

CASE DIGEST



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TORT: DEFAMATION; ACTION FOR DEFAMATION; IS IT REQUIRED FOR A PLAINTIFF TO PROVE THAT A DEFAMATORY STATEMENT IS FALSE?

DR. JEREMIAH O. ABALAKA v. PROF. IBIRONKE AKINSETE & ORS.

SUPREME COURT OF NIGERIA

(KEKERE-EKUN; GARBA; OGUNWUMIJU; SAULAWA; JAURO, JJ.SC)

Case Digest: The Topic

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Background Facts

Dr Jeremiah O. Abalaka's (the Appellant) contention was that he had found a cure for HIV/AIDS and that his discovery and person had been defamed by Prof. Ibrionke Akinsete, Dr. Tim Menakaya, and Auwalu Mohammed Farouk (the 1st, 2nd, & 3rd Respondents respectively) by their utterances in a TV Press Conference and the report of some print media of the event subsequent to which he claimed jointly and severally against the respondents:

- (a) The sum of N500 Million Naira as damages for libel and slander.
- (b) Perpetual injunction restraining the defendants, their servants or privies howsoever defined from further publishing such defamatory information of and concerning the plaintiff and his vaccines.
- (c) An apology from the defendants.

At the trial court, the Appellant testified and called four witnesses. The 2nd and 3rd Respondents never filed any statement of defence and none of the respondents testified or called any witness. Upon

conclusion of trial, the trial court delivered its judgment against the Appellant.

Dissatisfied with the judgment of the trial court, the Appellant appealed to the Court of Appeal (lower court). The lower court in its judgment upheld the judgment of the trial court.

Further dissatisfied with the judgment of the lower court, the Appellant appealed to the Supreme Court. The sole issue formulated for determination was: Whether the concurrent findings of the lower court and trial court are liable to be set aside by this court.

Arguments

Learned counsel for the Appellant argued that the judgment of the trial court was flawed and that the lower court was wrong when it held that the onus was on the Appellant to prove that the statement of the 3rd Respondent that the cure for HIV developed by the Appellant is not effective and that the Appellant and all other persons who paraded themselves as

having found the cure to HIV are liars and cheats. Counsel argued further that the lower court not only treated the words it credited to the 3rd Respondent as if he testified but also believed him and therefore concluded that a burden of proof was cast upon the Appellant which he failed to discharge. Learned counsel argued that the Appellant did indeed prove that he discovered a cure for HIV and that it was wrong for the lower court to neglect unchallenged evidence and elevate unproven allegations as reliable evidence. Counsel argued that the trial court put up a defence for the 3rd respondent thereby descending into the arena.

In response, the 1st Respondent's counsel argued that whether a defendant adduces or does not adduce any evidence at the trial, the fundamental and primary burden which the law at the outset places on a plaintiff who wishes to succeed in his claim remains. He states further that the Appellant never proved or led evidence that he cured anyone, and neither was he able to cure the 3rd Respondent and therefore failed to prove that the 3rd Respondent defamed him by saying untrue words. Counsel submitted that the televised video clip (exhibit H) was tendered before the court and was evaluated by the trial court in coming to its decision. Therefore, the basis of the

allegation of the Judge being biased is considered unreasonable in the eye of a reasonable man.

The 2nd Respondent's counsel in response to the Appellant's contention argued that the 2nd Respondent neither mentioned the Appellant's name nor made reference to anything the appellant had done during the interview conference and that no evidence has been led to prove his involvement with the cause of action. Counsel submitted that the 2nd Respondent was particular and careful with his choice of words at the World Press Conference as contained in exhibit H and that he never on any account made a defamatory statement concerning the Appellant and that the Appellant did not reference or lead any evidence that the 2nd Respondent made any statement which could be considered defamatory in nature.

Learned counsel for the 3rd Respondent argued that the Appellant had failed to discharge the burden that has been placed upon him as plaintiff in an action for defamation and that where a plaintiff fails to prove his case, the defendant will not even be called upon to enter his defence as the defendant will have nothing to answer.



Resolution

In resolving this issue, the Supreme Court held that:

It is obvious that the Appellant was burdened, as the plaintiff, to establish all the ingredients of defamation to win his case. The burden or obligation was neither waived nor extinguished by the practically undefended nature of the case at the trial court. Following a long line of decided cases, the ingredients which the Appellant was obligated to establish included but was not limited to the falsity or untruth of the alleged material statements of the Respondents. Put differently, the law is settled that in an action for any form of defamation, it is essential for the plaintiff to establish falseness of the material statement, failing which the defendant will not even be called upon to enter a defence.

Issue resolved in favour of the Respondents.

Isaac Okpanachi, Esq., Samuel Onalo, Esq., and
O.S. Oyakhire-Ifijeh, Esq., for the Appellant

S. B. Joseph (Jnr.), Esq., for the 1st Respondent
O. J. Ajakpovi for the 2nd Respondent
E. O. Adekwu with Banke Oluwagbemi, Esq.,
for the 3rd Respondent

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