

IN THE HIGH COURT OF DELTA STATE
IN THE WARRI JUDICIAL DIVISION
HOLDEN AT WARRI
BEFORE HIS LORDSHIP, HON JUSTICE ROLI DAIBO HARRIMAN
JUDGE

ON 8TH OF MAY 2020

W/76/2018

BETWEEN

HON JUSTICE GODWIN EJAETA GBEMRE

CLAIMANT

AND

MR ZIK GBEMRE

DEFENDANT

JUDGMENT

The claimant and the defendant hail from Iwhrekan Community in Ughelli South Local government Area of Delta State. It is the claimant's case that the defendant published several libelous statements of him, which has damaged his reputation.

The claimant claims

- a. A prompt and prominent retraction of the publications accompanied with an unconditional apology to the claimant, Hon Justice Godwin Ejaeta Gbemre
- b. The said retraction and apology is to be published and filed in the Registry of the High Court of Justice, Warri Judicial Division and given a wide and prominent publicity as the defamatory publications
- c. The sum of N250, 000 000 (two hundred and fifty million Naira) only as compensation and/or reparation for the injury to the claimant's reputation as a result of the damaging publication
- d. An order of injunction restraining the defendant, by himself, his servants, agents or otherwise howsoever,

CERTIFIED TRUE COPY.

from the publication of the said words or any of them or of any similar words in any format whatsoever

The claimant in his written deposition swore that he is a judge of the High Court of Delta State. He had graduated from the University of Lagos in 1979 and was called to the Nigerian Bar in 1980 after which he engaged in private legal practice until 2003 when he was appointed a judge. He functioned as Administrative Judge of the Sapele Division and was presiding judge of the Bomadi and Oghara Judicial Divisions.

According to the clamant, he had also engaged in politics between 1991 to 1993 during which he held positions of State Secretary of SDP and Zonal Secretary in the then Western States which included Ogun, Ondo Lagos, Oyo and Bendel States.

The claimant swore that the defendant and his cohorts had engaged in several acts of impunity to disrupt the peace of the community in a quest for power and a zest to manipulate the people of Iwhrekan Community and subject them to their control and leadership. Members of the community had written several letters to the police of the nefarious activities of the defendant and his cohorts. (Exhibit CL2 and CL3)

When the activities of the defendant became unbearable, members of the community approached the claimant to intervene in the crisis that had engulfed the community. He then advised that members at home and outside the community be involved in the attempts to mediate the crises.

This may have prompted the defendant to construct the following text to him:

Justice Godwin Ejaeta Gbemre, you should have known by now that the most educated people in the world are not certificated. You are really a big

CERTIFIED TRUE COPY.

FOOL at 64 plus. Liar, fool and coward that is what you are.

We will step-up this to the pages of papers as from tomorrow. The worst you can do is to go to court and I don't' bloody care. Nonsense

Zik Gbemre

The defendant also sent the following text message to the claimant:

Justice Godwin Ejaeta Gbemre, if you don't know, I am still doing a lot for Shell (SPDC), you are just an ignorant judge begging for alms here and there. Please try and develop your full potentials, which you will use to earn a legitimate living after retirement. I am capable of using a large crowd of women to gang up against you as well. I have overgrown that kind of primitive lifestyle. You are still living an outdated world. All you know best is to collect brown envelopes and organize 'hidden meetings' in your house built by Chief Kenneth Gbagi for you in Iwhrekan. Nonsense.

Zik Gbemre

The claimant swore that the above text messages were published and widely circulated to the Chief Judge of Delta State, Chief Kenneth Gbagi, Chief Moses Odibo, Chief Sam Odibo, the Attorney General and Commissioner for Justice, Delta State, the Commissioner of Police, Delta State, Mr Ray Ukuoku amongst others. (Exhibit CL4 - 6) these said recipients had told the claimant that they received the messages from the defendant.

It is the claimant's case that the words in the aforementioned text messages meant

i. That he is corrupt and accepts bribe


CERTIFIED TRUE COPY.

