IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE WINNEBA, HELD ON WEDNESDAY THE 17TH DAY OF MAY, 2023, BEFORE HIS LORDSHIP, JUSTICE ABOAGYE TANDOH, HIGH COURT JUDGE.

SUIT NO. E11/006/21

JAMES KOFI ANNAN ---- DEFENDANT/APPELANT

VRS.

ALEXANDER AFENYO MARKIN ---- PLAINTIFF/RESPONDENT

JUDGMENT

On the 28th day of August 2020, the Defendant/Appellant filed a Notice of Appeal against the Judgment of the District Court, Winneba, which Judgment was delivered on the 28th day of August 2020, in favour of the Plaintiff/Respondent and against the Defendant/Appellant.

Forease of reference the Defendant/Appellant will also be referred to, as the Appellant whilst the Plaintiff/Respondent will also be referred to, as the Respondent as and when applicable.

The Respondent at the court below in his action against the Appellant, per his Writ sought for the following reliefs:

(i) A declaration that the contents of the Press Conference are defamatory.

(ii) An order directing the Defendant to render an unqualified apology to the

Plaintiff through the same modus the defamatory statements were

published.

(iii) An order of perpetual injunction restraining the Defendant from further

Authoring and publishing any defamatory statement against the Plaintiff.

(iv) General damages of Twenty Thousand Ghana Cedis (GH¢ 20,000.00)

(v) Cost

THE BACKGROUND OF THE CASE

It was the case of the Respondent herein that, the Appellant who was then the aspiring Parliamentary Candidate for the Effutu constituency, on the ticket of the National Democratic Congress (NDC), held a Press Conference, entitled *Afenyo Markin's alleged scheme to scandalize James Kofi Annan exposed***.** In the said Press Statement, the Appellant suggested that the Respondent was the one behind his invitation by the Winneba Police that was investigating the payment of the sum of one hundred thousand Ghana Cedis (GH¢ 100,000), into his (Appellant's) account at the Winneba Branch of the Ghana Commercial Bank, with Consolidated Bank Ghana cheques. The Respondent further contends that the Appellant claimed to have made some preliminary checks on the particulars of, Petrinock Investment Enterprise, one of whose officers made the report to the Police, that he had wrongly paid into the Appellant's bank account, and that the two (2) names that were identified with Petrinock Investment Enterprise, Benjamin Ackah, and John Benefo, appear to have links with the Respondent. According to the Respondent, the Appellant stated at the said Press conference that an individual, who introduced him to an unknown traditional leader, and who had earlier donated cash of ten thousand Ghana Cedis (GH¢ 10,000.00), to him (Appellant),was said to have strong links with the Respondent. According to the Respondent, the Appellant in a four (4) minute audio recording, repeated in a summarized form, the statement made at the Press Conference. It was the case of the Respondent that, *considering the ordinary and*

natural meaning of the statements made at the Press Conference and the audio recording in their entirety; the Respondent had ***defamed*** *him because the statements on social media had far-reaching consequences as the damage to the Respondent's reputation goes beyond the boundaries of Ghana. According to the Respondent, the said Press conference had caused irreparable damage to his hard earned reputation, among his constituents who have at all material times, perceived him as an honest and credible person.*

Contrary to the assertion of the Respondent, the Appellant per his Statement of Defense states that the words used both in the Press Statement held on 17th March, 2020, and in audio recording, for which the Plaintiff was complaining, *were not defamatory because of the context in which they were used. The Appellant contends that, the words complained of by the Respondent,* ***in their ordinary and natural meanings are not capable of being interpreted to mean that the Plaintiff was a schemer with malicious intention, diabolical, and someone who was petty and apprehensive of competition.*** *It is also the case of the Appellant that the words complained of are not capable of lowering the reputation of the Respondent in the estimation of right thinking members of the society, adding that the Press Conference and the subsequently audio recording, contained his comments and opinions, that are of interest to the public in the Effutu Constituency, and that* ***the comments were fair and not malicious.***

According to the Appellant, the Respondent's action was an attempt to gag his political opponent in the run-up to the December, 2020 general elections.

