

**SUPREME COURT OF NIGERIA**  
20TH JANUARY, 1995. SC.26/1992.  
**CORAM:-M.L.UWAIS,A.B. WALI, LL. KUTIGI,**  
**U.MOHAMMED,A.I.IGUH,JJSC.**

CROSS RIVER STATE  
NEWSPAPERS CORPORATION .....APPELLANT  
AND  
MR. J.L. ONI & 6 OTHERS .....RESPONDENTS

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*ACTIONS - Right to relief for libel - Of the joint plaintiffs - Whether arising out of same transaction.*

*APPEALS - Issue - Where not covered by any ground of appeal - Whether to be struck out.*

*APPEALS - Grounds of appeal - Question of mixed law and fact raised thereby - Need to obtain leave of court.*

*DEFAMATION - Stainless character - Whether one's general character must be stainless - Before he can successfully maintain an action in defamation.*

*LIBEL - Several persons jointly injured - As "the management staff" - Whether properly joined as co-plaintiffs.*

*LIBEL - Imputation of general damages - Once libel is proved - Injury to reputation for damage is presumed.*

*LIBEL - Purely personal action - Whether by joining as co-plaintiffs - This principle is offended.*

*PRACTICE & PROCEDURE - Joinder of parties - Where common questions of law and fact would arise - Whether plaintiffs were rightly joined as parties.*

*PRACTICE & PROCEDURE - Specific testimony of each plaintiff - Libel - Whether plaintiffs can establish their case without each testifying.*

### FACTS

The plaintiffs/respondents filed an action against the defendant/appellant before the Ibadan High Court claiming the sum of seven million naira as damages for libel and an injunction restraining the defendant from publishing similar libel. The publication was contained in the defendant's newspaper, the Nigerian Chronicle of 7th August, 1986, under the title - Tribune may be shut by Awo. The plaintiffs are all management staff of the African newspapers of Nigeria Ltd. publishers of the Nigerian Tribune founded by late Chief Obafemi Awolowo.

The defendant admitted the publication, denied the basis for the publication and set up the defences of justification and fair comment. Defendant called no evidence but rested its case on that of the plaintiffs. The trial court found for the plaintiffs and awarded N80,000 damages to each of them. Defendant's appeal to the Court of Appeal was dismissed but that court varied trial court's award to be one single award of N560,000 being damages to the plaintiffs. Defendant has further appealed to the Supreme Court to determine whether it was proper for all the respondents to join as co-plaintiffs and whether failure of each plaintiff to testify on his own behalf was fatal.

**HELD** (Unanimously dismissing the appeal per lead judgment of **IGUH JSC**)  
*Issue not covered by any ground of appeal*

1. An appellate court can only hear and decide on issues raised on the grounds of appeal filed before it and an issue not covered by any ground of appeal is incompetent and will be struck out. The third issue formulated by the appellant relates to no ground of appeal before this court. Accordingly it must be and is hereby struck out as incompetent. (P. 180 A)

*Ground of mixed law and fact - Need to obtain leave*

2. In the present case, the second ground of appeal, as I have pointed out, raises questions of mixed law and fact for which the appellant ought to have sought and obtained the leave of the Court of Appeal or this court before filing. The appellant did not obtain such leave. In the circumstance, the said second ground of appeal is hereby declared Incompetent and is accordingly struck out. Similarly the second issue which relates to the said incompetent second ground of appeal is hereby discountenanced and is also hereby struck

out.

*Right to relief for libel*

3. I have given a most careful consideration to the pleadings and the evidence before the trial court and it seems to me crystal clear from the findings of the trial court as affirmed by the court below that the right to relief as claimed by all seven plaintiffs is in respect of and arises out of the same transaction. This is because in cases of libel or slander, the phrase “the same transaction” is judicially interpreted to mean the same publication and, I am with respect, in entire agreement with this view.(P. 181 A)

*Several persons jointly injured*

4. Where several persons are jointly injured by a libel or slander, they may all join as co-plaintiffs in one action. The reference in the offending publication was to “the Management staff of the African Newspapers of Nigeria Ltd. and it is the unchallenged case of the respondents that they were at all material times the management staff of the company in issue. They were therefore all jointly injured by the offensive publication and were entitled in the absence of other disqualifying factors to be properly joined as co-plaintiffs in the suit. (P. 188 A)

*Joinder of parties - Common questions of law and fact*

5. It cannot be seriously argued that if separate actions were brought by the plaintiffs/respondents before the trial court, common questions of law and fact would not have arisen in respect of such suits. The most obvious of such common questions of law and fact are whether the words complained of were defamatory, whether they referred to the respondents and whether they were published by the appellant. In my view, the requirements for the joinder of all seven respondents as co-plaintiffs in the present case were fully established and I endorse the decision of the trial court as affirmed by the court below on the issue. (P. 188 C)

*Libel - Purely personal action*

6. An action for libel is said to be a purely personal action as the proper person to sue as plaintiff is the person directly defamed, and the proper person to be sued as defendant is the person who published the defamatory words or caused them to be published. The respondents by joining as co-plaintiffs did not offend against this principle as their case is that they were the persons

directly defamed by the appellant itself.(P. 189 C)

*Defamation - Stainless character*

7. It is not the law that one's general character or reputation must transparently be stainless, unimpeachable and without any blemish whatever before one may successfully maintain an action in defamation. There can be no doubt that a plaintiff who brings an action for defamation indirectly puts his reputation in issue and the defendant in a plea of justification or in mitigation of damages may give evidence that the plaintiff bears a bad character. Such evidence must however be confined to the particular trait in the plaintiffs character which is attacked by the libelous publication complained of. Accordingly it is immaterial, if the cause of action be an imputation of drunkenness, to show that the plaintiff is reputed to be dishonest, for the bad reputation which is pleaded in mitigation of damages must bear some relation to the libel complained of. (P. 189 G)