- ii. That he engages in activities that is and/or are unbecoming of his status, office and judicial position
- iii. That he caused unrest, civil disorder and conflict in his community
- iv. That he is an ambiguous an utterly motivated opportunist who is interested in promoting his own selfish ambition by creating crisis and fanning the embers of hatred and crisis in his community
- v. That he is corrupt, fraudulent, dishonest and unfit to be a judge
- vi. That he is a dissolute and self indulgent person

It is also the claimant's deposition that the defendant published these words knowing that they were false. The claimant swore that the publications are prejudicial to his position as judge and his reputation, which he had garnered over the years by serious hard work and discipline. He swore that he had been greatly injured in his credit and reputation and has been exposed to hatred, contempt, odium, public ridicule and castigation by members of the legal profession and the society in general.

The claimant swore that to show his malice, the defendant wrote to the office of the Chief Justice of Nigeria and Chairman, National Judicial Council on 7/8/2017 where he wrote all sorts of defamatory words against his person (Exhibit CL7-8-). The petition to the CJN was later dismissed to be baseless.

The claimant further swore that the defendant manipulated youths like one Mr Noah Edeamrigho, to publish defamatory words about him on social media particularly Facebook. The said Mr Noah had apologised to the claimant after suing him to court. (Exhibits 9-11)

Under cross-examination, he denied that the defendant did not pursue the petition he wrote to the NJC. He stated that if the NJC had not dismissed the petition, their decision would have affected him adversely.

CERTIFIED TRUE COPY.

The claimant called one witness, Chief Moses Odibo who testified that he had received the aforementioned two text messages from the defendant. He then informed the claimant that he was disturbed and surprised with the contents of the said messages. The witness testified that he had known the claimant for over 50 years as an upright, honest and trustworthy. The text messages would have made him doubt the integrity, honesty and trustworthiness of the claimant. He stated that the allegations stated in the text messages are false and was calculated to embarrass and ridicule the claimant and bring him to disrepute in the eyes of the public and the judiciary.

CW3, registrar of this court also tendered Exhibits CL9-1, which are processes and affidavit filed by one Noah Edeamrigho, earlier mentioned.

The defendant denied the allegations and swore that the claimant is his first cousin. He alleged that the claimant in a bid to secure income for his retirement started intermeddling in community matters. He swore that it is the claimant that had created crisis in their community. He swore that it was the claimant who sponsored the authors of the petitions against him to the police. He swore that because he opposed the claimant's candidate as chairman, hence the claimant hated him. He stated that the text messages in issue were sent as response to the claimant's text messages to him.

The defendant insisted that there was nothing false in the text messages. He stated that it was the claimant who told him when the going was good that Chief Gbagi had given him a trailer load of cement to assist him in the construction of his house at Iwhrekan community. The defendant further stated that the text messages are not prejudicial, as the claimant had retired as a judge on 24/3/18. He stated that he had been persuaded by family members not to pursue the petition to NJC hence he abandoned same. He insisted that the petition to the NJC was not defamatory of the

CERTIFIED TRUE COPY.

claimant. He had decided to write to NJC because all efforts to stop the claimant from interfering in the internal politics of the Iwhrekan Community had failed.

The defendant admitted knowing CW2 but denied knowing Chief Kenneth Gbagi though he had mentioned him in his witness statement on oath. He denied ever meeting the said Chief Gbagi. He denied sending text messages to anyone than the claimant, though he had not stated so in his defence. He agreed that he had sent the text messages before writing the petition to the NJC. He stated that NJC dismissed his petition but this was because he did not pursue it as the claimant was his relation and that it was the claimant's father who trained him and took care of him. He admitted that the claimant was the only one in the family who had risen to be a judge.

The claimant's counsel contended that

1. It is not in dispute that the defendant published the said words to CW1, Chief Kenneth Gbagi, the Attorney General and Commissioner for Justice amongst others and the National Judicial Council
2. The main issue for determination are whether the words are defamatory and whether the defence of justification avails the defendant
3. Relying on the cases of DAURA V DANHAUWA and OLOGE V NAH LTD, counsel argued the words complained of meet the definition of defamatory works.
4. When the court applies the objective test and considering the environment in which it was published and the fact that the claimant was a judge of the High Court, it will find that the words published tended to lower the claimant in the estimation of right thinking members of society generally etc. the words were calculated to injure the reputation of the claimant.
5. The defence of justification does not avail the defendant because the evidence shows malice and

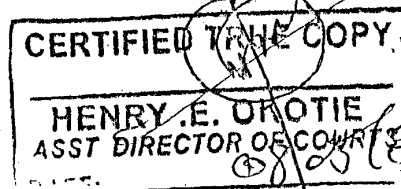
CERTIFIED TRUE COPY

the allegations have not been found to be true. The pleadings of the defendant do not show any defence of justification. Relying on ISAHKU & ANOR V AINA 2003, counsel submitted that the defendant has not discharged the burden on him to prove justification beyond reasonable doubt.

