

**SUPREME COURT OF NIGERIA**  
FRIDAY 28TH NOVEMBER, 2014. SC. 264/2003  
**CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,**  
**M. U. PETER-ODILI, K. B. AKA'AHs,**  
**K. M. O. KEKERE-EKUN, JJSC**

OBA GABRIEL ADEKUNLE AROMOLARAN ..... APPELLANT  
(OWA OBOKUN OF IJESHA LAND)

AND

DR. (REV.) ROLAND OLAPADE AGORO ..... RESPONDENT

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DOCUMENTS - Public document - Admissibility s. 90(1) EA - No other secondary evidence of public document is admissible - Other than a certified true copy - Hence Exhibit 7 is inadmissible (H1)

STATUTES - Interpretation - Principle - Court is to interpret words contained in statute - And not to go outside the clear words - In search of interpretation which is convenient to it or to the parties (H2)

DAMAGES - Award - Entitlement to - Having not succeeded in the case - Respondent is not entitled to the award of N2,500,000 (H3)

**FACTS**

Before the Oyo State High Court, plaintiff/respondent instituted this action against defendant/appellant, claiming the sum N2.5 million as damages for libelous publication made against him by appellant. Respondent went further to state that appellant withdrew the Chieftaincy certificate given to him. In an attempt to prove his case, respondent pleaded a letter dated 12th December 1984 allegedly written by appellant to then Military Governor of the State containing the libelous words. He subpoenaed an official of the State Ministry of Chieftaincy Affairs Governor's Office to tender a certified true copy of the letter. However, respondent rejected the copy of the letter brought by the said official claiming it was different from the actual letter written by appellant. The letter was admitted in evidence as Exhibit P1.

Upon the application of respondent's counsel, the witness was

treated as a hostile one and subjected to cross-examination by respondent's counsel. Thereafter, respondent tendered Exhibit P7 which he said was a photocopy of the libelous publication handed over to him. Appellant on the other hand did not give evidence in support of his pleadings. Appellant denied the authorship of Exhibit P7 which he described as a forgery. In its judgment, the court without a proper proof of the allegation made by respondent, granted the claim and awarded N2.5 million general damages to respondent. Dissatisfied, appellant appealed to the Court of Appeal Ibadan Division. The appeal was dismissed. Aggrieved, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*“3.01. Whether the judgment of the Court of Appeal can be allowed to stand in the face of the obvious conflict with the decision of the Supreme Court in the case of ARAKA V. EGBUE reported in (2003) 17 N.W.L.R Part 843 and other decided cases where it has been held that only certified copy of a public document is admissible as secondary evidence as provided for by Section 97 (2) of Evidence Act of 1990.*

*3.02. Whether the Court of Appeal is not in error by not allowing an expert to determine the genuineness of the signature on the two documents as required by Section 100 of the Evidence Act instead of resorting to a telephone directory which is inconclusive and the authenticity of the document is in the issue.*

*3.03. Whether the Lower Court was in error when it affirmed the hasty proceedings of the trial Court.*

*3.04. Whether the Lower Court was right in holding that Exhibit P7, and un-certified photocopy of a public document, was admissible in evidence and based its decision on the document.*

*3.05. Whether the Lower Court was right in upholding the judgment of the Trial Court finding the Appellant liable in damages for libel notwithstanding the absence before the Court of the very document which they held could alone found action in defamation.*

*3.06. Whether on the materials on the record of appeal the Lower Court was right in confirming the damages of N2, 500,000 awarded by the trial Court.*

# **HELD** (Unanimously allowing the appeal per **GALADIMA JSC**)

*DOCUMENTS - Public document - Admissibility of*

**1. There is no exception provided in the kind of secondary evidence of a public document, admissible other than a Certified True Copy. The fact that the original has been lost or destroyed does not give the court any power to admit a photocopy, which is not certified. The plausible reasons advanced by the court below for the admission of Exhibit 7 are not in compliance with the relevant evidence law dealing with the matter.**

**Looking carefully at the provisions of section 97 (2) (c) of the Evidence Act Cap 112 Laws of the Federation of Nigeria 1990 (now Section 90(1) (c) Evidence Act 2011) and the foregoing decisions of this court based on the provisions, it is abundantly clear that the law has left no room to admit secondary evidence of a public document other than by tendering a Certified Copy of Exhibit 7. The language used in the section is free and clear from ambiguity and it must be construed according to its expressed intention. This is what I have done here. In the circumstance, I resolve this issue in favour of the appellant. (pp. 3271 C/3275 D)**

*STATUTES - Interpretation - Principle*

**2. I must say that the duty of the court is to interpret the words contained in the statute and not to go outside the clear words in searching of an interpretation which is convenient to the court or to the parties in the process of interpretation. The court will not embark on a voyage of discovery. Where a statute is clear and unambiguous, as in this case, this court will follow literal rule of interpretation where the provision of the statute is clear and no more. (p. 3274 H)**

*DAMAGES - Award - Entitlement to*

**3. Issues 5 and 6 are supposedly based on the respondent's firm belief that the lower court was right in upholding the judg-**

*ment of the trial court, which found the appellant liable for libel, notwithstanding the inadmissibility of the very document. (i.e. Exhibit p.7) which was held to be quite vital to found respondents action in defamation. Similarly the award of N2, 500,000 damages in this case would have been naturally the reward for respondent's fruit of success in this case. Having not succeeded he cannot reap the fruit.* (p. 3276 E)

## NOTABLE POINT OF INTEREST

### C ONNOGHEN JSC

#### ***1. Documents – Means of proof***

It is settled law that the contents of a document may be proved by either the primary or secondary evidence - see Section 93 of the Evidence Act 1990.

D By primary evidence of the contents of a document we mean the document itself which is tendered for the inspection of the court so as to prove its contents - see Section 94(1) of the Evidence Act, 1990, etc.

E Section 96 of the Evidence Act, 1990 provides that documents must be proved by primary evidence except in certain circumstance which are provided for in Section 97 of the said Act. (p. 3277 B)

### **REPRESENTATION**

F Michael F. Lana Esq. with Oluwole Ilori Esq. David Ashadu Esq. Chris Idu Esq., for the Appellant  
Adekola Olawole Esq. with B.A. Adeosun Esq. Olusegun Olusola Esq. and Adekola Olawoye Esq., for the Respondent

### G **CASES REFERRED TO**

Araka v. Egbue (2003) 17 NWLR (pt. 843)  
Agha v. IGP (1997) 10 NWLR (pt. 527) 317  
Fawehinmi v. NBA (No.2) (1989) 2 NWLR (pt. 105) 558  
Ogbe v. Sade (2009) 12 SC (pt. III) 37  
H Okotie-Ebo v. Manager (2005) All FWLR (pt. 241) 277  
Minister of Lands Western Nig. V. Azikiwe (1969) 1 All NLR 49  
Onobruhere v. Esigine (1986) 1 NWLR (pt. 19) 799  
Nzekwu v. Nzekwu (1989) 2 NWLR (pt. 104) 373

Adewunmi v. A. G. Ekiti State (2002) 2 NWLR (pt. 751) 474  
Garba v. Federal Civil Service Com. (1988) 1 NWLR (pt. 71)  
Niger Progress Ltd. v. N.E.L. Corp. (1989) 3 NWLR (pt. 107)  
Ojokolobo v. Alamu (1987) 3 NWLR (pt. 61) 377  
Savannah Bank v. Ajilo (1957) 2 NWLR (pt. 57) 421  
Daniel v. Adaji (1998) 11 NWLR (pt. 574) 525  
Onyali v. Okpala (2001) 1 NWLR (pt. 594) 282

B

**STATUTES REFERRED TO**

Evidence Act 2011, ss. 100, 201, 231  
Evidence Act 1990, s. 97(2)

C

**LEAD JUDGMENT BY GALADIMA JSC**

This appeal is against the judgment of Court of Appeal, Ibadan Division, delivered on the 9th day of April, 2003, which confirmed the judgment of Oyo State High Court delivered on the 30th day of September, 1997.

