

SUPREME COURT OF NIGERIA

14TH MAY, 2010, SC 173/2003

**CORAM:- N. TOBI, A. M. MUKHTAR, I. F. OGBUAGU,
I. T. MUHAMMAD, J. A. FABIYI, JJSC**

1. MR. BIODUN ODUWOLE
2. MR. AKIN ONIPEDE
3. MR. AMOS OGUNFOWOKAN APPELLANTS
4. THE AFRICAN NEWSPAPER
OF NIGERIA, PLC.
AND
PROFESSOR TAM DAVID WEST RESPONDENT

APPEALS - Damages - Quantum - Interference by appellate court - Principles - It will only interfere where trial court acted on wrong principle of law - Or the amount awarded is ridiculously too high or too low (H1)

TORTS - Libel - Quantum of damages - Propriety - Though assessment is usually subjective - An award must be adequate to assuage for the injury to the plaintiff's reputation (H2)

TORTS - Libel - Assessment of damages - Factors to consider - Some of the factors to be considered - Are the social standing of plaintiff - And the rate of inflation (H3)

FACTS

The plaintiff/respondent sued the defendants/appellants before the High Court of Oyo State holden at Ibadan claiming the sum of N250 million as damages from appellants, jointly and severally, for libel contained in Nigeria Tribune of Monday, 2nd September, 1996, in its editorial features column titled "Enough of David West." It was undisputed that the publication reported respondent as having been sacked from the office of the Minister of Petroleum which was in fact false as he was actually deployed to the Ministry of Mines and Power. It was also not in dispute that respondent had written to appellants to retract the publication to no avail.

The matter went to trial after pleadings at the end of which the

learned trial judge found the respondents's case proved. However he awarded only N10,000.00 (ten thousand naira) as damages to respondent. Aggrieved, respondent appealed to Court of Appeal on the quantum of damages. The appeal was upheld and the sum was substituted with an award of N300,000.00 (three hundred thousand naira) only. Dissatisfied, appellants have brought this appeal against the judgment of Court of Appeal.

ISSUES FOR DETERMINATION

“(i) Whether the learned justices of the Court of Appeal were right in interfering with the damages awarded by the learned trial judge.

“(ii) Whether the sum of three hundred thousand Naira awarded by the lower court was not manifestly high or excessive in the circumstances.”

HELD (Unanimously dismissing the appeal per **FABIYI JSC**)

Damages - Quantum - Interference by appellate court

1. As a matter of general principle, an appellate court would not interfere with an award of damages by a trial court simply because faced with a similar situation and circumstances it would have awarded a different amount. An appeal court will however interfere with an award by a trial court where it is clearly shown:-

(a) that the trial court acted upon wrong principle of law, or

(b) that the amount awarded by the trial court is ridiculously too high or too low;

(c) that the amount was an entirely erroneous and unreasonable estimate having regard to the circumstances of the case.

(p. 1802 A)

Libel - Quantum of damages - Propriety

2. The assessment of damages in a libel action is usually subjective. So, an award in an unrelated case cannot be a useful guide. Whatever method of assessment is employed, a great part of the exercise of assessment must be arbitrary. An award must be adequate to assuage for the injury to the plaintiff's reputation. Indeed, it must atone for the assault on the plaintiff's character and pride which were unjustifiably invaded. However, it has been pronounced by this court that to the extent that the person who has injured a person in his

reputation must pay for the injury he has suffered, there is an element of compensation in the award of damages made.
(pp. 1802 E/1803 B)

Libel - Assessment of damages - Factors to consider

3. The court below was right when it considered the social standing of the respondent. He was an astute social critic with other array of credentials which stand him out as a national and international figure. He is, *inter alia*, an outstanding professor at the College of Medicine, University of Ibadan.

I should also note here that other factors which should be considered in assessing damages in libel cases are social standing of the plaintiff and the rate of inflation which has adversely affected the value of the national currency. (p. 1804 F)

NOTABLE POINT OF INTEREST

FABIYI JSC

1. General bad character simpliciter can not support plea of justification

It has been held by this court that it is not the law that one's general character or reputation must transparently be stainless, unimpeachable and without any blemish whatsoever before he may successfully maintain an action in defamation. In any event, he puts his reputation in issue and the defendant in a plea of justification or mitigation of damages may give evidence that the plaintiff bears a bad character. The bad reputation must however bear some relation to the libel complained of; not at large. (p. 1802 H)

REPRESENTATION

K. A. Gbadamosi (with him W. A. Olajide, Esq.,) for the Appellant.
O. Ogungbade (with him S. Onu, Esq., A. Belgore, Esq., and T. Faniyi (Miss) for the Respondent.

CASES REFERRED TO

Mogaji v. Odojin 1978 4 SC. page 91
Jones v. Jones (1916) 2 AC 481 at 500
Toriola v. Williams (1982) 7 S.C. 27@ 33
Barnet v. Long (1851) 3 N.L.C. 315 @ 414

- Groom v. Crooker (1939) 1 K.B 194 @ 231
Imana v. Robinson (1974) 3-4 S.C 1 @ 9-10
Karimu v. UBN Ltd (1996) 5 NWLR (Pt. 451) 634.
Hulton & Co. v. Jones (1909) 2 K.B. @ P. 483
Kalio v. Daniel Kalio (1975) 2 S.C. 15 @ 17- 19
B Nka v. Onwu (1996) 40/41 LRCN 1303 @ 1336
Ekpenyong v. Nyong (1975) 2 S.C. 71 @ 81 - 82
Daily Times v. Williams (1986) 3 NWLR (Pt. 124) 543
Williams v. Daily Times (1990) 1 NWLR (Pt. 124) 1 at 49
C Magnusson v. Koiki & 2 ors. (1993) 12 SCNJ. 114 @ 124
Alhaji Alaoye & anor. (2004) 12 NWLR (Pt.887) 322 @ 340

BOOKS REFERRED TO

- Gayley on Libel and Slander 8th Edition, Arts. 1515, 1517 and 1522
D Halsbury's Laws of England, Forth Edition, Re issue, para 1161

LEAD JUDGMENT BY FABIYI JSC

- This is an appeal against the decision of the Court of Appeal, Ibadan Division (hereafter referred to as 'the court below') dated 3rd
E April, 2003 which upturned the decision of R. G. Oyetunde, J. of the High Court of Oyo State holden at Ibadan on 1st July, 1999.

