

**IN THE DISTRICT COURT HELD AT WAMFIE ON MONDAY THE 17<sup>TH</sup> DAY OF APRIL, 2023. BEFORE HER WORSHIP DZIFA AZUMAH ESQ. DISTRICT MAGISTRATE**

**CC NO. /08/2023**

**THE REPUBLIC**

**VRS**

**AMPONSAH GEORGE TWUM**

**JUDGMENT**

The Accused persons was charged on one count of offence, namely causing Unlawful Damage contrary to section 172 of the Criminal Offences Act of Ghana of 1960, Act 29. The Accused pleaded not guilty to the charge inferring that there was an issue for the court to determine.

The case of the prosecution was that complainant Stephen Ameyaw is a farmer residing at Berekum. Accused George Amponsah Twum is also a farmer and lives at Wamfie. Complainant owns a ten (10) acreage inter-cropped farm located at Habitat, Wamfie, where he has cultivated maize, cocoyam, plantain and cassava. Complainant also have purposefully planted economic trees including Ofram, Emire, Mahogany, Teak and coconut in his farm. Complainant shares a boundary with the accused person.

On 2<sup>nd</sup> June 2022 at about 7:00am, complainant visited his farm and observed that twenty-five(25) purposefully planted Ofram trees have been cut down. Enquires made by complainant revealed that it was the accused who destroyed his properties. Complainant reported the case to the police and on 4<sup>th</sup> June, 2022, the accused was arrested. Accused admitted cutting down the (25) Twenty Five Ofram trees in his Investigation Caution Statement to Police. On 7<sup>th</sup> June, 2022, a letter was sent to the Forestry Commission to visit the scene and assess the value of damage caused.

On 21<sup>st</sup> June, 2022, the assessment report signed by Ebebeze Mensah, District Manager, Forestry Commission, Dormaa was received. The report among other things gave the assessment value of damage caused to the twenty-five(25) Ofram trees as GH¢7,325.175. After investigations, accused was charged with the offence.

The duty of the Court on a plea of Not Guilty has been laid down by spans of criminal jurisprudence. It is not to assume the guilty of the accused, but to take the evidence and consider whether the prosecution has successfully proved all the elements of the charge it has preferred against the accused persons.

The general burden of proof, in a criminal case lies on the prosecution to establish the guilt of the accused. This principle has been arrayed in our statue, in section 11(2), 13(1) and (2) of the Evidence Act, 1975, NRCD 323.

Section 11(2) NRCD 323 provides that, “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 could find the existence of the fact beyond a reasonable doubt.”

Section 13(1) NRCD 323 states that, “in a 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”.

In the case of **THE STATE V ALI KASSENSA (1962) 1 GLR 144**, in discussing the evidentiary burden on the prosecution in criminal cases, the court said that, “it is of course true that by our law a higher standard of proof is required in criminal cases than in civil cases. But this is subject to the qualification that there is no absolute standard in either case. In criminal cases, the charge must be proved beyond a reasonable doubt, but there may be degrees of proof within that standard”. We will now look at the ingredient, of the offence charged.

Ingredients to be proved are that of unlawful damage, and the Accused did not deny the existence of the said ingredient: It is quite clear from the trial that the Accused Person cut down the economic trees intentionally and unlawfully.

## INGREDIENT OF THE OFFENCE OF UNLAWFUL DAMAGE

Section 172 of Act 29 defines causing unlawfully damage as:

- (1) A person who intentionally and unlawfully causes damage to property.
  - (a) To a value exceeding One Million (old cedis) or without a pecuniary value, commits a misdemeanor;
  - (b) To a value exceeding One Million (old cedis) commits a second degree felony.

For the purpose of this section, “property” means movable or immovable property under section 174 (1) which gives the Explanation of unlawful damage;

It states (1) a person does an act or causes an event unlawfully, within the meaning of the provisions of this Act relating to unlawful damage, where that person is liable to a civil action or proceeding, or to a fine or any other punishment under an enactment;

- (a) In respect of the doing of the act causing an event, or
- (b) In respect of the consequences of the act or event, or
- (c) In which that person would be so liable if that person caused the event directly by a personal act or
- (d) In which that person is liable to be restrained by injunction or any other proceeding from doing that act or causing that event. (5) subsection (4) states that.....

