

IN THE DISTRICT COURT SITTING AT AMASAMAN ON TUESDAY THE 29<sup>TH</sup>  
DAY OF AUGUST, 2023 BEFORE H/W STANISLAUS AMANOIPO –  
MAGISTRATE

SUIT NO. CC08/01/22

**THE REPUBLIC**

**VRS**

**DAVID OKINE**

LEGAL REPRESENTATION:

NII ARDEY FOR ACCUSED PERSON

C/INSPR. BEATRICE ACHIAA APPIAH FOR PROSECUTION

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## **J U D G M E N T**

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1. The Accused person is before this Court charged with Forgery of Other Documents contrary to Section 159 (b) of the Criminal and Other Offences Act, 1960 (Act 29). The Accused person pleaded not guilty to the charge.
2. The Prosecution to discharge the burden of proof, called five (5) witnesses. PW1, Nii Odametey I, Chief of Bosuafise and Complainant in that case. The second witness (PW2) was McDaniels Lartey, the Head of Family of Akuatse Family of Busua fise. PW3 is Daniel Dzosi whilst the fourth witness is Kweku Yeboah. The fifth prosecution witness is Detective Chief Inspector Stephen Manful of the Amasaman Police Command, Accra.
3. At the close of Prosecution's case, it is the case of defence Counsel that the Prosecution has failed to establish the ingredients or elements of the offence of forgery of other documents and for that matter that no case has been made sufficiently against the Accused person for him to open his defence.

4. The law relating to submission of no case is stated in Section 173 and 174 (1) of Act 30. The relevant Section provides that;

“Section 173 acquittal of Accused when no case to answer where at the close of evidence in support of the charge, it appears of the charge, it appears to the Court that a case is not made out against the Accused sufficiently to require him to make a defence, the Court shall as to that particular charge, acquit him.”

Section 174 (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 to give evidence personally on oath or to make a statement”.

5. The effect of this provision is that the Accused person is only required to open his defence when the Prosecution has been able to establish a prima facie case against the Accused person. And for the Prosecution to achieve this, case law has established four grounds upon which a Court will uphold a submission of no case.

In the Supreme Court case of **Michael Asamoah & Anor vrs The Republic (Criminal Appeal) No. JS/4/2017 dated 26<sup>th</sup> day of July, 2017** identified four (4) ingredients which include;

- i) There had been no evidence to prove an essential element in the crime;
- ii) The evidence adduced by the Prosecution had been so discredited as a result of cross-examination; or
- iii) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it;
- iv) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt; and one with innocence.

## 6. FACTS

The Prosecution says Complainant (PW1) Nii Odametey I is the Chief of Bosuafise near Ashalaja whilst the Accused person, David Okine is an Estate Developer and Managing Director of Mal-Bernice Ltd. That on or before 22<sup>nd</sup>

September, 2021, the Accused person on behalf of his company signed a Memorandum of Understanding with one McDaniel Larney (PW2) who presented himself and acted as the family head of Akuatse family of Bosuafise to sell fifty (50) acres of their family land to Accused person. Further that, after the Deed of Agreement was signed, Accused person made an advance payment of cash the sum of Two Hundred and Ninety-two Thousand Ghana Cedis (GH¢292,000.00) to PW2, McDaniel Larney and notified PW1, the Complainant. That it was further agreed that all documents issued by the Accused person to clients shall be signed and stamped by the Complainant, until the Accused person form alises and completes the registration of the land.

On 13<sup>th</sup> July, 2020, Complainant submitted a petition to the Divisional Commandeer, Amasaman after realizing that his signature and stamp have been forged on the indenture purporting to have been signed by him and issued to one of the clients of the Accused person by name Kwaku Yeboah. During investigation, Complainant produced sample of his original signature and stamp on the disputed documents. This was forwarded to the Forensic Science Laboratory of the Ghana Police Service for examination. On 30<sup>th</sup> November, 2020, the result was received from the Forensic Laboratory which confirmed the complainant's signature and stamp on the disputed documents have been forged. That Accused person upon his arrest denied the offence in his cautioned statements and mentioned one James being the Company's Surveyor as the one responsible for the preparation of the Company's documents to their clients. That Accused person was given ample time to produce the alleged surveyor for questioning which he failed to do. Accused person is therefore charged with the offence and put before this Court.