- The respondent, as plaintiff at the trial court, claimed the sum of N250 million as damages from the defendants jointly and severally for libel contained in Nigerian Tribune of Monday, the 2nd
F day of September, 1996 in its editorial features column titled 'ENOUGH OF DAVID WEST'.

- Pleadings were filed and exchanged by the parties. After subsequent amendments of the pleadings by both sides of the divide,
G the plaintiff testified and called three other witnesses to buttress his case. The defendants rested their case on that of the plaintiff. Thereafter, the learned trial Judge was addressed by learned counsel to the parties. In a reserved judgment handed out on the 1st July, 1999 it was found that the plaintiff only proved allegation that he was sacked
H from the office of Minister of Petroleum which was false as he was deployed to Ministry of Mines and Power. The learned trial Judge then awarded the sum of N10,000.00 only as damages to the plaintiff.

The plaintiff felt unhappy with the sum awarded as damages

by the trial court and appealed to the court below. The appeal was upheld on the quantum of damages. The award of N10,000.00 made by the trial court was set aside. The same was substituted with an award of N300,000.00 only.

The defendants were dissatisfied with the stance posed by the learned justices of the court below and have appealed to this court. Briefs of argument were filed on behalf of the parties herein.

The two issues formulated on behalf of the appellants for determination in this appeal read as follows:-

“(i) Whether the learned justices of the Court of Appeal were right in interfering with the damages awarded by the learned trial judge.”

“(ii) Whether the sum of three hundred thousand Naira awarded by the lower court was not manifestly high or excessive in the circumstances.”

In the same fashion, two issues were also decoded on behalf of the respondent. They read as follows:-

“(1) Whether the learned justices of the Court of Appeal correctly applied the legal principles when they disturbed the damages awarded by the learned trial judge.”

“(2) Whether the sum of N300,000.00 awarded by the Court of Appeal was manifestly high or excessive.”

Arguing issue 1, learned counsel for the appellants submitted that assessment of damages is peculiarly within the province of the jury in an action for libel and an award would seldom be disturbed on the ground that the damages are either too great or too small. He referred to Gatley on Libel and Slander, 8th Edition, Art 1515, 1522 and also cited the cases of Onwu v. Nka (1996) 7 NWLR (Pt. 458) 1 and Ojini v. Ogooluwa Motors Ltd. (1998) 1 NWLR (Pt. 534) 353.

Learned counsel submitted that the reasons advanced by the court below for holding that there existed aggravating circumstances and which made it disturb the damages awarded by the trial court were wrong in law. He observed that the trial court considered the respondent's reputation as an astute social figure when it considered quantum of damages. He felt that the fact of P.W.4 being upset and embarrassed by the publication is relevant only to the extent that it established that the publication was in fact defamatory of the

respondent and has no relevance in respect of quantum of damages. Learned counsel asserted that a party is not expected in law of libel to retract and apologise for the truth. He opined that if the court below had adverted to the situation, it would not have treated the refusal of the appellants to retract as capable of aggravating the damages awardable in this matter.

Learned counsel further observed that the court below was wrong when it alluded to the evidence of P.W.1 as being sufficient to aggravate damages as he merely tendered exhibits on subpoena and did not testify on the merits of the case. He could not fathom how the court below arrived at the conclusion that P.W. 1's evidence was capable of aggravating damages and that the trial court glossed over it in awarding damages. He submitted that what the court below did was to wrongly substitute its own view of damages for that of the trial court. He cited *NITEL v. Ogunbiyi* (1992) 7 NWLR (Pt. 255) 543, 561.

Learned counsel submitted that the trial court did not misapply the relevant principles in awarding damages and the court below should not have interfered with the award made by the trial court. He referred to the cases of *Engineer Bayo Akinterinwa & Anr. v. Cornelius Olagundoye* (2000) 6 NWLR (Pt. 659) 92, 116; *Karimu v. UBN Ltd* (1996) 5 NWLR (Pt. 451) 634.

On issue 2, learned counsel submitted that the award of N300,000.00 by the court below was manifestly high and excessive in the circumstances. He conceded that damages are at large and there is no need to prove actual damage once libel is established. He cited *Cross River State Newspaper Corporation v. J.L. Oni & Ors.* (1995) 1 NWLR (Pt. 371) 270.

Learned counsel opined that a reasonable proportion must exist between the sum awarded and the circumstance of the case. He cited the cases of *Tolley v. Fry* (1930) 1 KB 467 at 476; *Taff Vale v. Jenkins* (1913) A.C. 7.

Learned counsel observed that an appellate court will interfere if the damages are out of proportion to the circumstances of the case. He cited *Davis v. Powell Duffryn* (1942) A.C. 616 and referred again to *Gatley on Libel and Slander*, 8th Edition, Art 1517. He felt that since the respondent did not claim special, exemplary or aggravated damages and did not prove any pecuniary loss, the award of

N300,000.00 is out of proportion to the circumstances of the case. He urged, in the alternative, that damages awarded be reduced to a figure that bears some proportion to the circumstances of the case.

