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

CORAM: R. C. OWUSU(MS) JSC (PRESIDING)
J. V. M. DOTSE JSC
ANIN YEBOAH JSC
P.BAFFOE-BONNIE JSC
N.S. GBADEGBE JSC

CIVIL APPEAL
No.J4/59/2013

19TH MARCH 2014

PROFESSOR E. O. ADEKOLU JOHN - **PLAINTIFF/ APPELLANT APPELLANT**

VRS

1. **UNIVERSITY FOR DEVELOPMENT STUDIES TAMALE** - **DEFENDANTS/RESPONDENTS RESPONDENTS**

2. **S. M. KUUIRE**
CENTRAL ADMINISTRATION
UNIVERSITY FOR DEVELOPMENT
STUDIES TAMALE

JUDGMENT

JONES DOTSE JSC:

On the 19th day of March, 2014, this Court delivered judgment in this appeal wherein the appeal lodged by the Plaintiff/Appellant/Appellant, hereafter referred to as the Plaintiff against the decision of the Court of Appeal, dated 29th June, 2012, was allowed in part.

By that judgment, the Defendants/Respondents/Respondents hereafter referred to as Defendants were ordered to pay to the plaintiff the following:

a. GH¢5,000.00 damages for wrongful termination

b. GH¢20,000.00 damages for defamation

c. GH¢2,000.00 as costs to the Plaintiff

We now proceed to give our reasons for that judgment.

Thomas Paine, in 1787 in one of his writings to *"The opposers of the Bank"* wrote thus:-

> *"An insinuation, which a man who makes it does not believe himself, is equal to lying. It is the cowardice of lying. It unites the barest part of that vice with the meanest of all others. An open liar is a highwayman in his profession, but an insinuating liar is a thief skulking in the night."*

We have decided to preface our judgment in this case by reference to the above words of Thomas Paine because of the special circumstances of this case which border on how the head of administration of one of the country's public universities threw caution to the winds in composing the contents of an official memorandum to a senior member of the University. The contents of the memorandum have not and could not be sustained and have been proven to have been published falsely and with malice.

FACTS

The plaintiff was at all material times that he commenced this action in the High Court, Tamale, a Professor of Medicine and Head of the Department of Community Medicine of the University For Development Studies, who are the 1st Defendants/Respondents/Respondents, hereafter referred to as the Defendants.

The Plaintiff's case is simple. He contended that he was offered a contract appointment as a Professor in the Department of Community Medicine with effect from June 2005 to July 2009. He however contended that, by a further memorandum from the office of the Vice-Chancellor dated 17th December 2007 his appointment as Head of Department was extended from 1st January 2008 to 31st August, 2009.

However, in a letter dated 13th March, 2009 signed by the 2nd Defendant, Respondent/Respondent hereafter 2nd Defendant purporting to be writing for and on behalf of the University Council informed the Plaintiff that his contract will not be renewed when it expires.

The Plaintiff however considered this letter of 13th March 2009 as ultra vires, and the purported termination of his contract on the due date as wrongful and unlawful and communicated his views to the 2nd Defendant, the acting Registrar of the University through series of correspondence.

The 2nd defendant in a memorandum dated 1st June 2009 in an official communication described the plaintiff in parts of the memorandum as follows:

"You have carried your insanity too far afield for my liking".

This communication from the 2nd defendant to the plaintiff was the tonic that ignited the plaintiff to institute legal proceedings against the defendant before the High Court, Tamale, claiming the following reliefs:

1. "Declaration that under the University Statute the decision to renew the Plaintiff's contract or not is a decision which can only be taken by the University Council and as such the 2nd Defendant's decision not to renew the Plaintiff's contract in the absence of the Council is null and void and of no effect.

2. A declaration that there was no University Council in existence at the time of 2nd Defendant's letter dated 13th March 2009 and therefore the 2nd Defendant's letter purporting to be *"on behalf of the University Council"* and terminating Plaintiff's contract is null and void and of no legal effect.

3. A declaration that the Plaintiff's contract as the Head of the Department of Community Medicine is due to end on 31st August 2009 and not 31st July 2009 as stated in the 2nd Defendant's letter dated 13th March 2009.

