

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON WEDNESDAY, THE  
29<sup>TH</sup> DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES  
OPOKU-BARNIEH, CIRCUIT COURT JUDGE**

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**SUIT NO: D21/33/19**

**THE REPUBLIC**

**VRS:**

**PASTOR ERNEST OMOLEME**

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**ACCUSED PERSON**

**PRESENT**

**ASP GEORGE DOE FOR PROSECUTION**

**PRESENT**

**ANTHONY ADU NKETIAH, ESQ. WITH VALENTINA KWARTENG ,  
ESQ. HOLDING THE BRIEF OF D. K. NYAMEKOR, ESQ. FOR THE  
ACCUSED PERSON**

**PRESENT**

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**RULING ON SUBMISSION OF NO CASE**

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**FACTS:**

This criminal case arises out of a land dispute between two churches, the Christ Embassy Church and the Believers Salvation Ministry and underscores what the Holy Book says in *Matthew 5:25* on the need to settle cases quickly before they escalate into criminal matters which may lead to the pain of criminal sanctions by a judge. To quote the scripture;

*“Settle matters quickly with your adversary who is taking you to court. Do it while you are still together on the way, or your adversary may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison” (NIV).*

The accused person, the Zonal Pastor of the Christ Embassy Church Head office, Nungua Accra was charged and arraigned before this court on 21<sup>st</sup> August, 2019, on the following charges;

1. Trespass contrary to **Section 157(a)** of the Criminal offences Act, 1960 Act 29; and
2. Threat of Death Contrary to **Section 75** of the Criminal Offences Act, 1960(Act 29).

The background facts culminating in the instant case are that the complainant, Charles Anarfi Oppong, is the Secretary of Believers' Salvation Ministry located at Community 3, Tema and the church owns a property located at Community 22 Annex, Tema. The 2<sup>nd</sup> complainant, David Tettey lives on the said parcel of land with his family as caretakers of the land. The prosecution states that the two churches have their respective lands located at Community 22 Annex with a common boundary and that there has been a long standing dispute between the two churches over the demarcation of their boundaries. Based on that, the Ashaiman District Police Commander invited the two churches for a peaceful resolution of the matter but settlement broke down.

The prosecution further alleges that on 28<sup>th</sup> day of August, 2018, some members of Christ Embassy church led by the accused person were fixing a metal gate at the entrance of Believers' Salvation Ministry ostensibly to prevent them from entering their premises. When the caretaker of Believers Salvation Ministry noticed what was happening, he approached them to know their reasons for mounting the gate at the entrance of the church. During the encounter, it is alleged that the accused person became offended and threatened the caretaker with words namely; *"I will kill you when you step your foot on the land again"*. The caretaker

sensing danger, notified the first complainant who immediately followed up and met them at the scene and demanded to know the reasons for their actions. In the process, an argument ensued between members of the two churches and one of the members of Christ Embassy allegedly attacked, assaulted and tore the dress of the first complainant.

Subsequent to that, the case was reported at the Tema Community 22 Police station and a police medical form was issued to the first complainant to attend hospital. Thereafter, the police visited the accused person's office to invite him to the Police station to assist with investigations but he declined the invitation and categorically told the police that he would not honour the invitation. The accused person then instructed one of the female workers in his office to take a video coverage of police presence in his office. Based on these facts, the accused person was served with criminal summons to appear before the Honourable Court.

### **THE PLEA**

The accused person who was represented by Counsel pleaded not guilty to charges after they had been read and explained to him in the English language. The accused person having pleaded not guilty to the charge put the facts of the prosecution in issue and thereafter the prosecution assumed the burden to prove the guilt of the accused person beyond reasonable doubt.

At the trial, the prosecution called five witnesses and tendered in evidence the following; **Exhibit “A”**-the investigation caution statement of the accused person, **Exhibit “B”**, **“B1”**- Official Receipt and annual rent demand from TDC respectively, **Exhibit “C”**- Application for transfer of ownership, **Exhibit “D”**- Statutory Declaration, **Exhibit “E”**- **“E2”** -Photographs of a gate, **Exhibit “F”**-

Charge statement of the accused person, **Exhibit “G”**- Site Plan, **Exhibit “H”**, Letter of change of ownership.

