

SUPREME COURT OF NIGERIA
26TH MAY, 2000. SC. 168/1994
CORAM:- S. M. A. BELGORE, E. O. OGWUEGBU, S. U. ONU,
O. ACHIKE, U. A. KALGO, JJSC

PROPHET IFEANYI EMEAGWARA APPELLANT
AND
1. STAR PRINTING AND PUBLISHING
COMPANY LTD. RESPONDENTS
2. ONOIMA IYIDA
3. OBI ODEFUNA

***APPEALS** - Concurrent findings of fact - When the Supreme Court will not interfere with such findings*

***DEFAMATION** - Libel - Qualified privilege - Plea of - To sustain such a plea - The report or publication must be proved to be fair and accurate.*

***DEFAMATION** - Libel - Qualified privilege - Publication - Although the publication must be fair and accurate - It needs not be verbatim or word for word - To qualify for the privilege.*

***DEFAMATION** - Libel - Malice - The fact that a publication is fair and accurate in substance - Does not automatically make it privileged - The privilege can easily be defeated by malice*

***DEFAMATION** - Libel - "Malice" - What it means*

***DEFAMATION** - Libel - Qualified privilege of a publication - What must be proved - Before the qualified privilege is destroyed*

***DEFAMATION** - Libel - Malice - Burden of proof - While the onus of proving that the publication is accurate lies on the defendant - The burden of proving malice rests solely on the plaintiff.*

DEFAMATION - Libel - Judicial proceedings - Where the publication complained of was a fair and accurate report of judicial proceedings - It enjoys the protection of being privileged.

WORDS & PHRASES - "Malice" - What it means.

WORDS & PHRASES - Qualified privilege - What it means

FACTS

In the Plateau State High Court, holden in Jos, the plaintiff/appellant took out a Writ of Summons against the defendants/respondents jointly and severally claiming the sum of N200,000.00 as aggravated or exemplary damages for libel published in the Daily Star Newspaper of 18th January, 1988. He also sought for an injunction to restrain the respondents from further publication of the libel. The publication concerned the appellant and the Christ Bible Mission Jos of which he was the founder: Both parties filed and exchanged pleadings. The crucial facts of libel alleged were contained in Exhibit 1, that is, the newspaper publication and as set out in paragraph 5 of the Statement of Claim of the appellant reads inter alia:-

"A Jos Chief Magistrate court has heard that a prophet with the "Christ Bible Mission" Nassarawa-GOWOM, Jos, allegedly removed pubic hairs and finger nails of a lady adherent of the Mission, in a pretext to pray for her with those materials."

The Newspaper it was averred further reported that "the prophet, Ifeanyi Emeagwara who is now standing trial before the court on a charge of indecent assault allegedly committed the offence between May and June last year, according to the Prosecution"

The respondents in paragraphs 4 and 5 of their statement of defence admitted the publication as contained in paragraph 5 of the statement of claim but averred that the publication was not false and malicious. They further averred that the publication was part of the proceedings in the Chief Magistrate Court Jos which is privileged. And that the defendants will at the trial rely on the said proceedings of the said case.

After due trial, the learned trial judge held that although the publication was defamatory, nevertheless being a fair and accurate report of judicial proceedings, the publication was privileged. The claim of the plaintiff was then dismissed. Dissatisfied the Plaintiff/appellant appealed to the Court of Appeal. That court dismissed the appeal. Still dissatisfied, the appellant has further appealed to the Supreme Court raising two issues.

ISSUES FOR DETERMINATION

"(a) Whether or not the publication in the Daily Star Newspaper of 18/1/88 is a fair and accurate report of judicial proceedings so as to avail the defendants of the defence of qualified privilege.

(b) Whether or not the publication was malicious having regard to all the circumstances of its publication and whether malice has been established".

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

Words & Phrases - Qualified privilege

1. At common law, qualified privilege primarily relates to statements made in the performance of a duty or in pursuit of a common interest or generally on matters in which the public had legitimate interest. (p. 1720 F)

Qualified privilege - Plea of

2. It has been established that even at common law, to sustain a plea of qualified privilege in respect of a report or publication, such report or publication must be proved to be "fair and accurate". See Kingshott v. Associated Kent Newspaper (1991) 1 QB 88 at 98, and "accurate" means substantially accurate. See Bruton v Estate Agents Licensing authority (1996) 2 V.R. 274 at 309. (p. 1720 H)

Qualified privilege - Publication

3. And although the report or publication must be fair and accurate, it needs not be verbatim or word for word. What is essential as in this case is that it must be fair, even if very brief, summary of the proceedings to qualify for the privilege. See Tsikita v Newspaper Publication (1997) 1

ALL E.R. 655; Cook v. Alexander (1974) Q.B. 279. (p. 1721 A)

Libel - Malice

4. The fact that the publication is fair and accurate in substance, does not
B automatically make it privileged. The privilege is not absolute but qualified and can easily be defeated by malice. (p. 1725 C)

Words & Phrases - Malice

C 5. In the Oxford Advanced Learners Dictionary "Malice" is defined as "the desire to harm; hatred for". And in Gately on Libel and Slander, 11th Edition the learned authors in dealing with malice under paragraph 16.4 on page 428 wrote:-

D *"Malice means making use of the occasion for some indirect purpose. If the occasion is privileged it is so for some reason, and the defendant is only entitled to the protection of the privilege if he uses the occasion for that reason. He is not entitled to the protection if he uses the occasion not for the reason which makes the occasion privileged, but*
E *for an indirect or wrong motive".* (p. 1725 D)

Qualified privilege of a publication - What must be proved

F 6. Therefore before the qualified privilege of the publication is destroyed it must be proved expressly or by some evidence from which to infer that the publication was for a purpose or motive other than its privileged occasion. See Williams v. Daily Times (1990) NWLR (pt. 124) 1 at 50-51. (p.1725F)

Malice - Burden of proof

G 7. While the onus of proving that the report of publication is fair and accurate and lies on the defendant, the burden of proving malice rest solely on the plaintiff-in this case the appellant. There was no evidence of malice in this case and nothing to infer that from. In fact the author of the publication D.W. 2, asserted in his cross-examination, that he believe in the truth
H of the publication. There was no evidence to show that other interest or motive the author had in making the publication or report in the 1st respondent's newspaper except to give information to the public which as

a reporter he has a duty to do. Therefore in my respectful view, as long as the publication was made bona fide and without actual malice, it is privileged. See Searles v Scarlett (1892) 2 QB 56 at 60 Kinber v Press Association (1893) 1 QB 65 at 72 Amiekhali v. Okwilage (1960) 2 ALL N.W.L.R. (p. 1725 H)

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Libel - Judicial proceedings

8. From all what I have said above, I find that the publication complained of was a fair and accurate report of judicial proceeding of 22/12/87 in Chief Magistrate Court 1, Jos, and that in the circumstances of this case, it enjoys the protection of being privileged. (p. 1726 C)

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Appeals - Concurrent findings

9. It should be noted here that there are concurrent findings of fact by the trial court and the Court of Appeal. It is trite law that this court will not interfere with such findings where there is sufficient evidence in support of such findings and where no substantial error is apparent on the record such as miscarriage of justice or violation of some principle of law or procedure. See Ezeonwu v. Onyechi (1996) 3 NWLR (pt. 438) 499 at 526; Ivienagbor v. Bazuaye (1999) 9 NWLR (pt. 620) 552 at 559 Ogunbiyi v. Adewunmi (1988) 5 NWLR (pt. 93) 217. I find no such error, miscarriage of justice or violation of principle of law or procedure in this case and see no ground to interfere with the decisions arrived at by those courts in this appeal. (p. 1726 E)

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NOTABLE POINTS OF INTEREST

OGWUEGBU JSC

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1. Basis of the defence of qualified privilege

In the case of Atoyebi v. Odudu (supra), this court held that a qualified privilege is an occasion where the person who makes the communication has an interest or duty, legal, social or moral to make it to the person to whom it is made and the person to whom it is made has a corresponding interest or duty to receive it. It is a rule of law founded upon principles of public policy and convenience that no action for libel can be maintained in

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respect of a report of judicial proceedings, taking before persons acting judicially in open court, where the reporting is a fair and accurate report of those proceedings and published without malice. See Kimber v. The Press Association (1892) 1 Q.B. 65, Adams v. Ward (1917) A.C. 309 at 334
B and Economides v. Thomopulos & Co. Ltd. (1956) 1 FSC 7 at 12. I am satisfied that the defendants/respondents satisfied the requirements of the law and are entitled to the defence of qualified privilege.

