IN THE CIRCUIT COURT '1', ADENTAN, ACCRA, BEFORE HER HONOUR JUDGE DORA G. A. INKUMSAH ESHUN (MRS.) SITTING ON FRIDAY THE 4TH DAY OF NOVEMBER 2022

SUIT NO: D3/39/2021

THE REPUBLIC

V.

JOHN ASARE

VERDICT

The accused person, a driver for the Adentan Municipal Assembly, was arraigned before the court on 16th March 2020, on one count of causing harm to Madam Mercy Mensah contrary to **section 69** of the **Criminal and Other Offences Act, 1960 (Act 29).**

According to the brief facts, the complainant operates a drinking bar at Adenta Housing Down, which the accused person regularly patronizes. On 23rd February 2021 at about 9pm, the accused person and his friend visited the complainant's drinking bar. The complainant served them and while they were drinking, the accused person accused the complainant of looking at him with bad eyes, without any provocation. The complainant asked the accused person what she had done to warrant such a wrong accusation and the accused person immediately slapped her face. The accused person then broke the bottle he was drinking from and used it to inflict multiple lacerations on the complainant's face and forehead when she attempted to defend herself from the unwarranted attack. The complainant filed a complaint with the police and was given a police medical form to go to the hospital. The accused was arrested and charged with the offence after investigations.

The accused person was granted bail in the amount of GH¢10,000 with two sureties and ordered to report to the investigator twice a week at the Adenta Housing Down Domestic Violence Victim's Support Unit (DOVVSU) Station. He was unrepresented throughout the trial.

On March 29th, 2022, the court ruled under **section 174(1) of the Criminal and Other Offences Procedure Act, 1960 (Act 30)** and the case of Logan and Laverick v. The

Republic [2007-2008] SCGLR 76[1] that the prosecution had adduced sufficient evidence to infer the guilt of the accused and had made out a case, sufficient for the accused to answer. The accused person was called upon to open his defence and was informed of his right to remain silent, make an unsworn statement from the dock or give evidence on oath. The accused elected to give evidence on oath. The witness statement filed by the accused on 22nd December 2021, was struck out on 30th December, 2021, because it was written in the form of a letter with no jurat or statement of truth included. The accused was permitted to give oral evidence and opened his defence on 28th January 2022.

Under **section 177(1)** of the **Criminal and Other Offences Procedure Act, 1960 (Act 30)**, "*The court, having heard the totality of the evidence shall consider and determine the whole matter and may,*

(a) convict the accused and pass sentence on, or make an order against the accused according to law, or

(b) acquit the accused, and the Court shall give its decision in the form of an oral judgment,

and shall record the decision briefly together with the reasons for it, where necessary"
[Comfort and Another v. The Republic [1974] 2 GLR 1].

The offence of causing harm is created by **section 69 of Act 29** which states that "*A person who intentionally and unlawfully causes harm to any person commits a second-degree felony*". The elements of this offence are that:

1. the accused person unlawfully caused harm to the complainant or victim, and
2. the accused person intentionally caused harm to the complainant or victim.

After finding from the evidence of the prosecution that the complainant was hurt by the bottle the accused was holding during the events that occurred on the material date, the issue to be determined is whether the accused can raise a reasonable doubt that he unlawfully and intentionally caused harm to the complainant.

The standard of proof in a criminal trial includes the burden of persuasion and the burden of producing evidence [**sections 10** and **11** of the **Evidence Act, 1975 (NRCD 323)**]. The

burden of persuasion is the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court [**section 10(1) of NRCD 323**]. It requires a party in a criminal trial to raise a reasonable doubt concerning the existence or non-existence of a fact or to establish the existence or non-existence of a fact by proof beyond a reasonable doubt [**sections 10(2) of NRCD 323**].

The burden of persuasion in a civil or criminal action "…*as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt*" [**section 13(1) of NRCD 323**]. "*In a criminal action, the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence, a reasonable mind could have a reasonable doubt as to guilt*" [**section 11(3) of NRCD 323**]. In Ali Yusuf Issa (No. 2) v. The Republic [2003 – 2004] SCGLR 174, the Supreme Court held that the burden of producing evidence and the burden of persuasion are the components of "*the burden of proof*".

The prosecution called two witnesses – Madam Mercy Mensah, the complainant (PW1) and Detective Lance Corporal Cynthia Afiyo Aperh (PW2). Emmanuel Atitso, a painter, whose witness statement was filed on 5th May 2021, failed to appear in court to testify. His witness statement was therefore struck out. Mr. Christian Ntiamoah, a witness listed by the prosecution, testified for the accused person who chose to give evidence on oath.

