

IN THE CIRCUIT COURT HELD AT GOASO IN THE AHAFO REGION ON
THURSDAY THE 4TH DAY OF OCTOBER 2023 BEFORE HIS
HONOUR CHARLES KWASI ACHEAMPONG ESQ. CIRCUIT COURT JUDGE

BR/SY/CT/207/2023

THE REPUBLIC

VRS.

1. ASAMOAH MARTIN
 2. KWAKU BONSU
 3. YAW ALEXANDER
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JUDGMENT

According to Prosecution, the accused persons fell trees within the GoaShelter Belt Forest Reserve. Upon their arrest, they were all charged with the offence of causing damage to the forest reserve by felling timber and conspiracy to commit the crime of felling timber without a written consent of a competent contrary to sections 1(1)(a) and (c) of Act 624/2002. It was alleged by Prosecution that in the course of arresting 3rd Accused person, he threatened to kill a forest officer consequently, he was charged with the offence of threat of harm contrary to section 74 of Act 29/1960.

Upon their arraignment, accused persons pleaded not guilty to all the charges, however on the 17th of January 2023, they all opted to change their plea. While 1st and 2nd Accused

persons pleaded guilty simpliciter to the charges levelled against them, 3rd Accused person pleaded guilty with explanation on counts 1 and 2 while pleading not guilty to count 3. 1st and 2nd accused persons were subsequently convicted on their own plea and dealt with accordingly. With regards to 3rd Accused person, his explanation on Count 1 raised no defence in law, hence he was duly convicted on his own plea on that count. On Count 2 however, 3rd Accused person's plea of guilt was changed to a plea of not guilty as the Court found that his explanation essentially raised a defence. Sentencing of 3rd accused person on Count 1 was however reserved pending the determination of Counts 2 and 3. Consequently, this Court shall seek to ascertain whether Prosecution led sufficient evidence to establish, beyond reasonable doubt, the charges of causing unlawful damage to the forest reserve and threat of harm.

COUNT TWO:

Under Count Two, 3rd accused person was charged with causing damage to the Goa-shelter Belt Forest Reserve. Prosecution brings the charge of causing unlawful damage under section 1(1)(c) of NRCD 243 (as amended). That section provides;

"Any person who in a Forest Reserve without the written consent of the competent forest authority, causes any damage by NEGLIGENCE in felling any tree or cutting or removing any timber commits an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or to imprisonment not exceeding 2 years or to both, except that for a second or subsequent offence under this section the offender shall be liable on summary conviction to a fine of not less than 250 penalty units or to imprisonment not exceeding 3 years or to both"

The operative word in the above provision is the negligence of the accused person. Thus if there is no negligence the offence cannot stick. In this case, can it be said that 3rd accused person was in any way negligent in felling the trees alleged? Certainly not.

Section 12 of Act 29/1960 explains a negligent act as follows;

“a person causes an event negligently if, without intending to cause the event, he causes it by voluntary act, done without such skill and care as are reasonably necessary under the circumstances”

In this case, having pleaded guilty to Count One, 3rd accused person was in fact admitting that he deliberately felled the trees within the forest reserve and hence his actions cannot be deemed to be a negligent one. In fact, the facts as proffered by Prosecution, do not support the charge of negligence. Once Prosecution charged 3rd accused person under section 1(1)(a) of the Forest Protection Decree 1974 (NRCD 243) (as amended) there was no need for it to have subsequently charged him with negligence under paragraph „c“ of the same Act. Count 2 is therefore struck out and accused person is acquitted and discharged on same.

COUNT THREE:

With regards to Count 3, as earlier indicated, accused person is charged with the offence of threat of harm. Threat of Harm is prohibited under Section 74 of Act 29/1960 and provides that, “whoever threatens any other person with unlawful harm, with intent to put that person in fear of unlawful harm, shall be guilty of a misdemeanour”.

The elements which require proof by Prosecution are;

1. That there was a threat to cause harm.
2. The threat was unlawful.
3. The accused person did in fact threaten the complainant.

Section 17(1) (a) of Act 29/1960 further indicates that “in this Act, unless the context otherwise requires, “threat” means a threat of criminal force or harm”. Thus, to prove the charge in this case, Prosecution ought to prove that the accused threatened another with criminal force or harm. Criminal force or harm is any force or harm which is not lawful, that is unlawful harm. An unlawful harm is harm caused to another which is not sanctioned by law. Hence prosecution ought to establish that accused issued threats of causing harm to another which was not lawful.

