

IN THE CIRCUIT COURT OF JUSTICE, SITTING AT ASHAIMAN ON  
MONDAY, THE 20<sup>TH</sup> DAY OF NOVEMBER, 2023, BEFORE HIS HONOUR  
SIMON NKETIAH GAGA

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SUIT NO. CC 50/2023

THE REPUBLIC

VRS

EMMANUEL LAVIE

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### JUDGEMENT

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The accused person has been arranged before this court on the charge of *THREAT OF DEATH* contrary to Section 75 of Act 29/60. The accused pleaded not guilty to the charge.

The facts as given by the prosecution are as follows;

The complainants in this case Richard Dupey, Ibrahim Alhassan and Mohammed Abubakari are tenants to step siblings of the accused person Emmanuel Lavie who is an electrician and they all live in the same house at Ashaiman New Town. The father of the accused person married more than one woman and after his death, rooms in the house were shared among the respective wives and their children and they have rented them out to tenants.

He has been harassing and threatening the tenants with ejection that he is the landlord. On Sunday 30<sup>th</sup> October, 2022 about 1200 hours, the first Richard Dupey complainant was standing in front of one of the stores in the house. All of a sudden the accused person attacked him and started insulting him and asked him to leave the place and that the house belongs to him. He then went into his room, picked a stick and hit the complainant with it. He went on and threatened to kill the complainant.

Immediately after the incident the second complainant Mohammed Abubakari had visitors and when they were about to enter into his room they were attacked by the accused person. The second complainant came out and asked why the accused person was preventing the visitors from entering his room His question got the accused person angry and without any reason, threatened to kill him.

On the same day about 2130 hours, the third complainant Ibrahim Alhassan and other tenants were in their rooms and all of a sudden their rooms were filled with smoke which forced him, his pregnant wife and other tenants to come out only to see the accused person burning rubbish in the middle of the house. On seeing the third complainant he started threatening that 'if you are a man stay in the house, I will kill you and everyone who lives in this house'.

The behavior of the accused person was getting scary and the three complainants rushed to the Comm. 22 Police station and lodged a complaint which led to the arrest of the accused person. On 31<sup>st</sup> October, 2022 the case was referred to Ashaiman DOVSSU for further investigations. The accused was interrogated, cautioned and after investigations he was charged with the offences before this court.

### **PROSECUTION CASE**

To proof the guilt of the accused person, prosecution called three witnesses.

**PW1** Richard Dufey testified as PW1. He told the court in his evidence in chief that he is a lotto writer and lives at Ashaiman in the same house with the accused person. He said that on the 30<sup>th</sup> of October, 2022 at 12 noon, he was standing in front of a store which is also in front of the house, the accused person came and told him to leave the frontage of the house since the store belongs to him more so, he is the landlord. Accused went inside

the house and came out with a stick and threatened to kill PW1 without any provocation and PW1 left the place.

He further averred at arrival at 9:30 pm on that same day, the accused burnt some rubbish in the house and as a result, the PW1 room was filled with smoke. PW1 came out from his room and saw accused burning some papers in the house. According to PW1, he came out from his room and when the accused saw him, he threatened PW1 and other persons in the house that he was going to kill them.

**PW2** Ibrahim Alhassan testified as PW2. He told the court that he lives in the same house with the accused person. According to the PW2, the accused was arrested in a rent related case by the police. PW2 offered statement to the police in that case. Since then, the accused has been threatening his life.

PW2 said that on 30<sup>th</sup> October, 2022 at about 9:30 pm, the accused person threatened him to with, *'I will kill you for going to give statement to the police.'* On that same night, the accused was burning some items in the house and the whole house was engulfed with smoke in the course burning the items he threatened to kill whoever tried to talk of it.

**PW3** One Mohammed Abubakari testified as PW3. He averred that the accused person is his landlord and they live in the same house. He averred that on the 30<sup>th</sup> of October, 2022 at 12 noon his brothers visited him at the house. When the accused saw them, without any provocation, he asked PW3 to sack them from the house but PW3 did not sack them. Accused then told him that he would kill him and his brother.

PW3 said he then left the house to avert any confrontation. According to the PW3 he returned to the house and saw that the accused was burning some items in the middle of the house. The whole house and the rooms were engulfed with smoke. He therefore reported the accused to the police.

**PW4** D/C/INSPECTOR JOSHUA TETTEH at the DOVVSU of Ashaiman Divisional Police Headquarters testified as PW4. He told the court that on 31<sup>st</sup> October, 2022 he was on duty at the station when the complainants reported cases of threat of death against the accused person. The complainants had on the 31<sup>st</sup> October, 2022 reported the incident to Community 22 Police because it was on Sunday. Extract from the station dairy of the Community 22 Police was referred to him for investigations.

