

SUPREME COURT OF NIGERIA
FRIDAY 8TH MARCH, 2013. SC. 109/2004
CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA,
M. U. PETER-ODILI, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC

1. PROF. KINGSLEY OWONIYI
OLOGE & 11 Ors APPELLANTS
AND
NEW AFRICA HOLDINGS LTD RESPONDENT

TORTS - Defamation - Publication complained of is fair report of what is sought to be conveyed - Which the law considers not to be defamatory (H1)

TORTS - Defamation - Test - In determining whether or not a publication is libelous - Court should consider the view of a reasonable man - Who comes into contact with the words therein (H2)

TORTS - Defamation - Determination - Basis - General impression conveyed by the publication complained of is to be considered - And not the meaning of each word (H3)

FACTS

Plaintiffs/appellants instituted this action at the High Court of F.C.T. Abuja against defendant/respondent, claiming damages for libel arising from a publication in the Democrat Newspaper published by the respondent in its edition of 27th June, 1994. At the trial, respondent raised the defence of qualified privilege. After hearing both parties, the court in its judgment, found that the defence of qualified privilege availed respondent.

However, the court went on to award damages to appellants in the sum of N120,000.00. Being dissatisfied with the judgment, appellants appealed to the Court of Appeal, while respondent cross appealed against the award of N120,000.00 damages. The court held that the publication in question was not defamatory of appellants and as such the trial court was in error in awarding the damages.

The appeal was therefore dismissed and the cross appeal allowed. Still aggrieved, appellants filed appeal in Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the publication of 27th June, 1994 in the democrat by the respondent was a fair and accurate copy of the Press Release issued by the University of Abuja i.e. Exhibit “B” and if not whether the said publication is defamatory of the appellants.

2. Whether the word “admitted” has the same meaning with the word “committed” within the context of the Press Release and the publication of 27th June, 1994 and, if not, whether the substitution of the word “committed” with the word “admitted” in the said publication affected the substance of the Press Release.

3. Whether the defence of qualified privilege availed the defendant/Cross-Appellant”

HELD (Unanimously dismissing the appeal per ON-NOGHEN JSC)

TORTS - Defamation

1. I hold the considered view that the lower court cannot be faulted in its holding supra. It should be noted that Exhibits “A” and “B” do not only concern or talk of, “all persons identified as having admitted [committed] acts of arson, looting” but also “all those persons identified as having played roles in aiding and abetting arson” etc as being the persons suspended by the University Authorities. The appellants were neither listed under “all persons identified as having admitted acts of arson” nor under “all those persons identified as having played roles in aiding and abetting arson...” Appellants were listed as those suspended as a result of having been “identified as having admitted acts of arson,” etc “and all those persons identified as having played roles in aiding and abetting arson”. Appellants have however not complained of their being “identified as having played roles in aiding and abetting arson” which description is a hue reproduction of Exhibit “B”, the Press Release. They therefore do not consider their being described as “persons identified as having played roles in aiding and abetting arson” as defamatory of their character!!!

I therefore agree with the lower courts that the publication complained of is an accurate and fair report of what transpired which

need not be verbatim or word for word. It is substantially a fair and accurate account of what is sought to be conveyed which the law considers not to be defamatory.

It is my further view that in the circumstances of the facts of this case, the substitution of the words “admitted” for “committed” has not in essence changed the tenor, character and substance of the Press Release, Exhibit “B” (p. 1353 D)

TORTS - Defamation - Test

2. The above notwithstanding it should be borne in mind that the test to be applied by the court in determining whether a publication is libelous or not is not that of highly educated and accomplished professors of various academic disciplines, such as the appellants, as suggested by counsel for appellants in the appellants’ brief but that of reasonable man on the streets who comes into contact with the words in the publication. The question is whether such a reasonable man reading Exhibits “A” and “B” would find Exhibit “A” defamatory of the appellants, which I had earlier, along with the lower courts, held that he would not as, the same is plainly not defamatory.

The reasonable men to be used by the judge in determining the question whether the words are defamatory in their ordinary meaning are men of ordinary intelligence while the publication has to be considered as a whole. (p. 1354 G)

TORTS - Defamation - Determination - Basis

3. In considering the words in a libelous publication, it is the broad and general impression conveyed by the publication complained of that has to be considered not the meaning of each word under analysis taken out of context.

