



REGISTRAR
HIGH COURT
ACCRA

WRIT OF SUMMONS

(Order 2 rule 3(1))

WRIT ISSUED FROM Accra 2/9/2020

SUIT No. GJ/1394/2020

IN THE HIGH COURT OF JUSTICE GENERAL JURISDICTION GREATER ACCRA REGION ACCRA – A.D. 2020

BETWEEN

GABBY OTCHERE-DARKO
17 E.D. Sowah Avenue, Otinshie, East Legon, Accra
And 5 Olooti Lane, Labone, Accra

Plaintiff *

AND

SABAH ZITA BENSON
Accra
(Plaintiff will direct service)

Defendant *

To **SABAH ZITA BENSON**

AN ACTION having been commenced against you by the issue of this writ by the above named Plaintiff **GABBY OTCHERE-DARKO**.

YOU ARE HEREBY COMMANDED that within EIGHT DAYS after service of this writ on you inclusive of the day of service you do cause an appearance to be entered for you **SABAH ZITA BENSON**.

AND TAKE NOTICE that in default of your so doing, judgment may be given in your absence without further notice to you.

Dated this 2nd day of September 20...20

Chief Justice of Ghana

ANIN YEBOAH

NB: This writ is to be served within twelve calendar months from the date of issue unless, it is renewed within six calendar months from the date of that renewal.

The defendant may appear hereto by filing a notice of appearance either personally or by a lawyer at Form 5 at the Registry of the Court of issue of the writ at A defendant appearing personally may, if he desire give notice of appearance by post.

**State name, place of residence or business address of plaintiff if known (not P.O. Box number).*

***State name, place of residence or business address of defendant (not P.O. Box number).*

2-9-2020
HIGH COURT ACCRA

STATEMENT OF CLAIM

The Plaintiff's claim is for:

- a) General damages for libel contained in the defendant's publication of the plaintiff indorsed on the writ of summons by way of an attachment and set out in paragraph 7 of the statement of claim.
- b) Aggravated and exemplary damages arising from libel published by the defendant of the plaintiff indorsed on the writ of summons by way of an attachment and set out in paragraph 7 of the statement of claim.
- c) Costs, including lawyers' fees.

This writ was issued by

**KISSI AGYEBENG, ESQ.
CROMWELL GRAY LLP**

whose address for service is

**6B DUCHESSVILLE
SECOND CIRCULAR ROAD, CANTONMENTS
ACCRA**

Number and date of
lawyer's current licence.

**GAR 00542/20 24 January 2020
PP00163/20**

Agent for

Lawyer for the plaintiff
Accra

who resides at

Indorsement to be made within 3 days after service

This writ was served by me at

on the defendant

on the day of

endorsed the day of

Signed.....

Address.....

NOTE: If the plaintiff's claim is for a liquidated demand only, further proceedings will be stayed if within the time limited for appearance the defendant pays the amount claimed to the plaintiff, his lawyer or his agent or into court as provided for in Order 2 rule 3(2).

IN THE SUPERIOR COURT OF JUDICATURE
IN TH HIGH COURT OF JUSTICE
GENERAL JURISDICTION
GREATER ACCRA REGION
ACCRA – A.D. 2020

SUIT NO.

BETWEEN

GABBY OTCHERE-DARKO

17 E.D. Sowah Avenue
Otinshie, East Legon, Accra
And
5 Olooti Lane, Labone, Accra

PLAINTIFF

AND

SABAH ZITA BENSON

Accra
(Plaintiff will direct service)

DEFENDANT

INDORSEMENT ON WRIT OF SUMMONS

29 August 2020
Audio Visual Post on Facebook

Family and Friends Agyapa Royalties

Hello my brothers and sisters this is Zita Benson here and I am making this video with regards to Agyapa Royalties that is currently trending in Ghana. I am sure that most of you have heard about the Agyapa Royalties but most of you do not understand the issues and that is why you cannot even comment on it. The journalists too that are supposed to you know and enlighten you and bring out the issues are all quiet. So I am going to bring this...erm...I am going to break it down; break the issues down so that the laymen can understand what is going on and weigh the issues out for themselves.

Under our minerals law, Ghana receives ten percent of all mining leases. This comes up to about hundred and twenty million dollars annually. Yes. So whatever is mined out of Ghana, we get ten percent as royalty payment and other taxes to government. So as at 2016, Ghana was receiving about hundred and twenty million dollars annually. As we speak gold prices are going up so obviously it means that what we will be receiving as royalties will also go up. Now this government has decided to use our royalties as security. So they are going to take a loan of five hundred million dollars and they are assigning seventy-six percent of the one hundred and twenty million dollars that we get annually as security to Agyapa. We get hundred and twenty million dollars every year, they are taking a loan of

five hundred million for fifteen years and they are mortgaging seventy-six percent of our shares for that. So you make the maths, do the maths – if you get hundred and twenty times even four, that's four hundred and eighty. But we are taking a loan of five hundred for fifteen years that Ghanaians must pay. And they say they will float shares for people to buy.

