

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON TUESDAY  
THE 3<sup>RD</sup> DAY OF OCTOBER, 2023 BEFORE HER HONOUR ENID MARFUL-  
SAU, CIRCUIT COURT JUDGE**

---

CASE NO. D7/129/2020

**THE REPUBLIC**

**VRS.**

**BISMARK OWUSU**

---

*ACCUSED PERSON ABSENT*

*PROSECUTION: C/INSP AWUAH ANSAH HOLDING BRIEF FOR C/INSP.*

*SALIFU NASHIRU PRESENT*

*NO LEGAL REPRESENTATION*

---

---

---

**JUDGMENT**

---

The Accused person is charged with one count of Defrauding by false pretence contrary to section 131(1) of the Criminal Offences Act, 1960, Act 29.

The facts as presented by Prosecution are that in November, 2017 the Accused engaged the complainant to install a plant for him at the cost of GH₵15,000.00. Prosecution says that during the installation, the complainant got to know that the Accused deals in cars and therefore he showed interest in buying two cars being a Kia Picanto and Toyota Haice from Accused. According to Prosecution, the Accused informed the complainant that he has vehicles coming in two weeks so the cars would be delivered to him. Prosecution says that based upon this, complainant asked the Accused to use the GH₵15,000.00 installation cost as the initial deposit. The Kia Picanto was priced at GH₵22,000.00 and the Toyota Haice was priced at GH₵60,000.00. According to Prosecution, complainant paid a balance of GH₵7,000.00 for the Kia Picanto and made a further deposit of GH₵31,000.00 for the Toyota Haice. Prosecution says that two weeks after payment there was no sign of the vehicles but in March, 2018 the Accused informed complainant that he had a Kia Picanto to clear at the harbour, but he later found out that the Picanto had been sold by Accused. Prosecution says that since then all efforts made by complainant to retrieve his money have proved abortive therefore a report was made to Police and the Accused was arrested and arraigned before this court.

Prosecution called three witnesses in support of its case. PW1 was Vincent Opoku Sarkodie, PW2 was Gabriel Ofori and PW3 was the Investigator C/Inspr. Deladem Ametepe.

PW1 testified that he is an electrical technician and that in October, 2017, the Accused brought a generator valued GH¢17,000.00 and made a deposit of GH¢2,000.00. He testified that on the same day, he went to the hostel of the Accused in the company of Mr. Ofori and fixed the generator for the Accused. He stated that there the Accused informed him that he deals in cars and he saw about six cars parked at the hostel premises so he informed the Accused that he was interested in getting a Kia Picanto. He testified that the Accused informed him that the cost of the Picanto was GH¢22,000.00 and that he had already sent for cars which would arrive in three weeks which included a Kia Picanto. He testified that he came to an Agreement with the Accused to add GH¢7,000.00 to the balance of GH¢15,000.00 for the generator so that he could take the car in three weeks. He testified that a week later, the Accused called him and sent some pictures of cars including a Toyota Haice which had arrived at the Tema port. He says that he showed interest in the Toyota Haice which cost GH¢60,000.00 and deposited GH¢30,000.00 cash in order to pay the balance in three months time. He testified that after two months; the Accused called him to inform him that the vehicles had arrived and he needed money to fuel them to his house so he arranged and met the Accused at Tesano and handed GH¢100.00 to him for fuel. He says that the total amount paid to the Accused was GH¢53,000.00 but he came to realize that the Accused does not deal in cars and does not own the hostel at which he fixed the generator. He says that it was at that point he realized the Accused had defrauded him, so he made a complainant to the Police.

PW2 testified that in or around October, 2017, the Accused came to his shop at Apenkwa to buy a generator for his hostel at Abeka. He says that the generator the Accused was interested in belonged to PW1, so he called him and they negotiated the price and agreed on GH¢17,000.00. He says that the Accused deposited an amount of GH¢2,000.00 leaving a balance of GH¢15,000.00. He stated that he together with PW1 and the Accused sent the generator to the hostel and fixed it. According to him, PW1 saw some cars parked in the yard and Accused informed PW1 that he deals in cars so he informed him that he was interested in a Picanto and Accused promised to get PW1 one at the cost of GH¢22,000.00. He testified that later PW1 informed him about the other transactions that transpired between the two of them.

