

IN THE CIRCUIT COURT ONE HELD AT ACCRA  
ON THURSDAY, 8<sup>TH</sup> JUNE 2023, BEFORE HER HONOUR AFIA  
OWUSUAA APPIAH (MRS), CIRCUIT COURT JUDGE

CC NO.: D2/29/2020

THE REPUBLIC

V

1. PRINCE ASIAMAH MINTAH

2. NANA OBENG YEBOAH

ACCUSED PERSONS

JUDGEMENT

Accused person herein stands before the court on two counts of offences, namely conspiracy to commit crime to wit causing unlawful harm contrary to sections 23(1) and 172(1) of the Criminal Offences Act 1960, Act 29 (hereinafter referred to as Act 29), and causing unlawful damage contrary to section 172(1)(b) of Act 29. Accused persons pleaded not guilty to the offence after same was read to them in English.

Prosecution's facts of the case attached to charge sheet is that During the year 2007, one Alex Asenso bought a parcel of land situate at Tema Community 18 from one Wulomo Borketey Larweh of Nungua Traditional Council and put up an uncompleted eight (8) bedroom on same and left it in the care of complainant Paul Tetteh Nyewunu. Alex Asenso received ground rent in the name of Alexander Yaw Kudjiku from Tema Development Corporation and therefore approached the latter. Mr Kudjiku agreed to resell the land to him but negotiations could not yield any fruitful results. The land was eventually sold to one Kojo Danso who also resold same to accused persons whilst the building of Alex Asenso was still on the land. On the 15/7/2018 at about 7am, accused persons without due diligence took the law into their own hands, hired an excavator to the land and pulled down the entire eight bedroom house which was even housing people. Complainant reported the matter to

the police and accused persons were arrested. During investigations, Assenta Property Consulting conducted valuation and gave the value as GHC525,000. Accused persons admitted causing the damage to the building but asserted they were the rightful owners to the land but could not produce any lawful order to support their actions. After investigations, accused were charged with the offences supra. At the close of prosecution counsel for accused Prosecution filed submission of no case to answer.

In a criminal trial and unless a statute otherwise states, the burden of proof is always on the prosecution since it is the prosecution that asserts a wrongdoing on the part of the accused person. Though this is a long standing position of the law, it can be said to be the direct effect of section 15(a) of the Evidence Act, 1975, NRCD 323 that *“Unless it is shifted the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue.”*

**Section 11(2) of the Evidence Act, 1975, NRCD 323** (hereinafter referred to as NRCD 323) with specific reference to criminal cases reads *“in a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt.”* It has also been held in the case of **TAMAKLOE VS THE REPUBLIC (2011) SCGLR 29 at 46** that, where a statute creates an offence, it is the duty of the prosecution to prove each and every element of the offence which is a sine qua non to securing conviction, unless the same statute places a particular burden on the accused.

Prosecution called four witnesses in support of their case.

PW1, Alex Assenso a business residing in USA testified that in December 2007, he bought one plot of land at Community 18 from NUnqua Chief Wolomo Borketey Lawey and was issued with an indenture and receipt of

payment. He stated that he conducted a search at Tema Development Co Ltd(hereinafter referred to as TDC) prior to the purchase which revealed the property was a State Land under TDC but the chief of Nungua “made it clear” to him that he had the authorization of TDC to sell some Community 18 lands. Only after spending \$250,000 putting up an eight(8) bedroom structure on the land did he receive a letter indicating he had to pay property rate on the land in the name of one Kudjeku. Upon meeting the said Kudjeku who claimed to be the owner at the TDC, he attempted negotiating the purchase of the land with him but same failed. He subsequently sent the matter to the Tema High Court through his lawful attorney. On 15/7/2019, he received a call that Accused persons herein had demolished his building.

PW2, Paul Tetteh Nyewunu, caretaker of the subject matter in dispute testified that about 2015, he approached PW1, the owner of the owner of the damaged building and obtained permission to occupy the building. In 2018, PW1 came to Ghana and he accompanied him to see one Mr Kudjeku who had a problem with PW1 over the land for negotiation for the settlement of the land in PW1. The negotiation however failed and he given a appointed attorney by PW1 with which he instituted a civil action at the Tema High Court. In May 2019, accused persons went unto the land and introduced themselves to him as the new owner of the land were there to demolish the building having purchased same from Mr. Kudjeku. They left but came back about 6 weeks after with a bulldozer to demolish the building. Accused persons left again after being told that there was an injunction on the land and same served on Mr. Kudjeku. On 15/7/2019 at about 7.00am, he received a call from one of the occupiers in the house that accused persons had brought a bull dozer machine and demolished PW1’s building.

