

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI
BEFORE HIS LORDSHIP S. B. BELGORE**

CLERK: MRS VICTORIA SILAS ADINOYI
COURT NO. 9

SUIT NO: FCT/HC/CV/1146/2010
DATE: 27/1/2025

BETWEEN:

ILIYASU HARUNA YAMAH.....PLAINTIFF

AND

- | | | |
|--------------------------|---|-------------------|
| 1. ABUBAKAR GIDADO IDRIS | } | DEFENDANTS |
| 2. ENGR. P. A. O. OKORO | | |

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

By an amended statement of claim dated 28th October, 2011, the Plaintiff claimed jointly and severally against the Defendants as follows:-

- (1) A Declaration that paragraph one of the 1st Defendant's letter dated 22nd February, 2010 addressed to the Plaintiff and copies sent to.
 - (a) Engineer P. A. O. Okoro
 - (b) Saidu Gidaddo Idris (NERFUND) is libellous/defamatory of the Plaintiff

- (2) A declaration that the offensive statement complained of in the document written by Engineer P. A. O. Okoro to Abubakar Gidado Idris is defamatory/libellous of the Plaintiff.
- (3) And the Plaintiff claims N30 Million exemplary damages and/or in the alternative N25 Million aggravated damages against the Defendants jointly severally.
- (4) Interest on the sum claimed on either of the alternative at the rate of 21% from 15/3/2010 till judgment is delivered in this suit.
- (5) Legal cost of this suit
- (6) Interest at 10% rate from judgment date till full liquidation of the judgment sum.

Upon settlement of pleadings by both parties; the Plaintiff opened his case on 1/6/2011 when he testified as PW1. Through the witness the following documents were tendered and admitted in evidence:-

- (a) Writ of Summons in Suit No: CV/35/07 – Exhibit ‘A’
- (b) Letter from Supreme Court dated 22/4/03 appointing PW1 as a Notary Public – Exhibit ‘B’
- (c) Handwritten letter dated 7/12/06 signed by the 1st Defendant – Exhibit ‘C’
- (d) Letter dated 22/2/2010 – Exhibit ‘D’
- (e) Receipt of payment – Exhibit ‘E’
- (f) Tenancy Agreement – Exhibit ‘F’
- (g) Affidavit statement of account of PW1 and Counterfoil of cheque – Exhibit ‘G’
- (h) Volumes 1, 2 & 3 of practice & precedents of contemporary law by – Exhibit ‘H’

(i) Auctioneer License – Exhibit ‘1’

The PW1 was duly cross examined by the counsels to the 1st and 2nd Defendants.

Upon closure of the Plaintiff’s case, the suit was adjourned for Defence. The counsels to the Defendants on 14/3/2024 elected to close their respective cases without calling upon the Defendants to testify as witnesses in the suit. The suit was adjourned to 5/6/2024 for adoption of final written addresses.

Parties exchanged final written addresses which were consequently adopted as their respective argument in fortifying their contentions. The 1st Defendant on 4/4/2024 filed his final written address and served same on the parties. However, the Claimant served his final written address on the 1st Defendant on 9/5/2024 together with his reply on point of law.

ISSUE FOR DETERMINATION

The 1st Defendant Counsel formulates one (1) issue for the determination of the Honourable Court as follows:-

“Whether the Plaintiff had proved his claim for libel against the 1st Defendant as to be entitled to the reliefs sought”.

2nd Defendant’s Counsel formulated 2 issues for determination; to wit;

“1. Whether the Plaintiff can maintain an action a libel against the 2nd Defendant.”

2. Whether the Plaintiff has proved the allegation of libel against the 2nd Defendant.”

Plaintiff’s Counsel submitted one issue for determination, thus:

“Whether the Plaintiff has reasonable cause of action as to entitle him to all the reliefs sought against the Defendants jointly and severally.”

In my view, only one issue calls for determination in this case and it is the issue as submitted by Plaintiff’s Counsel. This issue can take care of all the issues as framed by learned Counsel for the 1st and 2nd Defendants. The issue, I repeat is **“whether the plaintiff has a reasonable cause of action as to entitle him to all the reliefs sought against the Defendant’s jointly and severally.”**

I will deal with the issue in narrative form and only refer to Counsel’s arguments which are already on record as at and when appropriate.

