

IN THE CIRCUIT COURT HELD AT TEPA ON THURSDAY THE 13<sup>TH</sup> DAY OF  
APRIL 2023 BEFORE HER LADYSHIP JUSTICE GWENDOLYN MILLICENT  
OWUSU, A JUSTICE OF THE HIGH COURT SITTING AS AN ADDITIONAL  
CIRCUIT JUDGE

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04/2020

THE REPUBLIC  
VRS  
AKWASI YEBOAH

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PROSECUTION: CHIEF INSPECTOR CHARLES AGOVI  
ACCUSED PERSON SELF REPRESENTING

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## JUDGMENT

The accused was arraigned before this court on a charge of defrauding by false pretences contrary to section 131 of the Criminal Offences Act, 1960 (Act 29).

The particulars of the offence are that Akwasi Yeboah, a businessman on December 3, 2018, at Tapa in the Ashanti Circuit and within the jurisdiction of this court with the intent to defraud did obtain the consent of Godwin Kofi Dzakpasu to part with cash the sum of GHC 47,500.00 by means of certain false pretences to wit: if the said amount is given to you, you will be able to buy him 100 bags of dried cocoa beans”, and upon such false representation, you succeeded in obtaining the said GHC 47,500.00 from the said Godwin Kofi Dzakpasu which statement you well knew at the time of making it to be false.

Accused pleaded guilty with explanation to the charge.

The brief facts of prosecution’s case are that, Complainant Godwin Kofi Dzakpasu is the Tapa District Manager for Best Link Global Ghana Limited, a licensed cocoa purchasing

company, and lives at Tewa. Accused Akwasi Yeboah is a businessman who resides at Sunyani. In the month of November 2018, accused went to the complainant and falsely pretended to be a cocoa purchasing clerk. He said he wants to do business with the complainant. Complainant who believed accused was truly a cocoa purchasing clerk asked him to get a guarantor and accused provided him same. On the 3<sup>rd</sup> day of December 2018, complainant issued a cheque with a face value of forty seven thousand, five hundred Ghana cedis (GHC 47,500) to the accused person to buy one hundred (100) bags of dried cocoa beans for him. The accused after receiving the cheque went to cash same at Ghana Commercial Bank, Sunyani branch and went into hiding. Complainant made all possible efforts to locate the whereabouts of the accused person but all proved abortive. About a month ago, the complainant had information that accused had relocated to Cote D'ivoire where he is trading in cashew with the money he took from him. Complainant then engaged accused's pastor, one George Osei Frimpong to lure accused back to Ghana. On the 26<sup>th</sup> day of June 2019, the said George Osei Frimpong lured accused back to Ghana. Complainant was informed and he lodged a complaint with the police at Sunyani who arrested the accused. Since the case emanated from Tewa, accused person was brought to Tewa police for investigations and he was cautioned to that effect in the presence of an independent witness. Accused in his investigations caution statement, admitted having collected the said amount of money from the complainant under the pretence of buying one hundred (100) bags of dried cocoa beans for him. That after cashing the money, he gave same to Issaka Gyau a friend of his who resides at Cote D'ivoire to buy the cocoa for him there after which he will transport same to Ghana for him, but the said Issaka Gyau after taking the money, kept on giving him excuses one after the other. After police investigations, accused person was charged with the offence as stated on the charge sheet and admitted to surety in lieu of bail to appear before this honourable court.

**Section 131** of Act 29,

- (1) Whoever defrauds any person by any false pretence shall be guilty of a second degree felony.
- (2) A person who by means of a false pretence or by personation obtains or attempts to obtain the consent of another person to part with or to transfer the ownership of a thing by a false representation of acting in accordance with the instruction, orders or a request of the president or member of the cabinet commits a second degree felony under subsection (1) and is liable to a term of imprisonment of not less than ten years and not more than twenty-five despite section 296 of the Criminal and Other Offences (Procedure) Act 1960 (Act 30)

**Section 132** defines Defrauding by False Pretence as follows:

“A person is guilty of defrauding by false pretences if, by means of any false pretence, or by personation he obtains the consent of another person to part with or transfer the ownership of anything.”

