

IN CIRCUIT COURT "1" HELD AT TAKORADI, WESTERN REGION ON THURSDAY, 17TH NOVEMBER, 2022 BEFORE HIS HONOUR MICHAEL K. AMPADU, CIRCUIT COURT JUDGE

SUIT NO. C12/39/22

THE REPUBLIC

VS.

JOSEPHINE PANYIN MENSAH

JUDGEMENT

Accused Person: Present

Prosecution: Inspector Robert Yawson – present

The accused was charged on two counts of Deceiving Public Officer, contrary to section 251(b) of the Criminal Offence Act, 1960, Act 29 as amended by Act 1034 of 2020 and Publication of False News with intent to cause fear and alarm to the public contrary to section 208(1) of Act 29/60.

The accused pleaded not guilty to the two counts. The facts are that; the accused, Josephine Panyin Mensah, a trader aged twenty-seven (27) years resides at Old John Sarbah Road, Takoradi. On 16/09/2021 at about 4:05pm, Michael Simons of Colombia, Takoradi, husband of Accused, informed Police, Takoradi Central that his wife who is ten (10) months pregnant and lived with her mother, Agnes Essel, left home for a health walk but could not return. Her mother added that same day at about 3:30pm, an

unknown caller called her on MTN number 0599601438 and she only heard the voice of Accused crying that she had been kidnapped and taken to an unknown destination. In the course of investigations, Police discovered that the said number called from Agona Nkwanta and was registered in the name of the Accused Person. Police trailed the number there but did not find Accused. On 21/09/21 at about 11:15am while search was in progress, Police had intel which indicated that Accused was found at Axim. Police at Axim was informed and accused was conveyed from the premises of Jehovah Witnesses Kingdom Hall to Axim Government Hospital for treatment. Accused later narrated that she was pregnant and kidnapped during a walk on 16/09/21 at about 4:30am by unknown people who covered her mouth with cloth making her unconscious. She added that she met about twelve (12) other unknown women kidnapped by her captors and they were all killed except her. That, she gave birth to a baby girl and afterwards fell unconscious the second time and had no idea how she got to Axim. Doctors who conducted examination on the Accused at Axim Government Hospital told Police that they did not notice any postpartum sign. The Doctors stated clearly that Accused had not given birth within the six (6) days that she went missing and resurfaced. They added that no mark of violence was also noticed on the Accused. On 22/09/21, Accused was discharged from Axim Hospital after she was attended to by Clinical Psychologists. Police took Accused Person to Effia Nkwanta Regional Hospital where she was again examined by Doctors who also concluded that Accused did not give birth to any baby within the seven (7) days that she went missing and resurfaced. They also added that no mark of violence was detected on the Accused. Records at Takoradi/European Hospital where Accused claimed she attended antenatal care revealed that on 11/09/2020, she attended gynaecological clinic with complaints of lower abdominal pain; had pelvic ultra sound which showed normal pelvic scan with empty uterus. She was treated for pelvic inflammatory disease (PID) and was requested to do hormonal test. Accused subsequently attended the facility four (4) times same year with complaints of blurred

vision. The last visit she complained of cough, headache, body pains and cold for which she was managed for myalgia. There was no record of her visit to antenatal clinic or any diagnosis of pregnancy. Same day, Accused gave cautioned statement to Police. She confessed that she actually faked the pregnancy and the kidnap and that she conceived the idea after she experienced a miscarriage and lost her foetus in May 2021. Accused claimed she has been wearing a pregnancy prosthesis which she bought from Market Circle, Takoradi at a cost of Thirty Ghana Cedis (GH¢30.00) but threw it away into the bush while trekking on Takoradi - Agona Nkwanta trunk road. Accused also admitted that the MTN number 0599601438 through which she spoke to her mother was her own old sim card which she discarded afterwards.

