

IN THE CIRCUIT COURT HELD AT SOGAKOPE ON MONDAY, 5TH JUNE, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

CASE NO.: CC241/2021

THE REPUBLIC

VRS

JOSHUA ADZIDO

ATSU MODESTUS

ACCUSED PERSONS PRESENT

CHIEF INSPECTOR VICTOR SOMOAH FOR THE REPUBLIC PRESENT

ALFRED AGBESI, ESQ. FOR THE ACCUSED PERSONS PRESENT

JUDGEMENT

The Accused persons are before this Court charged together with the following offences:

- (i) Conspiracy to commit crime to wit Causing Harm contrary to sections 23(1) and 69 of the Criminal Offences Act, 1960 (Act 29);
and
- (ii) Causing Harm contrary to section 69 of Act 29.

Upon their arraignment before this Court, the Accused persons pleaded Not Guilty to the charges and submitted themselves to full trial.

THE FACTS OF THE CASE

On the 9th August, 2021 at about 1030hrs, the complainant in the company of one Ali Adama were sending their cattle for grazing behind a river at Sonukpo and on reaching a section of the road in the bush leading to the said

river bank, they met the Accused persons' with their cattle grazing. The 1st Accused person then asked the complainant to go back and that he will not allow them to cross to the other side of the river because that grazing site is for them alone. He chased the complainant's cattle away so the complainant directed his cattle through a different side to join the road which leads to the said river bank. The 1st Accused person then drove his cattle and blocked the only path leading to the river bank. The 2nd Accused person also crossed the complainant's cattle on the other side and chased them. Because the place was surrounded with water some of the complainant's cattle entered the river and some were left in the bush. Whilst Ali Adama entered the river to let the cattle cross to the other side and the complainant was going to look for those that could not enter the river, the 1st Accused person threatened the complainant that he will teach him a lesson. The 1st Accused person then inflicted cutlass wound on the complainant's head. The complainant defended himself by hitting the 1st Accused person with a stick he was holding and the stick broke. The 1st Accused person then called the 2nd Accused person who was a bit far from them to come. The 2nd Accused person passed behind the complainant and held him from behind whilst the 1st Accused person kept hitting the complainant severally with a stick. The complainant then bit the 2nd Accused person's hand so he left him. The 1st and 2nd Accused persons continued hitting the complainant's head with sticks. With blood oozing from the complainant's head, he managed and held the 2nd Accused person to prevent the 1st Accused person the 1st Accused person from hitting him but the 1st Accused person rather hit the complainant's right ankle with a stick and he fell. The Accused persons left the complainant alone at the scene. The complainant managed and went home and later reported the issue to Sogakope Police and a Medical Form was issued to him to attend hospital. The Accused persons also lodged a complaint of assault against the complainant at Dabala Police Station.

At the trial, the prosecution called three (3) witnesses to testify in support of its case against the Accused persons.

The testimony of PW1 (Musah Mahamadu), who is the victim and complainant in this case confirmed the facts as presented by the prosecution supra.

From the 11-paragraphed Witness Statement presented by PW2 (Ali Adamah) as his Evidence-In-Chief and which he relied on, he did not witness the Accused persons causing harm to PW1. According to PW2, on the 9th August, 2021, he assisted PW1 to send his cattle for grazing at the river bank at Sonukpo.

PW3 (No. 8139 Detective Corporal Happy Yawa Attah) investigated the case. PW3 relied on her Witness Statement together with the exhibits attached as her Evidence-In-Chief.

After the close of the case of the prosecution, this Court decided on whether or not a prima facie case had been made out against the Accused persons. In the case of The Republic vrs District Magistrate Grade II, Osu, Ex parte Yahaya [1984-86] 2 GLR 361-365 Brobbey J (as he then was) stated that:

"...evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence."

As enjoined by law, the Court evaluated the evidence adduced at that stage of the trial and held that the prosecution has made out a prima facie case against

the Accused persons. Consequently, this Court invited the Accused persons to enter into their defence.

THE CASE OF THE DEFENCE

In opening their defence, the Accused persons testified themselves and together called one (1) witness to testify in support of their case.

