

IN THE COURT OF APPEAL
LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
ON MONDAY THE 30TH DAY OF JUNE, 2025

BEFORE THEIR LORDSHIPS

<u>ABIMBOLA O. OBASEKI-ADEJUMO</u>	<u>JUSTICE, COURT OF APPEAL</u>
<u>ABUBAKAR MAHMUD TALBA</u>	<u>JUSTICE, COURT OF APPEAL</u>
<u>ABDULLAHI MAHMUD BAYERO</u>	<u>JUSTICE, COURT OF APPEAL</u>

APPEAL NO. CA/L/1072/2018

BETWEEN:

PRINCE MARSHAL OKAFOR ANYANWU - - APPELLANT


AND

SIR JUDE AGBASO - - - - - RESPONDENT

JUDGMENT

DELIVERED BY ABDULLAHI MAHMUD BAYERO(JCA)

This is an appeal against the judgment of Lagos High Court delivered on April 18, 2013. The Respondent was a former Deputy Governor of Imo State under the auspices of the All Progressive Grand Alliance from 2011 having been elected with Governor Rochas Okorocha (APGA) till March, 2013 when he was removed from office by the Imo State House of Assembly. The Appellant was the chairman of the All Progressive Grand Alliance (APGA) Imo State. Based on a paid advertorial at page 40 of the Daily Sun Newspaper of Thursday April 18, 2013 of a Press Statement titled "ALL PROGRESSIVE GRAND ALLIANCE

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
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PRESS STATEMENT BY APGA IMO STATE CHAPTER.” and signed by the Appellant in his official capacity as the chairman of the party, the Respondent instituted the action leading to this appeal against the Appellant personally claiming two billion naira damages for libel, a retraction of the libel published in full page advertorial in the leadership, Daily Sun, Thisday, Hallmark Punch, Vanguard and the Nation Newspapers to run Sunday to Saturday consecutively.

At the end of the trial, the lower Court after hearing arguments from Counsel to the parties, entered judgment for the Respondent. The notice of Appeal was filed on 29/06/2018. The Appellant’s Brief was filed on 4/10/2018. In it the following issues are formulated for determination:

1. Whether the learned trial judge was right when she held that the Appellant was the person who placed the paid advertorial (Grounds 1, 2, 3, 4, 5 and 13)
2. Whether from the evidence of the Respondent witnesses, the Respondent establish defamation (Grounds 6, 7, 11).
3. Whether the non-joinder of APGA as a party is not fatal to the Respondent actions. (Grounds 8 and 9)

Whether having regard to the evidence before the court, the award of damages of N5,000,000.00 (Five Million Naira Only) was not excessive. (Ground 12).



In arguing issue one, it was submitted that the defence of the Appellant in his paragraph 4 and 7 of his statement of defence is non-publication; and that where there is a plea of non-publication by a defendant the onus is on the plaintiff to prove directly that the words complained of were in fact published by the defendant - **Egbe vs. Adefarasin (1987) 1 NWLR (Pt. 47) 1 at 17**. That in the instant case the Respondent woefully failed to establish or prove either directly or circumstantially that the words complained of were in fact published by the Appellant.

According to Counsel, proof of the publication in the instant appeal is establishing that the Appellant was the person who paid for the advertorial. That APGA was not a party to the case and no evidence was led by the Respondent showing that APGA was the person who paid and placed the advertorial.

That an action for libel must fail if publication of the defamatory matter is not proved. Counsel further submitted that proof must be given by admissible evidence as it is the publication that gives a cause of action. That the material part of the cause of action is the publication; and that if there is no publication there will be no libel - **Douglas vs. Peterside (1994) 3 NWLR (Pt. 330) 37 at 48 Paras F-G**.

That in the instant appeal, there was no evidence that the Appellant actually paid and placed the advertorial the



publication of which is the cause of action. That the Respondent also failed to establish circumstantially that the words complained of were published by the Appellant in that throughout the trial he did not tender the receipt of payment issued by Sun Publishing Limited, publishers of the Daily Sun Newspaper to buttress the fact that the Appellant paid for the advertorial or call as a witness a staff of Sun publishing Limited to testify as to who placed and paid for the advertorial.

