

SUPREME COURT OF NIGERIA
30TH APRIL, 1999. SC. 164/1992
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
S. U. ONU, G. O. ACHIKE, U. A. KALGO

DR. E. J. ESENOWO PLAINTIFF/APPELLANT
AND
1. DR. I. UKPONG
2. MOBIL PRODUCING NIGERIA ... DEFENDANTS/RESPONDENTS

TORTS - Defamation - Action for defamation - No such action will be maintained - Unless the words complained of have more than their ordinary meaning.

TORTS - Defamation - Words used - Where they reflect the true situation - No libel can be sustained on them.

WORDS & PHRASES - Libel - What it means.

FACTS

The plaintiff/appellant a private medical practitioner instituted the present action against the defendants/respondents alleging that certain publication by the 1st defendant/respondent a medical doctor and an employee of the 2nd defendant/respondent was libellous of him. The plaintiff had treated an employee of the 2nd defendant the P.W. 6 who submitted the medical bill from the plaintiff to the 2nd defendant for reimbursement. It was the duty of the 1st defendant to vet and authenticate the bill, ensuring that the bill originates from a qualified medical practitioner before approving or disapproving the settlement of such bills. The bill from the plaintiff was duly signed as emanating from one "Dr. E. J. Esenowo" but there was no such name in the current Nigerian Medical Register for 1980 and 1981, (tendered as Exhibit E). Rather the name listed was "Dr. J. E. Esenowo". As a result of which the 1st defendant endorsed on 2nd defendant's internal memo minuted to a co- employee, P.W. 7 (the officer in charge of reim-

bursement) as follows: "Dr. E. J. Esenowo (meaning thereby the plaintiff) is not registered with Nigerian Medical Council. Bill cannot therefore be reimbursed."

This internal memo was admitted as Exhibit H. The 1st defendant in his defence averred that there was no publication of Exhibit H and that it was only an internal memorandum of the 2nd defendant.

The trial High Court after reviewing the evidence and the pleadings found for the plaintiff in libel and consequently awarded him damages. On appeal to the Court of Appeal by the defendants the appeal was allowed. The plaintiff dissatisfied has now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

(ii) Whether upon the evidence the defence of justification had, in fact, been established, even if pleaded.

HELD (Unanimously dismissing the appeal per lead judgment of BELGORE JSC)

Words and phrases - Libel

1. Libel is the publication of false and disparaging matter against a person to a third party. (Sketch Publishing Co. Ltd. v Ajagbemokeferi (1991) 1 NWLR (Pt. 100) 678. (p. 824 A)

Action for defamation

2. The defendants in the statement of defence deny the words complained of are not libellous of the appellant and that at any rate it was written in the course of duty by the first respondent as an employee of the second respondent. It is true E.J. Esenowo was not listed in the 1980 Edition of the Nigerian Medical and Dental Register, Exhibit E. No civil action for defamation will be maintained unless the words complained of have more than their ordinary meaning and the onus will be on the plaintiff to prove the extra-ordinary meaning of the words used. The words complained of were published to PW6, Moses Itam Itam otherwise called MII. This witness has not attributed any meaning other than the ordinary meaning to the words. It is therefore not actionable to state the obvious as in this case and it has not been proved that the words convey meaning other than the

ordinary meaning. (p. 824 B)

Defamation - Words used

3. The words used cannot by any dint of imagination convey defamation because they reflect the situation as first defendant saw it as it truly was. I can hardly find fault in the decision of the Court of Appeal which set aside the judgment of the trial High Court. Once what has been published is true no libel can be sustained on it. (p. 825 A)

NOTABLE POINTS OF INTEREST

BELGORE JSC

1. Need to ensure that names are correctly inserted in a professional Register

It must be borne in mind that the only meaning, ordinary meaning, in the words complained of is that "E. J. Esenowo is not registered with the Nigerian Medical Council." No innuendo has been pleaded and none was proved throughout the hearing. What first defendant was doing therefore was to take care that a person practising medicine was patronized by the second defendant company. Is it true that the Register of Nigerian Medical Council for 1980 and 1981 did not contain plaintiff/appellant's name? There is a world of difference between "J. E. Esenowo" and "E. J. Esenowo" for the purpose of registering a name in a professional register sanctioned by law. It allows for crooks and quacks to infiltrate into the profession if at random a person can re-arrange his initials or order in which his names are written. (p. 823 E)

