**MR. ORJI ASAA**

**V.**

**MR. FRANK OJAH**

IN THE COURT OF APPEAL OF NIGERIA

THE 13TH DAY OF JANUARY, 2015

CA/OW/325/2011

**LEX (2015) - CA/OW/325/2011**

OTHER CITATIONS

2PLR/2015/119 (CA)

(2015) LPELR-24278(CA)

**BEFORE THEIR LORDSHIPS**

IGNATIUS IGWE AGUBE, JCA

ITA GEORGE MBABA, JCA

FREDERICK O. OHO, JCA

**BETWEEN**

MR. ORJI ASAA - Appellant(s)

AND

MR. FRANK OJAH - Respondent(s)

**REPRESENTATION**

ANAGA K. ANAGA Esq. - For Appellant

AND

GABRIEL E. OGBONNA Esq. with KALU PRECIOUS - For Respondent

**ORIGINATING COURT**

ABIA STATE HIGH COURT (L. Alabi J - Presiding)

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

TORT AND PERSONAL INJURIES – DEFAMATION - DEFENCE:- Definition and ingredients – Distinction between Libel and Slander –

TORT AND PERSONAL INJURIES – SLANDER:- Meaning and Ingredients of slander – Onus on plaintiff to prove his case – What plaintiff needs to prove to succeed in a claim of slander – Whether slander is actionable per se – Need for exact words and language of the alleged slander to be pleaded – Duty of court to examine carefully the words complained of to see if they are capable of bearing defamatory meaning

TORT AND PERSONAL INJURIES – DEFAMATION – USE OF LANGUAGE DIFFERENT FROM THE LANGUAGE OF THE COURT: Need to expressly plead language used for the alleged defamation – Need to translate literally the words alleged as defamatory – Need to set out the original and the translated versions of the alleged defamatory words in the pleadings

TORT AND PERSONAL INJURIES – DEFAMATION – DEFENCE – JUSTIFICATION: The defence of justification – Whether setting up the defence of justification is an admission by defendant releasing the plaintiff from the burden of proving his case – Whether a court is bound to regard a plea of justification as admission against the defendant

**PRACTICE AND PROCEDURE ISSUES**

COURT - DUTY OF COURT:-Credible evidence set before it by parties - Duty of Court to act on

**MAIN JUDGMENT**

ITA GEORGE MBABA, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal against the judgment of Abia State in Suit NO.A/302/2008 delivered by L. Alabi J on 17/2/2011, wherein the trial Court awarded the sum of N1 million as general damages against the Defendant (now Appellant) for slander of the Plaintiff (now Respondent).

The claim at the court below was for:

*(a) The sum of N4,000,000.00 (four Million Naira) being general damages... for the libelous publication of the Defendant against the Plaintiff.*

*(b) The sum of N4,000,000.00 being general damages against the defendant for slander by the Defendant against the Plaintiff."*

A brief facts at the Court below showed that Appellant and the Respondent are natives of Amaeke Abiriba in Ohafia L.G.A. Abia State.  The Community had a chieftaincy dispute and the parties belonged to the opposing camps. Sometime on 18/7/08 Appellant was summoned by some persons from Amaeke Abririba to the public hall, called ***Obu Ekpe Amaja Amaekpe Abiriba***, where Appellant said he was threatened with a gun and humiliated by the Respondent and other persons; that the Respondent and his group then asked him (Appellant) to deposit with them the sum of N250,000.00 within 48 hours or face servere consequences; that following the threats, on 16/7/2008,  the Appellant, left Abiriba with members of his family for his place of business at Aba, but noticed that the Respondent was trailing him (Appellant) along Ururuka Road, near Isiala Ngwa, Abia State. He said that when the Respondent disappeared from his (Appellant's) view, some people emerged and riddled the car of the Appellant with bullets, and he (Appellant) was subsequently kidnapped on that date 16/7/08 along the said Ururuka Road, Isiala Ngwa by persons who spoke Abiriba dialect; the kidnappers told him (Appellant) that it was the Respondent who sent them; Appellant was kept in the captivity of the kidnappers for 2 days and was released on receiving the sum of one million five hundred thousand naira, as ransom from the family of the Appellant. He said that on 11/9/08 the Respondent filed this suit at Abia State High Court, **Suit No. A/302/08** wherein he (Respondent) claimed the above reliefs.

