

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON TUESDAY, 25<sup>TH</sup> JULY, 2023

SUIT NO. D7/4/20

THE REPUBLIC

VRS

NANA KOFI BOAFOUR

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JUDGMENT  
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On the 9<sup>th</sup> day of May, 2023, I held that prosecution had established a prima facie case against the accused person on a charge of fraudulent transaction of land contrary to *section 34(B) of the Land Registry Act, 1962, Act 122*. He was called upon to open his defence to the charge.

An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. See the dictum of Korsah CJ in the case of **Commissioner of Police V. Antwi (1961) GLR 408**. If the accused person is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See *Bruce-Konuah v. The Republic [1967] GLR 611* and *Section 11(2) and (3) of NRCD 323*.

In arriving at whether an accused has raised a reasonable doubt, the court may either believe or accept the explanation given by the accused or find that although it disbelieves the explanation, it is reasonably probable. In both instances, the court must

acquit and discharge the accused. Thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of *Brempong II v. The Republic* [1997-98] 1 GLR 467 and *Tsatsu Tsikata v. The Republic* [2003- 2004] SCGLR 1068

## **THE EVIDENCE OF ACCUSED PERSON**

According to the accused person, he is a director and chief executive officer of a company by name Rainbow Brothers Ltd. That a 10 acre piece of land was given to his company by the Awuley Kwao family to facilitate its sale.

He continued that PW1 came to him sometime in 2018 to purchase two plots of land and he sold same to him at a cost of Ghs 50,000. PW1 paid Ghs 35,000 into the accounts of Rainbow Bros awaiting completion of documentation before completing payment. PW1 also paid Ghs 2,000 to a surveyor.

The surveyor prepared the documents but before they could be signed, PW1 went for same and used it to lodge a complaint at the police station. That it was at the police station that he first got to hear that PW1 had been confronted on the land by another person who was claiming interest.

He continued that when he demanded to know who the person was, PW1 could not disclose but insisted that he wanted a refund of his money. That PW1 also refused to be relocated to another plot within the same area.

He denied granting a piece of land to PW1 without authority and said the entire transaction was done by the company in which he is a director and he did not receive any monetary reward for the transaction.

### **THE EVIDENCE OF DW1**

The evidence of DW1 is that he is a principal member of the Numo Awuley Kwao family. That sometime in 2019, their family engaged the accused person's company to sell ten (10) acres of their family land on their behalf.

That prior to this, their family had granted over 34 acres of land to one Yaw Takyi Adarkwa who had begun the process of registration. That the said Adarkwa could not fully pay for the land and had to surrender 20 acres back to the family. Subsequently, the said Adarkwa was issued with land title certificate covering the whole over 34 acreage of land.

He tendered in evidence EXHIBIT 1 and 2 as the deed of surrender and land title certificate. He continued that it is a portion of the surrendered land that they gave to the accused person to sell on their behalf and a portion of which he in turn sold to PW1.

Further that the accused person brought the sum of Ghs 30,000 to the family as payment for the two plots of land purchased by PW1. Accused person's company took its commission before handing them the Ghs 30,000.

That the family met with PW1 and the accused person and tasked a family member to show PW1 the exact location of the land. They later learnt that PW1 had caused the arrest of the accused person.

Accused person informed them that PW1 wanted a refund of his money and the family agreed to sell the land to someone else and refund the money. That before they could do so, their head of family was shot. That the land belongs to their family and it is not true that the accused person sold it to PW1 without authorization. That had PW1 conducted a proper search, he would have realized that the land belongs to their family.

## **THE EVIDENCE OF DW2**

His evidence is that he is the surveyor who prepared the documents covering the land. That it was the accused person who linked PW1 to his company for the documentation. The total cost involved was Ghs 2,000 and PW1 paid for same.

That after he had prepared the documents, PW1 contacted him for a copy with the excuse that he wanted to conduct a search at the Lands Commission. With the consent of the accused person, he handed over the documentation to PW1. That the land in question belongs to the Awuley Kwao Family and they contracted the accused person to sell same on their behalf.

Accused person was represented by learned counsel throughout this trial who did not challenge the admissibility of his investigation caution statement.

In accused person's investigation caution statement which he gave to the police on the 21<sup>st</sup> day of May, 2019, he stated that he operates a company by name Rainbow Brother's Company Ltd. The company amongst others sells lands to prospective buyers. That in 2018, PW1 bought two plots of land located at prampram from him at a cost of Ghs 50,000 and made part payment of Ghs 35,000 and also gave him additional Ghs 2,000 for the preparation of documents. He said he had now gotten another land at the same area and documents would soon be ready for onward transmission to PW1.

