

IN THE CIRCUIT COURT "A", TEMA, HELD ON MONDAY, THE 28<sup>TH</sup> DAY  
OF AUGUST, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE

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SUIT NO: D6/02/21

THE REPUBLIC

VRS:

JERRY DANQUAH

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ACCUSED PERSON

ABSENT

C/INSP. SUSANA AKPEERE FOR PROSECUTION PRESENT

ANTHONY ADU-NKETIAH, ESQ. FOR THE ACCUSED PERSON ABSENT

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JUDGMENT

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**FACTS:**

The accused person was charged and arraigned before this court on 8<sup>th</sup> October, 2020, on a charge of defrauding by false pretence contrary to **Section 131** of the Criminal Offence Act, (1960) Act 29.

The brief facts recounted by the prosecution are that the complainant, Evans Donkor, is a businessman residing at Techiman whilst the accused person aged 36 years is a self-styled freight forwarder based in Tema. It is the case of the prosecution that in the month of August 2020, the complainant imported a forty-footer container stuffed with paints to the Tema Port and engaged the accused

person to clear the consignment from the Port for him. The prosecution alleges that the accused collected an amount of GHC45,000 to pay the import duties and other charges to enable him clear the container for the complainant. However, after receiving the money, the accused person paid only GHC4,000 to DELMAS Shipping Line as shipping charges and used the outstanding amount for his benefit without paying the import duties on the container. The accused person thereafter went into hiding, compelling the complainant to engage another agent at an additional cost of GHC45,000 to clear the container from the Tema Port.

The prosecution further alleges that on the 7<sup>th</sup> day of September, 2020, the accused person was arrested from his hideout and handed over to the police. It is further alleged that during investigations, the accused person in his investigation caution statement, stated that he encountered financial problems in the process of clearing the container and used the money to solve personal issues. After investigations, he was charged with the offence and arraigned before this Honourable Court.

### **THE PLEA**

The accused person who was self-represented at the time his plea was taken pleaded not guilty to the charge after it had been read and explained to him in the English Language. The accused person having pleaded not guilty to the charge, the prosecution assumed the onerous burden to prove the guilt of the accused person beyond reasonable doubt.

The case proceeded to trial and the prosecution called three witnesses and tendered in evidence **Exhibit "A"** series, which is a printout of WhatsApp Communication, **Exhibit B**, Ghana Commercial Bank Deposit Slip- **Exhibit "C"**- Investigation caution statement of accused person, **Exhibit "D"**, charge statement of the accused person. At the close of the case for the prosecution, Learned Counsel for the accused person submitted that there was no case made out against the accused person sufficiently requiring him to open his defence and the court ordered him to file a written submission of no case but counsel failed to do so. The court on its own motion ruled that a prima facie case is made out against the accused person requiring him to open his defence.

### **BURDEN OF PROOF**

It is trite learning that a person charged with a criminal offence is presumed innocent until he has pleaded guilty or proven guilty. See **Article 19(2)(c)** of the 1992 Constitution. The burden and standard of proof required of the prosecution in criminal cases is codified in the **Evidence Act, 1975, (NRCD 323), section 11 (2) and 13 (1)** which respectively provides as follows: —

*"11(2) 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 a reasonable doubt."*

*Section 13 (1)*

*"13(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt."*

In the case of **Oteng v. The State** [1966] GLR 352 at page 354 -355, the Supreme Court held:

*“One significant respect in which our criminal law differs from our 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... The citizen too is entitled to protection against the State and that our law is that a person accused of a crime is presumed innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt.”*

The term "reasonable doubt" as explained by Lord Denning in the case of **Miller vs. Minister of Pensions (1947) 2 All ER 372** is as follows;

*“It needs not reach certainty but must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Law would fail to protect the community if it admitted fanciful positions to deflect the course of justice”*

## **ANALYSIS**

Here, the accused person is charged with defrauding by false pretences contrary to **section 131** of Act 29. The section provides that a person who defrauds any other person by a false pretence commits a second-degree felony. Under **section 132** of Act 29, *“a person is guilty of defrauding by false pretences if by any means of false pretence or by personation he obtains the consent of another person to part with or transfer the ownership of anything.”* **Section 133(1)** further defines false pretence as *“a representation of the existence of a state of facts made by a person, either with the knowledge that the representation is false or without the belief that it is true and made with an intention to defraud”*.

The representation may be made in writing or spoken words, or by personation, or by any other conduct, sign, or means of any 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 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. See **section 133(2)(d)**.

