

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

ON THURSDAY 13TH DAY OF JANUARY, 2022

BEFORE HIS LORDSHIP HON, JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 9, MAITAMA, ABUJA

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

BETWEEN

GENERAL OLUSEGUN OBASANJO (RTD.), GCFR... .. CLAIMANT

AND

MR. AKANDE ORO (AWIKONKO)..... DEFENDANT

JUDGMENT

According to the Writ of Summons and Statement of Claim filed on 04/10/2018 to commence the instant action, the Claimant is introduced and described as a two-time Head of State/President of the Federal Republic of Niger, renowned leader of thought with world-wide acclaim, Builder of Men, Peace Advocate, Statesman par excellence, and an esteemed political figure with reputation for justice, equity and fairness, inter alia. His case is that the Defendant, author and administrator of the website account

www.akandaoroawikonko.com.ng website and facebook account [www.facebook.com/akanda-oro-awikonko 18035691 9 423](https://www.facebook.com/akanda-oro-awikonko-180356919423) maliciously and falsely published to the whole world in prints, audio and video recordings as well as the internet through the accounts aforementioned, words purporting to be defamatory and libelous of him; which statements were read, seen and listened to by reasonable members of the society around the world, including persons in Abuja within the jurisdiction of this Court.

Being thereby aggrieved by the said alleged libelous publication, the Claimant has claimed against the Defendant reliefs set out as follows:

1. A declaration that the following word:

The die is cast. If a lie persists for years, truth will catch up with it in a day.

**Behold those who are responsible for Bola Ige's death (twice)
Behold the faces of murderers. Those who think they can carry out evil without being caught. SELF APPRAISAL**

I have a command of a language as the venom of a snake (welcome).

When we embark on a journey we are bound to return (I trust you). You have heard all about fallacies peddled (from part one) about Bola Ige's death. The fabrication of Festus Keyamo

(the deceitful lawyer) painted for the world to see (yes we heard it). Omisore is not responsible for Bola Ige's death (Did you hear that?). Why did they refuse to tell the world? (How?) Segun Banjo, Femi Davies and Festus Keyamo (Oga Fryo) are walking the street freely (none of them has been apprehended). Festus Keyamo (heen) Has he achieved his ambition (That he set to achieve)? Did he become the Governor of Delta State as he boasted (As he wanted it)? Isn't it God who installs? (What do you think?) It is only those destined to be kings who will be enthroned (any head destined for a crown must eventually wear it)

Omisore thought life's journey is always smooth sailing. (yes) His experience is part of life's lesson. (The man has witnessed it) But, (but) But (but) A Former Governor of Ondo State, Olusegun Mimiko said something and I quote (What did he say?) "Your Excellency, Senator Iyiola Omisore (Christopher) remains one of the most misunderstood Nigerians (Hmm). But history will soon vindicate you".

(The truth has been revealed) The time is nigh (The matter is unraveling). What was hidden is about to be blown (Right in the open) open. But (but) according to the question I asked earlier (Hen) whether Omisore killed Bola Ige; (Pertinent question). The response is Capital No. fights should not involve loss of life. (Such an innocent man). He only no longer wanted to be in their company (Yes). They only roped

him in Bola Ige's murder case (yes) so that he will not get a chance to contest (They are just using it to implicate him). The opposition feared Omisore (Because they know his weight and influence). They know they cannot compete with him, (who born them). For this reason, Omisore is innocent (He is an innocent man).

But (But) There are some questions begging for answers (Yes, quickly) concerning those that killed Bola Ige. Before he was killed (Yes) who gave him 50 million naira (I wanted to ask)? What is the purpose of the money (What purpose)? In the same manner, the person gave Harry Marshal (Yes) 50 Million (Yes). What is the money meant for (Yes)? What is the money meant for? Was is not that they has a dubious plan for the money (Yes)? Let's be attentive (Yes) to Lam Adesina quotes (Yes). What did he say? He said "it's as though I have known what will happen (Yes). My discussion that day was pertaining to security in Oyo State (Yes). I called on the Commissioner of Police in Oyo State and the Inspector General of Police (Yes) that they should please (Yes) beef up the security of Oyo State (Baba Adesina said that) because a classmate of mine, Engr. Adegbeebo was murdered a fortnight ago (Yes) at his residence as Bodija (Haa). All the ministers of God went to their various homes (Yes)

