

**IN THE CIRCUIT COURT '1' HELD AT ADENTAN ON THURSDAY, 18<sup>TH</sup> MAY, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE**

**CASE \_\_\_\_\_ NO.**

**CC028/2023**

**THE REPUBLIC**

**VRS**

**GEORGINA MAJOR**

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ACCUSED PERSON PRESENT

DSP PATIENCE EGYEPONG HOLDING THE BRIEF OF CHIEF INSPECTOR ANIM DARKO FOR THE REPUBLIC PRESENT

OLIVER SUSULI, ESQ. COUNSEL FOR THE ACCUSED PERSON PRESENT

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**JUDGEMENT**

The Accused person was first arraigned before this Honourable Court on the 17<sup>th</sup> October, 2022 charged with the offence of Defrauding by False Pretence contrary to section 131 of the Criminal Offences Act, 1960 (Act 29). Upon her arraignment before this Court, the Accused person pleaded Not Guilty to the charge and submitted herself to full criminal prosecution.

**THE FACTS OF THE CASE**

The complainant was a mobile money vendor at Adenta SSNIT Flats whereas the Accused person was a trader and resided at Adenta Village. On the 3<sup>rd</sup> August, 2022, the Accused person visited the mobile money shop of the complainant to transact mobile money business. The Accused person stated that her brother, one Emmanuel who resided in Kumasi wanted to send her GH¢100.00 through a

mobile money vendor since she had issues with her phone. The Accused person convinced the complainant to give out her mobile money merchant number to be given to the said Emmanuel to transfer the money. After several persuasions, the complainant reluctantly gave out the merchant number to the Accused person which she communicated to the brother. Investigations disclosed that the said Emmanuel called the Accused person and informed her that he had sent the money through ZEEPAY to the merchant number given. The complainant who did not know how ZEEPAY worked engaged the said Emmanuel via voice call on Accused person's phone to take her through the process to withdraw the GH¢100.00 for the Accused person. On completion of the transaction, the complainant detected that cash sum of GH¢11,077.00 had been remotely and electronically withdrawn from her merchant account by the said Emmanuel. The Accused person was arrested and handed over to the police. During investigations, the Accused person failed to disclose the whereabouts of the said Emmanuel. Investigations disclosed that the Accused person engaged in several voice calls with the said brother and after the incident.

The prosecution in discharging the burden placed upon it called two (2) witnesses as PW1 and PW2.

The testimony of PW1 (Lawrencia Kyei Abbas) confirmed the facts as presented by the prosecution. PW1 added that when she told the Accused person that she did not know how to use the ZEEPAY to withdraw the money for her, the Accused person called his said brother Emmanuel. According to PW1, brother Emmanuel begged her to withdraw the money for the Accused person and gave her a code 1720 to dial on her merchant number to withdraw the money which

she did. Immediately she did, an amount of GH¢11,077.00 was withdrawn from her merchant number.

PW2 (No. 49299 Detective Corporal Richard Atsu Dzidah) investigated the case. PW2 relied on his Witness Statement and tendered in evidence the Cautioned Statement, Charge Statement and MTN Itemized Bills without objection from the Defence Counsel and marked as Exhibits 'A', 'A1' and 'B' respectively.

After the close of the case of the prosecution, this Court decided on whether or not a prima facie case had been made out against the Accused person. In the case of The Republic vrs District Magistrate Grade II, Osu, Ex parte Yahaya [1984-86] 2 GLR 361-365, Brobbey J (as he then was) stated that:

*"...evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence."*

As enjoined by law, the Court evaluated the evidence adduced at that stage of the trial and held that the prosecution has made out a prima facie case against the Accused person. Consequently, this Court invited the Accused person to enter into their defence.

### **THE CASE OF THE DEFENCE**

The Accused person in opening her defence testified herself in open court and called no witness. Neither did the Accused person tender any exhibit in evidence.

