GHANA / JUDGMENT

REPUBLIC VRS GAD NII TETTEY COMMEY ALHASSAN BUKARI (D6/28/2018) [2023] GHACC 1042 (19 January 2023)

COURT
ghacc

DECIDED
19 January 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, 19TH DAY OF JANUARY 2023 BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, D6/28/2018 CIRCUIT COURT JUDGE. THE REPUBLIC VRS GAD NII TETTEY COMMEY ALHASSAN BUKARI

RULING

The accused persons were arraigned before this court on 4 counts of:

1. Fraudulent Transaction in Land: Contrary to section 34(a) of Land Registry Act 122/1962.
2. Defrauding by False Pretence: contrary to section 131(1) of the Criminal Offences Act 1960 (Act 29)
3. Trespass: Contrary to section 157 of the Criminal and Other Offences Act 1960, (Act 29).
4. Causing Unlawful Damage: Contrary to Section 172 1(b) of the Criminal and Other Offences Act, 1960, (Act 29) Article 19(2(c)) of the Constitution of the Republic of Ghana provides that: “A person charged with a criminal offence shall (c) be presumed innocent until he is proved or has pleaded guilty”. See GLIGAH & ATISO v THE REP [2010] SCGLR 870 1 In the case of the Republic v District Magistrate Grade II, Osu, Ex Parte Yahaya, His Lordship Brobbey J as he then was held that: “One of the cardinal Principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt. The law also provides for the submission of no case by an accused person at the end of the case of the prosecution that is when the prosecution announces to the court, the end of their case. This is provided for under sections 173 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. By this provision, the Accused Persons at the close of the case for the prosecution, has invoked the provision supra, and in a written submission by Counsel, has

submitted that, no case has been made against the accused person, sufficient, to justify the court to invite accused to open their defence. Therefore, it is the responsibility of the court to make that determination whether a case has been made against the accused persons to be asked to open their defence. The principle is supported by a plethora of case law authorities and has been jealously guarded by the courts over the years all these while and the law can be said to be settled in that area of our criminal jurisprudence. And the principle is said that at the close of the case of the prosecution, the Court must determine whether a prima facie case, has been made against the accused. If a case has not been made against the accused, then it 2 will necessitate the court to acquit and discharge an accused. This has been the guidelines which has been distilled from case law over the years:

a. There had not been sufficient evidence to prove the essential element in a crime.

b. The evidence adduced by the prosecution had been so discredited as a result of cross-examination that no reasonable tribunal could rely on the evidence.

c. When the evidence was so unreliable that no reasonable tribunal could safely convict upon it.

d. The evidence was evenly balanced, that is to say, that the evidence was susceptible to two likely explanations-one consistent with guilt, the other consistent with innocence. Where any of these exists, the court should acquit but where they are absent, then a prima facie case has been made and the accused will be called upon to open his defence. It is important to note that in the case of the State v Ali Kassena (1962) GLR 144 S. C., the Supreme Court per Azu Crabbe JSC (as he then was) stated thus: “Section 173 is concerned with summary trials where the Judge decides both questions of law and fact. It is for the Judge in a summary trial to weigh the evidence and then decide whether from the facts proved the guilt of the accused can be inferred. Evidence is said to be sufficient when it is of such probative force as to convince and which if uncontradicted will justify a conviction.” Azu Crabbe JSC, as he then was, in the Ali Kassena case developing these principles in the Ghanaian Criminal jurisprudence provided three rules for consideration by the courts and when he became the CJ in the Rep. v Moeshie took it a notch higher adding another one to make it four as enunciated above. And since then, a lot of authorities have followed the principles all along. See Tsatsu Tsikata v The Republic (2003-2005) 2 3 GLR 294, Apaloo v The Republic (1975) 1 GLR 156, Dadie v The Republic (2008) GMJ 167 CA; The Republic v Gyamfi (2007) 13 MLRG 192 CA. Therefore, at the close of the case for the prosecution, the evidence led, should be capable of displacing the presumption of innocence of the accused. It is only when this is done, that the court is justified to call on the accused to open his defence. The right of an accused to submit that there is no case for him/her to answer has been respected all these years and has become a time-honored practice in our Courts. This is how His Lordship Eric Kyei Baffour J as he then was in the case of The Republic v Eugene Baffoe-Bonnie and Ors, Suit No. CR/904/2017 put it, “In other words, at the close of the case of the prosecution the evidence led should be capable of displacing the presumption of innocence of the accused. And where the evidence has not been able to displace this presumption, then it means that

