IN THE CIRCUIT COURT '1', ADENTAN, ACCRA, BEFORE HER HONOUR JUDGE DORA G. A. INKUMSAH ESHUN (MRS.) SITTING ON FRIDAY THE 14TH DAY OF JULY 2023

SUIT NO: D3/61/2021

THE REPUBLIC

V.

SOLOMON ACQUAH

VERDICT

The accused person is a 54-year-old driver, who was arraigned before the relieving judge on 29th June 2021 on one count of threat of death, contrary to **section 75 of the Criminal and Other Offences Act, 1960 (Act 29).** The accused person pleaded "*not guilty*" to the charge and was granted bail in the sum of GH¢100,000 with two sureties, who should be known to the police.

An interim and occupation order was granted by the relieving judge on 29th June 2021 to permit the accused to move into one of the chamber and hall accommodations in the premises occupied by the parties and to prohibit the accused from coming within 50 metres of the complainant or doing any act that amounted to domestic violence against the complainant. After further submissions by the investigator and the complainant, the interim protection order was reviewed on 24th April 2021 to revoke the occupation order and to order the accused to stay a minimum of 100 metres away from the complainant, the children and the matrimonial home pending the resolution of the case.

In the brief facts, the investigator, Detective P. W. Sgt. Bernice Quashie stated that the complainant who is a trader, has been married to the accused person customarily for 15 years. They have two children and live at Frafraha, a suburb of Adenta. For some time now, the accused person has constantly threatened to kill the complainant over the slightest misunderstanding.

Early in April 2021, the accused person threatened the complainant with the words, "*I have already killed two women, you would be the next, the day I will kill you, I will behave as a mad person when the Police comes to arrest me. I will smear faeces on myself, for which reason, I will be set free*". On 15th April 2021, the accused person went to the shop of the complainant's sister Juliana and left the same threatening message. The complainant's sister told the complainant to be careful. The case was reported to the Adenta Domestic Violence Victim's Support Unit (DOVVSU) on 14th June 2021 and the accused was arrested.

The investigator submitted to the court that PW1 was afraid the accused person would harm her after his bail was executed because his family had decided to take him away for some days and bring him back home to her, and that the accused person shouts at and harasses the children of the parties, the court reviewed the interim protection ordered on 29th June 2021 to revoke the leave granted to the accused person to move into a chamber and hall on the same premises as the matrimonial home of the parties and ordered the accused person to stay 100 meters away from the complainant, children and matrimonial home pending the resolution of the case. The accused person was also ordered to temporarily move out of the vicinity of the matrimonial home pending the determination of the case and was given reasonable access to the children, supervised by a responsible maternal adult relative in a public place.

On January 18th, 2022, the court ruled under **section 174(1) of the Criminal and Other Offences Procedure Act, 1960 (Act 30)** [Sarpong v. The Republic [1981] GLR 790] that the prosecution had made a case, sufficient for the accused to answer. The accused person was called upon to open his defence and was informed of his right to remain silent, make an unsworn statement from the dock or give evidence on oath. The accused elected to give evidence on oath and opened his defence on 30th March 2022.

in this case, On 25th April 2022 the accused person was re-arrested and brought to court in a different case involving the complainant on charges of threat of harm contrary to **section 74** of the **Criminal and Other Offences Act, 1960 (Act 29)** and offensive conduct conducive to the breach of the peace, contrary to **section 207 of Act 29**. The accused

pleaded "*guilty*" and was sentenced to six months in prison in hard labour at the Nsawam Medium Security prison, and a fine of 50 penalty units or in default, to serve another term of one month for the offence of threatening to harm the complainant. He was sentenced to pay a fine of 100 penalty units or in default to serve a term of two months in prison at the same prison for offensive conduct conducive to the breach of the peace. The accused person was also ordered to pay the complainant compensation of GH¢5,000.

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 prosecution called the following witnesses,

1. Elizabeth Acquah (the complainant and wife of the accused person) (PW1).
2. Juliana Owiradu (the complainant's sister) (PW2).
3. Sgt Bernice Quashie (the investigator) (PW3).

The investigator (PW3) tendered the following documents:

1. The investigation caution statement of the accused person dated 17th June 2021 (Exhibits A and A1).
2. The charged caution statement of the accused person dated 22nd June 2021 (Exhibits B and B1).

The accused person testified without a witness. His witness statement was struck out on March 30, 2022, after he stated that he could not read or write English, because it did not contain a jurat and he was permitted to give oral evidence in Twi.

