

SUPREME COURT OF NIGERIA
3RD APRIL, 2009. SC. 221/2003
CORAM:- D. MUSDAPHER, G. A. OGUNTADE,
I. F. OGBUAGU, J. O. OGEBE,
M. S. MUNTAKA-COOMASSIE, JJSC

MR. OLAWALE SONIBARE APPELLANT
AND
MR. C. S. SOLEYE RESPONDENT

DAMAGES - General damages - Assessment - Guiding principle - It is necessary to award only such damages - As meet the justice of each case (H1)

FACTS

The plaintiff/appellant sued the defendant/respondent for a certain sum alleged to be professional fees for services rendered to the respondent as a legal practitioner. The respondent counter claimed, inter alia, for the sum of N3m (Three million naira) as general damages for libel contained in a letter written and published by the appellant.

After hearing, the learned trial judge dismissed both the appellant's claim and the respondent's counterclaim. Dissatisfied with the dismissal of his counterclaim, the respondent appealed to the Court of Appeal which allowed the appeal and awarded him N3m (Three million naira) as damages for libel. Aggrieved, appellant has appealed against the judgment of the Court of Appeal. At the hearing, it became obvious that the grouse of the appellant with the judgment is not as to liability but as to quantum of damages.

ISSUE FOR DETERMINATION

"Whether by the State of pleadings and evidence adduced, the award of N3 million damages is justified in law".

HELD (Unanimously dismissing the appeal while reducing the quantum of damages per **OGUNTADE JSC**)

General damages - Assessment - Guiding principle

1. I have considered the issues raised and the necessity to award only such damages as meet the justice of this dispute. It is my view that a

1158 Sonibare v. Soleye (2009) 4 KLR (pt. 266) 1157; (2009) 12 NWLR

reduction of damages awarded in favour of the respondent from N3m to N1 million would meet the justice of this matter.

Judgment is accordingly given in favour of the respondent for One million Naira. (p. 1160 D)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

1. An award of N3m is justified

In my respectful view, is the award of N3m (three million naira) excessive in all the circumstances of this case leading to the instant appeal? I or one may ask. I think not.

In Re Felix Egware (1974) 6 S.C. 90 @ 94: (1974) 1 All NLR (Pt. I) 293, Coker, JSC stated inter alia, as follows:

"..... Whatever method of assessment is employed, a great part of the exercise of assessment must be arbitrary but the entire exercise must at all stages have reference to the evidence in the case and the subject-matter of the action. Such an award must be adequate to repair the injury to the plaintiff's reputation which was damaged; the award must be such as would atone for the assault on the plaintiff's character and pride which were unjustifiably invaded and it must reflect the reaction of the law to the imprudent and illegal exercise in the course of which the libel was unleashed by the defendant. (p. 1162 A/1163 D)

2. The reduction of damages is based on consent

Coming back as to what transpired at the said hearing of this appeal on 13th January, 2009, the Court has treated the effect or consequence, as amounting to a "Consent Judgment". In other words, the liability of the Appellant as found and held by the court below, is no longer in dispute. What the court has to decide, is the quantum of the damages to be due to the Respondent in the spirit of reconciliation between the parties. It is on this ground, that I too, reduce the said damages to N1m (one million naira) payable to the Respondent by the Appellant. (p. 1164 F)

REPRESENTATION

Olalekan Ojo Esq. for the appellant.

C. O. Aduroja Esq. for the respondent.

CASES REFERRED TO

C & C Construction Co. Ltd. & anor. v. Okhai (2003) 18 NWLR (Pt.851) 79 @ 103. 113; (2003) 12 SCNJ. 33

Overseas Construction Co. (Nig.) Ltd. v. Creek Enterprises (Nig..) Ltd. & anor. (1985) 3 NWLR (Pt.13) 407

His Highness Uyo I v. Nigerian National Press Ltd. & 2 ors

LEAD JUDGMENT BY OGUNTADE JSC

The appellant, as plaintiff instituted an action against the respondent claiming the sum of Seventeen thousand, five hundred Naira being professional fees for services rendered to the respondent as a legal practitioner. The respondent in reaction filed a statement of defence and counterclaim which reads thus:

“(i) N7 Million (Seven Million Naira) general damages for inducing and procuring the termination of the Defendant’s employment by the United Bank for Africa Plc.

