

**IN THE GENDER-BASED VIOLENCE CIRCUIT COURT AT SEKONDI –W/R, HELD
ON TUESDAY, 18TH JULY 2023 BEFORE H/H NAA AMERLEY AKOWUAH (MRS.)**

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C9/10/2020

THE REP.

Vrs

SULEMANA ABDULAI AGBANYO

A/C: PRESENT

PROS.: SGT. E.K.O AGYEMAN

C/AC.: SAMUEL ADINKRAH, Esq.

JUDGMENT

To the charge of causing unlawful damage contrary to section 172 of the Criminal & Other Offences Act, 1960 (Act 29), accused person pleaded ‘Not Guilty’, setting in motion a trial to prove him otherwise. Prosecution’s facts supporting the charge were that the complainant, Kofi Agbenyefia, inherited a parcel of farmland from his late father who bought same from accused person’s late father sometime in 1985. Complainant tilled the land for years until a disagreement between himself, accused person and his siblings arose which case was filed at the Takoradi Circuit Court in 2011 and still pending. On 14/05/2020 complainant saw accused person cutting down his cocoa trees but for fear of his life, he went away without confronting him. Later, an assessment showed that 3080 cocoa trees valued at GHC92,400 were damaged.

At the trial, the complainant (PW1) testified and tendered his initial statement given to the police on 19th March 2020 (Exh. A), a Further Statement dated 14th May 2020 (Exh. B), an

indenture and Site Plan of the land on which the cocoa trees were on (Exh. C) and pictures of the burnt trees (Exh. D).

Counsel for the accused person put it to PW1, under cross-examination, that Exh. C was neither in his name, as an owner, nor registered because it was forged, which he denied but failed to give an explanation as to why it was not registered. PW1 admitted that the ownership of the land on which the cocoa trees were on was the subject of litigation at the Takoradi circuit court and a determination was yet to be made. Despite claiming ownership of the land, PW1 was unable to tell who his boundary neighbors were. The crux of cross-examination and defence, as subsequently unfolded, was in the following;

Q: The parcel of Land that you claim your father bought from Accused person's father, that parcel of land is different form the parcel of land that Accused person hired persons to clear

A: It is not true. The land is joined

Q: The cocoa trees that were cut down on the instructions of the Accused person are not yours. They belong to Accused person and his siblings

A: It is not true but my land which is 25 acres, out of it 7 acres of my cocoa trees, were the ones which were cut down.

From the testimony of PW1, Exh. C, questions and answers under cross-examination, I find as an established fact that cocoa trees on a disputed land were burnt into ashes.

The testimony of PW1, Det. Insp. William Abotsi of the Mpohor Police, found in paragraphs 10, 15 and 16 of his testimony, was that when accused person was arrested, he denied the offence and claimed ownership of the land on which the cocoa trees were cut. He told the Court that from his investigations, accused person and his family sued the complainant over the same disputed land and were hoping to have orders to eject him. Further, that the suit at the circuit court was pending. As part of his testimony, he tendered the Investigation

Caution Statement of accused person dated 2nd May, 2020 (Exh. E), an undated Further Investigation Caution Statement taken in response to the further initial statement taken from the complainant (Exh. F) and the Charge Statement taken before accused person was arraigned before court dated 2nd May 2020 (Exh. G).

Despite knowledge of the ownership dispute of the land on which the cocoa trees were, the fact that accused person had land with cocoa trees near the disputed land and the pending trial, PW2 said that when he visited the site as part of his investigations, accused person was absent and therefore made no contribution as to the boundaries of the land either he or complainant was laying claim to.

Exh H was a cover letter from the Lands Commission dated 5th January 2022 estimating the value of the cut cocoa trees to be GHS165, 615. It was tendered by PW3, Michael Essuon, an Assistant Land Administrative Officer of the Lands Commission. At the time of testifying, he said he did not have a copy of the detailed report for which the cover letter was drafted.

Before I deal with the substance of the charge, I must state that Exh. H, although scanty, carried evidential weight by stating the value of the cocoa trees cut and categorized the quantum of the damage which elevated the charge from a misdemeanor to a second-degree felony. Without the detailed report, Exh. H as a report of an expert made under sections 112 & 113 of NRCD 323, evidenced the definition of damage under s. 173 of Act 29 as follows;

"Damage" includes not only damage to the matter of a thing, but also any interruption of the use thereof, or any interference therewith, by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained.

It must be distinguished that Exh. H Section 172(1) of Act 29 provides that:

Causing Unlawful Damage

(1) Whoever intentionally and unlawfully causes damage to any property by any means whatsoever

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(a) To a value not exceeding ₦1 million, or to no pecuniary value, shall be guilty of a misdemeanor —

(b) To a value exceeding ₦1 million, shall be guilty of second-degree felony.

