

CORAM: HIS WORSHIP MR. MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, ZEBILLA IN THE UPPER EAST REGION OF GHANA, ON THURSDAY, THE 9TH DAY OF NOVEMBER, 2023.

CASE NO. UE/ZB/DC/B1/03/2020

**THE REPUBLIC
VRS.**

- 1. ATINIBILLA AKIRU**
 - 2. ABUBAKARI ISSAKA**
-

TIME: 08:34AM

ACCUSED PERSONS PRESENT

**CHIEF INSPECTOR TONKA APAM FOR THE REPUBLIC
PRESENT**

**JALADEEN ABDULAI, ESQ. FOR THE ACCUSED PERSONS
PRESENT**

JUDGMENT

Introduction

1. The accused persons were brought or arraigned before this court on the 2nd June 2020 for the following offences:
 - a. Conspiracy to commit crime to wit; Causing Unlawful Damage contrary to Sections 23(1) and 172(1)(b) of the Criminal and Other Offences Act, 1960 (Act 29)
 - b. Causing Unlawful damage contrary to section 172(1)(b) of Act 29.

The accused persons pleaded **NOT GUILTY** to all the two (2) counts.

Case of Prosecution

2. The case of the prosecution as can be gleaned from the brief facts attached to the charged sheet filed on 02/06/2020 and the evidence on record is that the complainant Malik Ayalega aged 35 is a farmer residing at Saka near Zebilla. 1st accused Atinibilla Akiru is a farmer at Saka near Zebilla while 2nd accused Abubakar Issaka is a Tailor and lives at Zebilla. Prior to this incident, complainant Malik Avalega had a dilapidated building at Saka. He pulled down the said building to rebuild into stores. On 13/09/2019, complainant engaged the services of a Mason and labourers to build the stores. The stores were built to window level and at about 2:30pm whilst work was ongoing, accused persons and five (5) others namely Apam, Moses, James and Boga (now at large) besieged the site and ordered them to stop work. This led to exchanges and resulted in a fight. In the process accused persons and the five (5) others now at large scattered some quantity of mortar on the ground. The complainant quickly came to the Police Station at Zebilla to lodge a complaint. Police swiftly proceeded to the scene but on arrival accused persons had fled. Photographs of the scene were taken for investigation. On 14/09/2019 at about 6:00am, complainant visited the site and met the accused persons pulling down the entire building. Complainant informed Police about the incident where the scene was visited. Photographs of the scene were taken by a civilian photographer. Accused persons Atinibilla Akiru and Abubakar Issaka were subsequently arrested and in their respective investigation cautioned statement before an independent witness they denied the offence and were granted Police enquiry bail. On 20/09/2019 a letter for assistance was dispatched to the Department of Works at Bawku West District Assembly, Zebilla for assessment of damage and report. On 23/10/2019 the scene was visited together with personnel from the Department of Works Bawku West District Assembly, Zebilla. After their assessment they gave a comprehensive report and the valued extent of damage as GH¢1,953.00. After investigation accused persons were charged with the above-mentioned offences.

Burden of Proof

3. In a criminal case where an accused person pleaded not guilty, it is the duty of the prosecution to prove the guilt of the accused person. Article 19 clause (2)(c) of the 1992 Constitution of Ghana provides that:

“A person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.”

The proof required is proof beyond reasonable doubt. **The Evidence Act, 1975 (NRCD 323)**, outlines this in subsections 11(2) and 13(1) and Section 22 as follows:

11(2) “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 could find the existence of the fact beyond a reasonable doubt.

13(1) In any 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.

Section 22: In a criminal action a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt and thereupon in the case of a rebuttable presumption the accused need only raise a reasonable doubt as to the existence of the presumed fact”.

4. The Supreme Court in a unanimous decision in the case of **Abdulai Fuseini v The Republic, reported in [2020] Crim LR, page 331** reiterated and affirmed the basic philosophical principles underpinning criminal prosecution in our courts as follows:-

“In criminal trials, the burden of proof against an accused person is on the prosecution. The standard of proof is proof

*beyond reasonable doubt. Proof beyond reasonable doubt actually means “proof of the essential ingredients of the offence charged and not mathematical proof.” **Emphasis supplied***

5. In the case of **Miller Vrs Minister of Pensions [1947] 2 ALL ER 372 at 373**

Lord Denning (as he then was) explained proof beyond reasonable doubt as follows:

