IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2014

CORAM: ADINYIRA (MRS),JSC (PRESIDING)
YEBOAH,JSC
BONNIE,JSC
BAMFO (MRS),JSC
BENIN,JSC

CIVIL APPEAL
NO.J4/13/2014

30TH JULY, 2014

ERIC KWAME AMOAH PLAINTIFF/APPELLANT/RESPONDENT

VRS.

BEN OWUSU DOMENA DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

BENIN,JSC:-

On October 19, 2009, the defendant/respondent/appellant, hereinafter called the defendant, caused a publication to be made in the Daily Graphic. A passport sized photograph of the plaintiff/appellant/respondent, hereinafter called the plaintiff, was attached thereto and the publication concerned the plaintiff. It read:

'DISCLAIMER

BENOD MACHINE SHOP

MR ERIC KWAME AMOAH, former Manager of the above named shop no longer works with the shop.

Any transaction on behalf of the above named shop with institutions, companies, shops, and individuals by Mr Eric Kwame Amoah is null and void.

Any company which goes into contract with him do(sic) so at their own risk.

By: Managing Director

BENOD Machine Shop

Ben Owusu-Domena'

The above publication was repeated in the November 12, 2009 edition of the Daily Graphic. It is this publication that gave rise to the action before the High Court that has resulted in the appeal before this court. The plaintiff complains that the said publication has damaged his reputation and has also diminished his chances of finding employment on the job market. Hence the reliefs endorsed on the writ of summons, namely:

1. Declaration that the publication caused by the defendant in the Daily Graphic concerning the plaintiff is malicious and reckless.
2. Punitive and exemplary damages against the defendant for the malicious and reckless publication.
3. An order directed at the defendant to retract the offending publication in the same medium over the same number of times of the publication together with an apology.

The indorsement raised no claim known in tort. Though the category of torts is not closed, yet malice or recklessness is not a tortuous liability per se, it must be pleaded in relation to a specific tort. Thus the plaintiff is required to give the particulars of the libelous publication complained of in the indorsement to the writ as required by Order 57 rule 2 of the High Court (Civil Procedure) Rules, 2004,

C.I. 47. And if he desires to do so in the statement of claim he must seek to amend the indorsement on the writ. The plaintiff did not comply with this provision in the rules and yet the defendant did not raise any objection in the proceedings. However, Order 81 of C.I. 47 has taken care of such non compliance especially where the defendant did not complain and participated fully in the proceedings. Therefore the particulars of the publication which were detailed in the statement of claim would be deemed to have cured the defect in the indorsement.

The facts of the case which are largely not in dispute are the following. The defendant is the owner of a business that operates under the business name BENOD Machine Shop. The defendant ordinarily resides in Germany. Sometime in the year 1990, the defendant employed the services of the plaintiff in his Accra residence and in January 1997 the defendant entrusted the management of this business, Benod Machine Shop, to the plaintiff. From all accounts the plaintiff performed to the satisfaction of the defendant. During the night of November 17, 2007 an unfortunate incident occurred at the business premises: there was fire outbreak which completely destroyed the business premises. The defendant was then out of the country but he returned home so soon thereafter. Upon his return the defendant suspected arson and decided to get the perpetrator/s of the act. He resorted to all means possible principally by consulting spiritualists but no name of any perpetrator came up. He returned to Germany with intent to rebuild his lost business from scratch. It was about a year later the defendant is alleged to have accused the plaintiff of embezzling funds due to the business and then setting the business premises ablaze. Consequently, the defendant proceeded to dismiss the plaintiff instantly and also ejected him forthwith from the residence given to him to occupy as part of his service conditions.

