

SUPREME COURT OF NIGERIA

27TH MAY, 2005. SC. 137/2000

**CORAM:- I. L. KUTIGI, D. MUSDAPHER, I. C. PATS-
ACHOLONU, G. A. OGUNTADE, S. A. AKINTAN, JJSC**

V. M. ILOABACHIE ESQ. APPELLANT
AND

BENEDICT N. ILOABACHIE RESPONDENT

TORTS - Libel - Defence of privilege - Facts to consider - Include interest of any of the persons - To whom the document was published (H1)

DEFAMATION - Libel or slander - Relates to damage to character - Where facts arise which show plaintiff to be unreliable - He cannot complain (H2)

TORTS - Libel - Reply - To defence of qualified privilege - Should show the malicious intention - Of the publisher of the statement (H3)

DEFAMATION - Libel - Defence of privilege - That avails respondent in this case - Can only be destroyed by appellant proving malice (H4)

DEFAMATION - Libel - Defence of estoppel by conduct - Can be inferred in the respondent's favour - Given the circumstances (H5)

ACTIONS - Appeals - Proof - Is the responsibility of the appellant - Who has not been consistent - In the presentation of his case here (H6)

FACTS

Before the High Court of Justice Ogidi, Anambra State the plaintiff/appellant filed an action against the defendant/respondent. Appellant alleged that the respondent published two defamatory communications against him vide two letters. He claimed the sum of N5 million as special and general damages for libel, and an injunction restraining the respondent from further publication of the defamatory words. The alleged libellous

words were published by the respondent following appellant's sale of No. 1 Allen lane Onitsha, property of one late Peter Iloabachie who was the respondent's father and appellant's grand father. The statement claimed that the sale was fraudulently made by the appellant in unprofessional and unethical manner.

Respondent denied any liability claiming that the publications he made were privileged and were addressed to the people to whom such letters should be written in the circumstances. The trial High Court dismissed the appellant's claim as it found that the publication was justifiable and privileged. Appellant's appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

3.01 Whether from the evidence led in this case, the defence of qualified privilege is available to the respondent herein having regard to the vital ingredient of reciprocity involved in the said defence and which the respondent failed to establish?

3.02 Whether the appellant filed a reply to the respondent's amended Statement of Defence alleging malice in order to meet the defence of qualified privilege pleaded by the respondent?

3.03 Whether from the respondent's pleading and evidence, the defence of estoppel by conduct can avail the respondent.

3.04 Whether the judgments of the courts below are supportable having regard to the grossly deficient evidence of the respondent?

HELD (Unanimously dismissing the appeal per **PATS-ACHOLONU JSC**)

Libel - Defence of privilege - Facts to consider

1. I believe that where a court is considering the defence of privilege, whether qualified or not, there are some empirical factors that should be taken into consideration and these include the interest of any of the persons to whom the document was published, and the circumstances of the matter in question. If the person against whom the publication is made is a public officer, consideration should be given to the position he holds viz-a-viz the interest of the public or those to whom the alleged and or offensive

publication was made to. Equally too, the court should consider the motive for the publication to examine whether it is actuated by purely altruistic principles or tendencies or malicious and injurious motive. (p. 1345 H)

Libel or slander - Relates to damage to character

2. The tort of defamation, whether libel or slander, relates essentially to damage to the character of the person. In other words, a plaintiff who institutes an action for libel has invariably put his character's issue. He is understood to be telling the whole world what a good person he is, and stating that some one is trying to destroy his enviable good name. He puts his reputation at stake depending of course on what the defamation is all about. In the course of consideration of the case but particularly as in this case where the appellant has shown through his pleadings what a person of great repute and of unblemished character he is, he has literally thrown his hat in the ring, caution to the wind, and dares the defamer to disprove his good and admirable character. Where in the process of the proceedings facts elicited in the evidence portray him as an inveterate liar Incapable of distinguishing truth from falsehood, he might have unwittingly succeeded by his inconsistent statements and falsehoods destroyed his character which he has held out to the world to be clean. In such a case he cannot complain if the court finds out that he is a chronic, or penitus insitutus liar.

The respondent had libelled him as a forger and one lacking in ethics. I tend to believe that the worst mistake the appellant made was in instituting this action and putting his name in the mirror to be x-rayed. In his bid to show what a great person he is and who has been unjustifiably libelled, he cuts a very poor figure and succeeds in showing how unreliable he is and therefore really has not much of a character to protect. By this, I do not mean that if a man is convicted of burglary or rape, a defamer should go scot-free by calling him a murderer or even an armed robber. In a case where a defendant feels genuinely affronted by an act of a relative in respect of disposing or alienating a property of which he the defendant strongly feels that as the head of the family, no such disposition could validly take place without his consent, and he upbraided the relation who purported to make the sale, it is his duty to inform those who ought to be

told and I believe he may be exonerated by use of a language which fits the occasion having regard to the circumstances of that case.
(pp. 1347 A & 1349A)

B Libel - Reply - To defence of qualified privilege

3. A reply to a defence of qualified privilege should resonate with facts and particulars that show the malicious intention of the publisher of the statement. It is to say that implicit in such a publication would readily depict a mind poisoned or jaundiced by the prejudice and evil disposition bent on destructive calumny against the plaintiff. With greatest respect to the submission of the appellant's counsel, the reply does not seem to me to wear this kind of garb. The communication to others was to my mind in order. For example, it was the appellant in Exhibit S who asked the respondent to communicate to Emeka. He cannot be heard to complain. Thus in *Hunt v. Great Northern Railway* (1891) 2 QB 191, Lord Esher said:

“A privileged occasion arises if the communication is of such a nature that it could be fairly said that those who made it had an interest in making a communication and those to whom it was made had a corresponding interest in having it made to them. Where those two co-exist the occasion is privileged.” (p. 1350 A)

F Libel - Defence of privilege - That avails respondent

4. In order to destroy or neutralize the defence of privilege or qualified privilege, it is incumbent on the appellant to prove malice. From the facts of the case given in the letter Exhibit S, written to the respondent, and the letters he the respondent wrote which he duly amplified in his pleadings and the evidence in court, can it really in all honesty and seriously be contended and argued that he had no protectible interest? In other words, was the respondent not really actuated by moral consideration and what may be considered a dutiful effort to prevent the alienating of their property by someone who he claimed he was in loco parentis after his father's death and who he helped financially during his schooling days. To my mind, the people to whom the letters were written were those who ought to be informed about what was going on. It was essentially to alert them on what

he considered a perfidious act of the appellant. I believe that this issue is resolved against the appellant. (p. 1350 F)

Libel - Defence of estoppel by conduct

5. Let me now address on the 3rd issue raised which is whether from the respondent's pleadings and evidence the defence of estoppel by conduct can avail the respondent. The appellant submitted that there is nothing in the respondent's pleadings from which the appellant or any discernible mind can infer or deduce estoppel by conduct and in this he referred the court to Exhibit S, which the respondent pointed out was the document written by the appellant to him that made him write Exhibits C & D. I have read Exhibit S wherein appellant informed the respondent that due to the nature of legal practice prevailing in Onitsha he was impecunious and had decided to sell his father's property situate at No. 1, Allen Lane. He stated that he sold the house and paid Mgbelekeke family N200,000.00 (even though he denied it in court) and paid a commission of 100,000.00 to the agents. Equally, too in that letter, he acknowledged the respondent as the head of the family when he said.

"We have no other earthly father to run to but you and we pray God to give you long life to enable you see your children's children and also to enable you continue your laudable work to humanity.

..... It is in the light of the above that I intend telling Emeka through you as the head of the family to tell the people occupying the main house to look for alternative accommodation."

It cannot be denied that pained or piqued by the contents of the letter and in-sensed by the brazen effrontery to sell the property which the respondent felt belongs to the family, he reacted sharply. Surely, the tone of the letter Exhibit "S" definitely invited a response. It was inevitable and the appellant should not quarrel about the reaction of the respondent. In my view, estoppel by conduct should be read in the letter. (p. 1351 A)

Appeals - Proof - Is the responsibility of the appellant

6. On issue No. 4, it is at all times the duty, nay, the responsibility of an appellant to prove his case on the balance of probability. He is the

proponent of the action. Although there may be an occasion when the burden of proof may shift but this can only take place when the appellant has satisfactorily discharged his burden.

