

**IN THE DISTRICT COURT HELD AT DROBO ON THE 11<sup>TH</sup> DAY OF AUGUST, 2023**  
**BEFORE HER WORSHIP LINDA ENYONAM NYAHE (MRS.) (MAGISTRATE)**

**CASE NO. BR/DR/DC/H7/10/2021**

**THE REPUBLIC**

**VRS**

- 1. NKETIAH BOATENG**
- 2. SEKYERE MOSES**

**ACCUSED PERSONS – PRESENT**

**G/SGT SEIDU ABDUL RAZAK FOR PROSECUTION FOR REPUBLIC- PRESENT**

**COMPLAINANT: ABSENT**

**JUDGMENT**

The accused persons herein were arraigned before this court charged with the offence of Defrauding by false pretences contrary to section 131 (1) of the Criminal and other Offences Act, 1960 (Act 29).

The particulars of offence read as follows: “1.Nketiah Boateng, aged 75 years, farmer; 2. Sekyere Moses, aged 37 years, Mason; During the year 2013 at Japekrom in the Jaman South Municipality and within the jurisdiction of this Court, with intent to defraud you obtained the consent of one Fedelis Mortty to part with cash the sum of GH¢14,200.00 by means of certain false pretences to wit, by falsely pretending that if the said amount is given to you, you could give him four (4) plots of land and upon such false representation you succeeded in obtaining the said amount from the said Fedelis Mortty which statement you well knew at the time was false.

Both accused persons pleaded not guilty after the charge had been read out and explained to them in the Twi language.

The burden was therefore entirely placed on the prosecution to prove the guilt of accused persons beyond reasonable doubt as per sections 11 (2) and 13(1) of the Evidence Act 1975, [NRCD 323] and also as stated in the case of **Asare Vrs. The Republic [1978] GLR 193-199, per Anin J.A.** (as he then was) that;

*“As a general rule, 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”.*

### **BRIEF FACTS OF THE CASE**

The facts as borne out of the charge sheet are that, Complainant Fedelis Mortty is a contractor whereas Accused persons Nketiah Boateng (A1), aged 75 years is a farmer and Sekyere Moses (A2) aged 31 years is a mason. Both are relatives and residents of Japekrom. During the year 2013, A1 met Complainant (PW1) and through conversation he told complainant that he has plots of land for sale. Complainant then confirmed from A2 who was his employee by then and A2 confirmed that A1 has plots. That, A1 has given him two plots to sell and use the money to secure travelling documents. A1 and A2 were able to convince complainant and took him to the land and sold four (4) plots of land valued GH¢12,000.00 to him. A2 sold his cashew crops on the land to complainant at a cost of GH¢1,200.00 and also collected GH¢1000.00 from complainant and uprooted cashew trees on the land. A1 made change of ownership and handed it over to complainant and he also made the site plan covering the four (4) plots of land. Complainant later visited the land and realized that someone else was developing the land. He then informed A1 and A2 but they did not do anything about it. Complainant then demanded for his money but A1 and A2 has since failed to refund the money. A

report was made at Japekrom Police station and A1 and A2 were arrested and after investigation they were charged with the offence and put before the Honorable Court.

#### **APPLICATION OF LAW AND EVALUATION OF EVIDENCE ADDUCED.**

**Section 131 (1) of Act 29** states as follows, *“A person who defrauds any other person by a false pretence commits a second-degree felony”*.

**Section 132** of Act 29 defines defrauding by false pretence as follows; *“A person defrauds by false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing”*.

**Section 131 (1) of Act 29** defines false pretence as *“the representation of the existence of a state of facts made by a person, with the knowledge that the representation is false or without the belief that it is true and made with an intent to defraud”*.

From the provisions above, the ingredients of the offence of defrauding by false presences which prosecution must prove beyond reasonable doubt to sustain the charge are as follows;

- a. That the accused persons charged made a false pretence or impersonated another person**
- b. That by means of false pretence or personation they obtained the consent of another person to part with or transfer the ownership of the thing, subject matter of the charge.**
- c. That the accused persons had intent to defraud at the time they made the false pretence.**

In proving its case, prosecution called two witnesses; thus, PW1 who is the Complainant and PW2; the police investigator.

**PW1** relied on his witness statement which later became his evidence-in-chief. He testified that about two (2) years ago, he met A1 at the drinking spot at Japekrom and that A1 told him that he has a plot of land along the Sampa road which he wanted to sell. He then enquired from A2 whom he has worked with before and A2 confirmed that A1 is his uncle and has plots of land which he has been given two plots he could sell to use the money to secure travelling documents. He stated in his evidence that A1 and A2 took him to the land and after inspecting it, he gained interest in it and paid GH¢8,000.00 to A1 being amount of two plots. He then paid GH¢4000.00 to A2 which was the amount of one plot. There was cashew on the land and that A2 sold the cashew to him for GH¢1000.00. He then hired A2 to uproot the cashew trees and A2 charged him GH¢1200.00 which he paid. He said A2 took GH¢500.00 from him to make documents but later refused to give him the documents covering the land. That, he went to Town and Country Planning of the Municipal Assembly and paid GH¢800.00 for site plan. He later visited the land and realized that someone was developing the land. That, he contacted A1 and A2 and they denied selling the land to anyone. PW1 told the Court that in all he has paid GH¢15, 300.00 to A1 and A2.

