

IN THE DISTRICT COURT, DZODZE HELD ON THURSDAY THE 11<sup>TH</sup> OF AUGUST, 2022 BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE.

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Case No. B3/3/21

THE REPUBLIC

VRS

MIDAWOVI ABAYAKPA

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JUDGMENT

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**PARTIES**

COMPLAINANT PRESENT

ACCUSED PRESENT

**REPRESENTATION**

CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION PRESENT

**BACKGROUND**

The accused was arraigned before this Court on 17<sup>th</sup> August, 2020 on a charge of threat of harm contrary to Section 74 of the Criminal Offences Act, 1960 (Act 29).

**BRIEF FACTS**

The brief facts as attached by the Prosecution stated that the complainant Gamor Sortornu and accused person Midawovi Bayakpa are both farmers and relatives of the same family and residents of Yavime a suburb of Dzodze.

The Prosecution stated that sometime in the month of June, 2020 a meeting was held to choose a successor to inherit the late father of the accused who was the fetish priest of the Kpoli gods.

The Prosecution stated that in the course of the meeting, the accused person alleged that the complainant and two others have knowledge about the cause of his late father's death.

The Prosecution stated that the family head, one Kojo Bayakpa who was one of those accused summoned another meeting for the accused to prove his allegation but the accused refused to attend the meeting which caused them to summon him again before the vice president of the Kpoli gods at Akatsi.

The Prosecution stated that the accused served the panel of the Kpoli gods with a letter to discontinue the case which was to have come off on 31<sup>st</sup> July, 2020 and later on the same day went to the complainant's house with a cutlass and threatened to kill him.

The Prosecution stated that the complainant upon seeing the accused with the cutlass bolted for safety and reported the matter to the Police on the following day when the accused was arrested.

The accused denied the offence in his investigation caution statement and was arraigned before this Court after investigation with a charge of the offence of threat of harm.

### **PLEA OF ACCUSED**

The accused pleaded not guilty to the offence when the charge and particulars of the statement of offence were read and interpreted to him and was admitted to bail.

Witness statements of witnesses of prosecution together with charge statement and investigation caution statement of the accused were filed by the prosecution and served on the accused for trial.

### **THE CASE OF PROSECUTION**

The prosecution called three witnesses, in addition to the complainant, to prove his case.

In his evidence to the Court, the first prosecution witness stated that at a family meeting held on the 19<sup>th</sup> of June, 2020, to elect the successor of the late priest of the Kpolifa gods, the accused alleged that he together with two others had a hand in the death of the deceased.

PW1 stated that, as a result of the accusation, the family head Hamenu Bayakpa who was one of those accused, summoned another meeting for the accused to explain his assertion but the accused refused to attend the meeting and still held on to the allegation which caused them to summon him before the vice president of the Kpolifa gods at Akatsi.

PW1 stated that the accused was present at the meeting on the first sitting on the 19<sup>th</sup> July, 2020 but did not attend the subsequent meeting scheduled for 28<sup>th</sup> July, 2020.

PW1 stated that the accused was verbally informed to attend the sitting rescheduled for 31<sup>st</sup> July, 2020 but the accused wrote to inform the panel of his unwillingness to appear before it and truly did not show up on the date communicated to him.

PW1 stated further that on the same day, 31<sup>st</sup> July, 2020, the accused came to his house with a cutlass and threatened to kill him as a result of which he made a complaint with the Police.

### **CASE OF ACCUSED**

In his evidence the accused denied the allegation that he threatened to kill the complainant with a cutlass.

The accused stated that first prosecution witness together with Adzogble Bayakpa and Kodzo Bayakpa earlier summoned him before the Adetsevi, but Torgbui Ege sent representatives from his palace to cause the matter to be withdrawn for settlement which request was opposed by them.

The accused stated that, following their refusal to have the matter withdrawn, he served the panel and the complainants with a letter of his withdrawal from the settlement but they failed to respond and rather went to make a complaint with the police that he chased PW1 with a cutlass.

The accused stated that, the allegation is false and that he did not visit the house of PW1.

### **FACTS**

From the evidence of witnesses for prosecution and the accused, the court finds the following facts as not in dispute;

- a. That both the complainant and accused are relatives who live in the same community.
- b. That the accused alleged that the complaint and others had knowledge about the cause of his late father's death.

- c. That the accused was summoned by PW1 and the head of family before a priest to justify his allegation by the Complainant.
- d. That the issues bordering on the allegation could not be resolved before the priest.
- e. That the complainant allege that the accused was in his house and threatened to kill him with a cutlass.
- f. That the accused deny going to complainant's house and threatening to kill him with a cutlass.

