

**CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRUIT COURT 'B' OF GHANA HELD AT TEMA  
ON MONDAY, 12<sup>TH</sup> DECEMBER, 2022**

**SUIT NO. D7/26/22**

**THE REPUBLIC**

**VRS**

**GIFTY ADDO**

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**JUDGMENT**  
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The accused person is before this court on one count of defrauding by false pretences contrary to *section 131 of the Criminal Offences Act, 1960 (Act 29)*. The particulars of offence are that on the 4<sup>th</sup> day of October, 2019 at white estate, Sebrepor in the Tema circuit and within the jurisdiction of this court, the accused person, with intent to defraud did obtain the consent of one Deborah Konney to part with cash the sum of Ghs 31,120 by means of certain false pretences.

That is by falsely pretending that if the said amount is given to her, she could secure she and her friend one Rose Ahadzi auction cars being Toyota Hiace and Toyota Corolla respectively and upon such false representation, accused succeeded in obtaining the said amount from the said Deborah Konney which statement she knew to be false at the time of making same.

Accused person pleaded not guilty. Per her plea of not guilty, she stood shielded by the law as per *Article 19 (2) (c) of the 1992 Constitution*, she is presumed innocent until proven guilty. According to the case of **Davis v. U.S. 160 U.S 469(1895)** "Upon that plea

the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

Accused person had also by the same plea put in issue all the relevant elements necessary to establish the offence she has been charged with. Prosecution thus bore the burden of leading cogent and credible evidence to establish a prima facie case against her. It is only then that the accused person would be called upon to lead evidence to raise a reasonable doubt in the mind of the court. Where prosecution fails to establish such a prima facie case, the court must acquit and discharge her.

In *Gligah & Atiso v. The Republic* [2010] SCGLR 870 @ 879 the court held that *"Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story."*

In proof of its case, prosecution called three witnesses. According to PW1, she is a proprietor of a school and indicated in a conversation with a parent of one of the students that she wanted to acquire a bus for her school. That the accused person who was eavesdropping held herself out as a national security operative who works at Jubilee House and said she could assist her to purchase a Toyota Hiace vehicle on auction from the Jubilee House.

Accused person told her that she could get the vehicle between forty and forty-five thousand Ghana cedis. Also that the process would take sometime and so she can be contributing the amount. PW1 continues that in May, 2019, she started with the contributions by making an initial payment of Ghs 4,000 to the accused person.

In June and July 2019, she paid an amount of Ghs 1,500 each month to the accused through one Esther. That the accused person acknowledged receipt. Then on 4<sup>th</sup> October, 2019, she paid Ghs 4,120 to the accused through the same Esther. Accused person acknowledged receipt and signed against it on a card.

PW1 says she mentioned this to a friend by name Rose Ahadzi and she became interested in acquiring a Toyota Corolla vehicle. The said Rose gave her a cheque with a face value of Ghs 18,720. That she in turn handed it to the accused. Accused then gave it to her driver by name David Aggrey to pay it into her account at Fidelity Bank, Community 25, Branch.

That she demanded for receipts from the accused person but she failed to issue her with any and so she became discouraged and decided to withdraw from the agreement. She then asked the accused person to refund the money to her. Accused stopped answering her calls, stopped responding to her messages and later abandoned her place of abode and went into hiding. That she later reported to the police. The accused person was arrested in May, 2022 and when the police informed her, she went to give her statement.

According to PW2, she is a teacher at PW1's school. That it was through her that PW1 handed payments of Ghs 1,500 each for the months of June and July, 2019 to the accused person. That on 4<sup>th</sup> October, 2019, PW1 once again gave her the sum of Ghs 4,120 to be

given to the accused person and she did same. That she sent the moneys to accused person in her house at White Estate, Bediako and she signed on PW1's school card to indicate receipt since she did not give her any receipts for the moneys received.

That PW1 later informed her that the moneys were for the acquisition of a school bus. Later PW1 informed her that the accused person was refusing to answer her calls and all efforts made to trace her whereabouts proved futile. That PW1 decided to retrieve her money from the accused person and she (PW2) tried to facilitate same but the accused person was reluctant.