4. A declaration that Plaintiff continues to be a Professor of Medicine and Head of Department of the Department of Community Medicine until such time that the University Council takes a decision on the matter.

5. A declaration that the Plaintiff's appointment can only terminate in the month of September and after he has been given 1 year's notice under the statute and conditions of service.

6. Damages for wrongful termination of appointment

7. The equivalent of 52 working days out of the 62 working days' leave entitlement of Plaintiff commuted to cash being leave which was due the Plaintiff but which he was denied by the 1st Defendant.

8. Declaration that under his contract of service Plaintiff was entitled to free accommodation and the rent demand by the Defendants on his residence, No. NV1, Norrip with retrospective effect from 2006 is null and void.

9. Damages in the sum of GH¢40,000 against the 2nd Defendant solely, for defamation for that on 1st June, 2009, the 2nd Defendant published libelous material against the Plaintiff to wit "You HAVE CARRIED YOUR INSANITY TOO FAR"... which material was circulated to the Acting Vice- Chancellor, Pro-Vice-Chancellor and Dean, SMHS which words have deeply injured the reputation of the Plaintiff as a Professor of Medicine and has ridiculed him in the eyes of right thinking men."

On the 22nd day of December, 2012 the learned trial Judge at the High Court Tamale after an elaborate review of the facts of the case and the law, dismissed the Plaintiff's case in the following terms:-

"From the totality of the evidence led before me, I think the Plaintiff's case having not been backed with the requisite evidence, same is hereby dismissed."

After dismissing the Plaintiff's case as is stated above, the learned trial Judge then proceeded to make the following statement in the closing pages of the judgment as follows:-

"While saying this, I must quickly mention that the action of the Plaintiff was launched because of, with respect, ***the apparent systemic failure of the command structures in the 1st defendant institution****. There was no co-ordination between the office of the Acting Vice-Chancellor and the Acting Registrar, including even the Dean of School of Medicine and Health Sciences. For instance it is incredible that though the 1st defendant says the Plaintiff has no access to annual leave, paragraph 9 of Exhibit 'F" clearly gives this as one of the conditions to be enjoyed by the plaintiff. The same unpardonable blunder as to leave is repeated in Exhibit 'c' and particularly 'E' all point to communication overlap and crisis-crossing of the 1st defendant University.*

In view of the above, I hereby recommend that the 1st defendant out of good will and on humanitarian grounds, pay the Plaintiff his August 2009 salary*. After all, it is only one month difference that ignited this instant litigation inter alia between the parties. The 1st defendant should never raise the issue of rent matter when considering the August 2009 salary of the plaintiff.* ***I also entreat the Vice-Chancellor and the Registrar etc to make use of the experience and resourceful material in their Legal Department to forestall unnecessary litigation."***

The above no doubt provided the necessary arsenal with which the plaintiff successfully appealed against the High Court decision to the Court of Appeal.

Accordingly, the Court of Appeal in its judgment dated 29th June, 2012 allowed the appeal and entered judgment for the plaintiff.

In view of the notable pronouncements made by the Court of Appeal in reversing the judgment of the trial Court, we deem it expedient to quote in extenso portions of the judgment.

The unanimous decision of the Court of Appeal is as follows:-

> "*From the foregoing therefore, the finding by the trial Judge that Exhibit A does not incorporate Exhibit C is clearly not supported by evidence on record. The Appellant was right in saying that his appointment was to terminate on 31st August 2009 and not 31st July 2009.*
>
> *This finding is buttressed by Exhibit E, which stated that;*
>
> ***"Following the current trend in the shifting of academic calendar for all public institutions from October – September and from September – August, Council at its meeting of 4th October, 2007 directed that the effective month for and of all appointments should now be started from August of the year the appointment are due to end (emphasis).***
>
> ***The directive takes immediate effective (sic) for Deanship, Head of Departments positions and normal lectureship and professional appointments."***
>
> *If exhibit M, is of no legal effect, then based on Exhibit C, the Appellant's appointment was extended to 31st August 2009 even if as the Head of Department as being contended by Counsel for the Respondents. Ground 1 of the Grounds of appeal succeeds. This also disposes of Ground 2.*
>
> ***My reaction to the submissions on ground 3 is that, the words "YOU HAVE CARRIED YOUR INSANITY TOO FAR AFIELD FOR MY LIKING", is a defamatory whether said on its own or taken out of a 4 page document.*** *The Appellant is a professor of Medicine and Head of Department at the School of Medicine and Health Science in a University, a center for High Learning. To impute insanity to him is to ridicule him in the eyes of right thinking people when the man is not mad. Secondly, I disagree that the 2nd Respondent was acting in his official capacity when he published the above words on the Appellant. It is true the 2nd Respondent was acting in his official capacity when he*

