

IN THE CIRCUIT COURT 3 HELD AT ACCRA ON TUESDAY THE 28<sup>TH</sup> DAY OF  
FEBRUARY 2023 BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT  
COURT JUDGE

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COURT CASE NO. D2/141/2022

THE REPUBLIC

VRS

DANIEL BOTCHWAY  
SHADRACK MOYAM DIMANY

**RULING ON SUBMISSION OF NO CASE TO ANSWER**

The Accused Persons has been charged on two counts, namely; Conspiracy to Commit Crime to wit Fraudulent Transaction of Land and Fraudulent Transaction of land contrary to sections 23(1) and 277(2) a of the Criminal Offences Act, Act 29 and the Lands Act 2020 (Act 1036) respectively.

The 3 counts of Issuance of False Cheque is against 1st Accused only, contrary to section 313(A)(1) of the Criminal Offences Act, Act 29 of 1960.

**BRIEF FACTS:**

The Brief Facts as given by Prosecution are that, "Complainants are couples and live in Takoradi. In the month of May, 2020, the

Complainants wanted land situated at Tse-Addo –La, Accra, to buy. Within the period, the second Accused Person introduced the first Accused to the Complainants that they have a land at Tse-Addo for sale. The Accused Persons showed a site plan of the land that was allegedly going through processing at Lands Commission. The Complainants inspected the land and expressed interest to acquire it. The Accused Persons gave the purchase price of the land as GH¢600,000.00. The Complainants deposited GH¢300,000.00 as part payment through Cal Bank account and it was received through first Accused Person's accounts at Fidelity Bank. The accused persons acknowledged receipt of the amount. After the part payment was made, the Complainants could not develop the land, because it was later found to have been granted to another person earlier. In March 2021, first Accused Person issued three Fidelity Bank posted-dated cheque numbers 020015, 020017 and 020018 with the face value of GH¢100,000.00 each to be cashed on 31/3/2021. However, the cheques were all dishonoured and returned to the complainants after they were presented on 11/08/2021. On 24/11/2021, the Complainants lodged a complaint at the Regional CID/Accra and the Accused Persons were arrested. The Accused Persons admitted the offences and pleaded with Police for some time to refund the amount involved. They have since refunded GH¢20,000.00 by Fidelity Bank cheque No. 020030 On 02/12/2021, leaving an unpaid balance of GH¢280,000.00. After investigation, the Accused Persons were charged with the offences and arraigned before court.

Both Accused Persons pleaded not guilty to all the offence charged. The Prosecution was called upon to prove all the charges against the Accused Persons.

## **STANDARD OF PROOF**

Submission of no case to answer in a summary trial of this nature is rooted under section 173 of Act 30 which states as follows:

‘where at the close of the evidence in support of the charge, it appears to the court that a case is not made out sufficiently to require the accused to make a defence, the court shall, as to the particular charge, acquit the accused’

This section 173 has been interpreted as requiring the establishment of a prima facie case. Section 19 of the Evidence Act, NRCD 323 states that:

‘an enactment providing that a fact or group of facts is prima facie evidence of another fact creates a rebuttable presumption’.

In other words, if it is prima facie then it cannot be conclusive so as to have put the guilt of an accused beyond all reasonable doubt. Indeed in the case of **GALVANISED IRON CO v WESTOBY, 8 EX 17**, interpreted prima facie regarding the allotment of shares and objections raised, Parke B held, that prima facie proof of an objection to a franchise was given ‘if is shown to the satisfaction of the revising

barrister that there is reasonable ground for believing that the objection is well founded' and the objector need not prove the truth of the objection at that stage.

This position does not also mean that the court should lower the bar for Prosecution at this stage. The evidence led should be enough to convict at that stage but as long as the accused has not spoken his guilt, it is not proved beyond reasonable doubt and if it is not enough to convict in circumstances where the accused refuse to speak then accused should be acquitted at that stage. See **TSIKATA v THE REPUBLIC [2003 -2004] SCGLR**.

