

SUPREME COURT OF NIGERIA
15TH APRIL 2011, SC. 234/2005
CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F.
TABAI, J. A. FABIYI, B. RHODES-VIVOUR, JJSC

1. GUARDIAN NEWSPAPERS LTD APPELLANT
2. MICHAEL SIMIRE
AND
REV. PASTOR C. I. AJEH RESPONDENT

TORTS - Libel - Proof - Where plaintiff proved he was the person referred to in the article - And the relevant portion of the statement of claim is libelous - Trial Court complied with O. 9 r. 4 - And the principle in Okafor case - In finding defendants liable (H1)

APPEALS - Evidence - Evaluation of - Is primary function of trial Court - Where such evaluation is justified - Appellate Court cannot disturb the findings (H2)

TORTS - Libel - Fair comment - Evaluation of evidence - Where appellants' defence is that of fair comment - They should justify it - Rather than pursuing imaginary loophole on evaluation of evidence (H3)

TORTS - Libel - Damages - Discretion - Factors Court should consider - Where there is absolute lack of remorse - Trial Court rightly awarded the sum of N500,000.00 (H4)

APPEALS - Interference - Discretion - Libel - Damages - Supreme Court would interfere - Where the estimate is erroneous - Or wrong principle of law was applied - Or the award is ridiculously low or so high - Which is not so in this case (H5)

APPEALS - Libel - Concurrent findings - Where the findings of libel are correct - As in this case - Supreme Court will not interfere (H6)

DEFAMATION - Libel - Fair comment - Where statements published by a newspaper - Are not true - It will not succeed on a defence of fair comment (H7)

FACTS

Before the Onitsha High Court of Anambra State, appellant/respondent (a pastor) claimed against defendants/appellants N10 million damages for libel, and injunction restraining further publication of the libelous article. Plaintiff's case was that 2nd defendant published an article in the Sunday edition of the Guardian Newspapers of 3rd December, 1995. That the article - "Lessons from a Pastor" - which was false and malicious portrayed him as a thief and dishonest person who stole the items mentioned in the article as a result of which his reputation was damaged and he lost his congregation. 2nd defendant who wrote the article maintained that the contents of the article are true. He pleaded that the article is fair comment on a matter of public policy.

The parties called some witness and tendered several documents. The trial court considered the defence of fair comment and justification, found that the article was libelous of plaintiff, awarded N500,000.00 damages and restrained further publication of the libelous article. Defendants' appeal to the Court of Appeal Enugu Division, was unanimously dismissed. Still dissatisfied defendants have further appealed to Supreme Court raising three issues for the apex Court's consideration.

ISSUES FOR DETERMINATION

1. Whether having regard to the state of the pleadings, the evidence and the law, the Court of Appeal below was justified in holding that the learned trial judge properly construed the provision of Order 9 Rule 4 of the High Court Rules, Anambra state 1988 and the avowed principle in *Okafor v. Ikeanyi* 1973 3-4 SC p. 99 that the full text of the publication or any part of it complained of must be set out verbatim in the pleadings.

2. Whether the learned justices of the Court below were right in holding that the trial judge properly dealt with the perception of facts and evaluation of the evidence before him prior to arriving at his decision.

3. Whether the learned justices of the court below were right in endorsing the punitive damages, awarded against the appellants when there was no evidence before the court that the appellants profited from their wrong doing nor was there any proof that the appellants' received any request to correct the publication and they failed to do so.

HELD (Unanimously dismissing the appeal per **RHODES-VIVOUR JSC**)

TORTS - Libel - Proof

1. The onus is on the respondent/plaintiff to prove that he was the one referred to in the alleged libel. The respondent, as plaintiff called evidence to prove that it was he that was referred to in the article. The testimony of PW2, PW3, and PW4 was unassailable and infact the identify of respondent who was referred to in the article was never in issue. The appellant's case is that the respondent is a thief and the article is fair comment on a matter of public interest. I am satisfied that both courts below were correct in their findings. The contents of paragraph 6 of the statement of claim refers to the respondent and it is defamatory of him. The contents of paragraph 6 of the statement of claim falls within the essential ingredients of, and are enough to prove libel. It was unnecessary to refer to other paragraphs in Exhibit C. The trial judge properly construed the provision of order 9 rule 4 of the High Court Rules, Anambra State 1988 and the avowed principle in *Okafor v. Ikeanyi* 1973 3-4 SC p 99.

The Court of Appeal was correct to confirm that decision. The Court did not take into consideration facts other than material facts pleaded in paragraph 6 of the statement of claim. (p. 991 A)

Evidence - Evaluation of - Duty of trial court

2. This court has stated again and again that the evaluation of evidence and the ascription of probative value to such evidence are the primary functions of the court of trial which saw, heard and assessed the witnesses as they testified at the trial in the witness box. It is equally basic that where such court of trial unquestionably evaluates the evidence before it and justifiably evaluates the evidence before it and justifiably appraises the facts, it is not the business of the court of Appeal to substitute its own view for those of the trial court.

