

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON MONDAY, 5TH JUNE, 2023

SUIT NO. D1/06/22

THE REPUBLIC

VRS

ABASS BABA

YUSIF FAROUK

MOHAMMED AWAL

JUDGMENT

The Accused Persons were charged before this court on four counts; *Conspiracy to Commit Crime, namely Trespass contrary to section 23 and 157(A) of the Criminal offences Act, 1960 (Act 29), Trespass contrary to section 157A of the Criminal Offences Act, 1960 (Act 29), Conspiracy to Commit crime namely Prohibition of Activities of Land Guards contrary to section 23 and 7 (1) of the Criminal Offences Act, 1960 (Act 29) and Vigilantism and Related Offences Act, 2019 and Prohibition of Activities of Land Guards contrary to section 7(1) of the Vigilantism and Related Offences Act, 2019.*

The particulars of offence for count one are that the Accused Persons, on the 29th day of November, 2021 at about 12:30pm at Katamanso in the Ashaiman Circuit and within the jurisdiction of this court, did agree to act together with a common purpose to commit crime namely trespass.

For count two, the particulars of offence are that on the same date, time and aforementioned place, they unlawfully entered a parcel of land in an annoying manner belonging to Okley family of Katamansu by erecting concrete pillars on the land without the consent of complainant's family.

For count three, the particulars of offence are that on the same date, time and place within the jurisdiction of the court, they did agree with a common purpose to commit crime namely Prohibition of Activities of Land Guards.

The particulars of offence for count four are that on the even date, time and place, the Accused Persons acted as land guards for the purpose of protecting a parcel of land at Katamansu purported to belong to Green lake estate.

Of the three Accused Persons, only A2 appeared in court to stand trial. After the charges were read and explained to him in Hausa; the language he had elected, he pleaded not guilty to all four counts.

By this plea, he stood shielded by the law as per *Article 19 (2) (c) of the 1992 Constitution*. He was presumed innocent until proven guilty. According to the case of *Davis v. U.S. 160 U.S 469(1895)* "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

In the case of *Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879* the court held that "Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is

arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story.

The presumption of innocence of the accused person guaranteed under the 1992 Constitution, is not cast in historic concrete like King Arthur's sword. That guarantee is that he is presumed innocent *until prosecution* has been able to lead evidence to establish his guilt beyond reasonable doubt.

That being so, prosecution may lead credible, relevant and material evidence in proof of the charges to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty. The onus lies on prosecution to lead evidence to establish a prima facie case against the accused person by the close of their case.

It is only then that prosecution would be deemed, prima facie to have upset the presumption of innocence in favour of the accused and he would in turn be called upon not to prove his innocence, but to raise a reasonable doubt as to his guilt.

Prosecution in proof of its case called two witnesses to testify.

THE EVIDENCE OF PW1

PW1's evidence is that he is a member of the Okley family that has a large tract of land at Katamansu. He holds a power of attorney from the said family to act on their behalf with regard to all issues concerning the land.

He continues that on the 26th day of November, 2021 at about 10:00am, he noticed that some land guards with offensive weapons were on a portion of the land demarcating same without the consent of his family.

He notified the police but the said land guards had left by the time the police arrived at the scene. He saw them again on the 29th day of November, 2021 and alerted the police. The police upon arrival arrested four persons with some motorbikes.

THE EVIDENCE OF PW2

PW2 is the investigator. His evidence is that on the 26th day of November, 2021, PW1 lodged a complaint that some land guards had invaded a portion of his family land lying at Katamansu.

On the same day, he together with a police patrol team visited the site but did not meet the supposed land guards. PW1 saw the land guards on the land again on the 29th day of November, 2021. He alerted the police headquarters and a patrol team was dispatched to the scene. Accused Persons were arrested with motorbikes and handed over to the Kpone Katamansu Police.

The three Accused Persons and one other by name Mumuni Issah now deceased were handed over to the police with five exhibits motor bikes. The Accused Persons intimated that they were engaged by Green Lake Estate Company Ltd to protect their surveyors to demarcate and erect concrete pillars on the land.

The complainant furnished the police with relevant documents to support his claim that the land belongs to their family. The Accused Persons and Green lake however failed to produce any documents to the police despite several appeals.

According to PW2, his investigations at DVLA revealed that none of the motorbikes retrieved from the Accused Persons were registered in their names. Accused Persons were sent to the site and they identified the concrete pillars.

