

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS
WEDNESDAY THE 1ST DAY OF DECEMBER, 2022 BEFORE HER HONOUR
EVELYN E. ASAMOAH (MRS)

CASE NO. D6/14/2022

THE REPUBLIC

V.

NELSON AZAGLO

CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC

===== *JUDGM*

ENT

- The accused was charged with the offence of defrauding by false pretence contrary to section 131(1) of the Criminal and Other Offences Act 1960, Act 29. He pleaded not guilty.

- The facts, presented by the Prosecution, are as follows: In the year 2020, the accused represented himself to the complainant that he is in a position to buy a car from Togo for him. The complainant based on the representation made by the accused, requested three vehicles- Toyota Prado 2015 model, Toyota Hilux pick-up 2014 model, and Toyota Corolla 2015 model. The accused sent him pictures of the three vehicles and assured the complainant of delivery upon receipt of the amount involved. The accused then gave the complainant MTN numbers 0241506804 and 05535599952 upon which all monies should be transferred. The complainant transferred a total of GHC 170,000 which the accused acknowledged receipt. He then promised to deliver the vehicles in November 2020 but failed to fulfill his promise. He switched off his phone and went into

hiding, making it difficult for the complainant to reach him. Upon several months of surveillance, the accused was arrested on 28th August 2021 at Spintex Road. During interrogation, the accused admitted the offence in his caution statement.

- In the case of **Ali Yusif Issa (No 2) V. The Republic (2003-2004) 1 SCGLR 297**, the Court held:

'The burden of producing evidence and the burden of persuasion are the components of 'the burden of proof.' Thus, although an accused person is not required to prove his innocence, during the course of his trial, he may run a risk of non-production of evidence and/or non-persuasion to the required degree of belief, particularly when he is called upon to mount a defence'

- The complainant, a military officer, contended that: He got to know the accused as a mechanic in early 2000. In November 2019, the accused approached him at the 66 Artillery regiment in Ho and informed him that he had moved from the mechanic job to buying vehicles from Togo and selling same to interested persons in Ghana. The accused represented to him that he could get a good vehicle from Togo at a relatively cheaper price. Subsequently, he contacted the accused in February 2020 to buy him a Toyota Landcruiser Prado but the accused said he had a 2015 model Toyota Landcruiser at the cost of GHC 65,000. The accused gave him two MTN mobile money registered numbers: 0242812409 bearing the name Elorm Enterprise and 0553599952 bearing the name David Awatey, who the accused later introduced as a friend, to transfer the money. He transferred monies to the numbers over a period of two months. The accused called and acknowledged receipt of the money.

- The accused requested for his passport-size photograph and address to process documents of the vehicle in his name and he did send the pictures and address to

him. Subsequently, the accused sent him pictures of the vehicle. The accused said because of the closure of the Ghana land borders, he had parked the vehicle at a safe location in Togo and sent him pictures to that effect. The accused sent him pictures of other cars in which he expressed interest and sent monies to the accused to buy same. He sent a total of GHC 170,000 to the accused to purchase the three cars.

In November 2020, there was no indication that the Ghana/ Togo border would be opened so he started making enquiries, and an officer of the Ghana Revenue Authority- Custom Division informed him that the closure of the borders did not affect the importation of vehicles from Togo. Around 8th November 2020 in the night, the accused used his mobile phone number 0274627568 to call, informing him that he would bring the vehicle the following morning. The accused said he had got three drivers to help him bring the vehicles. The accused indicated that the drivers charged GHC 1000 each and he needed GHC 600 to buy fuel. That fateful evening, he transferred GHC 1500 to the accused. That the accused failed to fulfill his promises after obtaining GHC 170,000 under the pretext of buying three cars for him. Thereafter, all attempts to reach the accused were unsuccessful.

- The accused pleaded not guilty to all the charges/counts. The prosecution bore the burden to prove its case beyond reasonable doubt.

Section 132() of the Criminal and other Offences Act 1960, Act 29 states:

"A person defraud by false pretences if, by means of any false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of anything."

Defrauding by false pretence is defined by **section 133 (1) of Act 29** as follows:

"A false pretence is a representation of the existence of a state of facts made by a person with the knowledge that the representation is false or without belief that it is true and made with intent to defraud."

