

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA,
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
COURT: 28
DATE: 4TH APRIL, 2023

FCT/HC/CV/2435/2016

BETWEEN

ALHAJI AHMED BABA IBRAHIM-----

CLAIMANT

AND

1. MR. FRIDAY ILENIKHENA
2. THE REGISTERED TRUSTEES OF
NON-ACADEMIC STAFF UNION OF EDUCATIONAL
AND ASSOCIATED INSTITUTIONS (NASU)

DEFENDANTS

JUDGMENT

This Judgment is in respect of the Suit commenced at the behest of the Claimant by way of a Writ of Summons filed alongside accompanying processes on the 30th of August, 2016 wherein the Claimant sought the following claims against the Defendants to wit:-

- a. A DECLARATION THAT THE WORDS COMPLAINED OF WRITTEN BY THE DEFENDANT OF AND CONCERNING THE PLAINTIFF ARE LIBELOUS AND INJURIOUS TO THE PLAINTIFF'S CREDIT AND REPUTATION.

- b. THE SUM OF N 100,000,000.00 AS EXEMPLARY AND AGGRAVATED DAMAGES FOR LIBEL.
- c. AN ORDER OF PERPETUAL INJUNCTION RESTRAINING THE DEFENDANTS EITHER BY THEMSELVES, OR THEIR SERVANTS, AGENTS OR OTHERWISE HOWSOEVER FROM FURTHER PUBLISHING THE SAID WORDS COMPLAINED OF OR ANY SIMILAR WORDS INJURIOUS, DEBASING, FALSE AND DEFAMATORY TO THE PLAINTIFF.
- d. N 2,500,000.00 COST OF THIS SUIT.

The 1st Defendant in response filed his amended Statement of Defense and accompanying processes on the 16th of March, 2018 pursuant to an order of Court urging this Honourable Court to dismiss the Claimant's Suit.

The 2nd Defendant equally entered appearance and filed their Statement of Defense on 26th January, 2018 and prayed the Court to dismiss the Claimant's suit against the them.

On the basis of this, parties joined issues and trial commenced. The Claimant personally testified as Witness and also called another Witness- Mr. Rufus O. Olabisi who testified in support of the Claimant's Case. The following documents were tendered in support of the Claimant's Case to wit-

1. Redeployment of Senior Finance and Accounts Staff Memo dated 11thFebruary, 2011.
2. Posting of Accountants in the Council Circular dated 28thFebruary, 2011.
3. Posting of Accountants in the Council letter dated 4thMarch, 2011.
4. Posting of Accountants in the Council Letter dated 22ndMarch, 2011.
5. Posting of Accountants in Council letter dated 27thApril, 2011.
6. Posting of Accountants in Council letter dated 25thOctober, 2011
7. Illegal submission and diversion of NASU dues letter dated December 16, 2015.
8. Illegal submission and diversion of NASU dues letter dated January 19, 2016
9. Illegal submersion and diversion of NASU dues letter dated 25thApril, 2016.
10. Decision reached at Management Committee meeting letter dated 11thMay, 2016.
11. Invitation to address Committee later dated 16thMay, 2016.
12. Letter addressed to the executive secretary NERDC dated 17thMay, 2016.
13. Memo on submission of investigation committee report dated 6thJune, 2016.

14. Report on the loan facility dated 26th July, 2018
15. Receipt dated 26th June, 2018
16. Remita receipt dated 29th June, 2018.

Upon close of the case of the Claimant, the 1st Defendant proceeded to open its case, testifying for himself. At this stage of trial, the following documents were tendered on behalf of the 1st Defendant in support of his case to wit-

1. NASU Ceremony letter dated 13th April, 2015
2. Guidelines for Appointment, promotion and discipline
3. Public Service Rules (2008)
4. Civil Service Handbook
5. Constitution, Rules and Order of Business
6. Reposting of Accountants Letter dated CTC 7th March, 2011
7. Reposting of Accountants Letter dated CTC 25th October, 2011
8. Investigation Panel on allegation of posting of accountants dated 9th June, 2011
9. Report for submission of written evidence dated CTC 27th June, 2011
10. Reposting of Accountants in the Council letter dated 7th April, 2011 CTC
11. Reposting of Accountants in the Council letter dated 29th April, 2011

12. Withdrawal of Protest Letter dated 1st August, 2011 CTC
13. Withdrawal of protest letter dated 9th November, 2011
14. Request for 28 days in lieu letter dated CTC 13th December, 2011
15. Original Receipt dated 9th September, 2021

The 2nd Defendant also called a Witness and tendered Exhibits DW8 to 11 in support of their case. At close of the case, the 2nd Defendant, 1st Defendant and Claimant proceeded to file their Final Addresses on the 10th of January, 2023, 16th of December, 2022 and 20th of January, 2023 respectively.

