

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 23
CASE NUMBER : SUIT NO: CV/3277/2017
DATE: : TUESDAY 30TH JUNE, 2020

BETWEEN:

OBINNA OSCAR OBIOHA PLAINTIFF

AND

1. VANGUARD MEDIA LTD
2. PUNCH NIGERIA LTD
(PUBLISHERS OF PUNCH NEWSPAPERS)
3. PREMIUM TIMES SERVICES LTD
(PUBLISHERS OF PREMIUM TIMES
NEWSPAPER)
4. NEWS AGENCY OF NIGERIA
(Joined pursuant to Order of Court)

DEFENDANTS

THIRD PARTY

JUDGMENT

The Plaintiff by a writ of summon filed on 24th October, 2017 claimed against the Defendants jointly and severally as follows:-

- i. An Order mandating each of the Defendants to forthwith publish in their various newspapers and online media and in at least six national dailies in Nigeria and in at least a popular magazine or online media or newspaper in circulation in each country of the world including Time Magazine, a public apology to the Plaintiff and a clear retraction of their false news against the Plaintiff and dissociating the Plaintiff's photograph from the incident they reported.
- ii. The sum of N5,000,000,000.00 (Five Billion Naira) against each of the Defendants in favour of the Plaintiff as general and aggravated damages for the

libellous publication against Plaintiff whose face has been brandished to the public as a criminal by the Defendants.

- iii. An Order withdrawing and cancelling all privileges and licenses being enjoyed by the Defendants which entitle them to carry on the business of publishing news and reports in the Federal Republic of Nigeria, and forbidding, barring and restraining the Defendants from publishing news, articles, reports howsoever described within the Federal Republic of Nigeria, except to comply with relief one (1) above, the Defendants having shown by their acts that they are unfit and incompetent to continue as news carriers and publishers who are unworthy of any rights, privileges and licenses given to and enjoyed by participants in the news industry in the Federal Republic of Nigeria.

All the Defendants filed their respective statements of defence after service of the writ on them.

The Plaintiff filed a Reply to the 1st, 2nd and 3rd Defendant's Statement of Defence on the 12th October, 2018, 11th October, 2018 and 30th November, 2018 respectively.

After exchange of pleading, the suit proceeded into hearing. The case of the Plaintiff as distilled from the statement of claim and the witness statement on oath is as thus:

The Plaintiff averred in paragraphs 5, 6 and 7 of the Statement of Claim that the 1st, 2nd and 3rd Defendants are media agencies who are very popular and globally accepted, they publicize their news through the medium www.vanguardngr.com, www.punchng.com and www.premiumtimesng.com respectively, and that he was alarmed by a call from Mr. Fidel Olisa (a representative of Osemg Ventures) a company he has investments

interest in, that he should no longer bother investing any money with the firm as the firm does not deal with criminals, on account of the fact that it was reported in the media that the Plaintiff is fraudster who has been convicted.

Plaintiff averred in paragraphs 8, 9 and 10 of the Statement of Claim that his wife equally saw his picture being studied by some individuals at a cybercafé and when she saw several people including friends and family over the publication.

Plaintiff further averred in paragraphs 11, 12 and 13 that the 1st, 2nd and 3rd Defendants published his photograph on a news headline captioned “US court jails Nigerian hacker “ObinnaObioha” and published of and concerning the Plaintiff as follows:-

“ObinnaObioha, a Nigerian hacker has been jailed for 51 months by a New York Federal judge for operating a fraud scheme that swindled \$6.5 Million

from businesses in the U.S and elsewhere. U.S District Judge David N. Hurd sentenced ObinnaObioha, 31, for running a scheme in which he instructed hackers to hack into computers and email accounts of individuals around the world using malicious software. The announcement of Obioha's sentence was made by Acting United State Attorney Grant C. Jaquith and Vadim D. Thomas, special agent in charge of the Albany Field Office of the Federal Bureau of Investigation. "Obioha, working from Nigeria, was a central figure in a fraud scheme using digital disguises and deceit to bilk businesses out of millions of dollars. We will continue to track down and bring to justice cyber criminals like Obioha no matter where they operate. I thank the FBI for its terrific work in this case identifying and apprehending Obioha", said Acting United States Attorney Grant C. Jaquith. FBI Special Agent in charge Vadim D. Thomas and;

“These schemes can rob individuals and businesses of their livelihood. Cyber-crime is a serious threat and the FBI is prepared to go to any lengths to apprehend those like Obioha.” As part of his guilty plea to wire fraud in April, 2017, Obioha admitted that, while in Nigeria, he worked with and instructed others to hack into computers and email accounts used by dozens of victims in the United States and around the world. The organization infiltrated victims’ computers and email accounts using malicious software (“malware”). After monitoring victims’ information to identify imminent commercial transactions, Obioha and his associates created knockoff email addresses that appeared similar to – but varied slightly from – victims’ legitimate email addresses. Obioha and his associates used those bogus email accounts to send fraudulent invoices to victims, instructing them to wire funds to bank accounts controlled by

Obioha and his associates under the pretence that the wires were payments for actual deals that had been previously negotiated by the victims. Obioha admitted that between January and September, 2016, he was involved in at least 50 wire transfers and that about \$6.5 Million was sent by wire to bank accounts that he and his associates controlled. The accounts received money from fraud victims in New York, Florida, Illinois, Ohio and Texas, among other places. During today's sentencing, U.S District Judge Donald N. Hurd described Obioha as "right in the middle of the action" in "very sophisticated criminal activity" designed to achieve "millions of dollars in illegal funds." Obioha was arrested on October 6th, 2016, after flying from Lagos, Nigeria, to JFK International Airport. He has been in custody since that time. This case was investigated by the FBI and prosecuted by Assistant U.S Attorney Wayne A. Myers."

Plaintiff also averred in paragraphs 14, 15 and 16 that he printed the aforesaid publications from the websites of the Defendants directly from his laptop and while the Plaintiff's wife was at the Cyber Café in Gwarimpa, Abuja, she used her handheld device, to do a video recording of the news as it was displayed on the website of the 1st Defendant. Plaintiff said he also used his handheld device, an iPhone 6 smart phone to do a video recording of the news as it was displayed on the website of the 1st, 2nd and 3rd Defendants and that his colleague, Francis Adeoye equally did a video recording of the news as it displayed on the websites of the Defendants and that the recordings were equally transferred to the Plaintiff's laptop and were saved in a flash drive.

Plaintiff averred in paragraphs 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36 and 37 that his face which was brandished to the world as a criminal gained condemnable notoriety and that the publication has the effect of

lowering the Plaintiff in the estimation of right thinking members of the society, cutting him off from the society, exposing him to hatred, contempt and ridicule, causing other persons to shun or avoid him and discrediting him. The Plaintiff averred that the publication of the Defendants were understood to mean and meant that:-

- a. The Plaintiff is a Nigerian hacker and fraudster,
- b. the Plaintiff is a high tech criminal who has been involved in sophisticated criminal activities and has swindled companies of millions of dollars
- c. The Plaintiff was arrested, tried, and that he pleaded guilty and was convicted and sentenced to jail.

The following document were tendered by the Plaintiff at the trial.

Exhibit “A” Printout of online publication of August 18th, 2017 by the 1st Defendant.

Exhibit “B” Printout of Whatsapp communications between the Plaintiff and his friends.

Exhibit “C” Flash drive and pictures from flash drive

Exhibit “D” Printout from instablog9ja

Exhibit “E” Plaintiff’s Solicitors letter dated 19th August, 2017 to the 2nd Defendant at 55 Opebi Road, Ikeja.

Exhibit “F” Plaintiff’s Solicitors letter dated 19th August, 2017 to 1st Defendant’s office 609 Danbata Close Opposite Zenith Bank Area 7, Garki, Abuja.

Exhibit “G” Plaintiff’s Solicitors letter dated 19th August, 2017 to the 2nd Defendant at Suite 6, Hilbiz Complex, No. 22 Dunokofia Street Area 11, Garki – Abuja.

Exhibit “H” Plaintiff’s Solicitors letter dated 19th August, 2017, to the 3rd Defendant at 53 Mambolo Street, Wuse Zone 2, Abuja.