On his part, the Respondent said that Appellant was invited by some persons from Amaeke Abiriba on the said 15/7/08 over his (Appellant's) conducts; that Appellant, after he had explained himself to the group was advised to stay away from causing trouble and from sabotaging his own people; he said that he (Respondent) returned to Aba and later he was called on phone and told that Appellant had been kidnapped; he said, he was further informed that Appellant was telling people that he (Respondent) and his group were the people that kidnapped him; that Appellant sent e-mail message to all Abiriba indigenes all over the world, telling them that it was he (Respondent) who kidnapped him (Appellant).  He said that Appellant, on 10/9/08, at No 94 Jubilee Road, Aba, told everybody present (in the presence of Respondent), that he (Respondent) kidnapped him (Appellant) and caused him to pay N1.5 million fee for his ransom. He filed the suit because he suffered damages. The Court below had held for the Respondent.

Dissatisfied, Appellant filed this appeal on 25/2/11, as per the Notice of Appeal on pages 180 to 183 of the Records of Appeal, and raised two grounds of appeal. He filed his brief on 11/12/12 and distilled two issues for determination, namely:

*(1) Whether the trial judge properly evaluated the evidence placed before him, before arriving at the judgment that found Appellant liable for slander in this case.*

*(2) Whether the learned trial judge was right in holding that the Respondent established and proved slander in this case.*

The Respondent filed his brief on 6/12/13 and adopted the two issues distilled by the Appellant.

When the appeal was heard on 26/11/14, parties adopted their briefs and urged us, accordingly.

Arguing the appeal, ***Anaga K. Anaga Esq***. submitted that the trial Court failed in its duty to evaluate the evidence of the parties; which showed:

(1)   That there was evidence that he was kidnapped at the instance of the Respondent - he relied on the evidence of CW1 and CW2 (pages 21 - 27 of the Records).

(2)   Appellant and his 2 witnesses also testified to the same effect that he was kidnapped.

(3) Prior to the suit there was rift in the community which made the parties to be in opposing camps.

(4) Those who kidnapped him spoke Abiriba dialect and confessed they acted on the instruction of the Respondent (pages 104 -106 of the Records).

(5) Ransom was paid to the kidnappers by DW2 and this evidence was not dislodged.

(6) The probative value of Appellant's evidence that the kidnappers spoke Abiriba dialect and had acted on the Respondent's instruction was not diminished by the mere fact that the Respondent did not say so prior to his evidence in court.

(7) Exhibits A, B, C and D which the trial Court analysed to come to its conclusion, that Appellant did not mention the Respondent as the person who sponsored his kidnapping was done in error by the Court; that the said Exhibits did not form part of the Respondent's claim for slander but they were tendered in respect of the Respondent's claim for libel, which the court dismissed.

(8)   The Court was wrong in ascribing probative value to the evidence of CW2 who did not state what impression or impact the alleged slanderous words spoken by the Appellant of and concerning the Respondent had on him.

(9) The evidence of CW2 was at variance with the Respondents' pleading; that it was never pleaded by the Respondent that peoplecalled the CW2 on phone regarding the alleged slander of the Respondent by the Appellant, neither was it pleaded that the cold room and other business of the Respondent was closed down as a result of the incident; that the Court wrongly acted on those evidence by the CW2, when the same were not pleaded.  He relied on the case of Opeola vs Opadiran (1994) 5 NWLR (Pt.344) 368 at 369

Counsel further submitted that the facts pleaded in paragraph 15 of the amended Statement of claim as constituting the slander (pages 18 - 20 of the Records) was at variance with the evidence led in support thereof; that whereas Respondent alleged in the pleading that Appellant said:

*"You kidnapped me and caused me to cough out N1,500,000.00 fee (sic) my ransom and you still expect me to answer invitation of the Eze Amaeke ...",*

That in evidence, the Respondent (as CW1), said:  
*"Yes, you kidnapped me, Yes, you kidnapped me, okay, I will kill you: I will deal with you (page 23 of the Records)*

Counsel submitted that the consequence of the failure to prove the exact slanderous words is fatal to his case. He relied on the case of *Okpara vs. Umeh (1997) 7 NWLR (Pt.511) 95.* He added that, if the trial Court had evaluated the evidence adduced by the two sides properly, it would have found that the justification pleaded and led in evidence by the defendant was proper and adequate defence; that the trial court, in its judgment, simply re-stated the evidence of the parties without evaluating and ascribing probative value to each and every evidence led, and that it is trite that re-statement of evidence of the parties by the Court does not amount to evaluation of evidence. He relied on *Anyanwu vs. Uzowuaka (2009) 13 NWLR Pt. (1159) 445* and submitted that the trial judge did not apply the principles enshrined in that case of *Anyanwu vs. Uzowuaka (supra)* on evaluation of evidence.

