

GHANA / JUDGMENT

The Republic Vrs Takyi [2023]

GHACC 132 (19 July 2023)

[2023] GHACC 132

COURT

Circuit Court

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IN THE CIRCUIT COURT HELD AT KPANDO ON TUESDAY THE 19TH DAY OF JULY 2023, BEFORE HIS HONOUR FRANCIS ASONG OBUAJO ESQ., THE CIRCUIT COURT JUDGE.

===== NO. CC. 109/2022 THE REPUBLIC
VRS: WILLIAM TAKYI ACCUSED PERSON PRESENT. PROSECUTOR, D/INSPECTOR HENRY ODOI DOKU PRESENT. J U D G M E N T Accused person was brought to this court on the offence of causing harm contrary to section 69 of Criminal Offences Act, Act 29 of 1960 to which he pleaded not guilty. The facts of this case are that accused person who is a mason lives in the same house with the two complainants who are siblings and are cousins to accused at Aloyi. Prior to this incident accused person and the complainants were not on talking terms due to internal issues over a family building plot. Accused person has been bathing his step son on the door steps of 1st complainant and will not stop doing so even though he was warned severally by 1st complainant. On the 9/8/2021 at about 6:45 pm the 1st complainant returned from work and met the accused bathing the child at the same spot again and he took the bucket of water and dropped it in front of accused door. Accused brought it back and continued bathing the child. The 1st complainant went for the bucket of water the second Page 1 of 11 time and accused held on to the bucket and a struggled ensued between them which led to a fight. The 2nd complainant who was in his room heard the noise and came out to separate them but accused attacked him too and they engaged in a fierce fight. That attracted neighbours who came to separate them. Accused afterwards went into his room and brought out a mattock which he used to fix bamboo fence around the house and attacked 1st complainant as he hit his head with the tool. He also sustained laceration on his left thumb as he held the mattock and accused pulled it. Accused proceeded to the 2nd complainant who had then also armed himself with a long knife. The second complainant held the sharp edge of the mattock and accused pulled it with force and it cuts the left palm and the forehead of the 2nd complainant. The accused, 1st and 2nd complainants simultaneously reported the case to the police and were all issued with police medical form to attend hospital and they returned with them endorsed. They were all charged with the various offences but 1st and 2nd complainants pleaded guilty to their charges and were convicted earlier. As accused person pleaded not guilty to the offence, the prosecution then assumed the onus of adducing credible evidence at the hearing to establish the guilt of the accused beyond reasonable doubt

over the elements of the offence as required under sections 11(2) and 13(1) of the Evidence Act 1975 (NRCD 323). It was held in GLIGAH AND ATISO VRS THE REPUBLIC [2021] SC GLR 870 that under article 19 (2) (c) of the 1992 Constitution everyone charged with a criminal offence was presumed innocent until the contrary is proven. That means whenever an accused person is arraigned before any court in criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused beyond reasonable doubt.