On behalf of the respondent, learned counsel submitted on issue 1 that an award can only be disturbed when found to be arbitrary, erroneous and based on a wrong exercise of discretion. He too cited *Nka v. Onwu* (supra); *A.C.B. Ltd Apugo* (2001) FWLR (Pt. 42) 38 SC; *S.G.C. Ltd. v. Bendel Newspapers Ltd.* (2002) FWLR (Pt. 93) 1939-1940. B

Learned counsel felt that the court below did not arbitrarily interfere with the damages awarded by the trial court. He felt that the issue of upset and embarrassment of P.W.4 who read the publication was correctly taken into account in computing damages as it showed the repulsive effect of the publication on one reading member of the public. He cited *Offoboche v. Ogoja Local Govt.* (2001) FWLR 1051. D C

On issue 2, learned counsel observed that courts have developed certain principles which should guide them in the determination of what is adequate damages in libel cases. He referred to the cases of *His Highness Uyo 11 v. N.N.P.L* (1974) N.S.C.C. 304; *Offoboche v. Ogoja Local Govt.* (supra). He felt that from the decisions in these cases, the following facts ought to be taken into consideration in the determination of what is an adequate award in a libel case; viz E

1. The award must be adequate to repair the injury to the plaintiff's reputation. This does not require proof of pecuniary loss. F

2. The award must atone for the assault on the plaintiff's character and pride which were unjustifiably invaded.

3. It must reflect the reaction of the law to the impudent and illegal exercise in the course of which the libel was unleashed by the defendant. G

4. It must also take into account the loss of social esteem and the natural grief and distress to which plaintiff may have been put.

5. The fact that the defendants did not show any remorse and did care whether or not the plaintiffs reputation or feeling was injured. H

6. The social standing of the plaintiff must also be considered.

7. The rate of inflation which has adversely affected the value

of the national currency.

Learned counsel observed that evidence abound in this case which favour all the factors listed above. He urged that the appeal be dismissed for lack of merit.

As a matter of general principle, an appellate court would not interfere with an award of damages by a trial court simply because faced with a similar situation and circumstances it would have awarded a different amount. An appeal court will however interfere with an award by a trial court where it is clearly shown:-

(a) that the trial court acted upon wrong principle of law, or

(b) that the amount awarded by the trial court is ridiculously too high or too low;

(c) that the amount was an entirely erroneous and unreasonable estimate having regard to the circumstances of the case.

For the above, See: Zik's press Ltd. v. Ikoku 13 WACA 188; Williams v. Daily Times (1990) 1 NWLR (Pt. 124) 1 at 49, 55; James v. Mid-Motors (1978) 12 SC 31; Eboh v. Akpolo (1986) 1 All NLR 220; Idahosa v. Oronsaye (1959) SCNLR 407; Bala v. Bankole (1986) 3 NWLR (Pt. 27) 141.

The assessment of damages in a libel action is usually subjective. So, an award in an unrelated case cannot be a useful guide. Whatever method of assessment is employed, a great part of the exercise of assessment must be arbitrary. See: Offoboche v. Ogoja Local Govt. (supra) at 458.

It must be reiterated here that every libel is of itself a wrong in regard to which the law imputes general damages. If a plaintiff proves that a libel has been published of him without legal justification, his cause of action is complete. He needs not prove that he has suffered any resulting actual damage or injury to his reputation for such damages is presumed. See: English and Scottish Co-operation Properties v. Odhams. (1940) 1 KB 440 at 445; Jones v. Jones (1916) 2 AC 481 at 500.

It has been held by this court that it is not the law that one's general character or reputation must transparently be stainless, unimpeachable and without any blemish whatsoever before he may

successfully maintain an action in defamation. In any event, he puts his reputation in issue and the defendant in a plea of justification or mitigation of damages may give evidence that the plaintiff bears a bad character. The bad reputation must however bear some relation to the libel complained of; not at large. See: C.R.S.N. Corp. v. Oni (supra) at page 292; Speidel v. Plato Films Ltd. (1961) A.C. 1090. B

An award must be adequate to assuage for the injury to the plaintiffs reputation. Indeed, it must atone for the assaults on the plaintiff's character and pride which were unjustifiably invaded. However, it has been pronounced by this court that to the extent that the person who has injured a person in his reputation must pay for the injury he has suffered, there is an element of compensation in the award of damages made. C
But that is usually not on the basis that such would restore the plaintiff to the position he was before he was defamed, as if he had not been defamed where the injury he has suffered did not lead to pecuniary loss. See: Offoboche v. Ogoja Local Govt. (supra). D

The learned trial Judge at page 123 of the record of appeal found libel to have been proved thus:-

"The statement that the plaintiff was sacked from the Ministry of Petroleum Resources is obviously false as shown by the evidence of the plaintiff which was not contradicted by the defence. Indeed, the defendants called no evidence so that their pleadings go to no issue. The plaintiff was in fact deployed to the Ministry of Mines and Power. I find the statement to be defamatory of the plaintiff. The defendants were called upon by letter dated 4th September, 1996 to retract the statement. They neglected and failed to retract same. I find the plaintiffs claim for libel proved in this regard." E F

It beats one's imagination that the appellants' counsel felt G uncomfortable that the court below considered the point that the appellants failed to retract their false assertion that the respondent was sacked. They put up a volte-face that one does not retract and apologise for stating the 'truth'. They were dead wrong as it has been shown that they embarked upon falsehood and should be made to H face the reality of the self-imposed situation created by them.

The appellants felt that the issue of upset and embarrassment of P.W.4 who read the publication should not be taken into account in computing damages. I do not think that the stance posed

by the appellants is correct. This is because the upset and embarrassment of P.W.4 who read the publication should be taken into account in computing damages as it shows the repulsive effect of the publication on one reading member of the public. P.W.4 said he saw the respondent as a role model. See: *Offoboche v. Ogoja Local Govt.* B (supra) at page 1051.

