

**IN THE DISTRICT COURT SITTING AT WALEWALE ON MONDAY THE 13TH OF MARCH
2023 BEFORE H/W SIMON KOFI BEDIAKO ESQ – MAGISTRATE**

SUIT NO. NE/DC/WW/24/2023

THE REPUBLIC

VRS

ABDULAI ABDUL WAHAB

JUDGEMENT

INTRODUCTION

The accused person was arraigned before this Court on 18th November 2023 charged with the offence of **Cruelty to Animals: Contrary to Section 303 of the Criminal Offences Act, 1960 (Act 29)**.

PLEA OF THE ACCUSED PERSONS

The Accused pleaded not guilty after the charge as stated in the charge sheet had been read to him in Mampruli language, the language of his choice.

BURDEN OF PROOF

It is settled in law that the burden of proof is heavily on the prosecution to prove its case beyond a reasonable doubt against the accused in accordance with **Article 19(1) and (2) (c) of the 1992 Constitution of the Republic of Ghana** which 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;”

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.”

Lord Denning J (as he then was) in the case of **Miller v Minister of Pensions [1947]**

2 All ER 372 at 373 in respect of proof beyond reasonable doubt stated that *“It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice”*.

He further stated in the same case that *“If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt’*”.

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;*

THE CASE OF PROSECUTION

The brief facts of the case as presented by the prosecution is that the complainant in this case Gambase Ernest is a 25-year-old student at the University of Cape Coast. The accused person Abdulai Abdul Wahab is also a 45-year-old farmer. Both parties are residents of Tamplungu a suburb of Walewale. On 8th November 2022 at about 10:30 pm, the complainant had a call from one of his brothers that the accused person together with some people were chasing his pigs. The complainant then traced his pigs and later went and found two of them dead in the accused person's residence. A report was made to the police by the complainant. Police together with the complainant visited the scene and truly found the animals dead. On the instructions of the district

commander DSP Mr. Cosmas Awe, the two dead animals were released to the complainant since it may decompose. Meanwhile, photographs were captured for evidential purposes. The accused person was arrested and in his voluntary caution statement to police admitted the offence.

The prosecution called two (2) witnesses to testify in support of its case against the accused persons. A summary of the testimony of the prosecution witnesses is as follows:

The first witness that the prosecution called is Gambase Ernest (hereafter '**PW1**'). PW1 is the complainant in this matter. PW1 stated that he is a resident of Tamplungu, a suburb of Walewale. He testified that on 8th November 2022, at about 10:00 pm he received a call from his brother that some people were chasing his pigs. He averred further that he mobilized some men which included his brothers to check if the information he received is true. According to PW1, he found two of his pigs dead in the accused person's house. PW1 stated that when he confronted the accused person, the accused person told him he was the one who killed the pigs. He added that he took pictures of the dead pigs and reported the matter to the police.

The accused person when he cross-examined PW1 failed to raise any doubts as to the truth of the testimony of PW1.

The prosecution called PW/Constable Peace Treba (hereafter '**PW2**') as its second witness. PW2 stated that she is a police officer and lives at the police barracks in Walewale. According to PW2, a case of cruelty to animals was referred to her for investigation. She testified that a team of investigators visited the crime scene and found two dead pigs valued at GHS 1,600 lying in front of the accused person's house. PW2 testified that PW1 identified the pigs as his. She stated that photographs of the crime scene were taken for evidential purposes. According to PW2 investigation caution statement and charged caution statement were taken from the accused person. These were admitted into evidence and marked as Exhibit A and B respectively. In Exhibit A, the accused person admitted that he killed the pigs in question. Exhibit A was admitted in evidence without objection by the accused person and the statement contained therein was given

voluntarily in the presence of an independent witness as stipulated by section 120(2) of the Evidence Act 1972 (N.R.C.D 323).

PW2 also tendered in evidence photographs of the dead pigs and the house of the accused which was admitted in evidence and marked as Exhibit C Series.

PW2 concluded that on the instructions of District Commander DSP Mr. Cosmos Awe the dead pigs were released to PW1.

The accused person could not dent the testimony or evidence of PW2 when he cross-examined PW2 as of right.

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 the accused person and the accused person was duly called upon to answer the case. The court in considering whether the prosecution has made a prima facie case against the accused person after the close of its case is not required to determine whether the prosecution has proved its case beyond a reasonable doubt. It is at the end of the trial that the court is required to determine whether the prosecution has proved its case beyond a reasonable doubt. See Tsatsu Tsikata v The Republic [2003-2005] 2 GLR 294, SC.

