

IN THE TDC DISTRICT COURT HELD AT TEMA ON THURSDAY, THE
15TH DAY OF DECEMBER 2022 BEFORE HER HONOUR AKOSUA
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS
AN ADDITIONAL MAGISTRATE

CASE _____ NO.:

B7/23/2019

THE REPUBLIC

VRS

CHARLES OKONAH

ACCUSED PERSON ABSENT

COMPLAINANT PRESENT

INSPECTOR HILDA ASANTE SARKODIE FOR THE REPUBLIC PRESENT

BABA JAMAL M. A. ESQ. FOR THE ACCUSED PERSON ABSENT

JUDGMENT

The accused person herein was arraigned before this Court charged with Defrauding by False Pretence contrary to *section 131 of the Criminal and Other Offences Act, 1960 (Act 29)*.

He pleaded not guilty after the charge has been read out to him.

The facts of the case as presented by the prosecution are that the complainant Owusu Afriyie is a businessman residing at Adenta Accra. Accused Charles

Okonah is a National Security officer residing at La, Accra. The accused is attached to the Confiscation Committee at the Tema Port. On 24th December 2018, the accused person collected GH¢20,000.00 from the complainant to get him two Daewoo cars from safe bond on auction. That if he was not able to honour his promises within ten, he will refund the GH¢20,000.00 to the complainant. Accused went into hiding after receiving the money until his arrest on 08/03/2019 by the police following a report on 17/01/2019. After investigations, accused was charged with the offence and arraigned before the Court.

In proving its case, the prosecution called two (2) witnesses.

PW1 gave his name as Owusu Afriyie of H/no. Blk 8 Adenta Accra. That he is a businessman dealing in cars and knows the accused person. He told the Court in his Witness Statement that somewhere November 2018, he met one Kwaku his friend who used to sell cars to him. that he told him he need cars to buy but he told him he is no more in the business but he has a friend who is a National Security officer at Ghana Ports and Harbour Authority Safe Bond Department who sells auction cars and will inform him on his behalf. That on 21st December 2018 at about 8:00pm the accused person Charles Okonah called that he has secured two cars for him i.e. Daewoo Matiz model. That went to see him on 22nd December 2018 at Safe Bond where he showed the two cars to him and also claimed they belonged to him and even had a chit to that effect and by this he made him believe that the cars belonged to him. *PW1* continued that on 24th December 2018 himself, Kofi Asamoah his brother and Kwaku the friend who introduced the accused to him went to him at the Safe Bond at the Ports where he demanded the sum of GH¢20,000.00 being the cost of the two cars in the presence of the aforementioned people which he paid him. that he promised to release the

cars to him in ten days and he kept tossing him, since then he never saw him again neither did he return to the work place again because he visited the office many times but could not see him. That he contacted one Mr. Owusu and Ben his colleague and they told him he had stopped coming to work so he went to report the case to the police. That he went into hiding and he spent GH¢2,400.00 to hire men to search for him until he was arrested on 8th March 2019. He tendered in evidence the receipt the accused person gave to him as exhibit 'A'.

PW2 (Investigator), No. 41073 D/Sgt Derick Debrah stationed at Tema Regional CID told the Court that he knows the complainant and the accused person. He stated in his Witness Statement that on 17th January 2019 this case was referred to him for investigation. That he obtained the written statement from the complainant and on 9th march 2019 the accused person was arrested from his hide out at Osu, Accra. That on same day he took the accused person's investigations caution statement which he tendered in evidence. He continued that investigations revealed that the accused person was a National Security personnel and was working at the Tema Harbor at a National Security personnel. He concluded that on 9th march 2019 charge statement was collected from the accused person and same was tendered in evidence.

Thereafter, the prosecution closed its case.

After the close of prosecution's case, the Court examined the evidence of the prosecution witnesses to determine whether a prima facie case had been made by the prosecution to warrant the accused person to open his defence. The Court then ruled that a prima facie case had been made and the evidential burden had shifted to the accused person to raise a reasonable doubt in the case of the prosecution.

In the case of *The Republic v District Magistrate Grade II, Osu, Ex parte Yahaya* [1984-86] 2 GLR 361 – 365 Brobbey J (as he then was) stated that:

“...evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence.”

In view of the above, the Court found that the accused person had a case to answer and was therefore called upon to enter into his defence, after the three options available to him as an accused person were explained to him.

