

IN THE COURT OF APPEAL OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

ON THURSDAY THE 2nd DAY OF JULY 2026

BEFORE THEIR LORDSHIPS

HON. JUSTICE FOLASADE AYODEJI OJO - JUSTICE COURT OF APPEAL

HON. JUSTICE MUSLIM S. HASSAN - JUSTICE COURT OF APPEAL

HON. JUSTICE POLYCARP T. KWAHAR - JUSTICE COURT OF APPEAL

APPEAL NO. CA/LAG/CV/1246/2019

SUIT NO. LD/2278/2011

BETWEEN

MOSUNMOLA ABUDU APPELLANT

AND

OLUYEMISI WADA RESPONDENT

JUDGMENT

(DELIVERED BY HON. JUSTICE MUSLIM SULE HASSAN, JCA)

This is an appeal against the Judgment of the Lagos State High Court sitting at Lagos delivered by Hon. Justice T.A.O Oyekan-Abdullai in Suit No. LD/2278/2011, on the 3rd day of May, 2019, wherein the Trial Court dismissed the Appellant's claim for libel against the respondent for want of prove of the article published.

CA/LAG/CV/1246/2019

A. M. AYOADE
ASSISTANT CHIEF CLERK OFFICER (LIT)
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The Appellant was the Claimant, while the Respondent was the Defendant at the trial High Court. The Appellant being aggrieved with the decision of the Trial Court had appealed against same to this Court vide her Notice of Appeal containing six grounds filed on the 1st day of August, 2019, See pages 708 – 716 of the record.

The Record of Appeal was compiled and transmitted to this Court on the 29th of October, 2019. The Appellant's brief of argument was filed on the 16th of December, 2019, but deemed properly filed and served on the 24th of November, 2025. The Respondent's brief of argument was filed on the 13th of January, 2022, but deemed properly filed and served on the 24th of November, 2025. The Appellants upon receipt of the Respondent's brief did not file a reply brief. The Respondent filed a motion to strike out ground one and two of the Notice of Appeal, and issues one and two in the Appellant's brief.

At the hearing of the Appeal, counsel to both parties argued the respondent's motion to strike out grounds one and two, adopted their briefs and this Court reserved the Appeal for judgment.

This Appeal was Commenced by the Appellant who was the Claimant at the Lagos State High Court, sitting at the Lagos, wherein the Claimant at the Trial Court vide amended writ of Summons dated 13th day April, 2016, and filed on the same date, prayed for the following reliefs:

CA/LAG/CV/1246/2019

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- a. *N100,000,000.00 (One hundred Million Naira) General Damage for libel.*
- b. *N100,000,000.00 (One hundred Million Naira) aggravated damages for deliberate and malicious defamation of the claimant in the way of her profession, business and calling.*
- c. *AN ORDER of mandatory injunction compelling the defendant to cause a public retraction of the offensive article and a letter of apology to the claimant to be published in the same This Day newspaper, 2 (two) other national daily newspaper and the internet.*
- d. *AN INJUNCTION restraining the Defendant whether by herself, servants, agents or otherwise from further publishing or causing to be published the said words or any words similarly defamatory of the claimant.*
- e. *Cost. See pages 451-452 of the Record.*

The Respondent herein as defendant upon receipt of the Suit of the Claimant filed her defence to the matter and completely denied the claims of the Appellant for defamation on grounds of justification and fair comment.

BRIEF STATEMENT OF FACTS

The facts of this Appeal is simply about the grievances raised in an article written by the Respondent and published by the THISDAY Newspapers Limited in their 20th September, 2009 edition titled "MUTE VOICES" which raised questions concerning the benefit concert organized by the Appellant for street children where in the respondent published that the Appellant never utilized the earnings of the concert for the purpose it was organized.

The Appellant's case is that the Respondent never denied the case of the Appellant that she published the article, rather she admitted same and even though the Respondent relied on defence of justification and fair comment, she never effectively demonstrated her defence before the court.

The Respondent's case however is that she made the publication because the Appellant raised funds from public for street children and she did not channel the funds for the street children, and she the Respondent as a child right advocate made the public as a fair comment on issues of national and public interest. Thus she relied on defence of justification and fair comment in her defence.



The trial Court upon entertaining the case of the Appellant and respondent, dismissed the claim of the Appellant for lack of merit on the basis that the Appellant had not established her case of defamation. The Appellant being aggrieved by the decision of the trial court had challenged same by this appeal.