The facts relevant to the case are simple. The respondent as plaintiff complained of a libelous publication against him by the appellant as defendant, in a letter dated 12th August, 1984 written and sent to the then Military Governor of Oyo State, Colonel Oladayo Popoola admitted as Exhibit “p7” at the trial, pleaded in paragraph 3 of the statement of claim dated 18th March, 1992. The pivot upon which the respondent rested his case reads thus:

*“The certificate which he carries about now was forged and was not the certificate issued to him just as Olapade Agoro claims that he has B. Sc. (Engineering) and M. Sc. (Engineering) when in actual fact he has never seen the inside of any university anywhere in the world. His academic credentials such as Certificate and Transcripts should be probed by the NSO and Interpol to establish their genuineness.”*

Both parties pleaded the said Exhibit P7 and sought reliance on it at the trial. The respondent herein caused a subpoena Duces Tecum Ad Testificandum to issue on the official of the Oyo State Ministry of Chieftaincy Affairs Governors’ office to come to court with a certified True copy of the Exhibit and also to give evidence on same. Strange enough the 2nd witness of the plaintiff came with a different version of Exhibit P.7 which the trial court admitted as “Exhibit P.1”.

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In view of the distasteful conduct of this witness, the respondent thought he was trying to suppress a vital documentary evidence which is germane and fundamental to his case. His counsel accordingly applied to the learned trial judge who gave his leave that the witness be treated as hostile under section 207 of the Evidence Act now  
 B Section 231 of the amended 2011 Evidence Act.

The appellant did not give evidence in support of his pleading at the trial. It should be noted however, that right from onset he pleaded specifically at page 17 of his Further Amended Statement of  
 C Defence that Exhibit P7 was a forgery.

The respondent's counsel proffered his address while the appellant's counsel declined to address the Court on the matter. In his judgment the learned trial judge granted the claim and awarded N2,500,000 (Two Million, Five Hundred Thousand Naira) general  
 D damages to the respondent. He also granted the injunction sought by the Respondent.

Dissatisfied, the appellant appealed to the Court of Appeal Ibadan Division which dismissed the appeal with costs. Not satisfied with the judgment appellant has further appealed to this court.

E His Further Amended Notice of Appeal containing 12 grounds was deemed filed on 30/9/2014. In his Further Amended brief of argument deemed filed on 30/9/2014, he distilled the following six issues for determination:

F *"3.01. Whether the judgment of the Court of Appeal can be allowed to stand in the face of the obvious conflict with the decision of the Supreme Court in the case of ARAKA V. EGBUE reported in (2003) 17 N.W.L.R Part 843 and other decided cases where it has been held that only certified copy of a public document is admissible  
 G as secondary evidence as provided for by Section 97 (2) of Evidence Act of 1990. Covers Grounds 1, 2 & 3*

*3.02. Whether the Court of Appeal is not in error by not allowing an expert to determine the genuineness of the signature on the two documents as required by Section 100 of the Evidence Act  
 H instead of resorting to a telephone directory which is inconclusive and the authenticity of the document is in the issue. Covers grounds 4, 5 and 6*

*3.03. Whether the Lower Court was in error when it affirmed the hasty proceedings of the trial Court. Cover ground 7*

*3.04. Whether the Lower Court was right in holding that Exhibit P7, and un-certified photocopy of a public document, was admissible in evidence and based its decision on the document. Covers grounds 8, 10, 11*

*3.05. Whether the Lower Court was right in upholding the judgment of the Trial Court finding the Appellant liable in damages for libel notwithstanding the absence before the Court of the very document which they held could alone found action in defamation. Cover Ground 9*

*3.06. Whether on the materials on the record of appeal the Lower Court was right in confirming the damages of N2, 500,000 awarded by the trial Court. Covers Ground 12"*

On his part the respondent submitted the following five issues for determination:

*"(i) Whether or not Exhibit P.7 was properly admitted by the trial court as evidence of the document which the appellant on subpoena Duces Tecum and Ad Testificadum refused to produce as the publication of the libel complained of by the respondent in this case which decision the lower court affirmed and/or upheld? (Covers grounds 2, 8, 9, 10 and 11)*

*(ii) Whether the right of the appellant to fair hearing and fair trial in this case has been infringed upon by the decision in the judgment of the trial Court which was affirmed by the lower court? (Covers ground 7)*

*(iii) Whether the burden of proof of publication with regards to defamation (the subject matter of this case) was not discharged by the Respondent Judging from the decision of the Lower Court? (Covers ground 6)*

*(iv) Whether it is proper in law for the Lower Court in view of the quality and quantity of uncontroverted evidence in this case to uphold the findings of facts made by the Trial Court on the N2, 500,000.00 general damages awarded against the appellant? (Covers ground 12).*

*(v) Whether the burden of proof placed on the respondent by law that Exhibit P1 was a forgery as pleaded by him was discharged in accordance with the decision of the Lower Court. (Covers 1, 3, 4 & 5)"*

In response to the appellant's brief of argument the respon-

dent filed his brief in which he raised a preliminary objection challenging the competence of grounds 1, 2, 3, 5, 7, 8, 9, 10, 11 of the Notice of Appeal.

The appellant on his part filed a Reply brief of argument drawing the attention of this court to some obvious flaws inherent in the respondent's preliminary objection. Noticing this on 30/9/2014 when this appeal came up for hearing learned counsel for the respondent Adekola Olawoye Esq., sought to withdraw the preliminary objection argued in paragraphs 3.01 - 3.12 of the brief.

Accordingly those paragraphs were struck out. That notwithstanding the appellant in his Reply brief deemed filed on 30/9/2014, addressed other issues raised by the respondent in his issues 1, 3 and 4.

At the hearing of this appeal learned counsel for the appellant and respondent both adopted their respective briefs of argument.

Without further amplifications on the issues, learned counsel for the appellant has urged us to allow the appeal. Whilst the learned counsel for the respondent urged otherwise; he urged that appeal be dismissed for lacking in merit.

I have carefully considered the issues formulated by the parties. Those issues distilled by the appellant are considered apt and can adequately resolve the appeal. However, their issues are unnecessarily proliferated and arguments on them boring and repetitive. Issues 1 and 4 can be considered together. These issues touch on what is germane or fundamental to the respondent's case at the trial.

It is the submission of the learned counsel for the appellant that Section 97(1) (a) and (ii) of the Evidence Act, 2004 (now 90(1) (c), Evidence Act 2011) only provides for the admissibility of a public document when it is duly certified. It does not create any exception to the type of secondary evidence that is admissible. That the fact that the original has been lost or destroyed does not give the court power to admit a photocopy which is not certified. That the reasons advanced by the courts below for the admission of Exhibit P.7 are not in compliance with the provisions of evidence. Learned counsel for the respondent has noted that the pith and substance of the complaint of the appellant on this issue is the decision of lower court that although Exhibit P.7 is a public document, it is admissible without being certified in compliance with the said now Section 104 of the



Evidence Act.

It is conceded that before a public document is admissible in any proceeding, a copy of the document must be certified. The learned counsel has however submitted that in the circumstance of this case the respondent was frustrated by the refusal of 2nd P.W. to produce the appellant's actual letter which contained the libelous words against the respondent, upon which issues have been joined by both parties to this case; that the respondent had no other means provided by law through which he could obtain a Certified True Copy of the said letter than to tender the photocopy given him by the men of the then Nigerian Security organization (NSO). It is his submission that having regard to the findings of the lower court on Exhibit 7 at pp.248 - 249 of the record it was practically impossible for the respondent to obtain the certified copy of the said Exhibit P7 from the office of the then Military Governor of Oyo State. It is further submitted that after the respondent had caused a Writ of Subpoena Duces Tecum and the Ad Testificandum to issue on both the office of the Military Governor and the Director of the Nigerian security Organization, where the photocopy the respondent tendered was given to him, and both offices having failed to produce the certified copy, the respondent has satisfied the requirements of the law as far as obtaining the certified copy of Exhibit P7 is concerned; therefore the decision of the Lower Court that under S.97(a) (i) and (ii) of the Evidence Act, Exhibit P7 is admissible correct, equitable, sound and justifiable in law. That having regard to the facts and circumstances of this instant case, they are dissimilar and distinguishable from the facts in *ARAKA v. EGBUE* (2009) 17 NWLR (pt. 848) 1 at 18.

