

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON TUESDAY, 25<sup>TH</sup> OCTOBER, 2022 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE**

**CASE NO.: CC159/2019**

**THE REPUBLIC**

**VRS**

**RICHARD TSE DORCOO  
WISDOM YAO DORCOO  
MAWULI YAO DORCOO**

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**ACCUSED PERSONS PRESENT**

**CHIEF INSPECTOR JACOB AWIAGAH FOR THE REPUBLIC PRESENT**

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**JUDGEMENT**

The Accused persons were arraigned before this court charged together with the following offences:

- i. Conspiracy to commit crime to wit Causing Unlawful Damage, and
- ii. Causing Unlawful Damage, contrary to sections 23(1) and 172 of the Criminal Offences Act, 1960 (Act 29). The Accused persons pleaded Not Guilty to the charges after same had been read out and explained to them.

**FACTS OF THE CASE**

The brief facts of the case were that during the month of March, 2019, the complainant organized some labourers to uproot and dress fifty (50) oil palm trees on their family land closer to the Mafi-Kumase Police Station to pave way for the mounting of electricity poles by an on-going electrification project. On the

23<sup>rd</sup> March, 2019 at about 10:00am, the complainant who intended using the said trees for palm wine was assisting one Edoh Eti, a witness in this case to do same. Suddenly, the 1<sup>st</sup> Accused person who also claimed ownership of the very piece of land and its plantation emerged with the 2<sup>nd</sup> and 3<sup>rd</sup> Accused persons holding cutlasses, spears and digging axes and destroyed the said trees. A report was lodged to the police. The police caused an Agric Extension Officer from the Department of Agriculture of the Central Tongu District Assembly to assess the cost of the damage and he arrived at GHC1,660.00.

### **THE CASE OF THE PROSECUTION**

The prosecution in proving its case called four (4) witnesses to testify in support of its case.

The testimony of PW1 (Billy Amesimeku) and PW2 (Edoh Eti) confirmed the facts as presented by the prosecution.

PW3 (Amesimeku Nicholas Amos) testified as the head of family of the Bokor/Amesimeku family. According to PW3, together with PW1, the permitted ECG to cut down some oil palm trees on their family land which was a hindrance at where they wanted to mount some electricity poles.

PW4 (Detective Lance Corporal Aaron Nana Antwi Okraku) investigated the case. PW4 relied on his Witness Statements together with the exhibits attached.

After the close of the case of the prosecution, the court ruled that a prima facie case had been made out against the Accused persons, and so they were accordingly called upon to enter into their defence.

## THE CASE OF THE DEFENCE

The Accused persons on the other hand testified themselves and together called one (1) witness as DW1.

The 1<sup>st</sup> Accused person told the court that the reason why they caused damage to the oil palm trees was that the Assembly man came to tell him about the electrification project so he gave out the place to the Electricity Company of Ghana to carry out the project. According to the 1<sup>st</sup> Accused person, the ECG contractors cut down the palm trees. That PW1 told him that the palm trees were theirs. So he also told PW1 that where they are alleging belongs to them rather belongs to the Accused persons' grandparents and that they have usufructory right per a judgement.

The 2<sup>nd</sup> Accused person told the court that they destroyed the oil palm trees because the land does not belong to the complainant because they started farming on that portion of the land first from the time of their great grandfathers and to their fathers. According to the 2<sup>nd</sup> Accused person, no one has ever challenged them that the farmland belonged to them. The 2<sup>nd</sup> Accused person told the court that ECG led by the Assembly man came to ask for permission from the 1<sup>st</sup> Accused person to carry out electrification project. That the 1<sup>st</sup> Accused person permitted them to carry out the project. That they saw that some people had gone to fell some oil palm trees in their coconut plantation where the project was ongoing and preparing them to tap palm wine. It is the case of the 2<sup>nd</sup> Accused person they went to question those working on the palm trees but they absconded so they destroyed the oil palm trees.

The 3<sup>rd</sup> Accused person told the court that the palm trees that they destroyed belonged to his grandfather. According to him, permission was sought from the 1<sup>st</sup> Accused person for a project. That when they went there to see the progress of work, they saw that the complainant was using the palm trees which were felled by the workers. That when they tried to approach the complainant to question him about what they saw, the complainant left.

The Accused persons called one witness as DW1 (Isaac Nanedo Kwabla).

The legal issues that emerged for determination after the end of the trial are:

- i. Whether or not the Accused persons agreed or acted together to cause damage to the palm trees.
- ii. Whether or not the Accused persons intentionally and unlawfully caused damage to the fifty (50) dressed oil palm trees.

The cardinal rule in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution; and the standard of proof required by the prosecution should be proof beyond reasonable doubt as provided in the Evidence Act, 1975 (NRCD 323), sections 11(2) and 13 (1), and also as was stated in the case of Donkor v. The State [1964] GLR 598.

Likewise the case of Republic v. District Magistrate Grade II, Osu; Ex parte Yahaya [1984-86] 2 GLR 361-365, where Brobbey J. (as he then was) stated and I quote:

*“One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt.”*

### **THE LAW AND EVALUATION OF THE EVIDENCE**

Section 23(1) of Act 29 provides that where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy or abet the criminal offence.

In law, Conspiracy consists not merely in the intention of two or more persons, but also in the agreement of two or more persons to do an unlawful act or to do a lawful act by an unlawful means. And a person could be charged with conspiracy to commit a crime whether he was involved in the conspiracy before the act (accessory before the fact) or after the act (accessory after the fact). What is material is whether there was a common design by the parties to commit the crime.

