GHANA / JUDGMENT

Republic Vrs Kofi Asamoah & Anor. [2023] GHACC 505 (25 April 2023)

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DECIDED
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IN THE CIRCUIT COURT '3' HELD AT ACCRA ON TUESDAY THE 25TH DAY OF APRIL, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS), CIRCUIT JUDGE CASE NO. D2/86/2018 REPUBLIC VRS KOFI ASAMOAH DUKE CHARLES FOR RULING OF SUBMISSION OF NO CASE TO ANSWER Both Accused Persons have been charged on two counts of; Conspiracy to commit crime to wit Defrauding by False Pretence contrary to sections 23(1) and 131 and Defrauding by False Pretence contrary to section 131 of the Criminal Offences Act, Act 29 of 1960. BRIEF FACTS The brief facts of Prosecution are that "Complainant is a trader who lives at Datus Junction in Accra. Whilst Accused Persons A1 and A2 are best friends and traders who live in Accra. A2 is the biological son of the Complainant. In the year 2016, A2 introduced A1 to his mother, the Complainant as a 1 businesswoman who travels from Ghana to United States of America (USA) often and was willing to send him to USA. A1 charged Complainant GH₵21,500.00 for documents and other travel expenses. Complainant paid cash, amounting to same to A1 and also paid GH₵5,000.00 separately to A2 to be given to A1's business partner living in USA who he alleged would facilitate the acquisition of working documents of A2. Complainant demanded a refund of the amount of GH₵26,500.00 from A1 and A2 after realizing that Accused Persons connived and collected such money from her, but they failed to pay it back her. Complainant lodged a case to Police and A1 and A2 were arrested. During interrogations, A1 admitted the offence but added he took GH₵1,000.00 from the amount and handed the remaining over to A2 to deposit in his bank account. A2 in his Caution Statement admitted the offence. After investigation, Accused Persons were charged with the offences and arraigned before this honourable court". On July 14, 2020, the plea of the Accused Persons was retaken as the court was differently reconstituted. Both Accused Persons pleaded not guilty to court one and count two. Counsel for A1 has filed his submission on whether or not the Accused has a case to answer on April 17, 2023. This court has taken his submission into consideration in coming out with my

ruling.

STANDARD OF PROOF AND BURDEN OF PROOF The settled position of the law as espoused in several authorities decided by the Ghanaian Courts is that at the close of prosecution's case, a prima facie case ought to have been established. MALI V. THE STATE [1965] 2 GLR 710; THE STATE V. SOWAH [1961] 2 GLR 745; MOSHIE V. THE REPUBLIC [1977] 1 GLR 258; APALOO v. THE

REPUBLIC [1975] 1 GLR 156; ALI KASSENA V. THE STATE [1962] 1 GLR 144 and recent cases such as TSATSU TSIKATA V. THE REPUBLIC [2003-2005] 2GLR 294. In the case of MICHAEL ASAMOAH & ANOR v. THE REPUBLIC Suit No. J3/4/17 dated 26th July, 2017, where the Supreme Court speaking per Adinyira JSC stated the law thus: "Furthermore, the standard of proof borne by the prosecution at this stage cannot be proof beyond a reasonable doubt, as held in the case of Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068" From the law stated above, it is clear that even without the prompting of the Accused Persons, this Court is obliged by law to consider, at the close of Prosecution's case, whether sufficient evidence has been offered to prove every essential element in the offence charged. To determine whether or not a case has sufficiently been made by the prosecution to justify this Court to invite the Accused Persons to open their defence, it is necessary to set out the scope of burden that is cast on the prosecution to discharge at this stage. That is to say, whether the Prosecution has been able to establish a prima facie case against the accused persons in respect of each of the offences charged. Referencing from the ruling of the High Court in the case of THE REPUBLIC v. EUGENE BAFFOE-BONNIE & 4ORS Suit No. CR/904/2017 dated 23rd May, 2019, what will necessitate a discharge and an acquittal of the accused persons, at this stage is when the following are present;

