

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS TUESDAY
THE 17TH DAY OF JANUARY, 2023 BEFORE HER HONOUR EVELYN E.
ASAMOAH (MRS)

CASE NO. D6/53/2022

THE REPUBLIC

VRS

1. REV. EDWARD BUABENG

2. WILFRED BROWN

3. AUBREY DES-BORDES MENDS

CHIEF INSPR BENSON BENNEH FOR THE REPUBLIC

MR AMEYAW NYAMEKYE FOR ACCUSED

JUDGMENT

●The accused persons were charged with the offence of conspiracy to commit a crime to wit defrauding by false pretences contrary to sections 23(1) and 131(1) of the Criminal and other Offences Act, 1960- Act 29. They were charged with the offence of defrauding by false pretences (172 counts) contrary to section 131(1) of Act 29. They pleaded not guilty. A3 is at Large.

● The facts are that: The accused persons are a pastor, an accountant, and a businessman respectively. In July 2018, the complainant and his wife invested USD 7,000 and USD 6000 at the career link markets company limited in Dansoman operated by the accused for three months with a 40% interest per month. The investment matured at the end of October 2018. The company failed

to refund either the principal or the interest to them. Several efforts made to retrieve the monies proved futile and the accused persons went into hiding. A formal complaint was lodged at the Dansoman police station.

Subsequently, more customers numbering over a hundred who also invested various sums amounting to GHC 1,193,136 and USD 185,408 with the company came to lodge a similar complaint against the accused persons. The accused persons were arrested and detained for investigation. The accused admitted the offence in their caution statements and stated that they have enough funds to refund the customers but have since failed to honor their promises. However, investigations further revealed that the company, though registered at the Registrar General's department, was not given a license by the Security and exchange commission to operate such a business. During investigations, an amount of GHC 115,000 was brought by the accused persons and same was disbursed to the complainant and six others.

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

"A person defraud 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."

In the case **Blays V. The Republic (1968) GLR 1040**, the Court held:

"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 futuro there was sufficient false pretence on which a conviction could be based... To defraud was to deprive by deceit or to induce a cause of action by deceit."

- Prosecution called thirteen (13) witnesses. The first prosecution witness stated, in her witness statement, that in the year 2018, her friend introduced her to the TCL Market Ghana Limited. The accused instructed her to deposit the money in their GN bank account as a deposit to initiate her account. In August 2018, she deposited GHC 30,800 with the username LADYTED on their investment account. They entered an agreement that after three months and 21 days, the maturity value will be paid to her. The accused refused to either pay her deposit/principal after several promises. The accused assured her of insurance on the deposit and that her money -was 100% assured in any circumstance. That the accused have shown no effort in paying her money to her. PW1 stated during cross-examination that the accused persons are the directors of the company. The second prosecution witness asserted that the accused instructed him to deposit his money in their access bank account to initiate his account so he deposited GHC 15,000. According to the complainants accused have shown no effort in paying his money. PW2 during cross-examination stated:

"The investments were in packages so I choose an advanced plan for three months with an interest of 40%."

The other prosecution witnesses in their testimony stated the various amount they deposited in the various bank accounts furnished to them by the accused, the maturity date of their investments, the fact that an online platform account was created for them, that the accused persons have refused to pay the principal and the interest et cetera.

The investigator in this case – PW13 alleged that on 14th January 2019, A2 took the Police to the office of TCL where A2 submitted the company's documents such as a certificate of incorporation, certificate to commence business, and other documents from the Registrar General's department but failed to produce any document from the Security and Exchange Commission to start the business. During interrogations and deliberations, the accused persons pleaded for more time to refund the sums of money to the complainants. According to the investigator, Investigations revealed that A1 was the managing director, A2 was the accountant, and A3 was the operational manager of the company.

● **Representation.** The facts reveal that the accused did advertise on the internet an investment package to the public to invest their money with an interest, rate of 30-40%- within 3 months. They directed the complainants to visit their website and complete all required forms. An online platform (**Exhibit D**) was created for the complainants to register- <http://tclmarketsgh.com>.