Newspapers and other publications which report what transpires
C in our courts are to a certain extent privileged. They serve the cause of public justice on such occasions through their accounts of judicial proceedings but their privilege must be limited to occasions in which they publish fairly what passes in the courts. The basis of the privilege lies not in the circumstances that the proceedings reported are judicial but that it is
D in the public interest that all such proceeding shall be fairly reported. Unless it is shown, not merely that the publication was a publication of what took place in a court of justice, but also, that it was a fair and accurate publication the privilege does not arise. See R. v. Wright (1799) 8 T.R. 293 at
E 298 and Webb v. The Pub. Co. Ltd. (1960) 2 Q.B. 535. (p. 1730 E)

ONU JSC

2. Standard of accuracy of a Newspaper report

F According to the learned authors of GATLEY ON LIBEL AND SLANDER, 7TH EDITION:

*"A report in a daily newspaper is not to be judged by the same strict standard of accuracy as a report coming from the hand of a trained lawyer unless a fair and reasonable latitude is given; there should be no
G safety in reporting the proceedings in courts of justice. It would be impossible to exercise the privilege of reporting if every trifling in a report deprived it of privilege."* (p. 1735 H)

H 3. *When the publication of libel may be a joint tort*

Further no publication of libel, the law is well stated in C Lindsell on Torts, 15th Edition, Paragraph 20-48 at page 930

"JOINT PUBLICATION" - The publication of libel may be a

joint tort, as where in pursuance of common design one composes, another prints and another distributes a libel or where a servant publishes a libel within the scope of his employment. "Where defamatory matter is contained in a book, periodical, or newspaper there are normally a series of publications each of which constitutes a separate tort. First, there is publication by the author to the publisher for which the author is solely liable. Secondly, there is the publication of the printed work to the trade and the public, for which the author, publisher and printer are jointly liable. It is normally in respect of this last publication that proceedings for libel are brought, although it is open to the plaintiff to sue in respect of the separate publications set out above." (p. 1736 E)

ACHIKE JSC

4. When the defence of qualified privilege will avail person

A person may make a defamatory statement about another under circumstances where there exist a qualified privilege to make the statement provided the maker is not actuated by malice. The principle is that communications made in the discharge or performance of a duty (be it public or private duty) or made in the protection of lawful interest or fair and accurate reports in a newspaper of the public proceedings of any court of justice, whether superior or inferior, and whether courts of record or not. It will follow that this privilege will not avail a reporter if the proceedings take place in a court to which the public are not admitted or in a purely domestic tribunal. It has long been established that defence of qualified privilege will only avail a person where the report or publication is shown to be "fair and accurate", that is to say that it is substantially accurate, without necessarily being exactly word for word of what transpired. Mitchell Richards v. Hirst, Kidd & Ronnie, Ltd (1936) 3 ALL ER 872 is manifestly illustrative as to what constitutes a valid plea of fair and accurate report. (p. 1740 C)

REPRESENTATION

G. Ofodile Okafor SAN, with J. D. Moze for the appellant
P. I. N. Ikwueto, with Okey Obi for the respondent

CASES REFERRED TO

Cook v. Alexander (1974) Q.B. 279

Williams v. Daily Times (1990) NWLR (pt. 124) 1 at 50-51

Searles v Scarlett (1892) 2 QB 56 at 60

B Kinber v Press Association (1893) 1 QB 65 at 72

Amiekhai v. Okwilage (1960) 2 ALL N.W.L.R

Ogunbiyi v. Adewunmi (1988) 5 NWLR (pt. 93) 217

Kimber v. The Press Association (1892) 1 Q.B. 65

Adams v. Ward (1917) A.C. 309 at 334

C Economides v. Thomopulos & Co. Ltd. (1956) 1 FSC 7 at 12

R. v. Wright (1799) 8 T.R. 293 at 298

Webb v. The Pub. Co. Ltd. (1960) 2 Q.B. 535

D **BOOKS REFERRED TO**

Garley on Libel and Stander, 11th Ed. p. 428 para 16.4

Oxford Advance Learners Dictionary

Black's Law Dictionary 6th Ed. Clerk and Lindsell on Torts, 15th Ed. para

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LEAD JUDGMENT BY KALGO JSC

F The appellant was the plaintiff in the High Court of Plateau State
holden in Jos where he took out a Writ of summon: against the respon-
dents jointly and severally claiming the sum of N200,000.00 as aggra-
vated or exemplary damages for libel published in the Daily Star of 18th of
January, 1988. He also sought for an injunction to restrain the respon-
G dents from further publication of the libel. The publication concern the
appellant and the Christ Bible Mission Jos of which he was the founder.
Both parties filed and exchanged pleadings.

Paragraph 5 of the statement of claim of the appellant inter alia
reads:-

H *"On the 18th day of January, 1988, the defendants falsely and
maliciously wrote and printed and published on the back page of the
issue of "Daily Star" dated that day of and concerning the plaintiff under
the caption title "prophet docked over indecent assault", the words fol-*

lowing that is to say:-

"A Jos Chief Magistrate Court has heard that a prophet with the "Christ Bible Mission", Nassarawa-Gwom, Jos, allegedly removed pubic hairs and finger nails of a lady adherent of the Mission, in a pretext to pray for her with those materials".

The prophet, Ifeanyi Emeagwara, who is now standing trial before the court on a charge of indecent assault allegedly committed the offence between May and June last year, according to the prosecution
The respondents in paragraphs 4 and 5 of their statement of defence pleaded thus:-

"4. The defendants admits (sic) the publication as contains (sic) paragraph 5 of the statement of claim but aver that the publication was not false and malicious. The defendants aver that in so far as the said publication consists of allegation of fact, they are true in substance and in fact, in so far as consist of expression of opinion they are fair comments and made in good faith and without malice against the plaintiff.

5. In further answer to paragraph 5 of the statement of claim, the defendants aver that the publication was part of the proceedings in the Chief Magistrate Court Jos which is privileged. The defendants will at the trial rely on the said case". (Underlining mine)

At the trial, the appellant called 3 witnesses to prove his case and the respondents called only 2 witnesses in their defence. At the end of the evidence in the case, counsel addressed the court on the evidence and the law applicable. On the 28th of May 1991, learned trial Judge, Azaki J. delivered his judgment and came to the following conclusion:-

"In my judgment although the complained publication was defamatory in substance, but being a fair and accurate report of judicial proceedings the publication was privileged. To this extent I dismiss the plaintiff's claim against the defendants". (underlining mine)

Notwithstanding this clear finding, the learned trial judge proceeded to award the sum of N20,000,00. to the appellant which he considered as adequate compensation for the injury suffered by the appellant as a result of the publication, in case an appeal court finds his judgment to be erroneous.

