

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. 14

CASE NUMBER : SUIT NO: CV/2856/2018

DATE: :WEDNESDAY 13TH DECEMBER, 2023

BETWEEN:

ENGR. PROF. MOHAMMED SANI HARUNA.....CLAIMANT

AND

1. DOM COMMUNICATIONS LTD. } DEFENDANTS
2. DENNIS SAMI } }
3. AARON OSSAI } }

JUDGMENT

The Plaintiff commenced this action vide Writ of Summons and Statement of Claims dated 25th September, 2018 and filed 26th September, 2018 wherein they claim against the Defendants jointly and severally as follows:-

1. A Declaration that the publication on Tuesday June, 26th, 2018 on the front page and at page 5 of the Nigerian Pilot Newspapers by the Defendants were defamatory of the Claimant.
2. Damages in the sum of N100,000,000.00 (One Hundred Million Naira only) as general damages for the publication of a libelous matter concerning the Claimant.
3. An Order of Perpetual Injunction restraining each of the Defendants, their privies or agents or

otherwise, from further publishing or causing to be published, the picture and defamatory statements against the Claimant.

4. An Order mandating all the Defendants to unreservedly retract the published libelous statements and tender public apology on the front page of the Nigerian Pilot and one (1) National Daily Newspaper.
5. The sum of N10,000,000.00 (Ten Million Naira) only as cost of filing and prosecuting this suit.

The case of the Claimant as distilled from Witness Statement on Oath of Engr. Prof. Mohammed Sani Haruna, the Claimant in this suit is;

That the 1st Defendant is a limited liability company incorporated under the Companies and Allied Matters Act, 1990 and it is the printer and publisher

of “The Nigerian Pilot Newspaper”, a national newspaper with a very wide circulation within the Federation of Nigeria and beyond our National boundaries and also online with an office at Block A1, AMMAC, beside Heritage House, Wuse Zone 3, Abuja – FCT.

That the 2nd Defendant is the Group Chairman, Publisher and Editor-in-chief of the Nigerian Pilot Newspaper.

The 3rd Defendant is the reporter of the publication complained of, titled “NASENI boss in multi Million Naira scams” at page 5 of the Nigerian Pilot Newspaper.

That his attention was drawn to the publication on the front page (headline), and at page 5 of the daily issue of the Nigerian Pilot dated Tuesday June 26th,

2018, wherein the Defendants; and each of them printed and published or caused to be printed and published of and concerning him, his picture and the following defamatory words:

“NASENI boss in multi-million Naira scams CONTRARY to President Muhammadu Buhari’s anticorruption crusade, the Executive Vice Chairman and Chief Executive of National Agency for Science and Engineering Infrastructure, NASENI, Dr. Muhammed Sani Haruna, who has just been reappointed for a second term, is currently enmeshed in allegation of fraudulent activities while he held sway in the Organization.

A Law firm, AS-Servio Attorney and Solicitors through its representative, Barrister Kester

Elebesunu, in a petition to the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC), and President Muhammadu Buhari accused the CEO of embezzlement, false contract awards, intimidation of staff, diversion of funds among others.

According to the petition made available to Nigeria Pilot with relevant documents, Dr. Haruna embezzled over N500 Million with cronies, N24.5 Million contract award for an existing infrastructure – Automatic Wood Processing Plant, N26 Million to purchase Toyota Jeep for project supervision among others.

The statement further alleged that Dr. Haruna was not qualified in the first place to head the Organization, explaining that out of all the people shortlisted for the position, he was the least qualified but that due process was overlooked to ensure that he occupied the seat.

The law firm in the petition also alleged that Haruna, between 2012 and 2015, used overhead votes of agencies under NASENI to steal and divert funds for personal gains while due process was violated in appointing Consultants and companies in award of contracts valued at Billions of Naira.

The petition, in which the law firm strongly kicked against re-appointment of Dr. Haruna as the head of NASENI, also accused him of

approving the withdrawal of N22 Million from NASENI's capital project account – Ecobank account number 0661301005018, which was sent to one Dr. I.O Abdulmaliki's personal account at Zenith Bank account number 1001154695 for undisclosed use.

