IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI ON THE 24TH DAY OF NOVEMBER, 2022, BEFORE HER LADYSHIP AFIA N. ADU-AMANKWA (MRS.) J.

SUIT NO. F22/10/21

DIWURA MOHAMMED

VRS

THE REPUBLIC

JUDGMENT

The appellant, Diwura Mohammed, herein was the 1st accused person at the Circuit Court, Tarkwa. He was charged with one other for the following offences:

i. Conspiracy to commit crime, to wit stealing contrary to sections 23(1) of Act 29/60.
ii. Causing unlawful damage contrary to section 172 of Act 29/60.
iii. Unlawful entry contrary to section 152 of Act 29/60.
iv. Stealing contrary to section 124(1) of Act 29/60.

According to the prosecution, the complainant, Joyce Akomeah, owned a beer bar at the railway station. On 2nd October, 2013, at about 1:30 am, the complainant and her workers closed and locked their container and went home. At 2:30 am, the appellant and A2 went to the back of the complainant's container, chiselled it, entered it and stole a television set and assorted drinks. One Kofi Odoom heard the noise and organized others who rushed to the back of the container and saw the appellant in possession of the implements and the drinks whilst A2 carried the TV set on his head. They were arrested to the Railway police station. During their interrogation at the police station, the appellant and

A2 confessed to the crime. After investigations, the appellant and A2 were charged with the offences and arraigned before the court.

When the charges were read and explained to the appellant, he pleaded guilty simpliciter to all the charges. A2 also pleaded guilty simpliciter to all the charges. The appellant was convicted on his own plea of guilty and sentenced to 6 years IHL on counts 1, 2 and 3 and 14 years IHL on count 4. The sentences were to run concurrently. Dissatisfied with his conviction and sentence, the appellant appeals to this court on the sole ground that:

> "The trial judge erred in law when he failed to comply with section 171(1) and (2) of the Criminal Procedure Act, 1960 (Act 30)".

Arguing the sole ground of appeal, counsel for the appellant has submitted that the appellant was not given enough time to prepare his defence nor consult his lawyers as stipulated in Article 14 of the Constitution, as his trial was held within five days upon his arrest. Again, given that the appellant was unrepresented by counsel, it was necessary for the court to have complied with the procedure as provided in section 171 of Act 30 by explaining the charges fully to him before calling upon him to plead. The non-compliance with this provision and that of the Constitution rendered the conviction void as due process was not followed.

In response to these submissions, counsel for the respondent submitted that the procedure adopted by the court was regular and that there was no breach. Section 171(3) of Act 30 empowered the court to convict and sentence the accused once he pleaded guilty unless there appeared to the court sufficient cause to the contrary. The appellant pleaded guilty, and the court was duty-bound to sentence him, which it did within the allowable limits set by law.

I would begin the discussion by correcting the title of the law which was wrongly quoted by counsel for the appellant. The law in question is no longer the Criminal Procedure Act, 1960 (Act 30) but the Criminal and Other Offences (Procedure)

Act, 1960 (Act 30). The appellant pleaded guilty simpliciter at the trial court and was subsequently convicted and sentenced to 6 years IHL on counts 1, 2 and 3 and 14 years IHL on count 4. The sentences were to run concurrently. It is trite that a genuine plea of guilty to a charge amounts to a judicial confession to having committed the offence, which disposes of the obligation on the prosecution to prove the case as such a plea constitutes a conviction. It is now well settled that a person who has pleaded guilty can appeal against his conviction if it can be shown that an appellant did not appreciate or understand the charge or procedure and thus pleaded guilty by mistake. See the case of **Alpha Zabrama vrs. The Republic [1976] 1 GLR 291**. The gravamen of this appeal stems from the appellant's complaint that the charges were not read and explained to him prior to his pleading guilty.