PW2 tendered in evidence the investigation caution and charge statement of A2 as Exhibits A and A1, Exhibit B as the investigation caution statement of A1 and Exhibit C and C1 as the investigation caution and charge statement of A3. He also tendered in evidence Exhibit D series as search results from DVLA indicating the ownership of the motorbikes as well as photographs. Exhibit E was tendered in evidence as the land title certificate of Seth Otu Okley and Humphrey Otu Okley. Exhibit E1-E5 were tendered in evidence as photographs of the land.

Prosecution closed its case after this.

CONSIDERATION BY COURT

It is elementary that prosecution bears the evidential burden of establishing all the elements of the offence they have charged the accused persons with. The reverent Dotse JSC in the case of *Richard Banousin vrs. The Republic, Crim., Appeal No J3/2/2014 delivered on 18th March, 2014* held that “the prosecution has the burden to provide evidence to satisfy all the elements of the offence charged”.

Section 173 of the Criminal and Other Offences Procedure Code, 1960 (Act 30) provides that; "If 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."

According to the Supreme Court in the case of *Asamoah & Anor. Vrs. The Republic* [2017-2018] 1 SCGLR, 486, *Adinyira JSC* speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

- a) There had been no evidence to prove an essential element in the crime
- b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
- c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it
- d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of *The State v. Ali Kassena* [1962] 1 GLR 144 in which the *Practice Direction issued by the Queens Bench Division in England* [1962] 1 E.R 448 (*Lord Parker CJ*) was approved of

On count one, the applicable sections of the *Criminal Offences Act, 1960 (Act 29)* are *sections 23 (1) and 157 (A)*. Prosecution's first obligation is to produce cogent, material and credible evidence to establish that the Accused Persons agreed to act together with a common purpose of trespassing unto the land of the Okley family at Katamansu.

The provision on *Conspiracy in the Criminal Offences Act, 1960 (Act 29) is section 23 (1)*. It 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 to commit or abet the criminal offence.

In the case of *Agyapong v. The Republic [2013-2015] 2 GLR 518*, the court of Appeal noted that “under the old formulation of section 23(1) of Act, 29, the prosecution needed to prove only one of two things. One was that the accused persons agreed to act together in furtherance of the commission of the offence and the other was that even without agreeing to act together, they acted together in furtherance of the crime. But under the new formulation, the prosecution had a duty to prove that there was a prior agreement by the accused persons to act together with a common purpose, before it could secure a conviction for conspiracy”. See also the decision of Marful Sau J.A (as he then was) sitting as an additional High Court Judge in the case of *Republic v. Augustina Abu and others, (Unreported) Criminal Case No. ACC/15/2013*.

In order for Prosecution to establish its case against the Accused Persons on count one and count three they must lead positive, cogent and credible evidence to establish that;

1. The accused persons agreed to act together
2. The agreement to act together was for the common purpose of undertaking the criminal enterprise of trespassing unto the land of the Okley family at Katamansu
3. The agreement to act together was for the common purpose of engaging in land guard activities

In Commissioner of Police v. Afari & Addo [1962] 1 GLR 483, it was held by Azu Crabbe JSC that “it is rare in conspiracy cases for there to be direct evidence of the agreement which is the gist of the crime. This usually has to be proved by evidence of subsequent

acts, done in concert, and so indicating a previous agreement." This position of the law was reiterated by the Supreme Court in the oft cited case of *Azametsi & Others v. The Republic* [1974] 1 GLR 228, where the Court held that "it was not always easy to prove agreement by evidence, but it could be inferred from the conduct of and statements made by the accused persons". See also the case of *Duah v. Republic* [1982-88] 1 GLR 343.

The offence of trespass is provided for in section 157 of Act 29. Section 157 (a)

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 required to depart from that land, or*
- (c) *Unlawfully enters and remains on land after having been required to depart from that land,*
or
- (d) *Having unlawfully entered on a land, acts in a manner that is insulting, annoying or threatening, or*
- (e) *Having unlawfully entered on a land, remains on that land after having been lawfully required to depart from the land*

Commits a criminal offence and is liable, on the complaint of the owner or occupier of the land to a fine not exceeding 25 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.

Prosecution, must thus establish by evidence that;

1. The complainant is an owner or occupier of the land at Katamanso
2. That the Accused Persons entered the said land in an insulting, annoying or threatening manner.

I would first consider whether or not Prosecution has been able to lead cogent, relevant and credible evidence in support of the charge of trespass.

