

IN THE CIRCUIT COURT '1', ADENTAN, ACCRA, BEFORE HER HONOUR JUDGE DORA G. A. INKUMSAH ESHUN (MRS.) SITTING ON FRIDAY THE 3RD DAY OF FEBRUARY 2023

SUIT NO: D9/01/2020

THE REPUBLIC

V.

NICK AMUZU LAGOH

VERDICT

The accused person was arraigned on a charge of causing unlawful damage to the fence wall of Mr. Kamal Mamud, contrary to **section 172(1) of the Criminal and Other Offences Act, 1960 (Act 29)** on 8th June 2020. He pleaded "*not guilty*" to the charge. Accused counsel at the time, JK Yeboah Esq. wrote to the court praying that the accused person be granted bail because he is a pastor, a very responsible man with a wife and children, who has stayed in his house on the land in question for over sixteen years. Bail was set at GH¢10,000 with two sureties, one to be justified in the bail amount and the accused person was ordered to report to the investigator twice a week at the Lakeside police station.

The brief facts are that the accused, who is an evangelist, built a house close to the land belonging to the complainant's brother Kamal Mamud, and claims ownership over the land. The accused previously filed a complaint of trespass against Kamal Mamud at the Property Fraud Unit at the CID Headquarters, Accra. Police investigations at the Lands Commission revealed that the land was subject to several judgments in favour of Agric-Cattle Lakeside Estate Limited, Mr. Kamal Mamud's grantors. The results of the search were made known to the parties and a police report was issued to Lakeside Estates.

Mr. Kamal Mamud left the land in the care of his brother Mr. Mohammed Abubakar, a businessman who lives at Adenta. On 7th May 2020, Mr. Mohammed Abubakar reported

to the Lakeside Police Station that a fence wall he had built around the land had been demolished by the accused person. The accused person was arrested, and the complainant produced a site plan and indenture to show that the land was purchased from Agric-Cattle Lakeside Estates Ltd in 2018. The accused person produced a site plan and an indenture showing that he purchased a parcel of land measuring 100 x 100 feet from Nii Sowah Okataban II the Chief and Head of Kplen We Family of Adenta in 2003. The police in their investigations found that the courts granted judgment on the land in favour of Lakeside Estates Limited against the Kplen We Family of Adenta in **Suit Number FAL363/2013** on 22nd July 2016. The accused person was therefore charged and arraigned before the court.

After trial had been postponed due to several absences by the accused person, the accused filed a *“Motion on Notice to Dismiss Case as Trial is Bound to be a Camouflaged Civil Trial of Ownership of Property”* on 12th May 2021, which was struck out for want of prosecution on May 24, 2021. The motion was re-filed with a notice of change of solicitor on 11th June 2021. In the affidavit attached to the motion, the accused person, after reciting the manner in which he acquired the land, prayed the court to dismiss the charges proffered against him on the ground that the prosecution, upon realizing from the investigation that the trial was bound to be a camouflaged trial into the ownership of the land, ought to have declined prosecution.

On September 28, 2021, the court dismissed the motion after finding that, once the police found that the accused person touched the wall the complainant built, he is liable to be prosecuted for causing unlawful damage and it is up to the prosecution to make a case against him sufficiently for him to answer as required by **section 173** of the **Criminal and Other Offences Procedure Act, 1960 (Act 30)** and the case of Homenya v. The Republic [1992] GLR 306.

The case management conference for the prosecution was conducted on 2nd and 9th November 2020. Accused counsel stopped coming to court and the accused person represented himself for the rest of the trial. The prosecution called three witnesses:

1. Mohammed Abubakari, the complainant,
 2. Abubakari Yakubu the Chief Security Officer of Lakeside Estates Co. Ltd., and
 3. C. I. Foster Agbadi, the investigator.
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On 26th May, 2022, the court ruled that the prosecution had made out a case against the accused person to answer under **section 174(1) of the Criminal and Other Offences Procedure Act, 1960 (Act 30)** and he opened his defence on 8th November 2022. The accused person opted to give evidence on oath and called Salomey Amuzu, his wife, as his only witness.