How did Agyapa come in? In 2018 the Mineral Income Investment Fund was passed and under that law they needed a body to manage our royalties. So MIIF, which is the minerals income investment fund decided to create an SPV. An SPV is the special vehicle...special purpose vehicle to collect those funds on our behalf. They registered a company called Asaase Royalties in Jersey. Jersey is one of those safe havens...countries where you can put money and you can go and hide your money without anyone getting access to know. They protect your money. Nobody can get access to know how much you have in there. So there was an uproar. Asaase Royalties obviously had links to Asaase Radio which belongs to our Prime Minister Gabby Otchere Darko [meaning thereby the plaintiff], the nephew of the President. So obviously people were saying that why should...that why should that SPV be given to Gabby [meaning thereby the plaintiff] because there were other qualified people in the country? So they quickly changed the name from Asaase Royalty to Agyapa Royalties and they incorporated that in Jersey, a safe haven. And then they came to Ghana and incorporated Agyapa Royalties Ghana also in Ghana to manage the fund. The lawyers for that fund erm the lawyers for that SPV is Gabby's [meaning thereby the plaintiff] law firm, White and Castle which is an international law firm, Bentsi Enchil & Letsa. Parliament had to pass a law to put the SPV in place. But because they were running out of time, what they did was that they started the process of setting up the SPV even before the bill went to parliament to be passed. And even before the President assent to that bill Agyapa Royalties in Jersey and Agyapa Royalties Ghana had already been put in place. The company came before the law was passed and everything. But well, that is beside the point.

...

Who are the people behind Agyapa? Our own senior minister, Osafo Marfo's son is behind it. Gabby Otchere Darko [meaning thereby the plaintiff] is in it as lawyer – he claims he doesn't know about it. He claimed he did not know about it and he was even going to go to court but today he himself confirmed that he is privileged to be the lawyer of Agyapa. One percent legal fees, of what will go to Gabby's [meaning thereby the plaintiff] law firm is not small money. It is this same group of people [meaning thereby including the plaintiff] that sold Electricity Company of Ghana to themselves under PDS and they did not pay a penny and that is why the PDS agreement had to be abrogated. Because the equity that had to go into that contract never went and PDS was struggling because somebody had written a letter that they had paid their share when in actual fact it was just a letter that they had written – no money had actually gone. And for months or years they were taking money from ECG. So far nobody has been held responsible. It is the same thing that we are seeing with Agyapa. Once again we see family and friends at play. The same group of people – the same the Osafo Marfo, Gabby [meaning thereby the plaintiff], Ken Ofori Atta...

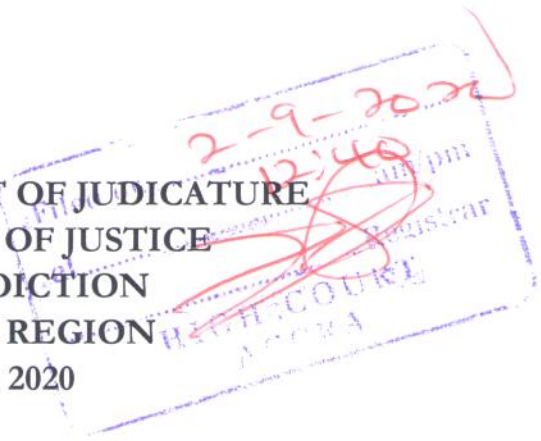
They are going to mortgage Ghana and you and I will be paying and even the money that we were getting under our royalties that was benefiting all of us will be going to a group of peoples' pockets. [meaning thereby including the plaintiff] They [meaning thereby including the plaintiff] have built a war chest for themselves to ensure that their generation and generation and generation's children will never ever see poverty again. Can you imagine if this had happened under NDC under John Mahama, what all of you would be saying by now? But because, you know, it is your people so you are quiet. So the whole of Ghana should suffer and a group of people [meaning thereby including the plaintiff] should benefit and then when you go and talk they will tell you that oohh but he is qualified. But who is not qualified? Who is not qualified? Don't we have qualified Ghanaians? Are they the only, is that family, that family – the Akyem family, are they the only qualified in Ghana? Are they? Don't you have qualified people in your own families that can also be put on those companies?

