

IN THE CIRCUIT COURT HELD AT TEPA ON THURSDAY THE 1ST DAY OF
DECEMBER 2022 BEFORE HER HONOUR GWENDOLYN MILLICENT OWUSU
ESQ., CIRCUIT JUDGE

04/2021

THE REPUBLIC
VRS
MARGARET OPPONG

PROSECUTION: CHIEF INSPECTOR CHARLES AGOVI
ACCUSED PERSON SELF REPRESENTING

JUDGMENT

The accused was arraigned before this court for the offence of offensive conduct conducive to breaches of the peace contrary to section 207 of the Criminal Offences Act 1960 (Act 29).

The particulars of the offence are that on February 27, 2020, the accused, Margaret Oppong, aged forty (40) years and a farmer, at about 0600 hours at Numesua , near Manfo in the Ashanti circuit and within the jurisdiction of this court, without lawful authority uttered certain abusive words to wit: “you are stupid man, foolish, you claim yourself as a chief, it was in the olden days that I did not have men and if you like come out and see if you will not see blood”, to the annoyance of the complainant, Nana Okoforobuor Boateng, with intent to provoke breach of the peace.

The accused pleaded guilty with explanation.

The brief facts of prosecution's case are that, Complainant Nana Okoforobuor Boateng is the Kunafuor Gyaasehene of Otumfuo Asantehene, a business man and he resides in Kumasi and Numesua near Manfo. Accused Margret Oppong aged 40 years is a farmer and a resident of Numesua. The complainant's house at Numesua and accused person's house share boundary. The complainant decided to build a fence wall around his house whereby he dug a trench on the boundary and laid concrete in it to build the wall. On 26/02/2020, about 1630 hours the complainant and his masons were at the site building the wall when accused confronted the complainant and told him that she will not allow him to build the wall and if he builds the wall ten times she will also break it ten times. Accused then covered the trench already laid with concrete with soil but the complainant did not mind her after she had again threatened him that if he goes ahead and put up the wall he will see blood. On the next day 27/02/2020, about 0600 hours, the complainant was in his house when accused again came to his compound and insulted him to wit "stupid man, foolish chief, you claim yourself as a chief, it was the olden days that I did not have men and if you like come out and see if you will not see blood" to the annoyance of the complainant but he did not utter a word. A report was made to police and the accused was arrested. In accused person's investigation statement before an independent witness, she denied having insulted complainant and indicated that she only covered the trench dug by the complainant with soil when he was putting up a fence wall between his house and her mother's house. After investigations, accused failed to avail herself for her to be charged after several demands and a criminal summons was prepared and served on her to appear before the court.

After the brief facts of prosecution's case were read and translated to the accused in twi, her language of choice, she was asked to give her explanations to the court. After the explanation of the accused, the court entered a plea of "not guilty" for the accused, since

the court was of the view that the explanation of the accused may amount to a defence if proved at the end of a trial.

Section 207 of the Criminal Offences Act, 1960 (Act 29) states that "A person who in a public place or at a public meeting uses threatening, abusive or insulting words or behavior with intent to provoke a breach of the peace or by which a breach of the peace is likely to be occasioned, commits a misdemeanor".

A plea of "not guilty" having been entered for the accused after her explanation, the prosecution had the burden to prove that the accused person had indeed committed the offence as contained in the charge sheet. This is so because in our criminal law jurisprudence, it is the prosecution which carries the burden of proof, the standard of which is proof beyond reasonable doubt.

Section 11(2) states that

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

This is in consonance with **Article 19 (2) (c) of the 1992 Constitution** which provides:

"A person charged with a criminal offence shall be presumed to be innocent until he is proved or had pleaded guilty".