A proper evaluation and appraisal of the appellant's case does not portray him as a consistent person. In one breath, he hailed the respondent highly and wished that God would give him good health and longevity and in another he lampooned and upbraided him as an evil man bent on destroying him. (pp. 1351 H & 1352 E)

C **NOTABLE POINTS OF INTEREST**
PAST-ACHOLONU JSC

1. Need for issues to be clear and accurate

I must say straight away that the issues made out by the appellant appear woolly, overly generalized and do not reflect in the most succinct and discerning manner the main issues to be pointedly determined by the court. It is nebulous. Issues formulated should have the distinctive quality of clarity, precision and accuracy. (p. 1343 H)

E **OGUNTADE JSC**

2. Truth is answer to libel suit

The learned authors of Gately and Libel on Slander, 7th edition, paragraph 351 at page 152 write on the defence of justification thus:

“351. *Truth of the imputation: The plaintiff establishes a prima facie cause of action as soon as he has proved the publication of defamatory words. It is no part of plaintiff's case in an action of defamation to prove that the defamatory words are false, for the law presumes this in his favour. It is however a complete defence to an action of libel or slander that the defamatory imputation is true. The truth of the imputation is an answer to the action, not because it negatives malice but because the plaintiff has no right to a character free from that imputation, and if he has no right to it, he cannot injustice recover damages for the loss of it; it is damnum absque injuria.*”

The plaintiff/appellant having been found to be a man without character could not rely on malice against the defendant. (p. 1367 B)

AKINTANJSC

3. How tort of libel is committed

The tort of libel is committed through the publication of defamatory words in writing. It is a tort in which the writer or publisher attacks the reputation, integrity, standing and or fidelity of the victim of the publication. However, published words which are considered to be mere vulgar abuses, will not normally ground an action for libel or slander. What could be regarded as vulgar abuse would however depend on the exact words published, the status of the parties and the circumstances when the publication is made. For instance, abusive words uttered by low class people or motor park drivers and workers, which are usually uttered as prelude to fights, are usually regarded as vulgar abuses as they are normally never taken very seriously and could therefore not ground an action for either slander or libel. (p. 1369 B)

4. Libel - What plaintiff must prove

The law is settled that to sustain an action for libel, the plaintiff must prove that: (1) the publication was in writing; (2) the publication was false; (3) the false publication was made to a person apart from the plaintiff and the defendant; (4) the publication referred to the plaintiff and was defamatory of the said plaintiff; and (5) the publication was made by the defendant.

The onus is on the plaintiff, in an action for libel, to show that the published words complained of are defamatory or that they convey a defamatory imputation. However, where the words complained of are defamatory in their natural and ordinary meaning, the plaintiff has no legal duty to lead any evidence to show additional defamatory meaning as understood by persons possessing some particular facts. (1369 E)

REPRESENTATION

Appellant not represented.

Arthur Obi Okafor, (with him, Ikenna Uzochukwu), for the Respondent.

CASES REFERRED TO

1342 Iloabachie v. Iloabachie (2005) 5 KLR Pats-Acholonu JSC

James v. Baird (1916) S.C. 158 at 163.

Giwa v. Ajayi (1993) 5 NWLR (Pt. 294) 423

Ugo v. Okafor (1996) 3 NWLR (Pt. 438) 542

Ojene v. Momodu (1994) 1 NWLR (Pt. 323) 685

B Puillman v. Hill (1891) 1 QB 528.

Bardi v. Maurice (1954) 14 WACA 414

Registered Trustees of AMORC v. Awoniyi (1991) 3 NWLR (Pt. 178) 245

Sketch Publishing Company Ltd. v. Ajagbemokeferi (1989) 2 S.C. (Pt. II)

73; (1989) 1 NWLR (Pt. 100) 678

C Nwachukwu v. Nnoremeké (1957) 3 ERLR 50

Union Bank of Nigeria Ltd. v. Oredein (1992) 6 NWLR (Pt. 247) 355

STATUTE REFERRED TO

D Torts Law Cap. 135, Laws of Anambra State ss. 177 and 178

LEAD JUDGMENT BY PATS-ACHOLONU JSC

The appellant had instituted an action against the respondent for
E defamation for publishing a document which he complained had libelled
him. The alleged libellous statements were said to have been published by
the respondent sequel to a compliant by him that the appellant had
committed certain ignoble acts in respect of the sale or purported sale of
F one Peter Iloabachie's property by the appellant which land is situate at No.
1, Allen Lane, Onitsha. The statement claimed that the sale was fraudu-
lently made without any authorization or consent of the respondent and
that the act of the appellant by the sale bespeaks of unprofessional and
unethical behaviour, as the appellant, a mere grandson of late Peter
G Iloabachie, was not the owner of the property, which said property
devolves on the whole family, i.e. the children of Peter Iloabachie.

The appellant said that by the said publication, his name was
tarnished and brought into odium and ridicule moreso as he is a solicitor,
H an alumnus of the prestigious University of Nigeria, Nsukka, and is married
to a woman from a reputable family in Edo State. He stated that he is a
member of Inwelle Age grade, Ogidi, and happens to be the only solicitor
from Ogidi appointed by their Igwe (King) to be a member of an arbitration

panel in the area.

The respondent replicando stated that the property purportedly sold belongs to his late father, Peter Iloabachie, and that during his lifetime no permanent building was erected there after the land was bought from Mgbelekeke Family of Onitsha. It was his case that in 1963, the members of Peter Iloabachie Family including the respondent contributed money to put the magnificent edifice that now adorns the place. He denied that the property belonged to Alfred Iloabachi i.e., the father of the appellant. The respondent stated that as the only surviving son of Peter Iloabachie and the head of that family, the publications he made in that capacity in respect of the sale were privileged and were addressed to the people to whom such letters should be written in the circumstances and denies any liability.

In the High Court, the suit filed by the appellant was dismissed, and on appeal to the Court of Appeal his appeal was equally dismissed. Thereupon, he filed another appeal to this court and from the grounds of appeal, he distilled 4 (four) issues for determination, which are as follows:

3.01 Whether from the evidence led in this case, the defence of qualified privilege is available to the respondent herein having regard to the vital ingredient of reciprocity involved in the said defence and which the respondent failed to establish?

3.02 Whether the appellant filed a reply to the respondent's amended Statement of Defence alleging malice in order to meet the defence of qualified privilege pleaded by the respondent?

3.03 Whether from the respondent's pleading and evidence, the defence of estoppel by conduct can avail the respondent.

3.04 Whether the judgments of the courts below are supportable having regard to the grossly deficient evidence of the respondent?

Respondent framed only one issue which is:-

"Whether the Court of Appeal was justified in dismissing the appellant's appeal then before it or was the judgment of the Court of Appeal right".

I must say straight away that the issues made out by the appellant appear woolly, overly generalized and do not reflect in the most succinct and discerning manner the main issues to be pointedly determined by the

court. It is nebulous. Issues formulated should have the distinctive quality of clarity, precision and accuracy. That observation notwithstanding I shall now take the first issue.

The appellant's counsel referred the court to the observations of the court below which run thus:

"The concurrence of the right and duty on the part of the writer and addressee of Exhibit D is the basis of their common interest and is sufficient to sustain the defence of qualified privilege of the respondent As regards the publication of the libel to Comrade Emeka Iloabachie the privilege which applies to the addressees of the two letters, Exhibits "C & D also applies to him."

The learned counsel for the appellant submitted that it must be a common interest between the maker of the statement and the person to whom it was made to sustain the defence of qualified privilege. He referred the court to Watt v. Longsdon (1930) 1 KB 130; White v. Stone Ltd. (1939) 2 KS 827 at 535 and Atoyibe v. Odudu (1990) 10 SCNJ 52 at 66. The kernel of the appellant's case is that the respondent merely pleading that the addressees of the persons to whom the publications regarded as offensive to the appellant were interested in the outcome of the No. 1, Allen Lane, Onitsha, is not enough. He submitted that they must be called to show that they have interest in the matter. He contended that there was no evidence linking whatsoever the interests the addressees of Exhibits C & D have with the land in question. (Exhibits C and D are the letters regarded as defamatory). I must hasten to add here and it must be pointed out that this court is not concerned with the dispute as to the ownership of No. 1, Allen Lane, Onitsha but with the alleged libeling of the appellant. This alleged libel arose from the perceived right, whether convoluted or not, of the respondent to publish and inform some people of the sale of the property said to belong to the whole family of Iloabachie.

