

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 15TH
DAY OF DECEMBER 2022 BEFORE HIS HONOUR KWABENA KODUA OBIRI-
YEBOAH, CIRCUIT COURT JUDGE.

D6/259/2019

THE REPUBLIC

VRS

FRANK BADUM

JUDGEMENT

The accused was arraigned before this court on one count:

1. Defrauding by False Pretence: Contrary to section 131(1) of the Criminal Offences Act, 1960, (ACT 29).

The accused pleaded not guilty to the charge brought against him when he appeared before the court on the 22/05/2019. The prosecution therefore assumed the duty to prove the guilt of the accused and has to do that with the certainty required of the law.

*Section 131(1) of the Criminal Offences Act, 1960 (Act 29)*¹ provides that, “a person who defrauds any other person by a false pretence commits a criminal offence.”

¹ Act 29, s 131(1).

*Section 132 of Act 29*² also provides that, “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. “

In section 132 of the Act, false pretence is defined as the representation of existence of a state of facts made by a person with the knowledge that the representation is false or without the belief that it is the truth and made with the intention to defraud. Therefore, the prosecution has to prove that the accused made a representation to the complainant that at the time of making the representation he knew it was false and he made it with intention to defraud.

Section 133 also provides that false pretence is a representation of the existence of a state of facts made by a person, with the knowledge that the representation is false or without the belief that is true and made with intent to defraud.

The prosecution had the responsibility to prove the ingredients of the offence of Defrauding by False pretence. In the case of **Kuma v The Republic**³ [1970] CC 113, It was held, **Per Azu Crabbe and Anin J.A (as they were)**, that: for the prosecution to succeed on a charge of defrauding by false pretences, it must be proved that: (i) there was a mis-statement or personation by the accused which in law amounts to a false pretence, (ii) that the falsity of the pretence was known to the accused, (iii) that the accused thereby obtained the consent of another person to part with or transfer the ownership of anything and (iv) that the accused acted with intent to defraud. See also the **Republic v Selormey (2001-2002) 2 GLR 424**.

It is the duty of the prosecution to prove their case, and in a criminal action, must be beyond reasonable doubt. Sections 11 (2) of the Evidence Act 1973, NRCD 323 states that:

² Act 29, s 132.

³ Kuma v The Republic [1970] CC 113.

“In a criminal action, the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt”. See **Oteng v The State (1966) GLR 355**

And section 15 of the same Act, “unless it is shifted

- (a) The party claiming that a person committed a crime or wrongdoing has the burden of persuasion on that issue”

The accused pleaded not guilty to the charge and therefore it is the duty of the prosecution to prove the guilt of the accused as mandated by law.

The particulars of the offence was, “Frank Badum-Businessman, For that you during the month of May 2019 at Accra Central in the Greater Accra circuit and within the jurisdiction of this court, with intent to defraud did obtained the consent of one Alexander Lau to part with cash the sum of 53,000 US Dollars by means of certain false pretences to wit; by falsely pretending that if the said money is given to you, you could release to him a treasure of gold you inherited from your late father and upon such false representation you succeeded in obtaining the said cash from the said Alexander Lau, which statement you knew at the time of making it to be false.

The case of the prosecution per the facts attached to the charge sheet is that the Complainant in this case Alexander Lau is a Canadian Businessman; whilst the accused Frank Badum is unemployed Nigerian residing in Ghana. During the month of February 2019, the complainant came to the country to explore business opportunities. He met the accused who introduced himself as a son of a worthy Liberian. He convinced the complainant to believe that his late father has treasure of gold and currencies currently kept in a warehouse in Ghana. The accused person told the complainant that he needed

someone to manage or invest the treasure on his behalf. The complainant bought into the idea and express interest in it

The complainant went back to Canada and was paying hotel bills for the accused person, who told him, he has no fixed place of abode in Ghana. During the month of April 2019, accused person lured the complainant back to the country and took him to a purported warehouse at Haatso-Accra where the complainant met one Francis and other accomplices, who took the complainant into the said warehouse and pointed out three sealed and locked metal boxes which were said to have contained the treasures belonging to the late father of the accused. On 10/05/2019, the accused person and his accomplices demanded and collected cash the sum of 53,000 USD from the complainant, and they handed over the said three (3) metal boxes to him as boxes of gold. Later the complainant opened one of the metal boxes and detected that it has been stuff with bags of sachet water. The complainant became alarmed and reported the matter to the police and the accused person was arrested. When the accused was cautioned, he admitted the offence and stated that they shared the money and he had 4000USD and his accomplices took the remaining money. Efforts are being made to apprehend his accomplices.

