

IN THE CIRCUIT COURT 3, HELD AT ACCRA TUESDAY THE 19TH DAY OF JULY 2023
BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT COURT JUDGE.

COURT CASE NO. D6/135/2022

THE REPUBLIC
VRS
ABDUL-MAJEED ZIBLIM

RULING ON SUBMISSION OF NO CASE TO ANSWER BY THE ACCUSED

The Accused Person has been charged on four (4) counts of the offence of Issue of False Cheque, contrary to **Section 313(A)(b) of the Criminal Offences Act 1960 (ACT 29)** and on (1) Count of Defrauding by False Pretences to section 131 of the Criminal Offences Act, Act 29 of 1960.

The Brief facts

The brief facts of the case as presented by Prosecution are that, "The complainant, Mohammed Fuseini Alhassan is a budget officer whilst Accused Abdul-Majeed Ziblim is a retired health worker. Both reside in Accra. Somewhere in 2019, the Accused approached the complainant for a loan of GH¢180,000 with a promise of monetary rewards if the funds are raised for him to execute a contract. Complainant was able to raise the amount requested and subsequently Accused issued post-dated GCB Bank cheques valued

GH¢469,750.00 for payment covering the principal and the monetary reward. Complainant presented the cheques for pay on the due dates but were dishonored. As a result, a complaint was made to the Police. Investigation disclosed that there were no adequate funds in the account of the Accused to pay the amount specified on the cheques to be drawn on the due dates. Further investigations led to the arrest of the Accused who admitted having collected GH¢180,000.00 from the complainant but has refunded GH¢218,000.00. Accused person was charged with the offences after investigations.

The Accused Person pleaded not guilty to all the five (5) counts levelled against him on May 25, 2022 when his plea was retaken. At the close of prosecution's case, Counsel for Accused prayed to file a submission of no case to answer and same was filed on July 3, 2023. This court has perused the submissions filed. The court has taken the submissions into consideration in coming out with this ruling.

STANDARD OF PROOF

THE STANDARD AND BURDEN OF PROOF

The settled position of the law as espoused in several authorities decided by the Ghanaian Courts is that at the close of prosecution's case, a prima facie case ought to have been established. **MALI V. THE STATE** [1965] GLR 710; **THE STATE V. SOWAH** [1961] 2 GLR

745; **MOSHIE V. THE REPUBLIC** [1977] 1 GLR 258; **APALOO v. THE REPUBLIC** [1975] 1 GLR 156; **ALI KASSENA V. THE STATE**

[1962] 1 GLR 144 and recent cases such as **TSATSU TSIKATA V. THE REPUBLIC** [2003-2005] 2GLR 294. In the case of **MICHAEL ASAMOAH & ANOR v. THE REPUBLIC** Suit No. J3/4/17 dated 26th July, 2017, where the Supreme Court speaking per Adinyira JSC stated the law thus:

“Furthermore, the standard of proof borne by the prosecution at this stage **cannot be proof beyond a reasonable doubt**, as held in the case of **Tsatsu Tsikata v. The Republic** [2003-2004] SCGLR 1068” This position does not also mean that the court should lower the bar for Prosecution at this stage. The evidence led should be enough to convict at that stage but as long as the accused has not spoken his guilt, it is not proved beyond reasonable doubt and if it is not enough to convict in circumstances where the accused refuse to speak then accused should be acquitted at that stage.

From the law stated above, it is clear that even without the prompting of the Accused Persons, this Court is obliged by law to consider, at the close of Prosecution’s case, whether sufficient evidence has been offered to prove every essential element in the offence charged.

To determine whether or not a case has sufficiently been made by the prosecution to justify this Court to invite the Accused Persons to open their defence, it is necessary to set out the scope of burden that is cast on the prosecution to discharge at this stage. That is to say, whether the Prosecution has been able to establish a prima facie case

against the accused persons in respect of each of the offences charged.

