IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION "2")

ACCRA-A.D.2023

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CORAM:

ERIC BAAH, JUSTICE OF APPEAL, SITTING AS AN ADDITIONAL HIGH COURT JUDGE

CIVIL SUIT NO: GT/892/2018

DATED: WEDNESDAY 15 MARCH 2023

ANAS A. ANAS----------PLAINTIFF

Versus

KENNEDY AGYEPONG----------DEFENDANT

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JUDGMENT

INTRODUCTION

This, no doubt, is a judgment on a mammoth case. It is so by reason firstly of the personalities involved, secondly by the nature of the issues around which the case revolves and thirdly, by reason of the expected wide reach of the accusations of the defendant and the responses by the plaintiff resulting in this suit, ''*thanks*" to modern media and communication systems.

The plaintiff and defendant are national figures of varied degrees of reputation and popularity. It cannot be doubted that a stain on the reputation of the plaintiff; if the accusations of defendant are untrue, unfair, and unjustified, would have been far reaching. The damage to be caused the credibility and standing of the defendant will also be damning, should it turn out that he made the serious and widespread allegations knowing them to be false, inaccurate, unfair, or unjustified.

The plaintiff who identifies himself as a lawyer and ‘’*an internationally acclaimed investigative journalist*’’ with several local and international awards and stated recognitions, per his lawful attorney, approached the court on 18 June 2018, seeking redress in the form of monetary damages, the quantum of twenty-five million Ghana cedis, for the tortious offence of libel, allegedly committed against him by the defendant, by reason of which his name, reputation and image has been critically damaged.

Plaintiff identified the defendant as the member of parliament for Assin Central constituency, owner of Kencity Media and a proprietor of a television station and several radio stations. The writ of summons issued by the plaintiff on the said 18 June 2018, was amended on 20 November 2018. Defendant entered (a conditional) appearance on 3 July 2018, and followed it up with a statement of defence on 13 November 2018. Plaintiff’s reply was filed on 21 January 2019. With the pleadings set, the cases of the parties were as below.

A. CASE OF PLAINTIFF

Plaintiff’s case is founded on several statements and comments defendant made on different dates and on varied media platforms allegedly in reference to plaintiff, which plaintiff asserts, amounts to

defamation. The dates, media platforms on which the statements were made, and the specific words of the defendant have been pleaded and particularized by plaintiff in the amended statement of claim.

The effects of the words published by defendant, as perceived by plaintiff in their natural and ordinary meaning; and in his view the audience who heard them, have been outlined in paragraph 15 of the amended statement of claim. According to plaintiff, the words which referred to him were meant and understood to mean that:

i. *The plaintiff is a self-confessed thief.*
ii. *The plaintiff is a murderer, and he killed a former member of parliament, Joseph Boakye Danquah Adu.*
iii. *The plaintiff is an abettor of the murder of several Chinese nationals.*
iv. *The plaintiff is an evil and dishonest person.*
v. *The plaintiff is a thief.*
vi. *The plaintiff is suffering from mental derangement.*
vii. *The plaintiff cheated his way through Law School.*
viii. *The plaintiff promotes illegal mining.*
ix. *The plaintiff is a fraudster.*
x. *The plaintiff is an extortionist.*
xi. *The plaintiff is a blackmailer.*
xii. *The plaintiff is corrupt.*
xiii. *The plaintiff corrupts public officials.*
xiv. *The plaintiff engages in tax evasion.*
xv. *The plaintiff engages in custom duty evasion.*
xvi. *The (plaintiff) takes bribes to influence the outcome of his investigative journalistic work.*
xvii. *The plaintiff impersonates as a lawyer.*

xviii. The plaintiff engages in criminal assault.

xix. The plaintiff engages in threat of death.

xx. The plaintiff engages in threat of harm.

xxi. The plaintiff is a land guard.

xxii. The plaintiff engages in illegal land grabbing.

xxiii. The plaintiff interferes with the administration of justice.

xxiv. The plaintiff is an odious and contemptible person.

xxv. The plaintiff is a cheat.

xxvi. The plaintiff molests children.

xxvii. The plaintiff inordinately discredits foreign powers.

xxviii. The plaintiff terrorizes people.

xxix. The plaintiff engages in fraudulent acts and extortion with his lawyer.

xxx. The plaintiff is an email and messages hacker.

The plaintiff further averred that the words of the defendant were meant or understood by innuendo to mean that:

i. *The plaintiff conspired with the widow of Joseph Boakye Danquah Adu to cause his death, engaged in adulterous relationship, and conspired to sell his landed property immediately after his death.*

ii. That plaintiff is a gangster in the mould of the Italian American John Gotti.

B. CASE OF DEFENDANT

Defendant who identifies himself as an "*anti-corruption crusader and campaigner'',* asserted in his statement of defence that during his anti-corruption campaign, he came across information indicating that the *modus operandi* of the plaintiff was the extraction of benefits through corrupt activities by blackmailing suspected corrupt individuals, making

money from them, and thereafter shielding them from criminal prosecution. Save challenging the translation from Twi to English of some of the alleged defamatory words, defendant contended that the words spoken by him of the plaintiff were factual, true, or opinions of him of the plaintiff, intended to expose the malicious intentions of the plaintiff to Ghanaians, which could therefore not have been uttered deliberately to injure the image and business reputation of the plaintiff. Since the words were true; defendant averred, they could not have occasioned distress and embarrassment to the reputation of the plaintiff. He cited several investigations into corruption conducted by him involving high personalities, one of which resulted in an order by the apex court for the refund of millions of cedis by a businessman.

He insisted that his comments are true, factual, and fair, and therefore justified. He particularized the grounds for the justification of his comments against plaintiff in paragraph 19 of his statement of defence.

C. ISSUES

At the close of pleadings, the following issues were settled for the determination of the case:

a. *Whether or not the words which the defendant published and or caused to be published of the plaintiff and set out in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the amended statement of claim in their natural and ordinary meaning meant and were understood to mean the matters pleaded in paragraphs 15, 16 and 17 of the amended statement of claim.*
b. *Whether the words published and or caused to be published by the defendant of the plaintiff and set out in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the amened statement of claim are defamatory of the plaintiff.*

c. *Whether the words published and or caused to be published by the defendant of the plaintiff and set out in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the amended statement of claim were fair comment on a matter of public interest.*
d. *Whether the defendant was justified in publishing and or causing to be published of the plaintiff the words set out in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the amended statement of claim.*
e. *Whether the plaintiff is entitled to damages for libel.*
f. *Whether the plaintiff is entitled to aggravated damages per the matters pleaded in paragraph 20 of the amended statement of claim.*
g. *Any other issue(s) arising from the pleadings.*

Additional issues

The following additional issues filed by the defendant were equally adopted by the court.

a. *Whether the words or comments uttered by the defendant mainly in local dialect (Twi) about the conduct of the plaintiff are true and factual?*
b. *Whether or not the comments or words uttered by the defendant mainly in local dialect (Twi) were justified and fair.*

D. WRITTEN ADDRESSES

At the close of the evidence, the court ordered addresses to be filed by counsel for the parties. Counsel for the plaintiff filed his address on 24 January 2023, while counsel for defendant filed his earlier on 30 November 2022. Both counsel addressed the court on the evidence adduced, the applicable law and what they perceived to be the effect of the alleged defamatory words in the context of the law on defamation.

They referred the court to a number of authorities which were of much assistance to the court. I will revert to these addresses in the course of the judgment.

E. APPROACH

I will begin with a brief, but concise statement of the evidential burdens placed on the parties by reason of the pleadings and the evidence, and show the undulating nature of the burdens, as the pieces of evidence rose and fell.

I will then proceed to a crisp statement of the law on defamation as is relevant to this case, particularly in the *specie* of libel and its defences, to which the claims and defence of the plaintiff and defendant respectively would be subjected, for a determination as to which of the parties' anchor held, and which unraveled.

If plaintiff prevails after the examination of the totality of the evidence, he will be entitled to damages as claimed, or damages of a quantum deemed fit by this court. That compelled me to at least, skeletonize the remedies available to a victorious party in the tort action of defamation.

F. CHOICE OF LAW

The **Courts Act, 1993 (Act 459)**, recognizes two legal regimes for the protection of the reputation of people. The two systems are customary law and common law, one of which must be chosen for the trial of a defamation case.

When a defamation suit is between two Ghanaians, the personal law which ought to apply is the system of customary law to which the parties are subject.

Customary law defamation protects both reputation and injured feelings, and is therefore wider than common law defamation, which protects only reputation. Whereas common law recognizes slander and libel, customary law deals only with slander.

At customary law, slander is actionable *per se,* that is, without the need for proving special damage. At common law, libel is equally actionable *per se*, but slander is actionable only on proof of actual damage.

The parties herein are citizens of Ghana. The system of law applicable would have been their personal law under S. 54 of the **Courts, 1993 (Act 459).** The difficulty in this case is that, whereas the Plaintiff is a Christian, the Defendant is a Moslem. It was therefore difficult to select a set of customary law that could apply to both.

I accordingly decided to adopt the common practice of the courts of Ghana, which is the application of the common law rules on defamation.

At common law as aforesaid, libel is actionable *per se*. There is no need to prove actual damage in the form of money lost or lost advantage which can be quantified into money.

G. BURDEN AND STANDARD OF PROOF

In all civil suits, the primary burden of proof, that is, the duty of producing evidence in support of averments necessary for the court's decision, is upon the party who made the averment. The primary burden of proof is usually on the plaintiff because he made the primary averments when he instituted the action. However, where the plaintiff adduces sufficient evidence in discharge of the primary burden, the onus shifts under section 14 of Act 323 onto the defendant, who under section 10 (2) of Act 323, is required to adduce sufficient evidence in rebuttal, in order to avoid a ruling against him on the particular issue, see-**Faibi v State Hotels Corporation [1968] GLR 471**.

Where a defendant has a counterclaim, the same primary burden of proof, and standard of proof are placed on him as it is with the plaintiff, see-**Birimpong v Bawuah [1994-95] GBR 837.**

The obligation on the party making the averment is two-fold. The first is the production of evidence in proof of the averment, as required by sections 11(1) and 14 of the **Evidence Act, 1975 (N.R.C.D 323).**

Firstly, that burden may be discharged by adduction of evidence by the plaintiff himself or by his witness(es).

Secondly, the burden of producing evidence may be discharged if the averment made by the plaintiff or defendant-counterclaimant, is admitted by the opponent. In **West African Enterprise Ltd v Western Hardwood Enterprise Ltd [1995-96] 1 GLR .CA**, it was held (in holding 3),

''...no principle of law required a party to prove an admitted fact.''

