

CORAM: HER HONOUR SEDINAM AWO BALOKAH (MS.), JUDGE,
SITTING AT THE CIRCUIT COURT 2, ADENTAN, ACCRA ON THE 6TH
DAY OF DECEMBER, 2022

CASE _____ NO.

D7/14/2021

THE REPUBLIC

VRS.

SAM NII ODOI

ACCUSED				PERSON
.....				PRESENT
C/INSPR.	JACOB	NYARKO	FOR	PROSECUTION
.....				PRESENT
AMEYAW		NYAMEKYE	FOR	ACCUSED
PERSON.....				ABSENT

JUDGMENT

"It is a comfortable feeling to know that you stand on your own ground. Land is about the only thing that cannot fly away". –Anthony Troppe

"Buy land, they aren't making any more of it." –Mark Twain

Indeed the above quotes are a reflection of the aspirations of the Complainant in the instant case, Pastor Ishmael Adjei Kofi when set out to acquire 5 plots of land from the Accused Person herein, Sam Nii Odoi, who is a businessman.

Sometime in the first quarter of 2018, the Complainant herein met the Accused Person herein and told him about his intention to acquire some land. According to the brief facts presented by the Prosecution in support of the charge leveled against the Accused Person, the Accused Person promised the Complainant to secure five plots of land for him. The Accused Person is alleged to have led the Complainant to Abokobi, a Suburb of Accra in the Ga East District of the Greater Accra Region, where the Accused Person purported to have sold to the Complainant five plots of land valued at GHC96,000. This GHC96,000 was paid by the Complainant to the Accused Person in installments and receipts of payments were issued to the Complainant by the Accused Person.

On 28th July 2020, the Complainant came to know that the Accused Person was not the rightful owner of land he purported to have sold to him. The Accused Person, upon confrontation promised to refund to the Complainant the GHC96,000 paid. The Accused Person is alleged to have admitted to the offence of Fraudulent Transaction of land when interrogated by the Police. Thus, the Accused Person herein, was presented to this Court having been charged with the offence of Fraudulent Transaction of Land under **Section 34 (a) of the Land Registration Act, 1962 (Act 122)**.

As at the date the plea of the Accused Person was taken on 2nd March 2021, **Act 122** had been repealed by the **Lands Act, 2020 (Act 1036)**. However, the Court proceeded to hear his plea on the charges properly laid under the old law, Act 122. Seeing as the liability of the Prosecution had accrued before the repeal and

Accused Person had been properly charged under **Section 34(a) of Act 122** (see **Michael Ofofu Sakyi vs. The Republic** (dated 14th July 2022) also see (Section **34(1)(d) and (e) of the Interpretation Act, 2009 (Act 792)**).

After the charge was read and explained to the Accused Person in English language, which was the language the Accused Person elected to use in Court, the Accused Person pleaded **NOT GUILTY**.

I must mention that, the Accused Person's plea was taken about five months after the case was first presented on 5th October 2020 because the Accused Person was absent until his surety secured him and presented him to the Court on 26th January 2021, and further because the Accused Person was gravely ill when his sureties brought him. The court deemed it fair to allow some time to pass for the Accused Person to recuperate sufficiently to partake fully in the proceedings. Thus, the Accused Person's plea was taken on the 2nd day of March 2021.

The Prosecution is obliged under **Section 13(1) and Section 11(2) of the Evidence Act, 1975 (NRCD 323)** to prove the Guilt of the Accused Person beyond a reasonable doubt with regards to the offence charged. (see also the following cases;

Tetteh v. The Republic (2001-2002) SCGLR 854

Fuseina v. the Republic (6th June 2018)

Logan and Laverick v. the Republic (2007-2008) SCGLR 76

Now **Section 34(a) of Act 122** states that; *a person who knowingly purports to make a grant of a piece of land to which that person does not have title, commit the offence of a second-degree felony and is liable, in addition to any other punishments that may be imposed, to pay an amount equivalent to twice the value of the aggregate consideration received by that person.*

In order to prove the offence charged, the Prosecution must prove that;

- a) The Accused Person knowingly purported to make a grant of the five plots of land to the Complainant, and
- b) The Accused Person did so when he had no title to the said five plots of land.

The Prosecution presented its evidence through three Witnesses (PW1, PW2 and PW4). The third proposed witness for the prosecution (PW3) did not testify in the long run. The labeling of the Witness Statements having already been done during Case Management Conference, the third witness as presented on 10th March 2022 maintained his original label as PW4 even though he was the third and last witness to testify for the Prosecution.

