

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR
ON THIS 31ST DAY OF OCTOBER, 2024

SUIT NO.: CV/5074/2023

BETWEEN:

MR. PETER ODANG ENYIGWE CLAIMANT

AND

1. FASTCREDIT LIMITED	} DEFENDANTS
2. MR. EMEKA ILOELUNACHI		
3. MR. FEMI ADEBAYO		

JUDGMENT

DELIVERED BY HON. JUSTICE J. ENOBIE OBANOR

The Claimant commenced this suit by Writ of Summons on 4th May, 2023. He sought the following reliefs from this Honourable Court:

- a) The sum of Two Billion Naira (N2,000,000,000.00) as General Damages for the defamation of the Claimant
- b) The cost of this suit.
- c) Post judgment interest of 10% percent interest

However, in the Statement of Claim, the Claimant's reliefs are as follows:

- a) The sum of Two Billion Naira (N2,000,000,000.00) as General Damages for the defamation of the Claimant.

- b) 1st Defendant's Unreserved Apologies to the Claimant in four Dailies with nation wide spread and to all the claimant's contacts to whom the libelous publication was made to.
- c) The cost of this suit.
- d) Post judgment interest of 10% percent interest

There is a slight disparity between the reliefs sought in the Writ of Summons and the Statement of Claim. In circumstances such as this, the law is that where a relief claimed in the Statement of Claim differs from the Writ, the Statement of Claim supersedes the Writ. See *IBEDC v. FOLORUNSHO & ORS*(2021) LPELR-54965(CA).

The Defendants did not enter an appearance nor did they file a Statement of Defence despite being served with the court processes.

On 31st October, 2023 when hearing commenced the Claimant called three (3) witnesses as follows: Dr. Daniel Mailumo (CW1), Mrs. Zainab Osuyah (CW2) and Peter OdangEnyigwe, himself (CW3). They adopted their Witness Statements on Oath deposed to on 4th May, 2023.

It is the Claimant's case that he is an Abuja-based businessman and Managing Director of several companies, including CCAI Management Consultant Services Limited and Continental Capital Alliances Investment Limited. The Claimant was involved in several high-value business projects, such as contracts with the University of Calabar and a consulting job with New Satii-An Nigeria Limited, worth millions of dollars. In mid-2022, due to his funds being tied up in ongoing jobs, the Claimant applied for a microloan of ₦24,000 from the 1st Defendant, a licensed non-bank financial institution.

After failing to repay the loan on time, the 1st Defendant threatened the Claimant via WhatsApp, demanding immediate payment and stating they would declare him and his contacts wanted for fraud. Despite the Claimant's attempts to settle the debt in good faith, the 1st Defendant published defamatory content online, including the Claimant's photograph with captions labelling him a fraudster. This false publication led to severe reputational damage, with several contacts calling him to express their shock, and even resulted in the termination of his consultancy job with New Global Satii-An Nigeria Limited. Despite settling his debt, the defamatory content remained, causing further harm.

The Claimant's witnesses tendered documents admitted in evidence and marked as Exhibits A – N as follows:

1. Certificate of Compliance dated 27th October, 2023 – Exhibit A.
2. Certificate of Compliance Section 84 (4) of the Evidence Act dated 27th October, 2023 - Exhibit B.
3. CAC 7 – Particulars of Directors dated 6th July, 2006 – Exhibit C
4. CAC - Particulars of Directors dated 8th July, 2010 - Exhibit D
5. Notice of Change of Directors dated 18th January, 2021 - Exhibit E
6. Incorporation of Trustees dated 8th December, 2011 - Exhibit F.
7. Letter titled "Sanitation Disinfection Fumigation" dated 17th February, 2021 - Exhibit G
8. Letter of Authority for Financial Consultancy Services dated 6th May, 2022 - Exhibit H
9. Certificate of Compliance and Whatsapp chat dated 27th October, 2023 - Exhibit I

10. Certificate of Compliance and transaction receipt dated 27th October, 2023 - Exhibit J
11. SMS Exchanges and Certificate of Compliance and transaction receipt dated 27th October, 2023 - Exhibit K
12. Letter of Termination of Consultancy Services dated 15th July, 2022 - Exhibit L
13. Certificate of Compliance dated 27th October, 2023 - Exhibit M
14. Certificate of Compliance dated 27th October, 2023 Exhibit N

As stated earlier the Defendants did not file a defence and were foreclosed from cross-examining the Claimant's witnesses and defending the suit.

