IN THE DISTRICT COURT

AGONA SWEDRU - A.D. 2022

BEFORE HIS HONOUR ISAAC APEATU

Court Case No 95/2023

6th October, 2022

THE REPUBLIC

Versus

ALEX ATILAH

JUDGMENT

The accused person was arraigned before this court charged with a single count of Being on premises for unlawful purpose contrary to section 155 of the Criminal Offences Act, 1960 (Act 29). He pleaded guilty with an explanation on the charge. However, when he gave his explanation, a plea of not guilty was entered for him because the explanation disclosed a defence to the charge. It was the result of the plea leading to a full trial for evidence to be taken which has culminated in this judgment.

The facts of this case as contained in the charge sheet and as narrated by the prosecution was that complainant, Forster Asiedu is a security man at Ghana COCOBOD while the accused person Alex Atilah is a head porter and scrap dealer as well. Both the complainant and accused are resident at Agona Swedru. On 10th September 2022 at 6:00am, the complainant arrested and brought the accused person to the Police Station and made a report that, while on guard duty at same day about 5:45am, he spotted the accused person on their compound picking used empty cans within the yard. That he arrested accused person for security purposes. The accused person was rearrested and

investigation revealed that the accused person unlawfully jumped into the compound on seeing used empty cans. During investigation, accused person was cautioned and he admitted the offence in his cautioned statement. After investigation, the accused person was charged with the offence as stated on the charge sheet and arraigned before this court.

In proof of these facts, the prosecution called the complainant, whose name I mentioned as Foster Asiedu as their first witness (PW1). They also called the investigator who gave evidence as PW2. The case of the prosecution as evidenced from the witnesses they called is that PW1 is a security man at COCOBOD, Agona Swedru. That on 10th September 2022 around 5.45 am, while the complainant was on guard duty, he spotted the accused person on their compound picking used empty cans within the yard. That he arrested accused person for security purposes. The accused person was rearrested and investigation revealed that the accused person unlawfully jumped into the compound on seeing used empty cans.

After calling the above witnesses, the prosecution intimated that it was closing its case. Accused was then called to open his defence. He gave evidence in his defence but called no witnesses. The nub of his defence was an admission that he jumped the fence wall and entered the yard but denied that he was there to steal. He claimed that he was looking for empty cans.

In his caution statement taken down by the police on the 11th day of September 2022, the accused had stated that he is jumped into the COCOBOD yard but did so only to look for empty cans. So when the security man chanced upon him, he was collecting empty cans and that is what he told him.

It is settled Constitutional law that a person accused of having committed an offence is presumed innocent until proven guilty or he has voluntarily pleaded guilty. This is a constitutional injunction provided for by Article 19(2) (c) of the 1992 Constitution of Ghana. The burden of proof in a criminal case therefore is on the prosecution at all

material times to establish the guilt of the accused in respect of the charges levelled against him. It has been held that the failure to discharge that burden should lead to the acquittal of the accused. And this proof required of the prosecution is said to be proof beyond reasonable doubt. See **Oteng v The State [1966] GLR 352.** In the converse, the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt. See **Commissioner of Police v Antwi [1961] GLR 408.** It has also been held that it is not enough for the court to hold that it does not believe the defence of the accused and then proceed to convict him. Short of disbelieving the defence, the court has a duty to consider whether the defence is reasonably true or reasonably probable.

From the facts and evidence above, the issues that call for determination in this case are;

1. Whether or not the accused entered the COCOBOD yard.
2. Whether or not his entry was for an unlawful purpose
3. Whether or not the accused was found with any stolen item belonging to the complainant.
4. Whether or not the prosecution proved the offences beyond reasonable doubt.

The first charge was laid against the accused persons under Section 155 of Act 29. The section reads:

155. Being on premises for unlawful purposes

(1) A person who is found in or about a market, wharf, jetty, or landing place, or in or about a vessel, verandah, outhouse, building, premises, passage, gateway, yard, garden or an enclosed piece of land, for an unlawful purpose, commits a misdemeanour.