...

The same suspects [meaning thereby including the plaintiff], **the usual suspects that we saw in PDS that we have been seeing in all these smelly stinky fraudulent deals, sale of state assets and state companies that we have been seeing, the same group of people are behind Agyapa. So sit there and shout four more for nana. The next four more, you will not even know what hit you because they** [meaning thereby the plaintiff] **would have sold everything including you...**

Nissi Agyakong 1.

IN THE SUPERIOR COURT OF JUDICATURE
IN TH HIGH COURT OF JUSTICE
GENERAL JURISDICTION
GREATER ACCRA REGION
ACCRA – A.D. 2020



SUIT NO.

BETWEEN

GABBY OTCHERE-DARKO

17 E.D. Sowah Avenue
Otinshie, East Legon, Accra
And
5 Olooti Lane, Labone, Accra

PLAINTIFF

AND

SABAH ZITA BENSON

Accra
(Plaintiff will direct service)

DEFENDANT

STATEMENT OF CLAIM

- 1 The plaintiff is a citizen of Ghana, a lawyer and the Senior Partner of the law firm Africa Legal Associates – a reputable law firm established in Ghana. He is also a well-known public figure and a member of the Ghana Bar. He resides in Accra.
- 2 The defendant is also a lawyer, a former minister for tourism, a former minister for information, and a former ambassador to the Czech Republic with concurrent accreditation to Slovakia, Hungary, Macedonia and Romania. She describes herself as a gender activist. She resides in Accra.
- 3 In 2018, Parliament passed the Minerals Income Investment Fund Act, 2018 (Act 978) to establish a Fund (Minerals Income Investment Fund) to manage the equity interests of the Republic in mining companies, to receive mineral royalties and other related income due the Republic from mining operations, and to provide for the management and investment of the assets of the Fund.

- 4 By section 3 of Act 978, the Minerals Income Investment Fund is vested with the power, *inter alia*, to create and hold equity interests in a Special Purpose Vehicle (SPV) in any jurisdiction in furtherance of its objects, procure the listing of the SPV on any reputable stock exchange that it considers appropriate, and to assign or transfer all or any of its rights to minerals income to an SPV in furtherance of the objects of the Fund.
- 5 The Minerals Income Investment Fund duly set up and incorporated an SPV in accordance with Act 978 called Agyapa Royalties Limited, which is wholly owned by the Fund, which is also wholly owned by the Government of the Republic of Ghana, until an intended initial public offering of forty-nine *per cent* of the shares of the SPV on the London Stock Exchange in England.
- 6 From the records, the name initially intended for Agyapa Royalties Limited was Asaase Royalties Limited. However, the name was changed to avoid confusion and passing off because it was discovered that there are more than twenty (20) companies on the Register of Companies, especially in the mining sector, bearing the name “Asaase” in several variants.
- 7 On Saturday 29 August 2020, the defendant posted on Facebook (a social media site on the Internet on the World Wide Web) an audio visual recording of herself under the headline – **Family and Friends Agyapa Royalties** – in which she published the following words defamatory of the plaintiff:

Hello my brothers and sisters this is Zita Benson here and I am making this video with regards to Agyapa Royalties that is currently trending in Ghana. I am sure that most of you have heard about the Agyapa Royalties but most of you do not understand the issues and that is why you cannot even comment on it. The journalists too that are supposed to you know and enlighten you and bring out the issues are all quiet. So I am going to bring this...erm...I am going to break it down; break the issues down so that the laymen can understand what is going on and weigh the issues out for themselves.

Under our minerals law, Ghana receives ten percent of all mining leases. This comes up to about hundred and twenty million dollars annually. Yes. So whatever is mined out of Ghana, we get ten percent as royalty payment and other taxes to government. So as at 2016, Ghana was receiving about hundred and twenty million dollars annually. As we speak gold prices are going up so obviously it means that what we will be receiving as royalties will also go up. Now this government has decided to use our royalties as security. So they are going to take a loan of five hundred million dollars and they are assigning seventy-six percent of the one hundred and twenty million dollars that we get annually as security to Agyapa. We get hundred and twenty million dollars every year, they are taking a loan of five hundred million for

fifteen years and they are mortgaging seventy-six percent of our shares for that. So you make the maths, do the maths – if you get hundred and twenty times even four, that's four hundred and eighty. But we are taking a loan of five hundred for fifteen years that Ghanaians must pay. And they say they will float shares for people to buy.