*“It need not reach certainty but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice ... 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, but nothing short of that will suffice.” **Emphasis supplied***

6. In the case of **Dexter Eddie Johnson Vrs the Republic [2011] SCGLR 601**

Dotse JSC discussed the principle of proof beyond reasonable doubt in some detail and cited the case of Woolmington Vrs DPP [1934] AC 462 where Lord Sankey made the following statement:

*“Throughout the web of the English Criminal Law, the golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner”s guilt – if at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner – the prosecution has not made out the case and the prisoner is entitled to an acquittal. 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.” See the case of: **Commissioner of Police Vrs Isaac Antwi [1961] GLR 408** where the Woolmington principle was applied.*

7. See also the following cases on the burden of proof in criminal cases: *Frimpong @Iboman v The Republic* [2012] 1 SCGLR 297, *Gligah & Anr v The Republic* [2010] SCGLR 870, *Tetteh v The Republic* [2001-2002] SCGLR 854, *Francis Yirekyi v Republic* [2017-2020] 1 SCGLR 433 at 457 and 464-466, just to mention a few.

Evidence of the Prosecution and the Accused Persons

8. The prosecution in bid to prove its case called three witnesses. PW1-**Yakubu Adam** testified that “On 13th day of September, 2019 at about 2.30pm the complainant, myself and workers were on site building when accused persons arrived that we should stop work. Accused persons without any provocation, scattered quantity of mortar on the ground. That the complainant and I quickly reported the matter to Police but on their arrival accused persons had fled.”
9. PW2-**Malik Ayalige** testified that “I had a dilapidated building at Saka and decided to build into stores. I engaged a Mason and labourers to build the stores to window level. On 13th day of September, 2019 at about 2.30pm while the work was on going, accused persons besieged the site and ordered us to stop work. Accused persons scattered quantity of mortar on the ground. I quickly reported the matter to Police but on their arrival accused persons had fled. On 14th day of September, 2019 at 6.00am I visited the site and met the accused persons pulling down my uncompleted stores. I reported the matter to police and they went to the scene and took photographs of the damage. I led police to the arrest of the two accused persons. On 23/09/2019 I accompanied Personnel from the Works Department of Bawku West District Assembly and the Police to the scene to access the extent of damage.”
10. PW3-No.43978 Detective Corporal Aaron Quainoo testified that “on 13/09/2019 a case of causing unlawful damage was referred to me for investigation. I visited the scene with the complainant but on my arrival accused persons had left. After assessing the situation, I observed that the

stores were at a window level with small quantity of mortar scattered on the ground. On 14th day of September, 2019 at about 7.30am the complainant informed me that he visited the site and met accused persons pulling down the uncompleted stores. I visited the scene and found that indeed the uncompleted stores have been pulled down. I took photographs of the scene and the first two accused persons were subsequently arrested. I took investigation cautioned statements separately from accused persons in the presence of an independent witness. Accused persons were granted police enquiry bail to be reporting periodically. On 20/09/2019 sent a letter for assistance to the Works Department Bawku West District, Zebilla to assess and value the damaged stores. On 04/10/2019 Police led Personnel from the Works Department Bawku West to the scene to assess the damage. On 7/10/2019 the report was received from the Works Department Bawku West. On 16/10/2019 and on the instructions of my commander I charged accused persons with the offences as stated on the charge sheet.”

11. He tendered in evidence the following documents: Investigation caution statement of 1st accused person as **Exhibit A**, Charge cautioned statement of 1st Accused person as **Exhibit B**, Investigation caution statement of 2nd accused person as **Exhibit C**, Charge statement of 2nd accused person as **Exhibit D** and photograph of the scene showing the demolished building as **Exhibits E Series** and A report from Works Department of the Bawku West District as **Exhibit F**.

12. The accused persons in their defence testified themselves without calling any witness. The 1st Accused person **Atinabilla Akiru** testified that “I say that it was on the 13th of September, 2019 when I was on our way to Googo when I chanced Malik and his masons doing development. I say that I went and asked them to stop work because the land was a subject of dispute. I say that Malik and his people dissatisfied with my approach started raining insults on me. I say that I got infuriated and also insulted back and there after one Asiwo slapped me. I say that in an attempt to retaliate, people came in to separate us including Abubakar A2. I say that it was after the separation that I

left the scene and went away. I say that it is not true that I agreed that I caused damage to complainant building. I also say that I never push down any part of the complainant building.”

