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

SUIT NO. D1/4/21

THE REPUBLIC

VRS

BENJAMIN ASIEDU

MIKE PHIPHI AFFUL

RULING

The Accused Persons are before this Court on thirty charges. On count one, they are charged with the offence of ***Conspiracy to Commit Crime, namely Defrauding by False Pretences contrary to section 23(1) and 131*** of the ***Criminal Offences Act, 1960 (Act 29).*** The particulars of the offence are that during the month of February to August, 2019, they did agree together to act together with a common purpose to commit the crime of Defrauding by False Pretences.

A1 is charged with eight counts of Defrauding by False Pretences; count five, eight, thirteen, fifteen, twenty four, twenty seven, twenty eight and twenty nine.

The Particulars of Offence are that during the month of May, April, and February, 2019 as well as during the months of November, 2018, September, 2019, 14th March, 2019 and May, 2019, in Tema and within the jurisdiction of the court, he did obtain the consent of one Augustus Mensah to part with a cash sum of GH¢5,000.00, one Samuel Edmund Adjei Lomo to part with GH¢6,500.00, one Maxwell Djan to part with GH¢5,000.00, one Thomas Kofi Annan to part with GH¢5,700.00, one Tobiase Tayne to part with GH¢10,000.00, one Alfred Otoo to part with GH¢7,500.00, one Alex Yankson to part

with GH¢5,000.00 and one Rockson Kumaza to part with GH¢5,000.00 all by means of false pretence that if the said amounts were given to him, he could secure each of them a Canadian Visa, and upon such false representation, he succeeded in obtaining the said amounts from them which statement he knew well at the time of making to be false.

A2 is charged with nineteen counts of Defrauding by False Pretences; count two, three, four, seven, nine, ten, twelve, fourteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty one, twenty two, twenty three, twenty five, twenty six and count thirty. The Particulars of Offence are that on the 25th day of June, 2019, 5th July, 2019, May 2019, January, 2019, May 2019, March 2019, May 2018, February, 2019, June, 2019, June 2019, March 2019, March 2019, 14th July 2019, June 2019, July 2018, 15th August, 2019, September 2019, August 2019, 6th August, 2019, 26th May, 2019 all in Tema and within the jurisdiction of this court, with intent to defraud, he obtained the consent of one Stephen Kwabena Bremang to part with a cash sum of GH¢ 5,000.00, one Amoah Kwame Samuel to part with GH¢ 5,000.00, one David Atta Yevutse to part with GH¢5,200.00, one Mahama Yusif to part with GH¢4,000.00, one Sosu Christopher to part with GH¢7,500.00, one Richard Mensah to part with GH¢8,300.00, one Thomas Koranteng to part with GH¢27,000.00, one Opoku Kwame Nyamekye to part with GH¢15,000.00, one Ernest Ofori to part with GH¢7,500.00, one Kwadwo Moses to part with GH¢9,000.00, one Emmanuel Adu Gyamfi to part with GH¢5,000.00, one Emmanuel Kwame Baah to part with GH¢5,000.00, one Henry Charway Ayerh to part with GH¢5,500.00, one Charity Korsah to part with GH¢39,500.00, one Dennis Dotse to part with GH¢12,000.00, one Awudu Ivy to part with GH¢5,000.00,one Simon Obeng to part GH¢13,100.00 , one Michael Atsu Agbenyenu to part with GH¢10,000.00 and one Francis Eyiah Mensah to part with GH¢10,000.00 all by means of false pretence that if the said amount was given to him, he could secure each of them a Canadian Visa, and

upon such false representation, he succeeded in obtaining the said amounts from them which statement he knew well at the time of making to be false.