On the first element, Prosecution must prove that the complainant is not simply anyone affected but either the owner or occupier of the said land. The evidence of prosecution witnesses is that the land which lies at Katamansu is the property of the Okley family, and that PW1 has a power of attorney to act on behalf of the family in all matters concerning the land.

According to PW2, during his investigations, PW1 was able to produce a land title certificate indicating his family's ownership of the said land. Prosecution tendered in evidence Exhibit E as the said land title certificate. The power of attorney of which PW1 testified as having been donated to him by the family was not tendered in evidence to prove its existence.

Exhibit E is a land title certificate which indicates that the said land belongs to Seth Otu Okley and Humphrey Otu Okley. It does not mention the word 'family' or 'families'. The name of Complainant is Godrich Nii Ardey Ankrah. Clearly, he is neither Seth nor Humphrey Otu Okley.

The power of attorney Prosecution speaks of which was not tendered in evidence means the court is left bereft of any evidence that prima facie shows the land belongs to PW1 or that PW1 is an agent or lawful attorney of the owner(s) of the said land. Prosecution also fails to lead any evidence that PW1 was in occupation of the said land.

To further darken the skies of Prosecution's case, PW1 admitted under cross examination that prior to his report to the police and the arrest of the Accused Persons, a civil case was

instituted by Green Lake Construction Ltd against PW1 and the Okley Family of Katamanso.

At page...of the record of proceedings, PW1 answered under cross-examination by learned counsel for the Accused Person at pages...of the record of proceedings,

Q: *There is a pending suit at the High Court between Greenlake Estates Ltd vrs Nii Andy Ankrah and the Okley family. Are you aware?*

A: *That is not so. There is no pending case. It was a case that was only revived last week and it is a civil case.*

Q: *I suggest to you that that suit commenced on 6th January 2021.*

A: *My Lord, I cannot remember the date.*

Q: *And you submitted to the jurisdiction of the court by entry of appearance through your lawyer Musah Ahmed on 28th July 2021.*

A: *That is so. After the Accused Persons were arrested.*

Q: *When were the Accused Persons arrested?*

A: *I would have to refer to my evidence in chief.*

Counsel: *My Lord, he could refer.*

A: *26th November 2021.*

Q: *What is the stage of that case now?*

A: *We were served with a continuation notice last Thursday and so we went to take a date on Friday as it was very short.*

Q: *So presently there is a pending before the Adenta High Court on motion on Notice for interlocutory injunction and for judgment in default of defence.*

A: *That is so my Lord.*

Q: *So you are aware of the pending of this suit against yourself and your family yet you made an allegation of trespass to the police in November 2021.*

A: *That is so but there had been earlier complaints to the police already.*

Per PW1's own admission, which he reluctantly made after being evasive, there is indeed a pending suit at the Adentan High Court between Green Lake Construction Ltd on one hand and PW1 and the the Okley Family of Katamanso on the other hand. The suit was taken out on 6th July, 2021 and PW1 entered appearance on the 28th of July, 2021.

That means that prior to his complaint to the police on 26th and 29th November, 2021, he was not only aware that there was an ongoing dispute to the ownership of the land but had entered appearance and subjected himself to the jurisdiction of the High Court to determine the issue.

PW2, the investigator answered under cross-examination by learned counsel for the Accused Persons at page...of the record of proceedings that;

Q: *Are you aware that there is a pending litigation between Greenlake estate and the complainant and his family in a civil suit at the Adenta Court?*

A: *My lord, I am not aware.*

Without evidence to the contrary, the only inference which can be made from PW2's answer is that PW1 had not informed him (the investigator) of this civil suit. This inference is further strengthened by PW1's lack of candour under cross-examination. He answered at page... of the record of proceedings

Q: *But you did not find it very important to report Greenlake estate to the police for hiring the services of land guards.*

A: *I did not know Greenlake at the time.*

Q: But there is a suit between you and your family and Green lake estate which was commenced on 6th July 2021.

A: That is so but on a different location within my titled certificate land.

As PW2's duty was to investigate the complaint and not simply take PW1 for his words and/or proceed to take statements from A2 and other accused persons, I cannot help but wonder at whether or not he simply conducted an arm chair investigation.

For PW1 to proceed to the police more than five months after the institution of the civil case when the case was still pending and claim ownership of the land is not only an outright falsehood but one which appears to bring the administration of justice into disrepute. As at 26th November, 2021, he knew of Greenlake Estate, knew about the pending suit to determine ownership of the land and was a party to that suit.