The trial judge would have no difficulty in arriving at the correct decision if evidence is properly evaluated. Consequently where evidence is properly evaluated ie to say when all the principles of law relevant are properly considered an Appeal Court would been in much difficulty trying to disturb the findings arrived at by the trial judge. Such findings cannot be disturbed by an appeal court. Receipt of relevant evidence is perception, while evaluation entails the weighing of the

evidence bearing in mind the surrounding circumstances of the case. Findings of fact by the trial judge involves both perception and evaluation. (p. 991 G)

Libel - Fair comment - Evaluation of evidence

B 3. To my mind there is not much to evaluate in this case in view of the pleadings and evidence led. The respondent's witnesses all led evidence showing their disgust after reading the offensive material. The appellants do not deny writing the offensive material. The appellants case is that the respondent is a thief and the matter is fair comment on a public policy. In court the 2nd appellant said an oath:

C *"All the contents of the article were written by me and I stand by it..."*

I think learned counsel for the appellants would have been better D off restricting himself to justifying the defence of fair comment rather than pursuing imaginary loopholes and how the judge evaluated evidence. This line of argument seems to be adopted because different counsel handled the case at the Court of Appeal and in this Court. An appellant who says he stands by what he wrote and it is fair comment ought not to E be interested in evaluation of evidence. He should ensure the defence of fair comment is sustained. I am satisfied that the learned trial judge evaluated evidence before him prior to arriving at his decision. (p. 992 G)

Damages - Discretion - Factors Court should consider

F 4. I have made a diligent review of the judgment of both court below and nowhere therein was punitive damages awarded. The Court of Appeal found and rightly too that the award of damages by the trial court was not based on punitive and exemplary damages. After being G guided by the factors to be considered before awarding damages the learned trial judge concluded by observing that there was absolute lack of remorse on the part of the defendants, then proceeded to award damages in the sum of N500,000.00. The award of damages once libel is established is an exercise of discretion by the learned H trial judge, and as with all orders etc granted on the exercise of discretion the trial judge must consider the following factors when exercising his discretion:

- (a) The standing of the plaintiff in society
- (b) The nature of the Libel

- (c) The mode and extent of the publication
- (d) The refusal to retract or render an apology to the plaintiff
- (e) The value of the local currency. (p. 993 H)

APPEALS - Interference - Discretion

5. This court, as indeed an Appeal Court is always loath to interfere with the discretion of the learned trial judge but would be compelled to interfere if it finds that the judge acted upon an erroneous estimate, or a wrong principle of law was applied, such as taking into account some irrelevant factors or leaving out some relevant facts or that the award is either so ridiculously low or so ridiculously high that it must have been a wholly erroneous estimate of damage. B

Before awarding N500,000.00 as damages for Libel against the appellants the learned trial judge found that the Guardian Newspaper has very wide circulation and the offensive article affected the plaintiffs church drastically since he lost most of his congregation after the publication. The judge also found that the appellants remained defiant, showing no sign of remorse. The Court of Appeal agreed with the learned trial judge. I am unable to disagree with the findings of both courts. C

On the value of the local currency. It is a well known fact that the Naira is no longer stable. It swings around with every gust that blows. To my mind the sum of N500,000.00 seems fair and just in the circumstances of this case. (p. 994 D) E

Concurrent findings - Interference - Attitude of Supreme Court F

6. Finally I must observe that this court rarely interferes with concurrent findings of fact by the court below except where there has been exceptional circumstances such as:

- (a) The findings of fact are perverse G
- (b) The findings are not supported by evidence
- (c) There was miscarriage of justice or violation of some principle of law or procedure.

The findings of the trial court that the article written by the 2nd appellant and published by the 1st appellant in its Sunday edition of 3rd December, 1995 is offensive and libelous of the plaintiff, a fact affirmed by the Court of Appeal to my mind is correct. (p. 994 H) H

DEFAMATION - Libel - Fair comment

7. Learned counsel for the appellants has been unable to show that the views expressed by the court below are wrong. The finding of the trial court that the contents of paragraph 6 of the Statement of claim are defamatory of the plaintiff and the defence of fair comment cannot be sustained (sic, is correct) because where statements complained of are untrue and defamatory and made maliciously I fail to see how a Newspaper that decides to publish the untrue statements would expect to succeed on a defence of fair comment.

In the light of my findings this court would not disturb those concurrent findings of fact by the courts below. Accordingly the appeal lacks merit and it is hereby dismissed. (p. 995 E)

NOTABLE POINTS OF INTEREST

RHODES-VIVOUR JSC

1. Definition and essential ingredients of libel

Libel is statement/s in written form which causes a person to be exposed to hatred, ridicule or contempt, ie to be shunned or avoided and to be lowered in the estimation of right thinking people in the society. Put in another way to be disparaged in his profession or trade. The tort of defamation is either libel or slander, the difference being that the former is written while the latter is spoken.

The essential ingredients of libel are:

1. The words complained of must have been written;
2. The publication must be false
3. The words must be defamatory or convey defamatory imputation;
4. The words must refer to the plaintiff;
5. It must be the defendant who published the words;
6. The onus is on the plaintiff to prove he was the one referred to in the alleged libel.

In cases of libel, pleadings are of tremendous importance, and so the plaintiff who claims that an article is libelous of him must reproduce the whole article verbatim or the particular passage he complains of in his pleadings. No matter how long the article is, it must be reproduced. (p. 988 B)

FABIYI JSC*2. Libel is defamation expressed in writing*

Libel is defined as a method of defamation expressed by print, writing, pictures or signs; any publication that is injurious to the reputation of another, a false and unprivileged publication in writing of a defamatory material; a malicious written or printed publication which tends to blacken a person's reputation or to expose him to public hatred or ridicule, contempt or to injure him in his business or profession - Corabi v. Curtis Publication Co. 441 pa. 432, 273 A. 2d 899, 904. See: Black's Law Dictionary Sixth Edition page 915. (p. 1001 B)

3. General damages - How it applies to libel

Libel is a wrong to which the law imputes general damages. Once 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 as such damage is presumed. See: Jones v. Jones (1916) 2 AC. 481 at 500.

