

IN THE DISTRICT COURT 2, TAMALE HELD ON WEDNESDAY 10TH JANUARY,
2024 BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. B3/3/23

THE REPUBLIC

V

SAEED YAHAYA BABAMU

JUDGMENT

INTRODUCTION

1. On 22nd February, 2023 the accused person was arraigned before this court on the charge of threat of harm, trespass and causing unlawful damage contrary to sections 74, 157 and 172(1) of the Criminal Offences Act, 1960 (Act 29), respectively. The accused person pleaded not guilty to the said charges.

FACTS OF THE CASE

2. The facts as filed by the prosecution are that complainant's sister, Bintu Tahira, bought a plot of land marked plot no. 11 situate at Aboabo Market, near Picorna Hotel, Tamale. Ms. Bintu had gone to develop the said land when some persons, including the accused, opposed her. The matter was referred to the High Court and same determined in favour of Ms. Bintu. On 15th January, 2023 Ms. Bintu tasked the complainant (Alhaji Hassan Issah) to take some workers to the said land to construct a fence wall. However, accused person led a mob to the said land and ordered the

said workers to stop and leave the site. Accused person also threatened that should the workers remain on the land, he and his gang would visit mayhem on them. During the confrontation, accused person and his gang damaged 3,000 pieces of cement blocks and three trips of sea sand deposited at the site. The sea sand got mixed with the laterite and that same could not be salvaged. A complaint was lodged at the police and later accused was served with summons to appear before the court.

DEFINITION OF THE OFFENCE

3. Section 74 of Act 29 provides that, “A person who threatens any other person with unlawful harm, with intent to put that person in fear of unlawful harm commits a misdemeanour.”
4. Trespass as a criminal offence is provided for at section 157 of Act 29. It states that, “A person who (a) unlawfully enters in an insulting, annoying or threatening manner on land belonging to or in the possession of any other person, or (b) unlawfully enters on land after having been forbidden so to do, or (c) unlawfully enters and remains on land after having been required to depart from that land, or (d) having lawfully entered on a land, acts in a manner that is insulting, annoying or threatening, or (e) having lawfully entered on a land, remains on that land after having been lawfully required to depart from that land, commits a criminal offence and is liable, on the complaint of the owner or occupier of the land, to a fine not exceeding twenty-five penalty units; and the Court may order the removal from the land, by force if necessary, of a person, an animal, a structure or a thing.”
5. On causing unlawful damage, section 172 of Act 29 also provides that, “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 degree felony.”

BURDEN OF PROOF

6. By a plea of not guilty, the accused puts himself in charge of the court, meaning that his guilt has to be proved beyond reasonable doubt. The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that the person was guilty, has been provided for in ss. 11(2), 13(1), 15 and 22 of Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the accused beyond reasonable doubt, there is no such burden on accused to prove his innocence. At best, he can only raise a doubt in the case of the prosecution. This doubt must be real and not fanciful, see the cases of **Miller v Minister Of Pensions [1947] 2 ALL ER 372 at 374**, **COP v Isaac Antwi [1961] GLR 408** and **Gligah & Atiso v The Republic [2010] SCGLR 870**.

METHODOLOGY

7. With accused person pleading not guilty to the above charges, it is settled law that the prosecution must prove the whole of its case against the accused person, beyond reasonable doubt.
8. The prosecution in support of its case called two (2) witnesses: Alhaji Alhassan Issah (Complainant/PW1) and D/Sgt. Stephen Owusu (PW2). Prosecution filed witness statements for Abdulai Mohammed Miftawo (the machine operator) and Hajia Bintu Tahira, but did not call them to testify. Prosecution tendered in evidence the following exhibits:
 - i. Exhibit A – Investigation cautioned statement of accused dated 24/2/23
 - ii. Exhibit B - Charge Statement of accused dated 24/2/23

- iii. Exhibit C – Copy of Criminal Summons served on the accused
- iv. Exhibit D – Court Order requesting Police assistance to execute the Judgment of the High Court, dated 6/4/22.
- v. Exhibits E-E5 – Pictures of the land in question.

