

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 28TH DAY OF OCTOBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/BW/CV/22/2021

BETWEEN:

EMMANUEL CHUKWU

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PLAINTIFF

AND

1. AMOS JORO

2. THE JORO'S FAMILY

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DEFENDANTS

JUDGMENT

On the 19th day of January, 2021 the Plaintiff – Emmanuel Chukwu instituted this Suit which is premised on Defamation and Libel made against him by the Defendants – Amos Joro and the Joro's Family. In it he claims the following Reliefs:

- a. A Declaration that the publication contained in a petition authored by the Defendants through their Counsel, Rachael Gyang Esq. addressed to the Chief of Defence Staff Abuja, Chief of Army Staff Abuja, GOC 3rd Armoured Division Jos, Plateau State and Nigeria Army Corp of Artillery Minna, Niger State and disseminated to Amnesty**

International and Human Right Commission respectively dated the 14th day of December, 2020 is false, defamatory and libelous to the person of the Plaintiff.

b.A Declaration that the Plaintiff is entitled to a public apology by the Defendants.

c.An Order for public apology by the Defendants in favour of the Plaintiff to be published in at least three (3) National Dailies circulating within Nigeria as well as paid advertorial to the same effect on the Nigeria Television Authority (NTA) and Federal Radio Corporation of Nigeria (FRCN).

d.An Undertaking not to indulge in any such false publication against the Plaintiff.

e.Ten Million Naira (₦10, 000,000.00) only being damages against the Defendants for defamation.

f. Cost of this action.

It is the story of the Plaintiff as aptly captured in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 respectively of the Statement of Claim that the Plaintiff engaged a technician to install a Closed Circuit Television (CCTV) camera in his private residence at Kissayhip, New Layout, Bassa LGA, Plateau State. The 1st Defendant approached the Plaintiff's technician that he noticed that the camera is facing his house. The technician labored in

vain to help him understand that the camera has a radius and is not capturing his house. That he insisted that he must see from the monitor kept in the bedroom to satisfy his curiosity. That doing that he made effort to enter to the compound except for the intervention of one Corporal Babangida, he would have crushed in. That when the antisocial behavior of the 1st Defendant got to the notice of the Plaintiff, he went and made a formal report to the Military Police and Military Police went and invited him to the Station. That when he got to the Station and the Military Police discovered that he is a civilian, they decided to refer them to the Civilian Police.

That at the Police Station, he accepted his fault and wrote an apology letter and undertook not to cause any harm to the family of the Plaintiff. Sad enough, the 1st Defendant kept on demonstrating by gesture as well as verbal utterance that he will soon strike and surprise them.

That the Plaintiff on noticing that decided to file a direct criminal complaint against the 1st Defendant at the Chief Magistrate Court in Bassa.

That while the case at Bassa was still on, the Defendants authored a petition against the Plaintiff and the content of the said petition gave rise to this summons.

The Plaintiff called One (1) Witness and tendered a document. The Defendants called Two (2) Witnesses and tendered 2 documents.

In the Plaintiff's Final Written Address he raised Five (5) Issues for determination which are:

- 1. Whether there was a publication by the Defendants against the Plaintiff.**
- 2. Whether the publication of the Defendants against the Plaintiff was made to a third party.**
- 3. Whether the Defendants' publication against the Plaintiff amounts to Defamation.**
- 4. Whether the Plaintiff has proved the case of defamation to be entitled to Judgment.**
- 5. Whether the Plaintiff is entitled to the award of damages.**

On Issue No. 1 – whether there was a publication by the Defendants against the Plaintiff, he submitted that there was a publication by the Defendants against him. That the Defendants did not deny that fact. That they disseminated same to the third parties. They referred to paragraph 12 of the Statement of Claim in which the Defendant made publication and sent same to the Chief of Defence Staff, Chief of Army Staff Abuja, GOC 3rd Armoured Division Jos, Plateau State and Nigeria Army Corp of Artillery Minna, Niger State and to Amnesty International and Human Right Commission. The article was dated 14th December, 2020. The Defendants admitted the fact in paragraph 10 of their Joint Statement of Defence. Though they denied that it was not disseminated to Amnesty International and Human Right Commission as shown in