PW3 is the investigator. According to her, PW1 made a complaint against the accused person to the effect that the accused person had taken the sum of Ghs 31,120 from her under the pretext of securing an auction Toyota Hiace and Corolla car for her. That PW1 presented a copy of a card on which accused person had signed indicating receipts of the moneys from PW2. She tendered same in evidence as Exhibit C.

That she took the statement of the accused person. Accused admitted the complaint and said she had handed the money to her boss. However, accused person could not lead her to the said boss. That after her investigations, she charged the accused person with the offence. She tendered in evidence the investigation caution and charge statement of the accused as Exhibit A and B respectively. Prosecution closed its case after this.

## **CONSIDERATION BY COURT**

*Section 132* defines the offence of defrauding by false pretences to be:

*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. The prosecution in order to succeed on a charge of defrauding by false pretences in this particular case need to prove that;*

- the accused made a false pretence
- that by means of the said false pretence, the accused obtained the consent of the complainant to part with or transfer her ownership of a thing or property (money)
- the accused did so with an intention to defraud the complainant.

By a false pretence, the prosecution must prove that the accused, knowing that a statement or representation she was making was false, made such a false representation to the complainant with the intention that she should rely on the said false statement.

On the first element, the evidence of prosecution witnesses; particularly PW1 and PW3 is that the accused person represented herself to be a national security operative who worked at the Jubilee House; the seat of Government and who could obtain an auction car from the said Jubilee House for PW1. That this representation turned out to be false.

Accused person did not challenge this under cross examination. For all of prosecutions witnesses, she had cross examined only PW1 and asked her only one question. When the court explained to her that her decision not to cross examine on the evidence would be deemed as an admission of the evidence, accused person still did not cross examine.

Prosecution must go on to prove that the complainant relied on the false statement to her detriment. This means that she was induced by virtue of her belief in that statement to part with his money.

Here again, prosecution's evidence is that PW1 was induced by her belief that the accused person was a staff of national security positioned at the Jubilee house who could assist her acquire a vehicle and by so doing, parted with the sum of Ghs 11,120. PW1 was not only induced to part with her own cash, but believing in accused person's representation, she also convinced her friend to part with Ghs 18, 720 to the accused person for the purpose of accused getting her friend a Toyota Corolla vehicle.

The accused person does not dispute that PW1 parted with such an amount and also convinced her friend to part with her money. PW2 was the one who handed some of the moneys to the accused. Accused person refused to cross examine her and indicated that all that PW2 said was the truth.

Prosecution had also tendered in evidence exhibit C as the card on which the accused person signed to indicate receipt of the said moneys paid by PW1. Exhibit C is a Potters Gold Model School Pre School Monthly Fees Card. The second page indicates in ink "Payments made for mini Toyota Bus to Auntie Gifty". It indicates payments of Ghs 4,000, 1500, 1500 and 4,120. The last payment has the date of 4/10/19 indicated in ink. There is a signature and the total amount is written out as 11,120.

Accused does not deny this. Thus the sum that PW1 and her friend parted with to the accused person based upon their belief in her false representation is Ghs 29,840 and not Ghs 31,120 as prosecution claims.

On the last element of an intention to defraud, section 16 of the Criminal Act, 1960 (Act 29) provides that for the purposes of any provision of this Code by which any forgery, falsification, or other unlawful act is punishable if used or done with intent to defraud, an intent to defraud means an intent to cause, by means of such forgery, falsification, or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense or to the loss of any other person.

On this element, prosecution's evidence is that the accused person went into hiding and refused to answer the calls of PW1 when PW1 demanded for a refund of her money. Accused person does not deny that she made a gain of these moneys at the expense of PW1 and Rose Ahadzie. The payments to accused person by PW1 was in 2019 with the last payment being in the month of October. Accused person was arrested in May, 2022. That is a period of about two and a half years.

