

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

CASE NO.: B7/17/22

THE REPUBLIC

VRS

EMMANUEL TENKORANG @ SNR MOST EVANGELIST EK MANU

---

ACCUSED PERSON PRESENT

COMPLAINANT PRESENT

CHIEF INSPECTOR MENSAH FOR THE REPUBLIC PRESENT

PAUL SELORM KPODOVIA FOR THE ACCUSED PERSON ABSENT

---

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 Simon Boison @ Simon Kofi Gyan is Reverend Minister residing at Community 2, Tema whiles the accused person is a businessman residing at Damfa. On 7<sup>th</sup>

March 2022 complainant was discussing with one of his church members his intention to buy a new car. A witness in the case Augustina Akwao Akuetteh and also a church member of complainant who overheard the conversation approached and told complainant that her brother in law sells cars and could be of help which complainant agreed. On 8<sup>th</sup> March 2022 at about 12:42pm, witness and her mother Edith Kokor Ahunarh also a witness went to complainant's office and introduced the accused as the person dealing in cars. Accused told the complainant that he was in good hands since he himself is a Christ Apostolic Church pastor. Complainant expressed interest in Toyota Highlander which the accused said will cost GH¢160,000.00 but was readily not available and promised to get one. That the complainant must make initial payment of GH¢50,000.00. That the complainant told the accused he had cash of GH¢20,000.00 ready. Accused told the complainant that he will accept the said amount and spread the balance for complainant to pay in two years to help his fellow pastor. Accused further told the complainant he will provide him a small car Toyota Vits on 10<sup>th</sup> March 2022 for the meantime while he secures the preferred Toyota Highlander. Complainant then gave the said GH¢20,000.00 to the accused in the presence of witnesses. Accused on 10<sup>th</sup> March 2022 could not honour his promise and also refused to answer complainant phone calls. On 16<sup>th</sup> March 2022, complainant sent a picture of cheque with the face value GH¢30,000.00 on Whatsapp to accused that he should come for the balance for the initial payment. Accused proceeded to Kpone for the said balance and complainant arrested him and handed him over to the Kpone Police and a complaint lodged. Investigation caution statement was obtained. During investigation it came to light that the accused does not deal in cars. After investigations he was charged with the offence and put before this honourable court.

In proving its case, the prosecution called four (4) witnesses.

*PW1* who is the complainant herein told the court that he needed a car to buy so he was discussing same with one of his church members by name Augustina and other people. That through the said Augustina he was introduced to the accused person. That he told the accused person that he needed a Honda Pilot but he said it is not readily available but he can get him Toyota Land cruiser and he gave the price as GH¢160,000.00. That he told the accused he only has GH¢20,000.00 with him in the presence of *PW2* and her daughter Nora. That the accused told him not to worry he will spread the payment of the car for him to pay in two years subject to initial payment of GH¢50,000.00. That the accused accepted the GH¢20,000.00 and thereafter told him that the land cruiser is not available so he should settle for Toyota Highlander which will be ready by 10<sup>th</sup> March 2022. According to *PW1* he accepted it because the accused is a pastor like him. That the accused again promised to give him some small car to make his rounds before 10<sup>th</sup> March 2022. That the accused demanded to go with his junior pastor who is *PW3* to his garage at Lapaz to have a look at the Highlander. That *PW3* returned to inform him that they went to two different garages where the first one did not have a highlander but a fleet of small cars and the second one owned by one Burger had a highlander. That the accused person thereafter ignored his calls and his whereabouts was unknown to him then he realized he had been duped so he devised ways and means to have him arrested. He concluded that he submitted his statement to the police.

*PW2*, Edith Korkor Ahunarh told the court that the accused person says he sells cars and that is what she knows. That her daughter Augustina told her *PW1*'s car is spoilt and needs another car. That she said she will talk to the accused person to help *PW1* to purchase a car on credit. That she introduced *PW1* to the accused

person where the latter informed her of the development between them. PW2 repeated the facts of the case as presented by the prosecution on the smaller car after PW1 paid GH¢20,000.00 and added that the accused person later told her that he could not deliver the said small car to PW1 because someone had expressed interest in the car. That the accused person even showed her pictures of the car he wanted to give to PW1. That the accused person told her he will travel and upon his return he will send the said car to PW1 which he has failed to do so till now. That she gave her statement to the police.

