

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S.  
IDRIS**

**COURT: 28**

**DATE: 8<sup>th</sup> FEBRUARY, 2022**

**FCT/HC/CV/3276/2020**

**BETWEEN:-**

**ENGR. CHRISTOPHER N. OKONKWO-----PLAINTIFF**

**AND**

**1. DAIRO ABIDEMI**

**2. YERIMA B. HASSAN**

**DEFENDANTS**

**JUDGMENT**

This suit was commenced by a writ of summons dated and filed on the 26<sup>th</sup> of November, 2020 wherein the Plaintiff is seeking the following reliefs:-

1. A declaration that the letters dated 7<sup>th</sup> February, 2019, 25<sup>th</sup> September, 2020 and dated 17<sup>th</sup> November, 2020 respectively are jointly and severally defamatory and therefore illegal.

2. A declaration that the joint and several acts of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have injured both the estimation of the Plaintiff and his livelihood.
3. An order of this Honourable Court perpetually restraining the Defendants, their servants, privies or stooges from disparaging or further disparaging the Plaintiff forthwith.
4. An order of this Honourable Court directing the Defendants jointly and severally to pay the Plaintiff the sum of ₦500,000,000.00( Five Hundred Million Naira only) as general damages.
5. An order to pay the sum of ₦1,000,000.00 to the Plaintiff being the cost of the suit.

The grounds upon which this application was brought and the facts averred in the statement of claim are as follows:-

The Plaintiff is a General Manager by rank in Transmission Company of Nigeria (TCN) and the President General of the Senior Staff Association of Electricity and Allied Companies.

That the 1<sup>st</sup> Defendant is a staff and Senior Manager by rank in Transmission Company of Nigeria (TCN). He is an expelled officer of Senior Staff Association of Electricity and Allied Companies.

That the 2<sup>nd</sup> Defendant is a staff and principal manager by rank in Transmission Company of Nigeria (TCN). He is also an expelled officer of Senior Staff Association of Electricity and Allied Companies and work with Transmission Company of Nigeria (TCN) in Maitama within the jurisdiction of this Court.

The Plaintiff avers that his position as stated in the paragraph above makes him the President of all Senior Staff of the Companies in the Power sector in Nigeria.

The Plaintiff avers further that the 1<sup>st</sup> Defendant wrote a letter of disparaging nature to the former Managing Director/Chief Executive Officer, Transmission Company of Nigeria (TCN) that the Plaintiff who is not a policeman arrested the expelled Branch Secretary of Senior Staff Association of Electricity and Allied Companies (SSAEAC) of Transmission Company of Nigeria (TCN). A copy of the letter is pleaded and shall be relied upon at the trial. The Plaintiff further avers that the letter in the preceding paragraph as captioned contains disparaging statement and/or malicious accusations or innuendo which however the value of the Plaintiff in the estimation of the right thinking members of the

society and exposes him to ridicules in his office and professions and the statements are false.

The Plaintiff also avers that he did not arrest neither does he have the Powers to do so and will not molest anybody as written in the letter.

The Plaintiff also states that the 2<sup>nd</sup> Defendant wrote letters, in particular was the one dated 25<sup>th</sup> September, 2020 disparaging the person of the Plaintiff. A copy of the letter is pleaded.

The Plaintiff states that there is another letter dated 17<sup>th</sup> November, 2020 containing similar derogatory statements about him and the statements made in the letter led to the false termination of employment of the Plaintiff in Transmission Company of Nigeria (TCN) via a letter dated 24<sup>th</sup> April, 2020, with attendant suffering for 6 months until reversed on appeal.

That the Defendants have made false and malicious allegation by petitions to Economic and Financial Crime Commission (EFCC) and Independent Corrupt Practices Commission (ICPC), all aimed to defame the Plaintiff.

Attached to the writ is a witness statement on oath deposed to by Engr. Christopher N. Okonkwo, the Plaintiff himself, backing up his statement of claim. Along with a list of witnesses and frontloaded documents relied upon at the trial.

The Defendants have also filed a 14 paragraph statement of defence dated 5<sup>th</sup> of February, 2021 where the following facts were stated.

That the Defendants deny every material allegation of fact contained in the statement of claim except hereinafter admitted.

That the Defendants deny making derogatory and disparaging statements which are false about the Plaintiff.

That the Defendants deny that the Plaintiff did not arrest any of the Defendants.