Both Accused Persons are charged with two counts of Defrauding by False Pretences; count six and count eleven. The Particulars of Offence are that during the month of August 2019 and February, 2019, within the jurisdiction of this court, with intent to defraud, they obtained the consent of one Andrew Kojo Yankey and Samuel Francis Addo to part with cash sums of GH¢12,700.00 and GH¢5,000.00 respectively all by means of false pretences, that if the said amounts were given to them, they could secure each of them a Canadian Visa, and upon such false representation, they succeeded in obtaining the said amounts from them which statement they knew well at the time of making to be false.

After the charges were read and explained to them in their language of preference, they both pleaded not guilty to all the respective charges. By so doing, they cast upon the State the burden of leading evidence to establish their guilt. Accused Persons had also invoked the Constitutional guarantee in Article 19 of the 1992 Constitution. By that plea, they stood shielded by the law as per ***Article 19 (2) (c) of the 1992 Constitution***, that they are 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".

By their plea, they had cast upon prosecution the singular duty of leading cogent, reliable and credible evidence to establish their guilt beyond reasonable doubt. The veritable Dotse JSC in reading the decision of the Supreme Court in the case of ***Amaning v.The Republic [2020) GHASC 47***, had this to say by way of a prologue;

"William Blackstone, an 18th century English jurist in a statement on the hallowed principle of 'Innocent until proven guilty:-rights of an accused person' upon which our criminal justice administration has been founded in Article 19(2) (c) of the Constitution, 1992 stated as follows: 'better that ten guilty persons escape than that one innocent suffer'. The above constitutes the fulcrum of our criminal justice jurisprudence''.

In the case of ***Domena v. Commissioner of Police [1964] GLR 563*** the Supreme Court per Ollenu JSC (as he then was) commented on the burden and standard of proof as such: "Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitutes the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person except in special cases where the statute creating the offence so provides…"

In the case of ***Richard Banousin v. The Republic, Criminal Appeal NO. J3/2/2014 delivered on 18TH March, 2014,*** The Supreme Court per Dotse JSC noted that "the prosecution has the burden to provide evidence to satisfy all the elements of the offence charged".

That being so, Prosecution may lead credible and positive evidence to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty. The onus lies on Prosecution to lead evidence to establish a prima facie case against the Accused Persons by the close of their case. It is only then, that Prosecution would be deemed, prima facie to have upset the presumption of innocence in favour of the accused and he would in turn be called upon not to prove his innocence, but to raise a reasonable doubt as to his guilt.

Prosecution in proof of its case called four witness.

EVIDENCE OF PW1

According to PW1, Stephen Kwabena Bremang, he was introduced to A2 by a friend and A2 claimed to be recruiting people for job opportunities in Canada. A2 arranged a meeting with A1 whom he said was his boss. A1 confirmed the claim of A1 that he was recruiting for a Canadian Company and said he had worked with the company for 26 years.

A1 then charged GH¢30,000.00 of which GH¢5,000.00 was to be paid as initial deposit. HE says that he refused to deal with A1 as he did not know him and A2 agreed to deal with him on financial matters. He later paid GH¢5,000.00 to A2 and also submitted his passport and passport picture to him. They also entered into a Memorandum of Understanding. A2 gave a period of six weeks to complete all the travel arrangements. The scheduled period elapsed and they did not fulfill it.

PW1 further says that he resorted to Alternative Dispute Resolution (ADR) to retrieve his money. A2 then introduced him to one Alhaji Yakubu. A2 also asked that he go for a medical check up to find out his health status and its compliance with the company's requirement. He met other victims at the medical check up. Suspicious that he was being defrauded, he mounted pressure on A2 and A2 returned his passport only.

THE EVIDENCE OF PW2

According to PW2, in July, 2018, A2 offered to help him with a contract so that he could go to sea. However, he had to pay GH¢5,000.00 which he did. A2 then took all his sea certificates, travelling certificate and seaman charge book. A2 failed to deliver the

contract after some weeks and he demanded for a refund but A2 asked him to wait for another opportunity.

