

**IN THE DISTRICT COURT HELD AT SEFWI JUABOSO ON  
THURSDAY, THE 25<sup>TH</sup> DAY OF APRIL, 2023 BEFORE HIS  
WORSHIP SAMUEL ENTEE JNR ESQ. THE MAGISTRATE**

**CC NO.: 243/22**

**THE REPUBLIC**

**VRS.**

**PIUS NKUAH**

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Accused Person: Present

Daniel Asaase Prosecuting Officer for Sefwi Juaboso District Assembly:  
Present

The Accused person is charged with three offences:

1. Building permits and authorised building contrary to Section 106(1) of the Local Government Act 2016 (Act 936)
2. Authorised development- contrary to Section 118(2) of Land Use and Spatial Planning Act, 2016 (Act 925), and
3. Prohibition of development without contrary Section 117(2) of Act 925.

The facts of the case are that the Accused is a nurse at Juaboso Government Hospital and lives at Juaboso. That on 13<sup>th</sup> August 2021, the Works Department of Juaboso District Assembly went out for routine inspection and found that the accused had constructed a footing opposite Desert Filling Station along the Sefwi Afere road without drawings and permit and also building on part of the Assembly land and a reserved area. The accused was served with an invitation notice to produce his land documents but he did

not honour the invitation and failed to produce the document and rather continued to build and defy the order given him to stop work. That in January 2022 when the Works Department visited the site, Accused had built and about to floor it to become a multiple storey building and when he was asked to stop work, Accused said he was not going to stop and nobody could stop him. So he was charged with the offences as stated in the charge sheet and put before court for prosecution.

Amankwaatia Essuman (PW1) who is the District Works Engineer with the Sefwi Juaboso District Assembly to support their case. The Accused gave evidence in his defence but did not call any witness.

PW1 testified that on the routine inspection by him and other officers of the Work Department in December 2020, they saw an evacuation of trench on a piece of land in-between a motor repair shop in a spare parts container on the Afere road. That they asked of the developer but the 2 shop owners could not tell them. So they left a message that the developer should report to them at the assembly and submit his permits and drawings. That the developer did not report, and that on 12<sup>th</sup> January 2021, they saw works still on-going on the site whiles returning from the timber market and reinforcement bars or starter bars had been planted in the concrete foundation. They sought for the developer and told him that his structure was within the road reservation so he could not put up any permanent structure, but temporal structures like kiosk and metal containers were allowed with permits, and that the distance of reservation was 15 meters from the centre of the road.

PW1 said on 9<sup>th</sup> February, 2021 during an inspection on the assembly projects at magazine, they saw that the work was still on-going without permits and consent from the Assembly, and meant the developer (Accused) had chosen not to heed to the warnings. And they found out that works on the site are being done on the weekend to prevent the Assembly workers from interfering. PW1 said the assistant engineer of Juaboso District Assembly, Mr Brown, saw workers on site working one Sunday afternoon when returning from church and when he told the developer and his workers to stop work, they refused and it turned into a heated quarrel and

Mr Brown seized their head pans and shovel. That subsequently they gave verbal and written warnings to the Accused to stop work due to the incident with Mr Brown. PW1 again said on 21<sup>st</sup> February, 2021, he was in his office when he received information that the Accused was on site working. Then on 10<sup>th</sup> August 2021 while returning from site with the District Chief Executive, the District Coordinating Director and the Presiding Member all of the Juaboso District Assembly, they met the Accused in person working on site, and the DCE told the Accused to stop work but he continued the work when they left the site.

In his defence, the Accused said even though he did not obtain permit from the District Assembly before commencing the development, but the reason was that he thought he could obtain the permit during progress of the work. That he was only warned on 16 August, 2021, by Mr Brown who took his shovel and head pan, and called PW1. And on 17<sup>th</sup> August, 2021 he went to the Assembly to access the permit but was denied the permit by the District Engineer, PW1. The Accused said on the 19<sup>th</sup> August, 2021 the Assembly went and wrote the inscription "Demolish by JDA" before 6/10/2021. Then on 24/01/2021 the DCE, District Coordinating Director, the Presiding Member, and the district engineer visited the site by which time the flooring of the structure had been completed but despite the numerous attempt to acquire the permit, the District Engineer had refused to grant him the permit.