The 1st Accused person in his Evidence-In-Chief per his Witness Statement told the Court that on the 9th August, 2021, he sent his father's cattle about 30-40 for grazing at the bush over the Negbeme stream between Sonukpo and Negbeme village in the morning. That at a point near the stream about to cross the stream, he noted that one of the cattle was in labour he returned the rest of the cattle backward so that they do not cross the river. So, he called the 2nd Accused person on the phone to bring a rope to tie the one in labour. The cattle were then scattered and grazing, and he prevented the cattle from entering the nearby farm. That, suddenly, PW1 and PW2 drove their over 100 cattle to where he was standing by his cattle, and the cattle of PW1 mingled with his cattle which was not done. PW1 and PW2 drove their cattle to mingle with his cattle which is against the law/practice that nobody should bring his cattle to mingle with another person's cattle. At this stage, he called PW1 and pleaded with them not to bring their cattle to mingle with his own but PW1 and PW2 did not obey this practice. It is the case of the 1st Accused person that PW1 told him that he had been looking for him for a long time, and immediately, he rushed on him with the Fulani stick and hit him on his head. According to the 1st Accused person, he fell down on his buttocks and whilst on the ground he raised his hand with the Fulani stick to prevent him from hitting him further but he kept on hitting on his back and hands. That PW1 was joined by PW2 and he also hit him on the side with the Fulani stick, and that at that time, the 2nd Accused person arrived with the rope and attempted

to separate them and questioned what they were doing. Upon the question from the 2nd Accused person, PW2 took to his heels. The 1st Accused person added that when PW1 hit him with the stick, all the cattle scattered.

The 2nd Accused person in his defence denied conspiring with the 1st Accused person to cause harm to the complainant. In his Evidence-In-Chief per his Witness Statement, the 2nd Accused person told the Court that on the 9th August, 2021, he was in the house when the 1st Accused person left for the bush with the cattle. That he was in the house and he informed the 1st Accused person that he would be leaving to Ahiatrogakope during his absence. It is his case that when he was prepared to leave Sonukpo to Ahiatrogakope, the 1st Accused person called him on the telephone to bring a rope to tie a cow in labour. So, the 1st Accused person directed him to his location which was at Negbeme by the Negbeme stream. He took the rope and located the 1st Accused person and that whilst going he saw the motorbike of the complainant in the bush and after bypassing the motorbike, he saw the complainant's father kneeling by a small forest. So, he passed by the complainant's father asking him nothing and few meters away he chanced upon the scene and saw PW1 and PW2 mercilessly beating the 1st Accused person. According to the 2nd Accused person, he then shouted on top of his voice and when PW2 saw him he took to his heels and entered the stream. The complainant continued beating the 1st Accused person and he rushed on him to stop him from the continuous beating but the complainant turned the Fulani stick on his left arm and beat him with the stick two times and one even hit his leg. Without having anything to defend himself, he embraced the complainant and held his Fulani stick and this led to struggle leading to the breaking of the stick into two. At this stage, the complainant bit his arm and blood started oozing out. The 1st Accused person then had a chance to escape and made a call to his father. Some people came to separate the fight and the

complainant escaped. That the messengers sent by the 1st Accused person's father took them to the Police Station and later to the hospital.

DW1 (Seth Ametorwodo) told the Court that he owned a kraal at Nyinto near Dabala. According to DW1, one of the rules governing their trade is that you have no right to send your cattle to destroy someone's farm. That one of the rules was also that you have no right to send your cattle to mix another man's cattle. So, if a Fulani is heading his cattle in one direction, the other Fulani should not also head his cattle towards that direction. If the latter Fulani reaches the spot where the earlier Fulani had reached, the second Fulani will see the animal of the first Fulani and on seeing the cattle of the first Fulani ahead, the 2nd Fulani must return. In such a situation the 2nd Fulani must return with the animals to avoid the second Fulani animals mixing with the first Fulani animals. This is to avoid stealing. That, if the first Fulani insists that the second Fulani should not bring his animals to where his are, there will be misunderstanding leading to a fight. And in such a situation it is the second Fulani who brought the fight.

At the end of the trial, the Court had to determine whether or not the Accused persons intentionally and unlawfully caused harm to the complainant.