At the close of the case of the prosecution, Learned Counsel for the accused person submitted that there was no case sufficiently made out to warrant calling on the accused person to open his defence on the two counts. The court ordered Counsel for the accused person to file a written submission of no case which was filed 2<sup>nd</sup> October, 2023. The court therefore has a statutory duty to evaluate the evidence led by the prosecution to determine if at the close of the case of the prosecution, a prima facie case is sufficiently made out to warrant calling upon the accused person to open his defence.

### **THE LAW ON SUBMISSION OF NO CASE**

**Section 173** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30):

*"Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."*

In the case of **Michael Asamoah & Another v The Republic, Suit No. J3/4/2017**, delivered on 20<sup>th</sup> July, 2017, the Supreme Court, per Adinyira JSC (as she then was), restated the law on submission of no case at page 5 as follows;

*"The underlying factor behind the principle of submission of no case is that an accused should be relieved of defending himself where there is no evidence upon which he may be convicted. The grounds upon which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under summary trial or trial on indictment may be restated as follows:*

- a. There has been no evidence to prove an essential element in the crime;*

- b. *The evidence adduced by the prosecution has been so discredited as a result of cross-examination; or*
- c. *The evidence was so manifestly unreliable that no reasonable tribunal could safely convict on it;*
- d. *The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, and one with innocence".*

Regarding the standard of proof at this stage, the Supreme Court in the case of **Tsatsu Tsikata v. The Republic** [2003-2004] 1 SCGLR, 1068, stated that the standard of proof at the submission of no case stage is a prima facie case and not beyond reasonable doubt since the court has not had the opportunity to hear the defence.

In the case of **Kwabena Amaning Alias Tagor and Anor. v. The Republic** (200) 23 MRLG 78, the court held that:

*“Prima facie evidence is evidence, which on its face or first appearance, without more, could lead to conviction if the accused fails to give reasonable explanation to rebut it. It is evidence that the prosecution is obliged to lead if it hopes to secure conviction of the person charged. At this stage, the trial court is not supposed to make findings of facts since the other side has not yet spoken to determine who is being factual. What the trial court has to find out at this stage that the prosecution has closed its case is whether or not the evidence led has established all the ingredients of the offence charged for which the accused person could be convicted if he failed to offer an explanation to raise doubts in the said evidence”*

I proceed to discuss the ingredients of the charges levelled against the accused person in the light of the evidence adduced by the prosecution to determine if at

the close of the case for the prosecution, the prosecution succeeded in proving the essential ingredients of the offences charged requiring a full trial or the evidence is one-sided favouring the accused person such as not to call upon him to open his defence.

## **ANALYSIS**

### **COUNT 1-TRESPASS**

It is provided for in **Section 157** of the criminal Offences Act, 1960 (Act 29) as follows;

*A person who—*

*(a) unlawfully enters in an insulting, annoying or threatening manner on land belonging to or in the possession of any other person; or*

*(b) unlawfully enters on land after having been forbidden so to do; or*

*(c) unlawfully enters and remains on land after having been required to depart from that land; or*

*(d) having lawfully entered on a land, acts in a manner that is insulting, annoying or threatening; or*

*(e) having lawfully entered on a land, remains on that land after having been lawfully required to depart from that land,*

*commits a criminal offence and is liable, on the complaint of the owner or occupier of the land, to a fine not exceeding twenty-five penalty units; and the Court may order the removal from the land, by force, if necessary, of a person, an animal, a structure or a thing.*

Here, the accused person is specifically charged under **Section 157(a)** and from the particulars of offence, he is alleged to have unlawfully entered the land in the

possession of Believers Foundation Church in a threatening and insulting manner. To succeed, the prosecution must prove the following essential ingredients of the offence.

- i. That the complainant is the owner or occupier of the land,
- ii. That the accused person unlawfully entered the land in an annoying, insulting and threatening manner.