There is pertinent issue to be dealt with concerning the second offence that is Unauthorised development- contrary to section 118(2) of Land Use and Spatial Planning Act, 2016 (Act 925). The law provides that:

1. "A district Assembly shall comply with the procedure stated in Section 119 where (a) a physical development has been or being carried out without a permit contrary to this Act, or (b) the condition of permit are not complied with"
2. "Despite subsection (1), a District Assembly may issue an enforcement notice demanding the immediate stoppage of the execution of a development of works carried out contrary to this Act or to the term of an approved development plan".

It could be seen that section 118(1) and (2) of Act 925 is not an offence creating section. Subsection (1) is a mandatory duty imposed on the District Assembly to comply with the procedure stated in Section 119 of Act 925. Subsection (2) is a discretionary power given to the District Assembly, to issue enforcement notices. So since section 118 of Act 925 is about their procedure to follow when Act 925 section 118 is contravened, and not an offence creating section, accordingly, the second offence is hereby struck out.

The issues for determination are therefore:

1. Whether or not Accused is guilty of the offence of prohibition of development without permit
2. Whether or not Accused is guilty of the offence of Building Permits and unauthorised Buildings.

**ISSUE 1: Whether or not Accused is guilty of the offence of prohibition of development without permit.**

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Section 117 (2) of Act 925 under which Accused is charged provides that “A person who carries out any physical development without a permit commits an offence”.

Section 117 (1) of Act 925 explains that “A person shall not carries out any physical development within this Act.”

So the prosecution have to prove that:

1. Accused carried out a physical development
2. Without a permit

The evidence of the prosecution before the court which evidence was admitted by Accused clearly indicated to the court that Accused carried out a physical development on a piece of land along the Juaboso-Afere road. The evidence further indicated that Accused carried out the physical development without a permit. However, Accused said he thought he could obtain the permit later or during the progress of the physical development. During Cross examination of PW1, accused put it to him that PW1 came to

meet him on the building site on 23/08/21, and seized his head pan and shovel to which PW1 replied that it was rather his assistant, Mr Brown, who brought the head pan and shovel to the office on 9/2/21 so the said items were seized at his site on 9/02/21. But Accused insisted that it was on the 23/08/21 that PW1 and the presiding member of Juaboso District Assembly, Adu Blankson, and Mr Brown took the items away.

To another question that PW1 refused to issue the permit to him though he told PW1 that he did not know that he had to seek for permit before working on the land, PW1 replied that he refused it because when the presiding member asked him to stop the work. Accused told him to the face that nobody could stop him from the work he was doing on the land. The Accused did not deny or dispute or challenge PW1 that he never said that to the presiding member. So the court presumes the Accused told the presiding member that nobody could stop him from the work he was doing on the land. (FORI V. AYIREBI [1966] GLR 627 SC) cited. Probably, Accused thought that he could build without a permit. Granted that accused thought he could start developing the land before he could go for the permit. The evidence before the court showed that officials of the District Assembly warned accused several times to stop the physical development on the land but he went ahead to develop it.

According to PW1 they saw excavation of trench on the land in December, 2020 and left a message for accused to report at the Assembly but he failed to report. Then on 12/01/2021 they saw that accused was still developing the land and warned him personally to stop the construction of the building. Then again, on 9/2/2021 they saw again that the accused was still developing the land. But accused denied this evidence in cross-examination by putting it to PW1 that the first time he (accused) went on the land was on 20/06/202. Accused again, put it to PW1 that PW1 and the presiding member came to meet him on the land on 23/8/21 and that was the day Mr Brown took away the head pan and shovel and not the previous dates PW1 claimed. And that on 25/8/21 he went to PW1 at the office and asked of the permit he talked about on 23/8/21 based on which he took his head pan and shovel away. PW1 denied all these pieces of evidence by accused.

From the cross-examination above, the accused wanted to portray to the court that it was on 23/8/21 that PW1 warned him about developing the land without a permit and he went to PW1 at his office on 25/8/21 for the permit. However, in his evidence-in-chief Accused said he was only warned on 16/08/2021 by Mr Brown about the need to serve a permit before developing the land, and Mr Brown took his head pan shovel away. Then on 17/08/2021 he went to the assembly for the permit but PW1 denied him the permit.

