

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON MONDAY, 23RD JANUARY, 2023

SUIT NO. D7/63/2019

THE REPUBLIC

VRS

ERIC AWATEY

JUDGMENT

Mr. Eric Awatey stands before this court accused of three counts of issuance of false cheque contrary to *Section 313(1)(a) of the Criminal Offences Act, 1960 (Act 29)*.

The particulars of offence for count one are that on the 29th day of April, 2014 at Dawhenya in the Tema circuit and within the jurisdiction of this Court, he did issue a Bank of Africa cheque number 000080 for an amount of twenty thousand Ghana cedis (Ghs 20,000) to be drawn by Mrs. Rose Frempong at Tema on 29th April, 2014 when he had no grounds to believe that he had adequate funds in his account to pay the amount specified on the cheque within the normal course of business.

On count two, the particulars of offence are that on the 31st day of February, 2015 at the same place, date and time, he did issue a Bank of Africa cheque number 000078 for an amount of nineteen thousand, two hundred and thirty eight Ghana cedis (Ghs 19, 238) to be drawn by the same person at the same bank on the 31st day of February, 2015 when he had no grounds to believe that he had adequate funds in his account to pay the amount specified on the cheque within the normal course of business.

On count three, the particulars are that on the 31st day of March, 2015 at the same place, date and time, he did issue a Bank of Africa cheque number 000079 for an amount of twenty thousand Ghana cedis (Ghs 20,000) to be drawn by the same person at the same bank on the 31st day of March, 2015 when he had no grounds to believe that he had adequate funds in his account to pay the amount specified on the cheque within the normal course of business.

The accused person pleaded not guilty to all three counts. The accused person pleaded not guilty to the charge and by so doing, cast upon the prosecution the duty of leading evidence to establish his 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 plead 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.”*

Prosecution in proof of its case called three witnesses. PW1's evidence is that she is a businesswoman who is into the sale of building materials. One Owusua Ruth is her grand daughter and also her sales girls. That on the 8th day of September, 2014, the accused person collected an amount of sixty nine thousand, two hundred and fifty Ghana cedis (Ghs 69,250) from her to enable him supply her with 480 packs of plastic T&J, 500 bags of tiles cement, 2000 pieces of U-Clip and 2000 pieces of corner mould to sell.

That after receiving the money, the accused person supplied her with only 27 packs of plastic T&G and 250 pieces of corner moulds all to the value of ten thousand, twelve Ghana cedis (Ghs 10,012).

That the accused person later gave her three post dated cheques of Bank of Africa with serial number 000080 dated the 29th day of April, 2015 with a face value of nineteen thousand, two hundred and thirty eight Ghana cedis (Ghs 19,238), 000078 dated the 31st day of February, 2015 with a face value of twenty thousand Ghana cedis (Ghs 20,000) and cheque number 000079 dated the 31st day of March, 2015 with a face value of twenty thousand Ghana cedis (Ghs 20,000).

That she sent Owusua Ruth to cash the cheques on all the given dates but each of them was dishonoured. That she reported to the police on the 23rd day of July, 2019 and the accused person was arrested.

She tendered in evidence EXHIBIT A series as the copies of the post dated cheques the accused person issued to PW1.

EXHIBIT A is a copy of Bank of Africa cheque dated the 31st day of March, 2015. The bearer of the cheque is MAA TEE ENT and the issuer of the cheque is Z.A. KERAS ENT. The face value of the cheque is twenty thousand Ghana cedis (Ghs 20,000). It is cheque number 000079.

EXHIBIT A1 is also a Bank of Africa cheque dated the 29th day of April, 2014. The bearer of the cheque is the same MAA TEE ENT and the issuer is Z.A. KERAS ENT. The face value of nineteen thousand, two hundred and thirty eight Ghana cedis (Ghs 19,238). It is Cheque number 000080.

EXHIBIT A2 is also a Bank of Africa cheque dated the 31st day of February, 2015. The bearer of the cheque is the same MAA TEE ENT and the issuer is Z.A.KERAS ENT. The face value of twenty thousand Ghana cedis (Ghs 20,000). It is cheque number 000078.

PW2 is Owusua Ruth. She corroborated the evidence of PW1 and added that the accused person handed the cheques to her. That she was sent by PW1 to cash the cheques on all the due dates but all were dishonoured by the bank.

PW3 is the investigator. He tendered in evidence the investigation caution and charge caution statement of the accused person as EXHIBIT B and C respectively. That during

investigations, the accused person admitted issuing the said cheques to PW1 knowing that he had no funds in his account.

Prosecution closed its case after this.

