

**IN THE HIGH COURT OF JUSTICE, EDO STATE - NIGERIA**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP: HON. JUSTICE J.O. OKEAYA-INNEH, (JUDGE)**  
**DELIVERED ON WEDNESDAY THE 31<sup>st</sup> DAY OF MAY, 2016**

**BETWEEN:**

**SUIT NO. B/769/2011**

DR. PUIS ODUBU

....

CLAIMANT/APPLICANT

AND

1. ROOBBS COMMUNICATION  
NETWORK LTD
2. LANRE OYELEYE
3. MUSBAU RASAK
4. BABS ADE

}

DEFENDANTS/RESPONDENTS

**J U D G M E N T**

The Claimant filed this suit by a writ of Summons dated 17/11/2011 and by his Amended Statement of Claim dated 16/8/13 filed 20/8/13.

**Whereof** Claimant Claims against the Defendants as follows:

- a. The sum of **N100,000,000** (One Hundred Million Naira) being damages for libel;
- b. A well worded retraction and apology to be published in a similarly conspicuous manner in an edition of The Premier newspaper and a daily newspaper that has a wide publication in Nigeria as may be determined by the Court and within such time after the judgment as the Honourable Court may direct;
- c. An Order of Perpetual Injunction Restraining the Defendants from howsoever publishing or causing to be published the said or similar words defamatory of the Claimant.

The Defendant entered appearance on the 18<sup>th</sup> day of July, 2012.

The Claimant opened his case by calling on C.W.I Oluwole Iyamu to testify.

C.W.I stated that his name is Oluwole Iyamu, he lives in No. 10, Osadebe Avenue, G.R.A. Benin City. He is a Legal Practitioner and Solicitor-General in the Edo State Ministry of Justice.

CWI stated that he remembers making a Written Statement on Oath on the 5<sup>th</sup> day of December, 2012 in respect of this matter. A copy of the said Written Statement on Oath was shown to him. He identifies same and further states he wishes to adopt the Written Statement on Oath as his evidence in chief in respect of this matter.

### **WITNESS DEPOSITION ON OATH**

I, Oluwole Iyamu, Male, Christian, Nigerian, of No. 10, Osadebey Avenue, G.R A., Benin City, do hereby make oath and state as follows:-

1. That I am a Legal Practitioner by profession, and the Chairman of Edo State Law Review Committee.
2. That I know the Claimant in this suit. He is the Deputy Governor of Edo State of Nigeria elected to the position with the Governor, Comrade Adams Oshiomhole under the aegis of the political party known as Action Congress of Nigeria (ACN).
3. That I have seen a copy of a Newspaper or news publication called "The Premier" Newspaper.
4. That I did purchase a copy of "The Premier" Newspaper Vol. 3, No. 21 of Tuesday 19<sup>th</sup> of July - Monday 25<sup>th</sup> of July, 2011, copies of which were displayed for sale at various newspaper vendors stands in Benin City. I saw other persons purchasing copies.
5. That at pages 34 and 35 of the said "The Premier" Newspaper Vol. 3, No. 21 of Tuesday 19<sup>th</sup> July - Monday 25<sup>th</sup> July, 2011 are the articles titled "Edo Deputy Governor in Secret Cult Scandal" and "Edo Deputy Governor in Secret Cult Scandal As Opposition Mounts Against His Return in 2012".

6. That the respective captions and the entire publication wherein the Claimant was referred to by name, have two of the Claimant's photographs published apparently to ensure that the reading public is not misled in anyway about the person referred to therein. The captions contained very tendentious, damaging and highly defamatory matters touching and concerning the Claimant.
7. That the Claimant was referred to by name and by reference to the office of the Deputy Governor of Edo State which he occupied in the front page of the Newspaper, and at pages 34 - 35 of the said "The Premier" Newspaper. I can identify a copy of the publication if shown to me.
8. By the said publication, the contents of which were capable of being understood to mean, or which were indeed understood by ordinary members of the public to mean that he (Claimant) is:
  - a. a party buff who indulges in excessive consumption of palm wine which is an intoxicating alcoholic beverage;
  - b. that despite the high office which he occupies, the Claimant dances with empty bottles at palm wine joints when he is allegedly drunk;
  - c. that he was a member of secret cult known as "**Osokpikan**";
  - d. that he belongs to other secret cults by virtue of which he engages in fetish activities;
  - e. that he stole or misappropriated the sum of N2 billion "**FADAM FUND**";
  - f. that he misappropriated constituency project funds allegedly allocated to him for the eight (8) years that he was in the House of Representatives;
  - g. that he is unfit to continue or be re-elected in or to the office as the Deputy Governor of Edo State;

I so understood the articles to mean or convey the meanings hereinabove set out.