**Section 133 of Act 29** further explains that:

A false pretence is 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. It further states that for the purpose of the section, 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. The expression "a representation of the existence of a state of facts" includes a representation as to the non-existence of anything 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 any

intention or state of mind in the persons making the representation, nor any mere representation or promise that anything will happen or be done, or is likely to happen or be done; a consent shall not be deemed to have been obtained by a false representation as to the quality or value of a thing, unless, the thing is substantially worthless for the purpose for which it is represented to be fit, or to have been substantially a different thing from that which it is represented to be; and subject to the foregoing rules, if the consent of a person is in fact obtained by a false pretence, it is immaterial that the pretence is such as would have had no effect on the mind of a person using ordinary care and judgment.

#### BURDEN OF PROOF

The prosecution had the burden to prove that the accused person has perpetrated the said offence. This is so because in our criminal law jurisprudence, it is the prosecution which carries the burden of proof, the standard of which is proof beyond reasonable doubt as reflected in the statement of Lord Sankey in **Woolmington v. DPP [1935] UKHL 1** that

*“no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained”.*

It was held in *Dexter Johnson v. the Republic [2011] 33 GMJ 68 S.C* that prosecution would have to discharge this burden by leading evidence satisfactorily to prove that the accused person committed the offences he has been charged with. Any doubt in the prosecution’s case should inure to the benefit of the accused person.

Section 11(2), (3) and (4) of the Evidence Act refers to the burden on prosecution to prove the guilt of the accused person beyond reasonable doubt. Section 11(2) states that

*“in a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to the guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt”.*

This is in consonance with **Article 19 (2) (c) of the 1992 Constitution** which provides:

*“A person charged with a criminal offence shall be presumed to be innocent until he is proved or had pleaded guilty”.*

#### PROSECUTION'S CASE

Accused collected GHC47, 500.00 from PW1 to purchase hundred (100) bags of dried cocoa beans for Best Link Global Ghana Limited, a cocoa buying company. PW1 is the District Manager of the said company. Before the said money was given to the accused person, PW2 stood as a guarantor for the accused, using his house as collateral. During cross-examination, accused strongly challenged the witnesses for the prosecution that he has not committed the offence. However, at the close of prosecution's case, it was evident that accused had indeed collected the said sum from PW1 to supply him with 100 bags of dried cocoa beans but failed to do so, and had failed to return the money as well. The court ruled that a prima facie case had been made and called on the accused to open his defence.

Prima facie evidence is evidence which on its face or first appearance without more, could lead to the conviction if the accused fails to give reasonable explanation to rebut it.

It is the evidence that the prosecution is obliged to lead, if it hopes to secure conviction of the person charged. See Kwabena Amaning alias Tagor vs. Republic (2009) 23 MLRG 78 C.A. Thus, 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/her, he is generally not required by law to prove anything. He is only to raise a reasonable doubt in the mind of the Court as to the commission of the offence and his/her complicity in it except where he/she relies on statutory or special defence.

#### DEFENCE OF THE ACCUSED

According to the accused, he has been a purchasing clerk, purchasing dried cocoa beans for cocoa buying companies since 2001. He got to know PW1 in the year 2018, through a friend Kwabena Oppong who is also a purchasing clerk working under PW1. Accused said PW1 quizzed him on his competence and only agreed to let him buy the cocoa for him after he was convinced. He said PW1 was more pleased when he told him that he could also purchase the dried beans from La Cote D'Ivoire. Accused says he and PW1 struck a good acquaintance such that whenever PW1 came to Sunyani, accused will take PW1 around on the motor bike of the accused for PW1 to complete his errands. The landlord of the accused gave documents covering his house as collateral for PW1 to be given the said money for buying the cocoa. Accused further told the court that he was instructed by PW1 to convert the money into CFA Francs so they can use same to procure the cocoa from La Cote D'Ivoire, which accused did, and got CFA 5, 750, 000.00. Accused says he and PW1 agreed that accused was to bring the cocoa from La Cote D'Ivoire and deposit same at a border town called Awiakrom, where PW1 will make a truck available to pick same. Accused says he spent one week in Agnibilekro in La Cote D'Ivoire to purchase all 100 bags which was loaded into a truck. En route to Dame from Agnibilekro, the truck conveying the cocoa beans got impounded by Ivorian security men, who