On Issue 2, Counsel referred us to the paragraph 15 of the Amended Statement of claim, where the appellant pleaded the defamatory words.  He also referred us to the evidence by the Respondent on the allegation (pages 21 - 24 of the Records) and submitted that they were at variance; that the evidence led must not be at variance with the pleaded words constituting the slander. He relied on the case of *Olaniyi vs Elaro (2008) 8 NWLR (Pt.1037) 517.*

Counsel submitted that the court must always act on credible admissible evidence led before it and is not permitted to assume any fact, or evidence not led before it.  He relied on the case of *The state vs Collins Ojo Aibangbee (1988) 3 NWLR (Pt.84) 548*, where the Supreme Court held; (Per, Eso JSC):

*"A judge of first instance decides on evidence led by the parties to a case before him, he does not with respect concoct evidence. He does not imagine evidence. He interprets a situation as per the cold facts before him, not as per what he would have preferred the facts to be."*

Counsel referred us to the findings of the trial Court on pages 168 - 169 of the Records, where it said:

*"With regards to slander as earlier stated, words complained of were set out in paragraphs 15 of the amended statement of claim. The words are set out in English and are presumed to have been spoken in that language, in the absence of any evidence to the contrary. The claimant also testified in English language and did not state that the words were uttered in any other language. I hold the claim for slander is proper before the Court."*

Counsel submitted that, by so holding, the trial Court assumed evidence not pleaded, contrary to the position in the case of the *State vs. Aibangbee (supra).* He submitted that the court wrongly shifted the burden of proof on the Appellant, contrary to Section 13 (1) of the Evidence Act. He referred to paragraph 13 of the Statement of defence (page 126 of the Records), where Appellant joined issues with Respondent's paragraph 15 of the Amended Statement of claim, where he said:

*"Paragraphs 15 and 16 of the Statement of Claim are denied as there was no interaction between the Claimant and the Defendant on the 10/9/08 the Defendant avers that the Claimant has not suffered any damages to his character"*

Counsel submitted that with the above pleading by the Appellant, the burden was on the Respondent to prove in what language the words were uttered, that the Court was wrong to assume that it was uttered in English; that the conclusion of the trial judge was therefore founded on speculation and evidence not before the Court. Thus, the judgment was a nullity. He relied on *Orji vs. PDP (2009) 14 NWLR (Pt.1161) 310 at 331.*

He urged us to resolve the issues for the Appellant and allow the appeal.

Responding, Learned Counsel for Respondent, *Gabriel Emperor Ogbonna Esq* (who settled the brief of the Respondent) submitted that the Learned trial Court properly evaluated the evidence placed before it before reaching its conclusion. He referred us to the evidence on pages 164 - 165 of the Records.

Counsel added that the Appellant, having made a plea of justification that the Respondent and his group kidnapped him, *"the Court was no longer under a great burden but the burden of the Court would then be to find out whether the Defendant has adduced sufficient facts to prove the justification and to prove that his allegation is in fact true:* (See page 3, paragraph 3 of the Respondent's Brief). He relied on *Ojeme vs. Momodu (1994) NWLR (Pt. 323) 685*

Counsel submitted that the **crux** of the case of the Appellant in raising the defence of justification, was to show that, in fact, the Respondent kidnapped him; that Appellant failed to state the person who told him that it was the Respondent that kidnapped him; that he also failed to tie the allegation to the Respondent. He submitted that in the defence of justification, the Appellant must furnish the Court with enough particulars of the allegation for the Court to come to the conclusion that the allegation is true. He relied on *Akomolafe vs Nigeria Exchange Insurance Co. Ltd (2000) 13 NWLR (Pt. 683) Salaudeen vs. Mamman (2000) 14 NWLR (Pt. 686) 63 at 65.*

