

GHANA / JUDGMENT

# Agbeko Vrs Fuh [2023]

## GHAHC 195 (3 March 2023)

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3 March 2023

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IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE HO – VOLTA REGION A.D. 2023 CORAM: CHARITY A. ASEM (MRS), J. SUIT NO. E11/09/2022 DATE: 3RD MARCH, 2023. 1. 2. DZANKU AGBEKO PLAINTIFF/APPELLANTS KRAKASU SENYO VRS. DIANA FUH DEFENDANT/RESPONDENT

### JUDGEMENT

On the 14th of December 2020 the plaintiffs/appellants (herein referred to as plaintiffs issued a writ of summons at the District Court Adaklu for the following claims against the defendant.

- a) Gh¢10,000.00 being general damages for defamation of plaintiffs' character to wit slander words which defendant maliciously uttered against the plaintiffs to tarnish their good image without any provocation whatsoever in Ewe and to the hearing of other people in the community, "Mi dobe mia wum" 1 The above words when literally translate into English language means "You people have planned to kill me". In their statement of claim which is found at page 5 and 6 of the record of appeal they alleged that, they are Teacher and Police Assistance whilst the defendant is a Pastor. They all live at Adaklu Anfoe. It is their story that sometime in November 2020, the defendant went to the 1st plaintiff's house and 2nd plaintiff's office at Adaklu Waya and in the presence of others uttered certain words to wit "Mido be mia wum" which when translated in English language means "You people have planned to kill me" to the hearing of the general public. The plaintiffs aver that these utterances of the defendant have injured their character and has caused them to lose respect and dignity before others in the vicinity. Upon service the defendant denied their claims and in her defence counter-claimed against plaintiffs as follows;
- (a) An amount of GH¢4,000.00 from plaintiffs for wasting defendant's precious time which can be found at page 7 and 8 of the record of appeal. A full trial ensued at which the plaintiffs/appellants testified and called two witnesses. The defendant/respondent testified and called three witnesses in prove of her counter- claim. On the 23rd of March 2021 the presiding Magistrate His Worship Samuel Essel Walker delivered himself of a judgment by which he found in favour of the defendant and dismissed the appellants' claim. The said judgment appears on pages 43-55 of the record of appeal. He found as follows

1. That the defendant published those words complained of by the plaintiffs. 2
2. The words are not false of the plaintiffs.
3. The incident happened in a public place so a lot of people heard same as they had been called by the Chief of Adaklu Anfoe and
4. The defendant had not defamed the plaintiffs. GROUNDS OF APPEAL The Notice of Appeal filed by the plaintiffs/appellants against the judgment appears at pages 59-60 of the record of appeal. The grounds of appeal as stated therein are;
  - a) The judgment is manifestly against the height of overwhelming evidence on record.
  - b) Further grounds to be filed upon receipt of the record of proceedings. It is noted that no further grounds of appeal has been lodged by the appellants. The directive for filing of written legal submissions by Learned Counsels were complied with. The written submission on behalf of the defendant/respondent was first in time on 17/01/2023 whilst that of appellants was filed on the 20/01/2023. The court will revert to any relevant aspect of the submissions from both Learned Lawyers in the cause of this discussions. Once the appellant contends that the judgment was against the evidence before the court the understanding is that, the entire proceedings and the judgment thereof have been thrown into issue. By the litany of judicial pronouncement, the appellate court is bound to rehear the entire record and determine whether or not the judgment was supported by the evidence led. In effect a re-hearing power of the appellate court must be made manifest. 3 Both Learned Counsels have referred to a number of those authorities on the above position of the law. In *Tuakwa vs Bosom* (2001-2002) SCGLR 61, it was held that; “An appeal is by way of re-hearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of evidence. In such a case, although it is not the function of the appellate court to reevaluate the veracity or otherwise of any witness, it is incumbent upon the appellate court in a civil case, to analyze the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that on a preponderance of the probabilities, the conclusions of the trial judge are reasonable or amply supported by the evidence...”. The law places a duty on the appellant who alleges that the court failed in its duty to analyze the matter properly, has the duty to assist the court in identifying the lapses of fact and laws which were overlooked. The Court of Appeal (Criminal Division) *Koforidua*, in the case of *The Registered Trustees of the Presbyterian Church of Ghana Mpreaso-Kwahu Vs Mr. Kwaku Baah* (2019) 144 GMJ at page 208 held that, On the burden duty on an appellant who brings an appeal on the omnibus ground stated that; “While a complaint that a judgment is against the weight of the evidence invokes the jurisdiction of this court under rule 8(1) of the Court of Appeal Rules C.I. 19, to rehear the matter by evaluating the evidence led, (both oral and documentary), to come to our own conclusions, in support of, or against the trial courts findings”. 4 See *Oppong Kofi & ors vs. Attibru Kussu III* (2011) 1 SCGLR 176 *Tuakwa vs*