For the offence to be made out, the prosecution had the burden of proving the following elements:

1. The accused was on a premises
2. He was there for an unlawful purpose

What is unlawful was not defined in the section. However, from the use of the term unlawful in other sections, I surmise it to mean any of the following:

1. Where a person enters such premises otherwise than in the exercise of a lawful right, or
2. Without the consent of any other person able to give the consent for the purposes for which that person enters.
3. Where a person enters premises to commit a crime

It has been held that to succeed on the charge of being on premises for unlawful purpose, there must be clear and unmistakable evidence that the accused had been found in the building, premises or yard etc. If he was found outside of the premises, he cannot be charged successfully with the offence. So in the case of **Emmanuel Kofi v Commissioner of Police [1961] GLR 184** where the accused was found outside of the premises, his conviction was quashed on appeal. See also the case of **R. v Lumsden [1951] 1 All E.R. 1101.** In this case, the appellant was seen by police officers as he entered during the night, a recess in the side of a cinema theatre in which was the doorway of one of the side exists of the theatre. The officers entered and searched the cinema, but they found no trace of the appellant. Later, however, one of the officers saw him running out of the theatre through the open doorway. He was followed and arrested. He was convicted of being found by night in a building with intent to steal. On appeal, his conviction was quashed on the ground, as held by the court, that to support a conviction for the offence of being on premises for unlawful purpose, evidence that the appellant was seen coming out of the cinema, from which it would be reasonable to infer that he must have been in it, was not sufficient. That there must be clear and unmistakable evidence that the appellant had been found in the building. Since that evidence was lacking in that case, the conviction was quashed.

In this case, the prosecution claimed that PW1 saw accused in the yard or compound of COCOBOD when he was on his duty checks. They claimed that accused had jumped into the yard. There is no doubt that the accused was in the yard. He was clearly in the yard. The accused admitted that he was found by PW1 in the COCOBOD yard. But was he in the yard for an unlawful purpose? Prosecution did not readily claim that they suspect the accused was there to steal. But what I find from the statements made in evidence suggests that they suspected the accused to have gone there to steal. As I

stated above, for a person to be convicted of the offence of being on premises for unlawful purpose, he must have been in or about the premises with the purpose or intent of committing a crime.

But whether an accused entered such premises with intent to commit an offence or not touches on the state of mind of the person who does the act. And whether an accused person has a particular state of mind is essentially a question of fact which has to be decided based on the circumstances of each case. As the Latin maxim goes; *acta exteriora indicant secreta* – "exterior actions indicate interior secrets." The moral lesson of the maxim is that in some cases, a man's previous intentions are judged by his subsequent conduct. The law thus takes cognisance of the original intention with which an act was done by reference to the subsequent act of the person concerned. As we all know, the devil himself, "knoweth not the mind of man."

So, from the evidence, did the prosecution prove the intent with which the accused entered the premises? As I stated above, the prosecution claimed that PW1 found accused in the yard when he was going on his inspection tour of the yard. He then asked the accused what he was doing there. Accused mentioned that he was there to collect empty cans. But PW1 did not believe him and arrested him. According to the prosecution, the accused did not enter into the yard through any of the conventional means. He rather chose to jump over the wall into the premises. This appears to have been the major trump card of the prosecution. But I do not think that the fact that accused jumped the wall into the yard is enough to conclude that he must have been on the premises to commit an offence. Indeed, PW1 admitted that when he saw accused in the yard, he was not carrying any weapon or any implement designed to break into or break any thing. Accused did not wield any weapon which would have suggested that he meant to steal with that weapon. He carried nothing on him. PW1 saw him collecting empty cans. This was also admitted. So, it is not as though the accused quickly thought of something to say to extricate himself when PW1 found him on the premises. He was actually collecting used tins and cans. If that is what has been found on the record, wherein lies the conclusion that he must have been on the premises to commit an

offence?

Being a trial court, I am enjoined to evaluate all the evidence adduced by the prosecution and see if the charge proffered against the accused is proved beyond reasonable doubt. If there is any reasonable doubt as to the guilt of the accused, the charge must fail. It bears repeating the wise universal principle that an innocent man in the eyes of the law should not be convicted of a crime. As is oft parroted, it is better that 99 offenders shall escape than that one innocent man, be condemned. But its overuse has not whittled down its relevance and comes in handy in cases such as this. The evidence adduced against the accused did not indicate that the accused was on the premises to commit an offence. I find in this case that the accused is a scrap dealer. Desirous of collecting scrap, he jumped the wall into the COCOBOD yard. I do not find any ulterior motive behind his entry onto the premises. There being no intent to commit any offence, I do not find the charge of being on premises for unlawful purpose made out. The evidence led by the prosecution did not support the charge against the accused. In the circumstances of the case, I hold that the prosecution failed to prove that the accused was on the premises for an unlawful purpose.

It is my judgment therefore that the prosecution failed to prove the elements of the charge of being on premises for unlawful purpose against the accused person. In the absence of any proof of the guilt of the accused, I hold that charge of being on premises for unlawful purpose fails. Accused is hereby declared not guilty of the offence of being on premises for unlawful purpose and is hereby acquitted and discharged.

HIS HONOUR ISAAC APEATU
DISTRICT MAGISTRATE