

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON WEDNESDAY, THE
7TH DECEMBER, 2022 BEFORE HER HONOUR ROSEMARY BAAH TOSU (MRS) –
CIRCUIT COURT JUDGE

COURT CASE NO: D6/175/2021

THE REPUBLIC

VS

GODFRED ATTER OTUMI

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RULING
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The facts upon which Prosecution has charged Accused person with the offences of **Fraudulent Transaction in Land** contrary to section 34(a) of the Land Registry Act 1962, Act 122 and **Defrauding by False Pretences** contrary to section 131 of the Criminal and Other Offences Act, 1960, Act 29 are as follows.

Both Complainant and Accused persons are resident in Accra. They are Caterer and Land Agent respectively.

In June, 2020. One Theresa Ogoe Haizel owner of a plot of land at Tse Addo, decided to sell the land at a price of 50,000USD. She informed her caretaker, one Samuel Tetteh Batsa, who posted a for sale notice on the land in question.

Accused person, noticed the sign and got in touch with the caretaker for a copy of the indenture covering the land. At the same time, Complainant had also been notified that one lawyer Benjamin Haastrup Quornnooh needed a parcel of land to buy.

One Nana Yaa Akyaa Boadi who knew the Accused as a land agent informed him of this need and gave his number to Complainant. Accused on being contacted made a false representation that he had acquired the property from the said Madam Haizel and was selling it at a cost of GH¢350,000.

Accused led them to inspect the land and agreed with them that the purchase price can be paid in installments. Complainant made part payment of GH¢90,000 to Accused. Later, the land owner sold the property to a different person, so the caretaker requested a copy of the indenture however, Accused refused to hand it over. After noticing some developments on the land, complainant questioned Accused who convinced her that he was trying to secure the land for her.

Complainant found out later that the land had been sold out. Accused has been unable to refund the money.

THE PROSECUTION'S CASE

Prosecution called three witnesses at trial. The first witness PW1, is Edna Hutcul. Her evidence is that she was introduced to Accused as an agent in land by her adopted daughter, Nana Yaa Akyaa. PW1 met Accused, who informed her that he had land at Tse Addo.

PW1 expressed interest in it after inspecting it. The parties agreed on a price of GHS 350,000. PW1 says that when she requested for proof of ownership, Accused gave her an indenture executed between East Dadekotopon Development Trust and Madam Theresa Ogoe to conduct a search.

After being satisfied with the search, she paid an amount of GHS90,000 in installments to Accused. PW1 says she noticed some developments on the land, when she questioned Accused, he told her that because he had not finished paying the full purchase price to Madam Ogoe, she was entitled to sell the land to a different person so he would refund the purchase price to PW1.

PW1 testified further that persistent activities on the land led her to lose confidence in the transaction. She therefore requested for a refund from Accused. PW1 says that her investigations in the vicinity showed that Accused was not the owner of the land but rather Madam Ogoe.

PW1 tendered the following documents in evidence. Exhibit A & A1, receipts of payments made to Accused and Exhibit B, a lease Agreement dated 10th December, 2012.

Prosecution also called Benjamin Haastrup- Quornoo as their second witness. PW2 is a lawyer who resides at Tse Addo in Accra. He testified that sometime in the early part of 2020, he expressed his desire to acquire land to PW1. PW1 upon enquiries informed him that Accused had land to sell. PW2 inspected the land and requested PW1 to request for the title deeds from Accused.

PW1 produced exhibit B. PW2 says he was surprised to see a female name and when probed Accused informed them that the purpose for buying the land was to resell and make profit, so he did not want to spend money to register the land in his name.

After being convinced PW2 pleaded to pay the purchase price in installments. PW2 says in all that he paid GHS90,000 to Accused. Upon noticing developments on the land, PW1 finally got to know that Accused did not owe the land.

PW2 says that Accused attempted to sell him another plot of land but a search showed that it was registered in a different name. PW2 attached Exhibit C, an indenture dated 28th March, 2017.

PW3 is Detective Sergeant Samuel Oppong. He testified that a case of Fraudulent Transaction in Land and Defrauding by False Pretences was referred to him for investigations. He tendered in evidence the following documents, Cautioned Statement, Exhibit D and Charge Statement, Exhibit E.

