

COURT OF APPEAL AKURE DIVISION
THURSDAY 16TH JANUARY 2014. CA/B/293/2006
CORAM:- S. DENTON-WEST, M. A. OWOADE,
C. I. JOMBO-OFO, JJCA

ENTERPRISE BANK LIMITED APPELLANT
AND
OLAWALE NURUDEEN AMAO RESPONDENT

APPEALS - Grounds - Competence - Any ground formulated but not argued is deemed abandoned - And it is treated as never existed (H1)

DEFAMATION - Publication - Meaning - It means making known of the defamatory matter - After it has been written to some people - Other than the person of whom it is written (H2)

TORTS - Libel - Ingredients - Proof - Plaintiff must prove that there is the publication complained of - That the same refers to him - And is defamatory to him (H3)

TORTS - Libel - Publication - Reference - It is not in all circumstances that names of persons - To whom alleged libelous document is delivered - Can be numerically mentioned (H4)

TORTS - Libel - Parties - Three parties are involved in libel - The publisher - Person defamed by the publication - And person the publication is delivered to (H5)

EVIDENCE - Evaluation - Trial court ascribes credibility to evidence of witnesses - And where findings of facts are not perverse - Appellate court cannot interfere with them (H6)

COURTS - Issue - Determination - It is not the duty of court to speculate on any matter - But to determine a case based on evidence before it (H7)

COURTS - Proceedings - Due process - It is the duty of court to set

standard precedents - Not only to arrest circumstances before it - But to compel people to always follow due process of law (H8)

TORTS - Defamation - Meaning of - Sketch's case - Defamatory statement is one which is published concerning a person - And calculated to lower him in the estimation of right thinking persons (H9)

TORTS - Libel - Test - Is that of a reasonable man - And Judge will be guided by how reasonable men of ordinary intelligence - Would likely understand the words used in their ordinary meaning (H10)

FRAUD - Allegation of - Proof - Party making such allegation has the duty to prove particulars of same - But appellant failed to prove fact contained in Exhibit N8 - Alleging that respondent was involved in fraud (H11)

TORTS - Libel - Proof - In action for libel it is the duty of defendant and not plaintiff to prove - That the main charge of the libel is true (H12)

TORTS - Defamation - Justification - Failure to prove - Appellant failed to justify the statements made in exhibit N8 - And therefore cannot succeed on plea of justification (H13)

FACTS

Plaintiff/respondent commenced this action at the High Court of Ondo State Akure against defendant/appellant. Respondent's claim is inter alia for a declaration that by the letter titled "Separation" addressed by appellant to respondent, the latter is entitled to payment of all his benefits including one month salary in lieu of notice having served appellant as its employee for 17 years. Respondent equally sought for damages for libel and also for innuendo published against him by appellant. As at the time his employment was terminated, respondent was working as appellant's Operations Manager.

Against his expectation, he was informed in writing that there is no entitlement to him from appellant on the ground that he was implicated in a syndicated fraud while serving at a branch of appellant. Respondent was not pleased with the stance of appellant. Hence,

he initiated the action. At the commencement of trial, the parties called witnesses and tendered several exhibits to support their cases. Upon the conclusion of trial and in his judgment, the learned trial Judge held in respondent's favour. The court ordered that respondent be paid his entire entitlements, gratuity pensions and allowances. Respondent was also awarded the sum of N500,000.00 as damages for libel and innuendo. Aggrieved, appellant appealed to the Court of Appeal.

ISSUES FOR DETERMINATION

(1) Considering the evidence led in this case particularly taking into consideration the fact that the plaintiff testifying in person, whether the plaintiff proved publication of Exhibit N8.

(2) Whether Exhibit N8, the alleged libelous document was defamatory in nature.

HELD (Unanimously dismissing the appeal per

DENTON-WEST JCA)

APPEALS - Grounds - Competence

1. Nevertheless, on ground 1 of the Notice of Appeal in which no issue was formulated, the law is settled that any ground of appeal formulated and not argued is deemed abandoned and if abandoned, it is treated as never existed. The said ground 1 of the Appellant's grounds of appeal is hereby struck out.