It also accused Dr. Haruna of collecting double salary as acting DG in 2012, explaining that he collected from PEEMADI, Okene, where he served as Director/CEO and also collected as acting DG of NASENI with N910.269 each paid into his First Bank account number 2005645842 as well as several estacodes collected for China and India trips that was not undertaken to the tune of Millions of Naira (documents attached).

Details of the alleged scam continue in our next edition.”

That the Defendant caused and consented to the publication of the Defamatory Statements in the publication complained of without reasonable care in verifying the veracity and authenticity of the said statements.

That upon discovery of the said publication of June, 26th, 2018 my counsel, on instruction of the Claimant wrote a letter dated 7th July, 2018 and received on 9th July, 2018 to the 1st and 2nd Defendants informing them of the defamatory publication and consequently demanded a retraction of the said publication and public apology amongst other demands.

That despite notifying the Defendants in writing of the damaging publication, the Defendants failed to reply and willfully neglected to correct, retract or tender a public apology.

That the Defendants' publication of June 26th, 2018 at page 5 of the Nigerian Pilot Newspaper referred to him by name, was made of and concerning him and in their natural and ordinary meaning, the said words were understood to those who read it to bear libelous meaning.

That in their natural and ordinary meaning, the words contained in the said publication meant and were understood to mean that:

- a. Contrary to President Muhammadu Buhari's anticorruption crusade, the Claimant is a fraudulent and corrupt person who has just been

reappointed by the President as the Chief Executive Officer (CEO) of the National Agency for Science and Engineering Infrastructure (NASENI).

- b. Claimant is involved in embezzlement of funds, false contract awards, intimidation of staff, diversion of funds and among other negative activities that savored tangibly in favour of corruption and dishonest practice.
- c. He is also qualified to head NASENI and due process was overlooked to ensure that he occupied the seat. He is unfit to occupy the office that he is holding.
- d. Claimant have stolen and diverted funds for personal gains.

e. Claimant have willfully and with reckless abandon, violated or breached his oath of office.

That the article complained of, when read clearly depicts libel because it tends to show that he engaged in criminal activities during his tenure as Vice Chairman/CEO of NASENI wherein he was accused of embezzlement, false contract awards, intimidation of staff, diversion of funds among others.

That he is not presently standing trial and was never at any time invited by the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC) nor the Nigerian Police Force with regards to the allegations contained in the article complained of or any allegations whatsoever.

That the publication complained of has greatly exposed him to hatred, contempt, ridicule and obloquy because the said publication has portrayed him as a fraudulent person, crooked, unreliable and a corrupt public servant given the position of trust he currently occupy.

That the libelous article by the Defendants, were published maliciously, with spite and ill will towards him.

That the resultant effect of the said publication has caused him considerable embarrassment, distress and irreparable damage to his reputation as a civil servant and an outstanding Professor in his field of study.

PW1 tendered the following in evidence:

1. Publication on Nigerian Pilot Newspaper of 26th June, 2018.
2. Letter from Solicitor.
3. Certificate True Copy of Pilot Newspaper of 26th June, 2018.

All marked Exhibits ‘A’, ‘B’, and ‘C’ respectively.

PW1 was cross-examined and subsequently discharged.

Defendants opened their Defence and called DW1 (Mr. Aaron Ossai). The case of the Defendants as distilled from Statement of Defence and Witness statement on Oath of DW1 is, that;

That on the 6th of August, 2015, the law firm of AS-SERVIO ATTORNEY & SOLICITORS, who acted as counsel to Academic Staff Union of

Research Institutions (ASURI), caused several petitions to be written and forwarded to President Muhammadu Buhari, the Chief of Staff to President Muhammad Buhari, the Chairman of Economic and Financial Crimes Commission (EFCC), the Chairman of the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the Inspector-General of Police, The Director General of the Department of State Services (DSS) and the Head of Mission, Japanese Embassy in Nigeria.

That the petition is dated 6th August, 2015 and titled, ***“Petition Highlighting Corruption In Procurement & False Claims By Dr. M.S. Haruna, The EVC/CE of National Agency For Science & Engineering Infrastructure (NASENI) Idu Industrial Area, PMB 391 Garki, Abuja With His Collaborators & Call For Investigations Into Over Five Hundred***

Million (N500, 000, 000.00) Naira Pilfered and Embezzled Funds” He shall rely on copies of the various petitions during the trial of this Suit.

