

**IN THE CIRCUIT COURT HELD IN ACCRA ON 21ST DAY OF FEBRUARY 2023
BEFORE HIS HONOUR SAMUEL BRIGHT ACQUAH, CIRCUIT COURT JUDGE**

CASE NO. D9/23/2018

THE REPUBLIC

VRS

1. PETER ANNOBIL

2. DIXON ANYETEI PATTERSON

3. ADJETEY SOWAH

COUNSEL FOR ACCUSED PRSONS – KENNEDY WIAFE EFFAH ESQ.

PROSECUTION – CHIEF INSPECTOR TERKPETEY DENNIS

FINAL JUDGMENT

The three (3) Accused persons are facing the under listed charges.

COUNT ONE (1)

CAUSING UNLAWFUL DAMAGE CONTRARY TO SECTION 172(1) OF THE CRIMINAL OFFENCES ACT 1960 (ACT 29) – For All the three Accused persons.

COUNT TWO (2)

CAUSING HARM CONTRARY TO SECTION 69 OF THE CRIMINAL OFFENCES ACT, 1960 (ACT 29) – For A2 and A3.

COUNT THREE (3)

ABETMENT OF CRIME CONTRARY TO SECTION 20(1) OF THE CRIMINAL OFFENCES ACT. 1960 (ACT 29) – For A2 and A3

COUNT FOUR (4)

STEALING CONTRARY TO SECTION 124(1) OF THE CRIMINAL OFFENCES ACT. 1960 (ACT 29) – For only A2.

After the close of Prosecution case, counsel for Accused persons filed a submission of No Case pursuant to section 173 of the Criminal and other offences (Procedure) Act,

1960 (ACT 30), in the evidence, the court ruled that the Accused persons have a case to answer but struck out count three (3) – Abetment of crime. Hence the charges before this court for trial are;

Causing Unlawful Damage, Causing Harm and Stealing.

The prosecution called three (3) witnesses, PW1 (complainant) in the matter (WOI RTD Richard Nixon Tetteh) PWII (Mr. Augustine Nartey) and PWIII (The investigator in the case – D/INSP NUTAKOR. They filed their respective witness statements and relied on same as their respective evidence in chief.

BRIEF FACTS

The complainant in this case, WOI (RTD) Richard Nixon Tetteh is a former member of the Dadekptopon Development Trust of La (EDDT) and the Accused persons are all staff of EDDT security men.

That on 27th April, 2013, the complainants foundation for storey building was demolished by the EDDT Task Force led by the Accused persons. Later on 27th April, 2013, the complainant met the chairman of the Trust at a Board meeting and questioned the chairman as to why he instructed some people to demolish his foundation. The complainant told the chairman that he was going to continue developing his building he would see who could come and stop him. The chairman of the Trust became offended and reported a case of threatening at La Police Station against the complainant.

That on 30th April, 2013, at about 2.00pm, Accused persons led a police officer to La Traditional Council to identify the complainant. On their arrival at the La Traditional Council, premises where the chiefs were about to hold a meeting, Accused persons saw the complainant carrying files from his car and was about to enter the hall, A1 chased him and held him preventing him from entering the hall and the files fell from complainant's hand and scattered on the ground. A2 and A3 also supported the struggle that ensued. The complainant was pushed into his car amidst beating. A1 laid

heard on a knife from the complainant's car and used it to cut the complainant's head and shoulder.

That the police officer became helpless as he could not control the Accused persons but shouted for them to stop attacking the complainant. In the process, the complainants became weak and fell on the ground. This attracted the chiefs and others present.

During the course of the struggle, A3 stole a Nokia Mobile phone of the complainant. The police officer took the complainant to the police Hospital for treatment. A report was made at La Police Station and A1 was arrested. Later, the case was transferred to the Regional CID/Accra for further investigation. A2 and A3 were later arrested and after investigation, Accused person herein were charged with the offences and just before the court.

