

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON TUESDAY, 18<sup>TH</sup> JULY, 2023

SUIT NO. D9/1/2023

THE REPUBLIC  
VRS  
ERIC DOTSEY

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JUDGMENT  
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On the 19<sup>th</sup> day of September, 2022, I determined at the close of prosecution's case that they had established a prima facie case against the accused person on the charge of causing unlawful damage and he was called upon to open his defence.

The offence of unlawful damage is provided for by *section 172 (1) of the Criminal Offences Act (1960) Act 29*. The relevant elements for prosecution to establish on a charge of unlawful damage are;

1. The accused person caused the damage
2. That the damage was caused intentionally
3. The damage was unlawful
4. The *value* of the damage exceeds Ghc 100

On the first element, prosecution must establish that the properties mentioned in the particulars of offence and brief facts were damaged either permanently or temporarily by the accused persons. Damage is defined by *section 173 of Act 29* to include not only damage to the matter of a thing, but also any interruption of the use thereof, or any interference therewith, 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 evidence of prosecution witnesses particularly PW1 is that the accused person caused permanent damage to a wall which she had caused to be constructed on a piece of land which she and her husband purchased in 1994 for themselves, their child and a friend of their child.

As proof of her ownership of the land, she tendered in evidence an indenture, receipt of payment, a document titled land acquisition and a site plan. She also testified that they were in the process of registering the land at the Lands Commission when the accused person came to encroach same.

The receipts show four payments made on the 26<sup>th</sup> day of February, 1994, each for two plots of land. The amounts were received from Mr. Peter Yaw Agyemang whom PW1 says is her late husband, PW1 herself, Patrick Fosu Siaw and Bright Bensah Drah who PW1 says are her son and a friend of her son.

The document titled land acquisition is dated the 18<sup>th</sup> day of March, 1994 and lists various things including the cost of the land, transportation by surveyors, surveyors fees, pillars installation, preparation of indentures, cost of plot etc. It appears to be entries concerning the land. The cost of one plot is 580,000 cedis at the time. A simple calculation of two plots by that figure would give the sum of one million, one hundred and sixty cedis which is the consideration that PW1 per the receipts, paid for the land.

The indenture is dated the 28<sup>th</sup> day of February, 1994 and Peter Yaw Agyemang; the late husband of the accused person. The site plan is in the name of PW1. Aside the fact that the

documentary evidence bears out the claim of PW1 as to ownership of the land, the fact that she and her late husband had built on four plots of the land and been in possession of same together with the remainder four plots which they had fenced and were selling cement from since 1994 till 2017 when the accused person came unto the land was not challenged.

Learned counsel for the accused person had challenged PW1 by vigorously cross examining her on the documentation concerning the land. PW1 had acquitted herself by providing answers which I found to be truthful and in further explanation of her evidence in chief. She and her late husband had purchased the land for themselves, their child and a friend of their son and each of them had two plots each.

She and her late husband had built on four of the plots and the remaining four had been walled for her son and the friend. From that walled piece of land, they had a container from which she has been selling cement as well as chippings, sand and blocks. The receipts bear her claim out. The fact that she had been in a long and undisturbed possession for herself and the two other people from 1994 till 2017; a period of twenty three years also operates in her favour. It is trite that possession of land constitutes nine tenths of ownership of land.

As to the damage, her evidence is that the accused person encroached unto her land in 2017 and caused damage to the fenced wall around the four plots and also destroyed her chippings, sand and blocks. That the cost of the damages is Ghs 45,000.

PW2 corroborated the claim of PW1 as to the damage by accused person to the wall and also PW1's ownership and possession of the land as well as the process of registration same at the Lands Commission. I found him to be a truthful witness.

Learned counsel for the accused person under cross examination had not challenged the evidence that the accused person caused the damage to the walls as well as other building materials on the land. He did not also cross examine the evidence as to the value of the land.

I thus find that the accused person does not dispute that he broke down the said fence walls as well as destroying the building materials of PW1. As he had done the act voluntarily believing that it would cause the breakdown of the walls and same had happened, I find in line with *section 11(2) of Act 29* that he intended to cause the event. Generally, an individual has no right to destroy the property of another without a lawful order. Accused person by means of cross examination did not put forth a case that he had a lawful order or justification to destroy the said wall and other building materials of PW1.

It was on these basis that I determined that prosecution had established all the relevant elements of the offence against the accused person. Prosecution's evidence was not so discredited under cross examination and the evidence on record is manifestly reliable such that the court could found a conviction on same if the accused person refuses to open his defence. The evidence at this stage also lends itself to only once explanation, the prima facie guilt of the accused person.