Thus, despite a challenge to the title of the Okley family and to PW1 himself in court, PW1 had knowingly led a state institution into believing that the Okley family of which he claims to be a member were the owners of the land and as complainant, wanted another court to base a criminal finding against the Accused Person on the basis of that falsely declared ownership.

On the charge of trespass, I find that Prosecution has failed to lead cogent evidence to establish that the complainant is the owner or occupier of the said land. The evidence on record does not also establish that PW1 is the lawful agent or attorney of the owner or occupier of the said land.

As Prosecution is required to establish all the necessary ingredients of the offence, their inability to establish the first element means there would be no need to foray into whether or not they were able to establish the second element.

On the same reasoning, as Prosecution has failed to establish the ownership of occupancy of the land, it stands to say that it cannot be held that the Accused Person and others conspired to trespass unto land the ownership of which is uncertain. Accordingly, on count one and count two, I find that Prosecution has failed to establish a prima facie case against A2 and he is accordingly acquitted and discharged.

I would now proceed to count three and count four. On count four, *section 7 (1) of Act 999* provides that:

“A person shall not, directly or indirectly, facilitate, organize or promote the organization of land guards, for the purposes of protecting or guarding land or property, whether belonging to that person or any other person”.

Thus in order for Prosecution to successfully establish the ingredients of the offence, it must prove that;

1. That A2 directly or indirectly facilitated, organized or promoted the organization of land guards
2. That he did so in order to protect or guard land or property
3. That the said property belonged to A2 or another person.

Prosecution’s case begins to wobble even in its particulars of offence for count four. The particulars of offence are that the Accused Persons on the said date, time and place aforementioned acted as land guards for the purpose of protecting a parcel of land at Katamansu purported to belong to Green lake estate.

Acting as a land guard is an offence on its own under Act 999. *Section 7 subsection 3* further provides that “a person shall not act as a land guard”.

Although both offences are provided for in *section 7 of Act 999*, one cannot be interchanged for the other. This is because they have different punishments. The punishment upon conviction for an offence under *section 7(1) of Act 999* is a term of imprisonment of not less than five (5) years and exceeding fifteen (15) years whilst the punishment upon conviction under section 7(3) per section 7(4) is a term of imprisonment not less than ten (10) years and not more than fifteen (15) years.

Ordinarily, I would have ended my analysis here on the basis that the mistake in the charge sheet enured to the disadvantage of the Accused Person. However, I find that although the statement of offence was wrong, the particulars of offence gave relevant details of the exact offence A2 and the others were charged with and more importantly, A2 was represented by learned counsel who extensively cross examined prosecution witnesses on the basis that A2 was accused of acting as a land guard. In his well written address to the court on a submission of no case, counsel for A2 also proceeded to argue on the basis of *section 7(3) rather than 7(1) of Act 999*.

Learned counsel referred the court to the definition of a land guard in *section 11 of Act 999*. Section 11 is the interpretation section of Act 999 and it defines land guard to mean “a person who uses violence to protect or guard land or property belonging to that person or another person”.

The evidence of PW1 is that the Accused Person and others numbering about 50, were on the land using weapons to intimidate his clients who were working on the land. PW1

answered at page ...of the record of proceedings under cross-examination by counsel for the accused that;

Q: *So on the day you found the accused persons on the land, what made you arrive at the conclusion that they were land guards?*

A: *My Lord, they were holding cutlasses and giving warning shots and scaring my clients working on the very parcel of land.*

Q: *So which type of weapons were they arrested with when the police arrived?*

A: *My Lord, I did not see the weapons retrieved by the police from them.*

Q: *Now the accused persons were arrested with motor bikes and corner pillars. Are you suggesting to this court that those are offensive weapons?*

A: *My Lord, I cannot say anything to that.*

Q: *Were you ever threatened or attacked by any of the accused persons?*

A: *No but my life was at stake by then.*

PW2's evidence is that upon their arrest, A2 and the others were found with motorbikes some of which were unregistered and others which had registration numbers that cannot be traced at DVLA.

