

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON THURSDAY
THE 28TH DAY OF DECEMBER, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE**

CASE NO. D1/96/2022

THE REPUBLIC

VRS.

**1.RAZAK NARTEY
2.WISDOM MACCATHY**

FIRST ACCUSED PERSON PRESENT

SECOND ACCUSED PERSON ABSENT

PROSECUTION: C/INSP. AWUAH ANSAH PRESENT

COUNSEL: ANTHONY COBBINAH ESQ. FOR ACCUSED PERSONS PRESENT

*S.S. AGBEEHIA ESQ. WATCHING BRIEF FOR COMPLAINANT
PRESENT*

JUDGMENT

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

The facts as presented by prosecution are that the complainant who owns a farm has been experiencing illegal sand winning activities on a portion of his farmland which has resulted in the damage of his farm products being cassava, sugar cane and pineapples. Prosecution says that on 24th March, 2020 at about 6:00am, complainant visited the farm and met the Accused Persons winning sand where the produce had been cultivated thereby causing damage to them. Complainant made a report at the Amasaman Division Police and the Accused Persons bolted with the payloader machine upon seeing the police. Prosecution says that a request was sent to the Ga South Municipal Agric Officer to assist evaluate the cost of the damage caused and upon receipt of the evaluation report the Accused Persons were charged with the offence and arraigned before this court.

Prosecution called three witnesses in support of its case. PW1 was Daniel Kofi Dzotsi, PW2 was Daniel Lartey and PW3 was the Investigator D/Insp Alexander Barnes.

PW1 testified that on 24th March, 2019, he visited his farm and saw that land guards were winning sand on the land and destroying his farm produce which included pineapples, sugar cane and cassava. According to him, the damage on the land is such that he cannot farm on it anymore. He testified that the Accused persons were among those who caused damage to the farm and when he went to the site with the Police, A1 run away and he was later arrested.

PW2 testified that he will like to bring to the attention of the Police sand winning activities occurring at Yevaho Farms and that the illegal sand winning by the accused cause damage to crops and border pillars and has created holes on the land and made it difficult to continue with farming activities.

PW3 testified that on 24th March, 2020, PW1 and PW2 made a report of sand winning on their farm. He testified that a Police patrol team quickly accompanied them to the site and when the Accused persons saw them, they took to their heels. According to him, one of the loading boys was arrested and sent to the station and cautioned and released. He tendered the following exhibits which were admitted and marked as follows:

- Exhibit A & A1: Charge Sheet and Brief Facts
- Exhibit B: Statement of PW1
- Exhibit C: Statement of PW2
- Exhibit D & D1: Investigative and Charge Cautioned Statement of A1
- Exhibit E & E1: Investigative and Charge Cautioned Statement of A2
- Exhibit F: Investigative Cautioned Statement of Ebenezer Quartey
- Exhibit G: Site Plan
- Exhibit H: Land Certificate
- Exhibit J: Letter dated 2nd April, 2020
- Exhibit K: Report on Destruction of Farm Land
- Exhibit L: Letter dated 19th May, 2020
- Exhibit N: Indenture
- Exhibit P: Photographs of farmland

Prosecution's last witness failed to appear before the court on 4th April, 2022 and this court proceeded to close the case of Prosecution to make a

determination as to whether or not a prima facie case has been made against the Accused Persons.

By a Ruling dated 17th May, 2022, the Accused Persons were called upon to open their defence to the charges levelled. A1 testified by means of a Witness Statement filed on 19th July, 2023. According to him, he is a member of the Akwanoor Royal family of Manhean near Amasaman. He testified that complainant leased land from Adams Addy who had no capacity to grant Asahlaja lands by virtue of a recent Supreme Court decision. According to him, the court made consequential orders that any grant of Ashalaja lands made by Adams Addy is void. He testified that one MC Daniel Lartey, a relative of complainant with the help of caretakers named Daniel Nii Nartey and Ebenezer Sackey went into an agreement with a contractor name Kujays Enterprise to grade the whole land which is about 300 acres and which includes that of complainant. He testified that it was the said contractor who won sand on the land. He tendered the said Agreement as Exhibit 1. He testified that in the course of winning sand, MC Daniel reported the caretakers at the Police Headquarters and they were arrested however after the police saw the Agreement they were granted bail.

He testified that in or around the year 2019, the land was sold to one Alhaji Bamba by the Akwannor Royal Family and the said Alhjai took possession of the land by erecting corner pillars. According to him, the transaction was reduced into writing and he tendered the indenture as Exhibit 2. He stated that the corner pillars were destroyed by unidentified trespassers and the said Alhaji was approached by the Nii Adjin Family of Manhean who claimed ownership of the land so he went to see them and was issued with a receipt a copy of which he tendered as Exhibit 3. He stated that the Alhaji went into possession by erecting corner pillars and digging holes on the land. He stated that he hired earth moving machine which levelled the land. He testified that there were no crops on the land and the accused persons were doing their legitimate work by levelling their land. He stated that at the time of the sand winning complainant had not planted crops on the land and only recently planted crops when complainant issued a civil action against them and others at the High Court. He tendered a copy of the Writ of Summons as Exhibit 4. He stated that when the land was sold to Alhaji there were no crops on the land. He testified that complainant does not own the land and the family he claims granted the land to him is the rightful owner. According to him the head of the Akwannor Family said he had not granted any land to complainant. He testified that the land had

been there for so many years without crops and that was how come MC Daniel Lartey gave it to a contractor to win sand.