ISSUES FOR DETERMINATION

The Appellant's brief of argument distilled three issues for determination by this Court as follows:

- 1. Whether the learned trial judge misdirected herself when she held that the Appellant failed to prove the essential element of publication of libel which was copiously admitted by the Respondent, because she did not call third parties to lead evidence that they read the libelous publication. (Distilled from ground 1 of the Grounds of Appeal)*
- 2. Whether the learned judge erred in law when she held that her legal duty to decide whether the ordinary English words used by the Respondent and relied on for their ordinary meaning were defamatory in law required evidence from a third party witness as to their own subjective understanding. (Distilled from ground 2 of the Notice of Appeal)*

3. *Whether the learned judge misdirected herself when she held without evidence and in the face of Respondents own admission that the Respondent had established the defence of justification and fair comment and that malice was not established. (Distilled from grounds 3, 4 and 5 of the Notice of Appeal)*

The respondent on her part distilled two issues for determination to wit:

1. *Whether the learned trial judge was wrong to hold that the Appellant failed to establish her claim of libel against the respondent? (Ground 1, 2 and 6)*
2. *Whether the learned trial judge was wrong to hold that the Respondent established her defence of justification and fair comment, which was not punctuated by evidence of actual malice from the Appellant? (Grounds 3, 4 and 5)*

In this appeal I have examined the Judgment of the Lagos State High Court sitting at Lagos, and the submissions of Counsel in their respective briefs. I observed that the issues formulated by the Appellant and the Respondent are similar, therefore, I shall adopt the three issues formulated by the Appellant for the just determination of this appeal. I shall consider the arguments of the respondent counsel in



resolving the issues. But I shall resolve issues one and two together because they are similar.

RESPONDENT'S MOTION ON NOTICE

But before I go into the merit of the Appeal, the Respondent by a motion filed on the 13th of January, 2022, prayed for an order striking out grounds 1 and 2 of the Notice of Appeal, and issues 1 and 2 formulated in the Appellant's brief on the ground that the said grounds of appeal did not emanate from the *ratio decidendi* of the judgment of the trial court being appeal. Counsel also argued that the grounds 1 and 2 of the Appellant's Notice of Appeal even contain particulars that are capable of being grounds of appeal themselves.

The Application is supported by a 5 paragraphed affidavit and annexed thereto is the Notice of Appeal filed by the Appellant marked as EXHIBIT A. The Appellant upon receipt of the motion filed a 10 paragraphed counter affidavit and written address on the 25th of January, 2022, which was deemed properly filed and served on the 21st of April, 2026. Upon receipt of the Appellant's counter affidavit and written address, the Respondent filed a Reply address on point of law on the 28th of January, 2022. The said Reply was deemed properly filed and served on the 21st of April, 2026.

The gamut of the motion of the Respondent by the written address accompanying same is that the said grounds 1 and 2 of the Notice of Appeal did not arise from the *ratio decidendi* of the court, but the *orbiter dictum*. Counsel argued that the trial court never made any finding about publication of libel, and by the authority of ***Rikichi & Ors v. Gambo (2019) LPELR 47676 CA***, no ground of appeal can arise from an orbiter dictum from which issues can be formulated from.

Counsel argued that particulars v, ix underground 1 of the Notice of Appeal are grounds of their own, thereby making grounds to contain three substantive grounds alone, and this situation makes the ground 1 to be vague, wooly nebulous and liable to be struck out. See ***Nuhu v. Ogele (2003) LPELR 2077 (SC); CBN & Anor v. Okojie & Ors (2002) LPELR 836 SC and Osasona v. Ajayi & Ors (2004) LPELR 2790 SC***.

Counsel submitted that the ground two did not also arise from the judgment of the trial court. That the connotation given by the Appellant to the judgment of the trial court is clearly out of context, and by the authority of ***Anyanwu v. PDP (2020) 3 NWLR (Pt. 1710) 160***, the said ground two is also incompetent and liable to be struck out.

That since issues 1 and 2 argued at pages 10 – 18 of the Appellant's brief are framed from grounds one and two which counsel argued are incompetent, they ought to be discountenance having been predicated



on incompetent grounds. See *Atanda v. Hon. Commissioner for Lands and Housing, Kwara State & Anor (2017) LPELR 42346 SC*.

The Appellant in her written address accompanying the counter affidavit to the respondent's motion submitted that the grounds 1 and 2 are based on the trial court's judgment and not orbiter dictum of the court as strongly argued by the respondent. Counsel quoted the portion of the decision of the trial court forming the basis of grounds 1 and 2 in his submission for emphasis to submit that the argument of the respondent is misconceived.

