IN THE CIRCUIT COURT ONE HELD AT ACCRA ON MONDAY, 10TH OF OCTOBER 2022, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS) CIRCUIT COURT JUDGE

CASE NO: D6/174/2021

THE REPUBLIC
V
ODU SULE ACQUAYE

RUING ON SUBMISSION OF NO CASE

The accused person stands charged before the court on one count of of fraudulent transaction in land contrary to **277(2)(a)** of the Land Act 2020, (Act 1036). The particulars of offence read:

"Odu Sule Acquaye, Farmer, you during the year 2002 at Oduman in the Greaater Accra Circuit and within the jurisdiction of this court did make a grant of Forty (40) plots of land lying and situate at Oduman-Asuabu near Oboom at the cost of GHC73,000 to Widad Quaye which you have no title."

THE PLEA

The accused person who was represented by counsel pleaded not guilty to the charge after it had been read and explained to him in the Ga language. The accused person having pleaded not guilty put the facts of the prosecution in issue and thereafter the prosecution assumed burden prove the guilt of the accused person beyond reasonable doubt.

To discharge their legal burden the prosecution called two witnesses, complainant PW1 and the investigator of the case PW2. Pw2 tendered in evidence **Exhibit A** - investigation caution statement of accused dated 12/6/2020, **Exhibit B**- Caution Statement of accused dated 19/6/2020, **Exhibit C**- Mutual agreement dated 2/4/2017, **Exhibit D, D1**-search report from Lands Commission dated 10/8/2020.

At the close of case of the prosecution, Counsel for the accused person applied to file a submission of no case for the accused. Counsel for accused in his submission of no case raises two main grounds. Firstly, he submits that the Act under which Accused person stands charged i.e Act 1036 does not have retrospect application as complainants case is that the land was acquired over eighteen years ago. Secondly, he submits that the evidence of prosecution witnesses does not establish the particulars of offence accused stands charged before the court.

THE LAW GOVERNING SUBMISSION OF NO CASE

The law governing a submission that there is no case for an accused person to answer is laid down in **section 173** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), which states that:

"Where 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."

At this stage, the burden of proof on prosecution is not proof beyond reasonable doubt but all the essential elements/ingredients of the offence must be established and same must be sufficient to secure a conviction of the accused in the absence of defence from the accused person. In the case of **TAMAKLOE VS THE REPUBLIC (2011) SCGLR 29** at 46 it has been held that, where a statute creates an offence, it is the duty of the prosecution to prove each and every element of the offence which is sine qua non to securing conviction, unless the same statute places a particular burden on the accused.

It is also important for this Court to bear in mind that the Constitution 1992 Article 19(2)(c) presumes everyone innocent until the contrary is proven. In other words, whenever an accused person is arraigned before any court in any criminal trial it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond any

reasonable doubt. The burden of proof is therefore on the Prosecution and it is only after a prima facie case has been established by the Prosecution that the accused person is called upon to give his side of the story. See also **the case of KWAKU FRIMPONG VRS THE REPUBLIC (2012) 45 GMJ, 1 SC which** establishes that the burden of proof remains on the prosecution throughout the trial, and it is only after a prima facie case has been established that the accused will be called upon to give his side of the story.

The Supreme Court in the case of **MICHAEL ASAMOAH & ANOR V THE REPUBLIC (2017) SCGLR AT PAGE 4. per Adinyira JSC** restated the law on submission of no case at page 5 as follows;

"The underlying factor behind the principle of submission of no case is that an accused should be relieved of defending himself where there is no evidence upon which he may be convicted. The grounds upon which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under summary trial or trial on 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.*
c. *The evidence was so manifestly unreliable that no tribunal of fact could reasonable convict upon it.*
d. *The evidence was evenly balanced in the sense that it was susceptible to two (2) likely explanations, one consistent with guilt and one with innocence.*

"Prima facie case" was defined in the case of **Republic v. Kwabena Amaning @ Tagor & Anor.**, Criminal Appeal No. 4/2007, delivered on 28th November, 2007, the court stated that:

"The paramount consideration in deciding whether a prima facie case has been made or not is; whether the prosecution has proved all the essential ingredients or prerequisites of the offence charged. No prima facie case is made where the prosecution was unable to prove all the essential ingredients.