An award of general damages must be adequate to assuage for the injury to the plaintiffs reputation. It must atone for the assault on the plaintiff's character and pride which were unjustifiably invaded. (p. 1002 F)

REPRESENTATION

Mr. A. C. Anaenugwu, with him Okey Abazu and Chigbo Anaenugwu for the appellants.

Mr. Aham Ejelam for the respondent.

CASES REFERRED TO

Njoku v. Eme 1973 5 S.C. 293

Ibanga v Usanga 1982 5 SC p. 103

Ulor v. Loko 1988 2 NWLR Pt. 77 p. 430

Jones v. Jones (1916) 2 AC. 481 at 500

Bourke v. Warren 1826 2 C & P page 138

Okafor v Ikeanyi and ors 1979 12 NSCC p43

Ziks Press Ltd v. Alvan Ikoku 13 WACA p. 188

A.C.B. Ltd v. B.B. Apugo 2001 5 NSCOR P.549

Balogun v. Adelobi 1995 2 NWLR pt. 376 P.131

Odoniyi v. Oyeleke 2001 6 NELR part 708 page 12

Okonkwo v. Okonkwo 1998 10 NWLR Pt. 571 p. 554

Mayange v. Panoh Nig Ltd 1994 7 NWLR pt.358 p. 570

D. D. G. A. Pharmaceuticals Ltd. V Times Newspapers Ltd 1973 1QB p. 21

B Williams v. Daily Times (1990) 1 SC. 23

RULES REFERRED TO

Supreme Court Rules O. 6 r. 5

C High Court Rules of Anambra State 1988 O. 9 r. 4

LEAD JUDGMENT BY RHODES-VIVOUR JSC

In the Onitsha High Court of Anambra State, the respondent as plaintiff claimed against the appellants as defendants in paragraph 9 of his
D statement of claim:

(a) Ten Million Naira (N10,000,000.00) damages for Libel

(b) Injunction restraining the defendants, their agents and or privies from further publication of the libelous article

lyizoba, J (as she then was) presided. The plaintiffs (a Pastor)
E case was that the 2nd defendant wrote an article in the Sunday edition of the 1st defendant's Newspaper's on the 3rd of December 1995. The article Titled "*Lessons from a Pastor*", according to the plaintiff was false and malicious and portrayed him as a thief and dishonest person who stole
F items mentioned in the article, and that since the article was published his reputation has been damaged and he has lost his congregation. Three witnesses called by the plaintiff expressed similar views in their testimony on oath. The plaintiff claimed N10m damages for Libel. The 2nd
G defendant who wrote the article testified that contents of the article are true. He pleaded that the article is fair comment on a matter of public policy. The plaintiff called three other witnesses while the defendants called three witnesses which included the 2nd defendant. Several documents were tendered as exhibits.

The learned trial judge heard evidence and considered the defence
H of fair comment and justification. Evaluated evidence and in a considered judgment delivered on the 23rd of February 2000 found that the article was libelous of the plaintiff, awarded N500,000.00 damages and restrained the defendants, its agents, privies from further publication of the libelous article. The defendants now appellants filed an appeal before the

Court of Appeal Enugu Division, and in a unanimous decision delivered on the 22nd day of April, 2005 that Court dismissed the appeal in these words:

“All the issues are resolved in favour of the Respondent. In sum this appeal lacks merit and it is dismissed accordingly. The judgment particularly award of damages by the trial court is affirmed. Costs of this appeal is assessed as N10,000 in favour of the respondent.” B

This appeal is against that judgment. In accordance with Order 6 Rule 5 of the Supreme Court Rules briefs were duly filed and exchanged. The appellants brief was filed on the 9th of December 2005, while the respondents brief was filed on the 27th of February 2006. C

In the appellants’ brief three issues were formulated for determination of this appeal. The issues are:

1. Whether having regard to the state of the pleadings, the evidence and the law, the Court of Appeal below was justified in holding that the learned trial judge properly construed the provision of Order 9 Rule 4 of the High Court Rules, Anambra state 1988 and the avowed principle in *Okafor v. Ikeanyi* 1973 3-4 SC p. 99 that the full text of the publication or any part of it complained of must be set out verbatim in the pleadings.

2. Whether the learned justices of the Court below were right in holding that the trial judge properly dealt with the perception of facts and evaluation of the evidence before him prior to arriving at his decision. E

3. Whether the learned justices of the court below were right in endorsing the punitive damages, awarded against the appellants when there was no evidence before the court that the appellants profited from their wrong doing nor was there any proof that the appellants’ received any request to correct the publication and they failed to do so. F

On the other side of the fence, the respondent formulated two issues for determination. They read: G

1. Did the learned Justices of the Court of Appeal take into consideration facts other than material facts pleaded by the plaintiff/respondent in determining whether or not the words complained were defamatory and is the judgment against the weight of evidence.

2. Did the learned Justices of the Court of Appeal award punitive damages contrary to known legal principles. H

I shall restrict myself to the issues formulated by the appellants as it obviously brings into focus the real grievance of the appellants. At the hearing of the appeal on 1st of February 2011, both counsel simply

adopted their briefs, appellants learned counsel urging us to allow the appeal and respondents learned counsel urging us to dismiss the appeal. Counsel said nothing in amplification of their respective briefs.

Both courts below found as a fact that the contents of the article published in the Guardian Newspaper on the 3rd of December 1995 was libelous of the respondent. Libel is statement/s in written form which causes a person to be exposed to hatred, ridicule or contempt, ie to be shunned or avoided and to be lowered in the estimation of right thinking people in the society. Put in another way to be disparaged in his profession or trade. The tort of defamation is either libel or slander, the difference being that the former is written while the latter is spoken.

