

**IN THE TDC DISTRICT COURT HELD AT TEMA ON MONDAY, THE 31ST
DAY OF OCTOBER 2022 BEFORE HER HONOUR AKOSUA ANOKYEWAA
ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS AN
ADDITIONAL MAGISTRATE**

CASE NO.: B7/3/21

THE REPUBLIC

VRS

DANIEL PREMPEH KYEREMATENG @ RASTA

ACCUSED PERSON PRESENT

COMPLAINANT ABSENT REPRESENTED BY EKOW ARKO

INSPECTOR HILDA ASANTE SARKODIE FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSON

JUDGMENT

The accused person herein was arraigned before this court charged with Defrauding by False Pretence contrary to *section 131 of the Criminal and Other Offences Act, 1960 (Act 29)*.

He pleaded not guilty after the charge has been read out and explained to him in Twi.

The facts of the case as presented by the prosecution are that the complainant Mariama Bukari is a trader while the accused person is a security man working with Majaro Company. Both live at Community 8, Tema. On 20/02/2020

complainant who needed a container store and land to rent for her business approached the accused person in respect of that. The accused person told her that he has a container store and a land. The complainant expressed interest and paid GH¢2,000.00 for a period of one year. After the payment complainant began renovating the shop to start her business. To her surprise she went to the shop and realized the container had been pushed and turned upside down. Complainant then confronted the accused person but he could not give any reasonable explanation as to why the container was turned upside down but rather pleaded with the complainant to relocate her. She demanded for a refund of her money but the accused person told her that he had spent it on his family. Complainant then reported the matter to the police where the accused person was arrested. During police investigations it was discovered that the land on which the container was does not belong to the accused person hence has no authority to rent it out. After investigations he was charged with the offence before this court.

In proving its case, the prosecution called two (2) witnesses.

PW1 confirmed the facts as presented by the prosecution. That he and the complainant reported to the police and gave his statement to the police.

PW2 (Investigator) also confirmed the facts as the prosecutor presented to the court. She tendered in evidence, the investigation cautioned and charge statements of the accused person as exhibits 'A' and 'B' respectively, and exhibit 'C series' being the complainant's Witness Statement, statement to the police as well as the tenancy agreement between accused person and complainant.

Thereafter, the prosecution closed its case.

The court examined the case of the prosecution whether a prima facie case had been made by the prosecution to warrant the accused person to open his defence. The court then ruled that a prima facie case had been made so the accused person had a case to answer and was therefore called upon to enter into his defence.

OPENING OF DEFENCE BY THE ACCUSED PERSON

In opening his defence, the accused person testified that he lives at community 8 and is a security man. He continued that he knows the complainant but doesn't know the witnesses who were called. He further testified that it is not true that he took the complainant's money under false pretence. That when the complainant went to him she said she wanted to rent the container from him and he told her the place belongs to one Majaro. That after that he travelled and got a call that the complainant had come to demolish the place and placed her container. That he returned and called the complainant on phone but she did not answer his calls so he went to the masons who did the demolition to enquire from them who authorized them to do that and they told him it was the complainant who asked them to do that. According to the accused person he took the GH¢2,000.00 from the complainant being money for rent in respect of the container and the piece of land but the complainant did not take the place he was going to give her and brought her own container onto another place. That he told her that the particular place in issue now should not be used by anybody. The accused person concluded that when the complainant came to ask for her money he also asked her why she went to the land his boss said he should not go there then she reported him to the police.

The accused person called one witness as DW1 who gave his name as Abubakari Sidiq. DW1 testified that he is a mason and knows the accused person. That he was there when a gentleman who lives in the house with the complainant called him that he should come and work for him. That the complainant then took them to a container at Lighthouse that she wanted her to lay broken tiles on the floor of the container. That he did the work upon her direction and left. That he does not know what happened again.

Under cross examination DW1 told the court that he does not know about what happened between the complainant and the accused person about the said GH¢2,000.00 and the container and land.

The accused person 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 GH¢2,000.00 to him, he could rent his container shop and a piece of land at community 8, Tema to her.