Even if one of the ingredients is not proved, the prosecution fails and no prima facie case is made."

In the case of **Tsatsu Tsikata v. The Republic [2003-2004] 1 SCGLR, 1068,** the Supreme Court held in its holding 5 that:

"On a submission of no case, the judge's function was essentially to determine whether there was a genuine case for trial, i.e. whether there were any genuine factual issues that could properly be resolved only by a finder of fact because they might reasonably be resolved in favour of either party. The enquiry has to focus on the threshold question whether the evidence presented a disagreement to require for a full trial, or whether it was one-sided that one party must prevail as a matter of law. Therefore where reasonable minds could differ as to the import of the evidence presented in a motion for submission of no case, that motion should not be upheld. If, on the other hand, there could be but one and only one reasonable conclusion favouring the moving party, even assuming the truth of all that the prosecution had to say, the judge must grant the motion..."

Therefore at the close of prosecution's case, the court is not to find the existence of the fact beyond reasonable doubt but **all the essential elements/ingredients** of the offence must be established and same must be sufficient to secure a conviction of the accused in the absence of any reasonable doubt that may be created in the mind of the court by the defence of accused.

Here, the accused person is charged with fraudulent transaction in land contrary to **section 34(a)** of the Land Registry Act, 1962(Act 122).

Section 34 (a) of Act 122 provides as follows;

"A person who purports to make a grant of land to which that person has no title, 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 to both."

Therefore, to succeed, the prosecution must prove the following essential elements of the offence;

i. That the accused person had no title to the land subject matter of the complaint.

ii. That the accused person purported to make a grant of the piece of land.

iii. That the accused person knew that he had no title to the land he purported to grant.

In the case of **Santuoh v. The Republic [1976] GLR 44,** the High Court, Kumasi, presided over by Owusu-Addo J, speaking on guilty knowledge as an element of a crime charged held at page 48 as follows;

"*in discharging onus of proof of knowledge it is not necessary for the prosecution to lead evidence of actual knowledge; it is sufficient if evidence from which knowledge can be justifiably inferred is established."*

Thus, in addition to proving that the accused person had no title to the land he purported to grant, the prosecution must prove that the accused person knew that he had no title to the land he purported to grant.

To prove prosecution's case, the first prosecution witness, Widad Adaku Quaye, testified that about 18 years ago, she and her sister acquired 40 plots of land from accused person and his two brothers at a cost of GHC800 per plot at Oduman-Asuaba near Oboom in the Ga West district of Greater Accra. A part payment of GHC8,000 was made to accused and his brothers and thereafter land located behind the Asuaba Basic School was demarcated to them with documents on the land shown to them by accused and his brothers. After the demise of the brothers, accused continued with the transaction and collected several monies and a Hyundai Matrix salon car from them. In 2017, accused gave her an indenture and site plan covering 20

plots of land at a different location not far from the previous one and caused her to engage the services of a grader machine operator at a cost of GHC6,000 to clear the first 20 plots of land for construction work to commence but the operator was prevented from working by some land guards who said the land was not for accused pointing another land close to the one demarcated to her as belonging to accused. Accused later showed her the other 20 plots of land but did not give her any documents to cover same. Accused and his nephew, one Abass Lamptey collected GHc1500 form her to supervise the grading of the land after which the nephew of accused collected GHC4,500 as digging fee and promised to supervise the work with his Asafo boys but he failed to do so and her masons were attacked and arrested to the Amasaman Police Station for encroaching on someone's land by nephews of accused. she therefore conducted a search at the Lands Commission where it was revealed that the land did not bear the name of accused and he had no title to the land. Under cross-examination, PW1admitted that the GHC8,000 she had paid for the 40 plots of land was paid to the late Mankralo and not accused person herein but added that the late Mankralo directed them to complete the payment with accused and their other brother Ogyam who is currently deceased. She contended she dealt with the late brothers of accused and accused in 2002. PW1 further admitted under cross-examination that the Hyundai matrix vehicle given to accused was not in relation to this piece of land in question.