To prove their case before the Court, the prosecution called eight (8) witness; Michael Simmons, husband of accused person, pw1; Agnes Essel, mother of accused, PW2; Michael Prah, PW3; Ebenezer Nyame Ayeh, PW4; Dr Jerry James Abrobrah, PW5; Dr George Peprah, PW6; Dr Samuel Agyeman, PW7 and Detective Chief Inspector Archims Anfor, PW8.

The evidence of the PW1 who is the husband of the accused and PW2, the mother of the accused person are that they knew the accused person as their wife and daughter respectively and knew that she was pregnant. PW1 however did not know that the pregnancy was miscarried at any point in time and that what he saw at the later days of the pregnancy was an attempt to cover up the miscarriage. The PW1 stated that he knew the accused was pregnant and as an expectant mother of ten (10) months pregnancy, she moved from the matrimonial home to go and live with her mother at Old John Sarbah Road, Takoradi from where the incidents started till her arrest.

The PW2 who is the mother of the accused added that the accused was an expectant mother of a ten (10) month pregnancy living with her husband, PW1 but relocated to her (PW2) house at Old John Sarbah Road during the advanced stage of the pregnancy. According to her, accused had been embarking on a health walk each dawn about 5:00am but she (PW2) had never monitored her routes. That on 16/09/2021 about 5:00am, she woke up but did not see accused person and thought she had left for the regular walk but on this day, accused kept longer than usual in returning so about 8:00am, she called PW1 and told him that accused had not returned from her regular walk and so the PW1 visited Effia Nkwanta and Kwesimintsim hospitals but had no information about her. She alleged that about 3:30pm same day, an unknown number, 0599601438 called her cell phone and what she heard was the voice of the accused crying and she said she had been taken to an unknown place by unknown people after which message, the phone went off. She said she never heard any other voice apart from the accused person's voice. She alleged she informed the accused person's husband and handed over her phone to him and the husband later reported the case to Police, Takoradi. According to her, she lived in the same room with the accused and knew that she was pregnant but she never saw her nakedness.

The evidence of PW3, Michael Prah and PW4, Ebenezer Nyame Ayeh were that they saw the accused at Axim at the premises of the Kingdom Hall of Jehovah's Witness on 16/09/2021. According to them, the accused was weak and could not speak so she was given a pen to write what she wanted to say and she wrote that she from Takoradi so her Pastor should be called and she gave them the Pastor's phone number. According to them while they were with the accused, they had information that the accused had got missing and was being looked for so shortly, Police from Axim came and they took her to the Police station.

The evidence of the PW5, Dr Jerry James Abrobrah who testified viva voca because, according to the prosecution, his schedule did not allow him to testify by a witness statement was that he is the Medical Superintendent of the Axim Government Hospital and he remembered the accused was once at his hospital as a patient. According to him, on 21/09/21 he was called by the Medical Officer that some boys brought the accused person and he could not tell what the case was about that when he got to the facility, he saw some policemen, the accused person and some civilians with the accused at the emergency and surrounded by the police and some civilians. He said he asked the accused what brought her to the facility and she told him that she was pregnant for almost eleven (11) months and her doctor has instructed her to do some exercise to lessen her labour at the time of birth. According to him, the accused told him that on that fateful date, on her road at around the Paa Grant roundabout, she heard somebody's footsteps behind her so she decided to see what was happening and as soon as she turned, her face was covered with a handkerchief and she did not see anything again. That when she became conscious, she realised that she was in a thick forest and saw that she was tied with a rope at her hands and that she saw a couple of pregnant women about twenty-one (21) women and they were all being killed but could not identify the women because she was drowsy. He said the accused told him that in the forest she heard somebody telling her to push and when she pushed, something fell from her vagina and it was a life female baby and the membrane and the sack all came out and that she heard the baby cry signifying that it was alive. She said she did not know where the baby was taken to after the delivery. PW5 told the Court that at this stage he asked permission to examine the accused and on the examination of the accused, it was found that the abdomen was still soft and not tender. There was not any black line on the stomach as expected of every pregnancy, there was no abdominal enlargement, the uterus could not be felt with bare hands and it was not palpable.