Exhibit “I” Plaintiff’s Solicitor letter dated 19th August, 2017 to the 1st Defendant at I Vanguard Avenue, Off ApapaOshodi Express way, Kirikiri Canal, Apapa, Lagos.

Exhibit “J” Copy of Plaintiff’s International Passport.

PW2 testified and did not tender any documents but referred to the video recording tendered by the Plaintiff which he recorded and forwarded to the Plaintiff.

PW3 Mr.ChikeNweke testified and tendered the following:

PW3’s Screenshot of Punch Publication as Exhibit “K”.

PW3’s Screenshot of Vanguard Publication as Exhibit “L”.

PW3’s Printout of Instablog9ja Publication as Exhibit “M”.

PW1 (the Plaintiff himself) was cross – examined by the learned counsel representing 1st, 2nd and 3rd Defendants.

The cross examination and answers was as follows;

XXX:- Please confirm to this court that the video displayed and all the publications were printed from your phone and transferred from your laptop.

Ans:- Yes.

XXX:- It is then not true that you printed anything from the website of the 2nd Defendant.

Ans:- I printed from the website of the 2nd Defendant.

XXX:- See Exhibit 'A', shown to you. Where is the weblink.?

Ans:- It is there.

XXX:- May I put it to you that what you have in Exhibit 'A' is a photograph?

Ans:- It is a PDF file.

XXX:- You then confirm that Exhibit 'A' was printed from a PDF file?

Ans:- Yes.

XXX:- When did you last visit the website of Punch.

Ans:- Sometimes last month.

XXX:- In report of this matter you brought to court, When last did you visit Punch Website?

Ans:- End of August 2017.

XXX:- All that is contained in Exhibit 'A' was printed as of August 18th 2017.

Ans:- Yes.

XXX:- What did you see in respect of the story.

Ans:- The story was still there but my picture was not there.

XXX:- What time did you visit the website on August 2018.?

Ans:- Around 10:00pm.

XXX:- Is there a time reflected on Punch Publication as contained on Exhibit 'A'.

Ans:- No.

XXX:- I put it to you that as of 10pm when you visited Punch Website, your picture was not there.

Ans:- It was.

XXX:- From the flash drive you demonstrated before this court, the Defendants in court were not the only people who made publication with your name.

Ans:- Yes.

XXX:- Was your picture used by other people.

Ans:- Yes.

XXX:- Was the wordings the same.

Ans:- Yes.

XXX:- Does the 'Nigerian Authority Newspaper' writing in Exhibit 'A' of Punch Publication signify anything to you.

Ans:- No.

XXX:- You demonstrated vide your flash drive that you got the video from Nigerian Authority Newspaper.

Ans:- Yes.

XXX:- Does 'NAN' signify anything to you.

Ans:- No.

XXX:- You believed that the publication was about you.?

Ans:- Yes.

XXX:- See Exhibit 'B' shown to you. Who has the phone number on the said Exhibit 'B'?

Ans:- My friend from Cara.

XXX:- All you have on that page from your friend is what is contained in the document?

Ans:- Yes.

XXX:- What was your friend sorry about.

Ans:- About the malicious publication.

XXX:- On that page your friend never said he saw anything from Punch.

Ans:- Yes.

XXX:- Who has the number +12322137647.

Ans:- Francis Adewoye my friend.

XXX:- Francis Adewoye did not say on the page anything with reference to Punch Newspaper?

Ans:- Yes.

XXX:- Why did your friend on the page ask you to tell Shell.

Ans:- That is in line with the code of conduct.

XXX:- Why did you not say that you work with Shell. I put it to you that you want to hide it from the court?

Ans:- No.

XXX:- The only reference to loss of income was to OSEMG Ventures and not Shell.

Ans:- Yes.

XXX:- You claimed that the publication in question has deprived you of government means of livelihood?

Ans:- Yes.

XXX:- Were you sacked by Shell.

Ans:- No.

XXX:- You collected salary to the end of September 2018.

Ans:- Yes.

XXX:- You tendered Exhibit “J” i.e. your International Passport. You wanted to show that you taking Visa all over the world.

Ans:- No, to show my identification.

XXX:- You stand by your paragraph 30.

Ans:- Yes.

XXX:- Where are the Visas?

Ans:- My passport.

XXX:- The trips were private and official.

Ans:- Yes.

XXX:- If Shell asks you to travel you would have travelled?

Ans:- Yes.

XXX:- You are not asked to travel by Shell.

Ans:- Yes.

XXX:- Are some of the Visas spent?

Ans:- Yes. Netherlands.

XXX:- That is to Shell operations in Netherlands.

Ans:- Yes.

XXX:- Have you applied for the renewal.

Ans:- No. I was advised not to by my employer (Shell).

XXX:- Who advised you in Shell not to present yourself for Visa.

Ans:- Tayo. He is our Human Resources.

XX:- Was the advice personal or official.

Ans:- Personal.

XXX:- Which of your Visa is current.

Ans:- United State of America Visa.

XXX:- When is your Visa expiring?

Ans:- I don't know off hand.

XXX:- Have you tried to visit United State and you were not allowed into US.

Ans:- I don't want to answer.

XXX:- The communication on Wassap in green is your own.

Ans:- Yes.

XXX:- See the communication with the number +44..
From UK. Who is she?

Ans:- My friend from UK (KC Arushafe)

XXX:- He never said by reference anything to Punch Newspaper.

Ans:- Yes.

XXX:- He was just trying to get job for his wife.

Ans:- No.

XXX:- In the Wassap communication you were asked to consult?

Ans:- Yes.

XXX:- Your friend's wife refused your brief.

Ans:- Yes.

XXX:- All the remaining pages of wassap communication has anything to do with Punch Newspapers.

Ans:- Yes.

XXX:- You told the court that you believed the story was about you.

Ans:- Yes.

XXX:- The postings in green were by you when you had Wassap Communication with TonaMbara.

Ans:- Yes.

XXX:- From your posting saying, “bro, mistaken identity” you knew the publication was not about you.

Ans:- It was about me.

XXX:- See your Wassap Communication with ChinonsoObioha on the sheet.. what did the said ChinonsoObioha say?

Ans:- He did not believe.

XXX:- You made statement in paragraph 31 of your statement on oath.

Ans:- Yes.

XXX:- What is the name of the cashier and the person who ask you fee.

Ans:- I don't know.

XXX:- You don't know because you just make up the story for you to claim the Millions.

Ans:- When you go to the bank, you don't ask the names of cashier.

XXX:- Since you have money in the bank and were not asking for loan, did you not think it was necessary to know the name of the said Bank staff.

Ans:- No.

XXX:- You told the bankers that the picture on the publication was not yours.

Ans:- Yes.

XXX:- You live in Port – Harcourt.

Ans:- Yes.

XXX:- How many times have you been assaulted in Port-Harcourt.

Ans:- None.

XXX:- How many times have you been accused in Abuja.

Ans:- None.

XXX:- You still stand by your paragraph 24.

Ans:- Yes.

Cross – examination:- Nil.

Dada:- We adopt answers with the cross examination of the learned SAN on behalf of the 1st Defendant.

Oluwole:- I adopt the cross examination of the learned SAN for the 2nd Defendant. I shall add a few of questions.

Cross - examination by 3rd Defendant counsel (AbiolaOlawole)

XXX:- You signed your witness statement on oath at Port-Harcourt.

Ans:- No. I signed them in Maitama High Court.

XXX:- What date.

Ans:- I can't remember.

XXX:- See Exhibit "A" confirm to this court, that the Website address of the 3rd Defendant is not on the two pages.

Ans:- Yes.

XXX:- You are Obinna Oscar Obioha.

Ans:- Yes.

XXX:- What is the name on Exhibit 'A'.

Ans:- ObinnaObioha.

XXX:- Obinna Oscar Obioha and ObinnaObioha is not the same person.

Ans:- It does.

XXX:- Is the Oscar in Exhibit 'A'.

Ans:- No.

XXX:- See Exhibit 'B'. There is no reference to any publication by the 3rd Defendant.

Ans:- Yes, there isn't.

XXX:- See your communication with ChinonsoObioha, and tell the court what that means.

Ans:- From the beginning she said it was a scam.

XXX:- Obinna Oscar Obioha works in Shell.

Ans:- Yes.

