IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,ABUJA

IN THE APPEAL SESSION HOLDEN AT APO,ABUJA.

ON THURSDAY THE 24TH DAY OF JUNE, 2021.

SUIT NO.CV/56/2018
APPEAL NO.CVA/227/2019

BETWEEN

AL -MUSMOON SECURITY LTD ---------- APPELLANT
AND
BLAKE EXCELLENCE RESORT ---------- RESPONDENT

BEFORE THEIR LORDSHIPS:

HON. JUSTICE S.C. ORIJI [PRESIDING JUDGE]
HON.JUSTICE F. E. MESSIRI [HON JUDGE]

[JUDGMENT].

[DELIVERED BY HON JUSTICE F. E. MESSIRI.]

This Appeal is against the Judgment of His Worship Sharon Tanko Ishaya of Chief District Court sitting at Life

Camp, Federal Capital Territory, Abuja, delivered on the 2/7/2019.

The Appellant herein was the Plaintiff at the trial Court while the Respondent herein was the Defendant. The Plaintiff instituted the suit at the lower court vide an application for Civil Summons/Plaint dated the 22/02/2018 Contained at pages 2-4 of the Record of Appeal.

The case of the Plaintiff as disclosed in the Application for Plaint is that the Plaintiff entered into a security service agreement with the Defendant sometime in 2010 to provide security service for Blake Excellence Resort, Garki 11 Abuja.

The Defendant breached the contract with the Plaintiff by refusing to pay the consideration when due, thus necessitating the Plaintiff to give one month notice to withdraw his Security Men from the Resort of the Defendant, at which time the Defendant owed the Plaintiff outstanding debt of ₦1,886,000.00.

The Defendant replied the one month notice to withdraw security men written by the Plaintiff to him wherein he admitted to owing the Plaintiff the sum of ₦1,432,000.00 not ₦1,886,000.00.

The Plaintiff contends that it was defamed by the defendant in the Reply to its one month notice with the following content,

"As we want you to be mindful of our tolerance/patience of your lapses of sending unequipped Guards without

uniform, boots, torchlights etc, we were also informed by your guards that most of the payment made to your organisations by us were not remitted to them."

The plaintiff stated further that the said security vacated Defendant's property with handover note of his properties which shows that the letter by the Defendant to the Plaintiff was libellous.

The Plaintiff therefore claims the following from the Defendant;

1.The sum of ₦1,886,000.00 being outstanding security fees.

2.The sumof ₦2,000,000.00 for libel and retraction of the above statement in two widely read newspapers.

3. ₦100,000.00 as cost of this suit and

4. 10% of the Judgment sum until the Judgment is liquidated.

On the 9/5/2018, Learned Counsel for the Defendant denied liability on behalf of the Defendant. On 5/10/2018, hearing commenced with Alhaji Musa Ma'aji Omika testifying as PW1. He tendered 7 Exhibits which includes; Exhibits MSI,MS2,MS3,MS4,MS5,MS (a) and MS6(b).The Exhibits are at pages 25-37 of the Record of Appeal.

On the 13/12/2018 Ahmadu Ayengba testified as PW2 ,the case was thereafter adjourned for cross-examination. After several adjournments, on the 21/01/2019 the Defendant was foreclosed from cross examining the PW2, and subsequently foreclosed from defence.

On the 14/5/2019,Learned Counsel for the Plaintiff adopted the plaintiff's final written address. The Record of Proceedings is at pages 39-48 of Record of Appeal.

Judgment was entered on the 2/7/2019.The trial Court made the following orders in favour of the Plaintiff and against the Defendant;

1. The Defendant should pay the Plaintiff the sum of ₦1,432,000.00. as debt outstanding and the payment should be done forthwith.
2. The Defendant should pay to the Plaintiff the sum of ₦50,000.00 as cost of suit.
3. 2nd and 4thClaim fail.

The Plaintiff now Appellant being dissatisfied with the Judgment of the trial court (which is at pages 49-53 of the Record of Appeal) has now Appealed to this Court vide Notice of Appeal dated and filed on the 1/8/2019.

The said Notice of Appeal is contained at pages 54-58 of the Record of Appeal and has 8 Grounds of Appeal to wit;

Ground One.

That the trial Court erred in law when it held that the Appellant was not entitled to the Sum of One Million, Eight Hundred and Eighty -Six Thousand Naira (₦1,886,000.00) Only, being the outstanding payment due to them from the Respondent for the services rendered by the Appellant.

