

CORAM: HER HONOUR SEDINAM AWO BALOKAH (MS.), JUDGE,
SITTING AT THE CIRCUIT COURT 2, ADENTAN, ACCRA ON THE 10TH
DAY OF OCTOBER, 2022

CASE NO: D18/07/2022

THE REPUBLIC

VRS.

KWABENA APPIAH

ACCUSED PERSON PRESENT

C/INSPR. LANYO FOR PROSECUTION PRESENT

ALHASSAN ABDUL WAHID HOLDING BRIEF FOR BAFFOUR GYAWU
BONSU ASHIA..... PRESENT FOR ACCUSED PERSON

JUDGMENT

The Accused Person has been charged with the offence under **Section 277(2)(b)** of the Land Act, 2020 (Act 1036) which states that;

A person who purports to make a grant of land without authority commits an offence and is liable on summary conviction to a fine of not less than seven thousand five hundred penalty units and not more than fifteen thousand penalty units or to a term of imprisonment of not less than seven years and not more than fifteen years or both.

The Accused Person pleaded **NOT GUILTY** after the charge was read and explained to him in English Language on the 5th day of August, 2021. (Accused Person opted to use English Language in Court).

The Prosecution led four (4) witnesses to testify and adduce evidence in its attempt to prove a prima facie case per **Section 277(2)(b) of Act 1036** against the Accused Person. As delivered on the 3rd day of June 2022, the Court, after considering all the evidence adduced by the Prosecution, ruled that a prima facie case had been established against the Accused Person requiring the Accused Person to put up a defence in that regard. (See Ruling of the Court delivered on the 3rd day of June 2022 at the close of Prosecution's case.)

Referring briefly to some relevant portions of the said Ruling; the Court found that on the question of whether or not the Prosecution had led sufficient evidence to establish, prima facie, the elements of the offence under **Section 277(2)(b) of Act 1036**, the Prosecution has adduced;

- a) Proof that the Accused Person purported to make a grant of a piece of land located at Lagos Avenue, East Legon, Accra, to the Complainant (PW1). (See '**Exhibit A series**').
- b) Proof of payment of various sums of money totaling **USD375, 000** by PW3, (the Complainant's business partner) towards the acquisition of the piece of land offered for sale by the Accused Person. (See '**Exhibit A Series**').
- c) Proof that at the material dates, the Complainant (PW1) and his business partner (PW3) advanced the **USD375,000** to the Accused Person as payment for the acquisition of the land in issue (sometime in July, 2021), the Accused Person knew that the land which had been subleased to him by one Peter Adjei had been repossessed by the said Peter Adjei by the

Judgment of the Accra High Court (Lands Division) dated the 24th day of November, 2020. (See '**Exhibit B and C Series**').

Now, the elements of the offence per **Section 277(2)(b) of Act 1036** are as follows;

- a) That the Accused Person purported to make a grant of a piece of land, and
- b) That the Accused Person did not have authority to grant the said piece of land when he purported to do so. (See **Section 277(2)(b) of Act 1036**)

From the evidence of agreement and payments made per '**Exhibit A Series**' as well as the testimonies of the Prosecution Witnesses, the Court found that clearly, the Accused Person purported to make a grant of the piece of land located at Lagos Avenue in East Legon, Accra. Further, from '**Exhibit B**', '**Exhibit C**', '**Exhibit C1 and C2**' (Judgment against Lorient Kal Ghana Limited, request for Writ of Possession to issue, Writ of Possession and Order granting Leave for Writ of Possession to issue), as well as the testimonies of the Prosecution's Witnesses, the Court found facts in evidence that showed that at the time the Accused Person purported to make the grant of the land in issue to PW1 sometime in July, 2021, he prima facie, did not have authority to do so, seeing as the High Court (Lands Division) per the Judgment of K. A Gyimah, J. dated 24th November 2020 had granted to one Peter Adjei, who was the leasehold owner of the said land and the Plaintiff in that suit, repossession and re-entry onto the very land the Accused Person had purported to grant to the Complainant herein (PW1).

