

IN THE TDC DISTRICT COURT HELD AT TEMA ON THURSDAY, THE
15TH DAY OF DECEMBER 2022 BEFORE HER HONOUR AKOSUA
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS
AN ADDITIONAL MAGISTRATE

CASE _____ NO.:

B7/1/2020

THE REPUBLIC

VRS

BRAIMAH WILLIAM

ACCUSED PERSON ABSENT

COMPLAINANT ABSENT

CHIEF INSPECTOR DORIS DOE FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSON

JUDGMENT

The accused person has been arraigned before this Court charged with two counts of Defrauding by False Pretence contrary to *section 131 of the Criminal and Other Offences Act, 1960 (Act 29)*.

He pleaded not guilty to both counts after the charges were read out to him.

The facts of the case as presented by the prosecution are that, the complainant Michael Kwaku Owusu is a chemical engineer and lives at Bethlehem, Golf City.

The accused William Braimah is a businessman and also lives at Michel Camp. Somewhere in November 2018, both were living in the same house as co-tenants at Golf City. The accused person then told the complainant he has Mazda Demeo car with registration number GW 7858-17 which he was selling for the price of GH¢18,000.00. The accused further told the complainant the car had been seized by the National Security operatives and they were demanding for an amount of GH¢5,000.00 before they release it to him, hence the complainant should give him the GH¢5,000.00 to pay the National Security operatives and get the car for the complainant for him to pay the remaining GH¢13,000.00 by installment. The complainant agreed and gave the accused GH¢6,000.00 on 22/11/2018 and told him to use the GH¢1,000.00 to transfer the document of the car into his name. The accused later informed the complainant he needed additional money to buy mother board and other parts and fix them before he could drive the car. The complainant then transferred GH¢3,800.00 in bits into the accused mobile money account number 0243617747. The accused after receiving the above stated amounts of monies told the complainant it was difficult for him to get the Mazda however, he had Chevrolet Matiz saloon car at Sunyani which he was selling for GH¢25,000.00. That the complainant should give him GH¢4,200.00 to go and bring the car to replace the Mazda for him. The complainant agreed and on 13th, 19th and 23rd February, 2019 transferred the money in bits into the accused mobile money account again. The accused after receiving the money, travelled to Australia without the complainant's consent. Whilst in Australia the accused directed the complainant to transfer GH¢710.00, GH¢303.00, GH¢303.00 and GH¢360.00 into the mobile money accounts of Luke Randy, Gideon Donkor, Adolley Allotey and Joseph Bortey respectively. The accused returned on 28/07/2019 and called the complainant to inform him and stated further that he was going to follow up the release of the Mazda on 30/07/2019. The accused

contacted the complainant on phone that the National Security operatives were demanding GH¢1,500.00 before they finally release the car and GH¢650.00 to change the car's starter bringing the total money received by the accused to GH¢17,826.00. The complainant again transferred the money into accused mobile money account on 05/08/2019. The accused told the complainant he could not get the car from the National Security, however he had a Toyota Yaris at Tema Port, the complainant should assist him pay the duty so that he sells the car to him for GH¢30,000.00. That he would deduct all the payment made to him by the complainant from it and allow him to pay the balance by installment. On 20/08/2019, a complaint was lodged and the accused person was arrested and detained for investigations. During investigations, it was observed that the National Security operatives told the accused to pay the duty on the car to be released to him. However, the accused decided to pay GH¢2,000.00 to one of the National Security men by name Watz to release the car to him without paying the duty. But the said Watz could not do so and he was also sacked from the office. After investigations the accused was charged with the offence and arraigned before this honourable Court.

The prosecution called two witnesses in support of its case.

PW1 (the complainant) in his evidence to the Court confirmed the facts as presented by the prosecution.

