

GHANA / JUDGMENT

Republic Vrs Osuman [2023]

GHACC 284 (28 February 2023)

COURT
ghaccDECIDED
28 February 2023

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

1 IN THE CIRCUIT COURT HELD AT MPRAESO ON TUESDAY 28TH DAY OF FEBRUARY, 2023 BEFORE HIS HONOUR STEPHEN KUMI ESQ CIRCUIT JUDGE. COURT CASE NO. B7/119/2022. THE REPUBLIC V ABUBAKARI OSUMAN.

JUDGMENT:

The Accused herein has been charged with and arraigned before this court on some one count of defrauding by false pretences contrary to section 131 of the Criminal Offences Act, 1960 (Act 29) as amended as per the statement of offence. The particulars of offence on that same charge sheet read as follows: “ABUBAKARI OSUMAN: TRADER: You on the 18th day of September, 2021, at Kwahu Nketepa in the Eastern Circuit and within the jurisdiction of this court, with intent to defraud did obtain the consent of Complainant Issaka Djabere an onion farmer at Kwahu Okredjie village to part with his seventy (70) bags of onions valued GHC 33,600.00”. When he was arraigned before this court, he denied the count or charge against him by pleading not guilty; with the effect that the prosecution came to assume the onus of proof in establishing or even proving his guilt beyond reasonable doubt on the said count as required per Article 19 (2) (c) of the 1992 Constitution, which reads as follows; “(2) A person charged with a criminal offence shall (c) be presumed to be innocent until he is proved or has pleaded guilty”. ISSUE FOR TRIAL: On the basis of the denial of the charge by the Accused person herein, the court raises the following as the sole issue for determination in this judgment: Whether or not the Accused person herein, Abubakari Osuman defrauded the Complainant in 2 this case beyond reasonable doubt?. However, it is conceded that such a critical determination cannot be done in vacuum. I would therefore now go on to look in detail the nature and quality of evidence adduced by parties in support of their respective positions. CASE/EVIDENCE OF THE PROSECUTION. The prosecution in their bid to discharge their case called four (4) witnesses. The witnesses, including the complainant and the police investigator in the case testified per their filed witness statements, which on the rules and by the operation of law became their evidence-in-chief when they went into the box and subjected themselves to cross-examination. See the case of Godka Group of Companies v PS International Ltd. (2001-2002] SCGLR 918 @929. The first prosecution witness is Issaka Djabere. He is a farmer who lives at Okradjie village near Kwahu Adawso. He has some onion farms at Okradjie, Nketepa and Amartey; all villages within the jurisdiction of

