

IN THE CHILD-FRIENDLY GENDER-BASED VIOLENCE CIRCUIT COURT,  
DOVVSU HEADQUARTERS, ACCRA, BEFORE HER HONOUR JUDGE DORA G. A.  
INKUMSAH ESHUN (MRS.) SITTING ON TUESDAY THE 7<sup>th</sup> DAY OF FEBRUARY  
2023

SUIT NO: D8/001/2022

THE REPUBLIC

V.

EMMANUEL KWAME ADDO DANQUAH

MALIK OKE

RULING ON WHETHER THE PROSECUTION HAS MADE OUT A CASE FOR THE  
ACCUSED PERSON TO ANSWER

The first accused person is a 38-year-old piano teacher, while the second accused person is a 27-year-old trader. The accused persons were each arraigned on one charge of causing harm -to each other contrary to **section 69 of the Criminal and Other Offences Act, 1960 (Act 29)**. The second accused person was also charged with one count of causing unlawful damage to the windscreen of the first accused person's car, contrary to **section 172(1)(b) of Act 29**. The accused persons pleaded "*not guilty*" to the charges and were granted bail in the amount of GH¢20,000 with two sureties, with the condition that they should report to the investigator at the Nungua DOVVSU station every other Thursday at 10 am until the end of the trial.

The brief facts are that, the first accused person is the brother of the second accused person's deceased mother. The accused persons live in separate homes. After the death of their mother, the second accused person and his two siblings have been denied of their late mother's room. "*This did not go down well*" with the second accused whose "*imbecile*" sister lives in the family house. When he had information that his sister was being maltreated, he decided to go to the house to see things for himself. On the morning of 27<sup>th</sup> April 2022, the second accused went to the family house and met his aunties occupying a small room he claims belongs to his late mother, and sacked them from the room.

The first accused person was called on the phone and went to the house where there was a confrontation between the accused persons. The first accused person, who was holding a long metallic padlock, tried to *sack* the second accused person to lock the hall, while the second accused person tried to take possession of the padlock. The second accused managed to pull one side of the padlock which divided into two and they started to hit *themselves* with it, injuring each other in the process. As they were going to the police station to report, the first accused jumped into his car to drive to the station, but *accidentally* drove into a gutter. Then the second accused rushed to the car and smashed the windscreen with a shovel. The two accused persons rushed to the Nungua Police Station to lodge reports. They were issued with medical forms which they submitted to the police after attending the hospital. After investigations, they were charged with the offences and brought before the court.

**In section 174(1) of the Criminal and Other Offences Procedure Act, 1960 (Act 30):**

*“At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused sufficiently to require the accused to make a defence, the court shall call on the accused to make their defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement”* [Sarpong v. The Republic [1981] GLR 790].

The accused persons were unrepresented, therefore the court will consider *suo motu*, whether or not the prosecution has made out a case, sufficient to require calling on them open their defence.

After case management, the prosecution opened their case with five witnesses,

- a) Dr. Prince Emmanuel Yirekyi (PW1), a senior medical officer at the Surgical Department of the LEKMA Hospital,
- b) Mr. Bortey B. Manison (PW2), a physician assistant, medical at the LEKMA Polyclinic,
- c) Det. P.W. C. I. Gloria Akumatey (PW3), the investigator,
- d) Malik Oke (A2), and

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e) Emmanuel Kwame Addo Danquah (A1).

The issues the court must determine are, whether;

1. A1 intentionally and unlawfully caused harm to A2,
2. A2 intentionally and unlawfully caused harm to A1, and
3. A2 intentionally and unlawfully caused damage to the windscreen of A1's car.

The standard of proof for the prosecution in **section 173 of Act 29** was discussed in Logan and Laverick v. The Republic [2007-2008] SCGLR 76<sup>1</sup> as follows:

*Section 173 is concerned with summary trials where the judge decides both questions of law and fact. It is for the judge in a summary trial to weigh the evidence and then decide whether from the facts proved, the guilt of the accused can be inferred. Evidence is said to be sufficient when it is of such probative force as to convince and which if un-contradicted, will justify a conviction... where therefore, the evidence adduced on behalf of the prosecution fails to take the case out of the realm of conjecture, the evidence is best described as 'insufficient'. It is the type of evidence which, because it cannot convince, cannot be believed, and therefore is incapable of sustaining conviction.*

The court will consider the first two issues together. In **section 69 of Act 29**: *"A person who intentionally and unlawfully causes harm to any person commits a second-degree felony"*. The elements of this offence are that:

1. The accused person unlawfully caused harm to the complainant or victim, and
2. The accused person intentionally caused harm to the complainant or victim.

