

VERSUS

IRENE EMPARI ADDAE Defendant

JUDGMENT

The Plaintiff by her Writ of Summons filed on the 28th July, 2022, claimed against the Defendant as follows:

- a. GH¢15,000 general damages from the defendant for without any provocation or justification whatsoever and to the hearing of the public used slanderous words at the Plaintiff on the 1st day of July 2022 to wit: *“Wo maame toon asaase dze hwee wo, aber a ereye ayefor no, seesei wo aware, eso wo retwe mpona, wow) kunu nanso wore twe mpona”* literally meaning "that your step-mother sold her land to support you during your marriage ceremony with your husband; and now, your marriage has collapsed, a married woman but you go about flirting with other men till your marriage has collapsed'

- b. Perpetual Injunction by restraining the defendant personally, her dependents, privies, executors, workmen or whoever enjoys through her from making the above derogatory, malicious and defamatory pronouncements against her forthwith.

This has been a rather acrimonious dispute between the parties herein. When this matter came up in court, the Court referred the parties to ADR for them to attempt settlement. However, the docket was returned with a note that the parties were unable to settle their differences. The court then tabled the matter for trial. The Plaintiff averred in a written statement attached to her Writ that she is a well-respected member and an opinion member at Agona Desuanim where she fries egg, bread and sells rice among other things. That the defendant also resides at Agona Desuanim. That on or about the 1st day of July 2022, at about 8.30am while preparing her wares, she overheard the defendant raining insults at her step-mother who was leaving. That due to the behaviour of the defendant against the step-mother of the Plaintiff, a lady passing by appealed to the Plaintiff to intercede on the part of her step-mother to avoid the defendant raining more vituperative words at her without any justification. She however did not intervene. That she heard the defendant saying in Fanti dialect to wit: "*Wo maame toon asaase dze hwee wo, aber a ereye aye for no, seesei wo aware, eso wo retwe mpona, wow) kunu nanso wore twe mpona*" literally meaning "that your step-mother sold her land to support you during your marriage ceremony with your husband; and now, your marriage has collapsed, a married woman but you go about flirting with other men till your marriage has collapsed", she confronted the defendant by asking her who she was referring to. That the Defendant pointed at the Plaintiff that she was referring to her. That she therefore confronted her (defendant) as to who she was referring to that her step-mother sold her land to support a wedding ceremony. That the Defendant insisted that it was she the plaintiff that was supported by her step-mother and further added that the biological

mother of the Plaintiff stole somebody's property and she was arrested and convicted to prison term where she died in prison.

Plaintiff averred that what muddled the utterances directed at her by the defendant is that she is lawfully married with children yet the defendant, without any justification, openly insulted her to the hearing of the public that she was a cheap flirt. That the slanderous words used by the defendant directed at her has drastically reduced her hard won reputation and that she has been exposed to public ridicule, contempt and disgrace which tends to lower her in the estimation of right-thinking members of society generally. Plaintiff therefore averred that there is no alternative but to institute this action against the defendant as per the reliefs set out.

Upon the service of the writ of summons on the Defendant, she filed a written Statement of defence in response to Plaintiff's claims. Defendant denied most of the averments made by the Plaintiff in her Statement of Claim to the effect she uttered insulting words at the Plaintiff or saying that her step-mother sold her land to support a wedding ceremony. She further denied Plaintiff's assertion that she insisted that it was the plaintiff that was supported by her step-mother or that she added that her biological mother stole somebody's property and she was arrested and convicted to prison term where she died in prison. Defendant averred in explanation that she and one Auntie Maame were arguing about how the family members spent the proceeds of a plot of land. That she told the said Auntie Maame (stepmother of the plaintiff) that she (Defendant's grandmother) used her part of the money to settled her debt whiles plaintiff's step-mother also used her part of the money to buy some cloths for her daughter's wedding.

That Plaintiff overheard them arguing but when the plaintiff reached the scene, she never said those words as attributed to her. She further denied telling Plaintiff about her mother's arrest, conviction and that she died in prison because she did not know

anything about incident. Defendant averred that she never insulted the plaintiff to the hearing of the public.

Defendant averred that she has not used any slanderous words against the plaintiff hence plaintiff's image has not been tarnished, ridiculed or disgraced.

