

IN THE DISTRICT COURT, DZODZE HELD ON MONDAY THE 23RD OF JANUARY,
2023 BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE.

Case No. B1/11/22

THE REPUBLIC

VRS

AGBENYEGA GAKPO & 7 OTHERS

JUDGMENT

PARTIES

COMPLAINANT PRESENT

ACCUSED PERSONS PRESENT

REPRESENTATION

CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION PRESENT

BACKGROUND

The accused persons were arraigned before this Court on 7th December, 2021 on charges of Conspiracy to commit crime to wit causing unlawful damage contrary to sections 23 and 172 of the Criminal Offences Act and unlawful damage contrary to Section 172 of the Criminal Offences Act, 1960 (Act 29).

BRIEF FACTS

The facts as attached by the Prosecution stated that the complainant, Prosper Gadzi age 45 is a farmer and lives in the same vicinity at Huive with all the accused persons, namely, Agbenyega Gakpo, Ametsi Amewuga Gakpo, John Gborgla, Wisdom Gakpo, Bessa Gakpo, Dzakosi Ametsi, Ehor Ametsi and Kofi Ametsi Atokple.

The Prosecution stated that on the 2nd day of October, 2021 around 3:00pm, the complainant reported to the Police that, while he was in his farm with his brothers, the accused persons surfaced there, harassed and prevented him from selling some cassava to a customer.

The prosecution stated that on the 5th of October, 2021 while the complainant was in his farm again with his brothers, the accused persons went there again with cutlasses and sticks and chased them out of the farm.

The Prosecution stated that the complainant reported the incident to the police on the same day and the police proceeded with the complainant to the scene for fact finding.

The prosecution stated that on reaching the farm, quantities of harvested okro had been poured to the ground and the containers damaged.

The prosecution stated that, the accused persons were subsequently arrested but denied the offence in their cautioned statements and were arraigned before the court after police investigations.

PLEA OF ACCUSED

The accused persons pleaded not guilty to the offences when the particulars of the offences were read and interpreted to them and were all admitted to bail.

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

THE CASE OF PROSECUTION

The prosecution called five witnesses, including the complainant and the investigator to prove his case.

In his evidence to the Court, the first prosecution witness stated that, on the 2nd of October, 2021, he was in the farm together with his brothers and another man who had come to measure cassava at about 3:00pm and 4:00pm when six men namely, Bessavi Gakpo, John Gborgla, Ehor Gakpo, Agbenyega Gakpo, Wisdom Gakpo and Kofi Atorkple came there.

PW1 stated that they enquired from him why he did not inform them before inviting someone to measure the farm but he refused to answer but their queries drew a response from PW3 which incurred their displeasure.

PW1 stated that, they left afterwards but A4 and A5 threatened to butcher him and his wife if they should see them alone on the farm.

PW1 stated that after they had left the farm, he was informed by one Vorsah that the accused persons had gone to mount a red flag in his farm so he proceeded there and found the assertion to be true.

PW1 stated that while they were on the farm harvesting okro the accused persons returned with cutlasses, gun and a catapult which caused them to run and abandon 5 bags of okro they had harvested in the farm.

PW1 stated that they went to make a complaint to the police and upon their return to the farm with the police they discovered that the okro which they left behind in sacks had been cut with cutlass and some taken away.

CASE OF ACCUSED PERSONS

In their respective witness statements filed on 13th October, 2022 all the accused persons admitted that they were on the complainant's farm on the 2nd of October, 2021 to drive away the surveyor and that they were also responsible for the red flag that was mounted in the farm.

They however denied that they were on the farm again on the 5th of October, 2021 and that they were not responsible for the alleged damage caused to the okro on complainant's farm on the day alleged.

FACTS

From the evidence of witnesses for prosecution and the accused, the court finds the following facts as the facts;

- a. PW1 alleges that whiles working on his farm on 2nd October, 2021, A1, A3, A4, A5, A6, A7 and A8 came to the farm to threaten him in the presence of his brothers and a man who had come to measure cassava for purchase.
- b. PW1 alleges that he was informed that accused persons went to mount a red flag on the farm which was confirmed by him after checking on the farm.
- c. PW1 alleges that on the 5th of October, while on the farm with his brothers the accused persons returned to the farm again with weapons which caused them to run away leaving behind 5 bags of okro they had harvested.
- d. PW1 alleges that upon their return to the farm with the police it was discovered that part of the harvest had been destroyed and some taken away.

- e. The accused persons admitted that they went to the farm of the complainant on the 2nd October, 2021 to prevent him from measuring the land with a surveyor.
- f. Accused persons also admitted that they went to mount a red flag on complainant's farm as a warning to all trespassers.
- g. The accused persons denied being on the complainant's farm on 5th October, 2021 and stated that they were not responsible for the alleged destruction on the complainant's farm on 5th October, 2021.

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.**

The extent of the onus on the accused on the other hand is provided by section 11(3) of the evidence Act 1975 which states;

“In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that

on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt". See also the case of COP v. Antwi [1961] GLR 408.