Learned counsel further relied on the case of *AGHA v. IGP* (1997) 10 NWLR (PT.527) 317 and submitted that the Court of Appeal gave approval to the admissibility of secondary evidence in a similar circumstance like the instant case. Relying further on the cases of *FAWEHINMI v. NBA* (No.2) (1989) 2 NWLR (pt. 105) 558 at 650, *OGBE v. SADE* (2009) 12 SC (pt. III) 37 at 71 and *OKOTIE-EBO v. MANAGER* (2005) ALL FWLR (pt. 241) 277 at 317, he submitted that in the resolution of disputes by courts every proposition must have factual base.

It is finally urged on this court to uphold the decision of the court below which is correct in the circumstance and not perverse

and has not occasioned miscarriage of justice; that to decide otherwise would lead to injustice.

It is the contention of the appellant that the suit was fought on the basis that the original of Exhibit p.7 has been in existence and if it was un-certified photocopy that would be inadmissible in evidence.

B In his Further Amended statement of Defence paragraph 15 the Appellant avers thus:

C *“15. The defendant avers that his letter dated 12-12-84 addressed and delivered to Governor of the then Oyo State form part of the official records of the state, defendant will rely on oral or documentary evidence to show that the letter is inadmissible in evidence.”*

At page 248 of the records the court below held as follows:

D *“To further prove his point the plaintiff tendered Exhibit 7 which he claimed was only a photo copy of the original document given to him by security officials in the course of his interrogation and detention. It is not a Certified True Copy. Was it properly admitted in evidence. That is the key question. There are, in my view two reasons why I consider the document properly admitted.*

E *The first relates to the evidence that Exhibit 7 was the very document given to him by Government or Security Personnel. While it does not purport to be the very original document sent to, and received and acted upon by the Military Governor of Oyo State, it nevertheless is the exact document that was given to him by the security personnel from that perspective it is on original and therefore*  
F *admissible. This was one of the grounds upon which the learned trial judge admitted the document and I think he was right to so hold.”*

G On this same page the court gave second reason as the document being the best documentary evidence, because it is the very letter presented to the Military Governor of Oyo State or a certified True copy of it while the court below correctly held at page 249 of the records that it is only Certified True Copy of public document that is admissible in evidence, it erred when it held that;

H *“But in this case it was practically impossible for the plaintiff to obtain a Certified True Copy of the document since the original appears to have been destroyed or lost or hidden by those in possession or control over it.”*

The court below admitted Exhibit p.7 under s.97 (a) (i) and (ii) and (c) of the then Evidence Act as Secondary evidence of the

existence and contents of actual defamatory letter received and acted upon by the then Military Governor of Oyo State.

Section 97 (i) (e) provides;

*“(i). Secondary evidence may be given of the existence condition or contents of a document in the following cases.*

*(e). When the original is a public document within the meaning of section 109 of this Act.* B

*Subsection 2(c) provides:*

*(2). The secondary evidence admissible in respect of original documents referred to in the several paragraphs of subsection (1) of this section is as follows:* C

*(c). In paragraph (e) or (f) a certified copy of the document but no other kind of secondary evidence, is admissible.”*

***There is no exception provided in the kind of secondary evidence of a public document, admissible other than a Certified True Copy. The fact that the original has been lost or destroyed does not give the court any power to admit a photocopy, which is not certified. The plausible reasons advanced by the court below for the admission of Exhibit 7 are not in compliance with the relevant evidence law dealing with the matter.*** D E

I shall take time to explain the foregoing points in a number of decisions of this court. In ARAKA v. AGBUE (supra), relied upon by both parties, the appellant as plaintiff filed an action claiming the sum of 10 million as damages for libel against the respondent in a letter dated 10/9/1984, written by the respondent concerning the appellant and in the way of his office as Chief Judge of Anambra State. F

By their pleadings the parties joined issues and the matter went to trial. Appellant opened his case by calling one K.N Udoh, a legal practitioner as his first witness. He testified that he was representing the principal secretary to the Governor of Enugu State who was subpoenaed to tender documents in court. After saying that the original letter dated 10/9/1984 addressed to Military Governor of Anambra State could not be found, witness tendered a photocopy of the letter through counsel for the appellant. Counsel for the respondent objected on the ground that the letter being a public document can only be admitted in evidence, if it is certified true copy of the original as required by Section 96 (i) (e) and (2) (c) of Evidence Act Cap 62 G H

Laws of the Federation of Nigeria and Lagos, 1958 now Section 97 (i) (e) and 2(c) of the Evidence Cap 112 of the Evidence Act 1990.

The learned trial judge overruled the objection and held that the original of the letter dated 10/9/1984 having been lost, any secondary evidence of the lost document is admissible under Section B 96(i) (c) and 96 (2) (a) of the Evidence Act.

Dissatisfied, the respondent, as appellant approached the Court of Appeal. That court reversed the decision of the learned trial Judge Uwaifo, JCA (as he then was) had this to say at pp. 170 and 171 of the report:

C *"I see nothing contrary to any canon of interpretation to insist on what the law says in Section 97 (2) (c) of the Evidence Act that as far as a public document is concerned, the secondary evidence is a certified copy of the document, but no other kind of secondary evidence. This is bound to be so from the plain language. Any other provision in the said Act which makes any secondary evidence of a lost document admissible must be interpreted not to include a public document so as not to derogate from its special provision."*

Further dissatisfied with this decision, the appellant filed the E appeal to this court. The issue formulated for determination was as follows:

F *"Whether, in a case where the original of a public document is lost and cannot be found or where such document has been destroyed and is no longer in existence, any secondary evidence of such document (other than a Certified True Copy thereof) is admissible in evidence."*

Appellant formulated the following issue in the alternative:

G *"Whether the provision of Section 97(2) (c) is applicable in a case where the original of a public document is lost and cannot be found of where such document has been destroyed and is no longer in existence."*

H It is noted that the contents of the two issues formulated by the appellant are similar. The second issue formulated in the alternative merely introduces the applicable section which makes it more exact. I think it is the Respondent's issue in that case that is more direct. It runs thus.

*"Whether the Court of Appeal was right in holding that under Section 97 (2) (2) (c) of the Evidence Act relating to tendering in*

*evidence of a public document the only admissible evidence regarding such is the Certified Copy of such document and no other kind of secondary evidence.”*

After careful consideration of the issue formulated for determination by the parties this court per TOBI JSC at page 18 of the report held as follows: B

*“It is clear from the provision of Section 97 (2) (c) that the only acceptable secondary evidence of a public document is a Certified Copy of document. The subsection has put the position precisely concisely and beyond speculation or conjecture by the words “but no other kind of secondary evidence is admissible.”* C

The foregoing provisions have been interpreted by the courts in so many decisions. In MINISTER OF LANDS WESTERN NIGERIA v. DR. AZIKIWE (1969) 1 ALL NLR 49, COKER JSC had this to say at page 59. D

*“We have already pointed out that the original of the document exhibit 2 is a public document and indeed it is so within the meaning of Section 108 of the Evidence Act Section 96(2) of the Evidence Act prescribes the type of secondary evidence which may be given in the several cases therein set out and section 96(2)(c) provides as follows:* E

*’96(2) The secondary evidence admissible in respect of the original document referred to in the several paragraph of subsection (1) is as follows:* F

*(d). in paragraph (e) or (f) certified copy of the document, but no other kind of secondary evidence, is admissible.*

*The combined effect of the subsections is that in the case of public documents the only type of secondary evidence permissible is a certified true copy of the document and none other. The document now marked exhibit 2 is not a certified true copy but a Photostat copy and it is therefore inadmissible as secondary evidence of a public document which it purports to be.* G

*There was no objection to its admissibility when it was produced but it is not within the competence of parties to a case to admit by consent or otherwise a document which by law, is inadmissible.”* H

In ONOBRUCHERE v. ESIGINE (1986) 1 NWLR (pt. 19), 799 the appellants challenged Exhibits E, E1 and E2, which were un-certified copies of the original documents of official Record (in-

cluding judgments). This Court held that unless duly certified the Exhibits were inadmissible as they were copies official records.