Referencing from the ruling of the High Court in the case of **THE REPUBLIC v. EUGENE BAFFOE-BONNIE & 4ORS** Suit No. CR/904/2017 dated 23rd May, 2019, what will necessitate a discharge and an acquittal of the accused persons, at this stage is when the following are present;

1. That there has not been sufficient evidence to prove the essential elements in the offence charged.
2. That the evidence adduced by the prosecution had been so discredited as a result of cross examination that no reasonable tribunal could rely on that evidence.
3. That the evidence offered by the prosecution is so manifestly unreliable that no reasonable tribunal could safely convict upon it.
4. That the evidence is evenly balanced, that is to say, the evidence is susceptible to two likely explanations- one consistent with guilt, the other consistent with innocence.

Section 173 of ACT 30, states that, if 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 defense, the court shall, as to that particular charge acquit him. This Court is obliged by law to consider, at the close of Prosecution's case, whether sufficient evidence has been offered to prove every essential element in the offence charged. In this case, the duty of the Prosecution is to

establish a prima facie case against the Accused Person. In the case of **Yeboah and Another v The Republic [1999-2000] 1 GLR 149** where the Court of Appeal speaking per GBADEGBE J stated that “...a prima facie case was made against the appellants which required the trial circuit tribunal to call upon them to enter into their defense. The authorities are quite well settled that where at the end of the case for the prosecution, an ingredient of the offence charged was not proved or where the evidence of the prosecution was discredited as a result of cross-examination, thus rendering it unsafe to be acted upon, then the court need not call upon the accused to open their defense.”

Prosecution called two witnesses and tendered three (11) exhibits in evidence.

EVIDENCE OF THE PROSECUTION

The summary of the evidence of Prosecution is that, PW1 was approached by Accused for a loan of GHC200,000.00. PW1 who did not have the said amount spoke with other friends to help him raise the amount. PW1 was able to raise the amount of GHC180,000.00 and paid it to Accused. Accused issued to Complainant, post-dated cheques with the total face value of GHC469,750.00 which constitutes the sum of the principal as well as monetary rewards. Complainant who was not satisfied use of the cheques issued to him as security for the loan and so in addition Complainant got the Accused to hand over his land title documents to him in addition to the cheques issued. Accused promised to pay the agreed amount

after 3 days but he did not heed to his promised and failed to make the said payment. Accused gave further promises of receiving money from GRA among others but nothing come out of those stories. Complainant presented the cheque issued by Accused to GCB Bank and the cheques were dishonored by the bank. Disclosures made at the bank to police indicated that the Accused did not have funds in the account at the time the cheques were presented and the charges made against the Accused.

EVALUATION OF THE EVIDENCE AND APPLICATION OF THE LAW:

Section 313A (1) (a) (b) and (c) of Act 29 provides that:

- (a) A person who without reasonable excuse, the proof of which lies on that person, issues a cheque drawn on a bank with which that person does not have an account or
- (b) issues a cheque in respect of an account with a bank when that person does not have a reasonable ground, ... to believe that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal courses of banking business or
- (c) with intent to defraud stops or countermands a cheque previously issued by that person, commits a criminal offence.'

To determine whether or not a prima facie case has been made by the Prosecution to warrant the accused person being called on to open his defence, prosecution must prove that:

- i. That accused issued cheque(s)
- ii. That accused had knowledge that there were not enough funds in the account to pay for the cheque issued or
- iii. Did not have reasonable cause to believe that funds will be available in the account to pay for the value of the cheque issued.
- iv. That accused did issue the cheque with intent to defraud.

Section 313 (1) consists of three sub sections. Subsection (a) and (b) creates an offence similar to the offence of fraud by false pretenses under **section 131 of Act 29** except that under (a) and (b) the burden of offering reasonable excuse rests upon the Accused. But under section (c) the burden rest on the above Prosecution throughout. Also, the purpose for the cheque not going through must be an intent to defraud.

An intent to defraud on the hand is defined under **section 16 of Act 29**, among other things as follows:

‘...an intent to defraud means an intent to cause, by means of the forgery, falsification, or the 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 other words, Prosecution must demonstrate under **subsection (c)** that Accused gained some advantage when the cheques were issued. Further, Prosecution need to demonstrate that the cheques served as the consideration. Where no advantage was obtained then under **subsection (c)** no offence seems to have been committed as the offence is not one of strict liability and mere stoppage of a cheque could not constitute the offence. See the judgment of Wiredu J. (as he then was) in the case of **SEIDU v THE REPUBLIC** [1976] 2 GLR 288

The Accused has been charged under **Section 313 (A)(1)(b)** and so the Court will proceed to evaluate the evidence under the said section.