The 2nd Defendant raised a sole issue in its Final Address for determination by this Honourable Court to wit:

a. WHETHER THE 2ND DEFENDANT CAN BE HELD VICARIOUSLY LIABLE FOR THE LIBELOUS WORDS OFFERED BY THE 1ST DEFENDANT AGAINST THE PLAINTIFF AS ITS DISCLOSED PRINCIPAL.

ARGUMENT OF THE 2ND DEFENDANT:

Counsel on behalf of the 2nd Defendant argued that as the chairman of the NERDC branch the 1st Defendant is expected to act within his express authority as stipulated by the constitution of the union. *GLOBAL SOAP AND DETERGENT IND. LTD V BELLO (2013) ALL FWLR [PT. 679] Ration 2*

Counsel maintained that the 1st Defendant is in law the agent of the 2nd Defendant and he is expected to act for and in the interest of his principal the 2nd Defendant. However, for him to bind the principal he must be seen to act within his express authority. That is he must act within his powers as the branch chairman of the 2nd Defendant as expressly stipulated under the constitution of the 2nd defendant. Failure to do so he will be seen as acting outside his express authority and powers and will not be seen as acting for the interest of his principal for the purposes of binding the principal.

Counsel submitted that letter was not discussed at the branch meetings before being issued against the Plaintiff, hence, the 1st defendant is on a frolic of his own and should be held personally liable for whatever the purport of that letters may ensue.

Counsel further maintained that the content of the letters complained to be defamatory by the Plaintiff against his person are issues that the 1st Defendant does not have the authority to engage the authority of NERDC on or any of its personnel. The subject matter of the letters bothers on Branch check-off dues which the 2nd Defendant constitution under Rules 21 (1) provides thus:

"The funds of all units of the Union shall be the property of the Union and nothing in these rules shall prejudice the right of the

National Executive Council to institute proceedings to recover any money due to, or other property of the Union "

In other words it the exclusive jurisdiction of the 2 Defendant to engage any institution including NERDC on matters that bothers on check-off dues of the Branch. Where it is seen or found that the primary place of employment of members of the Union is not remitting the monthly check-off dues of the members of the Branch it is the exclusive responsibility of the 2nd Defendant to engage such institution under Rules 21 with a view to recovering such funds which includes but not limited to institution of proceedings. In this light it is not within the express powers of the 1st defendant to engage the Plaintiff and by extension NERDC on matters that bothers on monthly check-off dues which is the fund of the 2nd Defendant.

The express and necessary implication of the action of the 1st defendant, according to counsel is that he was acting outside his express authority and powers as contained in the Union constitution and to that extent he cannot be said to bind the principal on such matters. Though it could seem that he was acting for the interest of the Union but he actions were in bad faith as a matter of fact.

Counsel on behalf of the 2nd Defendant urged the court to dismiss the claim of the plaintiff against the 2nd defendant in its entirety.

The 1st Defendant in his final address equally raised a sole issue for determination by this honourable Court to wit:

“Whether the Claimant has proved his case on balance of probabilities to be entitled to the reliefs claimed in this case”

ARGUMENT OF THE 1ST DEFENDANT

Learned counsel to the 1st Defendant submitted that the law is trite that in a civil case, the burden of proof is upon the parties who substantially assert the affirmative of an issue and would fail if no evidence were adduced. See S. 136 of the Evidence Act 2011.