PW3 tendered the following which were admitted and marked as follows:

- Exhibit A: Statement of PW1
- Exhibit B: Statement of PW2
- Exhibit C: Investigative Caution Statement
- Exhibit D: Charge Caution Statement
- Exhibits E & E1: Charge Sheet & Brief Facts

Prosecution closed its case, and the Accused person was called upon to open his defence. Accused testified on oath on 10<sup>th</sup> August, 2023. He testified that he manages a hostel and that he did not defraud PW1. He stated that he went to buy a generator from PW1 as he is a regular customer of his, so one day PW1 brought a business proposal, and the business was not going on as it used to so PW1 caused his arrest. He stated that the police wrote down certain things for him to sign and as he had not been to the police station before he did not know that he was being processed for court. According to him what is contained in the statements is not what he volunteered to the Police.

As already indicated, the Accused is charged with defrauding by false pretence. Section 132 of Act 29 defines Defrauding by False Pretence as follows:

*“A person defrauds by false pretence 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.”*

To prove this offence, the following ingredients must be satisfied:

1. That a person shall make a false representation or by a personation either written, spoken or sign language or any other means whatsoever;
2. That the said representation was made with regards to a state of facts to obtain the consent of another person;
3. That the said representation was false or made without the belief that it was true;
4. That as a result of the false representation the accused person caused the other person to part with or transfer ownership of a thing.’

In the Supreme Court case of **LOGAN & LAVERICK V. THE REPUBLIC [2007-2008] SCGLR 76**, it was held that whatever evidence is led by prosecution in support of the charges against Accused Persons should directly concern and be in line with the Particulars of Offence. In this case, the Particulars of Offence provides as follows:

“BISMARCK OWUSU, BUSINESS MAN:- you in the month of November, 2017 at Tesano, Accra in the Greater Accra Circuit and within the jurisdiction of this court with intent to defraud did obtain the consent of Vincent Opoku Sarkodie to part with GH₵53,000.00 by means of certain false pretences to wit; by falsely pretending that if the said amount is given to you, you wo;; sell one Kia Picanto car and Toyota Haice bus to him and upon such false representation, you succeeded in obtaining the said amount from the said Vincent Opoku Sarkodie which statement you well knew at the time of making it to be false”

The case of prosecution is that the Accused made a false spoken statement to PW1 that he trades in vehicles and based on that representation, he obtained the consent of PW1 when the said representation was false and as a result, PW1 parted with an amount of GH₵53,000.00 to the Accused. The Accused has indicated that PW1 made a business proposal which did not go well, however he did not in his testimony indicate which business proposal this was. During cross examination by Accused, it became clear that the case he put across was that it was PW1 who proposed the purchase of cars from him. Indeed, from the evidence it is not in dispute that there was transaction between Accused and PW1 involving the sale and purchase of a car. The following ensued during cross examination of PW1 by the Accused:

**Q:** At what point did you show interest that you want a car

**A:** The day we went to install the generator

**Q:** Are you telling the court the day you installed the generator is the day you showed interest in the car

**A:** Yes

**Q:** Did I tell you that the car is something you order or it is available in a garage.

**A:** You said the Kia Picanto is readily available here.

...

**Q:** Do you remember I came to your office and showed you a document

**A:** No

**Q:** Do you remember that I showed you the Bill of Lading

**A:** No

**Q:** So what went on that you told me that you will not get any money to pay the duty of the vehicle

**A:** You kept changing your stories. I paid fully for the first vehicle but you never produced it.”

The above extract gives a clear indication that there existed a business relationship between the Accused and PW1. Prosecution relies on Exhibit C which is the investigative caution statement as proof that Accused admitted the offence he has been charged with. Indeed, the said document was admitted and it was during cross examination of PW3 that the Accused indicated that he did not make that Statement voluntarily. It is a trite principle of law that once a confession is admitted in evidence, it will require no further proof of its contents before it is relied upon. Admissibility and probative value are however two distinct concepts. In the case of **G/L/CPL EKOW RUSSEL VRS. THE REPUBLIC CIVIL APPEAL NO. J3/5/2014; SC dated 13<sup>TH</sup> JULY, 2016**, it was held by Akamba JSC as follows:

*“Since a true confession is so highly persuasive, care must be taken to ensure that the tribunal of fact does not credit evidence of a confession unless there is good reason to believe that the confession was actually made in the terms presented in court and was a true and reliable statement when made.”*

Though the Accused has rather belatedly called into question the voluntariness of the Cautioned Statements tendered, the testimony of the Accused that there was no independent witness present and that the Statement was copied down by the investigator and signed tones down the effect of the confession and discounts the weight of the said confession.

