

SUPREME COURT OF NIGERIA
FRIDAY 14TH DECEMBER 2012. SC. 289/2005
CORAM:- W. S. N. ONNOGHEN,
C. M. CHUKWUMA-ENEH, B. RHODES-VIVOUR,
M. D. MUHAMMAD, C. B. OGUNBIYI, JJSC

CHIEF T. F. ORUWARI APPELLANT
AND
MRS. INE OSLER RESPONDENT

TORTS - Slander - Translation - For a cause of action to arise - Slander uttered in foreign language must firstly be set out in the original language - Followed by literal translation to English (H1)

TORTS - Defamatory words - Interpreter - Trial court must satisfy itself as to correct English translation of the words in foreign language - By an independent sworn interpreter (H2)

TORTS - Defamation - Meaning - Defamation is imputation which tends to lower a person - In the estimation of right thinking members of society - And thus expose the person to hatred (H3)

TORTS - Slander - Definition - Slander is false and defamatory statement - Made by spoken words in some non permanent form - Published of plaintiff whereby he has suffered special damages (H4)

TORTS - Slander - Proof - Slander is actionable without proof of damages - Being required of plaintiff to succeed in the action (H5)

PLEADINGS - Averments - Denial - Defendant must expressly deny plaintiff's material averment in statement of claim - Otherwise he will be taken as having admitted same (H6)

PLEADINGS - Binding nature - Parties are bound by their pleadings - Facts not pleaded go to no issue - And are bound to be discounted and expunged from records (H7)

TORTS - Slander - Foreign language - Interpreter - Plaintiff is to

prove correctness of the translation of such language to English - By a sworn interpreter brought for that purpose (H8)

EVIDENCE - Expert witness - Qualification - Such witness must show skill in the field - In which he is called to give evidence - And the Judge decides whether or not a witness is an expert (H9)

FACTS

Before the High Court of Rivers State, plaintiff/respondent filed this action against defendant/appellant contending that the latter made slanderous publications against her (respondent). Respondent thus claimed for damages and restrictive injunction against appellant. The said slanderous publications were made in Kalabari language. At the trial, respondent called her witnesses to prove the alleged slanderous words. However, appellant contended that respondent has failed to call evidence specifically of an independent sworn interpreter knowledgeable in Kalabari and English languages to translate the foreign language to English language.

In its judgment, the court held that respondent has proved the alleged slanderous words and that appellant must be held liable in damages in favour of respondent. Being dissatisfied, appellant filed appeal in the Court of Appeal Port Harcourt Division, contending that respondent has not proved the correctness of the English translation of the alleged slanderous words uttered in Kalabari language. The court affirmed the decision of the trial court and dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

“Whether the translation of a foreign (kalabari) language to court’s (English) language by a sworn interpreter is fundamental, particularly in the circumstance.”

HELD (Unanimously allowing the appeal per **CHUKWUMA-ENEH JSC**)

Slander - Translation

1. There can be no doubt that what seems to have arisen from the apparent joinder of issues as per the above abstracts of

their pleadings and according to their briefs of argument is not the publication per se of the alleged slander at that stage of the cause at the trial but the correctness of the English translation of the defamatory words from Kalabari language (a foreign language). This is so as it is trite that a slander uttered in a foreign language must firstly be set out in the original language followed by a literal translation to English otherwise the action is not properly constituted to give rise to a reasonable cause of action before the court

It is settled law that the defamatory words in an action in slander as uttered and published in a foreign language as here must be set out side by side the literal translation to English language of the slanderous words for the action to be properly constituted. (p. 3941 D/3950 E)

Defamatory words - Interpreter

2. In this regard it is trite that a trial court has to satisfy itself as to the correct English translation of the defamatory words in a foreign language by an independent sworn interpreter before acting on the same. (p. 3948 E)

Defamation - Meaning

3. Let me for completeness before going further in this discourse examine the meaning of defamation as consisting of libel and slander so as to bring out in the context of this matter their unique distinctions vis-a-vis the real issue in controversy here, that is in relation to the correctness of the English translation of the defamatory words uttered in a foreign language (i.e. Kalabari) to PW5. The cause of action in this matter has arisen from the alleged use of defamatory words in a foreign language to disparage the respondent's name and integrity. On the whole defamation as a tort whether as libel or slander has been judicially defined to encompass imputation which tend to lower a person in the estimation of right thinking members of the society generally and thus expose the person so disparaged (plaintiff) to hatred, opprobrium, odium, contempt or ridicule. (p. 3954 E)

Slander - Definition

4. It is trite that slander on the other hand has been defined as a false and defamatory statement (i.e. of a transient nature) made or conveyed by spoken words, sounds, looks, signs and gestures or in some other non-permanent form (as against libel which is required to be in some permanent form) published of and concerning the plaintiff that is to a person other than the plaintiff without any lawful justification or excuse whereby the plaintiff has suffered special damages.
 C (p. 3954 H)

Slander - Proof

5. I must add that slander is actionable per se without proof of damage being required to be proved by the plaintiff to succeed in the action.
 D (p. 3955 A)

PLEADINGS - Averments - Denial

6. Firstly, I now have to consider whether as alleged by the respondent the appellant has admitted via the pleadings of the instant defamatory words in a foreign language (i.e. Kalabari) and its interpretation and translation to English language. That is to say as pleaded in paragraph 37 of the Amended Statement of Claim vis-a-vis paragraph 17 of the Amended Statement of Defence on the backdrop of the principles of law guiding the court under the Rules of pleadings that a defendant must expressly deny a plaintiff's material averment in his Statement of Claim otherwise he will be taken as having admitted the same.
 F (p. 3955 H)

PLEADINGS - Binding nature

7. It is also trite law that parties are bound by their pleadings and that facts not pleaded go to no issue and are bound to be discountenanced and expunged from the record.
 H (p. 3956 B)