Counsel argued that particulars v and ix are not grounds of appeal but particulars framed pursuant to Order 7 Rule 2 (2) of the Court of Appeal Rules which mandates for particulars of errors to be stated under grounds of appeal. That the fact that the said particulars can be construed as grounds does not strip them of being particulars under the circumstance. Counsel urged the court to hold that issues 1 and 2 are competent and discountenance the motion of the respondent.

RESOLUTION OF THE MOTION ON NOTICE.

Notice of appeal is a very important document and the very foundation of an appeal. It is an originating process. If it is defective, the Court of Appeal in the exercise of its inherent jurisdiction to protect itself would most likely strike it out on the ground that the appeal is incompetent.

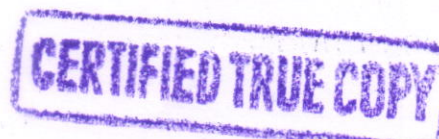


See *NWANWATA v. ESUMEI (1998) 8 NWLR (Pt. 563) 650 at 667 CA; ANADI V. OKOLI (1977) 7 SC 57.*

A ground of appeal can arise in a number of situations such as the following: from the text of the decision appealed against (ipsissima verba); from procedure under which the claim was initiated; from other extrinsic factors such as issue of Jurisdiction of a Court from which the appeal emanates; from commissions or omissions by the Court from which the appeal emanates in either refusing to do what it ought to do or doing what it ought not to do or even in over doing the act complained of. See *AKPAN V. BOB & 4 ORS (2010) 4-7 SC (Pt. II) 57 at 94.*

An appeal is a challenge against the judgment of a trial Court and it is never predicated on what a Court has not decided in its Judgment or Ruling. Therefore, a Ground of Appeal must arise from the live issues at the Trial and not hypothetical assumption by the Appellant. See *OLORUNTOBA-OJU & 4 ORS V. ABDULRAHEEM & 3 ORS (2009) 5-6 SC (Pt. II) 57 at 79.* Once the brief strays away from the grounds of appeal, an appellate Court is entitled to ignore or discountenance the brief because it has gone outside its brief.

In the instant case I have considered the case of the respondent by this motion and I must say that it is not necessary for a party to formulate a



ground of appeal word for word from the decision of the trial court for same to emanate from the ratio decidendi of the court.

It is settled law that a ground of appeal must emanate from the decision of the court, but same can be adopted from the context of the judgment, and same would be well allowed as emanating from the decision of the court.

I have looked at the grounds 1 and 2 complained about by the respondent and I have studied the judgment of the trial court from where this appeal is predicated. I find that the grounds of appeal are well within the judgment appeal. The issues formulated therefrom capture clearly the crux of the judgment of the trial court as the respondent even made lengthy and verbose argument in her respondent's brief.

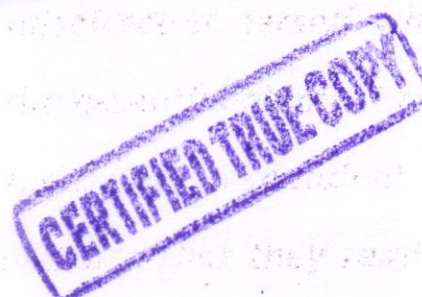
This motion lacks merit and it is hereby dismissed.

ISSUE ONE

Whether the learned trial judge misdirected herself when she held that the Appellant failed to prove the essential element of publication of libel which was copiously admitted by the Respondent, because she did not call third parties to lead evidence that they read the libelous publication. (Distilled from ground 1 of the Grounds of Appeal)

APPELLANT'S COUNSEL SUBMISSION

CA/LAG/CV/1246/2019



Counsel submitted firstly that there is nothing like constructive admission as held by the trial judge. There was no argument to that effect and there is no law supporting the finding of the trial court on constructive admission. That the admission of the respondent to the publication in EXHIBITS A-6 was full admission and not constructive admission as held by the court.

The Appellant submitted that the Appellant proof the essential element of producing and tendering the publication of this Day newspaper of 20th September, 2009, in Exhibit A-6 which the Respondent admitted by her defence of justification and fair comment. That by the admission of the respondent that she made the publication in question, the issue of publication was proved and the trial judge was bound to so hold without further proof.

Counsel cited and relied on the authorities of *Skye Bank Plc v. Chief Moses Bolanle Akinpelu (2010) 9 NWLR (Pt. 1198) 179; Bonum (Nig) Ltd v. Ibe & Anor (2019) LPELR 4652 (CA); and Dr. Abdulrasheed A. Adeoye v. Dr. Taiwo Oloruntoba Oju (2018) LPELR 44976 CA* to urge that issue one be resolve in Appellant's favour.

