

IN THE CIRCUIT COURT OF JUSTICE, HELD IN ACCRA ON FRIDAY THE 19TH DAY OF MAY, 2023 BEFORE HER LADYSHIP ROSEMARY BAAH TOSU(MRS)-HIGH COURT JUDGE SITTING AS AN ADDITIONAL CIRCUIT COURT JUDGE

SUIT NO. D6/175/2022

THE REPUBLIC

VS

BRIGHT DARKWA

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RULING ON SUBMISSION OF NO CASE TO ANSWER
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Accused is charged with the offences of Defrauding by False Pretence contrary to section 131(1) of the Criminal Offences Act 1960 (Act 29) and Uttering Forged Document contrary to section 169 of the Criminal Offences Act 1960 (Act 29).

He pleads not guilty to the charges.

THE PROSECUTION'S CASE

The Prosecution says that the Accused is a banker and complainant is a trader who resides in Agona Nkwanta.

Sometime on the 29th October, 2018, the Accused collected GHS40,000 from complainant to invest in a company called TCL Markets Ghana Limited. This investment was to earn interest of 40% within a period of three months. At the expiration of the three months, complainant requested for principal amount plus interest but Accused could not account for it.

According to prosecution, their investigation revealed that accused collected the money from complainant on 29th October, 2018 but gave him a backdated pay in slip of Access Bank as proof of deposit into the company's account. Further investigations showed that no such amount was paid into account number 0060226716081 within the period of 26th to 29th October, 2018. It was also revealed that TCL Market Ghana Limited was also not licensed there was therefore no information about their operations.

Accused was therefore arrested and charged with the offences.

Prosecution relied on the evidence of two witnesses to discharge their burden of making out a prima facie against Accused before this Court.

The complainant testified as the first prosecution witness. PW1 testified that on 29th October, 2018, the Accused took an amount of GHS40,000 from him to invest in TCL Investment Company. This investment was to accrue interest of 40% upon maturity in three months. This amount was handed over to Accused at the Access Bank Osu Branch in Accra.

PW1 testified that upon maturity in January, 2019, Accused asked him to wait a further 21 days. After the expiration of the 21 days too, Accused also claimed that there was a problem which was being resolved at Bank of Ghana so PW1 should allow him sometime to pay the money.

Following Accused person's inability to pay up the principal and interest, PW1 reported him to the Police. PW1 says that during investigation, Accused produced a pay in slip at Access Bank which was suspected to be a forgery because it was dated 26th October, 2018, when PW1 claims he gave Accused the amount for investment on the 29th October, 2018.

PW1 attached the pay in slip as exhibit A.

PW2 is the investigator in charge of the matter, he is Detective Constable Martin Arnold Coffie. His evidence is that a case of Defrauding by False Pretences was referred to him for investigation. PW2 says that statements were taken from Accused and other witnesses. PW2 further testified that investigations were extended to the Security and Exchanges Commission as well as the Registrar General's Department to ascertain if the entity TCL Markets Company were registered. PW2 testified that he also obtained Court orders for information on the account into which the said amount was paid.

A request to Bank of Ghana showed that TCL Markets Limited was not registered with it and thus they had no information on the company.

PW2 tendered the following documents in support of Prosecution's case.

- Exhibit B- Investigation cautioned statement
- Exhibit C- Letter to Securities and Exchange Commission
- Exhibit D- Letter to Registrar Generals Department
- Exhibit E- Reply from Registrar General's Department
- Exhibit F- Reply from Securities Exchange Commission
- Exhibit G- Ex-parte Motion
- Exhibit H- Court Order

Exhibit J- Bank Statement and Attached Documents

Exhibit K- Letter from Police to BOG

Exhibit L- Response to BOG

Exhibit M- Charge Statement

ANALYSIS

Per section 174 of the Criminal and Other Offences (Procedure) Act, 1960, Act 30, it provides that the Court should only call upon an Accused person to enter a defence if at the close of Prosecution's case it is clear that a case has been made out sufficiently against an Accused to warrant the Court to hear his side of the story.