1. That there has not been sufficient evidence to prove the essential elements in the offence charged. 3
2. That the evidence adduced by the prosecution had been so discredited as a result of cross examination that no reasonable tribunal could rely on that evidence.
3. That the evidence offered by the prosecution is so manifestly unreliable that no reasonable tribunal could safely convict upon it.
4. That the evidence is evenly balanced, that is to say, the evidence is susceptible to two likely explanations- one consistent with guilt, the other consistent with innocence. Section 173 of ACT 30, states that, if at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make a defense, the court shall, as to that particular charge acquit him. This Court is obliged by law to consider, at the close of Prosecution's case, whether sufficient evidence has been offered to prove every essential element in the offence charged. In this case, the duty of the Prosecution is to establish a prima facie case against the Accused Person. In the case of Yeboah and Another v The Republic [1999-2000] 1 GLR 149 where the Court of Appeal speaking per GBADEGBE J stated that "...a prima facie case was made against the appellants which required the trial circuit tribunal to call upon them to enter into their defense. The authorities are quite well settled that where at the end of the case for the prosecution, an ingredient of the offence charged was not proved or where the evidence of the prosecution was discredited as a result of cross- examination, thus rendering it unsafe to be acted upon, then the court need not call upon the accused to open their defense." 4 The Prosecution in establishing a prima facie case against the Accused Persons the Accused Persons called 2 witnesses and tendered 4 exhibits in evidence. INGREDIENTS OF THE OFFENCE: For the first count of conspiracy, contrary to Section 23(1) of the Criminal Offences Act 1960 (Act 29)

to succeed against the accused persons the prosecution must prove: i. ii. That the accused persons agreed together to commit crime to wit Defrauding by False Pretence or That the accused persons acted together with a common purpose to commit the crime. See P. K. Twumasi – Criminal Law in Ghana p.106. See also REPUBLIC v MAIKANKAN [1972] GLR 502 The second count is Defrauding by False Pretences. Under Section 131 of the Criminal and Other Offences Act, 1960 (Act 29), "Whoever defrauds any person by any false pretence shall be guilty of a second-degree felony." Section 132 of Act 29 provides that "A person is guilty of defrauding by false pretences if, by means of any false pretence, or by personation he obtains the consent of another person to part with or transfer the ownership of anything." For the Prosecution to succeed on a charge of defrauding by false pretences, it must prove that: (i) there was a mis-statement or personation 5 by the accused which in law amounts to a false pretence, (ii) that the falsity of the pretence was known to the accused, (iii) that the accused thereby obtained the consent of another person to part with or transfer the ownership of anything and (iv) that the accused acted with intent to defraud. EVALUATION OF THE EVIDENCE AND APPLICATION OF THE LAW: Count 1 The Prosecution has the burden to prove that A1 and A2 acted together with a common purpose to commit crime to wit, Defrauding by False Pretence. From the evidence of prosecution, A2 introduced A1 to PW1 that he is able to send him abroad and A1 from Ghana to United State of America based on that PW1 parted with an amount GHC26,000.00 to A1 for the said purpose. Again, when A1 took the money he took GHC1,000.00 out of it and gave the remaining GHC20,000.00 was given to A2 to keep in his Account. A1 took the amount of GH5,000.00 from PW1 for a separate purpose with the promise to refund it. The court has considered the evidence of Prosecution on record, the court finds that, fact that it was A2 who knew his mother was able to afford the said money and knew his mother was willing to finance the bill to get him abroad, hatched a plan with A1 to get PW1 to part with the amount stated with the intention to defraud PW1. The court presumes that A1 and A2 played their various hatched roles very well to accomplish their common purpose that is to get PW1 to part with the said amount with the intention 6 of defrauding her. The (Supreme Court per Dotse JSC in the case of FRANCIS YIRENKY v. THE REPUBLIC Unreported) Criminal Appeal No. J3/7/2015 dated 17th February, 2016 explained the formulation on the offence of conspiracy as follows: "In this new formulation, the only ingredient that has been preserved is