It was about a year after the defendant had dismissed the plaintiff from the employment and ejected him from the residence he was occupying that the defendant caused the two publications in the Daily Graphic. The plaintiff claimed that the offending publication was maliciously and recklessly made and calculated to tarnish his hard won reputation in the eyes of Civil Society and their industry players. The last part of the publication was intended to cripple his ability to

engage in any gainful employment or contract to earn a living, as per paragraphs 16 and 17 of the statement of claim. The plaintiff listed a number of companies and public institutions both local and international, with which he had had interactions in the course of doing business with them on behalf of Benod Machine Shop. Hence the publication had damaged his reputation worldwide, plaintiff averred. The plaintiff averred also that the defendant caused Melcom/Century Stores to photo frame and hang the offending publication in their factory thereby giving it wider local circulation. The defendant also went to KGM industries and gave the staff copies of the publication, telling them the plaintiff had stolen his money and built houses and bought cars with it.

In his statement of defence, the defendant denied the charges of malice and recklessness attributed to him by the plaintiff. He rejected the plaintiff's claims and pleaded justification instead. The material averments are contained in paragraphs 15 to 18 of the statement of defence. They provide:

15. …….defendant states that he made the publication in the Daily Graphic because he went to solicit for jobs at Melcom and KGM and found out that the plaintiff was known and referred to by the said companies as BENOD.

16. The defendant contends further that he has to convince the staff of the said companies that he is the owner of the BENOD Machine Shop and that BENOD is the acronym for BEN OWUSU DOMENA.

17. Defendant contends further that since the plaintiff was no longer in his employment, he had to give public notice in the media to prevent any of his customers from dealing with the plaintiff hence the publication is neither reckless nor malicious.

18. Defendant states further that he also made the publication to protect his company from individuals, institutions and companies who will deal with the plaintiff in the honest belief that they are dealing with BENOD Machine Shop more especially when his shop is a sole proprietorship.

At the summons for directions, all the core issues were identified by the parties. The plaintiff filed eight issues and the defendant added three. The issues put together are:

1. Whether or not plaintiff has been involved in any wrong doing whilst in the employment of the defendant.
2. Whether or not the publication caused by the defendant in the Daily Graphic was malicious and reckless.
3. Whether or not the last paragraph of the…..publication…will deny the plaintiff the opportunity to be engaged by an employer or enter into a contract with any firm to earn a living.
4. Whether or not at any material time, plaintiff described himself as BENOD.
5. Whether or not the defendant accused plaintiff of having embezzled money and arson.
6. Whether or not in spite of the publication defendant has personally continually made representations of malice against the plaintiff to some of the companies.
7. Whether or not the publication has injured the reputation of the plaintiff.
8. Whether or not the plaintiff is entitled to the reliefs sought.
9. Whether or not plaintiff has acquired any worldwide reputation.
10. Whether or not plaintiff acted on behalf of BENOD in his dealings with companies mentioned in the statement of claim.
11. Any other issues arising out of the pleadings.

The plaintiff testified by himself and called a witness, one S. K. Owusu who is his brother. The defendant testified by himself but called no witness. The trial High Court dismissed the plaintiff's claim on ground that the publication was justified in the sense that the defendant just sought to protect his business interest. The court held that the third paragraph of the publication which the plaintiff dwelt upon did not on its own create any wrong impression about the plaintiff. No malice or recklessness could be imputed from that, the trial court concluded.

The plaintiff appealed to the Court of Appeal, which allowed the appeal, on 31st July 2012. Among others, the Court of Appeal found evidence of malice and

recklessness in the publication and evidence on record and concluded the publication was defamatory of the plaintiff. The court awarded general damages in the sum of GH₵50,000.00 in favour of the plaintiff plus costs.

