

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
DELIVERED ON THURSDAY THE 20TH DAY OF APRIL 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. FCT/HC/CV/3024/2018

1. SALIHUMOHAMMED LUKMAN =====PLAINTIFFS
2. FOLORUNSHO ALUKO
3. REGISTERED TRUSTEES OF PROGRESSIVE GOVERNORS FORUM
AND

1. DAAR COMMUNICATIONS PLC
(Televising under the name and style of AIT)
=====DEFENDANTS
2. AKWA ONAH (AIT Correspondent)

JUDGMENT

The Plaintiffs by a Writ of Summons on the 5th of February 2019 filed this suit against the Defendants claiming as follows:-

- a. A declaration that the publication of the names and pictures of the 1st and 2nd Plaintiffs by the Defendants in the course of broadcast of 4pm on AIT News of 26th August 2018 and repeated at 12:00am and 12pm News on 27th August 2018 as persons alleged to have embezzled the money donated by some governors to support victims of year 2014 Nyanya Bomb blast is malicious, slanderous, libellous and has lowered the good reputation of the plaintiffs in the eyes of the general public.
- b. A declaration that the act of mentioning the names of the plaintiffs in the course of the 4pm News broadcast on AIT on the 26th of August 2018 and repeated in 12am, 12pm and 4pm broadcasts of 27th August 2018 as the alleged embezzlers of the money donated to support the 2014 Nyanya Bomb blast victims was malicious and done with the intention of slandering the good names of the plaintiffs, thereby

damaging the hard earned reputation of the plaintiffs in the eyes of the reasonable members of the public.

- c. An Order directing the defendants to retract the news item as it relates to the plaintiffs by airing an apology via African Independent Television (AIT) for one week and a written apology which shall be published in two national dailies circulating all over Nigeria preferably Thisday and Daily Trust Newspapers.
- d. An Order directing the defendants jointly and severally to pay the plaintiffs the sum of N200, 000, 000. 00 (Two hundred million naira) only being special damages for defaming the character and good reputations of the plaintiffs without any justification.
- e. An Order directing the defendants jointly and severally to pay the plaintiffs the sum of N50,000, 000. 00 (Fifty million naira) only, being exemplary damages for defaming the character and good names of the plaintiffs.

The defendants on the other hand, filed their statement of defence/counterclaim, claiming the following:-

- a. Special damages in the sum of N5, 000, 000. 00 (Five Million Naira)
- b. Exemplary damages in the sum of 10, 000, 000. 00 (Ten Million Naira)

The facts that gave rise to this suit are that after bombing at Nyanya Abuja on April 15, 2014, eight governors made donations of N10, 000, 000. 00 (Ten million naira) each to the victims of the terrorist attacks. That the 3rd Plaintiff commissioned a verification exercise of the victims and payment made to those verified.

That on Sunday August 26, 2018, the defendants during the 4pm News on Africa Independent Television broadcast a story "Victims of Terrorism; Bomb blast survivors allege embezzlement of donation". That the 2nd

Defendant who is the correspondent of the story called the 1st plaintiff on phone, who informed her that he was away from office on an official assignment and could not answer her questions and advised her to contact the 2nd plaintiff. That instead of reporting the above interaction, the 2nd Defendant reported falsely that **"Efforts to get the Director General of the Progressive Governors Forum, Salihu Lukman who is alleged to be in custody of the money donated by some governors to support the 2014 Nyanya Bomb Blast Victims were not successful as he claimed to be indisposed. He (Salihu Lukman) however referred AIT to his colleague Funsho Aluko who refused to respond to phone calls or messages sent to him"**.

That the entire contents of that news item as it relates to the 1st and 2nd Plaintiffs is false and defamatory targeted at damaging the reputation of the Plaintiffs as plaintiffs claimed that the above words were not what transpired between the 1st plaintiff and the 2nd defendant and that they were defamed by the above words which were false.

