

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS THURSDAY THE 8TH DAY OF DECEMBER, 2022 BEFORE HER HONOUR EVELYN E. ASAMOAH (MRS)

CASE NO.

D9/11/2017

THE REPUBLIC

V.

1. REV. KWAME BOATENG

2. LAUD BRUCE TAGOE

CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC

===== *JUDGM*

ENT

- The accused persons were charged with the offence of causing unlawful damage contrary to section 172 of the Criminal and other offences Act, 1960- Act 29. They pleaded not guilty.

- The facts, presented by the Prosecution are as follows: The complainant, the Head pastor of Words of Christ Evangelistic ministry reported that on 18/5/14 he detected that his church premises located at Agege which he constructed at the cost of GHC 15,000 had been damaged by the accused persons. The accused were subsequently arrested and investigation revealed that the second accused, an associate pastor introduced to the complainant, introduced the first accused to Marion Daisy Tagoe- landlord of the first accused over the allegation that the complainant had vacated the church premises for a long period and his whereabouts was not known. Several attempts to reach him via his mobile phone

proved futile. They alleged that the church building got damaged by the rain storm. However, when the investigation was extended to Marion Daisy Tagoe and she revealed contrary to the allegation of the accused that they intentionally caused damage to the property because it was in a dilapidated state. They were therefore charged with the offence after investigations.

- The prosecution called two witnesses; the complainant and the Police Investigator. In the case of **Frimpong Alias Iboman V. The Republic (2012)1 SCGLR 297**, the court held:

“The prosecution has a duty to prove the essential ingredient of the offence with which the appellant and the others have been charged beyond any reasonable doubt. The burden of proof remains on the prosecution throughout and it is only after a prima facie case has been established i.e. a story sufficient enough to link the appellant and the others to the commissioning of the offence charged that the appellant, therein accused is called upon to give his side of the story”

- **Section 172** of the Criminal and Other Offences Act, 1960 Act 29 provides (1) A person who intentionally and unlawfully causes damage to property (a) to a value not exceeding one million cedis or without a pecuniary value, commits a misdemeanour, (b) to a value exceeding one million cedis commits a second degree felony.

Brobbeey and other V. The Republic (1982-1983) GLR 608, the Court held:

“...an essential element for the constitution of the crimes of causing harm contrary to section 69 and causing damage contrary to section 172 of the Criminal Code, 1960 (Act 29), was that the harm or damage must not only be

intentional but also unlawful. Mere harm or damage without more was insufficient...”

- The first prosecution witness testified that: He knows the 2nd accused person but does not know the 1st accused. In 2014, he came to meet the accused persons and a group of people having church services on his church premises. The land on which the church structure was situated was given to him by an old lady on the condition that whenever they wanted the land, they could call him and have discussions/ sit with him. That no money was taken from him. According to him, the old woman died but he visited her children. That he built a church on the land. Later, he traveled and, on his return, he noticed that A2, his former assistant pastor, had broken into his church and he was having church services there with another pastor, without his consent. That the accused persons unlawfully entered his church to plunder his properties which cost GHC 15,000.

The investigator stated in paragraph 10 of his witness statement that on 21st May 2014, he visited the church premises and the investigation revealed that a kiosk the complainant was using as an office was raised down by a windstorm. That the complainant's structure was in a dilapidated state and people had started dumping refuse there.

- After the case of the prosecution, the accused persons were called to open their defence. The first accused(A1) stated that in the year 2014, they were looking for a place to worship so he contacted A2 who told him his church was not functioning and that the complainant had asked him to give the place to anyone interested. He went with A2 to inspect the church building which was old, weak, and an abandoned structure built on a short wall- about three feet in a waterlogged area. It was an open space without any lock. That they tried reaching the complainant on his cell phone for about three months but to no avail. So, they contacted the daughter of the landlady who indicated that the

place had been turned to a refuse dump and that AMA had warned them to clear the place. She gave them the go-ahead to clear the area and make use of the place to avoid sanctions by AMA. The only item he saw in the wooden structure was an old stuffing chair, one empty box, and two damaged drums. That it is not true that they caused damage to PW1's structure but it collapsed as a result of a heavy rainstorm.

- According to A2, in his witness statement, the complainant's church was a structure made up of three layers of blocks and a wawa board with a short gate. The roofing had lots of leakages which made church services very difficult when it rained. That the complainant informed him that thieves broke into the church because the structure was weak. After some time, the complainant disappeared when he realized that the church had almost collapsed. All attempts to reach him proved futile. That the complainant came back after almost 5-6 months and told him that he had rented a place at Mallam and wanted to start a new church there and that he could give the place out to anyone interested. At the time, the church was no more and because the place was waterlogged, it became weedy and people started dumping refuse there. In May 2014, there was a heavy storm that blew part of the structure away so the landlady advised that they pull down the rest of the structure because it was a death trap.

- In this prosecution bore the legal burden to establish that the accused intentionally and unlawfully caused damage to the complainant's property.

In **Yeboah and Another V. The Republic** (1999-2000) 1GLR 149, the court held:

“On a charge of causing unlawful damage under section 172 of the Criminal Act 1960(Act 29), the ingredients to be proved by the prosecution were intention and unlawful damage...”

In this case, the investigator corroborating the evidence of the accused persons stated that the complainant's kiosk was “raised down by windstorm.

Photographs of the scene were captured. Interacting with Rabiatu Mohammed indicates that the church building was in a dilapidated state so when the Water of Life Ministry assumed worshipping at the place, they demolished it and started putting up their own structure.”

- This evidence reveals that the complainant abandoned his wooden structure for a long time and it collapsed due to the storm. During cross-examination of the investigator, he again admitted that the place was abandoned and used as a refuse dump. This is an excerpt of what transpired during the cross-examination of the Investigator by A2:

Q: Per your narration, you spoke to some residents around?

A: Yes.

Q: Were you told that the place, for some time, had been a dumping place for refuse and faces?

A: Yes. Habiatu said the place had been abandoned and as a result, it had been used as a dumping place. I also witnessed a lot of dirt, and refuse at the place on my 1st visit.

Q: Have you ever met the landlady of the premises before?

A: As at the time of the incident, the landlady was dead. I met her daughter, Delion, and even obtained a statement from her.

Q: Did the landlady's daughter tell you that she gave the place to A1 to start a church?

A: She said she knew that the mother giving the place to the complainant but sometimes, she saw that the premises was not been used and she needed someone for the upkeep of the place. Based on that she called the complainant many times but she could not reach him but met A2 who also told her he could not get in touch with the complainant. with this information, she readily gave it to A1.

She justified her action by the fact that at the time they were giving the place to the complainant, they did not collect anything from him.

DW1 indicated that *'a strong wind blew part of the dilapidated structure ... and it became a death trap so we agreed to pull down the rest of the structure to save life'*

- The evidence on record clearly shows that the complainant's structure was dilapidated and posed danger. The prosecution could not establish that the accused persons herein intentionally and unlawfully caused damage to the complainant's property. Accused persons acquitted.

(SGD)

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