It is clear to the court from the foregoing that the evidence of Accused concerning when he was informed by the officials of the District Assembly that without a permit he could not put a physical structure on the land was markedly conflicting. The court is therefore of the view that the Accused's evidence was not credible and therefore not reliable. The court therefore prefers the evidence of the prosecution that they warned Accused as far back as 12/01/2021 to stop the work on the land as he had no permit for that purpose but he refused and continued to build. A photograph tendered in evidence by the prosecution as Exhibit C showed the stage the Accused had built his house to.

In Exhibit C the Juaboso District Assembly wrote on the walls of the building "Demolish by JDA B/F 6/10/2021" but the evidence by the Accused himself showed that he still continued and built the house and even floored it. Section 117(1) of Act 925 clearly explains that a person "shall not" carry out physical development without a permit. The word SHALL is mandatory which implies that the developer has to obtain the permit before commencing the physical development not after commencing or during the construction of the building. And since Accused had put up a building on the land without a permit he had breached the law.

At any rate, ignorance of the law is not an excuse to contravene the law.

Section 29 of the Criminal Offences Act, 1960 (Act 29) provides that "A person shall not be exempt from liability from punishment for an act on the grounds of ignorance that the Act is prohibited by law".

On the evidence before the court therefore, since the Accused commenced the building without a permit, I find that the Accused is guilty of the offence

of prohibition of development without a permit contrary to Section 117 (2) of the Land Use and Spatial Planning Act, 2016 (Act 925).

**ISSUE 2: Whether or not Accused is guilty of the offence of Building Permits and unauthorised buildings.**

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Section 106 (1) of Act 936 under which Accused is charged provides that “A person shall obtain a building permit from the District Planning Authority before undertaking a construction of a building or any structure or undertaking any other work.”

Section 106 (2) explains that “The permit shall contain the conditions that the District Planning Authority considers necessary”.

Section 106 (3) further explains that “A District Planning Authority may give notice in writing in the form set out in the sixth schedule, to an owner, occupier or developer of premises, if the owner or occupier or developer:

- a. is constructing a building or other structure
- b. has constructed a building or other structure
- c. is working or executing work

without a permit or contravention of a by-law made by the District Assembly.

Section 106 (4) further states that “The notice shall require:

1. The owner, occupier or developer to show sufficient cause why the building, structure or work should not be removed, altered or demolished on or before the day specified by the District Planning Authority, and
2. A written response by the owner, occupier developer or duly authorised agent to be served on the District Planning Authority.”

Section 106 (5) adds that “If the owner, occupier or developer fails to show sufficient cause why the building, structure or other work should not be removed, altered or demolished, the District Planning Authority shall by notice order the owner, occupier within one month to remove, alter or demolish the building, structure or order work at personal cost.

Section 106 (6) states that “if the owner, occupier or developer fails to comply with the order, the District Planning Authority may carry on the removal, alteration or demolition and shall be entitled to recover the expenses incurred by the District Assembly from the owner, occupier or developer as a debt owned by to the District Assembly”.

Section 106 (7) provides that “A person who contravenes the terms of a permit, commits an offence”.

The court is of the considered view that section 106 (7) is not applicable in this case as the evidence before the court showed that the Accused did not obtain any permit. So since he did not obtain any permit he did not contravene the terms of any permit because section 106(2) states that the permit shall contain the conditions of terms.

Therefore the court will rather look at whether, the District Planning Authority and for that matter the District Assembly complied with section 106 (3) and section 106(4)(a) of Act 936.

According to PW1, they served the accused with warning letters, and even wrote on his building walls to stop work on the building but he still continued the work. Pw1 tendered a document in evidence as Exhibit B which was dated 10/08/2021. Exhibit B was a mandatory summons issued by the Juaboso District Assembly to Pious Nkuah, the Accused person.

Exhibit B stated that “You are requested to appear in person at the Works Department of Juaboso District Assembly to explain to the satisfaction of the Assembly why court action should not be taken against you for failing in constructional obligation by allowing the following occurrences

- a. Erection of structures without a permit
- b. Building without a permit

Contrary to section 106 sub section 3 of Act 936.

