

**SUPREME COURT OF NIGERIA**  
15th JULY, 1994. SC. 23/1991.  
**CORAM.- S. M. A. BELGORE, A. B. WALL,**  
**U. MOHAMMED, Y. O. ADIO, A. I. IGUH, JJSC**

THE REGISTERED TRUSTEES OF  
THE ROSICRUCIAN ORDER, .... APPELLANT/CROSS RESPONDENT  
AMORC (NIGERIA)

AND

1. HENRY O. AWONIYI
  2. GABRIEL ABIKOYE .... RESPONDENTS/CROSS APPELLANTS
  3. ECWAPRODUCTIONS LIMITED
  4. CAXTON PRESS (W.A.) LIMITED
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***APPEALS*** - Additional grounds of Appeal - Where filed within time - Whether leave of court is required.

***APPEALS*** - Cross Appeal - Whether argument in respect of Cross Appeal - Can be included in the original Appeal without leave.

***APPEALS*** - Issues of mixed law and facts - Where no leave was obtained - When grounds of Appeal will be struck out.

***APPEALS*** - *Suo motu* issue - Raised by Court of Appeal - Where that court's decision was not based on that issue - Whether the judgment will be reversed.

***APPEALS*** - *Suo motu* issue - Not to be raised by courts advisedly - But where *suo motu* issue is raised - Need to hear the parties.

***CONSTITUTIONAL LAW*** - Fair hearing - Need for court not to raise issues *suo motu*.

***DEFAMATION*** - Libel - Failure to plead innuendo - When deemed a ground for rejecting an exhibit.

***DEFAMATION*** - Defence of fair comment - When not properly pleaded - Defence of qualified privilege - Held not pleaded at all.

**DEFAMATION-** *Justification - Libel - Publication describing Amorc as secret and satanic - Held to be justified.*

**DEFAMATION-** *Libel - Defence of justification - Where pleaded - Whether the words complained of will be construed as a whole.*

**DEFAMATION - Libel - Proof of publication - Not to be by mere reliance on the journal in question - Whether the two lower courts can rely on evidence of members of the plaintiff- In finding proof of the publication.**

**EVIDENCE-** *Libel - Defence of justification - When plaintiff's own publications tendered as exhibits - Are found to justify the conclusion that plaintiff is secret and satanic society.*

**PLEADINGS - Amended statement of claim - Supercedes the one amended - Where there is no substantial change in the two statements - Whether court's reference to the former occasioned a miscarriage of justice.**

**PLEADINGS - Innuendo - Where natural and ordinary meaning of libelous words were pleaded - Whether tantamount to plea of innuendo.**

### **FACTS**

The plaintiff filed an action against the Defendants before the Cross River State High Court Calabar claiming the sum of N10,000,000 (Ten million naira) for Libel contained in the Defendants' journal - Today's challenge. Plaintiff highlighted certain publications in the said journal which it alleged were defamatory against it and claimed that it has been greatly injured in its reputation and has suffered damage. The said publication portrayed the plaintiff as a satanic, demonic, sinister, occultic and a secret society. The plaintiff also sought a perpetual injunction restraining the Defendants from publishing any similar libel.

The defendants raised the defence of justification which was established from various publications of the plaintiff tendered in evidence. The trial court found in favour of the plaintiff and awarded N1,000,000 (one million naira) as general damages against the Defendants. The Defendants' appeal to the Court of Appeal was allowed by a majority judgment and the plaintiff's action was dismissed. Being dissatisfied, the plaintiff has now appealed to the Supreme Court to determine inter alia whether the Court of Appeal was right in

holding that the Defendants had established the Defence of justification to the multiple libel of the Appellant. The Defendants' cross - appeal was dismissed by the Supreme Court.

**HELD** (unanimously dismissing the appeal)

***Additional grounds filed within time.***

1. The additional grounds filed within time will form part of the grounds of appeal filed along with the Notice of Appeal. The appellant does not require leave of the Court of Appeal to file them. But it will be neater and make the work of the court much easier and smooth if the appellant applies to the court to amend his Notice of Appeal by incorporating therein, the additional grounds. (P.30L.5)

***No substantial change in amended statement of claim***

2. Although it is the law that what is amended in a pleading is superseded by the amendment but the added portions of the publications to paragraph 26 of the second further Amended Statement, of Claim has not changed the substance or the sting of the whole publications complained of, to wit - the plaintiff is a secret and satanic organisation. There is therefore no miscarriage of justice. (P.31 L.22)

***Court not to raise issues suo motu-Need to hear the parties on suo motu issue.***

3. The principle of fair hearing as guaranteed in our Constitution has not been strictly observed as regards these issues. This court has, in its several decisions advised lower courts against their decisions solely on issues raised by them suo motu and on which parties are not heard. It has also advised lower courts against commenting on issues not raised and canvassed. Where an appellate court is disposed of raising an issue suo motu, it is imperative that the parties involved are afforded the opportunity of being heard before a final decision is taken. (P.33L.3)

***Where court's decision is not based on its suo motu issue***

4. The Supreme Court will not allow an appeal simply because an appellate court raised an issue suo motu and took a decision without hearing parties on the same unless the court based its decision solely on that issue or that the issue so decided and relied upon was so fundamental that it resulted in mis

carriage of justice. In the present case the Court of Appeal did not base its majority judgment on the issue of the plaintiffs standing or the issue raised in ground 6, but on other fundamental issues properly raised and canvassed by the parties. Although the grounds are substantiated the appeal cannot be  
 5 allowed solely on them as there is no miscarriage of justice. Without them, the majority judgment can be sustained on other grounds raised and argued. (P.33 L.25)

***Failure to plead innuendo***

10 5. The learned justice was right to say that Exhibit 39 is irrelevant and therefore inadmissible in so far as “no innuendo putting that special libel on it was pleaded as an extrinsic fact”. The words complained of may in their natural and ordinary meaning be defamatory, and unless innuendo is specifically  
 15 pleaded to portray the plaintiff as a secret society in terms stated in section 35 (4) of the constitution, the plaintiff cannot be heard on that. (P.33 L.35)

***Whether natural meaning of words is tantamount to plea of innuendo***

6. Neither in the main plea of the paragraph nor in the particulars did the plaintiff plead anything suggestive of an innuendo. What is pleaded is the  
 20 natural and ordinary meaning of the words complained of. Where the plea against the publication is in the form pleaded in paragraph 39, that is, “the publications in their natural and ordinary meaning” it will not amount to a plea of innuendo, as words are normally construed in their ordinary meaning unless pleaded otherwise. (P.36 L.11)

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***Plea of fair comment and qualified privilege***

7. There was no proper plea of defence of fair comment since particulars in support of these averments were not provided. The defence of qualified privilege was not pleaded either. (P.37 L.8)

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***Plaintiff held justifiably described as secret and satanic***

8. From all these and the quotations referred to by the Court of Appeal in Exhibits 26 and 38, its conclusion was justified in describing the plaintiff as secret and satanic. It is satanic to say that Jesus christ was a member of secret  
 35 societies and an advocate of occult teachings. There is nothing secret in the message of Jesus to his people. (P.44 L.12)

***Defence of justification - How words are construed***

9. Where a defence of justification is pleaded, it is the broad and general impression conveyed by the publication complained of that has to be considered and not the meaning of each word complained of and taken out of context. The general applicable principle of law is that the words complained of and publicised must be construed as a whole. (P.44 L.17) 5

***Striking out grounds of appeal for not obtaining leave***

10. Having examined the grounds of appeal filed the following grounds are found to be incompetent as they involved issues of mixed law and facts and which have been filed without leave of the Court of Appeal or of this court to wit - grounds 1,3 and 5. They are accordingly struck out. (P.47L.12). 10

***Including cross appeal argument within the main appeal***

11. A cross appeal is an appeal independent of the main appeal. But that notwithstanding, incase of cross appeal, order 6 rule 6(2) permits a cross appellant to include in his brief for the original appeal, argument in respect of the cross appeal without leave. This is what the defendants/cross appellants did in this case. (P.47 L.19) 15

***Libel - How Publication is proved***

12. Both the trial court and the Court of Appeal did not rely on the mere printing and publication of the issues of Today's challenge in which the articles complained of were printed and published. They relied on the evidence of some members of the plaintiff, other than the Registered Trustees of the Rosicrucian order in reaching the finding that there was publications. Being members of the plaintiff will not disqualify them from giving admissible evidence of the publication to them of the libels contained of by the plaintiff. (P.47L.27) 20

***Opinion in accepted authoritative books***

13. There is nothing wrong in citing opinion in accepted authoritative books in support of a submission as done in this case by the Court of Appeal. Gatley on Libel and Slander is an authority on the subject and the Court of Appeal was right to refer to it. (P.47 L.38) 25 30

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**NOTABLE POINTS OF INTEREST**

**WALIJC**

***1. Many notices & ground of appeal - Where filed within time***

5    If an appellant can file as many notices of appeal as he wishes in one appeal provided that is done within 3 months period allowed for appealing as of right, nothing stops him from filing additional grounds to any of the Notice of appeal if done within time. (P.30 L.22)

10 **IGUHC**

***2. Whether AMORC is a secret society***

“In the face of the above copious evidence, the question that must arise is whether it can be seriously contended that AMORC is not a secret society. I agree with the majority judgment of the Court of Appeal that it is futile on the 15 part of the appellant to attempt now to deny its secret identity.” (P.51 L.18)

***3. Whether Jesus Christ was a member of Secret Societies***

“..... the respondents to a large extent sufficiently established their defence of justification of the alleged libel. In the first place, it cannot be seriously 20 suggested that there is anything secret in the teachings of Jesus Christ which in my view are entirely public and properly documented in the Scriptures. Clearly to assert, as the plaintiff unequivocally did, that Jesus Christ was a member of secret societies and that he was an advocate of occult teaching is, speaking for myself, satanic, sinister, blasphemous and entirely 25 unacceptable.”(P.52 L.30)

***4. Libel - How defence of justification will succeed***

“For the defence of justification to succeed, it is not necessary to prove the truth of each and every word comprised in the alleged libel. It suffices if the 30 defendant established that the main substance of the libellous statement is true and justified. The defendants need not justify statements or comments which do not add to the sting of the charge or introduce any matter by itself actionable. (P.52 L.38)

35 ***5. When words will be deemed defamatory***

“Words, however much they may appear to damage a man in the eyes of only a section of the community, are not defamatory or actionable within the law of defamation, unless they amount to disparagement of his reputation in the eyes of the average right thinking members of the public generally”(P.53 L20)

**REPRESENTATION:**

Chief Chuks Muoma with Pat Anegbada, Anthony Dafe, Ifeanyi Eke, Olu Oyelumade, Agbor Nnandi and T.W. Onohonda Wopopa for the Plaintiff/Appellant/Cross-Respondent.

