

**IN THE DISTRICT COURT SITTING AT NALERIGU ON THURSDAY 16TH OF
NOVEMBER 2023 BEFORE H/W SIMON KOFI BEDIAKO ESQ – MAGISTRATE**

SUIT NO. NR/NG/DC/78/22

THE REPUBLIC

VRS

- 1. BRAIMAH SALIFU**
- 2. ABDUL SAMED MOHAMMED**
- 3. MUKAILA MUMUNI**

JUDGEMENT

INTRODUCTION

The accused persons herein were arraigned before this Court on the 6th of April 2022 charged with the offence of **Unlawful Possession of Narcotic Drugs; contrary to section 37(1) and (2)(a) of the Narcotic Control Commission Act, 2020 (Act 1019)**.

PARTICULARS OF THE OFFENCE

1. BRAIMAH SALIFU, PAINTER: AGE 33. 2. ABDUL SAMED MOHAMMED, MOTOR CYCLIST, AGE 23. 3. MUNKAILA MUMUNI, MOTOR CYCLIST, AGE 32: - For that you on 28th September 2021 at about 6:30pm at Nalerigu in the North-East Region and within the jurisdiction of this court, you were found using (smoking) Cannabis.

PLEA OF THE ACCUSED

The charge stated in the charge sheet against the Accused persons was read to the Accused persons in the Mampruli language which is the language of their choice. Each of the Accused persons pleaded **Not Guilty** to the charge.

BURDEN OF PROOF:

The Accused persons pleaded not guilty to the charge therefore, the prosecution is saddled with the burden to prove its case beyond a reasonable doubt against the Accused persons in accordance with Article 19(1) and (2)(c) of the 1992 Constitution of the Republic of Ghana which stipulates that:

19. Fair Trial

- “1. A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.*
- 2. A person charged with a criminal offence shall*
 - c. be presumed to be innocent until he is proved or has pleaded guilty;”*

Sections 11(1) (2) and (3), 13(1) and (2) and 15 (1) of the Evidence Act, 1975 (N.R.C.D. 323) have well settled the evidential and the persuasive burden that the law casts on Prosecution in a criminal matter. It provides as follows:

Burden of producing evidence

- 11. (1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.*
- (2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.*

Proof of a crime

13. (1) *In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.*
- (2) *Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.*

Burden of persuasion in particular cases

15. *Unless it is shifted,*

- (a) *the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue;*

In the case of **Woolmington v DPP [1935] UKHL**, stating the judgement for a unanimous Court, Viscount Sankey made his famous “Golden Thread” speech that:

“throughout the web of the English criminal law one golden thread is always to be seen, that is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exceptions...No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

Lord Denning J (as he then was) in the case of **Miller v Minister of Pensions [1947]**

2 All ER 372 at 373 in respect of proof beyond reasonable doubt stated that *“It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice”*.

He further stated in the same case that *“If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt’*”.

DEFINITION AND ELEMENTS OF OFFENCE

The Accused persons were charged with the offence of **Unlawful Possession of Narcotic Drugs; contrary to section 37(1) and (2)(a) of the Narcotic Control Commission Act, 2020 (Act 1019)**.

Section 37(1) of the Narcotic Control Commission Act, 2020 (Act 1019) states that “A person who, without lawful authority, proof of which lies on that person, has possession or control of a narcotic drug for use or for trafficking commits an offence.”

Section 37(2)(a) of the Narcotic Control Commission Act, 2020 (Act 1019) provides that a person who commits an offence in subsection (1) for use is liable on summary conviction to a fine imposed in accordance with the penalty specified in the Second Schedule and an additional term of imprisonment specified in that Schedule if the fine is not paid. The Second Schedule of Act 1019 provides the fine as not less than **two hundred penalty units** and **not more than five hundred penalty units** and a **default sentence of not more than fifteen months imprisonment**.

The key elements of the offence that the Accused persons have been charged with herein which must be proved beyond reasonable doubt by the prosecution are:

- (a) That the Accused persons were in possession or control of a narcotic drug for use.
- (b) That the Accused persons were in possession or control of the narcotic drug without lawful authority.

