

CASE DIGEST

TORT: DEFAMATION; BANKER–CUSTOMER; INTERBANK COMMUNICATION ABOUT A CUSTOMER'S ACCOUNT IS PRIVILEGED COMMUNICATION, AND NOT DEFAMATORY TO THE CUSTOMER

KUNGO ROCK INVESTMENT LTD v. UNION BANK OF NIGERIA PLC.

COURT OF APPEAL (NIGERIA)
(LAGOS DIVISION)

(OGBUINYA; BAYERO; SIRAJU, JJ.CA)

Kungo Rock Investment Ltd. (Appellant) a current account customer of Union Bank of Nigeria Plc. (Respondent) at its branch in Ikeja, Lagos drew a cheque for the sum of N500,000.00 on the 10th of January 2002, in the name of Mr Kunle Adenipekun, its managing director, on its account with the Respondent, which was to be paid to Gateway Bank Plc. Gateway Bank Plc then sent the cheque for clearing but the Respondent refused to pay it for the reason that it was a forged instrument. On enquiry, the Appellant was informed by the Respondent that a similar cheque for the sum of N500,000.00 was earlier presented and the sum paid to the holder. The Respondent further wrote a letter to the Gateway Bank Plc wherein it informed it that the Appellant's cheque of 10th January 2002 was forged, and it should not be paid, and that the payee should be arrested, and his account blocked. The Appellant alleged that it was the Respondent who negligently paid the said sum to the presenter of that cheque as it breached normal banking rules and regulations. It further viewed the content of the letter written to Gateway Bank Plc as defamatory of it, causing it damage not only to its credits but also to its reputation. The Respondent joined issues with the Appellant, and upon the conclusion of the trial, the Lagos State High Court (trial Court) dismissed the Appellant's suit.

Aggrieved by the decision of the trial Court, the Appellant appealed to the Court of Appeal. One of the issues for determination is: *Whether or not the words contained in Exhibit C3 amount to defamation of the Appellant.*

The Counsel for the Appellant enumerated the features of libel and submitted that it is the duty of the plaintiff to plead and prove libel. He asserted that the appellant pleaded' and proved libel based on exhibits C1 - C4, and also noted that a corporate entity is capable of being defamed. Further to this, he narrated the circumstances when qualified privilege is not applicable and insisted that exhibits C1 - C4 were libelous of the Appellant.

Counsel for the Respondent contended that exhibits C1 - C4 was made in privilege communication. He submitted that the defence of qualified privilege is available if a defamatory communication is made in a privileged communication as in exhibits C1 - C4 which were not made with malice. He took the view that it was the duty of the Appellant to prove libel, which it had failed to do, and as such the Respondent's defence on privileged communication stands.

The Court of appeal on this issue held that:

It is not an argument that the Respondent published the alleged offending words in its letter to a third party, Gateway Bank Plc as shown in exhibit C2. However, the purported libelous statements, do not, explicitly or inferentially, refer to the appellant. Its target is against the author of exhibit B. The words have not, even in infinitesimal measure, debased, injured or undermined the financial character and reputation of the appellant in the business firmament in Nigeria and beyond. Nor do they portray the appellant as a swindler, fraudulent, dubious, and dishonest juristic corporate entity. In the aggregate, the appellant failed woefully to fulfil the communal ingredients of defamation (libel) to ground or impregnate its case with success. That is not all. In a spirited bid to snuff life out of the Appellant's case, the Respondent weaved the defence of privileged communication. Qualified privilege is a defence usually contrived as a defence to untrue publication. An occasion is privileged when the person who makes the documentation has moral or public duty to make it to the person to whom he does make it and the person who receives it has an interest in hearing it. The twin conditions must co-exist to make an occasion privileged. Reciprocity of interest between the parties is a sine qua non for a successful plea of the defence, See *Emeagwara v. Star Printing of Pub. Co. Ltd* (2000) 10 NWLR (Pt. 676) 489. It cannot be gainsaid that the Respondent and Gateway Bank Plc were/are bankers and, ipso facto, partners in the fiduciary obligations of protection of customers' funds in the banking industry within the province of the Nigerian economy. In the glaring presence of this pecuniary/financial relationship, vis-a-vis conservation of customers' money, the Respondent possessed the moral or public duty to disclose the pitfall that plagued exhibit B to the third party, Gateway Bank Plc, which, in turn, owed the corresponding interest to receive and consume the information against it. Thus, the twin conditions, reciprocity of interest between the duo banks, for the employment of qualified privilege were met by the respondent. Curiously, the Appellant, in its infinite wisdom, failed to plead and prove malice, as ordained by law, in order to puncture the effervescence of the Respondent's defence of qualified privilege. The neglect or failure is a costly one as the defence coasts to victory without any interference.

Issue resolved in favour of the Respondent.

Lanre Oyetunji, Esq., for the Appellant.

Johnson Odionu, Esq., with Adisa Oluwole, Esq., and Stanley Ajaegbu, Esq., for the Respondent.

This summary is fully reported at (2022) 5 CLRN

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