THE JUDGMENT OF THE TRIAL COURT

The trial court after evaluating the evidence adduced by the parties rendered its judgment per pages 85 – 92 of the record of appeal on the 28th day of August 2020 at the District Court Winneba. The trial court in his decision held thus;

"I hereby grant the plaintiff's reliefs in its entirety and further order the Defendant to retract his publication (Exhibit A) and apologize to the Plaintiff, between today and 31st August 2020. He is also to use the same media outlets he employed in his press conference including Adom TV, Joy TV and United Television. The ***Online media portals are to equally carry the Apology and retraction."***

THE GROUNDS OF APPEAL

The sole ground of appeal filed on the 28th day of August 2020 per page 98 of the record of appeal was as follows:

i. The judgment was against the weight of evidence

It is trite that an Appeal is by way of re-hearing especially in the instant appeal where the judgment is being challenged as not supported by the weight of the evidence. This principle was reaffirmed by the Supreme Court speaking through **Appau JSC** in the case of **EVELYN ASIEDU OFFEI V YAW ASAMOAH ODESHE KWAKU AGYAPONG**[1]thus:

> ***"… An appeal is by way of rehearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court was against the weight of evidence. In such a case, it is the duty of the appellate court to analyze the entire record of appeal, take into account the testimonies…it is immaterial whether the appeal is a second one from the Court of Appeal to the Supreme Court."***

Similarly, the Supreme Court speaking through Adinyira JSC on the primary duty of the appellate court in the case of **Ackah v Pergah Transport Ltd & Others [2010] SCGLR 728 and at pages 737 – 739 of the report,** held that it is the primary duty of the appellate court to examine the record of proceedings in order to be satisfied that the findings of the court below are supported by the evidence on record. The Supreme

Court further stated that the appellate in so doing is in the same position as a trial court to make its own inference from the established facts as an appeal is by way of re - hearing. See also: **KoglesLtd (No.2) v Field [2000] 175 and Gihoc v Hannah Assi [2005 – 2006] 458**

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1 (2005 - 2006) GLR 4458.

SEE ALSO

1. ABBEY & OTHERS v ANTWI V [2010] SCGLR 17 @ 34 - 35

2. TUAKWA VRS. BOSOM (2001-2002) SCGLR 61.

THE BURDEN OF PROOF

The burden on the Plaintiff therein and the Respondent herein, at the court below was to establish his case by the preponderance of the probabilities as provided under section **11(4), 12 and 14 of the Evidence Act, 1975 NRCD 323.**

1. **GIHOC REFRIGERATION & HOUSEHOLD VRS. JEAN HANNA ASSI**

[2005 – 2006] SCGLR 458.

2. **BARIMA GYAMFI VRS. AMA BADU [1963] 2 GLR 596.**

3. ARYEH &AKAKPO VRS. AYAN IDDRISU [2010] SCGLR 891 AT 901.

SEE ALSO:

1. **FOSUA & ADU – POKU VRS. DUFIE (DECEASED) & ADU POKU –**

MENSAH [2009] SCGLR 310 @ 325 – 327.

2. SARKODIE VRS. FKA COMPANY LTD. [2009} SCGLR 65.

3. ZABRAMA VRS. SEGBEDZI[1991] 2 GLR 223.

THE SUMMARY OF EVIDENCE

The Evidence of the Plaintiff/Respondent

The Respondent in his evidence before the court below said that while the Appellant was being Investigated by the Police for a matter involving the receipt of the sum of One hundred thousand Ghana Cedis (GH¢100,000.00) paid into Appellant's account, he held a Press Conference, where he made statements that scandalized him, and also linked him to the company and persons who made the complaint against the Appellant. The Respondent further stated that though innocent, the Appellant told the whole world that he (Respondent) had schemed to tarnish his image. According to the Respondent, by the Press Conference and its publication, the Appellant had sought to subject him to hatred and ridicule by stating that he the Respondent was the one behind his predicament.

