

SUPREME COURT OF NIGERIA
FRIDAY 11TH JULY, 2003. SC. 171/1999
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
A. I. IGUH, A. I. KATSINA-ALU, D. O. EDOZIE, JJSC

1. BASSEY EDEM
2. PAMOL NIGERIA LIMITED APPELLANTS
AND
1. ORPHEO NIGERIA LIMITED
2. DR. SAMA EKPO SAMA RESPONDENTS

COMPANY LAW - Legal personality - Torts - Nature of - *Duyile v. Ogunbayo* - A company can be injured by libel as to its monetary earnings - And not as to its feelings (H1)

COMPANY LAW - Legal personality - Defamation of company - A company is entitled to award of damages - Once it is proved that libel complained of - Is defamatory of its reputation (H2)

COMPANY LAW - Actions - Libel - Joinder of parties - Correctness of - 1st & 2nd plaintiffs were rightly joined - Since any libelous imputation on professional competence of the company - Refers to both (H3)

FACTS

1st respondent was the owner of a cottage hospital located on 2nd appellant's plantation. The plantation was later on sold to 1st respondent. 2nd respondent was the medical Director running the hospital on behalf of 1st respondent. By an agreement between 2nd appellant and 1st respondent, employees of 2nd appellant were being treated at agreed fees at the hospital. On the expiration of the agreement, appellants notified respondents that they would not renew it. Subsequently, 2nd appellant converted a part of the plantation premises into a clinic for use of its staff. During an opening ceremony of the clinic, 1st appellant (i.e. managing director of 2nd appellant) made a statement which respondents complained was libelous of them. The full text of the statement was subsequently published in a staff newspaper of 2nd appellant.

Consequently, respondents sued appellants in the High Court of Cross-River State claiming damages for libel. After the trial, the learned trial judge found for respondents and awarded the sum of N400,000.00 (four hundred thousand naira) to them as general damages. Aggrieved, appellants appealed to Court of Appeal, Calabar Division. The court dismissed the appeal. Still dissatisfied, appellants have come on a further and final appeal to Supreme Court. It is their contention that the joinder of 1st respondent (an artificial person) and 2nd respondent (a natural person) as co-plaintiff's for the action was fatal to their case in that appellants' liability to each of them depended on proof of a different and totally distinct kind of injury from that required to be proved by the other.

ISSUES FOR DETERMINATION

"1. Whether the claim of the 1st Plaintiff was sustainable in the light of the evidence adduced at the trial.

2. Whether the joint claim of the Respondent which culpability (or damages) is dependent on the two proofs of different and totally distinct injury, could be sustained in the circumstances."

HELD (Unanimously dismissing the appeal per
OGUNDARE JSC)

COMPANY LAW - Legal personality - Torts - Nature of

1. It is settled law that a limited liability company such as the 1st plaintiff cannot be injured in its feelings as it has no feelings; it can only be injured in its pocket. As Lord Reid put it in *Lewis v. Daily Telegraph, Ltd.* (1963) 2 All ER 151 at 156:

"A company cannot be injured in its feelings, it can only be injured in its pocket. Its reputation can be injured by a libel, but that injury must sound in money. The injury need not necessarily be confined to loss of income. Its goodwill may be injured." (Underlining are mine)

The law is restated by this court per Belgore, JSC., in *Duyile v. Ogunbayo and Sons Ltd.* (1988) 1 NWLR (Pt. 72) 601 at 611 in these words:

A company is a legal person, but it is inanimate. A company can only be injured as to its earnings and not as to its

feelings. It can be injured by libel and that injury must be related to its loss in money terms. Its loss of earnings, loss of profits, and loss of goodwill are matters that libel can bring as misfortune for the company. (p. 2184 C/ G)

COMPANY LAW - Legal personality - Defamation of company

2. That the libel complained of as defamatory of the 1st Plaintiff in its reputation is without doubt. I have read over the dictum of Belgore, JSC., in the case cited above and I am of the view that once it is proved that the libel complained of is defamatory of the company in its reputation, the company is entitled to award of damages. As Kay, LJ., put it in *South Hetton Coal Company v. North Eastern News Association* (supra) at 148:

“I therefore am of opinion that a trading corporation may sue for a libel calculated to injure them in respect of their business, and may do so without any proof of damage general or special. Of course if there be no such evidence the damages given will probably be small.” (Underlining is mine)

