

JOURNALISM AND DEFAMATION LAW IN NIGERIA, ISSUES, ESSENTIALS AND DEFENCES

BY

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INTRODUCTION

Defamation is a publication of a statement or presentation, which tends to lower the reputation of a person or which can make people shun or avoid that person defamed.

The Article 25 of the 1963 constitution has stipulated the freedom to publish and disseminate information. Also in the 1979, the 1993 and the 1999 constitutions affirmed the freedom. Therefore, the freedom to publish and disseminate information is not exclusive to the press only. The freedom is subject to the laws of the country and for the purpose of protecting the right, the reputation and freedom of people or person, the most important of such laws at this juncture, is the law of defamation source (Agbakoba, 2021). Defamation appeared in act of Nigeria 1961, act of Eastern Nigeria 1962, Western Nigeria Cap 32, 1962. Then degree No 44 of 1966, and No 7 of 1069, No 4 of 1984 and 2 of 1989 source (Onagoruwa, 2006).

Therefore, defamation is of two types: (a) Libel (b) Slander.

Originally, in the law, libel referred to written statement or presentation, while slander referred to spoken word. The offence for libel is considered more serious than that of slander. This is because written words indicate to damage or injure a person's reputation, whereas, spoken words may be spoken less serious, may be out of jokes. Intelligently, a person may say something out of annoyance and may not intend it to injure one's reputation.

1. According to Oliza Agbakoba (2022) defamation in law is the act of communicating false statement is about a person that result in damage to that persons' reputation. Adding that defamatory statement is one which tends to lower a person in the estimation of other members of the society, or to expose him to hated, contempt or ridicule; or to cause other persons to shun or avoid humour her or to discredit a person's office, trade or profession; or to injure financial credit.

Similarly, Okoye (2007), Ewelukwa (2004), Alayinde (2021) and Agbakoba (2022), have claimed that the Nigeria court defined defamation as any written or printed article published and equally concerning a person without lawful justification or excuse and fending to expose him to public contempt, ridicule, shame or disgrace or intending to induce an evil opinion of him in the mind of the right thinking members of the society, or trade is libellous and actionable, whatever the mention of the writer may have been.

Besides, the cybercrime (Prohibition, Prevention) act 2015 which became effective on May 15, 2015 according to Chiza Agbakoba (2022) also provides a follows. Any person who knowingly sends a message or other matter by means of computer systems or other matter by means of computer systems or that he knows to be false, for the purpose of.

2. Causing annoyance, inconvenience danger, obstruction , insult, injury, criminal, intimidation, entity, hatred, ill will or needless anxiety to another or cause such a message to be sent commits an offence under this act and shall be liable on conviction for a five of not more than ₦ 7,000,000.00 or imprisonment for a term of not more than three years or to both such fine and imprisonment.

Thus, when an individual posts something on social media, he is acting as publishers and can be used for making false statements or defamatory comment.

The case of Rafiu Ajakaye, Chief Press Secretary to the Governor of Kwara State (2022) can bring this point to limelight. One Abdulrasheed Akogun and the two Akogun brothers who is in online media practitioner and the brother Dare Akogun of Sobi Fm Ilorin jointly made a statement in a group WhatsApp platform the state government under Mall. Abdulrasaq Abdulrahman is corrupt and that the rural environment should come out to defend itself that it did not ridge the election of NUJ state council chairman for the incumbent NUJ state chairman. On the 14 October, 2022 the press secretary to the governor sued the two journalists for defamation against his boss Kwara State Governor before a magistrate court sitting in the matter was later settled out of court in the spirit of pen pushers, although, after the two brothers here remanded for few days in Ilorin Mandalla prison.

Element of Defamation In Relation To The Press

For defamation case to exist, according to Ewelukwa (2004), the plaintiff must prove that: (a) The statement must be defamatory, (b) It must refer to the plaintiff, (c) It must be published maliciously.

To prove that the statement must be defamatory, it is the court which decides whether a statement is defamatory or not. In arriving at its decision, the court will consider whether the statement complain of, raises the apprehension of hatred to the person he points to or the statement causes people to shun him or it affects him in his work, occupation or trade. The court will also examine whether the statement discredits the plaintiff, and the court will also find out whether it tends to lower the dignity of the person. The plaintiff himself must establish that there is defamatory in the statement.

That the publication refers to the plaintiff:- This must also be established. There is no problem if his name is mentioned but if it is not, he has to leave evidence to prove an indirect statement. Some statements are indirectly and this is what is called INNUENDO. Here, the statement looks like they are made innocently, but the proper meaning is concealed and it bites hard on the plaintiff, they are no doubt defamatory. Such statement may not be defamatory because of the special circumstances known to the person the statement refers to.

