

THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST CENTRAL REGION  
ON TUESDAY 24<sup>TH</sup> DAY OF JANUARY, 2023 BEFORE H/H DORINDA SMITH  
ARTHUR (MRS.), CIRCUIT COURT JUDGE.

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SUIT NO. 279/2021

THE REPUBLIC

VRS

EMMANUEL KINGSLEY NORMAL

**JUDGMENT**

The Accused persons were arraigned before this court on July 07, 2021 for the offences of Conspiracy to commit crime namely Causing Unlawful Harm and Causing Unlawful Harm Contrary to Sections 23(1) and 69 of The Criminal and other Offences Act 29, 1960.

The accused persons pleaded not guilty to the charges preferred against them for which reason the prosecution assumed the burden of proof and must prove the charges against the accused persons beyond reasonable doubt in accordance with

**Section 11(2) of the Evidence Act 1975 NRCD 323 states;**

*“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 will find the existence of the facts beyond reasonable doubt.”*

Further, **Section 13(1) of NRCD 323** provides that the standard of proof is nothing less than proof beyond reasonable doubt no matter the offence charged.

See the case of **AMPABENG VRS REPUBLIC [1977] 2 GLR 171 CA**

### **THE PROSECUTION CASE**

The summary of prosecution evidence is that the complainant (PW1) is a farmer and on 22/08/2020 he went to his family land to search for herbs with his son (PW2). Upon reaching the land they saw a group of gangs numbering about fifteen to twenty holding cutlasses and sticks together with tape measure and a form of gallon in a polythene bag. They asked him what he was doing on the land and he told them he is on his family land so they told him the land belongs to Nana Kotonpo. According to him one guy slapped his son so he quickly run away leaving his son behind and hid somewhere to watch the scene. They started beating his son with the sticks and the cutlasses so he rushed home and told people. The elders told him to report the matter to the police whilst they also would go to the land. He received a phone call when he was at the police station that his son was at the hospital. He went to the hospital to look at his condition and he reported back to the CID. He caused photographs to be taken of his son and the police also saw a gallon containing patrol when they went on the land.

PW2 repeated PW1 evidence and added that PW1 suggested they return home but the group started to attack them so his father run away but they got hold of him and started beating him. He said he fell unconscious and realized that he was at the hospital the next morning.

PW3 is a prison officer stationed at Ankafu main camp Prison. He said on 22/08/2020 he went to Abura Academy area for construction work with one of his senior officers

PW4 and eight prisoners. They heard noise of a group of people so he drew the attention of his senior man and went to the scene with one of the prisoners. He saw a group of about fifteen people beating a youngman with sticks and some were beating him with their bare hands whilst others were pulling him down the hill so he shouted and stopped them. He confronted them and asked why they were beating the young man and some said someone called to inform them that a young man and someone have attacked their workers on the land with pepper spray and upon reaching the scene they saw the young man and started beating him. According to PW3, the young man then said he pleaded with him that he is not the one and not a bad person but they did not listen to him and started beating him up. He said PW2 was severely butchered with cutlasses and blood was coming out from his nose and mouth. He asked them about a weapon PW2 was holding but they could not produce same and ordered them to send PW2 to the police station.

PW4 was with PW3 and eight prisoners and he corroborated the evidence of PW3 but added that he saw a bicycle there and one guy also holding a yellow gallon containing liquid he suspected to be petrol. He continued that the group of about fifteen people were dragging PW2 on the ground and so they shouted at them to stop. He added that one of them informed him that the regional commander is aware of what is going on there and that he was with one of their Ebusuapanyin at that time. They were able to stop the beatings and decided to take PW2 to the police station but A1 told them to send him rather to the Ebusuapanyin's house. On their way to the residence one young man suddenly told them that the Ebusuapanyin said they should not bring him there else some of the men will kill him. He then decided to send PW2 to the police station but PW2 requested he send him rather to the hospital. He chartered a taxi and sent him to the hospital and at the hospital he called one of the family members. He waited till that person came before he left to continue with his duty.

PW5 is police detective stationed at RCID and he tendered in evidence the investigation caution and charged statements of accused persons, photographs of the crime scene, photographs of PW2 and his injuries, medical report, record of proceedings from District Court 1 Cape Coast, ADR settlement, charge sheet from the District Court in the case of The Republic v Emmanuel Aidoo and 3 ors, Judgment from the Circuit Court dated 31<sup>st</sup> January 2019 in the case of The Republic V Nana Agyare Kotompo III and 6 ors, charge sheet with brief facts in the case of The Republic V Nana Agyare Kotompo and 6 ors and a copy of a Petition dated 26<sup>th</sup> August 2020 addressed to the Chief Justice of Ghana.

