

IN THE CIRCUIT COURT "A", TEMA, HELD ON MONDAY, THE 28TH
DAY OF AUGUST, 2023, BEFORE HER HONOUR AGNES
OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO: D6/14/21

THE REPUBLIC

VRS:

PAUL ESIANYO

ACCUSED PERSON

PRESENT

ASP GEORGE DOE FOR PROSECUTION

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The accused person was charged and arraigned before this court on 14th June, 2021 on a charge of defrauding by false pretences contrary to **Section 131** of the Criminal Offences Act, (1960) Act 29.

The brief facts presented by the prosecution are that the complainant, Theresa Adjei, is aged 72 years old, an Evangelist, and lives at Community 2, Tema.

The accused person is also 49 years old, a carpenter, and lives in Tema Newtown. The prosecution alleges that the complainant and one Benedicta Galley, are family friends. In the year 2018, the complainant discussed her intention to buy a house within Tema Metropolis with the said Benedicta Galley, who passed the information on to Kojo Kukubor, who was a house agent now deceased. In March 2019, Kojo Kukubor called Benedicta Galley and informed her that the accused person had two rooms located at J County, a suburb of Community 2, Tema, for sale. On April 20, 2020, the accused person showed the house to the complainant in the presence of witnesses, and the complainant showed interest in buying same.

The accused person quoted the price of the house as GH¢140,000.00 in the presence of the witnesses and the complainant made a part-payment of GH¢25,000.00 to the accused person in the presence of witnesses for documentation and to settle the tenants occupying the rooms to vacate the house. In May 2020, the complainant went to the house to start renovations only to see a notice on the wall that the *"house is not for sale."* The complainant became alarmed and contacted Kojo Kukubor, who went to Tema Development Corporation to conduct a search which proved that the accused person had no title to the house to transfer to the complainant.

According to the prosecution, the accused person went into hiding after collecting the money. On 15th August, 2019, a complaint was lodged at the Community 2, Tema Police Station, and the accused person was arrested from his hideout at Tema Newtown. During investigations, it was discovered that the house belonged to the accused's late father and he sold the house without his siblings' knowledge. During investigations, an amount of GH¢16,500.00 was retrieved from the accused and handed over to the complainant. After investigations, the accused person was charged with the offence and brought before this Court.

THE PLEA

The self-represented accused person pleaded not guilty to the charge after it had been read and explained to him in the Ewe language. The accused person having pleaded not guilty to the charge put the facts of the prosecution in issue and thereafter the prosecution assumed the burden to prove the guilt of the accused person beyond reasonable doubt.

BURDEN OF PROOF

Under **Article 19(2)(c)** of the 1992 Constitution, a person charged with a criminal offence is presumed innocent until proven guilty or has pleaded guilty. This simply means that when a person is charged with a criminal offence, it is the duty of the prosecution to prove the guilt of the accused person beyond reasonable doubt. This requirement is the essence of the **Sections 11, 13, 15** of the Evidence Act, 1975(NRCD 323). In the case of **Asante (No.1) v. The Republic (No.1)** [2017-2020] I SCGLR 132 at 143 per Pwamang JSC held that:

“Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it was the accused person who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to his commission of the offence and his complicity in it except where he relies on a statutory or special defence”

The prosecution therefore bears the burden to prove the guilt of the accused person beyond reasonable doubt. When the accused person is called upon to open his defence, the law requires the accused person only to raise a reasonable doubt in the case of the prosecution as to his guilt. See **Section 13(2)** of the Evidence Act, 1975(NRCD 323)

ANALYSIS

Section 131 of Act 29, which creates the offence of defrauding by false pretence provides that any person who defrauds another person by false pretence shall be guilty of a second-degree felony. Section 132 of Act 29 which defines the offence states that:

"a person is guilty of defrauding by false pretence, if by any false pretence or by personation, he obtains the consent of another person to part with or transfer the ownership of anything".

