IN THE CUSTOMARY COURT OF APPEAL
EDO STATE OF NIGERIA
HOLDEN AT BENIN CITY

ON THURSDAY, 22ND JANUARY, 2009

BEFORE THEIR LORDSHIPS

PETER OSARETINMWEN ISIBOR é é é JUDGE (PRESIDED)

TIMOTHY UKPEBOR OBOH é é é JUDGE

PETER AKHIMIE AKHIHIERO é é é JUDGE

APPEAL NO.CCA/6A/2007

BETWEEN:

1. HELEN AMASIHE ï OHU
2. CARO AMASIHE ï OHU

é é APPELLANTS

AND

VERONICA ERHABOR é é RESPONDENT

JUDGMENT
DELIVERED BY PETER AKHIMIE AKHIHIERO (JCCA)

This is an appeal against the judgment of the Orhionmwon Area Customary Court, Abudu, delivered on the 31st day of January, 2005 in Suit No. OACC/17/2003.

In the said suit, the respondent (as plaintiff) claimed against the appellants (as defendants) jointly and severally as follows:

ñ(1) N300, 000.00 (Three hundred thousand naira) being damages

to plaintiffôs reputation (sic)

(2) Perpetual injunction restraining Defendants, their servants, agents and privies from further publishing the defamatory comments of the plaintiff.ò

The respondentôs case at the trial court was that sometime in the month of November, 2003, her son, Osasere was passing through the frontage of the appellantsô house, when the appellants started clapping their hands, running after him, and saying to him in Edo language **"ovbiazen, Ighona nuwaya azen si wa ma ya mure?"** Translated at the trial, to mean ñmy money which your mother took with witchcraft, she does not value, she does not farm, where did she get the money to buy motorcycle, is it not our money she dragged to buy the machine?ò

Thereafter, the 2nd appellant started to beat the respondent and her children with a broom, alleging that she was a witch.

After the incident, the respondent was no longer having good patronage because of the allegation of witchcraft. There were other people present when the appellants called the respondent a witch.

The aforesaid Osasere, testified as the P.W. 2 at the trial. His evidence was substantially the same as that of the respondent

At the trial court, the appellants led evidence to dispute the claim. They denied ever calling the respondent a witch. According to them, it was they respondentôs daughter, by name Iyobo who called the 1st appellant sometime in the month of June 2003, and informed her that the respondent and herself (Iyobo) have taken the appellants money to the coven at night. That they did it to stop their trade and

business. The appellants further testified that in the past, their business of buying and selling was booming, and that it was when the respondent started to buy items like salt, maggi and groundnut oil from them that she took their wealth to the coven to impoverish them.

At the conclusion of the trial, the court gave judgment in favour of the respondent. The court awarded ₦200, 000.00 (two hundred thousand naira) damages against the appellants for defamation of character. Also, costs was assessed at ₦500.00 in favour of the respondent.

Aggrieved by the judgment, the appellants filed a notice of appeal with the omnibus ground of appeal.

Subsequently, with the leave of this Honourable Court on the 18th of September, 2008, the appellants filed four additional grounds of appeal which are reproduced verbatim with their particulars as follows:

ñ1. GROUND 1

The trial court erred in law when it held that the Plaintiff/ Respondent was entitled to damages against the Defendants/ Appellants for the defamation of the Plaintiffôs/Respondentôs character.

(a) PARTICULARS OF ERROR

There was no evidence before the trial court to show that the Defendants/Appellants uttered the alleged defamatory words aside the Plaintiffôs/Respondentôs evidence which was controverted by the Defendants/Appellants.

(b) There was no evidence before the trial court to show that there was publication of the alleged defamatory words.

2. GROUND 2

The trial court erred in law when it held:

ó The position of the law in S.149 (b) of the Evidence Act CAP 112 and supplied in Obu V Commission of Education, Bendel State (1989)2 NWLR pt. 273, 5 is to the effect that failure of the Defendants to call the two persons and even their brother whom they claim was present when Plaintiffôs daughter made this allege (sic) confession to testify raises the presumptions that either such persons did not exist or that if they exist, their evidence would have been unfavourable (sic) to the defendantôs case.

PARTICULARS OF ERROR

(a) There is no such alleged presumption in section 149(b) of the Evidence Act.

(b) The presumption in Section 149(d) of the Evidence Act does not discharge the onus on the Plaintiff to prove his case at all times.