## **THE DEFENCE**

A summary of Accused persons and their witnesses are that:

A1 testified that he trades in fish so that day he went to supply fish to one Efua Ntipe and two other women. He said he was asleep around 4am when three people entered his room and one policeman asked one of them whether I am one of them and that person responded in the affirmative. So he was taken away to the police station and he gave Efua Ntipe and one Esther's name to the CID that that day he went to supply fish to them.

DW1 Esther Acquah testified that A1 supplies her meat and chicken and on that day, it was a Saturday and he supplied her some chicken.

A2 testified that he knows PW1 but not PW2. He said he was asleep around 3.30am when he heard a knock on his door and someone saying police so he opened the door and he was taken to the police station and he met PW1 who narrated the incident to the

police and added that the case happened on Saturday but he goes to church on Saturdays. He said he attends Theocracy so when the police asked him he mentioned he gave his church elder's contact to the police.

DW4 testified that he is a consultant in Agriculture and A2 is his church member as he is the leader of the branch. He said on 22/08/2020, A2 came to church from morning till evening. They had a regular service as they started the service from 8.30am and closed at 5pm.

A3 testified that he is a driver and was coming from Academy heading towards Abura when he met a man who started talking to him. He was there when someone came out of a car and started beating him and put him in the vehicle. He was sent to UCC police station and kept there for three days. After three days the investigator and told him that he has assaulted PW2 with others but he was at Takoradi for a funeral. He told the investigator that he stayed with his uncle at Takoradi so the investigator asked for his uncle's number and he told him that he does not have his number.

A4 testified that he is a tricycle rider and was at Takoradi on the 22/08/21 as he was visiting his brother. He said he sometimes visits his brother at Takoradi for awhile as he had no job offer after school. He was there and later returned to Cape Coast and that was when he heard of the case involving some of the family members but he was not there. According to him his Uncle Kotompo sometimes comes to court so he hold his bag. So he attended court with him in the court complex and someone pointed at him so the police approached him and the person wrote his name on a sheet of paper insisting he is part of the people even though his name was not on the list. He was arrested and taken to the police station.

A5 testified that he is a chain saw operator and also trade in lumber. He said he was at Shama junction leading to Adansi on the day of the incident. He said he came to Abura

to visit his mother who was not well. After the visit he got some food stuffs and returned to Shama junction. He was operating there but they run out of foodstuffs. He received a call from his wife who told him that his nephews have been arrested at Abura so he should come down. He returned to Abura the following day and his mother informed him of the case. He was later arrested.

DW2 testified that A5 is his father and he travelled with him to Takoradi. He said he was with him when they run out of food so he went to buy some and on his return he was told by his mother that his nieces have been arrested but his mother could not tell him what they did so they returned to Cape Coast the next day.

A6 testified that he is unemployed and on 22/08/20 he was in Accra and know nothing about the case. He said he was arrested three days after he returned from Accra when PW1 came to the house with a police officer and pointed at him.

DW3 testified that A6 is her father and he visited her at Tema on 21/08/2020 to 23/08/2020.

## **EVALUATION OF EVIDENCE, FINDING OF FACTS AND APPLICATION OF LAW**

Section 11(2) of the Evidence Act provides for the burden of producing evidence and here prosecution is to produce sufficient evidence so that on all the evidence as produced, a reasonable mind will find the existence of the facts beyond reasonable doubt.

In determining what is proof beyond reasonable doubt, our courts generally rely on the definition of Lord Denning in **MILLER VRS MINISTER OF PENSIONS** [1947] AII

**E.R. 372 AT 374.** In short the evidence that the prosecution adduced in proof of the charges must preclude every reasonable hypothesis except those which tend to support the charges. Conversely, the accused persons only need to adduce evidence which raises reasonable doubt as to their guilt.

Accused persons are charged with two offences being Conspiracy to commit crime to wit: causing unlawful harm and causing unlawful harm.

Conspiracy is defined under *Section 23 (i) of the Criminal Offences Act, 1960*. It states as follows:

*“If two or more persons agree or act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime as the case may be”.*

The Prosecution was thus expected to establish the following ingredients:

- 1. That there must be two or more persons.**
- 2. That the persons must either agree or act together.**
- 3. That they held a common purpose and;**
- 4. That the common purpose must be either to commit or abet a crime.**

To satisfy the ingredients, the Prosecution led evidence through five witnesses whose testimony established that accused persons with other persons who are on the run in common purpose acted together and attacked PW2, beat him up mercilessly where he sustained injuries till he was rescued by PW3 and PW4 who took PW2 to hospital.

