**EVARISTUS D. EGBEBU**

**V.**

**EMEKA IZEJIOBI AND ANOTHER**

IN THE COURT OF APPEAL OF NIGERIA

THE 17TH DAY OF MARCH, 2017

CA/OW/134/2010

**LEX (2017) - CA/OW/134/2010**

OTHER CITATIONS

3PLR/2017/115 (CA)

(2017) LPELR-42285 (CA)

**BEFORE THEIR LORDSHIPS**

RAPHAEL CHIKWE AGBO, J.C.A

AYOBODE OLUJIMI LOKULO-SODIPE, J.C.A

TUNDE OYEBANJI AWOTOYE, J.C.A

**BETWEEN**

EVARISTUS D. EGBEBU Appellant(s)

**AND**

EMEKA IZEJIOBI & ANOR Respondent(s)

**ORIGINATING COURT**

IMO STATE HIGH COURT, OWERRI JUDICIAL DIVISION (Duroha -Igwe J., Presiding)

**REPRESENTATION/LAWYERS**

E. D. EGBEBU - For Appellant

AND

PRINCE CHINEDU ODOEMENA - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

TORT AND PERSONAL INJURY LAW – DEFAMATION:- Defamatory word – How determined - What the Court will consider – Award of damages where defamation is proved – Relevant considerations

**PRACTICE AND PROCEDURE ISSUES**

ACTION - SIGNING OF COURT PROCESS(ES) - Effect of a court process signed in the name of a law firm.

APPEAL - INTERFERENCE WITH AWARD OF DAMAGES:- Domain of trial court in the determination and award of damages - Circumstances/grounds upon which an appellate Court will interfere therewith

APPEAL - REPLY BRIEF - What a reply brief is not meant to do.

COURT - CONTEMPT OF COURT - What amounts to contempt of court.

JUDGMENT AND ORDER - DAMAGES - ASSESSMENT OF DAMAGES:- Factors to be considered in assessing damages in defamation cases.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The plaintiff at the Lower Court instituted an action against the defendants, praying for a declaration of this Court that the publication in the October - November, 2001 Edition of URU-NOW Newspaper by the Defendant is contemptuous of our judicial process, malicious, libelous and in absolute bad faith; an order of Court on the police to arrest and prosecute the Defendant for contempt ex facie curia; an order of the Court on the Defendants to pay the sum of N10,000.00 to the Plaintiff as exemplary damage for malicious, libelous publication; and an order of Court on the Defendant to publish an unreserved apology to the plaintiff in ORU-NOW Newspaper.

Pleading were filed and exchanged. The learned trial Judge after hearing the parties gave judgment, holding that the liability of the defendant is an implication of legal technicality, and that there was no loss or injury to the Plaintiff’s reputation. He therefore awarded to the Plaintiff as damages the sum of N30,000 against the defendant jointly and severally.

Dissatisfied with the said decision, the appellant filed an appeal at the Court of Appeal, challenged the judgment, for accepting the defence of the Defendants.

**DECISION(S) APPEALED AGAINST**

The trial Court entered judgment in favour of the Appellant, holding that the liability of the defendant is an implication of legal technicality and that there was no loss or injury to the Plaintiff’s reputation. Dissatisfied, the Appellant appealed to the Court of Appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

1. Whether there was a statement of defense to this action in the Lower Court?

2. Whether the appellant was libeled in the publication which was the close of another action in the Lower Court.

3. Whether the award of N30,000 as damages to the appellant by the Court below.

4. Whether the decision of the Court below that the said publication by the Respondents was not contemptuous of the Court of appeal is not justifiable.

*BY RESPONDENTS:*

1. Whether the defect in the statement of Defense filed at the Lower Court is not a mere irregularity which could have been cured at the Lower Court.

2. Whether the publication by the Respondent in the “URU NOW” Newspaper of October - November 2001 is a mere vulgar abuse.

3. If the answer in issue 2 is yes, whether the appellant is entitled to exemplary damages above what the Lower Court awarded.

4. Whether the publication in “ORU NOW” of October - November 2001 amounts to contempt of Court.

*AS FORMULATED BY COURT*

[The Court adopted the issues formulated by the Appellant].