*PW3*, Edmund Owusu-Ansah generally repeated the contents of the Witness Statement of PW1, in his Witness Statement which he relied on as his evidence in chief.

*PW4* (Investigator) told the court in his evidence that on 16<sup>th</sup> March 2022 he was on duty as the available detective when his station officer referred the instant case reported by the complainant against the accused person to him for investigation. That he obtained statements from the complainant and his witnesses. That he also obtained investigation caution statement from accused in the presence of an independent witness Emelia Agoe and tendered it in evidence as exhibit 'A'. PW4 continued that during investigation the accused and witness Edmond Owusu Ansah led him to two garages Francis Owusu Motors and Chabel Motors the accused showed to the witness as his places of work at Darkuman Junction and Lapaz respectively. That at Francis Owusu Motors, he met the second in command Paul Adutwum who told him that the accused is neither the owner of the garage nor a worker. That the accused on the 10<sup>th</sup> March 2022 came to the garage with witness Edmond Owusu Ansah and two females (PW2 and her daughter Norah). That the accused told him he is into work and

pay business. That he will come and buy car from Francis Owusu Motors whenever he gets customers. PW4 continued that he met Charles Asante, CEO of Chabel Motors Lapaz. That he told him he does not know the accused and that the accused is not the owner of Chabel Motors and is also not a worker. That on 10<sup>th</sup> March 2022 the accused came to the garage with Edmund Owusu Ansah and two females and they left after some minutes. According to PW4, Eric Young a worker at Chabel Motors said on that date, the accused said he needed a Toyota Highlander to buy so in case he hears of some being offered for sale he should alert him. That after investigations, he charged the accused person with the offence and took and charge statements from him in the presence of an independent witness. He tendered same as exhibit 'B'.

Thereafter, the prosecution closed its case.

After the close of prosecution's case, the Court examined the evidence of the prosecution witnesses to determine 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 and 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 directed by the court that he may stand in the dock and give a statement, decide not to talk or enter the witness box and give his defence. The court adjourned the case to give the accused person enough time to decide which of the options he would take and further directed him to file his Witness Statement if he wants to give evidence. On the next adjourned date the accused person told the court that he does not want to give evidence that is why he did not file his Witness Statement. The court was ready to take the evidence of the accused person orally by the insisted he does not want to give evidence. He was therefore not subjected to any cross examination by the prosecutor as he did not give evidence.

The accused person did not also call a witness.

*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¢20,000.00 to him as part payment, he could secure him a Toyota Highlander car, which statement he well knew to be false at the time of making it.*

After the trial, I had to examine the cogency of the evidence to determine whether or not the evidence adduced by the prosecution could ground a conviction against the accused person on the above offence.

The fundamental 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)*.

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”.*

**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¢20,000.00 to the accused person after he told complainant that he can get a Toyota Highlander for him at a price of GH¢160,000.00 for him to spread the payment of the remaining amount in two years.



From the evidence of PW2, the accused person made her and her family believe that he sells cars therefore she and her daughter introduced the accused person to the complainant that he sells cars. After the introduction, the accused person told the complainant that he could get him a Toyota Highlander at a price of GH¢160,000.00 so he should make an initial deposit of GH¢50,000.00 and spread the payment of the remaining amount in two years.

According to the evidence before this court, the complainant paid GH¢20,000.00 as the initial payment which the accused person accepted and told the complainant that the Toyota Highlander will be ready by 10<sup>th</sup> March 2022. The accused person promised the complainant to get him a small car to use before the 10<sup>th</sup> March 2022. From the evidence before this court, the accused person failed to honour the promise of getting the complainant the small car and did not also answer the calls of the complainant after receiving the said GH¢20,000.00. He also did not deliver the Toyota Highlander on the 10<sup>th</sup> March 2022 as he told the complainant so the complainant devised a means to cause his arrest since he did not know the whereabouts of the accused person.

From the evidence of PW4, when he visited the two garages the accused person took PW2 and her daughter; and PW3 to, it was revealed that he is not the owner of the said garages neither does he work there. It can be gathered from the evidence of PW4 that the accused person rather went to the said garages to look for a car to buy as he specifically stated according to PW4, that he said he needed a Toyota Highlander to buy. From this piece of evidence it implies that at the time the accused person took the complainant's part payment of GH¢20,000.00 towards the sale of a Toyota Highlander to him, he did not have any Toyota Highlander car available for sale.