In the case of the **Republic v Selormey [2001-2002] 2 GLR 424**, HC, stated the essential ingredients of a charge of defrauding by false pretences as follows;

- a. That the accused made a representation of the existence of a state of facts.
- b. That the representation was made either in writing or spoken words or by impersonation.
- c. That the representation was made with the knowledge that it was false or made without the belief that it was true.
- d. That the representation was made with intent to defraud.
- e. That the representation was made by the accused and that by that representation he obtained the consent of another person to part with money.

The first prosecution witness (PW1), Evans Kweku Donkor, the complainant, testified that he is a businessman and lives in Techiman. According to testimony, he got to know the accused person through one agent by name Evans Baffoe, now deceased, who was working on his containers at the Tema Harbour. Subsequently, he had a conversation on WhatsApp with the accused person who assured him that he could assist him to clear his container. In support, he tendered a copy of the chats between himself and the accused person, admitted and marked as **Exhibit "A"**. Per his testimony, he expected the container to arrive in the country on 30<sup>th</sup> July, 2020. Consequently, on 26<sup>th</sup> July, 2020, he directed the accused person on how to clear the container and the accused person promised to work on them for him.

PW1 testified further that prior to the arrival of the container at the Port, he gave all the documents to the accused person and the accused person demanded an amount of Thirty Thousand Ghana Cedis (GHC30,000) as initial payment to start the process of clearing the goods. Based on the request for part-payment, the accused person gave him an account number in the name Christiana Kwao, to deposit money into the account which he did and the accused person acknowledged receipt of the money and promised to work within time. In support, he tendered the deposit slip admitted and marked as **Exhibit "B"**. He again testified that the accused person called him later to demand payment of the outstanding balance of Fifteen Thousand Ghana cedis (GHC15,000) and on 3<sup>rd</sup> August 2020, he deposited Five Thousand Five Hundred Ghana Cedis (GHC5,500) into the account number provided by the accused person and sent the remaining Nine Thousand Five Hundred Ghana Cedis (GHC9,500) into his

mobile money account number 0541429283; with total payments made to the accused person as Forty Five Thousand Ghana Cedis(GHC 45,000).

PW1 testified further that after making full payment, the accused person called his truck driver to come and load the goods on 7<sup>th</sup> August, 2020. On the said date, he sent his truck driver to the Tema Harbour to receive the goods but when the truck driver got there, the accused person was nowhere to be found. After waiting the whole day and realizing that the accused person was not at the Harbour, he called his friend, PW2 who resides in Tema, to assist him to arrest the accused person. PW1 states further that after two weeks, his container went into demurrage and he had to borrow money to clear it at a high cost. Further to this, with the assistance of PW2, the accused person was arrested and sent to the Police Station.

Under cross-examination by the accused person, PW1 testified that the accused person and his deceased cousin had previously worked on the clearing of his container and through that he got to know the accused person. Under further cross-examination by Counsel for the accused person, PW1 testified that he contracted the accused person to work on his container that he had imported for him and as a result of the contract, he made a total payment of GH¢45,000 to the accused person. And when the accused person could not clear the container, he demanded a refund of his money.

The second prosecution witness (PW2), Martin Twi Frimpong, testified that in August, 2020, PW1 called him to assist him arrest the accused person for collecting an amount of GH¢45,000 from him to clear his container containing paints and going into hiding without giving him any reason for not clearing the container. Further to this, PW1 forwarded the detailed information of the accused person which included his full name, a photograph and contact number to him and based on the information, he got the accused person arrested and handed over to the police. According to his testimony, when he arrested the accused person and questioned him about the claims of PW1, he disclosed that he used Four Thousand Ghana Cedis (GH¢4,000) to pay the shipping line but could not provide any document to support his claim. PW1 had to engage the services of another agent to clear his container which had gone into demurrage. After the arrest of the accused person, he quickly went and paid an amount of Seven Thousand Ghana Cedis (GH¢7,000) to one Mr. Agyei, the agent PW1 contracted to clear his container and promised to refund the rest of the money which he had used for his personal benefit.

The second prosecution witness under cross-examination by Counsel for the accused person testified that he has no personal knowledge of the case and that all that he knows about the transaction between the accused person and PW1 is what PW1 told him. He further testified that the accused person upon his arrest informed him that he had spent the money and he had also spent huge sums of money belonging to other clients and theirs was the least.



The third prosecution witness (PW3), D/Insp. Fredrick Torpey, testified that on 2<sup>nd</sup> September, 2020, PW1, came with an extract from Techiman police and reported a case against the accused person which was referred to him for investigation. During investigations, he obtained a printout of WhatsApp chat messages between the accused person and the complainant which were admitted and marked as **Exhibit "A"** series. He also tendered a deposit receipt from Ghana Commercial Bank Techiman branch dated 27/07/20 bearing the name of Christian Kwao with account number 1351060002287 in which the accused person deposited the money admitted and marked as **Exhibit "B"**. According to his testimony, PW1 informed him that the accused person had gone into hiding and assured him of conducting his own investigations to assist him arrest the accused person. PW3 further testified that on 07/09/2020, PW2, assisted by two others arrested the accused person and brought him to the station. He tendered the investigation caution statement of the accused person admitted and marked as **Exhibit "C"**.