Upon parties exchanging pleadings, the matter proceeded to trial on the 23rd of January 2020. The Plaintiffs in proving their case, called three (3) witnesses; Folorunsho Aluko as PW1, Salihu Mohammed Lukman as PW2 and Ebenezer Olaleye (a Chartered Accountant) as PW3, who adopted their witness statement on oath as their evidence in this case and tendered the following as exhibits: -

1. Curriculum/Vitae of PW1, Folorunsho Sunday Aluko admitted as Exhibit A.
2. Video of the news in a CD admitted as Exhibit B.
3. 5 pages of payment schedules for Nyanya Bomb Blast victims as Exhibit C.
4. Profile of Salihu Mohammed Lukman as Exhibit D.

On the other hand, it is the case of the Defendants that on the 4th anniversary of the 2014 Nyanya terrorist attack, the 1st Defendant commissioned the 2nd Defendant to produce a news story about the plights of victims of the terrorist attack. That in course of production, 2nd Defendant interviewed some victims who informed her that they are yet to receive any money from the money donated by the trustees of the 3rd Plaintiff and that the donations was in custody of the 1st Plaintiff. That in line with responsible journalism, 2nd Defendant got the 1st Plaintiff's number on that day being the 20th of August 2018 and called him requesting an interview to get his side of the story but when he did not answer, she sent him a message whereupon he responded he was out of town and referred her to his colleague, the 2nd Plaintiff. That what was reported is fair and an accurate report of what transpired between her and the 1st and 2nd Plaintiffs as what was reported was done in good faith and without malice. That the Plaintiffs did not suffer any damage and the claims of the Plaintiffs be dismissed with cost. In their counter claim, Defendants claimed the sum of 5M as professional fees issued by the firm of BVM solicitors to defend this suit. The Defendants in proof called two witnesses in defence that is; Akwa Onah as DW1 and Kayode Olatunji as DW2 who adopted their witness statement on oath as evidence and tendered the following as Exhibits: -

1. WhatsApp chat between the 2nd Defendant and the 1st Plaintiff and the message sent by the 2nd Defendant to the 2nd Plaintiff along with certificate of authentication as Exhibit E1 and E2.
2. Letter written by I. C. Ejiofor dated 25/5/2017 addressed to the Chairman EFCC admitted as Exhibit E3.

3. Certified true copies of New Telegraph Newspaper, pages 27, 28 and 29 of July 27, 2017 and pages 29 and 30 of the New Telegraph Newspaper of July 28, 2017, as Exhibits E4 and E5.
4. 3 pages of Nairaland publication as Exhibit D6 and Certificate of authentication as Exhibit D7.

At the close of trial, the Court adjourned the case for adoption of written address. The Defendant's Counsel filed their written address and raised two (2) issues for determination as follows:

1. Whether the Plaintiffs have proved their case of defamation against the defendants to entitle them to judgement.
2. Whether the Defendants have proved their counter claim against the Plaintiffs.

Arguing issue 1, Defendant's Counsel submitted that by the Defamation Act Cap 492, Laws of the Federal Capital Territory, the Plaintiffs in addition to the conditions laid down by judicial precedents, must prove that the publication is false and was made with a malicious intent as proof of falsehood of the statement alone does not prove the tort of Defamation in the Federal Capital territory, which the Plaintiffs have failed to prove.

Submitted that the Defendants have a legal justification to publish the story and the general public had interest in it to receive it. Submitted further that the Plaintiffs did not plead the words or statements published by the Defendants alleging same as the law is that the libellous words be reproduced in its original form.

It is also Defendants' contention that the new issues raised in the statement of defence which were not replied to by the Plaintiffs is deemed admitted particularly as it presented the Plaintiffs the opportunity to challenge the issue of embezzlement raised by the Defendants. Moreso as they failed to produce the financial report of the 3rd Plaintiff.

Counsel submitted finally that all the Plaintiffs' witnesses from the evidence before the Court gave inconsistent evidence and contradicted themselves and ought not to be believed and urged this Court to resolve issue 1 in favour of the Defendants.

Arguing issue 2, Counsel for the Defendants submitted that the Plaintiffs, who are defendants to the counterclaim, did not file a defence to the counterclaim, neither did they lead evidence to contradict the Defendants' claims. Counsel therefore urged the Court to hold that the Defendants have established their counterclaim and are entitled to the reliefs sought in their counterclaim.

