**AJALA**

**V.**

**ADELAGUN**

HIGH COURT, CIVIL DIVISION, LAGOS STATE

22ND DAY OF MARCH, 1979

**LEX (1979) – HC 3 LRN 28**

OTHER CITATIONS

2PLR/1979/2 (HC)

(1979) 3 LRN 28

**BEFORE HIS LORDSHIP:** DESALU, J.

**BETWEEN:**

AJALA – Appellant

AND

ADELAGUN – Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

TORT AND PERSONAL INJURY:– Defamation - Slander – Meaning - Words ordinarily deemed to amount to slander – Imputation of prostitution and being an ex-convict – Whether judicial notice of a common social practice can be taken by court as to reduce same to mere abusive words in the heat of passion – Whether words imputing un-chastity or adultery to girl are actionable without proof of damage

TORT - DEFAMATION:- Slander - How proved – Whether essential that the actual words and not merely their substance should be set forth verbatim in the statement of claim or indictment – Whether proof of language substantially the same as that pleaded is admissible

NOTABLE STATEMENT:- *“It is a matter of common knowledge of which I take judicial notice, that people, in this country, particularly women, call each other ‘ex-convict, prostitute’, in their heated arguments, quarrels and/or altercations, which often lead to blows or fights and which words no-one takes seriously as they were words of anger.”* –Per Desalu J.

**MAIN JUDGEMENT**

DESALU, J. READ THE FOLLOWING JUDGMENT.

The plaintiff’s claim against the defendant is for­

‘(a) N5000 damages for slander in the presence and hearing of a court bailiff, a police officer and other persons whose names are unknown to the plaintiff, on the 9th June 1976, at 102 Brickfield Road Ebute Metta, Lagos State, and

(b) an injunction to restrain the defendant whether by herself, her agents or servants or otherwise from further speaking or publishing the said or similar words defamatory of the plaintiff.

In her statement of claim the plaintiff claimed that she was the lawful wife of Oyeniyi Ajala. Pursuant to an action for maintenance by the plaintiff against him, an order was made in favour of the plaintiff by the High Court. Ikeja, on 14th February 1975 Paragraph 5 of the statement of claim alleged that on the same date a writ of *fieri facias* was issued against Oyeniyi Ajala, to recover an amount of N1,050 due under the order of court for maintenance.

The bailiff of the High Court, Ikeja, a police constable and the plaintiff, on 9th June 1976, went to 102 Brickfield Road, Ebute Metta, where Mr. Ajala was living with the defendant in this case to levy execution on the personal property of Mr. Ajala to satisfy the amount due on the writ of fieri facias.

The plaintiff averred that on that date and at the stated address, the defendant falsely and maliciously spoke and published of and concerning her, to the bailiff and the police constable and other persons whose names are unknown to her, the following words:

‘You are an ex-convict:

‘You are not the legal wife of Mr. Oyeniyi Ajala.

‘You are an imposter.’

The plaintiff further averred that those words meant, or were understood to mean, that: (a) the plaintiff had been found guilty of a criminal offence which was untrue; (b) the plaintiff had been cohabiting with Mr. Oyeniyi Ajala immorally and had actually committed adultery with him, when in fact the plaintiff had since 30th June 1955 been legally married to Oyeniyi Ajala; and (c) that the plaintiff is a cheat, a swindler and also assumed a false character.

The plaintiff claimed she had been gravely injured in her character and reputation and had been brought into public scandal, odium and contempt and has suffered damage. Whereupon she claimed N5,000 damages and an injunction.

In her statement of defence, the defendant admitted calling the plaintiff an ex-convict as alleged in para 8 of the statement of claim, and averred that the statement that the plaintiff was an ex-convict was true in substance and in fact, because on 5th or 6th July 1964, both the plaintiff and the defendant were charged in court with affray and conduct likely to cause a breach of the peace and were each sentenced to one month’s imprisonment or a fine of N2 (then £1).

The defendant denied the meaning attributed to the words she admitted that she uttered by the plaintiff; or that the plaintiff suffered any injury thereby. She further averred that the statements alleged to have been uttered were no more than mere vulgar abuse as both the plaintiff and the defendant were engaged in altercation.