On the first ingredient of the offence, the prosecution must prove that the complainant is the owner or the occupier of the land. **Section 156** of Act 29 defines “owner” and “occupier” to include a tenant or lessee, and the attorney or agent of an owner or occupier for purposes of an offence under Section 157 of Act 29.

The first prosecution witness (PW1), David Tetteh Logodjo testified that he lives at Community 22, Tema and describes himself as a farmer and a caretaker of Believers Salvation Ministry's property. According to his testimony, on 28<sup>th</sup> August, 2018, between the hours of 2:00pm and 3:00pm, he was in his farm located at Michel Camp when his wife called him that a group of people had come onto the land they occupy as caretakers. When he arrived at the site, he met about six people he had not met before and when he enquired of their mission on the land, they informed him that they had been sent by the Christ Embassy Church to mount a metal gate. He then informed one of them called Isaac that the land in dispute did not form part of their church's land and asked them to leave the land. They took the metal gate and placed it back into the car and left. He also went home and whilst at home, he heard some noise from a metal gate so he came out and saw the same people back again. He told them to leave the site as they were encroaching on the land.

According to the first prosecution witness, whilst he was discussing the issue with them, an elderly man came out of his car and attempted to take a photograph of him but he prevented him from doing so. Later, the said man asked him to take a call from someone on his phone which he refused since he did not know the person on the other side of the phone call. According to him, he later got to know the said man was a pastor of Christ Embassy Church. The man then told him that, *"Since you have refused to talk to the person on the phone, I will kill you when you step your feet on this land"*. Based on that, he called one Mr. Charles, an elder in his church who came to the site to meet the people on the site. In the process, one of the men attacked Mr. Charles and tore his shirt. After the incident, they went to the police station to lodge the complaint.

The second prosecution witness, Mabel Brako, the wife of PW1 also testified that on 28<sup>th</sup> August, 2018, she was at home when she saw a car with a metal gate with about six people trying to offload it onto the land in dispute. She asked them about their mission and they responded that they had been sent by the Christ Embassy Church to mount a gate. She then told them that the land did not belong to the Christ Embassy Church and also called her husband who had gone to the farm to come and witness what was happening. When her husband arrived at the scene, he spoke to people and they stopped mounting the gate. She was at home when she saw her husband returning from the land in dispute with the accused person following him and asking him to take the phone for a call. PW1 refused to take the phone and the accused person told her husband that if he steps on the said piece of land again, he will kill him. At that point, PW1 called one Mr. Charles who came to the site. An argument ensued between them and in the process a man pushed the said Mr. Charles and tore his shirt. Later Mr. Charles and PW1 reported the case at the Tema Community 22 Police Station.



The third prosecution witness (PW3), Charles Anarfi Oppong, testified that under his leadership, his church, Believers Salvation Ministry bought a piece of land measuring 100' feet by 128 feet and located at Community Twenty two (22) Annex - Tema from one Mr. Erasmus Tetteh Nanor at a price of One Hundred and Thirty Thousand Ghana Cedis (GH¢130,000.00) in January, 2017. In June 2017, the church purchased another piece of land adjoining the land they had already purchased measuring 40' feet by 80feet from a married couple by name Monica Acheampong and Derrick Acheampong, at a price of Ten Thousand Ghana Cedis (GH¢10,000.00) and they were issued with receipts. PW3 states that the plots share boundaries with Christ Embassy Church's land.

PW3 further testified that on or round July, 2017, a man called him on his phone and introduced himself as Pastor Mintah, a head pastor of the Christ Embassy Church and invited him to their office located behind TDC main office in Community One (1). Tema for a meeting. He went with a member of his church by name, Paakor Hayford to the meeting. At the meeting, the said Pastor Mintah told him that he had been instructed by the Head Pastor of Christ Embassy Church to call for the meeting and that he went to Mr. Erasmus Tetteh Nanor in attempt to buy the land they had already purchased but Erasmus told him that he had already sold the land to Believer's Salvation Ministry. Based on that, the accused person had proposed to buy the land but he rejected the offer and left the meeting.