Still in argument, Counsel submitted that advertisement or paid advertorials are messages paid for by those who send them and are intended to inform or influence people who receive or read them. That advertorials are paid for by those who send them and not who signed them - **Omo – Agege vs Ohajafor (2011) 3 NWLR (Pt. 1234) 356**. That evidence of receipt of payment and placement of the paid advertorial is material for the proof of who paid and placed the advertorial as the publication complained of was (in the words of the learned trial judge) not a news report but a paid advertorial.

That the failure of the Respondent to tender the receipt issued by Sun Publishing Ltd publishers of the Sun or call any person from the said Sun Publishing Ltd to give evidence that the Appellant was the person who placed and paid for the publication showed that the evidence did not exist or that if it had existed would have been unfavourable to the Respondent



in accordance with Section 167(d) of the Evidence Act, 2011 (As amended) - **Obaro vs. R.S1 & NDA (1997) 9 NWLR (Pt. 521) 425 at 441 Paras D-C.**

On issue two, it was submitted that from the evidence elicited from the Respondent that the Appellant had proved the averment statement of defence that the words complained of are words of All Progressive Grand Alliance (APGA) Imo State Chapter which the Appellant signed in his official capacity the state Chairman. That evidence elicited from a party or his witnesses under cross-examination, which goes to support the case of the party cross-examination, constitutes evidence in support of the case or defence of the party - **Akomolafe vs. Guardian Press Ltd (2010) 3NWLR (Pt. 1181) 338 at 351.**

That the evidence elicited from the Respondent and his witness were on facts pleaded by the Appellant that he signed the words complain as an agent of the APGA and that the words complained of were the words of APGA a registered and suable political party in Nigeria as pleaded in paragraph 5,6, 8 and 9 of the statement of defence.

According to Counsel, the Respondent described the Appellant in paragraph 12 of the written deposition on oath as the Chairman of APGA and by that description he had acknowledged that the Appellant was an agent of a disclosed

principal (All Progressive Grand Alliance, APGA) - **Leventis Tech Ltd. vs. PetroJessica Ent. Ltd (1992) 2 NWLR (Pt. 224) 459**. That there was no evidence in support of the reply of the Respondent where the issue of joint tortfeasors was pleaded and therefore that averment is deemed abandoned in law.

That there was no evidence elicited from the Appellant that he published the words complained of and that he merely said he signed the press statement on behalf of the party. On issue three, it was submitted that the Claimant and his witnesses did not prove that the words complained of lowered his estimation in the eyes of right thinking members of the public - **NTA vs. Babatope (1996) 4 NWLR (Pt. 440) 75 at 95**. On issue four, it was submitted that there was no evidence at the trial, that the Respondent had written to the Appellant complaining that the words complained of and demanded for retraction or apology and it was refused.

That damages are not awarded on the basis that such an award restore the plaintiff to the position he was before he was defamed as if he has not been defamed - **Offoboch vs. Ogoja Local Government (2007) 16 NWLR (Pt 739) 458**. He urged the Court to resolve the issues in favour of the Appellant, against the Respondent, allow the Appeal and set aside the judgment of the lower Court.



In the Respondent's Brief, the following issues are distilled for determination:

(1) Whether the Learned Trial Judge was right to have found the Appellant liable in the defamation in the circumstances (Grounds 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13).

(2) Whether the award of N5 Million as general damages in favour of the Respondent was excessive (Ground 12).

On issue one, it was submitted that it was proved before the lower Court that:

- (a) The offending words were published at page 40 of the *Daily Sun* Newspaper of Thursday, April 18, 2013, and were read by the general reading public, especially the CW2 and CW3.
- (b) That the words complained about referred to the Respondent was not disputed at trial.
- (c) That the words, which are allegations of commission of crime, were defamatory of the Respondent was also not disputed. Parties were therefore agreed on the defamatory nature of the words.
- (d) That the words were published to third parties (the general newspaper reading public, especially CW2 and CW3) was also not an issue at trial. That is common ground.



According to Counsel, the Appellant did not plead non-publication of the Libel, but only pleaded that the publication of the defamatory press statement in the *Daily Sun* was by APGA, his political party and thus he should not be held responsible and liable. That Exhibit C1, the publication, is documentary evidence and speaks for itself; and that there is no further proof of publication required other than the Exhibit. Still in argument, Counsel submitted that it is immaterial who pays for the publication of a libel. That a person can author an advertorial and send it out for publication whilst another person pays for it.

