

08: 09: 2022

IN THE DISTRICT MAGISTRATE COURT HELD AT VAKPO ON THURSDAY THE 8TH DAY
OF SEPTEMBER, 2022 BEFORE HER WORSHIP GIFTY CUDJOE THE MAGISTRATE

SUIT NO. B3/01/2022

THE REPUBLIC

VERSUS

WINFRED KODZOKUMA

J U D G E M E N T

The accused person herein is charged with (2) two counts. Threat of Harm Contrary to Section 74 of the Criminal Offences Act. 29/60 and Count two, Offensive Conduct Conducive to the Breach of the Peace Contrary to Section 207 (1) of Act. 29/60.

BRIEF FACTS OF THE CASE BY PROSECUTION

Both Complainant and accused in this case are all farmers. That about (2) two years ago an uncle of the accused was a plaintiff in a land litigation where complainant was the defendant. During the court process the plaintiff sought an injunction to restrain complainant from working on the land but the court declined. In view of that the plaintiff advised the accused not to confront the complainant when he is working on the said land.

However, on 05/04/2022 about 8 a.m. the accused was returning from his farm with a cutlass when he saw complainant on the land. He walked to the complainant and threatened to butcher him if he does not vacate the land. He further rained insults on him to wit.

“You are a murderer; you have been killing People in Awate herein”.

The Posture of the accused made the complainant leave the farm and subsequently went to Anfoega Police Station and made a report.

THE CASE FOR PROSECUTION

It is the case for the Prosecution that PW (1) one Doh Atsu was on his way to the farm in the morning and realized someone was coming towards him.

As the Person came nearer he questioned why he was working on the land and who authorized him there. PW (1) said he answered that the farm is already for him and he said if he does not get out of the farm, he will slaughter him.

He added that he had been killing so many people in Awate when and if he does not leave the farm he will kill him with his cutlass. PW (2) states that on the day of the incident around 11 a. m. he was at home when PW (1) came and held him that he visited the farm and met complainant working on same.

He asked whether the court had lifted the injunction on the land before he is working on the land.

“The complainant gave answered him in the following words that if he gets closer to him he will see”.

He therefore threw his Cutlass away and both of them stated exchanging words. Earlier, he advised his nephew that if he see the complainant on the land he should not confront him. Per PW (2)' s evidence the court did not place an injunction on the land as the suspect stated. He rather raised the issue while come that the complainant is destroying his crops but the court did not make any pronouncement on same. That they have been litigating over the same piece of land for two years. The investigator assigned to the case in his witness statement states that immediately the case was referred to him he took statement from the complainant. Statement admitted and marked as exhibit “A”. He later arrested accused and received Caution Statement. From him also marked as exhibit “B” without objection. He visited the scene at Awate and the distance from where accused allegedly dropped the cutlass before approaching the complainant

is about (60) sixty meters away from where the complainant was then working before he approached. From the distance where complaint also alleged heard the accused footsteps and identified him is about (7) seven meter away. It is the investigators and Statement that there was no witness to the incident.

THE CASE FOR ACCUSED

Accused in defence elected to rely on his investigative statement given at the Police Station. In land in disputed is between his uncle one Peter Atormenu and the complainant. That he remembered the court ordered an interim injunction on the subject matter of dispute. That on the 03/09/2022 around 10 30 a.m. he was returning from the farm and saw the complaint clearing the land. He walked to him and asked whether the court passed judgment for him to be on the land. He asked whether the land was for him and he mentioned his uncle. He got annoyed and warned him that if he steps foot on the land again and asked him questions, he will show him. He left the scene and narrated the incident to his uncle. He did not threaten complainant as he stated.

Section 74 of Act 29/60 the 1st charge preferred against his accused person herein reads:

“Whoever threatens any other Person with Unlawful Harm, with intent to put that Person in fear of unlawful harm, shall be guilty of a misdemeanor”.

SECTION 2007 (1) OF ACT 29/60.

Reads:-

“A Person who in any Public Place or at any Public Meeting uses threatening, abusive or insulting words or behavior with intent to Provoke a breach of the peace or whereby a breath of the peace is liable to be occasioned, shall be guilty of a misdemeanour”.

In Criminal Cases, the Prosecution bear the burden of proof of establish clearly the quant of an accused person and this proof must be established beyond Sall reasonable doubt. See Section 11 (2) (3) and 15 (1) of the Evidence Act; 1975 (NRCD 323). To Secure Conviction of an accused person, the prosecution is to establish all the essential ingredients of all the offences preferred against an accused person.

