

- b. Perpetual injunction restraining the Defendant, assignees, etc. from publishing any such words against the Plaintiff either in public or private.
- c. Any other relief that the Court may deem fit to grant the Plaintiff and cost.

Let me put it on record that both parties on their first appearance before the Court on 2nd February 2022, the Defendant confirmed being served with the Writ of Summons and Statement of Claim but he had not filed any process in response. The Court read the particulars of claim of the Plaintiff and explained to the Defendant in Twi. The Defendant responded that he was not liable to the claim of the Plaintiff. The Court accordingly ordered the Defendant to file his Statement of Defence on or before 16th February 2022.

As at 1st April 2022, when the case was called, both parties were again present but the Defendant had not complied with the Court's order to file his Statement of Defence. The Court awarded a cost against him and obliged him another opportunity to file his Statement of Defence not later than 14th April 2022.

On the next adjourned date when the case was called on 9th May 2022 both parties were absent. The Court therefore struck out the suit for want of prosecution. The suit was subsequently relisted upon an application on notice to the Defendant, by the plaintiff herein.

On the next adjourned date on 26th August 2022 when the case was called the Defendant had been duly served with a hearing notice but he did not attend Court and had also failed to file his Statement of Defence as ordered by the

Court. In view of that the Court ordered the Plaintiff to file her Witness Statement and serve same on the Defendant with a hearing notice and she complied.

On the next sitting by the Court, the Defendant neither attended Court nor file his Statement of Defence notwithstanding proof of service of hearing notice on him.

Order 1 of the District Court Rules, 2009 (CI 59) provides that the rules shall apply to all civil proceedings in the District Court and shall be interpreted and applied so as to *inter alia* achieve speedy and effective justice and avoid delays and unnecessary expense and also to ensure the complete, effective and final determination of all matters in dispute.

Order 27 rule 1 of CI 59 provides that it is the duty of the parties, their lawyers and the Court to avoid unnecessary adjournments and other delays and ensure that causes or matters are disposed of as speedily as the justice of the case permits.

Sophia Akuffo JSC (as she then was) reiterated the above principles in the case of *Republic v. High Court, Koforidua; Ex parte Eastern Regional Development Corporation [2003-2004] SCGLR 21* where she said

“... in its remedial or practical character, the rules of procedure should serve the purpose of facilitating the sound management of litigation and process efficiency. It is these basic characteristics of civil procedure rules that facilitate the realization of the overall objective of the judiciary which is to assure access to justice for all...”

A party has himself to blame for failing to attend Court. In the case of *Republic v. Court of Appeal, Accra Ex Parte East Dadekotopon Development Trust, Civil Motion No J5/39/2015, dated 30- 07-15, SC Unreported,* it was held that:

“There could not be a breach of the rules of the audi alteram partem rule, when it is clear from the fa

From the foregoing reasons and relying on the above authorities, the Court proceeded to hear the case without the Defendant and set a date for judgment having given the Defendant ample time and opportunity to attend Court to partake in the hearing and possibly open his defence but failed to do so.

THE CASE OF THE PLAINTIFF

It is the case of the Plaintiff that the Defendant is her co-tenant in a storey building at house number 139/N3C2, Community 2, Tema that they shared the same flat of three single rooms with kitchen and washroom and water together. That they as a result assumed the duty of sharing the water bills and they had an issue with the sharing of the water bill. That her husband drew the Defendant's attention to it that the sharing was not accurate. that on or before 20th November 2021 her husband travelled to his hometown and she was at home attending to her wares as she sells drinks. That the Defendant started shouting on top of his voice casting insinuation and insults at her husband. According to the Plaintiff she approached the Defendant and told him to stop and wait for her husband to return for them to resolve the matter. That one Ernest who is also a co-tenant was also stopping the Defendant. That to her surprise the Defendant said her husband was not the cause of his anger and provocation and that it was the

Plaintiff he was looking for and not her husband. That he then started raining series of insults on her and threatened to beat her mercilessly. That the same co-tenant Ernest prevented the Defendant from touching her. That the Defendant continued with his insults on her using unbearable words such as dirty woman like a dustbin, prostitute, useless woman, marrying somebody's husband. That he insulted her for one hour. According to the Plaintiff, the insults he rained on her has seriously affected her reputation in the eyes of the known and unknown people. That the Defendant deliberately, falsely, maliciously and wickedly said to the hearing of people. That the Defendant was standing on top of their storey building and used the same abusive words against her repeatedly all over the area and people standing on their corridor listening and to the hearing of the general public. That as a result of this false publication she and her husband have lost their esteem in the eyes of people in the neighbourhood, church members and people who otherwise held them in high repute or esteem. That the conduct of the Defendant has put her into public ridicule. She prayed per her reliefs endorsed on the writ of summons.

