

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT COURT NO. 13. WUSE ZONE 2, ABUJA  
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU  
THIS 22<sup>ND</sup> DAY OF MARCH, 2022**

**SUIT NO: HC/ CV/2357/15**

**BETWEEN:**

<b>1. BISHOP RAPHAEL FAGBOHUN 2. INCORPORATED TRUSTEES OF OLD CATHOLIC APOSTOLIC CHURCH</b>	}		<b>PLAINTIFFS</b>
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**AND**

<b>1. PUNCH (NIG) LIMITED 2. GUARDIAN NEWSPAPER LIMITED 3. THE INCORPORATED TRUSTEES OF CATHOLIC SECRETARIAT OF NIGERIA 4. REV. FR. RALPH MADU</b>	}		<b>DEFENDANTS</b>
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***PETER ULOFU for the plaintiffs.***

***plaintiffs are not in court.***

***DUNCAN DAVID OLUOHU for the defendants.***

**JUDGEMENT**

This suit was instituted vide a Writ of Summons dated and filed on the 7th day of July, 2015. The reliefs endorsed on the said writ are as follows:

1. A declaration that the publication in the **Guardian Newspaper** of Wednesday, 22nd April, 2015 at Page 10 and the **Punch Newspaper** of Tuesday, 21st, 2015 at page 52 stating that:

*“Rev. Fr. Raphael Fagbohun, whose picture appears above; and now presenting himself as a Bishop of the Old Catholic Church of Scotland is*

*no longer in full communion with the Catholic Church. The Catholic Church in Nigeria has no connection whatsoever with the supposed Episcopal ordination of the said Raphael Fagbohun as the first consecrated Bishop of the Old Roman Catholic Church of Scotland for Africa said to have taken place in Glasgow recently. The said Raphael Fagbohun of the Diocese of Ekiti, Ekiti State, who served as the National Catholic chaplain for the Nigeria Police, had his priestly faculties withdrawn by the Bishop of his diocese, Most Rev. Felix Ajakaye, after due consideration of his inability to fulfil the spiritual and pastoral obligations as a Catholic priest. The decision was announced by Bishop Ajakaye at a press conference at Ado-Ekiti, on Tuesday, August 12, 2014. He has since then been banned from celebrating the Holy Mass, administering the Sacraments and preaching the Good News of Christ as a Catholic priest.*

*Similarly, the Catholic Archdiocese of Abuja has put out a public disclaimer in the press along the same lines. All Catholics are hereby advised to note that the Catholic Church has nothing to do with his said ordination and ignore the call to join the said old Roman Catholic Church of Scotland. The old Roman Catholic Church is not in Communion with the Holy Father, Pope Francis, and the universal church. Catholics are hereby advised to keep their distance from the above named Fr. Raphael Fagbohun and his new Church in the interest of their integrity faith. May the Lord keep us faithful to his truth.”*

By the Defendants is libelous.

2. ~~N5,000,000~~ **(Five Hundred Million Naira)** damages for libel including aggravated damages in favour of the plaintiff for libel jointly and severally against the Defendants.
3. An injunction restraining the Defendants and each of them, whether by themselves, their servant agent or otherwise from further publishing or causing to be published the said or similar word defamatory of the plaintiffs.
4. An order directing the Defendants to publish an apology to the plaintiffs' in two (2) editions of the Guardian and the Punch Newspapers by retracting the libelous publication in the Guardian of Wednesday, 22nd April, 2015 and the Punch of Tuesday, 21st, 2015.
5. ~~N3,500,000,000.00~~ **(Three Million Five Hundred Naira)** only being cost of this action.
6. Interest on the sum of ~~N3,500,000.00~~ **(Three Million Five Hundred Naira)** only being cost of this action at such as the court may determine.

In the statement of claim, this 1<sup>st</sup> plaintiff claimed to be Bishop consecrated in the Reform Old Catholic Church for Old Catholic Apostolic Church Province of Nigeria, while the 2<sup>nd</sup> plaintiff is the Registered Trustees of Old Catholic Apostolic Church Kpaduma 11, Asokoro , Abuja. Before the 1<sup>st</sup> plaintiff consecration as Bishop in the above named church he was ordained a Roman Catholic Priest of Diocese of Ekiti on the 6<sup>th</sup> of April 2003 and

commissioned into the Nigerian Police Force as National Police Chaplin on 1<sup>st</sup> April 2006. He claimed that he was compelled to resign and retire a Police Chaplin. And that pursuant to his forced resignation several media outfits were inundated and overawed with the notices, publications and press conferences with notifying them of his ban from functioning as a Roman Catholic Priest.

He further averred that through the instrumentality of the Synod of Bishops and an invitation offered the platform of Old Catholic Apostolic Church province of Nigeria formalized and redefined her existence with the Old Catholic Apostolic Church of England and Wales. That the Old Catholic Apostolic Church province of Nigeria enjoys full communion and retains her apostolic succession with mother church, the Old Catholic Apostolic Church Worldwide. And that the plaintiffs officially marked the erection of Old Catholic Apostolic Church Province of Nigeria and the 1st plaintiff Installation on 6th Dec, 2014. That through the print and electronic media the plaintiffs Church's activities and existence is open and known for general public interest and notice. And that the plaintiffs read in the Public Column on page 10 of the Guardian Newspaper of Wednesday, 22nd April, 2015 and the punch Newspaper of Tuesday, 21st April, 2015 at page 52, the following defendant's published defamatory words of the plaintiffs.