The appellant was not satisfied with this decision and he appealed to the Court of Appeal. The Court of Appeal dismissed the appeal and held, per Musdapher JCA who wrote the leading judgment, thus:-

B *"In my view the respondents are completely exonerated from any legal liability and therefore the question of the assessment of damages does not arise on the appeal".*

Still the appellant was dissatisfied and he now appealed to this court on only two grounds. Both parties later filed their briefs and exchanged them between themselves. The appellant formulated two issues for the determination of this court in the appeal which read:-

C *"(a) Whether or not the publication in the Daily Star Newspaper of 18/1/88 is a fair and accurate report of judicial proceedings so as to avail the defendants of the defence of qualified privilege.*

D *(b) Whether or not the publication was malicious having regard to all the circumstances of its publication and whether malice has been established".*

For the respondents the only issue raised was:-

E *"Whether in the circumstances of the case, the defence of qualified privilege was available to the respondents.*

F Having regard to the two grounds of appeal filed by the appellant in his appeal, I am of the view that the two issues for determination raised by the appellant for consideration of this court are quite proper and germane. I intend however to consider them together because in the treatment of the issue of qualified privilege, the issue of malice must necessarily come up.

G **At common law, qualified privilege primarily relates to statements made in the performance of a duty or in pursuit of a common interest or generally on matters in which the public had legitimate interest.** Most of these occasions are now covered under the Defamation Act 1996 in England and are now conferred statutory qualified privilege. H We are not here concerned with the said English Act, but **it has been established that even at common law, to sustain a plea of qualified privilege in respect of a report or publication, such report or publication must be proved to be "fair and accurate". See Kingshott v.**

Emeagwara v. Star Printing & Publishing (2000) 5 KLR Kalgo JSC 1721
Associated Kent Newspaper (1991) 1 QB 88 at 98, and "accurate"
means substantially accurate. See Bruton v Estate Agents Licensing
authority (1996) 2 V.R. 274 at 309. And although the report or pub-
lication must be fair and accurate, it needs not be verbatim or word
for word. What is essential as in this case is that it must be fair, even
if very brief, summary of the proceedings to qualify for the privi-
lege. See Tsikita v Newspaper Publication (1997) 1 ALL E.R. 655;
Cook v. Alexander (1974) Q.B. 279.

The 3rd respondent was the reporter of the 1st respondent. He
was DW. 2 at the trial and in his evidence he testified that he made the
publication complained of in his capacity as a reporter. He confirmed that
he was in the chief Magistrate Court 1, Jos on 22/12/87 and witnessed the
proceedings concerning the matter. It was after the proceedings that he
wrote the report which was published in the Daily Star of 18/1/88.

In Gatley on Libel and Slander, 11th Edition paragraph 15.4, the
learned authors said:-

*"The theory is that the reporter represents the public - he is their
eyes and ears and he has to do his best, using his professional skill to
give them a fair and accurate picture. Nor need the report be accurate
in every detail. If the report be as a whole a substantially fair and cor-
rect account of the proceedings, a few slight inaccuracies will not de-
prive it of protection. But where the inaccuracies are of a substantial
kind, there is no immunity".*

Let me now examine the relevant proceedings in Exhibit 3 and
compare its contents with those of the publication in Exhibit 1.

The publication complained of and which gave rise to this action
was published in the Daily Star (Northern Edition) of Monday 18th Janu-
ary, 1988 on the back page. It was admitted in evidence at the trial as
Exhibit 1 and the relevant publication reads:-

"'Prophet' Docked over indecent assault

From

OBI UDEFUNA,

Jos,

A Jos Chief Magistrate Court has heard that a prophet with the "Christ

Bible Mission", Nassarawa-Gown, Jos, allegedly removed pubic hairs and finger nails of a lady adherent of the mission, in a pretext to pray for her with those materials.

B *The prophet, Ifeanyi Emeagwara, who is now standing trial before the Court on a charge of indecent assault, allegedly committed the offence between May and June last year, according to the prosecution.*

Said the prosecution Police Officer, Sergeant Kujiral Audu: "The accused lured Miss Patricia Ogonna into one of the rooms in the church, and began to rub her private parts with an oil.

C *"Consequently, the accused began to remove the hairs in the girl's private region and later cut her finger nails".*

Thereafter, the prosecution told the court, Miss Patricia Ogonna of No. 8, Maichibi Street, Jos, reported the matter to the police.

D *Ifeanyi pleaded not guilty and the Magistrate, Mr Pius Damulak, adjourned for further hearing".*

Also at the trial, certified true copy of the Criminal record of proceedings before Mr. P.D. Damulak, Chief Magistrate 1, Jos, was admitted in evidence as Exhibit 3. The First Information Report (FIR) on page 2 of the record reads in part:-

"Nature of Information: Assault on a woman with intent to outrage her modesty:- On the 14/12/87 at about 0800hrs one Mrs Rose Otwayne 'F' of No. 8 Maichibi Street, Jos came to 'C' Division Police Station Jos, and reported that sometimes last year 86 between the months of May and June one prophet Ifeanyi O. Emeagwara invited her in a private room in the Church and started cutting hairs of her private part in a pretext that he was going to pray for her - Section 268 suggested".

G *(Underlining mine)*

Page 3 of the record also reads:-

"Court:- Particulars of the offence read and explained to accused.

H *Accused:- I do understand the offence alleged. I have cause to show. The allegation is a lie. I do not know the woman.*

Court:- The accused denies the allegation". (Underlining mine)

In looking at the words underlined both in the publication (Ex-

hibit 1) and the F.I.R. and page 3 of the record (Exhibit 3) it is very clear that both have shown that:-

- (a) The allegation was the removal of pubic hair of a lady,
- (b) In a pretext to pray for her;
- (c) The person alleged to have done the act was prophet Ifeanyi B Emeagwara;
- (d) It took place between May and June last year (1987)
- (e) The lady's address was No.8, Maichibi Street, Jos.
- (f) The lady reported the matter to the police;
- (g) Offence contrary to Section. 268 of Penal Code;
- (h) The accused pleaded not guilty to the offence;
- (i) The Magistrate was Mr. Pius Damulak.

All these clearly appeared without any ambiguity in both Exhibits 1 and 3. In respect of (h) the slight difference is that in Exhibit 3, the record says that the accused "denies" the allegation. This in effect means that the accused pleaded not guilty of the offence. The items listed above constitute in my view, the substance of what is contained in the publication complained of in short. The rest are mere details which cannot change the meaning of what the publication contained.

The learned trial judge listed about 6 areas of differences in his judgment between the publication and the contents of the record of proceedings in the matter but came to the following conclusion:-

"Going back to the entire inaccuracies I am inclined to the view that they did not substantially distort the impression cast by the proceedings of the court as reported and published by the defendants. The inaccuracies did not make verse (sic) the nature of the allegation of indecent assault for which the plaintiff was arraigned before the learned Chief Magistrate on the F.I.R. I therefore hold that the inaccuracies were minor and did not disentitle the defendant of the defence of qualified privilege".

The Court of Appeal per Musdapher JCA in his lead judgment concurred by Muhammad and Orah JJCA, said on page 63 of the record of appeal:-

"On the facts of this case, it is not disputed that the appellant

was arraigned before the Chief Magistrate Court for the offence of assault on a woman with intent to outrage her modesty contrary to Section 268 of the Penal Code Law of Plateau State; The First Information Report was read and explained to the appellant in open court. The appellant denied the allegation and the matter was adjourned".

He went on further to say:-

"In order to be privileged the report must be a fair and accurate account of what took place in court. If what is stated is substantially a fair account of what took place, there is complete immunity for those who publish it. But where the inaccuracy is of a substantial kind, the newspaper report will lose the privilege".

I entirely agree with this statement of the facts and the law by the Court of Appeal in relation to this appeal.

The learned counsel for the appellant Mr. Okafor SAN submitted in his brief and emphasized by his oral argument in court, that the 6 items or incidents of inaccuracies found and listed by the learned trial judge in his judgment, taken as a whole, constituted grave and substantial indicator to the fact that the publication was malicious and could not be protected by law. He drew the attention of the court to the decided cases contained in his list of additional authorities in support of this contention.