It would be noted that the appellant faced charges of stealing and unlawful damage, amongst other offences and was being tried summarily. It was in the course of his trial that he pleaded guilty simpliciter. Counsel has contended that the acceptance of his plea in the absence of any explanation of the nature of the charge and the procedure that followed the acceptance of a guilty plea rendered his conviction bad in law. The question to determine is the law governing guilty pleas in summary trials. Pleas of guilty in summary trials are governed by section 171 of Act 30. Section 171(3) of Act 30 is as follows:

> "*A plea of guilty shall be recorded as nearly as possible in the words used, or if there is an admission of guilt by letter under section 70(1), the letter shall be placed on the record and the court shall convict the accused and pass sentence or make an order against the accused unless there appears to it sufficient cause to the contrary*".

Thus, in summary trials, all that the judge is enjoined to do is to record as nearly as possible the plea. Where other words are used in addition to the plea of guilty,

those words are recorded as nearly as possible, and where they are inconsistent with his plea of guilt, the judge would enter a plea of not guilty. The explanation of the nature of the charge and the procedure which follows the acceptance of a guilty plea to an unrepresented person pertains to guilty pleas under trial on indictments and, therefore, does not apply to summary trials. I have read the case of **Dakrugu vrs the Republic [1989-90] 1 GLR 308 @ 311-312**, where the court per Benin J (as he then was) interpreted section 171(3) to mean:

> *"This provision, to my mind, casts more than ordinary and passive supervisory role on the trial court. Judging from the circumstances outlined by Taylor J. (as he then was) in Alpha Zabrama v. The Republic (supra) it will clearly be seen that the trial magistrate or judge is expected to play an active role to ensure that the accused actually intended to plead guilty to the charge".*

The appellate judge went further to give guidelines as to what should be done before accepting a guilty plea. He stated as follows:

> *"(i) He must ensure that the guilty plea is voluntary. Sometimes the accused, before he is put before court, will have been threatened, especially by the police, that he should plead guilty to the charge to save the time of the court and the prosecution otherwise, if he allows the trial to go on and at the end of it all he is found guilty he will be given a heavier sentence than if he had simply pleaded guilty. Or sometimes, he is advised that if he pleads guilty, he may end up with only a fine or a more lenient sentence. …. Hence the trial court should necessarily take an explanation from the accused to find out whether or not he has been prompted by anybody to plead guilty to the charge. If he so finds that the accused was urged by someone else to plead guilty the court should conclude that the plea was not voluntary and should thus enter a plea of not guilty for him……..*

(ii) He must ensure that the plea is intelligent, in other words that the accused knows his rights, the nature of the charge to which he is pleading and the consequences of his plea. The "rights" here include the right to a full trial.

(iii) He must also ensure that there is a factual basis for the plea. That is that the facts presented by the prosecution support the charge, and the accused's explanation does not tend to negate the vital ingredients of the charge, say lack of intent.

(iv) It is desirable that the trial magistrate or judge personally addresses the accused in the language that he understands; and that all these processes must be recorded".

Thus from the Dakrugu case, there has to be some interaction between the judge and the accused before the plea is entered. This is inconsistent with the said section, which only requires the judge to record all that has been said as nearly as possible and not necessarily to interact with the accused person.

I have found support in the view I have expressed in the case of **Gabriel Johannes vrs. The Republic [2011] DLSC2591,** which counsel for the appellant has alluded to. The appellant, in that case, was charged with two others on two counts of attempted exportation of narcotic drug without a licence and possession of narcotic drug without a licence contrary to section 56(a), 1(1) and 2(1) of the Narcotic Drugs (Control, Enforcement and Sanctions) Law 1990 (PNDCL 236). On 15th September, 2009, the appellant and others were arraigned before the High Court. The charges were read and explained to them, to which the 1st and 2nd accused persons pleaded not guilty to both counts. The appellant refused to plead to the charges because her counsel was not in court. On 3rd September, 2009, the accused persons reappeared before the court with their lawyer. The charges were read to the appellant, who pleaded not guilty to both counts. On