The Respondent further tendered in evidence the four (4) minute audio recording and the Press Statement which the Defendant read to the general public and same published by the media, as **Exhibit A per pages 114-117 of the Record of Appeal.**

The Respondent also stated that by reason of the Press Conference and the subsequent publication, people who respect him and associate with him, are likely to avoid him in

view of the Appellant's statement to the effect that they had made preliminary checks which confirmed that Perinock Investments was linked to the Respondent.

According to the Respondent he had built a positive image which could be undermined as any reasonable person could come to the conclusion that the Plaintiff/Respondent is a politician who destroys his opponents through subterfuge and scheming. According to the Respondent, considering the entire context in **Exhibit A,** the conclusion was that he suspected the Plaintiff/Respondent to be responsible for the Appellant's scandal. In his evidence, the Plaintiff/Respondent said the statement made by the Defendant/Appellant were actuated by malice, adding that in the entire Press Statement, the Appellant refused to mention names of people he dealt with in respect of the money, but only mentioned the name of the Respondent. He said the fact that it was only his name that the Appellant mentioned in the Statement, meant that it was the Appellant's intention to expose the Respondent to ridicule on the allegation that the Respondent was a schemer.

According to the Respondent, the statements made by the Appellant were not to serve the Public interest because the Statements were false, as they were only meant to attack him as the Member of Parliament (MP) of the Effutu Constituency.

According to the Plaintiff/Respondent during his previous political activities in the year 2004 and 2006 as an assembly man, and a Presiding Member, those activities provoked open debates and arguments with his opponents, adding the rivalry then never resulted in any court action being taken against anyone.

The Respondent further stated that in the years 2012 and 2016, when he contested for the Parliamentary seat in the Effutu Constituency, there were threats and cases of assault, but that never resulted in any court action against anyone. The Respondent averred that even though the Appellant was circulating a disparaging twenty-seven (27) minute audio recording about him, apart from the fact that the Appellant and his

association said a lot of unprintable statements about him on Nyce Radio, he never took any legal action against the Appellant.

According to the Plaintiff/Respondent, even though the Appellant, on 5th March 2020, went on radio and alleged that he is corrupt and that he denied him of the Chairmanship of Ghana Water Company Board, he never took action in court against the Appellant.**See Exhibits B, C, D, E, F.**

The Respondent further mentioned instances when the Appellant alleged he had tortured a gentleman to death per **Exhibit G. See also Exhibits H, J, K, L**

The Evidence of the Defendant/Appellant

The Appellant in his evidence before this court admitted being the author of **Exhibit A** which he read during a press conference he organized on 17th March 2020.

According the Appellant, he supported the Respondent's political campaigns in the years 2012 and 2016. The Appellant added that during his previous relationship with the Respondent, he personally gave him money to pay some of his children's school fees and also the Respondent sometimes came to him personally for the money, but on some other occasions he sent some individuals including one Kojo Halm (Chairman of NPP), Holy, Esther, Bondzie Sey and Awudu.

The Appellant further stated that every weekend when the Respondent is in Winneba, he will go to his Restaurant with his entourage and eat after which he would direct that the bill be sent to him the Appellant and further stated that he spent GH¢200, 000.00 on the Respondent's campaign.

According to the Appellant, having known the Respondent since 2007 A.D, he knew the Respondent played a role in the one hundred thousand Ghana Cedis (GH¢100,000.00) criminal case leveled against him.

The Appellant said that he formed a Movement by name Winneba is King after which they organized a float with about 4,000 attending and one Henry Osei supported the Movement with Ghc10, 000.00 which was paid into GCB account in Winneba opened for that purpose. **See Exhibit 3 and pages** 186-191 of the record of appeal**.**

According to the Appellant one Nana Yeboah also promised to pay Fifty Thousand Ghana Cedis (GH¢ 50,000.00) on the 4th day of February 2020 and another Fifty Thousand Cedis (GH¢50,000.00) on the 7th day of February 2020 into his account at GCB Bank Winneba branch.