The duty therefore fell on prosecution to prove beyond reasonable doubt that

1. There was an offensive conduct by the accused
2. The said offensive conduct was at a public place or at a public meeting; and

3. It was intended to provoke a breach of the peace

THE CASE FOR THE PROSECUTION

PW1 in his testimony told the court that, on the said day of the incident, he was with a mason who was laying blocks in a trench dug for the erection of a fence wall around his house, an uncompleted building inherited from his late father, when the accused came to confront him. He said that the accused threatened that if he, PW1 puts up the fence wall ten times, she the accused will pull same down ten times. Accused also told him that if he does any stupid things, he will see blood. According to PW1, he left the scene, and the accused person covered the trench in which they had already cast the foundation concrete with the dug up soil, and he made a video recording of the accused in the act. The following morning, the accused at about 0530 hours to 0600 hours came to stand behind his window, and without any provocation started insulting him to wit: “stupid man, foolish man, you claim yourself a chief, it was the olden days I did not have men”, and challenged him to come out of his house to see if he will not see blood. He reported the matter to the police, and gave his statement.

When PW2, Donkor Ernest was called to the witness stand, he corroborated the testimony of PW1. However, the insulting words complained of at about 0530 hours to 0600 hours on 27/02/20 according to him were: “it will not come off, it will not work, stupid person, do you think you are the only person who has money to make property to come and encroach on my land? It was in the olden days that I did not have men but now I have men, wherever we will pursue this matter, we will do so.”PW2 also stated that when he, and a tenant of PW1 known as Tarzan came to where they were working that very morning, accused was in the process of refilling the foundation trench with soil, and PW1

took a photograph of her, as well as the refilled trench; and the accused further insulted PW1 to wit, witch like you, photograph me and take it to a juju man to kill me. He also stated that the accused refused to pay heed to all the advice to get her to desist from what she was doing.

Prosecution called their PW3, a form 3 JHS pupil, Kelvin Appiah who is a nephew of PW1. He said that he resides at Asuofia, where he attends school but his uncle PW1 had taken him to Numesua to fetch water to be used for the construction of the fence wall. He also reiterated that the accused had been insulting PW1, and being very noisy that early morning. He also said PW1 had called PW2 and the tenant Tarzan to come to where the work was being done, and when they got there, the accused was refilling the fence wall foundation trench with soil using a shovel. According to him, PW1 told accused that he was filming her activities but accused ignored them and continued with her acts.

The next person called by the prosecution was the investigator, PW4. He testified that, on 27/02/19, this matter was referred to him for investigation. He visited the scene at Numesua and found the fence wall foundation trench which had concrete in it fill with soil. He took a photograph of same and went in search of the accused but she was not found, so he left a message with the Assembly man for the accused to report at the Manfo Police Station. According to him, PW1 called him on phone on 16/04/2020 that the accused has come to his house again to insult him. The police again went to look for the accused but again, they could not find her. Accused reported to the police on 19/04/2020, accompanied by the youth leader of Numesua, Nicholas Osei. She was cautioned and admitted to police enquiry bail. After the investigations, accused refused to avail herself to the police in spite of several invitations until a criminal summons to appear before this court was served on her on 03/07/2020. PW4 tendered in evidence exhibit "A", which is the charge sheet; exhibit "B", the brief facts of prosecution's case; exhibit "C", the caution

statement of the accused; exhibit "D", the charged statement of the accused; exhibits "E1 to E3", photographs taken at the scene; and exhibit "F", the criminal summons served on the accused.

The accused cross examined all the prosecution's witnesses. During cross examination, accused denied that PW2 was ever present in all that transpired. She also said that all that the witnesses had come to testify to in the court were untrue. She requested for a copy of the video that was said to have been taken by PW1 of her during the incident but prosecution said they are unable to produce same because the said video was on the mobile phone of PW1 but same was stolen from PW1 some time back when he was at his place of business in Kumasi. Accused however admitted in her cross examinations that she did insult but the said insults were not directed at PW1 but to whomever had cut a branch of the mango tree at her mother's house, which said cut branch had mango fruits on it.

At the close of prosecution's case, the court ruled that a prima facie case has been made, and called on the accused to open her defence.

The position of the Ghanaian law is that, the accused in her defence, is not required to prove anything. She is only required to raise a reasonable doubt. Thus, though the accused person may testify and call witnesses to explain her side of the case where at the close of the case of the prosecution a prima facie case is made against her, she is generally not required by law to prove anything. She is only to raise a reasonable doubt in the mind of the Court as to the commission of the offence and her complicity in it except where she relies on statutory or special defence.