Slander - Foreign language - Interpreter

8. I have not the slightest doubt that paragraph 17 of the Amended statement of Defence has clearly outlined the cause to be met by the plaintiff at the trial. Short of pleading evi-

dence to support the allegation which is not permitted in pleading it is my view that the defendant having traversed the paragraph 37 of the Amended Statement of Claim has put her to the strictest proof. That being so it is trite law and also as opined by the said learned authors of Gatley on Libel & Slander that the respondent (Plaintiff) in such situations is required to prove the correctness of the translation of the foreign language to English by sworn Interpreter brought for that purpose and that nothing short of that quality and standard of evidence in establishing a slander uttered in a foreign language to English is acceptable. (p. 3957 F)

EVIDENCE - Expert witness - Qualification

9. And to qualify as an expert witness under the Evidence Act, the witness must show special skill in the field in which he is called upon to give evidence and it is for the Judge to decide whether or not a witness is an expert that is knowledgeable in Kalabari and English language in this case and the test of this is based on the knowledge and experience of the witness. Against these backdrops, PW5 an illiterate Kalabari man does not stand any grounds of being referred to as an expert witness on the particular facts of this matter nor the interpreter that has interpreted his viva voce testimony in Kalabari into English at the trial and I so hold that none of them is an independent witness called for that purpose. Unarguably the respondent's case on this point therefore fails. (p. 3961 E)

REPRESENTATION

B. C. Igwilo with O. B. Atabansi, C.C. Ewesi and O. E Nwanosike, for the Appellant

J. O. N. Ikeji with F. U. Opakeji, F. C. Mbadugha and C. M. Nwabuko, for the Respondent

CASES REFERRED TO

Sowole v. Erewunmi (1961) 1 ANLR 741

A-G Anambra State v. Onuselogu Enterprises Ltd (1987) 4 NWLR (Pt. 66) 547

Titiloye v. Oladipo (1991) 7 NWLR (Pt. 205) 519

- Ugochukwu v. C.C.B. Ltd. (1996) 6 NWLR (Pt. 456) 524
- Buhari v. Obasanjo (2005) NWLR (Pt. 258) 1604
- Oshinowo v. Oshinowo (2005) NWLR (Pt. 251) 1698
- Ogbona v. Eke (1998) 10 NWLR (Pt. 568) 73
- Okobia v. Ajanya (1998) 6 NWLR (Pt. 559) 358
- B Okulate v. Awosanya (2000) 1 SC 107
- Enang v. Agu (1981) 11-12 SC 17
- Nitel v. Togbiyele (2005) AFWLR (Pt. 246) 357
- B.P.P.C. v. Gwagwada (1990) 4 NWLR (Pt. 116) 439
- C Okagbue v. Romaine (1982) 5 SC 133
- Adenuga v. Lagos Town Council 13 WACA 125
- Buraimoh v. Esa (1990) 2 NWLR (Pt. 133) 406

BOOKS REFERRED TO

- D Bullen & Leake on Pleadings 11th Ed. p. 510
- Gatley on Libel & Slander 9th Ed. para. 26 p. 15
- Clerk & Lindsell on Torts 11th Ed. para. 1245

LEAD JUDGMENT BY CHUKWUMA-ENEH JSC

- E This appeal is against the unanimous decision of the Court of Appeal Port-Harcourt Division delivered on 14/4/2005 affirming the trial court's decision, holding the appellant (defendant) liable in damages in favour of the respondent (plaintiff) for slanderous publications uttered and concerning of the respondent (plaintiff) on 7/5/1994; also an order of restrictive injunction which has in addition been slammed on the appellant to prevent a repetition of the slander against the respondent.
- F

- G The correctness of the translation to English of the alleged defamatory words spoken in a foreign language (i.e. in Kalabari language) as well as its publication to PW5 as pleaded in paragraph 37 of the Amended Statement of claim of the plaintiff/respondent in this matter is the gravamen of this appeal. The plaintiff/respondent has pleaded the said defamatory words thus:

- H *"On or about the 7th day of May 1994, the respondent herein falsely and maliciously spoke and published the following in the presence of Clement Ibialabo and others...*

... 'Saki mengba I pa be be I biari idigi, inegogo Oruwari I igbigi fit e diri ke nna piri te iba be te doki eri krabio a pa kuro te megi

ma buroari. Which words literally mean in English Language: Every time you always say you are sick, look at me since inegogo Oruwari has been giving money to people to kill me with medicine, I am still strong and I (sic) working about."

The defendant/appellant herein in paragraph 17 of the Amended statement of Defence has reacted to the allegation as follows:

"Defendant denies paragraph 37 of the Statement of Claim. It is one of the plaintiff's characteristic and fraudulent lies. Defendant could not have said any word in the presence of Clement Ibialabo because he did not meet him on the 7th May, 1994 as he defendant with his wife were undergoing their spiritual confinement at their church between 30th April, 1994 and 8th May 1994 and thus confined to the church premises. The defendant will show at the trial that Mr. Clement Ibialabo is hired to tell that story. Defendant shall show at the trial that most if not all of the plaintiffs witnesses were bought over because of one relationship or the other."

There can be no doubt that what seems to have arisen from the apparent joinder of issues as per the above abstracts of their pleadings and according to their briefs of argument is not the publication per se of the alleged slander at that stage of the cause at the trial but the correctness of the English translation of the defamatory words from Kalabari language (a foreign language). This is so as it is trite that a slander uttered in a foreign language must firstly be set out in the original language followed by a literal translation to English otherwise the action is not properly constituted to give rise to a reasonable cause of action before the court. The instant matter has proceeded to trial wherefore the plaintiff/respondent has sought to prove the alleged defamatory words and has called her witnesses on whom the burden rests to demonstrate that the said English, translation of the defamatory words is correct particularly so as the same has been denied by defendant/appellant. However, the plaintiff has not called evidence specifically of an independent sworn interpreter knowledgeable in Kalabari and English languages to translate the foreign language, to English language, it has remained the crucial issue in this matter, in other words, what the defendant/appellant is saying is that the plaintiff has not proved the correctness of the English trans-