The Claimant's Counsel filed his Written Address on 20th March, 2024 wherein he posed a sole issue for determination thus:

Whether the Claimant has established the infraction of defamation as to be entitled to the reliefs claimed in the instant suit.

In his submission, Counsel argued that the Defendants have engaged in defamatory conduct, leading to injury to the Claimant's reputation, The Claimant provided specific case references such as UBN PLC VS OREDEIN 1992 6 NWLR (PART 247)355 and SKYE BANK PLC VS AKINPELU (2010) 9 NWLR PT 1198 P179 to outline the elements that must be proven in a defamation claim, including publication to a third party, the defamatory nature of the statement, and the absence of legal justification for the publication. He further submitted that the law presumes harm to reputation once defamatory statements are made, meaning the Claimant need not prove actual damage.

The Claimant also elaborates on the factum of publication, specifically pointing to the dissemination of defamatory content via

WhatsApp chats and Facebook posts, which include personal identifiers and statements branding the Claimant as "wanted for fraud and threat to life." These actions, the Claimant contends, damaged his reputation in the eyes of society and caused him harm. In concluding, the Claimant requests that the court award damages for defamation which he stated is presumed in law once defamatory statements are published and affirmed that defamation is actionable *per se*. He placed reliance on the case of ODUWOLE VS WEST (2010) 10 NWLR PT 1203 P598 AT 614 PARAS C -D among others.

After a thorough review of the pleadings and evidence presented, I will adopt the issue raised by the Claimant as follows:

Whether the Claimant has established the infraction of defamation as to be entitled to the reliefs claimed in the instant suit.

The case of the Claimant is simply one for defamation particularly libel. The tort of defamation is either libel or slander, the difference being that the former is written while the latter is spoken as decided in the case of GUARDIAN NEWSPAPERS LTD & ANOR v. AJEH (2011) LPELR-1343(SC)

This suit as stated earlier is undefended, that notwithstanding, it is the principle of law that burden of proof in civil cases is on the party who asserts and whose case will fail if such assertion is not established. It is elementary that standard of proof in civil matters is the balance of probabilities or the preponderance of evidence. In other words, the party who asserts a fact owes himself the duty to prove same. A Claimant is not allowed in law to rely on the weakness of the opposite party in order to succeed as decided in the case of SHERIFF v. MINISTER, FEDERAL MINISTRY OF EDUCATION (2022) LPELR-58707(CA).

The Claimant, in an effort to prove his case, presented evidence showing that the Defendants defamed him by posting his photographs, taken from his Facebook page, with the caption **"WANTED FOR FRAUD AND THREAT TO LIFE."** Below the Claimant's photographs, the 1st Defendant added the following statement:

"ODANG ENYIGWE WITH PHONE NUMBERS 09019434023, 08064625245, 0705448876, 09014627208 WITH BVN 2215339945 BLOCKED EVERY AGENT THAT REACH OUT TO HIM, THREATENED THE LIFE OF AN AGENT OVER HIS OVER DUE LOAN OF N35, 427 AT FASTCREDIT. HE ALSO SAID WE SHOULD GO AHEAD AND PUBLISH YOUR DETAILS AS HIS ACCOMPLICE THEREFORE THE MANAGEMENT HAVE DECIDED TO PUBLISH YOUR DETAILS ON ALL MEDIA PLATFORMS FROM 12.30 PM TODAY AND ALSO TAKE IT UP LEGALLY. YOU ARE ADVISED TO FORWARD YOUR LAWYER'S DETAILS IMMEDIATELY. FASTCREDIT"**

This message was further disseminated on WhatsApp to several of the Claimant's contacts, including CW1 and CW2, and across various WhatsApp platforms.

