

GHANA / JUDGMENT

REPUBLIC VRS NANA ADU
PAAKO II (B3/78/2022) [2024]
GHACC 318 (17 October 2024)

COURT
ghacc

DECIDED
17 October 2024

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IN THE CIRCUIT COURT, MPRAESO, EASTERN REGION, BEFORE HER HONOUR MRS ADWOA
AKYAAMAA OFOSU, CIRCUIT COURT JUDGE ON WEDNESDAY, THE 17TH OF OCTOBER, 2024

B3/78/2022 THE REPUBLIC V

1. NANA ADU PAAKO II
2. SAMUEL MICHAEL MIREKU
3. NANA KWABENA AGYAPONG
4. NANA AMANKWAH POKU
5. TALANTA ADAM
6. HAMIDU TIRO
7. KWAME FOSU
8. KWAKU AGYAPONG
9. KWAME ACHEAMPONG
10. KWADWO MBOLAPOA
11. KWAME COSMOS
12. 20 OTHERS @LARGE
..... TIME: 9:55 ACCUSED PERSONS: A1 TO A5 PRESENT CHIEF INSPECTOR
BEATRICE LARBI H/B CYRIL BOATENG KETEKU ESQ SENIOR STATE ATTORNEY FOR THE
PROSECUTION PRESENT DANIEL INNOCENT YAO GBENU ESQ H/B JERRY OBENG KWAKYE
ESQ FOR A1 TO A5 PRESENT P a g e 1 | 31 RULING – SUBMISSION OF NO CASE The accused
persons herein were arraigned before this court on the 6th of July, 2022 charged with seven
counts of offences under the Criminal Offences Act, 1960 (Act 29) as follows: COUNT ONE

STATEMENT OF OFFENCE ABETMENT OF CAUSING HARM contrary to section 20(1) and 69 of the Criminal offences Act 1960 (ACT 29) PARTICULARS OF OFFENCE NANA ADU PAAKO II, Krontihene Farmer: On or about 9th day of April, 2021 at about 9:00pm at Pitiko in the Eastern Circuit and within the jurisdiction of this court, did instigate SAMUEL MICHAEL MIREKU, NANA KWABENA AGYAPONG, NANA AMANKWA POKU, TALANTA ADAM@OBETEH, HAMIDO TIRO - AT LARGE, KWAME FOSU - AT LARGE, KWAKU AGYAPONG - AT LARGE, KWAME COSMOS - AT LARGE AND 20 OTHERS ALL AT LARGE to cause harm COUNT TWO STATEMENT OF OFFENCE ABETMENT OF CAUSING UNLAWFUL DAMAGE contrary to section 20(1) and 172(1)(b) of the Criminal Offences Act, 1960 (Act 29) P a g e 2 | 31 PARTICULARS OF OFFENCE NANA ADU PAAKO II, Krontihene Farmer: On or about 9th day of April, 2021 at about 9:00pm at Pitiko in the Eastern Circuit and within the jurisdiction of this court , did instigate SAMUEL MICHAEL MIREKU, NANA KWABENA AGYAPONG, NANA AMANKWA POKU, TALANTA ADAM@OBETEH, HAMIDO TIRO - AT LARGE, KWAME FOSU - AT LARGE, KWAKU AGYAPONG - AT LARGE, KWAME COSMOS - AT LARGE AND 20 OTHERS ALL AT LARGE to cause damage to the Mercedes Benz saloon car valued 35,000 Ghana Cedis belonging to Nana Frimpong Okoamire II COUNT THREE STATEMENT OF OFFENCE CONSPIRACY TO CAUSE HARM contrary to section 23(1) and 69 of the Criminal Offences Act, 1960 (Act 29) PARTICULARS OF OFFENCE SAMUEL MICHAEL MIREKU, Driver, NANA KWABENA AGYAPONG, Building Contractor, NANA AMANKWA POKU, Retired Educationist, TALANTA ADAM@OBETEH, Driver, HAMIDO TIRO - AT LARGE, KWAME FOSU - AT LARGE, KWAKU AGYAPONG - AT LARGE, KWAME COSMOS - AT LARGE AND 20 OTHERS ALL AT LARGE: On or about 9th day of April , 2021 at about 9:00pm at Pitiko in the Eastern Circuit and within the jurisdiction of this court did agree to act together with a common purpose to commit a crime namely causing harm P a g e 3 | 31 COUNT FOUR STATEMENT OF OFFENCE CAUSING HARM contrary to section 69 of the Criminal Offences Act, 1960 (Act 29) PARTICULARS OF OFFENCE SAMUEL MICHAEL MIREKU, Driver, NANA KWABENA AGYAPONG, Building Contractor, NANA AMANKWA POKU, Retired Educationist, TALANTA ADAM@OBETEH, Driver, HAMIDO TIRO - AT LARGE, KWAME FOSU - AT LARGE, KWAKU AGYAPONG - AT LARGE, KWAME COSMOS - AT LARGE AND 20 OTHERS ALL AT LARGE: On or about 9th day of April, 2021 at about 9:00pm at Pitiko in the Eastern Circuit and within the jurisdiction of this court did intentionally and unlawfully cause harm to Nana Frimpong Okoamire II. COUNT FIVE STATEMENT OF OFFENCE CONSPIRACY TO CAUSE UNLAWFUL DAMAGE contrary to section 23(1) and 172 (1)(b) of the Criminal Offences Act, 1960 (Act 29) PARTICULARS OF OFFENCE SAMUEL MICHAEL MIREKU, Driver, NANA KWABENA AGYAPONG, Building Contractor, NANA AMANKWA POKU, Retired Educationist, TALANTA ADAM@OBETEH, Driver, HAMIDO TIRO - AT LARGE, KWAME FOSU - AT LARGE, KWAKU AGYAPONG - AT LARGE, KWAME COSMOS - AT LARGE AND P a g e 4 | 31 20 OTHERS ALL AT LARGE: On or about 9th day of April , 2021 at about 9:00pm at Pitiko in the Eastern Circuit and within the jurisdiction of this court did agree to act together with a common purpose to commit a crime namely causing unlawful damage COUNT SIX STATEMENT OF OFFENCE CAUSING UNLAWFUL DAMAGE contrary to section 172 (1)(b) of the Criminal Offences Act, 1960 (Act 29) PARTICULARS OF OFFENCE SAMUEL MICHAEL