A.O. Olufon with G.O.A. Ogunyomi, J.S. Barau, U.S. Okonkwo, O. A. Junobo Awosika and B. Mabawanku for the Defendants/Respondents/Cross-Appellants.

**CASES REFERRED TO**

- Tukur v. Government of Gongola State (1988) 1 NWLR (pt.68) 49 10
- Emeghara v. Health management Board Imo State (1987) 2 NWLR (pt.56)330 at 331;
- Fouchee v. Braid (1911-1914) 2 NLR 102 at 105
- Obinyan v. military Governor midwestern State and Ors. (1972)1 All NLR (pt. 1) 222 at 226 15
- Ogbu v. Urum & Anor. (1981)4 SC. 1 at P. 10
- William v. Hope Rising Voluntary Funds Society (1982) 1-2 SC. 145 at 153
- Commissioner of Police v. Kemavor & Ors. (1941) WACA 198 at 202
- Ogbechie v. Onochie (1988) 1 NLWR (PT.70) 370 at 374
- Aqua Ltd v. Ondo State Sports Council (1988) 4 NWLR (pt.91) 622 20
- Wanierv. Sampson (1959)2 All ER 123 at 124
- Rotimi v. Mogregor (1974) 11 SC. 133 at 152
- Government of Midwest v. Midmotors (1972) 10 SC. 43 at 56
- Onajobi v. Olanipekin (1985) 4 SC (pt.2) 156
- Gwonto v. The State (1983) 1 SCNLR 142 25
- Salami v. Oke (1987)4 NWLR (pt 63)1
- Din v. Attorney-General of the Federal (1988) 4 NWLR (pt.87) p. 147
- Kuti v. Jibowu (1972)6 SC. 147
- Kuti v. Balogun (1978) 1 SC. 53
- Olusanya v. Okusanya (1983) 1.SC. NLR 598 30
- Okhidemev. Toto & (1962) All NLR (pt. 1) 307
- Agagu v. Dawodu (1990)7 NWLR (pt.160) 56 at 59
- Nwosu v. Udeaga (1990)1 NWLR (pt.125) 188 at 210-211
- Gray v. Jones (1939)1 PLC ER 798
- Lewis v. Daily Telegraph (1964) AC. 234 35
- Okolo v. Midwest Newspapers Corporation (1977)1 SC. 33
- Ajakaiye v. Okandeji (1972)1 SC. 92
- Sutherland v. Slopes (1925) A.C. 49
- Dumbo v. Idugboe (1983)1 S.CN.L.R. 29 at 51

Tolley v. Fry (1930) 1 K.B. 467 at 479

**STATUTES & RULES REFERRED TO**

Court of Appeal Rules 1981, O. 3 44.2 (1) & (5)

Constitution of the Federal Republic of Nigeria 1979, ss.220 (1), 35(4)

5 Court of Appeal Act 1976, s. 25(1) & (2)

**BOOK REFERRED TO**

Gatley on Libel and Slander

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**LEAD JUDGMENT BY WALI JSC**

The plaintiff took out a writ in the High Court of Cross-River State sitting at Calabar in which the following reliefs were claimed against the defendants.

15 *“(a) N 10,000,000 (Ten Million Naira) aggravated damages for libel contained in the Defendants’ Journal styled: “Today’s Challenge” in March/April, 1984 and May/June, 1984 issues at pages 27 through 29 and 24 through 27 respectively being a serial article headed: “Rosicrucian Order (Amorc) (Bed-fellow with satanic, secret cults?)”. The defendants published in the said issues of their Journal (which has a large circulation 20 throughout Nigeria, West Africa and overseas), of and concerning the plaintiff, the words following, that is to say:*

1. *“One significant fact that came to light as a result of that fire incident is that the meeting place, “den”, of a confirmed secret society, Ogboni 25 was conducive for Rosicrucians to hold their own meetings.*

2. *“Not only was the meeting place of sinister groups like Ogbonis and Odd Fellows conducive for Rosicrucians to hold their meetings, the aims and objectives of AMORC were also similar and compatible with those 30 of Ogboni and the Odd Fellows. The extent and proof of their compatibility lay in the fact that the Rosicrucians tucked away their rare property and documents, as well as their choice volumes of correspondence in the den of the Ogbonis.”*

3. *“Do not be misled. AMORC is a secret society despite its frequent 35 disclaimers that it is not”*

4. *““Considering ‘Mother’ in the Rosicrucian system, one cannot but ask some questions that erupt spontaneously. Is this the forum for seeking job opportunities or for settling promotion matters? Is this the occasion for a member, feeling cheated and revengeful towards a nonmember, to un*

*burden his heart? Is this the type of help that the 'mother' is supposed to seek the co-operation of the other members to render? What is the difference between what obtains between 'mother' and the members on the one hand, and the lobbying that obtain in lodge meetings of other secret societies on the other? One might object that there is nothing wrong with one making one's need for a job or promotion known to other people. But there is every- 5 thing wrong with going to a room with five doors locked with iron bars behind one to express one's desires (voluntarily?)".*

*5. Astral projection is a wicked practice especially when the pro- 10 jection is aimed at a person in his sleeping state"*

*6. "Here again the reader should note that there is a third party, the 'Cosmic Mind' involved in astral projection.*

*Similarly, the vibrations are a non-objective source and not of the objective world. The source of all astral projection is definitely satanic".*

*By reason of the premises the plaintiff has been greatly injured in its 15 reputation and has suffered damage.*

*(b) Perpetual injunction restraining the defendants and each one of them whether by themselves or by their servants or agents from further writing, printing or circulating or causing to be written, printed or circu- 20 lated or otherwise publishing of the plaintiff the said or any similar libel."*

*Issues were joined by the defendants. Pleadings were ordered, filed and amended several times. At the trial both parties called a number of witnesses and several documents were tendered and received in evidence. At the end of the trial, in a reserved judgment by the learned trial Chief Judge, he found in favour of the plaintiff and granted the following reliefs against the defendants:- 25*

*"The plaintiff claimed general damages also. The principle involved in this claim is that where on a claim for general damages, the plaintiff establishes his legal entitlement to them, the court must still make its own assessment of the quantum of such general damages.*

*It is also stated that general damages is such that flows naturally 30 from the defendants' act. It need not be specifically pleaded. It arises by inference of law, and need not be proved by evidence. It suffices if it is generally assessed - Incar v. Benson (supra). The plaintiff has assessed its quantum of damages to be N2,000,000.00. In the light of the extent of the libel and the implied attempt to destroy not only the reputation of the plaintiff, Amorc 35 and lower its image in the estimation of the public but to destroy the plaintiff out of existence, I am tempted to say that N2,000,000.00 is not sufficient compensation for the libel on the plaintiff - Amorc. But times are hard even though this is no excuse for awarding the plaintiff less. It is the success of the*

plaintiff and not pecuniary gain that is likely to be important to it. The action was not to make money but to vindicate its good name in the society. Having found the defendants liable for the libel on the plaintiff, Amorc, I award N1,000,000.00 (One million Naira) to the plaintiff as general damages with N405.00 out of pocket expenses. The greater claim for special damages having not been proved I award N500.00 costs only.

The defendants and each one of the them are restrained by a perpetual injunction by themselves or by their servants or agents from further writing, printing, or circulating or causing to be written, printed or circulated or otherwise publishing of the plaintiff the said or any similar libel."

Dissatisfied with the judgment of the trial court the defendants lodged an appeal against it to the Court of Appeal, Enugu Division. After all the necessary formalities for hearing the appeal were completed, the appeal was taken on 7th May 1990 when learned counsel on both sides adopted their briefs and made oral submissions in support. And in a considered majority judgment of that court (2 to 1) by Uwaifo, J.C.A. he allowed the appeal and concluded -

"This appeal succeeds and is allowed. The judgment of the lower court together with the order for costs is hereby set aside. The action is dismissed. I award costs of N1,000.00 in the court below and N1,200.00 in this court to the appellants against the respondent."

In the minority judgment of Kutigi, J.C.A. (as he then was), he dismissed the appeal and concluded -

"On the whole therefore this appeal fails and it is dismissed. The respondent is awarded costs of this appeal assessed at two thousand Naira (N2,000.00)."

There is now a further appeal and cross appeal to this court by both parties.

The plaintiff as the appellant filed 9 grounds of appeal while the defendants as cross-appellants filed 6 grounds. At the hearing of the appeal, the defendants abandoned Ground 5 of their cross appeal and same was accordingly struck out.

For the purpose of this appeal and the cross appeal I shall continue to refer to the parties as plaintiff and defendants respectively.