PW2, the investigator testified that when the case was reported by the complainant on 20/08/2019 it was referred to him for investigations. That he obtained investigation caution statement from the accused for investigations which was tendered in evidence as exhibit 'B'. That the accused person led him

to the National Security Annex Blue Gate, Accra and showed him the car Mazda Demio with registration number GW4378-17 where he took photographs of the car which he tendered as exhibit 'A'. That he obtained further investigation cautioned statement from the accused person and was tendered as exhibit 'B1'. He continued that during investigations he noticed that the accused after collecting the amount of GH¢17,826.00 then told the complainant the National Security operatives did not release the Mazda to him. That the information he received from the National Security indicated that the Mazda was seized because the duty was not paid and the accused was directed to go and pay the duty and bring the receipt for the car to be released to him. The accused then gave GH¢2,000.00 to one Watz who is a National Security officer to assist him get the car without paying the duty; the said Watz could not also do anything about it and he was sacked from the office. That he charged the accused person with the offence of Defrauding by false pretences. He tendered the charge statement of the accused person as exhibit 'C'.

Prosecution thereafter closed its case.

After the close of prosecution's case, Counsel for the accused person who later withdrew his representation for the accused person, filed submission of no case on behalf of the accused person and the Court delivered a ruling on same, to the effect that a prima facie case had been made by the prosecution to warrant the accused person to open his defence. That the evidential burden had shifted to the accused person to raise a reasonable doubt in the case of the prosecution.

In the case of *The Republic v District Magistrate Grade II, Osu, Ex parte Yahaya* [1984-86] 2 GLR 361 – 365 Brobbey J (as he then was) stated that:

“...evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence.”

In view of the above, the Court found that the accused person had a case to answer and was therefore called upon to enter into his defence, after the options available to him as an accused person were explained to him.

OPENING OF DEFENCE BY THE ACCUSED PERSON

In opening his defence, the accused person testified in open Court that he is a businessman and lives at Golf City. That he knows the complainant as they live in the same house at Golf City. In the testimony of the accused person in defence, he testified that he had a Mazda Demio in the house and he wanted to travel so he needed money from that car so he gave the car to someone to sell for him because he was in need of money. That the national security seized the car when they saw it and requested for the car documents as they were doing investigations on those cars because it was over aged cars. That he discussed with the complainant who said he is interested in the car so he will pay by instalment after he sees the car. That they negotiated the amount to be GH¢25,000.00 and later went to see the car at the National Security and he was satisfied. That he then made payment of GH¢5,000.00 and took the number of the national security boss whose name is Watt that he will talk to him, and was always calling Watt. That the complainant gave him money in bits and the car was still at the National Security. That he wanted to travel so he informed the complainant and Watt; and Watt said he will do everything on his behalf. That before he travelled Watt told him that the duty that was paid on the car was not up to what was supposed to be paid that is why same was seized and he

demanded for money to release the car to them. That the complainant said he will pay that money and he gave him GH¢3,500.00 which he gave GH¢2,000.00 out of that to the said Watt and kept the GH¢1,500.00 with complainant's consent. That the said Watt started tossing them, giving them one month after one month. That the complainant agreed with him that he can travel after he explained things to him. That he communicated to the complainant whilst in Australia and complainant paid additional moneys upon his instruction. That when he returned he told the complainant that if he does not get the car he will pay his money to him. That the complainant later took his Iphone 8 plus and Iphone 6X plus as collateral on the moneys he gave him for the car. That they later realized Watt was deceiving them so the complainant did not return his phones to him till now. The accused person continued that the complainant later said he is no more interested in the car. That all the monies he took from the complainant was GH¢10,678.38.

The accused person did not call witness and thereafter closed his defence.

The legal issue to be determined is whether or not the accused person herein did defraud the complainant by falsely representing to him that if he pays the amounts of GH¢13,626.00 and GH¢4,200.00 to him, he would sell Mazda Demio saloon car and Chevrolet Matis saloon car to him.

The cardinal rule in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution and the standard of proof required by the prosecution should be proof beyond reasonable doubt as provided in the *Evidence Act, 1975 (NRCD 323)*, per *sections 11(2) and 13(1)*.