Therefore, the conclusion I reach is that it is not necessary for the corporation in order to succeed to prove that special or general damages occurred once it can show that its reputation or goodwill is injured by the libel. (p. 2186 E)

COMPANY LAW - Actions - Libel - Joinder of parties - Correctness of

3. The thrust of Defendants’ submission is that since the damage required to be proved by each Plaintiff is different and distinct the parties could not jointly sustain the libel action. I can find no substance in the arguments for the Defendants on this issue. The 1st Plaintiff is the owner of the Health Farm Clinic, Dr. Sama while the 2nd Plaintiff was the one responsible for running it. Any libelous imputation on the professional competence of the clinic would obviously refer to the two Plaintiffs. There is no doubt that the two Plaintiffs rightly joined in this action. The joinder of the two Plaintiffs was not questioned by the Defendants at the trial. In any event I can see nothing wrong in the two Plaintiffs joining to sue as co-Plaintiffs in this action. (p. 2187 B)

REPRESENTATION

V. Ndoma-Egba, with T. E. Taiwo, for the Appellants
S. N. Chukwuma, Esq., for the Respondents

CASES REFERRED TO

Oshoboja v. Dada (1987) 3 NWLR (Pt. 66) 565
Fadayomi v. Shadipe (1985) 2 NWLR (Pt. 25) 736
Duyile v. Ogunbayo & Sons Ltd (1988) 1 NWLR (Pt. 72) 601
Chinweze v. Masi (1989) 1 S.C. (Pt. II) 33
South Hetton Coal Co. Ltd. v. North-Eastern News Association Ltd.
(1894) 1 QB 133
Cross River State Newspaper Corp. v. J. L. Oni (1995) 1 NWLR 270

LEAD JUDGMENT BY OGUNDARE JSC

The Plaintiffs, Orpheo Nigeria Limited and Dr. Sama Ekpo Sama, (who are Respondents in this appeal), and the Defendants, Bassey Edem and Pamol Nigeria Limited, (now Appellants), had business relationship. The 2nd Defendant owned a cottage hospital on its plantation which it sold to the 1st Plaintiff. The hospital became known as Health Farm Clinic Dr. Sama and was being run on behalf of the 1st Plaintiff by the 2nd Plaintiff, the medical director of the hospital. By an agreement between the 2nd Defendant and 1st Plaintiff employees of the former were being treated, for agreed fees, at the hospital. On the expiration of the agreement the Defendants intimated the Plaintiffs of their intention not to renew it. The 2nd Defendant had by then converted a part of its premises into a clinic and equipped same, for the use of its staff. There was an opening ceremony of this clinic attended by many people, including members of the press. At this opening ceremony the 1st defendant, who at all times relevant to this action was the Managing Director of the 2nd defendant, made a statement which the Plaintiffs complained was libellous of them. The full text of the statement was published in "Pamol News" the staff newspaper of the 2nd defendant. In consequence of this statement the plaintiffs sued the defendants claiming N2m general damages for the libel.

Pleadings were filed and exchanged and the case went to trial on Plaintiffs' Statement of Claim and Defendants' Amended State-

ment of Defence. At the trial, evidence was led on both sides. After addresses by learned counsel for the parties, the learned trial Judge in a reserved judgment found for the plaintiffs and entered judgment in their favour in the sum of N400,000.00 as general damages.

Being dissatisfied with this judgment the defendants appealed to the Court of Appeal which court dismissed the appeal and affirmed the judgment of the trial court. The defendants have now appealed to this court. B

Pursuant to the rules of this court the parties filed and exchanged their respective briefs of argument. In the Appellants' brief, 2 issues have been raised as calling for determination in this appeal. C
The 2 issues read:

"1. Whether the claim of the 1st Plaintiff was sustainable in the light of the evidence adduced at the trial.

2. Whether the joint claim of the Respondent which culpability (or damages) is dependent on the two proofs of different and totally distinct injury, could be sustained in the circumstances." D

The plaintiffs for their part, formulated 2 Issues which I consider to be variants of the issues formulated by the defendant. I think for the purpose of this appeal the issues as formulated by the defendants will suffice. E

ISSUE 1:

Whether the claim of the 1st Plaintiff was sustainable in the light of the evidence adduced at the trial.