PW7 explained the modus as follows:

“TCL usually, had everything programmed online. You do not have access to a pen to sign. You click online to terms and agreement and me that is the signature. We are in the modern world. It's not everything that you need to sign”.

Based on the representation of the accused the complainants paid various sums of money into the account of the company given to them by the accused – TCL market Ghana limited at Zenith bank, GN bank, and Access bank. **Exhibit B and B1** show that the company had foreign currency accounts at Zenith bank and Access bank in which the complainants deposited their dollars.

Conference -The accused organized a conference at one of the branches where the general public was sensitized about the said investment and interest. Some of the complainants, after the conference, based on the representation of the accused that they will receive about 40% interest on their investment after 3 months, deposited their money in the various bank accounts of the accused.

Meetings – It is evident that the complainants met the accused, at the office located in Dansoman, where they were assured that the deal was genuine and given further explanation and instructions. The complainants were informed by the accused and other staff that the company was affiliated with another company outside the country and that the company was engaged in other businesses. PW5 during cross-examination stated:

“I was not convinced so I went to the office in person. On 29th June 2018, I went to see A1 and I spoke to him about this investment that my colleagues introduced me to. He assured me that my coming to the office is the right decision and that their office and business is registered. A1 assured me that any investment I will do is with no fear and I will never regret it... I was not convinced because of the 40% but about the fact that the investment is in dollars. A1 told me the monies are used in Forex trading and some businesses which brought about 40%”.

Illegitimate Scheme- The accused knew at all material times that they had no license to operate the said business. However, they took various sums of money from the complainant under the pretext of giving them 30-40 % interest.

A2 in his caution statement dated 11th January 2019 indicated that they do not have the license to operate and that they applied to the Security and Exchange Commission for a license. He further added that they started operating the

business online where clients registered and made payments to their various bank accounts. He again stated that the company is being investigated by the Economic and Organized Crime concerning their operations.

The accused persons were called upon by the court to open their defence after the prosecution closed its case.

First Accused(A1)

- The first accused (A1) in his caution statement dated 10th January 2019 referred to the complainants as his clients/investors and indicated that he is the chairman of the company. He also admitted to taking various sums from the complainants. He stated:

“...this morning concerning a complaint lodged by some clients/ investors of TCL Market Ghana limited, which I am a chairman. The complaint involves delayed payment of their due investment which the company is putting structures to execute payment in the shortest possible time...”.

A1 in his witness statement asserted that: He knows some of the complainants and he is also a co-director and chairman of the company TCL- The Career link market limited. That the company was introduced to him in late 2017 by the 3rd accused who was then resident in South Africa. That the mother company stationed in South Africa had the intention of opening a branch in Ghana to introduce people to the trading platform. He opted for registration of the company at the Registrar General Department. They had discussions with the Bank of Ghana as to the requirements wherefore they were directed to the Security and Exchange Commission (SEC). Their application with SEC is still receiving attention on their desk. In August 2018, the Bank of Ghana published its name, among others, warning clients not to transact business with them. This

was done without any notification to them and it led to panic withdrawal. That the investments were done at the volition of the investors and they were never tricked into same. That the clients of TCL were more convinced because they had a physical structure in the form of an office with pictures embossed in sharp contrast to some online operators. That they encountered a setback from their mother company when as a result of the global crisis their payments were not forthcoming. A1 did not lead evidence to establish that there is a mother company and that they encountered any setbacks.

The Second Accused -A2

He alleged that he is an employee of the company; an accountant. That his major role was to ensure that the company met all statutory requirements of the State. He helped register the company. Other statutory requirements were followed such as opening a file at the Ghana Revenue Authority and SSNIT. In pursuit to obtain a license of accreditation, they had a discussion with the Bank of Ghana where they were directed to the SEC. At SEC, they were made to buy a form to enable them to know what was required and they met all the requirements. He was one of the staff who benefited from the training at the Ghana Stock Exchange- which was a basic requirement.