this court. He testified that at the end of the season's harvests, he told a brother of his called Ibrahim Mohammed to inform him whenever prospective onion buyers showed interest to purchase the harvests. He recalled that based on that information, his brother directed the Accused to him as a prospective buyer of his onions at about 10:30 am on 18th September, 2021. He led the Accused to his onion farm and bargained about the price, which they agreed at GHC 480.00 per bag. According to him, the Accused bagged and took away a total of seventy (70) bags of onions- 60 bags at his farm at Nketepa and 10 bags at his farm at Okradjie- at a total cost or price of GHC 33,600. He clarified that while the Accused was still at his farm and was bagging the onions, he requested the Accused to pay him but he refused and asked to wait until he was done and about to leave. However according to the PW1 as he was about to leave for Amartey to attend to some other pressing matters, he asked the Accused to pay the money to his brother Ibrahim Mohammed at Adawso, which was agreed to by the Accused. It is further evidence that on 21st September, 2021, he contacted his brother for the money but he was told that the Accused took away the goods without payment to Ibrahim Mohammed. He was compelled to contact the Accused about his conduct, who replied that he was still at Adawso and had not left for Accra. 3 He called the Accused on phone the next day about the payment, only for him to reply that he had left for Accra as he needed to make some supplies to some customers of his in the Central Region. He added that for several weeks after, he called the Accused on multiple occasions for his money but the Accused failed to pay up and would sometimes refuse to answer his calls. He mentioned how he asked a worker of his called Jomo to call the Accused who either alleged he had made payment to Ibrahim Mohammed or that he had not even bought anything from him to warrant payment. He also recalled how in December, 2021, he was compelled to travel with the Ibrahim Mohammed to the Accused at the Medie market in Accra for him to pay up; even though the Accused asked for about two more weeks to make payment on 10th January, 2022, because he had deposited the money at the bank, he still refused to pay up. The second prosecution witness Ibrahim Mohammed, brother of the PW1. His testimony supported the material parts of the previous evidence of the PW1. But what stood out from his evidence was that when the Accused approached him that he needed onions to buy, he called the Complainant (PW1) who said he had some harvested onions to sell but not on credit purchase. He informed the Accused about it, who replied he had ready cash to purchase them and based on that directed the Accused to the PW1. He added that since then, all efforts to compel the Accused to settle the PW1 of the amount in question for the 70 bags of onions proved futile amidst several promises by the Accused to pay up. The PW3 was Jomo Zafoye; a worker of the PW3. He testified that he was present when the Accused came to buy the 70 bags of onions from the PW1 at GHC 480.00 per bag. His testimony went on to corroborate the essential parts of the testimonies of the PW1 and PW2. He also told the court that at a point after the Accused continued to default on repayment, he called the Accused concerning the money but the Accused asked them to be patient. Subsequently he called the Accused who replied that he had paid the money to the PW1 and asked that he was not bothered anymore. He called the PW1 to confirm the assertion of the Accused that he had finally made the full payment to the PW1, which was denied by the PW1. The police investigator was called as the last prosecution witness. He was Detective Chief Inspector F. Johnson; with the Mpraeso District Criminal Investigations Department of the Ghana Police Service. According to

him, a complaint of defrauding by false pretences involving the Accused was referred to him for investigations. Person. He took statements from the complainant and two witnesses. He also obtained investigation cautioned statement from the Accused (admitted into evidence and marked as Exhibit A); and subsequently a charge statement from the Accused; admitted into evidence 4 and marked as Exhibit B. Based on the said investigations, the Accused was charged and put before this court. CASE/DEFENCE OF THE ACCUSED PERSON. The court, after the close of case of the prosecution, determined or ruled, pursuant to section 174 of the Criminal Procedure Act, 1960, Act 30, that the evidence as adduced by the prosecution in support or proof of their case against the Accused had succeeded to establish or raise a prima facie case against the Accused to warrant him to answer. He was therefore ordered by the court to open his defence on the count against him. This position of the law is provided for under section 174 of the Criminal Procedure Act, 1960; (Act 30). It reads as follows: "At the close of the evidence in support of the charge, if it appears to the court that a case is made against the accused sufficiently to require him to make a defence, the court shall call upon him to enter into and shall remind him of the charge and inform he that, if he so desires, he may give evidence himself, or make a statement..." In the case of *Gligah & Atiso v The Republic* (2010) SCGLR 870 @879, the Supreme Court of Ghana held, inter alia, as follows: "In other words whenever an accused person is arraigned before any court in any criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence charged the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused is called upon to give his side of the story". The Accused in his sworn evidence or defence testified to admit buying the quantity of the onions and at the above-mentioned price from the PW1. However his defence was that when he went to the farm to bag the onions, he realized that even though the onions appeared nice on the outside, their insides were bad and watery. He called the PW1 and PW2 to complain about his observations of the onions but they did not say anything much to him. He therefore took the bags of onions to the market to sell but as they had gone bad, he run at a loss and even called the PW1 to inform him and asked for a discount; a request the PW1 rejected. As a judge in a summary trial who was required to consider every defence or explanations by the Accused, I looked at the cautioned and charge statements of the Accused too. 5 The Accused offered the same or similar defence; which is that he defaulted in paying the PW1 because the onions that he took to the market were bad and thus incurred a loss. He also denied that it was agreed for him to make full payment to the PW2 at Adawso on behalf of the PW1 before he could take the onions away. The Accused called one witness. He turned out to be the Ibrahim Mohammed; who had earlier on testified for the prosecution as PW2. It had escaped the court he had previously testified for the prosecution against the Accused. His testimony or evidence was essentially what he told the court in his original testimony. In other words, he testified to support the testimony or evidence of the PW1 and against the case or defence of the Accused. ADDRESSING THE ISSUE: EVALUATION OF THE EVIDENCE AND APPLICATION OF THE LAW: Before I deal with addressing the main or even the only issue in this judgment- which is whether or not the prosecution succeeded to prove beyond reasonable doubt that the Accused person herein, Abubakari Osman, defrauded the Complainant by false pretences- I would like to make the following comments by

