IN THE CIRCUIT COURT HELD AT GOASO IN THE AHAFO REGION ON FRIDAY THE 12TH DAY OF APRIL 2024 BEFORE HIS HONOUR CHARLES KWASI ACHEAMPONG ESQ. CIRCUIT COURT JUDGE

A4/05/2023

ISSAH SOBAH **---** **PLAINTIFF**

VRS.

1. **MUSAH YAHAYA**
2. **SADIQUE MUSAH** **---** **DEFENDANT**

JUDGMENT

Plaintiff initiated the present action against Defendants on the 19th of May 2023 seeking "…compensation of Ten Thousand Ghana Cedis (GH¢10,000.00) for defamation of character…" as well as cost. According to Plaintiff, on the 13th of May 2023, while at his place of work, the Defendants caused his arrest after which he was detained by the police till the next day. Plaintiff alleged that while in custody, the police informed him that the Defendants had lodged a complaint to the effect that he (Plaintiff) had stolen cassava belonging to Defendants. He alleged that when the Defendants failed to procure any evidence of their assertion, he was discharged by the police. Consequently, Plaintiff alleges that due to the allegations made against him by the Defendants, he lost his job as a security man and therefore seeks compensation for defamation of character.

Both Defendants were duly served with the writ and statement of claim however it was only 1st Defendant who filed a defence to the action. Plaintiff

nevertheless proceeded with the action without applying for default judgment against 2nd Defendant hence the suit took its normal course. With regards to the defence of 1st Defendant which was filed on the 13th of June 2023, Defendant essentially admitted lodging the complaint regarding the theft of his cassava to the police against Plaintiff. He alleged that, for a while he has been experiencing a series of thefts in his farm where the perpetrator(s) have been stealing his cassava. That several efforts to arrest the culprit have proven futile despite him lodging a complaint with the police. Defendant indicated that one day, he decided to mount surveillance in his farm only to find a hooded man digging cassava in his farm. When he shouted the name „Manu" which he alleged referred to Plaintiff, the Plaintiff fled leaving behind his sandals, bag and the hood he was wearing. He then presented the items to the police for investigations. Plaintiff was subsequently arrested but granted bail pending investigations.

Plaintiff denied these assertions in his Reply filed on the 15th of June 2023 thus joining issues. The sole issue for determination at the close of pleadings was whether or not Defendant in causing the arrest of Plaintiff on an allegation of theft with intent to prosecuted had defamed the Plaintiff.

In every civil action, it is the Plaintiff who bears the burden to prove his case on a balance of probabilities. Section 11 of the
Evidence Act, 1975 (NRCD 323) states in part;

> Section 11—Burden of Producing Evidence Defined.
>
> (1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(4) 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 nonexistence.

In the case of Ambrose Dotse Klah V. Phoenix Insurance Co. (2012) JELR 83010 (SC), the Supreme Court reiterated what constitutes proof as laid down in the case of Majolagbe v. Larbi 1959 GLR 190 as follows;

> "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 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." (See also: Ackah v. Pergah Transport Limited and ors (2010) SCGLR 736).

Consequently, Plaintiff bears the burden to establish, on the balance of probabilities that he had indeed been defamed. This burden is discharged when the Plaintiff proves the underlisted three elements which are a sine qua non to establishment of a case of defamation.

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.

A defamatory statement is defined as one which tends to lower the claimant in the estimation of right-thinking members of society generally. It injures the

reputation of another by exposing him to hatred, contempt, or ridicule. (See: Sim v Stretch [1936] 2 All ER 1237).

In this case, the comment which Plaintiff alleges were defamatory rest in the complaint made by Defendants to the police to the effect that Plaintiff had stolen their cassava. In other words, Plaintiff alleged that by their report made to the police, Defendants had referred to him as a cassava thief. In resolving whether the alleged comment was defamatory, the following undisputed facts must be noted;

i. That the Defendants lodged a complaint against Plaintiff with the police.

ii. That the complaint made to the police was that Plaintiff had stolen their cassava.

iii. The Defendants did not deny making the said comment or complaint to the police.

The complaint in itself imputed a crime as having been committed by the Plaintiff. In other words, the complaint essentially alleged that Plaintiff had committed the offence of stealing and in this regard it is settled law that words which impute an indictable offence committed by the plaintiff are actionable per se under the common law. In the case of Tufuor v. Beng [1963] 1 G.L.R. 21 it was held that;

> "The words proved to have been uttered by the defendant imputed to the plaintiff the commission of the indictable offence of theft. In their natural and primary meaning they were defamatory of the plaintiff and actionable per se."

Again in the case of Attiase v. Abobbtey, Court of Appeal, 21 July 1969, unreported; digested in (1969) C.C. 149 the Court of Appeal held that;

> "The words which the trial local court found as a fact to have been published, namely `the plaintiff is a prostitute and practicing prostitution in her store,' were capable of being understood by those who heard the respondent to mean that the appellant was keeping a brothel camouflaged as a store. Running a brothel is a misdemeanour punishable by imprisonment under sections 275 and 279 of Act 29 and section 296 (4) of Act 30. The circuit court judge was consequently wrong in holding that they were not actionable per se if the law applicable were the common law. Dictum of Vaughan Williams L.J. in Marks v. Samuel [1904] 2 K.B. 287 applied".

