

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

BEFORE HIS LORDSHIP: HON. JUSTICE M. S. IDRIS

COURT: 28

DATE:-6TH JULY, 2022

FCT/HC/CV/1769/2021

BETWEEN

MRS. GRACE OBI-UKPABI -----

CLAIMANT

AND

1. MRS. ABIOLA BABATUNDE LAWAL

2. THE ESTATE OF MR. BABATUNDE LAWAL

DEFENDANTS

JUDGMENT

By a writ of summons dated 28th July, 2021 and filed same date at the Court's Registry, the Claimant claims the following reliefs against the Defendants:-.

- A. **AN ORDER** of Injunction restraining the 1st Defendant, by herself or by her servants or agents or otherwise howsoever, to immediately cease and desist from publishing online or in any other manner whatsoever further defamatory remarks about the Claimant and her children;
- B. **AN ORDER** compelling the 1st Defendant to immediately remove from all of the 2nd Defendant's Facebook timeline all defamatory and disparaging

remarks regarding the Claimant and her children including the removal of their pictures;

- C. AN ORDER for an apology to the Claimant and her children by the 1st Defendant to be posted on the 2nd Defendant's Facebook timeline; and
- D. DAMAGES in the sum of N10 Million for Libel.

The 1st Defendant filed a joint Statement of Defence on 15th December, 2021 through Counsel who by virtue of designation represents the Defendants.

In proof of its case, the Claimant through Counsel called a sole witness, who is the Claimant herself. She testified as Pw1. She adopted her witness statement on oath dated 28th July, 2021. She tendered the following exhibits in evidence:

1. The 1st Defendant's Facebook posts on 2nd Defendant's page was admitted as Exhibit 1.
2. The 1st Defendant's Whatsapp chats with Claimant via 2nd Defendant's handle was admitted as Exhibit 2.
3. The Claimant's lawyer letter to 1st Defendant dated 12 April 2021 was admitted as Exhibit 3.
4. The Letter by coalition of Civil Society Organization in Nigeria dated 12 April 2021 was admitted as Exhibit 4.
5. The Letter by D. Chukwunyere Chambers dated 12 April 2021 was admitted as Exhibit 5.

6. The Claimant's lawyer letter to the Police dated 12 April 2021 was admitted as Exhibit 6.
7. The International passports of Claimant's two sons was admitted as Exhibit 7.

Pw1 was then cross-examined by Counsel to the Defendants and the Claimants therein after closed its case.

It is pertinent to state that at the close of the Claimant's case, the Defendants elected not to lead evidence in their defence but to rest their case on that of the Claimant.

At the conclusion of the trial, parties filed and exchanged final written addresses. The Claimant filed its Final written address on 11th May, 2022 and a reply brief on the 20th May, 2022. The Defendants on their part filed their Final written address on 11th May, 2022.

In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by Counsel.

Before I go further, let me refer this Court to the position asserted by Counsel to the Defendants at the close of the Claimant's case. Counsel opted clear and unequivocally to rest its case on that of the Claimant. This position as opted for by the Defendants has its attendant consequences which will form a fulcrum in analyzing the issues in this case. Therefore this Court will move swiftly to analyze the legal effect of a Defendant resting his case on that of the Claimant and the effects thereof.

The case of ***FAIRLINE PHARMACEUTICAL INDUSTRY LTD & ANOR V TRUST ADJUSTERS NIG. LTD (2012) LPELR-20860 (CA)*** is instructive where the Court holistically looked at the implication of the Defendants not

adducing evidence to buttress their statement of defence and in effect stated thus:-

"I had stated earlier that, the Appellants led no evidence but elected to rest their case on that of the Respondent. It is the law that where a defendant does not adduce evidence, as in the instant case, the evidence before the Court goes one way leaving the Court with no other evidence or set of facts with which to do the measuring of the scale. This is because in a situation where a defendant leads no evidence in proof of facts pleaded by him, such pleading is deemed abandoned and the defendant would be left with nothing with which to present against the plaintiff. Thus, in a situation where a defendant abandons his pleading and rests his case on the plaintiff's evidence, he is deemed in law to have completely accepted both the pleadings and evidence or the case presented by the plaintiff. In such a situation, it may mean that:

(a) The defendant is stating that the plaintiff has not made out any case for the Defendant to controvert or respond to; or (b) He admits the facts of the case as presented by the Plaintiff; or (c) He has a complete legal defence in law in answer to the Plaintiff's case."

Armed with the above submission by the Court, it is pertinent to state here that by virtue of the option elected by the Defendants at the close of the

Claimant's case, their pleading is hereby deemed abandoned and construed as though nothing was placed before this Court in defence of the claims of the Claimant. This Court is now therefore faced with a single obligation of deciding this matter with sole reference to the Claimant's pleadings and the evidence adduced thereof.

