

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA AT CIRCUIT COURT '2' ON TUESDAY, 30TH APRIL, 2024 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

CASE NO.: D6/344/2022

THE REPUBLIC

VRS

JOSEPH AGYEMANG

ACCUSED PERSON PRESENT

CHIEF INSPECTOR JOSEPHINE LAMPTEY FOR THE REPUBLIC PRESENT

THEOPHILUS DONKOR, ESQ. FOR THE ACCUSED PERSON ABSENT

JUDGEMENT

The Accused person stands charged to two (2) counts of Defrauding by False Pretences contrary to section 131(1) of the Criminal Offences Act, 1960 (Act 29).

THE BRIEF FACTS OF THE CASE

The complainants are public servants with the National Signals Bureau. The Accused person is a self-styled businessman. During the year 2019, the complainants surfed the internet in search of accommodation for rent but were unsuccessful. A few days later, they received a telephone call from an agent who told them the accused person had some properties for rent. The

complainant expressed interest and they went to inspect the properties at Achimota and Dansoman respectively. They were then led to the Accused person who introduced himself to them as the owner of the properties and negotiated the rent with them. After agreeing on a price, the complainant Nana Adjoa Ewudzi-Odoom issued two cheques with a total face value of GH¢20,000.00 whereas complainant Louis Batioka Babalangna paid GH¢17,500.00 into the GT Bank Account owned by the Accused person. The complainants after making payments went to occupy the properties but were told the Accused person did not own the properties. The complainants tried to locate the Accused person but they were unsuccessful. They then proceeded to the bank to prevent the Accused person from getting access to the money but were told it had been withdrawn by the Accused person.

At the trial, the prosecution called three (3) witnesses to testify in support of its case against the Accused persons.

The testimony of PW1 (Louis Batioka Babalanga) and PW2 (Nana Adjoa Ewudzi-Odoom) confirmed the facts as presented by the prosecution.

PW3 (Detective Inspector Mawunyegah George) investigated the case. PW3 relied on his Witness Statement and tendered in evidence, the following exhibits:

- a. Investigation Cautioned Statement of Accused person;
- b. Charge Statement of Accused person;
- c. Copies of Republic Bank Cheques and Identity Cards
- d. Copies of Fidelity Bank Cheques and Identity Cards
- e. Statement of Accounts
- f. Copy of Ghana Card of Accused person
- g. Copies of GT Bank Opening Forms

At the close of the case of the prosecution, the Court determined that the prosecution had made out a prima facie case against the Accused person. Accordingly, the Accused person was called upon to enter into his defence.

THE CASE OF THE DEFENCE

In opening his defence, the Accused person testified himself from the Witness Box and neither called any witness nor tendered any exhibit in evidence.

The Accused person told the Court that he got to know the complainants through a friend called Michael Opoku who informed him that his father was having a house for rent. That his father was not around and that he was the caretaker. According to the Accused person, his said friend told him to stand in for him and rent the house. The Accused person told the Court that it got to time when he realised that his friend, Michael had misled him so he was arrested by the police. The Accused person said he wanted the police to search for the said Michael but they could not find him.

The legal issue that emerged for determination at the end of the trial is whether or not the Accused person defrauded the complainants by false pretences.

BURDEN OF PROOF

The common law rule that a person was presumed innocent until the contrary was proved or he pleaded guilty is reinforced by Article 19(2)(c) of the 1992 Constitution which reads:

"A person charged with a criminal offence shall ----- (c) be presumed to be innocent until he is proved or has pleaded guilty."

The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the Accused beyond reasonable doubt, there is no such burden on him to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides that:

“In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt.”

In the case of Republic v. District Magistrate Grade II, Osu; Ex parte Yahaya (supra), Brobbey J. (as he then was) stated and I quote:

“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.”

Also, in the case of Bruce-Konuah vrs The Republic [1967] GLR 611-617, Amissah J.A. stated as follows:

“Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the accused person's guilt is on the prosecution.”

