

IN CIRCUIT COURT "1" HELD AT TAKORADI, WESTERN REGION ON
THURSDAY, 23RD MARCH, 2023 BEFORE HIS HONOUR MICHAEL K. AMPADU,
CIRCUIT COURT JUDGE

SUIT NO. C18/95/22

THE REPUBLIC

VS.

NANA ATTA KAKRA II

JUDGEMENT

Accused Person: Present

Prosecution: G/Sgt Emmanuel K. Owusu Agyeman - present

Four counts were preferred against the accused person which were (1) Fraudulent Land Transaction contrary to Section 34 (a) and (b) of Act 122 of 1962; (2) Forgery of Other Documents contrary to Section 159 of the Criminal and Other Offences Act, 1960, Act 29; (3) Forgery of Other Documents contrary to Section 159 of Act 29/60; and (4) Possession of Forged Documents contrary to section 166 of Act 29/60.

The accused person pleaded not guilty to all the charges. Three witnesses were called by the prosecution in their attempt to establish their case against the accused person. They were Nana Kwasi Kuma, (PW1), Copson Baidoo (PW2) and D/Cpl Francis Osei Bonsu, No. 46263 (PW3).

Complainant in this case is a farmer and caretaker of Yebiw Bronsanase Ekisi family land located across Yebiw and Old Daboase junction. Whiles the accused person is the Chief of Old Daboase junction community. Sometime ago, the complainant's family entrusted part of their family land situated at Old Daboase junction into the care to the accused person. The accused person's core mandate was to facilitate the sales of these lands, account to the family on proceeds received and present the buyer(s) to the complainant's family for them to sign the indentures. The complainant in the month of December 2021 came across two indentures bearing names of Alhaji Abdulai and Enock Asare Leeward Ellen where the signatures and stamp therein were not that of the signatories and of the family members. The accused person was confronted by the complainant and he admitted having made his own stamp and without the complainant family's knowledge, signed these indentures for the bearers. The accused person in his cautioned statement admitted having made a stamp which he knew was not genuine in the name of the complainant's family with the inscription "head of Ekisi family of Old Daboase family Abusuapnyin Copson Baidoo" and signed as a lessor himself without the knowledge of the complainant. Police retrieved the stamp from accused person. Accused after investigations was charged with the offences and arraigned before this honourable Court.

Section 11(2) of the Evidence Act (975) Act 323 states that in a criminal action, the burden on the prosecution on facts essential to guilt requires the prosecution to produce sufficient evidence so that the court can find the guilt of the accused person beyond reasonable doubt.

Section 13(1) of the Act also provides that "In any civil or criminal action, the burden of the prosecution as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt."

Section 22 of Act 323 further provides that *"In a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond reasonable doubt."*

The accused however is not supposed to prove that he is innocent and it is enough if he raises reasonable doubt in the case of the prosecution. It was stated in the English case of **Woolmington vs. D.P.P. (1935) AC 462 at 481 per Sankey LC** that *"Whiles the prosecution must prove the guilt of the prisoner there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence."*

The evidence of the PW1, complainant, was that he was the caretaker of all the Yabiw Bronsase Ekisi Family Land which stretches across the Sharma District part of which also lies at told Daboase Junction. That sometime ago his family entrusted part of their family land at Old Daboase Junction into the care of the accused and he was asked to sell the lands at Old Daboase Junction and give proceeds to the family so that the family prepares the indentures for the buyers. He alleged that as part of their regular visits to the lands, they met one Mr. Kpodo who told them that one Alhaji had bought a parcel of land from Nana Atta Kakra II (accused) and further showed them indentures depicting the sales and when the documents were inspected they detected that Nana Atta Kakra II had forged signatures of the PW1 and Ebusuapanyin Copson, who is the PW2 in this case, on the indentures. They also found that the accused had made a rubber stamp of the family and used same to stamp the indentures even though the Ebusuapanyin has no stamp for himself or the family. It was the further evidence of the PW1 that they also met another person who informed them that he also bought a parcel of land from the accused person and he also evidenced the said sales to him with an indenture signed by the accused

person with Ebusuapanyin Assifuah Kum as the lessor and the indenture, he alleged was thumb printed by Ebusuapanyin Assifuah even though Ebusuapanyin Assifuah does not thumbprint documents but signs. According to him, when all these documents were seen, they confronted the accused person who admitted having sold the land but had not given the proceeds to the family. This statement or evidence of the PW1 is the same as what he gave to the prosecution as initial statement.

