

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON MONDAY, 30TH JANUARY, 2023

SUIT NO. D7/22/22

THE REPUBLIC

VRS

GIFTY ADDO

JUDGMENT

The accused person, a forty five (45) year old woman is before this court on two counts of defrauding by false pretences contrary to *Section 131 of the Criminal Offences Act, 1960 (Act 29)*. The particulars of offence for count one are that on or before the month of August 2021 at Tema, in the Tema circuit and within the jurisdiction of this court, with intent to defraud, accused obtained the consent of one Gifty Mensah to part with cash the sum of forty one thousand Ghana cedis (Ghs 41,000.00) by means of certain false pretenses; that if the said amount is given to her, she could purchase her a saloon Toyota corolla vehicle and a saloon Hyundai Elantra vehicle on auction and upon such false representation, she succeeded in obtaining the said amount from the said Gifty Mensah, which statement you well knew at the time of making it to be false.

For count two, the particulars of offence are that on or before the month of August 2021 at Tema, in the Tema circuit and within the jurisdiction of this court, with intent to defraud, accused obtained the consent of one Kingsley Agyemang to part with cash the sum of one hundred ad forty eight thousand Ghana cedis (Ghs 148,000.00) by means of certain false pretenses that if the said amount is given to her, she could enlist 20 people of his into Ghana Immigration Service and upon such false representation, she

succeeded in obtaining the said amount from the said Kingsley Agyemang, which statement she well knew at the time of making it to be false.

The brief facts of the case according to prosecution are that complainant Gifty Mensah and Kingsley Agyeman are naval officers stationed at eastern naval command Tema. Accused Gifty Addo is a businesswoman. The accused sister is married to Daniel Quist Love, also a naval officer stationed at eastern naval command Tema.

During the month of August, 2021, the accused went to visit her sister at Tema naval barracks. During the conversation with the sister and Daniel Quist Love, she stated that she has been given an allocation at the office of the vice president to employ people to the various security agencies such as Ghana Immigration Service, Ghana Army, Customs Excise and Preventive Service of Ghana Revenue Authority as well as Ghana Gas Company.

Daniel Quist Love developed interest and also informed Kingsley Agyemang and gave the accused's contact number to Kingsley Agyemang. Kingsley Agyemang contacted the accused on phone and she confirmed the story and stated that she was working at the office of the vice president. The accused informed Kingsley Agyemang that it was protocol enlistment and payment of money has to be made before one could be enlisted. She mentioned the amount ranging from five thousand Ghana cedis (GHs 5,000) to seven thousand Ghana cedis (GHs 7,000) depending on various security posts one prefers.

Kingsley Agyemang developed interest and informed various potential candidates who wanted job opportunity. He collected money from twenty people ranging from five thousand Ghana cedis (GHs 5,000) to seven thousand Ghana cedis (GHs 7,000) to a total sum of one hundred and forty eight thousand Ghana cedis (GHs 148,000) and paid same to the accused through her MTN momo number 0242319549 and her UBA bank account number 98074601552.

The accused in the course of collecting the money from Kingsley Agyemang informed him that she had been given some vehicles to be auctioned at the office of the vice president, but had reserved some two cars namely Hyundai Elantra and Toyota Corolla saloon cars.

Kingsley Agyemang also informed Gifty Mensah who developed interest in purchasing the two cars. Accused told Gifty Mensah that the two cars were forty one thousand Ghana cedis (GHs 41,000) which Gifty Mensah made a full payment to her through Kingsley Agyemang.

After several months of different promises made by the accused without any positives result, the complainants demanded for the refund of their monies from the accused but the accused failed. On 28th February, 2022 the complainant made a complaint at the office of the Military Police Michel Camp and the accused was arrested and handed over to Tema Regional CID for investigation.

During investigation it came to light that the accused does not work at the office of the vice president as she made the complainant to believe. The accused told police she gave

some of the money to one Richard Attah Kwasi alias Rich Boss who lives in Nungua for safe keeping and also deposited some of the money in her bank account. She stated that the bank has suspended her account. She led police to the house of Richard Attah Kwasi but he was not met. After investigations the accused was charged with the offence and put before this honorable court.

Before this Court, the accused person pleaded not guilty to both counts and by so doing, cast upon prosecution the duty of leading cogent and credible evidence to establish her guilt. A plea of not guilty serves as both a shield and a sword. A shield for the accused person who is presumed to be innocent until proven guilty and does not have to say anything in proof of his innocence and a sword pointed at his accusers to lead evidence to establish a prima facie case against him.

