

IN THE DISTRICT COURT HELD AT SOMANYA ON FRIDAY THE 28<sup>TH</sup> DAY OF  
APRIL, 2023 BEFORE  
HIS WORSHIP MICHAEL DEREK OCLOO.

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SUIT NO: B3/03/21

THE REUBLIC

VRS

KENNETH KWAO BOAFO

Accused Person:	:	<b>Present</b>
Complainant	:	<b>Absent</b>
Chief Inspector Emmanuel Ayitte for Prosecution	:	<b>Present</b>

**J U D G M E N T**

The Accused person was arraigned before this Court on a charge of threat of Death Contrary to section 75 of the Criminal and other offences Act, 1960, Act 29. He pleaded not guilty after the charge had been read out and explained to him.

The facts of the case as presented by the prosecution are that the complainant Hans Carboo Kweinor is 34 years old and business man while the Accused person Kenneth Kwao Boafo is 38 years old and a farmer. Both the complainant and the Accused person live at Oduwanya a suburb of Somanya and they are cousins. In April, 2020 the Accused person told one Paul Tetteh who is a witness in the case to inform the complainant that anywhere he (Accused Person) meets the complainant he will kill him (complainant). Paul Tetteh delivered the message to the complainant. The Accused person again told some of the complainant's friends to inform him (complainant) that when he meets the complainant he will kill him. On 24/5/2020 the complainant lodged a complaint of Threat of Death against the Accused person at the Somanya Police Station. On 28/5/2020 the Accused person was invited to the Somanya Police Station and was re-arrested for investigation after which he was charged with the offence stated on the charge sheet.

In the Witness Statement of PW1 he corroborated the facts of the prosecution and added that his tenant by name Happy informed him (PW1) that the Accused person's mother Comfort Korla had ordered him (tenant) to vacate the room so he (PW1) went to the house to establish the veracity or otherwise of the information. He knocked on the door of Comfort Korla but it was the Accused person who came out and when he started to make enquiries about Comfort Korla, then the Accused person told him (PW1) that he will finish him on that day whilst at the same time picking a pestle to attack him (PW1) and the tenants around took him (PW1) away from the scene.

PW2, Paul Tetteh corroborated the facts of the prosecution and added that he informed the complainant's mother Henrietta Carboo about the threat and she (Henrrieta) also told the complainant to be aware of same.

**PW3 NO. 52400 D/L/CPL** Atanla Peter who is the investigator in the case stated that the complainant, upon hearing of the threat, became afraid and lodged a complainant at the Police Station.

When the Accused person was given the opportunity to give his caution statement he said he needed an explanation about the charge because he has no knowledge about it. However in his statement of defence he stated that he did not discuss with anybody the issue of threat to kill the complainant. He did not call any witness and closed his case.

The Legal issue to be determined is whether or not the Accused person is guilty of the offence of Threat of Death.

The general principle of Law in every criminal case, including the instant one, as stated in the case of *ASARE V. THE REPUBLIC [1978] GLR 193-199* is that:

*"There was no burden on the Accused to establish his innocence, rather it was the prosecution that was required to prove the guilt of the Accused beyond all reasonable doubt."*

Section 75 of the Criminal and other offences *Act 1960 (Act 29)* provides as follows:

*"A person who threatens any other person with death, with in tend to put that person in fear of death, commits a second degree felony."*

When the Accused person cross-examined PW1 the following ensued:

- Q. I am putting it to you that out of the 5 persons it was only Paul Tetteh (PW2) who confirmed that I sent a message threatening to kill you.
- A. That is true however the remaining four (4) persons said because we are siblings, they do not want to do anything by way of delivery of the message to bring us at logsger-heads to each other.

A deduction from the above is suggestive of the fact that the Accused person has admitted that he actually gave the threatening message to 5 persons and it was only one of them (PW2) who delivered the message. The admission is regardless of the number of people who went given the message and the number that delivered same. The important point is that the message was issued out and it was delivered. Whether or not it was delivered by one person is immaterial since it does not take away the fact that the Accused person actually gave out that message.

When PW2 testified and in the course of which he offered a probative evidence of the matter in issue the Accused person Cross-Examined him as follows:

- Q. I am putting it to you that I did not give you the said message to be given to the complainant.
- A. That is not true you did same.

PW2 is a material witness therefore the Accused person was expected to do further Cross Examination to establish the veracity or otherwise of his (PW2'S) averment but the Accused person failed to do so. In the case of *QUAGRAINE V. ADAMS [1981] GLR 599, CA*, it was held that:

“When a party makes an averment and his opponent fails to Cross-Examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by the failure to Cross-Examine.”

By his failure to do thorough Cross-Examination of PW2, the Accused person is deemed to have acknowledged sub silentio, PW2'S averment. I must state that the Court is not oblivious of the exceptions to the rule on failure to Cross-Examine as the Accused was given the opportunity to Cross Examine PW2 without any hindrance.

Also when the Accused Person Cross-Examined PW3 the investigator in the case the, following transpired:

Q. Between PW1 and I who came 1<sup>st</sup> to lodge a complaint at the Police Station?

A. You came first.

Q. Did you ask PW1 why he failed to report to the Police before I came to do so?

A. Yes.

Q. What did he tell you?

A. He said he travelled.

This line of questioning from the above is suggestive of the fact that the Accused person is of the opinion that if a crime is committed between parties, the first person to lodge a complaint of the crime to the Police is exonerated or in other words is considered not to be guilty of the said crime. This opinion of the Accused person is inappropriate and misleading because when an act is defined as a crime the culprit is dealt with by Law irrespective of which of the players 1<sup>st</sup> reports same to the Police. The Accused person can therefore not rely on the flimsy excuses or ill-conceived idea that since he 1<sup>st</sup> lodged the complaint to the Police, there is no way that he would be found guilty of the offence.

In the case of *THE STATE V. SOWAH AND ESSEL [1961] GLR 743-747, S.C.*

It was held that:

“A Judge must be satisfied of the guilt of the crimes alleged against an Accused person only on consideration of the case; and only then can he convict.”

I am satisfied of the guilt of the crime leveled against the Accused person as it is my finding after considering all the evidence adduced during the trial that the prosecution has been able to prove beyond reasonable doubt that the Accused person committed the offence of Threat of Death. The Accused person is accordingly convicted.

In sentencing the Accused person the Court takes into consideration the fact that the Accused person and the complainant are family members who will continue to live and

interact with each other. It is therefore prudent to promote peaceful co-existence between them.

The Accused person is therefore sentenced to a fine of 20 penalty Units in default of which he will serve 2 months prison term.

**(SGD)**  
**H/W MICHAEL DEREK OCLOO**  
**(MAGISTRATE)**  
**28/04/2023**

**F. T.**