The Complainant who testified as the first witness for the Prosecution (PW1), testified inter alia that he bought five plots of land from the Accused Person herein and paid him a total of GHC 96,000 which the Accused Person receipted. This event occurred sometime in 2018. The Accused person was asked to give land documents covering the five plots of land bought and paid for but he could

not furnish PW1 with the said land documents. On 28th July 2020, PW1 found out at the Abokobi Police Station that the Accused Person was never the owner of the five plots of land he had paid GHC 96,000 to him for. PW1 said he lodged a complaint against the Accused Person herein. The police effected the arrest of the Accused Person. During investigations, PW1 furnished the Police with the receipt issued to him by the Accused Person during their purported sales transaction. The second witness for the Prosecution, Benedicta Daniels (PW2) testified that she was the wife of one Kingsley Daniels who gave all his land documents to the Accused person to keep for him since they were friends. PW2 testified further that her husband called her on phone to complain that he had been reliably informed that Accused person herein, was selling his lands to some people. PW2 conducted her own investigations and discovered that indeed, the Accused Person had sold some of her husband's lands to some people including the Complainant (PW1) herein. PW2 then reported the issue to the Abokobi police and Accused Person was arrested.

PW1 then arrived to make his own case against the Accused Person to the Abokobi Police Station after identifying Accused Person to the Police and confirming to them in PW2's presence that, it was Accused Person who had sold to him PW1's 5 plots of land at Abokobi for GHC96,000. PW2 was then assisted by the police to retrieve all of her husband's land documents in the Accused person's custody.

The last witness for the Prosecution, the case investigator (PW4), D/Insp. John Adjei testified that after the Complainant's case was referred to him for investigation, he discovered that PW1 had paid some GHC96, 000 to the

Accused Person for 5 plots of land at Abokobi in 2018. He further discovered that the Accused Person had issued receipts in the name of the ruler of Awula Korso Family of Osu – Accra to PW1 upon receiving payment of various sums of money all totalling GHC96,000 (see **Exhibit C series**).

It was when the Accused Person was arrested, upon a complaint lodged by PW2 herein, that he called on PW1 to come and assist him at the Police Station. Things took a turn for the worse for the Accused Person when PW1 arrived at the Police Station and realized that the land the Accused person had purportedly sold to him for GHC96,000 was actually land belonging to the husband of PW2, upon whose complaint the Accused person had been arrested. PW1 then made his own complaint against the Accused Person for Defrauding him in a Land transaction. A cruel Twist of Fate I must say, for the help Accused Person called upon had become another of his accusers. However, this was what happened according to the testimonies of PW1, PW2 and PW4. During the investigation, Cautioned statements were obtained from the Accused person see **exhibits A and B**.

The cross-examination of the three Witnesses presented by the prosecution essentially pointed to the fact as alleged by the defence that the accused person was acting on behalf of PW2's husband, one Kingsley Daniels, who was resident in the UK. The Accused Person sought to impugn ownership of the land in issue as claimed by PW2's husband, Kingsley Daniel. The Accused person insisted that the land in issue belonged to the Awula Korso Family of Osu. PW2 however said that her husband was the head of the Awula Korso Family of Osu after Naa Awula died. The Accused Person however put it to PW2 that one Tawiah Allotey

was the head of family for Awula Korso Family of Osu – Accra. This was denied by PW2. The Accused person further insisted that the Tawiah Allotey was the caretaker of the Awula Korso Family of Osu lands, including the land in issue. This was rejected by PW2. The Accused Person further insisted that he was representing PW2's husband, Daniels Kingsley in a Civil Suit with respect to the land in issue and that is what he told police. He rehashed his claim that at all times during his transaction with PW1, he was acting on behalf of PW2's husband, Daniels Kingsley.

At the close of Prosecution's case, the Court sought to determine whether or not the Prosecution had successfully established a prima facie case of Fraudulent Transaction of land as per **Section 34(a) of Act 122** against the Accused person.

Were the material elements of the said offence presented to the court through the evidence of the Prosecution Witnesses?

From the evidence presented by the prosecution, the following facts were found;

1. The fact that the Accused Person knew that he did not have title to the 5 plots of land he purportedly sold to PW1 because the whole of **Exhibit C series** which Accused Person issued to PW1 were in the name of Awula Korso Family of Osu – Accra.
2. The fact that the Accused Person took payment of GHC96,000 from PW1 as the purchase price of the five plots of land that the accused person purported to sell for the Awula Korso Family of Osu - Accra as its manager. (see **Exhibit C, C1, C2, C3 and C4** also see **exhibit A and B**)

Upon this fact in evidence, the court deemed it fit to call on the Accused person to put up a defence to the charge since the prosecution was found to have established a prima facie case against the accused person with regards to the charge under **Section 34(a) of act 1 22**.

The law, per **Sections 13(2) and 11(3) of NRCD 323** require that the Accused Person adduced sufficient evidence to raise a reasonable doubt as to his guilt. The Accused person elected to testify via written witness statements and also to call a witness to testify for him thereafter.