The basis for upholding a submission of no case has been emphasized in a number of decisions. In the case of **APALOO v THE REPUBLIC [1975] 1 GLR 156** the court outlined the grounds as follows:

1. When there had been no evidence to prove an essential element in a crime.
2. When the evidence adduced by prosecution had been so discredited as a result of cross examination.
3. That the evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it
4. That the evidence was evenly balanced, that is to say, that the evidence was susceptible to two likely explanations - consistent with guilt, one consistent with innocence. Where any of these exists the court should acquit. See also **MOSHIE v THE REPUBLIC [1977] 1**

**GLR 258;**

**INGREDIENTS OF THE OFFENCE:**

For the first count of conspiracy to commit crime to wit Fraudulent Land Transaction contrary to sections 23(1) and Fraudulent Land Transaction Section 277(2) (a) of the Criminal Offences Act, Act 29 of 1960 and the Lands Act 2020 Act 1036.

To succeed against the Accused Persons, the Prosecution must prove;

- i. That the Accused Persons agreed together to commit the offence of fraudulent land transaction or
- ii. That the Accused Persons acted together with a common purpose to commit the offence of fraudulent land transaction.

**Section 277 (2) of the Lands Act 1036 provides;**

A person who;

1. (a) Purports to make a grant of land to which that person has no title.
2. (b) Purports to make a grant of land without authority, or
3. (c) Makes conflicting grants in respect of the same piece of land to more than one person, commits an offence and is liable on summary conviction to a fine of not less than seven thousand five hundred penalty units and not more than fifteen thousand penalty units or to a term of imprisonment of not less than seven years and not more than fifteen years or to both.

The Prosecution must therefore prove that:

- a. Accused made a grant of a piece of land
- b. That Accused had no title or authority to make the grant or
- c. That a grant was made to more than one person in respect of one piece of land

**Section 313A (1) (a) (b) and (c)** states that:

- (a) A person who without reasonable excuse, the proof of which lies on that person, issues a cheque drawn on a bank with which that person does not have an account or
- (b) issues a cheque in respect of an account with a bank when that person does not have a reasonable ground, ... to believe that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal courses of banking business or
- (c) with intent to defraud stops or countermands a cheque previously issued by that person, commits a criminal offence..'

To secure conviction Prosecution must prove that:

- i. That accused issued cheque(s)
- ii. That accused had knowledge that there were not enough funds in the account to pay for the cheque issued or
- iii. Did not have reasonable cause to believe that funds will be available in the account to pay for the value of the cheque issued.
- iv. That Accused did issue the cheque with intent to defraud.

## **THE EVIDENCE OF PROSECUTION**

PW1 was Emmanuel Kofi Diaba. He is a Judge and the Complainant herein and PW2 is the wife of PW1. He knows A1 and A2. According to PW1 he was introduced to A1 and A2 by his landlord one Alex Tamakloe as persons having land to sell at La Tseado. The Accused Persons inspected the land in issue with Complainant and PW2 and the purchase price was negotiated and agreed upon. The price agreed as the purchase price of the land was GHC600,000.00. It was agreed that half of the amount would be paid by Complainants by the end of June 2020 whilst the remaining amount would be paid by installment basis. That is GHC50,000.00 every two months until the full amount was paid. Both Accused Persons assured PW1 and PW2 that the land belongs to A1 who acquired it legitimately from the family that owned it. The two Accused Persons showed PW1 and PW2 a photocopy the lease agreement between the family and the first Accused. Accused Persons further stated that they had presented the original documents to the lands Commission for processing and so it would be ready soon. A1 gave PW1 and PW2 his bank account details for them to make the payments and the payment of GHC300,000.00 was deposited in the said bank account by Complainant. PW1 and PW2 later detected that A1 had delayed in the processing of the land documents at the lands commission and so undertook an investigation at the Lands Commission which revealed there were rival claim to the land. The Accused Persons when confronted with their findings on the said land, the Accused Persons later admitted to PW1 and PW2's findings. PW1 then demanded a refund of the

amount of GH¢300,000.00 paid to A1 and A2. A1 assured PW1 and PW2 of making payment by March 31, 2022 and gave 3 Fidelity bank's post-dated cheques each with a face value of GH¢100,000.00 PW1 stated that PW2 paid the money into his bank account but they later received notification that the cheques were dishonored cheques.

PW1 tendered the exhibit A, A1 and A2 which are copies of the dishonored cheques.

