

IN THE CIRCUIT COURT HELD IN KUMASI ON FRIDAY THE 18<sup>TH</sup> DAY OF JULY,  
2023 BEFORE HER LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU (MRS.),  
SITTING AS ADDITIONAL CIRCUIT COURT JUDGE.

SUIT NO. D6/154/2021

**THE REPUBLIC**

**VRS:**

**SARAH OPOKU & ANOTHER**

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**JUDGMENT**

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The first and second accused persons were arraigned before this court and charged with two counts of defrauding by false pretence contrary to section 131 of the Criminal Offences Act, 1960 (Act 29) and abetment of crime to wit defrauding by false pretence contrary to sections 20(1) and 131 of Act 29 respectively. Both accused persons pleaded not guilty to the charges against them.

BRIEF FACTS; *1<sup>st</sup> Complainant Osei Kwaku is a businessman and a resident of Kronum Afrancho, Kumasi. 2<sup>nd</sup> Complainant Kofi Asare Bamfo is internal auditor at the forestry*

commission, Kumasi. A1 Sarah Opoku is a trader and residing at Agric-Nzema, Kumasi. In the month of January 2021, the 1<sup>st</sup> complainant was looking for an apartment to rent and A2 led him to A1 at Agric Nzema where A1 showed three-bedroom apartment to the complainant and said the apartment belongs to her husband who lived in abroad. A1 and A2 collected cash of GHC14,000.00 from 1<sup>st</sup> complainant as the rent fee for two years. Thereafter A1 then told the complainant that she is renovating a portion of the apartment, so the rooms will be available within two weeks. A1 after collecting the money started giving excuses and failed to give the apartment to 1<sup>st</sup> complainant. the 1<sup>st</sup> complainant then demanded for a refund from A1 since she failed to release the apartment. A2 then led 2<sup>nd</sup> complainant to A1 for the apartment to be rented to him. A1 and A2 again collected GHC10,000.00 from 2<sup>nd</sup> complainant but failed to release the apartment for him and also fail to refund the money to the complainants. Complainants reported the case to the police RCID/Kumasi where A1 and A2 were arrested. In their respective caution statement, A2 admitted having collected part of the money from the complainants and has not given same to A1. A1 also admitted having collected the money from the complainants through A2 and used part of the money to renovate the apartment and she has also used some for her business. Further investigation depicted that A1 has rented the apartment to somebody else and that person is occupying the apartment. After investigation accused persons were charged with the offences.

The issues before this honourable court for determination are;

1. Whether or not the 1<sup>st</sup> accused person defrauded the complainants by false pretence.
2. Whether or not the 2<sup>nd</sup> accused person abetted the 1<sup>st</sup> accused person to defraud the complainants.

An accused person is presumed innocent unless the contrary is proven or he or she pleads guilty according to Article 19 (2) (c) of the 1992 Constitution.

Section 11(2) of the Evidence Decree, 1975 (NRCD 323) provides that,

*In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the facts beyond reasonable doubt.*

Section 15 of NRCD 323 also provides that, *“Unless it is shifted, the party claiming that a person has committed a crime or wrong doing has the burden of persuasion on that issue”.*

Thus, the onus on the prosecution is proof beyond reasonable doubt as they are alleging the accused persons have committed a crime and the evidential burden is first on them to establish a prima facie case for the accused persons to answer. It is after they have established a prima facie case that the accused persons will be called to open their defence. This is because the accused persons do not have any burden to prove their innocence. They can choose to remain silent if they so wish.

In the case of **Gligah & Atiso v. The Republic** [2010] SCGLR 870 @ 871, the Supreme Court held unanimously dismissing the appeal by the accused persons from the judgment of the Court of Appeal held at holding (1).