In her only question to PW1 under cross examination, she had asked;

*Q. I put it to you that I did not go into hiding and that I was ill and you knew about it?*

*A. That is not so. It was a year after the incidence that you said you were ill. You said you had an ankle problem and you took a picture for me to see. Even by then, you had told me a lot of stories. When I call you would not answer. You would also not respond to text messages. Then after some time, you would communicate that you had an accident or you were involved in one issue or the other. Sometimes it would take about four months before you would respond to one message and only to say you had a problem. And because you abandoned the place, it was out of our control and we did not know what to do. After some point, when I call it does not go through at all and that was after July last year. Since then you have never picked my calls or responded to any messages.*

PW1 had by her answer and explanation disputed the claims of accused person as to her being ill. To go silent on someone whom you had made a representation to and who had been induced by your representation to part with her money, to further move out of your place of abode which is known to her and then after several messages and calls from the person, communicate via text once in a long while to say you are ill is an act that would raise the suspicions of the reasonable man.

That this went on for almost three years would lead to an inference that the accused had made the false representation to induce PW1 to part with her money and with an intention to defraud PW1.

At the close of prosecution's case, in line with section 173 of the Criminal and Other Offences Procedure Act, 1960 (Act 30), I determined that prosecution had established a prima facie case against the accused person.

I found that prosecution had led evidence to establish all the elements of the offence of defrauding by false pretences against the accused person. Furthermore, prosecution's evidence was not so discredited under cross examination such that the evidence was unreliable and the evidence on record also lent itself to only one conclusion; that prima facie, the accused person defrauded PW1. She was thus called upon to open her defence if she so desired. See the cases *Apaloo & Others v. The Republic* [1975] 1 GLR 156) *Gyabaah v The Republic* [1984-86] 461 C.A and *Tsatsu Tsikata v. The Republic* [2003-2004] SCGLR 1068).

Denning J (as he then was) in the celebrated case of *Miller v. Minister of Pensions* [1947] 1 All ER 372 at 373 held that. "The constitutional presumption of innocence of an



accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of *Philip Assibit Akpeena v. The Republic* (2020) 163 G.M.J 32

An accused person when called upon to open her defence does not have a duty to prove her innocence. Her only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against her by the prosecution. Where she is able to raise a reasonable doubt in the mind of the court, she must be acquitted and discharged. See *Bruce-Konuah v. The Republic* [1967] GLR 611 and *Section 11(2) and (3) of NRCD 323*.

In arriving at whether an accused has raised a reasonable doubt, the court must first consider whether her explanation is acceptable i.e. whether it believes the explanation given by the accused. If it does not, it must proceed to find out whether the explanation by the accused is reasonably probable. If that fails, then thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. In any of these instances, the court must acquit and discharge the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of *Bediako v. The State* [1963] 1 GLR 48.

Accused person elected to give an unsworn statement from the dock when she opened her defence. According to her " Yesterday, I admitted the evidence of prosecution witnesses. I

*pray that, the court grants me bail so that I can go to those who have the money in their possession. They are saying that, I come personally before the money is handed to me so that I can take it to pay the complainant. On one occasion, I even informed the C.I.D and with another person, I even went there with the C.I.D to his residence but was told that he had travelled to the U.S.A. I have nothing more to say. I have no defence to the charges and I admit all of what prosecution witnesses said. I am just pleading with the court to give me time and vary my bail for me. So, that I can go out and recover the money to pay them. That is all. I took their money.*

In EXHIBIT A which is accused person's investigation caution statement, she admitted receiving the moneys from PW1. That it all started about three years ago. That her daughter attends school at PW1's school and PW1 is also her friend. That PW1 told her that she wanted a school bus and she in turn informed her that her boss whom she works with at the Jubilee House in Accra deals in auction cars and could assist PW1 get one.