These facts in evidence were found by this Court to prove that the Prosecution had successfully established a prima facie case against the Accused Person with respect to **Section 277(2)(b) of Act 1036**. The Court therefore called on the

Accused Person to prepare to put up a defence in accordance with law. The Court adjourned the case for the Accused Person to tell his lawyers to appear in Court to inform the Court of the elected mode of defence. On the 6th day of June 2022, Counsel for Accused Person was present and informed the Court orally that the Accused Person would defend himself via the testimonies of 5 witnesses and some documentary evidence. (See the record of proceedings of 6th June 2022). The court on the said 6th day of June, 2022 accordingly ordered the defence to file its Witness Statement(s) and proposed documentary evidence on or before the 24th day of June 2022. On the 29th day of June 2022, when the case was called, the defence had not filed any of the documents it had proposed to use in its defence. The Court cautioned the Defence and adjourned the case to 15th July 2022.

On 15th July 2022, the defence had still not filed any document to be used for its case. The Accused Person informed the Court that his lawyer was sick with the Covid-19 earlier but was on the said date before the High Court, Accra conducting a case. The Accused Person was asked by the Court to open his defence orally because, Counsel for the Accused Person did not write any formal request for an adjournment and had clearly shown by conduct that the defence was unwilling to file the Witness Statements and proposed documentary evidence it had told the Court on 6th June 2022 that it would use in conducting its case. The Accused Person gave some Evidence-In-Chief on oath orally and made payment of **USD20,000** to the Complainant in restitution.

A month's adjournment was ordered for the Accused Person to give further Evidence-In-Chief. On 15th August 2022, when the Accused Person appeared, he and his Counsel present informed the Court that the Accused Person was unwell. The Court on humanitarian grounds adjourned proceedings to 30th August 2022 for the Accused Person to recover and continue to give further Evidence-In-Chief.

On 30th August 2022, the Court noticed that Accused Person had caused his lawyers to file for him a Pre-trial Check List and a Witness Statement for Accused Person on 15th August 2022. However, once again, there was neither a lawyer present for the Accused Person nor a letter seeking an adjournment. The Accused Person therefore continued with his Evidence-In-Chief and was cross-examined. The Accused Person relied on his Witness Statement as well as his previous oral testimony as his Evidence-In-Chief. The Prosecution cross-examined the Accused Person on 30th August 2022, 1st September 2022, and concluded on 9th September 2022. The Court in fairness to the Accused Person, considered the Pre-trial Check List filed by Counsel for Accused Person and asked the Accused Person to produce his two (2) proposed Witnesses to give oral testimony. This was because, Counsel had failed to file the said witnesses' Witness Statements and Proposed Documentary Evidence as previously ordered by the Court as far back as 6th June 2022, a rather unusual and undesirable manner of conducting a defence for an Accused Person, I must politely add.

Be that as it may, in order to allow the Accused Person to have his witnesses in Court to testify, the Court adjourned the case to 19th September 2022 for Accused Person to call his proposed Witnesses to testify. On the said 19th September 2022, the Court noticed that the Accused Person had caused to be filed a Witness Statement and a piece of Documentary Evidence for one Isaac Opoku Danso on 16th September 2022. Regardless of the short notice of this Witness Statement and Proposed Documentary Evidence on the Prosecution, the Court allowed the said witness for the defence, Isaac Opoku Danso, to mount the Witness box for his testimony to be taken as the first witness called by the Accused Person, DW1. DW1 sought to rely on his Witness Statement and the attached Documentary

Evidence as his Evidence-In-Chief. The Substantive Prosecutor was absent from sitting that day but his brief was held for him by another Prosecutor. The Court therefore adjourned the case briefly to 23rd September 2022 for the witness to return and for his testimony to continue. However, when the case was called on 23rd September 2022, the Accused Person informed the Court that DW1 could not be found. He was asked to phone DW1 and place the phone on speaker phone. When DW1 finally answered his call after several unsuccessful attempts to reach him, he (DW1) said to the hearing of all present, that he had left the Court premises.

The Court thus ordered that his (DW1's) testimony be expunged from the records since he did not avail himself for continuation of his Evidence-In-Chief and cross-examination. The Accused Person was then asked to present his other witness, Peter Adjei on the next adjourned date. On 10th October 2022 when the case was called, the Accused Person had failed to avail his Witness, Peter Adjei, to give his testimony. No Witness Statement had been filed for the said Peter Adjei either. It is worthy to mention at this point that during the presentation of the Accused Person's defence, his Counsel appeared only on 15th August 2022 and today 10th October 2022. During Accused Person's testimony and cross-examination, his Counsel was absent.