A person who intentionally sets fire to that person’s own dwelling-house or ship may commit the criminal offence of causing unlawful damage as, for instance, if the fire is likely to spread to other houses, or if the property of any other person is likely to be destroyed and is destroyed.

In the Case of **YEBOAH AND ANOTHER VRS THE REPUBLIC [1999] DLCA 496**, Judgment of Gbadegbe J..... “In my view, the real question which this interlocutory appeal raises for determination is whether at the end of the case for the prosecution, a prima facie case was made against the appellants which required the trial circuit tribunal to call upon them to enter into their defence. The authorities are quite well settled that where at the end of the case for the prosecution, an ingredient of the offence charged was not proved or where the evidence of the

prosecution was discredited as a result of cross-examination, thus rendering it unsafe to the acted upon the court need not call upon the accused to open their defence. See **APALOO V THE REPUBLIC [1975] 1 GLR 156"**

### **ANALYSIS OF LAW AND EVIDENCE**

The prosecution set out to prove these charges and offered the following pieces of evidence through five (5) witnesses including the investigator of the case. The first prosecution witness, the complainant is (PW<sub>1</sub>). His sworn account was he is a 52years old farmer and lives at Berekum. According to him, he inherited a ten acre farm located at Habitat, Wamfie from his late father Maazu about thirty years ago.

According to him the farmland was inherited from his grandfather Ibrahim also known as Ohene Kramo "I cultivated economic trees including Ofram, Emire, Mahogany, Teak and Coconut mixed with farm products such as Maize, Plantain, Cassava and Cocoyam," he stated, adding that he had maintained the farm without any interference from anybody until this case came up.

PW<sub>1</sub> went further to state that in the year 2002, he travelled outside the country and entrusted his farm in the care of Kwasi Yeboah who also maintained the farm without any problem from anybody. He stated that he returned from his sojourn to the country in 2019 and took over the farm from Kwasi Yeboah, where he planted three hundred (300) Ofram trees on a portion where he shared boundary with one Alex and demarcated the boundary with a net. "In March 2022, the net was destroyed on three different occasions. All effort made to trace the culprit failed" he stated. PW<sub>1</sub> went further to state that on 2<sup>nd</sup> June, 2022, at about 9:00am, he visited his farm and observed that twenty –five of the Ofram trees he planted in the year 2019 had been cut down by the Accused George Amponsah Twum. He said he reported the case to the police, gave a statement and led the police to the scene where the police confirmed the report and took photographs. He said on 4<sup>th</sup> June, 2022, he led police to arrest Amponsah George Twum and later led officers of the Forestry commission to his farm to assess the damage caused.

The second prosecution witness (PW<sub>2</sub>) a witness in this case, stated his age to be Sixty (60) years and having known the complainant Stephen Ameyaw for more than 28 years on the land in

dispute. He described his farm to be very closed to the complainant Stephen Ameyaw's farm. Giving a back ground to the land in dispute, he said about 24years ago, there was a litigation over boundaries on the farmland at Habitat Wamfie.

According to him a committee made up of the late Maama Tailor, Opanin Tutu and Alhaji Fulani all of blessed Memory and himself (PW<sub>2</sub>) and some others were tasked to demarcate all the boundaries, which was successfully carried out. PW<sub>2</sub> said he personally planted banana on the boundaries and that he knew the boundaries very well "The banana trees are still on the boundaries," he added.

He continued his narration by saying somewhere in the year 2002, Stephen Ameyaw travelled out of the country and entrusted his entire farm in his care "I maintained his farm cultivated with Teak, Ofram, Coconut and other crops without any interference from anybody". He said Stephen Ameyaw returned to Ghana in the year 2012, where he handed over his farm to him and he (Stephen Ameyaw) planted more economic trees on the land.

"The latest was about four years ago, where he planted Ofram trees," PW<sub>2</sub> stressed. He (PW<sub>2</sub>) continued his narration by saying that somewhere in June 2022, Stephen Ameyaw reported to him that the accused George Amponsah Twum has destroyed his Ofram trees alleging that Amenyaw had trespassed into his Accused land. PW<sub>2</sub> said he personally visited that scene and observed that Stephen Ameyaw had not trespassed into the accused person's land.