I must say it here that the same cannot be said in respect of the evidence of P.W.1 who was served with a subpoena to merely tender exhibits. He did not testify on the merit of the case. I cannot fathom how his evidence can be taken to be material in computing damages. The court below goofed in so finding. But it is not a very serious point which should be taken as a 'joker' by the appellants. C

The award must be adequate to reflect the reaction of the law to the impudent and illegal exercise in the course of which the libel was unleashed by the defendants. The appellants saw the respondent as an astute social critic and decided to 'clip his wings' in their editorial. In the process, they embarked upon deliberate falsehood and refused to retract their spiteful write-up in respect of their 'sack allegation' which turned out to be a farce. They arrogantly maintained that they would not apologise for stating the 'truth'. They caused the respondent loss of social esteem, natural grief and distress. I feel same should be taken into account in computing damages as done by the court below. I cannot see my way clear in faulting the learned justices of the court below in their stance. D E F

The court below was right when it considered the social standing of the respondent. He was an astute social critic with other array of credentials which stand him out as a national and international figure. He is, inter alia, an outstanding professor at the College of Medicine, University of Ibadan. G

I should also note here that other factors which should be considered in assessing damages in libel cases are social standing of the plaintiff and the rate of inflation which has adversely affected the value of the national currency. See: *Daily Times v. Williams* (1986) 3 NWLR (Pt. 124) 543. H

I am of the considered view that the court below properly considered all the factors in reviewing upwards the award made by the trial court. The award of N10,000.00 was arbitrary, erroneous and based on a wrong exercise of discretion. It was ridiculously low

having regard to the circumstances of this case.

The award of N300,000.00 only as adjusted by the court below appears pragmatic and in tune with the reality of the matter. I do not see how I can tamper with it.

In conclusion, I have no hesitation in my mind that the appeal is devoid of merit. It is hereby dismissed. The judgment of the court below is hereby affirmed. The appellants shall pay N50,000.00 costs to the respondent.

TOBI JSC

Where a trial court awards damages wrongly an appellant court can award the correct damages. This is what the Court of Appeal did and I cannot see my way clear in faulting the court. I agree with my learned brother that the award of N10,000.00 damages is arbitrary. I agree with the award of N300,000.00 damages by the Court of Appeal. The appeal is dismissed. I abide by the costs award (*sic awarded*) in the lead judgment of Fabiyi, JSC.

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned brother Fabiyi JSC. The gravamen in this appeal emanating from the decision of the Court of Appeal, Ibadan Division is the review of damages by the court, the said appellate court having interfered with the trial court's award. The grounds of appeal filed by the appellants are premised on the complaint on the damages, and so are the issues for determination raised in the appellants' brief of argument, and which have been distilled from the two grounds of appeal. The issues are:-

"i. Whether the learned justices of the Court of Appeal were right in interfering with the damages awarded by the learned trial judge.

ii. Whether the sum of Three Hundred Thousand Naira awarded by the lower court was not manifestly high or excessive in the circumstances."

The issues raised in the respondent's brief of argument are in

pari materia with the appellants' issues. In arguing issue (1) supra, the learned counsel for the appellants submitted that the Court of Appeal had made up its mind to revise upwards the damages awarded by the trial court and that its conclusion that the earlier award was arbitrary, erroneous and based on a wrong exercise of discretion cannot be supported if properly examined. The learned counsel attacked the observation made by the Court of Appeal in its judgment. It reads:-

"A brief recourse to the records in this case showed that the learned judge had before him (sic) evidence that clearly should have influenced him to award a far more adequate sum as compensation."

The learned counsel for the respondent has in reply referred to the learned Justices treatment of the interference of damages which reads thus:-

"The starting point of my consideration is to spell out the principle, review briefly the facts of the case, relation to events leading to the award of damages and determine whether the learned trial judge in the exercise of his discretion had kept within the principle. It is the outcome to this that will determine whether or not the appellate court can interfere in reviewing the awards."

The learned counsel has contended that the learned Justices fully considered the law before interfering with the award. On carefully perusing the record of proceedings, I am not inclined to endorse the argument of the learned appellants' counsel. In the first place the statement of the learned Justice who wrote the lead judgment above does not signify that he had predetermined the issue. By saying what he said above, the learned Justice was merely reviewing the evidence before him, and stating the principle governing damages, which the law permits him to do. Secondly a Judge in writing his judgment is at liberty to deal with all the materials before him in whatever form or style he deems fit. He is not obliged to put himself in a straight jacket to the extent that he cannot weave through and move freely from one point to the other, as long as he adheres to the principles laid down by Fatal Williams JSC (as he then was) in the case of *Mogaji v. Odojin* 1978 4 SC. page 91.

After a careful perusal of the record of proceedings before me, (i.e. facts and law) I am satisfied that the learned lower court was right in its re assessment and upward review of the damages awarded

by the learned trial judge. The lower court definitely did not err in interfering with the judgment of the learned trial court, as the law is trite that it could do so once it is satisfied that the award was manifestly low on the face of the evidence before it, and also not in accordance with the laid down principle of law governing such award. This situation is made clear in Halsbury's Law of England Fourth Edition B Re issue paragraph 1161, which states thus:-

"The occasions when the Court of Appeal is likely to involve itself in question of damages are comparatively rare. Damages are, in essence, a question of fact rather than of law. Appeals on damages are therefore generally confined to rare cases where either the court applies the wrong measure of damages or where further findings were not open to the judge on the facts. The latter category is comparatively rare because the Court of Appeal is reluctant to upset findings of fact without good reason. Moreover, the Court of Appeal is D reluctant to interfere with assessments of general damages save in cases where the trial Judge has applied wrong principle or is otherwise clearly wrong." See *Moeliker v. Reyrolle & Co. Ltd* 1977 1 All ER 9, *Ziks Press Ltd. v. Ikoku* 1951 13 WACA 188 and *Offoboche v. Ogoja Local Government* 2001 16 NWLR part 639 page 458. E

In the circumstances, this court cannot and will not disturb the award by the Court of Appeal. I believe this contribution suffices for the purpose of the treatment of this appeal, the gravamen of which is the award of damages.

I am in full agreement with the reasoning and conclusion F reached in the lead judgment, that the appeal lacks merit and ought to be dismissed. I also dismiss the appeal in its entirety and affirm the judgment of the lower court. I abide by the consequential orders made in the lead judgment. G

OGBUAGU JSC

This is an appeal against the Judgment of the Court of Appeal, Ibadan Division (hereinafter called "the court below") - per Okunola, H JCA (of blessed memory) delivered on 3rd April, 2003 setting aside the quantum of damages awarded in favour of the Respondent by the High Court of Oyo State, sitting at Ibadan and presided over by Oyetunde, J. in his Judgment delivered on 1st July, 1999.

