

IN THE CIRCUIT COURT ONE HELD AT ACCRA ON THURSDAY, 23<sup>RD</sup>  
NOVEMBER 2022, BEFORE HER HONOUR AFIA OWUSUAA APPIAH  
(MRS), CIRCUIT COURT JUDGE

CC NO.: D6/205/2021

THE REPUBLIC

V

MOHAMMED ABDUL RAHMAN

ACCUSED PERSON

RULING ON SUBMISSION OF NO CASE

Accused person herein stands before the court on one count of defrauding by false pretence contrary to section 131 of the Criminal Offences Act 1960, Act 29 (hereinafter referred to as Act 29). On the 24/3/2021 Accused person pleaded not guilty to the offence after same was read to him in English.

**The particulars of offence read**

**“MOHAMMED ABDUL-RAHMAN, BUSINESSMAN: You during the month of October, 2020 at Accra in the Greater Accra circuit and within the jurisdiction of this court, with intent to defraud, did obtain the consent of one Faisal Abubakar to part with cash the sum of Gh¢32,000.00 by means of certain false pretences to wit; by falsely pretending that if the said amount is given to you, you could clear his container containing personal effects at the port for him and upon such false pretences you succeeded in obtaining the said amount from the said Faisal Abubakar which statement you well knew at that time of making to be false.”**

BRIEF FACTS attached to the charge sheet are as follows “Complainant Faisal Abubakar is a businessman residing at Oyibi, Accra. Accused Mohammed Abdul Rahman is also a businessman residing at Tema. On the 25/04/20, complainant imported 40 feeter container containing personal effects from Sweden to Ghana. During the month of October 2020, accused was introduced to the complainant by a family friend as a clearing agent and he promised to clear his container at



the port for him. Accused person demanded and collected an amount of Gh¢32,000.00 from the complainant under the pretext of clearing the container for the complainant but failed. On 26/02/21, accused was arrested and handed over to cantonments police. He admitted the offence in his caution statement. Accused funded an amount of Gh¢7,500.00 during investigation leaving a balance of GH¢24,500.00. After investigations, he was charged with the offence as stated on the charge sheet.

Prosecution called three witnesses in support of their case. Complainant, Faisal Abubakar testified as PW1. Mrs Abdulai Chenti testified as PW2 and the investigator of the matter Cephas Asansunu testified as PW3. PW3 also tendered in evidence Investigation Caution Statement of accused dated 26/02/2021 Charge Statement of accused dated 10/3/2021, Unipass port clearing bill payment receipt documents and a document titled transaction details as exhibits A, B, C and D respectively.

At the close of case of the prosecution, Counsel for the accused person filed a submission of no case for the accused. Counsel per his submission contends that at the close of prosecutions case, the essential ingredients of the offence of defrauding by false pretence has not been established therefore no prima facie case established against accused for him to open his defence.

**SECTION 173 of Criminal and Other Offences Procedure Act, 1960, Act 30** provides that 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.

In the case of **TSATSU TSIKATA VRS THE REPUBLIC [2003-2004] SCGLR 1068**, it was stated that

*“... indeed if the submission of no case is made just at the close of prosecution’s case and cross examination of its witnesses, how could one seriously speak of proof beyond doubt when the defence has not had a full chance of punching holes in the prosecution’s case to possibly raise doubt*



*in the minds of the trier of facts, by calling its own witnesses and presenting the counsel's address? It seems as if we have to look for a lower standard of proof at the preliminary stage in the criminal proceedings".*

Therefore at the close of prosecution's case, the court is not to find the existence of the fact beyond reasonable doubt but all the essential elements/ingredients of the offence must be established and same must be sufficient to secure a conviction of the accused in the absence of any reasonable doubt that may be created in the mind of the court by the defence of accused.

It is thus provided respectively by sections 19 of NRCD 323 that, *"an enactment providing that a fact or group of facts is prima facie evidence of another fact creates a rebuttable presumption"*. Therefore until a prima facie is established against accused creating rebuttable presumption, an accused person ought not to be called to open his defence since there would be no presumption which may be refuted by the him through his defence.