PW1 testified orally that in January 2021, while she was selling in her kiosk at the Lotto Kiosk at the Reservoir, the accused person and a friend of his arrived at around 11pm. The accused person's friend asked for Sprite, which she did not have, so she served him Fanta. The accused person was served two tots of Alomo Bitters and two cigarettes, then the complainant returned to her seat. The accused person asked his friend why she was looking at his face like that, that evening and the complainant asked, "*If you were not looking at me, how would you know I was looking at you*?". The complainant thought this was a joke so she went back to sit down and went through her phone. She stood up to serve another customer and when she returned, she realized that someone had drunk a bottle of Eagle beer and had left the bottle on the ground.

The accused person picked up the bottle of Eagle beer and said the complainant's husband had beat him before, so he had already targeted her. He broke the bottle on the ground and started stabbing her with it all over her face, lips and right arm. Blood started flowing all over her body. A passer-by put the complainant in their private car and took her to the police station where she was given a form to go to Madina Kekele – the Madina Polyclinic. After she was treated, she took the form back to the police. The accused in his cross-examination of the complainant, put it to her that he bought one bottle of Guinness, 1 bottle of Fanta, 1 sachet of Alomo bitters and 3 cigarettes, all coming up to GH¢11. However, the complainant insisted the accused person purchased one Fanta, two sachets of Alomo and two cigarette sticks.

The investigator, No. 9420 Detective Policewoman Lance Corporal Cynthia Afiyo Aperh (PW2), testified in her witness statement filed on 5th May 2021 that the case was referred to her while she was on duty on 23rd January 2021 at the Adentan Shopping Mall Station. When she visited the scene at Adenta Housing Down behind Lotto Kiosk, she did not find any harmful object. The accused was arrested, and an investigation caution statement was taken from him (Exhibit A). The accused denied the offence and stated that it was rather the complainant who assaulted him. Photographs were taken and a medical form was issued to the complainant to go to the hospital. PW2 testified that during her investigation, it was disclosed that the accused had a misunderstanding with the complainant which resulted in a fight. The accused broke a bottle and stabbed the complainant several times with it. The harm caused was found to be unlawful and PW2 was instructed by the District Commander to charge the accused with "*causing harm*".

PW2 tendered the accused's investigation and charged caution statements of the accused person (Exhibits A and A1), a picture of the bruised right arm of the complainant, (Exhibit B), a picture of the complainant from her mid-thigh up showing bruises on her forehead (Exhibit B1) and a picture of the complainant's face with cuts and bruises on her forehead, eyebrow, nose and lips (Exhibit B2). The police medical form signed at the Madina Polyclinic Kekele stating that the complainant had multiple lacerations on her face and lower lips with the wounds sutured and dressed was also tendered as Exhibit C. In his

cross-examination of the investigator, the accused person only made a statement that the issue between him and the complainant occurred around 9 pm.

In Exhibit A, the accused person stated that on 23rd February 2021 at about 9pm, he and his friend Kofi went to a spot at Adenta Lotto Kiosk. Upon arrival they requested a drink and paid. The spot operator, Mercy, came and asked them why they were talking about her. The accused told her he did not know what she was talking about, only for Mercy to slap him twice on the face. She also used a broken bottle to cut his hand after she took a chair and threw it at him, resulting in a cut on his finger in the presence of eyewitnesses. He concluded by saying "*I did not beat or slap the spot operator or used ay bottle to cut her*". A similar version of this statement was repeated in Exhibit A1.

To determine whether the accused intentionally or unlawfully caused harm to the complainant, the court must look at **sections 11, 31 and 37 of Act 29** and **article 13 of the 1992 Constitution of Ghana**.

The definition of *intent* in **section 11 of Act 29** includes:

(1) Where a person does an act for the purpose of causing or contributing to cause an event, that person intends to cause that event, within the meaning of this Act, although in fact, or in the belief of that person or both in fact and also in that belief, the act is unlikely to cause or to contribute to cause the event.

(2) A person who does an act voluntarily, believing that it will probably cause or contribute to cause an event, intends to cause that event within the meaning of this Act, although that person does not do the act for the purpose of causing or contributing to cause the event.

(3) *A person who does an act of such a kind or in a manner that, if reasonable caution and observation had been used, it would appear to that person*

(a) that the act would probably cause or contribute to cause an event,

(b) that there would be great risk of the act causing or contributing to cause an event, intends for the purposes of this section, to cause that event until it is shown that, that person believed that the act would probably not cause or contribute to cause the event, or that there was not an intention to cause or contribute to it.