Dissatisfied with the said Judgment, the Appellants have appealed to this Court with the leave of the court below which was duly sought by the Appellants. There is only one ground of appeal which without its particulars, it reads as follows:

B “1. *The learned justices of the Court of Appeal erred in law when they interfered with and disturbed the award of damages made by the trial court*”.

I note that the Relief sought from this Court reads as follows:

C “*An order setting aside the judgment of the Court of Appeal and in its stead entering judgment to dismiss the Respondent’s appeal*”.

ALTERNATIVELY

D *An order setting aside the damages awarded by the Court of Appeal and substituting thereof an order to reduce the said damages considerably*. [the underlining mine]

The Respondent who was the Plaintiff in the trial court claimed Two hundred and Fifty Million Naira as damages from the Appellants for Libel contained in the Editorial column of the Nigerian Tribune of Monday 2nd September, 1996 titled “ENOUGH OF DAVID WEST”.

E Pleadings which were further amended by each of the parties, were filed and exchanged. At the trial, four (4) witnesses including the Respondent, testified for the Respondent. The Appellants elected not to testify or give evidence but rested their case on that of the Respondent. This fact, was even noted by the trial court at page F 123 lines 16 to 18 of the Records. After addresses by the learned counsel for the parties, in a reserved Judgment, the learned trial Judge, found that the statement that the Respondent was sacked from the Ministry of Petroleum Resources, is false and that the same is defamatory of the Respondent and held that the Respondent’s claim for libel, was proved in that regard. When His Lordship came to award G of quantum of damages, he strangely and most surprisingly, stated that there was no evidence before him that the Respondent was injured in his reputation as “an astute social figure”. On this basis, he H awarded in favour of the Respondent, the sum of N10,000.00 (ten thousand naira). Yet, the Appellants at paragraph 4.05 of their Brief, quoted the reverse and deliberately omitted to include the word “no”.

On appeal to the court below on quantum of damages by the Respondent, as already noted by me above, the said award was

set aside and was enhanced or if you like, substituted by an award of three hundred thousand naira (N300,000.00), hence the instant appeal.

The Appellants, have formulated two (2) issues for determination, namely,

“i. Whether the learned justices of the Court of Appeal were right in interfering with the damages awarded by the learned trial judge.

ii. Whether the sum of Three Hundred Thousand Naira awarded by the lower Court was not manifestly high or excessive in the circumstances”.

On his part, the Respondent, also formulated two (2) issues for determination. They read as follows:

“1. Whether the learned justices of the Court of Appeal correctly applied the legal principles when they disturbed the damages awarded by the learned trial judge.

2. Whether the sum of N300,000.00 awarded by the Court of Appeal was manifestly high or excessive”.

As could be seen, the issues of the parties are substantially the same although differently worded. In my respectful but firm view, the issue for determination, is whether or not the court below was justified in interfering or disturbing the award made by the trial court. But before dealing with this issue, it is not in doubt that the Respondent's case or evidence at the trial court, was never controverted by the Appellants who in fact, rested their case on that of the Respondent. It is now firmly settled firstly, that pleadings and forensic eloquence of a brilliant lawyer, do not constitute evidence. See the case of Neka G.B. B. Manufacturing Co. Ltd. v. A.C.B. Ltd (2004) 1 SCNJ. 193 @ 205 -per Pats-Acholonu, JSC (of blessed memory) and therefore, any averment of fact or facts in a pleading but not given in evidence, is or are deemed abandoned and must be discountenanced. See also the case of Mobil Produce (Nig.) Ltd. v. Umenweke (2002) 9 NWLR (Pt.773) 541 C.A. In other words, averments in pleadings, do not tantamount to evidence. See the cases of Raimi Olarewaju v. Amos Bamigboye & ors. (1987) 3 NWLR (Pt .60) 313, 359, 362; and Eseigbe v. Agholor & anor. (1993) 9 NWLR (Pt.316) 128; (1993) 12 SCNJ. 82 - In fact, Onu, JSC in the latter case at page 105, stated that failure to give evidence, is deemed that the party have accepted

both the pleadings and evidence or case of the Plaintiff, “lock, stock and barrel”. See also the cases of Ezeamoh v. Alhaji Atta (2004) 7 NWLR (Pt.873) 468; (2004) 2 SCNJ. 200 @ 235; (2004) 2 S.C. (Pt.1) 75 citing other cases therein, Hutchful v. Biney (1971) 1 ANLR 268; Imana v. Robinson (1974) 3-4 S.C 1 @ 9-10; Odunsi v. Bamgbala & 3 ors. (1995) 1 NWLR (Pt.374) 641; (1995) 1 SCNJ. 275 and Federal Capital Development Authority v. Alhaji Naibi (1990) 3 NWLR (Pt.138) 270 @ 281; (1990) 5 SCNJ. 187. This Court in the case Of Hyacinth N. Nzeribe v. Dave Engineering Co. Ltd (1994) 8 NWLR (pt.361) 124; (1994) 9 SCNJ. 161 - per Iguh, JSC stated that there, the Appellant (as in this case), offered no evidence whatsoever in his defence, that in this sort of or such circumstances, the evidence before the trial court, goes one way with no other set of facts or evidence weighing against it. See also per Kutigi, JSC (as he then was later CJN) in the cases of Magnusson v. Koiki & 2 ors. (1993) 12 SCNJ. 114 @ 124 and Ajero & anor. v. Ugorji & 6 ors. (1999) 7 SCNJ. 40 @ 48.

