

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON MONDAY, THE 6TH
DAY OF NOVEMBER, 2023 BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO: D6/14/23

THE REPUBLIC

VRS:

GIFTY ADDO

ACCUSED PERSON

PRESENT

C/INSP. SUSANA AKPEERE FOR PROSECUTION

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The accused person was arraigned before this Court on 28th November, 2022, on a charge of defrauding by false pretences contrary to **Section 131** of the Criminal Offences Act, 1960(Act 29).

The brief facts presented by the prosecution are that the complainant is a Naval officer stationed at Burma Camp, Accra and resides at Michel Camp whilst the accused person is a trader and resides at Gbestile. The prosecution asserts that two years prior to alleged incident, the complainant’s husband, Eric Cudjoe introduced the accused to her as a friend and a National Security personnel stationed at the Jubilee house, Accra and that he got to know the accused person when he assisted her in arresting a suspect who was alleged to have defiled her daughter. The accused person then told the complainant that due to the services her husband had rendered to her, she wanted to show her appreciation by helping

any close associate of her husband to be enlisted into the Ghana Immigration Service.

The prosecution further alleges that the accused person charged the complainant an amount of Seven Thousand Ghana Cedis (GH¢7,000.00) under the pretext of assisting the complainant's sister to be enlisted into the Ghana Immigration Service which was paid in the presence of complainant's husband. It is further claimed that the accused person further requested an amount of GHC1,000.00, that she will use same to sort out things. This money was also sent to her through an MTN Mobile Money number 0243322356 with the total amount received totalling Eight Thousand Ghana Cedis (GH¢8,000.00). According to the prosecution, after taking the money, the accused person went into hiding and switched off her phones which made her unreachable. After investigations, the accused was charged with the offence and arraigned before this Honourable Court.

THE PLEA

The accused person pleaded not guilty to the charge after it had been read and explained to her in the Twi language. The accused person having pleaded not guilty to the charge put the facts of the prosecution in issue and the prosecution is statutorily required to prove the guilt of the accused person beyond reasonable doubt.

BURDEN OF PROOF

Under **Article 19(2)(c)** of the 1992 Constitution, a person charged with a criminal offence is presumed innocent until proven guilty or has pleaded guilty. This

simply means that when a person is charged with a criminal offence, it is the duty of the prosecution to prove the guilt of the accused person beyond reasonable doubt. This requirement is the essence of the **Sections 11, 13, and 15** of the Evidence Act, 1975(NRCD 323). In the case of **Asante (No.1) v. The Republic (No.1)** [2017-2020] I SCGLR 132 at 143 per Pwamang JSC held that:

“Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it was the accused person who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to his commission of the offence and his complicity in it except where he relies on a statutory or special defence”

The prosecution therefore bears the burden to prove the guilt of the accused person beyond reasonable doubt. When the accused person is called upon to open his defence, the law requires the accused person only to raise a reasonable doubt in the case of the prosecution as to his guilt. See **Section 13(2)** of the Evidence Act, 1975(NRCD 323).

ANALYSIS

Section 131 of Act 29, which creates the offence of defrauding by false pretence provides that any person who defrauds another person by false pretence shall be guilty of a second-degree felony. **Section 132** of Act 29 which defines the offence states that:

"a person is guilty of defrauding by false pretence, if by any false pretence or by personation, he obtains the consent of another person to part with or transfer the ownership of anything".

The law further defines false pretence under **Section 133 (1)** of Act 29 as:

"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 made with an intent to defraud. A representation may be made either by written or spoken words or by personation or by any other conduct, sign or means of whatsoever kind".

The representation as to the state of facts may also include a representation as to any right, liability, dignity, or ground or confidence but excludes a mere representation of an intention of state of mind or promise that anything will happen or be done or is likely to happen or be done. See **Section 133(2)** of Act 29. Additionally, where an accused person succeeds in obtaining the consent of a person by false pretence, the fact that the pretence is not of a kind that would not have an effect on the mind of a person using ordinary care and judgment is inconsequential and not a defence. See **section 133(2)(d)** and the case of the **Republic v. Osei Wusu** (Winfred) Unreported; Suit No. FT/0036/2016; Asare-Botwe J.(as she then was).