Being dissatisfied with the judgment of the Court of Appeal, the defendant appealed to this court on only one ground that the judgment is against the weight of evidence. The sole ground of appeal throws up the case for a fresh consideration of all the facts and law by the appellate court. We are aware of this court's decision in Tuakwa v. Bosom (2001-2002) SCGLR 61 on what the court is expected to do when the ground of appeal is that the judgment is against the weight of evidence. it has erroneously been cited as laying down the law that when an appeal is based on the ground that the judgment is against the weight of evidence then only matters of fact may be addressed upon. Sometimes a decision on facts depends on what the law is on the point or issue. And even the process of finding out whether a party has discharged the burden of persuasion or producing evidence is a matter of law. Thus when the appeal is based on the omnibus ground that the judgment is against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the factual matters. This court's decision in Attorney-General v. Faroe Atlantic Co. Ltd. (2005-2006) SCGLR 271 at p. 306 per Wood JSC (as she then was) cited by Counsel for the respondent is apt on this point.

Arguments by Counsel for the defendant/respondent/appellant

Counsel for the defendant faulted the Court of Appeal for not citing any authority for all the principles they applied to the facts. He argued that in the absence of any local authorities the court should have considered common law and text writers as helpful and better guide than merely stating legal principles without citing any authority to back them.

Counsel also faulted the Court of Appeal holding at page 148 that "the trial court erred seriously when it took the position that the Plaintiff had abandoned the first two paragraphs and was relying solely on the third paragraph to make his case." Counsel said the High Court did not do what was attributed to it because it held

that "……taken in isolation, the paragraph complained of by the plaintiff is totally meaningless…….one cannot look at only paragraph 3 of the said publication and derive any meaningful understanding of that publication. To be meaningful, paragraph 3 must be read together with the first and the second paragraphs of the publication."

Arguments by Counsel for the plaintiff/appellant/respondent

Counsel agreed that the publication must be considered as a whole in accord with the basic and fundamental principle of construing documents. Counsel referred to the fact that in this case the plaintiff relied upon actual malice against the defendant and submitted it would suffice if the party alleging malice is able to prove spite or ill will or indirect motive on the part of the other party in the publication. He cited the case of Turner v. Metro-Goldwyn-Meyer Pictures, Limited (1950) 1 All ER 449. Counsel submitted also that the publication must be considered in the light of the prevailing circumstances both before and after the publication, and when this is done the court would come to the conclusion that the appellant was influenced by malice and acted recklessly. In this regard Counsel recounted the facts in evidence in arriving at his conclusions.

What constitutes defamation has been the subject of several interpretations by Judges, Academics and Commentators alike. It is an endless exercise to attempt a single definition that will capture all facets of the tort. For the present case the definition proffered by the editors of Halsbury's Laws of England, 4th edn. (reissue) vol. 28, para. 10 is appropriate. It provides: 'A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to disparage him in his office, profession, calling, trade or business.'

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 18th edn. at page 584, para. 12-15 described as the *'natural and ordinary meaning'* of the words published.

The learned authors cited the case of Jones v. Skelton (1963) 1 W.L.R. 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."***

Next, the defamation complained of may be established from the prevailing facts and/or circumstances. Proof of either of these will suffice for the plaintiff.

For his part the defendant could raise in his defence priviledge, whether absolute or qualified, and/or fair comment. But these defences of qualified priviledge and fair comment will be defeated if actual malice is established. Malice in such matters will be said to exist if there is spite or ill will on the part of the defendant or if the court finds indirect and improper motive against the defendant in publishing the words complained of. Thus in Angel v. HH Bushell & Co. Ltd. (1968) 1 Q.B. 813; (1967) 1 All ER 1018 a defamatory letter was found to have been motivated by anger, not by duty or any interest, so a defence of qualified priviledge failed.

Thus the plaintiff must plead and lead evidence on the following matters in order to succeed:

i. There was publication by the defendant;
ii. The publication concerned him, the plaintiff;
iii. The publication was capable of a defamatory meaning in its natural and ordinary sense;
iv. Alternatively or in addition to iii above, that from the facts and/or circumstances surrounding the publication, it was defamatory of him, the plaintiff;
v. If the defendant seeks qualified priviledge or fair comment, that the defendant was actuated by malice. Absolute priviledge does not apply here since that deals largely with matters in the public interest and those provided by statute.

