

An exploratory analysis of “libel” in Nigeria mass media and the democratic world

RICHARD OKUJENI, PH.D.**, *MERCY TARTSEA-ANSHASE, PH.D.**,
& *****GABRIEL TIVLUMUN NYITSE, PH.D.**,

Abstract

This exploratory analysis may be likened to an archaeological spadework aimed at uncovering the atomic root of the term — libel! It shows that only communication or a communication situation offers this journalism bogey a fertile base for existence. The study used extant literatures and authorities to explain what libel literally and legally defines, incorporating perspectives and practices in Nigeria and other legal jurisdictions across the democratic world. Defences and illustrative cases marshal alibi and defences available to a defendant-communicator caught in the web of defamatory litigation, each defence strewn with educative past libel cases involving well-known journalists and non-journalist communicators. The study finds that libel is an impedance which robs humanity of the useful knowledge of criminality tearing at society when journalists have to resort to sealed lips and frozen pens as a result of lack of proof; also that the world is ahead of Nigeria in demanding that it be expunged from the books. Conclusion unavoidably argues that this impedance to globally proclaimed freedom of speech, expression and of the press is a cover under which wrong doers shield their nefarious activities from the scrutinous eyes of society and negates the “public’s right to know”.

Key Words: Libel, Defamation, Journalism, Nigerian Mass Media

Introduction

Essentially man is homo communicatus - a communication being! For him communication is first nature, unavoidable and compulsive. Wilson & Itek (2006, p. 38) put it like this, “Man cannot not communicate. Communication is an inevitable element in human life. All behaviours communicate. Any behaviour in an interactional situation, has a message value.” On their part, Nwosu & Idemili (1992, p. 48) stress the overwhelming influence of communication on man thus: “From morning till night, from life till

death and, as some of our traditionists believe, even after death, man is continually involved in the process of communication. Even when living humans are asleep, they still involve themselves in some kind of communication, as psychologists and other observers or experts can easily confirm.”

Agreed that sharing of ideas between and among people have helped mankind to make meaning of his environment and in moving his world from its primitive beginning to the current

About the Authors

- * Richard Okujeni, Ph.D., is a lecturer in the Department of Mass Communication, Faculty of Communication and Media Studies, Bingham University, Karu, Nasarawa State, Nigeria. Though his bias is public relations and advertising, his interests vary and include Digital PR, Corporate Communication, Journalism, Research and is a novelist.
- ** Mercy Tartsea-Anshase, Ph.D., is a lecturer in the Department of Mass Communication, Faculty of Communication and Media Studies, Bingham University, Karu, Nasarawa State, Nigeria. Her research interest is in broadcast journalism, Development Communication, Strategic Communication and new media studies.
- *** Gabriel Tivlumun Nyitse, Ph.D., Orcid: <https://orcid.org/0000-0002-3292-190X>, is an Associate Professor of Journalism and Media Studies in the Department of Journalism & Media Studies, Faculty of Communication and Media Studies, Bingham University, Karu, Nasarawa State, Nigeria. He is an administrator and a seasoned academic and was a Chief of Staff to an Executive Governor of Benue State, Dr Samuel Ortom. His research interest includes Media Ethics, New Media, Theory and Research.

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civilisation, communication has also ironically role-played as a fountain for many world troubles. Among such distresses are individual conflicts, groups and intergroup crises, national, international and multi-national wars and numerous other social problems. Indeed, the history of mankind is replete with conflicts resulting from his efforts at abridging man's freedom to communicate as he is capable of or as he pleases.

The first official act on defamation in the United Kingdom was traced to King Alfred the Great in the ninth century (Crone, 1995). The tyrant was reported to have issued a decree to the effect that slanderers should have their tongues cut off (*Defamatory and Offensive Publication Act Cap. 93 L.F.N*, 1990). This penalty represents unimaginable cruelty for the defamation of slander though it is the historical fact and evidence of man's zeal to extinguish contrary views. King Alfred's example validates the common-place fine artist's impression of a padlocked mouth often dismissed as art or fiction.

Legendary Socrates, the Greece, was sentenced to death by drinking hemlock - a poison - to stop him from corrupting Athenian youths (Dylan, 2015). The Italian astronomer, Galileo Galilei reportedly rescind the heresy of a spherical earth moving around the sun rather than face the wrath of a brutish ecclesiastical authority of his day (Feldhay, 1995). Equally harrowing is the case of Giordano Bruno. He was burnt alive for contradicting orthodoxy with his idea of reincarnation (Boulting, 1914). The gruesome killing Jesus Christ through crucifixion is common knowledge. For refusing to stop preaching the gospel of repentance, salvation and sonship of God, he was crucified (Mark 11:24; Matthew 27:54). His disciples were tortured, brutalised and killed in various circumstances just to put an end to Christianity (thexenaproject.org, 2020).

