

SITTING IN THE DISTRICT COURT AT WENCHI IN THE BONO REGION ON
MONDAY THE 13TH DAY OF FEBRUARY,2023,BEFORE HIS WORSHIP ISSAH
ABDUL-WAHAB (DISTRICT MAGISTRATE)

CASE NO. B7/60/2022

BETWEEN

THE REPUBLIC

VRS:

KWAME ABAYELE

JUDGMENT

The accused herein was put before this court charged with the offence of Fraud by false pretences contrary to section 131 (1) of the Criminal Offences Act, 1960 (Act 29).

Accused pleaded not guilty to the charge after same was read and explained to him in Twi.

The following issues were then set down for trial;

- (1) Whether or not the accused made any representation to the complainant that he is a police officer;
- (2) Whether or not the said statement made by the accused is false.
- (3) Whether or not the accused at the time of making the said statement he knew it was false.

(4) Whether or not the complainant behaving the said statement parted with the cash of GH¢200.00.

The facts as presented by the prosecution are that the complainant is one Abena Porgnee aged 73 years and a farmer at Dankonto near Tromeso/Wenchi. That the accused, Kwame Abayele aged 56 is a farmer and lives at Subinso No. 2 near Wenchi. That on 12th day of May, 2022 accused went to the village of the complainant and introduced himself as a police officer from Wenchi. Investigating a case of causing damage reported by one Abisco against complainant and others. That accused told complainant he can drop the case against complainant and the others if they can pay GH¢100.00 each. That the other woman who is also a witness in the case told accused she does not have any money, but the complainant paid GH¢200.0 to the accused to the two of them and accused left. That on the 13th of May, 2022 accused returned to the complainant and demanded GH¢1,000.00 to be given to the District Police Commander at Wenchi and that the Commander rejected the GH¢200.00 he (accused) collected previously.

That the complainant became suspicious of the accused and caused his arrest to the Tromeso Unit Committee. The accused was later handed over to the police after a complaint was made against the accused. After police investigations the accused was charged with the offence and put before this court for trial.

In presenting their case the first prosecution witness (P.W.1) told the court she is Abena Porgnee, and the complainant. That she lives at Dankonto near Tromeso. That she knows the accused person as well as the other prosecution witnesses. P.W.1 said on the 12th day of May,2022 the accused came to their cottage at Dankonto and introduced himself as a police man from Wenchi who is investigating a case reported by one Abisco against her (P.W.1) and Begnia Hainn. Than the accused then demanded that the two of

them pay GHC100.00 each and that he had spoken with the said Abisco who is the complainant. P.W.1 said Bengina told accused she does not have money and so he (P.W.1) gave accused GHC200.00 and accused left.

The witness said the following day 13th May, 2022 accused came back and demanded GHC1,000.00 and that the police Commander said the GHC200.00 they gave was small. P.W.1 said she told accused she did not have that money and that accused could take them to the police station. P.W.1 said she called her husband's brother call Don Yuru who came and interrogated the accused. That it was through the interrogation that they saw that accused is not a police man as he claimed. That Don Yuru then arrested the accused and took him to the Unit Committee members at Tromeso where it was confirmed that accused is an imposter. He was then taken to the police station and a complaint lodged against him (accused).

The second prosecution witness was one Bengina Hainn, a farmer and resident at Dankonto near Tromeso. P.W.2 said she knows the accused and other prosecution witnesses. That on the 12/05/22 accused came to their cottage at Dankonto and introduced himself as a police man from Wenchi who is investigating a case reported by one Abisco against her (P.W.2) and P.W.1. That accused told them there is case of causing damage against them (P.W.1 & P.W.2). That accused then asked them to pay GHC100.00 each for him to drop the case and that he had spoken to Abisco who was the complainant. P.W.2 said she told the accused she does not have money and P.W.1 gave accused GHC200.00 and he left. That the following day 13/05/22 accused came back to P.W.1 and demanded GHC1,000.00 and that the police commander said the GHC200.00 given was small. P.W.2 said accused was later found to be an imposter and was arrested and taken to the police station.

The third witness for the prosecution (P.W.3) said he is Amadu Mohammed and he is a farmer living at Tromeso. P.W.3 said he knows the accused and the other prosecution witnesses. That on the 12/05/22 he went to see P.W.1 at Dankonto when he met the accused and P.W.1. That there accused was introduced to him (P.W.3) as a policeman who was in charge of a case of causing damage reported by one Abisco against P.W.1. P.W.3 said he asked accused three times if he is a policeman and accused answered in the affirmative. And that accused even told him (P.W.3) he visited Abisco s pepper farm and saw only three pepper plants damaged. And that accused said he had spoken with Abisco and so he will collect some money from P.W.1 for the case to be dropped. P.W.3 said at that stage he left for his farm leaving accused still with P.W.1. Then later P.W.1 informed him accused collected GH¢200.00 to drop the case. P.W.3 said the following day, the 13/05/22 he was at Tromeso when the accused was arrested and brought with a report that he went back to P.W.1 demanding GH¢1,000.00 for the police Commander because the GH¢200.00 he collected was not enough. That accused was found to be an imposter and taken to the police station.

