

GHANA / JUDGMENT

# REPUBLIC VRS AGYEMANG (201/2023) [2024] GHACC 231 (29 May 2024)

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IN THE CIRCUIT COURT HELD AT DORMAA AHENKRO ON WEDNESDAY, THE 29TH DAY OF MAY, 2024 BEFORE HER HONOUR, PHILOMINA ANSAAH ASIEDU ESQ, CIRCUIT COURT JUDGE  
Court Case No: 201/2023 THE REPUBLIC VRS KWADWO AGYEMANG Accused Person – present D/ Insp. Emmanuel Asare for the Republic – present

## JUDGEMENT

The accused person was charged with the offence of threat of death contrary to the Section 75 of the Criminal Offences Act of Ghana, 1960 (Act 29). The charge was read to the accused person when he was arraigned before the Court and he pleaded not guilty to the offence. This placed the burden on the prosecution to prove their case beyond reasonable doubt. THE FACTS The complainant is an ambulance service driver while the accused is a farmer. Both reside at Dormaa Ahenkro within the jurisdiction of the court. Somewhere in March 2023 the complainant's mother approached the accused person's father to discuss and resolve a dispute on a piece of land between the parties aforementioned. During the discussion the accused person became angry and said in the presence of the complainant's mother that “since your son has decided to work on my land it will be bloody”. The complainant's mother then informed the complainant and the complainant reported the case of threat of death against the accused person to the police. The accused person was then arrested and charged and put before this honorable court after investigation. Section 75 of Act 29 states: A person who threatens any other person with death with intent to put that other person in fear of death commits a second degree felony. The burden of establishing the guilt of the accused person is on the prosecution and the standard of proof required by prosecution should be proof beyond reasonable doubt as provided in the Evidence Act 1973 (NRCD 323) per Section 11 and 13. The prosecution in their quest to prove the guilt of the accused person called the complainant in the person of Tuah William alias Paa Willie as PW 1, Magarete Serwaa (PW 2), Stephen Kwadwo Fordjour (PW 3) and the case investigator PW LCPL E. Abeka (PW 4). For the benefit of the prosecution and the accused, I would summarise the evidence of all these prosecution witnesses aforementioned as follows: EVIDENCE OF TUAH WILLIAMS (PW1) Tuah Williams, the 1st prosecution witness is an ambulance service officer at Kumasi and resides at Dr. Ola area, a suburb of Dormaa Ahenkro. PW1 asserts that on 14/04/2023 at about 6:16pm, his mother Magarette Afia Serwaa who had returned from their family house

came to inform him that, the accused person threatened to kill Him, PW1 with a cutlass. PW1 further says that, this was not first time he had heard accused person telling people that he would kill him. PW1 again says that, the accused person has been threatening him because he stopped him from farming on their land. That the land dispute has been resolved but do not know why the accused person was always telling PW1's family members that he will kill him, PW1. Based on this, he reported the case to the police. EVIDENCE OF MAGARETTE SERWAA (PW2) The second prosecution witness is Magarette Serwaa (PW2) who resides at Dr. Ola area, Dormaa Ahenkro. PW2 avers that PW1 is her son. That she met the accused person at accused person's father one Kwasi Nsia's house at Kofikumikorm to discuss a land issue. That the accused person has been claiming ownership of her land for a year now, of which PW1 is cultivating on some portion of the land. According to PW2, the matter was determined at the Atesikrom Chief's palace and accused person was found liable. That the boundary was set between the accused person and PW1 but accused person became angry claiming that the complainant has trespassed on to his land. So during the discussions on this dispute at accused person's father's house, the accused became irritated and threatened to kill the complainant with words to wit: "since your son has decided to work on my land, it will be bloody". EVIDENCE OF STEPHEN KWADWO FORDJOUR (PW3) Stephen Kwadwo Fordjour, a resident at Kofikumikrom is the prosecution's third witness (PW3). He stated that somewhere in March 2023, he visited his friend Kwasi Nsiah at his house and whiles there PW2 and the accused person came there. Whiles they started a discussion on a land issue, accused person suddenly stood up and threatened the complainant with words to wit: I will kill him! I will kill him! I will kill Paa Willi. According to PW3, he said he did not know what provoked the accused person to threaten the complainant. EVIDENCE OF NO. 10179 PW/L/CPL E. ABEKA (PW4) The investigator of the case testified as the fourth prosecution witness (PW4). A case of threat of death was referred to her for investigation and that PW1 had reported that accused person has threatened to kill him. PW4 obtained statements from PW1 (complainant), PW2 (Magarette Afia Serwaa) and PW3 (Stephen Kwadwo Fordjour) which confirms their above stated respective evidences. That she arrested the accused person and in accused person's investigation cautioned statement, he denied the offence. She was instructed to charge the accused person and to be brought to Court on the charge of threat of death. Prosecution tendered in evidence two (2) exhibits: Exhibit 'A' – Investigation Caution Statement of Accused Person Exhibit 'B' – Charge Statement of Accused Person The accused person cross examined all the witnesses with the exception of the case investigator. The case investigator was not cross examined by the accused person at the end of her evidence in chief. At the end of the prosecution's case a prima facie case was established against the accused person and the accused person was called upon to answer. The accused person mounted the witness box and gave a sworn statement. EVIDENCE OF ACCUSED PERSON (KWADWO AGYEMANG) Accused person in his evidence stated that his father showed him a land which he farmed on with his father where he had cultivated tomatoes for 3 years, cassava and cashew for 15 years; and palm nut tree on the same land for 25 years. He later left the land to cultivate another land and gave out the palm tree to palm wine tappers to tap wine. Accused person further said that someone informed him that one Izaa was cultivating his land and upon confronting the said Izaa, the said Izaa told him that it was PW1 (Paa Willie) who had asked him to weed the farm. A week later, he detected that

