

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON MONDAY, 3RD
OCTOBER, 2022 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE**

CASE NO: 14/2022

THE REPUBLIC

VRS

DANIEL SABAH KPOBI

ACCUSED PERSON PRESENT

SERGEANT NENE OMAN 'V' FOR THE REPUBLIC PRESENT

**ENOCK ADU-AMEYAW, ESQ. HOLDING THE BRIEF OF EKOW DADSON
EGYIR, ESQ. FOR THE ACCUSED PERSON 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.

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".

THE CASE OF THE PROSECUTION

The brief facts of the case as presented by the prosecution were that the complainant is a teacher whereas the Accused person is a land surveyor. The complainant wanted to put up a building and informed a witness to search for land for him. The witness who heard the Accused person's readiness to sell a plot of land consulted him and informed the complainant. The Accused took the complainant and a witness to five plots of land at Aveyime-Kpordulor as his, and the complainant showed interest. The Accused person bargained for the price at GHC22,000.00 which amount was paid to the Accused person. The complainant after some months visited the said land but was warned to stay away after his pillars were removed by another claimant. The complainant confronted the Accused person and he took him to another five plots of land. Again, when the complainant wanted to develop the land, he detected that a claimant had started farming on a portion of the land and had heaped two trips of sand on the other portion of the same land. The complainant sensing danger demanded refund of his money but the Accused person refused to refund same.

The prosecution in establishing its case filed Witness Statements for three (3) persons but called two (2) of them.

The testimony of PW1 (Paul Mensah Gokah) confirmed the facts as presented by the prosecution.

PW2 (G/Corporal Solomon Essel-Quayson) investigated the case. He relied on his Witness Statement together with the exhibits attached.

At the end of the prosecution's case, the court was enjoined to determine whether or not a prima facie case had been made out against the Accused person to warrant him to enter into his defence.

Sections 173 and 174(1) of the Criminal offences (Procedure) Act, 1960 (Act 30) provides:

"173 Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.

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 of the accused to give evidence personally on oath or to make a statement."

In the case of Michael Asamoah & Another vrs The Republic [2017] DLSC 2628 @ page 4, the Supreme Court speaking through Adinyira JSC stated the law on submission of no case as follows:

"The grounds upon which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial on indictment may be restated as follows:

There had been no evidence to prove an essential element in the crime;

- a) The evidence adduced by the prosecution had been so discredited as a result of cross-examination; or*

- b) *The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it;*
- c) *The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt and one with innocence. See also the cases of Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068; Affail v. The Republic [1975] 2 GLR 69; Apaloo and Others v The Republic [1975] 1 GLR 156-192; State v. Ali Kassena [1962] 1 G.L.R. 144, S.C.”*

This being a criminal case, the prosecution bears the burden of proof to establish the guilt of the accused person beyond reasonable doubt as per sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323) and also as was stated in the case of Bruce-Konuah v. The Republic [1967] GLR 611 – 617, where Amissah J.A. stated thus:

“Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the accused person’s guilt is on the prosecution.”

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.

The Particulars of Offence under which the Accused person was charged reads as follows:

“DANIEL SABAH KPOBI, AGE 56, SURVEYOR: On 14/11/2018, at Aveyime in the Volta Circuit and within the jurisdiction of this court, with intent to defraud did obtain the consent of Paul Mensah Gokah to part with cash the sum of GHC22,000.00 by means of certain false pretences to wit; by falsely pretending that if the said amount is given you, you could secure him five building plots of land and upon such false representation

you succeeded in obtaining the said amount from the said Paul Mensah Gokah which statement you well knew at the time of making it to be false."

The Accused person through his counsel forcefully maintained that the transaction was a commercial transaction between the Accused person's Kumi family and the complainant that turned sour. The question the court would like to ask is; Did the Accused person use false pretence or engage in personation?

From the evidence adduced at this stage of the trial, it is established that when PW1 paid the money, the family of the Accused person showed him the plot of land. It is also established that in all the transactions, PW1 dealt with the Kumi Family through the Accused person. Even when PW1 wanted a refund of his money, he wrote a letter addressed to the head of the Kumi Family. For the avoidance of doubt, the following is part of what transpired when the defence counsel cross examined PW1 on the 4th April, 2022:

