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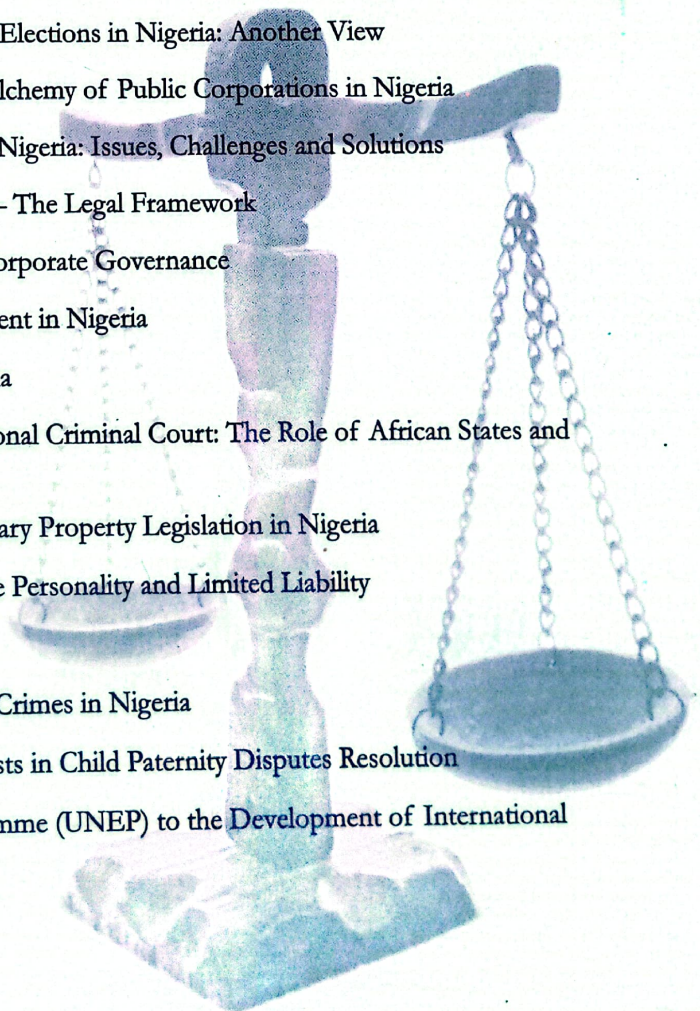
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Accrual of Cause of Action in Torts of Defamation of Character and the Available Defences

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and

J.O. Olatoke*

Abstract

It is common ground that the major source of Nigerian law of torts is case law, particularly English Decisions which form part of the sources of Nigerian law of torts. Although, there are Nigerian Courts decisions which form part of the sources of Nigerian law of torts, however, the available textbooks on law of torts in our tertiary institutions and universities based their information, especially torts of defamation of character on old English cases and where Nigerian cases are referred to, they are not recent ones. Law is dynamic in nature, therefore our courts have decided so many cases in the recent times on torts of defamation of character with some variations or development in the principle of law relating to defences to an action in torts of defamation of character which are not readily available in most of the Nigerian text books on law of torts found in our tertiary institutions and universities. Meaning that those textbooks need urgent review or update to meet up with the current position of the law. This paper has brought on board some of the recent decisions of the Nigerian Courts on torts of defamation of character pointing out some developments associated with them which are not addressed by the available textbooks in our school libraries. This paper therefore is indispensable to lawyers and law students as well.

Introduction

Every citizen of Nigeria is entitled to the right to personal liberty and no one should be deprived of the right except in the manner prescribed by the constitution itself. (*) The constitution recognizes the right of every citizen during his life time to an unimpaired possession of his/her reputation and good name. Therefore anyone who communicates to the mind of another person any information which may likely disparage the reputation of the plaintiff may be guilty of a legal wrong which may lead to an action in tort of defamation of character. In so far as the Fundamental Rights occupy a very stringent position in the constitution of the Federal Republic of Nigeria, the tort of defamation of character should be given special consideration in Nigerian Law of Torts especially in this era of democracy.

