IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON TUESDAY 6TH DAY OF JULY, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 9, MAITAMA, ABUJA

SUIT NO: FCT/HC/CV/1650/2018

BETWEEN

HIGH CHIEF RAYMOND DOKPESI… … … … … CLAIMANT

AND

1. ALHAJI LAI MOHAMMED
   (Minister of Information & Culture) } DEFENDANTS
2. ATTORNEY GENERAL OF THE FEDERATION

JUDGMENT

In the pleadings filed to commence the instant action, the Claimant is introduced as the Chairman/Chief Executive, DAAR Investments & Holding Co. Ltd, Founder/Chairman Emeritus, DAAR Communications Plc, Chairman/Chief Executive, Baldok Shipping Lines Ltd.; and Proprietor/Operator of Ray Power FM,

Africa FM, Africa Independent Television & Faaji FM, *inter alia*. The Claimant's grievance against the Defendants, in a nutshell, is that the 1st Defendant, who, at the material time, was the Minister of Information of the Federal Republic of Nigeria, on or about the 30th of March, 2018, in the course of addressing a press conference covered by several print, electronic and other online media platforms, published and disseminated to the general public, statement that he was one of the looters of Nigeria's treasury; which statement, according to the Claimant, was false and defamatory of him.

The Claimant further contended that the purported defamatory statement, which according to him, was actuated by malice, injured his reputation; and efforts to get the 1st Defendant to retract the purported defamatory publication did not yield any positive result.

Consequently, the Claimant instituted the instant suit *vide* _Writ of Summons and Statement of Claim_ filed at the Registry of this Court on 30/04/2018, whereby he claimed against the Defendants, jointly and severally, the reliefs set out as follows:

1. ***Damages for libel in the sum of ₦5,000,000,000.00 (Five Billion Naira) only.***

2. ***An order compelling the Defendants to publish a full retraction and apology to the Claimant concerning the defamatory statements made by the Defendants against the person of the Claimant in the same print, social and electronic media platforms through which the defamatory statements were initially published and circulated, in particular, The Punch, Daily Trust, Tribune, Vanguard, This Day, Telegraph, Independent and the Sun Newspapers, as well as two slots each on the Nigeria Television***

Authority (NTA), Channels TV and African Independent Television Authority (AIT).

3. ***A perpetual injunction restraining the Defendants, whether by themselves, their servants, agents, partners, representatives, privies and/or otherwise howsoever, from further writing, publishing, speaking or cause to be written, published, or spoken the said words complained of or any words to the like effect similarly defamatory of the Claimant.***

4. ***Cost of this action at ₦50,000,000.00 (Fifty Million Naira) only.***

5. ***Other reliefs as the Honourable Court may deem fit to grant in the circumstances of the case and or action.***

The Defendants denied the entirety of Claimant's claim in their *Joint Statement of Defence* filed on

17/06/2019, maintaining, essentially, that the statement attributed to the 1st Defendant was true to the extent that the Claimant was, at the material time, standing trial for allegedly taking the sum of **₦2.1 Billion** from the Office of the National Security Adviser.

The Claimant filed a *Reply* to the Defendants' *Joint Statement of Defence* on 10/03/2018.

The matter proceeded to trial. In support of his case, the Claimant testified in person and called eight (8) witnesses, namely:

- **Ikpoghodu Lina Okakpu (CW1)** – She claimed to be a media consultant and Claimant's political associate.
- **Roselyn Adomhi Unoarumi (CW2)** – She claims to be a businesswoman and Claimant's political associate.

- **Goyit Jiritmwa (CW3)** – She claims to be a businesswoman and the Claimant's political associate.

- **High Chief Jubril Alaba Oshogwemoh (CW4)** – He claims to be a businessman and a politician.

- **Alhaji Dauda Muhammad Kurfi (CW5)** – He claims to be a businessman and a politician.

- **Rev. Habu Dawaki (CW6)** – He claimed to be a public servant and a clergyman.

- **Chieme O. Chukwu (CW7)** – She claimed to be a legal practitioner and the Claimant's political associate.

- **Ide Eguabor (CW8)** – He claims to be a journalist and the Claimant's political associate.

The witnesses, including the Claimant, adopted their respective *Statements on Oath* as their respective

evidence-in-chief. The Claimant, on his part, tendered **twelve (12)** sets of documents in evidence as exhibits, including the alleged libelous publications, to further support his case.