XXX:- What is your relationship with Mrs.Ugochi Favour Obioha.

Ans:- My Wife.

XXX:- You have never tried for any fraud in Nigeria or outside Nigeria.

Ans:- Yes.

PW1 was then discharged after cross – examination.

PW2 (Francis Adeoye) mounted the witness box and adopted his witness statement on oath and was cross – examined as thus;

XXX:- How long have you known the Claimant.

Ans:- 2013.

XXX:- Is he your friend.

Ans:- Yes, and my colleague.

XXX:- He is still your friend till this moment.

Ans:- Yes.

XXX:- Did you believe the publication were about your friend.

Ans:- Yes.

XXX:- Did the publication change your opinion about your friend.

Ans:- At first, I was confused.. I have known the Claimant for a while; when I found out he was in Nigeria I believe him, even though the pictures went virile on the internet.

XXX:- After you had communication with him; did the publication change your opinion of him.

Ans:- I am now beginning to believe it's not about him.

XXX:- Nil.

Olawole:-I adopt the cross examination of the SAN for the 2nd Defendant and counsel for the 1st Defendant.

XXX:- Nil.

PW3 (ChikeNweke) adopted his witness statement on oath and was cross – examined as thus;

XXX:- What is your relationship with the Plaintiff?

Ans:- He is husband of a close friend of mine.

XXX:- Did you contact him when you read the publication?

Ans:- Yes.

XXX:- You are veterinary doctor?

Ans:- Yes.

XXX:- Were you taught law?

Ans:- No.

XXX:- Where you in court when the witness gave evidence?

Ans:- No.

XXX:- Your paragraphs 5, 6, 7 and 8 of the further witness statements on oath are more or less answer to what the other witness said?

Ans:- Yes.

XXX:- Why were paragraphs 5, 6, 7 and 8 not part of your earlier evidence?

Ans:- I heard about it and I was told when I was not in court.

XXX:- Nil.

Fusika, SAN, relied on the questions and answers supplied by the witness.

Abiola of counsel for the 3rd Defendant adopted the cross – examination of ChudeEsq. and proceeded further ask the following questions:-

XXX:- What is the full web site address of the 3rd Defendant?

Ans:- I do not have it off heart. It is on the print out.

XXX:- Nil.

Cross –examination by Umudjoro:-

XXX:- You are very close to the Plaintiff?

Ans:- I know him because I have a good relationship with his wife.

XXX:- You did not state in your evidence before the court that you read the news from a third party (News Agency of Nigeria)?

Ans:- Yes.

XXX:- You then did not say the truth when you said what you said in your paragraph 4?

Ans:- It is correct.

XXX:- Nil.

Cross – examination by (Fusika SAN):-

XXX:- Is there NAN in Exhibit “M”?

Ans:- Yes .

XXX:- Nil.

Plaintiff closed it case to give way for defence.

1st Defendant’s Defence

The case of the 1st Defendant as distilled from the statement of claims is as thus;

That some of its news items are published only on its website and that the 1st Defendant did not report any news published on the 1st Defendant website was not about the

Plaintiff (Obinna Oscar Obioha) but about one ObinnaObioha.

It is the averment of the 1st Defendant that the said publication was a fair comment in respect to criminal activities and that the publication was made contemporaneously with the news issued by the News Agency of Nigeria a reputable source of information.

1st Defendant stated the particulars of justification to include;

1. The 1st Defendant published the said story of ObinnaObioha who is usually resident in Lagos Nigeria who was investigated by the American FBI, who admitted guilt and was convicted and jailed by a New York Federal Judge.
2. The Publication is a true and accurate report of the Jail Sentence passed on a Nigerian hacker by a New York Federal Judge. And that the

ObinnaObiohamentioned in the publication and convicted by the New York Federal Judge is not the same as the Plaintiff.

It is further the averment of the 1st Defendant that the said publication was made in an occasion of qualified privilege and made without malice to Plaintiff and that the 1st Defendant has a duty to the public to disseminate information of public interest.

1st Defendant avers that it instructed its solicitors to engage the Plaintiff which they did and made to the Plaintiff the proposition that the 1st Defendant will make and publish a corrigendum and that the 1st Defendant will grant an interview to the Plaintiff and publish same in addition to the corrigendum if need be but the Plaintiff refused.

1st Defendant however filed a 3rd party claim against News Agency of Nigeria wherein 1st Defendant stated that it subscribed to the news distribution service of third party, and it was in consideration of such subscription that

the 1st Defendant got and publish the news material said to constitute the libel complained of by the Plaintiff in this case.

Whereof the 1st Defendant claims indemnity against the third party to the full extent of any liability that may be found against the 1st Defendant on the Plaintiff's claims.

DW1, a subpoenaed witness tendered the following document in evidence.

- i. Subpeana as Exhibit "D1"
- ii. Five statements of account as Exhibit "D2", "D3", "D4", "D5" and "D6".

"DW1 was cross – examined as thus;

Nweke:- You are not a cashier in the branch?

Ans:- I manage the cashiers.

XXX:- You have an office where you operate from. You do not stay at the point where people pay – in – money and cash money?

Ans:- I work everywhere in the branch.

XXX:- As branch manager, you do not have a sit in the banking hall?

Ans:- I sit in the banking hall.

XXX:- A non-customer can cash a cheque.

Ans:- Yes.

XXX:- When a cheque is returned unpaid and not stamped, your bank would not have such record of transaction?

Ans:- Yes.

XXX:- If a customer of the bank presents a cheque issued to me, the transaction cannot reflect in my account.

Ans:- No.

XXX:- You do not know the allegation about this case?

Ans:- Beside the subpoena, no.

XXX:- Nil.

1st Defendant closed its case for 2nd Defendant's Defence.

2nd Defendant's Case

DW2 (Bamidele O.) a subpoenaed witness testified and tendered the subpoena as Exhibit "D7" and was cross – examined in the following manner:-

XXX:- Plaintiff is an employee of your company?

Ans:- Yes.

XXX:- Obinna Oscar Obioha is not same with ObinaObioha?

Ans:- I am familiar with the name ObinnaObioha.

XXX:- You did not inform Plaintiff there was publication but he did inform you that there was publication?

Ans:- Yes.

XXX:- You read the publication in questions?

Ans:- Obinna sent the snapped publication to explain what he found online.

XXX:- Anybody who tells the court you read the publication would be a liar?

Ans:- No. I needed to read the publication and confirm.

XXX:- How did you confirm the truth to what ObinnaObioha sent to you?

Ans:- I called the Punch News Paper to complain and they effected the correction.

XXX:- The amendment was to remove the picture of the Plaintiff?

Ans:- Yes.

XXX:- Did Punch communicate to you that the picture of Obinna was removed and how did you confirm the removal?

Ans:- Yes. I checked on the line and there was no picture there.

XXX:- You never checked on the link to see the publication before Obinna sent same to Government?

Ans:- I checked the link to see the Presentation dealing with a U.S based Nigerian (ObinnaObioha). It was said that the said Obioha was convicted for financial crime. That's all I can remember.

XXX:- Did Punch Newspaper tell you they obtain the picture from NAN (News Agency of Nigeria)?

Ans:- Yes.

XXX:- Did Punch ask you to apologize to Obinna?

Ans:- Yes. Punch also said they'll do a retraction?

XXX:- Did you see any retraction?

Ans:- No.

XXX:- Nil.

DW3 (OlufolabiOluseganAdewale) adopted his witness statement on oath and was cross – examined as thus;

XXX:- How long have you been in the business of journalism?

Ans:- Over 20 years.

XXX:- Did you study Mass Communication?

Ans:- No.

XXX:- You are responsible for anything you present?

Ans:- I know.

XXX:- If a man gives you a story and you publish it, you are surely responsible for it?

Ans:- No. The person who gave me the story is also responsible.

XXX:- You have a duty to investigate any story given to you?

Ans:- Yes.

XXX:- Have you seen any copy of correspondence signed between NAN (News Agency of Nigeria) and Punch?

Ans:- No.

XXX:- Did you publish the story that is subject to trial here?

Ans:- No.

XXX:- You were a sub editor at the time this story was published?

Ans:- Yes.

XXX:- A sub-editor act as a gate keeper for stories that may not be true or investigated?

