

**IN THE DISTRICT COURT SITTING AT NALERIGU ON TUESDAY 9<sup>TH</sup> MAY 2023 BEFORE**  
**H/W SIMON KOFI BEDIAKO ESQ – MAGISTRATE**

**SUIT NO. 09/2023**

**THE REPUBLIC**

**VRS**

- 1. MAKAN DANYURI (A1)**
- 2. KWAME DANYURI (A2)**
- 3. ALHASSAN TIBRISOA (A3)**
- 4. ALHASSAN MOHAMMED (A4)**
- 5. BABA TAMPURI (A5)**

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**JUDGEMENT**

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**INTRODUCTION**

The Accused persons were arraigned before the Court on 24<sup>th</sup> August 2022 charged with two counts:

- a) Conspiracy to commit a crime to wit assault: contrary to section 23(1) of the Criminal Offences Act 1960 (Act 29) and
- b) Assault: contrary to section 84 of the Criminal Offence Act 1960 (Act 29).

**PLEA OF THE ACCUSED PERSONS**

The charges against each accused person as stated in the charge sheet were read to them individually in the Mampruli language, the language of their choice and they all appeared to understand the same. Thereafter, A1, A2 and A5 pleaded **Guilty**, and they were accordingly convicted on the two counts and duly sentenced. A3 and A4 however pleaded **Not Guilty** to the charges against them.

#### **BURDEN OF PROOF:**

Considering that A3 and A4 pleaded not guilty to the charges against them, the burden of proof is therefore on the prosecution to prove their guilt. The burden of proof and how it can be discharged by the prosecution to secure a conviction of the Accused persons is elaborated below.

**Article 19(1) and (2) (c) of the 1992 Constitution of the Republic of Ghana** stipulates that:

##### *19. Fair Trial*

- "1. A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.*
- 2. A person charged with a criminal offence shall*
  - c. be presumed to be innocent until he is proved or has pleaded guilty;"*

**Sections 11(1) (2) and (3), 13(1) and (2) and 15 (1) of the Evidence Act, 1975 (N.R.C.D. 323)** have well settled the evidential and the persuasive burden that the law casts on Prosecution in a criminal matter. It provides as follows:

##### *Burden of producing evidence*

- 11. (1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.*
  - (2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence*

*so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.*

#### *Proof of a crime*

13. (1) *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.*
- (2) *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.*

#### *Burden of persuasion in particular cases*

15. *Unless it is shifted,*

- (a) *the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue;*

In the case of **Woolmington v DPP [1935] UKHL**, stating the judgement for a unanimous Court, Viscount Sankey made his famous “Golden Thread” speech that:

*“throughout the web of the English criminal law one golden thread is always to be seen, that is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exceptions...No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”*

## **THE CASE OF PROSECUTION**

Below are the brief facts of the case as presented by the prosecution in support of the charges against the Accused persons.

The complainant in this case is Alidu Sita a teacher whilst accused persons A1, A2, A3, A4 and A5 are all farmers and residents of Temaa. In June 2022 a freelance pastor whose name and

whereabouts are unknown, came to Temaa community, held a church service and accused one Azindoo Faitma as a witch. Just after the service, a rumour went around that, the complainant's mother Alidu Azara's name was also mentioned by the pastor as a witch. That, this accusation after the pastor left the community became an issue before the chief of Temaa who tried his best to handle it without any problem. On 04/07/22 at about 0900 hours, the accused persons led the youth to the complainant's mother Alidu Azara's house with reasons best known to them and physically assaulted her, the husband one Alidu Dalabri and their daughter Alidu Adamu without any provocation. A complaint was made to the police and victims were issued with police medical report forms which they later returned same fully endorsed by a medical Doctor with a report of having been treated and discharged. Accused persons were later arrested and investigation caution statements were obtained from them. However, after police investigations, accused persons were charged with the respective offences to appear before this honourable court.