9. That the offensive and malicious publication is capable of reducing and/or has reduced the Claimant's reputation in the estimation of right thinking members of the public and has brought him into public scandal, odium and contempt.
10. That the said publication is completely false and untrue.
11. That the publication which was done recklessly was actuated by base and improper motives meant to boost the sales and/or circulation of the offensive publication to its primary and secondary readers, thereby increasing its sales and revenue.
12. That when the publication came out, the Claimant was seeking for election to a second term in office as the Deputy Governor of Edo State and Oshiomhole and running mate to the Governor, Comrade Adams and this publication caused great distress for him.
13. That the publication about the Claimant was to make pecuniary gains by that the publication about the Defendants to the detriment of the Claimant's reputation and goodwill.

14. That I make this deposition believing same to be true and correct to the best of my knowledge and belief and in accordance with the provisions of the Oaths Act.

(SGD)  
DEPONENT  
5/12/12

In the cause of Trial a Certified Copy of the Premier Newspaper dated 19/7/2011-25/7/2011 was tendered in evidence and marked as Exhibit %A+.

***THERE WAS NO CROSS-EXAMINATION AND NO RE-EXAMINATION.***

The Claimant testified by stating his name as Dr. Pius Odubu. He lives at No. 2, Liberty Avenue, off Boundary Road G.R.A. Benin City. He is a Legal Practitioner and presently the Deputy Governor of Edo State. He stated that he remembers making a Written Statement on Oath in respect of this matter on the 5/12/2012. A copy of the Written Statement on Oath was shown to him. He identifies same and further states that he wants to adopt the Written Statement on Oath as his evidence in chief in respect of this matter before this Honourable Court.

The Written Statement on Oath is reproduced hereunder:-

**WITNESS DEPOSITION ON OATH**

I, Dr. Pius Odubu, Male, Christian, Nigerian, of No. 1 Government House, G.R.A., Benin City, do hereby make oath and state as follows:-

1. That I am the Claimant in this case, by virtue of which I am seised of the facts leading to this suit.
2. That I am the Deputy Governor of Edo State of Nigeria having been elected to the position with the Governor, Comrade Adams Oshiomhole under the aegis of the political party known as the Action Congress of Nigeria (ACN).

3. That the 1<sup>st</sup> Defendant is a Limited Liability Company, which is the printer and publisher of %The Premier+ Newspaper or tabloid and which has a very wide and considerable circulation and readership throughout the jurisdiction of this Court, in Nigeria and several other countries.
4. That the 2<sup>nd</sup> Defendant is the Managing Director of %The Premier+ Newspaper in which capacity he decides on the reports, stories, gossips, interviews etc., that are published in every edition of the Newspaper. He was at all material times in the employment of the 1<sup>st</sup> Defendant.
5. The 4<sup>th</sup> Defendant is the News Correspondent of %The Premier+ Newspaper who wrote the article titled “**Edo Deputy Governor in secret cults scandal+** and %Edo Deputy Governor in secret cult scandal As Opposition Mounts Against His Return in 2012” respectively. He was at all material times in the employment of the 1<sup>st</sup> Defendant.
6. I state that the said article was published in %The Premier+Newspaper Vol. 3 No. 21 of Tuesday 19<sup>th</sup> July - Monday 25<sup>th</sup> July, 2011, with very bold headlines with the two photographs of the Claimant conspicuously displayed.
7. I further state that at pages 34 and 35 of the said %The Premier+Newspaper Vol. 3 No. 21 of Tuesday 19<sup>th</sup> July - Monday 25<sup>th</sup> July, 2011 are the articles titled %Edo Deputy Governor in secret cult scandal” and %Edo Deputy Governor in Secret Cult Scandal As Opposition Mounts Against His Return in 2012+ respectively. The respective captions and the entire publication wherein I am referred to by name, has two of my photographs published apparently to ensure that the reading public is not misled in anyway about the person referred to therein. The captions contain very tendentious, damaging and highly defamatory matters touching and concerning me. The said words referred and were understood or were capable of being understood, referred to me.

#### **8. PARTICULARS OF REFERENCE**

- a. I was referred to by name and by reference to the office of the Deputy Governor of Edo State which I occupy in the front page and pages 34 -35 of the said %The Premier+Newspaper;
- b. My two photographs were conspicuously published at pages 34 . 35 containing the offensive captions in %The Premier” Newspaper Vol, 3 No. 21 of Tuesday, 19<sup>th</sup> July - Monday 25<sup>th</sup> July, 2011;

I can identify a copy of the publication if shown to me.