3. GROUND 3

The trial court erred in law in awarding extremely high monetary damages to the Plaintiff/Respondent against the Defendant/Appellants.

PARTICULARS OF ERROR

Both the Defendants/Appellants and the Plaintiff/Respondent are peasant village dwellers.

4. GROUND 4

The judgment is against the weight of evidence.

PARTICULARS OF ERROR

The totality of evidence adduced during the trial does not justify the conclusions arrived at by the trial court, and its subsequent judgment and ordersò

The parties filed and exchanged their briefs of argument, in accordance with the rules of this Court.

In the appellantôs brief of argument, learned counsel for the appellants, R. O. Isenalumhe Esq., distilled two issues for determination as follows:

ISSUE I

Whether having regard to the evidence led at the trial, the court below was right in holding that the appellants were liable for defamation of character of the respondent(Grounds 1,3 and 4).

ISSUE II

Whether the trial court was right when it held the appellants liable for failure to call vital witnesses in their defence.ò

In his brief of argument, learned counsel for the respondents, M.K. Agienoji Esq., tacitly adopted the two issues distilled by the appellants.

Before we proceed to the consideration of the issues and the submissions of the learned counsel on same, it is pertinent to observe at this stage that the two issues formulated and adopted by both counsel do not sufficiently cover all the grounds of appeal in this case.

Contrary to the assertion of the appellants counsel that Issue I covers

Grounds 1,3and 4, it is evident that the issue as formulated, that has no bearing

whatsoever on the complaint in Ground 3, which is against the alleged excessive damages awarded by the trial court.

For the avoidance of doubt, the said Issue I states as follows:

ñWeather (sic) having regard to the evidence led at trial, the court below was

5 right in holding that the Appellants were liable for defamation of character

of the Respondent (Grounds 1,3 and 4)ò

It is settled law that an issue for determination must be based on the complaint in the ground of appeal. See: STIRLING CIVIL ENGR (NIG) LTD V

10 YAHAYA (2005) VOL. 127 LRCN 1174 at 1181 Rat. 9; ADELEKAN V ECU

LINE NV (2006) VOL.141 LRCN 2290 at 2296 Rat.7.

Although the appellants counsel made some efforts to incorporate argument covering the said Ground 3 under Issue I, this approach is quite irregular. The Issue as formulated should clearly embrace or encapsulate the ground of appeal.

15 However, an appellate court is not under a regimental duty to take the issue or

issues formulated by a party or parties or counsel in order to give it precision and

clarity if the issues as formulated appear awkward or not well framed.

See: LATUNDE V LAJINFUN (1989) 3 NWLR Pt. 108 p. 177;

AWOJUGBAGBE LIGHT INDUSTRIES LTD V CHINUKWE (1995)5

20 NWLR Pt. 390 p.379; UNITY BANK PLC V BOUARI (2008) 7 NWLR Pt. 1086 P.372 at 383.

Consequently, it is our view that since the complaint against damages was

specifically raised in Ground 3 of the appellants grounds of appeal, and the counsel articulated his arguments on the said ground in his brief of argument, howbeit,

erroneously under Issue I, the issue is germane enough to be considered.

5 Thus, in the interest of justice, and in order to properly define the issues as enshrined

in the grounds of appeal in this case, we accordingly exercise our powers to formulate an additional issue for determination to wit: ñ**whether the award of**

the sum of two hundred thousand naira (N200,000.00) as damages in favour of the respondent was excessive in the circumstances of this case."

In the event, the issues for determination in this appeal are as follows:

1. Whether having regard to the evidence led at the trial, the court below was right in holding that the appellants were liable for defamation of character of the Respondent.
2. Whether the trial court was right when it held the appellants liable for failure to call vital witnesses in their defence. (Ground 2)
3. Whether the award of the sum of two hundred thousand naira as damages in favour of the respondent was excessive in the circumstances of this case (Ground 3)

Arguing the first issue for determination, the learned counsel for the appellants R. O. Isenalumhe Esq., submitted that the respondent testified at the trial

that there were three witnesses including one Vincent who purportedly heard the slanderous words. But the respondent failed to call the said three witness who he

maintained are vital witnesses in the case.

He further submitted that the child of the respondent who was the only witness called by the respondent is a tainted witness who has a purpose to serve, to wit; the protection of the interests of his mother. He contended that the failure of the

respondent to call those vital witnesses is tantamount to an admission that if the

vital witnesses had been called, their evidence would have been unfavourable to her. He relied on section 149 (d) of the Evidence Act, Laws of the Federation of

Nigeria 2004.

