

**IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2', ACCRA ON
MONDAY, 29TH APRIL, 2024 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE**

CASE NO: D6/255/2023

THE REPUBLIC

VRS

NANA YAW ASARE @ BISHOP

ACCUSED PERSON PRESENT

INSPECTOR WILHERMINA KWAFO FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR ACCUSED PERSON

JUDGEMENT

On the 2nd May, 2023, the Accused person was arraigned before this Court charged with the offence of Defrauding by False Pretences contrary to section 131 of the Criminal Offences Act, 1960 (Act 29).

Upon his arraignment before this Court, the Accused person pleaded Not Guilty to the charge.

FACTS OF THE CASE

The complainant is a businessman and resides at Abuakwa, a suburb of Kumasi, whereas the Accused person is a travel agent and resides at West Hills Mall in Accra. Sometime in June, 2022, the complainant saw an online advertisement displayed by the Accused person's company by name Jackmillan Travel and Tour. The complainant contacted the Accused person through the contact number that was provided. After discussions and negotiations, the Accused person assured the complainant that he will provide all the necessary documents and secure school admission and VISA for him to travel to Mauritius within a month. The Accused person demanded and collected a total cash of GH¢12,800.00 from the complainant under the pretext of securing a travel VISA and plane ticket to Mauritius. A few weeks after the payment the Accused person called to inform the complainant that he could not secure the VISA but rather have means to get him VISA to Maldives and Turkey. The Accused person failed to secure the VISA for the complainant and went into hiding. A complaint was lodged with the police and the Accused person was arrested where he refunded GH¢7,500.00.

The prosecution put forward, two (2) witnesses to testify in support of its case. The testimony of PW1 confirmed the facts as presented by the prosecution. In addition, PW1 told the Court that after the Accused person had taken his academic documents and passport, he asked him to pay GH¢1,600.00 as tuition deposit, which he paid through Momo. That in November, 2022, the Accused person told him that everything was set for him to travel so he should pay GH¢11,200.00 for ticket which he paid through the Accused person's GT Bank Account.

PW2 (Detective Sergeant Rexford Adzah) investigated the case. PW2 relied on his Witness Statement and tendered in evidence the following exhibits without any objection:

- i. Cautioned Statement of the Accused person;
- ii. Charge Statement of the Accused person; and

- iii. Copies of the Accused person's Company LinkedIn and Facebook Account.

After the close of the case of the prosecution, the Court determined that a prima facie case had been made out against the Accused person. Accordingly, the Court invited him to enter into his defence.

THE CASE OF THE DEFENCE

In opening his defence, the Accused person opted to file a Witness Statement for himself as the sole witness. The Accused person relied on his Witness Statement as his Evidence-In-Chief and attached copious documentary evidence to same.

The Accused person testified as the CEO of Jackmillan International Limited contracted to recruit people to work in the cruise ship in the United States of America and a recruiter for Aura School of Hospitality and Business Management. The complainant contacted the company through Facebook advert on cruise ship jobs recruitment and arranged for a meeting. According to the Accused person, he explained to the complainant during the meeting that cruise ship jobs processing is faster when processing it from Mauritius because his recruiters' company i.e. CSCS International Manning is based in Mauritius. The complainant opted for traveling to Mauritius through education permit because that was the only way he could get permit to stay in Mauritius. So, the complainant told him to start the process for him and that he was selling his Chevrolet cruise vehicle to pay him after the job was done and also in case he could not sell he would give it to the Accused person in lieu of payment. The complainant provided his documents but could not provide a bank statement so it became necessary to buy one for him at GH¢1,600.00. After providing all the documents to the school in Mauritius, the school was satisfied with the documents and offered the complainant admission and acceptance letter. After the complainant received the admission and acceptance letter, he called the school to confirm

if indeed the admission was truly from the school which the school confirmed. The complainant paid GH¢11,200.00 for his flight. A day before the complainant's departure, the school called that the document for their arrival which was okay to board has been called because there was a clerical error on one of the bank statements. The Accused person informed the seven (7) applicants traveling for the same purpose that since the deal did not go through, there was another option which were Cyprus and Turkey, and also told them to be patient with him to get offers for them. The complainant said he could not wait for other options because his rent was due so he should process him for the Turkey offer. It is the case of the Accused person that he started the documentation for the Turkish visa and with the consent of the complainant, he requested for an Invitation letter. So, he went ahead and paid for the fully sponsored Invitation letter at US\$300 which was part of the GH¢1,200.00. After two weeks, the Invitation letter arrived including the supporting documents so he went to the Embassy with the complainant and he gave him GH¢1,600.00 for the Visa fee and insurance. After some time, the complainant told the Accused person that the Embassy called him to come for his Passport but the complainant refused to bring the Passport to him for the Accused person to know the reason for the refusal of the Visa. The complainant told him that he was no more interested and needed his money back.

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

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 provides that a person charged with a criminal offence shall 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 her to prove her innocence. At best she can only raise a doubt in the case of the Prosecution. But the doubt must be real and not fanciful.

In Republic vrs Adu-Boahen & Another [1993-94] 2 GLR 324-342, per Kpegah JSC, the Supreme Court held that:

“A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt”.

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 false pretence, 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.

The Particulars of Offence under which the Accused person was charged reads:

“NANA YAW ASARE @ BISHOP, 39 YEARS, BUSINESSMAN:- For that you on or before the month of June, 2022, in the Greater Accra Circuit and within the jurisdiction of this court, with intent to defraud did obtain the consent of one Frank Jonathan Agaab to part with cash the sum of GH¢12,800.00 by means of certain false pretences to wit: by falsely pretending that if the said amount is given to you, you could secure him Turkish Visa and upon such false representation you succeeded in obtaining the said amount from the said Frank Jonathan Agaab, which statement you well knew at the time of making it to be false.”

What representation did the Accused person make to the complainant?

The Accused person placed an advert on his Facebook page as per Exhibits 'C' and 'C1' inviting people to engage his services to travel abroad. On this Facebook page, he described himself as the Chief Executive Officer at Jackmillan International. The Accused person did not deny the fact that he demanded and collected the sum of GH¢11,200.00 from the complainant. The Accused person assured the complainant of securing him admission and Visa to travel to Mauritius within a month, and later, to Turkey.

Did the Accused person make the above representation with the knowledge that such representation is false or without the belief that it is 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

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".

There is evidence that the Accused person operates a Travel and Tour business duly registered in accordance with the laws of Ghana. The complainant was offered admission by the AURA Institute of Business and Hospitality, Mauritius by a letter dated 27th July, 2022 as per Exhibit '2'. The complainant accepted the offer of admission. It is also not denied that when the complainant was denied Visa to travel to Mauritius, he opted for Turkey. That also turned out to be unsuccessful. The Accused person forwarded all the documents of the complainant to the Turkish Embassy and again, the Visa was refused. The Cautioned Statement of the Accused person given to the police on the 25th February, 2023 is consistent with his Evidence-In-Chief.

From the totality of the evidence adduced at the trial, the Court finds that this entire case is one of a pure civil transaction that went bad, and the complainant was only approbating and reprobating. No litigant, even an Accused person or a complainant in a criminal case will be permitted to approbate and reprobate.

Following from the above, the Court finds that the prosecution has failed to prove its case beyond reasonable doubt. In the circumstances, the Accused person herein, Nana Yaw Asare @ Bishop is hereby acquitted and discharged.

(SGD.) ISAAC ADDO
CIRCUIT COURT JUDGE
29TH APRIL, 2024