I went back to Government House, Agodi (Yes) I relaxed a bit (Yes). Then I retired to my bedroom to look through some

files (Yes). Suddenly, my phone rang and the operator told me that someone was on the line for me (Yes). By the time I answered (Yes) it was my deputy's younger one (Yes) that he was directed to inform me (Yes) that hired assassins have killed Bole Ige (Yee). Immediately I became flummoxed. In fact I did not know what to do. Later on I came to (Yes). I rushed downstairs from my room without informing my wife about the situation (You didn't tell her). I didn't tell her what happened (You have not gotten the clear picture). It was about 10 minutes to 10 at night (Okay). I called the Resident Chief Security Officer who goes about with me because all other aides and security personnel had closed (He called the CSO). I asked him to take a car that would not attract attention as we had to go out. (Yes) I only informed him that Uncle Bola Ige has been shot when we got into the car and that I wanted to check him at the Catholic Hospital Oluyoro (Yes) because the caller said he had been taken to Oluyoro (Yee).

You won't believe that I got lost on a route that I have been plying for sixty years (Hee). I was just doing a merry-go-round (Confusion). Soon afterwards, I found my way (Haa). The gateman opened the gate without questions (Yes) immediately he saw me. I met Uncle Dele Ige wailing and rolling on the floor like a child (Chai). I didn't take a second look as I went into the ward where Bola Ige was laid (Hen). I saw the bullet wound on his body, he laid down supine.

Breathing with difficulty (heavily) and abnormally (With great difficulty). I saw the bullet entry point on his left hand side by (close to the heart) the heart.

I saw it with my own eyes (Hee) Uncle was clad in shirt and trousers (Go on). I saw Muyiwa too (That's his son) standing by his bedside (Hmm) trembling and shedding tears profusely (oor boy), pleading with me saying "Uncle (Hen) please help me tell the doctor (that what) to revive my dad, tell him, (haa) the doctor can do it (haa) (hun) hun. I went to the doctor; I inquired as to what we could do(What could be the solution?) in response, the doctor called me aside (to say what?) and told me that there was nothing we could do (haa) "Bola Ige is dead (hee)" He said "Sir, Your Excellency, (Hun) uncle is gone (yee) There is nothing we can do (chai) he was shot right in his heart (it is too late). He said I should not inform Muyiwa yet (Yee). Without mincing words, I broke down (Oh my) in tears. I almost let the cat out of the bag to Muyiwa (Due to your reaction). I composed (1 pulled myself together) myself as I returned to the ward where Uncle Bola Ige was laid. Muyiwa was very close to the bed by this time. I put up a brave face to lie to Muyiwa that I wanted to see the Chief Medical Officer (Hen). I excused myself under that pretense (Hee).

On getting him (Yes) I planned calling the President, Olusegun Obasanjo, at that time (Baba Iyabo). As I was going

to my room to make the call to the President (Baba lyabo), I heard the phone ringing already. It kept ringing until I entered the room, I quickly picked. To my surprise it was Obasanjo (The one you were planning to call). My operator said "The President of the Federal Republic of Nigeria wants to talk to you" (Baba lyabo). I asked the call to be transferred to my room extension (Haa). The question put directly to me by Obasanjo was that "Has the hospital confirmed that he had died? (Haa) I said yes sir (Haa). On hearing that, he hung up immediately (Haa). That was all (Finished) I have never experiences such in my life. (Haa haa)

In fact it is an experience I will never forget in my life. (What happened?) They actually killed him so that they could win in the Southwest (Yee) they believed that (That what?) if Bola Ige were to be alive (Hee) PDP cannot take over Southwest. (Go on) it will be impossible (it cannot happen). The thinking of Obasanjo was (Was what?) to erase Obefemi Awolowo's legacy. As it is (Hun) Obasanjo has no legacy, he has no legacy in the political arena (however little). He might have had a legacy during his military rule (Hen). But in this democratic dispensation, he has no legacy (he just got out of jail) His government was characterized by chaos, assassinations (Yes), killing here and there. Police officers and soldiers (Yes) shooting people at will, (Bad government). It was all chaos and unrest during his regime (Disorder everywhere). I was amazed (It is serius). My thinking was that

the President should have allowed me to explain the situation (Oh) before asking such a question (As though in anticipation) In any case, in line with Yoruba traditions, the first thing to do should have been to extend his sympathy and offer his condolences on Bola Ige's death. Then send same to the family of the deceased (That's how it should be). Instead of doing all these he cut the conversation short and hung up on me (Kai)."