wrote Exhibit N, but writing the words complained off by the Appellant, he was not acting officially. The words for my liking (the emphasis is mine) is clear on it. By publishing those words the 2nd Respondent abandoned his official duty and entered into personal issues.

This certainly, is not in line with administrative practice. It is also not in consonance with international best administrative practice to use insulting language in official communication. ***That being the case, the 2nd Respondent is personally liable for defaming the Appellant.***

The argument that, the publication was copied to three (3) officials who have interest in that communication is untenable. Once persons other than Appellant were made aware of the publication, the tort has been established. On the point that the Appellant was unable to prove malice on the part of the 2nd Respondent, that argument is rejected for the simple reason that, malice being a state of mind, prove can only be subjective.

From all of the foregoing, Ground 3 succeeds and same is hereby upheld. It is for these reasons that the appeal succeeds. Judgment is hereby entered in favour of the Appellant for the following:

1. ***The payment of one month's salary i.e. August 2009, as the Appellant's contract with 1st Respondent was to expire on 31st August 2009 and not 31st July 2009, by 1st Defendant/Respondent.***
2. ***GH¢10,000.00 damages for defamation against the 2nd Respondent.***
3. ***GH¢5,000.00 against 1st Respondent [UDS] for wrongful termination of contract."***

As can be seen from the above extensive quotations, despite the fact that the plaintiff was successful on appeal, he nonetheless launched a further appeal against part only of the judgment of the Court of Appeal to this Court and complained as follows:-

1. "The quantum of damages awarded against first Defendant/Respondent /Respondent for wrongful termination of appointment.

2. The quantum of damages awarded against the 2nd Defendant/Respondent /Respondent for defamation.

3. The failure of the Court of Appeal to deal with the status of Plaintiff/Appellant/Appellant and to order his re-instatement.

4. The failure of the Court of Appeal to award costs to the Plaintiff/Appellant/Appellant for a successful appeal".

Thereafter, the following are the grounds of appeal that the Plaintiff lodged against the Court of Appeal judgment to this Court.

1. That the learned Justices of Appeal erred in law when they found that the letter of termination was null and void but did not order the re-instatement of the Plaintiff/Appellant/Appellant.

2. That the Learned Justices of the Court of Appeal fell in error when they failed to consider the status between Plaintiff/Appellant/Appellant and 1st Defendant/Respondent/Respondent upon the annulment of the termination letter.

3. That the Learned Justices of Appeal, having found that the termination letter was null and void, fell into error when they failed to also find that Plaintiff/Appellant/Appellant still remained in the service of 1st Defendant/Respondent/Respondent in the absence of notice of termination of his contract.

4. That the sum of GH¢5000 awarded to Plaintiff/Appellant/Appellant as damages for breach of contract is minimal and not commensurate in the light of all the circumstances of the case.

5. **That the sum of GH¢10,000 awarded against the 2nd Defendant/Respondent/Respondent as damages for libel is minimal and not commensurate with the libelous material of imputing madness to the Plaintiff/Appellant/Appellant who is a professor of medicine of worldwide acclaim.**

6. That having upheld the appeal the Learned Justice of Appeal erred in not awarding costs to the Plaintiff/Appellant/Appellant.

From the decision we have already rendered on the 19th March 2014, it is clear that this Court did not disturb the decisions and awards of the Court of Appeal save that on defamation. This is because we consider the Court of Appeal as having dealt adequately with the other issues in their judgment such that there is no need to disturb those findings and awards. For that reason, we shall only focus on the award of damages for defamation which we consider to be worthy of serious deliberation and rendition on our part.