In **section 177(1) of the Criminal and Other Offences Procedure Act, 1960 (Act 30)**,

“The court, having heard the totality of the evidence, shall consider and determine the whole matter and may,

(a) convict the accused and pass sentence on, or make an order against the accused according to law, or

(b) acquit the accused, and the Court shall give its decision in the form of an oral judgment,

and shall record the decision briefly together with the reasons for it, where necessary”

[Comfort and Another v. The Republic [1974] 2 GLR 1].

The issue the court must consider is whether the accused person has raised a reasonable doubt that he intentionally and unlawfully caused damage to the wall of the complainant’s brother. 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”.

One million cedis is currently GH¢100 after the revaluation of the cedi in or about 2007. The value of the damage to the fence wall as stated in the charge sheet is GH¢10,595, bringing the offence within the bracket of a second-degree felony. The elements of the offence are that the accused person;

a) intentionally caused damage to the subject-matter, and

b) unlawfully caused damage to the subject-matter.

It is immaterial whether a person accused of a criminal offence in respect of premises, or a thing is or is not in possession or occupation of those premises or that thing [**section 174(2) of Act 29**]. However, a person is not liable to punishment in respect of doing a thing which they in good faith believe they are entitled to do – despite the provisions on mistake in law [**section 174(5) of Act 29**].

The accused did not tender any document in evidence. The investigator tendered the following documents into evidence:

1. Investigation caution statement of the accused person dated 27th May 2020 (Exhibit A).
2. Charged caution statement of the accused person dated 27th May 2020 (Exhibit B).
3. Police Report from the Ghana Police Headquarters dated 20th June 2019 (Exhibits C and C1).
4. Photograph of the demolished fence wall and rubble – Exhibit D.
5. Sub-Lease between Agri-Cattle Lakeside Estate Limited and Kamal Mamud – Exhibits E–E4.
6. Site Plan for Kamal Mamud – Lakeside Katamanso – Exhibit F.
7. Search from the Lands Commission for Nick Amuzu Lagoh – Exhibit G.
8. Indenture between Nii Sowah Okataban II and Nick Amuzu Lagoh – Exhibits H – H5.

Mr. Mohammed Abubakar, the complainant (PW1), testified that he is a businessman resident at Adentan. In 2018, his senior brother Kamal Mamud who is now in the United Kingdom, bought half a plot of land from Lakeside Estate Company Limited and was issued with a site plan and an indenture by his grantor. This was corroborated by PW2, Mr. Abubakari Yakubu, Chief Security Officer of Lakeside Estate Company Limited, who testified that he knows both PW1 and the accused person.

PW1 testified that his brother built a footing for a two-bedroom house on the land and placed it in his care before travelling to the UK. His brother instructed him to build a fence

wall which he completed on 6th May 2020. On 7th May 2020 at 5am, an informant called to tell him at 2am that ~~"I saw your man standing by your fence wall. I drew closer to see what he was doing but he was still standing so I went away. When I returned, I saw that the wall had been pulled down and your man was still there"~~. PW1 testified that he understood "your man" to be the accused person because he is the only person litigating with his brother over the land. When the accused person put it to PW1 that he was not in Accra at that time, PW1 testified that after he reported the accused to the police, he went with the investigator to Mr. Amuzu's home and he was there. The accused person told the investigator, "I warned him not to build the wall!" and continued to say if PW1 built it ten times, he would pull it down ten times.