MIREKU, Driver, NANA KWABENA AGYAPONG, Building Contractor, NANA AMANKWA POKU, Retired Educationist, TALANTA ADAM@OBETEH, Driver, HAMIDO TIRO - AT LARGE, KWAME FOSU - AT LARGE, KWAKU AGYAPONG - AT LARGE, KWAME COSMOS - AT LARGE AND 20 OTHERS ALL AT LARGE: On or about 9th day of April , 2021 at about 9:00pm at Pitiko in the Eastern Circuit and within the jurisdiction of this court did intentionally and unlawfully cause damage to damage to the Mercedes Benz Saloon car valued 35,000 Ghana Cedis belonging to Nana Frimpong Okoamire II COUNT SEVEN STATEMENT OF OFFENCE FORCIBLE ENTRY contrary to section 202A of the Criminal Offences Act 1960 (Act 29)

PARTICULARS OF OFFENCE P a g e 5 | 31 SAMUEL MICHAEL MIREKU, Driver, NANA KWABENA AGYAPONG, Building Contractor, NANA AMANKWA POKU, Retired Educationist, TALANTA ADAM@OBETEH, Driver, HAMIDO TIRO - AT LARGE, KWAME FOSU - AT LARGE, KWAKU AGYAPONG - AT LARGE, KWAME COSMOS - AT LARGE AND 20 OTHERS ALL AT LARGE: On or about 9th day of April, 2021 at about 9:00pm at Pitiko in the Eastern Circuit and within the jurisdiction of this court did violently enter the house of the queen mother without lawful authority. In effect therefore, the 1st accused person only was charged with counts one and two and A2 to A5 and the others at large were charged with counts three to seven. THE FACTS OF THE CASE The facts presented by the prosecution in support of the above charges preferred against the accused persons are that on the 5th of May, 2021, the complainant Nana Frimpong Okoamire II chief of Pitiko in the Afram Plains South District petitioned the Director General / CID on a case of assault, causing Harm, etc against Nana Adu Paako II, Krontihene of Pitiko and others. According to the complainant, on the 9th of April, 2021, at about 9:00 pm some young men numbering about 30 who were armed with sticks and cutlasses, forcibly entered the Queen Mother's house at Forifori, a town located about 15 km from Tease where the complainant was lodging. They attacked the complainant and severally assaulted and kidnapped him. The thugs later dragged him to the Krontihene's palace at Tease. Upon seeing the poor condition of the complainant, the Krontihene left them in the house and went to the Tease police station. He later called someone in the house on phone and instructed that the complainant be brought to the police station. P a g e 6 | 31 Upon receipt of the petition, the police called for the original docket from the Tease Police station through the Eastern Regional Police Command. The relevant parties were also invited and put before the unit commander AARU C/Supol Mr Felix Anyidoho, the 2i/c DSP Mr Augustine Offei and the station officer after which various statements were obtained from them for further investigation. During investigations, it was discovered that the complainant and the accused persons are involved in a chieftaincy dispute over who is the legitimate chief of Pitiko. On 9th April, 2021, the complainant visited the area and was at Nana Frimpomaa Amanuaa's house, the Queen mother of Forifori where he was attacked by some young men numbering about 30 with sticks and cutlasses. They forcibly entered the said house at Forifori, seriously assaulted and caused damage to his Mercedes Benz saloon car. The complainant was captured and later sent to the Krontihene's palace at Tease. The Krontihene upon seeing the poor condition of the complainant left him and the thugs at his palace and went to the Tease police station. He later instructed that the complainant be brought to the station. Upon seeing the complainant's condition, the police immediately

issued him with a police medical form for him to attend hospital for treatment. On 10th April, 2021, a team of investigators led by D/C/Inspector Philip Dzade, left Accra for Forifori and Tease on enquiries. At Tease, both parties met the team at the police station and led them to the various crime scenes. Investigation conducted at Forifori and Tease revealed that the complainant was indeed captured and assaulted right from the Queen Mother's house at Forifori to the Krontihene's palace at Tease, a distance of 15 km. His Mercedes car valued at ₵35,000.00 was also vanderlised. P a g e 7 | 31 Article 19(2)(c) of the 1992 Constitution of the Republic of Ghana presumes the innocence of an accused person unless he pleads guilty or he is proven guilty. This means that when an accused person is arraigned before a court and he does not plead guilty, it puts the facts in issue and the prosecution assumes the burden of proving the guilt of the accused person because he who alleges must prove. The standard of proof is "proof beyond a reasonable doubt". To this end, there are several provisions in the Evidence Act 1975 (NRCD 323) which deal with the nature of the burden of proof on the prosecution as well as the standard of proof. The relevant ones are as follows: Section 10(1) For the purposes of this degree the burden of persuasion means the obligation of a party to establish the requisite degree of belief concerning a fact in the mind of the tribunal of fact. Section 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 reasonable mind could find the existence of the existence of the fact beyond reasonable doubt. Section 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 15 (1) Unless and until it is shifted , the party claiming that a person is guilty of a crime or wrong doing has the burden of persuasion on the issue. See:

- Kingsley Amankwah (a.k.a. Spider) v. The Republic [2021] DLSC 10793 at pages25 & 26
- Gligah & Atiso v. The Republic [2010] SCGLR 870 P a g e 8 | 31 THE CASE FOR THE PROSECUTION In an effort to discharge its burden of proof, the prosecution led evidence through five witnesses. The first prosecution witness (PW1) was Nana Frimpong Okoamire II, the complainant, the second prosecution witness (PW2) was Nana Ansomaa @Agya Attah Hema, the third prosecution witness (PW3) was Doris Kata, the fourth prosecution witness (PW4) was Nana Enoch Teye Soda and the fifth prosecution witness (PW5) was Detective Chief Inspector Frank Otoo, the investigator. PW5 also tendered the exhibits of the prosecution in evidence. PW1 testified that he is the chief of Pitiko, Afram Plains South and also a business man who lives in Dansoman Accra. He said that on the 7th of April, 2021 he arrived at Afram plains and went to Maame Krobo with some of his elders and relatives and passed the night at a hotel called Castro. On the 8th of April, 2021, he visited Pitiko to meet his elders to discuss issues affecting the town and went to Forifori with his elders and relatives around 2:30pm. PW1 told the court that on the 9th of April, 2021 at about 9:00 pm, he was in the queen mother's palace where he used to stay because of the Krontihene's action of locking his palace for reasons best known to him. He said he was there with PW2 and PW3 showing them a video on his phone. Suddenly some young men numbering about

thirty forcibly entered the palace and started hitting his Mercedes Benz with registration number GT1028 – S with implements and caused damage to two of the tyres, one in front and one at the rear. He became afraid and anxious and decided to enter his room but two of the thugs prevented him and threatened him with a knife and pistol if he dared enter the room. PW1 further testified that others joined the two and they pulled him out of the house and beat him with cutlasses, wood and other implements without any provocation. He shouted in a struggle and asked them why they were attacking him and where they were taking him to. Some of the thugs lifted him up and threw him on the ground and he remained on the ground and insisted that he would not go anywhere. PW1 said that one of them said the police was aware of what they were doing and so he became surprised. Some of the attackers pulled him towards Tease by foot and was told that the one who sent them told them to kill him but they had spared him. He continued to testify that on their way, one of them called Talata pulled a gun and he was asked to stop. As they were going, they kept hitting him with cutlasses and sticks. Later, a motorbike came from the Tease direction and he was forced onto the bike and one person sat behind him. On their way, when he asked who sent them, the one who sat behind him on the motor bike said it was A1 and he also mentioned that A3 and A4 were also aware that he was being brought. He was thus taken to A1's house before he was later sent to the police station. PW1 further testified that when they got to A1's house and he asked him why he asked the young men to do that to him, he responded by asking him why he did not notify him of his arrival at Forifori. As he tried to respond to the question, A1 as well as A4 all shouted at him to keep quiet. Later, A4 took A1 on his motor bike and left the house to the police station. A1 instructed the young men on phone to bring him to the police station which they did. According to PW1 at the police station, he told the station officer to send him to the hospital for treatment. A medical form was prepared for him and because he could not walk he pleaded with the police to send him to the hospital but they said they did not have a car and so he should call his family. One police officer arranged for a motorbike to take him to the hospital. He was taken to the Tease clinic and whilst there, PW4 came to his rescue and took him to the Donkorkrom hospital for further treatment as he saw that his life was in danger. The following morning he was transferred to the Atibie Government Hospital for further treatment. PW2 testified that she is the queen mother of Agya Atta near Pitiko and lives at both Agya Atta and Forifori. She said that whenever PW1 comes to Pitiko she is the one who cooks for him at Nana Amanua, the queen mother of Pitiko's house. That on the 9th of April, 2021, at about 9:00pm, she was sitting with PW1 and his sister called Sisi and others at the said queen mother's house. Whilst sitting on the compound of the house where PW1's car was parked, they were watching a video on PW1's phone. Suddenly, some young men numbering about thirty who were armed with cutlasses, sticks and other weapons forcibly entered the house. PW1 asked them why they had invaded the house with the weapons. He tried to enter the room where he sleeps but some of the young men crossed and held him firmly preventing him from entering the room. Some of the young men used cutlass to cut the tyres of PW1's car and they started to beat him up and tore his attire. PW2 continued that as they were pulling PW1 away, one of his sisters asked where they were taking him to. They said they