In his leading judgment, OPUTA JSC (of blessed memory) said at page 808 thus:

*“Exhibit E will be admissible under Section 93 (1) of Evidence Act if it is original. The court below did not admit exhibit E as an original document Exhibit E itself ex facie testifies to the existence of the original in court record book. Even if Exhibit E was admissible under Section 95(2) (c) it should be a certified copy of the original in court record book. Whether one proceeds under Section 96(2) (c) or Section 110 or 111 of the Evidence Act, exhibit E has to be certified to be admissible as secondary evidence. It was no so certified. Exhibit E was therefore wrongly admitted.*

*If these two judgments are to be tendered, Section 131(1) of the Evidence Act makes the record book itself the primary evidence. Failing to produce the primary evidence, a party relying on Exhibits E1 and E2 will at least tender admissible secondary evidence will necessarily be certified true copies. Exhibits E1 and E2 do not purport to be certified true copies. They were therefore wrongly admitted... Exhibits E, E1 and E2 were plainly inadmissible and the court below was in error in holding that they were rightly admitted.”*

Similarly, in NZEKWU v. NZEKWU (1989) 2 NWLR (pt. 104) 373 this court held that a judgment of a court being a public document within the meaning of that expression of Section 108 of the Evidence Act and because of the combined effect of Section 96(1) (e) and (2) (c) of the Evidence Act 1958 the secondary evidence admissible in respect of the original document constituting the proceedings and judgment of a court is a certified true copy of the document but no other kind of secondary evidence.

I have observed that the fulcrum of the submission of the learned counsel for the respondent herein, is that Section 97 (2) (c) (now Section 102 of the Evidence Act 2011) should be construed to accommodate a situation where the original of a public document is lost, and cannot be found or destroyed and is no longer in existence.

***I must say that the duty of the court is to interpret the words contained in the statute and not to go outside the clear words in searching of an interpretation which is convenient to the court or to the parties in the process of interpretation.***

***The court will not embark on a voyage of discovery. Where a statute is clear and unambiguous, as in this case, this court will follow literal rule of interpretation where the provision of the statute is clear and no more.***

In the case of ADEWUNMI v. A. G. EKITI STATE (2002) 2 NWLR (pt. 751) 474 WALI JSC said at page 512:

*“In cases of statutory construction the court’s authority is limited. Where the statutory language and legislative intent are clear and plain, the judicial inquiry terminates there.*

*Under our jurisprudence the presumption is that ill-considered or unwise legislation will be corrected through democratic process. A court is not permitted to distort a statute’s meaning in order to make it confirm with Judge’s own views of sound social policy.”* See further GARBA v. FEDERAL CIVIL SERVICE COMMISSION (1988) 1 NWLR (pt. 71); NIGER PROGRESS LTD v. N.E.L. CORP. (1989) 3 NWLR (pt. 107) 6s; OJOKOLOBO v. ALAMU (1987) 3 NWLR (pt. 61) 377; SAVANNAH BANK v. AJILO (1957) 2 NWLR (pt 57) 421 and ADISA OYINWOLA (2000) 10 NWLR (pt. 674) 116.

***Looking carefully at the provisions of section 97 (2) (c) of the Evidence Act Cap 112 Laws of the Federation of Nigeria 1990 (now Section 90(1) (c) Evidence Act 2011) and the foregoing decisions of this court based on the provisions, it is abundantly clear that the law has left no room to admit secondary evidence of a public document other than by tendering a Certified Copy of Exhibit 7. The language used in the section is free and clear from ambiguity and it must be construed according to its expressed intention. This is what I have done here. In the circumstance, I resolve this issue in favour of the appellant.***

Next to be considered is the appellant’s issue 2, which covers grounds 4, 5, and 6 of the grounds of appeal. This is Respondent’s issue No.5. The complaint of the appellant is that the court below failed to resolve which of the two letters was authentic; is it p.1 or p.7. At the trial one Lawrence Oyelade Oyeniran, a senior officer of the Military Administrator’s Office, Oshogbo who was 2nd PW had been subpoenaed to tender the letter of 12/12/84, from the defendant to the Military Governor of Oyo State, tendered Exhibit p.1 in evidence. It is noted however, that in the writ of summons and in paragraph 3

of the statement of claim, the plaintiff/respondent herein pleaded the letter dated 12/12/84 allegedly written by the appellant to the Military Governor of Oyo State and it contained the defamatory matter in issue. In the statement of defence, the defendant admitted writing a letter but disputed contents of the said letter as set out in paragraph B 3 of the statement of claim and that he would contest the genuineness of the contents of the letter on the ground that same was a forgery.

It is the contention of the appellant that the court below erred C in law when it failed to reverse the ruling of the trial court on the role of 2nd PW who was summoned to produce the document not as a witness but was treated as a hostile one under Section 207, where there is nowhere on the record he made inconsistent statement.

However, the court below impeached 2nd PW's credibility and D opted/decided to rely on Exhibit p.7 which it held was admissible, a decision that I have resolved in the first issue against the respondent but in favour of the appellant, that in effect it was not admissible in law. Really whither this issue if I may ask. It serves no purpose. In any event once Exhibit 7 is expunged for being inadmissible the whole E case of the Respondent's case collapses.

Indeed it does, in view of my firm position on the issue of inadmissibility of Exhibit p.7.

***Issues 5 and 6 are supposedly based on the respondent's F firm belief that the lower court was right in upholding the judgment of the trial court, which found the appellant liable for libel, notwithstanding the inadmissibility of the very document. (i.e. Exhibit p.7) which was held to be quite vital to found respondents action in defamation. Similarly the award of N2, G 500,000 damages in this case would have been naturally the reward for respondent's fruit of success in this case. Having not succeeded he cannot reap the fruit.***

On the whole I hold that the appeal has merits and is accordingly allowed. The judgment of Court of Appeal delivered on 9th H day of April, 2013 is hereby set aside. I make no order as to costs.

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**ONNOGHEN JSC**

I have had the benefit of reading in draft the lead judgment of



my learned brother, GALADIMA, JSC just delivered.

I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

The main issue that calls for determination in the appeal is whether by the provisions of Section 97(2) of the Evidence Act 1990 any other secondary evidence of a public document other than a certified copy of the original is admissible in evidence in a proceeding.

It is settled law that the contents of a document may be proved by either the primary or secondary evidence - see Section 93 of the Evidence Act 1990.

By primary evidence of the contents of a document we mean the document itself which is tendered for the inspection of the court so as to prove its contents - see Section 94(1) of the Evidence Act, 1990, etc.

Section 96 of the Evidence Act, 1990 provides that documents must be proved by primary evidence except in certain circumstance which are provided for in Section 97 of the said Act. These exceptions are stated as follows:-

*“(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases:-*

*(a) When the original is shown or appears to be in the possessions or power -*

*(i) of the person against whom the document is sought to be proved, or*

*(ii) of any person legally bound to produce it and when, after the notice mentioned in section 98 of this Act, such person does not produce it;...*

*(e) When the original is a public document within the meaning of Section 109 of this Act...*

*(2) The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of subsection (1) of this section is as follows-*

*(c) in paragraph (e) or (f) a certified copy of the document, but no other kind of secondary evidence, is admissible.”*

The action giving rise to this appeal is founded on libel arising from a publication of a document which was tendered and admitted at the trial and marked as exhibit P7. Exhibit P7 was addressed to the

then Military Governor of Oyo State, Colonel Oladayo Popoola and therefore qualifies as a public document. However, exhibit P.7 is a photocopy of the original letter/document sent to the said Military Governor, not a certified copy of same as required by the provisions of Section 97(2)(c) of the Evidence Act, 1990 reproduced supra.