RESPONDENT'S COUNSEL SUBMISSION.

Counsel submitted that the Appellant was wrong to submit that where a party admits publication in libel then the court can work on his

CA/LAG/CV/1246/2019

12



admission to give judgment. Counsel contended that the trial court was right to hold therefore that there is no constructive admission in libel cases, as even if there is admission as the respondent admitted publishing EXHIBIT A-6, the Appellant has the burden to establish that same is defamatory by calling witnesses to satisfy that the said publication is defamatory. Counsel relied on the authorities of ***Ajakaiye v. Okandeji (1972) 1 SC, Ayeni v. Adesina (2007) All FWLR (Pt. 370) 1451 at 1473 and Dangungu b. Islam & Anor (2014) LPELR 22898 CA.***

Counsel submitted that libel just like declaratory reliefs must be established on the strength of the Appellant's case as the Appellant cannot rely on the defence of justification as admission by the respondent to prove libel. The Appellant must succeed on the strength of her case and not the admission of the respondent, as judgment in libel case is judgment in rem binding all the world as it regards the reputation of the person. Counsel also made lengthy submissions as to the fact that all the cases cited by the Appellant are distinguishable as none of the cases affirmed that admission can establish libel, and none of the cases overruled the position of the Apex Court in ***Ajakaiye v. Okandeji (Supra).***

Counsel maintained that the findings of the trial court was simply that the Appellant ought to call third parties to establish that the publication

made was defamatory of her character and brought down her reputation before reasonable men and not to rely on her connotation and interpretation of the publication, and the trial court was right not to adopt the reasonable man's test in analyzing the Appellant's interpretation of the publication, but insisted that it can only be established by evidence of third parties. See *Aromoloran v. Agoro (2014) 18 NWLR (Pt. 1438) 153 at 188, paras C-F; Almagamated Press Ltd v. Allen (1961) 1 SCNLR 37*

ISSUE TWO

Whether the learned judge erred in law when she held that her legal duty to decide whether the ordinary English words used by the Respondent and relied on for their ordinary meaning were defamatory in law required evidence from a third party witness as to their own subjective understanding. (Distilled from ground 2 of the Notice of Appeal)

APPELLANT'S COUNSEL SUBMISSION

Counsel submit that the trial court was wrong to hold that a third party must testify that exhibit A-6 was libelous for the Appellant to prove her case of defamation against the respondent. According to counsel, the trial court did not make any pronouncement as to whether the words in the publication were libelous, and the court erred to hold that the Appellant ought to call a third party to establish the connotation of the

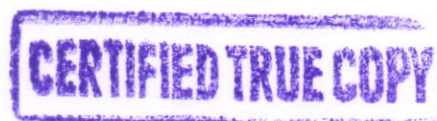


publication, because the publication was not ambiguous and can be understood by its ordinary English meaning.

Counsel to the appellant quoted a part of the publication and submitted that a glance at the publication show that the words and phrases complained of in their natural and ordinary sense conveyed the meaning relied upon by the Appellant, which are the ordinary meaning of the printed words. Counsel maintained that the words being the natural ordinary English words, the trial court ought to give them the test of a reasonable man to determine if the ordinary man would ascribe defamatory meaning to the words used and not to demand that the Appellant calls third parties to tell the court the connotation of the words.

Counsel called to aid the authorities of *Professor Kingsley Owwoniyyi Ologe & Ors v. New Africa Holdings Limited (2013) LPELR 20181 SC and Chief Nya Edim Ekong v. Chief Asuquo E Otop & Ors (1989) 1 NWLR (Pt. 1000) 678 at 709* to submit that the Apex Court did not require the calling of third parties to establish libel in the cases, and the Appellant is also no obligation to do so since the defamatory words were plain and unambiguous.

Counsel urged the resolution of issue two in Appellants favour as the publication was injurious to her.



RESOLUTION OF ISSUES ONE AND TWO TAKEN TOGETHER.

Defamation encompasses both libel and slander. Defamation, whether as libel or slander, consists of imputation which tends to lower a person's reputation in the estimation of right-thinking members of the society generally and thus expose the person so disparaged to hatred, opprobrium, odium, contempt or ridicule. See *ORUWARI v. OSLER* (2013) 5 NWLR (Pt. 1348) 535. Defamation involves a false statement that defames or harms another person's reputation. Defamatory statements are categorized as "libel" or "slander". Libel is written or visual defamation and slander is spoken or oral defamation. See *SUN PUBLISHING LTD V. ALADINMA MEDICARE LTD.* (2016) 9 NWLR (Pt. 1518) 557.