PROSECUTION'S EVIDENCE Page 2 of 11 The prosecution called three (3) witnesses who tendered their witness statements into evidence. 1st complainant Prosper Elorm Tachie of Kpando Aloyi gave evidence as PW1 under oath that accused is his cousin and they live in the same compound but in different apartments. Prior to this incident accused has been bathing the stepson in front of his door. He warned accused on several occasion to desist from that but he did not mind him. On the 9/8/2021 he came home from work early at about 6:45 pm and met accused bathing the child as usual. PW1 added that he questioned accused and took the bucket of water and placed same at his entrance and he brought it back and PW1 went for it again but before he realized accused hit him with his fist and he also retaliated and they started fighting. PW1 stated further that his brother, Bright Tachie, who was in the room heard the noise and came out to separate them. Accused however turned on him too and fought both of them. Accused later went for a mattock to hit him and the brother but people came out to control the situation. Unknown to him and the brother after every one had left, accused went for the mattock again and pulled it and cut his left thumb and her brother had a cut. It was when accused went for the mattock that his brother also went for a knife. People who came to separate them retreated before accused attacked and wounded them. They reported the incident at the police station and were given medical form to attend hospital. During cross examination PW1 said he is an electrician and not a mason as stated in his evidence as same was a typographical error PW1 maintained that after the first incident and they were standing outside talking, that accused went for a metal chisel fixed onto a wood used to uproot palm trees called 'Etso' in Ewe language, and came from behind them to hit his forehead injuring his face and hand and he used the same tool to hit his brother as they tried to collect it from accused. Bright Tachie of Kpando Aloyi gave evidence as PW2 that PW1 is his brother and accused, is his cousin and they all stay in the same house. He said he witnessed how PW1 on Page 3 of 11 several occasions warned the accused not to bath the child in front of his door. On the 9/8/21 at about 6.30 pm, he was in his room and was going to fetch water to bath and saw accused fighting PW1 over the same issue and he went in to separate them but accused attacked him too. Later, accused went for a mattock and used it to hit PW1's head and as he went to hold the accused he threw the mattock at him and he held it, accused then pulled the mattock and it cut his palm. PW2 said he went for a knife to defend himself against the accused in case he attacked him again but his girlfriend who was with him at the time, collected it from him. Adding that he also sustained a cut at the left side of his head from the mattock. They later reported the incident to the police and they were issued with police medical form to attend hospital and they did and brought the endorsed medical form to the police. Under cross examination, PW2 maintained that it was the accused who injured him with the said tool. D/Insp. Ramsden Daanaah, gave evidence as PW3 that this case was referred to him for investigation. After accused herein reported to the police that Prosper Tachie PW1 and PW2 assaulted him and

threatened to kill him on the 7/8/21. Same day, PW1 and PW2 reported the accused that he caused harm to them with an axe. He issued medical form to them to attend hospital for treatment and they returned with endorsed medical report to him. He added that he cautioned PW1 and PW2 for threat of death and assault. He cautioned the accused for causing harm. PW3 said he visited the crime scene with the parties for inspection and at the close of investigation it came out that the parties fought at the full glare of the public and accused caused harm to PW2 with an implement but was told it was a mattock. He was instructed to charge them with the various offences and accused has been so charged. Accused's caution and charged statements admitted into evidence as exhibit A and A1 respectively. Endorsed medical reports of PW1 and PW2 admitted into evidence as exhibit B. and B1 respectively. During cross examination PW3 admitted that accused made the complaint to the police on the 9/8/21 and not 7/8/21 as stated in his evidence and he apologized for the mistake. Page 4 of 11 PW3 further answered and insisted that accused person was the aggressor in the fight as he was the first to attack Bright Tachie (PW2) who came in with good intention to separate the fight between accused and PW1. He came to this finding after talking to people who witnessed the fight. Accused was ordered to open his defence after the close of prosecution's case as prima facie case had been made against the accused over the offence charged. DEFENCE OF THE ACCUSED Accused person elected and gave evidence under oath. He said he was bathing a child of five (5) years at about 7:00 pm on that 9/8/21 before PW1 returned from work on a motorcycle to say he should stop and take the water from there. He asked PW1 why should he take the water from that place since his wife also baths the child there. PW1 then picked the bucket with the water to throw away but accused held PW1's hand. A struggle ensued between them but PW1 managed and threw the water away. PW1 then threw a fist on him and he equally threw one back at PW1. Accused stated further that he had a knock at his back and when he turned it was PW2 in a boxer short and started hitting him with heavy punches at his back. A fight then ensued between the three of them and the two of them beat accused to the ground which he struggled to get up. PW1 rushed into his room and brought a knife lifted it up and said he has a knife ready to slash accused and advanced towards him but the knife was taken from him by those who were around. Then PW1 and PW2 went for sticks he cut down in the house and rushed on him as he kept moving backwards and he also got a stick. Then PW1 threw his stick which accused held it and he also threw his stick and they also held it and it turned into a fight. Other people came to the scene including one prison officer in the house who came to push PW1 and PW2 from beating him as he found it difficult to get up from the ground. He sustained injuries in his hand during the fight and he went to make a report to the police and a medical form was issued to him to attend hospital for treatment. He was called back to the police station and was told PW1 and PW2 came to make complaint about him that he Page 5 of 11 used mattock to injure them and he was detained by the police. Accused denied injuring the complainants with mattock. On the 9/8/21 he was granted bail, but was still in pains so he returned to the hospital. He brought endorsed medical form to the police together with the knife PW1 used in an attempt to stab him. Accused tendered his endorsed medical form into evidence as exhibit WT1 without objections. Under cross examination accused denied being the aggressor in the incident. Accused closed his defence as he did not call any witnesses. Exhibit 'A', accused caution statement taken on 10/8/21 very similar to his evidence in chief at the hearing. In exhibit