In the instant suit therefore, since the complaint made by Defendants to the police imputed to the Plaintiff the commission of the offence of stealing, that complaint or comment to the police was defamatory.

The next issue is to ascertain whether the comment complained off referred to the Plaintiff and no other for it is trite that for one to succeed in an action for defamation, it must be established that

"…the events complained of must be published "of the plaintiff." To succeed therefore in an action of defamation, the plaintiffs must not only prove that the defendant published the words and that they were defamatory. He must also identify himself as the person defamed. It is an essential element of the cause of action that the words complained of should be published of the plaintiff" - Oppong V. Advance Press Co. Ltd. (1980) JELR 65883 (HC). This issue is however resolved by a cursory perusal of 1st Defendant's Statement of Defence which essentially confirms that the comment or complaint made referred to no other than the Plaintiff. This can be observed from paragraphs 6 and 7 of 1st Defendant's Statement of Defence filed on the 13th of June 2023. 1st Defendant averred as follows;

"6. 1st defendant says there was a item he went to his farm and shockingly, he saw the Plaintiff herein in a hood dress who, without any authority had intruded into his farm, digging and uprooting his cultivated cassava crops and packing them in bags.

7. 1st defendant says he called and screamed the name of the plaintiff herein "Manu" and which the Plaintiff herein upon hearing flee leaving his sandals, bag and the hood he was wearing" (sic).

The above is clearly an admission to the effect that 1st Defendant was referring to no other than the Plaintiff when he lodged the complaint about the alleged theft of his cassava to the police. Consequently, the second element is duly established.

The last element has to deal with the publication of the words or comment by the Defendant. Publication is the communication of the words complained of to at least one person other than the plaintiff himself - E. O. Adekolu-John V. Saa Dittoh (2011) JELR 67247 (CA). It seeks to ascertain whether the words complained of were to a third party. If the words were made to the Plaintiff alone, publication would not be said to have taken place.

In the instant suit, Plaintiff testified to the effect that on the 13th of May 2023, while at work 2nd Defendant came to him and told him that someone had stolen their cassava and that they had found a bag which they believed belonged to Plaintiff. Plaintiff subsequently left with 2nd Defendant and were met by 1st Defendant and they both took Plaintiff to the police station where he was arrested and detained. Clearly from his testimony, Plaintiff alludes to the fact that the statement he complains about was made to no other than the police. In strict terms the case of defamation would have been made out since the police is a third party before whom the comment was published. However, such a strict determination would not bode well for the dispensation of justice as it

would mean that every complaint made to the police is defamatory in character. This has the potential of stifling the ends of justice given that people would feel reluctant to lodge complaints with the police for fear of being cited for defamation. In any case, the police is the statutory body mandated by law to investigate all complaints made to it. Some of these complaints may be outright falsehood others may have elements of an offence having been committed which may merit prosecution. Be that as it may, it is only through a report first having been lodged that the very nature of the complaint may be determined through investigations or possibly prosecution. Thus the report or publication of such comment or complaint to the police regarding possible offences having been committed ought not to be considered defamatory unless and until such report is found to be baseless and palpable falsehood. Where prosecution proceeds upon such baseless or false accusations, this may found tort of malicious prosecution against such a Defendant. In Aubin V.
Ehunaku [1960] G.L.R 167, the Court of Appeal held that;

> "In order that an action may lie for malicious prosecution the following conditions must be fulfilled: (1) The prosecution must have been instituted by the defendant; (2) He must have acted without reasonable and probable cause; (3) He must have acted maliciously; (4) The proceedings must have been unsuccessful-that is to say, they must have terminated in favour of the plaintiff. It will be observed that, from the nature of these conditions, a plaintiff will fail unless it can be proved that all those conditions are fulfilled. Failure to prove one of them will be fatal to a plaintiff's case."

In the instant suit however, Plaintiff alleged that after investigations he was asked to stop reporting to the police which indicates that the report made by the Defendant was baseless. This was in stark contrast to Defendant's assertion

to the effect that Plaintiff refused to report himself to the police after being granted bail. Thus while Plaintiff alleged that the investigations had been concluded and same vindicated him, Defendant alleged otherwise and since it was Plaintiff who was alleging, it behooved upon him to so establish on the balance of probabilities.

Investigations are however a formal process the conclusion of which are formally recorded. Consequently, all Plaintiff had to do was to tender such investigative report indicating the conclusion of the matter this, he failed to do. In any case, this Court takes judicial notice of the fact that there is a recent suit filed by the police against accused person on a charge of stealing in this very court with Defendant as the complainant. The pendency of that suit confirms the fact that as at the time of instituting the present action, investigations had not concluded and hence malicious prosecution would not lie in favour of Plaintiff. In any case, Plaintiff did not sue for damages for malicious prosecution.

It is therefore the finding of the court that the publication to the police alone would not suffice to found an action for defamation since the police is a statutory body tasked to receive complaints whether founded or not. The publication ought to have been made to right-thinking members of society in whose estimation the reputation of the Plaintiff had been lowered. Plaintiff however failed to establish the persons in the society before whom Defendants made the comments complained of. Consequently, Plaintiff had failed to establish the last element necessary to found a case of defamation for which reason his case must fail. The case of Plaintiff is accordingly dismissed. With cost of GH¢2,000.00 awarded against Plaintiff,

SGD
H/H CHARLES KWASI ACHEAMPONG ESQ.
CIRCUIT COURT JUDGE – GOASO