

**IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS**  
**THURSDAY THE 27<sup>TH</sup> DAY OF OCTOBER, 2022 BEFORE HER HONOUR**  
**EVELYN E. ASAMOAH (MRS)**

SUITNO.  
D6/306/2020

**THE REPUBLIC**

**VRS**

**SAMUEL WIREDU ADARKWAH**

ASP YAKUBU FUSEINI FOR PROSECUTION

MR. CHRISTOPHER LARTEY FOR THE ACCUSED

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**RULING**

- The accused was charged with the offence of defrauding by false pretence contrary to section 131(1) of the Criminal and other Offences Act, 1960-Act 29. He pleaded not guilty to the charge.

**Section 11(2) of the Evidence Act, 1975 (N.R.C.D 323) states:**

*“In a criminal action the burden of producing evidence when it is on the prosecutions 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 **Kuma V. The Republic (1970) CC 113**, the court held:

*“For the prosecution to succeed on a charge of defrauding by false pretence, it must be proved that: (i) there was a mis-statement or*

*personation by the accused which in law amounts to a false pretence, (ii) That the falsity of the pretence was known to the accused, (iii) that the accused thereby obtained the consent of another person to part with or transfer the ownership of anything (iv) that the accused acted with intent to defraud”*

The facts submitted by prosecution are as follows: The complainant is a development finance expert. The accused is the Chief Executive Officer of NK Samadark investment limited, until October 2017, the complainant and the accused were friends. Sometime in 2017, the accused who claimed to be expert in forex trading made the complainant believe that he could carry out a forex trading for him at the interest rate of 50%. Based on this representation, the complainant became interested and told the accused he has some money and willing to give same to him to carry out the forex trading for him.

Accused then directed the complainant to pay the money into NK Samadark investment account at the Fidelity bank. On April 13, 2017, the complainant paid GHC 82,600.00 equivalent to USD 18,600 at that time for the accused to use same for the forex trading for 182 days at the interest rate of 50% as promised by the accused. After the 182 days, which was in October 2017, the complainant demanded for return of his principal and interest. That was when the accused started giving excuses until 22<sup>nd</sup> March 2019 when the complainant reported the case to the police leading to the arrest of the accused.

He admitted having received the amount from the complainant to carry out forex trading but he indicated that he used the money to buy bitcoins online and forwarded same to one Jake who lives in Cyprus to do the forex trading for the

complainant. According to the accused, Jake severed all communications with him after receiving the bitcoins. Accused could however not produce any evidence to support this claim. Investigations revealed that before the complainant deposited the amount into the account, the balance on the account was GHC 35.09. Further investigations revealed that five days after the complainant deposited the amount into the account, the accused using cash cheque personally withdrew GHC 82,500 leaving the balance of GHC 123.34 in the account. Investigations also revealed that even though the accused owns and operates an investment company, the company NK Samadark limited is not licensed by the Security and Exchange Commission as required by section 109(1) of the Securities Industries Act, 2016-Act 929. Accused after his arrest, on 5<sup>th</sup> April 2019, made several promises regarding the payment/refund of the amount but has failed to do so.

- The complainant in his testimony stated that the accused made a false representation to him; convinced him and succeeded in obtaining an amount of GHC 82,600 from him under the pretext of using it to trade in forex for 182 days at 50% rate but failed and has no evidence of using the money for the intended purpose.

In the case of **Asiedu V. The Republic (1968) GLR 1, the court held:**

*“When a valuable thing was obtained by false pretences, prima facie there was an intent to defraud. That presumption was not rebutted here by the fact that the appellant was well off enough to pay for the goods when he was arrested. He had so arranged things that everything the seller knew about him to help him trace him to recover the money was false”.*

- The second prosecution witness, the investigator, asserted that the accused was arrested on 5<sup>th</sup> April 2019 and on interrogation, he admitted having received the said amount from the complainant to carry out forex trading but indicated he used the money to buy bitcoins online. The investigator added that the accused alleged he purchased bitcoins online, that he forwarded some to one Jake who lives in Cyprus to do the forex trading for the complainant but the said Jake severed all communication with him after receiving the bitcoins. That the accused could not produce any evidence to support his claim. He could not produce any evidence to show that indeed he really bought bitcoins online with the amount as he claimed.

- In his caution statement dated 5<sup>th</sup> April 2019, the accused disclosed that he informed the complainant that he would get “someone to trade his account... He gave me a total of GHC 82,600 for that purpose...” Thus, the accused did make a representation to the complainant in respect of forex trading for which the complainant gave him an amount of GHC 82,600. According to prosecution, the accused has not provided any evidence to show that he carried out the said forex trading. So far, there is no evidence to that effect. The accused has not denied that the complainants gave money to him.

In the case of **Blays V. The Republic (1968) GLR 1040**, the Court held:

*“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 futuro there was sufficient false pretence on which a conviction could be based... To defraud was to deprive by deceit or to induce a cause of action by deceit.”*

In the case of **The State V. Sowah and Essel (1961) GLR 743**, Crabbe J.S.C (as he then was) stated:

*“It is wrong therefore to presume the guilt of an accused merely from the facts proved by the prosecution. The case for the prosecution only provides prima facie evidence from which the guilt of the accused may be presumed, and which, therefore, calls for explanation by the accused.”*

It is the view of the court that a prima facie case has been established. An explanation is required from the accused. He is called upon to open his defence.

**(SGD)**  
**H/H EVELYN E. ASAMOAH (MRS)**  
**CIRCUIT COURT JUDGE**