What is the evidence on record to demonstrate that Prosecution has been able to satisfy any of the sub sections of **section 313 of Act 29**?

Prosecution led evidence that Accused issued 5 cheques, which is Ex 'E' series for payment as follows:

1. Exhibit E was issued on February 27, 2020 and was presented to the bank on July 7, 2020 with face value of GHC47, 500.00.
2. Exhibit E1 was issued on March 30 2020 and was presented to the bank on August 12, 2020 with face value GHC113,250.00.
3. Exhibit E2 was issued on March 15, 2020 and it was presented

to the bank on August 12, 2020 with the face value of GHC71,500.00.

4. Exhibit E3 was issued on March 10 2020 and was presented to the bank on August 12, 2020 with the face value of GHC240,000.00.

5. Exhibit E4 was issued on March 18 and was presented to the

bank on August 12, 2020 with the face value of GHC45,000.00 Indeed, Accused, even confirmed in **Exhibit 'K'**, his Investigative Cautioned Statement that he did issue the cheques. The Court therefore finds that the first element on the issue of cheque has been satisfied by Prosecution as same is not disputed by the accused person.

Did Accused at the time of issuance of the cheques have reasonable cause to believe that monies would not be available in his accounts to pay PW1? Making a finding on this issue rests on the subsequent conduct of Accused after issuing the cheques. Indeed, under **sub section (a) and (b)** of the law, if it has been established that Accused issued the cheques, then **Per section 313 of Act 29 under (a) and (b)** the burden of offering reasonable excuse rests upon the Accused. From the investigation caution statement of Accused Exhibit K he states "That I issued the postdated cheques of 517,250.00 to the Petitioner as a guarantee together with my land title document".

From the Investigation Caution Statement and the cross-examination which ensure when prosecution witnesses were in in the

box, the Accused Person seems to suggest that the cheques were issued as security cheques and so were not meant to be cashed. My understanding of security cheques as used in the context of Accused Person is that it was issued to Complainant that in the event they default payment by cash and mobile money transfer they could fall onto the cheque. So, the Complainant presented the cheques for payment at the time Accused defaulted then it was regular with the arrangement between the parties. However, there is evidence on record per exhibit F which shows that the Accused on various occasions instructed the Complainant not to present the cheque; B “(Emphasis) I am organizing something small for you.

A: That you the cheques have dates on them.

B: Just note I will never argue with you about the date I don't have problem with that.

A: There are some issues when it get to a certain dates you cannot take it to bank. Unless you write the dates again and the money involved.

B: I know that.

A: Even though we have not approached that date.

B: We have not yet approached that date. These cheques I am giving you I want to assure you this is the amount I am owing you. I am not saying you should sent them to bank now.

A: No if I were to do that I would not be calling. But the issue is that what I am trying to say is that if it gets to a point and not change me the cheque I will be forced to go to the bank

The examination of the cheques exhibits E series shows the date the cheques were issued and the dated the cheques were presented to the bank. Under **Section 313A (2) of the Criminal Offences Act 1960 (ACT 29)**

“No person shall be guilty of an offence by virtue of subsection (1) of this section in respect of the cheque which is presented for payment later than 3 months after the dated specified on the cheque for payment. This shows that all the cheques were presented to the bank after the expiration of the stipulated 3 months under the law. What the Complainant ought to have done was to have asked Accused to re-issue the cheques. Accused did not do so but presented it. The Court is of the opinion that the cheques were presented to the bank after the stipulated 3 months period and does not conform with the provisions of the above stated statute, consequently the Accused person is acquitted and discharged under Count 1 to Count 4.

Count 5

I shall first discuss what the elements of the offence are and then determine whether on the evidence prima facie case has been made against the Accused.

Defrauding by false pretences contrary to section 133 of Act 29/60 explains defrauding by false pretences;

Section 133—Definition of and Provisions Relating to a False Pretence.