ARGUMENTS

The Courts have been urged to deal with every civil matter before it on the balance of probability and/or on Preponderance of Evidence and not proof beyond reasonable doubt. See **Section 135 of the Evidence Act.**

The Supreme Court buttressed this view in the case of **ORJI VS. DORJI TEXTILE MILLS (NIG) LTD (2010) 5 WRN 32 at Page 68 Lines 40 – 45**, when **Mukhtar, JSC** stated thus:

“It is elementary law that civil matters are determined on preponderance of evidence and balance of probability”. See also

AITIEGBEMILIN VS. RTAG (NIG) (2012) 44 WRN 120 at Page 139 – 140 lines 45 – 5.

The Plaintiff failed to place sufficient materials before the Court that would have aided the Court to grant his claims. The Plaintiff failed to show that there was a publication of the libellous material to a third party. During cross examination, he stated that he could not tell with exactitude that the letter of termination of his services by the 1st Defendant (which was copied to the 2nd Defendant and one Saidu Gidado Idris) were actually delivered to or received by them. He had the onus to prove receipt by a third party.

It is not sufficient to make allegations or averments in a pleading, credible evidence must be led in proof thereof (**N.B. N Ltd v. P. B Olatunde & Co. Nig. Ltd 1994) 3 NWLR (Pt. 334) 512 Pg. 54 Para 54 Para A.**

Where a party fails to call evidence in support of his averment in his pleading such averment are deemed abandoned. **Yusuf v. Oyetunde 1998 12 NWLR Pt. 579 483; Omoboriowo v. Ajasin 1984) 1 SCNLR 108: Pp 53 – 54, Paras H – A.**

Parties are bound by the issues raised by the parties in the pleadings, thus a plaintiff fails or succeeds on the basis of his pleadings and the evidence he adduce in support of such pleadings, the Court will ignore pleadings that are not supported by evidence same having gone to no issue. Thus a party who seeks judgment of the Court to be in his favour must not only plead relevant facts but adduce credible evidence in support of his pleadings, where he fails to provide credible evidence in support of his pleading, the averments in the pleading are deemed abandoned **Aghedo v. Adenomo (2018) 13 NWLR (Pt. 1636) 264 Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1**

Anyanwu v. Uzowuaka (2009) 13 NWLR (Pt. 1159) 445 p. 289, (Paras D – F).

The Defendants did not present any evidence in this case. But then, I am not unmindful of the position of the law that the Plaintiff (Claimant) can only succeed on the strength of the case he made before the court and not on the failure or weakness of the case of the 1st – 2nd Defendants/or any of the Defendants in this suit.

In **Mr. Ghassan Saidi v. Mr. Alake Osarobo Ibude (2011) 20 WRN Pg. 127 Lines 15 – 20 Gumel, JCA** said:

“It is the Plaintiff who must first prove his case and make it a fortress strong enough to support his pleadings. Any weakness or failure on the part of the defence cannot alleviate this primary burden on a Plaintiff. In other words, a Plaintiff is said to succeed or fail on the strength of his case and the evidence which he brought to Court notwithstanding any weakness in the case of the Defendant” (Underlining mine for emphasis).

Similarly, in **Adeyemo v. Adeyemo (2010) 45 WRN 81 at 109 Lines 30 – 40, Kekere – Ekun, J.C.A** said:

“In a claim for declaration of title, the onus is on the claimant to establish his case upon a preponderance of evidence or upon the balance of probabilities. He must rely on the strength of his own case and not the weakness of the evidence. He may however, take advantage of the defendant’s evidence where it supports his case” see **Onwugbufor v. Okoye (1996) 1 NWLR (Pt. 424) 252 and Ajiboye v. Ishola (2006) 39 WRN 1.**

Now in this case, the Plaintiff failed to show that, the words complained of in Exhibit ‘D’ were untrue and orchestrated to ruin and

damage his reputation which he had worked hard to build over the years.