*Libel - Imputation of general damages*

8. The law is firmly settled that every libel is of itself a wrong in regard to which the law imputes general damages. If a plaintiff proves that a libel has been published of him without legal justification, his cause of action is complete and he needs not prove that he has suffered any resulting actual damage or injury to his reputation for such damage is presumed by the Jaw. The words complained of here are printed and dearly defamatory of the respondents. The publication is not in dispute mid is in fact admitted. It seems to me plain as the Jaw stands that damage must be presumed in the circumstances. (P. 190 C)

*Specific testimony of each plaintiff*

9. In the present case, only P.W.I, - one Peter Ajayi and the 3rd plaintiff testified on behalf of all the respondents. It is clear that the said respondents from the state of the pleadings, the evidence before the trial court and the law applicable thereto conclusively established a case of defamation against the appellant. The respondents were able to establish their claims without each testifying on his own behalf before the court and there is clearly noting fatal to their case in this regard.(P. 191 C)

**NOTABLE POINTS OF INTEREST**

**IGUH JSC**

***1. Effect of established case of misjoinder***

Even where, therefore, there is an established case of misjoinder or non-joinder of parties, the provisions of the said Order 8 Rule 19(1) of the High Court (Civil Procedure) Rules of Oyo State do stipulate that such misjoinder or non-joinder shall not defeat a cause of action. Besides, it is a settled principle of law that non-joinder or misjoinder of parties will not be fatal to the proceedings. (P. 189 A)

***2. No rule of law requiring physical presence of plaintiff in a civil suit***

There is no rule of law or practice which requires a plaintiff in a civil suit to be physically present in court or to testify if he can otherwise prove his case. Indeed, it ought to be mentioned that there is also no such rule which compels a defendant in a civil suit to appear before the court and to testify before he may successfully defend an action against him. Accordingly a plaintiff or a defendant can prove his case without presenting himself or testifying before the court. Indeed, judgment in an appropriate case may be entered in a suit on the pleadings only with or without the presence of the parties so long as they are duly represented. (P. 190 H)

E

**REPRESENTATION**

K.G. Agabi Esq. for the appellant.  
Akin Ige Esq. for the respondents.

F

**CASES REFERRED TO**

Attorney-General of Kwara State v. Olawale (1993) 1 N.W.L.R. (Part 212) 645  
Metal Construction (W.A.) Ltd. v. Migliore (1990) 1 N.W.L.R. (Part 125) 299  
Momodu v. Momoh (1991) 1 N.W.L.R. (Part 161) 130 at 157  
Management Enterprises v. Otusanya (1987) 2 N.W.L.R. (Part 55) 1  
Attorney-General of Anambra State v. Onuselogu Enterprises Ltd. (1987) 4 N.W.L.R. (Part 66) 547  
Oniah v. Onya (1989) 1 N.W.L.R. (Part 99) 514 at 529  
Western Steel Works Ltd. v. Iron Steel Workers Union of Nigeria (1987) 1 N.W.L.R. (part 49) 284  
Adelaja v. Fanoiki (1990) 2 N.W.L.R. (Part 131) at 148  
Ajibade v. Pedro (1992) 5 N.W.L.R. (Part 241) 257 at 267  
Motunwase v. Sorungbe (1986) 2 N.W.L.R. (Part 23) 484  
Arowolo v. Adimula (1991) 8 N.W.L.R. (Part 212) 753

- Amachree v. Newington (1952) 14 W.A.C.A. 87  
 Smurthwaite v. Hannay (1894) A.C. 494  
 Carter v Rigby & Co. (1896) 2 Q.B. 113  
 Robinson v. Merchant (1945) Q.B. 918  
 Chinweze v. Masi (1989) 1 N.W.L.R. (Part 97) 254 at 267  
 Anyaduba v. N.R.T.C. Ltd. (1992) 5 N.W.L.R. (Part 243) 535 at 565  
 Oshoboja v. Dada (1987) 3 N.W.L.R. (Part 66) 565 at 572  
 Fedayemi v. Shadipe (1986) 2 N.W.L.R. (Part 25) 736 at 745  
 Strand v. Lawson (1898) 2 Q.B. 44  
 Harwood v. Stateman (1929) 45 T.L.R. 237 C.A.  
 Oladeinde v. I.C. Oduwole (162) W.N.L.R. 41  
 English and Scottish Co-operative Properties v. Odhams (1940) 1 K.B. 440 at 455  
 Jones v. Jones (1916) 2 A.C. 481 at 500  
 British and French Bank Limited v. Solel-EI-Assad (1967) N.M.L.R. 40  
 Kehinde v. Ogunbunmi (1967) 1 All N.L.R. 309 OR (1968) N.M.L.R. 37

#### **STATUTES AND RULES REFERRED TO**

- Court of Appeal Act. Cap. 75 Laws of the Federation of Nig. 1990 S. 16.  
 High Court (Civil Procedure) Rules of Oyo State 0.8 rr 1, 2 & 10(1)  
 Constitution of the Fed. Rep. of Nig. 1979 S. 213 (3)  
 English Supreme Court Rules 0.16 r. 1, 0.15 r. 4  
 Supreme Court (Civil Procedure) Rules 0.4 r. 2

#### **LEAD JUDGMENT BY IGUH JSC**

In the Ibadan Judicial Division of the High Court of Justice, Oyo State, the plaintiffs, who are now the respondents, caused a writ of summons to issue against the appellant, who therein was the defendant claiming as follows-

*“(a) The sum of seven million Naira as damages for libel contained in the issue of the Nigerian Chronicle of the 7th day of August, 1986 on the rear cover under the title “Tribune May be Shut by Awo.” (b) an injunction restraining the defendant from further writing, printing or causing to be written, printed or circulated or otherwise publishing of the plaintiffs the said or similar libel. Pleadings were ordered in the suit and were duly settled, filed and exchanged.*

The facts of the case, briefly stated, are that the plaintiffs are the management staff of the African Newspapers of Nigeria Limited which prints and publishes the daily newspaper known as and called the “*Nigerian Tribune*.” The publication complained of is contained in the issue of the newspaper called the “*Nigerian Chronicle*” of the 7th August, 1986. The defendant is the printer and publisher of the said Nigerian Chronicle which has a large circulation throughout Nigeria.