The point has already been made earlier in this judgment that D.W. 2 (the 3rd respondent) who made the report which was published in Exhibit 1, did so in his capacity as a reporter of the 1st respondent and that he reported what he perceived in court in his presence. In his cross-examination he bluntly denied that he had any malice against the appellant whom he said he did not know at all before the publication.

I have also made a comparative analysis of the publication with what was contained in court record of the proceedings (Exhibit 3) and listed nine incidents or items appearing in both which I found to be substantially constituting a fair and accurate summary of what actually took place on 22/12/87 in the Chief Magistrate Court 1, Jos.

I have also examined the question of the 6 items of inaccuracies detected by the learned trial judge which he found to be inconsequential and unlikely to effect the substantiality of the publication. The court of

Appeal agreed with him and restated briefly as quoted above the substance of the allegation as contained in the publication and concluded that

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"..... discrepancies are minor and are of no consequence and do not disentitle the respondents from the plea of qualified privilege". B

I have carefully gone through the decided cases referred to the court by the learned counsel for the appellant, and found none of them useful in supporting the contention of the learned counsel.

From the above findings, I have inevitably come to the conclusion that the publication in Exhibit 1 complained of by the appellant is in substance, a fair and accurate report of what took place in court as recorded in Exhibit 3. I so find. C

The fact that the publication is fair and accurate in substance, does not automatically make it privileged. The privilege is not absolute but qualified and can easily be defeated by malice. In the Oxford Advanced Learners Dictionary "Malice" is defined as "the desire to harm; hatred for". And in Gatley on Libel and Slander, 11th Edition the learned authors in dealing with malice under paragraph 16.4 on page 428 wrote:- D E

"Malice means making use of the occasion for some indirect purpose. If the occasion is privileged it is so for some reason, and the defendant is only entitled to the protection of the privilege if he uses the occasion for that reason. He is not entitled to the protection if he uses the occasion not for the reason which makes the occasion privileged, but for an indirect or wrong motive". F

Therefore before the qualified privilege of the publication is destroyed it must be proved expressly or by some evidence from which to infer that the publication was for a purpose or motive other than its privileged occasion. See Williams v. Daily Times (1990) NWLR (pt. 124) 1 at 50-51; Atoyebi Vodudo (1990) 6 NWLR (pt. 157) 384; Clark v. Molyneux (1877) 3 Q.B.D. 237 at 246; Groom v. Crocker H (1939) 1 KB 194 at 207. G

While the onus of proving that the report of publication is fair and accurate and lies on the defendant, the burden of proving

malice rest solely on the plaintiff-in this case the appellant. There was no evidence of malice in this case and nothing to infer that from. In fact the author of the publication D.W. 2, asserted in his cross-examination, that he believe in the truth of the publication. There was no evidence to show that other interest or motive the author had in making the publication or report in the 1st respondent's newspaper except to give information to the public which as a reporter he has a duty to do. Therefore in my respectful view, as long as the publication was made bona fide and without actual malice, it is privileged. See Searles v Scarlett (1892) 2 QB 56 at 60 Kinber v Press Association (1893) 1 QB 65 at 72 Amiekhai v. Okwilage (1960) 2 ALL N.W.L.R.

From all what I have said above, I find that the publication complained of was a fair and accurate report of judicial proceeding of 22/12/87 in Chief Magistrate Court 1, Jos, and that in the circumstances of this case, it enjoys the protection of being privileged. I answer both issues against the appellant.

It should be noted here that there are concurrent findings of fact by the trial court and the Court of Appeal. It is trite law that this court will not interfere with such findings where there is sufficient evidence in support of such findings and where no substantial error is apparent on the record such as miscarriage of justice or violation of some principle of law or procedure. See Ezeonwu v. Onyechi (1996) 3 NWLR (pt. 438) 499 at 526; Ivienagbor v. Bazuaye (1999) 9 NWLR (pt. 620) 552 at 559 Ogunbiyi v. Adewunmi (1988) 5 NWLR (pt. 93) 217. I find no such error, miscarriage of justice or violation of principle of law or procedure in this case and see no ground to interfere with the decisions arrived at by those courts in this appeal.

In the circumstances, I find that there is no merit in this appeal. I dismiss it and affirm the decision of the Court of Appeal made on the 17th February 1994. I award N10,000.00 costs against the appellant in favour of the respondents.

BELGORE JSC

I read and discussed at length the draft of the judgment of my learned brother, Kalgo JSC, with which I am in full agreement. For the reasons extensively set out in the judgment, which I adopt, I also dismiss this appeal as totally lacking in merit. I award N10,000.00 as costs in B
favour of respondents against the appellant.

OGWUEGBU JSC

I have had a preview of the judgment just delivered by my learned C
brother Kalgo, J.S.C. I agree with the reasoning and conclusions contained therein.

The plaintiff who is the appellant in this court submit the following issues for our determination in the appeal: D

"(a) Whether or not the publication in the Daily Star Newspaper of 18-1-88 is a fair and accurate report of judicial proceedings so as to avail the defendants of the defence of qualified privilege.

*(b) Whether or not the publication was malicious having regard E
to all the circumstances of its publication and whether malice has been established."*

The alleged publication which is set out in paragraph of the statement of claim reads: F

*"A Jos Chief Magistrate Court has heard that a Prophet with the
"Christ Bible Mission", Nassarawa-Gwom, Jos, allegedly removed pubic
hairs and finger nails of a lady adherent of the mission, in a pretext to
pray for her with those materials.*

*The prophet, who is now standing trial before the court on a G
charge of indecent assault allegedly committed the offence between May
and June, last year, according to the prosecution.*

*Said the prosecuting police officer, Sergeant Kujiral Audu. The
accused lured Miss Patricia Ogbonna into one of the rooms in the Church, H
and began to rub her private parts with an oil.*

*Consequently, the accused began to remove the hairs in the girl's
private region and later cut her finger nails.*

Thereafter, the prosecution told the court Miss Patricia Ogbonna of No. 8 Maichibi Street, Jos reported the matter to the police.

The offence, the prosecution told the court, was contrary to section 268 of the Penal Code. Ifeanyi pleaded not guilty and the Magistrate Mr. Pius Damulak, adjourned for further hearing."

The first Information Report which was read in the Chief Magistrate's Court on 22-12-87 reads in part:

"Nature of Information: Assault on a woman with intent to outrage her modesty: On the 14-12-87 at about 0800 hrs. One Mrs. Rose Otwaye "F" of No. 8 Maichibi Street, Jos came to "C" Division Police Station Jos, and reported that sometimes (sic) last year 86 between the months of May and June one prophet Ifeanyi O. Emeagwara invited her in a private room in the Church and started cutting her private part in a pretext that he was going to pray for her section 268 suggested."

Part of the proceedings before the Chief Magistrate sitting in Jos on 22-12-87 reads:

COMR. OF POLICE VS IFEANYI EMEAGWARA

Accused:- Person in court Speaks English.

Pros:- Insp. J. Obanewo.

D - Counsel:- Mr. J. E. Egemba for accused.

F.I.R.:- Assault on Woman with intent to outrage her modesty S. 268 P.C.

Court:- Court Particulars of the offence read and explained to the accused.

Accused:- I do understand the offence alleged. I have cause to show. The allegation is a lie. I do not know the woman.

Court:- The accused denies the allegation.

Pros:- The case is not ready. I am not yet sure of the position of the case. The IPO is still in possession of the F.I.R. I apply for a date for mention."

