

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON TUESDAY
THE 31ST DAY OF OCTOBER, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE**

CASE NO. D9/35/2018

THE REPUBLIC

VRS.

FLORENCE OBENG MENSAH

ACCUSED PERSON PRESENT

PROSECUTION: C/INSP AWUAH- ANSAH PRESENT

COUNSEL: LINUS SEKU ESQ. FOR ACCUSED PERSON PRESENT

RULING

The Accused person is charged with 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 the Complainant, Ebenezer Bosomtwi owns two plots of land at Ashalaja on which he has put up a building on one of the plots and constructed a fence wall to ward off encroachers. According to Prosecution, on 2nd January, 2018, complainant had information that the Accused person had led a group of men to cause damage to the fence wall. Upon visiting the site, the Complainant found that the entire fence wall had been demolished, the matter was therefore reported to the police and the Accused person was arrested and arraigned before this court.

Prosecution called 3 witnesses in support of its case. PW1 was the complainant Ebenezer Bosomtwi, PW2 was Jerry Kwame Akpabi and PW3 was the Investigator, ASP Oscar Atta Yeboah.

PW1 testified that he has two plots of land located at Asahalaja which he purchased from Nii Ashalaja Akwanor VI in the year 2008. He testified that after he made full payment he was issued with indenture and site plan. He stated that he bought the two plots for his brother Paul Agyei the documents were prepared in his name. He testified that he erected a five bedroom self-contained building which is occupied by his caretaker. He

stated that he put a fence wall around the two plots and deposited building materials, sand and stones on the other plot. He testified that about six years ago when the building was near completion, a certain woman came to claim ownership of the two plots claiming it formed part of her 12 plots. He stated that he made it known to her that she should go and see his grantor, but she refused so he completed his building. He testified that in December, 2017 the same woman caused the arrest of his caretaker when they were continuing the construction of the fence wall. He stated that whilst the matter was still at the Police Station to his surprise on 2nd January, 2018, he received a phone call from his caretaker named Jerry that the said woman led a team of men believed to be land guards to demolish the fence wall. He testified that he went home to find that the whole fence wall around the two plots has been demolished but no one was met on the site. According to him, the damage caused is about GH₵13,000.00. According to him, the information is that the said woman's brother who is known to him was among those who demolished the fence wall and the woman, and her men also threatened to attack the caretaker and his wife for feeding him with information.

PW2 was Jerry Akpabi, he testified that PW1 is his landlord as he has been living in his house for the past four years as a caretaker with his family. He testified that PW1 showed him two plots of land with a building on one of the plots which he currently lives in. He testified that about two years ago, a certain lady who is the suspect in this case came to dig a two-bedroom foundation on the remaining one plot of PW1's land. He testified that he informed PW1, but he informed him that he had travelled. He stated that the woman and her brother whose name is Asiamah came to use PW1's materials to construct a two-bedroom house on the land. He testified that he periodically tried to reach PW1, but he could not. According to him, the woman visited the land periodically with her brother and claimed ownership of the two plots of land. He testified that in November, 2017, PW1 engaged some workers from Kumasi to construct a fence wall around the two plots. He testified that just after the fence wall had reached completion, the woman came with Policemen to arrest him and before realization the woman had demolished the fence wall herself by pushing it. He testified that he was arrested for trespass. According to him, in December, 2017 PW1 again engaged workers to erect a wall around the two plots. He testified that on 2nd January, 2018 at about 2:00pm the suspect lady drove her car to the site with two men and her brother Asiamah and the woman ordered the demolishing of the fence wall. He

testified that she sat somewhere and gave the orders while her brother followed the men and gave direction. He stated that he called Ebenezer quickly to inform him but he was out of town. According to him, he was present with his wife and children when the demolishing was being done and the suspect rained insults on him for giving information about the land to PW1 so she threatened to deal with him and his wife drastically.

PW3 testified that he is a Detective stationed at the Amasaman Divisional CID. According to him, on 3rd April, 2018 whilst on duty at the station, he was the available investigator when PW1 made a report about the demolishing of his fence wall. He testified that he took a statement from PW1 and proceeded to the scene of crime on the same day. He stated that he found a stretch of fence wall which had been demolished and took photographs. He testified that on 4th January, 2018, the police patrol team went to the scene with PW1 who identified the Accused at the site to the Police as the one who with two others caused the damage so she was arrested. He testified that he took Statements from PW2, Nii Akwanor VI and Asafoatse Osu Clottey. HE tendered the following exhibits:

- Exhibits A & A1: Charge Sheet and Brief Facts
- Exhibit B: Statement of PW1
- Exhibit C: Statement of Nii Akwanor IV
- Exhibit D: Statement of PW2
- Exhibit E: Investigative Cautioned Statement
- Exhibit E1: Charge Cautioned Statement
- Exhibit F: Statement of Nii Asafoatse Clottey
- Exhibit G: Lodgment at Land Title Registry
- Exhibit H: Receipt
- Exhibit J: Search Report
- Exhibit K: Acknowledgment Slip
- Exhibit M: Receipt
- Exhibit N: Receipt
- Exhibit P: Search Report
- Exhibit P1: Search Report
- Exhibit Q: Indenture
- Exhibit S: Indenture
- Exhibit S1: Indenture
- Exhibit T: Receipt
- Exhibit U Series: Photographs

At the close of Prosecution's case, this court adjourned the matter to suo motu make a determination as to whether or not a prima facie case has been made against the Accused Persons which will require them to open their defence.

