

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 15TH DAY OF FEBRUARY 2024 BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE.

D2/321/2023

THE REPUBLIC

VRS

LAUD AWUKU

RICHARD OSEI (AT LARGE)

JUDGEMENT

The accused was arraigned before the Court on four counts:

1. Conspiracy to commit crime to wit defrauding by false pretence: contrary to section 23(1) and 131(1) of criminal and other offences Act, 1960 (Act 29).
2. Defrauding by false pretence: Contrary to Section 131 (1) of the Criminal Offences Act 1960 (Act 29).
3. Defrauding by false pretence: Contrary to section 131 (1) of Criminal Offences Act 1960 (Act 29).
4. Defrauding by false pretence: Contrary to section 131 (1) of Criminal Offences Act 1960 (Act 29).

The law provides under **sections 173 and 174** of the **Criminal and Other Offences Procedure Act, Act 30** as follows:

173. *Acquittal of accused when no case to answer*

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 the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.

174. The defence

(1) At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the Court shall call on the accused to make the defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement.

(2) The Court shall then hear the accused if the accused desires to be heard and the evidence the accused may adduce in defence.

By these provisions, at the end of the case of the prosecution, the court came to the conclusion that a case has been made against the accused person.

THE FACTS OF THE CASE AS PRESENTED BY THE PROSECUTION

The facts of the case as attached to the charge sheet is that Complainants in this case are Rose Fordjour, a prison officer, residing at Obeyeyie, Frank Nlibe Nmalibene, unemployed, residing at Odorkor and Daniel Adjei, also unemployed residing at Tema Community Seven (7). Accused person Laud Awuku is unemployed, residing at Tantra Hill and his accomplice Richard Osei now at large, presented themselves to the complainants as National Security operatives stationed at the Jubilee House. Complainant Rose Fordjour and the accused are church members. In the year 2021, the accused person informed her that he has protocol slots in recruiting people into the Ghana Immigration Service at a fee ranging from Seven Thousand Ghana Cedis (GHC7, 000) to Fifteen Thousand Ghana Cedis (GHC 15, 000.00) depending on one's qualification

and encouraged her to mobilize interested persons for him. She also informed her friends and relatives, where two of her family members expressed interest as well as complainants Frank Nlibe Nmalibene and Daniel Adjei.

The accused person gave MTN MoMo account number 0243226563 of his accomplice Richard Osei to all the complainants to pay their respective monies into the said account. Complainants Rose Fordjour and Frank Nlibe Nmalibene went to the accused person's house at Tantra Hill and gave him Ten Thousand Cedis (GHC 10,000.00) cash as part payment for the protocol fee for complainants to send the monies to his aforementioned MoMo account, hence GHC 45,600.00 was paid into the said MoMo account. Accused person and his accomplice succeeded in collecting a total amount of GHC 55,600 from the complainants after which they went into hiding. All efforts made by the complainants to retrieve their money or to be enlisted into Security agencies was fruitless. On 14/07/2022 the victims petitioned the Director-General CID and the accused person was arrested for investigation. In his caution statement, he admitted the offence and stated that he had given the amount involved to one Isaac, who was to facilitate the enlistment process but failed to assist police to arrest the said Isaac. The accused person has been charged with the offences stated on the charge sheet and arraigned before this honorable court while efforts are being made to apprehend his accomplice Richard Osei for investigation.

BURDEN OF PROOF

Accused appearing before the court pleaded not guilty to the charge proffered against him. It is trite law that in a criminal case, when an accused pleads not guilty to an offence, pursuant to S.11 (2) of the Evidence Act, 1975 (NRCD 323), *the burden of proof is on the prosecution*; and the **standard of proof** has to be **beyond reasonable doubt** as stated in **Section 13(1) of the Evidence Act, 1975 (NRCD 323)** and affirmed in the case **DARKO v THE REPUBLIC** [1968] GLR 203. There is no burden on the accused. See: **COP v Isaac Antwi** (1961) GLR 408 @ 412, **Nkansah v The Republic** (1980) GLR 184.