According to him, a vaginal examination revealed a healthy vulva vagina and when the uterus was opened, there was no sign of any vaginal discharge that accompanied delivery. PW5 further contended that there was no laceration or abrasion on the vagina walls but there was a whitish candid fluid which was not related to birth. He said the cervix was healthy and in fact on examination, there was no discharge. He alleged that they did a pregnancy test and full blood count, urine, ultra sound test and all were normal.

The evidence of PW6 was that he is a Medical Practitioner at the Takoradi/European Hospital and that the accused person's first visit to the hospital was on 11/09/2020 when she attended the gynaecological clinic with complaints of lower abdominal pain. The accused had pelvic ultra sound which showed normal pelvic scan with empty uterus. According to him, the accused visited the facility four times in 2021 and for the first three which were on 12/01/21, 20/01/21 and 15/07/21, she came with complaints of blurred vision and on the last visit, she came with a complaint of cough, headache, pains and cold and she was managed for myalgia and that the hospital does not have any record of accused person's visit to their antenatal clinic or any diagnosis of pregnancy.

The PW7 is Dr Samuel Agyeman of the Effia Nkwanta Regional Hospital. He is a specialist in Obstetrics and Gynaecology and was called upon to examine the accused person sometime in September 2021. He tendered a copy of the report they made on the accused and it was admitted as Exhibit "AA8". According to him, he was called upon by his Medical Director to examine the accused person and give his opinion on her state of pregnancy. He therefore went to examine the accused with his team of medical officers including himself and doctors Lattif Shamrock, Reindorf Appiah, Phyllis Bogya, Velma Duncan, Dominic Afful, Henrietta Obenewaa, Mrs Frances Derby (Principal Nursing Officer) and Dr Brian Taylor (Accident and Emergency).

After their examination, they came out with the following conclusion:

1. Non-pregnant anxiously looking woman.
2. Vaginal candidiasis and also that the claim of nine (9) months pregnancy could not be true since all signs of pregnancy expected to be present within the first week of delivery were absent. The Trauma and Orthopaedic team led by Dr Tawiah Siameh also came out with the following findings after their examination in the same hospital concluding that the accused was conscious and alert, well oriented to time, place and person; that the abdomen was full, soft. No sign of injuries and finally that there were no signs of physical injuries of assault. There was also a psychological report on her by Ms Vida Badu Oppong. She reported that the accused was oriented in time, place and person; that she had sufficient attention; her insight was good but she had poor judgment.

All these reports were part of Exhibit "AA8".

The PW8 is the investigator in the case, Detective Inspector Archims Anfor and his evidence was that on 16/09/21 he was on duty at the Divisional CID when a case of kidnapping was referred to him for investigations. He obtained witness statement from Michael Simmons, husband of the accused and Agnes Essel, mother of the accused person. According to him, the mother of the accused person, Agnes Essel informed police that she received a call on MTN number 0599601438 and spoke with accused who told her she went on a regular health walk at about 4:30 a.m. same day and was kidnapped by unknown persons to an unknown destination.

The witness said he quickly informed the police hierarchy through SITREP and forwarded CID Form 118 and photograph of accused to the CID headquarters, Accra for publication. The said information to the headquarters was tendered as Exhibit "AA1".

It was his further statement that under the supervision of the Divisional Crime Officer, they immediately deployed police officers including himself to search for the alleged missing Josephine Panyin Mensah and that they were about forty (40) police officers in the search party. That on 17/09/21, he obtained a Court Order from the Market Circle District Court for disclosures of information and served same on MTN Ghana Limited, Takoradi Beach Road Branch for the disclosure of the particulars of the subscriber of MTN cell phone number 0599601438 and the said information received indicated that the cell phone number 0599601438 was registered in the name of the accused person, Josephine Panyin Mensah and that the caller was located around Agona Nkwanta. A copy of the disclosures was tendered as Exhibit "AA2".