PW3, D/Sgt Prince Okoh also testified that the case was referred to him for investigations. According to him, on 12/6/2020, PW1 reported to the Regional Police that about 18 years ago accused collected monies form her and the sisiter to sell hand to them but had failed. He took statement from the complainant and she submitted an indenture in the name of Nidad Dedei Quaye, her sister covering the 20 plots of land with a mutual agreement form executed between the complainant and accused. Same day, accused was arrested at his residence and investigation caution statement taken from him.

Accused stated that there were no problems with the first 20 plots of land and asked PW1 to go to the site and start her project. On 21/06/2020 he visited the first 20 plots of land site with parties where accused in the presence of police asked PW1 to start work. PW1 paid GHc4,040 to the Asafo Youth and boys of Accused's family. Unfortunately PW1 reported later that her workers had been assaulted and had sustained various degrees of injuries. Police then conducted a search at Lands Commission where it indicated that the land is not registered in the name of accused. under cross-examination, PW2 failed to tell the court the names of the other persons laying claim to the land but stated he met them personally and they were from the Ayikine family of Oboom. He stated he took no statement from them but knows the Amasaman Police arrested them and took statements from them.

The accused person in his caution statement denied the offence and stated that the land in question was 20 plots of land situate at Oduman Asuaba near Oboom sold to the sister of PW1. He admitted demarcating the land for her and giving her all the necessary documents. He however contended that the workers of Pw1 had gone unto a different land than what was allocated to them.

From the evidence led by the prosecution witnesses and the cross-examination conducted by counsel for the accused person, PW1 contends, that the purported sale of the land to her sister in 2002 was made by accused and his two deceased brothers and a part payment of GHC8,000 paid as at 2016 to the late Makrolo, the brother of accused. Per exhibit C dated 2/4/2017, PW1 confirmed making payment of only GHC8,000 as at that date and agreeing to pay the balance to accused herein. Per exhibit C and as admitted by PW1 under cross-examination, the Hyundai matrix vehicle was given to Accused in relation to a land situate at Dzata Bu and not related to this land at Oduman Asuaba.

PW2 however vehemently insisted under cross-examination that the monies paid for the land in dispute were paid directly to accused person herein. This

evidence is contrary to the evidence of PW1 on who collected the monies. From the evidence of prosecution witnesses, it is unclear whether or not the purported grant of the lands situate at Oduman Asuaba was made by the accused and his brothers including the Mankralo or accused person herein.

Prosecution at the close of their case is further required to establish that the accused has no title to the land purportedly granted. On this ingredient, PW1 and PW2 contends that workers of PW1 were prevented from working on the land by some persons who claimed ownership of the land. They further contend that search at Lands Commission did not mention accused as the owner of the said lands as seen in exhibit D. Indeed per exhibit D, Accused is not mentioned as the owner of the land identified in the site plan used to conduct the search ie exhibit D1. Exhibit D however does not also mention the land as belonging to any other person. All exhibit D states or proves is that the land is not a state land and not affected by any recorded transaction. Prosecution failed to lead evidence as to the ownership of the land as alledgedly claimed by the Ayikine family. PW2 as noted earlier failed to take any statement from this family personally and failed to also get their alleged statement given to the Amasaman police upon their arrest. PW1 and PW2 are basing their claim that accused had no title to the land he had purportedly granted to PW1 and her family at Oduman Asuaba on the adverse claim mounted by other persons purportedly belonging to the Ayikine family of Oboom.

It is trite learning that the mere claim by adverse claimant that he owns the land does not convey title of the land into that claimant

The prosecution who alleged that the accused person had title to the land when he knew he had no title now claimed that the accused person did not have the authority of the owner. However, the prosecution led no evidence to show that the accused person did not have the authority of the owner to sell the land. The investigator who purportedly investigated this case, in which

the authority of the accused person to sell the land is a fact in issue, did not deem it fit to find out from the said Ayikine family of Oboom their claim of title to the land. Neither have the prosecution witnesses provided any document showing that the land granted to PW1 and her family belonged to some other persons. Further there is no evidence on record that accused knew that he had no title to the land at Oduman Asuaba but yet at the time of the purported grant.

On the totality of the evidence led by the prosecution, I find that the prosecution failed to prove all the essential elements of the offence charged to warrant calling on the accused person to open his defence.