That can even be published without pay. According to Counsel, it is not the payment of money that shows publication but release for publication. That evidence of payment for the advertorial has never been held as determinant factor of publication, once established that the defamatory words were made known to person(s) other than the Respondent, publication is deemed established - **Ugo vs. Okafor (1996) 3 NWLR (Pt. 438) 542 at 561 A – C.**

That the Respondent did not plead that the Appellant paid for the defamatory advertorial as the fact was not within the Respondent's knowledge; that the Respondent's case was never on who paid for the advertorial but rather that the Appellant published the defamatory paid advertorial which he

signed. That authorization to publish a press statement need not be express as it is mostly a matter of inference - **Ejabulor vs. O.S.H.A. (1990) 5 NWLR (Pt. 148) 1 at 14.**

On issue two, it was argued that an award of general damages in a case of Libel is discretionary depending on the peculiar facts and circumstances of each case. That an appellate Court would not as a matter of course interfere by substituting its own discretion for that of the trial Court, except where it is shown that the trial Court acted upon or applied wrong principles of law; or that the amount was an entirely erroneous estimate which no reasonable tribunal would make - **Ishaku & Anor. Vs. Aina (2003) LPELR – 7255 (CA) at 44 A-G.**

That the Appellant has not shown any basis upon which he wants this Court to declare the award as excessive. That the Respondent was a Deputy Governor of Imo State and that the publication damaged him politically. According to Counsel, even with the judgment it would be difficult for the electorate to understand that he was never charged or convicted of bribery. He urged the Court to dismiss the Appeal. The Reply Brief is a rehash of the main Appellant's Brief, it is accordingly discountenanced.

RESOLUTION

The twin issues that call for determination in this Appeal in my humble view are:

“Whether the lower Court was right to have found the Appellant liable in defaming the Respondent in the circumstances”

“Whether the award of N5 Million as general damages in favour of the Respondent was excessive”

The law is settled that a party who wants the Court to find in his favour in Defamation must establish three essential ingredients to wit:

- (a) That the words complained of were defamatory
- (b) That the words complained of referred to the Respondent,
- (c) That the words were published (to at least one person other than the Respondent).
- (d) In **Ologe vs. New Africa Holdings Ltd. (2013) 17 NWLR (Pt. 1384) 449 at 469 D–E**, the Supreme Court identified six co-terminus ingredients which a party has to prove to succeed in defamation as:
 - (a) That the offending words were published
 - (b) That the words complained of refer to the plaintiff.
 - (c) That the words are defamatory of the plaintiff
 - (d) That they were published to third parties
 - (e) That the words were false or lack accuracy, and
 - (f) That there are no justifiable legal grounds for the publication.



From the pleadings and evidence adduced in the Lower Court, the following facts were established:

- (a) The offending words were published at page 40 of the *Daily Sun* Newspaper of Thursday, April 18, 2013, and were read by the general reading public, especially CW2 and CW3.
- (b) That the words complained about referred to the Respondent was not disputed at trial.
- (c) That the words, which are allegations of commission of crime, were defamatory of the Respondent was also not disputed. Parties were therefore agreed on the defamatory nature of the words.
- (d) That the words were published to third parties (the general newspaper reading public, especially CW2 and CW3) was also not an issue at trial. That is common ground.
- (e) It was equally neither pleaded nor put in evidence that the words were true or justified in any manner.

The Appellant contends that there was no proof of the publication. He misconceived proof of publication as proof that he was not the person who paid for the advertorial - Paragraphs 2.2 – 2.4 of the Appellant's Brief of Argument. However, the Appellant did not plead non-publication of the



libel but only pleaded that the publication of the defamatory press statement in the *Daily Sun* was by APGA, his political party and thus he should not be held responsible and liable.

After admitting that he signed the words complained about on behalf of APGA in his official capacity, the Appellant pleaded at **Paragraph 8** of the statement of defence with respect to the publication thus:

"The Defendant shall contend that the publication complained of is the publication of All Progressives Grand Alliance (APGA), a suable duly registered and recognized Political Party in Nigeria and not that of the Defendant"

The Appellant submitted that in proving publication, the Respondent has the evidential burden of establishing that the Appellant was the person who paid for the advertorial. It is immaterial who pays for the publication of a libel. A person can author an advertorial and send it out for publication whilst another person pays for it. It can even be published without payment.