The Claimant and his witnesses were roundly subjected to cross-examination by the Defendants' learned counsel.

The Defendants, in turn, fielded a sole witness, one **Segun Adeyemi**, who claimed to be a Special Assistant to the President of the Federal Republic of Nigeria, attached to the office of the 1st Defendant. He adopted his *Statement on Oath* as his evidence-in-chief and further tendered **four (4)** documents in evidence as exhibits. He was equally cross-examined by the Claimant's learned senior counsel.

Upon conclusion of plenary trial, parties filed and exchanged their written final addresses as prescribed

by the provisions of **Order 33** of the **Rules** of this Court.

In the final address filed on behalf of the Defendants on 13/03/2021, their learned counsel, **T. D. Agbe, Esq.,** formulated three issues as having arisen for determination in the suit, set forth as follows:

1. ***Whether considering the facts of this case, the evidence adduced by parties, the Claimant is entitled to the reliefs sought.***

2. ***Whether the statement alleged to have been made by the 1st Defendant on the 30th of March, 2018 with respect to the Claimant is true to avail the Defendants the defence of justification.***

3. ***Whether the defence of privileged communication will avail the Defendants considering the fact that the Press Conference by***

the 1st Defendant of 30th March, 2018, was done in the official capacity.

The Claimant in turn filed his written final address on 06/11/2020, wherein his learned senior counsel, **Chief Mike A. A. Ozekhome, SAN**, distilled a sole issue as having arisen for determination in this suit, set forth as follows:

Whether from the totality of the evidence led before this Honourable Court, the Claimant has proved his case on the preponderance of evidence to enable this Honourable Court grant the reliefs of the Claimant in the terms sought before this Honourable Court.

The Defendants filed a Reply on points of law to the Claimant's final address on 10/03/2021.

Having examined, assessed and considered the totality of the pleadings, admissible evidence on record, the final submissions of the respective learned

counsel and the totality of the field of dispute in the instant suit, my view is that the issues that have arisen for determination, without prejudice to the issues formulated by the respective learned counsel, can be succinctly formulated as follows:

1. ***Whether the Claimant has proved that the statements credited to the 1st Defendant which were alleged to have been published during the Press Conference he held on 30th March, 2018, were defamatory of him to entitle him to the reliefs sought.***

2. ***Whether the defences of justification and privileged communication set up by the 1st Defendant avail for him in the circumstances of this case.***

In proceeding, I should state that I had carefully considered and taken due benefits of the totality of the written and oral final submissions of the respective

learned counsel on either side of the divide; and I shall make specific reference to the arguments canvassed by them as I deem necessary as I proceed with this judgment.

RESOLUTION OF ISSUES

It is well settled, and as correctly canvassed by learned counsel on either side, that in order to succeed in an action for defamation, whether libel or slander, a claimant is required in law to lead credible evidence to establish the presence of the following basic ingredients, without exception, namely:

1. That there was publication of the allegedly defamatory matter to some person other the claimant of and concerning whom the defamatory statement is written or spoken;

2. That the alleged defamatory words must convey defamatory meaning to those to whom it is published;

3. That the words must be false in their content; and

4. That there are no justifiable legal grounds for the publication of the words.

See *The Sketch Publishing Company Limited Vs. Ajagbemokeferi* *[1989] 1 NWLR (Pt. 100) 678;* *Zenith Plastics Industries Limited Vs. Samotech Limited* *[2007] 16 NWLR (Pt. 1060) 315;* *Iloabachie Vs. Phillips* *[2000] 14 NWLR (Pt. 686) 43;* *Skye Bank Plc. & Anor. Vs. Akinpelu* *[2010] LPELR-3073(SC);* *Aromolaran Vs. Agoro* *[2014] 18 NWLR (Pt. 1438) 153;* *Ekong Vs. Otop & 2 Ors.* *[2014] 11 NWLR (Pt. 1419) 549.*

The task before the Court is therefore to determine whether the Claimant in the present case has succeeded, on the basis of the totality of the evidence

led on the record, in establishing the presence of each and all of these ingredients; and if so, whether or not, on the other hand the Defendants succeeded in sustaining the defences pleaded by them in the totality of the circumstances of the case, in order to escape liability.

IS THERE PUBLICATION?