The general principle of law in every criminal case as provided under **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 **Asare v The Republic [1978] GLR 193 – 199**, per Anin J. A. reading the Court of Appeal decision is that:

“There was no burden on the accused to establish his innocence, rather it was the prosecution that was required to prove the guilt of the accused beyond all 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 pgs 1-8, Amisah J.A. stated:

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

The prosecution witnesses told the court that the complainant gave GH¢2,000.00 to the accused person after he told complainant that he can rent to her his container shop and a piece of land at community 8, Tema.

The accused person did not deny this assertion in his defence but stated a different thing under cross examination. The accused person even entered a

tenancy agreement with the complainant but the evidence on record indicates that the accused person is not the owner of the said land and container but stated in the tenancy agreement between him and the complainant that he is the landlord.

In his evidence in chief the accused person testified that he took the said money from the complainant being money for rent in respect of the container and the piece of land however under cross examination, he told the court that the purpose of the money was for the renting of the container and not for the land and the container. The accused person contradicted himself as to what he had earlier testified.

Meanwhile the accused person executed a tenancy agreement with the complainant where he offered to rent the land and container to the complainant for a period of one year. He admitted having signed the said tenancy agreement being exhibit 'C2' under cross examination. The said tenancy agreement also states that the accused person is the landlord when he was not the owner of the land or container neither was he authorized by the owner to rent same. It took the owner of the container and the land to confront the complainant that he is the owner before the complainant got to know the accused person was not the owner but represented himself as the owner and took money from her that he will rent same to her. The accused person indeed admitted under cross examination that all the land there belongs to the said Majaro, who is actually the owner. He further admitted that the land does not belong to him but he has been on it for 15 years. This goes to support the case of the prosecution that the accused person is not the owner of the land and container but rented to the complainant without the consent and knowledge of the actual owner and took money from the complainant for that.

From the defence of the accused person it is clear that at the time he took the said GH¢2,000.00 from the complainant he did not have any authority or consent from the owner of the said land and container to rent same.

The accused person ought to have refunded the complainant's money to her instantaneously when the complainant found out he is not the owner but he did not do that as he had spent the money.

All that accused person needed to do was to raise a reasonable doubt in the case of the prosecution but he could not lead satisfactory evidence that he is/was the owner of the container and the land for which he took money from the complainant that he will rent to or he had the authority and consent from the owner to rent same.

On the question of false representation, it is apparent from the evidence adduced during the trial that the accused person convinced complainant that he could rent to her both the land and the container as he is the landlord per the agreement he signed with the complainant. As a result of this, the complainant was induced to pay an amount of GH¢2,000.00 to the accused person who parted away with it when he knew that he was not the owner and did not have the authority to rent.

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 the accused person was the owner of the land and container false, the accused person took advantage of the deceit and kept the complainant's money. Relying on the above authority, although the accused may intend to repay the money, he had the intent to defraud the complainant.

After evaluating all the pieces of evidence adduced during the trial, I find that the evidence point to only one conclusion that the accused person defrauded 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.”

The evidence of the accused person was marred with inconsistencies and therefore not credible so it could not raise a reasonable doubt in the case of the prosecution especially after he also made admissions about not being the owner of the container and the land.

From the evidence before this court, the accused person does not have a reasonable defence to the charge against him and so could not raise a reasonable doubt as to his guilt.

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 at p. 373 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 804-925 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 story of the accused person, I find that his defence was not reasonably probable and 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.

For the foregoing reasons, I find the accused person herein, guilty of the offence of defrauding by false pretence and convict him accordingly.

Q: Any plea in mitigation before sentence is passed?

A: I am pleading with the court for leniency.

Q: Is the accused person known?

A: No, he is a first time offender.

By Court:

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

The accused person shall serve twelve (12) months prison term IHL. In addition he shall pay a fine of One Hundred (100) Penalty Units or in default serve six (6) months prison term IHL.

Final Orders:

The accused person is ordered to refund the amount of GH¢2,000.00 to the complainant.

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H/H AKOSUA A. ADJEPONG (MRS)
CIRCUIT COURT JUDGE

31ST OCTOBER 2022