The Learned counsel submitted that in order to succeed in an action for defamation, the respondent must prove six co terminus ingredients to wit;

(i) Publication of the offending words;

(ii) Proof that the words complained of refer to the Plaintiff;

(iii) That the words are defamatory of the Plaintiff;

(iv) Proof of publication to a third party;

(v) Falsity or lack of accuracy of the words complained of; and

(vi) That there was no justifiable ground for publication of the words.

He cited the following cases in support of his submission:

ALAWIYE V OGUNSANYA (2003) FWLR Pt. 82 1873, Ratio 4;

and ANATE V SANUSI (2002) FWLR Pt. 93, 1902, Ratio 6.

He posited that the six ingredients are coterminous and that one is not an alternative to the other. That in the instant case, there is no clear evidence of publication and the time of publication.

He submitted that the time of (re) publication is a determining factor in any claim for slander and cited the case of OFFOBOCHE V OGOJA LOCAL GOVT (2001) 90 LRCN 2782.

The learned counsel submitted that the trial court misdirected itself and introduced emotion into its decision when it described the evidence of the 1st appellant as ñmere fabrication and trump up.ò(sic)

Furthermore, he submitted that there was no evidence to justify the findings of the trial court that the problem between the appellants and the respondent aroused

(sic) from petty jelousy (sic) that the Plaintiff bought a motorcycle did not go down

well with the defendantsò

Learned counsel maintained that the trial court reached a perverse conclusion when it held that ñthe Defendants -------- used the police and the Enogie to harace (sic) the plaintiffò, because there was no iota of evidence to justify that conclusion.

Responding to Issue I, the learned counsel for the respondent, M.K. Agienoji Esq., submitted that the respondent discharged the onus placed on her

by sections 136 and 137 of the Evidence Act, LFN, 2004, to prove, her case on the balance

of probability and also to establish the ingredients of the tort of slander.

He sited the case of ALAWIYE V OGUNSANYA (2003) 39 W.R.N. 140 at 142- 143 Ratio 2 where the court stated as follows:

ñThe rule is applicable whether in libel or slander, it is this, would the words used tend to lower the plaintiff in the opinion of or the estimation of right thinking members of the society.ò

He submitted that slander is actionable per se when the words uttered about the plaintiff injure the plaintiff in her profession, trade, calling, office or impute a crime

punishable with imprisonment, or impute certain disease or impute unfitness for his calling. He cited the case of BASORUN V OGUNLEWE 1(2001) 1NWLR Pt 640,

221 at 226 Ratio 11. He also relied on the case of ALAWIYE V OGUNSANYA supra Ratio 7.

Submitting on the proof of publication of the slander the counsel maintained that once the defamatory utterance is made known to any other person other than the

respondent herself, it amounts to publication. He cited the case of BASORUN V OGUNLEWE supra at p. 223, Ratio 2.

He submitted that the respondent gave evidence of the actual defamatory words used on her by the appellant in Bini language and also provided the English

translation. He argued that the words were defamatory of the respondent as they

carry the imputation of her unfitness in her calling or trade as a food seller or trader. He maintained that the defamation immediately affected the patronage of the respondent. He referred to the evidence of the respondent that thereafter, the Ogie-

Ugo sent some people to throw away the food she took to the market for sale.

Responding to the submissions of the appellants counsel that some of the

findings of the trial court were perverse, the learned counsel for the respondent submitted that the said findings were borne out of admitted evidence from the respondent and the P.W. 2.

Addressing the court on the weight to be attached to the evidence of the P.W.

2 being a child of the respondent, the counsel further submitted, that by virtue of of section 155 of the Evidence Act, the P.W. 2 was competent witness, his his relationship with the respondent notwithstanding. He cited the case of AKPAN V

V. THE STATE (2001) 53 WRN 1 at 6, Ratio 6.

He maintained that the tort of slander is not one of those, which require corroboration of the evidence of a witness as enshrined in sections 177 and 179

of the Evidence Act. Counsel submitted that the P.W. 2 was not a tainted witness.

On the issue of uncertainty of the time the alleged words were spoken the respondentôs counsel maintained that there is no such uncertainty. That the respondent stated in evidence that the words were uttered sometime in November, 2003 and that the P.W. 2 gave the accurate date as 11th November,2003. He submitted further that it is the duty of the trial court to assess the credibility of witnesses and to make findings of fact.