The essential ingredients of libel are:

1. The words complained of must have been written;
2. The publication must be false
3. The words must be defamatory or convey defamatory imputation;
4. The words must refer to the plaintiff;
5. It must be the defendant who published the words;
6. The onus is on the plaintiff to prove he was the one referred to in the alleged libel.

In cases of libel, pleadings are of tremendous importance, and so the plaintiff who claims that an article is libelous of him must reproduce the whole article verbatim or the particular passage he complains of in his pleadings. No matter how long the article is, it must be reproduced. See *D. D. G. A. Pharmaceuticals Ltd. V Times Newspapers Ltd* 1973 1QB p21 relied on by this court in *Okafor v Ikeanyi and ors* 1979 12 NSCC p43. Issue No.1 questions whether the provisions of Order 9 rule 4 of the High Court of Anambra State Rules 1988, were properly construed in view of the judgment of this court in *Okafor v Ikeanyi* (Supra) that the full text of the publication or any part of it complained of must be set out verbatim in the pleadings.

Learned counsel for the appellants argued that the respondent ought to have been confined by the learned trial judge to what he pleaded in paragraph 6 of the statement of claim. Reliance was placed on *D. D. G. A. Pharmaceuticals Ltd v Times Newspaper Ltd* 1973 1QB p21 contending that the trial judge was wrong to rely on other parts of the article not pleaded. The Court of Appeal was wrong to agree with the procedure

adopted by the learned trial Judge. Learned counsel for the respondent observed that the court did not take into consideration facts other than material facts pleaded and the relevant part of the publication was properly quoted at paragraph 6 of the statement of claim.

The real issue for determination in these submissions is whether the pleading in paragraph 6 of the statement of claim is only what was relied on by the learned trial judge or the reference to further paragraphs of the article were also relied on to find that the article was libelous of the plaintiff. Order 9 Rule 4 Supra simply restates the obvious that pleadings must contain only material facts.

Paragraph 6 of the statement of claim relied on by the plaintiff as being offensive reads thus:

6 *“So as fate would have it, I placed a lot of trust in him, left him at home and went to work. Boy, what a dumb decision. Coming back around 16 hours that evening was even rather early for me. But the door was locked and the lights were not on. I immediately knew what had happened. I used the spare keys on me to allow myself in. Well, I was right, the house had been assaulted and Ajeh was nowhere to be found. Missing items include a sharp video cassette Recorder Model VC-A 30 BR, Aiwa compact disc digital audio player model DX-M75 H; Nino wall clock; Suits ties, a trouser, travelling bag; instruction manuals to the VCR-CD player and winder had also disappeared. I have sure learned my lessons the hard way, can you imagine from a pastor”*

A certified true copy of the Guardian on Sunday of 3rd December, 1995 was admitted in Evidence as Exhibit c. Paragraph 6 of the statement of claim reproduced above is part of paragraph c. In the judgment of the trial judge the judge referred to other parts of the article. Thus parts of Exhibit c were reproduced in the judgment. Extracts from the judgment runs as follows:

.....The 2nd defendant then wrote the article published at page B9 Guardian on Sunday of December 3, 1995 captioned *“Lessons from a Pastor”*. The first three paragraphs reads:

“The atmosphere that Sunday August morning I met Chukwuma Charles Ajeh after so many years at Oshodi in Lagos was that of a reunion. We were school mates at the Baptist Academy, Obanikoro also in Lagos, the 1976 - 81 set to be precise. That notwithstanding, and men being what they are, we warmed up to one another and got to talking as we patiently awaited our bus to CMS.

He said he was married with about five children and had left that dirty customs job and also given his life to Christ. Indeed he explained that he was a clergy man now referred to as Rev. Pastor Chuma Israel Ajah, founder of one Christ Grassroot Church at No. 2 Christ Church Street, Onitsha in Anambra State.....”

B The argument put forward by learned counsel for the appellants is that the court ought to confine itself to what was pleaded in the statement of claim. That the court cannot refer to the rest of the publication in Exhibit C that was not pleaded. Explaining, the learned trial judge said:

C *“I am afraid I am unable to agree with learned Counsel for the defendant. Plaintiff was clearly identified. There may be many Ajehs but there may not be many who are pastors. The plaintiff and his witnesses, even the 2nd defendant himself in their evidence confirm that the publication relates to the plaintiff, that issue is not in dispute at all.....”*

D The learned trial judge continued:

“What was set out in the pleadings in this case is the material part of the libelous material..... The plaintiff in this suit is not complaining of the whole publication. The libelous part of the publication is the part set out in paragraph 6 of the statement of claim. That part did refer to Ajeh and Pastor. Read in the circumstances of the entire publication leaves no doubt that the publication referred to the plaintiff.....”

E The court of Appeal agreed that the contents of paragraph 6 of the statement of claim is offensive and libelous of the plaintiff and it refers to the plaintiff. For the plaintiff to succeed in a case of Libel he must reproduce
F verbatim the whole of the article or the particular passage he complains of in his pleadings.

The respondent pleaded verbatim the particular passage of the article Titled *“Lessons from a Pastor”* in the Sunday Edition of the Guardian for
G the 3rd of December 1995.

Both courts below were satisfied with the following:

1. That the words complained of were written by the 2nd appellant in the Sunday edition of the Guardian of the 3rd of December, 1995.
2. The publication was false because the respondent was tried for
H theft in a Magistrate Court in Ikeja, Lagos. He was acquitted and discharged. The judgment of the Magistrates Court is inviolate until set aside. There is/was no appeal.
3. The words clearly convey a defamatory imputation that the respondent is a thief.

