

GHANA / JUDGMENT

REPUBLIC VRS WAJILA (UW/WA/DC/B3/03/2024) [2024] GHADC 435 (30 May 2024)

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IN THE DISTRICT COURT, WA. HELD ON THURSDAY, 30TH DAY OF MAY, 2024, BEFORE HIS WORSHIP, MAXWELL M. TITRIKU, DISTRICT MAGISTRATE. COURT CASE No: UW/WA/DC/B3/03/2024 THE REPUBLIC V MAKAMA OSMAN WAJILA ACCUSED PERSON PRESENT ACCUSED UNREPRESENTED PW/SGT. COMFORT AKAMBANG FOR THE REPUBLIC

JUDGMENT

The Accused person was arraigned before this Honourable Court on Tuesday, 14th Day of November, 2023, on the offence of:

- Threat of Harm, contrary to Section 74 of Criminal Offences Act, 1960 (Act 29). The Accused person however pleaded “Not Guilty” after the charge was read and explained to him.

FACTS

The facts of the case as presented by the Prosecution were that, the Complainant, Nana Djongare Saliou Mahama, Chief of Bussie Traditional Area, Wa, whiles the accused person, Makama Osman Wajila, is a farmer, resident in Wa. 1 According to Prosecution, nineteen (19) years ago, accused person had a chieftaincy dispute with his Paramount Chief, Busa Naa, who happens to be a witness in this case, which did not go down well with the accused person, and so he (accused) started issuing threatening words on Complainant, that he (accused) will harm him (the Complainant) whenever he (accused) sees him. Prosecution further stated that, the Complainant thereafter lodged a complaint to Police for investigation into the matter, and in the course of investigation, accused person was arrested, and in his investigation caution statement, accused admitted the offence of having threatened Complainant, but claimed that, it was the Complainant who first called him (accused) on phone and insulted him (accused) to wit: “I am a slave and a fool”, and Complainant later switched off his cell phone, making it impossible to reach him on phone. According to Prosecution, because he (accused) could not reply Complainant on the insults, he (accused) rather sent to the Complainant a voice message which stated in part as follows: “I am telling you that, Djongare Saliou Mahama is an arm robber, or you don’t know, and

you people are also thieves, but you fear Djongare Saliou Mahama. Your chieftaincy and Bramabat's have ended. My mission with you people is not politics, you will hear from me like fire, if the day comes. If I get any of you in your car, I will rush and bite you before the Police arrest me. This is going to be a hot case." Prosecution further stated that, Police managed to get hold of a copy of the said voice message and transcribed it from Waale language into English language. He said, duplicate docket was later forwarded to the office of the Attorney-General, Wa, for advice and the Attorney-General then advised that, accused be charged for Threat of Harm. He said, after investigation, accused person was charged with the offence of Threat of Harm, and arraigned before this Honourable Court. 2 Thereafter, Prosecution called Three (3) Witnesses: PW1 In his evidence-in-chief, PW1 (Naa Djongare Saliou Mahama), Chief of Dusie, a Community in the Wa-East District of the UW/R, stated that, somewhere in the month of June, 2023, he (PW1), Naa Seidu Braimah Guli Naa and Naa Ali Pelpuo Busah Naa spotted a voice recording message on WhatsApp sent to him (PW1) by Accused, with insults to wit: "I am an armed robber and also threatened to harm me anywhere he sees me and the above-mentioned Chiefs." According to PW1, the first day he spotted the said voice recording message, he did not believe in his ears until on the 9th July, 2023 at about 8:06pm when accused called him on his cell phone with MTN number 0597270917 again, and rained insults on him to wit: "I am an armed robber and I am not qualified to be a Chief in the Waala Traditional Area.". PW1 further stated that, accused also threatened the above-mentioned Chiefs (i.e. Naa Seidu Braimah, Guli Naa, and Naa Ali Pelpuo, Busah Naa), also captured in the voice recording, which same was forwarded to the Police. End of Evidence. Cross-Examination of PW1 by Counsel for the Accused Person: Q: You have given a statement to Police in this case previously? A: Yes Q: In the same statement, accused never threatened to harm you? A: Accused threatened to harm us Q: You alleged that, you came across a voice recording? A: Yes, the voice recording was given to Guli-Naa and Busa-Naa, and myself. Q: In your witness statement to the Police filed on 18/12/2023 as 3 well as in your statement given to the Police dated 10/07/23, nowhere do you state the harm you alleged accused person threatened you? A: Yes, but everything was captured in the voice recording, so I did not want to mention it in my statement. Q: I am putting it to you that, accused person never uttered any word that implied that, he was going to harm you? A: What I said is the fact. All that he said were in the audio recording. Q: End of cross-examination of PW1. It would be recalled that, Counsel for the Accused person, haven't done with the Cross- examination of Prosecution witnesses, withdrew his representation as a Lawyer for the Accused person in a letter dated 28th March, 2024. Thereafter, Accused pursued the matter himself. PW2 In his evidence-in-chief, PW2 (Alhassan Mumuni, No. 4847, G/Cpl), stationed at Regional Criminal Investigation Department, Wa, stated that, both accused and the Prosecution witnesses are known to him in this case. According to him, on 10th July, 2023, the Complainant, Naa Djongare Saliou Mahama (PW1) reported that, he had received a WhatsApp voice audio message from accused person, Makama Osman Wajila indicating that, the Complainant (PW1) is a Thief and an Armed Robber, and that, the Paramount Chief of Busa Paramountcy, Naa Ali Seidu Pelpuo Yemaana, does not deserve to be a Chief, and that, one Mr. Braimah Bart is a thief, and anytime he (accused) meets any of them either in a car or even in the Mosque, he (accused) will rush on him and bite the person. 4 PW2 further stated that, the case was then referred to him for investigation, where he obtained from the