PW2 Patience Ella Diaba corroborated PW1's evidence and stated in evidence that she was the one who paid the cheques issued by A1 into PW1's bank account and the said cheques were dishonored. PW2 tendered exhibit B which is her bank statement with Cal Bank to show that the monies were transferred from her bank account to A1. Payment of GH¢ 60,000.00 on June 6, 2020 and GH¢240,000.00 on June 19, 2020.

PW3 was Detective Chief Inspector Joseph Barson. He is stationed at Accra Regional CID. PW3 is the investigator in this case. He corroborated the evidence of PW1 and PW2. PW3 further stated that his investigation revealed that the Accused Persons were selling to the Complainant land which had already been sold to someone else and the said person had begun construction of a storey-building on the land. PW1 took the Investigation Caution Statement of Accused Persons well as their Charge Statement and tendered them as exhibit C-F. PW3 also tendered in evidence exhibit G which is the bank



statement of A1 which indicates that A1 did not have enough money in his bank account at the time he issued the Fidelity Bank cheques to the Complainant.

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

The 1st and 2nd Accused Persons have been charged under Section 23

(1) of the Criminal Offences Act, Act 29 1960 and Section 277(2) of the Land Act 2020 Act 1036.

The Prosecution has to prove that A1 and A2 acted together for a common purpose to commit crime as stated.

In evidence, Prosecution stated that A1 and A2 made a presentation to PW1 and PW2 that A1 has a land available for sale and that they were in the process of registering the said land at the Lands Commission. It was A1 and A2 who negotiated with PW1 and PW2 the price of the land and also the terms of payment. According to PW2 at all material times she and PW1 dealt with both A1 and A2;

When PW2 was cross-examined by Counsel for A1 and A2 the following ensued:

Q: So will you agree with me that the property belongs to A1 and not A2 or both.

A: Yes I do. But it was A1 and A2 who came together to show us that lease agreement.

Q: Lease agreement that was executed between the family and the

1st Accused. I am putting it to you that the property belongs to A1 and not A1 and A2 whether or not the two showed it to you?

A: It belongs to A1 but A1 and A2 always come together so far as the transaction is concerned and I have not said it belongs to the two. The Accused tendered exhibit 1 through PW2 which is a contract of sale agreement between A1 on one part and PW1 and PW2 on the other part to indicate that A2 was not part of the transaction but was just a Witness to A1 per the exhibit.

Evidence of outward manifestations of acting together by Accused Persons gives rise to an inference that they acted together for a common purpose. Having acted together with others, it is enough to establish the charge of conspiracy and Prosecution has established same in the mind of the court.

The next question is, has prosecution led evidence to establish the elements of Fraudulent land transaction?

It is Prosecution's evidence that A1 and A2 made a grant of a parcel of land which belongs to A1 to PW1 and PW2. The price GHC600,000.00 was agreed as the price for the piece of land in issue after negotiation. Per the terms of the agreement for the sale of land PW1 and PW2 were to make payment of GHC300,000.00 by the end of June 2020 and the rest paid by instalment; GHC50,000.00 every 2 months until final payment was made. PW1 and PW2 were assured by A1 and A2 that A1 was the legitimate owner of the said piece of land. A1 and A2 showed PW1 and PW2 a lease to confirm that A1

was the legitimate owner. A1 and A2 further assured PW1 and PW2 that they had presented the original documents to the lands commission for processing when in fact they had not done so. Since A1 and A2 delayed in the registration of the said documents, the Complainants made an unofficial search at the Lands Commission which revealed that there were rival claimants to the land. This according to PW2 the Accused Persons A1 and A2 admitted it when they were confronted with the facts.

Accused Persons per their Investigation Caution Statements tendered as exhibit E, E1 and C, C1 which is their version is that A1 owns a land which he bought from B.T Quaye and family and since A1 did not pay the full amount there was pressure on him to complete the payment for the land. From A2's statement "Mr Daniel Botchway is a friend and a brother who told me of a land behind Trade Fair that he has bought from the family of B.T Quaye and later he informed me of selling the land due to some pressure from the family to pay the rest of the money and so Mr Daniel Botchway decided to sell the land which was sold to Mr. and Mrs. Diaba..."

