

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON TUESDAY, 11<sup>TH</sup> JULY, 2023

SUIT NO. D7/25/21

THE REPUBLIC

VRS

ASAFOATSE TETTEH ODJADAM V

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JUDGMENT

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The Republic has arraigned the accused person before this Court on a charge of fraudulent transaction in land; contrary to *section 277 of the Land Registry Act, 2020*. The particulars of offence are that on or before June 2020 at community 25 in the Tema metropolis and within the jurisdiction of this court, you did make a grant of two plots of land situate, lying and being at Community 25 to Anthony Kwame Archer and received an amount of Ghs 52,500 from him which you had no title to the said land.

The accused person pleaded not guilty to the charge. By so doing, he cast upon prosecution the duty of producing relevant, cogent, credible and material evidence in proof of their claim against him. According to the case of *Davis v. U.S, 160 U.S 469(1895)*. "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

The accused person by his plea of not guilty had put in issue all the essential elements necessary to prove that he had not committed the offence as charged. A plea of not guilty serves as both a shield and a sword.

A shield for the accused person who is presumed to be innocent until proven guilty and does not have to say anything in proof of his innocence and a sword pointed at his accusers to lead evidence to establish a prima facie case against him on the charge(s). It is only when prosecution has discharged its duty that the sword would now turn towards the accused person; not to establish his innocence but to raise a reasonable doubt in the mind of the court.

In the case of *Gligah & Atiso v. The Republic* [2010] Scglr 870 @ 879 the court held that *“Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of 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 would be called upon to give his side of the story.”*

In proof of its case, prosecution called three witnesses. PW1 is the complainant. His evidence is that his wife introduced him to the accused person who is the chief of Prampram. That he acquired two plots of land at a cost of Ghs 45,000 each and paid Ghs 20,000 to the accused person herein.

That he began working on the land and was stopped by policemen. He later got to know that the D.C.E of the area was laying claim to the land. He met with the D.C.E who told him that the land was given to him by the Kpone Traditional Council without

the payment of any consideration because the District Assembly was built on his father's land.

PW1 continues that he caused a search at the Lands Commission with documentation provided by the accused person. It showed that the land belongs to Prampram and is not registered in any one's name. Accused person urged him to proceed with his development on the land and also introduced him to the secretary of the director of land valuation for the processing of his documents.

The said Secretary also tasked one Fred to assist him with the process. That he spent Ghs 8,500 and although he was promised that his title would be processed in three months, it was still not processed after more than a year. That the said Fred then told him that a second search had shown that the land was registered in the name of one George Mullah.

That when he confronted the accused person, he explained to him that the family members had caused the said George Mullah to do the registration and so he should pay Ghs 2,500 for an assignment. That he paid the money to George Mullah only to come back and see that the whole land was fenced.

That accused person then told him that a son of George Mullah by name Junior was the one who had constructed the said wall. George Mullah upon confrontation said he did not have such a son and the named person rather works with the accused person.

That he realized that he had been defrauded by the accused person. That he had then given a total of fifty two thousand five hundred Ghana cedis to the accused person and

this was exclusive of the eight thousand five hundred Ghana cedis (Ghs 8,500) he spent at the Lands Commission.

### **THE EVIDENCE OF PW2**

PW2 is the wife of PW1. Her brief evidence is that she was introduced to the accused person concerning a plot of land she was interested in purchasing. She informed her husband and he also expressed interest. She and PW1 made a part payment of Ghs 20,000 to the accused person for one plot of land which costs Ghs forty five thousand Ghana cedis. That after inspecting the land, PW1 decided that he wanted an extra plot of land.

### **THE EVIDENCE OF PW3**

PW3 is the investigator. His evidence is that he took copies of the indenture and site plan of PW1 for investigations. That after he arrested the accused person, he took an investigation caution and later a charge statement from him.

That his investigations revealed that the accused person had sold the land to another person who eventually fenced and gated it. Accused person was confronted and he could not give any tangible reason.

He tendered in evidence the investigation caution statement and charge statement of accused person as EXHIBIT A and B respectively. EXHIBIT C is the indenture accused person supposedly handed to PW1. Prosecution closed its case after this.

### **CONSIDERATION BY COURT**

*Section 173 of the Criminal and Other Offences Procedure Code, 1960 (Act 30)* provides 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 defence, the Court shall, as to that particular charge, acquit him."

According to the Supreme Court in the case of *Asamoah & Anor. Vrs. The Republic [2017-2018] 1 SCGLR, 486, Adinyira JSC* speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

- a) There had been no evidence to prove an essential element in the crime
- b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
- c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it
- d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of *The State v. Ali Kassena [1962] 1 GLR 144 in which the Practice Direction issued by the Queens Bench Division in England [1962] 1 E.R 448 (Lord Parker CJ) was approved of and the case of Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068*). See also the case of *Sarpong v. The Republic [1978] GLR 790*.