Exhibit B was signed by the District Works Engineer as the chairman of the Technical sub Committee. Pw1 again tendered a warning letter to the Accused as Exhibit A dated 02/11/2021. Exhibit A was issued by the Juaboso District Assembly and signed by the District Coordinating Director, Mr



Emmanuel Esiape for the District Chief Executive, Honourable Godfred Kwabena Agyei.

Exhibit A was headed “Building Permits and Unauthorised Buildings”, and stated that “We wish to inform you that under the local government Act 2016 (Act 936) section 106(1), (2) and (3) every person or company shall before constructing a building or other structures or undertaking any work, obtain the permit from the District Assembly before construction work starts. We therefore write to inform you that you are being required on or before from the date above to submit and pay for land development and building permit fee to the Assembly for verification. Section 106 (4), (5) and (6) also states that if the owner or developer fails to comply with the order from the district assembly within a specified time, the district assembly may carry out removal, alteration or pulling down, and recover the expenses from the owner or developer, as if it were debt due from the person to the District Assembly. Your prompt action is highly anticipated”.

PW1 further tendered a photograph in evidence as Exhibit C. It showed inscription or writings on walls which PW1 said it was Accused person’s building. It was written on the walls “Demolish by JDA B/F 6/10/2021” although the Accused said he was not served with Exhibit A and B he admitted Exhibit C, that the building in Exhibit C was his and the Assembly Officials wrote the order on his walls. The evidence before the court also indicated that Accused was served with Exhibit A and B.

Under section 106 (4) (b), Accused or his agent was supposed to have responded to Exhibit B with a letter to the District Planning Authority, but Accused failed to do so, and failed again to respond to Exhibit A which was more or less a reminder to the Accused to show cause why his building should not be demolished. So by failing to respond, Accused failed to show cause entitled.

From the forgoing and on the totality of the evidence before the court, I find that the District Assembly complied with section 106 (4) (a) of the Local Government Act, 2016 (Act 936) by serving the required notice on Accused. Furthermore the position of the law is that “A District Planning Authority may effect or carry out an instant prohibition, abatement, alteration, removal or demolishing of any unauthorised development carried out or being carried out that encroaches or will encroach on a community right of space or that interferes or may interfere with the use of space “[Section 97(1) of Act 936].

According to PW1, he and his officials told Accused that his structure was within the road reservations so he could not put up a permanent structure. The Accused did not deny or dispute or challenge what PW1 said about his structure being on land within the road reservation. What the Accused said however, was that the land his building was on belonged to his family who sold it to someone who in turn gave it to him to build a house and give him (the owner) one room. But PW1 in his response explained that the road reservation started from the centre of the road to 15 meters, that is, 50 feet either was in respect of highways.

Since Accused did not dispute that the land and for that matter his building was within the road reservation, the court presumes that the Accused person’s land is within the road reservation. The court is therefore of the view that the Accused’s building encroaches on the community right of space and if left to stand it would school ground, hospital ground, open space, cemetery, playing field, square, durbar interfere with the use of that space.

Section 234 of Act 936 interprets community, right of space to mean “a road, street footpath, pavement, passenger terminal, parking area, any public right of way, ground, market place, public place or assembly, or any space or ground or area for public or community use that exist or is so designated in an approved settlement plan or under the provision of any law”.

Accordingly, Section 97 (2) of Act 936 provides that “The action to stop the encroachment on the community right of space, and the District Assembly has complied with Section 106(3) and Section 106(4) (a) of Act 936, by serving notice on the accused, I find that the Accused is guilty of the offence of building permits and unauthorised buildings contrary to section 106(1) of Act 936.

Accordingly Accused person is convicted on the first and third counts that is count 1 and 3. Accused is sentenced to pay a fine of 300 PU on count three or in default 1 year IHL. With respect to the first offence, count 1, since the District Planning Authority complied with section 106 (3) and section 106 (4) (a) by serving Accused notice to show cause why his building should not be demolished but he failed to respond, the District Planning Authority is ordered to proceed under section 106(5) of Act 936 and serve Accused with notice ordering him within one month to demolish entirely the building at his own cost. Subsequently the District Planning Authority may apply section 106(6) of Act 936 based on the outcome of the notice ordering Accused to demolish the building.

**SAMUEL ENTEE JNR. ESQ**  
**THE MAGISTRATE**