See Exhibit 4

The Appellant averred that, while he was entering the house of Nana Yeboah, they met one Bortey, whom Nana Yeboah described as his assistant. He said that Nana Yeboah called to confirm whether he received the monies. The Appellant said that, after receiving the pay- in - slips signed by Bortey, he became convinced that it was Nana Yeboah who had caused the payments to be effected and disbursed same according to the wishes of the donor. **See Exhibit 5 and 6**

The Appellant averred that a couple of weeks later, he received an invitation to the police station, through a phone call, to answer questions in respect of the sum of one hundred thousand Ghana Cedis (GH¢100,000.00) allegedly stolen from the complainant. At the police station, the Appellant said he saw one Bondzie a youth organizer of one of the electoral areas, as well as some media personnel and the NPP activists present, attempted to take photographs of him. Indeed, the Appellant said he was surprised how a case concerning an NDC member will be of that interest to NPP activists. The Appellant in his evidence further stated that he wondered why Nana Yeboah, the donor, Daniel Bortey and one Mandingo, who introduced him to Nana Yeboah were not arrested. According to the Defendant/Appellant, he overheard a conversation among the NPP activists that there was going to be huge media news in

Ghana. He said the common conversation at the time was that it was a political case and that the Appellant should get the Respondent, who was described as "Chief:" for the matter to be settled.

The Appellant also stated that, the presence of the NPP activists and the sudden presence of the media aroused his curiosity especially when the common conversation was that the Respondent had branded the entire police with his name, even cells and it was commonly perceived that the Respondent had written them in the pockets of the police.

The Appellant further stated that given all that was happening; his fellow NDC members agreed that the respondent could have inspired a set up because there was evidence that the Respondent had the habit of inspiring events from a distance.

He said **Exhibit A** narrate the beginning of his encounter with the Chief through whom money was paid into his account. According to the Appellant, in writing **Exhibit A,**he was very careful as he avoided making categorical statements about a person without conclusive evidence. He said **Exhibit A** was not a statement of fact but a statement of opinion. According to the Appellant, the 1992 constitution gives him the freedom of expression and of opinion, and that he could not hold back the expression of his opinions, feelings and suspicions. He said he had no other way of expressing his opinion, about the Respondent who is his Member of

Parliament. According to the Appellant, what he said was that the Respondent could not get a scandal around him and that he was not defaming the Respondent. He said the Respondent was not seeking anything, but to intimidate and to gag him. He said the Respondent vilified him on so many occasions, but he did not take a court action to that effect. **See Exhibit 7, 8, and 9 and also page 41 of the record of proceedings.**

According to the Appellant, in the wording of the title of **Exhibit A,** the word "**alleged"** is used and, therefore, the contents of **Exhibit A**, cannot be defamatory as they are not categorical statements. The Appellant added that he also used the word "**suspected"** in **Exhibit A** to suggest that he was expressing an opinion. The Appellant further averred that, in their ordinary and natural meanings, the word used in **Exhibit A** do not mean that the Respondent is diabolic, malicious, petty and intolerant.

According to the Appellant, the words used in **Exhibit A,** do not have the ability to lower the Respondent's reputation neither has he suffered any damage.

According to the Appellant, the issue of the **One Hundred Thousand Ghana Cedis, (GH¢100,000.00)**, was a set-up engineered by the Respondent who wanted him disqualified as the Parliamentary candidate for the National Democratic Congress (NDC), on the ground that he is a convict.

The Appellant further averred that he read the contents of **Exhibit A,** at the Press Conference so as to fully inform his supporters of what had happened and that **Exhibit A** did not scandalize or defame anyone.

THE TORT OF DEFAMATION

The Cambridge Dictionary defines Defamation as; "*the action of damaging the reputation of a person or group by saying or writing bad things about them that are not true."* Therefore there is the likelihood of the spoken or written word lowering the person in the estimation of right thinking members of the society.

