

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON MONDAY,  
THE 30<sup>TH</sup> DAY OF JANUARY, 2023, BEFORE HER HONOUR  
AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE**

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**SUIT NO: D6/08/20**

**THE REPUBLIC**

**VRS:**

**ISAAC TANKO BOLU**

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**ACCUSED PERSON**

**ABSENT**

**INSP. EMMANUEL ASANTE FOR PROSECUTION**

**PRESENT**

**NO LEGAL REPRESENTATION**

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**JUDGMENT**

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**FACTS:**

The accused person was charged and arraigned before this court on two counts of Defrauding by False Pretences contrary to **section 131** of the Criminal Offences Act, 1960(Act 29).

The brief facts presented by the prosecution are that the Complainant is a businessman living at Berekum whilst the accused person is a clearing agent and resident at Tema Community 2. The prosecution alleged that on 24<sup>th</sup> day of September 2019, one Daa Joe introduced the accused person to the complainant as an importer of used vehicles into the country through the Tema Port. The prosecution alleges that the complainant

became interested and traced accused person to Tema. The accused person then informed the complainant that he has a Toyota Corolla 2010 Model valued at GH¢24,613 at the Tema Port for sale. The complainant immediately made part payment of GH¢13,650 and on 26<sup>th</sup> November, 2019, he made another part payment of GH¢9, 850 all totaling GH¢23,500 leaving an outstanding balance of GH¢1,113. After payment, the accused person issued the complainant with a receipt and gave him the documents purporting to be documents covering the vehicle which turned out to be fake.

On 27<sup>th</sup> November, 2019, the complainant contacted the accused to lead him to the Tema Port to see the vehicle but the accused person could not do so and kept giving him excuses. The complainant became suspicious that the accused person had defrauded him and reported the matter to the police. Based on that, the accused person was arrested. The prosecution further alleges that in his investigation caution statement, the accused person stated that he collected the said amount and gave the complainant fake documents for him to believe him. The accused person further stated that he used the money to settle a debt at Kasoa Ofaakor District Court. After investigations, the accused person was charged and arraigned before the court.

### **THE PLEA**

The self-represented accused person pleaded not guilty to the charges after they had been read and explained to him in the English Language. The accused person having pleaded not guilty to the charge put the entire facts of the prosecution in issue and thereafter, the prosecution assumed

the burden to prove the guilt of the accused person beyond reasonable doubt.

### **BURDEN OF PROOF**

Under **Article 19(2)(c)** of the 1992 Constitution, a person charged with a criminal offence is presumed innocent until proven guilty or has pleaded guilty. This simply means that when a person is charged with a criminal offence, it is the duty of the prosecution to prove the guilt of the accused person beyond reasonable doubt. This requirement is the essence of the **Sections 11, 13, 15** of the Evidence Act, 1975(NRCD 323).

In the case of **Asante (No.1) v. The Republic (No.1)** [2017-2020] I SCGLR 132 at 143 per Pwamang JSC held that:

*“Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it was the accused person who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He*

*is only to raise a reasonable doubt in the mind of the court as to his commission of the offence and his complicity in it except where he relies on a statutory or special defence”*

### **ANALYSIS**

The accused person in the instant case is charged with two counts of defrauding by false pretences contrary to **Section 131** of Act 29, which provides that:

*"Whoever defrauds any person by any false pretence shall be guilty of a second-degree offence"*

The offence is defined under **Section 132** of Act 29 as follows:

*"a person is guilty of defrauding by false pretence, if by any false pretence or by personation, he obtains the consent of another person to part with or transfer the ownership of anything".*

**Section 133 (1)** of Act 29 also defines false pretence as:

*“a representation of the existence of a state of facts made by a person either with the knowledge that such representation is false or without the belief that it is true and made with an intent to defraud. A representation may be made either by written or spoken words or by personation or by any other conduct, sign or means of whatsoever kind”.*

**Section 33(2)(b)** of Act 29 further defines a “representation as to existence of a state of facts” as including;

*“a representation as to the non-existence of a thing or condition of things, and a representation of any right, liability, authority, ability, dignity or ground of credit or confidence as resulting from any alleged past facts or state of facts, but does not include a mere representation of an intention or state of mind in the person making the representation, nor*

*mere representation or promise that anything will happen or will be done, or is likely to happen or be done”*

In the case of the **Republic v Selormey [2001-2002] 2 GLR 424, HC**, the essential elements of a charge of defrauding by false pretence were identified 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 something.