The appellant is the son of Alfred, the deceased first son of Peter Iloabachie. In the course of the proceedings in this case the appellant repudiated the assertion built in the case of the respondent that the publication of the alleged defamatory statements was in any case privileged in that the dissemination was made to people who should be made to be

aware of the development in respect of No. 1, Allen Lane, Onitsha. Let me delve in a short form into the nuances of the expression “privileged” and “qualified privilege”. In the case of Nigeria Television Authority v. Ebenezer Babatope (1996) 4 NWLR (Pt. 440) 75 at p. 6 Uwaifo, JCA., (as he then was), said:

“Qualified privilege is a defence to an untrue publication. It can only be claimed however when the occasion of the publication is shown to be privileged.”

In that case, one Chief Daboh had published of the respondent, then the Director of U. P. N. (a political party in the 2nd Republic), that he, the respondent, collected N250,000 from each of the five Governors in 5 States to make same available for the party’s campaign in 1983. The respondent went to court. The appellant, while admitting that it made the broadcast, denied making it maliciously and contended that it had the constitutional duty to disseminate such information having regard to the position held by the appellant.

In that case, I said as follows:

“Can it in all honesty be said that given the facts that are attendant to this case that the circumstances in which the publication was made was not protected by defence of qualified privilege.”

In this case I think that Nigerians are entitled to know what goes on in a party organization. It is their duty to be so informed for the people did not and cannot be said to have taken the political parties as secret organizations whose activities when sordid should not be disclosed to them. Some party men could only have known of what happened by the publication. In that case, it is the moral duty of Nigerians to be informed as it is their duty to receive and know such a matter”.

Consider too the case of Pullmon v. Hill Ltd. (1891) 1 QB where Lord Esher, MR, said:-

“An occasion is privileged when the person who makes the documentation has a moral duty to make it to the person to whom he does make it and the person who receives it has an interest in hearing it. Both these conditions must exist in order that the occasion may be privileged”.

I believe that where a court is considering the defence of

privilege, whether qualified or not, there are some empirical factors that should be taken into consideration and these include the interest of any of the persons to whom the document was published, and the circumstances of the matter in question. If the person
 B against whom the publication is made is a public officer, consideration should be given to the position he holds viz-a-viz the interest of the public or those to whom the alleged and or offensive publication was made to. Equally too, the court should consider the motive
 C for the publication to examine whether it is actuated by purely altruistic principles or tendencies or malicious and injurious motive. See James v. Baird [1916] S.C. 158 at 163.

In his summation of the case, the learned trial Judge had made these findings:

D “In Exhibit “S” at pages 2 and 3, it was untrue for the plaintiff to inform the defendant that:

1. “There is no single document of title concerning the property, for my step mother destroyed all of them”.

E 2. “The documents were never registered at the Land Registry from where I could apply for and obtain a certified true copy”.

3. “Nevertheless, I continued scouting for a buyer but no person was ready to part with his money without documents evidencing root of title.”

F 4. “When I narrated my plight to a lawyer from Onitsha who is my close friend, he came to my rescue by taking me to the people of Mgbelekeke who are the original owners that granted same to my grand father.”

G 5. “An agreement was reached that they would enter into an agreement with me on the basis of that document, I could then sell the property”.

H 6. “Their fees for the arrangement was eventually priced down to N200,000.00” I was helpless because you cannot sell a property without a written evidence of ownership and so I accepted their condition.”

7. “It was on that score that one man from Oba by name Mr. Obi who is a pharmacist based in America came into contact with me and we

settled the price at N 1.2 Million and I accepted same since he was the highest bidder”.

8. “I then paid the sum of N200,000.00 to the Mgbelekeke family and the sum of N100,000.00 on commission to the land agents”.

The tort of defamation, whether libel or slander, relates essentially to damage to the character of the person. In other words, a plaintiff who institutes an action for libel has invariably put his characters issue. He is understood to be telling the whole world what a good person he is, and stating that some one is trying to destroy his enviable good name. He puts his reputation at stake depending of course on what the defamation is all about. In the course of consideration of the case but particularly as in this case where the appellant has shown through his pleadings what a person of great repute and of unblemished character he is, he has literally thrown his hat in the ring, caution to the wind, and dares the defamer to disprove his good and admirable character. Where in the process of the proceedings facts elicited in the evidence portray him as an inveterate liar Incapable of distinguishing truth from falsehood, he might have unwittingly succeeded by his inconsistent statements and falsehoods destroyed his character which he has held out to the world to be clean. In such a case he cannot complain if the court finds out that he is a chronic, or penitus insitus liar.

The High Court took great exception to this man of seemingly great repute who swore falsely in respect of Exhibit L where he stated that the only property of his father, A. C. Iloabachie, is No. 1, Allen Lane, Onitsha, yet he mentioned not less than 5 houses belonging to the same late A. C. Iloabachie during his cross-examinations.

The court below had in relation to the observation of the trial court to the inconsistent testimony in respect of the number of properties owned by A. C. Iloabachie and the false oath in respect of Exhibit L commented tritely and observed as follows:

“On that requirement, the appellant is on a sticky wicket as learned counsel for the respondent has submitted, rather derisively, that the body of evidence from which a dent was made on the character of the appellant

was not from the testimonial (sic) of the respondent who gave no evidence about the character of the appellant; rather, from the evidence given by the appellant himself extracted under cross-examination from the documents tendered by the respondent through him. The learned trial Judge expressed
 B the view that the appellant had no good reputation or good character to protect because of ‘the revelations in the exhibits above mentioned and my observations and highlights thereof. The observations and highlights are shown on the record, in respect of Exhibit ‘S’ on pages 352 - 354, Exhibits
 C ‘R’, ‘T’, and ‘Q’ 355 and Exhibit ‘L’ on pages 355 - 356. Having shown as above demonstrated that the evidence on which the learned trial Judge based his finding on the character of the appellant are not from the testimony of the respondent the argument of learned counsel for the appellant that the evidence of the appellant’s character had no legal plank
 D on which to stand is grossly erroneous as a delirious gaffe.”

Further below, the Court of Appeal said:

“The subject matter of what was deposed to being an estate of a deceased person I agree with the learned trial Judge that Section 63 of the
 E Administration and Succession (Estate of Deceased Persons) Law of Anambra State is apposite. I also agree with his finding that the grant of Exhibit ‘R’, i.e. the letters of Administration to the Administrator-General/
 Public Trustees, Enugu, by the Probate Registrar, Enugu, “was based,
 F inter alia, on Exhibit ‘L’, a false inventory and a false testimony in judicial proceedings”.

The appellant had at all times held out that he sold a property which he inherited and therefore he had no need to consult anyone. The respondent had repudiated this and based his letter under probe to Exhibit
 G S written to him by the appellant. He used some words which the appellant described as being libelous and held himself out to the world to being a person of impeccable character not used to ignoble ways. Is this really so? Can this seemingly pompous and self-aggrandisement stand the test when
 H shown in the mirror of character analysis. The learned trial Judge pointed out and indeed analytically showed all the falsehoods told by the appellant including false oath. The respondent’s description of him as someone without consideration of the ethics of his profession cannot in my view be

considered an overstatement seeing that the appellant's skewed philosophical bent could be hinged on the Machievelli Philosophy that the "end justifies the means". **The respondent had libelled him as a forger and one lacking in ethics. I tend to believe that the worst mistake the appellant made was in instituting this action and putting his name in the mirror to be x-rayed. In his bid to show what a great person he is and who has been unjustifiably libelled, he cuts a very poor figure and succeeds in showing how unreliable he is and therefore really has not much of a character to protect. By this, I do not mean that if a man is convicted of burglary or rape, a defamer should go scot-free by calling him a murderer or even an armed robber. In a case where a defendant feels genuinely affronted by an act of a relative in respect of disposing or alienating a property of which he the defendant strongly feels that as the head of the family, no such disposition could validly take place without his consent, and he upbraided the relation who purported to make the sale, it is his duty to inform those who ought to be told and I believe he may be exonerated by use of a language which fits the occasion having regard to the circumstances of that case.**

I really believe that issues I and II ought to be taken together as issue II relates as to whether the appellant in this case filed a reply to the Amended Statement of Defence of qualified privilege. He submitted that he filed a reply contrary to the holding of the court below and referred this court to the Records. I have carefully read the paragraphs as contained in the Record. It is a fact that the appellant filed a reply to the defence but the question to be determined is whether the reply is on the question of qualified privilege. I hereby set down paragraph 7 of that reply.