Thirdly, the burden of proof may be discharged by evidence from the mouth of an opponent or his witness. In **Nyame v Tawiah & Anor [1979] GLR 265, C.A (Full Bench),** it was held:

''*A party could prove his case by admissions from the mouth of his opponent or his adversary's witness...*''

See also-**Tsrifo v Duah VIII [1959] GLR 63; Ameoda v Pordier [1967] GLR 479** and **Eugene Guddah & Ors v Goldfields (Ghana) Ltd [2006] 8 M.L.R.G 13, C.A**

The second leg of the obligation on the averrer is to ensure that the evidence adduced meets the standard of proof set by the law. The evidence must be sufficiently cogent in persuading the trier of fact under section10 (1), Act 323, of the existence of the fact alleged. The test applied by the trier of fact in determining whether the evidence adduced was persuasive, is ''*proof by a preponderance of probabilities*'', under section 12 of Act 323, see-**Majolagbe v Larbi [1959] 2 GLR 190; Owusu v Tabiri & Anor [1987-88] 1GLR 287; Fosua & Adu-Poku v Adu-Poku Mensah [2009] SCGLR 310** and **Agbeko v Standard Electric Co [1978] 1 GLR 432.**

Where a party alleges the commission of crime by the other in a civil suit, the standard of proof is the same as in a criminal case, which is "*proof beyond a reasonable doubt.*" In **Sasu Bamfo v Simtim [2012] 1 SCGLR** 136 at 138, it was held:

"*The law regarding proof of forgery or any allegation of a criminal act in a civil trial was governed by section 13 (1) of the Evidence Act, 1975 (NRCD 323); that section provided that the burden of persuasion required was proof beyond reasonable doubt…*"

See also-**Fenuku v John-Teye {2001-2002] SCGLR 985 and Commey v Bentum-Williams [1984-86] 2 GLR 301**, at 303**, CA.**

In criminal cases, the rule has crystalised into a voluntary confession being a sufficient ground for conviction, thereby discharging the prosecution from its burden of proof and persuasion, see section 120**, Evidence Act, 1975 (NRCD 323.**

I shall be guided by the above guidelines on the burden of proof and standard of proof in evaluating the evidence placed before me by plaintiff in proof of the alleged defamation, and the defence of justification and fair comment put up by the defendant.

Since the plaintiff was the one who approached the court with the claims, my task will begin from his doorstep. I will first determine whether the plaintiff was able to prove that the statements were defamatory and then proceed to determine as to whether the defence of justification and fair comment put up by defendant succeeds or fails.

H. DEFAMATION AND FREEDOM OF EXPRESSION

Freedom of expression versus the right to human dignity and its defence through the law of defamation

The constitution of Ghana guarantees the right of individuals, the press and other media to free speech, expression, and opinion, see article 21 of the constitution. An individual, press or media may say whatever he, she or it likes, anywhere, anytime, and anyhow. This right cannot be curtailed by the government or any other individual, except under another law either provided in the constitution or any other law of this land.

The right to free speech is however not the only fundamental right enshrined in the constitution. Respect for human dignity is equally guaranteed and entrenched. Under article 15 of the constitution, "*The dignity of all persons shall be inviolable."*

The right to free speech and the dignity of the individual are two competing constitutionally guaranteed values, none of which is superior to the other. One cannot therefore claim that because of the right to free speech, he can say anything to disparage the reputation of his neighbour, and the neighbour cannot also claim that because of his right to dignity, the other cannot exercise his right to free speech.

In contest in this case is defendant's right to free speech and expression, and plaintiff's right to the inviolability of his dignity and reputation.

The constitutional device for adjudicating conflicts between two guaranteed constitutional values (rights) is *weighing* and *balancing*, see- **Barak**, ***The Judge in a Democracy***, **2006, Princeton, 160-170).** Weighing and balancing, or whatever other term may be used for it, is a constitutional interpretative devise which is a jurisdictional preserve of the Supreme Court, and way beyond my jurisdiction in this first-tier of the superior court of judicature.

The law of defamation however gives this court jurisdiction to umpire a dispute between an individual's right to dignity, and the right to free speech and expression, as this case presents.

It is by the law of defamation that persons; natural and artificial, protect their reputations and dignity from unwarranted and malicious attacks, see-

Offei, ***The Law of Torts in Ghana*** *(2014, GIALS, KNUST, 527*); Kumado, ***Introduction to the Law of Torts in Ghana*** *(2019, 2nd ed, Black Mast, Accra, 27).*

As it is often said, the right to point accusing fingers (free speech), ends at the border of the nose (dignity) of the subject of the speech. When someone's nose is breached, *prima facie*, the exercise of a right has encroached on the enjoyment of another right. Most people grieve silently when their right to dignity is so violated, but there are many who won't tolerate the slightest dint on their reputations.

When someone approaches the court with a complaint of defamation, the court examines the *bona fides* of his claim as against the defence of his defendant. I will now proceed to what the courts have established mainly by precedent, to be the elements which every defamation suit must satisfy.

I. ELEMENTS OF DEFAMATION

In every defamation action, the plaintiff is required to prove a number of fundamental elements. The four elements of defamation agreed amongst authors and the sumptuous list of decided cases; both local and foreign, are the following (see-Offei *op. cit,* 530; Kumado, *op. cit.* 2019, 238-248):

a. That the words were capable of defamatory meaning.
c. That the words were actually defamatory.
d. That the words referred to the claimant, and
e. That the words were published by the defendant to at least one person other than the plaintiff.

I will hereunder expatiate on the elements of the law of defamation as listed above.

a. That the statement is capable of defamatory meaning

A statement is defamatory if it '*tends to lower the claimant in the estimation of right-thinking members of the society generally'* see **Sim v Stretch [1936] 2 ALL ER 1237 AT 1240**.

The statement must result in the claimant being opened up to "*hatred or contempt … or causing people to shun or avoid him or to discredit him in his office, trade or profession.*" see: Offei, (*op cit*, 530) and the case of **Parmiter v Coupland [1840] 65M X W 105 AT 108**.

The learned authors of ***Clerk & Lindsell on Torts*** (6th ed. 1080-1081) explain the essence of the law of defamation thus:

"*The right of each man, during his lifetime, to the unimpaired possession of his reputation and good name is recognized by the law. Reputation depends on opinion, and opinion in the main on the communication of thought and information from one man to another. He, therefore, who directly communicates to the mind of another matter untrue and likely in the natural course of things substantially to disparage the reputation of a third person is, on the face of it, guilty of a legal wrong."*

In **Eric Kwame Amoah v Ben Owusu Domena [2014] DLSC 2915,** the Supreme Court per Benin JSC held:

> *"For the present case, the definition proffered by the editors of Halsbury's Laws of England 4th edition. (Reissue) vol. 28 para 10 is appropriate. It provides: '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."*

See also: **Professor E. O. Adekolu v. The University of Development Studies [2014] DLSC 2938**, in which the apex court per Dotse JSC,

expatiated on the meaning and nature of the law of defamation, and see further the cases of **Wankyiwaa v Wereduwaa [1963] 1 GLR 323** and **Afful v Okyere Anor [1997-98] 1GLR 730**.

i. Types of defamation

There are two types of defamation, that is libel and slander. Libel is defamation through a permanent medium. The easiest example is writing, such as a newspaper publication. There are however several permanent mediums by which a person may be defamed. Disparaging statements made in a book, photograph, cartoon, radio, television, film, on the internet, by artwork or waxwork (effigy), are all defamation per libel, see Offei (*op. cit.* 527-528) and the case of **Youssoupoff v MGM Ltd [1934] 50 TLR 581**, where defamatory matter in a film was held to be libel.

Slander on the other hand occurs where the defamatory matter is in temporary or transient form such as spoken words.

The importance of the dichotomy between libel and slander at common law is that, whereas libel is actionable *per se*, that is without proof of actual damage such as loss of money or some advantage estimable in money, slander, save in a few exceptional cases, is based on proof that the claimant has suffered some damage.

The statements of defendant were in both permanent and transient forms. The pictorial films are definitely in permanent form, and therefore in the realm of libel. There are however a number of words spoken on various radio (and television) stations which do not lend themselves to the permanency test of libel.

It is yet to be settled by judicial authority as to whether words spoken on radio or television, or contained on a pen drive, cassette or tape recording constitutes libel or slander, see Offei, op. cit.,528.

The law in England per s. 166 of the **Broadcasting Act** 1990, stipulates that words published on a radio or television programme should be treated as permanent and therefore libellous. Without actually or pretending to apply that English law to this case in Ghana, I will adopt its cogent logic and spirit, which incidentally is the viewpoint of most legal commentators (Offei, op. cit.,528).

I determine therefore that the words spoken by defendant of plaintiff on radio and television, are in the libel category and will be treated as such.

b. That the words were actually defamatory

Beside establishing that the words complained of were capable of defamatory meaning, the plaintiff must prove that they are actually defamatory, see Kumado, *(op. cit. 240-241)* and **Mrs. Abena Pokuaa Ackah v Agricultural Development Bank (civil Appeal no. j4/31/2014, delivered 19/12/17** (unreported).

The trust of this element is that it is not enough for the subject words to be of a defamatory nature. The words must actually result in defaming the plaintiff. For instance, a plaintiff cannot win his case if a known mentally challenged person calls him a thief. Nobody will take the words of a mad man seriously. If a man who has been proven to have stolen is called a thief, the words are true and could not have actually defamed the plaintiff, excerpt in circumstances where the allegation was made out of malice, solely to irritate the plaintiff and open his past for ridicule.

Offei (*op cit,* 53, para 3) explains the perspective from which an allegation of defamation ought to be examined by a court of law. He cites the case of**, The Times 9 Hart v Newspaper Publishing PLC [1989November],** where it was held that in deciding whether or not a statement was defamatory, the approach which should be adopted is that of the hypothetical ordinary reader *"who was neither 'naïve' nor 'unduly suspicious' but who 'could read in an implication more readily than a lawyer and might indulge in a certain amount of loose thinking'. On the other hand, the hypothetical ordinary reader was not someone who was avid for scandal, and he was not someone who will select one bad meaning where the other, non-defamatory meaning were available."*

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Absent a jury in civil trials in Ghana, judges determine both questions of fact and law. As a judge of the facts, I would have to adorn the garbs and assume the thinking of the "*hypothetical ordinary reader*", in examining the subject words to determine whether they actually defamed the plaintiff.

I now turn to the third element of defamation, which is whether the words complained of were in reference to the plaintiff.

c. **That the words referred to the plaintiff**

For the defamatory words complained of to be referrable to the claimant, two things must be shown.

i. *That the statement must be reasonably be understood to refer to the claimant, and*
ii. *That the statement must be understood by reasonable people as referring to the claimant.*

See-Offei (op cit, 536) and **Morgan v. Odhams Press Ltd [1971] 1 WLR 1239.**

In **Knupffer v. London Express Newspaper Ltd [1944] AC 116 AT 121**, Lord Atkin stated:

"To be actionable, the defamatory words must be understood to be published of and concerning the Plaintiff."

Even though the judge decides as to whether the statement refers to the claimant, the decision is based on whether a reasonable man or an ordinary reader will believe that the statement was referring to the claimant. A defamatory statement naming the claimant is *prima facie* of reference to him. The task of determining a reference to the claimant becomes complex where the claimant is not named or the statement is an *innuendo*, or where the statement refers to a class of persons, and the whole class or one of them decides to sue, see-**Knupffer v London Express (1858) 1 F&F. 347: Browne v D.C. Thompson & Co Ltd. (1912) S.C. 359; Joseph Le Fanu v Joseph Malcolmson [1940] 2 KB 507.**

If a defamatory statement is not clear as to its reference to the claimant, but subsequent statements are made which unambiguously refers to the claimant, the court can contextualize the body of statements and deduce that the first statement referred to the claimant.