On the record, the evidence is in controvertible that there was a confrontation between the accused person herein and the complainant. I will subsequently deal with the 2nd charge preferred against the accused before the first. One of the essential ingredients the prosecution must prove under the offence of Offensive Conduct. Conducive to the breach of the peace is that the offence must be committed in a public place. The law insider describes a public place as:-

“Any place, enclosed area to which the public is invited to which the public is permitted, including but not limited to banks educational faculties, laundromats, public transportation facilities, reception areas theatres waiting rooms”.

On the evidence, the confrontation between the accused herein and the complainant occurred on **“a farm”**. This fact is not denied by any of the Parties. Again Pro (1) confirmed to the court that during the alleged confrontation, there were only two of them and no other person.

CROSS EXAMINATION PRO (1) REVEALS: -

- Q. Was there any witness at the farm at the time of the incident?
 A. I was alone. No one witnessed what transpired.
 Q. I put it to you that. You concocted the story against me. All is not true?
 A. What transpired is true.

In evaluating the evidence, the court has observed that the incident occurred between the accused and the complainant on the farm. And although the public or community may have access to the farm because other farmers have farms in the surrendering area, a breach of the peace could not have been occasioned where there were no onlookers and the place secluded.

In the case of **Gaba versus The Republic**

[1984 - 86] 1 GLR at 694, it is stated that:-

“An essential ingredient of the offence under section 207 is that it must be committed in a Public Place. No offence is committed in a private house to which the Public has no right of access. Thus as quarrel in a house is not sufficient to support prosecution under the section because a private house is not a Public place”.

On the evidence, the court relies heavily on the testimonies of PW (1) and (2) that the incident did not occur in a Public place and therefore a breach of the peace cannot be occasioned. Prosecution has therefore failed discharge the onus so placed on them to satisfy the court to accept conviction of the accused on this Count.

The evidence of the Prosecution on the second charge against the accused is that accused threatened PW (1) with harm.

The words of the accused himself at paragraph (4) of his investigative caution statement States: -

“Yesterday around 10: 30 a.m. I was returning from farm and I saw the complainant clearing the land, I walked up to him and asked him that”.

The evidence disclosed that the subject matter the land, the complainant was working on is a subject of litigation of which the accused is not a party to.

CROSS EXAMINATION BY ACCUSED ON PW (1) REVEALS: -

Q. Do you remember you went to farm on the land on 8th April, 2022?

A. Yes.

Q. Do you remember I questioned you at a distance why you still farm on the land while judgment had not been passed?

A. You were very close to me before you question me.

Q. Do you remember you had a cutlass at hand before I approached you?

A. Yes I has a cutlass. I was weeding before you approached me.

Q. If I intend to butcher you would I be far away from you before greeting you?

A. You were very close while questioning me.

From the evidence on record, it is the accused person who walked up to the complainant. The evidence is not controverted that the complainant had a cutlass at hand before their confrontation. The complainant explained himself away that indeed he has a cutlass at hand and that is because he was weeding before accused approached him. The accused however at paragraph (6) of his Investigation Caution Statement. Statement that he was holding a cutlass but he dropped same on the ground before walking up to the accused. What was his intention when he walked towards the complainant?

What is the Position of the law on threat of harm.?

In the case of:-

Bahome versus The Republic

[1979] GLR 112, It was held that

“Where one is charged with threat of harm, the threat Must be off harm and nothing else”.

It is the evidence of PW (1) that when accused approached him, he asked him about who authorized him to where on the farm and if he does not leave he will slaughter him.

Clearly, accused could not have approached the complainant peacefully having assigned himself a caretaker of a disputed land and having authorized himself to question a party in a matter before Court which he obviously is not a party to PW (2) in his witness statement to the court stated that he had warned the accused person not to confront the victim whenever he sees him on the disputed land.

Having scrutinized the evidence offered by the prosecution and having applied all the test therewith, the court finds the case put forth by prosecution on count (2) as not consistent. On count (5) the evidence adduced by the accused is not believable that he did not threaten the complainant and same not reasonable probable. If not what was his intention approaching him with or without a cutlass?

Accordingly, the court convicts accused person herein on Threat of Harm, contrary to Section 74 of the Criminal and other Offences Act 29/60.

Pre – Sentencing - Hearing.

Plea in Mitigation

Accused:- I am pleading with the court .

BY COURT: Accused convicted and sentenced to sign a bond to be of good behavior for six months or in default 2 weeks' imprisonment with H.L on count (I).

Accused is acquitted and discharge on count 2 .

(SGD)

GIFTY CUJOE

THE MAGISTRATE

