

**IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2',
ACCRA ON WEDNESDAY, 23RD AUGUST, 2023 BEFORE HIS HONOUR
ISAAC ADDO, THE CIRCUIT COURT JUDGE**

CASE NO: D2/267/2023

THE REPUBLIC

VRS

- 1. BONDZE FLORENCE ADOFO**
- 2. ABDULAI HASHIM**
- 3. ALHAJI TAMINU @ LARGE**

1ST & 2ND ACCUSED PERSONS PRESENT

INSPECTOR CYRUS CONDUAH, ESQ. FOR THE REPUBLIC PRESENT

**BENEDICT ASHIDAM, ESQ. LED BY MUMIN MASHOOD, ESQ. HOLDING
THE BRIEF OF ATINGA AYAMGA, ESQ. FOR THE 1ST ACCUSED PERSON
PRESENT**

SANI RASHEED, ESQ. FOR THE 2ND ACCUSED PERSON PRESENT

**RULING TO DETERMINE WHETHER OR NOT A PRIMA FACIE CASE HAS
BEEN MADE OUT AGAINST THE ACCUSED PERSON**

The names of three (3) Accused persons appear on the face of the Charge Sheet that was filed before this Court on the 20th March, 2023. However, only the 1st and 2nd Accused persons appeared in Court to face prosecution. The 3rd Accused person is at large. The three (3) Accused persons were charged together with the offences of Conspiracy to commit crime to wit Defrauding by False Pretences and Defrauding by False Pretences contrary to sections 23(1) and 131 of the Criminal

Offences Act, 1960 (Act 29). The 2nd Accused person was charged with the offence of Dishonestly Receiving contrary to section 146 of Act 29.

On their arraignment before this Court differently constituted on the 23rd March, 2023, the 1st and 2nd Accused persons pleaded Not Guilty to the charges. In the case of Republic vrs 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 FACTS OF THE CASE

The complainant, Chief Haruna Saley is a Forex Bureau operator, the 1st Accused person is a trader, the 2nd Accused person, Abdulai Hashim and the 3rd Accused person, Alhaji Taminu are business partners. On the 22nd November, 2022, the 1st Accused person contacted one Police Officer, Corporal Thompson Abraham Ntosour on phone and told him that she had USD45,000 readily available and wanted someone who could buy with Cedis. The police officer then introduced

the 1st Accused person to the complainant and they agreed on GH¢652,000.00 for the USD45,000. The complainant together with the Police officer met the 1st Accuse person at SIC Mall Car Park, Makola-Accra, and the complainant handed over GH¢652,500. The 1st Accused person after receiving the Cedis, demanded that the complainant should wait behind whiles the police officer accompanied her to Opera Square, Accra to get the USD45,000 for the complainant. When the 1st Accused person and the police officer got to Opera Square, the 1st Accused person asked the officer to wait behind the office whiles she goes inside the said office to bring the USD45,000. The 1st Accused person entered the said office and came out with neither the USD45,000 nor the complainant's Ghana Cedis. The 1st Accused person deceitfully told the police officer that the 2nd Accused person after collecting the Cedis could not raise the USD45,000 and that they were expecting some dollars in no time. The police officer then escorted the 1st Accused person to the SIC Mall Car Park to narrate the story to the complainant. At the car park, the 1st Accused person told the complainant that the 2nd Accused person would soon bring the anticipated US dollars. The complainant waited for a while and when the money was not forthcoming, he became suspicious and quickly arrested the 1st Accused person to the Accra Central Police Station and lodged a complaint. At the Police Station, the police retrieved an amount of GH¢45,000.00 from the 1st Accused person and subsequently released same to the

complainant. During investigations, the 1st Accused person told police that her representations to the complainant was based on a promise she received from the 3rd Accused person who works with the 2nd Accused person.

The prosecution in establishing its case called three (3) witnesses to testify in support of its case. The testimony of PW1 (Chief Haruna Saley) and PW2 (No. 46709 Corporal Thompson Abraham Ntosour) confirmed the facts as presented by the prosecution. PW3 (Detective Inspector Frank Nti-Appiah) investigated the case. PW3 relied on his Witness Statements and tendered in evidence the Cautioned and Charge Statements of the 1st and 2nd Accused persons without objection from the defence counsel. At the close of the case of the prosecution, the court was enjoined to determine whether or not a prima facie case had been made out against the Accused persons to warrant them to enter into their defence. That notwithstanding, the defence counsel applied to file written submissions for consideration by the court, and this was granted. I have discussed this at the last paragraph on the last page of this judgement.

Sections 173 and 174(1) of the Criminal Offences (Procedure) Act, 1960 (Act 30) provides:

“173 Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.

174(1) At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the Court shall call on the accused to make the defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement.”

