

CORAM: HIS WORSHIP MR. MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON FRIDAY, THE 22ND DAY OF MARCH, 2024.

SUIT NO. UE/BG/DC/A5/1/2023

**REGINA ABOTNERBA
OF ABOTNERBA'S HOUSE,
SOE-BOLGATANGA**

PLAINTIFF

VRS.

**TIMOTHY AMOGRE
OF TIMOTHY AMOGRE'S HOUSE,
SOE-BOLGATANGA**

DEFENDANT

TIME: 09:13AM

**PLAINTIFF PRESENT
DEFENDANT PRESENT**

**RICHARD ADAZABRA, ESQ. FOR PLAINTIFF ABSENT
NO LEGAL REPRESENTATION FOR THE DEFENDANT**

JUDGMENT

Introduction

1. By an amended Writ of Summons and Particulars of Claim filed on the 25th August, 2023, Plaintiff claims against the Defendant as follows: -
 - a. A Declaration that the words uttered by the defendant on 10th July 2023 at about 6:00pm in front of Plaintiff's house at Soe being "*You prostitute, you dog, I will kill you. In your prostitution you married 3*

times you never had a baby and it is only your present husband's place that you have a baby. Who are you to have taken me to police station to pay you money? I will certainly end your life" to the hearing of some people in public are deliberately defamatory, libelous and slanderous of the plaintiff since those words are false and their publication is actuated by malice.

- b. An order of general damages of Fifty Thousand Ghana Cedis (GHC50,000.00) for defamation in favour of plaintiff.
 - c. An order for a public retraction, withdrawal from circulation of, denunciation of and an apology for those defamatory statements at Abotnereba's House by the Defendant for that purpose.
 - d. An order of Perpetual injunction restraining the Defendant whether the Defendant acts by himself or by his association, agents and assigns of whatever description from further defaming the Plaintiff through the medium of such public insults.
 - e. Cost.
2. Also, on the 17th day of August, 2023, the Defendant filed his defence and counterclaims against the Plaintiff as follows:
- a. A declaration that, the plaintiff on 10th June 2023, insulted defendant at Soe that *"You Timothy, you are a Mad Man"* in the presence of the District Crime Officer-Bolgatanga, Alice Ayana, plaintiff's husband and Plaintiff's Son, thereby defamed the defendant.
 - b. A declaration that, it was the plaintiff who threatened to curse the defendant on 31st July, 2023 in the presence of the District Crime Officer-Bolgatanga and the investigator handling the case of causing damage to the defendant's property, thereby putting fear, panic and causing emotional injury to the defendant .

- c. A declaration that the plaintiff caused damage to the defendant's property, thereby causing financial loss and emotional injury to the defendant.
 - d. An order of perpetual injunction against the plaintiff, from insulting, threatening to curse and further causing damage to the defendant's property.
 - e. An order of general damages of GH¢50,000.00 (Fifty Ghana Cedis) for defamation in favor of the defendant.
 - f. Costs.
3. On 6th November, 2023, this court in consideration of the nature of the case and the willingness of the parties to attempt settlement of the matter out of court referred the matter to the Court Connected Alternative Dispute Resolution pursuant to **section 72 of the Courts Act, 1993 (Act 459)** as amended. The said section provides as follows:

Section 72—Courts to Promote Reconciliation in Civil Cases.

(1) Any court with civil jurisdiction and its officers shall promote reconciliation, encourage and facilitate the settlement of disputes in an amicable manner between and among persons over whom the court has jurisdiction.

(2) When a civil suit or proceeding is pending, any court with jurisdiction in that suit may promote reconciliation among the parties, and encourage and facilitate the amicable settlement of the suit or proceeding.

See also **Order 25 Rule 1 sub rules (3) to (8) of the District Court Rules, 2009 (C.I 59) as amended by C.I. 134.**

However, the parties could not resolve the matter out of court; hence the court proceeded to determine the matter on its merit.