The Divisional Crime Officer and other police officers including the witness visited Agona Nkwanta and its environs in search of the accused but could not find her. Same day, the team visited major hospitals such as Effia Nkwanta, Takoradi/European, Kwesimintsim and New Takoradi hospitals but had no clue on the accused person.

On 18/09/21, the police search party according to PW8, visited Effiakuma No.9 community and Heaven Family Church International where accused and her husband Michael Simmons fellowship in search of her. On 20/09/21, the search team which has always included him and led by the Divisional Crime Officer, picked the mother of the accused person, Agnes Essel, to Mpohor, the ancestral home of the accused, interacted, consoled and urged the family to remain steadfast whilst Police intensified efforts to find the accused. He said on 21/09/21, the investigation team followed an intelligence to

Ewutu Breku in their quest to find the accused and while the search was ongoing, the team had another information that a woman of accused's resemblance had been found on the premises of the Kingdom Hall of Jehovah's Witness at Axim. He said the Axim Police Commander was contacted and policemen were dispatched who found the accused person and took her to the Axim Government Hospital for treatment.

At the Axim hospital, according to the witness, the accused told police officers together with doctors that she was walking along the Paa Grant roundabout near Roman Cathedral in Takoradi on 16/09/21 when someone covered her face with a piece of cloth and kidnapped her to unknown location. That she was tied with a rope and forced to give birth to a baby girl and the kidnappers took the baby from her. That she was able to tear the sac and placenta with her hand all by herself and she added that she met twelve (12) other women kidnapped by her captors in the forest and they were all killed except her. According to PW8, a medical examination conducted on the accused at the Axim Government Hospital indicated that she had not given birth within the six days that she went missing and no marks of violence were also found on her. Medical report on her from the Axim hospital was tendered as Exhibit "AA3" without objection. Witness tendered in Exhibit "AA4" which is the medical records on the accused from the Takoradi/European hospital which indicated that the accused did not attend any antenatal clinic there and there was no diagnosis of pregnancy from that hospital.

He stated that on 22/09/21 the accused was taken to a Effia Nkwanta Regional Hospital after she was discharged from Axim Government Hospital and on 24/09/21, a Psychologist from Police Hospital, Accra attended to the accused whilst still on admission at Effia Nkwanta Hospital and at the end of the counselling, it was established that the accused had no mentally related problem. Copy of the medical report from the Effia Nkwanta Hospital was tendered as Exhibit "AA5".

He alleged that at the Central Police Station, Takoradi, after the accused had been discharged from Effia Nkwanta, she was interrogated in his presence and she confessed to the interview panel, in the presence of her mother Agnes Essel and her husband Michael Simmons that she faked the pregnancy and kidnapping. She went further to state that she got pregnant in December 2020 but had a miscarriage afterwards in May 2021 as a result of taking a bottle of Rush energy drink. That according to her, she could not bear the disgrace because that was the second miscarriage so she decided not to tell her husband. She later bought a pregnancy prosthesis from a female hawker at Market Circle, Takoradi at a cost of Thirty Ghana Cedis (GHC30.00) and had been wearing it ever since. She said she knew she could not forever hide the pregnancy and so decided to fake the kidnapping. Accused, PW8 said, ended up pleading with the police for forgiveness and that she was only faking the pregnancy and kidnapping to deceive her husband whom she never thought would report her missing to the police. PW8 tendered Exhibits "AA6" and "AA7" which were the investigation caution and charge statements of the accused respectively.

After the close of the prosecution's case, counsel for the accused person made a submission of no case against the evidence led by the prosecution that no prima facie case has been established against the accused person. This application was made orally to the Court but the Court overruled the submission and held that from all the evidence submitted by the prosecution and on the totality of the evidence, the Court sees that a prima facie has been established by the prosecution and it was fair for the accused to open her defence to tell the Court what the prosecution said that was not true.