The PW2 testified that he is the current family head of the Ekisi Bronsase of Yabiw which family owns vast land in and around Old Daboase Junction. He testified that his predecessor, the late Ebusuapanyin Assifuah Kum and the family linguist Kwasi Kuma engaged the accused person to take care of their family lands around Old Daboase Junction and he was mandated to sell the lands only and nothing else and after the sales the documents should be brought to them to sign. That the accused was not given any authority to sign documents emanating from sale of land to any buyer. That when he assumed office as head of family, he has not signed any document in respect of land sale but at point in time, he realised that the accused has used a stamp purported to have been made by him (PW2) to stamp some documents using his name and thumb prints as well as the forged signature of Okyeame Kwasi Kuma. That the stamp bears his name and his position but he knows nothing about it. According to him, the accused admitted making the stamps and signing the documents as well and pleaded for an amicable settlement but failed to honour his promise and several attempts to have the matter settled have failed that is why they were in Court.

PW3 is No. 46263 Detective Corporal Francis Osei Bonsu stationed at RCID, Sekondi. He stated that when he received the case on 19/11/21 he invited the accused and obtained cautioned statement which cautioned statement he tendered as Exhibit F. He alleged the accused told him that he was engaged by complainants to sell their family lands for them.

According to him he advised the complainants to demarcate the area so that they can make more money and upon this advice the complainants entrusted the lands into his care so he engaged a surveyor to do the base map and later a cadastral plan. According to the PW3, the accused admitted he sold some of the plots and presented the proceeds and the documents to the family who signed them. He said the accused told him he later sold some lands but the complainants failed to sign the indentures claiming that they have not received the proceeds. According to PW3, the accused person sold 0.06 and 0.33 acres of land to two buyers with the forged stamp and signatures.

The first charge against the accused is Fraudulent Land Transaction contrary to section 34 (a) and (b) of Act 122 of 1962.

Section 34 (a) and (b) of the Act provides,

A person who knowingly;

- a. purports to make a grant of a piece of land to which that person does not have title
or
- b. purports to make a grant of a piece of land without authority... commits the offence of a second-degree felony and is liable in addition to any other punishment that may be imposed, to pay an amount of money equivalent to twice the value of the aggregate consideration received by that person.

For the prosecution to succeed in this offence, they have to prove that the accused person made a grant of land to some other person and that the accused did not have title to the said land at the time of the grant or he made the grant of the land without the authority of the actual owner of the piece of land. It is clear from the facts that the accused person herein did not have title to the lands he allegedly granted to the third parties. Both the complainants and accused admitted that the land in dispute which are located around

the Old Daboase Junction is the property of the complainants, the Yabiw Bronsase Ekisi family which land stretches across the Sharma District. So, the accused person could not have granted these lands to anybody without he having title to same.

The second issue to consider is whether the accused had authority to grant the lands. The law makes it clear that a grant can be made with authority from the actual owners even though the grantor may not have title to the land.

The PW1, the complainant and the PW2, the Ebusuapanyin of the Ekisi Family of Yabiw stated in their statements to the police and their witness statements to this Court that they entrusted their lands around Old Daboase Junction into the care of the accused, Nana Atta Kakra II to sell for them. According to them, the accused was to sell the lands only and bring the proceeds to the family for the family to prepare the indentures and all the other documents for the buyers.

The records show that this role was given to the accused person by the predecessor of the complainants. It is also a fact that it was accused who was entrusted with the duty of engaging a surveyor to draw the base map of the Lands and finally the making of the cadastral plan of the area after he (accused) told the predecessor of the complainants that that was the best way to have the plots sold. This assignment the complainants did not say the accused defaulted in anyway in its performance.

Accused stands charged because he is alleged to have sold some parcels of land without giving the proceeds to the complainants. On count one, he is alleged to have collected and amount of Seventy Thousand Ghana Cedis (GH¢70,000.00) from one Enock Asare in one of his fraudulent transactions.

In cross examination of PW1 by the accused person, he answered this way;

Q: You said I sold your land at a price of Seventy Thousand Ghana Cedis (GH¢70,000.00) to Enock Asare, who is Enock Asare?

A: Enock Asare is now on the land after building his house on it.

Q: How many plots of land did Enock Asare have?

A: It is one plot. That is what he told me when I asked him.

Q: Is one plot sold at Seventy Thousand Ghana Cedis (¢70,000.00)?

A: When I asked, that is what he told me. I did not sell anything to him.