BURDEN OF PROOF

The common law rule that a person was presumed innocent until the contrary was proved or he pleaded guilty is reinforced by Article 19(2)(c) of the 1992 Constitution which reads:

"A person charged with a criminal offence shall ----- (c) be presumed to be innocent until he is proved or has pleaded guilty."

The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the Accused beyond reasonable doubt, there is no such burden on him to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides that:

“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.”

In the case of Republic v. District Magistrate Grade II, Osu; Ex parte Yahaya [1984–86] 2 GLR 361-365, where Brobbey J. (as he then was) stated and I quote:

“One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt.”

THE LAW ON CAUSING UNLAWFUL HARM

The Offence Of Conspiracy:

Section 23(1) of Act 29 provides that where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy or abet the criminal offence.

In law, Conspiracy consists not merely in the intention of two or more persons, but also in the agreement of two or more persons to do an unlawful act or to do a lawful act by an unlawful means. A person could be charged with conspiracy to commit a crime whether he was involved in the conspiracy before the act (accessory before the fact) or after the act (accessory after the fact). What is material is whether there was a common design by the parties to commit the crime.

To found conviction for conspiracy, the prosecution has the duty to establish the following ingredients:

1. That the offence involved two or more persons;
2. That those persons agreed or acted together; and
3. That they acted together with a common purpose, i.e. to commit a crime or do an unlawful act or a lawful act by an unlawful means.

The Offence Of Causing Harm:

Section 69 of Act 29 provides:

“A person who intentionally and unlawfully causes harm to any other person commits a second degree felony.”

The elements of Causing Harm are that the Accused person has caused harm, it was caused to a person, and the harm was unlawful.

Section 76 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.”

EVALUATION OF THE EVIDENCE

It is noted that the Accused persons and the complainant had some misunderstanding in the morning of 9th August, 2021 concerning the movement of their cattle. It is surprising to state that the 1st and 2nd Accused persons only narrated what PW1 and PW2 allegedly did to them but did not tell the Court what they also did to the complainant. However, in their respective Cautioned Statements given to the police, they stated the following:

Cautioned Statement of 1st Accused person given to the police on the 17th August, 2021:

*“On Monday, 9/08/2021 in the morning, I was sending my father’s cattle to the bush to go and graze when at about 10:30am, I detected that one of them was about to give birth so I called my brother by name Atsu Modestus to bring me a rope to tie the said animal which was in labour. The cattle were grazing there where I saw Ali and Musah with their cattle coming to my direction. My cattle were on the road heading to a river bank where I was going before I found out that one of them was in labour before I stopped. I asked them not to mix their cattle with mine but they refused and mixed theirs with mine. Whilst I was separating mine from theirs, Musah went and collected a stick from Ali and came and hit my left cheek and I fell. As at that time, Ali was standing behind him. Whilst I was on the ground, Musah kept hitting me with the stick but I blocked most of them with my hands. I then managed and got up. Ali was still standing there watching us. **When I got up, I also hit Musah’s head three times (3) with a stick I was holding.** Whilst we were fighting and Ali was watching us, my brother Modestus Atsu came with the rope I asked him to bring so he came and asked Musah to stop but Musah turned on him and started hitting him. Ali also came to hit my left ribs with a stick. I then left the scene and called my father on phone. The time I hit Musah’s head, blood was oozing from the wound he had on the head through the stick I hit him with. I want to state that I did not use any cutlass on the complainant as he stated. I only used stick. I cannot tell what happened to his*

face and ankle. Whilst I was separating my cattle from their own, Musah came and told me that today is today for me. I did not prevent them not to cross to the other side of the river. I only stopped my cattle there because that was where I reached before I detected that my cow was in labour.” (Emphasis mine)

Cautioned Statement of 2nd Accused person given to the police on the 17th August, 2021:

“I am a farmer living at Ahiatrogakope. I visited my uncle by name Afome Joshua at Sonukpo on Saturday, 7/08/2021. On Monday, 9/08/2021 at about 10:30am, my cousin by name Joshua Adzido called me to bring a rope to him in the bush because one of the cattle was in labour. When I got to the spot where Joshua asked me to meet him, I met Musah and Joshua fighting. They were hitting each other with stick. Ali was then standing with his cattle about 30 meters away from them. I asked Musah to stop the fight. Musah then hit my right wrist and my left shoulder with a stick. I then held Musah from the front. My cousin then left the scene. Whilst I held Musah, he bit my right arm in between the elbow and shoulder (Biceps). I then left him and followed my cousin. I cannot tell whether Ali came to us at the time we were fighting or not. Blood was oozing from Musah’s head before I got to the scene. I want to state that I did not cause harm to the complainant as he stated. I was only separating them before he hit me. I did not chase their cattle as said.”

