

**IN THE CIRCUIT COURT HELD AT ACCRA ON MONDAY THE 16<sup>TH</sup>  
DAY OF OCT 2023 BEFORE HER HONOUR SUSANA EDUFUL  
(MRS.), CIRCUIT COURT JUDGE**

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**COURT CASE NO. D6/333/2022**

**THE REPUBLIC**

**VRS**

**BENEDICT ESHUN**

**RULING**

The Accused Person has been charged with one count of Defrauding by False Pretences contrary to sections 131 of the Criminal and other Offences Act, 1960 (Act 29).

**The Brief facts**

The brief facts of the case as presented by Prosecution are that, “The Complainant, Antwiwaa Adabel Obeng is a nurse and resides at Fiapre in the Bono Region. The Accused is also a businessman resident at Community 25, Tema. In February, 2021, the Complainant was introduced as a car dealer by a friend to import a vehicle, Mazda 3 for her. The Accused gave the price of the mazda 3 as GHC34,000.00. The Complainant sent the money to the Accused via bank transfer to his Stanbic Bank account. The accused told the complainant, the vehicle will be delivered within two months after payment of the amount. One month later, the Accused told the complainant that he had purchased the vehicle. The Complainant however suggested to the Accused to purchase SUV vehicle which value the Accused gave as GHC55,000.00. The Accused agreed to

sell the mazda 3 he alleged to have purchased. Later, the Accused told the Complainant that he had sold the mazda 3 at GHC35,000.00 which he would use to purchase the SUV vehicle and that she should pay GHC20,000.00 to clear the vehicle from the port. On 26/9/2021, the Complainant completed payment of the GHC20,000.00 also through his bank account. After the Accused received the GHC20,000.00 he started giving one story after another and eventually went into hiding. On 28/1/2022, the Complainant arrested the Accused and handed him over to the Police. In his Investigation Caution Statement to the Police, the Accused admitted the offence. He refunded GHC3,000.00 and pleaded with time to refund the money to the Complainant but failed. He was charged and arraigned before the court.

The Accused pleaded not guilty to the charge levelled against him on 8/08/2022 when his plea was taken. At the close of prosecution's case, the duty of the court is to determine if there is a prima facie case made against Accused.

## **THE STANDARD AND BURDEN OF PROOF**

The settled position of the law as espoused in several authorities decided by the Ghanaian Courts is that at the close of prosecution's case, a prima facie case ought to have been established. **MALI V. THE STATE** [1965] GLR 710; **THE STATE V. SOWAH** [1961] 2 GLR 745; **MOSHIE V. THE REPUBLIC** [1977] 1 GLR 258; **APALOO v. THE REPUBLIC** [1975] 1 GLR 156; **ALI KASSENA V. THE STATE** [1962] 1 GLR 144 and recent cases such as **TSATSU TSIKATA V. THE REPUBLIC** [2003-2005] 2GLR 294. In the case of **MICHAEL**

**ASAMOAH & ANOR v. THE REPUBLIC** Suit No. J3/4/17 dated 26<sup>th</sup> July, 2017, where the Supreme Court speaking per Adinyira JSC stated the law thus:

“Furthermore, the standard of proof borne by the Prosecution at this stage **cannot be proof beyond a reasonable doubt**, as held in the case of **Tsatsu Tsikata v. The Republic** [2003-2004] SCGLR 1068.”

This position does not also mean that the court should lower the bar for Prosecution at this stage. The evidence led should be enough to convict at that stage but as long as the Accused has not spoken his guilt, it is not proved beyond reasonable doubt and if it is not enough to convict in circumstances where the Accused refuse to speak then Accused should be acquitted at that stage.

From the law stated above, it is clear that even without the prompting of the Accused Persons, this court is obliged by law to consider, at the close of Prosecution’s case, whether sufficient evidence has been offered to prove every essential element in the offence charged.

To determine whether or not a case has sufficiently been made by the prosecution to justify this court to invite the Accused Persons to open their defence, it is necessary to set out the scope of burden that is cast on the prosecution to discharge at this stage. That is to say, whether the Prosecution has been able to establish a prima facie case against the Accused Persons in respect of each of the offences charged.