7. The Accused Person has been charged with forgery of other documents contrary to section 159 (b) of the Criminal and Other Offences Act, 1960 (act 29). It provides;  
159. A person commits a misdemeanor who forges a document.  
(b) with intent to evade the requirements of the law.
8. The law is that, in any civil or criminal action, the burden of persuasion are to the commission by a party of a crime which is directly in issue requires proof

beyond a reasonable doubt. See Section 13 (1) of Evidence Act, 1975 (NRCD 323).

The burden of proof in the sense of the burden of establishing the guilt of the Accused person always on the Prosecution and failure of the Prosecution to discharge that burden should lead to the acquittal of the Accused person – see *Donkor vrs The State* (1964) GLR 598 SC.

Again, in the Evidence Act, 1975 (NRCD 323), Section 15 (1), the same principle is ... thus;

“Unless and until it is shifted, the party claiming that a person is guilty of a crime or wrong doing has the burden of persuasion on that issue”.

The Prosecution therefore has to produce sufficient evidence so that on all the evidence, a reasonable mind could find the existence of a fact beyond a reasonable doubt. See Section 11 (2) of the Evidence Act, 1975 (NRCD 323). The Accused person on the other hand is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt. See *Commission of Police vrs Antwi* (1961) GLR 408 SC.

**9.** In the meaning of Section 173 of Act 30 which states;

“If at the close of evidence in support of the charge, it appears to the Court that a case is not made out against the Accused sufficiently to require him to make a defence, the Court shall as to that particular charge acquit him”.

On this, two obligations are placed on the Prosecution and the Court respectively by this Section. First, Prosecution should be able to make a case sufficient and unequivocal enough to require the Accused person to make of defence and secondly, upon the failure of the Prosecution to do that, the Court is obliged to acquit the Accused person or persons.

**10.** To establish a case against the Accused person therefore, Prosecution called five (5) witnesses. The following exhibits were also tendered in evidence;

Exhibit A with statement of PW1 (Complainant) attached petition of Complainant.

Exhibit B (series) indenture in the name of Kwaku Yeboah.

Exhibit C (series) indenture in the name of Richard Frimpong.  
Exhibit D – written statement of McDaniels Larley (PW2)  
Exhibit E – written statement of Daniel Kofi Dzosi (PW3)  
Exhibit F – Investigative caution statement of Accused person.  
Exhibit G – request for examination of suspected forge document.  
Exhibit H (series) – report from Forensic Sequence Laboratory.  
Exhibit J – charge statement of the Accused person.  
Exhibit K – written statement of Kwaku Yeboah (PW4)  
Exhibit L – charge sheet and facts.

**11.** The witnesses called by the Prosecution are Nii Odametey I, Chief of Bosuafise, McDaniels Larley, the Head of Family, Daniel Kofi Dzosi whose farm land Accused person's company sold resulting in the instant charge and Kwaku Yeboah who bought the disputed land resulting in the instant charge. The final witness being the Investigator.

**12.** Complainant (PW1) in his evidence said he is Head of sixteen (16) families including Akuatse family. The McDaniel is Head of Akuatse family. That he was approached by McDaniel with a land document with his signature. It indicated by his signature he has sold their family land to an Estate Company, Mal-Bernice Real Estate Company. Then again, another document bearing one Kwaku Yeboah who had bought the land from the Estate Company bearing his signature. He wrote a petition to the Divisional Commander for investigation.

In cross-examination, the witness denied any dealings with Accused person. He never took any money from Accused person. He got to know Accused person only in this Court. The evidence of McDaniels (PW2) is that Akuatse-Kotoku Family is part of the sixteen (16) families of Bosuafise. He confronted PW1 with the indenture bearing his signature. That PW1 denied knowledge but his title, signature and stamp had been forged. He accompanied PW1 to make a complaint to the Police for investigations.

In cross-examination, the witness said when Kwaku Yeboah (PW3) was confronted on his indenture, he stated his indenture was given him by Mal-Bernice Company. And further to establish the authenticity of the signature and stamp of PW1, the Police forwarded the exhibitors to the Forensic Laboratory for determination. The witness also admitted his late father Moses

Agyeman Lartey allocated 100 acres of their land in the year 2000 to one Mr. Quarshie registered at Lands Commission as Yevakpo Farms Ltd. He admitted that the indenture he saw therefore is actually part of the Yevakpo land.