PARTICULARS OF ERROR

1. There was uncontroverted evidence: 'Exhibit MS1' tendered by the Appellant during the trial to establish the outstanding due debt of (₦1,886,000.00).
2. The Respondent did not enter her defence nor tendered any evidence to contradict the claims of the Appellant.
3. The Respondent is deemed to have admitted the claim of (₦1,886,000.00) established by the Appellant.

GROUND TWO.

The trial court erred in law and fact when it held that the Respondent's indebtedness to the Appellant is limited to the amount admitted by the Respondent in the sum of ₦1,432,000.00.

PARTICULARS OF ERROR

1. The Respondent did not admit any indebtedness before the trial court.

2. The Respondent did not call any evidence to establish owing the Appellant the sum of ₦1,432,000.00.

3. That Exhibit MS5 which contained the sum of ₦1,432,000.00 was rejected by the Appellant in subsequent correspondence between the Parties in exhibit MS6.

4. That the parties did not join issues at the trial on the exact amount due to be paid to the Appellant by the Respondent.

GROUND THREE.

The Learned Trial Magistrate erred in law by descending into the arena and making case for the Respondent

PARTICULARS OF ERROR

1. The Trial Magistrate awarded the sum of ₦1,432,000.00 an amount neither claimed nor admitted by the Respondent during trial.
2. The Respondent did not present any evidence before the trial court to establish the claim of ₦1,432,000.00.
3. The Trial Magistrate acted in speculation and not on any evidence of the Respondent in awarding the sum of ₦1,432,000.00.
4. That the Respondent refused to defend the case made out against her at the trial court.

GROUND FOUR.

The Learned Trial Magistrate misapplied the law when he held that the Appellant did not establish her claim before the Court but relied on the weakness of the Respondent's case.

PARTICULARS OF ERROR.

1. The Appellant duly discharged the evidential burden on her.

2. The Respondent did not discharge the burden on her by adducing any evidence to contradict the Appellant.

3.The Respondent is deemed in law to have admitted the case of the Appellant.

GROUND FIVE.

The Hon. Magistrate erred in law when he held that the particulars of libel were not established before the court by the Appellant.

PARTICULARS OF ERROR.

1. That there was publication of exhibit MS2 to the general public.
2. The evidence of PW1 and PW2 on the publication was not contradicted by the respondent.
3. The Appellant established the damages she suffered as a result of the malicious publication of the letter.

GROUND SIX

The trial Court misapplied the law when it held that libellous publications must be made only in a public document.

1. The court held that the publication was made in a private correspondence.
2. The Appellant proved that the private letter contained false information which was published to the general public on the notice board at the office of the Appellant.

GROUND SEVEN

The Trial Magistrate erred in law by not awarding damages for breach of Contract against the Respondent.

PARTICULARS OF ERROR.

1. The court held that there was breach of the Contract by the Respondent.
2. That breach of Contract attracts consequences in form of damages.

GROUND EIGHT.

The court below erred in law by not awarding the 10 percent cent interest or any interest on the judgment sum.

PARTICULARS OF ERROR

1. The Respondent was in breach of the contract she had with the Appellant.
2. The Respondent is indebted to the Appellant and every debt in law attracts interest in a specified sum.

The reliefs sought by the Appellant from this court are:

i. An order allowing the Appeal.

ii. An order setting aside the Judgment of His Worship Sharon Tanko Ishaya of Chief District Court of FCT Holden at Life Camp Abuja delivered on the 2/7/2019.

iii. An order that the Respondent shall pay the Appellant the sum of one million eight hundred and eighty-six thousand naira (₦1,886,000.00) only being outstanding security fees.

iv. An order that the Respondent shall pay the sum of two million naira (₦2,000,000.00)only to the Appellant for libel and mandating the Respondent to retract their statement in two widely read newspapers.

v. 10% of judgment sum until judgment is liquidated.

The Appellant'sBrief settled by Ijeoma Madu Esq dated the 20/10/2020 and filed on the 04/11/2020 was adopted at the hearing of this appeal on the 24/03/2021 while the

Respondent Brief settled by Alozie Nmerengwa Esq dated the 08/03/2021 and filed on the 10/03/2021 was adopted by Charles Izoka Esq (holding the brief of Alozie Nmerengwa) at the hearing of this Appeal on the 24/03/2021.

In the Appellants Brief of Argument, Ijeoma Madu Esq for the Appellant distilled 4 issues for determination by this Honourable Court, to wit:

1. Whether the trial magistrate was right in holding that Appellant is not entitled to sum of ₦1,886,000.00 and that the Respondent was liable to the sum of ₦1,432,000.00 when they did not call any evidence to defend the suit (distilled from ground one and two).