## **THE LAW**

### **Burden of Proof**

In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind will find the existence of the facts beyond reasonable doubt. *See Section 11(2) of the Evidence Act, 1975 (NRCD 323) and the cases of Kingsley Amankwah (a.k.a Spider) v. The Republic [2021] DLSC10793 at pages 25-26 per Dotse JSC and Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297.*

In the case of **Ali Yussuf Issa (No.2) v. The Republic [2003-2004] SCGLR 174**, it was held that the burden of proof has two components, the duty to lead evidence on any fact required to be proved and the duty to provide sufficient evidence to persuade a reasonable mind as to the existence of any such fact. **See also Kweku Quaye alias Torgbe vs. The Republic [2021] DLSC10794 at page 9-10 per Prof. Mensa Bonsu, JSC.**

**Section 13(1) of the Evidence Act 1975 (NRCD 323)** provides the extent of proof or the burden on the prosecution in a criminal action thus;

*"In civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt".*

The extent of the onus on the defence on the other hand is provided by section 13(2) of the evidence Act 1975 which states;

*“Except as provided in section 15(c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt”. See also the case of COP v. Antwi [1961] GLR 408.*

### **Threat of harm**

A person who threatens any other person with unlawful harm, with intent to put that person in fear of unlawful harm commits a misdemeanor under section 74 of the Criminal Offences Act, 1960 (Act 29).

Threats in the Criminal Offences Act, 1960 (Act 29) as explained in Section 17(1) (a) means a threat of criminal force or harm.

In the case of **Behome v The Republic [1979] GLR 112**, it was held that, *“where one is charged with threat of harm, the threat must be of harm and nothing else”*

### **ANALYSIS AND EVALUATION OF EVIDENCE**

The issues to be resolved in this case are as follows;

- i) Whether the accused threatened to cause harm to the complainant?
- ii) Whether the alleged act of the accused created in the mind of the complainant an expectation of harm?
- iii) Whether it was in the realization of the accused that his action would produce an expectation of harm in the mind of the complainant?

Section 17 of the Criminal Offences Act, 1960 (Act 29) makes it clear that unless the context otherwise requires, threat means any threat of criminal force or harm.

To constitute a threat of harm therefore, the threat must be criminal and in respect of unlawful harm.

Harm is unlawful which is intentionally or negligently caused without any justification allowed by law. **See Section 76 of the Criminal Offences Act, 1960 (Act 29).**

To prove the intention on the part of the accused to put the complainant in fear of harm it is important to establish that he exhibited a real or wicked intention to put the other person in fear of harm.

In his evidence to the Court, PW1 stated that the accused came to his house with a cutlass and threatened to kill him with the cutlass.

PW2 corroborated this by stating that on the 31<sup>st</sup> July, 2020 he was in his room around 7:00pm when he heard an unusual noise from the house of PW1. He stated further that he rushed to PW1's house and saw the accused holding a cutlass and was threatening to kill PW1 with the cutlass.

The Court also received a similar evidence from PW3 who stated that on the same date on 31<sup>st</sup> July, 2020, around 7:00pm he heard the accused shouting and saying that he will kill PW1 and actually saw him proceed towards the direction of PW1's house with a cutlass in hand.

PW3 stated further that upon hearing that, he proceeded to the house of PW1 to notify him by using a different route but did not meet him in the house and his efforts to reach him on the phone was not successful because PW1 at the time did not answer his calls.

For the accused to be liable in an offence of threat of harm, it must be established that he threatened PW1 with unlawful harm.

In the case of *Behome v. The Republic* (supra), it was held that, where one is charged with the offence of threat of harm, the threat must be harm and nothing else.

The evidence led by witnesses for prosecution is rather consistent in the fact that the accused threatened to kill PW1, which threat amounts to threat of death under Section 75 of Act 29. Nothing in the evidence provided the grounds for conviction over the offence of threat of harm.

The particulars of offence as contained in the charge sheet and read to the accused also affirmed this and is reproduced as follows;

*“Midawovi Bayakpa, Farmer, Age 40 year: For that you on the 30<sup>th</sup> day of July, 2020 at Yavime, a village near Dzodze in the Ketu North magisterial district and within the jurisdiction of this court, you threatened one Gamor Sortornu with words to wit **“I will kill you”** with intent to put the said Gamor Sortornu into fear of harm”.*

The accused was charged with threat of harm under section 74 of Act 29 but the particulars disclosed that he threatened to kill with an intent to put the complainant in fear of unlawful harm.



In the case of **Kwaku Agyem v. The Republic, High Court, Sunyani, 21<sup>st</sup> December, 1976, unreported**, it was stated by the Court that *“a person cannot intend to put another person in fear of death or of unlawful harm if there is no evidence that he threatened that other person with death or, as the case may be, with harm, and that where the accused is, therefore, charged with threat of harm the threat must be of harm and of nothing else”*.

**Section 176(1) of the Criminal and Other Offences Procedure Act, 1960 (Act 30)** provides that, “where at any stage of a summary trial before the close of the case of prosecution, it appears that the charge is defective in substance or in form, the Court may make an order for the amendment of the charge or by the substitution or addition of a new charge as the Court considers necessary to meet the circumstances of the cases.

The above cannot be applied in this situation because the prosecution had long closed their case.

## **CONCLUSION**

The Court finds that, the particulars of the charge are defective and the evidence led by the prosecution failed to cure the defect. The particulars of offence, the facts and the evidence given by witnesses for prosecution do not comply with the requirements of the specific statute under which the crime of threat of harm has been laid.

In the circumstance, the court holds that the burden of proof as pertains to the elements of the offence under section 74 of Act 29 have not been sufficiently discharged. The accused is acquitted and accordingly discharged.

(sgd.)

NELSON DELASI AWUKU

MAGISTRATE