

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON FRIDAY
THE 8TH DAY OF SEPTEMBER, 2022 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE**

CASE NO. D1/09/2022

THE REPUBLIC

VRS.

1. JOSEPH AMON KORTEY

2. WILLIAM ABAZING

ACCUSED: A1 PRESENT, A2 AT LARGE

*PROSECUTION: C/INSP. SALIFU NASHIRU WITH INSP. COMFORT MENSAH
DRAPHOR PRESENT*

COUNSEL: FRANK K. NIKOI ESQ. FOR A1 PRESENT

JUDGMENT

The Accused Persons are charged with one count of Conspiracy to wit Fraudulent Transaction of Land contrary to section 23(1) and Section 277(2) of the Criminal Offences Act, 1960 Act 29 and one count of Fraudulent Transaction of Land contrary to section 277(2) of the Land Act, 2020 (Act 1036).

The facts as presented by Prosecution are that in 2016, PW1 was in need of land to purchase for a project so he was introduced by a friend to A1 who assured him of having genuine land for sale. Prosecution says that A1 led PW1 to A2's office at Ofankor and informed him of PW1's intention to buy the land and A2 encouraged PW1 to go ahead and purchase same since it was genuine. According to prosecution, A2 was assigned by A1 to collect monies from PW1 for the transaction and on 9th August, 2016, PW1 issued a cheque with face value of GHø50,000.00 to A2 who acknowledged receipt of same. Prosecution says that PW1 on 30th August, 2016 issued the second cheque of GHø50,000.00 to A2 and A1 took PW1 to Ofankor Achiato and granted him two plots of land at the cost of GHø100,000.00. According to prosecution, PW1 also made a payment of GHø9,700.00 to Asafo boys to supervise and grade the land and expended GHø50,000.00 on constructing foundation and footing. According to prosecution, the land turned out to be

a disputed family land and before PW1 could start block laying, he was served with a court injunction to stop work from this court in Suit No. C1/07/2017. Prosecution says that PW1 demanded for a refund of his monies from Accused persons but to no avail so on 22nd January, 2021, a case was reported to the Ofankor police for investigation. Accused persons were arrested and arraigned before this court.

Prosecution called three witnesses in support of its case. PW1 was the Investigator D/C/Insp. Michael Dorgbefu, PW2 was Dr. Joseph Okine Afrane and PW3 was Stephen Ofori Amarfo.

PW1 tendered the following documents which were admitted and marked as follows:

- Exhibit A: Statement of PW2
- Exhibit B: Investigative Caution Statement of Stephen Ofori Amanfo
- Exhibit C: Statement of Ebo Mends
- Exhibit D: Investigative Caution Statement of A2
- Exhibit D1: Charge Caution Statement of A2
- Exhibit E: Investigative Caution Statement of A1
- Exhibit E1: Charge Caution Statement of A1
- Exhibit F & F1: Photographs
- Exhibit G: Deed of Assignment
- Exhibit H Series: Receipts
- Exhibit J: Judgment of Circuit Court, Amasaman dated 2nd December, 2020
- Exhibit K: Statement of Tettey Kwame
- Exhibit L & L1: Charge Sheet and Brief Facts

PW2 testified that he is a retired banker and his son Osei Tutu Afrane came from the USA and needed land for a project. He stated that he contacted a security man by name Ebo Mends and he took him to Mr. Stephen Ofori Amanfo who informed him that A2 had land for sale. He testified that he together with the said Ebo followed A2 who showed them two plots of land and they negotiated a price of GH₵50,000.00 per plot. He stated that he paid for the plot that day with a cheque and A2 gave him a receipt in his name. According to him, they agreed to meet on 31st August, 2016 for final payment to be made and for collection of indenture and site plan. He testified that on 31st August, 2016, he together with Mr. Stephen Ofori Amanfo met the Accused persons at the office of A2. He stated that that was the first time he met the 2nd Accused and A2 handed over the indenture and

site plan to him duly signed by A1 after which he issued the second cheque of GH¢50,000.00 to A1 to complete payment. He testified that in January, 2017 he went unto the land to start the project, so he cleared the land, built a septic tank and constructed a footing of a six-bedroom house at a cost of GH¢70,000.00. He stated that in April, 2017 when he sent workers to the land to continue working, to his surprise they were driven away by a court bailiff and police officers who posted a court injunction on the land. He stated that he informed the Accused persons who indicated that the situation will be handled but they lost the case and all efforts to retrieve his money have proven futile.