Meaning of the Term "Defamation"

It should be noted that there is no general definition or a wholly satisfactory definition of the word "defamation". Defamation may arise where injury is caused to reputation as a result of words written or spoken by somebody. AKAHS, JCA has defined defamation in the famous case of *Okolie v. Marinbo* ⁽¹⁾ as follows:

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¹. (2006) 15 NWLR (Pt. 1002) 316, 335 & p. 336-337. See also the Sketch Publishing Company Limited & Ors. V. Alhaji Ajagbemokeferi (1989) 1 NWLR (Pt.100) 678; Benue Printing and Publishing Corporation V. Alhaji Gwagwada (1989) 4 NWLR (Pt. 439); Complete Communications Ltd. V. Onoh (1998) 5 NWLR (Pt. 549) 197, 218.

A defamatory publication is one that is calculated to lower the person in the estimation of right thinking men or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on him in his office, profession, calling, trade or business.

Similarly, **OGUNBIYI, JCA** elucidates more on the meaning of defamation in the case of *Vanguard Media Ltd. V. Olafisoye* ⁽²⁾ as follows:

Any imputation which may tend "to lower the plaintiff in the estimation of right thinking members of the society generally, to cut him off from society, or to expose him to hatred, contempt or ridicule is defamatory to his reputation.

An imputation may be defamatory whether or not it is believed by those to whom it is published. It can also be defamatory whether or not it is true, conversely, untruth alone does not render an imputation defamatory. See *Vanguard Media Ltd. V. Olafisoye* ⁽³⁾

The two definitions stated above can be summarized under the dicta of his Lordship **NGWUTA, JSC** in the locus-classicus of *Ologe v. New Africa Holdings Ltd.* ⁽⁴⁾ where his Lordship held thus:

A defamatory statement may be defined as a statement which tends:

- (a) to lower the claimant in the estimation of right thinking members of society generally, or*
- (b) to expose him to hatred, contempt, ridicule, or*
- (c) to cause other person to shun or avoid him, or*
- (d) to discredit him in his office, trade or profession, or*
- (e) to injure his financial credit.*

Types or Classes of Defamation

There are two classes or types of defamation, that is to say, the tort of defamation is either:

(a) Libel or (b) Slander ^(5a) the difference being that libel is written while slander is spoken. ^(5b)

LIBEL

Libel is a method of defamation expressed by print, writing, pictures or signs ⁽⁶⁾ Libel is also defined as defamation in permanent form for instance a book, newspaper, letter, painting cartoon, photograph, statute or a film. ⁽⁷⁾

The tort of libel is also committed through the publication of defamatory words in writing because it is a tort in which the writer or the publisher attacks the reputation, integrity, standing and or fidelity of the victim of the publication. ⁽⁸⁾

² (2011) 14 NWLR (PT. 1267) 207, 233.

³ Supra note 2

⁴ (2013) 17 NWLR (PT. 449 AT 469 PARAS A-B. See also *Guardian Newspapers Ltd V. Ajeh* (2005) 12 NWLR (pt. 938) 2005; *Concord Press (Nig) Ltd. v. Olutola* (1999) 9 NWLR (Pt. 620) 578 at 597 Paras C-E & *Ciroma V Ali* (1999) 2 NWLR (Pt. 590) 317 at 330.

⁵ *Kodilinye and Aluko, The Nigerian Law of Torts* 2nd ed. Spectrum Law Publishing, (1999) p.139 & *Guardian News Papers Ltd V. Ajeh* (2011) 10 NWLR (pt. 1256) 574, 588.

^{5a} *Asheik V. M.T.N. (Nig.) Ltd.* (2010) 15 NWLR (pt. 1215) 114, 162

⁶ Supra note 4, p. 602. See also *Kodihinye and Aluko* Supra note 5 p. 139, S.3 of Defamation Law, 1973, Cap. 32, Laws of Lagos State, Defamation Law, 1959, Cap 32, Laws of Western Nigeria, S.3 and English Defamation Act, 1952, S.1

⁷ Ibid.

Slander

Slander has been defined as a defamatory statement expressed in a transitory form.⁽⁹⁾ It is often said that libel is addressed to the eye while slander is addressed to the ear.