The above represent the proceedings in the Chief Magistrates' Court, Jos, the First Information Report and the publication which formed the basis of the action leading to this appeal. The learned trial Judge after holding that the publication was a fair and accurate report of the judicial

proceedings and therefore privileged proceeded to award damages against the defendants in case his judgment was found to be erroneous by Court of Appeal. The plaintiff was not satisfied and appeal to the Court of Appeal, Jos Division. The court below in dismissing the appeal held as follows:

"From all the above, I am of the view, that the learned trial judge B was right in holding, that the defence of qualified privilege availed the respondents. They merely reported and published in their newspapers a fair and accurate account of what took place in the court on 22-12-87 in the issue of the Daily Star of 18/1/88. Accordingly the first issue formulated in the respondent's brief which is the same as issues 1-3 formulated C in the appellant's brief are answered in the positive."

Mr. Ofodile Okafor, S.A.N. for the appellant submitted as follows at page 7 of the appellant's brief:

"Privilege is attached to a fair and accurate report in a Newspaper D per of judicial proceedings. Material inaccuracies in a Newspaper report of judicial proceedings destroy a defence of qualified privilege since the fact that an occasion is privileged affords no panacea for publication of libellous imputations, unnecessary or irrelevant to the privileged occasion." E

The learned Senior Advocate of Nigeria pinpointed the various inaccuracies and distortions in the report. He relied on the following decided cases: Duyile v. Ogunbayo & Sons Ltd (1988) N.W.L.R. (pt. 72) 601, Atoyebi v. Odudu (1990) 6 N.W.L.R. (pt. 157) 384, and U.B.A. Ltd. v. Oredein & Or. (1992) 6 N.W.L.R. (p. 247) 355 at 362. F

It was contended in the respondents' brief that the publication as contained in Exhibits "1" and "1A" enjoyed the protection of the defence G of qualified privilege and that malice was not proved. It was further submitted that the whole report was substantially an accurate report of what took place in the trial court and the fact that slight inaccuracies occurred is immaterial. The court was referred to the case of Ryalls v. Leader (1866) H L.R.I. Exc. 296 at 230 and Clerk and Lindsell on torts, 15 ed. paragraphs H 20-133 and Gatlley on Libel and Slander, 7th ed. paragraph 624 pp. 264 - 265.

The courts below held that the report is a fair and accurate report

of the proceedings before Mr. P. D. Damulak, Chief Magistrate sitting in the Chief Magistrate's Court, Jos on 22-12-87 and that it was not actuated by malice. Some of the inaccuracies are that the complainant's name was Mrs. Rose Otwaye and not Patricia Ogbonna, that the plaintiff was not described as a prophet in the proceedings of 22-12-87, that Christ Bible Church was not mentioned, that the plaintiff was never alleged to have rubbed the private parts of Patricia Ogbonna with oil before the cutting of her public hairs and finger nails and that the police prosecutor was Inspector J. Obanewo and not Sergeant Kujiral Audu. The courts below held that the inaccuracies are inconsequential and did not rob the respondents of the defence of qualified privilege in the absence of malice which the plaintiff alleged but did not prove. I am of the same view with the courts below. The inaccuracies are not relevant. No reasonable man could come to the opinion that they added anything to the substance of the report (Exhibits "I" and "IA"). The report need not be a verbal one, it is enough if it is in substance a fair account of what took place. A few slight omissions or inaccuracies are immaterial I think that the courts below were justified in holding that the report is a fair and accurate account of what transpired in the Chief Magistrate's Court.

In the case of Atoyebi v. Odudu (supra), this court held that a qualified privilege is an occasion where the person who makes the communication has an interest or duty, legal, social or moral to make it to the person to whom it is made and the person to whom it is made has a corresponding interest or duty to receive it. It is a rule of law founded upon principles of public policy and convenience that no action for libel can be maintained in respect of a report of judicial proceedings, taking before persons acting judicially in open court, where the reporting is a fair and accurate report of those proceedings and published without malice. See Kimber v. The Press Association (1892) 1 Q.B. 65, Adams v. Ward (1917) A.C. 309 at 334 and Economides v. Thomopoulos & Co. Ltd. (1956) 1 FSC 7 at 12. I am satisfied that the defendants/respondents satisfied the requirements of the law and are entitled to the defence of qualified privilege.

Newspapers and other publications which report what transpires in our courts are to a certain extent privileged. They serve the cause of

public justice on such occasions through their accounts of judicial proceedings but their privilege must be limited to occasions in which they publish fairly what passes in the courts. The basis of the privilege lies not in the circumstances that the proceedings reported are judicial but that it is in the public interest that all such proceeding shall be fairly reported. Unless B it is shown, not merely that the publication was a publication of what took place in a court of justice, but also, that it was a fair and accurate publication the privilege does not arise. See R. v. Wright (1799) 8 T.R. 293 at 298 and Webb v. Times Pub. Co. Ltd. (1960) 2 Q.B. 535. Issues (a) and C (b) are therefore resolved against the appellant.

For these reasons and those adequately set out in the leading judgment by my learned brother Kalgo, J.S.C., I too dismiss the appeal. I abide by the order for costs contained in the lead judgment.

D

ONU JSC

I had a preview of the judgment of my learned brother Kalgo, JSC just delivered before now and I agree with him that the appeal fails. E

In adding a few comments of mine, I wish to say firstly that the facts of the case are not in dispute except the issues germane thereto and upon which arguments were agitated by the parties. Those issues are those upon which Appellant's complaint are: F

"(a) Whether or not the publication in the Daily Star Newspaper of 18/1/88 is a fair and accurate report of judicial proceedings so as to avail the Defendants of the defence of qualified privilege.

(b) Whether or not the publication was malicious having regard to all the circumstances of its publication and whether malice has been established." G

and the Respondents' lone issue proffered as arising for determination, to wit:-

"Whether in the circumstances of the case, the defence of qualified privilege was available to the Respondents." H

Having carefully studied the above issues, I have come to the inevitable view that to adopt the two issues formulated at the instance of the Appel-

lant will suffice to dispose of the matter as follows:-

ISSUE NO. (A)

After pin-pointing the Daily Star publication of 18/1/88 vide Exhibit 1, and its certified true copy viz. Exhibit 1A, we were referred to B page 19 of the Record of Proceedings (vide Exhibit adding that Exhibit 1 and 1A contained the following publication against the Appellant:-

"A Jos Chief Magistrate Court has heard that a Prophet with the 'Christ Bible Mission', Nassarawa - Gwom, Jos allegedly removed pubic hair and finger nails of a lady adherent of the mission, in a pretext to C pray for her with those materials."

As can be seen, malice was not proved by the Appellant. The only attempt made by him to prove malice was in his testimony-in-chief wherein he said:-

D *"In my view the publication was out of malice. This is because such a matter was never before any court."*

Contrary to the above piece of evidence, the Respondents tendered Exhibit 3 which showed that in fact the Appellant was arraigned before the Court E of the Chief Magistrate in Jos on 22/12/87 on First Information Report on an allegation of Assault on a Woman. The report, according to Exhibit 3, read in part thus:-

"On the 14/12/87 at about 0800 hours one Mrs. Rose Otwange 'F' of No. 8 Maichibi Street, Jos came to 'C' Division Police Station, Jos and reported that sometimes last year between the months of May and June one Prophet Ifeanyi O. Emeagwara (i.e. the Appellant) invited her in a private room in the Church and started cutting hairs of her private part in a pretence that he was going to pray for her."

