

**CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 29TH DECEMBER, 2022**

SUIT NO. D18/13/22

THE REPUBLIC

VRS

WAHAB ISSAHAKA

RULING

The accused person is before this court on a charge of deceiving a public officer, contrary to **Section 251 of the Criminal Offences Act, 1960 (Act 29)** The particulars of offence are that on the 22nd day of November, 2021 at about 12:30pm at Tema Circuit court 'A' in the Tema Metropolis and within the jurisdiction of this court, you with intent to obstruct the course of justice, deceived the presiding judge H/H Agnes Opoku Barnieh (Mrs.) by making a false statement that one Libagtib Sambelibia, an accused person who is on trial, is on admission at the Tema General Hospital, a statement which you did not have good reason to believe to be true.

The accused person pleaded not guilty to the offence.

Prosecution in proof of its case called one witness; Detective Constable Sylvester Osei Osafo. In his evidence in chief, he said he was present in Circuit Court A on the 22nd day of November, 2021 at about 12:30pm. That a case of "The Republic v. Saeed Abdul Gafar and others" was called before the presiding judge.

That accused person informed the court that he was representing the 2nd accused person in the said case by name Libagtib Sambelibia who is sick and on admission at the Tema General Hospital. Upon the orders of the Court, the prosecutor in the case instructed him to visit the Tema General Hospital and ascertain whether the said 2nd accused person was indeed on admission.

That in the presence of two others and the accused person herein, they went to the aforementioned hospital. That the nurses on duty at the hospital took them to the male ward to conduct a search and the said 2nd accused Libagtib Sambelibia could not be found. His name was also not found in the hospital records.

Section 251 of Act 29 provides that:

A person commits a misdemeanor who with intent to defeat, obstruct or prevent the course of justice, or the due execution of the law, or evade the requirements of the law, or to defraud or injure a person, or to obtain or assist in or facilitate the obtaining of any passport, instrument, concession, appointment, permission or any other privilege or advantage, endeavours to deceive or to overreach a public officer acting in the execution of a public office or duty

- (a) By personation, or by a false instrument, document, seal, signature or
- (b) By a false statement, declaration or assurance, whether written or verbal or by a written or verbal statement, declaration or assurance which the person making the statement, declaration or assurance did not have good reason to believe to be true.

Thus, prosecution in order to establish the charge in this case must prove that the accused person;

1. Made a false verbal statement which he did not have good reason to be true
2. That he did so with an intent to defeat or obstruct the course of justice

CONSIDERATION BY THE COURT

Section 173 of the Criminal and Other Offences Procedure Code, 1960 (Act 30) provides that; "If 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 him to make a defence, the Court shall, as to that particular charge, acquit him."

According to the Supreme Court in the case of *Asamoah & Anor. v. The Republic [2017-2018] 1 SCGLR, 486, Adinyira JSC* speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted.

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

- a) There had been no evidence to prove an essential element in the crime
- b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
- c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it
- d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of *The State v. Ali Kassena [1962] 1 GLR 144 in which the Practice Direction issued by the Queen's Bench Division in England [1962] 1 E.R 448 (Lord Parker*

CJ) was approved of and the case of Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068).

The evidence of prosecution's only witness is that he was present in the Tema Circuit Court A when the incident occurred. Thus he was an eye witness. On the first element, his evidence is that the accused person herein made a representation to the presiding judge that an accused person in a pending case was ill and on admission at the Tema General Hospital. That he was personally tasked to go with the accused person to the hospital and verify this information. Their search at the hospital male ward and also in the hospital record book did not find the said accused person in the hospital.

The accused person does not deny that he went to the Circuit Court A on the said date and time to make a representation that an accused person in a case pending before the Court was ill and on admission at the hospital. He also does not deny that the said statement later proved to be false after a visit to the hospital with PW1. What he put in issue was the fact that he did not have good reason to believe the statement was true.

Prosecution's case through PW1 is that the accused person knew that the said statement was false at the time he was making it. Under cross examination by learned counsel for the accused person and the accused himself, he stood by his evidence and was not found wavering. At page 20 to 21 of the record of proceedings, accused person had asked PW1,

Q: Do you remember that when you arrested me, I told you that the accused person had only sent me to deliver the message.

A: Yes, you told me so.

Q: Do you remember that I also told you that I did not check whether or not the said accused person was in the hospital.