Section 11(2) of the Evidence Act, 1975 (NRCD 323) is 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. 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”.

Significantly, whereas the prosecution carries that burden to prove the guilt of the accused person beyond reasonable doubt as per **sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323)**, there is no such burden on accused person 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 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.

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.

The House of Lords, in *Welham v. Director of Public Prosecutions [1961] A.C. 103*, 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 therefore 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 1*, Amisshah 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”.

Archer J. (as he then was) in the case of *Blay v. The Republic [1968] GLR 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”.

After careful examination of the evidence led at the trial, I made the following findings of facts and observations:

It is the prosecution’s case the accused person collected an amounts of GH¢13,626.00 and GH¢4,200.00 from the complainant that he would sell him a Mazda Demio saloon car and a Chevrolet Matis saloon car and after he took the said money from the complainant, he used the money but did not give any car to the complainant because he knew well that the statements he made were false at the time of making them. From the evidence of PW1, the accused person told him that he was selling a Mazda Demio at GH¢18,000.00 but the car had been seized by the National Security operatives so the complainant should give him GH¢5,000.00 to pay the National Security operatives and get the car for the complainant for him to pay the remaining GH¢13,000.00 by installment. Based on this representation, the accused person convinced PW1 to part an amount of GH¢6,000.00 to him. The accused person later informed the complainant that he needed additional money to buy mother board and other parts and fix them before he could drive the car. The complainant then transferred GH¢3,800.00 in bits into the accused mobile money account number 0243617747.

From the evidence of PW2, he went to the National Security Annex with the accused person to investigate about the Mazda Demio. That the accused person showed him the said car parked at the National Security Annex. That upon

further investigations, he received information from the National Security that the Mazda was seized because the duty was not paid and the accused was directed to go and pay the duty and bring the receipt for the car to be released to him but he did not. Instead he paid GH¢2,000.00 to one Watz who is a National Security officer to assist him get the car without paying the duty and the said Watz could not also do anything about it.

From the evidence before this Court, after the accused person had taken monies from the PW1 that those monies were meant for the release of the said Mazda and to fix parts of same, he subsequently told the PW1 that it was difficult for him to get the Mazda however he had Chevrolet Matiz saloon car at Sunyani which he was selling for GH¢25,000.00 so the complainant should give him GH¢4,200.00 to go and bring the car to replace the Mazda for him. Again the accused person made another representation to PW1 and was able to convince PW1 who agreed and transferred additional money in bits into the accused mobile money account.

However the accused after receiving the money, decided to travel outside the country without the knowledge of PW1. The accused person even outside the country was able to convince PW1 again to make further payment in respect of the Chevrolet Matiz saloon car at Sunyani. With this the accused person made PW1 transfer monies into the mobile money accounts of Luke Randy, Gideon Donkor, Adolley Allotey and Joseph Bortey respectively.

After these payments in relation to the Chevrolet Matiz saloon car at Sunyani, the accused person upon his arrival in Ghana told PW1 that he met the main boss in charge of the Blue Gate and had requested GH¢1,500.00 again to finally discharge the Mazda since the first guy he dealt with was not truthful. Upon this

representation, the accused person requested an amount of GH¢2,150.00 from PW1 through mobile money to pay off the National Security requested amount and also to change the starter of the car as it was faulty.

The question any reasonable man will ask is what happened to the Chevrolet Matiz the accused person took PW1's money for, and even when he was outside the country directed that PW1 should pay monies to the people mentioned above.

From the evidence before this Court, the accused person later told PW1 that there is another car he bought whilst he was away – a Toyota Yaris 2007 model which was yet to be cleared and kept in the safe bond garage at Tema Port so the complainant should help him clear the car and he would sell to him at GH¢30,000.00.

Again, what happened to the Chevrolet Matiz for which the accused person took monies from the complainant?