It is the contention of the Defendants' learned counsel that the Claimant failed to discharge the burden placed on him by law to establish, with cogent evidence, that the alleged defamatory statement credited to the 1st Defendant was published. Learned counsel submitted that the case of the Claimant, with respect to publication of the alleged defamatory matter, was built on hearsay evidence led by the Claimant and his witnesses, in that all the newspaper publications tendered by the Claimant that claimed to report the alleged defamatory statement published

different versions of the same story; that the Claimant failed to sue any of the media houses that published the alleged defamatory statement; and that the Claimant failed to call any of the journalists that covered the press conference where the alleged defamatory statement was made as witness to attest to the fact that the 1st Defendant made the alleged defamatory statement; that the Claimant and his witnesses did not claim to have seen a live broadcast of the press conference. Learned counsel therefore contended that the totality of the evidence of the Claimant and his witnesses and all documents tendered fell squarely in the realm of hearsay evidence, citing the provision of **s. 37** of the **Evidence Act** and the authorities of *Agi Vs. FCMB Plc. [2013] LPELR-20708(CA); Edosa & Anor Vs. Ogiemwanre [2018] LPELR-46341(SC); FRN Vs. Usman & Anor. [2012] LPELR 7818(SC); Lawrence Vs. Olugbemi & Ors.*

[2018] LPELR-45966(CA); Bajowa Vs. FRN & Ors. [2016] LPELR-40229(CA).

Learned Defendants' counsel further contended that even though the Claimant's witnesses testified that they heard or watched the broadcast of the press conference on television but the Claimant failed to call anyone from the media houses to testify that indeed they broadcasted the alleged defamatory statement on the date and time or at any time at all; that the Claimant was under obligation either to sue the media houses that allegedly rebroadcasted the press conference or call any of the journalists that physically covered the press conference to testify in Court that the words reproduced by the Claimant in *paragraph 17* of the *Statement of Claim* were the exact words used by the 1st Defendant at the press conference. Learned counsel further relied copiously on the authorities of *Ayeni Vs. Adesina [2007] LPELR-*

4932(CA); Ogbonnaya Vs. FBN Plc [2015] LPELR-2731(CA), for the principle, *inter alia*, that a claimant is under a duty to prove publication of an alleged defamatory statement; and that the general principles relating to admission in civil matters would not be sufficient proof.

Learned counsel for the Defendants further contended none of the Claimant's witnesses testified as to what they heard on the said Channels television station or the print media, referring to *paragraphs 9 and 10* of the *Statements on Oath* of the respective Claimant's witnesses which, according to him, did not contain any evidence as to what they heard or watched on television and that the Court cannot speculate on what the witnesses heard or watched; that the purported video clip of the press conference tendered by the Claimant was played at the end of the trial and that none of the Claimant's witnesses was called to verify

that it was the same content of the video clip tendered by the Claimant that they watched.

Learned Defendant's counsel further argued that even though the said press conference was said to have been aired on Channels TV programme called **"Politics Today;"** but that no staff of Channels TV was called as a witness to confirm the veracity or authenticity of the said video footage, and therefore urged the Court not to place any reliance on the content of the CD, **Exhibit C8**.

Learned senior counsel for the Claimant, on the other hand, contended that the Defendants unequivocally admitted publication of the alleged defamatory matter, contained in **Exhibit C8**, by the averment contained in *paragraph 3* of their *Joint Statement of Defence*, contending the trite position of the law that admitted facts need no further proof.

Learned senior counsel further submitted that apart from the Claimant, his witnesses testified variously, even under the fire of cross-examination, that they saw the 1st Defendant call the Claimant a looter, therefore urged the Court to hold that the Claimant established publication of the alleged defamatory Statement.

Now, the Claimant pleaded in _paragraphs 10, 11, 12, 13, 14, 15, 16, 21, 22, 23 & 30_ of his _Statement of Claim_ as follows:

> ***"10. The Plaintiff avers that on or about the 30th day of March, 2018, the Defendants defamed the Plaintiff while addressing a press conference covered by several print (Newspapers), electronic (National Televisions) as well as online media platforms, publishing and/or disseminating to the general public that the Plaintiff is a treasury looter.***
>
> ***11. The Plaintiff avers that video footage/clip of the press conference wherein the defamatory statements***

were made went viral and are found and read on social media sites, print, electronic (several television news stations) and other platforms.

