

IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST ON FRIDAY THE  
13<sup>TH</sup> DAY OF OCTOBER 2023 BEFORE HER HONOUR MRS VERONIQUE PRABA  
TETTEH.

---

SUIT No. 99/2022

THE REPUBLIC

VS

WILLIAMS ASAMOAH  
EVANS OPOKU  
POLYCARP APPENTENG  
DANIEL KYEREMEH AND 5 OTHERS AT LARGE

---

I have before me a submission of no case to answer filed by counsel for the first, second and fourth accused person on the grounds that the evidence led by prosecution at the close of their case was insufficient to establish a prima facie case against accused persons.

Before considering the arguments made by counsel, it is important to look at the offence, the accused persons are charged with and the essential ingredients prosecution was tasked with proving. The accused persons are charged with conspiracy to commit the crime of defrauding by false pretences and defrauding by false pretences. The particulars of offence of count 2, defrauding by false pretences provides that the accused persons

*“on the 17<sup>th</sup> of September 2021 at Diaso in the central region and within the jurisdiction of the court with the intent to defraud, you did obtain the consent of one Charles Quaicoe to part with cash the sum of GH¢400000 by means of certain false pretense to wit by falsely pretending that if the said amount is given to you, you could secure him 1.2kg of gold and upon this false representation you succeeded in obtaining the said amount from Charles Quaicoe which statement you knew at the time of making it to be false.”*

From the particulars of offence, it appears the accused persons played equal roles in the deception of the complainant that led to this crime. This is however not the case as is clearly seen from the facts supporting the charge and from the evidence led by the prosecution witnesses.

Moving on, the essential ingredients required to be proved by u can be gleaned from the definition of the crime. Sections 131 and 132 of the Criminal Offences Act, 1960, Act 29 provides that

***131. Defrauding by false pretence***

*(1) A person who defrauds any other person by a false pretence commits a second degree felony.*

*(2) A person who by means of a false pretence or by personation obtains or attempts to obtain the consent of another person to part with or transfer the ownership of a thing by a false representation of acting in accordance with the instructions, orders or a request of the President or member of the Cabinet, commits a second degree felony under subsection (1) and is liable to a term of imprisonment of not less than ten years and not more than twenty-five years despite section 296 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30).35(35)*

***132. Definition of defrauding by false pretence***

*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.*

From the above definitions the ingredients below must be proved at the close of the prosecution's case.

- 1) That the accused persons 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.

As pertains to this case, the prosecution should have established that the accused persons represented to the complainant that

- a. they could secure him 1.2kg of gold
- b. the representation was made with the knowledge that it was false or without believing the truth of their representation
- c. that they made the representation with the intent to defraud the complainant

d. and based on that representation the complainant parted with the cash of GH¢400000.

Prof. Ocran JSC, in the case of *Tsatsu Tsikata v The Republic* 2003-04 SCGLR 1068 stated that:

*“On a submission of no case, the judge’s function was essentially to determine whether there was a genuine case for trial, i.e. whether there were any genuine factual issues that could properly be resolved only by a finder of fact because they might reasonably be resolved in favour of either party. The inquiry had to focus on the threshold question whether the evidence presented a significant disagreement to require submission for a full trial or whether it was so one-sided that one party must prevail as a matter of law. Therefore where reasonable minds could differ as to the import of the evidence presented in a motion for submission of no case, that motion should not be upheld. If, on the other hand, there could be but one and only one reasonable conclusion favouring the moving party, even assuming the truth of all that the prosecution had to say, the judge must grant the motion”*

At the close of the case of prosecution, the evidence so far presented is that the complainant called his cashier, PW2 and asked him to give GH¢400,000 to the first accused who said he would supply him with 1.2kg of gold dust. That some hours after the money had been given to the second accused to give to his boss, first accused, they realized his office was closed. They monitored his office until the accused persons returned to the office. They proceeded to the first accused’s office and there, he purported to hand over some gold dust to complainant who insisted that it should be tested. When it was tested, the substance proved to be fake and not gold. The accused persons were then arrested together with the substance they had with them and the money they had on them.

This was the oral evidence which was subjected to cross examination. Also tendered was documentary evidence which included the statements given by the accused persons after their arrest and the test results of the substance retrieved from the first accused. In the statements given by the accused persons, they deny defrauding the complainant and instead narrate how they were defrauded by the other accused persons who have remained at large.

From the evidence led, it is clear that the 1<sup>st</sup> accused asked for the complainant to send him money so he could buy him gold. The complainant did send him the money relying on the promise to get him gold. The purported gold dust was fake. The 2<sup>nd</sup> and 3<sup>rd</sup> accused persons are employees of the first accused. Their role in the offence is clearly of

persons who went along with their employer to assist him in his negotiations for the purchase of the gold. While I do not agree that there must be express evidence of agreement by persons to show conspiracy as argued by their counsel, in this particular instance I am not satisfied that the second and third accused were part of the conspiracy. As argued by counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons, no actual mention is made of their role in the crime committed. I also find that as employees of the 1<sup>st</sup> accused, the evidence led does not establish any complicity on their part to require them to open their defence. For this reason I will acquit and discharge the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons on both counts.

I however find that a sufficient case has been by prosecution for the 1<sup>st</sup> and 4<sup>th</sup> accused to answer. Counsel for accused person argued that the 1<sup>st</sup> accused was defrauded by the 5 to 9<sup>th</sup> accused persons and therefore he must be discharged as well. Similarly counsel for the 4<sup>th</sup> accused seeks to dissociate him from the actions of the 5<sup>th</sup> to 9<sup>th</sup> accused persons. In my opinion, it is the evidence presented by the 4<sup>th</sup> accused that will prove the disconnection or dissociation if any between the said accused persons and the others. It is up to the accused persons to lead evidence of the facts they claims prove their innocence should they wish to. I find that there are factual issues that are yet to be resolved. As it stands now the 1<sup>st</sup> and 4<sup>th</sup> accused persons acting together led the complainant to believe by paying GH¢400,000 he would be receiving 1.2kg of gold. That was not the case however as the facts and the exhibits show. I will therefore call upon the 1<sup>st</sup> and 4<sup>th</sup> accused to open their case.