**MAIN JUDGMENT**

TUNDE OYEBANJI AWOTOYE, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is the judgment in respect of the appeal filed by the appellant who was the plaintiff at the Lower Court against the judgment in Suit No: HOW/4/2002 - EVARISTUS D. EGBEBU V EMEKA IZEJOBI & ANOR delivered at Imo state High Court sitting at Owerri on 21/10/2004.

The plaintiff at the Lower Court instituted an action against the defendants jointly and severally claiming as follows:-

i. A declaration of this Court that the publication in the October - November, 2001 Edition of URU-NOW Newspaper by the Defendant is contemptuous of our judicial process, malicious, libelous and in absolute bad faith.

ii. An order of Court on the police to arrest and prosecute the Defendant for contempt ex facie curia.

iii. An order of the Court on the Defendants to pay the sum of N10,000.00 to the Plaintiff as exemplary damage for malicious, libelous publication.

iv. An order of Court on the Defendant to publish an unreserved apology to the plaintiff in ORU-NOW Newspaper.

Pleading were filed and exchanged. The learned trial Judge after hearing the parties gave judgment inter alia thus:-

As the liability of the defendant is an implication of legal technicality there being no loss or injury to the Plaintiffs reputation as aforesaid, I ward to the Plaintiff as damages the sum of N30,000 against the defendant jointly and severally."

The defendant will bear the cost of this action which I assess at N1,000. Dissatisfied with the said decision, the appellant vide his Notice of Appeal filed on 16/11/2004 challenged the judgment on 6 grounds. The grounds (excluding the particulars) are:-

GROUND 1

MISDIRECTION

The trial Court misdirected itself when it took a defense filed in Court as a statement of defense in this matter contrary to Imo State Laws and High Court Civil Procedure Rules.

GROUND 2

MISDIRECTION

The Learned trial Judge misdirected himself when he allowed the defendant in an action for libel to give evidence in chief to mitigate damages as to the circumstance under which the libel was published when the plaintiff was not furnished with the particulars of the matters as to which the defendants intended to give evidence.

GROUND 3

ERROR OF LAW

The Lower Court erred in law when it arbitrarily awarded N30,000 only as damages to the plaintiff/appellant without due consideration to settled principles for determination of quantum of damages in libel

GROUND 4

Part of the decision of the trial Court is against the weight of evidence before it.

GROUND 5

ERROR OF LAW

The trial Court erred in law when it held that the publication is not contemptuous of out Court of appeal.

GROUND 6

ERROR OF LAW

The Lower Court erred in law when it heard this matter as a defended suit when there is no competent statement of defense filed in Court.

The record of this appeal was transmitted to this Court on 26/5/10 but was deemed transmitted on 28/5/2012.

Parties subsequently filed and exchanged brief of argument.

Chief EVARISTUS D. EGBEBU, counsel for the appellant who prepared the appellant brief of argument filed his brief on 6/6/2012.

Learned counsel formulated 4 issues for determination as follows:-

1. Whether there was a statement of defense to this action in the Lower Court?

2. Whether the appellant was libeled in the publication which was the close of another action in the Lower Court.

3. Whether the award of N30,000 as damages to the appellant by the Court below.

4. Whether the decision of the Court below that the said publication by the Respondents was not contemptuous of the Court of appeal is not justifiable.

Chinedu Odoemena for the Respondent settled the Respondents brief of argument which was filed on 24/6/2014 but deemed filed on 5/12/2016.

Learned Respondents counsel formulated 4 issues for determination to wit.

1. Whether the defect in the statement of Defense filed at the Lower Court is not a mere irregularity which could have been cured at the Lower Court.

2. Whether the publication by the Respondent in the “URU NOW” Newspaper of October - November 2001 is a mere vulgar abuse.

3. If the answer in issue 2 is yes, whether the appellant is entitled to exemplary damages above what the Lower Court awarded.

4. Whether the publication in “ORU NOW” of October - November 2001 amounts to contempt of Court.

The appellant filed appellant reply brief on 8/9/14 in response to the Respondents brief filed on 24/6/14 but deemed filed on 5/12/2016. It is essentially a reaction to what appears to be a preliminary objection raised by the Respondent in his brief but which is deemed abandoned having not been argued before the main appeal was argued. Other part of the reply brief is a rehash of the appellants brief. As this is not what a reply brief is meant to contain the reply brief is consequently discountenanced.