Counsel relied on the following cases: -

1. Chilkied Security Services & Dog Farms Ltd v. Schlumberger (Nig) Ltd & Anor. (2018) LPELR-44391 (SC),
2. Oruwari V. Osher (2013) 5 NWLR (Pt.1348) 535.
3. Agbanelo V. Union Bank of Nigeria Ltd (2000) 7NWLR (Pt.566) 534.
4. Sketch Publications Ltd v. Ajagbemokeferi (1989) 1 NSCC 346.
5. Ciroma v. Alli (1999) 2NWLR(Pt.590) 317.
6. Salaudeen v. Okunloye (2019) LPELR-48469 (CA)
7. Emeagwara v. Star Printing and Publishing Ltd & Ors (2000) LPELR-1122 (SC).
8. Obiozor v. Nnamua (2014) LPELR-2304 (CA)
9. Usman v. Firstbank & 2 Ors (2019) LPELR-47086 (CA)
10. AG Abia State v. AG Federation & Ors (2005) 6 SC Pt. 1, 63
11. Bakare v. Ibrahim (1973) 6 SC 205.
12. Emeka v. Chuba Ikpeazu & Ors (2017) LPELR-41920 SC
13. Ajose v. Federal Republic of Nigeria (2011) ALL FWLR [Pt.595] 396
14. Ezemba v. Ibeneme (2004) AL FWLR [Pt.223] 1786.

15. Ighiwiyisi v. Igbidere (2016) ALL FWLR [Pt.819] 1056.
16. Oroja & Ors v. Adeniyi & Ors (2017) LPELR-41985 (SC).
17. Maobison Interlink Associated Limited v. U.T.C (Nigeria) Plc (2013) 9NWLR (Pt.1359)197
18. Kwajafa & Ors v. Bank of the North Ltd (1999) 1 NWLR (Pt.587) 423
19. Onjeh & Anor. v. Mark & Ors (2015) LPELR-25974 (CA).
20. Eghobamien v. Eghobamien (2017) AL FWLR [Pt. 889] 575.

Upon receipt of the Defendants' written address, the Claimants filed their final written address and raised two issues thus;

1. Whether the publication of the statements "VICTIMS OF TERRORISM, BOMB BLAST SURVIVORS ALLEGE EMBEZZLEMENT OF DONATION" and the names and picture of the 1st and 3rd Plaintiff under it is not defamatory?
2. Whether the Plaintiffs have proved a case of defamation of character against the Defendants to entitle them to the reliefs sought?

Plaintiffs' Counsel arguing the first issue submitted that the publication of the statement "VICTIMS OF TERRORISM, BOMB BLAST SURVIVORS ALLEGE EMBEZZLEMENT OF DONATION' and the names and picture of the 1st and 3rd Plaintiff under it as the alleged embezzlers of the fund donated to support Nyanya bomb blast victims is defamatory of the Plaintiffs.

Submitted that the burden is on the Defendants to show that the Plaintiffs have been convicted of embezzlement or alleged to have embezzled money or property entrusted to them by the Trustees or members of the 3rd Plaintiffs. Submitted that the DW2 admitted under cross-examination that to the best of his knowledge, the Trustees and members of the 3rd Plaintiff did not complain of embezzlement of their money by the Plaintiffs, and it is

clear from the testimony of DW1 and DW2 that they have no proof of the allegation of embezzlement of any money.

Submitted that the effect of the publication of the Defendants from the evidence of PW3 is that after watching the news, his impression of the Plaintiffs is that they are criminals and dishonourable members of the society who have embezzled charity money meant to assist the identified victims of Nyanya bomb blast.

Submitted further that the Defendants made the publication to the whole world without lawful justification knowing it to be false and without any shred of evidence of embezzlement against the Plaintiffs. Counsel therefore urged the Court to hold that the Defendants maliciously lied that the Plaintiffs have embezzled monies donated for the Nyanya bomb blast victims.

On the issue of malice, Plaintiff's Counsel submitted that the Defendants who have not pleaded qualified privilege which is one of the exceptions not to prove malice, hence the Plaintiffs are not bound to prove malice as the Defendants defence is that the publication is true and was made with lawful justification and urged the Court to so hold.