In the brief of arguments filed by the plaintiff, the following issues were formulated for determination in this appeal -

"2.01 Whether an appellant can without the leave of the Court of Appeal urge or be heard in support of any ground of appeal or additional ground of appeal not mentioned in the notice of appeal, albeit that such ground of appeal or additional ground of appeal was filed within the time stipulated for appealing from the judgment or decision appealed against

*and whether the additional grounds of appeal in this case filed in the trial High Court without the leave of the Court of Appeal were valid?*

2.02 *Whether it was proper for the Court of Appeal in its lead judgment to review and/or base its judgment on the further Amended Statement of Claim which had been superseded in and was no longer part of the proceedings by a Second Further Amended Statement of Claim which was filed with leave of the trial court, and on which the Appellant based its evidence and/or case at the trial?*

2.03 *Whether the Court of Appeal was right in basing its majority judgment on the issue of the Capacity of the appellant to institute the libel action when the issue was raised suo motu for the first time by the Court of Appeal in its said judgment without giving the parties any opportunity of contesting the case on that issue or ground which was neither raised nor canvassed by the parties either in the High Court or Court of Appeal?*

2.04 *Whether the Court of appeal was right in rejecting Exhibit 39 in the proceedings and deviating in its definition of a Secret Society from the definition/definitions contained in the said Exhibit 39 and Section 35(4) of the Constitution of the Federal Republic of Nigeria, 1979 in force at the time of the said judgment of the Court of Appeal?*

2.05 *Whether the Court of Appeal was right in holding that the respondents had established the defence of justification to the multiple libels of the appellant, who were said by the respondents to be satanic, secret society, occult, demonic and sinister, and at the appeal pleaded for the forgiveness of the respondents by the appellant?*

2.06 *Whether it was right for the Court of Appeal in its judgment to come to conclusions on issues which were never pleaded, never canvassed, never led in evidence by the parties, never made a ground of appeal, never addressed upon by the Counsel, but raised suo motu by the Court of Appeal, which said conclusions were unfair, detrimental and pre-judicial to the appellant who was thereby taken by great surprise?*

2.07 *Whether it was right for the Court of Appeal to hold that the respondents had established the defence of justification to the multiple libels of the appellant by the respondents by basing the said decision of the Court of Appeal on Exhibit 1B which the Court of Appeal had rejected as not being relevant in or to the appellant's action?*

2.08 *Whether it was right for the Court of Appeal to hold that the appellant did not plead innuendoes (secondary meanings) of the multiple libels contained in Exhibits 1 and 1A when in paragraph 39 of Second*

*Further Amended Statement of Claim which was the operative pleadings of the appellant both in the High Court and Court of Appeal, there were eight separate sub-paragraphs of innuendoes or secondary meanings of the libellous imputations published by the respondents of and concerning the appellant?"*

5           2.9 *Whether the Court of Appeal was right in reversing the judgment of the trial Court and upholding the respondents' defence of justification, truth, fair comment etc. having regard to the evidence in the printed records in the appeal before it?"*

10           On their part, the defendants formulated the following issues in the only brief they filed for the main appeal and their cross appeal-

*"1. Whether any leave of Court is required to file additional grounds of appeal on an appeal from the High Court to the Court of Appeal in a final decision where both the original grounds of appeal and the additional grounds of appeal are filed within the statutorily prescribed time.*

15           2. *Whether the majority decision of the Court of Appeal (Coram Uwaifo and Katsina-Alu, J.J.C.A) was indeed based on the Appellant's Further Amended Statement of Claim as opposed to the Second Further Amended Statement of Claim as the appellant contends.*

20           3. *Whether even if the majority decision of the Court of Appeal is based on the Further Amended Statement of Claim as opposed to the Second Further Amended Statement of Claim (Which is not conceded) there was a fundamental difference between the two pleadings as to material facts, which made the omission of the Court of Appeal (which is not conceded) a fundamental error that had occasioned a miscarriage of justice.*

25           4. *Whether there is indeed a valid Second Further Amended Statement of Claim in the Records of Appeal?*

30           5. *Whether in all the circumstances of the appeal before the lower Court, (the Court of Appeal) the standing or the capacity of the appellant to sue did not arise from the respondents' appeal to the lower court or at least from the records before the said court.*

35           6. *Whether where an issue which relates to the standing or capacity of a litigant to sue arises from the records which goes to the competence and jurisdiction of the Court to adjudicate the Court of Appeal could not raise the issue suo motu and based on the address of Counsel for the parties resolve the issue.*

*7(i) Whether issue 2.06 of the appellant's issues for determination could be said to arise for determination when the majority decision of the Court of Appeal was based on the grounds of appeal filed, the briefs of argument drawn up and the oral addresses of counsel.*

(ii). Whether the appellant's issue 2.06 ought not to be struck out as being an unwarranted attack on the Justices of the Court of Appeal (Coram Uwaifo and Katsina-Alu J.J.C.A.) who gave the majority decision in the appeal before the lower court but who will be unable to defend themselves before the Supreme Court. 5

8. Whether the lower court (the Court of Appeal) was not right to hold the defence of justification of the alleged multiple libels established and proved by the respondents. The above 8 issues arise mainly from the Appellant's issues for determination in their appellant's brief of argument. However certain issues arise from the respondents/cross appellants. 10

9. Whether the appellant at the trial court discharged the burden of proving the publication of the newspaper articles in line with the established principles of law and the Supreme Court decision in *Ajakaiye v. Okandeji & Ors* (1972) 1 S.C. 92 and the premise that publication of libel is the gist of defamation, the appellant's claim ought not to have failed. 15

10. Whether Supreme Court decision in *Ajakaiye v. Okandeji & Ors.* (1972) 1 S.C. 92 in the absence of any other decision of the Supreme Court overruling it is still not good law on the proof of publication in Newspaper Libel.

11. Whether the failure of the appellant to prove at the trial court the publication of the alleged defamatory materials to a third party is not fatal to its claim for defamation. 20

12. Whether the Court of Appeal was right in holding that the respondents did not sufficiently plead or prove the defence affair comment and qualified privilege. 25

13. Whether in setting up the defences of fair comment and qualified privilege it is necessary to use the words or cliches "fair comment" and "qualified privilege", and if the failure of the respondents to use the said words and cliches, by itself is fatal to the setting up of the defences.

14. Whether the rejection of Exhibit 39 by the Court of appeal can be said to be the only ground for the dismissal of the appellant's claim by the majority decision of the Court of Appeal. 30

15. Whether in all the circumstances of this case particularly the testimonies of the appellant's witnesses, the mass of documentary exhibits on record, the literal construction of the documents produced on record and the applicable legal principles the appellant ever made out a claim of libel against the respondents. 35

(ii) Whether even if the Appellant made out a claim of libel against

*the Respondents (which is not conceded), the claim is not legally and effectively defeated by the defence of Justification, Fair comment and Qualified Privilege set up by the Respondents jointly and severally.*

16. *Whether in all the circumstances of this case the majority decision of the Court of Appeal on the additional grounds of appeal filed and the proof of justification by the respondents should not be affirmed and both the majority decision of the Court of Appeal and the dissenting decision of the Court of Appeal on the failure of the respondents/cross-appellants to prove fair comment and qualified privilege should not be set aside.”*

10 In reply to the cross appeal, the plaintiff filed brief and formulated the following two issues:-

“2.01 *Whether or not there was evidence of the publication of the libel as required by law?*

15 “2.02 *Whether or not the cross-appellants pleaded the defences of “fair comment” and “qualified privilege” as required by law?*

As indicated by the plaintiff, the defendants did not file separate briefs for the main appeal and the cross-appeal and this has made it difficult to relate the arguments to the issues both in the main appeal and the cross-appeal.

The simple and concise facts of this case can be narrated as follows:

20 The plaintiff, the Rosicrucian Order (AMORC) is a registered corporation in Nigeria under the Land (Perpetual Succession) Act (Cap. 98) Laws of the Federation of Nigeria, 1958. It can sue and be sued through its registered trustees. The first defendant is the writer of the alleged libellous articles complained of; the second defendant is the Editor of Today’s Challenge Magazine  
25 in which the articles complained of were published; the 3rd defendants are the proprietors and publishers of the said magazine - Today’s Challenge while the 4th defendant is the printer of the said Today’s Challenge Magazine.

30 The defendants published of and concerning the plaintiff in three different issues of Today’s Challenge the following articles alleged to be defamatory -

1. In the March/April, 1984 issue the article at pages 27 - 29 headed “Rosicrucian Order (AMORC) (Bed-fellow with satanic, secret cults?)

2. In the May/June 1984 issue at pages 24 - 27, the second article headed “Rosicrucian Awakening Via Occult Teaching” and

35 3. In July/ August 1984 issue is the article at pages 28 - 31 headed - “Harve Spencer Lewis”. The man from whom Rosicrucian (AMORC) derive their teachings.

In the action filed, the plaintiff claimed the sum of N8,000,000 as special damages and N2,000,000 as general damages for the libel complained of.

The plaintiff's complaint in issue 1 which is related to ground 1 of the main appeal is that the Court of Appeal is wrong in its majority judgment to hold as valid, the additional grounds of appeal, (that is grounds 12-23 in the Court of Appeal) which they filed without leave of the Court of Appeal, contrary to Order 3 rule 2(5) Of the Court of Appeal Rules, 1981 even though such grounds were filed within the statutory period for the defendants to appeal. Learned counsel for the plaintiff submitted that the decision in *Tukur v. Government of Gongola State* (1988) 1 NWLR (Pt. 68) 39 particularly at page 49 relied on by the Court of Appeal is completely irrelevant and inapplicable to the point, since he contended, *Tukur's* case was based on Order 3 rule 2 (I) of the Court of Appeal Rules, 1981 and neither dealt with Additional Grounds of Appeal not included or mentioned in the Notice of Appeal, nor with Order 3 rule 2(5) of the Court of Appeal Rules, 1981. Learned counsel cited and relied on the following decisions in support of his submissions - *Emeghara v. Health Management Board Imo State* (1987) 2 NWLR (Pt.56) 330 at 331; *Fouchee v. Braid* (1913) 2 NLR 102 at 105; *Obinyan v. Military Governor Midwestern State and Ors.* (1972) 1 All NLR (Pt.1) 422 at 426; *Ogbu v. Urum & Anor.* (1981) 4 S.C. 1 at p. 10; *William v. Hope Rising Voluntary Funds Society* (1982) 2 S.C. 145 at 153; *Commissioner of Police v. Kemavor & Ors.* (1941) 7 WACA 198 at 202 and *Oghechie v. Onochie* (1988) 1 NWLR (Pt. 70) 370 at 374.

In his reply to the submissions above learned counsel for the defendants contended that the defendants have a constitutional right of appeal against the decision of the High Court sitting at first instance. Whether such a decision involves questions of mixed law and facts; facts or law alone provided such right is exercised within the statutory period provided in Section 220(1) of the 1979 Constitution and Section 25(1) & (2) of the Court of Appeal Act, 1976. He referred to the case of *Aqua Limited v. Ondo State Sports Council* (1988) 4 NWLR (Pt.91) 622. He said neither the Court of Appeal Act, 1976 nor the Court of Appeal Rules, 1981 prohibits the filing of additional grounds of appeal within the stipulated ninety days. He further submitted that the decision in *Tukur v. Government of Gongola State* (supra) is in support of his case and therefore very apposite.

I think the simple and straightforward question here is whether - where a proper notice of appeal was filed, the appellant still needs leave of the court in order to file additional grounds within the stipulated time allowed for appealing.

Section 220(1) of the 1979 Constitution gives an appellant right to

appeal against a High Court decision sitting at first instance within 90 days, whether on issue of law, facts, or mixed law and facts. The provision of section 25(2) (a) of the Court of Appeal Act, 1976 does not derogate from the constitutional provision, so also Order 3 rule 2(5) of the Court of Appeal Rules, 1981.