In view of the settled position of the law as it relates to the facts and substance of this case, the Claimant has the burden of proving her claim. That being so, the issues formulated by the parties can be accommodated under the sole issue formulated by the Court thus:-

"Whether the Claimant has proved its claims on a balance of probabilities to entitle it to any or all of the Reliefs sought."

The above issue is not raised as alternative to the issues raised by parties, but the issues canvassed by parties can and shall be cumulatively considered under the above issue. See **SANUSI V AMOYEGUN (1992) 4 NWLR (Pt. 237) 527.**

The issue thus raised has in the Court's considered opinion brought out with sufficient clarity and focus, the pith of the contest which has been brought to Court for adjudication by parties on both sides of the aisle.

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their case. At the conclusion of trial proper, the real issue(s) which the Court would ultimately resolve must be manifestly clear. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of the critical or fundamental questions affecting the rights of parties will only

have peripheral significance, if any. In **OVERSEAS CONSTRUCTION LTD v CREEK ENTERPRISE LTD & ANOR (1985)3 N.W.L.R (Pt13) 407 at 418**, the Supreme Court instructively stated as follows:-

“By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the Plaintiff will itself give him the right to the reliefs he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the Defendant, then the Plaintiff’s case collapses and the Defendant wins”.

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issue I have raised and also consider the evidence and submissions of counsel.

The Claimant’s case is on libel, which means that the defamatory statement complained of is in written form. Libel is actionable per se. If a Claimant proves that a libel has been published against him without legal justification, his cause of action is complete. He need not prove that he has suffered any resulting actual damage or injury to his reputation for such damage is presumed. See **MR. BIODUN ODUWOLE & ORS V PROF TAM DAVID WEST (2010) LPELR-2263 (SC) PAGES 15-16 Paras G-B, Per Fabiyi JSC; EZEGBO & ANOR V IGBOKWE 2016 LPELR – 40784 CA.**

To prove libel, the Claimant therefore needs to prove by cogent and credible evidence the following:

- i. The words complained of must be written
- ii. The words must be false

- iii. The words must be defamatory or convey a defamatory imputation
- iv. The words must refer to the Claimant
- v. It must be the Defendant who published the words.

See **GUARDIAN NEWSPAPERS LTD & ANOR V REV. PASTOR AJEH (2011) LPELR 1343 SC AT 5. PARAS. D-F. CHIMA OGBONNAYA V FIRST BANK OF NIGERIA PLC (2015) LPELR-24731 CA P.29 PARAS B-E.**

I shall consider whether all the ingredients of libel have been established by the Claimant.

1. That the words were written: It is not in doubt that the statements alleged to be defamatory to the Claimant were in written form, having been published on the 2nd Defendant's Facebook timeline being a social media platform open to members of the Public across the globe. See Paragraph 4 – 6 of the Claimant's Statement of Claim and Exhibit Pw1.
2. There is also no doubt that the alleged defamatory statements were directed at the Claimant as the Claimant was mentioned by name in the Facebook publication Exhibit Pw1. The Claimant established this fact having through Exhibits Pw1 and Pw2 identified the person referred to on the Facebook posts as herself.
3. That the words published must be false: It is the testimony of the Claimant in evidence that the words complained of in Paragraphs 4-6 of the Claimant's statement of Claim and Exhibit Pw1 are false and the not Defendant having not led evidence to establish the contrary will leave the Court with no other option that adopt the testimony of the Claimant that the statements allegedly defamatory are false and without any basis.

4. That the words complained of are defamatory: It is veritably deduced from the Claimant's statement of Claim and witness deposition before this Court that the words/statements complained of are allegedly defamatory to her person. For words to be considered defamatory, the test is whether reasonable men whom the publication was made to will likely understand them in a libelous sense. See **YAHAYA V MUNCHIKA (2000) 7 NWLR (PT. 664) 300 AT 314 PARAS. F-H.**

The words complained of as contained in Paragraph 4 of the Claimant's Statement of Claim which read thus:-

"Asewo! Ole! Grace Obi-Ukpabi, You wicked woman, your husband wasn't enough for you and you had to sleep around with my husband for 18years controlling with your "Juju" and siphoning all his monies and properties until you killed him. Almighty God will judge you in the mighty Name of Jesus Christ Amen.

You will never know peace and joy the rest of your days in Jesus Christ Name Amen".

I agree with the Claimant's counsel that the words as stated above are defamatory of the Claimant. I agree with him that the words to an ordinary man in their plain and ordinary meaning portrays the Claimant as pleaded in the above paragraphs 4 of the Claimant's Statement of Claim as having had and sustained an extra-marital affair with the 2nd Defendant. The above connotation is actionable per se without proof of special damages. See **CHIEF S.A.O. EZEGBO AND ANOR V GEORGE IGBOKWE (2016) LPELR-40784 CA.**

5. There is a last condition which must be substantiated before a case of Defamation is established to wit:- That it must be the Defendant who published the defamatory words.