had been asked to take him away. According to her, PW1 was greatly manhandled. He was shouting on the ground and they were all speechless because they did not know where they were taking him to. They sent one Fuseini to go and find out where he was being taken to. They also gave him an attire to give to PW1. Sometime later, Fuseini returned and told them that PW1 was sent to the Tease police station. PW2 further said that PW1 did not attempt to break into the palace as its being alleged. That they were all in the queen mother's house when the young men came to the house. She said they left sticks and weapons in the house. It was after PW1 was discharged from P a g e 11 | 31 the hospital that he told them that the young men took him to A1's house before taking him to the police station. They handed over the weapons that were left behind to the police who came to the crime scene. PW3 Doris Kata told the court that she lives at Amasaman in the Greater Accra Region of Ghana and that PW1 is her younger brother. According to her she was part of the group that traveled with PW1 when this incident happened. She said that on the material date at about 9:00 pm they were at Forifori in Nana Amanua's house. That she was there with PW1 and PW2 and PW1 was showing them a video on his phone when suddenly some men numbering more than twenty entered the compound. She said that some of them were holding cutlasses and others were holding sticks. They started hitting PW1'S car with the object and one of them pointed at PW1 and said that if he is the chief, they had been instructed to come for him. One of them hit her and she fell at the rear of the car. PW1 wanted to enter his room but the young men prevented him. She went out to see a prison warder who was at that time in his wife's container to report to him to call the police for him. She heard the prison warder telling some people that he had also been hit with a stone by the young men. Later he saw PW1 being assaulted and pulled out of the house. They walked a distance away from the house and got on a motor bike with him and fled towards Tease junction. She said that she tried to follow them but someone advised her not to follow them because it was not safe. At about 2:00 am, they had information that PW1 had been sent to the police station. They were later told that he had been taken to the hospital at Donkorkrom. They followed up to Donkorkrom where he was on admission PW4 testified that he lives at Maame Krobo and that on or about the 9th of April 2021, he was in his house at Maame Krobo with One Nana Denkyira when he received a call from P a g e 12 | 31 Kwasi Marfo that some people had gone to assault PW1 at their house. According to Kwasi Marfo, the assailants forcibly entered the house and assaulted him and even prevented him from wearing an attire and forcibly took him away towards Tease junction. He then started calling PW1 on phone but there was no response. He further testified that he together with Nana Denkyira and Kwaku Nkansah decided to look for PW1. Subsequently he called PW1 and he responded. PW1 confirmed to him that some young men rushed on him at home and had severely beaten him. He stated that he was taken to A1's palace at Tease and later to the Tease police station and was left there. He was later sent to Tease for treatment when the police realised how he had been severely assaulted. According to PW3, they went to the clinic and saw PW1 in a very bad condition. He was lying down sweating with pain all over. He became alarmed and he and the two others who accompanied him, went to the police station to find out what triggered the assault on PW1. At the police station, he met two police officers and when he asked

about the case he was told that it was A1 and some young men who brought him. He asked about the nature of the complaint against PW1 but they asked him to go and come the following day. He said that they went back to the hospital and pleaded for PW1 to be transferred due to his condition and they were obliged so he sent PW1 to the hospital at Donkorkrom. PW5 rehashed the story of the other witnesses and added that the Police visited the crime scene at Forifori and found the palace securely locked with five padlocks such that it will be extremely difficult to break those five padlocks under a street light in front of the palace. The findings made the police to believe that indeed PW1 was at home when A2, A3, A5 and A6 and those at large went and attacked him. He said that in the course of investigation, A1 to A5 were arrested and he obtained cautioned statements from them. They later arrested A6 and also took cautioned statement from him. P a g e 13 | 31 PW5 further testified that during investigation it was revealed that the complainant and the suspect led by A1 are involved in a chieftaincy dispute concerning the vacant stool at Pitiko. Therefore when the complainant visited the area and was at Nana Frimpomaa Amanua's house he was attacked by some young men numbering about thirty who forcibly took him to A1's house. PW1 who had sustained injuries resulting from the attack was sent to the police station at Tease upon the instruction of A1. Again, during investigation, the complainant produced photographs showing cuts and bruises he sustained from the assault the accused persons subjected him to. Furthermore, according to PW5, PW1 produced photographs depicting when he was on admission at the hospital receiving treatment. He also provided to the police photographs showing the damage caused to his car when they went to attack him. PW1 presented to the police a medical report which had been duly endorsed. In the course of investigation A5 indicated that he had travelled when the incident happened the ticket he produced indicated that he travelled on the pantoon a day after the incident. After investigations he was instructed to charge the accused persons with the various offences. I must remark here that the exhibits tendered by the prosecution, had some markings on them which did not conform to how PW5 had marked them in his witness statement. The court has thus remarked the said exhibits to conform to how they were marked in PW5's witness statement to bring some clarity. It must also be placed on record that even though PW5 indicated at paragraphs 9 and 12 of his witness statement that he was tendering Exhibit F and R respectively being the cautioned and charge statements of Halidu Tiro, one of the accused persons at large, same did not form part of the disclosures on record. The following are the documents the prosecution tendered in evidence

- Cautioned statements of A1 to A5: Exhibits A,B&B1, C,D and E respectively
- Photographs of PW1 showing cuts and bruises he sustained: Exhibit G series P a g e 14 | 31
- Photographs showing when PW1 was on admission at the hospital: Exhibit H series
- Photographs showing the damage caused to his car: Exhibit J series
- PW1's endorsed medical report: Exhibit K

