

IN THE CIRCUIT COURT HELD AT KIBI IN THE EASTERN REGION ON  
THURSDAY THE 16TH DAY OF NOVEMBER 2023 BEFORE H/H PETER OPPONG-  
BOAHEN, ESQ CIRCUIT COURT JUDGE

CASE NO. B8/2/23

THE REPUBLIC

VRS

SAMUEL OBENG

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JUDGMENT

~~Complainant, Kwaku Darkwa aged 77 years is a blind man and the Abusuapanin of~~  
Agona No. 2 clan at Akyem Apapam. Accused Samuel Obeng is a member of the same  
family. In the month of February 2022, accused instituted a civil action at Kibi District  
Court against Abena Sisi @ Christiana Abrokwa and Nana Adwoa Abrokwa @ Beatrice  
Amponsah Nyarko also of the same family and claimed that he was given the power of  
attorney by the complainant to take action against them. Accused thumb printed the  
power of attorney document and purported that it was the complainant who thumb  
printed it. Complainant was informed of the civil suit and ne denied knowledge of the  
court action. Complainant recounted that accused obtained his thumb print some time  
ago after claiming that the thumb print was for the purpose of population census.  
Complainant reported the matter to police and accused was arrested and cautioned to  
that effect before an independent witness and he admitted the offence. On 31/11/22,  
finger prints of complainant as well as the accused were forwarded to to the finger print  
section at CID Headquarters for verification and necessary action to determine whether  
the thumb printed version on the power of attorney matches with the finger print of the

complainant. On 10/11/22, a finger print report with Reference number CID/DSB/30/58/SFS/22/V.1/85 dated 9/11/22 was received from the CID Headquarters Accra which states that the thumb print of the complainant does not match with the thumb print on the power of attorney purported to emanate from him as alleged by accused. After investigations, accused was charged with the offence as stated on the charge sheet and arraigned before this court to stand trial.

It is upon these facts that the accused person herein; Samuel Obeng, aged 74 years was charged with the offence of Forgery of Official/Judicial Document contrary to section 158 of the Criminal Offences Act 1960 (Act 29).

The **particulars of offence** as contained in the charge sheet read as follows:

*'SAMUEL OBENG, AGED 74 YEARS, UNEMPLOYED; For that you on or before the month of February 2022 at Akyem Apapam, in the Eastern Circuit and within the jurisdiction of this court, did forge and thumb print the power of attorney and purported that it was Kwaku Darkwa who thumb printed it with intent to deceive officers of the court and instituted a civil suit.*

Accused pleaded Not Guilty to the charge of forgery of official document and hence this trial.

It is a trite law that when an Accused person pleads 'Not Guilty', everything is in issue.

Prosecution, in proof of its case, called three (3) witnesses including the investigator.

**PW1, Kwaku Darkwa**, in her testimony, confirmed the facts as presented by prosecution.

**PW2, Christiana Abrokwa @ Abena Sisi** testified to the effect that accused did forge the power of attorney.

**PW3, D/Sergeant Francis Agyei**, the investigator in this case, told the court that on 13/9/22 a case of forgery of official/judicial document involving the accused was reported and same was referred to him for investigation. According to the investigator, upon the arrest of accused, he cautioned him. He testified he obtained the forged power of attorney by accused; he received the finger print report of the forged power of attorney document and later charged accused with the stated offence on the charge sheet. He tendered in evidence without objection the investigation cautioned statement of the accused, the forged power of attorney by accused dated 9/9/21, finger print report of the forged power of attorney document dated 9/11/22 and charge statement of the accused which were admitted and same were marked as **Exhibits A, B, C and D** respectively.

In his defence to the charge preferred against him, accused denied committing the offence of forgery of official/judicial document both in his evidence in chief and under cross examination.

### **ISSUE(S)**

The issue for the determination of this case is whether or not accused did forge an official or judicial document

### **BURDEN OF PROOF**

In this trial, prosecution is enjoined by law to prove the guilt of the Accused beyond reasonable doubt as provided in the Evidence Act, 1975 (NRCD 323) sections 11 (2) and 13 (1)). Similarly, in the case of *Republic v District Magistrate Grade II Osu; Ex parte Yahaya [1984-86] 2 GLR 361-365*, Brobbey J (as he then was) stated as follows:

'One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt'.