The Medical Report of the complainant issued by Dr. Yeboah of South Tongu District Hospital on the 9th August, 2021 was tendered in evidence without any objection by the defence counsel. The Medical Report was marked as Exhibit ‘A’ and it reads:

“Patient alleges that he sent his cattle to graze on a parcel of land and met the 2 other assailants. He alleges there was a confrontation which led to him being struck on the

head several times with a sharp object. A stick was also used to allegedly hit his right ankle and left wrist.

O/E: adult male lying supine on examination bed, not in obvious respiratory distress.

P:J: F:H: HS (satis)

4 scalp lacerations on head with largest measuring 4 by 2cm.

Not actively bleeding – Right ankle swollen and tender.....” (Emphasis mine)

In the Cautioned Statement of the 1st Accused person, he stated he hit the complainant three times on his head with a stick. The medical doctor detected four lacerations on the head of the complainant. The photograph shows big lacerations and the report indicated that the largest laceration measured 4cm by 2cm.

A careful look at the photograph which was tendered in evidence and marked as Exhibit ‘E’ shows the extent of harm caused to the complainant. The photograph corroborates the content of the Medical Report.

The Cautioned Statement of the Accused person was tendered in evidence and marked as Exhibit ‘A’. A careful scrutiny of Exhibit ‘A’ shows it was taken in compliance with section 120 of the Evidence Act, 1975 (NRCD 323).

The Court finds two (2) contrasting stories of the 1st and 2nd Accused persons in respect of their Cautioned Statements to the police and their Evidence-In-Chief. On the part of the 1st Accused person, he told the police that whilst he and the complainant were fighting and Ali (PW2) was watching them, the 2nd Accused person came with the rope he asked him to bring, and he asked the complainant to stop the fight but he turned his anger on him and started hitting. That, PW2 (Ali) came to hit his ribs with a stick. For the avoidance of

doubt, I reproduce part of the Cautioned Statement of the 1st Accused person as follows:

“..... Whilst we were fighting and Ali was watching us, my brother Modestus Atsu came with the rope I asked him to bring so he came and asked Musah to stop but Musah turned on him and started hitting him. Ali also came to hit my left ribs with a stick. I then left the scene and called my father on phone”

In respect of the 2nd Accused person, he told the police that when he got the scene and met the 1st Accused person and the complainant fighting, Ali (PW2) was standing with his cattle about 30 meters away from them. He added that he could not tell whether or not Ali (PW2) came to them at the time they were fighting. I reproduce part of the Cautioned Statement given to the police by the 2nd Accused person below:

“When I got to the spot where Joshua asked me to meet him, I met Musah and Joshua fighting. They were hitting each other with stick. Ali was then standing with his cattle about 30 meters away from them. I asked Musah to stop the fight. Musah then hit my right wrist and my left shoulder with a stick. I then held Musah from the front. My cousin then left the scene. Whilst I held Musah, he bit my right arm in between the elbow and shoulder (Biceps). I then left him and followed my cousin. I cannot tell whether Ali came to us at the time we were fighting or not” (Emphasis mine)

In his Evidence-In-Chief, the 2nd Accused person told the Court that he chanced upon PW1 and PW2 mercilessly beating the complainant. In the case of *Brempong II vrs The Republic 1995-96* [1 GLR 350 per holding 5, the Court of Appeal stated that:

“In law, for conflicts and inconsistencies in evidence to influence a decision, they had to be material and also destroy proof of an element of the offence or totally discredit the witnesses so as to make their testimony unreliable.....”.

Also, in the case of *Kuo Den alias Sobti vrs The Republic* [1989-90] GLR 203, the Supreme Court in a charge of murder explained at page 213 that where there are material inconsistencies in the defence put up by the accused person, there was sufficient justification for the jury to reject the defence.