lation of the defamatory words from the foreign language as uttered in Kalabari language as a first step to proving her claim. Clearly, the defendant/appellant has so maintained in the two lower courts. His stance in this appeal is no different and is predicated on the averments in paragraph 17 of the Amended Statement of Defence which
 B have specifically denied paragraph 37 of the Amended Statement of Claim. He has thus put the correctness of the defamatory words as spoken in Kalabari language (a foreign language) and its English translation thereof beyond per adventure in issue. And that fact having
 C been put in issue as pleaded in paragraph 17 of the Amended Statement of Defence, the onus of proving the correctness of the English translation thereof rests squarely on the plaintiff/respondent. In that regard it is trite that under the Rules of pleadings:- issue is joined on that question between the parties. The plaintiffs case stands to col-
 D lapse if no evidence is called on the issue, in the event of the plaintiff/respondent failing to discharge the said onus it also follows that the question of publication of the slanderous words (as in this case in Kalabari language) as uttered in a foreign language to a third party, (in this case to PW5) otherwise the gist of an action in slander and a
 E necessary factor in establishing the publication of the defamatory words against a defendant as in this case, becomes a mirage.

In this regard it is trite that a trial court has to satisfy itself as to the correct English translation of the defamatory words in a foreign language by an independent sworn interpreter before acting on the same. The instant trial court's findings on this important issue is at P:262 lines 28-32 and at page 263 lines 1-6 of the record thus:

G "The defendant spoke in Kalabari language to the lady he was talking to. Clement Ibialabo is a Kalabari man, and not literate. He testified in Kalabari language, through a sworn Kalabari language interpreter, brought for that purpose. It is obvious therefore that he understood the discussion between Defendant and the lady he was discussing with that day."

H From the above abstract the trial court has found that the instant defamatory words in a foreign language as per its English translation has been proved by the sworn interpreter provided in the proceedings at the trial to literally interpret PW5's ordinary testimony i.e. his viva voce evidence as rendered in Kalabari language into En-

glish language. The defendant/appellant naturally being dissatisfied with the trial court's decision has appealed the decision to the Court of Appeal substantially on the issue of the plaintiff not having proved the correctness of the English translation, and upon which rests the publication to PW5 of the alleged defamatory words uttered in a foreign language (in Kalabari language). And that his failure in this regard has arisen from not calling at the trial for that purpose an independent sworn interpreter to translate the foreign language (i.e. Kalabari language) to English language. The lower court at page 387 of record in its findings on issue has stated as follows:

"Again, Clement Ibialabo to whom it was said that the alleged slanderous words were made was called as witness PW.5. At page 95 of the records, the said Clement Ibialabo was recorded as having been sworn on Bible and gave his evidence in Kalabari with the aid of an interpreter. This suggests that Clement Ibialabo was an illiterate in English language. So, an interpreter was provided for him. Again, let it be said that the law demands that Records of proceedings must ex facie show that an interpreter was made available in court where an illiterate in English language is testifying. See: Panalpina vs. Woriboko (1975) 2 SC 29 and (2) Animashaun vs. U.C.H. (Ibadan) (1996) 10 NWLR (Pt.476) 65."

Again, being dissatisfied with the lower court's decision the appellant has appealed the decision to this court on a sole ground of appeal, in the appellant's brief of argument filed in this matter and adopted at the oral hearing of the appeal a sole issue for determination has been distilled to wit:

"Whether the translation of a foreign (kalabari) language to court's (English) language by a sworn interpreter is fundamental, particularly in the circumstance."

The respondent in her brief of argument filed and also adopted before the court at the oral hearing of this matter has also raised a sole issue for determination as follows:

"Whether the concurrent findings of the learned trial court and the Court of Appeal, that the slanderous statements of the appellant on May 1994, concerning the respondent were proved as required by law"

The central questions that have cropped up in this matter in this court on the backdrop of their arguments as per their respective

briefs simply put, amount to whether an independent sworn interpreter knowledgeable in Kalabari and English language ought to have been called vis-a-vis the testimony of PW5 given at the trial as having proved the correctness of the translation of the alleged defamatory words in Kalabari language, a foreign language to English language
 B as required by law in actions of slander of this nature. And whether truly any issue has been joined between the parties on that question vis-a-vis the state of their pleadings and if so whether the two lower courts rightly have found for the plaintiff/respondent as having proved
 C the correctness of the said English translation and even then the publication to PW5 of the defamatory words as uttered in Kalabari language and as translated to English language to justify the concurrent findings on the issue by the two lower courts.

However, one thing that is certain in this appeal is that the
 D alleged publication of the defamatory words in Kalabari language a foreign language in the original form as uttered to PW5 has been as pleaded by the plaintiff. Although the English translation of the defamatory words has been pleaded side by side the foreign language in
 E Kalabari language as required by the Rules of practice and procedure in civil actions of this nature the correctness of the English translation of the foreign language having been denied must be proved.
It is settled law that the defamatory words in an action in slander as uttered and published in a foreign language as here must be set out side by side the literal translation to English
 F ***language of the slanderous words for the action to be properly constituted.*** See Bullen and Leake, on Pleadings 11th Edition at P.510 and with approval the case of Sowole v. Erewunmi (1961) 1 ANLR 741 at 743.

G The gist of the main issue in this respect at the trial court and the lower court is to the effect of whether the correctness of the English translation cum publication of the defamatory words in a foreign language (i.e. Kalabari language) have been proved as required by law. The plaintiff has answered the poser in the affirmative by
 H alleging the admission of paragraph 37 of his Amended Statement of Claim as pleaded in paragraph 17 of the Amended statement of Defence; alternatively that the English translation has been so translated as per the evidence of PW5 at the trial hence the two lower courts have so found in her favour in their concurrent findings on the

issue.