(p. 2603 H)

DEFAMATION - Publication - Meaning

2. Publication as an ingredient of the tort of libel means the making known of the defamatory matter after it has been written to some person other than the person of whom it is written. (p. 2604 E)

TORTS - Libel - Ingredients - Proof

3. The law is trite that in an action for libel, the Plaintiff must prove 3 fundamental elements of defamation constructively:

1. That there is the publication complained of by the defendant;

2. That the publication refers to no other person but the Plaintiff conclusively;

3. That the publication is defamatory to the plaintiff.

It is obvious from the above that publication is the first, most important, and very fundamental element that must be established in an action for libel: Publication or communication of the alleged defamatory words to a third party constitutes a very important ingredient in an action for libel. (p. 2606 C)

C TORTS - Libel - Publication - Reference

4. It is my opinion that the above piece of evidence does not fall short of establishing publication of exhibit N8.

I agree with the learned counsel for the Appellant on his submission that defendant is an artificial person and naturally it carried out its activities through the human elements who naturally are its head, legs, brain and directing mind. The fact that Dr. Enwefah as the head, human resources department of the appellant and the author of exhibit N8 signed the said exhibit in his official capacity; the said exhibit cannot be said to be published to him but there was publication in my view. The counsel to Appellant's submission to the effect that Respondent failed in his pleading and his evidence to plead and mention the names of the persons to whom the alleged libelous document was delivered, in my view cannot hold water. It is not in all circumstances that the name(s) of the persons to whom the alleged libelous document is delivered to can be numerically mentioned. (p. 2607 D)

G TORTS - Libel - Parties

5. Thus, it is a step in the right direction to state that in libel, three parties are involved, namely: the publisher, the person defamed by the publication and the person the publication is delivered to. My view with the greatest respect is that there is nothing in paragraphs 10, 14, 15, 16 and 17 of the statement of defence of the appellant that admits publication of exhibit N8 to a third party. The appellant is one and where a document is issued to the respondent and kept with the appellant, it cannot amount to publication to itself in the absence of any

evidence from a third party, that same document was forwarded to him/her by the appellant. (p. 2608 C)

EVIDENCE - Evaluation

6. The trial court has the power to ascribe credibility to the evidence of witnesses who testified before it. Thus where findings of facts are not perverse an appellate court cannot interfere with them. (p. 2608 G) B

COURTS - Issue - Determination

7. There is no doubt that it is not the duty of the court to speculate on any matter no matter how close what it relies on may seem to be but to determine a case based on evidence before it. (p. 2609 B) C

COURTS - Proceedings - Due process

8. However, it is the duty of the courts to set standard precedents that will not only arrest the circumstances presented before it but will compel people to always follow the due process of the law. (p. 2609 C) D

TORTS - Defamation - Meaning of - Sketch's case

9. In law, a defamatory statement has been defined as follows by the Supreme Court in Sketch Publishing Company Ltd. & Anor v. Alhaji Azeez Ajagbemokeferi (1989) 1 NWLR (Pt 100) 678 that: F

“A defamatory statement is a statement which is published of and concerning a person and calculating to lower him in the estimation of right thinking person or cause him to be shunned or avoided 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”. (p. 2611 G) G

TORTS - Libel - Test

10. The question as to whether or not published words are defamatory in their ordinary meaning is the first question a Court must determine. H

The test of libel is that of a reasonable man and the Judge will be guided by how reasonable men of ordinary intelligence would likely understand the words used in their ordinary meaning as a whole. (p. 2612 A)

B FRAUD - Allegation of - Proof

11. Where there is an allegation of fraud, the duty to prove particulars thereof rests on the party alleging same.

C Appellant failed to adduce any evidence or establish the fact contained in exhibit N8 alleging that the Respondent was involved in a syndicated fraud. (p. 2612 D)

TORTS - Libel - Proof

D 12. Also, it is the duty of the defendant nay Appellant herein in an action for libel to prove that the main charge of the libel is true. (p. 2612 G)

TORTS - Defamation - Justification - Failure to prove

E 13. I wish to hold that the Appellant failed to justify the statements made in exhibit N8 and therefore cannot succeed on its purported plea of justification. Exhibit N8 is defamatory and I so hold. (p. 2613 D)