Q. You requested a refund of your money by a letter to the family of the Accused person. Not so?

A. That is correct.

Q. After you made the payments, the family of the Accused person showed you the plot of land.

A. That is correct.

Q. So they gave you the land you bought.

A. That is correct.

Q. You submitted your letter to withdraw from the transaction to the investigator. Not so?

A. Yes My Lord, I did.

Q. Kindly identify that letter.

A. This is the letter.

Q. This letter is dated the 9/4/2021.

A. That is correct.

Q. This letter is specifically addressed to the head of family of the Kumi family.

A. That is correct but through the accused person.

Q. So the letter was directed to your grantor family but delivered through the accused person.

A. Yes My Lord. Every transaction and money all went through the accused person.

Q. At paragraph 6 of the letter you pleaded with the family to refund your money to you.

A. That is correct.

Q. The full amount that you paid was covered by the family's receipt to you.

A. That is correct.

Q. You paid a certain amount to the accused person for the purposes of conducting a survey to issue a site plan for you.

A. That is correct.

Q. The family gave you a site plan and an indenture to cover the land sold to you.

A. That is correct. It is not the family but the accused person.

Q. Did you submit this site plan and indenture to the investigator?

A. I did.

Q. So the originals are in your custody.

A. Yes My Lord.

Q. To date even though you demand for a refund of the purchase price, you have not handed over the documents to the family.

A. That is correct because they have not paid me any money yet.

The prosecution has not been able to prove that the Accused person did not have the authority of the head of Kumi Family to receive the purchase money from PW1. That is, the prosecution has not been able to prove that the Accused person impersonated the head of Kumi Family. PW1 was given an indenture after contracting the Accused person to prepare same for him. The commencement of the Indenture reads:

“This INDENTURE made the SEVENTEENTH day of NOVEMBER, TWO THOUSAND AND EIGHTEEN (17TH DAY OF NOVEMBER, 2018) between AVAFIA TORGBE KUMI IV, Head and Lawful Representative of the KUMI FAMILY of AVEYIME-BATTOR, AND MR. PAUL MENSAH GOKAH of MEPE”

From the Indenture, the land transaction was entered into between the Kumi Family through its head and lawful representative, Avafia Togbe Kumi IV and PW1. The Accused person only signed as one of the witnesses of the Vendor family. In the course of investigations, PW2 (the investigator) came across all these pieces of information but however, failed to investigate further by contacting the head of the Kumi Family. PW2 could also not tell whether or not it was the family of the Accused person that delegated him to sell the land to PW1 on behalf of the Kumi Family. The following is what transpired when PW2 was cross examined by the defence counsel on the 13th July, 2022:

Q. You exhibited Exhibit ‘C’ is a receipt.

A. Yes My Lord.

Q. On the said receipt you can see clearly see "The Kumi Family" on it.

A. Yes, My Lord.

Q. I put it to you that what transpired between the Accused and the complainant is a purely commercial transaction for the sale of land.

A. That is not true.

Q. I put it to you after the said purchase, the complainant was put in possession of the land.

A. Yes, My Lord. The complainant had no knowledge of the litigation on the said land. Other claimants prevented him from going onto the land.

Q. You agree with me that you cannot state as a fact that the Accused family has no interest in the land in question since the matter is before the High Court, Sogakope.

A. He has interest.

Q. You agree the Accused family has interest in the land.

A. Yes My Lord.

Q. The said family sold the land to the Complainant.

A. I cannot best tell if the family delegated Accused to do so on their behalf but it was the Accused who sold the land to PW1.

Q. You have not given any evidence that the said family has denied selling the land to the Complainant.

A. It is the Accused I know sold the land, not the family.

Q. In the course of your investigation, did you approach the said family?

A. Yes My Lord. I approached Togbe Kumi (Deceased), I could not meet him physically.

Q. So it is your evidence that you did not get any information from the deceased Togbe Kumi?

A. Yes, My Lord. I could not see him in person.

Q. I put it to you that by this fact you cannot state in certain terms that the said family denied selling the land to PW1.

A. We are not denying any fact. We got to know that the land in issue is under litigation. The same plot of land was sold to PW1 and portion sold to Elizabeth who has two (2) trips of sand on the Land.

Another interesting piece of evidence is that fact that PW2 told the court that in the course of his investigations, he got to know that the Accused person had sold a portion of the land that was sold to PW1 to one Elizabeth who had two trips of sand on it. However, the prosecution failed to call the said Elizabeth to substantiate these claims even though PW2 told the court that the said Elizabeth was readily available. The court will treat this piece of evidence of the prosecution as hearsay evidence and attach no probative value on same.

Upon a careful evaluation of the evidence on record, this court is unable to find any false pretence or personation on the part of the Accused person. There is therefore no need to discuss the other elements of the offence of Defrauding by false pretences. In the circumstances, the Accused person herein, Daniel Kpobi Sabah is hereby acquitted and discharged.

I cannot end this judgement without commending the defence counsel for his industry in this case, and also, for filing a comprehensive Written Submission of No Case to Answer on behalf of the Accused person. I must say, all the analyses and laws cited were apt.

.....
ISAAC ADDO
CIRCUIT JUDGE
3RD OCTOBER, 2022