The grounds for justifiable force or harm in criminal law include "*of a necessity for the prevention of or defence against a criminal offence*" in **section 31(f) of Act 29**. Self-defence is a fundamental human right, guaranteed even to the extent of depriving another person of their life. This right is enshrined in **article 13(2)(a) of the 1992 Constitution of Ghana** which is reflected in **section 37 of Act 29** as follows:

"*For the prevention of, or for personal defence or the defence of any other person against a criminal offence, or for the suppression or dispersion of a riotous or an unlawful assembly, a person may justify the use of force or harm which is reasonably necessary extending in case of extreme necessity, even to killing.*"

In Palmer v. R [1971] AC 814, Lord Morris held that self-defence is a relatively simple defence based on law and common sense. It either applies or does not apply. The jury should consider whether *in a moment of unexpected anguish*, a person attacked, had only done what they honestly and instinctively thought was necessary, as the most potent evidence that only a reasonably defensive action had been taken. In The State v. Ampomah [1960] GLR 262, SC, the Court of Appeal held that a person is entitled to strike in self-defence, even unto death.

The accused person testified when he opened his defence on January 28, 2022, that on 23rd February 2021, around 10 – 11pm, he went with his friend Christian Ntiamoah (DW1) to PW1's bar. He ordered one Guinness and DW1 ordered one Sprite. PW1 told DW1 she had no Sprite and gave him Fanta. Then the accused bought 1 sachet of Alomo bitters and 3 cigarette sticks, amounting to GH¢11. He gave PW1 GH¢20 – when she returned his change, she had crumpled the bills up in her hand and gave them to him while he was holding the bottle of Guinness and his phone. As he was opening up the money to check it, PW1 asked him why he was opening it up and he replied, "*When you gave me the change, don't you want me to open it up and check*?" and PW1 asked the accused whether he thought the change was not the amount she was supposed to give him.

After checking the change was correct, the accused and DW1 sat down and started drinking their drinks. PW1 passed in front of them and gave them an evil look twice. Then she returned and retorted, "*What are you discussing? Are you talking about me?*" The accused

responded "*No, we are having a chat*". PW1 continued talking and pointed at the accused and said, in the accused's words, "*…as for this my nonsense, she will not take it today – I should not bring it on her*". Immediately, she slapped the accused with both hands. The accused said nothing, and she did it again. Under re-examination, DW1 confirmed the above testimony including the fact that after the accused asked why she was looking at them in that manner, she turned back, pointed and wagged her fingers at the accused and slapped him twice.

The accused testified that DW1 told him they should get up and leave. The following testimony is critical to the case of the defence,

"*When we got up to leave, she came with speed from behind me to come to slap my back and ears. As I turned myself around, I was holding the bottle and her hands hit the bottle in my hand and it broke. After the bottle broke, she run fast and took an Eagle bottle, broke it on the ground and brought it to stab me with it. As she was coming with speed, I also took the chair we were sitting on to protect myself. The people who were sitting there – there is a lady who cooks indomie there, came and told her to stop and couldn't she see she was hurt? That is when the complainant realised she was hurt and there was blood oozing from her face. I also had a cut and blood oozing from my palm.*

We all went to the police station and explained the matter. We were given medical forms to go to the hospital. My medical form is with the police. When we returned to the police, the complaint was filed. Later, anytime anyone heard of the case, they would say, "The way you and Serwaa are, why are you fighting?" Later, she was going round telling people in the area that she would spoil my job by any means she can. When my mother went to her to resolve the matter at home, a member of the complainant's family insulted my mother and said, as for the matter, they would bring it to court".

In evidence-in-chief, DW1 adopted her witness statement as her evidence-in-chief. The certified re-
medical form was also dated 23rd February 2021. by the prosecution. The complainant's

The court ordered the Madina Polyclinic at Kekele to forward a copy of the accused's persons records in February 2021 through the Registrar. The hospital filed a copy of a tracer card dated 23rd February 2021 for John Asare. The doctor's impression was "*multiple cuts/bruises/assault*". The accused was treated with Diclofenac, Amoksiklav & TT injections and tablets were prescribed. The complaint was "*multiple cut/bruises on the right thumb and fifth finger as a result of being assaulted this evening*". The tracer card was admitted into evidence as Exhibits 1 and 1A. He also tendered the police medical form supplied by the

prosecution and said he could not remember whether the doctor wrote on it when he took it there. It was marked Exhibit 2.