SELF APPRAISAL

There is no beginning without an end (True). Nemesis will always catch up (it always does). I have the privilege of informing Nigerians home and abroad (All over) that Chief Olusegun Aremu killed Bola Ige. To be certain, take Obasanjo before the Ogun shrine (If Ogun will not bathe in his blood) to swear an oath that he had no hand in Bola Ige's death if he is guilty then all his children should die in his lifetime (Die before him). If you have not forgotten, (Forgotten what?) from the question I asked about whether those response for Bola Ige's death profited from the action (Yes, you did ask). I wish to tell you that they profited (Hun) because PDP took over Yoruba States except Lagos after Bola Ige's death (That's what they want).

You may assassinate me tomorrow (You won't die yet)But I am happy the truth has been told to the world (Truth has triumphed) that they should not consider you an angel (You

are not a messiah). Your regime was terrible (You are a wicked person) You killed a lot sir (Very true). Your regime featured deaths of politicians here and there (That's true), countless gubernatorial aspirants (You are not worthy to be called a leader), Funso Williams (Yes) Ayo Daramola (Yes), Dele Ariyo (Murderer of innocent), Dipo Dina (True). The list is endless (Quite a long list) Haba self-centered and irresponsible elder a (irresponsible elder). You are a good-for-nothing elder (Useless Elder). You messed up everything because of political ambitions (you wreaked havoc). All your secret evil deeds are in the open (yes). The human heart can be evil (You forget six feet down). It is a pity there is no way to read the mind of an evil doer (Very true). Aren't you even afraid (is that not so?) (Afraid of the day you will die) considering the number of souls murdered already? Many men turned widowers (That death will strike you), women turned widows (Haa), children who have become orphans as a result of your nefarious activities (Why do this?) what a pity (Haa) God will judge you (Amen). God deliberately preserves the life of an evildoer to allow for nemesis to catch up with such at the appropriate time. Have you ever pondered over the twilight of your life? (That you will sleep never to wake up one day) what will your end look like? (What about your children?) You know Bola Ige ended it well (Yes) He is an honorable man even in his death. Will the story be same in your case? (It cannot be) You seem to have forgotten that

once a reputation is soiled it becomes a lifetime stigma (That's how it works).

Obasanjo sent fifty million to Bola Ige (The money you mentioned earlier) and Harry Marshal (Go on) let's inquire from Obasanjo (About?) what the money was meant for (Is it a price for their lives?) They are not members of PDP (Isn't that so?) Bola Ige was an AD member (Yes) while Harry Marshal belongs to ANPP (What purpose should the money serve?) Lest I forget, I would like to say something (I have forgotten) One Mr. Odusanya said "Obasanjo was in charge of a killer squad (He said so) that was formed under the military regime (Hen) of the late Gen Sanni Abacho (The man with dark goggles). The former President (Iyabo's father) Obasanjo lodged the killer squad (Aremu) at a State Security Service (SSS) headquarters known as Yellow House (Yellow House). The squad was used for the political assassinations (just for assassination) and was responsible for the unresolved killings of politicians (True) under Obasanjo's administration (Senseless killings). Obasanjo knew about the murder of former Minister of Justice and Attorney General of the Federation (Our own Bola Ige) Bola Ige (Yes) and the South-South politician (Yes,) Chief Harry Marshal (He gave both of them money).

The night Chief Bola Ige was assassinated, (The night he died) a top PDP member confided in me (What did he say?)