The Defendants do admit that the 1<sup>st</sup> Defendant is a Senior Manager with Transmission Company of Nigeria (TCN) While the 2<sup>nd</sup> Defendant is a Principal Manager also with Transmission Company of Nigeria (TCN), but however deny both their expulsions (purported) from the Senior Staff Association of Electricity and Allied Companies as the matter was in Court.

The Defendants admit writing letters to certain authorities complaining about the conduct of the Plaintiff for his refusal to pay the check off dues of the Transmission Company of Nigeria (TCN) Branch of Senior Staff Association of Electricity and Allied Companies (SSAEAC), and also unjustly exposing the 2<sup>nd</sup> Defendant and some staff of Transmission Company of Nigeria (TCN) to criminal investigations. They however denied that the said letters are of a disparaging nature and that the Defendants will contend at the hearing of this case that the occasion of the issuance of the said letter is privileged.

The 2<sup>nd</sup> Defendant also admits to writing a letter expressing the Transmission Company of Nigeria (TCN) branch of Senior Staff Association of Electricity and Allied Companies (SSAEAC), displeasure about the rumored reinstatement of the Plaintiff as a staff of Transmission Company of Nigeria (TCN) after he had been sacked.

The Defendants also averred that the termination of the Plaintiff's appointment has been reversed as claimed but he was just reinstated to his position as General manager pending the

submission of the report of the committee set up to look into his sack from Transmission Company of Nigeria (TCN).

In Defendant's written address, two issues were brought up for determination as follows:-

1. Whether the Plaintiff has proved to the satisfaction of the Court that the words complained of are derogatory of the Plaintiff and lowers him in the estimation of right thinking members of the public.
2. Whether the words complained of as derogatory by the Plaintiff were not written by the Defendants on an occasion of privilege.

The Defendants referred to sections 131 and 132 of the Evidence Act, 2011 which states that the initial burden of proof of a fact or facts asserted and relied on by a party who desires any Court to give judgment as to any legal right or liability in a case, lies on the party as one who would fail if no evidence at all were given on either side in the case.

This is reiterated in judicial authorities such as ***E.D TSOKWA & SONS LTD VS U.B.N LTD (1996) 10 NWLR (478) 281;***

***MANDILAS LTD VS AYANRU (2000) 4 NWLR (653) 438;***  
***DABO VS ABDULLAHI (2005) 7 NWLR (923) 181.***

Also relied upon was section 134 of the Evidence Act, which states that the standard of proof required in civil matters or cases, is on the balance of probabilities or preponderance of evidence. See ***KAYDEE VENTURES LTD VS MIN. FCT (2010) 7 NWLR (1192) 171, OHOCHUKWU V A.G RIVERS STATE (2012) 6 NWLR (1295).***

The Defendants went further to ascertain the test for determining the natural and ordinary meaning of words in an action for defamation. They referred the Court to ***OKAFOR V IKEANJI (1979) 3-4 SC., 65 (1979) ALL NLR (1979) LPELR -2418 (SC)***, wherein the apex Court, per Bello, JSC referred to with approval, the statement by Lord Reid on the test for determining the natural and ordinary meaning of word in such cases. In the case of ***LEWIS VS DAILY TELEGRAPH LTD (1964) AC, 234 at 258.*** He state thus:-

*"There is no doubt that in action for libel the question is what the word would convey to the ordinary man; it is not a question of*



*construction in the legal sense what the ordinary man would infer without special knowledge has general been called the natural and ordinary meanings of the words”*

Also referred were ***SKETCH V AJAGBEMOKEFERI; AGBANELO V UBA LTD (2000) 4 SC (pt1) 233; (2000) 7 NWLR (666) 534; VANGUARD MEDIA LTD V OLAFISOYE.***

Defendants further submit that the principle that evolved from the above authorities is that what constitutes defamatory word does not lie and depend on the emotional, sentimental or personal good opinion a complainant has and hold of himself.

In ***REG. TRUSTEES OF R.O (AMORC) NIGERIA V AWONIYI (1994) 7 NWLR (355) 15***, it was held that “ words are not defamatory, however much they damage a man in the eyes of a community, unless they also amount to disparagement of his reputation in the eyes of right thinking men generally.

It was further submitted that in order to prove that ordinary and right thinking members of the society viewed and consider words as defamatory, it is essential that an ordinary and right thinking man is called to give evidence of his understanding of

the words in the context and circumstance in which they were published of the complainant . Referred cases are ***BON LTD V ADEGOKE; UNITY BANK, PLC V OLUWAFEMI (2006) LPELR – 9847 (CA)*** among others.