It was upon these basis that the court called upon the accused person to open his defence if he so desired.

Denning J (as he then was) in the celebrated case of *Miller v. Minister of Pensions [1947] 1 All ER 372 at 373* held that. "The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a

prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of *Philip Assibit Akpeena v. The Republic* (2020) 163 G.M.J 32.

An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. Where he is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See *Bruce-Konuah v. The Republic* [1967] GLR 611 and *Section 11(2) and (3) of NRCD 323*.

In arriving at whether an accused has raised a reasonable doubt in the mind of the Court, the court must first consider whether his explanation is acceptable i.e whether it believes the explanation given by the accused. If it does not, it must proceed to find out whether the the explanation by the accused is reasonably probable. If that fails, then thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. In any of these instances, the court must acquit and discharge the accused. 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. See the case of **Bediako vrs. The State** [1963] 1 GLR 48

Accused person testified and called three witnesses

## THE EVIDENCE OF ACCUSED PERSON

Accused person in his evidence in chief said about ten years ago, he purchased a parcel of land from the Saman Tua We family of Jerusalem- Afienya represented by the head of family, Numo John Lartey Mensah. That he later noticed that PW1 had encroached onto his land (accused person filed his witness statement in October, 2022, ten years before then would be October, 2012. From PW1's evidence which I found to be credible, she had been on the land from 1994. Thus even if I am to believe the claim of the accused person, PW1 had been on the land for eighteen years before he acquired same. However, I do not believe that he even acquired the said land).

That an indenture signed by the head of family and himself were executed and he has began the process of perfecting his title to the land at the Land Title Registry. He attached the indenture and yellow card as EXHIBIT 1 and 2.

That he has been in effective possession and constructed a wall around the wall. He denied pulling down PW1's wall. That PW1 is using the police to harass him and has no locus over the land and should thus be ordered by a court of competent jurisdiction to stay off the land.

In his investigation caution statement, accused person said that he acquired the land about eight years ago from the late Hannah Attie. That he caused a search at the Lands Commission which showed that the land was registered in the name of his vendor. That he then paid for the four plots and went ahead to register the land at the Lands Commission. That it was later that the complainant came to lay a claim to the land.

### **THE EVIDENCE OF DW1**

In his evidence in chief, DW2 said he is a member of the Samantua We. That he was present and witnessed the sale of the land between the accused and the head of family and so accused

person is the rightful owner of the land. He added that it is not true that accused person pulled down the wall of PW1. Prosecution tendered EXHIBIT D through him under cross examination.

### **THE EVIDENCE OF DW2**

According to DW2, she is a member of the Samantua We family and the accused person purchased the land from them and that she was present during the transaction between accused person and their head of family. Her evidence is the same as that of DW1.

### **THE EVIDENCE OF DW3**

Although a witness statement was filed for DW3 as being his evidence, he repudiated same when he mounted the box and said he had never given a statement to be prepared as his witness statement and no such statement has been read and explained to him. He thus testified viva voce.

### **CONSIDERATION BY COURT**

The explanation of accused person in his defence is that he acquired the plot of land ten years ago and had been in peaceful possession of same. That he had the necessary title to the land and it was rather PW1 who trespassed unto the land when he was constructing a fence wall. That there was no fence wall on the land and it did not also have any building materials and container shop as PW1 says.

Where a person is accused of damaging a property or item and he is able to prove that the said property or item belongs to him, it becomes a complete defence to the charge. I would thus first consider the evidence of accused as to whether he is the owner of the land as that would be complete defence if established.

EXHIBIT 1 is an indenture dated the 22<sup>nd</sup> day of February, 2016 between Numo John Lartey of the Samantua We family and the accused person. It is signed by the said Lessor and witnessed by Ezekiel Tetteh and Samuel Ashitey Amah.

Although accused person in his evidence in chief says he acquired the land ten years ago, per his own EXHIBIT1 if at all, he acquired the land in 2016. His initial investigation caution statement is dated the 23<sup>rd</sup> day of August, 2017 and was taken at the Emefs police station where he says PW1 initially reported the matter. In same, he says he purchased the land about eight years ago. February, 2016 to August, 2017 cannot constitute even two years.