For example, a statement that Mr. Ngba Aba is a frequent visitor to Obafemi Awolowo Road, Allen Avenue in Lagos, is perfectly innocent on the face but the words will be defamatory if it was published maliciously: There must be publication that it injures the reputation of the plaintiff. Publication here means that the content must go through publishing. In another development, defamation is the act of communication to a third party false statements about a person, place or things that results in damage to its reputation. (Defamation Act, 2013 United State Defamation Law).

The publication must be understood by the 3rd person. (e.g language understand). E,g If a statement in Arabic is not understood in a community in which the plaintiff live, the defendant cannot be said to have published defamation statement about him. Similarly, if a letter is made and marked confidential and someone else opens it and get information in it there is no publication. Defamation was described by Justice Candido Johnson (1980) a Lagos State acting Chief Judge declared in Tony Momoh Vs The Senate that “Every person who publishes or cause to be published or reproduces or records for playing disseminate, circulate, or cause to be circulated or multiplied a publication is severely guilty of publications of such defamatory statement”. Source (Momoh, 2002)

Some Grey Areas in Defamation Law

From the brief introduction, it is obvious that the law of defamation is the difference between the individual’s right to have his reputation protected and the freedom to expose wrongdoing and thus risk damage to reputations.

Defamation law is the easiest legal trap that journalist possibly falls victim of, as newspapers could be liable even if they had made a reasonable mistake. As a result, historian Daniel Boorstein once said, “editors who wanted to stay alive were careful not to offend”. Source (Media Defence, 2021)

Weighing the complexity of defamation law against the background that erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the breathing space that “they need... to survive” (Bank 1995:598); it becomes imperative to address this and some other murky areas in the defamation law in the interest of freedom of information and the new democracy in Nigeria.

This law, essentially a “patchwork” of state standards under which public officials sue for libel often could recover large damage awards upon a simple showing that defamatory statement had been published, is unacceptable to the intelligence of the emerging free society. Walking on this slippery ground, Daramolu (1999:66) says, “A libel is actionable per se. That is a plaintiff does not have to prove special damage, the mere publication of the material make it an offence” citing *William V. The West African Pilot* (1961).

Another grey area in Defamation Law is Imputation.

They are many and in exportable. However the paper will give 3 examples:

- a) Imputation of dishonest or dishonourable conduct. E.g To accuse a person of cheating, ingratitude, cowardice, bad sportsmanship, maltreating employees. E.g Defamatory to alledge that Mrs Joseph had not feed her house maid for a whole week.
- b) Imputation as to unfitness for office e.g Defamatory to publish that so and so was not qualified for the position of an editor but he was just brought there to be the master voice.
- c) Imputation of immorality.

Although, a statement may refer to a plaintiff, not all statement are defamatory as such. Thus defamation should distinguish from:

- a) Mere vulgar abuse which conjures a man dignity and not his reputation. See *Penfold V. Westcote* in 1866, 2 queen’s bench, 335. In this case, the defendant said “You black guy, rascal, Penfold you are a thief”. It was held that this statements were Mere Vulgar Abuse. But the word thief was held to be defamatory. Source (Bryan, 2016 Pg 479-480).
- b) Injurious Falsehood: This is not defamatory unless it injures the plaintiff reputation. Thus the statement which merely injures the plaintiff business, and not his personal reputation is actionable as injurious falsehood. In a statement which refers to plaintiff as been miser or stingy in other to safe money is not defamatory. A statement which state that a trader was selling his material at an high price in order to make money is not defamatory.
- c) A statement is not defamatory, if it refers to something illegal which the plaintiff is doing, the test for this is that the right thinking people in the society would not regard it as defamatory.

The Essentials of Defamation

It has been noted from the beginning that defamation is of two forms, libel or slander. Whichever the case, the following points according to Okoye (2007) must be equally proved for the case to succeed in court:

- a) **Publication:** This means any publication article or write-up or any description to be read or look at or both or any sound record or any film, or other record or a picture which is published, distributed, circulated, sold or let it aired.

- b) **Malice:** This is another essential ingredient of defamation. This denotes that the offending statement must contain malicious intent. Malice is described as evil motive. If the plaintiff can prove the existence of a malice, the defendant will be defeated.
- c) **Damage:** This is identifiable loss as a result of the defamation. In a situation like a mere abuse or mere publication, the plaintiff must prove some special damage of character or reputation to succeed in his claim.
- d) **Repetition:** This is not an essential condition. If a defamatory statement is repeated in writing or orally or in any other form, it amount to fresh publication in the law.

Thus, repetition and dissemination of defamatory matter may necessitate the suing of the printer, publisher, author and vendor/Newspaper agents, in the case of books, magazines.

