

THE LAW ON DEFAMATION OF COMPANIES¹

BRIEF INTRODUCTION

The provision of Section 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) grants every citizen the right to freedom of expression in the following words;

39(1) Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference...

The constitutionally guaranteed freedom of expression as couched in the words quoted above is not absolute. Therefore, there is a limit to the extent of expression granted and allowed each citizen by Law. It will indeed be unwholesome and inimical to society that unfounded imputations/statements calculated to expose people to ridicule, hatred or contempt are made under the cloak of freedom of expression. This is where the law of Defamation comes to the rescue.

THE LAW OF DEFAMATION : BRIEF OVERVIEW

By definition or description, a defamation is any imputation published about a person which is calculated to lower that person in the estimation of the right thinking members of the society or cause him to be shunned or avoided, or which exposes him to hatred, contempt or ridicule, or which is disparaging, or injurious to him in his office, profession, calling, trade or business².

On a general note, the interest protected by the law of defamation is the interest in the individual's reputation. Consequently, the basis of the tort of defamation is that every person has a right to the protection of his good name, reputation and the estimation in which he stands in the society of his fellow citizens. On this basis, it has been consistently held by the Courts that anybody who publishes anything injuring that good name, reputation or estimation commits the tort of libel (if written) and slander (if verbal). However, it is noteworthy that not every statement which annoys is ipso facto defamatory nor is every vulgar statement, mere abuse or insult actionable in law³.

The ingredients

DEFAMATION OF COMPANIES

It has been common place to find that the law of Defamation has been explored to protect the reputation of individuals. However, the law of Defamation does actually extend to

¹ *By Nkobowo Frederick Nkobowo Esq*

² A.O. Ezeani and R. U. Ezeani; Law of Torts (With Cases and Materials)

³ Per Onnoghen JCA (as he then was) in *Anate v Sanuai* (2001) 11 NWLR (Pt 725) 542 At 556

protecting the reputation of Businesses and corporate entities yet this realm of the law is rarely explored.

COMPETENCY OF COMPANIES TO SUE FOR DEFAMATION

The law is now settled that just as an individual may be defamed, a company or business entity may be defamed and therefrom suffer loss in profits as well as goodwill. This is because although a company is factually inanimate, a company naturally has a trading character or reputation which if defamed may adversely affect and in fact ruin the company.

Flowing from the above, a company can properly maintain an action for libel or slander in respect of statements made which are calculated to injure its reputation. However the alleged defamatory words or statement must relate to the mode or manner in which the Company carries out its business. In ***Bassey Edem v Orpheo Nigeria Ltd (2003) 13 NWLR (Pt 838) 537*** the Supreme Court stated inter alia as follows;

*It is settled law that just as an individual or a human being may be defamed, a trading company, naturally has a trading character, the defamation of which may adversely affect and may, indeed ruin it. See South Hetton Coal Co. Ltd v North Eastern News Association Ltd (1894) 1 Q.B. 133 at 145 (C.A.). Accordingly, a corporation or company may maintain an action for libel or slander in respect of any words which are calculated to injure its reputation in the way of its trade or business. See Linotype Co Ltd v British Empire Typesetting Machine Co Ltd (1899) 81 L.T. 331, Slazengers Ltd v Gibbs and Co (1916) 33 TLR 35 etc. This, it may rightly do with or without any proof of special damage. So, where a statement is made with regard to the mode in which a trading Corporation or company conducts its business such as to convey to right thinking members of the society generally that it conducts its business in a dishonest, improper or inefficient manner, the law is the same as in the case of an individual or human being, and the Company can maintain an action without proof of special damage. See **South Hetton Coal Company v North Eastern News Association (Supra) at P 139**. Where however, the words do not reflect on the trading or business reputation of the Company, no action in libel or slander will lie. As Lord Goddard explained the position in **D and L Caterers Ltd and Another v D'Ajou (1945) K.B. 364 at 366**; "If one said of a company, 'it is a murderer' or 'it is a forger', I have no doubt that the company could not bring an action, because a company cannot forge and a company cannot murder, so that in the ordinary way, it would not be actionable to write something of a company which might be actionable in the case of individuals, unless what is written reflects on the Company in the way of its business". A Company cannot therefore sue either for libel or slander unless it is defamed in the way of its business.*