That PW1 expressed interest and started paying moneys to her. That she in turn gave these monies to her driver by name David who is on the run to give to her boss. She said she does not want to mention her boss's name. That PW1 later gave her a cheque from one of her friends who was also interested in acquiring a Toyota Corolla auction vehicle. The amount was Ghs 18,720 and she instructed that it be paid to a Fidelity bank account in the name of David Aggrey and same was done.

She continues that along the line she began bleeding and went to her hometown for treatment and that was when PW1 did not hear from her again. That it was not her intention not to get PW1 the cars or refund her money to her but it is due to her ill health. Further that her boss had promised to pay all the moneys involved. She relied on the same statement in her charge statement.

From the explanation of the accused person and her statement to the police, her defence is that she gave the moneys to some other persons including her boss. Also that it is her boss who could assist PW1 to obtain the auction cars. PW1 had testified that it was the accused person herself who said she could get her the vehicle. Accused had not confronted her under cross examination to challenge that she had not made that representation.

Again, it is reasonable to expect that if indeed accused person had a boss to whom the moneys were sent to and who was the one to assist PW1, then she would have at the least mentioned his/her name and called the said boss to testify on her behalf. She failed to do any of these. Her claim of a boss appears to be an afterthought than the truth.

Again, on accused person's claim that she had been ill, from her own evidence, she received the moneys from PW1 about three years ago. If she was ill all these whiles, a medical report from a hospital or a report from a herbal centre indicating this would have been material in proving her ailment. At the least, if the illness was for such a considerable length of time, she could have tendered in evidence some photographs of herself during her periods of ill health as proof of her three-year ailment and/ or called any persons including her family who could reasonably be expected to know of her ill health to testify on same. She failed to do this.

I find at the close of her defence that I neither believe her nor find her explanation to be reasonably probable. Her explanation does not raise any defence in her favour. Consequently, accused has failed to raise a reasonable doubt in my mind as to the prima facie guilt established against her by the prosecution at the close of their case. Consequently, that prima facie case crystallizes into proof beyond reasonable doubt and

I hereby hold that prosecution has established a prima facie case against the accused person on the charge of defrauding by false pretences. She is thus convicted of the offence.

### ***PRE SENTENCING HEARING***

According to prosecution, the convict is not known to the law. That none of the money has been recovered from the accused person. Prior to sentencing, a pregnancy test was carried out on the convict. It proved negative.

According to the complainant, this has really affected her as she is a widow and has kids. That she has not been able to acquire a bus for the school and her friend has been pestering her for the money. That her friend took a loan from the bank and is still paying with interest.

In mitigation, convict says that she is not known to the law. That she is pleading with the court to give her a few days to pay. That she has organized something to give it to her so that the court can have mercy on her and give her a light sentence. Based on her plea, the court adjourned for one week to give her the opportunity to make the said restitution in order to enable the Court to take that into consideration when passing sentence. As of today, she has failed to make any restitution to the complainant.

### ***SENTENCING***

Defrauding by false pretences carries with it a maximum sentence of twenty-five years imprisonment. Operating in convict's favour is the fact that she is a first time offender.

The offence of defrauding by false pretences appears to have become a main stay within the jurisdiction. Making false representations of being connected to the executive seat of power appears to be one of the main modus operandi to get unsuspecting victims to believe in such false representations. Simply saying one works in Jubilee House is enough to earn the trust of many a person. It appears after that trust is earned, making further false pretences which would induce the victim becomes easy.

In as much as the accused person is in her 40's and the Court must show her some mercy, she herself did not show that same mercy to PW1 who also appeared to be quite old, a widow and a woman just like the accused who was struggling to put her school on a good footing by acquiring a school bus to convey the students to and from school. That the convict's daughter was attending this same school shows how ruthless the convict is.

In consideration of the above factors, I hereby sentence the convict to a four-year term of imprisonment. She is also to enter into a self recognizance bond to keep the peace and be of good behavior for a period of twelve (12) months after her release from custody. In default, she would serve a six (6) month term of imprisonment.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**

**(CIRCUIT COURT JUDGE)**

**D.S.P. JACOB ASAMANI FOR THE REPUBLIC PRESENT**