

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 3RD DAY OF JULY, 2020

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

JUDGE

SUIT NO. FCT/HC/CV/2013/2016

BETWEEN:

MR.MOSES ANYAOHAPLAINTIFF

AND

MR.CHARLES OZOILODEFENDANT

JUDGEMENT

In this case a landlord, businessman and contract residing at No. 70 Moses Anyaoha Street Arab Road Kubwa Abuja FCT alleged that another man who is his tenant and resides at same address has been brutalized his wife on several occasion. That he as a good Samaritan had equally on several occasion intervened in the brutality and had “pleaded” with the tenant to stop brutalizing his wife and live in peace. Paragraph 5 statement of Claim.

That “as a result of the peace interventions to protect the life of the man’s wife from being killed” by the defendant the same “defendant has since been keeping malice with him. This lead to the Defendant accusing him of assault and having sexual intimacy with the said defendant’s wife. That still in order to let the man see reason to stop brutalizing his wife, he wrote a petition against the man to the FCIID and based on the allegation too. That they were invited by the police. That on getting to the police the same man on citing him “in the presence of his friends and other bystanders orally spoke in English Language that-

“see my shameless landlord having sexual affair with my runaway wife.”

That the “Statement of the man as stated above is slanderous and tends to disparage his reputation and lower him to such an an estimation of right thinking members of the society generally”. (SIC)

That the Statement is also malicious spoken without reasonable cause. Moreover that these statements were not uttered at the heat of anger. That the man made that statement consciously. That as a result of that statement his friends, business associates have started shunning and avoiding him. That that had caused damages to his person business and reputation.

It is based on this that he instituted this action on the 20/6/16 claiming the following as the main.

1. An Order of this Court directing the Defendant to tender to him apology in two Daily Newspaper in respect to his reputation.
2. N1 million as general Damages in his favour.

3. N250.000.00 as cost of this Suit.
4. Omnibus prayer.

Mr. Moses Anyoaha is the landlord and the plaintiff in this case. Mr Charles Oziolo is the tenant and the Defendant and the man accused of saying that his landlord is a shameless landlord who is having sexual affair with his runaway wife.

Upon the receipt of the Originating Process the Defendant an an Engineer with Electricity Distribution Company vehemently deemed all the allegation of brutalizing his wife. He stated that he is a loving and peaceful husband and also a caring. That he never accused the plaintiff of having sexual affairs with his wife and he never made any slanderous statement against the Plaintiff. That he never made any such statement in the police before the friends of the plaintiff or ever. That the only thing that used to link him with the plaintiff is that he used to be a tenant in the said No. 70 Moses Anyoaha Street.

He also stated that it is common for husband and wife to have misunderstanding with his wife that the plaintiff intervened. He urged the Court to dismiss the statement of plaintiff because it lacks merit and he is not entitled to the reliefs sought.

Both parties filed witness statement on oath for the plaintiff and defendant respectively. But Defendant did not testify in Court. It is imperative to state that the Court had advised the parties to explore amicable settlement of the case but all attempts to do so failed.

In this Final Address the Defendant raised 2 Issues for determination which are:

1. Whether Plaintiff has proved his case beyond reasonable doubt.
2. Whether the case of the Plaintiff should not be dismissed.

ON ISSUES NO.1 He submitted that the allegation in issue is based on words spoken by him which the plaintiff believe is slanderous and malicious as stated in paragraph 11 & 12 of plaintiff's statement on oath that the general Rule is that proof of civil cases are on balance of probability except where there is allegation of crime in a civil case.

That slander as complained of has its root in defamation which is an offence that entails releasing of words calculated to be based on hatred, contempt and ridicule. That since the case of plaintiff is founded on criminal allegation he is expected to prove it beyond reasonable doubt and not on balance of probability going by provision of Section 135 (1) Evidence Act 2011.

That Plaintiff is also expected to prove all the ingredients of the offence. That he is also expected to present credible witnesses and tender documents in support and in proof of these allegations. That from the totality of evidence of the Plaintiff he has not discharged the onus placed on him for making criminal allegation against Defendant in a civil matter.

That he is to prove the allegation beyond reasonable doubt. This he should do by leading evidence to support the averment in his statement on oath. But instead the defendant made mere allegation which were unsubstantiated. That in paragraph 9 & 10 of the oath reveal that the allegation were never proved by the plaintiff. That in paragraph 10 the plaintiff referred to allegation of the Defendant and that the Defendant was invited based on two petitions, one written by Defendant and another written by the Plaintiff. But that he failed to present any of those petitions to support his averments in paragraph 9 & 10 of his oath. That his inability

or failure to attach those documents have fundamentally dented his case and testimony as well. That no supporting the case with those documents makes his case to be mere allegation which is criminal in nature and required to be proved beyond reasonable doubt. That the statement in issue-

“See my shameless landlord who is having sexual affair with my runaway wife” was allegedly spoken at the police station at FCIID.