**Section 131 (1) of Act 29** provides that " A person who defrauds any other person by a false pretence commits a second degree felony.

Defrauding is defined under **section 132 of Act 29** as follows: *"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."*

Archer J (as he then was) in the case of **BLAY VRS THE REPUBLIC [1968] GLR 1040** in holding 5 stated *"to defraud was to deprive by deceit or to induce a cause of action by deceit."* In the case of **Republic vr Selormey [2001-2002] 2 GLR 424** the ingredients of the offence of defrauding by false pretence were reiterated thus:  
—  
*"Therefore for the prosecution to succeed in proving the charges of fraud by false pretences against the accused person, the law requires*

*that the prosecution must prove by evidence, the following:*

- (a) That the accused person made a representation either by written or spoken words or any other means whatsoever.*
- (b) That the said representation was in regard to the existence of a state of facts.*
- (c) That the said representation was false or made without the belief that it was true.*
- (d) That by that false representation the accused caused another to part with a thing..."*

Does the evidence of prosecution satisfy all the essential ingredients of the offence of defrauding by false pretence listed above?

In determining the essential ingredients of the offence, I shall consider the first and second ingredients together i.e *that the accused person made a representation either by written or spoken words or any other means whatsoever and that the said representation was in regard to the existence of a state of facts.*

PW1 on this issue is that he is an importer who imports personal effects from Sweden to Tema port. On 25<sup>th</sup> April 2020, his container got to the port but because of the lockdown, he was unable to come to Ghana on time and arrived on the 21/6/2020. Accused being his agent at the port told him to pay duty of GHC30,000 because the goods had delayed and that he had someone to help him clear the goods for them at a lesser amount. He ended up paying GHC32,000 to accused who had stated that he could help him clear the goods.

PW2 wife of PW1 testified that Accused was introduced to them by a friend as a clearing agent and accused promised to assist them clear their goods from Tema port and charged them GHC32,000 to clear the goods.

PW3, the investigator also testified that his investigations revealed that accused,

an unlicensed clearing agent collected an amount of GH32,000 from complainant under the pretext of clearing a 40 footer container containing personal effects at the Tema Port. From these pieces of evidence, it is established that accused made a representation to PW1 and PW2 that he could clear their container from the Tema Harbour for them. First and 2<sup>nd</sup> ingredients of the offence are established per the record.

In respect of the third ingredient of the offence of defrauding, prosecution is to establish that the **said representation was false or made without belief that it was true. It has been held by the courts that**, that for the prosecution to succeed on a charge of fraud by false pretences under Act 29, ss. 132 and 133 it was not enough for the prosecution to prove that the representation was false, they should go further to prove that the consent to part with ownership was in fact obtained by false pretence. (see the case of **ASANTE & ORS V THE STATE [1968] GLR 804**). **Section 133(1) of Act 29** defines false pretence 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 the belief that it is true, and made with an intent to defraud. “

Per this definition, prosecution is expected to lead evidence to establish that the accused person knew and or did not have the belief that he could clear PW1's container from the port but yet made this statement to induce PW1 parting with his money. The false representation or a statement made must therefore be with an intent to deceive. Prosecution therefore has to establish per their evidence that not only was a false statement made by accused to PW1 but same was made with the intention to deceive PW1.

PW3 testified that accused was an unlicensed clearing agent who represented to PW1 he could clear his goods. PW1 denied accused working with an accredited clearing company called Humble Trust Ltd. PW1 and PW2 however under cross-examination admitted knowing accused since 2017 and accused having at one time cleared their container from a port for them in 2017. Although PW1

subsequently denied accused clearing any goods for him at either the Takoradi Harbour or Tema Harbour, his wife PW2 admitted accused had cleared PW1's goods from Sweden at Tema and Takoradi Harbour all in 2017 and 2018 respectively.