There is no dispute there was publication in the Daily Graphic. There is also no dispute the publication concerned the plaintiff whose name was mentioned and so too was his picture affixed to the publication. Was the said publication when read as a whole capable of a defamatory meaning, in other words, when taken in its natural and ordinary sense?

The defendant's position was that the publication was justified in the sense that it was necessary to protect the business. Following the rehabilitation of the factory after the fire outbreak, the defendant began to source for business. But according to him wherever he went people only knew the plaintiff who had become synonymous with BENOD. It was with intent to correct this false impression that he caused the publications.

It must be pointed out from the onset that it is not what the defendant intended that matters but what the words can reasonably be understood as conveying. As stated in Halsbury's Laws of England, 4th edn. (Reissue) vol. 28 page 23, para. 44 *'in determining the natural and ordinary meaning, the court takes into account not only the literal meaning of the words but also the inferences which a reasonable person would draw from them in their context.'* On the same point Lord Devlin stated that "***the other respect is that the natural and ordinary meaning of words for the purposes of defamation is not their natural and ordinary meaning for other purposes of the law. There must be added to the implications which a court is prepared to make as a matter of construction all such insinuations and innuendoes as could reasonably be read into them by the ordinary man."*** That was in the case of Daily Telegraph v. Associated Newspapers Ltd. (1964) AC 234 at p. 280.

We thus have to look at the ordinary and natural meaning of the words contained in the publication to start with. When read as a whole, the only inference that could be drawn from the publication was that the defendant was advising all persons, both corporate and human, from transacting any business or contract with the plaintiff on behalf of Benod Machine Shop, as same would be null, void and risky. Paragraph 3 cannot be considered in isolation as the plaintiff wanted the court to do, as it flows directly from the preceding paragraphs.

Secondly, it is observed that the plaintiff's main case was focused on the fact that the defendant's act was actuated by malice and recklessness, which the defendant vehemently denied. The facts pleaded by the plaintiff were that the defendant accused him of having embezzled funds and setting the factory ablaze. The defendant proceeded to terminate his appointment and eject him from the official accommodation. All these material averments were denied by the defendant in his statement of defence. Thus the plaintiff assumed the burden of producing evidence as well as the burden of persuasion by virtue of sections 10 11(1)(4) and 14 of the Evidence Decree, 1975 N.R.C.D 323. The Court of Appeal reviewed the evidence and concluded that the plaintiff had discharged the evidential burden on him.

The plaintiff is required by the provisions of Order 57 rule 3 of C.I. 47 to give particulars of the facts and matters on which he relies in support of the sense in which he understood the publication. Thus a plaintiff must plead what meaning he attributes to the statement in order that the defendant may know what case he has to meet.

After setting out the publication in paragraph 14 of the statement of claim, the plaintiff pleaded material facts in paragraphs 16 and 17 to underscore what he understood the publication to mean. They provide:

16. The plaintiff contends….that the offending publication is malicious and reckless and calculated to tarnish the hard won reputation of the plaintiff in the eyes of Civil Society and their industry players.

17. The plaintiff will contend that the last paragraph of the publication was calculated to cripple his ability to engage in any gainful employment or contract to earn a living.

It is clear the plaintiff was relying on facts and circumstances of the case to establish the libel especially in the light of his plea that the defendant had accused him of embezzlement and arson prior to the publication. This is what the law recognizes as innuendo. In the legal sense innuendo will arise only where the alleged defamatory matter depends upon facts and/or circumstances that are not

within general knowledge but are known to the persons to whom the words were published.

The plaintiff's case devolved around three matters, namely, that the plaintiff dismissed him from the employment and then ejected him from the duty post residence and finally and most serious of all that the defendant accused him of embezzlement and arson. His view was that the publication was reckless and actuated by malice.