On ***Exhibits A, B, C and D*** Counsel said those documents were pleaded and formed part of the entire case of the Respondent; that there was no distinction in the pleading or statement of claim that a particular fact was to establish slander while the other fact was to establish libel; that the Court was bound to evaluate the entire evidence of a party, not to pick and chose. He relied on the case of *Awusa vs. Odili (2005) ALL FWLR (Pt. 253) 270; Osumbor vs. Oshiomhole (2009) ALL FWLR (Pt. 463) 1363*, to say that, once a document is admitted as Exhibit, the Court has a duty to evaluate the probative value of the same and can rightly rely or act on it. Counsel added that, though the Court rejected the case of libel, that that did not mean the Court could not consider the entire document to form part of its evaluation of the evidence of slander; that for the Court to come to its conclusion, snippets of evidence from different part of the evidence were necessary to help the Court.

On the words used in the slander in paragraph 15 of the Amended Statement of claim, Counsel submitted that the same are not different from the words stated in evidence by CW1 and CW2; that the words in evidence need not be verbatim reproduction of the pleaded words.

On the Issue of proof of damages, Counsel said the Respondent did not need to prove that he suffered damages, since the words used by the Appellant had imputation of crime, in which case damage is automatically inferred. He relied on *Eyo vs. Eastern Nigeria Information service (1963) 7 NWLR 144 at 197****.***

On the issue that Respondent did not plead that people called the CW2 on the phone regarding the alleged slander, and that his businesses were closed down, Counsel said that pleadings must contain facts not evidence. Counsel submitted that the court had considered the evidence, by defence - DW1 to DW3; that it was not an issue that Appellant was kidnapped and he paid ransom, nor that the kidnappers spoke in Abiriba dialect, that what was in issue was that the Respondent kidnapped the Appellant; that Appellant had a duty to prove that, to sustain the plea of justification.  Counsel referred us to pages 174 - 178 of the Records of Appeal, where he said the trial court copiously evaluated, analysed and considered the defence of justification raised by the Appellant.

On Issue 2, Respondent's Counsel asserted that the trial Court was right to hold that the claim for slander was proved.  He argued that the evidence adduced agreed with the pleading in paragraph 15 of the Amended Statement of Claim; that it would be too much to expect the Respondent to [memorize] the exact words used in the pleading and to reproduce the same, verbatim; that the true test is to consider whether the evidence by the witness was in pari materia with the fact, pleaded.  He relied on the case of *Nwokoro vs. Onuma (1999) 12 NWLR (Pt 631) 342; Olaniyi vs. Elero (2008) 8 NWLR (Pt 1037).*

On the argument that it was wrong to presume the language in which the slander was expressed, Counsel argued that the words were expressed in English language in the pleading and the parties also testified in English language in Court and the CW2, who heard it also testified, that the Court was right to have presumed it was expressed in English language; that Appellant did not join issues with the Respondent on this issue of the language used, at the trial Court, and so cannot raise this as a point/ground of appeal, without obtaining the leave of this Court to do so as fresh issue. He relied on *Gaji vs Paye (2003) 75 C M  55 at 57*    He also relied on Section 167 of the Evidence Act 2011, on presumption.

Counsel asserted, again, that the defence of justification, canvassed by Appellant, was akin to admission; that it is trite in law that what is admitted needs not be proved. He relied on the case of Registered *Trustees of Amorc vs. Awoniye (1994) 7 NWLR (Pt. 355) 154; Cappa & Dalberto Ltd vs. Akintola Tilo (2003) 9 NWLR (Pt. 824) 49 at 71*

He urged us to resolve the issues against the Appellant and dismiss the appeal.

**RESOLUTION OF ISSUES**

I think the two issues distilled for the determination of this appeal by Appellant (and adopted by the Respondent) are on the same issue of evaluation of evidence, whether the trial Court, properly, evaluated the evidence to reach the conclusion that the Respondent was slandered by the Appellant, considering the defence of justification and the absence of disclosure of the language of communication of the alleged slander.  I shall therefore consider the two issues, together under the above re-phrased composite issue.

The law relating to [proof] of defamation is well settled and defamation is usually considered in the context to slander, when the defamatory words are communicated in transient form e.g. orally; or libel, when the defamatory words have been reduced into permanent form, like in writing. But one [thing] is common to both, that is, that the defamatory words must have been published to a 3rd party, who, by law, was not entitled or privileged to hear/receive the offending words/writing, the same being damaging to the reputation of the Plaintiff. See Daura vs. Danhauwa (2011) ALL FWLR (Pt.558) 991; Mamman vs. Salaudeen (2006) ALL FWLR (Pt.298) 469;  Independent Newspapers Ltd vs. Idiong (2012) ALL FWLR (Pt 647) 677; See also Vanguard Media Ltd vs. Olafisoye (2012) ALL FWLR (Pt. 634) 97.

