

GHANA / JUDGMENT

REPUBLIC VRS KWAME OFORI TENKORANG (D6/153/2022) [2023] GHACC 1051 (19 April 2023)

COURT
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19 April 2023

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IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 19TH DAY OF APRIL 2023
BEFORE HIS HONOUR KWABENA KODUA OBIRI- YEBOAH, CIRCUIT COURT JUDGE. D6/153/2022
THE REPUBLIC VRS KWAME OFORI TENKORANG

RULING

===== The
accused was arraigned before the court on one count which is: Defrauding by False Pretences:
contrary to section 131 (1) of The Criminal Offences Act 1960, (Act 29) The law provides under
sections 173 and 174 of the Criminal and Other Offences Procedure Act, Act 30 as follows:

173. Acquittal of accused when no case to answer 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 the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.
174. The defence 1
- (1) 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 make the defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement.
- (2) The Court shall then hear the accused if the accused desires to be heard and the evidence the accused may adduce in defence. Therefore, it is the responsibility of the court to make the determination, if a case has been made against the accused person. The principle is that at the close of the case of the prosecution, the Court must determine whether a prima facie case, has been made or not. See *Ali Kassena v The State* (1962) 1 GLR 144-154, *Apaloo v The Republic* (1975) 1 GLR 156, *The State v Annan & Others* 11965 GLR 600-612, *Sarpong v The*

Rep (1981) GLR 790, *Dadie v The Republic* (2008) GMJ 167 CA; *The Republic v Gyamfi* (2007) 13 MLRG 192 CA. The Particulars of the offence was that, "Kwame Ofori Tenkorang: AGE 34 YRS; BUSINESSMAN:- For that you during the year 2020 in Accra in the Greater Accra Region within the jurisdiction of this court, with intent to defraud, did obtain the consent of Philemon Oteng to part with cash, the sum of GHC 50,800 by falsely pretending that if the said amount was given to you, you could secure him with an Ireland visa to travel, which statement you well knew at the time of making it to be false." The facts of the case as attached to the charge sheet is that, Complainant Philemon Oteng is unemployed and resident of Sunyani, Bono Region. Accused Kwame Ofori Tenkorang is a self-styled Car dealer residing at Atibie in the Eastern Region. During the year 2020, the complainant wanted to travel to Ireland. In the course of preparations towards his journey, he met the accused who promised him that once he make payment of GHC 2 50,800, he could assist him with a valid Ireland visa together with all the documents necessary for his travel. The complainant became convinced and based on that, the accused person demanded and collected the said amount of money from the complainant. The accused person after taking the money, sent photograph of a cancelled Ireland visa to the complainant which did not go down well with him, so he demanded explanation. The accused person could not help and went into hiding. The complainant reported the matter to the police and the accused person was lured and arrested. During the investigation, the accused person admitted the offence and pleaded for two weeks to refund the money but failed. The accused was subsequently charged with the offence and arraigned before this court. The accused when brought before the court pleaded not guilty. The principle is that once the accused pleaded not guilty to all the charges and in such circumstance, the prosecution must prove the guilt of the accused as mandated by section 11 of the Evidence Act, 1975, NRCD 323 which states: "In a criminal action, the burden of producing evidence when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt". It is also trite law that in a criminal case, when an accused pleads not guilty to an offence, pursuant to S.11 (2) of the Evidence Act, 1975 (NRCD 323), the burden of proof is on the prosecution; and the standard of proof has to be beyond reasonable doubt as stated by Section 13(1) of the Evidence Act, 1975 (NRCD 323) and affirmed in the case *DARKO v THE REPUBLIC* [1968] GLR 203. There is no burden on the accused. See: *COP v Isaac Antwi* (1961) GLR 408 @ 412, *Nkansah v The Republic* (1980) GLR 184 3 The prosecution in seeking to prove their case that is proving the charge brought against the accused called PW1, the complainant Philemon Oteng and PW2 the Investigator. PW1 evidence was that he called the accused on his phone number 0508845070, who asked him to meet him at Legon, Accra and he promised to get him an Ireland visa at a fee of GHC 50,800.00 out of which he collected GHC 5000 on that very day. PW1 said he gave him an account number to which he deposited the remaining amount of money. PW1 said the accused then collected his passport and assured him that his visa will be ready by 18/04/2021. PW1 concluded his evidence by saying the accused could not deliver on his promise and later accused sent screenshot of a cancelled Ireland visa and used COVID pandemic as an excuse. PW2 evidence was a

corroboration of that of PW1. PW2 gave evidence that the accused submitted receipt as evidence of payment to the accused to Police. PW2 indicated that the accused was arrested on 06/02/2022 at Sowutuom by Police. PW2 gave further evidence that the accused claimed he obtained the visa but due to COVID restrictions he could not give same to the complainant to travel and the visa was cancelled eventually and requested to secure the complainant a new visa but failed and kept telling stories. PW2 said accused during investigations submitted copies of the cancelled visa. Prosecution witnesses were cross examined and discharge. The prosecution tendered in all: Exhibit A – Cancelled Visa in the name of Philemon Oteng. Exhibit B1 – Deposit slip dated 09/03/2021. Exhibit B2 - Deposit slip dated 20/05/2021 Exhibit B3 - Deposit slip dated 05/05/2021. Exhibit B4 - Deposit slip dated 14/05/2021. Exhibit B5 – Deposit slip dated 12/05/2021. 4 Exhibit C – Caution Statement of Accused dated 04/02/2022. Exhibit D – Charge Statement of Accused dated 04/02/2022. During the hearing of the case, the prosecution witnesses, testified before the court and corroborated the evidence of the prosecution in total. The prosecution tendered exhibit C which was the caution statement without any objection from the defence. In the said caution statement the accused said on 26th of April, 2021 the visa of the complainant was released to him. Interestingly he did not release the said visa to the complainant but rather sent a copy of the visa to one Yaw Oppong by email. Why the accused did not release the visa and the passport to the complainant before it was cancelled is very strange and this is what the accused stated in his own caution statement. Looking at all these and the totality of the evidence, the court is of the opinion that, the prosecution through the totality of evidence before the court has made a case against the accused person on the count and the accused will therefore be called upon to open his defence on the count. HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. 5

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