

**IN THE CIRCUIT COURT 3 ACCRA HELD ON 22<sup>ND</sup> NOVEMBER 2022 A. D.  
BEFORE HER HONOUR SUSANA EDUFUL (MRS), CIRCUIT JUDGE**

**CASE NO. D3/16/2018**

**THE REPUBLIC**

**VS.**

**KWAKU AYITEY  
ENOS NANA ANKOMAH  
MOHAMMED AWAL**

**JUDGMENT**

Accused Persons have been charged with Forcible Entry contrary to section 202 A(1) of Act 29, Trespass to Land contrary to section 157 of Act 29 and the 3rd Accused Person (A3) has been charged with the offence of Threat of Harm contrary to section 74 of the Criminal Offences Act, Act 29 of 1960

All Accused Persons pleaded not guilty to the charges against them.

**BRIEF FACTS:**

The brief facts of the case as given by the Prosecution are that Complainant Ben Asamoah is a Ghanaian resident in the United States of America. In 1997, he purchased ten (10) plots of land from Nii Tetteh family of Sapeiman in the Ga West District of the Greater Accra Region. He secured same with sandcrete block fence wall. He has been visiting the land anytime he visited Ghana on holidays. The necessary documents were issued him and are being processed by the Land Title Commission. In September 2017, Complainant visited the site and saw the need to repair portions of the fence wall as it was deteriorating. He therefore sent workers with materials to work on the land only to be confronted by A1 Kwaky Ayitey, A2 Enos Nana Ankomah and A3 Mohammed Awal Aminu who claim that land belongs to them. A1 claimed that he bought his four-acre land in 2004, while A2 also claim his mother, one Joan Wolay Agbo also bought four plots of the land in the year 2007, all from the same grantors. The matter was reported to Police at Amasaman for investigation. The Police warned A1 and A2 were warned to keep away from the land, but they feigned deaf ears and continued to develop the land. On 28/9/17, whilst Complainant's workers were working on the land, A3 led four young men who were wielding gun, machetes and other weapons onto the land and threatened the site foreman, one Samuel Andoh to wit' "If you do not stop the work immediately, you would not like what will happen to you and

your workers”, A3 claimed to be the caretaker of the land in question on behalf of A1 and A2. For fear of their lives, the workers laid down their tools. The three Accused Persons were later arrested. After investigations, they were charged with the offences accordingly.

## **THE EVIDENCE OF PROSECUTION**

The prosecution called four witnesses and tendered 7 exhibits. The Accused Persons who testified did not call any witnesses they however tendered 5 exhibits all together.

### **PW1 – SAMUEL ANDOH**

PW1 lives at Adenta Accra, he is a mason by profession and knows the Complainant Ben Asamoah who is based in the USA. PW1 is the foreman working on the Complainant’s project site at Sapeiman near Amasaman. According to PW1 somewhere in October, 2017 While the Complainant was in Ghana and engaged him to re-construct the original fence wall around 10 plots of land as some portions of the wall had deteriorated. PW1 further stated that he, together with David Arthur, Isaac Essuman and another other mason went onto the land. Whilst working on the land a man whom PW1 later got to know as Awal came to the site with some young men riding on motor bikes. Awal in a confrontation inquired from PW1 to know whose job he was doing on the land. Awal informed PW1 that the land belonged to them. So, he directed PW1 and his men to stop

working on the land. When PW1 told Awal, the complainant had reported the matter to the Police Station, Awal went to the Police station and PW1 pointed Awal to the investigator who requested the parties in issue to produce their respective documents on the land. PW1 stated that, Awal never showed up at the Police Station. Therefore, the complainant was asked by Police to continue with his construction work.

### **PW2 – DAVID ARTHUR**

PW2 lives at Ashaley Botwey in Accra. He is a carpenter and knows the Complainant who is based in the USA. He also knows the land situate at Sapeiman which is the land in issue. According to PW2 in October 2017, the Complainant asked he and his other colleagues to clear his land and also work to re-construct his fence wall on the land in issue. PW2 further stated that whilst working together with his colleagues on the land Awal, led a group of macho men numbering four onto the land to confront them and directed them to stop working on the land. PW2 communicated the incident to the Complainant as Awal at the time insisted that he together with the other workers on the land should pack their tools and vacate the land. The next day, the four Macho men were at the site again to stop him, PW2 and the other workers from working.