The article in issue was published at the back page of the said edition of the Nigerian Chronicle under the heading, “*Tribune May be Shut By Awo*”, and runs thus -

*“The on-going staff recruitment exercise at the African Newspapers of Nigeria Limited, publishers of the Tribune Group of Newspapers, may be a barren one.*

*Sources close to the company said in Ibadan, that the founder of the company, Chief Obafemi Awolowo, is unhappy with the high incidence of corruption in the company, for many years now, particularly among the management staff of the company, and may shut it down. According to the sources, a re-organisation is imminent and top management staff could be affected by the purge exercise. It is suspected that the place might be closed down temporarily and a retired Judge appointed as the company’s managing director, when it re-opens.*

*Junior staff who wish to return would have to re-apply - Mr. Felix Adenaike, the current editor-in-Chief of the newspaper, is likely to be retained. Chief Awolowo is understood to have ordered that money be set aside to pay off the workers. The crises in Tribune started in 1984 when workers protested against alleged highhandedness of the editor in-Chief of the newspapers, Mr. Adenaike.”*

The defendant, by paragraph 2 of the amended Statement of Defence, admitted printing and publishing the article but denied that the same was published of the Plaintiffs, or of them in the way of their offices, or in relation to their conduct therein. Also by paragraph 9 of the same amended Statement of Defence, the defendant set up the defenses of justification and fair comment and facts were pleaded in support of both defenses.

At the subsequent trial, the 3rd plaintiff and one Mr. Peter Ajayi, a journalist and the Managing Director of the Sketch Press Limited, Ibadan testified for the plaintiffs who thereupon closed their case. Learned defendant’s counsel at that stage announced that he would call no evidence but would

rest his defence on the plaintiffs' case. Both counsel then addressed the court.

At the conclusion of hearing, the learned trial Judge, in a well considered judgment delivered on the 16th July, 1987 found for the plaintiffs and awarded damages assessed and fixed at N80,000.00 to each of them. B

Being dissatisfied with this judgment, the defendant appealed to the Court of Appeal, Ibadan Division which in a unanimous decision on the 19th of December, 1991 dismissed the appeal. The Court however invoked its powers under Section 16 of the Court of Appeal Act, Cap. 75, Laws of the Federation of Nigeria, 1990 to vary the several awards of 1480,000.00 to each of the seven plaintiffs to one single award of N560,000.00 being damages in their favour. C

The defendant has now further appealed to this court against the said decision of the Court of Appeal. I shall hereinafter refer to the plaintiffs and the defendant in this judgment as the respondent and the appellants respectively. D

Two grounds of appeal were filed by the appellant as follows -".  
*ERROR IN LAW*

*The learned Justices of the Court of Appeal erred in law when they held that it was proper for the Respondents to join their several causes of action and claim damages jointly, for Libel. PARTICULARS OF ERROR* E

(a) *Libel being a right of action arising from alleged injury to a person's reputation, each of the plaintiffs had a separate cause of action arising from any allegation of injury to such reputation,* F

(b) *The Plaintiffs not having a common reputation or any legal interest in each others' reputation cannot claim damages jointly for any injury to the reputation of any one or all of them.*

(c) *Even if Order 8, Rule 2 of the High Court (Civil Procedure) Rules of Oyo. State permits joinder of causes of action (which is denied) the conditions for such joinder as enunciated by the learned justices themselves did not exist in the instant case. 2. ERROR IN LAW* G

*The learned Justices of the Court of Appeal erred in law when they upheld the damages awarded by the trial Court in spite of the fact that that Court had taken into consideration extraneous factors such as the status and social standing of the Respondents not being matter's in evidence.* H

*PARTICULARS OF ERROR*



(a) *The Respondents did not call any evidence as to their status or social standing at the trial.*

(b) *The award of N 560,000.00 was high and arbitrary, as from all indications the sole aim of the Respondents was to vindicate themselves."*

I think it should be mentioned that the appellant, on the 9th January, 1992, filed before the court below, an application for a stay of execution of its judgment pending the determination of the appeal and for leave to file a further ground of appeal on a question of fact. The proposed further ground of appeal on a question of fact for which leave was sought reads as follows –

C “MISTAKE OF FACT

*The Court of Appeal erred when it held that the 3rd respondent was libeled in the publication complained of even though he was particularly singled out and exempted from the general statements in the publication."*

D At the hearing of the application, however, on the 11th May, 1992, the appellant's learned counsel abandoned the aforesaid prayer for leave to file the further ground of appeal and the same was accordingly struck out. There are thus only two grounds of appeal in this appeal and these are as already set out above.

E Pursuant to the rules of this court, the parties, through their respective counsel, filed and exchanged their written briefs of argument. In the appellant's brief, the following three issues are set out as arising for determination, namely:-

F “1. *Whether in the circumstances of the case, it was proper for all the Respondents to join as Co-Plaintiffs in the action and whether the failure of each Respondent to testify on his own behalf was fatal.*

2. *Whether the award to each Respondent was right in spite of their having all together claimed a single sum and there being no evidence upon which the damage suffered by each Respondent could be assessed and whether the award so made was not excessive.*

G 3. *Whether the trial Court was right in holding that the 3rd Respondent was defamed by the publication complained of.*

H The respondents, for their part, gave notice of preliminary objection in their own brief. They contended therein that the second and third issues raised by the appellant are both incompetent and should be struck out. They argued that the second ground of appeal with its particulars raises questions of mixed law and fact in so far as the award of damages by the trial court is put in issue. They contended that the appellant ought to have sought and obtained the leave of the court below or of this court before filing the same. This

it failed to do. In the circumstance, they submitted that the said second ground of appeal is incompetent and ought to be struck out.

