DR. MATTHEW OPOKU PREMPEH

v

SAMMUEL GYAMFI

13th October, 2022

COUNSEL
Nana Agyei Baffour Awuah for the Plaintiff
Godwin Kudzo Tameklo for the Defendant

JUDGMENT

Charles Gyamfi Danquah J.

INTRODUCTION
I begin this delivery with a saying from Bill Gates, "that success is a lousy teacher. It seduces smart people into thinking they can't lose."
The Plaintiff, with the following accolades, achievements, work experience and laurels as a member of Parliament for the Manhyia South Constituency in the Ashanti Region of the Republic of Ghana, Minister for Education of the Republic of Ghana, Member of various Standing Committees including Health, Appointments, Special Budget and Environment, Science, Technology, Innovation Committees, a Medical Doctor in the Republic of Ghana and the United Kingdom, was an active member of the Royal College of Physicians and Surgeons of the United Kingdom, an alumnus of the Prestigious Kennedy School of Government, Harvard University, USA has brought the present

defamation action against the Defendant, a lawyer and the Communications Officer of the National Democratic Congress Party.

In his amended writ of summons and amended statement of claim filed on 16th July, 2019 the Plaintiff claimed the following reliefs against the Defendant;

1. A declaration that the words complained of and published by the Defendant and contained in paragraph 14, herein, are defamatory of the Plaintiff's character.
2. An order of the Honourable Court directed at the Defendant to publish an unqualified retraction and an apology with the same prominence the defamatory words received within 7 days after the judgment.
3. An order of the Honourable Court for perpetual injunction restraining the Defendant, his agents, assigns, servants and any person claiming authority from the Defendant from further making and/or publishing any defamatory words against the Plaintiff.
4. The sum of One Million Ghana Cedis (GH¢ 1,000,000.00) in damages for defamation.
5. Costs including Lawyer's fees; and
6. Any other order as this Honourable Court may deem fit in the circumstances.

The Defendant entered appearance on the 21* October, 2019 and in his amended statement of defence filed on the 25t November, 2019 denied the Plaintiff's claim.

AMENDED STATEMENT OF CLAIM

The Plaintiff after the enumeration of his credentials, accolades, and laurels as earlier narrated above averred that before he entered into politics, he practised as a medical doctor in Ghana and the United Kingdom and was also an active member of the Royal College of Physicians and Surgeons of the United Kingdom.

The plaint is that at a press conference addressed by the Defendant on 13' June, 2019 the Defendant associated the Plaintiff with Seidu Mba, a suspect in the kidnapping case involving two Canadian students. That the Defendant in the press statement referred to Seidu Mba as a ringleader of a syndicate of thugs and criminals who were behind the kidnapping of the two Canadian students.

The Plaintiff gave the particulars of defamation as follows;

> "Seidu's association with the NPP is more than meet the eye. He is alleged to be the personal body guard of the Asokore Mampong MCE, Alhaji Alidu Seidu, and an errand boy for both Manhyia South MP, Hon. Matthew Opoku Prempeh, and Ashanti Regional Chairman of the NPP, Bernard Antwi Bosiako (a.k.a Wontumi)."

According to the Plaintiff the said words created in the mind of people that the Plaintiff is associated with thugs and criminals who are in the business of committing heinous crimes.

With this imputations the Plaintiff claimed the statement caused damage to his reputation and gave the particulars of damage as follows;

> 1. That the Plaintiff has suffered serious damage to his character and reputation by being portrayed to right-thinking members of society as an irresponsible Minister of State and Member of Parliament who has no regard for the laws of Ghana
> 2. That the Plaintiff has suffered serious damage to his character and reputation by being portrayed to right-thinking members of society as one who condones and benefits from thugs and/or criminals who committed heinous crimes.
> 3. That the Plaintiff has suffered serious damage to his character and reputation by being portrayed to right-thinking members of society and indeed the global/international community as not being a person worthy of being entrusted with the offices he occupies as a Minister of State and Member of Parliament.
> 4. That the Plaintiff has suffered serious damage to his character and reputation

by being portrayed to right-thinking members of society and indeed the global/international community as being a deviant public official and a distrustful member of the society.

The Plaintiff's lawyers on the instructions of the Plaintiff wrote to the Defendant to render unqualified apology but the Defendant did not budge and continued to state that he did nothing wrong and that the statements made at the press conference were facts and the truth.

AMENDED STATEMENT OF DEFENCE

In his amended statement of defence filed on 25t November,2019 the Defendant denied the Plaintiff's claim that the statement made was defamatory except that there was a press conference where the words complained of was made. The defence continued that the interpretation put on the words which associated the Plaintiff with Seidu Mba as defamatory is an overstretch of the words and even if the words were defamatory which allegation is denied by the Defendant, the statements constituted a fair comment on matters of public interest.

Additionally, the Defendant's position is that the words were expressions of opinion and fair comments on matters of public interest, therefore the Defendant was justified in uttering those words. They were made without malice and the Plaintiff had put his own interpretation and ascribed meanings which are far-fetched, unreasonable, contextually and semantically inaccurate. These are the very words of the defence and to the Defendant they had not made the Plaintiff to suffer any damage to his reputation or character.

The defence also has it that the issues and discussions at the press conference were of National character as same bordered on the kidnapping of foreign nationals in Ghana and showed to the World the insecurity situation in the country.

ISSUES FOR TRIAL

At the Application for Directions held on the 24' February, 2020 the joint issues filed following the proceedings of 13t February, 2020 and which were set down for trial were the following;

1. Whether or not within the context and advanced by the Defendant in the delivery of the press statement at the press conference, the statement complained of bears meanings which are defamatory of the Plaintiff.
2. Whether or not the statement complained of in paragraph 14 of the statement
of claim is defamatory.
3. Whether or not the plea of fair comment and justification are available to the Defendant for making the statement complained of within the context created by the Defendant in the press statement.
4. Whether or not the Plaintiff is of the stature attributed to him by paragraphs 4, 5, 6, 7, 8, 9 and 10 of the amended statement of claim
5. Whether or not the Defendant, on the 17' June, 2019 on a radio programme on Asempa FM, insisted that the statement complained of was true and thus refused to retract same and render an apology to the Plaintiff.
6. Whether or not the Plaintiff has suffered any damage to his reputation.
7. Whether the Plaintiff is entitled to the reliefs he seeks.
8. Any other issue (s) arising from the pleadings.