The law further defines false pretence under **Section 133 (1)** of Act 29 as:

"a representation of the existence of a state of facts made by a person either with the knowledge that such representation is false or without the belief that it is true and made with an intent to defraud. A representation may be made either by written or spoken words or by personation or by any other conduct, sign or means of whatsoever kind".

The representation may be made in writing or spoken words, or by personation, or by any other conduct, sign, or means of any kind. The

representation as to the state of facts may also include a representation as to any right, liability, dignity, or ground or confidence but excludes a mere representation of an intention of state of mind or promise that anything will happen or be done or likely to happen or be done. See **Section 133(2)** of Act 29. Additionally, where an accused person succeeds in obtaining the consent of a person by false pretence, the fact that the pretence is not of a kind that would not have an effect on the mind of a person using ordinary care and judgment is inconsequential and not a defence. See **section 133(2)(d)** and the case of the **Republic v. Osei Wusu** (Winfred) Unreported; Suit No. FT/0036/2016; Asare-Botwe J.

In the case of **Adobor v. The Republic** [2007] GHACA 5 (20 December, 2007), CA, the court held that:

“to constitute an offence of fraud by false pretence, the accused should have made a representation which to his knowledge is false, the representation should be made to a person who believed it and as a result was induced to part with or transfer the ownership of anything.”

The court further defined *“induce”* as to persuade, to prevail upon another person to believe something and act upon it. Thus, the victim must have been persuaded to accept the representation made to him as true and act upon it to his detriment.

The essential elements which prosecution must prove to secure conviction as

stated in the case of The **Republic v. Woyome (Alfred Agbesi)** Suit No H2/17/15, CA decided on 11th March, 2016 CA are that:

- i. a representation made that is false.
- ii. made without the belief that it was true
- iii. made with intent to defraud.

To prove that the accused person defrauded the complainant by false pretence, the first prosecution witness (PW1), the complainant testified that in March, 2019, one Benedicta Aku Galley (PW2) informed her that a man had informed her that Tema Development Corporation (T.D.C) was offering a four-bedroom apartment located at J County, a suburb of Community 2, Tema for sale which she expressed interest in buying. Based on that the said Benedicta introduced the accused person to her and she went with the accused person, PW2, and one Rev. Moses Mensah to inspect *House No: 322/N3 C2* located in Community 2, Tema. PW1 further testified that after inspection, the accused person showed and represented to her that the apartment solely belonged to him and offered to sell it to her. She then agreed to buy the apartment at a price of One hundred and Forty Thousand Ghana cedis (GH¢140,000.00). Pursuant to that she made a part-payment of Twenty-Five Thousand Ghana cedis (GH¢25,000.00) in the presence of PW2. Thereafter, the accused person issued her with a receipt signed by the accused person, herself and other witnesses. The receipt issued was admitted and marked as **Exhibit "C"**.

PW1 testified further that after the sale, she went to the Tema Development Corporation (T.D.C) to secure the relevant documents covering the apartment she bought from the accused person and to her chagrin, the officials at TDC informed her that per their records, the property does not belong to the accused person but rather the late father of the accused person, Mr. Thomas Yao Esianyo. Therefore, the accused person's other siblings had an interest in that apartment and it was not sale-able to her to buy only by the accused person. Consequently, she caused the arrest of the accused person and during investigations, the siblings of the accused person in his presence informed the police that the accused person alone was not competent to sell the apartment to her which the accused person confirmed. Based on that the Crime Officer told the accused person to refund the amount of Twenty-Five Thousand Ghana cedis (GH¢25,000) received from her. The accused person then refunded Sixteen Thousand, Five Hundred Ghana cedis (GH¢16,500), leaving a balance of Eight Thousand, Five Hundred Ghana cedis (GH¢8,500). Two months later, when she demanded the outstanding balance to be paid, the accused person told her to send him to court.