2. Whether or not the court below rightly held that the Appellant did not establish its case before the court but relied on the weakness of the case of the Respondent (distilled from ground three and four) .

3. Whether the court below was right to hold that the particulars of libel were not properly established before the court. (Grounds five and six).

4. Whether the court below ought to have awarded damages for breach of contract against the Respondent and 10% Interest on the judgment sum (ground seven and eight).

In the Respondent Brief of Argument,Learned Counsel for the Respondent raised a notice of preliminary objection and further distilled a lone issue for determination. They are:

- Preliminary Objection on the Jurisdiction of this Court to entertain an Appeal where the sole Respondent is unknown to law.

- Lone Issue for determination:

Whether or not going by the state of pleadings and evidence led on record, the trial court was right in upholding only the sum admitted and dismissing other as unproven.

The Appellant filed a reply to Respondent's Notice of Preliminary objection and brief of Argument dated 18/03/2021 and filed on 24/03/2021

Where Notice of preliminary objection is raised challenging the jurisdiction of court it behoves on that court to first resolve same.We therefore begin with Respondent's preliminary objection contained in Respondent's brief of Argument which is that this Court lacks jurisdiction to hear this Appeal on the ground that only a legal person can sue and be sued.

Learned Counsel for the Respondent contends that the Respondent sued as "BLAKE EXCELLENCE RESORT" is not a

person known to law. He contends further that by the provisions of section 29(1) of CAMA 2020, the name of a private company limited by shares shall end with the words "limited". Relying on case of **ONUEKWUSI V. R.T.C.M.Z.C. (2011)35 WRNPG 1 AT 23 PARAS 40-45.**

Learned Counsel for the Respondent states that incorporation or registration of a company cloths such company with legal entity separate and distinct from its members and states further that objection to Jurisdiction of Court can be raised at any time and in any manner deemed fit or even by the court suo motu or even viva voce.Counsel cites the case of **BRAITHWAITE V. SKYE BANK PLC (2013)5 NWLR PT 1346 AND THE CASE OF, AG FEDERATION V. AG ANAMBRA (2018)6 NWLR PT 1615 PG 314 AT 346 PARA F.**

Learned Counsel for the Respondent contends therefore, that the Appellant proceeded against a party who lacks the legal personality to defend an action in court. Consequently, he states that the court will have no further option than to dismiss this Appeal and so urges.

In response to the Notice of preliminary objection of the Respondent, Learned Counsel for the Appellant contends that the Respondent has a duty to prove its position by tendering certificate of incorporation or such other evidence as would prove the juristic personality it is alleging, that the mere addition of plc or ltd to a name does not prove same. Placing heavy reliance on the case of **BANK OF BARODA V. IYALABANI CO LTD (2002) 13 NWLR (PT 785)574-575 PARASE-F AND 567-577 PARAS F-C.**

Learned Counsel for the Appellant submits that the Respondent transacted business and did all correspondence

thereto in the name and letter head of Blake Excellence Resort, that even where a party is sued in the wrong name, same stood to be amended adding that the Respondent herein was not misled in any way having transacted with Plaintiff using the name Blake Excellence Resort in which he is sued.Therefore, no miscarriage of Justice was occasioned.

We agree with the submission of learned Counsel for the Respondent to the extent that it has been upheld by the Apex Court in plethora of cases that objection to Jurisdiction can be raised at any time even at the Appeal Court for the first time.

Now,to the ground for the preliminary objection as raised by the Respondent,we observe as submitted by Learned Counsel for the Appellant that there is Exhibit MS4, a letter emanating from the Respondent (Objector)to the Appellant with the name of the Respondent as "*Blake Excellence Resort*". Further to this is that the same name is on the letter headed paper of the Respondent with which it entered into business and transacted with the Appellant.

The Appellant sued the Respondent in the name which it held out as its name, now sued, suddenly the Respondent is the objector to a name which it used in entering into business relationship with the Appellant.

The English principle of law that allows a party to be sued eonominee that is "*by that name it is known*" will come to aid. The principle was reiterated and applied in the case of **MASON V. MOGRIDGE (1892)8 TLR 805 AND UPHELD BY THE COURT OF APPEAL IN THE CASE OF F.O-LOY ESQ V.**

REGISTERED TRUSTEES OF THE NEW COVENANT CHURCH (2017) LPELR -42183(CA).that;

"Any person carrying on business within the jurisdiction in a name or style other than his name may be sued in such name and style as if it were a firm's name, and, so far as the nature of the case will permit, all rules relating to proceedings against firm shall apply."