The position of the law is trite that for a case of defamation to be grounded, the words complained of must have been published by the Defendant personally and not published by or through another.

It is pertinent to appreciate the above principle with particular reference to the facts of this case in its entirety. The alleged defamatory words in this case were published on a Facebook page belonging to the 2nd Defendant who is now deceased and was nowhere in evidence established that the words were published by the 1st Defendant on her personalized Facebook account. While I will agree that the Facebook account of the 2nd Defendant now deceased cannot be operated by the 2nd Defendant from the second realm of existence, it must have in fact been operated by a human being with attendant mental soundness. However, the law will not embark on a wild-goose-chase in search of the persons behind the operation of the 2nd Defendant's Facebook account but rather the law will look inwards on the available evidence before it to ascertain whether or not it is established that the 1st Defendant being the wife of the 2nd Defendant now deceased is responsible for the defamatory publications.

The law is trite that civil cases are decided on the balance of probabilities, that is, preponderance of evidence by both parties on an imaginary scale to determine which side's evidence is heavier and accordingly preponderates. In this case the Defendant having rested his case on that of the Claimant shifts the burden to the Claimant to establish his case on the merits. See ***DR USENI UWAH & ANOR V DR EDMUNDSON T. AKPABIO & ANOR (2014) 2MJSC (PT.11) 108 @113.*** Therefore, the success or failure of the

Claimant's case will be predicated first on the nature of this pleadings and the evidence adduced in support thereof.

With regards to the evidence adduced by the Claimant to substantiate the fact that it is the 1st Defendant who is responsible for the publication, it is apposite to state that the Facebook account of the 2nd Defendant who is now deceased could have and can be operated by another apart from the 1st Defendant, yes the 1st Defendant is the widow of the 2nd Defendant but there is nothing before this Court to substantiate the claims of the Claimant that the 1st Defendant is responsible for the publications defaming the Claimant on the 2nd Defendant's Facebook page. The story and facts of a Claimant no matter how compelling and disparaging it seems, cannot be construed to erode the position of our extant laws on the subject matter of defamation. The law is trite that the words alleged to have been defamatory must be published by the Defendant and nothing more pretentious. In as much as the Law sympathizes with the Claimant on the publications referred to her person, the law remains the law and cannot change otherwise.

The Claimant should have beyond mere assertions taken further steps to establish that it is indeed the 1st Respondent who is responsible for the operation of the 2nd Defendant's mobile phones and in effect responsible for the defamatory publications.

One would at this instance presume that the 2nd Defendant be made liable for the publications, but the law is different on this. It is the law that generally, a cause of action shall not abate by the mere death of a person except for defamation, seduction and inducement of spouse. See **OGIUGO V OGIUGO (1992) 12 SCN) 191**. It therefore implies that the 2nd Defendant cannot in the instant case be held liable for the Claims of the Claimant on

libel, as the law excludes the above claims on deceased persons. A man who has died to my mind deserves rest.

Generally the law of evidence is the principle law applicable in all our Court whether of adjudication of matter properly brought before a Court of Law be it civil or criminal matter as the case may be like in this case, the entire burdens lies on the Claimant who would fail if he fails to satisfy the requirement of the evidence Act. As can be seen from section 131 of the Evidence Act, 2011 (1) whoever desires any Court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts shall prove that those facts exist. Sub 2, of 131 Evidence Act also provides when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Similarly section 132 of the Evidence Acts provides the burden of proof in a suit or proceeding lie on that person who would fail if no evidence at all were given on either sides from the content of the above provision of the Evidence Act it is clearly shown the onus in most cases is on the Claimant in this case to established likely fact contained in the writ. It is not at all in doubt that the character of the Claimant was been defamed nevertheless it is the duty of the Claimant to establish those facts. This is because the requirements of libel cannot easily be changed by this Court. Strict compliance with the element of the defamation in this case libel must be literally interpreted and complied with in the spirit of justice and fair play.

It is on this note that I submit that the last limb of facts that must be established and same being an important element in establishing defamation with particular reference to Libel, has not been creditably proven by material evidence before this Court.

As a logical corollary, I therefore hold that the Claimant having failed to establish that the defamatory words complained of were published by the

1st Defendant, the Claims of the Claimant therefore fails and is accordingly dismissed.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

APPEARANCE

M.O Dedon:- For the Claimant

E.S Oluwabiya:- Appearing with Thuddeus Odo and Ikechukwu J.Iwujo
for the Defendant.