F REPRESENTATION

Ekerete Udofot Esq., for the Appellant

Oyindamola Osekita Esq. (Miss), for the Respondent

G CASES REFERRED TO

Adeniyi v. Oroja (2006) All FWLR (pt. 324) 1839

Alao v. Marantha Ltd. (2006) All FWLR (pt. 334) 1996

Dahini v. Kamala (2006) All FWLR (pt. 295) 616

Aigbobahi v. Aifuna (2006) All FWLR (pt. 303) 202

H Bashorun v. Ogunlewe (2000) 1 NWLR (pt. 640) 221

Sky Bank Plc. v. Akinpelu (2010) 9 NWLR (pt. 1198) 179

Sketch v. Ajagbemokeferi (1989) 1 NWLR (pt. 100) 678

Odo v. Agbese (1985) 1 NWLR (pt. 4) 704

Nitel v. Tugbiyele (2005) ALL FWLR (pt. 241) 357

Nepa v. Inameti (2002) FWLR (pt. 130) 1695

Nsirim v. Nsirim (1990) 3 NWLR (pt. 138) 285

Nas v. Adesanya (2003) FWLR (pt. 145) 686

Esenowo v. Ukpong (1990) 6 NWLR (pt. 608) 611

Ajura v. Odili (1991) 2 NWLR (pt. 9) 710

Chikwete v. Nwankwo (1985) 2 NWLR (pt. 6) 195

B

LEAD JUDGMENT BY DENTON-WEST JCA

This appeal stems from the judgment of Hon. Justice O.O. Akeredolu of the Ondo State High Court of justice sitting in Akure delivered on the 14th day of February, 2006.

C

From the records of this appeal, the plaintiff now Respondent was an employee whose status was that of Operations manager at Appellant Bank Oke-Agbe branch, Ondo State before his employment was determined in the year 2001.

D

The Respondent was dismissed from the employ of Appellant Bank vide a letter of separation dated 31st January, 2011 which informed him that his services were no longer required and that his separation entitlements will be conveyed to him. When the Respondent demanded for his entitlement from the Appellant Bank, he was informed in writing that he had no entitlements because he was implicated in a syndicated fraud while he served at Oke-Agbe branch of the Appellant bank which allegation according to the Respondent was false and unfounded. Aggrieved by that response by the Appellant bank, the Respondent filed an action at the High Court Akure wherefrom this appeal arose seeking the following reliefs:

E

F

(a) A declaration that by the letter dated January 31st 2001 titled "Separation" addressed by the Defendant bank to the plaintiff which separation was stated to take effect from February 1, 2001, Plaintiff/Respondent is entitled to payment of all his benefits including one month salary in lieu of notice having served the Defendant bank as its employee for 17 years.

G

(b) A declaration that the second letter titled "separation" dated March 31st 2003 with Reference No: HRD/JE/FD/SATE/2003 addressed to plaintiff by the Defendant bank which letter in the main communicated to the plaintiff, a purported confiscation of the Plaintiffs entitlements to the Defendant bank which it was claimed was to augment part of the Bank losses, Plaintiff having been purportedly

H

implicated in a syndicated fraud (a claim which is a lie, unsubstantiated) is unconstitutional, null and void and of no effect whatsoever.

(c) An order setting aside the said letter i.e. dated 31st March, 2003 same being void and of no effect.

(d) An order directing Defendant bank to pay to Plaintiff forthwith all his entitlements including gratuity, pensions and allowances etc.

(e) Damages for libel and also for Innuendo published against Plaintiff by Defendant in a letter dated March 31, 2003 and addressed to Plaintiff and published to its Human Resources Department thereof in the following words:

“HRD/JEIFD/STAFF/2003

March 31, 2003

MR. Olawale N. Amao

c/o P. O. Box 3346

Akure,

Ondo State.

Dear Mr. Amao

RE: SEPARATION

Your various correspondences on the above subject refer.

As you are aware you were implicated in a syndicated fraud at Oke-Agbe branch continuously for a sustained period of 3 years during your tenure as the OPM and the fraud affected the branch to the tune of N14.5 Million you and several colleagues were subsequently arrested and handed over to the police. The bank had to pay from its coffers to the branch customers that were defrauded. Consequently, you were separated from the outcome of the investigations. In addition, it is normal practice in the Banking Industry for the names of dismissed/separated staff to be submitted to CBN for onward circulation to other banks.

In view of the forgoing, your entitlements have been confiscated therein to augment part of the bank’s losses. Furthermore, as per CBN policy, staff regrettably cannot convert dismissal/separation under these circumstances.

Please be guided accordingly.

Yours faithfully,

For: Omega Bank Plc.

SIGNED

JASON Enwefali (Dr.)