Early 20th century Union of Soviet Socialist Republics (USSR) had its signature in history as part of the machinery that denies mankind its right to freedom of speech and expression. Self-expression was guillotined based on the perspective of its chief protagonist, Vladimir Ilyanov Lenin (1920) that, "Why should freedom of speech and of the press be allowed? Why should a government which is doing what it believes to be right allow itself to be criticized? ... ideas are much more fatal things than guns. Why should any man be allowed to buy a printing press and disseminate pernicious opinions calculated to embarrass the government?" *Gulag Archipelago* is an experiential account by Alexandra Solzhenitsyn who luckily escaped from the gulag in Siberia,

offers the worse in USSR's determination to stem the freedom of expression and others.

Okoro (2004, p. 145) notes that, most third world leaders embrace the Leninist's postulation given their almost universal penchant for the suppression of the most basic freedom and heritage of man as homo communicatus. Nigeria till date has no credit in the bank of freedom of speech and expression. One of the worst cases happened in October 1989. Dele Giwa, the late Publisher and Managing Editor of "Newswatch", a vibrant weekly magazine, paid the supreme prize for his right to communicate when he was assassinated through the novel means of a letter bomb during the regime of Gen. Ibrahim Babangida. Another epochal violation in show of intolerance of other's view in Nigeria, was the gruesome hanging of the playwright, producer and environmental campaigner, late Kenule Saro-Wiwa with eight other of his Ogoni kins. Spiteful of appeal processes to regular constitutional courts, pleas from world leaders, including the late Pope John Paul in person and the Queen of England, the late Head of State, Gen. Sani Abacha hurriedly hanged the Ogoni environmental rights campaigner and eight others on the strength of a conviction by a "kangaroo tribunal" constituted by himself for the purpose. The act struck John Mayor, former British Prime Minister as "Judicial murder!"

The government of late President Umaru Yar'Ardua whose primary policy was to restore the "Rule of Law" in Nigeria, no sooner shut Channels Television simply for reporting the possibility of the ailing president resigning. Though the station was reopened later the point was thereby made: intolerance for alternative viewpoints in a democratic Nigerian.

The determination by man to rob humanity of freedom of speech and expression began in anciencey, has been relentless, cruel and troubling. MacBride, et al (1981) recalls that, "Freedom of thought and freedom of expression have always been a contested ground between public and private authorities and the independent spirit. Debates on the possible boundaries of freedom in the India of Asoka are known to have taken place; dissident Hebrew sects took refuge in caves and hid their scrolls; in Athens, Socrates paid with his life for 'corrupting the young'. With the advent of printing and the prospect that 'dangerous thoughts' might be circulated far beyond the immediate influence of their originators; the issue was sharpened."

Circumscribing freedom of information and expression was the order during the Authoritarian media era of the 16th and 17th centuries.

Abridgement was actively perpetuated by the reigning Tudors of England, the Bourbons in France, the Hapsburgs in Spain and practically all Western Europe (Siebert, et al, 1956). Images of the conflict of the era are again more eloquently expressed by MacBride as follows: "The technological advance as such was often seen as a threat; printing-presses were frequently forbidden and generally permitted only under licence, sometimes actually destroyed. Innovatory thinking in philosophy or the natural sciences was stigmatized as impiety or heresy. Many men who are now revered as pioneering intellects, were forbidden to publish, dismissed from universities, ordered to renounce their ideas under threat of dire penalties, imprisoned, or even put to death."

Maximum control of the mass media in Europe was replaced by the Libertarian press model. This era allowed absolute freedom of the press or access to various ideas from which people and governments can choose. Ojobor (2002), in Okunna (2002, p. 10) observes that the world thereby learnt a lesson in absolute freedom as impracticable ideal, as the Libertarian press was marked by yellow journalism typified by character assassination and sensationalism at the detriment of social cohesion. Libertarianism was subsequently displaced by Social Responsibility press philosophy with the primary obligation of social responsibility, ethical self-regulation, objectivity, balance, minority rights, etc on which non-interference was predicated. This seemingly ended the conflict over press freedom in Europe and the United States. Nevertheless, on a backdrop of vestiges of reputation-protection laws such as defamation of libel and slander that hunt Westerners until recent agitations.