PW1 testified that he was not at the site himself on the day they started building the fence wall, but on the day the foundation for the wall was dug, the foreman at the site reported to PW1 that the accused's wife came out and was raining insults on them. After casting concrete on the foundation, the accused person came there in the evening and tried to close the foundation. PW1 denied the accused's assertion that he invaded the accused's house with land guards and policemen anytime he came there and said it is not possible that policemen and land guards would work together. He went to the accused's house with the police twice to invite the accused to the police station for causing unlawful damage to the property. When the accused person repeated his assertion that he was not in Accra on the day the wall was demolished, PW1 testified, "My lord as I said earlier, it's not true that it is not Mr. Amuzu who pulled down the wall. Mr. Amuzu admitted before the investigator that "If you build it ten times, I will pull it down ten times, confirming to us that he was the one who pulled down the wall". PW1 then testified further that the statement was made in his presence while the investigator was there. When the accused person asked PW1 whether he could confirm with photographic evidence or a witness that it was he who pulled down the wall, PW1 said the accused did not deny the action in their presence.

According to PW1, the accused reported a case of trespass to the land against PW1's brother at the Criminal Investigative Department (CID) at the Police Headquarters. As part of the investigation, a search was conducted at the Land's Department by the investigator and the result shows that the land is in the name of the Lakeside Estate

Company Limited. PW2 corroborated this testimony and added that one day in 2018, he saw the accused person working on the land sold to Mr. Kamal Mamud and advised him to stop work, but he refused, claiming ownership of the land. PW2 made a report to the Police at Lakeside and he was advised to stop work on the land. According to PW2, the accused person is living on land at Lakeside Estate that does not belong to him. He was approached to provide every document he had on the land, but he never provided it. When the accused insisted that he did not receive any order from the court restricting him from staying on the land – PW2 said the order is with Lakeside Estates, and he will provide it to the accused person.

The accused put it to PW2 that as a security man, he breached the accused's liberty to engage in purchaser's possession by attacking him on his land. Therefore, PW2 is in connivance with other people to take the accused person's property according to the **Protection of Purchasers Law, 1960 (Act 2)**. PW2 responded that he has not breached the accused's enjoyment of his rights. As a security man, the land the accused claims is his to enjoy, belongs to Lakeside Company. The security go on patrol at Lakeside Estates and have a word with whoever is on the land without a sub-lease from the Lakeside Estate Company. Where the person argues with them, they tell them to take the site plan they were given to the Lands Commission for a search.

When the accused asserted that PW2 witnessed the sale of the land the accused lives on with his family and was one of the assailants at his house on 16th June 2018 at 12:32 am, PW2 testified that he usually closes at 6 o'clock so he was asleep at that time and as head of security, he did not demolish the accused person's structure. PW2 also testified that the accused's assertions that PW2 did not know the boundaries of the company's land and that a judgment had been obtained against the Lakeside Estate Company on 4th May 2017 in **Suit**

AL 123/2017 in favour of the Ashaley Botwe family should be directed at the Lakeside Estates Company.

PW1 testified that he reported the damage estimated at a cost of GH¢10,595 caused to the fence wall, to the police on 7th May 2020 for investigation and the accused person was

subsequently arrested. PW3, Detective Chief Inspector Foster Agbadi (the investigator), ~~testified that the case was referred to him that day for investigation. He took a statement~~ from the complainant, who submitted his land documents and the police investigation report from the CID Headquarters. Statements were taken from the witness and the accused who reported at the station. PW3 visited the scene and recorded his findings, after which the accused was prosecuted.

PW3 admitted that the image of the accused person was not in the pictures taken during his findings. At the end of the investigation, it came to light that the accused person was the only one who had been litigating over that parcel of land with the complainant. According to PW3, although litigation over the land is not unlawful, causing unlawful damage to property that does not belong to you is a criminal act, and that is why the accused person was brought to court. PW2 further testified that he investigated the documents tendered by the complainant – he contacted Agric-Cattle Lakeside Estate and they confirmed that they issued the documents to Kamal Mamud for a parcel of land purchased from the company.

