

IN THE CIRCUIT COURT HELD AT ACHIMOTA, ACCRA ON MONDAY,
THE 22ND DAY OF MAY, 2023 BEFORE HER HONOUR AKOSUA
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE

D6/006/23

CASE _____ NO.:

THE REPUBLIC

VRS

MICHAEL OWUSU MINTAH

ACCUSED PERSON PRESENT

INSPECTOR RITA A. KONADU FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSON

JUDGMENT

The accused person herein was arraigned before this court on 18th April, 2023 charged with Defrauding by False Pretences contrary to *section 131 of the Criminal Offences Act, 1960 (Act 29)*.

He pleaded not guilty after the charge had been read and explained to him in Twi, being his language choice.

The facts of the case as presented by the prosecution are that the complainant David Dankwah Mireku is an auto dealer and resident of Nii Boi Town, Accra.

The accused on the other hand is a self-acclaimed trader. On 6th November, 2022, accused person who in the past had sold vehicles to the complainant's partner, Agyei Opoku Michael, called and informed the said Agyei Opoku Michael, a witness in this case that he imported four vehicles which have arrived at the Tema Port, including two Toyota Corolla vehicles for sale. The accused further requested of the witness to send him the sum of GH¢83,768.00 to enable him pay customs duty to clear the vehicle in order to sell to them. The accused subsequently provided the witness with Fidelity Bank account number 2410013905958 to send the money into it. He further informed the witness that, the said Fidelity Bank account belongs to his clearing agent who was to clear the vehicles. The witness notified his partner, the complainant about the accused person's proposal. On 7th November 2022, the complainant proceeded to the Abeka branch of Fidelity Bank together with the witness where the complainant David Dankwah Mireku deposited GH¢83,768.00 into the said Fidelity Bank account. Immediately upon sending the money, the accused was notified. Accused after being notified about the deposit, suddenly switched off his mobile phone, preventing the complainant and the witness from reaching out to him. As a result, on 8th November 2022 the complainant and the witness proceeded to the accused's house where his wife was met, but she informed them that the accused had vacated his house a week prior to the fraud. On 17th November 2022 the complainant reported the incident to the police. As part of investigation, the operators of Fidelity Bank account numbers 24100013905958 Kwame Ofosuhene and 1060141096719 Insp. Kwadwo Armah Aboagye-Anin Kissi were arrested. Investigation revealed that on 7th November 2022, the very day the complainant was defrauded by the accused, the accused contacted Kwame Ofosuhene, operator of Fidelity Bank account number 2410013905958 and pleaded with him to give him his account number to enable him give same to someone who

wanted to buy his vehicle to deposit the cash into it. Having known the accused person as his client who use to buy spare parts from him, Kwame Ofosuhene innocently released his account number to the accused, which he gave to the complainant. About two hours after the giving out of his account number, Kwame Ofosuhene received an alert indicating that, the money had successfully hit his account and subsequently notified the accused. The accused person then instructed Kwame Ofosuhene to transfer the sum of GH¢20,000.00 into Fidelity Bank account number 1060141096719 and thereafter, withdraw the remaining balance of GH¢63,768.00 for him, which he did. Further investigation revealed that the accused person in a similar fashion on 23rd September 2022, collected the cash of GH¢20,000.00 from Inspector Kwadwo Armah Aboagye-Anin Kissi under the guise of selling a Toyota Corolla to him, but failed and stopped answering his calls. On 6th November 2022, a day prior to the fraud, Inspr. Kwadwo Armah Aboagye-Anin Kissi issued a stern warning to the accused person's wife to let him refund his money, an act which led to the accused instructing Kwame Ofosuhene to send the GH¢20,000.00 into Inspr. Kwadwo Armah Aboagye-Anin Kissi's Fidelity Bank account number 1060141096719. The accused in his statement admitted having collected the complainant's money under the guise of selling two Toyota Corolla salon vehicles to them. That Kwame Ofosuhene was an innocent person whose bank account he used for his nefarious activity. The accused at the time of collecting money from the complainant had no vehicles to be cleared at the Port. It was also discovered that the owner of the Fidelity Bank account number 2410013905958 is not the accused person's clearing agent as he claimed. After investigation the accused was charged with the offence and put before this honourable court.

In proving its case, the prosecution called four (4) witnesses.

