

**IN THE DISTRICT COURT HELD AT DAMBAI BEFORE H/W ALHASSAN  
DRAMANI ESQ ON THURSDAY, 11<sup>TH</sup> AUGUST, 2022**

**CASE NO: 7/21/2022**

**THE REPUBLIC**

**VRS**

**YUSSIF MAHAMOUD**

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**ACCUSED PERSON PRESENT**

**COMPLAINANT PRESENT**

**ASP ALHASSAN A. RAZAK FOR THE PROSECUTION PRESENT**

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**JUDGEMENT**

The accused person is charged with Fraudulent breach of trust contrary to Section 128 of the Criminal and Other Offences Act, 1960 (Act 29).

The accused person pleaded not guilty after the charge had been read out and explained to him.

**THE CASE OF THE PROSECUTION**

The facts of the case as presented by the prosecution were that, somewhere in the year 2018, the complainant was having two containers of wood valued at GH¢100,000.00 which he intended to export to Vietnam but at the same time, the complainant was in the process of travelling to Mecca, Saudi Arabia, for the Moslem annual Hajj pilgrimage. The complainant discussed his predicament with the accused person and the accused assured

him that he could sell the wood and give him the money when he return from his trip. The accused then demanded for and collected the goods (two containers of wood) from the complainant under the pretext of selling them to a customer. After receiving the wood the accused consequently sold same and used the money for his personal purposes. On his return from the pilgrimage, the complainant called the accused several times on his mobile phone but he refused to answer the calls. All attempts also by the complainant to meet the accused proved futile as the accused kept avoiding him. A complaint was lodged with the police and the accused was arrested. He admitted the offence in his caution statement and pleaded for time to pay the money. The accused was granted bail but he subsequently went into hiding. The accused person was rearrested from his hideout in Accra and after investigations, he was charged with the offence and arraigned before this court.

In proving its case, the prosecution called three (3) witnesses including the Investigator.

**PW1**, the complainant stated exactly the facts as presented by the prosecution.

According to **PW2**, somewhere in the year 2018 PW1 told him that he was preparing to go to Mecca, for Hajj, and that he had two containers of wood to be sold but because he had little time in his hands he had decided to give the goods to the accused to sell for him. PW2 said PW1 later invited him to the Hajj village in Accra and introduced him to the accused and further instructed the accused to give him (PW2) GH¢5,000.00 when he sell the goods. PW2 stated that after about three weeks the accused sent him the GH¢5,000.00 as directed by PW1.

**PW3** in his witness statement filed on 29<sup>th</sup> March, 2022 only rehashed the facts of this case as presented by the prosecution and tended the cautioned and charge statements of the accused person marked as Exhibit A and B respectively without any objection. PW3 was subsequently crossed examined by the accused.

Thereafter, the prosecution closed its case.

### **THE CASE OF THE DEFENCE**

The accused person testified under oath, called no witness and tendered no exhibits. He therefore closed his case after his evidence.

According to the accused person, somewhere in 2018 PW1 was about to embark on the Moslem annual Hajj Pilgrimage and so entrusted his two containers of wood in him to sell and keep the proceeds till PW1 returns from his journey. The accused said that even though the value of the two containers of wood was GH¢100,000.00 some deductions were later made which brought the value down to about GH¢66, 990.00. Accused told the court that he in turn gave the wood together with his own consignment with a total market value of about GH¢400,000.00 to his friend by name Abu Saeed to be sent to Vietnam for sale but unfortunately since the said friend left for Vietnam he has not heard from him again. The accused further told the court that he later had information that his friend was arrested in Morocco but all efforts to reach him proved futile. According to the accused when PW1 returned from Mecca he went to him and explained to him the challenge he had encountered and also assured PW1 that he was making efforts to pay back the money but things have not been easy for him since the past four years hence his inability to honour his promise.

Thereafter, the accused closed his case.