Given these benefits of historical experiences concerning freedom of speech and expression, the United Nations Organisation (UNO), on 10th October, 1948 came up with the idea that, "Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs." On this conviction, the world body formally packaged a thirty-article declaration on human rights and basic freedoms as minimum standards for the nations of the world, known as the *Universal Declaration of Human Rights* (UDHR). Specifically, Article 19 of the UDHR focuses on freedom of speech and expression as inalienable rights, including, "... freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (MacBride, et al, 1981, p. 35).

The UDHR virtually opened the floodgate for forces of the right to communicate globally. Two years later, a European Convention on Human Rights was signed in 1950 and subscribed to the tenets of the UDHR. The year, 1966, saw the signing of the International Covenant on Civil and Political Rights which also subscribe to the ideals of the UDHR as fundamental rights, particularly Article 19. It emphasises that the provision is irrespective of "...whether in oral, printed or artistic form, or by any other means of the individual's choice."

Americans, North and South, in 1969 signed the American Convention on Human Rights with the same objective of affirming the ideals of the UDHR and their subscription thereto. Tom (2006, p. 10) reports that, coming late though Africa also joined the UDHR bandwagon when they signed the *African Charter on Human and People's Rights* in 1986. The Charter, adapted from the UDHR, provides that, "Every individual shall have right to receive information. Every individual shall have the right to express and disseminate his opinion within the law." As an indication of its seriousness on human rights issues, it enjoined State parties to the Charter to regard it as their duty and responsibility to: "promote and ensure through teaching, education and publication, the respect of the rights and freedoms, contained in the present charter and to see it that these freedoms and rights as well as corresponding obligations and duties are understood" (See Wilson, 2005, p. 105)

All Nigerian constitutions since its independence in 1960 provide similarly for freedom of information and expression (Gambo, 2006, p. 89). Section 39(1) of the operating *1999 Constitution of the Federal Republic of Nigeria*, as amended, though a military generated document, states that, "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference."

Nigeria joined the UNO immediately on gaining her independence from Britain in 1960 and as a signatory to the UN Charter and later to the African Charter on Human and Peoples' Rights, implementing these protocols therefore is only an obligation and a responsibility; and whether they are being honoured or honoured in breach is not the issue here.

The above international charters, protocols, conventions or declarations are a culmination of a world effort to promote global peace and happiness on a "foundation of freedom, justice and peace" (UDHR, 1948). They hold out a picture of a world agreed and settled on the matters of human rights and basic freedoms. Therefore, it is an irony

that this vision has failed to be matched by the reality of our world today. Freedom of expression is yet a far cry, resulting in various rabid global turmoil such as terrorism, freedom-fighting, liberation, suicide-bombing, political conflicts and general philistinism everywhere: a horrifying image that gives credence to Okoro & Okolie (2004, p. 40)'s tragic-comic assertion on wars, religious intolerance and violence, economic and oil militancy, racism, neo-colonialism, Zionism, etc. as indicators that, "Man, by nature is...expansive, domineering, atavistic, and governed by the principles of cupiditas and libido dominandi....when vested with absolute power, man has the tendency of subordinating, exploiting and suppressing one another."

The typical platform for this antagonism is the communication phenomenon hence all over the world some abridgements to freedom of speech are allowed despite the enumerated conventions and declarations. Among these abridgements are the laws of defamation (libel and slander), sedition, copyright, Official Secrets Act. Of these, Greenwood & Welsh (1985, p. v) aver that "libel continues to be the greatest and most expensive danger to journalists" and public communicators generally. Hence it is the focus of this exploratory analysis.

Designation and components of libel

Libel and Slander: Libel takes its form out of the offence of defamation which is a statement that damages a person's reputation. A defamatory statement becomes libel when it is rendered in a permanent form such as in writing, newspaper publication, pictures, artworks, DVD, Mp3, Mp4, etc. Slander is much the same as the defamation of libel except that it is expressed in a transitory form such as spoken words, audible sounds, and other uttered matters that are not recorded. The unwarranted statement "John is a thief" falsely made is a defamation which becomes libel, if it is in written or any other permanent form and slander when it is spoken, uttered or in any other transient form.

Elements of Libel: It is easy to infer libel in a statement; but it is not the same for such allegation to qualify as libel. It must pass through a rigorous test to qualify. The parameters for measuring libel, according to Tom (2006, p. 85) and which the onus of proof rests with the plaintiff in any particular case, include defamation, identification and publication. Defamation refers to the harm which the act of libel has or will cause, involving four elements as follows:

- (a) the material lowers plaintiff's esteem before right-thinking members of the society generally;
- (b) exposes the subject to hatred, ridicule and contempt;
- (c) causes the defamed person to be shunned or avoided; and
- (d) disparages him in his business, trade, office or profession (Tom, 2006).

