

IN CIRCUIT COURT '1' HELD AT TAKORADI IN WESTERN REGION ON THURSDAY, 17<sup>TH</sup> NOVEMBER, 2022, BEFORE HIS HONOUR MICHAEL KUDJO AMPADU, CIRCUIT COURT JUDGE.

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SUIT NO. C1/10/21

**THE REPUBLIC**

**VS.**

- 1. ISAAC AIDOO @ DELMAS**
  - 2. ALBERT AIDOO @ SARIKYI**
  - 3. KAYA BOAFO**
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JUDGEMENT

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Accused Persons: Present

Prosecution: DSP Isaac Mensah Apenteng – present

Counsel: Appiah Adjei Yeboah – Asuamah – present

On the 5<sup>th</sup> day of November, 2020, the three (3) accused persons were charged on four (4) counts of

1. Conspiracy to commit crime, to wit Engaging in Illegal, Unreported and Unregulated Fishing Methods (IUU) contrary to section 23(1) of Act 29/60 and sections 88(1)(a) and 3(b) of the Fisheries Act, Act 652 of 2002 as amended by Act 880 of 2014;

2. Engaging in Illegal Unreported and Unregulated fishing Methods (IUU) contrary to sections 88(1)(a) and 3(b) of the Fisheries Act, Act 652 of 2002 as amended by the Fisheries (Amendment) Act, Act 880 of 2014;
3. Destruction of Evidence contrary to section 124 of the Fisheries Act, Act 625 of 2002 as amended by Act 880; and
4. Deceiving a Public Officer contrary to section 251 of Act 29/60.

The three accused persons pleaded not guilty to all the charges.

The facts of the case are that complainant in this case is Inspector Wonder Kpedator of Marine Police Department attached to the Fisheries Commission. A1 is a fisherman and owner of canoe with inscription "HUMBLE", "NO. 2", "DELMAS". A2 and A3 are also fishermen who work with A1 and his canoe. A1, A2 and A3 are all residents of Akwidaa, a fishing community near Dixcove. On 09/03/20 at about 10:00am, complainant reported that on 05/03/2020 had receipt of information to the effect that on 03/03/2020, at about 1:30pm, some fishermen at Akwidaa went on a fishing expedition on the sea and detonated a dynamite for the purpose of killing, stunning, disabling and catching fish which is prohibited. The explosion cut off the writ of A1. He was traced to Ward 'D' of Effia Nkwanta Regional Hospital where he was on admission with severe injuries on various parts of his body responding to treatment. During investigations, Police got to know from the medical officer that A1 sustained his injuries from a dynamite explosion while fishing together with A2 and A3. Records of the Hospital indicated that A1 was referred to the facility on 03/03/2020 from Nana Hema Dekyi Hospital at Dixcove with an alleged shark attack on the same day. The right wrist and the left first finger of A1 was chopped off. The right eye and limbs of A1 were also attached and dressed with bandage with multiple burns all over the upper part of his body. On 09/3/2020, investigations were extended to Akwidaa where a canoe with an inscription "HUMBLE", "NO. 2",

“DELMAS” painted sky blue and black, decorated with colours of the Ghana flag by its side, found on the water with a fishing net was identified as the canoe used for the crime. On 13/03/2020, a team of policemen from the Marine Police Department led by the Crime Officer, ASP/Mr. Solomon Debi revisited the Akwidaa community for investigation but the canoe “Humble”, “No. 2”, “DELMAS” was not located for further examination. Surveillance was laid on A1 who was still on admission at the Hospital. On 31/03/2020, cautioned statement was taken from A1 at Hospital after his health condition had improved. A1 in his cautioned statement mentioned the names of A2 and A3 as those who went for fishing with him when the incident occurred. On 08/04/2020, A2 and A3 were arrested to assist in investigations. A2 and A3 in their cautioned statements admitted that they went on fishing expedition with A1 on 03/03/2020 but alleged that A1 suffered a shark attack but not a dynamite blast. Later when A1 was discharged from the Hospital, police as part of investigations wrote to the Medical Director of Effia Nkwanta Regional Hospital to furnish us with medical report of A1 on the wounds he sustained. On 23/04/2020, medical report on A1 was received from the Hospital which was endorsed by Dr Tawiah Siameh, a Trauma Surgeon at Effia Nkwanta Regional Hospital which stated; *“Physical examination of wounds revealed traumatic amputation of the right hand with exposed distal radius and ulna, multiple facial avulsion around the right eye and meek with confusion of the right eye and exposed right teeth and tongue through the opening. There were also multiple puncture wounds all over the body suggestive of blast wounds. There was loss of vision in the right eye and dysarthria”*. An earlier medical report received from the Nana Hema Dekyi Hospital at Dixcove also showed that A1 hid the true cause of his wounds from the medical officers.