Accordingly, indirect defamatory statements are sufficient if there is enough evidence to point to the claimant as the subject of the statement, see-**Morgan v Odhams Ltd [1971] 1WLR 1239.**

A statement may be defamatory if even though not intended to refer to the claimant, contains sufficient details that link the claimant to the statement, see-**Hulton v Jones [1910] AC 20** and **Newstead v London Express Newspapers Ltd [1940] 1 K B 377.** It is not a defence for the defendant to claim that he did not know the claimant and the statement was not intended to refer to him, see **Newstead v London Express Newspapers Ltd** (supra).

d. That the words were published to at least one person beside the claimant.

The fourth and last element is publication of the defamatory matter. The claimant must prove that the alleged defamatory statement(s) was published by communication of the words to at least, one person other than the claimant. On the authority of **Pullman v. Walter Hill and Co [1891] 1 QB 524,** Offei (op. cit, 528-539) explains the rationale behind this element:

> *"The reason why publication to the claimant alone is not actionable is that the tort of defamation protects a person from injury to his reputation among people, and not from injury to feelings about himself".*

In **Pullman v Walter Hill & co** (supra), Lord Esher MR, defined publication as:

> *"Making it known the defamatory matter, after it has been written or spoken to some person other than the person of whom it is written or said."*

In that case, the contents of a letter containing defamatory matter were deemed to have been published to clerks and other persons who became

aware of it in the ordinary course of their business or office. Where the communication is done in a manner that third parties are not in the ordinary course of events expected to read or hear about it, or where the information is stolen or eavesdropped, there is no communication in law, see **Huth v Huth (1915) 3 K.B 32.**

Communication may be through varied forms. Probably, the loudest way to broadcast defamatory material is through radio and television, which are the channels defendant is alleged to have used in the instant case. Other forms of communication are newspapers, emails, SMS, and postcards.

J. DEFENCES

A defendant to a defamation suit may fall on the five defences that are available, see Kumado (*op. cit* 249-255). These are:

a. Absolute privilege
b. Qualified privilege
c. Fair comment
d. Justification, and
e. consent.

a. Absolute privilege

A communication which may by its context and occasion be defamatory, may be defended on ground of absolute privilege. Free speech may trump reputation on ground of public policy, aimed at the protection of the public interest. A defence founded on absolute privilege, present or absent malice, is a complete defence to a defamatory suit.

Absolute privilege covers communication on executive matters, judicial and legislative proceedings, and solicitor-client communication.

b. Qualified privilege

A fair and honest statement made by a person on a reasonable occasion in the discharge of a public or private duty is privileged. Qualified privilege

exists to promote common convenience and the welfare of society, see-**Toogood v Spyring 149 E.R. 1044.** Under qualified privilege comes (i) words relating to matters of common interest (ii) words protecting the interest of the publisher (iii) words protecting the public interest (iv) words advancing the public interest and words highlighting misconduct of public officials, see-Kumado (*op. cit*. 250-253).

Any aspect of the defence of qualified privilege is defeated if the plaintiff is able to establish that the publication was made maliciously, see **Groom v Crocker [1939] 1 K.B 194.**

The existence of inaccuracies in the publication however is not enough to defeat the defence of qualified privilege. Put differently, factual doubts in a publication are not sufficient to erase the defence of qualified privilege, see-**Tsikata v Independent Newspapers Publications Plc [1997] 1 All ER 655.**

c. Fair comment

Honest and fair comment by way of comments and criticisms on public interest issues, absent malice, is a defence to a defamatory action. For the defence to succeed, the subject matter must (i) be a matter of public interest (ii) the comment must be founded on fact(s) and (iii) the comment must be an opinion, see-Kumado (op. cit 253-254).

d. Justification

A defendant who raises the defence of justification to a defamation suit says that the words he published are wholly or substantially true. He assumes the burden of proving the truth of the words published. A defence of justification is an absolute defence to a defamation action at common law.

e. Consent

If the publication was done with the consent of the plaintiff, an action by him will fail.

K. REMEDIES

The remedies available in defamation actions are injunction and damages. If the claimant becomes aware of the defamatory material before its publication, he may apply for an interlocutory injunction to forestall its publication, which may be made permanent if he succeeds in the action. The normal remedy after the matter has been published is damages, which may be punitive, exemplary, or nominal.

For the sake of logic and convenience, I will examine the evidence in terms of whether: (a) the statements were capable of defamatory meaning (b) the statements were published by defendant, (c) the statements referred to the plaintiff and (d) the statements were actually defamatory.

L. WHETHER THE STATEMENTS WERE CAPABLE OF DEFAMATORY MEANING

a. Evidence of plaintiff

The plaintiff testified through an attorney named Listowell Bukarson and a witness named Musa Ziyad (PW1). The witness statement of the plaintiff categorized the alleged defamatory statements made by the defendant with the dates and venues. A summary of those statements will be provided in a moment, after which the exhibits tendered by plaintiff will be listed.

The alleged defamatory statements made by defendant are hereunder itemized with their dates, venue, media, or channel of publication.

29 May 2018

Plaintiff testified through the attorney that in the course of a live programme called *Pampaso* in Twi on Adom TV, and in respect of an expose made by the plaintiff, the defendant during an interview said the

plaintiff is a blackmailer, extortionist, evil, corrupt, a thief. He alleged that plaintiff sets up people in Dubai, takes money and buy tablets for his wife to sell, of which he pays no tax.

Defendant also said plaintiff set up some politicians in Cote d' Ivoire and amassed wealth from corrupt activities, out of which he has acquired properties at Midace City, Dworwulu and Phinas Hostel, Phinas Pharma, apartments at Osu Cadilce. It was further alleged that plaintiff had grabbed lands at Trade Fair, where he uses land guards to beat people.

Again, defendant alleged that plaintiff has some relationship with one Ivy, wife of JB. Defendant also alleged that plaintiff brings tablets loaded in bags from Dubai of which no taxes are paid at the airport. He alleged that plaintiff uses a police officer called Gilbert Argar as a guard on 24/7 basis and uses him to beat people at Trade Fair. Defendant allegedly made a chocking sign, indicating that if it were in any other country, the plaintiff would have been killed.

a. 30 May 2018

On a live programme in Twi titled *The Dialogue* on Net2 TV, which was simultaneously aired on Oman 107.7 FM and Ash 101.1 FM radios based in Accra and Kumasi respectively, defendant during an interview alleged that in the course of his investigations, he received pictures and got to know about the things plaintiff does in Dubai. According to defendant, Anas traps people and demands a bid. When he receives the sum he desired, he does not telecast the videos.

He cited an alleged investigation on Mahama's boys which never saw the light of day because money changed hands. Another was the plaintiff being paid by one Duffuor to set up and disgrace an MD of Unibank called Felix Nyankopong. According to him, Al Jazeera and the BBC did not know about the real character of the plaintiff and hence their recognition of him. He labelled the plaintiff a naturally born evil person who has caused the lives of some people.

He repeated the blackmail and extortion allegations, alleged land grabbing and destruction of institutions of state by plaintiff. He alleged that plaintiff owns a big apartment called Midaze Residence with his friend called Philip. He queried the source of funding such a property. He again questioned the relationship between plaintiff and Ivy. He repeated the allegation that plaintiff does not pay tax on tablets he brings from Dubai for his wife to sell.

31 May 2018

The defendant was alleged to have made similar defamatory remarks on a Twi programme called *Boiling Point* on Oman 107.1 FM which is based in Accra.

4 June 2018

On a live programme in Twi called *Dwaaso Nsem* on Adom 106.3 FM, a radio station based in Accra, defendant is alleged to have made several defamatory statements against the plaintiff, including that if he caused a custom officer who took a bribe of GHC50 to be dismissed, and the death of a judge whom he investigated, then he (plaintiff) should be hanged for using the cover of investigations to amass; that he has about 40 videos but has brought out only 12 because he took bribes to protect the others captured on those videos; that he colluded with one Baba Tunde and Hafiz to shield them from a gold scam in which an investor lost $1.9 million.

According to him, the plaintiff has amassed so many properties which no genuine and honest journalist could acquire. He claimed that plaintiff took money and influenced a state attorney to make a case a "*foolish case*", and that was why plaintiff failed to tender evidence to facilitate a successful prosecution of the case. He alleged that it was the plaintiff and JB's wife who sold JB's house in the UK.

8 June 2018

The events that occurred on the date was after plaintiff had instituted the action against the defendant. On a live programme in Twi called *Ekosii*

Sen on Asempa 94.7 FM, which is a radio station based in Accra, defendant who was being interviewed from abroad admitted to hearing, reading, and being informed of the suit mounted by plaintiff. He repeated that the plaintiff is a thief and a blackmailer. He promised to face plaintiff in court with the evidence. He wondered why plaintiff sued him when he had denied being the person in the pictures. He mentioned one Hafiz as someone plaintiff took a bribe from. He alleged that plaintiff took USD100,000.00, out of the USD150,000.00 he demanded from one Kwasi Nyantakyi. He alleged that it was because Nyantakyi could not pay the full USD150,000.00 demanded that plaintiff showed the video of him. He further alleged that plaintiff collected USD50,000.00 from one Mubarak around the Accra Girls area. He in addition alleged that it was the plaintiff who took money from Hafiz and Mubarak to spoil a case at the court, and refuted the blame being cast on the trial judge. He repeated the allegation of bribery, land grab, blackmail, and extortion.

He alleged that the plaintiff was going to blackmail the sitting President of Ghana, but because he did not pay, he proceeded to show the video. He explained that as with all his victims, the plaintiff showed the video to the President, and if he had panicked and offered him money to shelve it, he (plaintiff) would have then made demand of the amount of money he desired.

26 June 2018

On a live radio programme in Twi on Adom 106.3 FM of Accra, dubbed *Dwaaso Nsem* defendant alleged that plaintiff made a video of an abortion doctor at Korle-Bu, but failed to make it public because he took money from the culprit. He alleged that plaintiff had been involved in crime for nine years at the time. He further said plaintiff took USD50,000.00 each from Hafiz and Mubarak and USD100,000.00 from Baba Tunde, who had defrauded certain persons from Dubai. In addition, he alleged plaintiff defrauded a car dealer of USD30,000.00.

He made it clear that he did not side with the officers who were dismissed as a result of plaintiff's investigations but was against his tactic of leaving others out for the sake of monetary gains. He alleged that plaintiff's father manufactured a fake death certificate to portray that his brother was dead in Tamale and then produced an obituary which he pasted at Burma Camp to extort money.

28 June 2018

According to plaintiff, upon service of the writ on the defendant, he appeared on Kasapa 102.5 FM in Accra, and during an interview, he alleged that he had information from plaintiff's guy that plaintiff is a cheat. According to the said person, plaintiff sent him to Cote d'Ivoire for 6 months and when his son called him for school fees, plaintiff did not assist, even though he had collected USD100,000.00. Defendant called plaintiff an evil and bad person who is an extortionist, blackmailer, and a criminal who has cheated people to put up mansions. According to the defendant, plaintiff investigated 55 custom officers but outed the report on only 11, because reports on those who pay him are not publicized.

In reference to a video that he (defendant) had apparently shown, he alleged that the plaintiff took bribes to collude with the suspects and to destroy a case that was before one Justice Quist, and in respect of which the plaintiff had been contracted to investigate. He thought plaintiff should be referred as "*corrupt journalist*" and not "*ace journalist*".