demanded payment of CFA 800, 000.00 before releasing the truck. Accused says he called PW1 and PW2, informed them of the developments but they ignored him. After four (4) days when the money demanded was not paid, the Ivorian security escorted the truck back to Agnibilekro, and accused returned to Sunyani. According to the accused, after purchasing the cocoa, he went back to Dormaa where PW1, PW2, and PW3 were lodging in a hotel awaiting the arrival of the goods to inform them that the road was not secure but they told him to employ any tactics available to me to bring the goods to Ghana. Accused further said that on his return to Sunyani, he had met with PW1 and PW2, with the wife of the accused in attendance to see how best to get the cocoa back but PW1 insisted that once accused could not get the cocoa to Ghana, he will not listen to anything. PW1 had, unknown to the accused, already arranged with the police to arrest him, and so he was arrested at that very time. Accused says he was ready to go with PW1 and PW2 to La Cote D'Ivoire to try and sort out the situation but PW1 and PW2 refused.

## ANALYSIS

Accused in his investigating cautioned statement exhibit 'C', admitted pleading with PW1 and soliciting the intervention of PW3 to put in a word for him before PW1 gave him the money for the cocoa, but under cross-examination, he was unwilling to admit same. In the same exhibit 'C', accused said after he had given the money to one Issaka Gyau to buy the cocoa beans, and the said Issaka Gyau after taking the money kept telling him stories until he caused the arrest of the said Issaka Gyau. When the said Issaka Gyau was released on bail, he requested accused to give him some time to refund the money to the accused. Accused said due to that he was not able to return to Ghana until his pastor came to him at La Cote D'Ivoire and spoke to him to return and sit with PW1 to see how best to resolve the matter. Nowhere in the said exhibit did the accused mention that they

had purchased the cocoa and loaded same on a truck that got impounded by Ivorian security.

The court during the trial observed from the posture and demeanor of the accused person that there was something that was not being said. The court observed that the accused when cross-examining PW1 wanted to ask certain questions but was hesitant. The court thus encouraged the accused person who was then unrepresented by counsel to open up and tell the court whatever the reality was. It was then that the accused informed the court that the agreement between himself and PW1 was to bring in the dried cocoa beans from La Cote D'Ivoire, and started cross-examining PW1 on same. PW1 and PW3 however vehemently denied ever having any knowledge, let alone agreed that the cocoa beans were to be bought from La Cote D'Ivoire to be brought in Ghana. Accused also persisted challenging that there were some requirements that PW1 was to satisfy by providing him scales and record books as per the terms of trade but these were not provided to him because there was that consensus that the cocoa was to be brought in from La cote D'Ivoire:

**Q. Did you give me a shed for the purchase of cocoa?**

**A. We do not give sheds to cocoa purchasing clerks. They have their own sheds. The accused has his own shed at Nkrah Nkwanta which we went to inspect.**

**Q. Did you give me company scales for the purchase of the cocoa? If you did, provide us with numbers.**

**A. We don't give scales to all the purchasing clerks, some have their own scales and we allow them to use it if they have. The accused said he has his own scale, so that was what he was to use.**

**Q. Did you provide me with company books in which to record transactions of cocoa purchases?**

**A. No. When you are being funded, the money is given with Company receipt. After the first returns, we then give the Company books.**

**Q. I am putting it to you that if the cocoa was to be purchased in Ghana, you would have given me books in which to record transactions when the cocoa is purchased but because we all agreed that the cocoa was to be brought from Ivory Coast, that is why you did not give me any books for record.**

**A. It is not true. With the collateral he has with us, and the money that we give to him with the Company receipt, and knowing the station (Nkrah Nkwanta) that you buy the cocoa to us, it is not only the society way bill that will enable you deliver the cocoa beans to us**

**Q. When you give me money and refuse to give me books in which to record the purchases from the farmers. Where should I keep the records?**

**A. This is not true. Every purchasing clerk has a ledger that you register all your farmers' purchases in. We do that because all your farmers' record book is given to us as a Company by Cocobod. So when it is not available, you use your records in your ledger to be accountable to your farmers at the end of the season.**

**Q. We have books in which we record transaction before the cocoa is loaded in the vehicle to transport same to the depot but because this was a deal, that is why I was not given the books.**

**A It is not true. The Company is a registered one under Ghana cocoa Board and we have another Government Company, Quality Control Division, for the movement of cocoa from the area. So when they ask you and you mention the name of the Company**

the cocoa belongs to, they will call us and when we respond that it is our cocoa, it will be allowed to come to us, and most times, we go with the Company vehicle to load the cocoa.

