

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 7th DECEMBER 2023 BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE.

D6/45/2023

THE REPUBLIC

VRS

DAVID PAPPOE JUNIOR

JUDGMENT

The accused was arraigned before this court on three counts of “Issue of False Cheque: Contrary to section 313A (b) of the Criminal Offences Act 1960 (ACT 29).

The law provides under sections 173 and 174 of the Criminal and Other Offences Procedure Act, Act 30 as follows:

173. Acquittal of accused when no case to answer

Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.

174. The defence

(1) At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the Court shall call on the accused to make the defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement.

(2) The Court shall then hear the accused if the accused desires to be heard and the evidence the accused may adduce in defence.

By this provision, the Accused at the close of the case for the prosecution, was asked to open his defence as the court came to the conclusion that a case has been made against him and the accused was called upon to answer. The accused then opted to give evidence personally on oath.

The facts of the case is that the Complainant is Anthony Mba Ndor, Deputy Director - General of Ghana Maritime Authority, Tema. The accused is a Business Executive and lives at Lakeside Estate, Accra. During the year 2019, Ghana Maritime Authority awarded the accused person and MD of Ovimus Service Limited to supply them with three (3) Trase Skimmers from Quinazhour Julong Environment Technology Company in China which could not be delivered (sic).

The Ghana Maritime Authority asked the accused to refund an amount of GHC 1,398,000.00. The accused then issued three UBA Bank Cheques numbers 284634 with face value of GHC 366,000, 284633 with face value of GHC 300,000 and 284639 with face value of GHC 200,000.00 all totaling GHC 866,000.000 to be withdrawn from account number 1011467803503.

On 03/11/2021 and 21/12/2021, the cheques were presented but were dishonoured. Complainant lodged a complainant with Police which led to the arrest of the accused person. Investigation revealed at the time accused person issued the cheques, he had no funds in the account. After investigation, the accused person was charged with the offence and brought before the court.

The accused pleaded not guilty to the charge and therefore it is the duty of the prosecution to prove the guilt of the accused as mandated by section 11 of the Evidence

Act, 1975, NRCD 323 which states: "In a criminal action, the burden of producing evidence when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt". See **Oteng v The State (1966) GLR 355**

The question for determination by the Court is "Did the accused issued false cheques in respect of an account to the complainant Company"?

It is stated under Section 313A of the Criminal Offences Act,1960, Act 29 as follows:

313A. *Issue of false cheque*

(1) *A person who*

(a) *without reasonable excuse, the proof of which lies on that person, issues a cheque drawn on a bank with which that person does not have an account, or*

(b) *issues a cheque in respect of an account with a bank when that person does not have a reasonable ground, the proof of which lies on that person, to believe that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal course of banking business, or*

(c) *with intent to defraud stops or countermands a cheque previously issued by that person, commits a criminal offence and is liable to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment; not exceeding twelve months or to both the fine and the imprisonment, and in the case of a subsequent criminal offence to a fine not exceeding one thousand penalty units or to a term of imprisonment not exceeding five years.*

(2) A person shall not be convicted of a criminal offence by virtue of subsection (1) (b) in respect of a cheque which is presented for payment later than three months after the date specified on the cheque for payment.

(3) Where a person is convicted of a criminal offence by virtue of subsection (1) (c), the Court may, if satisfied that there are adequate funds in the account of that person in respect of which the cheque in question was issued to meet the amount specified on the cheque, order the bank in question to honour the cheque, and a bank complying with the order is not liable to a claim in respect of that act.

Prosecution has to prove that at the time of signing the cheque the accused had insufficient funds in his account to satisfy the value of the cheque.

During the trial of the case before the Court, the Prosecution in proving their case called 3 witnesses PW1 – Dr. Kwasi Awuah-Werekoh, Finance Director of the complainant institution, PW2- Anthony Mba Ndor, the Deputy Director of Finance PW3 – Yaw Akosa Antwi, Deputy Director General (Finance and Administration) and PW4, the Investigator, D/Insp. Imoro Abata.