The accused person does not deny that he received consideration and by so doing made a gain from his purported sale of land to PW1. He obtained the sum of Ghs 35,000. It is trite that a confession statement when properly obtained constitutes evidence against the accused persons. See the cases of Francis *Yirenkyi v. Republic (J3 7 of 2015) [2016] GHASC 5 (delivered by the supreme court on 17 February 2016); and Rep. v. Agyiri alias Otabil [1982-83] GLR 251.*

Accused person per his investigation caution statement admits that PW1 bought the land from him and also admits to receiving money from PW1 for the purpose of the land transaction. Without admitting that he was not the owner of the first land, he said he had now gotten another land at the same area and documents would soon be ready. That leads to a reasonable inference that he had the authority to alienate the land.

That was in May, 2019. PW1 testified in this court in 2021 and said even though accused person gave him that second land, it turned out the accused person had no authority to alienate it. Accused person gave him a third land and it also had the same problem.

Accused person never mentioned the Awuley Kwao family as the owners of the land in his investigation caution statement or charge statement. It was only in this court that he did so. When the variance between his evidence in chief and his investigation caution statement was pointed to him under cross examination, his answer at page 38 of the record of proceedings was

*Q: There are a lot of differences between your evidence in chief and your statement to the police.*

*A: What I know is what I have told the lawyer and which he wrote as my evidence in chief. He prepared it and I signed.*

Accused person did not provide any reason for the contradiction between his evidence in chief and his investigation caution statement. He had simply tried to distance himself from it by saying what he told the investigator was not what he wrote; even though the admissibility of his investigation caution statement was never placed in issue and he had earlier answered at page 37 of the record of proceedings that the said statement was read and explained to him

Q: *Can you read and write?*

A: *No please.*

Q: *At the police station, after your statement was written, it was read and explained to you.*

A: *Yes. That is so.*

Indeed, in this court, although he had answered that he could neither read nor write in English, he kept answering questions that was posed to him in English. As not being able to read or write is not the same as not being able to speak a language, I did not place much stock on this by way of credibility. However, accused person put his own credibility in question when he answered at page 42 of the record of proceedings under cross examination *that*

Q: *PW1 reported you as Nana Kofi Boafo and when you gave exhibit A, you gave your name as Nana Kofi Boafour.*

A: *It is Boafo but some mention it as Boafour and when I chance on it in a written form, I insist that they change it to Boafo.*

Clearly, the accused person can read and his denial of this basic fact does not place him in a good light before this Court. He is not a credible person. I find that his attempt to discredit his investigation caution statement is a mere afterthought and I do not accept it.

It is a legal known, that where an accused person gives evidence which conflicts his earlier statement, the court is bound to treat him with suspicion as to the veracity of his evidence. In the case of **Odupong v Republic [1992-93] GBA 1038**, the Court of Appeal, coram Amuah, Brobbey JJA's as they were then, and Forster JA held on this principle as follows: *"The law was well settled that a person whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence would be of no probative value unless he gave a reasonable explanation for the contradiction."* See also the cases of *Gyabaah v. Republic [1984-86] 2 GLR 416* and *Kuo-den alias Sobti v Republic [1989-90] 2 GLR 203 SC*.

Upon this basis, I find that I do not believe the evidence of the accused person. I would now proceed to whether or not his evidence is probable. The evidence of accused person and his first witness is that the land belongs to the Numo Awuley Kwao family and they had authorized the company of accused person to sell the land. He did not produce any evidence of this authorization.

In proof of his claim of family ownership, DW1 tendered in evidence EXHIBIT 1 and 2. According to him, the family sold the land to one Yaw Takyi Adarkwa who for want of payment, surrendered 20 acres to the family. Despite the surrender, the said Adarkwa registered all of the land comprising of over 30 aced in his name.

EXHIBIT 1 is a deed of surrender between the Yaw Takyi Adarkwa and the Numo Awuley Kwao family. It is dated the 15<sup>th</sup> day of October, 2015. In the recitals, it states that by an indenture dated the 30<sup>th</sup> day of December 2014 stamped as.....and at the Land Registry as..... between the family as lessors and the said Adarkwah as lessees. It then goes on to indicate the surrender of 20 acres of land.