Counsel on the production of witnesses to testify as to their reputation after publication, submitted that in this case, all that's required of the Plaintiffs is to show is that the Defendants made the publication and that the publication was false and if the Plaintiffs proved that a libel or slander actionable per se has been publishing without legal justification, his cause is established, and needs not prove that he suffered any actual damage.

Submitted further that the Defendants have failed to prove that the publication and all the comments made in relation to said publication are true and urged the Court to so hold.

On the issue of filing reply, counsel submitted that the Defendants did not introduce or plead new facts to necessitate the plaintiffs to file a reply. Contended that on the issue of counter claim, the Defendants do not have a counterclaim before the Court as the counterclaim must be related to the main action. Submitted finally that the Plaintiffs have made out a case of defamation of character against the Defendants and are entitled to the reliefs sought. The Plaintiffs' Counsel relied on the following: -

1. Chilkied Security Services and Dog Farms Limited v. Schlumberger Nigeria Limited &Anor (2018) LPELR-44391(SC)
2. Sketch v. Ajagbemokeferi (1989) 1 NWLR (PT. 100) 678 AT 695
3. Ayeni v. Adesina (2007) 7 NWLR (PT. 1033) 233
4. Chidi Odinkalu &Anor V. Sir (Dr.) Peter Odili (2022) LPELR-58717(CA).
5. A.C.B.Limited& Ors v. B. B. Apugo LPELR-9(SC)
6. Oilfield Transnational Investment Limited V. First Bank of Nigeria Plc (2020) LPELR-49949(CA)
7. T. O. Oyegbola V. Esso West Africa Inc (1966) LPELR-25323(SC)
8. Tourist Company of Nigeria Limited V. Neo-Vista Properties Limited &Ors (2022) LPELR-58910(SC)

The Defendants filed a reply on points of law contending that the testimonies of all the Plaintiffs' witnesses cantered on the falsehood of the reported interaction between the 1st Plaintiff and the 2nd Defendant as the Claimants written address cannot take the place of evidence. Submitted finally that the publication in the Compact Disk (Exhibit A2), which was played in the Court was not in the original form but mere recording, hence, does not satisfy the requirement of the law and urged the Court to so hold.

I have carefully read and considered the written addresses of respective counsel, as well as the evidence adduced by both the Plaintiffs' witnesses and the defendants' witnesses in support of their respective cases. The issue to be determined in this case is **"whether the plaintiffs have established a case to be entitled to the reliefs as claimed"**.

In this instant case, the grouse of the Plaintiffs case as derived from the facts stated in their pleadings and evidence is that the defendant defamed the Plaintiffs in course of the 1st Defendant's broadcast of the 26th and 27th of August 2018. That as a result of the broadcast, the good names and reputation of the Plaintiffs have been defamed and injured by the report and falsehood of the broadcast.

The law is well settled that in order to succeed in a case of defamation, a plaintiff is required in law to lead credible evidence to establish the presence of the following which must operate altogether:

1. That there was a publication of the alleged defamatory matter to some persons other than the plaintiff 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 and
4. That there are no justifiable grounds for the publication of the words.

The Court in the case of OGBARA v. OGBARA (2022) LPELR-59307(CA) (Pp. 15-16 paras. E-E) in stating the ingredients which a plaintiff must prove to succeed in an action for defamation and the effect of failure to prove same held as follows: -

"A claimant in an action for defamation must prove the following six (6) coterminous constituents or ingredients in

order to succeed: (i) publication [i.e. printing, writing or making] of the offending words by the defendant; (ii) that the words complained of refer to the claimant; (iii) that the words are defamatory of the claimant; (iv) that the words were published [i.e. transmitted, forwarded or delivered] to third parties; (v) that the words were false or lack accuracy; and (vi) that there are no justifiable legal grounds for the publication of the words. See OLOGE & ORS v NEW AFRICA HOLDINGS LTD supra, SKETCH v AJAGBEMOKEFERI supra at 704, CONCORD PRESS (NIG.) LTD v OLUTOLA [1999] 9 NWLR (PT. 620) 578, AFRICAN NEWSPAPER LIMITED v CIROMA [1996] 1 NWLR (PT. 423) 156; ANATE v SANUSI [2001] 27 WRN 26 at 41, ILOABACHIE v ILOABACHIE supra and AYENI v ADESINA [2007] 7 NWLR (PT. 1033) 233 at 259-260 H - A. The onus of establishing these constituents lies on the claimant and failure to establish them will result in dismissal of the action. See MR. JUSTICE SYLVESTER ONU v DAN AGBESE & ANOR [1985] 1 NWLR (PT. 4) 704, [1985] 1 NNSC 722 and NEW NIGERIAN NEWSPAPERS v OTERI [1992] 4 NWLR (PT. 372) 626 at 634."