**PW2**, the investigator also testified and corroborated some aspects of the PW1's testimony. He relied on his witness statement which later became his evidence-in-chief. He stated that in 2013 A1 through conversations told complainant he has plots of land. This was confirmed by A2. A2 then said A1 has given him plots of land to sell and use the money for travelling documents. He stated that A1 and A2 were able to convince the complainant and sold four (4) plots of land to complainant valued at GH¢12,000.00 to him. A2 sold his cashew trees on the land to complainant at a cost of GH¢1,200.00. Complainant also contracted A2 to uproot the cashew trees on the land which he paid A2 an amount of GH¢1,000.00. He said complainant later visited the land and realized someone else was developing the land. The Complainant, PW1 demanded for his money

but A1 and A2 has since failed to refund the money. PW2 tendered into evidence the investigation and charge cautioned statements of A1, the investigation and charge cautioned statements of A2, a deed of transfer and site plan without objection and same admitted and marked as Exhibits "A", "B", "C", "D", "E" and "F" respectively. Thereafter, prosecution closed its case. After prosecution closed its case, the Court found that prosecution had established a prima facie case and there was a case for Accused persons to answer. Accused persons (A1 and A2) were accordingly called upon to open their defence.

#### **THE CASE OF ACCUSED PERSONS.**

A1 testified that he owns the land which is along the Drobo-Faaman Road subject matter in contention. The land he owns is six (6) plots. At a point in time he met complainant; PW1 who expressed interest in buying a land to build his house. PW1 went unto the land which was then a farmland with cashew thereon. That at a time, he demarcated two (2) plots in front of the land and sold same to a man from Kwasibourkrom. Two (2) plots for PW1 and two (2) plots of land for A2 who had informed him of his intentions to travel. He testified that at a point PW1 and A2 went unto the land for inspection and the land was vacant without any encroachment. A2 later came to inform him that the Japekrom Traditional Council was claiming he (A1) should have informed them before demarcating the land. That, A2 again indicated to him that since PW1 had not developed the plot for the past 6-8 years the land was sold to him, the Japekrom Traditional Council has taken over the land and was claiming four (4) plots that is PW1's two (2) plots and A2's two (2) plots because the plots were not developed. He told the Court that when the Japekrom Traditional Council took over the land he protested same. He further told the Court in his evidence that the one of his grandson's called, Ben also sold one of the two plots he sold to complainant and that when complainant saw that the one plot was being developed, he said he was no longer interested in the land and asked for a refund. It is

also his case that the land was going for GH¢4,000.00 per plot. The total cost of the two plots was GH¢8,000.00 but the complainant paid GH¢3,800.00 and GH¢300.00 for the documentation amounting to GH¢4,100.00 in all. He therefore told the PW1 that since he has paid for only one plot he will sell the other plot of land and refund the money to him.

2<sup>nd</sup> Accused (A2) also testified. From his testimony, although he has two plots of land which the Japekrom Traditional Council has taken over, he never received any money for the payment of any plot and that he has not sold any land to the complainant. A2 said the money he received from complainant to the tune of GH¢5,000.00 was payment for work he did on the plots based on the complainant's instructions. He averred that the work comprised of uprooting tree stumps, payment for chainsaw operator etc. He said, he received GH¢5,000.00 and since he was the PW1's employee he thought he will 'deduct the money from his wages. He claimed after he worked on the land, the land has been lying vacant until the Japekrom Traditional council took over the land between 2017 and 2019. A2 called one witness; Frank Obour a lawful representative of the Japekrom Stool Lands Secretariat who was subpoenaed to testify. According to him, the land belongs to A1 and A2's family and that the practice was that anytime a land catches up with development the family or owner informs the Traditional Council. The council then goes unto the land and demarcates same and thereafter share the land depending on the plots after demarcation. The witness who turned to be an adverse one told the Court that in this case, the A1 never informed the traditional council when he demarcated the land and that it was when one Ben (whom the Accused persons mentioned) told the council A1 has sold the land to PW1 that the stool went unto the land and demarcated it and got four 4 plots out of it and took 3 and gave A1's family one plot. Even before the demarcation, the council had invited the A1 several times for them to deliberate over the matter several times but he will not avail himself for the issue to be discussed. He concluded that the accused persons could not blame the traditional council for their actions.

