

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON MONDAY, 5<sup>TH</sup> JUNE, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE**

**SUIT NO.: C6/5/2021**

**FAFAFE KETORWU**  
**PLAINTIFF**  
Unnumbered House No.  
AKA-080-A, Akatsi

**VRS**

**DELALI GBORGLA**  
Unnumbered House,  
Akatsi  
**DEFENDANTS**

**BLESS GBORGLA**  
Unnumbered House, Akatsi

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**PARTIES: PLAINTIFF PRESENT**

**DEFENDANTS PRESENT**

**NO LEGAL REPRESENTATION FOR THE PARTIES**

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**JUDGEMENT**

This case commenced with the issuance of a Writ of Summons and Statement of Claim at the Registry of this Court on the 17<sup>th</sup> December, 2020 in which were endorsed the following reliefs:

- a. General damages of GH¢50,000.00 for defamation of character for loss of respect in society, mental torture and depression.

- b. An order of the Honourable Court directed at Defendants to retract the slanderous words used against Plaintiff in the Akatsi market on Friday, 15<sup>th</sup> December, 2020 and an unconditional apology in writing to the Plaintiff within a specific time frame.
- c. Punitive Cost.

### **THE CASE OF THE PLAINTIFF**

The Plaintiff, per her pleadings is a businesswoman and once taught the Defendants at Akatsico Teaching Practice School at the Kindergarten level. The Plaintiff has a market stall at Akatsi market and it is directly opposite that of the 1<sup>st</sup> Defendant's. Whilst at the market one day, the Plaintiff overheard the 1<sup>st</sup> Defendant gossiping about one Peace with another person the Plaintiff did not know. After the person had left, the Plaintiff invited the 1<sup>st</sup> Defendant and advised her to stop gossiping about people. This, according to the Plaintiff did not go down well with the 1<sup>st</sup> Defendant and the latter stopped talking to her. The 1<sup>st</sup> Defendant at the least opportunity casted insinuations on the Plaintiff. On Sunday, 11<sup>th</sup> December, 2020, when the Plaintiff was eating, the 1<sup>st</sup> Defendant started running commentary on her saying "what a big ball" goal!!!! The Plaintiff states that the only comment she passed was that how come that her own food she was eating should come to this. As soon as the Plaintiff made this comment, the 1<sup>st</sup> Defendant retorted by saying "what at all is that hopeless old woman saying there? The Plaintiff states that when in her attempt to find out from 1<sup>st</sup> Defendant who she was referring to as hopeless old woman, the 1<sup>st</sup> Defendant demanded to know whether or not hopeless old woman was the name given to the Plaintiff by her father to assume that she was talking about her. Not long after this encounter with the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant mentioned the Plaintiff's name and demanded to know who exactly she was. The 2<sup>nd</sup> Defendant

continued to rain insults on to wit: 'ashawo, hetelitor' meaning you prostitute and many other unprintable words. The 2<sup>nd</sup> Defendant was pointing fingers at her and dared the Plaintiff to come over to her place. The 1<sup>st</sup> Defendant came to the Plaintiff clapping her hands and repeated the very insults the 2<sup>nd</sup> Defendant rained on her, and even said whether it was even true that the Plaintiff's surname was Ketorwu and that she wanted the whole world to know that the Plaintiff is a witch and it is her witchcraft she is using to sell her goods. The Plaintiff states that in all these she told the Defendants that they were kids and did not know what they were doing. The 1<sup>st</sup> Defendant said to the Plaintiff "you useless old woman. I will make sure you are removed from this market". The Plaintiff states that all these things happened in the presence of a witness in the case.