PW3 further testified that in August 2018, at about 3:00pm, PW1 called to inform him that some people were fixing iron gates at the portion of land where Mr. and Mrs. Acheampong sold to their church so he quickly rushed to the land. When he got to the land, he met the accused person with some people fixing a metal gate on the land in dispute and he informed them to stop work since the land belonged to his church. The accused person then approached him that he ordered the people

to fix the gate for him and asked him to calm down but he insisted that they stop mounting the gate. They did not heed to his request and mounted the gate. He then left the scene and reported the incident to the police. During investigations by the police, he led the investigator to the scene and showed him the metallic gate the accused person fixed which the investigator took photographs of. He also led the police to the accused person's office for his arrest but he resisted arrest. According to him, the portion of land the accused person fixed his metallic gate is for his church and in the records of TDC, it is plot number 95 which shares boundary with the accused person's plot numbers 101, 102. In their attempt to transfer ownership of Plot Number 95 into the name of his church, their grantor executed an affidavit for them. Mr. Erasmus Tetteh Nanor gave him the site plan covering Plot number 96 and 97 and on 21<sup>st</sup> November 2021, TDC gave him the transfer declaration confirming ownership of Plot 96 and 97 by Erasmus Tetteh to Believers Salvation Ministry. PW3 under cross-examination by the Counsel for the accused person, the following ensued;

*Q: Did you at least see 2 pillars at the entrance of the land when you first entered the land?*

*A: Yes My Lord. There were some pillars there. As I have said, there was a fence wall on part of the land so there were some pillars on part of the land.*

*Q: The two pillars you saw at the entrance of the disputed land is what your church has now mounted its own gate on. Is that correct?*

*A: My Lord, there were short pillars and we had to continue. Again, acquisition of land in Tema is not limited to pillars or fence wall on part of the land. There should be an offer, acceptance payment made and getting the right documents from TDC.*

*Q: I put it to you that these pillars and walls at the entrance were the structure on which exhibit E1 was mounted before you entered the land.*

A: *My Lord, there were some pillars but we did some work on it.*

Q: *I put it to you that these pillars and wall at the entrance that you came to meet on the disputed land were put up by the accused Christ Embassy Church.*

A: *My Lord I cannot confirm that. When we bought the land and went on the land, there were walls on part of the land.*

Q: *I put it to you that accused church workers only came to replace exhibit E1 which had gone rusty and brought down by your Church with exhibit E.*

A: *My Lord it is not true.*

Q: *I put it to you that since you were not there before the wall at the entrance of the disputed land and exhibit E1 were put up, it does not lie in your mouth to deny that Christ Embassy put them up there.*

A: *My Lord, I cannot confirm that because having fence wall is not proof of ownership.*

Under further cross-examination by Counsel, the following ensued;

Q: *I put it to you that Christ Embassy originally purchased 4 plots of land measuring 210 by 130 including the disputed land from one Mohammed. I put that to you.*

A: *My Lord, I was not there so I cannot say.*

Q: *When Christ Embassy purchased this 4 plots TDC had not yet demarcated and given any plot in the area any numbers.*

A: *When we bought ours, after buying from the owners we had dealt with TDC concerning fees and charges, so I do not know what counsel is talking about.*

*Q: These 4 plots including the disputed land were in Christ Embassy's possession to the knowledge and now opposition of Mr. and Mrs. Acheampong.*

*A: Before we bought the land, we made a search to TDC and it confirmed that that portion plot 95 belongs to Mr. and Mrs. Acheampong.*

*Q: Christ Embassy's possession of the disputed land is proven by the wall separating the disputed land from Acheampong that you came to meet.*

*A: My Lord, it is not true. This is because Mr. Acheampong has a fence wall around his land.*

*Q: The relationship between the Acheampong's and Christ Embassy was so cordial prior to TDC demarcation such that Christ Embassy used to keep their tools in Acheampong's house as they built the wall.*

*A: My Lord, I was not there so I cannot confirm.*

*Q: It was the demarcation exercise of TDC that unfairly included the disputed land in Acheampong's land. I put that to you.*