The appellant's case as set out in his brief of argument is that he has denied paragraph 37 of the Amended Statement of Claim vis-à-vis his paragraph 17 of the Amended statement of Defence and that he has therein also specifically pleaded more or less an "alibi" i.e. of not having met PW5 at all on the alleged date of 7/5/1994 and at the alleged place of uttering the said defamatory words. And that having been somewhere else in his church on a spiritual confinement he could not have been opportuned to have met PW5 at the said time and place to have uttered the alleged slanderous words to PW5 on that basis, he has opined to have clearly joined issue with the plaintiff/respondent as per the averments in paragraph 37 of the Amended statement of Claim. Meaning that the onus of proving the correctness cum publication of the translation of the said defamatory words in a foreign language (i.e. Kalabari) to English language has fallen on the respondent. And according to the appellant that onus has not been discharged. The plaintiff/respondent has also referred to and relied on the principle of law as per the Learned authors of Gatley on Libel and Slander 8th Edition at P551 to submit of having satisfied the requirement of proving the instant defamatory words in a foreign language spoken in Kalabari language through an independent sworn interpreter provided for the purpose. However, it is the appellant's contention that the instant interpreter has interpreted the testimony of PW5, an illiterate Kalabari man, in the proceedings at the trial into English, and has not done so as his own interpretation of the defamatory words as uttered in Kalabari language a foreign language to English but that of PW5's testimony: (pre-emptorily speaking this point is well taken) I agree with this point as I will show anon. The appellant has posited in the circumstances that PW5 cannot be seen as an Independent sworn witness that the law has contemplated in regard to proving that issue.

Furthermore, the appellant therefore has opined that the two lower courts have erred in wrongly deeming the appellant as having admitted the defamatory words in its original form as uttered in a foreign language (i.e. Kalabari) and its English translation as that conclusion he also has contended, cannot have arisen from the state of the issues as joined on their pleadings. The court is urged to interfere with the two lower courts' decisions on the concurrent findings on

the issue being perverse and as having occasioned a miscarriage of justice.

The respondent (the plaintiff at the trial) on the other hand has contended that the appellant (i.e. the defendant at the trial) has not in his amended statement of defence specifically denied the allegations as per paragraph 37 of the Amended Statement of Claim and so has rightly been deemed by the lower courts as having admitted the alleged slanderous words in a foreign language (Kalabari) and its English translation as pleaded in paragraph 37 and so requiring on her part no further proof in accordance with the Rules of pleadings, in that what is admitted need no further proof. See *Attorney-General of Anambra State v. Onuselogu Enterprises Ltd.* (1987) 4 NWLR (Pt.66) 547, *Titiloye V. Oladipo* (1991) 7 NWLR (Pt.205) 519, *Ugochukwu v. C.C.B. Ltd.* (1996) 6 NWLR (Pt.456) 524 and *Buhari v. Obasanjo* (2005) NWLR (Pt.258) 1604. In short that the appellant not having traversed the respondent's pleadings on the issue of the correctness of the interpretation and translation of the alleged slanderous words to English language has rightly been deemed by the lower courts to have admitted the same. See: *Oshinowo v. Oshinowo* (2005) NWLR (Pt.251) 1698 at 1727, *Ogbonna v. Eke* (1998) 10 NWLR (Pt.568) 73, *Okobia v. Ajanya* (1998) 6 NWLR (Pt.559) 358. In the result, it is emphasized that not having joined issues on the point the onus on her to prove that the interpretation and translation of the slanderous words from a foreign language (i.e. Kalabari language) to English language as correct has been discharged. Even then alternatively, that it suffices that PW5 an illiterate witness has rendered his testimony in his native Kalabari language while testifying in the proceedings at the trial through a sworn interpreter who has duly interpreted and translated the defamatory words in a foreign language (i.e. Kalabari language) to English language in the course of interpreting PW5's viva voce evidence at the trial, in that wise it has been submitted that an independent sworn interpreter has thus been provided in the circumstances to prove the correctness of the translation of the slanderous words to English language and that she in that regard has discharged the onus on her as the plaintiff/respondent in the matter. And consequently, that one of the options open to the appellant at that stage of the proceedings at the trial is to have cross-examined the sworn interpreter so provided for the translation

to English language of the defamatory words as pleaded. And that as the appellant has failed to do so, he cannot now be heard to complain even as there is no ground of appeal complaining on that question.

Finally the respondent has urged that the lower courts' concurrent findings having been founded on the solid evidence in proof of the alleged slanderous words as pleaded by the respondent as per her paragraph 37 of the Amended Statement of Claim are not perverse and should not be disturbed nor have they occasioned a miscarriage of justice so as to warrant this courts intervention. The court is urged to dismiss the appeal.

The two issues raised for determination one on either side of this matter are identical and as can be seen have not specifically raised any issues questioning under the Rules of practice and procedure as to the mode and manner of pleading the instant defamatory words in a foreign language (Kalabari) and - its alleged English translation thereof: thus presupposing that the defamatory words as uttered in a foreign language as here have been properly pleaded. I can see no ground for challenging the decision of the lower court on this ground; nor has the action been so challenged. The foreign language in Kalabari language has been set out herein alongside the alleged literal English translation of it. A plaintiff having in the circumstances complied with the practice and procedure of pleading the defamatory words in a foreign language to English ordinarily has the onus to prove the correctness of the English translation and this is particularly so where the English translation has not been admitted. What seems to be the issue here is the correctness of the English translation of the foreign language by which the defamatory words have been uttered to PW5 in Kalabari language so as to constitute a reasonable cause of action in slander and ultimately its publication as in this case to PW5; meaning in effect that the English translation must be pleaded and proved. I am of the firm view that where the practice and procedure of setting out the defamatory words in a foreign language in a suit as here has not been strictly followed (as in this case by pleading the slander in Kalabari language and its translation to English) in constituting a claim in slander as here, the claim is challengeable on grounds of not having disclosed a reasonable cause of action in slander and in that event the action is liable to be struck out albeit in limine. This is moreso

where the slander in a foreign language has not been translated to English language at all in the plaintiffs pleadings, in other words there is no English translation of the defamatory words, of course the action is fatally flawed.

What seems to be very clear in the matter is that arising from both sides to this appeal based on their respective issues for determination have dealt with the construction of the language used in uttering the defamatory words in its original form in a foreign language to PW5 vis-a-vis their having been predicated on the correctness of the alleged translation to English language as averred in the plaintiff/respondent's pleadings.

