

GHANA / JUDGMENT

REPUBLIC VRS ANTHONY AMOAH (B7/75/2024) [2024] GHACC 319 (17 October 2024)

COURT
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17 October 2024

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IN THE CIRCUIT COURT, MPRAESO, EASTERN REGION, BEFORE HER HONOUR MRS ADWOA
AKYAAMAA OFOSU, CIRCUIT COURT JUDGE ON THURSDAY THE 17TH OF OCTOBER, 2024

B7/75/2024 THE REPUBLIC V ANTHONY AMOAH

..... TIME:
10:40 ACCUSED: PRESENT CHIEF INSPECTOR BEATRICE LARBI FOR PROSECUTION PRESENT
ACCUSED PERSON SELF- REPRESENTED RULING – WHETHER OR NOT THERE IS A CASE FOR
THE ACCUSED PERSONS TO ANSWER The accused person herein is charged with ‘Defrauding by
false pretence’ contrary to section 131 of the Criminal Offences Act, 1960 (Act 29). He appeared
before this court on the 5th of June, 2024 and when the charge was read to him, he pleaded guilty
but added an explanation which was inconsistent with guilt. The court thus entered a plea of not
guilty for him and proceeded to take evidence. P a g e 1 | 11 The facts upon which the above
charge was laid against the accused are that the complainant is a trader staying at Akropong, a
suburb of Mpraeso. The accused Anthony Amoah is alleged to be a trader and he stays at
Abuakwa, a suburb of Kumasi but hails from Mpraeso. Both the complainant and the accused are
friends. During the latter part of the year 2022, the accused came to the complainant and
informed her that his brother in - law in Kumasi has the chance to recruit people into the Ghana
Police Service through protocol and asked if she is interested or if she can get people for him to
be recruited. The complainant showed interest and he charged her GH¢7,000.00 for each person
for the facilitation of the process. The complainant paid a total of GH¢42,000.00 to the accused for
her four children and two of the accused person’s children which he promised to pay back the
money to her later. The accused person asked the complainant’s children to submit all their
documents to which they complied. During the latter part of the year 2023, the complainant’s
children had a text message on their phones that they had been selected for medical screening.
He told them they should get prepared and that they would be called for training but since they
had the text message they have not been called for any screening or any training. The
complainant thus contacted the accused about it and the accused asked her to wait for some

time. The accused later took the complainant to Kumasi to meet a certain man who he introduced to the complainant as his brother in-law and the connection man. The said man told her to wait till February, 2024, if her children were still not enlisted into the Police Service, he would refund the money to her. After February, 2024, the complainant's children had still not been enlisted into the police service so she called the accused to demand for the money but he refused and has been avoiding her calls. A report was made to the police and the accused was arrested. In his investigation cautioned statement, he admitted the offence and mentioned one Mr Osei Boakye, his P a g e 2 | 11 brother in-law as his accomplice but he failed to lead the police to his said brother in-law. On the 5th of April, 2024, the accused brought an amount of GH¢15,000.00 as part payment of the amount he defrauded the complainant of and promised to pay the rest on 23rd April, 2024 but he failed and went into hiding. The sureties were pursued to produce the accused to the police but they failed. On the 4th of June, 2024, the accused was spotted in Mpraeso town by the police and he was arrested, charged and arraigned before this court. The law is trite that in criminal trials, the burden of proof in the sense of the burden of establishing the guilt of the accused is generally on the prosecution. The failure to discharge that burden should lead to the acquittal of the accused. The standard of proof placed on the prosecution in order to discharge its burden is proof beyond reasonable doubt. Section 11(2) of the Evidence Act, 1975 (NRCD 323) thus provides that: "In a criminal action 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 will find the existence of the facts beyond reasonable doubt." Furthermore the Supreme Court in the case of Kingsley Amankwah (a.k.a Spider) v. The Republic [2021] DLSC 10793 referred to its unanimous decision in Abdulai Fuseini v. The Republic, reported in [2020] Crim LR page 331 wherein it summed up the law of evidence in relation to the obligation on the prosecution in a criminal case as follows: "The Supreme Court in a unanimous decision in the case of Abdulai Fuseini v. The Republic, reported in [2020] Crim LR, page 331 reiterated and affirmed the basic philosophical principles underpinning criminal prosecution in our courts as follows: P a g e 3 | 11 "In criminal trials, the burden of proof against an accused person is on the prosecution. The standard of proof is proof beyond reasonable doubt. Proof beyond reasonable doubt actually means proof of the essential ingredients of the offence charged and not mathematical proof. To prove its case, the prosecution led evidence through two witnesses being the complainant Juliana Ankomah, PW1 and the investigator, Detective Sergeant Eric Nagadzi Tetteh, PW2. PW1 testified that the accused is her friend and that during the latter part of the year 2022, the accused came to inform her that his brother in-law in Kumasi has the chance to recruit people into the Ghana Police Service through protocol so he should give him a loan to enable him pay for his two children. She showed interest and asked if he could assist her children to also join the Police Service and he accepted to do so. According to PW1, the accused charged her GH¢7,000.00 for each person and so he gave a total amount of GH¢42,000.00 to the accused for her four children and the accused person's two children which he promised to pay the money back to her later. The accused asked her children to submit all their documents which they did. According to PW1, during the latter part of 2023, her children received whatsapp messages on their phones that they had been selected for police medical screening. The accused told her