“(ii) N3 Million (Three Million Naira) general damages for libel contained in a letter dated the 13th of March 1996 written and published by the Defendant.

“(iii) An injunction restraining the Defendant himself or otherwise from further publishing the said (sic) or any similar libel of and concerning the Plaintiff.”

The trial judge Arasi J. on 26/7/99 in his judgment dismissed both the appellant’s claim and the respondent’s counterclaim. The respondent was dissatisfied with the judgment of the trial court dismissing his counter-claim. He brought an appeal against it before the Court of Appeal sitting at Ibadan (hereinafter called the ‘court below’). In its judgment on 16-04-03, the court below allowed the appeal and awarded to the respondent the sum of three million Naira (N3million) as damages. Dissatisfied with the judgment of the court below, the appellant has brought this final appeal before this Court. In the appellant’s brief filed before this Court, two issues were identified as arising for determination in the appeal, namely:

“(a) Was the Court of Appeal correct in holding that the Exhibit D4 was written by the appellant to the Respondent’s former employer with the intention of causing the termination of the Respondent’s appointment and that it was Exhibit D4 that indeed

caused the termination of the Respondent's appointment. (In relation to Grounds 1 & 2).

(b) Whether by the State of pleadings and evidence adduced, the award of N3 million damages is justified in law. (In relation to Grounds 3, 4 and 5)."

B The appeal came before us for hearing on 13-01-09. Mr. Olalekan Ojo of counsel for the appellant adopted his written brief and urged the court to allow the appeal. Mr. C. O. Aduroja, counsel for the respondent similarly adopted his brief and urged the court to dismiss the appeal.

C At the end of these formalities, I pointed out to counsel the necessity to consider an amicable settlement as the main issue in the appeal revolved around the quantum of damages awarded by the court below. In the exchange of suggestions from counsel that followed, it became apparent that whilst appellant's counsel was willing to have the damages against the appellant reduced to about N750,000.00, the respondent prayed us to award N1.5m. In the end counsel agreed to leave the matter in the hands of the court.

E ***I have considered the issues raised and the necessity to award only such damages as meet the justice of this dispute. It is my view that a reduction of damages awarded in favour of the respondent from N3m to N1 million would meet the justice of this matter.***

F ***Judgment is accordingly given in favour of the respondent for One million Naira.*** There will be costs assessed at N50,000.00 in respondent's favour against the appellant.

G **MUSDAPHER JSC**

I have seen before now the judgment just delivered by my Lord Oguntade, JSC with which I entirely agree. The sum of one million naira will meet the justice of this case. I enter judgment in favour of the respondent in the sum of one million naira. I abide by H the order of costs proposed in the aforesaid lead judgment.

OGBUAGU JSC

This is an appeal against the Judgment of the Court of Appeal, Ibadan Division (hereinafter called “the court below”) delivered on 16th April, 2003, allowing the appeal to it by the Respondent and setting aside the Judgment of the trial court which dismissed the counter-claim of the Respondent and awarded (N3m) three million naira as damages in favour of the Respondent. B

Dissatisfied with the said Judgment, the Appellant has appealed to this Court on five (5) grounds of appeal. He has formulated two issues for determination, namely, C

“3.02 (a) *Was the Court of Appeal correct in holding that the Exhibit D4 was written by the Appellant to the Respondent’s former employer with the intention of causing the termination of the Respondent’s appointment and that it was Exhibit D4 that indeed caused the termination of the Respondent’s appointment? (In relation to Grounds 1&2).* D

(b) *Whether by the state of pleadings and evidence adduced, the award of N3 Million damages is justified in law. (In relation to Grounds 3, 4 and 5).* E

The above issues, have been adopted by the Respondent in his Brief.