PW1 who is the complainant herein told the court in his evidence that he resides at Nii Boi Town Lapaz, Accra and that he knows that accused person through his business partner Agyei Opoku Michael. That his business partner brought a business deal regarding 2013 Toyota Corolla LE which one will cost GH¢57,000.00 and he expressed interest in two of the said cars amounting to GH¢114,000.00. That his business partner made him understood that the accused person said the car was at the Tema Port and that he does not have money to pay duty to clear the cars, so since he is interested he should make payment of the duties so he can clear the cars from the Port. That the accused person gave a bank account details of an agent to his business partner for him to make deposit into it to facilitate the clearing process. That he immediately went to the bank and made a deposit of GH¢83,768.00 into bank account number 2410013905958 under the name NSHIRA BA ENTERPRISE. According to *PW1* he took a picture of the deposit pay-in-slip and sent it to his business partner to forward it to the accused person. That after three days they made effort to contact the accused person on his cell phone but the phone was off, and since then they did not hear from him again. That they went to Tesano police station to lodge a complaint for assistance and after a few months they had information that the accused had been arrested at Togo and sent to the police headquarters. *PW1* tendered in evidence cash deposit receipt of Fidelity Bank, Abeka branch dated 7th November 2022 with the amount on it being GH¢83,768.00 as exhibit 'A'.

PW2, Agyei Opoku Michael told the court that he knows the accused person and that he bought vehicles from him about three times in the past. He continued that on 6th November 2022, he received a call from the accused person who said that he had imported four vehicles which had arrived at the Tema Port including

Toyota Corolla vehicles. According to PW2, he informed his partner David Dankwah Mireku (PW1 herein) who expressed interest in having two of the said vehicles as he personally also wanted two of the vehicles. That the accused person stated that each of the said vehicle was GH¢57,000.00 and he told him and PW1 that they should send him customs duty for the two of the said vehicles amounting to GH¢83,768.00. That the accused sent him the cost of the custom duty as a proof and a Fidelity Bank account number 2410013905958. PW2 continued that he was convinced and made PW1 send the said amount into the said account number provided by the accused person on 7th November 2022 at the Fidelity Bank, Abeka branch. That he called the accused person to inform him after the deposit and the accused person told him the said account number belongs to his agent. That he called the accused person later again and he refused to answer his calls and switched off his phones so he followed up to the wife's house and met his wife at Odorkor Official Town and she told him that she had not seen her husband since 8th November 2022. PW2 concluded that he and PW1 went to Tesano police station to lodge a complaint for assistance and after a few months they had an information that the accused person had been arrested at Togo and sent to the police headquarters.

PW3, Stephen Ofosuhene told the court that he resides at Bubuashie, Accra and is a spare parts dealer. That he knows the accused as a car dealer who buys spare parts from him. PW3 continued that on 7th November 2022, the accused person called him that someone is buying his car but the person is requesting he gets a Fidelity or UMB bank account number so if he has any of the bank account number he should give it to him for the person to send the money into it. That he told the accused person he has a Fidelity Bank account number and he requested he sent him his details so he sent his Fidelity Bank details (2410013905958,

NHYIRA BA ENTERPRISE/STEPHEN OFOSU) to the accused person. According to PW3, he received an SMS alert after some few hours that GH¢83,768.00 had been deposited in his bank account and so he called the accused person to inform him about it and he told him to send GH¢20,000.00 into a bank account number 1060141096719, which he did. That the accused person later came for the balance of GH¢63,768.00 and gave him GH¢200.00 as a token to buy credit. PW3 continued that he did not hear from the accused person again. That he went to the bank to withdraw money and he was informed by the manager that his account had been blocked and the police was looking for him; so he was arrested at the bank by the Tesano police and was later granted bail. He concluded that after a few months they had an information that the accused person had been arrested at Togo and sent to the police headquarters.

PW4, Detective C/Inspector Muniru Aramakah stationed at Tesano Divisional CID (Investigator herein) told the court in his evidence that on 17th November 2022 whilst he was on duty at the Tesano Police Station, complainant David Mireku assisted by witness Agyei Opoku Michael lodged a case of defrauding by false pretences against the accused person involving the sum of GH¢83,768.00. That the case was referred to him for investigation which led to the arrest of Kwame Ofosuhene (PW3), Inspector Kwadwo Armah Aboagyee-Annin Kissi and Michael Owusu Mintah, the accused person herein. That he obtained statements from all the parties involved, being the complainant, witnesses and accused person. PW4 told the court about what his investigation disclosed, being a recount of the brief facts of the case. According to PW4, his investigation also revealed that the accused person did not import two Toyota Corolla vehicles to the Tema Port as represented to Agyei Opoku Michael, prior to collecting the complainant's money. That after investigation, he charged the accused person

with the above offence. PW4 tendered in evidence, exhibits 'B' and 'C' being the investigation caution statement and charge statement of the accused respectively.

Thereafter, the prosecution closed its case.

