

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON THURSDAY, THE 13TH 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

PARTIES:

ACCUSED PERSON – PRESENT

CHIEF INSPECTOR WONDER FOR THE REPUBLIC – PRESENT

COUNSEL:

NO LEGAL REPRESENTATION

RULING ON WHETHER A PRIMA FACIE CASE HAS BEEN MADE BY THE PROSECUTION

Background:

The Accused Person was charged with **Defrauding by False Pretenses**: Contrary to Section 131(1) of the Criminal and Other Offences Act, 1960 (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 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.

At the close of the case of the Prosecution, the Court has to determine whether the Prosecution has established a prima facie case against the Accused Person to require him to open his defence.

Determination

Article 19(2) (c) of the Constitution 1992 provides that '*a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty*'. Apart from strict liability offences, the general rule is that, throughout a criminal trial, the burden of proving the guilt of the accused person remains on the Prosecution. (See **Asante vs. The Republic** (1972) 2 GLR 177). An accused is generally not required

by law to prove anything, he is only to raise reasonable doubt in the mind of the Court as to the commission of the offence to secure an acquittal. (See **COP vs Antwi** (1961) GLR 408 SC; **Bruce Konua vs The Republic** (1967) GLR 611).

The Accused Person herein is charged with Defrauding by False Pretenses and Section 132 of Act 29 states that; *'a person defrauds by false pretences if, by a false pretence, or by personification that person obtains the consent of another person to part with or transfer the ownership of a thing'*. Thus, to secure a conviction of the Accused Person on the Charge, the Prosecution must prove that the Accused Person, by false pretence(s) or personification obtained the consent of the Complainant herein to part with the amount of Twenty-Nine Thousand Six Hundred and Sixty Ghana Cedis (Ghc29,660.00). The Court shall examine the evidence of the Prosecution to establish whether or not a prima facie case has been made out against the Accused Person.

Evidence of Witnesses

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 year 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 GHø29,660.00 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/INSPR 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 upon concluding investigations, the A-ccused person was charged with the offence of defrauding by false pretence and arraigned before this honourable court.

Analysis

The duty of the Court at this stage, is to determine whether the Prosecution has been able to establish a prima facie case against the Accused Person. In other words, the Prosecution, per their witnesses and evidence before the Court, must establish that the Accused Person indeed committed the offences he has been charged with. Regarding the burden of proof, section 11(2) of the **Evidence Act, 1975 (NRCD 323)** provides that '*...in 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 a fact beyond reasonable doubt*'. In the case of **Kwabena Amaning Alias Tagor and Anor. vs The Republic** (200) 23 MRLG 78, the Court held that: "*prima facie evidence is evidence, which on its face or first appearance, without more, could lead to conviction if the accused fails to give reasonable explanation to rebut it ... What the trial Court has to find out at this stage that the Prosecution has closed its case is whether or not the evidence led has established all the ingredients of the offence charged for which the accused person could be convicted if he failed to offer an explanation to raise doubts in the said evidence*".

Per the record before this instant Court and on the totality of the evidence led by the Prosecution, the oral testimonies of the Prosecution witnesses and the documentary evidence specifically **Exhibit 'A'** which is the Caution Statement of the Accused Person. The said Exhibit 'A' indicates that the Accused Person collected some monies from PW1 and this establishes a prima facie case warranting the Accused Person to enter a defence. It must be emphasized that the establishment of a prima facie case does not amount to establishing the guilt of the Accused Person. This was explained in the case of **Ekow Essuman vs The Republic**, [2016] DLHC 9242, as follows; *"where the Court has ruled that there was a prima facie case made out and the accused person was to enter into his defence, it does not mean that the accused was guilty. It simply means that the evidence on record as led by the Prosecution has gone beyond mere allegations or speculation that calls for some clarification or explanation, as it were, from the accused person. It is after the accused person has given his side of the story that the Court will be seised with jurisdiction to pronounce whether he is guilty or not. In other words, it is only at the stage where the accused has offered evidence in rebuttal of the Prosecution's case that the Court can make findings of facts"*.

DECISION

In the circumstances, the totality of the evidence led by the Prosecution, the Court finds that a prima facie case of defrauding by false pretences has been made out against the Accused Person to warrant calling upon him to open his defence so as to give his side of the story to raise a reasonable doubt in the case of the Prosecution. The Accused Person shall prepare to open his defence.

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