In the instant case leading to this appeal, the evidence of the Respondent at page 77 lines 14 to 19 as noted by the court below at page 16 of the Records and which was not controverted in evidence by the Appellants, is/was the attitude of the Appellants when the Respondent demanded an apology. Said he:

“The attitude of the Defendants since my counsel wrote the letter of 9.9.96 has been most unfriendly even cartooned me. They wrote more articles against me. They have been relentless in their ridicule of me. The defendants have not rendered any apology to me. I want the court to award me damages in the of N250,000,000.00 [the underlining mine]”

Secondly, for the effect, consequence or implication where a defendant rests his case on the plaintiff’s case, see the cases of Akanbi v. Alao (1989) 3 NWLR (Pt. 108) 118 @ 140 - per Craig JSC, 143 - per Eso, JSC; (1989)5 SCNJ 1; NEPA v. Olagunju anor. (2005) 3 NWLR (Pt.915) 603 @ 632 C.A.; Mobil Producing Nig. Unlimited & anor. v. Chief Monokpo & anor. (2003) 12 SCNJ. 206 @ 239 Citing the cases of Amponsa Tandoh v. CFAO 10 WACA 180; Laurie v. Building Co. (1942) 1 K.D. 152 @ 155; Toriola v. Williams (1982) 7 S.C. 27@ 33.

I will now deal with the issue of award of damages specifically

arising from proven defamation and in particular, libel cases such as the instant case in this appeal. The power of an Appellate Court to interfere, review, re-access or substitute the quantum of damages, is not now a matter of controversy. It is now firmly established in a plethora of decided authorities some of which have been cited and relied on by the parties in their respective Briefs and Brief. When this appeal came up for hearing on 15th February, 2010, Gbadamosi, Esq. - the leading learned counsel for the Appellants, adopted their Brief of Argument and the Reply Brief. He urged the Court to allow the appeal. Ogunbade, Esq., the leading learned counsel for the Respondent, also adopted their Brief of Argument. He urged the court to dismiss the appeal. Thereafter, judgment was reserved till to-day.

It is now also firmly settled that in order to interfere or justify the interfering with any decision of a trial judge on the amount or quantum of damages awarded or awardable; the Appellate court has to be convinced either,

"(a) that the judge acted upon some wrong principles of law or

(b) that the amount awarded, was so extremely high or very low or small as to make it an entirely erroneous estimate of the damage to which the plaintiff is entitled".

See - per Iguh, JSC in the case of Nzeribe v. Dave Engineering Co. Ltd. (supra) @ 140 of the NWLR also referred to and adopted in the case of The Shell Petroleum Development Co. of Nig. Ltd v. Chief Tiebo VII & 4 ors. (2005) 4 SCNJ. 39 @ 56-per Ogunbade, JSC (rtd.) (2005) 3 - 4 S. C. 137. The said award in the opinion of the Appellate Court, must be arbitrary, erroneous and based on a wrong exercise of discretion. In the case of Onwu & ors. v. Nka & ors. (cited and reproduced in the Respondent's Brief and by the court below at page 157 of the Records as Nka v. Onwu (1996) 40/41 LRCN 1303 @ 1336) it is also reported in (1996) 7 NWLR (Pt. 4 58) 1; (1996) 7 SCNJ 240, where this Court held that a court can increase the general damages awarded to a plaintiff, having regard to the fallen value or purchasing power of the Naira and in that case, the fluctuating currency. It further held inter alia, as follows:

".....the appellant's complaint can only be meaningful if they can show that the award is arbitrary, in which case, the Court of Appeal will and is duty-bound to intervene to set aside or reduce it

(see *S.W. Ubani-Ukoma v. G.E. Nicol* (1962) 1 All NLR 105; *Bashiru Bakare v. Alfred Jalleh* (1969) 1 NMLR 262; *Yesufu Maduga v. Hamza Kafarbai* (1987) 3 NWLR (Pt.62) 635 or that it is either excessive or erroneous (see *Ekpe v. Pogbemi* (1978) 3 S.C. 209) or further still, that there has been a wrong exercise of discretion in the award".

B [the underlining mine]

The cases of *A.C.B. Ltd & ors. vs. Apugo* (2001) FWLR (Pt.42) S.C. 38 (it is also reported in (2001) 2 SCNJ. 248) and *S.G.C. Ltd. vs. Bendel Newspapers Ltd.* (2002) FWLR (Pt.93) 1939 - 1940 C.A. are also cited and relied on in the Respondent's Brief.

C I note also that the Respondent in his Brief, cited and relied on the other pronouncements by the court below at pages 157 to 159 of the Records as regards the principles laid down by the Appellate Courts in the cases of *Nirchandani v. Pinheiro* (2001) FWLR D (Pt.48) 1307 referring to the cases of *Carey v. Associated Newspapers Ltd.* (No.2.) (1965) 2 Q.B. 87 @ 104 - per Pearson, J., *Daily Times v. Williams* (1986) 3 NWLR (Pt. 124) 543; *His Highness Uyo I. v. NNPL In re Felix Egware* (1974) NSCC 304; (It is also reported in (1974) 6 S.C. 103) and *Dr. Offoboche v. Ogoja. Local Government E & anor.* (2001) FWLR 1051 (it is also reported in (2001) 7 SCNJ. 468) and (2001 16 NWLR (Pt.739) 458.

As noted by the court below at page 158 of the Records, it is now firmly established that libel is actionable per se. Proof of damages is unnecessary the reason being that every libel, is a civil wrong F and the law implies general damages. The case of *Ejabulor v. His Highness Osha (not Osea)* (1990) 5 NWLR (Pt. 148) 1 @ 15 (it is also reported in (1990) 7 SCNJ. 187) is also referred to.

In the case Of Chief F. R. A. Williams v. *Daily Times of Nig. Ltd* (1990) 1 NWLR (pt. 124)1@ 49; (1990) 1 SCNJ. 1, it was held that an Appellate Court ought not to upset an award of damages by a trial court merely because if it had tried the matter, it might have awarded a different figure. That an award of damages can only be upset or interfered with by an Appellate Court, if it is shown by an H Appellate (*sic appellant*), either,

"(a) the trial court acted or proceeded upon wrong principles of law; or

(b) the amount awarded by the trial court is manifestly and extremely high or low, or

(c) the amount was an entirely erroneous estimate which no reasonable tribunal will make.