In the instant case the contention of the Appellant under is that the Appellant established publication of the libelous material by exhibit A-6 which the Respondent admitted she published. That the admission of the Respondent to have made the publication in the newspaper in exhibit A-6 simply establishes publication and the trial court ought to read the connotation of the words in exhibit A-6 and not require the Appellant to call witnesses to establish libel.

There is no doubt that the respondent made a publication in This Day Newspaper of 20th September, 2009 admitted as Exhibit A-6. In defamation cases, a publication in the dailies or Newspapers is a



publication to the whole world as the reach of the publication can only be imagined.

Be that as it may, a publication alone does not mean that the trial court would rely on the imputation or connotation of the Appellant that same has defamed her. This is more so in view of the contention of the Appellant that her grievances arose from concerns she received from her friends and associates who called her, but she failed to call these persons to testify and she is urging the trial court to hold that the respondent had defamed her simply because she published exhibit A-6.

Defamation is completed when a person say or published words that are not true to a third party and this words or publication had brought to the reduction of a person reputation or loss of value or profit or loss of business in the eye of a third party which would be tested by a reasonable man understanding of the words or publication. Therefore, publication of the libelous words even if it is in the newspaper as in Exhibit A-6 in this case is not sufficient.

The Appellant must go ahead to establish that in the eye of reasonable men or third party her reputation has been ruined, of estimation destroyed or business value loss before the damaged can be established. This equally mean that for the Appellant to establish that, she must call these friends and associates she called looked at her in a

The Appellant must go ahead to establish that in the eye of reasonable



devalued manner to testify and express to the court how they reasonable perceived the publication.

These two factors of proof of publication of the injurious words and perception of the third party who is a reasonable man on the street must both co-exist and be established by cogent and verifiable evidence by the Appellant for her case to succeed. This is because a person's reputation is not based on the good opinion he has of himself but the estimation in which others hold him.

In the case of the Appellant herein, she testified only for herself and close her case. It is counsel's strong contention that the court ought to apply the reasonable man's test on the ordinary English meaning of the words in the publication in Exhibit A-6 since they are plain and unambiguous. I disagree with the Appellant, as if the court does that, it would amount to the trial court jumping into conclusion, and not only jumping into conclusions without evidence, but doing so while delving into the arena of the case.

The court can only come to that conclusion by considering evidence of third parties who are reasonable men who have indeed consumed the publication and had understood same to demean the Appellant. It is not sufficient to say that the publication is to the whole world since same is in the newspapers. Who can tell the understanding of interpretation of the whole world about the publication if they are not



called to testify? The Appellant must not call a legion of witnesses to achieve this, as one single credible witness was enough, but not from her own mouth. Issues one and two are resolved against the Appellant.

ISSUE THREE

Whether the learned judge misdirected herself when she held without evidence and in the face of Respondents own admission that the Respondent had established the defence of justification and fair comment and that malice was not established. (Distilled from grounds 3, 4 and 5 of the Notice of Appeal)

APPELLANT'S COUNSEL SUBMISSION.

Counsel submits that for a party to succeed in a defence of justification, the court must construe the document as a whole to determine if the context of the publication is true. That the issue of public interest is irrelevant in the issue of justification as the court is solely interest in whether the statement is true. Counsel contended that the defendant having raised the defence of justification has the legal burden to establish same, and she failed woefully to establish by evidence that the funds realized were not used for the purpose as advertised.

Counsel submitted that the Appellant led evidence to show that the concert realized Two Hundred and Nine Million and about Seventy Four Million was used for organizing the concert which represents about 34% of the earnings of the concert contrary to the claims of the

Respondent in the publication that 70% of the funds raised were used for organizing the concert.

That no evidence was led to show that Appellant promised to have KPMG audited the funds raising accounts, and no evidence was led to establish Appellant promised to support similar NGO's from the fund raised. That the trial court failed in her duty to analyze the evidence led against each other to determine whether the scale of evidence tilt. That the failure of the trial court to evaluate the evidence led to miscarriage of justice against the Appellant. Counsel referred to the authority of ***Olaleye v. Trustees of ECWA (2011) 2 NWLR (Pt. 1230) 139***

On the defence of fair comment, counsel submit that the trial court misunderstood the nature of the defence, as to sustain the defence, the facts upon which the comment is based on must exist and be true, and the comment must flow from the facts expressing the authors opinion as opposed from statement of fact which maker hold honestly that a reasonable man can have such opinions. See ***Okolie v. Marinho (2006) 15 NWLR (Pt. 1002) 338 paras A-B.***

Counsel submitted that from the highlighted portion of the publication, the defence of fair comment cannot avail the respondent as the statements were statements of facts and not opinion, and the statements of facts made are not true as the respondent was unable to establish that.