The issue for determination is whether or not prosecution was able to prove beyond reasonable doubt, the charges proffered against the respective Accused persons.

1992 CONSTITUTION OF GHANA

Art 19(2) (c) - "A person is presumed innocent until the contrary is proven in court or he himself has pleaded guilty".

This conditional provision mandates the court to right from the onset makes its mind that Accused persons have not committed any of the offences levelled against them, but rather puts a greater burden on the prosecution to prove his case beyond all reasonable doubt, if prosecution really wants the court to rule in its favour.

STANDARD OF PROOF IN CRIMINAL MATTER

EVIDENCE ACT 1975 (NRCD 323)

Section 11 (1) – "For the purposes of this Decree, the burden of providing evidence means the obligation of a party to introduce sufficient evidence to avoid ruling against him on the issue"

Section 11(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 reasonable doubt”

Section 13(1) – “In any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt”.

Section 15(1) – “Unless and until it is shifted, the party claiming that a person is guilty of a crime or wrong doing has the burden of persuasion on that issue.

ACKAH V PERGAH TRANSPORT LTD (2010) SCGLR 728 PER ATUGUBAH JSC – “it is trite law that matters that are capable of proof must be proved by providing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-existence. This is a requirement of the law on evidence under sections 10 and 11 of the evidence Act”.

In criminal trials, the burden of proof in the sense of the burden of establishing the guilt of the accused is generally on the prosecution. The failure to discharge the burden should lead to the acquittal of the accused – **DONKOR V THE STATE (1964) GLR 598 – SC.**

The guilt of the accused must be proved with that degree of certainty required by law. – **YEBOAH V THE REPUBLIC (CONSOLIDATED (1972) 2 GLR 281.**

REPUBLIC V ADAMU (1960) GLR 91 @ 95, - Where the evidence of the prosecution is so inconsistent as to “contain the seed of its own destruction, accused could not be found guilty---

MALI V THE STATE (1965) GLR 710 – SC

Accused person who is brought to court by the prosecution carries no burden, but only to create a reasonable doubt in the minds of the court. Before accused be allowed to create that reasonable doubt, the prosecution should first be also to prove his case beyond all reasonable doubt.

Every criminal trial has two legs, the MENS REA and the ACTUS REUS – The Actus Rea is the act itself, who did what and the MENS REA also covers the intention behind the act, the two conditions should be conjunctive, an accused person should be found capable in both instances, if the act is proved but fails to prove the intention behind the act, accused persons should be acquitted and discharged, and all the things borders of the elements involved in the crime as defined by the law governing the crime. So for the prosecution to succeed and have judgment in his favour, he must prove the elements in the offence beyond reasonable doubt or else he fails.

COUNT ONE (1)

CAUSING UNLAWFUL DAMAGE CONTRARY TO SECTION 172(1) OF THE CRIMINAL OFFENCES ACT 1960 (ACT 29)

SECTION 172(1) OF ACT 29 – “Whoever intentionally and unlawfully causes damage to any property by any means whatsoever ---This law is a conjunctive one because of the word “and”. The act must be both intentional and unlawful, if it is not done with intention but unlawful too it will fail. Hence the burden on the prosecution is to prove to the court that the said damage to the storey building foundation owned by the complainant by the three Accused persons was both intentional and unlawful – **YEBOAH & ANOR V THE REPUBLIC (1999-2000) IGLR 149.**

Culled from prosecutions own facts:

“ That on 27th April, 2013 the complainant’s storey building foundation was demolished by EDDT Task Force led by Accused persons.

That later in the day on 27th April, 2013, complainant met the chairman of the trust at a Board meeting and questioned the chairman as to why he instructed some people to demolish his foundation.

Complainant own story he gave to the police on 27th April, 2013 -

That I had a call from my caretaker Bortey, that EDDT had visited my building at the Trade Fair site and demolished same.

Accused persons witness **DW1 – NII MENSAH NYEKPEA**In paragraph 4 of his witness statement stated that – it was EDDT which demolished the alleged property of the complainant and same was confirmed when DWI was under cross examination.