It is not the payment of money that shows publication but release for publication. Evidence of payment for the advertorial has never been held as determinant factor of publication, once

established that the defamatory words were made known to person(s) other than the Respondent, publication is deemed established. In the case of **Ugo vs. Okafor (1996) 3 NWLR (Pt. 438) 542 at 561 A – C** it was held that:

“The issue involved in this appeal is publication in a newspaper. In **Awoniyi and Others 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 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".

The Appellant misconceived the Respondent's case when it submitted at paragraph 2.6 of his Brief of Argument thus:

"The case of the Respondent on the pleadings and evidence was that the Appellant was the person who paid and placed an advertorial personally titled press statement by APGA".

The Respondent did not plead that the Appellant paid for the defamatory advertorial as the fact was not within the Respondent's knowledge. The Respondent's case was never on who paid for the advertorial but rather that the Appellant published the defamatory paid advertorial which he signed. The Appellant contends that the lower Court speculated when it found that that he authorized the publication of his press statement attributed to the Imo State Chapter of a Political Party (APGA) as Chairman and the leader of the Executive

Committee. The Appellant overlooks the fact that the publication is not a press report written by an itinerant reporter but a one-page paid advertorial which he conceded "*is a publication of APGA*"! How then could he accuse the lower Court of speculation, even in the face of his admission alone that it is a publication of party which he chairs, and he being the author and sole signatory of the publication.

The Appellant contends that since APGA was not a party to the case and no evidence was led by the Respondent to show that APGA was the person who paid for the advertorial, publication was not proved. The Appellant misconceives the Respondent's case at the lower Court and the concept of libel. The Respondent's case was never against APGA but the Appellant, thus there is no burden on the Respondent to prove that APGA paid for the advertorial. All that was required of the Respondent was to prove publication of Exhibit C1.

The Respondent established that there was a defamatory press statement authored, signed and placed for publication by the Appellant. The Appellant on the other hand did not deny authoring or signing the press statement. He only pleaded that he did as APGA's Chairman and as such Exhibit 1C should be treated as APGA's publication. The lower Court was on a sound footing when it believed parties' pleadings and presumed that



even if the publication was placed by APGA, given the entire circumstances of the publication, the Appellant must be held to have authorized it. This is even more so with the Appellant's failure to discharge the evidential burden when it shifted to him.

APGA is an artificial person who could not walk to the newspaper house and place Exhibit C1 and pay for it. It has no hands. It has no legs. It works through the agency of its officials.

Section 14 of the Defamation Law of Lagos State, Ch. D1 Laws of Lagos State of Nigeria 2015 Vol. 3 on "Responsibility for Publication" provides thus:

"In defamation proceedings a person would have a defence if it can be shown that the person – was not the author, editor or publisher of the statement complained of; took reasonable care in relation to its publication; and did not know, and had no reason to believe, that what was done did cause or contributed to the publication of a defamatory statement".

In the law of defamation like in other Torts, parties are sued jointly or even severally as Joint Tort Feasors. Under the concept which is analogous to law of principal offenders in



Criminal Law, persons are held liable for their role or participation in a Tort. Thus, it is not correct that the Appellant ought to be adjudged an agent of APGA and struck out his name as he contended. He admitted authoring a "press statement" which he alleged APGA published. He is on that score liable as a joint tort-feasor with APGA - **Dunu Merchants Ltd. vs. Obanye & Ors. (2014) LPELR – 24059 (CA).**

Quite contrary to the Appellant's contention that he wrote the "press statement" in his official capacity as an agent of APGA and thus APGA should have been the proper defendant, the Respondent is at liberty to choose who to sue among joint tortfeasors to Exhibit C1, the writer, the publisher, the newspaper, the publishing company, a vendor selling it etc.

In **Awolowo vs. Kingsway Stores (1968) All NLR 606**, a book *"The One-eyed Man is King"* contained libelous materials. It was written by one Ian Brook and published by Cassell and Co. Ltd in England. The Plaintiff (Chief Obafemi Awolowo SAN, GCON) recovered damages against the Defendant a book store in Nigeria. Neither the writer nor the publishing company was held to be the proper defendant as they were all jointly and severally liable. Chief Awolowo was allowed to pick whom he wished to sue.

