

**IN THE CIRCUIT COURT HELD AT YENDI ON WEDNESDAY 14<sup>TH</sup> DECEMBER 2022, BEFORE HIS HONOUR ANTHONY ADUKU-AIDOO ESQ, CIRCUIT COURT JUDGE.**

**COURT CASE No. CT/27/2022**

**REPUBLIC**

**VRS**

- 1. MOHAMMUDU MOHAMMED**
- 2. ALHASSAN AMIDU**
- 3. ABUBAKARI UMAR & 4 ors (at large)**

*Alhaji Mohammed Shaibu Abdulai for A1 – A3 - Present*

**JUDGEMENT**

**Introduction**

The accused persons were charged with two counts of offensive conduct conducive to the breach of peace, and causing unlawful damage, contrary to sections 207 and 172, respectively, all of the Criminal and Other Offences Act, Act 29, 1960 (as amended).

The accused persons pleaded not guilty to both charges and the case proceeded to trial. This is the judgement of this trial court.

**Facts of case**

The facts of the case as presented by prosecution to this court are that the complainant, Moli Mohammed Khalidu and Iddrisu Tahiri are farmers and resident in Yendi whilst the accused persons Mahamudu Mohammed, Alhassan Amidu and Abubakari Umar and four others at large are farmers and also residing at Gundougo village. Complainant Moli Mohammed Khalidu's family owns a piece of land situated at Moli-Yili on which they demarcated with a quantity of blocks and pillars with a metal tank placed on same. A1, A2 and A3 who claimed the said land belongs to them, went to the site and caused damage to the aforementioned pillars and blocks. Complainant Iddrisu Tahiru who thereafter visited the site and saw the extent of damage caused on

the land was met with insults to wit: “you are foolish, stupid and senseless”. A complaint was thereafter lodged at the police leading to the arrest of A1, A2 and A3 while efforts made to arrest four others now at large proved futile. A1, A2 and A3 after their arrest on 31<sup>st</sup> December, 2021, were granted police enquiry bail on 1<sup>st</sup> January, 2022 after which they went back to the site and caused further damage to the remaining blocks and pillars and one metal tank all valued at GH¢12,000.00. During investigations A1, A2 and A3 denied the allegations in their respective caution statements. After police investigations the accused persons were charged with the stated offences and arraigned before this Honourable court for trial.

### **Burden of Proof**

Section 11(2) of the Evidence Act, NRCD 323, 1975, and as posited in the Supreme Court case of Fuseini v. Rep. (J4/32/2014) [2018] GHASC 28 (09 May, 2018), that the prosecution bears the burden of proving the guilt of the accused persons beyond reasonable doubt. And in accordance with the current practice directive, after the prosecution has done full disclosure and served the witness statements on the accused, it called as many as seven (7) witnesses in its bid to prove the guilt of the accused persons to discharge its burden of proof.

### **The Prosecution's Case**

PW1, Moli Mahamudu Khalidu, testified that on 7<sup>th</sup> December, 2021 he sent his children Iddrisu Tahiru and Khalidu Abass to lead officers of town and country planning to go and demarcate some plots of their family land situate at Moli-yili near Gundougu. The officers could not carry out their work on the said day and had to go back to the land for the same purpose the following day. While there on the land some youth of Gundougu came and threatened them to stop the demarcation work.

The witness then went to report the case to the Overlord of the Dagbon who in turn referred the matter to the Kuga-Naa for resolution. While waiting for the resolution of the matter, on 21<sup>st</sup> December, 2021 at about 5.40am Iddrisu Karim and his son Iddrisu

Adam went to the disputed land, saw the accused persons herein and some others destroying the planted peaks, blocks and a metal tank on the land. The witness later went to the land to observe things for himself. With that the witness ended his testimony.

PW2, Iddrisu Tahiru, was the next witness prosecution called. His evidence was that some members of his family together with some surveyors went to their site at Moli-Yili to demarcate the said land. While there on the land working, some youth led by their elder Mba-Kpana Mahamudu Mohammed came to the site and asked them to stop the demarcation and warned them to leave, else they would have themselves to blame should anything happen to them. The head family of the witness went to the Kuga-Naa to report the case to him for resolution. The Kuga-Naa then advised them to report the case rather to the police which led to the arrest of the accused persons herein. With that the witness ended his testimony.