children to get prepared because they would be called for training but they have since not been called for any screening or training. PW1 further told the court that she contacted the accused and the accused asked her to wait for some time. The accused later took her to a man who he introduced as his brother in-law and the connection man and the said man told her to wait till February, 2024, if her children are not enlisted into the Police Service, he will refund the money to her. After P a g e 4 | 11 February, her children had still not been enlisted so she called the accused and demanded a refund of her money but the accused has been avoiding her calls. She made a report to the police and the accused was arrested. PW1 again said that on the 5th of April, 2024, the accused brought an amount GH¢15,000.00 as part payment of the amount he defrauded her of to the police. PW2 rehashed PW1's evidence and tendered the accused person's cautioned statement, his charge statement and the whatsapp message sent to PW1's children in evidence. They were admitted in evidence and marked as Exhibits A, B and C respectively. Even though the prosecution is required to prove the guilt of the accused person beyond reasonable doubt, at the close of its case, the prosecution is required to have established a prima facie case against the accused and not to have proved the case beyond reasonable doubt. See; *Tsatsu Tsikata v. The Republic* [2003-2004] SCGLR 1068. In view of this, the court is mandated under section 173 of the Criminal and Other Offences Act 1960 (Act 30) to determine whether or not there is a case for the accused person to answer at the close of the case for the prosecution, for if the prosecution has not made a sufficient case against the accused he ought not to be called upon to open his defence. In the light of the above, I shall proceed to determine whether or not at the close of the case for the prosecution there is a case for the accused to answer. In other words whether or not the prosecution has established a prima facie case against the accused in terms of the evidence led, to warrant the accused to be called upon to enter a defence. Section 131 of the Criminal Offences Act 1960, (Act 29) under which the accused person herein is charged enacts that: "whoever defrauds any person by any false pretence shall be guilty of a second degree felony. P a g e 5 | 11 Section 132 of Act 29 further explains 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". On a charge of defrauding by false pretences therefore, the prosecution must prove the following essential ingredients in order to secure a conviction as was laid down in the case of *Kumah v The Republic* [1970] CC 113 per Azu Crabbe and Anin JJA: (i) That there was a mis-statement or personation by the accused which in law amounts to a false pretence, that the falsity of the pretence was known to the accused, that the accused thereby obtained the consent of another person to part with or (ii) (iii) transfer the ownership of anything and (iv) that the accused acted with intent to defraud. The court further held that: "A mere representation or promise that anything will happen or be done, or is likely to happen or be done does not amount to false pretence" At page 344 of his book *Criminal law in Ghana* the learned author P. K. Twumasi states that: a false pretence is a representation of the existence of a state of facts made by a person, either with the knowledge that such representation is false or without the belief that it is true and made with an intent to defraud. The key point is that false pretence must relate to an existing fact and not a mere representation or promise that anything will happen or be done. The onus thus rests on the prosecution to prove that the accused person made a representation of the existence of a state of P a g e 6 | 11 facts". The law