CONSIDERATION BY COURT

Section 313 A (1) (b) of Act 29 provides that “A person who issues a cheque in respect of an account with a bank when that person does not have a reasonable ground, the proof of which lies on that person, to believe that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal course of banking business commits a criminal offence”

Generally, except otherwise explicitly provided by law, the onus lays on prosecution to prove the guilt of an accused person. The accused person does not need to prove his innocence. This offence is however one of the exceptions to the general rule. Prosecution’s duty is to establish that the accused person issued a cheque and the cheque was dishonoured due to insufficiency of funds in the accused person’s account. Once prosecution establishes these, the onus shifts to the accused person to establish that he had reasonable grounds to believe that there were adequate funds in his account.

Accused person does not deny that he issued three cheques to PW1. He also does not deny that those were the cheques presented to this court as EXHIBIT A series. Accused person also did not deny that all the three cheques which were to be cashed between 29th April, 2014 and 31st March, 2015 were dishonoured when presented to the bank.

According to PW1, she gave the amount of sixty nine thousand, two hundred and fifty Ghana cedis (Ghs 69,250) to the accused person in September, 2014 for the supply of the items. The fact that accused person issued one of the cheques for 29th April, 2014- when the transaction had not occurred can thus be deemed as an error.

Also, EXHIBIT A2 has the date of payment to be 21st February, 2015. According to PW2, when she realized this, she notified the accused person who then asked her to hold on for sometime before presenting it. When she presented same later, it was dishonoured and so was the cheque for 31st March, 2015.

As accused person does not deny that he issued the said cheques in the course of normal business with PW1 and same cheques were dishonoured by the bank upon presentation by PW1, I find that prosecution has established a prima facie case against the accused person.

Accused was thus called upon to open his defence. His duty is to prove that he had reasonable cause to believe at the time that the cheques were to be presented that there are funds or adequate funds in his account to pay the amount specified on the cheque within the normal course of banking business.

According to the accused person in his evidence in chief, he was pressurized by PW2 to issue these cheques just before he embarked on a trip to Jasikan. That he issued them knowing that he was going to sell some goods in Jasikan and would return with some funds. That after selling the goods and on his return journey, he suffered an accident which led to him being incapacitated and out of work for many months. That he asked PW1 to hold on with the presentation of the cheques but PW1 refused and went ahead to present them.

Accused person from his own evidence knew that he did not have the said amounts in his account at the time of issuing the cheques. This is evidenced by his post dating of the cheques. As put forth by learned counsel for the accused person in his cross examination of PW3 at page 32 of the record of proceedings had asked;

A: *My lord, I was only investigating an allegation of a crime.*

Q: *You know that if one gives a postdated cheque, it means that it is given in the hope that by that date, money would be there in the account.*

A: *Affirmatively my lord. I know.*

Q: *And you know that as human beings, we hope but there are circumstances which can dash these hopes.*

A: *I know my lord.*

I agree with learned counsel for the accused person. However, these unforeseen circumstances must be closely linked in time to the time of performance or maturity of the cheques such that the ordinary reasonable man can arrive at an inference that had it not been for the unforeseen circumstances, the accused person had reasonable cause to believe that he would have had adequate funds in his account by the date of maturity of the cheques.

Accused person had a duty to lead evidence to establish that he had issued the cheques in good faith with the expectation that he would have some money in his account by the date of presentation of the cheques and secondly that he was involved in a serious road accident shortly after he issued the cheques which thwarted his reasonable belief of having money in his account by the maturity date.

Accused person did not present any accident report to this court because according to him, all efforts to retrieve same from the police failed. Even if I am to believe him, he had indicated that he was admitted at a hospital prior to being referred for herbal treatment. He could have tendered in his hospital records. He failed to do so.

He rather tendered in evidence EXHIBIT 3 series. They are pictures of the accused person in what appears to be bandages. I say appears because a careful look reveals that accused person is in a cotton material which has the initials of CMG, Tema. There is no indication as to when and where these pictures were taken.

PW2 was the key witness in this case. This is because she had been the one who had dealt the most with the accused person prior to, during and after the issuance of the cheques. It is she who had gone to the bank with all three cheques to cash on the three different occasions.

She insisted under cross examination that although she got to know that the accused person was involved in an accident, this was many months after the cheques had been dishonoured and when the matter was before the Circuit Court A. She further insisted that at all times, before she went ahead to present the cheques, she called the accused person and had even notified him of the error in EXHIBIT A2.

Under cross examination by the accused person himself at page 25 and 26 of the record of proceedings had answered;

Q: After I presented the cheque to you and travelled on my return, I was involved in an accident and I sent word to you about that.