PW3, Ibrahim Abass, a retired Ambassador and a member of the Moli family was next to give evidence. He testified that his family owns a piece of land located to the North East of Yendi sharing boundary with Gundougu and Kuga communities. A recent claim of ownership of this land by the Gundougu community was reported to the Gbewaa Palace for resolution. On the 7<sup>th</sup> December, 2021 the Moli family went to the land with surveyors to attempt to demarcate the land. On the following day the team went back to the land to continue, but while there a group of young men from Gundougu came to the site and verbally insulted the family members together with the officer and asked them to stop the demarcation. According to the witness, on 9<sup>th</sup> December, 2021, the Moli-family received several calls from different people to the effect that the Gundougu community had held a night meeting and decided that if the Moli family goes to the land again they would attack them and destroy the pillars they had planted. The situation was reported to the Kuga-Naa for resolution but he in turn advised that the matter be rather reported to the police for action. Upon the matter being reported to the police the accused persons herein were arrested.

PW4, Khalidu Abass, another Moli-family member testified to corroborate the evidence of PW3, He however, added that on 1<sup>st</sup> January, 2022, at about 1.10am he went to the disputed land to lay an ambush to see who had been destroying the pegs and blocks on the disputed land. He saw two persons coming to the land and as he went closer to them, he saw one Alhassan Amidu, A2, but could not see the other person because he was afraid to confront them fearing he could be harmed. He testified that he saw A2 use an axe to perforate the tank and went to where the blocks were smashed every block he found. When he finished, he left while the witness also took his motor bike which was hidden in the bushes and went home to report to his family.

PW5, Iddrisu Adam, testified that he picked his father Iddrisu Karim, PW6 on his motor bike to visit their family land near Gundougu and see how work on the land was progressing. On reaching a section of the path, he saw the accused persons including others who were a little bit far destroying the pegs the mason planted to demarcate the plots on the land. The witness and his father stood there for some time and went back home and informed the family head of what they had observed. Later the matter was reported to the Kuga-Naa who in turn asked them to make a complaint at the police station which resulted in the arrest of the accused persons.

PW6, Iddrisu Karim, the father of PW5, testified that he went to the said land with PW5 and corroborated the evidence of PW5 as narrated above.

PW7, Insp. Daniel E. M. Issah, the investigator of the case was the last witness prosecution called to prove its case against the accused persons. Beyond the fact that he collected statutory statements from the parties the witness testified that his investigations revealed that on 10<sup>th</sup> December, 2021 the Moli-family went to their plot of land with their surveyors to carry out demarcation exercise. While doing that some youth led by Mba-Kpana Mahamudu Mohammed came to the site and asked them to stop work. The witness also testified that when the accused persons were granted

police enquiry bail, they went back to the land and caused further damage to the remaining blocks, pillars and a metal tank valued GH¢12,000.00 as exhibited. With that he ended his testimony and the case for the prosecution.

**Whether or not the prosecution has established a prima facie case**

At the end of the case of the Prosecution, in accordance with section 174 of the Criminal Procedure Act, Act 30, (1960), it is incumbent on this court to find out whether, upon the evidence adduced by the prosecution against the accused persons, a prima facie case has been established to warrant the accused persons to proffer an answer.

On record, at the close of the case of the prosecution, the prosecution has led evidence to show that the accused persons apparently went unto the land to cause the said damage to the items listed and breached the peace of the community.

**The case for the Accused**

In entering their defence, the accused persons through their lawyer filed their defence statements for all the three accused persons. They did not call any other person to their support.

A1's testimony was to the effect that he knows the complainants. He was arrested and charged with the stated offences. He is an elder of the Gundougu but he does not own the land in dispute to warrant his fighting over same. As an elder he was one of a delegation sent by the Gundo-Na in the company of some police officers to the disputed land to ensure that nothing untoward happened. And save that day that he stepped on the land in dispute he had never set foot on the said land in dispute. He denied doing or saying anything that endangered the public peace and order. He further denied damaging any property as alleged by the complainants or as charged.