DW1 was Solomon Mintah Ackwaah. He testified that he is the head and accredited representative of the Akwannor Royal Family of Asahalaja, Accra. He testified that his headship was confirmed in a Judgment dated 5th December, 2018 with a declaration that Adams Addy and another were restrained from holding themselves out as Heads of the Akwaanor Royal Family of Ashalaja. He testified that on 14th April, 2021, the said Adams Addy's appeal to the Supreme Court was dismissed thereby bringing finality on the issue of leadership of the Akwanor family.

What is missing from Defence's evidence is the decision of the Supreme Court stating that Adams Addy has no capacity to grant Ashalaja lands. From his evidence, A1 claims that the land in dispute forms part of a larger tract which was given out by one MC Daniels. In another he says that the land in dispute was sold by the Akwannor family to one Alhaji. In another, he claims that the said Alhaji went to see the Nii Adjin Family of Manhean and paid for the land because they claimed it as theirs. Clearly, by his own evidence, A1 has failed to establish clearly who owns the land in question from his own contradictory evidence. Again, A1 states that during the sand winning, there were no crops on the land and complainant recently planted the crops when he took a civil action against Accused persons in the High Court. I find from Exhibit 4 that the said action was commenced on 19th November, 2021. Indeed the Accused persons were arraigned before this court for having caused damage to the crops of complainant through sand wining activities since 5th October, 2020. It could therefore not be the case that the said crops were only planted after the High Court action was instituted.

As already indicated in the Ruling of 17/05/2022, the Particulars of Offence state that the Accused caused damage to an acre of pineapple farm, an acre of sugar cane farm and two acres of cassava farm all valued at GH¢114,640.00 the property of Yevaho farms limited. I note from Exhibit L which is a Report on the destruction of farmland by the Ga South Municipal Assembly shows that the value of the damage caused is a total of GH¢53,500.00. There is also Exhibit K which indicates that the value of the destruction is GH¢14,400.00. The value therefore brings the offence within the ambit of Section 172(1)(b).

In the case of **YEBOAH AND ANOTHER V THE REPUBLIC [1999-2000] I 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 exists direct evidence on record by PW1 that the Accused persons were among those causing the destruction on the farmlands. PW3 also testified that when the report was made and they went unto the land, the Accused Persons were seen taking their heels. I consider that there is direct evidence placing both Accused Persons at the scene of the crime thereby connecting them to the charge. Prosecutions witnesses I find were credible witnesses. From the evidence adduced, it is also not in dispute that the crops on the land have been destroyed.

In the case of **YEBOAH and Another v THE REPUBLIC [1999-2000] I 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. On the evidence, the appellants had intentionally destroyed the complainant's fence wall and they did so unlawfully within the provisions of section 174(1) of Act 29 because as provided by section 174(2) of Act 29 the mere fact of the appellants' possession of the land in dispute was irrelevant to the commission of the crime under section 172 of Act 29. Besides, if the facts grounding the charge had been brought before the court it would have been sufficient to have had a.' order of restraint made since no court would allow any person to conduct himself in the manner urged against the appellants. Furthermore, the said facts would have established liability against the appellants. Consequently, at the end of the prosecution's case, there was a prima facie case which required the trial tribunal to call on the appellants to enter their defence. It was only when after the appellants had been called upon, they had testified and offered an explanation to the charge that the trial tribunal would have been enabled to inquire whether or not their conduct was one done in good faith, i.e. in assertion of a right, since the determination of good faith could only be made after hearing the appellants and having regard to all the circumstances of the case. In the absence of that, the trial tribunal could not come to its decision whether or not the

appellants had acted in an honest belief that they were entitled to demolish the fence wall.”

I am unable to find from the evidence that the destruction to the crops was done through Accused persons good faith doing ‘legitimate work by levelling their land’.

In **LUTTERODT v. COMMISSIONER OF POLICE [1963] 2 GLR 429** it was held as follows:

“In all criminal cases 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:

(a) if the explanation of the defence is acceptable, then the accused should be acquitted;

(b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;

(c) if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict.”

From the evidence before me, I am unable to accept the evidence of defence as reasonably probable. Upon a consideration of the entirety of the evidence on record, I am unable to find anything which creates a doubt in favour of Accused or exonerates him from the Charge levelled. I find that the prosecution has discharged the burden of proving its case beyond any reasonable doubt that the first Accused intentionally and unlawfully caused damage to the crops of complainant. I therefore find the First Accused Person Guilty on Count 2 and I hereby convict him accordingly.

I am unable to find evidence of an agreement to act together between the Accused persons to commit the crime of causing unlawful damage. The Accused persons are therefore acquitted on Count 1.

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