A: *No, you did not.*

Q: *Do you also recall that I told you the accused person had only called me on phone and asked me to come and deliver the message to the court?*

A: *My Lord, no, he did not say that.*

Q: *I put it to you that I said that to you.*

A: *My Lord, he only said that after we went to the hospital.*

Q: *Do you also recall that in the court premises before we went to the hospital, I had wanted to call the accused person as I told you that he had only called me on phone and I did not see him personally on admission at the hospital.*

A: *My Lord, at the court premises, accused person was about calling the said accused person to meet him up at the hospital and his phone was seized.*

Further at page 22 of the record of proceedings, still under cross examination by the accused person, PW1 had answered;

Q: *And I also told you that I was not aware that the said accused person was not being truthful.*

A: *No, My Lord. He did not tell me that. This accused person went to court 'A' to testify that the said accused person was in the hospital.*

Q: *I suggest that to you.*

A: *My Lord, that is not true. It was after the hospital that he said that the said accused person only called him. This was after accused person had told the court that the accused person was on admission at the Tema General Hospital receiving treatment.*

Then under cross examination by counsel for the accused, PW1 had answered at page 27, 28 and 29 of the record of proceedings;

Q: *So, it was your observation that the accused person they claim was on admission was not there?*

A: *My Lord, it was my observation that the accused person who he claimed was at the hospital was not there and I went there with this accused person.*

Q: *Do you recall that accused person herein told you that he had not been to the hospital to visit the accused person therein?*

A: *My Lord, yes. That was after we had been to the hospital.*

Q: *Do you recall talking to the medical director of the Tema General Hospital on that faithful day?*

A: *My Lord, it was a nurse we met at the ward who took us round the ward of which after the accused person was not seen, she brought us their list of people who are on admission. We went through the list and the accused person therein name was not on it.*

Q: *You see, so which public document in your request to observe did you collect for the attention of the court?*

A: *My Lord, I was given a specific task to look for a specific person whose name was given to me. When I got to the hospital, the nurse in charge, made the book available to me of which I checked and accused person's name was not found.*

I found the evidence of PW1 to be consistent. The accused person had represented to the court that Libagtib Sambelibia who was standing trial before the court was ill and on admission at the Tema General Hospital. That was a definite statement which accused herein could only have made if he knew or had cause to believe that same was true. Had it been that the accused therein had called him to tell him so, then his representation to the court would not have been a definite statement. His representation was not that the said Libagtib Sambelibia had told him that he was ill and admission.

That the accused person proceeded to appear in court to relay the said definite statement to the Court is an indication that he knew it was true or had cause to believe that it was true.

Accused person through cross examination puts across a case that he had tried to call the said Libagtib Sambelibia when they were on their way to the hospital and PW1 had stopped him from doing so. The question is, if he knew or had cause to believe that the said accused was indeed at the hospital and on admission, then why was there a need to call him before going to the hospital for the inspection.

Accused person's cross examination had been based on what he says he supposedly told PW1. His conversations with PW1 only happened after his representation to the Court and not before. I find that prosecution has established the first element of the offence; that the accused person made a false verbal statement which he did not have good reason to be true

Prosecution must go on to prove that the accused herein did so with an intent to defeat or obstruct the course of justice. An accused person when admitted to bail, is expected to appear in court to stand trial on all adjourned dates till the conclusion of trial, save for some matter of justification or extenuating circumstance. That is the course of justice. When an accused person fails to appear and there is no reason for his absence, the court per *Article 19 (3) (a) of the 1992 Constitution and section 167 of the Criminal (and other) Offences Procedure Act*, issues a bench warrant for the arrest of the said accused person and/or proceeds with the trial.

Being ill is an extenuating circumstance as to why an accused has failed to appear in court. The accused herein making the false statement as to the illness of the accused

therein was providing an extenuating circumstance for which reason the court would not issue a bench warrant and/or proceed with the trial. That on its face is an act meant to obstruct the course of justice.

I thus find that prosecution has established the second element of the offence. Although prosecution had called only one witness, his evidence was credible. In the case of *Frimpong v. The Republic (2012/ GHASC, VOL 3 – 18th January 2012,)*, it was held by the Supreme Court speaking through Dotse JSC “that evaluating evidence in a criminal trial ...is not based on the quantity of witnesses called at a trial in proof of the case of the prosecution or the defence, but the quality of the evidence that the witnesses proffer at the trial”.

Again, in the case of *Gligah and Anor v. The Republic [2010] SCGLR 870, the Supreme Court again speaking through Dotse JSC* held that “in establishing the standard of proof required in a civil or criminal trial, it was not the quantity of witnesses that a party who had the burden of proof called to testify that was important, but the quality of the evidence called and whether at the end of the day, the witnesses called by the party had succeeded in proving the ingredients required in proving a particular case.” *See also the cases of Tetteh v. The Republic [2001-2] SCGLR ...and Dexter Johnson v. The Republic [2011] SCGLR 601.*

In sum, it is the quality of evidence rather than a multitude of witnesses or evidence that is required to establish a case. The probative value of evidence is based on the credibility of the testimony and not necessarily on the number of witnesses called or the volume of the testimony.

At the close of prosecution's case, I hereby determine that prosecution has established a prima facie case against the accused person. This is because prosecution had established all the elements of the offence against him, prosecution's evidence had not been so discredited during cross examination that no court could convict on same and the evidence on record pointed only in one direction; that of the prima facie guilt of the accused. Accused person is hereby called upon to open his defence if he so desires.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

DSPJ ASAMANI FOR THE REPUBLIC

PRINCE KWAKU HODO FOR THE ACCUSED PERSON