Libel consists in the publication by the respondent by means of printing, writing, pictures or the like of signs of a matter defamatory to the Plaintiff. Thus, reading to a third party, is the publication of a libel. For a Plaintiff to succeed in libel, there must be proof by evidence by a third party of the effect of the alleged publication on him, that is, the reaction of a third party to the publication. It is not necessary for a Plaintiff to prove publication where the Defendant has admitted it. What is important in a libel or defamation is the reaction of a third party to the publication complained of. It is not what the plaintiff thinks about himself, but rather what a third party thinks of the plaintiff as regards his reputation.

In **Labati v. Badmus (2007) 1 NWLR (Part 1014) 199@201** The Court defined Defamation as follows:

“Defamation is any imputation which may tend to lower the Plaintiff in the estimation of right-thinking members of the society which exposes him to hatred, contempt, ridicule.

Also, in **Fayose v. Independent Communications Network (2012) 19 WRN 146 at 175-176, lines 45-10, Denton-West, JCA**, defined defamation as follows that:

“The tort of defamation has to do with injury to the reputation of a person resulting from words written or spoken by others against him. A defamatory statement has the ability:

- (a) To lower the Plaintiff in the estimation of right-thinking members of the society generally, or***
- (b) To expose him to hatred, contempt, or ridicule; or***

- (c) To cause other persons to shun or avoid him; or**
- (d) To discredit him in his office, trade or profession; or**
- (e) To injure his financial credit**

Thus to succeed in an action for libel, the Plaintiff must establish the aforementioned as the effects of the defamatory publication of him”

In **The Sun Publishing Ltd v. Dumba (2020) 2 NWLR (Pt. 1709) 325**, the Court stated that:

“To sustain an action for libel, a Claimant must prove that:

- (a) The publication was in writing**
- (b) The publication was false**
- (c) The publication was made to a person apart from the Claimant and the Defendant**
- (d) The publication referred to the Claimant and was defamatory of the Claimant, and**
- (e) That the publication was made by the Defendant.”**

See also case of **Anate v. Sanusi (2001) 11 NWLR (Pt. 725) 543 PP 558-559**.

For there to be a successful claim for libel, there must be a publication.

In **Esika v. Medolu (1997) 2 NWLR (Pt. 485) 54 at 56 – 57**, it was stated as follows:

“In determining whether certain words are defamatory, the Court or judge’s duty is to apply the reasonable mans test, that is whether, under the circumstances in which the words were

uttered or published, a reasonable man or reasonable persons or ordinary intelligence to whom the publication was made would likely understand them in the libellous sense.”

What amounts to publication was aptly stated by the Court in **FBN v. Aboko (2007) 1 NWLR (Pt. 1014) 129** as follows:

“Publication in the context of Defamation, is the making known of the defamatory matter after it had been written to some person other than the person of whom it is written”

So, without proof of publication in an action for libel, there is no cause of action.

The writing of Exhibit ‘D’ by the 1st Defendant to the Plaintiff simpliciter without proof of publication of the private letter to a third party cannot found an action for libel.

The Plaintiff claimed that the libellous letter was copied to the 2nd Defendant and one Saidu Gidado Idris by the 1st Defendant. No evidence was led in proof of this assertion that he pleaded. There was no evidence led to show that the letter was delivered and or received by the duo of the 2nd Defendant and Saidu Gidado Idris. Instead of calling either of these two persons as witness in support of his case the Plaintiff decided to join the 2nd Defendant as a party to the suit. He could not subpoena the other person Saidu Gidado Idris as a witness.

A Man’s reputation is not the good opinion he has of himself, but the estimation in which others hold him. Thus, the tort of defamation whether is a permanent or fugitive form, aims at the protection of the person’s general reputation. It is the person’s reputation in fact,

not the reputation he deserves. See **Iwueke v. I.B.C (2005) 17 NWLR (Pt. 955) 447 (Pp. 482 – 483, Paras G – A, Paras E – F).**

It therefore follows that, the Plaintiff had abandoned his pleadings as no evidence was led in support of his averments. And averment in which no evidence is led is deemed as abandoned.