A2's testimony was largely a denial of all the allegations by the complainants and the charges as stated. He denies going unto the said disputed land on the 21<sup>st</sup> December,

2021 and destroying or causing damage of property thereon. He further added that they spent the early hours of the New Year day in the custody of Yendi Police.

A3's testimony was also a denial of all the allegations and the stated charges against him. He denies going unto the land as alleged let alone to destroy any property and states that he has never used any abusive or insulting words on one Tahidu Iddrisu. And with that the accused persons closed their case in their defence.

### **The guilt of the Accused Persons**

The accused persons are charged with two counts of offensive conduct conducive to the breach of peace, and causing unlawful damage, contrary to **sections 207 and 172, respectively, all of the Criminal and Other Offences Act, Act 29, 1960 (as amended)**. I intend dealing with them in that order.

### **The guilt of the Accused persons on Count One**

The particulars of this offence read:

### **PARTICULARS OF OFFENCE**

**MOHAMMUDU MOHAMMED 65 YRS, 2. ALHASSAN AMIDU 25 YRS AND 3. ABUBAKARI UMARI 48 YRS AND FOUR (4) OTHERS @ LARGE.** For that you on 14<sup>th</sup> December, 2021 at Moli-Yili a suburb of Yendi, in the Northern Region and within the jurisdiction of this Court, without lawful authority engaged in offensive conduct in public place that was conducive to a breach of the peace, did utter certain abusive words to wit: "You are foolish, stupid, senseless" to the annoyance of one Tahiru Iddrisu with intent to provoke the breach of peace which is likely to be occasioned.

**Section 207 of the Criminal and Other Offences Act 29** reads:

#### **Section 207—Offensive Conduct Conducive to Breaches of Peace.**

"Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a

breach of the peace or where-by a breach of the peace is likely to be occasioned, shall be guilty of a misdemeanour.”

For prosecution to ground conviction for each of the accused persons, it has to prove that each of the accused persons used some threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace. Unfortunately, there is nothing on record of evidence that give any semblance of such a conduct by any of the witnesses the prosecution called to testify. The evidence of PW3 was basically hearsay evidence and therefore cannot attract much attention in this regard. Throughout the evidence led by prosecution, it was only PW2, who testified that when he and others were working on the said disputed land some group of youth led by one Mba-Kpana Mohammudu Mohammed, which appears to be A1, came to them and asked them to stop work on the land. This cannot amount to an insult or any abusive words as contained in the particulars of offence espoused above. In the circumstances, I find that the prosecution has failed to prove the guilt of any of the accused persons on count 1. Accordingly, all the accused persons are acquitted and discharged of the offence contained in Count One.

### **The guilt of the Accused Persons on Count 2**

The accused persons were charged with the offence of causing unlawful damage, contrary to section 172 of the Criminal and Other Offences Act, Act 29, 1960 which reads:

#### **Section 172—Causing Unlawful Damage.**

(1) Whoever intentionally and unlawfully causes damage to any property by any means whatsoever —

(a) to a value not exceeding ₦1 million, or to no pecuniary value, shall be guilty of a misdemeanour;

(b) to a value exceeding ₦1 million, shall be guilty of second degree felony.

(2) Whoever intentionally and unlawfully causes damage to any property in such a manner as to cause or to be likely to cause danger to life shall be guilty of first degree felony.

(3) In this section property means movable and immovable property of every description.

Unlawful damage is explained in section 174 thus:

**Section 174—Explanation of Unlawful Damage.**

“(1) A person does an act or causes an event unlawfully, within the meaning of the provisions of this Code relating to unlawful damage, in any case in which he is liable to any civil action or proceeding, or to a fine or other punishment under any enactment, in respect of his doing such act causing such event, or in respect of the consequences of the act or event, or in which he would be so liable if he caused the event directly by his own act, or in which he is liable to be restrained by injunction or any other proceeding from doing such act or causing such event.”