Head, Human Resources”

At the trial, both parties called witnesses and tendered several documents which were admitted in evidence. At the end of the trial, the court found for the Plaintiff now Respondent and ordered that the Respondent be paid all his entitlements, gratuity pensions and allowances. The court also awarded the sum of N500,000.00 as damages payable to the Plaintiff/Respondent for libel and innuendo. B

Dissatisfied with the said decision of the trial court, the Appellant herein filed this appeal vide a Notice of Appeal dated 2nd March, 2006. C

Both parties filed and exchanged their respective briefs in this appeal. The Appellant in their Brief of argument dated 6th day of December, 2012 but filed on 7th December, 2012 submitted the 2 issues below for determination in this appeal. D

(1) Considering the evidence led in this case particularly taking into consideration the fact that the plaintiff testifying in person, whether the plaintiff proved publication of Exhibit N8 (Ground II).

(2) Whether Exhibit N8, the alleged libelous document was defamatory in nature. (Ground II & IV) E

On the other hand, the Respondent in his Brief of Argument dated 11th February, 2011 but filed on 14th February, 2011 adopted the issues as submitted by the Appellant but however raised the point preliminarily that a perusal of the ground of appeal will show that Appellant has abandoned ground 1 of the Grounds of Appeal having distilled no issue on it and he urged this court to strike it out. F

He further pointed out that grounds (III) & (IV) of Appellant's grounds of Appeal contained in the Notice of Appeal complained of error and misdirection in each of the grounds and that the issues raised therefrom (grounds (III) & (IV)) do not strictly relate to the said grounds. On these further observations, there were no arguments proffered and so it will be needless for this court to embark on voyage of discovery to make up for the unargued points above. G

Nevertheless, on ground 1 of the Notice of Appeal in which no issue was formulated, the law is settled that any ground of appeal formulated and not argued is deemed abandoned and if abandoned, it is treated as never existed. The said ground 1 of the Appellant's grounds of appeal is hereby struck out. H

See Adeniyi v. Oroja (2006) ALL FWLR (Pt.324) p.1839 @ 1859 Para G, Alao v. Marantha Ltd. (2006) All FWLR(Pt 334) page 1996 @ 2007- 2008 para G - A., Alhaji Dahini & Anor v. Alhaji Kamala (2006) All FWLR (Pt.295) p. 616 @ 654, paras E-H, Aigbobahi v. Aifuna (2006) All FWLR (Pt 303) 202 SC.

B ARGUMENT
ISSUE 1

Considering the evidence led in this case particularly taking into consideration the fact that the plaintiff testifying in person, whether the plaintiff/proved publication of Exhibit N8 (Ground II).

C On this issue, the basis of the Appellant's submission was that publication is the first, most important, and very fundamental element that must be established in an action for libel. Publication or communication of the alleged defamatory words to a third party constitutes a very important ingredient in an action for libel. The following cases were referred to:

(a) NITEL V. TUGBIYELE (2005) ALL FWLR (PT.241) 357 AT 375 (PARAS A-D)

(b) NEPA v. INAMETI (2002) FWLR (PT.130) 1695 AT 1721 E (PARAS D-E)

(c) NSIRIM V. NSIRIM (1990) 3 NWLR (PT.138) 285 AT 297

(d) NAS V. ADESANYA (2003) FWLR (PT.145) 686 AT 694 (PARAS C-E)

F ***Publication as an ingredient of the tort of libel means the making known of the defamatory matter after it has been written to some person other than the person of whom it is written.*** EDORO V. GURARA FINANCE & SECURITIES CO. LTD. (2003) FWLR (PT. 142) 9 AT 20 PARA A-C.

G It was contended that the plaintiff's piece of evidence on the issue of publication falls short of establishing publication of Exhibit N8 for it was only to the effect that:

H *"Dr. Jason Enwefah wrote the letter to me on behalf of the bank... I was being embarrassed by relatives, friends and customers who asked me what has happened".*

It was further argued that the defendant was an artificial person and naturally it carried out its activities through the human elements who naturally are its head, legs, brain and directing mind. That the fact that Dr. Enwefah as the head, human resources depart-

ment of the appellant and the author of exhibit N8 signed the said exhibit in his official capacity; the said exhibit cannot be said to be published to him.

