

IN THE DISTRICT COURT, DZODZE HELD ON MONDAY THE 26TH OF JUNE, 2023
BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE.

Case No. B9/03/23

THE REPUBLIC

VRS

ATI FORTUDE

JUDGMENT

PARTIES

COMPLAINANT PRESENT

ACCUSED PERSON PRESENT

REPRESENTATION

CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION PRESENT

BACKGROUND

On 25th of October, 2022, the accused person was arraigned before this Court on a charge of causing unlawful damage contrary to section 172 of the Criminal Offences Act, 1960 (Act 29).

BRIEF FACTS

The brief facts attached by the prosecution disclosed that the complainant Francis Nutornutsi, a 50-year-old trader and the accused Ati Fortude, a 70-year-old farmer are both residents of Tadzewu in the Ketu North Municipality of the Volta Region.

The Prosecution stated that, the complainant who had inherited a parcel of land from his grandmother detected that some unknown persons were stealing plantain on the land.

The Prosecution stated that the complainant visited the land and realized that portions of it had been dug with some plantain trees uprooted and upon his personal enquiries discovered that the accused person was responsible for the damage.

The Prosecution stated that the complainant reported the incident to the police and the accused was arrested but he denied the offence and was arraigned before the court for prosecution after investigations.

THE CASE OF PROSECUTION

The prosecution relied on the evidence of the complainant, PW1 and the police investigator Michael Governor, PW2.

In his evidence in chief PW1 stated that on the 8th of September, 2022 he visited the land he inherited from his late father and found out that trenches had been dug on the land with parts of his plantain destroyed.

PW1 stated that his own enquiries revealed that it was the accused who caused the damage so he reported the incident to the police.

PW2 stated that he was the investigator on duty at the Tadzewu Police station when the case was reported and referred to him for investigation.

PW2 stated that upon his arrest, the accused denied being responsible for the offence in his cautioned statement.

The prosecution tendered through PW2, the cautioned statement and charge statement of the accused as well as a photograph of the scene of crime which were adopted as Exhibits A, B and C.

DEFENCE OF THE ACCUSED

In his witness statement filed on 11th May, 2023, the accused stated that the mother of the complainant was granted permission by his father to cultivate the land on crop sharing terms until she died.

The accused stated that after the demise of the complainant's mother, they wrote to her children and the head of their family to stop cultivating the land.

The accused stated that, he took over the cultivation of the land and planted coconut and plantain on portions of it.

The accused stated that after his family wrote to the complainant's family to stop cultivating the land, the land was given by the family to a developer who commenced a project on the land.

The accused denied the allegations against him and stated that he is not responsible for the alleged damage.

In corroboration of the evidence of the accused, his witness Sampson Afortude (DW2), stated that the land in issue belongs to their family whose head of family is Rev. Kofi Afortude.

DW2 confirmed that their family in 2021 wrote to the head of the complainant's family to stop cultivating the land after the death of the complainant's mother.

He stated further that their family gave the land to a developer who started developing the land and that the accused is not responsible for the activities on the land.

The accused tendered in evidence a copy of a notice served on one Charles Nutornutsi to yield vacant possession of a land to the Afortude family.

THE LAW AND ANALYSES

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 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.*

Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides that; "In a criminal action, the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt required the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond reasonable doubt".

The extent of the onus on the defence on the other hand is provided by section 13(2) of the evidence Act 1975 which states;

“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”. See also COP v. Antwi [1961] GLR 408.

The Law on 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.

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.

Based on the principles above, it is essential to establish the involvement of the accused in the alleged incident. The burden on prosecution was to establish that the accused directly caused the alleged damage by way of personal act or that the damage was occasioned at his instance.

The evidence given by PW1 is that he made his own enquiries which revealed that the accused person was responsible for the development on the land.

Under cross examination by the accused on 24th January, 2023, he departed from his claim under paragraph 5 of his evidence-in-chief where he stated that he discovered the accused was responsible for the development through his personal enquiries and stated that he actually saw the accused destroy the plantain with his children.

Portions of the responses of PW1 are reproduced below;

Q. Do you remember when we went to the scene with the police he spoke with one Attipoe who stated that it might be his children who cut the plantain?

A. That is not true.

Q. I am putting it to you that I did not destroy your plantain?

A. You destroyed them with your children. I saw you.

The only witness called by prosecution in addition to PW1 was the Police investigator, detective corporal Michael Governor (PW2).

In his evidence, PW2 could not confirm that the accused was responsible for the damage.

The responses of PW2 under cross examination on 20th March, 2023 by the accused on the allegations against him are reproduced below;

Q. Did your investigation reveal that I was the one who caused damage to the plantain?

A. It was difficult to establish.

Q. If it was difficult to establish that I caused damage to the plantain, then why did you charge me for court?

A. You claimed ownership of the said land on which the damage was caused.

Q. I am putting it to you that I did not cause any damage?

A. I leave that to the court to determine.

The principle regarding situations in criminal cases where the accused claims ownership of the property in dispute alleged to have been damaged is for prosecution to establish that the accused has no such claim to the property. See the case of *Homenya v. The Republic* [1992] 2 GLR.

In *Homenya v. The Republic* (supra) it was held that;

“The task of the court in a criminal trial under section 172(1) of Act 29 is not to embark upon the determination of the ownership of property as between the complainant and the accused . . . Thus as soon as the prosecution realizes from the investigation into the complaint that the trial is

bound to be a camouflaged civil trial into the ownership of the property, they must decline prosecution since the accused's claim to the ownership of the property is bound to negative the unlawfulness of his conduct".

The evidence of PW1 was not only found by the court to be inconsistent, but the effect of the evidence given by PW2 left the evidence of PW1 uncorroborated. A conviction cannot be secured on his self-serving and self-acclaimed enquiries without further details and verification.

CONCLUSION

In the circumstance, the court holds that, the prosecution has not made a sufficient case against the accused person.

The charge against the accused is therefore dismissed and the accused is acquitted and discharged.

NELSON DELASI AWUKU
MAGISTRATE