In that case of Daura vs. Danhauwa (supra), another distinguishing element was drawn between slander and libel, that whereas the latter (libel) is actionable without the need to prove actual damage (actionable per se), the former (slander), except in certain cases, is only actionable on proof of particular damage, that is, it is not actionable per se. My Lord Okoro JCA (as he then was) had held in that case as follows:

"A defamatory statement may be libel or slander. It is libel if it is published in a permanent form i.e. in writing, print, photograph, carving, statute or carton.  Slander on the other hand is defamatory statement which is published in a transient form, i.e. by words spoken or gestures.  Libel is always actionable without the need to prove actual damage, i.e. that is actionable per se, whereas in slander, except in certain cases, it is only actionable on proof of particular damage, i.e. it is not actionable per se...

In any case of defamation, the Plaintiff must prove three things which include the following:

(1) That the words complained of were defamatory

(2) That the words referred to him

(3) That the words were published to at least one person other than the Plaintiff."

See also Emmanuel Bekee & Ors vs. Friday Ebom Bekee (2012) LPELR - 21270 (CA).

Of course, it should be appreciated that proof of libel would be easier, upon production of the published offensive document by the Plaintiff for inspection and assessment by the Court. That cannot be said of slander, which requires the pleading and capturing of the exact words or gestures complained of, and leading evidence to establish the same. And he (Plaintiff) must be present when the alleged slanderous words are spoken, so that he does not carry it as "hear-say" evidence.  See the case of Emmanuel Bekee & Ors vs. Friday Ebom Bekee (2012) LPELR 21270 (CA)

It should also be expected that the Plaintiff has a duty to state the language of communication of the offensive words and the translation of the same in the language of the Court (English) if the original language of the defamatory words was different from the English language. In the case of Oruwari vs. Osler (2012) LPELR - 19764 (SC), my Lord, Chukwuma - Eneh JSC, said:

"Where the libel or slander was published in a foreign language, it must be set out in the statement of claim and followed by a literal translation. It is not enough to set out a translation without setting out the original or vice versa. The pleader should include an allegation to the effect that the translation is a true interpretation of the foreign language used."

I think the need to state the language of the publication of the defamatory words becomes imperative where the Defendant has denied making any statement or saying anything. The Plaintiff then has a duty to clearly state and prove the medium of communication of the alleged defamatory words. In the case of *Bekee vs. Bekee (2012) LPELR 21270 CA, held 13, Onyemenam JCA* said:

*"... The law requires the exact words in the exact language of the slander to be pleaded. This is for the reason that the cause of action is not founded on the Plaintiff's impression of the slander, but on those words - uttered...The language employed by the Respondent in uttering the words complained of ought to be pleaded ..." See also the case of Access Bank Plc vs. Mohammad (2014) 6 NWLR (pt.1404) 613, held 5 - "whether libel or slander, the Plaintiff must plead verbatim in his statement of claim the exact words uttered or written... in the language rendered.*

In this case, the Respondent had pleaded in paragraph 15 of the Amended statement of claim, as follows:

*"On Tuesday the 10th day of September, 2008 the Plaintiff saw the Defendant at No.94 Jubilee road, Aba, close to the office of the Plaintiff.  The Plaintiff went and greeted the Defendant and asked him why he refused to come and answer the invitation of the Eze of Amaeke Abiriba. The said Defendant said this "You kidnapped me and caused me to cough out N1,500,00.00 fee ransom and you still expect me to answer the invitation of the Eze" This was said to the hearing of all persons who were there and those doing business close to the office of the Plaintiff, including some customers of the Plaintiff and relations of the Plaintiff. He also said that the Plaintiff was already dead (i.e. that he will kill the Plaintiff) (See pages 19-20 of the Records of appeal).*

Appellant's reaction to that pleading, as per paragraph 13 of the statement of defence, was:

"Paragraphs 15 and 16 of the statement of claim are denied as there was no interaction between the claimant and the defendant on the 10/9/08. The Defendant avers that the claimant has not suffered any damages to his character" (page 126 of the Records).