It is also very important to note that the law is settled that it is the words of the publication that must be construed as a whole, not a single word as canvassed before us. (p. 1355 B)

NOTABLE POINTS OF INTEREST

NGWUTA JSC

1. Defamatory statement - Definition

A defamatory statement may be defined as a statement which tends:

(a) to lower the claimant in the estimation of right thinking members of society generally, or

(b) to expose him to hatred, contempt or ridicule, or

(c) to cause other persons to show or avoid him, or

B (d) to discredit him in his office, trade or profession, or

(e) to injure his financial credit. (p. 1357 A)

2. Defamation – Ingredients of

C There are six co-terminous ingredients which the plaintiff has to prove to succeed in defamation:

(1) Publication of the offending words.

(2) That the words complained of refer to the plaintiff.

(3) That the words are defamatory of the plaintiff.

(4) That the words were published to third parties.

D (5) That the words were false or lack accuracy, and

(6) That there are no justifiable legal grounds for the publication of the words. (p. 1357 D)

REPRESENTATION

E P. O. Okolo Esq., for the Appellants

A. A. Olatunji Esq. with Messrs Oga Obeya; Chinazor Dike and Olaluwa Ajoni, for the respondent

CASES REFERRED TO

Okolo v. Midwest News Papers Corporation (1977) 1 SC 23

Emeagwara v. Star Printing & Publishing Co. Ltd. (2000) 10 NWLR (pt. 769) 489

Dimbo v. Idogboe (1983) 1 SCNLR 25

Dimbo v. Idogboe (1983) 1 SCNLR 25

G Rgd. Trustees of Amorc v. Awoniyi (1994) 7 NWLR (pt. 355) 154

Sim v. Stretch (1936) 2 All ER 1237

Guardian Newspapers Ltd v. Ajieh (2005) 12 NWLR (pt. 938) 205

Skuse v. Granada Television Ltd (1996) EMLR 278

Ayeni v. Adesina (2007) All FWLR (pt. 370) 1451

H Iloabuchie v. Iloabuchie (2005) 13 NWLR (pt. 943) 695

Concord Press (Nig.) Ltd. v. Olutola (1999) 9 NWLR (pt. 620) 578

STATUTE REFERRED TO

Defamatory Act Cap 492 LFN 1990, s. 9(1)

LEAD JUDGMENT BY ONNOGHEN JSC

This appeal is against the judgment of the Court of Appeal B
Holden at Abuja Division in appeal no. CA/A/81/98 delivered on
the 13th day of February, 2002 dismissing the appeal of appellant
against the judgment of the Federal Capital City High Court, in suit
No.FCT/HC/CV/572/94 in which the court entered judgment for the
plaintiffs, now appellants before this court.

The appellants, as plaintiffs instituted the action against the C
respondent claiming damages for libel arising from a publication in
the Democrat Newspaper published by the respondent in its edition
of 27th June, 1994. The respondent raised the defence of qualified
privilege. D

In its judgment the trial court found that the defence of qual-
ified privilege availed the respondent but went on to award damages
to the appellants in the sum of N120,000.00.

Being dissatisfied with the judgment, appellants appealed E
to the lower court while the respondent cross appealed against the
award of N120,000.00 damages.

The lower court held that the publication in question was
not defamatory of the appellants and as such the trial court was in
error in awarding the damages complained of, thereby dismissing the F
appeal and allowing the cross appeal. The instant appeal is against
the said judgment, the issues for the determination of which have
been identified by learned counsel for appellants, IKECHUKWU
EZECHUKWU ESQ in the appellants' brief filed on 6th July, 2004
and adopt in argument of the appeal on the 15th day of January, G
2013 as follows:-

"1. Whether the publication of 27th June, 1994 in the dem-
ocrat by the respondent was a fair and accurate copy of the Press
Release issued by the University of Abuja i.e. Exhibit "B" and if not H
whether the said publication is defamatory of the appellants (Ground
1).

2. Whether the word "admitted" has the same meaning with
the word "committed" within the context of the Press Release and
the publication of 27th June, 1994 and, if not, whether the substitu-

tion of the word “committed” with the word “admitted” in the said publication affected the substance of the Press Release (Ground 2).

3. Whether the defence of qualified privilege availed the defendant/Cross-Appellant”

B Learned counsel for respondent OLABISI O. SOYEBO ESQ also formulated three issues for determination, which issues are substantially the same as those of appellants reproduced supra. I therefore have no need to reproduce them herein.

