

GHANA / JUDGMENT

REPUBLIC VRS DANIEL KONUTSE (D6/221/2021) [2023] GHACC 1038 (20 April 2023)

COURT
ghaccDECIDED
20 April 2023

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 20TH DAY OF APRIL 2023
BEFORE HIS HONOUR KWABENA KODUA OBIRI- YEBOAH, CIRCUIT COURT JUDGE. D6/221/2021
THE REPUBLIC VRS DANIEL KONUTSE

RULING

===== The accused was
arraigned before the court on one count of:

1. Fraudulent Breach of Trust: Contrary to section 128 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 will 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. Particulars of the offence is "Daniel Konutse – (Businessman) (AGE 35) For that you, during the month of April 2020, at Tema in the Greater Accra Circuit and within the jurisdiction of this Court, you dishonestly appropriated a 40ft footer container with 2583 cartons of frozen chicken valued GHC 176,000 the ownership of which is invested in you as a trustee on behalf of one William Ralph Opoku". The facts of the case as attached to the charge sheet is that Complainant Constance Konadu is a cashier and lives at Taifa. The accused person Daniel Konutse is a businessman and lives at Madina. Complainant has a brother in the person of William Ralph Opoku who domiciled in United State of America. In April 2020, witness William Ralph Opoku shipped 40ft footer container with 2583 cartons frozen chicken valued GHC 2 176,000 to accused person's Madvan Impex Limited fishing company for clearance at Tema port. Accused person who earlier on contacted the witness for the shipping of the product did not pay for the cost of the product but had verbal negotiation with the witness to send him his money after clearance. In the month of May 2020, the accused person cleared the goods but refused sending the money to the good's owner. All efforts to get the accused person to pay the money proved unsuccessful. The case was reported to the Ofankor police for investigation. On 12/10/2020 the accused person was arrested, cautioned and released on bail to assist investigation. Cash, an amount of GHC 10,000 was paid by the accused person and kept as exhibit. After investigation, he was charged with the offence and arraigned before this Honourable 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, Constance Konadu, PW2, Ralph Williams, and PW3, DPW/ Insp. Lydia Adu-Tutu Mensah. The prosecution tendered in all: Exhibit A – Investigation Caution Statement of accused. Exhibit B – Charge Statement of Accused. Exhibit C – Invoice in the name of Nutrifoods USA LLC Exhibit D – Bill of Lading During the hearing of the case, PW1 gave evidence how PW2 has been shipping frozen products for some time now. PW1 said in April 2020, PW2 shipped a 40-feeter container comprising of 2583 cartons of frozen chicken valued at \$32,000 which is equivalent to about GHC 176,000 to the accused person who is said to be the manager of Mavdan Impex Limited, a fishing company at Tema Port.

