

GHANA / JUDGMENT

Republic Vrs Wumanyo [2023]

GHADC 518 (7 February 2023)

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IN THE DISTRICT COURT, DZODZE HELD ON THURSDAY THE 7TH OF FEBRUARY, 2023 BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE. Case No. B3/9/22 THE REPUBLIC VRS ANTHONY WUMANYO

JUDGMENT

PARTIES COMPLAINANT PRESENT ACCUSED PRESENT REPRESENTATION CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION PRESENT

BACKGROUND

The accused was arraigned before this Court on 17th August, 2020 on a charge of threat of harm contrary to Section 74 of the Criminal Offences Act, 1960 (Act 29). BRIEF FACTS 1 | P a g e The brief facts as attached by the Prosecution stated that the complainant John Aproh is a driver and a resident of Agbozume whilst the accused Anthony Wumanyo is a plumber and a native of Ehi-Tove. The Prosecution stated that on 14th October, 2021 the complainant together with witness Korbla Akwe went to a site at Ehi-Tove to offload some bags of cement in a tricycle. The Prosecution stated that on reaching the destination, the complainant and the witness saw the accused who was sitting under a coconut tree sharpening his cutlass. The Prosecution stated that when the complainant ordered the witness to offload the cement from the tricycle, the accused stood up and started brandishing his cutlass and threatened them by saying that, "I will butcher you or anyone who will offload the cement from the tricycle". The prosecution stated that, the accused denied the offence in his investigation caution statement and was arraigned before this Court after investigation with a charge of the offence of threat of harm. PLEA OF ACCUSED The accused pleaded not guilty to the offence when the charge and particulars of the offence were read and interpreted to him and was admitted to bail. Witness statements of witnesses of prosecution together with charge statement and investigation caution statement of the accused were filed by the prosecution and served on the accused for trial. THE CASE OF PROSECUTION 2 | P a g e The prosecution called three witnesses, in addition to the complainant and investigator to prove his case. In his evidence to the Court, the first prosecution witness stated that on 14th October, 2021, he took some workers from Agbozume to Ehi-Tove. PW1 stated that, on their arrival at the site they saw the accused sitting on the compound and upon seeing them, he

suddenly stood up and brandished his cutlass saying he will not allow anyone to offload the cement. PW1 stated that the accused pointed the cutlass at him and stated that he will butcher him and anyone who try to offload the cement and violently drove them away. In his evidence, PW2 stated that he was contracted by the complainant to mold blocks for him at a site at Tove, but upon reaching the destination they saw the accused sharpening a cutlass under a coconut tree on the compound. PW2 stated that, when the accused spotted them he entered the room and came out with a calabash, mentioned the name of the complainant and poured the substance in the calabash on an idol in front of his door. PW2 stated that the accused brought out a cutlass from his room and instructed all his children to leave the place and go to their mother. PW2 stated further that, the accused then walked towards them brandishing the cutlass and saying he will butcher anyone who will offload the cement from the car. CASE OF ACCUSED 3 | P a g e In his evidence the accused stated that on the 14th of October, 2021 he went to the farm and upon his return was sharpening his cutlass when he saw PW1 arrived together with some workers to offload cement. The accused stated that when PW1 asked him to move his motorbike so that they can offload the cement, he objected and asked them to wait for his uncle Francis Wumanyo to come and give them the go ahead before they could off load the cement to commence work. The accused stated that he threw the cutlass he was sharpening to the entrance of his door to avoid any issue because the complainant had earlier threatened to have him arrested by the police. The accused also called one witness, Emmanuel Yewenyo who stated that on that day he was in his farm when the accused run to call him to come and witness what the complainant was doing. DW2 stated that upon his arrival he did not see anyone fighting but saw the complainant who had come with some workers and a tricycle to offload cement. DW2 stated that, he heard the accused telling the complainant to wait for his uncle Francis Wumanyo to come and give them the go ahead before they could commence their work. DW2 stated that the complainant threatened to cause the arrest of the accused and after about an hour and thirty minutes brought the police to arrest the accused. THE LAW Burden of Proof 4 | P a g e 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 a reasonable mind will find the existence of the facts beyond reasonable doubt. See Section 11(2) of the Evidence Act, 1975 (NRCD 323) and the cases of Kingsley Amankwah (a.k.a Spider) v. The Republic [2021] DLSC10793 at pages 25-26 per Dotse JSC and Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297. In the case of Ali Yussuf Issa (No.2) v. The Republic [2003-2004] SCGLR 174, it was held that the burden of proof has two components, the duty to lead evidence on any fact required to be proved and the duty to provide sufficient evidence to persuade a reasonable mind as to the existence of any such fact. See also Kweku Quaye alias Torgbe vs. The Republic [2021] DLSC10794 at page 9-10 per Prof. Mensa Bonsu, JSC. Section 13(1) of the Evidence Act 1975 (NRCD 323) provides the extent of proof or the burden on the prosecution in a criminal action thus; "In 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". The extent of the onus on the defence on the other hand is provided by section 13(2) of the evidence Act 1975 which states; "Except as provided in section 15(c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that

the accused raise a reasonable doubt as to guilt". See also the case of COP v. Antwi [1961] GLR 408.

