

IN THE CIRCUIT COURT ONE HELD AT ACCRA ON MONDAY, 13TH
FEBRUARY 2023, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS),
CIRCUIT COURT JUDGE

CC NO.: D6/313/2022

THE REPUBLIC

V

- | | | |
|-----------|--------------------------------|-----------------------|
| 1. | MOHAMMED BASSAT | ACCUSED PERSON |
| 2. | EDEN BASSAT- (AT LARGE) | |

RULING

Accused person herein stands before the court on one count of defrauding by false pretence contrary to section 131 of the Criminal Offences Act 1960, Act 29 (hereinafter referred to as Act 29) as per the charge sheet filed 17/5/2022. On the 23/5/2022, accused person pleaded not guilty to the offence after same was read to him in French, his elected language.

Facts of the case as attached to the charge sheet reads as follows 'Complainant, Elizabeth Machal, is a French National and an Estate Developer living in France whilst accused person Mohammed Bassat A1, is a Beninoise who lives in Benin whilst Eden Bassat, A2 is currently at large. In the year 2004, the complainant advertised some apartments on the internet for sale. A1 contacted the complainant and expressed interest in buying the apartments. A1 introduced himself as an Estate developer who had investment both in Benin and in Ghana and further convinced the complainant to come to Benin to work on the documentation of the sale of the apartments. The complainant traveled to Benin and met A1 and A2 who took her through certain documentation processes. The complainant was made to pay ten thousand five hundred Euros (€10,500) as a processing fee to open a Bank account for the transaction. A1 and A2 told the complainant that they had a bag full of dollars and needed money to work on

custom clearance to enable the complainant send it to France with ease. The complainant transferred one hundred and seventy nine thousand five hundred Euros (€179,500) to A1 and A2 to facilitate the custom clearance. After paying for the processing and clearance fee, A1 and A2 lured the complainant to invest in Gold and real Estate business in Ghana. A1 and A2 made the complainant believe that they had Gold and other investments in Ghana that could generate huge returns for her. They lured the complainant to go back to France whilst they work on the documentation to have the money shipped to her in France. The complainant travelled back to France and transferred monies through Western Union and Bank transfers to A1 to finalize the documentation. The complainant came to Ghana on two consecutive times to meet A1 and A2 who took her through the business in Ghana. A1 and A2 introduced the complainants to one Mr Anderson as a business partner who also requested for money to work on the documentation of the Gold and the real estate business for the complainant. The complainant paid monies totaling about one million and forty two thousand one hundred and eighteen Euros (€1,042,118) to A1 and accomplices but neither received the Gold nor the returns of the investments. The complainant became alarmed when she got information from a friend in France that all the transactions were fraudulent. The complainant however played along with A1 who again invited her to come to Ghana on 10th May 2022 with twenty two thousand Euros (€22,000) to finalize the transaction. The complainant agreed to come to Ghana and reported the case to the Police. The complainant arrived at Kotoka International Airport on 11th May 2022 at about 11:45pm and met A1 and two other guys namely, Nelson Aho and Godwin Nyame. The complainant identified A1 to the Police as the person she dealt with both in Benin and in Ghana...”

Although accused got legal representation at some stages of the proceedings, at the hearing of evidence of prosecution’s witnesses, accused was self-represented.

SECTION 173 of Criminal and Other Offences Procedure Act, 1960, Act

30 provides that where 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 the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.

At the close of prosecution's case, the court adjourned the matter to consider the evidence led by the prosecution to ascertain whether or not a prima facie case had been established at the close of prosecution's case which necessitated accused opening his defence to the charge.

The scope of the court in considering whether or not a prima facie case is made out against accused person was stated by the supreme court in the case of

TSATSU TSIKATA VRS THE REPUBLIC [2003-2004] SCGLR 1068, as follows:

"... indeed if the submission of no case is made just at the close of prosecution's case and cross examination of its witnesses, how could one seriously speak of proof beyond doubt when the defence has not had a full chance of punching holes in the prosecution's case to possibly raise doubt in the minds of the trier of facts, by calling its own witnesses and presenting the counsel's address? It seems as if we have to look for a lower standard of proof at the preliminary stage in the criminal proceedings".

Therefore at the close of prosecution's case, the court is not to find the existence of the fact beyond reasonable doubt but all the essential elements/ingredients of the offence must be established and same must be sufficient to secure a conviction of the accused in the absence of any reasonable doubt that may be created in the mind of the court by the defence of accused.

It is further provided by section 19 of the Evidence Act 1975, NRCD 323 that, -
"an enactment providing that a fact or group of facts is prima facie evidence of another fact creates a rebuttable presumption". Therefore until a prima facie is established against accused creating rebuttable presumption, an accused person

ought not to be called to open his defence since there would be no presumption which may be refuted by him through his defence.

Section 131 (1) of Act 29 provides that “ A person who defrauds any other person by a false pretence commits a second degree felony.

