

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS THURSDAY THE 19<sup>TH</sup> DAY OF JANUARY, 2023 BEFORE HER HONOUR EVELYN E. ASAMOAH (MRS)

CASE NO.

D21/182/2021

THE REPUBLIC

VRS

RONALD KANZONI MPAH

D.S.P EVANS KESSE FOR THE REPUBLIC

MR. FELLI HOLDING MR YAW DANKWAH'S BRIEF ACCUSED PERSON

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## JUDGMENT

• It is the case of the prosecution that the accused sold a vehicle, with a tampered chassis number, and submitted forged car documents to the complainant. The accused person was charged with the following offences:

- Forgery of official documents contrary to section 158 of the Criminal and other Offences Act, 1960- Act 29 (2counts)
- Possession of forged documents contrary to section 166 of Act 29
- Defrauding by false pretences contrary to section 131(1) of Act 29.

•The facts are as follows: In October 2017, the second complainant bought a Toyota Venza vehicle with Chassis number 4T3ZA3BBPDO67654 from the accused at the cost of GHC 55,000 at Achimota-Mile 7 for personal use. Unfortunately, the vehicle was involved in an accident in the Suhum area while it was being driven to Tamale. As a result, the second complainant repaired the

vehicle and sold same to the first complainant at the total cost of GHC 70,000 through a car agent, a witness in this case. On 4th December 2018, the Ghana Revenue Custom Division, Sunyani headquarters impounded the vehicle from the first complainant for the offence of tampered chassis number and forged vehicle documents. On 5th December 2018, the first complainant reported the case to the Police for investigation. During investigations, the second complainant and his car agent, initially suspected, were arrested for investigation. On 19th April 2021, the second complainant led the Police to arrest the accused when he was lured to come for a car business.

- Investigations further revealed that the second complainant saw pictures of the car posted on tonaton.com by the accused person and he later contacted him in Accra to buy the car. The second complainant did not get his choice of car at the accused garage. However, the accused person with the intent to defraud brought the Toyota Venza vehicle without its duty paid and convinced the second complainant that he could use GHC 5000 to pay for the duty and get genuine vehicle documents for him. Based on this representation, the accused person valued the vehicle at the cost of GHC 55,000. The second complainant paid GHC 30,000 and added his personal Camry car valued at GHC 25,000 to the accused person. The accused to actualize his false representation collected GHC 5000 from the second complainant to pay the vehicle duties.

A few days times, the accused person forged Ghana Revenue Custom Division vehicle declaration document, DVLA documents, and the vehicle registration number plate CR 430-17 and handed them to the second complainant. The first complainant paid GHC 40,000 duty and penalty on the vehicle to the Customs division to get the car. The accused person admitted the offences and informed the police that the forged documents were prepared by a man who works around DVLA Accra but failed to lead the police to the said man. The accused

has refunded GC 5000 as part payment of the duties and penalties paid but failed to refund the balance.

Section 158 of the **Criminal and other Offences Act 1960, Act 29** states:

*(Forgery of judicial or official document) - A person who, with intent to deceive any other person, forges a judicial or an official document, commits a second-degree felony.*

Section 166 of Act 29: (Possessing forged document)

*A person who with an intent mentioned in this chapter has in his possession a document or stamp, which is forged, counterfeited or falsified, or which that person knows is not genuine, commits a criminal offence and is liable to be punished as if that person had, with that intent forged, counterfeited or falsified the document or stamp.*

Section 132() of the Criminal and other Offences Act 1960, Act 29 states:

*"A person defrauded by false pretences if, by means of any false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of anything."*

Defrauding by false pretence is defined by section 133 (1) of Act 29 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 belief that it is true and made with intent to defraud."*

- The first prosecution witness, PW1, testified that he bought the car from Effah and Co. Motor Accra at the cost of GHC 70,000. He was given the registration and customs documents covering the car. On 4th December 2018, he was intercepted by a GRA custom division official and he was made aware that the

document covering the car was forged. He paid an amount of GHC 36,855 as duty and penalty before the documents were regularized.

According to the investigator, the police extended investigations to the DVLA office in Accra and they received an official report on a search conducted on the validity of the car documents and the number plate. They also received the full investigative report on the impounded vehicle.

In the case of **Frimpong Alias Iboman Vrs. The Republic (2012)1 SCGLR 297**, the court held:

*“The prosecution has a duty to prove the essential ingredient of the offence with which the appellant and the others have been charged beyond any reasonable doubt. The burden of proof remains on the prosecution throughout and it is only after a prima facie case has been established i.e. a story sufficient enough to link the appellant and the others to the commissioning of the offence charged that the appellant, therein accused is called upon to give his side of the story”*

- After the case of the prosecution, the court ruled that a prima facie case had been established and called upon the accused to open his defence.