On 13th January, 2009, when this appeal came up for hearing, both learned counsel for the parties, adopted their respective Brief. While Ojo, Esqr. - learned counsel for the Appellant, urged the Court to allow the appeal and resolve the two issues in their Brief, in favour of the Appellant as according to him, the claim for special damages, was not established, Aduroja, Esqr., - the learned counsel for the Respondent, submitted that Exhibit D4, was written to the Respondent’s employers and the purpose, was to induce the termination of the Respondent’s employment. F G

Before Judgment was reserved till to-day, it appeared to the Court that the main issue, was about the quantum of the damages awarded by the court below. This is because, my learned brother, Oguntade, JSC in the circumstance, pointed out the need for a possible amicable settlement. While the learned counsel for the Appellant, was willing to have the damages reduced to the sum of N750,000.00 (seven hundred & fifty thousand naira), the learned H

counsel for the Respondent, asked for an award of N1.5m (one million, five hundred thousand naira). Eventually, both learned counsel for the parties, agreed to leave the matter to the Court to determine.

In my respectful view, is the award of N3m (three million naira) excessive in all the circumstances of this case leading to the instant appeal? I or one may ask. I think not.

I note that at pages 140 and 141 of the Records, the court below - per Omuogbo, JCA, stated inter alia, as follows:

“..... The questions which arise are these, was the said Exhibit D4 not written by the respondent with the knowledge that it impugned (sic) the status and integrity of Mr. C. S. Soleye with his employers? It was. Did the writer not know that the U.B.A. are the employees (sic) of Mr. Soleye? He knew. Did the writer of Exhibit D4 not expect any employer will terminate the appointment of its staff who joined others to defraud the Bank? He did. Can it be said that the writer of exhibit D4 did not intend the termination of the appointment of its employer? It cannot be so said. In my view the above questions should have been answered by the trial court in the positive, and the said court should have held that the respondent with said court should have held that the respondent with knowledge of the employment of the appellant with the U.B.A. Plc, intended that the appellant's appointment will be terminated when the respondent wrote such a derogatory and damaging letter to the employer of Mr. Soleye about the racket, he made to deceive and obtain money by fraud from the employees (sic) of the appellant whether the allegation is true or false. In my view therefore the conclusion of the trial court on the evidence before him (sic) is unreliable and perverse. I set aside the conclusion so reached. I find instead that the said exhibit D4 knowingly and intentionally interfered with the appointment of the appellant with the U.B.A.

It went on, inter alia, thus:

“I feel persuaded on this conclusion because evidence exists in which the respondent said he would show the appellant that he was a lawyer and would deal with the appellant. Furthermore PW4, in the proceedings had testified that the documents sent by the respondents (sic) to the U.B.A. on behalf of the appellant were all forgeries, which necessitated the investigation by the police.

It is truly inconceivable that a legal practitioner would write

such a letter as exhibit D4, and proceed to litigation to claim his professional fee, I will refrain from commenting further on the conduct of a respondent who claimed to be a member of the honourable profession. In conclusion I find against the respondent's issue one of the appellant's brief and issue 2 of the respondents brief.....",

At page 144 of the Records, Tabai, JCA (as he then was), in his concurring Judgment, stated inter alia, as follows:

"..... I am inclined to the view that Exhibit D4 was the immediate cause of the Appellant's termination ".

Adekeye, JCA (as he/she then was), at page 146-147 of the Records in his concurring Judgment, also held that the conclusion reached by the learned trial Judge, is unreliable and perverse.

I have deliberately gone this far because, it is now firmly settled, as to when an Appellate Court, can on its own, assess damages.