CHARGES AGAINST ACCUSED

Section 34 (a) of Act 122 provides

“A person who knowingly

(a) purports to make a grant of a piece of land to which that person does not have title, commits the offence of a second degree felony and is liable in addition to any other punishment that may be imposed to pay an amount of money equivalent to twice the value of the aggregate consideration received by that person.”

The elements of this offence which Prosecution needs to prove are as follows

1. The Accused must have purported to make a grant of land
2. The Accused does not have title to the land.

The evidence led by both PW1 and PW2 shows that Accused convinced them that he was the owner of the plot of land at Tse Addo and he further supported his claim with an indenture, Exhibit A. I find that Prosecution has proved sufficiently that Accused purported to make a grant of land to PW1 and PW2.

The Prosecution must next prove that Accused did not have title to the land. Exhibit A alone in the name of East Dadekotopon Development Trust and Theresa Ogoe, show that Accused did not have title to the said piece of land he purported to sell.

This element is sufficiently proved.

Accused is further charged with the offence of Defrauding by False Pretence contrary to section 131 of Act 29.

Section 132 (1) of Act 29 provides

“A person defrauds by false pretence, if by means of a false pretence or by means of personation that person obtains the consent of another person to part with or transfer the ownership of a thing”.

A false pretence is defined under Section 133 of Act 29

“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 an intent to defraud”.

The elements of this offence can therefore be distilled as follows

- a. Representation made by an Accused as to the existence of a state of fact
- b. Representation was made with the knowledge that it was false or made without belief that it was true
- c. The representation was made and based on it Accused obtained the consent of another person to part with the ownership of a thing
- d. The representation was made with the intent to defraud

EVIDENCE AND ANALYSIS

The burden on Prosecution after it closes its case is to have made out a prima facie case against Accused person. A prima facie case does not equate to proof beyond reasonable doubt, which conclusion can only be arrived at after a Court has heard both Prosecution and Defence. See the case of **Tsatsu Tsikata vs The Republic (2003-2004) SCGLR Vol.2 1068.**

Prima facie evidence simply put is evidence, which on its face or first appearance, without more could lead to conviction if the accused fails to give reasonable explanation to rebut it.

The first two elements Prosecution must prove is that Accused made a representation of the existence of a state of facts and this representation was made with the knowledge that it was false or made without a belief in its truth.

The uncontroverted evidence led by PW1 and PW2 is that Accused convinced them that he was the owner of the plot of land at Tse Addo, which is described in Exhibit B.

On the second leg of the element, PW1 testified as follows in her witness statement at paragraph 4 and 5 of her witness statement.

4. When I requested for proof of ownership of the land, the Accused gave me a copy of an indenture executed between the East Dadekotopon Development Trust and Madam Theresa Ogoe to go and conduct a search at the Land Title Registry.

5. When I asked why a woman 's name is on the indenture instead of his name, he told me that he decided not to change the name to his because the purpose for the purchase of the land from Madam Theresa Ogoe was to re-sell and make some profit. I was convinced so I conducted a window search at the Land Title Registry.

PW2 also corroborated this piece of evidence in paragraphs 5 and 6 of his witness statement.

There was not much challenge to these pieces of evidence from Accused by way of cross-examination. I find that Prosecution has proved sufficiently these two elements against Accused person.

The last two elements Prosecution need to prove are that Accused made this representation and based on it Accused obtained the consent of another person to part with the ownership of a thing and this representation was made with an intent to defraud.

The evidence is crystal clear that based on this representation, Accused managed to convince the complainants to part with the sum of GH¢90,000 which was part payment for a purchase price of GH¢350,000.

Intent to defraud can be inferred from the statements or other conduct of Accused person. Accused person's statements as testified to my PW1 that since he Accused had not completed paying the purchase price, Madam Ogoe, the original land owner was entitled to sell the land, is a clear indication of an intent to defraud PW1 and PW2.

I find that Prosecution has proved these last elements sufficiently against Accused.

Section 174(1) of Act 30 also provides

'At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require him to make a defence, the court shall call upon him to enter his defence...'

I do find that Prosecution has proved sufficiently the elements of these two offences against Accused person and I would call on him to enter a defence at the next sitting of the Court.

(SGD)

**H/H ROSEMARY BAAH TOSU (MRS)
CIRCUIT COURT JUDGE**