The reasons for this judgment will therefore be highly focused on the contents of Exhibit N, which is an internal memorandum authored by the 2nd defendant to the plaintiff dated 1st June 2009 and copied to the Vice-Chancellor, the Pro-Vice Chancellor and the Dean of School of Medicine and Health Sciences.

It must also be noted that as an internal memorandum addressed to the plaintiff, it will definitely be on his personal file in the University and will form the basis of any reference point that the Plaintiff might require from the University in future long after he has left the employment of the university.

In view of the seriousness with which we attach to this letter Exhibit N, it is deemed expedient to quote the relevant and salient parts of this memo to illustrate our analysis. The memorandum reads in part as follows:-

> ***"I note in preparing this response that even though you are among the recent arrivals, your file is one of the bulkiest because of your penchant for writing needlessly on issues. In your letter dated 27th May 2009, copied to me, you attached a letter from the Former Registrar purported to be drawn from the operational Conditions of Service. Although the benefits listed therein have changed, you have not complained about enjoying them because most of the changes are positive. You chose to hang on to the last one on annual leave which has varied following the case of Mr. Mate Siakwa v the University. For***

instance, vehicle maintenance allowance has since changed from GH¢30.00 to GH¢75.00, professional allowance from 15% of basic salary to 200% and per diem ranging from between GH¢25.00 to GH¢30.00 to GH¢55-GH¢100 for senior members. You have carried your insanity too far afield for my liking. You must be realistic.

I find it very strange that you have refused a hand of friendship from me between now and 31st July 2009 and elected to proceed on such a proposed leave after your contract has expired. I find it even more strange for you to indicate your intention to resume duty from the controversial proposed annual leave on 17th May 2010 when I was categorical that the University will not renew your appointment. I shall leave the rest to the officers to whom your application is routed and only wish you well."

From the above quotation, what is clear is that, the 2nd defendant sought to justify the reasons why he certified the plaintiff as insane and concluded that he was carrying this insanity too far afield for his liking. There was absolutely no basis for this certification of the plaintiff as being insane.

It must be noted that, the 2nd defendant, in his position as the acting Registrar of the University must be deemed to be responsible for the words he used. The said words can only have the meanings ascribed to them in the context in which he has written them.

Let us now discover some dictionary meanings of the words **insane** and ***insanity***.

1. **The *Oxford English Dictionary*** defines ***insane*** as **seriously mentally ill,** (ii) ***very foolish, irrational*** – and it's derivatives are **insanely** (adv.) and **insanity** (n).

2. In the ***Dictionary of Law, by L. B. Curzon, Fifth Edition*****,** insanity is defined as follows:-

Insanity - term used to refer to one whose state of mind prevents his knowing right from wrong so that he cannot be held responsible for his acts.

3. ***Webster's Third New International Dictionary*** on the other hand defines insanity as follows:-

1a: the state of being insane: unsoundness or derangement of the mind usually occurring as a specific disorder (as schizophrenia or dementia praecox) and usually excluding such states as mental deficiency, the psychoneuroses and various character disorders.
b. a mental disorder (dementia praecox is one of the commoner insanities)
2. Such unsoundness of mind or lack of understanding as prevents one from having the mental capacity required by law to enter into a particular relationship status, or transaction or as excuses one from criminal or civil responsibility.
3a: Extreme folly or unreasonableness
b. Something utterly foolish or unreasonable.

4. And finally ***Words and Phrases, Judicially defined, Volume 3,*** has this on insanity

Insanity [331] and see 'Monomania'; 'Unsound mind'

"The true criterion – the true test – of the absence or presence of insanity, I take to be, the absence or presence of what, used in a certain sense of it, is comprisable in a single term, namely –delusion. ***Wherever the patient once conceives something extravagant to exist, which has, still, no existence whatever but in his own heated imagination; and wherever, at the same time, having once so conceived, he is incapable of being, or, at least, of being permanently, reasoned out of that conception; such a patient is said to be under a delusion****, in a peculiar, half technical, sense of the term; and the absence, or presence, of delusion, so understood, forms, in my judgment, the true, and only test, or criterion, of absent, or*

present, insanity" . Dew v Clark & Clark (1826), 3 Add. 79, per Sir John Nicholl, at pp. 90, 91.