The second prosecution witness (PW2), Benedicta Aku Galley, in her testimony corroborated the account of PW1 regarding the sale of the house. She testified that in the year 2018, PW1 expressed interest in buying a house and requested for her assistance. She was introduced to the accused person

who informed her that he had a house for sale. The accused person took her to house No: 322/N3 Community 2 , Tema and told her that it was his personal property that he was offering for sale and she agreed to buy it on behalf of PW1. When she asked the accused person how he acquired the house since it was a TDC Company Ltd. property, he answered that the house was rented by his father from T.D.C. and when his father was sick and about to die, he used his father's name to buy the apartment and that he was the sole owner of the house and was ready to sell it.

The second prosecution witness further testified that she then asked the accused person to let her see his siblings to confirm whether the apartment really belonged to him. The accused person brought an older man whose name he gave as David Esianyo and introduced him as his elder brother to confirm that the accused person was the owner of the house in the presence of PW1 and One Rev Moses. After the confirmation, they met and agreed on a purchase price of One Hundred and Forty Thousand Ghana Cedis (GH¢140,000.00) out of which PW1 made a part-payment of paid Twenty-Five Thousand Ghana Cedis (GH¢25,000.00) to the accused person.

Later, she discovered that the house did not belong to the accused person and asked the accused person to take her to his family head in his hometown to

clear all doubts about the house. She sent one Mr. Arnold Deku and John Kukubor (deceased) to accompany the accused person to his hometown to meet the family head. The accused person, Mr. Arnold Deku and John Kukubor (deceased) informed her that they had set off to Tatome, near Akatsi to meet the family head of the accused person. However, a few minutes later, Mr. Arnold Deku and John Kukubor (deceased) returned and told her that the accused person vanished suddenly while they were on their way to his hometown which alarmed her. She then advised PW1 to take full possession of the house by sacking all the tenants. She accompanied PW1 to the house, but they were attacked and sacked from the house by some men who claimed to be the brothers of the accused person. She went to the house of David Esianyoh, the supposed elder brother of the accused person who admitted that he was not related to the accused person and that the accused person paid him Five Hundred Ghana Cedis GH¢500.00 to pretend to be his elder brother.

Furthermore, PW2 testified that she advised PW1 to verify if the building was registered in the name of the accused person at the Tema Development Company Ltd. (TDC). PW1 confirmed that the house was registered in the name of Thomas Yao Esianyoh, the father of the accused person. PW2 then maintains that the accused person deceived them and took PW1's money amounting to Twenty-Five Thousand Cedis (GH¢25,000.00) to sell the house to PW1.

The third prosecution witness (PW3), *No. 46790 Isaac Otchere*, stationed at Community 2 Police Station, Tema testified that on 15th August, 2019, PW1, came to the police station and reported that in April 2019, the accused person collected an amount of GH¢25,000.00 from her as part payment of the sale of the house in dispute. However, the accused failed to deliver the rooms because they did not belong to him. PW3 further testified that the case was assigned to him for investigations and during investigations, he interviewed PW1 and PW2 who narrated the antecedents of the case and the transaction between the accused person and PW1. During investigations, one Kojo Kukubor led him to the house of the accused person to arrest him and PW1 and PW2 identified the accused person to him as the one who took PW1's money.

PW3 further testified that the accused person claimed that the house belonged to him and also admitted that he collected an amount of GH¢25,000.00 from PW1 as part payment of the purchase price of the rooms out of the agreed purchase price which was GH¢140,000.00. He then took the investigation caution statement of the accused person admitted and marked as **Exhibit "A"** and the charge statement as **Exhibit "B"**. PW3 also tendered in evidence **Exhibit "C"**, the receipt issued to PW1 by the accused person bearing the

names of PW1, the accused person, David Essiano, Benedicta Aku Galley, Kojo Kukubor, and Jacob Odai. After that PW1, PW2, Kojo Kukubor, and the accused led him to house *number 322/N3C2* and showed him the rooms as well as a three-room extension on a parcel of land attached, and he tendered in evidence photographs admitted and marked as **Exhibits "H" and "H1"**. The accused person told him in his statement that the rooms belonged to his late father, which he inherited, and his brothers as well as the whole family were aware but the accused person did not produce his brothers to confirm that he was the owner of the house. The accused person then produced annual ground rent demand notice receipt bearing the name of Mr. Thomas Esiano, the late father of the accused person as proof of his title to the land in dispute. The Annual Demand Notice was admitted and marked as **Exhibit "E"**