The defendant averred that the plaintiff was a trouble-maker, had no reputation to protect and was not in the least injured in her character or reputation.

I find myself unable to agree with the averment that the plaintiff was a trouble-maker or had no reputation to protect. I believe it is an inherent right of any person not to have her reputation wantonly assailed and that every person has some reputation to protect, howbeit small, unless there is overwhelming and convincing evidence to the contrary.

Indeed this is a rather unusual case in which in her pleadings the defendant admits calling the plaintiff an ex-convict, because it is a true statement. The defendant then went on further to state that the statement was no more than mere vulgar abuse.

At the hearing of this case only the plaintiff and her witnesses testified. The defendant was absent throughout the proceedings but was represented by counsel.

In support of her several averments in the statement of claim, the plaintiff testified that she was a trader and was legally married to Oyeniyi Ajala, who had since deserted her to live with the defendant at 102 Brickfield Road, Ebute Metta, Lagos State. In consequence of her husband’s noncompliance with the order of court for maintenance, the plaintiff caused a writ of *fieri facias* to be issued against him. On 9th June 1976, in company of the bailiffs of the High Court, Ikeja, and a police constable, she went to 102 Brickfield Road, Ebute Metta. The purpose of this visit was to levy execution against the personal property of Oyeniyi Ajala. When the bailiff showed Oyeniyi Ajala the writ of *fieri facias* and told him that if he did not pay the amount therein contained, execution would be levied against his personal effects; the defendant whom they met in the premises flared up and said all the property in the premises belonged to her. The plaintiff testified:

‘She [ie the defendant] started shouting on me and said I was a thief and a jailbird. She said I was a prostitute and that she had taken my husband from me and that I should not look for him ever again.’

The bailiff on levying execution on Mr. Ajala’s motor car caused it to be driven to the premises of the High Court, Ikeja. In the car were Oyeniyi Ajala, the two bailiffs, a police constable, the plaintiff and the defendant. The plaintiff testified that whilst on route to Ikeja. ‘the defendant was abusing me all the way to Ikeja. She said further, ‘when we alighted the defendant was calling people, calling me harlot, prostitute, thief. She said she had taken my husband from me.’ She asserted she had never been sent to prison before; that she was legally married to Mr. Ajala and had not been divorced.

The plaintiff also testified that one day one of her customers came to enquire why the defendant was abusing her and whether it was true. ‘I said “No,” that she was just spoiling my name. The plaintiff alleged her trade went down after the incident.

Under cross-examination by counsel for the defendant. the plaintiff admitted that she was charged in court to July 1964 with the defendant for affray and that the presiding magistrate fined each of them £1 or 14 days’ imprisonment. That on 9th June 1976, it was the defendant who was abusing her.

Thomas Adeogun, a bailiff of this court, testified for the plaintiff and confirmed that on 9th June 1976 he was at 102 Brickfield Road, Ebute Metta, to execute the writ of fieri facias on Mr. Ajala. He stated that the plaintiff requested him to levy execution on all the personal effects on the premises, but that the defendant objected, since the goods belonged to her and not the judgment debtor. The plaintiff later confirmed that the goods in fact belonged to the defendant. The witness said that when Mr. Ajala’s car was later attached ‘both the plaintiff and the defendant were abusing each other.’ He said, ‘I asked the two of them to keep quiet but they refused. When they did not heed me, I left them to face the job I wanted to do.’ The bailiff, Adeogun, then said that the defendant claimed that she was married to the husband of the plaintiff legally and that he gave her a ring. The witness said he was surprised when the ‘defendant called herself “Mrs. Ajala.” In the car the plaintiff and defendant were abusing each other.’ Finally, the witness testified that the defendant on realizing the seized car would not be released at the High Court premises at Ikeja, paid the judgment debt on the writ of fieri facias from her pocket.

Amos Odede then testified for the plaintiff. He confirmed he was the second bailiff who went to the premises it 102 Brickfield Road, Ebute Metta, to levy execution on the personal effects of Mr. Ajala and that Mr. Ajala’s car was duly attached. He stated:

‘The defendant said that the plaintiff was not the legal wife of Ajala and that she was. She said the plaintiff was a prostitute. We directed our mind to what we were doing’.