4. The 2nd appellant wrote the article and it was published in the Sunday Edition (3/12/95) of the 1st appellant.

5. The words referred to the respondent.

The onus is on the respondent/plaintiff to prove that he was the one referred to in the alleged libel. The respondent, as plaintiff called evidence to prove that it was he that was referred to in the article. The testimony of PW2, PW3, and PW4 was unassailable and infact the identify of respondent who was referred to in the article was never in issue. The appellant's case is that the respondent is a thief and the article is fair comment on a matter of public interest. I am satisfied that both courts below were correct in their findings. The contents of paragraph 6 of the statement of claim refers to the respondent and it is defamatory of him. The contents of paragraph 6 of the statement of claim falls within the essential ingredients of, and are enough to prove libel. It was unnecessary to refer to other paragraphs in Exhibit C. The trial judge properly construed the provision of order 9 rule 4 of the High Court Rules, Anambra State 1988 and the avowed principle in Okafor v. Ikeanyi 1973 3-4 SC p 99.

The Court of Appeal was correct to confirm that decision. The Court did not take into consideration facts other than material facts pleaded in paragraph 6 of the statement of claim.

Issue No. 2 reads:

Whether the learned justices of the Court below were right in holding that the trial judge properly dealt with the perception of facts and evaluation of the evidence before him prior to arriving at his decision. Learned counsel for the appellant observed that the learned trial judge took diverse extraneous factors into consideration in its process of the said evaluation.

In response learned counsel for the respondent observed that the learned trial judge evaluated evidence by examining Exhibit C and all testimonies of witnesses, and the court of Appeal was correct to agree with the findings of the trial court. ***This court has stated again and again that the evaluation of evidence and the ascription of probative value to such evidence are the primary functions of the court of trial which saw, heard and assessed the witnesses as they testified at the trial in the witness box. It is equally basic that where such court of trial unquestionably evaluates the***

evidence before it and justifiably evaluates the evidence before it and justifiably appraises the facts, it is not the business of the court of Appeal to substitute its own view for those of the trial court.

See Akpagbue v Ogu 1976 6SC p63

B Woluchem v Gudi 1981 5SC P320

Ibanga v Usanga 1982 5 SC p103

The trial judge would have no difficulty in arriving at the correct decision if evidence is properly evaluated. Consequently where evidence is properly evaluated ie to say when all the principles of law relevant are properly considered an Appeal Court would be in much difficulty trying to disturb the findings arrived at by the trial judge. Such findings cannot be disturbed by an appeal court. Receipt of relevant evidence is perception, while evaluation entails the weighing of the evidence bearing in mind the surrounding circumstances of the case. Findings of fact by the trial judge involves both perception and evaluation.

After reviewing evidence the learned trial judge said:

E *"I do not have any doubts and I have already ruled that the part of the publication reproduced in paragraph 6 of the statement of claim taken as it stands is capable of bearing a defamatory meaning."*

The Court of Appeal had this to say:

F *"In the instant case, the learned trial judge had unquestionably evaluated the evidence before it, it is therefore not for the Court of Appeal to re-evaluate the same evidence and come to its own conclusion."*

I am of the firm view that the trial judge evaluated evidence properly and there was no reason for the Court of Appeal to disturb the findings of the learned trial judge.

G **To my mind there is not much to evaluate in this case in view of the pleadings and evidence led. The respondent's witnesses all led evidence showing their disgust after reading the offensive material. The appellants do not deny writing the offensive material. The appellants case is that the respondent is a thief and the matter is fair comment on a public policy. In court the 2nd appellant said an oath:**

"All the contents of the article were written by me and I stand by it..."

I think learned counsel for the appellants would have been

better off restricting himself to justifying the defence of fair comment rather than pursuing imaginary loopholes and how the judge evaluated evidence. This line of argument seems to be adopted because different counsel handled the case at the Court of Appeal and in this Court. An appellant who says he stands by what he wrote and it is fair comment ought not to be interested in evaluation of evidence. He should ensure the defence of fair comment is sustained. I am satisfied that the learned trial judge evaluated evidence before him prior to arriving at his decision.

Issue No.3 reads as follows

Whether the learned Justices of the Court below were right in endorsing the punitive damages awarded against the appellants when there was no evidence before the court that the appellants profited from their wrong doing nor was there any proof that the appellants received any request to correct the publication and they failed so to do.

Relying on *Awolowo v. Kingsway Stores Ltd* and another 1968 2 ANLR p.27 Learned counsel for the appellants submitted that punitive and exemplary damages should only be awarded if the appellant profited from their wrong doing in publishing the defamatory article. He further submitted that since the appellants did not acquire any direct pecuniary benefit from the publication the sum of N500,000.00 awarded was excessive and this court should interfere.

Learned counsel for the respondent observed that the learned trial judge did not award punitive damages, and the Court of Appeal was correct to uphold the award of N500,000.00, contending that the sum was adequate in the circumstances. In conclusion he argued that the learned trial judge considered the relevant factors in assessing damages in Libel cases before awarding the sum of N500,000.00.

In libel cases, once the offensive article is found to be libelous of the plaintiff, damages follow and the damages awarded is general damages. On the other hand where there is direct pecuniary benefit from the offensive publication punitive damages are awarded. See *Awolowo v. Kingsway Stores Ltd & anor. Supra*.

I have made a diligent review of the judgment of both court below and nowhere therein was punitive damages awarded. The Court of Appeal found and rightly too that the award of damages by the trial court was not based on punitive and exemplary damages.