PW3 Isaac K Asare an occupant of eight bedroom uncompleted building testified to the effect that on 15/7/2018, the eight bedroom building of Alex

Asenso was demolished/ pulled down by a bulldozer machine under the instructions of accused persons herein.

The investigator of the case, C/Inspector John Nutsugah testified as PW4. According to his evidence when the case of causing damage was reported and referred to him for investigations, he took statements from complainant and all available witnesses. He stated that his investigations revealed that PW1 acquired the land from the Nungua Traditional Council through Numo Borketey Laweh at GHc40,000 after which he put up the said 8 bedroom house. According to him PW1 became alarmed when he started receiving ground rate from TDC in the name of Alex Yaw Kudjeku and therefore contacted the said Kudjeku for the latter to resell the land to him but that negotiation couldn't materialize. Investigations also revealed that the one Kojo Danso without the authorization of Pw1 claimed to have bought the land from Mr. Kudjeku sold same to accused persons herein who in turn without due diligence demolished the building in the presence of occupants of the building. PW4 stated that ASSENTA Property Consulting did valuation of the damaged building and its value was assessed at \$250,000. PW4 tendered in evidence the investigation caution statement and charge statements of A1 and A2 as exhibits A, A1 and B, B1 respectively. Photographs of a cleared land with a heap of sand were tendered as exhibit C, C1; photograph of the storey building marked exhibit D, D1; indenture between Numo Borketey Laweh and PW1 was admitted and marked exhibit E with receipt of payment issued to Pw1 by one Daniel Odai Laryer marked exhibit F. Letter of Consent to PW1 by the Nungua traditional Council was marked exhibit H whilst a letter from Assenta Property Consulting stating the value of the demolished building is in evidence as exhibit G.

A1 in his defence testified that in or about 2018, he agreed with A2 his bossom friend since 2010 to procure land and commence a building project. They contacted Mr Kojo Danso, managing director of Hamlets Limited, a real estate

development company for directions and possible purchase of land from his company. They were informed Hamlets Limited had a property at Community 18, which turned out to be the property in dispute. He stated that they were told Hamlets Ltd had acquired the property from Mr Kudjeku who had acquired the same from the TDC for a term of 60 years commencing from 1/11/1995. They conducted rudimentary due diligence which confirmed Hamlets Ltd's leasehold on the property and acquired the land. He applied to his former employer Ghana Home Loans for a mortgage facility and same was approved after the Ghana Home Loans had conducted official search at Lands Commission to ascertain the ownership of the property which revealed TDC as the owners of the land per a search report dated 8/1/2019 i.e exhibit 3. A1 continued that Ghana Home Loans search was extended to TDC were it was disclosed per a letter dated 7/2/2019 (exhibit 8) that Hamlets Limited was the Lessee of TDC in respect of the land and that there was no encumbrances registered on the property per their records. His mortgage facility was therefore granted per exhibit 9 and he duly accepted same as per exhibit 9a and made full payment to Hamlets Ltd. A1 and A2 with confidence in the title of Hamlets acquired the property and were given building permit issued by TDC to Hamlets for in respect of the land, statutory declaration by Hamlets of the transfer of ownership of the property to them (accused persons). See exhibits 4 and 5. A1 stated further that he also swore a statutory declaration accepting the transfer as per exhibit 6. A1 further tendered in evidence as exhibit 7, letter written by Hamlets to TDC for the unexpired term on the lease with respect to the portion leaded to him to be transferred into his name. A1 contends that the property was in a dilapidated state, unfit for human habitation and had been earmarked by TDC for removal with red painting statin "Final warning by TDC" and TDCC had given Hamlets authority to demolish the two storey building on the land. According to A1 when they got to he and A2 engaged the services of a contractor to demolish the structure. Upon getting a person claiming to be an occupant of the property approached them with a document intended to be an injunction. In light of the