For guidance on figure to be awarded, see the cases of Ziks Press Ltd. v. Alvan Ikoku 13 WACA 188; Akinola v. Anyiam (1961) 1 ANLR 508; Adelakin v. The National Bank of Nigeria Ltd. (1978) 1 LRN.; Youssouff v. Metre-Goldwayne - Mayer Pictures Ltd. (1933 - 34) TLR 581. I have Stated earlier in this Judgment, that the evidence of the Respondent, was uncontroverted by the Appellants who rested on his case. In the case of Jolayemi & 2 ors. v. Alhaji Alaoye & anor. (2004) 12 NWLR (Pt.887) 322 @ 340; (2004) 5 SCNJ. 305, this Court - per Kalgo, JSC (Rtd.) stated inter alia, that if a party's pleadings are relevant to this (*sic his*) claim in the court and he produces evidence in support of the pleadings (as happened in this case leading to this appeal), the court, is bound to consider and decide his claim on the evidence. The cases of Overseas Construction Ltd. v. D Creek Enterprises Ltd. (1985) 3 NWLR (Pt.13) 407; African Continental Seaways Ltd v. Nigerian Dredging Roads & General Works (1977) 5 S.C. 235 and Adeniji v. Adeniji (1972) 4 S.C. 10 were referred to therein.

The court below at page 159 of the Records, stated inter alia; as follows:

"A brief recourse to the records in this case showed that the learned trial judge had before him, evidence that clearly should have influenced him to award a far more adequate sum as compensation. Such evidence include the following where;

1. PW4 gave evidence that he read the publication and stated as follows:

"I was embarrassed and upset because I regard Professor West as a role model. "

He was not cross-examined on this evidence. (See page 86 lines 23 - 24 of the record).

2. PW1 tendered the publications. Plaintiff himself stated in evidence as follows:

(a) His reputation and standing in society as a very prominent national and international figure. (See pages 28-29, 70-71 of the Records)".

The Appellants in paragraphs 4.02 and 4.03 at page 3 of their Brief unjustifiably with respect, accused the court below of hav-

ing made up its mind to revise upwards the damages awarded by the trial court and had pre-determined the issue. It is unfortunate to say the least.

At pages 160 to 161, it stated inter alia, as follows:

B *"It is surprising to observe that the trial judge abandoned all the evidence above to hold that there was no evidence that Plaintiff was injured in his reputation as an astute social figure. The admission that the Plaintiff is an astute social figure having been made by the trial judge, it is clear that he ought to have gone on to award a far higher sum in damages".*

C I agree completely. In order to justify its intervention in the said award by the learned trial Judge which it found as a fact to be arbitrary, erroneous and based on a wrong exercise of discretion, it continued at page 161 of the Records, inter alia, as follows:

D *"..... clearly PW4 stated his upset and embarrassment on the publication because of the respect he had for the Plaintiff..... The evidence of failure of the defendants to retract the offensive publication after the receipt of the teller dated 9th September, 1996 which the trial judge Sound made him find the libel proved is enough ag-*
 E *gravating evidence. It is also surprising to note that after the evidence of PW1 & PW4 supra the learned trial judge could again change gear to hold that "the first and fourth plaintiff witnesses did not by reason of the publication, cease to give the plaintiff the respect they were*
 F *giving him before they read the words complained and to say there was no evidence in the defendants publication which aggravated dam-*
 G *ages". In my view this finding of the learned trial judge is not in tune with the evidence before the trial judge, in the circumstance I hold that the appellant in this case has acquired a good reputation and dignity and had by the libel been injured in his reputation, dignity and feelings. The natural grief and distress to which he may have been put by this libellous publication are elements that tall to be taken into account. (See Me CARAY v. ASSOCIATED NEWSPAPERS (1995) (sic) (it is 1965) 2 Q.B. 86, 104 -105 cited with approval by the*
 H *Supreme Court in OFFOBOCHE v. OGOJA LOCAL GOVERNMENT (supra)".*

Except to disagree that the evidence of PW1 was of any moment, since he merely tendered the publications, I cannot fault the above which are borne out from the Records. It concluded at pages

161 to 162 inter alia, as follows:

“..... In the light of the foregoing I hold that from the evidence of PW1 (sic) and PW4 which the trial court accepted and later denied or neglected. There is evidence in the libellous publication which aggravate damages such that the defendants who had injured the appellant in his reputation must pay for the injury the Plaintiff/ appellant has suffered. This will bring out the element of compensation in the award of damages in the instant case. It is trite, as in the instant case, that in libel cases once libel is proved, damage is presumed hence there is no longer any need to prove actual damage. See CROSS RIVER STATE NEWS PAPERS CORPORATION v. MR. J.L. ONI & ORE (1995) 1 SCNJ. 218; (1995) 26 LRCN 51.....”

Again, the evidence of PW1 should have read 2 PW or PW2 who started his evidence at page 28 of the Records. This is because, as noted by me, PW1 was the Senior Librarian at the National Library and was called only to tender documents - Exhibits - see page 18 of the Records. It is not every mistake of court, that will nullify the proceedings. This is trite or settled law.

I am puzzled at the stance of the learned trial judge with respect, approbating and reprobating at the same time. I have a hunch that by the award of N10,000.00 (ten thousand naira) in a claim of N250 million, which was arbitrary, erroneous and based on a wrong discretion, the learned trial judge, wanted to please or indulge the Appellants who in their ego, will not retract their said publication and apologise. In the case of Fielding & anor. v. Variety Incorporated (1967) 2 Q.B. 541 @ 854 - 855 - per lord Salmon, it was held that the fact that the defendants did not apologise or withdraw the publication, cannot be taken into an account, but it is material in so far as it increased the injury to the Plaintiff's (Fielding's) feelings. I have noted in this Judgment that in the relief sought by the Appellants in this Court, they even want the said award by the trial court, to be reduced considerably! This indeed is evidence that the Appellants, have shown no remorse in this matter.