THE LAW OF PROOF IN CIVIL PROCEEDINGS

The suit before this Court is a civil one. The Plaintiff's contention is that he has been defamed which the Defendant disputed and raised the defences under the law of defamation. To prove a case in civil proceedings the Plaintiff who summoned the Defendant to Court has a burden to lead credible and admissible evidence to establish every issue raised by him. In the case of ACKAH vs PERGAH TRANSPORT LTD & OTHERS (2010) SCGLR 728 at 736 Adinyira JSC stated;

"It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail.
It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of a fact is more probable than its non-existence. Section 10 (1) (2) and 11 (1) (4) of the Evidence Act, 1975 NRCD 323."

See also the case of Adwubeng vs Domfeh (1996-97) SCGLR 660.

There is also the Standard of Proof and in civil matters same is on the preponderance of the probabilities which is defined at Section 12 (1) of the Evidence Act, 1975 NRCD 323 as that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.

In his book Essentials of the Ghana Law of Evidence 2014 Edition, His Lordship S. A. Brobbey reproduced the position on preponderance of probabilities contained in the Bench Book for U. S. District Court Judges published by the Federal Judicial Centre (March 2000 Ed) as follows;

> "The Plaintiff has the burden of proving his/her case by what is called preponderance of the evidence which considered in the light of all that facts leads you to believe that what the Plaintiff claims is more likely to be true than not. To put it differently, if you were to put the Plaintiff's and the Defendant's evidence on opposite sides of the scales, the Plaintiff would have to make the scales tip somewhat on his (or her) side. If the Plaintiff fails to meet this burden, the verdict must be for the Defendant."

The burden of proof does not lie on the Plaintiff alone. Where the Defendant raises an issue in his or her pleadings the Defendant carries the burden to establish same. What this means is that the issues raised in the defence would have to be proved by the Defendant. See Section 14 of the Evidence Act, 1975 NRCD 323 which states;

> "Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting."

So in short the burden is not static but shifted from party to party depending on what is to be proved at every point in time in the proceedings.
See the cases of In RE ASHALLEY BOT WE LANDS; ADJETEY AGBOSU &

Others vs KOTEY & OTHERS (2003-2004) SCGLR 420 and TOTAL GHANA LIMITED vs THOMPSON (2011) SCGLR 458.

ELEMENTS OF DEFAMATION, THE LAW AND ITS PROOF.
The Court now looks at the law on what constitutes defamation. In the case of OWUSU-DOMENA vs AMOAH (2015-2016) 1 SCGLR 790 cited by learned Counsel for both parties the Supreme Court quoted the definition of defamation as contained in the Halsbury's Laws of England, 4' Edition Volume 28 paragraph 10 as follows;

> "A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to disparage him in his office, profession, calling, trade or business."

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

> "There are two steps involved in establishing that the publication was defamatory; first, whether the publication was capable of a defamatory meaning. If a defamatory meaning is found to exist the Plaintiff will have established his claim. This is what the authors Winfield and Jolowicz on Tort 18' Edition at page 584 paragraph 12-15 described as the *natural and ordinary meaning' of the words published. The Learned Authors cited the case of JONES vs SKELTON (1963) 1 WLR 1362 at p. 1370-1371, where Lord Morris said that "the ordinary and natural meaning may…include any implication or inference which a reasonable reader guided not by any special but only by general knowledge, and not fettered by any strict legal rules of construction would draw from the words."

See also the case of ABU vs BPI BANK (2014) 68 GMJ 115 where the Court of Appeal also made the following pronouncement;

> "…Words are capable of being defamatory of a Plaintiff if they tend to hold him up to contempt, scorn or ridicule or if they turned to lower him in

> the estimation of right thinking members of society generally, or if they caused him to be shunned or avoided."

The authorities abound both in Foreign and Ghanaian case law. It must be noted that there is no statutory definition of defamation and the courts have over the years tried and succeeded in defining defamation.
In the case of YOUSSOUPOFF vs M.G.M. PICTURES LTD (1934) 50 TLR 581 defamation was defined as:

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

The words claimed to be defamatory must be interpreted in their normal or natural meaning and so in the case of PROFESSOR E.O. ADEKOLU JOHN vs UNIVERSITY FOR DEVELOPMENT STUDIES & ANOTHER Civil Appeal No. J4 /59/2013 dated 19th March, 2014 the Supreme Court defined what constitute defamatory statements and gave three other elements of defamation as;

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

In summary, for the Plaintiff to be successful in a defamatory suit he must plead and lead credible and admissible evidence to establish the following;

1. That it was the Defendant who made the publication;
2. That the publication concerned the Plaintiff.
3. That the publication was capable of a defamatory meaning in its natural and ordinary sense;

In the alternative to the third element that from the facts and or circumstances surrounding the publication, it was defamatory of the Plaintiff.

In the Court of Appeal case of BENJAMIN DUFFFOUR vs BANK OF GHANA, Civil Appeal No. H1/67/2018 dated 30 May,2019 reported in DLCA 7756 cited by learned Counsel for the Defendant, Her Ladyship Ackah-Yensu JA stated the elements that have to be proved in defamation cases by a Plaintiff in order to be successful at the trial are as follows;

> "In order to prove defamation, five key elements must be prevalent with no exception:
> 1. A statement of fact
> To be considered defamatory, the statement must concern a matter of fact, not simply an opinion.
> 2. A published statement
> To be published, the statement need not necessarily be published in print, such as a newspaper or book. For the purposes of defamation, the statement is considered published if a third party sees, reads or hears it.
> 3. The statement caused injury
> An injury is considered to have occurred if the Plaintiff's reputation was harmed by the statement.
> 4. The statement must be false
> It is not enough to show that a published statement simply does injury to the Plaintiff; rather, for it to be determined to be "defamatory", it must also be shown that the statement is false.
> 5. The statement is not privileged."