way of discussion as to the nature of and meaning of the offence of defrauding by false pretences under our laws. The accused person is before the court to answer to the offence of defrauding by false pretences contrary to section 131 of the Criminal Offences Act, 1960, Act 29. That provision is as follows:

131. “A person who defrauds any other person by a false pretence commits a second degree felony”. However, that provision is only the creation section. For section 132 of the same Act 29 states or defines that offence as follows: “132: A person defrauds by false pretence, or by personation if that person obtained the consent of another person to part with or transfer the ownership of a thing” Now, after undertaking this reasonable discussion as to what constitutes the offence of defrauding by false pretences under our statute, I will then proceed to resolve the issues in this case; which is whether or not the Accused is guilty of the charge. However, before that, I need to restate the duty of the prosecution in this case in order to obtain conviction in respect of the charge against the accused person. DUTY OF THE PROSECUTION: 6 Since this was a criminal trial in every form and hue, the onus of proof was on the prosecution. That is, the prosecution, for alleging that the accused has committed an offence or done some wrongdoing, had the burden to produce sufficient and credible evidence to establish the guilt of the accused. See the case of *Donkor v The State* [1964] GLR 598, SC; as well as sections 15 and 17 (2) of the Evidence Act, 1975 (NRCD 323). In criminal prosecutions such as this present exercise, the proof required of the prosecution is said to be proof beyond reasonable doubt. See section 11 (2) of the same Evidence Act. However, there is no such burden or duty on the accused. It was stated by Sankey LC in the English House of Lords case of *Woolmington v Director of Public Prosecutions* [1935] AC 462 at 481 as follows: “whiles the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence”. This is because at the heart of criminal trial or prosecution is criminal intent or intention. In criminal law, an act or even an omission is not an offence because an accused committed a criminal act (actus reus). It is an offence or crime only if there was the accompanying criminal intent or intention or what is called mens rea. For as was stated in the case of *Republic v Kambey and Others* [1991] 1 GLR 235 (SC), the principle of law enunciated in *R v Grant* [1954] 38 Cr App R 107, CCA, is that “those who embarked on an enterprise to commit a felony must have a preconceived intention to use violence of any degree....” The prosecution was therefore required under the law to prove to the satisfaction of the court and beyond reasonable doubt that the accused person intentionally set out to defraud the Complainant when he took his onions away without paying. See the case of *The Republic v Francis Ike Uyanwune*

[2013] 58 GMJ 163 at 177, per Adjei J.A. I now turn my attention to dealing with or addressing the issue herein. In law, when an individual commits the crime of false pretences, they misrepresent a fact or set of facts in order to acquire someone else's property. To be found guilty of defrauding by false pretences, the prosecution must show that the individual acquired the property at issue by intentionally misrepresenting a fact. Defrauding by false pretences may also be by personation too. So by definition, a person is guilty of

defrauding by false pretences if by any false pretences or personation, he obtains the consent of another person to part with or transfer the ownership of anything 7 valuable. See section 132 of Act 29/60. It is further statutorily defined in section 133 (1) of Act 29 as follows: "A false pretence is a representation of the existence of a state of facts made by a person with the knowledge that such representation is false or without the belief that it is true and made with intent to defraud". In the case of *Kuma v The Republic* (1970) CC 113, the elements of the offence of defrauding by false pretences and which the prosecution ought to prove to obtain conviction are that; "