It was contended that the respondent failed in his pleading and his evidence to plead and mention the names of the persons to whom the alleged libelous document was delivered. B

The learned trial judge it was argued made a palpable error when he was trying to establish publication of exhibit N8. The court held:

“DW1 said that the letter was personally addressed to the plaintiff. This cannot avail the defendant in view of the averments in the statement of defence at paragraphs 10, 14, 15, 16 and 17 which clearly support the case of the plaintiff that the contents of exhibit N8 were published to other persons namely human resources department of the bank/the head of the department one Jason Enwefah” C D

It was submitted that there is nothing in paragraphs 10, 14, 15, 16 and 17 of the statement of defence of the appellant that admits publication of exhibit N8 to a third party. The appellant is one and where a document is issued to the respondent and kept with the appellant, it cannot amount to publication to itself in the absence of any evidence from a third party, that same document was forwarded to him/her by the appellant. E

It was submitted that in the absence of evidence on records, is not the duty of the court to speculate on any matter no matter how close what it relies on may seem to be, but to determine a case based on evidence before it. Referred to were: F

(1) EDOSA V. ZACCALA (2006) ALL FWLR (PT.306) 881 (PP 909 - 910) PARAS N - A

(2) DALFAM NIG. LTD. V. OKAKU INTERNATIONAL LTD. & ANOR (2002) FWLR (PT.96) 501 PAGE 541 PARAS B - C G

(3) OYINLOYE V. ESINKIN (1999) 10 NWLR (PT.624) 540 PAGE 55 (PARAS B - C)

This court was urged to allow this appeal on this issue.

The Respondent's counsel on his own part submitted basically H that the publication of Exhibit N8 was proved and was established by evidence of DW1 under cross-examination and was found as such by the trial Court in its judgment contained at page 44 of the records of appeal).

It was contended that DW1's evidence at page 44 reads...
"we put the information on the internet at the time the Plaintiff's appointment was determined we were not placing such information as separation of employment on the internet but on the Notice Board."

It was argued that the defamation consisted of the publication letter
 B (Exhibit N8) by appellants (The Bank) on internet, and Notice Board.

It was submitted that publication of a defamatory publication
 can be established through a defendant. Referred to was Bashorun
 & Ors -v- Dr. Ogunlewe (2000) 1 NWLR Pt 640 pg 221 at 227. This
 C court was urged to resolve this issue in favour of the Respondent.

RESOLUTION OF ISSUE 1

The law is trite that in an action for libel, the Plaintiff must prove 3 fundamental elements of defamation constructively:

D ***1. That there is the publication complained of by the defendant;***

2. That the publication refers to no other person but the Plaintiff conclusively;

3. That the publication is defamatory to the plaintiff.

E See Sky Bank Plc v. Akinpelu (2010) 9 NWLR (Pt.1198) 179, Skechth v. Ajagbemokeferi (1989) 1 NWLR (Pt. 100) 678, ODO v. Agbese (1985) 1 NWLR (Pt 4) 704, Service Press limited v. Nnamdi Azikiwe 13 WACA 301.

F ***It is obvious from the above that publication is the first, most important, and very fundamental element that must be established in an action for libel: Publication or communication of the alleged defamatory words to a third party constitutes a very important ingredient in an action for libel. See***

G Nitel v. Tugbiyele (2005) ALL FWLR (Pt.241) 357 at 375 (Paras A-D), Nepa v. Inameti (2002) FWLR (pt.130) 1695 at 1721 (Paras D-E), Nsirim v. Nsirim (1990) 3 NWLR (Pt.138) 285 at 297, Nas v. Adesanya (2003) FWLR (Pt.145) 686 at 694 (paras C-E).

H Publication as an ingredient of the tort of libel means the making known of the defamatory matter after it has been written to some person other than the person of whom it is written. Edoro v. Gurara Finance & Securities Co. Ltd.. (2003) FWLR (Pt. 142) 9 at 20 PARA A - C.

The plaintiff's averment on the issue of publication is mainly in

paragraphs 14 & 15 of the statement of claim. Paragraph 15 of the statement of claim states that the alleged libelous statement was published to “*other persons namely Human Resources Department of the defendant/the head of the department one Jason Enwejah*”.

The department of Human Resource of the Appellant Bank is to my mind an office not belonging to one person and neither is it affiliated particularly to the person named above. Documents therein are accessible to any official of the Appellant Bank especially the occupant of that office.