The prosecution in seeking to prove their case indicated, at case management conference (CMC) that they were going to call three (3) witnesses. The three witnesses of the prosecution were Alexander Lau, PW1, the complainant, PW2, Frank Boateng who said he works as a National Security operative and Security advisor to the complainant and D/Inspector Joseph Agbeyegah, the Investigator. The first witness of the prosecution was the complainant who gave evidence as PW1. After the evidence of PW1, he was cross examined by the Counsel for the accused. The witness PW1 mouth was sealed, and the case was adjourned for continuation. After that there was a number of adjournments at which time the accused was coming to court. Later PW1 had to go for surgery as a result

of ill health and after came back for the case to continue. On his return the accused stopped coming to court and a bench warrant was issued for his arrest.

The prosecution on 25/08/2022 indicated before the court that the accused who was under cross examination failed to appear on 26/01/22 and since then a number of efforts put in place for the arrest of the accused has been unsuccessful and prayed for the accused to be tried in absentia which was granted by the court. The prosecution concluded on their case after producing all their witnesses before the court and of course they were not cross examined.

Prosecution tendered exhibit A-Caution Statement of accused taken on 16/05/2019, exhibit B-The photograph showing the three metal boxes, exhibit C-The photograph of opened metal box containing bags of sachet water and exhibit D-The opened metal box with bags of sachet water. The prosecution did not file a charge statement as part of the disclosures and did not also tender same before the court.

The principle of the law is that after the close of the case of the prosecution the court will have to make a determination if a case has been made against the accused. If a case is made against the accused, then he will be called upon to open his defence. However, in this case the accused is absent and not present to open his defence even if a case is made against him. Therefore, the case was adjourned for judgment and if from the evidence of the prosecution, if a case is made against him to be convicted accordingly and to be acquitted if the evidence does not support a case against him.

From the particulars, the prosecution said complainant parted with cash the sum of 53,000USD by means of false pretences to wit; by falsely pretending that if the said amount is given you will release to him treasure of gold you inherited from your late father. Prosecution also stated in the facts that on 10/05/2019, the accused person and his

accomplices demanded and collected cash the sum 53,000 USD and handed over three (3) metal boxes to him as boxes of gold.

From the testimony of the complainant PW1 in paragraph 3 said the accused person and I exchanged contact details, and it was during our conversation that he convinced me to look for funds for us to explore gold trade. PW1 did not give any testimony per the particulars of the offence and the facts in the charge sheet. The accused claimed he made payments and supposedly made payment of 48,000 USD per his witness statement. He however did not indicate who he made payment to, whether to the person at the warehouse, Francis, PW1 introduced in his evidence or the accused.

From the testimony of the accused the money was not paid as a result of any representations made to him by the accused as per the facts of the case. And there is no evidence that showing that the said amount of money was parted by the complainant in any way. The said amount also contradicts the amount as was stated in the facts of the prosecution. The PW2, witness of prosecution, who was called to corroborate the evidence of PW1 was also not present when the said money was purportedly paid and to whom it was paid to by the complainant. There is also no evidence before the court that the said money was indeed paid by the complainant especially as there are conflicting figures on record for the prosecution.

The prosecution called the investigator PW3 and in paragraph 3 of his witness statement stated that, ".... the complainant reported having been defrauded by the accused person and his accomplices the sum of USD 48,000. This is the same investigator who has stated the amount of 53,000 in the facts attached to the charge sheet and here states the complaint was defrauded of 48,000USD.

PW 3 stated further in his evidence, paragraph 13, "Investigations further established that the accused person and his accomplices then demanded an amount of 48,000 USD from the complainant who became convince and agreed to invest and manage the wealth for and on behalf of the accused person". One wonders where the investigator got this information from, as the complainant did not say this in his evidence in chief before the court. Investigator PW3 went further now to say complainant parted with 43,000USD and again contradicting the evidence of his own witnesses.

I must say that of a truth there is no evidence that has been provided by the prosecution with respect to the charge brought against him to prove the various ingredients of the offence, for the court to convict on same. From the totality of the evidence, the court is of the opinion that there was no misstatement by the accused, no misrepresentation by the accused based on which the complainant parted with money to accused with intent to defraud the complainant.

The principle is that *the burden of proof is on the prosecution*; and the **standard of proof** has to be **beyond reasonable doubt** as stated by S. 13(1) of the Evidence Act, 1975 (NRCD 323) and is affirmed in **DARKO v THE REPUBLIC [1968] GLR 203** and a host of other authorities.

The prosecution has not met the standard of proof as required by law. The accused will therefore be acquitted on the charge that was brought against him before the court.

SGD

**HIS HONOUR KWABENA KODUA OBIRI-YEBOAH,
CIRCUIT COURT JUDGE.**