In February 2019, A2 told him that he had a contract for him with a Canadian oil company called Chevron but the amount involved was GH¢30,000.00. A2 demanded for GH¢10,000.00 to start the process. He paid GH¢7,000.00 to A2 and A2 told him he would give it to his boss, A1, to start the process.

PW2 says that A2 led him to A1 on the 21st day of February, 2019. A1 then took his passport and two passport size photographs. He later sent his certificates to A1 via email. On 9th September, 2019, A2 called and asked him to go for his medicals. He did so on the 11th of September, 2019 and it was there that he got to know he had been defrauded.

EVIDENCE OF PW3

According to PW3, he was introduced to A2 for the purpose of processing documents to go and work in Canada. He paid GH¢10,000.00 to A2. After some weeks, he paid GH¢500.00 for medical examination and GH¢100.00 for a police medical report. He also paid GH¢2,000.00 for finger print identification and later went ahead to have his yellow fever vaccination.

PW3 says that he made his payment directly to A2 in his house and his passport and yellow fever cards are with the Accused Persons. The Accused Persons informed him that his travelling documents would be ready by the end of August 2019, however, till date that has not happened and neither has he received his money.

THE EVIDENCE OF PW4

PW4 is the investigator. His evidence is that in the course of investigations, both Accused Persons admitted having received moneys from the complainants. PW4 says that A1 is a retired worker of Tide Water Marine, Oil and Gas Company based in Canada. A1 and A2 became friends when A1 returned to Ghana.

The two of them conspired to recruit people to work in Tide Water Marine, Oil and Gas Company and during the months of May, 2018 to August, 2019, they convinced thirty five people including the complainants to be sent to the said company to work.

They asked these complainants to pay GH¢30,000.00 each for the processing of their documentation and visa acquisition and told them they could make initial deposit payments. Accused Persons then received various sums of money ranging from GH¢5,000.00 to GH¢39,000.00 from the complainants knowing fully well that they were incapable of securing Canadian visas for them.

In total, Accused Persons received the sum of GH¢276,900.00 from the complainants. He tendered in evidence the investigation caution and charge statements of the Accused Persons.

CONSIDERATION BY COURT

It is a legal known that Prosecution bears the evidential burden of establishing all the elements of the offence they have charged the Accused Persons with. Learned counsel for A1 and A2 aptly referred to the dictum of Dotse JSC in the case of ***Richard Banousin v. The Republic, Crim., Appeal No j3/2/2014 delivered on 18th March, 2014*** where the reverent Justice of the Supreme Court says that "the prosecution has the burden to provide evidence to satisfy all the elements of the offence charged''.

In ***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."*

Section 173 of the Criminal Procedure and Other Offences Procedure Code, 1960 (Act 30) provides that; "If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

Thus a court is under a duty at the close of Prosecution's case, to find out whether from the evidence on record, Prosecution has established a case sufficiently against and accused person that requires him to answer. The law has long been settled as to the factors for a court to consider in deciding whether or not a case is made out against the accused sufficiently to require him to make a defence.

In the Supreme Court case ***of Asamoah & Anor. v. The Republic [2017-2018] 1 SCGLR, 486, Adinyira JSC*** speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

a) There had been no evidence to prove an essential element in the crime

b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it
d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of ***The State v. Ali Kassena [1962] 1 GLR 144*** in which the Practice Direction issued by ***the Queens Bench Division in England [1962] 1 E.R 448 (Lord Parker CJ)*** was approved and the case of ***Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068***). See also the case of ***Sarpong v. The Republic [1978] GLR 790.***

To begin with, although Prosecution charged the Accused Persons with thirty counts of Conspiracy to Commit Crime and Defrauding by False Pretences and their plea was taken on twenty-six of these counts, Prosecution led copious evidence on count one, count two, count six and count twenty two. Both Accused Persons are charged with count 1 and count 6, while A2 is charged with count 2 and 22.