The Prosecution's Case

9. The evidence of Complainant/PW1 is similar to the aforementioned facts. He averred that attempts to get squatters off plot no. 11 at Aboabo Market have been difficult. Hence, after obtaining judgment from the High Court, the police and military assisted in evicting the squatters. Thereafter, on 15th January, 2023 he was tasked by his sister, Hajia Bintu, to send a back-hole machine to the site to construct a fence wall. PW1 stated that at 4:00am he took the operator to the land, but left to town to attend to other business. While in town, he received a call from the machine operator that the accused person with some people had demanded that work should stop. PW1 stated that he requested to speak to the accused person, whom he identified as one of persons served with a contempt application at the High Court and had denied having a structure on the land. According to PW1, accused person confirmed on the phone that he had ordered the work to stop and all attempt to convince the accused failed. He added that accused threatened to attack, harm and oppose anyone working on the land and that should the workers not leave, the machine would be burnt down. PW1 stated further that accused and his accomplices destroyed 3,000 pieces of molded cement blocks and spread the trips of sea sand deposited at the site such that same could not be salvaged. He then reported the matter to the police.
10. PW2, D/Sgt. Stephen Owusu averred that he investigated the matter and charged the accused person with the above offences. He estimated the value of the 3,000 cement blocks at GHS21,000.00. He also added that PW1 identified a structure on the land as belonging to the accused. He tendered in evidence the aforementioned exhibits.

11. As indicated earlier, the prosecution failed to call Abdulai Mohammed Miftawo (the machine operator) and Hajia Bintu Tahira, although witness statements were filed. At the end of the prosecution's case, the court found that a prima facie case had been established against accused person and therefore called upon accused person to open her defence.

Accused Person's Defence

12. Accused person testified and called a witness, Abdul-Hakim Sayibu (DW1). Accused in his witness statement stated that where he used to trade (he deals in smocks) was demolished sometime in August 2020. Since then he has been operating from home and hawking. He sometimes keep his goods with a friend near the market. On the day in question, 15th January, 2023 he had sent his children to school near the Aboabo Timber Market and on his way back, he decided to pick his goods he had kept with one Abdulai Abu. It was there that he saw a group of people and a back-hole machine digging trenches at the site. According to the accused, he called the Assembly Member for the area, Hon. Osuman Amadu, to the scene. He averred that it was Hon. Amadu who approached the machine operator and the workers left the site, peacefully. He mentioned that he saw, Abdul Hakim Sayibu, (DW1) at the scene, but never saw the complainant/PW1. Again, he did not speak to the machine operator and neither did he speak to PW1 on phone. He denied leading any group of persons to destroy anything on the said land. He averred that the people were on the land before his arrival. Lastly, he did not threaten or caused any damage or have trespassed onto the land. He stated that the land the machine operator was working on was rather plot no. 213 instead of plot no. 11. Accused caused to be tendered a picture of Hajia Bintu's property/house as Exhibit 1.

Defence Witness

13. DW1, Abdul Hakim Sayibu, added that the machine operator was working on plots 213 and 214 which he and the other smock traders/shop owners have sued Hajia Bintu and one Alhaji Sayibu at the High Court. He tendered a copy of the Writ and Statement of Claim dated 1/3/23 as Exhibit 2. He stated further that he did not witness the accused speaking to the machine operator or on phone with anyone. Rather, it was the Assembly Member, Hon. Amadu who spoke with the machine operator and the operator left.

ANALYSIS OF FACTS AND LAW

14. In **Owusu-Ansah v The State [1964] GLR 558** the court held that, ‘...the prosecution is bound to prove each count separately beyond reasonable doubt and that proof in support of one count cannot be deemed to be proof of the other counts where the evidence in support of the other counts leaves room for doubt.’ Hence, the onus on the prosecution to prove each of the charges beyond reasonable doubt. I shall deal with each of the charges.
15. First, trespass as a criminal offence, section 157 of Act 29 requires prosecution to prove beyond reasonable doubt that accused (a) unlawfully entered in an insulting, annoying or threatening manner on land belonging to Hajia Bintu or (b) unlawfully entered on land after having been forbidden so to do, or (c) unlawfully entered and remained on land after having been required to depart from that land, or (d) having lawfully entered on a land, acts in a manner that is insulting, annoying or threatening, or (e) having lawfully entered on a land, remains on that land after having been lawfully required to depart from that land.

16. From the evidence, prosecution maintained that accused was on plot no. 11. Again, accused had erected a temporary structure on the said land, see Exhibit E1. Accused, on his part, denied he was on plot no. 11. He stated further that the machine operator was rather on plots 213 and 214. This was repeated by DW1. However, in his investigation caution statement, Exhibit A, this is what accused stated:

“On my arrival at the nearby shop, I saw a group of people *on the land in question* and upon seeing the crowd, I decided to go and call the area Assembly Member to the scene, *so that if something unusual happens, they will not say it was we those who were initially occupying the land...* When the Assembly member told the operator about the crowd and possible destruction, the operator understood him and left the scene with the machine.”