Learned counsel for the defendants referred to passages in the evidence of the 2nd Plaintiff who testified at the trial as P.W.1. After citing dicta from various authorities, learned counsel submitted, having regard to the pleadings filed and evidence of P.W.1, that there was no shred of evidence to justify the finding that the 1st Plaintiff was injured, "in the pocket" by the libel of the defendants. He urged the court to hold that the two courts below were wrong in finding in favour of the 1st Plaintiff as no evidence existed showing such pecuniary loss, or any other loss for that matter, on the part of the 1st Plaintiff. He urged the court to set aside the judgments of the two courts below in so far as the 1st Plaintiff was concerned. F G H

Learned Counsel for the Plaintiffs, after referring to a passage in the judgment of the learned trial Judge, observed that the learned Judge was mindful of the artificial nature of the 1st Plaintiff. He ar-

gued that the finding of the trial Judge was to the effect that the 1st plaintiff was injured in its reputation in the operation of the Health Farm Clinic Dr. Sama which was no longer functioning as a result of the libelous publication by the defendants. Learned counsel argued that the injury to the 1st Plaintiff was to its business reputation. Counsel
B submitted that the 1st Plaintiff injured in its reputation and was, therefore, entitled to damages.

The finding in favour of the 2nd Plaintiff is not being contested in this appeal. It is the judgment in favour of the 1st plaintiff who is a
C corporate body that is being contested on the ground that there was no evidence that the 1st Plaintiff suffered any pecuniary loss as a result of the libel.

It is settled law that a limited liability company such as the 1st plaintiff cannot be injured in its feelings as it has no feelings; it can only be injured in its pocket. As Lord Reid put it in Lewis v. Daily Telegraph, Ltd. (1963) 2 All ER 151 at 156:
D

***“A company cannot be injured in its feelings, it can only be injured in its pocket. Its reputation can be injured by a
E libel, but that injury must sound in money. The injury need not necessarily be confined to loss of income. Its goodwill may be injured.” (Underlining are mine)***

***The law is restated by this court per Belgore, JSC., in
F Duyile v. Ogunbayo and Sons Ltd. (1988) 1 NWLR (Pt.72) 601 at 611 in these words:***

***“Unlike a human being, a corporate body suing for defamation, seeks only damages for pecuniary loss it can suffer and not for things only possible in personal feelings. It can sue for loss of profit,
G shortfall in turnover or anticipatory loss but not for natural grief and distress, and not for social disadvantage. A company in law is a person that can sue and be sued, but it can only do these through the agency of its directors who think for it and carry out its objective. A
H company is a legal person, but it is inanimate. A company can only be injured as to its earnings and not as to its feelings. It can be injured by libel and that injury must be related to its loss in money terms. Its loss of earnings, loss of profits, and loss of goodwill are matters that libel can bring as misfortune for the company. It is because of these special attributes of a com-***

pany that in an action in defamation, a company does not need to prove special damage or even financial loss to recover damages for the injury to its reputation in the way of its trade or business. Lewis v. Daily Telegraph (1964) AC 262; Proprietors of Selby Bridge v. Sunday Telegraph (The Times, 17th February, 1966)." (Underlining are mine) B

Again in *South Hetton Coal Company v. North Eastern News Association* (1894) 1 QB, 133 1 147, Kay, LJ., had this to say on the competence of a corporation to sue for defamation -

"In Metropolitan Saloon Omnibus Co. v. Hawkins (1859) (1) Pollock, CB., says, 'That a corporation at common law can sue in respect of a libel, there is no doubt. It would be monstrous if a corporation could maintain no action for slander of title, through which they lost a great deal of money. It could not sue in respect of an imputation of murder, or incest, or adultery, because it could not commit those crimes; nor could it sue in respect of a charge of corruption, for a corporation cannot be guilty of corruption, though the individuals composing it may. But it would be very odd if a corporation had no means of protecting itself against wrong: and, if its property is injured by slander, it has no means of redress except by action. Therefore it appears to me clear that a corporation at common law may maintain an action for a libel by which its property is injured; and he held that a trading corporation formed under 19 & 20 Vict. c. 47, had the same power, saying this: 'In order to carry on business it is necessary that the reputation of such a corporation should be protected, and therefore in cases of libel or slander it must have a remedy by action;' and the other judges of the Court of Exchequer concurred."