Hence, it behooves on the Plaintiffs to prove the above ingredients to be entitled to the reliefs as sought. To determine whether the Plaintiffs have proved their case, this Court will examine the claim before it, vis a vis the evidence led by the Plaintiffs' witnesses to establish the presence of each, and all the ingredients required in proving defamation.

For there to be defamation, the first thing that ought to be determined is whether there is publication as the law is trite that the crucial issue in a case of defamation is publication and once a publication is not properly pleaded and proved, the case is bound to fail as it is publication that gives

cases such as this instant case, life. The Supreme Court in the case of DAIRO V. UNION BANK & ANOR (2007) LPELR-913 (SC) Per Chukwuma-Eneh, JSC in P.81 para-C-D, held as follows

“It is settled that there is no actionable wrong in defamation unless there is publication of the defamatory material to at least one person not being the person defamed”.

It is therefore the duty of the Plaintiffs to prove publication both in their pleadings and by credible evidence. In this case, the Plaintiffs pleaded particularly in paragraph 14 of their statement of claim as follows:

“The entire contents of that news item at (sic) it relates to the 1st and 2nd Plaintiffs is false and Defendants knew it to be false but still went ahead to broadcast it during the 4pm news of Sunday August 26, and 12am and 4pm of Monday August 27, 2018..... Recorded version of the news as it affects the Plaintiffs was copied into CDs is hereby pleaded.....

The PW1 in his evidence from his statement on oath as well as under cross-examination testified that he saw the broadcast live when he responded under cross examination thus **“the first day was in the evening of the major news, the 2nd day was the day following it early in the morning. It was broadcasted four times within 24 hours, and I decided to record it. The routine of AIT is to re-broadcast their news. The PVR DSTV has a recording mechanism, so I set it up and recorded it”.**

In proof of the publication, the PW1 tendered the said recording of the broadcast as in Exhibit B.

The PW3 also in his evidence in chief stated that he watched the said broadcast and under cross-examination, reiterated his position that he watched the telecast and called the 1st Plaintiff afterwards.

Indeed the Defendants in their statement of defence admitted to the fact that there was a broadcast on the 26th and 27th of August 2018 where the alleged defamatory statement was made, However, the Defendants' in their reply on points of law contended that the publication ought to be in the original form, which is not the case as provided by the Plaintiffs as the said publication before this court as in Exhibit B is a recording and not in its original form. The defendants in their evidence have not denied the publication as 2nd Defendant did not controvert nor challenge the contents of the said publication hence facts admitted needs no further proof. However, defendants counsel has raised some salient points in his reply on points of law to the effect that the said libelous statement must be tendered in its original form and cited the case of EGHOBAMIEN VS. EGHODAMIEN (2017) ALL FWLR (Pt. 898) 575 and concluded that the compact Disk containing the libelous statement which has already been admitted in evidence (without objection from Defendants counsel) was not in its original form. Defendants counsel also cited 2 other cases in support of his submission. All three (3) cases cited by defendants' counsel are in respect of petitions, letters and articles containing libelous statements and do not have any bearing with this case as the case before this court is audio visual libel and not print media. He who asserts must proof and Defendants counsel failed to cite cogent evidence to back up his submission. Hence the court will discountenance same. However, from evidence of both parties before this court, it is unchallenged and uncontroverted that the publication was indeed broadcasted by the Defendants on national television. Hence it is not in contention that the said publication was disseminated through the apparatus of the Defendants to the Nigerian public. I therefore hold that there was indeed a publication of the Defendants ----- to the general public.