What the above pronouncement meant is that all the elements without an exception will have to be proved by the Plaintiff. This may be difficult in certain situations but same is not insurmountable. The Plaintiff is in Court because he claimed he is in a position to prove all the elements of defamation against the Defendant. The Defendant's position is that based on the evidence on record the Plaintiff failed or could not establish all the elements of defamation as laid down by the legal authorities. The Defendant as already stated pleaded the defence of fair comment and justification.

EVIDENCE OF THE PARTIES AND THEIR WITNESSES

The Plaintiff's case was prosecuted by an Attorney who testified on behalf of the Plaintiff but did not call additional witness. The Defendant also testified and called one witness who claimed to have been attacked at a point in time by the Plaintiff's boys. The evidence of the parties and their witnesses would be laid bear in the resolution of the issues that were set down for trial.

I must at this stage put on record that there is no law which compels a party to testify before he can be successful in a case. In the case of IN RE ASHALLEY BOTWE LANDS; ADJETEY AGBOSU AND OTHERS vs KOTEY AND OTHERS cited supra Her Ladyship Georgina Wood, JSC (as she then was) stated at holding 6 as appeared in the headnotes as follows;

> "The Court of Appeal erred in dismissing the claim of the sixth Plaintiff on the ground that he himself did not give evidence. There was no rule of law, stating that a party would succeed in his case only if he testified at the trial."

She continued:

> "The standard test in any given case is not whether the party himself gave evidence at the trial, but whether he was able, through whomever, to provide the needed evidence. So that even if a party did not make himself available at the trial as a witness, provided sufficient evidence was led on his behalf in proof of his case, he ought not to loose the action on the basis that he himself never testified at the trial."
>
> As some of the issues overlap or revolve around the same facts they would be resolved together where necessary.

RESOLUTION OF THE ISSUES SET DOWN FOR TRIAL

I will begin the resolution of the issues with the 4th issue which is whether or not the Plaintiff is of the stature attributed to him by paragraphs 4, 5, 6, 7, 8, 9 and 10 of the amended statement of claim. The Plaintiff's Attorney in his witness statement and supplementary witness statement led evidence both oral and documentary to establish the stature attributed to the Plaintiff. These were the accolades, laurels, achievements, etc already enumerated at the beginning of this delivery. The Attorney tendered Exhibit B series- as proof of the Plaintiff's association with the Harvard Kennedy School, Exhibit C - proof of Plaintiff being a Member of Parliament since 2009, Exhibit D series- Plaintiff's professional

and academic records which establishes Plaintiff's profession as a Surgeon and a member of the Royal College of Physicians and Surgeons of the United Kingdom, Exhibit E series -Recipient of Harvard Ministerial Medal of Achievement 2020, Exhibit F series; Recipient of the best performing minister.

In fact, the Plaintiff has to his credit other awards including Ghana Enterpreneur and Corporate Executive Awards bestowed on him by the United States Ambassador to Ghana as the overall best minister in Ghana,- Exhibit G as well as other Awards in Exhibits H, J and K.

The Defendant did not deny any of the evidence, both oral and documentary on the Plaintiff's stature. Under the law the Defendant is deemed to have admitted that in fact and in reality the Plaintiff possesses all the stature attributed to him by paragraphs 4, 5, 6, 7, 8, 9 and 10 as contained in the amended statement of claim and the witness statements of the Plaintiff's Attorney. An admission according to the Black's Law Dictionary, Deluxe Ninth Edition, is "a voluntary acknowledgement of the existence of facts relevant to an adversary's case." In simple terms it means that the issue or fact has been conceded and are not in contention. The Plaintiff with the evidence on record therefore proved that he possesses the stature attributed to him. In the case of In Re Ashalley Botwe Lands; Adjetey Agbosu & others vs Kotey and others cited supra Brobbey JSC stated;

> "The rule is that where an averment is made that is not challenged the one making the averment need not lead evidence in proof of it. The rationale for this is simply that no one has an obligation to prove the obvious or what is not challenged."

Issue 4 is therefore ruled in favour of the Plaintiff that he possess the stature attributed to him.

This leads me to the resolution of issues 1 and 2 which stood as the core of the proceedings at hand and they are whether or not, within the context created and advanced by the Defendant in the delivery of the press statement at the press conference the statement complained of bears meanings that are defamatory of the Plaintiff and whether or not the statement complained of in paragraph 14 of the statement of claim is defamatory.

The words as contained at paragraph 14 of the statement of claim are as follows;

> "Seidu's association with the NPP is more than meets the eye. He is alleged to be the personal bodyguard of the Asokore Mampong MCE, Alhaji Alidu Seidu, and an errand boy for both Manhyia South MP, Hon. Matthew Opoku Prempeh, and Ashanti Regional Chairman of the NPP, Bernard Antwi Bosiako (a.k.a Wontumi)."

The said statement or words standing on their own do not connotes or convey defamatory meaning. After all an errand boy is a person whose job is to run errands for important people. He is in the position of a messenger
However, the words were stated in a particular context.

The Defendant held a press conference on the 13' June, 2019 and at the said press conference in the Defendant's own words was to exonerate Honorable Samuel Ofosu Ampofo, the Chairman of the NDC and the NDC itself, by exposing the true identities and political affiliation of the people behind the recent cases of kidnapping in the Country.

It should be noted that the press Conference had its roots from the kidnapping of two Canadian girls who were in Ghana on an exchange program. According to the Defendant the Government in power had put the blame at the doorstep of the chairman of the NDC and with the press conference was to brief the Ghanaian Community and the World by showing the people behind the act of kidnapping of the Canadian girls.