The Plaintiff called one witness, who gave his name as Ernest Agbemehia as PW1. He testified that he is a co-tenant with the parties herein. That they live in one flat of three rooms and they share the same utility of water and washroom together. That somewhere in November there was a misunderstanding between the parties and he was trying to prevail on the Defendant to stop but he refused and he left him to go and have his bath. He continued that when he returned the Defendant was still casting insinuation and insulting the Plaintiff and he warned him to stop his behavior as it will bring problem to them in the house but he did not bother to take his advice. That the Defendant continued to rain insults on the

Plaintiff be a foolish woman, prostitute, dirty woman like a dustbin, useless woman and a husband snatcher, etc. and his utterances lasted for over one hour. That as they are living to on the storey building all his shouting was being overheard far away and their neighbours started to come out of their rooms to see who and whatever was the problem on their flat. That the Defendant became uncontrollable on the flat till he left the house to the town.

The Plaintiff closed her case thereafter.

I then made evaluation and determination of the evidence before me.

The legal issues to be determined by this Court are:

1. *Whether or not the defendant uttered defamatory words against the plaintiff; and flowing from that,*
2. *Whether or not the plaintiff is entitled to the damages and reliefs she seeks.*

In every civil case, the general rule is that the burden of proof rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of his or case.

Section 11(4) of the Evidence Act explains the burden of proof in civil cases as follows:

'In other circumstances, the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact was more probable than its non-existence'.

The burden of producing evidence as well as the burden of persuasion is therefore on both the Plaintiff and the Defendant and the statutory standard is one on the “preponderance of the probabilities” by virtue of **section 12 of the Evidence Act** which requires evidence to “that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence” .

In the case of Lampsey alias Nkpa v. Fanyie & Others [1989-90] 1 GLR page 286, the Supreme Court held that:

“On general principles, it was the duty of a plaintiff to prove his case. However, when on a particular issue he had led some evidence, then the burden will shift to the defendant to lead sufficient evidence to tip the scale in his favour” .

This is clearly covered in **section 14 of the Evidence Act, 1975 (NRCD 323)** as

“Except as otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting”

In the case of Bank of West Africa Ltd. v. Ackun [1963] 1 GLR 176-182, S.C., Sarkodee-Addo JSC stated:

“... The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof ... The issue must be proved by the party who alleges the affirmative in substance, and not merely the affirmative in form.”

Notwithstanding the Defendant’s failure to file his Statement of Defence, as ordered by the Court and the absence of the Defendant in Court to take part in the hearing of the instant action, I have subjected the evidence of the Plaintiff and

her witness to the prescribed standard of proof as provided under *sections 10 – 14 of the Evidence Act, 1975 (NRCD 323)*.

Consequently, I made the following observations and findings:

In the locus classicus of *Sim v Stretch (1936) 2 All E R 1237 @ 1240*, Lord Atkin defined a defamatory statement as one which tends to lower the plaintiff in the estimation of right thinking members of society generally; or which tends to make people shun or avoid them. In order for an action of defamation to lie, the words uttered must be defamatory, they must refer to the plaintiff and they must be published or spoken to third parties. Slander is a defamation using words or gestures etc. and is transient in form.

In the case of *Sogbaka v. Tamakloe [1973] 1 GLR 25-29 @ 26* : Francois J (as he then was) stated as follows:

“In an action for slander, a party need not elect which law he is proceeding under. If it appears on the whole facts that the law applicable is customary law it should prevail”.

This position of the law was affirmed by Sarkodee J in the case of *Afriyie v. Dansowah [1976] 2 GLR 172-178* where he stated as follows:

“Where persons were subject to customary law, the law applicable to a slander action was customary law and a party did not need to elect which law he was proceeding under”.

I therefore proceed under customary law and state, as per Sarkodee J in the *Afriyie v. Dansowah* case (supra) that slander under customary law is actionable

without proof of special damage provided the words uttered against the reputation of the plaintiff are false.

Also in the case of *Nkrumah & Another v. Manu* [1971] 1 GLR 176-190 Taylor J (as he then was) stated:

"It is now generally accepted that defamation under customary law is wider than under common law... "Words imputing witchcraft, adultery, immoral conduct, crime, and all words which sound to the disreputation of a person of whom they are spoken, are actionable."

The learned judge continued to state:

"Dr. Danquah in the introduction to his Cases in Akan Law was more specific at p. xxiii:

'Thus, although under the Common Law it is only in very exceptional cases that a plaintiff can succeed in an action for slander, the Customary Law gives full recognition to all claims for damages for insulting words or language used verbally against any person. A suit of this nature (slander) is termed in these judgments 'action for defamation of character', and it covers such serious assertions as that a person is an Odonkoba, 'son of a slave,' an obayifo, 'a witch,' ... down to such commonplace assertions as that another is a fool, or a beast such as an ass, or a silly idiot."