2 July 2018

Plaintiff averred that after the issuance of the writ, the defendant in the course of being interviewed on Okay 101.7 FM, alleged that some boys who were tried for having killed one lawyer Blay in Tema had come to tell him that the plaintiff owes them and had deceived them. Further to that, defendant alleged that the plaintiff got the script from a prisoner to publish, but instead of the 50,000.00 he promised them, paid only 20,000.00. He alleged that plaintiff was involved in untoward acts at

Bodwiase. He repeated that plaintiff took bribes in the custom officers' investigation, and that was why only 11 people out of the 55 were published. Defendant claimed plaintiff had defrauded people to enrich himself, that some of his victims have died, while others have suffered stroke, and others' children cannot attend school.

3 July 2018

Again, after service of the writ of summons on defendant, he appeared on a programme on Adom TV in Accra, where during an interview, he alleged that plaintiff caused the death of some Chinese people and took money from some Chinese nationals. He alleged that in an upcoming video, plaintiff gave money to be given to the Prime Minister of Cote d' Ivoire, and he is heard in the video asking a Sheik if he was able to implicate the Prime Minister as plotted. A further allegation was that plaintiff stole his way through law school. Again, he said plaintiff took someone's documentary and sold it to the BBC but brought only 200 pounds to that person.

According to the defendant, plaintiff had the balls of the NDC because he had blackmailed them. He allegedly went to the galamsey areas collecting USD500,000.00 and that some Chinse people he interviewed were dead.

Defendant claimed that plaintiff signed a contract with European companies to discredit the Chinese to be unpopular in Ghana. He alleged that the plaintiff bragged to an MP that he had information on GFA and that he had access to the emails of Kwesi Nyantakyi, as a result of which he accesses his emails.

4 July 2018

Yet again, defendant after being served the writ of summons allegedly appeared on Net 2 TV television in Accra, and during an interview, alleged that some videos show the death of Chinese nationals who had granted an interview to plaintiff. He claimed that plaintiff who entraps

people, is eviler than the people he entraps. According to him, plaintiff who was between 37-38 years was so rich and powerful due to his tactics. The following exhibits were tendered by plaintiff: Exhibit A-power of attorney; Exhibit B-List of awards; Exhibit C-pen drive containing some of the defamatory statements; Exhibit D- Statement by the Committee to Project Journalist (CPJ), condemning defendant for calling for the lynching of plaintiff; Exhibit E-Letter of plaintiff's lawyer to the Attorney General on a case titled *The Republic v Mohammed Hafix Abdallah, Mubarak Seidu, & Prince Kingston Kwame*; Exhibit F- Attorney General's response; Exhibit F (series)-Record of proceedings in the *Republic v Mohammed Hafix Abdallah, Mubarak Seidu, & Prince Kingston Kwame* case and Exhibit G-Parliamentary record wherein defendant was found guilty for contempt of Parliament.

b. Defendant's evidence

Defendant relied solely on his testimony. His defence of justification and fair comment were anchored on video evidence tendered as exhibits KO1, KO3, KO4 and court proceedings admitted as exhibit KOA2. It is noted that defendant caused a transcription and translation of his video evidence by the Ghana Institute of Languages. A language expert of that institute named Iliasu Abubakari testified as Court Witness 1 (CW1) and tendered the transcripts. He opted not to call Justice Kwaku Annan who had filed a witness statement in his favour. His second witness, Adolph Tetteh Adjei was not granted leave by the court to testify because he was held not to be a necessary witness.

c. Submission of counsel for plaintiff

According to counsel for plaintiff, defendant failed to respond to a number of the defamatory statements in his statement of defence and in his

evidence, despite having notice of them and having admitted them. He submitted that the admission by defendant that he published the defamatory statements complained of erased any dispute as to whether defendant made those statements. The admissions in his view, foreclosed any doubt about the person defamed by the defendant.

According to him, because the court upheld an objection in relation to paragraphs 7 and 8 of defendant's witness statement which had sought to justify that plaintiff demanded a bribe of USD150,000.00, from the former GFA president, Kwesi Nyantakyi, to blot or conceal a documentary about him, that allegation remained unproved and unjustified.

He contended that the four exhibits tendered by defendant failed to substantiate the defamatory statements defendant admitted making.

Under the heading "*Undefended Defamatory Statements*", counsel for plaintiff listed the statements defendant admitted to making but for which no evidence was proffered to prove or justify.

According to plaintiff's counsel, defendant failed to meet the onus of proof that laid on him, despite the clear possibility of adduction of evidence to prove the above assertions. After references to a litany of cases, he concluded that the defendant failed to prove that the statements above mentioned were made under the banner of fair comment and justification.

He submitted that the above statements were: *(a)published by defendant (b) the publication concerned the plaintiff (c) The publications were capable of a defamatory meaning and did defame the plaintiff and (d) a defence of qualified privilege or fair comment could not avail defendant because he was actuated by malice.*

In relation to the defence, he contended that no particulars were given by defendant in satisfaction of Order 57 r 3 (2), C.I 47. He denied that plaintiff contrived with the prosecution to kill a pending criminal case

by taking bribes from Hafiz, Mubarak and Baba Tunde, and offered bribes to the State Attorney and the then Director General of the Criminal Investigations Department of the Ghana Police Service. It was his submission that if defendant had verified from the Attorney General who superintended over the criminal prosecution, he would have realized the falsity in his claim that plaintiff was responsible for the botched prosecution.

According to counsel, the events in the video defendant relied on related to trapping of suspects and pre-trial rehearsal by plaintiff and the prosecutor in that case. He again referred to the enquiry plaintiff's lawyers carried out with the Attorney General to ascertain if indeed the plaintiff and the State Attorney did anything untoward to result in the truncation of the case, to which a negative verdict was returned by the Attorney General.

He recounted the strenuous efforts made by the plaintiff in the prosecution of that case, including attending court, testifying, and offering secret recordings he had made of the suspects, which was rejected by the trial court.

He cited the proceedings in that case (exhibit F, F1 series) to show that plaintiff attended court, contrary to the claims of defendant that the case was dismissed due to plaintiff's failure to attend court. He also referred to the ruling of the court on 18 January 2011 in that case numbered Case No ST/169/2009 TRS, by which the trial judge upheld the objection to the tendering of tape recordings involving the accused persons therein.

He wondered how the plaintiff could have connived with the judge he subsequently investigated, resulting in his dismissal. He considered defendants exhibit KOA1 as a fabricated, doctored, and skewed video based on a narration by a third party, tendered to support defendant's malicious narrative against the plaintiff. That was more so when the

alleged editor of the *Salis Newspaper* who published exhibit KOA1, had subsequently been called out by defendant as evil, due to a misleading video he produced on a gift made to then candidate and now President Akuffo Addo. He called on the court not to place any probative values on exhibits KOA1, KOA3 and KOA4, since they are not raw unedited material and are influenced by the interpretation of the voice cover, as admitted by the court witness (CW1). In his view, CW1 went beyond his mandate and read extraneous meanings into exhibits, which otherwise cannot be found in the material.

He considered the defence of justification a hoax. Based on a statement the defendant admitted making at Assin Nyankomasi to NPP faithful in March 2019, after the release of plaintiff's documentary "*No. 12 and Galamsey Fraud Part 1"* he considered the defendant, a hatched man hired by his party to destroy the plaintiff.

In sum, he submitted that there is nothing in defendant's exhibits that suggests even remotely that plaintiff played in any role in the truncation of the criminal case. He therefore found defendant's defence of justification not borne out by the evidence he proffered to that effect.

d. Submission of counsel for defendant

The first call of counsel for defendant in his submission was to concede that his client admitted making the statements complained of by plaintiff. To that end, he stated at paragraph 13 of his submission:

"*Respectfully, per defendant's own admission that the words uttered by him are true, factual and justified, section 11 and 12 (supra) shift the burden on defendant to lead sufficient evidence to support his defence…"*

His first shot was that plaintiff failed to particularize the facts he relied on, as required by Order 57 r 3(1), **High Court (Civil Procedure) Rules, 2004, C.I. 47**. By reference to the Nigerian case of **Oruwari v**

Osler [2012] LPELP 19764, he contended that plaintiff's translation of the words issued by defendant in Twi into English without first setting out the original words in Twi was not sufficient particularization.

According to him, plaintiff conducted the translation by himself, instead of by an accredited language bureau, resulting in the plaintiff giving his own meanings to the words in paragraphs 15,16 and 17 of his amended statement of claim.

On account of the above, he prayed the court to dismiss plaintiff's amended statement of claim for its violation of the aforesaid Rule.

On the issue as to whether the statements were in reference to the plaintiff, he stated that the defendant admitted making the statements about one Anas Aremeyaw Anas, and proceeded to show a documentary (exhibit KOA1) titled "*Who watches the watchman*". Interestingly, he proceeded, plaintiff denied in paragraph 14 at page 10 of his witness statement that he was not the person featured in the video. However, in paragraphs 35 and 36 of the same witness statement, plaintiff's attorney admitted the presence of plaintiff in exhibit KOA1.

In an another about turn, he submitted, plaintiff's attorney after watching the video in court insisted under cross examination that the plaintiff was not the person featured in the video as Anas Aremeyaw Anas.

He stated further that even though plaintiff's witness (PW1) also admitted watching exhibit KOA1, he denied under cross examination that plaintiff is featured in the video.

According to him, plaiting failed to prove his claim that exhibit KOA1 was doctored and pieced together. He expected the plaintiff to produce the genuine version if exhibit KOA1 was doctored as alleged.

He concluded on that issue that if plaintiff himself denies that he is the person in exhibit KOA1 of whom the defendant spoke, then the alleged defamatory words could not have referred to him (plaintiff).

On the words published by defendant on the Omega Strategic Services case, he referred to the admission by plaintiff's attorney under cross examination that since the matter was of public interest, defendant was right to publish it.

He submitted that since defendant is a law maker with obligation to expose illegal acts and untoward behaviours, and since his statements were true, factual and in the public interest, his comments were fair and just, and therefore not defamatory.

On defendant's allegation that plaintiff was involved in land grabbing, he submitted that *certiorari* had to be issued to quash the judgment in **Adolph Tetteh Adjei v Anas Aremeyaw Anas & Anor (Suit No LD/256/2017),** in a case titled: **Republic v High Court (Land Division 7), Accra Ex parte: The Registered Trustees of East Dadekotopon Development Trust (Applicant) & Adolph Tetteh Adjei, Anas Aremeyaw Anas & Holy Quaye (Interested Parties)**. That was because, plaintiff had allegedly entered 1st Interested Party's land without recourse to law, and also fraudulently sought to rely on a judgment that had been set aside.

On the cross examination of defendant by plaintiff's counsel, he asserted that counsel for plaintiff concentrated on extraneous matters which were not in issue, or of relevance to the case. He gave example of plaintiff counsel's focus on the conviction of defendant for contempt by parliament. As a result, he posited, plaintiff's counsel was unable to punch any hole in the defence of the defendant.

In his view, plaintiff's attorney could not speak to the effect of the alleged defamatory comments on plaintiff's person and how it has affected his business and profession.

According to him, the case was initiated by plaintiff just to deter defendant from speaking the truth on matters that affects Ghanaians.

DETERMINATIONS

a. Whether the words were capable of defamatory meaning-issue A

Having laid out the facts, the applicable law, and the evidence in the case, as well as the submissions of counsel for the parties, the time is up for me to perform my judicial duty, which encompasses finding the established facts and applying them to the applicable law.