28th January, 2010, when the accused persons reappeared in court, their counsel prayed for a short adjournment for the accused persons to reconsider their pleas. On 3rd February, 2010, the 1st and 2nd accused persons pleaded to change their pleas. The charges were read and explained to them, and they pleaded guilty to both counts. They were both sentenced to 10 years IHL. On 23rd February, 2010, the appellant was in court with her counsel, and her trial began with the evidence of the 1st prosecution witness. The next time the appellant appeared in court was on 4th May, 2010. She appeared in court without her lawyer and indicated to the court of changing her plea. The charges were read to her, and she pleaded guilty to both counts. She was convicted on her own guilty plea and sentenced to 10 years IHL on both counts, which sentences were to run concurrently. The appellant appealed against her conviction to the Court of Appeal. Among her grounds of appeal were:

i. The learned judge erred when he accepted the plea of the appellant in the absence of her counsel after she had refused to plead to the charges.
ii. The appellant never intended to plead guilty to any charge as she had written in her statement to the police and for that matter to the prosecution that she knew nothing about the drugs.

The Court of Appeal by a unanimous decision dismissed the appeal. Being dissatisfied with the decision of the Court of Appeal, the appellant appealed to the Supreme Court amongst other grounds that:

i. The Court of Appeal erred when it held that the trial High Court was correct in accepting the plea of the appellant in the absence of her counsel without explaining the consequences to the appellant.

ii. The court of appeal erred when it failed to consider the effects of section 171 of the Criminal Procedure Code, 1960 Act 30 on the change in the plea of the appellant of the trial High Court.

In arguing these grounds before the Supreme Court, counsel for the appellant submitted that if the trial judge had asked for and recorded the explanation for the change in plea, the court would not have accepted the plea of guilty and convicted the appellant. Counsel cited the learned author's book "Practice and Procedure in the Trial Court and Tribunal of Ghana, in which S. A. Brobbey JSC dealt with a change of plea and cited the case of **Yeboah vrs. The State [1964] GLR 715 at 717**.

The Supreme Court dismissed the appeal and held that as the appellant was standing a summary trial, it was section 171(3) of Act 30 which applied to her case concerning guilty pleas. The court, per Rose Owusu (JSC) stated thus:

> *"Under section 171 (3) what the trial Judge was legally bound to do was to have recorded the plea as nearly as possible in the words used so that if there was any explanation or words used which rendered the plea of guilty inconsistent with the words added then the court was bound to enter a plea of not guilty and proceed to try the case. Section 199 laid down the procedure before the trial court in a trial on indictment.*

Rose Owusu (JSC) disagreed with the appellate judge in the Yeboah case, who ruled that when the appellant changed his plea of not guilty to guilty, the magistrate ought to have paused for judicial thought and enquired from the accused the circumstances surrounding and leading to his sudden change of plea and recorded his answers. If his answers indicated that he had a defence, the court should have proceeded to try the case under section 199(4) of Act 30. According to her, the said section, i.e. 199 (4), was only applicable to trials on indictment and not summary trials.

She further added that:

> *"The duty being cast on a trial court to pause for "judicial thought" and inquire from the accused the circumstances leading to the sudden change of plea and record his answers is not a legal duty under the Act failure of which must in all cases vitiate the conviction.*"

From the record of proceedings, even though the appellant was unrepresented, the charges were read and explained to him in the Twi language, after which he pleaded guilty to the charges. The record of proceedings states:

"CRE: In Twi

PLEA:

Count 1 both guilty
Count 2 both guilty
Count 3 both guilty
Count 4 both guilty"

