

**THE DISTRICT MAGISTRATE COURT HELD AT BEGORO ON
WEDNESDAY THE 09TH DAY OF AUGUST, 2023 BEFORE HER WORSHIP
FLORENCE A BAAH DISTRICT MAGISTRATE**

SUIT NO: B18/6/23

**THE REPUBLIC
VRS
AKAKPO KPEGLO**

JUDGMENT

The accused person was charged with one count of cruelty to animal contrary to section 302(1a) of Act 29/60.

The brief facts attached to the charge are that Complainant in this case Ayisi Samuel aged 56 is a farmer while the accused person Akakpo Kpeglo aged 42 is also a farmer and both reside at Begoro. For some time now accused person has been killing the complainant's pigs for no apparent reason. On 27th day of June, 2022 at about 6:00pm, complainant realized that two of his pigs valued GH¢ 1,600.00 have been butchered by the accused person. A report was made to Police and accused person was arrested. During interrogation, accused person admitted killing the said pigs with cutlass for destroying his house. However, he intimated that the pigs normally comes to his house and dig out a hole under his building and caused damage to his Bio-Digester toilet hence his action. Accused person after killing the pigs, he threw one of the carcass into a public toilet at the back of his house. After investigations, accused person was charged with the offence as contained in the charge sheet before this court.

The accused appeared before the Court on 3rd August, 23 and when the charge was read and explained to him, he pleaded Not Guilty to the charge.

The evidential burden was therefore on prosecution to prove its case beyond reasonable doubt required by law.

EVALUATION OF EVIDENCE ADDUCED AND APPLICATION OF LAW

Under **Section 13 (1) of the Evidence Act, 1975, (NRCD 323)**, prosecution has to prove its case against the accused person beyond reasonable doubt. **Reasonable doubt according to P K Twumasi in his book Criminal Law in Ghana (1996) Page 124 states that** the doubt, "must be a reasonable probability and not a fanciful possibility."

It was held in **Miller v. Minister of Pensions (1947) 2 A.E.R. 372 at 744** that "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 strong against a man as to leave a remote possibility in his favour which can be dismissed with a sentence," of course it is possible" but not the least probable, the case is proved beyond reasonable doubt but nothing short of that will suffice."

Prosecution in proving its case called two witnesses and tendered three exhibits into evidence.

PW1 was Ayisi Samuel he told the Court he lives in Begoro and work as a farmer. In the witness statement filed to the Court, PW1 stated that for some time now accused person Akakpo Kpeglo who lives closed to his house has been killing his pigs for no apparent reason. And that on 26/06/2022, accused person killed two of his pigs and put one into a toilet behind his house. He claims he went to accused person's house and confronted him as to why he had killed the said pigs but he did not give any tangible reason to him. He therefore reported the matter to the Police for his arrest and investigation.

PW2 was Detective Inspector Set Annan stationed at Begoro District Police Station. He told the Court he was on duty at the Charge Office on 28/06/2022 when a case of cruelty to animals was reported and same was referred to him for investigation. According to him he took statement from the complainant which he stated that for some time now the accused person Akakpo Kpeglo have been killing his pigs for no apparent reason and that he had killed two of his pigs on 26/6/2022. And so complainant led him to the house

of the accused person Akakpo Kpeglo and pointed him to Police as the culprit and he was arrested. He added that during interrogation accused admitted having killed the said two pigs with cutlass for destroying his building foundation and bio-digester toilet facility. He averred further that during investigation at the scene, it came to light that indeed the pigs normally enter into the accused person's compound and dig holes under the building foundation. Police also saw one of the dead pigs in the toilet behind the accused person's house. He concluded his evidence by adding that investigation cautioned statement was obtained from the accused and later charged with the offence of cruelty to animals. He tendered the Investigation cautioned statement of accused, charged statement and photograph of the alleged dead pigs and same were admitted into evidence and marked as Exhibits A, B, and C without objection.

At the close of the prosecution's case a prima facie case was made against the accused, Akakpo Kpeglo and he was made to open his defense. Accused chose to give his defense from the witness box and called one witness to testify for him but did not tender any exhibit in evidence.

