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ARTICLE

The Crime of Holding Out: Section 277(2) and the Dragnet of Justice

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ABSTRACT

Section 277(2)(a) and (b) of the Land Act, 2020 (Act 1036) criminalises purporting to grant land without title or authority. This article examines whether the provision reaches beyond the fraud and multiple sales it seeks to prevent. It argues that the omission of "knowingly", which appeared in section 34 of the Land Registry Act, 1962 (Act 122), creates a "purport trap" capable of exposing honest claimants, family heads and prospective vendors to criminal liability. The analysis considers the meaning of "purport", the presumption of mens rea, uncertainty over title and authority under customary law, and the proportionality of the penalties compared with sections 12 and 13 of Act 1036. It proposes express provision for mens rea, a defence of bona fide claim of right, and appropriate proof of want of title, with judicial determination where title is genuinely disputed. Section 277(2)(c), addressing conflicting grants, should be retained. The central concern is to punish fraudulent dealing without turning an honest mistake about title or authority into a serious criminal offence.

Keywords: land law; criminal liability; mens rea; customary tenure; bona fide claim of right; Ghana

I Introduction

The Land Act, 2020 (Act 1036) is the most ambitious and the most audacious land reform in Ghana since independence. It sought to revise, harmonise and consolidate the chaotic cacophony of land law, to exorcise the demon of landguardism, and to cure multiple sales — the hydra-headed monster that has turned Kasoa, East Legon Hills, Adjirigano, Nungua, Prampram and Amrahia into a sprawling litigation graveyard.

The mischief is real. In writing this paper, the author's attention was drawn to an incident where a Head of Family sold land for residential purposes. The indenture bore beautiful dimensions: "100 x 70 feet". The site plan was neatly drawn. The purchaser paid for it. However, upon a superimposition by a licensed surveyor at the Lands Commission, the land was completely on the sea. Not near the sea, but on the sea. The purchaser had bought the Atlantic Ocean for a bedroom.

Such is a classic fraud - selling fiction as family land, selling water as land, selling one plot to five buyers. No one can defend a Head of Family who does that.

Section 277 is the sword with which Parliament sought to slay the monster. Section 277(2) is its sharpest edge and it provides as follows:

"(2) A person who
(a) purports to make a grant of land to which that person has no title
(b) purports to make a grant of land without authority,
(c) makes conflicting grants in respect of the same piece of land to more than one person,
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 to both."

Subsection (c) on conflicting grants is the archer's arrow. It is straight, targeted, and just. It strikes at the heart of the mischief: the racketeer, the fraudster, the land merchant who sells one plot to five desperate buyers, collecting five separate considerations with five lying mouths. No one quarrels with it.

Subsections (a) and (b), however, are not arrows. They are a dragnet cast into a crowded lagoon. Meant for the sharks, they haul in the tilapia, the fisherman, and the boat itself. This article interrogates that dragnet.

II The meaning of "purport to make"

Parliament did not say a person who "makes" a grant without title. It said a person who "*purports to make*" a grant. The distinction is not semantic; it is existential. It is the difference between doing and claiming to do, between the act and the boast.

"Purport", per Black's Law Dictionary (9th ed.), means "*to profess or claim, especially falsely; to appear to be.*" The Concise Oxford English Dictionary (11th ed. Rev.) puts it in ordinary language: *appear to be, or claim to be something.*

Read together, the two definitions agree: "purport" criminalises the claim, not the conveyance; the shadow, not the substance; the mask, not the face; the proposal, not the marriage. The offence is completed the moment the words leave the mouth. No deed needs to be signed. No cedi needs to change hands. No reliance needs to be proved. No victim needs to exist.

To secure conviction, the prosecutor must prove three elements thus:

(a) That the person purported – that he professed, claimed, or held himself out as making a grant

(b) That what he purported to do was to make a grant of land, and

(c) That he did so without title or without lawful authority.

It is element (b) that exposes the absurdity. If what is sold is not "land" within Act 1036, superimposition shows no land exists. If there is no land, there is no grant of land. If there is no grant, what exactly has been criminalised – the lie, or the land?

Take the everyday example. The Head of Family who, at a family meeting, declares: "I am giving a four-acre plot to Mr. X" commits the offence by his mouth, though his hand never delivered.