### **THE CASE OF THE 1<sup>ST</sup> DEFENDANT**

The 1<sup>st</sup> Defendant denied all the claims of the Plaintiff. The 1<sup>st</sup> Defendant stated that anytime they were at the market, they turned their backs to the Plaintiff as the latter is behind them. The 1<sup>st</sup> Defendant stated that the Plaintiff created a shed behind their stall where she prepared food for sale. That though they are in the same area, they have no relationship except greeting each other. The Plaintiff started behaving in a way to infuriate the Defendants. The Plaintiff would arrive at the market late on a motorbike and walk across the crates of eggs. Anytime the Plaintiff passed, she casted insinuations on them to wit 'go and tell your parents to buy cement and build a house for you to occupy'. The Defendants did not utter a word since the Plaintiff neither mentioned their names nor parents' names. On Friday, 11<sup>th</sup> December, 2020, the Plaintiff again walked through their stall and stepped across the crates of eggs and this time she said 'you people

should go and tell your parents to buy cement, mould blocks and put a building for you to occupy. The house in which you are is mine as it belongs to Mr. Nyamordey. You have no relationship with Nyamordey since you do not bear the same surname.

### **THE CASE OF THE 2<sup>ND</sup> DEFENDANT**

The 2<sup>nd</sup> Defendant states that the Plaintiff constructed a shed behind the Defendants' market stall. Even though there is a thoroughfare to her shed when she came to the market, she would pass through the Defendants' stall and step across the crates of eggs. Though the Defendants never uttered a word, the Plaintiff would always cast insinuations thus 'I have come to the market again and you use the eye of a witch to look at me.' The Plaintiff on the day in question was casting insinuation on top of her voice saying 'that house in which you are, Nyamordey's house is my house. If you are related to Nyamordey why don't you bear the same surname? Go and advise your father to be saving the market remittance which he should be giving to your mother in order to buy cement, mould blocks and build a house. If you are ladies try to take good care of your mother who has become dirty since she divorced our father so that she can become presentable for another man to marry her.

The Defendants called one common witness as DW1 (Amegatse Thywill).

### **ISSUES SET DOWN FOR DETERMINATION**

At the Application for Directions stage, the Court set down the following Issues for trial:

1. Whether or not the Plaintiff is entitled to any of her reliefs sought.
2. Any other reliefs the Honourable Court may deem due.

## **BURDEN OF PROOF**

Section 14 of the Evidence Act, 1975 (NRCD 323) which regulates the reception and evaluation of evidence provides.

*“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”*

The burden of producing evidence as well as the burden of persuasion is therefore on both the Plaintiff and the Defendants and the statutory standard is one on the *“preponderance of the probabilities”* by virtue of section 12(1) of the Evidence Act which requires evidence to *“that degree of certainty and 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 Lamptey alias Nkpa v Fanyie & Others [1989-90] 1 GLR 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”*.

Also, the Supreme Court decision on such burden on a party who asserts is in the case of Ackah v. Pergah Transport Ltd & Ors [2010] SCGLR 728 where in unanimously dismissing an appeal, it held *inter alia* as follows:

*“It is a basic principle of the 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. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury.....”*

### **THE LAW AND EVALUATION OF EVIDENCE**

In an action for defamation, the claimant must prove three elements;

1. That the words were defamatory;
2. That the words referred to the claimant; and
3. That the words were published (to at least one person other than the claimant) by the Defendant.

What elements the Plaintiff has to prove were well set out by the Supreme Court in the case of *Owusu-Domena vrs. Amoah* [2015-2016] 1 SCGLR 790 at page 802. The Court, speaking through Benin JSC stated that a Plaintiff in an action for defamation must plead and lead evidence on the following matters in order to succeed:

- (i) That there was a publication by the defendant;
- (ii) That the publication concerned the Plaintiff;
- (iii) That the publication was capable of a defamatory meaning in its natural and ordinary sense;
- (iv) Alternatively or in addition to (iii) above, that 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.

The Supreme Court further stated 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 will have established his claim”. The apex Court after relying on the writings of Winfield and Jolowicz on Tort (18<sup>th</sup> ed.) at page 584, paragraphs 12-15 and the old English case of Jones v Skelton [1963] 1 WLR 1362 and the statement of Lord Morris further stated that:

“The defamation complained of may be established from the prevailing facts and/or circumstances. Proof of either of these would suffice for the Plaintiff”.