The plaintiffs averred that that the Defendants falsely and maliciously wrote and published the above defamatory words of the Plaintiffs complained of. That the picture of the plaintiff and his name were conspicuously printed in

the columns of the adverts. That there is no mistake or doubt that the name and words referred and were understood by the members of the public to refer to the plaintiffs and the picture referred to the plaintiffs.

Particulars:

- i. The name and picture of the publication are those of the 1<sup>st</sup> plaintiff.
- ii. The words of the publication are those referring to the plaintiffs.
- iii. The 1<sup>st</sup> plaintiff was Roman Catholic Priest whose facility was withdrawn and banned from the public service, exercise of his priestly duties.
- iv. The 1<sup>st</sup> plaintiff worked as Roman Catholic Police Chaplin in Abuja of the 3<sup>rd</sup> defendant principal.
- v. The above facts are widely reported in newspapers and known to friends relations, acquaintances, neighbours and colleagues of plaintiffs.

In addition the plaintiff also stated that in their natural and ordinary meaning the said publication and words of the publication meant and were understood to mean as follows:

- i. The plaintiffs are imposters.
- ii. The plaintiffs are not Catholics.
- iii. That the plaintiffs are fakes and fraudsters.

- iv. That the plaintiffs are dishonoured, dangerous to deal with as church and an individual.
- v. That the plaintiffs are people of questionable honesty and background.

The plaintiffs averred that their reputation has been seriously damaged and suffered considerable distress and embarrassment. They have also suffered rejection and odium from the public and the 1<sup>st</sup> plaintiff been unable to exercise his responsibility on both plaintiffs, able to practice their faith without disdain and suspicion.

Particulars:

- i. Nigerians and the world are sceptical of Old Catholic Apostolic Church and Leadership in Nigeria.
- ii. The plaintiffs' integrity of faith is thrown to the mud.
- iii. Bodies the plaintiff had relationship before and after the publication referred to the instance libellous publication to neglect and refuse further association.

The plaintiffs itemized particulars of their claim for damage, including exemplary damages as follows:

- I. The 1st plaintiff has ceased to function as Roman Catholic Police Chaplain.
- II. The 1st plaintiff suspensions and ban was publicly announced.

- III. The 1st plaintiff complied with sanctions that emerged from his suspension and ban as a Police Chaplain.
- IV. The 2nd plaintiff has the full recognition of the Nigerian government and law.
- V. The Plaintiffs are Nigerian vested with rights to Freedom of Association and Religion.

Lastly the plaintiffs claimed that they read the publication in Abuja on the 21<sup>st</sup> and 22<sup>nd</sup> April 2015, fellow clergy and parishioners read it the same day in Abuja, Niger State, Nasarawa State, Ekiti State, Imo State, Lagos State, River State and Bishop Emmanuel Kwasi Mensah read it in Ghana, Bishop Jean read it in Yaoundé, Republic du Cameroon, Bishop Adrian S. Gulliver and Right Reverend Andrew Haliosfs in Britain. And that unless restrained, the defendants and each of them will further publish or cause to be published the said or similar words defamatory of the plaintiffs.

In denial of the claim of the plaintiff, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants filed a joint statement of defence. The 4<sup>th</sup> defendant stated that the publications authored by him with regards to the plaintiffs are true and un-malicious. The defendants also averred in the statement of defence that the letters of resignation written by Priest Rev. Felix Femi Ajakaye Catholic Bishop of Ekiti Dioceses to the 1<sup>st</sup> plaintiff to resign as a Police Chaplin as pleaded by the plaintiffs were written to him within the powers conferred on him by the code of Cannon Laws that governs the activities of the Catholic Church. That these letters were written due to the 1<sup>st</sup> plaintiff's inability to fulfill the

spiritual and pastoral obligations required of him as a Catholic Priest rather engaged in practice of commerce and fraud which is forbidden of him to do by the Code of Canon Law warranting petitions written against him. And that it was the 1<sup>st</sup> plaintiff himself who requested that he should be dispensed from his priestly vows completely and that the removal of the priestly facilities of the plaintiff was announced by the Most Rev. Felix Ajakuye at a press conference at Ado-Ekiti on Tuesday the 12<sup>th</sup> of August 2014. The defendant state that the Old Catholic Apostolic Church is in no way connected to or in communion with the Universal Roman Catholic Church which has its headquarters in Rome and has its universal leader as Pope Francis.