Ans:- Yes.

XXX:- Did you see this story before it was published?

Ans:- No.

XXX:- Nil.

Nweke:-

XXX:- You did not edit the News material involved in this matter?

Ans:- I did not see the story at all until it was published.

XXX:- It is only what you have deposed to in your statement on oath that you know?

Ans:- Yes.

XXX:- Did you take down only Plaintiff's picture or entire News Material?

Ans:- All.

XXX:- The reason why Punch did not write a retraction was because the picture and story were pulled down?

Ans:- It is not for me to say.

XXX:- You were in court when PW2 gave evidence?

Ans:- Yes.

XXX:- Would say you are source for the publication?

Ans:- I did not publish it.

XXX:- Nil.

DW3 was discharged. DW4 (Adesola Ayo Aderele) adopted his witness statement on oath and tendered computer verifying print out as Exhibit "D8" and letter

dated 19th May, 2017 and receipt No. 0017274 dated 21st April, 2017 as Exhibit “D9”

DW4 was cross – examined as thus;

UmodjoroEsq:-

XXX:- You are a Journalist?

Ans:- Yes for over 20 years.

XXX:- You are then experienced?

Ans:- Yes.

XXX:- Beside NAN, do you source News from other places and ‘source’?

Ans:- Yes.

XXX:- Many of the other places and source are Non-Nigeria based?

Ans:- Yes/No.

XXX:- Once you pay subscription you have access to NAN portal?

Ans:- Yes.

XXX:- You are an Assistant Editor?

Ans:- Yes.

XX:- Your training provides that you must confirm your stories?

Ans:- Yes.

XXX:- Does Punch News Paper accept money i.e subscription to Punch website?

Ans:- Yes.

XXX:- The story that is before this court you published it?

Ans:- Yes.

XXX:- Beyond copying it from NAN, did you do any other thing than copy and paste?

Ans:- We used everything from NAN as it was sold to us by NAN.

XXX:- Are you familiar with the law establishing NAN?

Ans:- No.

XXX:- Have you seen any document establishing indemnity between NAN and Punch Newspaper?

Ans:- Punch Newspaper always pay for subscription and issue receipts by NAN.

XXX:- What did you do when you were asked to pull down the story?

Ans:- We deleted everything from the social media handle.

XXX:- Nil.

Nweke:-

XXX:- Do you know what is Investigative Journalism?

Ans:- It is self-explanatory.

XXX:- Stories must then be investigated before publication.

Ans:- Yes.

XXX:- What can you remember about what Punch said about ObinnaObioha?

Ans:- We published a story about a Nigeria Hacker, jailed and convicted in a U.S Court.

XXX:- What is the name of the Nigerian Hacker?

Ans:- ObinnaObioha according to NAN.

XXX:- Did you ask NAN of the picture of ObinnaObioha standing trial in the U.S?

Ans:- We only used what NAN sold to us. We did not contact the Court in USA.

XXX:- Anybody in this Court now can read News from your website?

Ans:- Yes.

XXX:- Punch did not publish any retraction of this matter?

Ans:- Yes.

XXX:- Punch never wrote the Plaintiff or his Lawyers?

Ans:- Yes.

XXX:- The duty Punch has is to disseminate accurate story to the public?

Ans:- Yes.

XXX:- What was the reason of not responding to Exhibit 'E'?

Ans:- I don't think I have an answer to that.

XXX:- Do you know one OnyinolaAkinkotu?

Ans:- Yes.. He is one of our reporters.

XXX:- He is a reliable person?

XXX:- Can you confirm his works?

Ans:- Yes.

XXX:- You did not pull down the said publication?

Ans:- Yes.

XXX:- Who pulled down the publication?

Ans:- I gave the instruction for the publication to be pulled down. Somebody did the pulling down but I do not know the name.

XXX:- Exhibit 'M' was what was published by Punch?

Ans:- Yes.

DW5 (Donald E. Iyashare) adopted his witness statement on oath. And tendered News Agency of Nigeria invoice and receipt as Exhibit “D10”.

Under cross – examination, the witness had this to say;

XXX:- Every fact stated in you statement on oath are best within your knowledge?

Ans:- Yes.

XXX:- As staff of the 1st Defendant, you were invited in the publication in issue?

Ans:- Yes.

XXX:- I am correct to say that you verified the said publication in issue before it was published?

Ans:- I did not verify the present publication.

XXX:- As a Legal Practitioner who understands the works of the 1st Defendant, you know that Journalist verify information before publication?

Ans:- Yes.

XXX:- Were you amongst the team of Lawyers that met with 1st Defendant in paragraph 28 of your statement on oath?

Ans:- Our external solicitors did at my instance.

XXX:- From Exhibit 'A' please confirm it was the publication made by 1st Defendant?

Ans:- Yes.

XXX:- Is there any where a referral was made to NAN as the source of the information?

Ans:- When we source for News from NAN, we don't indicate the source.

XXX:- Have you made an encounter with the Plaintiff in this matter?

Ans:- No.

XXX:- Is the face on the publication that of the Claimant?

Ans:- But I don't know the Claimant.

XXX:- People within and outside Nigeria read your online publication?

Ans:- Yes.

XXX:- Did you put it in writing that external solicitors represent you as stated on your paragraph 28 of the witness statement on oath.

Ans:- Yes.

XXX:- Was the proposal to grant the Claimant an interview in writing?

Ans:- No.. it was orally made.

XXX:- You claimed you had several meetings with the Claimant. Did you have the record?

Ans:- No.

XXX:- Did 1st Defendant respond to Exhibits “E” & “I”?

Ans:- We did not.

XXX:- As a Legal Practitioner if you see that a person has been sent to jail but the person is with you, would I be correct to say the person is at large?

Ans:- No.

XXX:- It is true that you have been working with 1st Defendant?

Ans:- Yes.

XXX:- You are then conversant with the phrase “Biline”?

Ans:- Yes.. it is a particular News covered by a reporter which must have the reporters name.

XXX:- Who was the Journalist on the ‘Biline’?

Ans:- I can't remember.

XXX:- When a journalist given a 'Biline' he is saying, this is my story?

Ans:- Yes.

XXX:- He will state the source in the story?

Ans:- I don't know.

XXX:- Are you conversant with NAN website and portal?

Ans:- I know there is.

XXX:- If you get a story from NAN, you have an obligation to verify the truthfulness of the story?

Ans:- That is not correct. When it is from NAN, we don't.

XXX:- In other words, if NAN publishes that the president is death, would you publish it?

Ans:- Yes.. This is because NAN is a credible source?

XXX:- Would you be surprised to know that this story is not in the portal?

Ans:- It was at the time of the publication.

XXX:- Have you assessed the NAN portal before?

Ans:- No.

XXX:- Since you were not the one who published the story you don't have facts about the story?

Ans:- We don't verify NAN story.

DW5 was discharged and 2nd Defendant then closed its case.

3rd Defendant in its defence called IdrisAkiabajoand was led in evidence as DW6. He adopted his statement on oath and was cross – examined as thus;

XXX:- I am correct to say that your statement on oath are facts best within your knowledge.

Ans:- Yes.

XXX:- Were you involved in the publication of 14th June, 2018?

Ans:- We did not publish Exhibit 'A'.

XXX:- Is there anywhere from Exhibit 'A' where the NAN was mentioned?

Ans:- No.. I can't see any.

XXX:- Did the 3rd Defendant respond to Exhibit 'H'?

Ans:- No.

XXX:- Is it true that people within and outside the shores of Nigeria can assess the website?

Ans:- Yes.

XXX:- What is the website address?

Ans:- <https://www.premiumtimes.ng.com>.

XXX:- How would one know that a website is that of premium times i.e portal?

Ans:- The URL is the server indicator.

XXX:- Do you have a web logo i.e premium times?

Ans:- Yes.

XXX:- How do you identify the web logo?

Ans:- By the original URL.

XXX:- What is on the front page of premium times?

Ans:- News of the day.

XXX:- Where do you locate the URL of premium times?

Ans:- At the top and at the bottom.

XXX:- What part of Exhibit 'A' did the logo appear?

Ans:- This is not premium times logo.

XXX:- Did the 3rd Defendant make any effort to reach out to the Claimant?