6. The claimant having shown that the defamatory words was to the effect that the claimant is a fool, coward, liar, primitive, corrupt, dishonest, bribe collector, causes civil disorder and conflicts, ambitious, fraudulent and unfit to be a judge, the claimant is entitled to award of damage. Counsel contended that the publications were made when the claimant was still in service and made in relation to the performance of his job as a judge. This, he says should be a major consideration when determining the quantum of damage.

The defence counsel contended that

1. The words in the text messages cannot be said to be defamatory. He contended that the claimant has not proved that the statement are false and that it referred to the claimant and that it lowered him in the estimation of right thinking members of society or exposed him to ridicule etc.
2. The claimant has not established any injury to his reputation as CW2 has testified that the reputation of the claimant is intact.
3. The CW2 has not shown the text messages were sent to his telephone as the defendant has denied same
4. The claimant has not proved malice on the part of the defendant
5. The letter to NJC was privileged
6. Court should expunge Exhibits CL1-6 because they were written to public officers and are not certified
7. Exhibits CL7 and CL8 are public documents and the documents tendered were not certified true copies



I need to point out at this juncture that this case is not about any text messages sent between the parties but about the text messages to 3rd parties and letter to the NJC.

It is not in dispute that

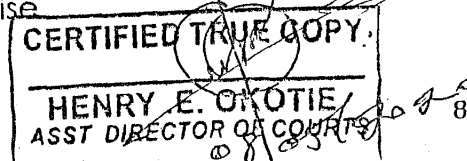
1. The claimant was a judicial officer at the time of the writing of the text messages complained of and as at the time this suit was instituted
2. The parties are related
3. The quarreled text messages were sent to 3rd parties as stated in the claim and not denied by the defendant
4. The defendant wrote Exhibit CL 7 to the NJC

I say the issues in 3 and 4 above are not in dispute because it is clear from the Amended Statement of defence and indeed the evidence of the defendant that he admits writing and sending those text messages despite any attempt to deny this under cross-examination. There is no specific denial that the words complained of were published to 3rd parties including CW1. See Order 15 rule **7 of the High Court of Delta State Civil Procedure Rules 2009** which provide that:

Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic or person of unsound mind not adjudged a lunatic.

And Order 15 Rule 11 which provide thus:

It shall not be sufficient to deny generally the facts alleged by the statement of claim, but the defendant shall deal specifically with them, either admitting or denying the truth of each allegation of fact seriatim, as the truth or falsehood of each is within his knowledge, or (as the case may be) stating that he does not know whether any given allegation is true or otherwise.



See also **AIR VIA LTD V. ORIENTAL AIRLINES LTD** (2004) LPELR-272(SC) and **PROSAN ENGINEERING COMPANY LTD V. KIPS ENGINEERING LTD** (2015) LPELR-40407(CA).

Contrary to the aforementioned provisions of the Rules of Court on defence pleadings, the defendant did not specifically deny the allegations in Paragraph 8 of the statement of claim that the complained words were published and widely circulated to specific people to wit: the Chief Judge of Delta State, Chief Kenneth Gbagi, Chief Moses Odibo, Chief Sam Odibo, the Attorney General and Commissioner for Justice, Delta State, the Commissioner of Police, Delta State, Mr Ray Ukuoku. A general denial is not sufficient in the circumstances where in this case specific allegations were made. The defendant in response to the averment of the claimant that the text messages were published and widely circulated to some persons including the letter to the NJC averred as follows:

11. The defendant denies paragraph 8, 9, 10, 11, 12, 13, 14 and 15 are vehemently denied and state as follows:

- a. The text messages been referred to by the claimant are no defamatory of the claimant in their natural and ordinary meaning. Both the claimant and the defendant exchange text messages.
- b. The text messages were not intended to injure and tarnish the public reputation of the claimant. The text messages came about as a result of the exchange of text messages between the clamant and the defendant because of the disagreement and misunderstanding between the claimant and the defendant
- c. The text messages are not false but the plain truth. It was the claimant who confided in the defendant when the going was good that it was Chief Kenneth Gbagi who gave him a trailer load of cement and the sum of N1, 000,000.00 (One Million