Publication: This entails that the defamatory content was published in a permanent or transient form and apart from the defendant and the person defamed at least one other person accessed the information. Citing Middleton & Chamberlin (1988), Okoro and Okolie (2004, p. 69) highlights a distinction between this form of publication and book, magazine or newspaper type publication which are automatic once they go into circulation; radio, television and like communication devices, once they are broadcasted or aired; as well as a miscellany of other publication forms such as "press and news release, inter-office memos, interviews/conversations, business letters and the likes" once released. Also highlighted is the libel of "republishing" of a libel in contest which amounts to a new or cause for a fresh action for libel.

Identification: It defines that the plaintiff was evidently identified as the actual person referred to in the libellous material. This comes in two ways: either directly (libel per se) or through indirect reference technically called innuendo (libel per quod). Corroborated by Greenwood & Welsh (1985, pp. 99-100), Okoro & Okolie (2004, p. 67) and others, the above qualifications must be complete for a statement to be considered as a defamatory libel. Bittner (2005, p. 363) condensed the qualifications as follows: "A test to determine whether something is libellous has three parts: publication, defamation and identification. If a person is written about in a newspaper or mentioned during a broadcast and that mention defames the person, then publication, defamation, and identification have occurred and the person may have been libelled".

Types of libel

Just as defamation has two types — libel and slander - libel has five types: (1) Libel per se: This signifies a manifestly obvious libel, the words of which require no proof to discover their injurious effect; (2) Libel per quod: denotes innuendo which have meaning other than its original, natural ordinary meanings; (3) Civil libel: indicates a tort or civil wrong against an individual or his business

or contract and there is remedy for damages done; (4) Criminal libel: This refers to a crime against the state; for instance, writing and publishing a material that has potentials to cause a breach of peace in the society or a grievous libel against an individual that could provoke a breach of order. The eminent jurist, Elias (1969, p. 19) however notes that the related Nigerian law on criminal libel is inconsistent with the above universal definition of criminal libel. In Nigeria, he opines that, "the publication of any defamatory matter — whether it be libel or slander — is a criminal offence." Whereas criminal libel ought to be occasioned only by a very grievous attack on an individual's reputation or by a statement capable of causing a breach of the peace Elias' interpretation appears to make a tort a criminal libel. It should be noted however, that criminal libel does not require proof of publication as in civil libel; and (5) Class or Group Libel: This is a situation where a statement libel a class or group. For example, labelling all females prostitutes, all males robbers or all politicians corrupt. Here there is no basis for action since no particular individual or class was specified. However, where a class was specified in the libellous statement, then a cause for action has been given to the identified individuals or class. Onwubere (2002, p. 20) explains that to say that the female students in the mass communication department are cheats is specific and gives cause for class or group action.

Damages/assessing damages

The punishment meted out for proven libel includes jail terms in criminal libel and damages recoverable through money or like assets as a remedy for the tort of civil libel. Again, Onwubere (2002, p. 25) states that there are three types of damages in civil libel: compensatory, special and punitive or exemplary damages. Compensatory are general damages awards made to compensate the plaintiff in cases of libel *per se*; Special damages, as the adjective suggests, are awards to a plaintiff in remedy for the damages suffered in their business or profession. (These are actual loss which are measurable.) Punitive or Exemplary damages are awards made to a plaintiff who has suffered grievously. The gravity of the defamation determines the weight of this remedy.

When libel has been proven, it raises the question of remedy and what amount to a satisfactory remedy. This brings up the second element of this subsection - assessing damages! Middleton & Chamberlin (1988), cited by Okoro & Okolie (2004, p. 72) reveal that the courts, in executing this function, take into accounts several factors such as: The plaintiff's position and

standing; The nature of the libel; The mode and extent of publication; The absence or refusal of any retraction or apology; and The whole conduct of the defendant from the time when the libel was published up to the very moment of the verdict.

Libel in Nigeria and other democratic jurisdictions

Nigeria: The distinctive and draconian nature of Nigerian libel laws makes it all-important subject in the mass communication curriculum. Stressing this, Okoro & Okolie (2006, pp. 65-66) latch on the power of an indigenous saying that, "a good name is better than silver and gold" to show how traditional African society cherishes reputation and why journalists must therefore walk the minefield with caution. In support, Yakubu (1999) warns that, "the law in its wisdom insists that words which are capable of leaving a stain on the reputation of another should not in the absence of lawful excuse be uttered or published." These professional injunctions are proof that the Nigerian legal system values and protects reputation, as is the case in the US, most of Canada and other Commonwealth countries where the defamation of libel very nearly holds the same meaning.