However, the Plaintiff did not call a third party to read the alleged derogatory and or libelous publication save for one Chibueze Ejieji with whom the Plaintiff relates ordinarily and who shares common interest of a professional class with the Plaintiff, and thus does not qualify as an ordinary right thinking man.

Finally, it is submitted that because the letters were written to people in authority who have a corresponding duty to receive them and be treated as privileged information, it cannot form the basis of a claim for defamation of character.

In response to this, the Plaintiff filed his final written address dated and filed on the 10<sup>th</sup> of December, 2021.

The written address brought up two issues for determination as follows:-

1. Whether the Plaintiff has been able to prove his case on the balance of probabilities entitling him to the reliefs sought, and

2. Whether there co-exists conditions for making publications by the Defendants under the circumstances and /or whether the Defendants are under any duty to make such publications to which they pleaded defence of privilege, assuming that said defence of privilege either absolute or qualified can avail the Defendants.

Applicant referred the Court to the case of **HON. JULIUS OYEBANJI-AKINREMI V MR IPOOLA BINUYO & ORS (2010) LPELR – 9150 (CA)**, where it is settled law that civil cases are proved on the balance of probabilities.

Also referred are sections 135, 136 and 137 of the Evidence Act cap E14 (LFN) 2004.

Applicant also cited the case of **OBA GORIOLA OSENI & ORS V YAKUBU DAWODU & ORS (1994) LPELR – 2795 (SC)** where it was slated that :-

*"A fact which is admitted by the Defendant in his pleadings need not to be proved any more by the Plaintiff but should in law be regarded as established at the trial"*

Regarding the second issue, Applicant referred the Court to the case of **CHRISTIAN ONYENWE & ANOR V CHIEF GODWIN ANAEJIONE (2014) LPELR- 22495 (CA)** where it was held that:-

*" The law is trite that a defence of qualified privilege will only avail a Defendant in libel suit if he can establish two conditions as follows:-*

- i. There must exist a common interest between the maker of the statement and the person or persons to whom it was made;*
- ii. The facts relied on by the maker must be true, mere belief will not sustain the defence"*

Applicant also relied on the case of **JOSIAH OTAMEH V AEKUNLE ADESANYA & CO. (2016) LPELR- 41135 (CA)** where the Court held that defence of privilege will not avail one where there is malice. See also the case of **PROPHET IFEANYI EMEAGWARE V STAR PRINTING and PUBLISHING COMPANY LIMITED & ORS (2000) LPELR – 1122 (SC)** for a definition of the word "malice"

I would like to first of all, state that none of the exhibits attached have been marked. In ***OLUWASEUN OGUNBAMBO V FEDERAL REPUBLIC OF NIGERIA & ORS (2013) LPELR – 20551 (CA)***, the Court expressed dissatisfaction over the fact that none of the parties endorsed their respective exhibits. The Court had stated: “Counsel is expected, indeed it is expedient that Counsel endorses on the documents exhibited thus:-

*“This is the document referred to as exhibit xxx in the affidavit/ counter affidavit...”*

It went further to state that it is not the function of the Court to fish out exhibits. It is the function of parties to identify exhibits by marking them.

Section 131 of the Evidence Act 2021 states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist (i)

And when a person is bound to prove the existence of any facts it is said that the burden of proof lies on that person.

Section 132 also states that the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side. See also ***E.D TSOKWA & SONS LTD V UBA LTD (1996) 10 NWLR (478) 281, VANGUARD MEDIA LTD V OLAFISOYE NIG. LTD (2012) 18 NWLR (1321) 109***, as cited by the Defendants.

Therefore, the burden of proof that the words used were libelous and derogatory towards the Plaintiff rests squarely on the Plaintiff which he has not seemed to prove that the words are in actuality, derogatory or libelous.

This is further because when determining the ordinary meaning of words in action for defamation, and to prove that the ordinary man would consider the words complained of , it is essential that an ordinary and right thinking man is called to give evidence of his understanding of the word in context.

See ***NSIRM V NSIRIM (1990) 3 NWLR (138) (285) at 289; SKYE BANK PLC V AKINPELU (2010) 9 NWLR (1198) 179 at 211, IWUEKE V IBC (2005) 17 NWLR (PT. 955) at 482.***

The Plaintiff in this case however, failed to call a neutral party, the said ordinary man to read and give a reaction on the words

claimed, but instead called one Chibueze Ejeji who happens to relate with the Plaintiff ordinarily and thus whose opinion may be biased.