Section 14 of the Evidence Act, 1975, Act 323 provides that; except otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact the

existence or non-existence of which is essential to the claim or defence he is asserting. The learned author, S. A. Brobbey states at page 58 of his book "**Essentials of the Ghana Law of Evidence**" (2014 edition) that *"the first consideration to the above general rule is to the effect that a party against whom a ruling would be given has the onus to make his case where the prosecution has established a prima facie case against the accused, a ruling would be given against the latter if he fails to make his defence to the prima facie case"*.

It is based on the above that the accused was called upon, after the prosecution's case and the Court found a prima facie case made and asked the accused person to open her defence.

The accused's defence was to deny the prosecution's case and to insist that she was actually pregnant and she was also kidnapped by an unknown person to an unknown place. After her evidence-in-chief, she called two witnesses; Akua Tweneboah (DW1) and Francis Essel (DW2). The evidence of DW1 who said she was the grandmother of the accused was that she lived at Mpohor and visited the accused and her mother in Takoradi often and saw the pregnancy of the accused person. DW2 said in his evidence-in-chief that he is the uncle of the accused person and testified that the accused was pregnant and that he saw the pregnancy with his naked eyes.

Section 11(2) of the Evidence Act, Act 323, 1975 provides that in a criminal action, the burden on the prosecution of facts essential to guilt requires the prosecution to produce sufficient evidence so that the Court can find the guilt of the accused person beyond reasonable doubt.

Section 13(1) of the same Act provides that *"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 burden on the prosecution is further emphasized under section 22 of the Act that; *"in a criminal action, presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond reasonable doubt..."* Accused however is not supposed to prove that he is innocent and it is enough if he raises reasonable doubt in the case of the prosecution. It was held in the English case of **Woolmington vs D. P. P (1935) AC 462** at 462 by Sankey LC that *"whiles the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence"*.

The first count against the accused is Deceiving a Public Officer contrary to section 251(b) of Act 29/30 as amended by Act 1034 of 2020. The section provides that "A person commits a misdemeanour who,

- a. with intent to defeat, obstruct, or prevent the course of justice, or the due execution of the law, or evade the requirement of the law, or to defraud or injure a person or to obtain or assist in or facilitate the obtaining of any passport, instrument, concession, appointment, permission, or any other privilege or advantage, endeavour to deceive or overreach a public officer acting in the execution of a public office or duty,
- b. by a false statement, declaration or assurance, whether written or verbal or by a written or verbal statement, declaration or assurance which the person making the statement, declaration or assurance did not have good reason to believe to be true".

To establish a case of deceiving a public officer, the prosecution must prove the following ingredients;

- i. That the complainant is a public officer;
- ii. That the accused endeavoured to deceive or overreach the complainant, a public officer;
- iii. That at the time of such endeavour the public officer was acting in the execution of his public office or duty;
- iv. That the accused endeavoured to deceive or overreach such public officer by
 - a. A means which was false to his knowledge e.g. any false statement or declaration or assurance, whether written or verbal;
 - b. That the accused had the necessary specific intention to deceive the public officer.

The accused in this case, by all the evidence provided by the prosecution, alleged that she was pregnant and was kidnapped during a health walk. The accused's allegation was however proved on the negative after the close of the prosecution's case. All medical examinations performed on the accused person, the only means to confirm whether or not there was a pregnancy, proved that the accused was not pregnant at the time she alleged she was pregnant and kidnapped.

What made this finding plausible in the opinion of the Court is the confession statement given by the accused during the time of her caution and charge by the police. This was evidenced by Exhibits "AA6" and "AA7" which are her cautioned and charge statements respectively.