CERTIFIED TRUE COPY.
HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
DATE: 08/00

Naira) to assist him in the construction of his residential building at Iwhrekan community

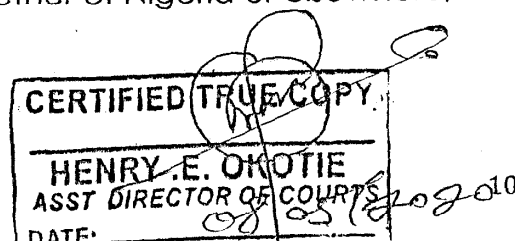
d. The said publications are not prejudicial to the claimant's position as a judge because he is no longer a judge having retired successfully as a High Court Judge in the Delta State Judiciary since on the 24th day of March 2017 on pension

The above is a clear admission that the defendant publicized the quarreled words. What is admitted need no prove. See S123 of the Evidence Act 2011. The argument of counsel for the defendant in his written address that the defendant did not admit publicizing is not backed up by the pleadings. Well, no matter how brilliant submission of counsel is and no matter what such submission is meant to achieve, it cannot take the place of evidence. See **P.A.S. & T.A. LTD. V. BABATUNDE (2008) 8 NWLR (Pt.1089) 267 at 296, Para. H (CA)** and **C.C.C.T & C.S. LTD V. EKPO (2008) All FWLR (Pt. 418) 198 at 205, P. 221 paras. G - H (SC)**.

Despite the admission, the defence counsel urged court not to rely on the publications sent to 3rd parties, i.e Exhibits CL1-8. Counsel urged me to expunge same because they were written to public officers and are not certified.

Documents that can be regarded as public documents are stated in S102 of the Evidence Act. They are:

- (a) Documents forming the official acts or records of the official acts –
 - (i) Of the sovereign authority;
 - (ii) Of official bodies and tribunals;
 - (iii) Of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere;



- (b) Public records kept in Nigeria of private documents.

The question is whether the letters written to these office holders can be regarded as public documents. I have looked at Exhibits CL2-8 and I find that they do not meet the criteria of public documents as described in S102 of the Evidence Act. See also See **PDP V. INEC & ORS** (2014) LPELR-23808 (SC). Specifically, Exhibit CL7 written by the National Judicial Council to the claimant, attaching the petition of the defendant. As can be seen also, Exhibit CL8 was copied to the claimant though written to the defendant. I find that the documents are admissible.

The Court of Appeal in **OMON & ORS V. EKPA (2019) LPELR-47978 (CA) TORT** has defined defamation as:

"Defamation has been, judicially, defined to embrace imputations which tend to lower a person's dignity in the estimation of the right thinking members of the society and expose him, the person so disparaged, to hatred approbrium, odium, contempt or ridicule, see *Oruwari v Osler* (2013) 5 NWLR (Pt. 1348) 535. There are two species of defamation: libel and slander. Libel is any publication in print, writing, pictures or signs that injures the reputation of somebody. Slander, on the other hand, means a defamatory statement made/conveyed by spoken words, sounds, looks, signs and gestures which injure the reputation of somebody, see *Society BIC S.A. v. Charzin Ind. Ltd.* (2014) 4 NWLR (Pt. 1398) 497; *Oruwari v. Osler* (supra). To succeed in an action for defamation, which is actionable per se, the defamed person must conjunctively prove. (1) Publication of the offending words. (2) That the offending words refer to him. (3) That the offending words are defamatory of him. (4) That the offending words were published to a third party. (5) That they are false or lack accuracy and (6) That there are no justifiable legal grounds for the

CERTIFIED TRUE COPY.
HENRY E. OKOTIE
ASST DIRECTOR OF COURTS

publication of the defamatory words, see *Dalumo v. Sketch Publication Co. Ltd.* (1972) SSC 308; *Ezomo v. Oyakhire* (1985) 2 SC221; *Onu v. Agbese* (1985) 1 NWLR (Pt. 4) 704/(1985) LPELR - 2698 (SC); and a host of other relevant cases.

