

IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST ON THURSDAY
THE 21ST DAY OF DECEMBER 2023 BEFORE HER HONOUR MRS VERONIQUE
PRABA TETTEH.

SUIT No. 138/2023

THE REPUBLIC

VS

JOSEPH MENSAH

KOBINA TWENTOH AND 4 OTHERS

The six accused persons are charged with the offences of trespass contrary to section 157 and causing unlawful damage contrary to section 172, all of the Criminal Offences Act, 1960, Act 29. The prosecution's case is that the accused persons unlawfully entered the farmland of the complainant Solomon Dadzie and then caused damage to 100 coconut trees, 5 acres of acacia trees, the property of Solomon Dadzie and valued collectively at GH¢390,000.

It was apparent at the start of the trial that the background to this case is a dispute over ownership of the land on which the crops were planted. The accused persons comprising principal members and ordinary members of the Nsona No.2 family of Sanka claim ownership of the land in dispute. Their defence to this action was that the land belonged to their family and the absolute denial that the land contained 100 trees of coconut and five acres of acacia trees.

Section 11(2) of the Evidence Act, 1975, NRCD 323 provides that prosecution in a criminal action must prove the guilt of an accused person beyond reasonable doubt in order to secure a conviction. This means the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court

would believe beyond a reasonable doubt that the offence has been committed and that it is the accused who committed it. See *Asante v The Republic* (J3/7/2013) [2017] GHASC 3 (26 January 2017).

The Supreme Court in the case of *Banousin v Republic* (J3/2/2014) [2014] GHASC 10 (18 March 2014) explained that

“What “beyond a 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.”

See also *Frimpong alias Iboman v Republic* [2012] 1 SCGLR 297

***Gligah & Anr. v The Republic* [2010] SCGLR 870**

The prosecution called 3 witnesses; the complainant, police investigator and Charles Oppong. The accused persons also made their case through the first and fourth accused. They also relied on the evidence of the head of the Nsona No.2 family of Sanka.

Section 157(b) under which the accused persons are charged for trespass provides that

Whoever unlawfully enters and remains on any such land after having been required to depart therefrom... shall on the complaint of the owner or occupier of the land, be liable to a fine not exceeding 500,000 and the court may order the removal from the land, by force if necessary, of any person, animal, erection or thing.

The essential ingredients required of prosecution to establish trespass are

- a. Unlawfully entering the farmland
- b. The land must be occupied or owned by the complainant

From the evidence narrated it is clear that the land was occupied by the complainant in that he had crops growing on the land. While the complainants deny the volume of plants claimed by the complainant, there is an admission of some crops being on the land. It is clear therefore that the complainant was in occupation of the land. It is important to state that the meaning of “owner”, under section 157, contrary to the argument of accused’s counsel under section 15 does not merely refer to ownership in law per se. Section 156 provides that

“For the purposes of section 157, “**owner**” and “**occupier**” respectively includes a tenant or lessee, and the attorney or agent of an owner or occupier.”

For that reason I find that the complainant had been in possession of the land and that the entry by the accused persons amounts to trespass. On count 1 I find the accused persons guilty of trespass unto the land as it is clear that the complainant had been in possession of the land through his cultivation of same.

The second charge is for causing unlawful damage to the crops of the complainant.

Section 172 provides that a person who intentionally and unlawfully causes damage to any property by any means whatsoever to a value exceeding one million cedis commits a second degree felony. To secure the conviction of the accused persons, prosecution must prove that the unlawful damage was caused intentionally and not accidentally or negligently as this will negate the offence. The author P.K Twumasi explained the intent of causing unlawful damage at page 396 of his book *Criminal Law in Ghana* as follows:

"it must be proved that the unlawful damage was caused by the accused intentionally. Evidence that the damage was caused accidentally or negligently will not suffice. Where for instance an accused person through his negligence sets something ablaze and thereby causes harm to another person he may properly be convicted for negligently causing damage to the property."

The accused persons have never denied that they caused the land to be cleared so they could use it. This means they intentionally contracted the services of an excavator to clear the land of the plants. What they denied was the volume and value of the crops cleared on the land. In their evidence in chief however, admissions were made by the first and fourth accused of there being crops planted on the land. The admission by the first accused of there being some 20 acacia trees destroyed during the clearing of the land as well as the admission by the 4th accused that there had been some coconut and palm trees planted on the farm proves that the land had not been merely overgrown with weeds but that there had been a quantity of crops deliberately planted on it at the time they caused the land to be cleared.

The clearing of the so called 20 acacia trees and coconut and palm trees caused irreparable damage to the crops. The crops planted by the complainant. I am satisfied and find that the complainant had some crops growing on the land at the time it was cleared by the accused persons. I am also satisfied that the accused persons were aware of the crops growing on the land but decided to destroy them so the land could be cleared. Their intentional actions therefore caused damage to the plants.

The next question to consider is whether or not their claim of ownership of the land entitled them to destroy the plants found on it. My answer is no. While I find that there is litigation over ownership of the land, the law does not allow one faction to take the law into their own hands to cause damage however minimal to property found on the land which they claim has been planted illegally. Any orders to destroy

the crops or to clear same should have come from the courts of law and not the accused persons taking the law into their own hands. I find the action of the action taken by the accused persons to clear the land which damaged the crops of planted by the complainant unlawful. Consequently, I find the accused persons guilty of causing unlawful damage to the crops planted by the complainant.

Finally, the value of the property damaged is a very important matter as it determines the degree of crime committed. That is the classification of the crime either as a misdemeanor or second degree felony. The outcome of such classification would ultimately determine the punishment meted out to accused persons once they are found guilty. The evidence of the complainant on the loss caused to him was that

“On the land I had 100 trees of coconut, 70 of which is for planting for food and jobs and 30 which is mine. The acacia trees covered three and half acres of land while the coconut covers one and half acres of the land.”

This evidence is contrary to the evidence contained in the report of the Department of Agriculture. In the report admitted and marked as Exhibit G, the assessment of the acacia trees was on the basis that it covered 5 acres of land. The agric officer who tendered this report was cross examined and his evidence showed that he did not conduct the valuation himself. The report also shows that it was not based on a physical assessment conducted on the field but based on the statements made by the complainant. Therefore the report cannot be relied on as conclusive proof of the actual value of the crops destroyed on the land. so while I can conclude that there were crops destroyed when the land was cleared, I am unable to conclude on the quantity.