The law is also trite that civil suits generally are decided on the relative strength of the cases presented by the parties upon the preponderance of evidence resolved in the imaginary scale principle. The Plaintiff must succeed on the strength of his case and not on the weakness of the defence although he is entitled to rely on the evidence revealed in such weakness to strengthen his case. Counsel relied on the case of *OTUNBA OWOYEMI VS PRINCE YINUSA OLADELE ADEKOYA & 2ORS 2013 12 SCNJ 131 at 154.*

Counsel submitted that the plaintiff has failed woefully to produce evidence in support to his case.

Counsel noted that the Plaintiff who testified as PW1 in proof of his case under cross -examination by the 1 Defendant's counsel, told the court unequivocally that he is not a lawyer and that his lawyer prepared his witness statement on oath and after preparation, his lawyer took it to him and he signed it in his office at Sheda, Kwali, Abuja.

Counsel submitted that despite the attempt by the Plaintiff (PW1) to retract or repair his earlier evidence on oath as per his signing of the witness statement on oath in his office, the uncontroverted and undeniable fact remained that the Plaintiff (PW1) did not sign the witness statement on oath before the Commissioner for Oath but in his office at Sheda, Kwali, Abuja before or in the presence of his counsel who took it to him after preparing same.

Consequently, his evidence-in-chief in proof of his case is defective and incompetent and did not prove his case. Also, the documents relied on in the said witness statement on oath by the Plaintiff (PW1) and tendered by him upon his adoption of the said witness statement on oath are also of no evidential value and incapable of proving the Plaintiff's case.

Counsel referred the court to the case of *ASHIRU VS INEC* where the Supreme Court held that "The law is that deposition must be signed by the deponent in the presence of the person authorized to

administer oaths, failing which the deposition on oath shall be, must be, discountenanced"

Counsel further submitted that the only competent evidence left before the Honourable court after the incompetent witness statement on oath/evidence of the Plaintiff(PW1), is the evidence of PW2 which is grossly insufficient to establish or prove the Plaintiff's case as the essential evidence needed to prove defamation such as the alleged defamatory letters (Exh. PW2C, PW2G, PW2H and PW2I) were not tendered by the PW2 but by the Plaintiff (PW1) pursuant to and along with the defective Plaintiff's witness statement on oath.

Counsel maintained that the material evidence required is the evidence of the third party to whom the letters and/ or statements were served or published to by the Defendant and not the evidence of a person whom the letters were not served on and/or published to such as the PW2 who only became aware or privy to the said letters/statements only by virtue of been given the letters by the authority or having access to same by being a member of the panel that investigated the letters/statements.

Counsel also argued that the Claimant has failed to establish by evidence that the alleged letters and/or statement/words contained in them and alleged to be defamatory or libelous of the Claimant

were published as publication is the bedrock and/or one of the most essential ingredients of defamation. *AMUZIE V. ASONYE 2011 6 NWLR (PT. 1242) pg. 19 at pg.40 paras. E-G.*

Counsel further submitted that in the case at hand, the Plaintiff did not state the name or names of persons to whom the alleged letters and/or statements (Exh. PW 2C, PW2G, PW 2H and PW2I) were published to in any of the paragraphs in the statement claim thereby rendering the statement of claim not only defective but particularly leaving the publication of the said letters/ statement unproved.

Counsel submitted that assuming but not conceding, that the Plaintiff has proved the publication of the alleged letters/ statements and/or proved that the alleged letters and statements were defamatory of him, the 1st Defendant is entitled to the complete defence of qualified privilege in writing the letters and serving or publishing same to the Executive Secretary who is the Chief Executive Officer of Nigerian Educational Research and Development Council (NERDC), Sheda, Abuja, and that the defence of qualified privilege being a complete defence to the assertion/allegation of the Plaintiff that the alleged letters and/or statements are malicious or actuated by malice and therefore defamatory of him, the 1st Defendant should be discharge or held

not liable to the allegation of defamation and the Plaintiff's case dismissed.

The Claimant in his final address also raised a sole issue to wit:

“Whether given all the facts and circumstances of this case, especially having regard to the state of pleadings and evidence on record, the Claimant has proved his claims as required by law and is therefore entitled to the reliefs sought in this Suit.”

ARGUMENT OF THE CLAIMANT

Counsel argued that given all the facts and circumstances of this case, especially having regard to the state of the pleadings and evidence on record, the Claimant has proved his case against the Defendants and is therefore entitled to the reliefs sought in this case.