- a. There was a mis-statement or personation by the accused person which in law amounts to a false pretence,
- b. That the falsity of the pretence was known to the Accused,
- c. That the Accused thereby obtained the consent of another person to part with or transfer the ownership of anything and
- d. That the Accused acted with intent to defraud". Also per section 133 (2) (a), a representation may be made either by written or spoken words or by personation or by any other conduct, sign or means of whatsoever kind. In the charge of defrauding by false pretences, the rule is that there ought to be proof that but for the false pretences, the person who parted with his money or property would not ordinarily have done so. See the case of *The Republic v Emmanuel Kwabena Gainsford* (unreported) case NO. FTRM/72/12 per Bright Mensah, J (as he then was) who quoted for approval and applied the principle in the case of *COP v Dwamina* (1956) 1 WALR 55. Also worthy of mention is the case of *Emmanuel Mensah Xenyo*, Criminal Appeal No. 8/2002, delivered 9n 23rd May, 2002; where Rose Owusu JA (as she then was), held inter alia that in a charge of defrauding by false pretences, it must be proved that the person who parted with or transferred the ownership of anything, in this case the PW1, would not have done so but for the false pretences. In other words, it must be proved that PW1 was induced by the false pretences to part with or transfer the ownership of the money to the Accused. See also the case of *COP v Dwamina* (1956) 1 WALR 55. Meanwhile, Archibald, "Criminal Pleading, Evidence and Practice"; (36th ed.), paragraph 2043 at p. 753, defines intent to defraud as follows: " 'intent to defraud' means an intent to practice a fraud on someone and would there include an intent to deprive another person of a right, or to cause him to act in any way to his detriment or prejudice, or contrary to what would otherwise be his duty, notwithstanding that there was 8 no intention to cause pecuniary or economic loss.". My view or understanding from the totality of the above authorities is that in a charge of defrauding by false pretences, the main ingredients to be established from the evidence are false representations by the Accused to the victim and the intention of the Accused to defraud the victim. In the present case, the clear evidence is that the complainant (PW1) parted with the seventy (70) bags of onions valued GHC 33,600 to the accused upon a representation by the Accused that he was interested in purchasing and had the ability to buy the quantity of the onions at that price. But it is not enough for the prosecution to establish that the Accused made representations of an existing fact with