The offence of threat of death is as follows [**section 75 of Act 29**]:

"*A person who threatens any other person with death, with intent to put that person in fear of death, commits a second-degree felony.*"

The elements of this offence are that:

1. "*There must be evidence of threat to kill issued by the suspect against the life of the victim*", and
2. There must be "*the intent to put the victim in fear of death*"[1]

Section 17(a) of Act 29 defines "**threat**" to include "*a threat of criminal force or harm*". In **section 17(3) of Act 29** it is immaterial whether the threat would be executed by the person issuing it. **Section 17(4) of Act 29** states that, "*It is immaterial whether a threat or offer is conveyed to any person by words, or by writing, or in any other manner, and whether it is conveyed directly, or through any other person, or in any other manner*".

The issues the court must resolve are whether the accused person **has raised a reasonable doubt** that he:

1. threatened the complainant with death, and
2. intended to put the complainant in fear of death.

The complainant (PW1) testified that the accused person, her husband of 15 years, with who she has two children, has verbally abused her whenever he drinks alcohol for some time now. He has constantly threatened to kill her for no apparent reason to take her property, including the house they live in. On 14th April, without any provocation, the accused person threatened to hit and harm PW1 and told her that whenever she reported to the police, he would behave as if he were insane and would be released.

Again, in April 2021, the accused person went to PW1's younger sister Juliana Owiradu (PW2) and left the following threatening message, "*Abacha, I have killed two women. Your sister is the next. If Police comes to arrest me, I will defecate and smear same on my nose and I will behave like a mad man*." This testimony was corroborated by PW2, a seamstress, who testified in her witness statement that the accused person, her sister's husband, uttered

these words to her when he came to her shop on 15th April 2021 at about 2:30pm. She could not keep the threat to herself and reported it to PW1. PW1 testified that she remembered the accused person saying the same words to her some time ago and is afraid for her life and the lives of her children.

In cross-examination, the accused person denied knowing PW2's house or shop and stated that he was in Oda, not Accra, on the date she said he visited her shop. PW2 responded that the accused person knows both her shop and her house. He came to her shop on 15th April and greeted her and she responded. When he was leaving, he said, "*Hmmm, me Abacha! I've killed two women, its left with your sister!*". PW2 said, "*Ei!*" and the accused replied, "*Yes, I am the one telling you so do well and call your sister and inform her!*" When PW2 called PW1, she told her that the accused person had said this before, so if he had been able to say this to PW2, then she would have to be very careful.

The accused person denied going to PW2 to make the threat to PW1 through her because he has not spoken to PW2 for four years and does not know where she lives. PW1 testified that PW2 came to stay with her and the accused person for some time but left because of the way the accused person would insult all of them whenever he got drunk. This testimony was corroborated by PW2, who testified that she went to live with the accused person and PW1 to take care of PW1 after she delivered a child. Whenever PW2 finished working and needed to rest, the accused person would not let her rest, so she left. When the accused person went to town and returned, he would make so much noise, banging on the gate and the doors, bang! bang! He would also threaten PW1 and insult all of them. According to PW1, she rented a place for PW2. Whenever PW1 passed by, she would say hello to PW2, but PW2 did not speak to the accused person because of what he did to her. Later, the accused person went to PW2 to plead for forgiveness since he is her brother in-law and would greet her whenever he passed by her place. That is how come he left the message with PW2 for PW1 on the 14th.

The accused person said PW1 and PW2 burnt all his belongings in his room including his mattress and clothes. When the church asked them to replace the items, PW2 only bought him some second-hand clothes. They also broke the windscreen of a company car the

accused person was in and hit the side of his eye with the rod used to fasten the banku pot. The accused person stated that he still has the scars from the accident, but one may not see them if you do not take notice, because he is dark in complexion. PW1 responded that she built the house the parties live in and goes to the market to buy things for the accused person every year. She denied hitting the accused person with the iron rod and said the accused person was scratched by a gutter he fell in while he was drunk. The accused person did not even bring his salary home. According to PW1, the accused person parked his office car at their home after he crossed someone with it, and that person beat him up and destroyed the windscreen and parts of the car.

When the accused person put it to PW1 that they were married for six years before they built the house, PW1 testified that they were married in 2006 but because of his behaviour when he drinks, she searched for land at Frafraha and built a house on it in 2007. After the house was built, she informed their co-tenants where they were renting, that she wanted to move out because of the way the accused person was treating her. A co-tenant told the accused person to stop maltreating PW1 or else she would leave him for her house. Elders sat with the couple and the accused person promised to change, so they were encouraged to go and live together in the new house. After they moved into the house, the accused began to drink and misbehave again, making statements that his friends were teasing him that a woman had built a house and he had moved in with her.