As a trial Magistrate, my task in this case appears to have been laid down in decided cases. Therefore at the close of exchange of written statements, the issues which the Court tabled for determination in this matter are:

1. Whether or not the words complained of were spoken by the Defendant.
2. Whether or not the words complained of were spoken of the party complaining i.e. the Plaintiff.
3. Whether or not the words complained of were defamatory.
4. Whether or not the words complained of were false.
5. Whether or not the Plaintiff was entitled to her claims.

It is a settled principle of law codified by the Evidence Act, 1975 (NRCD 323) that the onus of producing evidence of a particular fact in civil cases is on the party against whom a finding of fact would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323. The authorities are also in harmony that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

The burden of producing evidence has been defined in Section 11 (1) of the NRCD 323 as follows;

“11 (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party”.

Thus the burden of proof is not static but could shift from party to party at various stages of the trial depending on the obligation that is put on that party on an issue. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 thus:

“14 Except as otherwise provided by law, unless 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 that party is asserting”.

In this case the burden of proof was therefore on the Plaintiff initially to establish each allegation she had made against the Defendant on a preponderance of probabilities. After she was able to raise a presumption in her favour based on the evidence led, the onus would then shift to the Defendant to rebut that presumption created in the Plaintiff's favour failing which a ruling shall be made against her on that allegation.

Now, the matter of whom the burden of proof rested in this matter laid to rest, I wish to run through highlights of the evidence led by both parties in proof of their respective claims and defenses. As procedure demanded and as set out above, the Plaintiff had to lead evidence to prove the grounds upon which she claimed the reliefs on the writ to have judgment entered for her. The Plaintiff gave evidence on her personal behalf in proof of her case. She then called one Vivian Yeboah as her only witness. The Plaintiff's evidence from her testimony and that of her single witness is to the effect that on 1st July, [2022] at around 9 am, she was setting her goods to trade. Her mother sat by the roadside. She saw the defendant come to stand by her mother mumbling words but did not want to intervene. Her mother got up to go but the defendant followed her. That she insinuated that when she was outdoor her child, no one sold land which proceeds she used. But that her mother had sold her land and given the proceeds to her which she

used to perform her marriage. She said she approached the defendant and asked whether her husband had left her. That defendant replied that her husband has left her and was staying in Accra. That she has given herself to other men who have sex with her. She said she asked the defendant whether she knows of any man who had had sex with her. Defendant insisted that she knew of many of the men. According to the plaintiff, she got embarrassed because there were many people there. She said the defendant continued that her real mother was imprisoned because she stole and she died in prison.

After the Plaintiff had indicated that she did not intend to call any more witnesses and closed her case, the Defendant was called upon to open her defence. Defendant gave evidence in her defence but called no witnesses. The evidence of the Defendant is to the effect that PW1 had a quarrel with someone. She intervened. PW1 turned the heat on her. That PW1 told her that her mother got a problem as a result of which they had to sell land to bail her out. She said she also told PW1 that it was part of that money that she gave to the plaintiff to get married. She said plaintiff then joined in and insulted her to the effect that she was a flirt. She said she replied the plaintiff that she has been divorced and that she was in the same state as herself. She also admitted telling the plaintiff that her mother was arrested and she came back from prison and died out of it.

Having dispensed with the preliminaries, I shall proceed to determine the issues as set out above which I think are relevant to bringing some quietus to this case. Having stated the issues as above, I think that of all those issues set out above to be determined, the one that stands out as crucial is whether or not the words complained of by the Plaintiff were indeed spoken or uttered by the Defendant. But before I set out to evaluate the evidence, I think it is necessary to lay out some foundations here on which to build this judgment. This is a defamation suit and as such, the court ought to determine which law is most appropriate to apply to determine the case. It is important to note that there are mainly

two sets of law which could be applied to a determination of the case; Ghanaian customary law and English common law. Each has their own peculiar characteristic and a choice between them will determine the matter one way or the other. The parties in the instant case are Ghanaians. They are all Akans. As contained in the provisions of the Courts Act, 1993 (Act 459) particularly section 54, the personal law of the parties is none other than Akan customary law. Therefore, Akan customary law as distinct from English common law appropriately governs this case.