Let us start with a consideration of the plaintiff's claim that the defendant accused him of embezzlement and arson; in the sense that having embezzled the funds belonging to the business the plaintiff burnt down the factory. Thus it was with this state of malice that the defendant dismissed him from the employment and ejected him from the official residence and caused the publication to be made.

We would then have to consider whether the persons to whom the publication was made understand it the way the plaintiff claimed. This is a matter of fact which thus called for evidence to prove on a balance of probabilities. There were two issues raised, first the effect on his worldwide reputation, and second, the effect on his ability to secure a job or contract. All these facts are interwoven and will thus be considered together.

The sole witness called by the plaintiff was his own brother S. K. Owusu who testified as PW 1. Counsel for the defendant sought to make capital out of the fact that PW1 is the blood brother of the plaintiff and said "no other witness was called so there is no proper corroboration of the plaintiff's case." At the hearing counsel was asked whether corroboration was required in a civil trial and he answered that what he meant was that the plaintiff's case was not supported. So be it. The position of the law makes PW1 a competent witness within the meaning of sections 58 and 60(1) of the Evidence Decree, 1975 (N.R.C.D. 323). These provisions state:

58. Except as otherwise provided by this Decree, every person is competent to be a witness and no person is disqualified from testifying to any matter.

60(1). A witness may not testify to a matter unless sufficient evidence is introduced to support a finding that he has personal knowledge of the matter.

A witness's close affinity to a party does not disqualify him as a witness, see section 61 of N.R.C.D. 323 nor does that fact render his testimony any less credible than that of any other witness. In this case the relevant evidence that is required is whether the witness read the publication and whether he was privy to facts which led him to believe that the publication was defamatory of the plaintiff and was indeed defamatory.

On the issue of loss of reputation, the plaintiff testified that during the course of doing business for the defendant he had come into contact with several companies both local and international so the publication had affected his worldwide reputation. 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 speak 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? For instance when a person is said to have visited a certain house in a residential area several times, it is not defamatory per se, but to those who know the house to be a brothel and is in fact a brothel, the obvious inference is that the visitor has depraved morality which no doubt casts a slur on a person's reputation. But where, as in this case, the inference is not so obvious, there must be evidence by or on behalf of the claimant to establish the alleged defamation.

In the pleadings the plaintiff listed a large number of companies and institutions, both local and international that he claimed had worked for on behalf of BENOD. He claimed the defendant had visited some of these companies and disparaged him there. But in evidence none of the staff of these organisations was called to testify.

It has been observed that this is not a case where the publication carries a defamatory meaning per se. That explains why the plaintiff tried to establish his

claim by facts and/or circumstances surrounding the events. This depends on others who perceived or understood the words to be defamatory. As stated earlier reputation is a matter of fact, thus barely repeating the averments will not suffice. At page 61 of the record PW1 said the publication was made by the defendant to tarnish the image of the plaintiff which the defendant rejected. In what sense did it injure the plaintiff's reputation? From the evidence on record the best inference that might be drawn in respect of the plaintiff's reputation is his skill in sourcing business from the organizations listed in the pleadings and his managerial skills which he applied on his job. Nobody came forward to say that his reputation as a skilful manager was impaired. Even the Managing Director of Pepsi Cola who the plaintiff said called him about the publication was not said to have been privy to anything wrong between the plaintiff and the defendant; rather he enquired from the plaintiff what was happening between them. He only said he had seen a disclaimer in the Daily Graphic but he did not make any adverse comment about it. See page 23 of the record.

