

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE, HOHOE, HELD ON FRIDAY THE 17TH DAY OF
MARCH 2023 BEFORE HIS LORDSHIP AYITEY ARMAH-TETTEH J.

SUIT NO: E12/29/2021

BORIS FIDELIS

--- PLAINTIFF

VRS

JANET MIKADO

--- DEFENDANT

PARTIES: - PLAINTIFF PRESENT

DEFENDANT ABSENT

COUNSEL: MR. OSCAR VULOR PLAINTIFF

J U D G M E N T

The Plaintiff on 29 January 2021 issued out a writ of summons against the defendant claiming the following reliefs:

- 1. The Plaintiff's claim is for special damages for deceive (sic) by the Defendant for wrongfully, intentionally and falsely representing that Plaintiff was responsible for the pregnancy for which act the Plaintiff suffered damages against the defendant.*
- 2. General damages for deceive(sic).*
- 3. Costs*

Briefly, the Plaintiff's claim is that in the month of November 2019, the defendant lodged a complaint at the Domestic Violence and Victim Support Unit (DOVVSU) of the Ghana Police Service, Hohoe against the Plaintiff that she was impregnated by the Plaintiff. According to the Plaintiff he denied the allegation when he was called to the office of the Divisional Commander of Police with CHRAJ and the District Social Welfare Officer in attendance. It is the case of the Plaintiff that to avoid scandal, he agreed to pay maintenance allowance of Ghs 100.00 per month until the Defendant gives birth. According to the Plaintiff on the 17th of July 2020 he caused a Writ of summons to issue before the District Court, Hohoe, suit No A6/01/2021 against the Defendant in suit entitled FIDELIS BORIS v. JANET MIKADO. It is the further case of the Plaintiff that the court ordered a paternity test when the child was born, and the report indicated that the Plaintiff was not the father of the child. It is the case of the Plaintiff that the court ordered him to bear the cost of the test.

The defendant was served with the writ of summons and statement of claim. She entered appearance on 10 August 2021 and filed a defence on 31 August 2021 and denied the claim of the claim of the Plaintiff in its entirety. According to the Defendant, she sent her former husband to DOVVSU and the Plaintiff as a Police Officer was in charge of the case. It is the case of the Defendant that they later entered into an amorous relationship for two and half years. And that it was within this period of their amorous relationship that she got pregnant. According to Defendant, the Plaintiff asked her to terminate the pregnancy, but she refused and gave birth. It is the case of the Plaintiff that the DNA result is fake, and the plaintiff is the father of her child. The defendant then counter claimed as follows:

‘Compensation from the Plaintiff for the 2 ½ years spent with Plaintiff as a wife, cook, wash (sic) , slept and have(sic) intercourse with defendant.’

ISSUES FOR DETERMINATION

At the close of pleadings the following issues were set down for the determination of the suit:

1. Whether or not the Magistrate Court, Hohoe has determined the issue of paternity of defendant's child.
2. Whether or not the defendant is liable for deceit of Plaintiff.

At the Application for directions stage and after unsuccessful attempts to resolve the matter through the Court Connected Alternative Dispute Resolution system, the parties were ordered to file their respective witness statements for the case to proceed to trial. The case was then adjourned for case management. The Plaintiff filed his witness statement and pretrial check list as directed by the court. The defendant upon several adjournments and extension of time within which to file her witness statement and pretrial check list refused to file comply with the court's directive.

The Court on 24 January 2023 conducted case management conference and in accordance with Order 32 Rule 7A(3)(b) of the High Court (Civil Procedure) Rules, C.I. 47 struck out the statement of defence and counterclaim of the defendant for failure to comply with the directives of the Court and the case adjourned for hearing on plaintiff's claim. Order 32 Rule 7A (3)(b) provides as follows:

(3). Where a party has failed to comply with any of the directions given at case management conference or a pre-trial review or both, the judge may make any of the following orders-

(b) strike out the defence and counterclaim as the case may be, if the non-complying party is a defendant;

The Court ordered that the Defendant be served with a hearing notice for the hearing. Even though there was proof of service that the hearing notice was served on the Defendant she refused to attend the trial.

The Plaintiff testified but did not call any witness.

ISSUE 1: Whether or not the Magistrate Court, Hohoe has determined the paternity issue of defendant's child.