Current English defamation law consists of the twin–like torts of slander and libel. Indeed the common law drew a sharp dividing line between spoken defamatory

utterances and imputations expressed by writing, signs, pictures, newspapers and other forms that establish some form of permanence on statements.

Furthermore, it is noted that libel remains much longer compared to slander, to the extent that more importance and significance is related to the written word than the spoken word by those the communication is addressed. Also, libel conveys an impression of a deliberate calculation to injure one's reputation, while slander is usually born of sudden irritability.

See Introduction to the Law of torts in Ghana pages 235 – 236, 2nd Edition by ***the learned author Kofi Kumado.***

In the instant appeal, the common law principle on the tort of defamation is preferred given the circumstance of this case and when applicable the customary law of the parties would be considered to do substantial justice in the determination of this appeal. **See: section 54 of ACT 459 (1993).**

The two key issues for consideration in this appeal are:

1. Whether or not Exhibit A was published and whether doing so

defamed the Plaintiff.

2. Whether or not the defence of fair comment will avail the Appellant

In resolving the issue of whether or not the content and publication of **Exhibit A** defamed the Respondent, it is also important to establish whether the words complained of indeed had defamatory meaning.

In the case ***Ahevi v Akoto IV { 1993 – 94 } 1 GLR 512 – 538 per ACQUAH J., the court at holding 1 held thus:***

> *"(1) a plaintiff in an action for defamation was not obliged to prove the exact words or the whole of the defamatory statement uttered by the defendant in order to succeed. It was enough to establish his claim if he proved that the defendant uttered some words bearing the defamatory meaning complained of. In the instant case, since the defendants published of the plaintiff that he was unfit to live in their society, words usually meant for those who had committed heinous crimes, and consequently prohibited any interaction between him and other citizens of the town, that publication was defamatory."*

Counsel for the Respondent rightly quoted the case of **Owusu Domena v Amoah [2015 – 2016] SCGLR at page 790 of the report** where the Supreme Court outlined the factors to consider in the determination of whether or not one has been defamed as in this case and the factors were;

[2](1993 - 94) 1 GLR 512 – 538.

3[2015 – 2016] SCGLR at 790.

a. That there was a publication by the Defendant

b. That the publication concerned the Plaintiff

c. That the publication was capable of defamatory meaning in its natural

and ordinary sense

d. In the circumstance surrounding the publication, it was defamatory of the

Plaintiff

e. If the defendant seeks the defence of qualified privilege or fair comment

It was also argued for and on behalf of the Appellant in page 5 of his legal submission where Counsel for the Appellant stated three key elements worth considering in a defamatory suit thus:

1. That the words were defamatory;

2. That the word referred to the claimant

3. That the words were published to (at least one person other than the

claimant) by the defendant.

Be that as it may, the elements of defamation submitted on behalf of the Appellant are not much different from that of the Respondent, as it dove-tailed into the elements or factors submitted on behalf of the Respondent.

In this appeal I will first of all examine whether or not the words or communication complained of by the Respondent is capable of defamatory meaning. It is trite that the natural and ordinary meaning of words for the

purposes of a defamation claim is the single meaning that will be conveyed by those words, to the ordinary reasonable reader. **See Simpson v MGN & Another (2015) EWHC 77 (QB).**

Parke Baron in the case of **Parmiter v Couplands (1840) 6 M & W @ 108 151 ER 340,**defined defamation to be a false publication without justification or lawful excuse, calculated to injure the reputation of another by exposing him to hatred, ridicule or contempt. **See: ADEJUMO v. ABEGUNDE AND ANOTHER [1965] GLR 499-511 SC.**

Similarly, if any person maliciously and deliberately 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. **See Villers v Monsley [1769]2 Wils. 403**

The thrust of this matter is all about a criminal investigation initiated against the Appellant, in respect of hundred thousand Ghana Cedis (GH¢ 100,000.00) that allegedly found its way into his accounts without lawful authority but same was denied by the Appellant. Indeed, the issue of the Ghc100, 000.00 which was being investigated by the police has been amply discussed in this appeal.