See **Chukwuma v. Nwoye (2010) 30 WRN Pg. 79 (P. 110) Lines 30-45, Ariwoola, J.C.A** said:

“The law is settled that averments in pleadings are not evidence and they cannot be so construed. They are mainly to set out the facts that a party is likely to call evidence to prove, so that the opposing party would not be caught unaware or unprepared. The averments in pleadings must be proved by evidence except where they are admitted by the other party”.

See also **Arabami v. Advance Beverages Industries Ltd (2006) 8 WRN 1 at 35 Lines 35-40** where **Mukhtar, J.S.C** said:

“The law is clear and settled that pleading is not synonymous with evidence and so cannot be construed as such in the determination of the merit or otherwise of a case. A party who seeks judgment in his favour is required by law to produce adequate credible evidence in support of his pleadings, and where there is none then the averments in the pleadings are deemed abandoned”.

In **Nsirim v. Nsirim (Supra)** at Page 30 Lines 10 – 15, **Obaseki, JSC**

“It is the reduction of libellous matter to writing and its delivery to any person other than the person injuriously affected thereby

that is publication. The name of the person to whom delivery of the libellous document was made must be pleaded”.

The Plaintiff as PW1 made a heavy weather of what he thinks about himself and his reputation as a lawyer, Notary Public, Auctioneer and a member of an Editorial Board. In a suit founded on libel. **It is not what the Plaintiff thinks of or about himself that is important, what is fundamental is what others think about him and the estimation they hold of him.**

Therefore a person’s reputation is not based on the good opinion he has of himself, but the estimation in which others hold him. See **Economides v. Thomopoulos & Co. Ltd (1956) SCNLR 40: Ngilari v. Mother Cat Ltd (1999) 13 NWLR (Pt. 636) 626.**

In **Nsirim v. Nsirim (Supra) at Page 32 Lines 30 – 40, Belgore, JSC** said:

“The cardinal principle of libel in law is that there must be publication of libellous matter to a third person other than the person libeled, this is because a person’s reputation is not based on the good opinion he has of himself but the estimation in which others hold him. In the present appeal, could it be said there was a publication? Tons Fetepigi, News Editor of “Nigerian Tide”, never testified that the appellant actually delivered the defamatory matter to him, he merely mentioned that he received it from a reporter.....Apart from this there was no publication; and in law this is no evidence of publication for purposes of libel. Publication directly to a man defamed, without more is no publication Pullman v. Hill (1891) 1 Q. B 527”

Since the Plaintiff failed to prove publication of the letter to a third party, the action for libel ought to fail.

Taking it for granted that there was publication even though there was none, the Plaintiff failed to show by calling evidence of the person to whom the publication was made, the person who ought to testify of the injury the publication had done to the reputation of the Plaintiff in the light of the libellous material. Without there being a corroborative testimony, the suit is bound to fail. See **Anate v. Sanusi (Supra)**.

Furthermore, it is true the 1st and 2nd Defendant did not lead evidence in this suit but that does not mean admission of the Plaintiff's claim as same was uncontroverted. The need for proof of the Plaintiff's case is not dispensed with in the absence of an admission by the 1st Defendant.

In **NEPA V. Inameti (2002) 11 NWRL (Pt. 778) 397, Edozie, J.C.A, at Page 431, Paras D – F** said:

“The fact that an action is undefended by the Defendant does not exclude the need to prove the Plaintiff's case. The only circumstance in which the need for proof can be dispensed with is if the Defendant pleads liable to the total amount claimed by the Plaintiff.” (Underlining mine for emphasis).

CONCLUSION:

On the whole, the Plaintiff's case lacks merit and same ought to be dismissed and I so do. The Court cannot act on speculation or on instinct in the absence of credible evidence being placed before it.

In the case of **Katto v. Central Bank of Nigeria (1991) 12 SCNJ 1 at Pg. 15 Akpata, J. S. C** said:

“In the administration of justice, the Courts do not have the liberty to act on instinct. Cases are decided on proof by admissible and credible evidence and not on evidence not made available to the court. In effect, decisions are not based on intuition that documentary evidence not placed before it must have existed” (Underlining mine for emphasis).

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S. B. Belgore
(Judge) 27/1/2025