Other witnesses including Isaiah Dompseh PW<sub>3</sub>, Biafra Gladys (PW<sub>4</sub>) and the investigator (PW<sub>5</sub>) testified in favour of Stephen Ameyaw (complainant).

In the witness statement of PW<sub>5</sub> Daniel Otutu (PW<sub>5</sub>), he stated that he is stationed at Wamfie Police station, and that on the 2<sup>nd</sup> day of June, 2022, while on duty, a case of Causing Unlawful Damage was reported to the police by Stephen Ameyaw and it was handed over to him to investigate. As an investigator, he visited the farm which was an inter-cropped farm mixed with purposefully planted economic Ofram, Emire, Mahogany, Teak and Coconut trees located at Habitat, Wamfie. He stated that upon his arrival in the farm, he observed that damage had been caused to twenty –five (25) Ofram trees by someone who had cut the trees down.

He said he obtained statement from the complainant Stephen Ameyaw and also took photograph of some of the cut down Ofram trees for evidential purposes. He said on 4<sup>th</sup> June 2022, suspect George Amponsah Twum was arrested. He stated that suspect admitted cutting down the trees in his investigation caution statement to the police. He said on 7<sup>th</sup> June 2022, a letter was sent to the Forestry commission to visit the scene for assessment of the destroyed trees. He said upon receipt of the assessment report from the Forestry Commission, he was instructed by his superiors to charge the accused with the offence of causing Unlawful Damage and to appear before this court. The investigator during trial tendered in the (1) Investigation caution statement of George Amponsah Twum, (b) Charge caution statement of accused George Amponsah Twum (c) three(3) photographs of the scene labelled 'A', 'B' and 'C' and A field Assessment Report received from the Forestry Commission. After the prosecution had presented its case against the accused person, the court determined that there was a case for the Accused person to answer.

The evidence of PW5 tendered in were scrutinized together with the Accused's own witness statements and other materials tendered in evidence by him (Accused). Meanwhile the court will bring out a few, such as the Accused's statement.

Meanwhile when the Accused was given the opportunity to question the witnesses who testified against him, he refused with the excuse that he did not know them and hence will not question them, implying that he admitted all the accusation levelled against him in line with the saying that silence means consent. He consented to what he was being accused of. The court will now move on to examine some of the documents before it.

In his statement to the police in the presence of Ophelia Lawsah of Wamfie police, an independent witness, he stated that he was a farmer and lives at Wamfie. That about two years ago, one Kofi Twum now domiciled in the United Kingdom bought a parcel of farmland located at Habitat, Wamfie. He stated that the said Kofi Twum entrusted the land to his care. He said he had cultivated Coconut and Plantain on this land. According to him, on 2<sup>nd</sup> May, 2022 he Accused visited his land and observed that the plantain had been cut down. He stated that he met Ameyaw in his farm and that he admitted destroying the plantain. He said he reported the case to the police. One 31<sup>st</sup> May, 2022, at about 6:00am he visited the farmland and cut down about

(12) twelve Ofram trees which Ameyaw planted on a portion of the farmland entrusted in his care. He said further that he personally cleared that portion and planted coconut on it. He alledged that Ameyaw destroyed the coconut and planted Ofram on that portion. He said the seller of the land later came to show him accused the true boundary of the land which suggested that Ameyaw had encroached on their land. He said on 4<sup>th</sup> August 2022 at about 8:45am, Ameyaw led police to his house to arrest him for causing damage to his ofram trees. Accused testified and offered an explanation to the charge. The court tried to inquire into whether or not his conduct was one done in good faith. ie in assertion of a right; see **OKEE V THE REPUBLIC [1979] GLR 137.**

In his own witness statement he said the land was purchased by one Winifred Amponsah who is now domiciled in London. He attached a copy of the transferred documents which were marked as Exhibit 1 and 2.