PW1 said the consignment was accordingly cleared in May 2020 but the accused has since failed to pay a penny of the said amount after he had sold the entire 2583 cartons frozen chicken. PW2, the complainant, giving evidence before the court stated that on 20th April 2020, he shipped one 40 feet container comprising of 2583 cartons of frozen chicken valued \$32,000 to the accused – Daniel Konutse of Mavdan Impex Limited. The container arrived somewhere 17th of May 2020 of which he confirmed clearing and my representative Constance Konadu, PW1, also confirmed the accused has cleared the container from Tema port. PW2 gave further evidence that the accused was to sell the cartons and make payment for the consignment within two weeks after it had been cleared from the port. PW2 said after the accused cleared the goods, the accused sold the entire consignment and 4 deliberately refused to return the proceeds due him. PW2 said for over 6 months he was pressing for the said amount involved but to no avail and the accused stopped communication with them and nothing was heard from the accused or his company. PW2 testified further that the accused was arrested later. PW2 said on 30/3/2021 he called at Ofankor police station and gave written statement to the police. PW2 said further that the accused person said he was going to refund the said amount involved and he refunded GHC 10,000. PW3 the investigator concluded the evidence of the prosecution. PW3 gave evidence of in support of the case of the prosecution and corroborated the evidence of the other witnesses as per the evidence they gave before the court. PW3 gave evidence how she got involved in the case. PW3 said in paragraph 7 investigations unmasked that, the consignment was cleared in May 2020 but accused secretly sold off the \$32,000 worth of frozen chicken and failed to return the said amount to the complainant of his Ghana representative. The accused suddenly terminated communication with complainant and the Ghana representative, and nothing was heard from the accused or his company. PW3 concluded that the accused admitted the offence during investigations and refunded GHC 10,000 as part payment. PW3 afterwards tendered the exhibits of the prosecution and after cross examination the case of the prosecution was closed. During cross examination, the totality of the evidence of the prosecution witnesses was strongly challenged including that of the complainant PW 2 and PW2 also made certain admissions when he was confronted with the case of the accused. These were some of the responses that the complainant PW2 gave during cross examination. Q21. In essence this is a simple contract between your company and the accused's company, is that correct. 5 A. Yes Q23. The beneficiaries of this frozen chicken is the accused company, is that correct. A. Yes Q24. I am putting it to you, if there is non-performance of any part of the contract the remedy lies in a civil court and not a criminal court. A. No Q25. The inability of accused's company to pay what is due you in respect of the said contract is what has landed him in this court, is that correct. A. Yes. The prosecution during the trial tendered exhibit A, investigation caution statement, before the court without objection from the defence. In the said exhibit A, the accused admitted the shipment was made to him and he received same, and he gave the consignment to one customer to sell, and he indicated his personal involvement in the whole process and the challenge he face currently as he is not able to get the money back to pay the complainant that is PW2. The statement of the accused generally support the case of the prosecution in

substance and the accused gave statement to the police with respect to his personal involvement and action without any reference to any company. It is the statement of the accused that causes the submission of his counsel very much challenged in my view. I must say counsel in his written submission, which was well written, made the point that the relationship was more of a contractual relationship and that the accused company was the consignee, purchaser and beneficiary of the frozen chicken. (See 2nd Paragraph page 9 of the written submission) 6 However, this is what the accused said in his investigation caution statement about his direct involvement and responsibility towards the complainant, PW2, "One William, a resident of the United State of America has been sending me containers of chicken to "sale" which I always "sale" and make payments based on our signed agreement without default. He sent one container of chicken (mountaire) which arrived on 20th of April with the total quantity of 2570 boxes of chicken to be sold and pay him I made a good effort to "sale the container. The container was given to one customer by name Lawrence Oye Ampah through her loading Agent called Abraham Narh at Sakyi Cold Store at Kaneshie under the agreement that she pays half of the total cost of GHC 238,917 which is GHC 119,458.5. This agreement she breached despite all efforts to take the money from her." The statement of the accused as quoted indicates that the accused admits that he has a responsibility to the complainant and not just a company or contractual relationship. The statement also shows that he has a responsibility to the complainant and not just the payment of debt as a general purchaser of goods from the complainant. Counsel in his strong points in his written submission made the point in paragraph 4 page 3 of his submission, "My Lord to the extent that the accused's company was the buyer/purchaser of the said frozen chicken from complainant's company, accused cannot be deemed to be holding the said frozen chicken in trust for the complainant as that logic would totally defeat the principles of trusteeships which is very central in this case." Considering the strong arguments of counsel in his submission on behalf of the accused, I am of the opinion, unfortunately in disagreement with counsel, that per the accused own statement, he must open his defence, as I am convince that a case has been made against him. I am strengthened in this position by the authority that Counsel relied on, the case of Tsatsu Tsikata v The Republic (2003-2004) SCGLR 1068, Ocran JSC, "... on a submission of no case, the judge's function is essentially to determine whether there is a genuine case for trial. The inquiry has to focus on the threshold question whether the 7 evidence presents a sufficient disagreement to require submission for a full trial, or whether it is so one-sided that one party must prevail as a matter of law." In conclusion, the prosecution through the totality of evidence before the court has made a case against the accused person and the accused will therefore be called upon to open his defence on the count. SGD HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/akn/gh/judgment/ghacc/2023/1038/eng@2023-04-20/source.pdf>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/fraudulentbreachoftrust-ghacc-2023>

Prepared on 24 October 2026 · Esheria