This principle received a huge nod in the case of **IYKE MEDICAL MERCHANDISE V. PFIZER INC.&ANOR (2010) 10 NWLR PART 722PG 540 .**The point to note under this principle of law is that such a person coming within this rule may be sued in a trade name that he transacted in but cannot sue in that trade name.

Thus, the Respondent having transacted with the Appellant using the name in issue, the Appellant can or is allowed by the principle of eonominee to sue the Respondent in that name.

We therefore hold the view that the Respondent having held itself out as Blake Excellence Resort in its business dealings with the Appellant can be validly and legally sued under the principle of eonominee. See the case of **IYKE MERCHANDISE** (SUPRA)

The Respondent therefore has the legal personality to Defend this action, the Preliminary Objection contained in Respondent Brief is therefore overruled and same is dismissed.

We hold further that this Honourable Court has the requisite Jurisdiction to hear this Appeal.

We shall now resolve the Issues raised in the Appeal before us. We adopt the four issues formulated by the Appellant's Counsel.

Issues one and two.

Learned Counsel for the Appellant argued issue one and two together, the issues are drawn from grounds 1,2,3 and 4 respectively. Learned Counsel for the Appellant submits that the Court below did not properly consider exhibit MS5 wherein the Appellant gave a detailed analysis of how she arrived at the total sum of ₦1,886,000.00, as salary for the period spanning through 1st March-31st May 2016, being claimed before the court and submits that the trial Court cannot make case for the parties.

On his part Learned Counsel for the Respondent argues that the Appellant was merely relying on a correspondence sent to the Respondent indicating a certain amount as the indebtedness without showing by clear evidence how he arrived at the said sum, he therefore submits that the trial court was correct to hold that the proven sum was that admitted by the Respondent.

It is the law indeed that in civil proceedings where evidence of the Appellant is uncontroverted and believed minimal proof is required. In the instant case, the oral evidence of

PW1 and PW2 is the minimum Proof required before the trial court.

When put on the imaginary scale there is nothing to put on the other side of the scale(since the Respondent did not defend Appellant's claim having being foreclosed) the Exhibit MS4 preceded the Exhibit MS5, after Exhibit MS5 the Respondent did not further deny the content of Exhibit MS5 and did not testify in its defence at the trial Court after the evidence of PW1 and PW2, the only evidence left for the Court to act on is therefore the oral evidence of the Appellant.

We are of the firm view that in the circumstance of this case the trial Court having accepted the oral evidence of the Appellant as proved and also having believed same, then the oral evidence before the trial court ought to have formed the basis in awarding the debt sum in its judgment.

We accordingly uphold the Argument of Learned Counsel for the Appellant on issues one and two and hold that the appellant is entitled to ₦1,886,000 .00 only.

Issue three.

On issue three,Learned Counsel for the Appellant listed the essential ingredients of libel and contends that the evidence of PW1 and PW2 and the Exhibit MS4 tendered proved all the ingredients of libel.

The Learned Counsel for the Appellant therefore urged this court to hold that from the evidence before the trial Court the libellous letter to wit Exhibit MS4 was published to the general public other than the Appellant and thus has satisfied

the requirements of defamation.The respondent did not canvass any argument on this point.

Looking at the evidence of PW1 and PW2 before the trial court ,which is that, the exhibit MS4 was kept in an open space and that it was read by everybody and that the PW1 was portrayed in bad light, we note that there is no evidence on how a letter addressed to the MD /Chief Consultant of the Appellant outfit found its way to the said public place at the Appellants address.

The notice board in question is in the premises of the Appellant , there is no evidence on how the exhibit got to the notice board. This cannot be left to this honourable Court to speculate, the Appellant had the burden to prove that indeed the Respondent was responsible for putting the exhibit MS4 in a public domain, which in this case is the notice board of the Appellant.

There is also nothing to show that the Appellant suffered any reputation damage as a result of the exhibit MS4 or that the exhibit MS4 caused the reputation of the Appellant to be lowered in the eyes or estimation of a third party.

The Apex Court in the Case of **SULE AND OTHERS V. ORISAJIMI (2019) LPELR-47039(SC)** listed the essential ingredients or elements a Plaintiff must prove to succeed in an action for libel and further stated unequivocally that;

"*The onus of proving libel, rests on the Plaintiff"*

The ingredients which a plaintiff must prove to establish a claim for libel, include ;

i. That the Defendant published a statement in a permanent form.

ii. That the statement referred to him.

iii. That the statement was defamatory of him in the sense that it lowered him in the estimation of right-thinking members of the society; or exposed him to hatred ridicule or contempt or it injured his reputation in his office, trade, orprofession, or it injured his financial credit.