How did Agyapa come in? In 2018 the Mineral Income Investment Fund was passed and under that law they needed a body to manage our royalties. So MIIF, which is the minerals income investment fund decided to create an SPV. An SPV is the special vehicle...special purpose vehicle to collect those funds on our behalf. They registered a company called Asaase Royalties in Jersey. Jersey is one of those safe havens...countries where you can put money and you can go and hide your money without anyone getting access to know. They protect your money. Nobody can get access to know how much you have in there. So there was an uproar. Asaase Royalties obviously had links to Asaase Radio which belongs to our Prime Minister Gabby Otchere Darko [meaning thereby the plaintiff], the nephew of the President. So obviously people were saying that why should...that why should that SPV be given to Gabby [meaning thereby the plaintiff] because there were other qualified people in the country? So they quickly changed the name from Asaase Royalty to Agyapa Royalties and they incorporated that in Jersey, a safe haven. And then they came to Ghana and incorporated Agyapa Royalties Ghana also in Ghana to manage the fund. The lawyers for that fund erm the lawyers for that SPV is Gabby's [meaning thereby the plaintiff] law firm, White and Castle which is an international law firm, Bentsi Enchil & Letsa. Parliament had to pass a law to put the SPV in place. But because they were running out of time, what they did was that they started the process of setting up the SPV even before the bill went to parliament to be passed. And even before the President assent to that bill Agyapa Royalties in Jersey and Agyapa Royalties Ghana had already been put in place. The company came before the law was passed and everything. But well, that is beside the point.

...

Who are the people behind Agyapa? Our own senior minister, Osafo Marfo's son is behind it. Gabby Otchere Darko [meaning thereby the plaintiff] is in it as lawyer – he claims he doesn't know about it. He claimed he did not know about it and he was even going to go to court but today he himself confirmed that he is privileged to be the lawyer of Agyapa. One percent legal fees, of what will go to Gabby's [meaning thereby the plaintiff] law firm is not small money. It is this same group of people [meaning thereby including the plaintiff] that sold Electricity Company of Ghana to themselves under PDS and they did not pay a penny and that is why the PDS agreement had to be abrogated. Because the equity that had to go into that contract never went and PDS was struggling because somebody had written a letter that they had paid their share when in actual fact it was just a letter that they had written – no money had actually gone. And for months or years they were taking money from ECG. So far nobody has been held responsible. It is the same thing that we are seeing with Agyapa. Once again we see family and friends at play. The same group of people – the same the Osafo Marfo, Gabby [meaning thereby the plaintiff], Ken Ofori Atta...

They are going to mortgage Ghana and you and I will be paying and even the money that we were getting under our royalties that was benefiting all of us will be going to a group of peoples' pockets. [meaning thereby including the plaintiff] They [meaning thereby including the plaintiff] have built a war chest for themselves to ensure that their generation and generation and generation's children will never ever see poverty again. Can you imagine if this had happened under NDC under John Mahama, what all of you would be saying by now? But because, you know, it is

your people so you are quiet. So the whole of Ghana should suffer and a group of people [meaning thereby including the plaintiff] should benefit and then when you go and talk they will tell you that ooh but he is qualified. But who is not qualified? Who is not qualified? Don't we have qualified Ghanaians? Are they the only, is that family, that family – the Akyem family, are they the only qualified in Ghana? Are they? Don't you have qualified people in your own families that can also be put on those companies?

...

The same suspects [meaning thereby including the plaintiff], the usual suspects that we saw in PDS that we have been seeing in all these smelly stinky fraudulent deals, sale of state assets and state companies that we have been seeing, the same group of people are behind Agyapa. So sit there and shout four more for nana. The next four more, you will not even know what hit you because they [meaning thereby the plaintiff] would have sold everything including you...

(sic)

- 8 In their natural and ordinary meaning, the words published by the defendant and reproduced in paragraph 7 above referred to and were understood to refer to the plaintiff and they meant and were understood to mean that:
- i. The plaintiff is engaging in criminal capture and dissipation of public funds by being the actual owner of Agyapa Royalties Limited.
 - ii. The plaintiff is corrupt and he engages in reprehensible clandestine dealings to arrogate or convert public funds arising from equity interests in mining companies and royalties from mining companies and the ownership of a public company to himself.
 - iii. The plaintiff is a member of a nepotistic family and he, in cahoots with other members of his family, engages in inordinate and dishonest monetary gain through the seizure and plundering of public funds, assets and public companies (including Agyapa Royalties Limited and the Electricity Company of Ghana).
 - iv. The plaintiff is a detestable, distasteful and nepotistic person who he engages in publicly opprobrious practices by appropriating state owned assets and funds by employing his blood ties with the President of the Republic.
 - v. The plaintiff is fraudulent and dishonest.

vi. The plaintiff used his law firm to dishonestly siphon state funds.