The witness then said in his examination-in-chief:

‘When the defendant called the plaintiff a “prostitute,” I was surprised. I was only surprised when the defendant said she was the wife of Ajala.’

Under cross-examination by counsel for the defendant, the witness said the defendant and the plaintiff were exchanging abuses in Yoruba language’. With these two witnesses counsel then closed the case for the plaintiff’.

Counsel for the defendant did not adduce any evidence and addressed the court. In his address counsel for the plaintiff, urged the court to hold that the defendant ‘spoke and called the plaintiff harlot, prostitute, ex-convict and not the legal wife of Oyeniyi Ajala,’ and that these words were defamatory of the plaintiff. At this state, counsel then said ‘I shall abandon the allegation that the plaintiff was called “ex-convict.”’

Counsel referred to para 8 of the statement of claim which referred to other offending words uttered and or published by the defendant. He urged the court to hold that the defamatory words thus published were actionable per se, imputed adultery and unchastity to the plaintiff within the purview of the Slander of Women Act 1891. The words were published, she alleged and this was not traversed in the statement of defence or controverted by evidence of the defendant. Finally, counsel for the plaintiff submitted the words were not mere vulgar abuse.

In his own address, counsel for the defendant submitted that the plaintiff had suffered no loss, that the actual words spoken were not quoted in the language it was spoken, verbatim, since the witness Adeogun had said they were abusing themselves in the Yoruba language. He urged the court to hold the words alleged uttered were mere vulgar abuse and therefore not actionable. Finally, counsel urged that none of the witnesses was influenced by the alleged words spoken of the plaintiff and therefore the action should be dismissed.

The words alleged to have been published and to be defamatory of the plaintiff are stated in para 8 of the statement of claim and read:

(i) ‘You are an ex-convict.’

(ii) ‘You are not the legal wife of Mr. Oyeniyi Ajala.’ And

(iii) ‘You are an imposter.

It is in respect of these words, as pleaded therefore, that evidence is receivable. Counsel for the plaintiff in his address abandoned phase (i) (supra) -that the plaintiff is an ex-convict. I shall therefore give no further consideration to the words so uttered.

In support of phrases (ii) and (iii) (supra), the evidence of the plaintiff was:

‘She started shouting on me and said I was ... a prostitute and that she had taken my husband from me and I should not look for him ever again.’

The evidence of the witness, the bailiff, on this point was:

‘The defendant then said that she married the husband of the plaintiff legally and he gave her a ring.

Amos Odede’s evidence was:

The defendant said that the plaintiff was not the legal wife of Ajala and that she [i.e the defendant] was. She said the plaintiff was a prostitute:

Slander is the publication of defamatory matter by spoken words; and an action for slander will lie without proof of special damage under the Slander of Women Act 1891, where the words impute adultery and or unchastity to a woman or girl. The very speaking of such words, apart from any damage, constitutes a wrong and gives rise to a cause of action. The law in such a case presumes, and in theory allows proof of, general damage.

In Fields v. Davis (1955) The Times, 25th May, it was however held that if the expressions used were understood only as mere vulgar abuse of the plaintiff, no action will lie.

Quite rightly, in Lord Simond’s edition of Halsbury’s Laws of England, Vol 24 (3rd edn) p 25, para 47, it was stated that whether the words used made a definite charge of crime or of dishonesty or immoral conduct or were only used as words of general abuse depends on the manner in which they were spoken and on other circumstances of the case.

Strictly in order that the statement complained of as being a slander may be construed or interpreted it is essential that the actual words and not merely their substance should be set forth verbatim in the statement of claim or indictment; but the strictness of this old rule as followed in Capital & Counties Bank Ltd v. George Henty & Sons (1882) 7 App Cas 741, as to variance, has long ago disappeared. Now proof of language substantially the same as that pleaded is admissible, and it is for the court sitting as judge and jury to consider whether the words are defamatory with reference only to the version of the conversation which it accepts: see Tournier v. National Provincial & Union Bank of England [1924] 1 KB 461, per Bankes LJ at p 469; also Ateze v. Momo [1958] NRLR 127.