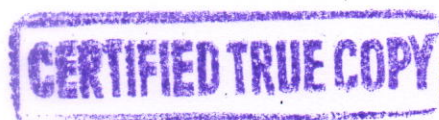
Counsel submit that the Appellant had equally establish malice against the respondent which clearly defeats the defence of fair comment, as all the respondent's actions against the Appellant were out of spite and envy and not public interest. That the trial court also did not evaluate the evidence led and the contention of the Appellant regarding the respondent's malice which arise from the fact that both parties are into NGO business and the respondent is envious of the Appellant's success.

RESPONDENT'S COUNSEL SUBMISSION.

Counsel submits that the respondent abundantly established her defence of fair comment and justification by the evidence elicited from the Appellant under cross examination and from the respondent's deposition on oath which had not been contradicted under cross examination by the Appellant's counsel. That the Respondent had shown that the facts she referred to are true and therefore a fair comment.

Counsel reiterated the fact that the children for whom the concert were organized for did not benefit from the concert by the admission of the Appellant. Counsel also contended that the Appellant admitted that about 75% percent of the funds raised was used to organize the concert as admitted by the Appellant.

Counsel contended that the funds being raised publicly and the respondent being a child advocate has a right under the freedom of



information Act to inquire into how the funds were managed and spend by the Appellant, and the Appellant has an obligation to account for how the funds publicly raised with the respondent being part of the donors was spent.

Counsel referred to exhibit A2, A16 and A18 to submit that the contents of the said documents and the pleadings and evidence of the information Act to inquire into how the funds were managed and spend by the Appellant herself supported the respondent's defence of justification and fair comment as the pleadings are documents were not denied or contradicted by the Appellant herself. Counsel maintained that the funds being publicly raised, the respondent has a right to make fair comment on matters of public interest. See **DIN v. African Newspapers (1990) 3 NWLR (Pt. 139) 392**

That the letter written to EFCC was to conduct a scrutiny of the spending of the funds by the Appellant since same was publicly raised and not out of malice. That the respondent as a child right activist has a right to make fair comment of the facts she knows. Counsel cited **the authorities of Concord Press (Nig.) Ltd v. Olutola (1999) 9 NWLR (Pt. 620) 578; Sketch v. Ajagbemokeferi (1989) 1 NWLR (Pt. 1100) 678**

Counsel contended that even though the Appellant pleaded malice and particular of same, she was unable to lead evidence to proof same, and the trial judge was right to find that the publication of the respondent in exhibit A-6 is a fair comment.

CA/LAG/CV/1246/2019



RESOLUTION OF ISSUE THREE.

Defences available to a claim of defamation include justification, fair comment, privilege which may be either absolute or qualified. See **ONWURAH & ORS V. NWUMEH & ANOR (2016) LPELR-40304 (CA) page 16**. In general, an action lies for the deliberate publication of statements which are false in fact and injurious to the character of another. The law considers such publications as malicious unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases, the occasion prevents the inference of malice which the law draws from unauthorized communications, and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency and honestly made, such communications are protected for the common convenience and welfare of the society; and the law has not restricted the right to make them within any narrow limits. See **Mamman v. Salaudeen (2005) 12 SCNJ 1; Onwurah & Ors v. Nwumeh & Anor (Supra) page 11 Per Ogunwumiju, JCA (now JSC)**.

A defendant willing to rely on the defence of justification must establish by evidence, the truth in his publication even if he acted out of spite. This is because an indiscriminate affliction of truth on a person is not actionable merely because people think worse of a person when they



hear the truth about it. For a defence of justification to hold water in Court, it must be true in substance. **See Prophet Ifeanyi Emeagwara v. Star Printing & Publishing Company Ltd & Ors (2000) 5 SCNJ 175.** Everything in a defamatory publication which adds weight to the imputation is material. It is essential for the plaintiff to give particulars of any defamatory meaning which is not the plain, ordinary meaning of the words, so also must the defendant make clear and explicit the meaning he seeks to justify. The standard of proof of justification is one of balance of probabilities.