The plaintiff’s evidence on the issue of publication is to the effect that:

“Dr. Jason Enwefah wrote the letter to me on behalf of the bank... I was being embarrassed by relatives, friends and customers who asked me what has happened”.

It is my opinion that the above piece of evidence does not fall short of establishing publication of exhibit N8.

I agree with the learned counsel for the Appellant on his submission that defendant is an artificial person and naturally it carried out its activities through the human elements who naturally are its head, legs, brain and directing mind. The fact that Dr. Enwefah as the head, human resources department of the appellant and the author of exhibit N8 signed the said exhibit in his official capacity; the said exhibit cannot be said to be published to him but there was publication in my view. The counsel to Appellant’s submission to the effect that Respondent failed in his pleading and his evidence to plead and mention the names of the persons to whom the alleged libelous document was delivered, in my view cannot hold water. It is not in all circumstances that the name(s) of the persons to whom the alleged libelous document is delivered to can be numerically mentioned as held in *Nsirim v. Nsirim* (1990) 3 NWLR (PT. 138) 285 AT 295. See also *Esenowo v. Ukpung* (1990) 6 NWLR (Pt.608) 611 at 621-622 para H-A.

The learned trial judge in my view was not in error when he held:

“DW1 said that the letter was personally addressed to the plaintiff. This cannot avail the defendant in view of the averments in the statement of defence at paragraphs 10, 14, 15, 16 and 17 which

clearly support the case of the plaintiff that the contents of exhibit N8 were published to other persons namely human resources department of the bank/the head of the department one Jason Enwefah”

I agree with the learned Appellant’s submission that, Exhibit N8 cannot be published both in law and in fact to the author of the said letter. It is common knowledge that a letter from a corporate entity such as the appellant must be written and signed by an officer of the appellant; in this case one Jason Enwefah.

This fact is clearly admitted by the plaintiff in his examination-in-chief when he stated:

“Dr. Jason Enwefah wrote the letter to me on behalf of the bank”.

Thus, it is a step in the right direction to state that in libel, three parties are involved, namely: the publisher, the person defamed by the publication and the person the publication is delivered to. My view with the greatest respect is that there is nothing in paragraphs 10, 14, 15, 16 and 17 of the statement of defence of the appellant that admits publication of exhibit N8 to a third party. The appellant is one and where a document is issued to the respondent and kept with the appellant, it cannot amount to publication to itself in the absence of any evidence from a third party, that same document was forwarded to him/her by the appellant.

I wish to affirm the decision of the learned trial judge when he held:

“Exhibit N8 also confirm that the defendant made the contents of exhibit N8 available to CBN knowing fully well that the libelous information will be circulated to other banks”.

My reason for the above is because of what the action of the Appellant Bank here is capable of doing to the future career of the Respondent.

The trial court has the power to ascribe credibility to the evidence of witnesses who testified before it. Thus where findings of facts are not perverse an appellate court cannot interfere with them. See *Ajura vs. Odili* (1991) 2 NWLR (Pt. 9) 710; *Chikwete vs. Nwankwo* (1985) 2 NWLR (Pt. 6) 195.

The most appropriate thing in the circumstances was the prosecution of the Respondent which was from the records of this appeal

was done at the Magistrate court of Ondo State in which the Respondent as the accused was discharged. This is a legal mechanism which ought to have brought the Respondent to book if found guilty of the allegation rather than resorting to publication as in the circumstances that leads to this appeal.

There is no doubt that it is not the duty of the court to speculate on any matter no matter how close what it relies on may seem to be but to determine a case based on evidence before it as held in *Edosa v. Zaccala* (2006) ALL FWLR (Pt.306) 881 (Pp 909 - 910 paras N-A., *Dalfam Nig. Ltd. v. Okaku International Ltd. & Anor* (2002) FWLR (Pt.96) 501 page 541 paras B-C., *Oyinloye v. Esinkin* (1999) 10 NWLR (Pt.624) 540 page 55 (paras B-C).

However, it is the duty of the courts to set standard precedents that will not only arrest the circumstances presented before it but will compel people to always follow the due process of the law. This issue is resolved against the Appellant.

ISSUE NO. 2

Whether Exhibit N8, the alleged libelous document was defamatory in nature.