12. The Plaintiff shall rely on the CD/DVD audio clip, the print media publications and other relevant documents to the facts pleaded herein and also play the contents of the CD/DVD with the aid of a laptop computer or a projector.

13. The Plaintiff further avers that the transcripts of video footage/clip of the defamatory statements by the Defendant was also accessed, transcribed and downloaded from the internet. The transcript (is) hereby pleaded and shall be relied upon during trial.

14. The Plaintiff avers that the Defendants in the said CD/DVD audio clip/footage named or mentioned the Plaintiff as one of the treasury looters of Nigeria's monies.

15. The Plaintiff avers that the following were defamatory words/statements of the 1st Defendant in the said media briefing and the CD/DVD audio clip/footage and same appeared on television and newspapers:

> ***"The PDP has challenged us to name the looters under their watch. We are doing this very reluctantly because most of these matters are in court but we want to assure the PDP that Nigerians will not forgive and they won't forget until they return all the funds they looted. The PDP said they did not loot the treasury, well I am sure they know that the treasury was looted dry under their watch yet they decided to grandstand, this shows the hollowness of their apology to Nigerians. Let us give them a teaser with this small list:***
>
> ***1. PDP chairman, Uche Secondus on the 19th of February 2015, he took 200 million Naira***

only from the office of the then NSA under his own name.

2. *On the 24th of October 2014, the then PDP financial secretary took 600 million naira only from the office of the NSA.*

3. *The then National Police Secretary (sic) Olisa Metuh who is on trial for collecting 1.4 billion naira from the office of the then NSA.*

4. *Of course, you all know the case of Dr. Raymond Dokpesi, Chairman of DAAR communications who is on trial for taking 2.1 billion naira from the then office of the NSA.*
5. *The former SSA to President Jonathan, Dudafa Waripam-Owei is also on trial over 850 million kept in accounts of four different companies.*

6. *The former President Jonathan's cousin, Robert Azibaola just on Thursday, a Federal High Court ruled that he has a case to*

answer for collecting 40 million dollars from the office of the then NSA.

This list like I said is just a tip of the iceberg and the PDP is aware of this. We did not make up these cases, many of them are in court and the records are available, all the people on this list are seeking to plea bargain and that is also fact. We insist that Nigeria was looted blind under the watch of the PDP and that the starting point in tendering an apology is for them to return the loot, it is like a robber admitting to stealing your car and apologizing but then insisting he will still keep the car, it doesn't work that way.

The PDP is a hypocrite and that reminds me of what the English writer William Hazlitt said "The only vice that cannot be forgiven is hypocrisy, the repentant of a hypocrite is in itself hypocrisy".

We will not stop talking about the massive looting by the PDP, they have brought Nigeria to this sorry past, we are now looking around for loans to build infrastructures and they ask us not to talk about it, we will continue to talk about it. Thank you very much."

16. The Plaintiff avers that the Defendants' defamatory publication was also used on various print media, which includes: Saturday Tribune of 31st March, 2018, Saturday Daily Trust of 31st March, 2018, Saturday Vanguard of 31st March, 2018, Saturday This Day of 31st March, 2018, Saturday Telegraph of 31st March, 2018, Saturday Independent of 31st March, 2018, Saturday Leadership of 31st March, 2018, wherein the newspapers echoed the same words/statements defamatory of the Plaintiff, as used by the 1st Defendant. The Plaintiff shall at the trial rely on the said newspapers publication.

21. The Plaintiff state(s) that large and unquantifiable number of users read, viewed and continues to read and view the published/released words of (on) various print, electronic and social media platforms.

22. The Plaintiff avers that the 1st Defendant had granted an exclusive press conference wherein he made the defamatory statements against the Plaintiff.

23. Further, the 1st and 2nd Defendants well know that once they granted the interview and made defamatory statements to various print, online, electronic media and who would publish them in their newspapers, air it on their television stations and on their websites, they could and would and were accessed by a substantial but unquantifiable number of readers and subscribers to other internet provider systems all over the world.

30. The Plaintiff avers that after these defamatory publications by the Defendants, several people, both within and outside the country, who read the

publications have called him and expressed their disappointment that they never knew that he was a man of dubious character, despite his apparent sterling and distinguished career in the public sector and enviable achievements in the private sector. Some of them challenged the Plaintiff to sue the authors of the publications to clear his name if he knew that the publications were false."