So too the vendor who posts on Facebook: "73 plots for sale at East Legon Hills, with title" — where the title is later impugned by a rival family, is a complete felony at the moment of posting, even if no buyer ever calls. The crime is not in the selling of the land without title; it is in the saying. He has not sold. He has only said. Yet on the words of Section 277(2)(a), that saying is a felony punishable by a term of imprisonment of seven to fifteen years.

The litigant who in his Statement of Claim asserts a title he has already granted to another, is equally caught if he eventually loses the suit. His pleadings, once a sword of civil litigation, retrospectively transmogrifies into a confession of a crime.

The law has turned words into chains. It punishes the bucket that claimed to hold water, though it was empty and no one was thirsty.

There should be some substance to the assertion and not merely an assertion.

III The mens rea vacuum

The hallowed maxim of criminal law remains unshaken: *actus non facit reum nisi mens sit rea* – the act does not make a man guilty unless his mind is also guilty. No crime is committed without a guilty mind.

Section 277(2)(a) and (b) offends this ancient wisdom. It says nothing of fraud, dishonesty, knowledge or intention. It says nothing of *mens rea*. It is a sword without a hilt - a weapon without a handle with which to hold it.

In customary law, title is not a certificate; it is a tapestry of historical accounts, conquests, family lineages and oral grants. A man may genuinely believe he is the owner. A Head of Family may honestly believe he has the mandate of his people. The law has always protected the bona fide claimant.

Statutes that properly convey the idea of "purport" tether it to dishonesty. Under the English Fraud Act, 2006, section 2 on Fraud by False Representation, states:

"A person is in breach of this section if he –
(a) dishonestly makes a false representation, and

(b) intends, by making the representation –

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss."

Implicit in the above provision, a person commits an offence only if he dishonestly makes a false representation intending to make gain or exposes another to a loss. Section 277(2) cuts the tether and leaves "purport" floating like a ghost ship without a captain of *mens rea*.

The law must distinguish between two men. The first missed one elder. The second sells land that does not exist or belongs to another. Section 277(2)(a) and (b) lumps the innocent, the reckless and the guilty as felons.

IV The vanishing word in section 34 of Act 122

Under Section 34 of the repealed Land Registry Act, 1962 (Act 122), a similar provision existed thus:

"A person who knowingly (a) purports to make a grant of a piece of land without title, or (b) purports to make a grant of a piece of land without authority ... commits offence of second degree felony..."

The obvious difference between that provision and Section 277(2) of the Land Act is "knowingly."

In R v. Bannen,[1] Tindal CJ said "*knowingly must mean with a design*". Similarly, in R v. Saik[2], the House of Lords held that knowledge means true belief, not mere suspicion, however well-founded. Prof. Mensa-Bonsu, in her Criminal Law book,

[1] (1884) 1 Car & Kir 295 at 299.

[2] [2006] UKHL 18.

explains at page 57 that the word "knowingly" means 'deliberately' or 'on purpose'. It connotes some form of *mens rea*.[3]

Parliament did not lose that word by accident. It deleted the only word that made the offence criminal. What was a crime of dishonesty under Act 122 has become a crime of utterance under Act 1036.

Had "knowingly" remained, the innocent seller would be safe. Take Kwaku Mensah, who sells land he genuinely believes is his, but who did not know he lacked authority. Under Act 122, he would be innocent because he did not know he lacked authority. Under Act 1036, he is a criminal. The only change between 1962 and 2020 was the deletion of one word. That deletion turned a fraud offence into a trap.

V The strict liability fallacy

Severe sentences do not make an offence one of strict liability. In modern times, strict liability is used in less serious offences, usually regulatory in nature. Examples are laws that protect the sale of adulterated food, traffic offences and pollution. It is not used for prime crimes carrying stigma and imprisonment of seven to fifteen years as was held in Gammon v AG of Hong Kong[4], Sweet v Parsley[5] and R. v. Terry.[6]

Section 277(2)(a) and (b) cannot be saved by calling it strict liability. Parliament hardly dresses a regulatory mouse in a felony gown. By stripping out *mens rea*, Parliament has created a crime where the state need not prove that the accused knew his act was unlawful, yet punishes him as if he did.

The court must therefore read *mens rea* back into the provision. In Sweet v Parsley supra, Lord Reid held that *mens rea* is an essential ingredient of every offence unless some reason can be found for holding that it is not.[7] By applying that presumption, the court should interpret Section 277(2)(a) and (b) to require actual guilt.