The accused person further stated that PW1 rented the house while they stayed in a rented place, however he advised her to rent part of it so that they could stay in the other part and use the rented part to pay their bills. PW1 testified that to try to keep the relationship she did not insist the house was hers. She quoted the following proverb, "*When a woman buys a gun, it is in the possession of the man.*" She continued to say that the accused person would come home at 10 o'clock and midnight and the topic at that time would be that he had married an old woman. When she entered her room and locked the doors the accused would threaten her at 12am and 1am. In 2014, the accused person threatened PW1 with a cooking knife when he came home after midnight because he said she had locked the door. When PW1 opened the door for him, he barged into the kitchen, pulled out a knife

and threatened to harm her with it. Whenever the accused person behaved like that, PW1 would report to the police and sometimes he would be detained for 3 or 4 days and then released.

The accused person said PW1's brother who is a police officer, has arrested him more than 24 times in a week. They put the accused in a patrol car, go round with him, drop him at the Barrier and ask him to go home. According to the accused, he has only been arrested and sent to police cells once, leading to his being arraigned before the court in this case. PW1 denied this and testified that she sometimes calls the patrol team when the accused threatens her after midnight, and they come and take him away. Sometimes the patrol team meet the accused person in the process of threatening her. None of the members of the patrol team were called to testify to this fact.

The investigator (PW3), testified in her witness statement that she was on duty on 14th June 2021 when the case reported by PW1 against the accused person was assigned to her. She obtained a statement from PW1. On 17th June 2021 the accused person was arrested and brought to the unit where a cautioned statement was obtained from him in the presence of an independent witness – the accused denied threatening to kill the complainant. However, PW2 testified that the accused person really did threaten the complainant and left a message with her on 15th April 2021 at her shop with a threat to be delivered to the complainant. After the parties were paraded before DSP Edna Akotsu, the accused was charged with the offence. The accused person did not cross-examine PW3.

The court noted the demeanour of the accused person, the complainant, whose fear of the accused person and her despair over her situation was palpably felt in the courtroom – and the reports of PW1 and PW3 that PW1 feared the accused would attack her when his bail was executed by his family during the case of the prosecution.

The accused testified that he lived with the complainant, then at Adenta SDA, and currently lives near the Housing Down Police Station. He and PW1 were married under the Ordinance at Frafraha Presbyterian Church after being in a relationship for four years. They have been married for about 20 years. According to the accused, they developed the

property around Frafraha Engine Filling Station that has self-contained house where they live with the children and three single-room apartments. The parties lived happily for four to five years, even when PW1 brought one of her brothers to the house. When PW1 brought her sister to live in a self-contained chamber and hall apartment, the accused reminded her that they decided to use the apartments to pay their children's school fees and asked her to let her siblings stay in one room so that the other two rooms could be rented out. PW1 did not respond to this suggestion. In the morning he told her he was going to work. On the road to Koforidua around 4:30 – 5:00 pm, he received a call from a Madam Tina and parked the car to speak to her. She asked him to return to Housing Down immediately, but he told her he would return the next morning. She said "*no*" and cut the call. When he returned to his workplace at a wood merchant at Jason's Spot at the Barrier around 7:34pm, a police patrol team approached him and asked whether he was "*Abacha*". When he responded affirmatively, they said he was needed at the Police Headquarters.

The accused person denied threatening his wife and testified that PW2 had a problem such that he could not allow her to stay in the house because the house is the future property of his children. PW2, who was not speaking to him, left the house in anger and has not spoken to him for seven years. When the parties attended the marriage of PW1 and PW2's brother at Akosombo, PW2 served the whole church without serving the accused because they were not on talking terms. The accused did not know where PW2 lived until he met her at the wedding. He also submitted that from the Barrier to Pantang is a highway – no one has placed a seamstress' kiosk by the roadside, so he does not know her shop, how much more her house.

The accused person testified that, he has not been to Togo before, how much more Benin, to kill two women there. He wondered how it would be possible for him to move his car to PW2's shop to make a threat that he had killed two women in Benin and was going to kill her sister? The accused also testified that he was at Oda Ayerebi in Akim Oda, Osafo Marfo's hometown for three days over the period PW2 stated he had come to make the threat to her.