- In the case of **Philip Assibit Akpeena V. The Republic(unreported)** Court of Appeal suit number H2/23/2018 dated 13th February 2020, Justice Adjei stated the ingredients of the offence of defrauding by false pretence as follows:

"...The main elements of defrauding by false pretence as discussed above which the prosecution is required by law to prove are five folds and they are; a representation has been made by the accused as to the existence of state of facts; the representation was made either in writing, uttered words or by impersonation ; the accused made the representation with the knowledge that it was false or he made it without belief that it was true; the accused made the representation with intent to defraud; and finally, the accused made the representation and based on it he obtained the consent of another person to part with something..."

- The court ruled that a prima facie case had been made against the accused person after the prosecution closed its case. The accused averred that: He knows the complainant since 2018 and that he met him at the barracks. In March 2020, the complainant called and said he wanted a car from Togo and he agreed to assist him. He received an amount of GHC 70,000 from the complainant through his mobile money account registered in his name. He went to the carport in Togo and he communicated with the complainant via a messenger's- David Awatey's phone number. The complainant told him to hold on with the process because of the closure of the border so he came to Accra. That the complainant went to Togo with some soldiers to claim the car purchasing forms but it was not given to him. That he had to sell his phone to take care of his wife and he did not know where

the complainant was staying. In August 2021, he was arrested. He told the complainant that he wanted to pay back the GHC 70,000 he received.

- There is no dispute about the fact that the accused received various sums of money from the complainant based on a representation made by the accused that he would get him three cars from Togo.

The accused in his further caution statement dated 30th August 2021 admitted that he received an amount of GHC 33,000 from the said David and further stated that he travelled to Togo and inspected a Toyota Prado car.

Fiddly Scheme- In this case, the prosecution tendered in evidence audio recordings in respect of the deal which illustrate the scheme the accused adopted. The accused again admitted that he took money from the complainant purposely to buy 3 cars for him but he did not do as he represented. He showed pictures of the alleged cars to the complainant and stated that he was in Togo, trying to bring the cars to Ghana. He then involved other people, who on his instructions came up with fake excuses and communicated with the complainant that the accused was in prison and unable to bring the cars to Ghana- to further defrauded the complainant. In **Exhibit B**- audio recording- the accused stated:

“What thing dey ground be sey I buy some cars for some people aha but we no buy the car but we take the money. Man, now the only thing the man dey do be say the man wan know where I dey but my friend tell am say they arrest me for Togo inside but he no know where for Togo inside where they arrest me they take me put, you understand. So right now the only thing we wan do be sey na if you find the Togo number na you go tell them say you find me na you go find me for some prison they take me go for some prison say I make some body in car fall for somebody top no be the real story. The real story be sey I dey owe the person

money wey the person no pay me that be why I no fe bring the car to them, you understand”

- The person (Kwame), engaged by the accused, communicated on WhatsApp with the complainant (*Exhibit A*), stating that the accused was arrested in Togo. They succeeded in taking an additional GHC10,000 from the complainant. The accused pretending to be known as Bob communicated with the complainant with a Togo number on WhatsApp (*Exhibit F*) and informed the complainant that the accused purchased the car but one of the vehicles fell on a child and for which reason the accused was in custody in Togo.

In the case of **Elvis Philip Yamoah V. The Republic** Criminal Appeal No.: H2/7/19- 8th July, 2020 – Justice Georgina Mensah-Datsa (Mrs.) JA stated:

“Section 131(1) of Act 29 makes defrauding by false pretence a second-degree felony. Section 132 of Act 29 defines defrauding by false pretence as “a person defrauds by false pretences if, by means of a false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing.”

For the prosecution to succeed on a charge of defrauding by false pretences, it must prove the following:

- 1. That the accused made representations to the victim that he knew were false or without the belief that they were true. That he obtained the consent of the victim to part with his money.*
- 2. That he made the representations with an intent to defraud...”*

- The evidence reveals that the accused under the pretext of buying three cars from Togo for the complainant defrauded the complainant. There is no evidence on record that the accused went to Togo to purchase the said cars. He showed

pictures of the cars to the complainant but did not purchase same after collecting the money from the complainant and he was not arrested in Togo - as he presented. He succeeded in taking huge sums of money from the complainant. Prosecution proved its case beyond reasonable doubt. The accused is hereby convicted of the offence.

To serve as deterrence to likeminded youth, he is hereby sentenced to 5 years imprisonment with had labour. He is ordered to refund all the money to the complainant.

(SGD)
H/H EVELYN E. ASAMOAH (MRS)
CIRCUIT COURT JUDGE