More extensively, the Court of Appeal, whilst adopting the decision of the Supreme Court in ***GUARDIAN NEWSPAPERS LTD & ANOR V REV. PASTOR C.I AJEH (2011) LPELR – 1343 (SC)***, held in ***ACCESS BANK PLC V AJAYI (2018) LPELR – 43813 at PP. 22-28, paragraphs C-F***. That to prove libel, the Claimant must establish the following:-

- i. The words complained of must have been written;
- ii. The publication must be false;
- iii. The words must be defamatory or convey defamatory imputation;
- iv. The words must refer to the Claimant;
- v. It must be the Defendant who published the words; and
- vi. The onus is on the Plaintiff to prove he was the one referred to in the alleged libel.

This general practice of requiring the Claimant to produce a third party, in addition to the six elements mentioned above, however

is mainly traditional as a few recent decisions have adopted a more liberal approach.

In the recent case of **ASHEIK V MT NIG LTD (2010) 15 NWLR (pt. 1215) 114 at 164**, it was held, among other things that *"where words are defamatory in their ordinary sense, the Plaintiff need prove no more than that they were published"*

The Plaintiff relied on the case of **CHRISTIAN ONYENWE & ANOR v CHIEF GODWIN ANAEJIONU (2014) LPELR – 22495 (CA)** on whether the Defendants should be able to rely on the defence of privileged information, where it was held that two conditions must co- exist in order for the defence to succeed. They are as follows:-

1. A common interest between the makers of the statement and the person (s) to whom it was made.
2. The facts relied on by the maker must be true.

The Plaintiff went further to submit that there is no common interest between the Defendants and the Plaintiff as the Defendants had been expelled from the association. However, no evidence of expulsion is attached in the documents therefore,



that information may or may not be true as far as we are concerned.

In conclusion, it seems that Defendants were not satisfied or happy with the work ethics of the Plaintiff, hence the reason for their letters. The Plaintiff, however, seems to have felt slighted by the said letters, and mainly embarrassed and thus decided to bring an action against the Defendants.

However, just as mentioned in cases such as ***VANGUARD MEDIA LTD v OTUNBA ADEBIYI O. OLASISOYE (2011) 14 NWLR (PT 1267) 207***, what constitute defamatory words does not depends on the feelings of the complainant, but rather on the estimation of ordinary, unbiased members of the society. During the trial the Claimants Counsel tendered the following document evidence:-

- (1) Letter dated 24<sup>th</sup> April, 2020 reposting to Transmission Company of Nigeria (TCN) exhibit 1
- (2) Letter of expression and displeasure on the rumored reinstatement of disengaged and former Ikeja Distribution Staff Comrade Chris Okonkwo to Transmission Company of Nigeria (TCN) dated 25<sup>th</sup> September, 2021 exhibit 2

- (3) Letter dated 7<sup>th</sup> February, 2019
- (4) Re-arrest of the Transmission Company of Nigeria (TCN) Branch secretary by Mr. Okonkwo exhibit 3
- (5) A letter address to Engr. C.N Okonkwo 25<sup>th</sup> September, 2020 exhibit 4.

In the cause of this proceeding Claimant gave all his evidence and also a subpoenaed witness tendered the aforesaid document in evidence. On the other hand the defence also gave geographic account of there defence.

Having extensively analyzed the entire evidence given in this trial both from the Claimant and the evidence adduced in the cause of defence. The totality of the evidence adduced by the Claimant is primarily what matter in such a trial. The Supreme Court in ***DURU VS NWOSU (1989) 4 NWLR (pt113) 24*** states thus:-

*"..... A trial Court urge always to start by considering the evidence led by the Plaintiff to see whether he had led evidence on the material issue he needs to prove if he has not so led evidence or if the evidence led by the him is so patently unsatisfactory, then – had*

*not made out what is usually referred to as prima facie case, in which case the trial judge does not have to consider the case of the Defendant at all”*

From the above, the point appears sufficiently made that the burden of proof lies on the Claimant to establish their case on a balance of probability by providing credible evidence to sustain their claims irrespective of the presence and /or absence of the Defendants see ***AGU VS NNADI (1999) 2 NWLR (Pt589)131 at 142.*** From the pleadings in this case which in law is what precisely streamlines the issues and facts in disputes, the Plaintiffs cause of action is essentially premised on defamation. The alleged defamatory instrument is contained in exhibits 1, 2 and 3 as admitted in evidence by this Court. The inquiring here is simply whether the Plaintiffs have credibly established on the evidence that the said exhibits are defamatory of the Plaintiff.