In order to establish their case, the prosecution called three (3) witnesses; Inspector Wonder Kpedator (PW1), G/Cpl Stephen Kofi Obour (PW2) and D/L/Cpl Abdulai Alhassan (PW3).

The accused persons were led in evidence by Appiah Adjei Yeboah – Asuamah Esq.

The evidence of PW1, Inspector Wonder Kpedator was that on 05/03/2020 he had information that certain persons at Akwidaa went on fishing at sea and detonated a dynamite which eventually killed one of them. That a similar issue occurred on 03/03/20 involving a canoe by name Delmas whereby one person got injured after the blasting of the dynamite and the victim was rushed from Akwidaa beach to Dixcove Hospital for treatment and later referred to Effia Nkwanta Regional Hospital for further treatment. That after the information, they followed up to the Effia Nkwanta Regional Hospital and met the victim, A1, Isaac Aidoo alias Delmas who was at the time responding to treatment but was unable to speak to the police on that day. According to him, the investigation team continued to Akwidaa fishing community and a search was conducted through the shore of the Akwidaa beach and the suspected canoe with inscription “Humble”, “No. 2” “DELMAS” printed in light blue, black on the edge of the canoe was found. That though they tried to trace who the owner of the boat was, nobody owned up as the owner in the whole community and so the team returned to base and they reported to the Crime Officer. That on the following day, the team visited the Effia Nkwant Hospital on enquires and met the A1, Isaac Aidoo who was responding to treatment but still refused to talk to the police. He alleged that the team later went to the Dixcove police station, met Nana Kwame Musah of Patakro; met the Chief fisherman of Akwidaa township, Nana Nyankadey and his secretary, Kofi Abu and when all these people were interviewed, they denied knowledge of the case.

PW2, G/Cpl Stephen Kofi Obour gave evidence which was not different from what was offered by PW1 except that he added that a photograph of the canoe allegedly used by the accused persons was captured. He also said it was gathered that on 03/03/20 at about

1:00pm, A1, Isaac Aidoo a.k.a. Delmas and two other fishermen went to sea on a fishing expedition at Akwidaa sea and detonated dynamite to catch fish which eventually exploded and caused injuries to A1 who was receiving treatment at Effia Nkwanta Regional Hospital.

The evidence of PW3, D/L/Cpl Abdulai Alhassan added that on 31/03/2020, police cautioned statement was taken from A1 where he stated that on 03/03/2020, he together with A2 and A3 went on fishing at Akwidaa sea waters. He said A1 stated again that he was attacked by a shark of which he sustained injuries during fishing while using one of his canoes called "DELMAS" at Akwidaa sea waters. That he also took cautioned statements from A2 and A3 on 08/04/2020 and A3 admitted that they went to fishing with A1 on 03/03/2020 and A1 was attacked by a shark. According to him, he received two medical reports on the injuries of A1 from Nana Hema Dekyi Hospital at Dixcove Hospital and Effia Nkwanta Regional Hospital which hospitals the accused received treatment. PW3 stated that he also received from Dr Godfred Baidoo Tsibu, Western Regional Director of Fisheries Commission, documents of shark attack date and memo of shareholders' meeting on dynamite fishing by some fisheries at Dixcove sea waters. PW3 tendered the following in evidence; Exhibits