Bossom (2001-2002) SCGLR 61, (supra) It also places a burden on the appellant making that complaint to point out where the trial judge went wrong. In this regard, the appellant has a duty to point out pieces of evidence which had they been applied properly, would have led to a different result". Similarly, the Supreme Court in the case of OPPONG V. ANRFI (2011) 1 SCGLR 55, it was decided that; it is incumbent on a party who alleges that the judgment or ruling is against the weight of evidence to demonstrate from the judgment or ruling the lapses in same. See also DJAN V. DAAKO (2007-08) page 686. ISSUES FOR DETERMINATION.

- (a) Whether the judgment is against the weight of evidence adduced. In the instant case the only ground of appeal is that stated above filed on the 17/06/2021 see page 59 of the record of appeal It is apt that I record in detail the case of the parties and evidence led at the court below for its full effect. THE PLAINTIFFS' CASE IS THAT; He lives at Adaklu Anfoe and he is a teacher. He knows the Defendant. In November, 2020 he was in the house when the defendant and her two brothers and one sister came to him. They greeted him and told him that they came to him for a discussion about something. The issue they brought to him was that they have planned to kill her, the 2nd plaintiff and himself. He told them that he is in the house alone and his wife too the children are disturbing him so he wants to send somebody to one of his uncles to come and hear the case with him. His uncle came and they quoted 5 exactly what they said earlier. He asked the defendant how did she hear this about him and who told her. The defendant said he cannot mention the one who told her. That day he went to Senyo and the mother and asked them whether they have heard what the defendant is saying or not. There Senyo told him that the defendant came and asked him a similar thing and he told his mother and father and they went to the defendant to confirm. The defendant told Senyo and the mother that it is true she heard that the two plaintiffs had planned to kill her. There he asked Senyo that what will the woman and the family think if something happens to her at that night. There he told his mother then let them call a third party for this case to be heard so that they see the truth in what the woman is saying. There 2nd plaintiff's father said he will call the defendant and ask her the details of what she is saying. He agreed to him but told him that he is giving him three days for the case to be heard so that he will not sit down as a teacher and such allegation will be taken against him. The third day he went to the man and he said he called the defendant and she came with one of her brothers but refused to mention who told her. He told the man he had heard him but he will send the case to one of the defendant's brothers at their church. He went to the elder and he said this murder case is beyond his hearing and he told him to send the case to defendant's pastor at Pentecost church at Waya. He sent the case to the Pastor and he called the defendant and they met there. When they met at the Pastor's house he told him exactly what the defendant had said about them. The defendant told the pastor that she had received a phone call from Adaklu Kpogee and she was told that this is what the plaintiffs had planned against her. The pastor said it is about a murder case he cannot sit on such a case but because of he being a Christian he will try and settle the case between them. They also told the pastor that because they are Christians that is why they have brought the case to