The accused reported that when he went back to the house to take his license after serving his sentence in the other case, PW1's new husband/boyfriend had taken it. When he asked his wife to get it for him, two weeks later she reported him to the police, and he was arrested and taken down to the Housing Down Station where he spent some days. The police took his phone, so the accused reported the matter to the IGP. When the complainant's brother who is a policeman was called, he told the IGP he is friends with the accused person, and they go to each other's houses – he did not give an order that the accused should be arrested so the policemen who arrested him should be arrested. According to the accused, PW1's new boyfriend took his car, driver's license, his brother's military identity card and "*Akuffo Addo's*" identity card (the Ghana card).

In his investigation caution statement, the accused person stated that he has been married to the complainant under the Ordinance for twenty-one years and admitted they have two children. He denied threatening the complainant and stated that he detected that she has been having an affair with a certain man known as "*car owner*" for about a year now. The complainant denied the allegation when he asked her about it, but he has seen "*their action several times*". According to the accused person, it was then that he told the complainant he would punish her. Since then, they have been at loggerheads with each other, and the complainant does not perform her duty as a wife to him. She sleeps in the hall while the accused person sleeps in the bedroom. The accused stated that the complaint is a fabricated story levelled against him by the complainant and that he is innocent of the crime.

This information was repeated in the accused person's charged statement with a few changes – the accused person stated that he sacked the complainant from "…*her matrimonial room and she now sleeps in our hall with the children*". He concluded by stating, "*How can I kill a woman whom I have children with. Who will take care of my children for me? Hence my statement*".

In cross-examination, the accused testified that one morning, when he and PW1 were going to their shop at Mother Love Junction, he asked PW1 why she was having a

relationship with the taxi driver behind his back. He went to the Foster Home Police Station and met a female police officer who asked him to buy a touch phone to take a photo of them if he wanted to know the truth. The accused bought the phone and placed it in the window of his hall and set it up. Then he called PW1 into the bedroom and asked her why she was having an affair. He told her what she was doing will not help her. PW1 asked him not to tell her father. She did not want her father to know, but she said would call her boyfriend's father to come for them to sit down to discuss the matter. The accused testified that he saw his wife and her boyfriend in his house three times on the phone. When he told PW1 he had evidence on the phone, she began liaising with the police from Headquarters to arrest him and take the phone from him. On the day of his arrest, he had placed the phone on the wall in the bathroom. The accused contested the prosecutor's assertion that he was arrested because he threatened his wife and assaulted her. He asked why the police let him go after arresting him if he assaulted his wife? The police usually arrested him, drove around with him, and let him go.

The accused testified further that he was arrested and taken to Adenta DOVVSU once and not four times. Once, the accused was arrested while he was at work over ten years ago. When he asked what he had done, the police told him the complainant said her share of the money from the rent of the three rooms was greater than that of the accused, so she was taking her money. She wanted to rent the room for six years and after the six years, the accused told her the time had elapsed so she should go back to the Women and Juvenile Unit (WAJU) to have them handover the keys of the rooms to he and his children.

The accused said he was arrested around 11:30 – 12am when he was in the bathroom, naked. His wife, two children and PW1's boyfriend Richard were in the house. Richard was peeping into the house from the hall gate. He took out ten GH¢100 notes making GH¢1000 and gave them to the complainant who gave them to the arresting police. The police officer and PW1 were speaking the Anum language. Besides the arrest that generated this case, the accused person has been arrested 17 times.

The accused denied threatening his wife on 14th April 2021 and threatening her through her sister on 15th April 2021 at her sister's house. The accused testified that he did not

know where PW2 lived after she left his house. He also denied coming home drunk all the days he allegedly threatened his wife. The accused also stated that the prosecutor told him the complainant went to hospital at Mother Love and spent GH¢60 did not go to work for two days, costing GH¢5,000 while he was at the Nsawam Prisons. When the accused conducted investigations, he was told the complainant had not been there. The parties are known to the staff at the Mother Love Hospital. The accused person also complained that PW1 shouted at the investigator and the prosecutor told the investigator not to go with the accused to look at the room he was given under the first interim protection order. The court noted that in the second case of threat of harm against PW1 in which the accused person pleaded "*guilty*", he was ordered to pay compensation of GH¢5000.00.