Counsel insisted that there is no denying the fact that the words contained in those letters were published to third parties; those letters were addressed to the Executive Secretary of NERDC, who subsequently caused same to be distributed to other persons. These letters were signed by the 1st Defendant, although co-signed by other persons.

Equally, Counsel posit that the malice latent in the said publication is expressed in the words used in the publication itself. Phrases like "The said purported posting was presented by the Ag. Director, with

ulterior motive", "that the main reason for our posting was because of the inconsistencies and criminalities that are working 'sic' on four legs in the department which we are trying to correct.", etc. are replete with sarcasm and innuendos, all directed at one person - the Claimant in this case.

Counsel therefore submit that the Claimant has proved all the essential ingredients of libel against the 1st Defendant and is thus entitled to the reliefs sought in this suit.

Counsel also maintained that the defence of qualified privilege cannot avail the Defendant. This is because for the defence of qualified to avail the defendant, then the publication must be true in the first place. Where falsehood is apparent in the publication, then malice is implied.

After a thorough appraisal of all processes filed and evidence led during trial, I find it of utmost importance to streamline topical issues in this case to enable this honourable Court ensure justice is done. From the totality of facts before this honourable Court, the major topical issues which if resolved will ensure the justice of this Case are to wit:

WHAT CONSTITUTES LIBEL?

WHAT MUST BE SHOWN TO PROVE LIBEL.

WHAT CONSTITUTES PUBLICATION IN THE EYES OF THE LAW?

WHAT DEFENCES ARE AVAILABLE TO LIBEL.

On the first topical issue above, libel has been defined in a plethora of cases and it is a specie of defamation which is always put into writing. In the case of *SOCIETY BIC S.A. & ORS V. CHARZIN INDUSTRIES LTD (2014) LPELR-22256(SC)* The apex Court defined it thus:-

"Libel on the other hand is either written, (defamation) or spoken (slander). A libel is any publication in print, writing, pictures, or signs that is injurious to the reputation of someone else. Claims in libel succeed when found to be false." Per OLABODE RHODES-VIVOUR, JSC (Pp 44 - 44 Paras B - C)

Therefore, it appears to me that for something to be regarded as libelous, it must of necessity be in writing and this is well settled. Moving further, in order for damages to be granted by the Court in a case of libel, there are key things which a Claimant must show so as to cloth the Court with requisite powers to grant his claims. In this regard, in the case of *OGUNBADEJO V. OWOYEMI (1993) LPELR-2321(SC)* the apex Court held thus on the essential ingredients or elements a plaintiff must prove to succeed in an action for libel:

"To succeed in a claim for libel, it is settled law that the actual defamatory words complained of must be proved. To do this

the plaintiff must tender in evidence the document containing the alleged libel. Where a plaintiff is unable to produce the original libel, however, he can give secondary evidence of it." Per MICHAEL EKUNDAYO OGUNDARE, JSC (Pp 9 - 9 Paras A - C)

The Court of Appeal in the case of *GTB PLC V. FADLALLAH (2009) LPELR-8355(CA)* when deciding on what a plaintiff must prove to sustain an action in libel held thus:-

"Now the first duty of a plaintiff who comes to Court in a case of libel contained in a document is, subject to recognized exceptions to produce and tender the whole of the original document complaining of as well as any connected documents which are capable of throwing any light on the meaning of the word complained of to be read and construed by the Court. This is a duty which the plaintiff owes to the defendant and the Court. See PLATO FILMS v. SPEIDEL (1961) A.C 1126 at PP 1143 - 1144, R.V. LAMBERT (1810) 2 Camp 398 at 400 - 401 and OGUNBADEJO v. OWOYEMI (1993) 11 NWLR (PT.271) 517 at 533. Paragraph 221 at page 103 - 104 of GATLEY AND SLANDER SEVENTH EDITION reads as follows: "No civil action can be maintained for libel or slander unless the words complained of have been published. "That material part of the cause of action in libel is not the writing, but the publication of the libel." By "publication" is