EXH AM2. That facts admitted need no further proof. They relied on the cases of:

Prince Lanre Adeyemi V. Lan & Baker
(2000) 7 NWLR (PT. 663) 33 @ 47 Paragraphs A – C

APC V. Lere
(2020) 1 NWLR (PT. 1705) 245 @ 281 Paragraph A

On Issue No. 2 – whether the publication was made to a third party, he answered in the affirmative. That the Defendants confirmed that the publication was made to a third party. Under Cross-examination the 1st Defendant confirmed that he made the publication to the Amnesty International and the Human Right Commission too and that his Counsel made the other publication to the other third parties. That he never called his Counsel to testify on those facts which action amounts to withholding evidence. He referred to S. 167 of the Evidence Act 2011. He also referred to the case of:

Salaudeen V. Okunloye
(2020) 8 NWLR (PT. 1727) 455 @ 477

He urged Court to so hold.

On Issue No. 3 – whether the publication amounts to defamation, the Plaintiff answered in the affirmative too because the publication belittled him in the eyes of right thinking persons and members of the public. He referred to the case of:

Omon V. Ekpa
(2019) 15 NWLR (PT. 1696) 504 @ 533

That the Defendants admitted the content of defamatory words as stated in paragraph 12 of their Joint Statement of Defence and that it was made to defame the Plaintiff.

That the statement made his juniors to look down on him and made his colleagues to ridicule him as a tribal bigot. That it has affected his family as his wife withdrew from the Nigeria Army Officers Wives Association. That the content of the publication satisfied all the element of defamation. He referred to the case of:

**Daily Telegraph V. Ekeuwie
(2019) 14 NWLR (PT. 1693) 455 @ 480**

That he has proved the ingredients as required in establishment of allegation of Defamation both in his Statement of Claim and in his testimony in chief and under Cross-examination. He urged the Court to so hold. That the publication was in a permanent form as it was written to the said Chief of Defence Staff, Chief of Army Staff Abuja, GOC 3rd Armoured Division Jos, Plateau State and Nigeria Army Corp of Artillery Minna, Niger State and to Amnesty International and Human Right Commission on the 14th of December, 2020. These facts were not denied but confirmed by the Defendants who said they did so because they want Plaintiff to be investigated.

That those documents were tendered and marked as **EXH 1 & 3**. Again, that he has proved that the publication conveys defamation meaning to those to whom it was published as it came to his juniors, mates, colleagues and the “public” and has lowered him in the estimation of right thinking Nigerians and members of the society and has

affected his work, making him to look like a tribal bigot. He urged Court to resolve the Issue in his favour.

On Issue No. 4 – whether he has proved allegation of defamation against the Defendants, he submitted that he has done so and that he is entitled to Judgment in his favour. That the Defendants have admitted the fact in the 12th paragraph of his Statement of Claim in paragraph 10 of their Statement of Defence. That he disseminated the publication at Amnesty International and Human Right Commission without stating his reason for doing so.

That he discharged the onus placed on him and shifted same to the Defendants who were not able to discharge same. That the Defendants admitted those facts. He referred to **EXH 1 & 3** as well as **S. 133 of the Evidence Act** and the cases of:

Oguebie V. Federal Republic of Nigeria
(2020) 4 NWLR (PT. 1715) 531 @ 549

Sun Newspaper V. D.S Nigeria Limited
(2019) 9 NWLR (PT. 1678) 510 @ 509

He urged Court to resolve the Issue in his favour.

On Issue No. 5 – whether he is entitled to damages, he answered that in the Affirmative. That he has successfully proved his case and is therefore entitled to be paid damages. He referred to the case of:

FBN PLC V. A-G Federation
(2018) 7 NWLR (PT. 1617) 121 @ 174

EDOSACA V. Osakwue
(2018) 16 NWLR (PT. 1645) 199

He urged Court to grant his claims and award punitive cost against the Defendants.