him to be solved. The pastor asked the defendant that this is what the plaintiffs are saying so she should mention the one who told her but the defendant said she cannot mention the one who told her this. The pastor continued with series of questions but the defendant refused disclosing where she heard the issue from. The pastor said the way the case is going he will allow them to go but they should not send the case to any other place until they hear from him and they agreed. The 6 pastor called them back on a different day and they met again. There the pastor insisted on the defendant to disclose who told her but she refused to disclose the person. The defendant said they the plaintiffs are suffering and they put it before the pastor that did he hear what the defendant is saying. From there the misunderstanding started coming among them and the pastor quickly took a Bible and read to their hearing for the case to come to an end. The pastor told them that what he is going to say to them now the law of this country does not say that but because of God he is going to say it. The pastor told them that they should leave this case dragging but from there they should all go to the police station and sign a statement that what the defendant is saying about them is not true so that if something happens to the defendant tomorrow the families will not hold them responsible. The pastor said do they agree on what he said. They the plaintiffs agreed but the defendant refused to sign the statement. The pastor asked the defendant why she refused to sign that statement and the defendant said she is not ready to disclose who told her about the plaintiffs but they can proceed to send her to wherever. There they told the pastor that the defendant just framed this on her mind about them and so they are also ready to send this case to wherever. The pastor told them that the defendant is one of his church members before leading one prayer camp at Adaklu Anfoe so they should go and he will call the defendant and talk to her and whatever the outcome he will tell them. They told the pastor that they have heard him and because of respect they left there. Some few days later the pastor's wife called him on phone that her husband wants to talk to him. The pastor asked him where he is and he told him he just came from farm so he is in the house and he again said they should come to him at any free time for a discussion about their case. The pastor said he talked to the defendant several times but she refused to tell him who told her so she is only telling them to leave this case but where his fear lies is that may be something will happen to the defendant and the families will be holding them responsible and that is why he is afraid of that. They asked the pastor that now you sat on the case as the man of God but without final determination. Shall they offend him if they send the case to any place and he said no they will not offend him but they should do it in a humble way. There they told the pastor that where he has sent them earlier to go and sign the statement then they are going there to see if the defendant 7 will be able to mention the one. The pastor told them that he has decided to come to Adaklu Anfoe for an announcement but one of the defendant's brothers called him and said a chief of Adaklu Anfoe said they the plaintiffs' families are no more part of Adaklu Anfoe community that is exactly what has prevented him to come to Anfoe for such an announcement. They told the pastor that OK. They quickly sent the case to the Police Commander called the defendant and she brought about 500 members including them but the defendant refused to say who and where she heard the story from. The Police Commander told them that they cannot

force the defendant to mention any body to them and so they should send the case to court. They told the police that they have heard them and the defendant again told them that they have nothing doing. They have realized that may be something might happen to the defendant and the family may hold them responsible. That is why they brought her to court to come and explain and tell the court who and where she heard the murder case from.

**DEFENDANT'S CASE** In her evidence in chief the defendant stated that she lives at Adaklu Anfoe. In June 2020 Senyo (2nd plaintiff) came to her and told her that he is passing through some things problems and so she should help him through prayers. She is a herbalist and she also helps her husband in church programs, fasting and praying. What he told her was why she told him to come for praying and fasting and he will be set free. He told her that he had sworn to one spirit and through that swearing he proceeds to face problems that is why he came to her as a spiritual mother to help him. He told her that the spirit that he sworn to came on somebody. The spirit mentioned Senyo's name that the spirit talking now is the dead person. Senyo said he told the spirit that what the spirit is saying he does not know anything about it and if really he (Senyo) knows about what the spirit is saying then problems should come onto him. Senyo said again to her that what marvels him to come to her as a spiritual mother is that he has his whole body burnt with the exception of the shorts he is wearing. There he told him to come on the day he was born and he came on that day. She took him through praying and fasting and he went back in the evening. From that time 8 onwards he had been visiting her. Through him she was looking for palm wine for distillation of one medicine and he was the one who gave it to her without taking money because of their relationship. Because of that she took him as her son spiritually and whenever she heard something she called him and gave him advice. Through Senyo one of his sisters brought in one pregnant woman to her that her time is due to deliver but she is not able to do so. She called her husband and they worked on the pregnant woman and she gave birth safely and Senyo and the mother came to her at the prayer camp with testimony and she never took GH¢1.00 from any of them. In addition to Agbeko his first son fell sick seriously and there is a man in his house who called her to come and she went and prayed on the son before they sent him back to the hospital. Agbeko always passes through the prayer camp premises before going to his farm. On 1st November, 2020 they were at the church and teaching when they brought in one lady. When she saw the lady she was thinking she was going insane. When they finished praying at the point the pregnant woman was standing at her front. When she tried to lay her hands on her the lady they brought to the church ran and hit her by her leg. Immediately the ushers held her and she turned to pray on her. She said no she has no right to lay her hand on her and she held the pregnant woman's hand and she did not know the name of the pregnant woman but the one which the spirit was working mentioned the pregnant woman's name that I am your father. She added that the reason why you are not able to deliver is if you do not reveal the secret about me you will not be able to deliver and by that time she was not understating anything to what they were saying. The one on which the spirit was working's mother was there and she sent her back home without the prayer. That same month on 8th November, 2020 she heard that Mr. Agbeko and the family were having some problem with the chief of the town (Anfoe) and