CRE means charge read and explained. Thus, the assertion of counsel that the charge was not read and explained to the appellant is not borne out by the evidence on record. Upon his plea of guilt, what was required of the judge was to record as nearly as possible the words used. As the plea was a guilty simpliciter one, there was no need for the judge to ask him any further questions. This was also the stance taken by the Court of Appeal in the unreported case of **Kofi Yeboah vrs the Republic, Criminal Appeal No: H2/6/17** delivered on 23rd November, 2017**,** where counsel for the appellant had submitted that the failure of the trial court to explain the plea to the appellant infringed on the appellant's constitutional right. Dzamefe JA stated thus:

"As we have already pointed out, by counsel's own admission, there is no requirement in Act 30 that a plea of guilty simpliciter should be explained to an accused person who is not represented by counsel. Therefore the whole argument of counsel for the appellant that the failure of the trial court to explain the "plea" to the appellant and the failure of the court below to condemn that fact and nullify the proceedings of the trial court infringes on the appellant's constitutional right to a fair trial is baseless in law and we hereby reject it".

Judging from the two decisions of the Superior Courts that I have cited, the position is a departure from the Yeboah and Dakurugu cases, which advocate for judicial thinking before the acceptance of a guilty plea in summary trials. There are no such guidelines in Act 30. This is not to suggest that the standards pertaining to summary trials are lower than in trials on indictment. The guidelines as laid down in section 199(1) may be desirable to be followed in a summary trial, but not a necessity such that the failure to follow such a rule should vitiate conviction as counsel for the appellant is advocating for.

Again, **section 37(1) of the Evidence Act, 1975 (NRCD 323)** provides the rebuttable presumption that "*official duty has been regularly performed*". This presumption is also known as *omnia praesumuntur rite et solemniteresse acta denec probetur in contrarium* (all things are presumed to have been done properly and with due formalities, until it be proved to the contrary). Thus, anybody tasked with an official duty will be presumed to have performed that duty regularly. This raises a presumption of regularity in respect of the trial judge's acceptance of a guilty plea and places on the appellant the burden of producing evidence to dislodge that presumption if he considers that the presumed state of affairs is not the true state of affairs. The appeal record does not show that this presumption has been dislodged. As has already been stated, under section 171(3) of Act 30, all that the judge is required to do is to record the plea of guilty as nearly as possible in the

words used by the appellant. The appellant pleaded guilty, which is precisely what the trial judge recorded. There is no indication from the record of appeal that anything untoward happened. There being no such contrary evidence, I am certain that the trial judge complied with the provisions of section 171(3) of Act 30, and the conviction ought to be sustained.

Counsel for the appellant also makes the point that the appellant was not given enough time to prepare his defence as stipulated in Article 14 of the 1992 Constitution. The State's crime was that it arraigned the appellant before the Circuit Court within five days of his arrest. Article 14(2) of the 1992 Constitution is to the effect that a person arrested, restricted or detained upon his arrest shall immediately be informed of the reasons for his arrest and his right to counsel. Counsel has not provided the court with any evidence that the police failed to comply with this provision. Article 19(2)(e) further stipulates that an accused person charged with an offence should be given adequate time and facilities to prepare for his defence. Adequate time here does not mean forever. The same Constitution enjoins the trial of an accused to be conducted within a reasonable time. The fact that the appellant was unrepresented during his trial cannot be attributed to the short time within which he was arraigned before the Circuit Court for trial. Five days between his arrest and arraignment in court is enough time for the appellant to have consulted a lawyer to prepare his defence if he so wished. After all, an accused person has the choice to be represented by a lawyer or to conduct his case himself. During the trial, his charges were explained to him in a language he understood before he pleaded. Indeed, the best practices envisaged in the Miranda rights that Dotse JSC in the Johannes case alluded to were not breached in this case. The appeal lacks merit, and it is dismissed.

(SGD.)
H/L AFIA N. ADU-AMANKWA (MRS.)
JUSTICE OF THE HIGH COURT

COUNSELS

Pamela Arvoh-Mensah (holding Robertson Kpatsa's brief) for the Appellant.
Ewurabena Attefuah (ASA) for the Respondent.