The Defendants claimed that they made the publication/defamation because of the threat by the Plaintiff and their action in writing the petition was justified.

On their part, the Defendants called 2 Witnesses and tendered 2 documents. In their Joint Final Written Address they raised an Issue for determination which is:

“Whether the Plaintiff has by evidence proved that the words contained in paragraph 16 of the Statement of Claim are defamatory to him?”

They submitted that in civil case the burden is on the Plaintiff to prove his case on preponderance of evidence and balance of probabilities. That the Plaintiff should satisfy the Court that he is entitled to his case and must succeed on the strength of his case. That unfortunately, the Plaintiff has not satisfied that and has not discharged that onus placed on him by law in this case. They referred to the following cases of:

Onisere V. Oyeleye
(2008) All FWLR (PT. 446) 1826 @ 1834

Motunwase V. Sorungbe
(1988) 5 NWLR (PT. 92) 90 @ 92

That the Plaintiff admitted that he arrested the 1st Defendant. That that fact is in favour of the Defendants.

That the allegation of the Plaintiff mounting CCTV Camera on his fence which captured the Defendants' compound

has not been denied by the Plaintiff. That the publication has not affected the Plaintiff as he is still in the rank of Colonel in the Army. There is no evidence that the Plaintiff has been denied any of the privileges opened to him by the publication since after the publication.

That in paragraphs 6, 7, 9, 14 & 17 of their Statement of Defence, the Defendants averred that the Plaintiff's threat and action were the product of the petition all in order to curb Plaintiff's excesses. That the Plaintiff did not counter those facts and they are therefore admitted. That the high handedness of the Plaintiff over a simple complaint that the CCTV Camera is capturing the Defendants' compound does not warrant dehumanization treatment that the Defendants were subjected to. That there is no evidence that the letter was published to a 3rd party. That all authorities that responded to the letter were relevant to the control of the Plaintiff. That since they denied publishing or disseminating the letter to any 3rd party, that the onus has shifted to the Plaintiff. They referred to the case of:

Ekong V. Otop

(2014) 11 NWLR (PT. 1419) 549 @ 554

That the Nigeria Army and the Defence Headquarters, the 3rd Division Nigeria Artillery where the Plaintiff is currently serving are his appointers and are responsible for disciplining the Plaintiff. They urged Court to dismiss the Suit as it is frivolous and vindictive.

In the Reply on Points of law on whether the words were defamatory as raised in Issues No. 2, 3 & 4, the Defendants replied referring to the cases of:

**Sketch Publishing V. Ajabemokeferi
(1989) 1 NWLR (PT. 100) 678**

**Ologe V. New African Holdings Limited
(2013) 17 NWLR (PT. 1384) 449 @ 455**

Ekong V. Otop Supra

They submitted that it is not every statement made that is defamatory. That mere abuse or insult is actionable. That issues are joined by parties on pleadings. That action is ascertained based on pleaded facts and evidence on those facts. That any fact not pleaded goes to no issue. That issues are joined in pleadings not in the evidence. That EXH 1 was disseminated to Amnesty International and Human Right Commission was clearly denied and that the burden was on the Plaintiff to prove same not on the Defendants. He referred to the case of:

**Yankey V. Augustine
(2021) 1 NWLR (PT. 1757) 227 @ 231**

They urged the Court to hold that the words complained of are not defamatory.

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Having summarized the submission and evidence of the Witnesses on both side of the judicial aisle, can it be said that there was a publication by the Defendants against the Plaintiff?

Without an iota of doubt, there was a publication by the Defendants against the Plaintiff. The 1st Defendant confirmed that in his testimony in Court though he denied sending the publication to Amnesty International yet he

accepted that his lawyer sent the same publication to the Amnesty International.