13.A2- **Abubakari Issaka** testified as follows: “I say that it was on the 13th of September, 2019 when I went to my auntie’s place in Saka. On same day at about 2.00pm when I was having conversation with Enoch and Jirima in front of Jirima’s shop and there I saw people gathering at the scene of the incident and I also went to see what was happening. I say that upon arrival I saw Malik who is my customer and that of suspect Atinibilla exchanging words with each other. I say that when I asked Atinibilla he told me that he was passing and saw the complainant and his workers busily working on the disputed land and that he decided to ask them to stop. I say that I was able to calm down the situation and Atinibilla went away and I also returned to Zebilla. I say that I did not know anything in relation to causing damage to complainant building. I say that even during cross examination of the police investigator he agreed with my Lawyer that I never participated in the damage of complainant building.”

Ingredients of the Offence of Conspiracy, Evaluation of Evidence and Legal Analysis

14. Section 23(1) of the Criminal and Other Offences Act, 1960, Act 29) provides 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.”

15. Also, in the case of *Francis Yirenkyi v The Republic supra*, at holding 1 at page 435 the court held as follows:-

1. *Under the old formulation of the offence of conspiracy under section 23 (1) of Act 29, conviction could be obtained by the establishment of three ingredients, namely (i) prior agreement to the commission of a substantive crime, to commit or abet that crime, (ii) acting together in the commissioning of a crime in circumstances which showed that there was a common criminal purpose; and (iii) a previous concert even if there was evidence that there was no previous meeting to carry out the criminal conduct. However, under the new formulation, the offence of conspiracy could be established by only one ingredient namely (1) the agreement to act to commit a substantive crime, to commit or abet that crime. The effect therefore was that the persons must not only agree or act, but must agree to act together for common purposes.*

Thus under the new formulation, a person could no longer be guilty of conspiracy in the absence of any prior agreement, whereas under the old formulation a person could be guilty of conspiracy in the absence of any prior agreement. Dictum of Korbieh JA in Republic v

Abu and others Criminal Case No. ACC/15/2013 (unreported) and Sgt. John Agyapong v The Republic, Criminal Appeal No. H2/1/2009, 12 February 2015 (unreported cited) Emphasis supplied

16. See also the following current cases on conspiracy: *The Republic Vrs. Ernest Thompson & 4 others* [2021] DLSC 10174 (Criminal Appeal NO. J3/05/2020 delivered on 17th March, 2021), *Kingsley Amankwah (a. k. a. Spider) Vs. The Republic* [2021] DLSC 10793 (Criminal Appeal No. J3/04/2019 delivered on 21st July, 2021).

17. At this stage, the question to ask is did the Accused persons act together to cause unlawful damage to the complainant's property? The answer to this question is in the negative because there is no sufficient evidence on record to show that the accused persons agreed and acted together with a common purpose to demolish the complainant's building. This court therefore finds as

a fact from the evidence on record that the Accused persons did not agree and act together with a common purpose and demolished the complainant's uncompleted building. I shall now proceed to examine the offence of causing unlawful damage itself.

Ingredients of Unlawful Damage, Evaluation of Evidence and Analysis

18. Section 172(1) of Act 29 which governs the offence of Causing unlawful damage provides as follows:

172(1) A person who intentionally and unlawfully causes damage to property (a) to a value not exceeding one million cedis or without a pecuniary value, commits a misdemeanour, (b) to a value exceeding one million cedis commits a second a degree felony.

Also, in **Homenya vrs. the Republic [1992] 2 GLR 305-319**, the court said that:

"Section 172(1) of Act 29 which creates the offence of unlawful damage requires that for a person to be liable under the said section, the accused must have caused the damage intentionally and unlawfully. The section reads: "whoever intentionally and unlawfully causes damage to any property by any means . . ." Each of the two words emphasized above is important and must be established before one can be called upon to open his defence in respect of this offence. For if the damage was intentionally but not unlawfully caused, the offence is not committed. Likewise if the damage was unlawfully but not intentionally caused, then it is not one of unlawful damage."

See also Okoe v. The Republic [1979] G.L.R. 137 and Asante v. The Republic [1972] 2 G.L.R. 177.