The legal issue to be determined is whether or not the accused person herein did fraudulently breached the trust invested in him by the complainant by selling two containers of wood valued at GH¢100,000.00 belonging to the complainant and failing to account for the proceeds.

The cardinal rule in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution; and the standard of proof required by the

prosecution should be proof beyond reasonable doubt as provided in the **Evidence Act, 1975 (ACT 323)**, per sections 11(2) and 13(1), and also as was stated in the case of **Donkor v. The State [1964] GLR 598.**

Likewise the case of **Republic v. District Magistrate Grade II, Osu; Ex parte Yahaya [1984-86] 2 GLR 361 – 365,** where Brobbey J. (as he then was) stated and I quote:

“One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt.”

Section 129 of Act 29 provides:

“A person commits a fraudulent breach of trust if that person dishonestly appropriates a thing the ownership of which is invested in that person as a trustee for or on behalf of any other person.”

From the above, the elements of fraudulent breach of trust are as follows:

1. That ownership of a thing has been invested in a person as a trustee for and on behalf of another person
2. That, that person has dishonestly appropriate that thing being held in trust.

The accused person throughout the trial did not deny the fact that he received two containers of wood from PW1 to sell on his behalf.

In his caution statement to the police dated 16th February, 2022 the accused stated as follow:

“..... It is true that somewhere in 2018 the complainant gave me two containers of wood to sell for him because he was about to leave for Mecca, in Saudi Arabia and didn't have time to sell the wood himself.....”

So from the foregoing it is settled that trust of two containers of wood belonging to the complainant was invested in the accused person in or about 2018 on behalf of the complainant.

However, what the accused has contested is the amount involved. Whilst PW1 pegged the value of the two containers of wood at GH¢100,000.00, the accused maintains that the value of the two containers of wood was GH¢66, 990.00

Further in his caution statement to the police the accused stated as follows “..... The GH¢100,000.00 the complainant is alleging I am owing him is not true. I know I am owing him GH GH¢66,990.00 for the two containers of wood and when the complainant got back to Ghana from Mecca, I was able to mobilise some wood and after selling it I gave the complainant GH¢9,000.00 as part payment. When complainant was in Mecca, I gave his brother Alhassan Abdul Rauf (PW2) GH¢5,000.00 all totaling to GH¢14,000.00. As at now the total amount of money I am owing the complainant is GH¢52,990.00.....”

Again during cross examination of PW1 by accused, this transpired;

Q. You indicated that you gave me wood worth GH¢100,000.00 is that correct.

A. Yes.

Q. I suggest to you that the goods were not up to GH¢100,000.00 because some deductions were made bringing the amount down to GH¢69, 990.00

A. That is not true.

In the case of **Obeng alias Donkor & Others v. The State [1966] GLR 259-261**, S. C. per the judgment of Crabbe JSC (as he then was) at page 261, stated as follows:

“Therefore where a person is charged with stealing a certain sum, it is sufficient if the prosecution proves that he in fact stole part of that sum”.

In the instant case the accused has been charged with fraudulent breach of trust involving an amount of GH¢100,000.00. The accused per evidence on record has admitted that the original amount involved in the entire transaction was GH¢100,000.00 and after certain deductions and/or payments made to the complainant the amount came down to GH¢69,990.00. The accused explained that some monies amounting to GH¢14,000.00 was paid to the complainant and DW2 (GH 9,000.00 and 5,000.00) respectively. Both complainant and DW2 have confirmed that an amount of GH¢5,000.00 was paid to DW2 by the accused but the complainant has denied receiving GH 9,000.00 from the accused.

However, aside PW1 denying that he did not receive GH 9,000.00 from the accused prosecution has not produce sufficient evidence to disprove the accused persons claim that he indeed paid a total of GH¢14,000.00 out of the GH 100,000.00 and I hence, have no justification in disbelieving the accused person's claim.

However, going by the accused person's own assertion above, it is obvious that he still has in his custody an amount of GH¢86,000.00 belonging to the complainant.