THE CASE OF PROSECUTION

BRIEF FACTS: “The complainant in this case is Ghana Police whiles A1- Braimah Salifu, A2- Abdul Samed Mohammed and A3- Munkaila Mumuni are from Nalerigu. On 28/09/2021 at about 6:00pm, the Regional Operational Commander ASP/Mr. Emmanuel Paa Awortwe incharge of 15 men went on a swoop in Nalerigu township based on intelligence gathered about some youth who engaged in peddling and using (smoking) a substance suspected to be Narcotic drugs in town. The team moved towards D-line in Nalerigu and saw A1, A2 and A3 under a mango tree using (smoking) a substance suspected to be Narcotic drugs. They were arrested with 2 pieces of remains of the

substance they were using (smoking) and two lighters. The substances were forwarded to Police Forensic Science Laboratory for examination and tested positive as Cannabis. All the accused persons were cautioned and charged with the offence as stated on the charge sheet and brought before this honourable court.”.

The prosecution called two (2) witnesses for purposes of proving its case against the accused persons.

The prosecution called No. 47500 D/CPL Avorgbedor Christopher as its first witness (hereafter ‘PW1’). In PW1’s evidence-in-chief he stated that he is a police officer stationed at the Regional CID, Nalerigu. PW1 avers that on 28th September 2021 at about 6:00 pm a team of 15 police men including him, led by the Regional Police Operational Commander at the time by the name ASP/Mr. Paa Awortwe, went on an operation in Nalerigu township based on intelligence gathered by the police that some youth in Nalerigu have been engaging in narcotic drugs. According to PW1 during the operation, they found the Accused persons and other men who they could not identify sitting under a mango tree in Moshiefong smoking cannabis. PW1 stated that when the accused persons saw the police, they threw the remainder of the substance, they were smoking into the bush around where they were sitting and wanted to escape but they were able to arrest them. PW1 stated further that they searched the area and found two remaining pieces of the cannabis they were smoking. He also stated that two lighters were found on the accused persons after the police carried out a search on them.

The prosecution called No. 10488 PW/CONST. Ahiatsi Mercy as its second witness (hereafter ‘PW2’). PW2 in her evidence-in-chief stated that she is a police officer stationed at Regional CID, Nalerigu. She stated that a case of possession of narcotics was referred to her to investigate. PW2 tendered in evidence the following exhibits which were duly admitted into evidence by the court with no objections from the Accused persons:

- Exhibit A1 – Investigation Caution Statement of A1.
- Exhibit A2 - Investigation Caution Statement of A2.
- Exhibit A3 - Investigation Caution Statement of A3.
- Exhibit B1 – Charged Caution Statement of A1.
- Exhibit B2 – Charged Caution Statement of A2.
- Exhibit B3 - Charged Caution Statement of A3.
- Exhibit C – Letter requesting for forensic exam of the suspected narcotics the police allege Accused persons were using dated 11th October 2021.
- Exhibit D – Forensic laboratory test results of the suspected narcotics the police allege Accused persons were using dated 15th December 2021.

At the close of the prosecution's case, the court in accordance with section **173 of the Criminal and Other Offence (Procedure) Act, 1960 (Act 30)** ruled that the prosecution had made a prima facie case against the Accused persons and the Accused persons were duly called upon to answer the case. The court in considering whether the prosecution has made a prima facie case against the accused after the close of its case is not required to determine whether the prosecution has proved its case beyond a reasonable doubt. It is at the end of the trial that the court is required to determine whether the prosecution has proved its case beyond a reasonable doubt. See **Tsatsu Tsikata v The Republic [2003-2005] 2 GLR 294, SC.**

CASE OF A1

It is A1's case that he lent GHS 30 to his friend A3 who rides a motor king. According to A1, A3 needed the money to buy fuel to travel to Gbintiri. He stated that A3 subsequently informed him that he is digging gravels at a place so he should come to the place and take his money. He testified that when he got to the place it was surrounded by mango trees. He added that he had not been to the place before. He also stated that he went to the place with a friend who accompanied him. According to him, when they got there A3 was at the place with another person digging the gravel.