A1 taken on the 20/8/21 he relies on exhibit 'A'. Exhibit 'B' PW1's endorsed medical form. The medical officer found that he had about 2 cm laceration at the base of the left thumb from a sharp object which was bleeding but same sutured on the 9/8/21 per Dr. Tetteh of Marquart Hospital of Kpando Exhibit 'B1' endorsed medical form of PW2 on the 9/8/21. It was stated that he sustained minor laceration at the base of the 2nd to 4th digit on his left hand. A minor laceration on the left lateral aspect of his scalp from a sharp object. Laceration sutured per Dr. Tetteh of Marquart Hospital Kpando. Exhibit WT1 endorsed medical form from Dr. Tetteh of Marquart Hospital Kpando, on 9/8/21 stated that accused had minor abrasions on both palms not actively bleeding from a sharp object with complains of general bodily pain worse at the neck region and lower back from a fight. The abrasion were cleaned and dressed. THE LAW Section 69 of Act 29/60 on causing harm states: "A person who intentionally and unlawfully causes harm to any other person commits a second degree felony" Page 6 of 11 Section 76 of Act 29/60 defines unlawful harm thus: "Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in chapter one of this Part" Section 1 of Act 29/60 interprets 'harm' to mean a bodily hurt, disease, or disorder whether permanent or temporary The essential elements of causing unlawful harm have been identified in the case of BROBBEY AND OTHERS VRS THE REPUBLIC [1982-82 GLR 608 at holding one (1) thus: ... "that the harm or damage must not only be intentional but also unlawful..." In view and in accordance with the decided case, the essential element of this offence which the prosecution must prove beyond reasonable doubt are:

- i. That harm was caused to somebody ii. The harm must be intentional iii. The harm must be unlawful iv. That accused person caused the harm The evidence of PW1 was that it was the accused who first hit him with his fist when he struggled with him over the bucket of water he was taking away from where accused was bathing the stepson that evening and he PW1 also returned a blow to accused. Then a fight ensued between them. And that PW2 came in initially to separate the fight between him and the accused and accused turned on him too and they fought. PW2 corroborated this piece of PW1's evidence that he saw them fighting and he went to separate the fight and accused attacked him too. Accused denied this evidence partly and said that it was PW1 who first threw a blow on him and he returned same and as they started fighting. He had a knock at his back and when he turned he saw PW2 who hit him with punches and they fought and they beat him to the ground. Page 7 of 11 It is my finding of fact at this stage that the accused and the complainants (PW1 and PW2) engaged in unlawful fight that evening per the provisions in section 38 (2) of Act 29/60. Section 38 (2) of Act 29/60 states: "(2) A fight is an unlawful fight in which a person engages or maintains, otherwise then solely in pursuant of a matter of justification specified in this chapter" Per the provisions of this law, both the accused and the first two prosecution witnesses engaged in unlawful fight. Further evidence of PW1 which was again corroborated by PW2 was that, other people came to separate the fight between them but accused later went into his room and came out with a mattock which was later described as earth chisel and came to hit PW1 and PW2 but again people came to prevent accused from doing so. Accused again went for the said earth chisel and came to hit PW1 injuring his left thumb and injuring the palm of PW2 also. It was when the accused caused harm to them that he went