The defendants admit paragraph 14 of the statement of claim to the extent that the 3<sup>rd</sup> and 4<sup>th</sup> defendant caused the publication to be made through the 1<sup>st</sup> and 2<sup>nd</sup> defendants on the 21<sup>st</sup> and 22<sup>nd</sup> day of April 2014 but denied that the said publication is defamatory and rather that the words in the publication are true facts and did not tarnish the image of the plaintiff. That the publication were rather aimed at clarifying to Catholics the position of the Roman Catholic Church with respect to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. The defendants further averred that the write-up in the publication are true as they were mere disclaimer and could not have been either malicious or defamatory as alleged by the plaintiffs. The defendants therefore deny the interpretation and the meaning of words as given by the plaintiff. They further denied that the plaintiff could not have suffered any damages or



injury resulting from the said publication. And that the plaintiffs have not controverted the said publication. The court was urged by the defendants to dismiss the claim of the plaintiff.

In the amended reply to the joint statement of defence filed by the 1<sup>st</sup> -4<sup>th</sup> defendants, the plaintiffs reiterated that the 1<sup>st</sup> plaintiff at no time presented himself as a Bishop of the Old Catholic of Scotland or consecrated Bishop of the Roman Catholic Church of Scotland for Africa and in communion with the Holy Father, Pope Francis, but of the Old Catholic Apostolic Church province of Nigeria in communion with the world and Old Apostolic Church, and that the word Catholic is not the monopoly of the Roman Catholic Church as there are other Catholics and Churches such as the Orthodox Catholics, Coptic Catholics, Galician (French Catholics), Polish National Catholic Church, Ecumenical Catholics, Liberals Catholics, Old Catholics, Reformed Old Catholics and Independent Catholics and the Universal Church, One Holy Catholic Church, the Mother Church is not the Roman Catholic Church.

The Plaintiff stated further that he was pressurized to resign from the Roman Catholic Church and thereafter gained membership of the Old Catholic Apostolic Church which further consecrated him Bishop. That the defendants' publications were directed not exclusively to Roman Catholics but the Diaspora Catholics. That it was their determination to ruin the plaintiffs at all cost that set in motion the publication after the 1<sup>st</sup> plaintiff had left the Roman Catholic Church and gained legal recognition. That the

press conference held by Most Rev. Felix Ajakaye at Ado-Ekiti on the 12<sup>th</sup> of August 2014, had in attendance several pressmen each of whom subsequently has portions in their respective print and electronic media and same read within Nigeria and outside. That the 2<sup>nd</sup> Plaintiff had been in existence since time immemorial in the world and gained official recognition under Nigerian Law in June 2014.

The plaintiff further averred that pursuant to the libelous publication, the membership of the 2<sup>nd</sup> plaintiff have suffered damages and injury from similar publication by the agent of the 3<sup>rd</sup> defendant in Lagos, the Catholic Archdiocese Bulletin. The plaintiff pleaded the video tape of the Episcopal installation of the 1<sup>st</sup> plaintiff which he said shows the presence of old Catholic Bishop at the ceremony, and also the installation was covered and broadcasted by the Nigerian Television Authority, that the installation ceremony proceeds the libelous publication of the Guardian Newspaper of Wednesday, 22<sup>nd</sup> April 2015 at page 10 and Punch Newspaper of Tuesday 21<sup>st</sup> 2015.

At the close of pleading, the matter went into trial. The plaintiffs called two witnesses in proof of their claim, while the defendants fielded a sole witness. The 1<sup>st</sup> plaintiff testifies as PW1, he identified his witness statement on oath and urged the court to take it as his oral evidence, and also adopted his reply to the defendant's pleadings. His testimonies are on record, needless to repeat them, because they are in pari-material with the facts

pleaded in the statement of claim and reply to the defendant's joint statement of defence.

The PW2 Patrick Ogunleye a clergy and a farmer who lives in Ado-Ekiti also adopted his witness statement on oath as his oral evidence. In his adopted witness statement on oath he testified that he read in the public column at page 10 of the Guardian Newspaper of Wednesday, 22<sup>nd</sup> April 2015 and Punch Newspaper of Tuesday 21<sup>st</sup> 2015 at page 52, the defendants jointly and severally published false and maliciously (sic) on the said publication, the photograph of the 1<sup>st</sup> plaintiff and defamatory words complained of against the plaintiffs. And that by the said words he understood it to mean that the plaintiffs are not fit and proper persons to be conferred or headship/mentorship of a Church or religious body and that by the reason of the words and photograph of the 1<sup>st</sup> plaintiff, the plaintiff have been greatly injured in character, credit and reputation and have suffered damages. That many people have shunned the plaintiff and have avoided them for prayer assistance and association. That the publication has injured the plaintiffs' reputation and exposed them to hatred and ridicule. And that in the natural and ordinary meaning of the publication complained of the publication meant and were understood to mean as follows:

- i. That the plaintiffs are fakes and fraudsters.
- ii. That the plaintiffs are crooked, trickery and treacherous.
- iii. That the plaintiffs are dishonoured, dangerous to deal with as individual and institution respectively.