The inconsistencies in the evidence of the defence are clearly irreconcilable and the Court cannot gloss over them. Just hitting the head of the complainant with a stick three (3) times would not have caused these severe injuries to him. In the humble view of this Court, the 1st Accused person used a sharp object and a stick to inflict wounds on the head of the complainant. This Court believes the story of the complainant that the 1st Accused person used cutlass and stick to inflict the wounds on him whereas the 2nd Accused person used a stick on the complainant. Assuming without admitting that the complainant started the fight and beat the 1st Accused person with a stick, would the 1st and 2nd Accused persons be justified in causing such grievous head injury on the complainant?

Right of self defence of a person is recognized in all free, civilized, democratic societies within certain reasonable limits. In the case of *Sabbah vrs The Republic* [2009] SCGLR 728, the Court held as follows:

“It is therefore trite learning that whenever the defence of self-defence is put up by a person, the use of force or harm in defending oneself or another person shall be reasonably necessary within the circumstances.”

Also, in the case of *Larti v. The State* [1965] GLR 305, the Court held that:

“In the defence of self defence, the nature of the injury or harm caused by the person to another that is not reasonably necessary within the circumstances may displace the defence of self defence.”

A legal philosopher Michael Gorr in his article *“Private Defense”* (published in the Journal *“Law and Philosophy”* Volume 9, Number 3/August 1990 at Page 241) observed as follows:

“Extreme pacifists aside, virtually everyone agrees that it is sometimes morally permissible to engage in what Glanville Williams has termed “private defence”, i.e. to inflict serious (even lethal) harm upon another person in order to protect oneself or some innocent third party from suffering the same.” This quotation is captured under section 37 of Act 29.

If there was any self defence at all, then what the Accused persons did to the complainant was extreme and unjustified. For DW1, he was not present when the incident happened. The defence only called him to come and tell the court how the Fulanis work in respect of cattle grazing. The Court did not find his evidence useful. What DW1 said and to which this Court find interesting and surprising is the fact that whenever there arose an issue between two (2) Fulanis on where the cattle should pass and the first Fulani insisted that the second Fulani insisted that should not bring his cattle to where his are, a fight would ensue and in such a situation it was the second Fulani who caused the fight. This kind of practice should not be encouraged. This is a bad practice and same must be condemned.

The stories of the Accused persons do not add up. This Court is of the humble view that the defence put forward by the Accused persons is not reasonably

justified. They were economical with the truth and only tried to throw dust into the eyes of the Court. In the case of *Lutterodt vrs Commissioner of Police* [1963] 2 GLR 429 at 430 at holding 3, the Court stated and I quote:

“In all criminal cases where the determination of a case depends upon facts and the court forms an opinion that a prima facie case has been made the court should proceed to examine the case for the defence in three stages:

- a) if the explanation of the defence is acceptable, then the accused should be acquitted;*
- b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;*
- c) if quite apart from the defence’s explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict...”.*

Upon a careful consideration of the case of the prosecution as well as that of the defence as I am enjoined by law so to do, I find the explanation of the defence unacceptable, unreasonable and afterthought. Consequently, I find that the Accused persons herein agreed to act together with a common purpose to cause harm to the complainant. In the circumstances, I find the Accused persons herein guilty of the offence of Conspiracy to commit crime to wit Causing Harm and Causing Harm, and they are accordingly convicted.

In sentencing the Accused persons, the Court takes into consideration of the fact that they are first-time offenders and are also young men. I have also considered the plea in mitigation put made by the defence counsel. However, looking at the severity of the harm caused to the complainant, and to serve as deterrent to others, passing a fairly deterrent sentence on the Accused persons

will be appropriate. The Accused persons are hereby sentenced to serve the following prison terms:

Count 1

The 1st and 2nd Accused persons will serve a prison term of Six (6) years each IHL.

Count 2

The 1st and 2nd Accused persons will serve a prison term of Six (6) years each IHL.

Both sentences shall run concurrently.

Final Order:

The Accused persons shall each pay the sum of GH¢2,500.00 to compensate the complainant (Musah Mahamadu).

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ISAAC ADDO
CIRCUIT JUDGE
5TH JUNE, 2023