*Under Article 19(2) (c) of the 1992 constitution, everyone charged with a criminal offence was presumed innocent until the contrary was proved. In other words, whenever an accused person was arraigned before any court in a criminal trial, it was the duty of the prosecutor to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof was therefore on the prosecution and it was only after a prima facie case had been established by the prosecution that the accused person would be called upon to give his side of the story.*

Section 131(1) of Act 29 states that, *“whoever defrauds any person by any false pretence shall be guilty of a second degree felony”* and Section 132 of Act 29 defines defrauding by false pretence as, *“A person is guilty of defrauding by false pretences if, by means of any false pretence, or by personation he obtains the consent of another person to part with or transfer the ownership of anything.”*

In the case of **Akawah vrs. Commissioner of Police** [1964] GLR 475 @ 477, Apaloo (as he then was) held that, *“In a charge of defrauding by false pretences, the representations alleged in the charge which induced the parting with the money or goods, should be the same in substance as the pretence of which evidence is given.”* The mere representation that something may occur or is likely to occur does not amount to fraud by false pretences unless it is accompanied by a false statement of an existing fact (**Kuma v. the Republic**, Court of Appeal delivered on 24<sup>th</sup> July, 1970 and digested in (1970) CC 113).

The elements that will constitute defrauding by false pretence include;

- a. Means of any false pretence or
- b. By personation obtained consent of another to part or transfer the ownership of a thing.

It is also trite that in proving an offence, it is important to prove the mens rea and actus reus. One cannot stand without the other.

The prosecution called two witnesses to testify on their behalf and the said witnesses are John Osei Kwaku hereinafter referred to as PW1 and Detective \Sergeant Justice Ativor hereinafter referred to as PW2.

PW1 testified that he needs an apartment to rent and A2 led him to A1 who showed him an apartment which need renovation. That A2 informed him that the apartment will be ready in 2 weeks when he made part payment of GHC10000.00 to her through A2 and she later came for the balance of GHC4,000.00. According to PW1 he later observed that A1 had moved into the said apartment she was renovating for him and also there was a misunderstanding between the family members of her husband and herself so he asked for a refund of his money. That A1 has rented the apartment to another but failed to give him his money so he brought her to the police for investigation.

The summary evidence of PW2 is that a case of defrauding by false pretences involving the accused persons were referred to him and further testified that A1 admitted taking money from the complainants.

In the case of **COP v. Antwi [1961] GLR 408**, the court stated that,

*“The fundamental principles underlying the rules of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted.”*

A1 collecting money from the complainant is not a crime. In fact, in the case of **Herman v. Coffie [1996-97] SCGLR 596 @ 599**, the Supreme Court held that, *the duty of the police was to protect the life and property of the citizenry and not to act as debt collectors.”*

A person owing another is not a crime but getting one to depart of a thing under false pretence is a crime. The evidence clearly shows that, there was indeed an apartment for rent which the first accused person managing which same belongs to her alleged boyfriend/husband. The prosecution did not lead any evidence to rebut her claim that the apartment was given to her by the said husband or boyfriend to renovate and rent. In fact PW1 evidence suggest that eventually the renovation was done but she rented to another who is in occupation but has failed to refund his money to him.

With regards to A2 it is an established fact that he is an agent who helps individuals to acquire or rent houses or apartment.

Section 20(1) of Act 29 provides that,

*every person who, directly or indirectly, instigates, commands, counsels, procure, solicits, or in any manner purposely aids, facilitates, encourages, or promotes, whether by his act or*

*presence or otherwise, and every person who does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain, is guilty of abetting that crime, and of abetting the other person in respect of that crime.*

The prosecution evidence against A2 is that he brought people who were looking for accommodation to A1 to rent the said apartment. If the prosecution failed to prove any of the elements that constitute defrauding by false pretence against the first accused person, the charge against the 2<sup>nd</sup> accused person will not stand.

This honourable court erred when it made a ruling that the prosecution has established a prima facie case for accused persons to answer. Instead, it should have acquitted and discharged the accused persons. Even upon the accused persons opening their defence, they punched more holes in the case of the prosecution as clearly there is no evidence of intent to defraud by the first accused person or any intent to abet crime by A2.

The prosecution failed to prove their case beyond reasonable doubt and ideally should have advised PW1 who was the only complainant who testified in court to seek redress at the civil court for the refund of his money. This court finds the accused persons not guilty to all the charges against them and hereby acquits and discharges them on all three counts. PW1 can find redress at the civil court for the refund of his money if the accused persons failed to refund same to him.

**MRS. PRISCILLA DAPAAH MIREKU J.**

**JUSTICE OF THE HIGH COURT SITTING**

**AS ADDITIONAL CIRCUIT COURT JUDGE**