The law is well settled that publication is central to, and perhaps, is the life wire of a claim of the tort of defamation, be it libel or slander. Its proof must be strictly established. Without publication, there certainly can be no defamation. Publication of defamation is the act of making known the alleged defamatory matter to some persons other than the person of whom it is written. This position was firmly established by the Supreme Court in *Nsirim Vs. Nsirim [1990] 3 NWLR (Pt. 136) 285*, where it was held, *per* **Obaseki, JSC,** as follows:

"By publication, it is meant the making known of the defamatory matter to some person other than the person of whom it is written… it is the reduction of libelous matter into writing and its delivery to any person other than the person injuriously affected thereby. That is publication. The name of the person to whom the libelous document was made must be pleaded."

See also Musa Omika Vs. Alhaji Mallam Uba Isa *[2011] LPELR-4564(CA)*, where the Court of Appeal further underscored the point that the third party(ies) to whom an alleged defamatory statement is published must be clearly identifiable and identified in the pleadings, when it held as follows:

"The law is very well defined and fully settled that one basic ingredient of defamation, whether libel or slander, as in the instant appeal is publication. In order to succeed the Plaintiff must prove the fact of publication. In other words the Plaintiff is under a

burden to prove that the defamatory matter was published to a 3rd party. And the law requires that the 3rd party must not only be named but must be clearly identifiable and identified. Any failure to properly plead and prove publication is fatal to the case and it is bound to collapse because it is publication that gives the case its cause of action….

Perhaps in his effort to prove publication, the Plaintiff/Respondent called and relied on the evidence of PW1 and PW7, members of his vigilante group. These are people he all along knew and who were seemingly together with him on the scene of the event. However, his pleadings fell short of naming them in any proper manner whatsoever. For the purpose of defamation and publication thereof, the persons to whom it was published must be properly identified in the pleadings."

See also <u>Ejabulor Vs. Osho</u> *[1990] 5 NWLR (Pt. 148) 1.*

It is therefore essential to underscore that in order to establish publication; the testimony of the Claimant of or against whom the alleged defamatory statement is made is of little or no significance whatsoever. In *Otop Vs. Ekong* *(supra)* the Court of Appeal, *per* **Adamu, JCA**, @ pages 30-31, held as follows:

> ***"It is also pertinent under the above rule on publication that the evidence of the respondent (as the plaintiff) on the petition is not relevant to prove publication in libel. His testimony of Exhibit 'D' and other exhibits or documents containing the libelous statements is therefore not relevant and goes to no issue."***

In the circumstances, the focus of the Court is therefore on the testimonies of the Claimant's witnesses to whom the alleged defamatory statement was said to have been published in the manner pleaded in the *Statement of Claim*.

It is pertinent to add, upon examination of the portions of the Claimant's pleadings reproduced in the foregoing, that it could be inferred that the Claimant alleges the tort of both slander and libel against the 1st Defendant; in that, apart from pleading the video footage and transcript of the press conference where the 1st Defendant allegedly said the allegedly defamatory statements; he also pleaded newspaper reportage of the said statements.

Going further, I agree with the contention of the Defendants' learned counsel that the general principles relating to admissions in civil cases cannot be invoked to prove publication. The legal position is that proof of publication must be given by admissible and cogent evidence as it is the publication that gives a cause of action. See _Ajakaiye Vs. Okandeji_ *[1972] 1 SC 92;* _Ayeni Vs. Adesina_ *[2007] 7 NWLR (Pt. 1033) 233* [also reported in *[2007] ALL FWLR (Pt. 370) 1451];*

Nas Vs. Adesanya [2003] 2 NWLR (Pt. 803) 97; NITEL Vs. Tugbiyele [2005] 3 NWLR (Pt. 912) 334.