Threat of harm 5 | P a g e A person who threatens any other person with unlawful harm, with intent to put that person in fear of unlawful harm commits a misdemeanor under section 74 of the Criminal Offences Act, 1960 (Act 29). Threats in the Criminal Offences Act, 1960 (Act 29) as explained in Section 17(1) (a) means a threat of criminal force or harm. In the case of Behome v The Republic [1979] GLR 112, it was held that, "where one is charged with threat of harm, the threat must be of harm and nothing else" ANALYSIS AND EVALUATION OF EVIDENCE The issues to be resolved in this case are as follows; i) Whether the accused threatened to cause harm to the complainant? ii) Whether the alleged act of the accused created in the mind of the complainant an expectation of harm? iii) Whether it was in the realization of the accused that his action would produce an expectation of harm in the mind of the complainant? To constitute a threat of harm therefore, the threat must be criminal and in respect of unlawful harm. Harm is stated to be unlawful which is intentionally or negligently caused without any justification allowed by law. See Section 76 of the Criminal Offences Act, 1960 (Act 29). To prove the intention on the part of the accused to put the complainant in fear of harm it is important to establish that he exhibited a real or wicked intention to put the other person in fear of harm. 6 | P a g e In his evidence to the Court, PW1 stated that the accused upon seeing them brandished the cutlass he was sharpening and threatened to butcher anyone who offloads the cement. PW2 corroborated this testimony by PW1 and added that the accused poured a substance in a calabash on an idol in front of his door and threatened to butcher them if they offloaded the cement from the tricycle. The accused denied the allegation and stated that he threw the cutlass in front of his door to avoid any issues with the complainant. The witness called by him admitted that he was initially not at the scene but was later called from his farm by the accused to come and witness what the complainant was doing. The witness for the accused stated that on his arrival he did not witness any incident but only heard the accused asking the complainant and his workers to wait for his uncle to come and give them the go ahead. The witness of the accused did not dispute the fact that any incident occurred but only narrated what he came to see which does not discount the possibility that something could have occurred prior to his arrival at the scene. Both the accused and his witness did not also deny the fact that the witness called by the complainant was present at the scene. This is a person who was engaged by the complainant to come and work for him at the site. It is not established that he has any personal issues with the accused or any interest in the land to propel him to fabricate stories against the accused. For the accused to be liable in an offence of threat of harm, it must be established that he threatened PW1 with unlawful harm. 7 | P a g e In the case of Behome v. The Republic (supra), it was held that, where one is charged with the offence of threat of harm, the threat must be harm and nothing else. The accused stated that he threw the cutlass in front of his door upon seeing the complainant and his workers and only asked them to wait for his Uncle. In his own testimony, the accused indicated that there is a prior issue with the complainant concerning the allocation of portions of their family land and the situation of his building. The pre-existing issues in relation to the family land as narrated by the accused does not bear credence to the fact in such a situation, the accused upon seeing the complainant and the workers will throw away the cutlass without any cause and quietly asked them to wait for his Uncle. He seems to portray that there were no altercations at all with the

complainant which will rarely be the case. The court has no basis to doubt the evidence led by witnesses for prosecution and find them to be more consistent with the developments. In paragraphs 11 to 22 of his witness statement, the accused gave evidence to the fact that the land on which he had built is a family land and narrated issues he is having with the complainant regarding his building on the land. From the developments and facts as narrated by the accused it could be inferred that the actual objective of the accused was to prevent complainant and his workers from offloading the cement and commencing work on the family land without their Uncles approval. 8 | P a g e In the common law case of R v O'Brien cited in the book Contemporary Criminal Law In Ghana authored by Dennis Dominic Adjei at page 187, it was stated that, in a case of threat of harm, it is immaterial whether the accused person when uttering the threatening words intended to carry it out or was capable of enforcing it. In effect, it is not an essential element under the offence that the recipient of the threats uttered by the accused feel intimidated by them or be shown to have taken them seriously. All that is required to be proven is that they were intended by the accused to have that effect.

CONCLUSION

The Court finds that, the prosecution led sufficient evidence in prove of the fact that the accused did make the utterances. The defendant was not able to prove otherwise as he claimed. From the facts and developments as narrated by prosecution's witnesses and accused, it appears the accused was motivated by the objective to prevent the complainant from offloading the cement and commencing work on the land through the threats. That objective indeed was achieved. In the circumstance, the court holds that the burden of proof as pertains to the elements of the offence under section 74 of Act 29 has been sufficiently discharged. The accused is therefore convicted. The accused is sentenced to twenty-five (25) penalty units and in default to three-months imprisonment. Accused is to also sign a bond without surety to keep the peace. Bond is to last for six (6) months. 9 | P a g e NELSON DELASI AWUKU MAGISTRATE 10 | P a g e

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