According to PW4, the accused lives in the same house with the complainants. The house was put up by the father of the accused person, now deceased. According to PW4, the accused person verbally attacked complainants to wit, *'I will kill you'*. The accused person also burnt some items in the house around 9:30 pm on the same day which posed heavy danger to the occupants in the house.

It is to be noted that the accused person waived the cross examination of all the four prosecution witnesses.

After evaluating the evidence before the court, the prosecution was able to establish a prima facie case against the accused person. The court therefore ordered the accused person to open his defence.

**SEE: GLIGA AND ANNOR VRS. THE REPUBLIC (2010) SCGLR 875**

### **EVIDENCE OF THE ACCUSED PERSON**

When the prosecution closed his case, the accused opened his defence under oath. He averred that he is an electrician, and he knows the complainants in the case. According to the accused, he left the house around 7:30 pm on the 30<sup>th</sup> October, 2022 to buy pre-paid power. He returned to the house around 9:30 pm. He took some waste papers from his room and was burning them outside his porch. According to the accused while the papers were burning, a brother of one of the tenants in the house came to question the accused

why he was burning papers in the house. He started insulting the accused to wit *"Who do you think you are, does the house belongs to you etc."* He went to his room and fetched water and poured it on the fire. Some of the water splashed on the accused. The accused said he went to the police station to lodge a complaint however the complainants got to the police station before him.

### ANALYSIS OF EVIDENCE

What the prosecution has to prove would be determined by the offence preferred against the accused person. The accused person is charged with three counts of THREAT OF DEATH under Section 75 of the Criminal Offences Act, 29/60 which states as follows:

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

The first ingredient of the offence of threat of death is that there must be evidence of threat to kill issued by the suspect against the life victim. The second ingredient of the offence is the intent to put the victim in fear of death.

*SEE: Behome vs. The Republic (1979) GLR 112*

Threat has been defined under Section 17 of Act 29 to include any threat of criminal force or harm The law under Section 17 (3) of Act 29/60 explains that it is immaterial whether a threat would be executed by the person issuing it or not. The determining factor is whether the victim of the crime feared death when the threat was communicated to him or her was brought his or her notice.

*SEE: Contemporary criminal Law in Ghana*

*By Dennis Dominic, JA Pg 185-186.*

Indeed, if any of the two elements is proved to the satisfaction of the court beyond reasonable doubt, the court will be bound to convict the accused person unless the accused person is able to put forward some defence which can cast a reasonable doubt on the case of the prosecution. The burden of proof therefore remains on the prosecution. It is after a prima facie case has been established that is, strong evidence sufficient to link the accused to the commission of the offence charge that the accused would be called upon to side his give of the story.

***SEE: GLIGA AND ANNOR VS. THE REP. MENTIONED SUPRA.***

This therefore means that the onus is on the prosecution to prove the guilt of the accused. The accused is not to prove his innocence. The accused should not even show up his hand until the need arises.

SEE: Atsu vs. The Republic (1968). GLR 176 CA

PW1 in his evidence before the court averred that the accused was burning some items in the house at 9:30 pm the whole house and the rooms were engulfed with smoke when PW1 asked the accused why he was doing that, he threatened to kill PW1 by using words to wit, "I will kill you". PW2 and PW3 evidences are not differently from that of the PW1.

It is to be noted that the accused failed to cross examine any of the three persons on the allegations. It is trite law that allegations which are not challenged by a party when they are raised against him by the opposite party, are deemed admitted.

***SEE: IN THE RE ASHITTEY BOTWE***

***LANDS: ADJETEY AGBOSU & OTHERS VS KOTEY & OTHERS (2023/04) SCGLR 420***  
***AT 431 - 432***

The accused person in his evidence in chief admitted burning some papers in front of his porch in the house around 9:30 pm when he went out to buy prepaid power and came back. The explanation or defence of the accused is not strong enough to punch holes in the prosecution case.

The offence under which the accused is charged is Threat of Death. The accused could not raise any doubt in the prosecution case.

### **CONCLUSION**

It is therefore my candid position that the prosecution has been able to prove the offences of *Threat of Death contrary to Section 75 of Act 29/60* beyond reasonable doubt against the accused person. The accused is therefore convicted on all the three counts.

**MITIGATION:** I pray the court to temper justice with mercy.

**SENTENCING:** In sentencing the accused, I have taken into consideration his age and also he is a first time offender. The accused is sentenced to a fine of five hundred penalty Unit or in default, three years in prison on count one. Three hundred penalty unit on count two or in default two years imprisonment and hundred penalty unit or in default one imprisonment year on Count 3. All the sentences are to run concurrently.

(SGD)

**H/H SIMON NKETIAH GAGA**

**(CIRCUIT COURT JUDGE)**

Jt.