The Defendant stated as follows;

> "This Akufo-Addo government has in the past few months accused and put the National Chairman of the DC through emotional and psychological trauma over false malicious charges of kidnapping. But today, our God who is faithful in all of His ways, has vindicated Hon. Samuel Ofosu-Ampofo and the NDC.
> Distinguished friends of the inky fraternity, in the circumstances, we are left with no other option than to clear the name of our highly esteemed National Chairman and the NDC by unmasking and exposing the true identities and political affiliation of the people who are behind recent cases of abduction and kidnappings in the Country"

The statement continued;

> "...It is scary to reveal the kidnapping of the Canadian girls, which has shocked our nation as the latest in the rising spate of kidnappings in Ghana, was largely orchestrated by hoodlums and bandits who are key and active members of militia groups of the New Patriotic Party (NPP)."

In essence all that the Defendant sought to do with the press Conference was to exonerate the Chairman of the NDC as the person behind the kidnappings but that same was done by persons affiliated to the New Patriotic Party. This the Defendant did by stating that the ringleader of the kidnappers was one Seidu Yakubu Mba, a member of a syndicate of thugs, and criminals who were behind the kidnapping of the Canadian girls.

After making the above statement the Defendant went ahead to directly associate Seidu Yakubu Mba with the Plaintiff in the words contained at paragraph 14 of the statement of claim and the witness statement of the Plaintiff's Attorney. These statements have been repeated over again in this delivery.

By the said conduct of the Defendant by stating that Seidu Yakubu was an errand boy of the Plaintiff a person the Defendant has described as bandit, criminal and hoodlum all that the Defendant sought to do with those words was to defame and did defame the Plaintiff. It is not only that the said person was described as a bandit and criminal and hoodlum but that he was responsible and the ringleader of the kidnappers of the Canadian girls.

In short the evidence of the Plaintiff's Attorney which captured what has been stated above dented the image of the Plaintiff in Ghana and abroad as a result of the media attention it attracted. The Plaintiff's case is that from the totality of the statement published by the Defendant and in the context it was made the meanings to be deduced from the statement are the following;

1. That the Plaintiff is associated with thugs and or criminals who engage in heinous crimes as kidnapping
2. That the Plaintiff condones thuggery and or criminal activities and is a beneficiary of such activities.

3. That the Plaintiff is not a law abiding citizen of Ghana.
4. That the Plaintiff has no regard for the high offices he occupies as Minister of Education and a Parliamentarian to the extent that he engages and works with hoodlums, thugs bandits and or criminals.
5. That the Plaintiff takes the offices he occupies so lightly that he engages all manner of persons including thugs and or criminals to work for him

These meanings ascribed to the statement complained of by the Plaintiff according to the Defendant is overstretched and that they are not defamatory and the crust of the Defendant's case is that even if the statement complained of is defamatory, same amounts to fair comment and the Defendant is therefore justified in making those statements. The Defendant continued in both his evidence in chief and in cross examination that the statement he made and published about the Plaintiff was not defamatory and that if same was the case then he was justified in making the said statement. The issue of whether or not there was publication of the statement at the press conference is not in doubt.

As already stated in this delivery in the OWUSU-DOMENA vs AMOAH case a defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally and 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.

The words as used are to be understood in their "ordinary and natural meaning and may ....include any implication which a reasonable reader guided not by any special but only by general knowledge, and not fettered by any strict legal rules of construction would draw from the words."

Defamation is about the publication of statements deliberately and maliciously about a person where it is meant to ridicule, or hinder other persons in society from associating or having intercourse with such a person.
It is not the case that people will approach the defamed to express their disapproval to him as a result of the publication but the opinion they form about such a person after the publication of the defamatory statements is what matters.

In the case at hand whether the people around the Plaintiff confronted him about

the publication or whether the close associates of the Plaintiff were confronted or contacted about the publication is not what matters most. What matters is how people will see a Member of Parliament or a Minister of State in the status of the Plaintiff associating with thugs, criminals, bandits and hoodlums etc. and whose object is the commission of crimes such as kidnapping.

In his cross examination of the Plaintiff's Attorney learned Counsel for the Defendant posed questions to suggest that the Plaintiff lost nothing as a result of the statement complained of by the Plaintiff. That the Plaintiff was not shunned by associates as he was received by Otumfuo at Manhyia during a ceremony. That after the defamatory statements the Plaintiff still maintained his position as a minister of State and even received many awards inspite of the alleged defamatory statements. That the Plaintiff's livelihood was not affected in any way.

In response the Plaintiff's Attorney was emphatic that the Plaintiff never lost the issues raised by learned Counsel for the Defendant but because the Plaintiff has couched a niche for himself as a responsible, respectable, and law abiding citizen and which status the Defendant sought to destroy was the reason the Plaintiff is in Court to protect the said image and not allow the Defendant to destroy what it took the Plaintiff many years to build.

I do not think that once a person is associated with criminals, thugs, bandits and hoodlums will not affect the reputation of the calibre of the Plaintiff. It is not only that people did not come to Court to testify about how they saw the Plaintiff after the publication but that the Plaintiff's Attorney narrated how he had calls from persons who knew the Plaintiff after the publication.

I am of the view and which position will no doubt be the same as that of right thinking members of the society that by the Defendant's publication in its entirety as Seidu Mba who was crucified as a criminal, hoodlum, bandit and a thug before he had even been accused and put before a court of competent jurisdiction being associated with the Plaintiff without any proof will not be to maliciously and deliberately to defame the Plaintiff.

It should be noted that as at the time the Defendant found these words to describe Seidu Mba he had not pleaded guilty to any such offence of kidnapping convicted any such offence. What it means is that the process for which the facts were to go through to establish whether Seidu Yakubu Mba was the kidnapper of the Canadian girls had not started.