*meant "the making known of the defamatory matter, after it has been written, to some person other than the person of whom it is written. If the statement is sent straight to the person of whom it is written there is no publication of it." "The uttering of a libel to the party libelled is clearly no publication for the purposes of a civil action." A communication of the defamatory matter to the person defamed cannot injure his reputation though it may wound his self-esteem. A man's reputation is not the good opinion he has of himself, but the estimation in which others hold him. If then the libellous matter be delivered only to the plaintiff himself there is no publication, and therefore no action will lie. Nor is there publication if it is handed, folded up but not sealed, to a third party to deliver to the plaintiff, and such person so delivers it without reading it himself or allowing anyone else to read it." An action for libel must fail if publication of the defamatory matter is not proved. The proof must be given by admissible evidence as it is the publication that gives a cause of action. The material part of the cause of action in libel is not the writing, but the publication of the libel. See *HEBDITCH VS. MACLWAIN & ORS.* (1894) 2 Q.B. 54 at 61, *BATA VS. BATA* (1948) W.N. 366 and *CHIEF O.N. NSIRIM VS. NSIRIM* (1990) 3 NWLR (PT.138) 285 at 297." Per BABA ALKALI BA'ABA, JCA (Pp 24 - 26 Paras D - D)*

Therefore, it is clear based on the authorities above what a Plaintiff needs to show in order for an action for libel to hold water.

Furthermore, one important factor when libel is put into perspective is the publication of the libelous material and it is important at the onset to consider what the law considers as publication. To this end, in the case of *UKACHUKWU V. UZODINMA & ANOR (2007) LPELR-8200(CA)*, the Court of Appeal when enumerating what the court considers to be a libelous publication held thus:-

"For the purpose of founding an action for libel, by publication of a libelous matter is meant the making known of the defamatory matter to some person other than the person of whom it is written. See NSIRIM V. NSIRIM (supra) pp. 297-298. If the writing of a libel is to the person or party libeled that does not constitute publication for the purpose of a civil action." Per SULEIMAN GALADIMA, JCA (Pp 14 - 14 Paras B - C)

Therefore, and in line with the authority above, in the eyes of the law, publication will be completed when the libelous matter is made known to a person who is not the subject of the libelous matter by the originator of the libelous matter.

Moving on to the fourth topical issue raised as to what defenses are available to libel, it has been established beyond equivocation that justification, privilege, plea of fair comments amongst others are

defenses available to a Defendant in an action for libel. To this end, in the case of *THE SKETCH PUBLISHING CO LTD & ANOR V. AJAGBEMOKEFERI (1989) LPELR-3207(SC)* on defenses available to the defendant in a case for libel, it was held thus:-

"It is accepted that a plea of fair comments is one of the defences available to a defendant in a claim for libel: other defences are those of justification and privilege..." Per EBENEZER BABASANYA CRAIG, JSC (Pp 62 - 63 Paras G - A)

Also, in the Case of *SULE & ORS V. ORISAJIMI (2019) LPELR-47039(Sc)* the Supreme Court held thus:

*"It should be noted that where the defence pleads justification, it is admitting the fact that the publication is libelous of the plaintiff but that the plaintiff has no reputation whatsoever but if the defence is that of qualified privilege it can only be claimed when it is shown that the occasion of the publication is privileged. An occasion is privileged when the person who makes the publication has a moral duty to make it to the person to whom he does make it and the person who receives it has an interest in hearing it. Both conditions must exist in order that the occasion may be privileged. See *ILOABACHIE V. ILOABACHIE (2005) 13 NWLR (Pt. 943) 695*. The defence of privilege is destroyed by malice or ill-motive." Per KUMAI BAYANG AKA'AHS, JSC (Pp 28 - 29 Paras E - C)*

Having now settled these preliminary issues, it is pertinent to now delve into the merit of this Case. The case of the Claimant is that the Defendants had published words which were injurious to the Claimant's credit and reputation. These words as presented by the Claimant were contained in certain letters written by the 1st Defendant. First was a letter dated 4th March 2011 which was addressed to the Executive Secretary, Nigerian Educational Research and Development Council ("NERDC"), Sheda, Abuja and was co-signed by the 1st Defendant and 2 others. The second was a letter dated 16th December, 2016 written by the 1st Defendant in his capacity as Branch Chairman of the 2nd Defendant and co-signed by the Branch Secretary. The third was a letter dated 19th January, 2016 written and signed by the 1st Defendant and addressed to the Executive Secretary, NERDC, Abuja. The fourth was a letter dated 25th April, 2016 written and signed by the 1st Defendant to the Executive Secretary, NERDC, Abuja.