From the evidence of PW1 when the accused person discussed with him about the Toyota Yaris, he invited him and sent him to the police because he felt he was being deceived. PW1 further told the Court under cross examination that when the accused person told him about the Toyota Yaris, he was not interested because he felt deceived for taking his monies and giving him stories so he went to check the car with him with a policeman and reported him to the police after the accused person suggested that he should pay an amount of money for him to clear the car.

In view of this piece of evidence it cannot be said that PW1 agreed to buy the Toyota Yaris and because the accused person delayed in giving same to him he

reported him to the police station. PW1 throughout the trial maintained that he felt the accused person was deceiving him because of how he dealt with him.

The accused person in his defence told the Court that the Mazda Demio saloon car was seized by National Security for being an over aged car and in another breadth he said he was told that it was seized because the duty that was paid on the car was less than what was supposed to be paid. That one Watt who worked with National Security took GH¢2,000.00 out of the said money and promised to release the said car but he deceived them and did not do so.

On the second count the accused person did not give any evidence or testimony as to the said GH¢4,200.00 and the Chevrolet Matiz saloon car he took the complainant's money and said he will sell to him. From the evidence of the accused person under cross examination the said Chevrolet Matiz saloon car is for his boss and that he asked someone to send that car's picture to the complainant but he did not agree to that.

The accused person further told the court that the complainant collected copies of the documents of the cars he wanted to sell to him. Surprisingly the accused person did not show these documents to the police or even tender them in evidence before this court. Also the accused person told the court that he informed and discussed his travel to Australia before he left which the prosecution denied. However in his caution statement the accused person stated that he travelled to Australia and did not inform the complainant but when he got to Australia he called to tell him.

The accused person also told the court in his defence that all the monies he took from the complainant was 10,678.38, meanwhile under cross examination he told the court that he took GH¢16,783.00 from the complainant. The accused person was inconsistent as to the amount he took from the complainant and was simply

being untruthful to the court. The inconsistencies in the accused person's evidence before this court and the contradictions in his evidence and his statements to the police during the investigation stage make him and his evidence not worthy of believe.

From the evidence of the accused person, it can be gleaned that at the time he took the said money from the complainant the cars were not available to be sold but he deceived the complainant and took his money and used for his own benefit.

On the question of false representation, it is apparent from the evidence adduced during the trial that the accused person convinced the complainant that he was going to sell a car to him and on two occasions showed him the cars. As a result of this, complainant gave the said money to the accused person who used the money for his own benefit when he knew that the said cars Mazda Demio saloon car and Chevrolet Matis Saloon car were not available to be sold because the Mazda had been seized for not complying with statutory payments and the Chevrolet did not belong to him.

The intentions of a person is always determined by their conduct. *Section 11 of Act 29* explains *intent* and in summary provides that a person intends the natural consequence of his or her actions. The conduct and actions of the accused person lead to the suggestion that he intended to defraud the complainant and he kept deceiving the complainant with the sale of cars and took his money when he knew the said cars could not be sold to him.

The accused person from the evidence before this court, knew the car had issues but took money from the complainant that he will sell it to him even when the

car had been seized by the National Security and used the said money for his benefit and further travelled outside the country without any notice to the complainant but still managed to deceive the complainant to pay additional money for the said car when he was outside the jurisdiction and knew the car was not available to be given to the complainant. At the time the accused person took the said moneys from the complainant on both counts he knew very well that those cars even though the complainant saw them, were not available to be sold to the complainant so he defrauded the complainant by showing him the cars and took monies but could not give same to him because they were not available for sale. The accused person only dealt with the said Watt to help him to evade the necessary requirements to be able to have the said car and the said Watt also deceived him thereby exposing the accused person.

The accused person told the court that he will call a witness but he did not call any witness to testify in Court after the Court gave him ample time and opportunity to call his witness. On about nine adjournments the accused person did not call the said witness for which the Court kept adjourning the case since he always pleaded with the court for time to do so.