In addition, PW3 testified that during investigations, he wrote a letter to TDC Company Ltd to ascertain the rightful owner of the rooms, admitted and marked as **Exhibit "F"**. After that, he received a letter from TDC, admitted and marked as **Exhibit "G"** which confirmed that the rooms belonged to Mr. Thomas Yao Esiano, as stated in the TDC document provided by the accused person. PW3 further testified that PW2 told him that the accused introduced David Esiano as his elder brother, but David Esiano later admitted that he was not related to the accused person and that the accused person paid him

an amount of GH¢500.00 to pretend to be his elder brother. He further invited David Esiano to his office to assist in the investigations, but he failed and later vacated his place of abode. In the course of investigations, PW1 and PW2 gave him an Application for Late Death Registration dated 14th May 2019, admitted and marked as **Exhibit "D"** and a Statutory Declaration purporting to have been granted by the High Court-Tema on the same date, which the accused person furnished to them as proof of his ownership of the rooms, admitted and marked as **Exhibit "D1"**. However, upon investigation, he realized that the documents were fake. Based on the foregoing, he charged the accused person with the offence of defrauding by false pretences and the accused submitted a statement to that effect.

From the evidence led by the prosecution witnesses, the accused person is alleged to have orally represented to PW1 and PW2 that he was the sole owner of the house in dispute and that if an amount of GH¢140,000 was paid to him, he could transfer ownership of the said house to PW1 and based on that he succeeded in obtaining the consent of PW1 to part with of an amount of GH¢25,000, which statement turned out to be false. The prosecution further maintains that the accused person knew that he was not the owner but intended to defraud PW1 by the false representation.

The onus therefore is on the accused person to raise a reasonable doubt in the case of the prosecution as to his guilt. The accused person in his investigation caution statement, **Exhibit "A"** told the police that the house is not a family house and that his father rented the property from TDC and in the year 1996, TDC gave them the option to buy the property or vacate from the house. By then, his father had died so he went to TDC to pay for it. According to him, when his elder siblings saw that he was selling the house, they created a problem for him that the house belongs to all of them.

The accused person in his defence testified on oath that he is the owner of the house and that he informed his cousin David that he wanted to sell his house. The said David also informed one Kojo Kukubor about his intention to sell the house in dispute and Kojo Kukubor informed PW1 who expressed interest in buying the house. They negotiated the price and agreed on GH¢140,000 and he demanded for an amount of GH¢25,000 as part-payment to use to effect the change of ownership. PW1 then requested for the documents covering the house and when he gave the documents to her, she asked him how he acquired the property. He then told her that his father rented the house from TDC. According to the accused person, at the time his father was working with Ghana Ports and Harbours Authority in the year 1990 and that his father died in 1996.

The accused person further testified in his defence that TDC sent notification that the house be sold to the sitting tenant so he purchased the property from TDC and paid for the house. In support, he tendered in evidence **Exhibit "1"** as the receipt TDC gave to him after he paid the purchase price of GH¢460. According to him, after receiving money from PW1, they agreed that he would complete the documentation for transfer of ownership to PW1 within one month. PW1 took the documents to conduct a search at TDC. After two weeks, she called him to inform him that she was satisfied with the results so he should come to the house to collect the GH¢25,000. Two weeks later, PW1 called that if he had not completed the documentation for the transfer, then he should refund monies paid to him because she had gotten another house to buy. According to him, at the time, he had spent part of the money in preparing the documents so he refunded an amount of GH¢16,500 to her and promised to refund the outstanding balance being GH¢8,500 to her within two months but in two weeks, PW1 reported the matter to the police and he was arrested.