B The question is whether a photocopy of the original public document is as good as a certified copy of same for the purposes of admissibility in evidence as secondary evidence of the original. The lower courts have held that it is but appellant is contending the contrary.

C To me, the provisions of Section 97(2)(c) supra is very clear and unambiguous. It says that no other kind of secondary evidence, such as photocopy of the original document is admissible as secondary evidence except a certified copy of the public document. The D provision therefore admits of no exception whatsoever. It is only a certified copy of the public document or nothing else. It therefore does not matter whether the original public document cannot be found or has been destroyed. In fact secondary evidence comes into play when the original or public document cannot be found, traced E or has been destroyed. The law however provides that in the case of a public document, the only admissible secondary evidence of same is a certified copy and nothing else - see *Minister of Lands, Western Nigeria vs Dr. Azikiwe* (1969) (All NLR 49 at 59; *Onobruhere vs Esigine* (1986) 1 NWLR (Pt.19) 799; *Nzekwu vs Nzekwu* (1989) 2 F NWLR (Pt.104) 373 etc.

In the circumstance and, having regard to the state of the law applicable to the facts of this case, it is my view that Exhibit P7, though admitted without objection is clearly inadmissible in law and consequently liable to be expunged from the record by an appellate court and since the lower court failed to act accordingly, it is the duty of this Court to so expunge exhibit P.7 from the record which I accordingly hereby order.

H Exhibit P7 is the foundation of the action for libel of the respondent particularly as it is needed to prove publication, the fundamental requirement of the law of defamation. Without publication there cannot be libel/slander.

Therefore without Exhibit P7, it is clear that the action for libel by the respondent cannot be proved and is liable to be dismissed.

It is for the above reasons and the more detailed reasons contained in the lead judgment of my learned brother, GALADIMA, JSC that I too find merit in the appeal and consequently allow same.

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

B

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**PETER-ODILI JSC**

I am in total agreement with the judgment just delivered by my learned brother, Suleiman Galadima, JSC.

This is an appeal against the decision of the Court of Appeal Ibadan Division delivered on the 9th day of April, 2003 which confirmed the decision of P. O. Aderemi J. (as he then was) delivered on the 30th day of September 1997 in which the learned trial Judge of Oyo State awarded the sum of N2, 500,000.00 (Two Million, Five Hundred Thousand Naira) as damages for the libelous publication made by the defendant against the plaintiff.

**FACTS RELEVANT TO THE APPEAL**

The defendant now appellant is the paramount ruler of Ijeshaland and made the Plaintiff now Respondent a Chief and issued him a certificate to that effect.

From the account of the respondent the relationship between the parties became sour when the respondent made some unsavoury comments about the appellant in the Newspaper. The respondent went further that the appellant withdraw the Chieftaincy Certificate he issued to him. At the trial the respondent tendered a letter that was purportedly written by the appellant to the then Military Governor of Oyo State. The contents thereof were denied by the appellant but which letter was admitted in evidence.

The Government Official who was on subpoena by the respondent was treated as a hostile witness because he tendered a document that ran contrary to the interest of the respondent. The respondent tendered photocopies of his academic certificates.

On his own side, the appellant did not give evidence and the learned trial Judge closed the case and adjourned. The trial Judge was transferred from Ibadan Judicial Division but came back to complete the hearing of the proceedings and delivered judgment. The appellant did not give evidence in support of his pleadings because

the trial court ruled that he was wasting the time of the court by his frequent requests for adjournment. The appellant denied the authorship of Exhibit P7 which contained the words complained of by the respondent and Exhibit P1 that the appellant admitted, he wrote was described as a forgery. The trial court listened to the address of  
B counsel to the respondent and gave judgment in favour of the respondent. The appellant appealed to the Court of Appeal which affirmed the decision of the trial court hence this appeal to the Supreme Court.

C On the 30th September, 2014 date of hearing learned counsel for the appellant, Michael F. Lana Esq. adopted the Further Amended Brief of Argument of the appellant settled by himself, filed on 16/9/14 and deemed filed on 30/9/14. He also adopted a Reply Brief filed on 16/9/14.

D Learned counsel for the appellant identified six issues for determination which are stated hereunder, viz:

1. Whether the judgment of the Court of Appeal can be allowed to stand in the face of the obvious conflict with the decision of the Supreme Court in the case of *Araka v. Egbue* reported in (2003)  
E 17 NWLR Pt. 843 and other decided cases where it has been held that only certified copy of a public document is admissible as secondary evidence as provided for by section 97 (2) of Evidence Act of 1990. (Covers Grounds 1, 2 & 3)

F 2. Whether the Court of Appeal is not in error by not allowing an expert to determine the genuineness of the signature on the two documents as required by Section 100 of the Evidence Act instead of resorting to a telephone directory which is inconclusive and the authenticity of the document is in issue (Covers Grounds 4, 5 & 6)

G 3. Whether the lower court was in error when it affirmed the hasty proceedings of the trial court. (Covers Ground 7)

4. Whether the lower court was right in holding that Exhibit P7, an un-certified photocopy of a public document was admissible in evidence and based its decision on the document. (Covers Grounds  
H 8, 10, 11)

5. Whether the lower court was right in upholding the judgment of the Trial court finding the appellant liable in damages for libel notwithstanding the absence before the court of the very document which they held could alone found action in defamation. (Cov-

ers Ground 9)

6. Whether on the materials on the record of appeal the lower court was right in confirming the damages of N2, 500,000.00 awarded by the trial court. (Cover Grounds 12)

For the respondent, learned counsel, Adekola Olawoye Esq. adopted the Amended Respondents Brief filed on 7/6/13 and deemed filed on 30/9/14. He raised five issues for determination which are as follows:

(i) Whether or not Exhibit P7 was properly admitted by the trial court as evidence of the document which the appellant on subpoena Duces Tecum and Ad Testificandum refused to produce as the publication of the libel complained of by the respondent in this case which decision the lower court affirmed and/or upheld? (Covers Grounds 2, 8, 9, 10 & 11)

(ii) whether the right of the appellant to fair hearing and fair hearing In this case has been infringed upon by the decision in the judgment of the trial court which was affirmed by the lower court? (Covers Ground 12)

(iii) whether the burden of proof placed on the respondent by law that Exhibit P1 was a forgery as pleaded by him was discharged in accordance with the decision of the lower court. (Covers Grounds 1, 3, 4 & 5)

I see the 5th issue for determination as crafted by the appellant, adequate to settle the matter in contention in this appeal and I shall utilize it in resolving the question posed.

#### ISSUE 5

Whether the lower court was right in upholding the judgment of the Trial Court finding the appellant liable in damages for libel notwithstanding the absence before the court of the very document which they held could alone found action in defamation.

Mr. Lana of counsel for the appellant submitted that the Evidence Act does not create any exception to the type of secondary evidence of a public document that is admissible as only a certified copy of such a public document is the admissible one. That the fact that the original has been lost or destroyed does not give the court power to admit a photocopy which is not certified. That the reasons advanced for the admission of Exhibit P7 is not in compliance with the provisions of the statute. He referred to Section 97 (2) of the

Evidence Act, *Araka v Egbue* (2003) 17 NWLR (pt. 848) 1 at 18; *Fawehinmi v I. G. P* (2000) 7 NWLR (pt. 665) 481 at 524 at 525; *Daniel v Adaji* (1998) 11 NWLR (Pt. 574) 525 at 528; *Onyali v Okpala* (2001) 1 NWLR (pt. 594) 282 at 303; *Witt & Busch Ltd v Good & Trust Inv. Ltd* (2004) 8 NWLR (pt.874) 179 at 202.