9. By the said publication, the 1<sup>st</sup> - 4<sup>th</sup> Defendants meant or were capable of being understood to mean and were indeed understood by ordinary members of the public to mean that I, Dr. Pius Odubu, who, before becoming the Deputy Governor, of Edo State, was elected twice to represent my constituency in the Federal House of Representatives and who does not take alcohol at all:
  - a. is a party buff who indulges in excessive consumption of palm wine;

- b. that despite the high office which I occupy, I dance with empty bottles at palm wine joints when I am allegedly drunk;
  - c. am a member of secret cult known as "Osokpikan";
  - d. belong to other secret cults by virtue of which the I engage in fetish activities;
  - e. stole or misappropriated the sum of N2 billion "FADAM FUND";
  - f. misappropriated constituency project funds+ allegedly allocated to me for the eight (8) years that I was in the House of Representatives, and;
  - g. that I am unfit to continue in office as the Deputy Governor of Edo State. .
10. The offensive and malicious publication is capable of reducing and/or has reduced my reputation in the estimation of right thinking members of the public and has brought me into public scandal, odium and contempt I do not belong to any secret cult and I have never been a member of any secret cult or society.
  11. That the publication which was done recklessly was actuated by base and improper motives meant to boost the sales and/or circulation of the offensive publication to its primary and secondary readers thereby increasing its sales and revenue.
  12. I further state that "The Premier" Newspaper has a very wide readership and is circulated in the entire states of the country, as well as the Federal Capital Territory, Abuja. It is also published to an international audience via the internet.
  13. Unless restrained, the Defendants and/or each of them will further publish the words complained of or similar words defamatory of me.
  14. The defamatory publication on the front page and pages 34 - 35 of "The Premier" Newspaper Vol. 3 of No. 21 of Tuesday, 19<sup>th</sup> of July - Monday 25<sup>th</sup> of July, 2011 appeared in the following terms "Edo Deputy Governor in Secret Cults Scandal As Opposition Mounts Against His Return in 2012"
  15. That through a letter dated 13<sup>th</sup> of August, 2011, Messrs Ken E. Mozia (SAN) & Co., Legal Practitioners acting for me, wrote to the Defendants to demand for a retraction, apology etc. for the offensive publication but the Defendants deliberately ignored the request. I am relying on a copy of the said letter which I can identify and a Notice to Produce the original having been served on the Defendants through their Counsel.
  16. Premised on the above, I claim as follows from the Defendants jointly and/or severally:-
    - a. the sum of N100,000 (One Hundred Million Naira) being damages for libel;
    - b. a well worded retraction and apology to be published in a similarly conspicuous manner in an edition of "The Premier" Newspaper and a daily Newspaper that has a wide publication in Nigeria as may be determined by Court and within such time after the judgment, as the Honourable Court may direct;

- c. an order of perpetual injunction restraining the Defendants from howsoever publishing or causing to be published the said or similar words defamatory of me;
17. That I make this deposition believing same to be true best of my knowledge and belief and in accordance with the provisions of the Oaths Act.

(SGD)  
DEPONENT  
5/12/2012.

In the cause of trial the following document was tendered: Letter dated 13/8/2011 written to the Newspaper by the Claimants Counsel was marked as Exhibit "B".

***THERE WAS NO CROSS-EXAMINATION AND NO RE-EXAMINATION.***

The matter was adjourned for the Defendant to cross examine the Claimant and open their Defence. After several adjournments made by the Court to allow the Defendant open their Defence and there was no response, the Claimants Counsel moved the Court to foreclose the Defendant.

The Claimants Counsel filed and served their Written Addresses and same was adopted on the 16<sup>th</sup> day of May, 2016.

Learned Counsel for the Claimant in the Written Address stated that the sole issue for determination is:

Whether the publication in question made by the Defendants is not defamatory of the Claimant and if he is not entitled to damages for the said publication by the Defendants.

Learned Counsel for the Claimant stated that the Halsbury's Laws of England 3<sup>rd</sup> Edition Volume 24 paragraph 40 defines defamation as:-

"A statement is defamatory of a person of whom it is published if, broadly speaking it is calculated to lower him in the estimation of right thinking members of the community or to cause him to be shunned or avoided or expose him to hatred, contempt or ridicule or to disparage him in his office, profession or calling. A statement which reflects upon the character of another person without exposing him to hatred may be defamatory".