From the various definitions of the words **INSANITY** *(noun*) or **INSANE** *(adverb)* the meanings which come out clearly are:

1. Seriously mentally deranged and deficient person

2. Very foolish, irrational and utterly unreasonable person

3. Someone whose state of mind prevents him from knowing what is right or wrong and cannot be responsible for his actions.

4. Delusion of the mind, one leaving in a fanciful world and incapable of controlling his mental faculties.

Are these the qualities the 2nd defendant intended to attribute to the Plaintiff? Our simple answer is that the words used speak for themselves and the 2nd Defendant must be held responsible for the consequences of his actions.

What should be noted is that, the institution we are dealing with in this case is a University, which is regarded and considered as a Centre of learning.

Secondly, the personalities involved in this drama are senior members of the University who should be deemed to be aware of the consequences of their actions. As stated earlier, the 2nd defendant was categorical about the insanity of the plaintiff as if that condition had been certified by a medical expert. Besides, his conduct in the witness box when he testified gives adequate proof that the 2nd defendant really meant to describe the plaintiff as such. The evidence by the 2nd defendant that what he meant was that, the Plaintiff was petty, unreasonable and unrealistic. Even if this is what he genuinely meant, it has not been proven from the record. The Plaintiff cannot in our estimation be penalized for being principled and standing up for his rights.

QUALIFICATIONS AND EXPERIENCE OF PLAINTIFF

We have read the curriculum vitae of the Plaintiff and we are convinced that he is an academic of no mean repute.

For example, the plaintiff has on record the following qualifications, scholarship and fellowship awards and has conducted research, medical education just to mention a few in the underlisted areas.

"**QUALIFICATIONS:-**

1. MBBS 1972, University of Ibadan, Nigeria

   (Registered with the Nigerian Medical Council, Nigeria)

2. USMLE/ECFMG (No. 0-172-047-3) 1972, USA

3. MPH 1976, Harvard University, USA (Registered with Nigerian Medical Council, Nigeria)

4. MD 1983, University of Ibadan, Nigeria (This Degree is rated equally with MD degree awarded by a highly rated British University)

5. FWACP 1983, West Africa, (Registered with Nigeria Medical Council, Nigeria).

SCHOLARSHIP AND FELLOWSHIP AWARDS

1. World Health Organization Fellowship to study the health component of Aswan High Dam and Health Services in Egypt, July-August 1976.

2. World Health Organization Fellowship to study health component of Volta Lake, Ghana, September – October 1976.

3. World Health Organization Fellowship to study Schistosomiasis in Man-Made Lakes, Accra, Ghana, January, 1978.

CONTINUED MEDICAL EDUCATION

1. Volta Lake and Health Services in Ghana (September – October, 1976) as WHO Fellow.

2. Inter-Regional Schistosomiasis Project on Man-Made lakes, Accra, Ghana (January, 1978) as WHO Fellow"

We believe that, it was the above qualifications and work experience of the Plaintiff that convinced the 1st defendants to decide to give him the appointment as Professor in a critical department as Medicine. It is the height of folly for the Head of Administration of the said institution to turn round to label their own employee, an International Scholar and Professor as an insane person. It is the case of cutting your own nose just to spite your face.

If that were not so, how come that the head of the administration of the 1st Defendants will describe their professor and Head of Department as someone who is either mentally deranged or very foolish and irrational in his conduct.

In his relief for damages for defamation, the plaintiff reiterated the fact that the words complained of have deeply injured his reputation as a Professor of Medicine and ridiculed him in the eyes of right thinking men.

The fact of the Plaintiff being an academician of high international standing and repute is without doubt an established fact.