information, they halted the demolishing and made several efforts and crosschecks to ascertain whether in deed there was any such injunction to no avail. Therefore on 15/7/2019, on the authority of the demolishing permit granted to Hamlets Ltd by the TDC dated 4/4/2017, they demolished the property. He went further to state that TDC on 26/6/2020 finally completed the transfer of title in a portion of the property from Hamlet to him, see exhibit 10. A1 contended that PW1's evidence before the court clearly showed that he was a trespasser on the land and his attempts to purchase the land from the real owner Mr Kudjiku failed. He contended that he believed that as the owner of the property, he was legally entitled to pull down any existing structure and make use of the property for his purpose.

A2's evidence before the court is the same as that of A1. A2 however tendered in evidence the lease of 60 years granted to Mr Kudjiku by TDC effective 1//11/1995 as exhibit 11,11a and 11b; TDC's search r report dated 7/2/2019 as exhibit 12; letter form lawyers engaged by Ghana Home Loans to conduct legal due diligence on the property on behalf of accused persons prior to the purchase dated 14/3/2019 as exhibit 13; TDC building permit to Hamlet Ltd dated 4/4/17 for construction of a building and demolishing of existing dwelling house (2 storey) as exhibit 14 and also TDC's letter to Hamlet Ltd informing them about transfer of their rights and interest in a portion of the land to A2.

Accused persons are charges with conspiracy to commit the crime to wit causing unlawful damage and causing unlawful damage.

The Law Review Commission amended the definition of conspiracy as was contained formerly in Act 29. Section 23(1) of Act 29 **after the Review reads thus:**

**“ Where two or more persons agree to act together with a common purpose for or in committing or abetting a crime, whether or without**

any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet”.

The Supreme Court in the recent case of **FAISAL MOHAMMED AKILU v THE REPUBLIC [2016-2017] SCGLR 444 per Yaw Appau JSC** stated the current Ghanaian law on conspiracy as follows:

“From the definition of conspiracy as provided under section 23(1) of Act 29/60, a person could be charged with the offence even if he did not partake in the accomplishment of the said crime, where it is found that prior to the actual committal of the crime, he agreed with another or others with a common purpose for or in committing or abetting that crime... However, where there is evidence that the person did in fact, take part in committing the crime, the particulars of the conspiracy charge would read; “he acted together with another or others with a common purpose for or in committing or abetting the crime”. This double-edged definition of conspiracy arises from the undeniable fact that it is almost always difficult if not impossible, to prove previous agreement or concert in conspiracy cases. **Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime”.** (Emphasis mine).

**Section 172 (1) (2) of Act 29** provides “A person who intentionally and unlawfully causes damage to 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 a degree felony.

(2) A person who intentionally and unlawfully causes damage to property in a manner which causes, is likely to cause, danger to life commits a first degree felony.”

Prosecution per the statement of offence failed to disclose under which of the subsections of Section 172 accused persons are charged. Notwithstanding, the particulars of offence of count two on causing damage reads “The particulars of offence for count two reads as follows “ **1. PRINCE ASIAMA**

**MINTAH, BANKER 2. NANA OBENG YEBOAH TRADER. You on the 15<sup>th</sup> of July 2019 at community 18 in the Greater Accra Circuit and within the jurisdiction of this court did intentionally and unlawfully cause damage to an eight bedroom storey building valued GHC525,000, the property of Alex Asenso.”**

Prosecution in the particulars of offence stated supra gave the value of the storey building as GHC525,000. PW1 in his evidence to the court stated that he spent \$250,000 putting up the said 8 bedroom house. PW4 tendered in evidence a covering letter from Assenta Property Consult dated 15/8/2019 which gave the recommended reinstatement value of the property as GHC525,000. This said letter is in evidence as exhibit G. Counsel for accused persons tendered through PW4 the actual valuation report on which exhibit G covered and same was admitted and marked exhibit 2. The purpose of valuation per exhibit 2 is for ascertaining the value of the damaged property. Whether for probate purposes or any other purposes, the reinstatement value of the demolished property save any structural defects and influences, is GHc525,000. Moreover it cannot be disputed that the cost of the 8 bedroom house as shown in exhibit D series is more than one million Cedis equivalent to GHC100 currently. It is therefore safely be inferred that accused persons are charged under section 172(1)(b).