This piece of evidence shows that at the time A1 and A2 decided to sell the land to PW1 and PW2, A1 had not completed payment for the land in issue and therefore title in the said land had not been passed to him. This means that he did not in fact own any land for him to pass it onto another person that is PW1 and PW2.

A1 corroborates A2's evidence by stating that "However to make the sale of the land faster I opted to plot the land in my name since the

whole area was in the name of the family whom I bought the land from of which the plotting is still in process at the Lands Commission...”

This piece of evidence shows that his ownership of the land has still not been legitimised to A1. There is thus the probability the said plotting would be denied by the Land Commission as not being legitimate.

A1 however stated that he owes that land which he sold to PW1 and PW2. There is no evidence that A1 is the owner of the land to warrant him to make a legitimate grant.

PW1 and PW2 have stated that, the fact that they were prevented from developing the land by arrival parties on the land shows that A1 is not the owner of the said land.

A1 has been charged under count 3-5 for Issuance of False Cheque contrary to section 313 A (b).

Section 313 (1) consists of three sub sections. Subsection (a) and (b) creates an offence similar to the offence of fraud by false pretence under section 131 of Act 29 except that under (a) and (b) the burden of offering reasonable excuse rests upon the Accused. But under section (c) the burden rest on the Prosecution throughout. And the purpose for the cheque not going through must be an intent to defraud.

An intent to defraud on the hand is defined under section 16 of Act

29, among other things as follows:

‘...an intent to defraud means an intent to cause, by means of the forgery, falsification, or the other unlawful act, a gain capable of being measured in money, or the possibility of that gain, to a person at the expense or to the loss of any other person’

In other words Prosecution must demonstrate under subsection (c) that Accused gained some advantage when he issued the cheques and the cheques served as the consideration and where no advantage was obtained then under subsection (c) no offence seems to have been committed as the offence is not one of strict liability and mere stoppage of a cheque could not constitute the offence. See Wiredu J. (as he then was) in the case of **SEIDU v THE REPUBLIC [1976] 2 GLR 288**

What is the evidence on record to demonstrate that Prosecution has been able to satisfy any of the sub sections of section 313 of Act 29? Prosecution led evidence that Accused (A1) issued three cheques, which is exhibit ‘A’ series to be cashed on the 31/3/21 and upon presentation all three cheques were dishonored. Indeed, Accused even confirmed in exhibit ‘A’ his Investigation Caution Statement that he did issue the cheque. A1 however stated that “However Mrs. Diaba insisted that I write them a cheque so that when the money is ready I can give them to ahead to cash the cheque. However, to make the sale of the land faster I opted to plot the land in my name since the

whole area was in the name of the family whom I bought the land from of which the plotting is still in process at the Lands Commission

... I did not indicate any date on the cheque and Mrs. Diaba presented the cheque without my knowledge though she knew the refund money was not ready.

The court therefore finds that the first element of the issue of cheque was issued by A1 has been satisfied by prosecution

Did Accused at the time of issuance of the cheques have reasonable cause to believe that monies would not be available in his accounts to pay PW1 and PW2. Making a finding on this issue rests on the subsequent conduct of accused after issuing the cheques. And indeed, under sub section (a) and (b) of the law, as it has been established that Accused issued the cheques, the burden of offering a reasonable excuse rests on the Accused. Accused claim that he issued the cheque with both parties agreeing that when the money was ready A1 will then notify them to clear the cheque but the cheque was presented to the bank without PW1 or PW2 notifying him. The court will allow the Accused A1 to open his defense to enable him lift the burden of offering reasonable excuse.

However, under section 174(1) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), 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 enter his defence and shall remind the Accused of the charge and inform the Accused of the right

to give evidence personally on oath or to make a statement.

Having applied the principles to the case before me and having regard to the evidence on record, it is my opinion that the Prosecution has been able to establish a prima facie case against both Accused Persons in respect of the all the charges levelled against them, to warrant both of the Accused Persons to open their defence.

**PROSECUTOR**

**DSP. EVANS KESSE**

**LEGAL REPRESENTATION**

**ANDREW K. VORTIA**

**H/H SUSANA EDUFUL (MRS)**

**(CIRCUIT COURT JUDGE)**