they are dragging that problem since 2019 before she came back from somewhere to the town. Truly the spirit that came onto that person it was that same spirit that came onto someone too and spoilt her and she even brought that person to the court. It is this issue that they are struggling over with the chief in the community and the chief and his elders are telling them (Agbeko family) to go by the decision of the spirit but they also refused to go by what the spirit is demanding. There the chief told Agbeko and the family 9 that they are not going to sit down to see these spirits again to destroy this pregnant woman's life so if they refuse to go by the decision of the spirit then they as the chiefs of the town will punish their family. On that day the chief will punish the family of Agbeko. There they told her that Agbeko said she is responsible for laying her hand on the person before the spirit came so she is going to fly out of the town. On that month Monday she came to Waya and was standing under one tree near the roundabout and she heard the issue about Agbeko that same Monday before she came to Waya and she saw Senyo and he greeted and came to her under the tree because of their relationship. She said "Oh Senyo I heard something, the work she is doing they do not carry peoples work at heart. She asked him that Senyo you and your brother said the spirit that came on the girl that day she was responsible and so you will deal with her. Senyo said it is not true. It was only Senyo that she asked this and she told him that if she sees the brother Agbeko because his wife and children always come to them she does not want that cordial relationship to break up if she sees him too. There she came back home and their pastor called her on Tuesday. The pastor told her somebody brought her issue to him at the mission house and by that time too her brothers were with her discussing something. When she went to the pastor he called one of the elders and said Agbeko came and told him that she met Senyo and confronted him that they Senyo and Agbeko are planning to kill her. How the whole issue was, she told the pastor like that and he said if this is how it is then she should go and see Agbeko and tell him for understanding. Because her brothers were with her before the pastor called her and they said whenever she comes back from the pastor she should come and tell them the issue. She went to them when she came back from the pastor and they escorted her to Agbeko and his wife and children were there. He called one man in addition to his uncle Mr. Dzanku. When they greeted he asked her why was she and she told him that their pastor sent her to him and he admitted that he went to the pastor because of what Senyo came to tell him. How she asked him she told Agbeko the same thing. He asked her that he should call a witness. When Agbeko was asking of the witness the one who told him he has admitted angrily that when he heard of the name of the one who told her then on that day the land there would be divested. After Agbeko had added that the uncle who was there said they are one people 10 and this will not bring misunderstanding and he asked to pray and he prayed and they departed. When he went home the following day Senyo's father called her on phone and she does not know where he had her number from and he told her that she should bring along those people who can hear cases and come. She told one of her brothers and one church member at the prayer camp to accompany her to the church. When they went to him he said he heard that she said Senyo and Agbeko are planning to kill her and so she should mention the one who told her that. He added that although he is not walking but when he chatters a