C In arguing Issue 1, learned counsel for appellants submitted that the publication of 27th June, 1994, Exhibit “A”, which purports to be a reproduction of the University of Abuja Press Release is defamatory of the appellant because it is not a fair and accurate copy of Exhibit “B”; that respondent falsely and maliciously and without any reasonable or probable cause substituted the phrase “having committed” arson, looting etc with the phrase “having admitted” acts of arson, looting etc; that the use of the substituted phrase made Exhibit “A” false and materially and substantially changed the meaning of the whole Press Release; that whereas the phrase “having committed” conveys the impression that the acts complained of are mere allegations and subject to disputation, etc, the phrase “having admitted” portrays appellants as self-confessed criminals i.e. arsonists and looters.

F It is the further submission of learned counsel that the impression conveyed by Exhibits “A” that appellants are self confessed criminals cannot be anything but defamatory as the same portrays appellants to the parents of their students and the reading public as:-

(i) A disappointment and a disgrace to their fellow Dons and society who look upon them as icons of high moral rectitude.

G (ii) That the society’s trust in them that made them entrust the guidance and education of their children upon their hands was largely misplaced.

H Relying on *Okolo v. Midwest News Papers Corporation* (1977) 1 SC 23 at 38, counsel submitted that the substitution of the phrases made Exhibit “A” false being an inaccurate reproduction of Exhibit “B” and therefore defamatory of the appellants and urged the court to resolve the issue in favour of the appellants.

On his part, learned counsel for respondent reproduced Exhibit “A” and stated that a comparison of Exhibit “A” and “B”

show that the two publications were the same, the only difference being in the substitution of the word “admitted” for “committed” in paragraph 1 of the said Exhibit “A”; that where the whole report is a substantially accurate account of what took place, the fact that there are few slight inaccuracies is immaterial, particularly where the inaccuracy is not of a substantial nature, relying on *Emeagwara v. Star Printing & Publishing Co. Ltd.* (2000) 10 NWLR (Pt.769) 489 at 504 - 505; that the publication be viewed liberally as there was no malicious intention of defaming the appellants; that the court should hold that the publication was a fair and accurate report; that the test for the determination of the issue as to whether the word used in a publication is defamatory is objective; that is, how a reasonable man coming in contact with them will understand them, relying on *Dimbo v. Idogboe* (1983) 1 SCNLR 25 at 45: that any reasonable man would not understand it to be libelous and urged the court to resolve the issue against appellant.

It should be noted that the lower courts are in agreement in their finding that the publication complained of is not defamatory of the appellants though the trial court erred in going further, after finding that the defence of qualified privilege availed respondent to award damages which was rightly set aside, in my view by the lower court in the judgment now on appeal before us. A defence which the court finds established is a complete answer to the case of the plaintiff which absolves the defendant of any liability on the claim. There is, however, no appeal against the decision of the lower court setting aside the award of damages anyway.

In the instant appeal, the issue under consideration is whether the lower courts are right in their concurrent findings as regards the defamatory nature of the publication complained of.

Both parties and the lower courts agree that Exhibit “B” was altered while being reproduced in Exhibit “A” by the respondent by the substitution of the words “having admitted” in Exhibit “A” for “having committed” in Exhibit “B”. It is the substitution of the word “admitted” for “committed” that appellants contend makes the publication libelous and consequently condemnable in damages. What do the publications state? Exhibit “A” was published at page 2 of the 27th day of June, 1994 issue of the Democrat Newspaper Published by the respondent and it runs thus:-

“The Abuja University on Thursday announced the suspension of five professors and seven other staff of the institution for their alleged role in the February student unrest that led to the closure of the university. The University Registrar and Secretary to the Governing Council, Mallam Yakubu H. Habi said in a statement that the decision was carried out in line with the provision of Decree No.106 of 1992 that established the institution and the regulation governing the services of senior staff of the university. The panel report according to the statement indicated that all persons identified as having admitted acts of arson, looting and all those persons identified as having played roles in aiding and abetting arson be charged to a special tribunal (Miscellaneous Offices) as prescribed in Decree 20 1984 as amended by Decree 22 of 1986.

Those suspended, are Professors A. H. Ekpo, M. A. Owoade, K. O. Ologe; S. O. Tyoden and A. A. Olatunde, others are Dr. Y. B. C. Omele; Miss Folasade Saba; Mr. Kwaghkondo Agber; Mr. Musah A. Salami; Mr. Godwin I. Itegi and Mr. David Aiyejina”.