Complainant. He said, on 11th July, 2023, accused person was arrested, and during his interrogation and in his cautioned statement, accused admitted the offence in the presence of an independent witness, with his justification that, the Complainant and two others, Busa Naa Ali Seidu Pelpuo Yemaana and Braimah Bart deskinning him (accused) as Katuo Naa. He said, accused has since been insulting and threatening the Complainants physically and on WhatsApp voice messages. According to PW2, this matter was before the Regional House of Chiefs for settlement, and accused indicated that, it was on this background that, he (accused) also sent a WhatsApp voice message to the Complainant by expressing his anger. He said, he transcribed the WhatsApp voice message from Waale into English language in writing in the presence of the accused person and a witness, where he (PW2) read and explained to the best of the accused persons understanding and he (accused) approved of it by thumbprinting same. He said, he was then instructed by the Regional Crime Officer, ACP, Raynolds Manteaw to prepare a duplicate docket to the Office of the State Attorney, Wa, for advice, and on the 17th October, 2023, the Office of the Attorney General and Ministry of Justice directed that, accused be charged with the Offence of Threat of Harm, contrary to Section 74 of Criminal Offences Act, 1960 (Act 29). He said, on 14th November, 2023, he (PW2) was then instructed by his Superior to charge accused person and arraigned him before this Honourable Court. The Investigator in this case (PW2) finally prayed the Court and tendered in his evidence, the WhatsApp Audio Message (Exhibit "A") accused sent to the Complainant on 09/06/2023, Investigation Cautioned Statement (Exhibit "B"), and the Charged Statement of the Accused person (Exhibit "C"). End of Evidence. 5 Cross-Examination of PW2 by Accused Person: Q: No questions. DEFENCE In his defence, the accused person (Makama Osman Wajila), a farmer, resident at Nayiri, a Section of Wa told the Court that, he knew the prosecution witnesses. According to him, it was Naa Salifu and Busa Naa Ali Pelpuo and Naa Braimah, Goli Naa in 2002 spoke about his death which he reported to the Police in Wa. He said, Wa Naa later withdrew the case from the Police for settlement. He said, in 2023, Naa Ali Pelpuo and Busa Naa threatened him to kill and Naa Ali Pelpuo told his Landlords that, he (accused) would be slaughtered and killed. He said, all these threats came to him and he couldn't contain them, which mounted pressure on him, and he (accused) also have to act in some way for him to be later arrested. Accused further stated that, he was arrested because, he made voice recording and sent same to Busa Naa, Ali Seidu Pelpuo Yemaana and Guli Naa, Seidu Braimah, in which he stated that, how they are threatening him, if he (accused) should get any of them, he (accused) would bite them, since they also threatened him, and if he report to the Police, he would get no result, that was why he (accused) also threatened to harm them. End of Evidence. Cross-Examination of Accused Person by Prosecution: Q: You said the Complainant and other Chiefs threatened to kill you? A: Yes Q: Did you report to the Police? A: Yes Q: And how was the result? 6 A: Wa Naa intervened and withdrew the case. Q: So, threat of harm case was referred to a Chief for settlement? A: Yes Q: I put it to you that, all that you told the Court were not true? A: They were true. Q: You also stated that, the Chiefs threatened you in 2003 to kill you? A: Yes Q: I put it to you that, it is not true that, these Chiefs threatened you? A: Not true. Q: And you said, you could not control yourself, and you also threatened them? A: Yes Q: If somebody threatened you, you are supposed to report to the Police? A: It is true, I always report but received no action. Q: You said you always report to Police but the Police did not act that is why you failed to report the

recent one? A: I reported to the Police, but Police did not forward the case to the Court, so the matter is still with the Police. Q: In 2024, you threatened the Complainant? A: I also made report at the Police Station in 2024 Q: I once again put it to you that, you did not only threaten the Complainant and others, but you also planned to execute same? A: Not true Q: I finally put it to you that, your argument that, you reported your matter to the Police is not true. We are here because you 7 threatened the Complainant and others? A: It is true. Thereafter, accused person closed his case, without calling any witness. The legal issue that emerged for determination by this Honourable Court was:

- WHETHER OR NOT ACCUSED PERSON IS GUILTY OF THE OFFENCE CHARGED. The cardinal rule in all criminal proceedings is that, the burden of establishing the guilt of an accused person is on the Prosecution, and the standard of proof required by the prosecution should be proof beyond reasonable doubt, as provided for in the Evidence Act, 1975 (NRCD 323), Sections 11(2) and 13(1). ANALYSIS OF THE EVIDENCE After the trial, the following facts and observations were made by the Honourable Court:
 1. It was evident that, the Complainant (i.e. PW1), is a Chief of Dusie, a Community in the Wa East District, whereas, accused person, Makama Osman Wajila, was once enskinned 2015 as the Chief of Katuo Community (i.e. Katuo-Naa) under the Busah Paramountcy, where Naa Ali Seidu Pelpuo Yelmaana is the Paramount Chief of Busah Traditional Area, as well as the Vice President of Waala Traditional Council.
 2. It was also evident that, sometime in 2021, accused person, Makama Osman Wajila, had Chieftaincy dispute with: i. Dusie Naa, Naa Djongare Saliou Mahama, Busah Naa, the Complainant (PW1). ii. Naa Ali Seidu Pelpuo Yelmaana, and 8 iii. Guli Naa, Naa Seidu Braimah, ...AND as a result, accused person issued threat of harm against them, as he (accused person) stated in part of his statement to the Police (Exhibit “B”), as follows: “I had a Chieftaincy dispute with the Complainant and the two other persons mentioned above”. Accused further stated as follows: “However, I wish to state that, whatever the Complainant have said in respect of the Threat and that of the Offensive Conduct towards them was true. I have admitted to that offence with the reason that, they called my Landlord, Sidiki Mahama and his Son, Aminu Sidiki before Busah Naa Ali Pelpuo on 09/07/2023 to eject me from his house. Interestingly, accused person failed to call his alleged Landlord or Son as a witness(es) to prove his case. ALSO, in part of his evidence-in-chief, accused admitted the offence and stated as follows: “I was arrested because, I made Voice Recording and sent same to Busah Naa, Ali Seidu Pelpuo Yemaana, and Guli Naa, Seidu Braimah, in which I stated that, how they are threatening me, if I should get any of them, I would bite them.” AND, in cross-examination, accused person answered the following questions among others from Prosecution: Prosecution : Complainant reported you to the Police and brought audio recording (Exhibit “A”) and you confirm same at the Police Station and the Court? Accused : Yes Prosecution : And in the audio (Exhibit “A”), you said, the Complainant (PW1) and others are thieves and Armed Robbers? 9 Accused : Yes, I stated so. Prosecution : You also stated that, if you see or meet

any of them, you will bite them? Accused : Yes, I stated so. Prosecution : Therefore, I am putting it to you that, you indeed threatened the Complainant and others and you admitted that, you sent the audio (Exhibit “A”) to them? Accused : I stated so, I can’t act on my words. In the opinion of this Honourable Court, this is a clear confession statement made by accused person. In the Supreme Court case of: KWEKU OFORI v THE STATE [1963] 2 GLR 452, it was held as follows: “An accused person may be convicted solely on his own subsequent retracted confession statement, if the statement is sufficiently corroborated by other independent evidence.” In the instant case, the confession statement made by accused person is sufficiently corroborated by the prosecution witnesses together with Exhibit “A”. The CRIMINAL OFFENCES ACT, 1960 (ACT 29), SECTION 74, provides as follows: “Whoever threatens any other person with unlawful harm, with intent to put that person in fear of unlawful harm, shall be guilty of misdemeanour.” In: SECTION 76 OF ACT 29, harm is stated to be unlawful which is intentionally or negligently caused without any justification allowed by law. In the case of: Behome v The Republic [1979] GLR 112, it was held as follows: “Where one is charged with threat of harm, the threat must be of harm and nothing else.” 10 In the Common law case of R v O’Brien, cited in the book entitled: “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. From the developments and facts as narrated by accused, and prosecution witnesses, the act of the accused person created in the mind of the three Chiefs an expectation of harm as a result of the dispute. It was also therefore established that, accused person exhibited a real or wicked intention to put the said Chiefs in fear of harm. In the circumstances, this Honourable 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 beyond reasonable doubt. The accused person is hereby found guilty and convicted accordingly. In sentencing the accused person, the Court considered the nature of the offence charged, and the demeanor of the accused person throughout the trial. The Court also considered the age of the accused person, and his disrespectful and unlawful conduct towards the Prominent Chiefs of the Waala Traditional Council, Wa. Accused being a first offender, and considering his plea, he is hereby sentenced to pay a fine of One Hundred (100) Penalty Units and in default, Three (3) Months imprisonment. Accused is also to sign bond, to be of good behavior for Twelve (12) months or in default, Six (6) months imprisonment. MAXWELL M. TITRIKU, MAGISTRATE, DISTRICT COURT, WA, UW/R, 30/05/2024. 11 12

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