- 5 The additional grounds filed within time will form part of the grounds of appeal filed along with the notice of appeal. The appellant does not require leave of the Court of Appeal to file them. But it will be neater and make the work of the court much easier and smooth if the appellant applies to the court to amend his notice of appeal by incorporating therein, the additional grounds.
- 10 The proposition of law in the case of Tukur v. Government of Gongola State (supra) supports this view, since in that case two notices of appeal filed differently within time were upheld to be valid and that the appellant could withdraw one of the notices and merge the grounds of appeal filed thereunder with the other notice of appeal. The Supreme Court even expressed the view that
- 15 the appellant could argue the two notices of appeal with grounds of appeal filed under each one of them.

The appellant will only require leave of the Court of Appeal where the additional grounds are to be filed out of time.

- Where additional grounds of appeal are filed within time, such additional grounds will in my view, form part of the notice of appeal and the grounds of appeal filed thereunder.

- If an appellant can file as many notices of appeal as he wishes in one appeal provided that is done within 3 months period allowed for appealing as of right, nothing stops him from filing additional grounds to any of the Notice
- 25 of appeal if done within time. The ratio in Tukur v. Government of Gongola State (1988) 1 NWLR (Pt.68) 39 is equally applicable to the filing of additional grounds. I endorse the majority decision of the Court of Appeal on the issue where Uwaifo J.CA., said:

- "The appellants filed a valid notice of appeal later filed additional*
- 30 *grounds of appeal both within three months from the date of the judgment appealed against. The additional grounds of appeal obviously formed part of the notice and grounds of appeal before the appeal papers were transmitted to the Court of Appeal. The additional grounds of appeal in the present case are part of the Notice of Appeal or are deemed to be so."*

- 35 This ground of appeal fails.

Issue 2 is related to ground 2 of the grounds of appeal. Under this issue, it was the contention of learned counsel for the plaintiff that the Court of Appeal erred in law in its majority judgment when it failed to review or base its judgment on the Second Further Amended Statement of Claim filed on 4th

day of March, 1987, but on Further Amended Statement of Claim which was superseded by the former. He cited the following cases in support of this submission Warner v. Sampson (1959) 2 All ER 123 at 124; Rotimi & Ors. v. Macgregor (1974) 11 S.C 133 at 152; (1971) 1 NMLR 289 and Government of Midwest v. Midmotors (1977) 10 S.C 43 at 56.

The plaintiff complained under this ground against the statement of the Court of Appeal in its lead judgment that -

*“The aspects of the publications complained of by the plaintiff/respondent are taken from the respective issues of the Magazine, Today’s Challenge. They are set out in paragraph 26 of the further amended statement of claim”*

I have painstakingly compared paragraph 26 of the Further Amended Statement of Claim with paragraph 26 of the Second Further Amended Statement of Claim. Although the Second Further Amended Statement of Claim contains more of the publications printed in the March/April and May/June issues of Today’s Challenge, the two are in substance the same and do not materially differ as regards the allegation that the plaintiff is a secret and satanic organization. The majority judgment of the Court of Appeal extensively and thoroughly dealt with that allegation before reaching its final decision on the same. The brief filed by the plaintiff on this issue fails to show how he is prejudiced by the non-quotation in the majority judgment of the added portions of the publications contained in paragraph 26 of the Second Further Amended Statement of Claim. Although it is the law that what is amended in a pleading is superceded by the amendment but as I have earlier said, the added portions of the publications to paragraph 26 of the Second Further Amended Statement of Claim has not changed the substance or the sting of the whole publications complained of, to wit - the plaintiff is a secret and satanic organisation. There is therefore no miscarriage of justice. See Onojobi v. Olanipekun (1985) 2 S.C 156; Gwonto v. The State (1983) 1 SCNLR 1; and Salami v. Oke (1987) 4 NWLR (Pt.63) 1.

This ground therefore fails.

Issue No.3 is related to ground 3 of the grounds of appeal. Under this issue the plaintiff complained that the Court of Appeal in its majority judgment raised suo motu the issue of the plaintiff’s capacity to institute the action. He submitted that the issue was never contested in the trial court or in the Court of Appeal and that none of the parties was given the opportunity of being heard before the Court of Appeal opined thus -

*“That even if the defendants have failed to justify any of the imputations which may naturally flow from the articles complained of or have defence to the alleged libel the plaintiff cannot sue in view of the nature of*

*the said imputations.”*

Learned counsel cited several authorities to support the submission, two of which are *Din v. Attorney-General of the Federation* (1988) 4 NWLR (Pt.87) 147 and *Kuti v. Jibowu* (1972) 6 S.C. 147.

5 Issue 6 which is related to ground 6 also deals with matters raised suo motu by the Court of Appeal. Under this ground the plaintiff complained that the Court of Appeal in its majority judgment descended into the arena in the matter when it raised suo motu the issue of ancient signs and images including mummies mentioned in *Amorc Publications* and reached conclu-  
10 sions detrimental to the plaintiff.

The portion of the Court of Appeal judgment as lifted and quoted in the appellant’s brief reads as follows -

“*In addition there are AMORC publications which carry illustrations of strange ancient signs and images and Egyptian mummies, which*  
15 *themselves conjure up unusual imaginations in the minds of the ordinary person - some to the uninitiated, are suggestive of contact with the dead and use of spiritual invocation. All of this, in fact, may lead to hold AMORC, I think, in a sense of awe and the fear not to step on the toes of its members by the ordinary man in a community such as ours, rather than its loss of reputa-*  
20 *tion.”*

I have looked through the briefs of argument filed by counsel on both sides in the Court of Appeal and cannot see where the capacity of the plaintiff to sue was discussed either directly or impliedly. The minutes of the proceedings of the Court of Appeal of 7th May 1990 at pages 621 to 623 did  
25 not show that either. What was recorded on that date under the heading Damages is -

“*Submit the respondent being a body corporate cannot be awarded any general damages at all. The claim for general damages should have been disallowed as with the special damages (The Judge found libel estab-*  
30 *lished) S.2 Land Perpetual Succession Duyile v. Ogunbayo & Sons Ltd. (1988) 1 NWLR (Pt. 72) 601. Submit as a corporate body the respondent are only entitled to special damages. Truth is a complete defence to libel”*

The minutes (supra) cannot by any stretch of imagination be said to have dealt with the capacity or locus standi of the plaintiff, particularly when  
35 one looks at the last paragraph of the quotation where learned counsel for the defendants submitted that the plaintiff as a corporate body, would only be entitled to special damages, if proved. In my view, this ground has substance.

I have also looked at the grounds of appeal and issues related thereto

canvassed in the Court of Appeal, but cannot see any complaint leading to the comment complained of in the majority judgment of the Court of Appeal.

The principle of fair hearing as guaranteed in our Constitution has not been strictly observed as regards these issues. This court has, in its several decisions advised lower courts against their decisions solely on issues raised by them suo motu and on which parties are not heard. It has also advised lower courts against commenting on issues not raised and canvassed. Where an appellate court is disposed of raising an issue suo motu, it is imperative that the parties involved are afforded the opportunity of being heard before a final decision is taken, see Kuti v. Balogun (1978) 1 S.C. 53 and Olusanya v. Olusanya (1983) 1 SCNLR 134. 5 10

Learned counsel for the plaintiff urged this court to allow the appeal on these issues and relied on Okhideme v. Toto & Anor (1962) 1 All NLR 309; (1962) 2 SCNLR 8 in support.

I have read the case of Okhideme (supra) but the facts involved are not on all fours with the present case. In Okhideme's case, the learned appellate Judge based his decision on the single issue raised suo motu by him while avoiding to consider the issues of law properly raised and canvassed before him. The Federal Supreme Court in allowing the appeal and making an order for a re-hearing of the appeal opined thus (per Ademola, C.J.F). 15 20  
*"The learned Judge has taken no decisions on matters of law argued before him. I have searched in vain under what section of the law this novel procedure adopted by the Judge can be found; namely to give judgment on a point not raised or argued before him."*

The Supreme Court will not allow an appeal simply because an appellate court raised an issue suo motu and took a decision without hearing parties on the same unless the court based its decision solely on that issue or that the issue so decided and relied upon was so fundamental that it resulted in miscarriage of justice. In the present case the Court of Appeal did not base its majority judgment on the issue of the plaintiff's standing or the issue raised in ground 6, but on other fundamental issues properly raised and canvassed by the parties. Although the grounds are substantiated the appeal cannot be allowed solely on them as there is no miscarriage of justice. Without them, the majority judgment can be sustained on other grounds raised and argued. 25 30

Issue No.4 is related to ground 4 of the grounds of appeal. Under this issue the plaintiff is complaining against the declaration by the Court of Appeal that Exhibit 39 is inadmissible and thereby expunging the same from the record when it was properly pleaded in paragraph 18 of the Second Further Amended Statement of Claim. Learned counsel for the appellant submitted 35

that by excluding Exh. 39 the Court of Appeal had failed to consider the provision of section 35(4) of the 1979 Constitution. He further submitted that the Court of Appeal was wrong to expunge Exh. 39 from the record. He relied on *Agagu v. Dawodu* (1990) 7 NWLR (Pt. 160) 56 at 59 and *Nwosu v. Udejaja* 5 (1990) 1 NWLR (Pt. 125) 188 at 210-211.

Paragraph 18 of the Second Further Amended Statement of Claim which is word for word the same with paragraph 18 of Further Amended Statement of Claim provides as follows-

“18 *The Rosicrucian Order, AMORC does not fall within the definition of secret societies as circulated by the Federal Military Government and the plaintiff will rely and found on the Federal Military Government Circular and Ogun State Government Edict on Secret Societies.*”

While Paragraph 39 of the said Second Further Amended Statement of Claim provides thus -

15 “39 *By the said words and the said publications in their natural and ordinary meaning and by reason of the facts and matters therein set-out the defendants meant and were understood to mean:*

- (a) *the plaintiff is a satanic devilish and evil body;*
- (b) *that the plaintiff is a secret cult;*
- 20 (c) *that the plaintiff indulges in the practice of witchcraft or voodoo;*
- (d) *that the plaintiff is an organisation unfit for interaction with descent people in the society;*
- (e) *that the plaintiff is not fit and proper body to be issued a certificate of incorporation under the Laws of the Federal Republic of Nigeria;*
- 25 (f) *that the plaintiff engages in corrupt practices;*
- (g) *that the plaintiff engages in dangerous activities which are punitive and not good for modern civilised society;*
- (h) *that the Plaintiff engages in activities dangerous to health.”*

It is to be noted here also paragraph 39 of the Second Further Amended Statement of Claim is the same in words and content as paragraph 39 of the Further Amended Statement of Claim.