Further that, the current Director of Yevakpo is Kobla Ashiedy Dzotsi. Therefore, that any valid alienation has to be signed by Ashiedey Kobla Adzotsi. Thus, that for a signature to be forged, it has to be the signature of the Director which is forged. He admitted however that it is not the Director of Yevakpo Farms which signature is said to be forged.

The third witness is Daniel Kofi Dzosi. He is the Manager of Yevakpo Farms. He informed the land owner when he noticed the development on their land and that they claimed to have a grant from Mal-Bernice Estate Company. That when they produced their documents, it was realized that one of the buyers bore the signature of Nii Odametey I (PW1) which PW1 denied any knowledge.

He confirmed in cross-examination the land belongs to Yevakpo Farms and that the land has been registered at Lands Commission in the name of Yevakpo Farms with the Director as Kwabena Dzosi. Therefore, that any alienation not in the name of the Director is invalid. Further that, the people who encroached into the land are many and who have commenced various projects on the land claiming Mal-Bernice sold the land to them. He could not mention the names of the said encroachers though he stated the encroachment started since 2019. But that, when he schedule a meeting with them, they failed to attend the meeting.

Kwaku Yeboah (PW4) bought half plot of land from Mal-Bernice Estate Company on February, 2019. That when he made payment, the Surveyor from Mal-Bernice Estate Company took him to site to sow him the half plot. The Surveyor then directed him to collect his indenture at their office at Kokomlemle. He met the secretary, a lady and she handed over his indenture prepared in his name. He reported the case to Police on a litigation over the land.

In cross-examination, the witness admitted he was given a receipt when he purchase the land. He however, failed to produce the said receipt in evidence. However, that his grantors are Mal-Bernice Estate Company. That

the signature on the indenture was the name of Nii Odametey. He denied a suggestion that he did not buy any land from Mal-Bernice Company and that his evidence is a figment of his own and manipulated to throw dust into the eyes of the court. The Investigator alluded to the Exhibits tendered in evidence and steps taken in the investigation upon which Accused person is being charged with the offence.

This is evidence adduced by the Prosecution. Counsel to the Accused person calls for the Accused person to be acquitted and says the Prosecution failed to prove the case against the Accused person beyond reasonable doubt. That the essential ingredients of the offence have not been proven.

The Court would now examine Prosecution's evidence adduced vis-à-vis the elements required to be established.

The first ground for the submission of no case is that the Prosecution has to establish the essential ingredient of the offence. In the instance charge; Section 159 (b) of Act, 1960 (Act 29) provides;

“159. A person commits a misdemeanor who forges a document.  
(b) with intent to evade the requirements of the law.

It is essential under this Section that the Prosecution proves first that a document has been forged and it was the Accused person who forged the said document. The evidence that the indenture issued to PW4 bears the name of Nii Odametey I, the stamp and signature as grantor. PW4 evidence is that Mal-Bernice Company signed the said indenture bearing the name of the Complainant to him. Thus, from the petition for assistance, written statements as well as the witness statement of Complainant, it can be confirmed that Complainant, Nii Odametey I stamp and signature had been forged on an indenture purportedly executed by him in favour of one Kweku Yeboah.

Whilst it has been established that the signature of Complainant has been proven, the next the Prosecution must prove is, who forged the Complainant's signature. To this end, the sample signature stamp of the Complainant on the disputed documents which were forwarded to the Forensic Science Laboratory of Ghana Police Service for examination. On the 30<sup>th</sup> November, 2020, the result was received from the Forensic Science Laboratory which confirmed that the

Complainant's signature and stamp on the disputed document have been forged.

The copy of the Forensic Report attached as Exhibit H dated 9<sup>th</sup> November, 2020. On examination, the documents listed as used on arriving at the said results did not include the purported forged document, the indenture in the name of Kwaku Yeboah. The report however contained list of materials examined by the laboratory which excluded the purported forged document.

Counsel for Accused person's case is that the effect is that there is no proof that the said document was forged, this discovery has been admitted to in evidence and cross-examination of the Investigator as follows;

Q: It is true the only forged document was prepared for Kwaku Yeboah's document, Exhibit B.

A: That is so.