See also **UNION BANK OF NIGERIA LTD. V. OREDEIN (1992) 6 NWLR (Pt. 247) P. 355,**

Having found that the defendant made the quarreled publication, the next issue to be determined is whether the words are defamatory.

It is trite that it is the court that will determine whether the words are defamatory. To do this the court

- (a) Considers the meaning, the words would convey to the ordinary person;
- (b) Considers the circumstances in which the words were published; and
- (c) Determines whether in such circumstances, a reasonable person would likely understand them in a defamatory sense.

See **BEKEE & ORS V. BEKEE (2012) LPELR-21270 (CA).** See also **OKAFOR V. IFEANYI (2007) 12 NSCC 43.**

So are the words in the text messages and letter to the NJC capable of conveying a defamatory meaning?

The words in the text messages are

Justice Godwin Ejaeta Gbemre, you should have known by now that the most educated people in the world are not certificated. You are really a big FOOL at 64 plus. Liar, fool and coward that is what you are.

We will step-up this to the pages of papers as from tomorrow. The worst you can do is to go to court and I don't' bloody care. Nonsense

CERTIFIED TRUE COPY.
HENRY E. OLOTIE
ASST DIRECTOR OF COURTS

Zik Gbemre

The defendant also sent the following text message to the claimant:

Justice Godwin Ejaeta Gbemre, if you don't know, I am still doing a lot for Shell (SPDC), you are just an ignorant judge begging for alms here and there. Please try and develop your full potentials, which you will use to earn a legitimate living after retirement. I am capable of using a large crowd of women to gang up against you as well. I have overgrown that kind of primitive lifestyle. You are still living an outdated world. All you know best is to collect brown envelopes and organize 'hidden meetings' in your house built by Chief Kenneth Gbagi for you in Iwhrekan. Nonsense.

Zik Gbemre

These were the words admitted by the defendant as being what he wrote to 3rd parties.

To determine if the said words convey a defamatory message, one must apply the test of reasonableness. As was held in **VANGUARD MEDIA LTD & ORS V. OLAFISOYE** (2011) LPELR-8938 (CA), the Court will construe the words according to the fair and natural meaning, which would be given them by reasonable person of ordinary intelligence. See also the case of **PUNCH (NIG.) LTD. V EYITENE** (2001) 17 NWLR (pt.741) p.228. The concept of reasonableness depends on the facts of each case. See **OKONGWU V. NNPC** (1989) LPELR-2475 (SC). In defamation cases, it is primary duty of the trial judge to determine whether a publication is defamatory or not of a claimant. In doing so, the Judge construes the publication holistically, not in isolation, employing literal interpretation to it: ordinary grammatical means of the words in the publication. It is incumbent on the Judge to adopt the litmus test of foraging what a reasonable men/right thinking

CERTIFIED TRUE COPY

HENRY .E. OKOTIE

men in the society think of the publication. See **OMON & ORS V. EKPA** (supra).

What will a reasonable man think of the claimant after reading the said words? It is not in dispute that the claimant was a serving judge when the words complained of were written. A judge is an umpire, someone who decides matters assigned to him for adjudication. A judge is someone a litigant trust to decide judiciously and judicially. A judge's position is one of trust. An unbiased umpire. A decent and incorruptible person. A person who uses his position to ensure peace, to restrain anyone who wants to cause calamity or conflict within society, one who dispassionately declares and enforces the rights of others, high or low etc etc. A judge is someone who until the contrary is shown is of impeachable character. A judge imposes penalties in deserving cases fairly and impartially. A judge is a pillar in the entire justice system. A judge is presumed to have legal ability; the intellectual capacity to interpret and apply established legal principles to factual situations and to communicate, in speech and writing, the reasoning behind a legal conclusion. A judicial officer has the ability to reach concise decisions promptly, respond to issues in a clear manner and grasp quickly the real meaning of questions presented. A fool cannot do any of these. The integrity of a judge is the keystone of the judicial system. Integrity enables a judge to make decisions based on the facts of a case. A judge with integrity sets aside personal prejudices, personalities and partisan political influences. It is assumed that before a judge is appointed, he has a record and reputation for excellent character and integrity. Any words used to show that a judge does not have some of these qualities will certainly be interpreted as bringing the said judge to ridicule.

I will now pick a few words from the offending communication. These are

You are really a big FOOL at 64 plus. Liar, fool and coward that is what you are.