car and enter he can move to any other place and litigate with anyone. There she told him they are not fighting and hearing of the person's name is not necessary so he should leave the case. There he asked her again that whenever they kill a fowl do you ever see the blood pouring on the ground before and she said no and he added if she was to mention that witness like it will have been very good. There he also described their family relationship and she put it back to him that can she pray with you and he said yes and she prayed with him. Later again the pastor called her saying again that she should bring along some people who can hear issues and come for Agbeko has brought back the same issue and he sent one of his brothers and he went. Truly he said it again before the pastor that the issue she heard from Senyo is disturbing him and he sat down and thought and realized that he needs a witness for what is happening now. The day he was using dangerous words against the witness that was what prevented her from mentioning who told her this because the person's life is important. At the point that he sent her to the pastor she was having some problems with the pastor on church problems so the pastor too came in and said she should go to the police station and she writes a statement that what she had said is not true and she said no she cannot do that. The pastor was talking prolonging his speech and she told him that she will come when the time is due. When she went home she told her elder brother who sent her to Agbeko what is happening before the pastor. Her brother said the punishment the chief of the town has given them is that they will not litigate with anybody in the town until they go by their decision and now that she never offended them and they are dragging her like this and refused to go to the police station. Senyo too she never knew that he is a Community Assistant. Last year November 5th she came to one of her sister's 11 funeral at Waya. One policeman called Adjetomenyo saw her and told her that they have brought an issue about her to him and had decided to come to her at home but once he had seen her here then she will request her to come. Later and hear. Later she went and the police man said Senyo and Agbeko lodged a complaint that she said they are planning to kill her so he needs the name of the witness. When she went there she told the police what happened. He said if this is the issue she should go home for she had just returned from a funeral and Senyo was not there. After she went home they were in a meeting discussing about their funeral programs when her phone rang about 4.30 and she picked and realized that it was the police calling and asked her to come to the police station. She heard the issues earlier and her brothers who were there told her that let them go to the police station and see what is happening and they went, when they arrived there she saw the plaintiffs with the Inspector and they sat down. The allegation against her is what they said again. When the Inspector asked her how the case went round before reaching him she told him like that. There Agbeko picked up his phone and said the day the chief of the town told them that they are not part of Anfoe community again they raised a stick to beat him at the gathering and this the video he has on his phone to testify There the inspector told him Agbeko that it is not about video matter. The inspector added that what he is requesting the woman to write and sign there is no form or law with them allowing that. There they ended and the police allowed them to go. When she went home about one and half weeks later the pastor again called her back that the church members and the delegates are in the mission

house waiting for her for a case to be heard. There she went to meet the pastor and six elders. The pastor said he called her on two different issues. First the issue of Agbeko and secondly church matters. At that time too the summons had been brought to her before he is calling again. She kept quiet and he started the statement from Agbeko stopped. He proceeded from church matters up to a point and stopped. There she put it back to the pastor that you sat on this issue of Agbeko and had ruled that she should go and sign a statement at the police station and it is again known to you that they have brought a writ of summons to her why would you call her again on the issue of 12 Agbeko in the presence of this gathering. There he raised up his voice on her. There she got the heart attack and latter to realize that she was at the hospital. It is not because of this issue that the chief of Anfoe has punished you and your family in addition it is not because of this issue that the people are pointing fingers at you that you are a murderer. The chief too is her witness. As brilliantly pointed out by Counsel for the plaintiffs, it will be necessary for the appellate court to determine from the records of appeal and most essentially the testimonies and cross examination of the parties as to whether or not the supposed statement was pronounced to the hearing of a third party other than the plaintiffs. Indeed, the number of people the words were published to matters not in a defamation suit in so far as it is more than one person and there is evidence on record and/or reason to believe that a third party has heard or is likely to have heard the words at the time they were uttered. According to counsel for plaintiff/appellants there is a public place which is near the roundabout of the community. Same is at the heart of the community and so concluded that the probability that commuters have heard the utterances of the defendant is high. Counsel stressed further that, evidence on record as corroborated by all the parties as well as their respective witnesses that the matter become known to the police, the chief, the pastor and indeed other relatives. The defendant is alleged to have repeated the words when, 1st plaintiff's uncle visited the defendant in her home. The defamatory words were repeated to the hearing of defendant's family. It is his submission that throughout the trial the defendant never denied uttering those words in the presence of the 3 persons in the 1st plaintiff's home. 13 According to Counsel for plaintiffs, the statement 'you people have planned to kill me is not true'; and the statement uttered to 2nd plaintiff near the roundabout of the Adaklu Waya community which is a public place at the wee hours of the day, same words issued to 2nd plaintiff in his house and before 3 other relatives of the defendant were defamatory as it has the tendency of influencing the perception of the public against the plaintiffs hereby injuring their reputation. SUBMISSION BY COUNSEL FOR DEFENDANT According to learned counsel for defendant/respondent, there is evidence before the court that the defendant asked the plaintiffs whether they have planned to kill her. She agreed in principle that the words "you have planned to kill me" may cause the plaintiffs to be shunned in the community in which they live as the said words are capable of lowering the plaintiffs in the estimation of the right-thinking members of the society. She said that, the words when interpreted in the fair and natural meaning is capable of defamatory meaning. Counsel submitted that, the plaintiffs themselves did the publication of the words spoken by the defendant. She continued that all the meetings before the chiefs, police, pastors, relatives