THE LAW AND EVALUATION OF THE EVIDENCE

Section 132 of Act 29 provides:

“A person defrauds by false pretences if, by means of a false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing.”

From the above, the elements of defrauding by false pretences are as follows:

1. The use of false pretence or personation,
2. To obtain the consent of another person,
3. So that the person parts with or transfers the ownership of something.

In the case of *The Republic vrs Selormey* [2001-2002] 2 GLR 424, the Court stated the following ingredients in an offence of defrauding by false pretences:

“A person shall make a false representation or by a personation either by written, spoken or sign language or any other means whatsoever; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was false or made without the belief that it was true; as a result of the false representation the accused person caused the other person to part with or transfer ownership of a thing.” See also *Sarpong vrs The Republic* [1981] GLR 790; *Adobor v. The Republic* [2008] 19 MLRG 23 CA.

Section 133 of Act 29, in defining defrauding by false pretences, lays out the following ingredients:

1. Representing the existence of a state of fact,
2. Either with the knowledge that such representation is false or without the belief that it is true,
3. The representation should be made with the intention to defraud.

What representation did the Accused person make to the complainants?

According to PW1, the Accused person represented to him that he was the landlord of the house at Achimota Petroleum and was renting it out to him. PW1 paid the sum of GH¢17,500.00 into the GT Bank Account of the Accused person. The Accused person confirmed receipt of the money and assured PW1 of handing over the key to the house in the evening. On the part of PW2, the Accused person told him that he was the landlord of a house at Dansoman. By this, the husband of PW2 paid GH¢20,000.00 to the Accused person by cheques.

Did the Accused person make the above representations with the knowledge that such representations were false or without the belief that they were true? Was there also an intention on the part of the Accused person to defraud the complainant?

In the case of Welham v. Director of Public Prosecutions [1961] A.C. 103, the House of Lords held, as stated in Archbold, Criminal Pleading, Evidence and Practice (36th ed.), para. 2043 at p. 753 that:

'Intent to defraud' means an intent to practise a fraud on someone and would there include an intent to deprive another person of a right, or to cause him to act in any way to his detriment

Also, in the case of Asiedu v. The Republic [1968] GLR pgs 1-8, Amissah J.A. stated and I quote:

"An intent to defraud is an essential element of the offence of defrauding by false pretences whether the method of fraud adopted was personation or a false representation".

In his defence, all that the Accused person told the Court was that he got to know the complainants through Michael Opoku and that the said friend misled him to rent out the property to the complainants. In his Cautioned Statement given to the police on the 17th June, 2022, the following is what he told the police:

"I am a Businessman and I own a store at Tuba near Kasoa where I sell second hand goods. Boaithey Nana Yaw and Nana Yaw Biney are my pseudonym. During the year 2019, Alhaji Ahmed and Richard who are my friends came to inform me that Complainant Louis Babalangna needed a house to rent and that they have sent him to a house at Achimota where Complainant expressed interest in renting the place. They also told me that they have told Complainant that I am the owner of the property. Same day, Richard brought Complainant Louis to me at Anyaa market and introduced me to him as the landlord of the property. I asked Complainant if he was satisfied with the place and he said Yes. I asked him about the rent and he told me that he has been informed by Richard. However, he would like to pay part of the money into my account. I gave him my account number 0219/0108268-4/001/000/000 with GT Bank, with account Name Boaithey Nana Yaw. Complainant Louis deposited GH¢17,500.00 into the account. Same day I withdrew the money from the account and shared it with Alhaji Ahmed and Richard, part of the money was reserved for one Eli whom I was told placed the advert for the rental on the internet. I don't know him and I have never met him before. I don't own the property at Achimota that was shown to Complainant Louis. It was only a ploy to collect money from Complainant. In respect of Complainant Nana Adjoa A. Ewudzie-Odoom I don't know her. I have not dealt with her and I have not collected any money from her father being cash or cheques as alleged."