In a charge under section 172 the prosecution must prove not only that the accused had caused damage but also that the damage was caused unlawfully. In the case of ***Yeboah v The State [1999-2000] 1GLR 149***, the Court of Appeal in holding 1 said that “on a charge of causing unlawful damage under section 172 of the Criminal Code, 1960 (Act 29), the ingredients to be proved by the prosecution were intention and unlawful damage”. In ***Asante v: The republic (1972) 2 GLR 177–197*** Anterkyi J stated that “to secure conviction under section 172 of Act 29, not only must it be proved that the damage was caused intentionally within the provisions relating to intent in section 11 of Act 29, but also it must be proved beyond reasonable doubt that it was caused without just cause or excuse”.

s. 174 of Act 29 explains that ‘Unlawful Damage’ occurs when “A person does an act or causes an event unlawfully, within the meaning of the provisions of this code relating to unlawful damage, in any case in which he is liable to any civil action or proceeding, or to a fine or other punishment under any enactment. In respect of his doing such act causing such event, or in respect of the consequences of the act or event, or in which he would be so liable if he caused the event directly by his own act, or in which he is liable to be restrained by injunction or any other proceeding from doing such act or causing such event”

In ***Homenya v: The Rep. (1992) 2GLR 305-309***, Acquah J. (as he then was) stated that;

“(i) Since a person cannot be prosecuted for unlawful damage in respect of his own property under section 172 (1) of Act 29 unless the damage has affected other people’s property, it follows that where in a complaint of unlawful damage to property, the suspect vehemently

maintained that the property damaged is his and not the complainant's, a prosecution under section 172(1) of Act 29 would be inappropriate, except where the accused's claim to ownership of the property is patently a ruse, calculated to enable him escape the result of his criminal action, and the prosecution have a water-tight proof of the complainant's title to the property.

(ii) The task of the court in a criminal trial under section 172(1) of Act 29 is not to embark upon the determination of the ownership of property between the complainant and the accused. Thus, as soon as the prosecution realizes from the investigation into the complaint that the trial is bound to be a camouflaged civil trial into the ownership of the property, they must decline prosecution since the accused's claim to the ownership is bound to negative the unlawfulness of his conduct (emphasis mine)"

Against the backdrop of the law, I will examine the defence of accused person and determine if it raises a reasonable defence under s. 11(3), NRCD 323. Accused person unequivocally admitted that he cut down the cocoa trees. However, he testified that the land and cocoa trees he cut down were for him and his siblings, inherited from their father, the late Alhaji Abdulai Wutsa Agbenyo. As proof of his father owning the land, he tendered Exh. 1, an indenture covering 573 acres of land lying at Asaka Tumentu. He further testified that, contrary to the complainant's assertion that his late father purchased the disputed land from the late Alhaji Abdulai Wutsa Agbenyo, the former was rather a caretaker placed in charge of an acre of land with cocoa seedlings planted by the latter. Accused person also testified that indeed, sometime in 1987 when complainant's father attempted to register his forged documents of a portion of his father's land at the then Land's Department, the Department notified his father of the illegality. Consequently, complainant's father was reported to the Kwesimintsim police but upon advice from his military superiors, the matter was withdrawn and settled and complainant's father continued his caretaker duties on accused person's father's farm. During the lifetime of both Alhaji Agbenyo and Emmanuel K.

Agbenyefia (complainant's father), the latter never made ownership claims of the disputed land against the former, not even after 1992 when Alhaji Agbenyo died and the former lived for ten (10) more years. Significantly, accused person testified that it was true that the complainant's father had land on which he planted cassava and other food crops, but this was not near the land on which he cut down the cocoa trees. Finally, that when both the police investigator (PW2) and the officers from the Lands Commission (PW3, included) visited the disputed site, he and his siblings were not invited to assist with investigations.

As of right, accused person called Agbanyo Abdulai Yakubu his elder brother as DW1. In line with s. 7 of NRCD 323, the corroborative value of his testimony was in not merely supporting the testimony of the accused person but in clarifying the assertion that the complainant's father bought the land and owned the cocoa trees that the accused person cut down. He tendered Exh. 2, a copy of the indenture of the complainant's father, which he explained to be forged in paragraph 10 (a-c) of his testimony as follows;

- a. First, the name of my late father was written as Abdulai Butsa Agbenyo instead of **Alhaji Abdulai Wutsah Agbenyo**.
- b. Secondly, the Lands Commission duty stamp on the document shows new Ghana Cedis instead of **Pound**. That new Ghana Cedis duty stamp was not in use at the time the complainant purported to be registering his document.
- c. Thirdly, the number of years stated on complainant's indenture was fifty (50) years starting from 1983. This cannot be true because the lease term granted my late father was fifty (50) years commencing from 17th January 1980. The complainant (sic) document properly is an Assignment and the tenure couldn't have been fifty (50) years.

Further exhibits in support of his testimony were in Exhs. 3 & 4, a replica of Exh. C and the alleged receipt of payment issued to the complainant's father as evidence of the purchase of land from the accused person's father. Exh. 5 was a copy of complainant's Witness Statement

filed in the case pending at the Takoradi Circuit Court, involving DW1, complainant and others.

The testimonies of accused person and DW1, in particular, raised very cogent arguments worthy of questioning the basis of the complaint culminating in the charge of causing unlawful damage. As in the Homenya case (supra), a person cannot be held liable for 'damaging' his own property unless in doing so, he also damaged the interest of another in that same property. It is apparent from the evidence that the accused person and DW1 put before the Court that the ownership of the land, cocoa trees that used to be thereon and even the boundaries of the parties were in contention. At the very least, the suit pending at the Takoradi Circuit Court is testimony of the litigation over the land on which the cocoa trees cut down were on.

CONCLUSION

In the opinion of this court, there are civil issues for consideration by a court exercising civil jurisdiction where the relevant orders as to title or others may be made. In the instant case, the same issues arising under the principles of criminal law discussed earlier in this judgment mean that a charge of causing unlawful damage will not lie since they constitute reasonable defence in favour of the accused person.

DECISION

Accused person is hereby acquitted of the charge of causing unlawful damage contrary to s. 172 of Act 29.

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H/H NAA AMERLEY AKOWUAH (MRS.)