That the aforementioned petitions contain allegations of corruption against the Claimant to the effect that the Claimant was not qualified to hold the office he was appointed into and that he has used the said office to embezzle huge amount of money belonging to the National Agency for Science & Engineering Infrastructure (NASENI) which is an agency of the Federal Government.

That the Petitions were accompanied by various documents supporting the above allegations, some of which are the NASENI Capital Budget Utilization for the years 2012, 2013 and 2014 with documents annexed therein as Annexures 1-6. He shall rely on

these documents and Annexures during the trial of this Suit.

That as an editor of a newspaper, he carried out due diligence, exercised reasonable care and he made his findings and discovered that the aforesaid petitions were not fictitious, but that they were actually written and that they are of public interest.

That as an editor of a newspaper, he knows that he is entitled to report or publish news that are of public interest.

That he knows as a fact that the Petitions are still pending against the Claimant in the various offices where they were submitted.

That the Defendants' publication of June 26th, 2018 in the Nigerian Pilot Newspaper was therefore not his independent publication but that he merely

reported the aforementioned petitions by AS-SERVIO ATTORNEY & SOLICITORS as a report of the fact that the petitions were written and nothing more.

That the publication of June 26th, 2018 did not make any allegations against the person of the Claimant.

That whatever allegations, if any, against the person of the Claimant (that could warrant any claim of defamation) were made in the petitions submitted against the Claimant by AS-SERVIO ATTORNEY & SOLICITORS.

That apart from the Nigerian Pilot Newspaper, other newspapers and news agencies published the same news, such as the Blueprint Newspaper, Aljazeera News etc. He shall rely on copies of these other newspaper publications during the trial of this Suit.

That before the said publication was made, he put several phone calls through to the Claimant to inform him of the publication, but the Claimant refused to take his calls, and when the Claimant sent his letter, there was nothing to reply to.

That the Defendants insist that they have no business or concern with the contents of the petition as what was merely published was the fact of the existence of the petitions written by AS-SERVIO ATTORNEY & SOLICITORS.

That he knows that the only thing published by the Defendants is the following:

“CONTRARY to President Muhammadu Buhari’s anti-corruption crusade, the Executive Vice Chairman and Chief Executive of National Agency for Science and

Engineering Infrastructure, NASENI, Dr. Muhammad Sani Haruna, who has just been re-appointed for a second term, is currently enmeshed in allegation of fraudulent activities while he held sway in the organization”.

That apart from the above quoted statement, every other thing was as contained in the petition by AS-SERVIO ATTORNEY & SOLICITORS.

That from the publication quoted above, the following are true:

- a. The Claimant is Dr. Muhammed Sani Haruna
- b. The Claimant was appointed the Executive Vice Chairman and Chief Executive of NASENI for a second term

- c. The Claimant is enmeshed in allegation of fraudulent activities as contained in the various petitions by AS~SERVIO ATTORNEY & SOLICITORS, and
- d. The Claimant held sway in the organization (which is NASENI).

That there is nothing libelous of the Claimant in the publication of June 26th, 2018 edition of the Nigerian Pilot Newspaper, but that the same is justified.

That whether or not the Claimant is standing trial at the Economic and Financial Crimes Commission (EFCC) or any other anti-graft agency, does not whittle down the fact that those petitions against him by AS-SERVIO ATTORNEY & SOLICITORS were actually written.

That the Claimant is not entitled to the claims as contained in the Writ of Summons, same being an exercise in gold digging and a malicious attempt to use the process of the law unjustly against the Defendants and prays the court to strike – out the Suit of the Claimant as same is frivolous and a calculated attempt to waste the time of this Honourable Court.

DW1 was cross examined and subsequently discharged.

Claimant filed reply on point of law to the Defendants' Statement of Defence.

Learned counsel submits, that Claimant denies the averment in paragraph 6 of the Statement of Defence and states that no phone calls were made to the

Claimant to confirm the veracity or otherwise of the said libelous statements and puts the Defendants to the strictest proof thereof.

The averments contained in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Statement of Defence are false and unsubstantiated and in response to the said paragraphs, the Claimant avers that:

- a. The quoted statement in paragraph 8 of the Statement of Defence clearly demonstrates a conclusive opinion of the Claimant in a libelous manner.
- b. The Defendants falsely portrayed the Claimant as a fraudulent and corrupt civil servant, given the position of trust he currently occupies, which greatly tarnished the Claimant's reputation.