- The ticket A5 allegedly claims he travelled with: Exhibit L
- Charge statements of A1 to A5: Exhibits M,N,O,P,Q respectively The prosecution closed its case after its witnesses had testified and been duly cross examined. As indicated above, the prosecution has the burden to prove the accused person's guilt beyond a reasonable doubt. However, it was held in *Tsatsu Tsikata v the Republic* [2003- 2004] SCGLR 1068 that the decision as to whether or not the prosecution's case has been proved beyond a reasonable doubt should be made after the end of the entire trial, after consideration of the prosecution's case and that of the defence. See also:
 - *Kweku Quaye alias Togbe v. The Republic* [2021] DLSC 10794 at page 8
 - *Practice and Procedure in Trial Courts and Tribunals of Ghana* by S. A Brobbey at page 126
Thus Section 173 of the Criminal and other Offences (Procedure) Act, 1960 (Act 30) provides that: "Where at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make a defence, the court shall as to that particular charge acquit and discharge the accused" P a g e 15 | 31
Therefore at the close of the prosecution's case, the law requires the court to make a determination as to whether or not the prosecution has made a sufficient case, in other words, a prima facie case against the accused to warrant him to be called upon to open his defence. In practice, this determination can be made by the court suo motu or upon a submission of no case by counsel for the accused person. This is supported by Paragraph 21 of the Practice direction (Disclosures and Case Management in Criminal Proceedings) states that: "at the close of the case for the prosecution, the court shall on its own motion or on a submission of no case to answer, give a reasoned decision as whether the prosecution has or has not led sufficient evidence against the accused person" In the light of the above, counsel for A1 to A5 applied for leave to file a submission of no case at the close of the case for the prosecution and same was granted. The circumstances under which a submission of no case will be upheld have been espoused in a plethora of cases. A relatively recent one is the case of *Tsatsu Tsikata v The Republic* [2003-2004] 1068 wherein the Supreme Court held that: "A submission that there is no case to answer may properly be made and upheld when:
 1. The prosecution failed to provide evidence to prove an essential element of the alleged offence; or
 2. When the witnesses called by the prosecution were discredited by the accused through cross examination; or
 3. The evidence adduced by the prosecution is so manifestly unreliable that no reasonable tribunal could safely convict upon it; or P a g e 16 | 31
 4. The evidence adduced by the prosecution is evenly balanced, that is, the evidence on record is susceptible to two likely explanations and while one is consistent with guilt, the other is consistent with innocence See also: *State v Ali Kassena* [1962] 1GLR 144 S.C *Apaloo v. The Republic* [1975] 1 GLR 156, C.A, *Gyabaah v. The Republic* [1984-86] 2 GLR C.A *Aaron Kwesi*

Kaitoo v. The Republic [2018] DLCA 4485 Being guided by the above, I shall proceed to determine the submission of no case filed by counsel for A1 to A5. In respect of count one which is ‘abetment of causing harm’ contrary to section 20(1) and 69 of the Criminal Offences Act, 1960 (Act 29), which was preferred against only A1, counsel for the accused persons submitted that the prosecution failed to prove same against A1 as he sought to justify A1’s conduct by reference to sections 12 and 14 Act 30 supra which he erroneously cited as sections 12 and 14 of Act 29 on arrest by a private person with particular emphasis on section 12 (1)(e), 12(2) and section 14(1). He submitted that, PW1 had made several attempts to break into the palace and take over and because of that, A1 caused 5 pad locks to be fixed on the main gate but PW1 still made attempts to break in so he reported the matter to the police at Tease and also engaged two men to guard the palace. Counsel further submitted that, Exhibit 1 which is the diary of action clearly shows that a report was made by A1 and that PW1 was rearrested by the police and he was granted bail. P a g e 17 | 31 Section 20(1) under which A1 is charged on count two provides that: A person who directly or indirectly instigates, commands, counsels, procures, solicits or in any other manner purposely aids, facilitates, encourages or promotes, whether by a personal act or presence or otherwise and a person who does an act for the purposes of aiding, facilitating, encouraging or promoting the commission of a criminal offence by any other person whether known or unknown, certain or uncertain, commits the criminal offence of abetting that criminal offence and of abetting the other person in respect of that criminal offence Section 69 of Act 29 supra also provides that: “a person who intentionally and unlawfully causes harm to any other person causes a second degree felony: To secure a conviction on the instant charge therefore, the prosecution is required to prove the following ingredients:

1. That the accused person caused bodily hurt, disease or disorder to the victim
2. The harm was intentional; and
3. The harm was unlawful In the case of Brobbey and the Republic [1982 -83] GLR 608 the court held that: “an essential element for the constitution of the crimes of causing harm contrary to section 69 and causing damage contrary to section 172 of the Criminal Code, 1960 (Act 29), was that the harm or damage must not only be intentional but also unlawful. Mere harm or damage without more was insufficient”. Harm is caused unlawfully if it is without any of the justifications stated under section 31 of the Criminal Offences Act 1960, (Act 29). The said section provides that: “force may be justified in the case and in the manner and subject to the conditions provided for in this chapter on the grounds:
 - (a) of express authority given by an enactment; or
 - (b) of authority to execute the lawful sentence or order of a Court; or P a g e 18 | 31
 - (c) of the authority of an officer to keep the peace or of a court to preserve order; or
 - (d) of an authority to arrest and detain for felony; or