Clearly concurrent findings of facts and law by the two lower courts on that issue. And this court based on a settled principle of practice cannot rightly interfere with the said decisions unless special circumstances exist to support this rule of practice. This court has only exercised this power where there are obvious miscarriages of justice arising from the violation of principles of substantive law and or procedure and perverse findings by the two lower courts. See *Okulate v. Awosanya* (2000) 1 SC 107, *Enang v. Agu* (1981) 11-12 SC 17.

Let me for completeness before going further in this discourse examine the meaning of Defamation as consisting of libel and slander so as to bring out in the context of this matter their unique distinctions vis-a-vis the real issue in controversy here, that is in relation to the correctness of the English translation of the defamatory words uttered in a foreign language (i.e. Kalabari) to PW5. The cause of action in this matter has arisen from the alleged use of defamatory words in a foreign language to disparage the respondent's name and integrity. On the whole defamation as a tort whether as libel or slander has been judicially defined to encompass imputation which tend to lower a person in the estimation of right thinking members of the society generally and thus expose the person so disparaged (plaintiff) to hatred, opprobrium, odium, contempt or ridicule. See Nitel v. Togbiyele (2005) AFWLR (Pt.246) 357, B.P.P.C. V. Gwagwada (1980) 4 NWLR (Pt.116) and 439. It is trite that slander on the other hand has been defined as a false and defamatory statement (i.e. of a transient nature) made or conveyed by spoken words, sounds, looks, signs and

gestures or in some other non-permanent form (as against libel which is required to be in some permanent form) published of and concerning the plaintiff that is to a person other than the plaintiff without any lawful justification or excuse whereby the plaintiff has suffered special damages. I must add that slander is actionable per se without proof of damage being required to be proved by the plaintiff to succeed in the action. See words and phrases legally used vol. 5, S-Z, P83, and also Egbe v. Adefarasin (1987) 1 NSCC (vol.18).

From the above definition vis-a-vis the defamatory slanderous words in the instant case as uttered in a foreign language (i.e. Kalabari language), the question that has arisen from the state of the pleadings is whether the defendant/appellant has uttered the alleged defamatory words in a foreign language (Kalabari) to PW5 and PW9. This allegation rests squarely on having translated correctly to English of the alleged defamatory words in a foreign language. The plaintiff apart from pleading the slander in the precise foreign language verbatim in the original, that is, in Kalabari language as here and its translation to English language (as has been rightly pleaded in paragraph 37 of the Amended statement of Claim), to be actionable it is required by law to be proved by the plaintiff that the alleged slanderous words are published to a third party who understands, the foreign language. Hence the necessity of the correct English translation of the meaning in English being the language of the court, it is vital for the plaintiff to prove that the English translation of the defamatory words as here as uttered to PW5 in a foreign language is correct that is as to their literal translation to English. And again, where as here the English translation of the alleged slanderous words cannot be agreed or admitted by the defendant then the plaintiff bears the onus in law to call an independent sworn interpreter particularly so for that purpose only, to prove the correctness and the meaning of its translation to English language in other words this is so to prove the ultimate publication of the slander to a third party and thus consummate the action properly, which is the gravamen of an action in slander.

Firstly, I now have to consider whether as alleged by the respondent the appellant has admitted via the pleadings of the instant defamatory words in a foreign language (i.e.

Kalabari) and its interpretation and translation to English language. That is to say as pleaded in paragraph 37 of the Amended Statement of Claim vis-a-vis paragraph 17 of the Amended Statement of Defence on the backdrop of the principles of law guiding the court under the Rules of pleadings that a defendant must expressly deny a plaintiff's material averment in his Statement of Claim otherwise he will be taken as having admitted the same. It is also trite law that parties are bound by their pleadings and that facts not pleaded go to no issue and are bound to be discountenanced and expunged from the record. See *Enang v. Adu* (1981) 11/12 SC. 17. at 42, *Okagbue v. Romaine* (1982) 5. SC 133, *Adenuga v. Lagos Town council* 13 WACA 125 at 126, *Buraimoh v. Esa* (1990) 2 NWLR (Pt.133) 406 at 414.

The appellant in paragraph 17 of the Amended Statement of Defence has denied the averments in paragraph 37 of the Amended statement of Claim and has put the plaintiff to the proof of the same. There can be no doubt of his having put the respondent to the strict proof in that issue specifically. He has further pleaded “alibi” and as required by law has gone on to give the particulars of the alibi by stating his whereabouts on that day as regards as to the time and place of the alleged slander as uttered to PW5 and PW9. From the state of the facts on the pleadings the appellant cannot be at the two places at the same time all by himself. The defence of “alibi” leading to the appellant’s spiritual confinement in the church on that day i.e. 7/5/94 and of uttering the defamatory words to PW5 is plainly inconsistent with the plaintiffs averment that the defendant has uttered the defamatory words to PW5 and PW9 on that day. I must say that it is proper to make that point as it has arisen from the state of their pleadings here. I also agree with the respondent that what is really in issue in this matter is not the publication per se of the defamatory words but the correctness of the English translation of the defamatory words as uttered in Kalabari (a foreign language) as the correct translation to English language of the defamatory words is a sine qua non to proving slander uttered in a foreign language.

The respondent has not called for further and better particulars to the alleged averment of “alibi” as per paragraph 17 of the Defence (supra). All the same she has submitted in her brief that the

appellant has been evasive as he neither has denied specifically the English translation of the slanderous words as per paragraph 37 of the Amended Statement of Claim nor has he given his own English translation of the same to imply his disagreement i.e. non admission of the said English translation as averred by the plaintiff. It is my view nonetheless that the appellant, having pleaded “alibi” meaning that he has been elsewhere at a different place as to the day and time as against where and when PW5 has alleged in his testimony concerning the alleged uttering of the alleged slanderous words to PW5. It is note worthy and as required in pleas of “alibi” that he has given the particulars of his whereabouts on that day and as I have stated herein in his church on a spiritual confinement. This issue having been introduced by the Defence I see no difficulty on the part of the plaintiff in controverting the plea of “alibi” by calling evidence to refute that fact so as to enable the court to rule on the truth of the matter even as she has not joined issue on that question with the appellant on the pleadings, it is my opinion on having taken into account the state of the defendant’s averments in his pleadings as a whole and on the issue of “alibi” particularly that he, the appellant herein, has by paragraph 17 (supra) completely traversed paragraph 37 (supra) of the respondent and which has shifted the onus of proving the averment including the English translation of the said defamatory words as per paragraph 37 (above) on the plaintiff/respondent. See: Chief Jacob Ibanga & Ors. V. Chief Edet Usanga (1982) SC 103 at 124, Lewis & Peat (N.I.R.) Ltd. v. Akhimien (1976) 1 ANLR 460.

