

SUPREME COURT OF NIGERIA
FRIDAY 6TH JUNE, 2014. SC. SC.127/2006
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
B. RHODES-VIVOUR, K. B. AKA'AH, J. I. OKORO, JJSC

CHIEF NYA EDIM EKONG APPELLANT
AND
1. CHIEF ASUQUO E. OTOPO
2. CHIEF EDET BASSEY EDIM
3. MR. E. E. EKPO RESPONDENTS

LIBEL - Defamation - Meaning of - Statement is defamatory where it is calculated - To lower a person in the estimation of right thinking men - Or to expose him to hatred or ridicule (H1)

LIBEL - Defamation - Ingredients - For statement to constitute an action in libel - It must be false and defamatory of plaintiff - As it is not every statement which causes damages - That gives rise to a cause of action (H2)

LIBEL - Defamation - Proof - Plaintiff must prove that defendant published in permanent form - A statement that refers to plaintiff - Which conveys defamatory meaning to people (H3)

LIBEL - Defamatory words - Particularization of - Plaintiff must set out in his statement of claim - Exact words which he alleges to be defamatory of him - To enable court determine if there is ground of action (H4)

EVIDENCE - Documents - Credibility of - Documents tendered before trial court - Are part of evidence to be considered - Which are subject to scrutiny and to be tested for credibility by the court (H5)

COURTS - Documents - Examination of - Where trial court fails to examine documents - Appellate court can evaluate same - And draw such inferences as it deems fit (H6)

TORTS - Defamation - Defence - Where it is determined that words

complained of - Do not constitute defamation - It becomes unnecessary to consider any defence available to defendant (H7)

FACTS

Plaintiff/appellant instituted this action against defendants/respondents at the High Court of Cross River State, seeking inter alia damages against respondents for libel contained in publications made by respondents against appellant. Appellant also asked for an order of injunction restraining respondents from further publication of the libel and from demanding the penalty stated in their publications. In their defence, respondents denied liability and raised inter alia the defences of qualified privilege and fair comment. The case as presented by appellant is that respondents wrote a petition wherein they falsely and maliciously published defamatory material against him. The said petition was admitted in evidence as exhibit D.

The petition was sparked off by a fracas sometime in 1996 at one Ediba swamp and marshlands between the indigenes of Akim clan on the one hand and those of the protesting clans on the other hand. Appellant was mentioned as the leader of the agents of Akim clan in the fracas. Appellant's contention is that he was libeled in the said petition. At the end of hearing, judgment was entered against respondents and award of N10,000,000.00 made against them as general damages. Dissatisfied, respondents appealed to the Court of Appeal Calabar Division. The court held that the publications were not defamatory of appellant. The appeal was thus allowed. Aggrieved, appellant lodged appeal in Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the plaintiff has proved that the allegation in exhibits D, F and H referred to him and were published by the defendants to a third party.
2. Whether the lower court was right in holding that the allegation complained of was true and as such not libelous of the plaintiff.
3. Whether the defences of qualified privilege and fair comment availed the defendants in this case.
4. Whether the lower court was right in refusing to re-assess the lump sum awarded as general damages by the trial court for the three causes of action in this suit.

HELD (Unanimously dismissing the appeal per **OKORO**

JSC)

LIBEL - Defamation - Meaning of

1. A statement is said to be defamatory where, if published of and concerning a person, is calculated to lowering him in the estimation of right-thinking men or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business. Every person has a right to the protection of his good name, reputation and the estimation which he stands in the society of his fellow citizens. Thus, whoever publishes anything injurious to that good name, or reputation commits a tort of libel, if written and slander, if oral. It must be noted that the test in determining whether the words complained of are defamatory is always that of a reasonable man. That is to say, given the environment and the circumstances in which the statements were made and published what would be the interpretation and understanding of a man of ordinary understanding. (p. 2497 F)

LIBEL - Defamation - Ingredients

2. There is need to emphasize that it is not every statement which is made and which annoys a person that is defamatory. It is also not every vulgar statement, mere abuse or insult which is actionable. Thus, whenever a statement is placed before a court to determine whether or not it is defamatory, the court must make findings of fact whether the words complained of are capable of bearing defamatory meaning and then ask and find answer to the question whether the plaintiff was actually defamed by those words.

But let me state that it is not every statement which causes damages to a plaintiff that gives rise to a cause of action. The statement, to found an action in libel must be false and defamatory of the plaintiff. (pp. 2498 B/2500 G)

LIBEL - Defamation - Proof

3. This court has laid down in quite a number of decisions certain conditions which must be satisfied before defamation can be proved. In an action for libel, the plaintiff must prove the following:

- B **1. That the defendant published in a permanent form a statement;**
2. That the statement referred to the plaintiff;
3. That the statement conveys defamatory meaning to those to whom it was published; and
C **4. That the statement was defamatory of the plaintiff in the sense that:**
(a) It lowered him in the estimation of right-thinking members of the society; or
D **(b) It exposed him to hatred, ridicule or contempt; or**
(c) It injured his reputation in his office, trade or profession; or
(d) It injured his financial credit. (p. 2498 E)

E *LIBEL - Defamatory words - Particularization of*

- 4. Good enough, the appellant has set out the words he alleges are libelous and or defamatory because in an action for libel, a plaintiff must set out in his statement of claim the exact words which he alleges to be defamatory of him. This is to**
F **enable the court to determine whether they constitute a ground of action. (p. 2500 H)**

EVIDENCE - Documents - Determination of

- G **5. It is trite that all documents tendered before a court at the trial of a case is part and parcel of the evidence to be considered in the determination of issues before the court.**

Such documents usually referred to as exhibits are subject to scrutiny and to be tested for credibility and weight by
H **the trial court. (p. 2503 H)**

Documents - Examination of

6. Where the trial court fails to examine documents tendered before it, an appellate court is in a good position to evaluate

such exhibits.