CHARGES BROUGHT AGAINST THE ACCUSED AND THE LAW

The accused was charged with one count of conspiracy and three counts of defrauding by false pretence. Considering the charge of conspiracy, the law under conspiracy is provided for by section 23 of the **CRIMINAL OFFENCES ACT, 1960 (ACT 29)** which reads:

Section 23: Conspiracy

(1) Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.

The Supreme Court in the case of **Francis Yirenkyi v The Rep. (2017-2020) 1 SCGLR page 457 the Court per Dotse JSC** as he then was said, "The effect of conspiracy as defined by the Court of Appeal, is that the persons must not only agree or act but must agree to act together for common purposes". The Court went further to state, "... Under the new formulation, a person could no longer be guilty of conspiracy in the absence of any prior agreement, whereas under the old formulation a person could be guilty of conspiracy in the absence of any prior agreement". The Court then concluded that the decision by Marful-Sau, JA in the **Rep. v Abu & Others Case** and by the Korbieh, JA panel in the **Sgt Agyapong Case** are therefore correct and should be applied. The law therefore requires the prior agreement of the accused persons.

Section 131 (1) of the Criminal Offences Act, 1960 (Act 29) provides the offence of defrauding by false pretence and states: "A person who defrauds any other person by a false pretence commits a second-degree felony." False pretence has been defined in section 133 (1) of the Act 29 as : "... a representation of the existence of a state of facts made by a person, with the knowledge that the representation is false or without the belief that it is true, and made with an intent to defraud." The pertinent question is: what

is defrauding by false pretence? According to S. 132 of Act 29: “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.”

Pursuant to S.133 of Act 29 and as affirmed in the case of **ABODAKPI v THE REPUBLIC [2008] 2 GMJ 33**, for the prosecution to succeed in proving the offence of defrauding by false pretences, they are required to prove the following:

- (1) That the accused made a representation of the existence of a state of facts.
- (2) That the representation was made either by written or spoken words or by impersonation.
- (3) That the representation was made with the knowledge that it was false or made without the belief that it was true.
- (4) That the representation was made with intent to defraud.
- (5) That the representation was made by the accused and that by that representation he obtained the consent of another person to part with something.

The various elements of defrauding by false pretence can be elucidated further as follows:

a. Defraud b. False Pretences c. Personation and d. intention to defraud

Consequently, in a criminal trial of an accused person for the offence of defrauding by false pretences, if the prosecution fails to adduce sufficient and satisfactory evidence to prove all the above stated ingredients of the offence their case must fail. Thus, the failure by the prosecution to prove sufficiently any one of these essential ingredients of the offence will be fatal to the prosecution’s case.

See **TAMAKLOE v THE REPUBLIC [2011] 1 SCGLR 29**, **Asiedu v The Republic (1968) GLR 1**, **Chief Superintendent of Police v Ceesay & Anor (1957) 2 WALR 87**, **Rabbles v The State (1964) GLR 580**.

In **Blay v The Republic (1968) GLR 1040** it was held that in a charge of defrauding by false pretences, if the evidence showed, that the statements relied on, consisted partly of a promise to do something in future, there was sufficient false pretence on which a conviction could be based. In holding 5 thereof the court held that “To defraud was deprive by deceit or to induce a cause of action by deceit”, In the case of **Adobor v The Republic (2008) 19 MLRG 23 CA**, the court stated as follows: “To constitute an offence by false pretence, the accused should have made a representation which to his knowledge is false, the representation should be made to a person who believed it and as a result was induce to part with or transfer with or transfer the ownership of anything”.

Also, in the case of **Asiamah v The Republic (J3/06/2020) (2020) GHASC 64/04, Nov. 2020**, the Supreme Court, speaking through **Her Ladyship Torkornoo (Mrs.) JSC**, stated that “The criminal enterprise of defrauding by false pretence requires ... people to agree to get a ... person to give consent to part with or transfer the ownership of a thing... See also **Commissioner of Police v Dwamena (1957) 1 WALR 55, COP v Dwamena (1956) 1 WALR 55, Arthur v State (1961) 1 GLR 316, Akowuah v Commissioner of Police (1964) GLR 457**.