The following documents were tendered and admitted on behalf of the plaintiffs:

1. Certificate of Incorporation - Exh. A1
2. Programme of Installation - Exh. A2
3. Guardian Newspaper Publication - Exh. A3
4. Punch Newspaper Publication- Exh. A4
5. Newswatch Times - Exh. A5
6. A Letter asking the 1<sup>st</sup> plaintiff to resign with the signature of the Bishop Ajakaye dated 26th Feb, 2013 - Exh. A6
7. The Plaintiff's Letter of Resignation dated 10, the April, 2014 - Exh. A7
8. Withdrawal of faculty and the Prohibition to Celebrate the Sacraments dated 2nd May, 2013 - Exh. A8
9. An Instrument from the Church of England - Exh. A9
10. Instrument of Consecration - Exh. A10
11. A document titled: "An Introduction to the Independent and Old Catholic Churches" – Exh A11
12. A document titled: "The Church and Ecclesial Communion Report of the International Roman Catholic, Old Catholic Dialogue Commission" - Exh A12
13. A publication made by the Lagos Archdiocese - Exh A13
14. Video Tapes in respect of the Installation Ceremony of the 1<sup>st</sup> plaintiff – Exh A14 and A15 respectively.

At the end of the testimonies of the plaintiffs' witness, they were duly cross-examined by the defendants' counsel. The PW1 was cross-examined by Mr. Kanu Agabi SAN, while the PW2 was cross-examined by Innocent Eno Esq. I shall have recourse to the evidence on cross-examination while evaluating the general testimony of the witnesses.

The Defendants' Witness, Cletus Alope, stated that he is a lawyer under the 3<sup>rd</sup> defendant Catholic Secretariat and works as their Good Governance Program Manager. And on behalf of the defendants six documents were tendered and admitted as exhibits. All the documents are letter dated 26<sup>th</sup> February 2013, 10<sup>th</sup> April 2013, May 2013, June 2013, 15<sup>th</sup> April 2014, 18<sup>th</sup> April, 2011 referred to as Exhibits DW1 – DW6 respectively. He was also cross-examined by the plaintiffs' counsel, Mr. Peter Ulofu. At the close of the cross-examination, the defendants closed their case. The parties were directed to file and exchange their final written address.

The defendants raised two issues for determination in their final written address to wit:

1. Whether the publication in the Guardian Newspaper of Wednesday 22<sup>nd</sup> April 2015 at page 10 and the Punch Newspaper of Tuesday 21<sup>st</sup> 2015 at page 52 about the plaintiffs in this suit amount to libellous publications.
2. Whether the plaintiffs herein are entitled to the reliefs sought for in this suit.

With respect to issue 1, learned counsel to the defendants relied on the authority of **OMIKA V ISAH (2011) LPELR 4564 CA** on the meaning of the word defamation by Black's Law Dictionary 8<sup>th</sup> Edition at page 448 thus:

***“The act of harming the reputation of another by making false statement to a third person. 2. A false written or oral statement that damages another's reputation.” It goes further: Defamation is the publication of a statement which tending to lower a person in the estimation of right-thinking members of the society generally or which tends to make them shun or avoid that person. The wrong of defamation consists of the publication of a false and defamatory statement concerning another person without lawful justification”***

The defendants contended that nothing in the Guardian and Punch Newspapers amounted to falsehood against the plaintiff. On the test to determining whether words are defamatory or not the defendant further relied on the case of **OLOGE V NEW AFRICAN HOLDINGS LTD (2013) 17 NWLR (PT. 1384) 447 SC** where the Supreme Court held:

***“The test to be applied by the court in determining whether a publication is libelous or not is not that of highly educated and accomplished professors of various academic disciplines but that of a reasonable men on the streets who comes into contact with the words in the publication. The reasonable man to be used by the court in determining the question whether the***

***words are defamatory in their ordinary meaning are men of ordinary intelligence while the publication has to be considered as a whole.”***

He also referred to the authority of **OKOLO V MIDWEST NEWSPAPER CORP (1977) 1 SC 33, DUMBO V IDUGBOE (1983) 1 SCNLR 29 PP 466-467 PARS G-A.**

The learned counsel to the defendants also referred to the testimony of the plaintiff (PW1) during cross-examination on the 13<sup>th</sup> day of June 2017 and submitted that the plaintiff have not been able to establish defamation or libel as can be deduced from the answer provided during his cross-examination by the defendant's counsel. And above all, the defendant's counsel contended that there is nothing in the alleged publication that was untrue.

On the need to prove falsity of words complained of in libel case, the counsel referred to the ratio in the case of **OTOP V EKONG (2006) 9 NWLR (PT. 986) 533 CA** where the court held:

***“In proving one of the elements in a case of libel which is that the statement so published is false, even if a statement complained of appears to be derogatory or disparaging or injurious to a person. So as to impeach his character or reputation, it may still not amount to defamation unless the party or person complaining proves that it was false statement.”***

He also cited in support of the defendants' contention the case of **DIN V AFRICA NEWSPAPER LTD (1990) 3 NWLR (PT. 139) 392 @ PG 410**. And urged the court to hold that the plaintiffs have not been able to prove that the publication complained of in this suit are libelous. In addition the defendants' counsel stated that the publications were not geared towards tarnishing the image of the plaintiff in the eyes of right-thinking members of the society as contemplated by the law governing defamation and were not made out of mischief. That the plaintiffs have failed to link the publication by the defendants to any loss for which damages is being claimed. The onus he argued is on the plaintiffs to prove his entitlement to damages. He relied on the case of **ZENITH BANK PLC V EKRENUWEM (2012) 4 NWLR (PT. 1290) 207 CA, ACME BUILDERS LTD V K. S. W. B (1992) 2 NWLR (PT. 590) 288**.

