

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS WEDNESDAY
THE 14TH DAY OF DECEMBER, 2022 BEFORE HER HONOUR EVELYN E.
ASAMOAH (MRS)

CASE NO. D21/210/2022

THE REPUBLIC

V.

GODWIN KWASI OSEI

CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC

MR. ALFRED NII ADJIN MENSAH FOR THE ACCUSED

===== *JUDGMENT*

• It's the case of the prosecution that the accused person, a land guard, trespassed on the complainant's land and threatened to harm and kill him. The accused denied the charges, stating that: "The complainant had already mentioned that he was an army officer, I will not threaten such people. Neither am I a land guard, occupying the land."

The accused was charged with the following offences:

- Trespass – contrary to Section 157 of the Criminal and other Offences Act, 1960 (Act 29)
 - Threat of harm – contrary to section 74 Act 29 of the Criminal and other Offences Act, 1960 (Act 29)
 - Prohibition of activities of land guards – contrary to Section 7(1) of the Vigilantism and related offences Act 2019- Act 999
 - Threat of death – contrary section 75 of Criminal and other Offences Act, 1960 (Act, 29)
- Prosecution presented the following facts: In the year 2011, the complainant then a Colonel in the Ghana Armed Forces acquired two plots of land at Oyarifa from the Martey and Ahulu families of La – Accra, through the Ghana Armed Forces Land Scheme. The complainant was issued with an indenture and he applied for the

registration of the land at the Land Title Registry of Lands Commission. The registration however delayed due to a challenge by some persons. However, after a thorough investigation by the Lands Commission, the complainant was issued land certificate No. GA 55555, volume 05, folio 871 dated 12/06/2018. On 21/ 06/2021. The complainant visited the land and saw that the accused person had trespassed onto the land and built a structure on part of the land, where he lodges with his family. Complainant politely enquired to know the one occupying the land but the accused violently indicated he was kept there to watch over the land and further threatened him that if he is a man, he should come and take the land from them to see, among others. Subsequently, on 11/11/2021, the complainant again visited the land with a witness in this case but the accused prevented the complainant from entering the land and again threatened to kill him. The complainant thereafter lodged a complaint at the Regional CID/Accra and the accused was arrested. Accused in his caution statement indicated that the land belongs to her sister Sylvia Akosua, resident in Switzerland but he could not produce any document to support his claim,

- In the case of **Uyuanwunw V. The Republic, (2010 – 2012) GLR 15**, the Court held that:

Under section 13(1) of the Evidence Act, 1975 (NRCD 323) and Article 19(2)(c) of the 1992 constitution, a criminal offence required proof beyond reasonable doubt. Consequently, the prosecution must prove all the ingredient of the offence charged and in accordance with the burden of proof, by establishing a prima facie case after which the burden of proof would be shifted to the accused person to open his defence. In the event, the accused person must give evidence that was acceptable to the court otherwise he might be convicted.

- The complainant asserted that: He obtained an indenture from the Mantey and Ahulu families of Oyarifa and that the families have a land title to the land in question. Having

obtained an indenture from the family, he proceeded to register his title at the Lands Commission. Just before the issue, one George Addo challenged the certificate, claiming ownership of the land. As such his certificate was withheld to enable the Lands Commission to carry out its investigations.

The investigation was completed and on 22nd October 2021, the Lands Commission wrote to Mr. George Addo informing him that he could not prove his claim and since there was no other reason to hold the certificate, the office released the certificate to him. Subsequently, attempts made by him to access the land had been frustrated and prevented by a man on the land who is very volatile and continuously issue threats to his person.

The complainant further asserted that the accused threatened to kill him with a cutlass; the accused brandished a cutlass at him and scratched the ground with it and appeared very violent.

The first prosecution witness (PW1), corroborating the evidence of the complainant, contended that the accused threatened the complainant that he would kill him. PW1 added that the accused told him the land belongs to his sister but he refused to mention her name. That the accused on seeing the complainant went to his room and brought out a cutlass and threatened to kill the complainant.

- According to the investigator, the accused has constructed a single room where he is staying with his family. He pointed out that the Land Registration Division of the Lands Commission in a letter (*Exhibit E*) confirmed that the complainant is the rightful owner of the land. The acting head of the Mantey and Ahulu families (PW4) confirmed that the complainant acquired the land from the families and registered same at the Lands Commission. He added that that the “families apart from the complainant... did not grant the said land to any other person”.

- The accused, after close of the case of the prosecution, was called upon to open his defence. In his witness statement, the accused again denied all the charges against him. He stated that the complainant always come to ask him if the land was for sale and he informed him it was not for sale. Thereafter they came fully armed to arrest him. He disclosed that the land in question and the property thereon had been his home since 2004 and no one had come claiming same. That he was placed on the land by his cousin who lives outside the country.

- **Trespass:** The first crucial question is: Did the accused trespass on the complainant's land?