In dealing with cases of defamation, Sarkodee J in the *Afriyie v. Dansowah* case (supra) again stated as follows:

"A trial judge had first to determine whether the words complained of were spoken and of the party complaining. It then became necessary to determine whether they were defamatory and lastly whether they were false, for slander

under customary law was actionable per se without proof of special damage provided it was false”.

Acquah J (as he then was) also stated in the case of *Ahevi v Akoto IV [1993-94] 1 GLR 512—538* as follows:

“A plaintiff in an action for defamation was not obliged to prove the exact words or the whole of the defamatory statement uttered by the defendant in order to succeed. It was enough to establish his claim if he proved that the defendant uttered some words bearing the defamatory meaning complained of.”

I have carefully considered the evidence adduced by the Plaintiff and her witness before this Court, as a whole and I find that it is undisputed that the plaintiff and the defendant reside in the same house which is a storey building.

According to the plaintiff, the defendant in the presence of the plaintiff and other co-tenants and neighbours shouted at the top of his voice in the house with the following words: *“dirty woman like a dustbin, prostitute, useless woman, marrying somebody’s husband.”* That the Defendant deliberately, falsely, maliciously and wickedly said to the hearing of people whilst standing on top of their storey building and used the same abusive words against her repeatedly all over the area and people standing on their corridor listening and to the hearing of the general public.

As stated above, the Defendant failed to file his Statement of Defence after the Court had ordered him to do so and further obliged him more time to comply. The Defendant is therefore deemed as not having any response or defence to the claims of the Plaintiff.

PW1 told the Court that he was present when the defendant spoke those words of the plaintiff. According to PW1 the Defendant continued to rain insults on the Plaintiff be *a foolish woman, prostitute, dirty woman like a dustbin, useless woman and a husband snatcher, etc.*

These pieces of evidence stood unchallenged as the defendant did not avail himself the opportunity granted him to come to Court to cross-examine the plaintiff and the plaintiff's witness.

In the case of *Bonsu v. Forson* [1964] GLR 45-51, the Supreme Court held that words uttered in the heat of passion could not be said to be defamatory.

In the instant case the words that were uttered by the defendant were not done in a heat of passion per the evidence before this Court. The defendant spoke these words of the plaintiff in the presence of third parties and when he was told by PW1 to stop he did not and continued to deliberately insult the Plaintiff by using the above defamatory words on the Plaintiff.

In the case of *Serwah v. Sefa* [1984-86] 2 GLR 390, it was held that at customary law, slander is actionable per se and where the parties are Ghanaians, customary law as distinct from English common law should govern the case. Words which caused or produced any injury to the reputation of another were defamatory and if false were actionable. Words imputing witchcraft, adultery, immoral conduct, crime and all words sounded to the dis-reputation of a person of whom they were spoken were actionable. Slander as known and recognized by customary law was actionable per se without the English requirement of proof of actual or legally pecuniary damages.

In the instant case the defendant had verbally abused the plaintiff as *a prostitute, dirty woman like a dustbin and a husband snatcher*, among others; in the presence of third parties.

The plaintiff, I find has been able to establish the occurrence of some insulting statements spoken of her by the defendant to other people. However, the defendant did not have any defence to the instant action of defamation. The plaintiff's story I find has been consistent and has been largely corroborated by the testimony of PW1.

The burden at this point shifted to the defendant to prove by a balance of probabilities that the Plaintiff's claims are untrue. No such proof was established. Relying on the case of *Afriyie v. Dansowah* (supra) and *Bonsu v. Forson* (supra), I find that the plaintiff has been able to adequately establish that the words complained of were defamatory.

In the circumstances, I hold that the plaintiff's claims against the defendant succeed. I am satisfied from the evidence before this Court that the defendant abused the plaintiff with the words complained of. Such words in my view establish slander under customary law as they sound to the dis-reputation of the plaintiff. It has not been shown that what was said of her is true. I therefore find it as false.

I find the conduct of the defendant reprehensible and condemnable and in the circumstances I find that the Plaintiff is entitled to her reliefs.

Flowing from the above and upon a careful examination and evaluation of the evidence of the Plaintiff and PW1, I find that the Plaintiff has succeeded in adducing sufficient evidence in proving her case. I do hereby find for the Plaintiff and accordingly enter judgment for the Plaintiff against the Defendant as follows:

1. I award GH¢10,000.00 as damages against the defendant in favour of the plaintiff.
2. The Defendant is hereby perpetually restrained from using such defamatory words against the Plaintiff either in public or private.
3. I award a cost of GH¢2,000.00 against the defendant in favour of the plaintiff.

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**H/H AKOSUA A. ADJEPONG
(MRS)
CIRCUIT COURT JUDGE
15TH DECEMBER 2022**