(1) 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.

(2) For the purpose of this section—

(a) 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;

(b) 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;

(c) 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

(d) 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.

In relation to the elements of the offence of defrauding by false pretences the prosecution must establish the following;

- (1) That the accused made a representation of the existence of a state of facts.
- (2) That the representation was made either by written or spoken words or by impersonation.
- (3) That the representation was made with the knowledge that it was false or made without the belief that it was true.
- (4) That the representation was made with intent to defraud.
- (5) That the representation was made by the accused (or by a person) and that by that representation he obtained the consent of another person to part with something. In a criminal trial of an accused for the offence of defrauding by false pretences if the prosecution fails to adduce sufficient and satisfactory evidence to prove all the above stated ingredients of the offence their case must fail.

In the case of NANA S. K. GRAY @ADOBOR v. THE REPUBLIC

[2009]19 M.L.R.G. 23, @page 30, the Court of Appeal, per H/L R.C. Owusu J.A, (as she then was), delivering the lead judgment of the Court said;

“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 the transfer or ownership of anything.

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 act upon it to his detriment. See the case of *Rabbles v. The State* (1964) GLR 584 at 585.

In this case, the evidence led by the Prosecution are that Accused sought financial assistance from PW1 the Complainant herein. The Accused requested for an amount of GHC200,000.00 and convinced PW1 to part with the said sum, he issued 5 cheques to the tune of GHC469,750.00 which constitutes the sum of principal sum and a reward, for giving him the money. Based on this representation PW1 parted with the amount of GHC180,000.00 to Accused. That the Accused made the representation when he knew at the time of making it to be false and he intended to defraud him.

It is not enough to show that there was a representation on the basis of which Complainant parted with money to the Accused but Prosecution must go beyond the representation made to prove that the Accused knew that the representation as to the existence or non-existence of a state of fact to be false or did not believe in the truth of that representation. It was also noted by Apaloo J. (as he then was) in the case of **SEFA v COMMISSIONER OF POLICE [1963] 2GLR 33** that it is of the essence of this offence that a false representation must have been made by the accused and that such falsity must have been known to the accused at the time of making it.

What is the evidence on record to the effect that Accused knew the representation made to be false or did not believe in the truth of the representation?

From the investigation Caution Statement Exhibit K, Accused, states "I agreed to the sum of GHC517,250.00 due to the pressure on me from the sellers I bought my construction materials from".

This piece of evidence shows that at the time of issue of the said cheques, Accused, knew he would not refund the whole amount to PW1 but due to the pressure from the sellers he bought the construction materials from. He therefore authored the said amount on the cheques to entice PW1 to part with the amount GHC180,000.00 to him. Accused also knew he did not have the said amount in his account and knew he would not be able to raise the amount on the cheque at the stipulated time. He also knew in the

event of payment he was not going to pay the full amount, but he issued it anyway to entice and procure PW1 to part with the amount of GHC180.000.00 to him. The evidence from the recorded telephone conversation between Accused and PW1, Exhibit F, shows that it is Accused who endorsed the cheques with the dates when he knew the he knew he would not have the funds at the stipulated dates. Accused also gave the short dates as stated on the cheques to convince and induce PW1 to part with the amount as stated. The fact that Accused kept directing PW1 not to present the cheques within the time frame of the cheques show that he did not have the funds in his bank account. This piece of evidence shows that the Accused did this with the intent to defraud PW1 as he did not have the intention of paying the whole amount stated on the cheques. He also stated that he endorsed the said amount on the cheques because of the pressure on him from some sellers. The fact that Accused knew he would not pay whole amount stated on the cheques but part of the money but went ahead to issue the cheques shows he had the intention to defraud PW1.

After examining the evidence on record as a whole the court finds that Prosecution has made a prima facie case against Accused under count 5 the Accused is therefore called upon to open his defense under **Section 173 of Act 30, 1960.**

PROSECUTOR

CHIEF INSP. AMOAH RICHARD

LEGAL REPRESENTATION

JOSEPH .I. KAPONDE FOR ACCUSED PERSON

**H/H SUSANA EDUFUL (MRS)
(CIRCUIT JUDGE)**