The fourth and final witness for the prosecution (P.W.4) was the police investigator. He told the court he is No. 53498 G/CPL Samuel Owusu stationed at the Wenchi police station CID as investigator. That on the 13th day of May, 2022 whiles he was on duty at the station CID a case of defrauding by false pretences was reported by P.W.1 against the accused. That the accused was already in the custody of the police. They then took statements from the complainant and witnesses. The accused was also cautioned and a caution statement taken from him. The witness tendered the caution statement which was admitted and marked as Exhibit 'A'. After that he then visited the crime scene with the accused and witnesses. P.W.4 said the investigations revealed that the accused went to the cottage of P.W.1 and said he is a police officer and so took GH¢200.00 from P.W.1 to drop a case against P.W.1 and P.W.2. That the accused later

came back on the 13/05/22 and demanded another GHC1,000.00 to be given to the police Commander as the Commander rejected the GHC200.00. That the complainant became suspicious of the accused and alerted other people who arrested the accused and sent him to the Tromeso Unit Committee members.

That the accused was found to be a fraudster and so was handed over to the police. P.W.4 said after the investigations, he was then instructed to charge the accused with the offence as stated on the charge sheet. P.W.4 tendered the charge statement which was admitted and marked Exhibit 'B'.

After the prosecution closed their case, they took the view that a case has been made out against the accused and he was called upon to open his defence.

In his evidence in-defence the accused told the court he is Kwame Abayeale and that he lives at Subinso and is a farmer. Accused said he knows the prosecution witnesses. That he went to Dankonto near Tromeso to inspect a parcel of land. That when he went there one Maame Dankonto an old lady was sitting at the cottage. So he went and asked her for water to drink. That there he saw the woman hand was sickled so he asked what was wrong with her hand. The woman told him something pricked her. Accused said he inspected the woman's hand and told her it was a snake bite. He then told the woman he could give her medicine for the hand. Accused said the woman give him GHC180.00 to buy the things for the preparation of the herbal medicine. He then left for Techiman and came back with the herbal medicine. Accused said he went back the next day and the woman started telling him some issues about her home and that she believe her problems were spiritual. Accused said he was then to go back when they attacked him and took him to the police station and reported that he said he is a policeman. He was later brought to court.

When told during cross-examination that he (accused) did not go to the village to inspect any land, accused said he went there to see a parcel of land. Accused did not call a witness.

This court after having evaluated all the evidence as adduced before this court wishes to observe that the prosecution stated that on the 12th day of May, 2022 while the complainant was at her cottage call Dankonto near Tromeso/Wenchi, the accused came and introduced himself (accused) as a police officer from Wenchi and by so doing accused got the attention of the complainant herein who was with witnesses at the time. This indeed was the testimony of P.W.1 (Abena Pongnee). This ascertainment by P.W.1 was corroborated in greater detail by the other prosecution witnesses (ie P.W. 2 and P.W.3) who were present and saw as well as heard the accused made the said representations. P.W.3 told the court he decided to pass through P.W.1's cottage to see her. When he (P.W.3) got there he met accused and P.W.1 as well as P.W.2. There they introduced the accused as a police man from Wenchi who had come to investigate a case of causing damage against P.W.1 and P.W.2 with one Abisco said to be the complainant.

This evidence by the prosecution though very coherent and corroborative, the accused failed to dislodge or traverse same.

Again, it must be noted that the prosecution told the court the accused having made such false representation the demanded GHC100.00 each from P.W.1 and P.W.2 to drop the said case of causing damage reported by one Abisco against P.W.1 and P.W.2. P.W.1 stated when the accused demanded the GHC100.00 each, P.W.2 said she had no money on her and so she (P.W.1) gave accused the GHC200.00 for the two of them. Accused then took the money and left. This against was corroborated by P.W.2 and P.W.3. Here it must be stated that the accused though did not denied taking the GHC200.00 but he claimed that P.W.1 gave him (accused) the money to help prepare

some local medicine for her (P.W.1). This was denied by P.W.1, and accused did not also provide any evidence to support the said claim. The prosecution noted that this GH¢200.00 the accused took was to enable him (accused) drop the case he said was reported to the police by Abisco against P.W.1 and P.W.2. And this was after accused told the complainant and P.W.2 that he (accused) is a police officer from Wenchi police station.

Again it is instructive to note that the evidence showed that the complainant (P.W.1) and the other until that 12th day of May, 2022 did not know the accused and have never seen him. So it could not have been true as claimed by the accused that P.W.1 gave him (accused) the GH¢200.00 for any local medicine.