*A: I am not in a position to say what TDC did fairly or unfairly.*

*Q: So that TDC search report claiming Christ Embassy had encroached on plots number 95, 97 and Acheampong's land is not the correct position of the existing facts on the ground before the demarcation.*

*A: When the demarcation he is talking about happened I was not there. I know that if you want to buy a land, you have to conduct a search and that is*

*what we did and TDC confirmed that plot number 95 is for Mr. and Mrs. Acheampong, plot number 96 and 97 is for Mr. Nanor and we went ahead to see them and then we purchased from them.*

*Q: When the demarcation exercise was brought to the attention of Christ Embassy, the church made a written complaint to TDC and the matter is still under discussion.*

*A: My Lord, I cannot confirm.*

*Q: I put it to you that you cannot depend on the current demarcation of TDC to make the case of trespass against Christ Embassy.*

*A: It is not true. This is because as we speak we are paying ground rent based on that new demarcation we are talking about.*

*Q: I suggest to you that prior to the TDC demarcation, the existing demarcation on the ground never showed Christ Embassy to have encroached on the land.*

*A: I do not know about prior demarcation. What I know is what TDC has now said is charging ground rent and fees and charges on.*

*Q: This is why Christ Embassy Church or pastor Mintah could not have approached you to purchase the disputed land.*

*A: It is not true. I remember very well in pastor Mintah's office what he told me that he does not need all our land but only some portion which he claims he needed.*

The fourth prosecution witness, D/Insp. Joseph Mawuli Kwadjo Barabu testified that on 28<sup>th</sup> August, 2018, the instant case was assigned to him for investigations. During investigations, the complainants led him to the scene of the alleged crime where he observed a piece of land at Community 22, Annex, Tema and showed him an iron gate mounted on that land as the iron gate the accused person mounted as well as the place he threatened to kill PW1. He interviewed witnesses in the case and took statements from them. PW3 led him to the Christ Embassy Church, along Tema Community 3 Beach Road in Nungua and when they met the accused person, he resisted arrest and sacked him from his office. Based on that the accused person was served with criminal summons to appear before the District Court, Ashaiman and his lawyer presented him for investigations.

PW4 states that the accused person in his investigation caution statement informed him that his church, Christ Embassy bought the land in dispute from one Mohammed about 10 years before PW3 and his church came to the land and therefore, his iron gate on that land had also been there for a long time which got rotten and he only went there to repair the rotten iron gate before the altercation ensued between him and the complainants. He asked the accused person to produce documents covering the said land but he could not produce same. The accused person led him to the same land being claimed by the complainant and showed him the metal gate as the one he was erecting on the land. PW1 also identified the accused person as the one who threatened to kill him but the accused person denied threatening PW1 with death. PW2 also came to the scene to corroborate what PW1 had told him. He also asked PW3 to produce documents covering the land in issue to evidence his church's ownership to the land and he produced a site plan from TDC Development Company, Tema showing plots Numbers 95, 96 and 97, 102, 103 in the area of Community 22 Annex, Tema.

As part of his investigations, he wrote a letter of assistance to TDC to furnish him with the relevant documents showing ownership of plot numbers 95, 96, 97, 101, 102 and 103 in that area. The response from TDC showed that plot number 95 was in the name of Derrick and Monica Acheampong, PW3's churches' grantor. Plot numbers 96 and 97 were in the name of Erasmus Tetteh Nanor/ Believers Salvation Ministry whilst plot numbers 101, 102, and 103 stood in the name of Believers' Love World Church (Christ Embassy) being the accused person's church.