“(7)(i) The defendant is not in the employ of the Anambra State Government and the Director-General, Ministry of Lands, Awka, did not authorize the defendant to go ahead and start publicating the said letter.

(ii) The defendant made sure that the nails in the coffin of the reputation of the plaintiff are properly fastened by clearly underlying the venomous parts of the said letter of 3/10/94 for clearer picture and ease of reference.”

A careful examination of this paragraph seems to show that of all the paragraphs in the reply, this seems to be the only one with a modicum of effort to reply to the defence of qualified privilege. **A reply to a defence of qualified privilege should resonate with facts and particulars that show the malicious intention of the publisher of the statement. It is to say that implicit in such a publication would readily depict a mind poisoned or jaundiced by the prejudice and evil disposition bent on destructive calumny against the plaintiff. With greatest respect to the submission of the appellant's counsel, the reply does not seem to me to wear this kind of garb. The communication to others was to my mind in order. For example, it was the appellant in Exhibit S who asked the respondent to communicate to Emeka. He cannot be heard to complain. Thus in *Hunt v. Great Northern Railway (1891) 2 QB 191*, Lord Esher said:**

“A privileged occasion arises if the communication is of such a nature that it could be fairly said that those who made it had an interest in making a communication and those to whom it was made had a corresponding interest in having it made to them. Where those two co-exist the occasion is privileged.”

See also *Giwa v. Ajayi (1993) 5 NWLR (Pt. 294) 423*; *Ugo v. Okafor (1996) 3 NWLR (Pt. 438) 542* and *Ojene v. Momodu (1994) 1 NWLR (Pt. 323) 685* which I now cite with approval being only Court of Appeal judgments.

In other to destroy or neutralize the defence of privilege or qualified privilege, it is incumbent on the appellant to prove malice. From the facts of the case given in the letter Exhibit S, written to the respondent, and the letters he the respondent wrote which he duly amplified in his pleadings and the evidence in court, can it really in all honesty and seriously be contended and argued that he had no protectible interest? In other words, was the respondent not really actuated by moral consideration and what may be considered a dutiful effort to prevent the alienating of their property by someone who he claimed he was in loco parentis after his father's death and who he helped financially during his schooling days. To my mind, the

people to whom the letters were written were those who ought to be informed about what was going on. It was essentially to alert them on what he considered a perfidious act of the appellant. I believe that this issue is resolved against the appellant.

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conduct and in this he referred the court to Exhibit S, which the respondent pointed out was the document written by the appellant to him that made him write Exhibits C & D. I have read Exhibit S D
wherein appellant informed the respondent that due to the nature of legal practice prevailing in Onitsha he was impecunious and had decided to sell his father's property situate at No. 1, Allen Lane. He stated that he sold the house and paid Mgbelekeke family N200,000.00 (even though he denied it in court) and paid a commission of E
100,000.00 to the agents. Equally, too in that letter, he acknowledged the respondent as the head of the family when he said:

"We have no other earthly father to run to but you and we pray God to give you long life to enable you see your children's children and also to enable you continue your laudable work to humanity.

*..... It is in the light of the above that I intend telling F
Emeka through you as the head of the family to tell the people occupying the main house to look for alternative accommodation."*

It cannot be denied that pained or piqued by the contents of the G
letter and in-sensed by the brazen effrontery to sell the property which the respondent felt belongs to the family, he reacted sharply. Surely, the tone of the letter Exhibit "S" definitely invited a response. It was inevitable and the appellant should not quarrel about the reaction of the respondent. In my view, estoppel by H
conduct should be read in the letter.

On issue No. 4, it is at all times the duty, nay, the responsibility of an appellant to prove his case on the balance of probability. He is

the proponent of the action. Although there may be an occasion when the burden of proof may shift but this can only take place when the appellant has satisfactorily discharged his burden. He took umbrage with the lower court for holding that the respondent informed the
B appellant that the property was that of Peter Iloabachie and asked him to rescind the sale and that when he refused to comply, he the respondent had to do what he did. He further submitted that even if respondent had an interest to protect, that did not give him a license to malign others. I agree
C with the proposition, but one had to put himself in the frame of mind of the respondent who stated that on the death of the appellant's father, he became the head of the family. Being the head of the family and, as he stated, one of those who contributed to the construction of the house at No. 1, Allen Lane, it would be assumed that he was angered by the sale.
D Besides, if the property was one the appellant could dispose of as he liked why did he strive to inform the respondent? As I had held earlier, the respondent conceived that he had a protectible interest and in that vein he has a duty to himself at all times to do all things possible to stop or have
E the sale rescinded.

**A proper evaluation and appraisal of the appellant's case does not portray him as a consistent person. In one breath, he hailed the respondent highly and wished that God would give him good health
F and longevity and in another he lampooned and upbraided him as an evil man bent on destroying him.** As Shakespare said in Macbeth:
"Such welcome and unwelcome news at once. It is too hard to reconcile".

There is simply no merit in the case. Therefore, I dismiss the appeal
G and affirm the judgment of the court below. As I have found out that the respondent is the head of the family per the ipse dixit of the appellant, and he took the respondent as a father, it is a family quarrel badly handled by an impetuous young man, I make no order as to costs.

H _____

KUTIGIJSC

I read in advance the judgment just delivered by my learned brother,

Pats-Acholonu, JSC. I agree with him entirely that the appeal has no merit. The trial High Court and the Court of Appeal quite rightly dismissed plaintiff's claims. The appeal is accordingly dismissed. The judgments of the lower courts are affirmed. Being a family quarrel, I also make no order as to costs.

B

MUSDAPHERJSC

I have had the opportunity of reading before now the judgment of my Lord, Pats-Acholonu, JSC., with which I entirely agree. There is clearly no merit in this appeal. His Lordship in the aforesaid judgment has comprehensively and completely dealt with all the issues relevant for the determination of the appeal. I adopt his reasoning as mine. I award the respondent no costs as proposed in the lead judgment.

C

D

OGUNTADEJSC

Two suits in defamation were consolidated for hearing in the case out of which this appeal arose. The appellant, as plaintiff, alleged that the respondent, who was the defendant, published concerning him two defamatory communications, the first to the Mgbalekeke family of Onitsha vide letter dated 26/9/94 and the second to the Director-General, Ministry of Lands, Awka vide letter dated 3/10/94. The plaintiff claimed against the defendant, in respect of each of the two alleged defamatory publications as follows:

E

F

“(a) N5,000,000.00 (Five Million Naira) as special and general damages for libel.

G

(b) An injunction to restrain the defendant by himself or by his servants, agents or privies or otherwise howsoever from the further publication of the said words or any of them or of any similar words or any words to the like effect.”

H

Parties filed and exchanged pleadings after which Ibeziako, J., tried the suit. On 19/5/98, the trial Judge, in his judgment, spanning 140 foolscap pages, dismissed the plaintiff's suit. The plaintiff was dissatis-

fied. He brought an appeal before the Court of Appeal sitting at Enugu (hereinafter referred to as ‘the court below’). The court below, in its judgment, on 18/1/2000, dismissed plaintiff’s appeal and affirmed the judgment of the trial court. Still dissatisfied, the plaintiff has brought a further appeal before this court. In the appellant’s brief, the issues for determination in the appeal were stated to be the following:

“1. Whether from the evidence led in this case, the defence of qualified privilege is available to the respondent herein having regard to the vital ingredient of reciprocity involved in the said defence and which the respondent failed to establish?”