Again, in ***South Hetton Coal Company v North Eastern News Association***⁴ the Court per Kay, L. J. commented on the competence of a corporation to sue for defamation as follows;

In Metropolitan Saloon Omnibus Co v Hawkins (1859)(1) Pollock, C. B., says, "That a corporation at Common Law can sue in respect of a libel, there is no doubt. It would be monstrous if a corporation could maintain no action for slander of title, through which they lost a great deal of money. It could not sue in respect of an imputation of murder, or incest or adultery, because it could not commit those crimes; nor could it sue in respect of a charge of corruption, for a corporation cannot be guilty of corruption, though the individuals composing it may. But it would be very odd if a corporation had no means of protecting itself against wrong: and if its property is injured by slander, it has no means of redress except by action. Therefore it appears to me clear that a corporation at common law may maintain an action for libel by which its property is injured;" and he held that a trading company formed under 19 & 20 Vict. C. 47, had the same power, saying this: "in order to carry on business, it is necessary that the reputation of such a corporation should be protected, and therefore in case of libel or slander, it must have a remedy by action;" and the other Judges of the Court of Exchequer concurred"

There are however some interesting points of law that apply when a company institutes an action for defamation;

These points are;

1. As expected, the company cannot be injured in its feelings, it can only be injured in its pocket – ***Lewis v Daily Telegraph Ltd (1963) 2 All ER 151 at 156***
2. A company suing for defamation need not prove special damages or even financial loss to recover damages for injury

1. The company cannot be injured in its feelings, it can only be injured in its pocket :

The Law on this issue is that a limited liability company cannot be injured in its feelings as it has no feelings; it can only be 'injured in its pocket'. This in effect mean that where the words do not reflect on the trading or business reputation of the Company, no action in libel or slander will lie. As stated in the case of ***Lewis v Daily Telegraph Ltd (Supra)*** per Lord Reid;

"A Company cannot be injured in its feelings, it can only be injured in its pocket. Its reputation can be injured in a libel, but that injury must be sound in money. The

⁴ (1894) 1 QB 133 at 147

injury need not necessarily be confined to loss of income. Its goodwill may be injured'

The point was further elaborated upon by the Supreme Court in ***Duyile v Ogunbayo & Sons Ltd (1988) 1 NWLR (Pt. 72) 601 at 611***. The Court held inter alia that;

*'Unlike a human being, a corporate body suing for defamation, seeks only damages for pecuniary loss it can suffer and not for things only possible in personal feelings. **It can sue for loss of profit, shortfall in turnover or anticipatory loss but not natural grief and distress, and not for social disadvantage** ...A Company is a legal person, but it is inanimate. It has got no personal feelings of grief or distress. A Company can only be injured as to its earnings and not as to its feelings. **It can be injured by libel and that injury must be related to its loss in money terms**. Its loss of earnings, loss of profits and loss of goodwill are matters that libel can bring as misfortune for the company. It is because of these special attributes that a company does not need to prove special damages or even financial loss to recover damages for the injury to its reputation in the way of its trade or business'*

2. A company suing for defamation need not prove special Damages or even financial loss

The second germane point is that a company suing for defamation need not prove that it has suffered special damages. Furthermore, the injury suffered by the Company need not be confined to loss in income, it may recover damages for injury to its reputation and/goodwill. The Supreme Court in ***Bassey Edem v Orphea Nigeria Ltd (Supra)*** stated as follows;

'where a statement is made with regard to the mode in which a trading corporation or company conducts its business so as to convey to right thinking members of the society generally that it conducts its business in a dishonest, improper or inefficient manner...the company can maintain an action without proof of special damage'

'the correct view of the law in this regard is that the 1st plaintiff, as a company, is not required to prove that it has suffered special damage, such as financial loss before its claim for defamation may be sustained. The injury suffered by it need not be confined to loss of income. Its claim for libel or in defamation is also sustainable and it may recover damages against the defendants for the injury to its reputation and/or goodwill. See too Rubber Improvement Ltd v Daily Telegraph Ltd (1964) A.C. 234 at 262'