Counsel referred court to the case of **ILOABACHIE V. ILOABACHIE** (2005) 13 NWLR (PT 943) 695 at pages 735 - 736 paras H-A where Akintan JSC defines libel thus:

"The tort of libel is committed through the publication of defamatory words in writing. It is a tort in which the writer or publisher attacks the reputation, integrity, standing and or integrity of the victim of the publication. However published words which are considered to be vulgar abuses, will not normally ground an action for libel or slander. What could be regarded as vulgar abuse would however depend on the exact words published, the status of the parties and the circumstances when the publication is made. For instance abusive words uttered by low class people or motor park drivers and workers which are usually uttered as a prelude to a light, are usually regarded as vulgar abuses as they are normally never taken seriously and could therefore not ground an action for either slander or libel. See **SKETCH PUBLISHING COMPANY LTD V. AJAGBEMOKEFERI** (1989) 1 NWLR (PT 100) 678;

**NWACHUKWU V. NNOREMEKE** (1957) 2 E.R.L.R 50; **UNION BANK OF NIGERIA LTD V. OREDIN** (1992) 6 NWLR (PT 247) 355.

Counsel submitted that the law is settled that to sustain an action for libel, the Plaintiff must prove that: (1) the publication was in writing; (2) the publication was false; (3) the false publication was made to a person apart from the Plaintiff and the defendant; (4) the publication referred to the plaintiff and was defamatory of the said plaintiff and (5) the publication was made by the defendant; See **DIN V. AFRICAN NEWSPAPER OF NIGERIA LTD** (1990) 3 NWLR (PT 139) 392; **ONYEJIKE V. ANYASOR** (1992) NWLR (PT 218) 437; **NSIRIM V. NSIRIM** (1990) 3 NWLR (PT 138) 285 and **ONU V AGBESE** (1985) 1 NWLR (PT 4) 704.

Counsel submitted that the onus is on the plaintiff, in an action for libel, to show that the published words complained of are defamatory or that they convey a defamatory imputation. Counsel further submitted that where the words complained of are defamatory in their natural and ordinary meaning, the plaintiff has no legal duty to lead any evidence to show additional defamatory meaning as understood by persons possessing some particular facts. Counsel referred court to **UNION BANK (NIG) LTD V. OREDEIN,** (supra), 355 at 372.

Counsel further contended that if a man is proved to have stated that which he knew to be false, no one need enquire further everybody assumes that he was malicious and referred court to **CLARK V. MOLYNEUX** (1877) 3 QBD 237 at 247 and **CHIEF BAKARE & ANOR V. ALHAJL ADA IBRAHIM** (1973) 6 S.C. 205 where the Supreme Court at said:-

The law in its wisdom insists that words which are capable of leaving a stain on the reputation of another should not, in the absence of lawful excuse, be uttered or published of and concerning a person. Where defamatory words are published without lawful excuse the law conclusively presumes that the defendant is motivated by what is often described as malice in law; accordingly the plaintiff is usually not required to give particulars of the facts on which he seeks to rely in support of the allegation that the words were published maliciously".

Counsel submitted that it is trite law that to succeed in a claim of libel, the claimant must have to prove that he has been discredited by the imputation in the alleged statement without legal justification and that it is also trite law that a person's reputation is not based on the opinion he has of himself but rather the estimation in which others hold of him. Counsel further submitted that in order for the court to determine whether the words convey a defamatory message, the test of reasonableness must be applied for deciding that purpose. The court will therefore construe the words according to the fair and natural meaning which would be given them by

reasonable person of ordinary intelligence. Counsel referred court to **PUNCH (NIG) LTD V. EYLTENE** (2001) 17 NWLR (PT 741) 228.

Counsel further contended that the Law on libel and slander have been clearly defined in the introduction to the eighth edition of Gatley on Libel and Slander published in 1981 by Sweet and Maxwell, London as, **"a man's right to his un-dented reputation."** The corollary therefore is apt that where a man's reputation is dented as a result of words spoken or written about him in permanent form by another person, he is deemed to have been defamed.

Counsel further submitted that an imputation may be defamatory whether or not it is believed by those to whom it is published. It can also be defamatory whether or not it is true; conversely, untruth alone does not render an imputation defamatory. Counsel commended the case of **DINA V. NEW NIGERIAN NEWSPAPERS LTD** (1986) 2 NWLR (PT 22) 353, where it was held that the test in determining whether certain words are defamatory or not is that of reasonable people in the circumstances of each case.