Plaintiff's Case

4. Plaintiff says that she is a trader who owns a provision store at the Bolgatanga old market and that the Defendant is a driver working with the Talansi District Assembly as well as a neighbor to the Plaintiff. Defendant has been a neighbor of Plaintiff for about six (6) years now when he came to build his house close to her husband's house. For some time now, Defendant has been in the habit of verbally abusing and insulting her in her own house without any tangible reason. Such behavior has been traumatizing not just her but also her two infant grandchildren she lives with, and her husband as well in the house. On 15th December 2021, under the pretext that one of her grandchildren was disturbing his fowl which had strayed into Plaintiff's house, Defendant rushed into plaintiff's house and was about to inflict a blow on the child with his huge club he was holding when Plaintiff put out her hand to protect the child, and Defendant deliberately hit Plaintiff instead with the club resulting in a huge cut to Plaintiff's arm from which blood cozed out. Plaintiff reported to the police leading to Defendant arrest and admission of guilt at the police Station, and since several neighbors intervened to have the case settled amicably, Defendant only paid the medical costs of the plaintiff's treatment, and Plaintiff agreed to withdraw the case. Since the above incident, Plaintiff's life has been hell under the insults and even worse provocation from Defendant almost every day. Defendant resorted to baselessly reporting Plaintiff to the Police on flimsy excuses which turn out to be nothing upon Police investigations.
5. The following word were uttered by the Defendant on 10th July 2023 at about 6:00pm in front of Plaintiff's house at Soe being:-. ***"You prostitute, you dog I will kill you. In your prostitution you married 3 times you never had a baby it is only your present husband place that you have a baby. Who are you to have taken me to police station to pay you money? I will certainly end your life."*** which were said to the hearing of some people in public.

6. It is the Plaintiff's case that the said words are deliberately defamatory, libelous and slanderous of the Plaintiff since those words are false and their publication is actuated by malice against Plaintiff. Plaintiff's life has become a living hell and she is in trauma from the psychological toll the implication of the words carry to the ordinary reasonable person in the street, but which are totally false. Plaintiff is responsibly married and has never engaged in prostitution and therefore the words are deliberately defamatory. Plaintiff therefore urges the court to grant her reliefs for justice to be done pursuant to Defendant malicious defamatory attacks on her. Wherefore Plaintiff prays for the above-stated reliefs.

Defendant's Case

7. Defendant vehemently denies Plaintiff's claim and says that she is not entitled to her claims at all. The Defendant avers that he is officially known as Ayane Timothy and a driver at the Talensi District Assembly, Tongu. The Defendant specifically denies making any defamatory statement against the Plaintiff. The defendant avers that it was the plaintiff who caused damage to his property. The defendant avers that it was the plaintiff who threatened to curse him on 31st July, 2023 in the presence of the District Crime Officer Bolgatanga and the investigator handling their case. The defendant avers that, on 10th June 2023 it was the plaintiff who insulted him at Soe that ***"You Timothy, you are a Mad Man"*** in the presence of the District Crime Officer Bolgatanga, Alice Ayane, plaintiff's husband and Plaintiff's Son thereby defamed him. The Defendant therefore counterclaims against the Plaintiff for the reliefs as stated above.

Issues

8. The issues for determination in this case are as follows:
 - a. Whether or not Defendant defamed Plaintiff.
 - b. Whether or not the Defendant is entitled to his counterclaim.

Burden of Proof

9. The obligations or duties of parties to lead evidence; and to persuade the court, as to the credibility of his or her allegations are covered both by statute and plethora of authorities. Under sections 10, 11, 12 and 14 of the Evidence Act 1975 (NRCD 323), the burden of who has the responsibility to lead evidence is clearly set out. These are burdens of leading evidence and the burden of persuading a tribunal by leading credible evidence. Sections 11(1)(4) and 14 of the Evidence Act 1975 (NRCD 323) provides as follows:

11(1) For 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 non-existence.

14 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.”

10. Thus there are two parts to the duty to discharge the burden of proof. Thus, the twin burdens of proof and standard of proof contained in the provisions are: (a) There is the burden of leading evidence to back an assertion; and (b) the burden of persuasion i.e. leading evidence of sufficient standard to persuade a tribunal to rule in one's favour. **See the case of Isaac Alormenu vs. Ghana Cocoa Board, Civil Appeal No. J4/86/2022, delivered on 8th February 2023.**

11. In the case of **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors v Kotey & Ors [2003-2004] SCGLR 420, at pp. 464-465**, Brobbey JSC explained the law on burden of proof thus:

“The effect of sections 11(1) and 14 and similar sections in the Evidence Decree, 1975 may be described as follows: A litigant who is a defendant in a civil case does not need to prove anything: the plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make a determination of a fact or of an issue, and that determination depends on evaluation of facts and evidence, the defendant must realize that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of evidence before the court, which may turn out to be only the evidence of the plaintiff.”