In the case of *His Highness Uyo I v. Nigerian National Press Ltd. & 2 ors*: In *Re Felix Esware (1974) 6 S.C. 90 @ 94: (1974) 1 All NLR (Pt. I) 293*, Coker, JSC stated inter alia, as follows:

"..... Whatever method of assessment is employed, a great part of the exercise of assessment must be arbitrary but the entire exercise must at all stages have reference to the evidence in the case and the subject-matter of the action. Such an award must be adequate to repair the injury to the plaintiff's reputation which was damaged; the award must be such as would atone for the assault on the plaintiff's character and pride which were unjustifiably invaded and it must reflect the reaction of the law. To the imprudent and illegal exercise in the course of which the libel was unleashed by the defendant. We think that at least an amount of £1,000 (or N2.000) should have been awarded to the plaintiff..... we are satisfied that his defence supports the circumstances of aggravation which characterise the plaintiff's case through".

[the underlining mine]

Although the trial court, treated the matter as libel/defamation hence it *suo motu* raised with respect, the bogus defence of privilege which he held attached to Exhibit D4. It however, in the alternative, held that if it had found the Appellant

" liable for libel which he published on the 13th of March, 1996 concerning the defendant, I would have awarded N50,000.00 in favour of the defendant being damages for libel".

I note that the Respondent, counter-claimed (inter alia) and asked for (N7m) Seven million naira as general damages for the Appellant, inducing and procuring the termination of his employment by the United Bank for Africa. In the case of *C & C Construction Co. Ltd. & anor. v. Okhai* (2003) 18 NWLR (Pt.851) 79 @ 103, 113; B (2003) 12 SCNJ. 33, this Court, per Uwaifo, JSC, referred to Section 16 of the Court of Appeal Act, 1976 and Section 22 of the Rules of this Court, 1990 as to when an Appellate Court, may assess quantum of damages.

C His Lordship stated inter alia, as follows:

“..... In another word, there is no need for an appellate court to look at an issue of damages as if it were a sacred cow reserved for the court of trial. Therefore, unless an issue of credibility of witnesses as to damages arises in the proceedings, the appellate court D ought, on entering or affirming a judgment in favour of the plaintiff to assess and award damages to which he is entitled. In the instant case, the Court of Appeal was right, having found the appellants liable to have considered the issue of damages and made an assessment thereof.

E From the above, it is no longer in doubt that even where a trial court made no assessment of damages, an appellate court (like the court below did), can, make the assessment itself if there exists on the record, enough evidence on which the assessment can be based. See also the case of *Overseas Construction Co. (Nig.) Ltd. v. Creek F Enterprises (Nig.) Ltd. & anor.* (1985) 3 NWLR (Pt.13) 407.

Now, coming back as to what transpired at the said hearing of this appeal on 13th January, 2009, the Court has treated the effect or consequence, as amounting to a “Consent Judgment”. In other G words, the liability of the Appellant as found and held by the court below, is no longer in dispute. What the court has to decide, is the quantum of the damages to be due to the Respondent in the spirit of reconciliation between the parties. It is on this ground, that I too, reduce the said damages to N1m (one million naira) payable to the H Respondent by the Appellant. See perhaps (Order 8 Rule 12 (2) of the Rules of this Court as Amended in 1999) as to this decision. I finally, agree and I abide by all the orders contained in the lead Judgment of my learned brother, Oguntade, JSC, just delivered and which I had the advantage of reading before now.

OGEBE JSC

I had a preview of the lead judgment of my learned brother Oguntade, JSC just delivered and I agree with his reasoning and conclusion. I adopt it as mine. B

MUNTAKA-COOMASSIE JSC

I have read the lead judgment briefly rendered by my learned brother Oguntade JSC. The judgment actually should have been delivered on the bench. I completely and sincerely agree that a reduction of damages awarded in the court below, in favour of the respondent from N3 million to N1 million is about the justice of this matter - No more no less. D

That being the case, judgment is accordingly given for one million naira in favour of the respondent herein, Mr. Soley. I endorse the orders as to costs assessed at N50,000 in favour of the respondent against the appellant. E

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