Coming back to the case on hand there can be no doubt that the statement made by the 1st Defendant of the plaintiffs was defamatory. The Defendants are not contesting that in this appeal; what they seem to be saying is that as on the evidence of P.W.1 (the 2nd Plaintiff), 1st Plaintiff suffered no pecuniary loss as a result thereby, it was not entitled to award of damages. In his evidence at the trial, 1st Plaintiff testified thus: G

"The operation of the Health Farm Clinic Dr. Sama dwindled to a stop after that publication"

Cross-examined, the witness went on to say:

“Orpheo Nigeria Limited is a Multi Purpose Company. They handle quite a lot of things including health - buying of drugs. It is a Multi Purpose Company. I do not agree that I knew very little about Orpheo Nigeria Limited, apart from health, Orpheo carries out quarry. The company can do so through its employee. When the staff does something in the name of Orpheo, Orpheo is involved.”

To further questions the witness added that “business has not been good for Orpheo because of the present economy.” Concluding his evidence in cross-examination the witness said:

“Orpheo has been declaring profits. Business is very bad in the present economy. The down trend came when the contract was terminated. Orpheo is a Multi Purpose Company. We are still making money in quarry. The business is not so good. It used to be good but went down when the economy became bad.”

The argument of learned counsel for the Defendants is that having regard to the evidence highlighted above, the 1st Plaintiff suffered financial loss not as a result of the libel, but as a result of the economic down turn in the country. I have carefully considered this submission and, as attractive as it is, I find myself unable to accept it as a ground for reversing the judgment in favour of the 1st Plaintiff. ***That the libel complained of is defamatory of the 1st Plaintiff in its reputation is without doubt. I have read over the dictum of Belgore, JSC., in the case cited above and I am of the view that once it is proved that the libel complained of is defamatory of the company in its reputation, the company is entitled to award of damages. As Kay, LJ., put it in South Hetton Coal Company v. North Eastern News Association (supra) at 148:***

“I therefore am of opinion that a trading corporation may sue for a libel calculated to injure them in respect of their business, and may do so without any proof of damage general or special. Of course if there be no such evidence the damages given will probably be small.” (Underlining is mine)

Therefore, the conclusion I reach is that it is not necessary for the corporation in order to succeed to prove that special or general damages occurred once it can show that its reputation or goodwill is injured by the libel. Although the 1st Plaintiff in this case has not established by evidence the pecuniary loss suffered by it as a result of the defamation, it is however, in evi-

dence that the operation of his clinic dwindled to a stop after the publication of the libel. In the result I resolve Issue (1) in favour of the 1st Plaintiff.

ISSUE 2:

“Whether the joint claim of the Respondents, which culpability (or damages) is dependent on the two proofs of different and totally distinct injury, could be sustained in the circumstances. B

The thrust of Defendants’ submission is that since the damage required to be proved by each Plaintiff is different and distinct the parties could not jointly sustain the libel action. It is contended that the trial Judge failed to appreciate that it is only one of the two Plaintiffs that is a natural person. There is a belated attempt to question the finding that the libellous publication referred to the two plaintiffs. ***I can find no substance in the arguments for the Defendants on this issue. The 1st Plaintiff is the owner of the Health Farm Clinic Dr. Sama while the 2nd Plaintiff was the one responsible for running it. Any libellous imputation on the professional competence of the clinic would obviously refer to the two Plaintiffs. There is no doubt that the two Plaintiffs rightly joined in this action. The joinder of the two Plaintiffs was not questioned by the Defendants at the trial. In any event I can see nothing wrong in the two Plaintiffs joining to sue as co-Plaintiffs in this action.*** See Cross River State Newspaper Corporation v. J. L. Oni and 6 Ors. (1995) 1 NWLR 270 at 291 where Iguh, JSC., observed: C D E F

“I have given a most careful consideration to the pleadings and the evidence before the trial court and it seems to me crystal clear from the findings of the trial court as affirmed by the court below that the right to relief as claimed by all seven plaintiffs is in respect of and arises out of the same transaction. This is because in cases of libel or slander, the phrase ‘the same transaction’ is judicially interpreted to mean the same publication and I am, with respect, in entire agreement with this view. See too Smith v. Foley (1912) Victorian Law Rep. 314. H

In the second place, where several persons are jointly injured by a libel or slander, they may all join as co-plaintiffs in one action. The reference in the offending publication was to ‘the Management staff of the African Newspapers of Nigeria Ltd.’ and it is the unchal-

lenged case of the respondents that they were at all material times the management staff of the company in issue. They were therefore all jointly injured by the offensive publication and were entitled in the absence of other disqualifying factors to be properly joined as co-plaintiffs in the suit.