In the final analysis the said Seidu Mba was even discharged and was not prosecuted for any offence of kidnapping. So the question is, on what basis was the Defendant using all those words to describe Seidu Mba as hoodlum, a thug, a criminal and bandit. The police who arrested Seidu Mba and the others only referred to them as suspects. For referring to the said Seidu Mba and others as criminal, hoodlums, bundits and thugs before associating Seidu Mba with the Plaintiff the conclusion one can draw is that all that the Defendant set out to do by associating Seidu Yakubu Mba with the Plaintiff was to defame the Plaintiff and actually defamed the Plaintiff.

To establish or to prove defamation the Plaintiff as already stated must prove that the statement must concern a matter of fact and not an opinion, must prove that same was a published statement, that the statement must cause injury to the Plaintiff, ie the Plaintiff's reputation was harmed by the statement, that the statement is false and lastly that the statement is not privileged.

From the analysis and deductions made so far I am of the view that the Plaintiff has proved all the elements needed to establish that the Defendant defamed him with the words published at the press conference and whether same was drafted by the NDC secretary or whoever, once they were published and circulated by the Defendant, he is liable for whatever is contained in the statement and the Defendant himself stated in cross examination that he is responsible for every contents of the press statement including punctuation marks.

In conclusion, I state that the words in their context as contained in the press statement and as published by the Defendant defamed the Plaintiff.

DEFENCE OF FAIR COMMENT AND JUSTIFICATION

This leads me to the resolution of the issues 3 and 5 set down for trial and which are 3. Whether or not the pleas of fair comment and justification are available to the Defendant for making the statement complained of within the context created by the Defendant in the press statement and 5. whether or not the Defendant, on the 17t June, 2019 on radio programme on Asempa FM, insisted that the statement complained of was true and thus refused to retract same and render an apology to the Plaintiff.

In the case of OSUMANU vs OSUMANU (1982-83) GLR 797 it was held as follows;

> "a man could not complain that his character or reputation had been injured if what was said about him was true or substantially true. In that event, a Defendant against whom an action for defamation had been brought could raise the plea of justification in his defence."

It is clear from the proceedings that the Defendant's position is that the press conference was based on painstaking and diligent investigations to unmask the identity of the persons behind the kidnapping of the Canadian girls. This means that the information the Defendant put up at the press conference were not mere allegations but that they are true and if the Defendant is able to prove the truthfulness of the statement, then the Defendant would be justified in publishing the statement. After all, truth, justification and fair comment are defences when it comes to defamation suits. The basis for which a party may claim the defence of justification was stated in the case of BENJAMIN DUFFFOUR vs BANK OF GHANA AND GRAPHIC COMMUNICATIONS LIMITED, Civil Appeal No. J4/48/2021, dated 9th February, 2022 where it was stated;

> "The defence of justification is based upon proof of truth and nothing else. The common law took the position that a person was not entitled to a false reputation. Therefore, a publication that revealed the true reputation of another by publishing the truth about the person, would relieve the publisher of liability for defamation. For this reason, for the defence of justification to succeed in an action, there must be proof that each and every fact in the publication is true. It is not enough that the story is more or less true or contains only a few inaccuracies. Each fact must be justified, and

> when innuendo is pleaded, then the justification must go to that meaning as well."

Where therefore a Defendant in a defamation suit pleaded justification as a defence and failed to prove the truthfulness of the statement published the defence would automatically fail. In the case of BUACHIE vs SAMMAN (1982-83) 2 GLR 797 cited by learned Counsel for the Plaintiff the defence of justification and qualified privilege put up by the Defendant in that case failed because the Defendant was unable to prove the truth of the allegation he made against the Plaintiff.

In defamation cases the Court presumes that the defamatory statements are false and as already stated the duty is cast upon the Defendant to satisfy the Court that in fact and in reality the statement is true.

Under the defence of fair comment the Defendant is again under legal obligation to lead credible and admissible evidence that the statement is true. Where the facts commented upon is not true the defence would fail. See the cases of BENNEH vs NEW TIMES CORPORATION (1982-83) GL 302 and STANDARD ENGINEERING CO LTD vS NEW TIMES CORPORATION (1976) 2 GLR 409.

In the press statement which was admitted as Exhibit 1 the statement from the Defendant is that Seidu Yakubu Mba is alleged to be the errand boy of the Plaintiff. This was a specific statement and by the evidence of the Defendant these are information gathered from other people or heard from somewhere.

As a defence the statement that the words are true is not sufficient. The Defendant under the law has an obligation to plead and prove that the statement is true or that the comments made is true.

In his amended statement of defence the Defendant did not plead and particularised that the statement made was true. The defence was in a different direction. The defence of truth was introduced for the first time in the witness statement of the Defendant. The statement of defence centred on wrong interpretation as claimed by the Defendant on the words used during the press conference. The following paragraphs of the amended statement of defence were the core of the defence.
Paragraph 7.

In further denial of paragraph 14, Defendant avers that the statement that the said Seidu is alleged to be an errand boy of the Plaintiff, is not defamatory and the interpretation placed on the said statement by the Plaintiff is misplaced and at best an over stretch.
Paragraph 8
The Defendant avers that even if the statement is defamatory (which is denied) the statement constitute a fair comment on matters of public interest, as far as they are expressions of opinion and the Defendant is justified.
The Defendant again averred that the statement complained of cannot be reasonably interpreted to mean any inappropriate conduct had been ascribed to the Plaintiff by the Defendant.

From these averments the Defendant centred his defence on his expression of opinion on matters of public interest and was justified in making the said statement.

This is the reason why learned Counsel for the Plaintiff in his submission filed on 13' July, 2022 stated as follows;

> "It is therefore worthy of note that the Defendant's reference to justification in his statement of defence was not on the basis that the statement complained of was true but that the statement complained of constituted a fair comment as far as the statement was an expression of an opinion."