I think since exhibit C was tendered before the trial court and was part of the record of appeal before the court below, the justices of that court were eminently qualified to draw such inferences as they found fit and proper so to do. This is much more so as the criminal offence for which the appellant was discharged and acquitted by the Chief Magistrate did not address the issues bordering on the ownership of the swamp and marshlands arising from the very acts for which the appellant was charged. I need not say more on this. (p. 2504 A)

TORTS - Defamation - Defence

7. Having upheld the decision of the lower court that the statements complained of by the appellant were not defamatory, the backbone of this appeal has been broken. There remains nothing more to be said in this appeal.

Where it is determined that the words complained of do not constitute the tort of defamation, it becomes unnecessary to consider any defences that may be available to the defendant. There is therefore no need to consider issue three as to whether defences of qualified privilege and fair comment availed the respondents. Also, issue four becomes academic as it would serve no useful purpose to determine whether the lower court was right in refusing to re-assess the lump sum awarded as general damages by the trial court for the three causes of action. (p. 2504 D)

NOTABLE POINT OF INTEREST

RHODES-VIVOUR JSC

1. Defamation – Defence – Plea of fair comment

A plea of fair comment succeeds as a defence if the facts relied on by the defendant are sufficient to justify the statement or publication that the plaintiff finds to be libelous. The facts must be the truth. (p. 2507 E)

REPRESENTATION

Essien H. Andrew Esq., for the Appellant

O. O. Adebayo Esq., with Eunice Agbor, (Miss), for the Respondents

CASES REFERRED TO

- B Offoboche v. Ogoja Local Government (2001) FWLR (pt. 68) 1051
- Sketch Publishing Co. Ltd. v. Ajagbemokeferi (1989) 1 NWLR (pt. 100) 678
- Ejabulor v. Osha (1990) 5 NWLR (pt. 148) 1
- C Onu v. Agbese (1985) 1 NWLR (pt. 4) 704
- Zik Enter. Ltd. v. Awolowo (1955) 14 WACA 696
- Okolo v. Midwest Newspaper Corporation (1977) 1 SC 33
- Atoyebi v. Odudu (1990) 6 NWLR (pt. 157) 384
- Onyejike v. Anyasor (1992) 1 NWLR (pt. 218) 437
- D Din v. African Newspapers Ltd (1990) 2 NWLR (pt. 139) 392
- Dumbo v. Idugboe (1983) 1 SCNLR 29
- Esika v. Medolu (1997) 2 NWLR (pt. 485) 54
- Nsirim v. Nsirim (1990) 3 NWLR (pt. 138) 285
- Ugo v. Okafor (1996) 3 NWLR (pt. 438) 438
- E Iloabachie v. Iloabachie (2005) All FWLR (pt. 272) 223
- Concord Press Nig. Ltd. v. Olutola (1999) 9 NWLR (pt. 620) 578

LEAD JUDGMENT BY OKORO JSC

- F This is an appeal against the judgment of the Court of Appeal, Calabar Division delivered on 5th of December, 2005. In the said judgment, the lower court, in a unanimous decision allowed the respondent's (as appellants) appeal against the judgment of the High Court of Cross River State, and dismissed the appellant's cross appeal.
- G I shall briefly state the facts which gave rise to this appeal.

- The appellant as plaintiff sued the defendants (now respondents) over a petition written by the 1st to 5th defendants in which he claimed that they falsely and maliciously published defamatory material concerning him. The alleged offensive publication was contained in a letter titled *"Protest by the Big Qua, the Idundu and the Ediba Clans relating to claims to Ediba Swamp and Marsh Lands"* addressed to HRH Ndidem U. Iso, the Ndidem of the Quas. The said petition was admitted in evidence as exhibit D.
- H

The petition was sparked off by a fracas on the 21st day of

October, 1996 at the Ediba swamp and marshlands between the indigenes of Akim clan on the one hand and those of the protesting clans. In the said petition, the 1st to 5th defendants as chiefs of Big Qua, Idundu and Ediba narrated the events of 21st October, 1995 and called on the Ndidem “*as our leader - to whom matters of this nature are appropriately referable for detached and just resolution.*”^B The appellant was mentioned as the leader of the agents of Akim clan in said fracas which resulted in the machete cuts inflicted on some of the indigenes of the petitioners.

Neither the Ndidem nor Akim clan (of which the Ndidem was Clan Head) addressed the issues raised in the petition. Rather their solicitors wrote exhibit E affirming the ownership of the swamplands by Akim clan and to which the 6th defendant replied as secretary to the Qua Clans Constituted Assembly in exhibit F.^C

Meanwhile, the Qua Clans Constituted Assembly proceeded D to set up an arbitration panel to look into the complaint of the three clans against Akim and came up with its findings as contained in exhibit H. It was against this background that the appellant sued the respondents at the trial court claiming that he was libeled in exhibits D, F and H.^E

Initially the appellant sued nine defendants at the High Court of Cross River State for the following reliefs:-

“(1) N10 million against the 1st to 5th defendants as general damages for the libel contained in a petition dated 5th December, 1995.”^F

(ii) N10 million against all the defendants for the libel contained in a letter dated 19th March, 1997.

(iii) N30 million against all the defendants for the libel contained in a document titled “judgment” and dated 5th June, 1997.^G

(iv) An order that the defendants write an apology and a retraction of the libel individually and file same in court and serve it on the plaintiff and on all the persons to whom the libelous documents were originally addressed.

