

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON THURSDAY  
THE 23<sup>RD</sup> DAY OF NOVEMBER, 2023 BEFORE HER HONOUR ENID  
MARFUL-SAU, CIRCUIT COURT JUDGE**

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CASE NO. D1/43/2021

**THE REPUBLIC**

**VRS.**

**1.DANIEL MENSAH @ GBAN**

**2.APPIAH MENSAH**

**3.ROBERT MENSAH @ OKO**

**4.EVANS AFRIYIE**

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ACCUSED: A1 – A3 ACQUITTED, A4 PRESENT

PROSECUTION: C/INSP. AWUAH ANSAH PRESENT

COUNSEL: NO LEGAL REPRESENTATION

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**JUDGMENT**

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The Accused Persons are charged with one count of Conspiracy to wit Causing Unlawful Damage contrary to sections 23(1) and 172 and one count of Causing Unlawful Damage contrary to section 172 of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by prosecution are that in the year 2018, the brother of complainant named Winfred Apo Aduful and domiciled in the United States of America bought eight plots of land at Obakrowa. Prosecution says that he put up a three-bedroom apartment on the land and asked the complainant, Daniel Apo Aduful to engage workers to fence the land. According to prosecution, when the workers started to fence the land, the Accused persons harassed and threatened the workers asking them to stop working on the land failing which they will cause damage to the work. Prosecution says that on 22<sup>nd</sup> November, 2020 at about 3:30pm, a witness visited the site and met the Accused persons causing damage to the fence wall valued GH¢16,000.00. The complainant went to the site to see the damage caused and a complaint was lodged causing the arrest of the

Accused persons. Based upon these facts they were arraigned before this court.

By a Ruling dated 23<sup>rd</sup> February, 2023, A1-A3 were acquitted and A4 was called upon to open his defence to count 2. A4 testified on oath by means of a witness statement. He testified that he did not know the complainant until he encroached on his land. He stated that he bought the land in dispute from Kwame Obuaben Esiyaw family of Apenten-Obarkrowa who are the allodial owners of the land. He testified that he was putting up a dwelling house where he had built a four-bedroom foundation with concrete but the complainant demolished it and took a trip of his quarry dust and used it for a wall he was building. He tendered as Exhibit 3 a pen drive containing videos which he states prove the damaged property. He stated that he protested for the complainant to stop demolishing his structure, but he remained adamant that no one can tell him to leave the land so for self defense he also tried to prevent the complainant from building the wall around his land by removing the blocks from his land. He testified that the complainant after realizing that the construction has been removed went to the police station to report and he together with his brothers were arrested.

He stated that the complainant has continued to build on the land but because of this case he has not been to the land since. According to him, the complainant has used all his building materials to work. In his supplementary witness statement filed on 27<sup>th</sup> October, 2023, he indicated that he purchased the land from one Kofi Ashia and was issued with an indenture and site plan which he tendered as Exhibit 1. He testified that he shares a boundary with the complainant who without provocation extended his wall to cover his land. He tendered as Exhibit 2 a Search Report covering his land.

As already indicated in the earlier Ruling, the 4<sup>th</sup> Accused was called upon to open his defence because he had admitted in his Cautioned Statement, Exhibit K, that he used a pinch bar to cause damage to the fence wall because the complainant had encroached on his land about 200ft and had fenced same causing part of his (A4's) foundation to enter into the land fenced. He stated that he confronted complainant and he promised that they will sit and resolve the matter but that never happened, so he became peeved and caused the damage with a pinch bar. I have also considered Exhibit 3 which contains 4 different short length videos, I am however unable to see any evidence of destruction as stated by A4. A4 relies on

Exhibit 1 which is an indenture dated 9<sup>th</sup> December, 2020 as proof of ownership of the land. His grantor is one Daniel Mensah, Makralo and representative of Kwame Obuaben Esiyaw family of Openten-Obakrowa who he claims are the allodial owners of the land. However, on consideration of Exhibit 2 which is a Search report covering the site plan of the land A4 claims ownership over, there is no indication of the ownership rights of A4 or his grantor. The report provides in part as follows:

**1. “Whole Site**

c. Judgment dated 03/12/2003 in favour of Akwaanor Family of Ashalaja (Suit No 1222/89)

**SMD**

Reference Number X 3218B and Regional Number SGGA F684/2010 with Reference Number LRD/06108/09, Deletion of Plotting of Regimanuel Limited

**LRD**

**2. Portion Marked 1**

Affected by Land Certificate Number GA71829 issues Sampson Boakye Addei

**3. Portion Marked 2**

Does not affect any Land Certificate in our records”

Clearly, from the above there is no transaction plotted in the name of A4 or his grantor to indicate that the land legally belongs to either of them. This notwithstanding, the evidence also points to the fact that A4 is in possession of the land. In the case of **ASANTE v. THE REPUBLIC [1972] 2 GLR 177** it was held as follows:

*“Tersely, to secure conviction under section 172 of Act 29, not only must it be proved that the damage was caused intentionally within the provisions relating to intent in section 11 of Act 29, but also it must be proved beyond reasonable doubt that it was caused without just cause or excuse; the burden lay on the prosecution to prove conclusively the absence of any legal justification or excuse, but they failed to establish this by evidence.”*

Also, in **OKOE v. THE REPUBLIC [1979] GLR 137** it was held as follows:

*“by Act 29, s. 174 (1) and (5) which explained the offence of unlawful damage in Act 29, s. 172 (1) (b), the appellant's act could only be punishable if it was done intentionally and unlawfully and he did not believe in good faith that he was entitled to demolish the building. To*

*succeed in a prosecution it was first necessary to establish that the building was lawfully on the land, for if it was not lawfully there (as in the instant case), removing it would be lawful.”*

In the same case of **OKOE VRS THE REPUBLIC (supra)** the court held as follows:

*“To succeed in proving unlawful damage, it was therefore up to the prosecution on the persuasive authority of the Dyer case, first to establish that the building was lawfully on the land.”*

I note that Prosecution relied on Exhibit L as proof of ownership of the said land. The said Exhibit is an indenture between Solomon Mintah Ackaah and Appraku Sybil Rhoda and Aduful Winfred Apo. Aside this, no other evidence was led in proof of ownership of the said land. I therefore consider that the equities are even between the complainant and Accused. I am unable to find from the evidence that Prosecution has been able to establish that the said fence wall was on land lawfully belonging to the complainant. A4's reason for the said destruction was because he believed that the said wall had encroached on his land on which he had constructed a foundation, evidence of which is contained in Exhibit 3. I consider that this explanation is reasonable. I am thus unable to find from the evidence before me that it has been proven beyond reasonable doubt that the damage was caused without just cause or excuse by A4 thereby satisfying the meaning of “intentionally” within the provisions relating to intent in section 11 of Act 29. On this basis A4 is hereby acquitted.

**H/H ENID MARFUL-SAU  
CIRCUIT JUDGE  
AMASAMAN**