

GHANA / JUDGMENT

Republic Vrs Kumah (364/2023) [2023] GHACC 911 (30 November 2023)

[2023] GHACC 911

COURT

Circuit Court

CASE / FILE NUMBER

364/2023

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IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST ON THURSDAY THE 30TH DAY OF NOVEMBER, 2023 BEFORE HER HONOUR MRS VERONIQUE PRABA TETTEH (MRS) Suit No. 364/2023 THE REPUBLIC VS PETER KUMAH J U D G M E N T The accused person is charged with the offence of causing unlawful harm to one Felix Ansah by slashing him on his index finger with a cutlass contrary to section 69 of the Criminal Offences Act, 1960, Act 30 (hereinafter referred to as Act 30). Section 69 of Act 30 provides that: Causing harm A person who intentionally and unlawfully causes harm to any other person commits a second degree felony. The picture painted by prosecution is of an unprovoked attack by the accused person and his gang on the nephew of the victim on the day in question. The complainant hearing about the attack proceeded to his nephew's rescue and in his attempt to rescue him, the accused person slashed his finger with the cutlass. Three witnesses were called by prosecution to make their case; the complainant, his nephew and the police investigator. The accused person also testified on oath and called a witness in his defence. The first witness of prosecution was the victim who testified that he was at home when he received news of his nephew being attacked by a group of people. He quickly rushed to the rescue of his nephew at his brother's house and there he found the accused and other persons attacking his nephew. In his attempt to save him from the attack the accused who was holding a cutlass struck him with the cutlass and it cut his left index finger causing him severe injury. He was able to hold on to the cutlass which he later delivered to the police. After a month had passed he spotted the accused at the police station and caused his arrest. The second witness called by prosecution was the nephew of the complainant. His testimony confirmed what the complainant had earlier testified; that the complainant was attacked during his attempt to save him from an attack. I have taken the liberty to reproduce a paragraph of his testimony below "That on the 10th day of June 2023, I was sleeping at Dompouse community center. Suddenly, I saw the accused together with seven people coming. So they attacked me with sticks, shovel, dog chain and knives." From the above testimony, he claims he saw the accused person and his gang approaching him and that, the implements they used to beat him with consisted of "sticks, shovel, dog chain and knives" he makes no mention of the cutlass. He also says that the accused was in the process of hitting him when the cutlass hit the complainant who was trying to rescue him. His evidence is consistent with that of the first prosecution witness as to the intention of the

accused at the time they claim he cut him with the cutlass. Both of them state that the attack had been meant for the second prosecution witness and not the victim in this case. The last witness was the investigator who repeated the evidence that that been told him by the two previous witnesses. He also tendered the statements given by the accused person while he was arrested as well as a photo of the cutlass. Being satisfied that a prima facie case of causing harm had been made against the accused person, he was called upon to respond to the charge by making his defence. The accused opted to testify on oath and also called a witness to support his case. According to the testimony of the accused, not only did he not recall causing the injury to the complainant but on the day in question he lost consciousness due to severe the beatings he suffered and only regained consciousness while on admission at the hospital. His testimony of having lost consciousness and being admitted at the hospital was corroborated in part by his mother, his witness. She testified that she was the one who picked him up from Dompouse and sent him to the hospital at Elmina. She claims that she received a call informing her that her son, the accused was lying unconscious at Dompouse. She quickly rushed there with a taxi and discovered the accused's unconscious body. She then transported him to the hospital where he was treated and later discharged. If her testimony is to be believed, it proves that the accused person suffered harm to himself which caused him to lose consciousness. If the complainant's evidence is to be believed as well, he suffered his injury during a scuffle. During that scuffle, the accused person cut him with the cutlass. The elements of the crime of causing unlawful damage requires proof not of harm alone but deliberate and intentional harm for the purpose of causing injury or even death to one person. In the case of *Brobbeey and Others v 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. Intentionality of the harm is therefore an essential ingredient of the offence. Intentionality can be inferred from the directness of the attack on the victim and also from a motive for the attack on the particular victim. Directness of the attack in my opinion would be the fact that it was aimed at the victim and no other person. From the evidence of the first prosecution witnesses, the harm was not intended for the complainant. Nothing in their evidence suggests that the injury was targeted at the complainant. It is more likely that the complainant was in the path of the cutlass as it was swung. Consequently, I do not find that the harm caused to the complainant was intentional. Section 154 of the Criminal Offences Act, 1960 Act 30 stipulates the following:

154. When offence proved is included in offence charged

- (1) Where a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and the combination is proved but the remaining particulars are not proved, that person may be convicted of the lesser offence although not charged with it.

- (2) Where a person is charged with an offence and facts are proved which reduce it to a lesser offence, that person may be convicted of the lesser offence although not charged with it. Even though the harm was not intentional, it was unlawful and without justification within the meaning of the law provided for in Chapter 1, Part II of Act 30. The evidence produced by prosecution and the facts established, reduce the offence of Causing Harm contrary to section 69 of Act 29 to Negligently Causing Harm contrary to section 72. Section 72 provides that Negligently causing harm A person who negligently and unlawfully causes harm to any other person commits a misdemeanor. I find that the accused is guilty of the lesser offence of negligently causing harm to the complainant. According to the accused he did not even recall injuring the complainant which means he had no explanation on the reason for his attack on the complainant. In sentencing the accused I am mindful of the fact that the accused was also attacked and that he might have acted in self-defense even though sufficient evidence of this fact was not provided. For this reason, the accused is sentenced to spend 6 months in prison custody for negligently causing harm to the complainant. (sgd) H/ H Veronique Praba Tetteh (Mrs) CIRCUIT COURT JUDGE 6

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