

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON THURSDAY, THE 5TH DAY OF JANUARY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM VIDA DANQUAH AND MADAM PHILOMENA SACKEYAS PANEL MEMBERS

SUIT NO. R16/12/23

THE REPUBLIC

VS

JOSIAH ZOGLIE

Juvenile present with mother

Complainant present

Chief Havor with Insp. Rebecca Ackerson with PW/CPL Christiana T. Otema for the Republic

Komivi Dzotsi Esq. for Hamdiya Mohammed Esq. for Martin Kpebu Esq. for the Juvenile

JUDGMENT

On the 16th of November 2022, the Juvenile was put before this court on the following charges;

- i. Count One: Causing Unlawful Damage contrary to Section 172 of The Criminal and Other Offences Act, 1960 (Act 29).
- ii. Count Two: Unlawful Entry contrary to Section 152 of the Criminal and Other Offences Act, 1960 (Act 29).
- iii. Count Three: Stealing contrary to Section 124(1) of the Criminal and Other Offences Act, 1960 (Act 29)

The facts of the matter as incorporated from the Charge Sheet is that the Complainant has an uncompleted building at Doblo Gonno inside KAS Estate whilst the Juvenile is a Fifteen (15) year old school dropout who lives with his father at Obeyeyie. On the 29th of November 2022, the Juvenile was seen in the complainant's uncompleted building by

a carpenter he had engaged to do some works. The Juvenile had cut part of the P.O.P. ceiling at the porch and entered the roof of the building to cut electrical cables ready to be conveyed. The said carpenter raised an alarm of which the Juvenile was arrested, charged with the offences and arraigned before the instant court.

The Plea

On the 8th day of December 2022, the Juvenile pleaded guilty simpliciter to all Three (3) counts after same was read and explained to him in the Twi Language. The Juvenile was then convicted on his on plea, hence his sentence.

Sentencing

In sentencing the Juvenile, the Juvenile Court is guided by Section 24(1) of the Juvenile Justice Act, 2003 (Act 653) which provides, among others, that *“where a Juvenile is charged with an offence, the Juvenile Court shall order a Social Enquiry Report (SER) to be submitted to the Court which shall be taken into account in making an Order”*. The Probation Officer, Mr. Richard Tegbey, conducted the investigation and presented the SER to Court. The SER revealed the nature of the offence, the character, antecedents and home surroundings of this Juveniles as well as the circumstances that led to offence being committed.

The Social Enquiry Report (SER)

The SER revealed that the Juvenile’s father is a driver, lives in his own house at Amasaman Obeyeyie and is a father of Five (5) children but is currently separated from the Juvenile’s mother who is also a food vendor. The Juvenile has been living with both parents from birth till 2021 when the father attended his mother’s funeral at Akatsi Avedo, and gave him money to take care of his siblings. Upon his return, he realized that the Juvenile had used the upkeep money in playing games and when he was reprimanded, the Juvenile stopped school, left home and joined children with similar questionable characters in the area. The Juvenile’s father informed the Probation Officer

that the Juvenile comes home to steal some money and then return to the streets prompting him to change his door locks and when the Juvenile could not get access to the house, he left the house to go and live in an uncompleted building in the area. The Juvenile father informed the Probation Officer again that all efforts at getting the Juvenile to change his ways prove futile as he keeps returning to the streets and has pick all sorts of bad habits such as taking drugs.

According to the Juvenile's mother, the Juvenile left home on the 19th of October 2021 during his paternal grandmother's funeral in Akatsi Avedo. She informed the Probation Officer that when the Juvenile started skipping home, she enticed him with food and money to convince him to return home but his father sent him back to the street. She stated that when the Juvenile's character became worst, she went to the Senior Correctional Centre at Roman Ridge in December, 2021, pleaded with the authorities to admit the Juvenile but was told that was not the proper procedure for admitting inmates. She concluded by stating that she then gave up on the Juvenile who has been a street boy until he committed this offence. The Juvenile informed the Probation Officer that he did steal the electrical cables and if he had succeeded in his 'operation', he would have sold the pieces of the electrical cables at GH¢ 50.00. The Probation Officer concluding by stating that the Juvenile committed this offence in order to fend for himself as he lives on the streets. He stated further that both parents of the Juvenile's parents are gainfully employed as a driver and food vendor, they have their own homes and the rest of the Juvenile's siblings children are actively in school and it is only the Juvenile who is a delinquent.

The Probation Officer, who at best is an Independent Investigator and has the duty to make certain recommendations without losing cognizance of the best interest of the child stated that since the Juvenile lives on the streets and has defied all forms of parental control. The Probation Officer suggests to the Court that the Juvenile undergoes character and vocational training in a correctional center. He further recommended that the Juvenile is committed to into the Senior Correctional Centre for a period of Three (3) years. However, in spite of the recommendation of the Probation

Officer, it is the duty of the court to consider the effect the sentence is likely to have on the child or young person.

Mitigation

Counsel for the Juvenile prayed the court exercise its discretion in the best interest of the Juvenile.