Having gone through the contents of the letters enumerated above, it is indeed clear and not in doubt that they are in fact libelous publications against the Claimant as the letters were published to a third party to wit the Executive Secretary of NERDC.

However, the 1st Defendant has specifically pleaded and raised the defense of qualified privilege and it therefore rests on this Court to consider the defense so raised vis-à-vis the ensuing circumstances of this Case in order to reach an informed decision as to whether

the defense raised will exonerate the 1st Defendant. Therefore, in the case of *FBN PLC & ANOR V. ABOKO (2005) LPELR-7494(CA)* the Court of Appeal exhaustively described what the defense of qualified privilege entails when it held thus:

" The defence put up by the appellant is that of "Qualified Privilege". What does this defence connote? The term "Qualified Privilege" would seem to defy direct definition. It seems to me that for a proper understanding of what it connotes, an explanation, in words, is the proper approach. Generally, a Court action for a redress lies for the malicious publication of words or statements that are false in fact and injurious to the character and reputation of the person seeking the redress. The law considers the publication of such false and injurious words or statement as malicious unless it can be established that the person who makes the communication of such injurious and malicious words is a person who has an interest or a duty - be it legal, social or moral - to make it to the person to whom it was made and that the person to whom it was so made has a corresponding duty or interest to receive same. In other words, in law, a communication bona fide, made upon any subject matter in which the party communicating has an interest is privileged and in legal parlance, it is said to have been made on a privileged occasion and therefore, a defence of qualified privilege will avail a

person who is sued as a defendant in such circumstances. By this defence, a defendant in a libel case is saying no more than that even though the words complained of may be defamatory of the person of whom it was published to the person or persons whom the law recognises as persons who have a corresponding interest to receive it, the defendant cannot incur any legal liability if the publication was not actuated by malice. So when the words published are made honestly and without any indirect or improper motive, a person sued as a defendant can legitimately take a cover under the defence of qualified privilege, he will be immune from liability. It seems to me that the principle here is founded for the general welfare of the society." Per PIUS OLAYIWOLA ADEREMI, JCA (Pp 13 - 17 Paras B - D)

Therefore, a critical question worthy of consideration is can the Executive Secretary of NERDC be said in the eyes of the law to be qualified as to receive this publication? To my mind, the answer is in the affirmative as the Executive Secretary of NERDC, a senior Officer to the Claimant and 1st Defendant herein was under qualified privilege to receive these publications.

However, this is not the end as the law envisages a counter-attack to the defense of qualified privilege. Therefore, where a Claimant can show that the Defendant acted in malice, then the defense of qualified privilege will not avail such a Defendant. This burden

however rests squarely on the Claimant. In this regard, the Claimant in paragraph 27 of his Statement of Claim had specifically pleaded and stated that the 1st Defendant acted in malice. The question which then begs to be answered is was evidence led to establish the malice of the 1st Defendant against the Claimant during the course of the proceedings?

Having gone through the records of trial, and even though the publications of the 1st Defendant were ex-facie libelous, a prima facie case of malice has not been made against the 1st Defendant and as this Court has no business conjecturing or speculating, I am inclined to reason in line with the fact that the 1st Defendant has a moral duty as first an employee of NERDC and second as Branch Chairman of the 2nd Defendant to report to a more senior Officer of the organization things which he feels have or will have a negative impact on the Organization. See the case of *SULE & ORS V. ORISAJIMI (SUPRA)*.

Therefore, having held that the defense of qualified privilege has operated to absolve the 1st Defendant of liability in this regard, venturing into the Case of the 2nd Defendant will only amount to a mere academic exercise which this Court is unwilling to belabor itself with.

I therefore hold that the Claimant has been unable to substantiate malice against the Defendants and this action cannot in effect

succeed. This Case is hereby dismissed accordingly. I make no order as to costs.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

S.I Imokhe :- Appearing with Omokhojelhiede for the Claimant

S.G Kekere -Akpe:- For the 1st Defendant also holding the brief of Chief Anugon Ifeanyi for the 2nd Defendant