- B10: Investigative Cautioned Statement of Isaac Aidoo (A1) dated 03/03/2020
- B12: Charge Statement of A1 dated 03/03/2020
- B13: Charge Statement of A1 dated 21/10/2020
- B14: Investigative Cautioned Statement of Albert Aidoo (A2) dated 08/04/2020
- B17: Charge Statement of A2, Albert Aidoo dated 03/06/2020
- B18: Another Charge Statement of A2 dated 22/10/2020
- B19: Investigation Cautioned Statement of Kaya Boafo (A3) dated 08/04/2020
- B22: Charge Statement of A3 dated 03/06/2020
- C1: Reported on meeting with selected chief fishermen (MEMO) dated 19/06/2019

- C6: Shark Attack Data since 1900
- C29: Picture of A1 at Hospital
- C19: Medical Report from Effia Nkwanta Regional Hospital dated 02/04/2020
- C14: Police Request for Medical Report, directed at Nana Hema Dekyi Hospital
- C16: Police Request for Medical Report, directed at Effia Nkwanta Regional Hospital dated 06/04/2020
- C17: Report on Dynamite Detonation directed at Effia Nkwanta Regional Hospital dated March 2020
- C18: Report from Nana Hema Dekyi Hospital
- C28: Picture of accused person at Hospital
- C25: Photograph of Delmas No. 2
- C27: Photograph of Delmas No. 2

Section 11(2) of the Evidence Act, 1975, Act 323 states that in a criminal trial or action, the burden on the prosecution of facts essential to guilt requires the prosecution to produce sufficient evidence so that the Court can find the guilt of the accused beyond reasonable doubt. Section 13(1) also provides as follows; *“in any civil or criminal action, the burden of persuasion of a crime which is directly in issue requires proof beyond a reasonable doubt”*

On a presumption against the accused persons, section 22 of Act 323 provides again that *“in a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that gives rise to the presumption are found or otherwise established beyond reasonable doubt”*.

The accused persons were charged on four (4) counts. The Court will decide two (2) first before the rest and first is Engaging in Illegal Unreported and Unregulated fishing Methods (IUU) contrary to sections 88(1)(a) and 3(b) of the Fisheries Act, 2002, Act 652 as

amended by the Fisheries (Amendment) Act, 2014, Act 880. The accused persons are charged for using dynamite and fishing in the territorial waters of Ghana at Akwidaa specifically.

Section 88 (1)(b) provides that;

88(1) A person shall not

(b) carry on board or have in his or her possession or control without lawful authority at any place within a two-kilometre radius from any shore or river, any explosive, poison or other noxious substance in circumstances indicating an intention of using such substance for any of the purposes referred to in paragraph (a).

The purposes referred to at paragraph (a) of the section are the use of the explosives, poison or other noxious substances for killing, stunning, disabling or catching fish or in anyway rendering fish more easily caught.

For the purpose of this offence, section 88(2) also becomes essential and section 88(2) provides that *“Any explosive, poison or other noxious substances found on board a fishing vessel shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in subsection (1)(a)”*.

Section 88(3) (b) provides that; *“A person who lands, sells, receives or possesses fish taken by any means which contravenes subsection (1)(a) and who knows or has reasonable cause to believe that the fish has been so taken, commits an offence ...*

*b. ... and in addition, the catch, fishing gear or other apparatus or any combination of them used in the commission of the offence shall be forfeited to the state”*.

To have the accused persons convicted on this charge, the prosecution will have to prove the following ingredients that

1. The accused persons used or attempted to use any explosive, poison or other noxious substance.
2. The purpose of the use was for killing, stunning, disabling or catching fish or rendering the fish easier to be caught.
3. That accused persons carried these substance(s) without authority.
4. The substance was in the possession or control of the accused persons within two-kilometre radius from the shore at Akwidaa.

