

GHANA / JUDGMENT

REPUBLIC VRS. TUFFOUR (D6/207/2021) [2024] GHACC 172 (26 June 2024)

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IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2', ACCRA ON WEDNESDAY, 26TH JUNE, 2024 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE CASE NO: D6/207/2021 THE REPUBLIC VRS FRANCIS TUFFOUR @ KUDJOE ACCUSED PERSON PRESENT CHIEF INSPECTOR JOSEPHINE LAMPTEY FOR THE REPUBLIC PRESENT NO LEGAL REPRESENTATION FOR ACCUSED PERSON

JUDGEMENT

The Accused person is charged with the following offences: i. Defrauding by False Pretences contrary to section 131(1) of the Criminal Offences Act, 1960 (Act 29); and ii. Stealing contrary to section 124(1) of Act 29. The Accused person pleaded Not Guilty to both charges and submitted himself to full trial. THE FACTS OF THE CASE The complainant, is a journalist and a businessman whereas the Accused person is an auto mechanic. In October, 2012, the Accused person collected an amount of GH¢3,000.00 and a Range Rover Vogue with registration number GS 7502-10 from the complainant under the pretext that he would buy a home-based engine and fix same on the vehicle for him. After collecting the said money, the Accused person failed to buy the engine. The complainant lodged a complaint with the police leading to the arrest of the Accused person. Upon his arrest, the Accused person promised to fix the engine within a period of three weeks and he was admitted to bail. However, the Accused person absconded upon his release and went into hiding. The Accused person took the vehicle from its original place to an unknown location without the knowledge and consent of the complainant and the police. When the police eventually located the vehicle, some parts including dash board, mobilizer, old engine and some other valuable part all valued GH¢35,000.00 had been stolen. The Accused person was arrested on the 10th March, 2021 from his hideout at Ofankor. The complainant and the investigator testified for the prosecution as PW1 and PW2 respectively. The testimony of PW1 (Albert Kwabena Dwumfour) confirmed the facts as presented by the prosecution. PW2 (ASP Raymond Ackom) relied on his Witness Statement and tendered in evidence, the Cautioned and Charge Statements of the Accused person as well as a Photograph of the vehicle. At the close of the case of the prosecution, the Court determined that the prosecution had made out a prima facie case against the Accused person. The Court therefore invited the Accused person to enter into his defence. THE CASE OF THE DEFENCE In opening his defence, the Accused person

testified himself and did not call any witness to testify in support of his case. The Accused person did not also tender any exhibit in evidence. The Accused person told the court that he was at the workplace one day when his friend by name Atta Mortious came to tell him that he had sold an engine to some people but they could not start the engine so he should come and help them. So, he went there for two (2) days at Labadi. On the third day, he asked his friends to bring it to his shop at Tesano. It is the case of the Accused person that when he started the car, the engine was not in good shape so he removed it and gave it to his friend, Atta. Later, Atta brought a different engine. When they started it, smoke came out from the engine so they removed it and that was all. The Accused person further told the court that the owner of the car came to tell him the car was for him. So, the Accused told him that they had changed the engine twice but they were all not good. So, he told him to contact Atta but the car owner said he did not know Atta but rather knew one Selorm at Labadi. When the car owner spoke to them, Atta told him the engine was expensive so he should top up the money. As a result of that the car was left at the shop. It got to a time that the land where he had his shop was about to be developed. So, they sent all the cars to Fadama. According to the Accused person, he notified all the people who had their cars with him to come for them. They all came for their cars except the complainant. So, he informed Atta where they were moving the car to. It is the case of the Accused person that he had not taken money from the complainant, and not stolen any part of the car. The legal issue that emerged for determination at the end of the trial are: i. Whether or not the Accused person defrauded the complainant by false pretence. ii. Whether or not the Accused person dishonestly appropriated the Range Rover Vogue parts belonging to the complainant. The common law rule that a person was presumed innocent until the contrary was proved or he pleaded guilty is reinforced by Article 19(2)(c) of the 1992 Constitution which provides that a person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty. The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the Accused beyond reasonable doubt, there is no such burden on him to prove his innocence. At best he can only raise a doubt in the case of the Prosecution. But the doubt must be real and not fanciful. In *Republic vrs Adu-Boahen & Another* [1993-94] 2 GLR 324-342, per Kpegah JSC, the Supreme Court held that: "A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt". THE LAW AND EVALUATION OF THE EVIDENCE Whether or not the Accused person defrauded the complainant by false pretences Section 132 of Act 29 provides: "A person defrauds by false pretences if, by means of a false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing." From the above, the elements of defrauding by false pretences are as follows: 1. 2. 3. The use of false pretence or personation, To obtain the consent of another person, So that the person parts with or transfers the ownership of something. In the case of The

