

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON WEDNESDAY THE 14TH
DAY OF DECEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE**

SUIT NO. G/WJ/DG/A5/01/22

JANET MARFO

PLAINTIFF

VRS

1. MERCY AGYENKWA



DEFENDANTS

2. GRACE AGYENKWA

PLAINTIFF IS PRESENT AND SELF REPRESENTED.

1ST DEFENDANT IS PRESENT AND REPRESENTED BY KWASI AGYENIM
BOATENG ESQ.

2ND DEFENDANT IS ABSENT

JUDGMENT

The plaintiff filed a writ of summons and particulars of claim at the registry of this court on 10th January 2022 for the following reliefs;

- a. Damages of GHC20, 000.00 against each of the defendants for defamation of character.
- b. An order directed at defendants to make public publication that all the allegation made against plaintiff are false, costs and any further orders as the court may deem fit.

The 1st defendant filed notice of appointment of lawyer on 21st February 2022 and filed a defence on same day. The plaintiff did not serve the 2nd defendant with any of the processes before this court.

THE CASE OF THE PLAINTIFF

The case of the Plaintiff as per her pleadings and evidence before this court is that she was happily married to her husband who lives outside the jurisdiction however without any provocation, her husband ordered her to move out of the matrimonial home in or around November 2021.

It is the further case of the plaintiff that when she inquired from her husband the reasons for his action, he informed her that he has received information duly confirmed by pictures that she is having an affair outside her matrimonial home which allegations are false.

Plaintiff added that she conducted her own investigations and got to know that defendants were those who had sent those false allegations to her husband. She confronted the defendants about the said allegations and without any provocation whatsoever, defendants in a public place at Mallam and within the sight and hearing of many people jointly said "You prostitute, you have been having affair outside of your matrimonial home." She added that the defendants have on numerous occasion called her a prostitute to her face and to the hearing of people which statement has soiled her good name and reputation in the society and has dissolved her marriage.

In support of her case, plaintiff tendered the following documents in evidence;

- Telephone numbers used by the defendants to communicate with her husband
- A print out of evidence of monies allegedly sent to 2nd defendant by her husband supposedly to pay for her services
- Pictures of a taxi, her shop and a taxi driver which she claimed were sent to her husband to show that she was in an amorous relationship with a taxi driver.

- Pictures of videos and conversation which she claimed were videos and conversations allegedly sent to her husband by 2nd defendant.
- An audio recording on a pen drive which she claimed to be the voice recording of 1st defendant.

These were all admitted in evidence and marked as Exhibits A, B, C, D and E respectively.

1ST DEFENDANT'S CASE IN ANSWER

The 1st defendant denied the averments of the plaintiff and stated that she has not made any statement attributed to her and neither has she made any publication to that effect.

It is the further case of 1st defendant that on 16th November 2021, plaintiff went to her shop very drunk and started insulting her claiming that she was going out with her husband. She added that plaintiff broke her glasses and destroyed other items in her shop. She stated that she lodged a complaint against the plaintiff at the SCC Police Station where she was made to pay for the costs of damage to her shop. She tendered a copy of the complaint and a video recording of the damage to the shop and same were admitted and marked as exhibits 1 and 2.

1st defendant says that it is not true that plaintiff confronted the defendants at any public place in Mallam and it is never true that defendants insulted plaintiff and called her a prostitute which led to her divorce.

ISSUES SET DOWN FOR DETERMINATION

The issue raised by the pleadings for determination by this court is whether or not the defendant has defamed the plaintiff and if so whether or not plaintiff is entitled to damages in the sum of GHC20, 000.00 from the defendants.

BURDEN OF PROOF

It is trite that in civil cases, proof is by a preponderance of probabilities.

In the case of *Ackah v Pergah Transport Ltd* [2010] SCGLR 728 at page 736, Sophia Adinyira JSC (as she then was) delivered herself as follows;

“It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail.”

This position of the law was re-echoed by Benin JSC in the case of *Aryee v Shell Ghana Ltd & Fraga Oil Ltd* [2017-2020] 1 SCGLR 721 at page 733 as follows;

“It must be pointed out that in every civil trial all what the law requires is proof by a preponderance of probabilities. See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved.”

SHIFTING OF THE BURDEN OF PROOF

The burden of proof may shift from the party who bore the primary duty to the other.

Section 14 of the Evidence Act, 1975 (NRCD 323) provides as follows;

Except as otherwise provided, 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 *Re Ashalley Botwe Lands; Adjetey Agbosu v Kotey* [2003-2004] SCGLR 420, it was held as follows;

“It is trite learning that by the statutory provisions of the Evidence Decree 1975 (NRCD 323) the burden of producing evidence in a given case is not fixed but shifts from party to party at various stages of the trial depending on the issue(s) asserted.”