- B *Thirdly, it cannot be seriously argued that if separate actions were brought by the plaintiffs/respondents before the trial court, common questions of law and fact would not have arisen in respect of such suits. The most obvious of such common questions of law and fact are whether the words complained of were published by the*
- C *appellant. In my view, the requirements for the joinder of all seven respondents as co-plaintiffs in the present case were fully established and I endorse the decision of the trial court as affirmed by the court below on the issue. See too Oshoboja v. Dada (1987) 3 NWLR (Pt. 66) 565 at 572 and Fadayomi v. Shadipe (1985) 2 NWLR (Pt. 25) 736 at 745. To hold otherwise would create the situation in which the seven respondents, as plaintiffs, would have filed seven separate suits against the same defendant in respect of the same libel contained in the same publication - a situation which, in my view, is not entirely*
- D *desirable or warranted and would naturally amount to an unnecessary multiplicity of actions which ought not to be encouraged. see Chinweze v. Masi (1989) 1 S.C. (Pt. II) 33, (1989) 1 NWLR (Pt. 97) 254 at 267.*

- E *On the other hand, the court as I have already pointed out, has power under Order 8 Rule 1 to order separate trials upon the application of any defendant if it considers that the joinder may embarrass or delay the trial of the action. It is noteworthy that no such application was made by the appellant in the present case."*
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- G *Incidentally, the present action on hand arose from Cross River State and the same rules of court that applied in Oni's case also apply in this case.*

My conclusion on Issue (2) is that it is resolved against the Defendants.

- H *In conclusion, I see no merit in this appeal which I unhesitatingly dismiss. I affirm the judgments of the two courts below and award to the Plaintiffs the sum of N10,000.00 as costs of this appeal.*

BELGORE JSC

I read in draft the judgment of my learned brother, Ogundare, JSC., with which I am in full agreement. I find no substance in this appeal and I also dismiss it with the same order as to costs.

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IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ogundare, JSC., and I am in entire agreement with him that this appeal lacks substance and ought to be dismissed.

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The background facts to the dispute between the parties leading to this appeal have been fully set out in the leading judgment and I do not propose to recount them all over again. It suffices to state that in the Calabar Judicial Division of the High Court of Cross River State of Nigeria, judgment was entered for the plaintiffs/respondents against the defendants/appellants jointly and severally in the sum of N400,000.00 on the 18th day of January, 1993, by Ecoma, CJ., being general damages for the injury to the plaintiffs' reputation in consequence of the libel published by the defendants, of and concerning the said plaintiffs. The defendants' appeal to the Court of Appeal, Enugu Division, was on the 9th day of July, 1997, dismissed. The defendants have now further appealed to this court.

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The two issues formulated by the parties for the determination of this appeal are substantially identical and are as follows:-

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(1) Whether the claim of the 1st plaintiff company, an artificial person, was sustainable in the light of the evidence adduced at the trial.

(2) Whether the joint claim of the plaintiffs which is dependent on proof of different and distinct injuries is maintainable in the circumstances of the case.

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I will now briefly dispose of these issues.

With regard to issue 1, it is not in dispute that the 1st plaintiff is a Limited Liability Company carrying on business in diverse areas, particularly in the operation of a cottage hospital known as and called "Health Farm Clinic Dr. Sama" located at Pamol Rubber Plantation, Calabar. Learned counsel for the defendants, V. Ndoma-Egba, Esq., conceded that both courts below would appear to have recognised

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that for the 1st plaintiff to succeed, the injury it ought to prove must relate to that which injures “the pocket”. He, however, submitted that there was no shred of evidence to justify the findings of both courts below that the 1st plaintiff was injured in any way in “the pocket” by the libel complained of. He argued that no evidence was
 B led as to the earnings of the 1st plaintiff before and after the libel and wondered how any one in the circumstance could establish pecuniary loss incurred by the 1st plaintiff company to sustain its claim of libel against the defendants.