The accused persons were alleged to have used dynamite in the fishing method for which they stand trial before this Court. The prosecution is to establish that the said substance was used by the accused persons or create the circumstance from which the Court can infer that the accused persons used this substance which is dynamite in fishing.

PW1 in paragraph 12 of his witness statement stated that when the team was led to Dixcove Police Station, the police officer C/Inspector Afriyie who was contacted denied knowledge of the alleged use of dynamite by the accused persons. They continued to Akwidaa fishing community and a search was done through the shore and the suspected canoe with the inscription "Humble No. 2" Delmas painted light blue, black line on the edge of the canoe was found. His further evidence was that the owner was traced through the community but no one owned up. The team therefore returned to base and reported to the Crime Officer. At paragraph 19, the PW1 stated that they also visited the caretaker chief fisherman Nana Nyankadey and his secretary who also denied knowledge of the incident.



From the above, PW1's evidence has not been able to establish anything against the accused persons or the offences of using explosive or noxious substance for fishing. When they went to the Akwidaa beach, they saw the suspected canoe with the inscription; "Humble No. 2" Delmas. The complaint given to the police was on the suspicion of the use of dynamite for fishing for which reason they followed up to investigate. However, when they saw the canoe "Humble No. 2" Delmas they did not go near it to see what substance could be found in it. If they did go into it, they did not give that evidence. What they did was to trace the owner and when they could not, they left and came to report to the Crime Officer.

PW2 stated that when they had the information about the use of dynamite to catch fish, they went to Akwidaa fishing community and *"saw the fishing boat painted light blue with three Ghana flags drawn on the side of the canoe ..."* (paragraph 11 of his witness statement). In his paragraph 13, he took photographs of the canoe which has been exhibited as Exhibit "C25".

What PW2 did was to take a picture of "Humble No. 2 Delmas". How can the picture prove that there was any use of dynamite in the offence?

PW3's statement only contained the fact that "on 13/03/20 my crime officer, ASP/Mr Solomon Debi led a team of policemen including me, visited Akwidaa and Ketakro communities for investigations". PW3 did not tell what the said investigations revealed; whether the use of any explosive was investigated.

From the above, it is clear that none of the prosecution's witness investigated anything about the use of dynamite or any form of explosive or obnoxious substance for fishing by the accused persons. What the prosecution witnesses concentrated on was the A1 who

was injured and they tried to say the injury was as a result of the detonation on an explosive, dynamite. How did they get to that conclusion? In the community, all persons contacted denied knowledge of the occurrence of the offence. The prosecution depended on the injury and what they learnt from the Hospital to arrive at the conclusion that the accused got injured through the detonation of a dynamite. Yes, it is true that A1 got injured and one of his wrists got severed in the process. However, the prosecution was expected to prove that what happened to the accused was as a result of the use of a dynamite for fishing. The accused persons denied using dynamite and alleged what happened was as a result of a shark attack. This allegation looked funny but if it is not true, the prosecution should have proved that a dynamite was used and that the injury was as a result of a dynamite.

The report from the Effia Nkwanta Hospital on which the prosecution relies so much cannot be accepted by this Court. Counsel in cross examination says the Medical Report was self-serving. In cross examination of PW3 by counsel for the accused, he answered this:

Q: Can you tell this Court what your evidence revealed that the accused persons have done?

A: It was revealed that the accused persons conspired to commit illegal fishing with dynamite and explosive substances, deceit of public officer and destruction of evidence.

Q: Tell the Court what evidence you have to back these charges?

A: The hospital that A1 was taken to gave a police report upon police request and those medical reports did not reveal or suggest that the various wounds by A1 was as a result of shark attack and also, they consistently lied to the police and medical officers that they were not involved in dynamite fishing. I also obtained

photographs of the canoe that was used for the act and obtained incidents of shark attack from the Fisheries Commission.