"Purports" must not be used as a sledgehammer to kill a mosquito sitting on the cheek of customary tenure.

VI Uncertainty over title and authority

Article 19(11) of the 1992 Constitution demands certainty of the elements of the offence. "No title" and "without authority" are chameleons changing colours with

[3] Henrietta J.A.N. Mensa-Bonsu, "The General Part of Criminal Law – A Ghanaian Casebook", Volume 1. Published by Black Mask Ltd (2001).

[4] [1985] AC 1.

[5] [1970] AC 132.

[6] (1867) 11 Cox CC 671.

[7] See Jennifer Wiss-Carline, "Mens Rea: A guide", National Case Law Archive, August 30, 2026.

every charge sheet. Is it voidable title? Is it void title? Is it customary freehold under Section 5 of Act 1036? At what point does title become "no title". Is it after a search at the Lands Commission, or a final judgment of the court?

In customary law, the answer is never simple. In Adjei v. Appiagyei[8] and Sarpong & Ors. v. Frimpong & Anor.[9], the courts struggled with who can grant a family land. In Okai v. Clerk[10], the Supreme Court held that a sale of a family land by the Head of the Family alone without the concurrence of the principal members is not void *ab initio,* unlike the grant of a stool land by the occupant of the stool alone which is completely void and not voidable.[11] The Head has a defeasible title, not "without authority". He has a contested title.

That distinction is crucial for Section 277(2)(a) and (b). If the Head of Family alone sells, does he sell "without title" or without "authority"? He has the title, but he lacks full authority without the principal elders. Is that a felony punishable by seven to fifteen years' imprisonment, or a voidable civil transaction to be set aside?

Parliament has left the prosecutor to decide. A criminal statute that leaves its core element to prosecutorial discretion is vague. Vagueness in a fifteen year felony fails the test in Article 19(11).

That uncertainty is compounded by the settled judicial position of our courts that the police have no jurisdiction to determine title to land. In Djaba &2 Ors. v. Aggudey & 2 Ors.[12], the Court of Appeal held per Acquaye J.A. thus: *"It is trite knowledge that the Ghana Police Service has no business or jurisdiction in determining matters relating to ownership of land."*

The result is that Section 277(2)(a) and (b) creates a race to the police station. The police station becomes a Land Court, while the charge sheet becomes the Writ of title.

The provision is unprincipled, ripe for opportunistic report for "war", strict conviction for a civil dispute.

VII Disproportion and overlap under the Land Act

Act 1036 already provides two calibrated, proportionate offences for the land guard menace. Section 277(2)(a) and (b) go beyond them and criminalises honest claims.

[8] [1958] 3 WALR 401, 404, C.A.

[9] [2009] 5 MLRG 36, C.A.

[10] [2008] 13 MLRG 162, SC.

[11] See Awuku v. Tettey [2011] 1 SCGLR 366; Akwei v. Awuley [1960] GLR 231 and Akunsa v. Botchway & Jei River Farm Ltd. [2011] 1 SCGLR 288.

[12] [2015] 84 GMJ 185, 195, C.A.

A. Section 12 and the landguard menace

Section 12(1) is the scalpel for the violent landguard – the man with no interest in land who mounts a blockade, wields a weapon, and demands a ransom. It provides as follows:

"A person who
(a) unlawfully exercises or purports to exercise supervision or control of land development in a location,

(b) has no interest in land and

(i) extorts money or other benefits from a person who has an interest in land; or

(ii) prevents a developer from developing the land; or

(c) personally or through another person unlawfully uses force or violence to prevent a person who has an interest in land from having access to the land or drives away that person with an interest in land from the land

commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years and not more than fifteen years or to both."[13]

The main ingredients are:

1. No interest in the land,

2. Purporting to supervise or control, and

3. Unlawful prevention by force or blocking.

Section 12(1) targets physical conduct on the ground against the person with interest in the land. It is proportionate because it requires violence. The punishment ranges from five to fifteen years imprisonment.

B. Section 13 and the dishonest fiduciary

Section 13(2) makes a Head of Family a fiduciary. Section 13(4) punishes a fiduciary who contravenes his duty to manage land for the benefit of the family and to account. The punishment is a fine of not less than five thousand penalty units and not more than ten thousand penalty units or a term of imprisonment of not less than five years and not more than ten years or to both.