Section 373 of the Nigerian Criminal Code Act defines defamation as any "matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation." This Act is being given effect by the Nigerian judiciary as shown by the judgment of the Court of Appeal in *Nigerian Television Authority v. Ebenezer Babatope (1996), 4 NWLR (PT 440, 75)* which echo defamation as: "... a statement which is published of and concerning a person and calculated to lower him in the estimation of right-thinking person or cause him to be shunned or avoided, to expose him to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business".

United Kingdom: Greenwood & Welsh (1985, pp. 96-103) declares that the Defamation Act 1952 of the UK recognizes for a citizen "a right to have the estimation in which he stands in the opinion of others unaffected by false and defamatory statements and imputations". This obviously implies that jurisprudence in the UK presumes every citizen as having a reputation in the first instance; also, that this "tabula raza" status can become smeared through false and defamatory imputations by another person and that when this happens it leads to a loss of social respect resulting

in hatred, ridicule, shunning, avoidance, disparagement and like ill-treatments by right thinking members of the society. On libel specific, they explained that “if the (defamatory) statement is written or is in any other permanent form, such as a picture, it is libel”. In effect therefore, in the UK as in Nigeria, libel is defamation transmitted or published in permanent form such as in writing, etc. The authors also stated that there are two other forms of libel in the UK based on the medium of transmission also. These are libels committed through the medium of a recorded stage performance or as a recorded cable or broadcast matter, both of which are respectively covered by the Theatres Act 1968 and Cable and Broadcasting Act 1984 laws of the UK.

United States of America: In the US, the concept of libel is the same as that in the UK, with difference only in the words, circumstance and procedures through which they evolved. Baran (2009, p. 45) writing from the US perspective, describes libel as “the false and malicious publication of materials that damages a person’s reputation”. He added that a defendant in a libel charge loses his “First Amendment Protection”. Many imputations can be drawn from Baran’s definition of libel in US law. Every American, as Briton, is presumed to have a reputation, and this reputation credit is highly valued as to enjoy protection by the First Amendment of the US Constitution. (First Amendment provides for unrestricted freedom of expression to US citizens (particularly the press) limited only by the rights or freedoms of others.) It is implied that, this reputation is vulnerable to the damage of libel, charges can be brought to an appropriate court of justice, and if successfully proven sanctions are administered in accordance with the law as elsewhere.

Scotland: Even though Scotland operates the common law system, defamation laws recognize no distinction between libel and slander. All cases are simply defamation. The defence of justification is known as “Veritas”. This law has however been replaced by the Defamation and Malicious Publication (Scotland) Act 2021 which came into force on 8th August, 2022. Under Actionability of Defamatory Statements, the law firm Lindsays (2021) states that the new law defines defamation as the publishing of a statement which has caused or is likely to cause, *serious harm* to the reputation of another, that is, if it tends to lower the person’s reputation in the estimation of ordinary persons. This shows that Scotland shares in the propagation

and enforcement of libel in protection of reputation.

Germany: The defamation of libel and slander is operational in Germany. Defamation law in Germany however seems to be the most complex. Unlike the context in US and UK, it consists a list of some curious provisions such as S.90a (Denigration of the State and its Symbols), S.90b (Unconstitutional denigration of the Organs of the Constitution), S.185 (“insult”), S.199 (Cases of exchange of verbal abuse), S.188 which offers certain public figures additional protection against criticism, and more. Together, libel and slander are captured in Chapter Fourteen, Section 186 of the German Criminal Code on defamation thus: “Whosoever asserts or disseminates a fact related to another person which may defame him or negatively affect public opinion about him, shall, unless this fact can be proven to be true, be liable to imprisonment not exceeding one year or a fine and if the offence was committed publicly or through the dissemination of written materials (section 11(3) to imprisonment not exceeding two years or a fine”. (<http://www.lewik.org>>term>defamation)

Singapore: Back in 2008 Wikipedia rated Singapore as having perhaps the world’s “strongest” libel laws; reporting that the country’s leaders have warned that libel, as defined by them from time to time, on the internet will not be tolerated. “They have indicated to deal with those responsible including internet service providers and publishers liable for the content placed on the internet. Cybercafés too may be punished for libellous materials posted or possibly viewed in their establishments.” Even though scholars and researchers negate Wiki being transient, as recently as 2021, these reported sworn words of Singaporean leaders have been validated by a related sensational case. A law firm, pkwalaw.com reports that, “The highly publicised case of Prime Minister *Lee Hsien Loong v. Leong Sze Hian [2021] SGHC 66* illustrates how the courts applied civil defamation laws in online defamation matters. Simply ‘sharing’ a post can amount to defamation.” Every doubt that Singapore practices defamation of libel or slander to protect the reputation of its citizens is therefore removed. According to the law firm, the relevant section in Singaporean law (499) describes defamation as “... words either spoken or intended to be read, or by signs, or by visible representations, ... intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person....”