In the case of FRANCIS YIRENKYI V. THE REPUBLIC [2017-2018] 1 SCGLR 433, the Supreme Court held that conviction could be obtained by the establishment of any of the three ingredients under Section 23(1) of Act 29 and reiterated as follows:

“However, under the new formulation, the offence of conspiracy could be established by only one ingredient namely the agreement to act to commit a substantive crime, to commit or abet that crime. The effect therefore was that the person must not only agree or act, but must agree to act together for common purposes.”

On the ingredient that the persons must act together, PW1 in his testimony narrated how he was with PW2 on that day. They went on his family land for herbs but met accused persons with others about fifteen to twenty people who questioned them as to what they were doing on the land. They replied that the land is their family land and by that one person who PW1 identified as A3 slapped his son (PW2) first and others joined in and started beating him with sticks, bear hands and cutlasses. He managed to run away but PW2 was caught and he hid somewhere to watch the happenings until he thought PW2 was dead that he run to his family home and reported.

In the case of ADU BOAHENE V THE REPUBLIC (1972) 1 GLR 70, the Supreme Court held inter alia that

“ where the identity of an accused person is in issue there can be no better proof of his identify than the evidence of a witness who swears to have seen the accused committing the act.” See also RAZAK & YAMOAHA V THE REPUBLIC (2012) 2 SCGLR 75 where it was provided that prosecution to lead evidence to identify that accused person is the one who committed the offence.

The evidence of all prosecution witnesses indicated that accused persons were together on that day with others and they all beat PW2 and dragged him on the ground. It is noted that only six people out of about fifteen to twenty people were arrested and charged. Under cross examination PW1 answered among others the following questions:

Q. So you know A1 to A6

A. Yes, I know them.

Q. None of these people slapped your son (PW2) that day.

A. It was A3 who first slapped my son and others joined with more people also attached him beating him.

Q. I suggest to you that because of the larger number of people, you could not have identified all.

A. Even as I stand here if I should see any of them I can identify them, those who are not here.

Q. So when you went to the police station, you could not give the names of all because you do not know all their names.

A. Those here were among the names I mentioned to the police but the rest are not here.

Q. So the real culprits have not been arrested.

A. The real culprits are here but some of them have not been arrested.

Q. You mentioned their names because they belong to the side of Nana Kotompo.

A. I mentioned their names because of what they did not me and my son and not because of anything. They committed the offence even though they may be on the side of Nana Kotompo.

The evidence of PW1 show that all the six accused persons including others acted together to beat PW2 and they did beat him and caused harm to him. This evidence is corroborated by PW2 who was the victim and others. PW2 confirmed that he knows all six accused persons as they all live in one vicinity and was able to identify them as he saw them when they spoke with him and when they beat him up. PW2 answered this question as follows:

Q. Those you saw did not include these six people.

A. No, they were all part and they know me very well and I also know them.

The answer of PW2 corroborates that of PW1 and even PW3 and PW4 as to the number of people who acted together to cause harm to PW2.

Moreover, PW1 and PW2 from their evidence did not find it difficult to identify the accused person as according to them they know accused persons well. This is seen in the manner and way A6 was identified by them to the police on the court premises for him to be arrested. PW5 answered among others the following questions:

Q. You know for a fact that PW1 left the scene immediately so he did not watch the whole thing.

A. When accused persons started beating the son, he went and hid and saw everything before running to the police to lodge a complaint. So he knows them.

Q. If that was the case that PW1 knows them all he will not have waited until A6 comes to court before he will be identified.

A. PW1 gave A6's name to the police and others and he was wanted by police that is why we have thirteen accused persons' names on the docket.

From PW5, the names of all accused persons had been given to them already and it was only left for the accused persons to be identified by PW1 and PW2 for their arrest. Such was the case when A6 was in court and he was identified and arrested. Indeed, from the docket we have thirteen names. Seven accused persons were arrested, A7 jumped bail and the rest appeared in court for the trial.

Therefore, prosecution could successfully prove the charge of conspiracy to commit a crime namely causing unlawful harm beyond reasonable doubt against accused persons.

Having so held, I turn to the last charge which is causing unlawful harm.

**Section 69 of Act 29, Criminal offences 1960** provides that: *"a person who intentionally and unlawfully causes harm to any other person commits a second degree felony.*

In order to ground a conviction, the prosecution would have to lead sufficient evidence beyond reasonable doubt that the accused persons;

- Intentionally caused harm to PW2.
- That the act was unlawful

What then is harm?

Harm is defined under the interpretation **Section of Act 29, 1960 Section 1** to be;

*"harm" means any bodily hurt, disease, or disorder, whether permanent or temporary."*

Here, prosecution is to prove beyond reasonable doubt that whatever happened to PW2 was harm which can be any bodily hurt, disease, disorder whether permanent or temporary

Here, a burden is cast upon the prosecution to prove each and every one of the above two ingredients beyond a reasonable doubt that the accused persons with intent to harm PW1 attacked him with a slap first then beat him with sticks, bear hands, cutlasses, and dragged him on the ground.