After the close of the case of the prosecution, the Court examined the evidence of the prosecution witnesses to determine whether a prima facie case had been made by the prosecution to warrant the accused person to open his defence. The Court then ruled that a prima facie case had been made and the accused person was called upon to enter into his defence.

In view of the above, the Court found that the accused person had a case to answer. The court however explained the rights of the accused person to him that he can decide to keep quiet and not say anything; or give a statement from the dock or enter the witness box and give evidence. The court also reminded the accused person of the charge against him. The accused person in response told the court that he will remain silent.

The accused person did not also call a witness.

The legal issue to be determined is whether or not the accused person herein did defraud the complainant by falsely representing to him that if he pays GH¢83,768.00 to him as custom duty, he could sell two Toyota Corolla LE 2013 model to him, which statement he well knew to be false at the time of making it.

After the trial, I had to examine the cogency of the evidence to determine whether or not the evidence adduced by the prosecution could ground a conviction against the accused person on the above offence.

The fundamental rule in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution and the standard of proof required by the prosecution should be proof beyond reasonable doubt as provided in the *Evidence Act, 1975 (NRCD 323)*, per *sections 11(2) and 13(1)*.

In the case of *Republic v. Adu-Boahen & Another [1993-94] 2 GLR 324-342*, per Kpegah JSC, the Supreme Court held that:

“A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person... When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt”.

Section 132 of Act 29 provides:

“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.”

From the above, the elements of defrauding by false pretences are as follows:

1. The use of false pretence or personation,
2. To obtain the consent of another person,
3. So that the person parts with or transfers the ownership of something.

Section 133 of Act 29, in defining defrauding by false pretences, lays out the following ingredients:

1. Representing the existence of a state of fact,
2. Either with the knowledge that such representation is false or without the belief that it is true,
3. The representation should be made with the intention to defraud.

The House of Lords, in *Welham v. Director of Public Prosecutions [1961] A.C. 103*, held, as stated in Archbold, Criminal Pleading, Evidence and Practice (36th ed.), para. 2043 at p. 753 that:

“Intent to defraud’ means an intent to practise a fraud on someone and would therefore include an intent to deprive another person of a right, or to cause him to act in any way to his detriment ...”

In the case of *Asiedu v. The Republic [1968] GLR pgs 1-8*, Amisshah J.A. stated:

“An intent to defraud is an essential element of the offence of defrauding by false pretences whether the method of fraud adopted was personation or a false representation”.

Archer J. (as he then was) in the case of *Blay v. The Republic [1968] GLR 1040-1050* stated:

“In a charge of defrauding by false pretences, if the evidence showed that the statements relied on consisted partly of a fraudulent misrepresentation of an existing fact and partly of a promise to do something in future, there was sufficient false pretence on which a conviction could be based”.

After a careful examination of the evidence led at the trial, I made the following findings of facts and observations:

The prosecution witnesses told the court that the complainant paid an amount of GH¢83,768.00 to a Fidelity Bank account number provided by the accused person, after the accused person told PW2 who is a business partner of the complainant that he had imported four vehicles which had arrived at the Tema Port including Toyota Corolla vehicles. PW2 in turn informed the complainant who expressed interest in having two of the said vehicles. Therefore from the case of the prosecution the complainant paid the said amount into the said account number provided by the accused person, after PW2 who had been convinced by the accused person to pay the said amount, also told the complainant about same being his business partner.

From the evidence of PW2, the accused person made him believe that the said cars were available at the Tema Port waiting to be cleared when the accused person sent him the cost of the custom duty as a proof. That he was convinced and so he made the complainant pay the amount accused person requested for, into the account details provided by the accused person. Under cross examination, PW2 testified that the accused person called him to send him the money and he was with PW1 who is his business partner so he also told him about it.

According to the evidence before this court, PW3 deals in spare parts and the accused person buys spare parts from him. PW3 is not the clearing agent of the

accused person as the accused person made PW2 believe. From exhibits 'B' and 'C' the accused person stated *inter alia* that PW3 is a spare parts dealer at Abose Okine who does not know anything about his business and that he only used his account number to take the money.

The complainant paid the said GH¢83,768.00 as custom duty for the said two Toyota Corolla cars with the belief that those cars were at the Tema Port and the said money was being used to clear the said vehicles. This is because the accused person promised PW2 who also informed the complainant that he was going to use the said money to clear the said cars.

From the evidence on record, the accused person switched his phone off after he obtained the money paid into the account number he gave to PW2 who also gave to PW1. He also did not clear the said two Toyota Corolla vehicles as he told PW2 that, that was the purpose for which he collected the said GH¢83,768.00.