It was submitted by the Appellant's counsel that whether words alleged to be defamatory are indeed so, must be the conclusion arrived at by impartial observers. It is the written publication of false defamatory statement concerning the plaintiff without lawful justification. Thus, a true statement of fact' written or said about another person can never become defamatory. Once what was written is true no libel can be sustained on it. Referred to was *Esenowo v. Ukpong* (1999) 6 NWLR (Pt. 608) 611 (page 618) *Sketch Publishing Co. Ltd v. Ajagbemokeferi* (1989) 1 NWLR (Pt. 100) 678.

It was contended that there is nothing in the content of exhibit N8 that is false. Exhibit N8 merely reports or restates what had happened at the Okeagbe branch of the appellant. Also the learned counsel argued that the pleadings/evidence of the respondent certain facts that are in exhibit N8 were settled and that the respondent was arrested, investigated by policemen and subsequently charged to court as shown in exhibit N9. The arrest no doubt was as a result of the fact that the respondent was implicated in the crime before the policemen arrested him. It is also a true state of fact that the respondent

was dismissed/separated from the employ of the appellant.

It was stated that Exhibit N8 was merely stating the true position of what had happened in the past which fact contained therein is not contested but admitted by the respondent in his testimony in court. Further that the said exhibit does not carry the suggestion that the respondent “was involved in a syndicated fraud”. The true meaning of exhibit N8 is that the respondent was implicated in a crime, which led to his arrest by the police force and subsequent prosecution in court. That these were all true facts. This did not attract or carry any defamatory meaning. That the words in exhibit N8 were and are not defamatory in their true and ordinary meaning.

It was argued that the learned trial judge was specifically in error and actually was seeking a defamatory meaning to attach to exhibit N8 when she held thus:

“The plaintiff pleaded innuendo; his evidence that the implication of the letter is that he has a syndicate for fraud was not controverted”.

The learned counsel submitted that apart from the fact that the evidence of the plaintiff given on page 16 of the record of proceedings is different from the wordings of exhibit N8, the said plaintiff’s evidence in page 16 of the record of proceedings is different and convey separate meaning from what the learned trial judge stated on page 54 of the record of proceedings. The said two versions are different from exhibit N8. That Exhibit N8 is specific and states that the plaintiff was ‘implicated’ and not involve.

It was finally argued that the respondent throughout the trial never mentioned or gave evidence of the implication of the letter (Exhibit N8). And that the facts pleaded by the plaintiff in its paragraphs 19 of the statement was not supported by any evidence. Also that in law, pleadings in respect of which there is no evidence is deemed abandoned. Referred were: *Jolayemi v. Alaoye (2004) ALL FWLR (Pt.217) p.584 at 586 ratio 2 SC.*, *Awojugbagbe Light Ind. Ltd v. Chinukwe (2004) All FWLR (Pt. 229) p.943 at 955 ratio 14 SC.*

This court was urged to allow this appeal on this point.

In a swift reaction, the learned counsel for the Respondent submitted basically that defamation and defamatory words have been interpreted by our apex court that lectures are not needed to understand their meanings. However the test of what a defamatory state-

ment/or word is, is usually that of the opinion of a reasonable person.

It was submitted that Exhibit N8 is a letter of separation which states that the Respondent was involved in a syndicated fraud at the Oke-Agbe Branch of Appellant bank continuously for a sustained period of 3 years during his tenure as the Operations Manager. B

Also reference was made to page 7 paragraph 4.07 of the Appellant's Brief of Argument which states that:

"I submit with the greatest respect that the said exhibit does not carry the suggestion that the respondent was involved in a syndicated fraud. The true meaning of exhibit N8 is that he the respondent was implicated in a crime, which led to his arrest by the police force and subsequent prosecution in Court. These are all true facts. This does not attract or carry any defamatory meaning. The words in exhibit N8 are not defamatory in their true and ordinary meaning". C D

It was contended that since the Appellant's argument that words which are true cannot be termed defamatory, the question that flows from this assertion is whether or not the facts contained in exhibit N8 are true?