Ans:- No.

XXX:- How can you identify cloned URL from original?

Ans:- URL is like a finger print.

XXX:- Every person who assesses premium times uses finger print?

Ans:- URL is like a finger print.

XXX:- Where does it appear?

Ans:- On the top and bottom.

3rd Defendant closed its case for the 3rd party witness.

Engr. Aron Miller gave evidence as DW7.

He adopted his statement on oath and a publication was tendered through him as Exhibit “D11” under cross – examination.

DW7 was further cross – examined by Chude of counsel as follows;

XXX:- How long have you been with NAN?

Ans:- 2004.

XXX:- What is your qualification?

Ans:- Bachelor of Tech in Electronic Engineering.

XXX:- Do you know the functions of NAN and what are they?

Ans:- Yes.. We source for news and distribute them to our clients.

XXX:- Do you investigate such news before distribution?

Ans:- Yes.

XXX:- The publication in question was investigated by you before it was distributed?

Ans:- Yes.

Qus:- Nil.

Fusika, SAN, equally cross – examined the witness in the following manner;

XXX:- You said you'll be relying on a publication as stated in your paragraph 28.. Have a look at this publication and confirm it is the said publication?

Ans:- Yes.. it is.

Fusika, SAN:- We seek to tender the documents.

It was admitted as Exhibit "D11".

XXX:- What is in contention is not the authentication of the document. It is the photograph used that is the problem? Is there any photograph used in the publication?

Ans:- No.

XXX:- You said in your evidence that you did not publish the picture in question in your evidence?

Ans:- Yes.

XXX:- Have a look at Exhibit 'D8' is there any photograph.

Ans:- No.

XXX:- There are comments of your readers?

Ans:- Yes.

XXX:- Did you respond to the general comments that your publication carried any picture?

Ans:- No.

XXX:- Have a look at Exhibit 'M' it was what we published what is the 'Biline'?

Ans:- News Agency of Nigeria (NAN).

XXX:- Do you dispute that you render services to us and we pay for it?

Ans:- I don't.

XXX:- Is NAN paid per story?

Ans:- It all depends to the story subscribed to.

XXX:- Did our subscription cover pictures as well?

Ans:- I would not know.

XXX:- Have a look at Exhibit 'D9' it covers picture.

Ans:- 2017

XXX:- Is there any part of Exhibit 'D9' that says we have to pay for each story?

Ans:- No.

At the close of Defendant's Defence, Respective parties filed their final written addresses.

1st Defendant's final was filed on the 23rd January, 2020, 2nd Defendant's address was filed on the 8th January, 2020, 3rd Defendant's final address was filed on the 2nd March, 2020, Third party filed its address on the 2nd January, 2020 whereas Plaintiff's address was filed on the 2nd March, 2020.

3rd Defendant filed its final written address and formulated a sole issue for determination to wit; whether the Plaintiff has by preponderance of evidence established all the ingredients of libel against the 3rd Defendant to entitle his claim to succeed.

Learned counsel while arguing on the sole issue submit, that the onus is the Plaintiff in an action for libel to prove that the Defendant;

- i. Published in permanent form a statement,
- ii. That the statement referred to him
- iii. It lowered him in the estimation of the right thinking members of the society or
- iv. It exposed him to hatred, ridicule or contempt or it injure his reputation in his office, trade or properties or
- v. It injure his financial credit.

SKETICH VS AJAGBEMALLEFERI (1989) 1 NWLR (Pt. 100).

Learned counsel submit further that the allegation of defamatory publication within the context of online publication is hinged on the fact that the party claiming defamation must prove or show that the defamatory material was actually accessed and downloaded by identified persons within the jurisdiction of the court, thus, the law will not presume that the words were

actually read. ***KING VS LEWIS (2004) EWCA CIV 1329
Case No. AZ/2004/0380.***

Counsel submit further that as the evidence on record show, at no time was the Plaintiff avoided or shunned and no evidence was shown that his status was lowered in the estimation of right thinking members of the public or his community.

Court was urged to dismiss the Plaintiff's case for want of merit.

On it part, 2nd Defendant/third party claimant's formulated the following issues for determination to wit;

- i. Has the Plaintiff establish/proved the libel he claims against the 2nd Defendant.
- ii. In the event that the court determine that the alleged libel has been established/prove against the 2nd Defendant, is the Plaintiff entitled to the remedies (or any of the remedies) he claims?

iii. In the unlikely event that the issues 1 and 2 are resolved against the 2nd Defendant and any award is made in favour of the Plaintiff, then does the legal evidence establish the 2nd Defendant's claim for indemnity against the third party?

On issue 1, i.e. has the Plaintiff establish/proved the libel he claims against the 2nd Defendant?

Learned counsel cited the case of *SKETCH VS AJAGBEMOKEFERI (Supra)* relied upon by the third Defendant to state that the Plaintiff has woefully failed to prove that the statement referred to him.

Learned counsel argued that the evidence adduced at the trial showed that despite the publication of the Plaintiff's image with the news report, both the Plaintiff and other readers familiar with him knew that it was not to the Plaintiff that the factual event reported in the publication referred or intended to refer.

On issue 2, in the event that the court determine that the alleged libel has been established/prove against the 2nd Defendant, this is the Plaintiff entitled to the remedies (or any of the remedies) he claims?

Learned counsel contended that, the Plaintiff has subjoined two claims that cannot be awarded together. A claim for apology as well as damages cannot be awarded together as that would amount to double compensation.

OMATAYO VS AFRICAN NEWSPAPER NIG. LTD (CA K/38/86) reported at P.C 9218 of Nigerian Law of libel and press.

On issue 3, in the unlikely event that the issues 1 and 2 are resolved against the 2nd Defendant and any award is made in favour of the Plaintiff, then does the legal evidence establish the 2nd Defendant's claim for indemnity against the third party?

Learned counsel submit that the publication it made was an exact reproduction of news material internationally sourced and locally disseminated by the third party which by its enabling statute, the news Agency of Nigeria Act, Cap30, Laws of Federation of Nigeria, 2004.

Counsel submit that publication by the 2nd Defendant was of a product sold to it by third party whose business to source and distribute news to those to whom it sells its products and services.

On its part, the 1st Defendant/third party claimant counsel formulated four issues for determination to wit;

1. Whether having regard to the evidence before the court and the entire circumstances of the case, the Plaintiff made out a case of libel against the 1st Defendant.
2. Whether the defence of qualified privilege avail the 1st Defendant.

3. Whether the Plaintiff is entitled to the reliefs or remedies (or any of the remedies sought against the 1st Defendant.
4. In the unlikely event that the issues 1, 2 and 3 are resolved against the 1st Defendant and any award is made in favour of the Plaintiff, does the legal evidence before the court establish the 1st Defendant's claim for indemnity against the third party.

On issue one, whether having regard to the evidence before the court and the entire circumstances of the case, the Plaintiff made out a case of libel against the 1st Defendant.

Learned counsel submit that, the law is settled that to sustain an action for libel, the Plaintiff must prove that;

- i. The publication was writing
- ii. The publication was false,

iii. That false publication was made to a person apart from the Plaintiff *SKYE BANK VS AKINPELU (2010) (Pt. 1198) page 179 at page 204 – 205.*

Counsel submit that where as in the instant case, the appellant who as Plaintiff brought about confusion to his name by fingering himself as being the person referred. And that the Plaintiff has fail to prove that the statement was defamatory.

On issue two, whether the defence of qualified privilege avail the 1st Defendant.

Learned counsel submit the defence of qualified privilege is available if a defamatory communication is made on a privilege occasion without malice or improper motive. The defence of qualified privilege is destroyed only if the publication is actuated by malice. And that the predominant purpose for which the alleged defamatory words published were in accordance with the 1st Defendant's line of duty.

***M.T.S LTD. VS AKINUNMI (2009)16 NWLR Part 1168
Page 633 Page 651 – 652.***

On issues 3, whether the Plaintiff is entitled to the reliefs or remedies (or any of the remedies) sought against the 1st Defendant.

Learned counsel submit that the Plaintiff is not entitled to any of the reliefs, claimed in his writ of summons. This is because he failed to establish his case by credible evidence and court was urged to dismiss the case.