2. Whether the appellant filed reply to the respondent’s amended statement of defence alleging malice in order to meet the defence of qualified privilege pleaded by the respondent?

3. Whether from the respondent’s pleading and evidence, defence of estoppel by conduct can avail the respondent?

4. Whether the judgments of the courts below are supportable having regard to the grossly deficient evidence of the respondent?”

Appellant’s counsel has under issue 1 argued in his brief that the respondent did not call sufficient evidence in support of the defence of qualified privilege which he raised. Counsel relied on *Atoyebi v. Odudu* (1990) 10 SCNJ 52 at 66; *Watt v. Longsdon* (1930) 1 KB 130 and *White v. Stone Ltd.* (1939) 2 KB 827 at 835 for his submission that in order to sustain the defence of qualified privilege, a defendant must call evidence which establishes reciprocity of interest between himself and the recipient of the alleged defamatory publication. The defendant, it was submitted, must show that the defamatory publication was made in the discharge of some public or private duty whether legal, or moral, or in the conduct of his own affairs, in a matter where his interest is concerned. It must also be shown that the recipient of the defamatory publication had corresponding duties or interest to receive them. It was finally contended, that the respondent established his own interest in the matter, but that the evidence called by him did not show that the recipient of the publication had a reciprocal interest or duty in the matter covered by the publication.

In *Hunt v. Great Northern Rly.* (1891) 2 QB 199, Lord Esher, MR.,

discussing the essence of the defence of qualified privilege said:

“A privileged occasion arises if the communication is of such a nature that it could be fairly said that those who made it had an interest in making such a communication and those to whom it was made had a corresponding interest in having it made to them. When these two things co-exist, the occasion is a privileged one.” B

See also Puillman v. Hill (1891) 1 QB 528.

Sections 177 and 178 of the Torts Law Cap. 135, Laws of Anambra State provide:

“177. One who publishes a defamatory matter of or concerning another person is not liable therefor if (a) it is published on an occasion of qualified privilege; and (b) the privilege is not defeated by express or actual malice.” C

178. An occasion is one of qualified privilege where the person who makes a 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 so made has a corresponding interest or duty to receive it.” D

It is thus seen that Section 178 of the Torts Law above is in fact a re-statement of the principle governing the defence of qualified privilege as stated by Lord Esher in *Hunt v. Great Northern Rly.* (supra). Did the respondent call sufficient evidence in support of the defence which he raised? The plaintiff in the statement of claim he filed on the alleged defamatory publication to the Mgbalekeke family of Onitsha pleaded in paragraphs 21 and 22 thus: E F

“21. In the said letter of 26/9/94, the defendant wrote and published the following materials against the plaintiff: -

(a) ‘PROTEST AGAINST THE PURPORTED “SALE” OF PETER ILOABACHIE’S LANDED PROPERTY AT NO. 1 ALLEN LANE ONITSHA BY BARRISTER VINCENT ILOABACHIE (A GRANDSON OF LATE PETER ILOABACHIE) WITHOUT AUTHORIZATION FROM PETER ILOABACHIE FAMILY: AND REQUEST THAT THE PURPORTED “SALE” (WHICH IS AN UNAUTHORIZED AND FRAUDULENT TRANSACTION) BE DISCOURAGED, SET ASIDE, AND CANCELLED IN THE BOOKS OF THE MGBELEKEKE FAMILY’. G H

(B) ‘PETER ILOABACHIE FAMILY OF OGIDI HAVE SUBSEQUENTLY ORDERED VINCENT TO RETURN THE MONEY TO THE PURPORTED BUYER AND RESTORE THE PROPERTY TO THE FAMILY. VINCENT HAS NO MANDATE TO SELL THE PROPERTY. THE PURPORTED “SALE” WAS NOT AUTHORIZED, IT IS AS ILLEGAL AS IT IS FRAUDULENT, BECAUSE VINCENT NEVER CONSULTED OR DISCUSSED WITH ANY MEMBER OF THE FAMILY BEFORE HIS ACTION. THE PURPORTED “SALE” IS ALSO VERY UNPROFESSIONAL AND AGAINST THE ETHICS OF THE LEGAL PROFESSION BECAUSE NO HONEST AND RESPONSIBLE LAWYER WILL SELL WHAT IS BEING HELD IN TRUST FOR THE FAMILY WITHOUT CONSULTATION. THE TEAM OF SOLICITORS TO THE PETER ILOABACHIE FAMILY ARE ALREADY LOOKING INTO THESE ILLEGAL, FRAUDULENT, UNPROFESSIONAL AND VARIOUS OTHER ASPECTS OF VINCENT’S ACTION, AND APPROPRIATE MEASURES WOULD SOON BE TAKEN IN THE APPROPRIATE FOR A TO ADDRESS THE SITUATION’

By the publication of the said materials and by the said words in their natural and ordinary meaning, the defendant meant and was understood to mean: and in the alternative the said words were understood to mean:

(a) That the plaintiff is unruly and embarks on matters without authorization.

(b) That the plaintiff is fraudulent and not somebody to be trusted.

(c) That the plaintiff embarks on illegal activities.

(d) That the plaintiff is not worthy to be a Solicitor and Advocate of the Supreme Court of Nigeria as his activities are very unprofessional and against the ethics of the legal profession.

(e) That the plaintiff is dishonest, untrustworthy and irresponsible lawyer.

(f) That the various other aspects of the actions of the plaintiff are tainted with illegality, forgery, fraud and unprofessionalism.

(g) That the stock-in-trade of the plaintiff is the forging of documents which must have included his educational certificates and/or Degrees.

(h) That the plaintiff is an enemy of progress and very unfit to be a legal practitioner and unfit to occupy any other public office or position of trust.”

In reaction to the above, the defendant pleaded in paragraph 7 of his amended statement of defence dated 6/11/95 thus: B

“7. The defendant while admitting writing the letter of 3/4/94 denies every other averment in paragraphs 20, 21, 22, 23 and 24 of the statement of claim and also says that he did not act out of malevolence, spite, or ill-will against his nephew, the plaintiff, as pleaded in paragraph 26 of the statement of claim. The defendant says that the said words complained of in paragraph 22 of the statement of claim were published on an occasion of QUALIFIED PRIVILEGE. C

PARTICULARS

(i) The defendant is the undisputed head of late Peter Iloabachie’s family. D

(ii) The defendant is the only surviving male son of late Peter Iloabachi.

(iii) Prior to the plaintiff’s letter of 3/9/94, both the plaintiff and the defendant had enjoyed good relationship. E

(iv) The defendant has an interest and/or duty to protect a family property.

(v) The defendant acted honestly and in good faith. F

(vi) The defendant has an interest and/or duty to write the said letter of 3/9/94 to the Director-General, Ministry of Lands, Awka against the plaintiff.

(vii) The Director-General, Ministry of Lands, Awka has a corresponding duty or interest to receive the letter of 3/9/94. G

(viii) The words complained of were statements made by the defendant to obtain redress for a grievance against the plaintiff.”

In respect of the alleged publication to the Director-General, Ministry of Lands, Awka the plaintiff in paragraphs 22 to 24 of his statement of claim dated 13/6/95 pleaded thus: H

“22. In the said letter of 3/10/94 to the Director-General, Ministry of Lands, Awka, the defendant wrote and published the following

materials against the plaintiffs:-

(a) 'RE: PROPERTY AT NO. 1 ALLEN LANE ONITSHA REQUEST THAT THE GOVERNOR'S CONSENT TO ASSIGN/MORTGAGE, AND CERTIFICATE OF STATUTORY OCCUPANCY SHOULD NOT BE GIVEN, AND IF ALREADY GIVEN IN ERROR SHOULD BE REVOKED, BECAUSE BARRISTER VINCENT M. ILOABACHIE, WITHOUT THE FAMILY CONSENT, FRAUDULENTLY SOLD IT TO ONE MR. OBI OF OBA ABOUT TWO MONTHS AGO, WITH FORGED DOCUMENTS'.