It flows from the above section, in proving a charge of causing unlawful damage the following ingredients must be established;



- a. That damage has been caused to a property
- b. That the property does not belong to accused person
- c. That the value of the damage exceed one million Cedis i.e GHC100
- d. Accused must be the one who caused the damage. e. Damage must be done intentionally
- f. That the damage was unlawful.

**Section 173 of Act 29** explains damage as follows “For the purposes of this Act, “**damage**” includes not only damage to the matter of a thing, but also an interruption in the use of that thing, or an interference with that thing by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained.” The entire 8 bedroom house having been demolished and turned into debris as depicted in exhibit C and C1, it’s use, benefit and or purposes has been permanently interrupted and cannot serve it’s purpose.

Section 174 (1) of Act 29 defines what amounts to unlawful damage for purposes of the Act. The section provides “ A person does an act or causes an event **unlawfully**, within the meaning of the provisions of this Act relating to unlawful damage, where that person is liable to a civil action or proceeding, or to a fine or any other punishment under an enactment, (a) in respect of the doing of the act causing an event, or

(b)in respect of the consequences of the act or event, or

(c)in which that person would be so liable if that person caused the event directly by a personal act, or

(d)in which that person is liable to be restrained by injunction or any other proceeding from doing that act or causing that event.

From the evidence of on record, is not in dispute that the 8- bedroom two storey building was built by PW1. It is also not in dispute that an eight-bedroom building was put up by PW1, Alex Asenso on a plot of land situate at community 18 Tema has been pulled down and destroyed. Exhibit D and D1 are the front and side view pictures of the said building prior to it's demolishing and same was tendered in evidence without any objection by PW4. PW1 testified that on the 15/7/2018, he received a call from his caretaker Paul Nyewunu PW2 that the building he had put up at a cost of about \$250,000 had been pulled down to the ground by accused persons herein. PW2 also testified that one Ameyaw informed him on phone on 15/7/2018 at about 7am that the Accused persons herein went unto the site with a bulldozer and demolished the building. A report was lodged and photographs of the demolished building were taken. Exhibits C and C1 tendered in evidence by PW4 shows debris of the 8 bedroom house after same had been demolished by the bull dozer.

It is further established per exhibit A and B that accused persons intended to demolish the uncompleted structure and did cause the said demolishing by engaging the services of a bulldozer to carry out the demolishing. Per **section 11(2) of Act 29**, "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 of contributing to cause the 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."

A1 in exhibit A stated "*... in May, we decided to embark on the demolishing but later stopped because one pastor approached us with a document intended to be an injunction... we later proceeded with the demolishing on 15/7/2019*". A2 also in exhibit B stated"*... in*

*May, we (reference to A1) sought to demolish an uncompleted building on the land we then decided to hold on with demolishing of the land. Today 15/7/2019, we proceeded to go ahead with the demolishing ..."*

In their defence on oath, they testified to the effect that they proceeded with the plan of demolishing the property under the authority of the building permit dated 4/4/2017 granted to Hamlets by TDC. From the evidence supra, it is clear that accused persons had a prior agreement to cause the demolishing of the house and did cause the demolishing of the house. Prosecution once again establishes the essential ingredient of the offence of conspiracy ie agreeing to act together for a common purpose in this case causing unlawful damage.

In the case of **YEBOAH & ANOR V THE REPUBLIC (1999-2000) 1 GLR 149**, the court of Appeal speaking through **Gbadegbe JA** (as he then was) stated " Section 172(1) of Act 29 under which the charge was laid against the appellant reads: "Whoever intentionally and unlawfully causes damage to any property by any means whatsoever... shall be guilty of second degree felony."

Accused persons through cross-examination and their defence on oath put up the defence of claim of right as justification for the demolishing and damage caused to the 8 bedroom house of PW1.