Finally with respect to the injunction sought by the plaintiffs, the defendants relied on the case of **A. G. ANAMBRA STATE V OKAFOR (1992) 2 NWLR (PT. 224), IDEOZU V OCHOMA (2006) 4 NWLR (PT. 970) 364 pg 49 par C-D**; arguing that an injunction cannot be granted to restrain a completed act. He urged the court to dismiss the plaintiffs' claim and all reliefs sought with substantive cost.

The plaintiffs' counsel also alluded to the definition of a defamatory statement as espoused in the case of **OLOGBE & ORS V NEW AFRICA HOLDING LTD (2013) LPELR 20181 SC**. He submitted that the plaintiffs have proved the six co-terminus ingredients of libel in this case;



- a. Publication of the offending words.
- b. That the words complained of referred to the plaintiffs.
- c. That the words were published to a third party.
- d. Falsity or lacking accuracy of words complained of.
- e. That there are no justifiable legal grounds for the publication of the words (as would be demonstrated from under the next issue for determination).

In paragraph 5.05, the plaintiff's counsel submitted further that what is important in a libel or defamation is the reaction of a third party to the publication complained of. That it is not what the plaintiffs think about themselves but what a third party thinks of the plaintiffs as regards his reputation. That person's reputation is not based on the good opinion he has of himself but the estimation in which others hold him. He relied on the case of **IWUEKE V I. B. C (2005) 17 NWLR (PT. 956) @ PG 482-483**. He also relied on the case of **AYENI V ADESINA (2007) 7 NWLR (PT. 1033) 233 @ PG 254-256** and argued that in an action for libel, the question is what the words would convey to the ordinary man. He submitted that the words complained of would in their natural and ordinary meaning be understood by the ordinary man to mean as follows:

- i. That the plaintiffs are imposters.
- ii. That the plaintiffs are not Catholics.
- iii. That the plaintiffs are fake and fraudsters.

- iv. That the plaintiffs are dishonest and dangerous to deal with as a church and individual.
- v. That the plaintiffs are people of questionable honesty and background.

He argued strongly that the words complained of are libelous in their natural and ordinary sense.

I think I should pause at this stage and consider the pivotal issues at stake which is whether the words complained of are libelous, and damaging to the reputation of the plaintiffs. All other issues submitted for determination by the plaintiffs are subsumed in the issue which the court seeks to resolve. All the parties are in agreement on the definition of the word defamation. According to the Black Law Dictionary 9<sup>th</sup> Edition @ page 479-480, defamation is defined as the act of harming the reputation of another by making a false statement to a third party. It went further to state at page 480 that defamation is publication of a statement which tends to lower a person in the estimation of right-thinking members of the society generally, or which tends to make them shun or avoid that person. P H Winfield and a textbook of the law of tort 72 @ 242, 5<sup>th</sup> edition 19501. It is trite that defamation involves two related terms libel and slander. Libel is written and published whereas slander is oral. Similarly the Court of Appeal in the case of **EMECHI & ANOR V MUKORO (2021) LPELR 56108 CA** held thus:

***“In law for a publication to be considered as libelous the plaintiff must establish a credible evidence that there was publication of a written statement and that the statement referred to the plaintiff. Furthermore, that the publication is false and caused damage to the reputation of the plaintiff. The burden of proving these elements rests severely on the plaintiff. In other words, the words alleged to be defamatory must disparage the reputation of the plaintiff in the eyes of right-thinking people in the society. There must therefore be proof that the statement had the effect of lowering the reputation of the plaintiff in the estimation of the right-thinking members of the society or has caused him to be shunned by them.”***

These are the essential elements that the plaintiff must prove in order to succeed in an action of libel.

The question begging for answer is; How far has the plaintiff been able to proof these essential elements? The first element which has been proved by the plaintiff is the publication of the alleged libelous word, and he has tendered a publication on Guardian and Punch Newspapers, marked as exhibits A3 & A4 respectively. Were these words false; was there any damage caused to the reputation of the plaintiff, or did the statement tend to lower his reputation in the estimation of a right-thinking person in the society? A man’s reputation is not what he thinks about himself but his estimation in the eye of a third party; now to answer the question whether the statements were false or not, defendant’s counsel has submitted in

paragraphs 3.05 and 3.06 of his address on the following facts and I endorsed same; that it is true that the 1<sup>st</sup> plaintiff was a Catholic priest, and was that of the Archdiocese of Ekiti. It is also fact that he was the Chaplain for the Nigerian Police Force and has voluntarily opted out to be a Bishop of the Old Catholic Apostolic Church.