THE DEFENCE OF THE ACCUSED

Accused opened her defence on oath on October 13, 2022. She told the court that PW1 had uprooted boundary features used by the elders of Numesua to delineate the boundary between her mother's land and that of Nana Kramo, the late father of PW1, to put up a foundation for a fence wall. She admits that she covered same with sand because the said foundation affected a structure used by her mother as a bathhouse. According to her, while covering the foundation, PW1 called his tenant Tarzan to the scene who asked her to stop. Two weeks later, she visited her mother's house and noticed that a mango tree which had fruited had part of its branches cut off. Nobody could tell her who had done it when she enquired so she made some utterances and insinuations and left. She admits the utterances and insinuations were directed at whomever had cut the branches of the mango tree on which they all feed but insists that she did not know that it was PW1 who had cut off the branches. During cross examination, prosecution insisted that the insults were directed at PW1 but accused flatly denied. Accused called one witness. The witness she called, DW1 was none other than the tenant of PW1, Tarzan. This is the same tenant that PW1 had called to witness accused covering the foundation trench with soil. DW1 testified that PW1 had destroyed part of the bathhouse used by the mother of the accused, and the accused was vehemently protesting, using her bare hands to put back the dug up soil into the trench. He said two weeks later, he heard the accused talking and insulting. He came out and found one carpenter who carries on his daily business in the compound of the house of the accused's mother was burning sawdust under a mango tree. The mango tree had some of its branches extended to the window of PW1, and the fire had burnt a small part of PW1's window, and PW1 cut off the extended branches. He emphasized that the accused did not know who cut off the branches and started insulting. Prosecution has charged the accused with offensive conduct conducive to breaches of the peace. The ingredients of the offence required to be proved by the prosecution are that, there was an offensive conduct by the accused, the said offensive conduct was at a public

place or at a public meeting; and it was intended to provoke a breach of the peace. It was held in **Dexter Johnson v. the Republic [2011]33 GMJ 68 S.C** that prosecution would have to discharge this burden by leading evidence satisfactorily to prove that the accused person committed the offences he has been charged with.

Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt; meaning the prosecution has the burden to lead sufficient and admissible evidence such that on an assessment of the totality of the evidence adduced in Court, including that led by the accused person, the Court will believe beyond reasonable doubt that the offence has been committed and that it is the accused who committed it. Apart from specific cases of strict liability offences, it is trite learning that throughout a criminal trial the burden of proving the guilt of the accused person remain with the prosecution.

The accused person concedes that she made some utterances and insinuations. However, she maintains that they were not directed at the complainant, PW1. At this point, even if the court were to consider the explanation of the defence unacceptable, there are still two hurdles to be surmounted by the prosecution. All the evidence on record without any doubt has established where the incident took place, and it is uncontroverted that everything took place at the private residence of PW1, and the residence of the mother of the accused person. None of the two places qualify as a public place, or a public meeting. It was held in **Gaba v. The Republic [1984-86] 1 GLR 694** 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, a quarrel in a house is not sufficient to support prosecution under the section because a private house is not a public place".

Prosecution, having failed to satisfy the second ingredient, it will be an exercise in futility for the court to proceed to the third ingredient of whether the act was intended to provoke a breach of the peace. Per the particulars of the offence, prosecution had stated that the accused had uttered certain words to the annoyance of the complainant, (emphasis mine) Nana Okofoforobuor Boateng, with intent to provoke breach of the peace. In **Quansah v The Republic [1980] GLR 263**, it was held that in considering the meaning of section 207, the test of a reasonable man is inapplicable to the person(s) likely to be provoked.

This court holds that since prosecution has failed to discharge their burden of proof, the case for the prosecution fails. I find the accused not guilty, and acquit her accordingly.

SGD

H/H GWENDOLYN MILLICENT

(CIRCUIT

OWUSU

JUDGE)