(v) An order of injunction restraining the defendants from further publication of the libel and from demanding the penalty stated in their libelous “judgment” of 5th July, 1997.”^H

Some of the original nine defendants have since died and their names were consequently struck out. Thus the 3rd, 4th, 6th, 7th, 8th

and 9th defendants at the High Court became 1st, 2nd, 3rd, 4th, 5th and 6th respondents respectively.

However, at the hearing of this appeal on 25/3/14, the 4th, 5th and 6th respondents were reported dead. Their names are accordingly struck out. We now have the 1st, 2nd and 3rd respondents
B only to defend this appeal.

In their statement of defence, the respondents denied liability and raised inter alia the defences of qualified privilege and fair comment.

C At the close of the case, the trial court entered judgment against the respondents and awarded N10,000,000.00 against them as general damages. The defendants' appeal against the judgment of the trial court was upheld by the Court of Appeal. The lower court also dismissed the appellant's cross appeal.

D Dissatisfied with the judgment of the lower court, the appellant, with the leave of this court filed notice of appeal on 2nd March, 2006. There are eight grounds of appeal out of which the appellant has distilled four issues for the determination of this appeal. In the appellant's brief settled by Essien H. Andrew, Esq., and filed on 28th
E August 2006 which was adopted on 25th March, 2014 when this appeal was heard, the four issues are listed on page four thereof. The issues are:

1. Whether the plaintiff has proved that the allegation in exhibits D, F and H referred to him and were published by the defendants to a third party.
F

2. Whether the lower court was right in holding that the allegation complained of was true and as such not libelous of the plaintiff.

3. Whether the defences of qualified privilege and fair comment
G availed the defendants in this case.

4. Whether the lower court was right in refusing to re-assess the lump sum awarded as general damages by the trial court for the three causes of action in this suit.

H The learned counsel for the respondents, George N. Neji, Esq., however formulated three issues for the consideration of this appeal. In their brief filed on 1st November, 2006 the three issues are contained on page two and state as follows:-

1. Whether the lower court was right in holding that the contents of exhibits D, F and H were not defamatory of the plaintiff

(grounds 1 - 5 & 8).

2. Whether the defences of qualified privilege and fair comment was available to the defendants (ground 6).

3. Whether the lower court was right in refusing to re-assess the lump sum awarded as general damages by the trial court (ground 7). B

I intend to resolve issues 1, 2 and 3 of the appellant together which are in tandem with issues 1 and 2 of the respondents. Issue 4 of the appellant which is the same as issue 3 of the respondents shall be taken separately.

Arguing issue No. 1, the learned counsel for the appellant submitted that every publication and republication of a false allegation constitutes a separate and distinct cause of action for libel, referring to the case of *OFFOBOCHE V. OGOJA LOCAL GOVERNMENT* (2001) FWLR (pt.68) 1051. Referring to exhibits D, F and H, he submitted that the exact words complained of in the three documents are reproduced in paragraphs 8, 15 and 19 of the amended statement of claim. On the five essential elements of libel which must be proved, learned counsel referred to the case of *SKETCH PUBLISHING COMPANY LTD V. AJAGBEMOKEFERI* (1989) 1 NWLR C (pt. 100) 678 at 704. It is his further contention that it was not in dispute that the words complained of in exhibits D, F & H were published in a permanent form, and that it was the defendants who published them to third parties. In respect of exhibit D, he referred to paragraphs 8 and 9 of the amended statement of claim and paragraphs 7 and 9 of the statement of defence. For exhibit F, he referred to paragraphs 15 and 15a of amended statement of claim and paragraph 12 of the statement of defence. In respect of exhibit H, he referred to paragraph 21 of amended statement of claim and paragraph 15 of the statement of defence. It is his argument that the plaintiff's evidence on the publication of the libel stood unchallenged by the defendants. D
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In furtherance of his argument learned counsel referred to paragraph 3, page 292 of the record, where the court below held that *"it is pertinent to observe that the appellants do not deny the writing or publication of the words in question (i.e. exhibits D, H and F)."* and wondered why the court below held that it was not proved that the defendants published the documents. H

Learned counsel then went through the evidence adduced to show that the defendants/respondents published the three documents.

Learned counsel further submitted that even if the publication was at the instance of the Qua Clans Constituted Assembly, the plaintiff was still in order when he sued the defendants alone rather than
 B the entire membership of the assembly, referring to the case of EJABULOR v. OSHA (1990) 5 NWLR (pt. 148) 1. Also learned counsel submitted that the words complained of in exhibits D and H mentioned the name of the appellant except in exhibit F where parties
 C joined issues. He submitted that defamatory words need not refer to a plaintiff by name, provided it was published in a context where those to whom it was published understood the words as referring to the plaintiff, citing the cases of Onu V. Agbese (1985) 1 NWLR (pt. 4) 704 at 718, Dulumo V. Sketch Publishing Company Ltd. (1972) 5
 D SC 308; Zik Enterprises Ltd. V. Awolowo (1955) 14 WACA 696 at 703.

On the second issue, he submitted that the words complained of were allegations of a criminal assault and exposed the plaintiff to hatred, contempt and odium by all right thinking people as no criminal would be held in high esteem, citing the case of Okolo V. Midwest Newspaper Corporation (1977) 1 SC 33 at 38. Learned counsel argued that the defence of justification was made suo motu by the Court of Appeal whereas the said issue was made as an obiter dictum
 E by the learned trial judge. That from the evidence of the appellant at
 F the trial court, the respondents' allegation against the appellant was false and that was why the Magistrate's court dismissed the charge against the appellant. Learned counsel concluded that the appellant did not say that the words meant he was a murderer but that it portrayed him as an attempted murderer.
 G

On the 3rd issue of the defence of qualified privilege and fair comment learned counsel submitted that the court below, apart from merely acknowledging the defences of fair comment and qualified privilege, failed to go into the merits of those defences because of its
 H findings that the allegation against the plaintiff was true and that it was not the defendants who published that allegation to third parties. It was his view that the respondents pleaded the defences with respect to the libel contained in exhibit D alone but that during arguments in court, they sought to extend it to exhibits F and H. Accord-

ing to him, this is not possible, citing the case of Sketch V. Ajagbemokeferi (supra), Offoboche V. Ogoja Local Government (supra).