Before doing so, I will settle certain preliminary matters that arose from the cases of the parties. These include:

a. Particularization of the facts of plaintiff's allegations and the defence of justification.

b. *Defendant's admission of the alleged defamatory statements and the evidential configuration arisen therefrom*.

i. Particularization of the facts of plaintiff's allegations and the defence of justification.

Counsel for the defendant submitted that since the alleged words were uttered largely in Twi, plaintiff was required to first cite the Twi words before translating them into English. He cited as his authority, Order 57 r 3 (1), C.I.47 and the Nigerian case of **Oruwari v Osler** (supra), where it was held:

"*Where the libel or slander was published in a foreign language it must be set out in the statement of claim, followed by a literal translation. It is not enough to set out a translation without setting out the original or vice versa".*

This authority, aside having only persuasive effect on me as a foreign judgment, was totally inapplicable to this case. That was because, the Twi language is not a foreign language in Ghana to be brought under that

authority. Secondly, it will amount to needless adherence to technicality in a defamation case conducted in English, for a plaintiff to lose his cause simply because he did not firstly set out the defamatory words in the local dialect in which they were uttered before translation into English, unless the defendant can prove by cogent evidence that the English translation does not reflect the original words spoken in the local dialect.

Where the defendant does not challenge the words as translated into English by positive averments, or his pleading is *sub silentio* on same, or the parties are *ad idem* that the translated words reflect the words spoken in the local dialect, a failure to set out the words in the local dialect before a translation into English shall be inconsequential.

Defendant's counsels invocation of Order 57 r 3 (1), C.I. 47, failed to receive the blessings of the juridical gods of our land. There is a general misconception that in every defamation suit, the plaintiff is obliged to give particulars under the said rule. That view is wrong. Oder 57 r 3 (1), C.I 47 provides:

"*Where in an action for libel or slander the plaintiff alleges that the words or matters complained of* ***have been used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of the alleged sense" (emphasis mine)***

The rule is applicable where the meaning asserted for the words by the plaintiff is not the ordinary meaning. It applies mostly where the words are innuendos, or of a secondly or other meaning beside the ordinary, literal, and plain meaning. In the instant case where the words were understood by both sides in their ordinary, literal, and plain meaning, plaintiff had no pleading obligation under Order 57 r 3(1), C.I. 47.

In such an instance, the plaintiff in a libel suit would be obliged to particularize in terms of Order 57 r 2, which states:

"*Before a writ is issued in an action for libel it shall be indorsed with a statement giving sufficient particulars of the publication in respect of which the action is brought to enable them to be identified".*

See, **Bruce v Odhams Press Limited [1936] 1 K.B. 697.**

Plaintiff's counsel equally accused defendant of a failure to particularize the defence of fair comment and justification, based truth and facts, in violation of Order 57 r 3 (2), C.I. 47. The rule of law underlying Order 57 r 3 (2), C.I. 47, requiring particularization of a defence of true facts and fair comment in the public interest, has been elucidated in **Standard Engineering Co. Ltd v New Times Corporation [1976] 2 GLR 409** and **Quansah v Ofosu [1991] 1 GLR 151**, among others.

In the instant case, I found the contention of plaintiff's counsel to be unfounded. Defendant does not only rely on truth and fair comment of his statements. He asserts the truth of the statements and relies on justification. He provided particulars on some of the facts but omitted to attend to some of the statements. Since plaintiff did not seek to strike the unparticularized statements before the trial, they may not necessarily fail, if credible evidence were allowed in to substantiate them.

The complaints of both counsel were too late in the day. If a violation of any procedural rule occurred, objection ought to have been raised timeously and before any relevant step was taken. Order 81 r 2 (2) is opportune and applicable here. It states:

"*No application to set aside proceedings shall be allowed unless it is made within a reasonable time and the party applying has not taken any fresh step after knowledge of the irregularity."*

In **St. Victor v Devereux 14 LJ Ch 244** (at page 1116, Kwame Tetteh, *Civil Procedure-a practical approach*,2011), it was held:

"*Where an irregularity has been committed and where the party knows of the irregularity, he must come in the first instance to avail himself of it, and not allow the other party to proceed to incur expense. It is not*

reasonable afterwards to allow the party to complain of the irregularity, of which if he had availed himself in the first place, all that expense would have been rendered unnecessary."

See also-**Boakye v Tutuyehene [2007-2008] SCGLR 970.**

Secondly, noncompliance with a rule in C.I 47, is a forgivable procedural sin under Order 81 of C.I. 47, unless the noncompliance in addition amounted to a breach of a provision of the constitution, a statute, the rules of natural justice or otherwise goes to the jurisdiction of the court, see- **Republic v High Court, Accra; Amalgated Bank Ltd, Ex parte Allgate Company Ltd [2007-8] 2 SCGLR 109; [2008] 2 G.M.J 17.**

On account of the above, I found no merit in the issues raised by counsel for both sides on default of particularization of the claims and the defence.

ii. **Defendant's admission of the alleged defamatory statements and the evidential configuration arisen therefrom.**

A fundamental rule of evidential law, pounded into pulp in judicial pronouncements, is that the party who asserts, assumes the burden of proof, see- **Majolagbe v Larbi [1959] GLR 190; Zabrama v Segbedzi [1991] 2 GLR 223, CA; Owusu v Tabiri [1987-88] 1 GLR 287** and **Bank of West Africa Ltd v Ackun [1963] 1 GLR 176, SC.**

In **Agbeko v Standard Electric Co [1978] 1 GLR 432 at 443,** it was held:

> *"It is a vital principle of evidence, a common place of law, that the proof is upon the party who affirms and not upon the one who denies".*

The above authorities affirm the evidential configurations in sections 11 and 14 of the Evidence Act, 1975 (NRCD 323), by which the party asserting is required to adduce evidence to meet the set standard of proof on preponderance of probabilities, as laid out under the heading "*Burden and standard of proof*", *supra.*

The law, not being a mindless bulldog, asserts that where a defendant admits the assertion of the plaintiff, no issue is joined on the subject matter of the admission. It was accordingly held in **Kusi & Kusi v Bonsu [2010] SCGLR 60:**

"*Where no issue was joined as between parties on a specific question, issue or fact, no duty was cast on the party asserting it to lead evidence in proof of that fact or issue…"*

Similarly, it was held in **West African Enterprise Ltd v Western Hardwood Enterprise Ltd [1995-96] 1 GLR 153, CA:**

"*Where an averment made by one party in his pleadings was denied by the other in his defence or reply, it was necessary for the one who made that averment to produce evidence in proof of it. However, no principle of law required a party to prove an admitted fact."*

A party to a suit need not adduce evidence by himself. He can rely on the evidence of a witness produced by him, or on the evidence of his opponent or his witness, see-**Nyamekye v Ansah [1989-90] 2 GLR 152,C.A** and **Ameoda v Pordier [1967] GLR 479,C.A**

In **Nyame v Tawiah [1979] GLR 265**, the Full Bench of the Court of Appeal, per Apaloo, C.J held:

"*A party could prove his case by averments from the mouth of his opponent or his adversary's witness…"*

From paragraphs 8-18 of his statement of defence, defendant admitted making the statements complained of by plaintiff and averred that they factually true. That led him to rely on the defences of fair comment and justification. In his evidence in chief and under cross examination, he insisted that his statements are factual and true. Counsel for the defendant in his written address took the same view by insisting that the statements were authored by the defendant, and that they are factual and true.

With the admissions, the task of the plaintiff in proving that defendant uttered those words was fulfilled through the plethora of evidence he

presented, and by the mouth of the defendant. The words uttered by defendant of the plaintiff bothered on crime, fraud, corruption, and moral turpitude. They included plaintiff being called a thief, criminal, murderer, fraudster, blackmailer and evil. The words are without doubt, of a category that would sully or reduce the reputation of any citizen. Knowing well the harm that his words could cause, defendant never in his pleadings or evidence disputed that the words had defamatory meaning. He sought to justify them.

I hold that the plaintiff surmounted the first test by proving that the words complained of were uttered by defendant and that they were capable of defamatory meanings.

b. Publication

There was no issue joined as to whether or not the words were published. The alleged defamatory words were spoken by defendant on radio and television and broadcasted partly online to expected millions of people within and without Ghana. Plaintiff tendered a pen drive containing recordings of the said programmes at which defendant spoke. Defendant admitted making the comments and, on his part, tendered exhibits in which reports of plaintiff's alleged fraudulent and criminal activities were broadcast to the whole world *seriatim*.

It is my holding that the words which defendant admitted uttering, were published by him to several persons beside the plaintiff. With that, the plaintiff has satisfied the second element required to be proved in an action for defamation.

c. Reference to plaintiff

It has been explained above that as an element of the tortious offence of defamation, and as a pre-condition for proving defamation, the plaintiff must, among others, prove that the defamatory statements were in reference to him. The entirety of plaintiff's pleadings and the written submission of his counsel affirms that all the statements uttered or

published by the defendant referred to the plaintiff. These includes the material on the video evidence tendered as exhibit KOA1.

When plaintiff's attorney was cross examined by defendant's counsel on 18 May 2021, this is what partly transpired:

Q. *On 17th day of June 2020, during cross examination you admitted to having watched the documentary attached to the defendant (sic) witness statement as exbibit "KOA1", is that correct?*

A. Yes.

Q. Was your principal featured in this documentary?

A. No

Q. Kindly have a look at paragraph 14 page 10 of your own witness statement, (counsel reads to witness…), is it true that the plaintiff denied being the one whose picture was shown by the defendant?

A. Yes.

After plaintiff's witness Musah Ziyad (PW1) had testified, the following ensued during his cross examination by defendant's counsel on 8 June 2021:

Q. *Have you watched the documentary televised by the defendant titled Who watches the Watchman?*

A. Yes.

Q. Was the plaintiff shown in the documentary?

A. No.

Q. You are saying the plaintiff has been defamed by the defendant per your witness statement, is that correct?

A. Yes.

Q. Are you aware that it was on the basis of the documentary who Watches the Watchman which caused the plaintiff to issue the instant suit against the defendant?

A. Yes.

The evidence proffered by plaintiff in proving that defendant's statements referred to him, tendered to be full of approbation and reprobation. In one breath, that in his pleadings, plaintiff affirmed being the person referred to by defendant in all the statements and material published. In the next breath, that is through the evidence of his attorney and PW1, he denied being the one referred to by defendant in exhibit KOA1.

Obviously, plaintiff's case in relation to his identity, suffered from internal contradiction and inconsistency. I did not find that to be the result of an unintended error or mistake. As the pleadings on both sides, the evidence of defendant and the submission of plaintiff's own counsel shows, plaintiff was pictorially depicted in exhibit KOA1, contrary to the denials of plaintiff's attorney and his witness, PW1. The denials of plaintiff through his attorney and his witness (PW1) of his presence in exhibit KOA1, were deliberate falsehoods calculated to mislead the court. For a person accused of fraud by defendant, this bold lack of candidness in a court of law, and in the face of the whole world, was a reproachable act indeed.

That event however could not defeat the referability of defendant's publication to plaintiff. In the first place, nowhere in defendant's statement of defence or evidence did he deny the identity of plaintiff, and as being the same person on whom he published the videos and made the extensive comments on many media platforms. Secondly, the complaint by the plaintiff is not against a single piece of publication, that is exhibit KOA1, which plaintiff's attorney and PW1 denied featured plaintiff. Plaintiff's suit is equally against exhibits KOA2, KOA3, KOA4 and the armada of alleged defamatory statements spewed by defendant into the airways via several radio and television stations with extensive reaches.