When the accused person asserted that Exhibit F (Mr. Mamud's site plan) was fake, PW3 testified that he invited a surveyor from Lakeside Estate who confirmed that the site plan tendered by the complainant conforms to the subject-matter of the case. The surveyor was not produced in court as a witness. In addition, the report from the Property Fraud Office at the Head Office, Accra indicated that in 2018, when the accused person filed a complaint of trespass at their office, the investigator took the site plans of the accused person and Mr. Mamud to conduct a search at the Lands Commission to establish the rightful ownership of the land. The accused person said the Property Fraud Office Report is not accurate because he did not report a case of missing land or a dispute over the ownership of the land. He reported a case of trespass, unlawful entry and causing damage to his property. He also said the investigator did not use his site plan for the search.

The accused put it to the investigator that in his site plan, the land is at New Ashaley Botwe and the district is ADMA (the Adentan District Municipal Assembly), while the land in the site plan of the complainant is in the Akatamanso locality in the ADMA

District. PW3 admitted that the district is ADMA and the land is in the Akatamanso locality. He could not tell where Akatamanso is, but said all the cases he has investigated within Lakeside and its environs have site plans with Akatamanso as the locality. He continued to say, there is Kpone Katamanso, Katamanso Town and Adenta District. As far as he knows, the two districts share a common boundary on the way to Santor. Finally, he testified that he was not aware that the document filed by the complainant has been “cancelled” by the High Court. PW3 prayed for time to call an expert to resolve the issue of the districts since ADMA stretches all the way to Ashaiman. However, the prosecution was unable to produce an expert from the District Assembly and closed its case on February 16, 2022.

The standard of proof in a criminal trial includes the burden of persuasion and the burden of producing evidence [sections 10 and 11 of the Evidence Act, 1975 (NRCD 323)]. The burden of persuasion is the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court [section 10(1) of NRCD 323]. It requires a party in a criminal trial to raise a reasonable doubt concerning the existence or non-existence of a fact or to establish the existence or non-existence of a fact by proof beyond a reasonable doubt [sections 10(2) of NRCD 323].

The burden of persuasion in a civil or criminal action “...as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt” [section 13(1) of NRCD 323]. “In a criminal action, the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence, a reasonable mind could have a reasonable doubt as to guilt” [section 11(3) of NRCD 323]. In Ali Yusuf Issa (No. 2) v. The Republic [2003–2004] SCGLR 174, the Supreme Court held that the burden of producing evidence and the burden of persuasion are the components of “the burden of proof”.

In Exhibits C and C1, ACP Isaac Quist stated for the Director General of the CID, Headquarters, that the complainant in that case – Nick Lagoh Amuzu – the accused person in this case, reported a case of trespass against Kamal Mamud on 12th June 2018. The police visited the land that the accused person said he acquired in 2003 with the accused person,

and observed a chamber and hall structure occupied by the accused person and his family. ~~They also observed the debris of another single room footing put up by the accused that~~ was reportedly demolished. The police further observed that the suspect Kamal Mamud had constructed a three-bedroom footing on the land. After an official search was conducted at the Lands Commission, their investigation disclosed that the accused in this case acquired 0.23 acres of the parcel of land under investigation from the Kplen We Family of La, Accra, with an indenture executed by him and Nii Sowah Okataban II, Chief and Head of Kplen We Family, on 5th June 2003. The accused subsequently constructed a chamber and hall structure on one side of the land in which he resides with his family.

Further investigations revealed that Kamal Mamud also acquired 0.10 acres of the same land from Lakeside Estate Company in 2018 with a sub-lease executed with Agric-Cattle Lakeside Estate Limited, Accra, acting per its Managing Director, Dr. Prince Joseph M. K. Ayiku. Mr. Mamud constructed his footings on the land. The parcel of land had been a matter of litigation between the “*suspect’s*” grantor and others. An official search at the Lands Commission, Accra, showed that the land is affected by several judgments in favour of Agric-Cattle Lakeside Estate Limited with the current judgment dated 22nd July 2016 against Numo Nmashie Family and Ashiyie Families of Teshie, La, in **Suit Number FAL363/2013**. The search report was communicated to both parties and the case docket was kept in view for a fortnight, awaiting feedback on activities on the land.