Distinction between Libel and Slander

Libel is actionable *per se* that is without proof that the plaintiff has sustained any damage. Thus, in an action for libel, the onus is on the plaintiff to show that the words published are defamatory or that they convey a defamatory imputation. However, where the words published are defamatory in their natural and ordinary meaning, the plaintiff has no legal duty to lead any evidence to show additional defamatory meaning as understood by persons possessing some particular facts.⁽¹⁰⁾ Slander is not ordinarily actionable *per se* except in some circumstances. Such as imputation of crime,⁽¹¹⁾ it is a slander actionable *per se* to allege that the plaintiff has committed a criminal offence punishable by imprisonment or fine even though, the plaintiff has not suffered any damage he will be entitled to recover general damages for slander.^(12a) Other instances where slander may become actionable *per se* are where there is imputation of certain diseases, imputation of unchastity or adultery, imputation affecting profession or business reputation.^(12b)

Vulgar Abuses

The term vulgar has been defined as something not having or showing good taste or something not polite or not elegant.¹³

It has also been defined as something that is in bad taste or in poor artistic quality.¹⁴ As vulgar abuse would depend on the exact words uttered or published including the status of the parties and the circumstances when the publication is made¹⁵, For instance, abusive words uttered by low class people or motor park drivers and workers which are usually uttered as prelude to a fight are usually regarded as vulgar abuses as they are normally never taken seriously and could therefore not ground an action for either libel or slander.¹⁶

Ingredients of Defamation

In *Ologe v. New Africa Holdings Ltd.*¹⁷ NGWUTA, JSC held that there are six co-terminus ingredients which the plaintiff has to prove to succeed in defamation:

1. Publication of the offending words.
2. That the words complained of refer to the plaintiff.
3. That the words are defamatory of the plaintiff
4. That the words were published to third parties
5. That the words were false or lack accuracy and
6. That there are not justifiable legal grounds for the publication of the words.

⁸. AKITAN, J.S.C. in *Iloabachie v. Iloabachie* (2005) 13 NWLR (Pt. 943) 695, 735.

⁹. Black's Law Dictionary, 7th ed., 1999 p. 1392.

¹⁰. *UBN Ltd. V. Oredein* (1992) 6 NWLR (pt. 247) 355

¹¹. *Agoaka V. Ejiofor* (1972) 2 E.C.S.L.R. 109.

^{12a}. *Supra* note 5 p. 588, 594 and 603. See also *Awolowo V. Kingsway Stores Ltd.* (1968) 2 ANLR 27.

^{12b}. *Ibid.* See also *Vanguard Media Ltd. V. Olafisoye* (2011) 14 NWLR (pt. 1257) 207, 253

¹³. *Oxford Advanced Learners Dictionary International Student's Edition* 7th ed; p. 1648.

¹⁴. *BBC English Dictionary*, p. 1319

¹⁵. *Iloabachie V. Iloabachie* (2005) 13 NWLR (pt. 943) 695, 735-736

¹⁶. *Supra* note 15 p. 736

¹⁷. (2013) 17 NWLR (Pt. 1384) 449, 469. See also *Iloabachie V. Iloabachie* *Supra* note 15 and *Concord Press (Nig.) Ltd. V. Olutola* (1999) 9 NWLR (pt. 578), 597 – 598

There must be Publication of the Offending Words

It is important to note that publication of defamatory words or statements is an essential element of the cause of action in libel cases. In *Basborun v. Ogunlana*¹⁸ the court held that publication is the act of making the defamatory statement known to any person other than the plaintiff himself and that publication must be proved by credible evidence.

It is also worthy of note that liability for publication of defamatory words falls on all persons who participated or even authorized the publication. It therefore follows that while a libelous statement is published in a Newspaper, everyone who took part in publishing it or in procuring its publication or has submitted material published in it is liable for an action for libel. Consequently, the editor, printer and publisher of the Newspaper are *prima facie* jointly and severally liable for any libel which appears in the publication unless they can show that they did not know that the publication contained defamatory material or was unlikely to contain such material¹⁹.

The Words/Statement Complained of Must Refer to the Plaintiff

For a plaintiff to succeed in an action for defamation of character, particularly, libel, he has the burden to prove that the offending words published referred to him otherwise, the plaintiff's action can be dismissed by the court for lack of requisite *locus standi*. The Court of Appeal Lagos Division has held *inter-alia* that in an action for defamation of character, the question whether the words complained of are defamatory of the plaintiff is a matter for the court to decide based on the available evidence adduced in support of the complaint and it for the court to determine whether the words are capable of referring to the plaintiff as well as capable of conveying defamatory meaning in the minds of reasonable persons in the circumstance of particular case²⁰.