He cited the cases of EYA V QUDUS (2001) 30 WRN 7 at 82 ratio 18; and GAJI V PAYE (2003) 12 MJSC 76 at 79 ratio 3, to buttress his submission.

He finally urged the court to resolve Issue I in favour of the respondent

We have considered the submissions of both counsel on Issue I which is:

whether having regard to the evidence led at the trial, the court below was right in

holding that the Appellants were liable for defamation of character of the Respondent.ò The essential ingredients of the tort of defamation have been correctly set out by the learned counsel for the appellants earlier on.

The issue to be resolved under Issue I is whether the evidence adduced at trial and accepted by the trial court was sufficient to establish the six ingredients enumerated.

10 The learned counsel for the appellants has argued very forcefully in his brief that this issue should be resolved in favour of the appellants. In the course of his arguments he tried to fault the judgment of the trial court on the basis of the alleged failure of the respondent to establish some of the essential ingredients of the tort of defamation.

15 The appellantôs counsel opened his arguments by challenging the reliance of the trial court on the evidence of the P.W. 2, the child of the respondent who he classified as a tainted witness who had a purpose to serve. He argued that there were three other witnesses including one Vincent who the counsel classified as independent and vital witnesses and who the appellants should have called to prove

20 their case.

It is settled law that a plaintiff in a civil suit can succeed on the evidence of a single witness who may be the plaintiff himself or some other person with any other confirmation of the evidence of the witness by the testimony of another witness or by any other circumstance.

See AGUDA: LAW AND PRACTICE RELATING TO EVIDENCE IN NIGERIA 2nd Edition par. 25.04

Moreover, the general rule is that no particular number of witnesses is required for the proof of any fact. See section 179 (1) of the Evidence Act. Flowing from the foregoing, the finding of the trial court cannot be faulted on the ground that

the respondent did not call the three other witnesses mentioned.

The appellant further branded the P.W. 2 as a tainted witness. In the case of ISHOLA V THE STATE (1978) 9-10 SC 81 at 100, Idigbe JSC cautioned that ñit is proper to confine this category of witness (i.e. ótainted witnessô) to one who is either an óaccompliceô or by the evidence he gives, may and could be regarded as having some <u>purpose of his own to serve</u>ò (underlining mine)see also IFEJIRIKA V THE STATE 1999 3 NWLR Pt. 593 p. 59; OGUNLANA V THE STATE (1995) 5 NWLR 266; OLALEKAN V STATE (2001) 92 LRCN 3385.

The mere fact that the P.W. 2 is the child of the respondent does not make him a

tainted witness. The appellant has not shown that the P.W.2 has a purpose of <u>his own</u> to serve.

In the case of OLALEKAN V STATE supra at p. 34.04 Karibi Whyte J.S.C. buttressed the point thus:

ñThere is nothing on the evidence to suggest that P.W.1 has any other interest

to serve than to identify her assailant and the killer of her husband. It is preposterous reasoning to suggest that the status of the evidence of a wife or husband who witnessed the murder of a spouse or other offence, gives rise to a disqualifying interest which renders such evidence tainted and therefore requires

corroboration.ò

Accordingly we uphold the finding of the trial court that the P.W. 2 was not a tainted witness.

While contesting the issue of publication of the slander, the learned appellantsô counsel contended that the time of (re) publication is a determining factor in a claim for slander. He cited the case of OFFOBOCHE V OGOJA LOCAL

GOVT supra. We have read the said case and we are of the view that the OFFOBOCHE case was cited out of context. In the said case the issue of the time

when the defamation was made was very material because the defence was hinged on the period of limitation of time stipulated under the Public Officers Protection Law. The defence of limitation of time was not an issue canvassed in this trial.

Moreover, as to the issue of the time of the defamation being uncertain, we agree with the learned counsel for the respondent that the P.W. 2 was quite accurate about the time when he testified that ñon the 11/11/2003, when I was passing

through the road beside the defendantôs house, I heard someone saying, Osasere, the son of a witch.ò

Furthermore, we uphold the submissions of the respondentôs counsel that in so far as the defamatory statement was made known to another person other than the respondent herself, there was publication.

See BASORUN V OGUNLEWE (2001) 1 NWLR Pt. 640, 221 at 223.

