

**IN THE CIRCUIT COURT ONE HELD AT ACCRA ON MONDAY, 17TH
APRIL 2023, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS),
CIRCUIT COURT JUDGE**

CC NO.: D2/25/2021

THE REPUBLIC

V

**1. NII KWASHIE GBORBILOR IV
2. FESTUS NII DJATOR BOTWE**

ACCUSED PERSON

JUDGMENT

The accused persons are before this court on two charges namely Conspiracy to commit crime to wit: Failure to notify police of your desire to hold special event contrary to section 101) of the public order act 1994 (act 491) and sections 23[1] the criminal offences act 1960 (act 29) and failure to notify police of desire to hold a special event contrary to section 1 (1) of the public order act 1994 (act 491)

The brief facts narrated by the prosecution were that on 28th day of August 2020 at about 10.00pm, the Accra Regional Police Command received an information that some chiefs were being installed amidst gunshots in the Ngleshie Amanfrom, Accra without notifying the Police of their desire to hold a public event. Upon the information, the Regional Command dispatched patrol teams to Noleshie A manfrom to forestall any breach of peace and ensure public peace and order. On arrival, Police met scores of people on the street and around the Ngleshie Amanfrom Palace, drumming amidst gunshots. Police arrested A1 Ni Kwashie Gborbilor IV and A2 Festus Nii Djator Botwe, both traditional rulers of the Ngleshie Amanfrom. In their investigation cautioned statement, A1 and A2 admitted the offence and stated among other things that they previously notified Police before the emergence of the Corona Virus and assumed it was enough. They also stated that just as the injunction placed on the installation of the sub-chiefs was set aside, they organized and

held the event. After investigations, A1 and A2 were charged with the offence as stated on the charge sheet and put before this honourable court.

In **C.O.P V. Antwi [1961] G.L.R 408**, the court stated the burden of proof in criminal cases as follows;

“The fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted;

The burden on the accused when called upon to enter his defence as stated in the case of **RICHARD BANOUSIN VRS THE REPUBLIC (CRIMINAL APPEAL NO: J3/2/2014; 18th MARCH 2014)**, the Supreme Court speaking through His Lordship Dotse JSC defined beyond reasonable doubt as:

"What beyond reasonable doubt means is that, the prosecution must overcome all reasonable inferences favouring innocence of the accused. Discharging this burden is a serious business and should not be taken lightly. The doubts that must be resolved in favour of the accused must be based on the evidence, in other words, the prosecution should not be called upon to disprove all imaginary explanations that established the innocence of the accused. The rule beyond a reasonable doubt, can thus be formulated thus: - "An accused person in a criminal trial or action, is presumed to be innocent until the contrary is proved, and in a case of a reasonable doubt, he is entitled to a verdict of not guilty."

Prosecution called the investigator of the matter as the sole witness. He tended investigation caution statement of A1, investigation caution statement of A2, charge statement of A1, charge statement of A2, letter received by police from Ngleshie Amanfro Divisional Stool dated 15/06/2020, Police letter

to the Ngleshie Divisional Stool dated 24/06/2020 and Letter received from the Chieftaincy and Religious Affairs dated 12/08/2020 were admitted in evidence as A, B, C, D,E, F, G & G1 respectively. Accused persons also testified individually without calling any witness. A1 tendered in evidence a copy of the letter written by the Ngleshie Amanfro Divisional stool dated 15/06/2020 as exhibit 1.

Here, accused persons are alleged to have conspired to commit the offence and did commit the offence of failing to notify police of desire to hold special event.