This statement was taken from the Accused person in compliance with section 120 of the Evidence Act, 1975 (NRCD 323). Justice Akamba JSC in the case of Ekow Russel vrs The Republic [2016] 102 GMJ 124 SC, stated and I quote:

*“..... A confession is an acknowledgement in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. **By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused.** It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person’s own free will without fear, intimidation, coercion, promises or favours” (Emphasis mine)*

From the available evidence before this court, the Accused person did not deny the fact that he collected the sum of GH¢17,500.00 from PW1. As per the GT Bank Statement of the Accused person (Exhibit ‘H6’) with the name Boaitey Nana Yaw, PW1 paid GH¢17,500.00 into the Account of the Accused person on the 20th March, 2019. On the same day, the Accused person withdrew GH¢17,300.00 at the Ring Road Branch and also GH¢150.00 from the Kasoa Branch.

From Exhibit ‘F’, i.e., Fidelity Bank Account Statement of the Accused person with the name Nana Yaw Biney, the Accused person withdrew cash of GH¢5,000.00 with Cheque Number 20369 and another GH¢5,000.00 with Cheque Number 20370, both from the Dansoman Main Branch on the 9th July, 2018 from the account of Mr. Ewudzi-Odoom.

As part of investigations, the police requested for information from Republic Bank concerning two (2) cheques issued by the husband of PW2 to the Accused person to be drawn from the bank. The Bank furnished the police with these two (2) cheques issued by the husband of PW2 (Mr. Ewudzi-Odoom) and the Identity Card used by the Accused person to withdraw the money. This was tendered in evidence and marked as Exhibits ‘E’, ‘E1’ and ‘E2’. On the face of

these two (2) HFC cheques, i.e. Exhibits 'E' and 'E1', the face value of these cheques is GH¢5,000.00 and GH¢5,000.00 with Cheque Numbers 508469 and 508470 respectively. (NB: HFC Bank rebranded to Republic Bank).

According to PW1 and PW2, right after withdrawing the moneys from the respective banks, the Accused person and all his other friends (agents) switched off their mobile phones. Archer J. (as he then was) in the case of *Blay vrs The Republic* [1968] 1040-1050 stated:

"In a charge of defrauding by false pretences, if the evidence showed that the statements relied on consisted partly of a fraudulent misrepresentation of an existing fact and partly of a promise to do something in future, there was sufficient false pretence on which a conviction could be based".

The Court finds the defence of the Accused person as empty, unacceptable and unreasonable. From the totality of the evidence adduced at the trial, it is established that the Accused person with the intention to defraud the complainants misrepresented to them that he had property for rent and ended up parting with cash the sum of GH¢20,000.00 and GH¢17,500.00 belonging to PW1 and PW2 respectively. In the circumstances, the court finds that the prosecution has been able to prove its case beyond reasonable doubt. Accordingly, I find the Accused person guilty of two (2) counts of Defrauding by False pretences, and he is accordingly convicted.

SENTENCING

In sentencing the Accused person, the Court has taken into consideration of the fact his plea for mitigation of the sentence as well as the plea for mitigation made by Anass Mohammed, Esq. (amicus curiae). The Court has also considered the fact that the Accused person is a first time offender. The Court is also mindful of Article 14(7) of the 1992 Constitution since the Accused

person has been in police lawful custody for some period of time because of his inability to fulfil the bail conditions after he jumped bail for the second time. However, looking at the nature of the offences and the premeditated way the offences were carried out, and also the fact that not even a percentage of the money involved has been refunded to the complainants, the Court will pass a fairly deterrent sentence on the Accused person. The Accused person is hereby sentenced to serve a prison term of Five (5) years IHL on each count to run concurrently.

RESTITUTION ORDER:

The Accused person shall refund the sum of GH¢20,000.00 and GH¢17,500.00 to Louis Batioka Babalangna and Nana Adjoa Ewudzi-Odoom respectively.

**(SGD.) ISAAC ADDO
CIRCUIT COURT JUDGE**

30TH

APRIL, 2024