Republic vrs Selormey [2001-2002] 2 GLR 424, the Court stated the following ingredients in an offence of defrauding by false pretences: “A person shall make a false representation or by a personation either by written, spoken or sign language or any other means whatsoever; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was made in regard to the existence of a state of facts to obtain the consent of another person; the said representation was false or made without the belief that it was true; as a result of the false representation the accused person caused the other person to part with or transfer ownership of a thing.” See also Sarpong vrs The Republic [1981] GLR 790, Adobor v. The Republic [2008] 19 MLRG 23 CA. Section 133 of Act 29 in defining false pretence, lays out the following ingredients: 1. 2. Representing the existence of a state of fact, Either with the knowledge that such representation is false or without the belief that it is true, 3. The representation should be made with the intention to defraud. The Particulars of Offence under which the Accused person was charged reads: “Francis Tuffour @ Kudjoe (Auto Mechanic): In October, 2012, at Accra in the Greater Accra Region and within the jurisdiction of this court with intent to defraud did obtain the consent of one Albert Kwabena Dwumfour to part with cash the sum of GH¢3,000.00 by means of certain falsely pretences to wit; by falsely pretending that if the said amount was given to you, you would buy a home-used engine to fix on a Range Rover vehicle and upon such false representation you succeeded in obtaining the said amount from the said Albert Kwabena Dwumfour, which statement you well knew at the time of making it to be false. What kind representation did the Accused person make to the complainant? Per the Witness Statement of PW1, the Accused collected GH¢3,000.00 and his Range Rover Vogue under the pretext of buying a home-used engine and fix it on the vehicle for him. The Accused person denied this assertion and stated that he never received any money from the complainant. In the Cautioned Statement of the Accused person given to the police on the 7th November, 2013, the Accused person told the police that it was Arthur who brought the complainant’s Range Rover Vogue vehicle to him for repairs. For the avoidance of doubt, I reproduce the Cautioned Statement of the Accused person below: “I am a mechanic operating under the company by name which is located at Tesano near Kardoff. About ten months ago, one Arthur brought the complainant’s Range Rover car with a home-used engine to replace the engine for him. everything except the engine was functional when the car was brought to me. When I fixed the engine, it was not functioning properly so we had to change it. The 2nd and the 3rd engines did not work either. Currently, it is the 3rd engine which is still on the car but it cannot even start. In the course of replacing the engine, the control board also got damaged as a result of the frequent replacements of the engine so the complainant gave me GH¢500.00 to repair the control board which I have fixed. It is never true that I have removed some parts on the car.” Also, his Charge statement given to the police on the 12th March, 2021, the following is what he stated: “I wish to state that the only money I collected from the complainant was GH¢300.00 which was meant for engine oil. I have not stolen parts on the vehicle in question – Range Rover Vogue with registration No. GS 7502-10 belonging to the complainant.” Did the Accused person make the above representation with the knowledge that such representation is false or without the belief that it is true? Was there also an intention on the part of the Accused person to defraud the complainant? In the case of Welham vrs Director of Public Prosecutions [1961] A.C. 103, the