The prosecution has thus been able to lead sufficient evidence to prove beyond reasonable doubt that the accused has dishonestly appropriated an amount of GH¢86,000.00 belonging to the complainant and I so hold.

The accused in his defence has stated that he gave the goods to an agent to sell and since the agent left with the goods he never heard from him again.

Under cross examination of the accused by the prosecutor the following transpired;

Q. You have confirmed that the complainant entrusted two containers of wood to you in 2018, not so.

A. Yes, that is correct.

Q. You also said the value of the two containers of the wood was GH¢100,000.00.

A. Yes.

Q. Do you remember that PW2 told this court that you told him that you sold the goods but you never contested this statement.

A. I did not tell him I sold the goods. I only told him I gave the goods to an agent.

Q. Do you remember that before the complainant left for Mecca he instructed you to give GH GH¢5000.00 to PW2 after the sale of the goods.

A. Yes, the complainant only asked me to give PW2 GH¢5,000.00 and I did so

Q. Your case is that you gave the two containers of wood to an agent to sell in Vietnam but the agent was arrest in Morocco.

A. That was the information I got.

Q. Do you have any document to show that you gave the two containers of wood to this agent you are talking about.

A. No.

Q. What is the name of the agent?

A. Abu Saeed.

Q. So you want this court to believe that you were defrauded by your agent.

A. Yes.

Q. Did you report this incident to the police?

A. No

Q. Do you know that the Interpol Unit of the Police Service can deal with allege cross

boarder crimes of this nature.

A. Yes.

Q. So why didn't you report to the Interpol.

A. I did not have enough information and was also busy. I had so much work doing at the time that was why I did not report the case.

It is quite surprising that the accused who alleged he was defrauded by another person to the tune of over GH¢400,000.00 was reluctant in seeking assistance from the police under the excuse of being busy. The above encounter under cross examination of the accused exposes him as an untruthful person and this court will taking him as such.

Throughout the trial, the demeanour of the accused person as I observed was that of confusion; reluctant in giving adverse testimony; and replying evasively.

In the case of **Ackom v. The Republic [1974] 2 GLR 419** per holding 2, Osei-Hwere J (as he then was) held that:

“The question of credibility and demeanour of a witness was within the peculiar preserve of a trial court. Provided the trial judge had tested his impression as to the demeanour of a witness against the whole evidence of that witness he was entitled to adopt that impression as the basis of his decision and it would not be open to an appellate court to question the opinion of the trial court as to the demeanour of the witness.....”.

The crux of the issue in the instant case is, did the Accused person intend to fraudulently breach the trust invested in him by the complainant? My simple response is that from the available evidence on record, it is not difficult to find that the evidence of the accused person is tainted with untruthfulness and also inconsistencies and therefore manifestly unreliable.



On the above reasons, I find the accused person herein guilty of the offence of fraudulent breach of trust.

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 at p. 373** 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."

For the foregoing, and having found the accused person herein, **Yussif Mahmoud** guilty of the offence of fraudulent breach of trust, he is thus accordingly convicted.

Q: Any plea in mitigation before sentence is passed?

A: Accused person- I am pleading with the court with all due respect and humility for forgiveness. I am making every effort to pay back the money to the complainant. Just last week I again paid GH¢9, 000.00 to the Police to be given to the complainant.

Q: Is the accused person known?

A: No.

**BY COURT:**

The accused is a first time offender and has also pleaded for mercy, the court will give him opportunity to reform. In the circumstances, the accused person will pay a fine of Four Hundred (400) Penalty Units or in default serve twelve (12) months prison term.

**FINAL ORDER:**

The Prosecution is hereby ordered to release to the complainant the Nine Thousand Ghana cedis (GH¢9, 000.00) paid to them by the accused forthwith.

.....  
**H/W ALHASSAN DRAMANI**  
**DISTRICT MAGISTRATE**  
**11<sup>TH</sup> AUGUST, 2022.**