**Q. I am putting it to you that it was because of the deal that we sat and agreed on that you did not give me any books or scale, because you knew that I was to bring the cocoa from Cote D' Ivoire.**

**A It is not true.**

However, PW2 under cross-examination did shed some light on the matter:

**Q. Do you recall that I informed you that when I was bringing the said cocoa beans, I told you that the road had been blocked?**

**A. That is so, he informed me.**

**Q. Do you recall that you and Joseph Akpabli followed me to the Ivorian border and I requested that we all go for the cocoa but you told me that you will wait at the border while I go to bring the cocoa?**

**A Yes we went with him to Dormaa Ahenkro and stayed for two (2) weeks at a hotel. We did not see even a single bag of cocoa beans.**

**Q. I am putting it to you that when I went into the Ivorian territory, I returned the 2<sup>nd</sup> day to inform you that the road is still unsafe so we should return.**

**A Yes he came on a motor-bike to inform us.**

**Q. Do you recall that you had insisted that I go to bring the cocoa beans after I had told you that the road was unsafe?**

A Yes. He said so but the company has a big depot at Dormaa Ahenkro. So wherever the cocoa is coming from within those environs, they send it to the depot so we told him to bring them to the depot. We kept checking every three days, but nothing came.

Q. Do you recall I called you in the night to inform you that I had been arrested so you should come?

A. He said so to me on phone but I also told him that when the money was given to him, complainant did not tell him to go and bring the cocoa from Ivory Coast so if you have been arrested, we won't come.

Q. Do you recall that you had said you will also be arrested if you come so I should do my best to force and bring it?

A Yes I said so and truly, I did not go.

Q. Do you recall that I informed you that they are asking for CFA 800,000 in order to release me and the cocoa so I need that money, but you did not bring it.

A Yes, he told me and I also informed the D/O but the D/O said he has already put in a huge sum of money which he has not seen its yield so he is not ready to advance any further sums to him.

Q. I am putting it to you that we all sat and agreed that I should procure the cocoa from where I went, you are only saying this because there is an issue and you want to take yourself out of it.

A I am only a guarantor so when he and the D/O sat to arrange on where to go and what to do, I was not there. I was only trying to help.

The response of PW3 during cross-examination that **“The accused has his own shed at Nkrah Nkwanta which we went to inspect”** clearly indicates that they did conduct their checks on the accused. This also means that they knew that the accused was someone who does business in La Cote D’Ivoire and has links and contacts there. PW4 under cross-examination did confirm to this court that even he came to know that the accused is someone who does business in Cote D’Ivoire:

**Q. And as the investigator, did you find out what kind of business the accused is engaged in?**

**A. Yes**

**Q. What was the business as you found out?**

**A. He buys cocoa, and also buys goods from La Cote D’ivoire and sells in Ghana. He is also into the selling of plastic bowls and buckets.**

Counsel for the accused submits in his written submissions that this was a contractual agreement between two consenting adults, and PW1 could have looked for his remedies in civil action, so to prosecute the accused criminally is not only wrong but an abuse of the legal processes which this court must not countenance. Is counsel for the accused saying that a civil transaction cannot give rise to a criminal action? Certainly not. Almost all fraud cases start as a civil transaction between the parties. It is the conduct, how it was procured, and the ingredients of the offence to be proved that determines the outcome. And if the acts and intents are tainted with fraud which can give rise to both civil and criminal actions, the victim is at liberty to choose whichever cause of action or pursue both, if he so desires.

From the evidence on record, clearly, PW1 was aware that the venture they were about to undertake was one of a high risk such that he warned the guarantor severally of the risk the guarantor was about to assume. PW1 knew how risky it was, and also knew that the said importation was illegal. When he knew the consequences and opted to take his chances, why is he now asking that the accused be punished for defrauding by false pretences?

The accused person has done certain acts that are contrary to law, as has emerged in this trial, but the accused is not on trial for that. The accused is on trial for defrauding by false pretences. This court, going by the relevant law, the ingredients of the offence, the explanations of the accused and the totality of all the evidence on record holds that the accused is not guilty of the offence charged and is hereby acquitted

SGD

H/L JUSTICE GWENDOLYN MILLICENT  
(JUSTICE OF THE HIGH

OWUSU  
COURT)