In his testimony, the Accused person said that PW2's husband Daniels Kingsley told him that he was the owner of the land at Abokobi which he inherited from his father. Daniel's Kingsley further tasked the Accused person to represent him in all cases regarding this land. Accused Person testified that Daniels Kingsley asked him to sell portions of the land and to use proceeds of the sale to finance the litigation over the lands, to pay hotel bill debts he incurred for his stay in Ghana, and to pay his sister, one Lamptey, one Papa Okantey and PW2, his wife. The Accused person testified that he gave GHC14,000 to Daniels Kingsley and also paid a fetish priest to deal with one lawyer Francis Polley who was a stranger fighting him over the land. Eventually, Daniels Kingsley lost the land case to the strangers who were actually elders and family head of the Awula Korso Family of Osu. The Accused Person insisted that he had sold the land in issue to PW1 upon the instructions of Daniel's Kingsley, PW2's husband. According to the Accused Person's evidence per his witness statement, **exhibit 1** (a Judgment of the High Court, Accra, Land Division, dated 22nd May 2019) and **exhibit 2** (an indenture between the Awula Korso Family and Daniels Kingsley

in 2006), he was deceived by Daniel Kingsley to sell lands to people including PW1 when he, Daniels Kingsley had no title to the land.

Under cross-examination, it came to light that the accused person had no proof that the said Daniel Kingsley ever gave him express authority to sell any land including the land (5 plots) sold to PW1. It also came to light that the Accused Person was the one supervising the conduct of the suit with his counsel, one Lawyer Ameyaw Nyamekye in the land suit whose Judgment is **Exhibit 1**.(see **Exhibit 1**) The cross-examination of the Accused Person by Prosecution further revealed an undisputable fact. That is, as at the dates the Accused Person issued three of the receipts (see **Exhibit C series** ie; **exhibit C2, C3 and C4**) to PW1, the Judgment in **Exhibit 1**, had already been delivered by the Accra High Court in the suit numbered LD/059/17 (see **Exhibit C2 C3 and C4** and juxtapose same with **Exhibit 1's** date of judgment).

Considering the above facts revealed by the entirety of the evidence on record, the court cannot but hold that;

1. At the material time the Accused person purported to sell the five plots of land to the Complainant (PW1), he himself had no title to the said plot of land for which he received payment.
2. At all times after 22 May 2019, the Accused Person knew for a fact that the High Court had rendered Judgment to the effect that Daniel Kingsley was not the rightful owner of the Lands he had allegedly charged the Accused person to take care of. Therefore at the times Accused Person received

three payments from PW1 as shown in **Exhibit C2, C3 and C4**, the Accused Person knew for a fact that he was defrauding PW1.

3. The Accused Person led no evidence to prove that he had the express authority of anyone including Daniel Kingsley to sell any land to anyone including selling the five plots of land to PW1 herein.

The only witness presented by the accused person in his defence was one Robert Tawiah Allotey who testified to being the head of family for the Awula Korso Family of Osu –Accra (**DW1**). DW1’s testimony was essentially to the effect that the accused person had at all times during his transactions with PW1, been acting for and on behalf of Daniel Kingsley. That it was only when the Accra High Court (Lands division) on 22nd May 2019 in the suit numbered LD/059/17 adjudged Daniel Kingsley as not being the rightful owner of the lands in issue therein, the Accused person became aware that he had been misled. However, under cross-examination, DW1 admitted that the Accused person had known him as the Head of Awula Korso Family of Osu - Accra since 2017. This was quite a surprise since the Accused Person consistently insisted that he knew Daniel Kingsley as the head of the Awula Korso Family until the 22nd May 2019 High Court Judgment. DW1’s testimony that the Accused Person knew him as the head of Awula Korso Family of Osu since 2017, therefore left what can only be described as a crater in the Accused Person’s defence. The testimony of DW1 that the Accused person had known him as the head of the Awula Korso Family of Osu - Accra since 2017, only deepened and buttressed the Prosecution's case that at all times the Accused person dealt with PW1, he (Accused Person) knew that neither he himself, Daniel Kingsley nor anyone else apart from DW1 could lawfully claim to alienate land in the name of the Awula Korso Family as in the manner in which the accused person did with regards to PW1, whereupon he

(Accused Person), went as far as issuing PW1 with receipts designed in the name of the Awula Korso Family of Osu-Accra and having done same as the Manager (see Exhibit C Series). If any Witness' testimony totally damaged the Accused person's defence, it is the testimony of his own witness, DW1.

In the circumstances, the court finds that the Accused Person has been unsuccessful in discharging his burden under **Section 11(3) and 13(2) of NRCD 323**.

The Prosecution is accordingly found to have discharged its burden under **section 11(2) and 13(1) of NRCD 323** in proving the offence in **Section 34(a) of Act 122**, against the Accused Person beyond a reasonable doubt as to his Guilt.

The Accused person is therefore found **GUILTY** of the offence charged.

The Accused is sentenced to pay a fine of **7500 Penalty Units or serve Seven Years Imprisonment** in default.

Additionally, the Accused Person shall refund to the Complainant **GHC90,000** being the outstanding balance. Payment shall be made by 30th of December 2022

(SGD)

.....
H/H SEDINAM AWO BALOKAH
JUDGE
CIRCUIT COURT 2
ADENTAN