On the contention of the appellants that the trial court made some perverse findings to the effect that the problem arose from petty jealousy and that the appellants used the police and the Enogie to harass the respondents, we hold that the findings of the court were not perverse but were based on logical inferences drawn from the evidence adduced at the trial.

The law is well settled that the evaluation of evidence and the ascription of probative value are the primary functions of the trial court which saw, heard and assessed the witnesses.

See: OKWEJIMINOR V GBAKEJI & ANOR. (2008) 5 NWLR Pt.1079, 172 at 181; AGBEJE V AJIKOLA (2002) 93 LRCN 1, ABIDOYE V ALAWODE (2001) 85 LRCN 736

Upon a careful consideration of the aforesaid findings of the trial court, we have no reason to fault the inferences drawn from the evidence adduced at the trial.

Accordingly, we uphold the verdict of the trial court that the appellants were liable for defamation of character of the respondent

.

We therefore resolve Issue I in the affirmative.

Issue II is whether the trial court was right when it held the appellants liable for failure to call vital witnesses in their defence.

Arguing Issue II the appellantôs counsel submitted that the trial court misdirected itself when it held that ñthe position of the law in s. 149 (b) of the Evidence Act Cap. 112 and supplied in Obu V Commission of (sic) Education Bendel State (1989) 2 NWLR Pt. 273, 5 is to the effect that failure of the defendants to call the two persons and even their brother whom they claim was present when the plaintiffôs daughter made this allege (sic) confession to testify raises the presumptions that either such persons did not exist or that if they exist, their evidence would have be infavourable (sic) to the defendantôs case.ò

He contended that the presumption on failure to call witness or evidence is not in section 149 (b) but in section 149 (d) of the Evidence Act. Even the said section 149 (d) did not impose any obligation on a defendant to call witnesses neither does

it discharge the onus of proof on the plaintiff. He cited the case, of ANATE v SANUSI (2003) FWLR Pt. 93 p.1902 Ratio 5 & 8 at pages 1904 ï 1905; and TITILOYE V OLUPO (1991) 6 LRCN 1836.

He further submitted that section 149 (d) of the Act can only be invoked against the plaintiff/prosecution that is required to call vital witnesses to prove its case and not the other way round.

He cited the cases of:

ENAHORO V THE QUEEN (2007) 5 ACLR 403 Ratio 4;

OGUONZEE V STATE (1998) 58 LRCN

STATE V NNOLIM & ANOR (1994) 18A LRCN 1 Ratio 3

Replying to Issue2, the learned counsel to the respondent submitted that the reference to section 149 (b) of the Evidence Act in the judgment was a slip and that the section in contemplation was obviously section 149 (d). He maintained that since the appellants raised the defence of justification by their evidence, the burden was on them to call their witnesses to prove same. That the respondent having established a prima facie case of slander, the burden was not on her to prove that the defamatory words are false. The law presumes this in her favour. He cited the case of ACB V APUGO (2001) 10 W.R.N 124 at126 Ratio 2 in support of this proposition. According to him, the burden thereafter shifted to the appellants to prove justification. See the case of DUMBO V IDUGBOE (1983) 1 S.C. N. L.R 29 at 51. Learned counsel urged this court to hold that the trial court rightly invoked

the provision of section 149 (d) of the Evidence Act against the appellants when they failed to discharge the burden on them to prove justification.

Finally, the counsel submitted that even if there is any slip on the face of the records which he observed is fraught with typographical and proof-reading

errors, it is not such a slip or mistake that could lead to a miscarriage of justice

He relied on the case of UDEGBUNAM V FCDA (2003) 12 MJSC 64 at 67 Ratio 5.

We have considered the arguments of counsel on Issue II, which is on ñWhether the trial court was right when it held the Appellants liable for failure to call vital witnesses in their defence.ò

It is quite evident that the trial court made a slip when it referred to section 149 (b) of the Evidence Act instead of section 149 (d) of the Act.

It is settled law that it is not every error, mistake or slip in a judgment that must result in an appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the Appellate court will allow the appeal on that ground.

See: ABUBAKAR V BEBEJI OIL AND ALLIED PRODUCTS LTD. & OTHERS (2007) 18 NWLR Pt.1066, 319 at 338; UDEGBUNAM V FCDA (2003) 12 MJSC 64 at 67; AZUETONWA IKE VUGBOAJA 1993 6 NWLR Pt. 242, 386 at 400;

PRINTING & PUBLISHING LTD V NAB LTD (2003) FWLR Pt. 137, 1097 at 1110.