At page...of the record of proceedings, he answered under cross-examination by learned counsel for the accused persons;

Q: *What made you the investigator arrive at that conclusion that these young men are land guards?*

A: *Yes my lord. After they were arrested, during interrogations that they said they were working for a company and the company asked them to protect the surveyors demarcating the land.*

Q: *So that made you arrived at the conclusion that they are land guards?*

A: *Yes, my lord, not only that, they also went to the site with unregistered motorbikes, some of these motorbikes the registrations numbers cannot be traced at DVLA. They also claim they work for estate company Greenlake Company since investigations started, no one from this company came to police station to indicate that these accused persons are their employee.*

The evidence of prosecution witnesses on this is at cross purposes. Whereas PW1 alleges the use of weapons including guns to scare away his clients who were working on the land, PW2 who is the investigator did not make any such findings in his investigation. His findings were in relation to motorbikes that the Accused Person and others were found on the land.

His basis of arriving at a conclusion that A2 and others are land guards is based entirely on his findings about the motorbikes and the fact that a company that A2 and others had mentioned as working for had not come to the police station during investigations to verify the claim of the Accused Persons.

This is despite the fact that PW2 had under cross-examination by learned counsel for A2 sought to give a general definition of a land guard.

Q: *Do you know the definition of land guards according to the Act that is Section 11?*

A: *My lord, I know but I cannot define it copiously as stated in the Act.*

Q: *Tell us your general definition.*

A: *The land guard is a person or someone who is engaged, not authorized to enter into a parcel of land in a violent manner in a way of protecting that piece of land which may be under litigation.*

PW2 as the investigator per his own general definition was aware that there was a requirement of the use of violence in proving whether a person acted as a land guard or not. His own investigations had not led to any finding that A2 and others used violence for the purpose of protecting or guarding the said land. For the purpose of emphasis, his conclusion on A2 and others being land guards was on their use of motorbikes.

At page...of the record of proceedings, under cross-examination, PW2 answered;

Q: *And that you did not conduct any investigations before charging the accused persons before this court.*

A: *My lady proper investigations was done before the accused was charged.*

Q: *Else you would have known that there is a pending suit in respect of the land that the Accused Persons were laborers working for Green Lake Estate and were carrying out their lawful duties as assigned by green lake estate*

A: *My lady that is not so. If Green Lake Estate indeed believes that the Accused Persons are workers of the company they could have come to the police station in their defense. However, despite several invitations to them they failed to come.*

Q: *And that no offensive weapons were found on the Accused Persons.*

A: *My lady the definition of land guards does not mean that an offensive weapon has to be found on them.*

Q: *And the motorbike you seized in the cause of your investigations belong to Green Lake Estate Limited and some of the Accused Persons*

A: *My lady that is not true because a search on some of the number plates of the registration numbers of these motor bikes showed that they did not exist and three of these motor bikes were unregistered.*

Q: *And you do not believe the unregistered bikes belong to Green Lake Estate*

A: *My lady respectfully if Green Lake Company is a law abiding company, I do not believe they would send unregistered motor bikes to the site*

Q: *So tell this court which of these unregistered motor bikes does not exist*

A: *The motorbikes are 5. 3 are unregistered. 2 are registered. We picked the 2 registered motor bikes to conduct a search at DVLA and we realized that one of them that we received a report from DVLA, the name that is on record does not belong to any of the Accused Persons or Green Lake Estate*

Q: *Do I need a motor bike to be registered in my name before I can ride it*

A: *No. however if the motor bike becomes a subject of investigation, at least we expect you to bring the document of whose name it has been registered in*

From PW2's evidence, it appears that he had turned the burden of proof on to A2 and the others, that is, once he found them on the said land in possession of motorbikes some of which were unregistered, it meant that they were land guards and it was up to them to prove otherwise. Even if he surmises that land guards are usually found using motorbikes, the fact that the Accused Persons were found on motorbikes on the land does not automatically mean that they are land guards.

That is not the law. The position of the law is that it is the duty of Prosecution to lead evidence to establish the offence(s) it charges an accused person with save for instances where the accused person pleads guilty. Where the accused person maintains his innocence, then he would be presumed innocent until prosecution has led evidence to prove his guilt. See section 19 (2) (c) of the 1992 Constitution.

On the basis that Prosecution has failed to lead relevant evidence in proof of count four, I hereby hold that they have failed to establish a prima facie case against A2 and hereby acquit and discharge him. A2 was charged with count four on the basis of a prior agreement to act as a land guard in count three, my findings on count four would equally apply to count three. Consequently, he is hereby acquitted and discharged on count three.

At the close of Prosecution's case, A2 is acquitted and discharged of all four counts on the basis that Prosecution has failed to establish a prima facie case against him on the charges.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P. JACOB ASAMANI FOR THE REPUBLIC PRESENT

FRANCIS KWAKU OHENE FOR THE ACCUSED PERSON ABSENT