PW3 testified further that his investigations disclosed that the accused person assured PW1 of clearing his container at the Port due to the death of the agent, Evans Baffoe. Based on that representation, he parted with an amount of Forty-Five Thousand Ghana Cedis (GH¢45,000) to the accused person for the clearing of the container by accused person which he failed to do. Investigations further revealed that the accused person only paid Four Thousand Ghana Cedis (GH¢4,000) to Delmas Shipping Line as shipping charges but could not show any documents relating to any payment made in connection with the clearing of the container and that the accused person used the money to settle another business and could not get it back on time to make the payments to clear the

container. Based on this information gathered, the accused person was charged with the offence and arraigned before this court. The charge statement of the accused person was admitted and marked as **Exhibit "D"**.

Under intense cross-examination by counsel for the accused person, PW3 was insistent that the accused person falsely represented to PW1 that if the said amount was given to him, he could assist him clear the container but after receiving the money he spent the money without clearing the goods from the port. He states that the accused person received the money but failed to clear the container and he is not a member of the Freight Forwarding Association of Ghana.

The accused person in his investigation caution statement, **Exhibit "C"** denied defrauding PW1 and states that PW1 had been his client for about three years prior to this transaction and that he engaged him to clear his container with paints but he used the money for another business. Consequently, he was unable to clear the container for PW1. He requested for one month to pay the money back and he asked him to sign an undertaken which he did and even paid an amount of GH¢7,000 to PW1. According to him, out of the amount he paid GH¢4,000 to the shipping line.

The accused person in his defence denied the offence and testified that he is a Freight Forwarder/Clearing Agent and formerly a Manager at Crystal Shipping, Tema and that he has known PW1 since 2017 when one Evans now deceased,

introduced PW1 to him to assist him deal with challenges he was having with a consignment which had then been seized by the Customs Division of the Ghana Revenue Authority. The accused person says that he was able to resolve the matter and PW1 paid only GH¢5,000.00 instead of the GH¢75,000.00 demanded by the Ghana Revenue Authority. The accused person states that in February 2018, PW1 came to his office to express his appreciation and started contracting him to clear his goods for him. PW1 who is an importer of paints, prior to the instant case had contracted him to clear about 10 × 20ft containers on about eight (8) separate Bill of Ladings.

Additionally, the accused person testified that in one of such contracts PW1 could not pay him the amount he charged him fully after he had cleared the goods and that PW1 was indebted to him to the tune of GH¢7,000.00. This made PW1 break up relationship with him and refused to pay the outstanding amount of GH¢7,000.00 owed to him and that this continued for over six (6) months until PW1 brought the container which is the subject matter of this case to him to clear for him. The accused person tendered in evidence **Exhibits "1" and "1A"** which are two customs declaration forms bearing the name of his company as the clearing agent to debunk the assertion that he was not a clearing agent.

The accused says that in the instant case, it is not true that he made any misrepresentation to PW1. Rather, PW1 knowing their existing business relationship contracted him to clear the container which is the subject matter of this case for him. He further states that somewhere in August 2021, PW1 sent him a copy of a bill of lading cover 1 × 20ft container detailed 20 tones × 1,200

liters of paints and quantity of empty plastic buckets and contracted him to clear same from the Tema Port for him. The accused person says that they negotiated the price and PW1 agreed to pay GH¢46,900.00 including labour charges to him to clear the consignment. However, PW1 made a part payment of only GH¢40,500.00 to commence the work with a promise to pay the outstanding balance during the clearing process.

The accused person says that he commenced the work by doing valuation at GRA - Customs headquarters, documentation and upon completion of the documentation, he paid the shipping line charges. He was left with the duty amount to pay to GRA - custom to complete the process to enable him clear the consignment as evidenced by **Exhibit "1"**. The accused person further states that, after completing all the necessary documentation and payment of the shipping line charges, he demanded the outstanding balance to enable him to continue with the process but PW1 failed to release the money. Since PW1 owed him an amount of GH¢7,000.00 from a previous transaction, he decided not to invest his own money into the work but wait until PW1 pays the remaining balance of GH¢6,400.00 before he would continue with the clearing.