The Plaintiff testified as follows:

"I sued the defendant for deceit. The Defendant made an allegation against me for impregnating her. I denied the allegation. I was brought to the office of the Hohoe Divisional Commander at which meeting a representative of CHRAJ and the District Social Welfare Officer were in attendance. I was prevailed upon to pay a maintenance allowance every month until the defendant delivered, and a paternity test taken. On the 17th of July, I issued a summons at the Hohoe District Magistrate Court against the Defendant. The suit number was A6/01/2021. The suit was titled Fidelis Boris vrs Janet Mikado. I together with the Defendant or Respondent appeared before the Family Tribunal of the Hohoe District Magistrate Court. On 7th of August 2020, the Family Tribunal made an order for a child paternity test. The test was done, and the result was that I did not father the child, or I was not the father of the child."

The Plaintiff tendered the DNA Report as Exhibit A.

The result was given as :

“An incompatibility with paternity was found at more than two (2) markers. Paternity of individual 1 (Mr. F. BORI, ID 19/06/1982 is excluded.”

The Plaintiff also tendered in evidence Exhibit B the proceedings of the Family Tribunal in suit No. A6/01/2021. The Tribunal found as follows:

“By this report it appears to me that the doctor has found out that the applicant is not the father of Stephanie Boris.”

In my view the issue of the Paternity of the child has been established between the parties by a competent court of jurisdiction and it operates as an issue estoppel between the parties.

For estoppel to apply the issues raised in the new action should have been dealt with by a court of competent jurisdiction between the same parties and persons deriving rights from them.

In **Dahabieh v SA Turqui & Bros** [2002-2002] SCGLR 498 the Supreme Court held as thus:

“It is well-settled under the rule of estoppel that if a court of competent jurisdiction has tried and disposed of a case, the parties themselves and their privies cannot bring an action on the same claim or issue. The rule covers matters actually dealt with in previous litigation and could have been brought up for determination but were not raised.”

In the instant case the Defendant is estopped from raising the issue of the paternity of the child as same has been determined by the Family Tribunal, Hohoe.. That issue has

already been determined by the District Court and I find that the Plaintiff is not the father of the child of the defendant.

ISSUE 2: Whether or not the defendant is liable for deceit of Plaintiff

Deceit is a tort or civil wrong arising from a false statement of fact made by one person, knowingly or recklessly, with the intent that it shall be acted on by another, who suffers damage as a result. To succeed in deceit, the Plaintiff must be able to establish that the Defendant made a fraudulent statement which statement the Plaintiff acted upon it to his detriment. See *Introduction to the Laws of Torts in Ghana* by Kofi Kumado

The fraud for the purposes of establishing deceit has been defined in **Derry v. Peek** (1889) 14 AC 337 as a false representation which is made without any belief in its truth, or, recklessly carelessly whether it be true or false.

at page 208 of Kofi Kumado's book supra, he gave the elements for the tort of deceit as follows:

- I. *the defendant must make a fraudulent representation as defined in Derry v Peek i.e., he must either know that it is false or make it recklessly, not caring whether it is true or false;*
- II. *he must intend that the plaintiff act or fail to act on the representation.*
- III. *the plaintiff must suffer damage as a result of his reliance on the representation.*

In the instant case the defendant informed the Plaintiff that she was pregnant and that the plaintiff was responsible for the pregnancy. This statement turned out to be false per the results of the DNA test results Exhibit A. The defendant knew or ought to have known that the statement he made to the plaintiff was false. She was the woman who was pregnant and generally it is only a pregnant woman who knows who the author of her pregnancy is.

The defendant intended the Plaintiff to act on the false statement that Plaintiff was the author of her pregnancy. The Plaintiff acted upon it and suffered damage. He incurred pecuniary loss. From the evidence adduced by the plaintiff he paid Ghs 100.00 per month as maintenance from November 2019 to October 2020. He also spent Ghs 500.00 on transport and Ghs100.00 on food. The cost of the DNA test was GHS2,700.

I find defendant liable to the Plaintiff for deceit and I accordingly enter judgment for the Plaintiff as follows:

1. Special damages of Ghs 4,300.00
2. General damages of Ghs 10,000.00
3. Costs of Ghs 6,000.00

(sgd)

AYITEY ARMAH-TETTEH J.

(JUSTICE OF THE HIGH COURT)