On the other hand, Exhibit “B” which is the Press Release issued by the University Authorities in relation to the incident and from which Exhibit “A” supra is meant to be a copy, is the exact replica of Exhibit “A” except the words “having admitted” in Exhibit “A” are replaced by the words “having committed”; which appellants contend imputes that appellants have admitted the commission of a criminal offence, which makes same defamatory as same is not true/ connect.

What did the lower court find/hold as regards this issue? At pages 120 - 121 of the record, the court stated, inter alia, as follows:-

“There is no dispute as to the fact contained in Exhibit “A”. Nor is there a denial that the Press Release emanated from the University of Abuja. It has also been shown that the respondent was issued with the Press Release by the University with other media organizations and it was his dirty to convey such information to the public.

In the cases of this nature, the publication has to be an accurate and fair report of what transpired and needs not be verbatim or word for word. If what is stated is substantially a fair and accurate account of what is sought to be conveyed then the statement cannot be said to be defamatory - Emeagwara v. Star Publishing Co. (2000)

5 SCNJ 175.

In the instant case, even if Exhibit “A” had contained a verbatim report of the Press Release Exhibit “B” the same facts would still have been conveyed to the public “having committed” and “having admitted” would not have changed the essence of the publication or conveyed a different meaning to the person reading the publication. B

The publication being a fair and accurate copy of the Press Release in my view is not defamatory of the plaintiffs. The substitution of the two letters “admitted” and “committed” does not in essence change the substance of the Press Release. The publication must be false to make the respondent liable in defamation, there was no such evidence before the lower court. In the circumstance, I uphold the trial court’s finding that defamation per se has not been fully established by the appellant against the respondent” C

I hold the considered view that the lower court cannot be D faulted in its holding supra. It should be noted that Exhibits “A” and “B” do not only concern or talk of, “all persons identified as having admitted [committed] acts of arson, looting” but also “all those persons identified as having played roles in aiding and abetting arson” etc as being the persons suspended by the University Authorities. The appellants were neither listed under “all persons identified as having admitted acts of arson” nor under “all those persons identified as having played roles in aiding and abetting arson...” Appellants were listed as those suspended as a result of having been “identified as F having admitted acts of arson,” etc “and all those persons identified as having played roles in aiding and abetting arson”. Appellants have however not complained of their being “identified as having played roles in aiding and abetting arson” which description is a hue reproduction of Exhibit “B”, the Press Release. They therefore do not consider their being described as “persons identified as having played G roles in aiding and abetting arson” as defamatory of their character!!!

I therefore agree with the lower courts that the publication complained of is an accurate and fair report of what transpired which need not be verbatim or word for word. It is substantially a fair and accurate account of what is sought to be conveyed which the law considers not to be defamatory. See Emeagwara v. Star Publishing Co. (2000) 5 SCNJ 175. It is my further view that in the circumstances of the facts of this case, the substitution of the words “admitted” for H

“committed” has not in essence changed the tenor, character and substance of the Press Release, Exhibit “B”

On Issue 2, learned counsel for appellants submitted that the words “admitted” and “committed” do not mean the same thing; that an allegation of commission of a crime remains allegation which
B may or may not lead to a conviction while the word “admitted” as contained in Exhibit “A” conveys the impression of admission of the crimes in question; that the lower court was in error in holding that the substitution of the words does not change the substance of the
C Press Release and urge the court to so hold.

On his part, learned counsel for the respondent submitted that the lower court was right in its holding and that the question as to whether the words complained of are capable of conveying defamatory meaning is a question of law to be decided by the court not the appellants and that the test to be applied in determining
D the question is objective - how a reasonable man understands the words or what he understands the words to mean, relying on *Dimbo v. Idogboe* (1983) 1 SCNLR 25 at 45; that a reasonable man would not understand the publication to be defamatory and urged the court to resolve the issue against appellants.

E I had, during the consideration of Issue 1, *supra*, substantially dealt with this issue and had clearly stated my agreement with the finding/holding of the lower court complained of in this issue. I stand by that holding.

F The above notwithstanding it should be borne in mind that the test to be applied by the court in determining whether a publication is libelous or not is not that of highly educated and accomplished professors of various academic disciplines, such as the appellants, as suggested by counsel for appellants in the appellants’ brief but that of reasonable man on the streets who comes into contact with the
G words in the publication. The question is whether such a reasonable man reading Exhibits “A” and “B” would find Exhibit “A” defamatory of the appellants, which I had earlier, along with the lower courts, held that he would not as, the same is plainly not defamatory.