After being guided by the factors to be considered before awarding damages the learned trial judge concluded by observing that there was absolute lack of remorse on the part of the defendants, then proceeded to award damages in the sum of N500,000.00. The award of damages once libel is established is an exercise of discretion by the learned trial judge, and as with all orders etc granted on the exercise of discretion the trial judge must consider the following factors when exercising his discretion:

- (a) The standing of the plaintiff in society***
- (b) The nature of the Libel***
- (c) The mode and extent of the publication***
- (d) The refusal to retract or render an apology to the plaintiff***
- (e) The value of the local currency***

D See Mayange v. Panoh Nig Ltd 1994 7 NWLR pt.358 p. 570 Ziks Press Ltd v. Alvan Ikoku 13 WACA p. 188

This court, as indeed an Appeal Court is always loath to interfere with the discretion of the learned trial judge but would be compelled to interfere if it finds that the judge acted upon an erroneous estimate, or a wrong principle of law was applied, such as taking into account some irrelevant factors or leaving out some relevant facts or that the award is either so ridiculously low or so ridiculously high that it must have been a wholly erroneous estimate of damage.

F See A.C.B. Ltd v. B.B. Apugo 2001 5 NSCOR P:549

Before awarding N500,000.00 as damages for Libel against the appellants the learned trial judge found that the Guardian Newspaper has very wide circulation and the offensive article affected the plaintiffs church drastically since he lost most of his congregation after the publication. The judge also found that the appellants remained defiant, showing no sign of remorse. The Court of Appeal agreed with the learned trial judge. I am unable to disagree with the findings of both courts.

H On the value of the local currency. It is a well known fact that the Naira is no longer stable. It swings around with every gust that blows. To my mind the sum of N500,000.00 seems fair and just in the circumstances of this case.

Finally I must observe that this court rarely interferes with

concurrent findings of fact by the court below except where there has been exceptional circumstances such as:

- (a) The findings of fact are perverse**
- (b) The findings are not supported by evidence**
- (c) There was miscarriage of justice or violation of some principle of law or procedure.**

See Balogun v. Adelobi 1995 2 NWLR pt. 376 P:131

Okonkwo v. Okonkwo 1998 10 NWLR Pt. 571 p. 554

The findings of the trial court that the article written by the 2nd appellant and published by the 1st appellant in its Sunday edition of 3rd December, 1995 is offensive and libelous of the plaintiff, a fact affirmed by the Court of Appeal to my mind is correct.

In Ulor v. Loko 1988 2 NWLR Pt. 77 p. 430

Karibi-Whyte JSC (as he then was) in his concurring judgment stated.

“An appeal is against the judgment of the court below and a challenge of its correctness on the grounds of law, mixed law and fact or on fact simpliciter as the case may be. Before a pronouncement can be properly made on the judgment on any of these grounds, appellant must show in the judgment sought to be reversed that the views expressed by the court below is wrong.”

Learned counsel for the appellants has been unable to show that the views expressed by the court below are wrong. The finding of the trial court that the contents of paragraph 6 of the Statement of claim are defamatory of the plaintiff and the defence of fair comment cannot be sustained (sic, is correct) because where statements complained of are untrue and defamatory and made maliciously I fail to see how a Newspaper that decides to publish the untrue statements would expect to succeed on a defence of fair comment.

In the light of my findings this court would not disturb those concurrent findings of fact by the courts below. Accordingly the appeal lacks merit and it is hereby dismissed. Costs of this appeal is assessed as N50,000.00 in favour of the respondent.

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned brother Rhodes-Vivour JSC, and I am in full agreement with

his reasoning and conclusion. The suit instituted in the High Court of Anambra State was predicated on libel and the principle of the law of libel is that the full text of the publication or any part of it complained of must be pleaded. See *Okafor v. Ikeanyi* 1973 3-4 SC. 99. In his statement of claim, the plaintiff who is now the respondent pleaded
 B the following:-

*“6. The said article contains false and malicious statements about the plaintiff. Parts of the said article read: So, as fate would have it, I placed a load of trust in him, left him at home and went to work. Boy, what a dumb decision! Coming back around 16 hours that evening was even rather early for me. But the door was locked and lights were not on. I immediately new (sic) what had happened. I used the spare keys on me to allow myself in. Well, I was right, the house had been assaulted and Ajeh was nowhere to be found. Missing items include sharp video cassette recorder model VC-A30 BY; Aiwa compact disc digital audio player Model DX - N75 Hi vitech Nino Wall clock, suit; Ties, a trouser; travelling bag; video tape winder model VR - 903; and cash. The receipts and instruction manuals to the VCR, CD player and Winder had also disappeared. I have sue learned (sic) my lessons the hard way and can you
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 D
 E imagine from a Pastor!”*

The learned trial judge after evaluating the evidence before him found in favour of the plaintiff in the sum of N500,000.00 against the defendants jointly and severally. The judgment was affirmed by the Court of Appeal, Enugu Division on appeal. Dissatisfied again, the defendants
 F have appealed to this court on three grounds of appeal. The issues formulated for the determination as this appeal has been reproduced in the lead judgment.

The article complained of above contain material facts of libel which
 G the respondent sought to rely on to prosecute his action of libel. They are the precise words alleged to be libelous, and they were sufficiently pleaded in accordance with the provision of Order 9 Rule 4 of the High Court Rules of Anambra State 1988. Accordingly, the respondent adduced evidence in support of his pleadings and the effect of the publication complained of on him. A careful perusal of the text of the publication exposes
 H the fact that the respondent was the person the allegation therein referred to, and they are indeed libelous. The text is informative enough to warrant the successful prosecution of the case of the plaintiff/respondent, and together with the evidence adduced, it was bound to succeed. The

whole publication, which consists of the text reproduced supra was exhibit C, and from it can be read the following excerpt inter alia:-

“The atmosphere that Sunday August morning I met Chukwuma Charles Ajeh after so many years at Oshodi in Lagos was that of a re-union. We were school mates at the Baptist Academy, Obanikoro also in Lagos, the 1976-81 set to be precise. Indeed he explained that he was a clergy man now referred to as Rev. Pastor Chuma Israel Ajeh, founder of one Christ Grassroot Church at No. 2 Christ Church Street, Onitsha in Anambra State.....”