In Exhibit A, the accused person stated that he did not know anything about the damage caused to the wall in his house, because he was away at the time of the incident. When he returned the following morning, he saw the walls laying on the ground. His brothers who work at National Security informed him that they were not going to sit down for somebody to come and take over their brother’s property. When he asked them who came to push the walls down, they did not “*show themselves*” but only said they would not sit down for someone to take over the toil of their senior brother. He bought the parcel of land from the Kplen We Family of La, Accra and conducted a search on it. His documents that are almost 19 years old show he is living on the land and the complainant came to destroy his property saying that the land has been sold to him, without a court order. Exhibit B, the accused’s charged caution statement is missing the second page and the first

page only states that the statement is freely given and he has been told he can correct or alter anything he wishes.

The accused opted to give evidence on oath, filed a witness statement for himself and his wife Salomey Amuzu and opened his defence on November 8, 2022. Considering Madam Salomey Amuzu is illiterate and her witness statement did not contain a jurat, her witness statement was struck out on November 15, 2022 and she was permitted to give oral evidence.

The accused testified that he lives at New Legon Nsuonaano opposite Balokah School Complex near Lakeside Estate and is a preacher of the gospel. He has only met Mr. Kamal Mamud once and doesn't actually know him. He was litigating with Mr. Mamud's brother. On 5th May 2022 he was buying bread away from his house when his neighbour called to say his children were crying and asked him where he was because he saw police men with AK47s and some men who were measuring his house. When he arrived at his house, PW1, PW3 and four police officers led by Sgt Tannor were there. He asked them if they had a court order to come and measure his house with eight boys. They responded that they were sent by the SWAT Commander from the Police Headquarters, so, he could not stop them from measuring his house.

When the accused person and his daughter began recording their activities on their smart phones, the police and PW1 captured them, took their phones, deleted the pictures and smashed the accused's daughter's phone. That day, he travelled for 3 days to go and seek the face of the Lord and returned to find that someone had demolished his fence wall and put up theirs and their fence wall had fallen down. When the court referred the parties to ADR, the officer asked PW1 whether he saw the accused the day he was putting the fence up and PW1 responded in the negative, but said that it is the accused who is litigating with him over the property. The accused ended his testimony with the following question; *"... is it a crime to litigate over property in Ghana against someone who is taking it from you by force?"*

The accused testified under cross-examination that he bought his land in 2000 – it was a bushy full plot measuring 100 x 100 feet. He denied there was a three-bedroom footing on ~~the land. He reported a case of trespass against Mr. Kamal Mamud to the Property Fraud~~ Office on 1st June 2018 when Mr Mamud entered his house with land guards. The police visited the land and conducted a search at the Lands Commission. The police used the site plan of Mr Mamud for the search (Exhibit C), without the accused person’s site plan. The accused said he therefore refused to accept the outcome of the investigation. The case was sent to court and Mr. Mamud abandoned the place and left.

According to the accused person, at the time, there was an ongoing case between the complainant’s grantors, Agric-Cattle and the accused’s grantors, with judgment being given on 20th February 2017 in favour of the accused’s grantors. He tendered the judgment between Numo Clement Bortier Kodjo v. Nii Otu Akwetey IX, Lands Commission and Ebenezer Neequaye Kotei dated 14th May 2017 in the High Court, Land Court 11 which was admitted and marked Exhibits 1 – 1F.

The accused testified that he was not around when the wall was constructed or torn down. He does not have the muscle to pull a 100-meter wall down. He knew he would take the complainants on at the law courts – and the case is in the High Court. When the prosecutor put it to the accused that he stated in his investigation caution statement that his brothers said they would not let anyone take his property, the accused person testified that they helped him take the complainants to court. According to the accused person he is telling the truth and cannot go against the law like the complainants did when they entered his premises. If the 100 x 100 plot belonged to the complainants, then they should have claimed all of it not half of it. Once they claimed to be taking half of it, then they are not sure the full plot is theirs.