G As did indeed transpired, the report was read out in open court and the Appellant denied the allegation. It is note-worthy to observe that the Appellant also pleaded Exhibit 3 vide paragraph 8 of the Statement of Claim. The main difference between Exhibit 3 and the said publication was that H the Respondents gave the name of the complainant as "Miss Patricia Ogbonna" instead of "Mrs. Rose Otwange". In the absence of any evidence, as in the present case, that the mistake in the name of the complainant was borne out of malice or that the true identity of the complainant was

material to the incident, I take the view that the error was not enough to deny the Respondents of the defence of qualified privilege. In the words of Bramwell B in the case of Ryalls v. Leader (1866) L.R.I Exch. 296 at 330:

"When you once establish that a court is a public court, a fair and bonafide report of all that passes there may be published." B

This view was referred to with approval by the learned authors in Clerk and Lindsell on Torts, 15th Edition at paragraph 20 - 133 thus:

"Principal reason for the privilege is that those of the public who are unable to obtain admission through lack of accommodation have a right to know through the medium of reports all that took place in the hearing of those who obtained admission." C

This privilege which Black's Law Dictionary, Sixth Edition defines as one defence to a prima facie case of defamation, is also referred to as conditional privilege in which interest the Defendant is seeking to vindicate is conditioned upon publication in reasonable manner and for proper purpose vide Hahn v. Kotten 43 Ohio St. 2d. 27 N.E. 2d. 713, 717. D

It is said to be granted on the ground of public policy. In effect, it ought to be borne in mind that the defence of qualified privilege can be destroyed E by proof of express malice on the part of the Defendants (Respondents) - a burden which the Appellant (Plaintiff). As stated earlier, in the instant no evidence of malice was led at the trial. Thus, where a defamatory statement is proved to be false and malicious, the Defendant (Respondents) F cannot be entitled to the defence of privilege Amiekhai v. Okwilage (1962) 2 ALL NLR (parts 2-4) and Clark v Molyneux (1897) Q.B.D. 247. See also Economides v. Thomopulos (1956) 7 at 12 and N.T.A. v. Babatope (1996) 4 NWLR 75. The few instances of inaccuracies in the report - G Exhibit 1 were, as found by the learned trial Judge, to be "minor and did not disentitle the Defendants (Respondents) of the defence of qualified privilege." CF Sketch Publishing Co. Ltd. v. Ajagbemokeferi 1 NWLR (part 100) 678.

It may be apt at this juncture to consider the said inaccuracies as found by H the learned trial Judge as follows:-

(a) The Appellant (Plaintiff) was not described as a prophet in quotations:

The fact that the Appellant claims to be a prophet is indisputable. In his evidence-in-chief, he described himself thus "I am a prophet of God in Christ Bible Mission". Further, during cross-examination, he said that "God made me a prophet."

B (b) Christ Bible Mission was never mentioned, let alone referred to in quotations. The Appellant testifying as PW1 and his witness Mrs. Ifeoma Ezeani (PW3), gave evidence that the Appellant is the founder and leader of the Christ Bible Mission.

C (c) The complaint and victim of the alleged indecent assault was Mrs. Rose Otwayne and not Miss Patricia Ogbonna. I am therefore of the firm view that in the absence of evidence that the variance in the name of the alleged victim of the assault and the one actually published in fact changed or aggravated the nature of the offence alleged made the defence D of qualified privilege to be still available to the Respondents. It could at best be described as the printer's devil without any mischief intended. On the contrary, the publication should be seen as making the alleged offence appear mild (if there is any such thing) for, if referred to a spinster instead E of the real victim - a married woman.

(d) The plaintiff was never alleged to have rubbed the private parts of Patricia Ogbonna with oil before the cutting of her pubic hair and finger nails.

F Although, it is pertinent to stress that no evidence was led at the trial that the Appellant was alleged to have rubbed the private parts of the victim with oil before he cut the pubic hairs, there was evidence that he was alleged to have cut her pubic hairs after taking her to a private room in the Church. The charge was not just read, but was also explained to the Appellant in open court. (See page 2 of Exhibit 3). I take judicial notice of G the fact that not everything that is said in open court is recorded. For, as the court below indeed held - a view which I endorse:-

"It does not matter whether he rubbed oil on her pubic H hairs before he began to shave off the hairs or not, the fundamental issue is whether the report as a whole is a fair representation of the allegations made against the Appellant."

In the light of the foregoing, my answer to issue 1 above is respectfully

rendered in the positive.

PUBLICATION:

Coming to issue No. B as to whether or not the publication was malicious having regard to all the circumstances and whether malice has been established, it will suffice to say that what was published did not change the nature of the alleged offence for the following reasons:-

(i) The police prosecutor was Inspector J. Obanewo and not Sergeant Kujira Audu. Indeed, as earlier pointed out in respect of paragraph (c) in issue A above, in the absence of evidence to the contrary, this discrepancy is hardly of any moment.

(ii) There was no charge and the Appellant did not plead not guilty to any charge but denied the allegation contained in the F.I.R. The Respondents are only journalists and not lawyers and so can hardly be expected to be very familiar with legal terms as to the difference between an accused person "pleading not guilty" to a charge or "denying an allegation in a F.I.R."

To the non-lawyer, both mean the same thing. In other words, to publish of a man that he pleaded not guilty to a charge in open Court rather than saying that he denied a charge as contained in a F.I.R. when read to him in open court, has the same effect to the ordinary man in the street reading such a publication and is not defamatory or can be so ascribed.

Bearing in mind the above mentioned discrepancies and the comments thereon, I have no hesitation in arriving at the conclusion that the Court below was right when it agreed with the trial Court when it held as follows:-

"... the discrepancies are minor and are of no consequence and do not disentitle the Respondents of the plea of qualified privilege."

This is the moreso, as in the instant case, where the whole report is a substantially accurate account of what took place and the fact that there are a few light inaccuracies therein which, to my mind, are immaterial. According to the learned authors of GATLEY ON LIBEL AND SLANDER, 7TH EDITION:

"A report in a daily newspaper is not to be judged by the same strict standard of accuracy as a report coming from the hand of a trained

lawyer unless a fair and reasonable latitude is given; there should be no safety in reporting the proceedings in courts of justice. It would be impossible to exercise the privilege of reporting if every trifling in a report deprived it of privilege."

- B In the case of N.T.A. v. Babatope (supra) the Court of Appeal inter alia that qualified privilege is a defence to an untrue publication. However, it can only be claimed when the occasion publication is shown to be privileged. Where the publication broadcast as in the present case, the Defendant should show broadcast is a fair information on a matter of public interest an appropriate status and an appropriate subject matter. A publication is privileged where it is made with a view to giving public information on a matter of interest if it is the duty of the Defendant to give it to the general public.
- D It is for the Judge who is trying the case to determine whether Defendant was under a duty to make the communication. The Judge is entitled to take the entire prevailing circumstances into account in reaching a decision.

- E Further on publication of libel, the law is well stated in C Lindsell on Torts, 15th Edition, Paragraph 20-48 at page 930

"JOINT PUBLICATION" - The publication of libel may be a joint tort, as where in pursuance of common design one composes, another prints and another distributes a libel or where a servant publishes a libel within the scope of his employment. "Where defamatory matter is contained in a book, periodical, or newspaper there are normally a series of publications each of which constitutes a separate tort. First, there is publication by the author to the publisher for which the author is solely liable. Secondly, there is the publication of the printed work to the trade and the public, for which the author, publisher and printer are jointly liable. It is normally in respect of this last publication that proceedings for libel are brought, although it is open to the plaintiff to sue in respect of the separate publications set out above."

In the instant case, I am inclined to the view and do humbly adopt and treat the "inaccuracies" as slight that do not deprive the report in Exhibit 1A of privilege. See the case of Obasuyi v. Ezeighu (1991) 3 NWLR (part 181)

585 at 596 which raised the question of the Plaintiff delivering a Reply (as herein), in order to show that the Defendants' claim of privilege is obviated by facts of their being actuated by express malice. See also Daily Times Nigeria Ltd. v. Emezuonwu (1990) 2 NWLR (part 122) 341, a case which dealt with the identity of the person to whom damages were awarded. See too Chief the Hon. Rotimi Williams and Others v. The West African Pilot (Consolidated Suits) (1961) ALL NLR. 866 at 877, where it was held inter alia that:-

"The proper purpose of an action for libel or slander is to vindicate the character of the person defamed and the proper party to bring the action is accordingly the person actually and personally defamed. In other words, the identity of the person who claims to be defamed must be easily ascertainable."