In the defense by the accused as found in his witness statement filed to the Court accused stated that he is a farmer who lives in Begoro and is the owner of H/NO. B 16, Begoro. Accused claims the complainant Ayisi Samuel has his house at the area where he lives and that the complainant has some pigs in his house. According to him about two years ago, some pigs were destroying his yams he had planted on a portion of his building plot and at the same time digging under the foundation of his house and also digging under his bio-digester toilet. He claims he reported the behavior of the pigs to the Begoro Police and the complainant in this case was invited to the Police Station where the complainant denied ownership of the said pigs. He claims further that the Police Officer told him to make an announcement at any information Centre to that effect, which he did. And that after the announcement he left to his village where he spent three days. When he returned from the village he saw that some pigs had destroyed

the bio-digester which he had made in his house and dug under the foundation of his house and the tomatoes and garden-eggs which he had planted in his garden had all been destroyed. Because of that he invited the person who made the bio-digester in his house and he came from Accra to repair and charged him GH¢ 3,000.00 including the workmanship of the mason who worked on the bio-digester. He averred some days after he repaired the bio-digester and the foundation of his house, he went to buy something at Begoro Township and when he returned to his house in the evening about 5:00pm he saw some pigs destroying the foundation of his building and the bio-digester again. He contend that through frustration of the activities of the pigs he took a cutlass and slashed two of them and they run away but he denied that he never put any pig in the toilet as the complainant accused him of killing and dumping his pig in the toilet in the presence of the toilet owner. He concluded his evidence by adding that all those situations were witness by his witness who is also his next-door neighbor, Agya Yaw who also is a victim to the destructions by the pigs.

Accused person's witness was Jonathan Kumi, he told the Court he lives at Mehame in Begoro and works as a farmer and also knows the accused and the complainant in this case because they all live in the same vicinity and shares common boundary. According to him for some years now the complainant, Ayisi Samuel has been rearing some animals including the pigs causing this problem leading to this case. The witness submitted that the complainant's pig have been causing nuisance in the area to the extent that these pigs always destroy his backyard garden where he had planted yams, plantain, cassava and other food crops by uprooting same. Further, he added that due to the above, he confronted the complainant on several occasions to keep his pigs from causing further damages to his fenced garden but to no avail. He claims since the complainant did not pay heed to the above, he reported to one Elder Sampson Ayeh on two different occasions to advice the complainant to tame his pigs, since they belonged to the same church but also to no avail. As a result, he told the accused that the pigs have been a

threat and since they are very swift and difficult to catch, it serve it right to have done so to them, since the complainant looked on with impunity while his animals cause unlawful damage to their properties. Accused person's witness added that it was later same day that he saw the carcasses of the pigs in his cocoa farm and in the evening in his toilet which he told Elder Ayeh to inform the complainant to remove the carcasses from his toilet which same was obliged to, the following day. And that the accused did not throw the carcasses of the slashed pigs into the toilet but rather the complainant because after the accused used the cutlass on the pigs they bolted away and he did not know where they died. He claims he further thought of taking a civil action against the complainant but did not do same since he was forced by the activities of those pigs to stop the backyard farming. And that the accused has also been suffering same fate hence approached the complainant to keep his pigs from destroying his building and bio-digester constructed by him but the complainant would not do same. He stated that about a year ago, he was informed by the accused that he slashed some pigs that were digging under and causing damage to his bio-digester and building and he killed them. He concluded his evidence by stating that he can say vehemently that the accused out of frustrations and the level of destruction caused to his properties by the pigs did the said act to safeguard his properties and that was his true witness.

Section 303 (1) of Act 29/60 provides thus: (1) A person commits the criminal offence of cruelty and he is liable to a fine not exceeding twenty-five unit who

- (a) Cruelly beats, kicks, ill-treats, over-loads, tortures, infuriates, or terrifies an animal, or causes or procures or being the owner, permits any animal to used; or*
- (b) By wantonly or unreasonably doing or omitting to do any act, causing or procuring the commission or omission of an act, causes unnecessary suffering, or being the owner, permits unnecessary suffering, to be caused an animal*
- (c) conveys or carries, or being the owner, permits to be conveyed or carried an animal in a*

Manner or position that would cause the animal unnecessary suffering; or

(d) drives an animal in harness, or when drawing a vehicle, which is in a condition that would cause the animal unnecessary suffering, or being the owner, permits the animal to be driven, or

(e) Subjects, or causes or procures, or being the owner, permits to be subjecting. An animal to an operation which is performed without due care or humanity.