Defrauding is defined under **section 132 of Act 29** as follows: “*A person defrauds by false pretences if, by means of a false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing.*”

What amounts to false pretence is further defined under **section 133 (1)** of Act 29 as “ a representation of the existence of a state of facts made by a person, with the knowledge that the representation is false or without the belief that it is true, and made with an intent to defraud.

In the case of **Republic vrs Selormey [2001-2002] 2 GLR 424** the ingredients of the offence of defrauding by false pretence were reiterated thus: “*Therefore for the prosecution to succeed in proving the charges of fraud by false pretences against the accused person, the law requires that the prosecution must prove by evidence, the following:*

- (a) *That the accused person made a representation either by written or spoken words or any other means whatsoever.*
- (b) *That the said representation was in regard to the existence of a state of facts.*
- (c) *That the said representation was false or made without the belief that it was true.*
- (d) *That by that false representation the accused caused another to part with a thing...*”

Does the evidence of prosecution satisfy all the essential ingredients of the offence of defrauding by false pretence listed above?

Prosecution called two witnesses in support of their case. Elizabeth Machal testified as PW1 whilst the investigator testified as PW2.

PW1, Elizabeth Machal, testified that in the year 2004, she advertised some building apartments on the PAP site for sale. A1 contacted her via the PAP site and expressed interest in purchasing some of the apartments in Paris. He convinced her to travel to Benin under the pretext of opening a bank account there to enable them transfer cash the sum of 870,000 Euros to me for the purchase of the apartments. On 07/09/2004, she went to Benin and they took from her 10,500 Euros as processing fee of the bank account opening. On same day, A1 sent her to Standard Chartered Bank at Cotonou that he had some money in a bag which needs to be cleansed. He asked her to give them 70,000 Euros to buy some chemicals for the cleansing and also promised to help her adopt two children. They made her transfer some 179,500 Euros to some accounts to process necessary documents for adoption of the children. He also introduced me to other people as their business partners whom I also transferred money to them. They include Anderson Williams, Aho Godwin, Osei Boateng, Edward Aquah, Bertha Afeku, Kwadwo Samuel and Osei Samuel. When her time to return was due, they had not fulfilled their promises but kept demanding money from her to complete the money cleansing and adoption processes. She stated that she had sent a total of 1,232,188 Euros to them but none of the promises has been fulfilled. In April 2022, one Eden Bassat A2, also contacted her via email and WhatsApp, that his father A1 had asked him to contact her to raise an amount of 22,000 Euros for a Gold treasure to be released to her because her money was invested in its purification. She feigned interest and agreed to come to Ghana to meet them to finalize the transaction and caused the arrest of A1 upon her arrival in Ghana. No exhibit was tendered by PW1.

PW2, D/Cpl Nash Kyeremeh of the Cybercrime unit of the national CID headquarters, Accra testified that on 10/05/22, a case of defrauding by false pretences was reported by Yvonne Oppong on behalf of her friend Elizabeth Marchal against accused Mohammed Bassat and Eden Bassat and same referred to him for investigation. He stated that complainant was made known to be an estate developer that, sometime in the year 2004, she advertised her building apartments online for sale and was contacted by A1 who expressed interest in purchasing some of the building apartments. In the course of the transaction, A1 convinced the

complainant to travel to his home country Benin under the pretext of opening a bank account for her to enable him transfer the cost of the apartments into the account and collected various sums of money from the complainant to open the bank account for her and also to process documents for adoption of two children as well as Gold business. A1 further introduced other people to her in Ghana as complainant's business partners and therefore made her send various sums of money to them in Ghana. A1 and his accomplices after collecting monies from the complainant to the tune of 1,232,181 Euros failed to honour their obligations of opening a bank account for her, adopting for her two children and supplying her with Gold. They also stopped any form of communication with her making her suspect the accused and their accomplices of fraudulent intentions. In April 2022, A2 who is at large contacted the complainant that, A1 had asked him to contact her to raise an amount of 22,000 Euros to him for the release of quantity of Gold which she had already invested in it to her. The complainant who suspected them of another scam, feigned interest and agreed on a date to bring the money to them in Ghana. On 11/05/22, I in the company of D/L/epl Ferguson Amponsah and personnel from CID headquarters operations laid ambush and arrested A1 upon his arrival at Kotoka International Airport to meet complainant. PW2 tendered in evidence ,the investigation caution statement and charge statement of accused as exhibit A, A1 and B1 respectively.

In determining whether all the essential ingredients of the offence is established per prosecution's evidence, I shall consider the first and second ingredients

together .i.e that the accused person made a representation either by written or spoken words or any other means whatsoever and that the said representation was in regard to the existence of a state of facts.

