

GHANA / JUDGMENT

REPUBLIC VRS. ALHASSAN (D6/19/22)

[2025] GHACC 27 (12 March 2025)

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COURT

Circuit Court

CASE / FILE NUMBER

D6/19/22

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IN THE CIRCUIT COURT “A”, TEMA, HELD ON WEDNESDAY, THE 12TH DAY OF MARCH, 2025, BEFORE HER LADYSHIP JUSTICE AGNES OPOKU-BARNIEH, SITTING AS ADDITIONAL CIRCUIT COURT JUDGE SUIT NO: D6/19/22 THE REPUBLIC VRS: MAHAMUD ALHASSAN ACCUSED PERSON ABSENT INSP. EMMANUEL ASANTE FOR PROSECUTION PRESENT RUTH SEFAKOR ADJORLOLO, ESQ. HOLDING THE BRIEF OF PRINCE KWAKU HODO, ESQ. FOR THE ACCUSED PERSON ABSENT RULING ON MINI-TRIAL

FACTS:

The accused person is before this court on a charge of defrauding by false pretences contrary to Section 131 of the Criminal Offences Act, 1960 (Act 29). When the investigating officer mounted the witness box, the accused person challenged the admissibility of his investigation caution and charge statements on grounds of voluntariness. The court stayed the proceedings to conduct a mini-trial to determine the voluntariness of the statements given by the accused person. In the case of *Anang V. The Republic* [1984-86] 1GLR 458, the Court of Appeal held that the provisions on mini-trial or “Voire Dire” are mandatory, and the court has no discretion in the matter. The court conducted a mini-trial to determine the admissibility of the accused person's statements. **LEGAL ISSUE** Whether or not the caution and charge statements of the accused person were voluntarily given.

ANALYSIS

Under Section 120 (1) and (4) of the Evidence Act, 1975 (NRCD 323), evidence of a statement made by an accused person, which constitutes a confession to the offence for which the accused person is standing trial is not admissible unless the statement was made voluntarily. Section 120(4)(b) further provides that a statement is not made voluntarily where the accused person “was induced to make the statement by being subjected to cruel or inhuman conditions, or by the infliction of physical suffering upon the accused by a public officer or by a person who has a direct interest in the outcome of the action, or by a person acting at the request or direction of a public officer or that interested person” In the case of *State v. Banful* [1965] GLR 433, the court

held in its holding 2 that: “Where the prosecution intend to rely on a confession statement, it is their duty to prove affirmatively that the admissions therein were voluntarily made and not induced by any promise of favour or advantage or by the use of fear or threats or pressure by a person in authority.” Thus, in the case of *The Republic v. Agyiri @ Otabil* [1982-83] 251, where an accused person objected to the tendering of his statement by the prosecution on grounds that the statement was written for him after he was handcuffed and severely beaten and then forced to thumbprint it without knowing the contents of the statement and without the presence of an independent witness, the prosecution alleged that there was an independent witness but failed to call the said officer as a witness. The Court, in upholding the objection, held in its holding 1 that: “There was a well-established principle of law that a voluntary confession by an accused person to the commission of the crime charged was sufficient to support conviction of the accused. Therefore, the onus lay on the prosecution to prove that the confession was voluntary; the prosecution should prove that there was no inducement by threat or duress or promise held out to the accused by a person in authority. In the instant case, since A claimed that he was forced to thumb-print a fabricated story and also that there was no independent witness present at the time the statement was made, the onus shifted on to the prosecution to substantiate their case.”