It is only when prosecution has discharged their duty by leading cogent and credible evidence in proof of their case that the sword would now turn towards the accused person; not to establish his innocence but to raise a reasonable doubt in the mind of the court.

Where prosecution fails to establish such a prima facie case, the court must acquit and discharge the accused person.

Also by his plea of not guilty, the accused person had invoked the protection accorded him under *Article 19 (2) (c) of the 1992 Constitution*. Per that provision, he is presumed innocent until proven guilty. According to the case of *Davis v. U.S. 160 U.S 469(1895)*. "Upon that plea the accused may stand, shielded by the presumption of his innocence,

until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

In the case of *Gligah & Atiso v. The Republic* [2010] SCGLR 870 @ 879 the court held that *"Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story."*

The accused person was before this court on three separate charge sheets. In the course of these proceedings, she was convicted of the same offence in suit number D7/26/22. Prior to sentencing, the court relied on *Section 162 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)* and enquired whether subject to the consent of prosecution, the convict would like to take advantage of the said provision.

Section 162 of Act 30 provides that:

Where an accused person is found guilty of an offence, the court may, in passing sentence, take into consideration any other charge then pending against the accused if the accused admits the other charge and desires it to be taken into consideration and if the prosecutor of the other charge consents.

In order to ensure that the convict understood the provision prior to making a decision, upon the orders of the Court, Mr. Anthony Adu Nketiah, a lawyer who was present in Court was asked to explain the provisions to the convict. Sentencing in the case in which she had been convicted was deferred to enable her ponder on the issue.

On the next adjourned date, the same counsel as a friend of the court once again explained the provisions to the convict. She submitted to the Court that she wanted to plead guilty to these two counts and for the court to rely on *Section 162 of Act 30* in sentencing. The prosecutor indicated his consent.

Accused person's plea was thus retaken and she pleaded guilty simpliciter to both counts. She was accordingly convicted on her own plea of guilt to both count one and count two.

PRE SENTENCING HEARING

Prior to sentencing, a pregnancy test was carried out on the convict. It proved negative.

According to prosecution, the convict is not known to the law. That the convict has paid an amount of seven thousand Ghana cedis (Ghs 7,000) to 1st complainant.

In her victim impact statement, 1st complainant said this matter has affected the relationship between she and her husband as she took part of the moneys handed to the convict from her husband and her son. That she has to pay them back the money.

In mitigation, convict says that she is not known to the law. That she has two children of her late brother who live with her and she also has one child. That she also suffers from a bleeding fibroid. When the court enquired if she had any medical report, she indicated that she did not and pleaded with the court to forgive her.

According to prosecution, the convict upon her initial arrest mentioned that she had a bleeding fibroid, she was admitted to bail whereupon she absconded and it took the police several months to locate and re arrest her. That if she had been ill, she would have treated herself within the period.

Defrauding by false pretences carries with it a maximum sentence of twenty five (25) years imprisonment. Operating in convict's favour is the fact that she is a first time offender.

The offence of defrauding by false pretences appears to have become a main stay within the jurisdiction. Making false representations of being connected to the executive seat of power appears to be one of the main modus operandi to get unsuspecting victims to believe in such false representations. Simply saying one works in Jubilee House is enough to earn the trust of many a person. It appears after that trust is earned, making further false pretences which would induce the victim to part with money becomes easy.

The convict is in her 40's and the Court must show her some mercy, she herself did not show that same mercy to the complainants. She had boldly made a false pretence and in so doing not only induced 1st complainant to part with money but also induced 2nd

complainant to take monies from unsuspecting and desperate persons who were in need of a job.

Again, I would have considered a non custodial sentence if the convict was indeed a mother who was taking care of three children. However, she herself says the children are not with her. Again, the facts of the case indicates that she went into hiding for more than a year and even after she was admitted by the police to police enquiry bail, she absconded. That means the children are not her primary concern.

In consideration of the above factors, I hereby sentence the convict to a three (3) year term of imprisonment on count one and a seven (7) year of imprisonment on count two. The sentences are to run concurrently. She is also to enter into a self recognizance bond to keep the peace and be of good behavior for a period of twelve (12) months after her release from custody. In default, she would serve a six (6) month term of imprisonment.

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

D.S.P. JACOB ASAMANI FOR THE REPUBLIC