The respondents further argued that the second issue formulated and canvassed by the appellant in its brief in so far as it relates to the second ground of appeal which is incompetent is misconceived and ought to be struck out as well. In this regard, they relied on the provisions of section 213(3) of the 1979 Constitution and the decisions in Attorney-General of Kwara State and others v. Raimi Olawale (1993) 1 N.W.L.R. (Part 212) 645 and Metal Construction W.A.) Ltd, v. Migliore (1990) 1 N.W.L.R. (Part 125) 299. B

On the third issue formulated by the appellant, the respondents argued that this relates to no ground of appeal before the court and consequently ought to be discountenanced and struck out. They called in aid the decision in Momodu v. Momoh (1991) 1 N.W.L.R. (Part 161) 130 at 157 in this regard. They pointed out that the proposed further ground of appeal on a question of fact pursuant to which the said third issue was-formulated was subsequently withdrawn and accordingly struck out by the court below on the 11th day of May, 1992. They thus submitted that in view of the matters hereinbefore argued in their notice of preliminary objection; only one issue arises for determination in this appeal. C D

This issue, they identified as follows:- E

*“Whether or not in the circumstances of the case, it was permissible for the seven plaintiffs’ who alone comprised the Management Staff of African Newspapers of Nigeria Limited to have co-joined in the suit against the defendant for libel contained in the same publication.” F*

Before us on the 24th October, 1994, when this appeal came up for hearing, learned counsel for the respondents, Akin Ige Esq. adopted his brief of argument and duly argued his preliminary objection as above indicated. He urged the court to pronounce issues 2 and 3 as formulated in the appellant’s brief of argument as incompetent and liable to be struck out. G

Learned counsel for the appellant, K.G. Agabi Esq. in his reply conceded that the third issue is not supported by any of the appellant’s grounds of appeal. He therefore had no option than to abandon that issue. H

I must say that learned appellant’s counsel is quite right in his concession to the respondents’ arguments in respect of this third issue, The reason is obvious. This is because it cannot be over-emphasized

180 CRS Newspapers Corp. v. Oni (1995) 1 KLR Iguh JSC  
that an appellate court can only hear and decide on issues raised on the  
grounds of appeal filed before it and an issue not covered by any ground  
of appeal is incompetent and will be struck out. See *Management En-*  
*terprises v. Otusanya* (1987) 2 N.W.L.R. (Part 55) 179, *Attorney-*  
*General of Anambra State v. Onuselogu Enterprises Ltd* (1987) 4  
B N.W.L.R. (Part 66) 547, *Oniah v. Onyia* (1989) 1 N.W.L.R. (Part 99)  
514 at 529, *Western Steel Works Ltd, v. Iron Steel Workers Union of Nigeria*  
and *Another* (1987) 1 NWLR (Part 49) 284 and *Adelaja v. Fanoiki & Another*  
(1990) 2 NWLR (Part 131) 137 at 148. The third issue formulated by  
C the appellant relates to no ground of appeal before this court. Accord-  
ingly it must be and is hereby struck out as incompetent. See too *Momodu*  
*v. Momoh* (1991) 1 N.W.L.R. (Part 161) 130 at 157.

Turning now to the second issue, it was the initial argument of  
learned counsel for the appellant that the preliminary objection raised  
D against the same-seemed ill-founded and misconceived. In the course  
of his reply, however, it became clear to him and he did concede, again quite  
rightly in my view, that the second ground of appeal with its particulars does  
in fact raise issues of mixed law and fact in so far as the factual basis upon  
which the award of damages to the respondents was put in issue.

E It seems to me plain that ground two of the appellant's grounds  
of appeal when it questioned the quantum of the trial court's award of  
damages as affirmed by the court below on the ground that the trial  
court had taken into consideration extraneous factors without support-  
F ing evidence clearly raised issues of mixed law and fact. The court, in  
effect, was being invited under that ground of appeal to investigate the  
existence or otherwise of certain facts upon which the award of dam-  
ages to the respondents was allegedly based. Such ground of appeal  
without doubt, is a ground of mixed law and fact. So too, a ground of  
G appeal, as in the present case, which challenges the findings of fact  
made by the court below or involves issues of law and fact can only be  
validly argued with the leave of either the Court of Appeal or the Supreme  
Court. See *Ajibade v. Pedro* (1992) 5 N.W.L.R. (PART 241) 257 at 267, *Failure to*  
*obtain such leave where necessary renders the grounds of appeal concerned*  
H *incompetent and liable to be struck out. See Motunwase v. Sorungbe* (1988) 5  
N.W.L.R. (Part 92). *Ogbechie v. Onochie* (No. 1) (1986) 2 N.W.L.R. (Part 23) 484.  
*Metal Construction (W.A.) Ltd, v. Migliore* (1992) 1 N.W.L.R. (Part 129) and  
*Arowolo v. Adimula* (1990 8 N.W.L.R. (Part 212). 753.

In the present case, the second ground of appeal, as I have pointed out, raises questions of mixed law and fact for which the appellant ought to have sought and obtained the leave of the Court of Appeal or this Court before filing. The appellant did not obtain such leave. In the circumstance, the said second ground of appeal is hereby declared incompetent and is accordingly struck out. Similarly the second issue which relates to the said incompetent second ground of appeal is hereby discountenanced and is also hereby struck out. This leaves the court with only the first issue formulated by the appellant for determination.

