

**IN THE CIRCUIT COURT HELD AT ACCRA ON WEDNESDAY THE 3<sup>RD</sup> DAY OF MAY  
2020 BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT COURT JUDGE**

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**COURT CASE NO. D6/228/2021**

**THE REPUBLIC**

**VRS**

**PRINCE KWAME KPOGLI**

**RULING ON SUBMISSION OF NO CASE**

The Accused Person has been charged with one count of Defrauding by False Pretences contrary to section 131 of the Criminal and other Offences Act, 1960 (Act 29).

The facts of the case as presented by Prosecution are that “Complainant Alex Kafui Azasu is a building contractor residing at Adenta, Accra. On the 4th January 2021, Accused was introduced to the Complainant by a friend, as someone who is into sale of auction vehicles. Complainant has showed interest in buying one Lexus 570, two Coaster Buses and one Toyota Corolla. Accused demanded and collected an amount of GHC330,000.00 from Complainant under the pretext of giving him Lexus 570, two coaster buses and one Toyota Corolla in two weeks but failed. Accused went into hiding after collecting the money. On 6/4/2021 Accused was arrested by National Security Operatives from Jubilee House and handed over to the Police. He admitted the offence in his caution statement and refunded an amount of GHC20,000.00 during

investigation. After investigation, he was charged with the offence as stated on the charged sheet before the court”.

The accused was charged and arraigned before the court on April 9, 2021. He pleaded not guilty to the charges levelled against him.

### **THE STANDARD OF PROOF AND BURDEN OF PROOF**

The settled position of the law as espoused in several authorities decided by the Ghanaian Courts is that at the close of prosecution’s case, a prima facie case ought to have been established. **MALI V. THE STATE** [1965] GLR 710; **THE STATE V. SOWAH** [1961] 2 GLR 745; **MOSHIE V. THE REPUBLIC** [1977] 1 GLR 258; **APALOO v.**

**THE REPUBLIC** [1975] 1 GLR 156; **ALI KASSENA V. THE STATE** [1962] 1 GLR 144 and recent cases such as **TSATSU TSIKATA V. THE REPUBLIC** [2003-2005] 2GLR 294. In the case of **MICHAEL ASAMOAH & ANOR v. THE REPUBLIC** Suit No. J3/4/17 dated 26th July, 2017, where the Supreme Court speaking per Adinyira JSC stated the law thus:

“Furthermore, the standard of proof borne by the prosecution at this stage **cannot be proof beyond a reasonable doubt**, as held in the case of **Tsatsu Tsikata v. The Republic** [2003-2004] SCGLR 1068”

From the law stated above, it is clear that even without the prompting of the Accused Persons, this Court is obliged by law to consider, at the close of Prosecution’s case, whether sufficient evidence has been offered to prove every essential element in the offence charged.

To determine whether or not a case has been sufficiently made by the prosecution to justify this Court to invite the Accused Persons to open their defence, it is necessary to set out the scope of burden that is cast on the prosecution to discharge at this stage. That is to say, whether the Prosecution has been able to establish a prima facie case against the accused persons in respect of each of the offences charged.

Referencing from the ruling of the High Court in the case of **THE REPUBLIC v. EUGENE BAFFOE-BONNIE & 4ORS** Suit No. CR/904/2017 dated 23rd May, 2019, what will necessitate a discharge and an acquittal of the accused persons, at this stage is when the following are present;

1. That there has not been sufficient evidence to prove the essential elements in the offence charged.
2. That the evidence adduced by the prosecution had been so discredited as a result of cross examination that no reasonable tribunal could rely on that evidence.
3. That the evidence offered by the prosecution is so manifestly unreliable that no reasonable tribunal could safely convict upon it.
4. That the evidence is evenly balanced, that is to say, the evidence is susceptible to two likely explanations- one consistent with guilt, the other consistent with innocence.

**Section 173 of Act 30**, states that, if at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make a defense, the court shall, as to that particular charge acquit him. This

Court is obliged by law to consider, at the close of Prosecution's case, whether sufficient evidence has been offered to prove every essential element in the offence charged. In this case, the duty of the Prosecution is to establish a prima facie case against the Accused Person. In the case of **Yeboah and Another v The Republic [1999-2000] 1 GLR 149** where the Court of Appeal speaking per GBADEGBE J stated that *"...a prima facie case was made against the appellants which required the trial circuit tribunal to call upon them to enter into their defense. The authorities are quite well settled that where at the end of the case for the prosecution, an ingredient of the offence charged was not proved or where the evidence of the prosecution was discredited as a result of cross-examination, thus rendering it unsafe to be acted upon, then the court need not call upon the accused to open their defense."*

The Prosecution in establishing a prima facie case against the Accused Persons called 3 witnesses and tendered 7 exhibits in evidence.