The photographs, medical record, and evidence of all prosecution witnesses corroborate the evidence that PW2 was harmed badly. The extent of harm can even be ascertained by just looking at the photographs. However, the medical report from the medical doctor provides that PW2 sustained the following injuries:

1. 6cm by 2cm deep laceration on fronto-parietal region of the scalp
2. 2cm by 0.5cm puncture wound on the media aspects of the right knee with bleeding and tenden involvement
3. Swollen big toe on the right foot with abrasions
4. Puncture wound at the right intergluteal region of the gluteal region
5. Swelling and tenderness at the lumbosacral region
6. Laceration were sutured, imaging of hand show no fractures
7. Client was in pain and bleeding

The aforementioned injuries as listed by the medical doctor were not contested or discredited by accused persons. As earlier indicated, the photographs confirm the

various injuries sustained by PW2 as a result of the beatings and dragging of PW2 on the ground by accused persons. Counsel for APs asked the following questions:

Q. When the incident occurred you claimed you run quickly from the site.

A. Yes, I run away but not until I had seen enough but I hid somewhere to watch the happenings.

Q. So how many minutes did the incident last.

A. About an hour.

From the answer given by PW1, he saw clearly what happened to PW2 before he left the scene and run for help.

I hereby find as a fact that PW2 was harmed by accused persons without his consent and caused bodily harmed to him making him suffer pain and bleeding.

Further, prosecution is to prove that the harm caused to PW2 was done intentionally by accused persons.

The provisions relating to intent is given under **Section 11 of Act 29/1960. Subsection (1)** provides that:

*(1) If a person does an act for the purpose of thereby causing or contributing to cause an event, he intends to cause that event, within the meaning of this Code, although either in fact or in his belief, or both in fact and also in his belief, the act is unlikely to cause or to contribute to cause the event.*

Also, the learned author **P.K. Twumasi in his book Criminal Law in Ghana p77** stated that:

“The general principle of our law is that intention, like many other states of mind, is incapable of direct proof; it is always inferred from proven facts. This is a principle of English common law which has been accepted as an important principle of our criminal law.”

Here, intention can only be inferred from the proven facts where prosecution has to prove that the accused persons’ actions caused harm to PW2 whether he believed or not that their actions would cause such harm.

It is noted that accused persons harmed PW2 because they did not want him on the land. They questioned PW2 and PW1 their reasons for being on the land and they beat PW2 mercilessly. Here, the intentions of accused persons are so clear as the unlawful harm occurred because of accused persons intention to get rid of him from the land. PW3 gave a vivid account of what he saw with his own eyes when he offered help to PW2. Under cross examination, he answered among others the following:

Q. I put it to you that none of the six accused persons here were at the site that day.

A. I am not here to identify the accused persons but I am here to testify to what I saw and the help I offered to the victim...

Q. In your own estimation how long did the incident last?

A. I cannot tell when the incident started but we heard the noise and cries for help and quickly rushed there. When we got there the victim had been beaten up badly and they were dragging him on the ground. But the time we went there can be about fifteen to twenty minutes before stopping them.

The answer provided by PW3 a prison officer who is in no way connected to the victim or complainant show how badly PW2 had been beaten up by accused persons. Also from PW4 provided these answers:

Q. None of these accused persons was at the site that day.

A. No, I cannot identify them.

Q. That day when you saw the victim, he had been severally beaten but was he conscious?

A. Yes, he was severally beaten but when we got there he was not conscious.

Q. So, it is not true that he was unconscious because he called his father to come and he did.

A. He was unconscious but not the whole day.

Here again, the answer show that PW2 was beaten up badly that he became unconscious. This evidence corroborate that of PW2 that he became unconscious through the beatings.

Even though PW4 indicated that he could not identify the accused persons, it is in no way saying that accused persons are not those who caused harm to PW2. This answer supports that of PW3 that he was not in court to identify accused persons but to testify as to the help he offered to the victim. Besides, from PW1 and PW2, accused persons are well known to them as they are from the same vicinity so they were able to not only identify them but to provide their names to the police for their arrest. It is noted also that it was PW1 and PW2 who took the police to accused persons' homes for their arrest.

So was the harm reasonably foreseeable by the accused persons?

Any reasonable man can come to but one conclusion that if a person is slapped, beaten up with sticks, cutlasses, bear hands, and dragged on the ground that person will be hurt or harmed. Especially so as PW2 was attacked by about fifteen to twenty persons which made him lose consciousness. This presupposes that accused persons knew that their actions can cause harm to PW2 to deter him or any other from coming on the land. I cannot ignore that from the evidence it was established that accused persons are all related to one Nana Kotompo who has been litigating people for these lands. This evidence is supported by exhibit F being a judgment from the Circuit Court, Cape Coast in the case of *The Republic v Nana Agyare Kotompo and 6 ors.* In that case Nana Kotompo rallied others and attacked people and injured them when they went on the land. The charges were of assault so three of the accused persons who are also accused persons in this case were made to execute a bond to be of good behavior for six months after the court found them guilty.