Again, he stated that at the police station, he gave his statement to the police explaining the circumstances leading to his arrest and he promised to refund the money within one month. Two weeks after, the police arraigned him

before the court. According to his testimony, the reason for his inability to pay the money was that when he was granted bail by the court, it took him two weeks to get sureties and his long absence from work caused him to lose his job. The accused person states he has secured another job and he is willing to refund the money to PW1.

The accused person, under cross-examination by prosecution, the following ensued;

Q: The house in question, can you tell the court who owns the house?

A: My Lord, I told the court the last time that my father rented the house from TDC when he was an employee of the Ghana Ports Authority.

Q: So you will agree with me that the house in question was not rented by you but rather by your father?

A: Yes My Lord.

Q: Can you tell the court how old you were at the time your father rented the house from TDC.

A: My Lord, I cannot remember when my father rented the place. It will be that I was not born at the time.

Q: You will also agree with me that the offer letter was not addressed to you but rather your father.

A: Yes My Lord. It was directed to my father but I paid the cost of the house to TDC.

Q: I am putting it to you that, your assertion that you bought the house is incorrect because there is no way you will buy the house and the offer letter will be in your father's name.

A: My Lord, I informed TDC about it and I was told that they can only effect change in the name if I produce letters of administration at the court.

The accused person under further cross-examination by the prosecution admits that TDC does not recognize him as the lawful owner of the property in dispute. The accused person further testified under cross-examination that after purchasing the house from TDC, there was a bare land in front of the house of which he made extension to the original structure and the ground rent he paid to TDC, the receipt is in his name. The said ground rent receipt admitted and marked as **Exhibit "E"**, the receipt of payment of ground rent up to 2019 still bears the name of Thomas Yao Esianyoy and the accused person had written his name in ink on the receipt issued by TDC. Receipt for payment of ground rent is not receipt for the purchase of the house by the accused person.

The defence witness (DW1) described himself as Peter Esianyoy, and the younger brother of the accused person. According to his testimony, the accused person has a house at Tema Community 2 but he does not remember

the house number because he did not stay there for long. DW1 further testified that one day when he returned from work, the accused person told him that he wants to sell his house at Community 2 and he responded that since he is the elder brother and the house belongs to him, he had the right to sell the house and after this conversation, he went to sea. Upon his return, the accused person informed him that some people showed interest in buying the house and they had given him money to effect the change of ownership of the house. After this conversation, he went to sea again. When he returned, he was told that the accused person has been arrested and was at the police station. He went to the police station to see the accused person and when he enquired from him the reason for his arrest, he informed him that the people who gave him the money to effect change of ownership said they were not interested in purchasing the house and that he should refund the money to them. The accused person told him that he had already used part of the money for documentation and he gave the remaining amount to them but the complainant went ahead to report him to the police.

The defence witness under cross-examination testified that their father was living in the house and when he died the accused person informed him that he had purchased the house from TDC. When challenged that he was the son of the accused person and not his elder brother, he stated that the accused person is indeed his brother and that their father died before he was born.

DW1 also gave the name of their head of family as Togbe Etor but the name of the head of family provided by the accused person is Kwamegah Esianyo as stated on the Declaration and the witness explained that when Togbe Etor is not around, Kwamegah Esianyo acts in his stead.

From the evidence led by the prosecution and the defence put up by the accused person, it is not in dispute that the accused person represented to PW1 that the house he purported to sell to PW1 originally belonged to his father and after his death, he became the owner of the property and that he had purchased the property from TDC. The accused person however, did not provide any evidence of the said purchase of the house from TDC. In the self-serving documents made in the year 2019 titled *“Application for Late Death Registration of the Late Death of the Late Thomas Yao Esianyo, Exhibit “D” and “D1”*, one Kwamegah Esianyo described as Head of Family and one David Esianyo, also described as a principal member of the family states that the accused person has been appointed as the next of kin of the deceased and that at the time of the death of the deceased, due to ignorance, the death was not registered and that they are in support of his application for late death registration to enable him process his documents and that they indemnify all authorities against any claim, action or proceeding that might arise out of this procedure. It is instructive to note that this alleged declaration was made in the year 2019 after the purported sale of the house to PW1 by the accused

person. This document for late registration of death at the High Court is not known to the law and smacks of fraud. Assuming, without admitting that the process is proper, it only appointed the accused person as the next of kin of his late father to register his death but does not authorise him to sell the house.