We are of the view that the error of the trial court in referring to section 149(b) instead of section 149(d) of the Act is not substantial enough to occasion a miscarriage of justice.

On the issue of the shifting of the burden of proof of justification to the appellant by the trial court, it is settled law that the burden of proof of any particular fact lies on that person who wishes the court to believe in the existence of such fact. But the burden may shift in the course of the proceedings from one side to the other. See section 139 of the Evidence Act.

We agree with the submissions of the respondentôs counsel that since the respondent has established a prima facie case of slander against the appellants, the burden was shifted to the appellants to lead evidence to establish the alleged defence of justification.

See NIGERIA MARITIME SERVICE LTD. V BELLO AFOLABI (1978) 2 S.C. 79, 84; E.D. TSOKWA & SONS CO. LTD V UNION BANK OF NIGERIA LTD (1996) 10 NWLR 281.

Accordingly, we hold that the trial court rightly invoked the provisions of section 149 (d) of the Evidence Act against the appellants when they failed to lead evidence to establish their defence of justification. In the event, we resolve Issue II in the affirmative.

Issue III is whether the award of the sum of two hundred thousand naira as

damages in favour of the respondent was excessive in the circumstances of this case.ò

In his brief of argument, the learned counsel for the appellants submitted that the trial court was wrong when it did not specify the type of damages it awarded and the principles used to arrive at the amount awarded. He contended that the court proceeded on wrong principles of law and the amount awarded was manifestly and extremely high. He cited the case of CHIEF F.R.A. WILLIAMS V DAILY TIMES OF NIGERIA LTD (1990) ALL N.L.R.1 Ratio 9.

The learned counsel further contended that in the award of damages, the trial court failed to appreciate the sociological fact that village citizens commonly use the words ñwitchò, ñdevil.ò ñogbanjeô ñdemonò etc, without meaning or intending harm, injury or disrespect. He concluded that the trial court would have imposed a minimal amount as damages if it had appreciated the way of life of village communities.

In his reply on the issue of damages, the learned counsel for the respondent submitted that the case of WILLIAMS V DAILY TIMES (supra) cited by the appellantôs counsel does not apply because it is a case of libel which involves publication in newspapers where there is opportunity for retraction. According to him, this is a mitigating factor in the assessment of damages. He submitted that the instant case is that of slander.

Counsel also submitted that the amount awarded by the trial court was not above the amount claimed, neither was it excessive in view of the evidence of the respondent that she lost substantial patronage in her trade as a food seller.

Furthermore, the respondent was beaten with brooms by the appellants and the Ogie--Ugo sent some persons to throw away her food meant for sale.

Finally, the counsel submitted that there is no basis in law for the court to consider the quantum of damages awarded because the appellants did not raise a separate issue on damages. He maintained that the appellant having failed to formulate a separate issue on damages; the court cannot raise the issue **suo motu** for determination or consideration.

After a careful consideration of the arguments from both sides on the award of damages, we hold that for reasons already advanced in this judgment, this court is competent to formulate a separate issue on damages and to determine same in the interest of justice. Accordingly, we shall consider and determine the issue of damages as formulated in Issue III.

The general rule is that an appellate court will not interfere with the award of damages made by the trial court, but where there is a clear failure on the part of the lower court to follow settled principles of law for the award of damages, an an appellate court can properly interfere with the award of damages made by the trial court.

See SHODIPO & CO. LTD V DAILY TIMES (1972) 1 ALL N.L.R. 406

EZE V LAWAL (1997) 2 NWLR Pt. 487, 333

While considering the award of damages, the trial court observed as follows:

ñThe next question is whether the plaintiff is entitled to damages from the defamatory words or whether the plaintiff suffered any damages as result (sic) of the word complained of in their claim. The law will presume that damages flows from such words.ò and dismiss the case of the Appellantsò

At the concluding part of the judgment, the court stated that the plaintiff is entitled to damages assessed at N200, 000.00 (two hundred thousand naira) for the defamation of her character.

We observed that the trial court did not explain how it arrived at the said sum which was awarded as damages for defamation. It is the counsel for the respondent who has tried to explain the basis, in his submissions before this court. According to him, the amount was to compensate the respondent for the loss of substantial patronage in her trade or business as a food seller and for the beating she received from the appellants.