...What 'proof beyond reasonable doubt' means is proof of the essential ingredients of the offence charged and not mathematical proof? See *Frimpong( Alias Iboman) v the Republic*[2012] 45 GMJ 1 SC. In the case of *Oteng v The State* [1966] GLR 352 at 355 the Supreme Court stated as follows:

*'One significant respect in which our criminal law differs from 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'.*

At page 355 Ollenu JSC stated further:

*'The citizen too is entitled to protection against the state and that our law is that, a person accused of a crime is presumed to be innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt'.*

Also, the Supreme Court has held in the case of *COP v Isaac Antwi* [1961] GLR 408 that the fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the Accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the Accused is called for. In that case, the Accused bears the evidential burden to raise the issue or defence of their existence. Thus, the Accused is merely required to raise doubt on the balance of probability. *See also section 10(3) of the Evidence Act, NRCD 323*

The burden on the prosecution to prove the guilt of the Accused is a burden to prove all the elements of the offence beyond reasonable doubt.

The offence of Forgery of Judicial or Official Document is created for under section 158 of the Criminal Offences Act 1960(Act 29) as follows:

*'A person, who, with intent to deceive any person, forges a judicial or an official document, commits a second degree felony.'*

Per the wording of section 158 of Act 29, the following elements/ingredients must be proven by the prosecution:

- a. There shall be either judicial or official document;
- b. The person forges it; and
- c. With intent to deceive any other person

It is the case of prosecution that in the month of February, 2022 accused who is a member of Agona No 2 at Akyem Apapam headed by the complainant Kwaku Darkwa, instituted a civil action at the District Court, Kibi against Abena Sisi @Christiana Abrokwa and Nana Adwoa Abrokwa @ Beatrice Amponsah Nyarko also of the same family and claimed that he was given a power of attorney by the complainant Kwaku Darkwa aged 77 years and who has been blind for the past ten (10) years. As already stated he is the Abusuapanin of Agona No 2 clan at Akyem Apapam. Exhibit B (the power of attorney) is the judicial document which is purported to have been issued by the accused and is dated 9<sup>th</sup> September, 2021. On the face of Exhibit 'B' there are two thumb prints: one designed for the donor and the other one intended for the attorney.

Surprisingly accused thumb printed both of them notwithstanding his denial of same. In the execution of powers of attorney, it is provided in section 1(1) (2) (3) of the Powers of Attorney Act 1998(Act 549) that:

(1) An instrument creating a power of attorney shall be signed by the donor of the power, or a person authorized by the donor in the presence of the donor.

(2) Where the instrument is signed by the donor of the power one witness shall be present and shall attest the instrument.

(3) Where the instrument is signed by a person authorized by the donor, two witnesses shall be present and shall attest the instrument.

Per Act 549 accused has no business thumb printing either portion as an attorney as provision is made for only the donor and the witness.

It is further the case of prosecution that accused thumb printed the power of attorney document and purported that it was the complainant who thumb printed it. PW1 in his testimony confirmed that he did not thumb print any power of attorney to accused to initiate any legal action against PW2 and her sisters. According to him, as an Abusuapanin, all family issues come before him for redress and all instoolment comes before him for approval. He testified that some months ago accused came to his house alleging that PW2 and her siblings have sued him at the court over their building and he wanted him, as an abusuapanin to have the matter withdrawn from court for an out of court settlement but It turned out that accused rather wanted to sue PW2 and her siblings but desired to use his name to prepare the suit as an abusuapanin but he declined.

Even though accused, in his evidence in chief and under cross examination vehemently denied forging the power of attorney which was used to institute a civil action against PW2 and her sibling, DW2 confirmed in his testimony that it was the accused who thumb printed the power of attorney which was used to file a suit at the District Court, Kibi against PW2 and her siblings.

It will not be out of place to reproduce some extracts from DW2 in his evidence in chief. He stated as follows:

*'.....That is correct. There was an issue on our building which we reported to police who advised us to take civil action. At the court for the suit we were advised to bring the head of family on the next day but abusuapanin could not come. According to abusuapanin he has given the power to accused to stand in his stead. We were given a document at the court for the abusuapanin to thumb print but because of his absence accused thumb printed. The court official told accused he should not have thumb printed. It should have been done by abusuapanin. We told the court official to cancel same and prepare a new one but he declined. We later heard accused has been brought to this court.'*

It needs be said that in **Exhibit A** (cautioned statement of the accused) he admitted forging the power of attorney which was used to institute a civil action against PW2 and her sibling. Some excerpts of his cautioned statement are as follows:

*'.....Yes, it is true I have forged an official document. During the month of February, 2022 there was litigation between myself and my siblings. Complainant Kwaku Darkwa is the head of our family, so when the issue came up, I informed him. I went to District Court in the name of the complainant and collected a document in the name of Power of Attorney. I then told him that my siblings do not want us to have access to the house. So I took the document and thumb printed both my column and that of the complainant without his consent. I did not know that what I did was wrong, but I realized that I have made a mistake. I thumb printed the document myself. Complainant does not know anything about the thumb print. So the court fined me GHc3000.00 and I paid.'*

It is apposite to state that when PW1 lodged the complaint and accused was arrested PW3(investigator) took the finger print of PW1 as well as the accused and on 3/11/22 forwarded same to the finger print section at CID Headquarters Accra for verification.

PW3 testified that on 10/11/22 **Exhibit 'C'** (finger print report with Reference No CID/CDSB/30/58/SFS/22/V.1/85) dated 9/11/22 was received from CID Headquarters Accra which states that the thumb print of the complainant PW1 does not match with the thumb print on the Power of Attorney purported to emanate from him as alleged by the accused which he used to initiate the civil action against PW2 and her sisters. In **Exhibit 'C'** the results of comparison state as follows:

*a). The thumb print against the name Samuel Obeng marked 'A' mentioned in paragraph 2(a) above does not have sufficient ridge details for effective ridgeology analysis.*

*b). the thumb print against the name Opanin Kwaku Darkwa marked 'B' mentioned in paragraph 2(a) above does not match with the thumb print of Kwaku Darkwa mentioned in paragraph 2(c) above.*

*c). This implies the thumb print against the name Opanin Kwaku Darkwa marked 'B' mentioned in paragraph 2(a) above was authored by someone else.*

It is worth stating that during cross examination on prosecution witnesses accused did not challenge these pieces of evidence. Neither did he object to the tendering of the exhibits. It is trite that when a party fails to cross examine on a piece of evidence he is deemed to have acknowledged and admitted the same. See the case of *Prah v The Republic* [1962]

Though accused denied committing the offence of forgery of a judicial document in his testimony and under cross examination, his cautioned statement to the police is on the differing. He admitted the offence in his cautioned statement to the police but however prayed for forgiveness.

It must be stated without mincing words that the evidence of the accused that he did not thumb print the power of attorney in his testimony and under cross examination



can only be an afterthought. He did thumb print the power of attorney as per **Exhibit A** (cautioned statement). Quite clearly, it will not be mistaken to state that this admission of the accused corroborates the evidence of PW1 and PW3 that upon the results of comparison of the finger print of both PW1 and the accused on the power of attorney they did not match.

**In Koranteng v The Republic unreported CA dated 19/7/68 the Court of Appeal held that:**

*'A voluntary confession of guilt which is fully consistent and probable is regarded as the most satisfactory evidence wherever there is independent proof that a criminal act has been committed.'*

Having carefully examined the totality of trial and the evidence adduced so far before me, I find that sufficient evidence has been adduced by prosecution to prove its case beyond reasonable doubt as required by section 13(1) of the Evidence Act, 1975(NRCD 323) that the accused committed the offence of judicial/official document as charged. Thus there was a power of attorney which accused claimed he was given same by the complainant (PW1) to institute legal action against PW2 and her sisters. Accused thumb printed the power of attorney document and purported it was PW1 who thumb printed it with intent to deceive officers of the court and instituted a civil suit.

For the foregoing reasons I find accused guilty of the offence as charged and I accordingly convict him.

In sentencing the accused the court takes into consideration the fact that accused is a first offender, is an old man of 74 years, has pleaded with the court to temper justice with mercy. Accused seems remorseful and repentant. The court shall give him the

opportunity to reform. However, the court shall impose the following sentence on him to serve as prevention and deterrent to him and to other perpetrators of the law.

Accused person herein, **SAMUEL OBENG** is sentenced to a fine of four hundred (400) penalty units or in default 24 months prison term.

**H/H PETER OPPONG-  
BOAHEN, ESQ  
(CIRCUIT COURT JUDGE)**

**16/11/23**

**REPRESENTATION**

**D/INSPECTOR KAMAL SALIFU GUMAH FOR THE PROSECUTION**

**H/H PETER OPPONG-BOAHEN, ESQ  
CIRCUIT COURT JUDGE**

**15/9/23**

**REPRESENTATION**

**D/INSPR JAMES K. NABUNE FOR PROSECUTION**