The prosecution called five (5) witnesses to testify in support of its case against A3 and A4. The prosecution called Alidu Sita (hereafter "**PW1**") as its first witness. PW1 testified that he is a teacher and lives in Temaa. He stated further that he is an Examination Coordination Officer for the Yunyoo/Nasuan District. PW1 is the complainant in this case. According to PW1, from 22<sup>nd</sup> to 26<sup>th</sup> June 2022, a prophet by the name of S.K. Elijah came to Temaa for a church programme and after the church programme, there was an allegation within the community that Fatima Azindoo, who is the wife of the Temaa chief confessed during the church programme that she is a witch and she accused Alidu Azaara, PW1's mother and one Jijiri Tiakum as witches linking them as the cause of many deaths within the community. According to PW1 attempts by himself and some relatives to ascertain the truth of the allegations against Alidu Azaara from the wife of the Temaa chief proved futile. PW1 further testified that on 4<sup>th</sup> July 2022 at about 9:00 he was returning home with one Osman Dagun when a boy met them on the way and told them not to go to PW1's house because a group of men are there assaulting PW1's parents. He stated that upon hearing that he reported the case to the Namomgo police station before he proceeded to Nalerigu. PW1 stated that he received a call from the police later that day that the police successfully rescued his parents and

sent them to Faith Hospital in Nankpanduri. According to him he went to the hospital and saw his mother Alidu Azaara with a deep cut on the head and blood oozing from her nose. He also stated that Alidu Dalabri also complained of severe pains. He concluded his testimony by stating that at the hospital, Alidu Azaara and Alidu Dalabri mentioned A3 and A4 as being part of those who led the men to their house to assault his parents without provocation.

From the evidence-in-chief of PW1, he did not actually witness his parents, Alidu Azaara and Alidu Dalabri being assaulted by any of the accused persons in this matter. PW1 only reported to the police what he heard from a boy he met and subsequently what he heard from his parents. PW1 was called as a witness merely because he is the complainant, and he avers after the incident he saw Alidu Azaara with injuries and Alidu Dalabri also complained of severe bodily pains in the hospital. PW1 when he was cross-examined by A3 admitted that A3 has not misbehaved in the community since he came to Temaa, however, his parents mentioned his name as one of those who assaulted them.

Alidu Azaara (hereafter “PW2”) is the second witness of the prosecution. PW2 testified that she is unemployed and resides in Temaa. She stated that in June 2022, after a prophet had come to Temaa for a church programme, it was alleged that Fatima Azindoo, the wife of the chief of Temaa accused her of being a witch. According to PW2, early in the morning on 4<sup>th</sup> July 2022, she was in the house when she heard her daughter Alidu Adamu screaming from outside of the house for help and saying, “They are killing my father”. She testified that she rushed outside and met a group of young men led by A3 and A4 attacking her husband Alidu Dalabri. According to her they turned their attention to her and assaulted her physically and also hit her head with a stick which made her unconscious. She stated that she woke up in the hospital with a deep cut on her head and blood oozing out of her nose.

The third witness of the prosecution is called Alidu Adamu (hereafter “PW3”). She testified that she is unemployed and lives in Temaa. She stated in her evidence-in-chief that on 4<sup>th</sup> July 2022, she was in the house with PW2 when she heard people shouting ‘fire’ ‘fire’ outside the house. She

stated further that she quickly came out of the house and a group of young men led by A3 and A4 were assaulting her father, Alidu Dalabri. According to PW3, she called for help and when her mother, PW2 came out of the house, they turned their attention to her and physically assaulted her without provocation. She stated further that they hit her head with a stick and she fell unconscious after which they dispersed. She concluded that the police came and took them to Faith Hospital in Nankpanduri.

The prosecution called Alidu Dalabri (hereafter **"PW4"**) as its fourth witness. PW4 stated in his evidence-in-chief that he is unemployed and a resident of Temaa. He stated further that a group of young men led by A3 and A4 came to his house and assaulted him without any provocation. According to PW4, his daughter, PW3 came out of the house and saw them assaulting him. She called for help and when his wife, PW2 came out of the house they turned their attention to her and assaulted her physically. He continued that they hit her head with a stick and she fell unconscious before they dispersed. He concluded that he suffered severe body pains from the assault and that when the police came to the scene, they took him and PW2 to Faith Hospital in Nankpanduri for treatment.

The prosecution called the police investigator by name No. 47510 Affum Kyeremeh Ebenezer (hereafter **"PW5"**) as its fifth and last witness. He testified that a case of conspiracy and assault was reported at the Bunkprugu police station on 4<sup>th</sup> July 2022 by PW1 and the same was referred to him to investigate. PW5 tendered in evidence the following exhibits which were not objected to by the A3 and A4:

- Exhibit A1 – Investigation caution statement of A3.
- Exhibit A2 – Investigation caution statement of A4.
- Exhibit B1 – Charged caution statement of A3.
- Exhibit B2 – Charged caution statement of A4.
- Exhibit C1 – Medical Report of PW3.