The Words must be Defamatory of the Plaintiff

A plaintiff who institutes an action for libel has invariably put his character in issue. In fact, he is understood to be telling the entire world that he is a good person and that someone else is trying to destroy his enviable good name. The plaintiff puts his reputation at stake depending on what the defamation is all about. Where the plaintiff has shown through his pleadings that he is a person of great repute and of unblemished character, he has literally thrown his hat on the ring, caution to the wind, and dares the defamer/defendant to disprove his good and admirable character. But where in the cause of the trial, the evidence and the facts elicited portray the plaintiff as a liar, he might have unwittingly succeeded by his own inconsistent statements and falsehood in destroying his character which he has held out to the entire universe to be clean. In such circumstance, the plaintiff cannot complain of defamation of character if the court finds out that he is a chronic or *penitus insitus* liar.²¹

However, in deciding whether the words complained of are defamatory or not, the court will reject the meaning which can only emerge as the product of some strained or forced or utterly unreasonable interpretation.²² The test of reasonableness guides and directs the court in its function of deciding whether to hold in any particular case that reasonable persons would understand the words complained of in a defamatory sense. The court is enjoined to construe the words complained of according to the fair and natural meaning which would be given them by reasonable persons of

¹⁸ (2000) 1 NWLR (Pt. 640) 221. See also *Vanguard Media Ltd V. Olafisoye* (Supra note 12b, p. 234.

¹⁹ *Vanguard Media Ltd V. Olafisoye* Supra, p. 245.

²⁰ Supra note 19 p. 239

²¹ *Iloabachie V. Iloabachie* Supra note 15, p. 714.

²² Supra note 19, p.237-238

ordinary intelligence and should not consider what persons setting themselves to work to deduce some unusual meaning might succeed in extracting from the words.

The test is whether under the circumstances in which the writing was published, reasonable men to whom the publication was made would likely understand them in libelous sense.²³

That the Words are False or Lack Accuracy

The plaintiff, to succeed in an action for defamation of character is required to establish that the words/statements published were false and lack accuracy because if the defendant succeeds in showing that the words/statements published or uttered are true, the plaintiff's action will fail. The Supreme Court held in *Mamman V. Salaudeen*²⁴ that:

In general, an action lies for the malicious publication of statements, which are false and injurious to the character of another and the law considers publication as malicious... If fairly warranted by any reasonable occasion or exigency and honestly made, such communication are protected for the common convenience and welfare of the society. (Underlining supplied for emphasis)

That there are no Justifiable Legal Grounds for the Publication of the Words Complained of

In determining whether the maker of an alleged libelous statement has justifiable legal ground to make the statement or not, the court will examine by whom it was published, when, why and in what circumstances it was published and see whether these things establish a relation between the parties which gives rise to a social or moral right or duty and the consideration of these things may not involve the consideration of question of public policy²⁵. The court will also consider whether or not the statement was made in the course of the maker's reasonable attention to his own business and affairs which gives him legitimate cause to write or speak of the party complaining (i.e. the plaintiff). The existence of such cause displaces the presumption of malice and the maker of the statement is only answerable if malice is shown to have existed in fact.²⁶

Innuendo

Innuendo is a latin word (*in-yoo-en-doh*) which means an indirect word or indirect statement or indirect suggestion.²⁷ Innuendo is of two types in the Law of defamation, namely: (1). True or Legal Innuendo (2). False or Popular Innuendo.

True or Legal Innuendo

Where the word spoken or written is defamatory on the face of it, ordinarily, the plaintiff has no further difficulty in alleging that the word is defamatory in law. However, where the word complained of is ambiguous, the plaintiff bears the burden to show that the word is defamatory in law. Under true or legal innuendo, the plaintiff's complaint is that although, the words used are not defamatory on their face, they convey a defamatory meaning to persons to whom they are published because of some special facts or circumstances not set out in the words but which were known to

²³ Supra note 19, pp.237 – 238, see also *Dumbo V. Idugboe* (1983) 1 SCNLR 29; *Okolo V. Midwest Newspaper Corporation* (1977) 1 SC and *Okafor V. Ikeanyi* (1973) 3-4 SC 95.

²⁴ (2005) 18 NWLR (Pt. 958) 478, 510 or (2005) 24 NSCQR 360

²⁵ Supra note 24

²⁶ Supra note 24.