A close study of the question posed in the respondents' brief shows that it is sufficiently encompassed by the surviving issue raised by the appellant in its brief of argument. Accordingly I shall in this judgment adopt the said surviving issue set out in the appellant's brief as set out above.

At the hearing of the appeal, both learned counsel who appeared for the parties adopted and relied on their written briefs of argument. They also proffered oral arguments in further elucidation of the submissions contained in their written briefs.

The main thrust of the appellant's complaint on the first issue is that the respondents erred in law to have joined as co-plaintiffs in the same action and that failure of each respondent to testify on his own behalf was fatal to his claim. It was the argument of learned counsel for the appellant that several causes of action were erroneously joined together in one single action by the seven respondents who, as plaintiffs, claimed together a bulk sum of 147,000,000.00 against the appellant for alleged libel. He strenuously argued that this is a typical case of misjoinder of parties and of several causes of action which in the circumstances of this case is not permissible in law. He explained that the respondents together instituted one single suit in their claim. This, the respondents did because -

(1) *They were at all material times the management staff of the African Newspapers of Nigeria Ltd.*

(2) *They were libeled in the publication and*

(3) *They were allegedly libeled by the same defendant.* Learned counsel submitted that the above are not sufficient grounds for joinder of several causes of action.

The court was referred to the provisions of Order 8 Rule 1 of the High Court (Civil Procedure) Rules, Cap. 46, Volume 3, Laws of Oyo State 1978 upon which the lower courts relied in upholding the joinder. Learned counsel argued that the expression "*all persons may be joined*" appearing in the said

rule implies that the joinder is to be effected by a person or persons other than the plaintiffs themselves. He therefore submitted that the respondents should have sought and obtained the leave of court before joining in one action. He further submitted that even if the joinder envisaged is that of persons and causes of action, such joinder would only be permissible where the causes of action arose from the same transaction and involves common questions of law and fact. The relief sought must also avail the co-plaintiffs altogether and not each of them separately,

Learned counsel stressed that the respondents failed to show at the trial that common questions of fact were involved in the suit. He claimed that they were only content to show that their causes of action arose from one transaction. He argued that where, as in the present action, private character and reputation are in question, these can under no circumstances be common to all the respondents as no two characters and reputation are exactly identical. He conceded that certain questions of fact might be common to all the respondents but that character and reputation could not be common to all of them. He contended that whether a particular respondent was defamed would depend on his character and reputation at the material time and that it was not possible for a plaintiff to succeed in an action involving his character and reputation without himself going into the witness box and submitting himself to cross-examination. Learned counsel drew the attention of this court to the decisions in *Amachree and others v. Nwington (1952) 14 W.A.C.A. 87*, *Smurtwaite and other v. Hannav (1894) A.C. 494*, *Carter v. Rigby and Company (1896) 2 Q.B. 113* and *Robinson v. Merchant (1945) Q.B. 918* and submitted that where the causes of action of several plaintiffs are separate and distinct, such causes of action cannot be joined in one single action. He referred to the provisions of Order 16 Rule 1 of the English Supreme Court Rules and submitted that these merely dealt with joinder of parties to an action and were not concerned with the joinder of several causes of action. He was of the view that the courts below were in error by failing to follow the above decisions. He conceded that the reliefs claimed arose out of the same transaction and involved common questions of law but argued that common questions of facts were not involved. He therefore urged the court to set aside the judgment of the lower court in its entirety and to substitute in its place an order of non-suit.

Learned counsel for the respondents in his reply submitted that in the circumstances of the case, the respondents were all properly joined as

co-plaintiffs in the action. At the time the writ of summons was taken out on the 9th September, 1986, in the High Court of Oyo State, the applicable rules of court were the High Court (Civil Procedure) Rules 1978. He observed that the provisions for joinder of several person as plaintiffs in one action are contained in the said Order 8 Rule 1 of the High Court (Civil Procedure) Rules of Oyo State. This rule provided that all persons could join in one action as plaintiffs, in whom any right to relief in respect of the same transaction is alleged to exist whether jointly, severally or in the alternative, where if such persons brought separate actions any common question of law or fact would arise. He stressed that the publication complained of referred to the “*management staff*” of the African Newspapers of Nigeria Ltd. and that it was not controverted that the respondents were the management staff referred to. He submitted that in view of the fact that all seven plaintiffs were libeled in the same publication by the same defendant, common questions of law and fact must necessarily arise in the suit. There existed, therefore, a situation in which the 7 respondents would have filed seven separate suits against the same defendant in respect of same libel contained in the same publication. He maintained that the court has a duty to prevent unnecessary and undesirable multiplicity of suits where all such suits can be settled in one action. He stressed that it is for this reason that the provisions of Order 8 Rule 1 of the High Court (Civil Procedure) Rules of Oyo State were made. He cited in support, the decision of this court in *Chinweze v. Masi* (1989) 1 N.W.L.R. (part 97) 254) at 267.

Learned respondents’ counsel further argued that even if there was misjoinder of parties, which he did not concede, Order 8 Rule 10(1) of the said Rules provides that such misjoinder would not defeat a cause of action. In this regard he relied on *Anvaduba & Another v. N.R.T.C. Ltd.* (1992) 5 N.W.L.R. (Part 243 535 at 656. He referred the court to the 8th Edition of *Gatley on Libel and Slander*. Article 922 which states

“Where several persons are jointly injured by libel or slander, they may all join as co-plaintiffs in an action” and contended that the respondents having been jointly injured by the publication in issue were all properly joined as co-plaintiffs in the suit. He further submitted that it is a settled principle of law that joinder of parties is generally by the court where the right to relief is in respect of or arises out of the same transaction and there is a common question of law or fact to be decided. He cited in support the decisions in *Oshoboia v. Dada* (1987) 3 N.W.L.R. (part 66) 565 at 572 and *Fadavemi*

v. Shadioe (1986) 2 N.W.L.R. (Part 25) 736 at 745.