Referencing from the ruling of the High Court in the case of **THE REPUBLIC v. EUGENE BAFFOE-BONNIE & 4ORS** Suit No. CR/904/2017 dated 23<sup>rd</sup> May 2019, what will necessitate a

discharge and an acquittal of the Accused Persons, at this stage is when the following are present;

1. That there has not been sufficient evidence to prove the essential elements in the offence charged.
2. That the evidence adduced by the prosecution had been so discredited as a result of cross examination that no reasonable tribunal could rely on that evidence.
3. That the evidence offered by the prosecution is so manifestly unreliable that no reasonable tribunal could safely convict upon it.
4. That the evidence is evenly balanced, that is to say, the evidence is susceptible to two likely explanations- one consistent with guilt, the other consistent with innocence.

**Section 173 of Act 30** states that, if 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 him to make a defense, the court shall, as to that particular charge acquit him. This court is obliged by law to consider, at the close of Prosecution's case, whether sufficient evidence has been offered to prove every essential element in the offence charged. In this case, the duty of the Prosecution is to establish a *prima facie* case against the Accused Person. In the case of **Yeboah and Another v The Republic [1999-2000] 1 GLR 149** where the Court of Appeal speaking per GBADEGBE J stated that *"...a prima facie case was made against the appellants which required the trial circuit tribunal to call upon them to enter into their defense. The authorities are quite well settled that where at the end of the case for the prosecution, an ingredient of the offence charged was not proved or where the evidence of the*

*prosecution was discredited as a result of cross-examination, thus rendering it unsafe to be acted upon, then the court need not call upon the accused to open their defense.”*

The summary of Prosecution’s evidence is that the Accused was introduced to Complainant by one Augustine when Complainant intimated to Augustine she needed a car to buy. The Accused then assured Complainant he could get her a mazda 3 valued at GHC34,000.00. The Complainant paid the total sum in two instalments. After one month, the Accused informed Complainant he had bought the car. Complainant requested to top up the amount paid so the Accused can buy an SUV instead of the mazda 3 originally agreed upon. But Complainant persuaded the Accused to sell the mazda 3 bought. The Accused confirmed to Complainant the sale of the said mazda 3 and indicated he made a profit of GHC1,000.00. It was agreed that the amount of GHC20,000.00 would be spent to clear the SUV from the port. This convinced the Complainant to deposit the amount of GHC20,000.00 with Augustine so that the money would be readily available when the SUV is available at the port. On September 24, Accused, called the Complainant that the SUV had arrived at the port hence the need to pay for the duty at the port. Complainant instructed Augustine to pay the amount of GHC20,000.00 to Accused for the payment of the duty at the port for the SUV. Thereafter, the Accused started giving accuses but did not produce the SUV and then promised to refund the amount of GHC55,000.00 taken for acquisition of the SUV.

## **EVALUATION OF THE EVIDENCE AND APPLICATION OF THE LAW:**

Count one is on the offence of Defrauding by False Pretences.

Defrauding by false pretences contrary to section 133 of Act 29/60 explains defrauding by false pretences;

Section 133—Definition of and Provisions Relating to a False Pretence.

(1) A false pretence is 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.

(2) For the purpose of this section—

(a) 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;

(b) the expression "a representation of the existence of a state of facts" includes a representation as to the non-existence of anything or condition of things, and a representation of any right, liability, authority, ability, dignity or ground of credit or confidence as resulting from any alleged past facts or state of facts, but does not include a mere representation of any intention or state of mind in the persons making the representation, nor any mere representation or promise that anything will happen or be done, or is likely to happen or be done;

(c) a consent shall not be deemed to have been obtained by a false representation as to the quality or value of a thing, unless, the thing is substantially worthless for the purpose for which it is represented to be fit, or to have been substantially a different thing from that which it is represented to be; and

(d) subject to the foregoing rules, if the consent of a person is in fact obtained by a false pretence, it is immaterial that the pretence is such as would have had no effect on the mind of a person using ordinary care and judgment.

In relation to the elements of the offence of defrauding by false pretences the prosecution must establish the following;

(1) That the accused made a representation of the existence of a state of facts.