CERTIFIED TRUE COPY
HENRY E. OKOTIE
ASST DIRECTOR OF COURTS
28/05/2020

..... Nonsense

you are just an ignorant judge begging for alms here and there..... I have overgrown that kind of primitive lifestyle. You are still living an outdated world. All you know best is to collect brown envelopes Nonsense.

These words, in their ordinary meaning suggest that the claimant does not have the qualities to be a judge, is corrupt, does not have the intellectual modern capacity to perform his job as a judge

The petition of the defendant to the NJC caps it all and underlines not only the intention of the defendant to further ridicule the claimant. I have read the 3-page letter and the 3-page affidavit of the defendant verifying the facts in the petition. Instead of reproducing the said letter and affidavit, I will pick a few words, or phrases or sentences therein.

.....Justice Godwin Ejaita Gbemre, who has been creating, instigating and causing a lot of problems and crises in his own community- Iwhrekan for selfish reasons best known to only him.

...Politics because of his selfish interests.....this obsession has made him to practically lose his mind

.....

.....Sponsoring hired youths/cultists.....

.....aiding one Junior Arhavwarien and his cultist thugs/gang.....

.....that for a supposed judge, like Justice Godwin Ejaita Gbemre to now be 'romancing with cultists/hardened irate youths' it seriously calls for concern....

...Justice Godwin Ejaita Gbemre is using his 'status' and power as a 'judge' to infiltrate, interfere and influence the happenings in Iwhrekan Community to satisfy his selfish interest. Even his home in Iwhrekan

CERTIFIED TRUE COPY
HENRY E. OKOTIE
ASST. DIRECTOR OF COURTS
MAR 05 1990

village has been turned into a 'Mini-Community Town Hall' for holding meetings with irresponsible women and men. In fact, Justice Godwin Ejaita Gbemre has been using his status as judge to influence Hon Justice Joshua E Ikede, to 'keep adjourning' an ex parte interim injunction order and dilly-dallying with the case of the High Court of Justice, Out-Jeremi in

The worst part of this is justice Godwin Ejaita Gbemre's interferences in Police investigations, which had made impossible for the police to address this crisis in Iwhrekan Community to a standstill long ago.

It is a shame that a High Court judge like Justice Godwin Ejaita Gbemre is romancing with hardened criminals.

Justice Godwin Ejaita Gbemre is portraying a very bad image about Nigerian judges and the Nigerian judiciary with his self-driven agenda IN local politics....

The defendant concluded his verifying affidavit by swearing thus:

That I swear to this affidavit in good faith and in support of this complaint/petition and in accordance with the Oaths Act currently in force

As I mentioned before, the public reposes a lot of confidence in a judge. Such words therefore written by someone especially a close relation would ridicule the reputation of the subject in the eyes of a reasonable man. It will seriously erode the reputation of the judge before the society. I have read the bio data of the claimant and the words used in the offending publications erodes all the good reputation built over time. I do not agree that the fact that the claimant has retired during the pendency of this case

CERTIFIED TRUE COPY

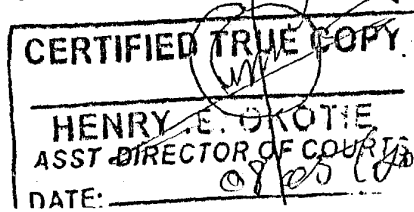
HENRY E. OKOTIE

removes from the fact that he is ridiculed by this allegation. Clearly the words published will lower the claimant in the estimation of right thinking members of society generally and exposes him to hatred, contempt and will ridicule or cause other persons to shun or avoid him, or to discredit him as a judge or a retired judge and a prominent member of his community. See **OLAJOGUN & ORS V. AGORO** (2014) LPELR-24040 (CA. See the following cases **OF LABATI V. BADMUS (2007) 1 NWLR (PT. 1014) 199. NITEL V. TUGBIYELE (2005) 3 NWLR (PT. 912) 334, EDEM V. ORPHEO** (Nig.) Ltd. (2003 13 NWLR (pt. 838) 537.

Consequently, my finding is that the words are defamatory.