Counsel submitted that elements or ingredients that a plaintiff must prove in an action for libel has been established by the Supreme Court in very many cases including **SKETCH V. AJAGBEMOKEFERI** (supra), to be as follows:

- (a) that the defendant published in a permanent form a false statement;
- (b) that the statement referred to the plaintiff;

- (c) that the statement conveys a defamatory meaning to those to whom it was published; and
- (d) that the statement was defamatory to the plaintiff in the sense that:
- (e) it lowered him in the estimation of right - thinking members of the society; or it is capable of doing so;
- (f) it exposed him to hatred; ridicule or contempt; or
- (g) it injured his reputation in his of office, trade or profession, or
- (h) it injured his financial credit.

Counsel argued that the claimant to succeed he must prove that he has been discredited by the imputation in the alleged statement without legal justification.

Counsel further argued that the basis of the tort of defamation is that every person has right to the protection of his good name, reputation and the estimation in which he stands in the society of his fellow citizens and that it has always been held by the courts that anybody who publishes anything injuring that good name, reputation or estimation commits the tort of libel (if written) and slander (if verbal). Counsel also stated that the exact words which the Claimant alleged are defamatory of him must be set out in his statement of claim. Counsel referred court to **Order 15 Rule 3(2)**, Edo State High Court (Civil Procedure) Rules 2012, Counsel submitted that in the present action the Claimant pleaded publication of the alleged defamatory words in paragraphs 6, 7 and 8 of the Amended Statement of Claim.

Counsel argued that the position of the law on proof of publication of libel in a Book or Magazine or Newspaper under English Common Law is stated in **GATLEY ON LIBEL AND SLANDER**, 9<sup>th</sup> Ed. Paragraph 32 5 at page 804, where the learned authors stated the law as follows:-

What is required is evidence that the defamatory statement was communicated by or on behalf of the defendant to persons other than the plaintiff in cases of libel this usually presents little difficulty. Production of the document containing the statement will in many cases be sufficient evidence. Thus where the statement is in a newspaper, production of a copy of the paper will generally be accepted as prima facie evidence of publication by the journalist named in the byline, and by the editor, publishers and printers of the newspaper.

Production of a copy of a book would provide evidence of publication by the named author and publishers of the book of a defamatory statement contained in the book..."

Counsel referred court also to the case of **UGO V. OKAFOR (1996)** 3 NWLR (PT 438) 542 at page 561 paras A-C, where Tobi J.C.A (as he then was) held:-

The issue involved in this appeal is publication in a newspaper in **AWONIYI AND ORS. V. THE REGISTERED TRUSTEES OF THE ROSICRUCIAN ORDER (AMORC)** (1990) 6 NWLR (PT 154) 42, this court held as follows ( 1) The law is that a libel does not require publication to more than one person. (2) It is not necessary in all cases to prove that the libelous matter was

actually brought to the notice of some third party. If it is made a matter of reasonable inference that such was the fact, a prima facie case of publication will be established. This is particularly so when a book, magazine or newspaper containing a libel is sold by the defendant. (3) A libel in any of such documents like a book, a magazine or a newspaper or a post card (posted) is therefore prima facie evidence of publication by the proprietor editor, printer and publisher and any person who sells or distributes it. (4) The fact that in this case the three issues of the magazine where the articles appeared were produced by the National Library of Nigeria was a clear evidence that the articles were published to a third party. Similarly, in **CHIEF FAWEHINMI V. BRIGADIER AKILU** (1994) 6 NWLR (PT 351) 387, the court held that since libel does not require publication to more than one person, a cause of action in libel contained in a newspaper; book, prospectus, handbill or other document widely disseminated is established by pleading and identifying any of the said or similar documents without naming any person to whom it was published

Counsel submitted submit that there is documentary evidence and oral or parol evidence, Exhibit A which is a Certified True Copy of the Premier Newspaper which contained the defamatory matter and that the Exhibit was tendered by PW 1 and admitted as exhibit. It was also identified by the Claimant.

Counsel also argued that there is evidence of publication and that there is documentary evidence and oral or parol evidence (Exhibit A) which is a Certified True Copy by the National Library of Nigeria of the Premier Newspaper which contained the defamatory matter established publication.. Counsel submitted that PW1 qualified as third parties and thereby established publication.