The accused person says that PW1 made him pay GH¢5,000.00 again on his behalf to facilitate a favourable valuation of the goods. Thus, PW1 owed him GH¢11,400.00 to complete the work. The accused person says that instead of PW1 paying the money to him, he refused to do so and contacted another clearing agent called Elder to contact him for the documents and for them to settle accounts. He then informed him that PW1 owes him so he should ask him

to pay him before he releases the documents to him. The accused person testified further that he then called PW1 and after settling accounts with him he agreed that he should refund GH¢20,000.00 and handover the documents including receipts for the payment made to the shipping line to Elder to continue with the process. The accused person states that he agreed, so he gave the documents together with an amount of GH¢7,000.00 to one Emmanuel Asamani and Victor who were working with him to handover same to Elder which they did. The accused person says that he then informed PW1 that he will pay the outstanding amount of GH¢13,000.00 by the end of the following week which he agreed.

The accused person says that he could not state all these details in his statement to the police because he was asked questions by the investigator, and the investigator made him write what he stated by paraphrasing to him that he should write, hence simply stating in his statement that he owes PW1 GH¢40,500.00. The accused person states that this cannot be the true state of affairs at the time he was arrested because out of the money PW1 paid to him, he had made expenses out of it and further paid out about GH¢5,000.00 to the shipping Line as charges. However, PW1 caused his arrest and he was subsequently arraigned before the court on a charge of defrauding by false pretences.

The accused person maintains his innocence and in his defence states that he has not defrauded PW1, and that their relationship was purely contractual which PW1 failed to complete the payment to be made to him and further, PW1

decided to use the Police to collect the amount he owed him after he had settled accounts and agreed with him to pay the outstanding amount to him.

From the evidence led by the prosecution and the defence put up by the accused person, the first prosecution witness admits that he knows the accused person as a clearing agent and that he contracted him to clear his goods from the Port which he was not successful at after he had paid the money. From the evidence led by the prosecution witnesses, this is not the first time the accused person had cleared goods from the Port for PW1. From the copy of the chats between the accused person and PW1, when Evans, the original clearing agent who had commenced the clearing died, PW1 contacted the accused person to continue with the clearing and agreed to send the accused person an amount of GH¢30,000 and asked him to add the difference for him to pay later. However, after a back and forth between them and PW1 mounting pressure on him, the accused person admitted that he had not used the money for the intended purpose, apologized and pleaded for one month to refund the money of PW1 due to personal challenges that he was facing. I have painstakingly read the chats between PW1 and the accused person and the admission of the accused person of not having cleared the container due to personal challenges that he was facing. On the effect of such apologies in criminal cases, the Court of Appeal in the case of **R.v. Djomoh** [1960] G.L.R. 193, at page 194, held that:

*"...it must be said that a confession of having " done wrong ", accompanied by an apology, does not (especially in this country) necessarily amount to a confession that a crime has been committed. It often means no more than this, " If what I have done has given you offence, I beg you to forgive me."*

In the instant case, it is not in dispute that the accused person is a clearing agent and that PW1 contracted him to continue with the clearing of his container upon the death of the original agent. The accused person promised to assist him to clear the container. Under **Section 133(2)(b)** a mere representation or promise that anything will happen or will be done, or is likely to happen or to be done does not amount to defrauding by false pretences. See the case of **Kuma v. The Republic** [1970] CC 113. In the case of **Hemans v. Coffie** [1997-1998] 1 GLR 144-158, the Supreme Court held in holding 3 that:

*“Where one obtained goods on credit and defaulted in paying or received money from people to do some work but failed to do the work, the default in each case would be breach of contract, the remedy for which lay in the civil courts, and not the police station. Neither situation amounted to the offence of defrauding by false pretences under section 131 of the Criminal Code, 1960 (Act 29) because false pretence as defined in section 133(1) of Act 29 had to involve false representation of an existing fact. Thus, a promise of an event in the future could found liability if it was coupled with a false statement of existing facts. But a mere representation that something would happen or was likely to happen did not amount to fraud by false pretences.”*

In the case at bar, the transaction between the accused person and PW1 is purely contractual. The accused person, a clearing agent was contracted to clear goods and he failed to do so. It is also not in contention that the accused person received money to clear the goods but failed to do so. The inability of the accused person to clear the goods because he had used the money for a purpose other than intended is immaterial. The fact remains that he breached the contract he had with PW1 to clear the goods within the time stipulated by the parties. The breach of that contract is civil and the remedy of PW1 lies in a civil court to claim

any amount paid with interest and damages as a result of the breach if any and not to resort to the police to collect the debt.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I hold that the prosecution failed to prove the charge of defrauding by false pretence against the accused person beyond reasonable doubt. I accordingly pronounce the accused person not guilty of the charge and acquit him of same.

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