However the 1<sup>st</sup> plaintiff contrary to the defendant's claim in the publication denied presenting himself as a Bishop of the Old Roman Catholic Church of Scotland or Consecrated Bishop of the Old Roman Catholic Church of Scotland for Africa, and in communion with the Holy Father, Pope Francis. In my view, the issue of whether the plaintiff was consecrated as a Bishop of Old Catholic Church or of Old Roman Catholic Church of Scotland did not affect the true position that the plaintiff as at the time of the said publication was no longer a Bishop of the Roman Catholic Church. This is an unassailable fact. It is also true that the Roman Catholic Church to which the plaintiff earlier belonged to is not the same as the Old Catholic Apostolic Church, which consecrated the 1<sup>st</sup> plaintiff as Bishop when he left the Roman Catholic Church as a Chaplain(in Nigerian Police Force.)

The 1<sup>st</sup> plaintiff under cross examination by the defendant's counsel confirmed to the court, that he has now been consecrated as a Bishop of the Old Catholic Apostolic Church, on 6<sup>th</sup> December, 2014 and that prior to that he was a priest of the Roman Catholic Church. He was further asked:

**QUESTION:** You took steps to inform the public or congregation of your ordination to the Old Catholic Apostolic Church.

**ANSWER:** Yes.

**QUESTION:** You were entrusted with the spiritual welfare of thousands as a Roman Catholic Priest?

**ANSWER:** Yes.

**QUESTION:** You will agree that it was right for the Roman Catholic Church to inform the thousands of people that you led that you left.

**ANSWER:** Yes.

**QUESTION:** Being a respectable man of God you had a duty to inform the public that you had left the Roman Catholic Church?

**ANSWER:** Yes, which I did.

**QUESTION:** Now that body informing the public that you had left the Roman Catholic Church was not defaming you?

**ANSWER:** Yes.

**QUESTION:** You will agree that it was the responsibility of Bishop of Ekiti to inform the public that you have left.

**ANSWER:** Yes.

**QUESTION:** You will agree that the Roman Catholic Church because you have left had a duty to withdraw the office which you held.

**ANSWER:** Yes.

**QUESTION:** To say that those duties had been withdrawn was not in itself defamatorily?

**ANSWER:** Yes.

The 1<sup>st</sup> plaintiff from the answers he gave to the questions asked by Mr. Kanu Agabi SAN confirmed that the statements published of him were true. The plaintiff has failed to prove the falsity of the statement contained in Exhibits A1 and A2.

The last poser is whether the publication lowers or tends to lower the 1<sup>st</sup> plaintiff in the eyes of right-thinking members of the society. The plaintiff in his additional witness statement on Oath stated that the defendants' publications were directed not exclusively to Roman Catholics but the Diaspora Catholics and the public. How has the said publications affected the image or reputation of the 1<sup>st</sup> plaintiff? The burden of proof is on the 1<sup>st</sup> plaintiff to prove that the words are defamatory of him in his personal or business character.

The witness to the plaintiff, Mr. Ogunleye Patrick Ayokunle (PW2) stated in paragraph 3 of his adopted witness statement on Oath thus; "By reason of the publications of the words and photograph of the 1<sup>st</sup> plaintiff the

plaintiffs have been greatly injured in character, credit and reputation and have suffered damages. Many people have shunned the plaintiff and have avoided them for prayers assistance and association. The claim by the plaintiff's witness was not substantiated in any form. It is an elementary principle of law that in civil proceedings the onus is on the he who alleges or asserts to prove. See Sections 131 and 132 of the Evidence Act, **KOKOROOWO V OGUBAMISI(1993) 8 NWLR (PT.313) 627, JALICO LTD V OWONIBIYO (1993) 4 SCNJ. 256.**

SECTIONS 131(1) of the Evidence Act states:

***“Whoever desires any court to give judgment as to legal right or liability dependent in the existence of facts which he asserts should prove that those facts exist.”***

Section 132 of the Evidence Act:

***“The burden of proof in a suit or proceedings lies on the person who would fail if no evidence at all were shown on other side.”***

In his evidence under cross examination, the PW2 stated that he is aware that the 1<sup>st</sup> plaintiff was an Ordained Priest of the Roman Catholic Church. And he is also aware that the 1<sup>st</sup> plaintiff resigned from his priesthood of the Roman Catholic Church, and that by the resignation, the 1<sup>st</sup> plaintiff does not have anything to do with Roman Catholic any longer. He is equally aware that the 1<sup>st</sup> plaintiff is now an ordained Bishop of the Old Catholic Apostolic

Church and it would be right to say that the Roman Catholic Church and the Old Catholic Apostolic Church are two differed religions Sect. And as a Vicar in the Old Catholic Apostolic Church he has a duty to inform his members and the concerned public the activities and various developments in the Church and also agreed that the Roman Catholic Church has also has a duty to inform the concerned public and their members about the event concerning their church. That it is not out of place for the members of Roman Catholic Church and the general public to be informed of the 1<sup>st</sup> plaintiff's resignation from the Roman Catholic Church. He confirmed that he knew the 1<sup>st</sup> plaintiff as a Roman Catholic Church priest before his resignation and subsequent Ordination as a Bishop of the Old Roman Catholic Apostolic Church. And that he had cause to tell members of his church that the 1<sup>st</sup> plaintiff is no longer a Roman Catholic Priest, but a Bishop of the Old Roman Catholic Apostolic Church, and when asked if in that process he was defaming the 1<sup>st</sup> plaintiff, he answered in the negative.