- (e) of an authority to arrest, detain or search a person otherwise than for felony; or
- (f) of a necessity for the prevention of or defence against a criminal offence; or
- (g) of a necessity for defence of property or possession or for overcoming the obstruction to the exercise of lawful right; or
- (h) of a necessity for preserving order on board a vessel; or
- (i) of an authority to correct a child, servant, or other similar person, for misconduct; or
- (j) of the consent of the person against whom the force is used” Therefore, the prosecution must show that PW1 was harmed and that A1 did any of the acts mentioned in section 20(1) prior to or contemporaneously with the commission of the crime. Thus in *Commissioner of Police v Sarpey and Nyamekye* [1961] GLR 756 the court held that: “an act constituting abetment of a crime must precede it or must be done at the very time when the offence is committed. Abetment must be contemporaneous in place time and circumstance with the commission of the offence”. It follows from the above that there must be the commission of a crime or the attempt to commit a crime before a person could be said to have abetted same. If no crime or an attempt of same has been committed a person cannot be accused of the criminal offence of abetment. Also a person cannot be said to have abetted the commission of a crime after the crime has been committed (See: *Effah and Another v The Republic* [1999-2000]2 GLR 722) Here, there is corroborative evidence that some young men numbering about thirty entered the palace of the queen mother of Forifori where PW1 was lodging and launched an attack on him and assaulted him thus harming him in the process. The medical report Exhibit K and the photographs of PW1 Exhibit G series and Exhibit H series showing P a g e 19 | 31 the injuries he sustained and while he was on admission at the hospital confirm that PW1 was assaulted and harmed. The evidence show that the conduct of the young men was intentional and none of the justifications above has been proved to justify their conduct. There is therefore a prima facie evidence of causing harm to PW1. The further evidence is that it was A1 who instructed the young men to go and bring PW1 and indeed when they succeeded, they brought him to A1’s house who later instructed for him to be taken to the police station. Counsel’s submission in respect of the arrest by a private person is therefore neither here nor there because, the evidence shows that the report to the police as per Exhibit 1 the diary of action referred to by counsel, was made after PW1 had been assaulted and harmed and to the extent that it was A1 who instigated the action of the over thirty young men leading to PW1 being harmed, it is my view that the prosecution was successful in establishing a prima facie case of abetment of crime against A1 on count one. In respect of count two which is also a charge of abetment against A1 only, I deem it prudent to determine whether or not a prima facie case of ‘causing unlawful damage’ with which the other accused persons have been charged on count six, has been established by the prosecution because as I have afore mentioned, a person cannot be charged with abetment of crime where no crime has been committed. Sub Section 1(b) of section 172 of Act 29 enacts that: “A person who intentionally and unlawfully causes damage to property to a

value exceeding one million cedis commits a second degree felony” To succeed, the prosecution must prove that:

1. the accused person intentionally caused the damage and
2. the damage was caused unlawfully. P a g e 20 | 31 Thus in *Homenya v the Republic* [1992] 2GLR 305 the court held that: “an accused could only be liable on a charge of unlawful damage to property under section 172 (1) of the Criminal Code 1960 Act 29, where the prosecution was able to establish not only that the accused caused the damage intentionally but also that the damage was caused unlawfully”. Section 174 of Act 29, explains what will constitute an unlawful act within the meaning of section 172 and in throwing more light on this section, the learned author P.K Twumasi in his book *Criminal Law in Ghana* at page 397 states that: “it must be proved further that the accused had no legal justification in causing the intentional damage”. He further stated that the following are circumstances under which damage can be said to have been caused unlawfully within the meaning of section 174(1) of Act 29:
 1. If his act could give rise to a cause of action in any branch of the civil law, including an action for injunction; or
 2. If his act could give rise to a fine or other punishment under any enactment It is alleged by the prosecution that the over thirty young men who entered the palace caused damage to PW1’s Mercedes Benz. PW1 testified that: “suddenly some young men numbering about 30 forcibly entered the palace, started hitting my vehicle with implements they were holding and causing damage to my Mercedes Benz with registration number GT 1028 – S . They caused damage to two of the tyres, one in front and one at the rear of my car.” Both PW2 and PW3 testified that the young men entered the house wielding sticks and cutlasses and started hitting PW1’s car with the implements they were holding and PW2 further said that they cut the tyres with a cutlass. The prosecution tendered in evidence Exhibit J series being photographs of the said vehicle with some damage caused to it and a deflated tyre. P a g e 21 | 31 During cross examination of PW1 at page 16 of the record of proceedings, the following ensued: Q: I am putting it to you that nobody attacked your Benz as you have exhibited in J1 and that the scratches you have exhibited are old dents A: That is not true, they caused damage to it Q: So you want this court to believe that if someone wants to destroy your car, he will just use a stone to scratch it A: That is not the only thing they did. They also burst the tyres so I am surprised he is not referring to those ones Q: Are you aware that the shells normally attached to the bonnet of vehicles have expiry dates? A: Yes I am aware Q: And that when it expires and gets into contact with sunlight, it cracks by itself A: I know but mine had not expired Q: Can you tell the court the year of make of your car? A: I can’t tell now. I have to check Q: I am putting it to you that your Benz as shown per the make is the 80,s year make A: I don’t have anything to say Q: Because you know your car is an old car that is why you couldn’t take full pictures of your car to tender in evidence A: I only took pictures of what they caused damage to P a g e 22 | 31 Q: How many tyres are you alleging that they got spoilt? A: Only one This last response of PW1 having already stated in his evidence in chief that the

