

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON THURSDAY, THE 27TH DAY OF JULY, 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL BAASIT, CIRCUIT COURT JUDGE.

SUIT NO.: CCD/C8/18/23

THE REPUBLIC

VS

BENEDICT ASSIFUAH-NUNOO

-

ACCUSED PERSON

JUDGMENT

The Accused Person was charged with **Defrauding by False Pretences**: Contrary to Section 131(1) of the Criminal and Other Offences Act, 1960 (Act 29) hereinafter referred to as Act 29. The Particulars of Offence are that the Accused Person on or about the 3rd day of February, 2023 at Anyaa/Accra in the Greater Accra Circuit and within the jurisdiction of this court, with intent to defraud did obtain the consent of one Deborah Selasi Bedzo to part with cash the sum of GHc29,660.00 by means of certain false pretences to wit *'pretending that his salary has been withheld and when he gets the said amount, he will pay it back as soon as his salary is worked out'* and upon such false representation succeeded in taking such amount of the money which statement he knew at the time of making it to be false.

The Brief Facts of the case as incorporated from the Charge Sheet are that the Complainant Deborah Selasi Bedzo is a trader at Anyaa whilst the Accused person is a self-acclaimed music tutor at Agona Swedru and they both met sometime in the 2022 via Facebook, became friends and subsequently entered into an amorous relationship of which they started cohabiting intermittently at the complainant's residence. On the 3/2/2023, the accused person who at the inception of the relationship told complainant that he is working with the

Ghana Education Service at Swedru told complainant that due to some administrative mishap his salary has been withheld and needed some loan whiles he works to resolve the issue. Accused managed to convince complainant to part with cash the sum of GHØ29,660.00 in various tranches on different dates both through mobile money and in cash with the promise to pay back when the issue is resolved. In or about the second week of April, 2023, accused person told complainant that the issue has been resolved and he needed GHØ500.00 to be given to the person who helped him resolve the issue. Accused person however went into hiding after complainant sent him the GHØ500.00 and mostly refused to pick complainant's phone calls occasionally calling back to rain insults on complainant when complainant demands her money. Complainant out of desperation went to accused person's alleged workplace at Agona Swedru to demand her money only to discover that accused person does not work there. Complainant lodged a complaint and accused person was apprehended. During investigation accused person admitted the offence and after investigation he was put before this honourable court.

The Plea

On the 9th day of May 2023, the Accused Person pleaded guilty with explanation to the offences after same was read to him and upon listening to his explanation, the court entered a plea of not guilty for the Accused Person. The Prosecution assumed the burden to prove the guilt of the Accused Person beyond reasonable doubt. To prove their case, the Prosecution called Two (2) Witnesses and tendered in evidence the following;

1. **Exhibit "A"** - Complainant Statement made to the Police;
2. **Exhibit "B"** - Statement obtained from one Anita Nkansah;
3. **Exhibit "C"** - Caution Statement of the Accused person;
4. **Exhibit "D"** - Charge Statement of Accused Person.

Analysis

Article 19 (2) (c) of the 1992 Constitution of the Republic of Ghana presumes everyone innocent until the contrary is proved or he/she pleads guilty. In every criminal prosecution, when an accused person denies an offence, prosecution assumes a statutory obligation to prove the guilt of the accused beyond reasonable doubt. **Section 11(2) of the Evidence Act, 1975, NR of Act CD 323** (hereinafter referred to as NRCD 323) with specific reference to criminal cases reads *“in a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt.”* **Section 13(1) of the Evidence Act 1975 NRCD 323** provides the extent of proof or the burden on the prosecution in a criminal action thus: *“In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt”*. **Section 22 of the NRCD 323** further emphasis this principle of law and provides that as follows: *‘in a criminal action, a presumption operates against the accused as to a fact which is essential to guilt **only** if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond reasonable doubt...’*

Section 131 (1) of Act 29 provides that *“A person who defrauds any other person by a false pretence commits a second-degree felony”*. Defrauding 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.”* What amounts to false pretence is further defined under **section 133 (1)** of Act 29 as *“a representation of the existence of a state of facts made by a person, with the knowledge that the*

representation is false or without the belief that it is true, and made with an intent to defraud."

To prove their case, the first Prosecution Witness (PW1) was the Complainant, Madam Deborah Selasi Bedzo who testified that the Accused Person is her boyfriend and they have dated for one and half years now. She testified further that on the 3/2/2023, the Accused Person told her that he had a problem with his employers at Ghana Education Service, Agona Swedru Station of which he stopped working for a year now. According to PW 1, upon the Accused Person's request for money to help resolve his issues at work, she assisted him with a total amount of GHc29,660.00 which was cash payment and some through mobile money transfer payment including foreign currency of United States Dollars. PW1 again testified that when she demanded for the money so far paid, the Accused Person informed her that the money was in his account, but subsequently refused to pick her calls prompting her to travel to Agona Swedru and Five (5) other places the Accused Person claimed to work but no one knew him. She then sought Police assistance when it was revealed to her that she had been defrauded.