This claim of right as a defence was considered and elaborated in the case of **OKOE V THE REP. [1979] 137 per Taylor J** who held as follows "In view of these provisions it is clear that the act of the appellant in demolishing the building can only be punishable if it is done intentionally and unlawfully and if he did not in good faith believe that he is entitled to demolish the building Furthermore it seems to me the prosecution must show that the building was lawfully on the land. For if it is not on the land, removing it cannot be unlawful, it will be lawful"

In the case of **HOMENYA V THE REP 1992 2GLR 307** also, the court held at holding one (1) that an accused could only be liable on a charge of unlawful damage to property under section 172(1) of the Criminal Code, 1960 (Act 29) where the prosecution was able to establish not only that the accused caused the damage intentionally but also that the damage was caused unlawfully. Since on the evidence the appellant admitted cutting down the trees intentionally, that ingredient of the offence was satisfied. However, section 174 of Act 29 provided, inter alia, that for an event to constitute an unlawful damage, it was essential that the conduct of the actor should be capable, inter alia, of landing him in civil liability. Accordingly, where an accused claimed ownership of the property in dispute and contended that he destroyed it because it was his, as in the instant case, the prosecution had to establish that the appellant had no such claim to the property by showing that the trees were within the complainant's land.

The court further held " section 172(1) of Act 29 which creates the offence of unlawful damage requires that for a person to be liable under this section, the accused must have caused the damage intentionally and unlawfully the section reads who ever intentionally and unlawfully causes damage to any property by any means..." Each of the two words emphasized above is important and must establish before one can be called upon to open his defence in respect of this offence. For if the damage was intentionally but not unlawfully caused, the offence is not committed. Likewise, if the damage was unlawfully but not intentionally caused, then it is not one of unlawful damage.

PW1 admits that after acquiring the community 18 land from the Nungua Chief and constructing 8 bedroom house, he started receiving property rates from Tema Development Corporation in the name of Alexander Kudjiku. This prompted a search at Tema Development Corporation (TDC) where it was revealed that the land belonged Tema Municipal Assembly (TMA) and same had been acquired and was registered in the name of Alexander Kudjiku.

PW1 then attempted to negotiate the resale of the land with this said Kudjiku but the latter did not accept all his proposals. PW1 per this evidence admits that his title to land was defective and he sought to rectify same by repurchasing it from Mr Kudjiku. Both PW1 and PW2 testified to the efforts taken by PW1 to negotiate with Mr Kudjiku the owner of the land per the TDC record. Unfortunately for Pw1, his efforts to repurchase were not successful as he failed to agree on the purchase price with Mr Kudjiku. Exhibits 3 series discloses that the said land in dispute was a state land acquired under certificate title dated 16/08/1952 for: Tema Township & Port and same leased by the Government to TDC per a lease dated 21/3/1956. Exhibits 11 series titled Right of entry also discloses that TDC on 11/11/1995 transferred their interest in the land in dispute to Mr Kudjiku. Per exhibit 8 and 12 dated 07/02/2019 which is the same document, TDC in response to an enquiry by Ghana Home Loans disclosed that hamlets Ltd was the Lessee of the land in dispute. Hamlets Ltd in turn transferred their interest in the same land to Accused persons herein per exhibits 5, 7, 10 and 15. Further per exhibit 4 and 14, TDC on 4/4/17 granted Hamlet Ltd permit t construct a building/execute work viz demolition of existing dwelling house (2 storey) and this permit was valid till 4/4/2020. Per exhibit 2 and 14, Hamlets Ltd was authorized to demolish the house on the land in dispute and accused persons based on these exhibits demolished the house. These said exhibit stands unchallenged or discredited by prosecution. Also although Prosecution claim there was an injunction on the land by the Tema High Court as at the time of the demolition, no such order was disclosed and or tendered by the prosecution.

## **CONCLUSION**

From the totality of Accused persons evidence and exhibits, it cannot be said that the actions of accused persons is unlawful. The defence of claim of right raised by the accused persons succeeds as a defence to both the charge of

conspiracy to commit crime to with causing unlawful damage and causing unlawful damage.

Accordingly A1 and A2 are found not guilty of both counts one and two and acquitted and discharged forthwith.

**ACCUSED PERSONS PRESENT.**

**C/INSPECTOR SAMUEL AHIABOR FOR REPUBLIC PRESENT**

**MR BENJAMIN SACEY WITH DOREEN QUAYNOR FOR ACCUSED PERSONS PRESENT.**

**(SGD)**

**H/H AFIA OWUSUAA APPIAH (MRS.)  
CIRCUIT COURT JUDGE**