Upon their arrival, the person with A3 took the gravel in a motor king to go and sell and then some of the proceeds would be used to pay him by A3. He continued that while they were waiting for that person to return, he took the phone of his friend and started watching videos on it. He testified that while watching the video he saw people surrounding them, he tried to run away but he was arrested and questioned.

CASE OF A2

A2 testified that he is an okada rider resident in Nalerigu. The case of A2 is that on the day he was arrested, he accompanied A1 to the farm. On their return from the farm A1 called A3 to find out where A3 was so that he could go to him and collect the money A3 owed him. A2 stated that when A1 called A3, A3 told A1 that he was in the bush picking gravel. He stated further that he and A1 went to where A3 was picking the gravel. According to A2 when they got there, he opened a video he had recorded on his phone, and they watched it. He testified further that while they were there, A3 gave his tricycle to his boy who took it to town. According to A2 while they were there watching the video, he heard voices saying don't move. He stated that he got up and one of the policemen used his gun to hit his phone and it fell and got broken. He testified that the police searched them, and they only found a handkerchief on him. According to A2, the police took them to the police station and took pictures of them.

CASE OF A3

A3 testified that he is a motor king rider and resides in Nalerigu. He stated that he knows the other two Accused persons in the matter. A3's case in summary is that he borrowed money from A1 to travel to Gbintiri. On the day he was arrested he had gotten a job to dig gravel, so he called A1 and showed him where he was so that he comes for the money he borrowed from him. A3 testified further that A1 came to the place at the time he was loading his motor king with gravel for his boy to go and convey that trip of gravel. He stated that his boy took the motor king with the gravel away while he was with A1. According to A3 while they were waiting for his boy to come back for them to load the last trip, they decided to watch a movie on his phone. He stated that whilst they

were watching the movie, a number of people just came to the place at once, so they panicked and got up to run but they were arrested. According to A3 they were never informed of the reason of their arrest. They only found out the reason for their arrest when they were brought before the court.

ANALYSIS OF FACT & LAW:

The prosecution has the burden to prove beyond a reasonable doubt the following elements of the offence of **Unlawful Possession of Narcotic Drugs; contrary to sections 37(1) and 37(2)(a) of the Narcotic Control Commission Act, 2020 (Act 1019)** which A5 has been charged with:

(a) That the accused was in possession or control of a narcotic drug for use.

(b) That the accused was in possession or control of the narcotic drug without lawful authority.

In respect of element (a) **section 113 of Act 1019** defines possess, possession for use, use of a narcotic drug or plant, control, and constructive possession as follows:

“Possess” in relation to narcotics or psychotropic substances includes keeping or storing narcotics or having the narcotics in custody or under the control or supervision of a person or being part of a consignment to a person, and constructive possession.

‘Possession for use’ means the possession or control of a quantity of narcotics drug or plant which does exceed the quantity which can reasonably be used by an individual in a day.

“Use of a narcotic drug or plant” means to smoke, sniff, consume, inject into the body of a person, or otherwise administer on the body of a person”.

“Control” in relation to a person, means possessing the power to direct or order an activity

“Constructive Possession” in relation to a person, means the person is deemed to be in possession of narcotics by reason of the fact that that person has control over another person who is in physical control of the narcotics, as to the disposal or otherwise of the narcotics.

PW1 testified that, during a police operation which was carried out in Nalerigu on 28th September 2021, he saw A1, A2 and A3 smoking cannabis under a mango tree in Moshiefong. He also stated that when the Accused persons saw the police they threw the remainder of the cannabis they were

smoking away. This means that each Accused person threw the cannabis he was smoking away. PW1 stated that the police searched the area the accused were arrested, and they found two remaining pieces of the cannabis the Accused persons were smoking. PW2 tendered in evidence Exhibit D which is a police forensic lab test result confirming that the two pieces of suspected cannabis retrieved from the scene by the police are indeed cannabis. PW1 during cross-examination admitted that when they got to the scene where the Accused persons were smoking the cannabis, he saw five persons including the accused persons at the scene. He also admitted during cross-examination that, he was able to determine that the Accused persons were smoking cannabis because it was dark and for that matter, he saw the light from the cannabis they were smoking. Considering that it was dark and there were at least two more persons in addition to the accused persons at the scene, it is not certain if PW1 could properly identify the persons who were smoking the cannabis. PW1 was adamant that the Accused persons were the ones he saw smoking the cannabis. The Accused persons in their respective defences denied smoking cannabis at the scene and stated that no cannabis was found on them when they were arrested by the police. PW1 admitted further during cross-examination that he only saw the Accused persons smoking the cannabis, but he did not arrest them with the cannabis in their possession. Below is the relevant questions and answers:

Q. I suggest to you that the accused never smoked cannabis and they were never caught with cannabis on the day in question.