Defenses and illustrative cases

Igben (1997, p. 167) suggests that journalists caught in the web of libel charges may wriggle themselves out with obvious defences such as (1) Unintentional defamation; (2) Truth or justification; (iii) Plea of Res Judicata or Double jeopardy; (4) Offer of amends and apology; (5) Fair comment; (6) Volenti non-fit injuria; (7) Action personalis mutur cum persona; (8) Absolute privilege; and (9) Qualified privilege. These defences are corroborated by the defences also suggested by the various authorities cited so far in this paper. Taken individually, they mean as indicated hereunder with past cases as illustration.

(1) Unintentional libel: This requires the communicator pleading that the alleged defamation was not intended or deliberate and that it has no malice behind it. An escape through a plea of unintentional defamation though not explored, can be found in *Complete Communication Ltd v. Bianca Onoh (1998 5 NWLR Pt 549)*. The defendant who was the publisher of "Climax" weekly publication had published that the former holder of both Miss Nigeria and Miss Continental crowns was arranging to publish her nude photographs through "Crown Prince". This resulted in an action for libel in which the publisher lost but appealed. Again, the publisher lost because the court held the defamatory material to have suggested that a sane person contemplate to publicise her nudity with the following position: The natural and ordinary meaning of the word nude is naked, barren, undraped. Thus, a human being with correct mental orientation and attitude must be draped. A human being found undraped will initially be regarded as mad or insane until the contrary is proved. This is because no sane human being is expected to be naked in public". The point here is that the publisher got something out of what was originally intended, hence unintentional defamation without malice would have been the best plea but this was not the case.

Unintentional libel may also play out when a reporter is not painstaking enough to ensure that the actual person was the very person described thereby leaving no room for an identical person to make claims. This is a situation in which a Dike Umukoro of New Haven Enugu may file an action for libel if it is not made clear that Dike Umukoro of Ogui road Enugu is meant.

Other cases of unintentional libel that may be referred include, (1) *Wole Soyinka (The Man Died) v. Femi Okunnu*; (2) *Newstead v. London Express Ltd (1940) (1 K.B. 377)*; and (3) *Hulton v. Johns (1909) (2. KB. P 444 CA)*.

(2) Innocent Dissemination: Okoro & Okolie (2004) describe this as a defence especially for those who might have shared in selling or distributing a libellous material unwittingly. The plea is that they had no knowledge that the material contained a defamatory content. A case that clearly illustrate this is *Awolowo v. Kingsway Stores Ltd (1968) (2 ALL NLR)*. The plaintiff bought a book with a curious titled "The One-Eyed Man is a King" off the defendant's shop. The content of the book turned out to have libelled the plaintiff. The Kingsway Stores Ltd had actually helped to distribute or sell a libellous material and is naturally liable, but with a 99% likelihood of having done so innocently. It could not have read just that book to determine a libel before displaying it for sale. Here innocent dissemination of a defamation as a defence applies. Particularly if there is no evidence of calculated malice arising from a related or unrelated connection between the defendant and the plaintiff. Other cases of innocent dissemination include: (1) UK: *Goldsmith v. Sperrings Ltd and Ors. (1997) (1 WLR 478)*; and (2) Nigeria: *Edukugho v. Sunday Times (See Onwubere, 2002, p. 24)*.

(3) Truth or justification: Here, a journalist pleads the truth of his report of the alleged defamation in facts and in substance. It is helpful if he has concrete evidence to back the plea. The case between *Concord Press Nigeria Ltd v. Olutola (1999) (9 N.W.L.R. pt. 620)*, clearly demonstrates the power of truth and justification as a defence in practical term. The plaintiff, a professor at the University of Ilorin, had sued the *Concord Newspaper* for ₦15m for alleging plagiarism against him falsely. Whereas he had been caught in the act by the institution's authority which had directed that he expunges the plagiarized materials from his CV and which he did. The court denied him the damage because the alleged defamation was true, of utmost public interest and show that the paper had no malice but just carrying out its social duties of informing the people about developments around them.