H The reasonable men to be used by the judge in determining the question whether the words are defamatory in their ordinary meaning are men of ordinary intelligence while the publication has to be considered as a whole. See *Okolo v. Midwest Newspapers*

Corporation (1977) 1 SC 33 at 39 - 40: Dumbo v. Idugboe (1983) 1 SCNLR 29 at 46 - 47.

In considering the words in a libelous publication, it is the broad and general impression conveyed by the publication complained of that has to be considered not the meaning of each word under analysis taken out of context. See *Lewis v. Daily Telegraph Ltd.* (1964) AC 234 at 285 per LORD DEYIN. It is also very important to note that the law is settled that it is the words of the publication that must be construed as a whole, not a single word as canvassed before us. See *Okolo v. Midwest Newspapers Corp.* supra at 41 - 43 per OBASEKI JSC.

It is settled law that:-

“Words are not defamatory, however much they may damage a man in the eyes of a section of the community, unless they also amount to disparagement of the reputation in the eyes of right thinking men generally. To write or say of a man something that will disparage him in the eyes of a particular section of the community but will not affect his reputation in the eyes of the average right thinking man is not actionable within the law of defamation”, per IGUH JSC in *Registered Trustees of Amorc v. Awoniyi & Ors.* (1994) 7 NWLR (Pt.355) 154 at 194.

In the instant case, appellants counsel based his submission as regards the test to be used in determining whether the publication complained of is defamatory of appellants on the eyes of the academic community of professors in different fields of learning rather than the eyes of the average right thinking man in the Nigerian Society.

In the circumstance, I resolve Issue 2 against appellants. On the third and final issue, learned counsel for appellants submitted that where a defendant decides to publish falsehood, as in the instant case, the defence of qualified privilege is not open to it; that for the defence to avail respondent, the publication, Exhibit “A” must be a fair and substantially accurate reproduction of the Press Release, Exhibit “B”, which is not the case in the instant case.

Learned counsel for respondent submitted that where a respondent succeeds in proving that the publication is fair and accurate, it is prima facie privileged and the appellants will only succeed if they prove that respondent was actuated by malice or some other indirect motive, relying on Section 9(1) Defamatory Act, Cap 492,

Laws of the Federation of Nigeria, 1990; Emeagwara v. Star Printing and Publishing Co. Ltd supra at 507 - 508; that appellants have not shown any malicious intention on the part of the respondent, and urged the court to resolve the issue against appellants.

B It is clear that this issue has become spent in view of the resolution of the two issues supra. Once the words or publication complained of has/have been found not to be libelous/defamatory that is the end of the matter as the occasion in which the publication was made becomes very irrelevant. It is when a publication is considered defamatory that one goes further to consider the defence of C the defendant/respondent herein.

D In any event the lower courts have concurrently found that the publication was privileged and I have no reason whatsoever to disturb the said findings as no special circumstance warranting the interference of this court with the said findings have been made out by learned counsel for appellants. Appellants have also not produced evidence of malice on the part of respondent in making the publication, which I have held to be a fair and substantially accurate publication of the Press Release, Exhibit "B".

E In conclusion, I find no merit whatsoever in the appeal which is accordingly dismissed by me with costs which I asses and fix at N100,000.00 against appellants in favour of the respondent. Appeal dismissed.

F —

NGWUTA JSC

I have had the honour of reading in draft the read judgment just delivered by My Lord Onnoghen, JSC. I agree with the reasoning and conclusion reached. I will however put in a few words by way of G contribution.

A defamatory statement may be defined as a statement which tends:

- (a) to lower the claimant in the estimation of right thinking members of society generally, or
- H (b) to expose him to hatred, contempt or ridicule, or
- (c) to cause other persons to show or avoid him, or
- (d) to discredit him in his office, trade or profession, or

(e) to injure his financial credit.

See *Sim v. Stretch* (1936) 2 All ER 1237; *Guardian Newspapers Ltd v. Ajieh* (2005) 12 NWLR (Pt.938) 205.

In all cases the test of the defamatory meaning is the impression the words of the publication, taken as a whole, would convey to the reasonable reader presumed not naive, but capable of reading between the lines and not unduly suspicious so that he would choose a defamatory meaning over a non-defamatory meaning. See *Skuse v. Granada Television Ltd* (1996) EMLR 278; *Ayeni v. Adesina* (2007) All FWLR (Pt.370) 1451.