19. The ingredients to be proved by the prosecution in a charge of unlawful damage are: accused person intentionally caused damage to the property and the accused person unlawfully caused the damage. The prosecution led evidence to the effect that the accused persons caused damage to the

complainant's building intentionally and unlawfully. From the evidence the 1st Accused person admitted that there was a dispute over the land that the complainant was developing. He claims he only confronted the workers on the land to stop work and they insulted each other. It is the 1st accused person's case that one Asiwo slapped him and when he wanted to retaliate they were separated by others including A2. Thus A1 testified in evidence in chief as follows:

"I say that it was on the 13th of September, 2019 when I was on our way to Googo when I chanced Malik and his masons doing development. I say that I went and asked them to stop work because the land was a subject of dispute. I say that Malik and his people dissatisfied with my approach started raining insults on me. I say that I got infuriated and also insulted back and there after one Asiwo slapped me. I say that in an attempt to retaliate, people came in to separate us including Abubakar A2."

20. 2nd Accused person on the other hand explained that he saw the complainant and 1st Accused person exchanging words and that he was able to calm down the situation and Atinibilla went away and he also returned to Zebilla. It is A2's case that he did not know anything in relation to causing damage to complainant's building. Thus the 2nd Accused person testified as follows:

"I say that upon arrival I saw Malik who is my customer and that of suspect Atinibilla exchanging words with each other. I say that when I asked Atinibilla he told me that he was passing and saw the complainant and his workers busily working on the disputed land and that he decided to ask them to stop. I say that I was able to calm down the situation and Atinibilla went away and I also returned to Zebilla. I say that I did not know anything in relation to causing damage to complainant building. I say that even during cross examination of the police investigator he agreed with my Lawyer that I never participated in the damage of complainant building."

21. From the evidence on record, this court finds the explanation of the 1st accused person unacceptable or not reasonably probable. Thus, this court finds as a fact that in the course of the confrontation or the exchange of words

between the 1st accused person and the complainant, the 1st accused person with others at large demolished the complainant's building. This is confirmed by **Exhibits A and B**. Accordingly, this court holds that the 1st Accused person intentionally and unlawfully demolished the complainant's building which was under construction. On the other, hand the courts finds the explanation of the 2nd accused person acceptable or reasonably probable.

22. The law is that 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 examine the case for the defence and consider whether the explanation of the defence is acceptable, if it is, that provides complete answer, and the court should acquit the person. Thus, in the case of **Lutterodt vrs Commissioner of Police (C. O. P.) [1963] 2GLR 429-440**, holding 3, the Supreme Court per OLLENNU J.S.C. set out 3 stages that a court must use to examine the case of the defence in criminal cases, as follows:

(3) "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."

Conclusion

23. So, having examined the whole evidence of the prosecution and Defence on record, the court is of the considered opinion that the prosecution has

discharged its burden of proof beyond reasonable doubt with regards to count 2-causing unlawful damage against 1st Accused person. Thus, the ingredients of the offence of Causing Unlawful Damage were proved beyond reasonable doubt. In other words, apart from the defence's explanation, this court is satisfied on a consideration of the whole evidence that the 1st accused person is guilty of causing unlawful damage to complainant's property. Consequently, the 1st accused person is hereby found guilty of causing unlawful damage contrary to section 172(1)(b) of the Criminal and other Offences Act, 1960 (Act 29) and he is convicted accordingly. A1 is however acquitted and discharged in respect of count one.

24. Besides, the prosecution has failed to prove the guilt of the 2nd accused person in respect of the two charges against him beyond reasonable doubt. In other words, the explanation of the 2nd accused person is acceptable to this court or reasonably probable. The 2nd Accused person is therefore acquitted and discharged in respect of the two charges.

Mitigation of Sentence and Sentence

25. Counsel for the accused persons pleaded with the court to temper justice with mercy and be lenient to the 1st accused person. He submitted that the 1st accused person is a first time offender.

26. The practice where people in society take the law into their own hands and engage in unlawful acts such as mob justice and demolishing of the complainant's property in the instant case must not be countenanced. Therefore a sentence that will deter likeminded individuals in engaging in similar unlawful act must be imposed. And now therefore, considering the plea of the 1st Accused person for mercy, the fact he is a first time offender, he is hereby sentenced to pay a fine of One Hundred and Fifty Penalty units (GHC1,800.00) and in default seven (7) months imprisonment with hard labour. It is further ordered that the 1st Accused person shall pay the sum of Three Thousand Two Hundred Ghana Cedis (GHC3,200.00) to the

complainant as compensation for the building demolished by the 1st accused person.

(SGD.)
H/W MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)