RESOLUTION OF ISSUES

After carefully considering the issues formulated by the learned counsel on both sides, I am of the respectful view that the four issues postulated by appellants’ counsel are very apt adequate and wide enough for the just determination of the appeal. I therefore adopt them and shall resolve them in seriatim.

Whether there was a statement of defense to this action in the Lower Court?

Learned appellants’ counsel submitted that the Joint Statement of Defence dated 1/8/2002 and filed on 7/8/2002 was issued by Chief Eze Duruiheoma & Co, a firm and not a legal practitioner registered in the roll and authorized to practice as an advocate in the Supreme Court of Nigeria.

He cited NEW NIGERIA BANK PLC V DENCLAG LTD (2004) ALL FWLR (Pt. 228) 606, and OKAFOR V NWEKE (2007) ALL FWLR (PT. 368) 1016 at 1025-1027.

He submitted that the Statement of Defence was incompetent. He urged the Court to resolve the issue in appellant favour.

Barrister Chinedu Odoemena, learned counsel for the Respondent on this point submitted that the provision of Order 2 Rule 1 (1) (2) and Rule 2(1) of Imo State High Court (Civil Procedure) Rules 1988 was applicable and that it was a mere irregularity which the appellant having gone into trial inspite of the defective statement of defense should be deemed to have waived. He posited that it was a mere technicality and the appellant having failed to raise the objection at the Lower Court could not raise now.

I have carefully considered the submission of learned counsel on this issue.

Order 2 of Imo State High Court (Civil Procedure) Rules applies to non-compliance with the Rule of Court. But failure to competently sign a Court process as a legal practitioner, affects, infects and vitiates the process completely. It is a fundamental non-compliance with the provision of the Legal Practitioners’ Act and it is incurable.

Recently in S.P.DC. LTD V SAM ROYAL NIGERIA LIMITED (2016) LPELR-SC 120/2006 the Supreme Court considered the issue. Okoro Jsc. At pp 25-26 had this to say on it:

By Section 2(1) of the Legal Practitioners Act, a person is authorized to Nigeria practice as a Barrister and solicitor in Nigeria if and only if his name is contained on the Roll of LEGAL practitioner. And by Section 24 of the Act, a legal practitioner means,

“A person entitled to practice as a Barrister or as a solicitor either generally or for the purpose of any particular office proceedings. By a community reading of Sections 2(1) and 24 of the LEGAL Practitioners’ Act (supra), it is very clear that only a person whose name appears on the Roll of Legal Practitioner that can practice law in this country. This of course, includes the signing of legal documents. Any legal document which is signed by any other person is incompetent and must be discountenanced and struck out. See N.N.B. PLC V DENCCLAG LTD (2005) 4 NWLR (Pt. 916) 549 at 583; OKAFOR V NWEKE (2007) ALL FNLR (Pt. 268) 1016 at 1018.

In the case now an appeal, the statement of defence was signed by the law firm of chief Eze Duruiheoma & Co. clearly. It was not signed by a Barrister or solicitor enrolled at the Supreme Court. This made the statement of defense incompetent and void.

The impact of the defect is incurable. It is a terminal impact on the process. It is not a mere irregularity which can be cured.

According to OGUNTADE JSC. in OKAFOR V NWEKE (supra) at 534:

it would have been quite another matter if what is in issue is a mere compliance with Court rule. Let me say bluntly that where the provision of an act like the Legal Practitioners Act is at play as herein, provision of rule of Court which are subject to the law must take the side line.

The implication of this is that the defendant at the Lower Court did not file a statement of defense.

I resolve this issue in favour of the appellant.

ISSUE NO 2

Whether the appellant was libeled in the publication which was the cause of action in the Lower Court?

Issue No. 2 from the argument of learned counsel for the appellant presupposes that the facts in the statement of claim would be deemed admitted should issue No. 1 be resolved in favour of the appellant.

Learned appellants counsel referred to the pleadings and submitted relying on AKOMOLAFE V NEIC LTD (2000) FWLR (Pt. 27) 2016 that the publication in the URU NOW Newspaper was excessively and extremely libelous of the appellant who is a lawyer.