I will take the 2nd & 3rd ingredients together that the alleged defamatory words must convey defamatory meaning and the statement must be false.

The Plaintiffs in this case sought for declaratory reliefs from this Court that the publication was defamatory to them and in line with Order 15 Rule 3(2) of the Civil Procedure Rules 2018, the Plaintiffs must set out the material facts and matters on which he relies in support of their allegation. The Court in the case of *EKONG V. OTOPI & ORS (2014) LPELR-23022 (SC)* held that in an action for libel, a Plaintiff must set out in his statement of claim, the exact words which he alleges to be defamatory of him to enable the Court, determine whether they constitute a ground of action. Hence, the exact words complained of are essential and must be set out in the statement of claim.

In this case, from the statement of claim, the Plaintiffs set out the alleged defamatory words from paragraph 12 as follows:-

"Instead of reporting the interaction between the 1st Plaintiff and the 2nd Defendant, the 2nd Defendant reported rather falsely that "EFFORTS TO GET THE DIRECTOR GENERAL OF THE PROGRESSIVE GOVERNORS FORUM, SALIHU LUKMAN WHO IS ALLEGED TO BE IN CUSTODY OF THE MONEY DONATED BY SOME GOVERNORS TO SUPPORT THE 2014 NYANYA BOMB BLAST VICTIMS WERE NOT SUCCESSFUL AS HE CLAIMED TO BE INDISPOSED..." The 2nd Defendant further reported rather falsely that *"HE (SALIHULUKMAN), HOWEVER, REFERRED AITTO HIS COLLEAGUE FUNSHO ALUKO WHO REFUSED TO RESPOND TO PHONE CALLS OR MESSAGES TO HIM..."*

The Plaintiffs went further in paragraph 16 to state that their good names and reputations have been defamed and injured by the report and the falsehood broadcast by the Defendants as news item on the said 26th and 27th of August 2018 with the following particulars;

“The 2nd Defendant lied that the 1st Plaintiff “Claimed to be indisposed” as the 1st Plaintiff simply said he was away on official assignment.

The Defendant published the name of the 1st Plaintiff and showed his picture as person “who is alleged to be in custody of the money donated by some Governors to support the 2014 Nyanya Bomb Blast Victims.....”

I have taken the time to set out and underline the alleged defamatory statements and Counsel for the Defendants have argued that the words are not defamatory of the Plaintiffs as what transpired between the 2nd Defendant and the Plaintiffs is what was reported.

For words to be considered defamatory, the test is whether reasonable men to whom the publication was made will likely understand them to be defamatory. The Plaintiffs to prove the defamatory nature of the broadcast called a witness who testified to the fact that after watching the news and seeing picture of the 1st Plaintiff, he went away with the impression that the Plaintiffs are criminals, committed crime and are morally bankrupt.

On the other hand, the Defendants are contending that what was reported was what transpired and is no way defamatory on the Plaintiffs. In proof the Defendants tendered Exhibit D1 which is a conversation between the 2nd Defendant and the 1st Plaintiff wherein the 2nd Defendant upon placing several calls to the 1st Plaintiff which went unanswered, sent a message to wit:

“2nd Defendant- Good morning sir. My name is Akwah Onah of AIT. I am doing a report and i need to interview you. I will want to know when u will be available so I can come.

1st Plaintiff: (replying) what is the report about.

2nd Defendant: (responding) it is about the victims of the Nyanya bombing.

1stPlaintiff (replying) I am out of town. Talk to my colleagueFunsho Aluko.....”

Now, can it be said that the 2nd Defendant saying 1st Plaintiff “claimed to be indisposed defamatory?

The Cambridge Dictionary defined the word indisposed to mean “not willing” “unwell”.

Oxford Learner’s Dictionary defined it as “unable to do something because you are ill, or **for a reason you do not want to give**”.

The word can also mean disinclined, unwilling, adverse Hence, in the context of the broadcast, the 2ndDefendant stating that the 1st Plaintiff is indisposed is the fact of what transpired between them as he responded he was out of town. From the contents of Exhibit D1, the 1st Plaintiff had the option of stating when he would be available as that option was presented to him, instead, having known what the interview was about he referred the 2nd Defendant to the 2nd Plaintiff, which in my view,clear that he was unwilling/indisposed to granting the interview himself for reasons he did not render to the caller. Thus, it is my view that the 2nd Defendant reported what transpired between her and the 1stPlaintiff.

