

IN THE DISTRICT COURT SITTING AT ASAMANKESE ON THE 19TH DAY
OF APRIL, 2023, BEFORE HIS WORSHIP GEORGE DAVIS KWASI OFORI –
DISTRICT MAGISTRATE

SUIT NO; B1/51/23

THE REPUBLIC

VRS:

COLLINS YAW TURKSON

CHIEF INSPECTOR R. L. ADUKPO FOR PROSECUTION

J U D G M E N T

CHARGES:

1. Defrauding by False pretenses Contrary To Section 131 of the Criminal Offences Act 1960 (Act 29) as amended.
2. Stealing: Contrary to Section 124(1) of the Criminal Offences Act (Supra).

SUMMARY OF PROSECUTION’S CASE:

It is their case that the accused is an agent who looks for oranges from various farm owners and buys them for his customers. That a witness in this case introduced the accused to the complainant as someone who could get her oranges from various farm owners. That buoyed with this information, the complainant parted with Gh¢31,400.00 to the accused to buy her oranges.

That after receiving the money, the accused person only bought oranges worth Gh¢7,500.00 from 3 farms owners leaving a balance of Gh¢23,900.00. That all efforts made by the complainant to collect that money proved futile, which made the

complainant to lodge a complaint with the police. During investigations, it came to light that the accused, apart from the 3 farms bought oranges from 4 other farm owners worth Gh¢19,000.00 but went back to harvest the oranges and appropriated the money. The prosecution called two witness.

SUMMARY OF ACCUSED PERSON'S EVIDENCE:

It is his case that in July last year, the complainant visited him at Abura Dunkwa to assist her buy oranges from farm owners. That he agreed to assist her and based on that, the complainant gave an amount of Gh¢31,000.00 to buy the oranges; out of which he bought oranges from 4 farms owners at Suponsu, Nkwanta and two farms at Nyankoma-Nkwanta worth Gh¢2,500.00 each.

That later, the complainant called him on phone to express interest in buying oranges from farms he had earlier showed her at Osenase, and that at the time, the balance of complainant's money with him was Gh¢21,000.00.

That although he had the complainants Gh¢21,000.00 still with him, he failed to tell the complaint that the orange farmers at Osenase were quoting Gh¢30,000.00, and were unwilling to sell, and so he left for Agona Swedru. That while at Agona Swedru, the complainant's mother called to tell him that other people had harvested the oranges at Osenase.

That he asked the complainant's mother if he should send them back the remainder of their money and they told him that if he could get some farms at Agona Swedru, he should use it to buy. That he bought oranges from 4 farms at Agona Swedru worth Gh¢19,000.00 and paid for it and informed the complainant's mother about it.

That three days after this, the complainant's mother called to tell him that they did not like the oranges so he should sell it and send them their money. That at time, he

had travelled to his hometown and so told them to wait for him to return to Agona Swedru to get a buyer and get them their money.

That in January, 2023, he came to Osenase to resolve an orange farm issue with one Mr. Afranie, a complaint in another case involving the accused person where he was arrested. That because of his arrest in January, 2023, he could not go back to Agona Swedru to sell the oranges to set the complainant's money for her.

ISSUES FOR DETERMINATION:

From all the evidence before me, the issue that came up for determination are:

- a) Whether the amount of money given to the accused by the complainant to buy oranges from farmers was Gh¢31,400.00 or Gh¢23,900.00,
- b) Whether or not prosecution was able to prove the charge of defrauding by false pretences against the accused beyond reasonable doubt, and
- c) Whether or not prosecution was able to prove the charge of stealing against the accused beyond reasonable doubt.

To succeed, the onus lies on the prosecution to prove both the *actus reus* (act of the offences) and *mens rea* (intent of the accused) in committing the offences, as an act alone would not constitute an offence unless it is committed with a criminal intent. *Actus non facit reus nisi mens sit rea*. See Section 10 and 11(3) of the Evidence Act 1975 (NRCD323) as amended.

With respect to the first issue, prosecution in their facts, as well as the evidence of PW1 (the complainant) mentioned Gh¢31,400.00 as the amount that the complainant gave to the accused to buy her oranges. However in the charge sheet, ie, is the first count, the prosecution quoted an amount of Gh¢23,900.00 as the amount given to accused.

On his part, the accused stated that it was Gh¢31,000.00 which he received from the complainant. Given the inconsistency in the figures quoted by the prosecution, I accept the Gh¢31,000.00 quoted by the accused as the money he received from the complainant to buy her oranges from farmers.

With respect to the 2nd issue, to succeed in establishing the guilt of the accused, in the offence of defraudingly false pretences, the ingredients needed to be proven by the prosecution beyond reasonable doubt are that the accused made a representation to the complainant that, when given the money, he could get her oranges from farmers, which representation he knew to be untrue at the time he made it.

From the evidence before me, the accused, after taking the Gh¢31,000.00 bought oranges worth Gh¢7,500.00 but could not account for the balance. Again, he bought farms worth Gh¢19,000.00 but went back to steal the oranges himself, thereby denying the complainant the benefit of the oranges/her investment.

Clearly, the accused bought some oranges for the complainant which she harvested, worth Gh¢7,500.00 and therefore he did not defraud the complainant. This is because after telling her that he could buy oranges from farmers, he did just that. He performed part of the agreement and could, therefore not be described as defrauding the complainant by false pretences. As to whether he dishonestly appropriated the balance would be seen in the next issue.

With respect to the 3rd issue the ingredients needed to be proven by the prosecution are that the accused dishonestly appropriated the complainant's money and oranges, thereby denying her the benefit of her investment.

According to accused, after receiving Gh¢31,000.00 from the complainant he bought 4 orange farms worth Gh¢2,500.00 each i.e Gh¢10,000.00 leaving a balance of Gh¢21,000.00. that this was in July, 2022.

Per paragraphs 10, 11, 12 and 13 of his witness statement, he said he wanted to buy 5 more orange farms at Osenase but the owners quoted Gh¢30,000.00 while the money at his disposal was Gh¢21,000.00. That he did not inform the complaints about it. The rhetorical question here is that if the accused did not inform the complaint and her mother that he had bought the orange farms, why would they travel to Osenase in the first place, only to see that the oranges had been harvested? In my opinion, the accused represented to them that he had bought those orange farms for them and based on those representations, they travelled to Osenase to see that the oranges had been harvested, either by him or others.

Again, I find the accused person's evidence that he bought orange farms for the complainant at Agona Swedru doubtful. Why was he never able to show the complainant the farms he allegedly bought for her at Agona Swedru the whole of July to December last year before his arrest in January, this year? Oranges are seasonal crops and so if indeed he was told 3 days later after buying the farms to re-sell them, why did he wait until January this year when he was arrested? Orange fruits would not stay on the trees for that long!

In my candid opinion, the accused dishonestly appropriated the balance of Gh¢21,000.00 by spending it, or he bought orange farms and harvested them and spent the money, which is stealing. For this reason, it is my considered opinion that the prosecution was able to prove his guilt of stealing beyond reasonable doubt. As

such, I convict him for stealing Gh¢21,000.00 belonging to the complainant, within the reading of section 124(1) and 125 of The Criminal Offences Act 1960 (Act 29).

Accused is however discharged on the count of defrauding by false pretence as prosecution failed to prove his guilt beyond reasonable doubt.

(SGD)

H/W GEORGE DAVIS KWASI OFORI (MR)

(MAGISTRATE)

19/4/23