PW1, PW2 and PW3 are officers of the institution Ghana Maritime Authority who gave similar evidence that the Ghana Maritime Authority entered into a contract on 13th February, 2019 with the Oximus Service Ltd for the supply and installation of three (3) Trash Skimmers from Qingzhou Julong Environment Technology Company Limited at a total cost of Eight Hundred and Thirty – Nine Thousand and Sixty – Seven United States Dollars and Fifty Cent (USD 839,067. 50) excluding value Added Tax (VAT). They testify that the complainant made full payment of the purchased price for the three (3) Trash skimmers.

It is the case of the complainant institution that after full payments were made, several attempts were made to compel the accused to deliver the trash Skimmers but the accused failed to do same. The accused later issued cheques to meet the cost obligation that was agreed between the accused and the complainant. The accused three (3) UBA cheques out of five (5) that were issued by the accused namely cheque number 284634 and with face value of Three Hundred and Sixty Six Thousand Ghana Cedis (GHC 360,000), cheque number 284639 with face value of Three Hundred Thousand Ghana Cedis (GHC 300,000) and cheque number 284639 with face value of Two Hundred Thousand Ghana Cedis (GHC 200,000) were presented to the bank and deposited into the bank of the complainant and all the three (3) cheques the accused gave were dishonoured by the bank. The witnesses testified that it was the accused who issued the cheques.

PW4 the investigator corroborated the evidence of the prosecution witnesses and testified further that the cheques which the accused issued on an account when presented at the Bank were dishonoured for lack of funds. PW4 testified further that as part of the investigations, Police obtained court order for disclosure of accused account detail with UBA which indicated that there was no funds for the bank to honour the cheque. The Statement of the account also shows that the three cheques were indeed presented to the bank and they could not clear because there was no funds in the account.

At the end of the case of the prosecution, the court makes a finding of fact per the evidence before the court that:

- i. The accused issued the cheques (Exh. F, F1 and F2) to the Ghana Maritime Authority.
- ii. The Ghana Maritime Authority presented the said cheques for clearance purposes.

iii. The said cheques were dishonoured as there was inadequate funds in the account.

After, the court came to the conclusion that a prima facie case had been made by the prosecution in respect of the charges against the accused, he was called upon to open his defense.

The accused gave evidence to the effect that his name is David Pappoe Junior. He lives at Ashaley Botwe and an Engineer. He said he works with Oximus Services Limited as the Managing Director. He went further to say that he would like to say that the issuance of the cheque was not an intent to issue a false cheque, it was a cheque issued for surety of reimbursement of funds issued for shipment of equipment's his company purchased on behalf of Ghana Maritime Authority.

The accused said there was no malice of issuance of the cheque. He said his company was assured that before the cheque was presented, they will be informed, and the cheque was later on presented and was not honored by the bank due to lack of funds which he had told the authority prior to the presentation of the cheque to the bank. He said the authority then lodged a complaint to the Police which he was invited and honored the invitation and eventually case being filed against him for a dud cheque.

Clearly from the evidence of the accuse in defense, the accused indicated that the cheques were issued by him and also admits that the cheques were presented and dishonoured for lack of funds. This was the response of the accused when he was asked during his cross examination after he opened his defence before the court:

Q6: Do you agree with me that they were all dishonored due to lack of funds

A: The cheques were dishonored yes which I had already told the court, we did not have funds at the time

Accused however in his defence stated that the cheques were issued for purpose of surety and they were assured that the complainant will inform them before the cheques were presented. The accused testify that the assurance was oral and he did not have any documentary evidence to that and it was one Yaw Akosa Antwi who gave him the said assurance. Prosecution called the said Yaw Akosa Antwi, the Deputy Director General in Charge of Finance and Administration who testified as PW3 and he denied the said assertion during cross examination.

It is the responsibility of the accused to lead evidence to create doubt in the case of the prosecution which was not done. The accused claim the cheques were not supposed to be cleared but to be kept by the Authority as a surety but a look at the cheques which were in evidence shows that he alone issued the cheque and he endorsed the cheque at the front and at the back. The accused even went further to open the cheques which were crossed cheques. All these support the case of the prosecution that the accused issued these cheques to the Authority for them to present to their bankers when the time is due and from the evidence before the court that is why the Authorities presented the cheques which were dishonoured by the bank of the Authority.

I am of the humble opinion that the prosecution have been able to prove their case against the accused person. Accused is therefore found guilty on all the three charges brought against him and convicted accordingly on all the three counts of offences.