Of course, the trial Court acknowledged the vital missing link in the claims of the Respondent as to the alleged slanderous words, in the absence of the language/medium of the communication of the offending words, in the face of the denial by Appellant. But the trial Court, apparently, stepped in to presume that the slanderous words were made by the Appellant in English language! He said:

*"With regards to slander as earlier stated, words complained of were set out in paragraph 15 of the amended statement of claim. The words are set out in English and are presumed to have been spoken in that language, in the absence of any evidence to the contrary. The Claimant also testified in English language and did not state that the words were uttered in any other language. I hold the claim for slander is proper before the Court." (Pages 168 - 169 of the Records)*

I think that was a grave error, as the trial Court apparently shifted the burden of proof to the Appellant (who had denied having any interaction with the Respondent on 10/9/08) to state and prove the language/medium of communication of the alleged slander! That cannot be, as the law is that the person that alleges has the responsibility to prove his allegation. *See section 132 and 133 of the Evidence Act, 2011, and the case of C.P.C. vs. INECS Ors. 6011) LPELR - 8257 SC, where it was held:*

*"Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, shall prove that those facts exist!.*

See also the case of Orji *vs. PDP (2009)14 NWLR (Pt. 1161) 310 at 331*.   
In *The State vs Collins Ojo Aibangbee (2008) 8 NWLR (Pt. 1037) 517*, the Supreme held, on the duty of Court to act on credible evidence before the Court, when it said:

"The role of a trial Court is to hear evidence, to evaluate that evidence, to believe witnesses who testified and to decide the merits of the case based on the findings. When a trial Court acts on speculations rather than on the evidence, then it has abandoned its proper role. No trial Court has a right to draw conclusion of fact outside, the available evidence. Such conclusion will be regarded as perverse..."  (Per Oputa JSC).

My Lord Eso JSC, in that case, also held:

"A judge of first instance decides on evidence led by the parties to a case before him. He does not, with respect, concoct evidence. He does not imagine evidence. He interprets a situation as per the cold facts before him, not as per what he would have preferred the facts to be."

In the case of *Ayoade vs. Spring Bank PLC (2014) 4 NWLR (Pt. 1396) 93 at 128* this Court, held:

"A Court's decision must be founded, on law and evidence before the Court and in line with sound legal principles and tradition. It is not at the whims and caprices of the judge as per the waves of his brain and feeling.

See *Adebiyi vs. Umar (2012)9 NWLR Pt (1305)279; Ogolo vs. Ogolo (2003)18 NWLR (Pt. 852) 494*. See also the recent decision of this Court in the case of *Theophilus Ajakaiye vs. The State: CA/OW/70C/2012*, delivered on 5/12/14.

In the case of Omwari vs. Osler (2012) LPELR - 19764 (SC) - the Supreme Court said:

" I am of the firm view that where the practice and procedure of setting out the defamatory words in a foreign language in a suit as here has not been strictly followed (as in this case by pleading the slander in Kalabari language and its translation to English) in constituting a claim in slander as here, the claim is challengeable on grounds of not having disclosed a reasonable cause of action in the slander, and in that event the action is liable to be struck out..."

There was evidence that the parties were of Abiriba dialect and that even the kidnappers spoke in Abiriba dialect. Evidence did not disclose the language or dialect used in the communication of the alleged slander.

The evidence which the Respondent gave in Court revealed that Appellant was, in fact, kidnapped sometime in July 2008 and he paid a ransom of about N1.5 million to the kidnappers; that information then went round that Respondent was behind the kidnap. The Respondent said he first heard of the insinuation from one Chief Onyeka, a senior friend, who asked him (Respondent) whether he had heard what he (Chief Onyeka) heard - that he Respondent was the person who kidnapped the Appellant! Respondent further said that not up to 5 minutes later, another person (whose name he did not disclose) came to tell him the same thing and that, because many people came to tell him the same thing, he decided to come to his office, and went home; He received a phone call from his in-law that evening from one Bassey Mang, who asked if he knew the Appellant; that he (Bassey Mang) met the Appellant to sympathies with him on the kidnap and the said Bassey Mang asked if it was not his (Bassey Mang's) in-law, Frank Ajah, that kidnapped him...?