Prosecution sought to establish the threat by calling Akwasi Gyasi (Pw1) who testified to the effect that upon arresting accused persons, they were instructed to board a vehicle to be conveyed out of the forest however, 3rd Accused person refused to comply. Due to this he (Pw1) instructed that 3rd

Accused person be placed in handcuffs. Pw1 then stated;

“...accused upon hearing me making that remarks took offence and threatened to kill me with words to wit even if I am jailed, I will come back and kill you...”

By this testimony, Pw1 was essentially alleging that 3rd accused person had threatened him with death and not harm as sought to be proved by Prosecution. Nevertheless, no matter the alleged offence committed, it is incumbent upon Prosecution to establish same beyond reasonable doubt especially when accused person denied having threatened Pw1 in any form or manner as revealed during cross examination as follows;

Q. I never told you that I would kill you even after conviction and my release.

A. You said so.

Prosecution therefore called Jacob Gyamfi (Pw2) who witnessed the incident as it unfolded. Under cross examination, Pw2 brought clarity to the issue when he was questioned by Accused person in the following discourse;

Q. What transpired between me and Pw1?

A. When we met you at the scene, we ordered you to board the vehicle we brought but you resisted. So Pw1 called another forestry guard to bring his handcuff for your arrest. In the process, Pw1 hit you with the back of a cutlass and that was when you told him that due to the fact that he had hit you with the cutlass, you will pay him back for his actions even after you return from prison. Q. I never threatened Pw1 as you allege?

A. You threatened him.

Q. Do you recall I gathered the sand under our feet at the scene?

A. Yes I recall.

Q. Why did I gather the sand?

A. I do not know.

From the above one observes that, the words Prosecution sought to attribute to 3rd accused person as having been uttered by him were materially different from that witnessed by its own witness Pw2. For while Pw1 alleged that 3rd accused person uttered words to wit, "...if I am jailed I will come back and kill you...", Pw2 on the other hand did not corroborate this assertion but only indicated that accused person said that he would

pay Pw1 back for his actions even after his return from prison. According to Pw2, 3rd accused person made that statement only after Pw1 hit him with the back of a cutlass. This obviously infuriated 3rd Accused person thus spurring him to state that should he return from prison he would pay Pw1 back for his actions. It must be noted that Pw1 denied, ever hitting accused person with a cutlass during his cross examination, yet his

own colleague, Pw2, confirms that Pw1 indeed hit 3rd accused person with a cutlass. This makes Pw1 an incredible witness thus making his assertion that accused person threatened to kill him also unbelievable.

Pw2 on the other hand was quite credible and this Court found no reason to doubt his testimony. This Court thus finds that accused person did utter words to the effect that since Pw1 had hit him (3rd accused person) with the cutlass, he will pay him back for his actions even after he returns from prison. Despite the fact that this statement is materially different from that which Prosecution sought to establish, can it be said that the statement meant that 3rd accused person intended to harm Pw1 in any way? The answer to this is not known as the statement is at large and ambiguous. As to how 3rd accused person was to effect the said pay back is not known and this Court cannot make assumptions to that effect.

Essentially the testimony of Pw1 and Pw2 contradicted each other with regards to the threat allegedly issued by accused person. This contradiction must certainly inure to the benefit of accused person.

Even though Pw2 confirmed that during the incident, accused gathered the sand under their feet at the scene which act may connote some superstitious belief, its essence is however lost on the Court. On the whole, Prosecution could not establish beyond reasonable doubt that accused person threatened to kill or to harm Pw1. The charge of threat of harm must accordingly fail. 3rd Accused person is acquitted and discharged on same as well.

In summary, while accused is acquitted and discharged on Counts 2 and 3, he is however convicted on his own plea on Count 1 having pleaded guilty on same.

On the 17th of January 2023, the Court ordered accused persons to pay an amount of GH¢22,024.60 in restitution for the value of the trees fell by them. A1 and A2 however

managed to pay a total of GH¢21,000.00 leaving an outstanding sum of GH¢1,024.60. Consequently, it is only fair that 3rd Accused person be made to pay this outstanding sum. 3rd accused person is accordingly ordered to pay the sum of GH¢1,024.60 within 14days from today and upon payment same shall be deposited into the consolidated fund by the Registrar of this Court. Sentencing on Count 1 for 3rd Accused person is accordingly reserved.

SGD
H/H CHARLES KWASI ACHEAMPONG ESQ.
CIRCUIT COURT JUDGE - GOASO