It was finally submitted on behalf of the respondents that the distinct and separate nature of their reputation which the appellant unduly harped on is of no significance or relevance in this appeal, The respondents' contention is that libel is always actionable without proof of special damage and that there is no legal requirement on the part of a successful plaintiff to prove any actual damage or injury to his reputation. This is because the law presumes the palintiff's reputation as injured or damaged once the libel complained of is established. Learned respondents' counsel in conclusion submitted that this appeal turns on mere technicality as neither the ground of appeal nor the arguments advanced in support of it touch on the true merits of the case which clearly favour the respondents. He urged the court to dismiss this appeal.

For a better appreciation of whether or not it was proper for all the respondents to be joined as co-plaintiffs in the same suit, it is necessary to examine the provisions of Order 8 Rule 1 of the High Court (Civil Procedure) Rules, Cap. 46, Volume 3, Laws of Oyo State, 1978 which, without doubt, are the applicable rules of court in force at the time the writ of summons in the suit was issued. I may add that it is upon these provisions that the lower courts relied in justifying the joinder.

Order 8 Rule 1 of the High Court (Civil Procedure) Rules of Oyo State provides thus -

*"All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transaction is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate actions, any common question of law or fact would arise; provided that, if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial of the action, the court or a Judge may order separate trials, or make such order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief., for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the court or a Judge in disposing of the costs shall otherwise direct."*

The first point that must be made here is that the joinder of persons or parties in one action as plaintiffs as well as the joinder of causes of action are clearly permissible under the provisions of order 8 Rule of 1 of the High

Court (Civil Procedure) Rules, 1978 of Oyo State. Two limiting factors or conditions must however be established by such plaintiffs to qualify for this joinder. These are -

(1) *That the right to relief is in respect of or arises out of the same transaction or series of transactions; and*

(2) *That if separate actions were brought by such persons, a common question of law or fact would arise.*

The establishment of the above two conditions for joinder notwithstanding, Order 8 Rule 1 has in the overall interest of the fair administration of justice further stipulated a proviso as follows:-"..... *that, if upon the application of any defendant, it shall appear that such joinder (of several plaintiffs) may embarrass or delay the trial of the action, the court or a Judge may order separate trials, or make such order as may be expedient...*"

I will return later in this judgment to these provisions of Order 8 rule 1 aforementioned. It suffices for the time being to point out that these provisions are in pari materia with the provisions of the amended Order 16 Rule 1 of the English Supreme Court Rules which came into force from the 26th October, 1896. I will now examine the oft-quoted case of Arnachree and others v. Newington. *supra*, which learned counsel for the appellant heavily relied upon.

In Amachree and 8 others v. Newington, *supra*, nine appellants as co-plaintiffs sued the respondent claiming a single amount as damages for assault and false imprisonment. In the course of the trial, learned Counsel for the plaintiffs was invited by the trial judge to consider whether it was competent for the plaintiffs to bring one action. Learned counsel was of the view that this was competent as the plaintiffs were all detained at the same time and in the same place. At the end of the case, the learned trial judge non-suited the plaintiffs on the ground that it could not be said that they had jointly together a ground for instituting a suit for the damage each had suffered separately.

On appeal by the plaintiffs to the West African Court of Appeal, it was held that Order 4 Rule 2 of the Supreme Court (Civil Procedure) Rules which was applicable at all material times permitted joinder of plaintiffs but not joinder of causes of action. There was no joint tort, for the damage caused to each plaintiff could only be personal to each of them. The court therefore held that the suit was wrongly constituted and that a non-suit was the proper order.

The said Order 4 Rule 2 of the Supreme Court (Civil Procedure) Rules on which Amachree's case was decided provided as follows:-



*“Where a person has jointly with other persons a ground for instituting a suit, all these other persons ought ordinarily to be made parties to the suit.*

B Learned appellant’s counsel also relied on the decision of the House of Lords in *Smurthwaite and others v. Hannav* (1894) A.C. 494 which was followed by the West African Court of Appeal in the case of *Amachree and other v. Newington*. *supra*. It is however of importance to note that the decision in *Smurthwaite v. Hannay* was, without doubt, based on the old Order 16 C Rule/1 of the English Supreme Court Rules which was applicable in England before the 26th October, 1896 aforesaid. This rule provided as follows -

*“All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of D transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate actions, any common question of law or fact would arise.”*

A close study of the amended order 16 Rule 1 of the Supreme Court E Rules (England), as I have observed earlier on, shows that the provisions are in *pari materia* with those of order 8 Rule 1 of the High Court (Civil Procedure) Rules of Oyo State. The amended Rules is now order 15 Rule 4 of the English Supreme Court Rules. In my view, it can safely be said that Order 8 Rule 1 of the High Court (Civil Procedure) Rulers of Oyo State which was applicable a F the time of the institution of this action on appeal and the amended Order 16 Rule 1 of the English Supreme Court Rules clearly permit joinder of plaintiffs as well as joinder of causes of action but only in the circumstances and under conditions which I have already indicated. The position can be seen to be very much unlike what the Nigerian and the English rules of Court were at all G material times upon which the decision in *Smurthwaite v. Hannay* which was rightly followed in *Amachree v. Newington* was given.