young men caused damage to two tyres, one at the front and one at the rear coupled with the prosecution's inability to show the state of the whole car that was allegedly vanderlised leaves the court with no sufficient evidence to ascertain whether indeed damage was caused to PW1's car. Indeed Exhibit J1 which captures the registration number of PW1's vehicle shows some scratches that do not depict that the car was hit by the young men who entered the house in the manner that has been described to the court but rather old dents as described by counsel for the accused persons in the excerpts above. The other photographs Exhibits J and J2 can also not be linked to PW1's car in any way in the absence of a full photograph of PW1's car showing those portions. Section 11(2) of NRCD, 323 provides that "In a criminal action, the burden of producing evidence, when it is on 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" Here, the prosecution failed to discharge its burden of producing evidence as far as count six on causing unlawful damage is concerned. It is therefore my respectful view that further evidence is needed to enable the court make a determination on whether or not any damage was caused to PW1's Mercedes Benz. The prosecution thus failed to establish a prima facie case in respect of count six on 'causing unlawful damage'. Having established that the charge of 'causing unlawful damage' on count six cannot be maintained against A2 to A5 and the others at large, it is the view of the court that the charge of 'abetment of crime to wit causing unlawful damage' on count two cannot be maintained against A1. P a g e 23 | 31 For ease of analyses, I will discuss counts three, four, five and seven together. It is the submission of counsel for the accused persons that the evidence stands unchallenged that the accused persons were not part at all material times, when the alleged crimes were committed and they could not have acted together. That there is no evidence of the accused persons acting together at any point in time. From the analyses in respect of count one, the evidence has firmly established that harm was caused to PW1. Furthermore, in analyzing count two, the court opined that the prosecution was unable to lead sufficient evidence to prove that the thugs who entered the queen mother's palace caused damage to PW1's car and so the charge of causing unlawful damage on count six cannot be maintained against the accused persons. However, it is important to ascertain whether A2, A3, A4 and A5 who have been charged along with others at large were indeed part of the young men who entered the queen mother's palace on the day in question to cause harm to PW1 and whether or not there was a prior agreement among them. Section 23 of Act 29 under which A2, A3, A4 and A5 are charged on count three provides that: "Where two or more persons agree to act together with a common purpose for or 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". See: *The Republic v. Augustina Abu and Others*, (unreported) Criminal Case No. ACC/15/2013; per Marful Sau J.A (As he then was) In elaborating further on the elements of conspiracy, the Supreme Court through Tokornoo JSC (as she then was) in the case of *Richard Kwabena Asiamah v. The Republic* [2020] GHASC 137 (4 November, 2020) cited with approval the elements of conspiracy as outlined by Justice Kyei Baffour JA sitting as additional Justice of the High

Court in the case of *The Republic v. Baffoe Bonnie and Others* (Suit no. CR/904/2017) (unreported) dated 12th May, 2020 in the following words: For the prosecution to be deemed to have established a prima facie case, the evidence led without more should prove that:

1. That there were at least two or more persons
2. That there was agreement to act together
3. That the sole purpose for the agreement to act together was for a criminal enterprise. See also:
 1. *The Republic v Ernest Thompson, John Hagan Mensah, Juliet Hassana Kramer, Caleb Kwaku Afaglo and Peter Hayibor* [2021] DLSC 101074
 2. *Kingsley Amankwah (a.ka Spieder) v. The Republic* [2021] DLSC 10793 at Page 28 per Dotse Jsc
 3. *Richard Kwabena Asiamah v. The Republic* [2020] DLSC9911 Per Torkornoo JSC Counsel for the accused persons discussed the law on conspiracy extensively in his submission relying on the above authorities and submitted that the evidence stands unchallenged in this case that the accused persons were not part at all material times when the alleged crimes were committed and they could not have acted together. Counsel further submitted that there is no evidence of the accused persons acting together at any point in time and therefore the prosecution failed to make a case against A2, A3, A4 and A5. P a g e 25 | 31 Now, even though PW1, PW2 and PW3 stated during cross examination that they know the accused persons, none of them categorically stated that they saw any of them in the house on the day in question. However, PW1 testified as follows: “... some of the attackers started pulling me towards Tease by foot and was told that the one who sent them instructed them to kill me but I was spared. Whiles on our way, one of them pulled a pistol and his name was mentioned that “Talata stop what you want to do and put the gun back”. As we were going they kept hitting me with cutlasses and sticks. Later a motorbike came. I resisted but later agreed to join the motor bike because of the continuous assault by the group of men. I was forced onto the motorbike and one of the guys sat behind me. On our way I asked who asked them to bring me. It was there that the one who sat behind me mentioned that Nana Adu Paako II had sent them. He also mentioned that Teacher Amankwa, Foreman also known as Kwabena Agyepong were also aware that they are bringing me”. Furthermore during cross examination of PW1, the following transpired Q: I am putting it to you that Kwabena Agyepong was no-where near where the incident took place A: I did not say Kwabena Agyepong came to the house but I met him on the way but the rider who came to pick me up mentioned his name so that made it two. Those who came to the house mentioned his name and the rider also mentioned his name Q: Do you know the name of this rider who took you on the motor bike A: No my lord Q: Do you know the one who allegedly sat behind you A: Mireku A2 P a g e 26 | 31 From the above, it is clear that Kwabena Agyapong, A3 and Amankwa Poku A4 were not part of the group that went to the queen’s palace to attack PW1. The only evidence against them is that they knew about the attack. PW1 was categorical in