The English common law is not to the preferred law in respect of this case over our customary law on defamation. The distinction between the customary law and English common law is that slander as known and recognized by customary law was actionable per se without the English requirement of proof of actual or legally presumed pecuniary damages. In the case of **Afriyie v Dansoa [1976] 2 GLR 172**, the court held that 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. So I shall apply customary law on defamation to determine the rights of the parties in this suit.

What then is slander under customary law and its scope? The accepted principle of customary law is that words which caused or produced any injury to the reputation of another were defamatory and if false were actionable per se. So that words imputing witchcraft, adultery, immoral conduct, crime and all words which sounded to the disreputation of a person of whom they were spoken were actionable. Slander i.e. the spoken form of defamation, is essentially a wrong against the person of an individual. It is therefore a private wrong redressible by damages. So under custom, slander is a civil wrong actionable at the suit of the person defamed and is properly redressible by pecuniary award. See the case of **Wankyewaa v Wireduaa [1963] 1 GLR 332**.

John Mensah Sarbah in his **Fanti Customary Laws (3rd ed.)** at p. 113 has defined slander as follows:

“Words which cause or produce any injury to the reputation of another are called defamatory, and, if false, are actionable... 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 scope of slander under customary law is very wide making mere abuse actionable.

Dr. J.B. Danquah in the introduction to his **Cases in Akan Law** stated 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 give full recognition to all claims for damages for insulting words or language used verbally against any person.”

Thus mere abuse, at any rate to the hearing of third parties, is actionable according to customary concept. The Plaintiff need not prove special damage to succeed. See **Adjuah Attah v. Abbah Attah [1961] G.L.R. 77; Attiase v. Abobbtey, Court of Appeal, 29 July 1969, unreported; digested in (1969) C.C. 149.**

In this case, the Plaintiff has alleged a plethora of abuses which she claims were uttered against her person by the Defendant. However, of the many allegations, I think that the ones that catch the eye in terms of the law of slander are just a few. She claims that the Defendant told her that her husband has left her and was staying in Accra. That as a result, she has been having sex with a multitude of men whom she knew. In other words, the plaintiff claims that the defendant alleged that she was flirting with men. So were these words, if uttered capable of a defamatory meaning? As I stated above, customary law frowned upon all manner of imputations of witchcraft, adultery, unchastity or immoral conduct among others. And once such words having the connotations given above were uttered, it was actionable per se without a requirement to prove any form of injury to reputation etc. as pertains under the English common law.

From Sarbah's definition, words imputing witchcraft, adultery, immoral conduct, crime, and all words which, he says, sound to the disreputation of a person of whom they are spoken, are actionable. It mattered not that the words were spoken in the heat of an argument or a quarrel. Once they were uttered and published, it was actionable and damages will lie provided of course it is false.

So in the case of **Wankyewaa v Wireduaa (1963) 1 GLR 332** where in an altercation between the plaintiff and the defendant, the defendant spoke and published of the Plaintiff that "her vagina stinks", the High Court held that at customary law, abuse or vituperation per se is a civil wrong redressible by a pecuniary award and it did not matter that it was uttered in the heat of an argument or a quarrel. The court further held that abuse by itself was a wrong redressible by damages according to customary law. And the fact that the words of abuse were spoken in the heat of a quarrel was no doubt a matter that the good sense of the tribunal would take into consideration as a mitigating factor, but it did not by itself negative liability. And even in common law, imputation of unchastity to a woman was actionable on proof of damage. See the case of **Kerr v Kennedy (1942) 1 KB 409**. I think, on balance, that the words which are alleged to have been published of the Plaintiff by the Defendant when subjected to the test, would be slanderous because when interpreted in their plain ordinary meaning, they carried venom capable of injuring the reputation of another in society.

As I stated above, the Defendant appears to have admitted portions of the assertions she is alleged to have made against the Plaintiff. She admitted that she told the plaintiff that her mother was arrested and she came back from prison and died out of it. These statements are not the relevant portions which the charge of slander is founded. It is the immoral aspect of the allegation which appears relevant here. From a reading of the evidence, it appears that the Defendant did not deny uttering those words which Plaintiff claims have tarnished her reputation in society. She readily admitted uttering

the words but appears to say that she uttered them in response to what she claims the Plaintiff had said to her. According to the Defendant, in the course of her banter with PW1, Plaintiff joined in and insulted her to the effect that she was a flirt. After the Plaintiff is alleged to have insulted her, Defendant then said she replied the Plaintiff that she (Plaintiff) has been divorced and that she was in the same state as herself. What state did the Defendant imply that the Plaintiff was in with her? I think that she meant that if the Plaintiff alleges that she was a flirt, then the Plaintiff was also a flirt.