I have not the slightest doubt that paragraph 17 of the Amended statement of Defence has clearly outlined the cause to be met by the plaintiff at the trial. Short of pleading evidence to support the allegation which is not permitted in pleading it is my view that the defendant having traversed the paragraph 37 of the Amended Statement of Claim has put her to the strictest proof. That being so it is trite law and also as opined by the said learned authors of Gatley on Libel & Slander that the respondent (Plaintiff) in such situations is required to prove the correctness of the translation of the foreign language to English by sworn Interpreter brought for that purpose and that nothing short of that quality and standard of evidence in establishing a slander uttered in a foreign language

to English is acceptable. See: *Dominion Flour Mills Ltd. v. George* (1960) LL.53, *N.I.P.C. v. Thompson organization Ltd.& Ors.* (1969) NMLR 99 and *Aderemi v. Adedire* (1966) NMLR 398 at 401. And I so hold.

Next is the main issue as to whether the respondent/plaintiff
 B has discharged the onus of proving the correct translation to English
 of the instant slanderous words in a foreign language (Kalabari) as
 required by law so as to raise a prima facie case on the issue calling
 for a rebuttal by the appellant/defendant. Before going further in
 C discussing this matter I must reiterate that it is a necessary factor albeit
 as a condition precedent to proving alleged slanderous words in a
 foreign language to translate the defamatory words to English lan-
 guage. The plaintiff upon the state of parties' pleadings as I have
 found above is in this regard required to call an independent sworn
 D interpreter to translate the alleged slanderous words in a foreign lan-
 guage in this case from Kalabari language to English language other-
 wise the action must fail for failing to prove a necessary ingredient to
 properly constitute an action in slander of this nature and at least
 raise a prima facie case for the defendant to rebut, that is to say as to
 E the meaning cum publication of the defamatory words in a foreign
 language. Even then where the translation to English language of the
 defamatory words in a foreign language has not been pleaded at all
 or correctly translated to English as I have observed above it cannot
 F be said that the meaning of the slanderous words as per alleged defa-
 matory words has been published to a third party in this case to PW5
 and PW9 so as to properly constitute an action in slander as other-
 wise it has not raised a reasonable cause of action. I must add that the
 requirement to set out the defamatory words in a foreign language in
 G the original form in the pleadings as in the instant amended state-
 ment of Claim in this case alongside the correct English translation of
 the defamatory words, is because English language again it must be
 emphasised is the orthodox language of the court. See: *Akekeja v.*
Uba (1986) 2 NWLR (Pt. 22) 257 at 258, 261. This requirement is
 H not dispensed with whether or not the judge understands the foreign
 language as it follows the principle of translating every document into
 English before it is admitted and acted upon by a court and even
 then it also has to be so before the defamatory words in a foreign
 language can be proved and received in Evidence in the proceedings

at the trial.

The translation to English is usually done by an expert witness particularly through an interpreter called and sworn solely for that purpose etc. to translate the defamatory words uttered in a foreign language as in this case in Kalabari language to English language otherwise if I may repeat, the action is a non-starter as no reasonable cause of action has been constituted to warrant a rebuttal by the defence. B

This position in this regard is ably supported by the learned authors of *Gatley on Libel and Slander* (9th Edition) paragraph 26.15 at 659 as follows: C

“Where the libel or slander was published in a foreign language, it must be set out in the statement of claim in that language and followed by a literal translation, it is not enough to set out a translation without setting out the original or vice versa. The pleader should include an allegation to the effect that the translation is a true interpretation of the foreign language used”. D

The plaintiff who is the respondent in this appeal, has rightly followed the practice and procedure as stated in the above abstract in pleading the literal translation to English of the defamatory words in a foreign language. Even then, it is not the end of the matter as the plaintiff still bears the burden to prove the correctness of the English translation and the publication of those words to a 3rd party for the facts situation to ripen into an actionable wrong. E

It remains then to be seen whether the plaintiff (respondent) has proved the averments as to the slanderous words uttered as alleged by the defendant/appellant in this matter. I have on this question herein already expressed my opinion that on the state of the pleadings that the onus has now fallen squarely on the plaintiff/respondent to prove that the alleged slanderous words as translated to English is correct. The defendant/appellant having denied that averment has put the issue to be strictly proved. The lower court, in my view in that regard has erred to hold that the defendant/appellant has not challenged the correctness or accuracy of the English translation herein. On the facts and evidence before this court I have wondered how else the appellant could have done so excepting as clearly averred in his paragraph 17 of the Amended statement of Defence and thus has put the plaintiff/respondent to the proof of the aver- F G H

ments in paragraph 37 of the Amended statement of Claim. I think that this question has arisen as an issue from the state of their pleadings which, with respect, the lower courts have misconceived. I have held herein and again if I may repeat, that on the state of their pleadings the onus has shifted to the plaintiff who as the (respondent) is
B bound to lose the case if he fails to prove the English translation of the defamatory words in a foreign language as correct otherwise the case is completely stalled as flawed.