It is the view of this Court that the publication sent to Amnesty International via the Counsel of the Defendants, Rachael Gyang Esq. is a publication sent by the 1st Defendant. After all, the said letter was written based on the instruction of the 1st Defendant. Therefore, it is clear that 1st Defendant wrote as it were the said petition sent to Amnesty International. So this Court holds. Even in the opening paragraph of the letter it was written that the letter was based on the 1st Defendant's instruction and that the said Rachael was acting or acted based on such instruction from the 1st Defendant as Counsel to the said 1st Defendant.

By making the publication to the several Army Units and Divisions and even the Ministry of Defence as well as to Amnesty International and National Human Right Commission, the publication was made to the 3rd party. So this Court holds.

To start with, once a publication is made outside the person who the publication concerns, it is said to be made to a 3rd party. All the Organizations where the 1st Defendant sent the publications are without any doubt 3rd parties. In those Organizations, the petition was seen by other persons from the Secretary who receives the petition for and on behalf of the Addressee to the Addressee who must have minuted it to other officers and men as well as staff of such Organization. Again, any decision made by the Organization must have been done by several persons deciding on the steps taken. So in that case as it were

several persons – 3rd parties got involved. Even the Secretary who must have type-setted the letter and others. All of them are 3rd parties. Hence the publication made against the Plaintiff in this case by the petition written by the 1st Defendant was made to 3rd parties.

It is the law that once a libelous publication is made to 3rd parties – anyone other than the Plaintiff, it is completely a Defamatory. Such publication to the 3rd party is the life wire of defamation. The 1st Defendant did not deny making the publication to the several Army Units and Divisions. He also stated that his sole aim of writing the petition was for the Organizations including the Amnesty International and Human Right Commission to investigate the Plaintiff. But strangely, he never sent such petition to the Police whose main duty is to investigate crimes. Failure of the 1st Defendant to copy Police shows that the petition was laced with malice and vindiction and was motivated by malice and nothing more. If actually he wrote petition for fear for his life, why did he not inform the Police? If the Plaintiff threatened his life as the 2nd Defendants' Witness, the man of God claims, why did the 1st Defendant not sue the Plaintiff to Court? Simple answer, it is because his whole action was malicious and he deliberately wanted to defame and actually defamed the Plaintiff. He wanted to belittle and ridicule him before his superiors and also make him look like bevel before both his superiors and juniors. If not why did the 1st Defendant instruct his lawyer to write to all those Organizations and Military outfit including the Amnesty International without writing to the Police in Nigeria. It is simply that the 1st

Defendant's petition was to defame and ridicule the Plaintiff.

Yes, the Plaintiff is a serving Officer Personnel of the Nigeria Army. The 1st Defendant did not just petition the Plaintiff before his direct office, he went about copying every Army Division. There is no other reason for the petition other than to defame and maliciously ridicule the Plaintiff and if possible, so that the Plaintiff will be dismissed from the military. But one wonders what the 1st Defendant wanted to achieve by this malicious act. If actually the petition was not malicious as it were, the 1st Defendant would not have copied all those Organizations.

Going by the content of the publication and its wordings as contained in the petition, it is very clear that the publication in its entirety is defamatory both by the community reading of the petition and by the words used therein and the content of the said paragraph 16 of the Statement of Claim.

It is imperative to reiterate that the 1st Defendant did not deny writing the words in the petition that the Plaintiff claimed defamed him.

Again, it is the humble view of this Court that going by the evidence of the PW1 who is the Plaintiff in this case, that he established that those words defamed him. He established the allegation of defamation against him by the action – petition of the 1st Defendant. So this Court holds.

To start with, the PW1 – Plaintiff tendered the documents of defamation which is the publication made in form of

petition by the 1st Defendant. He proved that it was published to 3rd parties. To prove that, he referred to the response of the petition from the Army. The 1st Defendant confirmed that fact too. Plaintiff also proved that the publication made his superiors, colleagues and juniors to look at him and refer to him as a tribal soldier and a bigot. That obviously is not very reputable. Besides, the Plaintiff also established the malicious effect of the petition when he told the Court that his wife resigned from the famous Nigeria Army Officers Wives Association as a result of the effect of the petition.