There are six co-terminous ingredients which the plaintiff has to prove to succeed in defamation:

- (1) Publication of the offending words.
- (2) That the words complained of refer to the plaintiff.
- (3) That the words are defamatory of the plaintiff.
- (4) That the words were published to third parties.
- (5) That the words were false or lack accuracy, and
- (6) That there are no justifiable legal grounds for the publication of the words. (See *Iloabuchie v. Iloabuchie* (2005) 13 NWLR (pt.943) 695 SC; *Concord Press (Nig.) Ltd. v. Olutola* (1999) 9 NWLR (pt. 620) 578.

In determining whether or not the words “admitted” used in place of the word “committed” is defamatory of the appellants the reference point is the average (ordinary) man on the street and not a group or a section of the community.

It is my view that the ordinary man reading Exhibits A and B will not see any substantial difference between the words “admitted” and “committed” in the context in which the two words appeared; therefore he will not consider the words admitted as defamatory of the appellants.

Based on the above and the fuller reasons in the lead judgment, I agree that the appeal is devoid of merit. I also dismiss the appeal and adopt the order for costs.

PETER-ODILI JSC

I am in total agreement with the judgment just delivered by

my learned brother, Walter Samuel Nkanu Onnoghen, JSC. Just to underscore the reasoning therein, I shall make a few comments.

This is an appeal against the decision of the court of Appeal Abuja Division dated 13th day of February, 2002 wherein the appeal of the Appellants was dismissed and the cross-appeal of the Respondents was allowed.

The facts relevant to this appeal are that the plaintiffs now Appellants at the Lower Court sued the defendants now Respondents for libel contained in a publication in the Democrat Newspaper of 27th June, 1994. Pleadings were filed and exchanged and at the trial the appellants called two witnesses while the Respondent called one witness and relied on the defence of qualified privilege.

In a considered judgment the trial court, Coram Sidi Bage J. found that the defence of qualified privilege availed the Respondent but went ahead to award damages in the sum of N120,000.00 (One Hundred and Twenty Thousand Naira) in favour of the Appellants.

The Appellants were dissatisfied with the judgment and appealed to the court of Appeal, Abuja while the Respondents cross-appealed against the said award of N120,000.00 against it. The Court of Appeal held that the publication in issue was not defamatory of the Plaintiffs/Appellants and that the trial court should not have awarded damages to the Appellants. It dismissed the appeal and allowed the cross-appeal. Dissatisfied with the said judgment, the Appellants have now appealed to this Court.

On the 15th day of January, 2013 date of hearing, the Appellants through learned counsel on their behalf adopted the Brief of the Appellants settled by Ikechukwu Ezechukwu and filed on 6/7/04. In the Brief were distilled three issues for determination, viz:-

1. Whether the publication of 27th June 1994 in the Democrat Newspaper by the respondent was a fair and accurate copy of the Press-Release issued by the University of Abuja i.e. Exhibit B and if not, whether the said publication is defamatory of the Appellants (Ground 1).

2. Whether the word 'admitted' has the same meaning with the word "committed" within the context of the press-release and the publication of 27th June 1994 and, if not, whether the substitution of the word "committed" with the word 'admitted' in the said publication affected the substance of the press-release (Ground 2).

3. Whether the defence of qualified privilege availed the Defendant/cross-Appellant?

Learned counsel for the Respondent adopted their brief settled by Olabisi O. Soyebo and filed on 11/11/04. Respondent also formulated three issues for determination similar in content with those of the Appellants but for clarity, they are as follows:-

1. Whether the Court of Appeal was right when it held that the publication was a fair and accurate copy of the press-release and not defamatory of the Plaintiff (sic).

2. Whether the Court of Appeal was right when it held that the substitution of the word 'admitted' for "committed" did not in essence, change the substance of the press release.

3. Whether the Respondent had indeed established the defence of qualified privilege.

The respective three issues of the two sides are two sides of the same coin as well as each issue being linked with the other two issues and so could and would be taken together.

Learned counsel for the appellants submitted that the publication of 27th June 1994, Exhibit 'A' which purported to be a reproduction of the University of Abuja press-release is defamatory of the appellants because it is not a fair accurate copy of Exhibit 'B'. That in the press-release the university alleged that the appellants have "committed" Arson, looting etc but the publication in issue, Exhibit 'A', rather than reporting fairly and accurately what the press-release said, decided rather falsely and maliciously and without any reasonable or probable cause to substitute the phrase, "having committed" with the phrase "having admitted" acts of Arson, looting etc.