Counsel referred court to Black's Law Dictionary, 5<sup>th</sup> edition where publication was defined as ~~to~~ to make public; to make known to people in general, to bring before public. The act of publishing anything; offering it to public notice. The term is both a business term meaning printing and distribution of written materials and a legal term communication of libelous matter to a third person.+

Counsel also referred court to the case of **NSIRIM V. NSIRIM** (1990) 3 NWLR (PT 138) 285, where the Supreme Court also defined publication as ~~the~~ the making known of the defamatory matter to some persons other than the person of whom it is written+ Counsel submitted that in the instant case PW1 one Oluwole Iyamu deposed in paragraphs 3, 4, 5, 6 and 7 of his Witness Statement on Oath that he saw and read the defamatory matter

and that he understood same to convey the defamatory meanings set out in paragraph 8 and further gave evidence in paragraph 10 that the said publication is false and untrue. Counsel stated that he was not cross examined and the defendants did not adduce any contrary evidence.

Premised on the authorities, reasons and facts hereinabove stated, Counsel urged court to hold that the Claimant established publication of the defamatory matter as required by law.

Counsel submitted that in an action involving libel, it is settled law that the question whether the words complained of are, in fact, defamatory of the claimant, is a matter for the jury and it is for the judge to decide on the evidence adduced in support of the complaint, whether they are capable of referring to the claimant as well as capable of conveying defamatory meaning in the minds of reasonable persons in the circumstances of the particular case.

Counsel argued that the next thing to consider is whether the words are in fact defamatory and on the evidence adduced capable of referring to the

claimant as well as capable of conveying a defamatory meaning in the minds of reasonable persons in the circumstances of the particular case. Counsel contended that from the evidence, the photograph and name of the claimant was contained in the defamatory matter and that reading the whole words in the context and circumstances that they were used, this court ought to determine that they are defamatory.

This, Counsel claimed is confirmed by the evidence of PW 1 and that the evidence shows that the Claimant's status was lowered in the estimation of the right thinking men of his community and that he was exposed to hatred, contempt and ridicule. Counsel also stated that the evidence further show the imputation on him is injurious to the claimant in his office and profession as he is no longer respected as a prominent and respectful community and state leader.

Counsel contended that the Claimant pleaded the particulars of matters based on which it can be easily determined that the offensive publication refers to him. Counsel referred court to the case of **DUMBO V. IDUGBOE** (1983) 1 S.C.N.L.R 29 at page 48, where Obaseki J.S.C held:-

"In deciding whether words are capable of conveying defamatory meaning, the court will reject that meaning which can only emerge as the product of some strained or forced or utterly unreasonable interpretation (per Lord Morris v. Skelton (1963) 1 WLR at P. 11370.

The text of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense. In determining whether the words are capable of a defamatory meaning the judge will construe the words according to the fair and natural meaning which would be given them by reasonable persons of ordinary intelligence and will not consider what persons setting themselves to work to deduce some unusual meaning might succeed in extracting from them. The test according to Lord Selborne is "whether under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand them in a libelous sense".

See also the case of **OKOLO V. MIDWEST NEWSPAPER**

**CORPORATION** (1977) 1 SC 33 and **OKAFOR V. LKEANYI** (1973) 3-4 SC

99.

Counsel submitted that the words complained of are such that can be regarded as being defamatory in both their natural and ordinary meaning.

For the reasons stated above, Counsel urged Court to hold that the words

complained of are defamatory of the claimant. '

I have carefully considered the evidence as led by the CWI and the Claimant and the submission of Learned Counsel and the Written Address as adopted in respect of this matter. The lone issue for determination in this case is whether the Claimant has proved to the satisfaction of this Honorable Court that the publication in question made by the defendants is not defamatory of the Claimant and if he is not entitled to damages for the said publication by the Defendants.

The above stated facts which constitutes the evidence in this case has not been challenged contradicted or contravened by the Defendants. It is the law that the onus of proof is mostly on the Claimant to discharge.

However, where the Defendant offers no evidence whatsoever in defence, the evidence before the Court obviously goes one way with one set of facts or evidence on the opposite side weighing against it. There is nothing to put on the other side of the imaginary scale of justice, and in that case as in this case, the proof is naturally discharged upon minimal proof. See:-

**NWABUOKU V OTTIH, (1961) SCNLR 232, OGUMA V IBWA (1988)**

LNWLR (PT. 73) 658, **BALOGUN V UBA** (1992) 6 NWLR (PT. 247) 366,  
**IKONO L.G. VS DE BEACON FINANCE LTD** (2002) 4 NWLR PT.(758) 120  
**SKYPOWER AIRWAYS LTD V OKIMA** (2005) 18 NWLR (PT. 957) 224 AT  
254- 255.