Defamation has been defined as any imputation which may tend to lower the Claimant in the estimation of right-thinking members of society generally. See *ZENITH BANK v. IYAMU*(2021) LPELR-54150(CA) and the ingredients to prove to succeed in an action for defamation as held in the case of *OLOGE & ORS v. NEW AFRICA HOLDINGS LTD*(2013) LPELR-20181(SC)Per NWALI SYLVESTER NGWUTA, JSC (Pp 19 - 19 Paras A - C) are as follows:

"There are six co-terminous ingredients which the plaintiff has to prove to succeed in defamation: (1) Publication of the offending words. (2) That the words complained of refer to the plaintiff. (3) That the words are defamatory of the plaintiff. (4) That the words were published to third parties. (5) That the words were false or lack accuracy, and (6) That there are no justifiable legal grounds for the publication of the words. (See Iloabachie v. Iloabachie (2005) 13 NWLR (pt. 943) 695 SC; Concord Press (Nig.) Ltd. v. Olutola (1999) 9 NWLR (pt. 620) 578."

Regarding the 1st ingredient as outlined in *OLOGE & ORS v. NEW AFRICA HOLDINGS LTD* (SUPRA), which is the **publication of the defamatory words**, it is a well-established principle in law that, in an action for defamation, the burden is on the Claimant to prove that the defamatory statements were published and conveyed a harmful meaning to those who received them. In this case, the Claimant presented CW1 and CW2 as witnesses. Both testified that they received the defamatory message concerning the Claimant, and it diminished the Claimant's reputation in their view and their disposition towards him has changed. Additionally, they submitted Exhibits A and B, which contained the defamatory message they had received from the Defendants.

On the 2nd ingredient, that is, **that the words complained of refer to the plaintiff**, it is not in doubt that the words complained of referred to the Claimant as the Claimant's picture, phone numbers and name were clearly contained in it.

Concerning the 3rd ingredient, which requires **that the words be defamatory of the plaintiff**, the publication in question portrayed

the Claimant as being "wanted for fraud and threat to life." In my view, such an assertion undoubtedly has the potential to tarnish the reputation of any individual against whom it is made. Fraud is a serious criminal offense, and no reasonable person would want to be labeled as fraudulent. The nature of the relationship between the Claimant and the 1st Defendant was merely that of lender and borrower, which did not justify the Defendants' actions. There were other legal avenues available for recovering the loan that did not require damaging the Claimant's reputation in such a manner.

Regarding the fourth ingredient, which is **that the defamatory words were published to third parties**, CW1 and CW2 testified that they received the said defamatory message. This negatively impacted their perception of the Claimant, leaving them with doubts about his personality and character, despite their prior knowledge of him.

On the 5th and 6th ingredients which are ***that the words were false or lack accuracy and that there are no justifiable legal grounds for the publication of the words***, there are a number of defenses available to a claim of defamation which include justification, fair comment, privilege which may be either absolute or qualified and the Defendants did not enter a defense to rely on any of these defenses and there is nothing before the Court to indicate the defamatory words are true. Since there is nothing to juxtapose the case of the Claimant against, the Court has no other choice but to act on it. See CHUKWU v. KELECHI & ORS(2023) LPELR-60285(CA). I firmly conclude that the Claimant has adequately established the case for defamation.

On award of damages, the general rule of law is that damages are awarded as compensation for the injury suffered by the Claimant and not as punishment for wrongdoing. In defamation cases, the law generally presumes damages. However, the Court in awarding damages must exercise its discretion judicially and judiciously. See TELL COMMUNICATIONS LTD & ORS v. NGILARI(2019) LPELR-46934(CA). The Claimant presented in evidence Exhibit L which showed his consultancy contract with CW1's company was terminated as a result of the defamation.

On the whole, the suit of the Claimant succeeds and judgment is entered in his favour against the Defendants as follows:

1. I hereby order the Defendants jointly and severally to pay the sum of Two Million Naira (~~₦~~2,000,000.00) to the Claimant as General Damages for defamation.
2. I hereby order the 1st Defendant to tender an unreserved apology to the Claimant in two (2) Dailies with nationwide spread and to all the Claimant's contacts to whom the libelous publication was made.
3. I hereby order that interest on the judgment sum at the rate of 10% per annum from the date of judgment till the sum is fully liquidated be paid by the Defendants.

I make no order for cost.

HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Claimant;, Esq.