the case has not sufficiently been made out to justify the court to call on the accused to open his defence". Per the facts as attached to the charge sheet by the prosecution, the Complainant in this case is a Caretaker to one Franklyn Verney's who owns two plots of land, situated at Amamoole, near Pokuase. A1 is a farmer, living at Amamoole, whilst A2 is a retired military officer. In the year 1998, one Nicholas Ofori Agyakwa acquired two plots of land from Nii Tettey Okpo II, Chief of Amamoole. Documents in respect of the land were given to Nicholas Ofori Agyakwa. In 2004, Nicholas Ofori Agyakwa also sold the two plots to the complainant's brother-in-law, one Franklin Verney. Franklin Verney acquired Deed of Assignment No. AR/10096/2004 dated 16/12/2004 from the Lands Department and left the land under the care of complainant. In 2011, Franklin Verney who is currently in the United States of America made complainant to obtain building permit No. 5/5/0310-M007 dated 01/09/2011 at Amasaman and put up a complete house on one plot and two rooms on the other. On 01/10/2016, complainant visited the site and detected that, A2 had engaged workers to cause damage to the two rooms and raising 4 fresh foundation. Complainant confronted A2 as to how he came by the plot of land, and he mentioned A1 as the person who sold it to him. Complainant approached A1 and showed him his valid documents to the two plots. A1 then demanded and collected GHC 11320 from complainant under the pretext of settling A2 to vacate the land, since he was wrongfully on the land. A2 continued to trespass onto the complainant's land compelling complainant to report to the police. The accused persons were arrested and granted police enquiry bail to be reporting to enhance investigation but failed to report to police. After investigations, they were served with criminal summons to appear before court. The accused persons appearing before the court 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". In Elis Tamakloe v The Republic CM No. J7A/1/2010, 20th January 2011. Justice Atuguba relying on the decision in Donkor v Republic 1974 2 GLR 254-258 stated thus: where a statute creates an offence, it is the duty of the prosecution to prove each and every element of the offence which is sine qua non to securing conviction. Unless the statute places a particular burden on the accused, the fundamental and cardinal principle as to the criminal burden of proof on the prosecution should not be shifted even slightly". See; Woolminghton v DPP (1935) AC 462; Bater v Bater (1951) All ER 458, Oteng v The State (1966) GLR 355 During the trial, the prosecution in an attempt to prove the charges of fraudulent transaction in Land, defrauding by false pretence, trespass and causing unlawful 5 damage called 3 witnesses (PW1, PW2 and PW3) and tendered exhibits A – H before the court. Exhibit A was a lease from Nii Tetteh Okpe II, Exhibit B - Deed of Agreement between Mr. & Mrs. Agyakwa to Leslie Franklin, Exhibit C Copy of Receipts with amount GHC 10,000 dated 26/08/16, Exhibit D Copy of receipt with amount GHC 1320 dated 02/08/16, Exhibit E is caution statement of A1, Exhibit F caution statement of A2, Exhibit G was Criminal summons on A1 and Exhibit H was Criminal summons on A2. The question before the court

is whether at the end of the case of the prosecution, a case has been made against the accused persons for the court to asked them to open their defence. This will be established by looking at the case of the prosecution with respect to the established principles as enunciated supra. From the records before the court A1 was charged with fraudulent transaction in land under section 34 (a) of the Land Registry Act 122 and defrauding by false pretences. That is A1 was charged under count 1 and 2 whiles A2 was charged under count 3 and 4 which were trespass and causing unlawful damage. The Land Registry Act, Act 122 under which the A1 was charged with count 1 was repealed by the Land Act, Act 1036. The law is settled that no person shall be convicted of a criminal offence unless the offence is defined, and its penalty is prescribed in a written law. Act 122 was not saved under the Land Act but rather, the regulations, among others, under it were saved under the Land Act. Therefore, A1 will be discharged with respect to Count 1 that was brought against him. Now the consideration will be whether the prosecution during the hearing of their case have been able to produce enough evidence against the accused persons to make a case against them with respect to the other charges brought against them before the court. The other charge against A1 was defrauding by false pretence. The particulars of the offence is "< with intent to defraud, did obtain the consent of one Martin Agortina to 6 part with cash, the sum of GHC 11,320 by means of certain false pretences to wit; by falsely pretending that, if the said amount were given to you, you would give same to Alhassan Bukari to vacate his plot of land, statement you well knew at the time of making it to be false." The prosecution even though said the Martin Agortina was the complainant, he was not called as a witness but rather called PW1 who had transferred his interest in the land. PW1 in his evidence said that A1 demanded GHC 10,000 to be given to A2 to vacate the land and they mobilized the money and gave it to A1. PW1 said A1 was also given GHC 1320 which as he said was the cost of blocks A2 used working on the land and tendered the receipts as exhibit C and D respectively. It must be noted that per the prosecution own evidence, the said PW1 was not a complainant, he had nothing to do with the land as he had transferred his interest. The payments that were made were receipted and the reason for payment stated per exhibit C, "Being payment of a re-settlement of a piece plot of land situated and being at Amamoley" and the exhibit D was also payment of six hundred, five inches, blocks as the reason. PW1 in his evidence did not indicate he was defrauded by A1 as all the payment he testified were made, were discussed, and after the payment receipts were provided accordingly. From the evidence, even the exhibit C which was the receipt for the GHC 10,000 was in the name of PW1 and not in the name Martin Agortina as stated in the particulars of the offence. It was only the GHC 1320 which was in the name of one Martin, who is likely to be the complainant. From the record it is clear that nothing was done dishonestly and that is why documentations were available. And as PW1 stated to an answer to Q36, he got involved to ensure peace. 7 The investigator also admitted to the fact that the transfer of the money was for settlement and that was the reason for the payment on exhibit C. Investigator PW3 was asked: Q23. And the purpose of that transfer of that money was for settlement in order to give the complainant proper document from the Amamoley family in respect of the land. A. That is so. This admission by the investigator is very important as it means that the