Learned counsel further submits, that in reply to paragraphs 17 and 18 of the Statement of Defence, the Claimant avers as follows:

- a. This suit was instituted in good faith and as a result of the Defendants' unwillingness to respond to the Claimant's letter of 7th July, 2018 wherein a retraction amongst other things were demanded.
- b. The Defendants did not respond to the said letter or retract the said publication hence the institution of this suit before this Honourable Court.
- c. The Claimant is entitled to the reliefs sought as the said publication has gravely tarnished the reputation of the Claimant.

Learned counsel further submits, that in response to paragraph 19 of the Statement of Defence, the Claimant states that the said averment is false.

In line with law and procedure, Defendant filed written address wherein sole issue was formulated for determination to-wit;

“Whether having regards to evidence before the Court, the content of Exhibits “A”, “B” and “C” and the general circumstances of the publication, the reliefs sought can be granted.”

It is the submission of learned counsel, that on the strength of evidence before this Honourable Court the Claimant reliefs cannot be granted.

Learned counsel submits, that on the front page (headline), and at page 5 of Daily Issue of Nigeria Plot dated Tuesday 26th January, 2018 the

Defendants and each of them printed and published or caused to be printed and published of and concerning the Claimant, the picture of the Claimant and the following words defamatory of the Claimant.

It is further the submission of learned counsel, that in defamation or libel cases, what is important is the action of a third party to the publication complained of. It is not what the Claimant thinks of himself, rather what a third party thinks of the Claimant as regards his reputation.

SKYE BANK PLC. & ANOR VS. CHIEF MOSES BOLANLE AKINPELU (2010)3 SC (Pt. II) 29 was cited.

It is also trite that he who alleges must prove. According to Sections 131, 132 and 133, of the Evidence Act, 2011, counsel also submit that it is

elementary law that whoever desire any Court to give judgment has to any legal write or liability dependent on the existent of fact which he asserts must prove that those facts exist. It is also trite in civil cases the burden of first proving the existence or non-existent of a facts lies on the party against whom the judgment of the Court will be given if no evidence where produced on either side, regards been heard to any presumptions that may rise on the pleadings, *BULET INT'L (NIG) LTD. VS. OLANIYI (2017)17 NWLR (Pt. 1594) 260 at 287 Paragraphs F – H* was cited.

Learned counsel submits, that PW1 admitted in evidence that he will not be surprised if there is such a petition. From the answer of PW1, it is obvious that he agreed that the Defendants were merely reporting the petition as written by As-Servio

Solicitors and Attorneys. As such the defence of justification would avail the Defendants. ***JOSEPH MANGTUP DIN VS. AFRICAN NEWSPAPER OF NIG. LTD. (1990) 5SC (Pt. 11) 111*** was cited.

It is the submission of learned counsel, that law is settled that a claim for damages is always to be deemed in issue. Counsel refer the Court to ***IWEKE VS. IMO BROADCASTING CORP. (2005) ALL NLR 251***. It is their humble opinion that the award for damages would fail where the main action fails.

Counsel concludes by urging this Honourable Court to so hold and dismiss the claims of the Claimant for lacking in merit.

On their part, Claimant filed written address wherein sole issue was formulated for determination to-wit;

“Whether considering the circumstances of this instant suit, as well as the evidence led at trial the Claimant has successfully established his claim of defamation against the Defendants to be entitled to the reliefs sought.”

It is the submission of learned counsel, that the law is trite that the ingredients a Claimant must prove to be successful in an action for defamation, in this case – libel are as follows:

- i. That the Defendant published in a permanent form a statement.
- ii. That the statement referred to the Plaintiff.
- iii. That the statement conveys defamatory meaning to those to whom it was published; and

- iv. That the statement was defamatory of the Plaintiff in the sense that;
- a. It lowered him in the estimation of right thinking members of the society; or
 - b. It exposed him to hatred, ridicule or contempt; or
 - c. It injured his reputation in his office, trade or profession; or
 - d. It injured his financial credit. ***EKONG VS. OTOP & ORS (2014)11 NWLR (Pt. 1419) (SC)*** was cited.