A Court of law is always entitled to accept and/or act upon unchallenged and uncontradicted evidence. As stated, the facts relied upon by Claimant in this case are unchallenged and uncontradicted.

Accordingly, I do accept them as the true correct and credible because the evidence does not appear to me to be willfully or completely false, incredible or impossible neither does the evidence fall below the standard expected in a matter of this nature. See: **NEKA V ACB** ( 2004) ALL FWLR (Pt. 198) 1175,  
**ADAMS VS A.G. FEDERATION** (2007) ALL FWLR PT (335) 429 at 447.

Having considered the evidence led by the Claimant and the written submission of Claimant's Counsel in respect of this case, the issues for determination in this case is whether the Claimant has proved his case of defamation and if he has, whether he is entitled to the Reliefs sought and damages.

Let me begin with the Definition of Defamation. Black's Law Dictionary, 7<sup>th</sup> Edition by Margaret Braizer defined Defamation as the act of harming the reputation of another by making a false statement to a third person. The tort of defamation occupies a prominent place in Nigeria law. Defamation is a noun derived from the verb to defame. To defame is to take away or destroy the good name, fame or reputation of another. To speak evil or speak maliciously of another or to charge another falsely with moral turpitude is to defame the person.

A statement that is said to be defamatory is, consequently, one that takes away the reputation of the person about whom one person speaks falsely to another, as a result of which the person spoken of suffers loss of fame. A defamatory statement vests in the person about whom it is published a right to claim for damages, right to vindicate his character.

In an action for defamation, a Claimant must establish three things.

- (I) That the words were defamatory.
- (II) That the words referred to the Claimant.
- (III) That the words were published (to at least one person other than the Claimant). In order for the Claimant to prove that the matter complained of is in law and in fact defamatory, the Courts will consider three things:-

- (A) Situation where the words alleged to be defamatory is plain and unambiguous.
- (B) Where the words complained of are ambiguous.
- (C) Where the words bear special meaning, extrinsic fact known to the recipients of the defamatory matter.

In the case of **Edem V. Orphea** (2003), 13 NWLR, Pg. 537 at 539 . 540; the Supreme Court defined what amounts to defamation as a defamatory imputation, consists of a publication to a third party or persons of any word or matters which tend to lower the person defamed in the estimation of right thinking members of the society, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or injure his financial credit.

It is trite law that a person commits the tort of defamation when he or she publishes to a third person words containing an untrue imputation against the reputation of another. See: **Ciroma V. Alli** (1999), 2 NWLR (Pt. 590) 317. In the case of **F.M.B. V. Adesokan** (2003), 3 NWLR. 19 at 29.

**Onnoghen, JCA**, (as he then was stated inter alia as follows:-

**“By defamation, we mean any imputation which may tend to lower the Plaintiff in**

**the estimation of right thinking members of the society generally and expose him to hatred, contempt or ridicule. An imputation may be defamatory whether or not it is believed by those to whom it is published. In the case of libel and slander actionable per se, the publication of the matter containing defamatory imputation is actionable without proof of damage.”**

The Plaintiff in any given case must prove per force, SIX coterminous ingredients, viz:-

- (1) Publication of the offending words.
- (2) That the words complained of relate and refer to the Plaintiff.
- (3) That the words are defamatory of Plaintiff.
- (4) Publication to third party.
- (5) Falsity of the words complained.
- (6) That there was no justification for the publication of the offending words. Per: Shoremi, JCA. (Pp. 7 . 8, Paras. C . B).

In addition to the essential and mandatory requirement of publication in libel cases, it is also part and parcel of it that a person's reputation is not the good opinion he has of himself but in the estimation of other people, or a class of people. It is the protection of that estimation that is the real subject and aim of the law. It is also not any estimation, be it emotional, biased, parochial, patronizing, sectional etc. that is protected, but that estimation which has passed the test of reasonableness both in its content

and the person holding the estimation. Without any doubt therefore, the determination of what constitutes publication is solely the decision of the Court having regards to the pleadings and the evidence adduced in support of same. See: **African Newspaper V. Chiroma** (1996), 1 NWLR, (Pt. 423), 156 at 163 . 164.