(1) The agreement to act to commit a substantive crime, to commit or abet that crime." The court finds that prosecution has been able to establish the elements of conspiracy to commit a crime as charged. I therefore hold that the prosecution has made a prima facie case against 1st and 2nd Accused Person. Count 2 To constitute an offence of fraud by false pretence, the accused should have made a representation which to his knowledge is false, the representation should be made to a person who believed it and as a result was induced to part with or transfer the ownership of anything. See Kanyoke J.A in Abodakpi v The Republic [2008] 2 GMJ 33 and also the case of Adobor v The republic (H2/12/ 07) [2007] GHACA 5 (20 December 2007). To induce is to persuade, to prevail upon another person to believe something and act upon it. In the case of false pretence, the victim must have been

persuaded to accept the representation made to him as true and to act upon it to his detriment. See Adobor vrs The Republic supra. Prosecution's evidence to the Court was that 2nd Accused Person represented to PW1 that his friend 1st Accused is able to assist he A2 to go to the United Stated of America. When A1 met PW1 he convinced her he 7 is able to send A2 to the USA. Based on this representation PW1 parted with an amount of GHC21,000.00 to A1. To gain PW1's trust in the representation, A1 informed PW1 that there is also a woman who is in the USA who can assist A2 to secure a job and the documentation on his stay in the USA. A1 used the latter representation to get PW1 to part with another GHC5,000.00 to him with the promise to refund it. PW1 stated that his investigations revealed that A1 took GHC1,000.00 out of the amount of GHC21,000.00 and gave the remaining GHC20,000.00 to A2 for safe keeping. It is also the case of Prosecution that at the time the 1st and 2nd Accused Person made the representation to PW1, based on the said representation PW1 parted with GHC21,000.00 to A2 even though A1 and both Accused Persons knew the said representations to PW1 were false but they made it with the intent to defraud PW1 in this case. It is also the case of Prosecution that at the time the 1st and 2nd Accused Person made the representation to PW1 the complainant, he knew the said representation was false but made it with the intent to defraud PW1 in this case. The court finds that the fact that A1 took the amount of GHC21,000.00 and he did not use is for intended the purpose but handed the amount of GHC20,000.00 over to A2 after taking GHC1,000.00; and also, the fact that A2 took the amount of GHC20,000.00 without objecting to do so and he knew it was the for which the money was given, shows that at time both Accused Persons made the said representation to PW1. Furthermore, at a later dated A1 without having fulfilling his obligation continued to 8 represent to PW1 that the woman who would be working on A2's document needs assistance in the form of money with the intention to giving PW1 an impression that the process was on-going when in fact he had not started doing anything. This piece of evidence show that both Accused Persons knew that the representation made to PW1 was false and it was made with the intention to defraud PW1. The evidence on records shows that prosecution has made a prima facie case against the A1 and A2. under section 174(1) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), At the close of the evidence in support of the charge if it appears to the Court that a case has been made out against the Accused sufficiently to require the accused to make a defence, the Court shall call on the accused to enter his defence and shall remind the accused of the charge and inform the accused of the right to give evidence personally on oath or to make a statement. under section 174(1) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), At the close of the evidence in support of the charge if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the Court shall call on the accused to enter his defence and shall remind the accused of the charge and inform the accused of the right to give evidence personally on oath or to make a statement. The court hereby holds after considering the prosecution's evidence that the prosecution has made a prima facie case against both Accused Persons as such the two have a case to answer and accordingly calls upon them to do so. 9 PROSECUTOR INSPECTOR TEYE OKUFFO LEGAL REPRESENTATION RAPHEAL KOFI BONNIE FOR 1ST ACCUSED MOSES ATTIGAH FOR 2ND

ACCUSED H/H SUSANA EDUFUL (MRS) (CIRCUIT COURT JUDGE) 11 10

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