were called or organized by the plaintiffs themselves in an attempt to clear their names. She concluded that, a party who consents to the publication of the defamatory matter cannot succeed in an action for defamation. In the painstaking reading of the record of proceedings from the District Court, the following facts come to my attention clearly. In respect of the said defamatory words;

- (1) That the defendant did ask the 2nd plaintiff alone whether they have planned to kill her. Which 2nd plaintiff denied and demanded to know her source of information.
- (2) That it was 2nd plaintiff who repeated the words to the 1st plaintiff, the statement made by defendant. 14
- (3) The record did not indicate any witness at this stage to have heard the words spoken at, under the tree when defendant enquired from 2nd plaintiff whether they planned to kill her.
- (4) There was evidence that defendant repeated the words in the presence of her brothers in 1st plaintiff's house because plaintiffs have arranged a meeting.
- (5) 1st plaintiff had reported the matter to the defendant's pastor and it was the plaintiffs who invited defendant to 1st plaintiff's house and plaintiff also invited his uncle to sit in the meeting.
- (6) Furthermore 2nd plaintiff informed his father and mother of the said words, a pastor and to the police.
- (7) That, the defendant's words come to the hearing of all the people mentioned in this case by the publications made by the plaintiffs themselves.
- (8) As I found as a fact that defendant only spoke to 2nd plaintiff under a tree.
- (9) That the meeting with the chiefs at the heart of the community had nothing to do with the statement made by the defendant. the subject matter was a spiritual issue concerning the death of plaintiff deceased brother. From observation, the plaintiffs/appellants in attempt to clear and protect their good names did more damage to themselves by helping to spread the words spoken by the defendant/respondent in secret. So where the words spoken false – Throughout the record of evidence neither the plaintiffs nor their witness denied the words allegedly spoken by the defendant. Indeed, as rightly pointed out by Counsel for defendant/respondent; the plaintiffs/appellants were only concerned about the source of defendant's information. In my careful study of the evidence, it is clear that the plaintiffs have not denied the statement even though the words were published. 15 Admittedly, the incident under consideration took place in the local community of the parties. And from the evidence gathered the parties are subject to customary law defamation which is actionable per se without proof of actual damage. Afriyie Vs Dansowah (1976) 2 GLR 172. The law on admission of an opponent's evidence by failure to cross examine and deny same has not changed. It is clear that the plaintiffs have admitted the words spoken by the defendant since they have not cross-examined on it. They are only interested in her source of information.