C Learned counsel for the plaintiffs, S. N. Chukwuma, Esq., for his own part submitted that the finding of the trial court as affirmed by the Court of Appeal was that the 1st plaintiff was injured in its reputation in the operation of its business, “Health Farm Clinic Dr. Sama” which ceased to function as a business concern as a result of
 D the libellous publication of the defendants. He stressed that the injury to the 1st plaintiff as found by both courts below was with regard to its business and business reputation in the running and operation of the hospital “Health Farm Clinic Dr. Sama.” He argued that there could be no doubt that the 1st plaintiff suffered loss of income when
 E its business ceased to function as a direct result of the libel. He submitted that this state of affairs naturally affected the pocket of the 1st plaintiff as it suffered total loss of earning from the desertion of the hospital by patients.

F Now, a defamatory imputation consists of the publication to a third person or persons of any words or matter which tend to lower the person defamed in the estimation of right thinking members of society generally or to cut him off front society or to expose him to hatred, contempt or ridicule or to injure his reputation in his office,
 G trade or profession or to injure his financial credit. See *Sim v. Stretch* (1936) 52 TLR 671. Whereas in a case of libel or slander actionable per se, the publication of the offensive matter is actionable without proof of actual or special damage, the law will presume that some damage flows from such publication in the ordinary course of things
 H from the mere invasion of the plaintiff’s absolute right to reputation. See *Ratcliffe v. Evans* (1892) 2 QB 524. In the same vein, every libel, in particular, is of itself a wrong in respect of which the law imputes general damages. If a plaintiff proves that a libel has been published of him without legal justification, his cause of action in tort is estab-

lished and he need not prove that he has suffered any resulting actual damage or injury to his reputation for such damage is presumed by the law. See *Cross River State Newspapers Corporation v. Oni and Others* (1995) 1 SCNJ 218 at 239.

It is settled law that just as an individual or a human being may be defamed, a trading corporation or company, naturally, has a trading character, the defamation of which may adversely affect and may, indeed ruin it. See *South Hetton Coal Co. Ltd. v. North-Eastern News Association Ltd.* (1894) 1 QB 133 at 145 (C.A.). Accordingly, a corporation or company may maintain an action for libel or slander in respect of any words which are calculated to injure its reputation in the way of its trade or business. See *Linotype Co. Ltd. v. British Empire Typesetting Machine Co. Ltd.* (1899) 81 LT 331; 15 TLR 524 (H.L.), *Slazengers Ltd. v. Gibbs and Co.* (1916) 33 TLR 35 etc. This it may rightly do with or without any proof of special damage. So, where a statement is made with regard to the mode in which a trading corporation or company conducts its business such as to convey to right thinking members of society generally that it conducts its business in a dishonest, improper or inefficient manner, the law is the same as in the case of an individual or human being, may be defamed, a trading corporation or company, naturally, has a trading character, the defamation of which may adversely affect and may indeed ruin it. See *South Hetton Coal Co. Ltd. v. North-Eastern News Association Ltd.* (1894) 1 QB 133 at 145 (C.A.) Accordingly, a corporation or company may maintain an action for libel or slander in respect of any words which are calculated to injure its reputation in the way of its trade or business. See *Linotype Co. Ltd. v. British Empire Typesetting Machine Co. Ltd.* (1899) 81 LT 331; 15 TLR 524 (H.L.), *Slazengers Ltd. v. Gibbs and Co.* (1916) 33 TLR 35 etc. This it may rightly do with or without any proof of special damage. So, where a statement is made with regard to the mode in which a trading corporation or company conduct its business such as to convey to right thinking members of society generally that it conducts its business in a dishonest, improper or inefficient manner, the law is the same as in the case of an individual or human being, and the company can maintain an action without proof of special damage. See *South Hetton Coal Co. Ltd. v. North - Eastern News Association Ltd.* (supra) at p. 139. Where, however, the words do not reflect on the

trading or business reputation of the company, no action for libel or slander will lie. As Lord Goddard explained the position in *D and L Caterers Ltd. and Another v. D'Ajou* (1945) KB 364 at 366.

B *"If one said of a company, "it is a murderer" or "it is a forger", I have no doubt that the company could not bring an action, because a company cannot forge and a company cannot murder, so that to the ordinary way, it would not be actionable to write something of a company which might be actionable in the case of individuals, unless what is written reflects on the company in the way of its business."* (Underlining supplied for emphasis).

C A company cannot therefore sue either for libel or for slander unless it is defamed in the way of its business.