Let me pause to quickly to add that the requirement that a claimant must clearly identify and state the names of persons to whom the alleged defamatory statement is published, as held in the authorities I had cited in the foregoing, would not necessarily apply in cases where the alleged defamation was published to the mass media, as in the instant case. See *Gatley on Libel & Slander – Tenth Edition @ para 26.5/page 807 (footnote 24).*

Let me also state in passing, that the contention of the Defendants' learned counsel that the Claimant was under obligation to sue the media houses that were said to have published the alleged defamatory statement does not represent the correct position of the law. In *Lai Mohammed Vs. Afe Babalola, SAN [2011] LPELR-8973(CA)*, the Court of Appeal, discussing the

same issues, which were on all fours with the circumstances in the present case, held as follows:

> ***"The maker of the Press Conference and the Press who further publish it are all joint tort-feasors and may be sued jointly and severally for defamation. That is so because, a person or speaker who knows or is reasonably expected to know that his words may be reported by the Press for the public ought to know that such a statement may be published. Thus, a speech made at a Press Conference will be deemed to have been requested by the maker to be re-published or repeated by the Press to the public. Indeed, it will be naive to assume that the news disseminated at a Press Conference will not be further published by the Press."***

See also *Halsbury's Laws of England, 4th Edition, Vol. 28, paras. 32 and 38* thereof & *Izuogu Vs. Emuma [1991] 4 NWLR (Pt. 183) 78.*

Therefore, the Claimant's option not to join any of the media houses who he claimed broadcasted or rebroadcasted the 1st Defendant's alleged defamatory statement is by no means fatal to his case. I so hold.

I must also state, with due respect, that the contention of the Claimant's learned senior counsel that the Defendants have admitted to the publication of the alleged defamatory statement and as such that the admitted facts required no further proof; making reference to the averment in *paragraph 3* of the Defendants' *Statement of Defence*, does not exactly represent the position of the law.

Paragraph 3 of the *Statement of Defence* states as follows:

> ***"3. The Defendants admit paragraph 10 of the Statement of Claim only to the extent that the 1st Defendant held a press Conference on or about the***

***30th day of March, 2018* but vehemently deny the fact that the Plaintiff was defamed during the press conference. The Defendants put the Plaintiff to the strictest proof of the alleged defamation."**

(Underlined portion for emphasis)

Averments in *paragraph 10* of the *Statement of Claim* are already reproduced in the foregoing.

In *Ajakaiye Vs. Okandeji (supra)*, the Supreme Court held as follows:

"We see no substance in this appeal. We think the learned trial Judge was entitled on the evidence before him to come to the conclusion that the plaintiff failed to prove publication of the libel complained of. The admission that the Daily Times was printed and published did not of itself establish publication…"

On the basis of the pleadings reproduced in the foregoing, it is clear that all that the Defendants

admitted is no more than the fact that indeed the 1st Defendant held a press conference on the stated date as claimed. This admission cannot therefore be construed as admission of publication of the statements he made at the press conference. I so hold.

It has been held that it is only in a situation where the Defendant has made a direct, unequivocal and positive admission of publication in the pleadings, that the Claimant could take advantage of such admission and thus be relieved of the burden of further proving same. See *Ofoegbu Vs. Onwuka* *[2008] All FWLR (Pt. 412) 1141 @ 1148-1149*; *Salawu Vs. Yusuf* *[*2007*]* *12 NWLR [Pt. 1049] 707*.

I therefore further hold that in the circumstances of the present case, the Defendants did not plead a direct, unequivocal and positive admission that the 1st Defendant published the alleged defamatory

statement, in order to relieve the Claimant of the burden of proof of the same.

Let me also state that although inference is available to be drawn that a statement made at a press conference to the whole world carries with it *prima facie* evidence of publication; however, it has been held that evidence of publication of the defamatory matter could only be established by witnesses to whom the alleged defamatory matter was published or communicated. See *Chief Senator Luka Gwom & Anor. Vs. Prince S. A. Orokoyo* *[2015] LPELR-24823(CA)*.

It therefore remains incumbent on the Claimant to adduce positive and credible evidence of publication of the alleged defamation.

I had reproduced the relevant portions of the *Statement of Claim* in the foregoing. For emphasis, I again reproduce *paragraph 30*, which seems to me to relate to the issue of publication, thus:

"30. The Plaintiff avers that after these defamatory publications by the Defendants, several people, both within and outside the country, who read the publications have called him and expressed their disappointment that they never knew that he was a man of dubious character, despite his apparent sterling and distinguished career in the public sector and enviable achievements in the private sector. Some of them challenged the Plaintiff to sue the authors of the publications to clear his name if he knew that the publications were false."

(Underlined portion for emphasis)

In order to give evidential flesh to this pleading, the Claimant fielded eight (8) witnesses, as part of the people that purportedly "read" the alleged defamatory statement. These witnesses have been identified earlier on in this judgment. I have examined each of their *Statements on Oaths*. It is important to remark that their testimonies are materially the same.