ACHIKE JSC

2. What constitutes publication of a libellous Matter.

It would be recalled that 1st defendant directed Exhibit H, an internal memo, to be sent to for the PW7 and for his attention in the course of his duty in the service of 2nd defendant. Assuming, but not conceding, that the content of Exhibit H was libellous, the question that arises is, was there a publication of Exhibit H in the legal sense to sustain the claim in libel? Publication consists of conveying to a person other than the plaintiff, the

content of the libellous material. Clearly, there was publication of libellous matter by 1st defendant to PW7 when the former handed Exhibit H to the latter. But that was a privileged situation, Exhibit H being an internal memo as between 1st defendant and PW7. By the same token, Exhibit H B in the hands of PW6 remained privileged because he also was an employee of 2nd defendant. The further publishing of Exhibit H to the guests of the appellant by PW6 cannot be an act for which 1st defendant will be responsible; he never authorized it. Such publication cannot be within the C anticipation of the 1st defendant. See Powell v Geston (1916) 2 KB 615. All in all, there was no publication within the purview of the law that could have exposed the 1st defendant to liability in libel. (p. 830 D)

REPRESENTATION

D Chief Debo Akande SAN with Dele Ibrionke for the Respondents.
Appellant absent and not represented.

CASES REFERRED TO

E Sketch Publishing Co. Ltd. v Ajagbemokeferi (1991) 1 NWLR (Pt. 100) 678.
Sketch Publishing Co. Ltd. v. Ajagbemokeferi (1989) 1 NWLR (Part 100) 678.
F Amiekhal v. Okwilage (1962) 2 NLR (Parts 2-4)
Clark v. Molyneux (1877) QBD 247
Sketch Publishing Company Ltd. v Ajagbemokeferi (1990) 1 NWLR (pt. 100) 678.

LEAD JUDGMENT BY BELGORE JSC

This appeal is in respect of alleged libellous publication concerning the plaintiff/appellant, Dr. Esenowo Johnson Esenowo. The appellant is a medical doctor who was at the material time of the alleged offensive H publication the Medical Director in charge of Memorial Specialist Clinic, Uyo. The first defendant/respondent is also a medical doctor employed at the material time of this alleged libel, by the Mobil Producing Nigeria Limited, the second defendant/respondent. In the final amended Statement

of Claim the appellant averred inter-alia as follows:

"4. In or about the month of May, 1984, the first defendant falsely and maliciously wrote an undated memo in longhand, signed it and published it to one MII (whose full name is Moses I. Itam) of and concerning the plaintiff in the way of the plaintiff's profession the words following, that is to say:-

"Dr. E.J. Esenowo (meaning thereby the plaintiff) is not registered with Nigerian Medical Council. Bill cannot therefore be reimbursed."

Mr. Moses I. Itam, referred to as "MII" was an official of the second defendant/respondent and his duties included reimbursement of medical fees to second respondent's employees. Thus the memorandum, Exhibit H at the trial Court is held out as libellous by the appellant. The bill, on Exhibit H, is in respect of medical treatment Mr. Irechio had in the clinic of the appellant. The first respondent minuted on it to Moses I. Itam that the appellant's name was not in the Register of the Medical Practitioners and in the statement of defence averred inter alia as follows:-

"7(a) that although the 1st defendant minuted upon Mr. Irechio's Medical Receipt Re-Imbursement Application for 2nd May, 1984 to the effect that the name of the Doctor stated in the application by Mr. Irechio that is Dr. E. J. Esenowo, is not listed in the current Nigerian Medical Councils Register (i.e Medical Council Register for 1980) and sent the document back to another officer of the 2nd defendant, Moses I. Itam. He, the 1st defendant did not thereby or in any other way publish the said words or any words of similar purport to Mr. Irechio nor to any one else."

The 1st respondent further averred that neither he nor Mr. Moses I. Itam published any thing to anybody. Exhibit H was an internal memorandum of the second respondent and was not supposed to be taken out of the possession of the company.