PW2 is D/PW/Insp. Abrafi Philispina stationed at Anyaa DOVVSU and is the Investigator in charge of this case when on the 3/5/2023 at about 2:30pm, PW1 reported a case of defrauding by false pretence against Accused Person of which the statement of PW1 was obtained. She testified that by reiterating the narrations of PW1 and stated further that upon concluding investigations, the Accused person was charged with the offence of defrauding by false pretence and arraigned before this honourable court.

In criminal trials, an accused person is not obliged to prove his/her innocence. All that an accused is required to do when invited to open his/her defence is

to raise reasonable doubt regarding his/her guilt. The burden is on the Prosecution to establish the guilt of the accused and as such in **Tamakloe vs The Republic** (2011) SCGLR 29 at 46 provides that, *'where a statute creates an offence, it is the duty of the prosecution to prove each and every element of the offence which is sine qua non to securing conviction, unless the same statute places a particular burden on the accused. In other words, whenever an accused person is arraigned before any court in any criminal trial it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the Prosecution and it is only after a prima facie case has been established by the Prosecution that the accused person is called upon to give his side of the story.'* See the case of **Gligah & Anr. v The Republic [2010] SCGLR 870.**

In the case of **Republic vs. Selormey** [2001-2002] 2 GLR 424, the ingredients of the offence of defrauding by false pretence were reiterated thus: *"Therefore for the prosecution to succeed in proving the charges of fraud by false pretences against the accused person, the law requires that the prosecution must prove by evidence, the following:*

- (a) *That the accused person made a representation either by written or spoken words or any other means whatsoever.*
- (b) *That the said representation was in regard to the existence of a state of facts.*
- (c) *That the said representation was false or made without the belief that it was true.*
- (d) *That by that false representation the accused caused another to part with a thing..."*

A Ruling on prima facie case was in favour of the Prosecution and the Accused was called upon to open his defence to raise a reasonable doubt in the mind of the court. Accused in his defence stated that he is known as

Benedict Assifuah Nunoo and lives at Agona Swedru where he works as a Church Organist. He stated that PW1 is his girlfriend who reported a case against him but the truth is that they were in a relationship and he had some spiritual issues to battle of which asked her for financial support to battle that issue spiritually. He stated that the money was given to him not as a loan but as a financial support but he is uncertain the exact amount he took from her. He concluded by stating that he is willing to pay the money back once he is released from custody.

However, Prosecution in seeking to establish the guilt of the accused cross-examined the Accused and the following ensued;

Q: *Apart from being a Music Organist, what other work do you do?*

A: *I am a trainer in Musical Instrument.*

Q: *Did you ever work with Ghana Education Service?*

A: *No.*

Q: *So, you never worked at Ghana Education Service, Agona Swedru?*

A: *Yes*

Q: *You agree with me that all the investigations conducted by the PW 2 per paragraph 7 and 8, you agree with me that all investigations as listed in her witness statements are true.*

A: *Yes.*

Q: *You just affirmed that you collected an amount of money from PW 1, how much in total did you collect from PW 1?*

A: *I cannot tell because it was given to me in installments GH¢100.00, GH¢200.00 etc.*

Q: *Do you agree with me that you once told the PW 1 that you worked at Ghana Education Service and was sacked?*

A: *Yes*

Q: *And you stated that you need an amount of money to settle your employers?*

A: *Yes.*

Q: *I put it to you that at the time you were collecting the money from PW 1, you knew very well that you were not an employee of Ghana Education Service?*

A: Yes.

Q: *I put it to you that out of that representation was why she parted with such an amount?*

A: Yes.

Q: *I put it to you that as a result of the representation, you succeeded in taking a total amount of GH¢29,660.00 from PW 1.*

A: *That amount still baffles me and my problem is the amount in question.*

Q: *I put it to you that as a result of the representation you succeeded in taking an amount of money but not the amount as quoted?*

A: Yes.

It will be observed that during cross-examination, the accused made admissions and juxtaposing such admissions with the facts of this case establishes a fact, in the mind of the court that a crime was committed beyond reasonable doubt. **In Re Asere Stool; Kotei v. Asere Stool** [1961] GLR 493 SC, the Supreme Court held that: *“Where an adversary had admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than relying on such admission...”* Upon the completion of the case therefore and in analyzing the evidence on record and the testimony of all the parties involved in this case, Prosecution was able to prove that the accused person by making a representation by spoken words to PW1 that he is an employee of Ghana Education Service, a representation that was false and/or made without the belief that it was true and by that false representation, the accused caused PW1 to part with monies.

Conclusion:

From the totality of the evidence on record, the guilt of accused remains proved beyond reasonable doubt on the charge of defrauding by false pretence as the defence of accused failed to raise reasonable doubt in the

mind of the court. The court therefore finds the guilt of accused proved beyond reasonable doubt at the close of the entire case. Accused is convicted forthwith on the charge of defrauding by false pretence contrary to section 131 of Act 29.

**H/H HALIMAH EL-ALAWA ABDUL-BAASIT.
CIRCUIT COURT JUDGE**

Accused Person - Present

Chief Insp. Wonder for Prosecution – Present.