The plaintiff’s complaint here is that having pleaded the document in question in paragraph 18 of the Second Further Amended Statement of Claim (supra), the Court of Appeal fell into grave error of law to expunge it from the 35 record.

The relevant portion of the lead judgment of Uwaifo, JCA, complained of by the plaintiff and quoted on page 25 of his main brief is at page 640 of Vol. II of the records and states thus -

“*In fact that evidence about the ban as well as Exhibit 39 ..... is*

*inadmissible since it tends to show why a secret society may be objectionable or reprehensible in the Nigerian situation whereas no innuendo put that special control on it was pleaded as an extrinsic fact”*

Section 35(4) of the 1979 Constitution defines a secret society within the context of that section, as follows:-

*“35(4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret Society, and for the purposes of this subsection, “a secret society” means a society or association, not being a solely cultural or religious body, that uses secret signs, oaths, rites, or symbols -*

*(a) whose meeting or other activities are held in secret; and*

*(b) whose members are under oath, obligation or other threat to promote the interest of its members, or to aid one another under all circumstances without due regard to merit, fair play or justice.”*

This is the type of society or association which is secret under the Constitution.

The defendants, as averred in paragraph 7 of the Further Amended Statement of Claim relied on Rosicrucian Manual by H. Spencer Lewis 10th Edition 1947, various Encyclopaedia, Dictionaries, learned publications and other publications both by Rosicrucian Order (AMORC) and other publications, to describe the plaintiff as a secret society. This is confirmed by DW2 when he said under cross examination:-

*“I did say that AMORC is a secret society By secret society in the context used is an organisation that has secret initiation or rituals, oaths, graps and other signs of recognitions and pass words.”*

From the above citations and quotations, it can easily be understood why Uwaifo, J.C.A. said Exhibit 39 is irrelevant to the present case.

In my view, the learned Justice was right to say that Exhibit 39 is irrelevant and therefore inadmissible in so far as “no innuendo putting that special libel on it was pleaded as an extrinsic fact”. The words complained of may in their natural and ordinary meaning be defamatory, and unless innuendo is specifically pleaded to portray the plaintiff as a secret society in terms stated in section 39(4) of the Constitution, the plaintiff cannot be heard on that.

This ground fails.

Issues 5, 7, 8 and 9 deal with the defence of justification, fair comment, qualified privilege and the plea of innuendo. I shall start with the issue 8 which deals with the plea of innuendo, which is related to ground 8 of the grounds of appeal. Learned counsel for the plaintiff contended that by the contents of paragraph 39 of the Second Further Amended Statement of Claim, the plaintiff had properly pleaded innuendo, that is, the secondary meaning of

the multiple libels in Exhibits 1 and 1A published of and concerning him by the defendants.

I have already reproduced the contents of paragraph 39 of the Second Further Amended Statement of Claim which is the same, word for word with paragraph 39 of Further Amended Statement of Claim, when I was considering issue 4 in this appeal. There is no need to reproduce the same. In that paragraph the plaintiff averred that -

*“By the said words and the said publications in their natural and ordinary meaning and by reason of facts and matters there set out the defendant meant and were understood to mean”*

10 The plaintiff then set out the particulars in support of the paragraph.

Neither in the main plea of the paragraph nor in the particulars did the plaintiff plead anything suggestive of an innuendo. What is pleaded is the natural and ordinary meaning of the words complained of. Where the plea against the publication is in the form pleaded in paragraph 39, that is, “the 15 publications in their natural and ordinary meaning” it will not amount to a plea of innuendo, as words are normally construed in their natural and ordinary meaning unless pleaded otherwise. That is the meaning in which reasonable men of ordinary intelligence with ordinary man’s general knowledge and experience of worldly affairs would likely understand them. See *Gray v. Jones* 20 (1939) 1 All ER 798; and *Lewis v. Daily Telegraph* (1964) A.C. 234. See Paragraphs 91, 92 and 93 of *Gatley on Libel & Slander* (7th Edition).

Even the learned trial Chief Judge in his judgment opined thus:-

25 *“The plaintiff in my opinion therefore ought not to lead innuendo since the word will be understood in the way they are used.”*

The plaintiff did not plead innuendo and there was no finding to that effect by the learned trial Judge. The plaintiff did not cross-appeal to the Court of Appeal against the trial court’s finding on the issue. So whatever the Court of Appeal said in its majority judgment is nothing more than emphasizing the 30 finding of the trial court on the issue.

In issue 7 which is based on ground 7 of the grounds of appeal, it was contended by learned counsel for the appellant that while the Court of Appeal was right in holding that the article in Exhibit 1B is exclusively on Harvey Spencer Lewis and therefore the plaintiff could not sue for any alleged libel of and concerning him in Exhibit 1B, it was 35 wrong for the court to have fallen back on the said Exhibit and making a finding that the publications complained of by the plaintiff were justified. Learned counsel submitted that Exhibit 1B was not the offensive article but Exhibits 1 and 1A which contained the multiple libels which the plaintiff complained against.

Issue 9 is interwoven with issue 7 (supra) as it deals with libellous articles, their publications and the defence of justification. Since the issue of

the plaintiff's capacity to sue was neither canvassed in the trial court nor in the Court of Appeal, but only raised suo motu by the Court of Appeal in its majority judgment and commented therein without hearing learned counsel, it becomes a non-issue. I leave it at that.

Both parties agreed in their respective pleadings that the articles, the subject of complaint in this action were published of and concerning the plaintiff by the defendants. Both the trial court and the Court of Appeal found so in their respective judgments. I also agree with the findings in the majority judgment that there was no proper plea of defence of fair comment since particulars in support of these averments were not provided. The defence of qualified privilege was not pleaded either.

Paragraph II of the Further Amended Statement of Claim in which the defence of fair comment seems to have been raised, pleads thus -

*"In so far as the words complained of concerning the plaintiff and no other person consist of statements of facts; they are true in substance and in fact, and in so far as they consist of expression of opinion they are fair comments on the said facts which are a matter of public interest."*(Italics supplied).

There are no particulars to support the words italicised The Court of Appeal was therefore justified when it said -

*"There has been no opportunity to consider this case on the basis of the two defences mentioned above because the defendants did not plead qualified privilege at all and did not sufficiently or properly plead fair comment."*

See paragraph 1130 of Gatley on Libel and Slander (8th Edition) pp.470 where it is stated -

*"The defence of fair Comment must always be specially pleaded..... and must give particulars of the facts on which the comment is based "*

Learned counsel for the appellant made heavy weather of the statement in the majority judgment that-

*"Whatever was written of Lewis in the article cannot be a matter for which the present plaintiff can seek redress in libel. Harvey Spencer Lewis is not a party. Neither the plaintiff nor those who believe in him or his teachings can sue for any alleged libel of and concerning him. As I said, he wrote many books, two of which were referred to in the July/August 1984 article by Henry Awoniyi (1st defendant), namely, The mystical Life of Jesus and The Secret Doctrines of Jesus. I think it is these two books which evoked all the articles complained of"*

There is nowhere in the majority judgment of Uwaifo J.C.A., where he said he rejected Exhibit 1B. What he said as correctly quoted by learned counsel on page 35 of his main brief is -

*“Exh. 1B was not the offensive publication. Admittedly, the appellant could not have complained if the Respondents had only written Exh. 1B.”*

What the learned Justice did in fact was to quote from the two books referred to in the July/August 1984 to wit: *The Mystical Life of Jesus* and *The Secret Doctrines of Jesus* as Exhibits 38 and 26 respectively. The author was accepted by the  
5 plaintiff to be the emperor of AMORC and the source of its teachings.

What the learned Justice quoted and referred to are:-

*“In The Secret Doctrines of Jesus, (exh.26), Lewis wrote how Jesus formed and belonged to secret societies which used passwords, signs, symbols etc. and whose aims included political and other advantages. At pages  
10 26-30 he wrote inter alia:*

*“5 That such a secret society was formed by Jesus, and maintained in continuous functioning and action throughout the last years of the life of Jesus, and did not become extinct at the time of the Crucifixion and Ascension;*

15 *6. That the men and women bound by secret oaths into this secret society numbered one hundred and twenty, it not being limited to just His twelve Apostles or Disciples, and that this astonishing and startling fact is clearly stated in the New Testament;*

20 *7. That like any other secret society that had to guard carefully its teachings, principles, membership list, and ideals and purposes against political or aristocratic persecution, this mysterious body of divine students had several definite, fixed, continuously - used meeting places in Jerusalem with branches for occasional meetings in outlying districts;*

25 *8. That its principal meeting place or ‘Temple’ was well guarded and well protected known by a secret name, and known only to the tried and tested members - a fact also proved by very definite passages in the New Testament;*

30 *9. That the secret society also had passwords, signs, symbols, and other tokens by which the members recognised one another, and prevented spies or political persecutors from joining them or becoming acquainted with their secret work - which is also proved by quotations from the New Testament;*

35 *10. That when the members of this secret society were called to gether by Jesus on regular and special occasions they had to approach their secret meeting place one by one with the greatest care and be guided by secret signs which were changed from period to period;*

13. *That among the one hundred and twenty secret students were wealthy men of the country, and a few who possessed political influence and power, and who later came to the aid of Jesus in His hours of persecution and performed certain acts which they had all promised one another to do in case of such an emergency;*

5

15. *That this special secret society may or may not have been affiliated with the Essenes - another secret society with which Jesus was well acquainted;*

17. *That these secret teachings and practices are missing in the instructions of the Christian Church today, and because some of these secret truths have been discovered by those outside of the Christian Church, various sects and cults utilizing this secret knowledge have come into existence as rivals of the Christian Church.*

10

In the other book, the *The Mystical Life of Jesus* (exhibit 38), Lewis wrote a lot. I shall refer to only four chapters:

15

Chapter XI *Jesus Attains Mastership*. Here it is inferred that Jesus was initiated into mysticism of the Great White Brotherhood, a secret society in Egypt, and trained there. The connection between that Brotherhood and the Rosicrucian Order was put like this:

(a) “*The council meetings were held in one of the halls of the temple at Karnak in Luxor where Thothmes III had erected two obelisks on which were carved the famous cartouche which became the seal of the Brotherhood and which is used in Egypt and America today as the seal of the organisation known as the Rosicrucian Order.*” see pages 191 - 192.