Thirdly, civil trials are not like a game of chess where a single wrong move might result in a defeat. Evidence in civil trials and indeed all trials,

are not counted piece after piece, and the party with the highest number of pieces rewarded with a judgment. The evidence are placed in their proper context, weighed as a composite unit, scaled against the evidence of the opponent, and determined.

The plaintiff could have sued the defendant if he (defendant) did not even intend to refer to plaintiff, so long as the hypothetical average reader would conclude that the statements referred to the plaintiff. In **Hulton v Jones [1910] A.C.20,** it was held per Lord Loreburn:

"*Libel is a tortious act. What does the tort consist in? It consists in 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."*

In **Newstead v London Express [1940] 1K.B. 377; [1939] AII E.R.319,** one Harold Newstead successfully sued, despite the defamatory story being about a different Harold Newstead. The absence of an address led readers to think that the report was about that plaintiff. In the instant case, nothing in the numerous publication could lead the average listener of defendant to think that defendant was referring to an Anas Aremeyaw Anas different from the plaintiff.

When I considered the facts and the totality of the evidence, I was left in no doubt that the entirety of defendant's publications was in reference to the plaintiff herein.

d. **Whether the words actually defamed plaintiff**.

The consideration of this element ought to be done with the consideration of defendant's defence. That was because, whether or not the plaintiff was actually defamed is dependent on the success or failure of fair comment and justification raised by defendant. If the statements were justified or

amounted to fair comment, then they could not have actually defamed the plaintiff, and vice versa.

I will first deal with two preliminary legal issues. The first regards the translation and transcription of defendant's exhibit KOA1, KOA3 and KOA4, by the court witness, CW1. The second is about the credibility or authenticity of exhibit KOA1.

i. Accuracy of translation and transcription of exhibits

It is noted that plaintiff translated and transcribed the words uttered by defendant in the Twi language into the English language. The translated words were made available in the statement of claim and embodied in the witness statement of the plaintiff's attorney and PW1. It is therefore easy to refer to the words complained of without having to mount the pen drive containing those statements on an electronic device any time I had to make a reference to them.

In the course of the trial, it came to light that the words on defendant's pen drive, part of which are in Hausa, were neither translated nor transcribed.

As *obiter dicta*, I have to state that where counsel conducts a case where electronic evidence on a device such as a pen drive is tendered, it is not sufficient to fasten the device to a document and go home to sleep. You must answer the following questions (a) Is my electronic evidence in the form that the judge can readily access, interpret, or apply? (b) If the evidence was not played out in court, when, where and how is the judge to access and apply the evidence from the device? (c) *Can the judge access electronic evidence not played out in court or translated and transcribed outside court sitting and in the absence of the parties? (d) How convenient will it be to expect the judge outside court hours to plug the device to an electronic system anytime he wants to make a reference to its contents? (d) If the relevant evidence is only a fraction of a bulky*

content, how reasonable is it to expect a judge after court hours to spend precious time viewing or listening to the entire content to be able to extract the relevant evidence? (e) If the evidence is not in English, what if the judge does not understand the language? and (f) Even where he understands it, is it permissible for the judge to turn himself into an interpreter behind the backs of the parties when he writes his ruling or judgment, which is usually at his home?

It is of necessity and desirability that the party tendering the electronic evidence apply to the court for it to be viewed in court. Most counsel do that, but a few forget to do so. Where the evidence is a bulky material, only the relevant or essential parts should be played. Where the relevant parts of the material are bulky or where it is not in the English language, the party tendering it must cause it to be translated and transcribed for convenience of reference by the parties and the court. Where the material is bulky, no pretension should be made that the judge can store the information in his memory, to be used during ruling or judgment. No one acquires such extra space in his brain on becoming a judge.

Where the material is of a brief nature, as to enable the court and the parties take notes of it, transcription may not be necessary for the sake of expense.

For the sake of convenience of reference, I ordered the aforementioned electronic evidence of defendant to be translated and transcribed. The exercise was carried out by the Ghana Institute of Languages Transbureau, which is an institution with expertise in languages. The officer of the Bureau who actually worked on the material appeared in court to be cross examined by counsel for plaintiff as CW1.

In the course of the cross examination of CW1, and his written address, counsel for plaintiff sought to undermine the accuracy of the translation and transcription. His main argument was that the transcribed words

contain voice-over words not found in the original material. That in his view, resulted in distortion in the content and meaning of the material.
After due consideration of contention of counsel for plaintiff, I found the accusation to be bereft of merit.
Firstly, in the statement of claim and in the witness statements of plaintiff's attorney and PW1, are several voice over insertions in brackets, to give context and meaning to the statements of defendant. The extensive use of the voice over insertions by plaintiff, affirms the claim of CW1 that translators are allowed to do so where the context so requires. Plaintiff did not produce the translator/transcriber in court to vouch for the accuracy of his work. The court saw no need to enquire into the accuracy of the translation with the inserted voice overs, because defendant could not point out any errors in that work. By parity of reasoning, plaintiff could not object to the transcripts with the voice overs because he used the same method.
Secondly, despite questioning the methods applied by CW1, counsel for plaintiff could not point out a single instance of false or wrong translation and transcription by CW1.
Thirdly and lastly, the voice over is a small fraction of the translation and transcription work carried out by CW1 and tendered in court. Minus the voice overs, there are sufficient conversations involving the plaintiff which, this court can consider in determining the issues.
I concluded that the transcribed material is a true reflection of the electronic evidence contained in defendant's exhibits KOA1,KOA3 and KOA4.

ii. Credibility of exhibit KAO1

In the plaintiff's pleading, his evidence and in the course of cross examining the defendant and in the written submission, plaintiff and his counsel for plaintiff cast doubt on the credibility of exhibit KOA1. It was

contended that the documentary was "*maliciously doctored and pieced together*."

Secondly, plaintiff and his counsel asserted that the meeting in the office of the prosecutor was for the purpose of rehearsing for the trial.

Defendant made no pretentions that exhibit KOA1, covers two separate events. The first part covers the meeting between the plaintiff and Mubarak and Baba Tunde. The second part covers a meeting between the plaintiff and the original prosecutor in the criminal case in her office. I am not aware of any law which says that a party to a case cannot put too events together as evidence if that act does not attempt to overlap and confuse the two events with a view to mislead the court.

In the real world, evidence comes in pieces and then weighed together. Plaintiff's accusation against defendant for piecing the two videos together, the evidence on which had been clearly grouped into two distinct parts, had no merit.

Secondly, plaintiff accused the defendant of doctoring the two videos put together. The presumption was that the plaintiff who recorded the video, had the original un-doctored version. What was expected of the plaintiff was for him to tender the original, un-doctored version. By the close of the case, plaintiff had failed to counter KOA1 with the authentic and un-doctored version. No effort was made to explain why plaintiff could not do so.

Since plaintiff could prove the accusation of doctoring of exhibit KOA1 by cogent evidence; that is the production of the authentic and un-doctored tape, and since he did not explain his failure to do so, he failed to prove the assertion that exhibit KOA1 was doctored. I will treat exhibit KOA1 as an authentic and credible piece of evidence.

a. Exhibit KAO1

Submission of counsel for plaintiff

Counsel for plaintiff sought to explain away the apparent meaning, scope, and effect of the recordings in exhibit KOA1 concerning the plaintiff.
According to him, exhibit KOA1 comprises two videos made by plaintiff and his Tiger Eye P.I team in 2009.
The first part concerns a conversation pursuant to a contract by one Zachary L. Venegas, between the plaintiff and the suspects in the $1.9 million gold scam case. The strategy of plaintiff, he claimed, was to engage in a free and open conversation with the criminals so they come out with all implicating facts that would then be used against them.
The second part of the video involved a meeting between the plaintiff's team and the prosecutor, to narrate their investigations and engage in pre-trial preparation for the trial. According to counsel, defendant and his team put the two audio visuals together, edited, patched up and superimposed same with ill-faith commentaries.
To buttress his submission, he referred to the proceedings of the trial, admitted as exhibit F (series) which proves that plaintiff was attending court and duly testified, to assist in the successful prosecution of the accused persons, contrary to the claims of the defendant. He also referred to exhibits E and F, by which as a result of communication between plaintiff's counsel and the Attorney General, it was made clear that nothing in the records of the trial indicates that plaintiff could have colluded with the prosecutor to botch the trial.
According to counsel, the prosecution prayed the court to tender the video evidence on the accused persons but were overruled by the court. He also referred to the fact that the presiding judge was thereafter implicated in an investigation carried out by the plaintiff, titled: *Ghana in the eyes of God, epic of injustice.*
He could not fathom how plaintiff who made himself available and participated fully in the trial and made available the tapes on the accused

to help seal their conviction, could be accused by defendant of plotting to botch the trial.

In law, a person is *estopped* by his own statement or conduct. To that end, section 26 of the **Evidence Act, 1975 (NRCD 323)** provides:

> "*Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and act upon such believe, the truth of that thing shall be conclusively presumed against that person or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest."*

In the instant case, the plaintiff is *estopped* from denying the confession statements which were relied upon by defendant, to make his bombastic statements.

The standard for proving an allegation of a crime, whether in a civil suit or a criminal case, is the same. To that effect, section 13 (1) of NRCD 323 provides:

> "*In any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt."*

See-**Sasu Bamfo v Simtim** (supra).

The statements of plaintiff on exhibit KOA1, regarding the receipt and sharing of bribes amounted to a voluntary confession. In **State v Otchere & Ors [1963] 2 GLR 463,** a Special Criminal Division of the High Court per Korsah C.J. held (holding 3):

> " *A confession made by an accused person in respect of a crime for which he is being tried is admissible against him provided it is shown by the prosecution that it was made voluntarily and that the accused was not induced to make it by any promise or favour, or menaces, or undue terror."*

See also-**State v Tabbey [1966] GLR 621**.

In the instant case, the plaintiff recorded exhibit KAO1 by himself. The evidence does not disclose how the tape landed in the hands of defendant or the *Salis Newspaper*. The source of the exhibit is immaterial. What is material is its relevance.

The plaintiff does not say that he was "*induced to make it by any promise or favour, or menaces, or undue terror.*"

In **Majolagbe v Larbi [1959] GLR 190,** the venerable Ollenu J (as he then was) held:

> "*Proof, in law , is the establishment of fact by proper legal means, in other words, the establishment of an averment by admissible evidence. Where a party makes an averment, and his averment is denied, he is unlikely to be held by the Court to have sufficiently proved that averment by his merely going into the witness-box, and repeating the averment on oath, if he does not adduce that corroborative evidence which (if his averment be true) is certain to exist."*

See also-**Zabrama v Segbedzi [1991] 2 GLR 223, CA**.

Exhibit KOA1 begins with one Hafiz Abdallah, who appeared on Net 2 TV on 31 May 2018 to allege that the plaintiff took a bribe of $50,000 (fifty thousand dollars) to quash an investigation into a gold scum by the said Hafiz and others. According to Hafiz, it was as a result of the bribe taken by plaintiff that he failed to publish the videos on that case.

The next part of the video is a conversation between plaintiff on one part, and Baba Tunde and Mubarak on the other part. The conversation hovered around a gold scam involving a huge sum of 1.9 million dollars, with Baba Tunde, Mubarak and Hafiz Abdallah and others as suspects.