The position of the law is that were the defence to be that the Defendant's statement made at the press conference was true which is an absolute defence in defamation cases then the Defendant should have made it part of his defence by pleading, particularising and proving same. That is not the situation with the Defendant's case.

As could be seen in the Defendant's witness statement the defence of truth was introduced for the first time in his witness statement. This is how the Defendant stated it; "that even if my statement suggest that the Plaintiff is associated with Seidu in the manner the Plaintiff would have this Court believe, same cannot be defamatory as they are true."

It is strange that the Defendant who never claimed to know Seidu Yakubu Mba

will all of a sudden claimed to know the said person during cross examination. The Defendant after realising that his defence was about collapsing turned to concentrate on the story of DW1 to build a defence. All the evidence relating to the DW1 was the evidence relied on by the Defendant to claimed that he saw the Plaintiff in the company of the said Seidu Mba on many occasions.

I do not think that the Defendant was telling the truth when all of a sudden in his answers in cross examination he sought to portray that Seidu Yakubu Mba is known to him for several years. Such an important evidence was not part of the evidence contained in his witness statement.

Under normal circumstances the crust of the Defendant's case from his pleadings and evidence is that Seidu Yakubu Mba is an errand boy of the Plaintiff and that would have been his first averment to be proved in the case. The following paragraph 9 of the witness statement of the Defendant showed that the Defendant

was not aware of any relation between the Plaintiff and Seidu Yakubu Mba. It states;

> "The press conference on the whole was to exonerate the National Chairman of the NDC, who had been accused by the NPP in relation to the kidnapping of the Canadian girls, and to further show that the suspects are affiliates of the PP and therefore mentioned that based on information gathered from the Plaintiff's own constituency and other eye witnesses, it was evident that the said Seidu was a personal bodyguard and an errand boy for some known and prominent members of the PP including the Plaintiff."

Paragraph 20 of the witness statement also states;

"That I made the statements based on facts gathered and easily verifiable."
The above evidence from the Defendant are to the effect that they were not within the knowledge of the Plaintiff but facts gathered from other people. It is therefore strange for the Defendant to turn round or change his position as happened in cross examination as follows;
Q. I suggest to you that equally by associating the Plaintiff to Seidu Yakubu Mba,

the person you have stated as a matter of fact was the ring leader of the syndicate that kidnapped the Canadian girls, you also dented the image of the Plaintiff
A. That is not correct. It is not correct because the said Seidu Yakubu is in fact and in truth an associate of the Plaintiff as has been demonstrated to this Honourable Court by persons who have seen them on several occasions.
Q. I suggest to you that Seidu Yakubu is not an associate or errand boy of the Plaintiff as you put it.
A. That is not correct because I have personally seen the two together at KMA and the Manhyia Palace on different occasions and as Mahfuz Jibreel confirmed to this Court the said Seidu is a known errand boy of Plaintiff and was in his company when he was attacked.

As already stated the Defendant who has not throughout the proceedings proferred any evidence of his personal knowledge of the Plaintiff and Seidu Yakubu now claimed that he personally saw the two on many occasions.

The Defendant was more or less approbating and reprobating and such conduct makes it difficult for a court of law to rely on the evidence of such a witness as the truth.

In the same vein the Defendant at a point stated that the statements made at the press conference were allegations and at a point stick his neck out to say that the statements were facts and true.

Inconsistencies in the evidence of a party and his witnesses where they are insignificant can be overlooked but where they are of the nature as contained in the answers of the Defendant then a Court cannot closed its eyes on them. See the case of OBENG vs BEMPOMAA (1992-93) GBR 1027 where it was stated thus;

> "Inconsistencies though individually colourless may cumulatively discredit the claim of the proponent of the evidence. The conflicts in the evidence of the Plaintiff and his witnesses weakened the merit of his case and proved fatal to his case."

It should also be noted that answers given during cross examination are part of the witness's evidence. See the case of GIWAH vs LADI (2013-14) SCGLR 1139.

Now to the evidence of DW1. He gave evidence of his encounter with the Plaintiff and Seidu Yakubu. He claimed he was once attacked by some people who happened to be the boys of the Plaintiff.

The Court's initial impression about DW1 was to be a witness of truth but his answers during cross examination just at the initial stage showed that DW1 was not consistent. He gave a sympathetic account of an attack on him but if the

witness is not consistent with his own personal information then I wonder how a Court of law could rely on his evidence.
The following questions in cross examination of DW1 will confirm the Court's position.

> Q. Please let's go to the verification of Truth page of your witness statement. You affirmed on the 26' day of June, 2020 that the facts contained in your witness
> statement are true. Is that not so.
> A. That is so.
> Q. Four days later on the 30t June, 2020 this witness statement of yours was filed
> in court. Is that no so.
> A. That is so.
> Q. At paragraph 3 of your witness statement you stated and I quote "I know Dr.
> Matthew Opoku Prempeh as a member of Parliament for the Manhyia South Constituency because I live in the Constituency and I have encountered him on many occasions." Is that not so.
> A. That is so.
> Q. Now at paragraph 1 of your witness statement you say you live at Sipe in the Ashanti Region of Ghana. Is that not so.
> A. Yes.
> Q. I am suggesting to you that Sipe is not in the Manhyia South Constituency.
> A. Yes it is not in Manhyia. I was living in Ashtown that is where I grew up and everything happened in Manhyia. I moved from Manhyia not quite long ago.
> Q. And yet right now before this Honourable Court you said that you live in Ashtown. I am suggesting to you that you speak from two sides of your mouth.
> A. The reason why I told the Court that I live at Ashtown is because I was

born
in Ashtown, I grew up there, I work at Ashtown, I only go to Sipe to sleep after my days work.
Q. I am suggesting to you that this answer is only an afterthought.
A. That is not so.