Learned counsel further submits, that the evidence before this Honourable Court has established all the essential ingredients that will make the Defendants liable for the Tort of Defamation. The starting point

is the publication about the Claimant published on Tuesday 26th June, 2018 on the front page and at page 5 of the Nigerian Pilot Newspaper.

Learned counsel submits that the publication of Tuesday 26th June, 2018 categorically, emphatically and specifically referred to the Claimant as illustrated below:

- a. The Defendants and publishers of the publication at page 5 paragraphs 1 – 7 of Exhibit A, referred to the Claimant by name – “Dr. Muhammed Sani Haruna”, “Dr. Haruna”; “Haruna”.
- b. The headline itself at the front page as well on page 5, of the Newspaper publication of Tuesday 26th June, 2018 referred to the Claimant as “NASENI Boss”.

- c. As if the reference above were not enough, the Defendants published and caused the Claimant's picture to be published alongside the defamatory statement on Page 5 of Exhibit "A".

Learned counsel contends, that the Defendants intended to stain the Claimant's reputation, disgrace, and expose him to hatred and ridicule by their publication of Tuesday 26th June, 2018 on the front page and at page 5 of the Nigerian Pilot Newspaper.

Counsel also submits, that the Defendants have made heavy weather of the fact that the publication was based on petitions written to the Economic and Financial Crimes Commission (EFCC), Independent Corruption Practices and Other Related Offence Commission (ICPC) and President Muhammadu

Buhari by one Law Firm called AS-Servio Attorney & Solicitors, and further that the publication was to the effect that the petitions were actually written, and not intended to defame the Claimant or written in bad faith. Be that as it may, the law is settled that repeating or publishing a defamatory statement or publication can give a cause of action in defamation.

The law is trite that when a Claimant who proves the tort of libel against a Defendant does not have to prove that he suffered any particular loss or damage before it could be awarded damages for the defamation committed against it. ***OKOROJI VS. ONWENU (2016) LPELR – 41285 (CA)*** was cited.

As such, defamation is actionable per se. Counsel urge this Honourable Court to find for the Claimant

and award damages as prayed for in its Statement of Claim.

Learned counsel concludes, that the Defendant publication of June 26th, 2018 on the front page and at page 5 of the Nigerian Pilot Newspaper referred to the Claimant by name throughout, was made of and concerning the Claimant, and in their natural and ordinary meaning, the said words were understood to those who read it to bear libelous meaning.

Having proved all the elements of defamation, and without any justification by the Defendants counsel humbly urge this Honourable Court to grant all the claims of the Claimant. This is against the background of the fact that the Defendants did not make out any of the defences recognized by law

against this claim. Counsel further urged this Court to allow the claims of the Claimant in its entirety.

COURT:-

I have read and assimilated the evidence (oral and documentary) ably led by Claimant on the one hand and the Defendants on the other hand.

The crux of Claimant's action is within the realm of the Tort of Defamation.

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 ensuing evidence before the Court as reproduced in the preceding part of this Judgment vis-à-vis the arguments of Claimant on the one hand and the Defendants on the other hand, the class of defamation involved here is libel.

To resolve the legal dilemma in this matter, the issue raised for determination by Claimant's counsel which to my mind seems to have covered the issue formulated for determination by Defendants, has

been adopted by the Court as its issue for determination.

The issue is;

“Whether considering the circumstances of this instant suit, as well as the evidence led at trial the Claimant has successfully established his claim of defamation against the Defendants to be entitled to the reliefs sought.”

In an attempt to establish the tort of Defamation of libel, Plaintiff tendered Exhibit “A” which is a printout Publication on Nigerian Pilot Newspaper of 26th June, 2018 made by the Defendants concerning the Claimant as

*“NASENI boss in multi-million Naira scams
CONTRARY to President Muhammadu
Buhari’s anticorruption crusade, the Executive*

Vice Chairman and Chief Executive of National Agency for Science and Engineering Infrastructure, NASENI, Dr. Muhammed Sani Haruna, who has just been reappointed for a second term, is currently enmeshed in allegation of fraudulent activities while he held sway in the Organization.

A Law firm, AS-Servio Attorney and Solicitors through its representative, Barrister Kester Elebesunu, in a petition to the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC), and President Muhammadu Buhari accused the CEO of embezzlement, false contract awards, intimidation of staff, diversion of funds among others.