²⁷ Supra note 9 p. 793.

those persons. For instance, a statement that Mr. A is a regular customer of White House at Ajao Street, Ajegunle in Lagos is perfectly innocent on its face or in its ordinary meaning since white colour is usually associated with or affiliated to peace as oppose to black or red colour. However, it may be defamatory if the statement was published to persons who knew the fact that white house at Ajao Street Ajegunle, Lagos was the headquarters of kidnappers; the statement would carry the innuendo that Mr. A was himself a kidnapper.²⁸

False or Popular Innuendo

Where the defamatory meaning arises indirectly by inference or by implication from the words published there is said to be a false or popular innuendo.²⁹ For example, where a bank wrongfully rejects a check presented to it by a customer and marked same as "Return to Drawer" or "R/D" such statement is defamatory because it carries the innuendo that the customer is not only in bad financial risk but also dishonest.³⁰

Defences to Action for Defamation

Justification

One of the defences available to a defendant in an action for libel is that of justification. It is therefore a complete defence to an action for libel or slander that the defamatory statement or imputation is true. A defence that the words complained by the plaintiff are true is called a "defence or plea of JUSTIFICATION".³¹ A defence of justification is therefore a complete bar to any relief sought by a party who complains of defamation. It is appropriately described in the Latin Maxim as: *Damnum Absque Injuria*, meaning: A man cannot injustice recover damages for the loss of reputation he is not entitle to. In *Iloabachie v. Iloabachie*³², the Appellant (as plaintiff at the trial court) instituted an action at Ogidi High Court, Anambra State against the Respondent (as Defendant). The Appellant's claim was for a total sum of N5million being general and special damages for libel published about him in two letters which the Respondent wrote respectively to the Mgbelekeke family in Onitsha (exhibit C) and to the Director-General of Lands, Awka (Exhibit D). The Respondent alleged in the letters, inter-alia, that the Appellant fraudulently sold the family house at No.1 Allen Lane, Onitsha without the consent of the members of the family. The Respondent was the current head of the family and the house sold by the Appellant belonged to the Respondent's late father while the Appellant, a lawyer, is a grandson. The Appellant's claim was dismissed by the trial High Court on the ground that the publication was justifiable and privileged. The Appellant's appeal to the Court of Appeal was also dismissed and at the Supreme Court, the appeal was equally dismissed. AKITAN, JSC held inter-alia that:

"In the instant case, it is not in doubt that the contents of the letters published by the respondent and relied on by the Appellant are defamatory in nature. But the respondent had proved that they are true. It was a very bitter truth that the appellant played an infamous role when he sold the family property, of which the respondent was the head, and that such sale was made without the consent or knowledge of the respondent or that of any principal member of the family whose prior consent was required before such sale

²⁸. See the cases of Akintola V. Anyiam (1961) 1 ALL NLR 508, Johnson V. Daily Times of Nigeria Ltd (1966) L.L.R 110.

²⁹. Gatley on Libel and Slander (Supra) p. 84.

³⁰. Supra note 5 p. 151. See also Mutual Aid Society Ltd. V. Akerele (1966) N.M.L.R.257 (SC); Karunwi V. Wema Bank Ltd (1973) 3 CCHCJ 61 affirmed in (1975) 1 S.C.15

³¹. Supra note 15 p. 736 – 737

³². Ibid.

could be validly made. The appellant, as grandson, totally lacked the authority to make the sale and misappropriate the money realized from the sale. The alleged publications were also made to only those who were entitled to receive the complaints made in the publication. The defence of justification was therefore rightly available to the respondent" (Underlining supplied by me for emphasis)³³

In *Amuzie v. Asonye*³⁴ **OGUNWUMIJU, J.C.A** held that although, under the Common Law, to succeed in raising the defence of justification, the defendant must prove the truth of all the material statements in the libel, he must justify everything that the libel contains which is injurious to the plaintiff. However, under the Nigerian Law of torts or jurisprudence, a plea or defence of justification means that the libel is true, not only in its allegations of facts, but also in any comment made thereon. Although defending on the circumstances of each case, a defendant is not obliged to prove the truth of every word in the libel; he is however obliged to prove that the main charge or gist of the libel is true.