- Exhibit C2 – Medical Report of PW2.
- Exhibit C3 – Medical Report of PW4.

Both A3 and A4 in their investigation caution statements made admissions that they were at the scene where PW2 and PW4 were assaulted. They however denied physically assaulting PW2 and PW4.

At the close of the prosecution's case, the court in accordance with **section 173 of the Criminal and Other Offence (Procedure) Act, 1960 (Act 30)** ruled that the prosecution had made a prima facie case against A3 and A4 which is sufficient to require them to open their respective defences. See **Tsatsu Tsikata v The Republic [2003-2005] 2 GLR 294, SC.**

### **CASE OF A3**

A3 testified that he is an Imam, and he resides in Temaa. He also stated that he is a farmer. He testified that he was in a village called Janga when the chief of Temaa called him. The chief informed him that he is not happy about what is happening in Temaa so he should come home. According to A3 he asked the chief what is happening. The chief told him that a paster came to the community and during a prayer session a woman fell and admitted that she is a witch and mentioned the names of other persons who are also witches. He testified further that he told the chief he will come home the next day, so when he got back to Temaa, he quickly went to the chief's palace. A3 stated that when he got to the palace, he saw a lot of people there, so he asked the chief what was happening, and the chief told him that was the reason why he called him to come. According to A3 the chief asked him to pray for him so that things will change in Temaa, and he told him he will do so. According to A3, after that he left to his house but on his way home, he heard some noise, and he went to check out what was happening. He stated that he saw that something serious was happening. According to him, Temaa is a small town so when they hear any noise, they come to see what is happening. He testified that when he came out, he saw people holding sticks in a fight and so he shouted at them to stop what they were doing. According to A3,

they threw the sticks away when he shouted. A3 stated that he is 67 years old and considering that he is weak and the number of people who were at the scene, he stood at a distance and shouted at them to stop. He stated further that he did not hit or assault anyone because he did not involve himself in the fight. He added that he leads the complainants in prayers and that if he was a bad person, he will not be their leader in prayers. He stated that he has been an Imam for 26 years and has sworn an oath not to do anything stupid such as assaulting someone. He concluded that A1, A2 and A5 who pleaded guilty to the charges were the ones who assaulted the victims.

The prosecution during cross-examination could not dent the testimony of the A3 with any damaging questions.

A3 called one witness to testify in support of his defence. The name of the witness is Abdul Rahaman Takpan (hereafter “DW1”). DW1 testified that he lives in Temaa and a farmer. According to DW1, he and A3 were coming from the chief’s palace, and they heard some noise. He stated that A3 said that, that kind of noise means trouble so they should get closer and see what is happening. When they got close, they realised that it was a mob action. According to DW3 at the time they got there the fight was about to end. He stated that A3 shouted at the people to stop what they were doing and they stopped. He concluded that A3 was not part of the fight and he did not see him holding anything to hit anyone.

Although A3 called DW1 as his witness, he never mentioned in his testimony or in his caution statements that he was with him on that day at the scene.

## **CASE OF A4**

A4 testified that he is a student, and he lives in Temaa. According A4 on the day of the incident, he was at the chief’s palace where a meeting had been called by the chief. A4 testified that there were many people at the chief’s palace. While they were there, they heard noise at the station so they ran to the station. According to A4 there were many people at the station when he got there. He stated that he saw his mother fighting with PW3 and so he signalled his mother to come. His mother saw



his signal and came to him. He added that they left the place because he did not want his mother to be disgraced at the station. He concluded that he heard later that he had been mentioned as part of those people who beat Alidu Adamu.

A4 called Fuseini Musah (hereafter “DW2”) as his sole witness in his defence. DW2 testified that he is a Muslim priest. He stated that he lives in Nalerigu but on the day of the incident he travelled to Temaa. When he got there, he wanted to greet A4 and A4 was at the chief’s palace, so he sent for A4 to be called for him. According to him, when A4 came, they heard noise of the fighting. He stated that A4 heard the voice of his mother. DW2 stated that there were many people there and they said his mother was fighting there. He told the court that he told A4 to go take his mother home which he did. According to DW2, after A4 had taken his mother home the fight continued. He testified further that A4 came to him subsequently and he told him not to go back to the scene which A4 duly obliged. He concluded that he later heard that A4 was part of the fight.