Furthermore, PW5's evidence indicated that he is aware of such lingering land issues. He mentioned that accused persons informed them that the regional commander was aware of the current incident and that he was with their head of family as they beat PW2. However, they did not allow PW2 to be sent to that head of family to meet with him and the commander so it is difficult to ascertain whether the regional commander was actually with the head of family.

Nevertheless, exhibit G2 which is a petition to the Chief Justice of Ghana where the Regional Commander was copied among others sought to report the illegal activities of Nana Kotompo and his land guards at Abura who were assaulting innocent citizens with cutlasses, metals and sticks.

It is safe for the court to infer that the harm caused to PW2 was unreasonable and intentional on the part of accused persons.

I therefore find as a fact that accused persons reasonably foresaw the harm they caused to PW2.

The next issue is whether or not the act was unlawful. This indicates the availability of defences of justification such as self-defence and consent of the complainant of that harm.

**Section 76 of Act 29 Criminal offences Act 1960** defines unlawful harm as:

*“Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Chapter one of this part.”*

At this stage, the evidence of defence is determined by the court to see whether it satisfies any of the justifications mentioned in the Act or whether the evidence adduced by accused persons and the witnesses raise a reasonable doubt in prosecution’s case.

Under the Evidence Act supra what is generally called the burden of proof has two elements. They are the burden of persuasion and the burden of producing evidence. Here, the two are not the same. The burden of persuasion as provided in Section 10 of the Act involves the establishment of a requisite degree of belief concerning a fact in the mind of the court; or that the party raises a reasonable doubt concerning the existence or non-existence of a fact, or that the party establishes the existence or non-existence of a fact. This burden is on both the prosecution and the defence.

Here, it is for accused persons to adduce credible corroborative evidence to either discredit or raise a doubt in prosecution’s evidence.

The evidence of all six accused persons were attempts of pleading alibi at this stage of the hearing when prosecution had testified and a prima facie case had been established. It is noted that counsel for accused persons after the case management conference pleaded alibi but same was dismissed for lack of evidence and witnesses. However, all the evidence of accused persons with their witnesses were to the point that accused persons were not around at the time of the commission of the crime.

Conversely, the evidence of all accused persons and their witnesses were collapsed during cross examination. This is because the evidence of accused persons' witnesses contradicted the evidence of accused persons.

A1 testified that he trades in fish so that day he went to supply fish to one Efua Ntipe and two other women. However, DW1 Esther Acquah testified that A1 supplies her meat and chicken and on that day, it was a Saturday and he supplied her some chicken. Under cross examination A1 answered among others the following:

Q. After the conclusion of the CMC and the date was fixed for hearing, you pleaded alibi. Right?

A. I do not know anything of that sort. I never said so.

Q. Are you now saying to the court that you did not plea alibi in this court.

A. No, I did not plea any alibi and did not give any statement like that. It was my lawyer who may have said so.

Q. I put it to you that the plea of alibi you mentioned, the court ordered for the investigation and you were served with copies.

A. Everything lies with my lawyer. (He kept looking for clues from his lawyer)

Clearly from his answer, he did not plea alibi as same was explained to him in his language and yet he insisted that he did not do so and that it was his lawyer who did that.

Later, he was asked:

Q. There are some days you feel weak so you did not go to work.

A. I operate my business at home so I am always at my work place at home.

Then later.

Q. You just said to this court that you are always at home and you do not go out as your home is your work place.

A. That is not what I said. I said I go to supply and return back home to sell.

The answer he provided for the later question discredited him as a credible witness as he clearly answered earlier that he does not go out. It was noted that throughout his questioning, he was not truthful as a witness. Prosecution asked him about his other names and he provided that he is also known as Kweku Dadzie. Prosecution from his question was of the view that he has been changing his name anytime he gets arrested. Hence the following question was asked among others:

Q. I am putting it to you that if you are to be arrested tomorrow you will use Kweku Dadzie and not Emmanuel Kingsley Normal.

A. It is also my name.

His answer above confirmed that he has been changing his name anytime he gets arrested and it also confirmed that A1 is not credible.

