

IN CIRCUIT COURT HELD AT TARKWA IN WESTERN REGION ON WEDNESDAY, 14TH JUNE, 2023, BEFORE HER HONOUR HATHIA AMA MANU, ESQ, CIRCUIT COURT JUDGE.

COURT CASE NO. B18/1/21

THE REPUBLIC

VRS.

1. NANA KWAW MENSAH
 2. NANA EMMANUEL KWAKU
 3. OKYEAME ARHIN (DECEASED)
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JUDGMENT

Accused Persons – Present.

Superintendent Juliana Essel Dadzie for Prosecution.

The Accused persons stand charged for failing to notify police of a special event, Contrary to Section 9(A) and (F) of the public order Act, Act 941. The accused persons denied the offence. Section 9(A) (F) of Act 941 provides that, “A person who desires to hold any special event within the meaning of this act in any public place shall notify the police of his intention not less than 5 years before the date of the special event”.

Section 10 of Act 941 the interpretation of a public place to mean a place to which at the material time the public have or are permitted to have access whether on payment or otherwise.

Special event is also explained to mean procession, parade, carnival, street dance celebration of traditional custom, outdoor of traditional ruler. As the accused persons pleaded not guilty, prosecution is saddled with the duty to ensure that the ingredients, of the offence are satisfied and the court is convinced beyond reasonable doubt as to the guilt of the accused person.

Prosecution called the complainant in this case as a witness. The complainant claimed the accused person have for some time not being trying to distool him as chief. In the complainant evidence he asserts that he received information about the announcement allegedly made by A1 and A2 from his brother Kwabena Nyarko. The complainant claimed that upon seeing people in white cloth and hooting their car horns he proceeded to the police station to file an official complaint. Thus, a majority of complainant's evidence was based on hearsay evidence. Even the line of cross-examination was centred more on attempts to distool the complainant and the hearsay allegations.

The prosecution's next witness was Opanyin Kwame Nyame. According to this witness, he was present and called the complainant to bring in the police. The witness during cross-examination gave contradictory response that made his evidence less credible to the Court.

This transpired when he was cross-examined by the accused persons:

Q. You admit there was police presence, do you agree with me that the police were informed that is why they did not arrest anybody?

A. Please I called Nana to call the police. So the police who came I called Nana to invite them.

Q. What did you call the police for?

A. To come and arrest him.

Q. Do you remember after the ceremony was when they brought the letter?

A. No, you were arrested. They were not served with a letter.

Q. When you were sited with the Inspector who did they arrest?

A. They did not arrest anyone. I told Inspector to come and stop incidence. The Inspector told us to be calm as he did not want to cause mayhem due to the macho men.

Q. Do you agree that this is a scheme to set us up?

A. It was not planned.

Q. Do you remember that you said in your witness statement that police came for patrol duties?

A. Yes we gave them a hint that is why they came.

From some of the things that transpired, I can adduce that PW2 went to the scene of the event to spy on the happenings and then subsequently informed PW1 to seek police assistance, yet when cross-examined by A2, PW2 denied being part of the scheme to arrest the accused persons. In fact although previously claiming accused persons were arrested and not invited he changed his claim again and said he did not know because it was the work of police.

Prosecution's crucial witness in this case was the arresting officers. This witness was on the grounds of the event and indicated that before coming they had prior knowledge of the event scheduled for that day. This witness claimed that due to the large crowd and the presence of well-built men they were directed not to engage but rather to monitor the grounds.

During cross-examination both accused persons questioned the witness extensively. A1 asked the witness if he saw him at the event to which the witness responded that he was at the centre of the occasion and A3 raised his hand high as the new chief amidst cheers.

In the case of A2, when the witness was questioned on the role he played, the investigative officer stated that he was an elder and was there.

This transpired between A2 and PW3.

Q. Do you know me?

- A. Yes I know you.
- Q. So among the two of us who was at the ceremony first.
- A. We the police.
- Q. What work did I come to do?
- A. You are one of the elders of Ndadieso.
- Q. Is it the elders of Ndadieso that you arrested?
- A. Some of them.
- Q. Why did you arrest some of them?
- A. We arrested those seen at the event.
- Q. So if you are at a ceremony and I am an elder and I come there must you arrest me?
- A. Yes because you did not inform the police.
- Q. Was I the one who organised the ceremony?
- A. No my lady.
- Q. If I did not then why did you arrest me to court?
- A. Because you are one of the elders.
- Q. So if someone does wrong in the town is it right by law that you come to arrest elders?
- A. Yes my lady.
- Q. By what means?
- A. Because they should have informed the police.
- Q. So even if I know nothing about it must I inform the police about it?
- A. Yes because you are one the elders.
- Q. If I say I disagree with you will you understand?
- A. No my lady.
- Q. You said you were there before I came, what did I go to do at the ceremony.
- A. I have no idea.
- Q. So if you had no idea what was the bases for my arrest?
- A. He is part of the elders.

Q. I put it to you that someone came to arrest me that is why you arrested me.

A. No my lady.

From this line of questions and answers the court is without doubt convinced that prosecution did not have any evidence linking A2 to the event organised. Yes, prosecution established that A2 was at the event in question but he cannot be said to have helped organise the event he attended. To this end the burden of producing evidence on the prosecution as to the facts made against the accused was not executed to the court's satisfaction.

Again, prosecution's next witness who was the station officer. This witness put the court in further confusion as to why the accused persons were not arrested at the scene.

In his response to questions, the witness was asked:

Q. Did you see me at the gathering?

A. Yes.

Q. What was I doing there?

A. You were part of those who alighted from the taxi and stood in front of the palace.

Q. Why do you arrest me as spectator when Omanhene has sent his people?

A. No my Lord, Omanhene is not part, due to the public order violation all leaders including A2 (you) must be arrested.

Q. Did you arrest the one who held the first accused's hand?

A. No.

The court found that a prima facie case had been made by prosecution because it was established that a special event did occur without the police being notified, it was also established the A1 was the focal point of the event and A2 was present.

See the case of *Gliga and Atiso Vrs. The Republic* 2010 SCGLR 870.

While the burden of persuasion remains on the prosecution although the trial, the evidential burden shifts as and when necessary as in this case the evidential burden shifted on the accused persons to disprove the prosecution's allegation.

See *section 14 of Evidence Act, 1972.*

The first accused's evidence was to the effect that he did not know he was to inform the police because he did not deem the event as one which was so special.

In the totality of the evidence, I find that prosecution made a case that the 1st Accused who was the main person to be outdoor failed to notify the police. However, they were unable to convince the court that even though A2 was at the event he played any role in organising the said gathering. All that was presented was a claim that A2 as an elder should have notified them. If the police were minded to arrest all elders at the event that PW2 who seems to have the ear of the complainant should also have been arrested. To hold that A2 played a role then that role must clearly outlined.

I hereby convict A1 of the offence of failing to notify police of a special event contrary to the public order *Act, Act 941*. In sentencing A1, I have considered his age and the fact that he is a first time offender, A1 is sentenced to pay a fine of eighty (80) penalty units in default, he will serve 3 years imprisonment.

I hereby acquit and discharge A2 as I find that there is no evidence to show he was part of those who organised the special event or played any vital role.

(SGD.)

H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)