PW3 testified that in July, 2016, one Ebo Mends approached him to inform him that his uncle wanted a plot of land so he asked people around who informed him to contact the Accused persons. He says that he contacted the Accused persons, and they informed him that the land belongs to then so he informed the complainant (PW2) and they went to A2's office at Ofankor on 9th August, 2016 and he took them to the site and demarcated the land for them. He says that PW2 was interested and requested for two plots at GH¢50,000.00 per plot and immediately issued a cheque of GH¢50,000.00 to A2. He stated that A2 asked them to return on 31st August, 2016 for the land documents, so they did visit A2 on the said date and made the 2nd payment in the presence of A1. He testified that the indenture was handed over to the complainant by A2 and endorsed by A1. He stated that in April 2017, PW2 informed him that he had started construction and a court has placed an injunction on the property.

At the close of Prosecution's case, A1 was called upon to open his defence. A1 testified on oath by means of a Witness Statement filed on 11th July, 2023. He testified that he has six plots of land at Ofankor which he has fenced, and he decided to sell two out of the six plots, so he informed his co-workers of his intention to sell the land. According to him, he went to a washing bay at Mile 7 and a man informed him that he wanted to buy the land and asked him for documentation to the land. He stated that he informed the man that the documents were with his lawyer and about four days later A2 called him that he has gotten a buyer, but he never discussed selling his land with A2. He says that he asked A2 how he got to know that he was selling his land and he informed him that someone informed him, and he stated that he had already visited the land. He testified that he went to see A2, and he informed him he had visited the land with the buyer which is the complainant, but this was done at his blind side. He says that

A2 asked him to prepare documents and he informed him that he did not show complainant any land, so he left. He says that A2 later called him to inform him that the complainant had brought money to buy the land, so he went there, and they met at A2's office.

He says that he did not see the buyer with money, but he was told complainant paid the money into A2's bank account at the Ghana Commercial Bank, Tantra Branch. According to him, a few days later he went to the bank to cash GH₵5,000.00 which A2 gave to him for documentation. He says that he went to Prampram when he was called by A2 and complainant about the documents and he informed them that he was out of town. He says that A2 informed him that he gave A2 GH₵50,000.00 when they all met at A2's office but he never knew anything about the price negotiations. He says that while complainant was working on the land, some people started working on other parts of his land which is different from what he sold to the complainant and complainant reported the matter to the Ofankor Police. He says that he took the matter to court and an injunction was granted against both parties. He testified that during investigation, he got to know that the complainant had paid GH₵100,000.00 for the two plots of land. And he was invited to this court because complainant had made an official report against him and A2.

As already indicated, the charges levelled against the Accused is Conspiracy to wit Fraudulent Transaction of Land without authority and one count of Fraudulent Transaction of Land contrary to Section 277(2) of the Land Act, 2020 (Act 1036). Section 277(2) of Act 1036 provides as follows:

*“(2) A person who
(a) purports to make a grant of land to which that person has no title,
(b) purports to make a grant of land without authority, or
(c) makes conflicting grants in respect of the same piece of land to more than one person,
commits an offence and is liable on summary conviction to a fine of not less than seven thousand five hundred penalty units and not more than fifteen thousand penalty units or to a term of imprisonment of not less than seven years and not more than fifteen years or to both.”*

Prosecution failed to disclose exactly which of the subsections of Section 277 which has been preferred against the Accused persons. The Particulars of Offence on count 2 states as follows:

“1. JOSEPH AMON KOTEY, FOOTBALLER AGE 35 YEARS:
2. WILLIAM ABAZING, BUSINESSMAN, 50 YEARS: For that on 30th of August, 2016 at Ofankor in the Greater Accra Circuit and within the jurisdiction of this court, did make a grant of two (2) plots of Land lying at Ofankor Achiato at the cost of GH¢100,000.00 to one Doctor Joseph Okine Afrane which you have no authority.”

In the case of **DOCHIE v. THE STATE [1965] GLR 208** it was held as follows:

“The charge of attempt was wrongly laid under section 18 (1) of Act 29. But there were sufficient particulars to show that section 18 (2) was intended and to give the accused sufficient information of the charge he was to meet. There was therefore no miscarriage of justice.”

From the particulars of offence set out above, it is apparent that an allegation of sale without authority falls under Section 277(2)(b), the ingredients to be considered therefore would thus be in line with this provision. I shall first consider Count 2. In order to establish this charge, Prosecution was to lead evidence to show that:

1. That the Accused purported to make a grant of land.
2. That the Accused person granted the land without authority.

It is trite that in criminal trials, the burden of proof against an accused person is on the prosecution. The standard of proof is proof beyond reasonable doubt. Section 11(2) of the **EVIDENCE ACT 1975 (NRCD 323)** states that:

“In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt.”