Section 23(1) of Act 29 **reads:**

“ Where two or more persons agree to act together with a common purpose for or in committing or abetting a crime, whether or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet”.

acy and not just the collaboration that produced a result that was criminal

The Supreme Court in the recent case of **FAISAL MOHAMMED AKILU v THE REPUBLIC [2016-2017] SCGLR 444 per Yaw Appau JSC** stated the current Ghanaian law on conspiracy as follows:

“From the definition of conspiracy as provided under section 23(1) of Act 29/60, a person could be charged with the offence even if he did not partake in the accomplishment of the said crime, where it is found that prior to the actual committal of the crime, he agreed with another or others with a common purpose for or in committing or abetting that crime. However, where there is evidence that the person did in fact, take part in committing the crime, the particulars of the conspiracy charge would read; “he acted together with another or others with a common purpose for or in committing or abetting the crime”. This double-edged definition of conspiracy arises from the undeniable fact that it is almost always difficult if not impossible, to prove previous

agreement or concert in conspiracy cases. **Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime**". (Emphasis mine)

Section 1 (1) of the Public Order Act provides "(1) A person who desires to hold a special event in a public place shall notify the police of that intention not less than five days before the date of the special event. Subsection (2) of section 1 of Act 491 mandated the contents of a notice under section 1(1) of the Act. It provides thus "the notification shall be in writing and signed by or on behalf of the organiser of the special event and shall specify

(a) the place and hour of the special event,

(b) the nature of the special event,

(c) the time of commencement,

(d) the proposed route and destination, and

(e) the proposed time of closure of the event.

(3) The notification shall be submitted to a police officer not below the rank of assistant superintendent or other police officer responsible for the police station nearest to the location of the proposed special event.

According to the testimony of PW1, the Central Regional Police Command received an information that some chiefs were being installed at night amidst gunshots at Amanfro in the Ga West Municipal on 28/8/2020. Police officers dispatched to the place met over hundred of people singing and drumming. They arrested the A1, the traditional ruler of Ngleshie Amanfro and his Dzasetse A2 for holding a public event without notifying the police of same.

He went further to state that investigations revealed that A1 and A2 wrote to the police per a letter dated 15/6/2020 notifying the latter that they would be holding a public event on the 25th to 28th June 2020 and requesting for security. The police however in a letter dated 24th June 2020 wrote to the Ngleshie Amanfro Divisional Stool asking them to postpone the event since the activity was likely to breach the public peace considering a protest from the Queen mother of the area and a breach of Corvid 19 protocols. Subsequently police received a letter from the Ngleshie Traditional Council dated 12/08/2020 indicating a ruling of the Judicial Committee of the council on 05/08/2020 dismissing a motion of interim injunction filed against A1 by one Nii Armah Okine and another. He contended that the notification received from the Amanfrom Divisional Stool on 15/06/2020 and organizing the event on 28/08/2020 breached section 1(1) of Public Order Act.

From evidence on record, it is established that accused persons notified the Regional Commander of the Central Region of the observance of the final customary/traditional rituals pertaining to the installation of their stool bearers from 25th to 28th of June, 2020 and requested for security in accordance with section 1(1) Act 491. The District Headquarters of the Ghana Police Service, Amanfro, Accra, responded per exhibit F directing A1 to postpone the ceremony until the head of security, the Municipal Chief Executive had met with A1 on the subject matter after citing three main reasons for their directive which said directive is in tune with section 1(4) of Act 491

Section 1 (4) of Act 491 provides “Where a police officer notified of a special event under subsection (1) has reasonable grounds to believe that the special event if held may lead to violence or endanger public defence, public order, public safety, public health or the running of essential services or violate the rights and freedoms of any other persons, the police officer may request the organiser to postpone the special event to any other date or to relocate the special event. ”

The evidence of A1 and A2 on record is the same. According to the two accused persons' evidence, sometime in 2020, the stool decided to install stool bearers to oversee its 48 villages, which were under threat of encroachment. The stool notified the police of its intention to install the stool bearers and requested for security per a letter admitted in evidence as exhibit 1 and the police acknowledged receipt of same. They stated that they held the event after the police had been notified of their intention install the stool bearers they went to install the stool bearers. They stated that there was no breach of peace and riot and all was peaceful until the police came to arrest. Exhibit 1 is the same as exhibit E tendered by the prosecution.