The only evidence Prosecution led on the other twenty-two counts was the evidence of the investigator. None of the complainants were in court to testify and PW4's evidence was general evidence which did not set out specifically how the Accused Persons had committed these twenty-six offences. I find the evidence on record to be insufficient as it fails to establish any connection between the Accused Persons and the said complainants. On that basis, I hereby find at the close of Prosecution's case that they have failed to establish a prima facie case on counts 3,4,5,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,23,24,25,26,27,28,29 and 30. Accused Persons are hereby acquitted and discharged on those counts.

On the first issue and charge, the applicable ***section of the Criminal Offences Act, 1960 (Act 29) is section 23 (1)***. It provides that "where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence".

The offence of Conspiracy is such that once a person has agreed with another to commit or abet the commission of an offence, the offence has been made out. This is so even where one of the parties resiles from the actual commission or abetment of the offence. Again, the persons need not have had a previous concert or deliberation prior to agreeing to act together.

In this case, in order to establish the first offence, Prosecution must prove that the Accused Persons agreed with others to act together with a common purpose to defraud the complainants.

In ***Commissioner of Police v. Afari & Addo [1962] 1 GLR 483***, it was held by Azu Crabbe JSC that "it is rare in conspiracy cases for there to be direct evidence of the agreement which is the gist of the crime. This usually has to be proved by evidence of subsequent acts, done in concert, and so indicating a previous agreement.'' This position of the law was reiterated by the Supreme Court in the oft cited case of ***Azametsi & Others v. The Republic [1974] 1 GLR 228,*** where the Court held that it was not always easy to prove agreement by evidence, but it could be inferred from the conduct of and statements made by the Accused Persons.

Section 132 defines the offence of Defrauding by False Pretences to be thus; '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'. The Prosecution in order to succeed on a charge of Defrauding by False Pretences in this particular case need to prove that;

- the accused made a false pretence
- that by means of the false pretence , the accused obtained the consent of the complainant to part with or transfer their ownership of a thing or property (money)
- the accused did so with an intention to defraud.

By a false pretence, the prosecution must prove that the accused, knowing that a statement or representation he was making was false, made such a false representation to the complainant with the intention that he should rely on the said false statement.

On the last element of an intention to defraud, ***section 16 of the Criminal Act, 1960 (Act 29)*** provides that for the purposes of any provision of this Code by which any forgery, falsification, or other unlawful act is punishable if used or done with intent to defraud, **an intent to defraud means an intent to cause, by means of such forgery, falsification, or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense or to the loss of any other person**.

Prosecution must go on to prove that the complainant relied on the false statement to his detriment. This means that he was induced by virtue of his belief in that statement to part with his money.

Although both Accused Persons were charged with count six, the complainant under cross-examination was emphatic that all his dealings were with A2 only and the first

time he met A1 was at the police station when this case was reported. There being no evidence in support of the charge against A1, he is hereby acquitted and discharged on count six.

At the close of Prosecution's case, I find that Prosecution has led evidence to establish all the elements of count one, count two, count six and count twenty against A2 and count one against A1. Furthermore, Prosecution's evidence was not so discredited under cross-examination such that the evidence was unreliable and the evidence on record also lends itself to only one conclusion; that the Accused Persons conspired to defraud and indeed defrauded PW1, PW2 and PW3. Prosecution has thus established a prima facie case against the Accused Persons.

Prosecution has established a prima facie case against both Accused Persons on count one. Prosecution has established a prima facie case against A2 on counts two, count six and twenty two. Save for these counts, Accused Persons are acquitted and discharged on all the other counts as Prosecution has failed to establish a prima facie case against them. Accused Persons are hereby called upon to open their defence on count one, and A2 is to as well open his defence on count two, six and twenty two.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P J. ASAMANI FOR THE REPUBLIC PRESENT

SOLOMON KOFI ADDO FOR A1 PRESENT

OKYEAME YANKSON FOR A2 PRESENT