According to Mubarak, of the sum of $1.9 million, they were paid a total of $560,000. This sum he claimed were shared with Hafiz, and "*those at the airport and all other persons."*

Mubarak made it clear in the presence of the plaintiff that they were part of an international criminal gang. Said Mubarak:

> "*The guy who brought the business was from Cotonou. He is called Abbas but his business name in Cotonou is Kwame. That is the name he uses for business. He is not here."*

He told the plaintiff that one of the suspects, "*Prince is not here, he is in Cotonou."*

Mubarak confessed his involvement in the crime in the following words:

> "*We don't hide anything. Actually, if it was 1.9, I can't confirm. But me, I know I am part of the whole deal.*"

He then proceeded to state how much was received, and how much each suspect, and their accomplices got.

The plaintiff and the two suspects then engaged in a lengthy conversation, in which they plotted on how they would contrive a story to scapegoat one Hafiz, who had refused to co-operate with the plaintiff by giving him money, and how they could tell their sweet story to the police, and also secure the proceeds of the crime in their bank accounts.

After this encounter, the plaintiff met the prosecutor in the gold scam case in what his lawyer said was a rehearsal for the trial. Indeed, the early part of their investigation revolved around the evidence plaintiff had gathered about the suspects. He showed the video on his encounter with the suspects and tried to explain the events to the prosecutor.

The conversation then changed from the suspects to money and the plaintiff and the prosecutor. The plaintiff confessed to the prosecutor that he had been bought with $100,000.00. This is how the conversation went:

Prosecutor: *Hmm they have really been working and settling everybody.*

Anas: *...his demeanour, 1.9 million dollars from where? Who did they take it from? Then he started telling me how the people came here and were working with them. So at that time they bought me with hundred*

thousand dollars because he is somehow related to me. Somehow. I don't know how…?

The prosecutor wanted to know who paid the money to plaintiff, and how much she was to receive, and how the evidence was to be skewed to scapegoat (Hafiz). The following conversation ensued between the two.

Prosecutor: Is it the two of them?

Anas: *No, it was Baba Tunde. He now wanted to fight for himself.*

Prosecutor: *Tell me the amount transferred to me*.

Anas: $*5,000(five thousand dollars)*

Prosecutor: *We all want money, we all need money…*

Anas: *Exactly.*

Prosecutor: *That's the reason why I had to know the evidence he had and then we turn it to suit the presentation you have in court.*

In a voluntary confession by the plaintiff that he had paid bribe to the Director General of the CID, this what the video says:

Anas: *They have…by then Adu Poku was the CID boss. So I met him and gave him seventy-five thousand dollars*.

The claim by plaintiff that the event in the office of the prosecutor, on the second part of the video was a rehearsal, turned out to be largely false. The event indeed started as a rehearsal, but veered off into matters unrelated to the rehearsal. It quickly degenerated into a strategy section on how to share bribes and sabotage the then pending criminal case on the gold scam.

Otherwise, how related was the rehearsal to the confession of plaintiff that Baba Tunde had bought him with $100,000.00, a claim which became proven by the exclusion of Baba Tunde from the charges despite his tape-recorded confession which was in the possession of the plaintiff? How related was the rehearsal to plaintiff's confession that he met the then Director General of CID, Ghana Police Service and bribed him with $75,000.00? And how related was the rehearsal to plaintiff's confession

that he had paid a bribe of $5,000.00 into the account of the prosecutor? Plaintiff evaded the critical issues raised by his confession statements in exhibit KOA1 and hid under the shaky and porous banner of the rehearsal. Even though the prosecution sought to tender a tape of plaintiff on the accused persons, there is no evidence of the actual copy that was to be tendered. It could have been the same copy as in exhibit KOA1, but it could have been an edited and doctored version.

By plaintiff's own account, he rested himself when the court overruled the application of the prosecution to admit the tape. The tape then went into abeyance and was brought to the attention of the public only when defendant aired his "*Who Watches Watchman*."

Had it not been for the efforts of the investigators of that piece and the defendant, Ghanaians and the world would never have become aware of that tape and the culprits therein.

The *mantra* of plaintiff repeated *ad nauseum* in our ears, and of which I take judicial notice is "Name, shame and prosecute."

Pursuant to that, plaintiff has rushed to air audio-visuals on his investigations to the public, often at a fee (judicial notice). Judicial notice is further taken of the fact that in some of the investigations aired to the public, the bribes collected involves thousands of cedis and or goats, yam etc.-refer to the investigation on judges dubbed "*Ghana in the eyes of God, epic of injustice*", cited by plaintiff's counsel.

In the case under reference, the amount stolen was $1.9 million, most probably, the biggest crime by *quantum* that has been investigated by the plaintiff. As mentioned above, the culprits confessed on tape and in the face of plaintiff, their involvement in the crime. The suspects indicated that they are an international criminal gang operating between Ghana and Cotonou. A tape covering the self-confession of the suspects in a gold scam involving $1.9 million and a cross border gang with accomplices at

the airport and other places, would have been explosive on the airways. But the airwaves were kept silent by the plaintiff and his team.

In this case, the plaintiff forgot to name and shame the criminals by publicly airing the explosive video, as has been his tradition. He uncharacteristically deferred first, and not last, to the court. However, even when the court rejected the tape, and the case was truncated for lack of prosecution, plaintiff kept the tape under wraps. His silence continued. He kept mute from 2009 to 2018, when the tapes first hit the public space, courtesy the defendant. That was not as a result of change of heart or policy, because plaintiff has continued to show tapes on investigations conducted by him.

What incapacitated the plaintiff from showing the tape to the public?

The answer is in the tape. In the tape, Hafiz decoded the reason why the plaintiff refused to air the tape as was his tradition in other investigations. Said Hafiz of the plaintiff's conduct:

> " *So why didn't you show the videos? You showed the custom officers, you showed the judges, but when it came to our time because he took the 50,000(fifty thousand dollars), he didn't show it. You understand where I am coming from? All that am trying to say to Ghanaians is that this guy is not correct. He is not a correct human being because he comes to do this thing, he goes to edit what he wants to add and minus what he wants-like any movie producer will do. That is exactly what he is doing. It is a movie that he is producing.*"

The claim of Hafiz, when considered in the context of other events in the case, assumes the status of high credibility. In the tape, plaintiff appeared to plot with Mubarak and Baba Tunde, on how to shield them and the other culprits and shift the blame onto Hafiz. When plaintiff met the prosecutor in her office, the plot continued. To that end, the prosecutor told plaintiff:

" *That's the reason why I had to know the evidence he had and* ***we turn it*** *to suit the presentation you have to do in court."*

To "turn" evidence to suit plaintiff's narration in court, was to bend the evidence, in breach of the law, and in violation of the ethics of prosecution. As a prosecutor, you do not turn or bend one piece of evidence to suit the other. You present it as it is, even if it would be to the accused's benefit. The ethics of prosecution goes on to require that if a prosecutor has evidence which will benefit or exonerate the accused, and which evidence the accused person does not possess, the prosecutor must hand over that piece of evidence to the accused. The up-quoted part of the conversation meant one and only one thing, that there was a plot between the plaintiff and the prosecutor to sabotage the trial.

In the court proceedings (exhibits KOA2/ F-series), the case began with Mohammed Hafiz Abdallah. Then an unnamed person was added. Later, the three persons appearing as accused persons were: Mohammed Hafix Abdallah, Mubarak Seidu and Prince Kingston Kwame.

Conspicuously missing was Baba Tunde, who plaintiff had captured on tape confessing to the crime. Why was Baba Tunde left out? If he was left out by the prosecution without the knowledge of plaintiff, did the plaintiff petition the Attorney General for his inclusion, since he had his confession on tape?

The evidence before me amply proves that Baba Tunde was excluded from the charges through the machinations of the plaintiff, after receiving a bribe of $100,000.00 from Baba Tunde, and on grounds of their family relationship. For the sake of emphasis, I will repeat the relevant aspect of the conversation between the plaintiff and the prosecutor on Baba Tunde:

Prosecutor: *Hmm they have really been working and are settling everybody.*

Anas: "*…his demeanour, 1.9 million dollars from where? Who did they take it from? Then he started telling me how the people came here and*

were working with them. So at that time they bought me with hundred thousand dollars because he is somehow related to me. Somehow. I don't know how…?

Prosecutor: *Is it the two?*

Anas: *No, Baba Tunde. He now wanted to fight for himself.*

If plaintiff says that Baba Tunde in fighting for himself bribed him with $100,000.00, who else can say he didn't? True to the scheme, Baba Tunde who had confessed to a crime involving $1.9milliom on a tape in the possession of plaintiff, was excluded from the charges. The video of his confession was never shown to the public.

Bribery and corruption by and of public officers are a crime under section 239 (1) and (2) of the **Criminal Offences Act, 1960 (Act 29).** Section 239 (1) and (2) provides:

"(1) Every public officer or juror who commits corruption, or wilful oppression, or extortion, in respect of the duties of his office, shall be guilty of a misdemeanour.

(2) Whoever corrupts any person in respect of any duties as a public officer or juror shall be guilty of a misdemeanour."

Corruption by and of a Public Officer, etc. has been explained in sections 240 and 241 of Act 29 as follows:

"Section 240.

A public officer, juror, or voter is guilty of corruption in respect of the duties of his office or vote, if he directly or indirectly agrees or offers to permit his conduct as such officer, juror, or voter to be influenced by the gift, promise, or prospect of any valuable consideration to be received by him, or by any other person, from any person whomsoever.

Section 241

A person is guilty of corrupting a public officer, juror, or voter in respect of the duties of his office or in respect of his vote, if he endeavours directly or indirectly to influence the conduct of such public officer, juror, or voter in respect of the duties of his office or in respect of his vote, by the gift, promise, or prospect of any valuable consideration to be received by such public officer, juror, or voter, or by other person, from any person whomsoever.

In criminal trials as aforesaid, a voluntary confession statement is admissible against the maker. The confession statements relieved the defendant of the *onus* of proof to the standard of "*beyond a reasonable doubt*", which is the requirement of proving an allegation of a crime in a civil trial. The conclusion is that the defendant proved the criminal allegations against the plaintiff based on exhibit KOA1, beyond a reasonable doubt.

Plaintiff's counsel sought to establish the accusation by theoretical arguments and logical deductions.

He wanted this court to believe that in spite of video evidence involving plaintiff plotting with Mubarak and Baba Tunde to botch the case; in spite of plaintiff meeting the prosecutor in her office to confess receipt of bribe of $100,000.00 from Baba Tunde, and distribution of the bribes to the prosecutor and the then Director General, CID, of the Ghana Police Service, and in spite of direct evidence that Baba Tunde was not charged apparently because of the bribe of $100,000.00 to the plaintiff and on grounds of blood relation, he did nothing wrong to botch the trial. The narration of plaintiff simply ran counter to the established facts.

Counsel for the plaintiff referred the court to their letter (exhibit E) to the Attorney General, inquiring among others, as to whether the plaintiff testified in the case, and as to "*Whether Mrs. Ellen C. Kwawukume and Mr. Anas could have botched the trial for it to terminate for want of prosecution."*

In the response (exhibit F), the Attorney General affirmed that even though the record of proceedings does not fully reflect it, plaintiff indeed testified and was cross examined. It also affirmed that the original prosecutor had retired by the time the case was struct out for want of prosecution. The response further states:

"*We do not have anything on our records to suggest that the trial of the accused persons in the above mentioned case was stalled or terminated by any acts perpetuated by either Ms. Ellen C. Kwawukume or Anas Aremeyaw Anas."*

Even though a large chunk of the record of proceedings is missing, the portions made available partially proved that the plaintiff did testify in the case. Defendant however cannot be blamed for claiming otherwise, because by his version of the proceedings (exhibit KOA2), the plaintiff did not testify. The blame must be placed on the Registry of the High Court for issuing an incomplete and distorted versions of the record of proceedings to the parties herein.