In the case of Michael Asamoah & Another vrs The Republic [2017] DLSC 2628 @ page 4, the Supreme Court speaking through Adinyira JSC stated the law on submission of no case as follows:

“The grounds upon which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial on indictment may be restated as follows:

There had been no evidence to prove an essential element in the crime;

- a) The evidence adduced by the prosecution had been so discredited as a result of cross-examination; or*

- b) *The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it;*
- c) *The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt and one with innocence. See also the cases of Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068; Affail v. The Republic [1975] 2 GLR 69; Apaloo and Others v The Republic [1975] 1 GLR 156-192; State v. Ali Kassena [1962] 1 G.L.R. 144, S.C.”*

This being a criminal case, the prosecution bears the burden of proof to establish the guilt of the accused person beyond reasonable doubt as per sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323) and also as was stated in the case of Bruce-Konuah v. The Republic [1967] GLR 611 – 617, where Amissah J.A. stated thus:

“Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the accused person’s guilt is on the prosecution.”

THE LAW AND EVALUATION OF EVIDENCE

COUNT ONE (1): Conspiracy to Commit Crime:

Section 23(1) of Act 29 provides:

“Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.”

The new definition of Conspiracy introduced by the Law Review Commissioner has limited the scope of conspiracy in Ghana. For conspiracy to succeed in Ghana, the prosecution must prove that the persons agreed to act together with the common purpose to commit the offence. It is however not a defence for an accused person who is charged for conspiracy to state that he did not have a prior or previous concert or deliberation with the other accused persons to commit the offence where there is evidence that they agreed to act together to commit the offence. Therefore, to found conviction for conspiracy, the prosecution has the duty to establish the following ingredients:

1. That the offence involved two or more persons;
2. That those persons agreed to act together; and
3. That they acted together with a common purpose, i.e. to commit a crime or do an unlawful act or a lawful act by an unlawful means.

In the Evidence-In-Chief of PW1, PW2 and PW3 per their respective Witness Statements, there is not a single evidence to establish the offence of conspiracy to defraud by false pretences against the 1st and 2nd Accused persons. In the Witness

Statement of the investigator (PW3) filed on the 8th May, 2023, the following is what he told the court at paragraphs 8, 9 and 10:

“8. Investigations revealed that A1 owed A2 an amount of Fifty Thousand US Dollars (\$50,000) and defaulted in re-payment.

9. A3 is an errand boy to A2 and a witness between A1 and A2 when the Fifty thousand US Dollars (\$50,000) was lend to A1.

10. A3 through A2 convinced A1 to come and pay the old debt and thereafter, A2 will then lend her an amount of Seventy thousand US dollars (US\$70,000).”

Also, from the facts of the case as presented by the prosecution, there is no evidence to establish that the 1st and 2nd Accused persons agreed to act together with a common purpose to defraud the complainant. In the circumstances, I acquit and discharge the 1st and 2nd Accused persons on Count 1.

COUNT TWO (2): Defrauding by False Pretences:

Section 131(1) of Act 29 provides:

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

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.

In the case of Republic vrs 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 vrs The Republic [1981] GLR 790, Adobor vrs The Republic [2008] 19 MLRG 23 CA.

Section 133 of Act 29, in defining false pretence, 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 complainant (PW1) in his Evidence-In-Chief told the court the following at paragraphs 8 to 19 of his Witness Statement:

“8. The police officer drove to Makola Mall car park and parked at the SIC car park. At the car park, he made a phone call and A1 Florence Bondze Adofo came to him.

9. The officer and A1 came to me and the latter told me that she would exchange my Cedis with her US Dollars.

10. A1 then demanded for my Six Hundred and Fifty-two Thousand, Five Hundred Ghana Cedis (GH¢652,500) but I told her that until I see the Dollars, I would not give her my money.

11. A1 told me that she could not carry the Dollars with her due to security reasons and that her shop was just a few metres away from where we stood.
12. I insisted that I would not give her the money until she brings the US Dollars. She then told me that she has to see her customer for the Dollars.
13. I told her that I would follow her to the said customer but she vehemently declined my request and added that she does not want me to meet her customer.
14. I reluctantly gave her the above-mentioned sum of money upon the request made by the said Police Officer. In fact, I trusted the presence of the police officer and that was the most reason why I gave the money to A1.
15. I waited for over an hour but the Police officer was not coming. I called him on phone and he told me that he was checking the money (cedis) with A1 and that he would be with me soon.
16. The police officer and A1 later returned to me with neither the US Dollars nor the Ghana Cedis.
17. When I demanded for the dollars, A1 told me that I should follow her to Abeka to collect the Dollars. However, on our way, she asked us to drive to Ghana Commercial Bank at Accra New Town. She claimed that the person who was bringing the Dollars was in the said bank withdrawing the dollars.
18. At the bank, we all waited till 7:00pm, but the alleged person never came out from the bank, neither did anybody bring any Dollars to me.

19. I then suspected her conduct and subsequently caused her arrest to the Accra Central Police station and made a complaint thereafter. At the police station, I was made to write my statement

20. It was at the police station that I got to know that I know A2 Abdulai Hashim.”

On the other hand, PW2 per his Evidence-In-Chief at paragraphs 3-11 of his Witness Statement told the court the following:

“3. On 22nd day of November, 2022 at about 8:10am, I was at home when A1 called me on phone to the effect that she had an amount of Forty-five thousand US Dollars available and that she needed someone to exchange it with Ghana Cedis at the rate of GH¢14.50 to a dollar.