Briefly, therefore, whereas Order 4 Rule 2 of the old Supreme Court (Civil Procedure) Rules and the old Orders 16 Rule 1 of the English Rules of the H Supreme Court prior to the 26th October, 1896 only permitted joinder of plaintiffs and were not concerned with the joinder of causes of action; Order 8 Rule 1 of the High Court (Civil Procedure) Rules of Oye State and Order 16 Rule 1 of the amended Rules of the Supreme Court of England permit joinder of plaintiffs as well as joinder of causes of action and here lies the difference in the

applicable rules of court before and after the decision in *Smurthwaite v. Hannav* which was followed in *Amachree v. Newington*. I am in total agreement with the observation of the Court below per the lead judgment of Ogwuegbu, J.C.A., as he then was, to the effect that Order 8 Rule 1 of the High Court (Civil Procedure) Rules of Oyo State and the amended Order 16 Rule 1 of the English Supreme Court Rules which are identical in material respects went a long way and covered a larger scope than the 1 old Nigerian and the English Rules of court upon which the decisions in *Smurthwaite v. Hannav* and *Amachree and others v. Newington*. *supra* were based. B

It must however be emphasized that under the said Order 8 Rule 1 of the High Court (Civil Procedure) Rules of Oyo State, the two factors already maintained must be established to permit the necessary joinder of several plaintiffs or causes of action. Therefore, the right to relief alleged to exist in each plaintiff should be in respect of or arise out of the same transaction or series of transactions and, secondly, if separate actions were brought by such co-plaintiffs, a common question of law or fact would arise. So in *Strand v. Lawson and others* (1898) 2 Q.B. 44, the Court of Appeal (England) applying the amended Order 16 Rule 1 of the English Supreme Court Rules held on the facts of the case that the plaintiff was not entitled under the said amended Order 16 Rule 1 to join two causes of action in one suit as the right to relief claimed by the plaintiff firstly in his personal capacity and secondly, as representing the shareholder, did not arise out of the same transaction or series of transactions within the meaning of the rule. Accordingly, where a defendant published defamatory words of two plaintiffs in the same libel or slander, and “*some common question of law or fact would arise*” if separate actions were brought by the two plaintiffs against the defendant, the two plaintiffs can join in one action, for their respective rights to relief arise out of the same publication. See *Harwood v. Statesman* (1929) 45 T.L.R. 237 C.A. I should, perhaps, finally mention that even if the requirements for joinder under Order 8 Rule 1 are fulfilled, but it appears to the court that such joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient. I will now apply the terms of Order 8 Rule 1 to the appeal under consideration. C D E F G

I have given a most careful consideration to the pleadings and the evidence before the trial court and it seems to me crystal clear from the findings of the trial court as affirmed by the court below that the right to relief as claimed by all seven plaintiffs is in respect of and arises out of the same transaction. This is because in cases of libel or slander, the phrase “*the same* H

*transaction*” is judicially interpreted to mean the same publication and, I am with respect, in entire agreement with this view. See too *Smith v. Foley* (1912) Victorian Law Rep. 314.

In the second place, where several persons are jointly injured by a libel or slander, they may all join as co-plaintiffs in one action. The reference in the offending publication was to “*the Management staff*” of the African Newspapers of Nigeria Ltd. and it is the unchallenged case of the respondents that they were at all material times the management staff of the company in issue. They were therefore all jointly injured by the offensive publication and were entitled in the absence of other disqualifying factors to be properly joined as co-plaintiffs in the suit.

Thirdly, it cannot be seriously argued that if separate actions were brought by the plaintiffs/respondents before the trial court, common questions of law and fact would not have arisen in respect of such suits. The most obvious of such common questions of law and fact are whether the words complained of were defamatory, whether they referred to the respondents and whether they were published by the appellant. In my view, the requirements for the joinder of all seven respondents as co-plaintiffs in the present case were fully established and I endorse the decision of the trial court as affirmed by the court below on the issue. See too *Oshoboia v. Dada* (1987) 3 N.W.L.R. (Part 66) 565 at 572 and *Fadavemi v. Shadipe* (1986) 2 N.W.L.R. (Part 25) 736 at 745. To hold otherwise would create the situation in which the seven respondents, as plaintiffs, would have filed seven separate suits against the same defendant in respect of the same libel contained in the same publication - a situation which, in my view, is not entirely desirable or warranted and would naturally amount to an unnecessary multiplicity of actions which ought not to be encouraged. See *Chinweze v. Masi* (1989) 1 N.W.L.R. (Part 97) 254 at 267.

On the other hand, the court as I have already pointed out, has power under Order 8 Rule 1 to order separate trials upon the application of any defendant if it considers that the joinder may embarrass or delay the trial of the action. It is noteworthy that no such application as made by the appellant in the present case.

In this connection, reference may also be made to the provisions of Order 8 Rule 19(1) of the High Court (Civil Procedure) Rules of Oyo State, 1978 which stipulate as follows:-

*No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”*

Even where, therefore, there is an established case of misjoinder or non-joinder of parties, the provisions of the said Order 8 Rule 19(1) of the High Court (Civil Procedure) Rules of Oyo State do stipulate that such misjoinder or non-joinder shall not defeat a cause of action. 3 Besides, it is a settled principle of law that non-joinder or misjoinder of parties will not be fatal to the proceedings. See J.F. Oladeinde & Another v. I.O. Oduwoie (1962) W.N.L.R. 41. The court may however order a retrial in appropriate case J.S. Ekpre & others v. Aforiie & Anothr 1972) 1 All N.L.R. (Part 1) 220. See too Anvaduba and Another C v. N.R.I.C. Ltd (1992) 5 N.W.L.R. (Tart 243) 535 at 656. But as I have repeatedly observed, no case of misjoinder, whether of parties or causes of action, has been established in the present case. B C

It was further submitted on behalf of the appellant that an action for libel is a personal action for the vindication of one's character and reputation and that each of the plaintiffs/respondents was in court to defend his reputation. Their reputations, it was argued, did not stand or fall together. Some could succeed while others might fall. It was then contended that the issue to good reputation was not common to all the respondents. D

