

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON MONDAY THE
17TH DAY OCTOBER, 2022, BEFORE HER HONOUR ROSEMARY BAAH TOSU
(MRS) – CIRCUIT COURT JUDGE.**

COURT CASE NO: D5/14/19

THE REPUBLIC

VS

FRED KWAKU SAM

RULING

Prosecution says that the complainant, one Owusu Appiah Kubi is the head of Forensic investigations at Barclays Bank Ghana Limited, whilst Accused person is a business Executive and Managing Director of a company called Joint Heirs Limited.

On the 27th October, 2018, the accused person presented a Barclays Bank cheque number 004902 with a face value of fifteen million Ghana cedis (GH¢15,000,000) to be paid into his Universal Merchant Bank account number 0111334734017.

Upon careful examination of the cheque, it was suspected to have been cloned. The two banks collaborated leading to the arrest of Accused. Accused mentioned one Charles Banson as the one who gave him the cheque when he, the Accused requested for a loan. Accused, however, could not lead Police to the said Banson. The cheque in question was also purported to have been issued by Marc Kok, the Managing Director of Wenco Ghana Limited. He however denies issuing this cheque out. According to Prosecution the original cheque leaflet is still in Mr Kok's custody, unused.

Accused is charged with the following offences

1. Forgery of document contrary to section 159 of the Criminal Offences Act 29/60
2. Possessing forged document contrary to section 166 of the Criminal Offences Act 20/69
3. Uttering forged document contrary to section 169 of the Criminal Offences Act 29/60

4. Attempt to commit crime, to wit Stealing contrary to sections 18 and 124 (1) of the Criminal Offences Act 29/60

To discharge their burden of making out a prima facie case against Accused, Prosecution called three witnesses. First is the complainant, Owusu Appiah Kubi. Per his evidence, on the 15th August, 2018, the Clearing Department of Barclays Bank Ghana Limited received Barclays Bank cheque number 004902 with a face value of GHS15,000,000 from Universal Merchant Bank (UMB) purported to have been issued by Wienco Ghana Limited, a customer of Barclays Bank.

Upon receipt, the clearing official who worked on it called the relationship manager of the customer for confirmation. The accountant of Wienco also confirmed that the MD had not signed any such cheque and it was therefore fraudulent. A complaint was then lodged with the Police.

The investigator assigned to this matter testified next. She is D/PW/L/CPL Clarissa Senghor. She testified that the matter was referred to her on the 22/8/2018 for investigations.

PW2 gave evidence that Accused claimed he was given the cheque by one Charles Benson, however, all efforts to trace the said Banson by the Kasoa and Weija Police were unsuccessful. During investigations too, the cheque was presented to Camelot Ghana Limited, which prints the cheque books for Barclays. The company confirmed that the cheque in question was not genuine.

As part of investigations, a sample of the signature of the MD of Wienco was forwarded with the cloned cheque to the Forensic Science Laboratory for examination. The conclusion from the lab was that the MD could not have signed the signature on the cloned cheque.

PW2 tendered the following documents in Evidence

- **Exhibit A- Wienco Barclays Bank Cheque No: 004902(original)**
- **Exhibit B- Cloned cheque no: 004902**
- **Exhibit C: Response from Camelot Ghana Limited**
- **Exhibit D series: Samples sent to Forensic laboratory**
- **Exhibit E series: Copies of Forensic report**
- **Exhibit F: Investigative caution statement**
- **Exhibit G& H: Charge and further charge statements**

PW3 is Alhaji Bukari Yakubu who works at Police Forensic Science Laboratory. He tendered in evidence the report of the deceased Superintendent Godwin Lavoe, Chief Document Examiner.

He testified that they received a request from the Director General of CID to undertake forensic examination of documents in this matter. He testified that the result of the examination shows that the MD, Marc Kok did not sign the cheque the subject matter of these charges.

THE CHARGES

Accused is firstly charged with the offence of Forgery of document contrary to section 159 of the Criminal Offences Act 29/60

Section 158 provides

'A person who with intent to deceive any other person forges a judicial document or an official document commits a second degree felony'

The ingredients of the offence which Prosecution needs to prove are

- a. Accused made or altered the whole of a document or other thing subject matter of the charge or any material part thereof.
- b. Accused must have had the intent that the document or other thing or any material part of it so made or altered would be believed to be what in fact it is not
- c. Accused must have had intent to defraud or injure any person or with intent to evade the requirements of the law.

The actus reus of the charge of forgery consists in the actual act of making or altering the document with the intent to cause it to present a false quality of itself and the mens rea would be the intent to defraud, which is an intent to acquire by any unlawful means any gain which is capable of being measured in money at the expense or to the loss of another person.

The evidence led by Prosecution is quite porous. There is no evidence to show that the Accused was the one who made or altered the said cheque, much less to show that he did this with intent to defraud.

Prosecution should know by now that finding a person with a forged document, does not automatically mean that he forged it and the act of altering the document is a very important part of this offence.

I find that none of the elements of Forgery have been proved by Prosecution.

Accused is secondly charged with Possessing forged document contrary to section 166 of the Criminal Offences Act 20/69.

Section 166 provides

'A person who with an intent mentioned in this chapter, has in his possession a document or stamp, which is forged or stamped, counterfeited, or falsified, or which that person knows is not genuine, commits a criminal offence and is liable to the like punishment as if that person had, with that intent forged, counterfeited or falsified the document or stamp'.

Prosecution must prove that Accused person was in possession of a forged document and that the Accused person knew that this document was forged or not genuine.