In the case of **Adobor v. The Republic** [2007] GHACA 5 (20 December, 2007), CA, the court held that:

“to constitute an offence of fraud by false pretence, the accused should have made a representation which to his knowledge is false, the representation should be made to a person who believed it and as a result was induced to part with or transfer the ownership of anything.”

The court further defined “*induce*” as “to persuade, to prevail upon another person to believe something and act upon it”. Thus, the victim must have been persuaded to accept the representation made to him as true and act upon it to his detriment.

The essential elements which prosecution must prove to secure conviction as stated in the case of **The Republic v. Woyome (Alfred Agbesi)** Suit No H2/17/15, CA decided on 11th March, 2016 CA are that:

- i. a representation made that is false.
- ii. made without the belief that it was true.
- iii. made with intent to defraud.

To discharge their legal burden, the prosecution called three witnesses. The first prosecution witness (PW1), the investigator, Esther Barbara Mensah, testified that on 12th July, 2022, one Larnyoh Abigail Abiashie lodged a complaint at the police station that, in December 2020, the accused person herein collected cash the sum of GHC8,000.00 to assist her younger sister get enlisted into Ghana Immigration Service, which turned out to be false and needed Police action and the case was referred to her for investigations. After taking statements of the witnesses, on 14th July, 2022, she proceeded with the complainant and her husband to the Community Four Police Station where the accused person was in

custody in connection with another case on enquiries. There, the accused person was identified to her as the one who collected the amount of GHC8,000.00 under the pretext of securing employment for the sister of the complainant in the Ghana Immigration Service. She tendered in evidence the investigation caution statement of the accused person admitted and marked in evidence as **Exhibit “A.”**

According to PW1, her investigations disclosed that the accused person represented to the complainant and her husband that she would enlist complainant’s younger sister into the Ghana Immigration Service. This statement induced the complainant to part with the said amount of Eight Thousand Ghana Cedis (GHC8,000.00) to the accused person for her younger sister to be enlisted into the Immigration Service which she knew, at the time of making the statement to be false. Based on that she charged the accused person with the offence and she tendered in evidence the charge statement of the accused person admitted and marked as **Exhibit “B”**. PW1 further testified that since the accused person mentioned that she works with the National Security and also stated in her investigation caution statement that the monies she collected were given to her boss at the Jubilee House, she wrote a letter to the National Security Office, attaching the accused person’s Identity card to ascertain the truth. However, her enquiries at the office disclosed that the accused person is not an employee of the National Security since she was not identified by her picture, her name was not on their employee list and she is not linked to the National Security Office in any way. In support, she tendered in evidence **Exhibit “C”**, a letter written by the police to the National Security for the verification of the identity of the accused person.

The second prosecution witness (PW2) states that he is a Policeman stationed at Sebrepor in the Afiemya District and resides at Michel Camp. According to him, he got to know the accused person when she came to lodge a case at the Police Station and they eventually became friends. The accused person introduced herself to him as a National Security Personnel working at the Jubilee House. He stated that because he assisted her to arrest the suspect in her case at the time, the accused person started visiting him in his house where he introduced her to his wife and children. Further to that, the accused person used to visit them at home and take their children out. According to him, one day the accused person informed him that she wanted to reward him for the good work he did in assisting her in the case she reported at the Police Station. The accused person then told him that her boss who is about to retire has been given slots for enlistment of some persons into the Ghana Immigration Service and asked if she had someone that she could assist. PW1 further testified that he informed his wife and a colleague police officer about the accused person's offer and they both agreed to assist their siblings through the accused person to get enlisted in the Ghana Immigration Service. The accused person then spoke with his wife and his other colleague and told them to pay an amount of Seven Thousand Ghana Cedis (GH¢7,000.00) each which was paid. The accused person again demanded for GH¢1,000.00 from his wife which she paid. Thus, in total, the accused person collected an amount of Eight Thousand Ghana Cedis (GH¢8,000.00) from his wife and Seven Thousand Ghana Cedis (GH¢7,000.00) from his colleague Sgt. Gloria Aglago and assured them that the two persons would soon be enlisted. However, the accused person failed to honour her word and after sometime, they could not reach the accused person on her phone.