It is apparent from this piece of evidence that the plaintiff and his witness failed to prove that the publications have affected his image or reputation and even his position as the Bishop of the Old Catholic Apostolic Church in the eye of a third party. The case of **SKY BANK & ANOR V AKINPELU(2010) LPELR 3073 SC**. Where the Supreme Court held:

***“It must be stressed and it is also settled that a defamatory or libel case, what is important is the reasoning of a third party to the publication***



***complained of. It is not what the plaintiff thinks about himself but what the third party thinks of the plaintiff as regards to his reputation.”***

Furthermore it is also necessary to consider the meaning the publication conveys to the ordinary, reasonable, fair minded reader. The court in the case of **BULUS VS. SULEIMAN SUIT NO: HJ/136/1981 PER OBI OKOYE C.J.** held:

***“The cardinal consideration really must be whether or not the words complaint of, is capable of being a defamatory meaning and if so, whether or not they were defamatory of the plaintiff in his person or in his capacity as Esu Karu. It is trite law that the issue whether a publication complained of, in its ordinary meaning is capable of bearing a defamatory meaning to the ordinary reasonable reader or for that matter what the publication is capable of conveying the interpretation pleaded to the ordinary reader, is a question of law for the judge, which has to be decided without any regard to the evidence of any witness. And it will be a bore in mind that the ordinary reader is not a layman and not a lawyer and does not live in the Ivory tower but reads in the light of the general knowledge and experience of worldly affairs being a person of fair intelligence who is neither personal nor morbid or suspicion of mind, nor and for scandal. See FARQULAR VS. BOTTUN & ANOTHER (1980) 2 NSWL 380.***

***The standard of opinion of what an alleged defamatory word meant is the impression on the mind of an average reasonable man. See Tolley Vs. Fry (1930) 1 KB 467 CA. @ 479 per GREEN L. J. Where the Court held:***

***‘Words are not defamatory however which they may damage a man in the eyes of a section of the community, unless they also amount to disparagement of his reputation in the eye of right-thinking men generally. To write or say of a man something that will disparage him in the eye of a particular section of the community but will not albeit his reputation in the eye of the average thinking man is not actionable within the laws of defamation. It is enough to prove that the words rendered the plaintiff obnoxious to a limited class. It should be proved that the words are such as would produce a bad impression on the minds of average reasonable men.’***

It is not in doubt that Guardian newspaper and Punch Newspapers are read both locally and internationally. What would readily strike an avid reader of the newspaper may not be about the plaintiff himself but about the institution, the Catholic Church which both the 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> defendant is representing. It will definitely bring to fore that apart from the Roman Catholic Church which is in communion with the Holy Father Pope Francis, and which majority of the people in the society, particularly our clime Nigeria, are aware of, there is another branch of Catholic Church known as Old Catholic Apostolic Church. In my humble view, if the Catholic Bishop Conference of Nigeria in the said publication have come out to clarify

and alert the public about another branch of Catholic Church in Nigeria, to which the 1<sup>st</sup> plaintiff who was originally a Priest with the Roman Catholic Church, now belongs, the Plaintiff has the herculean task to prove how the said publication have affected his integrity and his calling as a Bishop of new branch of the Catholic Church he belong. Furthermore, to an average Roman Catholic Church member who is not knowledgeable about the history of the Roman Catholic Church and the other branches of Catholic Churches in Nigeria and overseas, the publication in its context and contents is a clarification on the existence of institution of the Roman Catholic Church and the position of the Catholic Bishop Conference of Nigeria, who are the custodian of the tenets and the cannon laws governing the Old Roman Catholic Church in Nigeria.

In the plaintiffs' additional witness statement on oath, he desired thus:

*“the word Catholic is not the monopoly of the Roman Catholic Church as there are other Catholics and Churches such as the Orthodox Catholics, Coptic Catholics, Galician (French Catholics), Polish National Catholic Church, Ecumenical Catholics, Liberals Catholics, Old Catholics, Reformed Old Catholics and Independent Catholics and the Universal Church, One Holy Catholic Church, the Mother Church is not the Roman Catholic Church.”*

With this testimony of the plaintiff, is it not appropriate for the 3<sup>rd</sup> defendant to clarify and let the people be aware of the differences in the Orthodox Catholic Church and that of the plaintiff? The publication appears

to me to be a disclaimer rather than a libelous publication. In the said publication there is no imputation of crime on the person of the 1<sup>st</sup> plaintiff. And in my own opinion I do not think any reasonable reader of the publication would infer or impute crime or criminality to the 1<sup>st</sup> plaintiff. The fact that the plaintiff's witness (PW2) stated in his evidence-in-chief that the publication complained of were meant and understood to mean that the plaintiffs are fake, fraudsters and crooked does not on its own establish libel. It is therefore not just enough for the plaintiffs to plead the imputation or meaning of the publication as it appears to them, but must go ahead to prove with credible and convincing evidence how the said imputation have either affected his calling as the Bishop of the Old Catholic Apostolic Church, or his integrity as a person. The plaintiffs have failed to place before the court any evidence that they were shunned, despised or avoided by other members of the society as a result of the publication. The plaintiff did not prove that the publication have affected their membership in anyway, the PW2, Mr. Patrick Ogunleye the Vicar of the Old Apostolic Church did not tell the court in his evidence-in-chief how the publication have affected their church and its activities.