20

(b) “*Out of the Monasteries, Schools, and temples of the Great White Brotherhood, and its branches, came most of the famous philosophers, teachers, priests and Avatars of the future, and today we find that in the branches of the organization known as the Rosicrucian Order, which name has become practically the exclusive worldly name for the organization .....*” see page 195.

25

30

Chapter XV - *The Truth About The Crucifixion*. Lewis says Jesus did not die on the cross and that through a secret, conspiratorial arrangement even with the State Authorities, it was ensured that He was still alive when He was brought down from the cross. He also says that Jesus did not exclaim “*My God, My God, why hast thou forsaken me?*” but that He was referring to the Brethren of the “*Temple at Helios where he had been initiated by saying “My Temple of Helois, My Brethren of Helois, why has thou forsaken me?”*” see page 263.

35

Chapter XVI - *The Secret Facts of the Resurrection*. Lewis says Jesus

did not die during the crucifixion but that he regained strength in the tomb and that by some arrangement the stone was thrown over by members of his secret society and they escorted him from the tomb. He says there was no question of resurrection.

5 Chapter XVII - The Unknown Life of Jesus. The Ascension of Jesus as known by Christians was denied. Lewis says:

*"The words of Jesus that He would go unto His Father, or return to His Father in Heaven, most certainly did not mean to indicate that His physical body would rise, nor did He intend to intimate precisely when or*  
 10 *how this return of His spiritual being would occur"*

The learned Justice then commented -

*"I do not think that the plaintiff can complain if it is called a secret society. Dr. (Mrs.) Juliana Unofa Okpapi (P.W.6) admitted in cross-examination: "I do not dispute the fact that the publications of AMORC described*  
 15 *Amorc as Secret Organisation but that is under the normal meaning of the word secret. You will be talking the truth if you said that according to Amorc publications it is a secret society. Amorc is not an occult organisation but it has occult teachings .....I am a student of occult knowledge taught by the Rosicrucian Order."* From what Lewis wrote in exhibit 26, he extolled se-  
 20 *cret society and associated Jesus with more than one. In exhibit 38, the Great White Brotherhood was one of such societies to which he said Jesus was initiated. He then traced the Rosicrucian Order to the said Brotherhood as one of its branches in America o today. "which name has become practically the exclusive worldly name for the organization;..... see page 195.*  
 25 *Kenneth U. Idiodi (P.W4) admitted in cross-examination that: "It is true that Amorc has secret signs, secret passwords and secret handclaps."He, as did Lewis, said Jesus was a Rosicrucian.*

*In many of its publications and pamphlets, AMORC is referred to as*  
 30 *a secret society although some effort is made to redefine what is meant by secret: See exhibit 25, Master Monograph, Page 1 Exh. 23 refers to "Rosicrucians - the name of a secret society organised in Wurtemberg, Germany in the 17th century whose aim was to vitalize and prolong human life."* Exh. 20 is the Constitution and Statutes of the Grand Lodge of the  
 35 *Ancient Mystical Order Rosae Crucis. Section 124 deals with membership and it says:*

*"Initiation: In initiations, the form of ritualistic work prescribed by the imperator, and none other, shall be used. All vestments, symbols, and paraphernalia of every kind and nature used in the initiatory ceremony,*

*shall be such as have been approved by the Emperor.” That seems reminiscent of the secret societies which Lewis alleged Jesus formed or was associated with. If they say that of Jesus and claim to be walking in the footpath of Jesus how can they deny that Amorc is a secret society? The Oxford Universal Dictionary illustrated, reprinted in 1969, Vol. II page 1826, defines secret society as “an organization formed to promote some cause by secret methods, its members being sworn to observe secrecy.” That was what the Great White Brotherhood, the acknowledged precursor of the Rosicrucian Order, was and did.*

*I think it is futile to try and deny that identity. I do not think it will be right to say that because the Federal Military Government banned public officers from membership of any secret society it necessarily follows that, that particular society support, bad per se.*

*It depends on what each secret society does as its functions and how it does them. In fact that evidence about the ban as well as Exhibit 39 (circular banning public officers from membership of secret societies) is inadmissible since it tends to show why a secret society may be objectionable or reprehensible in the Nigerian situation whereas no innuendo putting that special label on it was pleaded as an extrinsic fact: see Grubb v. Bristol United Press Ltd. (1963) 1 Q.B. 309 at 320-325 per Pearce L.J.; Lewis v. Daily Telegraph (1964) A.C. 234 at 281 per Lord Delvin.*

*As to whether the plaintiff is associated with occult power, one only needs to refer to exhibit 16 - Rosicrucian Digest Vol. 62 of February 1964. At page 35, it is advertised: “Write to a free discourse, Invoking Occult Power’ It is an intelligent, factual presentation of the fundamentals of esoteric science and arts’ “. It is also there stated, “If you would enlarge the visible, know the invisible so said a mystic centuries ago. Learn how the mystic directs nature’s forces, and you have an answer to the mystery of existence.” The same Dictionary mentioned above defines occult At page 1355 as follows: “Not apprehensible by the mind, recondite, mysterious. Imperceptible by the senses...Applied to physical qualities discoverable only by experiment, or to those whose nature was unknown and unexplained.. Of the nature of or pertaining to those sciences involving the knowledge or use of the supernatural (as magic, alchemy, astrology, theosophy, and the like) magical, mystical.” It is difficult not to associate AMORC with mysticism, astrology, knowledge or use of the supernatural through scientific studies and experiments and the use of astral projection from what is written in their various publications. If this is so, do these things not appear to non-members to be occultic? Dr. (Mrs.) Okpapi said: “Amorc is not an occult organisation but it has occult teachings”. How can the ordinary man differentiate an occult organization from a body which teaches occult, experiments and by implication practices or experiences it? The explanations offered by Amorc*

for the essence of their activities in order not to be misunderstood, may to some knowledgeable people, upon a generous view, appear highly intellectual; otherwise others may regard them, at the very least, as quite strained.”

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- 5 “Take for instance what Amorc calls astral projection. Professor Enyenehi (P.W.7) tried to describe it. Lewis in exhibit 38 page 277 puts it like this: “We find in the present day teachings of the Rosicrucians, in various lands, the simple laws which help men and women to attain that high degree of psychic development which enables them at will to project the psychic or soul consciousness to a distant point and become visible and even sensible to the higher faculties of persons who are likewise developed to the proper degree of receptivity.” In Exhibit 26 pages 208-209 he states: “We know today that to understand this great mystery of projection of consciousness and projection of self - or to take the first step in this mystical process - necessitates the mastery of many carefully prepared lessons dealing with fundamental divine and natural laws. There are those today who practice this process with reverence as well as profound intellectual understanding, and who know that it is not the result of the violation of any natural law as many would suspect, but the application of natural law with divine understanding along with the application of truly divine principles”(Emphasis added by me).

It is said that astral projection involves the conscious separation of the spiritual body from the physical body, all by study and experiments.

- It is known that such experiments are not done in scientific laboratories. How is any ordinary right-thinking person, a nonmember of Amorc, to know “it is not a violation of any natural law”, a feature Lewis appreciates many would suspect? It is either that such a person would say there is something fake about the claim or that it is achieved in violation of natural laws. I think even members of Amorc, to be fair, might have felt so before they joined. What people take to be a violation of natural laws would be regarded by them as occultic, magical, demonic, satanic, devilish and evil.”

- What the learned Justice did was to refer and quote from Exhibits 26 and 39 and such other publications of the author of Exhibits 26 and 39 and the evidence given by the plaintiff’s witnesses to arrive at the conclusion that the defendants were justified to describe the plaintiff as a secret society and satanic.

In his evidence in chief, P.W.A said:-

“The Rosicrucian Order is not an occult organisation if by that expression the defendants mean that we invoke or deal with spirits of people

*dead or alive."*

Under cross-examination, the witness said -

"Our lectures contain malphysical and mystical teachings, but not occult in the sense, the were (sic) occult used in our books.

We have secrets but are not secret organisation gest (sic) as we deal 5 with occult publication but, we are not an occult society.

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It is true that we believe in mental suggestion and we teach it. We believe in astral projection and we teach it. The book the Secret Doctrines of Jesus by H. Spencer Lewis in our publication i.e. Amorc publication" (i.e. Exh. 26)

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It is true that Amorc has secret signs, secret password and secret handclaps. We Amorc do teach the law cycles. It is contained in the Amorc book self mastery and fate with cycles of life by H. Spencer Lewis. (Exh. 27).

Also P.W.6 in his evidence in chief testified thus:-

15

*"I have read the books of Spencer Lewis. He was fonner imperator of the Amorc"*

Under cross-examination he further testified thus -

*"I do not dispute the fact that the publications of Amorc describe Amorc as Secret organisation but that is under normal meaning of the word 20 secret. You will be talking the truth if you said that according to the Amore publications it is a secret society. Amorc is not an occult organisation, but it has occult teachings I am a student of occult knowledge taught by the Rosicrucian Order.The soul personality does not die in a man living or dead. One could communicate with them"*

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P.W.7 while testifying admitted that projection into future happenings is part of the thing taught in Amorc. He said.

*"Projection is not hazardous to life because it enables us humans to see into the future, plan ahead and relate to other human beings."*

xxxxxxxxxxx"

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The source of all projections is God and I do not see how this can be regarded as satanic which according to the Bible is anti-God.

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Members of Amorc read occult literature used by Amorc. It will be possible to consider a member of Amorc as a student of occult as used by 35 Amore and not occult as used by the public who are not members of Amorc."

Both P.W.8 and P.W.9 also gave the following evidence

P.W.8 in his evidence said -

“As a Rosicrucian I do practice communication with a dead... Amorc teaches projection because conscious projection is not within the knowledge of every body. Unless one is taught it will not be done properly.

Under cross-examination, the witness admitted that in Amorc -

- 5 “We have teaching of occult laws, but we are not an occult organization.” P.W.9 admitted that Spencer Lewis was the one who gave Amorc its teachings and said under cross-examination -

“I am not a member of militia. I know what it is. It is the inner circle of the Order. I do not know its functions. I do not know whether it is the real  
10 secret organization in the Amorc. Within Rosicrucian hamnology you will be correct to say that Rosicrucian is a secret organization.”