12. In **Ackah v Pergah Transport Ltd., 2010] SCGLR 728**, Sophia Adinyira JSC stated on the burden of proof at p.736 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. The method of producing evidence is varied and it includes the testimonies of the party and material witness, 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 minds the court or tribunal of fact such as a jury. It is trite law 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 the fact is more reasonable than its non-existence. This is a requirement of the law on evidence under Section 10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323)”.

13. Also, it is a settled principle of law that a bare assertion or merely repeating a party's pleadings in the witness box without more does not constitute proof. In **Klah V. Phoenix Insurance Co. Ltd [2012] 2 SCGLR 1139**, this principle was reiterated:

“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 *Air Namibia (Pty) Ltd. V. Micon Travel & Tour & 2 Ors*, [2015] 91 G.M.J, page 177, *Majolagbe v Larbi & others* (1959) GLR 190-195 and *Klutse v. Nelson* [1965] GLR 537

Evidence of the parties

14. Plaintiff testified herself and called one witness. Plaintiff testified in her evidence in chief as follows: “The Defendant herein defamed me by uttering certain very derogatory and insulting words to me to the hearing of several people on 10th July 2023 in front of a crowd in my own house. As is often the case, the defendant who is a neighbor to me and my husband, has been crossing over to my house and hurling abuses at me and even severely wounding me with a cutlass in the past. On 10th July 2023 at about 6.00pm in front of my house at Soe, Defendant defamed me as follows: “*You prostitute, you dog, I will kill you. In your prostitution, you married 3 times you never had a baby and it is only your present husband’s place that you have a baby. Who are you to have taken me to police station to pay you money? I will certainly end your life*” to the hearing of some people in public. This was deliberately defamatory, libelous and slanderous of me since those words are false and their publication is actuated by malice of me since defendant has never forgiven me for making him pay about GHC1,000.00 at the Police Station for having severely cut me with a cutlass with cause. I say that several people tried to calm him and discourage him from continuing to abuse me with those words but he refused and added more abuses. Among the people was my own son who as a Cando driver arrived at the scene and witnesses the rumpus firsthand. I have suffered from those abusive and defamatory words in public that suggested I am a

prostitute in particular, and I continue to face ridicule and disdain from my neighborhood whenever I go round. Defendant is unrepentant and continues his relentless defamation against me every day despite the pending suit. I therefore seek the public retraction and withdrawal from circulation of denunciation of and an apology for those defamatory statements at my house by the defendant. I also seek a perpetual injunction restraining the defendant his associates, agents and assigns of whatever description from further defaming me through the medium of such public insult.” The plaintiff maintains during cross examination by the Defendant that the Defendant uttered the above statements and therefore defamed her. PW1-Abotenereba Avea’s evidence in effect corroborated Plaintiff’s case.

15.The Defendant testified without a witness. The Defendant testified that he buried a full block halfway or pillar to serve as a boundary mark to his plot 89 situated at Bolgatanga Soe. The Plaintiff removed the said Block and the Defendant buried the block halfway again, planted a flower by the block to serve as a boundary mark. The Plaintiff removed the block and flower again. He tendered a Photograph of the block/pillar and the flower in evidence as **Exhibit 1**. Defendant said he went to the Bolgatanga main police station and made a report to the police against the plaintiff. The police investigator accompanied him to the scene and the police investigator asked the Plaintiff whether she removed the block and Plaintiff responded in the affirmative or yes. After a subsequent meeting with the crime officer Plaintiff was asked to go back to the said plot 89 and put the block back. The Plaintiff refused to comply to do what the crime officer asked the Plaintiff to do. Defendant said he went back to the crime officer to find out whether he can put the said block back himself but the crime officer decided to visit the scene himself. The crime officer after looking at the place said Defendant can make a fence wall if he can afford, and Plaintiff can also do same if she can afford. Plaintiff came out to the scene and started raining on him “*You Timothy, you are a man person*” in the presence of the crime officer.

16.The crime officer asked the parties to bring their documents and they complied. Defendant testified that the police told him that they had written

to Town and Country Planning Office, Bolgatanga to come and measure the land to know the individual boundary of the plaintiff and the defendant but there was no response. Defendant said while he was waiting on the Town and Country Planning Office's response, the Plaintiff farmed on the land and the said pillar cannot be seen again until they measure. Defendant informed the crime officer about the farming done by the plaintiff on the said land. Subsequently, the plaintiff made a case against him that the Defendant has been threatening and insulting her (Plaintiff) that "*Plaintiff is a prostitute*". Defendant denied insulting the plaintiff because that is not true. According to defendant, he leaves home before 6:00am to drop his children at school and proceeds to work at Tongo and comes back after 6:00pm.