(4) Fair comment: This can be pleaded when alleged libel is an expression of opinion based on available information without evidence of

malice but the public interest. The law sees fair comment as in the public interest when it accords with the principles of fair comment hence it protects it. In *Ugo v. Okafor (1996)* (3 *N.W.L.R. pt. 438*), the court held that: “In the defence of fair comment, the defendant does not take upon himself the burden of showing that the comments are true. If the facts are truly stated with regard to a matter of public interest, the defendant will succeed if the court is satisfied that the comments are fairly and honestly made”. (Also see *Nthenda v. Alade (1974)* (ECSLR 740). The above implies that fair comment must be a prima facie comment; it must be based on existing information which are true or at least not challenged; and the comment must have in mind the public interest. Again, to be fair a comment must be an honest expression of opinion based on facts, no imputation of dishonest or corrupt motives and without prejudice. As expressed in the first quoted paragraph under fair comment above, the defence does not have to bother with whether the comment is true. Greenwood & Welsh (1985, p. 116) place it thus, “The law does not require the ‘truth’ of the comment itself to be proved. By its nature it cannot be. Comment may be responsible or irresponsible, informed or misinformed, constructive or destructive; but it cannot be true or false.”

- (5) **Plea of Res Judicata or Double Jeopardy:** This requires the defendant to prove that a similar action has been entered or brought before a similar court and going ahead will result in double jeopardy for the defendant.
- (6) **Offer of amends and apology:** The practitioner or defendant here offers to make amends and to tender an apology to be published through the same medium which carried the defamation. This depends on the acceptance of the defamed individual and may not totally mitigate the offence but it has a vitiating impact on the libel.
- (7) **Volenti non-fit injuria:** This has to do with a context in which the plaintiff had already assented to the facts of libel before it was published. Caution is necessary here. It must be a voluntary concurrence and requires proof to be helpful. Merely claiming that the other party assented to the defamation is not enough for this plea to work. Some form of tangible proof will be required. Except this, nothing stops the plaintiff from denying the consent

earlier and actually given in the face of the law.

- (8) **Action personalis mutur cum persona:** This plea requires the communicator or journalist to prove that the plaintiff is actually dead before the court in order to have the case struck out since a claimant in law dies “with his reputation” (Onwubere, 2012; Greenwood & Welsh, 1985). This law has however been reviewed and a titled-holder of a deceased’s estate (e.g. a son) can represent him in a libel suit (Tom, 2006; *BON Ltd v. Muri (1998)* (2 *NWLR pt. 536*).
- (9) **Absolute privilege:** This plea nullifies a defamation if the said libellous content derives from any form of public records. For example, government gazettes, parliamentary proceedings, court proceedings fairly and accurately reported contemporaneously, tribunal of inquiry reports, or matters issued by officials in the course of performing their duties. Also, privileged absolutely are any matter published by the President, a Governor or a Minister, or such matters published in the execution of their mandate. Statement in a petition to the president, a governor or a minister are also privileged. The same applies in the case of a person who for the while is subject to military discipline.

The court, in *Ojeme v. Punch (Nig.) Ltd (1996 I NWLR pt. 427 701)* held that a “fair and absolute report in newspaper, or proceedings held before any court exercising judicial authority if published contemporaneously with the proceedings is absolutely privileged”. The privilege is lost after a longer duration.

Some other cases involving “Absolute privilege” include: *DPP v Amalgamated Press (I ERNLR 2)*; *Adene v. Oyeyemi (1968 NNLR, p. 37)*; *Allason v. Hainess* (Peter Carey Media Law, op cit *The Times, July 25, 1995*); *Majekodumni v. Olopade (1963 NMLR 12)*.

- (10) **Qualified privilege:** This plea is relevant where alleged defamation is founded on public interest and the exigency of telling the truth and without hidden motive, fairly and accurately.

An example is the comment of a referee on a subject to authorized third party. In *Ayoola v. Olajure (1977)* (3 *CCFHCJ. 315*), the court granted the defendant the benefit of qualified privilege for responding appropriately to an enquiry from a would-be employer that a

dismissed staff of his organization (the plaintiff in the case) was not worth employing.

The court held, in *Ogoja v. Offoboche* (1996 *NWLR pt. 458 52*), that a plea of Qualified privilege on malicious publication will fail, "unless it (defamatory statement) is 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 on the absence of actual malice."

Other cases under the qualified privilege are (1): *Uko v. Mba* (2001) (4 *NWLR pt. 704 at p. 460*); (2) *Akomolafe v. Guardian Press Ltd* (2004) (1 *NWLR pt. 7*); (3) *Gomes v. Punch Nig Ltd* (1999) (5 *NWLR Pt. 602*); (4) *Concord Press Nig Ltd v. Olutola* (1999) (9 *NWLR pt. 620*); (5) a failed plea of Qualified privilege in *DPP v. Associated Press of Nigeria* (1959) (*WRNLR 247*); and (6) *Ileobachie v. Philip Ltd* (2000) (14 *NWLR pt. 686, p. 43*).