EXHIBIT 2 is a land title certificate dated the 13<sup>th</sup> day of March, 2019. It is in the name of Yaw Takyi Adarkwa. In same, he is a registered lessee for 75 years from the 13<sup>th</sup> day of December, 2014. From the memorials, the date of the indenture is 30<sup>th</sup> December, 2014 and the date of registration is 29<sup>th</sup> January, 2015.

The said Yaw Takyi Adarkwa did not testify in this case. Even if I am to believe his claim that it is their family that sold the land to the said Adarkwah, DW1 wants the court to believe that the said Adarkwah surrendered over 20 acres of land to their family in October, 2015, yet when the land title was issued to him almost four years later i.e in March, 2019, it was the full 34.173 acres that he was given title to. DW1 did not say anywhere in his evidence that his family had protested this or made any efforts to have same amended.

From the memorials, the date of registration which signifies the date the said Adarkwah presented the indenture for registration was the 29<sup>th</sup> day of January, 2015. That pre supposes that he presented a regular indenture to the Lands Commission. A regular indenture would have been signed by all the necessary parties. DW1 wants this court to believe that even though the said Adarkwah had not fully paid for the land, the family executed a valid indenture in his name as at 30<sup>th</sup> December, 2014.

DW1's story is not reasonably probable. Reasonable men engage in reasonable actions. To the extent that the said Adarkwah presented a valid instrument i.e an indenture for



registration and most importantly that the said land was duly registered in his name in 2019, it is deemed that he is the owner of all that parcel of land delineated in the site plan per EXHIBIT 2.

In any case, I found DW1 to be a most untruthful witness. He could not even be certain as to what his own name was. He was also quick in turning around his answers when confronted with contradictions.

At pages 45 and 46 of the record of proceedings,

Q: *What is your name?*

A: *Samuel Awuley.*

Q: *Do you have any doc to show that you are Samuel Awuley?*

A: *Yes, my lady.*

Q: *In your written evidence in chief to the court, your name is Samuel Tawiah Awuley.*

A: *Yes, my lady.*

Q: *And earlier in this court when you were being led to give evidence you said your name was Samuel Akwetey Awuley.*

A: *My lady it was a slip of tongue.*

*Prosecution: I am praying that the court will allow him to produce any id card be it voters id or Ghana card to know if we are dealing with the right person.*

*By court: Do you have any national ID for instance Ecowas identity card aka Ghana card. Voters ID or passport which bears the name Samuel Awuley?*

A: *No my lady.*

*By Court: The witness cannot be compelled to produce what he does not have.*

*Q: I am putting it to you that you are a fake person who was hired to come and throw dust into the courts eyes.*

*A: My lady that is not true. There is nothing like that.*

*Q: When the accused person was arrested did you hear it*

*A: Yes my lady*

*Q: Did you go to the police station to give statement in support of his case?*

*A: My lady when he was arrested I was not in town. I had then traveled to Togo.*

*Q: What document did you use to travel to Togo because you have told the court you do not have a passport?*

*A: My lady I did not enter the Togo country but I had a land at Aflao at the border where I have been farming. That was where I was.*

DW1 had provided three names to this court; Samuel Akwetey Awuley, Samuel Awuley and Samuel Tawiah Awuley. He wants this court to believe that the difference in his own names is a slip of tongue. He also wants this court to believe that he does not even have one form of I.D Card indicating which of these names is his true name. That he would in one breadth say he was in Togo and in the next say say he was in Aflao which is in Ghana shows him as a witness of little credibility if at all.

I found him to be a person who was out to throw a fistful of sand into the eyes of this Court. For someone who could not be certain of his own name, I did not find his evidence believable or reasonably probable. In any case, if his family was so particular about documentation as to insist on a deed of surrender from Mr. Adarkwa, then

surely, one would expect that they enter into a written agreement with the accused person for him to facilitate the sale of 10 acres of their family land. No such document was tendered in evidence.

DW2's evidence was a regurgitation of accused person and DW1's evidence which I have found not to be credible.

The question that any reasonable man would ask is if the accused person had the authority to alienate all the three different pieces of land he had represented to PW1 that he owned, then why were other persons claiming ownership of same and chasing PW1 out of the land? Most importantly, why was the accused person simply offering alternative pieces of land (which turn out not to be his) rather than asserting his authority and right to alienate against the persons who claimed the lands he alienated to PW1?

Again, if indeed, the Numo Awuley Kwao family was the owner of the lands and had authorized him to alienate same, why was he also not mentioning the name of the Awuley Kwao family to either PW1 or the police after PW1 had reported the matter? One would expect as a reasonable man that mentioning the family's name would be the first thing he would do whenever any issue arose over ownership of the land.