9 Further, the words complained of bear and were understood to bear the meanings pleaded in paragraph 8 above by way of innuendo.

Particulars

- a) It is publicly known that the plaintiff is a shareholder of Asaase Radio, a radio station based in Accra.
- b) Asaase Radio bears similarity in name with Asaase Royalties Limited.
- c) Asaase Royalties Limited was changed to Agyapa Royalties Limited.
- d) The facts recited in sub-paragraphs (a) – (c) are generally known to the public.
- e) The defendant sought to imprint on the minds of the public that because the plaintiff is a shareholder of Asaase Radio; and Agyapa Royalties Limited was initially designated as Asaase Royalties Limited, then Agyapa Royalties Limited is owned by the plaintiff.
- f) Under a concession agreement the assets of Electricity Company of Ghana were taken over by Power Distribution Services Limited (PDS) for the distribution of electricity in the southern sector of the country.
- g) The Government of Ghana abrogated the concession agreement in 2019.
- h) The facts contained in sub-paragraphs (f) and (g) are generally known to the public.
- i) The defendant sought to imprint on the minds of the public that the plaintiff was a part owner of PDS and that the plaintiff conspired with his cronies to defraud and did defraud the Republic through the PDS concession agreement.

- 10 The plaintiff states that the words complained of are absolutely false, products of the defendant's imagination and were mischievously designed by the defendant to disparage him, stain his reputation and his legal practice, create disaffection for him, and to bring him into abhorrence in the eyes of right thinking members of the Republic and the global community.
- 11 In consequence, the plaintiff's reputation, particularly as a lawyer, has been egregiously damaged and he has suffered debilitating distress and embarrassment. Further, he has been inundated with numerous calls from business associates, social relations, friends and outright strangers, and he has had to answer very mortifying questions.
- 12 The plaintiff will rely on the following facts and matters to support a claim for aggravated and exemplary damages:

Particulars

- i. The defendant published the words complained of knowing they were false, or reckless as to their truth or otherwise – having calculated that the harm her publication would occasion the plaintiff would outweigh any compensation payable to him.
- ii. The defendant published the words complained of to an unquantifiable number of viewers on the Internet on the World Wide Web.
- iii. The defendant knew or ought reasonably to have known that once the words complained of was published on the Internet on the World Wide Web, it could and would be accessed by an unquantifiable number of subscribers to the Internet around the world.
- iv. The defendant knew or ought reasonably to have known that once the publication was made it would be culled and reproduced on the websites of media houses and accessible to countless numbers of persons worldwide.
- v. The defendant knew and intended that her publication of the words complained of should be so published and republished and/or such publication and republication was the natural and probable consequence of her publication.

- vi. Accordingly, it can be reasonably inferred that a large but unquantifiable number of users watched the publication worldwide, including in the Republic.
- vii. The defendant was malicious in her publication of the words complained of.

Particulars

- a. The defendant sought to project herself as very knowledgeable in the subject of her publication and she put herself out as a sort of messianic intervener with the calling of explaining and exposing the criminality and undesirability of the plaintiff to the lay public who would otherwise not know and appreciate the sheer devilishness of the plaintiff.
- b. The defendant well knew that the Minerals Income Investment Fund and Agyapa Royalties Limited are state owned entities, with an intended initial public offering of forty-nine *per cent* of the shares of the latter entity on the London Stock Exchange.
- c. The defendant well knew that the Minerals Income Investment Fund and Agyapa Royalties Limited are not owned, wholly or partly, by the plaintiff.
- d. The defendant well knew that her profession as a lawyer, and a politician and former diplomat would lend immense credence to her believability and attach credulity to her publication.

13 *Ergo*, the plaintiff claims against the defendant for:

- a) General damages for libel contained in the defendant's publication of the plaintiff indorsed on the writ of summons by way of an attachment and set out in paragraph 7 above.
- b) Aggravated and exemplary damages arising from libel published by the defendant of the plaintiff indorsed on the writ of summons by way of an attachment and set out in paragraph 7 above.

c) Costs, including lawyers' fees.

Dated in Accra this Second day of September 2020.



Lawyers for the Plaintiff
Cromwell Gray LLP
6B Duchesville
Second Circular Road
Cantonments, Accra

The Registrar
High Court
General Jurisdiction
Accra

And for service on the Defendant upon whom the
Plaintiff shall direct service.

=====

Practicing Certificate: GAR 00542/20
24 January 2020
Firm Registration: PP00163/20