The third prosecution witness (PW3) Lornyoh Abigail Abiashie also testified that she is Navy Officer stationed at Naval Headquarters, Accra and that Eric Teye

Cudjoe, PW2 is her husband and she got to know the accused person through PW2 two years prior to this incident when he introduced the accused person to her as a friend who works with the National Security. She further testified that the accused person was visiting them in the house and on one of such visits, the accused person told her that due to the good relationship existing between them, she would want to assist them by enlisting some of their relatives in the Ghana Immigration Service. According to her, the accused person explained further that, the “*kind gesture*” was meant to show her appreciation to PW2 for handling a case that she reported at the Police Station.

Based on that, she expressed interest and the accused person demanded an amount of Seven Thousand Ghana Cedis (GH¢7,000.00) to facilitate the application process which she personally paid to the accused person. The accused person later asked her to send One Thousand Ghana Cedis (GH¢1,000.00) to her to sort out a few things and she transferred the money through mobile money to the accused person. According to her, the accused person, after receiving the monies assured them that her sister will soon be enlisted into the Ghana Immigration Service. She states that she paid a total of Eight Thousand Ghana Cedis (GH¢8,000.00) to the accused person and that the accused person after collecting the money from her, went into hiding and switched off her phone based on that, she reported the matter to the Police against the accused person.

The accused person in her investigation caution statement **Exhibit “A”** admits that PW2 gave her an amount of Eight Thousand Ghana Cedis (GH¢8,000) to enlist PW2’s sister into the Ghana Immigration Service. According to her, she sent the money she received from PW2 to her “boss” who works at the Jubilee House, Accra. According to her, her boss who had some slots and helps people

to be enlisted into the Ghana Police Service and the Ghana Immigration Service. She maintains that her “boss” occupies a big position at the Jubilee House but refrained from mentioning the name of the said “boss”. According to her, the said “boss” had promised to refund the money by the end of July, 2022 but had failed to do so.

The accused person in her oral testimony before the court vehemently denies the charge levelled against her. According to her, she was not the person in charge of the enlistment and that she was only running errands for the person who was supposed to assist the complainant’s sister to get enlisted into the Ghana Immigration Service. According to her, they had already processed for some people and they were left with 15 persons to be processed. She testified further that her brother in-law also brought ten people to be enlisted and out of the ten, they were able to assist two of them to be enlisted and that her brother in-law who is a Naval Officer was reported to the authorities. According to her, to prevent her brother in-law from losing his job, she admitted liability and stated that she rather knew the person who works at the Jubilee House as a National Security Personnel who was supposed to help with the enlistment, based on which she was arrested. According to her testimony, during investigations, she directed the police to where the said “boss” was but he was not at home. During cross-examination of the accused person by the prosecution, the following ensued;

Q: I again put it to you that investigations at the National Security proved that you were not an employee.

A: I never said I work with the National Security. I said someone works at the Jubilee House and I used to run errands for the person.

Q: I am finally putting it to you that all statements you made to PW2 and PW3 in respect of this enlistment you claim you had no capacity to assist them in any way.

A: My Lord, I am not the person in charge. It was the person in charge who could not do it and it was not my fault.

Q: And that when PW2 and PW3 were before this court, you failed to challenge them on these issues.