A: *That is so. However, all three (3) cheques were bounced before you had the accident. It is not the case that you had the accident immediately you gave me the cheques. Any time before I would present the cheque, I would call you and you would instruct me to go ahead. Even with the February one, I called to tell you about the wrong date and you told me to hold on so that you would come and rectify it but you never came and that was long before the accident.*

Q: I put it to you that it was three days after I had issued the cheques that I got involved in the accident.

A: That is not so.

Q: *Do you remember that even when I was still indisposed due to the accident, I mobilized some money and sent it to the court that is when the matter was before court?*

A: *That is so. After the cheque was bounced and I had him arrested, that was when the issue came to court A and it was before the accident.*

The fact that this matter was initially before Court A is not in doubt. Learned counsel for the accused person had even put forth the case that same was struck out for want of prosecution. I find PW2 to be a most credible witness. She answered questions under cross examination in a straight forward manner and had remained convicted of her evidence.

That leaves many questions to be asked from accused person's explanation. If at the time the earlier case was in Court A, he was seriously indisposed due to the accident as he wants the court to believe, then how was he able to appear in Court talk more of mobilizing more than nine thousand Ghana cedis (Ghs 9,000) to pay to the complainant?

After this time, did his condition deteriorate such that he could neither move around or work to raise any further money for PW1 particularly so since he has not been able to pay any money to the complainant since then?

From the evidence and accused person's own actions, I am convinced and agree with PW2 that he suffered the accident after the case was arraigned before the court and not before. That would explain his inability to mobilize any funds since the payment of the over nine thousand Ghana cedis (Ghs 9,000).

Accused person also put across the case that he was pressurized by PW2 into issuing the cheques on the basis that she would be sacked by PW1. PW2 refuted this under cross examination and indicated that the accused person brought the cheques to her voluntarily at her work place.

At page 25 of the record of proceedings, under cross examination by the accused person, she had answered;

Q: I put it to you that I did not bring the cheque to your work place but rather to your house and I wrote out the cheque on a counter and gave all three (3) to you and told you that I was leaving for Jasikan

A: No my lord. He presented the cheque to me at work and he had already filled and signed it.

Her evidence was corroborative of PW1's earlier evidence in which she had indicated that the accused person brought the cheque to her shop. At page 9 of the record of proceedings, PW1 had answered;

Q: Did I give you the cheques personally or I gave it to your sales girl.

A: *All the time, I was seated by my sales girl when you handed over the cheques to me.....*

I found PW1 and PW2 to be credible witnesses. I find that accused person was not put under any unnecessary pressure to issue the cheques. His claim appears more to be an afterthought than a reflection of what truly happened.

At the close of the trial, I find that accused issued the cheque with full knowledge that the account did not have and was not likely to have enough funds to enable the bank in the normal course of business to pay off the cheque by the maturity date. The offences having been established beyond reasonable doubt, I hereby convict the accused person of all three charges.

PRE SENTENCING HEARING

According to prosecution, the convict is not known. That they have so far recovered the sum of twenty one thousand and twelve Ghana cedis (Ghs 21,012). The balance left to be paid is forty eight thousand, two hundred and thirty eight Ghana cedis (Ghs 48,238)

In mitigation, convict says that he is a 54 year old man with a wife and children. That his last child is three years old. He says further that had it not been for the accident, he would have finished paying off the amount. That he has paid about fourteen thousand Ghana cedis (Ghs 14,000) to complainant and he had with him fifteen thousand Ghana cedis to pay to her. He did so in open court.

The offences are misdemeanors which carries a maximum sentence of twelve (12) months and / or a fine of 250 penalty units. Business persons must have trust that when cheques are issued to them, it is done as a bonafide means of payment and not simply

to deceive them. If the country is to move to a cashless society, then it is imperative that a system of trust is created for the use of monetary instruments, including cheques.

This would ensure that when a person receives a cheque, he would have faith that upon presentation to the bank, it would be paid by the bank in the normal course of business. A custodial sentence would serve as a deterrence to other business persons to issue cheques only when they have reasonable belief that there are enough funds in their bank account.

Accordingly, convict is sentenced to a six week term of imprisonment and a fine of one hundred and fifty penalty units on count one, count two and count three. He is to pay the fine by the 7th of February, 2023. In default, he would serve a three month term of imprisonment. The terms are to run concurrently. He is also to compensate PW1 with an amount of one hundred penalty units as well as refund the full amount remaining (Ghs 48, 238) to PW1 by 28th February, 2023.

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

A.S.P. STELLA ODAME FOR THE REPUBLIC PRESENT

GODFRED ROGER KWAME AYEH FOR THE ACCUSED PERSON PRESENT