17. Defendant testified that on the 10th day of August, 2023, he was served with a document from the District Court to come to court. Defendant read the document from the court and noted it was the same case at the police station. It is the Defendant's case that the plaintiff only reduced the alleged threat by him from one month to one day. He said that Plaintiff rather caused damage to this property (demarcation pillar and a flower) on the defendant's plot No. 89 Bolgatanga Soe. Plaintiff rather threatened to curse him on 31st July, 2023. The plaintiff rather insulted the defendant that he is a "mad man" in the presence of the District Crime Officer, Bolgatanga, Alice Ayana, plaintiff's husband and plaintiff's son thereby defamed him. The defendant tendered in evidence his land document covering plot No. 89 at Bolgatanga Soe as **Exhibit 2**.

Evaluation of evidence, discussion of issues and legal analysis

18. In the first place, I will discuss the issue of whether or not Defendant defamed Plaintiff. What constitutes defamation in Law? In the case of **Owusu-Domena vs Amoah (2015-2016) 1 SCGLR 790** the Supreme Court quoted the definition of defamation as contained in the Halsbury's Laws of England, 4th Edition Volume 28 paragraph 10 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 disparage him in his office, profession, calling, trade or business.”

19. In going further to establish what then should be proved for a claim of defamation the Supreme Court stated;

“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. This is what the authors Winfield and Jolowicz on Tort 18 Edition at page 584 paragraph 12-15 described as the ‘natural and ordinary meaning’ of the words published. The Learned Authors cited the case of JONES vs SKELTON (1963) 1 WLR 1362 at p. 1370-1371, where Lord Morris said that “the ordinary and natural meaning may...include any implication or inference which a reasonable reader guided not by any special but only by general knowledge, and not fettered by any strict legal rules of construction would draw from the words.”

See also the case of **Abu vrs. Bpi Bank (2014) 68 GMJ 115** where the Court of Appeal also made the following pronouncement:

“.....Words are capable of being defamatory of a Plaintiff if they tend to hold him up to contempt, scorn or ridicule or if they tended to lower him in the estimation of right thinking members of society generally, or if they caused him to be shunned or avoided.”

20. In the case of **Youssouf vs M.G.M. Pictures Ltd (1934) 50 TLR 581** defamation was defined as:

“If a man deliberately or maliciously publishes anything in writing concerning another which renders him ridiculous or tends to hinder mankind from associating or having intercourse with him, it is actionable.”

21. The words claimed to be defamatory must be interpreted in their normal or natural meaning and so in the case of **Professor E.O. Adekolu John Vs University for Development Studies & Another, Civil Appeal No. J4 /59/2013 dated 19 March, 2014** the Supreme Court defined what constitute defamatory statements and gave three other elements of defamation as:

“A second element in the law of defamation under the common law is the interpretation of the words whether they are actually defamatory? The words must be interpreted in their fair and natural meaning as reasonable, ordinary people will understand unless an innuendo is pleaded. In the meanings ordinarily ascribed to the words used, it is clear they are defamatory especially as no innuendos have been used. To be defamatory, there must be something in the defamatory statement referable to the Plaintiff.... Finally, to constitute defamatory material, the words complained of must have been published.”

See also, Benjamin Duffour Vrs Bank of Ghana & Another, Civil Appeal No. J4/48/2021, Delivered On 9th February, 2022 and Dr. Matthew Opoku Prempeh vs. Samuel Gyamfi [2022] DLHC12019, Suit No. GJ/1510/2019, dated 13th October 2022.

22. In the instant case, the court found from the evidence on record, that the parties are neighbors who have a boundary issue. As a result, they have been insulting each other and engaging in quarrels. They have reported each other to the police. The subject matter of this case concerns the words Defendant allegedly used against the Plaintiff. The words are: *“You prostitute, you dog, I will kill you. In your prostitution you married 3 times you never had a baby and it is only your present husband’s place that you have a baby. Who are you to have taken me to police station to pay you money? I will certainly end your life”*. Plaintiff avers that these words were spoken to the hearing of some people in public and they are deliberately defamatory, libelous and slanderous of the plaintiff since those words are false and their publication is actuated by malice. The Defendant denied making this statement but this court found as a fact that the Defendant made the said statement against the Plaintiff.