Section 13 targets the failure of a fiduciary to account for money or any consideration received in respect of a family land alienated. It is proportional because it requires proof that the Head did not act for the benefit of the family.

[13] Section 12(1) provides for "imprisonment … or to both", without prescribing the fine to which "both" refers. Unlike Section 277(2), which prescribes both a term of imprisonment and a fine, Section 12(1) prescribes imprisonment alone. The reference to "both" is therefore inoperative, as a court cannot impose a fine that Parliament has not prescribed. This appears to be a drafting oversight.

C. Section 277(2) and the honest claimant

Section 277(2)(a) and (b) punishes a person who purports to make a grant of land without title or without authority. The punishment is 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 to both.

Section 277(2)(a) and (b) requires no violence, no dishonesty, and no breach of a fiduciary duty. It punishes the honest claimant as harshly as the violent landguard.

D. Overlap and disproportion

A caretaker who says: "pay me before you build", without claiming to sell the land commits an offence under Section 12(1) alone. He does not commit an offence under Section 277(2) because he has not purported to make a grant.

However, a Head of Family who at a family meeting says, "I have authority to grant this land to X", honestly believing that he has it, and who accounts fully, is innocent under Section 12 and Section 13, but guilty under Section 277(2)(a) and (b) as a felon for seven to fifteen years.

Under Okai v. Clerk *supra*, his grant is voidable, not void. He has a defeasible title, not without title.

Under Section 12, he is innocent, because he uses no force or intimidation.

Under section 13, he is innocent, because he accounted for the grant of the family land.

Furthermore, Section 277(2) (a) and (b) punishes an honest but mistaken claim with a minimum of seven thousand five hundred penalty units and not less than seven years' imprisonment, or both, while under Section 12(1), the land guard who has no interest in the land and prevents or intimidates the one with an interest in the land gets a minimum of five years' imprisonment.

Similarly, the dishonest Head of Family who willfully fails to render account under Section 13 is punished with a minimum fine of five thousand penalty units or five years imprisonment, while the honest Head who merely fails to obtain full concurrence but faithfully accounted to the family is punished under Section 277(2) (a) and (b) with a higher minimum fine of seven thousand five hundred penalty units or seven years imprisonment for merely purporting to have authority to grant the family land.

Section 12 and Section 13 already provide calibrated thresholds for the real mischiefs - violence and failure to account. Section 277(2)(a) and (b) risks becoming a sledgehammer that punishes the honest assertion of a voidable customary interest.

Section 277(2)(c), which punishes conflicting grants of the same land, should be retained, because double sale itself implies dishonesty.

VIII Conclusion and proposals for reform

The intention behind Section 277(2) is commendable. The mischief it targets is real: the family heads who sell one plot to several buyers, and in an extreme case encountered in this research, sell land for residential use which, on superimposition, lies entirely in the sea. Such conduct must be punished.

The defect lies not in the objective, but in the drafting. By deleting "knowingly" which anchored its predecessor under Section 34 of the Land Registry Act, 1962 (Act 122) – and by criminalizing mere "purporting" without fraud, dishonesty or knowledge, Section 277(2)(a) and (b) catches the honest head who acts on a bona fide but mistaken claim of title together with the fraudulent head who sells the sea. It is disproportionate to Sections 12 and 13, and uncertain under Article 19(11).

The provision must therefore be pruned to precision. My contribution to the improvement of the law is to suggest the following for consideration:

1. Insert mens rea: "A person who knowingly purports …" or "fraudulently or dishonestly purports with knowledge or without honest belief that he has title or authority."

2. Provide a statutory defence of bona fide claim of right and colour of title, as in Section 120(1)(b) of Act 29.

3. Require a prima facie proof of want of title - by documents where title is manifest, and by a final judgment of a court or Lands Commission Title Report only where title is genuinely disputed.

4. Retain Section 277(2)(c). Its mens rea is inherent in double sale.

Properly drafted, the law will catch the man who sells the sea, and spare the man who merely errs. Failing which, the Act, like King Midas whose gold touch turned blessings into curses, will turn even honest claims into a crime, and the land, which like the womb is meant to nurture, will devour its own fetus and leave us childless.

Let the law say so - with "knowingly" - and the sea-sellers will have nowhere to swim.