

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON MONDAY, 5TH JUNE,
2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE**

CASE NO: 235/2021

THE REPUBLIC

VRS

AWUKU AGBOTADUA

ACCUSED PERSON PRESENT

CHIEF INSPECTOR VICTOR SOMOAH FOR THE REPUBLIC PRESENT

AWUKU ATAKLI, ESQ. FOR THE ACCUSED PERSON PRESENT

**RULING ON A SUBMISSION OF NO CASE TO ANSWER AS MADE BY
THE DEFENCE COUNSEL ON BEHALF OF THE ACCUSED PERSON**

The Accused person stands charged before this Court charged with the offence of Defrauding by False Pretences contrary to section 131 of the Criminal Offences Act, 1960 (Act 29). On his arraignment before this Court, the Accused person pleaded Not Guilty to the charge.

In the case of *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 FACTS OF THE CASE

On the 3rd February, 2020, one Kwame went to the complainant and told him that his brother who is the Accused person had two plots of land at Alavanyo near Sogakope and wanted to sell. The said Kwame further led the complainant to the said plots and consulted the Fievie Customary Secretariat which they confirmed that the plots indeed belong to the Accused person. Few days later, the Accused person in the company of Kwame Agbenyega and Solomon Hodanu went to the complainant at his building materials shop where the complainant paid an amount of GH¢35,000.00 being the cost of the two plots of land to the Accused person in the presence of his wife, Kwame Agbenyega and one other person. The Accused person further issued a receipt in respect of the money complainant paid. Few months later, the complainant started developing the said plots of land when one Lilian Enyonam Omega who also claimed ownership of the said plots stopped the complainant from developing same. The complainant reported the case to the police and the Accused person was arrested.

The prosecution in establishing its case filed Witness Statements for three (3) persons but called two (2) of them.

The testimony of PW1 (Victor Anipah) confirmed the facts as presented by the prosecution.

PW2 (Edith Addy) confirmed that transaction that took place between the Accused person and the complainant. That she was present when the complainant paid GH¢35,000.00 to the Accused person and two (2) others who accompanied him to the complainant's store.

PW3 (General Corporal Solomon Essel-Quayson) investigated the case. He relied on his Witness Statement together with the exhibits attached.

At the end of the prosecution's case, the court was enjoined to determine whether or not a prima facie case had been made out against the Accused person to warrant him to enter into his defence.

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

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 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 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:

“AWUKU AGBOTADUA: 75 YEARS, PROCUREMENT PRACTITIONER:- For that, you on the 3rd February, 2020 at Sogakope in the Volta Circuit and within the

jurisdiction of this court, with intent to defraud, did obtain the consent of one Victor Anipah to part with the cash sum of GH¢35,000.00 by means of certain false pretence to wit by falsely pretending that if the said amount is given to you, you could sell two (2) parcel or plot of land situated at Alavanyo near Sogakope and upon such false representation, you succeeded in obtaining the said amount from the said Eric Anipah which statement you well knew at the time of making it."

The Accused person through his counsel denied defrauding the Accused person by false pretence and traced his root of title to the Fieve Clan. The Commencement of the Deed of Lease reads as follows:

"This Lease is made on the 1st Day of April, 2020 between The Fieve Clan acting through **DUMEGA SOLOMON S.K. HODANU, ZIKPUITOR YOHANESS SAKPITY, AVAFIA KOTOKO III & AVAFIA AHORTORVI III** joint heads of the Fieve Clan (all of P. O. Box SG 174, Sogakofe) and with the consent and concurrence of the principal Elders and Lawful representatives whose consent and concurrence are necessary or requisite by Customary Laws for the valid grant, alienation or disposition of any land or other property of the said Fieve Clan in Fieve Traditional Area in the South Tongu District in the Volta Region of the Republic of Ghana and which consent and concurrence are hereby testified by some of the principal members aforesaid witnessing the execution of this present (hereinafter called the "THE LESSORS which expression shall where the context so admits or requires include their successors, heirs and assigns) of the one part and MR. WILLIAM KWAME AWUKU of P. O. BOX CE 12088, TEMA, GREATER ACCRA REGION, GHANA hereinafter called "THE LESSEE" which expression shall where the context so admits or requires include their successors, heirs and assigns) of the other part)"

The complainant (PW1) told the Court under cross examination by the defence counsel that he made enquiries at the Fievie Customary Land Secretariat and it was confirmed that the Accused person owned the land. PW3 (investigator) also confirmed that the Accused person bought the land from the Fievie Clan. It has also not been established that the Accused person sold the same piece of land to a third party.

In the case of Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068, the Supreme Court laid down the circumstances under which a submission of no case may be successfully made as follows:

- (a) where there has been no evidence to prove an essential element in the crime charged;*
- and*
- (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it."*

In this instant case, the prosecution has failed to prove that the Accused person used false pretence to defraud the complainant. In the circumstances, I hold that the prosecution has failed to establish a prima facie case against the Accused person. Consequently, I acquit and discharge the Accused person herein.

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ISAAC ADDO
CIRCUIT JUDGE
5TH JUNE, 2023