In an effort to persuade this court to arrive at the view that there were enough discrepancies between the judicial proceedings as contained on Exhibit 3 and as published by the Respondents in Exhibit 1, the Appellant in his Grounds of Appeal and in his Brief of Argument, for the first time, and without seeking this court's permission or leave, introduced a new matter that was never before the two Lower Courts. For instance, in particular (d) of ground one of the Appellant's Ground of Appeal, the Appellant stated thus:-

"(d) In judicial proceedings there was no allegation that candlestick and oil were inserted into the private part of the alleged victim as portrayed by the report."

Throughout the proceedings in the trial court as well as in the court below, nothing was said to have been inserted into the private part of the alleged victim of the Appellant's alleged offence. As neither was mention made of candlestick in Exhibit 1 nor any other place in the proceedings, the fact that the Appellant neither pleaded nor proved that fact; nor further-still that oil was said to have been rubbed but not inserted before the pubic hairs were shaved off, leads me to conclude that this was an attempt by the Appellant to introduce these new set of facts at this late stage, in an effort or a desperate attempt to sway the mind of this court to irrelevant matters. This I will discountenance and refuse to do.

Besides, the decisions of the two courts below are concurrent and I will in the absence of any perverse finding decline to interfere therewith. Issue (B) is accordingly answered in the negative.

It is for the above reasons and the fuller ones contained in the judgment of my learned brother Kalgo, JSC, a preview of which I had had, that I too find no merit in this appeal. I therefore accordingly dismiss it and make a similar award of costs as contained in the leading judgment.

C

ACHIKE JSC

Plaintiff/appellant instituted this action in the Plateau State High Court, holden in Jos and claimed against the defendants/respondents the sum of N200,000.00 as aggravated or exemplary damages for libel published in the Daily Star newspaper of 18th January, 1988. He also prayed for injunction to restrain the respondents from further publication of the aforesaid libel. The publication related to the appellant and the Christ Bible Mission, Jos Founded by him. Both parties filed and exchanged pleadings. The crucial facts of libel alleged were contained in Exhibit 1, that is, the newspaper publication and as set out in respondent's averment in paragraph 5 of the statement of claims; it read:

"On the 18th day of January, 1988, the defendants falsely and maliciously wrote and printed and published on the back page of the issue of "Daily Star" dated that day of and concerning the plaintiff under the caption title "prophet docked over indecent assault", the words following that is to say:-

"A Jos Chief Magistrate Court has heard that a prophet with the "Christ Bible Mission", Nassarawa-Gwom, Jos, allegedly removed pubic hairs and finger nails of a lady adherent of the Mission, in a pretext to pray for her with those materials".

The prophet, Ifeanyi Emeagwara, who is now standing trial before the court on a charge of indecent assault allegedly committed the offence between May and June last year, according to the prosecution"

The defendants/respondents answered the above in paragraphs 4 and 5 of their statement of defence as follows:

"4. *The defendants admits (sic) the publication as contained in paragraph 5 of the statement of claim but aver that the publication was not false and malicious. The defendants aver that in so far as the said publication consists of allegation of fact, they are true in substance and in fact. In so far as consist of expression of opinion they are fair comments and made in good faith and without malice against the plaintiff.* B

5. *In further answer to paragraph 5 of the statement of claim, the defendants aver that the publication was part of the proceedings in the Chief Magistrate Court Jos which is privilege. The defendants will at the trial rely on the said proceedings of the said case".* C

After due trial, the learned trial judge held that although the publication was defamatory, nevertheless being a fair and accurate report of judicial proceedings, the publication was privileged. He then dismissed plaintiff's claim. The trial judge, after due consideration of the case on its merit, awarded N20,000.00 as damages should the appellate court disagree with him on whether the occasion of publication was privilege. D

Dissatisfied, the plaintiff/appellant appealed to the court of Appeal. That court unanimously dismissed the appeal having reached the conclusion that what was reported and set out in Exhibit 1 was substantially a fair and accurate account of what transpired in court and it accorded the defendants/respondents complete immunity in an action for libel. The lower court, like the trial court, was satisfied that the alleged inaccuracies were not of a substantial nature to rob the respondents of their qualified privilege. E F

Still undaunted, the appellant further appealed to this court. His learned counsel, Mr. Ofodile Okafor, SAN, submitted two issues for our determination, to wit: G

"(a) *Whether or not the publication in the Daily Star Newspaper of 18/1/88 is a fair and accurate report of judicial proceedings so as to avail the defendants of the defence of qualified privilege.*

(b) *Whether or not the publication was malicious having regard to all the circumstances of its publication and whether malice has been established."* H

The respondent in a brief filed by Sullivan Chime, Esq but argued

before us by Mr. P. I. Nwankwo-Ikwueto, identified a single issue for determination, namely,

"Whether in the circumstances of the case, defence of qualified privilege was available to the respondents."

B There is hardly much to choose between the two sets of issues for determination but I prefer the appellant's because it is quite germane and indeed more comprehensive for effective disposal of real question in controversy between the parties. To avoid undue repetition both issues would be taken together.

C A person may make a defamatory statement about another under circumstances where there exist a qualified privilege to make the statement provided the maker is not actuated by malice. The principle is that communications made in the discharge or performance of a duty (be it
D public or private duty) or made in the protection of lawful interest or fair and accurate reports in a newspaper of the public proceedings of any court of justice, whether superior or inferior, and whether courts of record or not. It will follow that this privilege will not avail a reporter if the proceedings take place in a court to which the public are not admitted or in a purely domestic tribunal. It has long been established that defence of qualified privilege will only avail a person where the report or publication is shown to be "fair and accurate", that is to say that it is substantially accurate, without necessarily being exactly word for word of what transpired.
F Mitchell Richards v. Hirst, Kidd & Ronnie, Ltd (1936) 3 ALL ER 872 is manifestly illustrative as to what constitutes a valid plea of fair and accurate report. Here the plaintiffs took a car from the premise of a hotel where it was kept and went on a ride before they were found by the police. The
G plaintiffs were charged (i) with theft and (ii) with having taken a car away without the owner's consent, contrary to the Road Traffic Act, 1930, section 28. At the police court, charge of theft was withdrawn in open court, and both plaintiffs were convicted on the charge under the Road traffic
H Act, 1930. The defendants published reports in their newspapers of the incident headed "stole motor car" and "Motor car theft". Richards was dismissed from his employment soon afterwards. Mitchell and Richards sued the owners and publishers of certain newspaper which publish the

police court proceedings. The learned trial judge accepted the evidence of the two reporters that they did not hear the withdrawal of the charge for theft due to their inattention. It followed that the reports were not fair and not accurate, even though it was not suggested that the reporters had malice at the time the publication was made. The two actions were consolidated under the relevant law.

The trial judge held that the reports were inaccurate and the plea of qualified privilege could not avail the publishers and awarded #100 damages to Mitchell and #109 damages to Richards.

It must be noted also that for a report to be fair and accurate it must constitute a fair presentation of that which took place on the said occasion bearing in mind that the purpose of the defence of qualified privilege is to enable the public to be informed of proceedings of public interest. Indeed, a brief summary of the report is sufficient; see Cook v. Alexander (1973) 3 ALL ER 1037. In contrast, one should also look at the case of Blackshaw v. Lord (1983) 2 ALL E.R. 311 at 327 where Stephenson, L.J. opined that 'where damaging allegations or charges have been made and are still under investigation or have been authoritatively refuted, there can be no duty to report them to the public'.