The above statements clearly show that it was the EDDT itself that carried out the exercise but not Accused persons own wishes. They are members of the Task force and take instructions from their superiors, and a member of the EDDT board – witness statement in court too told the court that they instructed their Task Force to do what they did.

From the above evidence, it is clear that accused persons were instructed by their employers to perform one of the job for which they were employed, that is, to protect the properties especially land belonging to the Trust. Complainant if he has any problem at all could have been directed at the Trust itself in a Tort, that is vicarious liability, but not to accused persons who are servants and acted under the instructions of their masters.

SECTION 15 OF 1960(ACT 29)

A claim of right means a claim of right in good faith.

NANA FABIN AMANTWI II & ANOR V THE REPUBLIC (1994)....., Crime APP NO. 23/94. Judgment delivered on 23 November 1994.

The defence of claim or right based upon the entitlement of the chief under customary law was a good defence. Conviction therefore could not stand.

In this instant case too, accused persons were instructed by their employers to perform an act which time they know was a lawful act as at their job description to do what they did, knowing they did so in good faith and a good defence.

BAIDOO V THE REPUBLIC (1968) GLR 1012 – CA

“ It must be reasonable to break down a wall to express disgust and to warn the complainant from continuing with the building operation, but to go beyond what is

reasonably necessary is another matter even if the person is claiming the land is his absolute property as in this case.

On record complainant was warned to stop encroaching the Trust's land but the warning heeded no result, the option for the Trust was to do something to express their anger to the complainant's continued trespassory act, hence the demolition.

OKOE V THE REPUBLIC (1979) GLR 137-44

“ To succeed in a prosecution, it is first necessary to establish that the building was lawfully on the land, for if it was not lawfully then (as in the instant case), removing it would be lawful”

This is not a battle between a land purchaser and a landlord, but a banter between a prospective land purchaser and a landlord. First the caretaker of a sort of the subject matter is telling the complainant that you have not, or I have not released the subject matter to you, so stop the development until the proper thing is done. Prosecution could not satisfy the court that the building thereon was lawful, hence removing it would be lawful under the circumstances.

All the three (3) accused persons were performing their legal duty they also had a claim of right in good faith and prosecution could not prove that the building was there legally, hence whatever happened to the foundation of storey building belonging to complainant was legal. Prosecution's proof was too low or didn't meet the required standard for conviction, hence on Count one (1); **CAUSING UNLAWFUL DAMAGE CONTRARY TO SECTION 172 (1) OF 1960 (ACT 29)**, all the three Accused persons are acquitted and discharged forthwith.

Count two (2) – CAUSING HARM CONTRARY TO SECTION 69 OF 1960 (ACT 29) –
Against 2nd & 3rd Accused persons (A2 & A3).

Section 69 of Act 29/60 – “Whoever intentionally and unlawfully causes harm to any person shall be guilty of Second Degree Felony.

Accused persons involved in the case (A2&A3) have alleged to have been accompanied by a police officer to identify the complainant for him to be arrested by the police officer in respect of a case lodged with the police against the complainant.

Counsel for Accused persons tried to find some inconsistencies in the statement of the complainant, praying to the court to dismiss that allegation – **KOTEY V THE STATE (1 GLR 41 SC)**

Prosecution's case was full of discrepancies which went to the root of the identity of the Accused persons and therefore gave rise to a reasonable doubt as to the accuracy and truth of the testimony of witness"

Counsel for Accused persons tried as much as possible to take the court through series of statements made by the complainant himself especially in what actually happened on that day – eg whether or not complainant was harmed with a knife, medical report and pictures submitted in evidence whether those injuries were inflicted on complainant by Accused persons etc, but short of denying that;

2---A1 chased him (complainant) and held him, preventing him from entering the hall -
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(1) They went to the scene with a police officer to effect arrest.