B It was further submitted for the appellant that there were contradictory dates proffered by the respondent as to when the offending letter was written that is 12th August 1984 in the writ of offending letter was written that is 12th August 1984 in the Writ of summons and 12th day of December 1994 in the statement of claim. That it has to be said that in a line of decided cases ordinary words in a statute should be complied with and so there is no necessity to look for avenue to make un-certified documents admissible. He cited *Adisa v Oyinwola* (2000) FWLR (pt. 8) 1349; *Aqua Limited v. Ondo State D Sport Council* (1983) 10 - 11 SC 31; *Adewumi v Attorney - General of Ekiti State* (2000) 2 NWLR (pt. 751) 474 at 512; *Minister of Local Government Eastern Nigeria v D. O. Akpagu* (1964) 1 ALL NLR 211; *Olowu v Abolori* (1993) 5 NWLR (pt. 293) 255 at 275.

E Michael Lana Esq. contended that if a handwriting expert has been sought, he would have saved the judgment of the minor error of the PW4 and the issue as to which of the two letters is authentic and the veracity would have been proved beyond doubt. That using a telephone directory to determine the authenticity or otherwise of Exhibit P1 is inconclusive having regard to the fact that it is the content of the Exhibit that is in issue not the telephone number. He relied on *Omoniyi v. Sodeinde* (2013) 13 NWLR (pt. 836) 53 at 64; *Fatuade v Onwoamanam* (1990) 2 NWLR (pt. 132) 322 at 332; *The Queen v. Omisade & 17 ors* (1962) NWLR 67 at 85; *State v Gwonto* (2000) FWLR (pt. 30) 2583 at 2610; Section 207 of the Evidence Act on hostile witness.

H Going further learned counsel for the appellant stated that the appellant was not allowed to state his case by shifting the date of judgment backwards by 23 days which denied the appellant the opportunity of fair hearing. That this was contrary to the High Court Civil Procedure Rules of Oyo State 1988 which provides that any of the parties can make application to re -open his case and the opportunity was foreclosed by the shifting of date of that trial court judgment. He cited *Mentiki v Menkiti* (2000) FWLR (pt. 2) 293 at 305;

*Osia v Edjekpo* (2000) 10 NWLR (pt. 720) 233 at 248; *I.I. G. (Nig) Ltd v Alao* (1990) 3 NWLR (pt. 141) 773 at 780.

For the appellant was submitted that this court has to exclude and discountenance a document unlawfully received in evidence even though counsel at the trial court did not object to its going into evidence. That the lower court was clearly wrong in holding that Exhibit B 7 which was merely a photocopy of a public document was admissible in evidence notwithstanding its non-certification. He referred to *Dagaci of Dere v. Dagaci of Ebwa* (2006) 7 NWLR (pt. 979) 382 at 424 - 425; *Minister of Lands Western Nig. v. Azikiwe* (1969) 1 ALL NLR 4 at 59; *Onobruhere v Esagine* (1986) 1 NWLR (pt. 19) 799 C at 808.

Also contended for the appellant is that defamation is all about publication of a defamatory matter about a person to a third party and where that publication is not made there can be no libel or slander. This being because it is not what the plaintiff think about himself but what a third party thinks of him as regards his reputation. He cited *Iwueke v IBC* (2005) 17 NWLR (pt. 955) 447 at 482; *Concord Press Ltd v Asaolu* (1999) 10 NWLR (pt. 621) 123 at 136. D

For the respondent, Mr. Adekola Olawoye reacted by saying E that before a public document is admissible in any court proceedings a copy of the document must be certified but such certification connotes that the original of the document is in the custody of the official upon whom Section 111 now 201 of the Evidence Act 2011 places F the duty of certification. He stated that having been frustrated by the refusal of PW2 to produce the appellant's actual letter which contained the said libelous words upon which issues had been joined by both parties to this case and going by the averments in the pleadings particularity paragraphs 15 and 17 of the appellants pleadings, the G respondent had no other means provided by law through which he could obtain a Certified True copy of the said letter than to tender the photocopy given him by the men of the then Nigerian Security Organisation (NSO) which is Exhibit P7 in line with the averment in paragraph 5 of the Statement of Claim. He referred to *Buhari v H Obasanjo* (2005) ALL FWLR (Pt.273) 1 at 76.

It was further submitted for the respondent that the decision of the lower court is right not perverse and has not occasioned a miscarriage of justice as far as the admission of Exhibit P7 in this case is

concerned. He cited *Okotie - Eboh v Manager* (2005) ALL FWLR (pt. 241) 277 at 317; *Broad Bank Nig. Ltd. v. Olayiwola & Sons Ltd & Anor.* (2005) ALL FWL (Pt. 251) 236 at 246 etc.

Mr. Olawoye of contended that the learned trial judge exercised the discretion on the application for adjournment judicially and judiciously. He cited *Oyekanmi v NAPA* (2000) 15 NWLR (pt. 690) 414 at 438 - 439.

That the appellant as in this case who refused or neglected to present his case for determination cannot complain of a denial of fair hearing. He referred to *Oyeyipo v Oyinloye* (1967) NWLR (pt. 50) 356 at 359 etc.

Learned counsel for the respondent said the findings of fact of the two courts below showed without doubt that the publication of the said defamatory letter i.e. Exhibit p7 was overwhelmingly proved by the respondent which said findings of fact are not perverse and this court should not interfere with same. He referred to *Globe Fishing Industries Ltd v Coker* (1995) 7 NWLR (pt. 152) 265 at 297; *Ogbe v Asade* (2009) 12 SC (Pt. III) 37 at 66. That a defendant who was given an opportunity by the courts to defend a case and refused to and/or failed to do so is deemed to have abandoned his pleadings in the case and is bound to the evidence put forward by the plaintiff and the claim must be dealt with on the evidence as it stands which is deemed admitted by the defendant. He cited *Omoregbe v Lawani* (1980) 3 -1 SC 108 at 118; *Imana v. Robinson* (1979) 3 - 4SC 1; *Ndulue & anor v. Ojiakor & ors* (2013) 1-2 SC (Pt. II) 1 at 112. Etc.

He said the law allows a trial court to form its opinion on the genuineness or otherwise of a signature in any document exhibited before it without relying on the evidence of a handwriting expert once he compares the two documents before him and he believes that one of them is genuine. He cited *UTB v Awan Zigana Ent. Ltd* (1994) 6 NWLR (Pt.348) 56 at 77; *Tomtec (Nig.) Ltd. V.F.H.A.* (2009) 12 SC (Pt.III) 162 at 188 - 189.

Mr. Michael Lana of counsel for the appellant in reply on point of law said there is no exception provided in the Evidence Act, Section 97(1) on the kind of secondary evidence of a public document admissible other than a Certified True Copy. That neither counsel nor court is permitted to read into a statute what the lawmakers did not put there. He relied on *NNPC v FAMFA Oil Ltd* (2012) 17 NWLR



(Pt.1328) 148; Kubor v Dickson (2013) 4 NWLR (Pt.1345) 534 at 593.