The Appellant never pleaded that the words complained of (allegations of crime) were not defamatory or lowered the Respondent in the estimation of right thinking persons. None of the paragraphs of the statement of claim wherein the defamatory nature of the words complained of were amply pleaded, was traversed. As an inflexible rule of pleadings, having not denied the averments, the Appellant must be deemed to have admitted them. Moreso, when there is no paragraph of the defence wherein it was pleaded that the words complained of were not defamatory. See **George vs. Dominion Flour Mills Ltd. (1963) ALL NLR 70.**

It follows that the Appellant who failed to join issues with the Respondent on the defamatory nature of the words cannot make a summersault and use answers elicited during cross-examination to set up a defence that the words published are not defamatory. The Appellant is bound by his pleadings and evidence obtained during cross-examination on facts not pleaded as defence goes to no issue - **Akomolafe vs. Guardian Press Ltd. (2010) 3 NWLR (Pt. 1181) 338 at 351 H** and **Dimpka vs. Chioma (2010) 9 NWLR (Pt. 1200) 482 at 503 H.** Issue one is therefore resolved in favour of the Respondent and against the Appellant.

On issue two, an award of general damages in a case of Libel is discretionary depending on the peculiar facts and



circumstances of each case. An appellate Court would not as a matter of course interfere by substituting its own discretion for that of the trial Court, except where it is shown that the trial Court acted upon or applied wrong principles of law; or that the amount was an entirely erroneous estimate which no reasonable tribunal would make - **Ishaku & Anor. Vs. Aina (2003) LPELR – 7255 (CA) at 44 A-G.**

The Respondent was a Deputy Governor of Imo State and that publication damaged him politically. It would be difficult for the electorate to understand that he was never charged or convicted of bribery. The Appellant never showed any remorse, both before the suit and during trial. He received two letters urging amicable settlement (Exhibits 1 & 2). He ignored them and stood his ground. Issue two is resolved in favour of the Respondent and against the Appellant.

Having resolved the two issues in favour of the Respondent and against the Appellant, the fate of this Appeal is crystal clear. It is devoid of merit and is accordingly dismissed. The judgment of the lower Court in Suit No. LD/506/2013 delivered on 31/05/2018 is hereby affirmed.

CROSS APPEAL

The Notice of Cross Appeal was filed on 23/07/2018. The Cross Appellant's Brief was filed on 28/03/2019 but deemed as filed



and served on 05/05/2025. In it, a lone issue is formulated for determination:

“Whether in all the circumstances the sum of N5 Million awarded as general damages was not excessively low as to assuage for the damage to reputation suffered by the Cross-Appellant for the libel complained about”

It was submitted that award of damages by a trial Court will be upset on appeal if the trial Court acted on wrong principles or the amount awarded is extremely low or high - **Williams vs. Daily Times (1990) 1 NWLR (Pt. 124)1 at 49**. That an award of damages in a case of libel must be adequate to assuage for the injury suffered by the victim as this is underscored by the inestimable value of a person's reputation. According to Counsel, reputation is the estimation in which a person is held in his society, once lost, it is extremely difficult to regain; hence, the need for adequate compensation to a person whose reputation is unjustifiably damaged - **Mirchandani vs. Pinheiro (2001) 3 NWLR (Pt. 701) 557 at 577**. That the paltry sum of N5 Million awarded as general damages is not adequate to assuage for the loss of reputation suffered by the Cross-Appellant. That it is not sufficient to



atone for the Cross-Appellant's character and pride that was unjustifiably invaded.

That in awarding damages for injury to a person's reputation, the Courts are enjoined to take it seriously and ensure the injured party is adequately compensated, failing which an appellate Court would be right to interfere - **Oduwale vs. West (2010) 10 NWLR (Pt. 1203) 598 at 613 G-H**. He urged the Court to allow the Cross Appeal. In the Cross Respondent's Brief, a lone issue is formulated for determination. Thus:

"Whether having regard to the evidence before the trial court, the award of damages in the sum of N5,000,000.00 (Five Million Naira Only) was not adequate. (Ground 1)"

It was submitted that by the evidence before the trial court there is nothing to show that the defamatory publication grossly affected or impugned on the character or reputation of the Cross-appellant as to warrant this Honourable Court hold that the damages awarded was indeed excessively low. That the five million naira awarded by the trial Court is in accordance with the extent of damages shown to have been suffered by the Cross-Appellant (by the evidence of CW2 and CW3) as can be inferred from the publication of the defamatory words and

nothing more. Consequently, it is submitted that the sum awarded as damages was adequate.