The testimony of DW2 and that of A4 have some notable differences. A4 did not mention in his testimony that he was called from the chief’s palace by DW2. According to A4 he ran to the station because he heard noise at the station. In A4’s testimony he never mentioned that he was with DW2 and that it was DW2 who asked him to go and take his mother home. This raises doubt as to the credibility of the evidence adduced by A3 and DW2. The court therefore places little weight on the same.

## DEFINITION AND ELEMENTS OF OFFENCES

### CONSPIRACY

**Section 23(1) of Act 29** which provides for the offence of conspiracy to commit a crime stipulates 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 a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.”*

The punishment for the offence of conspiracy to commit a crime contrary to section 23(1) of Act 29 is provided by **section 24 of Act 29** which states as follows:

1. *“Where two or more persons are convicted of conspiracy for the commission or abetment of a criminal offence, each of them shall, where the criminal offence is committed, be punished for that criminal offence, or shall, where the criminal offence is not committed, be punished as if each had abetted that criminal offence.*
2. *A Court having jurisdiction to try a person for a criminal offence shall have jurisdiction to try a person charged with conspiracy to commit or abet that criminal offence.”*

## **ASSAULT**

**Section 84 of the Criminal Offences Act 1960 (Act 29)** states that “A person who unlawfully assaults another person commits a misdemeanour.”.

There are three kinds of assault under Act 29 and according to **section 85(1) of Act 29** they are as follows:

- a) assault and battery,
- b) assault without actual battery, and
- c) imprisonment.

**Section 85(2) of Act 29** provides that an assault is unlawful unless it is justified on one of the grounds mentioned in Chapter One of Part Two of Act 29.

Considering the facts presented by the prosecution in respect of this matter, Assault and Battery as stated in **section 86(1) of Act 29** is the appropriate and applicable kind of assault in this case.

## **Assault and Battery**

**Section 86(1) of Act 29** provides that “A person makes an assault and battery on another person, if without the other person’s consent, and with the intention of causing harm, pain, or fear, or annoyance to the other person, or of exciting the other person to anger, that person forcibly touches the other person.

**Section 86(2) of Act 29** states that the application of subsection (1) is subject to the following provisions:

- a) where the consent of the other person to be forcibly touched has been obtained by deceit, it suffices with respect to intention that the touch is intended to be a touch that is likely to cause harm or pain, or is intended to be a touch that, but for the consent obtained by the deceit, would have been likely to cause harm, pain, fear or annoyance, or to excite anger;*
- b) where the proper person is insensible, unconscious, or insane, or is, by reason of infancy or any other circumstance, unable to give or refuse consent, it suffices, with respect to intention,*
  - (i) that the touch is intended to cause harm, pain, fear or annoyance, or*
  - (ii) that the touch is intended to be a touch that would be likely to cause harm, pain, fear, or annoyance to, or to excite the other person’s anger, if that person were able to give or refuse consent, and were not consenting;*
- c) the slightest actual touch suffices for an assault and a battery, if the intention is an intention as is required by this section.*
- d) a person is touched, within the meaning of this section, if the body is touched, or if the clothes or any other thing in contact with the body or with the clothes on the body are or is touched, although the body is not actually touched; and*
- e) for the purpose of this section, with respect to intention to cause harm, pain, fear or annoyance, it is immaterial whether the intention is to cause the harm, pain, fear, or annoyance by the force or manner of the touch itself or to forcibly expose the person, or cause that person to be exposed, to harm, pain, fear, or annoyance from any other cause.*

From the definition of assault and battery in section 86(1) of Act 29 above, the following elements of the offence must be proved beyond a reasonable doubt before A3 and A4 can be convicted of the offence they have been charged with in count two of the charges sheet:

- i. That A3 and A4 forcefully touched PW2 and PW4 without their consent.
- ii. That A3 and A4 touched PW2 and PW4 with the intention of causing harm, pain, or fear, or annoyance to them, or of exciting them to anger.