(11) Statute Barred: All libel cases are supposed to be charged for prosecution within six years from the date of the defamation. Where this is not done any attempt to begin prosecution outside the time frame (six years) is regarded as statute barred and consequently annulled. In the UK this period is being reviewed with a view to bring 'it down to three years (Greenwood & Welsh, 1985).

(12) Libel Proof/Incapable of Further Defamation: This is where the claimant has a very poor reputation in the society before the libel complained of. The proof and plea are that he has no reputation to be damaged — libel proof. Also, that an insulting statement that does not actually harm someone's reputation is not libellous.

(13) Public figure doctrine (absence of malice): In the United States (in *New York Times Co. v. Sullivan*) (1964) (376 *U.S. 254*), for a public figure to win a defamation claim, actual malice must be established. Therefore, a plea of absence of malice is a justified defence for the defendant.

(14) Media liability insurance: This is not a direct defence. Nevertheless, the service is reportedly available in the US where newspapers, magazine and other communication outfits shield themselves

from the negative effects of libel claims if and when they occur inevitably.

Libel as impedance to freedom of speech, information and expression

There is no doubt that the world has been in perpetual conflict, with humans contending among themselves who should speak or not, what they should or should not say, resulting in human beings chaining themselves up in a mutual bid to gag each other as so far demonstrated. The defamation of libel and slander is therefore symbolic of all that humanity has suffered unknown or been denied due to the danger of the obnoxious law of evidence contextually. It is gratifying however to note that humanity is now waking up to the reality of the impedance signified by libel and also that there is a growing resentment against defamation around the world. By the day, humanity gets wiser to the fact that more than protecting individuals, defamation is sadly and ironically interfering directly on the ideals of democratic freedom for which some great minds paid the supreme price; indeed, allowing all the devious things afoot: conspiracies, fraudulence, murders, assassinations, deceit, betrayals, theft, adultery and much more.

An example can be found in Article 10 of the European Convention on Human Rights which permits restriction on freedom of speech, but allows other legal jurisdictions (nations or group of nations) to determine where the burden of proof lies when allegations are made.

Host to all sorts of communicators, including amateurs and the-devil-may-care types with witting and unwitting negligence in ethics and malicious calumny, the Internet and associated social media has brought a new focus on the irrelevance of libel in the contemporary world. In some parts of the world the response has been positive as agitations are on for ending the impedance of libel as is obvious from this extract: "There is a broader (broadening) consensus against laws which criminalise defamation. Human rights organizations, and other organizations such as the Council of Europe and Organisation for Security and Co-operation in Europe, have campaigned against strict defamation laws which criminalise defamation. The European Court of Human Rights has placed restrictions on criminal libel laws because of the freedom of expression provisions of the European Convention on Human Rights. One notable case was *Lingens v. Austria* (1986)". (Wikipedia).

Conclusion

This analysis has shown that libel is a practice all over the world almost without exception. As Onwubere (2002, p. 19) puts it, libel — civil or criminal — is “the heart of media laws”. It is a media man wolf the fear of which leads to self-censorship among journalists and results in numerous hair-raising occurrences of public interests walking by while journalists are awake with eyes wide open. As this conclusion is being written, the blackmail symbolised by libel is being played out by Nobel Laureate Wole Soyinka’s reaction to accusation of claiming to have a first-class degree in Literature when what he has is a second-class degree he obtained from Leeds University. This study sees the revelation as a question without malice which the Laureate had better answer by showing or publishing the said degree. But, guess what! Rather than proving how irresponsible the writer is, Soyinka is, “...awaiting a decision from my lawyers whether or not to dignify the current sponsors of this mouldy tract with legal action...” (Ajala, 2023). Perhaps, to ask for millions or billions in damages if the writer failed to prove the assertion.

The study also shows that libel is a core anti-freedom of expression and anti-democratic instrument under which fascists and authoritarians, in and out of power, hide to challenge and repudiate the basic freedoms guaranteed by Article 19 of the 1948 UDHR, with “reputation” as excuse.

Defamation rubbishes the efforts, pains and sacrifices made by heroes of freedom of expression from all over the world across time. To a very large extent libel has taken away the envisaged gains from Article 19 of the UN’s UDHR. Criminal libel especially and sedition continues to put public faces on dictators, tyrants and anti-public interest forces who need them.

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