

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON  
WEDNESDAY, THE 27<sup>TH</sup> DAY OF JULY, 2023 BEFORE HER HONOUR  
HALIMAH EL-ALAWA ABDUL BAASIT, CIRCUIT COURT JUDGE

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SUIT NO.: CCD/C7/01/23

THE REPUBLIC

VS

SAMUEL CLOTTEY  
PERSON

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ACCUSED

### JUDGMENT

The Accused Person was charged with Two (2) Counts of **Defrauding by False Pretenses**: Contrary to Section 131(1) of the Criminal and Other Offences Act, 1960 (Act 29) hereinafter referred to as Act 29. The brief facts of the matter as incorporated from the Charge Sheet is that sometime in 2022, the Complainant met the Accused Person on Facebook and later became lovers. The Accused person then encouraged the Complainant to venture into the sale of second-hand clothes when she informed him of her intention to do something for a living. The Complainant then parted with an amount of Ghc3, 000.00 for the Accused Person to buy the said clothes but he failed to do so. The Accused Person again informed the Complainant of a travelling opportunity to Turkey as he was part of those travelling and therefore wanted the Complainant to join him. The Accused Person then collected the sum of Ghc12, 000.00 to process her travel document but again failed to do so and

after collecting the total sum of Ghc15, 000.00 from the Complainant, he went into hiding until his arrest and arraignment before this Court.

### The Plea

On the 22<sup>nd</sup> day of March 2023, the Accused Person pleaded not guilty to the offences after same was read to him. 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"** - Caution Statement of the Accused Person;
2. **Exhibit "B"**- Further Caution Statement of the Accused Person;
3. **Exhibit "C"**- Charge Statement of the 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 NRCDC 323 further emphasizes 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."

PW1's evidence on record she met the Accused Person via Facebook and they became friends. She then informed the Accused Person that she was unemployed of which the Accused Person encouraged her to venture into the sale of second hands clothes. PW1 testified further that she later became interested and parted with an amount of Gh¢3,000.00 for the purchase of a bale of used clothes which she paid to the Accused Person via Mobile Money (MoMo) but the Accused Person failed to send the goods to her. PW1 again testified that the Accused Person informed her of a travelling opportunity of which she again initially parted with the sum of Gh¢600.00 for the procurement of a Passport but the Accused Person further demanded for other monies which added up to Gh¢12,000.00 and same was sent via MoMo to the numbers 0596120199 and 0249901214. On the 6/3/2023, Complainant then informed the Accused Person that she was coming to Accra for her

passport but was unable to reach the Accused Person on phone when she arrived in Accra but a visit to the place where the Accused Person used to work revealed that the Accused Person had been sacked. Subsequently, the Accused Person was arrested and arraigned before the instant Court.

PW 2 is the Investigator testified that on 9/3/2023, PW1 with the assistance of Two (2) Policemen arrested and brought the Accused Person sometime in 2022. PW2 testified further by reiterating the narrations of PW1 and concluded by stating that in the course of investigation, the accused person made it known to the Police that he collected an amount of Gh¢7,300.00 from the Complainant.

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..."*

To discharge the burden of establishing the guilt of the accused, the evidence on record was not cogent enough as to establish the guilt of the accused. Nonetheless, 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 Samuel Clottey and is a Sound Engineer. He stated that he met PW1 in Sunyani and they exchanged contacts. A week later, she inquired from him if was in a relationship and when he answered in the negative, they started an amorous relationship. He stated further that as at the time they started the relationship, he was a Security Guard at Ashaley Botwe, Zoom Lion of which he invited PW1 to his house after she informed him that she was in Accra. After 2 weeks, he was dismissed from work because of PW1 and he narrated all his problems to her especially the financial difficulties he was facing of which PW1 agreed to assist him financially and indeed anytime he ask for financial assistance, PW1 will do so in a best way she can but never mentioned to him that the financial assistance was a loan. He stated further that shortly after, he realized PW1 was cheating on him and he confronted her about it resulting in PW1 being disrespectful and hanging up calls on him. He concluded his defence by stating that even after realizing that PW1 was

cheating, he was still in the relationship and never did they agree to a break up and then out of nowhere, she caused his arrest and subsequent arraignment before this instant court.

Prosecution in seeking to establish the guilt of the accused cross-examined him and some portions are as follows;

Q: *Do you agree that you attempted to travel outside the country at one time?*

A: *No.*

Q: *you admitted collecting an amount of Ghc4, 300.00 from PW 1?*

A: *Yes, but that was the financial assistance she rendered to me and for peace to reign, I confirmed the amount she gave to me even though she did not know the total amount she gave to me.*

Q: *in Exhibit A, you admitted that you collected Ghc3,000.00 from PW1 to buy her second-hand cloth bale?*

A: *yes, but it was for me to keep for her as her capital and during my financial crisis, anytime I ask her for assistance, she tells me to take some of the money to help myself and it continued till the money finished.*

Q: *So, you agree that the money belonged to PW1 but not you.*

A: *I agree, but she gave the money to me willingly.*

Thus, as far as the Accused is concerned, PW1 was rendering him financial assistance but it is the case of the Prosecution that the accused defrauded PW1. Yet, the Prosecution did not adduce further evidence to establish that PW1 was defrauded neither was any other Witness called to testify and/or corroborate PW1's testimony. Section 7(1) of the Evidence Act, (1975) NRCD 323 defines corroboration to consist '*...of evidence from which a reasonable inference can be drawn which confirms in some material particular the evidence to be corroborated and connects the relevant person with the crime, claim or defence*'. Corroboration, according to **Justice S. A. Brobbey** in his book; **Essentials of the Ghana Law of Evidence**, 2014 at page 84 says '*... is the information which connects, affirms, or makes more certain the relevant portions of previous or future*

*evidence in such ways that it enables the court to believe that the second or corroborating evidence confirms the previous evidence and that confirmation makes the previous evidence true... Corroborative evidence tends, in some material particulars, to substantiate, validate, verify, confirm, affirm or support all or some relevant aspects of previous or future evidence.'*

Similarly, Prosecution also failed to adduce any documentary evidence to support their stance that the accused made certain false representations to PW1 for her to have parted with monies to the accused. Prosecution simply relied on Exhibits A, B and C which are Statements the Accused made to the Police and never led any other evidence to establish that the accused got the monies from PW 1 by false pretences thus leading the court into the realm of speculations and probabilities. In the case of **Oteng vs. The State** [1966] GLR 352 at page 354 -355, the Supreme Court held that *"One significant respect in which our criminal law differs from our civil law is that while in civil law a plaintiff may win on a balance of probabilities, in a criminal case, the prosecution cannot obtain conviction upon mere probabilities... The citizen too is entitled to protection against the State and that our law is that a person accused of a crime is presumed innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt."* The term "reasonable doubt" as explained by Lord Denning in the case of **Miller vs. Minister of Pensions (1947) 2 All ER 372** is as follows; *"It needs not reach certainty but must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Law would fail to protect the community if it admitted fanciful positions to deflect the course of justice"*

### **Conclusion:**

The defence of accused juxtaposed with the evidence on record raises reasonable doubt in the case of the prosecution as to the guilt of the accused

on the charge of defrauding by false pretence. The Prosecution woefully failed to adduce the necessary and/or cogent evidence to secure the conviction of the accused. The court therefore finds accused person herein not guilty of the offence of defrauding by false pretence. Accordingly, he is acquitted and discharged forthwith on both counts.

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