In the case of **Adobor v. The Republic [2007] GHACA 5 (20 December, 2007), CA**, the court held that:

*“to constitute an offence of fraud by false pretence, the accused should have made a representation which to his knowledge is false, the representation should be made to a person who believed it and as a result was induced to part with or transfer the ownership of anything.”*

The court further held that:

*“to induce is to persuade, to prevail upon another person to believe something and act upon it. In the case of false pretence, the victim must*

*have been persuaded to accept the representation made to him as true and to act upon it to his detriment.”*

Therefore, to secure conviction, it is incumbent on the prosecution to prove beyond reasonable doubt that the accused person made a representation either in writing or orally or by impersonation with the knowledge that the representation is false or without a belief that it is true, with intent to defraud which representation induced the complainant to part with the said amount.

To prove their case, the prosecution called three witnesses and tendered in evidence **Exhibit “A”**-Letter of Agreement, **Exhibit “B”-“B5”**, Documents covering a vehicle, **Exhibits “C”**, Photocopy of the investigation caution statement of the accused person, **Exhibit “D”**, Charge Statement, **Exhibit “E”**, photocopy of cash deposit receipt.

The first prosecution witness, the complainant testified that one Daa Joe introduced the accused person to him as an importer of accident cars through the Tema Port. He became interested and asked his brother Ameyaw Simon who works with him to accompany him to Tema. When they arrived in Tema, he contacted the accused person on his cell phone *No. 0240249262* and he responded and directed them to his house at Community Two Tema near Fidelity Bank. The accused person confirmed what his friend told him.

On 24<sup>th</sup> September, 2019, the accused person told him that if he was ready to buy the vehicle, he should pay an amount of GHC24,613 for the

Toyota Corolla 2010 model. On the same day the accused person led them to an Ecobank Branch in Tema where he handed over an amount of GH¢13,650 as part-payment of the vehicle and accused person issued him with a receipt evidencing payment. The accused person then told them that when the vehicle arrives at the Tema Port, they will be required to pay an amount of GH¢9,850 for the clearing of the vehicle which they also paid. He tendered the receipt issued to him by the accused person admitted and marked as **Exhibit “A”**. The accused person also gave him the documents covering the vehicle which was admitted and marked as **Exhibit “B”** series.

According to his testimony, the accused person called to inform him that the vehicle had arrived at the Tema Port. On 26<sup>th</sup> November, 2019, he also made another payment of an amount of GH¢9, 850 for the clearing of the vehicle to the accused all totaling GH¢23,500 in the presence of his brother Simon Ameyaw with an outstanding balance of GH¢1,113 to be paid to the accused person. On 27<sup>th</sup> November, 2019, he came to Tema for the accused person to lead him to the Port of Tema to see the vehicle but the accused person could not lead him to the vehicle and asked him to call him the next day. On 28<sup>th</sup> November, 2019, he called the accused person and he responded and asked that he should call him in the evening. He therefore asked his brother Simon Ameyaw to call him. When his brother called, someone received the call and stated that the accused has been arrested and he is in the custody of the Marine Ports and Harbour Police Station.

PW2, Ameyaw Simon, corroborated the testimony of the first prosecution witness that on 24<sup>th</sup> September, 2019, the accused person represented to PW1 that he had a Toyota Corolla 2010 Model for sale at a cost of GHC24,613. Based on that they paid an amount of GHC13,650 and a further amount of GHC9,850 for the clearing of the vehicle which he instantly paid. Later, the accused person informed them that the vehicle had arrived at the Tema Port. On 8<sup>th</sup> December, 2019, when he called the accused person, he told him that he was busy and would call him later. When he later called, police officer answered the call and informed him that the accused person has been arrested.