The cross examination continued;
Q. I am suggesting to you that having admitted before this Court that Sipe is not in the Manhyia South Constituency your statement at paragraph 3 (I know Dr. Matthew Opoku Prempeh as a Member of Parliament for Manhyia South Constituency because I live in the Constituency and have encountered him on many occasions) is false.
A. What 1 have stated is correct.
Q. I am also suggesting to you that nowhere in Exhibit 4 is the name Seidu Mba mentioned
A. Yes
Q. I am also suggesting to you that the Plaintiff, Dr. Matthew Opoku Prempeh is not mentioned in this Exhibit 4 as having been with criminals.
A. That is true.
Q. In fact all references to persons and incidents in Exhibit 4 were made in alleged terms. Is that not correct.
A. It happened.

It should be noted that Exhibit 4 is the Graphic Online Report with the caption, Police Question Manhyia MP over Ashtown Incident.
From the evidence contained in DW1 witness statement, he claimed to know the Plaintiff because he lives in the Plaintiff's Constituency at Sipe and it was as a result of his abode at Sipe that he encountered the Plaintiff on many occasions. It turn out from the DW1 answers in cross examination that Sipe is not in the Plaintiff's Constituency as gathered from the answers of DW1. As a matter of fact Sipe is not in the Manhyia South Constituency. In his evidence before the Court the DW1 stated he lived at Ashtown. Meanwhile, this is the person who had stated in his witness statement that he lived at Sipe and got to know the Plaintiff as a result.

If therefore it turned out that the basis for which the DW1 claimed to know the Plaintiff is not the case, then one would not be wrong to conclude that the DW1

evidence that he knew the Plaintiff because he lived in his Constituency is highly improbable or unreliable as stated by learned Counsel for the Plaintiff.

The issues about the DW-1 residents and how he knew the Plaintiff are straightforward issues that one does not expect the D W1 to go round a circus. The evidence of an unreliable witness cannot be the basis for the resolution of issues before the Court. It was not the case that the DW1 was guessing about the situation of Sipe but was emphatic that he got to know the Plaintiff because he lives at Sipe which is in the Plaintiff's Constituency when in reality, same is not the case.

This Court does not believe the evidence of DW1 and would not attach any value to same.

I have also considered Exhibit P series, the evidence of the Defendant as well as the answers of the Defendant in cross examination and have formed the opinion that the Defendant did repeat on the said program that he has no apology to render to the Plaintiff. In cross examination of the Defendant by learned Counsel for the Plaintiff the following is what transpired:

> Q. You have admitted to your interview at Asempa FM on Ekosi Sen as captured by Exhibit P. Not so.
> A. That is so as captured on Exhibit P series.

The above position is correct that the Defendant emphatically stated that what is in Exhibit P are his words and insisted that the statement complained of was true and do not have any apology to render.

ISSUES 6
This issue has to do with whether or not the Plaintiff has suffered any damage to his reputation. The position of the Defendant is that the Plaintiff has not suffered any damage to his reputation and quoted Benin JSC in the Owusu-Domena vs Amoah case cited supra where it was stated;

> "The issue of reputation is one of fact. It is the summation of facts, acts, events, conduct, etc from which the esteem in which a person is held by other persons is adjudged. Thus unless the facts speaks for themselves from which a negative effect on a person's reputation may be inferred, the

> Plaintiff must lead evidence to prove the nature or kind of reputation he had prior to the publication and in what way it has been affected by the publication. Is it in relation to his character, trade, profession or what have you?

I have already stated that the statement published by the Defendant was defamatory of the Plaintiff. The Plaintiff's Attorney again testified on the achievements and the reputation the Plaintiff has built over the years. The position of the Defendant is that every reputation of the Plaintiff remained intact even if the statement were defamatory and that the Plaintiff lost nothing. Learned Counsel for the Defendant again quoted from the case of BENJAMIN DUFFFOUR vs BANK OF GHANA, Civil Appeal No H1/67/2018 dated 30th May, 2019 DLCA 7756 where the Court on proof of damage to reputation stated;

> "According to the Respondent, he received a lot of phone calls and messages from his relatives, friends, church members, pastors, work colleagues and the general public.
> However, he did not lead any evidence to prove how his reputation had been injured in the eyes of these people. It is more likely than not that the said people were naturally concerned that he had lost his job and called to sympathise with him."

The Defendant's position is that the Plaintiff did not call any witness to testify to the effect that they no longer held the Plaintiff in high esteem, or that they had shunned his company. It was just a bear assertion without proof and under the law the burden did not shift unto the Defendant. See the case of DZAISU & OTHERS vS GHANA BREWERIES LTD (2007-2008) 1 SCGLR 539 @, 547 where it was stated that:

> "It is trite law that a bare assertion by a party of his pleadings in the witness box without proof did not shift the evidential burden onto the other party."
> In the Owusu-Domena vs Amoah case cited supra Benin JSC again stated;
> "Finally, the Plaintiff made a rather feeble attempt to make a case that his own friends shunned him as a result of the publication, regarding him as an arsonist. If this allegation is found true, it would have afforded the Plaintiff a genuine case of defamation since by being considered an arsonist it has a dent on his character and reputation. For in law the true test is not what the writer meant but what the reader understood by the words.

However, apart from the bear assertion the Plaintiff made no attempt to develop this claim. None of the unnamed and unidentified friends was called; indeed the record does not indicate that he even made any attempt to call any of them but failed. And even assuming for the sake of argument that they were unwilling to come having shunned his company, or were simply unavailable, yet the Plaintiff could have called another person who was aware that his friends had shunned him following the publication by way of exception to the hearsay rules. This is a matter of fact so failure to produce evidence is fatal to the Plaintiff's case."