See also the case of **SKETCH PUBLISHING CO LTD & ANOR V. AJAGBEMOKEFERI (1989)1 NWLR PART100 P.678.**

The operative word is "*prove the following*".There was no evidence at the trial court to prove that it was the Respondent who put the Exhibit MS4 on the Notice board of the Appellant or that it was indeed the Respondent who caused exhibit MS4 to be placed on the notice board of the Appellant neither is there proof that the content of exhibit MS4 lowered the reputation of the Appellant in the estimation of a right-thinking member of the society.

To succeed in an action for libel, the plaintiff must adduce evidence to show that someone else that is a 3rd party read the alleged defamatory words and the effect the words had on the reader concerning his or its person. This is the only way the plaintiff can establish that the words were defamatory of him in the sense that the words lowered him in the estimation of a right-thinking member of the society. See **MALTIDA ADERONKE DAIRO V. UNION BANK OF NIGERIA PLC & ANOR (2017)16 NWLR,PT 1059 PG 99. ALSO, IN OFOEGBU V.ONWUKA (2008)ALL FWLR PART 412 PAGE 1141,**

Where it was held that, to succeed in an action for libel, there must be proof by evidence of a third party of the effect of the alleged publication on the plaintiff, that is the reaction of a third party to the publication complained of. It is not what the plaintiff thinks of himself but what a third party thinks of the Plaintiff as regards the publication.

A glance at Exhibit MS4, indeed discloses a private correspondence between the Respondent and the Appellant as rightly held by the trial court.We therefore find no justification to hold otherwise, issue three as formulated by the Learned Counsel for Appellant is therefore resolved in the affirmative.That is, the trial court was right to hold that the particulars or ingredients of libel were not established by the Appellant herein as plaintiff before the trial court.

Issue four.

Learned Counsel for the Appellant contends that having reached a finding that there was a binding contract between the Appellant and the Respondent,the trial court failed to exercise its discretion Judicially and Judiciously. Adding that the trial court ought to have considered the high inflation rate in the country in deciding the issue of interest on the Judgment sum. Counsel therefore urged this court to hold that the Judgment debt automatically carries interest rate of 10 % as provided by High Court Civil Procedures rules of the Federal Capital Territory 2018.

A post -judgment interest needs not be specifically claimed before it is awarded. It is statutory. The court is empowered by the Rules of court to award such interest at the court's discretion. It does not require to be proved.

The Court of Appeal in the case of **IDAKULA V. RICHARDS & ANOR (2001) 1 NWLR PT 693 P. 111.**

Had this to say on the position of the law with regards to award of post judgment interest ;

"*Furthermore, as pointed out by the Learned Counsel for the appellant, the trial Court had discretion under Order 40 Rule 7 of the High Court (Civil Procedure) Rules 1987 of Plateau State to award a post-judgment interest at the rate of not more than 10% per annum from the date of judgment till final liquidation. This is a discretion given by the Rules to the learned trial Judge to be exercised on the date of delivering judgment. She did not do so nor did so wrongly. Can this Court now do so?*

The answer in my respectful view is in the affirmative because under S.16 of the Court of Appeal Act, 1976, the Court of Appeal is given wide powers to do anything which the Court below could have done. In other words, we have "full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as Court of first instance."

We state therefore that this Honourable court has discretion to award post judgment interest in favour of the Appellant

We accordingly hold that 10% post Judgment interest per annum is grantable in the circumstances of this case. We so order.

Conclusion.

Flowing from the aforesaid this Appeal succeeds in part; we therefore make thefollowing orders;

I. An order allowing the Appeal in part.

II. An order setting aside the award of the sum of ₦1,432,000.00 made by the trial court. In its place we order that the Respondent shall pay the Appellant the sum of one million eight hundred andeighty-six thousand naira (₦1,886,000.00) only being outstanding security fees owed the Appellant.

III. An order for 10% interest per annum to be paid on the Judgment sum of ₦1,886,000.00 from 2/7/2019 until the Judgment sum is liquidated.

IV. The part of the Judgment of the lower court which dismissed the claim for libel is hereby upheld.

We make no order as to cost of this Appeal but uphold the order by the trial court that the Respondent shall pay to the Appellant the sum of ₦50,000 as cost of suit.

_____ _____

HON. JUSTICE F E MESSIRI. ***HON. JUSTICE S.C. ORIJI.***

[HON. JUDGE] ***[PRESIDING JUDGE]***

Appearance of Counsel:

Ijeoma Madu for Appellant.

Alozie Nmeregwa with Nnaemeka Nwosu for Respondent