Section 157 of the Criminal and other Offences Act, 1960 – Act 29 states: A person who

- (a) unlawfully enters in an insulting, annoying or threatening manner on land belonging to or in the possession of any other person, or*
- (b) unlawfully enters on land after having been forbidden so to do, or*
- (c) unlawfully enters and remains on land after having been required to depart from that land, or*
- (d) having lawfully entered on a land, acts in a manner that is insulting, annoying or threatening, or*
- (e) having lawfully entered on a land, remains on that land after having been lawfully required to depart from that land, commits a criminal offence and is liable, on the complaint of the owner or occupier of the land, to a fine not exceeding twenty-five penalty units; and the Court may order the removal from the land, by force if necessary, of a person, an animal, a structure or a thing."*

Threat -Sections 74 and 75 of the Criminal and other Offences Act, 1960- Act 29 provide:

74. *Threat of harm -A person who threatens any other person with unlawful harm, with intent to put that person in fear of unlawful harm commits a misdemeanour.*

75. *Threat of death -A person who threatens any other person with death, with intent to put that person in fear of death, commits a second-degree felony.*

In the case of **Behome v. The Republic (1979), GLR 112-** Osei-Hwere J (as he then was) stated:

“...In the offence of threat of death, the actus reus will consist in the expectation of death which the offender creates in the mind of the person he threatens whilst the mens rea will also consist in the realisation by the offender that his threats will produce that expectation. It matters not, therefore, whether the threats were related to the present or to the future...”

● The Lands Commission in a letter (*Exhibit E*) confirmed the authenticity of the Land certificate of the complainant. The representative of the Mantey and Ahulu Families testified that the land was granted to the complainant by the said families.

It is axiomatic that the complainant acquired the land in dispute and registered same at the Lands Commission. The accused indicated that he is not the owner of the land in dispute. In his caution statement (*Exhibit B*) and witness statement, he alleged that the land belongs to his sister. In *Exhibit B*, he stated:

“... My sister Sylvia Akosua bought a piece of land at Oyarifa where I am residing. She constructed a chamber and hall in 2014. My sister is however residing in Switzerland....”

This is an excerpt of what transpired during the cross-examination of the accused:

Q: *The land in question, you said you were put on that land by your cousin who is outside the country – paragraph 10 of your witness statement?*

A: Yes.

Q: So, this cousin of yours, what is the name and where is she currently?

A: Her name is Pamela Nelson. Before she traveled to the state, we used to call her Sylvia.

Q: Can you tell when she traveled outside the country?

A: She traveled and came back in 2004 and put me on the land before she went back.

Q: You were not there when your said cousin allegedly purchased that land?

A: No.

Q: So, you do not know anything about the land transaction allegedly?

A: No.

There is no documentary proof/evidence on record that the land which the accused occupies belongs to his sister. He was unsure of the name of the said sister or cousin; Pamela Nelson / Sylvia Akosua. The accused failed to prove his assertion that he was put in charge of the land by the said cousin/sister. He entered the land unlawfully. According to the prosecution the accused indicated he was kept there to watch over the land.

- The accused and his witnesses admitted that the complainant had been to the land on several occasions and had interactions with them in respect of the land.

It is evident that the complainant informed the accused and his family that the land they occupy belongs to him. However, the accused refused to vacate the land. The facts disclose that he rushed to his room, when he saw the complainant on the land and in a threatening/annoying manner, brought a cutlass and threatened to kill the complainant with it if he does not leave the land. He intended to put the complainant in fear of unlawful harm/ death and he succeeded in doing so. The court finds from the totality of the evidence adduced that the accused person trespassed on the complainant's land.

Despite being on the land unlawfully, he threatened to harm and kill the complainant with a cutlass.

Land guard- Is the accused a land guard.?

The Oxford Learner's online dictionary defines a land guard as-

'Mostly in Ghana - a member of an organized criminal group employed to protect land and property through the use of violence'

Section 7 of the *Vigilantism and Related Offences Act, 2019 (Act 999)*-*Prohibition of activities of land guards -*

(1) A person shall not, directly or indirectly, facilitate, organise or promote the organisation of land guards, for the purposes of protecting or guarding land or property, whether belonging to that person or any other person.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment of not less than ten years and not more than fifteen years.

(3) A person shall not act as a land guard.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a term of imprisonment of not less than ten years and not more than fifteen years.

(5) A person shall not directly or indirectly, engage a land guard to protect or guard the property of that person or any other person.

(6) A person who contravenes subsection (5) commits an offence and is liable on conviction to a term of imprisonment of not less than ten years and not more than fifteen years.

(7) Despite a provision in any enactment, a person who acts as a land guard armed with an offensive weapon commits an offence.

In this case, although the accused stated that the land in dispute belongs to his cousin/sister and that the structure was put up by that person. However, he failed to lead evidence to that effect. There is no evidence on record that the accused was employed/ engaged by someone to protect the land or that he is part of a criminal organized group engaged to do so. In the circumstance, he is acquitted of the offence of prohibition of activities of land guards. He is convicted of the following offences: trespass, threat of harm, and threat of death.

●Taking into account the accused plea in mitigation. He is hereby sentenced as follows:

Count I – Twenty-Five penalty units or in default thirty days imprisonment in hard labour

Count 2- Fifteen months imprisonment in hard labour

Count 4- Twenty months imprisonment in hard labour

Sentence to run concurrently. In accordance with section 157 of the Criminal and other Offences Act- 1960 Act29, the court hereby orders the removal of all structures and persons from the land.

(SGD)
H/H EVELYN E. ASAMOAH (MRS)
CIRCUIT COURT JUDGE