The PW7, Moses Itam Itam was surprised that Exhibit H got out of the company's possession as it was an entirely internal memorandum. PW6, Mr. Irechio, testified that he was not happy his medical bill was not going to be refunded and he took Exhibit H to the appellant who held on to

it and refused to release it to him. He remembered that some employees were once found to be patronizing quack doctors leading to their dismissal from the company. Exhibit H mentions Dr. E.J. Esenowo, but the receipts /bills forming Exhibits P and P1 were issued by one Dr. E.A. Esenowo. It seems the confusion was between the names - Dr. E. A. Esenowo, Dr. J. E. Esenowo and Dr. E. J. Esenowo. The Nigerian Medical Council Register for 1980 and 1981 did not list the appellant as Dr. E. J. Esenowo but as J.E. Esenowo and the normal practice, as clearly in evidence before the court was to ask the employee claiming reimbursement to bring photocopies of the doctor's registration with the council. The bills, Exhibit P and P1 given by the appellant to the PW6 were signed by E.A. Esenowo as Medical Director. E.A. Esenowo is not a registered medical practitioner. But one fact is uncontroverted and that is that the document Exhibit H is an internal memorandum of the second respondent exchanged by first respondent and M. I. Itam (PW7) in the course of their official duty with the second respondent. Secondly, all that the PW6 had to do to get reimbursed for the bills-Exhibits P and P1 - was to satisfy the company that the appellant was registered with the Nigerian Medical Council. Thus, Exhibit H, between first defendant/respondent, PW7 (M. I. Itam) and Mr. Itrechio (PW6), is an internal memorandum executed in the course of official duty.

The trial High Court, after reviewing the evidence and the pleadings found for the plaintiff in libel and awarded damages in consequence. The defendants appealed to the Court of Appeal where the appeal was allowed. The Court of Appeal came to its conclusion by holding that the plaintiff/appellant caused the confusion by the way his name was registered in the Medical directory of 1980, which was the then current edition with second defendant, the name entered was J.E. Esenowo, this is Exhibit E. This prompted the first defendant to minute as he did in Exhibit H as follows:-

"Dr. E. J. Esenowo is not registered with the Nigerian Medical Council. Bill cannot therefore be reimbursed."

The Court of Appeal held that what the first defendant wrote in Exhibit H was true because the professional register for 1980 and 1981

entered the name "Esenowo, J.E." not "E. J. Esenowo." In professional matters it is always of great importance to have one's name inserted correctly. The Court of Appeal therefore held that the Dr. Esenowo in the Register of Medical Practitioners was J.E. Esenowo not E.J. Esenowo, a correct statement of fact. Thus the plaintiff has appealed to this court. B

The appellant has set out four issues for determination as follows:-

"(i) Whether the learned Justices of the Court of Appeal were right in holding that the defence of justification was available to the respondents when that defence was neither pleaded, canvassed at the trial nor an issue before the Court of Appeal. C

(ii) Whether upon the evidence the defence of justification had, in fact, been established, even if pleaded.

(iii) Whether the learned Justices of the Court of Appeal were right in holding that the publication of the words complained of to the appellants guests, Gabriel Effiong Edet (pw 5) and Chief E.A. Udoh was not made by the 1st respondent and was slander not libel. D

(iv) Whether the learned Justices of the Court of Appeal applied the correct principles of law in assessing the damages having regard to the circumstances of this case."

It must be borne in mind that the only meaning, ordinary meaning, in the words complained of is that "E. J. Esenowo is not registered with the Nigerian Medical Council." No innuendo has been pleaded and none was proved throughout the hearing. What first defendant was doing therefore was to take care that a person practising medicine was patronized by the second defendant company. Is it true that the Register of Nigerian Medical Council for 1980 and 1981 did not contain plaintiff/appellant's name? There is a world of difference between "J. E. Esenowo" and "E. J. Esenowo" for the purpose of registering a name in a professional register sanctioned by law. It allows for crooks and quacks to infiltrate into the profession if at random a person can re-arrange his initials or order in which his names are written. Exhibit H written by first respondent queried the medical bills brought by PW6 as Exhibit E at page 92 (i.e Register of Medical and Dental Practitioners for 1980 contained an entry thus:-

"Esenowo, Johnson Esenowo."