Supreme Court has remained steadfast and consistent that the publication in its technical sense is always an essential ingredient in libel cases. See: **Ajakaiye V. Okandeji** (1972), 1 SC. 92, **Nsirim V. Nsirim**, **Anate V. Sanusi** and **Giwa V. Ajayi** (1993), 5 NWLR (Pt. 294) 423. The decision of the Supreme Court in **Ajakaiye V. Okandeji** (supra) is so succinct and terse and leaves no one in doubt as to its effect. The effect was re-echoed by **Tobi, JCA** (as he then was) in **Giwa V. Ajayi** (Supra) at 433 D . F. His Lordship said:-

**“One basic ingredient of defamation, whether it is libel or slander, is publication. In order to succeed, the Plaintiff must prove the fact of publication. In other words, the Plaintiff is under a burden to prove that the defamatory matter was published to a third party. And the law requires that the third party must not only be named but must also be clearly identifiable and identified.”**

In the instant case, the proof of the requirement of publication was established against the Defendant and same was uncontroverted. Without any doubt therefore, the determination of what constitutes publication is

solely the decision of the Court having regards to the pleadings and the evidence adduced in support of same. See: **African Newspaper V. Chiroma** (1996), 1 NWLR (pt. 423), 156 at 163 . 164.

In cases of libel, pleadings are of tremendous importance, and so the Claimant who claims that an article is libelous of him must reproduce the whole article verbatim or the particular passage he complains of in his pleadings. This the Claimant has done. This requirement was also met by the Claimant.

It is clear from the facts of the claim that the publication referred to the Claimant and same again is uncontroverted by the Defendant. The words which refer to the Claimant clearly convey defamatory meaning. The contents of Exhibit %A+ of the Statement of Claim refers to the Claimant and it falls within the essential ingredients of, and are enough to prove libel. The Claimant's witness led evidence showing his disgust after reading the offensive material. Besides the Claimant's witness who was peeved at the publication, it would seem right thinking members of the public will also have a lower estimation of the Claimant.

A Claimant's cause of action is complete when material falsehood is published of him without legal justification. He needs not prove that he has

suffered any resulting actual damage or injury to his reputation as such damage is presumed. See: **Jones V. Jones**, (1916), 2 AC. 481 at 500.

It is well settled that the onus lies on the Defendant to prove the truth of the words in their ordinary and natural meaning. See: **Dumbo V. Idugboe**, (1983), 1 SCNLR. 29. In: **Digby V. Financial News Ltd.** (1907), 1 K.B. 502 at p. 509.,

**Collins M.R.** said:-

**“A plea of justification means that all the words were true and covers not only the bare statements of facts in the alleged libel but also any imputation which the words in their context may be taken to convey.”**

The law is that libel is actionable and proof of damages is unnecessary. The reason for the law on this point as it stands is not far fetched. Libel is a civil wrong and the law implies general damages. Once libel is proved, there is a presumption of damages. The primary aim of damages is to place the Plaintiff in as good a position as far as money can do it, as if the matter complained of had not occurred. See the case of **Access Bank Plc. V. M.F.C.C.S.** (2005), All FWLR, Pt. 251 at 305.

The Claimant has satisfied all the ingredients to prove a claim of defamation and the claim should succeed. The measure of damages to be awarded in

favour of the Claimant is at the discretion of the Court. The following is a guide to wit:-

- (a) The position and standing of the Plaintiff in the society.
- (b) The nature of the libel.
- (c) The mode and content of its publication.
- (d) The effect of the publication on the Plaintiff.
- (e) The absence or refusal of retraction and apology by the Defendant.
- (f) The recklessness with which the libel was published.
- (g) The value of the Nigeria naira.

Having held as above, loss flows naturally from the Defendant's act, which quantum need not be pleaded or proved as it is generally presumed by statute, and it is quantified based on the opinion of a reasonable person, which this Court assumes. The Claimant has proved his case of defamation against the Defendant and is therefore entitled to the reliefs sought.

In the circumstance, I hereby hold and declare as per the reliefs sought by the Claimant as follows:-

- a. The sum of **N100,000,000** (One Hundred Million Naira) being damages for libel;
- b. A well worded retraction and apology to be published in a similarly conspicuous manner in an edition of The Premier Newspaper and a two daily newspapers ( the Guardian and Observer Newspaper);
- c. An Order of Perpetual Injunction Restraining the Defendants from howsoever publishing or causing to be published the said or similar words defamatory of the Claimant.

This is the judgment of the Court.

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**HON. JUSTICE J.O. OKEAYA-INNEH,  
JUDGE  
31/5/2016**

**COUNSEL:**

|            |                          |     |     |                            |
|------------|--------------------------|-----|-----|----------------------------|
| <b>(1)</b> | <b>KEN MOZIA (SAN),</b>  | ... | ... | Counsel for the Claimant   |
|            | <b>NO REPRESENTATION</b> | ... | ... | Counsel for the Defendants |