And as it is trite this involves the Prosecution having proved all the essential elements of the offence that an Accused person is charged with. This is when we say that the Prosecution has made out a prima facie case against an Accused.

In the case of *Republic vs. Kwabena Amaning @ Tagor & Anor Suit no. ACR 4/2007*, the Court of Appeal held that

'It is a notorious principle in the criminal law that 'prima facie' evidence is nothing more than evidence that can lead to the conviction of the accused if the accused leads no evidence to rebut the presumption(s) raised in it..'

The relevant section on the offence of Defrauding by False Pretence provides

132. ' A person is guilty of defrauding by false pretence if by means of any false pretence or by personation he obtains the consent of another person to part with or transfer the ownership of anything'

133(1). A false pretence is a representation of the existence of a state of facts made by a person, either with the knowledge that such representation is false or without the belief that it is true and with intend to defraud'.

In the case of *Philip Assibit Akpeena vs. Republic, Civil Appeal No H2/23/2018*, the main elements of the offence of defrauding by false pretence were listed as follows

Representation has been made by the Accused as to the existence of a state of facts

The representation was made either in writing, uttered words or by impersonation

The Accused made the representation with the knowledge that it was false or he made it without belief that it was true

That Accused made the representation with intent to defraud

Accused made the representation and based on it he obtained the consent of another person to part with the ownership of something.

PW1 testified as follows

2. On the 29 / 10/ 2018, the accused in this case Bright Darkwa collected from me cash the sum of GHS40,000 under the pretext of investing the money in TCL Investment Company with their office located at Dansoman.

The question that begs to be answered here is where is the representation made by Accused to PW1? How did PW1 know about the said company and how did he know about Accused to the extent of giving him GHS40,000 to invest? Was it PW1 who approached Accused or it was Accused who approached PW1?

Unfortunately, none of these questions have been answered by Prosecution in the evidence led.

PW1's questions under cross-examination are also very conflicting

Cross-examination of PW1 at pages 10 and 11 of the record dated 6th December, 2022

Que: Police in their disclosures have stated in a letter to Bank of Ghana (Request for information on TCL Markets Limited) Do you agree to Prosecution's assertion that you invested with TCL Markets Limited?

Ans: Yes

Que: From this answer, it means you did not invest the sum of GHS40,000 with Accused person, is that not so?

Ans: Accused explained to us so the money was lodged with Accused and he went ahead to invest for us

Que: You invested with TCL Ghana Limited, not so?

Ans: No, Accused informed me that he worked with Access Bank so it was Access Bank, Osu Branch that I handed over the money to him

Que: Are you telling this Court that you never had any investment with TCL Markets Limited?

Ans: Accused explained that he would invest in TCL however following his explanation, he convinced me that if I cannot do it myself, he would process everything on my behalf so I gave the money to him

Que: An account named Hanseng 1 was created by TCL Market Ghana Limited and same was given to you and Grace Hansen, is that correct?

Ans: Yes, that account was opened for us. Accused after opening this account refused to give us a receipt despite numerous requests.

The making of a false representation is at the heart of the offence of Defrauding by False Pretence. From PW1's conflicting evidence and cross-examination, I cannot conclude that Accused made any such representation to him.

It is Accused person's statement when he was charged, exhibit M which is rather very instructive

'I was in the office when Madam Grace Hansen came there with Mr. Justice Kwofie to assist them create an account and help them deposit GHS40,000 into an online investment platform, TCL Markets Ghana Limited because I was already investing there and had assisted Madam Garace Hansen with hers. They initially asked I do the investment in my name so I can monitor it. I however objected to it because I advised them online investments were risky and if they insist on doing it, it must be monitored by themselves. They both advised I use Hanseng 1 as their username since Grace who will be monitoring for them already had one running investment with the user name Hanseng. We created the online account successfully using Grace's email and the owner of the account's details. We also paid into their account by Perfect money using my Perfect money account'.