That by averments of PW2 the plaintiff informed him that the defendant has an informant-Barr Abdul who may alleged informed the Defendant about the illicit affair between the plaintiff and wife of Defendant. But that the plaintiff did not call the Abdul to testify. Again that he did not call the officers at the station to testify as witnesses too. That all that made the plaintiff’s case as mere allegation without proof.

He urged court to hold that the burden placed on the plaintiff was never discharged. Also plaintiff has not been able to pin the alleged offence on the Defendant.

ON ISSUE NO 2- whether plaintiff’s case ought to be dismissed the Defendant submitted that plaintiff has not proved his case and has not discharged the burden on him in line with provision of the Evidence Act-Section 135 (1) He cited the case of:

National Bank Vs P.B Olatunde & CO Ltd (1994) 3 NWLR 512 @ 156 Ratio 9

He urged Court to dismiss the Suit.

In their written address the plaintiff raised one issue for determination which are:

Whether plaintiff has proved his case against the Defendant and whether he is entitled to any remedy as claimed in this Suit.

The Counsel submitted that in allegation of defamation the person defame the suffer odium, shamed and disgrace. That CW1 & CW2 testified in Court but Plaintiff Counsel did not cross-examine them to impeach their statements/testimonies. That CW2 stated what transpired at the police station where he state the Defendant accused plaintiff of having sexual Affairs with his wife. That the same CW2 told Court how the statement of his wife has affected the relationship between the CW2 and his own wife. That Defendant did not deny the said statement by CW2 that means that plaintiff's claim of suffering rejection and depression within the neighborhood is true and proved. That because the Defendant has no defence he decided to rest his defence on the case of the plaintiff though he filed a statement of defence.

That plaintiff has a right to protect his good name reputation and his estimation of his stand in the society. That because the Defendant have bruised that reputation the plaintiff decided to come to Court to seek redress. That defamation is not proved based on identity of the Defamed but on who themay reasonably, think is defamed. He referred to the case of:

SUN PUBLISHING LTD Vs ALLADIMMA MEDICARE LTD.

That applicant is entitled to the Damages/reliefs sought.

That he need not prove that he suffered any injury resulting to action damages or injury to his reputation because such injury is presumed. He referred to the case of:

W.P.C. Ltd Vs FAYEMI (2017) 13 NWLR (PT.1582) 218

That Defendant did not defend the case of plaintiff but only deny the averments in the pleading in a general traverse which is not an effective way of denial.

He referred to the case of:

GTB Vs NOBLE (2019) 14 NWLR (PT.1693) 389

He urged Court to hold that Defendant's failure to specifically deny those averments amounted to admission of those facts.

That Defendant also abandoned his statement of defence by refusing to lead evidence in proof of its defence and therefore admit the claims made against him. He referred to the case of:

NIGERIA BREWERIES PLC Vs IKYARKYASE & ORS
(2015) LPELR-40409 CA

That being the case of the plaintiff remains unchallenged and as such admitted that there is no defence to the case of the plaintiff, they urged the Court to determine the issue in favour of the plaintiff and grant all the Reliefs sought.

COURT:

As already stated severally in this case the plaintiff accused the Defendant of slander in that this statement-

“See my shameless landlord who is having sexual Affair with my runaway wife” is slanderous.

He had sought for the relief which included apology made in writing published in 2 daily Newspapers and payment of Damages of N1,000,000.00 among other things.

Going by the Black Law Dictionary Slander means-

“ A defamatory assertion expressed in a transitory form especially in a speech.”

In any action predicated on slander it is incumbent on the plaintiff to prove the allegation of slander in order to be entitled to a payment of damages. This means that damages for slander unlike those of libel are not presumed. Slander is a civil injury. Slander is actionable only on proof of actual damage except on special cases. In any slander where special damages need not be proof or to the plaintiff a conduct that would adversely affect his business or that involves moral turpitude.

At times such defamation may exist though not spoken once the words spoken or allegedly spoken are words which holds one to hatred, contempt or ridicule it is said to be slanderous. But the plaintiff has to vividly describe the word and circumstance of the statement or words spoken where he fails to do so, it will be held that the words are not slanderous. Where that's the case the plaintiff will not be entitled to the reliefs sought. That's the decision of the Court in the case of:

GTB Vs FADLALLAH (2010) ALL FWLR (PT.537) 739@760
para C-D

Once one makes a statement against another which are proved to be false, such person is held to be a slanderer. So it is incumbent on the plaintiff to prove that the statement in issue is false and that the maker maliciously did so without any justifiable cause. And that such statement were not made in the heat of passion too. Where there is criminal allegation and special condition, then the plaintiff is not only to prove slander, but he must do so beyond reasonable

doubt. See Section 135(1) Evidence Act 2011, Section 391 Penal Code.

See also the Case of:

BENSON IKOKU Vs ENOCH OIL (1962) ALL NLR 191-200

It is trite that a plaintiff must ordinarily present and support his case with credible testimonies of the witnesses and documents to support and prove the case where available and necessary. Unless and until the plaintiff discharges the onus and establishes his case, he will not be entitled to the Reliefs.

Again where a defendant defence is weak, it cannot strengthen the case of the plaintiff. It is incumbent on the plaintiff to prove his case and not to anchor on the weakness of the defence.