I find after a careful consideration of accused person's defence, that it has failed to raise a reasonable doubt in my mind as to the prima facie case established against him by prosecution.

Consequently, at the close of the trial and after a careful evaluation of all the evidence on record in light of the law, I hereby find that prosecution has established the guilt of accused person beyond reasonable doubt. I find beyond reasonable doubt that accused person knowing fully well that he had no authority, granted one plot of land laying and

situate at Ningo Prampram to Asafo Henry Brain and collected the sum of Ghs 37,000 when he had no authority to do so. He is hereby convicted on the charge of fraudulent transaction in land.

As earlier indicated in my ruling against a submission of no case made by the convict through his counsel, " The question is whether the accused person can be tried and convicted of an offence contained in an enactment which was repealed during or in the course of his trial? Here, *section 34 (1) (d) and (e) of the Interpretation Act, 2009 (Act 792)* is instructive. It provides that

**34. (1)** Where an enactment repeals or revokes an enactment, the repeal or revocation shall not, except as in this section otherwise provided,

(d) affect an offence committed against the enactment that is repealed or revoked, or a penalty or a forfeiture or a punishment incurred in respect of that offence; or

(e) affect an investigation, a legal proceeding or a remedy in respect of a right, a privilege, an obligation, a liability, a penalty, a forfeiture or a punishment; and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked.

Based on the express provision of *section 34(1) (d)*, the repeal of *Act 122 by Act 1034* does not affect any offence committed against or under that enactment (Act 122) and/or any legal proceeding in respect of a punishment under that enactment and the legal proceeding in this case i.e the trial can continue."

*However, in determining the appropriate punishment, the requirement of the law is that between the repealed legislation and the current legislation in force, the court must impose the the lesser sentence of the two. Section 35 (2) of Act 792 provides thus:*

*(2) where an enactment repeals or revokes an enactment in this sub section and subsection (3) referred to as the "old enactment" and substitutes by way of an amendment, revision or consolidation with any other enactment, where a penalty, a forfeiture or a punishment is reduced or mitigated by provision of the enactment so substituted, the penalty, forfeiture, or punishment if imposed or awarded after the repeal or revocation, shall be reduced or mitigated accordingly.*

## **PRE SENTENCING**

According to the prosecution, the convict is not known. According to prosecution, complainant has not recovered any of the amount involved.

In mitigation

## **SENTENCING**

The punishment for an infraction of the law under which the accused person was charged i.e *section 34(b) of the Land Registry Act* is a second degree felony which "in addition to any other punishment that may be imposed, to pay an amount equivalent to twice the value of the aggregate consideration received by the person".

Per *section 296(2) of the Criminal and other offences (Procedure) Act, 1960, Act 30,* "where a criminal offence which is not an offence mentioned in subsection (5) is declared by an enactment to be a second degree felony and the punishment for that offence is

not specified, a person convicted of that offence is liable to a term of imprisonment not exceeding ten years”.

Under the *Land Act, 2020 (Act 1036)* the punishment upon conviction for the same offence per *section 277 (2) (b)* is “a fine of not less than seven thousand five hundred penalty units and not more than fifteen thousand penalty units or to a term of imprisonment of not less than seven years and not more than fifteen years or both”.

Clearly, between the two, the lesser punishment is that contained in the repealed act.

In arriving at an appropriate punishment, I have taken into account the fact that the convict, although in his fifties, has shown no remorse for his actions and has taken prosecution through a full trial to establish his guilt. Again, the offence of fraudulent transaction appears to have become a mainstay within the entire criminal jurisdiction that Parliament saw the need to enhance the punishment for same per the Land Act which was enacted three years ago.

The enhancement of the punishment to a minimum of seven years is evidence of the canker of fraudulent transactions in law and the need for the law to be used to clamp down on same by the imposition of harsh sentences that would generally deter many people from engaging in it.

Accordingly, I hereby sentence the convict to a one year term of imprisonment. Since he received the sum of thirty seven thousand Ghana cedis (Ghs 37,000) (inclusive of the Ghs 2,000 paid for the preparation of an indenture) from PW1, he is to pay twice of that amount i.e seventy thousand Ghana cedis (Ghs 74,000) to PW1 by the 31<sup>st</sup> day of July, 2023. He is also to enter into a self- recognizance bond to keep the peace

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P J. ASAMANI FOR THE REPUBLIC

PRINCE KWAKU HODO FOR THE CONVICT