

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON WEDNESDAY**  
**THE 26<sup>TH</sup> OF OCTOBER, 2022 BEFORE HER HONOUR ROSEMARY BAAH**  
**TOSU (MRS)- CIRCUIT COURT JUDGE**

COURT CASE NO: D8/36/2021

THE REPUBLIC

VS

EVANS AKWASI TEYETSU

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**JUDGMENT**

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Accused is charged with one count of Causing Harm contrary to section 69 of the Criminal and Other Offences Act (1960), Act 29. He pleads not guilty.

**THE PROSECUTION'S CASE**

Complainant is a taxi driver, whilst Accused is a security man and they both reside at Sakumono Village. Prosecution says that on the 16<sup>th</sup> December, 2020, at about 6:30 pm, one Christopher, a member of Kingdom Love Ministry which is located near Complainant's house, asked Complainant to shut a pipe that he Christopher had connected into a tank at the church premises. Later around 9:30 pm, Complainant sought to do this accompanied by a friend called Richard.

Whilst removing the hose, Accused person came and asked Complainant, why he was removing the hose. Accused did not agree to Complainant removing the hose and this led to an argument. Accused picked up a stick and hit the Complainant's head. Complainant sustained a deep cut.

Prosecution called two witnesses, complainant, Prince Ashong as PW1 and the investigator, Detective Inspector Isaac Ofori Demete as PW2. PW1's evidence is that on the day of the incident, one Christopher requested him to monitor a hose he had placed into a tank located in a church and to close the tap when the tank was full.

PW1 says that he monitored it and around 9:30 pm when the tank got full, he closed the tap and started to roll up the hose. PW1 says he noticed that Accused had removed the hose from the church's tank into his tank which was situated behind the church. Accused asked him why he was folding the hose and PW1 informed Accused that it was based on the direction of the said Christopher. According to

PW1, Accused refused to understand and threatened to wound PW1 so that he Accused would be sent to jail.

In the midst of the arguments, Accused picked up a piece of wood and hit PW1 on the head, leading PW1 to sustain a deep cut. After injuring PW1, Accused fled the scene.

PW2 testified that he is the investigator assigned to the conduct of the case. He testified that due to the nature of PW1's wound, he was immediately issued with a medical form to see a doctor. PW2 tendered in evidence the following exhibits A, investigation cautioned statement, exhibit B, medical report, exhibit C series, pictures of Complainant's wound and Exhibit D, charge statement.

### **THE DEFENCE**

Accused testified that the water hose was in his house between the hours of 11: 30 pm and 12 am. He noticed a little boy had come into the house which was walled so he asked him what he was doing there. At the exact moment he noticed PW1, the father of the young boy at the entrance of the house.

Accused says he was displeased with the presence of both the boy and PW1 in his house at that ungodly hour so he questioned and expressed his displeasure to PW1. According to Accused, PW1 retorted that is he the one to teach him how to raise his son? Accused testified that PW1 slapped him twice, pushed him and he fell down. PW1 then entered into Accused person's house, picked up a stick and used it to hit him. His wife came out and started calling for help. Accused says that PW1 upon hearing his wife shouting for help attempted to run, however he retrieved the stick and flung it at PW1. This stick hit PW1 whilst he had turned around and was running away. Accused says he was also feeling dizzy because PW1 hit him on his hands and shoulders.

Accused called his wife, Portia Fordjour as his only witness. DW1 testified that on the day of the incident she returned from church in the evening and noticed the hose connected to the tank. DW1 testified that she also noticed PW1 had opened the tap and was fetching water into his container. Accused pulled this hose into their landlord's tank. She then noticed the hose being pulled out and Accused calling out to see who was pulling the hose.

PW1 appeared with a young boy and started to insult Accused. A young man told PW1 to stop insulting Accused but PW1 refused and instead told Accused that he will teach him a lesson he will never forget. According to DW1, there was some construction going on in the house so PW1 took a piece of board /wood and used it to hit Accused person's hand which got swollen. Accused in the process fell down

and also picked up a piece of wood and it ended up hitting PW1's head. After this, PW1 asked the persons he came with to leave. PW1 was bleeding at this moment.

### **THE CHARGE OF CAUSING HARM**

*'A person who intentionally and unlawfully causes harm to another person commits a second degree felony'.*

The ingredients of the offence which the Prosecution must prove therefore are

1. That Accused caused harm
2. That the harm was unlawful
3. That the harm was caused intentionally.

The first element to consider is that Accused caused harm to PW1. In this case, there is no controversy that Accused caused harm to PW1, which is evidenced by exhibits C series, pictures of the wounds on PW1 and the medical report, exhibit B. I do therefore find as a fact that Accused caused harm to PW1.

The second element Prosecution must prove is that the harm was unlawful.

