IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE (COURT '1') HO THIS MONDAY 27 MARCH 2023 BEFORE JUSTICE GEORGE BUADI, J.

CASE NO. F22/14/2023

REPUBLIC } …….. RESPONDENT

Versus

GODWIN HOVEY BAHEY } ……..
CONVICT/APPELLANT

JUDGMENT ON CRIMINAL APPEAL

Upon leave of the Court dated 31 January 2023, and pursuant to the Criminal & Offences (Procedure) Act, 1960 (Act 30) s. 326, the appellant filed the notice of petition/appeal a week later 9 Feb. 2023. The appeal is **not** against his conviction for the charges of unlawful entry, stealing, and causing unlawful damage contrary to the Criminal Offences Act, 1960 (Act 29) i.e. sections 152, 124(1) and 172(b) respectively **but rather** against the respective sentences of "3 years, 2 years, and 2 years IHL [to run] **consecutively**" (Emphasis added).

The Appellant is unrepresented by counsel. His appeal processes were put together by a Prison Warden Officer. Strictly on the face of the papers, the appeal is against the sentence that he claims the court directed to run **consecutively**, and also for mitigation thereof on grounds that he is "a first-time offender; handed 3 warrants out of two dockets, [and that] he had served 3 and half of the 7 years imposed by the trial judge".

The facts redolent on the appeal papers before me are that the appellant has had two previous convictions besides his conviction in this present suit of the same charges. The other two previous cases just like this present case were before the Keta Circuit Court consolidated as *CC 103/2019* on the same charges of unlawful entry, stealing, and causing unlawful damage contrary to law.

Finding the appellant guilty after a full trial, and convicting him of the three counts, this is what the learned trial judge wrote: **"[a] accused has been convicted in two cases but he is yet to commence serving the sentence".** (Emphasis added). Pleading leniency after his conviction by the trial court prior to the court's sentence, the appellant stated that his family has paid the victim complainant for the loss of the stolen items. This is what the learned trial judge wrote in his sentence:

> The accused's plea of mitigation and the intervention by his family have been taken into consideration as mitigating sentence. Prosecution's representation of the two convictions against the accused for the same offence … which the accused is yet to be sent to prison is also considered. **The court in the circumstances sentences the accused to two years imprisonment IHL on each count. Sentence to run concurrently.** (Emphasis added).

In his appeal papers, the appellant confirms the court's finding of his two previous convictions. In fact, according to the appellant:

> I was first sentenced on 17th June 2019 on Case No. CC103/2019 to **3 years** IHL; on 30th August 2019 to **2 years IHL** on Case No. CC 110/2019, and on 20th September 2019 to **3 years** on Case No. 103/2019 again by the Circuit

Court Keta on charges of causing unlawful damage, unlawful entry and stealing.

The Appellant has attached copies of the three warrants that bear his separate convictions by the trial court of the same charges, marked Exhibit GB3. On the face of the warrants for prison committal, none of the sentences of the trial court was made to run consecutively as is being strongly contended by the appellant. The sentences in each of the suits were directed by the court to run concurrently.

I have looked into the trial proceedings and the judgment of the learned trial judge. Pardonably, the appeal, in my view is grounded extensively on misapprehensions of the law, indeed a clear twisting of facts by the appellant. The facts of the matter, which the appellant does not seem to appreciate is that the charges in the two or three cases do not arise from one criminal act or the same continuous criminal transaction. Neither were the crimes committed in the execution of one criminal purpose. The bare facts in this case are that the dates of the commission of the offences in the three suits are different, and that victims of the crimes are also not the same. That accounted for the formulation of separate charge sheets by the prosecutor's office. I reiterate that the offences were committed separately on different dates with different victims or complainants.

I deem it necessary to recall the previous convictions of the appellant as well as his last conviction and sentence, the subject of this appeal, in the appellant's submission before this court:

> I was first sentenced on 17th June 2019 on Case No. CC103/2019 to **3 years** IHL; on 30th August 2019 to **2 years IHL** on Case No. CC 110/2019, and on 20th September 2019 to **3 years** on Case No. 103/2019 again by the Circuit

> Court Keta on charges of causing unlawful damage, unlawful entry and stealing.

I find that the charges in each of the criminal cases, indeed convictions are the same - unlawful entry, stealing, and causing unlawful damage contrary to the Criminal Offences Act, 1960 (Act 29) i.e. ss. 152, 124(1) and 172(b). Apart from the charge of causing unlawful damage, which is a misdemeanour with a maximum sentence of three years, each of the other two charges – unlawful entry and stealing, is a second-degree felony, which upon conviction carries maximum sentence each of 25 years. I deem it necessary to recall once again the sentence the learned trial judge imposed after convicting appellant of the charges of unlawful entry, causing unlawful damage and stealing.

> [The] prosecution's representation of the **two convictions against the accused for the same offence** … which the accused is yet to be sent to prison is also considered. **The court in the circumstances sentences the accused to two years … IHL on each count. Sentence to run concurrently.** (Emphasis added).

The consistency of the commission of the offences of unlawful entry, stealing and causing unlawful damage and the fact of the appellant's previous convictions is a fact the appellant admits in this appeal. Based on appellant's previous convictions on the same or similar charges the learned trial judge would have been within his statutory remit to have passed an increased or enhanced sentence under Act 30, s. 300(1), which provides that if a person who has been convicted of a criminal offence is again convicted of the same or a similar criminal offence, that person shall be liable to an increased or enhanced sentence. I do not find on the record

that the learned trial judge strictly applied the law under the circumstances, nor took into due consideration the law in sentencing.

Clearly, on the face of the terse sentence, nothing is expressly shown that the learned trial judge took into consideration the express provision of section 300(1) id that required him to have imposed an increased or enhanced sentence under the circumstances of previous convictions of the appellant of the same crime. My view of Act 30, s.300(1) is that the learned trial has no discretionary powers to have allowed any mitigating factor to muffle, whittle, or to overlook the express provision of the law that enjoined him to have imposed an increased or enhanced sentence under the circumstances of the case.

The appellant chose to put up a spirited defence by subjecting the judicial process to its full elasticity. Indeed, as a form of punitive sentence and to discourage persons from repeatedly committing crimes, the law had always been to punish such a person with enhanced punishment. As an appellate court, the law clothes me with the power to enhance the sentence, particularly so when the trial judge failed to resort to or apply the appropriate law in sentencing.

I find it untrue appellant's claim that he is a first-time offender. Neither it is correct, indeed untruthful appellant's claim that the trial court directed his sentence to run consecutively. Certainly, the appellant has had previous convictions for the same offence. Having made such a crucial finding of appellant's previous convictions, the next step was for the learned trial judge to have proceeded to apply the law by passing an enhanced punitive sentence, which he failed to do. The appeal has no merits, and thus dismissed. I have the duty under the express law i.e. s.300, Act 30, coupled with the appellate powers under the Courts Act, 1993 (Act 459) s.30

to set aside the sentences imposed by the trial court and in its place, taking into consideration the previous convictions for the same offence, impose an increased or enhanced sentence of six years imprisonment in hard labour (IHL) to the charge of unlawful entry, six years IHL with respect to stealing, and four years to the charge of causing unlawful damage; sentences to run concurrently, taking effect from the day of sentence by the trial Circuit Court.

Ordered accordingly.[1]

(Sgd.) George Buadi J.
High Court (1)
Ho.

Lawyers:
Anthony Ghattie (Assistant State Attorney) for the Republic
No legal representation for the appellant.

1 The end of the judgment in this criminal appeal – *Godwin Hovey Bahey vrs. The Republic* (Case No. F22/14/2023)