In order to determine the fairness and accuracy of the report complained about it is necessary first to examine the report about which the complaint is made and compare it with what was stated by the court in its proceedings. We had earlier set out the plaintiff averment complained about. Let us now set out the content of what transpired in court as recorded by the presiding Chief Magistrate as the First Information Report (F.I.R.) and tendered in court as Exh. 3 and compare it with what was actually published by the defendants. First Exhibit 3. It runs as follows:

"Nature of information: Assault on a woman with intent to outrage her modesty:- On the 14/12/87 at about 0800hrs one Mrs Rose Otwayne 'F' of No. 8 Maichibi Street, Jos came to 'C' Division Police Station, Jos, and reported that sometimes last year 86 between the months of May and June one prophet Ifeanyi I. Emeagwara invited her in a private room in the Church and started cutting hairs of her private part in a pretext that he was going to pray for her - section 268 suggested".

Page 3 of the court's record reads as follows:

"Court:- Particulars of the offence read and explained to accused.

Accused:- I do understand the offence alleged.

B *I have cause to show. The allegation is a lie. I do not know the woman.*

Court:- The accused denies the allegation".

The content of the Daily Star newspaper report complained about was admitted in evidence at the trial as Exhibit J and reads as follows:

C *"'Prophet' Docked over indecent assault
From Obi Udefuna Jos*

*A Jos Chief Magistrate Court has heard that a prophet with the "Christ Bible Mission", Massarrawa-Gown, Jos, allegedly removed public hairs
D and finger nails of a lady adherent of the mission, in a pretext to pray for her with those materials.*

*The prophet, Ifeanyi Emeagwara, who is now standing trial before the Court on a charge of indecent assault, allegedly committed the
E offence between May and June last year, according to the prosecution.*

Said the prosecution Police Officer, Sergeant Kujiral Audu: "The accused lured Miss Patricia Ogbonna into one of the rooms in the church, and began to rub her private parts with an oil.

F *"Consequently, the accused began to remove the hairs in the girl's private region and later cut her finger nails".*

Thereafter, the prosecution told the court, Miss Patricia ogbonna of No.8, Maichibi Street, Jos, reported the matter to the police.

G *Ifeanyi pleaded not guilty and the magistrate, Mr. Pius Damulak, adjourned for further hearing".*

Learned counsel for the plaintiff/appellant Mr. Ofodile Okafor SAN identified the following as what he headed as inaccuracies, looking at Exhibits 1 and 3.

H *"(a) The plaintiff was not described as a prophet in quotation.*

(b) Christ Bible Mission was never mentioned let alone referred to in quotation.

(c) The complainant and the victim of the alleged indecent as-

sault is one Mrs. Rose Otuonye and not Miss Patricia Ogbonna

(d) The plaintiff was never alleged to have robbed the private part of patricia with oil before cutting her pubic hair and finger nails.

(e) The Police prosecutor was Inspector J.J. Obanewo and not sergeant Kujiral Audu.

(f) There was no charge and the plaintiff did not plead guilty to any charge but denied the allegation in the F.I.R."

As earlier noted, both the trial court and the Court of Appeal held that the defence of qualified privilege availed the defendant/respondent. Appellant's learned counsel submitted that the inaccuracies were sufficient to destroy the defence of qualified privilege while it was submitted in respondent's brief by his learned counsel, S. Chime Esq that the discrepancies between Exhibits 1 and 3 were not enough to destroy the respondent's defence of qualified privilege.

I have closely examined Exhibits 1 and 3. I am quite satisfied that there are some discrepancies between the contents of Exhibits 1 and 3. I have also identified some discrepancies between the exhibits. I shall take them seriatim.

1. The plaintiff was never described as a prophet. But in evidence-in-chief he described himself so: "I am a prophet of God in Christ Bible Mission" and further testified "God made me a prophet".

2. Christ Bible Mission was never mentioned in Exhibit 3. This may well be true but PW3 - Mrs Ifeoma Ezeani - testified that the appellant was the founder and leader of the Christ Bible Mission.

3. There is discrepancy that the victim of indecent assault was Mrs Rose Otwayne and not Miss Patricia Ogbonna. There was no evidence to establish that the variance in the name of the alleged victim of the indecent assault and the name actually published in fact made a difference to the offence alleged or aggravated it or affected the defendants' defence of qualified privilege. Exhibit 1 referred to Miss Patricia Ogbonna - a spinster - while Exhibit 3 referred to Rose Otwayne - a married woman. It seems to me the error in the victim of the assault in terms of being a spinster a married person is inconsequential. Perhaps, the error in terms of the victim of the assault would have become substantial if the one identified

the victim as a Miss X while the other stated a Mr. X. This would have been fundamental inaccuracy as the reference to a Mr. X as the victim has the far-reaching effect, or at any rate, the implication that the plaintiff was a gay personality, i.e. a homosexual. But this is clearly not the position.

B 4. It was never alleged that plaintiff rubbed the private parts of the victim with oil before the cutting of the pubic hairs and before cutting them as well as her nails, I think the crucial issue was that the appellant cut the pubic hairs of the victim and it seems immaterial whether there was any rubbing of the pubic hairs with oil or water before the cutting.

C 5. Again there was discrepancy as regards whether the Police prosecutor was Inspector J. Obanewo and not Sergeant Kujira Audu. Surely, this cannot make any difference whatsoever. It is at best a storm in a teacup and ought to be ignored.

D 6. There was no charge and the plaintiff did not plead 'guilty' or 'not guilty' to any charge but denied the allegation in the F.I.R. Procedure by F.I.R. wherein the allegation was denied rather than the formal plea of 'not guilty' are rather technical in nature and the distinction may not be easily appreciated by ordinary non-legally oriented people in society. Be that as it may, this did not affect the offence alleged against the plaintiff which in essence was an offence of indecent assault.

F The above have shown the alleged discrepancies. The real issue is whether the report by the reporter was essentially reasonably correct and accurate. If the answer is in the affirmative the defence inures to the reporter but if in the negative the plea of qualified privilege is lost. Gatley on Libel and Slander (7th ed) has cautioned in paragraph 624, pp 264 to 265 as follows:

G *"A report in a daily newspaper is not to be judged by the same strict standard of accuracy as a report coming from the hand of a trained lawyer. Unless a fair and reasonable latitude is given, there would be no safety in reporting the proceedings in courts of justice. It would be impossible to exercise the privilege of reporting if every trifling slip in a report deprived it of privilege."*

H From my scrutiny of Exhibits 1 and 3, the question I am bound to ask myself is whether the publication complained about is substantially a fair

and accurate report of what transpired in the Chief Magistrate Court, Jos
on that fateful day in respect of the charge of indecent assault on a female?
Thus whether it was included in the report complained about that the plaintiff
"shaved", "plucked" "pulled" or "cut" the victim's pubic hairs would hardly
make any difference to my mind in regard to the method adopted by the B
plaintiff in the removal of the pubic hairs. Furthermore, and like in the
latter situation, whether the defendant-reporter stated that some oil, water
any liquid, for that matter, was applied to the pubic hairs before their
removal would be of no moment so long as the pubic hairs were in fact C
removed. My unequivocal answer is in the affirmative more so as no
evidence had been proved to the satisfaction of the trial court, or the
lower court or even demonstrated to us that the report was actuated even
by the flimsiest notion of malice which no doubt, would have gone a lone
way to destroy the plea of qualified privilege. See Atoyebi v. Odudu D
(1990) 6 NWLR (pt. 157) 384 and Groom v Crocker (1939) 1 KB 19.

All in all, therefore, I have not been persuaded that the appeal has
any merit. Accordingly, I entirely agree with the leading judgment of my
learned brother, Kalgo, JSC that this appeal deserves to fail and I hereby E
dismiss it with N10,000.00 costs in favour of the respondents.

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