The Court therefore deemed that the Accused Person had closed his defence since his Witnesses were not availing themselves for their evidence to be taken. Further, the Accused Person, in the rather strange Pre-trial check-list filed for him by his Counsel, stated that a Senior Officer of the Lands Commission, Accra should be subpoenaed for him as an expert witness. Albeit, unsupported by practice, the Court indulged the Accused Person and asked him to furnish the

Court with the name, address and identification of the proposed expert witness from the Lands Commission, Accra that he wanted the Court to subpoena. This was to aid the Court in determining which process in particular would best aid the Court in making the said expert witness appear in Court to give evidence for the Accused Person as an expert witness for the defence. Again, the Accused Person and his Counsel failed to provide the Court with the details of the particular person the defence wanted the Court to call as their expert witness. Although the well laid down practice is that each party in a case ought to call their own witnesses, the Court was well aware that the defence could pray that a Witness Summons (Not a Subpoena) be issued by the Court against a named or identifiable person in order for that person to give evidence for the defence. However, the failure of the Accused Person and his Counsel to furnish the Court with the identity of their proposed Expert Witness, although the Court had ordered same to be provided, prevented the defence from proceeding. Thus, the need for the Court to deem the defence as having closed its case, and so it did.

In the circumstances, the question to answer at the close of the case for the defence is whether or not the Accused Person adduced sufficient evidence to raise a reasonable doubt as to his guilt.

Section 11(3) of the Evidence Act, 1975 (NRCD 323)

In a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt.

From the above, the Court shall consider all the evidence on record adduced by the Accused Person in his defence.

What evidence did the Accused Person adduce?

The Accused Person in his oral testimony on 15th July 2022 testified that, he met PW3 through the Complainant (PW1). That, after discussions about a parcel of land located at Lagos Avenue in East Legon, Accra, the Accused Person told PW1 and PW3 that he owned the said parcel of land but had used the land document to secure a loan facility at Stanbic Bank Ghana Limited. PW3 requested for documents to that effect. To the surprise of the Court, the Accused Person intimated that he had brought **USD20,000** to pay to the Complainants as part of the **USD375,000** he (Accused Person) had received from PW3 towards the grant of the land in issue. This **USD20,000** was released to the Complainant on 18th July 2022 since he was absent on 15th July, 2022.

In his further Evidence-In-Chief via his Witness Statement on 30th August 2022, the Accused Person testified again that he was introduced to the Complainant (PW1) by PW2. He said that PW2 informed him that PW1 had been searching to purchase land around East Legon near Accused Person's property. Accused Person said he met with both PW1 and PW2 and they discussed the land in issue in the instant case. Thereupon, Accused Person met with PW1 alone and the latter expressed interest in purchasing the land in issue which Accused Person's company, Lorient Kal Limited had legal and equitable rights in. The Accused Person then informed PW1 that the land had been used by Lorient Kal Limited to secure a loan facility at Stanbic Bank Limited. Accused Person told the Court that he had also informed PW1 that the land in issue was subject of a litigation in which Judgment had been given against Accused Person's company, Lorient Kal Limited. Accused Person said that he made PW1 aware that the Judgment was being appealed against at the Court of Appeal. Accused Person further testified

that he informed PW1 that he (Accused Person) had an agreement with the Plaintiff/Judgment Creditor in that High Court Judgment, Peter Adjei, to sell the land and to split the proceeds of that sale. Accused Person testified that PW1 had told him that his friend, PW3, would finance the purchase of the land because he had a stake in the business. Accused Person admitted that no documents were drawn up to evidence the conveyance. The agreed price of the land was **USD400,000**. The Accused Person admitted that PW3 made payments to him (Accused Person) towards PW1's acquisition of the land in issue. Accused Person said that after payment, there was a sale and purchase agreement executed between PW3 and Accused Person (on behalf of his company, Lorient Kal Limited). According to the Accused Person, there was nothing fraudulent about dealing with PW1 and that everything that happened was genuine.

It must be re-called that in order for the Accused Person to raise a reasonable doubt as to his guilt in this case under **Section 277(2)(b) of Act 1036**, he must show that at the time he purported to make a grant of the land in issue to PW1 for which he (Accused Person) received various payments all summing up to **USD375,000** from PW3 (PW1's business partner), he (Accused Person) had authority to make the said grant.

What is the evidence presented to the Court in support of Accused Person's assertion that he had authority to make a grant of the land in issue to PW1 at the time he purported to do so?