From the evidence of PW4, his investigation disclosed that the accused person did not import two Toyota Corolla vehicles to the Tema Port as he represented to PW2 prior to collecting the complainant's money.

From this piece of evidence, it implies that at the time the accused person took the complainant's amount of GH¢83,768.00 towards the sale of two Toyota Corolla cars to PW1 through PW2, he did not have the said Toyota Corolla cars available for sale.

Indeed the accused person falsely represented to PW2 and by extension to PW1 who is the complainant that the cars were available at the Tema Port and he was using the said money to clear same from the Tema Port, when he took the said money on 7th November 2022. Thereafter he switched his phone off and they did

not hear from him until he was arrested in Togo and sent to the police headquarters.

Therefore from the evidence of the prosecution witnesses, the accused person represented facts to PW2 and based on that took the money of PW1 knowing very well that the statement he made to PW2 that he was going to use the said money to clear the said vehicles and that the account number he provided for the money to be paid into was for his clearing agent, were false statements because he well knew that there were no such cars available to be cleared at the Tema Port, and that the said person whose account the said money was paid into, was not his clearing agent but a spare parts dealer who knows nothing about his business.

From his caution and charge statements, the accused person stated *inter alia* that he made PW3 transfer GH¢20,000.00 into Kojo Armah-Kissi's bank account and also made him withdraw the remaining balance for him the very day the complainant sent the money into PW3's account. That he used the remaining balance of GH¢63,768.00 to import a Toyota Vitz which is yet to arrive from Dubai. That he has informed the complainant that he will refund their money to them. There is no evidence before this court that at the time the accused person took the said money, the two Toyota Corolla vehicles were available for him to sell to PW2 and by extension his business partner, PW1 for which the accused person requested for GH¢83,768.00 as customs duty to clear the said vehicle.

Again, after the court had given the accused person the opportunity to cross examine PW4, he opted not to cross examine PW4 on material evidence he had adduced that, his investigation disclosed that the accused person did not import two Toyota Corolla to the Tema Port as he represented to PW2 before collecting

PW1's money. The accused person did not make any attempt to discredit the evidence PW4 gave as a result of his investigation in this case.

The only question he asked PW4 was "Is it Agyei (PW2) who came to make the complaint at the police station or it was David (PW1)" which PW4 answered that "Both David and Agyei came to report the case but David identified himself as the owner of the money that was sent to the account number you provided."

The Court of Appeal in the case of Quagraine v. Adams [1981] GLR 599 CA, held that:

"where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by the failure to cross-examine."

The principle was further enunciated by Ansah JSC in Takoradi Flour Mills v. Samir Faris [2005 -2006] SCGLR 882 when he referred to the case of Tutu v. Gogo, Civil Appeal No. 25/07, dated 28th April 1969, Court of Appeal unreported; digested in 1969 CC76 where Ollenu JA (as he then was) stated thus:

"In law, where evidence is led by a party and that evidence is not challenged by his opponent in cross-examination and the opponent did not tender evidence to the contrary, the facts deposed to in the evidence are deemed to have been admitted by the party against whom it is led, and must be accepted by the Court."

The accused person did not cross examine the investigator on this material evidence against him and so relying on the above principle and authorities, those facts are deemed to have been admitted by the accused person and the Court accepts same.

All that the accused person needed to do was to raise a reasonable doubt in the case of the prosecution but he did not do that as he did not cross examine the investigator on his material evidence which were heavily against him neither did he give any evidence to tell his side of the case when he was given the opportunity to do so.

On the question of false representation, it is apparent from the evidence adduced during the trial that the accused person convinced PW2 that he had two Toyota Corolla cars at the Tema Port waiting to be cleared and was going to sell to him. As a result of this, PW2 also informed the complainant who is his business partner to pay an amount of GH¢83,768.00 requested by the accused person to the account number provided by the accused person who parted away with the said money when he well knew that there were no such cars available at the Tema Port to be sold to the PW2 and by extension to PW2's business partner who is the complainant. This is because from the evidence before this court particularly exhibits 'A' and 'B', the accused person after taking the said GH¢83,768.00, then used part of the said money to clear his debt of GH¢20,000.00 to Inspector Kwadwo Armah Aboagye-Anin Kissi and used the remaining GH¢63,768.00 to import a Toyota Vitz to be shipped from Dubai which is yet to arrive from Dubai.

In the case of ***Blay v. The Republic*** (*supra*), the court stated:

"If a man makes statements of fact which he knows to be untrue, and makes them for the purpose of inducing persons to deposit with him money which he knows they would not deposit but for their belief in the truth of his statements, and if he intends to use the money thus obtained for purposes different from those for which

he knows the depositors understand from his statements that he intends to use it, then, although he may intend to repay the money if he can, and although he may honestly believe, and may even have good reason to believe, that he will be able to repay it, he has an intent to defraud."