The admitted words uttered by the Defendant I think carried the connotations referred to above. I think that to say to a person that she is a flirt is frowned on by custom. And especially under our customary setting where the chastity of a woman is cherished above all, to call a married woman a flirt is a serious indictment on the woman and her husband. It connotes that she is having sexual affairs with many men while her husband is unaware which has the implication of bringing distrust and eventually destabilize a marriage. That is what the Defendant admitted to have done. But, it appears that custom has left the determination of whether an utterance carries the imputation of unchastity or is defamatory to the one such statement is directed at. So Sarbah says that all words which sound to the disreputation of a person of whom they are spoken, are actionable. It is a subjective test and not an objective one. So that what may sound ill and to the disreputation of one person may not sound the same way to another. Every case is to be determined based on its exceptional circumstances. In the end, I hold that the Defendant uttered the words against the Plaintiff. And the words were defamatory.

So were the words uttered false? Whether or not the words were false depended on whether the Defendant was able to prove their truthfulness. That is to say, it depended on the Defendant to prove that what she uttered of the Plaintiff were true and though the words carried venom capable of denting the reputation of another, they were true. The Defendant therefore had to prove the following:

- (a) that each and every statement of fact in the words complained of are true; and
- (b) if she was able to prove that the statements she uttered were true, then the next hurdle is for her to proceed to prove that the comment on the facts so proved, was made bona fide (in good faith).

This is because a thing may be true but it may not be appropriate to utter it under certain circumstances. A statement made in bad faith, though true, may nonetheless be held to be injurious to a person's reputation.

In this case, Defendant made an attempt to justify her reference to the Plaintiff as a flirt. She told the court that the Plaintiff referred to her as a flirt prompting her to also use the same words on her. Unfortunately, she has not been able to establish that the Plaintiff accused her of being a flirt. No evidence was led that respect. So, I deem it that the Defendant failed to prove the allegation that the Plaintiff also insulted her of being a flirt. But even if the Plaintiff had insulted her that she was a flirt, I do not think that it was justifiable for her to have accused the Plaintiff of being a flirt knowing very well that she is married. I think that she made the utterance in bad faith intending to injure the reputation of the Plaintiff. In the end, I hold that the utterances made by the Defendant were false and without any basis.

The Plaintiff claimed general damages of GH¢15,000 against the Defendant for defamation of character. It is said that the measure of damages are at large and so the court is not bound by a specific sum set out by a party in the writ as general damages. It was for the court to award a sum that it deems meet in accordance with the circumstances of the case. Thus, their quantification was peculiarly within the province of the court. It is now settled beyond doubt that slander, according to native custom, is a civil wrong actionable at the suit of the person defamed and is properly redressible by a pecuniary award: See **Attiasse v. Abobbtey (supra)** approving **Wankyewaa v. Wireduaa [supra]**. In Attiasse's case, the Court of Appeal observed that the essence for bringing an

action for slander under customary law as also under common law, is to clear the plaintiff's good name and not merely to make money. It continued to say that so long as this principle of customary law is maintained, recanting a slander, that is, an unreserved withdrawal of the slander and all imputations made, with expression of regret, and matters which give satisfaction to an aggrieved person, and the fact that such publication of apology is or will be made, will be taken into consideration in assessing pecuniary damages.

In this case, the Defendant did not try to recant the words she uttered against the Plaintiff nor did she show any sign of regret. She instead tried to justify why she uttered the words which justification was unsuccessful. I think for the dent on the Plaintiff's reputation, an award of GH¢5,000 as damages against her is in order. I would further order Perpetual Injunction to restrain the defendant from further making any derogatory, malicious and defamatory pronouncements against the Plaintiff forthwith. Considering the short length of time it took the court to dispense with this case and the fact that none of the parties engaged the services of counsel, I award cost of GH¢500 against the Defendant in favour of the Plaintiff.

HIS HONOUR ISAAC APEATU
DISTRICT MAGISTRATE