Learned counsel further stated that the use of the phrase "having admitted" rather than "having committed" acts of arson, looting etc as was contained in Exhibit 'B' made Exhibit 'A' false and which materially and substantially changed the meaning of the whole press-release. That while the phrase "having committed" conveys the impression that the acts complained of are still mere allegations and subject to disputations which may or may not be true and thus creating a lot of doubt in the minds of the reading public and which to the public, most probably may be resolved in favour of the appellants having regard to their high positions in the Ivory Tower.

That the use of the phrase "having admitted" acts of arson

and looting portrays the appellants as self confessed criminals i.e. arsonists and looters which foreclosed any doubt of the guilt of the appellants. He cited *Okolo v. Midwest Newspaper Corporation* (1977) 1 SC 23 at 38.

B For the appellants was submitted that the Court below erred
when they held that the substitution of the two words admitted and
committed did not in essence change the substance of the press
release. That they concede that a press-release emanating from the
University of Abuja, a public institution which informs the public on
C the goings on within the University community is a matter of public
interest for which the respondent has a responsibility to get across
to the wider society. That it is protected even if the press-release is
defamatory. He said however that if the defendant decides as in this
instance to publish falsehood instead of what the press-release says
then the occasion of privilege is completely removed and destroyed.
D He said for the defence of qualified privilege to be sustained the pub-
lication must be fair and substantially accurate reproduction of the
press-release i.e. Exhibit 'B'. That the supplanting of the fabricated
phrases both grammatically and contextually changed the whole
substance of the press-release from mere allegation which admits of
E doubts and disputations to admissions and confessions which exclude
doubts and disputation as to the guilt or otherwise of the appellants.

Countering the submissions of the Appellants' counsel,
learned counsel for the Respondent said a careful comparison of
F Exhibits A and B show the two publications are the same, the only
difference being the substitution of the word "admitted" for "com-
mitted" in paragraph 1 of Exhibit 'A'.

Learned counsel for the Respondent said it is settled law that
when the whole report is a substantially accurate account of what took
place, the fact that there are a few slight inaccuracies is immaterial,
G particularly where the inaccuracy is not of a substantial nature. That
viewed liberally there was no malicious intention of defaming the
Appellants and the publication was a fair and accurate report. He
referred to *Emeagwara v. Star Printing & Publishing Co. Ltd.* (2000)
10 NWLR (Pt.769) 489 at 504 - 505.

H He further stated that the question whether the words
complained of are capable of conveying a defamatory meaning is
a question of law which must be decided by the court and not the

appellants. He said the test whether the words complained of are defamatory is objective and determined from how a reasonable man coming in contact with them will understand them. He cited *Dimbo v. Idoeboe* (1983) 1 SCNLR 25 at 45.

Learned counsel went on to say that where the Respondent succeeds in proving that the publication is fair and accurate then it is prima facie privileged and the Appellants will only succeed if they can prove that the Respondent was actuated by malice or some other indirect motive. He relied on Section 9(1) Defamation Act Cap. 492 Laws of the Federation of Nigeria 1990, *Emeagwara v. Star Printing & Publishing Co. Ltd.* (supra) at 507 - 508.

That the concurrent findings of the two Courts below will therefore not be interfered with since no special circumstances have justified such interference. He cited *Emeagwara v. Star Printing & Publishing Co. Ltd.* (supra) 508; *Duyile v. Ogunbayo & Sons Ltd.* (1988) 1 NWLR (Pt.72) 601 at 512.

Having perused the submissions which summary has been stated above, I would say without delay that this court is being called upon by the Appellants to interfere with the concurrent findings of the two Courts below. The findings and conclusion being that the publication is fair and accurate excused from defamation by privilege. A situation rejected by the Appellants who request a departure from this court. It needs be said that in the defence of a qualified privilege successfully made out by the defendant in the trial court and affirmed by the Court of Appeal, the only way this court can wade in contrariwise is that the Appellants have established that the publication made by the Respondent was actuated by malice or by some other ulterior motive which propelled the substitution with the word 'admitted'. While the Appellants contended that the inaccuracy brought about the substitution of the one word for the other is material and substantial, the Respondent takes the view that it is immaterial and did not change the purport of the publication which was basically the dissemination of the information to the public albeit the majority being those in the University Community. See *Emeagwara v. Star Printing & Publishing Co. Ltd* (2000) 10 NWLR (Pt.769) 489 at 504; Section 9(1) Defamation Act CAP. 492 Laws of the Federation of Nigeria 1990; *Duyile v. Ogunbayo & Sons Ltd.* (1988) 1 NWLR (Pt.72) 601 at 612.