On qualified privilege, counsel listed conditions for it to avail the respondents and concluded that it did not inure in their favour. He cited the case of Atoyebi V. Odudu (1990) 6 NWLR (pt. 157) 384. Learned counsel urged this court to resolve these issues in favour of the appellant. B

On his part, the learned counsel for the respondents, George N. Neji Esq., submitted on the first issue that the test in determining whether certain words are defamatory has always been that of a reasonable man. That given the environment and the circumstances in which the statements or words complained of were published, what sort of interpretation or understanding would a man of ordinary understanding ascribe to it? He argued that it would be impossible in the instant case to consider the use of the words complained of, detached from all that accompanied the opening paragraph of the petition (exhibit D). He submitted that in this case, given the environment and the circumstances in which the statements or words complained of were “*published*”, a man of ordinary intelligence will not come to the conclusion that the appellant (plaintiff) is a criminal murderer. C
D
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On what constitutes libel, he submitted that to found an action in libel the alleged libelous statement must not only be false, it must also be defamatory of the plaintiff, referring to the cases of Onyejike V. Anyasor (1992) 1 NWLR (pt. 218) 437, Din V. African Newspapers Ltd (1990) 2 NWLR (pt. 139) 392 and Dumbo V. Idugboe (1983) 1 SCNLR 29. F

Learned counsel submitted that in this case, there is evidence that the land dispute of 21/10/92 was real where the appellant played a prominent role. Exhibit D, according to him, was based on a factual situation. G

Learned counsel further submitted that publication to a third party is the gist of the tort of libel and that the appellant failed to prove this vital ingredient of his claim. He relies on the case of Din V. African Newspapers Ltd (supra), Esika V. Medolu (1997) 2 NWLR (pt. 485) 54, Nsirim V. Nsirim (1990) 3 NWLR (pt. 138) 285, Ugo V. Okafor (1996) 3 NWLR (pt. 438) 438. H

Learned counsel argued that in this case, the alleged publication was made to the Ndidem who is the clan head of Akim on whose behalf the act complained of was carried out. He submitted that a petition written to the appointor of the appellant cannot in law be regarded as publication to a third party to ground an action in libel.

B Learned counsel submitted further that the appellant did not allege or plead any innuendo in respect of exhibit F. As regards exhibit H, he submitted that it was a decision of the Qua Clans Constituted Assembly and that the said resolution was forwarded to the Ntoe's cabinet by the 66 defendant upon request of the cabinet, and C that this cannot amount to publication. Moreso, that the appellant was not a party to exhibit H, and there is nothing in the document which suggested libel against him.

On the second issue, relating to the defences of qualified privilege D and fair comment the learned counsel for the respondents also agree that the court below merely mentioned them but failed to properly consider same, and that is why the appellant has represented it before this court in the 6th ground of appeal. He submitted that in considering whether the occasion was an occasion of privilege the E court will regard the alleged libel and will examine by whom it was published, to whom it was published, when, why and what circumstances it was published. That, it is after taking the above factors into consideration that the court will see whether there exists a relationship F between the parties which gives rise to a social or moral right or duty, citing the cases of *Iloabachie V. Iloabachie* (2005) ALL FWLR (pt. 272) 223, *NTS V. Babatope* (1996) 4 NWLR (pt. 440) 75.

It was a further submission of the learned counsel that the authors of exhibit D had a social and moral responsibility as heads of G the aggrieved clans to protest to the Ndidem against the excesses of the agents of Akim so that their common heritage may be preserved. According to him, there is therefore reciprocity of interest in relation to the communication of the defendants to the Ndidem for the defence of qualified privilege to avail them in the event the words complained of being found to be defamatory. He contended that the H occasion was privileged and that malice cannot be imputed.

With respect to defence of fair comment, he submitted that a defendant who pleads it must show that the matter is of public interest, the comment is based on true facts and that the comment on the

fact is fair. He referred to the case of Ugo V. Okafor (supra), Concord Press Nig. Ltd. V. Olutola (1999) 9 NWLR (pt. 620) 578; Ajileye V. Fakayode (1998) 4 NWLR (pt. 545) 184. Learned counsel urged this court to resolve these issues in favour of the respondents.

I shall now consider the three issues as I earlier said.

The first issue is whether the appellant as plaintiff proved that the allegations in exhibits D, F and H referred to him and were published by the respondents to a third party. B

The issue of publication, having been decided by the court below without any appeal on it, I shall merely mention it and go to the issues which are contentious. On page 292 of the record of appeal, the lower court held as follows: C

“It is pertinent to observe that in the instant case the appellants do not deny the writing or publication of the words in question (i.e. in exhibits D, H and F). From my understanding of the appellants, D arguments, their denial is on whether or not the words are capable of conveying a defamatory meaning as interpreted by the respondent or similar to the meaning ascribed to them by him.”