Dr. Prince Emmanuel Yirekyi, a senior medical officer currently at the Surgical Department of the LEKMA Hospital (PW1) testified that he examined A2 on 28<sup>th</sup> April, 2022. He tendered A2's medical form into evidence (Exhibit A). According to PW1, A2 said he had been allegedly assaulted and sustained an injury to the scalp. He complained of

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<sup>1</sup>Cited in Mensah, K. & Nyinevi C. (2016). *The Lawyer's Companion, A Guide to Researching Ghanaian Case Law*:

*Cases from 1959 – 2015. 597-598.*

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a mild headache and on examination, he had moderate pain, and a scalp laceration which was actively bleeding and tender. The wound was washed, cleaned, sutured and dressed. A2 was given an injection, tetanus toxoid and oral medication including Amoksiklav and Diclofenac. The wound was on the frontal part of A2's scalp beginning from the hairline backwards. He identified A2's wound in Exhibit D, which showed A2's head and face.

Mr. Enoch Bortey Borquaye Manison (PW2), a physician assistant, medical, at the LEKMA Polyclinic, Adogonno, Nungua also testified that he attended to A1 on 28<sup>th</sup> April 2022. He tendered A1's police medical report (Exhibit B) into evidence and testified that A1 complained of allegedly being assaulted by his nephew resulting in him allegedly developing multiple lacerations on his scalp and forehead. On examination, A1 was bleeding from multiple wounds at the beginning of the scalp near the upper forehead, on the upper forehead and in the middle of the scalp. A1 was given Paracetamol and Amoksiklav tablets. PW2 tendered four pictures on one sheet of A1 with cut wounds on his forehead, frontal scalp and middle scalp (Exhibit C).

The investigator, Det. Cpl. C. I. Gloria Akumatey (PW3), testified in her witness statement that the case was referred to her for investigation on 27<sup>th</sup> April 2022 while she was on duty at the Nungua Divisional DOVVSU. Police medical forms were given to the accused persons and their statements were taken. She visited the scene of the crime with both accused persons who pointed out the place at the corridor where they fought and injured themselves in the house. She then obtained charged caution statements from them.

In cross-examination, A1 put it to PW3 that the events took place over three days. PW3 testified that she was only aware that the incident occurred on the day the accused persons reported it to the police station. A1 attempted to tender a witness statement purportedly signed by Mr. Richard Attram, the only witness to the incident. Neither the court copy, the prosecution's copy nor A2's copy was signed. A1 stated that he was given the document to send to Mr. Attram to sign. He signed it and A1 showed it to the prosecutor. The prosecutor stated that he asked the parties to bring their witnesses to sign their statements before they were filed and served. A1 and A2 brought no one and Mr. Richard Attram said he did not want to get involved in the case. The prosecutor noted that he did not sign his portion of the

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witness statement A1 sought to tender for Mr. Attram as it was not signed before him. PW3 also testified that Mr. Richard Attram declined to testify as he did not want to get involved in A1 and A2's family matters.

A1 asserted that after the two accused persons were presented before the DOVVSU officer, A1 and A2 were advised to go their separate ways. A1 said he and his people were going to "...gather the elderly people to speak to Malik so there was nothing like we coming to court". However, A2 came back and said he was influencing the case to the court level through the CID with a large sum of money, before his two sisters and two other witnesses. This was denied by PW3 who tendered the following documents in evidence:

1. A picture of A2 showing the injury on his scalp – Exhibit D.
2. Investigation caution statement of A1 dated 28<sup>th</sup> April, 2022 – Exhibit F.
3. Investigation caution statement of A2 dated 28<sup>th</sup> April 2022 – Exhibit G.
4. Charged caution statement of A1 dated 1st June 2022 – Exhibit H.
5. Charged caution statement of A2 dated 1st June 2022 – Exhibit J.
6. Photograph of metallic "hammer" that was used by both A1 and A2 – Exhibit K.