Section 173 of the **Criminal and Other Offences (Procedure) Act, 1960, (Act 30)** states as follows:

“Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the Court shall, as to that particular charge acquit the accused.”

In the case of **The State v. Ali Kassena [1962] 1 GLR 144** the Supreme Court held as follows:

“Section 173 is concerned with summary trials where the judge decides both questions of law and fact. It is for the judge in a summary trial to weigh the evidence and then decide whether from the facts proved the guilt of the accused can be inferred. Evidence is said to be sufficient when it is of such probative force as to convince and which if uncontradicted will justify a conviction.”

Counsel for Accused also filed a Submission of No Case on 16th October, 2023.

As already indicated, the Accused is charged with one count of causing unlawful damage contrary to section 172. Section 172 of Act 29 provides as follows:

- “(1) A person who intentionally and unlawfully causes damage to property*
- (a) To a value not exceeding one million cedis without a pecuniary value, commits a misdemeanour,*
 - (b) To a value exceeding one million cedis commits a second-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.*
- (3) For the purposes of this section, “property” means movable or immovable property.”*

The two main ingredients that must be proved by Prosecution are that:

1. The Accused Person intentionally caused damage to property.

2. The Accused Person unlawfully caused the damage.

In proving this charge, the value of the property is a key factor which needs to be established as the value of the property damaged changes the classification of the offence from a misdemeanour to a second-degree felony.

Per the Particulars of Offence, the value of the said fence wall is GH¢13,000.00.

In the case of **YEBOAH AND ANOTHER V THE REPUBLIC [1999-2000] 1 GLR 149** it was held as follows:

“On a charge of causing unlawful damage under section 172 of the Criminal Code, 1960 (Act 29), the ingredients to be proved by the prosecution were intention and unlawful damage...”

There is before this court the direct evidence of PW2 who confirms that he saw the Accused with others on the land. His evidence was that Accused was the one giving instructions for the destruction of the fence wall. There is also before this court Exhibit U4 which is a photograph of the said destruction. I must state that I am unable to find that PW2 was discredited during cross examination. Also, from the case put across by counsel for the Accused, there is no denial that Accused damaged a fence wall. However, the case of Accused is that the said destruction was necessary as the said land belonged to her and the said fence wall had blocked her access to her land. The following ensued during cross examination of PW1 by counsel for the Accused:

“Q: I put it to you that it was because constructed your fence wall to deny the Accused Person of access to her property that is why she broke part of it to protect her property

A: It is not true”

I therefore find that the first ingredient which is that the Accused intentionally caused damage to the fence wall has been satisfied. The second ingredient is that Prosecution must show that the Accused unlawfully caused the damage. Section 174 explains unlawful damage as follows:

“174. Explanation of unlawful damage

(1) 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.”

Section 174(5) also provides as follows:

“(5) Despite anything contained in Part One as to mistake of law, a person is not liable to punishment in respect of doing a thing which that person in good faith, believes to be entitled to do.”

As counsel for Accused rightfully stated in his submission to this court at page 7, a claim of right to the land is not an ingredient of the charge of unlawful damage. In determining whether or not a prima facie case has been made against an Accused person, the law is only concerned with the establishment of the ingredients of the offence and nothing more. This notwithstanding, in order to determine whether or not the actions of the Accused were unlawful, the court must have regard to section 174(5) as set out above. As already indicated, Accused admits having destroyed the fence wall because the land belongs to her and the construction blocked her access. In view of this case put across by the Accused, Prosecution was to lead evidence to show that the said land did not belong to the Accused hence she could not have been said to destroy the fence wall in good faith. There is however no credible evidence before this court to show that the land in question belongs to the complainant or his brother as claimed. 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.”

While PW1 claims to have purchased the land for one Paul Agyei, there is Exhibit J which is a search for certain land which belongs to Kwame Addy by a declaration dated 16th October, 1973. There is also another Search Report Exhibit P, which shows that a certain land is covered by a Judgment dated 15th November, 2012 in favour of the Nii Djanbi Amu Family I am unable to find from the evidence before me that Prosecution has shown that the said fence wall was lawfully on the land. Other documents such as the indenture in Exhibit Q were tendered which bear the names of Mr. Harry and Mrs. Maubeline Brown as the Leasees. There is no explanation as to whether or not these said lands are or form part of the land on which the fence wall was constructed and why these documents which do not bear the name of the alleged owner of the land were produced. Exhibits S and S1 bear the names of the said Paul Agyei but there is no evidence to show that the said land indeed is what the fence wall was constructed on or that the land belongs to the said Paul Agyei.

In **MALI v. THE STATE [1965] GLR 710**, the court held as follows:

‘Where at the end of the prosecution’s case, the court requires further evidence to enable it decide issues raised in the evidence given by the prosecution, then the irresistible inference is that the prosecution has not made out a case and the accused should be acquitted.’

Therefore, at the close of Prosecution’s case, I find that the ingredients of the charge levelled against Accused has not been established. I find that a prima facie case has not been made against Accused for which she should be called upon to open her defence. The Accused person is therefore acquitted.

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