ANALYSIS OF THE EVIDENCE AND OPINION BY THE COURT

In OWUSU-DOMENA V AMOAH [2015-2016] 1SCGLR 790 at 801, Benin JSC quoting the definition proffered by the editors of Halsbury’s laws of England (4th edition, vol 28, page 7 para 10 stated as follows;

A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him in his office, profession, calling , trade or business.”

He held that there are two steps involved in establishing that the publication was defamatory: first whether the publication was capable of a defamatory meaning. If a defamatory meaning is found to exist, the plaintiff would have established his claim. Next the defamation complained of may be established from the prevailing facts and or circumstances. Proof of either of these would suffice for the plaintiff.

At page 802 of the OWUSU- DOMENA V AMOAH case cited supra, Benin JSC laid down the elements that the plaintiff must plead and lead evidence on in order to succeed as follows;

- (i) There was publication by the defendant
- (ii) The publication concerned him, the plaintiff
- (iii) The publication was capable of a defamatory meaning in its natural and ordinary sense

- (iv) Alternatively or in addition to (iii) above, that from the facts and or circumstances surrounding the publication, it was defamatory of him, the plaintiff and
- (v) If the defendant seeks the defence of qualified privilege or fair comment, that the defendant was actuated by malice.

From the prevailing facts and evidence before this court, it is my considered opinion that the court must first establish whether or not there was a publication by the defendants and if so whether or not the publication concerned the plaintiff and whether the publication was capable of a defamatory meaning in its natural and ordinary sense.

Plaintiff in her summary of claim averred that without any provocation defendants in a public place at Mallam Market within the sight and hearing of many people jointly told plaintiff "you prostitute, you have been having affair outside your matrimonial home."

The 1st defendant denied the assertion of the plaintiff.

Under cross examination of the plaintiff by counsel for the 1st defendant, the following information was elicited;

Q: Madam, the basis of your claim is that in or around November 2021, the defendants without any provocation from you did call you a prostitute in a public place at Mallam as contained in your particulars of claim is that correct?

A: That is so

Q: And you never mentioned this in your witness statement

A: I said so. I even have an audio recording

Q: I suggest to you that you made no mention of this Mallam incident in your witness statement.

A: I have no business at Mallam

Q: Confirm to the court that no such incident happened at Mallam

A: The incident did not happen at Mallam. It happened at Broadcasting.

The above exchanges suggest that no defamatory words were uttered by the defendants in a public place at Mallam as plaintiff in no uncertain terms stated that she had no business in Mallam.

This explains why plaintiff did not mention any Mallam incident in her evidence in chief.

In *Odupong v The Republic* [1992-1993] 3 GBR 1028 – 1048 CA, Brobbey J.A (as he then was) delivered himself as follows;

“The law is now settled that a person whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn is not worthy of credit and his evidence cannot be regarded as being of any probative value in the light of his previous contradictory statement unless he is able to give a reasonable explanation for the contradiction.”

Applying the law cited supra to the facts of the present case, I do find and hold that the plaintiff is bound by her pleadings and therefore the contradictory statement made by her on oath shows that her evidence is not worthy of credit.

Again during cross examination of the plaintiff by counsel for the 1st defendant, the following information was elicited;

Q: Your exhibit D series represents events at 1st defendant’s shop

A: That is so

Q: On that day, you were seriously drunk and that is captured on 1st defendant's Exhibit 2 before this court. That was the day you went to destroy her things

A: That is true. That is my life.

Q: On the day you were exhibiting your life, there were lots of people around who were impressing upon you to stop what you were doing

A: That is so

Q: And as usual as characteristics of Ghanaians including myself, they were recording the incident

A: Yes I agree that because of Social media, people took videos of the incident

Q: I am putting it to you that 1st defendant has nothing to do with how the videos got to your husband

A: 1st defendant sent it to my husband

From the evidence, 1st defendant denied the claims of the plaintiff including plaintiff's Exhibit E which plaintiff alleged was an audio recording of 1st defendant's voice however plaintiff did not lead any credible evidence or call any witness to corroborate her claims.

In *Majolagbe v Larbi* [1959] GLR 190-195, Ollenu J held as follows;

"Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances or circumstances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves

it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true.”

The principle cited supra was re-echoed in the case of Zabrama v. Segbedzi [1991] 2 GLR 221 at 224, where the Court of Appeal held as follows;

A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment is true and he does not discharge this burden unless he leads admissible and credible evidence from which the facts or facts he asserts can be properly and safely inferred.”

Applying the law cited supra to the facts of this case and the evidence before this court I find that the plaintiff has been unable to lead credible evidence to prove that there was a publication by the 1st defendant which publication concerned the plaintiff and had a defamatory meaning.

Accordingly her claim against the 1st defendant fails and same is dismissed.

I award costs of GHC2, 000.00 in favour of the 1st defendant against the plaintiff.

H/W RUBY NTIRI OPOKU (MRS.)

DISTRICT MAGISTRATE