Most importantly accused as noted and raised by counsel for accused is charged under the Land's Act 2020 Act 1036. This Act came into force in December 2020. The offence accused was charged with allegedly occurred/ was committed in 2002 i.e 18 years before the coming into force of Act 1036. The law in force at the time of the commission of this alleged offence was the Land Registry Act 1962, Act 122. Although Act 1036 did not save pending investigations and legal proceedings under Act 122, Section 34 (1) (c), (d) (e) of the Interpretation's Act, 2009, Act 794 provides "Where an enactment repeals or revokes an enactment, the repeal or revocation shall not, except as in this section otherwise provided,

(c) **affect a right, a privilege, an obligation or a liability acquired, accrued or incurred under the enactment that is repealed or revoked;**

(d) **affect an offence committed against the enactment that is repealed or revoked, or a penalty or a forfeiture or a punishment incurred in respect of that offence; or**

(e) **affect an investigation, a legal proceeding or a remedy in respect of a right, a privilege, an obligation, a liability, a penalty, a forfeiture or a punishment;**

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked.

Despite the repeal of the Act 122 by Act 1036, the proper section and Act under which the offence occurred and should have been prosecuted is Act 122. The Supreme Court speaking through Dotse JSC in the case of The Republic vrs High Court, Accra (Commercial Division) Ex Parte Environs Solutions and 3Others, Suit Number15/20/2019 dated 29th April 2020 had this to say

"It must be emphasized clearly that from the principles of interpretation of statutes dealt with supra in respected legal texts, statutes as well as case law, it is apparent that, a repealed statute does not lose all of its effect and operating provision simply because a new statute had been enacted. General principles of interpretation as well as the effect of relevant provisions in the Interpretation Act must all be considered and read together to give a holistic application and meaning to the situation. When this is done, it becomes evident that the High Court had jurisdiction to hear the application for the confirmation albeit under a repealed enactment.".

The court of Appeal recently in the case of Edmund Addo vrs The Republic Criminal Appeal No H2/2021 dated 17th Febraury, 2022, presided by G Suurbareh, JA Merley A. Wood JA and R. Adjei Frimpong JA had the opportunity to explain the meaning and effect of section 34(1) OF THE INTERPRETATIONS ACT. The Court speaking through Merley JA stated thus "In respect of Section 34(1) (e) of Act 792, the law is that where an enactment is repealed, it would not affect any investigation, a legal proceeding or a remedy in respect of a right, privilege, an obligation, a liability, a penalty, a forfeiture or punishment under the repealed Act. Any investigation, legal proceedings or remedy in respect of the Act should be in accordance with the repealed law. Any penalty or punishment for a future obligation and/or liability should also be in accordance with the repealed

legislation. However, Section 34(1) (d) of Act 792 states that where an enactment is repealed it would not affect an offence committed against the enactment that is repealed or revoked or a penalty, or a forfeiture or punishment incurred in respect of that offence. The law is that where an enactment is repealed, it would not affect an offence committed against the enactment that is repealed or revoked or a penalty or a forfeiture or punishment incurred in respect or that offence. That being the case, it is clear that Section 34(1) (d) saves offences committed before the repeal of an enactment**. Therefore it means that in the instant case, though Section 136 of Electronic Transactions Act 2008 (Act 772) has been repealed, offences committed against the said Section 136 of Act 772 before it was repealed should be in accordance with the repealed law**."

The Act under which accused stands charges and prosecuted i.e Act 1036 is not only wrong but unlawful. From the totality of the evidence before the court and as submitted by counsel for accused in his written submission of no case, prosecution failed to establish the ingredients of the offence of fraudulent transaction of land but further charged accused under a wrong law. The court finds at the close of prosecutions case that no prima facie case is established to necessitate the calling of accused to open his defence. Accordingly, accused is acquitted and discharged forthwith.

ACCUSED PRESENT

C/INSPECTOR TENKORANG FOR REPUBLIC PRESENT

MR ROBERT HENRY GYARBENG FOR ACCUSED PRESENT

SGD
H/H AFIA OWUSUAA APPIAH (MRS)
CIRCUIT COURT JUDGE