that Obasanjo told me (Yes) Bola Ige was dying, (How did he know?) And concerning the murderer of Harry Marshal, I also took a gift of 50 million to Harry Marshal (He gave them money) whom he also assassinated just few weeks later (He paid the price for their lives) Obasanjo (Iyabo's father) asked me to deliver a Peugeot 607 (Heen) and a sum of five hundred thousand naira (Yes) to a woman (Hen Hen) Miss Lamidi (Lamidi) Adegbenro (Adegbenro). Odusanya explained (How?) Obasanjo gave 50 million naira each to Harry Marshal and Bola Ige (He paid for their lives) He said "But it is surprising, that Baba can give out 50 million naira (Without rendering any service) and turn around to kill the person (Well, he paid the cost of their life). That was why I said (Said what?) let's ask Obasanjo (Iyabo's father) what the money was meant for. (It is the cost of their lives?) Obasanjo himself said drug barons killed Bola Ige (How did he know?). the question is how did Obasanjo get to know that drug barons killed Bola Ige? Did they go to meet him in Aso Rock to confess the crime? (I suppose) Or did they put a phone call through to him (Perhaps he is an investigator). It is was so, why did Obasanjo not arrest them (He is aware of the situation) Or did these drug barons fall from the sky to assassinate Bola Ige? (I wonder) Hun, Hun, (Haa). Ehindero said "Obasanjo has murdered sleep (Murderer) and he shall never sleep." No sleep for the remainder of his evil life (All his life). he will always be looking for ghost which will hunt him to death like

Bola Ige, (Yes) Harry Marshal was coordinator (Yes) All Nigeria Peoples Party (ANPP) Presidential Campaign (That is true) in the South-South Zone. They killed him in his house, 28, Karaye Close, Garki 2 Abuja on 5th March, 2003 (Yes) just a little more. than a month before Olusegun Obasanjo was to be re-elected for the second term (Aremu, the father of Iyabo).

The only security at his house (Yes) Mr Paulini Ameya (Ameya) said the five-man assassin squad forcefully entered Harry Marshal's house at exactly 3:00am (Evil deeds are perfected at night) The ANPP and its presidential candidate at the time (Who?) Rtd Gen.Muhammad BUhari, (Say baba) speaking at the Harry Marshal's burial said PDP and the Federal Government killed Harry Marshal (he cried out). Buhari even said (What?) it is obvious (very much so) that the PDP was assassinating opponents so that they can rig elections (As usual) and forcefully come into power again (Why). He said and I quote (What did he say?) "In its dispensation to rig itself into power, the PDP-controlled federal government bankrolled assassins to eliminate political opponents (Why is that?). are we llying against Omisore (Poor man)? Why don't we allow Omisore to fulfil his purpose (Yes) if any politician still says Bola Ige was murdered by Omisore, stone the fellow. (Stone him) Stone the person to death (Let the person die). He has no value to add to you (None at all)

As it is, I have accomplished my mission as directed by God (Welcome ambassador of God) Blessed are the peacemakers for they shall be called the sons of God, (True) whoever ropes Omisore into the murderer of Bola Ige is an unfortunate fellow, a fool, a stupid person, an idiot, a scoundrel. Obasanjo murder of Bola Ige (Yes) if not for shortage of time, I would have listed the names of those murdered by Chief Olusegun Obasanjo (One after the other) during his regime (Yes) Bloodshed during Obasanjo Aremu's regime was too much (Foolish old man) There are repercussion for every evil deed done. This is how far I would go. If you have anything to say to me, comments, contradictions, arguments or you have evidences to prove that Obasanjo did not kill Bola Ige my page on facebook Akanda Oro Awikonko or on the telegraph or my radio, Awikonko FM, online FM radio or website www.akandaoroawikonko.com.ny in case you hear of my death, do not be sad. Perhaps this is the only mission I have been sent by God to accomplish. The fellow that killed a whole minister of justice and attorney general of the federation went scot-free. So what will it cost him to kill me, a commoner. According to what I have said earlier, let him go and commit suicide or take him before Ogun shrine to swear that he does not know anything about the murder of Bola Ige and Harry Marshal and that all his children die in his life time. My covenant with God is that whoever plots against me

would lose all his children in his life time, maliciously and falsely published to the whole world concerning the Claimant by the Defendant in Microsoft Word, Audio and Video Records and on the internet at www.akandaoroawikonko.com.ng www.facebook.com/akanda-oro-awikonko-180356919423 and Read, Watched/listened to by reasonable members of the society around the world including those in Abuja within the jurisdiction of this Honourable Court, are highly libelous of the Claimant.

2. A declaration that the publication complained of are false, malicious, unjustified, injurious, scornful, distasteful, unsavory, and have exposed the Claimant to public odium, ridicule and disdain both nationally and internationally.
3. A declaration that the words complained of do not constitute a valid exercise by the Defendant of his freedom of speech.
4. The sum of N1,000,000,000.00 (One Billion Naira) only against the Defendant as general damages for the defamation of the Claimant's hard earned reputation.
5. An order of perpetual injunction restraining the Defendant, his associates, agents, assignees, servants, privies, proxies, allies or anyone howsoever called from further publishing or

causing to be published the words complained of or any other defamatory words concerning the Claimant.