The prosecution cross examined accused person on this and at page 57 of the record of proceedings, accused person answered;

Q: *You indicated that you bought this land 10 years ago.*

A: *Yes.*

Q: *Can you explain to the court why your indenture exhibit 1 was issued in 2016?*

A: *Yes my lord. I did not fully pay for the land when I purchased it. I paid in installment and that caused the indenture and other document(s) to delay.*

Q: *Your paragraph 9 indicates that you have been in effective possession of the land since and has constructed a wall around it.*

A: *Yes. It was when the document(s) started coming that I started to build the wall.*

Accused person did not tender any document or receipt in evidence as proof of part payment for the land ten years ago. I take note that even though his DW1 and DW2 say they were present at the time of the transaction, none of them are able to indicate when the accused person acquired the land. Clearly, accused person's claim as to the time of his purported acquisition of the land is not true.



Again, contrary to his own evidence in chief that he was always in effective possession of the land, he changed this to say under cross examination that it was when the documents started coming that he took possession. That would even if true mean that he went onto the land in 2016.

Furthermore, per EXHIBIT D which is DW1's statement to the police dated the 23<sup>rd</sup> day of August, 2017, he states that PW1 has been on the land and built on certain portions of it and that his mother had allowed her to be on the land upon long deliberations over the years.

That evidence is clear and incontrovertible evidence on the part of accused person's own witness in support of prosecution's case that PW1 had been in possession of the land for many years before the accused person came to the land.

DW1's statement to the police also mentions the building materials and container as being on the land although he says that same belong to a certain man and woman and not PW1. Yet, accused person himself says that there were no such items on the land.

DW1 had also said that although PW1 was on the land, it may be that she had purchased it from the wrong person. That is an admission of PW1's earlier possession and occupation of the land. Yet, accused person and his witnesses per their evidence in chief in this court say that it was only after accused person began to develop the land that PW1 came onto the land.

Under cross examination, when the contents of DW1's own statement were read and put to him, he became evasive at best. I found his evidence in chief in support of the

accused person in this court to be unworthy of belief. I thus place no probative value on same.

Now, as to whether accused person indeed acquired the land, I find the evidence of his witnesses; DW2 and DW3 to be instructive. DW2 under cross examination says her mother signed a land document for the accused person. EXHIBIT 1 is the indenture accused person says was given to him by the Samantua We. It is signed by the supposed head of family and two witnesses; both male. Accused person's witnesses per their names are also male. The proof of execution was made by Ezekiel Tetteh. There is no female signatory on the face of EXHIBIT 1. Yet, DW2 says that her mother signed the document.

EXHIBIT 1 which is the indenture names DW3 as one of the witnesses as well as the one who proved the indenture (per the proof of execution). In this court, he denied ever witnessing the execution of the said indenture and said he was not present when same was being executed.

In his evidence, DW3 said "what I know about the case is that my mother sold the piece of land to accused person, Eric Dotsey. Our land is already registered and so after the purchase, document(s) were prepared for him".

DW3 also under cross examination had this to say;

*Q: So it is your case that your mother gave accused person document(s) in relation to the land in dispute.*

*A: Yes my lord. That is what I know but I was not present on the day the document(s) were given to him.*

*Q: So you were not present when this sale took place between your mother and accused person.*

A: *No but my mother told me about it.*

Q: *Have a look at Exhibit 1 which was presented to this court by the accused person.*

BY COURT: Exhibit handed to DW3.

A: *Yes my lord.*

Q: *Also identify the same document if it is you who appended your signature as a witness.*

A: *No my lord.*

Q: *I am suggesting to you that accused person has procured your services to come and throw dust into the eyes of this court.*

A: *No my lord.*

Q: *I am further suggesting to you that his exhibit 1 was forged by accused person with your consent to come and throw dust into the eyes of this court.*

A: *No my lord. I did not give accused person any document. The document were given to him by my mother and I have nothing to do with it.*

Q: *In exhibit E, paragraph 4, you say that you were one of the witnesses to the said land in contention.*

A: *My lord, my mother sold the land to the accused person and prepared document(s) for him and signed. I was not present and did not sign anything.*

Q: *So you would agree with me then that the document presented by eh accused person as exhibit 1 is forged.*

A: *No my lord. It has not been forged. It is my mother who signed it for him.*

Q: *So are you telling the court that it is her signature that is on exhibit 1?*

A: *As I have told the court, I did not sign and I do not sign any document(s) covering land sold by my mother. She signs it by herself.*

What DW3's evidence does aside from disputing the authenticity of EXHIBIT 1 is that it contradicts the evidence of accused person himself as well as the evidence of DW1 and DW2. They claim that it was the head of family that executed the documents covering the land for

the accused person, yet DW3 says it was his mother herself who executed the documents. As earlier indicated, DW2 said her mother signed when there is no such signature or name on the face of EXHIBIT 1.