S.2 An owner commits the criminal offence of permitting cruelty if the owner fails to exercise reasonable care and supervision in respect of the protection of the animal from an act of cruelty indicated in subsection (1).

In the accused person's investigation's cautioned statement when the matter was fresh in the mind of the accused he admitted killing the two pigs for causing harm to his property.

In his witness statement accused adduced evidence as shown supra, that he killed the pigs because the animals have consistently caused damage to his bio digester and his house on several occasions but since pigs are difficult to catch, they and their owner have been getting away from the injury they cause to other people's property.

The section 1(a) under which the accused was charged has some essential elements prosecution must prove to win conviction. They are: Cruelly beat, kick, ill-treat, overload, torture, infuriate, or terrify an animal, or causes, procures or being the owner, permits any animal to be used; Prosecution must prove that accused person did one of the essential elements to the pigs to cause their death.

In the evidence of PW1, supra, prosecution proved that accused killed two pigs belonging to the complainant and put one into a toilet. In the evidence of PW2 prosecution proved that the said pigs were killed by a cutlass by the accused for destroying his property and dumped one in a toilet behind accused person's house. Prosecution failed to prove by its evidence that accused person killed the pigs by cruelly beating, kicking, ill-treat, over-loading, torturing, infuriating or terrified the two pigs through which the animals died to prove the charge preferred against the accused.

In the accused person's investigation cautioned statement to the Police, his evidence to the Court and that of the evidence of his witness as shown supra, accused admitted killing the two pigs with a cutlass but denied putting its dead body into the pit because he slashed the animal with his cutlass and it ran away since it is very difficult to catch a pig and dump them in a Pit as allege. His denial was corroborated by his witness that he saw the dead pigs in his cocoa farm and later in his pit latrine and called on the complainant to remove which he complied. Prosecution failed to show how one slash of a cutlass wound the accused person inflicted on the pigs did not just killed the pigs but also amounts to cruelty. Neither did the prosecution also prove by adducing evidence to show that the accused person's act amounts to any of the essential elements of the offence charged by proving the time the accused slashed the pigs and the time the animals died. Did the pigs die instantly from the wounds sustained or they suffered from the wound for a long time before they eventually died to prove cruelty. Prosecution again failed to prove or equate accused person's act to any of the essential elements in section 303 1(a) for which prosecution must prove to win conviction for the offence charged. Prosecution woefully failed to prove how one slashed of a cutlass wound as shown in exhibit C amounts to cruelty. Exhibit C is a picture showing a cutlass wound of the dead two pigs. Besides the fact that pigs are very smart, swift, and are not easy to catch and will not stand for a second slash coupled with the fact that they also cannot be cached easily even if one wants to cause harm to it for causing damage to his property because of their swift nature. In the case of **Azu alias Ahor v The Republic (1970) CC 53** it was held that instantaneous killing of a dog does not amount to cruelty since shooting inflicts a minimum of suffering. In this instance case prosecution failed to show in its evidence how the cutlass slash inflicted on the pigs by the accused amounted to cruelty when there was no evidence to show the duration of the cutlass wound to the time the pigs died to prove cruelty.

Upon consideration of the whole evidence before me, it is my view that accused person's defense has raised substantial doubts in the case of the prosecution. I hold humbly that prosecution has failed to prove its case beyond reasonable doubt required by law. I therefore acquit and discharge accused on one count of Cruelty to Animal contrary to section 303 1(a) of Act 29/60

DECISION:

Prosecution has failed to prove its case beyond reasonable doubt required by law.

Accused is acquitted and discharge on one count of Cruelty to Animal contrary to section 303 1(a) of Act 29/60

**SGD
FLORENCE A. BAAH
(DISTRICT MAGISTRATE)**