Section 76 of Act 29 defines unlawful harm

*'Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Chapter 1 of this Part.'*

Section 31 of Act 29 provides a list of grounds on which force or harm may be justified, it reads

*Force may be justified in the cases and manner, subject to the conditions, hereinafter in this Chapter mentioned, on the ground of any of the following matters, namely –*

- (a) express authority given by an enactment; or*
- (b) authority to execute the lawful sentence or order of a Court; or*
- (c) the authority of an officer to keep the peace or of a Court to preserve order; or*
- (d) authority to arrest and detain for felony; or*

*(e) authority to arrest, detain, or search a person otherwise than for felony; or*

*(f) necessity for prevention of or defence against crime; or*

*(g) necessity for defence of property or possession or for overcoming the obstruction to the exercise of lawful rights; or*

*(h) necessity for preserving order on board a vessel; or*

*(i) authority to correct a child, servant, or other similar person, for misconduct; or*

Section 37 of Act 29 provides

*'For the preservation of or for the defence of himself or any other person against any crime, or for the suppression or dispersion of a riotous or unlawful assembly, a person may justify any force or harm which is reasonably necessary extending in case of extreme necessity, even to killing.'*

Self-preservation is said to be the first law of nature and the law recognises that every person has a right to protect his person and life against attack, harm or injury by another person.

By law, a Court must consider the defence of an Accused person, no matter how frivolous, irrelevant or far-fetched or even unbelievable it may appear to be. It appears to me that Accused through his evidence in chief and the evidence of his witness, tried to raise a plea of self defence.

Accused testified as follows

*'He told me to stop what I was saying. Before I realized, he had slapped me twice and he pushed me and I fell. He then told me that I like alcohol and he would teach me a lesson. He then entered into the house picked a stick and used it to hit me. My wife came out and started calling for help. Complainant heard her cries and attempted to run away. So I retrieved the stick and threw it at him and it hit him because I was feeling dizzy by then. PW1 hit my shoulders and hands and waist with this stick....PW1 turned and was running out of the house that was when I threw the stick at him.'*

In exhibit A, the cautioned statement, Accused stated the following

*'Then I heard him saying to a man he was walking with Richard that I am as drunkard and that if I don't take care he would do me something this evening I*

*would not like. I also responded that whatever he want to do he should do. Then he asked me to go back and all of a sudden he pushed me and I also pushed him. Then he picked a 2x3 wood and used it to hit my head and my right hand. I also managed to collect the wood from him and I also used it to hit his head and he ran away'.*

DW1 also testified as follows

*'PW1 was insulting Accused. The young man who was with PW1 told PW1 to stop insulting Accused however he refused and insisted that he will teach Accused person a lesson which he will never forget. In the house there was a board lying next to a pillar. PW1 took the board and used it to hit Accused person's hand and it got swollen. Accused fell down when he was hit with the wood and as he was getting up, he also picked up a different piece of wood and it ended up hitting PW1's head.'*

Prosecution disclosed the statement of one Richard Abban he stated as follows

*'But still this man by name Evans was not satisfied with the answers and started raining insults so Mr. Ansong asked why if he drinks finish and the alcohol is running through his mind then he comes to talk by heart so with this Evans with anger told Mr. Ansong that he will show him what people with insanity do if he is the one that bought him the alcohol he will hurt in and go to jail. So he picked 2x3 wood which was about 7 feet and hit Mr. Ansong with it so Ansong also retaliated and I decide to separate them but Evans told me I should let him be he want to show Mr. Ansong something so he struggled and pulled himself from me and hit Mr. Ansong on the head.'*

From the evidence led, it is clear that this was not a one sided affair, that there was some altercation between Accused and PW1. However, I am unable to find any corroboration for Accused person's evidence that PW1 hit him first.

DW1's evidence was shaken under cross-examination and proven to be full of inconsistencies. Her evidence was poles apart from that of Accused person.

In the circumstances, I accept Accused person's evidence that he hit PW1 with the plank whilst he attempted to leave the scene. There is therefore no justification for the harm caused PW1 because at that opportune moment, Accused was not defending himself against any crime.

Prosecution has proved that the harm was unlawful.

The final element which Prosecution must prove is that the harm was caused intentionally.

I refer to section 11(1) of the Criminal Offences Act, 1960 (Act 29)

*'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 contribute to cause the event.'*

This provision is referred to as the direct intent.

Accused cannot claim that the harm was caused by accident or that the harm was not intentional.

This is because a man is said to presume the natural consequences of his act, Accused, cannot be heard to say that his act of throwing a plank which hit PW1 was not intentional.

I therefore conclude that from the evidence on record, the harm was caused intentionally.

I find that Prosecution has proved beyond reasonable doubt that Accused caused unlawful harm to PW1. Accused is hereby convicted.

I have considered the plea of Accused person in mitigation and sentencing is based on these considerations.

- Accused is a first time offender and a family man
- This incident was not premeditated, that is it happened in the heat of the moment
- There was a lot of provocation from PW1

Accused is sentenced to a day's imprisonment and he is further to pay a fine 100 penalty units in default of which he would spend six (6) months in prison custody.

(SGD)  
H/H ROSEMARY BAAH TOSU (MRS)  
CIRCUIT COURT JUDGE