The standard of proof ‘beyond reasonable doubt’ was explained by Lord Denning in the case of **MILLER V PENSIONS (1972)2 ALL ER 372** as follows:

“Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted

fanciful possibilities to deflect the course of justice. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice".

From the evidence of PW2, Dr. Afrane, it is apparent that the negotiations for the sale of land happened between himself and A2. Again, from his evidence, the first time he met A1 was on 31st August, 2016 at the office of A2. On this date, according to PW2's testimony, he issued a second cheque of GH₵50,000.00 to A1 and he received an indenture which had been signed by A1. The said indenture is *Exhibit G* which is a Deed of Assignment between A1 and Osei Tutu Afrane dated 29th June, 2016. PW1 on the other hand testified during cross examination that PW2 did not pay money to A1. The following ensued:

“Q: I put it to you that I never collected money from Mr. Afrane

A: That is correct. But it was done under his instruction.”

The case of A1 is that A2 transacted with PW2 on his blind side to sell his land and subsequently A2 asked him to prepare documents. According to him A2 informed him that the buyer had brought money to buy the land so he met A2 and the buyer at A2's office and days later he went to cash GH₵5,000.00 which was given to him by A2 for documentation. During cross examination of A1 by Prosecution the following ensued:

“Q: The land in question at Ofankor who owns the land

A: I own it, it was given to me by my family and I have documents of that

...

Q: After the complainant did the second payment of GH₵50,000.00 in cheque you told the complainant you will prepare the indenture and sign for him because the land belongs to you

A: That is not so. When the complainant was paying monies to A2, I was not aware. I became aware when a when a Policewoman invited me to Ofankor Police Station it was there that the complainant mentioned he had paid GH₵100,000.00 to Mr. Abazing. After the Police Station I went to A2 and explained what I was told, and he insisted I prepare documents for complainant because complainant is a big man. I told him I cannot prepare documents without receiving money. He pleaded and I met complainant at GCB Tantra Hills Branch

and he gave me GH¢5,000.00 for preparation of documents that was the only money given to me by complainant.”

At paragraph 11 of A1’s witness statement he stated that he met PW2 at A2’s office but during cross examination he stated as follows:

“Q: Have you ever met A2 in his office before

A: I did not meet him in his office but I frequently go to him”

...

“Q: On 31/08/2016 you met A2 and the complainant in A2’s office is that not so

A: That is not the case

Q: I put it to you that after complainant insisted to meet the partner before second payment is done you met them at A2’s office

A: That is not so”

A1 also stated as follows:

“Q: Did you prepare the documents and sign to the complainant

A: Yes I prepared and signed and handed over to A2. He asked me to go and when complainant comes and pay money he will call me to come.

Q: I put it to you that you prepared the documents, signed and personally handed to the complainant

A: It is not true, I did not give any documents to complainant

Q: You own land, you have not seen any money and you are preparing documents to sign for complainant is that not so

A: No

Q: I put it to you that you took part in the complainant’s money that was paid for the land that is why you prepared the indenture marked Exhibit G, signed and you have boldly written on it

A: I was given GH¢5,000.00 and A2 said the money will motivate me to prepare the documents so that when the complainant sees the documents he will pay for the land.”

Also, in his Charge Cautioned Statement, *Exhibit E1*, A1 stated as follows:

“I have one Acre plot at Ofankor Achiator which I gave the land documents to Accused William Abazing to sell for me. Accused William Abazing sold out two plots to complainant Joseph Afrane.

Initially I did not [sic] the actual price he sold the land. The money I received from Accused William Abazing was GH₵35,000.00. He asked me to use GH₵5,000.00 to prepare land documents and come back.”

In **ASIA v AYEDUVOR AND ANOTHER [1987-88] 1 GLR 175** the court held that:

“Furthermore under "the principle of prior self-contradiction", a prior inconsistent statement, if not satisfactorily explained as to the circumstance under which it was made (eg under duress or a mistake), would go to impeach credit on the particular fact.”

Though A1 claims to own the land in dispute with documentation, he failed to produce any evidence of ownership before this court. The case of Prosecution is that the Accused does not own the land in dispute by virtue of a decision of this court tendered as *Exhibit J*. During cross examination of A1 by prosecution the following ensued:

Q: Have you been to this court Amasaman concerning that land

A: Yes

Q: What happened at the court

A: I went on the land and noticed there were people on the land so I sued them before my lord.

Q: What was the result

A: Judgment was given in favour of my opponent and I was asked to go to the High Court but I was financially handicapped.

Q: So as you stand now the land does not belong to you because Judgment was given to your opponent is that not so

A: The land still belongs to me because I have been given the chance to proceed to the High Court. I still have the mother document.”