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4 (1965) GLR 499 – 511.

As rightly submitted on behalf of the Appellant and also supported by the submission on behalf of the Respondent, the conclusion of the press statement among others was;

" I am therefore suspecting that Afenyo-Markin is scheming with the police to scandalize me, and this scheme has unfortunately been exposed"

Indeed the meaning of the words expressed in the press **conference Exhibit A** in its entire context juxtaposed with **Exhibit 11** defines the real issues in controversy as rightly established by the trial court per pages 89 – 91 of the record of appeal.

Under cross - examination, the Appellant answered the following questions among others:

Q. So we take it that you stand by every word in **Exhibit A**

A. Save the title of **Exhibit A** which is an editorial title, I take responsibility

for every single word in **Exhibit A.**Even the title is crafted to avoid

falling into the pitfalls of journalism.

Q. Your suspicion, I suggest to you are based on what you think are facts

about the Plaintiff

A. If the suspicion are based on what I think are facts, so should it be. But at the time of drafting **Exhibit A,** I have already shown what inspired **Exhibit A,** the Plaintiff is one I know to have forced someone to confess against me. He had also tried to do everything possible to prevent me from contesting. I subject it to the court's own interpretation.

Q. In your evidence in chief, you painted a very uncomfortable picture about the Plaintiff which was not based on suspicion but on facts you claim you have about the Plaintiff. Is that not the case?

A. I have said in this court that I had facts in relation to **Exhibit A** about the Plaintiff then that would have been a misunderstanding of the question asked me. That could be the reason. What I have said in this court per all the conversation regarding the issue of GH¢100,000.00 and my knowledge of the Plaintiff and what he is capable of doing and all the evidence that have been tendered , I suspect him to be behind the GH¢100, 000.00 set up. My position is that if there is anyone, who has been behind the set up, then it is the Plaintiff.

The Appellant emphatically and categorically said in page 63 of the record of appeal and in the judgment of the trial court thus:

" Our preliminary Investigations tells us that the said company Petrinock Investment Enterprise and its attendant account, were deliberately set up primarily to wage a smear campaining against my person and to find something of smear value against me since my opponent has so far failed to find any single scandal around me "

From the foregoing, I find that despite the Appellant's preliminary investigations he conducted about the Respondent's being behind the criminal investigation against him, there was no cogent evidence that the Respondent was behind any purported set up to

that effect. I further find that the Appellant was not able to show that the Respondent had anything

to do with the company Petrinock per **Exhibit 11**and complainant in the criminal case leveled against the Appellant.

I further find that the Appellant used conjectures and hearsay to link the Respondent to the occurrences narrated in **Exhibit A** as well as **Exhibit 11**when he has no concrete basis so to do. I also find that the Appellant did gather not only his supporters but the whole world that the Plaintiff is a schemer, working behind things to scandalize people and sometimes conniving with the police to do so.

I further find that the statements made at the press conference were not mere suspicions or allegations but were construed and presented as statement of facts and are likely to be understood by the ordinary people in the community to be true facts calculated to injure the reputation of the claimant (The Member of Parliament of the Effutu Constituency) and also expose him to hatred and ridicule. This view is strengthened by the fact that the author is a reputable and well respected parliamentary candidate in the constituency, a banker, journalist among others.

I therefore find that Exhibit A as communicated or conveyed through the press conference organized by the Appellant has defamatory meaning as rightly established by the trial court.

It is also obvious that the main subject of the press conference was how the Plaintiff/Respondent schemer of scandals has been exposed. Therefore the defamatory statement was referred or pointed to the Respondent.

Indeed in the case of Hulton v Jones(1910) AC 20 Lord Loreburn stated thus:

"Libel is a tortuous act. What does the tort consist in? It consists of using language which others, knowing the circumstances, would reasonably think to be defamatory of the person complaining of and injured by it. It was not what the defendant intends, but what the people around the area think of the words"

From the foregoing, I find that what was material in the words conveyed by the Appellant was not necessarily what his intentions were when he said it was to inform his people but what they think of the said words which words were defamatory ***of the Respondent.***

Having so held, was the words as contained in **Exhibit A** established as having defamatory meaning and same referred or pointed to the Respondent, actually published?