According to the petition made available to Nigeria Pilot with relevant documents, Dr. Haruna embezzled over N500 Million with cronies, N24.5 Million contract award for an existing infrastructure – Automatic Wood Processing Plant, N26 Million to purchase Toyota Jeep for project supervision among others.

The statement further alleged that Dr. Haruna was not qualified in the first place to head the Organization, explaining that out of all the people shortlisted for the position, he was the least qualified but that due process was overlooked to ensure that he occupied the seat.

The law firm in the petition also alleged that Haruna, between 2012 and 2015, used

overhead votes of agencies under NASENI to steal and divert funds for personal gains while due process was violated in appointing Consultants and companies in award of contracts valued at Billions of Naira.

The petition, in which the law firm strongly kicked against re-appointment of Dr. Haruna as the head of NASENI, also accused him of approving the withdrawal of N22 Million from NASENI's capital project account – Ecobank account number 0661301005018, which was sent to one Dr. I.O Abdulmaliki's personal account at Zenith Bank account number 1001154695 for undisclosed use.

It also accused Dr. Haruna of collecting double salary as acting DG in 2012, explaining that he

collected from PEEMADI, Okene, where he served as Director/CEO and also collected as acting DG of NASENI with N910.269 each paid into his First Bank account number 2005645842 as well as several estacodes collected for China and India trips that was not undertaken to the tune of Millions of Naira (documents attached).

Details of the alleged scam continue in our next edition.”

Claimant also tendered Exhibit “B” which is a Letter from the Claimant’s Solicitor to the 1st Defendant dated the 7th July, 2018 concerning the Claimant with heading **“Notice of Defamatory Publication against Engr. Prof. Mohammed Sani Haruna”**. Which was acknowledged by the 1st Defendant.

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 am clothed by 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 Defendants which carried the name/details of the Claimant.

The Defendants however, alluded in their defence that the publication which the Claimant is complaining of was as a result of petitions by AS-SERVIO ATTORNEY & SOLICITORS i.e several petitions to be written and forwarded to President Muhammadu Buhari, the Chief of Staff to President Muhammad Buhari, the Chairman of Economic and Financial Crimes Commission (EFCC), the Chairman of the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the

Inspector-General of Police, The Director General of the Department of State Services (DSS) and the Head of Mission, Japanese Embassy in Nigeria.

Thus, it was therefore not the Defendants' independent publication but that they merely reported the aforementioned petitions by AS-SERVIO ATTORNEY & SOLICITORS as a report of the fact that the petitions were written and nothing more.

Thus, there is nothing libelous of the Claimant in the publication of June 26th, 2018 edition of the Nigerian Pilot Newspaper, but that the same is justified.

Furthermore, whether or not the Claimant is standing trial at the Economic and Financial Crimes Commission (EFCC) or any other anti-graft agency, does not whittle down the fact that those petitions

against him by AS-SERVIO ATTORNEY & SOLICITORS were actually written.

That before the said publication was made, several phone calls were made through to the Claimant to inform him of the publication, but the Claimant refused to take those calls, and when the Claimant sent his letter, there was nothing to reply to.

Arising from the said publication, the said publication has caused him considerable embarrassment, distress and irreparable damage to his reputation as a civil servant and an outstanding Professor in his field of study.

From the foregoing, it is pertinent to note that indeed there is no mention of the Claimant as a fraudulent and corrupt person. The following words when read in their ordinary meaning, i.e “***CONTRARY to***

President Muhammadu Buhari's anticorruption crusade, the Executive Vice Chairman and Chief Executive of National Agency for Science and Engineering Infrastructure, NASENI, Dr. Muhammed Sani Haruna, who has just been reappointed for a second term, is currently enmeshed in allegation of fraudulent activities while he held sway in the Organization”, connotes clearly on every word of it that the Claimant is a fraudulent and corrupt person who has just been reappointed by the President as the Chief Executive Officer (CEO) of the National Agency for Science and Engineering Infrastructure (NASENI), as claimed by the Defendants as the basis for the libelous publication against him. The law on the burden of proving the existence of a fact is on that person who asserts it.

Permit me to state here, 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 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 VS. MACLLWAIN (1894) 2 Q C. 54.