From the above it is clear that the PW1 did not even know how much the said plot was sold to Enock Asare except what Enock Asare told him. The prosecution also failed to call Enock Asare to confirm that he bought a plot of land for Seventy Thousand Ghana Cedis (GH¢70,000.00). It was held in the case of **The Republic vs Kuree (1941) W.A.C.A. 175** at page 177 that *"It is well established that it is the duty of the prosecution to place before the Court all available relevant evidence. This does not mean, of course, that a whole list of witnesses be called upon the same point, but it does mean that if there is a vital point in issue and there is one witness whose evidence will settle it one way or the other, that witness ought to be called."*

Enock Asare has bought the land, built on it and was living on it as said by the PW1, before the complainants are complaining. It is clear that the land was sold to Asare by the predecessor of the complainants. They did not complain at the time.

It is clear that the complainants were not following the role they entrusted into the care of the accused person to sell lands on their behalf. To another question, the PW1 answered this way;

Q: Do you remember at our last meeting, I told you to bring the documents I had not signed so that I sign them?

A: Not true. When we met them and they said they had bought the land, we told them we did not know them so you should go and arrange with them and make a new indenture for them so that we can sign it for them.

Q: Have you signed Sister Gladys' child's indenture which was brought to you?

A: No Sister Gladys's child has brought any indenture to me.

The above discussion between the PW1 and accused person shows that the complainant was aware of some of the sales done by the accused person on behalf of the complainants. This is so because it is the complainant who authorised the accused person to sell their Old Daboase lands on their behalf. What the complainants did wrong was that they failed to monitor the sales and confused the sales made by the accused person with the proceeds they got from him. These perceived errors do not take away the fact that the accused was authorised to sell the lands by the complainant's family head. The accused was authorised to sell the lands so he cannot be guilty of the offence of Fraudulent Land Transactions. He is therefore acquitted and discharged on count one.

Counts two and three are Forgery of other documents contrary to section 159 of the Criminal Offences Act, Act 29 of 1960. Section 159 of Act 29/60 provides that "A person commit a misdemeanour who forges a document;

(a) with intent to defraud or injure another person, or

(b) with intent to evade the requirements of the law, or

(c) with intent to commit, or to facilitate the commission of a criminal offence.

Section 11 (1) of Act 29/60 states; *"Where a person does an act for the purpose of causing or contributing to cause an event, that person intends to cause that event, within the meaning of this Act, although in fact, or in the belief of that person or both in fact and also in that belief, the act is unlikely to cause or contribute to cause the event."*

The accused stated clearly his reason for forging the stamps and the signatures of the complainants. His reason was that he was entrusted with lands to sell for the complainants. He sold some lands earlier to some people and when the complainants took over the headship of Ekisi family of Yabiw, they failed to sign the indentures for the persons who bought the lands from him before the complainants assumed their headship roles. The grantees started putting pressure on him so he was compelled to forge the stamp and signatures in order to prepare the indentures for them. The PW1 agreed in cross examination cited earlier that he asked the accused to organise the buyers and prepare the documents for them to sign. The accused also said that he prepared but the complainants failed to sign and that compelled him to forge the stamp and signatures. If the complainants knew that the accused sold lands and asked him to organise the persons for them to sign and the complainants had abided by their promise to sign, the accused will not have forged anything. The reason for creating the stamp and forging signature flow directly from the mandate given to the accused person Nana Atta Kakra II to sell the lands which sales the complainants failed to specifically monitor. The Court cannot see the intention of the accused as one which was aimed at defrauding the complainants or to evade any requirements of the law or to commit or facilitate the commission of any criminal offence. The complainant should have contacted the person involved (accused) and reviewed the mandate they gave to the accused person on this sale, come out clearly with any misgivings instead of the allegations made against the accused person. The accused person is therefore acquitted and discharged on counts two and three also.

Count four is possession of forged documents contrary to section 166 of Act 29/60. Section 166 of act 29/60 provides that; *"A person who with an intent mentioned in this Chapter, has in possession a document or stamp, which is forged, counterfeited, or falsified, or which that person knows is not genuine, commits a criminal offence and is liable to the like punishment as if that person had, with that intent forged, counterfeited, or falsified the document or stamp."*

The prosecution was supposed to prove that the accused person intended to keep or possess the stamp in order to commit any criminal offence. The court has decided earlier that the accused could not be attached with any such intention at the close of the prosecution's case. He did that to defend himself from the complainants' non-cooperation with him on the mandate they gave him to sell their lands which they placed in his care. He is therefore acquitted and discharged on this count, count four also.

In all, the accused is acquitted and discharged on all the charges preferred against him. The accused person is however ordered to hand over the stamp to the complainants if they need it or submit it to the prosecution for it to be destroyed if the complainants do not need it.

SGD

H/H MICHAEL KUDJO AMPADU

CIRCUIT COURT JUDGE