He referred to Order 37 Rule 11 of Imo State High Court Civil Procedure Rule 1988 which read thus:

In action for libel or slander in which the defendant does not by his defense assert the truth of the statement complained of, the defendants shall not be entitled on the trial to give any evidence in chief with a view to mitigation of damages as to the circumstance under which the trial or slander was published or as to the character of the plaintiff, without leave of Court, unless seven days at least before the trial, he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence."

He contended that there was no competent defence asserting the truth of the statement compliance of as no leave was granted and no competent particulars were furnished. He argued further that the evidence of the respondents were not based on any competent pleadings and so should be discountenanced. He argued the Court to hold that the finding of the Lower Court in the face of the above was perverse and resolve this issue in favour of the appellant.

In response, Odoemena Esq. for the Respondent referred to the evidence adduced and the judgment of the Lower Court and urged the Court to uphold the position of the Lower Court that the publication was a vulgar abuse. He cited BENSON V WEST AFRICAN PILOT SUIT NO. LD/57/67 (1966) NMLR 3 at 8-9.

He urged the Court to hold that the publication in question was a vulgar abuse.

I have deeply considered the submissions of learned counsel on this issue. It was clarity’s sake I need to capture hereunder the publication in October-November 2001 Edition of ORU NOW Newspaper published by the 2nd defendant/Respondent but written by 1st defendant/respondent.

1. The 1st defendant made several unsuccessful attempt to secure admission into any tertiary institution and later settled to business in Aba. He deals on Alumaco doors and windows.

2. The 2nd defendant runs a Guest house at Uru Now, named ROSE GARDEN and also publishes a newspaper by the name URU NOW. 2nd defendant resided in Lagos but frequents his guest house regularly which is also his outlet for the distribution of his papers.

3. In the October-November 2001 Edition of URU NOW paper, the 2nd defendant published an article written by the 1st defendant wrote as follows against the plaintiff.

Is this publication, a vulgar abuse or a form of defamation? What is a vulgar abuse?

Okoro JSC. in CHIEF NYA EDIM EKONG V CHIEF ASUGUO E. OTOP (2014) LPELR-SC 127/2006 PP.1920 explained thus:

There is need to emphasize that it is not every statement which is made and which annoys a person that is defamatory. It is also not every vulgar statement, mere abuse or insult which is actionable. Thus, whenever a statement is placed before a Court to determine whether or not it is defamatory, the Court must make findings of fact whether the words complained of are capable of bearing defamatory meaning and then ask and find answer to, the question whether the plaintiff was actually defamed by those words, in SKETCH PUBLISHING COMPANY LTD V AJAGBE MOKEFERI (supra), this Court held that in deciding whether a word is capable of defamatory meaning the Court will reject that meaning which can only emerge as the product of some strained or forced or utterly unreasonable interpretation. See OKORO V MIDWEST NEWSPAPER CORPORATION (1973) 3-4 Sc. 99.

The learned trial judge in his finding held thus:

I am not at all satisfied that a reasonable reader of the article under reference will reasonably construe the words complained of in the light plaintiff has shown. It is obvious to me that before the reader starts reading; he would have noticed the caption “Rejoinder” which appears on about all the articles showing that parties were returning “fire for fire” as 1st Defendant put it. With this impression on the mind of the reader, the reference to the plaintiff as a “never do well” will obviously be understood by him as amounting to no more than vulgar abuse. To hold otherwise is to my mind to abdicate one’s common sense.

Although, I hold that the words complained of amount to no more than a vulgar abuse they are nonetheless actionable on the authority of Thorley V. Kerry (1812) 128 E. R. 367 and back home on the authority of Benson V. West African Pilot Ltd.

I am in complete agreement with the reasoning and conclusion of the learned trial Judge which is in line with the law.

I agree that the publication in view of its circumstance was a vulgar abuse.

Some Paragraphs of the statement of claim of the appellant justify the conclusion of the learned trial Judge on this. These are Paragraphs 2, 7 and 8 of the statement of claim. They read as follows:

The president belongs to the never do well class. He did not do well in the Nigeria Police Force, in the Leadership of Urualla Town and is not doing well in his present profession as a legal practitioner. As a failure, he is meant to be seen and not to be heard. What are his achievements as a privileged person, graduate, officer, chairman, and president lawyer both at Urualla and outside?

