

**IN THE CIRCUIT COURT HELD AT DORMAA AHENKRO ON THURSDAY  
THE 21ST DAY OF MARCH, 2024 BEFORE HER HONOUR PHILOMINA  
ANSAAH ASIEDU ESQ., CIRCUIT COURT JUDGE**

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CCNO: 127/2021

**THE REPUBLIC**

**VRS**

**KOFI ADAMS**

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**JUDGMENT**

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The accused person was charged with the offence of defrauding by false presence contrary to the Section 131 of the Criminal Offences Act of Ghana, 1960 (Act 29). The charge was read to the accused person when he was arraigned before the Court and he pleaded not guilty to the offence. This placed the burden on the prosecution to prove their case beyond reasonable doubt

### **FACTS**

The brief facts of the case are that, the complainant in this case resides at Dormaa Ahenkro and the accused person is a native of Yeji and a businessman. The complainant met the accused person sometime in 2012 through a friend on his visit to Ghana. The complainant's friend then introduced the accused person to him as a car dealer. The complainant who had problem with his vehicle then expressed interest in buying a tipper truck. He approached the accused person. Both parties agreed on a cost and the buying of the vehicle from Togo, they agreed on a deposit of GH¢40,000.00 for the payment of the truck and road expenses till the vehicle

arrives in Ghana and then they agree on a specific selling price. The accused then went to buy the vehicle but the Customs Officials seized the vehicle. The accused person informed the complainant about this and the fact that he needed his support financially and physically to redeem the vehicle from the officials of the Custom Exercise Preventive Service (CEPS). The complainant then made additional payment to the accused person to the tune of GH¢90,000.00 but failed to go and meet the accused person to settle the issue on the vehicle. This made the accused person seize communication with the complainant and the complainant has made several attempts for his money to be refunded to him but all to no avail. The complainant then reported the matter to the police and the accused person was arrested and put before this Honorable Court.

For purposes of emphasis and necessary reference, I hereby quote Section 131 and 132 of the Criminal Offences Act, 1960 (Act 29).

Section 131 states:

**“A person who defrauds any other person by false pretence commits a second degree felony”**

The Section 132 of the act supra defines defrauding by false pretense as:

**“A person defrauds by false pretenses if, by any means of a false pretense or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing”.**

In the case of RICHARD KWABENA ASIAMAHA V THE REP [2020] 170 GMJ 525 – 526, Mrs Torkonu JSC (as she then was) set out the elements of the offence of defrauding by false pretence in the following manner:

**“the criminal enterprise of defrauding by false pretence requires the accused to get a second person to give consent to part with or transfer the ownership of a thing. He may obtain the consent directly or through a**

**personation of another person. For the charge of achieving this purpose by false pretense to succeed, the accused should have represented the existence of a state of facts with the knowledge that such representation is false or without the belief that it is true."**

### **The case of the prosecution**

The prosecution called the complainants and the case investigator as their witnesses in the form of PW 1 and PW 2 respectively.

The complainant, Francis Asare (PW1) stated in his witness statement which was admitted as his evidence-in-chief at paragraphs 1 to 6 as follows:

*"My name is Asare Francis ... Somewhere in 2021, I visited a friend, one Afful in Tema and met the accused person for the first time. The accused person introduced himself to me as a car dealer and in the course of our conversation, we exchanged contact numbers. Somewhere in 2017, my car broke down and I applied for a loan of GH¢50,000.00 to support my business and recalled that accused Kofi Adams could help since he is a car dealer. I contacted the accused person and he informed me to be importing cars from Togo at affordable prices and that he can supply me a car of my choice. I got interested and requested that he supply me with a Tipper Truck since mine was old with faults..."*

PW2 (No 52356 G/L/Cpl Anaba A. Atinga) also in his evidence in chief at paragraphs 2 – 7 stated as follows:

*"On 26/02/2021, I was the available investigator at the station... I obtained PW1's statement and he stated that he came home from Austria to perform his mother's funeral. That somewhere in 2012, he met the accused Kofi Adams in Tema when he visited a friend, one Afful and the accused person introduced himself as a car dealer and they later exchanged contacts. That he never heard or contacted the accused*

*person until somewhere in 2017 when his car broke down and he acquired a bank loan of GH¢50,000.00 to support his business and recalled that the accused person is a car dealer. That, he then contacted the accused person and requested for a tipper truck since his car was old with faults. In trying to supply the said Tipper truck, the accused person explained that he imports cars from Togo to Ghana at a cost of GH¢45,000.00 without duty. That he got interested and made his order for the accused person to deliver the tipper truck at the agreed price but the accused person demanded for a first part payment of GH¢10,000.00 so that he could sponsor the rest until the truck is delivered and the money was sent through the accused mobile money number via 0553012081 in Dormaa."*

After the closure of the prosecution case, counsel for the accused person filed a submission of no case and same was dismissed for the accused person to open his defence.

### **Defence**

When the accused person opened his defense he also affirmed the fact that he met the accused person through his friend. He also said he told the complainant that he did not have what he was asking for unless they buy it through Togo and the complainant agreed. He then went to buy the car and he was arrested on his return with the vehicle hence the vehicle was seized. After the vehicle was impounded at Tamale customs he informed the complainant to do with him to go and retrieve it and he refused to go with him. The complainant subsequently caused his arrest.

Clearly from the evidence of PW1 and PW2, it was the complainant who approached the accused person first about his interest to engage in a business with him that is to buy an engine before he accused spoke about the fact that he can

even get him the whole tipper truck instead of an engine. The accused person only went further to engage in a conversation to help the complainant because of his issue at that time in his business. The complainant was fully aware that the accused person owned a car sale shop and that was the more reason he was an option for him to call when he needed solution to his car problem.

In addition to the aforementioned, it can be rightly said that the accused person is a business man that entered into a contract with the complainant (client). This was a mere business agreement between the two parties that went bad. The complainant knew what he was in for from the onset. It is a notorious fact that vehicles been brought from Togo are mostly obtained by illegal means and in this case, the complainant knew very well that his vehicle was going to be procured by such means and must as well have been ready for the issues that come with it.

At the end of the trial it was established that ;

- (1) the accused person own a car shop or was into sale of cars of which the complainant knew of such.
- (2) it was not the accused person who first approached the complainant and lured him into parting with his money in exchange for a vehicle.
- (3) there was evidence on purchase of the vehicle..

From the above, it is obvious that they both agreed to buy the vehicle and I would say that the intention to defraud was not established and there was no misrepresentation of facts by the accused person in anyway.

## CONCLUSION

In the case of MILLER V PENSIONS [1972] 2 ALL ER 372, Lord Denning stated as follows: **“proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is strong against a man as to leave a remote possibility in his favor which can be dismissed with the sentence of course it is possible but not the best probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”**

The prosecution failed to prove the elements of defrauding by false pretenses. The prosecution failed to prove that it was the accused person that personally or through someone obtained the consent of the accused person and by that consent succeeded in parting with his money or a thing for his benefit.

In conclusion, the prosecution could not prove their case beyond reasonable doubt. Prosecution failed to prove the elements of defrauding by false pretenses. The accused person is hereby discharged.

H/H PHILOMINA ANSAAH ASIEDU  
CIRCUIT COURT JUDGE  
21/03/2024