Section 1 (5),(6),(7) of Act 491 further provides the remedies available to an organizer who is requested by the police to postpone an event and the Police service upon an organizer failing to comply with their request for postponement of an event. Per these sections, an organiser requested under subsection (4) to postpone or relocate the holding of a special event shall within forty-eight hours of the request, notify the police officer in writing of the willingness to comply. Where the organiser refuses to comply with the request or fails to notify the police officer of his willingness to postpone the event with 48 hours, the police officer may apply to a Justice or the chairman of a Regional Tribunal for an order to prohibit the holding of the special event on the proposed date or at the proposed location and the Justice or chairman may make an order that the Justice or the chairman considers to be reasonably required in the interest of public defence, public order, public safety, public health, the running of essential services or to prevent a violation of the rights and freedoms of any other persons.

Accused persons herein upon receipt of exhibit F failed to notify the police of Amanfro their willingness to comply with the request for the postponement of the installation of the chief within 48 hours as prescribed by section 1(5). The police also failed to activate section 1(6) of the Act against the accused person. However accused persons in line with the directives of the police did not hold the said installation of stool bearers on the said 25th to 28th June

2020. It was not until the 28th of August 2020 that accused persons proceeded to install their stool bearers. The notice i.e exhibit E given to the police by accused persons herein for installation elapsed when on the said stated dates in exhibit E they failed to hold the event.

It is not in contention that accused persons herein held the event of installation of their stool bearers on the 28/8/2020. Their defence to the case of the prosecution is that they had notified the police per their letter dated 15/06/2020 of the installation and subsequently per exhibit G, G1 a letter from the Ministry of Chieftaincy and Religious Affairs dated 12/08/2020 which notified the police of the ruling of the Judicial Committee of the Ngleshie Alata Traditional Council dismissing the injunction application against A1 herein.

Nowhere from the record is there evidence that accused persons notified the police of the new date of 28/8/2020 for the installation of their stool bearers after receipt of exhibit G and G1. With the initial date communicated to the police having elapsed and the Ngleshie traditional council having fixed a new date, the police ought to have been notified of the new date in accordance with section 1(1) of Act 491 and complied with the requirements of section 1 (2) of Act 491. From the record at hand, failed to give the police notice of their new date which from their defence a breach of section 1(1) of Act 491. The defence of accused that they relied on exhibit E as notice to the police is a flawed excuse and same is untenable although same can be said to be ignorance and or negligence on their part.

The court finds Accused persons guilty of the offence of conspiracy to commit crime to it failure to notify police of desire to hold a special event and failing to notify police of special event as they have been charged. Accused persons are accordingly convicted forthwith.

Sentencing

The principles upon which sentences are imposed have been stated in the case of **Kwashie v The Republic [1971] 1 GLR 488 at 493** where it was stated thus:-

“In determining the length of sentence, the factors which the trial Judge is entitled to consider are:

- i. The intrinsic seriousness of the offence.
- ii. The degree of revulsion felt by law abiding citizens of the society for the particular crime.
- iii. The premeditation with which the criminal plan was executed.
- iv. The prevalence of the crime within the particular locality where the offence took place, or in the country generally.
- v. The sudden increase in the incidents of the particular crime
- vi. Mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed.”

SECTION 9(a) of Act 491 provides that A person who fails to notify the police of a special event contrary to section (1), commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment. I have considered the duration of the trial as an aggravating factor and the comportment of the accused persons throughout the trial, their punctuality in court, the fact that nobody was harmed and there was no breach of peace during the holding of the special event and plea for leniency put in by counsel for accused persons as mitigating factors. Accused persons are accordingly sentenced as follows:

In respect of count one, A1 and A2 are sentenced to pay a fine of 150 penalty units in default 6 months imprisonment. In respect of count 2, accused

persons are sentenced to pay a fine of 150 penalty units in default 6 months imprisonment.

Both sentences to run concurrently.

ACCUSED PERSONS PRESENT

**C/INSPECETOR TENKORANG FOR REPUBLIC ABSENT REPRESENTED
BY INSPECTOR WISDOM ALORWU.**

**H/H AFIA OWUSUAA APPIAH (MRS)
(CIRCUIT COURT JUDGE)**