As a talkative and a noise maker, the comrades are already sourcing for the record of the records of his service with the Nigeria Police Force. It will be open soon. He will be made to believe that man pass man and that some animals are more equal than others. Wisdom is a special gift from God. It is not for every person or leader. He should start to think well, reason well and act well before the time runs out on him.

The above paragraph suffers from the same vulgar ailment as the publication. It creates an impression of an exchange and crossfire of indecent abuses which every reasonable man would see in that light. I therefore resolve this issue in favour of the Respondents.

ISSUE NO. 3

Whether the award of N30,000 as damages to the appellant by the Court below is justifiable?

Learned appellants’ counsel argued submitted that the principles is AKOMOLAFE V NEIC LTD (supra) should guide the Court in the award of damages. He listed the principle as.

i. The standing and position of the plaintiff.

ii. The nature of the libel.

iii. The gravity of the words complained of.

iv. The absence of apology.

v. The extents and mode of publication.

vi. The conduct of the defendant.

He further relied on BPPC V GWAGWADA (1989) 4 NWLR (Pt. 116) 439 ONYEIKE V ANYASOR (1992) 1 NWLR (Pt. 2018) 437.

He submitted that the appellant was a lawyer and retired superior Police Office when the close of action arose. He added that the medium of publication was a newspaper sold at N30 per copy with internet website address. He submitted further that the words used in the publication were disparaging and the conduct of the respondents recalcitrant.

He therefore submitted that the sum of N30,000 awarded as damages to the appellant was extremely unjustified, too insignificant and not in conformity with laid down principles of law.

In reply, learned counsel for the Respondents submitted that the award of exemplary damages was at the discretion of the Court.

He stated that the principle that quantum of damages was essentially the discretion of the Judge was followed in TEBITE V NIGERIA MARINE & TRADING CO. LTD (1971) V.I.L.R. 432 at 438, and ABIOLA V IJEOMA in suit NO. LD 422/70 (1970) ALL NLR 569 at 577.

He submitted that the appellant Court would not interfere with award of damages made by trial judge unless the Appellate Court was convinced that the trial Court acted upon some wrong principle of law or that amount awarded was so extremely high or so very small as to make it an extremely erroneous estimate of the damages to which the plaintiff was entitled. He cited ZIK ENTERPRISES V AWOLOWO (1955) 14 WACA 696 at 704 and AWOLOWO V KINGSWAY STORES & ANOR (1968) ALL NLR 606 at 644. He urged the Court to resolve the issue in favour of the Respondents.

I have deeply considered the arguments canvassed on the issue. According to SALAMI J.C.A. (as he then was) in A.A. SALAUDEN V M.T. MAMMAN (2000) 14 NWLR (Pt. 686) 63.

The basis upon which a Court of appeal will intervene in award of damages is either if it is too low or excessive."

The particulars of what the Courts are to take into account are set out in BENUE PRINTING & PUBLISHING CORPORATION V ALHAJI UMARU GWAGWADA (1989) 4 NWLR (Pt. 116) 439 at 454 as follows:-

1. Recklessness of the publication

2. Plaintiff standing in the society

3. Failure of the defendant to amend

4. The whole conduct of the defendant from the time the libel was published down to the moment of the Court’s verdict

5. An anticipatory pecuniary loss or social disadvantage and natural injury to the feelings of the plaintiff.

6. The decline in the purchasing value of the naira.

I have carefully gone through what the learned trial Judge considered as well as the averments in the statement of claim. Put picturesquely, it was as a result of intra communal clash where skud missiles of vulgar abuses were hurled by one party against the other. This was further corroborated by the averment of the plaintiff is Paragraphs 2, 7 and 8 of the statement of claim. It was like a tit for tat kind of game. This was the view of the learned trial Judge. His Lordship found thus:-

From the pleadings and evidence in support, it is quite clear that the creation of more Autonomous communities in Uruella generated much heat and argument in the Community. Plaintiff and Defendants as a result engaged in altercations - both oral and written. Hence, the rejoinders in almost all the Newspaper exhibits tendered in this Court. I have earlier expressed my attitude to p.w.2’s testimony. This written could not tell that Exhibits “A” and “B” are the same simply because the front page of one (Exhibit “A”) was missing. He could not also tell the names by which the Newspaper was known at various times, yet he claimed to be an avid reader of some. Whether p.w.2 believed the article (libelous publication) is not relevant here because an imputation may be defamatory whether or not it is believed by those to whom it is published. See Anate V. Samuel (Supra) Ratio 3 page 1904. Suffice it to say that P.W.2 read the article in Exhibit “A” and understood it to be defamatory of the plaintiff.”