OPENING OF DEFENCE BY THE ACCUSED PERSON

In opening his defence, the accused person stated in his Witness Statement which operated as his evidence in chief that he is a National Security operative at the safe bond yard until he was arrested in this case. He continued that sometime in December 2018 his friend called Kweku approached him and pleaded with him to assist them to get auction cars to buy. That he informed Kweku that he is not involved in the selling of cars but he is aware one Mr. Kwasi Boateng Nkansah who is his boss can help them in getting some cars. That on 21st December 2018, the complainant went to him with Kwaku and pleaded with him to convince his boss to help him get the cars. That he was at the yard that day so they went to him at the yard. That the complainant saw some cars and pointed to some types he wanted. According to the accused person it is never true that he showed complainant any car in the yard which he said belonged to him or he will sell to him. That the complainant told him he has GH¢20,000.00 to give to him to show he is serious to buy the cars. That in the presence of the complainant he placed a call to Mr. Boateng and informed him that the complainant has expressed

interest in one Daewoo Matic but Mr. Boateng told him that that particular car is not yet cleared and will be cleared in one week. That he informed the complainant and he agreed he should keep the money as a deposit for the car. That he therefore issued him with a promissory note that in ten days if the car was not cleared he will return his money to him since he was sure Mr. Boateng will deliver. That immediately they left he went to Mr. Boateng and handed over a total of 1 GH¢42,000.00 to him which included monies from other people and he assured him he will clear the cars in seven days. That the GH¢142,000.00 was deposits for six cars that included the money given to him by the complainant in this case. According to the accused person after the seven days had passed he started calling Mr. Boateng but he was not responding to his call and he has stopped coming to the safe bond yard. That he traced to his house in Westland but the wife told him he has travelled and she did not know when he will be back. That after one month he became suspicious and reported the case to Westland Police Station. He tendered the extract from the said police station as exhibit '1'. That the case is pending before the Kwabenya Circuit Court where an arrest warrant was issued for the arrest of Mr. Boateng by the said Court and till date the police are looking for him. He tendered in evidence a copy of the arrest warrant as exhibit '2'. That he constantly brief the complainant all these happenings and his efforts to retrieve the money for him. That he always inform the complainant that he is even making efforts to pay the money from his own income so he should give him time. That he has paid GH¢4,000.00 to the complainant already and has not been able to pay the rest because he has been in police cells all this while. The accused person concluded that he had no intention to defraud the complainant but it was due to the problem with Mr. Boateng that is why he failed to fulfil his promise to the complainant. That he is prepared to pay to the complainant even with interest when the case is over.

The accused person did not call witness and thereafter closed his defence.

The legal issue to be determined is whether or not the accused person herein did defraud the complainant by falsely representing to him that if he pays the amount of GH¢20,000.00 to him, he would buy two Daewoo cars for him.

The general principle of law in every criminal case as provided under **section 11(2) of the Evidence Act, 1975 (NRCD 323)** is 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 fact beyond reasonable doubt”

In the case of **Asare v The Republic [1978] GLR 193 – 199**, per Anin J. A. reading the Court of Appeal decision is that:

“There was no burden on the accused to establish his innocence, rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt.”

Significantly, whereas the prosecution carries that burden to prove the guilt of the accused person beyond reasonable doubt as per **sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323)**, there is no such burden on accused person to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

Section 132 of Act 29 provides:

“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, the elements of defrauding by false pretences are as follows:

1. The use of false pretence or personation,
2. To obtain the consent of another person,
3. So that the person parts with or transfers the ownership of something.

Section 133 of Act 29, in defining defrauding by false pretences, lays out the following ingredients:

1. Representing the existence of a state of fact,
2. Either with the knowledge that such representation is false or without the belief that it is true,
3. The representation should be made with the intention to defraud.

The House of Lords, in **Welham v. Director of Public Prosecutions [1961] A.C. 103**, held, as stated in Archbold, Criminal Pleading, Evidence and Practice (36th ed.), para. 2043 at p. 753 that:

“Intent to defraud’ means an intent to practise a fraud on someone and would therefore include an intent to deprive another person of a right, or to cause him to act in any way to his detriment...”

In the case of **Asiedu v. The Republic [1968] GLR 1**, Amisah J.A. stated as follows:

“An intent to defraud is an essential element of the offence of defrauding by false pretences whether the method of fraud adopted was personation or a false representation”.

Archer J. (as he then was) in the case of ***Blay v. The Republic [1968] GLR 1040-1050*** stated:

“In a charge of defrauding by false pretences, if the evidence showed that the statements relied on consisted partly of a fraudulent misrepresentation of an existing fact and partly of a promise to do something in future, there was sufficient false pretence on which a conviction could be based”.

After careful examination of the evidence led at the trial, I made the following findings of facts and observations:

It is the prosecution’s case that on 24th December 2018, the accused person collected an amount of GH¢20,000.00 from the complainant under the pretext of giving him two Daewoo cars from safe bond on auction and the cars belonged to him after the accused person showed the complainant a chit that had his name on it to indicate the cars belonged to him, where the accused person gave an undertaking that if he was not able to honour his promise within ten days he will refund the said GH¢20,000.00 to the complainant; and after he took the said money from the complainant, he went into hiding until his arrest on 8th march 2019.