That the Cross-appellant in paragraphs 4.14 and 4.15 of his brief attempted to show that the evidence of CW2 and CW3 that the Cross-Appellant was lowered in their eyes and no doubt in the eyes of everybody who read the publication was uncontroverted. According to Counsel, the position stated by the Cross-Appellant is not the true position. That CW2 and CW3 (who supposedly read the publication) under cross-examination gave evidence to the effect that they still relate with the Cross-Appellant even after the publication

That the sum of five million naira is sufficient to vindicate his character considering the extent of the alleged damages he suffered as proved by CW2 and CW3 - **Sketch Publishing Co. vs. Ajagbemokeferi (1989) 1 NWLR (Pt. 100) 678.**

That in the face of the evidence of CW2 and CW3 that they still see the Cross-appellant as a mentor and relate with him, the trial Court awarded an adequate sum of five million naira as damages. He urged the Court to dismiss the Cross Appeal with substantial cost. The Cross Appellant did not file a Reply Brief.

RESOLUTION

The issue for determination in this Cross Appeal is:



“Whether having regard to the evidence before the trial court, the award of damages in the sum of N5,000,000.00 (Five Million Naira Only) was not adequate”

An appellate Court does not upset or reverse an award of damages simply because it might have awarded a different figure. In order to justify the reversal of the trial judge on the amount of damages awarded, the appellate court must be convinced that:

The lower Court acted upon some wrong principle of law; The lower Court acted in disregard of principles; The lower Court acted under a misapprehension of the facts; The lower Court took into account irrelevant matters or failed to take into account relevant matters; Where injustice will arise if the Appellate Court does not interfere; or

That the amount awarded was so extremely high or ridiculously low as to make it, in the judgment of the court an entirely erroneous estimate of the damage to which the party is entitled. The Cross-appellant in paragraphs 4.14 and 4.15 of his brief attempted to show that from the evidence of CW2 and CW3 his reputation was lowered in their eyes and no doubt in the eyes of everybody who read the publication.



CW2 and CW3 (who supposedly read the publication) under cross-examination gave evidence to the effect that they still relate with the Cross-Appellant even after the publication. Thus:

CW2: "I confirmed that the claimant swore his innocence, I believe him because I know him, he is my friend and I still relate with him. (see page 156 of the Record).

CW3: under Cross- Examination said of the claimant "He is my mentor. This moment yes, he is my mentor, I stopped but, at the moment he is my mentor" (see page 157 of the Record).

From the above evidence elicited from the Cross-appellant's witnesses can it be said that his reputation has been grossly lowered to the extent that the sum of five million naira awarded as damages cannot vindicate his character as a result of the publication? In the case of **Sketch Publishing Co. vs. Ajagbemokeferi (1989) 1 NWLR (Pt. 100) 678**, the Supreme Court held:

"Then reading the whole words in the context and circumstances they were used it is my view that they are not defamatory. This is confirmed by the evidence of the majority of plaintiff's witnesses. The evidence shows that from the



time the words were allegedly published of and concerning the Respondent, he was not avoided or shunned, nor did the evidence show that his status was lowered in the estimation of right thinking men of his community or that he was exposed to hatred, contempt or ridicule. There is no reliable evidence showing that the imputation on him is injurious to him in his office, trade or business. He is still being respected as a prominent and respectful Islamic preacher by his local community. This is evidenced by his continue with his weekly Friday sermon."

Obaseki, JSC at page 701 Para A stated as follows:

"There is abundant evidence from the plaintiff's witnesses that the words complained of have not brought the plaintiff into contempt and ridicule."