The above proposition of law was reiterated by Lord Reid in the English case of *Lewis v. Daily Telegraph* (1964) AC 234 at 262 D where he succinctly put the matter thus -

"A company cannot be injured in its feelings, it can only be injured in its pocket. Its reputation can be injured by a libel but that injury must sound in money. The injury need not necessarily be confined to loss of income. Its goodwill may be injured."

E See too, the decision of this court in *Duyile v. Ogunbayo and Sons Ltd.* (1988) 1 NWLR (Pt. 72) 601 at 611 per Belgore, JSC. I think the point that needs to be stressed is that learned counsel for the Defendant cannot, with respect, be right in his submission that F the 1st Plaintiff, a Limited Liability Company, to succeed in its claim for libel against the defendants, must establish the pecuniary loss it incurred as a result of the Defendants' libellous publication against it. The correct view of the law in this regard is that the 1st Plaintiff, as a company, is not required to prove that it suffered special damage, G such as financial loss, before its claim for defamation may be sustained. The injury suffered by it need not be confined to loss of income. Its claim for libel or in defamation is also sustainable and it may recover damages against the defendants for the injury to its reputation and/or goodwill. See too *Rubber Improvement Ltd. v. Daily H Telegraph Ltd.* (1964) AC 234 at 262.

In the present case, there can be no doubt that the learned trial Chief Judge was mindful of the artificial nature of the 1st plaintiff as a Limited Liability Company. Having arrived at the conclusion and, quite rightly in my view, that the publication complained of con-

tained “serious allegations” which cast “a slur” on the plaintiffs, the learned trial Chief Judge went on -

“The plaintiffs’ averments at paragraph 9 of their statement of claim reproduced above show that the defendants meant that the plaintiffs were cheats who offered poor medical services after extorting huge sums of money from their clients. The testimonies of PW.2, Effiom Eyo Oku, PW.3, Dr. Ekeng Edem Kooffreh, PW.4, Dr. Phillip Ante and PW.5, Effiong Ene show or reveal that they had at one time or the other worked with Dr. Sama, the 2nd plaintiff, in the “Health Farm Clinic Dr. Sama” and the services in the Clinic had been satisfactory. Some of them had received treatment in the said Clinic while in some cases they referred some patients to the Clinic. They said they did not receive any complaint of poor services which were derogatory or uncomplimentary. Exhibit 2 came as a surprise to these witnesses, particularly, PW.2. I am satisfied that the words complained of do, in fact, convey a defamatory meaning. I am satisfied too that reasonable men to whom the publications were made would be likely to understand them in a libellous sense.”

He accepted the evidence of the plaintiffs that the operation of the “Health Farm Clinic Dr. Sama” dwindled to a stop as a result of the libellous publication of the defendants. He concluded thus -

“In the instant case, it is common ground that the Health Farm Clinic Dr. Sama is no longer functioning and the plaintiffs have maintained (by evidence which remained uncontroverted) that it was as a result of the publication. Thus it seems to me that the words in the publication - Exhibit 2 certainly refer to the plaintiffs and where other elements or requirements are proved, the defendants would be held liable and I so hold.”

On whether the plaintiffs suffered any other legal injury apart from the injury to their respective reputation, the trial court observed -

“I must state here that it is common ground that the hospital is no longer functioning and the plaintiffs have maintained that it was as a result of the publication. Plaintiffs should be compensated. The 2nd defendant I must say is vicariously liable for the acts of the 1st defendant..... The plaintiffs claim the sum of N2,000,000.00 but I think they should content themselves in the sum of N400,000.00.”

For its own part, the Court of Appeal in affirming the decision

of the trial court that the 1st plaintiff was injured both in its reputation and its pocket had this to say -

“*The 1st respondent, being the company running the clinic, was similarly injured in its reputation as found by the learned trial Judge. This is because, being a company it cannot be injured in its feelings but can only be injured in its pocket In respect of the 1st respondent, the learned trial Judge found that it was so injured.*”

It is plain from the findings of both courts below that the 1st plaintiff was injured in its reputation and/or goodwill with regard to the running of the “Health Farm Clinic Dr. Sama, “the operation of which dwindled to a stop as the direct result of the libellous publication of the defendants. The further injury to the 1st plaintiff consequent upon this libel is its total loss of income as a result of the mass desertion of the hospital by patients which ended up in its ceasing to function. In my view, from whatever angle one looks at the issue under consideration, it is clear to me that both courts below were right in holding that the claim of the 1st plaintiff in the light of the evidence led at the trial was sustainable. Issue one is accordingly resolved against the appellants.