In any case his witness Esther Acquah, DW1 discredited his evidence and could not corroborate his evidence. The following questions are considered with others:

Q. When he brought the meat he did not keep long.

A. Yes he did not keep long.

Q. So the remaining time of the day you did not know his whereabouts right.

A. Yes.

Q. And where he came from before he came to supply you meat, you did not know right?

A. Yes, I do not know where he was. We are three and he supplies all of us meat.

Q. So you agree with me that if he goes to beat someone he will not come and tell you that he had beaten someone before coming to sell goods to you.

A. Yes, he will not tell me.

The next accused person is A2 and he testified that he was asleep around 3.30am when he heard a knock on his door and someone saying police so he opened the door and he was taken to the police station and he met PW1 who narrated the incident to the police and added that the case happened on Saturday but he goes to church on Saturdays. He said he attends Theocracy so when the police asked him he mentioned he gave his church elder's contact to the police.

The evidence of A2 contradicted his caution statement he gave to the police and same was brought to his attention of which he admitted. His contradiction discredited his evidence. See STATE V OKYERE (1963) 2GLR 463, it was held that a witness whose

evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn, is not worthy of credit.” Also see BUOR V THE STATE (1965) GLR 1,SC

A2 answered among others these questions:

Q. And that same statement was filed in court and a copy was given to you. Right.

A. Yes.

Q. But what you just said was not captured in your statement. Right.

A. What was not included is the name of my brother and friend. Also, the church elder’s name was not included only Joseph Amaro.

Q. And you have just confirmed that what you told the investigator is the one that was captured.

A. Yes, what I told him is exactly what was interpreted to me.

Later he answered that he knew where all the accused persons were on that day.

Q. So you knew where all the other accused persons were on that day right. They were all with you.

A. Yes.

This answer and others informed the court that accused persons were together on that day else A2 would not have known where all of them were as he clearly answered.

Then:

Q. You are aware that you were bonded in one of such cases.

A. Yes, but that occurred in 2018. We were all bonded because the Judge warned us not to fight at the place for six months.

Q. You are also aware that after that you went to fight again and the case was taken to District Court.

A. Yes.

A2's answer corroborate that of prosecution evidence that all accused persons have been involved in assaulting and injuring persons for Nana Kotompo as captured in PW5's evidence and exhibit G2, the petition.

DW4 testified for A2 and said that on 22/08/2020, A2 came to church from morning till evening. They had a regular service as they started the service from 8.30am and closed at 5pm. Under cross examination he was so discredited that no court can put any weight on his evidence. These are some of the questions:

Q. And you agree with me that the incident might have happened before A2 attended church right.

A. Yes, it is very possible.

Q. Do you keep a register.

A. No

Q. But it was during the covid-19 era where all churches were by law mandated to keep a register of attendees with their contact details.

A. It is true but we did not keep a register.

Q. Are you aware that you were not to have had more than twenty members?

A. Yes.

Then later.

Q. The question is how did you know that A2 attended church that day.

A. Some of the deacons said they saw him at church that day.

Q. In your E.I.C you said A2 attended church from 8.30am to 5pm. How did you arrive at that.

A. I was only mentioning the duration of the church service.

Q. So you cannot tell whether A2 participated in the church service from 8.30am to 5pm. Right?

A. Yes, I cannot tell.

Q. And you are saying you did not see him but someone informed you. Right?

A. Yes.

The witness for A2 admitted that he did not see A2 at church that day and that he only came to state the normal duration of their church service. He was informed by a deacon and he cannot tell when he came to the church if at all he did. DW4's evidence discredited the evidence of A2.

A3 testified that he was at Takoradi for a funeral. He told the investigator that he stayed with his uncle at Takoradi so the investigator asked for his uncle's number and he told him that he does not have his number. His evidence was also discredited under cross examination. A3 answered among others the following questions:

Q. Can you remember the name of the person you gave to the investigator as your uncle?

A. I did not give his name and only mentioned he is my uncle.

Q. Akwasi Addai is your uncle that you are talking about. Is that right

A. No, he is my brother.

Q. And you remember he is the one you mentioned to the investigator as the one you were with at Takoradi.

A. Yes, he is the one I stayed with at Takoradi.

Q. But you just said you stayed with your uncle.

A. Yes.

Q. And you also said you did not give the investigator any name.

A. I did.

His also attempted to testify that he was somewhere with someone but same failed and his evidence was totally discredited.

Then later.

Q. Tell the court what made you sign a bond at the District Court. What was the charge.

A. In that case too it was an allegation of us beating someone.

The case is in evidence and he was convicted with others for assault.

A4 testified that he is a tricycle rider and was at Takoradi on the 22/08/21 as he was visiting his brother. He said he sometimes visits his brother at Takoradi for awhile as he had no job offer after school. He was there and later returned to Cape Coast and that was when he heard of the case involving some of the family members but he was not there.