Where it is apparent from the records that the trial court in assessing damages, did not proceed on any principle of law and the award is manifestly excessive or extravagant, an appellate court will interfere with the award of damages.

See: OKWEJIMINOR V GBAKEJI & ANOR. (2008) 5 NWLR Pt.1079,172 at 182; UWA PRINTERS (NIG) LTD V INVESTMENT TRUST LTD (1988) 5 NWLR Pt. 92, 110; OKONGWU V N. N.P.C.

(1989) 4 N.W.L.R. Pt. 115, 296;

10 GARI V SEIRAFINA (NIG) LTD (2008) 2 N.W.L.R. Pt. 1070; 1& 8.

The judgment is silent on the principles that guided the court in the award of damages. We do not intend to speculate on the possible factors that may have operated in the mind of the court to award the sum of N200,000.00 (two hundred thousand naira) as damages. We are of the view that the award can be faulted on the ground that the trial court did not proceed on any discernible principle of law before arriving at the said sum. There was no evidence led to assess the extent of the losses allegedly suffered by the respondent as a result of the slander.

However, from the evidence adduced, it is not in doubt that the respondent suffered loss of patronage in her trade or business. She is entitled to some compensation.

We hold that the sum of N50, 000.00 (fifty thousand naira) will be adequate compensation for the respondent.

Accordingly, we resolve Issue III in the affirmative and set aside the award of the sum of N200, 000.00 (two hundred thousand naira) by the trial court, and substitute same with the award of the sum of N50, 000.00 (fifty thousand naira) as damages in favour of the respondent for slander.

We cannot conclude this judgment without making some remarks on the format adopted by the respondentôs counsel in the preparation of his brief of argument. In his brief of argument, dated 13th of October, 2008, the learned counsel for the respondent adopted a very unusual pattern. The counsel went straight to argue the

issues formulated without any preambles. In his classical book titled, **Manual of Brief Writing in the Court of Appeal and the Supreme Court of Nigeria**, our esteemed jurist, Hon. Justice Nnaemeka Agu J.S.C (rtd) stated that from the Rules and practice, as well as by judicial opinion, the essential parts of an appellate and respondentôs brief are as follows:

(i) The court in which the appeal is to be argued;

(ii) The Appeal number;

(iii) Parties to the appeal;

(iv) Title of the brief (i.e. appellants, respondentôs or reply brief);

(v) A table of contents;

(vi) Introduction or preliminary statement;

(vii) Issues for determination;

(viii) Statement of facts;

(ix) The argument;

(x) Conclusion; and

(xi) List of legal authorities

Surprisingly, the respondentôs brief began abruptly with the arguments on Issue 1 without any table of contents, introduction, or identification of the issues for determination. This approach is not in consonance with the usual practice.

Furthermore, the respondent concluded his brief with a rather terse statement as follows: ñWe urge Your Lordships to uphold the judgment of the trial court and dismiss the case of the Appellantsò

This is contrary to the provisions of Order 5 Rule 2 (3) and 3 (2) of the Customary Court of Appeal Rules 2000 which stipulates thus:

> ñ(3) All briefs shall be concluded with a numbered summary of the points to be raised and the reasons upon which the argument is founded.ò

Although our rules are silent on the consequences of failure of a party to comply with the provisions of the rules as it relates to the form and content of a brief, parties and their counsel are enjoined to comply substantially with the provisions of the rules in this regard. We commend the appellantsô counsel for his substantial compliance with the rules in the format of his brief. The counsel for the respondent should have followed the same pattern to conform to the standard practice on brief writing.

Having resolved Issues I and II in favour of the respondent, and Issue III in favour of the appellants, this appeal succeeds in part. Accordingly, we affirm the judgment of the Orhionmwon Area Customary Court, Abudu, delivered in this case on the 31st day of January, 2005, in its entirety, except as regards the quantum of

award of damages for slander.

We hereby set aside the award of the sum of N200, 000.00 (two hundred thousand naira) as damages and in its place, we award the sum of N50, 000.00 (fifty thousand naira).

There shall be no order as to costs in this appeal.

HON. JUSTICE PETER OSARETINMWEN ISIBOR

HON. JUSTICE TIMOTHY UKPEBOR OBOH

HON. JUSTICE PETER AKHIMIE AKHIHIERO

R. O. Isenalumhe Esq. é Counsel for the Appellants

M. K. Agienoji Esq. é Counsel for the Respondent