On the second part which is the publication of the name and picture of the 1st Plaintiff as the person alleged to be in custody of the money donated, the Defendants have raised the defence of justification and the law is trite as stated in the case of PERETU v. HARVEY GLOBAL COMMUNICATIONS LTD & ANOR (2017) LPELR-45199(CA) Per NDUKWE-ANYANWU, J.C.A in (Pp. 36 paras. C) held,

“A defendant who is relying on a plea of justification to avoid liability in respect of an allegation of defamation against such a defendant has indeed, an uphill task. To succeed he must prove that very strictly, the truth of every

allegation of fact made in the libel. Although, it is not necessary to prove the truth of every word in the libel, the defendant, is however obliged to prove that the main charge or gist of the libel is true. He need not justify the statements or comments which do not add to the string of the charge. Per Ejwunmi JSC in *ACB v. Apugo* (2001) 2 SC page 215, *Dumbo vs. Idugbe* (1983) 1 SCNLR page 29."

In this case, the PW1 under cross examination confirmed that he, along with the 1st Claimant and the chairman of the forum are signatories to the said account where the funds donated to the victims were lodged, hence, the funds are in their charge or custody as reported by the 2nd Defendant. From evidence before me the following facts as reported by the Defendants are correct.

1. That the 1st Plaintiff was indisposed as at the time the 2nd Defendant called him.
2. That the 1st Plaintiff is one of the signatories to the account of the Nyanya Bomb Blast hence the donated funds are in his custody.

That the word words "alleged" does not in anyway form an indictment on the person of the Plaintiffs and cannot in any way be seen as defamatory.

The Plaintiffs in relief 1 are claiming thus :-

"A declaration that the publication of the names and pictures of the 1st and 2nd Plaintiffs by the Defendants in the course of broadcast of 4pm on AIT News of 26th August 2018 and repeated at 12am and 12pm News on 27th August 2018 as persons alleged to have embezzled the money donated by some governors to support victims of 2014 Nyanya Bomb blast is malicious, slanderous, libellous and has

lowered the good reputation of the plaintiffs in the eyes of the general public.”

However, they failed to lead facts and evidence to show that the Defendants published their names and photographs as persons alleged to have embezzled the money donated by some governors to support victims of the 2014 Nyanya Bomb Blast. Moreso as the PW3 confirmed under cross examination that the broadcast with the picture of the Plaintiffs did not call the Plaintiffs thieves.

What is being sought to be declared is completely different from the defamatory comment in Plaintiffs' statement of Claim. The Plaintiffs are not claiming that the entire publication was defamatory but a particular content/part of the publication which Plaintiffs have failed woefully to prove. The Plaintiffs attempt to shift the goal post too late in the game by arguing in their written address that the alleged defamatory words are "VICTIMS OF TERRORISM, BOMB BLAST SURVIVORS ALLEGE EMBEZZLEMENT OF DONATION..." showing the names and the pictures of the Plaintiffs, cannot avail the Plaintiffs more so as the reliefs particularly reliefs (a) and (b) is at variance and a complete departure from the facts in the pleadings and evidence as Plaintiffs failed to lead evidence that Defendants published their names and pictures rather evidence was in proof of second relief to the fact that Defendants mentioned their names.

It is therefore my view that the Plaintiffs have failed to prove the essential ingredients contemporaneously to be entitled to the reliefs sought having held that the alleged defamatory words do not convey defamatory meaning and in fact the words used by the 2nd Defendant are true, the case of the Plaintiffs fails, and is accordingly dismissed.

The next issue to be dealt with is whether the Defendants are entitled to the reliefs claimed in their Counterclaim.