It was argued that where there is an allegation of fraud, the duty to prove particulars thereof rests on the party alleging same. E

The learned counsel among other arguments submitted that Exhibit E8 was highly defamatory which not only tarnished the image of the Respondent but also jeopardized the career of the Respondent who has been in the Banking sector for a very long period of time before dismissed by the Appellant Bank, and his entitlements confiscated. F

This court was urged to affirm the decision of the lower court on this point. G

RESOLUTION OF ISSUE 2

In law, a defamatory statement has been defined as follows by the Supreme Court in Sketch Publishing Company Ltd & Anor v. Alhaji Azeez Ajagbemokeferi (1989) 1 NWLR (Pt 100) 678 that: H

"A defamatory statement is a statement which is published of and concerning a person and calculating to lower him in the estimation of right thinking person or cause him to be shunned or avoided 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". See also Nta V. Babatope (1996) 4 NWLR (Pt 440) 75 at 88.

The question as to whether or not published words are defamatory in their ordinary meaning is the first question a Court must determine.

The test of libel is that of a reasonable man and the Judge will be guided by how reasonable men of ordinary intelligence would likely understand the words used in their ordinary meaning as a whole.

Exhibit N8 is a letter of separation which states that the Respondent was involved in a syndicated fraud at the Oke-Agbe Branch of Appellant bank continuously for a sustained period of 3 years during his tenure as the Operations Manager.

It is the Appellant's argument that words which are true cannot be termed defamatory. The question that flows from this assertion is whether or not the facts contained in exhibit N8 are true.

Where there is an allegation of fraud, the duty to prove particulars thereof rests on the party alleging same.

This court in the case of Are V. Saliu (2006) All FWLR (Pt 327) page 574 at 600 Para B, held:

"...that even though this is a civil matter, issue of fraud etc. is criminal matter cropping up and must be established by evidence beyond reasonable doubt..."

From the above decision of this court, it is my opinion that the Appellant failed to adduce any evidence or establish the fact contained in exhibit N8 alleging that the Respondent was involved in a syndicated fraud.

Also, it is the duty of the defendant nay Appellant herein in an action for libel to prove that the main charge of the libel is true.

The Supreme Court in the case of ACB & Ors v. Apugo (2001) NSCQR at 563 - 564 held that:

"...it is however a complete defence to an action for libel and slander that the defamatory imputation is true ...although it is not necessary to prove the truth of every word in the libel, the defendant is however obliged to prove that the main charge or gist of the libel is true".

In Omomiwu v. Enoglenu (1992) 7 NWLR (Pt 255) 593 at 603, Per Akpabio (JCA as he then was) referred to the case of Bardi -v- Maurice (1954) 14 WACA 414 where the West African Court of Appeal held that:

“to succeed on a plea of justification, the Appellants/defendants had the onus to justify the imputation complained of”. B

Furthermore in the words of the Late Hon. Justice Olatawura JSC (As he then was) in the case of Daily Times & Anor v. Emezuoni (1990) 2 NWLR (Pt 132) 340 at 355, he said and I quote:

“A plea of justification means that the libel is true not only its allegation of fact but also in any comments made... the defendant has to prove not only that the facts are truly stated but also that nay comments upon them are correct”. See also Emeagwara -v- Guardian Newspaper Ltd (1998) 1 NWLR (Pt 535) 610 at 623 C

I wish to hold that the Appellant failed to justify the statements made in exhibit N8 and therefore cannot succeed on its purported plea of justification. Exhibit N8 is defamatory and I so hold. D

Indeed it is difficult to disturb the findings of the fact of the lower court, however I would not quickly seek to congratulate the respondent for he may just have been lucky to get away free this time around for it is very disturbing that these days, bank officials have degenerated in forming a syndicate for fraudulent acts such as tampering into customer's account for their personal gains. This is very wrong and quite intolerable in a society that seeks to build a good and sound economy. I hereby wish to admonish the bad eggs in the system to perform their duties by applying the strictest code of conduct as expected in their profession because someday the long arm of the law would catch up with such unscrupulous bank officials. F G

On the whole, this appeal fails. The judgment of the lower court delivered on the 14th day of February, 2006 is hereby affirmed including the order granting the reliefs therein.

No order as to costs.

H

OWOADE JCA

I read in draft the judgment just delivered by my learned brother Sotonye Denton-West JCA. I agree with the conclusion therein that

the appeal fails and it is accordingly dismissed. I make no order as to costs.

JOMBO-OFO JCA

B I read in draft the lead judgment just delivered by my learned brother, DENTON-WEST, JCA and I agree with him that this appeal lacks merit and should fail. He has comprehensively dealt with the issues raised therein. I therefore adopt the reasoning and conclusions in the judgment as mine.

C I made no order as to costs.

D

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