From all these and the quotations referred to by the Court of Appeal in Exhibits 26 and 38, its conclusion was justified in describing the plaintiff as secret and satanic. It is satanic to say that Jesus Christ was a member of secret  
15 societies and an advocate of occult teachings. There is nothing secret in the message of Jesus to his people.

Where a defence of justification is pleaded, it is the broad and general impression conveyed by the publication complained of that has to be considered and not the meaning of each word complained of and taken out of  
20 context. The general applicable principle of law is that the words complained of and publicised must be construed as a whole. See *Okolo v. Midwest Newspapers Corporation & Ors.* (1977) 1 S.C. 33; *Lewis v. Daily Telegraph Limited* (1964) A.C. 234. See also paragraph 361 of *Gatley on Libel and Slander* (8th Edition) p. 154 where the author stated the Law thus -

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“361 Substantial justification sufficient. It is not necessary to prove the truth of every word of the libel. If the defendant proves that “the main charge, or gist, of the libel” is true, he need not justify statements or comments which do not add to the sting of the charge or introduce any matter by  
30 itself actionable. 33 “It is sufficient if the substance of the libellous statement be justified; it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified.”

35 I shall now proceed to deal with the cross appeal filed by the defendants in which the following grounds of appeal have been raised:-

“Ground 1: Error of Law

The learned Justices of the Court of Appeal, *Coram Uwai*fo J.C.A. in the majority judgment and *Kutigi, J.C.A.* in his dissenting judgment erred

in law in holding that publication of the libel was established by the Appellant/Cross Respondent.

*Particulars of Error*

(1) The plaintiff to succeed in a libel action must prove publication, as the cause of action is not writing of the libel but its publication. *Nsirim v. Nsirim* (1990) 3 NWLR (Pt.138) p. 285, *Ajakaiye v. Okandeji* (1972) 5 1 S.C. 92.

(2) By publication is meant the making known of the defamatory manner to some other person than the plaintiff - *Nsirim v. Nsirim* (supra).

(3) The plaintiff never offered legally admissible evidence of third parties to whom the alleged libel was published. 10

*Ground II: Misdirection of Law*

The court of appeal misdirected itself in basing their findings that publication was proved on the text of *Gatley on Libel* in the face of local judicial authorities to the contrary. 15

*Particulars of Misdirection*

(1) Opinion of text book writers and Academic Jurists irrespective of how brilliant and knowledgeable the authors are at best persuasive authority on the courts.

(2) The Courts are duty bound to uphold the decisions of higher Courts on an issue regardless of what text books say about them. 20

(3) The law is what the Court say it is until it is set aside by a higher court. Views of text book writers cannot override it- *Nsirim v. Nsirim* (1990) 3 NWLR (Pt.138) page 285.

(4) All the decisions referred to in *Gatley on Libel* by the Court of Appeal Justices are foreign cases which have no binding force in Nigeria judicial system. 25

*Ground III: Error of Law*

The Court of Appeal erred in law (*Coram Uwaifo J.C.A*) when it held that the fact that the issues of the magazine where the articles appear (Exhibits 1 - 1B) were produced by the National Library of Nigeria, was clear evidence of the publication of the articles to a third party. 30

*Particulars of Error of Law*

(1) The witness from the National Library of Nigeria did not give any evidence that he read the said publication and thus there was no evidence of their publication to him. 35

(2) The tendering of articles containing libellous publications in Court by a third party without more does not ipso facto establish publication. *Nsirim v. Nsirim* (1990) 3 NWLR (Pt. 138) page 285.

*Ground IV: Error of Law*

*The Court of Appeal erred in law in holding that the defences of fair comment and qualified privilege were not pleaded at all or sufficiently pleaded.*

*Particulars of Error of Law*

(1) *The facts and circumstance underlying the defences of fair comment and qualified privilege were succinctly set out in the Further Amended Statement of Defence of the Cross Appellant i.e. paragraphs 7,9, 11 of the Further Amended Statement of Defence.*

(2) *The pleadings of the Cross-Appellant in the afore-mentioned paragraphs contained such expressions as “fair comment” “matters of public interest” etc. which are the gist of the defences of fair comment and qualified privilege.*

(3) *The Appellant/plaintiff never sought for nor were denied particulars to the Cross-Appellants’ Further Amended Statement of Defence on the issue of fair comment and qualified privilege.*

(4) *No authority was cited for the proposition that particulars of the defence ought to have been pleaded.*

*Ground V: Misdirection of Law*

*The Court of Appeal Coram Uwaifo J.C.A. having held that the articles were justified as being truth, and also holding inter alia “It cannot be denied that religion is a matter of great public interest” and that “matters which are expressly impliedly submitted to public criticism or attention or for public consumption qualify for comment” misdirected itself in law in holding that the defences of their comment and qualified privilege were not made out.*

*Particulars of Misdirection*

(i) *The articles in question were based on the Christian truth vis-a-vis the teachings of the Appellant i.e. a religious matter.*

(ii) *It was a matter on which the public particularly Christians were entitled to be informed, and this was sufficiently pleaded in the cross-appellants’ Further Amended Statement of Defence.*

(iii) *The finding that the defence of fair comment and qualified privilege was not made out is inconsistent with the pleadings and evidence before the Court at first instance.*

(iv) *It is not necessary to use well worn cliches of “fair comment” and “qualified privilege” are used before these defences are sufficiently pleaded provided that from the pleadings those defences are made manifest.*

*Ground VI: The part of the decision of the Court of Appeal, Coram Kutigi and Uwaifo, J.J.C.A:*

(i) *That publication was established.*

(ii) *That the defences of Fair Comments and Qualified Privilege*

were not made out, is against the weight of evidence.”

In the respondent’s (plaintiff) brief to the Cross-Appeal, he raised the preliminary objection that:-

“3.03 *The Cross-Appellants did not obtain the leave of either the Court of Appeal or the Supreme Court to appeal against the concurrent findings or the unanimous decisions of the High Court and the Court of Appeal on proof of publication and failure of the defences of fair comment and qualified privilege aforesaid. The grounds of the cross-appeal pertaining to the findings or decisions of the trial High Court and the Court of Appeal are grounds of mixed law and facts in that, they related to the pleadings and evidence at the trial on which both the trial High Court and Court of Appeal made concurrent findings.*” 5 10

I have examined the grounds of appeal filed and I find the following grounds to be incompetent as they involved issues of mixed law and facts and which have been filed without leave of the Court of Appeal or of this Court to wit - grounds 1,3 and 5. They are accordingly struck out. Ground 6 had already been abandoned and struck out. 15

The Cross-Appeal is sustained by grounds 2 and 4 only of the notice of appeal.

A cross appeal is an appeal independent of the main appeal. But that notwithstanding, in case of cross appeal, Order 6 rule 6(2) permits a cross appellant to include in his brief for the original appeal, argument in respect of the cross appeal without leave. This is what the defendants/cross appellants did in this case, though inelegantly. 20

It is incorrect for learned counsel for the defendants to argue in support of issues 9 and 10 that the Court of Appeal ignored the principle laid by this Court in *Ajakaiye v. Okandeji & Ors* (1972) 1 S.C. 92. 25

Both the trial court and the Court of Appeal did not rely on the mere printing and publication of the issues of Today’s Challenge in which the articles complained of were printed and published. They relied on the evidence of some members of the plaintiff, other than the Registered Trustees of the Rosicrucian Order in reaching the finding that there was publications. See particularly the evidence of P.Ws 5, 6, 7 and 8. Being members of the plaintiff will not disqualify them from giving admissible evidence of the publication to them of the libels complained of by the plaintiff. The case of *Ajakaiye v. Okandeji* (supra), is not apposite and so the question of not following its ratio decidendi does not arise. As correctly pointed out by learned counsel for the plaintiff, the emphasis in that case was on “the evidence before him”. There is nothing wrong in citing opinion in accepted authoritative books in support of a submission as done in this case by the Court of Appeal. Gatley on Libel and 30 35

Slander is an authority on the subject and in my view the Court of Appeal was right to refer to it.

After all there is an unassailable concurrent finding of fact on the issue by the lower courts and which is here affirmed by me.

5 Ground 4 raised issue of law, and issues 12 and 13 are derived from it. I have covered these issues in the main appeal and have given my reasons for supporting the findings of the majority judgment of the Court of Appeal and I do not intend to repeat them. Suffice to say only that the defence of qualified privilege was not pleaded at all while that of fair comment was not sufficiently  
10 pleaded.

On the whole both the main appeal and the cross-appeal fail and are accordingly dismissed.

The judgment and orders of the Court of Appeal in the majority  
15 judgment are hereby affirmed. N1,000.00 costs for the defendants in respect of the main appeal and N 1.000.00 far the plaintiff in respect of the cross-appeal.

### **BELGORE JSC**

20 I read the lead judgment of my learned brother Wali, J.S.C. and I agree with him that this appeal lacks merit and that majority judgment of Court of Appeal ought to be affirmed. As the judgment has covered all the grounds I need add nothing except to adopt it as mine. I also dismiss this appeal and make the same consequential orders as in the lead judgment aforementioned.  
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### **MOHAMMED JSC**

I shall also, affirm the majority judgment of the Court of Appeal. My learned brother, Wali, J.S.C. has ably dealt with all the issues raised in this  
30 appeal, in the lead judgment which he kindly permitted me to read in draft. I agree with him that both the main appeal and the cross appeal must fail.

I abide by the orders made in the lead judgment on costs.

### **ADIO JSC**

35 I have had the opportunity of reading, in advance the judgment delivered by my learned brother, Wali, J.S.C., and I agree with it. The appeal and the cross-appeal did not succeed and I too dismiss them. I abide by the consequential orders, including the order for costs.

IGUHJSC

I have had the privilege of reading in draft the lead judgment just delivered by my learned brother, Wali, J.S.C., and I agree that both this appeal and the cross-appeal are devoid of substance and should be dismissed.

I wish however to make some comments by way of emphasis only with regard to one or two questions that arise for consideration in this appeal.