The learned plaintiffs' counsel opined on the defendants' contention that the publication is a disclaimer and clarification to the public that it must be within the limit of law. He contended thus; "It is our humble contention that although the defendant had mischievously denied and referred to the publication as a mere disclaimer or public notice, the undeniable fact is that

there is a subtle agreement that the wording of the publications referred to in the case are libelous to the plaintiff. He relied on the case of **ATOYEBI VS. ODUDU (1990) LPELR 594 pg18 Paras D-E** where **OLATAWURA JSC** defined disclaimer thus:

***“Disclaimer in its ordinary meaning means denial or renunciation. It is now almost a daily publication in our National Dailies, published ordinarily in respect of anybody, it is to show that the person should no longer be as associated with a particular office or his place of work.”***

Going by the submissions of the plaintiffs’ counsel, it is a fact that a disclaimer must not contain defamatory statements. And that is the limit argued by the him. The case of **ATOYEBI VS. ODUDU SUPRA** does not support the plaintiffs’ counsel case. In **ATOYEBI VS. ODUDU SUPRA**, Atoyebi was an employee of the defendant and the defendant wrote a disclaimer in respect of the plaintiff thus:

***“This is to inform you that the appointment of Mr. A. A. Atoyebi who was in our employment on the 13<sup>th</sup> of August 1979 has been terminated for professional misconduct. Any person transacting business with him on our behalf does so at his or her own risk.”***

The appellant had no quarrel with the simple fact of terminating his appointment, but was piqued by the reason stated i.e. for professional misconduct. The Supreme Court per **OLATAWURA JSC** held further:

***“It is this allegation that formed the basis of Exhibit 7, the disclaimer which is the cause of action; learned counsel for the appellant appeared to have over looked the provision of Section 137(1) of the Evidence Act, which requires burden of proof beyond reasonable doubt, the principle of law earlier enumerated by the same counsel.”***

The Supreme Court affirmed the findings of the lower court where he stated

***“I find no evidence to convince me that the plaintiff engaged in any activity which would amount to a misconduct let alone professional misconduct. There is also no evidence whatever that the plaintiff has ever been quarried by his employer or tried by any tribunal.”***

The difference between the authority relied on by the plaintiffs’ counsel in Atoyebi’s case is that the court held that the allegation of professional misconduct against the plaintiff thereon was not substantiated or proved by the defendant. This is in contradistinction from the case of hand. In one of the Exhibits tendered by the plaintiff, Exhibit A5, a certified True Copy of Newspaper publication dated February 28, 2015, the 1<sup>st</sup> plaintiff was said to have granted an interview to the Newswatch magazine with its content captured; ***“Why I want to marry” ...Old Catholic Bishop.*** in the sub-head the writer wrote:

***“For most Nigerians there is only one Catholic Church where Rev, Fathers are not allowed to marry and permitted to do carnal work. But that is not totally correct. Apart from the Roman Catholic Church with its***

*headquarters in the Vatican, Rome, there are branches of the Catholic Church. One of such branches is the Old Catholic Apostolic church Worldwide whose priest are allowed to marry and do secular jobs; while women are also allowed to be ordained as bishops. The latter's headquarters is in England. It has a strong footing in Ghana and few African countries. But in 2014, a Nigerian was identified and elevated to the rank of Bishop in the Church. An ex-policeman and ex-Roman Catholic Church Priest, Bishop Raphael Oluwaseunfunmi Fagbohun was the pioneer Chaplain of the Nigeria Police Force before he left both the Roman Catholic Church and the Police. Is the bishop ready to settle down? He answered in the affirmative. He said he may also take up a teaching job. His reasons? Find out in this interview with AKIN ORIMOLADE and TOYIN ADEDAYO."*

After the publication of the interview granted by the 1<sup>st</sup> plaintiff, came the publication in the Guardian Newspaper and Punch Newspaper of April 22, 2015 respectively where the 3<sup>rd</sup> defendant denounced and disassociated itself from the activities of the 1<sup>st</sup> plaintiff. The plaintiff failed to prove that the disclaimer amount to defamation. See **GUARDIAN NEWSPAPER LTD. V IGE (2011 10 NWLR PT. 1256) 574** and **ACCESS BANK PLC V MUHAMMAD (2014) 6 NWLR (PT. 1404) 613**:

*"In the instant case, the publication of a "Disclaimer" Per Se or without more, cannot amount to defamation. To qualify as a libelous publication, it must be proved that the "Disclaimer" was actuated by malice. That is, that*

***the publication was done without a good or lawful excuse.” - PER  
TSAMMANI JCA (PP.36-38 PARAS. F)***

On the whole, the plaintiff have failed to prove that the publication was false or actuated by malice. Consequently the claim of the plaintiff is hereby dismissed in its totality.

**Signed**

**Hon. Judge  
22/03/2022.**