The defendant pleads justification. He says the text messages and contents of the letter to the NJC are not baseless or malicious. He states that it was the claimant himself who told him that he had received a gift of cement worth N1ml from Chief Gbagi. He stated, despite his verifying affidavit, that he was persuaded not to pursue his petition with the NJC. I must mention here that there was no evidence before me that the defendant wrote to the NJC that he was withdrawing or abandoning his petition. What I have before me is the response of the NJC after their consideration of the petition and deliberated on same 'found no act of misconduct on the part of the Hon Judge'. (Exhibit CL8). As one can see from Exhibit CL7 and CL8, the investigation lasted a period of almost 6 months and 7 months after the communication from the defendant.

The defendant had stated in his text messages, in summary, that the claimant was corrupt, a fool, a criminal, a thug, not fit to be a judge etc. to show that he was justified to make this allegations especially to the claimant's employer, he must prove the burden was on the defendant to prove the truth of these statements. Where is the evidence of dishonest or fraudulent conduct by the claimant? Proof, in law, is a process by which the existence of facts is established to the satisfaction of the Court, see *Olufosoye v.*



Fakorede (1993) 1 NWLR (Pt. 272) 747; Awuse v. Odili (2005) 16 NWLR (Pt. 952) 416.

A defendant willing to rely on the defence of justification must establish by evidence, the truth in his publication even if he acted out of spite. This is because as held in **ONWURAH & ORS V. NWUMEH & ANOR** (2016) LPELR-40304 (CA)

An indiscriminate affliction of truth on a person is not actionable merely because people think worse of a person when they hear the truth about it. For a defence of justification to hold water in Court, it must be true in substance.

See also **PROPHET IFEANYI EMEAGWARA V STAR PRINTING & PUBLISHING COMPANY LTD & Ors** (2000) 5 SCNJ 175.

I have looked through the amended defence and evidence of the defendant and I cannot find where he has justified any of his claims about the lack of integrity of the claimant. The defendant gives the impression that he is making these statements because the claimant does not agree with his views, his views on the local emerging political game. This, I find does not justify the blanket statements made. Simply stating that the words are justified does not satisfy the requirements of prove. In which cases has it been shown that the claimant as a serving judge did not exhibit the minimum standard in arriving at his decisions? From whom did the claimant collect brown envelopes and to what end? When and who was present at the hidden meetings the claimant is alleged to have held? Who did the claimant tell a lie to? In which circumstances and when did the claimant exhibit cowardice? When did he meet with or romance with cultists/hardened irate youths? How and when did the claimant interfere with police investigations? How is the claimant connected with the victims in the medical reports attached to he petition to the NJC? In **DIVINE IDEAS LTD. V. UMORU** (2007) ALL FWLR (PT. 380) 1468 AT 1505 PARAS. B - C (CA) the court held

CERTIFIED TRUE COPY.

'By virtue of the provisions of section 135 and 136 of the Evidence Act Cap. 112 Laws of the Federation of Nigeria, 1990, he who asserts must prove and once he fails to prove his assertion with cogent and credible evidence then he is bound to fail in his claim. By virtue of the provisions of section 137 of the Evidence Act, the burden of first proving the existence or non-existence of a fact in a civil case lies on the party against whom the judgment of the court will be given.

See also S131-133 Evidence Act 2011, which provide:

131.-(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

133.-(1) In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

I find that the defendant has not shown by any iota of evidence that the allegations he made in the publications are true. See S121 of the Evidence Act which defines "proved" as

When, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, in

the circumstances of the particular case, to act upon the supposition that it does exist;

I find that the defence of justification fails.

The defence counsel also contended that the defence of privilege is open to the defendant. Although this defence was not pleaded, I would like to address it in case, one can say from the generality of the defence, such can be implied. What is qualified privilege? In **ILOABACHIE V ILOABACHIE** (2005) 13 NWLR (PT 943) 695, Acholonu JSC defined it thus:

"Qualified privilege is a defence to an untrue publication it can only be claimed however when the occasion of the publication is shown to be privileged."