A2 was the first accused person to testify. He testified that A1 is his uncle. While A2 was sleeping in his mother's share of the property inherited from his maternal grandmother, A1 came to the house and told him to pack out of his room. A2 told him he would not do so because A1 had his own rooms. A1 told A2 that if he did not pack out, he would strike his head, "*which is not right*". They argued because A1 told A2 to pack out and A2 refused to do so. A1 then struck A2 on the head with a long metal padlock. A2 defended himself and they both went out. A1 sat in his car and drove in A2's direction to hit his leg. A2 said A1 did not succeed and he defended himself. According to A2, "*Now they are saying my late mother does not have any share from her late mother's house*". A2's written statement to the police (Exhibit M) reflected his witness statement.

While cross-examining A2, A1 attempted to quote from the witness statement of Mr. Richard Attram which was not adopted; and attempted to insert testimony into PW3's witness statement on the metallic padlock. A2 stood by his testimony that it was A1 who brought the metal bar into the house and it was he (A2), who was defenceless. A2 explained





that when his grandmother died, he was given two out of the forty bedrooms in her house in 2017. He has never rented the bedrooms out. There were two aunties – Selina Addo and Henrietta in his rooms. He asked them when the tenancy of their tenants in the rooms would expire because he had to share the rooms with his sister; and his junior sister's clothes were out in the hall. His aunt asked him *"What kind of shitty question"* he was asking her. He replied that she had been given seven rooms while he and his siblings were given only two. They went to the police station, where the police told his aunt that if she had seven rooms in the house, she should pack out and go to her rooms so A2, his sister and brother could have their rooms.

When the aunties packed out of the two rooms, A1 came to propose to A2 that he bring tenants to rent the two bedrooms. A2 told A1 that he would decide with his sister and brother what to do with the bedrooms. A1 got angry when he could not manipulate A2, went out and returned with the metal bar at around 6:30am in the morning, shouting at A2 to pack out and go to his father's house. When A2 refused to do so, A1 said the house was his mother's house. If A2 did not pack out, he would use the metal bar to strike A2 on the head. A2 refused to pack out and A1 shouted that A2 does drugs and drinks beer, so he should pack out or else he would hit him on the head with the metal bar. A1 then proceeded to hit A2 on the head with the metal bar multiple times. A2 defended himself from A1's aggression and the metal bar with the key in it divided into two and fell off A1's shoulder – here A2 made a downward arc motion from his head to the shoulder to show the way the metal lock fell. Due to the pain he experienced from being hit with the metal bar, A2 took the metal bar that had fallen and was defending himself from A1's aggression. A1 was standing at the main gate – the *"front door"* of the A2's grandmother's gate and A2 went out to get a taxi.

A2 denied that he sacked two of A1's sisters from the house after they took over A2's room that he inherited from his mother because he wanted extra rooms and felt he had been cheated. He testified that it was the police who told the two aunties to pack out in peace. A2 denied threatening the family and testified that it was rather A1 who was making the threats. A2 also denied assaulting any of his aunties or stopping the shops

from opening. In his investigation caution statement (Exhibit G) A2 stated that he and A1 fought because A1 said

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A2 should pack out of his late-grandmother's room that A2's mother inherited. A2 said he told A1 he would not pack out for "no reason" and then A1 struck him on the head with the metal padlock.

A1 testified that A2, whose whereabouts were unknown after he had left his father's house at Tema Community 4 for the past 8 years, was sitting at the entrance of the porch smoking marijuana early in the morning and knocking the door very hard from midnight. A1 asked him where he had been and why he was behaving in an unlawful manner. A2 then began to scream at the top of his voice that he wanted his Aunty Maakel and Kesewa to come out of the room for him to occupy... that he would remove the eye of Selina and wants her to sit in a wheel chair and he would hire a contract killer to take her life. This matter was reported at the GREDA Estate Police Station.