Q: Let's look at Exhibit H. The second forge, it states that review this document with the case officer in respect of the case docket. From the officer to you. The Divisional Crime Officer did so with you. Not so?

A: That is so.

Q: The Exhibit H1, can you tell the Court what it is?

A: That is the Forensic Report.

Q: Who signed Exhibit H1.

A: Alhaji Bukari Yakubu C/Inspr./Retired.

Q: See the paragraph headed materials for examination; 6 listed.

A: Yes.

Q: Can you read same to the Court?

A: 1. 1<sup>st</sup> material photograph of the site plan if Richard Frimpong Darko with attachments marked Exhibit A but relabeled A1, A2, A3 and A4 in the laboratory.

2. Photograph of site plan for Benjamin Asiedu Coffie marked Exhibit B.



3. Photograph of site plan for Mr. Nyarko Sackey marked Exhibit B1.

4. Photograph of a site plan for Isaac Odame marked Exhibit B2.

5. Photograph of a site plan for Riga Rose marked Exhibit B3.

6. Specimen signature and rubber stamps impressions on three A4 sheets of paper all marked C but relabeled C1, C2 and C3 in the laboratory.

Q: It is true that the reason why we are here today is the purported forged indenture of Nii Odametey, Exhibit B was not part of the materials analyzed by the Forensic Laboratory.

A: Yes. It was later observed that the materials mentioned here are foreign materials dealt with in the laboratory and factored in the report. But the 1<sup>st</sup> and 2<sup>nd</sup> materials were our materials.

Based on this answer by the Investigator, Counsel wanted to know if the right documents have been applied. He asked the following question;

Q: The question is that the fact is that the purported forged signature was not part of the materials analyzed. Not so? Kwaku Yeboah's indenture was not part.

A: Yes.

It is clear that the documents applied in arriving at the conclusions on the report did not include the forged document, the indenture of Kwaku Yeboah.

In counsel's address to the other elements of a submission of no case, Counsel contends that the Prosecution has not adduced any evidence to prove that indeed Nii Odametey's signature and stamp had been forged on the documents purportedly executed in favour of Kwaku Yeboah. In the absence of this evidence, counsel opined that the Court cannot move a step further to determine whether it was the Accused person who forged the said document. He cited the case of *R vrs Kuree* (1941) 7 WACA 175 at page 177 in support. It states;

"That is established that it is the duty of the Prosecution to place before the Court all available relevant evidence. This does not mean of course that a whole host of witnesses must be called upon the same point but it does not mean that if there is vital point in issue and there is one witness

whose evidence would settle it one way or the other, that witness ought to be called. The Court cannot tie the Accused person to the offence based on hearsay evidence."

Concluding, Counsel prayed, that to uphold the submission of no case to answer by considering all the weak links in the evidence of the Prosecution, the discrepancies and the failure of the Prosecution to establish specific ingredients of the charges brought against the Accused person.

From the evidence, it has been established that the land dispute is not even for the Complainant. This has been admitted by PW2, McDaniels Lartey. His evidence is that the land in dispute is for Yevakpo Farms, the Director being Kwabena Dzosi. It has also been established that Yevakpo Farms has registered the dispute land. Therefore, that any valid alienated is in the Director of Yevakpo Farms and not in the Complainant, Nii Odametey I.

Furthermore, it has also been established that the document (indenture Exhibit B) in the name of Kwaku Yeboah which indenture is the basis of this charge against the Accused person is not included in the list of materials used in arriving at the Forensic Report.

It is being the case, the Investigator admitted foreign material being used in the Forensic Examination. This described the Forensic Report which finds that the Complainant's signature and stamp have been forged. Admittedly, therefore the Forensic Report has been conducted with foreign material exclusive Exhibit B.

Section 13 (1) of the Evidence Decree, 1975 (NRCD 323) states;

"In any civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt".

The Prosecution has failed to establish that the indenture Exhibit B in this case has been forged since the Forensic Report is not reliable. The indenture Exhibit B is not that which has been examined with the specimen signature and stamp of the Complainant. The Prosecution's case collapsed at this state. The Court therefore finds that Prosecution has not established the ingredients of the

offence of forgery. Accused person's prayer is upheld. Accused person is acquitted accordingly.

**(SGD)**

**H/W STANISLAUS AMANOIPO**

**(MAGISTRATE)**