In the case of *Okpara vrs. COP (1963) 1 GLR 31, SC*, it was held

'Prosecution must prove that the person charged knew that the document was forged, or counterfeited or at least not genuine. Failure to prove such knowledge is fatal to a conviction.'

Again, Prosecution has led no evidence about the mental state of Accused for this Court to conclude that he knew that the document he possessed was not genuine. Accused walked boldly into the bank and paid in the cheque, there is no evidence to show that he was acting shadily or that anything was amiss.

This charge remains unproven.

Accused is again charged with Uttering forged document contrary to section 169 of the Criminal Offences Act 29/60

169. 'A person who with an intent mentioned in this chapter, utters or deals with or uses, a document or a stamp mentioned in this chapter, knowing it is forged, counterfeited or falsified, or knowing it is not genuine, commits a criminal offence and is liable to the like punishment as if that person had with intent, forged, counterfeited, or falsified like document or stamp.'

The ingredients of this offence are

- a. That accused uttered or in any manner dealt with or used a forged document or stamp
- b. That he knew it to have been forged, counterfeited or falsified or not genuine

- c. That he had intent to defraud or to injure or to facilitate the commission of a crime.

For a charge of uttering forged document to succeed the prosecution must prove the Accused actually uttered or used the forged document. Merely holding a forged document does not constitute uttering or using it. It is however enough if prosecution proves that accused tendered it or in any dealt with it knowing it to be forged.

The evidence simplicita shows that Accused on the 27th August, 2018, presented Barclays Bank Cheque number 004902 with a face value of GHS15,000,000 for payment into his Universal Merchant Bank account. Accused person's act of tendering in this forged cheque amounts to uttering of forged cheque.

Prosecution has proved this element of the offence.

Prosecution, must prove next that Accused knew that the cheque was forged or not genuine. The act of knowing is a mental state and a Court can only arrive at such a conclusion based on the overt acts of a person. Such overt acts must show that the Accused knew that the cheque was forged.

In Accused person's cautioned statements, Exhibits G and H, he explained that he was a business man who was undertaking a hostel construction project at Central University at Prampram. He further explained that he needed funds to complete this project, so a colleague of his, one Paapa Eshun, introduced him to a man called Charles Banson, who would be able to help him secure the needed funds.

According to Accused, it is the said Banson, who secured the cheque for GHS15,000,000 for him as a loan.

Under cross-examination, Counsel for Accused was able to get prosecution witnesses to admit that if one is not an expert, it would be an uphill task to determine if a cheque is cloned.

Cross-examination of PW3 at page 4 and 5 of the record dated 1st March, 2022

Que: Before being an expert in forensic analysis, when you see a cloned cheque will you be able to know that the cheque was cloned?

Ans: No

Que: So when Accused is given a cloned cheque can he identify it as such whilst not an expert?

Ans: He could

Que: By which means will he be able to know if you being an expert will not know?

Ans: He could depending on the circumstance. If he is someone who handles cheques as a customer of a bank and he is used to the normal handling of cheques, he could tell whether it was cloned or not

Que: On the flipside if he is not the type that handles cheques you agree that he will not be able to know a cloned cheque at first hand

Ans: At first hand no.

Cross-examination of PW1 at record dated 6th October, 2020

Que: You examined the cloned cheque in this case is that correct?

Ans: That is so

Que: At first sight without examination would you be able to identify a cloned cheque

Ans: No

Cross-examination of PW2 at record dated 25th May, 2021

Que: When you see a cloned cheque at first hand will you be able to determine if it was cloned or otherwise?

Ans: I won't because I am not an expert.

Prosecution has led no further evidence to prove sufficiently that Accused knew that the cheque was forged. Prosecution obviously did not even conduct investigations to determine whether Accused person's story that he was working on a hostel project was true or false. That piece of information if false could have helped Prosecution's case greatly.

This element remains unproved.

The final element is that he had intent to defraud or to injure or to facilitate the commission of a crime. Prosecution has failed to prove that Accused knew that the

cheque was forged. It follows that he could not have intended to defraud or facilitate the commission of a crime when he tendered it at the Bank.

I find that Prosecution has failed to make out a prima facie case against Accused on the charge of uttering forged document.

Finally, Accused is charged with Attempt to commit crime, to wit Stealing contrary to sections 18 and 124 (1) of the Criminal Offences Act 29/60.

1. *'A person who attempts to commit a criminal offence shall not be acquitted on the ground that the criminal offence could not be committed according to the internet, by reason of the imperfection or other condition of the means, or by reason of the circumstances under which they are used, or by reason of any circumstances affecting the person against whom, or the thing in respect of which the criminal offence is intended to be committed or by reason of the absence of that person or thing.'*

A person therefore shall be guilty of an attempt to commit crime if in **furtherance** of his intent, he took such steps which should have enabled him to succeed in his criminal venture but for the factors listed in 18(1) above.

From the analysis made so far, it would be difficult to arrive at the conclusion that Accused attempted to commit the offence of stealing. This is because no evidence has been led to show that Accused had any knowledge that the document in question was a forgery. Thus even though he tendered in a forged cheque, he could not have attempted to steal because he thought the cheque was genuine.

Prosecution has failed to make out a prima facie case against Accused on this charge too.

Section 173 of the Criminal Procedure Act (1960), Act 30 provides as follows

'If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out sufficiently to recall him to make a defence, the Court shall, as to that particular charge, acquit him.'

Prosecution, having been unable to make out a prima facie case against Accused, on all the above charges, I am unable to call Accused to open his defence. Accused person is therefore acquitted.

(SGD)
H/H ROSEMARY BAAH TOSU (MRS)
CIRCUIT COURT JUDGE