Prosecution's evidence is that Accused was introduced to PW1 by a friend. At a subsequent meeting between Accused and Complainant (PW1), Accused represented to Complainant that he works at the Controller and Accountant General's Office and on secondment to Government Confiscated Assets Office. Accused further assured Complainant he could get him a Lexus 570 through auction. To convince PW1 Accused sent him a pictured of the said Lexus 570 and other cars which were ready for auctioning. Accused promised he could assist PW1 to acquire them.

Based on this representation PW1 paid a total amount of GHC330,000.00 to Accused for the purchase of Lexis 570 and two coaster buses and a Toyota Corolla. The money was however, paid on instalment basis through his brother Aaron Sitsofo Sunuh who is PW2. PW2 tendered exhibit E which is a receipt of payment issued to him by Accused.

It is prosecution's case that Accused upon receiving the money started telling Complainant stories and eventually went into hiding, but was eventually arrested by National Security Operatives at the Jubilee house and then handed over to the Cantonment Police Station. The Accused refunded an amount of GHC20,000.00 to Complainant.

At the end of Prosecution's case, the Court ordered to make a ruling submission of No Case to answer.

Under **Section 131 of the Criminal and Other Offences Act, 1960 (Act 29)**, "Whoever defrauds any person by any false pretence shall be guilty of a second-degree felony." Section 132 of Act 29 provides that "A person is guilty of defrauding by false pretences if, by means of any false pretence, or by personation he obtains the consent of another person to part with or transfer the ownership of anything."

For the Prosecution to succeed on a charge of defrauding by false pretences, it must prove that: (i) there was a mis-statement or personation by the accused which in law amounts to a false pretence, (ii) that the falsity of the pretence was known to the accused, (iii) that the accused thereby obtained the consent of another person to part with or transfer the ownership of anything and (iv) that the accused acted with intent to defraud.

The Prosecution has a duty to prove the essential ingredients of the offence with which the accused person has been charged beyond any reasonable

doubt. The burden of proof remains on the Prosecution throughout and it is only after a prima facie case has been established that the accused is called upon to give his side of the story. The evidence led in this Court to support the charge of Defrauding by False Pretences.

Prosecution's evidence to the Court is that accused person represented to PW1 that he could get him auctioned vehicle at an agreed price because he is a worker at the Controller and Accountant General's office and on secondment at the Government Confiscated Assets Office. Based on this representation PW1 parted with an amount of GHC330,000.00 to Accused for a Lexus 570 car, two coaster buses and a Toyota Corolla. Accused in his investigation caution stated (exhibit F) admits receiving the money amounting of GHC330,000, but handed over an amount of GHC230,000.00 to one Asare Appiah who has absconded. "Through conversation I sold a Toyota Highlander to the Complainant which my friend and I got through same auction allocation. The Toyota was purchased at GHC100,000.00, when the Complainant realised that, it was a genuine undertaking he demanded to purchase a Lexus 570 with GHC230,000.00. His brother Mr. Sonu Aaron who happened to be my old school mate also gave me GHC100,000.00 for 3 vehicles. I have given all this amount of money GHC330,000 to Mr. Asare Appiah who brought the receipt of payment as usual. When the date for delivery of the vehicle failed the Complainant became agitated and requested for a refund."

It is also the case of Prosecution that at the time the Accused person made the representation to PW1 he knew the said representation was false and made it with the intent to defraud PW1.

According to PW3 investigations revealed that Accused does not work with the Government Confiscated Office as he made the Complainant to believe. He is also not a licensed auctioneer. The vexed question is if Accused is not

an auctioneer and does not work with the Government Confiscated Assets Office, then why did he receive the money from Complainant for purchase of the vehicle which was tendered in evidence as exhibit A A1. The court therefore presumes the Accused made the representation to PW1 when he knew it was false and Accused made it with the intention to defraud PW1.

Under *section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)*, “where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the Court shall, as to that particular charge, acquit the Accused.”

Having applied the principles to the case before me and having regard to the evidence on record, it is my opinion that the Prosecution has been able to establish a prima facie case against the accused person in respect of the charge of Defrauding by False Pretence. Consequently, Accused is called upon to open his defence.

**PROSECUTOR**

**ASP. KESSE**

**COUNSEL**

**ANDREW K. VORTIA FOR ACCUSED PERSON**

**H/H SUSANA EDUFUL (MRS)**

**(CIRCUIT COURT JUDGE)**