Fair Comment

For the defence of fair comment to be sustained, it must be squarely proved. Under the plea of fair comment, the defendant is saying that his comment was based on an existing fact(s) when the comment was made.³⁵ Before a comment can be said to be fair, the truth of the facts upon which it is predicated must first be established because the law does not permit a person to invent or fabricate untrue facts about a man and then comment upon them. Defence of fair comment will succeed if it can be established that the opinion was expressed in good faith without malice.³⁶ In *Concord Press (Nig.) Ltd. V. Olutola*³⁷ **OKUNOLA, JCA** relying on *Obasuyi v. Ezeighi*³⁸ held inter-alia that:

Mere exaggeration or even gross exaggeration would not make the comment unfair. However wrong the opinion expressed may be in point of truth or however prejudiced writer, it may still be within the prescribed limit... when you come to a question of fair comment you ought to be extremely liberal, because it is a matter on which men's minds are moved, in which people who do know, entertain very, very strong opinions, and if they use strong language every allowance should be made in their favour. They must believe what they say, but the question for you to say. If they do believe it, and they are within the meaning of fair comment. If comment were made which would appear to you to have been exaggerated, it does not follow that they are not perfectly honest comments.

At page 597 of the Law Report, **OKUNOLA, JCA** further stated that:-

I believe the part of the publication complained about by the plaintiff/respondent is the headings of exhibit 1 which reads thus:

LAGLARISM: Shocking allegations against professor Olutola at University of Ilorin. I have no story to tell, says accused professor Olutola.... The plaintiff/respondent and the

³³. See also note 17 p. 594 - 600

³⁴. (2011) 6 NWLR (Pt. 1242) 19, 53. See also *Din V. African Newspapers Ltd.* (1990) 3 NWLR (Pt. 139) 392 and *A.C.B. Ltd. V. Apugo* (2001) 5 NWLR (Pt. 70) 483 at 496-497.

³⁵. *Ibid* note 12b p. 247; *Dima V. New Nigerian Newspapers Ltd.* (1986) 2 NWLR (pt. 22) 353; *Jegade V. Daily Times of Nigeria Ltd.* (1980) FNR 224; *Enahoro V. Associated Newspapers* (1959-1960) 1 NWLR 219.

³⁶. *Ibid*

³⁷. *Supra* p. 595 – 596

³⁸. (1991) 3 NWLR (pt. 181) 585, 596

DW1 as well as the defences available to the defendants show clearly that the plaintiff/respondent had failed to prove the above six ingredients conjunctively thus making his case liable to a dismissal by the trial court.

INGREDIENTS OF DEFENCE OF FAIR COMMENT

A defendant who pleads fair comment must show that:-³⁹

- (a) the matter is of public interest
- (b) the comment is founded or based on true facts; and
- (c) the comment on the fact is fair.

OKUNOLA, J.C.A added that:-

The evidence of PWS 2 and 3 called by the Plaintiff/Respondent confirmed that the Defendant/Appellant duly have a public duty to transmit the issue of plagiarism plaguing our universities to the public who have a duty to receive same.⁴⁰

See also section 39(1) of the 1999 of the Federal Republic of Nigeria (as amended in 2011).

Privileged Occasion

Privileged occasion has been defined in *Concord Press (Nig.) Ltd. V. Olutola*⁴¹ (Supra) as follows:

A privileged occasion is in reference to qualified privileged, an occasion where the person who makes a communication has an interest or a duty, legal, social or moral to make it to the person to whom it is made and the person to whom it is so made has a corresponding interest or duty to receive it. (Underlining is mine for emphasis).

Although privileged occasion as a defence to an action for tort of defamation has been classified into (a) Absolute Privilege and (b) Qualified Privilege by *Kodilinye and Aluko*⁴², the decision in *Concord Press (Nig.) Ltd. V. Olutola* (Supra) which was decided 1999 and the judgment in *Vanguard Media Ltd. V. Olafisoye* (Supra) handed down in year 2011 have shown that there was no need for the division or classification of privileged occasion into absolute or qualified. The reason is not unconnected with the fact that *Kodiloye and Aluko* identified the following as absolute privilege.

- (a) Statement made in the course of and with reference to judicial proceedings by any judge, juryman, advocate, party or witness
- (b) Statement made in proceedings of the legislature
- (c) Communications made by one officer of state to another in the course of his official duty.
- (d) Reports of judicial proceedings.

Also under occasion of qualified privileges the learned authors referred to the followings:

- (i) Statement made in the performance of a legal, moral or social duty.
- (ii) Statements made to the proper authorities in order to obtain redress for public grievances.
- (iii) Statements made in self defence.

³⁹. *Concord Press (Nig.) Ltd. V. Olutola* (Supra) p. 596 Para E.

⁴⁰. Ibid. see also *Vanguard Media Ltd. V. Olafisoye* (Supra) p.255 – 256 & 256 – 257; *African Newspapers of Nigeria Ltd. v. Coker* (1973) 5 SC 257

⁴¹. *Vanguard Media Ltd. V. Olafisoye* (Supra) p. 258.

