

IN THE CIRCUIT COURT "A", TEMA, HELD ON THURSDAY, THE 23RD
DAY OF FEBRUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO: D6/02/21

THE REPUBLIC

VRS:

JERRY DANQUAH

ACCUSED PERSON

ABSENT

C/INSP. SUSANA AKPEERE FOR PROSECUTION PRESENT

ANTHONY ADU-NKETIAH, ESQ. BEING LED BY PRINCE KWEKU HODO,
ESQ. FOR THE ACCUSED PERSON PRESENT

RULING ON SUBMISSION OF NO CASE

FACTS:

The accused person was charged and arraigned before this court on 8th October, 2020, on a charge of defrauding by false pretences contrary to **section 131** of the Criminal Offence Act, (1960) Act 29.

The brief facts presented by the prosecution are that the complainant, Evans Donkor, is a businessman residing at Techiman whilst the accused person aged 36 years is a self-styled freight forwarder based in Tema. It is the case of the prosecution that in the month of August 2020, the complainant imported a forty-footer container stuffed with paints to the Tema Port and engaged the accused

person to clear the consignment from the port for him. The prosecution alleges that the accused collected an amount of GHC45,000 to pay the import duties and other charges to enable him clear the container for the complainant but after receiving the money, he paid only GHC4,000 to DELMAS Shipping Line as shipping charges and used the outstanding amount without paying the import duties on the container. The accused person thereafter went into hiding, compelling the complainant to engage another agent at an additional cost of GHC45,000 to clear the container from the Tema Port.

The prosecution further claims that on the 7th day of September, 2020, the accused person was arrested from his hideout and handed over to the police. It is further alleged that during investigations, the accused person in his investigation caution statement, stated that he encountered financial problems in the process of clearing the container and used the money to solve personal issues. After investigations, he was charged with the offence and arraigned before this Honourable Court.

THE PLEA

The accused person who was self-represented at the time his plea was taken pleaded not guilty to the charge after it had been read and explained to him in the English Language. The accused person having pleaded not guilty to the charge, the prosecution assumed the onerous burden to prove the guilt of the accused person beyond reasonable doubt.

The case proceeded to trial and the prosecution called three witnesses and tendered in evidence **Exhibit "A"** series, which is WhatsApp Communication, **Exhibit B**, Ghana Commercial Bank Deposit Slip- **Exhibit "C"**- Investigation caution statement of accused person, **Exhibit "D"**, charge statement of the

accused person. At the close of the case for the prosecution, Learned Counsel for the accused person orally submitted that there was no case made out against the accused person sufficiently requiring him to open his defence and the court ordered him to file a written submission of no case but counsel failed to do.

Under paragraph 21 of the Practice Direction (Disclosures and Case Management in Criminal Proceedings), *“at the close of the case for the prosecution, the Court shall, on its own motion or on a Submission of No case to Answer, give a reasoned decision as to whether the Prosecution has or has not led sufficient evidence against the accused person”* The court therefore suo moto proceeded to determine if the accused person has a case to answer without the benefit of a written submission by Counsel for the accused person.

ANALYSIS

It is provided for under **section 173** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), 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.”

In the case of **Apaloo v. The Republic (1975) 1 GLR 156-192 C.A per Azu Crabbe C.J @ page 175**, the court laid down the circumstances under which a submission of no case may properly be made and upheld in the following terms;

“There has recently sprung up the practice by some counsel to make a submission of no case to answer in the teeth of direct cogent evidence implicating the accused in the crime charged. This invariably delays the dispatch of work in the criminal courts, and this court now considers it necessary to re-state the tests for making a submission of no case.

The circumstances in which a submission of no case may successfully be made are: (a) when there has been no evidence to prove an essential element in the crime charged; and (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it:"

Regarding the standard of proof at this stage, the Supreme Court in the case of **Tsatsu Tsikata v. The Republic** [2003-2004] 1 SCGLR, 1068, stated that the standard of proof at this stage is a prima facie case and not beyond reasonable doubt since the court has not had the opportunity to hear the defence. The Court further 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..."