In this court, prosecution charged the accused person with the offence of fraudulent transaction in land contrary to section 277 of the Land Registry Act, 2020. The accused person was arraigned before this Court on the 18<sup>th</sup> day of May, 2021. Unfortunately, there is no law in

force as the Land Registry Act, 2020. The current legislation is the *Land Act, 2020 (Act 1036)* which was passed by Parliament and received presidential assent in December, 2020.

Prior to this, the relevant law in force for the prosecution of fraudulent transactions in land was the *Land Registry Act, 1962, Act 122*, specifically *section 34*. *The Land Act*, repealed the Land Registry Act together with many other existing legislations affecting land.

Thus at the time prosecution was arraigning the accused person before this Court in May, 2021, the Land Registry Act was not in force. I however take note that although prosecution referred to the Land Registry Act, it provided the year as 2020 which is the year of the Land Act. The section under which it charged the accused person is also found in the Land Act rather than the repealed Land Registry Act.

*Section 277 of the Land Act* is headed “Offences”. Even though prosecution charged him under section 277 simpliciter, the specific provision should have been **section 277 (2)**. **Section 277** is divided into sub *sections 1 to 6*. It is sub section 2 that provides for the offence. It provides thus

(2) A person who

- (a) Purports to make a grant of land to which that person has no title
- (b) Purports to make a grant of land without authority, or
- (c) Makes conflicting grants in respect of the same piece of land to more than one person,

Commits an offence and is liable upon summary conviction to a fine of not less than seven thousand five hundred penalty units and not more than fifteen thousand penalty units or to a term of imprisonment of not less than seven years and not more than fifteen years or to both.

*Per section 112 of The Criminal and Other (Offences Procedure Act, 1960 (Act 30), an accused person is entitled to be furnished with a charge sheet which contains a statement of offence and the particulars of offence as well. For the statement of offence, the requirement is that it describes the offence shortly and in ordinary language and may also contain a reference to the section of the enactment under which the accused is being charged.*

**Section 112 (2)** provides that:

The statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all of the essential elements of the offence and where the offence is one created by an enactment, may contain a reference to that enactment''.

Although the section says "may contain a reference to that enactment" and the word may is construed to be permissive and empowering (*see section 42 of the Interpretation Act 2009 Act 792*), the Constitution 1992 which is Superior to any enactment provides in *Article 19 (11)* thus

"No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law''. The word shall per Act 792 is construed as mandatory

Per the constitutional provision, there must always be a written law which defines an offence and provides a penalty before an accused can be charged with that criminal offence. By extension, it means that the statement of offence must contain the written law by which an accused person is being charged.

An accused person must thus be informed of the offence, the enactment or statute which created the offence and the section of the enactment or statute where the offence can be found specifically. That is necessary to enable an accused person to not only be aware of why he is in court but also to prepare for his defence.

In the circumstances of this case, per the charge sheet, the accused is charged under the *Land Registry Act, 2020*. However, no one can find the existence of the said law even upon diligent search through the laws of Ghana. As prosecution has closed its case, the charge sheet can no longer be amended.

Per **section 176 (1) of Act 30** “where at any stage of a summary trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the Court may make an order for the amendment of the charge sheet or the substitution or addition of a new charge as the Court considers necessary to meet the circumstances of the case”.

On the basis that the accused person has been charged by a non existent law, contrary to the provisions of *Article 19 (11) of the 1992 Constitution*, and further on the authority of the case of *R v. Ojojo (1959) GLR 2017* which is that “If at the close of the case for the prosecution there is a doubt whether or not the accused has committed any offence of which he could lawfully be convicted on the charge brought against him, he should not be called upon to enter on his defence’, I hereby discharge the accused person.

**OBITER:** Even if the accused person had been charged under the *Land Act, 2020 (Act 1036) particularly section 277 (2) (a)*, it appears that prosecution per its evidence on record, could not have been deemed to have established a prima facie case against him. This because PW1 in his own evidence in chief says after he was stopped from



developing the land, the D.C.E told him that he was given the land by the Kpone Traditional Council. That he did not pay for it and there was no document covering whatever claims the D.C.E was making.

Now when PW1 proceeded to the Lands Commission for a search and same revealed that the land belongs to Prampram, the fact that the accused person is the chief of Prampram as well as a member of the alienating family, and the head of family had confirmed and/or ratified the grant by the execution of EXHIBIT C means the accused person cannot be deemed as having made an alienation of land without title.

The events that happened after this cannot retrospectively be taken to mean that the accused person did not have title to the said land at the time of alienating it to PW1. Those events may constitute another offence but not an *offence section 277 (2) (a) of Act 1036*.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**  
**(CIRCUIT COURT JUDGE)**

A.S.P STELLA ODAME FOR THE REPUBLIC

CHRISTOPHER ATSU FOR THE ACCUSED PERSON