In the case of **Asare and Others v The Republic (No.3) 1968 GLR 804 CA**, it was held that: - “To succeed on a charge of defrauding by false pretence under Act 29 section 132 and 133, it was not enough for the prosecution to prove that the representation was false; they should go further to prove the consent to part with ownership was in fact obtained by false pretence”.

In the case of **R v Emmanuel Mensah Xenyu, Criminal Appeal No. 8/2002**, delivered on 23rd May 2002, Rose Owusu JA (as she then was), held inter alia that in a charge of defrauding by false pretences, it must be proved that the person who parted with or transferred the ownership of anything, would not have done so but for the false

pretences. In other words, it must be proved that PW1 was induced by the false pretences to part with or transfer the ownership of the money to the Accused.

In the case of **Philip Akpeena Asibit v The Republic**; Unreported, Criminal Appeal No: H2/23/2018; delivered on 13th February 2020, the Court of Appeal, per Dennis Adjei JA, distilled and stated the following as the elements or ingredient of the offence of defrauding by false pretences.

“The main elements of defrauding by false pretence as discussed above which the prosecution is required by law to prove are fivefold and they are ; a representation has been made by the accused as to the existence of state of facts; the representation was made either in writing, uttered words or by impersonation; the accused made the representation with the knowledge that it was false or he made it without belief that it was true; the accused made the representation with intent to defraud; and finally, the accused made the representation and based on it he obtained the consent of another person to part with something. The above ingredients of the offence have been discussed in several cases including **Rep v Selormey (2001-2002) 2 GLR 424, Kuma v The Republic (1970) C.C 113** and the unreported case of **Daniel Abodakpi v The Republic (Criminal Appeal No H2/6/07 delivered on 20th June 2008)**.

ISSUES FOR DETERMINATION

The issue for determination in the instant case is whether or not the accused is guilty of the offence of conspiracy and whether or not the accused is guilty of the offence of defrauding by false pretences contrary to S.131 (1) of Act 29. In other words, did the accused, with intent to defraud, make a representation, knowing it to be false or without belief in its truth, and through that did obtain the consent of the complainants to part with something?

THE CASE OF THE PROSECUTION AT THE TRIAL

The prosecution, during the trial, through their witnesses that is PW1, Rose Fordjour, the complainant and PW2, the Investigator, gave evidence in support of the charge. The prosecution also tendered various documents before the court in support of the charges.

The prosecution tendered in evidence, exhibit A, Investigation Caution statement and charge statement of the accused as exhibit B, Order for disclosure of information as exhibit C and MTN MoMo Statement as exhibit D (5 pages).

From the evidence, PW1 said she knows the accused and in the year 2019, her husband was sick and admitted at the hospital where they needed blood donation for him and the accused assisted them by donating blood for them and from the they became friends, she got to know his place of abode, wife and children. PW1 said somewhere in August 2021, she received a call from the accused who informed her that he works with the National Security at the Jubilee House, Accra and that he had gotten a protocol enlistment offer so if she knew some people who were interested in joining the immigration Service she should link them up with him. PW1 said she informed a few friends about it and their wards showed interest. PW1 said accused later charged GHC 20000 for graduates and GHC 8000 for non-graduates and she got 4 people who were interested, two graduates and two non-graduates.

PW1 said she collected GHC 18,000 from four victims and handed it to the accused. PW1 said in all the accused and the said Richard Osei (A2) took a total of GHC 55,600 from which four persons she introduced to him to enlist into the Ghana Immigration Service of which GHC 18,000 passed through her and after the accused persons went into hiding and she could not reach them. PW1 said she made enquiries from his wife and she said the husband had abandoned her and the children and he does not come home and she does not know his whereabouts. After the evidence of PW1, accused was asked to cross examine the witness but he indicated that he does not have questions to ask.