(b) THESE ABOVE REQUESTS ARE MADE BECAUSE MY NEPHEW, BARRISTER VINCENT M. ILOABACHIE (HEREAFTER REFERRED TO AS 'VINCENT') WHO WAS TAKING CARE OF THAT PROPERTY IN TRUST FOR PETER ILOABACHIE'S FAMILY RECENTLY SOLD THAT PROPERTY TO ONE MR. OBI OF OBA FOR N1.2 MILLION WITHOUT THE CONSENT OF PETER ILOABACHIE'S FAMILY AND WITH FORGED DOCUMENTATION.'

(c) THE DIRECT CHILDREN OF LATE PETER ILOABACHIE NEVER RENOUNCED THEIR INTEREST AND CLAIM TO THEIR FATHER'S PROPERTY AT NO. 1 ALLEN LANE, ONITSHA. VINCENT WAS ONLY FORGING DOCUMENTS TO THIS EFFECT.

(d) VINCENT WENT FURTHER TO FRAUDULENTLY MISINFORM MISDIRECT THE AUTHORITIES IN HIS APPLICATION FOR A DEED OF VESTING ASSENT BY ASSERTING THAT THERE ARE NO OTHER INTERESTS AND CLAIMS ON THE PROPERTY.

(e) THE TEAM OF SOLICITORS TO THE PETER ILOABACHIE'S FAMILY ARE HANDLING THE SITUATION AND WOULD SHORTLY BE SEEKING REDRESS AGAINST VINCENT'S ILLEGAL, FRAUDULENT AND UNPROFESSIONAL ACTIONS AT THE APPROPRIATE FOR A.

(f) MEANWHILE, IN VIEW OF ALL THE ABOVE FORGERIES ON THE PART OF BARRISTER VINCENT ILOABACHIE, AND HIS FRAUDULENT MOVES IN SELLING A FAMILY PROPERTY HELD IN TRUST WITHOUT CONSULTING WITH A SINGLE MEMBER OF THE FAMILY.....'

23. The words referred and were understood to refer to the plaintiff:
PARTICULARS

(i) ‘Barrister Vincent M. Iloabachie’. ‘Banister V. M. Iloabachie’, or ‘VINCENT’ freely used by the defendant in the write up refer to one and the same person, the plaintiff. B

(ii) There is no other person alive at all material times who is Barrister Vincent M. Iloabachie.

24. By the publication of the said materials and by the said words in their natural and ordinary meaning, the defendant meant and were understood to mean; and in the alternative the said words were understood to mean:- C

(a) That the plaintiff is unruly and embarks on matters without authorization.

(b) That the plaintiff is fraudulent and not somebody to be trusted. D

(c) That the plaintiff embarks on illegal activities.

(d) That the plaintiff is not worthy to be a solicitor and advocate of the Supreme Court of Nigeria and his activities are very unprofessional and against the ethics of the legal profession. E

(e) That the plaintiff is dishonest, untrustworthy and irresponsible lawyer.

(f) That the various other aspects of the actions of the plaintiff are tainted with illegality, fraud and unprofessionalism. F

(g) That the stock-in-trade of the plaintiff is the forging of documents which must have included his educational certificates and/or Degrees.

(h) That the plaintiff is an enemy of progress and very unfit to be a legal practitioner and unfit to occupy any other public office or position of trust.” G

The defendant in reaction to the above pleaded in paragraphs 8 and 11 of the further amended statement of defence filed on 28/11/97.

“8. The defendant while admitting writing the letter of 3/10/94 H denies every other averment in paragraphs 20, 21, 23 and 24 of the statement of claim and also says that he did not act out of malevolence, spite or ill will against his nephew, the plaintiff, as pleaded in paragraph 26

of the statement of claim. The defendant says that the said words complained of in paragraph 22 of the statement of claim were published on an occasion of QUALIFIED PRIVILEGE.

PARTICULARS

B (i) The defendant is the undisputed head of late Peter Iloabachie's family.

(ii) The defendant is the only surviving male son of late Peter Iloabachie.

C (iii) Prior to the plaintiff's letter of 3/9/94, both the plaintiff and the defendant had enjoyed good relationship.

(iv) The defendant has an interest and/or duty to protect a family property.

(v) The defendant acted honestly and in good faith.

D (vi) The defendant has an interest and/or duty to write the said letter of 3/9/94 to the Director-General, Ministry of Lands, Awka against the plaintiff.

E (vii) The Director-General, Ministry of Lands, Awka has a corresponding duty or interest to receive the letter of 3/9/94.

(viii) The words complained of were statements made by the defendant to obtain redress for a grievance against the plaintiff.

F 11. The defendant denies paragraphs 27, 28, 29, 30 and 31 of the Statement of Claim and shall at the trial urge the court to dismiss the claim of the plaintiff as being vexatious, frivolous and gold-gigging (sic)."

G It is helpful, at this stage, that I discuss briefly the cause of the dispute between the plaintiff and the defendant. The dispute arose over the ownership of a property at No. 1, Allen Lane, Onitsha. The plaintiff claimed that he inherited the property from his late father, Chief A. C. Iloabachie. The plaintiff then sold the property to one Mr. Edward Obi. The defendant resisted the sale contending that the property belonged not to plaintiff's father but to Peter Iloabachie who was plaintiff's grandfather.
H The defendant was a direct son of the said Peter Iloabachie and an uncle to the plaintiff. The overlord of the land was the Mgbelekeke family who was said to have sold the land to Peter Iloabachie. The defendant claimed to be the head of the Iloabachie family.

Now at pages 143 and 144 of the record, the defendant testified as follows:-

“I did all I did as head of my family. I wrote Exhibits C & D without malice it was to protect the family property for the benefits of all members of the family including the plaintiff. I wrote the letters with good faith based on facts. This Exhibit S is the letter by the plaintiff to me. The facts are in Exhibit S. The facts include the fact that the plaintiff has no legal title to sell the property he approached Mgbelekeke family to get a document to settle the property. The plaintiff paid N200,000.00 to Mgbelekeke family and N100,000.00 to land gents (sic) and paid the balance of N900,000.00 in his personal account at Union Bank Nigeria Plc. Onitsha where his wife works. It was forgery for plaintiff to get documents from Mgbelekeke family to sell the house and property of Peter Iloabachie without the consent of the family for that transaction. I would say that the parties i.e., my father and Mgbelekeke family might have executed some documents of sale and purchase. But those documents are not available. The plaintiff said that the title documents had been destroyed by his late step mother called Mrs. B. C. Iloabachie. It is not true that the plaintiff is the lawful owner of No. 1, Allen Street, Onitsha. If the plaintiff got any deed of vesting assent over the property he did not disclose that to me. That information is not in Exhibit S.”

I wrote a letter to Mgbelekeke family at Onitsha because I am a direct son of Peter Iloabachie. I am a son and only surviving son of Peter Iloabachie. I have a duty to the family. The Mgbelekeke family has a corresponding duty and obligation to receive my letter so to ensure that the property to (sic) did not go to someone else without the consent of the family. I also wrote to D. O. Lands Awka because they have corresponding duty as a government office to ensure that properties are not sold, assigned or conveyed without the consent of the owners. It was done without malice.

I gave copies of Exhibits C & D to Comrade Emeka Iloabachie who is a principal member of the family and who is to be informed of actions being taken by head of the family Emeka had a common interest in the property at No. 1, Allen Lane, Onitsha. I also gave copies of Exhibits C &

D to the D. G. Lands Awka and I. I. Ekwerekwu Esq.”

The trial Judge at pages 377-378 of the record of proceedings in his judgment said:

“It seems to me that those words listed above in this judgment, and
B for which the plaintiff complained of bitterly pointing out emphatically
that the words showed malice and malicious intent which actuated and
motivated the defendant to write Exhibits C and D, are epithets used by
the defendant to demonstrate his opposition and reaction to the acts and
C actions of the plaintiff, first in claiming the ownerships of No. 1, Allen
Lane, Onitsha, and, secondly, in selling the said property as his personal
property to Edward N. Obi, for N 1.2 million and spending the proceeds
of sale as he wished.