A. They were arrested with the cannabis and still smoking the cannabis.

Q. By your last answer, do you mean to say you arrested them with cannabis in their hands.

A. I saw them smoking but I did not arrest them with the cannabis in their possession.

Q. I suggest to you that you did not even see the accused persons smoking cannabis on the day in question.

A. We arrested them with the cannabis and even a video of it was taken.

According to PW1 a video was taken of the Accused persons to prove that they were arrested with the cannabis. PW1 failed to tender in evidence this alleged video to back his averment. PW1 also admitted during cross-examination that the place where the Accused persons were arrested is a place the youth gather to smoke cannabis.

It is clear from the evidence of PW1 that the cannabis he alleges the Accused persons were smoking was retrieved from around where the Accused persons were seated after the police carried out a search of the area. If the place is indeed a spot where youth gather to smoke cannabis, then how certain is it that the pieces of cannabis the police found at the scene was the ones being smoked by the Accused persons and not pieces of cannabis left by other persons who came to the place to smoke earlier. It is also not clear from the evidence of PW1 whether he saw A1, A2 and A3 smoking cannabis when he got to the scene. This is very necessary to know because the police after searching the scene only found two remaining pieces of cannabis. The question is, where is the third piece of cannabis if all the Accused persons were seen by PW1 smoking cannabis.

As was illustrated in the case of Logan & Laverick v The Republic[2007-2008] SCGLR 76 the fact that a narcotic drug was found in a house when the accused person happened to be there, is not sufficient to connect that accused person to the crime unless it is proved that the accused person has possession or custody of it and furthermore knows about the nature of the drug. Therefore, the mere fact that the prosecution alleges that two pieces of cannabis were found at the scene where the Accused were arrested does not mean they are guilty of the offence they have been charged with.

The prosecution failed to adduce sufficient evidence to prove beyond a reasonable doubt that the accused persons were using cannabis or narcotic drugs when they arrested.

FINDING

Upon consideration of the entire evidence on record, I hold that the Prosecution has failed to prove beyond a reasonable doubt all the elements of the offence of **Unlawful Possession of Narcotic Drugs; contrary to section 37(1) and (2)(a) of the Narcotic Control Commission Act, 2020 (Act 1019).**

No matter what personal views or conviction I hold, the law must always prevail because the law is what it is and not what it ought to be.

Benjamin Franklin, in "Letter from Benjamin Franklin to Benjamin Vaughn (Mar. 14, 1785),"

stated that *"it is better a hundred guilty persons should escape than one innocent person should suffer."*

I find A1, A2 and A3 not guilty of the offence of **Unlawful Possession of Narcotic Drugs; contrary to section 37 (1) and (2)(a) of the Narcotic Control Commission Act, 2020 (Act 1019).**

DISPOSITION

I hereby acquit and discharge A1, A2 and A3 of the offence of **Unlawful Possession of Narcotic Drugs; contrary to section 37(1) and (2)(a) of the Narcotic Control Commission Act, 2020 (act 1019).**

I sign out with the famous words of Marc Anthony in Shakespeare's Julius Caesar. *"The evil that men do lives after them; the good is oft interred with their bones"*.

LEGAL REPRESENTATION

DETECTIVE INSPECTOR MUSAH IBRAHIM FOR THE PROSECUTION.

MABEL LARIBA AWUNI ESQ. HOLDING THE BRIEF OF SULLEY SAMBIAN ESQ. FOR THE ACCUSED PERSONS.

SGD

H/W SIMON KOFI BEDIAKO

MAGISTRATE

16/11/2023