The lower court went ahead to hold that the words complained of were not defamatory. As I alluded to above, there is no appeal against the decision of the lower court that the respondents herein have not denied writing the documents complained of or publishing them. For me issue of writing exhibits D, F and H and making them available to third parties appears to have been settled and I do not wish to split hairs on it. I shall now consider whether the contents of these documents are defamatory. F

A statement is said to be defamatory where, if published of and concerning a person, is calculated to lowering him in the estimation of right-thinking men or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business. Every person has a right to the protection of his good name, reputation and the estimation which he stands in the society of his fellow citizens. Thus, whoever publishes anything injurious to that good name, or reputation commits a tort of libel, if written and slander, if oral. It must be noted that the test in determining whether the words complained of are defamatory is H

always that of a reasonable man. That is to say, given the environment and the circumstances in which the statements were made and published what would be the interpretation and understanding of a man of ordinary understanding. See SKETCH

PUBLISHING COMPANY LTD & ANOR V. ALHAJI AZEES A. AJAGBEMOKEFERI (1989) 1 NWLR (pt. 100) 678, OFFOBOCHE V. OGOJA LOCAL GOVERNMENT (2001) FWLR (pt.68) 1051.

There is need to emphasize that it is not every statement which is made and which annoys a person that is defamatory.

It is also not every vulgar statement, mere abuse or insult which is actionable. Thus, whenever a statement is placed before a court to determine whether or not it is defamatory, the court must make findings of fact whether the words complained of are capable of bearing defamatory meaning and then ask and find answer to the question whether the plaintiff was actually defamed by those words. In SKETCH PUBLISHING COMPANY

LTD V. AJAGBEMOKEFERI (supra) this court held that in deciding whether a word is capable of defamatory meaning, the court will reject that meaning which can only emerge as the product of some strained or forced or utterly unreasonable interpretation. See OKOLO V. MIDWEST NEWSPAPER CORPORATION (1977) 1 SC 33, OKAFOR V. IKEANYI (1973) 3 - 4 SC 99.

This court has laid down in quite a number of decisions certain conditions which must be satisfied before defamation can be proved. In an action for libel, the plaintiff must prove the following:

1. ***That the defendant published in a permanent form a statement;***
2. ***That the statement referred to the plaintiff;***
3. ***That the statement conveys defamatory meaning to those to whom it was published; and***
4. ***That the statement was defamatory of the plaintiff in the sense that:***

- (a) ***It lowered him in the estimation of right-thinking members of the society; or***
- (b) ***It exposed him to hatred, ridicule or contempt; or***
- (c) ***It injured his reputation in his office, trade or profession; or***

(d) It injured his financial credit. See DULUMO V. SKETCH PUBLICATION COMPANY LTD (1972) 5 SC 308, ONU V. AGBESE (1985) 1 NWLR (pt. 4) 704, SKETCH V. AJAGBEMOKEFERI (supra).

I shall now bring to the fore the words or statements which the appellant opines were made by the respondents which defamed him. In respect of exhibit D, the appellant pleaded in paragraph 8 of his amended statement of claim the following statement allegedly made by the respondents.

“As some of the riparian and beneficial owners of the Ediba Swamp and Marsh lands among others, we feel very strongly about recent developments there and send this protest to you as our leader and to the Qua Clans Constituted Assembly as our apex organization to which matters of this nature are appropriately referable for detached and just resolution. On the 21st October, 1995, agents of Akim Qua clan led by Mr. Nya Edim Ekong allegedly invaded the Ediba Swamp and Marshlands viciously inflicting machete cuts on some of our indigenes.”

In respect of the statement in exhibit F alleged to have defamed the appellant, he has referred to paragraph 15 and 15a of his amended statement of claim. The said statement says:

“Within those swamps and marshlands one Ansa Ika and another (all indigenes of the complaining clans) were dastardly attacked and macheted by agents of your clients.

That gave rise to the petition by the disgruntled petitioners requiring a proper defence and explanation of such action by your clients before this body which they also constitute.

With all due respect, you will agree that, your letter does not afford, and can hardly provide, the explanation of such conduct of the agents of your client. The assembly still expects a proper reaction from your clients.”

As regards exhibit H, the alleged defamatory statement is pleaded in paragraph 19 of the amended statement of claim. It states:

“This rather protract matter came before the Qua Clans Constituted Assembly by way of joint protest dated 9th December, 1975 by the Big Qua, the Idundu and the Ediba clans (hereinafter referred to as plaintiffs) calling for the condemnation of acts of aggressive invasion of the Ediba Swamp and Marshlands on the 21st of October,

1995 and the vicious infliction of machete cuts on their indigenes without cause by agents of the Akim clan led by one Mr. Nya Edim Ekong.”

B “We find the aggressive invasion on the 21st of October, 1995 of the common property of the parties by agents of the defendants proved.”

C “Where any Qua indigenes were caught misbehaving themselves, our custom requires a report to be made to their families or clan of origin for appropriate sanctions and or reparations. Macheting of individuals is not the custom of the Quas. The threat to use the machete on individuals or in fact infliction of machete cuts on individuals is a sacrilege called ‘egbom Obom’ which attracts severe sanctions.

D Whereas in this case there was no denial or explanation offered for such action, we find the charge of unprovoked vicious infliction of machete cuts on Ansa Ika and one other by agents of the defendant proved.”

E “For the aggressive invasion of that common property and the sacrilege committed thereon the defendants shall pay a token fine of a live she goat with 24 bottles of drink (three of which must be strong) and a reparation of N2,000 to each of the victims of the machete cuts.”