Oputa, JSC at 704-705 Paras H - G stated as follows:

"But the part of the evidence of PW3 that is most relevant to the issue of Libel is that at pp.47 and 49 viz



"After I read the statement written under the photograph of the plaintiff in exhibit 'B' my sect did not think of removing the plaintiff from his title. P47 and P49 'with or without' the chieftaincy title the plaintiff is a respected preacher in his own right, and that whatever anybody says about him will not affect my opinion of the plaintiff."

If therefore, the comment below the photograph of the plaintiff in exhibit B did not affect PW3's opinion of the plaintiff then it follows that the very essence of defamation (lowering the reputation of the plaintiff in the opinion of right thinking members of the society) is absent here or that PW3 is not a right thinking member of the community, why was he (PW3) called then? As if to seal the doom of: plaintiff's case, the PW4 Mrs. Esther Olayemi Roberts at page 57 categorically gave the correct rendition of the alleged libel thus:..... Then expatiating on the alleged libel as follows:


The person who fabricates something is quite different from the person who wears the fabricated material or thing. The word



fabricators in exhibit B refers to the person who confer the title in question on the plaintiff ... the chieftaincy title conferred on the plaintiff does not affect my relationship with him. I know the plaintiff as a chief after"

The award of the sum of Five Million Naira awarded as general damages by the lower Court was therefore proper.

The Cross Appeal is therefore unmeritorious and is hereby dismissed by me.



ABDULLAHI MAHMUD BAYERO
JUSTICE, COURT OF APPEAL.

Certification — *1000'w*

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ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
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APPEARANCE:

Edwin Anikwem SAN., with }
Oluwatosin Omileke Esq., } - for the Appellant

C.O. P Emeka SAN with }
C. Nneke Esq., and A. E. Ogunjimi } - for the Respondent

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APPEAL NO: CA/L/1072/2018

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, JCA .

I had the opportunity to read the draft judgment of my learned brother, **ABDULLAH M. BAYERO, JCA** and I agree with his reasoning and conclusions therein.

The Appellants' declaratory relief which they sought at the trial court placed a significant burden on them to prove wrongful debits on the account of the 1st Appellant with the Respondent. Though grant of the relief is discretionary, plaintiff must satisfy the court that they are indeed entitled to the declaration based on cogent and credible evidence; for a Plaintiff must succeed on the strength of his own case, and not merely rely on any weakness in the defendant's case or even an admission by the defendant.

This principle is well-established in the case of **AYODELE ILORI v. ALHAJA RISIKAT ISHOLA (2018) 73 NSCQR 1565**, where it was held that a declaratory relief must be proved to the satisfaction of the Court notwithstanding default of defence or any admission in the defendant's pleading. See also, **COL. NICHOLAS AYANRU (RTD) v. MANDILAS LIMITED (2007) NSCQR VOLUME 30 2007**

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PAGE 85, SENATOR RASHIDI ADEWOLU LADOJA v.
INEC & ORS. (2007) SC. 120/2007

I agree that, the appeal is unmeritorious, and I abide by the
consequential order(s) in the lead judgment.

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO
JUSTICE, COURT OF APPEAL

A. M. AYOADE
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CA/L/1072/2018

A. M. TALBA (JCA)

I had the advantage of reading in draft the Judgment just delivered by my learned brother **Abdullahi Mahmud Bayero JCA**. I agree with the reasoning and conclusion that the lower court was right to have found the appellant liable in defaming the Respondent in the circumstance. The appellant admitted that it is a publication of party which ~~he~~ is its chairman and he being the author and sole signatory of the publication. The issue of payment for the advertorial, publication is not a determinant factor in a case of libel.

An award of damages in a case of libel is discretionary depending on the peculiar facts and circumstances of each case. In this instant case the respondent was a former Deputy Governor of Imo State. There is no doubt in the fact that the publication damaged him politically and it will be difficult for the electorate to understand that he was never charged or convicted of bribery. And moreover the appellant never showed any remorse before or during the trial at the lower court; hence the appellant received two letters exhibits 1 and 2 seeking for amicable settlement but he ignored them.

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Consequently the award of N 5 Million as damages in favour of the respondent was not excessive. This appeal is devoid of merit. I also dismiss the appeal. The cross appeal is also unmeritorious and it is dismissed.

Abubakar Mahmud Talba
Justice, Court of Appeal.

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
CERTIFIED TRUE COPY

SIGN.....
DATE..... 27/11/25