DW3's evidence places the authenticity of EXHIBIT 1 in issue and together with the contradictions and inconsistencies in the evidence of accused person and his two other witnesses, I agree with prosecution that it is a fraudulent document prepared by the accused person to throw dust into the eyes of the court.

Again, DW3 denied ever causing or preparing a witness statement to be filed on his behalf as a witness for the accused person in this court even though there is a mark on the said witness statement (which was tendered in evidence by prosecution as EXHIBIT E ) as belonging to him.

At page 75 of the record of proceedings, he had testified that:

*Q: You have filed a witness statement in this court to testify on behalf of the accused person.  
Is that so?*

*A: I have not given a witness statement but I have something to say.*

*BY COURT: Please take a look at the thumbprint on the witness statement under.*

*BY COURT: Document shown to DW2.*

*BY COURT: Underneath the said thumbprint, there is a name called Eric Dotse who says he interpreted the contents of the document to you in Krobo and you seem perfectly to understand it before you made your signature. Is that so?*

*A: I know Eric Dotsey, he is the accused person but I never gave him my witness statement.  
That thumbprint is not mine. I have evidence for the court.*

From the evidence, it appears that accused person went to great pains to throw dust into the eyes of this court. This included forging witness statements for his own witness. I found accused person to be lying through his teeth to this court not only on his claim as to ownership of the land but his evidence that he did not destroy the wall and building materials of PW1.

What is manifest from the contradictory, inconsistent and outright falsehood of evidence by the accused person and his witnesses is that the accused person met a fenced property with building materials on same as well as a container shop for the sale of cement and proceeded to demolish the wall and build his own. That cannot be effective occupation and/or possession. That is a brutish use of force against the persons in occupation and possession of the land.

I have meticulously analyzed the evidence of accused person and his witnesses and arrived at the conclusion at the close of his defence, that his evidence fails to raise a reasonable doubt in my mind. The evidence is such that I do not believe same, it is not reasonably probable and the entirety of the evidence on record does not raise any defence in favour of the accused person.

After a careful consideration of the evidence on record, I find that prosecution has proven the guilt of accused person beyond reasonable on the charge of causing unlawful damage. He is accordingly convicted of the charge.

## **PRE SENTENCING**

According to prosecution, the convict is not known.

In her victim impact statement, PW1 says that

In mitigation, counsel says; convict has made it clear that he is contesting the claim of ownership. His actions have not been nullified and borne out of good faith in his believe that he has a legitimate claim to the disputed property. Convict has cooperated with the court. He is a family man and we argue this court to take that into account in posting sentence. We respectively pray this court to give the convict a non custodial sentence to enable him to be around to take care of his innocent family. The damage that has been caused has been amassed to Ghs6,000.00 and accused person would be disposed to compensating the complainant in respect of this amount. The amount is said to be Ghs6,860.00. The accused person would be disposed to compensating the complainant in respect of the said amount. The high court has given an injunction in respect of the land my lord. We humbly pray.

## **SENTENCING**

The offence of causing unlawful damage to property which exceeds one million cedis is a second degree felony. It carries a maximum of ten years imprisonment upon conviction.

Prior to arriving at an appropriate sentence, I must consider both aggravating and mitigating factors in favour of the convict.

In aggravation is the manner in which the convict committed the offence. It appears that upon realizing that PW1 is an aged woman whose husband had passed on, he decided to use brute force to deprive her of a portion of land which she had been in occupation of for more than twenty years rather than if at all using the courts to make a claim to the land

From the evidence, convict was so set on doing this that he failed to heed to the advice of the police to leave PW1 to continue in peaceful occupation of the land. We do not live in a society of chaos, fear and brutishness. We live in a society governed by rule of law.

Our constitution, 1992 recognizes the right of every individual to own property. Where a person owns property, the law ensures that same is not destroyed or taken over by another in an unlawful manner. Convict set out intentionally and unlawfully to deprive PW1 of the property which she had acquired for her son and was holding in peaceful enjoyment all this while. The courts must frown upon such acts and ensure that a deterrent sentence is handed down that would send a message to all and sundry that the law protects property rights of individuals irrespective of their age.

Accordingly, convict is sentenced to a forty (40) month term of imprisonment. He is also to enter into a bond with one surety and keep the peace for a period of twelve months upon his release from custody. In default, he would serve a three month term of imprisonment. He is further to pay the sum of Ghs 6,860 which is the cost of the damaged wall to PW1 within thirty days from the date of judgment.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**

**(CIRCUIT COURT JUDGE)**

INSPECTOR JACOB KUUBAL FOR THE REPUBLIC PRESENT.

MOHAMMED FOR ACCUSED PERSON PRESENT.