To my clear mind, those words complained of should not be
D extracted from, or jettisoned from the entirety of the documents, Exhibits
C and D, in which the words are parts and parcel. The defendant wanted
a redress from the Mgbelekeke family of Onitsha, who are the original
owners of the property which Peter Iloabachie bought from them. Again
E the defendant sought a redress from the Government of Anambra State of
Nigeria, through the appropriate authority, that is, the Director-General,
Ministry of Lands, Awka, over No. 1, Allen Lane, Onitsha, which the
plaintiff in fact sold to Edward N. Obi without consultation, consent or
F authority of the defendant, an interested person and the head of Peter
Iloabachie family. After a calm and dispassionate consideration of
Exhibits C and D, the words complained of and the circumstances giving
rise to Exhibits C and D, but in particular. Exhibit S, I hold the view that
those words complained of are not malicious or tainted with malice at all.”

G The court below on the same point concerning the alleged defama-
tory publications which were tendered as Exhibits C & D said at pages 474
- 475:

“From the evidence before the trial court the respondent as the
H current head of Peter Iloabachie Family who had nursed the belief that
No. 1, Alien Lane, Onitsha, which was acquired by his late father, Peter
Iloabachie, was the property of that family was startled by the appellant’s
letter, Exhibit ‘S’, informing him that he had sold single-handed No. 1,

Allen Lane, Onitsha, which he claimed belonged to his late father, A. C. Iloabachie, the elder brother to the respondent. He further disclosed in the letter that as the property was not covered by any document of title he approached the Mgbelekeke family of Onitsha, the original owner of the land from whom Peter Iloabachie acquired it, who provided him with document of title with which he conveyed the property to the purchaser. The respondent informed the appellant that the property was that of Peter Iloabachie Family and not personal property of his late father, A. C. Iloabachie, and advised him to rescind the sale and restore the property back to the family. The appellant did not budge.

When the appellant remained adamant and ignored the respondent's advice to rescind the sale what was the option left to the respondent. Could he have folded his arms and regarded the incident as a fait accompli with his duty as the head of the family or protest the appellant's act to those who had a say in the matter? The learned trial Judge endorsed the initiative taken by the respondent and I cannot regard that decision as unreasonable.

Considering Exhibit 'D', the letter to the State Lands Department, the learned trial Judge acknowledged that department as the authority over land matters within the State and recalled its traditional functions which include entertaining from an aggrieved person protest or application for redress over land matters. He, therefore, held at page 365 to 366 of the record, that the State Land Department had a duty to receive the complaint in Exhibit 'D' which, correspondingly, the respondent had the right to present to it. The concurrence of the right and duty on the part of the writer and addressee of Exhibit 'D' is the basis of their common interest and is sufficient to sustain the defence of qualified privilege by the respondent."

It is my firm view that both courts below were right in the views they expressed on the defence of qualified privilege in relation to Exhibits C and D. The defendant stated that he was the head of the Peter Iloabachie Family and that the property sold by the plaintiff to Mr. Edward Obi belonged to Peter Iloabachie Family who had acquired it originally from the Mgbelekeke Family. Because the Peter Iloabachie Family did not have the documents concerning the land with it, it became necessary for the

defendant to send Exhibit 'C' to Mgbelekeke family; and for a similar reason, the defendant sent Exhibit 'D' to the Director-General, Ministry of Lands, Awka. These, in my view, were legitimate steps to take to abort the sale of the property in dispute. The Mgbelekeke family had to be informed so that it would not recognize or validate the sale of the property by the plaintiff to Edward Obi. As for the Director-General of Lands, it had the duty to register and record transactions concerning the sale of land in Anambra State. It is therefore my view that both the Mgbelekeke family and the Director-General of Lands Awka were persons who had an interest and the duty to receive the communications addressed to them by the defendant. I must therefore decide issue 1 against the plaintiff/appellant.

I now consider issue 2. At pages 486 to 487, the court below said:

"Where no reply is filed by the plaintiff to the statement of defence in which the defence of 'fair comment' or 'qualified privilege' is pleaded by the defendant, express malice is not in issue on the pleadings and it is erroneous for a trial Judge to consider it In Chiefs S. B. Bakare v. Alhaji Ado Ibrahim (1973) 6 S.C. 205, the decision of the trial court was reversed on appeal where the learned trial Judge dabbled into the plea of express malice in an action for defamation in which the plea of fair comment was raised by the defendant but the plaintiff did not file a Reply giving particulars of the facts from which express malice was to be inferred."

There is no doubt that the court below was mistaken in its view that the plaintiff did not file a reply. The plaintiff filed a reply dated 20/11/95. Paragraphs 5-7 of the reply read:

"5. In reply to Paragraph 7 of the defence, the plaintiff states as follows:-

(i) The defendant's letter of 26/9/94 and the subsequent publications in various quarters including Ogidi, Awka and Onitsha were geared towards ruining the plaintiff professionally and possibly rendering him liable to be sacked from the Honourable and Noble profession.

(ii) The defendant armed himself with a copy of the said letter of 26/9/94, visited No. 1, Allen Lane, Onitsha, summoned all the tenants residing therein wherein he verbally murdered the plaintiff and capped it up with reading and distributing the said letter to the tenants including E.

O. Nwakeme.

(iii) The defendant also handed over the letter to his agent, Mr. Emeka Iloabachie, who on the instructions of the defendant handed over the letter to Chief Obi Udoka, the letter to Chief Chris Obi Udoka, the lawful attorney of Edward N. Obi.

B

(iv) Peter Iloabachie's family have no joint property and right. The plaintiff challenges the defendant to produce evidence of ownership and/or defence of Peter Iloabachie's family properties.

(v) The Mgbelekeke family of Onitsha knew the enormity of the damage done by the said letter on the reputation of the plaintiff and hence they never reacted officially or unofficially to the letter including writing to the plaintiff over the issue.

C

(vi) The defendant did not wait for the Mgbelekeke family of Onitsha to give him the desired redress for the purported grievance before he started his campaign of calumny against the plaintiff.

D

(vii) The defendant is not a member of Mgbelekeke family and he is neither the agent of the said Mgbelekeke family. The defendant is also not in the employ of Mgbelekeke family.

E

(viii) The father of the plaintiff, Chief A. C. Iloabachie trained the defendant right from primary level to the University level, and made him what he is today. The defendant vowed never to reciprocate that gesture by wilfully refraining from assisting the plaintiff professionally and by also dragging his reputation to the mud so that the clients the plaintiff connected through the hands of providence will desert him.

F

(ix) The only interest had by the defendant that prompted the letter of 26/9/94 was his open vow to pull the plaintiff down. Prior to the said letter of 26/9/94, the relationship of the plaintiff and the defendant had been that of a cat and a mouse. The harassment of the plaintiff and his immediate family members by the defendant were of such gravity that on 3rd January, 1995, the Uruama family meeting, Ogidi, wrote a letter to the Divisional Police Officer, Ogidi informing him that the Uruama family meeting has handed over the safety of the lives of the plaintiff, his wife and children into the hands of the defendant.

G

H

The Uruama family meeting, Ogidi handed over one of the said letter

of 3/1/95 to the plaintiff and the plaintiff shall rely on same during the hearing of this case.

6. In reply to paragraph 8(v) and 8(viii) of the defence, the plaintiff states as follows:-

B (i) Emeka Iloabachie is a total stranger as far as No. 1 Allen Lane, Onitsha is concerned.

(ii) Emeka Iloabachie is not the only plaintiff in Suit No. 0/204/95. He is only a named plaintiff but also represents B. N. Iloabachie (the defendant) in the said suit.

C (iii) Mr. Edward N. Obi is the bona fide owner of No. 1, Allen Lane, Onitsha following the transfer of the property to him by the plaintiff.

7. In reply to Paragraph 9 of the defence, the plaintiff states that no iota of privilege is attachable to the publication of the said letter of 26/9/94, because:-

(i) The defendant is not a member of Mgbelekeke family of Onitsha and the said family did not authorize the defendant to go ahead and start publishing the said letter.

E (ii) The defendant made sure that the nails in the coffin of the reputation of the plaintiff are properly fastened by clearly underlining the venomous parts of the said letter of 26/9/94 for clearer picture and ease of reference.

F DATED this 20th day of November, 1995.”