A4 contradicted his evidence under cross examination which was so clear that his evidence in chief was not factual but an afterthought. He could not inform the police

who is visited at Takoradi and did not provide the contact number for police to verify from that person. He did not call a witness. He answered among others the following:

Q. And you were not able to lead the police to contact the person. Is that not so.

A. It is true

Then later.

Q. You said in your E.I.C. that when you returned from Takoradi you heard of the incident involving some of your family members. Can you tell the court the names of those family members?

A. I do not know any of the family members who were involved. I was in my room and heard of it being said outside. I did not see anyone when I came out.

Q. So you were in your room when it happened right.

A. Yes.

Q. And so you were not at Takoradi.

A. Not so.

Q. You were in your room and heard so why did you come out

A. When I came out the person had stopped saying and I waited for awhile but I did not see anyone. I went inside.

Q. So you came out and you did not see anyone but you also said you came out and they stopped talking. Which is which?

A. I heard it from my room but I did not see anyone when I came out. I waited for awhile and did not see anyone. I think it is not my family members.

Q. So you know those who beat John Essel but you are saying they are not your family members

A. I cannot tell.

It was painful listening to the answers of A4 as he lied through his teeth to the court. He gave his evidence in chief that he was visiting his brother at Takoradi when the incident occurred and later under cross examination, he said he was in his room and he overheard people mentioning it. When prosecutor asked him to confirm that he was in his room, he did so and added that it was not his family members who committed the offence even though in his evidence in chief he mentioned that some of his family members committed the offence. He refused to mention the names of the family members and later said it may not be his family members.

DW2 corroborated the evidence of A5 in his evidence in chief that A5 is his father and he travelled with him to Takoradi. He said he was with him when they run out of food so he went to buy some and on his return he was told by his mother that his nieces have been arrested but his mother could not tell him what they did so they returned to Cape Coast the next day. However, under cross examination he dismantled their evidence. These are some of the questions:

Q. Can you tell the court how many years the case has lasted?

A. No.

Q. What day did the incident happened.

A. I do not remember.

Q. What day of the week Monday to Sunday.

A. I do not remember.

Q. What day did you return to Cape Coast.

A. I do not know

Q. When you went to Takoradi Forest how many days did it take for your food to get finished.

A. It took two weeks.

Q. It was in which month

A. I do not remember the month.

Q. You do not remember the month, the date or day so your evidence can be for any month, any day or date. Right.?

A. Yes

The court can safely infer from the answers given that DW2 was coached to testify for his father. He could not give any correct answers to any of those easy questions because his evidence was not real.

A6 testified that he is unemployed and on 22/08/20 he was in Accra and know nothing about the case. He said he was arrested three days after he returned from Accra when PW1 came to the house with a police officer and pointed at him.

Q. He wrote the statement you gave and explained same to you right.

A. Yes, he read it out and explained it.

Q. You agree with me that your evidence today is different from your statements you gave right.

A. I do not agree with you.

Q. You remember you just admitted in this court that your statement was read over and explained to you.

A. I did not sit with Nana when I returned and it is not what I said.

Then later

Q. You are again aware that he lost all his suits in court.

A. It is not true, he won all the cases.

Q. So you can produce any document to prove that he won all the cases.

A. Yes, I can bring some tomorrow.

Next adjourned date.

Q. But all the judgments you have brought show that he lost the cases.

A. I did not know.

Q. But in your own document the defendant lost the case.

A. I think so.

DW3 testified that A6 is her father and he visited her at Tema on 21/08/2020 to 23/08/2020.

Her evidence which is about one sentence contradicted that of her father. She lives at Tema and even though Tema is in the Greater Accra Region, if A6 truly visited his daughter around that time, he would have said Tema and not Accra. DW3 could not also provide credible answers under cross examination and the answers given collapsed the evidence of A6 even though A6 himself had already being discredited through cross examination. These are some of the questions:

Q. You remember on 02/09/20 someone called you and told you he is a detective inspector. Do you remember.

A. I remember but I cannot remember the date he called.

Q. You also remember the exact words you told him. Right?

A. No.

Q. Then I put it to you that you told the investigator that your father visited you but you could not remember the dates he visited.

A. Yes, I said that to him ...

Q. How many days did your father stay with you.

A. Three day.

Q. But you earlier said he was with you on the 21<sup>st</sup> August and 22<sup>nd</sup> August and he left on 23<sup>rd</sup> August.