CASE OF THE ACCUSED

The accused testified by himself and called two (2) witnesses in his defence. Accused stated that he is a farmer. He added that he lives in Tamplungu in Walewale. According to the accused he has a garden in his house where he planted sweet potatoes. Accused testified that, pigs have been coming to his garden to destroy his sweet potatoes. He stated that all his efforts to find the owners of the pigs proved futile. The pigs continued to come to his garden to destroy the sweet potatoes, so he reported the matter to the chief of Walewale who then issued a warning to all the pig farmers in the area to control their pigs or stop rearing the pigs in the area. According to accused, the pigs

continued to come to his garden to destroy his sweet potatoes even after the chief had issued the warning. He testified that he went back to the chief and reported that the pigs have still been coming to his garden and the chief told him to report the matter to the Environmental and Sanitation Unit of the West Mamprusi Municipal Assembly (ESU). He stated that he reported the matter to ESU and they took his number and told him that they will come to his house. He stated that the officers of the ESU came to his house and looked at his garden. According to accused he told them who the owner of the pigs is, and they told him they will go and speak to the owner. According to accused after they had spoken to the owners of the pigs, they told him that he should report to them if the pigs came back to his garden so that they take the necessary action. Accused testified that the pigs came back to his garden at mid-night on the 6th of November 2022. He stated that there were many, but he was able to catch two (2) of them and he locked them in his yard. He continued that when he woke up in the morning at about 5:00am he saw that someone had come to free the pigs that he caught. According to the accused seven (7) pigs came back to his garden on the 9th of November 2022 at about 9-10pm. He was able to catch two of them which he locked in his house and subsequently killed them.

The testimonies of the two witnesses of the accused does not point to any defence or lawful justification for the killing of the pigs by the accused. The testimony of the first witness of the accused by name Iddrisu Braimah (hereafter 'DW2') only corroborates the fact that the accused reported the matter of pigs destroying his garden to the chief of Walewale. From the testimony of DW2, the accused only reported the matter to the chief through DW2 after he had killed the pigs in question. This is contrary to the testimony of the accused that he had reported the matter to the chief prior to the killing of the pigs. The testimony of the second witness of the accused who is an officer of ESU by the name Wuni Azara also indicates that the accused person was not truthful to the court in his testimony when he told the court that he reported the issue of pigs destroying his garden to the ESU before he subsequently killed two of the pigs. It is clear from her testimony that the accused only reported the matter to the ESU after he had killed the pigs and the matter had been brought to court.

ANALYSIS OF FACT & LAW:

303. Cruelty to animals

(1) A person commits the criminal offence of cruelty to animals and is liable to a fine not exceeding twenty-five penalty units, who

(a) cruelly beats, kicks, ill-treats, over-loads, tortures, infuriates, or terrifies an animal, or causes or procures, or being the owner, permits an animal to be so used; or

(b) by wantonly or unreasonably doing or omitting to do an act, or causing or procuring the commission or omission of an act, causes unnecessary suffering, or being the owner, permit unnecessary suffering, to be caused to an animal; or

(c) conveys or carries, or being the owner, permits to be conveyed or carried an animal in a manner or position that would cause the animal unnecessary suffering; or

(d) drives an animal in harness, or when drawing a vehicle, which is in a condition that would cause the animal unnecessary suffering, or being the owner, permits the animal to be so driven; or

(e) subjects, or causes or procures, or being the owner, permits to be subjected, an animal to an operation which is performed without due care or humanity.

(2) An owner commits the criminal offence of permitting cruelty if the owner fails to exercise reasonable care and supervision in respect of the protection of the animal from an act of cruelty indicated in subsection (1).

(3) This section does not apply

(a) to the commission or omission of an act in the course of the destruction, or the preparation for destruction, of an animal as food for human consumption, unless the destruction or the preparation was accompanied by the infliction of unnecessary suffering; or

(b) to the coursing or hunting of a captive animal unless the animal is liberated in an injured, mutilated, or exhausted condition; but a captive animal shall not, for the purposes of this section, be deemed to be coursed or hunted before it is liberated for the purpose of being coursed or hunted, or after it has been recaptured, or if it is under control.

The accused person admitted in his evidence in chief and Exhibit A and B that he killed two pigs which according to him belong to the brother of PW1. The act of the accused in killing the two pigs after he had been able to successfully capture them leads me to conclude that he killed them out of cruelty. The accused unreasonably caused the two pigs to suffer which led to their death. He sort to justify his action by stating that the pigs had been destroying sweet potatoes in his garden however this excuse does not fall under the exemption provided by **section 303(3)(a) and (b) of Act 29**. In determining whether the accused person is guilty of the offence he has been charged with herein, it matters not if PW1 owns the pigs, or they belong to his brother. What matters is that the accused person killed the pigs which he knew belonged to someone with no justification as stipulated **section 303(3)(a) and (b) of Act 29**.

DISPOSITION

The court in passing the sentence took into consideration the plea for mitigation of the accused person. The accused person is hereby cautioned not to commit the offence again. The accused is hereby discharged.

The accused person is hereby ordered to pay an amount of One Thousand and Four Hundred Ghana Cedis (GHS 1,400.00) to PW1 as compensation for killing two pigs belonging to PW1.

SGD

H/W SIMON KOFI BEDIAKO

MAGISTRATE

13/03/2023