Also, it is instructive to observe that after the accused took the GH¢200.00 from P.W.1 and left, the evidence showed the next day, which was the 13th day of May, 2022 accused came back to P.W.1 and demanded another GH¢1,000.00 from P.W.1 and P.W.2 under the pretext that his District Commander in Wenchi rejected the GH¢200.00 and stated the amount was small to drop the supposed case that was pending against P.W.1 and P.W.2. This accordingly to the prosecution raised the suspicion leading to the arrest of the accused. Here again P.W.1 said when she became suspicious after the accused came back and demanded the GH¢1,000.00 she then called others and the accused was taken to the Unit Committee Members at Tromeso. This again was confirmed by the other witnesses of the prosecution who said it was at Tromeso that they realized the accused is a fraudster and therefore took him to the police station in Wenchi where a formal complaint was lodged by P.W.1 against the accused.

Indeed the prosecution witness, No. 53498 G/Copl Samuel Owusu (P.W.4) stated that further investigations by the police revealed that the accused is not a police officer as he claimed to be and for which reason the said representation made by the accused to

P.W.1 that he is a police man from Wenchi is false. And it must be stated further that the accused at the time he made the said statement knew it was false and that he was making a false statement intended to defraud P.W.1 and the others.

Finally, it must be stated that the accused having falsely represented to P.W.1 that he is a police man from Wenchi, succeeded in getting P.W.1 part with the GHC200.00. But for the said false statements, perhaps P.W.1 would not have given accused the said cash sum of GHC200.00. This therefore made the action of the accused a fraudulent one and therefore unlawful.

From the evidence therefore, I found the following as facts;

- (1) That whiles the complainant (P.W.1) and others were at their cottage call Donkonto near Tromeso, accused went to them and said he is a police man from Wenchi so could help them drop a case they had.
- (2) That P.W.1 and P.W.2 believed the said representation made by the accused and parted with cash the sum of GHC200.00 after the accused demanded same from them.
- (3) That after the accused took the GHC200.00 he returned the next day and demanded a further GHC1,000.00 from P.W.1, and this led to his arrest.
- (4) That investigations showed the accused is not a police man.
- (5) That accused succeeded in defrauding P.W.1 and the others because of the said false representation he made.

This case being a criminal one, the burden of proof in the sense of the burden of establishing the guilt of the accused is on the prosecution and failure on the part of the prosecution to discharge that burden must lead to the acquittal of the accused. See *Donkor Vs The State* {1964} 2GLR, 598 SC.

It is also the law as set out in Yeboah Vs the Republic {1972} 2GLR, 289, that guilt of the accused in criminal trial must be proved with the degree of certainty that is required by law.

On the standard burden of proof required of the prosecution relative to the charge, Section 11 (20 of the Evidence Act, 1975 (NRCD) 323 is instructive here; Section 11 (2) states 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".

The offence of fraud by false pretences is created by section 131 (1) of the Criminal Offences Act 1960 (Act 29).

The prosecution in proving the said offence under the provisions of section 131 (1) of Act 29 must establish the essential ingredients of the offence. These are that;

- (1) The accused made the said representation that he is a police officer from Wenchi.
- (2) That at the time the accused made the said statement he (accused) knew it to be false.
- (3) That the complainant believed or relied on the said representation and parted with the money.
- (4) That the said representation was fraudulent and therefore unlawful.

Having therefore considered the evidence and the law, it is the view of this court that the prosecution has established that the accused herein on the said 12th day of May, 2022 went to the village of P.W.1 and told the P.W.1 he (accused) is a police man from Wenchi.

That the accused then got P.W.1 to part with the sum of GHC200.00 under the pretext of helping P.W.1 with a case accused said one Abisco had reported against the complainant and another (P.W.11 and P.W.2). The prosecution also showed though the evidence that at the time accused told P.W.1 that he is a police man, the accused was aware that statement was false, and yet he got P.W.1 to believe him (accused) and subsequently parted with GHC200.00.

So from the evidence and the law, therefore it is the conclusion of the court that the prosecution has proved the charge against the accused beyond reasonable doubt. The accused Kwame Abayele is found guilty as charged and convicted accordingly.

The reasons for the above conclusion include;

- (1) That the accused went to the cottage of P.W.1 and introduced himself to P.W.1 as a police man from Wenchi.
- (2) That the said statement by the accused was false and accused knew this at the time he made same.
- (3) That accused got P.W.1 to believe the said false statement and therefore parted with cash the sum of GHC200.00.
- (4) That the accused having been found to have defrauded P.W.1 was arrested and handed over to the police.
- (5) That the prosecution proved the charge beyond reasonable doubt and as required by law.

Mitigation – Accused is sentence to 18 months imprisonment in hard labour.

.....**SGD**.....

ISSAH ABDUL-WAHAB

(MAGISTRATE)