From the above it is clear that the prosecution relied on the report from the medical officers. The medical officers' report did not indicate that the wounds were not from shark attack but they did not say that it was from a dynamite explosion. If the report has said that, prosecution should have found that fact from the medical report to corroborate the prosecution's finding. In the matter of **The State vs. Owusu and Another [1967] GLR 114** that *"an extra-judicial confession by an accused that a crime had been committed by him did not necessarily absolve the prosecution of its duty to establish that a crime had actually been committed by the accused. It was desirable to have, outside the confession, some evidence, be it slight of circumstances which made it probable that the confession was true"*. From this case, even in a situation where the accused has confessed, there is the need for the prosecution to prove that the accused has committed the crime. The Hospital report should not be the basis for the prove of the offence by the prosecution without more.

Again, in cross examination of PW3 by Counsel for accused, Counsel asked these:

Q: Read the last sentence of C18 (medical report from Dixcove) and look at C14 (request letter for C18) and tell the date on it to the Court?

A: The date is not clear.

Q: But you agree it is a response to C18?

A: Yes.

Q: Read paragraph 2 of C14 (paragraph 2 of C14 which was the request for the medical report from the Nana Dekyi Hospital reads; "This incident happened on 03/03/20 at about 1300hrs when some fishermen from the Akwidaa community

went on a fishing expedition and detonated a dynamite which caused serious injuries to one of the fisherman by name Isaac Aidoo @ Delmas. The injured person was initially said to have been rushed to your medical facility on the same day of the incident for treatment"). I suggest to you that in your request for the report, you prejudiced the mind of the Hospital?

Prosecution objected to this question that the request could not be said to have prejudiced the mind of the hospital. The Court overruled the objection and stated that whether it prejudiced the mind of the hospital or not will be determined by the Court at the right time. Now the Court agrees that the said statement to the hospital was prejudicial because the report, "C18" concluded that *"We were later informed that the client suffered his injuries from a dynamite explosion"*. This means the conclusion of the report was derived from the request letter Exhibit "C18". This was what happened at the request to the Effia Nkwanta hospital and the conclusion of their report was also not different. All the above means that the prosecution tried to rely on the medical reports without looking for real evidence of dynamite explosion.

At the end of the prosecution's case, the Counsel for the accused persons made a submission of no case to the prosecution's case. The Court, however, overruled based on the principle of the case of **Tsatsu Tsikata vs The Republic [2003-2004] SCGLR 1068, holding 5** that the decision of as to whether or not the prosecution has been beyond reasonable doubt should be made after the end of entire trial, that is after the consideration of the prosecution's case and that of the defence.

Again section 88(1)(b) requires that for the offence to be committed, the explosive substance should be in the possession or control of the accused persons within two-kilometre radius from the shore. The prosecution could not trace any explosives or

substance on the shore of the Akwidaa beach when they got there. This Court therefore comes to a conclusion that the prosecution has not been able to prove that the accused, even though had a severed wrist from an injury, that injury was caused by the detonation of a dynamite. The Report on Shark Attack Exhibit "C8" which tries to suggest that there have not been any shark attacks in Ghana since 1900 is not enough to say that because there has not been shark attack, the injury was caused by a dynamite without any prove.

Prosecution has therefore failed to prove that the accused persons had an explosive to go on an illegal, unregulated and unreported fishing expedition. The explosive was not found in their possession neither were they found using same neither could it be proved that they were used in killing, stunning, disabling or catching any fish. They are therefore acquitted and discharged on the count two.

The main offence against the accused persons is the count two. Count one which is conspiracy and count three which is destruction of evidence and count four, deceit of public officer can all not be maintained against the accused persons since the accused persons have been discharged on the substantive offence. Those are ancillaries to the main offence. If the offence, count two, was not proved, then there cannot be a conspiracy to commit what has not been committed. There cannot be any destruction of evidence since there was no evidence to be destroyed because the substantive offence was not proved against the accused persons and there can also not be any deceit of public officer because the public officer could not prove that the injury was as a result of the dynamite and the accused persons deceived him that it was as a result of a shark attack.

The three accused persons are therefore all acquitted and discharged on all the four counts made against them.

**SGD**  
**H/H MICHAEL KUDJO AMPADU**  
**CIRCUIT COURT JUDGE**