● **Corporate Veil.** – It is the case of the prosecution that the accused persons herein are the operators of the company. A1 indicated that he is a co-director and A3 is the accountant of the company.

In *Morkor v. Kuma (No.1) [1999-2000] 1 GLR 721*, page 733 Justice Akuffo JSC (as she then was) stated:

“The corporate barrier between a company and the persons who constitute or run it may be breached only under certain circumstances. These

circumstances may be generally characterized as those situations where in the light of the evidence, the dictates of justice, public policy or Act 179 [now Act 992] so require. It is impossible to formulate an exhaustive list of circumstances that would justify the lifting of the corporate veil. However, the authorities indicate that such circumstances include where it is shown that the company was established to further fraudulent activities or to avoid contractual liability...."

"Nevertheless were there any proven factors driving the case, such as fraud, improper business conduct, deliberate attempts at evasion of legal obligations, or other devises or willful misdeeds on the part of the appellant, which would have justified the lifting of the veil in order to reach the appellant for redress?"

- In the case of **The Republic Vs Managing Director Alliance Motors Ltd** **Exparte: Joana Ewurabena Ocran** Suit No. H1/103/2019 -28th May 2020 Court of Appeal Justice Mensah, JA stated:

"There may be generally, 4 accepted conditions contingent upon which the veil may be lifted. These are:

where the company was set up for purpose of perpetuating fraud; ii) where there is a failure to observe corporate formalities or there is deliberate and conscious effort to avoid legitimate contractual obligations of the company;

1. where the company is undercapitalized and facing insolvency; ... and iv) where the company is formed purposely to evade tax or is evading taxes.

*In the United States, the case **Baatz v. Arrow Bar**, 452 N.W.2d 138, 141 (S.D. 1990) illustrates the rule that veil piercing may be done where*

the corporation is the mere “alter-ego” of its shareholders; or where it is undercapitalized; or that there is a failure to observe corporate formalities; or where the corporate form is used to promote fraud, injustice or illegalities. At common law, the eminent jurist Lord Denning posits, incorporation does not fully “.....cast a veil over the personality of a limited company through which the courts cannot see. The courts can, and often do, pull off the mask. They look to see what really lies behind.”

The law Lord explains further: “A corporation will be looked upon as a legal entity as a general rule but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime the law will regard the corporation as an association of persons.”

- In this case, the facts presented by the prosecution revealed that the accused did represent to the complainants that they would get about 30- 40 % interest on their various investments after a specific period. There is no indication that the company had the capacity to pay such an amount. None of the complainants receive the said benefit of 40 % interest or principal. The accused took millions of cedis from the complainants but the total amount guaranteed/insured at Enterprise Insurance was GHC 20,000 (Exhibit 10). They failed to take all the required steps to obtain a license from SEC. These factors point out that the intention was to operate any financial/ investment institution but to defraud the complainant.

Based on the representation made by the accused, the complainants parted with various sums of money.

A2, as indicated by the prosecution in the fact/ testimony, is the accountant of the company. *Exhibit 12* indicates that he was employed by the company as the risk

and compliance manager on 12th February 2018. PW13, the investigator admitted that A2 is an employee/accountant of the company. There is no evidence on record that he made any representation to the complainants or conspired with the other accused to defraud the complainants. A1 and A2 are hereby acquitted of the offence of conspiracy (count 1). A2 is hereby acquitted of all the other offences/charges.

A1 as the director and owner of the company met some of the complainants, directed them to pay the money into the various accounts, and made false presentations to them. The court finds that the prosecution established its case - in respect of A1 beyond reasonable doubt. He is hereby convicted of the offences. Taking into account the plea in mitigation of A1 that he is a first time offender, he is hereby sentenced to eight (8) years imprisonment in hard labour on all the counts (172) - Defrauding by false pretence. Sentence to run concurrently. A1 is ordered to refund the money to the complainants.

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