My simple answer to the above submission which learned appellant's counsel so strenuously argued is that an action for libel is said to be a purely persona] action as the proper person to sue as plaintiff is the person directly defamed, and the proper person to be sued as defendant the person who published the defamatory words or caused them to be Wished. See Gatlev on Libel and Slander. 7th Edition. Article 851. the respondents by joining as co-plaintiffs did not offend against this principle as their case is that they were the persons directly defamed by e appellant itself. No doubt, the respondents had their separate and distinct reputations as was pointed out by the appellant, the issue is in my view, entirely irrelevant and immaterial in the present case. E F G

I think the point must be made that it is not the law that one's general character or reputation must transparently be stainless, unimpeachable and without any blemish whatever before one may successfully maintain an action in defamation. There can be no doubt that a plaintiff who brings an action for defamation indirectly puts his reputation in issue and the defendant in a plea of justification or in mitigation of damages may give evidence that the plaintiff bears a bad character. Such evidence must however be confined to the particular trait in the plaintiffs character which is attacked by the libel- H

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publication complained of. Accordingly it is immaterial, if the cause of action be an imputation of drunkenness, to show that the plaintiff is reputed to be dishonest, for the bad reputation which is pleaded in mitigation of damages must bear some relation to the libel complained of. See *Speidel v. Plato Films Ltd* (1961) A.C. 1090. There was no attempt on the part of the appellant in this case to establish that the respondents or any of them was guilty or even involved with any high incidence of corruption in their management of the African Newspapers of Nigeria Ltd.

Secondly, the law is firmly settled that every libel is of itself a wrong in regard to which the law imputes general damages. If a plaintiff proves that a libel has been published of him without legal justification, his cause of action is complete and he needs not prove that he has suffered any resulting actual damage or injury to his reputation for such damage is presumed by the law. See *Yourssouff v. M.G. Pictures Ltd* (1934) S.O.T.L.R. 581 at 584 and *English and Scottish Co-operative Properties v. Odhams* (1940) 1 K.B. 440 at 455. See to *Jones v. Jones* (1916) 2 A.C. 481 at 500 where Lord Sumner summarised the position as follows: “*Defamation, spoken or written, is always actionable if damage is proved, and, even if it is not, the law will infer the damage needed to found the action*”

(1) *When the words are written or printed:*

(2) *When the words spoken impute a crime punishable with imprisonment;*

(3) *When they impute certain diseases naturally excluding the patient from social intercourse;*

(4) *When the words are spoken of a person following a calling, and spoken of him in that calling, which impute to him unfitness for or misconduct in that calling”.*

I must, with respect, endorse the above statement. The words complained of here are printed and clearly defamatory of the respondents. The publication is not in dispute and is in fact admitted. It seems to me plain as the law stands that damage must be presumed in the circumstances. Accordingly my answer to the first arm of the only issue before this court for determination must be in the affirmative.

The second arm of the said issue has questioned whether the failure of each respondent to testify on his own behalf was fatal to his case

The first point that must be made here is that there is no rule of law or practice which requires a plaintiff in a civil suit to be physically present in

court or to testify if he can otherwise prove his case. Indeed, it ought to be mentioned that there is also no such rule which compels a defendant in a civil suit to appear before the court and to testify before he may successfully defend an action against him. See *British and French Bank Limited v. Solel-El-Assad* (1967) N.M.L.R. 40, *Kehinde v. Ogunbunmi and others* (1967V 1 All N.L.R. 306 or { 1968 } N.M.JLR. 37. Accordingly a plaintiff or a defendant can prove his case without presenting himself or testifying before the court. Indeed, judgment in an appropriate case, may be entered in a suit on the' pleadings only with or without the presence of the parties so long as they are duly represented.

C

In the present case, only P.W.I, - one Peter Ajayi and the 3rd plaintiff testified on behalf of all the respondents. It is clear that the sad respondents from the state of the pleadings, the evidence before the trial court and the law applicable thereto conclusively established a case of defamation against the appellant. The respondents were able to establish their claims without each testifying on his own behalf before the court and there is clearly noting fatal to their case in this regard. In the circumstance, the answer to the question posed in the second arm of the tone for determination is in the negative.

D

On the whole, this appeal is without substance and it is accordingly dismissed with N1000.00 costs to the respondents jointly.

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#### **UWAIS JSC**

I have had the opportunity of reading in draft the judgment read by my learned brother Iguh, J.S.C. I agree that this appeal has no merit. Accordingly, I too dismiss the appeal and affirm the decision of the -lower court with N1,000.00 costs to the Respondents jointly.

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#### **WALI JSC**

I have had a preview of the lead judgment of my learned brother, Iguh, JSC and I entirely agree with it.

G

For the same reasons contained in the judgment of my learned brother, Iguh, JSC which I hereby adopt, I also dismiss this appeal for lack of merit with N1,000.00 cost to the respondents.

H

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#### **KUTIGI JSC**

I had a preview of the judgment just delivered by my learned brother, Iguh J.S.C. The facts of the case as well as the issues for resolution are well set

out in the judgment. I agree with the conclusion that the appeal lacks merit and ought to be dismissed. It is accordingly dismissed with costs as assessed.

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B

**MOHAMMED JSC**

I have had a preview of the lead judgment written by my learned brother, Iguh, JSC., in draft, and I agree with my Lord that this appeal ought to be dismissed. The appellant has been left with only one issue to seek a reversal of the decision of the Court of Appeal, Ibadan. Two other issues have been found incompetent and struck out.

C

The submission made by the appellant in the only issue left for the determination of this appeal is a very weak legal argument. It is trite law that where several persons are jointly injured by libel or slander, they may all join as co-plaintiffs in an action. See *Anyaduba & Another v. N.R.T.C.* (1992) 5 D N.W.L.R. (Part 243) 535 at 565. This issue had therefore failed to make any dent on the well considered judgment of the Court of Appeal.

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Accordingly, this appeal fails and it is dismissed. I also award N 1,000.00 costs in favour of the respondents.

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