someone had harvested 15 bunches of plaintiff and uprooted some cassava from his farm and he caused an announcement to be made on three occasions but no outcome. Accused person further averred that he stopped talking about the matter and thereafter he was arrested by the police on his return from the farm on the charge of threat of death. Accused person stated that he had not threatened to kill any one, neither has he even confronted PW1 on any issue concerning the land or the theft of his farm products. The above evidence of the accused person corroborated his case he tried to put across during the cross examination of prosecution witnesses. During the cross examination of PW 1, the accused asked the complainant Q When did I issue a threat to kill you A Q You told my mother. I was not around. I put it to you that I have not met you anywhere and threatened you with a cutlass A You did not issue the threat to me directly but you informed my laboureres I send to the farm and one was bold to inform me but he cannot stand as a witness for me at the police station. Later he issued the threat to my mother and uncle. Also the accused cross examined PW 2 Q Who else was with my father when I allegedly issued those threatening words to your son A My brother Kwadwo Fodjour who is also a good friend of the accused was also present. Q A I am putting it to you that I did not tell you that I will kill your son The accused person said so in the presence of my brother The same line of questioning in creating a doubt in the case in the minds of the court ensued between him and PW3 who is the said brother of PW 2 and by inference an uncle to PW 1(the complainant). Q When you heard I will kill him did you hear Paa Willie s name A A I was behind you so the only thing I heard was I will kill him So you mean to say that I did not mention any bodys name A Yes Considering the above stated line of cross examination by the accused person, he has created a doubt in the minds of the court. This is because first of all PW2 mentioned PW 3 as her witness to corroborate her evidence. However, PW 3 boldly declared to the court that he did not hear the complainants name been mentioned in the conversation on that day. Even though in his evidence in chief he stated that he heard the complainants name as Paa Willie he denied this under cross examination. I must admit that there are contradictions in the case of this prosecution witness, PW3 and same will have to lure to the benefit of the accused. Where there are irreconcilable contradictions in the case of the prosecution the accused must be discharged. See P K Twumasi , criminal law in Ghana at pages 128 to129 Clearly the evidence of PW1 is also purely a reported statement from PW2 and PW3 and the accused has denied this allegation. PW 2s statement is also tainted in some way when the witness he called to corroborate his evidence had in consistencies in it and therefore failed to corroborate same. The learned writer P.K Twumasi in his book ‘Criminal Law in Ghana, at pages 234 and 235 of Criminal law in Ghana stated that: ‘to constitute a threat of death, therefore, the threat must be criminal that is to say it must be in respect of unlawful harm..... in proving the offence of threat to death, it is not necessary to establish that the accused at the time he uttered the threat actually had in his hands or possession some visible means of carrying out his threat, such as holding a cutlass, a gun or a knife. Mere words are sufficient provided the ingredients of the offence are present’. From the above submission it means that the prosecution has a mandate to prove that the threat was criminal and unlawful and to prove this the ingredient of the offence of threat of death must be established to gain a conviction. The ingredients for the offence of threat of death is also discussed in the Behome case as stated below. In the case of Behome v the Republic 1979 GLR 112 the court held that in the

offence of threat of death the actus reas will consist in expectation of death which the offender creates in the minds of the person threatened whilst the mens rea will also consist in the realization by the offender that his threats will produce that expectation. From the above-mentioned case it is important to state that apart from the mens rea the prosecution is expected to prove which they have failed to prove, the prosecution will also have to prove the unlawfulness of actus rea of the accused in this case. The conduct or actions of the accused before, during and after the threat of death though immaterial is critical in determining this instance case. This will aid the court to come to an undoubted conclusion that the accused persons conduct indeed created in the minds of the complainant any expectation of death. In the instance case the accused person who was been tried for threatening to kill someone made it clear that his actions never amounted to so. During his cross examination on complainant, he asked the complainant Q After the land issue was settled at Atesikrom, how many times have you met me in the farm I have met you several times after we had the issue settled. (emphasis mine) Did you come to meet me on the land I met you on your farm but it is part of our land A Q A From the above cross examination, it is clear that the paths of the parties crossed after the accused person had allegedly threatened the complainant through PW2, PW3 when they went to settle the said land matter and the said laborers at the farm who never testified in court. The biggest question here that bothers the mind of the court is why then will the accused person keep his composure and not affirm his intentions and actions to the complainant after he had met him one on one and probably no one was around in the farm. This encounter was after PW 1 had admitted been the person who took the 15 bunches of plantain and cassava the accused person has planted on their disputed land. A man filled with such rage will not hesitate for a second to reecho his intentions and actions to his predator when he meets the person personally under such circumstances. This does not make the story of the prosecution probable. The prosecution did not say it anywhere that the accused exhibited wicked intention to put the complainant in fear of death even though he met him one on one, such a line of evidence was crucial in this particular case. By this inference and the above submissions, the prosecution has failed to prove that the accused had intentions and created in the mind of the complainant the expectation of death and that the complainant expected death at the hand of the accused person. The accused person is therefore acquitted and discharged. (SGD) H/H PHILOMINA A. ASIEDU 29/05/2024

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