It must be borne in mind that besides the falsehood or the untruth of the publication of a libelous matter and the injury consequently caused or it occasioned to a plaintiff, express malice is in the making of the statement or publication and this fact is taken as established - i.e. want of bona fide or the presence of male fide. Thus or

then, an action could be properly founded on the said statement or publication. See the case of *Halsey v. Brotherhood* (1881) 19 Ch. D. 386. What may be described as a wrongful malice in legal parlance, means an act intentionally done without just cause. The Advanced Dictionary of Current English defines it as “active ill will or desire to harm others”. The Respondent in paragraph 22 of his Further Amended Statement of Claim, pleaded express malice. At page 77 of the Records, there is such evidence in support. The Respondent, at pages 28 to 29, 70 - 71 of the Records, gave evidence of his reputation and standing in society. A long or systematic practice of libelling a plaintiff, tends to show malice. See the case of *Barnet v. Long* (1851) 3 N.L.C. 315 @ 414. Assessment of general damages in libel cases, is not markedly different from any other tort except that the injury, suffered by a person defamed, is generally appreciated more by the jury (where it is used) than in the cases of personal injuries sustained in a motor accident hence *Mackinnon, L.J.* in the case of *Groom v. Crooker* (1939) 1 K.B 194 @ 231 observed.

“I have been struck by the contrast between the frequent niggardliness of verdicts in cases of personal injury and the invariable profuseness in claims’ for defamation. A soiled reputation seems assured of more liberal assessment than a compound fracture.”

I note that general damages are classified as injury to reputation, feelings, health and pecuniary loss. See the case of *Goshim v. Corry* (1884) 7 Man. & C.G. 342 @ 346. A court or jury in assessing damages, is/are entitled to look at the whole conduct of the defendant from the time the libel was published down to the time it/they gave its/their verdict. It or they may consider what the defendant’s conduct has/had been, before the action after the action and in court during trial. See the case of *Praed v. Graham* (1890) 24 Q.B.D. 53 @ 55 - per *Esher, M.R.* Therefore, proof of malice on the part of the defendant as in the instant case, can affect the quantum of damages. See the case of *Meed v. Denbiguy* (1792) Peak 168.

Before concluding this Judgment, in the case of *Ladsner v. Sketch Publishing co. Ltd.* (1979) 4 - 6 CC HCJ. 108, *Ajose-Adeogun, J.* deprecated the conduct of the Defendants right from the time of the publication down to the time of trial. He referred to or cited the case of *Hulton & Co. v. Jones* (1909) 2 K.B. @ P. 483 citing the case of *De Crespigny v. Wellesley* 130 E.R. 112 Where *Best, C.J.* said as

follows:

“It is difficult to estimate the consequences of libel in a newspaper. It may circulate the calumny through every region of the globe. Those who read it may never read the subsequent explanation or the report of the trial, and some of those who read both may forget the result and be left with a general recollection that the Plaintiff was a man of whom a discreditable story was reported in the paper. Libelous statements are published by newspapers because they find that it pays, many of their readers prefer to read and believe the worst of everybody and the newspaper proprietor cannot complain if jurors remember this in assessing damages. The amount of damages is peculiarly their province and I see no ground for interference. B C

In my view the whole matter i.e. the publication taken together with the subsequent conduct of the Defendants savours of calumny and denigration and all the circumstances analysed warrant an award of aggravated damages”. D
[the underlining mine]

I must confess that the conduct of the Appellants from the time of the said publication, at the trial and up till now with respect, savours of impunity, denigration and remorselessness and arrogance E to say the least on the erroneous assumption that they were stating the truth which fact however, they never gave in evidence or subject themselves, to cross-examination. The reason for not testifying, is anybody’s guess. The only regret, is that the Respondent, did not claim for exemplary, punitive or aggravated damages, in the face of F and established fact of an outrageous publication which merited punishment as malice, insolence and flagrant disregard of the law and the like was evident in the conduct of the defendants. If he had done so, having regard to all the circumstances, this Court may have considered the claim and award the same or part of it. I therefore, answer Issue 1 of the parties in the Affirmative/Positive. In respect of G Issue 2 of the parties, my answer is definitely in the Negative. If there was an appeal by the Respondent for an enhancement of the said award, in all the circumstances of the case, this Court should have been minded to grant the enhancement having regard to the present H value of the naira and the conduct of the Appellants. It is however, settled that a court, does not and is not generally entitled to award a claim or relief not sought for by a party or plaintiff in particular. See

the cases of Kalio v. Daniel Kalio (1975) 2 S.C. 15 @ 17- 19; Ekpenyong v. Nyong (1975) 2 S.C. 71 @ 81 - 82; Union Beverages Ltd. v. Owolabi (1988) 2 NWLR (Pt.68) 128 @133; (1988) 1 SCNJ. 122 and Olakanjiola & anor. v. Chief Balogun (1989) 3 NWLR (Pt.108) 192 @ 206; (1989) 5 SCNJ. 42 just to mention but a few.

B It is from the foregoing and the fuller lead Judgment of my learned brother, Fabiyi, JSC just delivered and which I had the privilege of reading before now and I agree with the reasoning and conclusion, that I too, find no merit whatsoever in this appeal which fails.
C I too, dismiss it and I also hereby affirm the Judgment of the court below. Costs follow the event. I also award the sum of N50,000.00 costs in favour of the Respondent payable to him by the Appellants.

D

MUHAMMAD JSC

I read before now the judgment just delivered by my learned brother, Fabiyi, JSC. I agree with his reasoning and conclusion. This appeal from its antecedents is bound to fail. I dismiss it. I affirm the
E judgment of the court below. I adopt the award of costs made by my learned brother Fabiyi, JSC.

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