The prosecution called PW2 the investigator who is at the special investigation unit of the CID Headquarters, who said she knew the complainant and the accused. PW2 said on the 8th of July 2022, a case of defrauding by false pretence was reported by the compliant PW1 against the accused person and it as referred to her for investigations. PW2 said the accused was arrested for investigation and caution statement was obtained from him where he admitted having received various sums of money from the complainants and victims through MTN mobile money number 0242323789 bearing the name Laud Awuku and MTN mobile number 0243226563 bearing the name Richard Osei but could not recall the exact amount. PW 2 said as part of her investigation she obtained a court order through an ex-parte motion and obtained the itemised bill from MTN Ghana Limited on the numbers of the accused persons. PW2 said analysis of the transaction history indicated that the complainants and victims sent an amount of GHC 45,600 into the numbers of the accused persons. PW2 said in the course of investigation the accused refunded an amount of GHC 1000 as part payment of the money he collected from the complainant and victims. In all prosecution tendered exhibits A-caution statement, B-Charge statement, C-Order for disclosure and D-MTN MoMo statement.

THE DEFENCE OF THE ACCUSED AT THE TRIAL

From the record, at the end of the two prosecution witnesses, the accused did not have any questions for the prosecution witnesses and after the prosecution announced the end of the case of the prosecution, the court came to the conclusion that a case has been made against the accused and he was called upon to open his defence. The accused opened his defence from the witness box and stated that he admits to all the charges levelled against him. The accused said further that the court should exercise mercy and help him leave police custody. The accused said he does not have anything to say but if granted leave from the police custody he would pay back all the monies owed the complainant. That was the defence of the accused and after which he was cross examined.

EVALUATION AND ANALYSIS OF THE EVIDENCE BEFORE THE COURT

From the record the accused was charged with four counts of offences. Count one was the offence of conspiracy and the particulars of the offence indicates that the accused committed the offence with A2 but I must say there was no evidence to demonstrate that the accused A1 did agree to act together with common purpose as required by law. Again with respect to count three and four, the particulars indicated that one Frank Nlibe Nmalibene and another Daniel Adjei were the once who were defrauded but these complainants were not called as witnesses before the court. These were material witnesses that were essential for the prosecution to prove their case against the accused person with respect to the charges brought against him.

Witness statements of witnesses were filed with respect to those two charges before the court but for some reasons they were not called by the prosecution. I therefore make a finding of fact that the prosecution could not call the right witnesses to prove count three and four charges that were brought against the accused.

For Count 2 the prosecution called PW1 Rose Fordjour who testified before the court and gave evidence of the money she sent to the accused A1. The prosecution also proved through their witnesses PW1 and PW2 the representation that the accused made to the complainant and based on that the complainant paid money to the accused person. From the record that is exhibit A and B, which is the statement the accused gave to the police which was tendered in evidence, indicates he admits to monies he accused has received but claims he gave it to a friend. The accused also admitted to the charges brought against him in his defence and did not challenge any of the witnesses the prosecution called before the court. I therefore find that the prosecution has proved the count two against the accused.

In the case of **Miller v Minister of Pensions (1947) All ER 372 @ 373**, Lord Denning indicated that it is needless for the prosecution to attempt to prove the guilt of the accused beyond a shadow of doubt since that standard will be impossible to attain and were the law to allow that, there will be the admission of fanciful possibilities to deflect the course of justice.

CONCLUSION

The prosecution has been able to lead evidence to prove their case before the court and the issue before the court is answered in the affirmative. The defence of the accused has been considered by the court in totality and based on the three-tier test of examining the defence of the accused person, the defence is found to be unacceptable, it is not reasonably probable and considering the whole case before the court, that is the prosecution and the defence together, the prosecution has been able to satisfy the guilt of the accused beyond reasonable doubt with respect to the count two. See **Brempong v The Republic (1995-1996) 1GLR 321 @ 350**, **Lutterodt v Commissioner of Police (1963) 2 GLR 429 @439**.

The accused is therefore found guilty on the count 2 and convicted accordingly.