From the above definition of causing unlawful damage, for prosecution to ground a conviction of the accused persons, it has to prove beyond reasonable doubt that each of the accused persons herein has directly or indirectly caused damage of the properties listed in the charge sheet. But before I delve into which accused person caused what damage to which property, I would want to satisfy myself that the accused persons are the rightful persons who are being charged to have caused the said damages.

The first hurdle that the prosecution has to clear in all criminal prosecutions is to satisfy the trial court that the person who stands accused before the court is the one who purportedly committed the charged offence. In the case of Razak & Yamoah v. the Republic [2012] 2 SCGLR 750 the Supreme Court posited thus:



“In every criminal trial it is not only necessary for the prosecution to prove the commission of the crime, but also to lead evidence to identify the accused as the person(s) who committed it.”

In the instant case, it appears all the accused persons were sighted and identified at a distance and more importantly, when visibility was impaired. The accused persons were identified in their respective testimonies by PW4, PW5 and PW6. PW4 testified in his evidence-in-chief that he laid ambush on the land in dispute on 1<sup>st</sup> January, 2022, and at about 1.10am he identified A2 and another person destroying the metal tank at the site. PW5 and PW6 also testified that they saw the accused persons on the land at 5.40am at some distance off. To illustrate the point, I hereby reproduce an aspect of the cross-examination of PW5 by counsel of the accused persons.

Q. From your own evidence, where you were and where the accused persons were, there was a bit of distance.

A Yes, but it was not that far from where we were. It is like from here (the court premises) to the police station.

Q. So, you saw the accused persons standing on the land.

A Yes

Q You agree with me that at about 5.40am or pm it is not clear or visible.

A I do not agree.

Q. I put it to you that around that time, it's not so visible or clear.

A. I want this court to know that the weather changes and sometimes around that time it is visible such that you can see someone and identify the person. Therefore, as at that time we went to the disputed land I was able to identify the accused persons.

Q. At the time, as at 21/12/2021 at about 5.40am the weather is not so visible in the morning.

A. As at that time last year, the weather was visible.

Subsequently, in another cross-examination of PW6 by Counsel for the accused persons, with whom PW5 went to the disputed land, PW6 admitted that when they got to the land, they were using the headlight of the motor bike they were riding. This is a clear admission that at that time of the day in December when it is not so clear even at six o'clock in the morning it would not be easy to clearly identify an individual, much less at a distance of not less than 100 meters away.

This court has a serious doubt as to whether the accused persons herein were properly identified. Clearly this fact ought to have dawn on the investigator to probe further in the matter to find some corroborating evidence besides the allegations made by the complainants in these circumstances. This is more so, when, the criminal allegation is laced with some land dispute between the two factions. It is simply not enough for the investigator to just rehash as evidence, what the complainants have alleged. It is in such circumstances that the investigative role of the case becomes crucial to unearth facts and evidence that is independent in character to corroborate or contradict the alleged facts.

Section 11, (1) and (2) of the Evidence Act, NRCD 323, 1975, reads:

**“Section 11—Burden of Producing Evidence Defined.**

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(2) In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.”

Particularly from Section 11 (2) above, prosecution bears the burden of producing sufficient evidence to prove the identity of the accused persons and to prove that they

have indeed committed the offences preferred against them. As the case stands now, there is real doubt as to the identities of the accused persons.

From my analysis so far, prosecution has failed to prove beyond reasonable doubt that the accused persons herein were the culprits who actually went to cause damage to the properties and I need not go any further in respect of this case. All the accused persons are hereby acquitted and discharged on count two.

**Conclusion**

I find that prosecution has woefully failed to prove the guilt of the accused persons herein, beyond reasonable doubt as required by law on both counts. In accordance with section 177 of the Criminal Procedure Act, Act 30, 1960, the accused persons are hereby acquitted and discharged on both counts.

(SGD)

H/H ANTHONY ADUKU-AIDOO ESQ.

(CIRCUIT COURT JUDGE)