PW1 told the Court under cross examination that it is because the accused person showed him the car and his chit that is why he believed in him. That it is some of the seized cars that the accused person showed to him and they made an

agreement that he pays GH¢20,000.00 and he showed him the chit that the car belongs to him so he paid the said amount where the accused person gave him a receipt and they signed. He further told the Court under cross examination that he believed the accused person because he had his name on the chit he showed him. Throughout the trial PW1 maintained his position that the accused person actually showed him the car and stated it belonged to him which he showed him a chit with his name on it and that made him believe the accused person.

PW1 further told the Court that the accused person deceived and defrauded him that is why he reported him and not only because he is not refunding his money to him; and that he came to Court before the lawyer of the accused person started paying some of the money to him.

Under cross examination PW2 told the Court that during his investigation he verified the complaints of PW1 at the safe bond after the complainant told him.

The accused person in his defence told the Court it is never true that he showed complainant any car in the yard which he said belonged to him or he will sell to him. that the complainant told him he has GH¢20,000.00 to give to him to show he is serious to buy the cars so in the presence of the complainant he placed a call to Mr. Boateng and informed him that the complainant has expressed interest in one Daewoo Matic but Mr. Boateng told him that that particular car is not yet cleared and will be cleared in one week. He also told the Court that after he took the complainant's money he sent it to Mr. Boateng. That when the seven days Mr. Boateng gave him passed he started calling him but he was not responding to his call and he has also stopped coming to the safe bond yard. The accused person further told the Court he could not get Mr. Boateng so he reported him to

the Westland Police Station and the matter is pending before the Kwabinya Circuit Court.

The question any reasonable man would ask is if this was so why did the accused person give undertaking to the complainant promising him of the car being cleared and if it is not done in ten days he will refund his money to him. Why didn't the accused make the said Mr. Boateng sign the undertaking as having taken complainant's money in exchange of the said cars? Something does not add up to the explanation given by the accused person.

The defence of the accused person as to the said Mr. Kwasi Boateng Nkansah is an afterthought and not worthy of belief in the sense that, if indeed it was true, the accused person would take steps for the police involved in that matter to be in this Court to testify about it. He mentioned in his witness statement that the said Mr. Boateng was his boss, therefore he could have called at least one of his former colleagues to testify to confirm that he indeed worked with such a person as his boss or even worked with him.

Again the date he reported the matter to the Westland Police Station was 28th January 2019 where he said about four months ago he gave an amount of GH¢142,000.00 to one Kwami Boateng of Westland to purchase a vehicle for him and after collecting the money he failed to fulfil his promise. About four months ago from January 2019 will be about September 2018. Meanwhile the accused person has confirmed the complainant's evidence that he took the complainant's money on 24th December 2018 and so this case has nothing to do with the said case he reported to the Westland Police Station as it was about three months before the incident regarding this case happened.

The accused person decided to play smart by using the said case he reported at the Westland Police Station as his defence for this case but the loopholes in that case vis a vis his defence before this Court has greatly exposed him; as it is obvious from his own exhibits that Kwami Boateng in the police extract dated 28th January 2019 is different from Kwesi Boateng Nkansah which is on the warrant to arrest signed by the Kwabenya Circuit Court dated 24th April 2019 after he had been arraigned before this Court about six weeks earlier thus on 14th March 2019 and been admitted to bail for the prosecution to file the necessary documents for the commencement of the trial.

Below is what the accused person also told the police in both exhibits 'A' and 'B':

"I Charles Okonah who live at trade fair has collected from Owusu an amount of GH¢20,000.00 to give him a car which I did not, as an allocation car in which my boss nana wraku (chose man)."

There is nowhere the accused person mentioned the name he has stated in his defence in his statements to the police as the person he gave the money to and was supposed to give the said car to the complainant.

The defence of the accused person is not credible at all as it is a clear afterthought because he did not even mention it in his caution or charge statement to the police.

On the question of false representation, it is apparent from the evidence adduced during the trial that the accused person per his undertaking and in his caution and charge statements to the police did take the complainant's money that he was going to get the said car for him. As a result of this, complainant gave the said money to the accused person who went into hiding until he was arrested therefore he knew he was not in a position to get those cars for the complainant at the time to took his money.

The intentions of a person is always determined by their conduct. *Section 11 of Act 29* explains *intent* and in summary provides that a person intends the natural consequence of his or her actions. The conduct and actions of the accused person lead to the suggestion that he intended to defraud the complainant otherwise he would not have gone into hiding for over two months after he took the complainant's money but would have looked for the complainant to explain to him why he was not able to get the cars for him.

