

**IN THE DISTRICT COURT, KPANDAI HELD ON 28<sup>TH</sup>**

**JULY 2023 BEFORE HIS WORSHIP BITAM LARI**

Case No NR/KPA/DC/B1/2023

**THE REPUBLIC**

**V**

- 1. NTAPOAN MAFOTI**
- 2. NIMOTIME SOFAYA**
- 3. BICHATI JABOI**

**JUDGMENT**

The three accused persons were charged with

1. conspiracy to commit crime, to wit; cruelty to animal and stealing, contrary to sections 23(1) and 124(1) of Act 29/60.
2. All three were charged with cruelty to animal, contrary to section 303(1) of Act 29/60
3. Conspiracy to commit crime, to wit; stealing, contrary to sections 23(1) and 124(1) of Act 29/60
4. Stealing, contrary to section 124(1) of Act 29/60

All three pleaded not guilty and in accordance with section 172 of Act 29, the prosecution was to prove its case beyond reasonable doubt.

The facts of prosecution are that on 11th March 2023 stopped one Bube Muhammadu, a Fulani herds boy from grazing his cattle in the outskirts of Buntum village near Kpandai. the conduct and approach of the accused persons made the cattle to start running away, whereupon the accused persons started shooting at the cattle, killing eight of them instantly. The herds boy ran in fear of being harmed but hid in nearby bushes and watched as the accused pleased themselves. According to prosecution, the accused then conveyed the carcasses and fled the scene and the herds boy gathered the remnant of the cattle and sent them home and informed his father who led him to make a complaint to the police leading to their arrest. Prosecution tendered in evidence series of pictures depicting the crime scene and some of the cattle that survived the gunshots.

In making their case, prosecution presented three witnesses. The first witness' evidence lacked any credible evidence except the fact that he led his son to make a report to the police. The second witness was the star witness of prosecution, being an eye witness to the alleged crimes. According to this witness, when the accused persons, in the company of other accomplices confronted him and he wanted to flee the scene, the accused persons got hold of him and forced him to close his eyes and he struggled with them, leading to the cattle scattering. He said upon seeing the cattle flee, accused started shooting at them, killing eight of them instantly and after killing the cows, they let go of him and he ran away to a safe hiding place and watched them as they chopped up the carcass and carted same away in tricycles. Witness produced names of the accused persons to the police leading to their arrest.

According to PW3 the police investigator, it was the witness, PW2 who produced the names of the accused to the police leading to their arrest. He added that accused persons sold the meat to prospective buyers but searches the police conducted in the abode of the accused did not reveal any guns. The police presented pictures of six separate spots at the crime scene where the accused

emptied the content of the entrails of the carcasses. It is doubtful if the actual number of cows killed reached eight. Be that as it may, some cows were killed, if even less than the stated number.

In cross examination, PW2 told court that it was A3 who held him while A1 who wielded a gun shot at the cattle. Witness said he did not know if the police found any guns or meat in their abodes but he had information from one Taller that the community chief said accused sold some meat. PW2 repeated his answer that A3 held him and ordered him to shut his eyes but with his eyes shut, he heard the gunshots and the mooing of the cows. Witness added that A3 after the shots, let go of witness but advised him to avoid running in one direction. Witness in further questions said the accused carried the carcasses away in the night of the day in question and it was the next day that he led his father to the scene.

In cross examining the police investigator, he said that the accused were identified by PW2. He also admitted he did not find any guns or meat or the smell of same in the houses of the accused persons but explained that he did the investigation and searches days after the crime and so they would have hidden or got rid of the evidence.

The defence put up by all three accused persons is one of an alibi. Section 131 of Act 30/60 states that whenever an accused intends to put forward a plea of alibi, he should give notice of the alibi to the prosecution with particulars as to the time and place and of the witnesses by whom it is proposed to prove. On the evidence, the accused have all met this requirement. They stated that they all were nowhere near the scene of crime but were rather attending the installation ceremony of the chief of their community- Buntun on the day in question. However, they all state that it was the same newly installed chief who identified them as the ones who attacked the complainant's cattle and shot and killed some of them. They said it was the chief who made a phone call to the police, inviting the police to come and

arrest them and that it was at the police station the herdsman identified them to the police.

The police had a duty to investigate the claim of the accused persons. The chief of Buntun is a key witness in this case. It was his installation ceremony that the accused persons claimed they were attending for which they did not go to the bush.

Under the authority of section 68(1) of the Evidence Act, 1975 Act 323, court called the chief of Buntun village to appear and testify as to his basis for identifying the accused persons as alleged by them. The defence of alibi and the role of this chief makes him a key witness to the matter before the court.

The chief of Buntun testified on oath viva voce and was cross examined by all three accused persons. According to the chief, PW1 and PW2, that is, the owner of the cattle and his son herdsman are residents of Makango but relocated to his community in search of grazing grounds for their cattle. He said they approached him with this request and he granted them permission to graze in his area for two months. According to the chief, the Fulanis were one and half months into the two months he gave them when his installation as community chief came. Witness said on the morning of the ceremony, he went to his brother's compound and noticed A3 was dressed up in his farm attire and when he questioned him why he was going to farm on such an important day as this, A3 told him he was going to the farm but will not be long in returning.