The first issue set out by the plaintiff/appellant/cross-respondent, hereinafter called the appellant, questions whether an appellant can without the leave of the Court of Appeal urge or be heard in support of any ground of appeal or additional ground of appeal not mentioned in the notice of appeal even though such ground or additional ground of appeal was filed within the time stipulated for appealing and, in particular, whether the additional grounds of appeal in this case filed in the trial Court without the leave of the Court of Appeal are valid. It is the contention of the appellant that the Court of Appeal erred in law in holding as valid, the additional grounds of appeal, namely grounds 12 to 23 which were filed by the defendants/respondents/cross-appellants, hereinafter called the respondents, without the leave of the Court of Appeal contrary to. Order 3 Rule 2 (5) of the Court of Appeal Rules, 1981.

For the respondents, it was submitted that an appellant from a High Court Judgment to the Court of Appeal on a final decision of such High Court has a constitutional right of appeal against such a decision within 3 months irrespective of whether such an appeal involves questions of mixed law and facts, law or facts alone. The additional grounds of appeal complained of were filed in the trial court well within 3 months of the High Court decision. The respondents therefore contended that it seemed highly ridiculous, as urged by learned appellant's counsel, that where an additional ground of appeal is filed against a final decision of the High Court within the statutory period prescribed for the filing of an appeal, the leave of Court must first be obtained.

I have given this matter a most careful consideration and it seems to me that where a proper appeal is filed, additional grounds filed within the time prescribed for appealing may rightly be deemed to form part of the original grounds of appeal filed along with the Notice of Appeal. In my view, no leave of the appellate Court appears necessary before such additional grounds of appeal may be validly entertained, so long as they are filed within the statutory period of 3 months allowed for appealing as of right against the decision of the High Court as provided for under the Constitution. I am however in entire agreement with the admonition of my learned brother, Wali, J.S.C., in the lead judgment that it will certainly be more tidy and orthodox in such circumstances for the appellant to move the Court for the amendment of his Notice of

Appeal by incorporating the additional grounds therein. See *Tukur v. Government of Gongola State* (1988) 1 NWLR (Pt. 68) 39.

In dealing with this issue, Uwaifo, J.C.A.; in his lead majority judgment with which Katsina - Alu J.C.A., agreed, stated as follows:-

5       *"In my view, the need to seek the discretion of this Court to add to or amend the grounds of appeal properly filed in the Notice of Appeal can only arise when the time within which an appellant may file his appeal has expired. If it has not, he can withdraw his first notice of appeal and file another. He can even file more notices and grounds of appeal in addition to*  
 10 *the earlier one and either use all or adopt one. In Tukur v. Government of Gongola State (1988) 1 NWLR (Pt. 68) 39, Oputa J.S.C. said at page 49:*

*"An appellant can validly withdraw one of two Notices of Appeal and then proceed to argue his appeal on the other remaining Notice of Appeal." Obaseki J.S.C. at page 54 explained further: "If more than one*  
 15 *notices are filed, the others may be superfluous but not invalid. All the notices combined have been in exercise of a right of appeal in the cause or matter. They are in exercise of one right of appeal. They may have stated different grounds if permissible in law*  
 ..... *Where several notices of appeal*  
 20 *have been validly filed, I do not see anything preventing an application for leave to consolidate them into one or for withdrawal of all except one."*

*It seems to me to follow that when a valid notice of appeal has been filed; an appellant can, instead of withdrawing it to file another in the Court*  
 25 *below within time or filing another in addition to the earlier one in order to introduce further or additional grounds of appeal, file in the lower court only the further or additional grounds of appeal in a document so headed provided he does so within the time prescribed for filing an appeal. In the present case it is three months. The appellants filed a valid notice of appeal*  
 30 *and later filed additional grounds of appeal both within three months from the date of the judgment appealed against. The additional grounds of appeal obviously formed part of the notice and grounds of appeal before the appeal papers were transmitted to the Court of Appeal. They did not have to wait for the appeal to be entered in this Court before asking for leave to file*  
 35 *the additional grounds of appeal. The additional grounds of appeal in the present case are part of the Notice of Appeal or are deemed to be so. The appellants, in my opinion, can be heard in respect of them in the circumstances".*

I agree entirely with the above observations of the Court of Appeal

and fully endorse the same.

There are next issues 5,7 and 9 which deal with the defence of justification raised by the respondents before the trial Court. In this regard, it must be mentioned that the publications complained of are set out in the lead judgment of my learned brother and it is unnecessary to reproduce them all over again. It suffices to state that P.W.6, Dr. (Mrs.) Juliana Unofa Okpapi admitted under cross-examination that she did not dispute the fact that publications of AMORC describe it as a secret society or organisation. She testified that AMORC is not an occult organization but that it has occult teachings. She claimed to be a student of occult knowledge taught by the Rosicrucian Order.

P.W.4, Kenneth U. Idiodi, for his own part, also admitted under cross examination that AMORC has secret signs, secret pass-words and secret hand-claps.”

There is also Exhibit 23 which refers to “Rosicrucians” as “the name of a secret society organised in Wurtembur, Germany in the 17th Century, whose aim was to vitalise and prolong human life.”

In the face of the above copious evidence, the question that must arise is whether it can be seriously contended that AMORC is not a secret society. I agree with the majority judgment of the Court of Appeal that it is futile on the part of the appellant to attempt now to deny its secret identity.

On the issue of whether the plaintiff is associated with “Occult power”, reference must be made to the evidence of P.W.6 to the effect that AMORC is not an occult organisation although it has” occult teachings.” This Witness added that she is a student of “occult knowledge” of which the teachers are the Rosicrucian Order. She testified that the soul personality does not die in a man living or dead.

According to her, one could communicate with them.

P.W.8 in his evidence said that as a Rosicrucian, he practices communication with the dead. There is also the evidence of P.W.4 to the effect that the appellant deals with occult publication but that it is not an occult society.

It does not seem to me necessary in this judgment to delve into any exercise in semantics as to whether a body admittedly concerned with occult teachings may seriously be said not to be associated with occultism. This apart, there is Exhibit 16 - Rosicrucian Digest, Vol. 62, No.2 of February, 1964. At page 35 therefore, it is advertised thus-

*“Write to a free discourse, Invoking occult power. It is an intelligent, factual, presentation of the fundamentals of esoteric science and arts..if you would enlarge the visible, know the invisible, so said a mystic centuries ago..... learn how the mystic directs nature’s forces, and you have an*

*answer to the mystery of existence.”*

The majority Judgment of the Court of Appeal in analysing the entire evidence above set out commented as follow:-

“It is difficult not to associate AMORC with mysticism, astrology,  
 5 knowledge or use of the supernatural through scientific studies and experi-  
 ments and the use of astral projection from what is written in their various  
 publications. If this is so, do these things not appear to non-members to be  
 occultic? Dr. (Mrs.) Okpapi said: “AMORC is not an occult organization  
 but it has occult teachings.” How can the ordinary man differentiate an  
 10 occult organization from a body which teaches occult experiments and by  
 implication practices or experiences it? The explanations offered by Amorc  
 for the essence of their activities in order not to be misunderstood, may to  
 some knowledgeable people, upon a generous view, appear highly intellec-  
 tual; otherwise others may regard them, at the very least, as quite strained.  
 15 If the defendants describe all the above phenomena as satanic, or  
 wicked or sinister or a subtle command backed by demons, they may be  
 forgiven because probably to them, those things are not apprehensible by  
 the mind or they are imperceptible by the senses, or not compatible with  
 their religious understanding.

20 It must be clearly remembered that it was the source of astral pro-  
 jection that the 1st defendant/appellant described as satanic.

There may be aspects of sarcasm here and there introduced by him  
 for good measure. But I dare say, speaking for myself, that he demonstrated  
 some skill in the first two articles under discussion.”

25 I need only say that upon a careful consideration of the above evi-  
 dence of the plaintiff’s witnesses together with the Exhibits which are AMORC  
 publications, I agree entirely with the majority judgment of the Court of Ap-  
 peal that it is extremely difficult in the circumstances not to associate AMORC  
 with mysticism. I also endorse their conclusion that the respondents to a large  
 30 extent sufficiently established their defence of justification of the alleged libel.  
 In the first place, it cannot be seriously suggested that there is anything  
 secret in the teachings of Jesus Christ which in my view are entirely public and  
 properly documented in the scriptures. Clearly to assert, as the plaintiff un-  
 equivocally did, that Jesus Christ was a member of secret societies and that he  
 35 was an advocate of occult teaching is, speaking for myself, satanic, sinister,  
 blasphemous and entirely unacceptable.

For the defence of Justification to succeed, it is not necessary to  
 prove the truth of each and every word comprised in the alleged libel. It  
 suffices if the defendant establishes that the main substance of the libellous

statement is true and justified. The defendants need not justify statements or comments which do not add to the sting of the charge or introduce any matter by itself actionable. See *Sutherland v. Stapes* (1925) A.C. 47. In my view the Court of Appeal was right when it concluded that the defendants substantially justified what they wrote both as to facts and comments as required by law by reference to AMORC publications and by reliance on the natural and ordinary meaning of the words used by them and in the context in which they were used in the articles complained of. See *Dumbo v. Idugboe* (1983) 1 SCNLR 29 at 51.

The majority judgment of the Court of Appeal continued as follows:-

“To members of Amorc, these would be untrue: but they are only a limited section of the community. In this regard it is well to recall what Green L.J. said in *Tolley v. Fry* (1930) 1 K.B. 467 at 479 that:

*“Words are not defamatory, however much they may damage a man in the eyes of a section of the community, unless they also amount to disparagement of his reputation in the eyes of right thinking men generally. To write or say of a man something that will disparage him in the eyes of a particular section of the community but will not affect his reputation in the eyes of the average right-thinking man is not actionable within the law of defamation.”* In the present case only a few members of Amorc testified as to disparagement or loss of reputation as a result of the said articles.”

I agree, as words, however much they may appear to damage a man in the eyes of only a section of the community, are not defamatory or actionable within the law of defamation, unless they amount to disparagement of his reputation in the eyes of the average right-thinking members of the public generally.

On the respondent’s cross-appeal, it seems to me established that the defence of qualified privilege was never pleaded at all nor was fair comment sufficiently or properly pleaded as required by law. In my view, the cross-appeal, like the main appeal, lacks substance and must be dismissed.

In the result and in the light of the above and the more detailed reasons contained in the lead judgment of my learned brother, Wali, J.S.C., I too, would dismiss this appeal as well as the cross-appeal. The majority judgment of the Court of Appeal is hereby affirmed and I endorse the order as to costs contained in the lead judgment.