The testimony of the prosecution and defence consists of the oaths of PW1 and PW2 against the oath of the accused person. In Lutterodt v. COP [1963] 2 GLR 429-440 the Supreme Court held that,

> *Where, as in this case, the decision turns upon the oath of one prosecution witness against that of a witness for the defence, it is incumbent upon the trial court to examine the evidence of each of those two witnesses carefully along with other evidence in the case, oral, documentary and circumstantial as well, before preferring one of the conflicting evidence to the other; and where his preference is for the prosecution he must make it appear from his judgment that his said preference is reasonable, for the principle of law is, that if the court could not find reasonable grounds for preferring the evidence of the prosecution witnesses to contradictory evidence given by a defence witness, the prosecution has failed, because there would, at least, be reasonable doubt as to which of the two conflicting versions of the story is true, and the benefit of that doubt must be given to the defence.*

In Lutterodt v. COP (*supra*), the Supreme Court further held,

> *Where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:*

(1) Firstly it should consider whether the explanation of the defence is acceptable, if it is, that provides complete answer, and the court should acquit the defendant;

(2) If the court should find itself unable to accept, or if it should consider the explanation to be not true, it should then proceed to consider whether the explanation is nevertheless reasonably probable, if it should find it to be, the court should acquit the defendant; and

(3) Finally quite apart from the defendant's explanation or the defence taken by itself, the court should consider the defence such as it is together with the whole case, i.e., prosecution and defence together, and be satisfied of the guilt of the defendant beyond reasonable doubt before it should convict, if not, it should acquit.

The court finds from the evidence that the parties have a dispute over the ownership of the property that was developed during the pendency of their marriage where they lived. PW1, whose brother is a policeman, frequently called the police to arrest the accused person claiming he had assaulted or threatened her, particularly when he was allegedly drunk. PW1's sister, who lived with the parties at some point and left on account of the accused's discomfort with her presence in the house, stopped speaking to the accused for several years. This brings PW2's testimony that the accused came to her house to threaten PW1 into question due to her bias against the accused person. The court finds the accused's testimony that he did not know PW2's house and could not go to her because they were not on speaking terms for several years, reasonably probable. PW1, who was found by the accused person to be having an affair, began to harass the accused person with multiple arrests through the police, going as far as to report him to the Police Headquarters.

The court notes here that the issue of the ownership of property acquired during marriage is one that should be determined in the civil courts and not through police harassment, arrests, or criminal trials.

The evidence of the prosecution that the accused threatened PW1 on 14th April 2021 and threatened her again through PW2 on April 15, 2021, is brought into question by PW3's testimony that PW1 reported the case on 14th April 2021 and during investigations, PW2 corroborated PW1's report by stating that the accused threatened PW1 through her at her house the day after the date the report was made. This is too convenient. The case of the prosecution hinged on PW2's testimony. Due to the nature of her relationship or lack thereof with the accused and the circumstances of the case the court finds that her testimony was founded on the bias she had against the accused person, and she is therefore not a credible witness under **section 80(b), (e) and (g) of the Evidence Act, 1975 (NRCD 323)**.

The court finds therefore that the accused person, from the evidence has raised a reasonable doubt that he threatened PW1 with death.

The next question is whether the accused person intended to put PW1 in fear of death. In Behome v. The Republic [1979] GLR 112, it was held that the *actus reus* of this offence consists of the expectation of death which the offender creates in the mind of the person threatened and the *mens rea* is the realisation by the offender that his threats would produce that expectation. The definition of *intent* in **section 11 of Act 29** includes the following:

(1) 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 to contribute to cause the event.

(2) A person who does an act voluntarily, believing that it will probably cause or contribute to cause an event, intends to cause that event within the meaning of this Act, although that person does not do the act for the purpose of causing or contributing to cause the event.

(3) A person who does an act of such a kind or in a manner that, if reasonable caution and observation had been used, it would appear to that person

(a) that the act would probably cause or contribute to cause an event,

(b) that there would be great risk of the act causing or contributing to cause an event,

intends for the purposes of this section, to cause that event until it is shown that, that person believed that the act would probably not cause or contribute to cause the event, or that there was not an intention to cause or contribute to it.

Having found that the accused has raised a reasonable doubt that the threatened the PW1, the court finds that the evidence presented as a whole, leaves no room for a determination that the accused person intended to put PW1 into fear of death.

The court finds from the evidence that the accused person has raised a reasonable doubt that he threatened the complainant with death and intended to put her in fear of death. The accused person is therefore acquitted and discharged of the offence of threat of death contrary to **section 75** of the **Criminal** and **Other Offences Act, (Act 29)**.

(SGD)

DORA G. A. INKUMSAH ESHUN
CIRCUIT JUDGE