It is more or less a situation I term as *"hear one; hear all."*

For instance, in *paragraphs 9 – 13* of her *Statement on Oath*, the **CW1** testified as follows:

> ***"9. That to my greatest surprise and chagrin, on 30th March, 2018, the Federal Government of Nigeria through the person of the 1st Defendant defamed the Plaintiff while addressing a press conference covered by the Nigerian Television Authority and other private Television stations like Channels and AIT.***
>
> ***10. That I watched with horror, the defamatory news publication on Channels TV on the YouTube platform and social media in the United States.***
>
> ***11. That when I also turned to other stations on YouTube, the libelous news publication also aired.***
>
> ***12. That the said news publication is still intermittently being aired in various print, electronic, online and other news channels till date.***

13. That at the press conference, the 1st Defendant published with respect to the Plaintiff to the effect that the Plaintiff is among the treasury looters of Nigeria, who looted the national treasury dry."

(Underlined portion for emphasis)

As correctly noted by the Defendants' learned counsel, the **CW2 – CW8** practically chorused the testimony of the **CW1** reproduced above in *paragraphs 9 – 13* of their respective *Statements on Oath*; and indeed in the entirety of their *Statements on Oath*. By and large, it is only the introductory paragraphs, containing their names, addresses and signatures that differentiated the *Statement on Oath* of one witness from the other. I also noted that whilst the **CW1** testified in *paragraph 10* of her *Statement on Oath* that she "watched" the alleged defamatory publication on Channels TV via YouTube platform and social media in the United States; the remaining **CW2 – CW8** testified that they

"watched" the news publication only on Channels TV. Other that this, the testimonies of the witnesses are materially the same.

The Court must not overlook this fundamental point. In the authority of <u>Maduabum Vs. Nwosu</u> *[2010] 13 NWLR (Pt. 1212) 623 @ 656 [also reported in [2010] All FWLR (Pt. 547) 678(CA)]*, cited by the Defendants' learned counsel, the Court of Appeal, appraising a similar situation, held as follows:

> ***"To start with, on examination of the written statements on oath of RW1A-RW14A, who were witnesses called by the appellant, these witnesses claimed to have heard, seen and done exactly the same thing without any discrepancies in their respective evidence. This was indicative that the witnesses have been tutored, and could not have been telling the truth.***
>
> ***…. I totally agree in this respect, with the tribunal, when it is said that, 'the similarities of the depositions***

of those witnesses are too obvious to be coincidental and were therefore unbelievable and of no probative value: Ajadi Vs. Ajibola."'

In my view, it will be making a mockery of the administration of justice to overlook this issue. The inference that could be drawn from the similarities in the testimonies in chief of the **CW1-CW8** is that the statements were prepared in advance by the same mechanical process and the witnesses merely endorsed their signatures. They were all tainted and doctored witnesses whose testimonies cannot be relied upon by the Court. I so hold.

I must also state that whatever individual answers the Claimant's witnesses provided to questions posed to them under cross-examination did not change the opinion of the Court to the extent that their respective testimonies cannot be accorded probative value.

The Court's conclusion, here alone, is sufficient to hold that the Claimant has failed woefully to establish that the alleged defamatory statement was published to any of the witnesses called.

Now, even if the Claimant's witnesses' testimonies on oath were accepted on their face value, upon juxtaposing their evidence on the issue of publication to the facts pleaded in *paragraph 30* of the *Statement of Claim*; I found two essential deficiencies. For one, whilst the Claimant stated categorically in the said *paragraph 30* of the *Statement of Claim* that several persons who "read" about the alleged defamation, called him; all his witnesses testified that they "watched" the publication of the press conference on Channels TV. In other words, there is a disconnection between the pleadings and the evidence on record with respect to the issue of publication, in that whilst the Claimant pleaded libel in *paragraph 30* of the

Statement of Claim; all the witnesses gave evidence of slander.

As it is well known, the position of the law is that evidence at variance with pleadings goes to not issue.

I must further state, in passing, that the Claimant's witnesses, having given evidence that they watched the 1st Defendant's alleged defamatory publication on Channels TV, presupposing that they gave evidence of slander only; the implication is therefore that the entirety of the various newspaper publications tendered by the Claimant, as **Exhibits C1 – C7**, become irrelevant to the determination of the Claimant's claim. This is so because, as has been noted earlier on, publication is not about the injurious statement that the person alleged defamed (Claimant in the present case) heard or read; but about the statement published to third parties. I so hold.