The surname is Esenowo, the first and middle names being Johnson and Esenowo" respectively. This will be rendered into "Dr. J.E. Esenowo" not "Dr. E.J. Esenowo" that the appellant in his pleading and evidence clearly claimed to be correct name. **Libel is the publication of false and disparaging matter against a person to a third party. (Sketch Publishing Co. Ltd. v Ajagbemokeferi (1991) 1 NWLR (Pt. 100) 678. The defendants in the statement of defence deny the words complained of are not libellous of the appellant and that at any rate it was written in the course of duty by the first respondent as an employee of the second respondent. It is true E.J. Esenowo was not listed in the 1980 Edition of the Nigerian Medical and Dental Register, Exhibit E. No civil action for defamation will be maintained unless the words complained of have more than their ordinary meaning and the onus will be on the plaintiff to prove the extra-ordinary meaning of the words used. The words complained of were published to PW6, Moses Itam Itam otherwise called MII. This witness has not attributed any meaning other than the ordinary meaning to the words.** First respondent stated clearly that "E. J. Esenowo" was not in Exhibit E, and that is very true. PW6 understood that the words meant the appellant's name was not in Exhibit E and he did not know how the memorandum got to the possession of the appellant. The words complained of certainly refer to the appellant but the storm raised by the appellant on it was a little one in a cup of tea. By explaining that he was the same one called J. E. Esenowo in Exhibit E, and that it was an erroneous entry, and a simple letter explaining his impeccable professional background this matter would not have arisen. **It is therefore not actionable to state the obvious as in this case and it has not been proved that the words convey meaning other than the ordinary meaning.** The letter Exhibit A, written to the solicitor to the appellant stating that the appellant had been on the full Register since 1960 would not have been necessary. It is worthy of note that the Register for 1981 contained the same error of :J. E. Esenowo" in the main body of the Register and in portion of members of the Nigerian Medical Council. The bills brought by Pw 7 for reimbursement to all intents and purposes might have been issued to him by an imposer and not the appellant and

it was the first respondent's duty to check from the register - Exhibit E, which was the current one with him - that it contained the correct name. That was his duty to protect the second respondent from paying unjustified money as medical expenses for its employees. **The words used cannot by any dint of imagination convey defamation because they reflect the situation as first defendant saw it as it truly was.** B

I can hardly find fault in the decision of the Court of Appeal which set aside the judgment of the trial High Court.

Once what has been published is true no libel can be sustained on it. I find no merit in this appeal and I accordingly dismiss it with N10,000.00 costs to the respondents. C

OGUNDARE JSC

I agree with the judgment of my learned brother, Belgore JSC just delivered. The reaction of the plaintiff to the contents of Exhibit H was most unnecessary and rather unfortunate. Exhibit H is an internal memorandum written by an official (1st Respondent) of the Mobil Producing Nigeria (2nd Respondent) to another official of that company (PW7). Exhibit H correctly stated the factual situation in the register of the Nigerian Medical Council for the period when it (Exhibit H) was written. The memorandum was published to the plaintiff's guests not by the Respondents but by the plaintiff himself. One would think that the prudent step to take on noticing that his initials were wrongly entered in the Medical Council's register was for plaintiff to take steps to correct the entry in subsequent editions of the register. I do not see how he could successfully sue in libel for a statement which, on the face of it., correctly stated the factual situation having regard to the error contained in the Medical Council's register. D F G

I see no merit in this appeal which I too dismiss with costs of N10,000.00 (ten thousand Naira) to the Respondents. H

ONU JSC

I was privileged to have a preview of the judgment just delivered by my learned brother Belgore, JSC. I am in entire agreement therewith that the appeal lacks merit and ought. Therefore to fail.

B The four issues which the appellant identified and my learned brother considered before arriving at his well considered conclusion are:

(i) Whether the learned Justices of the Court of Appeal were right in holding that the defence of justification was available to the respondents when that defence was neither pleaded, canvassed at the trial nor an issue C before the Court of Appeal.

(ii) Whether upon the evidence the defence of justification had, in fact, been established, even if pleaded.

(iii) Whether the learned Justices of the Court of Appeal were D right in holding that the publication of the words complained of to the appellant's guests, Gabriel Effiong Edet (PW5) and Chief E.A. Udoh was not made by the 1st respondent and was slander not libel.

(iv) Whether the learned Justices of the Court of Appeal applied E the correct principles of law in assessing the damages having regard to the circumstances of the case.

I adopt the answers rendered by my learned brother in his consideration of the four questions posed at appellants' instance in their embodiments as mine; his reasoning and conclusions thereof except for the few F comments of mine in expatiation hereunder.

Where, as in the instant case the appellant who as plaintiff brought confusion to his name by fingering himself as being the person referred to as Esenowo, J.E., and E. J. Osenowo in the same breath with all the attendant irrationality, his action for libel would not merit to succeed irrespective of his tendering documentary evidence (vide Exhibit 'D' and 'E') both culminating in Exhibit H, the document in contention said to contain the offending libellous material. The name of the Medical register for H 1980 and 1981, to wit: Exhibit H which constitutes no more than an internal memorandum was to the effect that:

"Dr. E.J. Esenowo is not registered with the Nigeria Medical Council. Bill cannot therefore be re-embursed."

