

GHANA / JUDGMENT

Republic vrs Charles Bilson (D21/138/2023) [2023] GHACC 1037 (27 April 2023)

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27 April 2023

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IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 27TH DAY OF APRIL 2023
BEFORE HIS HONOUR KWABENA KODUA OBIRI- YEBOAH, CIRCUIT COURT JUDGE.
D21/138/2023 THE REPUBLIC VRS CHARLES BILSON

RULING

===== The
accused was arraigned before the court on two counts of:

1. Fraudulent Transaction: Contrary to section 277 (2) (c) of The Land Act, 2020 (Act 1036).
2. Defrauding by False Pretences contrary to section 131 (1) of the Criminal and other offences Act, 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) 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. 1 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 facts of the case as attached to the charge sheet is that Complainant George Dadzie Amonoo is a system engineer and lives at Gbawe, Accra. The accused person, Charles Bilson is a computer engineer and lives at Santa Maria. In June 2017, the accused person approached the complainant that he owns half plot of land at Tse – Addo near the Mayfair Estates which he was offering for sale. The complainant developed interest in acquiring the land after the accused person took him to the land and showed same to him as his property. The Complainant then paid an amount of Fifty Thousand Cedis (GHC 50,000) to the accused person as consideration for the half plot and was issued with receipts to that effect. The accused person again demanded and collected the sum of Three Thousand and Five Hundred Ghana Cedis (GHC 3500) from the complainant to construct a fence wall around the land for him. The accused person made the complainant to believe that he constructed the fence wall. The complainant visited the land and detected that the land is being developed by Sherifatu Abubbakar. Investigation established, in October 2021, the accused person sold the same piece of land to Sherifatu Abubakar for the sum of One Hundred and Twenty Thousand Ghana Cedis (GHC 120,000) for the same piece of land from Sherifatu Abubakar in 2021. It was also established that the fence wall was constructed by Sherifatu Abubakar and not accused but went ahead and collected money for it. After investigations accused was charged with the offences. 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".² 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 The prosecution in seeking to prove their case, that is proving the charge brought against the accused, called PW1 the Complainant George Dadzie Amonoo, Rocky Addo, PW2 and PW3, Corporal Theophilus Laweh Lartey. These are the exhibits that the prosecution relied on in prosecuting their case before the court and these included: Exhibit A – Receipt of payment of GHC 30,000 in the name of the complainant dated 14/08/2017. Exhibit B – Mobile money transfer of GHC 3510 to the accused dated 03/12/21. Exhibit C – Temporary receipt issued to Sherifatu Abubakar dated 2nd December 2021 Exhibit D – Writ of Summons and Statement of Claim between the complainant and accused and Hajia Sherifatu at the Civil Court. Exhibit E- Picture of scene

of crime with red writing on the wall Exhibit E1 Picture of scene of crime without writings. Exhibit F Caution Statement of Accused dated 12/07/2022. Exhibit G – Petition for assistance of the 2nd buyer dated 9/12/2021. Exhibit H – Site plan in the name of Sherifatu Abubakar Exhibit J – Charge statement of accused dated 27/09/22. During the hearing of the case, PW1 gave evidence how he negotiated for the land with the accused and paid cash the sum of GHC 30,000 to accused as part payment for the land. PW1 said the accused then prepared payment receipt covering the payment to him. PW1 said the receipt was witnessed by Mr. Rocky Addo (PW2) and Madam Doris Lamptey and he tendered the said exhibit as exhibit A in evidence. PW1 said further 3 that he subsequently paid the outstanding GHC 20,000 which was confirmed by the accused. PW1 said he took possession of the said land and deposited heaps of sand and stone on the land and when he demanded documents covering the land the accused said the Labadi Chief who will sign the indenture for him was not well and as soon as the chief recovers from the sickness he will send the indenture to him to sign which never happened as he was later told that the Labadi Chief passed on. PW1 said he later had information that accused person had resold the plot to someone. PW1 said he confronted the accused, and he denied the information. PW1 also said the accused also told him that he has built a fence wall to demarcate his plot at a cost of GHC 5000 and the accused asked him to refund but after negotiations he paid GHC 3500 through mobile money and he attached the transaction as exhibit B. PW1 said further that he proceeded to organise some construction workers to commence actual construction works on the plot but on arrival on the site they met some development on the land, and he was informed that the accused had resold his land to one Sharifatu Abubakar. PW1 said he was not able to get to the accused but rather the wife of the accused who told him that she warned the husband about his intentions to sell his land to another person. PW1 said when he contacted the new buyer, Sharifatu Abubakar to stop her from working on the land but she refused and told him that she has bought the half plot from accused at a cost of GHC 180,000 and she has made a payment of GHC 120,000 and she gave a copy of her receipt to him and same was tendered as exhibit C. PW1 said the accused and the second buyer used land guard to prevent him from having access to his legally acquired land and so he reported the case to the police and instituted a civil action and tendered the processes as exhibit D. PW1 concluded his evidence by saying that the accused sold half plot of land to him at the cost of GHC 50,000 in June 2017 and has unlawfully re-sold the same plot of land to one Sherifatu Abubakar for GHC 180,000 in November 2021 and that he also defrauded him of GHC 3500 which he collected from him as cost of fence wall he allegedly constructed to divide the plot where he knows that the fence wall was built by the second buyer with his building materials. PW2 and PW3 also testified before the court and corroborated the evidence of PW1 and provided the additional documentary evidence before the court. After the witnesses of the prosecution were called, the prosecution announced the end of their case. Going 4 through the evidence of the prosecution, the prosecution has led evidence to support the ingredients of the offences charged the accused before the court. That is, the prosecution, has provided both oral and documentary evidence before the court in support of their case. 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 two counts. SGD HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. 5

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