For the sake of emphasis, the Court will produce what the accused gave to the police when she was cautioned on her investigation caution statement. She said this in the

presence of an independent witness, Ebenezer Acquah on 28/09/21 after a similar one had been given earlier, also in the presence of independent witness by name Samuel Agyeman of Adabraka, Accra on 24/09/21 that;

"Complainant Michael Simmons is my husband. We have a boy child by name Elias Kweku Simmons aged three (3) years. I gave birth to my child on the 29/09/2018 through caesarean section at Kwesimintsim Government Hospital. In December 2020, I got pregnant of my second child. During the sixth month of that pregnancy, I took in Rush Energy drink. I did not know it would have adverse effect on my pregnancy. Same day, I began to experience abdominal pains. In the night it resulted into a miscarriage and I lost the pregnancy. I was afraid to disclose it to my husband because that was the second miscarriage I had. I therefore managed and hid the development from my husband and decided to get a pregnancy prosthesis to cover the disgrace. The next day morning, I went to Market Circle, Takoradi and bought the pregnancy prosthesis from a female hawker at a rate of Thirty Ghana Cedis (GHC30.00) which was just one. I was able to hide it from my husband and even used a piece of cloth to cover up during sexual intercourse with him. During the first five (5) months, I attended antenatal clinic at Takoradi/European Hospital and had antenatal card as well. I however stopped the antenatal clinic after I had the miscarriage. My husband was following my pretended pregnancy month after month. In the ninth month, my husband advised me to relocate to my mother's house at Old John Sarbah Road since we were both cohabiting at Columbia, Takoradi. I thought I could not bear the disgrace anymore since my husband and his family were in high anticipation of the supposed new baby. I therefore planned to go for a health walk after which to tell my husband that the pregnancy has spoilt as a result of the exercise. Based on that plan, I left home on 16/09/21 at about 4:30 a.m. without telling my mother Agnes Essel who was apparently asleep then. I took along my antenatal card and a small brown bag which contained my MTN SIM card number 0599601438. I covered my head with a piece of cloth and went through the premises of the Star of the Sea Cathedral (Roman

Church), Takoradi. I entered the dual carriage road and went by foot to Agona Nkwanta. About 3:30 p.m. same day, I met a passer-by male adult around a school compound at Agona Nkwanta. I pleaded with the young man to use his mobile phone for a call. He gave same to me and I inserted my old SIM card. I called my mother and could only cry because I was sorrowful. Thereafter, the owner collected his phone and went away. I then slept in an uncompleted church-like building near the school where I stood and made the call. That was the first night. At about 6 a.m. next day, 17/09/21, I continued my journey by foot towards Axim main road. I spent two days and nights in two villages which were unknown to me. I got to Axim on Tuesday 21/09/21 about 6 a.m. and went straight to Axim seashore. I laid on the reddish ground on the shore and later got up in less than an hour. While going back to Axim township, I felt dizzy and weak. As a result, I fell on the grass at the premises of Jehovah Witness Kingdom Hall. At some point, I got up and went to a carpenter at his shop nearby. I pleaded with him to call my husband for me and gave out his number. I made the said carpenter tell my husband to let my pastor, Richard Ampofo of Heaven Family Church, Effiakuma Post Office to come and collect me. Suddenly, some men and women at Axim township besieged the carpentry shop. I was offered a seat and the crowd said my photographs were being circulated on Facebook that I have gone missing. While there, two police officers arrived. They took me to Axim police station and later to Axim Government Hospital where I was admitted. I was given medical treatment. I told the medical officers at Axim hospital that I was pregnant and got kidnapped on 16/09/21 at dawn. I told them also that I gave birth to a baby girl after I was abandoned by the kidnappers. On 22/09/21, I revealed to the psychologist who attended to me that I have faked both the pregnancy and kidnap. Same day, I made the same confession to police officers at Central Police Station, Takoradi in the presence of my mother, Agnes Essel, my husband, Michael Simmons and my husband's brother Alex Essien that I had faked the pregnancy and kidnap. I took that opportunity to apologize to my husband to forgive me. I threw the pregnancy prosthesis into the bush while

trekking on Agona Nkwanta road. The antenatal card got lost on my way during the walk on 16/09/21. All I am saying now is that, I have erred therefore pleading for forgiveness. It is not true that I got pregnant nor kidnapped".