prosecution knew A1 has not defrauded anyone contrary to what is in the particulars. Again the admission is important per the particulars with respect to the other count, count 3. This is because from the prosecution evidence as testified by the investigator PW3, there was not proper transfer of the land as claimed by the complainant. This means that the complainant cannot then say there has been a trespass unto their land. These were the answers of PW3 during cross-examination: Q20. Again, the search said there was judgment in favour of the Amamoley's family land. A. That is so. Q21. So, you will agree with me that the said Tetteh Okpe II had no capacity to lease the land to the complainant because there was judgment against him. A. That is so. And even the two offences of trespass and causing unlawful damage were brought against A2 and not A1. PW1 did not lead any evidence with respect to that at all. PW 2 who testified for the prosecution attempted to provide some evidence and stated in paragraph 6 of his witness statement that "A1 came to demolish the single room", but it must be put on record that no charge of that nature was brought against A1, but it was 8 rather A2. However, PW2 in his evidence stated that he does not know A2 and that means all his evidence and as was the case had nothing to do with A2 and that means none of the charges brought against A2 were proven by the prosecution as required by law. And again, whiles his evidence was a demolishing of a single room, particulars of the offence mentioned, damage to two rooms. And the worse of all was PW2's answer to Q8 during cross examination. Q8. Do you know why the accused persons are in Court. A. I have no idea why they are in court. In summary, the prosecution could not produce the necessary evidence to prove the ingredients of the offences brought against the accused persons. It is trite law that the onus of proof which is always on prosecution if that onus is not successfully discharged a submission of no case should be upheld. See Donkor vrs The State (1964) GLR 598 SC and Nyarko vrs The State (1963) 2GLR 59 In the case of Logan & Laverick v The Republic (2007-2008) 1 SCGLR 76 @ page 87, the Court stated, "In the instant appeal, it is clear that there is no evidence on record to support conviction. Section 173 is mandatory; the operative word is "shall", thereby giving no option to the trial court where a case is not made out against the accused sufficiently to require to him to make a defence. There being no such evidence, the trial court erred in calling upon the appellants to make a defence. The burden of proof remains on the prosecution throughout, and it is only after a prima facie case has been established that is a story sufficient enough to link the appellant and the others to the commissioning of the offences charged that the appellant, therein accused is called upon to give his side of the story". See Amartey v The State (1964) GLR 256 @295, SC; Gligah v The Rep, Dexter Johnson v The Rep. (2011) SCGLR 601. 9 The Court agrees with submission of Counsel on their application of submission of no case for the accused persons to answer especially as he said in the penultimate paragraph, "< from the totality of the pieces of evidence adduced, it is manifestly clear that the prosecution has not been able to prove the charges as contained in the charge sheet against the accused persons" Therefore, submission of no case will be upheld, by the Court as essential elements of the offences has not been proven, the evidence of the prosecution has been discredited and no reasonable tribunal could rely on the evidence. The evidence was also unreliable for any tribunal to convict on same. In the circumstance, the accused persons will be accordingly acquitted on

the other charges as well that is (Count 2-4) brought against them. C2 against A1 and C3 and 4, against A2 as required by the law. HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. 10

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/2023/1042/eng@2023-01-19/source.pdf

CASE PAGE https://chat.esheria.ai/case-law/ghana/fraudulenttransactioninland-ghacc-2023

Prepared on 29 October 2026 · Esheria