In the instant case not only was the representation to the PW2 and by extension to PW1 that the accused person had available Toyota Corolla vehicles to sell PW2 and PW1 false, the accused person took advantage of the deceit and took the complainant's money as customs duty to clear the said vehicles from the Tema Port when these cars were not available. Relying on the above authority, although the accused person may intend to repay the money, he had the intent to defraud the PW2 and by extension PW1, the business partner of PW2.

From the evidence of PW1 under cross examination, he did not have any business transaction with the accused person but it is through PW2 who made him aware that the accused person said he was selling Toyota Corolla 2013 LE and PW2 also informed him as his business partner which made him deposit the said amount into the account the accused person gave to PW2. From the evidence on record, even though PW1 did not deal directly with the accused person, PW2 through whom PW1 got information about the accused person selling the said cars and subsequently forwarded the bank details accused person had given out for payment of the said amount to be made in to PW1, gave evidence before this court to corroborate the evidence of PW1, but the accused person did not deny PW2's evidence that he dealt with him.

The fact that the said GH¢83,768.00 paid into the account details provided by the accused person being the amount he requested to be paid into the said account

for him to use same to clear the said cars, was not paid by PW2 who directly dealt with the accused person, does not negate the fact that the accused person falsely represented to PW2 and by extension to PW1 that he had the said cars at the Tema Port waiting to be cleared in order for him to sell to them so they should make a deposit of GH¢83,768.00 for him to use same for the clearing process, when there actually were no such cars at the Port for the accused person to sell to PW2 and by extension PW1.

After evaluating all the pieces of evidence adduced during the trial, I find that the evidence point to only one conclusion that the accused person defrauded the complainant by taking GH¢83,768.00 from him as custom duty of two Toyota Corolla vehicles when there were no such cars available for sale by the accused person.

In the case of *Commissioner of Police v. Isaac Antwi* [1961] GLR 408-412, it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by *sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323)*. *Section 11(3)* provides that:

“In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.”

Section 13(2) provides that:

“Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.”

The accused person did not give evidence to attempt to raise a reasonable doubt in the case of the prosecution. From the evidence before this court, the accused person did not have any defence to the charge against him and so could not raise a reasonable doubt as to his guilt.

I support my decision with the dictum of Denning J. (as he then was) in the case of *Miller v. Minister of Pensions* [1947] 2 All E.R. 372 at p. 373 where he said:

“Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible, but not in the least probable,’ the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

Apaloo JA (as he then was) in the case of *Asare & Others v. The Republic (No. 3)* [1968] GLR 804-925 stated:

“The offence of fraud by false pretences seeks to punish anyone who deceives another to his detriment and which deceit operated to the material advantage of the deceiver”.

From the evidence before this court, I do find that the prosecution has been able to prove beyond reasonable doubt that the accused person is guilty of the offence he has been charged with.

From the foregoing reasons, I pronounce the accused person herein, guilty of the offence of defrauding by false pretences and I convict him accordingly.

Court: Any plea in mitigation before sentence is passed?

Accused person: It was not my intention that it happened this way. I am remorseful of my own actions. I have been able to raise an amount of GH¢10,000.00 to defray some of the debt. I promise to work hard within a short period to pay the rest. I am also a family man with children. I plead with the court.

Court: Is the accused person known?

Prosecutor: No, he is a first time offender. This is the said GH¢10,000.00. It was brought this morning by the accused person's wife to pay part of the money to him.

By Court:

In sentencing the accused person, the court takes into consideration the fact that he is a first time offender and also considers his plea in mitigation. The Court has also considered the fact that the accused person has made part payment of GH¢10,000.00 of the amount involved, to the complainant. In accordance with *Article 14(6) of the 1992 Constitution*, time spent in custody is considered. However to serve as deterrent to the accused person and others in the community that the Courts do not countenance such fraudulent actions, the Court hereby imposes the following sentence on the accused person:

The accused person shall serve a term of imprisonment of five (5) years in hard labour.

Restitution Order

The accused person in open court has paid the amount of GH¢10,000.00 to the complainant, being part payment of the amount of GH¢83,768.00 he fraudulently obtained from the complainant.

In accordance with *section 147B of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)*, the accused person is ordered to refund the remaining amount of GH¢73,768.00 to the complainant herein. The complainant shall enforce this order through civil means.

**H/H AKOSUA A. ADJEPONG
(MRS)
(CIRCUIT COURT JUDGE)**