If actually the 1st Defendant wanted an investigation, he should have contacted the Police. But because he was out on a malicious mission, he avoided reporting to the Police but went straight to the military and even as far back as the Amnesty International. *That action by the 1st Defendant and the petition as published is malicious and the publication libelous and the whole action very defamatory.* So this Court holds.

From the testimony of the 2nd Defendants' Witness, it is clear that he came to Court for basically "another case" – on what he called "the threat to the life of the 1st Defendant" which was not in issue in this case. May be that he was called to come as a support for the 1st Defendant. His whole testimony has little or no weight. It is unrelated to the issue before the Court and has no evidential value at all.

The 1st Defendant admitted making the publication. Such fact needs no further proof as it has established the claim of the Plaintiff in that regard.

The Plaintiff had proved that the publication had lowered his dignity before the members of the public especially the Army community and the society at large – especially in the Human Right circle. He showed that the publication/petition has exposed him to hatred, contempt and ridicule. It has affected his confidence and his command and control of men and women in his work place. He has shown also that it has caused trauma and stigma to him personally and his wife who resigned her membership of Nigeria Army Officers Wives Association.

The Plaintiff has by presenting the petition which was copied to several military outfits and Amnesty International and Human Right Commission shown that the publication was permanent as these Organizations have the petition filed in their respective offices. Obviously, the petition and its content had conveyed defamatory meaning to those who read same both the addressees and others who came in contact with the publication/petition. Naturally, the Plaintiff has also shown and established that the petition/publication had affected his reputation in his profession as a Colonel in the Nigerian Army. One wonders why a mere installation of CCTV Camera should degenerate to the level of writing petition for investigation of the Plaintiff. Meanwhile, there is even a pending Suit on the issue.

The Plaintiff proved his case and shifted the burden to the Defendants but the Defendants failed to shift the burden back as it did not defend his actions. The 1st Defendant admitted those facts, so they need no further proof.

It has been held in plethora of cases that any person who have discharged the onus on him and has established or proved his case, is entitled to be paid damages. That is so even in the case of Defamation. That is what Court held in the cases of:

FBN PLC V. A-G Federation

(2018) 7 NWLR (PT. 1617) 121 @ 174 Paragraphs F – G

EDOSACA V. Osakwue

(2018) 16 NWLR (PT. 1645) 199

The Plaintiff, having established his case, is entitled to his claim and payment of monetary compensation. The quantum of such damages both materially, financially and otherwise is determined by the Court. It is the recompense given to a person who is injured by the action of another person for the wrong done to the injured.

Having analyzed the stances of the parties vis a vis what the law says, it is the humble view of this Court that the Plaintiff – Emmanuel Chukwu has proved his case of defamation against the Defendants – Amos Joro and the Joro’s Family who are 1st & 2nd Defendants in this case respectively. He is entitled to compensation. This Court therefore enters Judgment in the favour of the Plaintiff – Emmanuel Chukwu to wit:

- 1. Prayer No. 1 granted as prayed.**
- 2. Prayer No. 2 granted as prayed.**
- 3. The Court hereby Order the 1st & 2nd Defendants jointly and severally to tender an apology to the Plaintiff in writing.**

Such letter of apology should be copied to the Chief of Army Staff Abuja, Chief of Defence Staff Abuja, GOC 3rd Armoured Division Jos, Plateau State and Nigeria Army Corp of Artillery Minna, Niger State and to Amnesty International and Human Right Commission, *all the places where the petition was served.*

4. The 1st & 2nd Defendants should also pay the Plaintiff the sum of Fifty Thousand Naira (N50, 000.00) as cost of the Suit.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2022 by me.

K.N. OGBONNAYA
HON. JUDGE