On issue 4, in the unlikely event that the issues 1, 2 and 3 are resolved against the 1st Defendant and any award is made in favour of the Plaintiff, does the legal evidence before the court establish the 1st Defendant's claim for indemnity against the third party.

Learned counsel submit that the third party admitted that they sourced the publication in question from Exhibit ('D11' Utl CA New York Publication) and therefore

3rd party is responsible and be ordered to indemnify the 1st Defendant if any cost is awarded against it.

On their part, the third party formulated a three issues for determination to wit;

1. *Whether the 1st Defendant's pleading disclose any cause of action against the 3rd party.*
2. *Whether the third party proceeding of the 1st Defendant against the 3rd party is competent.*
3. *Whether the 1st and 2nd Defendant have successfully shifted their liability to the third party in the event the court holds any of them liable in libel to the Plaintiff.*

On issue one, *whether the 1st Defendant's pleading disclose any cause of action against the 3rd party.*

Learned counsel submit that parties are bound by their pleading and that from the pleading, no cause of action has been variously described against the 3rd party.

On issue two, *whether the third party proceeding of the 1st Defendant against the 3rd party is competent.*

Learned counsel submit that beside the statement of defence, the 1st Defendant did not comply with the provision of the rules of this court to issue and serve the third party notice. *UNION BANK VS EDIOMSERI (1998)2 NWLR 93 at 104.*

On issue three, *whether the 1st and 2nd Defendant have successfully shifted their liability to the third party in the event the court holds any of them liable in libel to the Plaintiff.*

Learned counsel submit that the object of the third party rule is to prevent multiplicity of actions and enable the court to settle the disputes between all parties, and to get the third party bound by the decision between the Plaintiff and the Defendant.

Counsel submit further that for the Rules to apply, it must be shown that the Defendant has a right to indemnity against the third party. ***NIGER INSURANCE CO. LTD. VS ADED BROTHERS LTD. & ANOR (1976) NWLR 88.***

Counsel submit that for indemnity to arise against the third party, there must be a contract of indemnity and not just to infer.

Learned counsel urge the court to dismiss the action against the third party.

Upon service, the Plaintiff file it written address wherein three issues were formulated for determination to wit;

1. ***Whether based on the pleadings and the totality of evidence placed before this Honourable Court, the Plaintiff has established that the Defendants made libellous publication against the Plaintiff.***

2. *Whether the circumstances of this case, the Defendants are immune from liability in defamation on account of their plea of qualified privilege, fair comment and justification.*
3. *Whether the Plaintiff is entitled to the reliefs as claimed.*

On issue 1, whether based on the pleadings and the totality of evidence placed before this Honourable Court, the Plaintiff has established that the Defendants made libellous publication against the Plaintiff.

Learned counsel submit that the Defendant published the photograph of the Plaintiff and reported in their various websites that ObinnaObioha is a Nigerian Hacker who has swindled several companies of large sum of money. That the Plaintiff has established in evidence that the Plaintiff photograph was published by the Defendants in respect of the news item. That upon the publication of the news to

the whole world, that publication became completed in a permanent form.

That the publication referred to the Plaintiff and the publication conveyed defamatory meaning with the effect of lowering him in the eyes of the right thinking members of the society, exposed him to hatred and ridicule or contempt, injured his reputation and his financial credit. ***LANRE VS THE STATE (2018) LPELR 45156 (SC) at 27-28.***

On issue two, ***whether the circumstances of this case, the Defendants are immune from liability in defamation on account of their plea of qualified privilege, fair comment and justification.***

Learned counsel submit that the Plaintiff has established a prima facie cause of action as soon as he was proved the publication of defamatory words. And to establish a plea of justification, the Defendant must prove that the defamatory imputation is true, the Defendant must justify

the precise imputation complained of. ***ILOABACHIE VS ILOGBACHIE (2008) LPELR 1492 at Page 44-48.***

Counsel submit that where the Defendant plead justification, it is admitting the fact that the publication is libellous of the Plaintiff but that the Plaintiff has no reputation. And that the defence of privilege is destroyed by malice or ill motive.

With respect to fair comment, the defence is really designed to protect person who in the course of a fair and accurate report render an innocent opinion.

VANGUARD MEDIA LTD. VS OLAFISOYE (2011) LPELR 8938 (CA).

On issue three, ***whether the Plaintiff is entitled to the reliefs as claimed.***

Counsel submit that it is trite that a person who has been defamed in libel is without proof of any actual damages he has suffered, entitled to damages/compensation. That

the Defendant's conduct has aggravated the damages in this case for refusing to publish a retraction and an apology to the Plaintiff until date despite admitting their wrongful publication.

WILLIAMS VS DAILY TIMES (1990)1 NWLR (Part 124)1.

Court was finally urged to grant the reliefs of the Plaintiff.

Court:-I have gone through the evidence (oral and documentary) ably led by Plaintiff on the one hand and the 1st, 2nd and 3rd Defendants on the hand and the 3rd party.

The crux of Plaintiff's action is within the realm of the tort of defamation, what then is defamation in law?

Defamation has been, judicially, defined to embrace imputations which tend to lower a person's dignity in the estimation of the right thinking members of the society and expose him, the person so disparaged, to hatred

approbrium, odium, contempt or ridicule, see ***ORUWARI VS OSLER (2013) 5 NWLR (Pt. 1348) 535***. There are two species of defamation: libel and slander. Libel is any publication in print, writing, pictures or signs that injures the reputation of somebody. Slander, on the other hand, means a defamatory statement made/conveyed by spoken words, sounds, looks, signs and gestures which injure the reputation of somebody, see ***SOCIETY BIC S.A VS CHARZIN IND. LTD. (2014) 4 NWLR (Pt. 1398) 497; ORUWARI VS OSLER (Supra)***. To succeed in an action for defamation, which is actionable per se, the defamed person must conjunctively prove. (1) Publication of the offending words. (2) That the offending words refer to him. (3) That the offending words are defamatory of him. (4) That the offending words were published to a third party. (5) That they are false or lack accuracy and (6) That there are no justifiable legal grounds for the publication of the defamatory words. ***ONU VS AGBESE (1985) 1 NWLR (Pt. 4) 704 (1985) LPELR – 2698 (SC)***;

***SKETCH PUBLISHING CO. LTD. VS
AJAGBEMOKEFERI (1989) 1 NWLR (Pt. 100) 678
(1989) 1 NSCC 346.***

From the ensuring evidence before the court as reproduced in the preceeding part of this Judgment vis-à-vis the arguments of Plaintiff on the one hand and the Defendants and 3rd party on the other hand, the class of defamation involved here is libel.

To resolve the legal conundrum in this matter, the issues raised for determination by Plaintiff's counsel which to my mind seem to have covered all the issues formulated for determination by Defendants, have been adopted by the Court as its issues for determination.

The issues are;

- a. Whether based on the pleadings and the totality of evidence placed before the court, the Plaintiff

has established that the Defendants made libellous publication against the Plaintiff.

- b. Whether in the circumstances of this case, the Defendants are immune from liability in defamation on account of their plea of qualified privilege, fair comment and justification.
- c. Whether the Plaintiff is entitled to the reliefs as claimed.

In an attempt to establish the tort of Defamation of libel, Plaintiff tendered Exhibit “A” which is a printout of 1st, 2nd and 3rd Defendants with the picture of the Plaintiff as the Nigerian hacker who was jailed by a New York Federal Judge for operating a fraud scheme that swindled \$6.5 Million from businesses in the US and elsewhere.

Plaintiff also tendered Exhibit “M” which is printout of Punch dated the 18th August, 2017 showing a large frame of Plaintiff’s picture.

The ingredients that ought to be established to succeed in an action for defamation which I have already mentioned in the preceding part of this judgment is settled.

Libel or slander is a wrong which the law imputes general damages. Once a Plaintiff proves that a libel/slander has been published of him without legal justification, his cause of action is complete.

I place reliance on the authority of *SULEIMAN VS ADAMU (2016) CA*.

Publication is a crucial element in a case of libel. Once publication is not pleaded and proved, the case of such a Plaintiff is bound to collapse. It is publication that gives such a case its cause of action. The authority of *AMUZIE VS ASONYE (2011) 6 NWLR (Pt. 1242)* lends support to above proposition.