Respondent said he was shocked and so consulted his elder brother and then reported the matter to the Eze, who sent for the Appellant but Appellant, refused to honour the invitation.

The Respondent never stated that his informants said the alleged story of his involvement in the kidnap of the Appellant came from the Respondent. He heard the allegations and rather helped to spread it, without getting the informants to disclose their source of the damaging allegation. Even when his In-law, Bassey Mang, reported to him (Respondent), it was in form of a ***rhetorical*** question - whether it was not his in-law - Frank Ajah that kidnapped him? See pages 22 -23 of the Records.

On page 23 of the Records, the Respondent said:

*"On 10/9/08, in the morning, I was parking in front of my house I said (sic) the Defendant. I walked over to him; he was with other people. I greated (sic) him and asked him why he accused me falsely of kidnapping him trying to burnt (sic) his house and why he refused to answer the summon of the Eze (sic) before I could finish the statement the Defendant started abusing me he said: "Yes you kidnapped me, yes you kidnapped me. Okay I will dill (sic) you. I will deal with you" You (sic) said you made me pay that one million five hundred thousand naira at (sic) ransom."*

As can be seen, above, the recording of that evidence was greatly flawed, as the several mistakes outlined therein greatly distorted the exact text of the message the Respondent sought to put across in his alleged encounter with the Appellant on 10/9/08, where he said the Appellant abused him (Respondent), compared to the statement alleged in paragraph 15 of the Amended Statement of Claim. Of course, it can also be seen that the language of the communication of the alleged offending ***slanderous*** words was also not stated in the evidence of the Respondent.

An analysis of the above evidence also shows that the words complained of were not as exactly pleaded by the Respondent, which was:

*"You kidnapped me and caused me to cough out N1,500,000.00 fee (sic) my ransom and you still expect me to answer the invitation of the Eze Ameke"*

From the admission of the Respondent in his evidence and in the pleading, that he (Respondent) was the person who initiated the attack or altercation, when he confronted and queried the Appellant for "accusing him falsely of kidnapping him (Appellant) and trying to burnt (sic) his house, and (asking) why he refused to answer the summon (sic) of the Eze ..." (He Respondent was the actual person who raised the topic of kidnap at their alleged meeting and insinuated that Appellant had accused him (Respondent) of causing the kidnap). That suggests they were quarrelling and attacking each other with words.   The alleged reaction by the Appellant only seems to portray a man that fought back, to assert the fact of his kidnap and his losses in money (N1.5 Million), which he claimed were all caused by the Respondent!

Of course, the facts of the kidnap of the Appellant and the payment of N1.5 million ransom to the kidnappers were admitted by the Respondent, who even stated in his evidence that he was called on phone and told that Appellant had been kidnapped; and he visited him (Appellant) to sympathize with him.

I think the Respondent wrongly used the alleged sympathy visit to attack the Appellant, eliciting a response, which he now quarrels with! It is obvious the circumstances of the kidnap of the Appellant and the extortion of N1.5 million ransom from him, soon after the quarrels between Appellant and the Respondent (arising from the divide in the village over chieftaincy feuds), had created some suspicions, and may have caused people to look in the direction of the opposing Chieftaincy camp, apparently led by the Respondent - to explain the Appellant's kidnap.

Thus, even if the alleged, slanderous words were pleaded and proved in evidence as required by law (with the exact words and the language of communication proved), I do not think the Respondent would succeed, in the circumstances of this case, to hold Appellant for slander, where the alleged altercation between the two sides centred on mutual  attacks/abuses, occasioned by the actual kidnap of the Appellant and his payment of N1.5 million to secure his ransom, 'Of course, The Respondent had already heard from other sources that he was linked with the kidnap before he confronted the Appellant on the allegation! He did not trace the source of the information (from his informants) to the Appellant and did not call them as witnesses, except pw2.  
PW2, Chinedu Smart, an acquaintance of the Respondent, had also narrated the story of the quarrel which their group had with the Appellant and how they summoned him and made him to apologise and pledge to be of good conduct, and how, thereafter, the Appellant was kidnapped and made to pay a ransom to buy his freedom, and how he (PW2) heard that the Respondent was accused; PW2 said that he was in the company of the Respondent, when they saw the Appellant on the 10/9/08 and the Respondent opted to ask the Appellant *"why he was spoiling his name by spreding (sic) faulse (sic) stories -* " He said he remained in the vehicle and saw them shoke (sic) hands;  That it was then the Respondent asked the Appellant why he was *"matriting (sic) him, he asked him why he refused to replied (sic) to the summons"*;  that the Appellant then raised his voice and said:

*"Kidnapped me, did you not kidnapped (sic) me and make me spend N1.5 million I will deal with you."*

He went on:

*"I heard this so that the people who were present even some store keepers came out. I have been receiving calls since then from people who tell me my friend is a kidnapper ..." Pages 26 -27 of the Records.*

Of course, what PW2 allegedly heard from the Appellant on that encounter on 10/9/08 is different from what PW1 heard! By PW2, Appellant was rather asking Respondent - *did you not kidnap me*...? (which required an answer in the affirmative or negative)

That would not be an accusation or assertion as the Respondent alleged.

There is also evidence that the kidnappers were those who linked the Respondent with the kidnap and confessed to the Appellant; and that the Appellant had reported the matter to the police, which made the police to arrest the Respondent! See pages 96 and 113 of the Records.

I do not think Appellant can be held for defamation of the Respondent, based on a bonafide complaint lodged with the police, following his suspicion of the Respondent's involvement in the kidnap saga, or following mere altercation by the two parties, occasioned by the kidnap of the Appellant and payment of the ransom.  See the case of Adeyemo vs. Akintola (2003) LPELR - 10905 (CA); (2004)12 NWLR (Pt.887)390 Emeagwara vs. Star Printing & publishing Co.ltd (2000) LPELR - 1122 SC; (2000)10 NWLR (Pt 676)489. See the case of Ekong vs. Otop (2014) LPELR - 20322 (SC), where My Lord Okoro JSC said:

"There is need to emphasize that it is not every statement which is made and which annoys a person that is defamatory. It is not also 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..." See Sketch Publishing Co. Ltd vs. Ajagbemokefari (1989) 1 NWLR (Pt.100) 678

I think in this case, where the language of expression of the alleged slanderous words were not pleaded or disclosed in evidence and the alleged slanderous words, pleaded by the Respondent, are not in strict agreement with the evidence of what the Respondent (PW1) and his witness (PW2) stated  as what each of them heard from the Appellant, as constituting the slanderous words, there was no need to even raise and consider the issue of justification, which connotes admission that the words complained of were uttered and published and asserts the truth of same. See *Ojukwu vs. Nnoruka (2000) NWLR (Pt 641)368 at 361; Anya vs. African Newspapers Nig Ltd (1992) NWLR (Pt 274) 319*

I therefore resolve the issue for the Appellant and hold that the appeal is meritorious. It is accordingly allowed and I set aside the decision of the trial Court in the Suit No. A/302/2008, delivered on 17/2/2011, awarding 1 million Naira against the Appellant for defamation.

The Respondent shall pay the Cost of this appeal, assessed at fifty thousand Naira (N50,000.00) only.

**IGNATIUS IGWE AGUBE, J.C.A.:**

The lead judgment of my learned brother I.G. Mbaba, JCA has been read in advance and in line with decided authorities like *Adeyemo v. Akintola (2004) 12 NWLR (Pt.887) 390, Emeagwara v. Star Printing & Publishing Co. Ltd. (2000) LPELR - 1122 S.C. (2000) 10 NWLR* particularly the dictum of Okoro, JSC in the recent case of *Ekong v. Otop (2014) LPELR - 20322 (SC)* while relying on *Sketch Publishing Co. Ltd. v. Ajagbemo-Keferi (1989) 1 NWLR (Pt.100) 678*; it is clear from the evidence of the Respondent that the purported slanderous words upon which his claims were predicated in the lower Court were mere vituperations poured out in the course of altercation between the parties.

Accordingly, the lower Court was grossly in error to have found for the Respondent particularly where the language with which the slanderous words were expressed was not pleaded, I agree completely with my learned brother's reasoning and conclusion that this Appeal is meritorious and hereby succeeds. I also set aside the judgment of the lower Court in the Suit leading to this Appeal and the award of N1,000,000.00 (One Million Naira) damages for defamation against the Appellant.

**FREDERICK O. OHO, J.C.A.:**

I had the privilege of a preview of the judgment just delivered by my learned Brother, Ita G. Mbaba, JCA. I am in complete agreement with him on the fact that the Appeal has merit. I also endorse all the orders made by my learned Brother in this judgment.