That Exhibit P7 being a public document that was not certified is inadmissible no matter the circumstances surrounding and should have been expunged from the Records. He cited Akinduro v Alaya (2007) 15 NWLR (Pt.1057) 312 at 388. B

Further contended is that there was no proof of the publication of the offending material to someone other than the claimant which translates to the failure of the case of the plaintiff/respondent. He cited Nsirim v Nsirim (1990) 3 NWLR (Pt.138) 285; Anate v Sanusi (2001) 11 NWLR (Pt.725) 542; Ajakaiye v Okondeji (1972) 1 SC 92. C

Having set out the summary of the two opposing positions of the parties which can be stated to be, for the appellant that in the light of the settled situation of the law that only a certified true copy of a public document is admissible in law, the lower court erred in law when it held a photocopy of a public document admissible and in it containing the libel sued upon. While on the side of the respondent is that the appellant failed to show any special or exceptional circumstances in the case to compel this court to upset the findings of fact of the court below in its concurrent judgment relating to the admissibility of Exhibit P7. E

From the above a recapture of the foundation of this case may be useful at least for a refreshing of the mind and what is really the contest between the parties. In the Statement of Claim of the plaintiff/respondent paragraph 3 is thus stated: F

*Para 3 "The plaintiff avers that on or about the 12th day of December 1984, the defendant willfully and maliciously wrote and published or caused to be written and published the following words contained in a typewritten letter which are defamatory to the plaintiff.*

*The Certificate which he carries about now was forged and was not the certificate issued to him just as Olapade Agoro claims that he has B. Sc. (Engineering) and M. Sc. (Engineering) when in actual fact he has never seen the inside of any University anywhere in the world. His academic credentials such as Certificate and Transcripts should be probed by the NSO and Interpol to establish their genuineness"*

The defendants/appellant's reply being as follows:

*Paragraph 16 "The defendant would canted at the hearing of the case that the occasion necessitating the reply as contained in his letter dated 12th December, 1984 render the comments contained therein to be fair, justified and privileged. Defendant will at the trial*  
 B *found on his said letter and it pleaded."*

*Paragraph 17 "The defendant disputes the contents set out in paragraph 3 of the Statement of Claim and would contest the genuineness of the letter in possession of the plaintiff which is not from*  
 C *proper custody and further avers that any purported letter which contained the words set out in paragraph 3 of the Statement of Claim is a forgery in that the defendant never wrote such a letter; such a letter could not have emanated from a proper custody and defendant would insist on an original copy of such in proof of the genuine-*  
 D *ness of such letter if existing".*

From the Records spanning from the trial court and the Court of Appeal is that the area of the dispute is indeed very narrow ant that is the admissibility or not of Exhibit P7 which is a public document, a photocopy and not certified. The court below treated it thus:  
 E *"And having regard to the evidence of the plaintiff that Exhibit P7 though un-certified, was the exact photocopy of the original document given to him by the security personnel, its relevance to the facts in issue was firmly established. Against this background, it is my view*  
 F *that the plaintiff was at liberty to make resort to Section 97(a)(i) and (i) and (c) of the Evidence Act to tender Exhibit P7 as secondary evidence of the existence and contents of the actual defamatory letter received and acted upon by the Military Governor of Oyo State. It is my view therefore that Exhibit P7 was also admissible as second-*  
 G *ary evidence under Section 97 of the Evidence Act."*

The Trial Judge had admitted Exhibit P7 in evidence as a private document against the objection of the appellant's counsel that the document was a photocopy of a public document without certification was inadmissible.

H The stance of the Court of Appeal was that since it was impossible for the respondent to tender the original, he was at liberty to rely on Section 97(a)(i) and (i) and (c) of the Evidence Act to tender it as a secondary evidence. It is however to be noted that there was no evidence on what provided this impossibility of producing the

original or why the certification of the photocopy was not done. Therefore the Court of Appeal anchoring on relevance to take Exhibit P7 is not supported by law precisely Section 97 of the Evidence Act. In this wise the case of *Araka v Egbue* (2003) 17 NWLR (Pt.848) 1 is helpful as its facts are opposite to the facts on hand. In that case the original letter allegedly written to the Military Governor of Anambra State was not produced in evidence. The evidence proffered by the plaintiff was not that it could not be found and the trial court in spite of photocopy of the document objection against that being admitted in evidence held that the original of the letter having been lost any secondary evidence of the lost document was admissible. The Court of Appeal disagreed and had it position affirmed by the Supreme in this way:

*“The main thrust of the appeal appears to be that if the original of the public document is lost or destroyed thereby rendering the making of a certified copy impracticable, it would be unjust not to admit other form of secondary evidence such as photocopy of the original document. I share the plight of the appellant but it must be borne in mind that the duty of the court is to expound the law and not to expand it. It is not the function of the court to supply omissions in statutes and thereby embark on judicial legislation... The provision under consideration, that is Section 97(2)(c) of the Evidence Act (supra) has been judicially considered In several decisions of this court... The decisions in these cases are consistent that only a certified copy is admissible as secondary evidence to prove the contents of a public document. These decisions cannot be faulted.”*

Tobi JSC at P.21 stated:

*“The duty of the court is to interpret the words contained In the statute and not to go outside the words in search of an interpretation which is convenient to the court or to the parties or one of the parties. Even where the provisions of a statute are hard in the sense that they will do some inconvenience to the party, the court is bound to interpret the provisions once they are clear and unambiguous. It is not the duty of the court to remove the chaff from the grain in the process of interpretation of a statute to arrive at favourable terms for the lawmaker. That will be tantamount to traveling outside the statute on a voyage of discovery. This court cannot embark upon such a journey.”* See also *Dagaci of Dere v Dagaci of Ebwa* (2006) 7 NWLR

(Pt.979) 382 at 424 - 425; G -B and 445 - 446 H -A, Minister of Lands Western Nig. V. Azikiwe (1969) 1 ALL NLR 4 at 59; Onobruhere v. Esegine (1986) 1 NWLR (Pt.19) 799 at 808.

The background above stated would have in its wake the fact that the cause of action is in libel and there arises the doubt or question as to whether there had been publication. This is so because Exhibit P7 not being admissible and having been wrongly admitted has suffered the fate of either being expunged or taken as discounted and non-existent the natural conclusion is that a claim in libel cannot be established without the offending words having been communicated to a third party. That is the basic ingredient of defamation as publication to a third party is of the very essence.

In this I seek refuge in the case of Iwueke v I.B.C. (2005) 17 NWLR (Pt.955) 447 at 482 wherein this court held thus:

*“For a plaintiff to succeed in libel, there must be proof by evidence of a third party of the effect of the alleged publication on him, i.e. the reaction of a third party to the publication.*

*Afterwards, libel consists in the publication by the respondent, by means of printing, writing, pictures or the like signs of a matter defamatory to the plaintiff.”*

It naturally flows that in this instance where the document in issue is not really before court and therefore no evidence that the offending words were made known to a third party, then the evidence of the plaintiff of suffering a lot of public disgrace which led to nervous breakdown and public scorn and being put before the whole world as a criminal have no effect since there is no foundation on which the purported injury can be built and assessed.

Clearly from all I have set above, there was no basis for the concurrent findings of the two courts below, and therefore no difficulty in going along the well articulated lead judgment in allowing this appeal. I set aside the judgment of the court below which had upheld the decision of the trial court.

I abide by the consequential orders earlier made.

### **AKA’AHS JSC**

I had a preview of the judgment of my learned brother, Galadima, JSC. I agree that the appeal has merit and should be al-

lowed mainly on the ground that Exhibit P.7 which contained the libel ought to have been certified before it is admitted in evidence. Since it was not certified, it is inadmissible and notwithstanding its relevancy could not form part of the evidence on which the learned trial Judge could act to found for the Plaintiff/Respondent. The respondent as plaintiff during his testimony stated as follows at page 107 of the records:-

*“Sometime in 1984, December 12, the defendant caused to be written and published a defamatory speech concerning me to the effect that the certificate I was carrying about purporting myself to be an Oba was a forged one... Sometime in November 1985 after staying in Police custody for six months and on my release not committed any offence including offence of forging certificates concerning my degrees and installation, I was asked to go away and given a photocopy of the letter caused to be written and published by the defendant concerning me. Government gave me another copy of the same letter. So I have two photocopies of the letter. This is the photocopy that I receive.”*

Although the lower court correctly overruled the learned trial Judge’s finding that Exhibit P.7 was a private document by virtue of the fact it is a public record kept in Nigeria of a private document which comes within the meaning of Section 109(b) Evidence Act, the court veered off when it agreed with the learned trial Judge’s reasoning that even though the document (Exhibit P.7) did not purport to be the very original document sent to and received and acted upon by the Military Governor of Oyo State, it nevertheless is the exact documents that was given to him by the Security Personnel. The evidence of the plaintiff is not that of a facsimile document made by the same mechanical process. Since it was a photocopy, there ought to be a certification that it was a true copy of the original before it could become admissible. See Section 89 (e & f) Evidence Act 2011.