On the authorities cited, learned Counsel for the Defendant contended that the Plaintiff failed to prove that he suffered any injury to his character and reputation. However, this assertion by learned Counsel for the Defendant cannot be wholly true. This is because the Plaintiff's Attorney testified on how people called him after the press conference to ascertain whether the statements contained in the press release was true or not. The Defendant has admitted that the issue of the kidnapping of the Canadian girls created a bad image for Ghana and not only in Ghana but to the international community at large. A country where foreign nationals are kidnapped cannot be a safe place to live. It dented the image of Ghana. If therefore the issue has the potential to describe Ghana or to portray Ghana as a country of hopelessness then definitely the issue would dent the image of whoever is associated with such a heinous crime of kidnapping. All persons associated with the kidnapping of the Canadian girls would have their character, image and reputation dented in one way or the other. The fact that the Plaintiff was returned as a parliamentary candidate, the fact that the Plaintiff won the election as an MP, the fact that the Plaintiff was appointed a minister of State, or the fact that he won laurels after the publication would not matter. The issue is whether the press statement after the publication affected the image, reputation and dignity of the Plaintiff.

My opinion is that it is the case because people would see the Plaintiff from a different angle until he redeemed his image. The Plaintiff's Attorney testified on how he received several calls from people to ascertain the truth or otherwise of the Defendant's claim.

It should be noted that in the same Benjamin Dufffour case the Supreme Court was clear on the following position;

"In addition to all this, it would also be important to state that at common law, libel is actionable perse because damage is presumed. On account of the presumption, there need be no specific proof of damage. However, any particular damage that has occurred may be put in evidence and the Court would take cognisance of it. Such damage may be aggravated by certain circumstances, and a Court may take that into consideration as well."

In the case at hand the Defendant published the defamatory statement at a press conference and same were reproduced or repeated by various media houses as well as on online news portals. Radio and television stations also repeated it. This is a fact and the situation is worse with the advent of social media platforms where defamatory materials go viral within the shortest possible time and in unimaginable levels.

In short, just as the Defendant in the press statement stated and acknowledged that the kidnapping of the Canadian girls dented the image of Ghana on the international level, the ringleader of the kidnappers having been linked or associated with the Plaintiff as his errand boy also dented the image, reputation and character of the Plaintiff and I so hold.

In short, judgment is entered in favour of the Plaintiff against the Defendant that the Defendant published defamatory statements against the Plaintiff with his publication and distribution of the press statement on the 13t June, 2019. Having come to the conclusion that the Defendant defamed the Plaintiff I now consider whether or not the Plaintiff is entitled to the damages claimed by him.

AWARD OF DAMAGES

I have come to the conclusion that the publication on the day in question was defamatory of the Plaintiff and having entered judgment against the Defendant and in favour of the Plaintiff in respect of his claim then it follows that the Plaintiff is entitled to damages which I now proceed to determine the quantum of damages to be awarded. The Plaintiff in his writ of summons is praying the Court for damages for defamation. This is awarded as of right or in respect of libel or defamatory actions. It is also awarded as a matter of course. In the case at hand

the libel indulged in by the Defendant is grave. Libel under the law is actionable perse without proof of actual damage. In the ABU vs BPI case cited supra the Court of Appeal on the award of damages in libel suits stated as follows;

> "damages awarded in a defamatory suit are at large. This means that the award is not limited to pecuniary loss that can be specially proved, and the court may award damages in an amount it finds reasonable having regard to the circumstances of the particular case. The circumstances may include the mode of the publication, the circumstances in which it was made, and the extent to which it was made. The Court may also take account of the motives and conduct of the Defendant from the date of the publication to the verdict."

It should also be noted that damages that are awarded in defamatory actions are not or intended to enrich the Plaintiff who has been defamed and as stated by President Obama, "Money is not the only answer, but it makes a difference." It is meant to vindicate them to the public at large and also to console them as a result of the wrong done to them. The defamed suffered injury as a result of the publication of the defamatory statements that had wide coverage. It is therefore meant to compensate them for injury and damage to their reputation, image and character. Having injured the Plaintiff's feelings the damages awarded is also meant to cool the hurt to his feelings.

Aside finding a means to relieve the Plaintiff for the damage suffered the award of damages is also meant for the Defendant to feel the pinch of his wrongful and unlawful conduct and as a lesson to potential defamers who are bent on soiling the person, body or reputation of others built over the years. In the case of RONER ENTERPRISE LIMITED vs GLAHCO HOTELS & TOURISM DEVELOPMENT LIMITED (2017) 112 GMJ 182 at 209 CA, Aduama Osei JA stated thus;

> "Halsbury explains that in contract, damages are not meant " to punish the party in breach, or to confer a windfall on the innocent party, but to compensate the innocent party and repair his actual loss.' This end is achieved, as Georgina Wood JSC, (as she then was ,put it in JUXON SMITH vs KLM DUTCH AIRLINES (2005-2006) SCGLR 438@ 456, by

> placing him so far as money can do it, 'in the same position with respect of damages, as if the contract had been performed.'

In tort, however, beyond putting the Plaintiff in the same position, to award damages, as noted above, with the end of punishing or deterring."

It is the responsibility of the Court to bring defamers to order but that is not to condemn them to extinction. The fundamental law of the land, that is the 1992 Constitution of Ghana places emphasis on the freedom of expression of the individual. But in expressing the said right the law prohibits the intentional or reckless damage to the rights of other persons.

In the circumstances of this case and having regard to the conduct of the Defendant and the extent of damage or injury suffered by the Plaintiff I think an amount of GH% 500,000.00 is enough to compensate the Plaintiff and is so awarded against the Defendant.

OTHER RELIEFS SOUGHT

The Plaintiff apart from his prayer for damages also prayed for other ancillary reliefs. In addition to the damages awarded to the Plaintiff the Defendant is ordered to publish an unqualified apology and retraction of the defamatory words. This is to be carried out within a period of 14 days on service of the Entry of Judgment on the Defendant and the Defendant shall publish as false the defamatory statements in the like manner they were made or published.

An order of perpetual injunction is also granted against the Defendant, his agents, privies, servants, assigns, representatives and followers from publishing any further defamatory statements against the Plaintiff.

COST: Cost of GH₵ 40,000.00 is awarded against the Defendant.