(2) That the representation was made either by written or spoken words or by impersonation.

(3) That the representation was made with the knowledge that it was false or made without the belief that it was true.

(4) That the representation was made with intent to defraud.

(5) That the representation was made by the accused (or by a person) and that by that representation he obtained the consent of another person to part with something. In a criminal trial of an accused for the offence of defrauding by false pretences if the prosecution fails to adduce sufficient and satisfactory evidence to prove all the above stated ingredients of the offence their case must fail.

In the case of **NANA S. K. GRAY @ ADOBOR v. THE REPUBLIC** [2009]19 M.L.R.G. 23, @page 30, the Court of Appeal, per H/L **R.C. Owusu J.A**, (as she then was), delivering the lead judgment of the court said;

“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 the transfer or ownership of anything.

To induce is to persuade, to prevail upon another person to believe something and act upon it. In the case of false pretence, the victim must have been persuaded to accept the representation made to him as true and act upon it to his detriment. See the case of *Rabbles v. The State* (1964) GLR 584 at 585.

In this case, the evidence led by the Prosecution, PW1 are that Accused was introduced to the Complainant by their mutual friend, Augustine sometime in 2021 when she told him that she needed a car to buy and that it was Augustine who informed PW1 that the Accused person could help her buy a car.

Also during cross-examination of PW1 by Accused on the 25<sup>th</sup> of April, 2023, the following is what ensued:

Q. Who introduced you to this whole transaction?

A. We had a mutual friend by name Augustine Amu.

Also during Cross examination of PW2 on the 6<sup>th</sup> of September, 2023 PW2 sated as follows:



Q. The Complainant told you that one Augustine their common friend introduced the Accused to her, not so?

A. Complainant told me that a friend introduced Accused Person to her to enable her purchase a vehicle.

The above piece of evidence shows that, the Accused was not the one who induced or persuaded the Complainant to part with the initial GHC34,000.00 in order for him to get her a mazda 3 car. The parties were introduced to each other by Augustine, their mutual friend, and they negotiated and agreed for the Accused to purchase the mazda 3 car which was to be delivered within 2 months.

The Complainant has stated in evidence that the Accused actually informed her that he had purchased the Mazda 3 after one month.  
(see paragraph 7 of PW1 Witness Statement)

PW1 confirms from her evidence that she approached Accused through Augustine because he needed a vehicle to buy. Accused Person confirms he bought Mazda 3 for Complainant and there was an agreement between them to sell the said mazda 3.

From exhibit C the Investigation Caution Statement of Accused he says “when we all agreed on the purchase of mazda sedan for her which she later contracted to sell to another person whilst the car hasn’t even yet been shipped. I did as such and even declared to her a profit of GHC1,000.00 to add to the initial amount. I then began processes of purchases on the next vehicle. Due to challenges arising from the business short fall and mishaps couldn’t honour the second offer.” This piece of evidence shows

that this initial arrangement between the parties was concluded without any dispute.

There was a further agreement between the two for Accused to get Complainant an SUV. The Complainant then asked the Accused if he could purchase an SUV car for her, and they both agreed that Accused sells the mazda 3 in order to get an SUV.

Accused indeed sold the Mazda 3 at GHC35,000.00. Complainant says that the Accused informed her via text message that he had sold the Mazda 3 and even made a profit of GHC1,000.00 (see paragraph 9 of the Witness Statement of PW1) and that was what shot the price to GHC35,000.00). Accused also confirms the profit of GHC1,000.00 was made out from the sale of the Mazda 3.

There is then the second leg which is the assertion made by PW1 that she asked Accused to get her and SUV with the money in his hands and it was further agreed that an addition amount of GHC20,000.00 would be paid by PW1 to clear the car at the port.

The vexed question is did Accused make a representation to PW1 that the SUV had arrived at the port and therefore need the amount of GHC20,000.00 to clear the duty at the port when Accused knew that to be false? And based on this representation did Complainant part with the amount of GHC20,000.00 through Augustine to Accused. What evidence did prosecution proffer to establish that indeed the said to GHC20,000.00 was paid the Accused through Augustine via bank to Accused on September 25, 2021 and September 26, 2021. The Accused admit in Exhibit

C his Investigation Caution Statement that it is the second offer he could not honour.