Analysis

It is obvious from the contents of the SER that this is a Juvenile that needs reformation and such reformation must be over a period of time. This is because the Juvenile herein, per the Bone Age Determination Report, is estimated to be between the ages of 14 years and 16 years and has been exposed to various types and forms of delinquent behaviors as well as social vices that consequently resulted in the commission of the criminal offence. It is also observed from the SER that both parents are currently separated and are unable to exercised parental control over the Juvenile. It is therefore obvious that it will in the best interest of the child that he is detained at a Correctional Centre for reformation. *'Section 46 (1) of Act 653, however, provides that where a Juvenile or young offender is ordered to be sent to a Centre, the detention order shall be the authority for the detention and the period shall not exceed*

- a) three months for a Juvenile offender under the age of sixteen years;*
- b) six months for a Juvenile offender of or above sixteen years but under eighteen years;*
- c) twenty-four months for a young offender of or above the age of eighteen years; or*
- d) three years for a serious offence'.*

Clearly, the Juvenile herein is a Juvenile Offender as defined in Section 60 of Act 653 as *'a Juvenile who has been convicted of an offence for which the court may impose a sentence of imprisonment for one month or upward without the option of a fine'* and the period of detention should have been *Three (3) months per Section 46(1)(a)* or a maximum of *Six (6)*

months per Section 46(1)(b). However, the Probation Officer recommends a period of Three (3) years detention per Section 46(1)(d) which is a period reserved for serious offences. It must be stated that Section 46(8) states that 'the following offences are considered to be serious offences (a) murder; (b) rape; (c) defilement; (d) indecent assault involving unlawful harm; (e) robbery with aggravated circumstance (f) drug offences; and (g) offences related to firearms'.

It must be repeated and emphasized that the Juvenile herein has been convicted of the offences of Causing Unlawful Damage, Unlawful Entry and Stealing contrary to the provisions of Act 29. Clearly, the offence the Juvenile has been convicted of is not considered as a Serious Offences and as such the Detention of the Juvenile herein should not be for the period reserved for Serious Offences although the Probation Officer recommends that the Juvenile be detained at the Senior Correctional Centre. Section 46(2) of Act 653 states that *'a Juvenile offender under the age of eighteen years shall be detained in a Junior Correctional Centre'*. Section 46(3) of Act 653 also provides that *'a young offender above the age of eighteen years shall be detained in a Senior Correctional Centre'*. Section 46(4) of Act 653 further states that *'a Juvenile offender under the age of fifteen years who has been convicted of a serious offence shall be detained in a Senior Correctional Centre'*. Yet, it has been recommended that the court detains the Juvenile, who is estimated to be between the ages of 14 years and 16 years old, for a period of Three (3) years at the Senior Correctional Centre for an offence which is not considered as a Serious Offence.

The Senior Correctional Centre is a Juvenile correction institute under the Ghana Prisons Service (GPS) for Juveniles who are under Eighteen (18) years old and have been convicted of criminal or civil offences. The period that a Juvenile spends in the Centre is aimed at reforming him or her so they can fit into society easily after their stay at the Centre. The Centre's reformation programs includes training these young offenders for a period between Three (3) months and Three (3) years in various vocational and technical skills so as to fully reintegrate these Juveniles into their communities. The evidence on record shows that the Juvenile herein will need reformation given his delinquent behavior and such reformation should span over a

period of time that will be adequate for a comprehensive reformation and rehabilitation. As such detaining the Juvenile in any other institution apart from the Senior Correctional Centre will not be in the best interest of the Juvenile as the Court is guided by Section 2(1) of The Children’s Act, 1998 (Act 560) which provides that ‘*the best interest of the child shall be the primary consideration by any Court, person, institution or other body in any matter concerned with a child.*’ The Court takes cognizance of the fact that this Juvenile lives on the streets hence his delinquent behaviors as well as the lack of parental control. The court is therefore of the opinion that the Senior Correctional Centre is the only institution that will ensure that this Juvenile is reformed, rehabilitated and reintegrated fully into society so as to be able to contribute meaningfully to society. It is for the reasons elucidated above that the court appreciates the Recommendations of the Probation Officer and shall not depart from same.

SENTENCE:

Pursuant to Sections 44, 45 and 46 of Act 653, the Juvenile is sentenced as follows;

1. The Juvenile is to be detained at the Senior Correctional Centre for a period of **Three (3) years** and the Three (3) years shall be inclusive of the period spent on remand.
2. The Juvenile’s parents shall contribute an amount of Two Hundred Cedis (Ghc200.00) monthly towards his upkeep at the Correctional Centre.
3. The Juvenile’s parents are ordered to pay damages in the sum of Five Thousand Ghana Cedis (Ghc5, 000.00) to the victim.

SGD

.....
H/H HALIMAH EL-ALAWA ABDUL-BAASIT.
PRESIDING JUDGE

I AGREE

.....
MADAM PHILOMENA SACKY
PANEL MEMBER

I AGREE

.....
MADAM VIDA DANQUAH
PANEL MEMBER