Indeed the accused person falsely represented to the complainant that the car was available and complainant will get it by 10<sup>th</sup> March 2022, when he took the said money on 8<sup>th</sup> March 2022. Thereafter he did not communicate with the complainant about the car; and even when the complainant wanted to reach him he did not answer his calls until complainant found a way to get him. Therefore from the evidence of PW1 and PW4, the accused person represented facts to the complainant and took his money knowing very well that the statement he made to the complainant that by 10<sup>th</sup> March 2022, he will get a Toyota Highlander for him, being the reason why he took part payment of GH¢20,000.00 from the complainant, was a false statement because he well knew that there was no such car available, and he was now going to look for some to buy.

From his caution statement the accused person stated that he has invested the complainant's money he took into another car but he can refund it in 24 hours. There is no evidence before this court that there was an available Toyota Highlander vehicle that the accused person was going to give to the complainant after he took his money as part payment of the purchase price and told him it will be ready by 10<sup>th</sup> March 2022.

Again, from the evidence before this court, the accused person is not the owner of any of the garages he sent the witnesses to, he does not even work there. Also after the court had given the accused person the opportunity to cross examine PW4, he opted not to cross examine PW4 to attempt to discredit the evidence PW4 gave as a result of his investigation in this case. Meanwhile the accused person was one of the two people who led the investigator (PW4) to the said two

garages for him to conduct investigations but he failed to cross examine the investigator.

The Court of Appeal in the case of Quaigraine v. Adams [1981] GLR 599 CA, held that:

*“where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by the failure to cross-examine.”*

The principle was further enunciated by Ansah JSC in Takoradi Flour Mills v. Samir Faris [2005 -2006] SCGLR 882 when he referred to the case of Tutu v. Gogo, Civil Appeal No. 25/07, dated 28<sup>th</sup> April 1969, Court of Appeal unreported; digested in 1969 CC76 where Ollenu JA (as he then was) stated thus:

*“In law, where evidence is led by a party and that evidence is not challenged by his opponent in cross-examination and the opponent did not tender evidence to the contrary, the facts deposed to in the evidence are deemed to have been admitted by the party against whom it is led, and must be accepted by the Court.”*

The accused person did not cross examine the investigator on his evidence against him and so relying on the above principle and authorities, those facts are deemed to have been admitted by the accused person and the Court accepts same.

All that the accused person needed to do was to raise a reasonable doubt in the case of the prosecution but he did not do that as he did not cross examine the investigator whose evidence was heavily against the accused person neither did

he give any evidence to tell his side of the case when he was given the opportunity to do so.

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 sell to him a Toyota Highlander car. As a result of this, the complainant was induced to pay an amount of GH¢20,000.00 to the accused person who parted away with it when he well knew that there was no such car available to be sold to the complainant, as from the evidence before this court the accused person after taking the part payment of GH¢20,000.00 then went to two garages to look for a car; where in one of the garages at Chabel Motors, he told a worker there that he needed a Toyota Highlander to buy so in case the worker hears of some being offered for sale he should alert him.

In the case of *Blay v. The Republic* (*supra*), the court 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 had an available Toyota Highlander to sell to the complainant false, the accused person took advantage of the deceit and took the complainant's money as part payment of the said car which was not available. 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 by taking GH¢20,000.00 from him as part payment of the purchase price of a Toyota Highlander when there was no such car available for sale by the accused person.

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 accused person did not give evidence to attempt to raise a reasonable doubt in the case of the prosecution. From the evidence before this court, the accused

person did not have any 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 evidence before this court, I do find that the prosecution has been able to prove that the accused person is guilty of the offence he has been charged with.

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

Court: Any plea in mitigation before sentence is passed?

Accused person: I plead with the court to be lenient with me.

Court: Is the accused person known?

Prosecutor: 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 and also considers his plea in mitigation. The Court hereby imposes the following sentence on the accused person:

The accused person shall serve eighteen (18) months prison term IHL. In addition he shall pay a fine of Two Hundred (200) 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¢20,000.00 to the complainant.

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