The publication at this base of this appeal which brought about the complaint admitted in evidence at the trial Court as Exhibit 'A' is quoted hereunder thus:-

B "The Abuja University on Thursday announced the sus-
pension of Five professors and Seven other staff of the institution
for their alleged role in the February student unrest that led to the
closure of the University. The University Registrar and Secretary to
the governing Council, Mallam Yakubu H. Habi said in a statement
that the decision was carried out in line with the provision of Decree
C No.106 of 1992 that established the institution and regulations gov-
erning the services of senior staff of the University. The penal Report
according to the statement indicated that all persons identified as
having admitted acts of arson, looting and all those persons identified
as having played roles in aiding and abating arson be charged to a
Special Tribunal (miscellaneous Offences) as prescribed in Decree
D 20 of 1984 as amended by Decree 22 of 1986. Those suspended
are Professor A. H. Ekpo, M. A. Owoade, K. O. Ologe, S. G. Tyoden
and A. A. Olatunde, others are Dr. Y. B. C. Omole, Miss Folasade
Saba, Mr. Kwaghkondo Agber, Mr. Adeboyega Kolawole, Mr. David
Aiyejina."

E The original publication as a press-release issued by the
University of Abuja admitted in evidence as Exhibit 'B' from which a
reproduction was made by the Respondent and published verbatim in
the Newspaper apart from the use of the word "committed" instead
F of "admitted". This error embedded reproduction was admitted as
Exhibit 'A' being the fulcrum of the suit basis of this appeal.

The contention of the Appellants is that the use of the
phrase "having admitted" rather than "having committed" acts of
arson, looting etc as contained in Exhibit 'B' made Exhibit 'A' false
as it materially and substantially changed the meaning of the whole
G press-release. That on the other hand the impression conveyed by the
phrase complained of "having admitted,, connotes that the appellants
are self-confessed criminals i.e. arsonists and looters while the earlier
phrase, having committed shows the acts are still mere allegations
and subject to disputation as to the truth of the allegation or falsity
thereof.

H This stance of the Appellants is understandable since they
are approaching the interpretation from the Ivory Tower with profes-

social spectacles. That is not a problem so long as it remains in that academic discussion environment. The law of defamation takes a different course which is that the test is not for the subjective reading and understanding of such a high class elite but the objective test of the ordinary peoples' understanding or what the reasonable man in the street would take the word "admitted" to mean as against "committed". In my view along this objective reasonable man's test is that the two words would be taken as meaning and connoting the same thing which has no room for the high faulting reading and understanding of a University community people with the highly educated in a brain storming session and excluding the junior staff or those executing menial jobs within that same environment who could even be stark illiterates. These latter persons have been factored within that test of the reasonable man, and the publication was also intended for them. Therefore the standard is that which would accommodate the highly educated or literate as well as the not so educated or even the ignorant and in this the Appellants' case has fallen short. See *Dimbo v. Idogboe* (1983) 1 SCNLR 25 at 45. B C D

The above being what it is, the only option open to the Appellants was to establish that the substitution by the use of the word "admitted" as against "committed" was brought about by malice. I must hasten to add that nothing in the Record has any iota of evidence to bring in malice as having activated the publication. This is so because only malice being the impelling factor would negate the defence of qualified privilege as put up by the Respondent. The absence of that ulterior motive which would have changed the course of events being absent, I see no reason for this Court's entertaining the right to upset the position as determined by the two Courts below. I rely on *Emeagwara v. Star Printing & Publishing Co. Ltd.* (supra) G 507. E F

From the foregoing and the deeper insight as shown in the lead judgment, I too dismiss this appeal. I abide by the consequential orders therein made. H

ARIWOOLA JSC

My learned brother, Onnoghen, JSC obliged me with a copy of the draft of the lead judgment just delivered. I am in total agreement with the reasoning therein and the conclusion arrived thereat. I adopt

the reasoning as my own and also come to the conclusion that the defence of qualified privilege availed the respondent, rendering the appeal unmeritorious. It deserves to be dismissed. Accordingly, I too dismiss the appeal and abide by the consequential orders in the said lead judgment, including that on costs.

B

MUHAMMAD JSC

C I had a preview of the lead judgment of my learned brother Onnoghen, JSC, and entirely agree with his reasoning and conclusion that the appeal lacks merit.

For all the reasons adumbrated in the lead judgment which I hereby adopt as mine, I also dismiss the appeal. I abide by the consequential orders made in the said judgment.

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