A. Yes, he left on 23/08/20

Q. So you agree with me that if he left on 23/08/2020 then he was not there for three days

A. Yes.

Q. What was the purpose of your father's visit.

A. I had delivered so he came to visit me for the naming ceremony.

Q. How many days did you use for the naming ceremony?

A. One day, the Sunday.

Q. So your father left before the naming ceremony

A. Yes

Q. It was that 23/08/20 that you did the naming ceremony.

A. Yes.

Q. You said your mother-in-law had visited you.

A. Yes.

Q. So did your father sleep with your mother-in-law?

A. No

I find as a fact that all six accused persons and their witnesses were discredited during cross examination. I also find as a fact that their attempt of pleading alibi or leading evidence to prove that they were either with someone or somewhere on the of the incident was collapsed. In any case alibi can only be entertained or sustained by the court at any time before the examination of the first witness for the prosecution. It is noted that counsel for the accused person pleaded alibi and same was dismissed after investigation as they could not provide the witnesses to prove that they were elsewhere at the material time. See section 131 of the Criminal and other Offences Procedure Act, 1960.

I then deal with the issue of whether or not the harm caused was unlawful. Sections

Section 31(e) Act 29,(1960) states:

**“Force may be justified in the case and in the manner, and subject to the conditions, provided for on the grounds;**

**(e) of necessity for the prevention of or defence against a criminal offence(See also section 37 of Act 29, (1960)."**

**Section 174(5) of Act 29, (1960) also states:**

**"Despite anything contained in Part One as to mistake of law, a person is not liable to punishment in respect of doing a thing which that person in good faith, believes to be entitled to."**

The combined effect of **Sections 31(e) and 174(5) of Act 29 (1960)** is that if the accused persons could show that they acted with just cause and in good faith, they would not be liable for punishment and would not have then acted unlawfully.

**Also Section 39 of Act 29 is in the following terms;**

**A person may justify the use of force for the defence of property or possession, or for overcoming an obstruction to the exercise of a legal right, where**

**(d) A person may use force that is reasonably necessary for overcoming an obstruction or a resistance to the exercise by that person of a legal right.**

In the light of the above the accused did offend **Section 172 of Act 29**. This is because according to prosecution, accused persons could not prove that the land they found PW2 and PW1 on belong to them. Prosecution was able to prove beyond reasonable doubts with judgments from the courts and same was corroborated by judgments which were tendered in evidence by A6 that Nana Agyare Kotompo whom they all have allegiance to cannot be the owner of those lands. They did not have a legal right to be on the land and they did not have a legal right to protect that land.

Therefore, the court can safely infer that the accused persons are not justified in their use of force and they did not also act in good faith. The court finds as a fact that accused persons caused harm to PW2 unlawfully.

It is noted that from prosecution evidence a gallon of patrol was found with the APs on the land and it makes one wonder what APs with their accomplices would have done to PW2 if nobody intervened.

The court therefore does not put much weight on the evidence of accused persons and find their evidence not credible because of all the inconsistencies and contradictions as shown above.

Hence, accused persons were not able to raise a doubt in prosecution's case and could not also discredit the evidence of prosecution.

I have considered accused person's caution statements, charge statements and testimonies and find that accused persons failed to discharge the burden of persuasion placed on them and they were not able to raise a reasonable doubt as to their guilt as required of them under **Section 13(2) and 14 of NRCD 323** supra.

### **DISPOSITION/HOLDING**

I therefore find as a fact that accused persons did conspire to cause unlawful harm to PW2 and they carried out their intentions and acted together to cause harm to PW2 which caused him much injury.

The Accused Person are thus found guilty of the offence of Conspiracy to commit a crime namely causing unlawful harm and causing unlawful harm **Contrary to Sections 23(1) and 69 of Act 29, 1960** and I hereby convict them.

## **PRESENTENCING HEARING**

I have considered all the mitigating factors including an attempt to settle part of the medical bills of the complainant. I have also considered the gravity of the offence. APs could have killed PW2. They even had with them a gallon of patrol which leaves much negative thoughts as to what they could have done to him if the prison officers had not intervened.

I hereby sentence A1, A4, and A5 to two months imprisonment for Count one and two Months Imprisonment for Count two. Sentence to run concurrently.

A2 and A3 are known for similar offence as evidenced by the judgment from the Circuit Court dated 31/01/2019 with suit No. 011/2019 (as attached to the docket).

I thereby sentence A2 and A3 to six Months Imprisonment for Count one and one year Imprisonment for Count two.

Sentence to run concurrently.

In addition, A1, A4, and A5 are to sign a bond to be of good behavior for two years in default serve two years IHL.

For A2 and A5 they are to sign a bond to be of good behavior for three years in default serve three years IHL.

APs are to recompense the remaining amount of Nine Thousand Ghana Cedis(Ghc9000) to the compliant for the medical bills.

**H/H DORINDA SMITH ARTHUR (MRS.)**

**CIRCUIT COURT JUDGE**

ACCUSED PERSON PRESENT.

PROSECUTOR: INSP IDDRISU YAKUBU PRESENT.

SAMUEL TETTEH SACKY ESQ FOR ACCUSED PERSONS PRESENT.