For this and the more detailed reasons contained in the judgment of my learned brother, GALADIMA, JSC, I find that the appeal has merit and it is hereby allowed. The judgment of the High Court, Oyo State delivered on 30/9/1997 in suit No. I/740/90 which was affirmed by the lower court on 9/4/2003 in appeal No. CA/I/16/99 are hereby set aside. In its place the Plaintiff/Respondent’s case is

dismissed. Each party is to bear his own costs.

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***KEKERE-EKUN JSC***

B I have had a preview in draft the judgment of my learned  
brother, GALADIMA, JSC just delivered. I agree with his reasoning  
and conclusion that there is merit in this appeal and it ought to be  
allowed. My brief comments are in support of the lead judgment and  
for emphasis. From the issues formulated by the appellant, I agree  
C with my learned brother in the lead judgment that issues 1 and 4  
should be considered together.

I adopt the summary of the facts leading to this appeal already  
fully set out in the lead judgment. The main issue in contention in this  
appeal is whether there is any exception to the rule of evidence as  
D provided for in Section 97(1)(e) and (2)(c) of the Evidence Act 1990,  
applicable at the time the case was heard at the lower court, (now  
Sections 89(e) and 90(1)(c) of the Evidence Act 2011 as amended)  
that only a certified true copy of a public document is admissible in  
evidence.

E At the trial court in an attempt to prove the publication of the  
alleged libel against him, the respondent pleaded a letter dated 12th  
December 1984 allegedly written by the appellant to the Military  
Governor of Oyo State containing the libelous words. He subpoenaed  
F an official of the Oyo State Ministry of Chieftaincy Affairs,  
Governor's Office to tender a certified true copy of the letter. How-  
ever the respondent rejected the copy of the letter brought by the  
said official claiming it was different from the actual letter written by  
the appellant and upon which the Military Governor acted. The let-  
G ter was admitted in evidence as Exhibit P1. Upon the application of  
the respondent's counsel the witness was treated as a hostile witness  
and subjected to cross-examination by the respondent's counsel.  
Thereafter the respondent tendered Exhibit P7, which he said was a  
photocopy of the libelous publication handed over to him by the  
H men of the Nigerian Security Organisation (N.S.O.) upon his release  
from detention and which he contended contained the libelous words  
complained of.

To succeed in an action for libel the plaintiff must prove the  
following:

i. Publication of the material complained of to some person other than the person of whom it is written;

ii. That the words complained of need not necessarily refer to him by name but would be understood by reasonable people to refer to him; and

iii. That the publication is defamatory of the plaintiff. See: Onu Vs Agbese (1985) 1 NWLR (Pt.4) 704; Sketch Vs Ajagbemokeferi (1989) 1 NWLR (Pt.100) 678; Skye Bank Plc. Vs Akinpelu (2010) 9 NWLR (Pt.1198) 179. B

In the instant case it was imperative for the respondent to prove that the appellant actually received the letter containing the libelous words. The only way to do so was to produce a copy duly certified by the Governor's office. Exhibit P7, which the respondent tendered and relied on, is a photocopy of the original document allegedly in the possession of the Military Governor. C D

Sections 97(1)(e), (2)(c) and 109(a)(iii) of the Evidence Act 1990 (now Sections 89(e), 90(1)(c) and 102(a) (iii) of the Evidence Act 2011) provide as follows:

*"97(1). Secondary evidence may be given of the existence, condition or contents of a document when - E*

*(e) the original is a public document within the meaning of Section 102.*

*(2) The secondary evidence admissible in respect to the original documents referred to in the several paragraphs of subsection (1) is as follows - F*

*(c) In paragraph (e) or (f) a certified copy of the document, but no other secondary evidence is admissible.*

*109. The following documents are public documents -*

*(a) documents forming the official acts or records of the official acts of - G*

*(iii) public officers, legislative, judicial and executive, whether of Nigeria or elsewhere. "*

The letter having been addressed to the Military Governor in his official capacity, qualifies as a public document within the meaning of Section 109 of the then applicable Evidence Act (now Section 102 of the Evidence Act 2011 as amended). The literal rule of interpretation of statutes is that ordinary words must be given their natural and ordinary meaning. It is only when there is doubt or ambiguity H

that recourse may be had to other cannons of interpretation. See: A.G. Ogun State Vs Aberuagba (1985) NWLR (Pt.3) 395; Ndoma-Egba Vs Chukwuogor & Ors. (2004) 2 SC (Pt.1) 107; Cotecna International Ltd. Vs Churchgate (Nig.) Ltd. (2010) 18 NWLR (Pt.1225) 346. In the case of Ahmed Vs Kassim (1958) SCNLR 28 @ 30 C

B Foster-Sutton, FCJ held thus:

*“The underlying principle is that the meaning and intention of legislation must be collected from the plain and unambiguous expressions used therein rather than from any notions which may be entertained as to what is just or expedient.”*

C This court also held in Adewunmi Vs A.G. Ekiti State & Ors. (2002) SCNJ 27 @ 50 per Wali, JSC:

*“In cases of statutory construction, the court’s authority is limited. Where the statutory language and legislative intent are clear and plain, the judicial inquiry terminates there. Under our jurisprudence, the presumption is that ill-considered or unwise legislation will be corrected through democratic process. A court is not permitted to distort a statute’s meaning in order to make it conform with the judge’s own views of sound social policy.”*

E At page 249 of the record the lower court held:

*“It is true that only certified true copy of public document is admissible in evidence. See Section 97(1)(e) and (2)(c) of the Evidence Act. But in this case it was practically impossible for the plaintiff to obtain a certified true copy of the document since the original appears to have been destroyed, or lost or hidden by those in possession or control over it. And having regard to the evidence of the plaintiff that Exhibit P7, though un-certified, was the exact photocopy of the original document given to him by the security personnel. ...Against this background it is my view that the plaintiff was at liberty to resort to Section 97(a)(i) and (ii) (c) of the Evidence Act to tender Exhibit P7 as secondary evidence of the existence and contents of the actual defamatory letter received and acted upon by the Military Governor of Oyo State. It is my view therefore that Exhibit P7 was also admissible as secondary evidence under Section 97 of the Evidence Act. For the foregoing reasons I hold that Exhibit P7 was admissible and rightly admitted by the learned trial Judge.”*

H The words used in Section 97(2)(c) of the Evidence Act 1990 (section 90(1)(c) of the 2011 Act) are clear and unambiguous and



best illustrate the intention of the lawmakers i.e. that the only secondary evidence of a public document admissible in evidence is a certified true copy thereof. This position of the law has been upheld by this court in: *Araka Vs Egbue* (2003) 17 NWLR (Pt.848) 1 @ 18; *Kubor Vs Dickson* (2013) 4 NWLR (Pt.1345) 534 @ 593 F; *Nzekwu Vs Nzekwu* (1989) 2 NWLR (Pt.104) 373. In *Araka Vs Egbue* (supra), His Lordship, Niki Tobi, JSC explained thus:

*“As indicated above, Section 97(2)(c) contains the words “but no other kind of secondary evidence is admissible.” The word “but” in the context, as a conjunction, means “against what might be expected; in spite of this” and the word is followed by the specific negative expression “no other kind of secondary evidence is admissible” Can this court give another kind of secondary evidence to the very clear words in section 97(2)(c)? I think not.”*

In light of the authorities variously referred to, there was no justification for the finding of the lower court reproduced above. There is no exception provided in the statute. Exhibit P7 being an un-certified photocopy of the letter containing the alleged libel was clearly inadmissible in evidence and ought to have been expunged from the record by the lower court. I also resolve issues 1 and 4 in the appellant's favour. Having failed to prove publication of the libelous matter, I agree with my learned brother in the lead judgment that the respondent's case collapses like a pack of cards. For these and the more detailed reasons contained in the lead judgment, I find merit in the appeal and allow it accordingly. The judgment of the Court of Appeal, Ibadan Division delivered on 9th April 2003 is hereby set aside. I abide by the order for costs as contained in the lead judgment.

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