

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON THURSDAY, 24TH
NOVEMBER, 2022 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE**

CASE NO:

155/2021

THE REPUBLIC

VRS

SEGBEDZI AGBALENYO

ACCUSED PERSON PRESENT

CHIEF INSPECTOR VICTOR SOMOAH FOR THE REPUBLIC PRESENT

JUDGEMENT

The Accused person stands charged before this Court charged with the offence of Defrauding by False Pretences contrary to section 131 of the Criminal Offences Act, 1960 (Act 29). On his arraignment before this Court, the Accused person pleaded Not Guilty to the charge.

THE CASE OF THE PROSECUTION

The complainant was a farmer whereas the Accused person was a driver. The complainant decided to purchase a mini bus to be used in carting his farm produce to the market. As a result, the complainant and one Robert Torbi met the Accused person at Dabala junction where the Accused person assured the complainant that he could buy a Hyundai H100 vehicle for him. The Accused person succeeded in collecting cash of GHC24,000.00 from the complainant to purchase the vehicle. The Accused person succeeded in collecting cash of GHC300.00 from the complainant and gave him two weeks to bring the vehicle

but failed to do so. The complainant approached the Accused person again at Dabala junction and this time the Accused person took the complainant to the Republic of Togo and showed to him a Hyundai H100 minibus as the one he bought for the complainant. The complainant rejected the vehicle that he did not ask the Accused person to buy a Togo vehicle for him. The complainant reported the matter to the police and the Accused person was arrested.

The prosecution in establishing its case called three (3) witnesses to testify in support of its case.

The testimony of PW1 (Francis Agbake) confirmed the facts as presented by the prosecution. The testimony of PW2 (Tobi Robert) corroborated the testimony of PW1.

PW3, Detective Sergeant Godfred Nii Aryee investigated the case. PW3 relied on his Witness Statement together with the attached exhibits.

After the close of the case of the prosecution, the court found that a prima facie had been made out against the Accused person. The court therefore called upon the Accused person to enter into his defence.

THE DEFENCE OF THE ACCUSED PERSON

In opening his defence, the Accused person testified himself and called two (2) witnesses. The Accused person denied defrauding the complainant by false pretences. According to the Accused person, PW1 told him that he wanted to purchase a vehicle from Togo and he attempted same at Tema for GHC60,000.00. That the complainant asked him whether he could accompany him to Togo to

buy a vehicle and he answered in the affirmative. So he told the complainant to give him one week to organise and come. After one week, the complainant sent him GHC100.00 for transportation to Togo to inspect the vehicle. So he went to Togo and returned to report to the complainant that he had bought the vehicle. The complainant promises to transfer the money to him because he could not go with him. It is the case of the Accused person that he later met the complainant for the first time at Dabala Junction and together with his (Accused person) wife and the complainant's daughter, they went to Togo and saw the vehicle. That when the complainant wanted to know the next line of action, he told him that he had to pay for the Duty before the vehicle can be brought to Ghana. So the complainant told him he was going to come back but he wanted to know the amount of money. According to the Accused person, he told the complainant that the agent said he should be prepared to pay GHC20,000.00. The complainant later called him to tell him that was not able to get the money so he should sell the vehicle. The Accused person told the court he was not able to get a buyer and subsequently, the complainant brought in the police to arrest him.

DW1 (Joshua Kamassah) told the court that he got to know the complainant when he gave money to the Accused person to buy him a vehicle from Togo. Later the complainant told the Accused person to take the car to a welder for it to be worked on. Subsequently, the complainant got the Accused person arrested.

DW2 (Sitso Kwablah Nanevi) told the court that he assisted people to buy cars. DW2 told the court that the Accused person told him to help him to get a vehicle to purchase for someone. So he did that and he purchased the vehicle and the Accused person invited the complainant to come and inspect the vehicle which he did. DW2 further told the court that they could not bring the vehicle to Ghana

because according to the Accused person the person did not give him money to pay the Duty.

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.”

The learned judge continued to state that:

“The accused is presumed innocent until his guilt is established beyond reasonable doubt; that the burden is rather on the prosecution to prove the charge against him beyond reasonable doubt.... The judge or magistrate must on a consideration of the whole evidence, be satisfied of the guilt of the accused before he may convict.”

THE LAW AND EVALUATION OF EVIDENCE

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.

In Republic vrs Selormey [2001-2002] 2 GLR 424, the court stated the following ingredients in an offence of defrauding by false pretences:

“A person shall make a false representation or by a personation either by written, spoken or sign language or any other means whatsoever; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was false or made without the belief that it was true; as a result of the false representation the accused person caused the other person to part with or transfer ownership of a thing.” See also Sarpong vrs The Republic [1981] GLR 790, Adobor v. The Republic [2008] 19 MLRG 23 CA.

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.

Did the Accused person represent the existence of a state of fact with knowledge that such representation is false or without the belief that it was true? It is the case of the prosecution that the complainant and the Accused person agreed that the Accused person will purchase a Hyundai H100 vehicle for the complainant at GHC24,000.00. This is what PW1 and PW2 corroboratively told the court. PW1 and PW2 were consistent in their testimony and remained unshaken under cross examination. The following is part of what they told the court under cross examination:

Cross examination of PW1 by Accused person on the 10th February, 2022

Q. The vehicle you asked that I buy for you, did you pay the duty of the car to me?

A. Before I gave you the money as I said earlier, you told me after I sent the GHC24,000.00, I wouldn't make any expenses but will have the car delivered to me. I asked you severally and you said that is what I have paid.

Q. Do you recall that after I took you to Togo, you liked the car I showed you and when we came back you sent me money to pay the clearing fees before duty is paid?

A. You didn't tell me you were going to buy a car from Togo but you asked that I pay GHC24,000.00 and extra GHC300.00 for fuel to Begoro.