F The above three statements are curled from exhibits D, F and H respectively and are pleaded by the appellant as the statements which defamed him. As I had stated above, the respondents have not denied authorship of any of the exhibits or part of it complained of. The statements were meant for persons other than the appellant. There is no difficulty in these areas. **But let me state that it is not every statement which causes damages to a plaintiff that gives rise to a cause of action. The statement, to found an action in libel must be false and defamatory of the plaintiff.** See *ONYEJIKE v. ANYASOR* (1992) 1 NWLR (pt. 218) 437, *DIN V. AFRICAN NEWS-PAPERS LTD* (1990) 2 NWLR (pt. 139) 392; *DUMBO v. IDUGHOE* H (1983) 1 SCNLR 29.

Good enough, the appellant has set out the words he alleges are libelous and or defamatory because in an action for libel, a plaintiff must set out in his statement of claim the exact words which he alleges to be defamatory of him. This is

to enable the court to determine whether they constitute a ground of action.

In the instant case, the three statements have a thin line connecting them, starting from exhibit D, the petition to the Ndidem of the Quas, their paramount ruler. In that petition, the respondents as chiefs of Big Qua, Idundu and Ediba narrated the events of 21st October, 1995 in respect of their alleged swamp and marshlands and called on the Ndidem *“as our leader ...to whom matters of this nature are appropriately referable for detached and just resolution.”* In exhibit D, the appellant was mentioned as the leader of the agents of Akim clan in the fracas which resulted in machete cuts inflicted on some of the indigenes of the petitioners. The appellant had a duty to prove that the statement made by the respondents which he alleged are defamatory are false. Rather, the appellant, in his evidence before the trial court, confirmed the truth of the statement by the respondents concerning the fracas and events which happened on 21st October, 1995 in respect of the swamp and marshlands in dispute. In his testimony at pages 42 - 43 of the record of appeal, the appellant as PW1, stated as follows:-

“The 1st - 5th defendants are from the above mentioned clans who are struggling for the ownership of the swamp in issue. The 1st to 5th defendants on 21-10-95, sent Ansa Ika and Okon Bassey to the swamp to fight me. They fought me and later reported to the 1st and 2nd defendants who directed them to report the matter to the Nigerian police. The 1st to 5th defendants also wrote a petition to the Ndidem of the Quas to the effect that I fought and cut Qua people in the swamp.”

For me, and as was rightly held by the court below, the petition written by the respondents as chiefs of Big Qua, Idundu and Ediba reporting the incident of 21/10/95 to the Ndidem, was based on a factual situation. The appellant has confirmed in his testimony that there was indeed a fight between him and the two men he mentioned who were allegedly given machete cuts during the fight. Secondly, this matter was reported to the police and the appellant was charged to court after investigation.

It is unusual that a complainant would report a case of machete cuts to the police and the accused would be charged to court when the machete cuts cannot be found.

No wonder the court below berated the Magistrate's court in its comment on exhibit C, the judgment of that court in the criminal matter. I do not intend to say more on this as the court below had said enough. All that is left for me to say is that the appellant as plaintiff at the trial court failed to show that the statement contained
B in the petition was false.

Assuming that the petition was based on a false premise, can it be said that the contents were defamatory of the appellant? The lower court answered this question in the negative. The appellant in paragraph 20 of the amended statement of claim stated that the statement depicts him as a "*common criminal*" and an "*attempt to murder a fellow human being in cold blood.*" I think this is an extreme interpretation of the situation by the appellant just to strengthen his case. As was submitted by the learned counsel for the respondents,
C D given the environment and the circumstances in which the statements and words complained of were made, a man of ordinary intelligence will not come to the conclusion that the appellant is a "*common criminal or an attempted murderer*" as alleged by him. It is trite that in determining whether the words complained of are defamatory, the said
E words must be construed as a whole and not in isolation. Exhibit D is a petition or complaint to the Ndidem of the Quas, their paramount ruler on the ownership of the swamp and marshlands by the people of Akim to the exclusion of other Qua clans. The events of the 21st
F October, 1995 were used to buttress the consequences of not resolving the issue of ownership of the swamp. As I see it, the intention was not to impugn the character and integrity of the appellant.

As regards exhibit F, there is nothing in it to suggest that it referred to the appellant. It was a correspondence between the counsel
G to Akim clan and the Qua clans Constituted Assembly wherein the assembly used the words "*your client*" and "*agents of your client, in the said letter. These two phrases cannot by any stretch of the imagination refer to the appellant. And in any case, the appellant did not plead or allege any innuendo in the said letter. I do agree with the*
H court below, that reading the letter as a whole (i.e. exhibit F), it is difficult to conclude that the words complained of carry any defamatory imputations on the appellant. The court below also held that exhibit F did not refer to the appellant at all as his name was never mentioned in the letter. In summary, there is nothing to suggest that

exhibit F referred to the appellant and even if did, there is nothing defamatory in it."

I now turn my attention to exhibit H, the alleged "judgment" of the Qua Clans Constituted Assembly. The paragraph of exhibit H alleged to have defamed the appellant is as set out earlier in this judgment. It is the findings of the arbitration panel set up by the Qua Clans Constituted Assembly to look into the complaint of the protesting clans in exhibit D. The 6th respondent, who is now dead, forwarded the said "*judgment, to the Ntoe's cabinet of Akim Qua clans upon the request of the said Ntoe. As I said earlier in this judgment, the defendant in exhibit H was Akim clan and not the appellant and it was the Ntoe's cabinet that was invited to appear before the panel and not the appellant. The PW2, the secretary of the Ntoe's cabinet admitted this in his evidence-in-chief at page 48 of the record of appeal as follows:*"

"The defendants demanded that the Ntoe's cabinet of Akim Qua clan should appear before the Qua Clans Constituted Assembly to defend the criminal conduct of the plaintiff."

At best, the alleged defamatory statements contained in exhibit H referred to the Akim clan on whose behalf the appellant acted and not to appellant as a person. Again, the appellant has failed to show how he was defamed in exhibit H. This was also the position taken by the court below.