Additionally, from the response from TDC pursuant to the request for information sent by the police, **Exhibit "G" and "G1"**, the accused person is not the rightful owner of the house in dispute. The letter states that:

"(i)The rightful owners of house number 322/N3C2 are Yaw Akumanyi (A)Thomas Yao Esianyo (B&C) and John Adarku (D)"

(iv)No, the accused person does not have title to the property"

From **Exhibit "G1"**, TDC under the house ownership scheme dated 15/2/2011, offered the house a lease of the property to these individuals at a cost of GH¢460 which TDC acknowledged that the three people paid in 2002 and 2004. The accused person in the receipt prepared for PW1 **Exhibit "C"** state states that he and David Esianyo are the current owners of the property which originally belonged to their late father. The said David Esianyo who the accused person described as an owner also signed as a witness to the transaction and not a seller. There is no evidence that the property has been vested in the accused person after the death of his father and there is no

evidence to substantiate his claim that he purchased the property from TDC.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I hold that the accused person falsely represented to PW1 that he was the owner of the house in dispute and that this statement induced PW1 to believe that the accused person was indeed the owner based on which she parted with an amount of GH¢25,000 as part-payment for the house.

On the issue of whether or not the representation was made with intent to defraud, Intent to defraud is defined in **section 16 of Act 29** as *“intent to cause, by means of forgery, falsification, or other unlawful act, a gain capable of being measured in money, or the possibility of that gain, to a person at the expense or to the loss of any other person”*.

In the case of **Asiedu v. The Republic** [1968] GLR 1, the court held in its holding 4 that *“when a valuable thing was obtained by false pretences, prima facie there was an intent to defraud.”*

In the instant case, the accused person is not the rightful owner of the house since from the records of TDC, the house belongs to his late father. The

accused person claims to have solely purchased the house from TDC without any proof. There is also no evidence that the property devolved on him and has been vested in him. To further perpetuate fraud on PW1, after the sale, the accused person by Statutory Declaration purporting to come from his head of family and one David Esianyoo described as a principal member of the family made an application for late registration of death at the High court. The defence witness, who claims to be the brother of the accused person could not even state the name of the head of family and clearly made a mockery of himself when he claimed that their late father died three years before he was born. Till date, the accused person who claims to be the owner of the house has not been able to give possession to PW1. The accused person therefore possessed the requisite intent to defraud PW1 when he induced her to part with money to her detriment.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I hold that the prosecution succeeded in proving their case beyond reasonable doubt that the accused person orally represented to PW1 that he was the sole owner of the property in dispute, with the knowledge that it was false which statement induced PW1 to part with money with intent to defraud her. I therefore pronounce the accused person guilty of the offence and I accordingly convict him of same.

SENTENCING

In sentencing the Convict, the court takes into consideration his plea in mitigation, the fact that he is a first-time offender, and the fact that he is married dependents, and the age of the accused person which he has given as 53 years. The court also takes into consideration the fact that the accused person has refunded part of the money received from PW1. The court further considers the fact that the subject matter of the fraud is an immovable property and the victim of the fraud is an old woman aged over 70 years.

I therefore sentence the Convict to serve a term of imprisonment of Eight (8) years in hard labour.

RESTITUTION ORDER

In accordance with **Section 146** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), the accused person shall refund the outstanding balance of GH¢8000 to PW1.

The amount of GH¢500 paid to the police by the Convict should be released to the Complainant.

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)