According to his testimony, when he enquired from PW3 why the land was still in the names of their grantors, he told him that they had not yet effected the change of ownership. According to him, based on his investigations, the land in dispute belongs to PW3's church. PW3 also made him aware that part of plot number 95 which was the place the accused person erected the iron gate was the portion he bought from Derrick and Monica Akyeampong on behalf of his church whilst he bought plot numbers 96 and 97 from Erasmus Tetteh Narnor. PW3 also produced receipts covering plot numbers 96 and 97 with Erasmus Tetteh Narnor as the grantor and receipts covering part of plot number 95 he bought from Mr. and Mrs. Akyeampong. He contacted Derrick Acheampong and Erasmus Tetteh Narnor who confirmed the sale. Based on that, he charged the accused person with the instant offences and arranged him before the Court. PW4, under cross-examination by Counsel for the accused person, the following exchanges took place;

*Q: I put it to you that you were not willing to listen to anything the accused had to say and that is why you cannot remember or that the accused told you his church bought land measuring 210 by 130 feet.*

*A: My Lord, I was willing and ever to listen to anybody that comes my way during investigations.*

*Q: The accused also told you that Christ Embassy purchased and possessed its land including the disputed land several years before complainant and his Believers Salvation Church purchased their first 2 plots 96 and 97. Is that correct.*

*A: No my Lord. In the sense that the accused person did not produce any document which will assist police know the number of plots his Church purchased years back but he said that the land in question is for his church.*

*Q: The accused person also told you that when Christ Embassy purchased the land, TDC had not yet demarcated and numbered the plots constituting the land. Is that correct.*

*A: My Lord, he did not tell me.*

The prosecution also subpoenaed an official from TDC Company Ltd. Survey Department, Daniel Owusu who testified as the 5<sup>th</sup> prosecution witness. According to him, his office received a letter from police for assistance and that it was established that Christ Embassy Church had erected a wall which had encroached onto plot number 95, 96, 97. According to his testimony, Plot numbers 95, 96, 97 were in the names of Tetteh Narnor and Believers Salvation Ministry and Plot numbers 101, 102, 103, were in the name of Believers Love World Church (Christ Embassy). PW5 under cross-examination by Counsel for the prosecution, the following ensued;

*Q: The conclusion that the disputed land has been developed beyond its boundaries was arrived at during TDC demarcation of the land. Is that correct?*

*A: Yes my Lord.*

*Q: Did TDC inform Christ Embassy of the alleged encroachment.*



*A: My Lord, I do not know about that.*

*Q: What about plot no. 95 for the Acheampong's. Had it been developed beyond its boundaries at the time of demarcation by TDC.*

*A: My Lord,*

*Q: I put it to you that at the time of demarcation by TDC, the Acheampong's had developed plot No. 95 beyond its boundaries into the next road sharing boundaries with the western side of plants No. 95, 96 and 97.*

*A: No My Lord.*

The evidence led by the prosecution witnesses and the rigorous cross-examination conducted by Counsel for the accused person shows that the issue between the parties is one of boundary dispute and ownership of the area where the accused person and his church members mounted the metal gate. In fact, the prosecution witnesses agree that PW3's church's land in the area, shares boundary with the land of Christ Embassy Church. The investigator, PW4 also states that during investigations the accused person maintained that he acquired the land and they were in possession for more than ten years before the alleged acquisition by the Believers Salvation Ministry. Also, the accused person was insistent that the TDC re-demarcation was long after they had purchased the land in dispute. However, PW4 maintains that the accused person could not produce documents to the police. It is noteworthy that document is not the only means of proving ownership to land. Thus, a suspect's failure to produce land documents when requested to do so is not conclusive proof that the rival claimant is the owner of the land.

Additionally, from the investigations conducted by the police, and their own facts presented to the court, the main dispute between the accused person's church and the complainant's church is one of boundary dispute which in my view, can properly be determined through a civil suit when a composite plan is drawn to determine the limits of the respective lands of the parties. As the court cautioned in the case of **Homenya v. The Republic** [1992] 2 GLR 305 at page that:

*“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 as between the complainant and the accused . . . Thus as soon as the prosecution realises 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 of the property is bound to negative the unlawfulness of his conduct.”*

Similarly, the task of the court on charge of criminal trespass where proof that the accused person was not the owner of the land is an essential ingredient of the offence, the prosecution cannot succeed where the accused person makes a bona fide claim to the property and which calls for a determination of the issue of title to the land between the accused person and the complainant. For a charge of trespass to succeed, the accused person must not have any valid claim to the land. Where, as in the instant case, the parties acknowledge that they are boundary owners and that the dispute relates to the extent of their respective lands and the limits of the boundary between them, an action in trespass cannot lie without a civil court first determining the issue of the title to land. The prosecution having failed to establish conclusively the ownership of the land, the court will not embark on a discussion of whether the accused person unlawfully entered the land in an insulting, annoying and threatening manner.