It is important to state that in this case there was no publication. The only thing that nearly relates to “publication” is the alleged petition allegedly written by the plaintiff to the place. But the same petition was never presented before this Court. Again it is important to point out that the plaintiff filed 2 statement on oath of 3 witnesses but did not call them to testify in Court. The Defendant anchored its case on the case of the plaintiff. It is important to point out that the Court has right to look at all the document duly filed and served on the Court in support or against a case pending in that Court; moreso where such documents were never withdrawn or such appreciation heralding them were not struck out. So this Judgment encompasses the statements of both parties made or written whether adopted or not adopted. It is important to point out that the Defendant did not cross-examine one of the 2 witnesses who testified on the side of plaintiff.

In this case can it be said that the plaintiff was able to prove and establish the allegation of slander against the Defendant in that the said statement in issue actually deemed the plaintiff in the eyes of the society, caused him irreparable damage, rejection and depression in the eyes of his friends and society at large, that the Court should grant all the reliefs sought by him.

Again can it also be said that the Defendant has not challenged the case of plaintiff notwithstanding that he filed 2 statements on oath for 2 witnesses and never called any to testify before the Court and notwithstanding that he did not cross-examine the one of the witnesses brought by the plaintiff. Was the plaintiff able to establish the allegation of slander?

It is the considered view of this Court that the plaintiff has not been able to establish the allegation of slander against the Defendant. He had stated on oath that the slanderous statement was made at the police station and that he had petitioned the Defendant at the FCIID Area 10, but he did not attach that one important document to buttress and show prove that the Defendant actually slandered him. Again failure to call the 3rd witnesses casts doubt in his testimony and case at large. Moreover the facts in support of his case were all frivolous. One had expected that he should have called the person-wife of the Defendant as one of the witnesses of the plaintiff. After all she is at the center of the debacle of slander. Again going by the alleged but unsubstantiated slanderous statement.

“see my shameless landlord having sexual affair with my runaway wife”.

Shows that the wife is no longer with the Defendant. Again this statement was made in the police station far away from where the plaintiff's landlord is residing, at Area 10 Garki. It is obvious that there may be done Nigerian there when the alleged statement was made but it is very obvious that the plaintiff's friends, family and business associates were not present if they were, the plaintiff did not say so. It should have been a totally different thing if the said statement was made in the premise where the plaintiff and defendant were residing. By the statement it shows that the Defendant was no longer a tenant to plaintiff. There is no evidence to show aside from what the plaintiff state. He did not present any petition to the police. As writer of such petition he should have an acknowledgement copy of same and should have presented it to Court as strong evidence to support his claim. Allegation of slander is strictly proved. It is not a used slanderous language against another.

The Defendant did not call any of his witnesses. He did not testify but rested his case on that of the plaintiff. The weakness of a defence cannot establish the case if a plaintiff who had failed to prove his case as required by law. Going by the averment of the plaintiff in paragraph 7 & 8 of his oath that defendant is vicious and brutalize his wife that lead to her running away, it is clear that the plaintiff for reasons best known to him decided to meddle into the matrimonial affairs of the Defendant and his wife. As a landlord he has no right to do so.

“ intervene pleading with defendant to stop brutalizing his wife”

He is their landlord not their marriage Counselor. This lead to the petition by the Defendant accusing the plaintiff of having

sexual affair with his wife. Going by the fact that the Defendant was occupying a 2 Bedroom apartment will shows that there are other neighbors in the premise. One wonders why none of them was in the picture to confirmed that actually there was brutalization of the woman and there was occasion of accusation that tantamount to slander.

The slanderous statement was made at FCIID stated at Area 10 Garki Abuja. Very far from the place of abode of the parties. Obviously there were no neighbors their and no business associates of the plaintiff or as already state no family members too. Why go all the way from kubwa to make the report. At FCIID Area 10 Garki when he could have made the report of brutalization and slander at the closest police command at kubwa. Meanwhile the Defendant denied that such petition existed and such invitation at FCIID police never occurred.

The testimony of the Gate/Security man is good but did not establish the allegation of slander because the word used, going by the averment in paragraph 7 of the statement on oath shows that the words were spoken at the police station at Area 10 Garki not in the premise of NO. 70 Moses Anyoaha Street Arab Road Kubwa. Where the 2 men resided.

In paragraph 7 of the statement of claim the plaintiff averred that defendant petitioned him first before he in turn petitioned Defendant when Defendant now made the statement.

Again it is clear that at the time the plaintiff petitioned Defendant and the statement was made the Defendant was no longer living in the same premises with the plaintiff as his tenant. Again he was no longer living with his wife. Going by the statement it is clear that the allegation is that the plaintiff

is still having affairs with the Defendants wife who had runaway.

All in all the plaintiff was not able to establish that the Defendant slandered him by those words. There is no slander as claimed by plaintiff. The plaintiff is not entitled to the relief/claim as sought. Therefore the Suit lacks merit and is accordingly dismissed.

This is the Judgment of this Court delivered today the.....day of2020

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K.N.OGBONNAYA
HON.JUDGE