The above being part of the evidence adduced the learned trial judge was justified when she observed and found as follows in her judgment. In the same vein, the Court of Appeal was also right when it affirmed the finding in its judgment. The finding reads:-

“There is no one who read the publication complained about who would not know that it referred to the plaintiff. The opening paragraphs quoted above mentioned all of his names Chukwuma Charles Ajeh, the name by which he was known when he was in school; Rev. Pastor Chuma Israel Ajeh, the name he assumed when he became a pastor; the name of his Church - Christ Grassroot Church and the address No. 2 Christ Church Street Onitsha in Anambra State. Nothing was left out. It is impossible to consider the part of the publication pleaded detached from all that accompanied it in the news paper.

The plaintiff in this suit is not complaining of the whole publication.

The libelous part of the publication is the part set out in paragraph 6 of the statement of claim. That part did refer to Ajeh and Pastor read in the circumstances of the entire publication referred to the plaintiff.”

The fact that some parts that form the finding were not specifically pleaded is of no consequence, for the parts form part of the evidence adduced, and it will be wrong to expect the learned trial judge to shut her eyes to them. They were part of the publication that was in exhibit C, and which linked the respondent with the libel. Besides, a careful reading of paragraphs (5) and (11) of the respondent's pleading with paragraph (6) discloses that there is nexus between the publication in exhibit C and the respondent. These averments are as follows:-

“5. The first defendant on Sunday, December, 1995, at page 39 of the first defendant's said Guardian on Sunday, falsely and maliciously

printed and published of, concerning the plaintiff the article title “Lesson from a Pastor”.

11. Since the publication of the said false and malicious article many of the plaintiff’s friends and associates have cut off their dealings and associations with the plaintiff.”

B I have no doubt in my mind that any reasonable man would be convinced that the respondent was the person disparaged in the publication, and the words complained of as contained in paragraph 6 of the respondent’s pleading supra are defamatory of the respondent. The principle of the law of defamation on identity as stated in *Gatley on Libel and Slander*, 7th Edition page 282 in paragraph 282 reads thus:-

C “The question is whether the libel designates the plaintiff in such a way as to let those who know him understand that he was the person meant. It is not necessary that all the world should understand the libel; D it is sufficient if those who know the plaintiff can make out that he is the person meant, i.e. meant by the words employed.”

E There is abundant authority to show that it is not necessary for everyone to know to whom the article refers; this would in many cases be. an impossibility; but if, in the opinion of a jury, a substantial number of persons who knew the plaintiff, reading the article, would believe that it refers to him, in my opinion an action, assuming the language to be defamatory, can be maintained;.....”

See *Bourke v. Warren* 1826 2 C & P page 138.

F I am fortified by the above principle and resolve issue (a) in the appellants’ brief of argument in favour of the respondent.

As for the damages awarded to the respondent which the appellants regards as punitive. The learned counsel for the appellants has not been able to convince this court that the learned trial court exercised its G discretion wrongly in awarding the quantum of damages which the lower court did not deem necessary to disturb. In the words of Adekeye JCA (as she then was):-

“A trial court has discretion to exercise as to the quantum of damages it would award in a claim for damages”

H In order to justify reversing the findings of a trial court on the question of amount of damages, it will generally be necessary that an appellate court should be convinced that:-

“(a) The trial court acted under a mistake of law or upon some wrong principle of Law or

(b) *The award is arbitrary.*

(c) *The amount awarded is so extremely high or low as to make it, in the judgment of the appellate court an entirely erroneous estimate of the damages to which the plaintiff is entitled.*

(d) *There has been a wrong exercise of discretion in the award or*

(e) *The trial court acted in disregard of principles or*

(f) *The trial court acted under misapprehension of fact.*

(g) *The trial court took into account irrelevant matters or failed to take account of relevant matters.*

(h) *Injustice will result if the appellate court does not interfere.*

In the instant case none of the foregoing complaints is applicable to this case. The unrepentant attitude of the 2nd appellant lingered till the end of trial, while the damage done to the reputation of the respondent is permanent.”

I endorse the finding of the lower court on the said damages, and will not disturb it.

This is an appeal against the concurrent findings of two courts, which this court is not willing to interfere with, for the cardinal principle of law is that this court will not disturb concurrent findings of facts of a trial court and the Court of Appeal which are not perverse and have not occasioned miscarriage of justice. See *Fayehun v. Fadoju* 2000 6 NWLR part 661 page 390, *Odoniyi v. Oyeleke* 2001 6 NELR part 708 page 12, and *Njoku v. Eme* 1973 5 S.C. 293.

I agree that the appeal is completely devoid of merit and deserves to be dismissed. I also dismiss the appeal, and abide by the consequential orders made in the lead judgment.

ONNOGHEN.JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother RHODES-VIVOUR, JSC just delivered and I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

My learned brother has dealt exhaustively with the issues relevant to the determination of the appeal and I have nothing useful to add. This is a clear case of libel to which none of the known defences relating thereto avails the appellants. The publication was clearly a deliberate attack on the character and reputation of the respondent.

I therefore dismiss the appeal with costs as assessed and fixed in the lead judgment.

Appeal dismissed.

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FABIYI JSC

I have read before now the judgment just delivered by my learned brother - Rhodes-Vivour, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed.