The crux of the Appellant's concern here is that the respondent did not establish the defence of justification and fair comment regarding her publication in exhibit A-6. It is correct that for the defence of fair comment to avail the respondent, the publication must be established by the respondent to be true and her fair, honest and sincerely opinion of the affairs being commented on. In order that a comment is fair, it must be based on facts truly stated and honest expression of the commentator's real opinion. In other words, the commentator **bona fide** believes in the authority of the comment and is not actuated by malice. A **mala fide** comment predicated on organized vendetta will not found a defence of fair comment. **See U.B.N. Ltd v. OREDEIN (1992) 6 NWLR (Pt. 247) 355.** Fair comment, in practical term, is a conglomeration of critical opinions expressed on matters of public



interest such as the criticism of government and its functionaries. See ***AKOMOLAFE V. GUARDIAN PRESS LTD (2010) 3 NWLR (Pt. 1181) 338.***

The basis that the Appellant is a celebrity, child right activist, and a public figure in one hand, and the fact that the utilization of the funds talked about were generated from public fund raising for charity on another hand is imperative here. The fact that the respondent also contributed with her husband in the fund raising is vital.

The contention of the Appellant on the failure of the respondent to establish the defence of justification for the publication is hinged on the issue of audit by KPMG, the sharing of the fund realized to other small child right activist NGOs like the one ran by the Respondent and the fact that the respondent stated that the Appellant spent over 75% of the fund realized for organizing the concert.

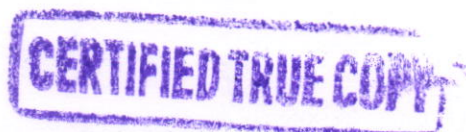
When these facts are kept side by side against the contention of the Respondent with documents showing that the Appellant audited her account, that the funds are raised to support child welfare and organization engaged in such cause, it is not far from true. What is most vital which I agree with the trial court is the fact that the funds being engaged by the respondent in the publication were raised by public fund raising by the Appellant, and the respondent also contributed her widow's might to the cause, thus, the Appellant should be very

generous in entertaining criticism and public comments on how these funds were utilized.

In fact, I am of the opinion that the publication challenges the Appellant to throw more light to her cause to bring more transparency. I mean these monies are not her personal monies, but monies generated from the public with the sympathy of street boys being displayed to draw the attention of humanity to support herself on humanitarian cause. The Appellant ought to rise to the occasion and provide explanation to the public, more so to the respondent who is even a donor to the cause.

The dignity of the Appellant to my mind while considering the intention of the funds raising concert and the publication has not been impinged, but she was just rather challenged to show her prudence to the cause, but she mistook it for devaluing of reputation before right thinking men. It would not cost the Appellant anything to provide explanation of her dealing with the funds generated from the public. She owes these to herself and the public who entrust their funds for the cause.

On the defence of fair comment counsel to Respondent hammered on the publication stating the Appellant used her celebrity status to ride on people's back. In the circumstance of the fact that the respondent who is a contributor to the concert had observed that the cause for which the funds were raised for was not achieve, it is within her right to hold a fair opinion that the Appellant is riding on her status. Even



though the Appellant came up with some explanation as to what she did with the funds, it does not take the concern of the respondent out of a genuine reason to ask what the funds raised were utilized for.

The Appellant came to the public to request for the public to champion a cause and she is concern about public comment. The Respondent who contributed to the fund raising is well within her rights to ask question and beg to opinion that the funds were not applied for what they were requested for.

On the contention of malice by the Appellant, I do not think reporting a matter to EFCC means that the respondent bear malice against the Appellant. After all they are all child right's advocates purportedly in the same cause, so how did the respondent harbour malice in this context. The matter having been reported to EFCC, it is the job of EFCC to investigate and not for the respondent to follow up.

I see no wrong with the decision of the trial court, I think the Appellant being a public figure should take the concern of the respondent as a constructive criticism to sharpened her desire to see children off the street, rather than an attacked on her celebrity personality. The goal is greater if we look beyond. Issue three is resolved against the Appellant. Having resolved issues one, two and three against the appellant, this appeal lacks merit and it is hereby dismissed. The Judgment of the lower Court delivered on the 3rd day of May, 2019 is hereby affirmed.



I make no order as to costs.

M.H.

MUSLIM S. HASSAN
JUSTICE, COURT OF APPEAL.

I make no order as to costs.

APPEARANCES:

OLUFEMI MAKANJUOLA with M.A. ABDULFATAI Mrs. for Appellant.

OLUWASEUN OLUSIYI for Respondent.

JUSTICE, COURT OF APPEAL.

certification - #1000

APPEARANCES:

OLUFEMI MAKANJUOLA with M.A. ABDULFATAI Mrs. for Appellant.

OLUWASEUN OLUSIYI for Respondent.