A: Yes, My Lord. They came to this court and I was not able to challenge them because I was then not feeling well and I was devastated and I could not ask them any question. The court gave me time to go and study their witness statement but I could not defend myself.

From the answers of the accused person reproduced above, it is not in dispute that she represented to the complainant that if the said amount was given to her, she could secure their relatives employment in the Ghana Immigration Service. The crux of the defence mounted by the accused person is that she did not represent to them that someone works at the National Security but rather at the Jubilee house and that it was the person in charge who allegedly defrauded the complainants. However, the evidence on record does not suggest that the accused person was only running errands and knew nothing about the recruitment scheme. It was the accused person who personally made the representations and demanded money to help some people to be recruited when as a public institution, application to the Ghana Immigration Service is not for sale. It was the accused person who demanded for the payment of money and received all payments in connection with the supposed recruitment. The accused person at the time of making the statement knew that it was false and based on this false information, she induced the complainants to part with money. Under our law, it is immaterial

that if the complainant has exercised due care, she would not have been induced. The intention of the accused person could not have been for any other reason than to defraud since she is neither a worker at the Jubilee House nor the Ghana Immigration and had no means other than dubious means to secure the job for the complainant.

On the totality of the evidence led, I hold that the prosecution proved their case beyond reasonable doubt that the accused person, made a representation which she knew at the time of making it to be false and based on that false representation she induced the complainant to part with an amount of GH¢8,000. I therefore pronounce the accused person guilty of the offence of defrauding by false pretences contrary to **Section 131** of Act 29 and I accordingly convict her of same.

SENTENCING

The Court, as required by **Section 313A** of Act 30, ordered for a pregnancy test to be conducted on the female Convict and the test result proves that she is not currently pregnant. It is trite that a punishment must not only be appropriate for the crime or fit the crime but must also fit the person Convicted. In sentencing the Convict, the Court has considered both mitigating and aggravating factors. The Court, as mitigating factors takes into consideration the age of the Convict who is Forty-Six (46) years and the fact that according to her, she is a mother with four children. The prosecution, during the pre-sentencing hearing informed the Court that the Convict is serving a sentence for a similar offence. This fact is admitted by the Convict who states that she is serving a seven year jail term for defrauding by false pretences.

It is trite learning that a previous conviction of a Convict may be considered in opposing sentence as provided for under **Section 300** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30). In the Practice Note contained in the case of **Blackie v. The state (Practice Note)** [1962] 2 GLR 2019, SC, Van Lare JSC (as he then was) stated that previous conviction is one in respect of which the prisoner had already suffered punishment before committing a later offence. Thus, the Court cannot take the previous conviction of the accused person into consideration in imposing the sentence.

As aggravating factors, the Court takes into consideration the **modus operandi** of the Convict in committing the crime. From the evidence, it appears the Convict is not in the dubious recruitment scheme alone but there is a whole recruitment cartel that she consistently throughout the trial failed to mention the names of the so called “big men” defrauding Ghanaians under the cloak of working with the National Security and the Jubilee House. Recruitment to the security services is a serious business and the security of the nation cannot be compromised through such fraudulent enlistments. There is the need to protect the public from such miscreants particularly the vulnerable youth who, due to the unemployment situation in the country may fall prey to such fraudulent schemes. There is the need to sanitise the system and the Court must not countenance fraudulent means of gaining access to these institutions since it has repercussions for the security of the country. Additionally, the amount received from the fraudulent act and the fact that the accused person has not refunded the amount is also considered. There is also the need to impose a deterrent sentence to make it unattractive to the Convict herself to repeat the offence and also to serve as deterrent to the people that she has been engaging in the ardent activities with.

I therefore sentence the accused person to a term of imprisonment of Eight (8) years in hard labour.

ANCILLARY ORDERS

In accordance with **Section 146** of the Criminal and Other Offences (Procedure) Act, the amount of Eight Thousand Ghana Cedis received by means of false pretences should be refunded by the accused person to the complainant.

SGD.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**