In the same case of **Kwabena Amaning Alias Tagor and Anor. v. The Republic** (200) 23 MRLG 78, the court held that:

" prima facie evidence is evidence, which on its face or first appearance, without more, could lead to conviction if the accused fails to give reasonable explanation to rebut it. It is evidence that the prosecution is obliged to lead if it hopes to secure conviction of the

person charged. At this stage, the trial court is not supposed to make findings of facts since the other side has not yet spoken to determine who is being factual. What the trial court has to find out at this stage that the prosecution has closed its case is whether or not the evidence led has established all the ingredients of the offence charged for which the accused person could be convicted if he failed to offer an explanation to raise doubts in the said evidence”

Here, the accused person is charged with defrauding by false pretences contrary to **section 131** of Act 29. The section provides that a person who defrauds any other person by a false pretence commits a second-degree felony. Under **section 132** of Act 29, *“a person is guilty of defrauding by false pretences if by any means of false pretence or by personation he obtains the consent of another person to part with or transfer the ownership of anything.”* **Section 133(1)** further defines false pretence as *“a representation of the existence of a state of facts made by a person, either with the knowledge that the representation is false or without the belief that it is true and made with an intention to defraud”*.

In the case of the **Republic v Selormey [2001-2002] 2 GLR 424**, HC, stated the essential ingredients of a charge of defrauding by false pretences as follows;

- a. That the accused made a representation of the existence of a state of facts.
- b. That the representation was made either in writing or spoken words or by impersonation.
- c. That the representation was made with the knowledge that it was false or made without the belief that it was true.
- d. That the representation was made with intent to defraud.

- e. That the representation was made by the accused and that by that representation he obtained the consent of another person to part with money.

Intent to defraud is defined in **section 16 of Act 29** as *“an intent to cause, by means of forgery, falsification, or other unlawful act, a gain capable of being measured in money, or the possibility of that gain, to a person at the expense or to the loss of any other person”*.

The first prosecution witness (PW1), Evans Kweku Donkor, the complainant, testified that he is a businessman and lives in Techiman. According to him, he got to know the accused person through one agent by name Evans Baffoe, deceased, who was working on his containers at the Tema Harbour. Subsequently, he had a conversation on WhatsApp with the accused person who assured him that he could assist him clear his container. In support, he tendered a copy of the chats between himself and the accused person, admitted and marked as **Exhibit “A”**. According to him, he expected the container to arrive in the country on 30th July, 2020 so he informed the accused person on 26th July, 2020, on how to clear the container and the accused person promised to work on them for him.

PW1 states that prior to the arrival of the container at the port, he gave all the documents to the accused person who requested for an amount of Thirty Thousand Ghana Cedis (GHC30,000) as an initial payment to start the process for him. Based on that request, he sent the said amount into the account number 1351060002287 bearing the name of Christiana Kwao, with Ghana Commercial Bank Techiman Main branch which was given to him by the accused person. In

support, he tendered the deposit slip admitted and marked as **Exhibit "B"**. Thereafter, the accused person called him to confirm receipt of the payment and assured him that he will work within time. He again testified that the accused person called him later to ask for payment of the remaining Fifteen Thousand Ghana cedis (GH¢15,000) and on 3rd August 2020, he deposited Five Thousand Five Hundred Ghana Cedis (GH¢5,500) into the account number provided by the accused person and sent the remaining Nine Thousand Five Hundred Ghana Cedis (GH¢9,500) into his mobile money account number 0541429283; totaling Forty Five Thousand Ghana Cedis(GH¢ 45,000) as the money advanced to the accused person for clearing of the container.

PW1 testified further that after making full payment, the accused person called his truck driver to come and load the goods on 7th August, 2020. On the said date, he sent his truck driver to the Tema Harbour to receive the goods but when the truck driver got there, the accused person was nowhere to be found. After waiting from morning till evening and realizing that the accused person was not even at the Harbour, he called his friend, PW2 who resides in Tema, to assist him arrest the accused person and gave him the particulars of the accused person. PW1 states further that after two weeks, his container went into demurrage and he had to borrow money to clear it at a high cost. Further to this, with the assistance of PW2, the accused person was arrested and sent to the police station.

Under cross-examination by the accused person, PW1 testified that the accused person and his deceased cousin had previously worked on the clearing of his

container and that is how he got to know the accused person. Under cross-examination, the following ensued;

Q: Do you know the accused person to be a clearing agent.

A: Yes My Lord.

Q: You contracted the accused person to clear the container you have imported for you.

A: Yes My Lord.

Q: As a result of that contract, according to you, you made a total payment of GH¢45,000 to the accused person.

A: Yes My Lord.

Q: And again the accused person could not clear your container for you. Is that your case?

A: Yes My Lord.

Q: When the accused could not clear the said container, you requested for a refund of your money.

A: Yes My Lord.

Q: The accused person could not refund your money to you.

A: Yes My Lord.