At page 1049 the Court in the case of *Blay v. The Republic* (*supra*), stated:

"If a man makes statements of fact which he knows to be untrue, and makes them for the purpose of inducing persons to deposit with him money which he knows they would not deposit but for their belief in the truth of his statements, and if he intends to use the money thus obtained for purposes different from those for which he knows the depositors understand from his statements that he intends to use it, then, although he may intend to repay the money if he can, and although he may

honestly believe, and may even have good reason to believe, that he will be able to repay it, he has an intent to defraud."

In the instant case not only was the representation to the complainant that he was going to sell a car to him false because as at the time he took the money the said cars were not in the position to be sold, but also the accused person took advantage of the deceit and used the complainant's money for his own benefit. Relying on the above authority, although the accused may intend to repay the money he took from the complainant to him, the accused person had the intent to defraud the complainant and did defraud him.

Consequently the accused person's defence that the complainant took his two Iphones to offset some of the money he paid to him cannot be a complete defence because he took the complainant money out of fraudulent pretence and would have to repay to the complainant.

In the case of *Commissioner of Police v. Isaac Antwi*[1961] GLR 408-412, it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by *sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323)*. *Section 11(3)* provides that:

"In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt."

Section 13(2) provides that:

“Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.”

For the accused person to have been called upon to open his defence it implies that a prima facie case was made by the prosecution and it was the duty of the accused person to raise reasonable doubt in the case of the prosecution to enable his acquittal. Unfortunately, the evidence of the accused person before this Court could not raise any reasonable doubt as to his guilt. This is because the evidence adduced by the prosecution witnesses was able to establish that the accused person took the complainant’s money by false pretence and used same for his benefit as he did not have any car available for sale, to sell to the complainant being the reason why he took the said money.

From the evidence of the accused person, I find that the accused person does not have a reasonable defence to the charge against him since he could not raise any reasonable doubt as to his guilt; and I do find that the prosecution has been able to prove that the accused person is guilty of the offence for which he has been charged. This is because the case of the prosecution has been consistent and been able to establish beyond reasonable doubt that the accused person defrauded the complainant.

I support my decision with the dictum of Denning J. (as he then was) in the case of *Miller v. Minister of Pensions* [1947] 2 All E.R. 372 where he said:

“Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful

possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

Apaloo JA (as he then was) in the case of *Asare & Others v. The Republic (No. 3)* [1968] GLR 804 stated:

"The offence of fraud by false pretences seeks to punish anyone who deceives another to his detriment and which deceit operated to the material advantage of the deceiver".

From the foregoing reasons, I find the accused person herein, **Braimah William** guilty of the offence of defrauding by false pretence on both counts one and two; and I do convict him accordingly.

There will not be plea in mitigation since the accused person is absent.

Court: Is the accused person known to the police?

Prosecutor: No, he is a first time offender.

By Court:

In sentencing the accused person, the Court has considered the fact that he is a first time offender. The court hereby imposes the following sentences on the accused person:

Count one: The accused person is sentenced to a prison term of eighteen (18) months IHL.

Count two: The accused person is sentenced to a prison term of six (6) months IHL. In addition he shall pay a fine of Two Hundred (200) Penalty Units or in default serve six (6) months prison term IHL.

The sentences on counts one and two are to run consecutively.

Final Orders:

The accused person is ordered to refund the amount of GH¢17,826.00 to the complainant less the value of the accused person's two phones being Iphone 8 plus and Iphone 6X plus that the complainant took from the accused person.

The police shall obtain commitment warrant which will authorize the apprehension of the convicted person for the purpose of carrying out the sentence. The person effecting such apprehension shall endorse the date thereof on the back of the warrant, and the sentence of imprisonment imposed on the accused person apprehended on such warrant shall commence from the date of his apprehension.

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H/H AKOSUA A. ADJEPONG
(MRS)
CIRCUIT COURT JUDGE
15TH DECEMBER 2022