It is the contention of learned Senior Advocate for the Respondents, Chief Akande, that there is a difference between "being in the Register" and "being registered with the Nigerian Medical Council". It was his further submission that there was, however, no difference as to the intention of checking the Register to know whether the Appellant was a registered medical practitioner or not. What was most important and clear, he further argued, was that Appellant's name was not on the Register kept by the 1st Respondent, and moreover, that the initials on the invoice were different from those of the Appellant, as hitherto demonstrated, even though the latter's Counsel argued that the vagueness of the initials did not matter. It was however the Respondents' further submission that it mattered; thus the court below was right in holding that the Appellant's name as it appeared on Exhibit Q was different. This finding, in my firm view, cannot be faulted.

It was learned Senior Advocate's further contention that the court below was right because the intention of the 1st Respondent in making Exhibit H was not to ridicule the Appellant but rather, that when Exhibit Q was corrected are returned to him, he approved it for payment without hesitation. This conclusion, in my view, is unimpeachable. See Sketch Publishing Co. Ltd. & Anor. v. Ajagbemokeferi (1989) 1 NWLR (Part 100) 678. Compare Amiekhail v. Okwilage (1962) 2 NLR (Parts 2-4) 3 following Clark v. Molyneux (1877) QBD 247. In the Okwilage case (supra) it was held, inter alia, that where a defamatory statement is proved to be false and malicious, the defendant cannot be entitled to the defence of privilege.

With regard to justification, though no justification would appear to have been specifically pleaded, from the evidence led in respect of paragraphs 8, 13 and 14 of the Statement of Defence in particular and the totality of evidence adduced at the trial, this can be inferred.

It is for these reasons and those ably set out in the leading judgment of my learned Belgore, JSC that I too dismiss this appeal with all the consequential orders inclusive of costs contained therein.

ACHIKE JSC

The plaintiff, Dr. E. J. Esenowo, a private medical practitioner instituted this action against the defendants alleging that certain publication by the 1st defendant, a medical doctor and an employee of 2nd defendant, was libellous of him. Briefly, plaintiff had treated some employees of the 2nd defendant and thereafter sent his bill for reimbursement to 2nd defendant. Routinely, the 2nd defendant passed the bill over to its employee, the 1st defendant to vet and authenticate the bill, ensuring that the bill originated from a qualified medical practitioner before approving or disapproving the settlement of such bills. A bill from the plaintiff was duly signed as emanating from one "Dr. E.J. Esenowo". After consulting the current Nigerian Medical Register for 1980 and 1981, tendered as Exhibit E, 1st defendant discovered that there was no such name as Dr. E. J. Esenowo, rather he found that there was a name listed as " Dr. J. E. Esenowo." The plaintiff having submitted his bills, tendered as Exhibits P and P1, and 1st defendant not being able to identify plaintiff as listed as Dr. E.J. Esenowo, 1st defendant endorsed on 2nd defendant's internal memo E minuted to another employee of the 2nd defendant, PW7, one Moses I, Itam - the officer in charge of reimbursement - as follows:

"Dr. E.J. Esenowo (meaning thereby the plaintiff) is not registered with Nigerian Medical Council. Bill cannot therefore be reimbursed."

This internal memo was admitted in evidence as Exhibit H.

The learned trial Judge, after due trial, held that the content of Exhibit H was libellous of plaintiff and proceeded to award him damages. On appeal by the defendants, the Court of Appeal held that the content of Exhibit H was not libellous and accordingly set aside the decision of the trial Judge because the content of Exhibit H was a correct statement of fact and being true it cannot sustain an action in libel.

Thoroughly dissatisfied, the plaintiff has now appealed to this Court on his grounds of appeal and from which the following four issues for determination were identified:

"(i) Whether the learned Justices of the Court of Appeal were right in holding that the defence of justification was available to the re-

spondents when that defence was neither pleaded, canvassed at the trial not an issue before the Court of Appeal.