House of Lords held, as stated in Archbold, Criminal Pleading, Evidence and Practice (36th ed.), para. 2043 at p. 753 that: ‘Intent to defraud’ means an intent to practise 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’ In the case of *Asiedu v. The Republic* [1968] GLR pgs 1-8, Amissah J.A. stated and I quote: “An intent to defraud is an essential element of the offence of defrauding by false pretences whether the method of fraud adopted was personation or a false representation”. In this case, the evidence adduced is that of the complainant (PW1) against the evidence of the Accused person. Per the evidence of PW2 (investigator), the content of both the Cautioned and Charge Statements of the Accused is a denial of the charges proffered against the Accused person. The court does not find any intention on the part of the Accused person to defraud the complainant. Whether or not the Accused person dishonestly appropriated the Range Rover Vogue parts belonging to the complainant. Stealing is defined at Section 125 of Act 29 as follows: “A person steals who dishonestly appropriates a thing of which that person is not the owner”. The definition of stealing therefore requires the prosecution to prove the essential elements of the offence. In the case of *The State vs. W. M. Q. Halm and Aryeh Kumi* Crim. App Nos. 118/67 and 113/67, 7 August, 1969; (1969) CC155, the Court per Akufo Addo, C.J., Ollennu, Apaloo, Amissah JJ.A and Archer J stated the three essential ingredients which prove a charge of Stealing under our criminal law as: “(i) That the person charged must not be the owner of the thing allegedly stolen; (ii) That he must have appropriated the thing; (iii) That the appropriation must have been dishonest.” See also *Lucien vrs The Republic* [1977] 1 GLR 351-359 at holding 2. The Particulars of Offence of Count Two (2) reads: “Francis Tuffour @ Kudjoe (Auto Mechanic) in February, 2014 at Accra in the Greater Accra Region and within the jurisdiction of this court you dishonestly appropriated Range Rover Vogue parts namely: dash board, mobilizer and used engine all valued at GH¢35,000.00, the property of Albert Kwabena Dwumfour.” It is not in dispute that the Range Rover Vogue vehicle belong to the complainant. What is also not in dispute is the fact that the Accused person worked on the complainant car as a mechanic. Section 122 (2)(3) of Act 29 defines Appropriation as follows:

- (2) An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that a person may be deprived of the benefit of the ownership of that thing, or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing.
- (3) An intent to deprive can be constituted by an intent to appropriate the thing temporarily or for a particular use, if the intent is so to use or deal with the thing that it probably will be destroyed, or become useless or greatly injured or depreciated, or to restore it to the owner only by way of sale or exchange, or for reward, or in substitution for another thing to which that owner is otherwise entitled, or if it is pledged or pawned. Section 120(1) of Act 29 defines dishonest appropriation as follows: “An appropriation of a thing is dishonest
 - (a) if it is made with an intent to defraud, or

- (b) if it is made by a person without a claim of right, and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is trustee or who is owner of the thing or that the appropriation would, if known to the other person, be without the consent of the other person". In the case of *Salifu v. The Republic* [1974] 2 GLR 291, Ata-Bedu J stated: "There is no doubt that the crucial ingredient or element in a charge of stealing is dishonest appropriation." In the first place, did the Accused person appropriate dash board, mobilizer and used engine of the complainant's vehicle. As I have stated earlier in this judgement, the evidence adduced at the trial is the evidence of the complainant against that of the Accused person. Therefore, the evidence adduced at the trial is one of oath against oath. In the case of *Lutterodt vrs Commissioner of Police* [1963] 2 GLR 429, the Supreme per holding 2 stated that: "Where a decision of a trial court turns upon the oath of a prosecution witness against that of a defence witness, it is incumbent on the trial court to examine the evidence of the said witnesses carefully along with other evidence adduced at the trial before preferring one to the other. If the court prefers the evidence of the prosecution then it must give reasons for the preference, but if it is unable to give any reasons for the preference, then that means that there is a reasonable doubt as to which of the versions of the story is true, in which case, the benefit of the doubt must be given to the defence.....". I have carefully evaluated the evidence of the prosecution and that of the defence. At this stage, the court is in a doubt as to which of the two (2) stories to believe. When such a situation occurs, the court must resolve this doubt in favour of the defence. It therefore stands to reason that the prosecution has not met the standard of proving its case beyond reasonable doubt. In the circumstances, I hereby acquit and discharge the Accused person herein, Francis Tuffour @ Kudjoe on the charges of Defrauding by False Pretences and Stealing. ISAAC ADDO CIRCUIT COURT JUDGE 26TH JUNE, 2024

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