According to the chief, at the peak of the ceremony, PW2 came running to the ceremonial grounds and pleading to have audience with him but he asked him to hold on till after the ceremony but the herdsman insisted he must be heard. He said the herdsman informed him of the attack on his cattle and the killing of some of them. The chief said when he asked PW2 whether he knew them, the latter said he knew them only by faces but not by their names. He said PW2 pointed at the

respective compounds of the three accused persons and repeated that he knew them but not by their names. The chief said he knew from the information from PW2 that it was the three young men and added that A3 was his direct nephew, that is, a son of his blood brother. According to him, after the programme, he sent for the accused persons and questioned them but all three denied it. According to the witness, " I told them the day was an important one but I did not see any of them at the cerebation. I told A3 in particular that he had assured me he was going to the farm but will be back shortly but here he was, coming home in the evening." The chief said he let the accused go home but called them again the next day and further questioned them but they did not take it kindly this time, accusing him of harassment. He added that A3 in particular called him a fake chief. According to him, accused persons told him they were not ready to listen to him and so he also told them he was trying to find out to settle the matter because the Fulani had lodged a complaint with him and vowed to send the matter to the police if he failed to settle it. He said he told accused persons that since they did not recognize his leadership role, he was allowing the Fulani man to forward the case to the police and that is what he did. He said the police invited the accused persons through a letter sent to him as community chief but they all declined to attend the invitation, leading to the police coming to arrest them in the community. He said as for the carcasses, he did not see any meat but added that even if there was any such meat, they would have hidden it.

In answer to A1's questions during cross examination, the chief said he called four people for questioning but the Fulani man identified the three of them and excluded the fourth.

A2 in cross examination wanted the chief to provide proof that he either saw him kill the cows or that he saw him with meat or that he should tell which community the sold the meat.

In cross examination, A3 wanted an explanation as to why the Fulani man reported the matter to him but to none other. The chief explained that he was their host and he permitted them to settle and so it was right that they reported the incident to him. The witness agreed with A3 that he supplied A3's name to the complainant but did so after the Fulani man had identified him on sight when they were attending his call for the sitting. Witness repeated his interaction with A3 when he saw him dressed up in his farm attire. A 3 accused the chief of implicating him in the case out of hatred.

Apart from A3 who made a weak attempt to deny going to the farm but present at the ceremony, the other two led no evidence to prove their alibi when they were confronted with the court witness's evidence deflating the defence of alibi.

From the evidence, PW2 had direct and close interaction with the accused persons. He said they came with other people but in his narrative, he was specific on the role each of the accused persons did in the commission of the crime. Again, being a new resident of the community, he knew them by face and their houses but not their names. The fact that he admitted that he did not know their names makes his evidence more credible because from the evidence of the court witness, they were barely two months old as temporary settlers. The fact that this witness knew the compound of each of the accused persons shows he had a clear memory of who they were and which house they lived in.

When an accused person pleads alibi, it means his entire defence hinges on the alibi and should he prove it, he gets an acquittal. However, should that defence collapse, he fails in his defence on that. What will be left is for the court to find out if on the evidence the prosecution had made its case solidly against the accused.

On the evidence, the offence was committed on 11<sup>th</sup> March. They police invited the accused after the report was made to them but the accused refused to attend the invitation. Nine days after the offence had been committed, the police arrested and

cautioned the accused persons. Certainly, nine days is long enough time for the accused, whose conduct had become public knowledge to eliminate any evidence, especially after becoming aware that the police were investigating the case and had even invited them through a letter.

It is not expected that the police should find the accused in possession of the meat from the carcasses. The accused also argued forcefully that no guns were found in the possession or control when they were searched. Of course, at that stage and time, the search was only a formality as they would have long eliminated any incriminating evidence.

A3 denied going to the farm that day. He raised this defence before the chief called by court to testify. On the contrary, later evidence showed he went to the farm. The chief interacted with him personally before his departure for the farm. What A3 did not avert his mind to was that, the complainant did not say the cows were shot in anybody's farm. He said it was in the bush. Again, A3 vehemently denied a gun. But PW2 did not accuse him of shooting or holding a gun. He said A3 was the one who forcefully held him, restraining him while A2 shot at the cows.

A2 put his personal character and achievement in life as part of his defence and accused the chief of having a personal hatred for him because he had built a four-bedroom house in the community. He denied having a gun. What he failed to recognize is the fact that the complainant did not accuse him of shooting the cows with his own gun. Short guns are very common in rural farming communities such as Buntun and it cannot be said that accused could not have had access to one, having regard to the fact that it was a bigger group that did the attack but only the three accused persons were identified.

A1 claimed he did not attend the invitation of the police because he knew nothing about the crime for which he was being invited. On the contrary, if he knew nothing about it, the best option was to attend the call and explain himself out.

After all, it was only being investigated. Again, A1 defending himself made it sound as if he as being accused of killing the cows in his farm. The facts of the case establish that they killed the animals for their meat and not because they entered their farms or destroyed their crops.

All three accused persons have forcefully argued that it was the chief who supplied their names to the complainant. They are under a mistaken believe that once a complainant does not know one's name, he cannot link one to any offence he has personally seen one commit. Physical identification of persons is a proper and accepted way of identifying people for any cause. That is why the police sometimes conduct identification parade for victims of crime to identify the perpetrators. They were not arrested because the chief gave their names. They were arrested because the herdsman identified them properly.

The attack on PW2 was done in broad daylight. The details given by that witness shows a close contact with all three accused persons. They witness was able to identify where each of them lived in the community. Putting these two pieces of information together, it was established that they were connected to the crime.

On the totality of the evidence, I find that the accused persons and the others who were participants of the attack could not have met in the bush by coincidence. It was an organized attack. That is where conspiracy comes in.

In also find that the accused persons attack, particularly the shooting and injuring as well as killing the cows was very cruel. The animals are domestic animals. The manner in which they were shot at and some killed makes it look like they were hunting buffalos.

I also find on the evidence that the accused persons in the company of some others agreed together and appropriated the meat from the carcasses which was not for them. And they had enough time to dispose of them before any serious investigations commenced.



I accordingly convict all accused persons as charged.

.....sgd.....

Magistrate