In the light of the foregoing reasoning I hold further that it is
C an essential requirement for the instant defamatory words in a foreign language to be proved in law in that wise as a first step the exercise of translating the same to English language and proving the same has to be done by expert evidence. The respondent has contended that it suffices as having done so through the testimony of
D PW5, an illiterate Kalabari man, whose testimony (viva voce) in the proceedings at the trial has been rendered in his native Kalabari language otherwise a foreign language in this matter including the said defamatory words translated to English language before the trial court. She has argued that in this way she has discharged that onus of interpreting the foreign language (i.e. Kalabari) to English.
E

The appellant on the other hand has rightly pointed out and I agree with him that it is a common ground reached by parties as per their pleadings to the effect that it is an essential requirement to prove the alleged slanderous words by a sworn interpreter translating the
F alleged slanderous words in a foreign language (i.e. Kalabari language) to English language on having joined issue on that fact. I am in agreement with the defendant/appellant that the requirement has not been met by the nature and quality of evidence PW5 has rendered in the proceedings at the trial of this matter. The respondent
G has not discharged the onus on her in that regard. What is clear is that the correctness of the said English translation has to be proved by a sworn interpreter properly called as an expert witness for that purpose. I am satisfied that PW5 on the facts of this case cannot be
H the sworn expert interpreter as contemplated in law to correctly translate the instant foreign language in Kalabari language to English language for the court to act on them as being the expert evidence of a sworn interpreter called for that purpose at the trial, it is clear that the testimony simpliciter of the illiterate witness - PW5 which has been

interpreted through an interpreter into English language at the trial has not been rendered as evidence of an expert to prove the English translation of the foreign language (in kalabari language). Nor has the interpreter called to interpret PW5's viva voce testimony into English in the cause to be seen as having interpreted the defamatory words in his own right as an expert witness called for that purpose in the proceedings. Therefore neither the evidence of PW5 nor that of his interpreter is in the circumstances acceptable as expert evidence in any respects in this case and it is rejected. This is so as guided by the learned authors of the 11th Edition of Clerk and Lindsell on Torts at paragraph 1245 where they have stated:

"...the plaintiff must be prepared to put and prove the necessary gloss or innuendo upon them. They may be wholly or in part foreign, technical or slang, and, if so, they must be properly translated by suitable expert evidence into plain English."

The above abstract has laid bear the duty of a plaintiff in a case as this one to call an expert evidence in order to prove the translation of a foreign language to English. For all this PW5's testimony through his interpreter cannot therefore fill the obvious lacuna in the plaintiffs case in proving the correct English translation of the defamatory words by a sworn interpreter as required by law in such matters as this one, it is in this respect that the case has terribly floundered.

And to qualify as an expert witness under the Evidence Act, the witness must show special skill in the field in which he is called upon to give evidence and it is for the Judge to decide whether or not a witness is an expert that is knowledgeable in Kalabari and English language in this case and the test of this is based on the knowledge and experience of the witness. Against these backdrops, PW5 an illiterate Kalabari man does not stand any grounds of being referred to as an expert witness on the particular facts of this matter nor the interpreter that has interpreted his viva voce testimony in Kalabari into English at the trial and I so hold that none of them is an independent witness called for that purpose. Unarguably the respondent's case on this point therefore fails.

See Azu v. The state (1993) 6 NWLR (Pt.299) 303. More importantly I do not see how PW5 being an illiterate can qualify as an

independent sworn witness so as to constitute properly the instant suit in slander as having been published to a third party in this case i.e. PW5 (himself) and PW9. This lacuna has completely damaged the plaintiff's case in this matter.

From the totality of my reasoning above the respondent has failed woefully in proving the essential ingredients necessary to constitute and succeed in an action in slander as here uttered in a foreign language to a witness as PW5. And I must reiterate that to succeed in such actions the plaintiff must do so by:

- (1) proving the actual words published to a person other than the plaintiff; and
- (2) proving the translation to English by a sworn interpreter as an expert witness.

The two foregoing requirements must co-exist at the same time and must also be pleaded and satisfied before the plaintiff can succeed in an action in slander as here. The implication of failing to discharge the above essential ingredients in an action in slander as here where the slander is founded on the backdrop of a foreign language is graver as the action having been founded in defamation cannot in that regard be said to have been properly constituted without pleading and proving the defamatory words in a foreign language as required by law. The gist of such action as here if I may recap, is the publication to another person as the PW5 and PW9 in this case of the alleged slanderous words. I hold that the translation of the foreign language to English language apart from being pleaded in the original along side the English translation thereof, has to be proved in the circumstances as here by an independent sworn interpreter called for that purpose. This is moreso where the defamatory nature of the words in a foreign language and its English translation as here have been denied so as to enable the defendant (i.e. as appellant here) to understand what the plaintiff is alleging the slanderous words to mean and so enable the defendant decide whether the said defamatory words are capable of that meaning in English language and ultimately the publication to a third party. Where the plaintiff (as appellant here) is deficient in proving any of these ingredients in this regard as required by law, again as in this matter his case in its entirety remains unproven, and must fail. I find therefore that the respondent (plaintiff) as can be seen has woefully failed to prove the

correctness of the translation to English of the defamatory words uttered in Kalabari language being a foreign language for that matter, in short on the evidence before the trial court the plaintiff has failed to raise a prima facie case to call for a rebuttal by the Defence. And I so hold.

In conclusion, therefore I find that the two lower courts have seriously erred in their concurrent findings both in fact and in law as I have adumbrated in the fullness of my reasoning herein. In the result, this appeal being meritorious is hereby allowed. The judgments of the two lower courts in this matter being perverse and having occasioned a serious miscarriage of justice are hereby set aside with costs of N100, 000 to the appellant. Appeal allowed.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother CHUKWUMA-ENEH JSC just delivered.

I agree with his reasoning and conclusion that the appeal is meritorious and should be allowed.

I therefore order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal allowed.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment prepared by my learned brother Chukwuma-Eneh JSC. I agree with the judgment. The issue in this appeal is:

How are words alleged to be slanderous spoken in a foreign language proved in court.