COURT OF APPEAL
Cashier's Office
DAWODU T.R
08 JUL 2026
SIGN. *A*
LAGOS DIVISION

R1614-8445-528814

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
CERTIFIED TRUE COPY

SIGN. *[Signature]*
DATE *8/7/26*

APPEAL NO: CA/LAG/CV/1246/2019

FOLASADE AYODEJI OJO, JCA.

I had the privilege of reading in draft the lead judgment just delivered by my learned brother, **MUSLIM SULE HASSAN, JCA**. I agree with his conclusion that this appeal lacks merit and should be dismissed. I wish, however, to add a few remarks on Issue Three.

The evidence on record sufficiently supports the conclusion that the Respondent established the defences of justification and fair comment in respect of a matter of public interest. The law is settled that where the substance or sting of the publication is shown to be true, the defence of fair comment avails the defendant; likewise, an honest comment founded on true facts relating to a matter of public interest is not actionable. See the decision of the Supreme Court in **EKONG v. OTOP & ORS (2014) LPELR-23022(SC) PER OLABODE RHODES-VIVOUR, JSC AT (Pp 34 - 34 Paras A - B)** where it was held as follows:

"A plea of fair comment succeeds as a defence if the facts relied on by the defendant are sufficient to justify the statement or publication that the plaintiff finds to be libelous. The facts must be the truth."

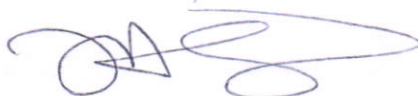
I also wish to add that authorship of a libelous material is conceptually distinct from its publication. Publication is defined as the communication of the defamatory matter to a third party. See **OFFORBOCHE V. OGOJA LG (2001) LPELR-2265(SC)** and **NSIRIM V. NSIRIM (1990) 3 NWLR (PT. 138) 285 AT 297.**

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In the instant case, the Appellant adduced no credible evidence that any person other than himself saw Exhibit A-6.

In the absence of proof of publication the claim for libel must fail.

It is for these reasons, and the fuller reasons contained in the lead judgment, that I also dismiss the appeal and affirm the judgment of the lower Court. I abide by all the consequential orders made therein, including the order as to costs.



HON. JUSTICE FOLASADE AYODEJI OJO
JUSTICE COURT OF APPEAL

A. M. AYOADE
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
COURT OF APPEAL, LAGOS
CERTIFIED TRUE COPY
SIGN.....
DATE..... 8/17/26

CA/LAG/CV/1246/2019

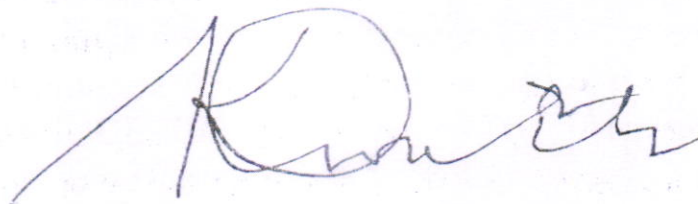
POLYCARP TERNA KWAHAR JCA

I have had the privilege of reading in draft the lead judgment of my learned brother, **MUSLIM SULE HASSAN, JCA** and I agree with his reasoning and conclusions. However, I wish to add a few words of my own on when a ground of appeal is said to have emanated from the *ratio decidendi* of the court.

Respondent's Counsel urged on this Honourable Court to strike out grounds 1 and 2 of the Notice of Appeal, and issues 1 and 2 formulated in the Appellant's brief for being incompetent. The reason given for this submission is that the said grounds did not arise from the *ratio decidendi* of the court, but the *orbiter dictum*.

It needs to be emphasised that a ground of Appeal should preferably quote the portion of the judgment Appellant (s) complains about. See **Wafa Agregate Limited & Anor vs Eco Bank Nigeria Limited Unreported Appeal No CA/L/623/17, The Judgment of which was delivered on 24th January, 2025 per Kwahar JCA at page 15**. Be that as it may, the said Grounds 1 and 2 and the issues formulated therefrom clearly emanate from the judgment of the lower court in the instant case. Flowing from the above consideration, it is my respectful view that Grounds 1 and 2 of the Notice of Appeal and the issues formulated therefrom are competent.

On the whole, the appeal fails for lacking in merit and is hereby dismissed in line with the lead judgment.



**POLYCARP TERNA KWAHAR
JUSTICE, COURT OF APPEAL**

CA/LAG/CV/1246/2019

A. M. AYOADE ³¹
ASSISTANT CHIEF EXECUTIVE OFFICER (LIT)
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SIGN.....