When Awal was invited by the Police when the Complainant made a report to the Police but Awal did not turn up at the

Police Station. However Awal again visited the site the third time when PW2 and the other workers were on the site and issue his last warning to them which was a verbal threat to their life.

### **PW3 – BEN ASAMOAH**

PW3 is domiciled in the USA but whenever he visits Ghana he resides at 324 Naa street Dzorwulu Accra. He did not know the Accused Persons until this matter came up. According to PW3, Nii Tetteh Kofi family of Saperman in the Greater Accra Region sold to him 10 plots of land in 1997 and attached exhibit B series the original copy of the indenture in that respect. PW3 further stated that he lodged the said indenture at the Lands Commission for processing. It is PW3 further stated that when he visited Ghana in September 2017 while he was on holidays he realized that some portions of the fence wall was deteriorating so he engaged workmen to repair the fence wall. PW3 deposited building materials on the land to be used for the said fence wall construction of the portion of the fence wall that had deteriorated. However, whilst the workmen were on the site working, Accused Persons and others came to the site and stopped the worker from working and so PW3 reported the matter to the Police. When the Police invited the Accused Persons but they did not show up. The Police asked PW3 to continue with his work when Accused Persons did not show up. The workers went to the site to continue with the work but the

accused person organized and attacked the workers seized their tools and threatened to kill.

**PW4 – D/C/INSPR. PHILIMON GOKAH**

He took over investigations caution statement and the charge statement of the Accused Persons. He tendered same in evidence and was accepted and labeled exhibit A –G respectively. PW4 corroborated the evidence of the other prosecution witnesses.

On February 16, 2022 the court found that prosecution has been able to establish prima facie case against the Accused Person on counts 2, 4, 5 and 6 and therefore called upon all Accused Persons to open their defence.

Prosecution therefore had the duty to prove the charge preferred against her beyond reasonable doubt in accordance with

**Section 13 (1) of the Evidence Act, 1975, (NRCD 323).**

Reasonable doubt, as stated by **P. K. Twumasi on page 124 of**

**his book, Criminal Law in Ghana (1996), “must be a reasonable probability and not a fanciful possibility.”**

In order to prove the case against the accused person, Prosecution called three (3) witnesses and tendered Three (3) exhibits in evidence.

## EVALUATION OF PROSECUTIONS EVIDENCE

### Count 2, 4 and 5

The three counts are against all three accused persons and will therefore consider them together.

For the charge of **Trespass to Land, Section 157 of Act 29 1960** provides that “whoever (a) unlawfully enters in an insulting, annoying, or threatening manner upon any land belonging to or in the possession of any other person;

(b) unlawfully enters upon any such land after having been forbidden to do so

or (c) unlawfully enters and remains on any such land after having been required to depart therefrom or (d) having lawfully entered upon any such land

misconducts himself in an insulting , annoying or threatening manner: or (e)

having lawfully entered on any such land, remains thereon after having been

lawfully required to depart therefrom, shall on the complaint of the owner or

occupier of the land, be liable to a fine ...

To succeed the prosecution must prove the following:

- i. The entry on the land by the accused persons
- ii. The Accused person must not be the owner or occupier of the land

On the charge of Trespass on the land A1, A2 and A3 have been

charged under count 2, 4 and 5 with the offence. PW3 tendered exhibit B to show that he obtained an indenture from his grantor when he purchased the land and to demonstrate that he owns the land in issue. He also stated that the 10 - acre land had already been fenced by him and he went to the land to re-construct it as part of the wall had collapsed. That was when the incident happened. The Accused Persons in their Investigation caution statements indicated adverse claim to the land. A1 told the court in in defense, that in 2004 he together with Madam Joan Wolay Agbo went to the owners of the land in dispute, that is the Nii Tetteh Kofi family of Sarpeiman and took a grant in the name of Madam Wolay Abgo. The land in issue are 4 plots of land covering an area of 0.77 acres. Also, he A1 was granted another land by the same family covering 0.18 acres which is contagious to that of Madam Wolay Abgo by the same family. This earlier grant was reduced into writing iin 2007 Exhibit 1, 2 and 3 were tendered in evidence to represent the said land documents.

