

**IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS THURSDAY THE  
10<sup>TH</sup> DAY OF AUGUST, 2023, BEFORE HER HONOUR EVELYN E. ASAMOAH**

**(MRS)**

**CASE NO. D6/165/2019**

**THE REPUBLIC**

**VRS**

**MANASSEH NARTEY**

**CHIEF INSPR BENSON BENNEH FOR THE REPUBLIC**

**MR RAPHAEL KOFI BONIN FOR THE ACCUSED PERSONS**

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**JUDGMENT**

• The accused persons were charged with the following offences: conspiracy to commit a crime to wit defrauding by false pretences contrary to section 23(1) and 131(1) of the Criminal and Other Offences Act 1960, Act 29 and the offence of defrauding by false pretence contrary to section 131(1) of Act 29. A1 pleaded not guilty to the charges. The other accused persons are at large.

• The facts, presented by prosecution, are as follows: In July 2018, the first accused (A1) collected an amount of USD 10,000 from the complainant and promised to secure a Canadian visa for the complainant in Ghana but he failed. He later made the complainant travel to Nairobi-Kenya to meet A2 and A3 whom he claimed to be his business partners and could secure the Canadian visa for the complainant. After some months in Nairobi.

A2 and A3 could not secure the Canadian visa for the complainant. The complainant informed A1 who asked the complainant to return to Ghana which he did. A1 promised

to return the money collected from the complainant. During interrogation, A1 admitted the offence and informed the police that A2 had been arrested in Kumasi. The police proceeded to Kumasi and arrested A2. During interrogation, A2 admitted having collected USD 6000 from A1. A2 brought an amount of GHC 15,000 and same was kept by the Police as an exhibit.

● **Section 11(2) of the Evidence Act, 1975 (N.R.C.D 323) states:**

*“In a criminal action the burden of producing evidence when it is on the prosecutions 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 the fact beyond reasonable doubt.”*

In the case of **Rahim Ibrahim and 3 Other V. The Republic** Court Of Appeal Criminal Appeal No.: H2/2/201 - [2017] DLCA 5012 Justice Barbara Ackah-Yensu JA (as she then was) Stated:

*“It is trite learning that under Article 19(2) (c) of the 1992 Constitution, every one charged with a criminal offence is presumed innocent until the contrary is proved. In other words, whenever an accused person was arraigned before any court in any criminal trial, it is the duty of the 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 will be called upon to give his side of the story. See **Gligah & Atiso vrs. The Republic [2010] SCGLR 870**. While the burden of persuasion remains on the prosecution throughout the trial, the evidential burden shifts as and when it becomes appropriate. This position is stated in Section 15 of the Evidence Act, 1972 (NRCD 323) thus: “unless and until it is shifted, the party claiming that a*

*person is guilty of crime or wrongdoing has the burden of persuasion on that issue”.*

- The complainant recounted the incident as follows: In the year 2018, an immigration officer told him, during a telephone conversation, that he knew one Edwin Adjetey who has a travel and tour business and has been securing visas for people. He indicated to Adjetey that he wanted him to secure a visa for his nephew- Derick Peparah. Ajetey demanded the passport of his nephew and an amount of 500 pounds to start the process. Adjetey introduced A1 as the agent to be sent to the UK embassy for submission of the document. His nephew, after returning from the embassy, informed him that he was given two weeks to check on his application. Thereafter his nephew called that he was denied the visa. The accused further indicated that he has a Canadian visa connection which would take two weeks and that the applicant was to go to Kenya to submit the application at the Canadian embassy in Kenya for a fee of USD 10,000. He sent an amount of USD 200 to the accused to start the process. A week later, he sent GHC 9600 equivalent to USD 2000, at that time, to the accused.

After another week, the accused sent him a WhatsApp of a Canadian visa in his nephew's passport and demanded the balance of GH 28,800 which he deposited into the accused account at ADB. Thereafter, his nephew called informing him that he was still in Kenya. He called the accused to verify and that was when the accused started giving him flimsy excuses. His nephew came to Ghana and the accused refused to answer his calls.

According to PW2, he left Ghana for Kenya in July 2018, and he met Rose Agyemang, the accused partner, who accommodated him. She took his passport to start the visa process over there. She later returned his passport with a Canadian visa in it. Other Ghanaians were there waiting to travel to Canada. They left Nairobi for Canada and had to transit to Ethiopia where they were arrested at the Airport because of fake visas.

They communicated with him and told him the issues. He confronted Rose who said those people were arrested because they had no Kenya resident permit in their passport and that they would prepare a Malta book for him but his passport was returned without the visa nor the Malta book. Rose and her agents gave him excuses until he ran out of money so he returned to Ghana where he reported the case to the police and the accused was arrested.

- The court after close of the case of prosecution ruled that a prima facie case had been made against the accused and called on the accused to open his defence.