his evidence that he saw A4 at A1's house when he was taken there and he shouted at him. For A3, PW1 claims that he saw him while he was being taken to the A1's house along the road. Therefore, the only evidence against A3 and A4 is that they knew about the attack without any further evidence to show how they knew about the attack or d9e evidence to show that they had a previous agreement with A2, A5 and the others to cause harm to PW1. If anything at all, once the evidence is that they knew about it they could have been charged with abetment along with A1, and evidence led to show the particular roles they played in terms of the acts stipulated in section 20(1) in having the others cause harm to PW1. It is therefore my view that the charge of conspiracy on counts three and five cannot be maintained against A3 and A4. Section 202(A) of Act 29 under which the accused persons are charged on count seven enacts as follows: Whoever with force and violence makes an entry into any building or land, whether or not he is entitled to the possession thereof, shall be guilty of a misdemeanour, unless he does so in pursuance of a warrant or other lawful authority to use such violence The essential elements are:

1. An entry was made by the accused into any building or land
2. That such entry was made with violence See: Criminal Law in Ghana by P.K. Twumasi at page 463 P a g e 27 | 31 According to PK Twumasi in his book supra, "to sustain a charge of forcible entry at common law there must be as many persons as would be required in a riot.....Under our law , where the legislature intends that a particular offence can be committed by a specified number of persons it expressly says so in the enactment . There is no such specification in respect of forcible entry and therefore one person can be guilty of forcible entry" Section 197 of Act 29 defines violence as: "any criminal force or harm to any person or any criminal damage to property, or any threat or offer of such force, harm or mischief, or the carrying or use of such force or offensive instruments in such a manner as that terror is likely to be caused to any person or such conduct as likely to cause in any person a reasonable apprehension of criminal force, harm or mischief to him or his property" Here, the evidence is that on the material date, a number of young men numbering about 30 entered into the queen mother's palace where PW1 was lodging and caused harm to him. It is therefore obvious that there was an entry into a building and in terms of the definition of violence above, to the extent that harm was caused to PW1, the entry was with violence. Both elements were thus proved by the prosecution. However from the evidence adduced by the prosecution, it is clear that A3 and A4 were not among those who entered the queen's palace to cause harm to PW1 and therefore the charge of causing harm on count four and forcible entry on count seven can also not be maintained against them. In respect of A2, it has been established that he was among the assailants and indeed he was the one who sat behind PW1 on the motor bike. There is therefore a case for him to answer in respect of counts three, four and seven. P a g e 28 | 31 In respect of A5, the evidence led is that his name, 'Talata' was mentioned by one of PW1's assailants to stop what he wanted to do when he pulled a gun. Counsel however alleges and submits that A5 was not present at the scene at all as he had travelled. According to counsel for the accused, a notice of Alibi was filed on behalf of A5 but the prosecution failed or refused to investigate same as

required by law and so it should inure to the benefit of the 5th accused person. Indeed the record shows that a notice of Alibi was filed on behalf of A5 on the 23rd of March, 2023, a day after the prosecution had filed the witness statement of their last witness, the investigator. Section 131 of the Criminal Offences and other (Procedure) Act 1960 (Act 30) provides that:

- (1) If a person charged intends to put forward as a defence a plea of alibi, he shall be bound to give notice thereof to the prosecutor or his counsel with particulars as to the time and place and of the witnesses by whom it is proposed to prove it, prior in the case of a summary trial of the examination of the first witness for the prosecution and prior in the case of trial on indictment to the sitting of the trial court on the date to which the case has been committed for trial
- (2) If such notice is given, the court may upon the application of the prosecution grant such adjournments as in the circumstances appears to the court to be reasonable
- (3) If the person charged puts forward a defence of alibi without having given such notice the Court shall call upon him to give notice to the prosecution of the particulars mentioned in subsection (1) either forthwith or within such time as the Court may allow and after such notice has been given shall, if the prosecution so desires, adjourn the case.
- (4) If the person charged refuses to furnish the said particulars as required the case shall proceed but no evidence in support of a plea of alibi shall be admissible evidence. P a g e 29 | 31 From the above provisions therefore, the prosecution ought to have investigated the alibi alleged by A5 since same was filed before the prosecution's first witness mounted the witness box but they failed to do so for reasons that have not been made known to the court. The law however does not state the effect of the failure of the prosecution to investigate an alibi and it is my considered view that the failure of the prosecution to investigate the alibi filed by A5 is not fatal especially so as the evidence led shows that A5 was at the scene of the incident on the day in question. Besides, A5 will not be disadvantaged in any way because in terms of sub section 4 of section 131 of Act 30 supra, evidence of the alibi is admissible since he filed a notice of the alibi and gave the particulars as required by law. On the totality of the evidence, it is my view that there is a case for A5 to answer in respect of count three, count four and count seven and he shall be permitted to lead evidence on his alibi. In the premise, the submission of no case succeeds in part. A3 and A4 are acquitted and discharged on all the counts against them that is, counts 3, 4, 5, 6 and 7. A1 is acquitted and discharged on count two. He is however called upon to open his defence on count one. A2 and A5 are also acquitted and discharged on counts 5 and 6. They are to open their defence on counts 3, 4 and 7. A1, A2 and A5 shall file their respective witness statements for continuation. H/H ADWOA AKYAAMAA OFOSU (MRS) CIRCUIT COURT JUDGE P a g e 30 | 31 P a g e 31 | 31

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