⁴². Ibid note 5

- (iv) Statements made between parties having a common interest.
- (v) Fair and accurate reports of proceedings in the legislature.
- (vi) Fair and accurate reports of Judicial/Proceedings
- (vii) Statements privileged under the Defamation Acts.

It can be discerned from the above that the definition proffered by the court in the cases of *Concord Press (Nig.) Ltd. V. Olatola* (Supra) and *Vanguard Media Ltd. V. Olafisoye* (Supra) encompasses all that have been listed under both qualified and absolute privilege occasion by Kodilinye and Aluko. In fact some occasions mentioned under absolute privileges are repeated under qualified privileges are repeated under qualified privileges.

The underlining words from the judgment quoted above encapsulate the entire circumstances enumerated under both absolute and qualified privilege occasions by the learned authors. Therefore, for the purpose of our discussion here, the defence would be referred to as "Defence of Privileged occasion" whether qualified or not. In *Iloabachie v. Iloabachie* (Supra)⁴³ the Supreme Court held that:-

Where a court is considering the defence of privilege whether qualified or not, there are some empirical factors that should be taken into consideration and these include the interest of any of persons to whom the document was published. If the person against whom the publication is made is a public officer, consideration should be given to the position he holds vis-à-vis the interest of the public or those to whom the alleged and or offensive publication was made to. Equally too, the court should consider the motive for the publication to examine whether it is actuated by purely altruistic principles or tendencies, or malicious and injurious motive.

Duty of the Plaintiff when Defendant Relies on Defence of Privilege

For the plaintiff to destroy or neutralize the defence of privilege whether qualified or not, he is required to prove malice on the part of the defendant in respect of the alleged defamatory statement made by the defendant.

Award of Damages for Defamation

The factors to be considered in award of claim damages in torts of defamation are the extent of the publication and the pecuniary loss of the plaintiff. In the case of *Vanguard Media Ltd. V. Olafisoye*,⁴⁴ the Court of Appeal held that the sum of ₦10million awarded in favour of the plaintiff against the defendant as damages for defamation is just and appropriate taking into consideration the fact that the newspaper that contained the defamatory statements enjoyed wide spread circulation and that the plaintiff's overseas partners valued at US \$2m as a result of the publication.

Similarly, in *Guardian Newspapers Ltd. V. Ajeh*,⁴⁵ the Supreme Court was of the firm view that once a plaintiff proves that a libel has been published of him without legal justification, his cause of action is complete and he is entitled to an award of general damages. He needs not prove that he has

⁴³ P. 713 Paras A-C

⁴⁴ Supra note 12b p. 254

⁴⁵ (2011) 10 NWLR (Pt. 1256) 574, 594 Para and p. 603. In *Guardian Newspapers Ltd. V. Ajeh* (Supra), the Supreme Court affirmed the decisions of the two courts below awarding ₦500,000 damages against the appellant on the ground that the newspaper has very wide circulation and that the offensive article affected the plaintiff's church drastically since he lost most of his congregation after the publication and that the appellant remained defiant showing no sign of remorse.

suffered any actual damage/injury to his reputation because damage/injury is presumed in plaintiff's favour until the contrary is proved by the defendant.

Things to be Considered in Assessment of Damages for Defamation

The award of damages in an action for defamation by court is discretionary however; the discretion must be exercised judicially and judiciously. Therefore, the court is enjoined to consider the following factors when exercising its discretion:

- (a) The award must be adequate to repair the injury to the plaintiff's reputation and this does not require proof of pecuniary loss;
- (b) The award must atone for the assault on the plaintiff's character and pride which were unjustifiably invaded;
- (c) It must reflect the reaction of the law to the impudent and illegal exercise in the course of which the libel was unleashed by the defendants;
- (d) It must take into account the loss of social esteem and the natural grief and distress to which the plaintiff may have been placed;
- (e) The fact that the defendant did not show any remorse and did not care whether or not the plaintiff's reputation or feeling was injured;
- (f) The social standing of the plaintiff must also be considered.
- (g) The rate of inflation which has adversely affected the value of the national currency.

See the case of **OFFOBOCHE V. OGOJA**⁴⁶

⁴⁶. (2001) 16 NWLR (Pt. 739) 458 and Guardian Newspapers Ltd. V. Ajeh (Supra) p. 602-603 p.603 -604.