### **ANALYSIS OF FACT & LAW:**

From the evidence adduced by the prosecution witnesses and the evidence adduced by A3 and A4 in their respective defences, it is an established fact that PW2 and PW4 were assaulted by a mob on the 4<sup>th</sup> of July 2022 which led to PW2 and PW4 suffering injuries shown in Exhibits C2 and C3. It is also a fact that there were a lot of people at the scene where PW2 and PW4 were assaulted. It is also a fact that A3 and A4 were at the scene where PW2 and PW4 were assaulted.

The testimonies of PW2, PW3 and PW4 are very relevant to the successful prosecution of A3 and A4 by the prosecution. This is because they were present at the scene of the assault and therefore perceived first-hand what transpired at the scene of the assault. PW2 in her evidence in chief stated that it was A3 and A4 who led a group of young men to assault her and PW4. By this statement, PW2 means that she saw those who assaulted her, and it included A3 and A4. However, when PW2 was cross-examined by A3 she provided answers which indicate that she only saw A3 at the scene but did not see him assaulting her and that A3 did not lead the other accused persons to physically assault her. Below are the relevant questions and answers given by PW2:

*Q. The day the quarrel came how did you see me?*

*A. When the fighting started, I was in my compound and I heard people coming from the chief's palace shouting fire, fire. I ran out and saw that they were beating my husband. When I got out they also came and*

*started beating me. I saw A3 pick a stick from a summer hut. By that time, I was already on the floor. I did not see A3 hitting me with the stick because I was on the floor.*

From this answer, PW2 did not actually see A3 hitting her with a stick or physically assaulting her. When the prosecution re-examined PW2 she stated that she saw A3 at the scene, but she cannot predict what exactly he was doing. PW2 avers that she saw A3 at the scene, and she saw him removing a stick from a summer hut. The truth of this statement is doubtful considering that she stated in an answer to a question posed to her by A3 regarding whether she saw A3 beating PW4 when she came out of the house. Below is the question and answer:

*Q. You said you were in the compound when you heard fire, fire and they told you your husband was being beaten. When you ran out of the compound, did you see me beating your husband?*

*A. If we follow this matter darkness will reach us. When I came out there were a lot of people. I saw you coming far from the chief palace. When you got there, I was already on the ground they had knocked me down.*

This answer indicates that at the time PW2 heard the cry of PW3 in respect of people killing PW4, A3 was not part of those people who were physically assaulting PW4. From her own answer, A3 was coming from the chief's palace, and she was already on the ground when A3 arrived at the scene. Therefore, those who physically assaulted PW4 and subsequently PW2, when she came out of the house, did not include A3. I wonder how PW3 was able to see A3 remove a stick from a summer hut when she was being physically assaulted by many people and was also on the floor. It appears to the court that PW2 only mentioned A3's name as one of those who assaulted her merely because A3 was present at the scene where she was assaulted. This conclusion is buttressed by the following answers PW2 provided to questions A3 asked her during cross-examination.

*Q. I put it to you that I was only pleading with the people who pleaded guilty that they stop beating you.*

*A. If you said this, why did they continue to beat me. They were a group of people who did that act so if you pleaded well they would not have beaten me.*

*Q. Are you saying that because I did not plead enough for them to stop beating you, is why you have named me as an accused.*

*A. I saw you at the scene, that is why I named you as an accused. You did not beg well that is why they did not stop beating me.*

Regarding whether A4 was also part of those who assaulted PW2 and PW4, during the crossexamination of PW2 by A4, he put a question to PW2 that he only came to the scene to take his mother away from the scene as his mother was arguing with PW3. PW2 provided the answer below

*That is not true. He came from the chiefs palace and started the whole thing. At the time they were beating me your mother had gone home. The reason why we removed your mother is that we cannot bring your whole household to court. That is why we removed your mother.*

The testimonies of PW2, PW3 and PW4 state that the accused persons led by A3 and A4 started assaulting PW4 and subsequently PW2 when she came out of the house after she heard PW3 calling for help. This means that when PW4 was being assaulted initially, PW2 was not there, yet she claims that it was A4 who came from the chief's palace and started the whole thing.

PW4 also testified that he was physically assaulted by young men led by the A3 and A4. When he was put under cross-examination by A3 it became clear that his evidence was not credible. The series of questions and answers below, given by PW4 shows that he did not see A3 and A4 assaulting him. He only saw them at the scene.