There was no question about character either; the closest to that was the alleged accusation by the defendant that the plaintiff burnt down the factory and was thus an arsonist. This is linked to the issue of malice and recklessness. The trial Judge did not accept this. The trial court could not be faulted because if indeed the plaintiff believed the plaintiff had caused the incendiary at the factory, it would be hard to believe he would still keep him at the factory for a year and even involve him in the reconstruction, as testified to by the plaintiff himself and also accommodate him for that period after the arson. What the defendant said was more probable that they resorted to spiritual help to find the culprit, if any, a fact the plaintiff himself admitted. And it is significant to note that it was even the plaintiff who knew the persons who led them to the various spiritualists near Akwamufie and in the Volta Region. The first person, a co worker, was from the same town as the plaintiff. Daniel who took them to the Volta Region was the plaintiff's friend. It is clear that despite the arson the defendant still had faith in the plaintiff and that is the only explanation for allowing the plaintiff to lead the way to the spiritualists, to remain in the business and assist in the reconstruction and remain in the official residence.

Besides, the inference to be drawn from the totality of the plaintiff's contradictory and inconsistent evidence was that it was unreliable and the court would attach little or no weight to it. In his evidence in chief the plaintiff asserted positively that the defendant accused him of embezzlement and arson and that same day 16th November 2008 dismissed him and ejected him forthwith from the residence, on the instructions of the defendant's wife and that the defendant refused to allow him a few days to vacate. However, in cross examination he admitted that he did not leave the house that same day but some four days later. But significantly he admitted that he left the house on his own volition in order to join his family who were living elsewhere. The following are extracts from the cross examination at pages 44, 45 and 46 of the record:

"Q-I am putting it to you that it is not true when you said the defendant's wife instructed him to sack you from his house.

A-He told me his wife was giving him pressure because he had told him they are bringing somebody from their village so he needed to paint my room so I should move out of the room because that boy from the village is also calling him and asking him when he's coming to Accra.

Q-Did you remember telling the defendant that you need to go and spend time with your children?

A-Yes. I told him because his wife wouldn't want my family to live in their house and I had lived in the house for 18 years without my wife and children. I always have to visit them after work and go to the house alone. So I told him it is about time I move and stay together with my family.

Q-Were you married when you moved into the house?

A-I wasn't……..

Q-Do you remember after you have told the defendant that you intend to go and stay with your family that …the defendant came down to Ghana?

A-Yes he was in Germany when he called me and I told him I want to move and live with my family because I have lived in the house for so many years and he said that is fine and he agreed to that.

Q-And for a period of about one and half months when he was in Ghana you hadn't made any attempt to move from the house. Not so?

A-When I told him this in Germany and he came down to Ghana actually I had not worked for one year so I wasn't having any money so I was even expecting him to have told me that since you've stayed with me for 18 years I have this small amount of money for you to rent a place but nothing was coming and I was also quite expecting something from him but he never did.

Q-And he told you that it was better that you move when I am around than for you to move when I leave to Germany, not so?

A-Yes, he told me to wait till he comes and he came and eventually I moved in his presence.

Q-I am telling you that the decision for you to leave the house was not at the instance of the defendant or his wife. It was at your own volition.

A-Yes. I have told him this whilst he was in Germany that when he comes I would like to move and he said fine so that I can have control over my family."

We have taken pains to quote extensively from the cross examination in respect of the defendant's departure from the house. First he was ejected forcibly when he was summarily dismissed from the employment. Next he was asked to quit in order to make way for a member of the defendant's wife's family who was coming from the village to occupy same. Lastly he quit voluntarily in order to be together with his family. Which of these three inconsistent and indeed contradictory statements represents the plaintiff's position as to why he left the house? The last bit supports the case of the defendant. Where a party's testimony is inconsistent whilst that of his opponent is consistent and finds support from even that of his opponent, the court must accept the consistent story unless there is very strong reason, appearing on the record, to decide otherwise. In this case

the cross examination clearly supports the defendant's case that the plaintiff left the house voluntarily when he left the employment. Indeed it is more probable than plaintiff's inconsistent story and it accords more with reality that since he was receiving no payment for one year following the fire outbreak the plaintiff would move on with his life. Thus even whilst the defendant was still in Germany the plaintiff told him he would want to leave the house and expected the defendant to give him some money before leaving but the defendant gave him nothing. Who would fault the plaintiff for not staying at post without pay for one year, and with the residence being duty post he would have to vacate once he was no longer in the employment. That is the more probable scenario. The defendant's story was thus acceptable on the evidence and the trial court could not be faulted. The defendant left the employment and the residence on his own accord. He was not forced out so the claim that he was dismissed and forced out of the house following allegation of embezzlement and arson could not be supported. The basis for his claim of malice and recklessness is thus unfounded.