The law is well settled that a counterclaim is an independent, separate, and distinct claim which counterclaimant must prove and must succeed on the strength of their case to be entitled to judgement. See the case of TOURIST COMPANY OF NIGERIA LIMITED v. NEO-VISTA PROPERTIES LIMITED & ORS (2022) LPELR-58910(SC) Per GARBA, J.S.C in (Pp. 50-51 paras. B-B) held

"The law is now beyond argument that a counterclaim made in a suit or action is a separate and independent action from the main action in which it was made and for the purposes of determination, the counter-claimant becomes the Plaintiff whilst the party against whom the counterclaim is made becomes the Defendant. The initial burden of proof of a counterclaim, just like in the main claim, lies on the party against whom judgment will be given if no evidence at all was called in the case and desires that judgment be entered in his favour on the basis of assertions he makes in the counterclaim. A counter-claimant therefore bears the burden of proof imposed by the provisions of Sections 131, 132 and 133 (1) of the Evidence Act; in respect of the counterclaims he makes in the main action and unless he satisfactorily discharges that burden, the counterclaim will be liable to be dismissed..."

Hence, a Plaintiff who fails to file a reply in defence of the Defendants' counterclaim may have the claim resolved against them however, for the Defendants to succeed, they must establish their claim. In this instant case, the Plaintiffs did not file a reply to the Defendants counterclaim but challenged same in the written address, contending that the counterclaim

before this Court is not related to the main action as what is being claimed by the Defendants as counterclaim is basically the cost of litigating this suit. The Defendants filed a reply but failed to touch on this issue in their reply on points of law.

Now the question that begs to be answered is whether the Defendants claim for cost can be claimed as a counterclaim. The Supreme Court in the case of *GOWON V. IKE-OKONGWU* (2003) 5 NWLR (Pt.515) 38 SC, refused to allow a counter claim which cause of action accrued after the date of the issuance of the writ. See also the case of *JOINT PROJECT DEVT COMPANY & ORS v. AKINLADE* (2014) LPELR-22559(CA) in (Pp. 37-38 paras. B)

In this instant case, the Defendants cause of action in the counterclaim arose after the writ of the Plaintiffs were filed, hence the Defendants bringing this claim for cost as a counter claim cannot avail the Defendants. Be that as it may, even if the claim can be considered under the counter claim, the Defendants have not successfully proved the counterclaim to be entitled to the reliefs sought as the Defendants from the statement on oath of the DW1 testified in paragraph 26 that they paid the sum of N5,000,000.00 as professional fees to defend the Plaintiffs suit and the 1st Defendant has the receipt of the payment of the said sum, issued to them by the firm of BVM Solicitors, however, the Defendants failed to furnish this Court with the said receipt. The law is trite that special damages must be strictly proved. In the case of *Onyiorah vs. Onyiorah & Anor* (2019) LPELR - 49096 (SC) 6, paras E - F, the Supreme Court, per Rhodes-Vivour, JSC held that:

"Special damages must be specially pleaded and strictly proved by the claimant. To succeed in a claim for special damages the claimant must plead the special damages and give necessary particulars and adduce credible evidence in

support. The claimant must satisfy the Court as to how the sum claimed as special damages was quantified."

Although the counterclaim is unchallenged, the law is that unchallenged evidence is not enough to prove special damages where the claim is required to be proved by documentary evidence such as this instant case by tendering the receipt for the sum paid to their solicitors, which the Defendants admitted was in 1st Defendants custody, but none was tendered. This relief fails for failure to prove same.

The Defendants also claimed for exemplary damages this relief also fails as the Courts have stated circumstances where exemplary damages can be awarded. They can be made in addition to normal compensatory damages and should be made only: a. In a case of oppressive, arbitrary, or unconstitutional acts by government servants; b. Where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff, and c. Where expressly authorised by Statute. See the case of NURSING AND MIDWIFERY COUNCIL OF NIGERIA v. PATRICK OGU & ANOR (2019) LPELR-53899(SC) (Pp. 15-17 paras. F). Flowing from the above, it is my view and I sohold that the counterclaim of the Defendants fails to qualify under the above circumstances where exemplary damages can be granted. Consequently, the counterclaim of the Defendants is hereby dismissed. Both the claim of the Plaintiff and counter claim of the Defendants are hereby dismissed.

Parties:Absent

Appearances: Martins Joseph appearing for the Claimant.
OkechukwuOpara appearing for the Defendants.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
20TH APRIL, 2023