*According to A1, "They wee invited and Malik was was asked to go to court or Legal Aid, but they should pack and go and seek Legal Aid, I then presented document indicating he is the only beneficial to the one room he claimed that, even he wants extra or we would sit on that wheel chair, I, KESEWA and maakali packed out of the room as a result of His violent tendencies out of fear and also tendency's of a drug addict, also raping my sister and preventing that, the shop which is being used should be closed."*

A1's witness statement was very difficult to read or understand considering the problems with grammar and sentence structure and the way it was written. A1 testified that there was fear and panic in the residence; the tenants on the compound had a lot of fear and told "them" they want to move out of the house. A1 was "parking water" from the shop into his car and thought it wise to secure the hall and store room with a metallic designed padlock. A2 was exchanging words with him, asking him to leave his hall and go to the "Pecom" or he would contact killers for A1. As they exchanged words and A2 insulted A1, A2 took the metallic padlock and started hitting A1's head with it. A1 said all he tried to do was take the lock from him with blood spilling all over and he also hit A2 with it as a defence. A1 ended his testimony by pleading for police assistance on behalf of his entire family " ...since everything indicate that Malik Oke is into Beer, His Drug Addictive tendency which is

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*currently threatening the life of the entire family and the tenants in the house*". His witness statement reflected his written police statement (Exhibit H).

In cross-examination, A2 asked A1 what his intention was when he brought the metal bar to the house. A1 testified that it was purposely to lock the entrance of the hall and that the metal bar is used to lock room doors, particularly the hall of that house. According to A1, he was forcing A2 to pack out from the house because A2 has no place in the house they inherited from A1's mother. It is not A2's inheritance and A1 does not understand why A2 feels he has a share of *"their mother's"* property. A1 admitted that A2's mother is his deceased sister whose biological mother is A1's own mother. When A2 asked whether his mother had a share in the rooms, A1 testified *"I can't tell you – I don't know."* Then *"To the best of my knowledge, "no"*. When A2 asked why his mother has no share in the rooms when she is one of A1's mother's children, A1 responded, *"Because I do not share rooms"*.

According to A1, he does not know how A2 got the rooms because *"...he does not have any rooms"*. He could not tell if A2's mum would have any rooms if she were alive. He admitted that he has three single bedrooms, two bedrooms and the hall in the house and testified that his mother had six children. According to A1, A2's mother died 15 years ago before his mother built that house. A1 admitted to the court that the five surviving children of his mother received rooms as part of their inheritance from their mother in the house. According to A1, there are thirty rooms in the house that were distributed by the family elders, specifically Papa Adjei, Charlotte Danquah and Yaw Asare. A1 admitted that provision was made for A2's mother's child called Baaba who is autistic.

A1 denied that he and his sisters knew A2's whereabouts. When A2 asked him why he did not go to the police station after the two aunties went there but came to the house with a letter for A2 to pack out, A1 testified that he went to the police station with A2 and after he explained to the police officers, they advised A2 to seek Legal Aid. A2 denied that A1 went to the police station with him and insisted he went with his two aunties.

In his investigation caution statement (Exhibit F), A1 testified that on 28<sup>th</sup> April 2022, due to A2's violent tendencies, threats, smoking marijuana, preventing shops from opening,

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sacking and breaking doors violently, he went to pack the last thing from the super market... water and a “*metallic designed padlock*” to lock the hall. A1 told A2 to take his things to the room he sleeps in as he was locking the hall. A2 said he would cripple him if he touched him with the weapon he was holding. A1 laughed and said it was a padlock, not a weapon. A1 continued to say that A2 had managed to sack his aunties who had taken care of his sister and brother for the past 10 years from the room. So, he should go to the other room as A1 was locking the hall and he should go to court as advised by the police. A2 began pushing him and said he would not “*allow*” A1. Suddenly, A2 took the metallic padlock from A1 and hit his head with it three times. A1 took the metal from A2 who started running to “*hit*”, and he also hit him with the metal. A1 started bleeding and went into his car to go to the police station. A2 quickly accosted him and A1 made a U-turn because A2 had a shovel in his hand and was attacking his windscreen. A1 repeated that he made a u-turn and entered a gutter and got “*locked up*”. A2 came “*close further*” and started destroying his car windscreen so A1 got down with the help of passers-by and went to the police station. A1 relied on Exhibit F in his charged caution statement (Exhibit H).

The court takes judicial notice of the fact that the device referred to by A1 as a metal padlock which he claims was regularly used to lock the hall is actually a steering wheel lock which is commonly used to lock car steering wheels abroad. The court finds from the evidence that the accused persons caused harm to each other – yet they are each claiming that their actions were in self-defence.