The legal issues that fall for determination after the end of the trial are:

1. *Whether or not the failure of A1 to inform the Traditional Council before selling the land to PW1 constituted defrauding by false pretences.*
2. *Whether or not A2 fraudulently sold land to the complainant, PW1.*
3. *Whether or not prosecution has discharged its burden in respect of both accused persons*

I shall resolve the first two issues before concluding on whether or not prosecution has been able to discharge its burden. The prosecution discharging its burden will mean that it has been able to prove the elements of the offence against each accused person.

Starting with the issue of whether or not A1 sold land to the complainant, on the record, A2 admits taking money to the tune of GH¢5,000.00 from the complainant but his case is that it was for work done on the two plots of land A1 sold to complainant. Both in his evidence and the investigation caution statement, he also represents that he has land which A1 gave to him. He admitted taking an amount of GH¢5,000.00 for the work he did on the land and not for sale of land. There is no strong evidence on record showing that a land transaction took place between A2 and complainant. From the answers elicited from the Complainant himself he did not pay money to the A2 for the plot of land he purportedly purchased from A2 contrary to what PW1 stated in his evidence-in-chief. Below are relevant questions and responses elicited from the PW1 under cross-examination by A2 as follows;

**“Q.How did I get to know that A1 has sold land to you?**

**A. Moses, A2 has worked with me before and it was during that time that I asked him if it is true the land in dispute belongs to Nana Boateng, A2**

**Q.How come I went to uproot trees on the land?**

**A. After you confirmed to me that the land belongs to Nana Boateng and then 2 of them showed me two plots each at the same place**

**Q. the money that you paid was it for four (4) plots or 2 plots?**

**A. I paid for 3 plots. I paid 2 cost of plots to A1 and one plot to A2**

**Q. The money you paid was it for cost of plot or the work I did on the plot by removing the trees?**

**A. I paid for the plot differently, the work done differently and the cashew differently**

**Q. How much did you pay to me in total?**

**A. GH¢6500.00**

**Q. How much did you buy the plot from me?**

**A. My lord, I bought the plot GH¢4000.00**

**Q. Can you show this Court the receipt which indicates that you have bought the plot from me?**

**A. No, he told me that the plot belongs to A1 and whatever document A1 gave me covers the one you have shown to me.**

**Q. Which of us that is A1 and A2, which of us gave you land?**

**A. Both of you**

**Q. If you claim that the both of us gave you land; then why did you give money to A1 without giving me?**

**A. A2 told me that his plot is two and A1's is also 2 so if I pay to A1 it is the same."**

From above, it is obvious A2 never accepted money for payment of land sold as prosecution wants it to appear. There is no proof of payment of an extra GH¢4000.00 to neither of the A1 nor A2 for sale of land. Right from the onset prosecution's case was weakened by reason of conflicts in their case as to the number of plots purchased and payments made. It is trite learning that in criminal cases, any doubts created in prosecution's case must inure to the benefit of accused, in this regards A1. It is not the case that A2 was charged with conspiracy probably it would have been different. On a whole the evidence on the charge against A2 is insufficient to stand. A2 is therefore acquitted and discharged on the charge.

Now, I turn to issues 1 and 3 in respect of A1.

The evidence on record shows that some monies passed to A1 for plots of land. Although A1 gives conflicting accounts of the monies he received for payment of two plots of land, Exhibit A, the deed of transfer which A1 and PW1 signed shows that A1 received GH¢8,000.00 for two plots of land. In this light, it became obvious that A1 was not truthful when comes to the monies PW1 paid him however not being a credible witness is not enough to convict A1 on the charge levelled against him. To be able to do that, prosecution must further prove the elements of the offence beyond reasonable doubt. The crux of this charge is the underlying intention of the accused at the time of selling the land. Prosecution must be able to show that the Accused (A2) made false statements from which can be deduced some dishonest intent or point to criminal activity designed by accused persons to perpetuate fraud on the complainant through for example the making of representations of facts which are false or inexistent. A1's ownership of the land was not disputed. Thus, prosecution never attacked the capacity of A1 to sell the lands. It is also not prosecution's case nor has it led evidence that A1 was the same person who sold the land to the person laying rivalry claim. Prosecution has not also made a case that A1 sold land to PW1 which never existed. The evidence points to the fact that A1 in fact has

land which has been demarcated and majority taken by the Traditional Council unfortunately after the sale to PW1. In the light of the facts, the failure of the A1 who is known to be the owner of the land but did not inform the traditional council before demarcating the land and selling same to complainant is not enough to secure a conviction on the charge. The case would have been different, had the demarcation been done and A1 knowing he didn't have the land paid for went ahead and sold same. In my humble opinion, the elements of the charge having been outlined in this judgment has not been proved as per the standard required in criminal cases. On this note, A1 is as well acquitted and discharged on the charge of defrauding by false pretences. The evidence prosecution led in my humble view points to a contract failure for which the complainant can pursue a civil claim in a civil court.

.....SGD.....

**H/W LINDA E. NYAHE (MRS.)**

**MAGISTRATE**

.