The plaintiff/appellant in clinging to the assertion that the defendant in disseminating the malicious publication was actuated by malice would appear to have overlooked the finding of fact made by the trial Judge that what the defendant published concerning the plaintiff in Exhibits C & D was substantially true and that the plaintiff could not lay claim to being a man of character or honour having regard to the assertions made by the plaintiff in Exhibit ‘S’ and his answers to questions under cross-examination. At pages 358 and 359 of the record, the trial court said concerning H the plaintiff:

“I hold that the plaintiff by his letter, Exhibit S, induced, compelled and propelled the defendant to write his protest letters as demonstrated by Exhibits C and D. The defendant employed very strong words in Exhibits

C and D to present his infinite and indefinite objections to the acts and activities of the plaintiff I believe and I hold that the revelations in the exhibits above mentioned and my observations and highlights thereof, make me to hold that in the circumstance the plaintiff as of the dates of Exhibits C and D had no good reputation, or good character to protect or B which this High Court will lend its help to protect or preserve by an injunctive order.”

The learned authors of Gatley and Libel on Slander, 7th edition, paragraph 351 at page 152 write on the defence of justification thus: C

“351. Truth of the imputation: The plaintiff establishes a prima facie cause of action as soon as he has proved the publication of defamatory words. It is no part of plaintiff’s case in an action of defamation to prove that the defamatory words are false, for the law presumes this in his favour. It is however a complete defence to an action D of libel or slander that the defamatory imputation is true. The truth of the imputation is an answer to the action, not because it negatives malice but because the plaintiff has no right to a character free from that imputation, and if he has no right to it, he cannot injustice recover damages for the E loss of it; it is damnum absque injuria.”

See also Bardi v. Maurice (1954) 14 WACA 414 and Registered Trustees of AMORC v. Awoniyi (1991) 3 NWLR (Pt. 178) 245 at 257.

The plaintiff/appellant having been found to be a man without F character could not rely on malice against the defendant.

The plaintiff/appellant in his issue 3 has contended that the court below was wrong to say that the respondent pleaded estoppel by conduct. This issue is a clear demonstration that the plaintiff/appellant has not come to terms with the extent of damage which the many false assertions he G made in Exhibit ‘S’ did to his case. The trial Judge at pages 352-354 of the record spelt out the obvious untruths stated by the plaintiff/appellant in Exhibit ‘S’. This was not a case of pleading estoppel by conduct or not pleading it. Was not the defendant entitled to represent the plaintiff to H outsiders as a liar when obviously that was what the plaintiff showed himself to be? Even if the defendant had not pleaded estoppel by conduct, the nature of the case before the trial court was such that the trial court

and the court below had to ask themselves whether or not there was justification for the defendant to publish Exhibits 'C' and 'D' of and concerning the plaintiff. I would therefore decide issue 3 against the plaintiff/appellant.

B Issue 4 raises the question whether or not there was sufficient
evidence before the trial court and the court below to enable them come
to the conclusion they arrived at. I have examined each of the issues raised
by the plaintiff/appellant. This had been a simple matter on the evidence for
C the courts below to resolve. The defendant had no doubt done what might
on a first appearance convey that he defamed the plaintiff. But the plaintiff/
appellant was shown to be a man undeserving of the honour he ascribed
to himself. That was his undoing in the case. It is quite clear to me that the
two courts below on the evidence came to the right conclusion in the
D matter.

I, therefore, agree with the lead judgment by my learned brother,
Pats-Acholonu, JSC. I would also dismiss this appeal and affirm the
judgments of the two courts below, I subscribe to the order on costs made
E in the lead judgment.

AKINTAN JSC

F The appellant, as plaintiff, instituted this action at Ogidi High Court
in Anambra State against the respondent as defendant. His claim was for
a total sum of N5 million being general and special damages for libel
published about the appellant in two letters which the respondent wrote
G respectively to the Mgbelekeke family in Onitsha (Exhibit C); and to the
Director-General of Lands, Awka (Exhibit D). The respondent alleged in
the letter, inter alia, that the appellant fraudulently sold the family house at
No. 1 Allen Lane, Onitsha without the consent of the members of the
family. The respondent was the current head of the family and the house
H sold by the appellant belonged to the respondent's late father while the
appellant, a lawyer, is a grandson. The plaintiff's claim was dismissed by
the learned trial Judge on the ground, inter alia, that the publication was
justifiable and privileged. The appellant's appeal to the Court of Appeal was

dismissed. The present appeal is against the decision of the Court of Appeal.

The appellant canvassed four issues in this court. His main complaint was against the failure of the court below to reverse the decision of the trial court in the case.

The tort of libel is committed through the publication of defamatory words in writing. It is a tort in which the writer or publisher attacks the reputation, integrity, standing and or fidelity of the victim of the publication. However, published words which are considered to be mere vulgar abuses, will not normally ground an action for libel or slander. What could be regarded as vulgar abuse would however depend on the exact words published, the status of the parties and the circumstances when the publication is made. For instance, abusive words uttered by low class people or motor park drivers and workers, which are usually uttered as prelude to fights, are usually regarded as vulgar abuses as they are normally never taken very seriously and could therefore not ground an action for either slander or libel. See *Sketch Publishing Company Ltd. v. Ajagbemokeferi* (1989) 2 S.C. (Pt. II) 73; (1989) 1 NWLR (Pt. 100) 678; *Nwachukwu v. Nnoremeké* (1957) 3 ERLR 50; and *Union Bank of Nigeria Ltd. v. Oredein* (1992) 6 NWLR (Pt. 247) 355.

The law is settled that to sustain an action for libel, the plaintiff must prove that: (1) the publication was in writing; (2) the publication was false; (3) the false publication was made to a person apart from the plaintiff and the defendant; (4) the publication referred to the plaintiff and was defamatory of the said plaintiff; and (5) the publication was made by the defendant: See *Din v. African Newspaper of Nig. Ltd.* (1990) 3 NWLR (Pt. 139) 392; *Onyejike v. Anyasor* (1992) 1 NWLR (Pt. 218) 437; *Nsirim v. Nsirim* (1990) 3 NWLR (Pt. 138) 285; and *Onu v. Agbese* (1985) 1 NWLR (Pt. 4) 704.

The onus is on the plaintiff, in an action for libel, to show that the published words complained of are defamatory or that they convey a defamatory imputation. However, where the words complained of are defamatory in their natural and ordinary meaning, the plaintiff has no legal duty to lead any evidence to show additional defamatory meaning as

understood by persons possessing some particular facts. See *Union Bank Nig. Ltd. v. Oredein*, supra, 355 at 372.

One of the defences available to a defendant in an action for libel is that of justification. It is therefore a complete defence to an action for libel or slander that the defamatory imputation is true. The truth of the imputation is an answer to the action because the law presumes that the plaintiff has no right to a character free from that imputation if he has no right to it. He cannot in justice recover damages for the loss of it. He is not entitled to benefit from the loss of a reputation he is not entitled to and as such the allegation in a defence that the words complained of are true is therefore a complete bar to any relief sought by a party who complains of defamation. It is appropriately described in the latin maxim: “*damnum absque injuria*”. Until it is clearly established that an alleged libel is untrue, it will not be clear that any right at all has been infringed: See *Registered Trustees of Amorc v. Awoniyi* (1991) 3 NWLR (Pt. 178) 245 at 257.

In the instant case, it is not in doubt that the contents of the letters published by the respondent and relied on by the appellant are defamatory in nature. But the respondent had proved that they are true. It was a very bitter truth that the appellant played an infamous role when he sold the family property, of which the respondent was the head, and that such sale was made without the consent or knowledge of the respondent or that of any principal member of the family whose prior consent was required before any such sale could be validly made. The appellant, as a grandson, totally lacked the authority to make the sale and misappropriate the money realized from the sale. The alleged publications were also made to only those who were entitled to receive the complaints made in the publication. The defence of justification was therefore rightly available to the respondent.

For the reasons given above and the fuller reasons given in the leading judgment prepared by my learned brother, Pats-Acholonu, JSC., which I also adopt, I agree that there is no merit in the appeal and I accordingly dismiss it. I abide by the order on costs made in the said leading judgment.