The above is what the accused gave to the police and it was repeated in her charge statement also in the presence of an independent witness, Ebenezer Acquah, on 28/09/21. The above is the confession that was made by the accused person.

At page 119 of his book "**Essentials of Ghana Law of Evidence**" the author, S. A. Brobbey states that "*confession is a statement by suspect which when taken together with other facts and circumstances constitute an admission of the commission or participation in the commission of an offence*". The above confession, considered together with the evidence of the prosecution leaves no doubt in the mind of the Court that the accused person was not pregnant neither was she kidnapped. It was held in the case of **The State vs. Owusu and Another [1967] GLR 114** that "*an extra-judicial confession by an accused that a crime had been committed by him did not necessarily absolve the prosecution of its duty to establish that a crime had actually been committed by the accused. It was desirable to have, outside the confession, some evidence, be it slight of circumstances which made it probable that the confession was true*". The prosecution did the best to provide all the additional evidence which actually corroborated the fact that the accused person was not pregnant at the material time neither was she kidnapped as she alleged.

For this offence of Deceit of Public Officer to be sustained against the accused person, the ingredients include, as said earlier;

- i. That the complainant is a public officer;
- ii. The accused endeavoured to deceive or overreach the complainant, a public officer;

- iii. That the deceit was done while the public officer was executing his public office or duty;
- iv. That accused endeavoured to deceive or overreach such a public officer; and
- v. The accused had the necessary specific intent.

In their prove, the prosecution in addition to all that they were able to prove, were expected to prove all the ingredients listed above. The complainant in this case was the husband of the accused person. In the facts, the prosecution stated that "*... on 16/09/21, at about 4:05 p.m., Michael Simmons of Columbia, Takoradi, husband of the accused informed Police, Takoradi Central, that his wife who is ten (10) months pregnant...*" It was stated in the investigation cautioned statement also that "*... Complainant Michael Simmons is my husband...*" The above indicates that both the accused person and the prosecution see the husband of the accused person, Michael Simmons, as the complainant in this case. He stated in his witness statement that he was a businessman. If the prosecution agreed that Michael Simmons is the complainant, then for the first ingredient to be proved, Michael Simmons should have been proved to be a public officer and he was deceived. The husband says he is a businessman. He should also have been shown that he was carrying on a public duty or executing a public duty when the accused deceived him. The Court has decided that the accused did not tell the truth when she said she was pregnant at the time and was kidnapped. The prosecution, however, could not prove that this untruth was told the complainant in his capacity as a public officer.

The mens rea is very important in the commission of any criminal offence. The question here is whether from the confession statement and the whole of the evidence adduced by the prosecution, there was any intention on the side of the accused person to deceive any public officer.

From the above reason, the Court cannot hold the accused person liable for the offence of deceit of public officer since the complainant was not a public officer. She is therefore acquitted and discharged on count one which is deceit of public officer contrary to section 251(b) of Act 29/60 as amended by Act 1034 of 2020. The second count is publication of false news with intent to cause fear and alarm to the public contrary to section 208(1) of Act 29/60. The section provides that *"a person who publishes or reproduces a statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace knowing or having reason to believe that the statement, rumour or report is false commits a misdemeanour"*.

The essential elements of this offence are;

- i. Publication or reproduction of a rumour, report or statement;
- ii. Falsity of the rumour, report or statement;
- iii. Knowledge of the falsity or reasonable belief in the falsity of the rumour, report or statement;
- iv. Likelihood that the statement, rumour or report will cause fear or alarm to the public or disturb the public peace.

Here there is no duty on the prosecution to prove strictly that the accused intended to cause fear or alarm to the public or disturb the public peace. The only essential element which requires proof according to P. A. Twumasi in his book **"Criminal Law in Ghana"** (1996 edition) at page 474 is knowledge of the falsity of the rumour, reports or statement.

The accused person pleaded not guilty to this second offence and this means she did not publish any false news to cause fear or alarm. It is to be noted that until the accused was found at Axim at the Jehovah Witness Kingdom Hall, the news about her was that she

was missing. Nobody stated anywhere that she had been kidnapped or forced to deliver any baby or lost her pregnancy.