In the case of **Elvis Philip Yamoah V. The Republic Criminal Appeal No. H2/7/19 Court of Appeal** dated 8th July 2020, Justice Mensah-Datsa stated:

*Section 131(1) of Act 29 makes defrauding by false pretence a second-degree felony.*

*Section 132 of Act 29 defines defrauding by false pretence as “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.”*

*For the prosecution to succeed on a charge of defrauding by false pretences, it must prove the following:*

- 1. That the accused made representations to the victim that he knew were false or without the belief that they were true. That he obtained the consent of the victim to part with his money.*
- 2. That he made the representations with an intent to defraud.*

*See Kuma v. The Republic (1970) CC 113.*

- The accused in his witness statement contended that he did not defraud the complainant and neither did he plan or conspire with anybody to defraud the complainant. He got to know the complainant through one Mr. Adatey. Mr. Adajatey and the complainant informed him that to avoid any fraudulent actions, he should tell

the person who does the processes that he will use his money for the deal and thereafter the complainant and Mr. Adajatey will pay him. According to the accused, he funded the initial process. That the complainant and Mr. Adajatey paid the UK visa fee but the Embassy did not grant the complainant a visa.

A few months later his travel and tour agents by name Ben and Rose contacted him notifying him of Canadian visa opportunity. He therefore told the complainant who showed interest. He spoke to a representative of the accused by name, Mr. Kwabena Adjei, and an amount of USD 8000 was agreed upon. According to the accused, he explained to the complainant that he would travel to Kenya to meet Rose Agyeman, and thereafter the deal would start. The parties agreed on an initial amount of USD 1000 to start the process and a ticket was purchased for the complainant to travel to Kenya. The complainant traveled to Kenya and was welcomed and sheltered by Rose Agyemang.

On 26th July 2018, Rose Agyemang sent him a soft copy of the visa acquired via WhatsApp which he sent to Mr. Kwabena Adjei, an Immigration Officer, to check whether it was genuine and authentic before they would make any additional payment. Mr. Adjei confirmed it was genuine and he sent an amount of GHC 28,800 to him.

- According to the accused, he gave that money to Mr. Mohammed Yakubu to give it to Rose and Ben in Kenya. Thereafter, Ben sent him a message via WhatsApp that they needed more money to purchase a plane ticket. Mr. Adjei arranged and sent additional money to Rose. Ben and Rose later told him that there were changes in the processes and that the complainant's stay permit had expired. The complainant informed them that he was being pursued by the police so he agreed and used his own money to rebook a return ticket for him to come to Ghana.

DW1, who claims to be a victim, alleged that in Kenya the complainant was irresponsible and behaved as an accomplice and that he joined Ben and the others and lived lasciviously in Kenya. He also asserted that he was given a fake visa. However,

during cross-examination, he stated that he did not know the agreement/ arrangement between the accused and the complainant.

- The accused admitted that he did make a representation to the accused that he would get him a visa to travel.

This can also be gleaned from his caution statement- Exhibit A. He stated:

*“...I later told the complainant that I can assist him to get a Canadian visa for which he agreed and became interested. I then told the complainant the cost of the transaction was 8000 US dollars and that they should pay half of the money which I cannot remember. I told the complainant that the documentation was ready and he should travel to Kenya to meet a lady who is an agent to me. I then bought a ticket for the complainant to travel to Kenya to meet Rose in Kenya to assist the complainant in getting the Canadian visa. She sent me a copy of the visa to me through my WhatsApp number... and then showed it to the immigration officer who is a friend of Derrick. The immigration officer said it was okay and he gave me the remaining total of 8000 US dollars.”*

- In this case, the evidence establishes that the accused assured the complainant that ‘documentation was ready’ before the complainant embarked on the journey. However, that was untrue. The accused and his partners showed a fake Canadian visa to the complainant and Mr. Adjei and collected the additional balance.

**In the case of Richard Kwabena Asiamah V. The Republic Criminal Appeal No. J3/06/2020 [2020] DLSC9911 - Justice Torkornoo (Mrs.), JSC stated:**

*The criminal enterprise of defrauding by false pretence requires these people to agree to get a third person, to give consent to part with or transfer the ownership of a thing. They may obtain the consent directly or through personation of another person. For the charge of achieving this purpose by false pretence to succeed, these*

*two or more people should have represented the existence of a state of facts, with the knowledge that such representation is false, or without the belief that it is true. They should also have made this false representation with an intent to defraud.*

- The complainant upon the representation of the accused, traveled to Kenya and got stranded there. The said documents were not ready when he got to Kenya. However, it was when he got to Kenya that the accused and his accomplices began the said processes and subsequently gave him his passport with a fake visa. The complainant upon receiving information of the other victims who were arrested at the airport, during transit, confronted the accused persons who then took the visa from his passport. The accused made a representation to the complainant when he had no ground or belief that the said representation was true. He did not provide any evidence to establish that he had any capacity to acquire a visa for the complainant or that genuine documents were presented to any embassy for a visa. The intention was not to aid the complainant in his travel process but to defraud him. The prosecution proved its case beyond reasonable doubt. A1 conspired with the other accused persons and defrauded the complainant. he is hereby convicted of the offences.

Sentence

Taking into account the plea in mitigation, the accused is hereby sentenced to pay a fine of 1500 penalty unit on each count or in default 12 months' imprisonment with hard labour. Sentence to run concurrently. He is ordered to refund the remaining balance to the complainant forthwith.

**(SGD)**  
**H/H EVELYN E ASAMOAH (MRS)**  
**CIRCUIT COURT JUDGE**