23. The words used are to be given their ordinary meaning. Prostitute is a person, in particular a woman, who engages in sexual activity for payment. This person lacks moral character. The inference from the statement made by the Defendant is that the Plaintiff lacks moral character and has been engaging in sexual activities in exchange for money. I will kill you or I will certainly end your life is a threat and if proved can lead to an imprisonment. The words also appear offensive and abusive. So considering the words as a whole in their ordinary meaning carries defamatory meaning. The statement refers to the plaintiff but the statement is not true. Since it was said in the presence of other people apart from the parties' herein, it constitutes publication. The statement has the tendency to lower Plaintiff in the estimation of right thinking members of society generally or to cause her to be shunned or avoided or to expose her to hatred, contempt or ridicule, or to disparage her in her trade or business. Accordingly, this court holds that Defendant defamed plaintiff. The Defendant is claiming for GHC50,000 as damages. It is on record that plaintiff insulted the Defendant as a mad man which this court finds unacceptable and the court has taken this into consideration in awarding damages to the Plaintiff. This court will therefore award an amount of GHC5,000.00 as general damages against the Defendant.

24. The next issue to consider is whether or not the Defendant is entitled to his counterclaim. It is a well-established principle of law that a defendant who files a counterclaim has the same burden of proof as a plaintiff. In the case of **Nortey (No.2) V. African Institute of Journalism And Communication & Others (No.2) [2013-2014] 1 SCGLR 703,** the principle was stated:

“Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he/she has to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRCD 323, the Evidence Act (1975)”.

The Defendant counterclaimed against the Plaintiff for the reliefs stated above. He therefore has a burden of proof to discharge.

25. In the instant case, the court found from the evidence on record that Plaintiff caused damage to defendant's property (flower and block/pillar) as well as insulted him as a mad man. It is a trite learning that words which merely cause injury to feelings or cause annoyance but in no way reflect on character or reputation are not defamatory. In **Wankyiwaa v. Wereduwaa & Another [1963] 1 GLR 332-337, Apaloo J.** stated as follows:

"I understand the law to be that words which merely cause injury to feelings or cause annoyance but in no way reflect on character or reputation are not defamatory. Sarbah says "Words which cause or produce any injury to the reputation of another are called defamatory and if false are actionable. False defamatory words, when spoken, constitute slander." See Fanti Customary Laws (2nd ed.), Chapter 8 at p. 93. I think, on balance, that the words proved to have been published of the plaintiff by the defendant were plain vituperation only."

The Plaintiff insulted the Defendant as mad man when they were on the site with the Investigator handling their case to inspect the pillar demarcating their lands. It is noteworthy that the statement was made "in the heat of the moment" and as a result it is only vituperation and not defamatory. Nevertheless, this court has taken this into consideration before awarding general damages against the Defendant for defaming plaintiff.

26. So having examined the evidence of the parties on record as well as the above analysis under issue one *supra*, this court is of the considered opinion that the defendant has partly established the existence of facts contained in his counterclaim by the preponderance of the probabilities. The Defendant counterclaim is accordingly upheld or granted in part in that the Defendant proved to the satisfaction of this court that Plaintiff caused damage to his property (flower and block/pillar) as well as insulted him as a mad man.

Conclusion

27. Having examined the whole evidence adduced by the Plaintiff and the Defendant on record in accordance with the foregoing authorities as well as the analysis, the court holds as follows that:

- a. Plaintiff's action succeeds in part. The words uttered by the Defendant against Plaintiff are defamatory especially slander. A general damage of Five Thousand Ghana Cedis (GH¢5,000.00) for defamation is awarded in favour of plaintiff.
- b. The Defendant shall render an apology to the Plaintiff for those defamatory statements at Abotnereba's House at Soe-Bolgatanga.
- c. An order of perpetual injunction is hereby made restraining the Defendant from further defaming the Plaintiff through the medium of such public insults. Plaintiff's other reliefs are however dismissed.
- d. Defendant counterclaim is also granted in part. It is hereby declared that the plaintiff caused damage to the defendant's property (flower and block/pillar), insulted the Defendant that he is a mad man. An order of perpetual injunction against the plaintiff is hereby made restraining the Plaintiff from insulting the defendant and further causing damage to the defendant's property (flower and block/pillar). Defendant's other reliefs are however dismissed.
- e. There will be no order as to costs.

(SGD.)

**H/W MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)**