So, prior to her discovery at the premises of the Jehovah Witness Kingdom Hall at Axim, what the police were doing was looking for a missing alleged pregnant woman. It was after she had been resuscitated at the Axim Government Hospital that she gave the news that she was pregnant and was kidnapped by some unknown men. In her confession statement she said "*... I was given medical treatment. I told the medical officers at Axim Hospital that I was pregnant and got kidnapped on 16/09/21 at dawn. I told them also that I gave birth to a baby girl after which I was abandoned by the kidnappers*".

The above statement to the medical officers was what was given to the police and it was published that the accused was found and the ordeal she allegedly went through. Publication to the public was done by the police because the accused added that she was not kidnapped alone but together with some twenty-one (21) other pregnant women. This number was given by the accused to the medical officers and it was given in evidence by Dr Jerry James Abrobrah (PW5). The police published it because if the statement as they heard it at that time from the accused was true, then it meant the lives of the other twenty-one (21) pregnant women were in danger. So even though the news was published by the Police, it was at the behest or at the instance of the accused person.

This Court can therefore conclude with all certainty that the publication of the news of the pregnancy, kidnap and false delivery was done by the accused person. However, all the investigations to confirm the veracity or otherwise of the published news proved that they were false. Medical examination on the accused person revealed that at the time the said news was being published, the accused person was not pregnant and had not given birth also.

Her confession statement to the police also showed that she was not kidnapped but she faked the kidnap as part of her attempt to cover her miscarriage, a situation which she did not bring upon herself and which should not have made her go to extremes that she went to, to the extent of walking on foot from Takoradi to Agona Nkwanta to Axim.

The Court therefore finds that the accused person published false news that she was pregnant and kidnapped when she knew at the time of the publication that it was false. The other ingredient is whether the said news caused fear and alarm to the public. The allegation of the accused that she was pregnant and kidnapped together with twenty-one (21) other pregnant women came to the public with a big shock. People wondered whether human nature has become so callous that pregnant women could be kidnapped and treated so barbarously as the news portrayed. This Court believed that at the time, any person who had a pregnant woman relative who had travelled will be looking around to see whether she was safe or among the twenty-one (21) captives. There cannot be anything fearful or more alarming than the said news. It is therefore not surprising that the Police organized all the resources at their disposal to look for the accused person when the news of the alleged kidnap broke up. This Court commends the Police for the efforts they made in getting to the root of this allegation.

This Court therefore finds that the prosecution has been able to establish the guilt of the accused on this count beyond all reasonable doubt and their prove has been corroborated by the confession statement of the accused person. The accused person is therefore convicted on the second count which is publication of false news with intent to cause fear and alarm to the public which is contrary to section 208(1) of Act 29/30. The section provides that whoever committed this offence, commits a misdemeanour. Section 296(4) of the Criminal and Other Offences (Procedure) Act, 1960, Act 30 provides that *"where a criminal offence which is not an offence mentioned in subsection (5) is declared by an enactment*

to be a misdemeanour and the punishment for that offence is not specified, a person convicted of that offence is liable to a fine or imprisonment not exceeding three (3) years”.

In accordance with section 313(a) of Act 30/60, the Court ordered a pregnancy test on the accused before sentence. The test which was done on 15/11/22 at the Takoradi/European Hospital reported that the accused person is pregnant. The emotional trauma the accused's false news caused to the public was so immense and she would have been given the full term or sentence for this offence but for her pregnancy. Because she is pregnant, she is hereby sentenced to a fine of six hundred (600) penalty units which is Seven Thousand, Two Hundred Ghana Cedis (GH¢7,200.00). Accused is to pay this fine within fourteen (14) days from today. This is to serve as a deterrent to those who want to put the public into such emotional trauma.

SGD

**H/H MICHAEL KUDJO AMPADU
CIRCUIT COURT JUDGE**