- 6. An order of this Honourable Court directing the Defendant to retract the defamatory words via a publication on the front page of two national newspapers and on his internet platforms within 3 days from the day of the delivery of the judgment of this Honourable Court.**

The Defendant was served with the originating and all other processes in this suit, including hearing notices for the scheduled hearing dates, by substitution but failed either to respond to the suit or turn up at the trial.

Trial proceeded. The Claimant called a sole witness, by name **Kehinde Akinyemi**, a media practitioner. He adopted his written Statement on Oath and he also tendered in evidence two compact discs purporting to contain the audio/video recordings of the alleged libelous matter.

Since the Defendant did not turn up for trial of the suit, the Court directed the Claimant to file his final address, which he did on 25/11/2019. In the said address, which was adopted by the Claimant's learned counsel, **Edidiong Usungurua, Esq.**, on 14/10/2021, a sole issue is formulated as having arisen for determination in this suit, namely:

Whether the Claimant has proven his case and therefore entitled to the reliefs sought.

In proceeding to determine this sole issue, I should state that I had carefully considered and taken due benefits of the totality of the Claimant's learned counsel's final submissions as encapsulated in his written address. I shall

make specific reference to arguments canvassed by learned counsel as I deem necessary as I proceed with this judgment.

RESOLUTION OF SOLE ISSUE

It is well settled, and as correctly canvassed by the Claimant's learned counsel, 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 than the claimant 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; Asheik Vs. Media Trust Nigeria Ltd. & 3 Ors. [2010] 15 NWLR (Pt. 1215) 114; Ekong Vs. Otop & 2 Ors. [2014] 11 NWLR (Pt. 1419)

549; Chilkied Security Services & Dog Farms Limited Vs. Schlumberger (Nig.) Ltd & Anor. [2018] LPELR-44391 (SC).

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 he is entitled to the damages and other reliefs sought.

IS THERE PROOF OF PUBLICATION?

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 Ejabulor Vs. Osho [1990] 5 NWLR (Pt. 148)1.

It is again important to underscore the point 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 (PL. 803) 97, NITEL Vs. Tugbiyele (2005) 3 NWLR (P. 912) 334.

In the instant case therefore, it does not matter that the Defendant failed to defend the action; the Claimant remains duty bound to establish publication by credible evidence; more so that he has sought declaratory reliefs in this suit.

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

Now, the Claimant pleaded in paragraph 15 of the Statement of Claim as follows:

"15. The Plaintiff asserts that much to his consternation, the Defendant maliciously and falsely published to the whole world in Prints, Audio and Video Records as well as the internet at www.akandaoroawikonko.com.ng and www.facebook.com/akanda-oro-awikonko-180356919423, the following words concerning

him:

.....

The Plaintiff pleads and shall rely on the Video and Audio Record rendered in Yoruba and translated into English as well as print out from the Defendant's Facebook page wherein the defamatory materials are also published."

In paragraph 16 of his Statement on Oath, the Claimant's sole witness testified as follows:

"16. On the 27th day of August, 2018, my attention was drawn by Abraham Taiwo Ojo, Principal Secretary to the Claimant and within the jurisdiction of this Honourable Court, I read, listened to and watched the Malicious and false publication made by the defendant to the whole world in Prints, AUDIO AND VIDEO RECORDS as well as the internet at www.akandaoroawikonko.com.ng and www.facebook.com/akanda-oro-awikonko-180356919423,

wherein he published the following words concerning the Claimant:

.....

The Video and Audio record rendered in Yoruba and transcribed into English as well as a print out from the Defendant's Facebook page wherein the defamatory materials are also published are here attached."

From the testimony of the **CW1**, as contained in his Statement on Oath, reproduced in the foregoing, the witness confirmed that he "read, listened to and **watched**" the alleged defamatory matter ascribed to the Defendant. This presupposes that there are both written and oral versions of the alleged defamatory statement. The witness further stated that the alleged defamatory matter were contained in video and audio recording in Yoruba language; but transcribed to English language. He proposed to tender in evidence the said audio and video recording as well as the English language transcript of the same and also a printout of the alleged defamatory matter also published by the Defendant on his Facebook page.