It is not enough to show that there was a representation on the basis of which Complainant parted with money to the Accused but Prosecution must go beyond the representation made to prove that the Accused knew that the representation as to the existence or non-existence of a state of fact to be false or did not believe in the truth of that representation. It was also noted by Apaloo J. (as he then was) in the case of **SEFA v COMMISSIONER OF POLICE [1963] 2GLR 33** that it is of the essence of this offence that a false representation must have been made by the accused and that such falsity must have been known to the accused at the time of making it.

The Accused persuaded the Complainant pay to him an GHC20,000.00 when he informed the Complainant that the SUV had arrived at the harbour and that he needed the money to pay duties on the car which representation was false.

This representation induced the Complainant to part with the GHC20,000.00. This constitute a misrepresentation of the state of facts. Had the SUV indeed arrived when Accused stated it was at the port? This brings up a triable issue which Accused must give evidence in order to raise a doubt in the mind of the court the state of facts at the time. There is no evidence to establish that the SUV has been cleared at the port, as the Accused has not been able to produce the SUV which was allegedly at the Harbour. Accused has also not refunded the money to the Complainant.

From the Investigation Caution Statement Exhibit C, Accused stated that he could not honour the second vehicle due to business shortfalls and mishaps.

If Accused has a business short fall why did he ask Complainant to send the GHC20,000.00 when he knew the said vehicle was nowhere in sight and needed the money to rather salvage his business from a possible collapse.

This means that the representation by Accused to PW1 to send the GHC20,000.00 to clear the SUV at the poet, at the time he made it he knew the representation was false.

He stated that he held a meeting with the Complainant and requested her to give him some time to produce the SUV but it was the Complainant who insisted she need a refund of her the money.

This is what ensued on the 3<sup>rd</sup> of May, 2023 during cross - examination of PW1 by the Accused person.

Q. Did I give a definite date to refund?

A. No.

Q. After the meeting on 31/12/2021, were we in contact before you reported the matter to the Police?

A. I was in contact with you. I was the one who was calling you. You never called me.

Q. Did I tell you the process I was using to get funds to refund the amount?

A. You told me, it was all excuses.

Q. On 28/1/2022 per paragraph 15 when I was invited by the Police, did I not give the process I was going to use to refund the money?

A. You did not, you said you were in contact with some financial institution to help you pay but you did not give the actual process.

Q. Did I in any way disappear or go out of contact after these payments were made?

A. No.

Q. Did I block channel of communication; I mean through the mutual friend?

A. No.

Q. Did Augustine inform you I had avoided his calls or messages?

A. No.

This piece of evidence shows all the excuses the Accused gave the Complainant. The Accused was the one who informed the Complainant that the vehicle had arrived and only needed to be cleared it with the amount of GHC20,000.00. When and how did the business shortfalls and mishaps set in?

When the pressure got to the Accused, he then issued a cheque of GHC25,000.00 to PW2.

This is what ensued during cross examination of PW2 by counsel for Accused on 6<sup>th</sup> September, 2023.

Q. The cheque was never dishonoured.

A. The Accused gave a cheque to me with a promise to hold on until the money was in the account he will tell me to present it to the Complainant.

This piece of evidence shows that at the time of issue of the said cheque, Accused, knew he would not refund the whole amount to

PW1, the Complainant. He only issued the cheque because he did not want to be prosecuted as the Complainant had already reported him the Police.

Accused also knew he did not have the said amount in his account but issued it anyway. The pieces of evidence shows that the Accused at the time he told the Complainant to send the GHC20,000.00, he did this with the intent to defraud PW1 as he did not have the intention of giving her the SUV.

From the entire evidence, I am of the opinion that the Prosecution has made a prima facie case against the Accused and he is therefore called upon to open his Defence.

**PROSECUTOR**

**INSP. EBENEZER TEYE OKUFFO**

**LEGAL REPRESENTATION**

**I.K KUTU AKYEAMPONG FOR ACCUSED PERSON**

**H/H SUSANA EDUFUL (MRS)  
(CIRCUIT JUDGE)**