It is therefore enough to prove the substance of the words alleged in the pleadings, but if there were differences between both the form and the substance of the words alleged and of the words proved, the defendant is entitled to succeed.

There seems to me to be little or no difference in the words as alleged in para 8 of the statement of claim and the words proved by the evidence of both the bailiffs.

I do not for that reason alone think that for this slight variance and perhaps, unimportant variance, the plaintiff’s case should fail.

It is trite law that the plaintiff must succeed on the strength of her case and not on the weakness of the defendant’s case or indeed absence of evidence to controvert or rebut the evidence adduced by the plaintiff.

It does appear to me that even if I find that the words were duly published that such words referred to the plaintiff and on the face are derogatory of the plaintiff it is incumbent also on me to find that the words were defamatory of the plaintiff and actionable. Such findings must necessarily depend on the circumstances of the case.

Indeed it seems proper and I think it behoves me to consider the circumstances in which the words complained of were uttered. There is no doubt that there is no love lost between the plaintiff and the defendant. The husband of the plaintiff cohabits with the defendant. The incident giving rise to this action took place at the residence of the defendant where the plaintiff went, howbeit, rightly, to act as a pointer, with a view to executing a writ of fieri facias.

Tempers flared up when the plaintiff sought that the bailiffs, who accompanied her to the residence of the defendant, should attach the property which the defendant claimed to be hers. There was also evidence before me of a previous quarrel leading to a charge of affray between the two warring partners.

The evidence of the plaintiff and her witnesses was punctuated with the word ‘abusing’ and sounded in warranted altercation. In her own evidence the plaintiff said that ‘the defendant was abusing me all the way to Ikeja.’ Adeogun, the bailiff, said:

‘... both the plaintiff and the defendant were abusing each other. I asked the two of them to keep quiet but they refused. When they did not heed us I left them to face the job I wanted to do.’

Odede, the second bailiff said:

‘The plaintiff and the defendant were exchanging words of abuse; and under cross-examination by counsel for the defendant, he said: ‘The defendant and the plaintiff were exchanging abuses in the Yoruba language.’

There is no doubt that with this exchange of abuse, the warring parties could have exchanged blows also but for the presence and the intervention of the two bailiffs and the police constable who were present throughout and were attempting to pacify the two parties.

It is indeed a relevant fact to consider in determining the sense in which the words were used and understood that they were spoken in the heat of passion or accompanied by a number of non-actionable but scurrilous epithets of abuse.

The words complained of by the plaintiff were spoken while the parties were exchanging words of abuse.

It is a matter of common knowledge of which I take judicial notice, that people, in this country, particularly women, call each other ‘ex-convict, prostitute’, in their heated arguments, quarrels and/or altercations, which often lead to blows or fights and which words no-one takes seriously as they were words of anger.

Although in the case of slander actionable per se damage is presumed, yet the bailiffs said that they ignored the abuse and were only surprised by the words uttered by the defendant.

In Bakare v. Ishola [1959-6o] WNLR to6, it was held that such words spoken in the heat of passion are words of abuse and therefore not actionable. See also my judgment in Okunowo v. Adebanjo (1977) 9 CCHCJ 2967.

I find therefore from the totality of the evidence before me that the words alleged uttered by the defendant were mere abusive vituperations, spoken in the heat of passion by the defendant and therefore not actionable per se.

I hold therefore that words which prima facie impute unchastity or adultery to a woman or girl, are not actionable without proof of special damage if it is clear that they were spoken merely as general vituperation or abuse and were so understood by the hearers.

In her evidence-in-chief, the plaintiff stated: ‘I was weeping when she was abusing me, the bailiffs asked me not to answer her.’ No special damage had been proved to my satisfaction as being suffered by the plaintiff or that she had fallen in reputation in the estimation of right-thinking members of society or that the two witnesses or either of them tend to shun, ridicule or avoid her.

The plaintiffs claim therefore fails and it is accordingly dismissed. I do not however think this is a proper case to and do not therefore, award any costs against the plaintiff.

Order accordingly.