The 2nd Accused (A2) told the court in defense that he is the son of Madam Joan Wolay Agbo of Accra. According to A2, being the son of Madam Agbo he had an interest in the land so he visited the said land occasionally. A2 told the court that his mother made the Zongo chief of Sarpeiman the care taker of her land. It was A1 who introduce Madam Agbo to her grantors and assisted her in acquiring the said land. The land is covered land



title document. They have been in active possession of same until on October 10, 2017 when A3 called A2 to inform him that one Ben Asamoah is laying claim of ownership of the land. A2 conducted a search at the lands commission and tendered exhibit 6 and 7 in evidence.

A3 told the court in defence that he is an estate developer and that Madam Agbo purchased the land in issue from Nii Aryeetey Tetteh and Ebenezer Teiko Tetteh who are representatives of Nii Tetteh Kofi family of Sarpeiman. A3 further stated that when the land was purchased and has since 2007 been entrusted to his care. It was also in 2007 when Madam Agbo introduced A2 to A3 as she was visiting the land with A2. A3 further stated that in September 2017 he went onto the said land and saw a group of people workers on the land and therefore, contacted them. The said persons indicated that it was one Ben Asamoah who instructed them to work on the land. A3 gave his phone number to the working to hand it over to Ben Asamoah but did not hear anything from anybody until A3 received a phone call from the Police inviting him to the Police Station. This piece of evidence shows that the accused person admits that they entered the land save that they entered it as their own property

The second ingredient is that the accused Persons must not be the owner or occupier. Prosecution has to prove that prosecution witness is the owner of the land or are in possession of the land in issue. The prosecution tendered exhibit B to show

that PW3 purchased the said land from the Nii Tettey Kofi family on September 29, 1997. Prosecution again stated that it is PW3 who occupied it as he had fenced the land already. Prosecution also gave evidence that the Accused persons are not the owners of the land as they were not able to produce any documentation to that effect. Consequently, the burden shifts onto the Accused Persons to raise a doubt that the prosecution witnesses are not the owner of the land in issue. All accused Persons have to do is to raise a doubt in the mind of the court that prosecution witnesses are not the owner of the said land. Accused person tendered exhibits 5, 6 and 7 these are indenture in the name Miss Joan Wolay Agbo dated 2007 and Land Title Certificate dated June 17, 2019.

What is on record to prove occupation or possession of the land in issue?

According to Prosecution the land was purchased by Ben Asamoah PW3. It consists of 10 plots which was fenced with a dwarf wall. According to prosecution, PW3 constructed a fence wall on the land that shows acts of possession of the land A3 confirms during the cross-examination that the fence was on the land at the time it was purchase by Madam Agbo.

When A3 was cross-examined by prosecution the following ensued:

“Q. You said in your Witness Statement that you are the caretaker of the land in dispute. Is that correct? A. Yes, that is so.

Q. You were not there when A2's mother allegedly bought the land?

A. No.

Q. As caretaker the first day that the land was shown to you what was the state of the land?

A. The land is not far from my house. There was a dwarf fence wall constructed on the land.

Q. Do you know the one who erected the said dwarf wall?

A. I don't know the one who constructed the dwarf fence wall. But it was constructed before I even constructed my own building. But I saw that Joan alone came to the land all the time. She was the one I approached that I will take care of the land for her.

Q. Which year was the land entrusted into your care?

A. Around 2013.

Q. Do you know when the land was bought?

A. No.

Q. You gave your statement to Police on the 4/7/2018 and the said statement is evidence 'F' – 'F1'.

A. That is so.

Q. You indicated in exhibit 'F' the back page that the land in dispute was entrusted in your care about... years ago by A2's mother in 2018.

A. That is so.

Q. Per your answer that the land was entrusted into your care in 2013 is falsehood.

A. I am telling the truth.

Q. As at 2018 if the land was entrusted into your care about seven (7) years when it was 2011 that A2's mother entrusted the land into your care and not 2013 as you want the court to believe.

A. I did not say that I was made a caretaker in 2013. I rather said that was the time I met the woman.

Q. The land A2's mother entrusted into your care form part of ten (10) plots of land by the Complainant in 1997.

A. I know nothing about that.

Q. It was the Complainant who constructed the dwarf wall you saw on the land the first day A2's mother took you to the land.