(3) The fact that complainant got injured as a result of the struggle

Accused persons went to the locus in quo with a police officer to effect arrest of the complainant. On seeing complainant at the scene, A1 chased the complainant preventing his free movement and a struggle ensued. A1 according to his side of the story, disarmed the complaint of a knife and stick-picture in evidence where A1 was holding the knife. A1 being the architect of the whole alleged crime, initiated the violence and was seen with a knife was not charged for causing unlawful harm, but A2 and A3 who denied their involvement in the struggle are facing that charge. Complainant alleged of knife wounds, where A1 was seen in the picture with the custody of the knife.

Nowhere in the facts or the evidence led in court showed that A1 gave the knife to either A2 or A3 to inflict the injury on complainant. A2 and A3 denied their involvement in the struggle that other witnesses also corroborated same. A1 is more likely to inflict the knife injuries on the complainant than A2 and A3, because at all material time, after getting custody of the knife, he (A1) was on full control of the knife. A2 and A3 could not have done so. The nexus between A2 and A3 on the crime of causing unlawful harm to the complainant is too weak. A1 has confirmed even by his own evidence that he was in possession of the knife after complainant being disarmed of same and also had struggle with the complainant and surprisingly he (A1) was not charged for causing unlawful harm. Therefore, A2 and A3 are acquitted and discharged of Causing Unlawful Harm, contrary to section 69 of Act 29/60

Count three (3) – Abetment of crime contrary to section 20(1) of Act 29/60 was struck out by the court when the court was dealing with submission of no case to answer.

COUNT FOUR (4)

STEALING CONTRARY TO SECTION 124(1) OF CRIMINAL OFFENCES ACT, 1960

(ACT 29) – For A2 only;

Section 125 of Act 29/60 – “ A person steals if he dishonestly appropriate a thing of which he is not the owner.” **In AMPAH V THE REPUBLIC (1977) 2 GLR 171 – CA –** The Court identified elements of stealing as (i) **DISHONESTLY**, (ii) **APPROPRIATION** (iii) **PROPERTY BELONGING TO ANOTHER PERSON.**

SEC 122(2) OF ACT 29/60.

Appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that some person may be deprived of the benefit of his ownership, or of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any point thereof.

The story of A2 corroborated by other witnesses is that, a certain small boy gave the phone to him, and he picked it from the locus in quos. He tried looking for the owner but to no avail. He was later called by the police that they have heard the Nokia phone was in his possession, he quickly sent the phone to the police and was subsequently charged for stealing . the only reason why A2 was charged for stealing is that, the phone was found in his possession. Also there is no clear evidence to contradict the evidence led by A2 and other corroborators to the effect that, the phone was handed over to him by a certain small boy. The court then took the evidence led by A2 as the truth of the matter.

EXPLANATION AS TO STEALING OF THING FOUND – Section 127 of Act 29/60

127 – A person who appropriates a thing which appears to have been lost by another person is not guilty of stealing it, unless –

(a) at the time of appropriating it, he knows who is the owner of the thing or by whom it has been lost, or

(b) The character or situation of the thing, or the marks on it, or any other circumstances is or are such as to indicate the owner of the thing or the person by whom it has been lost; or

(c) the character or situation of the thing, or the marks upon it, or by other circumstances is or are such as that the person who has lost the thing appears likely to be able to recover it by reasonable search and enquiry if it were not removed or concealed by any other person.

A lost property (NOKIA phone) found by a certain small boy, given to A2, the prosecution could not convince the court that A2 falls under any of the exceptions found in section 122 of Act 29/60 from (a) to (c), that will convince the court to convict A2. Prosecution therefore could not meet the standard of proof in criminal law – Proof beyond all reasonable doubt. A2 therefore acquitted and discharged of stealing a NOKIA Phone belonging to the complainant.

DECISION:

ACCUSED PERSONS ACQUITTED AND DISCHARGED OF ALL THE COUNTS AS CHARGED.

(SGD)
H/H. SAMUEL BRIGHT ACQUAH
CIRCUIT COURT JUDGE