To found conviction for conspiracy, the prosecution has the duty to establish the following ingredients:

1. That the offence involved two or more persons;
2. That those persons agreed or acted together; and
3. That they acted together with a common purpose, i.e. to commit a crime or do an unlawful act or a lawful act by an unlawful means.

Section 172 (1)(b) of Act 29, and it provides:

*“Whoever intentionally and unlawfully causes damage to any property by any means whatsoever —*

*(b) to a value exceeding One Hundred Cedis, shall be guilty of second degree felony.”*

From the above, the elements of causing unlawful damage are as follows:

- i. That the accused person intentionally caused damage to the property,  
and
- ii. The accused person unlawfully caused the damage.

It must be proved that the unlawful damage was caused by the Accused persons intentionally. Evidence that the damage was caused accidentally or negligently will not suffice. Section 11(3) of Act 29 provides:

*“If a person does an act of such a kind or in such a manner as that, if he used reasonable caution and observation, it would appear to him that the act would probably cause or contribute to cause an event or that there would be great risk of the act causing and contributing to cause an event, he shall be presumed to have intended to cause that event, until it is obvious that he believed that the act would probably not cause or contribute to cause the event or that he did not intend to cause or contribute to it.”*

In their defence, the Accused persons did not deny the fact that they went there together and caused damage to the fifty (50) dressed oil palm trees claiming ownership of the land and the trees thereon. In their respective Cautioned and Charge Statements given to the police, the Accused persons did not deny the fact that they caused damage to the oil palm trees.

PW1 (Billy Amesimeku) and PW2 (Edoh Eti) who were eye witnesses confirmed same. This establishes that the Accused person acted together to cause damage to the oil palm trees.

In a case where the prosecution proves the ingredients of the offence of causing unlawful damage, that is intention and unlawful damage, the accused person would be required to offer an explanation to the charge for the court to determine whether or not the conduct of the accused person was done in good faith, including where the accused asserts a claim of right to the property. See Yeboah & Anor vrs The Republic [1999-2000] 1 GLR 137. A claim of right means a claim of right in good faith. See section 15 of Act 29.

In the course of the trial, the prosecution through PW3 tendered a Judgement of the Court of Appeal, Ho and marked as Exhibit 'G1'. By the terms of the Court of Appeal, Ho judgement in Suit No. H1/144/05 titled Awuku Konglo Bokor & Thomas kwaku Amesimeku vrs. Mankralo James Asafo & Another dated 10<sup>th</sup> March, 2006 affirming the judgment of the High Court, Ho in Suit No. L/5/73 (Exhibit 'G') delivered by Acquah JSC sitting as Additional High Court Judge stated through Apaloo J.A. at page 4 as follows:

*"The historical evidence was clear that Plaintiff ancestor Bokor received 1<sup>st</sup> Defendant's ancestor Asafo as his guest but did not settle Asafo within any demarcated boundaries on the land in dispute. Asafo and his people lived side by side with Bokor and his people on the land in dispute without any boundaries drawn between the two families for over 300 years."*

Apaloo J.A. further stated at page 6 as follows:

*“The rights of the Plaintiff determined by the Court is simple and straight forward; **the Plaintiffs are the land owners but the Defendants are in possession.** These possessory rights by the Defendants maintained over 300 years should not be disturbed by an injunction. In my view it is rather too late by years to disturb such a possessory right.” (Emphasis mine)*

The Accused persons’ family was the Defendants in the above case whereas the family of PW1 and PW3 were the Plaintiffs in the case. In the case of Togbe Lugu Awadali IV vrs Togbe Gbadawu IV [2018] 119 GMJ 1 SC, the Supreme Court in a unanimous decision speaking through Apau JSC held that:

*“The law is certain that long possession by a stranger with the permission of the allodial owner, would not confer ownership of the land upon the stranger. The authorities are clear that laches of this nature do not confer ownership of the land upon the stranger. The authorities are clear that laches of this nature do not extinguish the title of the true owner and do not vest the stranger-occupier with title to the land. All it does is that it prevents the true owner from recovering possession and enables the stranger to retain the use of the land ..... Though such a stranger can deal with the land as he wishes including granting conveyances, these interests are limited to possessory and user rights and cannot mature to absolute ownership rights. This is grounded on the customary law principle that a stranger cannot by mere occupation of land of a stool or clan or family to which he does not belong, acquire any real interest in that land, no matter how long.”*

In his book titled “Contemporary Trends In The Law of Immovable Property in Ghana”, the learned author Yaw D. Opong had this to say on the right to economic trees at page 144:

*“Generally, the customary freeholder has unfettered right to own strips of economic trees, natural or cultivated by him, on the land. The allodial title holder cannot go upon the land to harvest or fell any economic trees without the consent of the customary freeholder.” (Emphasis mine)*

In this case, there is no evidence whatsoever to establish that PW1 obtained the consent of the customary freeholders, i.e. the Accused persons’ family before going ahead to dress the 50 oil palm trees. The complainant did not have right or authority to dress the oil palm trees. The court finds that action of the Accused persons on that day was justified.

Having so held above, the Accused persons cannot be said to have committed the offences of conspiracy and causing unlawful damage. In the circumstances, I hereby acquit and discharge all the Accused persons.

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**ISAAC ADDO**  
**CIRCUIT JUDGE**  
**25<sup>TH</sup> OCTOBER, 2022**