(ii) *Whether upon the evidence the defence of justification had, in fact, been established, even if pleaded.*

(iii) *Whether the learned Justices of the Court of Appeal were right in holding that the publication of the words complained of to the appellant's guests, Gabriel Effiong Edet (pw5) and Chief E.A. Udoh was not made by the 1st respondent and was slander not libel.*

(iv) *Whether the learned Justices of the Court of Appeal applied the correct principles of law in assessing the damages having regard to the circumstances of this case."*

The undoubted posture of the Court of Appeal was that Exhibit H did not constitute a libel against the plaintiff and to succeed in this appeal it became imperative to show that Exhibit H, the cause of action, was libellous. As would be recalled, the gravamen of this appeal was that the plaintiff signed Exhibit P and P1 as "Dr. E. J. Esenowo" whereas the name listed in the 1980 Nigerian Medical Register read "Dr. J.E. Esenowo." Ordinarily, there is a world of difference in the arrangement of the initials listed in Exhibit E and those stated in Exhibit P and P1 by the plaintiff. It may well be that the plaintiff was used to arranging the initial interchangeably for which he needed to so plead and lead credible evidence in respect thereof or it may well be, on the other hand, that the initials "E.J." were exclusively used by him and perhaps that the initials "J. E." were alien to him. Clearly, there was need to furnish some lucid explanation otherwise it would be unacceptable to accede, by the judgment of the trial Judge, that it will be too simplistic to hold that the name "Dr. E.J. Esenowo" is the same as "Dr. J.E. Esenowo". It was in appreciation of such apparent mix-up that prompted the 1st defendant to place heavy reliance on Exhibit E. Indeed, it was 1st defendant's reference to Exhibit E that informed him that the plaintiff, signing as "Dr. E.J. Esenowo," could not be approved as a registered medical practitioner by the Nigerian Medical Council because the only name found in Exhibit E was "Dr. J.E. Esenowo" and, as earlier observed, there was no nexus by the pleadings and evidence of the sameness of "Dr. E.J. Esenowo" and "Dr. J.E. Esenowo". Since the name listed was

Dr. J.E. Esenowo, then it was perfectly legitimate for the Court of Appeal to hold the plaintiff, signing as Dr. E.J. Esenowo, and that name not having been listed in Exhibit E as a registered medical practitioner, 1st defendant's statement in Exhibit H could not be impugned. In short, the content of Exhibit H could not by the wildest imagination be construed as libellous, it content being a statement of fact. It is trite that a true statement of fact written or said about another person can never become defamatory. The tort of libel consists in written publication of false defamatory statement concerning the plaintiff without lawful justification. See Sketch Publishing Company Ltd. and anor v Ajagbemokeferi (1990) 1 NWLR (pt. 100) 678. In this appeal, the content of Exhibit H being plain did not require any innuendo to ascribe to it any other meaning other than the plain sense in which it was used. In the circumstances, I cannot agree more with the Court of Appeal that the publication complained about not libellous. Was there publication?

It would be recalled that 1st defendant directed Exhibit H, an internal memo, to be sent to for the PW7 and for his attention in the course of his duty in the service of 2nd defendant. Assuming, but not conceding, that the content of Exhibit H was libellous, the question that arises is, was there a publication of Exhibit H in the legal sense to sustain the claim in libel? Publication consists of conveying to a person other than the plaintiff, the content of the libellous material. Clearly, there was publication of libellous matter by 1st defendant to PW7 when the former handed Exhibit H to the latter. But that was a privileged situation, Exhibit -H being an internal memo as between 1st defendant and PW7. By the same token, Exhibit H in the hands of PW6 remained privileged because he also was an employee of 2nd defendant. The further publishing of Exhibit H to the guests of the appellant by PW6 cannot be an act for which 1st defendant will be responsible; he never authorized it. Such publication cannot be within the anticipation of the 1st defendant. See Powell v Geston (1916) 2 KB 615. All in all, there was no publication within the purview of the law that could have exposed the 1st defendant to liability in libel.

Be that as it may, since we had observed that the content of Exhibit H was not libellous, it follows that even if it was published to a third

party, it was completely of no moment. And for the same reason, the question of assessment of damages did not arise.

It is for all these, and the fuller reasons in the leading judgment of my learned brother, Belgore, JSC, with which I am in agreement, that I, too, agree that the judgment of the Court of Appeal should be affirmed. **B**

Accordingly, I hold that the appeal lacks merit and the same is hereby set aside with N10,000.00 costs to the respondents.

KALGO JSC

I have had the benefit of a preview of the judgment of my learned brother Belgore JSC just delivered. I agree entirely with his reasoning and conclusions that this appeal lacks merit, and should be dismissed. I have nothing useful to add. In the result, I also dismiss the appeal and affirm the decision of the Court of Appeal. I award the costs of N10,000.00k in favour of the respondents.

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