There was also no evidence from which to draw a conclusion that the publication had affected the plaintiff in the job market. Once again no other person testified to that. This is one of those cases which called for evidence from person/s other than the claimant, preferably by their direct testimony or indirectly through what such other persons have said or written about their perception of the publication, subject to the rules on hearsay. The plaintiff named some companies which framed and posted the publication on their premises. At best it amounted to further publicity of the publication, as rightly pleaded by the plaintiff himself; this has its own legal consequences, not necessary to recall for this case. It cannot be construed as affecting the plaintiff's ability to work for or secure contract from those companies or other persons. He had not made any such attempt at all so he could not draw any negative conclusions.

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 a bare 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. Be that as it may it was not pleaded and was thus not one of the triable issues agreed upon so this evidence should not have been allowed to go in at all. And having been let in, albeit, inadvertently it was the duty of the trial court to expunge it from the record.

Let us sign off by addressing a point raised by counsel for the defendant in his address. It was this that the Court of Appeal ought not to have relied upon principles of law without citing any references or authorities for them. Counsel said a lot about this but the totality of his argument was that without any references to support the principles relied upon, the court's position could not be supported especially when there are other principles applicable to the same case which are well supported by text writers and decided authorities. It is a good point that Counsel raised, but we must state that failure to cite references by way of authorities per se would not warrant a decision of a court to be set aside, if those principles indeed exist in law or equity. However, it is highly desirable that every court, more particularly superior courts, must endeavour to support the principles or doctrines upon which their decisions on questions of law rest. The superior courts being courts of record give decisions which form part of the law of the land for the time being until they have been set aside by decisions of other higher superior courts in the hierarchy or by legislation. Whilst it is the primary duty of the courts to dispense justice to litigants, it is equally the traditional function of the court to dispense justice by an exposition of the law. Well reasoned and supported decisions evoke public confidence in the decisions of the court. The use of authorities and decided cases is the establishment of some principle which the judge can follow in deciding a case before him. Thus the

importance of supporting the principles or doctrines upon which a decision is given cannot be over emphasized. Jessel M.R. for instance in the case of Osborne to Rowlett (1880) 13 Ch. D. 774; 49 L.J. Ch. 310; 42 L.T. 650; 28 W.R. 365 took the position that the only thing in a judge's decision that is binding as an authority is the principle upon which the case was decided. Lord Haldane C. expressed similar views in the case of G. & C. Kreglinger v. New Patagonia Meat & Cold Storage Co. Ltd. (1914) A.C 25; 83 L.J.Ch. 79; 30 T.L.R. 114 where he said forcefully that following previous decisions which have laid down clear principles is essential if the law is to be preserved from becoming unsettled and vague. He went on to say that to look for anything except the principle established or recognized by previous decisions is to weaken and not to strengthen the importance of judicial precedent.

Thus the establishment of principles of law and equity are the bedrock of judicial precedent. Hence there is the need for a superior court to state the principles clearly and back them up appropriately. This is enough for this point which from the foregoing discussions has had no effect on our decision in this case.

It is for the foregoing reasons that we conclude the Court of Appeal erred in setting aside the judgment of the High Court. We uphold the appeal and set aside the judgment of the Court of Appeal and all the orders made therein.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA(MRS)

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) **P. BAFFOE BONNIE**

JUSTICE OF THE SUPREME COURT

(SGD) **V. AKOTO BAMFO (MRS)**

JUSTICE OF THE SUPREME COURT

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