In the case of **LANQUAYE v. THE REPUBLIC [1976] 1 GLR 1** it was stated by Taylor, J as follows:

*“It seems to me that our courts must be vigilant and must endeavour to detect very subtle forms of duress which the experience of other courts in other jurisdictions show are classical police methods used for circumventing the requirements of the law. This in my view is absolutely necessary in order to ensure a fair administration of criminal justice and protection of the citizen from arbitrariness, for these two considerations the fair administration of criminal justice and the protection of the citizen from arbitrariness are the essential hallmarks of the operation of the rule of law in a civilized society.”*

The above considerations thus weaken the probative value to be placed on Exhibits C and C1. Though Prosecution’s witnesses say monies were paid to Accused, pictures were sent and a certain friend of PW1 was present when the Accused sent them to inspect the car, no such proof was produced

before the court neither was the said person called as a witness. Indeed, aside the fact that PW2 was present when Accused purchased the generator and there was a conversation between Accused and PW1 about the purchase of a vehicle, PW2's evidence before this court is hearsay. During cross examination of PW1 by Accused the following ensued:

**Q:** Can you clarify, when you propose a business does it result in criminal

**A:** Yes I felt deceit

...

**Q:** I put it to you that we were transacting business and I wasn't defrauding you

**A:** You defrauded me because what we agreed was not what you did

**Q:** Are you telling this court that you completed your side of the transaction

**A:** Yes. I paid you money, you didn't bring the car."

In **HEMANS V COFIE [1997-98] 1 GLR 144; SC** it was held as follows:

*"Where one obtained goods on credit and defaulted in paying or received money from people to do some work but failed to do the work, the default in each case would be breach of contract, the remedy for which lay in the civil courts, and not the police station. Neither situation amounted to the offence of defrauding by false pretences under section 131 of the Criminal Code, 1960 (Act 29) because false pretence as defined in section 133(1) of Act 29 had to involve false representation of an existing fact. Thus a promise of an event in the future could found liability if it was coupled with a false statement of existing facts. But a mere representation that something would happen or was likely to happen did not amount to fraud by false pretences. Accordingly, the complaint lodged against the plaintiff, ie that he had received money from the complainants to do some work but had failed to do it, did not support a case of fraud to empower the police to arrest him and detain him in police cells."*

In this case, it is apparent that there was a contract for the sale and purchase of a vehicle between PW1 and the Accused and the Accused is alleged to have breached the said contract. I am unable to find from the evidence adduced that it has been proven beyond reasonable doubt that Accused made a false representation to PW1 and obtained his consent

based upon the false representation for which PW1 parted with the ownership of a thing.

In the case of **BROBBEY AND OTHERS v. THE REPUBLIC [1982-83] GLR 608** it was held as follows:

*“Proof beyond reasonable doubt in a criminal trial implies that the prosecution's case derives its essential strength from its own evidence. Therefore, where part of the evidence adduced by the prosecution favours the accused, the strength of the prosecution's case is diminished proportionately and it would be wrong for a court to ground a conviction on the basis of the diminished evidence.”*

From the evidence of PW1 he admits that he feels defrauded because what he agreed with Accused was not what Accused did. This is a case of a clear breach of contract. There is no other evidence on record which bolsters the case of Prosecution, in fact, the perceived strength of Prosecution's case was derived from their Exhibit C which probative value has been diminished.

I consider that doubts exist in the case of Prosecution and the said doubts must go in favour of the Accused. The Accused Person is therefore acquitted.

**H/H ENID MARFUL-SAU  
CIRCUIT JUDGE  
AMASAMAN**