Let me say a few words on exhibit C; the judgment of the Magistrate's court. Initially I did not intend to comment on it but since both parties have made it part of their arguments, I shall make a few comments. It was contended by the learned counsel for the appellant that the court below took the gauntlet, unsolicited, and proceeded to review, discredit and discard the judgment of the Chief Magistrate's court when the said judgment was not on appeal before it. In response, the learned counsel for the respondents submitted that the judgment of the Chief Magistrate's court having been tendered and admitted in evidence as exhibit C, the learned justices of the Court of Appeal were in order to comment on it.

It is trite that all documents tendered before a court at the trial of a case is part and parcel of the evidence to be considered in the determination of issues before the court.

Such documents usually referred to as exhibits are sub-

- ject to scrutiny and to be tested for credibility and weight by the trial court. Where the trial court fails to examine documents tendered before it, an appellate court is in a good position to evaluate such exhibits. See AYENI V. DADA (1978) 3 SC. 35, BAMGBOYE V. LARENWAJU (1991) 22 NSCC (pt. 1) 501. I**
- B think since exhibit C was tendered before the trial court and was part of the record of appeal before the court below, the justices of that court were eminently qualified to draw such inferences as they found fit and proper so to do. This is much**
- C more so as the criminal offence for which the appellant was discharged and acquitted by the Chief Magistrate did not address the issues bordering on the ownership of the swamp and marshlands arising from the very acts for which the appellant was charged. I need not say more on this.**
- D Having upheld the decision of the lower court that the statements complained of by the appellant were not defamatory, the backbone of this appeal has been broken. There remains nothing more to be said in this appeal.**

- E Where it is determined that the words complained of do not constitute the tort of defamation, it becomes unnecessary to consider any defences that may be available to the defendant. There is therefore no need to consider issue three as to whether defences of qualified privilege and fair comment**
- F availed the respondents. Also, issue four becomes academic as it would serve no useful purpose to determine whether the lower court was right in refusing to re-assess the lump sum awarded as general damages by the trial court for the three causes of action.**

- G On the whole, this appeal is devoid of merit and is hereby dismissed. I uphold the decision of the lower court which set aside the judgment of the trial court. I award N100,000.00 costs in favour of the three remaining 1st to 3rd respondents.**

H

ONNOGHEN JSC

I have had the benefit of reading in draft the lead Judgment of my learned brother, Okoro JSC just delivered.

I agree with his reasoning and conclusion that the appeal lacks

merit and should therefore be dismissed.

The Judgment of the Lower Court setting aside the decision of the trial court cannot be faulted in anyway. I have carefully gone through the contents of exhibits D, F and H, the alleged libelous materials, and found them not defamatory of appellant.

Secondly, the contents of exhibit D is based on facts attested to by appellant at pages 42 - 43 of the record where he stated as PW1 as follows:-

“The 1st to 5th defendants on 21-10-95, sent Ansa Ika and Okon Bassey to the swamp to fight me. They fought me and later reported to the 1st and 2nd defendant who ordered them to report the matter to the Nigerian Police. The 1st to 5th defendants also wrote a petition to the Ndidem of (the) Quas to the effect that I fought and cut Qua people in the swamp.”

The above testimony was corroborated by the testimony of DW3 and DW4 who are Ansa Ika and Okon Bassey respectively. The incident of 21/10/95 actually took place and DW3 and DW4 suffered machete cuts as a result of a fight with the appellant in the swamp.

In the circumstance it is my view that this appeal has no merit and it is consequently dismissed by me.

I abide by the consequential orders made in the lead Judgment including the order as to costs. Appeal dismissed.

GALADIMA JSC

My learned brother OKORO JSC, had promptly obliged me a preview of his lead judgment in respect of the appeal just delivered, I cannot improve on His Lordship's lucid and thorough resolution of the issues raised in the appeal. Permit me, my Lords, to add one or two words on the contents of Exhibits 'D' 'H' and 'F' (the alleged libelous materials).

I have read the finding of the court below on page 292 of the record of appeal where it held as follows:

“It is pertinent to observe that in the instant case the Appellants do not deny the writing or publication of the words in question (i.e. in Exhibit D, H and F). From my understanding of the Appellants' arguments, their denial is on whether or not the words are capable of Conveying a defamatory meaning as interpreted by the Respondent

or similar to the meaning ascribed to them by him.”

The Lower Court without much ado held that the words complained of were not defamatory.

The law is that to found action in libel the alleged libelous statement must not only be false, but must also be defamatory of the plaintiff. See DIN v. AFRICAN NEWSPAPER LIMITED (1990) 2 NWLR (pt. 139) 392, ONYEJIKE v. ANYASOR (1992) 1 NWLR (Pt. 218) 437.

It is beyond doubt that the contents of Exhibit ‘D’ is based on facts attested to by the appellant himself as PW1 at pages 42-43 where he stated that:

“The 1st to 5th Defendants are from the above mentioned clans who are struggling for the Ownership of the swamp in issue. The 1st to 5th Defendants on 27-10-95, sent Ansa Ika and Okon Bassey to the swamp to fight me. They fought me and later reported to the 1st and 2nd Defendants who directed them to report the matter to the Nigeria Police. The 1st to 5th Defendants also wrote a petition to the Ndidem of the Quas to the effect that I fought and cut People in the swamp.”

ANSA IKA and OKON BASSEY who were allegedly sent to the swamp to fight the plaintiff established in their testimony that exhibit ‘B’ the petition was based on a factual situation. The incident that took place on 21/10/95 indeed happened. It was a real situation. DW3 and DW4 suffered some injuries from matched cuts as a result of a fight with the appellant in the said swamp.