It was in my view unreasonable for counsel to have sought from the records of the Attorney General whether the plaintiff and the prosecutor deliberately botched the trial. I cannot imagine how counsel for plaintiff expected a prosecutor to place particulars of sabotaging a trial on her files if she really did so. If that were so, investigation of bribery and corruption by public officials would simply comprise of writing to their organizations for their records to be perused for the necessary evidence.

In this case, the basis for the accusation that the two botched the trial is based on what transpired between the plaintiff and the two culprits, and between the plaintiff and the prosecutor in her office.

As I have expatiated above, plaintiff confessed to the crime of bribery and corruption. When the circumstances of the case are considered, including meetings with Mubarak and Baba Tunde to thwart the trial, the receipt by plaintiff of a bribe of $100,000.00, the bribery of the prosecutor with

$5,000.00 and the then Director General CID of the Ghana Police Service with $75,000.00, I was left with no doubt that the strategy of plaintiff and the prosecutor resulted in the failure in the prosecution of the criminal case.

The case of Hafiz and Baba Tunde confirms the claim of defendant that the plaintiff is a blackmailer, an extortionist, corrupt and a criminal. on this point, Hafiz said on television that plaintiff failed to show the video on them because he paid him a bribe of $50,000.00. The evidence from plaintiff's own mouth is that Baba Tunde bought him with $100,000.00. Lo and behold! the tapes on the suspects were never shown to the public by the plaintiff.

I considered it established that plaintiff blackmails people he desires to destroy, probably his enemies, or the enemies of his friends or partners, or persons loaded with cash, whether legitimate or illegitimate, as the suspects in the gold scam case, by catching them on tape. The tape is then shown to them. The tape on those who pay up, are shelved, but those who refuse or are not able to pay are help to the full glare of the public for reputational damage.

Such conduct is legally and morally wrong. It is evil. Based on the evidence, defendant was justified in calling plaintiff evil, criminal, corrupt, blackmailer and extortionist.

Since the contents of exhibit KAO1 has been established to be true and factual, all comments made by defendant based in relation to it is both justified and fair.

Exhibit KAO2

I have already indicated that the copy of the proceedings in the criminal trial issued to the defendant did not include plaintiff's testimony. Plaintiff attested to the numerous omissions in the record of proceedings by the letter received from the Attorney General (exhibit F) and the proceedings

submitted to them by the Attorney General(exhibit F-series). In plaintiff's own exhibit F-series, only a sketchy indication is made of the fact that plaintiff had testified. The claim by defendant that plaintiff did not testify was based on official court records made available to him. His statement was based on fact and is thus justified.

Exhibits KAO3 and KOA4

Exhibit KOA3 is a video entitled: *Fake Sheik*. It is an interview section between the said fake Sheik and an interviewer labelled "Black man" in the transcript.

The Fake Sheik alleged that plaintiff and his group were sending bags loaded with thousands of dollars. The Fake Sheik mentioned the case of Kwasi Nyantakyi, and the attempt to use him to get to the president to facilitate the establishment of a branch of the Baraka Bank in Ghana. He revealed that their desire was to meet the President of Ghana but because they had issues, they had to meet him later. According to him, "*they planned it very well."*

Exhibit KOA4

This exhibit is a video covering plaintiff, one Amakye, a Sheik, an Arabian and a Blackman. They conversed about efforts to implicate the Ivorian Prime Minister. They talked about sharing some percentages with a President and his family. They also talked about gold. The linkages between the topics discussed was not clear.

In his evidence in chief, defendant contended that the meeting in exhibit KOA4, was to plot to entrap the Prime Minister of Ivory Coast and the President of Ghana.

The conversations in exhibits KOA3 and KOA4 appear very much to confirm that claim. I consider the plaintiff and his team to be serious minded people. They will not incur huge expense in dollars by booking flights, renting expensive hotels, paying fake Sheiks in addition to living

expenses, without a plan. They would have a script for each investigation, detailing the role of members of the team, and their culprits or victims, depending on the angle from which one takes it. As the fake Sheik stated in exhibit KOA3 "*they planned it very well."*

Corruption rating agencies have never been kind to Ghana in their ratings. As how to how plaintiff and his team select their subject persons is a matter shrouded in secrecy. But how do they choose their subject persons out of the large number of corrupt Ghanaians? As things stand, persons selected may just be the unlucky ones, since some of those not selected may be worse that those selected.

Leaving that issue, which is *obiter dicta*, I turn back to the scripts of the plaintiff and his team.

The President and the Prime Minister who plaintiff and his team targeted are the leaders of their nations. They embody the soul and spirit of the nations. They are obliged to lead by example, so if they engage in corrupt acts, journalists like plaintiff and indeed, any citizen is entitled to expose them.

However, a pre-emptily, unjustified attacks on their credibility, unprovoked by any credible suspicion of a specific act of corruption engaged in or about to be engaged in by them, such as drawing them into a trap so as to be caught in a contrived corruption set up, as was alleged by the defendant, and backed by exhibits KOA4, was unwarranted and devious.

It should be understood that as officers caught by plaintiff in his investigations have lost their jobs, an entrapped president may be compelled to resign out of shame or public pressure. That means, the plaintiff through his investigative antics can cause the removal of a president, and thereby upend the mandate given to him at the elections. That is not investigative journalism. It is investigative terrorism. It is exercise of indirect political power under the cloak of journalism.

The serious aspect is that political, enemies of a president who could not stand him at an election, may hire the plaintiff to entrap him to undermine his presidency. Enemies of a state can also hire him just to destroy the political hierarchy.

That brings up the issue of money. In exhibit KOA3, the fake Sheik who was hired to work for plaintiff, talked about the numerous bags of dollars sent to Dubai by plaintiff and his team. Defendant alleged that plaintiff has amassed wealth through corruption. Even if that allegation is discarded, the question remains as to how plaintiff and his team get those thousands if not millions of dollars. Plaintiff is a lawyer and journalist, but these professions do not breed dollars from nowhere. If plaintiff is being sponsored by internal or external entities, who are they? What are their motives and objectives? Does it include tarnishing the images of Presidents and Prime Ministers in our sub region? If the sponsors are external entities, do they approve of the *modus operandi* of the plaintiff? Can a journalist from CNN or BBC out of nothing, lay traps just to implicate the American president or the British Prime Minister for the purpose of grabbing the headlines and instilling unwarranted fear in the populace? Have they ever thought of sending plaintiff to their countries to use same methods to catch people in racist acts, which is a social canker plaguing those societies?

In all honesty, the plot by plaintiff and his group in exhibit KOA4 has nothing to do with journalism. It was a scheme for grabbing power by the back door and satisfying plaintiff's insatiable taste for power, publicity, fame, awards, and rewards.

Since the president is an embodiment of the soul of the nation, any unwarranted plot out of nothing to entrap him to destroy his reputation and undermine his authority is reproachable. The attacks of defendant on plaintiff on that ground deserves commendation and not condemnation.

I hold in respect of exhibits KOA3 and KOA4, that any statements based on them were justified and passed the test of fair comment.
In the result, the court finds established the defence of justification and fair comment in relation to the statements of defendant based on exhibits KOA1, KOA2, KOA3 and KOA4. Since those statements were justified, they could not have actually defamed the plaintiff.

Undefended statements

In his written address, counsel for plaintiff asserted that there were some statements made by defendant which the plaintiff averred in his claim and adduced evidence, but which the defendant did not respondent to in his statement of defence or testify on in his evidence. The said statements were composed in a pen drive admitted as exhibit C. The effect of those statements were summed up by counsel for plaintiff in paragraph 2.16 of his written address.
What runs through the gamut of accusations by the defendant are references to the plaintiff as a criminal, murderer, evil person, thief, a cheat, fraudster, extortionist, blackmailer, corrupt, landgrabber, tax evader, bribe taker/giver, cheat, interferer in the administration of justice, terrorizes people, email hacker, among others.
The failure of defendant to plead and provide evidence on the those matters only meant that the words were admitted by him *sub silentio*, as having being uttered by him; that they were uttered in reference to plaintiff and that they were published.
As already mentioned above, it is the burden of the judge as a trier of fact to determine whether the words actually defamed the plaintiff, using the hypothetical reader test.
I have concluded aforehand; based on exhibits KAO1, KAO3 and KAO4, that the plaintiff engaged in the crime of bribe taking and bribe giving. A person who commits a crime is a criminal, *simpliciter*. However since

every word uttered on a different occasion ought to be assessed for their defamatory effect, I will assess the alleged words to determine if they succeeded in actually defaming the plaintiff.
The facts and the evidence established the plaintiff as a self-confessed criminal, so defendant's statement is factual and justified.
Bribe taking is a dishonest, fraudulent, cheating, extortionist, thieving, blackmailing, and a corrupt act; besides being illegal. Plaintiff who has been established by the evidence as having taken and given bribes could not have actually been defamed by those words.

On the allegation that plaintiff murdered former member of parliament Joseph Boakye Danquah, is consorting with his wife, and was responsible for the killing of some Chinese, defendant explained under cross examination that he said so because plaintiff had alleged that he killed his colleague, Ahmed Suale.
The hypothetical reader would have read about that notorious case involving the murder of the former member of Parliament, Mr. Boakye Danquah, and would be aware of the trial of the suspects which excludes the plaintiff. The allegation made by defendant could not therefore succeed in actually defaming the plaintiff.
The allegation of land grabbing could equally not actually succeed in defaming the plaintiff. The defendant referred the court the decision of the Supreme Court in **Republic v the High Court, Land Division(7) Accra, ex parte: The Registered Trustees of the East Dadekotopon Development Trust, Adolph Tetteh Adjei, Anas Aremeyaw Anas, Holy Quaye (Civil Motion No: J5/46/2020, 22nd July 2020.**
This judgment being case law, is freely available on this Service's, and most online law portals.
In that case, the Supreme Court by an order of *certiorari*, quashed a decision of the High Court, which had favoured the plaintiff herein and

his grantor. The basis of the Supreme Court's decision was that, plaintiff' side did not effect service on a relevant party, and further, the High Court decision was based on a decision that had already been set aside by the Court of Appeal.

The statement of the defendant was substantially factual, and therefore justified. It could not have succeeded in actually defaming the plaintiff.

Some of the long list of words made by defendant and tendered as exhibit C were capable of defamatory meanings, but none was proven to have actually defamed the plaintiff.

I state in conclusion, that whereas all the statements founded on exhibits KOA1,KOA2, KOA3 and KOA4 were truthful and factual, thereby sustaining defendant's defence of justification and fair comment, the statements in plaintiff's exhibit C; though capable of defamatory meanings, were not proven to have actually defamed the plaintiff. I found the claims of plaintiff merit-less. It is hereby dismissed.

ERIC BAAH, J.A

COUNSEL

ODEI KROW Esq., for plaintiff,

OKYERE DARKO Esq., for defendant

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