

GHANA / JUDGMENT

REPUBLIC VRS NUKPORFE [2023]

GHADC 1159 (31 January 2023)

COURT
ghadcDECIDED
31 January 2023

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IN THE DISTRICT COURT HELD AT AGBOZUME IN THE VOLTA REGION BEFORE HIS WORSHIP IDDRISU ISSAH ON THE 31ST JANUARY, 2023. SUIT NO.B4/1/2022. THE REPUBLIC VRS: JAMES NUKPORFE J U D G M E N T:- The Police instituted this action against the accused person, James Nukporfe. The accused person was charged with causing unlawful Damage contrary to section 172 of the criminal and other offences Act 1960, (Act 29). The accused person pleaded not guilty to the charge. Brief facts to this case are that Ishmael Nukpofe aged 20, a Kente weaver is the complainant us the case and a nephew to James Nukporfe the accused person. They reside at Ablotsivia, Klikor. On the 9th of May, 2022 the accused person uprooted and scattered the 100m mounted by the complainant. The complainant reported the matter to the Police, on which the accused person was charged. The prosecution invited three witnesses to its case: Ishmael Nukporfe (PW1), Simon Nukporfe (PW2) and the investigator (PW3). The PW1 stated that on the 9th of May, 2022 at around 430 am erected his boom to weave. The accused person removed the tent and scattered the boom thread valued at GH¢300.00. Similarly the PW2 stated that he was in his room, when the PW1 son to tell 1 him that the accused person scattered his room. He came over and saw the damage caused. The investigator (PW3) stated that the matter was reported at the Action in the 9th of May, 2022. He obtained investigation caution statement from the accused person upon his arrest. He also obtained other statements from the complainant. The investigative caution statements from the PW1 and PW2 were marked as exhibits 'A' and 'B'. The caution statement of the accused person was marked as exhibit 'C. A picture of the scene tendered was marked as exhibit 'D and D1'. The charge statement of the accused person was marked as exhibit 'E'. Under the cross examination of the parties in the matter it was evident that the tent set up rather than the loom was spoilt. The accused person on the other hand stated that he stays in their family house with the complainant and other family members. When the complainant intended to set up his tent to weave kente, he asked him to relocate it. The complainant ignored him, went ahead to work on the location thus causing noise to him and others. On the 9th day of May, 2022 the complainant turned his radio to a high volume disturbing the neighborhood. He became annoyed took a machet and cut two poles of the shed down. Given the evidence before it, the Court has found as its findings of facts the following: (1) The accused person stays us the same house with the complainant and other family members. (2) The complainant mounted a kente weaving loop and a shed. 2 (3) The accused person cut down some

(two) of the poles or sticks holding the shed thus collapsing it. With the be facts before the Court the relevant question for determination is whether or not the accused person caused unlawful damage to the shed of the complainant. In criminal trials, the burden of proof in the sense of the burden of establishing the guilt of the accused person is generally on the prosecution. The failure to discharge that burden should lead to the acquittal of the accused. This sense of the burden of proof was stated in the case of *Donkor v The state* (1964)GLR 598 SC. On the question of unlawful damage, the case of *Asante v The Republic* (1972) 2 GLR 177 stated that it was necessary to establish that the damage was intestinally and unlawfully caused. According to section 173 of the Criminal Offences Act 1960, Act 29 “Damage” includes not only damage to the matter of a thing, but also on interruption of the use of that thing or an interference with that thing by which the thing becomes permanently or temporarily useless or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained: Given the evidence before the Court the damage had been caused to the tent by the accused person. However, the accused person argued that the complainant had been causing nuisance in the form of loud music in the house. The arguments by the accused 3 person amounts to a justification of his act. Such is not recognized under any justifications in the part two, chapter one of the Act 29. The accused person is hereby found guilty on the charge of causing unlawful damage. He is sentenced to twenty penalty units or in default two months in prison. H/W. IDDRISU ISSAH 31/01/2023. 4

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