I note that in the Judgment dated 2nd December, 2020, tendered as *Exhibit J*, Judgment was entered in favour of the Defendants against the Plaintiff, the 1st Accused herein in respect of a piece of land which A1 has admitted in this case forms part of the land in dispute in this case.

In the case of **LUTTERODT v. COMMISSIONER OF POLICE [1963] 2 GLR 429** the court held as follows:

“In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:

(a) if the explanation of the defence is acceptable, then the accused should be acquitted;

(b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;

(c) 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.”

In law, there is a presumption that evidence on oath is false in absence of satisfactory explanation of a prior inconsistent statement. See **YARO AND ANOTHER v. THE REPUBLIC [1979] GLR 10**. I find the story of A1 under oath as an afterthought. The apparent inconsistencies, contradictions and ambiguities in his evidence destroy his credibility and make him an untruthful witness. I find it reasonably improbable that an owner of a piece of land would willingly prepare and sign documents which would divest him of his interest in the land to some other person while still alleging that he has not sold same to that other person. Clearly, on the evidence Accused purported to have the authority over the land in dispute in order to grant same to PW2, hence being the author of *Exhibit G*. Having carefully examined the evidence of Prosecution's witnesses along with other evidence adduced at the trial, the case of prosecution is the preferred one. I do not consider that the witnesses were impeached under cross examination, and I am unable to find that a doubt has been created as regards the evidence adduced by A1. I therefore accept the evidence of Prosecution that A1 without authority made a grant of the land in dispute to PW2. A1 is accordingly found guilty and is hereby convicted on count 2.

As already indicated, Count One is a Charge of Conspiracy to commit crime to wit Fraudulent transaction of land contrary to section 23(1). Section 23(1) defines conspiracy as follows:

“Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.”

For this charge to succeed, the prosecution must prove that the persons agreed to act together with the common purpose to commit the offence. In the case of the **STATE V. YAO BOAHENE [1963] 2 GLR 554** it was held by Sowah J as follows:

“Conspiracy consists not merely in the intention of two or more persons, but also in the agreement of two or more to do an unlawful act or to do a lawful act by an unlawful means. To constitute an indictable conspiracy there must be an agreement between the conspirators to do some common thing. Whether they had met each other or not, does not matter in the slightest degree so long as they are working for the same common object. They need not know whether a conspiracy was already in existence. The test is whether or not there was a community of design or a common purpose. In order to find out whether or not there is a common design the court must not only look at what the accused persons say in court or elsewhere, but also at what the overt acts are, that is to say, any act of conspiracy, conferring or consulting with, advising, persuading, counselling, commanding or inciting words can be an overt act.”

It was held further in the **STATE V. YAO BOAHENE** (supra) that:

‘Where it is found that there is a conspiracy, each conspirator becomes the agent of the other conspirators, and any overt act committed by any one of the other conspirators is sufficient on general principles of agency to make it the act of all the conspirators.’

Also, in the case of **COMMISSIONER OF POLICE V. AFARI AND ADDO [1962] 1 GLR 483** it was stated at holdings 1 and 2 as follows:

“(1) the law of conspiracy is contained in section 23 (1) of the Criminal Code, 1960, and is wider in scope and in content than the English law on that subject. It consists not only in the criminal agreement between two minds, but also acting together in furtherance of a common criminal objective;

(2) it is rare in conspiracy cases for there to be direct evidence of the agreement which is the gist of the crime. This usually has to be proved by evidence of subsequent acts, done in concert, and so indicating a previous agreement. There is here clear, ample and affirmative

evidence of the conspiracy in addition to the evidence of the completed offence;”

Indeed, from A1’s own evidence under cross examination it is apparent that A2 is no stranger to him as he indicated that he knows him very well. From the undisputed evidence on record, PW2 dealt with A2 alone in negotiating and paying for the land. However, when he requested to see the owner of the said land, A1 presented himself and indeed went ahead to prepare documents for PW2 after receiving money from PW2. It was through the various efforts and representations made by each of the Accused persons which caused PW2 to part with the sum of money he did in the belief of purchasing the said land from the Accused Persons. I have evaluated the entirety of the evidence before this court and I find that there was a conspiracy between Accused persons with a previous concert and deliberation when they acted together and purported to have authority to sell the land in dispute to PW2 both knowing they had no such authority to do so.

Overall, there is clear and affirmative evidence of conspiracy between the Accused persons as well as evidence of the completed offence. I find no other evidence on record to exonerate A1 from the Offences as Charged. I hereby find A1 guilty on Count 1. He is hereby convicted.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**