MTPW1, No 54849 D/CPL Gemadi Christian Akorli testified that on the 23rd day of May 2022, he led a team of policemen to arrest the accused person at Community 10, Tema for the offence of defrauding by false pretence. He identified himself to the accused person as a police investigator, and he was brought to the police station for his statement to be taken. He called in a Policewoman who was then with the Community 11 Communications Department in the person of PW L/CPL Jennifer Owusu to be the independent witness whilst he obtained a statement from the accused person. He introduced the independent witness to the accused person and explained the process to him, which he understood, and he spelt out his rights of consulting a lawyer of his choice. After that, the accused person volunteered a statement in relation to the case in the Twi language which he recorded in the English Language. After that, he read the content in the presence of the independent witness after the accused person had understood same and appended his signature. The same process was followed for taking the investigation caution statement of the accused person. The statements were admitted and marked as Exhibits MT “A” and MT “B”. The investigating officer, under cross-examination by the accused person, denied that someone present advised him to accept the contents of the statements since there was no one sitting behind him as suggested by the accused person and denied that the accused person was slapped at the time of giving his statement to the police. The independent witness, MTPW2 No. 10270 PW L/CPL Jennifer Owusu, confirmed the testimony of the investigating officer that on 23rd May, 2022, he was at the office when D/L/CPL Christian brought in the accused person and asked her to be an independent witness. He introduced her and the accused person accepted her to be an independent witness. He spoke in Twi and wrote it down in English. After that, she read and explained the statement to the accused person in the Twi language. She confirmed that the accused person was not forced to give the statement or beaten in any way. Under cross-examination, the accused person suggested that the statement was written before the independent witness was brought in but the witness maintained her stance that she was in the room before the statement was taken. The accused person in his defence at the mini-trial,

testified that the police arrested him and brought him to the police station. He entered the room and there were four other people and the investigator in the room who stated that some fertilisers were missing and he was the one responsible. He told them that he bought it from one Gordon. He states that he cannot recollect how the statement was taken. They wrote what they wanted and after that they told him that he would go to court the following day. Under cross-examination, the accused person confirmed the details of the statement given to the police and stated that what he told the police was not what was written down. He further stated that he signed the statement because the people present told him to comply with what they had written down. From the evidence adduced by the prosecution witnesses for the mini-trial and the defence put up by the accused person, I find that the investigation and charge statements of the accused person amount to a confession to the alleged crime of defrauding by false pretences. Under Section 120 of NRCD 323 supra, such a statement is admissible once prosecution proves that the statement was voluntarily given. On the face of the statements, the accused person was reminded of his constitutional right to silence and his right to consult a lawyer of his choice. The accused person elected to give his statement in the Twi Language. There is also the certification by the independent witness and the investigator. The accused person stated that whilst giving his statement, someone told him to admit the contents of the statement and that he was also slapped, but in his defence, he did not lead evidence on the nature of the undue influence, duress or abuse meted out to him at the time his statements were given. The accused person stated that he gave a statement to the police but claimed that portions of the statement were not made by him. It is trite that in the absence of involuntariness and evidence that a statement was given, if the accused person challenges the accuracy or completeness of the statement made by him, the remedy is not to object to admissibility but for him to cross-examine on the portions of the statements that are not his deed since the implication is that he gave the statement voluntarily. In the case of *Asare alias Fanti v. The State* [1964] GLR 70, SC, the Supreme Court held in its holding 1 that: “where an objection is raised against the tendering of a statement alleged to have been made by an accused person, evidence will be heard only when the accused alleges that no statement was made at all, or that the statement was made under duress. But when objection is raised against such a statement on the ground of inaccuracy, its admissibility becomes a question of law for the judge and the weight to be attached to it is a question of fact for the jury, and it must therefore first be admitted before it can be evaluated. There is no evidence that the accused person was unduly influenced to give his statement.” In the instant case, the evidence shows that the accused person gave the statements voluntarily but challenges that portions of the statements were not made by him. Thus, the statements must be admitted in evidence for the accused person to cross-examine on the statements. On the totality of the evidence led by the prosecution and the defence put by the accused person, I find that the accused person voluntarily gave his investigation caution and charge statements and same are admissible in evidence to enable him cross-examine on the portions denied for admissibility is one thing, and the weight to be attached to the alleged confession is another thing. H/L JUSTICE AGNES OPOKU-BARNIEH (ADDITIONAL CIRCUIT COURT JUDGE) SGD. 6

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