In law, defamation has been defined to means a statement which tends to injure or lower the reputation of a person to whom it refers in the estimation or assessment of ordinary and right thinking members of the society and thereby expose such person

to hatred, ridicule and contempt and it does not matter whether or not such statement is believed by those to whom it was published see ***SALAWU VS MAKINDE (2003) 1 WRN 91 at 102.*** The question as to whether the words complained of are in their natural and ordinary meaning, defamatory is one of fact. The question whether or not the words are capable of conveying a defamatory meaning in the minds of reasonable persons in this particular case is for the judge to decide upon the evidence before him see ***SKETCH VS AJAGBEMOKEFEMI (1989) 1 NWLR (pt 100) 678 and ALAWIYE VS OGUNSANYA (2003) 39 WRN 140 at 161.***

The Claimant in an action in addition to the one mentioned above must prove the following elements or ingredients namely:-

- a. That the Defendant published in a permanent form a false statement.
- b. That the statement referred to the Plaintiff
- c. That the statement conveys a defamatory meaning to those to whom it was published and
- d.** That the statement was defamatory of the Plaintiff in the sense that it lowered him in the estimation of right thinking members

of the society see ***SKETAL VS AJAGBEMOKEFEMI (supra)***  
**and *ANATERS SANUSI (2001) 27 WRN 26 at 41.***

The onus of establishing these elements is on the Plaintiff and failure to establish them will result in a dismissal of the action see ***ONU VS AGBEGE (1985) 1 NWLR (pt 4) 704 and NEW NIGERIA NEWSPAPERS VES OFERI (1992) 4 NWLR (Pt 372) 626 at 634.***

I will now proceed to consider each of these element or ingredients to see if the Plaintiff have established the same. The 1<sup>st</sup> key ingredient that the Plaintiffs must establish in an action for libel is the publication of the alleged defamatory material. It is trite principle that no civil action can be maintained for libel or slander unless the words complained of have been established indeed it has been held that publication is the live wire and fundamental to an action in libel. See ***NAS VS ADESENYA (2003) 2 NWLR (pt803) 97.***

Having stated the importance of publication in an action for libel. It is perhaps necessary to defined what the concept of publication is all about. I find the definition by the learned authors of ***GATLEY***

***ON LIBEL AND SLANDER 18<sup>TH</sup> Edition at pg 141 -142 paragraphs***

**6. 1.** Very instructive they stated with considerable force thus:-

“No civil action can be maintained for libel or slander unless the words complained of have been published.

The material part of the cause of action in libel is not the writing but the publication of the libel. In order to consider publication, the matter must be published or communicated to a third party that is to say one person other than the Plaintiff. Defamation protects a person’s reputation and his reputation is not the good opinion he has of himself but the estimation in which others hold him.... A defamatory statement about the Plaintiff communicated to the Plaintiff alone may injure his self esteem but it cannot injure reputation..... It is not sufficient that the matter has been merely communicated to the 3<sup>rd</sup> party, it is also necessary that it be communicated in such a manner that it may convey the defamatory meaning and that person acquainted with the Plaintiff could understand it refers to him.....

The text of the defamatory statement said to have been made was in a written form by the Defendant and same were admitted

in evidence which showed that those exhibits the letter in this trial are libelous matters contained in exhibit 1,2,3

As stated above, I only evaluated the evidence of PW1 out of abundance of caution. The entire evidence of PW1 hereby relied on those three exhibits in the cause of the trial from the authorities cited above those written letter have not in any way satisfy the requirement of this law. As already alluded to but the points need to be understood that it is settled principle of general application that a defamatory publication is one which has the tendency to injure the reputation of the person to whom it refers and which tends to lower him in the estimation of right thinking members of the society generally and in particular to cause him to be regarded with feeling of hatred, contempt, ridicule, fear or disdain. See ***NEPA VS INAMATI (2002) 13 WRN 108 at 128.*** You cannot put something on nothing and expect it to stand. On the whole and on the basis of the evaluation of evidence led by the Claimant. I am not satisfied that they have led credible evidence on the defamatory meaning the publication conveyed to those to whom it was published see ***OKOLO V MIDWEST NEWSPAPER OR (1983) 1 S.C.N.L.R 23.***

In the light of the foregoing, the single issue raised for determination is answered in the negative the Plaintiff have clearly not established by credible evidence all the essential ingredients required to sustain an action for libel. Therefore the Plaintiff have failed to satisfy the requirement. This can be seen from exhibit 1,2 and 3. In the final analysis. The Plaintiff claim have failed in its entirety and same is hereby dismissed.

-----  
**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**  
**8/2/2022**