Cross examination of PW2 by Accused person on the 21st April, 2022:

Q. You gave me GHC24,000.00. Can that money buy Hyundai 800 in Togo, pay the Duty at Aflao border to be brought to Ghana?

A. You mentioned the GHC24,000.00 to us that you will do all the documentation and buy the car and bring it to Begoro.

Q. Do you recall I gave you the various costs to be paid from buying, clearing and removing the car from the yard on a phone call?

A. It is not true.

Q. I put it to you that the costs I mentioned to you did not include customs clearing.

A. You mentioned only GHC24,000.00 to us. You didn't mention Customs Duty to us to pay.

On the part of DW1 and DW2, they do not know the nature of agreement the Accused person and complainant entered into. The following is part of what transpired when DW1 and DW2 were cross examined by the prosecution:

Cross examination of DW1 by prosecution on the 22nd September, 2022:

Q. You told this court that when the transaction when the transaction took place you were around.

A. I wasn't present.

Q. How much did the complainant give to Accused to purchase the car?

A. I wasn't present so I don't know.

Q. So you just followed the Accused, complainant and the investigator to Togo.

A. I was the one who bailed the Accused person when he was arrested. So when they were going to Togo to inspect the car I was part of them.

Q. I put it to you that you don't know anything about this case.

A. What I know is what I have told the court.

Cross examination of DW2 by prosecution on the 27th October, 2022

Q. What was the negotiation between the Accused person and the complainant in bringing the car to Ghana?

A. I wasn't present when the transaction went on between the Accused person and complainant. The only thing I know is they were supposed to bring Duty for the vehicle to be brought to Ghana.

In his Evidence-In-Chief in open court, the Accused person told the court that the complainant sent him GHC100.00 as transportation to Togo to go and inspect the vehicle. However, in his Cautioned Statement given to the police on the 8th April, 2021 told the police what the GHC100.00 was meant for different from what he told the court. The following is what the Accused person told police in his Cautioned Statement:

"I am a 40 year old driver and a native of Dokploame. About 2 years ago, the complainant came to me that I should buy a Hyundai H100 vehicle for him from Togo. I told him it costs GHC20,000.00 and the complainant gave me the money. I went to Togo and bought the vehicle. I took the complainant to Togo to see the vehicle and he liked it. The complainant gave me additional GHC100.00 to clear the vehicle from the harbour. I told the complainant to go and look for some money to do the duty for the vehicle at the Ghana Customs. Later the complainant called me that he no longer wanted the vehicle so I should sell the vehicle and give his money to him. I have not sold the vehicle yet. Nobody has come forward to buy the vehicle. I want the police to give me a month to sell the vehicle and refund the money." (Emphasis mine)

It can be seen from the evidence of the Accused person that on one hand he said the complainant gave him GHC100.00 to go to Togo to inspect the vehicle, on the other hand he said the complainant gave him GHC100.00 to clear the vehicle from the harbor. This piece of evidence from the Accused person is contradictory. In the case of *Brempong II v. The Republic* [1995-96] 1 GLR 350 per holding 5, the Court of Appeal stated that:

“In law, for conflicts and inconsistencies in evidence to influence a decision, they had to be material and also destroy proof of an element of the offence or totally discredit the witnesses so as to make their testimony unreliable.....”.

Also, in the case of *Kuo Den alias Sobti v. The Republic* [1989-90] GLR 203, the Supreme Court in a charge of murder explained at page 213 that where there are material inconsistencies in the defence put up by the accused person, there was sufficient justification for the jury to reject the defence. See also *State vrs Otchere & Others* [1963] 2 GLR 463.

What is also interesting is the fact that the Accused person in giving evidence in open court did not comment on the sum of GHC300.00 that was sent to him by the complainant to fuel the vehicle and bring same to Begoro. Also, in his Cautioned Statement to the police, the Accused person did not comment on the GHC300.00 sent to him. However, when the Accused person was cross examined by the prosecution on the 23rd June, 2022, the following is part of what he told the court concerning the GHC300.00:

Q. You told the court that the agent demanded for GHC20,000.00.

A. Yes My Lord for the Duty. The price of the vehicle is GHC16,000.00, clearing is GHC4,000.00, GHC300 was for fuel.

Q. You again demanded GHC300.00 for fuel.

A. Yes My Lord.

So the question to ask is; if the Duty on the vehicle had not been catered for, why then did the Accused person asked for the sum of GHC300.00 to fuel the vehicle from Togo to Begoro? The Accused person had told the court in his Evidence-In-Chief that when the mentioned to the complainant that the agent would take an

amount of GH¢20,000.00 for the Duty, the complainant said he was going to come back but never returned. I rely on the case of *Blay v. The Republic* [1968] 1040-1050 where Archer J. (as he then was) held that:

“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”.

It is the finding of this court that by such false representation, the Accused person obtained the consent of the complainant and succeeded in parting with cash the sum of GH¢24,300.00 and failed to deliver the Hyundai H100 vehicle to him at Begoro.

Following from the above, this court finds that the prosecution has been able to prove its case beyond reasonable doubt. The court finds the defence of the Accused person as afterthought and an attempt to throw dust into the eyes of the court. In the circumstances, I find the Accused person herein guilty of the offence of Defrauding by False Pretences, and I hereby convict him.

SENTENCING:

In sentencing the Accused person, I take into consideration of the fact that he is a first time offender and also a young man. However, to serve as deterrent to others, the court will impose a fairly deterrent sentence on the Accused person. In the circumstances, I hereby sentence the Accused person to a prison term of Twenty-Four (24) months In Hard Labour.

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ISAAC ADDO
CIRCUIT JUDGE
24TH NOVEMBER, 2022