In the Case of *Fori Vs Ayirebi* (1966) GLR SC 263 the Apex Court said that, when averments are made and not denied, no issues are joined and so deemed to have been admitted. At this stage of the discussion I turn my attention to the issue raised by Counsel for plaintiffs/appellants as whether or not the words are not false of the plaintiffs. Counsel for appellants argued that the import of this issue is to know whether the plaintiffs had actually said or is in anyway culpable or liable of the said defamatory words. He called on the court to determine whether or not the plaintiffs have actually planned to kill the defendant as being alleged. Counsel continued that, truth is a complete defence to the tort of defamation in customary law. Being a defence the onus lies on the defendant to lead evidence to prove this allegation on the balance of probabilities. He submitted that the burden then shifts on defendant. Now at page 34-42 of the record of Appeal is the evidence of one Henry Fuh DW3. Though his relationship with the defendant is not captured, his name suggest he may be 16 a relation to the defendant. As part of his narrations of the incident (spiritual) that took place at the town center concerning the plaintiffs and their family, they become aggrieved and blamed defendant for not casting the spirit from the person brought to her healing center. According to DW3 he heard 1st plaintiff milted as follows; “what happened that the spirit came on you and you went to the prayer camp of Diana and she was unable to sack the spirit in you. The 1st plaintiff again said he will kill the defendant for she is the cause of this thing happening in the public and who ever heard what he is saying and tell the defendant too he or she will also be in the same shoe with defendant.” The witness continued that, he did not tell the defendant what 1st plaintiff had said. But days later, the 2nd plaintiff came to his house. After ensuring that no one else was in the house with him 1st plaintiff said “He said he will like to tell me something. He continued that, what happened between them and the defendant he is going to tell me something about it but she should not mention his name. The 1st plaintiff has threatened to kill or deal with the defendant and I have taken the defendant as my spiritual mother known to her and if I did not tell her this I will not feel free. The next day I went and told the defendant what the 2nd plaintiff came and said, before the 2nd plaintiff left I told him that, that was exactly what the 1st plaintiff said into my ears last at the public gathering but I had no witnesses....” Apart from the cross-examination of the 2nd defendant, 1st defendant did not deny the alleged statement made by him to Dw3. Though the 2nd defendant denied the story he did not deny his visit to the DW3’s house. There are no credible questions of cross examination to discredit defendant’s assertions against the plaintiffs. From thorough evaluation of the evidence on record, the plaintiff/appellants did not deny the truth of the allegation of the words spoken by the defendant/respondent. I also find 17 that the words were not actuated by malice taking into account the close (spiritual) relationship that existed between the parties aforehand. In the case of *Afrieie v. Dansowah* (1976) 2 GLR 172 cited by Counsel for defendant, though a High Court division is of great persuasion on the law. This court has no difficulty in deciding that the defendant spoke those words complained of. Whether the words were defamatory and whether they were false, for slander under customary law and actionable per se without proof of special damages provide it was false. Not having denied the words spoken. It is the view of this court that the findings of the trial Magistrate was correct, that the statement was

true. It is important to note that due to the relationship defendant had with plaintiffs, she had an interest in the report made to her by DW3. And she was under obligation to protect her source of information. I do agree with Counsel for defendant/respondent that due to the cordial relationship defendant had with the plaintiff/appellants, she had moral obligation to ask plaintiffs whether indeed they had planned to deal with her or kill her. I hold firmly that the enquiry was not actuated by malice and planned to defame the appellants herein. It is for the above reason that the court found that the defendant carried no malice. Please see *Amoako Vs Takoradi Timber Ltd.* (1982) GLR 69. The last but not the least of the issues I wish to deal with is the publication of the words spoken. I reckon that series of meetings were held after defendant/respondent asked the 2nd plaintiff the words complained of. As stated earlier on, the plaintiffs had contributed to the publication of the words spoken. 18 Let me conclude by saying that, the Counsel for plaintiff/appellants have not pointed out the facts, law, pieces of evidence overlooked by the trial Magistrate on his submissions to the court. Having carefully evaluated the decision of the trial judge delivered on the 23/03/2021, I have no reason to disturb his findings and I hereby affirm same. The appeal is without merit and same is dismissed. Cost of GH¢2,000.00 in favour of the defendant/respondent. (SGD) CHARITY A. ASEM (MRS.) (JUSTICE OF THE HIGH COURT) PARTIES – PRESENT. LEGAL REPRESENTATION Joan Osei for E.A. Agbakpe for Plaintiffs/Appellants – Present. Jemima Addo for The Defendant/Respondent – Present. jd\* 19

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Prepared on 29 October 2026 · Esheria