*Q. When the fighting happened that day and you were in the house who did you see that hit you.*

*A. I saw many people. You and your son were there. Some came from the right and some came from the left. Everybody was knocking me.*

*Q. Did you see me holding a stick to knock you.*

*A. There were many people hitting me so I could not see. The people pushed me down and they were hitting me so I could not see but you were there.*

*Q. I put it to you that you saw me there because I came there to see what was going on.*

*A. That is not true. If he had come to help me, he will be pushing people to go away. I did not see him pushing people away.*

*Q. Because you did not see me separating the fight or stopping the fight is that why you are saying I am part of the accused persons.*

*A. That is not why. He should have been telling the people to stop what they were doing. I did not see him do anything to stop the fight.*

In respect to A4, PW4 stated he saw him beating him but when he was asked by A4 during cross-examination to describe what he was wearing he could not do so and stated that there were a lot of people hitting him so he could not have noticed what the A4 was wearing.

PW3 also testified that A3 and A4 led a group of young men to assault PW2 and PW4. She testified that she heard people shouting fire, fire and she came out to find PW4 being assaulted by a group of young men led by A3 and A4. This means that when she came out, both A3 and A4 were already at the scene assaulting PW4. This, however, conflicts with the admission PW2 made during cross-examination that when she came out A3 was coming from the chief's palace. This conflict leads the court to believe that PW3's evidence is not credible.

A3 and A4 during their defences adduced enough evidence to raise a reasonable doubt that they were part of those who assaulted PW2 and PW4. Although their testimonies and that of their respective witnesses contained some inconsistencies, it must be noted the prosecution wins a criminal case based on the strength of its case and not based on the weaknesses in the defence of the accused persons. In holding 3 of the case of **Lutterodt v. Commissioner Of Police [1963] LR 429-440** the supreme court per Ollenu JSC set out three stages that a court must use to examine the case of the defence in criminal cases as follows: *"In all criminal cases where the determination of a case*

*depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:*

- (a) if the explanation of the defence is acceptable, then the accused should be acquitted;*
- (b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;*
- (c) if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict."*

After careful evaluation of the whole evidence on record, the court finds the defence of A3 and A4 reasonably probable.

#### COUNT ONE

In count one, the prosecution charged A3 and A4 with Conspiracy to commit a crime to wit assault: contrary to section 23(1) of the Criminal Offences Act 1960 (Act 29). To get a conviction of A3 and A4 in respect of this offence, the prosecution had the burden to prove beyond a reasonable doubt that A1, A2, A3, A4 and A5 agreed with a common purpose to assault PW2 and PW4 whether with or without a previous concert or deliberation.

There is no shred of evidence presented by the prosecution to show that A1, A2, A3, A4 and A5 agreed with a common purpose to assault PW2 and PW4.

After consideration of all the evidence on record, I find that the prosecution has failed to prove beyond a reasonable doubt that A3, A4 and the other accused persons agreed together with a common purpose to assault PW2 and PW4.

I find A3 and A4 **Not Guilty** of the offence of **Conspiracy to commit a crime to wit assault: contrary to section 23(1) of the Criminal Offences Act 1960 (Act 29).**

#### COUNT TWO



In count two, the prosecution charged A3 and A4 with Assault: contrary to section 84 of the Criminal Offences Act 1960 (Act 29). The prosecution was required to prove the following elements in accordance with section 86(1) of Act 29 which provides for assault and battery:

- (i) That A3 and A4 forcefully touched PW2 and PW4 without their consent.
- (ii) That A3 and A4 touched PW2 and PW4 with the intention of causing harm, pain, or fear, or annoyance to them, or of exciting them to anger.

Having considered all the evidence on record, I find that the prosecution failed to prove beyond a reasonable doubt the above listed elements of assault and battery. The accused persons successfully raised doubts as to their guilt.

I find A3 and A4 **Not Guilty** of the offence of **Assault: contrary to section 84 of the Criminal Offences Act 1960 (Act 29)**.

## **DISPOSITION**

### **COUNT ONE**

I hereby acquit and discharge A3 and A4 of the offence of Conspiracy to commit a crime to wit assault: contrary to section 23(1) of the Criminal Offences Act 1960 (Act 29).

### **COUNT TWO**

I hereby acquit and discharge A3 and A4 of the offence of Assault: contrary to section 84 of the Criminal Offences Act 1960 (Act 29).

**SGD**

**H/W SIMON KOFI BEDIAKO**

**MAGISTRATE**

**09/05/2023**