From the answers given by both PW1 and PW3 as quoted above, accused had previously ie in 2017 and 2018 assisted and or cleared goods/container for PW1 despite not being a licensed clearing agent as contended by PW1. The evidence before the court however is that Accused failed to assist and or clear the container/goods of PW1 in 2020 contrary to his representation that he could clear same. The mere falsehood of a representation does not amount to a dishonest representation. The law requires that accused must have known about the falsity or untruthfulness of his statement at the time of making it and must have made it with an intent to defraud. Prosecution has to lead evidence to show that accused at the time of making this statement PW1 in 2020 he knew he would be unable to clear the goods/container with the intention to defraud.

The intention of man is said not to be unknown to even the devil.

"Intent" is defined under **section 11(1) ACT 29** thus:

*"where a person does an act for the purpose of causing or contributing to cause an event, that person intends to cause that event, within the meaning of this Act, although in fact or in the belief of that person or both in fact and in the belief of that person, the act is unlikely to cause or contribute to cause the event."*

The intention or mens rea of an accused person can only be deduced from their acts and the circumstantial evidence on record. A perusal of exhibit C i.e GRA Unipass Port Clearing Bill payment receipt dated 04/11/2020 although not so clear discloses payment of GHc8,128.25 by accused. PW3 has testified that because accused is unlicensed clearing agent, he was using other persons to clear the goods but same failed. This evidence discloses that accused made efforts to clear



the goods through others but some failed. Although accused failed to clear the goods as he represented, there is no evidence that he had no

intentions of clearing same or that he had intentions of not clearing the goods. In the case of **HEMANS v COFIE [1997-98] 1 GLR 144** at holding 3, the court held “Where one obtained goods on credit and defaulted in paying or received money from people to do some work but failed to do the work, the default in each case would be breach of contract, the remedy for which lay in the civil courts, and not the police station. Neither situation amounted to the offence of defrauding by false pretences under section 131 of the Criminal Code, 1960 (Act 29) because false pretence as defined in section 133(1) of Act 29 had to involve false representation of an existing fact. Thus, a promise of an event in the future could found liability if it was coupled with a false statement of existing facts. But a mere representation that something would happen or was likely to happen did not amount to fraud by false pretences. Accordingly, the complaint lodged against the plaintiff, ie that he had received money from the complainants to do some work but had failed to do it, did not support a case of fraud to empower the police to arrest him and detain him in police cells. “

Accused failing to clear the goods of PW1 after collecting GHC32,000 from PW1 although he made a representation to the effect that he could clear same upon payment of the said amount does not amount to a false representation per se. Same only amounts to a breach of contract, remedy of which lies in a civil court. Prosecution therefore fails to establish the third essential ingredient of the offence of defrauding by false pretence.

The Supreme Court in the case of **MICHAEL ASAMOAH & ANOR V THE REPUBLIC (2017) SCGLR AT PAGE 4. per Adinyira JSC** laid down the instances under which submission of no case must be upheld as follows;

- a. There had been no evidence to prove an essential element in the crime.*
- b. The evidence adduced by the prosecution had been so discredited as a result of cross-examination.*
- c. The evidence was so manifestly unreliable that no tribunal of fact could reasonable convict upon it.*

*d. The evidence was evenly balanced in the sense that it was susceptible to two (2) likely explanations, one consistent with guilt and one with innocence.*

Prosecution having failed to establish all the essential ingredients of the offence of defrauding by false pretence at the close of its case, on the authorities supra, they fail to establish a prima facie case against the accused person herein to necessitate a defence from him.

Accordingly accused person herein is acquitted and discharged of the offence of Defrauding by false pretences contrary to section 131 of Act 29 forthwith.

**ACCUSED PRESENT**

**C/INSP SAMUEL AHIABOR FOR PROSECUTION PRESENT**

**MR RICHARD KLU KPETSI H/B FOR PRINCE F.N. A NEEQUAYE FOR**

**ACCUSED PERSON PRESENT**

**(SGD)  
H/H AFIA OWUSUAA APPIAH (MRS)  
(CIRCUIT COURT JUDGE)**