The duty of parties before a Court, both Prosecution and Defence is to help the Court arrive at the truth of the matter. I therefore find it strange that in the evidence led by both Prosecution witnesses none of these facts stated by Accused were present. When it was clear under cross-examination that such an account was indeed created and there was indeed such a person named Grace Hansen, who surprisingly, Prosecution failed to call as a witness to help this Court resolve this issue.

From the evidence led I find that Prosecution has failed to prove that Accused made any such representation to PW1.

It therefore follows that Prosecution has failed to prove the other ingredients in the offence since no such representation was made for it to be false nor for Accused to have intended to defraud PW1 with such representation.

Accused is secondly charged with Uttering Forged Document contrary to section 169 of Act 29.

169. 'A person who with an intent mentioned in this chapter, utters or deals with or uses, a document or a stamp mentioned in this chapter, knowing it is forged, counterfeited or falsified, or knowing it is not genuine, commits a criminal offence and is liable to the like punishment as if that person had with intent, forged, counterfeited, or falsified like document or stamp.'

The ingredients of this offence are

That accused uttered or in any manner dealt with or used a forged document or stamp

That he knew it to have been forged, counterfeited or falsified or not genuine

That he had intent to defraud or to injure or to facilitate the commission of a crime.

For a charge of uttering forged document to succeed the prosecution must prove the Accused actually uttered or used the forged document. Merely holding a forged document does not constitute uttering or using it. It is however enough if prosecution proves that accused tendered it or in any dealt with it knowing it to be forged.

The document alleged to forged is exhibit A, a pay in slip from Access Bank. PW1' s evidence is as follows

8. During investigation at Osu, he produced an Access Bank pay in slip indicating that he made the payment into TCL Account. The pay in slip was dated 26/10/2018 which raised suspicion that the slip was forged because I gave the GHS40,000 to him on 29/10/2018 so he couldn't have made the payment on 26/10/2018. Copy of the pay in slip is marked and attached as exhibit JA1.

So first and foremost, the Prosecution charged Accused with this offence based on a suspicion. There is no forensic examination to show that the pay in slip was forged, neither has any Access Bank official been led to testify that the pay in slip is different from what they normally use.

Again, we are here on this charge because of the word of PW1, which is that he gave Accused the GHS40,000 on the 29th of October, 2018 and not on the 26th October, 2018 as is indicated on exhibit A.

Suffice it to say that PW1 has not produced any time or date stamped evidence that he indeed gave the money on the 29th and not the 26th October, 2018.

There is therefore no evidence that Exhibit A has been forged and any subsequent use of Exhibit A will not amount to uttering forged document.

One of the grounds prosecution is coming under to charge Accused with this offence is because Exhibit A is forged because per the Bank Statement of Account number, 006022671608, there is no indication that Accused person made such a deposit of GHS40,000 on either 26 or 29th October , 2018 into the said account. Fair enough, but did the Prosecution bother to read the statement given by Accused under caution and when he was charged? I refer to exhibit M, Charge Statement, where Accused stated

‘We created the online account successfully using Grace’s email and the owner of the account’s details. We also paid into their account by Perfect Money, using my Perfect money account. The next day they both confirmed to me that their online account with TCL has been duly credited’

Is there any reason why Prosecution did not investigate this Perfect Money which is obviously an online payment portal?

Looking at the evidence led Prosecution has failed to make out a prima facie case on both charges before this Court. The submission of no case to answer filed on behalf of Accused is upheld. Accused is acquitted of all the charges.

**H/L ROSEMARY BAAH TOSU (MRS)
HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE**

REPRESENTATION

Accused present

Chief Inspector Amoah Richard for Republic

Dr. Eugene Boadi Nyamekye for Accused.