The second prosecution witness (PW2), Martin Twi Frimpong, testified that he is a Pastor resident at Community, 1 Site 10, and knows the complainant (PW1) and the accused person. In the month of August, 2020, PW1 called him to assist him to arrest the accused person for collecting an amount of GH¢45,000 from him to

clear his container containing paints and going into hiding without giving him any reason for not clearing the container. Further to this, PW1 forwarded the detailed information of the accused person which included his full name, a photograph and contact number to him and based on the information, he got the accused person arrested and handed over to the police. When he arrested the accused person and questioned him about the claims of PW1, he disclosed that he used Four Thousand Ghana Cedis (GH¢4,000) to pay the shipping line but could not provide any document to support his claim. PW1 had to engage the services of another agent to clear his container which had gone into demurrage. When the accused person was arrested, he quickly went and paid an amount of Seven Thousand Ghana Cedis (GH¢7,000) to one Mr Agyei, the agent PW1 contracted to clear his container and promised to refund the rest of the money which he had used for his personal gain.

The second prosecution witness under cross-examination by Counsel for the accused person testified that he has no personal knowledge about the case and that all that he knows by the transaction between the accused person and the PW1 is what PW1 told him and he helped in arresting the accused person to the police station. He further testified that the accused person upon his arrest informed him that he had spent the money and he had also spent huge sums of money belonging to other clients and theirs was the least.

The third prosecution witness (PW3), D/Insp. Fredrick Torpey, stationed at MPRD/Tema testified that on 2nd September, 2020, PW1, the complainant, came with an extract from Techiman police and reported a case against the accused

person which was referred to him for investigation. During investigations, he obtained a printout of a WhatsApp chat messages between the accused person and the complainant which were admitted and marked as **Exhibit "A"** series. He also tendered a deposit receipt from Ghana Commercial Bank Techiman branch dated 27/07/20 bearing the name of Christian Kwao with account number 1351060002287 in which the accused person deposited the money admitted and marked as **Exhibit "B"**. PW3 According to his testimony, PW1 informed him that the accused person had gone into hiding and assured him of conducting his own investigations to assist him arrest the accused person. PW3 further testified that on 07/09/2020, PW2, assisted by two others arrested the accused person who was involved in another case which was under investigations and brought to the police station. He re-arrested the accused person and detained him to assist in his investigations. During his investigations, he obtained caution statement from the accused person which was admitted and marked as **Exhibit "C"**. PW3 testified that his investigations disclosed that the accused person assured PW1, of clearing his container at the Port due to the death of the agent, Evans Baffoe. Based on that representation, he parted with an amount of Forty-Five Thousand Ghana Cedis (GH¢45,000) to the accused person for the clearing of the container by accused person which he failed to do.

According to PW3, his investigations revealed that that the accused person only paid Four Thousand Ghana Cedis (GH¢4,000) to Delmas Shipping Line as shipping charges but could not show any documents relating to any payment made in connection of the clearing of the container and that the accused person used the money to settle another business and could not get it back on time to make the payments to clear the container. Based on this information gathered,

the accused person was charged with the offence and arraigned before this court. The charge statement of the accused person was admitted and marked as **Exhibit "D"**.

Under intense cross-examination by counsel for the accused person, PW3 was insistent that the accused person falsely represented to PW1 that if the said amount was given to him, he could assist him clear the container but after receiving the money he spent the money without clearing the goods from the port. The third prosecution witness further testified that the accused person received the money but failed to clear the container and he is not a Member of the Freight Forwarding Association of Ghana.

The accused person in his investigation caution statement, Exhibit C states that PW1 has been his client for about three years prior to this transaction and that he engaged him to clear his container with paints which he used the money for another business. Consequently, he was unable to clear the container for PW1. He requested for one month to pay the money back and he asked him to sign an undertaking which he did and even paid an amount of GH7,000 to PW1. According to him, out of the amount he paid GH4,000 to the shipping. In **Exhibit "D"**, the accused person relied on his charge statement.

On the totality of the evidence led by the prosecution, on the face of the evidence, the accused person made a representation to PW1 that if the said amount was given to him, he could clear the container from the Port. The prosecution maintains that it was this statement which induced PW1 to part with the money

but the statement turned out to be false since the accused person failed to pay for the charges to clear the container. The prosecution also maintains that the accused person is not a shipping Agent since he does not belong to any Freight Forwarders Association. The accused person must therefore open his defence to tell his side of the story to raise a reasonable doubt in the case of the prosecution that he had no intention to defraud the complainant.

In sum, I hold that a prima facie case is made out against the accused person requiring him to open his defence. The submission of no case is dismissed. The accused person shall prepare to open his defence.

H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)