The particulars of offence of the charge are as follows **"1. MOHAMMED BASSAT, BUSINESSMAN: For that, you from the year 2007 to 2022 in Accra, Greater Accra Region and within the jurisdiction of this Court, with intent to defraud did obtain the consent of one Elizabeth Machal, French national to part with cash the sum of about €1,232,118 Euros by means of certain false pretences to wit; **by falsely pretending that****

you are a Gold dealer and had a big investment in Ghana that could be used to establish a Real Estate company for her in Ghana. Upon such false representation you succeeded in obtaining the said amount from Elizabeth Machal; a statement you well knew at the time of making it to be false. "

The particulars of offence as highlighted above, the representation accused is charged with making to Elizabeth Marshal is a representation that he is a gold dealer and had a big investment in Ghana that could be used to establish a Real Estate Company in Ghana for her.

From the evidence of prosecution's two witnesses establishes per the record as summarized above is that A1 made the following representations; a representation of being interested in purchasing some apartments PW1 was selling on PAP site; that 10,500 Euros was to be used for opening a bank account in Benin for smooth transfer of the apartment purchase monies of 870,000 Euros; that he would facilitate the adoption documentation of two children by PW1; had monies that were to be cleansed/purified.

These representations are totally different, inconsistent and contrary to the representation accused per the charge sheet and facts sheets is alleged to have made to PW1.

Charge and facts sheets are essential in every criminal trial. Article 19 (2d) of the 1992 constitution of the Republic of Ghana provides that a person charged with a criminal offence shall be informed immediately in a language he understands and in detail of the nature of the offence charged. Charge facts sheets therefore give an accused person an idea of the offence he or she is alleged to have committed and the law he has breached. Charge sheet and facts sheet in criminal cases is like a writ of summons and statement of claim in civil cases. They serve as the being the foundation of prosecution's case. Prosecution cannot depart from the particulars of offence and facts and build an entirely different or contrary case from what accused is charged with committing. It is most worrying and disturbing that lawyer of complainant who was constantly in court monitoring proceedings, had applied for

and received copies of processes on the docket failed to notice this gross inconsistency and contradiction in the charge sheet and the case of PW1 and witness statements of PW1 and PW2. Admitted watching brief counsel cannot prosecute the matter or make input to the cases in court. However, it is trite learning that a watching brief counsel serves as a solicitor for the prosecution in ensuring proper and effective prosecution of their clients case. The failure of complainant's counsel to detect this grave contradiction/error on the part of prosecution I must say has contributed to the inability of the first two essential ingredients of the offence of defrauding by false pretence being met by the prosecution at the close of their case.

There is no iota of evidence per the testimony of both PW1 and PW2 of A1 making a representation that he is a gold dealer and had a big investment in Ghana that could be used to establish a Real Estate company in Ghana to PW1 or the *existence of a such fact*. The first two essential ingredients of the offence therefore remains unproven by the prosecution at the close of its case.

The third essential ingredient of the offence of defrauding by false pretence is that *the said representation was false or made without the belief that it was true*. In the case of **BLAY VRS THE REPUBLIC [1968] GLR 1040** Archer J (as he then was) in holding 5 stated *"to defraud was to deprive by deceit or to induce a cause of action by deceit."* Its been held in the case of **ASANTE & ORS V THE STATE [1968] GLR 804**, that for the prosecution to succeed on a charge of fraud by false pretences under Act 29, ss. 132 and 133 it was not enough for the prosecution to prove that the representation was false, they should go further to prove that the consent to part with ownership was in fact obtained by false pretence.

Prosecution as noted supra, failed to establish the representation accused is alleged to have made to PW1. The court therefore is unable to ascertain whether that statement was false or made without belief of it's truthfulness. This essential ingredient of the offence also remains unproved at the close of prosecution's case.

The Supreme Court in the case of **MICHAEL ASAMOAH & ANOR V THE REPUBLIC (2017) SCGLR AT PAGE 4. per Adinyira JSC** laid down the instances under which submission of no case must be upheld as follows;

- a. There had been no evidence to prove an essential element in the crime.*
- b. The evidence adduced by the prosecution had been so discredited as a result of cross-examination.*
- c. The evidence was so manifestly unreliable that no tribunal of fact could reasonably convict upon it.*
- d. The evidence was evenly balanced in the sense that it was susceptible to two (2) likely explanations, one consistent with guilt and one with innocence.*

With three essential ingredients of the offence of defrauding not proved by the prosecution at the close of their case. it fails to establish a prima facie case against the accused person necessitating the court calling on him to open his defence to same.

Accordingly accused person herein is acquitted and discharged of the offence of Defrauding by false pretences contrary to section 131 of Act 29 forthwith.

ACCUSED PRESENT

INSP WISDOM ALORWU H/B OF D/C/INSP AMOAH RICHARD PRESENT

**ALBERTHA ANTIONETTE CUDJOE WITH JOSEPHINE ANIMAH YEBOAH
H/B OF GEORGE ASAMANI FOR ACCUSED PERSON PRESENT.**

**ABIGAIL AMPOFO H/B OF EMMANUEL BARIMA MANU WATCHING
BRIEF FOR THE COMPLAINANT**

H/H AFIA OWUSUAA APPIAH (MRS)

(CIRCUIT COURT JUDGE)