17. The evidence adduced appears to me that accused was actually on the land which PW1 and his sister had earlier evicted him (the accused) and the other traders. Yet, accused has mounted a temporary structure/shed on it. What baffles me the more is defence's contention that the machine operator was on plot nos. 213 and 214 and that he (accused) had nothing to do with plot no. 11. As such defence counsel had instituted a civil suit against Hajia Bintu and one Alhaji Sayibu. I have earlier pointed out to the prosecution and the defence herein that this case has nothing to do with determining ownership of land. Plot no. 11 had been determined by the High Court in favour of the plaintiff. I find it interesting that while the accused was arraigned before this court on 22/2/23, the civil suit against Hajia Bintu and another, Exhibit 2, is dated 1/3/23. Also, while this case regards plot no. 11, the civil suit regards plot nos. 213 and 214. Accused is not even a party to that suit, let alone defend same. From the evidence led so far, accused had been evicted from the land in question (plot no. 11), he was physically present on the land when the machine operator was working and

he had mounted a structure/shed thereon (see Exhibit E1). He was not supposed to be there, let alone cause for the machine operator to leave the site. In my opinion, the evidence clearly point to the fact that accused trespassed onto plot no. 11 and so I find him guilty.

18. Secondly, on the charge of threat of harm, section 74 of Act 29, explains that threat of harm consists of threatening a person with unlawful harm with the intent to put that person in fear of unlawful harm. Where a charge against the accused is threat of harm, it is unnecessary to prove actual harm or even an attempt to cause actual harm. The *actus reus* is complete when the accused issued the threat to cause unlawful harm to the recipient. It is also unnecessary to prove that the accused was armed with any weapon at the time of issuing the threat. The *mens rea* of the offence is that the words or actions of the accused are meant to put the victim in fear that he will sustain some unlawful bodily harm. In other words, the words or actions of the accused must be intended to create in the victim some apprehension that bodily harm will be caused to him. It is an essential element to prove that the accused intended his or her words to be taken seriously. However, whether the recipient of the threat takes it seriously is not, in and of itself, an element of the offence.

19. Based on the above, the prosecution is required to prove that the accused altered the threat to harm to the machine operator or to damage the machine should the machine operator not leave. According to the prosecution, accused threatened to harm the machine operator and to even cause damage to the machine should the machine operator not leave the scene. This the accused denied that he neither spoke to the machine operator let alone threaten to destroy the machine. From the evidence, however, PW1 averred that accused told him on phone that he ordered the machine operator to stop work and leave the site else he (the machine operator) would be

harmed and the machine burnt. At paragraphs 11, 12 and 13 of his witness statement, this is what he said:

- “11. Whiles in town, I received a phone call from one the operator informing me that the accused, Saeed Yahaya Babamu, who initially was served with contempt by High Court, Tamale and denied having a structure on the land, showed up on the land with a group of people and demanded them to stop work.
 12. I asked the phone be given to accused and in our conversation, I asked whom I was speaking to and accused identified himself to me as Saeed Yahaya Babamu.
 13. I then asked his mission and he told me that he wanted the activities being done on the land to stop.
 14. I told him the operator was on the site acting on the orders of my sister, the owner of the land, but he was not ready to listen to my explanation and went further to threaten to attack, harm and oppose anyone if we don't leave with the building materials and the machine on the land.”
20. Accused in Exhibit A, the investigative caution statement, stated that, “... On my arrival at the nearby shop, I saw a group of people on the land in question and upon seeing the crowd, I decided to go and call the area Assembly Member to the scene, so that if something unusual happens, they will not say it was we those who were initially occupying the land. I then informed the Assembly Member and he came to the scene and on his arrival he approached the operator of the back-hole machine which was digging holes. So what I heard from the Assembly Member was that he

advised the operator of the back-hole machine to move the operator from the land because the way the crowd [as] gathered if he does not move away from the land the crowd may cause damage to the machine.”

21. From the above, it appears that accused knew and he communicated the intentions of the group gathered. Clearly, that intention to cause harm was communicated to PW1. As indicated earlier, to prove threat of harm, the *actus reus* is complete when the accused issued the threat to cause unlawful harm. The *mens rea* of the offence is that the words or actions of the accused are meant to put the victim in fear that he will sustain some unlawful bodily harm or to his property. What is important here is that the threatening words were communicated. In this instance, it was the accused who told PW1 on phone about the intended harm and subsequently the machine operator had to leave the site. Accused, however, failed to call the said Assembly member to support his assertion that he was rather averting harm. I, therefore, come to the conclusion that prosecution has been able to prove beyond reasonable doubt that accused threatened harm to the machine operator and to also burn the said machine if the operator did not leave.

