

**IN THE DISTRICT COURT HOLDING AT DODOWA SHAI OSUDOKU ON  
FRIDAY THE 3<sup>RD</sup> DAY OF FEBRUARY, 2023 BEFORE HER WORSHIP BRIDGET  
AKPE AKATTAH**

**CASE NO. B18/37/2021**

**THE REPUBLIC**

**VRS.**

**RAPHAEL FIAWORNU**

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**JUDGMENT**

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The Accused person is charged with the offences of Fraudulent Land Transactions contrary to Section 34(a) of the Land Regulatory Act 1962 (Act 122) as currently replaced by 34 of the Lands Act, 2020. The Accused pleaded not guilty to the offence charged.

The brief facts of the case are that the Accused sometime in 2016 sold a plot of at Rhama Town, Dodowa to the first Complainant, which said land, Accused failed to deliver to 1<sup>st</sup> complainant Kojo Akimatey after taking a part-payment of five thousand, two hundred Ghana Cedis (Gh¢5,200) from him. Subsequently, in 2016, Accused purportedly sold one plot of land at the same location to one Bridget Awo Leketey, after the part-payment of five thousand, five hundred Ghana cedis (Gh¢5,500) the Accused again failed to allocate the one plot of land to the 2<sup>nd</sup> Complainant herein. The Complainants made efforts to get their land or the money refunded to them by the Accused to no avail. Accused told the complainants that there is litigation on the land at the Accra High Court which said assertion was not true, Accused had no case pending in any of the Accra High Court

concerning the land he purportedly sold to the complainants. He was accordingly charged and arraigned before Court.

The PW1 was the key witness of the prosecution and in his evidence- in-chief stated inter alia that sometime in 2016, he was working with one Modza who is the nephew of the Accused. Modza informed him that his uncle (Accused person) was selling land at Rhama Town, Dodowa. PW1 went to the Accused who sold one plot to him at five thousand, five hundred Ghana Cedis (GhC5,500). PW1 said on 24<sup>th</sup> July, 2016, he made a part-payment of two thousand, five hundred Ghana Cedis (GhC2,500) and the Accused issued a temporal receipt which was tendered and marked Exhibit "A". PW1 later made payment of two thousand, seven hundred Ghana cedis (GhC2,700) to the Accused who did not issue any receipts to that effect. PW1 led evidence that the Accused made him transfer the monies through mobile money merchants to his wife and others at different times and he refused to issue any receipt for the GhC2,700. PW1 said he was going to develop the land when the Accused informed him that there was a problem of litigation on the land. Accused then promised to refund his money to him. PW1 made several efforts to get his money refunded to no avail, hence this suit. PW1 under cross examination stated inter alia as follows: He paid the GhC2,700 by installments at different times at the behest of the Accused person to specific mobile money (Momo) numbers given by the Accused.

The Prosecution called their second witness, Bridget Awo Leketey (PW2), the 2<sup>nd</sup> Complainant who is also a niece of the Accused person. In fact, the evidence of the PW2 is just similar to that of the PW1 but for the dates. PW2 stated in her evidence in chief that the Accused person told her that the land belongs to his him and he was selling same. Since the Accused and PW2 are from the same family, she did not bother to go see the land before paying for same. Accused detailed the PW2 to pay monies to different Momo numbers which she obliged. Accused issued a temporal receipt in respect of Two

Thousand Ghana cedis which PW2 paid to him on 12<sup>th</sup> August, 2016 tendered and marked Exhibit "B". Accused indicated on the receipt (i.e. Exhibit B) that the PW2 made a second payment of Eight hundred Ghana cedis (GhC800) to one Agnes Pentum on 0554887834 on 4<sup>th</sup> October, 2016. PW2 said she made several demands on the Accused to show her the plot of land so that she could start development to no avail. Family members came in to resolve the issue to no avail. Accused rather told PW2 that there was litigation on the land in Court but failed to name the particular Court. Under cross examination PW2 said that she did not conduct a search. The third witness of the Prosecution was the investigator, D/C/Inspector Patience Agortse, PW3. The nub of her evidence is that the Accused claimed he purchased land from one Stephen Nartey and presented an indenture dated 6<sup>th</sup> December, 2016 which is exhibited as Exhibit "E". It is the said land that the Accused purportedly sold to the Complainants and gave temporal receipts which were marked Exhibits 'C' and 'C1' respectively.

The general principle is that the standard of proof required on the Prosecution is to prove the guilt of the accused beyond reasonable doubt. The Evidence Act 1975, (NRCD 323) section 11(2) states *"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 event that the Accused person is called upon to open his defence, then he is enjoined by section 11(3) of the Evidence Act, 1975 (NRCD 323) to produce a reasonable doubt in the case of the Prosecution. **YEBOAH VRS. THE REPUBLIC (CONSOLIDATED) [1972] 2GLR 281**, it was held that the guilt of the Accused must be proved with that degree of certainty required by law.

After a careful study of the prosecution's case there was a prima facie case against the Accused person, hence he was ordered to open his defence. He led evidence that he purchased the land from Stephen Nartey and subsequently sold it to the complainants herein without any intention of defrauding them. It was due to the litigation on the land that he decided to refund the monies to the Complainants. He alleged that he did not give the Complainants documents on the land because they had not finished paying for their various plots of land.

Section 34(a) of Act 122 provides that *"a person who knowingly purports to make a grant of a piece of land to which that person does not have title or purports to make a grant of a piece of land without authority commits the offence of a second degree felony and is liable in addition to any other punishment that may be imposed, to pay an amount of money equivalent to twice the value of the aggregate consideration received by that person."*

The Prosecution is legally bound to prove the following ingredients:

- a. That the Accused person sold the land.
- b. That the Accused person knew that he is not the owner of the land nor clothed with authority to transact any business in respect of the land.
- c. That the Accused person knowingly acted in bad faith.
- d. That the Accused person is responsible for the fraudulent transaction of the land in issue.

The contention to be determined is whether the accused person is liable for the offence charged.

Per the facts of the case, the Accused person told the Complainants that the land belongs to him at the time he did not even have the indenture from his grantors. Accused did not even call his so-called grantors to lead any evidence on his ownership of the land he

purportedly sold to the complainants. PW1 and PW2 believed the misrepresentation of the accused and parted with money to the Accused person.

Following the discussions above, the Accused person is not the owner of the land he purportedly sold to the Complainants at the time of the alleged sale. Accused has contravened section 34 subsections (a) and (b) of Act 122 because he did not have title and/or authority to sell the land to PW1 and PW2.

According to the above stated provision a person who contravenes commits a secondary degree felony and liable in addition to any other punishment that may be imposed, to pay an amount of money equivalent to twice the value of the aggregate consideration received by that person.

From the foregoing, the Prosecution has proved beyond reasonable doubt hence the Accused person has failed degree of certainty required by law and must be punished accordingly.

In conclusion, the Accused person is found guilty on the counts. Accused is convicted on the offence charged. He is to pay twice of the price of the land paid by PW1 less the five thousand, two hundred Ghana cedis (GhC5,200.00) collected from the Police. I hereby impose a fine of one hundred and fifty (150) penalty units on each count and in default twelve (12) months imprisonment. PW1 and PW2 may initiate a civil action to recover their monies.

(SGD.)

**HER WORSHIP BRIDGET AKPE AKATTAH**  
**DISTRICT MAGISTRATE**