Salomey Amuzu, the accused person’s wife (DW1), testified in Ga that on 7th April 2020, while they were at home, four policemen with guns and workers entered the house while her husband was away. As soon as they entered, the policemen begun guiding the workers. They broke down the fence wall in front of the house at once, and began laying blocks in the ground, dividing the plot of land the house was on, into two. After that, they quickly began putting up a wall on the demarcation in the house with the police guarding

them. They left with their vehicle around 4:30–5pm after they built the wall. Since it was ~~late, she prepared dinner for the children and they went into the room after eating. The~~ next morning, when they woke up, they realized the whole wall had broken down – at the time, her husband was not around. According to DW1, she does not know how the wall got broken or what happened and cannot speak to that.

1 testified under cross-examination that she had lived on the land for about 22 years, the same number of years of her eldest child's age. She denied that her husband shares a wall with the complainant and testified that the complainant arrived recently, about 5 years ago, after she and the accused had been there for a long time. She does not know anything about police men coming on the land when her husband reported the case of trespass to the CID Headquarters on 22nd July 2016. She wakes up early around 3am, to go trading in second hand goods and to the market on Wednesdays and Saturdays. So she is not always in the house. Accused counsel suggested to DW1 that the accused reported the case of trespass because there is a boundary between his land and the complainant's land; and the police men only erected a fence wall for the complainant and did not destroy the accused's wall. DW1 responded aghast that the workers removed their blocks from in front of their house right before her very eyes with the assistance of the police while she was home. She denied being coached to give her testimony and put it to the prosecutor that her testimony is pure truth. When the accused person was given the opportunity to re-examine DW1, she testified that their second daughter took a video of the police in action but they snatched the phone from her, deleted its contents and smashed the phone. She confirmed that the police did not produce any document to show that the court had ordered them to demolish the accused's fence wall.

The court found the accused person and DW1 to be credible witnesses from their demeanour and reactions to the questions posed to them during cross-examination and re-examination. From a combination of their evidence, the accused was not present when PW2 entered his house with policemen and workers, demolished the accused person's wall, demarcated the land within the accused's premises and began building a new wall in the middle of the accused person's land. The accused person rushed back home after hearing about their actions from a third party. The accused then left home for three days. By the next morning, his wife woke up to find that the complainant's (new) wall was

down. The accused unsuccessfully tried to find out from his brothers who work at National Security whether they had a hand in the damage to the complainant's brother's wall. The court finds from the evidence that PW1, save for stating that the accused person said he would pull down the wall ten times if he built it ten times in the presence of the investigator, could not produce eye witness or documentary evidence that the accused person was at the scene of the crime when Mr. Mamud's wall was pulled down. The statement purportedly made in the investigator's presence was not corroborated by the investigator.

"Unlawful damage" is explained in section 174 of Act 29 as, damage done by a person within the meaning of Act 29, where the person is liable to a civil action or proceeding, or to a fine or other punishment under an enactment; in,

- (a) respect of doing an act or causing an event,*
- (b) respect of the consequences of the act or event,*
- (c) which the person would be liable if they caused the event directly by a personal act, or*
- (d) which the person is liable to be restrained by injunction or other proceeding from doing that act or causing that event.*

The circumstances of this case involve a dispute over land. Without proof beyond a reasonable doubt that it is the accused person who intentionally and unlawfully caused damage to Mr. Mamud's wall after the accused's own wall was torn down, the proper forum for this dispute is the civil courts. The court finds that the accused has raised a reasonable doubt as to whether it was he who intentionally and unlawfully caused damage to Mr. Mamud's wall. The accused person is therefore acquitted and discharged of the offence of causing unlawful damage to the fence wall of Mr. Kamal Mamud, contrary to **section 172(1) of the Criminal and Other Offences Act, 1960 (Act 29)**.

(SGD)

DORA G. A. INKUMSAH ESHUN
CIRCUIT JUDGE