IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT CAPE COAST IN THE CENTRAL REGION ON MONDAY THE 31ST DAY OF JULY, 2023 BEFORE HIS LORDSHIP JUSTICE BERNARD BENTIL – HIGH COURT JUDGE.

SUIT NO: F22/24/2023

THE REPUBLIC - RESPONDENT

VRS

APPIAH GYEDU @ VANISH - APPELLANT

JUDGMENT

This is an Appeal against the judgment of the District Court, Breman Asikuma presided over by his Worship Stephen O. Akrasi (Mr). on the charge of abetment of assault, causing harm and stealing contrary to Sections 20 (1), 84, 69 and 124 (1) of the Criminal Offences Act, 1960.

The Appellant pleaded guilty simpliciter and was convicted on his own plea and accordingly sentences to Twenty-Four (24) months imprisonment IHL. The Appellant being dissatisfied with the said judgment and conviction has appealed to this Honourable Court against same on the following grounds:

1. That the Learned Trial Judge erred when he failed to cause the charge on the charge sheet to be read and explained to the Appellant in a language that the Appellant understood.

2. In the event that the conviction is sustainable, the Learned Trial Judge erred when he failed to consider the fact that the Appellant is a first-time offender and that the Appellant pleaded guilty simpliciter and was a young person and that must be given the opportunity to reform and be useful to society.

The brief facts of the case as stated by the prosecution and same appearing on the charge sheet of the Record of Appeal (ROA) are that, Complainants both stay at the same house at Eduakura whiles the 1st Accused Person is a teacher at Breman Dewurampong near Eduakura, that 2nd Accused Person is a farmer staying at Breman Asikuma. Prosecution states further that there is one other person who is at large. That on 12/01/2023 about 6:30pm, A1 met A2 and Kwasi Dankwa @ Bonsam, (at large) at Breman Asikuma near the main lorry station and reported to them that PW2 has assaulted him and forcibly taken his mobile phone from him. A1 then procured A2 and Kwasi Dankwa @ Bonsam at a fee of GH₵200.00 to go and collect A1's phone from PW2. A1 hired a tricycle which transported all accused persons to the residence of the Complainants at Eduakura. At Eduakura, the Accused Persons met PW1 and two other witnesses but not PW2. PW2 had gone to help his father at his distillery just a few meters away from the house. The Accused Persons shouted and instructed PW1 to show them where PW2 was. Upon hearing the unusual noise from his house rushed there to ascertain what was happening. Immediately A2 and Kwasi Dankwa @ Bonsam saw PW2 approaching, they rushed and pulled him to the house and instructed PW2 to produce the phone he had allegedly taken from A1. PW2 indicated that he had no knowledge of any such phone. That A2 and Kwasi Dankwa subjected PW2 to beatings. A2 forcibly collected a Nokia Window Mobile phone valued at GH₵700.00 which PW2 was holding at the time. A2 who was very angry went to pick a piece of wooden board to attack PW2 which made PW2 to also pull out his cutlass to defend himself but both PW1 and the two others rushed on him and collected the cutlass from him. A1 then

pulled a cutlass from his shorts and used it to cut the upper part of PW2 head. PW1 rushed to intervene but A2 struggled with her and pushed her to the ground after which A2 again subjected PW2 to beatings using the side of the cutlass A2 was holding. After the act, the Accused Persons including the third person at large left the village. The Complainants reported the case to the Police and A1 and A2 were subsequently arrested whiles third person absconded upon seeing the arrest of A2. The stolen mobile phone was retrieved. After investigations, accused persons are charged with the offences on the charge sheet.

It is the case of the Appellant that the Trial Judge erred when he failed to cause the charge on the charge sheet to be read and explained to the Appellant in a language that the Appellant understood. The Appellant's argument was premised on the principle of Natural Justice warrants that a person is given reasonable time and space to respond to accusations or charges leveled against him.

This Honourable Court is therefore bound to evaluate the evidence adduced at the trial to determine whether or not the evidence supports the conviction or whether errors were committed by the trial judge which have occasioned substantial miscarriage of justice against the Appellant. See **RICHARD KWABENA ASIAMAH V THE REPUBLIC (CIVIL APPEAL NO. H2/20/2018) DATED 6 JUNE, 2019 (DELIVERED BY THE COURT OF APPEAL).**

The success of an appeal in criminal matters is dependent upon whether the Appellant has suffered a substantial miscarriage of justice. Section 31(2) of the Courts Act, 1993 (Act 459) provides that:

> *(2) The court shall dismiss the appeal if it considers that a substantial miscarriage of justice has not actually occurred or that the point raised in the appeal consists of a technicality or procedural error or a defect in the charge or indictment but that there*

is evidence to support the offence alleged in the statement of offence in the charge or indictment or any other offence of which the accused could have been convicted on that charge or indictment.