The words spoken in a foreign language must be reproduced in the foreign language and then translated into English in the plaintiff pleadings. Paragraph 37 of the plaintiff (respondent) pleadings reads:

“On or about the 7th day of May 1994, the respondent, herein falsely and maliciously spoken and published the following in the presence of Clement Ibialabo and others -

Saki Mengba I pa be be Ibiari idigi, Inegogo oruwari I igbigi fit

e diri ke nna piri te iba be te doki eri krabio a pa kuro te doki eri krabio a pa kuro te megi ma buroari. Which words literally mean in English:

Look at me since Inegogo Oruwari has been medicine, I am still strong and I (sic) working about. ”

B In paragraph 17 of the defendant/appellants pleadings the above is denied. That is to say a material fact (the words were spoken in Kalahari language in the presence of Clement Ibialabo) is affirmed by the plaintiff, but denied by the defendant. The question raised between the parties is an issue of fact.

C Now, to prove the issue of fact to the satisfaction of the court an independent sworn interpreter knowledgeable in Kalahari and English language must give evidence and translate the alleged slanderous words from Kalabari to English. See *Aderemi v. Adedire* 1966 D NMLR p. 398.

The onus is on the plaintiff/respondent to prove that the alleged slanderous words translated to English is correct.

The interpreter knowledgeable in Kalabari and English language is an expert as provided by section 57 of the Evidence Act. E The plaintiff (respondent) relied on PW5 to discharge the onus required. PW5 is an illiterate Kalabari man. He testified in Kalabari language through a sworn Kalabari language interpreter. It is thus clear that PW5 does not understand the English language. It is obvious F that he is incompetent to translate the alleged slanderous words from Kalahari language to the English language. In the circumstances the plaintiff failed woefully to discharge the onus required and so his case ought to have crumbled like a pack of cards in the trial court. It crumbles in this court. Both courts below thought otherwise They G were of the view that the plaintiff proved her case. It is now well settled that concurrent findings of fact are rarely disturbed by this court, but this court would be compelled to interfere if the findings are perverse or cannot be supported by the evidence before the court or there is/was a miscarriage of justice or violation of some H principle of law or procedure. See *Ugwenyi v. FRN* 2012 49 NSCQR p.1243.

There was a violation of the principle of law which requires the plaintiff to satisfy the court of the correct translation of the Kalahari words spoken, to English. Evidence led and accepted by the court

fell short of what was required, consequently the judgment of the trial court confirmed by the Court of Appeal is perverse since the basic requirement of onus of proof was never discharged.

This court would in the circumstances be right to interfere with the perverse findings of both courts below. As quite rightly concluded by my learned brother Chukwuma-Eneh, JSC the appeal is allowed. B

MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother Chukwuma-Eneh JSC just delivered. I entirely agree with him that the appeal has merit. I adopt the judgment as mine to allow the appeal. C

I abide by the consequential orders contained in the lead judgment as well. D

OGUNBIYI JSC

The grouse of the issue in this appeal centres on the effect of the failure by the plaintiff/respondent to specifically call an independent sworn interpreter who is knowledgeable in Kalahari and English languages to translate the foreign language into English language. In other words, it is expected of the plaintiff/respondent that after having pleaded the exact defamatory words complained of, same ought to have been related also in court by a witness who understood both the foreign language as well as English which is the language of the court. Paragraph 37 of the statement of claim which alleged the defamatory words was vehemently denied by the defendant/appellant by his paragraph 17 of the statement of Defence. The plaintiff/respondent was expected to provide for an independence sworn interpreter who ought to have translated the foreign language i.e. Kalabari language into English language. E F

It is the contention of the appellant that the witness PW5, in the person of Clement Ibialabo, to sworn (sic) the slanderous words were alleged to have been made was not an independent witness in a proof of defamation which is highly technical in nature. It is also intriguing that P.W. 5 was not literate in English language and hence G H

had to testify also through an interpreter. It is not enough as held by the lower court that:-

“Records of proceedings must ex facie show that an interpreter was made available in court where an illiterate in English language is testifying...”

B The foregoing conclusion arrived at by the lower court, I hold is erroneous. In other words, the purpose of providing an interpreter is not to fulfill all righteousness but rather to provide a witness who is impartial, independence and to relate the true and exact meaning of the defamatory words used. This is the only basis upon which the proof can be ascertained. I have earlier said that P.W. 5 as a witness, to whom the words were alleged to have been made was certainly not an independent witness. This is more so especially where P.W. 5 was held not to be literate in English language.

D The law is well settled that where there is a concurrent findings of fact by both the trial court and the Court of Appeal as it is the case at hand, this court should not as a general rule interfere except in situations where there is a miscarriage of justice. See the case of Okulafe V. Awosanya (2000) 1 SC.107.

E It is not enough, I also hasten to say, that the defamatory words be pleaded the correctness of its English translation must also be proved before the legal expectation could be discharged. The plaintiff/respondent had sought to rely on paragraph 17 of the defendant/appellant’s pleadings in proof of paragraph 37 of her amended statement of claim. On a careful perusal of the defendant’s paragraph 17 same I hold did not amount to an admission as sought to portray by the respondent. The reliance on the key witness PW5 did not also help the plaintiff/respondent’s case either. The English translation of the alleged slanderous words were vehemently objected to by the defendant/appellant. The onus is therefore upon the plaintiff/respondent to call an Independent Interpreter as a competent witness to prove the correctness and the meaning of the alleged words from foreign to English language. The witness PW5 was not a competent witness for that purpose as rightly submitted by the learned appellant’s counsel. See the case of Aderemi V. Adedire (1966) NMLR 397 at 401. There is therefore no evidence of publication made to PW5 as properly required by law and which should constitute an action in slander as sought to put forth by the plaintiff/respondent.

It is not also enough that the plaintiff/respondent should set out the slanderous words in the statement of claim in the very foreign words used and followed by a literal translation thereof; the onus still rested on the plaintiff to prove the correctness of the English translation and publication of those words to a 3rd party. The publication sought to be made to PW5 had fallen short of that expectation. The plaintiff/respondent in other words ought to have proved that the slanderous words translated into English is correct. B

My learned brother Chukwuma-Eneh JSC has dealt very comprehensively with the appeal. With my few added words and the fuller reasonings contained in the lead judgment which I adopt as mine, I also find merit in this appeal. In the same vein as the lead judgment therefore, I also allow the appeal and set aside the judgments of the two lower courts. I further abide by the orders made therein the lead judgment as to costs. C D

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