At the trial, the Claimant, through his witness, merely tendered in evidence the purported audio and video transcription of the alleged defamatory matter, which were admitted in evidence as **Exhibits C1** and **C1A** respectively. According to the Compliance made pursuant to Certificates of **s. 84(4)** of the **Evidence Act**, tendered alongside the compact discs, as Exhibits **C1B** and **C1C** respectively, the witness claimed to have downloaded the alleged defamatory matter from the Defendant's Facebook

account which he claimed to have stored in video/audio compact discs, **Exhibits C1** and **C1A** respectively.

Now, apart from tendering hard copies of the purported video and audio recordings, which the witness claimed to have downloaded from the Defendant's Facebook account, he failed to take the more important step of demonstrating the content of the two compact discs in open Court, as the law expects. The witness, perhaps, failed to appreciate that what is of value is not so much about the compact discs, **Exhibits C1** and **C1A**, but about the contents thereof, which indeed is the evidence of the purported defamatory matter. The Supreme Court appreciated this issue when it held in Dickson Vs. Sylva [2016] LPELR-41257 (SC), per **Nweze JSC**, as follows:

"...when it is an electronically-generated document which has been admitted in evidence, upon fulfilling all pre-conditions and it is not taken as read by consent, then it ought to be demonstrated or played to prove the facts alleged. Otherwise, it remains a closed or 'sleeping' document, which is unusable and which need not have been brought before the trial Court or Tribunal in the first place as it would merely amount to clutter. This prescription [that parties have a duty to link their documents with their averments in their pleadings] rests on the adversarial nature of our jurisprudence which we inherited from the common law,"

The **CW1**, having failed to demonstrate the said compact discs, **Exhibits C1** and **C1A**, respectively, purporting to contain the downloaded electronic versions of the alleged defamatory matter, the discs become useless to the Court. I so hold.

The Supreme again underscored that Courts, being impartial arbiters, are forbidden from undertaking the process of examining documents tendered by a witness in the course of trial in chambers, when the witness failed to demonstrate the contents of the document in open Court. His Lordship, **Nweze, JSC**, further held in Dickson Vs. Sylva (supra), as follows:

"It is, therefore, the impregnable juridical postulate of our adversarial jurisprudence that prohibits a Judge from embarking on an inquisitorial examination of documents outside the Court room. A fortiori, it is anathema for a Judge to be allowed to act on what he discovered from such a document in relation to an issue when that was not supported by evidence or I was not brought to the notice of the parties to be agitated in the adversarial procedure."

See also Ivienagbor Vs. Bazuaye [1999] 9 NWLR (Pt. 620) 552; Owe Vs. Oshinbanjo [1965] 1 All NLR 72 @75; Bornu Holding Co. Ltd. Vs. Alhaji Hassan Bogoco (1971) 1 All NLR 324 @ 333, Alhaji Onibudo & Ors Vs. Alhaji Akibu & Ors [1982] 7 SC 60, 62.

The Claimant further contended that the alleged defamatory statement was transcribed or translated into English language, but did not claim to be the

translator. He also failed to tender in evidence, the transcript of the alleged defamatory statement. The position of the law is that both the transcriber and the transcript must be tendered in evidence. See **JAMB Vs. Orji** [2008] 2 NWLR (Pt. 1072) 552.

In the instant case, the Claimant failed to either call the transcriber as witness or tender the said English transcript of the said defamatory statement.

The purported English transcript of the purported defamatory statement quoted by the Claimant, both in the Statement of Claim and in the **CW1's** Statement on Oath become inadmissible and unreliable, in the absence of proper foundation of its origin. In other words, the Claimant has failed to establish that it is the alleged defamatory statement made by the Defendant that is reproduced by the **CW1** in his Statement on Oath, having failed to establish any link between the said statement and the Defendant. It so hold.

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 publication of the alleged libelous and malicious statement credited to the Defendant. His sole witness failed to establish the connection between the Defendant and the purported defamatory statement reproduced in paragraph 16 of his Statement on Oath.

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 ALADENIYI

(Presiding Judge)

13/01/2022

Legal representation:

Edidiong Usungura, Esq. (with Pius Okpa, Esq.; Susan Ochonu (Miss) & Gideon Onero-Oviemuno, Esq.) – for the Claimant

Defendant unrepresented