In cross-examination the accused testified that he has known PW1 for more than 20 years. They had a good relationship and had no misunderstandings. He confirmed his testimony and added that he had not finished his drink by the time his friend asked him to leave. When they prosecutor asked, "*So are you trying to tell this court that the Guinness bottle with the drink, the complainant was able to use the hand and hit the bottle with the drink in your hand and it got broken*?" the accused answered,

"*When my friend told me to get up, when, when I got up, she returned and slapped me* [motioning with both hands] *from behind. As she was about to slap me again, I turned, and I was holding the bottle and my phone in my hands and the drink crashed with her hands and her face. I got hurt and she also got hurt*." The accused denied breaking the bottle and using it to inflict the wounds the complainant received. Despite stringent cross-examination by the prosecution, the accused confirmed his testimony. The accused further testified, "*Please no, I did not take the chair to hit her. She is the one who broke a bottle and was advancing towards me to hurt me with it, and I took the chair to protect myself with it. I was standing there with my friend and some women were also standing by. They came to separate us and told her to stop. It was then that she sustained some injuries, and I also sustained some, so we both went to the police station for a medical form to go to the hospital*". The accused then explained that the first bottle that broke, fell on the floor where he and PW1 were standing. The bottle PW1 picked up, was picked from a short distance such as the distance from the dock to the bar (about 210 metres). The prosecution did not call any of the witnesses at the bar to testify to the events that occurred, and the accused ended his testimony by stating that he did not intentionally hurt PW1.

The accused's testimony was corroborated by his friend, Christian Ntiamoah (DW1), who accompanied him to the bar on the material date. He gave the following testimony in a brief witness statement,

"*.. During the month of January 2021, I went to complainant's drinking spot located at Adenta Housing Down Lotto Kiosk and we requested for our drinks. Complainant served us with our*

requested drinks and went back to sit down. Within some few minutes, complainant stood up from her chair and came towards accuse[d]*, asking him why is accuse*[d] *talking about her. Complainant got angry and slapped accuse[d] twice on the face. Complainant again raised his* [her] *hands to slap accuse*[d]*. Accuse*[d] *was then drinking Guinness so at that moment accuse*[d] *raised the bottle to save himself and the bottle got broken and inflicted wounds on complainant*['s] *face*".

DW1 denied that the accused broke a bottle and inflicted wounds on PW1's face and hand with it. He testified that the accused was holding the Guinness bottle as PW1 advanced on him. PW1 raised her hand while holding a bottle with a broken bottom, as if she was going to slap or hit him and the accused said to DW1, "*She is advancing on me again*". When the accused person saw PW1 advancing on him with the broken bottle, he lifted a plastic chair to defend himself. As soon as he lifted it, DW1 told him to put it down so he would not use it to hit PW1. He denied the prosecution's assertion that it was the accused who slapped PW1 and testified that he called people to separate them. By the time they were separated, they were both injured. The accused person was still holding the bottle when PW1 was advancing on him and after they were separated, the bottle was on the ground. DW1 testified under re-examination that after PW1 slapped the accused from behind, he turned and they crashed into each other, they were separated and then PW1 went to take the Eagle bottle, broke it and returned to advance on the accused. That is when the accused picked up the chair, but people held onto PW1 and then both parties realised they were injured.

The court finds from the evidence that the complainant begun a verbal argument with the accused person, proceeded to assault him by slapping him three times and attempted to further assault him with a broken bottle. In Agyeman v. The Republic (No. 2) [1974] 2 GLR 398, it was held that a person who sought to justify the use of force to prevent the commission of a crime, would not be invested with the cloak of the innocent victim of an actual or threatened crime which he was justified in terminating by the use of force, if he was himself involved in the crime. It was also held that putting an end to a verbal altercation by the use of force could not be considered as one of the circumstances in which force could be justified on the ground of the need to prevent a crime.

The court therefore finds that the accused person, who turned around with a bottle of Guinness in his hand when the complainant was about to slap him the third time, did not intend to cause harm to the complainant within the meaning of **section 11 of Act 29**, and his actions during the altercation are justifiable as self-defence under **article 13 of the 1992 Constitution of Ghana** and **sections 31(f) and 37 of Act 29**. The court finds that the accused person has raised a reasonable doubt that he unlawfully and intentionally caused harm to the complainant, and it is rather the accused person who is the victim in the events that occurred between him and the complainant on the night of 23rd February 2021.

The accused person is therefore acquitted and discharged of the crime of causing harm to the complainant Madam Mercy Mensah contrary to **section 69 of the Criminal and Other Offences Act, 1960 (Act 29).**

(SGD)

DORA G. A. INKUMSAH ESHUN
CIRCUIT JUDGE