Publication is a critical factor or element worth considering in a defamatory action. Therefore until the defamatory matter is published, one's reputation suffers nothing. In the case of **Huth v Huth, (1915) 3 K.B 32***the defendant posted a statement to the plaintiffs in a sealed envelope which alleged was defamatory. In breach of his duty and out of curiosity, the statement was taken and read by a butler. The Plaintiff claimed that this constituted a publication of the libel for which the defendant was responsible. It was held that statement was not published in law and the Plaintiff's action failed.* ***See also: Introduction to the Law of torts in Ghana pages 239– 243, 2nd***Editionby ***the learned author Kofi Kumado.***

However, in **the case of SIDI v. ISSAH [1991] 1 GLR 599-607**, ***the facts of the case which was subject of Appeal from the decision of the High Court, Tamale, was that the Plaintiff-Respondent was an employee of the Ministry of Roads and Highways. The Defendant-Appellant wrote a letter, exhibit A, to the Secretary for Roads and Highways complaining about the plaintiff's injudicious use of his discretion in the hiring out of road making machines and equipment belonging to the ministry to private***

contractors. The Defendant also complained about the award of contracts to undeserving contractors by the Plaintiff. A copy of the letter addressed to the plaintiff allegedly passed through a series of office-holders who read it, including the Plaintiff's own clerks the third and fourth Plaintiff witnesses. The Plaintiff, claiming that the letter was defamatory and had been published to others, therefore brought an action at the High Court, Tamale for ¢10 million damages for defamation. At the trial, the Defendant who had pleaded justification, boldly amplified his allegations with serious and damaging evidence. The Plaintiff admitted some of the allegations in his testimony. The trial judge however found that the words contained in exhibit A were defamatory and because other people apart from the plaintiff had read exhibit A, it had been published. He therefore awarded the Plaintiff ¢1 million damages for libel. Aggrieved by that decision the Defendant appealed, and the main issue which fell for determination was whether exhibit A had been published.

However, the Court of Appeal, allowing the appeal held that:

> *"from the authorities it was clear that to succeed in proving publication the plaintiff must lead evidence to show that the defendant knew that all letters addressed to him (the plaintiff) would be intercepted, opened and read by those employees and officials who testified for him and that each had lawful authority to intercept, open and read all letters addressed to the plaintiff in their usual course of business. In the instant case, the evidence before the trial court did not show that the witnesses were empowered and had lawful authority to intercept, open and read all letters addressed to the plaintiff in their respective capacities in the usual course of business. Consequently, the trial judge misdirected himself both on the law and the facts on the issue of publication since his finding on it was plainly wrong. "*

Also in the case of AMOAKO v. TAKORADI TIMBERS LIMITED [1982-83] GLR 69-73 and also quoted by Counsel for the Defendant, **the Court at holding 2 held:**

> ***"(2) In an action for damages for defamation it was not sufficient for the plaintiff to say that in his self-estimation the words alleged conveyed some obnoxious meaning to him. He must go further to prove that the obnoxious meaning was conveyed to persons other than himself and the words had lowered him in***

6 (1982 - 83) GLR69 – 73

> ***the estimation of those persons; in other words no civil action***
>
> ***for libel or slander could be maintained unless the plaintiff had established that the words complained of had been published to persons other than himself and those persons had understood the words in the defamatory sense attributed to them by the plaintiff. In the instant case, the PTO alone could not constitute the public or a section of the public. In the absence of evidence that the matter was published to other timbermen or members of the public or a section of it, it could not be said that the words exposed the plaintiff to public hatred, ridicule or contempt or in any way injured him in his trade."***

In the instant appeal, the fact that the defamatory statement was read out during a press conference organized on the 17th day of March 2020 is not in doubt and as per pages 57 and 58 of the record of appeal.