The alleged publication was made to the NDIDEM who is the clan Head of AKIM, on whose behalf the act complained of was carried out. In his testimony the appellant stated that he was acting in his capacity as caretaker of AKIM QUA CLAN SWAMP Marsh land. See also Exhibit ‘A1’ and ‘A2’ which constitute his letter of appointment. I agree with the learned counsel for the respondent therefore, that the petition addressed to the appellants’ “appointor” cannot in law be regarded as publication to a third party to ground an action in libel. I adopt the lead judgment dismissing the appeal for lacking in merit. I abide by the consequential order made, including the order on costs.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment of my learned brother, Okoro, JSC. I agree with his lordships detailed reasoning and conclusions.

On the 21st day of October, 1996 there was a fracas between the Akim clan on the one hand and the Big Qua, Idundu and Ediba clans on the other hand over the Ediba swamp and marshlands. Machetes were freely used. After hostilities subsided the respondents wrote a petition to the Ndidem. In the petition they accused the appellant of inflicting machetes cuts on some members of the respondents, clan. Exhibits F, G, H, arose from the petition. The exhibits were correspondence and findings of the Constituted Assembly of the respondents' clan. The appellant as plaintiffs sued the respondent on the said exhibits claiming that he was libeled in them. The respondents pleaded fair comment, qualified privilege. The appellant won at the trial court. That judgment was upset on appeal.

In an action for defamation if the statement or publication is found to be false, malice is automatically inferred, damages follow, and the hearing of the case comes to an end. The conclusion being that the publication was done for a clearly wrong motive.

A plea of fair comment succeeds as a defence if the facts relied on by the defendant are sufficient to justify the statement or publication that the plaintiff finds to be libelous. The facts must be the truth. See *Akomolafe & anor. V. Guardian Press Ltd & 3 Ors.* (2010) 1 SC (Pt. I) p.58, *Guardian Newspaper Ltd. & Anor. V. Ajeh* (2011) 4 SC (Pt. II) p.69.

The appellant gave evidence as PW1. He testified as follows:

"...the 1st - 5th defendants are from the above mentioned clans who are struggling for the ownership of the swamp in issue. The 1st to 5th defendants on 21st of October, 1995 sent Ansa Ika and Okon Bassey to the swamp to fight me. They fought me and later reported to the 1st and 2nd defendants who directed them to report the matter to the Nigeria Police. The 1st to 5th defendants also wrote a petition to the Ndidem of the Quas to the effect that I fought and cut Qua people in the swamp."

DW3 and DW4 the respondents witnesses, corroborated PW1's testimony that on the 21st of October, 1995 there was a fracas and machete cuts were inflicted on them. If that recollection on the hap-

penings on 30/5/95 are true then there can be no libel. There is nothing in exhibits F and H that even remotely refers to the appellant, and so the question of its contents being libelous of the appellant cannot arise. As regards exhibit D the appellant is mentioned as the leader of the Akim clan that inflicted machetes cuts on some of the indigenes of the respondents' clans members, a fact admitted by the appellant in his testimony, earlier alluded to. The appellant confirmed that the contents of exhibit D are true. Exhibit D is fair comment since it is the truth that the appellant fought with the respondents' clan members and inflicted machete cuts on them. Exhibit D was published without malice. It is the plain truth as to what happened on 30/10/95. The judgment of the trial court is wrong while the judgment of the Court of Appeal is correct.

For these brief reasons as well as those more fully given by my learned brother, Okoro, JSC the judgment of the Court of Appeal is upheld with costs as proposed in the leading judgment.

AKA'AH'S JSC

The Plaintiff sued the Defendants for libel and got judgment for N10, 000,000.00 as damages. The Defendants appealed against the judgment while the Plaintiff cross-appealed on the quantum of damages awarded. The main appeal was allowed and the cross-appeal dismissed. The Plaintiff as appellant has now appealed to this court.

My learned brother, Okoro JSC dealt in an admirable manner with the facts and issues arising in the appeal. I agree with the resolution of the issues and the conclusion that the appeal lacks merit.

In an action for libel the Plaintiff must prove:-

1. That the defendant published in permanent form the statement which the plaintiff complains of as defamatory.
2. That the statement was false
3. That the statement referred to the plaintiff

4. That the statement conveys defamatory meaning to those to whom it was published; and

5. That the statement was defamatory of the plaintiff in the sense that:

- (a) It lowered him in the estimation of right - thinking mem-

bers of the society; or

(b) It exposed him to hatred, ridicule or contempt; or

(c) It injured his reputation in his office, trade or profession; or

(d) It injured his financial credit. See: Sketch Publishing Co. Ltd v. Ajagbemokeferi (1989) 1 NWLR (Pt.100) 678. Offoboche v. Ogoja Local Govt. (2001) 16 NWLR (Pt.739) 458 Guardian Newspapers Ltd & Another vs. Rev. Pastor C. I. Ajeh (2011) 10 NWLR (Pt.1256) 574. B

The appellant as plaintiff did not prove the publication to a 3rd Party notwithstanding the fact that the respondents did not deny making the documents. The alleged statements were not false since the appellant played a great role in the land dispute which led to the crisis for which the respondents wrote to Ndidem the Clan Head of Akim. In view of these and many more reasons the Lower Court had to interfere with the judgment of the learned trial Judge by allowing the substantive appeal and dismissing the cross-appeal. My learned brother, Okoro JSC meticulously considered the appeal before dismissing same and affirming the judgment of the court below. I too find no merit in the appeal whatsoever and I too dismiss same. I endorse the order of N100,000.00 as costs in favour of the remaining respondents and against the appellant. Appeal dismissed. C D E F

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