On the totality of the evidence led, I find that the prosecution failed to prove an essential ingredient of the charge to warrant calling on the accused person to open his defence on a charge of trespass. The submission of no case on count 1 is accordingly upheld. The accused person is acquitted and discharged.

## **COUNT 2- THREAT OF DEATH**

On count 2, the accused person is charged with Threat of Death contrary to **Section 75** of Act 29. The section provides that:

*"A person who threatens the other person with death, with intent to put that person in fear of death, commits a second degree felony"*.

The term "*threat*" is defined under **Section 17** of Act 29 to mean "*a threat of criminal force or harm*". The threat may be oral or in writing and may be communicated to the person threatened either directly or through another person. It is not a necessary element of the offence that the person using the threat will carry out the threat. See **Section 17 (3) and (4)** of Act 29.

In the case of **Behome v. The Republic** [1979] GLR 112 the court held as follows:

*In the offence of threat of death, the actus reus would consist in expectation of death which the offender creates in the mind of the person threatened whilst the mens rea would also consist in the realisation by the offender that his threats would produce that expectation.*

Also, in the case of **Patterson Ahenkang & Ors. V. The Republic** [2014] DLCA 4949 at page 12, the Court of Appeal stated that:

*"To constitute a threat of death therefore, the threat must be criminal, that is in respect of an unlawful harm. The means by which the threat is conveyed is*

*immaterial and it could be conveyed directly or indirectly. Indeed words are sufficient provided the ingredients of the offence are present. There must be proved, the intention on the part of the threatener/accused to put the other person in fear of death that is in the fear of being killed. The intention must be real or wicked. Whether the victim of the threat was actually put in fear of death is immaterial. What matters is the intention to put the other person in the fear of death”*

P. K. Twumasi in his book **Criminal Law in Ghana** states at page 234 as follows:

*“...In proving the offence, therefore, it is not necessary to establish that the accused at the time he uttered the threat actually had in his hands or possession some visible means of carrying out his threat. Mere words are sufficient provided the other ingredients of the offence are present. The next important element constituting the offence is intent on the part of the threatener to put the other person in fear of death, that is, in fear of being murdered.”*

Therefore, to succeed on a charge of threat of death contrary to **Section 75** of Act 29, the prosecution must establish the following essential elements of the offence charged;

- i. There must be evidence of threat to kill issued by the suspect against the life of the victim.*
- ii. Intent on the part of the accused to put the victim in fear of death.*

The evidence of the first and second prosecution witnesses in support of the charge is that when the accused person entered the land, he asked the first prosecution witness to speak to someone on his phone but PW1 refused. Based on that, the accused person threatened to kill him by saying, *"Since you have refused to talk to the person on the phone, I will kill you when you step your feet*

*on this land*”. Under cross-examination by Counsel for the accused person, PW1 was insistent that the accused person threatened to kill him and that he was put in fear of death. This is corroborated by the testimony of PW2, who also testified that he heard the accused person issuing out threatening words to PW1 that if he stepped his foot on the land again, he would kill him.

The accused person in his investigation caution statement denies issuing out the threat and says that he is a man of peace and cannot threaten anyone with death or harm. In my view, it is therefore pertinent for the accused person to open his defence to give his version of events on the day of the alleged incident for the court to determine if indeed he issued threatening words and if he did, his intent in uttering the words. On the totality of the evidence led by the prosecution in support of the charge of threat of death, I hold that a prima facie case is sufficiently made out to warrant calling on the accused person to open his defence. The submission of no case on this count is dismissed. The accused person shall prepare to open his defence on count 2.

**SGD.**

**H/H AGNES OPOKU-BARNIEH  
(CIRCUIT COURT JUDGE)**