Defendants have not tendered adequate evidence before this court to solidify their justification for making said publication of the Claimant.

The defence of qualified privilege, I dare say would not avail any of the 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 Defendants 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 the comments upon them are correct.” See also ***EMEAGWARA V GUARDIAN NEWSPAPER LTD (1998) 1 NWLR (Pt. 535) 610 AT 623.***

I have read the arguments of Defendants which is hinged on the Defence of Justification.

It is pertinent to note, that such a Defence of Justification and or qualified privilege will enure in favour of such a Defendant where the publication which led to the action on Defamation is found to be true. See ***CONCORD PRESS (NIG) LTD & ORS VS. ASAOLU (1999) LPELR – 5520 (CA).***

Where on the other hand, a publication is found to be untrue, no such Defence of Justification or

qualified privilege will avail such a Defendant in view of the fact that qualified privilege is no license to say untruths.

Thus, I hold that the Defendants failed to justify the statements made in Exhibits “A” and “C” as mentioned in the preceding part of this judgment, and cannot succeed on its purported plea of justification.

There is no evidence before this court withdrawing the said publication about the Claimant by the Defendants as a means to assuage the allegation of malice on the part of the Defendants.

The publication contained in Exhibit “A” and Exhibit “C” emanating from the Defendants is without any doubt defamatory. I so hold.

It is instructive to note that relief no. “1” claimed by the Claimant is declaratory in nature, and the law with respect to declaratory relief is clear.

Such reliefs shall succeed on the evidence adduced and not on admission or lack of defence.

See *AGBAJE VS FASHOLA & ORS (2008) 6 NWLR (Pt. 1082)*.

Indeed, judicial pronouncements are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence.

MOTUWASE VS. SORUNGBE (1988) NWLR (Pt. 92) 90.

Where a Court is called upon to make a declaration of right, it is incumbent on the party claiming to be

entitled to the said declaration to satisfy the Court by evidence and not the admission in pleadings.

SAMESI VS. IGBE & ORS (2011) LPELR 4412.

I am morethan satisfied that Defendants have failed to justify the said publication against the Claimant. Claimant who has led evidence to show that he is entitled to Relief “1”, shall be granted the said Relief. It is hereby granted in the interest of justice.

Next is the issue of 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.

Claimant gave evidence to the effect that he is an outstanding civil servant who has held important positions of leadership in government and he has been honoured with numerous awards and the latest being the National Leadership Award for Outstanding Manager of Government Agency (August 2015).

In 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 prove 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 Ogundare, JCA.***

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

Where there is a legal wrong proven, such shall be assuaged in damages.

Defendants who had all the time to have retracted the said write-up, failed to do so.

Claimant clearly is entitled to be assuaged in Damages having established that the publication authorized by Defendants is libelous.

As it relates to award of Damages, the legendary ***DENNING, M.R IN PACKER VS. PACKER (1954) Page 15 at Page 22***, stated as follows:-

“What is the argument on the other side? Only this that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything, which has never been done before, we shall never get anywhere. The law will not

stand still whilst the rest of the world goes on and that will be bad for both. The law is an equal dispenser of justice, and leaves none without a remedy for his right. It is a basic and elementary principle of common law that wherever there is a wrong, legal or injuria that is, there ought to be a remedy to redress that wrong. Ubi jus ibi remedium is the common law principle.”

On the whole therefore, I hereby award the sum of **N50,000,000.00 (Fifty Million Naira)** against all the Defendants conjunctively.

The next relief is that of Perpetual Injunction. It is usually a relief granted after determining in finality the case of the Parties.

This relief is meant to prevent a permanent infringement of those rights being complained of and to obviate the necessity of bringing multiple suits in the future.

See ***A.G. KWARA STATE ANOR VS. KOLAWOLE (2018) LPELR – 44982 (CA)***

Claimant is entitled to be granted the said relief... same is hereby granted.

Next and last relief is an Order mandating all the Defendants to unreservedly retract the published libelous statements and tender public apology on the front page of the Nigerian Pilot and one (1) National Daily Newspaper.

Having found the said publication libelous, it would be proper to have apologies published by the said Defendants.

I hereby so grant the said relief.

This is the judgment of this court.

Justice Y. Halilu
Hon. Judge
13th December, 2023