His lordship added,

"A privileged occasion arises if the communication is of such a nature that it could be fairly said that those who made it had an interest in making a communication and those to whom it was made had a corresponding interest in having it made to them. Where those two co-exist the occasion is privileged"

His lordship Pats Acholonu JSC explained further thus:

"Where a Court is considering the defence of privilege whether qualified or not, there are some empirical factors that should be taken into consideration and these include the interest of any of the persons to whom the document was published and the circumstances of the matter in question - - - Equally too the Court should consider the motive for the publication to examine whether it is actuated by purely altruistic principle or

See also **EMEAGWARA V STAR PRINTING AND PUBLISHING COMPANY LTD.**

It is trite that the burden is on the defendant to prove privilege after the claimant has shown publication and that the words are defamatory. See **OLAJOGUN & ORS V. AGORO** (2014) LPELR-24040 (CA) where ONIYANGI, J.C.A stated at (P. 24, paras. A-B):

"Where words in their natural meaning are defamatory plaintiff need prove nothing more than publication. Onus would then lie on the defendant to prove circumstances of use and qualified privilege."

The words used in the petition to the NJC clearly show that the defendant was driven by malice. The defendant's witness' statement on oath clearly shows this. The defence of fair comment and privilege does not avail the defendant in this case.

I agree with the claimant's counsel that there is no wrong without a remedy. Having found that the defendant has no defence to the claim, the claimant is entitled to damage. The law presumes that damages flow from libel and defamation is actionable per se without proof of injury. See **GIDENDO V. CHIEF IMAM ADO-ODO** (1962) NNLR 122.

In assessing damages in an action for defamation of a person by a publication, the court must take into account the following factors, recklessness of publication the nature of the libel whether it was news or opinion, the claimant's standing in the society, failure of defendant from the time the libel was published down to the moment of the court's verdict to apologise, any anticipatory preliminary loss or social disadvantage and natural injury to the feeling of the claimant etc. See **OLAJOGUN & ORS V. AGORO (Supra)**

See also the case of **OKAFOR & ORS V. IBEGBU** (2016) LPELR-40117(CA). The court held

CERTIFIED TRUE COPY

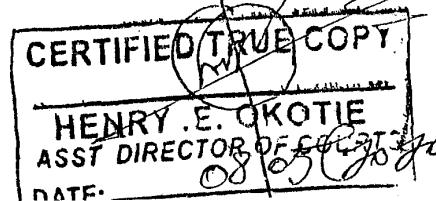
In awarding damages, the Court will take into consideration (a) the standing of the plaintiff in the society (b) the impact of the words complained on the career of the plaintiff (c) the moral standing of the plaintiff (d) the impact of the words complained of on the marital status of the plaintiff (e) the unjustifiability of the attack on the plaintiff's reputation (f) the depreciation in the value of the currency due to inflation.

See also **ALAWIYE V OGUNSANYA** (2004) (PT 864) 486.

The claimant testified (and this was not destroyed by cross-examination) he had an unblemished career as a legal practitioner before being appointed a judge, a position he held for over 15 years. After working so hard to build a reputation, it is almost like murder for someone to intentionally seek to destroy same for no apparent reason. The publication sought to tarnish the hard-earned dignity of the claimant and sought to ultimately, neutralise the assurances of the members of the public in relation to justice delivery. See **MIRCHANDANI V. PINHEIRO** (2001) 3 NWLR (Pt. 701) 557 at 577 where the court held:

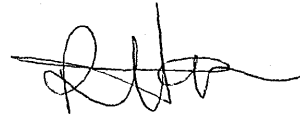
When wealth is lost, nothing is lost, when health is lost something is lost but when character is lost everything is lost.

The defendant clearly showed in his pleadings, evidence and the exhibits tendered that he was driven by malice. He threatened (blackmailed) the claimant at every turn. The defendant was relentless. As the defendant stated, he was determined to put an end to the perceived power of the claimant to influence others. His actions were driven by his desire to be in control of the affairs of his community and he was prepared to destroy anyone, anything in his path to achieve that goal; even if it meant destroying the reputation and career of his first cousin



Consequently, I find that the claimant has proved his case and is entitled to judgment as follows:

- a. The defendant is to write a letter of apology to the claimant through his counsel within 14 days hereof
- b. The defendant is to publish a retraction of his offending publication and his apology by filing same at the Registry of the High Court of Justice, Warri Judicial Division within 14 days hereof
- c. The sum of N5, 000,000.00 (five Million Naira) only as compensation to the claimant
- d. Cost of N50, 000.00 (fifty thousand Naira) only



ORIGINAL SIGNED BY
HON. JUSTICE R HARRIMAN
JUDGE

- Chief V Otomiewo for the claimant
- JO Kpedi for the Defendant

Certification = N500,000.00
File
AEE
8/5/2020