Question arise in the template law (2021:10) can a newspaper vendor be sued for defamation? The answer is that common law has successfully stressed that anyone involved in the publication of a defamatory statement no matter how alight, including a newspaper vendor who may be unaware but merely sells newspapers allegedly containing offensive materials, may be liable for defamation.

In his argument, Okoye (2007) refers to the issue of vendor involvement as a theory and not in practice. According to Okoye, vendors are rarely joined in any action of defamation because the law views their involvement leniently and regard vendors as innocent disseminators.

Defences to Defamation

The following defences are considered open to Journalist, Authors, Publishers etc.

- a. Justification or truth
- b. Fair comment
- c. Privilege
- d. Death of Plaintiff
- e. Innocent Publication
- A. **Justification:** You can plead that the statement or the publication was true. The law would not allow any person to claim damages of an injury of the character he had not possessed. If you called a thief a thief, truly is a thief. His plea of innocent will not be accepted, it is the duty of the defendant to prove as a matter of fact that the statement or allegation was justify and it is the court as a matter of law which takes decision on the legal aspect of the case.
- B. **Fair Comment:** You can plea that a publication, even though contains substances of defamatory, was made in good faith, without malice and on a matter of public interest. Fair comment should involve fair dealing, such as in editorials network, new analysis and not attacking a fault in a particular person in other words, a fair comment should not be the opinion of just a particular individual, it must represent public interest. Comment must be fair and must not be intended to damage or calm any particular person.
- C. **Privilege:** The press has right to make public anything it is authorise to publish or has write to do. There are (2) two type of privilege
- 1. **Absolute Privilege:** This is the freedom, the press has in publishing statement made in court proceeding, parliament, public lecture etc., and official privilege.

- 2. Qualified Privilege:** Statement made by police in evidence in court or statement made by person in private are expected to be published in the consent of those making the statement. There is another aspect to it, for example, any person whose character has been attacked in the press is entitled to defend himself and to reply in writing or otherwise use any relevant defamatory statement about the person who defames him.

News item, newspaper report of event cannot be defamatory as such. Other examples are letters to the editor, statement by individual to the press etc., as stated in section SS3 cap 2 & 3 of the 1964 newspaper amendment act. Source (Alayinde 2021).

Weather, defamation is intended or not, as long as it refers to plaintiff, the publisher is liable, but he may plead that the statements have been made honestly and without malice.

Ewelukwa (2004) quoted by Okoye (2007:98) writes that in the defamation laws of many states in Nigeria, newspaper reports enjoy qualified privilege if they satisfy the following criteria:

- i. They are fair and accurate in reporting legislative proceedings.
 - ii. They are fair and accurate in reporting the public proceedings of the conference of an international organisation of which Nigeria or any of its states is a member.
 - iii. They are fair and accurate in reporting any public proceedings of an international court.
 - iv. They are fair and accurate in reporting any proceedings in public government or legislature of any part of the Commonwealth outside Nigeria.
 - v. They are fair accurate in reporting any reports of any proceedings before a court exercising jurisdiction throughout any part of the Commonwealth outside Nigeria under the Nigerian Army Act 1990 or the Nigerian Navy Act, 1990.
 - vi. They are fair and accurate with copies or extract from any register inspection by the public or any other document which is required by any law or Act to be open to inspection by the public.
 - vii. Notice of advertisement published by or on the authority of a court within Nigeria or office of such court.
- D. Death of Plaintiff:** if the plaintiff is dead it will be difficult to carry on the action of defamation, because reputation is a personal possession and only the owner of the reputation can sue for defamation.
- E. Innocent Publication:** He has to show that he did not intend the statement to be defamatory, so, he must give prove to show that the word are not defamatory on the face of their ordinary meaning and that he did not know of circumstances by virtue of which the words may be understood to be defamatory. Also that he exercised reasonable care in relation to publication.

Where a plea of innocent publication is accepted reparation is made as follows:

- a. The publisher must publish the word complaint of;
- b. He must offer sufficient apology to the plaintiff; and
- c. Where copy of the publication has been distributed or multiplied, the correction made must also be multiply and circulated to all quest edition of the publication, the correction must be made in all this edition.

In some cases, offer of amends are made: This is an agreement to pay some money to the parson defame, the court will accept such settlement if agree to by both parties. This offer of amends must

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be accompanied by an affidavit specifying the fact rely upon to show that the words were reached by the plaintiff and signs the statement to give an accord of satisfactory release of the defendant. Where sufficient apology has been made and the plaintiff give accord of satisfaction release, he is not allowed or permitted under the law to sue the defendant on the same issue. In law, this is what we called RES JUDICATA. Res Judicata means that the case has come to a logical end and has died a natural death. Finally, the doctrine of VOLONTI NON INJURA is important here. That means you cannot sue for anything you consented to be done to you.

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