for a knife to defend himself should accused come again with the earth chisel at them but same was taken away from him by his girlfriend who was present there. Accused denied this piece of evidence from PW1 and PW2 and it was PW1 who went for a knife lifted it up and advanced towards him to slash him but it was collected from him. Then PW1 and PW2 went for sticks in the house and advanced towards him as he also in moving backwards found a stick. So PW1 threw the stick and he held it and he also threw his stick and they held it. A prison officer came in to separate the fight. Now the evidence of the investigator which was not discredited was that after visiting the crime scene to gather evidence, it was found that accused fought in the full glare of the people and accused used the earth chisel to attack PW1 and PW2 and that accused person was the aggressor. Page 8 of 11 Turning to the endorsed medical report as tendered in evidence, to help in this issue. Exhibit B for PW1 shows that he sustained about 2 cm of laceration at the base of the left thumb from a sharp object which was bleeding on the 9/8/21 but same was sutured by the Doctor. Exhibit 'B'. For PW2 shows that he sustained minor laceration at the base of the 2nd to 4th digits on the left hand and a minor laceration on left lateral aspect of his scalp from a sharp object and same sutured. Exhibit WT1 endorsed medical report from the same Doctor as in Exhibit B and B1 stated that accused had a minor abrasion on both palms from a sharp object and not actively bleeding. Same were cleaned and dressed. The finding's on the endorsed medical forms as considered here points to the fact that the injuries sustained by PW1 and PW2 appear to be more severe as there were lacerations that were sutured as compared with the abrasions that accused sustained that were cleaned and dressed. My finding from the medical report lends credence to the evidence of PW3 that accused person was the aggressor in that fight. It is therefore my finding that accused person was the aggressor in the said fight and was the one who attacked PW1 and PW2 with the said sharp object for that matter the earth chisel and caused the injuries sustained as evidenced in Exhibits B and B1. I therefore reject the evidence and the denial of the accused that he was attacked by the complainants in that fight and he was trying to defend himself against them. The said injuries caused to PW1 and PW2 by the accused person were intentional and unlawful as accused tried to cause harm to PW1 and PW2 with the said sharp object in his first attempt and he was prevented from doing so by those present and he later went for the said object the second time and succeeded in using it to cause those injuries to their bodies. There was no evidence at the hearing that PW1 and PW2 consented to accused person to cause these injuries to their bodies neither was there any evidence at the hearing that accused person was certified or accredited by any authorised institution of state to so Page 9 of 11 casus those injuries to PW1 and PW2. It is therefore my candid view and conclusion that accused person intentionally and unlawful caused harm to PW1 and PW2 in that unlawfully fight on the 9/8/2021 in their family home where they all live in their separate apartments. It is my finding of fact that accused person as on the 9/8/21 at about 6:30 pm was bathing the stepson at the main entrance to PW1's apartment when PW1 returned from work to meet. PW1's attempt to move the bucket of water accused was using to bath the child from his entrance to another place was fiercely resisted by the accused. Same resulted into an unlawful fight between them. PW2 who heard of the noise from his room came out and in his supposed attempt to separate the two

initially, ended up being a part of the fight against the accused. Accused seeing that he was numerically disadvantaged went for a sharp object against the PW1 and PW2 but those present at the scene prevented him from doing so. Accused however went for the said sharp object after that separation and attacked his victims causing harm to their hand and forehead of PW2. I therefore found that the prosecution has proven the elements of this offence against the accused beyond reasonable doubt and I hereby found accused guilty as charged and accordingly convict him. BY COURT: Do you have anything to say before sentence is passed. Accused prays for the forgiveness of the court. BY COURT: The Court has taken into consideration the plea on mitigation, the fact that it was a fight between close family members and the remorse shown by accused in the accused box. Accused is hereby sentenced to 30 days in prison as required under section 296 (4) of Act 30/60. SGD. FRANCIS ASONG OBUAJO CIRCUIT COURT JUDGE. Page 10 of 11 19/7/23 Page 11 of 11

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