That, when the said Winifred Amponsah bought the land, he released same to him to cultivate Coconut plantation. So the court at this point is confused as to who is the real owner of the land is. Is it Kofi Twum or is it Winifred Amponsah? Who gave the land to the Accused Person? Which of the two people entrusted the land to him? This contradiction indicate that the witness is not a truthful witness. His attached exhibits, one (1) and two (2) which are the purchased and sale Agreement had not been signed by either the purchaser or the seller. Neither is there any signature of witnesses on the documents. The attached Exhibit '2' which is supposed to be the site plan for Winifred Amponsah had not been signed by the witnesses whose names were given as Asante Peter and Abena Naomi. There is no signature by the chief of Wamfie nor the Commissioner of Oath which were inserted on the exhibit by the witness for the Accused, Gyamfi Kwasi Alex.

In the said Purchase and sale Agreement, which is not signed by neither party nor witnesses, it is stated in part that "I acquired the said property through a gift from my late grandmother Nana Abena Fema.....

Meanwhile in the witness statement of Gyamfi Kwasi Alex (DW<sub>1</sub>) who is supposed to be the same seller in the purchase and sale Agreement, he stated in paragraph 3 of the witness statement that the land in question at its virgin state was acquired and broken by his late grandfather Kwasi Ansu. Paragraph 4 stated that “my grandfather invited a herbalist called Henekramo who he (Kwasi Ansu) stayed with for some years”. In paragraph 5, he stated that his late grandfather gave a portion of the land to the said Henekramo to cultivate and feed on. In paragraph 6, he went further to state that after the death of his grandfather, Kwasi Ansu, the herbalist Henekramo also left Wamfie for his hometown and never returned and as such the land became a family property. But before I go on with the analysis, I want to bring to the fore that the witness cannot say the land in question is the one he sold to Winifred. Since in that agreement, he stated that the land was gifted by his grandmother, Nana Abena Fema.....and here he is tracing his history of possession to his grandfather by name Kwasi Ansu. The two cannot be the same person, making this witness an untruthful witness. Since the witness is not a credible witness, he cannot give what he does not have *Nemo dat quod non habet*, literally meaning “no one can give what they do not have”. The land does not belong to the witness, Gyamfi Kwasi Alex so he couldn’t have given the land to neither Winifred Amponsah nor Kofi Twum who passed it on to the Accused person *Nemo dat* rule.

Since the Accused person was unable to convince the court that he owed the portion of land on which he destroyed the Ofram trees, the court finds him guilty of the offence and convict him on same.

Before convicting the Accused Person, the court will consider the report and recommendation of the Forestry Commission.

The Report stated that per a request by the Deputy Superintendent of Police, Ghana Police Service, Wamfie, a field inspection was conducted for the farmer to ascertain the level of damage caused by one Mr. Yaw George of Wamfie Township. The report said the farm is a ten (10) acreage plantation site inter – cropped with multiple farm products such as maize, Plantain, Cassava and Cocoyam.



The economic trees purposefully planted by the farmer includes Ofram, Emire, Mahogany, Teak and Coconuts, which are all designed and thriving very well except for the deliberate destruction recently caused them. The farm also had matured Teak trees above twenty years which has been thinned before it was discovered during the inspection that twenty (20) saplings were Teak trees and Twenty-five (25) Ofram saplings were destroyed by the culprit. The other species were spared of destruction.

The year of establishment was given as four (4) years ie 2019. The trees had a size of 25.78cm and weight of about ten to fifteen (10-15) feet high with lateral branch formation typical of an Ofram trees.

According to the report the Ofram was established in 2019 and 25 of the trees were destroyed at a total value of GH¢7,325.175. Also destroyed were some Teak trees, which were also valued at GH¢880, bring the total Economic trees destroyed to GH¢8,205.175.

Since the Accused person has been found guilty he is ordered to refund an amount of GH¢8,300 to the complainant being the cost of the economic trees destroyed. He is however sentenced to a fine of GH¢2000 on default two months in jail in hard labour. This is to serve as deterrent to the whole world since the government is making efforts to make the country green again by instituting Green Ghana Day, and by investing in the planting of economic trees. Meanwhile people like the convict go about cutting down such economic trees without any just cause. The sentencing is to serve as deterrent to people with like minds.

**H/W DZIFA AZUMAH ESQ.**

**(MAGISTRATE)**