The accused person told the Court that he called the investigator in relation to the case he reported at the Kwabenya Circuit Court and he informed him that they have located the person he gave the money to so he will need accused person's help to arrest the man Mr. Boateng the one he gave the money to. That he told him he is still in custody so when he comes out he will do that.

The accused person came out of custody before he closed his defence that is the last adjournment when the prosecutor ended her cross examination of the accused person, the Court was informed that the accused person was no longer in custody and had been able to fulfil the bail conditions. Therefore if the accused person wanted to call another person to lead evidence as regards to who he gave the said money to, he could have done so. Moreover from the evidence before this Court when the accused person was taking the complainant's money he did not inform him that he was going to give the money to the said Mr. Boateng. He made the complainant aware that the cars belonged to him and the Daewoo matiz was to be cleared at the safe bond car park at Tema. He further promised to refund the money if the car is not cleared in ten days. Therefore it is safe to arrive at the conclusion that the accused person defrauded the complainant because he knew he could not do what he promised to do by taking the

complainant's money but still took the money anyway because from the evidence before the Court the accused person did not give the said cars to the complainant neither has he refunded complainant's GH¢20,000.00 to him. Therefore his defence that he gave the said money to one Mr. Boateng will not hold.

At page 1049 the Court in the case of *Blay v. The Republic* (*supra*), stated:

"If a man makes statements of fact which he knows to be untrue, and makes them for the purpose of inducing persons to deposit with him money which he knows they would not deposit but for their belief in the truth of his statements, and if he intends to use the money thus obtained for purposes different from those for which he knows the depositors understand from his statements that he intends to use it, then, although he may intend to repay the money if he can, and although he may honestly believe, and may even have good reason to believe, that he will be able to repay it, he has an intent to defraud."

In the instant case not only was the representation to the complainant that he was going to give those cars to him after taking his money false because he went into hiding thereafter and did not get him the cars or return his money, but also the accused person took advantage of the deceit and kept the complainant's money which he is paying in bits when the complainant, as a businessman the value of the money would depreciate for him. Relying on the above authority, although the accused may intend to repay the money he took from the complainant, the accused person had the intent to defraud the complainant.

Consequently the accused person's defence which is an afterthought cannot be accepted by this Court.

In the case of *Commissioner of Police v. Isaac Antwi*[1961] GLR 408-412, it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by *sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323)*. *Section 11(3)* provides that:

“In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.”

Section 13(2) provides that:

“Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.”

For the accused person to have been called upon to open his defence, it implied that a prima facie case was made by the prosecution and it was the duty of the accused person to raise reasonable doubt in the case of the prosecution to enable his acquittal. Unfortunately, the evidence of the accused person before this Court could not raise any reasonable doubt as to his guilt. This is because the evidence adduced by the prosecution witnesses was able to establish that the accused person took the complainant's money and went into hiding thereafter and he also failed to either give the said cars to the complainant or refund his money to him.

From the evidence of the accused person, I find that the accused person does not have a reasonable defence to the charge against him since he could not raise any reasonable doubt as to his guilt; and I do find that the prosecution has been able to prove that the accused person is guilty of the offence for which he has been charged. This is because the case of the prosecution has been consistent and been able to establish beyond reasonable doubt that the accused person defrauded the complainant.

I support my decision with the dictum of Denning J. (as he then was) in the case of *Miller v. Minister of Pensions* [1947] 2 All E.R. 372 where he said:

"Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

Apaloo JA (as he then was) in the case of *Asare & Others v. The Republic (No. 3)* [1968] GLR 804 stated:

"The offence of fraud by false pretences seeks to punish anyone who deceives another to his detriment and which deceit operated to the material advantage of the deceiver".

For the foregoing reasons, I find the accused person herein, *Charles Okonah* guilty of the offence of defrauding by false pretence and convict him accordingly.

There will not be plea in mitigation since the accused person is absent.

Q: Is the accused person known to the police?

A: No, he is a first time offender.

By Court:

In sentencing the accused person, the Court takes into consideration the fact that he is a first time offender. The Court hereby imposes the following sentences on the accused person:

The accused person shall serve twenty-four (24) months prison term IHL. In addition he shall pay a fine of hundred (100) Penalty Units or in default serve six (6) months prison term IHL.

Final Orders:

The accused person is ordered to refund the remaining amount of GH¢6,000.00 to the complainant with interest at the prevailing commercial bank rate on same from 24th December 2018 to the date of final payment.

The police shall obtain commitment warrant which will authorize the apprehension of the convicted person for the purpose of carrying out the sentence. The person effecting such apprehension shall endorse the date thereof on the back of the warrant, and the sentence of imprisonment imposed on the accused person apprehended on such warrant shall commence from the date of his apprehension.

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H/H AKOSUA A. ADJEPONG
(MRS)
CIRCUIT COURT JUDGE
15TH DECEMBER 2022

