

GHANA / JUDGMENT

REPUBLIC VRS JOSEPH OKO OKINE (D6/376/2022) [2023] GHACC 1045 (22 June 2023) [2023] GHACC 1045

COURT

Circuit Court

CASE / FILE NUMBER

D6/376/2022

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IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 22ND DAY OF JUNE 2023
BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. D6/376/2022
THE REPUBLIC VRS JOSEPH OKO OKINE

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RULING

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

1. Fraudulent Transaction of Land: Contrary to section 277 (2) (a) of The Land Registry Act 2020 (Act 1036). 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. 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*
- (1965) 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 “Joseph Oko Okine; Age 49 years; Businessman: For that you during the year 2018 in Accra in the Greater Accra Circuit and within the jurisdiction of this court, did grant two (2) plots of land to Samuel Asumani which you do not have a title”. The facts of the case as attached to the charge sheet is that Complainant Samuel Asumani is a Trader and lives at Sapeiman, Accra. Accused Joseph Oko Okine is a businessman and lives at Adjen Kotoku, Accra. On 11/11/2021, complainant reported to Police that, he bought two plots of land located at Kuntunse, Accra from the accused person. Accused issued him an indenture and site plan bearing the name of Nii Otu Tsuru Family of Kuntunse. The complainant first conducted a window search and Nii Otu Tsuru family name came up. The complainant became convinced and paid cash of GHC 44, 000 to the accused. Complainant fenced the land and built four-bedroom house on it. Later Damax Construction company Limited surfaced and claimed ownership of the land on which complainant had built on. Complainant called and informed accused about the new development and accused promised to refund the money but failed. In the course of investigation, the Police visited the site and also contacted Damax Construction Company. The investigation revealed that the company acquired about 53.40 acres of land from Nii Otu Tsuru Family in 2008 and registered same with Land Title Certificate. Search results from Lands Commission indicated that, the land lease dated 03/9/2005 to Nii Otu Tsuru family and in 2008 the Nii Otu Tsuru family sold the land to Damax Company. After investigations, the accused was charged with the offence. The accused, when brought before the court, pleaded not guilty. The principle is that once the accused pleaded not guilty to all the charge 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. The accused was charged under Act 1036, section 277 (2) (a) which provides, “A person who purports to make a grant of land to which the

person has no title, commits an offence and is liable on summary conviction to a fine of not less than seven thousand five hundred penalty units and not more than fifteen thousand penalty units or to a term of imprisonment of not less than seven years and not more than fifteen years or both. The prosecution in seeking to prove their case, that is proving the charge brought against the accused, called PW1, Samuel Asomani who was the complainant, PW2, Joseph Annan, who was the marketing manager of Damax Construction and PW3, D/Insp. Imoro Abata the Investigator. The prosecution tendered in various exhibits from exhibit A to K1 which included photograph showing the completed 4-bedroom house on the disputed land, search report dated 06/02/2020, caution statement of accused and charge statement of the accused. During the hearing of the case, PW1 gave evidence how in 2018 accused person sold two plots of land situated at Kuntunse to him at a cost of GHC 52,000 and he made part payment of GHC 44,000 and obtained receipts together with site plan and indenture. PW1 said about a year after he has finished construction a four bedroom and a fence wall, some officials of Damax construction came to claim ownership and he later reported a case at the Regional CID against the accused. Prosecution called the second witness, one Joseph Annan who said he was the marketing manager of Damax construction company Ltd. PW2 said the company in 2008 acquired about 54.40 acres of land at Kuntunse and registered the land at the lands commission and obtained a land title certificate. PW2 said people including the complainant PW1 started to encroach on the land and the company took the matter to court and judgment was delivered in favour of company and notices were served on all those affected to come and regularise with the company. PW3 the investigator also gave evidence and collaborated with the PW1 on his acquisition of the two plots and the fact that he took possession and has built a 4-bedroom house on the land and later officials from Damax Construction came to claim ownership of the land. PW3 said during investigation at Lands Commission, it was found out that the land is registered in the name of Damax Construction and the documents of the company supports their claim and therefore the accused was charged with the offence. The prosecution closed their case after the evidence of the investigator, PW3. It is the responsibility of the court to decide, if a case has been made against the accused, for him to open his defence before the court. Generally, from the records and the evidence before the court, the complainant acquired two plots of land and as he himself said in his evidence in chief, he was giving documents with respect to the land which was exhibited before the court. The complainant afterwards took possession and has been able to build four-bedroom house and a fence wall. From the evidence there was no interference all these while with respect to the possession of the land by the complainant. During cross examination of PW1 this is what transpired: Q9. Did you do a search to confirm ownership of the land? A. Yes, I did a search. Q10. So, the search dated May 2018 which you did not attach to your witness statement is yours. A. Yes, I was given. Q13. You mentioned that you have built and fenced a four-bedroom property on the land. A. Yes, I have an uncompleted four bedroom on the land. Q14. Did you have a building permit. A. Yes, I have a building permit. From the record, the exhibit C, which is an official receipt, which was giving to the complainant, was in the name of Nii Otu Tsuru Family. From the

records before the court that is exhibit A, the land document was an agreement between Nii Amo Beesheo I, Head of Family and Lawful Representative of Nii Otu Tsuru Family of Kuntunse and the complainant and his wife Mr. and Mrs. Samuel and Rhoda Asomani dated 26th day of April, 2018 when the complainant acquired the land, which means that the complainant was given documentation even though he did not complete the payment for the land. Again the document of the said Damax Construction which the prosecution relied on and the investigator testified of and was tendered by prosecution as exhibit F was also between Osagyefo Nana Dodoo Oyeadieyie, Head and Lawful Representative of the Nii Otu Tsuru Family of Otublohum and the Damax Constuction company and per a hand written receipt that was tendered by the prosecution, with respect to amount of money paid by the complainant, the accused signed as receiver of the money, and the document was witnessed by one Nii Darko Okai and the complainant paid as a client, and his was witnessed by Rhoda Dede Asomani. During the cross examination of PW2 the representative of the Damax Construction company these were some of the exchanges: Q3 Your witness statement paragraph 2 you indicated that you acquired some land from Nii Otu Tsuru Family. A. Yes Q4 Per your paragraph 4 you said you saw the accused person had encroached your land correct. A. I have not said in my witness statement that the accused person has encroached our land, I rather said the complainant has encroached upon our land. Q5. Are you aware that the complainant grantor is the same as Damax grantor. A. Yes I also take notice from the record that the “Order for leave to issue writ of possession” was granted for leave for writ of possession to be issue for the execution of a consent judgment, which went in favour of the Plaintiff/Applicant that is Damax Construction Co. Ltd. And the said process indicates that it was an action that was taking against Nii Otu Tsuru II @ Nii Sheriff Dodoo by the Damax Construction company at the High Court which was settled and hence a consent judgment. It is therefore not surprising that PW2 who was the representative of the said Damax Construction Company in paragraph 4 of his witness statement stated, “After some time, people including the complainant who claimed to have bought the land from the accused started to encroach on the land so the company took the matter to court and judgment was delivered in favour of the company and notices were served on all those affected to come and regularise with the company”. It is clear that even the company that had the consent judgment in their favour appreciate how the complainant and others came to acquire the land and they are ready to regularise their documentation for them. From the record and the evidence put forward by the prosecution, I am of the humble opinion, that, the prosecution has not been able to prove the ingredients of the offence and hence could not make a prima facie case against the accused person for him to be called upon to open his defence before the court. Accused person will therefore be acquitted with respect to the charge brought against him. HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. 6

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