With regard to issue 2, it is the contention of learned counsel for the defendants that since the damage required to be proved by the plaintiffs are different and distinct, the plaintiffs could not jointly sustain an action for libel. He argued that even if the court below was right to have held that the plaintiffs could sue jointly, they still needed to establish the damage suffered by them jointly. He submitted that the plaintiffs did not suffer joint injury to warrant the damages awarded to them by the trial court.

Learned counsel for the plaintiffs in his reply contended that the award of damages to the plaintiffs jointly and severally was right in law and clearly sustainable in all the circumstances of the case. He submitted that had separate actions been brought before the trial court, common questions of law and fact would have arisen in respect of such suits. He argued that the plaintiffs need not prove that they suffered any resulting actual damage or injury to their reputation for an award of damages to be made in their favour. Such damage, he pointed out, is presumed by the law. He submitted that the court below was mindful of the different personalities of the plaintiffs and the nature of the injury suffered by each to its/his reputation and

was therefore right in affirming the award of damages jointly to them by the trial court.

The law is well settled that where one or more defendants published defamatory words of two or more plaintiffs in the same libel or slander, and common questions of law or fact would arise for the determination of the court if separate actions were brought by the plaintiffs against the defendants, the plaintiffs could be joined in one action as their rights to relief arise out of the same publication. See *Cross River State Newspaper Corporation v. Oni and Others* (1995) 1 SCNJ 218. In the present case, the two defendants jointly and severally published the defamatory words complained of by the two plaintiffs in the same libel. It is also not in doubt that common questions of law and fact would have arisen for the resolution of the court were separate actions to have been brought by the two plaintiffs against the defendants. Both plaintiffs were jointly involved in the management of the hospital, "Health Farm Clinic Dr. Sama" and had a duty to vindicate themselves with regard to the libellous publication made against them by the defendants. I think the plaintiffs in all the circumstances of this case are entitled to bring this action jointly against the defendants.

With regard to the award of N400,000.00 to the plaintiffs jointly and severally, it ought to be noted that this was not made by way of special damages. It was awarded to the plaintiffs as claimed by way of general damages. There is, in my view, nothing wrong in this award and issue 2 is hereby resolved against the appellants.

It is for the above and the more detailed reasons contained in the leading judgment that I, too, find no substance in this appeal. The same is hereby dismissed by me with costs as assessed in the leading judgment.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother, Ogundare, JSC. I agree with it and, for the reasons given by him, I would also dismiss the appeal with costs as assessed in the leading judgment.

EDOZIE JSC

I had a preview of the lead judgment just delivered by my learned brother, Ogundare, JSC., and I agree with him that the appeal lacks substance. The appeal turns on the necessity or otherwise of proof of financial loss to sustain an action for libel by a company and the propriety of the joinder of co-plaintiffs in such an action.

In Gately on Libel and Slander 6th Edition, Article 891, the learned authors quoted a passage from the judgment of Lord Reid in Lewis v. Daily Telegraph (1964) AC at p. 62 which reads thus-

"A company cannot be injured in its feelings, it can only be injured in its pockets. Its reputation can be injured by a libel but that injury must sound in money. The injury need not necessarily be confined to loss of income. Its goodwill may be injured."

The learned authors also referred to the case of Proprietors of Selly Bridge v. Sunday Telegraph (The Times 17th February, 1966) where it was held that -

"A corporation does not need to prove special damage or financial loss to recover damages for defamation of its business reputation in a way calculated to injure its reputation in the way of its trade or business."

These authorities were cited with approval by this court in the case of Duyile v. Ogunbayo and Sons Ltd. (1988) 1 NWLR (Pt. 72) 601. I believe the principles therein distilled represent the correct position of our law. I therefore agree with the lead judgment that it is not necessary for a company in order to succeed in an action for libel to prove that special or general damages occurred once it can be established that its reputation or goodwill is injured by the publication. It is also my view that since it is trite law that where several persons are jointly injured by a libel or slander, they may all join as co-plaintiffs in one action, vide the case of Cross River State Newspaper Corporation v. J. L. Oni and 6 Ors. (1995) 1 NWLR 270 at 291, the joinder in the instant case is without reproach.

For the foregoing and the fuller reasons articulated in the lead judgment, I also dismiss the appeal with costs as assessed in the lead judgment.