Referring to the testimony of the Accused Person on record, the evidence offered by the Accused Person in support of his claim that he had authority to make the grant may be summed up rightly as follows;

- a) That he (Accused Person) informed PW1 that the land in issue was the subject matter of the Judgment of the Accra High Court (Land Division) delivered by the learned Justice, His Lordship K. A. Gyimah on the 24th day of November 2020,
- b) that he (Accused Person) informed PW1 that he was appealing the said Judgment at the Court of Appeal on behalf of Lorient Kal Limited, and
- c) that he (Accused Person) informed PW1 that he (Accused Person) had a subsequent agreement with Peter Adjei (the Plaintiff/Judgment Creditor in that 24th November, 2020 High Court Judgment) to the effect that they would sell the land in issue and share the proceeds of the sale afterwards.

The above testimony is what, according to the Accused Person, constitutes proof that he had authority to make a grant of the land in issue to PW1 for which he received payment of **USD375,000** from PW3 (PW1's business partner) when he (Accused Person) purported to make the said grant. However, the Court still needs to ascertain if the Accused Person merely stating these on oath without any further proof of his statements amounts to sufficient evidence that he had authority to grant the land in issue to PW1 when he purported to do so sometime in July 2021.

The Accused Person claims that PW1 knew that the High Court per '**Exhibit B**' and '**C Series**' had given the land back to Peter Adjei; the leasehold owner of the land, because he (Accused Person) had informed PW1 of the existence of the said Judgment (**Exhibit B**). The Accused Person also claims that PW1 knew that he (Accused Person) had a subsequent agreement with the said Peter Adjei after the

24th November 2020 Judgment for them (Accused Person and Peter Adjei) to sell the land in issue and share the proceeds of the sale because he (Accused Person) informed PW1 of this. There was however no proof of the above presented to the Court by the Accused person. The Accused Person in his defence is not denying that **'Exhibit B' and 'C Series'** are proof that he did not have authority to make a grant of the land in issue to PW1 when he purported to do so, because the High Court had clearly set aside the sublease between his company Lorient Kal Limited and the Plaintiff/Judgment Creditor in that case, Peter Adjei and had granted possession and right of re-entry to the said Plaintiff/Judgment Creditor, Peter Adjei. What Accused Person is saying is that regardless of the overwhelming proof per **'Exhibit B' and 'C Series'** that, since 24/11/2020, neither he nor his company had any authority and still have no authority to deal with the land in issue in anyway whatsoever, he had (at the time of purporting to make the grant to PW1 for which he received **USD375,000**) and as at the date of this judgment still has an agreement with the owner of the land, Peter Adjei to sell the land and for both of them to share the proceeds of the sale. One would think that the Accused Person would produce some proof of this alleged Post-Judgment Agreement between he and the said Peter Adjei to the Court or at least produce some proof in support of his claim that PW1 was duly informed about the encumbrances in this regard existing on the land in issue at the time the parties were transacting over the said land. However, no proof of his assertions were presented to this Court. Further, the Accused Person did not cross-examine PW1 in this regard.

Under cross-examination on 9th September 2021, the following ensued;

Q: As at date (9th September 2021), have you fully paid the price of the land you claim you leased from Peter Adjei for a 25 year period.

A: No

By Court:

Q: Are you currently in possession of the land?

A: No

By Court:

Q: Are you currently the owner of the land in issue?

A: No, but we have currently settled the issue with Peter Adjei.

Q: What does that mean?

A: For Peter Adjei to give me something back for the amounts paid to him as part payment.

What the Court gleaned from the above is that, the Accused Person after the 24th November 2020 High Court Judgment did not have the land in issue to give to anybody, save for his claim of an alleged latter agreement between he and the Plaintiff/Judgment Creditor of that case about they selling the land and sharing the proceeds of the sale. It cannot be emphasized enough that the alleged Post-Judgment arrangement between the Accused Person and the Plaintiff/Judgment Creditor in the 24th November 2020 Judgment (Peter Adjei) remains without an iota of proof before this Court.

Should this Court be minded to give any credence to the Accused Person's claim that, subsequent to the 24th November 2020 Judgment, he and Peter Adjei had an arrangement for the sale of the land and sharing of the proceeds of the said sale, the Court ordinarily expected to have been presented with evidence that during the transaction and before the Accused Person received the payment of **USD375,000;**

1. the said Peter Adjei had been introduced to PW1 and PW3 as the real legal and equitable owner of the land in issue since the 24/11/2020 Judgment (**Exhibit B**), and
2. the said Peter Adjei had confirmed to PW1 and PW3 expressly verbally or through a written legal document that he had authorized the Accused Person to make the grant of land to PW1 on his behalf.