The court will now consider whether A2 intentionally and unlawfully caused damaged to the windscreen of A1’s car. In **section 172(1) of the Criminal and Other Offences Act, 1960 (Act 29)**:

*“A person who intentionally and unlawfully causes damage to any 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”.*



A1 testified that after the confrontation with A2, he sparked his car to go to the Greda Estate Police Station. **On the way, A2 picked the shovel to hit his car so he quickly made a U-**

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**turn to go to the police station and the car entered the gutter. A1 then began destroying his windscreen with the help of passers-by while A2 was in the car.** A1 came out of the car and went to Greda Estate Police Station where he was asked to go to the Nungua Police DOVVSU.

When A2 asked why he wanted to hit him with his car in cross-examination, A1 testified that he was heading towards GREDA Estate Police Station junction in a rush because nobody knew where A2 lived. A2 came to the middle of the road with a shovel, attempting to hit his windscreen. While avoiding A2, A1's car got stuck in the gutter. A2 quickly rushed to the car and started hitting his windscreen countless times and *"I was in the car quietly watching him destroy my windscreen"*. A2 put it to A1 that his testimony was false because after he defended himself when A1 attacked him with the metal bar at around 7am, he went out and stood three buildings away from the house, behind the gutter, waiting for a taxi while he was bleeding. A1 was parked in the house. When he realized there was no car coming, he drove from the house towards A2, attempting to hit A2 with the car. A2 put it to A1 that he did not use a shovel to attack A1 because he was in pain, couldn't attack A1 and was trying to go to the hospital or the police. A1 denied this testimony and denied that he damaged his windscreen himself. He insisted that A2 *"... destroyed my car windscreen with a shovel, countless times."*

A1 told the court that he was headed towards the GREDA Estate Police Station when he moved the car from the house. According to A1, his mother's house is on the right side of the road going towards GREDA Estate Police Station. A2 was standing in the middle of the road with a shovel. A2 was standing on A1's left side on a bumpy road. There is a blood stain outside his car, on the left driver's side – no evidence was tendered to show this bloodstain. A2 was standing next to the door of a glass manufacturer, a minute's walking distance from the house, which is very big with long walls, so the glass manufacturer is almost in front of their house – on the same line. A1 finally identified his black Honda Fit Vehicle with registration number GA 2338 2018 in Exhibit E which showed a picture of the car with a dented windscreen and a picture of A1 sitting in the car with blood on his chest and shirt.

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There was no information in PW3's witness statement on an investigation into the allegations of causing damage A1 made against A2 for his car. She tendered a picture of A1 in his car with the windscreen broken – Exhibit E. When A2 put it to her that she charged him with causing damage when he did not damage A2's windscreen, PW3 testified that, *"My lady, A1 came with his car, the windscreen of his car was damaged and he claimed it was A2 who caused the damage to the windscreen and none of them could produce witnesses to support their statement. That is why I charged him based on A1's statement"*.

The court notes that, no evidence was tendered of the shovel allegedly used by A2 to *"destroy"* the windscreen of A1's car. Exhibit E, which shows A1 sitting in his car and a frontal picture of the car, shows the windscreen damaged on the left side of the windscreen if you are facing the car from the outside, or on the right side of the car facing the co-pilot's seat if you were inside the car. In his investigation caution statement (Exhibit G) A2 stated that the reason A1's car was damaged was because A1 wanted to use his car to hit A2's leg and A2 managed to find a piece of wood to defend himself from getting hit by A1's car. Based on this statement, the court finds that though the accused person denied damaging the windscreen of A1's car, he did interact with the car to defend himself, in his view.

A2 told the court at the end of the trial, that A1 has been forcing him to withdraw the case through threatening text messages. He was advised to report to the police. A1 attempted to continue talking about his vehicle after he had been given ample time to testify and cross-examine the witnesses on all issues before the court.

The court finds that the evidence presented in this case is sufficient to show that A1 and A2 caused harm to each other and his car was damaged in the course of the conflict between the accused persons. Since the accused persons have pleaded *"self-defense"* on all charges, they shall open their defense on all the charges and are reminded of their right to remain silent, give a statement from the dock or give evidence on oath.

(SGD)

**DORA G. A. INKUMSAH ESHUN**  
**CIRCUIT COURT**

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