4. A1 further told me that the cedis equivalent to the forty-five thousand dollars would be six hundred and fifty-two thousand, five hundred Ghana Cedis (GH¢652,500.00).

5. On the following day, I contacted a friend of mine who operates a forex bureau being the complainant in this case, and relayed the information received from A1 to him.

6. Complainant showed interest in the exchange business and organized an amount of six hundred and fifty-two thousand, five hundred Ghana Cedis (GH¢652,000.00). He thereafter called me that the money was ready.

7. On the same day being 23rd November, 2022, I drove to complainant's office at Kasoa. After meeting him, I called A1 to inform her that I had met the complainant and further enquired as to where she wants us to meet her. She directed me to bring complainant to Accra SIC car park.

8. When we got to Accra SIC car park, I called A1 to come. A1 suddenly appeared to meet us.

9. Complainant gave out the whole amount of six hundred and fifty-two thousand, five hundred Ghana Cedis (GH¢652,500.00) and asked me to follow her to wherever she was going to get the said Dollars from.

10. I followed A1 together with the money and when we got to her office, she asked me to wait behind the office whiles she enters to make the transaction.

11. After waiting for some time, she came and told me that someone was meeting us with the forty-five thousand US dollars. We waited for a while but nobody showed up with the said dollars"

The testimony of PW2 corroborated that of PW1. So, what false representation did the 1st Accused person make to PW1? In the case of Adobor vrs The Republic

[2008] 19 MLRG 23 CA per R.C. Owusu J.A. (as she then was), the Court of Appeal held that:

“To constitute an offence by false pretence, the accused should have made a representation which to his knowledge is false, the representation should be made to a person who believed it and as a result was induced to part with or transfer with or transfer the ownership of anything”.

Archer J. (as he then was) in the case of Blay vrs The Republic [1968] 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”.

The corroborative evidence of PW1 and PW2 that has not been discredited by the defence in respect of the offence of Defrauding by False Pretences is that the 1st Accused person demanded for Ghana Cedis to exchange for Dollars from the complainant through PW2. The 1st Accused person received the Ghana Cedis but the US Dollars never came. The House of Lords, in the case of 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 there 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, Amissah 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".

It is also interesting to note that the 1st Accused person did not allow PW1 and PW2 to see the alleged customer who was going to buy the Ghana Cedis and pay Dollars. They did not also witness what transpired between the alleged customer and the 1st Accused person. From the evidence on record, the prosecution has established that there was intent on the part of the 1st Accused person to defraud the complainant. On the part of the 2nd Accused person, from the totality of the evidence adduced at this stage of the trial, there is no evidence whatsoever to establish that the 2nd Accused person made a false representation to the

complainant. According to the complainant, he did not know the 2nd Accused person until he arrested the 1st Accused person to the Accra Central Police Station and the name of the 2nd Accused person was mentioned. It stands to reason therefore that the 2nd Accused person has not defrauded the complainant by false pretences.

Dishonestly Receiving:

Section 146 of Act 29 provides:

“A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter, commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence.”

The definition section of this offence is provided under section 147(1) of Act 29. It reads as follows:

“A person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assists in the disposal of the property otherwise than with a purpose to restore it to the owner.”

The basic ingredients that the prosecution must prove in the offence of Dishonestly Receiving property are that:

- i. The property being the subject matter of the crime was obtained or appropriated by a criminal offence or the property has been obtained by a criminal offence or the property has been obtained or appropriated by a criminal offence, or the property has been obtained or appropriated by a criminal offence;
- ii. The accused person knows that the property has been obtained or appropriated by a criminal offence;
- iii. The accused person receives, buys or assists in the disposal of the property otherwise than with a purpose of restoring it to the owner.

See also *Republic vrs Bayford* [1973] 2 GLR 421 at holding 1. *Gariba vrs The State* [1963] 2 GLR 54

It must be noted that the property obtained or appropriated by a criminal offence which will constitute the subject matter for the offence of dishonestly receiving includes property from stealing, fraudulent breach of trust, defrauding by false pretence, robbery, extortion and falsification of accounts.

In this case, however, the prosecution through PW3 (investigator) told the court that investigations revealed that the 1st Accused person owed the 2nd Accused person and defaulted in repayment. In the circumstances, the 2nd Accused person cannot be said to have dishonestly appropriated the sum of GH¢652,500.00. This court would be in error to call upon the 2nd Accused person to enter into his defence. Accordingly, I hereby acquit and discharge the 2nd Accused person herein on Count 3.

In conclusion, the 2nd Accused person is acquitted and discharged on all the charges against him. On the other hand, the 1st Accused person is acquitted and discharged on Count 1. The prosecution has established a prima facie case against the 1st Accused person on Count 2. Accordingly, I call upon the 1st Accused person to enter into her defence.

I cannot end this judgement without commenting on the failure of the defence lawyers to file their written submissions to reach this Court before the deadline given. At the time they filed their written submissions, the Court had finished writing its ruling and did not consider their inputs.

.....
ISAAC ADDO

CIRCUIT JUDGE
23RD AUGUST, 2023