The 2nd Defendant in his response to the averments of the plaintiff in support of his defence averred in paragraph 13 and 14 of the defence as follows:

13. *"The 2nd defendant says in answer to paragraph 9 that the copies of the memorandum made to the other officials of the 1st defendant University indicate that the communication was official and the 2nd defendant was performing an official duty and therefore the statement was made as a privilege" emphasis.*

14. *The 2nd defendant says in defence to paragraph 10, 11 and 12 that the Plaintiff's assertion that he enjoys a rich reputation as an academic of high standing and also as a Harvard Scholar defeats his claim that he has been reduced to the lowest ebb of his mental state since he is held in the high esteem and the said accolades or titles have not been taken away from him."*

Let us comment very briefly on the averments in paragraph 14 of the defence quoted supra. The fact that the plaintiff is an accomplished scholar of international repute does not mean he cannot be injured in his reputation when words which have no basis of being referable to him are made to be.

The fact remains that the qualifications of the plaintiff which he earned through the hard way that is by working for them thereby earning them on merit and not by any populist and public generated medium had been ridiculed with the reckless words written by the 2nd defendant about him.

For example, one may ask if it is a normal thing to refer to a scholar of the description of the plaintiff as a certified lunatic or insane person? As ordinary persons, we all know what is meant by the statement that *"You have carried your insanity too far afield for my liking."*

As we had stated elsewhere, this gives the impression that the plaintiff had been certified as insane and is carrying that condition too far, or beyond acceptable levels.

We are of the view that, persons in responsible positions such as the 2nd defendant must use their offices in responsible manner. Failure by such officials to be courteous, decorus and responsible in their use of language to describe their superior's, colleagues, subordinates etc. in disparaging, insulting and highly injurious demeaning language must evict strong condemnation from the law courts.

What must be clearly understood is that, the tort of defamation is meant and designed to protect persons from false imputations which harm their reputation before the eyes of right thinking members of the public.

It is in this respect that we are of the considered view that whenever a person decides to write an opinion about someone, that opinion must not be calculated to injure the reputation of that person if the writing is published. Has the Plaintiff succeeded in proving that the published memorandum is capable of a defamatory meaning?

1. Baron Parke, in the case of ***Parmiter v Couplands*** (1840) 6 M & W at 108, 151 E.R. 340 defined defamation to be ***"a publication without justification or lawful excuse, calculated to injure the reputation of another by exposing him to hatred, ridicule or contempt."***

The above definition has been found to be somewhat deficient and has been enhanced by the decisions in cases such as ***Youssoupoff v M.G.M Pictures*** [1934] 50 T.L.R 581 where the definition of defamatory material was said to be

"***if any 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."***

See also the definition by Lord Atkin in ***Tournier v National Provincial Bank [1924] 1 K.B. 461*** where situations in which words used damage a person in his profession or business was addressed.

Lord Atkin again in Sim V Stretch [1936] 2 A.E.R 1237 restated the definition of defamation as follows:

> "***Would the words tend to lower the plaintiff in the estimation of the right thinking members of the society generally?***

See also the case of ***Morgan v Lingen [1863] 8. L.T. 800*** where it was held that it is defamatory to say that someone is insane. And since the Plaintiff herein has not been proven to be insane, it was highly defamatory of him to have been described as such.

From all the above definitions, it is clear from the evidence on record that the words written by the 2nd defendant about the plaintiff, in our Ghanaian and African setting was meant to ridicule him and expose him to hatred, contempt and make him appear worthless before his peers and other right thinking persons.

2. 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.

3. To be defamatory, there must be something in the defamatory statement referable to the plaintiff. In the instant case this is not difficult to connect. This is because it was the plaintiff that the 2nd Defendant addressed the memorandum to.

4. Finally, to constitute defamatory material, the words complained of must have been published.

Since defamation, i.e. libel and slander protect reputation, the defamatory matter must be published to enable the plaintiff claim that he has suffered damage to his reputation.

In the instant case, as discussed elsewhere in this judgment, the memorandum comprising the offensive words had been published to key officials within the University. By the nature of the communication, it is bound to form part of the official record of the Plaintiff in the University permanently and will be a reference point for the Plaintiff in future if not redressed. This therefore proves the damages that the Plaintiff is likely to suffer.

From the above discussions, we are satisfied that the plaintiff has succeeded in establishing a prima facie case by proving the publication of the defamatory words by the 2nd defendant against him. The words have also been proven to be false and no explanation whatsoever has been given for the use of these offensive words. The court will therefore hold that there was absolutely no need for the 2nd defendant to descend into the abysmal depths into which he descended.