Section 30 (a) (1) of the Courts Act, 1994 (Act 459) provides that:

> Subject to the provisions of the Sub-Part, an appellate court may in a criminal case-
>
> a) On an appeal from a conviction or acquittal-
>
> i. Reverse the finding and sentence and acquit and discharge or convict the accused as the case may be or order him to be retried by a court if competent jurisdiction, or commit him for trial;
>
> ii. Alter the finding, maintaining the sentence or with or without altering the finding, reduce or increase the sentence, or the sentence; or
>
> iii. With or without such reduction or increase and with or without altering the finding alter the nature of the sentence;

As indicated supra, this appeal emanates from the District Court. It is a Petition, the nature of which lies automatically to the High Court as of right, per the Rules. It is important to state from the outset that the Court in its work is guided by laws and procedures which provide the steps to be taken at every turn in a matter before it. Where the Court is given discretion to make a certain determination, the Rules or Procedures would clearly indicate same, to give effect to the Judge's decision.

Usually in criminal trials, before an Accused is processed for court and finally put before the Court by the Police, it is the duty of the Police Prosecution to furnish the Accused Person with all the relevant documents it would be relying upon in the course of the trial. This is now a requirement under our Practice Direction. On the Accused Person's first appearance in court, the Prosecutor, in accordance with the Rules, is

mandated to read out the facts of the case to the hearing of the Accused Person, on the basis of which the Accused is then required to plead either guilty or not guilty.

At this point, the Accused Person is called upon, in fulfillment of the Rules to elect which language he would like to be addressed in during the trial and same for the conduct of his case in Court. This, like any other action, performed in accordance with law and procedure during the hearing, must be recorded in the Record Book.

Article 14 (2) of the 1992 Constitution of Ghana provides as follows:

> *A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice.*

Furthermore, the Court was also referred to **Section 171 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)** provides as follows:

> *(1) Where the Accused appears personally or by counsel as provided under section 79, the substance of the charge contained in the charge sheet or complaint shall be stated and explained to the accused or if the accused is not personally present to the counsel of the accused, and the accused or counsel of the accused shall be asked to plead guilty or not guilty.*

Again, it is instructive that per our Rules, an Appeal against the decision of a Court must be filed at the trial court without the option of filing the process at the destination of the appeal. At the first hearing of the appeal, this Court perused the record of proceedings of the trial court and examined the first ground of the appeal in the presence of counsel for the Appellant and the Respondent, i.e. the State. A close scrutiny of the record of proceedings did not indicate any evidence that the charges were read and explained to the Accused Person at the commencement of the trial. This

is a basic requirement which should not escape the attention of any Court hearing a criminal trial. Further due diligence by this Court in requesting the Record Book of the trial court, proved, no entry was made, as an indication, that the Accused's charges were read and explained to him in a language of his choice. The record of proceedings however show proof of the Accused Person's guilty plea repeatedly enunciated, and on one occasion a plea of guilty with explanation, for which the Court offered him an opportunity to put forward his explanation.

This Court would not be swayed to exercise a discretion it does not have, to overlook the glaring and palpable failure of the trial court to observe a fundamental Rule of Criminal Jurisprudence which goes to the heart of any criminal trial. And there is good reason for the insistence on the observance of this Rule as a necessary precursor to the taking and entry of an Accused Person's plea. It is trite law, that in criminal trials, the stakes are particularly high and hence the premium placed on the burden of proof for example, because a successful prosecution leads to a conviction and the curtailment of the liberties of the Accused Person – a right that is fundamental to man from birth. Where the liberty of an individual is at stake as is the case in this instant matter, any error of law or procedure must necessary inure to the benefit of the Accused Person. In the case of Matayo v. the Commissioner of Police (1950) 13 WACA 22 the Appellant was tried and convicted on a criminal charge by a Magistrate Court and he appealed against his conviction to the High Court. The High Court declared that the original proceedings were a nullity and therefore having set aside the conviction made an order for retrial. Upon further appeal to the West African Court of Appeal, the decision or retrial was affirmed.

The failure of the Lower Court to observe this important requirement in a criminal process deals a fatal blow to the case at the trial court. The failure is completely inexcusable – and not even the suggestion of oversight on behalf of the trial Judge can

extenuate the effect of this gross procedural error. In the circumstances, the Court would not expend any energy to examine the merits of the other ground of appeal on the harshness of the sentence, when the conviction which spawned the sentence was procured on a breach of a fundamental procedure at the start of the case.

On the totality of the facts available to the Court, and the preponderance of decided cases on appeals of this nature, I hereby set aside the sentence and the conviction and same is quashed. The Court is however unable to order a re-trial of the case as the Accused Person has already served part of the Sentence per *The Republic Vrs Appiah Gyedu*.

BERNARD BENTIL, J.
[HIGH COURT JUDGE]

COUNSEL

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LUCY BOISON ESQ. FOR THE RESPONDENT.