I am in full agreement with the view of the learned trial Judge which influenced his award of N30,000 damages against the defendant.

The learned trial Judge took into consideration all necessary factors in the award of damages. I am unable to disturb the said award of damages in the circumstance of the case.

I therefore resolve issue No. 3 in favour of the Respondent.

ISSUE NO 4

Where the decision of the Court below that the said publication by the respondent was not contemptuous of the Court of Appeal is justifiable?

Learned appellant’s counsel submitted that the publication of the Respondents was contemptuous of the Court. He referred to EGBEBU V IGP (2006) 5 NWLR (Pt. 972) 146. He referred the Court to his averment in Paragraph 5 of his statement of claim. He stated that the respondents did not report the truth. He contended that the publication was a criminal act to be proceeded against by the regular procedure of criminal trial. He cited UMOIJAHA V UMORU (1999) 8 NWLR (Pt. 614) 178. He submitted that the finding of the Lower Court on this was perverse. He urged the Court to resolve this issue in appellants favour.

The Respondents in their reaction urged the Court to uphold the position of the Lower Court on this point to the effect that mere comment, if fair of a matter pending in a Court did not amount to contempt. He urged the Court to resolve this issue in the negative.

In OKODUWA & ORS V THE STATE (1988) NWLR (Pt. 76) 333 Nnameni JSC. (of blessed memory) had this to say on what constitute contempt of Court:

It is settled law that it is not contempt of Court to criticize the conduct of a Judge or the conduct of a Court even if such criticism is strong worded provided that the criticism is fair, temperate and made in good faith. See R V. METROPOLITAN POLICE COMMISSIONER EX PARTE BLACKBURN (NO 2) (1968) 2 ALL E.R. 319. Also PERERE V R (1951) A.C.482.

The publication complained about is in quoted in Paragraph 4 of the statement of claim thus:

The president belongs to the never do well class. He did not do well in the Nigeria Police Force, in the Leadership of Urualla Town and is not doing well in his present profession as a legal practitioner. As a failure, he is meant to be seen and not to be heard. What are his achievements as a privileged person, graduate, officer, chairman, and president lawyer both at Urualla and outside?

As a talkative and a noise maker, the comrades are already sourcing for the record of the records of his service with the Nigeria Police Force. It will be open soon. He will be made to believe that man pass man and that some animals are more equal than others. Wisdom is a special gift from God. It is not for every person or leader. He should start to think well, reason well and act well before the time runs out on him.

The grouse of the appellant was that the comment on his conduct and record of service in the Nigerian Police Force was made during the pending of the appeal in the Court of Appeal.

The learned trial Judge, on this point, held thus:

I want to say that mere comment, if fair of a matter pending in a Court does not amount to contempt.

I completely agree with him. I see nothing contemptuous in the publication. It did not constitute an interference with the administration of justice. See SHAMDASANI V KING - EMPEROR (1945) A.C. 264.

I resolve this issue in favour of the respondents.

This appeal succeeds in part. The judgment of DUROHA -IGWE J. of Imo State High Court delivered on 21/10/2004 in suit No. HOW/4/2002 is however affirmed.

Parties are to bear their respective costs.

**RAPHAEL CHIKWE AGBO, J.C.A**.:

I agree with the conclusion of my learned brother Awotoye JCA in the lead judgment and abide by all the consequential orders contained therein.

**AYOBODE OLUJIMI LOKULO-SODIPE, J.C.A**.:

I have had the privilege of reading in draft the leading judgment prepared by my learned brother T. O. Awotoye, JCA. I am not only in complete agreement with the manner in which the issues considered in the appeal were resolved but with conclusion of his lordship affirming the decision of the Lower Court appealed against despite the success of the appeal in part.

Accordingly, I too affirm the judgment of the Lower Court delivered on 21/10/2004 and abide by the order made in the leading judgment in relation to costs.