Now, the next question to interrogate is as to whether the said witnesses, **CW1 – CW8**, who claimed they watched the 1st Defendant's press conference on Channels TV gave evidence of the exact statement they claimed to have watched?

It is again interesting to note that whereas the Claimant pleaded the purported transcript of the relevant portion of the 1st Defendant's press briefing of 30/03/2018 in *paragraph 15* of his *Statement of Claim*; all that his witnesses mentioned about the alleged defamatory statements is contained in *paragraph 13* of their respective *Statements on Oath*, where they all chorused as follows:

> ***"13. That at the press conference, the 1st Defendant published with respect to the Plaintiff to the effect that the Plaintiff is among the treasury looters of Nigeria, who looted the national treasury dry."***

(Underlining supplied for emphasis)

The above reproduced testimony, with respect, could not have amounted to evidence of publication of the alleged defamatory press conference. The witnesses merely testified to what; in their estimation; was the effect of the alleged defamatory statement; but not the precise statement they claimed to have heard spoken by the 1st Defendant when they watched the broadcast of the press conference. I so hold.

I must quickly add that, upon examination, I do not find the testimonies of the Claimant's witnesses under cross-examination, part of which the Claimant's learned senior counsel reproduced in his written submissions, as helpful in establishing publication in that, at best, the totality of their testimonies stating that they heard the 1st Defendant calling the Claimant a looter, amounted to speculation, since they failed to give evidence as to the exact words allegedly spoken by the 1st Defendant. I so hold.

I agree with the arguments advanced by the Defendants' learned counsel that none of the witnesses fielded by the Claimant gave evidence of the exact statements made by the 1st Defendant in the course of the press conference which they claimed to have watched on Channels TV. The witnesses merely speculated as to the effect of the said statement. I must hold that the testimonies of the **CW1 – CW8** fell abysmally short of the acceptable evidence of publication of the alleged slander.

I must quickly add that whatever opinion the Claimants' witnesses have with respect to the alleged defamatory statement, in terms of how they received it or what interpretation they gave to it, become irrelevant, they, having failed to give clear and credible evidence of the said statement purportedly published to them.

Let me come to the CD/DVD, **Exhibit C8**, which contained the purported recording of the press conference in which the 1st Defendant was alleged to have made the defamatory statement, as anchored by Channels TV. The CD/DVD was tendered in evidence by the Claimant in the course of his evidence-in-chief. The Claimant proceeded to demonstrate the visual content of the CD/DVD in open Court in the course of proceedings, as permitted by law. See *Omisore Vs. Aregbesola [2015] LPELR-24803(SC)*.

However, the position is that the Claimant testified after all his witnesses had already been fielded. **Exhibit C8** was shown to none of them. The exhibit was also not demonstrated to any of them to verify that the content was the same press conference they claimed to have viewed on Channels TV. The effect, again, is that **Exhibit C8**, relied upon heavily by the Claimant,

becomes irrelevant in establishing publication in the present case. I so hold.

The issue as to whether **Exhibit C8** contained hearsay evidence or not, as canvassed by the Defendants' learned counsel, would not arise in the circumstances here, for the reason that none of the eight (8) witnesses fielded by the Claimant identified it or made reference to it, to establish publication of the alleged defamation.

The sum total of the findings of this Court, upon a careful assessment of the pleadings and evidence led on the record, is that the Claimant has failed, fatally, to establish that the press conference addressed by the 1st Defendant on 30th March, 2018, in which he allegedly published defamatory statements of and concerning him, was indeed published to any of the eight (8) witnesses he fielded in the instant case. In other words, even though the Claimant's case is built on

Exhibit C8; he however failed to prove its publication to the witnesses he fielded. As such, an integral aspect of the Claimant's case, as it were, is fatally inflicted with the virus of lack of proof of publication of the alleged defamation; thereby paralyzing the entire action.

In the circumstances, it will be a needless and futile academic adventure to proceed to determine whether or not the other ingredients have been established in the light of the evidence on record. Accordingly, the suit shall be and is hereby dismissed. I make no orders as to costs.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
06/07/2021

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