A. I know nothing about that.

Q. I am putting it to you that since you were not there when A2's mother allegedly bought the land. You cannot testify on authority that the said land belongs to A2's mother.

A. What I know is that she A2's mother is the one who owns the land all the time. So I decided to help her to take care of it for her.

Q. I am putting it to you that on 28/9/2017 you went to the said land where you stopped Complainant's workers from working on the land.

A. That is correct."

The evidence on record shows that the PW3 and A2's mother has been contending on the ownership of the land. They have both provided the court what each is relying on to prove

ownership of the land. Accused Person's have been able to raise a doubt in the mind of the court that is "PW3 may or may not be the owner of the land". Therefore, doubt in law must inure in favour of the Accused Persons. That being the case, the civil court will be the proper forum to determine the ownership of the land. All Accused Person have to do is to raise a doubt in mind of the court which they have successfully done. Consequently, All 3 persons are acquitted and discharged on Count 2,4 and 5 on the charge sheet.

### **Count 6**

Count 6 is against A3 only.

Under **Section 74 of Act 29**, "A person who threatens any other person with unlawful harm with intent to put that person in fear of unlawful harm commits a misdemeanour". Prosecution's duty was to prove:

1. That the accused person uttered words;
2. That the words put the victim in fear of unlawful harm.

A3 has been charged with the offence of Treat of Harm. PW1 and PW2 and PW4 have stated in their evidence that A3 threatened PW1 and his worker by uttering the words to wit "If you don't stop the work immediately you would not like what will happen to you and your workers".

When PW1 was cross-examined by counsel for A2 and A3 the following ensued;

Per paragraph 8, there was nothing that shows that Awal

threatened you with any violence.

A. I don't agree with you.

From the investigation caution statement of A3, Madam Joan Woley Agbo had entrusted 4 plots of the said land in issue under his care, since September 28, 2017. He was informed that someone deposited building material on the land which was under his care and so he proceeded to the site and met PW1 Samuel Andoh and his workers. A3 gave his phone number to PW1 to be given to the complainant to call him on phone. After a week, A3 returned to the site and confronted PW1 and directed them to vacate the land along with his workers since the complainant did not call him.

From the investigation caution statement of the accused his encounter with the workers who were on the land, of which he A3 is also in charge was not a friendly one and if two persons are contending for the same piece of land it is unlikely in adverse possession of land would vacate the land voluntarily without use of strong and threatening words. A3 in his evidence to the court denied the offence charged.

When A3 was cross-examined by prosecution the following ensued.

Q. I am putting it to you that you have no right to stop Complainant's workers from working on the land.

A. Why I went there is that I was the caretaker so when I saw them on the land I went to tell them the land was for Madam Joan.

Q. I am also putting it to you that on the said date you stopped Complainant's workers from working on the land you threatened them as well.

A. It is not true because when I stopped them they told me they were working for a man. I told them it is for a woman so it can't be for a man. I left my phone number to them. If I went there to threaten them I would not have left my phone number to them.

Q. I am suggesting to you that you never left your phone number to the people on the said date. To wit if they don't stop the work immediately they would not leave there they will see what happened to them.

A. That is not correct.

The court presumes the confrontation between PW1 and his workers on one hand and with A3 and his 'macho men' (men well-endowed with strength) on the other hand as PW1 described them indeed used words of threat of harm. The court is not convinced by the defence put up by A3. Accordingly, A3 is convicted of the offence stated in count 6

## **SENTENCE**

In sentencing the accused (A6) I have taken into consideration the fact that he is a first-time offender and his plea for mitigation. What is imperative on the court which the court has taken into consideration is that the issue about land guards and

macho men issuing treat to person contesting land ownership is on ascendancy in this country and therefore will give the accused enhanced sentence to serve as the deterrent to the general public. The proper avenue to contest land issues is the court and nothing else.

I hereby sentence the accused person to a fine of 800 penalty units or in default 12 months' imprisonment.

**PROSECUTOR**

**INSPECTOR TEYE OKUFFO**

**LEGAL REPRESENTATION**

**PHIXON OWOO FOR A1**

**YAW DANKWAH FOR A2 AND A3**

**H/H SUSANA EDUFUL (MRS.)**

**(CIRCUIT COURT JUDGE)**