I therefore find that the said defamatory statement was published in the media such as Adom TV, Joy TV, United TV including other online portals per page 93 of the record of appeal.

In the case of **ODAMETEY v. CLOCUH AND ANOTHER [1989-90] 1 GLR 14-45, the SUPREME COURT, per ADADE, TAYLOR, FRANCOIS, WUAKU AND AMUA-SAKYI JJ.S.C. in holding (1)**

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7 (1989 - 90) 1 GLR 14– 45.

Held:

> **"(1) the present position was that if the plaintiff in a civil suit failed to discharge the onus on him and thus completely failed to make a case for the claim for which he sought relief, then he could not rely on the weakness in the defendant's case to ask for relief. If, however, he made a case which would entitle him to relief if the defendant offered no evidence, then if the case offered by the defendant when he did give evidence disclosed any weakness which tended to support the plaintiff's claim, then in such a situation the plaintiff was entitled to rely on the weakness of the defendant's case to strengthen his case. That was amply supported by sections 11 and 12, particularly section 11 (4) of the Evidence Decree, 1975 (N.R.C.D. 323).**

SEE : <u>BARIMA GYAMFI AND ANOTHER V AMA BADU</u>[1]

In the instant appeal before this court and per the evidence on record, I have no doubt in my mind and without re – inventing the wheel that the Respondent led evidence on the balance of the preponderance of the probabilities to establish his case.

Having so held, will any defence avail the Appellant by way of fair comment? It was argued on behalf of the Appellant that assuming without admitting that if the words complained of by the claimant were defamatory then the defence of fair comment will avail the Defendant of any liability.

It was argued on behalf of the Respondent that the comment must be fair in the sense of honest comments and fair on a matter of public interest. It was further argued further on behalf of the Respondent that the comment is a statement of opinion of facts and that the defence does not extend to misstatement of facts however bona fide. See **BENNEH v. NEW TIMES CORPORATION AND ANOTHER [1982-83] GLR 302 – 311 as quoted by both Counsel for the Appellant and the Respondent.**

See also:

1. Hartt v News Publishing plc (1989) The Times 9 November

2. Slim v Daily Telegraph [1968] 1 All ER 497 @ 503

3. Daily Dispatch and Another v Bonsu and Another [2010] SCGLR

459 – 461

4. London Artist v Littler (1969) 2 QB 375 @ 379

[8](1982 - 83) GLR 302 – 311

It was rightly established that the contents of **Exhibit A** was not factual and same is supported by the evidence on record. I however observed the intelligent and brilliant manner the Appellant sought to avoid liability by urging the defence of fair comment on this court. This is because the Appellant used and relied on words like suspicion, alleged and suspects as a decoy to escape liability when he knew very well the statements relied on were false to the extent that it refers to the Respondent.

From the foregoing, I find and hold that the defence of fair comment will not avail the Defendant/Appellant.

I further hold that having published the defamatory words exposed the Respondent to hatred, disparage, ridicule and did injure his hard earned reputation as a Lawyer and a Legislator, in the minds of the right thinking members of the society.

CONCLUSION

I have examined the entirety of the evidence on record and hold that the judgment or decision of the Court below (District Court, Winneba) delivered on 28th day of August, 2020 and same cannot be disturbed.

The judgment of the trial Court is affirmed and the Appeal is dismissed.

The Appellant/Defendant is ordered to comply with the order of the court to render an unqualified apology to the Applicant and also retract the defamatory statement at the press conference held on 17th March, 2020 by

using the same media outlets such as Adom TV, Joy TV, United TV and portal outlets used in the publication of the defamatory statements.

Cost of GH¢6, 000, 00 is awarded against the Appellant in favour of the Respondent.

(SGD)

H/L JUSTICE ABOAGYE TANDOH

JUSTICE OF THE HIGH COURT

HIGH COURT, WINNEBA

C. H. CHAMBERS ESQ, COUNSEL FOR RESPONDENT.

B. B. SIMPSON ESQ, COUNSEL FOR APPELLANT.