

IN THE CIRCUIT COURT HELD AT CAPE COAST ON FRIDAY THE 9<sup>TH</sup> DAY OF  
JUNE, 2023 BEFORE HER HONOUR VERONIQUE PRABA TETTEH (MRS.),  
CIRCUIT JUDGE

---

116/2022

THE REPUBLIC  
VRS  
SAFOHENE NANA AKAI

---

Chief Inspector Asare Bediako John for prosecution

E.M.K. Dzakpasu for accused

### JUDGMENT

There were initially four charges leveled against the accused person all emanating from a series of transactions that took place in the year 2017. The accused, described as the secretary to the Nkum number 4 Asafo Company of Cape Coast and an accountant, accused was charged with defrauding by false pretenses the complainant of the amount of GH¢125,000 by claiming he could sell eight plots of land to her when he knew he could not do so. He is also charged with unlawful sale of public land, grant of land without title and grant of land without authority. At the close of the prosecution's case, I acquitted and discharged the accused of the count of defrauding by false pretense.

With the acquittal and discharge of the accused on the first count, prosecution had to lead evidence on the other charges, that the accused person sold a public land, that he had no title to sell the land and that he had no authority to sell the land belonging to

Rev. William Porter. If the accused is able to show that he had the title and authority to sell the lands and that it was not public land, the case of the prosecution fails.

Section 11(2) of the Evidence Act, 1975, NRCD 323 provides that prosecution in a criminal action, must prove the guilt of an accused person beyond reasonable doubt in order to secure a conviction. This means 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 the evidence led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it is the accused who committed it. See *Asante v The Republic* (J3/7/2013) [2017] GHASC 3 (26 January 2017);

The burden on prosecutions stated above, requires proof beyond reasonable doubt. In section 13 of Evidence Act, it is provided that

*13.(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.*

Proof beyond reasonable doubt requires prosecution to present such evidence to lead to the conclusion beyond any fanciful doubt that the accused committed the offence. There are three main issues arising from the case against prosecution

- a. Whether or not the accused person sold public land to the complainant
- b. Whether accused person sold land without title
- c. Whether accused person sold land without authority.

### **Unlawful Sale of Public Land**

Under count 2, the accused is charged with unlawful sale of 0.27 acre of public land at Ola, a suburb of Cape Coast in the year 2017. Section 236(3) of Act 1036 provides;

*(3) A person who unlawfully appropriates, sells or conveys public land commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units and not more than ten thousand penalty units or to a term of imprisonment of not less than seven years and not more than fifteen years or, to both.*

The prosecution called four witnesses including the investigator. The first two witnesses were involved in the sale transaction with the accused person and the final witness was the Supi or head of the Nkum no.4 Asafo Company. The accused person also called a witness to support his testimony. The case of prosecution is that, the complainant is a registered nurse practicing in the United States of America. In 2017, she purchased through PW2, eight plots of land situated around St. Augustine's School from the accused. In 2020, the complainant gave the indentures given to her, by the accused, to PW1. The witness conducted further checks with the documents and they revealed that the indentures were not genuine as they were not signed by the grantor in the person of, Supi Patrick Cobbinah. Furthermore, Supi Patrick Cobbinah claimed he had no knowledge of the transaction. A further check also revealed that a portion of the land belonged to the Methodist church and another portion was Public land.

The investigator in his evidence, stated that when the case was reported, he was given copies of the indenture and with the site plans he went to the lands commission to conduct a search. The search report revealed that portions of the land falls within land acquired by the government of Ghana from Evans Smith in the year 1902 and this is witnessed by the deed of Conveyance dated 21/07/1902. The other portions of the land also falls within a registered deed of gift dated 27<sup>th</sup> April 1934 from Thomas H. Halm to Rev. William Porter. This search report was marked as Exhibit G.

Concerning the search report, in the civil case of Registered Trustees of The Catholic Church of Achimota vrs Buildaf Ltd and others (j430 of 2014) [2015] GHASC 124 (25 June 2015) Benin JSC held:

*“A search report is indicative of the solution of the land in question as the lands department has it at the date of the search, but its credibility can be impugned in judicial proceedings so when it succeeds the court will be at liberty to reject it. That is how the court’s treatment of the search reports should be understood.”*

Exhibit G is therefore proof that part of the land sold to the complainant forms part of state land as is registered at the Lands Commission.

The accused himself denied dealing personally with Josephine Hagan, who is the complainant in this case but admits that he dealt with PW2 who was acting on her behalf. It is for this reason that he prepared the indentures in her name. He also admits to receiving money for the sale of the land even though he claims the money he received is less than what prosecution claim. Since this case is not one for the recovery of the monies paid to accused, I find his admission of his receiving money for the sale of land to the complainant sufficient proof of his sale of land to her. I am also satisfied that as per Exhibit G, the land accused sold to the complainant forms part of state land acquired by the state in the year 1902. In the absence of any challenge to this evidence by the accused, I find that 0.27 acres of the land he purported to sell to the complainant in 2017 was state land and therefore contrary to the provisions of Section 236(3).