knowledge of its falsity or without belief in the truth of the representation. Suffice it to say that, the prosecution must additionally prove that the accused person had the intent to defraud at the time he made the false pretence. And as stated in the immediately preceding paragraphs, an intent to defraud in the context of section 133 (1) of Act 29/60 (supra) means an intent to induce another person by false representation to part with or transfer the ownership of some property. At this juncture, and on the strength of all that has been discussed and analyzed in the immediately preceding paragraphs and more importantly on the whole of the evidence before me, can it be said that the accused person intended and succeeded in defrauding when he took his bags of onions away without paying the PW1? I will first look at whether the representations that the Accused gave or made to the Complainant were false in terms of his ability and readiness to pay for the bags of onions. From the evidence and on the facts, I find that the Accused initially approached and spoke to the PW2 Mohammed Ibrahim that he wanted onions to buy. I find that the PW2 made it clear to the Accused that it was the PW1 who had onions to sell; that the PW1 would sell by cash purchase only and not by credit purchase, which was agreed to by the Accused. I find from the evidence that when the Accused met the PW1, they bargained over the price for the onions and there was an understanding or agreement for the Accused to convey the seventy (70) bags of onions away only upon payment of the total amount for the onions to the PW1 through the PW2. In other words, I find that the full payment of the cost of the onions by the Accused to the PW2 was a condition precedent to the Accused taking the onions away. From the evidence, I find that after the PW1 left the farm, the Accused packed the 70 bags of onions and conveyed the same to Accra without making the payment to the PW2 for the benefit of the PW1 contrary to their agreement. 9 In the opinion of the court, and from the circumstances surrounding the transaction and the very conduct of the Accused, he was aware and knew that he had not the intention nor the means to make ready or instant payment to the PW1 in respect of the 70 bags of onions yet he represented same to the PW1 and PW2 ; which made or led the PW1 and PW2 to believe that he had the ready cash to make payment for the quantity of onions he obtained and bagged at the PW1's farm. The court finds that the representation by the Accused was false and only intended to deceive or convince the PW1 to part with the quantity of onions in question. The court equally finds and holds that from the facts and the whole circumstances of the discussions between the PW1 and PW2 on the one hand and the Accused on the other, the PW1 was only going to sell the onions to the Accused by instant cash payment and not credit purchase; thus but for the false representation by the Accused that he had the ready money to pay for the bags of onions, the PW2 would not have led Accused to PW1 and PW1 would not have sold the bags of onions to the Accused. The court considered the explanation or defence of the Accused but found them to be convenient afterthoughts just to wiggle himself out of trouble. His explanation that it was never agreed for him to only take the bags of onions away without paying the PW2 for the benefit of the PW1 cannot be true, especially based on the evidence of the PW2. Accused- the court finds- knew from the onset that he could only take the bags of onions away upon payment for them to the PW2 who had been delegated by the PW1 to receive the money at Adawso. The court finds that the Accused- ostensibly without cash or

ability to make cash purchase at that particular time- falsely represented to the PW1 and PW2 his ability and readiness to make instant payment, which convinced and deceived the PW1 to part with the quantity of onions to the Accused. On the strength of the above, as the court has held that the Accused did make false statements or representations to the Complainant when he expressed his ability and capacity to make cash purchase for the bags of onions and when he knew he did not have the means then and never intended to, then the court a fortiori finds and holds that in the circumstances of the transaction between the parties, there is sufficient and credible evidence before the court that the Accused transacted with the PW1 with an intention to defraud him of his bags of onions or their worth. In the case of *Asare and Others v The Republic* (No.3) 1968 GLR 804 CA, it was held that:- “To succeed on a charge of defrauding by false pretence under Act 29 section 132 and 133, it was not enough for the prosecution to prove that the representation was false; they should go further to prove the consent to part with ownership was in fact obtained by false pretence”.¹⁰ It is the decision of this court that the representations by the Accused person to the PW1 were false and were solely said and meant to defraud the PW1 who was not ready to sell the onions to the Accused on credit purchase. So overall, I am satisfied that the prosecution succeeded in proving the guilt of the accused person beyond reasonable doubt on the one (1) count of defrauding by false pretences. The Accused, Abubakari Osman, is thus found guilty on the count and he is accordingly convicted. SENTENCING: The Accused, now convict, is hereby sentenced to pay a fine of one hundred (100) penalty units on the count. Or in default, he is to serve twelve (12) months imprisonment in hard labour. In passing the sentence, I had considered the plea for leniency by the convict himself, who appeared remorseful from the dock. In addition, I took into consideration the about almost three (3) weeks that the convict was kept in lawful police custody, after the court revoked his bail following his conviction and pending the sentencing. See Article 14 (6) of the Constitution, 1992. Most importantly, the court considered that the convict and his family have compensated the Complainant (PW1) who confirmed same in open court. SGD: STEPHEN KUMI ESQ, CIRCUIT JUDGE. sk....

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/akn/gh/judgment/ghacc/2023/284/eng@2023-02-28/source.pdf>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/Defraudingbyfalsepretences-ghacc-2023--6a3ea5233b1caa9129818edd>

Prepared on 26 October 2026 · Esheria