In the locus classicus of Sim v Stretch [1936] 2 All ER 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 to third parties. Slander is defamation using words or gestures etc. and is transient in form. This present case deals with slander against the Defendant.

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

*“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 the Court 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”.*

Undoubtedly, this suit is between two (2) Ghanaians and so, I proceed under customary law and state, as per Sarkodee J in the case of *Afriyie vrs 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.

The only issue before this Court for resolution is whether or not the Plaintiff is entitled to her reliefs as endorsed on the Writ of Summons.

To begin with, the statement detailed in the Statement of Claim and the Plaintiff’s Witness Statement regarding the words uttered are:

*“What at all is that hopeless old woman saying there?”*

*“ashawo, hetelitor” meaning “you prostitute.”*

The Plaintiff also added that the 1<sup>st</sup> Defendant called her a witch and she was using witchcraft to sell her goods.

The Plaintiff filed a Witness Statement for one Azaglo Olivia but failed to call the said witness to testify in support of her case. In their pleadings and at the trial, the Defendants denied uttering the said words against the Plaintiff. The burden of proof shifted to the Plaintiff to lead sufficient evidence to substantiate the



allegations that the Defendants indeed uttered those words in order to tilt the scale in her favour. In the case of Boakye v. Asamoah [1974] 1 GLR 38 @ 45, the Court held that the legal or persuasive burden is borne by the party who would lose the issue if he does not produce sufficient evidence to establish the facts to the requisite standard imposed under section 10 of the Evidence Act, 1975 NRCD 323 that is, by a preponderance of probabilities. The Plaintiff could not substantiate these claims and her testimony is uncorroborated. The law is that, where the evidence of a party remains uncorroborated but that of his opponent is corroborated even by the witnesses of his opponent, the court ought not to accept the uncorroborated version in preference to the corroborated one unless the court finds reasons to reject the corroborated evidence. See the case of Tonado Enterprises & Others vrs Chou Sen. In this case, the Defendants' respective testimony was corroborated by the evidence of DW1.

The burden on the Plaintiff under the law is double-edged. Akamba JA (as he then was) in the case of Kwaku Mensah Gyan & I Or. v. Madam Mary Armah Amangala Buzuma & 4 Others (Unreported) Suit No. LS: 794/92 dated 11<sup>th</sup> March, 2005 explained:

*"What is required is credible evidence which must satisfy the two-fold burdens stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section ... This burden is not met merely by tendering the exhibit G in evidence with all its ambiguities, lingering doubts and lack of explanation."*

The Plaintiff was expected to lead credible evidence before the reliefs she is seeking from the Court can be granted. Adade JSC brilliantly explained the rule

in the case of Nartey vrs Mechanical Lloyd Assembly Plant Ltd. [1987-88] 2 GLR 314 at page 344 thus:

*“A person who comes to Court, no matter what the claim is must be able to make a case for the court to consider otherwise he fails. But that is not to say that having succeeded in establishing some case he cannot take advantage of conflicts, admissions and other weaknesses in the defendant’s case”.* See also the cases of Roland Kofi Dwamena vrs Richard Nortey Otoo & The Regional Lands Officer [2017] 113 G.M.J. 46 at page 57 and Esseney Socrates Kwadjo vrs Speedline Stevedoring Co. Ltd. [2016] 92 GMJ 66 at page 90.

Since the Plaintiff could not lead credible and satisfactory evidence in this case to establish the alleged defamatory words uttered by the Defendants, it stands to reason that the Plaintiff has woefully failed to prove her case by preponderance of probabilities. At this juncture, I am left with one option – sending her home with an empty basket. On that note, I dismiss her entire claim.

I award costs of GHC2,000.00 each for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants against the Plaintiff.

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**ISAAC ADDO**  
**CIRCUIT JUDGE**  
**5<sup>TH</sup> JUNE, 2023**