The third and fourth counts emanate from the same Section 277 of Act 1036 and provide under 277 (2) (a) (b) and (c) as follows;

*(2) A person who*

*(a) purports to make a grant of land to which that person has no title,*

*(b) purports to make a grant of land without authority, or*

*(c) makes conflicting grants in respect of the same piece of land to more than one person, 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.*

Prosecution is thus to prove under count 3 that the accused made a grant of 0.30 acre of land to the complainant in which he had no title. In this case, the grant was not made in the accused's personal capacity as Exhibits A and B all refer to the vendor as Supi Patrick Cobbinah of Nkum No.4 Asafo company. The accused claims that he acted on behalf of the Asafo company. This was denied by Supi Patrick Cobbinah, who appeared in court to deny his knowledge and involvement in the sale of the land to the complainant. According to him, he only became aware of the sale when the matter had been reported to the police. The accused himself admitted that it was not Supi Cobbinah's signatures on the indentures but that he had signed them himself on behalf of the Supi.

It is my opinion that the issue of the knowledge of the Asafo Company and its head was a sub matter that was internal to in the affairs of the Company and not central to the issue. What is paramount, is the fact that, the land in dispute itself does not belong to the Asafo Company but to a different person who is named as Rt. Reverend William Porter. This is due to a deed of gift registered at lands commission as shown in Exhibit G. While it is doubtful that the said Reverend is alive as at today; It is certainly clear that accused did not have his permission or anyone representing the reverend's permission since he was claiming it was property of the Company.

The accused himself could not provide evidence that the land truly belonged to the Asafo Company. The witness statement filed by the accused was mainly focused on the quantum of money he received from complainant through her representative. He claims he received GH¢15,000 less than what was claimed by the PW1 and PW2.

In my opinion, for the purpose of establishing the sale by accused person, it is sufficient if it is proved that the accused received even a token, representing the purchase price of the money. Consequently, the matter in issue is not how much accused received for the sale of the money but whether accused sold or purported to sell the land. This is not a fact in dispute at all as accused has admitted to it.

The prosecution during the accused's cross examination tendered through him a judgment titled

*In the matter of the Public Lands Ordinance and In the Matter of Land Acquired at Cape Coast for Extension of African Hospital Grounds- Plan No. Z1649.* This is a judgment that the accused himself had sought to tender but failed to do so. In the judgment, the first paragraph sets out the issue as follows:

*This matter arises under the provisions of section 7 of the Public lands ordinance in regard to a small area of land acquired by the government and lying between St. Augustines College grounds and the colonial hospital at cape coast as delineated in pink on the plan admitted in evidence and marked as exhibit "A"*

*On the 11<sup>th</sup> of December 1945 the commissioner of lands paid into court a sum of 25 in respect of compensation for the acquisition of this area. No issue has been raised as to the sufficiency of the amount, but solely as between the two claimants as to which one is entitled to that money,*

It is clear that the above judgment was one for determination of the proper party to receive compensation for the acquisition of land lying between St. Augustine and the colonial hospital. The court granted that judgment found in favour of Nkum No. 4 Asafo Company over the Ebiradze Family of Cape Coast. The court determined that the company owned lands in that area and the proper party to receive the compensation in respect of the acquisition by government was Nkum No.4 Company.

While I found this judgment to establish that the Company had owned lands in that area, it lends support to the case of the prosecution that the lands had been acquired by the state as far back as 1945, it did not prove the Company's ownership of the land in dispute. I find that the sale of the land by accused to complainant which did not belong to the Asafo No.4 Company is sufficient proof of the accused's guilt on count 3 and I find him guilty on that count.

The final count is that accused did not have authority to sell land to the complainant. I am satisfied flowing from the above that accused did not have the authority of Rev. William Porter to sell the land to the complainant. The accused in selling the land, operated under the misapprehension that the land belonged to the Asafo Company. As to whether this misapprehension was with the knowledge that it was false or it was done carelessly, I am satisfied that accused sold the land without the authority of the owner of the land on record or his family members. I find the accused guilty as well on count 4.

Accused having been convicted on all 3 counts is sentenced as follows: for count 2, selling public land, he is sentenced to pay a fine of 5000 penalty units or in default spend 7 years in prison custody.

On count 3 and 4 he is sentenced to pay a fine of seven thousand five hundred penalty units or in default spend seven years in prison custody respectively. Since the offences arise out of one transaction, the accused's sentence is to run concurrently.

**(SGD)**

**H/H VERONIQUE PRABA TETTEH (MRS)**

**(CIRCUIT JUDGE)**