From the aforementioned exhibits which are publications, we are settled on the existence of a publication made by

the 1st, 2nd and 3rd Defendants which all carried the picture of the Plaintiff.

1st and 2nd Defendant alluded in their separate defence that they bought the news item from NAN i.e News Agency of Nigeria whom they have paid subscription to for them to always get news from and decimate to the public.

To that extent, 1st and 2nd Defendants joined the 3rd party in 3rd party proceedings that they claimed indemnity from the 3rd party in the event that they are found liable in the Tort of defamation i.e libel.. 1st and 2nd Defendants equally pleaded the defence of justification and qualified privilege.

From the evidence before me, Defendants and 3rd party are in agreement that Plaintiff whose picture was used by 1st, 2nd and 3rd Defendants to depict the Nigerian hacker who was jailed by the New York Federal Judge, was not the ObinnaObioha who was jailed for 51 months in the US.

From Exhibit “A” i.e the publications of 1st, 2nd and 3rd Defendants, the picture of Plaintiff was used depicting him as the Nigerian hacker who was jailed by the New York Federal Judge for 51 months.

Arising from the said publication, those who knew Plaintiff sent messages to him trying to verify the information as contained in Exhibit “B”.

From the foregoing, even if there was such a conviction in the US of a Nigerian hacker with the name ObinnaObioha, which is a name that any person could bear or answer in this world, once it is not the Plaintiff that has been jailed, any such publication about him with his picture used affords him the opportunity to run to court.

2nd Defendant tendered Exhibit “D8” i.e the publication of the Third party, News Agency of Nigeria (NAN) whom they have retainership with to buy News as their source of the news item.

It is in evidence which I have reproduced in the preceding part of this judgment that third party's sole witness denied publishing any picture alongside the said news of the Nigerian hacker on its website where Defendants usually have access to... The law on the burden of proving the existence of a fact is on that person who asserts it.

From Exhibit "D8" tendered by 2nd Defendant's witness, is there any such picture of the Plaintiff?

I have no difficulty in answering the question in the negative in view of the fact that it is in documentary form.

Permit me to state that where a case for Defamation is filed against a party or parties, such party or parties have right to establish the fact that they reserve the right to make such a publication by justification and or qualified privilege as claimed by the 1st and 2nd Defendants in this case which becomes their defence.

The law presumes malice in the publisher of a defamatory statement unless same is rebutted by the defence of justification or qualified privilege since the law will not permit a man to recover damages in respect of an injury to a character which he never had in the first place. ***ADENIJI VS FETUGA (1990) 5 NWLR (Pt. 150) 375 is instructive here.***

The law is trite that, a defence of qualified privilege will only avail a defendant in libel suit if he can cumulatively prove or establish two conditions that must co-exist namely; (a) There must exist a common interest between the maker of the statement and the person or persons to whom it was made. Reciprocity of interest is therefore an essential element in law of qualified privilege. (b) The facts relied on by the maker must be true; a mere belief will not sustain the defence. See: ***ADEMOLA ATOYEBI VS WILLIAM ODUDU (1990) 3 N.S.C.C. 334 at 345*** where ***OLATAWURA, JSC*** had this to say “I now come

to the issue of qualified privilege. There must exist, a common interest between the maker of the statement and the person to whom it was made. Reciprocity of interest is an essential element in the law of qualified privilege. ***ADAM VS. WARD (1917) A.C. 334. WHITE VS. J. & F. STONE (1934) 2 K.B. 827 PULLMAN VS. HILL (1891) 1 Q.B. 528.*** The facts relied upon by the maker must be true; a mere belief will not sustain the defence. ***HEDOITCH V. MACLLWAIN (1894) 2 Q.C. 54.***

1st and 2nd Defendant have not tendered evidence of any of such New York Federal Court proceedings suggesting that indeed any Nigerian hacker was sentenced to 51 months in jail, not to talk of the Plaintiff whose picture was used to depict the said story of the Nigerian sentenced.

The defence of qualified privilege, I dare say would not avail the 1st and 2nd Defendants.

Salami, JCA, (as he then was) in the case of ***OBASUGI VS EZEIGHU (1991) 13 NWLR (Pt. 81) 585*** held qualified privilege as follows:-

“It is settled on these authorities that qualified privilege is an occasion where the maker of a publication has an interest or duty whether legal, social or moral to make it to a person who has a corresponding interest or duty to receive it.

The existence of such an interest or duty destroys the inference to malice which the law makes and allows for the occasion to be privileged except there is evidence of actual or express malice.”

On the plea of justification, it is the duty of the Defendant nay Appellant herein in an action for libel to prove that the main charge of the libel is true. The Supreme Court in the case of ***ACB & ORS V APUGO (2001) NSCOR AT 563 - 564*** held that: *“..it is however a complete defence to an action for libel and slander that the defamatory*

imputation is true ... 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.” In *OMONUWA V. ENOGIERU* (1992) 7 NWLR (PT 255) 593 at 603, PER AKPABIO (JCA as he then was) referred to the case of *BARDI -V- MAURICE* (1954) 14 WACA 414 where the West African Court of Appeal held that: *“to succeed on a plea of justification, the Appellants/defendants had the onus to justify the imputation complained of.”* Furthermore in the words of the Late Hon. Justice Olatawura JSC (As he then was) in the case of *DAILY TIMES & ANOR V. EMEZUONI* (1990) 2 NWLR (Pt. 132) 340 at 355, he said and I quote: *“A plea of justification means that the libel is true not only its allegation of fact but also in any comments made... the defendant has to prove not only that the facts are truly stated but also that nay comments upon them are correct.”* See also *EMEAGWARA V GUARDIAN NEWSPAPER LTD* (1998) 1 NWLR (Pt.

535) 610 AT 623. I wish to hold that the Appellant failed to justify the statements made in Exhibit “N8” and therefore cannot succeed on its purported plea of justification.

I have seen correspondences from the law firm of Ikpeazu (SAN) Chambers to the 1st, 2nd and 3rd Defendants urging for retraction of the said news on behalf of the Plaintiff as contained in Exhibits “E”, “F” and “G” respectively all dated the 19th August, 2017. They were acknowledged vide Exhibits “I” and “H”.

There was no evidence withdrawing the said publication on behalf of the Plaintiff thereby suggesting malice on the part of the Defendants without much ado.

Where caution is thrown into the wind, recklessness is enthroned.

The publication contained in Exhibit “A” by the 1st and 2nd Defendants is defamatory. I so hold.

On the part of the 3rd Defendant, it is their defence and evidence that the said website where the news of the jailed Nigerian hacker was credited to them is not theirs and that their [URL:www.premiumtimesng.com](http://www.premiumtimesng.com) is like a unique fingerprint and that it is the address that authenticates news sourced from their website.

I make bold to say that once Plaintiff presents evidence showing that libel has been published, as in this case, without legal justification, his cause of action is complete.

Evidence has been led by Plaintiff vide Exhibit “A” to show that 3rd Defendant made publication with the picture of the Plaintiff depicting him to be the Nigerian hacker jailed by New York Federal Judge in US for 51 months.

Aside the fact that 3rd Defendant did not tender any document to show this court its [URL:www.premiumtimesng.com](http://www.premiumtimesng.com), 3rd Defendant did not also lead evidence to show that it has proceeded against those that operating the said website which carried the

name of premium times..cases are not won on the pages of written address but by evidence.

I find it most bizarre that 3rd Defendant who failed to establish any credible defence with respect to the said publication, is busying fishing for technical excuse to escape liability.

I find the defence of 3rd Defendant unattainable and unbelievably ridiculous..same is dismissed.

3rd Defendant indeed did publish the news item with the picture of the Plaintiff as the jailed Nigerian hacker as contained in Exhibit “A”. The said publication is defamatory. I so hold.

I now go to the claim of the 1st and 2nd Defendants for indemnity against the 3rd party now that Defendants publication as contained in Exhibit “A” is held to be libellously defamatory against the Plaintiff.

Defendants' defence of qualified privilege and justification having failed.

It is not in doubt that 1st and 2nd defendants have a relationship with the 3rd party i.e News Agency of Nigeria (NAN) to source for news and publish same for people consumption.