This evidence would mean that the legal and equitable owner of the land in issue (Peter Adjei) was known to PW1 and his business partner PW3 at all times during the transaction and especially before the sum of **USD375,000** was paid to the Accused Person for the grant of the land. However, to the contrary, the Accused Person's reliance on the owner of the land, Peter Adjei, only came to light to the Court, the Complainant and his business partner after the Accused Person commenced his defence in this Court.

For a land transaction such as the instant one in Accra, a city notorious for its complex land transaction issues and consequent disputes, active participation of the true legal and equitable owner of a land sought to be conveyed to a prospective purchaser, might in all reasonableness, be deemed as the most

essential part of that transaction. Active participation by Peter Adjei (owner of the land) in the **USD375,000** East Legon land transaction would not only have doused the fear and anxiety of the prospective grantee (PW1) as well as his business partner (PW3), it would have assured the prospective buyer that the Accused Person was clearly acting for and on behalf of the true owner of the land, Peter Adjei.

Now, to the extent that this was not the case, this Court opines humbly, that the Accused Person's quest to persuade and convince this Court that he had the authority of Peter Adjei to sell the land is deemed an afterthought, especially that the said Peter Adjei was never a participant in the entire transaction in July, 2021. The Court therefore rejects Accused Person's claim in this regard.

In any case, in the glaring light and effect of '**Exhibit B and C Series**', would it be reasonable to take the mere words of the Judgment Debtor in the 24th November 2020 Judgment, that regardless of the Judgment against him and his company, he still had authority to sell the land that had been given back to the Plaintiff/Judgment Creditor of that Judgment, as the true state of affairs after the 24th November 2020 Judgment? I think not. Any reasonable right thinking member of a society like ours especially in the absence of any evidence to the contrary, would rather rely on the content of the certified true copy of the 24th November 2020 Judgment and its ancillary orders ('**Exhibit B and C Series**') as the true state of the ownership of the land in issue as opposed to the mere allegations (without proof) of the Judgment Debtor of the said Judgment to the effect that he could still sell the land subject of that Judgment regardless of the said Judgment. The Accused Person is however urging this Court to accept his claim as constituting the proof that he (Accused Person) had authority to make a grant of the said land to PW1 at the time he purported to do so in July 2021. This

court is disinclined to acquiesce to this invitation by the defence. Evidence, they say is the rule of the game. In the absence of proof that he had express authority of the Plaintiff/Judgment Creditor in the 24th November 2020 Judgment of the Accra High Court (Land Division) to sell the land to PW1 in July, 2021, this Court must find that the Accused Person has failed to prove that when he purported to make a grant of the same land which is in this case in issue located at Lagos Avenue, East Legon, Accra to PW1 for which he received payment of **USD375,000** from PW3 (PW1's business partner), he (Accused Person) had authority to do so.

In the circumstances, the Court finds that the defence has failed to prove the above, claim, thus has failed to raise a reasonable doubt as to the Accused Person's guilt.

I accordingly find that on all the evidence on record, Prosecution has proved beyond a reasonable doubt that the Accused Person purported to make a grant of a piece of land to PW1, the Complainant when he (Accused Person) had no authority to do so.

That being so, I find the Accused Person **GUILTY** of the offence under **Section 277(2)(b) of the Land Act, 2020 (Act 1036)**.

The Accused Person is accordingly **CONVICTED** on the said charge.

Pre-sentencing Hearing

Counsel for Accused Person: Accused Person is a first time offender. He has demonstrated that he is willing to pay the money back to the Complainant.

Accused Person has a wife and 4 children and is a responsible young man. We pray for justice to be tempered with mercy.

Prosecution: We leave it to the Court.

By Court (Sentencing):

Having considered the following;

- a) The fact that Accused Person is a first time offender,
- b) The fact that Accused Person is a family man with a wife and 4 children,
- c) The fact that Accused Person refunded **USD 20,000** out of the **USD 375,000**, and
- d) The prayer for mitigation.

The Court sentences the Accused Person in light of **Act 1036** to serve a term of **10 years imprisonment**.

In the alternative, the **Accused Person may elect** to pay the outstanding balance of **USD 355,000** to the Complainant (with proof of payment) and **serve a reduced sentence** by paying a fine of **7,500 Penalty Units** or serve a term of **seven (7) years imprisonment in default of the fine**.

(SGD)

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**H/H SEDINAM AWO BALOKAH (MS.)
JUDGE
CIRCUIT COURT 2
ADENTAN**

ACCRA