C

The respondent herein was the plaintiff at the Onitsha High Court of Anambra State. Thereat, he claimed against the appellants as defendant the sum of N10,000,000.00 (Ten Million Naira) for libel and order of injunction restraining the defendants, their agents and or privies from further publication of their libellous article.

D

The offensive publication complained about by the respondent is contained in Exhibit C, a certified true copy of Guardian on Sunday of 3rd December, 1995. Paragraph 6 of the Statement of Claim reproduced part of Exhibit C as follow:-

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6. “So as fate would have it, I placed a lot of trust in him, left him at home and went to work. Boy, what a dumb decision. Coming back around 16 hours that evening was even rather early for me. But the door was locked and the lights were not on. I immediately knew what had happened. I used the spare keys on me to allow myself in. Well, I was right, the house had been assaulted and Ajeh was no where to be found. Missing items include a sharp video cassette Recorder -Model VGA 30 BR, Aiwa compact disc digital audio player model DX-M75 H; Nino wall clock; suits, ties, a trouser, travelling bag; instruction manuals to the VCR-CD player and winder had also disappeared. I have sure learned my lessons the hard way, can you imagine from a pastor.”

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The witnesses who testified on behalf of the respondent expressed their disdain and disgust after reading the appellants’ spiteful write-up. They did not deny same. Infact their stance is that the respondent is a thief and the matter is fair comment with a tinge of public policy. The 2nd appellant on oath said ‘all the contents of the article were written by me and I stand by it’. The appellants instigated the prosecution of the respondent at the Magistrate’s Court in Ikeja, Lagos where he was discharged and acquitted for the offence of theft.

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The learned trial judge found that the contents of paragraph 6 of the Statement of Claim reproduced earlier in this judgment are enough to prove libel in compliance with the provision of Order 9 Rule 4 of the High Court Rules, Anambra State, 1988 and the principle laid down in *Okafor v. Ikeanyi* (1973) 3-4 SC 99. The court below confirmed same.

I completely agree with the stance of the trial court and the court below. After all, libel is defined as a method of defamation expressed by print, writing, pictures or signs; any publication that is injurious to the reputation of another, a false and unprivileged publication in writing of a defamatory material; a malicious written or printed publication which tends to blacken a person's reputation or to expose him to public hatred or ridicule, contempt or to injure him in his business or profession - *Corabi v. Curtis Publication Co.* 441 pa. 432, 273 A. 2d 899, 904. See: *Black's Law Dictionary Sixth Edition* page 915.

From the established facts which are extant in the record, the words complained of were written by the 2nd appellant in the 1st appellant's edition of Sunday, 3rd December, 1995. The publication was false as same was not substantiated at the trial of the respondent at the Magistrate's Court, Ikeja, Lagos. The words which refer to the respondent clearly convey defamatory meaning that the respondent is a thief. The appellants who maintained that they stood by what they wrote and that they banked their assertion on fair comment, failed to substantiate same. They clung to their malicious publication to blacken the respondent. They exposed him to hatred, ridicule and contempt. It is therefore imperative that they should pay for same as dictated by the law.

I now move to the issue relating to the award of damages made by the trial court and affirmed by the court below. The respondent claimed the sum of N10,000,000.00 (Ten Million Naira). He was awarded the sum of N500,000.00 for the libel unleashed on his person by the appellants whose counsel felt that same was too high in the prevailing circumstance.

This court has developed certain principles which should serve as guide in the determination of what is adequate damage in libel cases. From the decisions in *His Highness Uyo 11 v. N.N.P.L* (1974) 6 SC 103; (1974) NSCC 304; *Offoboche v. Ogoja Local Government* (2001) 7 SC (Pt. 111) 107; the following facts ought to be taken into consideration:-

1. The award must be adequate to repair the injury to the plaintiff's

reputation. This does not require proof of pecuniary loss.

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 defendants.

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

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

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.

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 circumstance it would have awarded a different amount. An appellate court will however interfere with an award by a trial court where it is clearly shown that it acted upon wrong principle of law, or that the amount awarded is outrageously high or ridiculously low; or that the amount was an entirely erroneous and unreasonable estimate having regard to the circumstance of the case. See: *Zik's Press Ltd. v. Ikoku* 13 WACA 188; *Williams v. Daily Times* (1990) 1 SC. 23, (1990) 1 NWLR (Pt. 124) 1 at 49, 55; *Oduwole & Ors. v. Prof Tarn David West* (2010) 3-5 SC (Pt.111) 183 at 195.

Libel is a wrong to which the law imputes general damages. Once 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 as such damage is presumed. See: *Jones v. Jones* (1916) 2 AC. 481 at 500.

An award of general damages must be adequate to assuage for the injury to the plaintiffs reputation. It must atone for the assault on the plaintiff's character and pride which were unjustifiably invaded.

The learned trial judge considered all the relevant factors as espoused above before awarding the sum of N500,000.00 to the respondent as damages. The appellants who banked on the defence of fair comment which fell flat remained defiant. The sum awarded after a due exercise of discretion by the trial court not punitive. It was adequate to repair the injury caused to the respondent's reputation and loss of social

esteem. After all, the appellants showed no remorse. The court below affirmed same. I cannot see my way clear in interfering with the concurrent findings/award made by the two courts below. I shall not interfere. See: *Anaeze v. Anyaso* (1993) 5 NWLR (Pt. 291) 1; *Echi v. Nnamani & Ors* (2000) 5 SC 62 at 70.

For the above reasons and more especially the fuller ones set out in the lead judgment, I strongly feel that the appeal lacks merit and deserves to be dismissed. I order accordingly. I abide by the costs awarded by my learned brother.

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