The accused in his witness statement asserted: In 2017, the complainant wanted to buy a Toyota Venza vehicle but he did not have one so he contacted another car dealer who gave him the vehicle. According to him, the dealer informed him that the import duties and other taxes had not been paid and that the vehicle was not registered. The accused stated that he conveyed that information to the complainant. The complainant offered to buy the car at a reduced price of GHC 35,000 taking into consideration the amount to be paid as taxes at a later date,

instead of the market price of GHC 95,000. The agreement was that the complainant was to pay the taxes thereafter. He assisted the complainant to get an agent at the DVLA to get the necessary document- and drive the car to Tamale. That the complainant solely engaged the agent in his absence to help him get the necessary documentation and that the complainant paid the agent directly without his involvement. The complainant instructed the agent to hand over the documents to him because he was not available. According to the accused, the documents did not include the DVLA documents and customs exercise and preventive service vehicle declaration documents tendered by the prosecution.

- ***Contradictory statements-*** This evidence is contrary to what he stated in his caution statement. In his caution statement he indicated that after the complainant made the payment, he contacted a man who works at DVLA “to assist with the process for the payment of the duties and other vehicle documents.” He added that the said man brought to him “the documents of the vehicle” which he gave to the complainant. The accused further stated in his caution statement that he “did not check the documents... to know if they are genuine or not...”. The accused asserted that he was not in the right state of mind when his caution statement was taken.

This is an excerpt of the cross-examination of the accused:

...

*Q: You remember when you were arrested at the police station, you volunteered a statement which is in evidence, marked Exhibit E – Do you remember?*

*A: Yes. The statement that was made at the police station on that day was not voluntary in the sense that I was not in my right state of mind. I was under*

*extreme duress when I was arrested. I was arrested around 10:30 am – 11:30 am in my home. I had a six-month-old daughter and a four-year-old son in the house. I was sent to the police station and my phones were seized. I was locked up till 5:00 pm when I was brought out to write my statement...*

*...*

*Q: I put it to you that per what you said on line 25 of Exhibit E – the caution statement contradicts paragraph 14 of your witness statement. You were the one who procured the document?*

*A: There is no such document as the DVLA document. I had no such document with me and I do not know how those documents came about.*

*Q: Do you agree that you sold the Toyota Venza to Abdul Mugis?*

*A: Yes.*

*Q: It was upon the arrest of Abu Abdul Mugis that he led the police to arrest you as the one who sold the car to him.*

*A: Yes.*

The caution statement was taken before an independent witness who certified that the statement was voluntarily given by the accused and same was read and explained before he approved it. The accused in his caution statement gave a detailed account of the incident. He could not lead any evidence to prove his allegation that the statement was taken under duress.

- The accused admitted that he sold the car to the complainant and later gave the complainants the DVLA and Custom documents covering the car. The accused, contrary to what he stated in his caution statement, alleged that the documents tendered in evidence by the prosecution were not part of the

documents he gave to the complainants. However, he failed to tender the said documents in evidence. His evidence was not consistent.

In the case of **Obeng V. Bempomaa (1992-93) GBR 1027**, the Court held:

*“Inconsistencies ... may cumulatively discredit the claim of the proponent of the evidence. The conflicts in the evidence ... weakened the merit of his case and proved fatal to his claim”.*

In the case of **Okpara V. The commission of police (1963) 1GLR 31** the court held:

*“It is therefore essential that for a charge under section 166 of the Criminal Code, 1960, to succeed it must be alleged in the particulars thereof, and it must be proved by evidence, that the person charged knew that the document in his possession is forged or that it is otherwise not genuine. Failure to prove that essential ingredient of the charge is fatal to the prosecution.”*

- The facts establish that the accused gave the complainants documents- (Exhibit B series) which were forged and he knew the documents were not genuine. He further alleged that someone he knows at DVLA gave the documents to him but failed to lead the police to the said persons.

The Ghana Revenue Authority (GRA) report – **Exhibit C2**- states that:

*“...the chassis number on the vehicle was 43ZA3BB9DU067654 there was evidence of tampering. The registration number as cross-checked from the database was GS 9898-13 and not CR 430-17 as found on the vehicle. The vehicle was thus found to be uncustomed and was liable to forfeiture...”*

The evidence discloses that, under the pretext of procuring genuine car documents for the complainant, the accused took an amount of GHC 5000 but he intended to deceive/ defraud. The accused sold a car with a tampered chassis number and submitted forged car documents- which he knew at all material times not to be genuine to the complainant. The prosecution proved its case beyond reasonable doubt, the accused is hereby convicted of the offences.

**Mitigation** – The accused has been punctual and he has conducted himself during the course of this whole trial. The accused had dependent children who are all under age. I pray for a lenient sentence. This is his first time. He is not known. I pray the court to temper justice with mercy.

The court takes into consideration the accused person's plea in mitigation, that he is first time offender. Accused is hereby sentenced to pay a fine of 400 penalty unit on each count or in default 30 days imprisonment with hard labour.

He is ordered to pay the balance of GH¢31,855.00 to the complainant - (duty and penalty) and compensate the complainant with an amount of GH¢5,000.00. Sentence is run concurrently.

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