The third prosecution witness, the investigator also testified and tendered in evidence the investigation caution statement and the charge statements of the accused person admitted and marked as **Exhibits “C” and “D”** respectively. According to him, during investigations, the accused person admitted the offence and stated that he took cash the sum of GHC23,500 from the complainant to give him Toyota 2010 Model and issued him with a receipt for an amount of GHC13,500. PW3 further testified that his investigations revealed that the accused person made a false representation to the complainant with intent to defraud him.

The accused person in his investigation caution statement, **Exhibit C**, admitted without an objection admitted the transaction between himself and PW1 but stated that he could not honour his side of the bargain because he had an issue with his importer in Atlanta. According to him, he used part of the money to settle his debt with the importer and also used part to settle a District Court case he was involved in. He confirmed



he took a total amount of GH¢23, 500 from PW1. The accused person relied on this statement in **Exhibit “D”**, his charge statement.

The receipt issued by the accused person titled “*Agreement Letter*” is on the Letter head purporting to be that of Koro Shipping Co. Ltd., a custom bonded clearing& Forwarding Agents, Importers, Exporters and Warehousing. It is not indicated the capacity of the accused person who issued the said agreement letter and whether he worked with the said company. In **Exhibit “B”**, the name of the complainant, Elvis Gyamfi is stated as the consignee of a Toyota Corrolla with a Berekum address. The Customs Classification and Valuation Report also has the name of the complainant which prosecution claims to be fake. When the vehicle allegedly arrived at Tema Port, the accused person failed to give the vehicle to PW1.

The accused person in cross-examining the prosecution witness, only put the amount received in issue. At the close of the case for the prosecution, when the court ruled that the prosecution had made a prima facie case of defrauding by false pretences against the accused person and called on the accused person to open his defence, the accused person jumped bail and all efforts to arrest him on bench warrant proved futile, the prosecution made an application for the court to proceed since the prosecution had closed its case and the accused person had made it impracticable for further proceedings to be conducted in his presence having been duly notified. The unchallenged evidence on record is that led by the prosecution in support of the allegation that the accused person made a representation to the complainant which he knew to be false and by that false representation he succeeded in obtaining the said amount from the complainant with intent to defraud him.

On the issue of whether or not the representation was made with intent to defraud. Intent to defraud is defined in **section 16 of Act 29** as follows:

*“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”.*

In the case of **Asiedu v. The Republic** [1968] GLR 1, the court held in its holding 4 that: *“when a valuable thing was obtained by false pretence, prima facie there was an intent to defraud.”*

The accused person failed to lead evidence in his defence to raise a reasonable doubt in the case of the prosecution that he did not make a representation a representation to the complainant which he knew at the time of making it to be false or that he had no intention to defraud PW1.

On the totality of the evidence led by the prosecution, the court finds that the accused person orally represented to PW1 that he had a Toyota Corolla 2010 Model for sale at a cost of GH¢24,613, a representation he knew at the time of making it to be false. Based on that representation, he succeeded in obtaining the said amount of GH¢13,605 for the purchase of the car, and a further GH¢9,850 for clearing of the vehicle which never materialized. The intention of the accused person in making the false representation was to gain money at the expense of the accused.

Accordingly, I hold that the prosecution proved their case beyond reasonable doubt that the accused person defrauded PW1. I therefore pronounce the accused person guilty of the two counts of defrauding by false pretences and I accordingly convict him of same.

### **Sentencing**

In sentencing the convict, the court takes into consideration the fact that he is a first-time offender, the total amount of GHC23,500 received from the complainant under false pretence and the fact that the accused person has not refunded the amount. I therefore sentence the accused person as follows;

**Count 1:** The accused person is sentenced to serve two (2) years imprisonment in hard labour.

**Count 2:** The accused person is sentenced to serve a term of imprisonment of Two (2) years in hard labour.

The sentences shall run concurrently.

### **Restitution Order**

In accordance with **section 146** of Act 30, the accused person shall refund to the complainant the total amount of GHC23,500 received from the complainant under false pretences.

### **Ancillary Orders**

A bench warrant shall be issued together with the warrant of commitment of sentence. Upon arrest, the arresting officer shall endorse the date of arrest at the back of the warrant and the sentence of imprisonment shall commence from the date of the arrest of the convict.

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