Led in evidence by her defence counsel, the Accused person told the Court that

she sells fruits. It is the case of the Accused person that on the 3<sup>rd</sup> August, 2022, she was hawking and received a telephone call from her cousin by name Emma. That the said Emma asked how she and the children were faring and she answered that they were doing well. According to the Accused person, the said Emma told her he wanted to help her money and so she asked him of the kind of help he wanted to offer her. Emma told her if there was a Mobile Money Vendor nearby she should give her phone to the vendor so that he can speak with the person and send money to her through the vendor's number. So, she approached the vendor and she took her phone and spoke with the said Emma. The Accused person told the Court that she did not hear the conversation that went on between the complainant and Emma. That she was waiting to receive the money and also saw the complainant using the phone to carry out the transaction. The Accused person told the Court that two (2) elderly people near her advised the complainant not to give out her code. That the complainant told her that her money had been stolen from the phone so she should accompany her to the Police Station. It is the case of the Accused person that at no point in time did she handle the complainant's phone and code because she did not know how to operate the phone apart from using it to receive calls.

The legal issue that emerged for determination in this case is whether or not the Accused person used false pretence to obtain the consent of the complainant to part with her Merchant SIM Details to her brother resulting in the loss of cash the sum of GH¢11,077,00.

### **BURDEN OF PROOF**

The requirement of the law per Article 19 (2) (c) of the 1992 Constitution is that a person charged with a criminal offence is presumed innocent until he is proved guilty or he pleads guilty. The article reads:

(2) *“A person charged with a criminal offence shall -  
(c) be presumed to be innocent until he is proved or has pleaded guilty”*

The burden of proof in a criminal action therefore totally rests on the prosecution. The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the accused beyond reasonable doubt, there is no such burden on him to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

In *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”.*

### **THE LAW AND EVALUATION OF EVIDENCE**

Section 121(1) of Act 29 provides that:

*“A person who defrauds any other person by a false pretence commits a second degree felony.”*

The offence of Defrauding by False Pretence 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.”*

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.

In Republic vs Selormey [2001-2002] 2 GLR 424, the Court stated the following ingredients in an offence of defrauding by false pretences:

*“A person shall make a false representation or by a personation either by written, spoken or sign language or any other means whatsoever; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was false or made without the belief that it was true; as a result of the false representation the accused person caused the other person to part with or transfer ownership of a thing.”* See also Sarpong vs The Republic [1981] GLR 790; Adobor vs The Republic [2008] 19 MLRG 23 CA.

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 Particulars of Offence under which the Accused person was charged reads as follows:

**“GEORGINA MAJOR, TRADER, AGED 34:** For that you, on 03/08/2022 at Adenta in the Greater Accra Circuit and within the jurisdiction of this Court, did obtain the consent of one Lawrencia Kyei Abass, a mobile money vendor, to part with her mobile money merchant SIM details by means of certain false pretences namely; by falsely pretending that your brother one Emmanuel, resident in Kumasi was sending you money through ZEEPAY to the said merchant SIM details to be withdrawn and upon such false representation, you succeeded in causing the said Emmanuel to electronically and remotely withdraw an amount of GH¢11,077.00 from Lawrencia Kyei Abass mobile money account, which statement you well knew at the time of making to be false.”

Throughout the trial, the Accused person denied defrauding the complainant by false pretences. The question the Court would like to ask is; Did the Accused person use false pretence to obtain the consent of the complainant to part with cash the sum of GH¢11,077.00? That is, did she have the intent to defraud the complainant? The House of Lords, in the case of *Welham vrs 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 there include an intent to deprive another person of a right, or to cause him to act in any way to his detriment .....'*

Also, in the case of Asiedu v. The Republic [1968] GLR 1-8, Amisah J.A. stated and I quote:

*"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".*

From the entirety of the evidence adduced at the trial, it is obvious that the Accused person did not handle both the personal phone and the Vendor Merchant phone of the complainant. It is also established that the complainant did not share her Merchant Momo Code with the Accused person. What is also not in dispute is the fact that the complainant knew how confidential the Momo Code was and had been in the Momo business for five (5) years. The complainant also spoke with the said Bro. Emma through the mobile phone of the Accused person. The following is what happened when the defence counsel cross examined PW1 and PW2 on the 28<sup>th</sup> April, 2023 and 4<sup>th</sup> May, 2023:

**Cross examination of PW1 by the defence counsel on the 28<sup>th</sup> April, 2023:**

*Q. Do you know the Accused person?*

*A. Yes, My Lord.*

*Q. How do you know her?*

*A. She sells water melon and we buy from her.*



*Q. Did you know anything about her that made her a person of bad repute of her before?*

*A. No My Lord.*

*Q. Before the day of this transaction, had the Accused person transacted any business with you?*

*A. No My Lord.*

*Q. You have been doing this Momo business for some time now. Not so?*

*A. That is correct.*

*Q. How long have you done that?*

*A. About 5 years.*

*Q. You know it is true if you registered your business number there is a code that nobody is supposed to know. Is that correct?*

*A. That is correct.*

*Q. It is part of the terms that nobody should know this code. Is that correct?*

*A. That is correct. It is not the Momo vendor code that I gave to the Accused person. I gave my personal phone number to the Accused person.*

*Q. So there is a code for that number. Is that correct?*

*A. That is so.*

*Q. Did you give her that code with the number that day?*

*A. No My Lord.*

*Q. So it is within your knowledge that no money can be withdrawn from your personal number without the code.*

*A. Yes, My Lord. The Accused person's Emma sent GH¢105.00 to my personal number I gave to the Accused person. After the money was transferred, it indicated ZEEPAY. I*

*told her the ZEEPAY is for foreign transactions and I have not done that before. So, she called the man Bro Emma and I said I will not do it because I had not done it before. So, the Accused person told Bro. Emma that her 2 children will not get food to eat after school because I said I will not do it. When I said that Bro. Emma asked her to beg me because I am a mother. But later I did it for the Accused person. So, I transferred the money from my number to the Agents Momo vendor number and to my surprise all the money disappeared from the Momo Vendor Agent Number.*

*Q. So you transferred the ZEEPAY from your personal number to your own Agent Momo Number.*

*A. That is correct.*

*Q. You never transferred any money to the number of the Accused person. Did you?*

*A. No My Lord. She told me she had no Momo Number.*

*Q. You never transferred money back to Bro. Emma's number.*

*A. Yes, My Lord.*

*Q. After the alleged monies went missing, did you consult the Service Providers. Did you consult them?*

*A. Yes, My Lord, I did.*

*Q. What did they tell you?*

*A. I told MTN that someone did transaction with me and that all my money disappeared from my phone. MTN asked of the number and I was told the person had taken money away.*

*Q. Did MTN tell you the name of the subscriber of that number?*

*A. No name was mentioned to me.*

*Q. Can you tell the court if the Accused person knows the code of your Agent Momo Number?*

*A. No My Lord.*

*Q. I suggest to you that out of your own negligence, lack of due diligence or some electronic transaction mishap, you may have lost your money and just looking for someone to blame it on, and knowing that she is a poor hawker and vulnerable as she is, you are blaming her for your own fault.*

*A. It is not true. If I didn't know her, I wouldn't have done it. Because she told me her children will not get food to eat, I did it for her. She also told me that the sender of the money was her brother Bro. Emma. I even spoke to Bro. Emma and he confirmed it before I did the transaction.*

**Cross examination of PW2 by the defence counsel on the 4<sup>th</sup> May, 2023:**

*Q. Tell the court how long you have been in the Investigation Department?*

*A. Since 2018.*

*Q. That will make you 5 years.*

*A. That is correct.*

*Q. You know in criminal prosecution the standard of establishing the guilt is the evidence beyond reasonable doubt?*

*A. It is correct.*

*Q. Do you know that the burden on the prosecution is one of proof beyond reasonable doubt?*

*A. That is correct.*

*Q. You are aware that codes to merchant numbers are private and can only be known to the merchandiser.*

*A. I am aware.*

*Q. Are you also aware that no withdrawals can be made from that platform by a person who does not know the code?*

*A. I am not aware of that.*

*Q. I suggest to you that as conditions for the use of such number it is true that the code is kept confidential not to be known by any other person.*