also requires that all the four ingredients of the offence be proved before an accused person can be convicted. Here, as regards the 3rd element, there is no dispute that the accused person did obtain money from PW1. The critical question however is whether the said money he obtained was based on a misstatement which he made that he knew was false at the time of making it and that he had an intention to defraud. As stated above, false pretence must relate to an existing state of fact and not a mere representation or promise that anything will happen or be done. From the evidence, the accused person represented to PW1 that his brother in-law had told him that he has a chance to recruit people into the police service. The question is, was this representation that the accused made to PW1 a misrepresentation of an existing state of fact? The evidence shows that the said brother in-law of the accused person is a police officer based in Kumasi. When after a while, the complainant's children had not been called for the screening, she demanded her money from the accused who then took PW1 to his said brother in-law. This was confirmed by PW1 during cross examination as follows: Q: When I went to give the money to the man, you didn't believe I had given the money to him so do you recall that I went with you to the man in Kumasi A: Yes and when we met him he said all those he presented have not been recruited and so I should give him up to February, 2024, if they are not recruited he will refund the money to me. The said brother in-law of the accused therefore did not deny that he had made any such statement to the accused or received money from the accused for the purpose for which the accused obtained the money from PW1 but he assured PW1 that if by a certain date her children had not been recruited, he would refund the money to her. Whereas the Page 7 | 11 accused claims that his brother in-law said he would refund the money at the end of the year if PW1's children have not been recruited, PW1 insists that his brother in-law said he would refund the money in February 2024. Be that as it may, that is not critical to the determination of this case. There is no evidence to show that the accused person was aware of the falsity of the representation made to him by his brother in-law or that he was in league with his brother in-law. During cross examination of PW2, it was revealed that the accused has also made a complaint against his said brother in-law superintendent Osei Boakye for him to be arrested. The following ensued during cross examination of PW2: Q: I have also reported the case to you that I gave the money to Supt. Osei Boakye so you should cause his arrest A: You said so and I later got to know that the said man is a senior police officer and per our rules as a senior officer I cannot go personally to arrest him unless I pass through the process. So through my District commander we have prepared a sitrep and sent through the commander of the Ashanti Region for the said officer to be released to assist with investigation but he has still not reported. This presupposes that the accused person did not make any misrepresentation to PW1 when he told her that his brother in-law says he has a chance to recruit people into the police service. Indeed the evidence shows that the accused person approached PW1 for a loan to give to his said brother in-law to assist his (the accused person's) children to be recruited into the police service and then PW1 also expressed interest. PW1 said this in her evidence-in-chief and also when she was cross examined by the accused person. Here are excerpts of the relevant portion of the cross examination: Q: It is not true that I defrauded you Page 8 | 11 A: You told me that your brother in-law has protocol in the police service and that you needed a loan to enable you pay for your two children to be recruited, then I asked you whether my children can also be recruited and you said

yes It is obvious from the above that the accused person did not set out to defraud PW1 and therefore did not make any misstatement to her in order to obtain her consent to part with her money. It was a mere promise by the accused to assist PW1's children to be enlisted into the Police Service through his brother in law who had represented to him that he was so capable. From the evidence therefore I cannot infer any intention on the part of the accused to defraud PW1. As to whether or not the accused person's brother in-law was not in a position or did not have the chance to recruit people into the police service and for that matter whether he made a false representation to the accused based on which he obtained the said money from the accused, that is a matter between the accused person and his brother in-law, and it is a bridge which the two of them would have to cross when they ever get to the point where his said brother in-law has to be prosecuted. The prosecution thus failed to show that as between the accused person and PW1, the accused made a mis-statement to her that amounts to a false pretence. Section 173 of the Criminal and other offences (Procedure) Act, 1960 (Act 30) provides that: "Where 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 defence, the court shall as to that particular charge acquit and discharge the accused" P a g e 9 | 11 In line with the above provision, it has been held that a court would hold that there is no case for the accused person to answer or that the prosecution has failed to establish a prima facie case against the accused where at the close of the case for the prosecution;

1. The prosecution failed to provide evidence to prove an essential element of the alleged offence; or
2. When the witnesses called by the prosecution were discredited by the accused through cross examination; or
3. The evidence adduced by the prosecution is so manifestly unreliable that no reasonable tribunal could safely convict upon it; or
4. The evidence adduced by the prosecution is evenly balanced, that is, the evidence on record is susceptible to two likely explanations and while one is consistent with guilt, the other is consistent with innocence See: *Tsatsu Tsikata v The Republic* [2003-2004] 1068 State v Ali Kassena [1962] 1GLR 144 S.C Apaloo v. The Republic [1975] 1 GLR 156, C.A, Gyabaah v. The Republic [1984-86] 2 GLR C.A Aaron Kwesi Kaitoo v. The Republic [2018] DLCA 4485 As has been demonstrated in the instant case, the prosecution has failed to prove three elements of the offence namely; the accused made a misstatement that amounts to a false pretence, the falsity of the statement was known to the accused at the time of making it and that the accused had an intention to defraud. The prosecution thus failed to establish P a g e 10 | 11 a prima facie case against the accused person and he cannot legally be called upon to open his defence. Accordingly, pursuant to section 173 of Act 30 supra, he is acquitted and discharged. H/H ADWOA AKYAAMAA OFOSU (MRS) CIRCUIT COURT JUDGE P a g e 11 | 11

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