22. Lastly, causing unlawful damage, contrary to section 172 of Act 29, the law requires that the ingredients to be proved by the prosecution are intention and unlawful damage. See **Yeboah & Anor. v The Republic [1999-2000] 1 GLR 149**. In **Brobby v The Republic [1982-83] GLR 608**, Twumasi J (as then was) observed at page 612 as follows:

“An essential element for the constitution of the crimes of causing harm and damage is that the harm or damage must not only be intentional but also unlawful, see sections 69 and 172 respectively of Act 29. Mere harm or damage without more is insufficient.”

23. Acquah J. (as he then was) puts it succinctly in **Homenya v Republic [1992] 2 GLR 305** at page 312 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 emphasised 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.”

24. From the evidence, prosecution pointed to the fact that accused was the one who caused damage to the 3,000 cement blocks and the three trips of sand deposited at the site. Accused denied same. The law requires that prosecution to prove that it was indeed the accused or that it was at the instruction of the accused to some persons to cause the damage, but not a mere speculation. When PW1 was cross-examined as to who caused the damage, he answered that it was the machine operator who informed him. There was no doubt that PW1 was not at the scene when the alleged damage happened. His assertion that the machine operator informed him about the damage is hearsay. I do not have to flog the evidential principle that hearsay evidence is inadmissible, especially when the person who made that statement is unavailable to be cross-examined, see section 117 of NRCD 323. Prosecution also failed to call the machine operator to establish that it was accused who caused the damage. In fact, PW1 in his evidence-in-chief stated that it was accused and his gang who caused the

damage. As earlier pointed out, the prosecution is to prove beyond reasonable doubt that it was indeed the accused who caused the damage or that it was at his instructions, but not a fanciful or mere speculation. I find that the prosecution could not point out who actually caused the damage, for same to be held accountable. A mere speculation that accused and his gang caused the damage when you were not there or that the person who was there was not called to testify, leaves doubt as to who caused the damage. Accordingly, I hold that the prosecution was unable to prove beyond reasonable doubt that the accused caused damage to the 3,000 cement blocks and the three trips of sand.

25. On the totality of the evidence, I, therefore, find that prosecution has led sufficient evidence in proof beyond reasonable doubt that accused person trespassed onto plot no. 11 belonging to Hajia Bintu, contrary to s. 157 of Act 29 and threatened harm to the machine operator and also to burn the machine should the operator not leave, contrary to s. 74 of Act 29. Accused person is, however, not guilty on the charge of causing unlawful damage, contrary to s. 172 of Act 29.

PRE-SENTENCING HEARING

26. Having heard the counsel for accused and prosecution on mitigation, I note accused person's plea for leniency. He is also a first time offender. He is married and has children.

27. In the circumstance, accused is hereby sentenced as follows:

Count 1: Threat of Harm – Accused is to pay a fine of 350p.u. and in default shall serve a jail term of 7months.

Count 2: Trespass – Accused to pay a fine of 25p.u. and to also remove his structure on the land, forthwith. The complainant/owner of plot no. 11 to apply force to remove same should accused fail to do so.

Count 3: Causing Unlawful Damage – Accused is acquitted and discharged.

28. Sentences to run concurrently.

CONCLUSION

29. In effect, accused person is convicted on counts 1 (threat of harm) and 2 (trespass), but acquitted and discharged on count 3 (causing unlawful damage). Accused to pay a fine of 350p.u and in default to serve a jail term of 7months, IHL. Accused to also remove his structure on plot no. 11, forthwith. The complainant/owner of plot no. 11 to apply force to remove accused structure should accused fail to do so.

H/W D. ANNAN

[MAGISTRATE]

INSP. A. R. DAWUD HOLDING THE BRIEF OF INSP. S. MOHAMMED FOR THE
REPUBLIC

ISAAC BORIDOR FOR THE ACCUSED PERSON

References:

1. ss. 11(2), 13(1), 15, 22 and 117 of Evidence Act, 1975 (NRCD 323)
2. ss. 74, 157 and 172, of the Criminal Offences Act, 1960 (Act 29)
3. *Miller v Minister Of Pensions* [1947] 2 ALL ER 372 at 374

4. *COP v Isaac Antwi* [1961] GLR 408
5. *Gligah & Atiso v The Republic* [2010] SCGLR 870
6. *Owusu-Ansah v The State* [1964] GLR 558
7. *Yeboah & Anor. v The Republic* [1999-2000] 1 GLR 149
8. *Brobbey v The Republic* [1982-83] GLR 608
9. *Homenya v Republic* [1992] 2 GLR 305