*A. I cannot say whether a third party can see it or not.*

*Q. Would you say categorically that that code is known to the Accused person per your investigations?*

*A. It never came up in my investigations.*

*Q. By your investigations, do you know that the Accused person never transacted business with the merchandiser?*

*A. That is correct.*

*Q. You are also aware that at a point in the transaction, there was no point that the Accused person handled any of the gadgets or numbers or codes of the Accused person.*

*A. I am aware My Lord.*

*Q. Is it correct to say that all the documents you have prepared have no relationship with the Accused person at all?*

*A. Not correct.*

*Q. I suggest to you that you have brought the Accused person here knowing very well that she is not related to the charge.*

*A. Not true My Lord.*

*Q. I suggest to you that you brought the Accused person to court knowing very well that she is vulnerable and you intended to execute the soul of the poor woman.*

*A. Not true My Lord.*

In her Cautioned and Charge Statements given to the police on the 3<sup>rd</sup> August, 2022 and 5<sup>th</sup> August, 2022 which were admitted in evidence and marked as Exhibits 'A' and 'A1', the Accused person flatly denied defrauding the complainant by false pretence. For the avoidance of doubt, let me reproduce the content of Exhibits 'A' and 'A1' below:

Cautioned Statement of Accused person:

*"I am a trader who hawks mangoes. At about 11:30am that day I was hawking when unknown number 0545895172 called to say that he is my brother named Emma. I confess that I have a brother called Emma. He stated that he wanted to send some money to buy food for my kids. As such I should visit a Momo vendor for him to speak with to send the money. I visited the complainant who usually buys from me and told her the story. She refused at first but I persisted and she agreed to speak with Emma. After their conversation I do not know what happened but the vendor begun screaming that her money had been withdrawn from her phone and that I am the cause. She arrested and brought me to the station. I state that I have no knowledge of any fraud I am accused of."*

Charge Statement of Accused person:

*"I state that I only went to the complainant on the instructions of Emmanuel who I thought to be my brother through a phone call on phone No. 0545895172 to send the vendor with cash of GH¢105 from his account for me. I believed the caller to be my brother. While with the vendor she spoke with the caller through my phone but I do not know what they discussed. Few minutes later she said her cash of over GH¢12,000..... had been withdrawn from her merchant phone that I am the cause, hence my arrest"*

In her defence in open court, the Accused person was consistent and did not depart from her earlier statements to the police as contained in Exhibits 'A' and 'A1'. The answers and evidence elicited from the Accused person under cross examination were not discredited. If indeed the Accused person had the intent to defraud the complainant, why would she be with the vendor whilst the withdrawal was being made by the said Bro. Emma? More so, the complainant knew the Accused person to be a fruit seller before the incident happened. The

Accused person did not also receive the money the said Bro. Emma promised sending to her through complainant's Momo Account.

A careful perusal of the Itemized Bills from MTN which was tendered in evidence and marked as Exhibit 'B' does not show that the Accused person engaged in several voice calls with the said Bro. Emma before and after the incident as PW2 would want the Court to believe.

At this juncture, I will make a determination of this instant case by relying on the case of *The State vrs Sowah & Essel* [1961] GLR 743-747, where the Supreme Court stated at holding 2 as follows:

*"(2) in the instant case the defence put forward by the two accused left the judge with three possible positions, namely (i) if he accepted their explanations he must acquit them; (ii) short of accepting their explanations if he was left in doubt he must also acquit them; and (iii) he must be satisfied of their guilt of the crimes alleged against them only on consideration of the whole evidence adduced in the case ....."*

Upon a careful evaluation of the evidence of the prosecution and that of the defence, I accept the story of the Accused person as against that of the prosecution. In the humble view of this Court, the prosecution has failed to prove its case against the Accused person beyond reasonable doubt. The Accused person was only a victim of circumstance. In the circumstances, I hereby acquit and discharge the Accused person, herein, Georgina Major.

.....  
**ISAAC ADDO**

**CIRCUIT JUDGE  
18<sup>TH</sup> MAY, 2023**