The Law on Conspiracy

Section 23(1) of the Criminal Offences Act, 1960 (Act 29) in defining the offence of conspiracy states 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 any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet the criminal offence"

In the case of *The Republic v Ernest Thompson & Others [2021] DLSC 10174 at page 10174* the court stated that; *"under the definition of the offence of conspiracy, a conviction could be secured upon proof of the following ingredients;*

- i. Prior agreement for the commission of a substantive crime;*
- ii. Acting together in the commission of the crime in circumstances which show that there was a common purpose;*
- iii. Previous concert even if there was evidence that there was previous meeting to carry out the criminal conduct"*

See also the cases of Francis Yirenkyi v The Republic (2016) 99 GMJ 1 SC and Agyapong v The Republic [2015] 84 GMJ, 142, CA.

Same elements were stated in the case of *Republic v Baffoe Bonnie & Others (Suit No. CR/904/2017) (Unreported) dated 12th May 2020*, where the elements of conspiracy were outlined by the court in the words as follows;

"For prosecution to be deemed to have established a prima facie case, the evidence led without more should prove that:

- a. That there were at least two or more persons*

- b. *That there was an agreement to act together*
- c. *That the sole purpose for the agreement to act together was for a criminal enterprise”.*

The effect of the principles in the above authorities is that, persons accused of conspiracy must not only be established to have agreed to act but there must be an agreement to act together for a common purpose to commit crime.

It is also significant to note that, under the new formulation of the law on conspiracy as defined by the Supreme Court, a person could no longer be guilty of conspiracy in the absence of the evidence of any prior agreement. *See KINGSLEY AMANKWA (a.k.a SPIDER) vs. THE REPUBLIC [2021] DLSC 10793 @ page 28 per Dotse JSC.*

Unlawful Damage

Under section 172(1) (a) of the Criminal Offences Act, 1960 (Act 29), a person who intentionally and unlawfully causes damage to any property to a value not exceeding one million cedis, or without a pecuniary value, commits a misdemeanor.

A damage is defined under section 173 of Act 29, as including not only damage to the matter of a thing, but also any interruption in the use of that thing, or interference with that thing, by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purpose for which it was used or maintained.

Under section 174 (1) of Act 29, a person does an act or causes an event unlawfully, within the meaning of the provisions of the Act where that person is liable to a civil action or proceeding, or to a fine or other punishment under any 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.

ANALYSIS AND EVALUATION OF EVIDENCE

For the purposes of Count one in respect of the offence of conspiracy, the prosecution per the elements required as established in the cases of *The Republic v. Ernest Thompson & Ors and Republic vs. Baffoe-Bonnie(Supra)* had a duty to adduce evidence to establish the fact of a prior agreement between the accused persons or together with any other party to act in common purpose towards the commission of any substantive offence.

The expectation of the court was for prosecution to establish the basis for the conclusion that there was an agreement by the accused persons to act together in this alleged criminal enterprise since crime cannot be constituted on the bases of mere inferences or suspicions.

The court was not told about where the accused persons met, when and what activities or interactions were intercepted as evidence of the alleged conspiracy.

From the evidence of PW1 and his witnesses, it was on the 5th October that the destruction of his okro occurred on his farm.

The accused persons have denied going to the complainant's farm as alleged but the court do not believe in the possibility that all the four witnesses called by the prosecution will be merely engaged in fabricating a story against the accused persons.

The facts before me does not suggest that there have even been previous issues between the accused persons and all the witnesses for them to collaborate in bearing false witness against the accused persons. During cross examination, the accused persons apart from simply denying that they were not in the farm of the complainant on the day were not able to impugn the credibility of the witnesses for prosecution.

On the basis of the above, the court is inclined to believe the account of prosecution's witnesses as the true position of what actually took place on 5th October, 2021.

The direct evidence by the witnesses, nature of the issues underlying the dispute, circumstances of developments on the land few days prior to the day of the destruction of the crops such as entering and erecting flags on the land which the accused persons have claimed responsibility over and the demeanour of accused persons throughout trial, gives credence to the court's resolution.

In the case of *Asante v. the Republic* [1972] 2 GLR 177, it was held that on the issue of damage, it was the value of the damage that was material and not the value of the property that was damaged.

On the issue of value, PW1 alleged that they left behind five bags of okro in the farm but upon their return with the police discovered that part had been destroyed and some taken away.

The evidence given by PW2, PW3 and PW4 did not corroborate the fact that 5 bags of okro were destroyed. They stated rather that the okro had been thrown to the ground and the containers were destroyed. They also stated further that, they realized some of the okro had been taken away.

The allegation of theft however is a different offence which will require the proof of different elements. But the combined evidence of all prosecution's witnesses does not suggest that the value of the damage exceeds the threshold provided under section 172(1)(a) of Act 29.

CONCLUSION

The Court on the basis of the above reasoning acquit and discharge the accused persons on count one.

In respect of count two, the court finds the burden has been sufficiently discharged.

The accused persons are convicted on count two and sentenced to a fine of fifty penalty units each and in default to three months imprisonment.

The accused persons are in addition to enter into a bond without surety to keep the peace. Bond is to last for six(6) months.

NELSON DELASI AWUKU
MAGISTRATE