The 1st Defendants, acting through the principal officers of the University had every opportunity to retract, withdraw the said offensive memorandum, and indeed render unqualified apology to the plaintiff. This they failed to do thereby giving the impression that they acquiesced in the wrongful and unlawful conduct of the 2nd defendant, i.e. in the use of the words complained off.

It is because of the acts of omission of the 1st Defendant, that we hold both the 1st and 2nd defendants liable for the writing of the defamatory words complained of and hold both liable for the damages. Indeed, the learned trial Judge remarked in his judgment about the lack of co-ordination in the offices of the Vice-Chancellor and the Registrar and cautioned them to avoid needless litigation in future.

Secondly, the averments in paragraph 13 of the defence indicate some lame reliance on the defence of privilege. We have read the entire record but we have not found any evidence in support of the said defence of privilege.

In the case of ***Sterlin Automotive and Anr. v Toyota [2008-2009] 1 GLR 115***, holden 2, the defence of qualified privilege was discussed alongside celebrated cases like ***Adapoe v Pospisil [1974] 2 GLR 327*** and ***Amoako v Takoradi Timbers Ltd. [1982-83] GLR.***

In this case, the Defendants failed absolutely to establish the defence of privilege or qualified privilege. This is because they have not been able to prove that the occasion wherein the memorandum was written was privileged.

Thirdly, the defendants by their conduct have shown that they acted irrationally in their authorship of the offensive words and were not reasonable in their conduct. Not only were the words written false, but they knew them to be false and therein lay the fact that they acted with malice.

In the academic world reputation is critical to their career progression and the reputation which they enjoy is their ability to use their mental faculties to achieve and or acquire qualifications and publications to their names. Money per se is not what they seek in academia, but good name based on sound educational qualifications and publications in distinguished journals.

To describe someone in this field, the plaintiff, (a distinguished Professor of Medicine who has conducted international research and is well acclaimed in many countries) as a certified insane person is an insult that no monetary award can recompense.

We have examined all the circumstances of this case, to wit, the pleadings, the evidence led in court as well as the law on the subject matter.

We are satisfied that the plaintiff has succeeded in demonstrating that the words *"you have carried your insanity too far afield for my liking"* is defamatory and that it has been published with actual malice, that is with actual knowledge that it was false or with reckless disregard of whether it was false or not.

This is based on the ordinary meanings assigned to the word INSANITY and its various derivatives as has been stated supra. Once the Plaintiff has not been certified by an expert to be insane, any comment in that regard by the 2nd

defendant must be regarded as highly injurious of the plaintiff, considering his rich pedigree and experience.

Indeed, George Washington in November 28, 1796, wrote as follows:

> *"To speak evil of anyone unless there is unequivocal proofs of their deserving it, is an injury for which there is no adequate reparation."*

It is because of the above that, even though we are satisfied that the plaintiff deserves to be adequately compensated, we realised that it is not the quantum of the monetary award that will restore him to his original reputation.

What is significant is the recognition that the plaintiff has been vindicated of his fight against indiscretion by paid public officials without cause. That is why we enhanced the award from GH¢10,000.00 to GH¢20,000.00, although the Plaintiff asked for GH¢40,000.00.

In our opinion, we believe that the Defendants will take a cue from the judgment and be more cautions, responsible and reasonable in their use of language in official communication in future. We direct that this judgment be put on the file of the plaintiff to ensure that any request for reference about his tenure at the 1st Defendants University will be assessed correctly.

For failing to reprimand the 2nd defendant in his indecent use of language against a Senior member of the University, we direct that the Defendants pay the damages awarded jointly, and thereafter, the 2nd defendant, if he is still in the employment of the University be surcharged with the payment of GH¢10,000.00 i.e. 50% of the defamatory damages.

(SGD) J. V. M. DOTSE
JUSTICE OF THE SUPREME COURT

(SGD) R. C. OWUSU (MS)
JUSTICE OF THE SUPREME COU

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE
JUSTICE OF THE SUPREME COURT

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