Exhibits "D9" and "D10" which are News Agency of Nigeria (NAN) letter dated 19th May, 2017 acknowledging receipt of payment of N1,512,500 being payment for News Agency of Nigeria (NAN) services for 2017 addressed to the Managing Director Punch Nigeria Ltd, and another invoice dated 30th January, 2018 addressed to the Managing Director of vanguard Media Ltd being subscription fee were tendered to show the relationship between the 1st and 2nd Defendants and the 3rd party.

It is true that by the said exhibits, 1st and 2nd Defendants are entitled to assess the portal or web of the 3rd party for news.

It is the evidence of the 1st and 2nd Defendants that the entire of the news item in issue was obtained from the 3rd party's preserved on the World Wide Web by News Agency of Nigeria (NAN) using the domain name <https://www.nan.ng>.

Now that 3rd party's sole witness denied ever posting the picture of the Plaintiff along with the news item, now that Exhibit "D8" which is the said News item printed from the website of the 3rd party (NAN) has been considered, I will ask the Defendants the following questions.

- i. Is there any picture of the alleged hacker jailed anywhere in Exhibit "D8"?

ii. How and where did Defendants get the picture of the alleged hacker which later turned out to be that of the Plaintiff?

I ask the afore – questions on the strength of the fact that 1st and 2nd Defendants are pointing at the direction of the 3rd party as being responsible for their problem as the hangman noose is being lowered.

Documentary evidence as I said, is the best form of evidence whereas the human mouth reek of pungent smell arising from lies being told which can easily be denied, any document in written form is permanent unless and until it is destroyed.

I have seen Exhibits “A” i.e printout of online publication by the 1st, 2nd and 3rd Defendants which carries the story of ObinnaObioha, a Nigerian hacker who was jailed for 51 months by a New York Federal Judge for operating a fraud scheme that swindled N6.5Million from businesses

in the US and elsewhere. The picture of the Plaintiff appeared variously on the pages of Exhibit “A”.

I have also seen Exhibit “B” which is a printout from instablo9jA with the picture of the Plaintiff and the same story of a Nigerian hacker who was jailed in the united states.

Exhibit “M” is a printout from the Punch dated the August 8th 2017 carrying the same story that US court jails Nigerian hacker ObinnaObioha with the picture of the Plaintiff emborse on the page.

I have seen Exhibit “C” and carefully watched and listened to it.

The aforementioned Exhibits were tendered by Plaintiff to show the fact that his picture was used by the Defendants when they published the news that a Nigerian hacker was jailed in US for 51 months.

From the evidence before the court by the 3rd party's sole witness and the aforementioned printout from News Agency of Nigeria (NAN) which the news originated from and where Defendants source news from, there was no picture of the alleged hacker published by News Agency of Nigeria (NAN).

Failure to lead evidence i.e documentary to show that both the news item and picture was sold by News Agency of Nigeria (NAN) to the Defendants, 1st and 2nd Defendants cannot at this point attempt to share or transfer their liability unto the 3rd party. It is my judgment that Defendants being journalist ought to employ every professional diligence in ensuring that whatever and however they procure news, the authenticity and veracity is verified. In this case, it is not in doubt that the news of the jailed Nigerian Hacker was on the website of the 3rd party, but the issue is the picture of the Plaintiff depicting him as the ObinnaObioha who was jailed in the US.

The documents tendered by Plaintiff through its witnesses and Exhibit “D8” i.e the punched publication on the World Wide Web by News Agency of Nigeria (NAN) has clearly given the Defendants away.

Indeed the documents have betrayed the 1st and 2nd Defendants who seek to be indemnified by the 3rd party in the event that they are found liable in the defamation of libel.

I ask the same question again, where did Defendant get the picture of the Plaintiff they represented as the US jailed hacker? Was it from the 3rd party?

The argument with respect to indemnity is neither here nor there in view of the fact that it is already settled that News Agency of Nigeria (NAN) did not use any picture to show the face of the Plaintiff. Therefore claim for indemnity by the 2nd Defendant against the 3rd party is not just mischievous, it is spurious and unfounded. Same is refused and dismissed.

On the claim of indemnity by the 1st Defendant, I adopt my reasoning in dismissing the claim of indemnity by the 2nd Defendant.

1st Defendant's claim of indemnity against 3rd party is also hereby dismissed.

I am certain there are so many ObinnaObioha in this world. If the news item did not carry the picture of the Plaintiff, I am most certain Plaintiff would not be in this court against the Defendants.

3rd party can only be liable in indemnity if a news item sold is found to be untrue and unfounded. In this case, it is the issue of the picture of the Plaintiff.

I now proceed to address the reliefs sought by Plaintiff against Defendants.

The first is damages. There are factors to be considered in awarding damages in an action for defamation. In *NEPA VS INAMETI (2002) FWLR (Pt. 130) 1695 at 1704*, the

following factors were enumerated as factors to be considered;

- a. The conduct of the Plaintiff.
- b. The Plaintiff's position and standing.
- c. The nature of the libel
- d. The mode and extent of the publication.
- e. The absence or refusal of any retraction or apology.
- f. The whole conduct of the Defendants from the time when the libel was published down to the very moment of the judgment.

Plaintiff gave evidence to the effect that he is a staff of Shield Petroleum. Evidence was also led to establish the fact that people who knew him called to register concerns. There is evidence that Defendants were requested by Plaintiff's counsel to retract the said libellous publication but Defendants clearly refused to this moment.

In this age of information technology, the said publication which was online clearly has gone beyond the shores of this country which was why from Exhibit “B” i.e printout of chats and whatsapp calls, people who knew Plaintiff from the United States (US) and United Kingdom got in touch with him when they saw the publication.. In embarking on the assessment of damages in such a situation, award shall be adequately made to assuage the injury to the Plaintiff’s reputation, character and pride which were damaged and unjustifiably invaded. The law presumes that some damage must flow in the ordinary course of events from the libel of a person, and such is what is referred to as general damage.

A Plaintiff in a libel action is not required to prove his reputation or that he has suffered any actual loss or damage... on proved of the libel, he is entitled, at least, to nominal damage.

This was said in the case of *UFUA VS EBORIEME (1993) LPELR – 23674 (CA) Per Ogundere, JCA.*

I have considered all the factors as ably enumerated in *NEPA VS INAMETI (Supra).*

The Plaintiff before this court clearly has undergone mental and psychological torture arising from the libellous write up in question. The attitude and conduct of the Defendants who failed and or refused to retract the said publication did not help matters. This is a convenient point and circumstance for me to award damages which hopefully would assuage the pains of the Plaintiff.

I hereby award the sum of **N10Million** against each of the 1st, 2nd and 3rd Defendants respectively.

Next is an Order withdrawing and cancelling all privileges and licences being enjoyed by the Defendants which entitle them to carry on the business of publishing news and reports in Nigeria.

This relief against the Defendants has the capacity of throwing people out of jobs thereby compounding the already existing unemployment problems the country is grappling with.

Relief 3 is refused and dismissed.

Next is an Order mandating each of the Defendants to forthwith publish in their various newspapers and online media and in at least six National dailies in Nigeria and in at least a popular magazine or online media or newspaper in circulation in each country of the world including Time Magazine, a public apology to the Plaintiff and a clear retraction of the false news against the Plaintiff and dissociating the Plaintiff's photograph from the incident they reported.

Having held the publication to libellous, this relief is clearly grantable. It is hereby granted in part.

All such retraction and apology, shall be done online in view of the fact that the libellous publication was done online.. The publication of the retraction shall also be published in any Four National dailies (hard copy) in Nigeria.

Before I put a full stop to this judgment, I will like to thank all counsel in this matter for the invaluable consideration.

OlumideFusika, SAN, I.F ChudeEsq., AbiolaOlawole, B.E Umadjoro and T. Nweke. I appreciate your legal contributions..thank you and God bless.

Justice Y. Halilu
Hon. Judge
30th June, 2020

APPEARANCES

T. NWEKE with UzoamakaIkpeazuand Divine Jude Okeke– for the Plaintiff.

I.F Chude with E.F Olowofela and W.I Achuke– for the 1st Defendant.

R.O Adakole with U.P Ogo and E.C Egwatu – for the 2nd Defendant.

Abiola O. - for the 3rd Defendant.

3rd Party not in court and not represented.