**((ZIK’S PRESS LTD v. IKOKU))**

**ZIK’S PRESS LIMITED**

**v.**

**ALVAN IKOKU**

IN THE WEST AFRICAN COURT OF APPEAL, LAGOS, NIGERIA

ON THE 23RD DAY OF APRIL, 1951

W.A.C.A. CIV.APP. 3422

**LEX (1951) – WACA 3422**

OTHER CITATIONS

2PLR/1951/7 (WACA)

WACA VOL. 13 pp. 188-190

**BEFORE THEIR LORDSHIPS:**

VERITY, C.J.

LEWEY, J.A.

DE COMARMOND, J.

**BETWEEN**

ZIK’S PRESS LIMITED – Appellant

AND

ALVAN IKOKU – Respondent

**REPRESENTATION**

TAYLOR with UDOMA for Appellants.

ANWAN with ONYEAMA and BALOGUN for Respondent.

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

TORT AND PERSONAL INJURY - DEFAMATION:- Quantum of damages – Power of appellate court to interfere therewith on ground of excessiveness

**PRACTICE AND PROCEDURE ISSUES**

JUDGMENT AND ORDER**:-** Appeal against quantum of damages in libel action - Distinction between a trial by jury and a trial before Judge discussed – Whether Appeal Court has power to re-assess damages where trial before Judge – Attitude of appeal court to invitation to interfere with quantum of damages awarded

**MAIN JUDGMENT**

The following judgment was delivered:

**LEWEYY, J.A**.:-

On the hearing of this appeal Counsel for the appellants obtained leave to withdraw all the grounds of appeal save that which complained that the damages awarded the respondent at the trial were excessive. The appeal was argued, therefore, solely on the question of damages.

The action, which was a claim for damages for libel, was tried at Port Harcourt by a judge sitting alone. The claim was for £5,000 damages, and the learned judge found for the plaintiff (the respondent to this appeal) and gave him £1,000 damages.   We are asked to say that the amount so awarded was excessive. The principles upon which the Court of Appeal in England acts in considering the damages. assessed at a trial are well established, and it is, I think, most important that they should be understood. Where a case has been tried before a jury, the Court of Appeal may order a new trial if it appears that the jury applied a wrong measure of damages, or that the amount was so large that no jury could reasonably have arrived at it, or that the jury must have taken into consideration matters which they ought not to have considered; as to all this, there is abundance of authority. But the Court of Appeal cannot, in a jury case, instead of ordering a new trial, itself alter the amount at which the jury have assessed the damages unless both parties agree to such a course. Watt v. Watt (1). No such consent, however, is necessary where the trial has been by a judge alone; (Reaney v. Go-operative Wholesale Society (2) and Roach v. Yates (3). I have found no local authority on these matters, but it is of interest to note that this Court in the case of Mahtani v. Daswari (4) appeared to consider that such consent might be required, even where a judge alone had awarded the damages, before the amount of damages could be changed on appeal, though I must point out that the case of Smith v. Schilling (5) to which they referred, was, in fact, a jury case. In any event, the question does not appear to have been argued, and the parties did not, in fact, consent, so that the case went back for a new trial. I think, therefore, that what was said by the Court in that case may be treated as merely obiter.

It seems to me, with all respect, that it is clear from the authorities which I have cited, that this Court has the power to interfere in cases where a judge sitting alone has awarded the damages, and that in such cases the agreement of the parties is not required before the power can be exercised. But it is equally clear that the appellate courts are very reluctant to exercise this power and to attempt to re-assess the amount of damages which the trial judge has given, and that they will never do so unless it can be established that at the trial the judge proceeded upon a wrong principle of law or that his award was clearly an erroneous estimate, since the amount was manifestly too large or too small. These are, therefore, in my view, the tests which this Court should always apply before it will interfere with the damages awarded by a trial judge.

These principles are clearly set out, in the leading case of Owen v. Sykes (6), where the Court of Appeal followed the reasoning and decision in the earlier case of Flint v. Lovell (7). In the judgment of Slesser, L. J., in Owen v. Sykes (6), the following passage occurs:

“In the case of trials by a judge alone this Court has power, as the hearing is by way of re-hearing, to consider the matter and decide what damages ought to be awarded. In the case of an appeal from a judge trying a case without a jury I would accept as a criterion what Greer, L.J., states in Flint v. Lovell (7), where he says: ‘ In order to justify reversing the trial judge on the question of the amount of damages, it will generally be necessary that this Court should be convinced (either) that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court an entirely erroneous estimate of the damage to which the plaintiff is entitled.’ I read these words to mean that if the amount given is an amount which this Court itself might feel disinclined to agree with as an amount which they themselves would assess, that circumstance alone would not necessarily justify this Court in making any amendment of the judge’s award, and this Court would normally have to be satisfied that there really was, again to quote the words of Greer, L. J., ‘an entirely erroneous estimate of the damage to which the plaintiff is entitled.’ That is a question of degree, but I wish to guard against the supposition that because this Court is hearing such a case by way of re-hearing, therefore it would be ready to re-assess damages according to what this Court, if they had been trying the case, might have given as damages, and not what the judge below gave. It is incumbent, I think, on the parties wishing to disturb the damages awarded, to satisfy this Court that the judge had acted upon an erroneous estimate-meaning thereby something in which the error had so tinged the proceedings that it was a proper case for this Court to assess the damages. Otherwise it seems to me a matter of discretion for the learned judge as to his estimate of the damages.”

Applying those principles to the present appeal, I can find nothing in the case, nor in the judgment of the learned trial judge, which would justify any interference by this Court in the amount of damages assessed by the judge: it does not seem to me that he acted upon any wrong principle of law, nor that the award can be said to constitute “an entirely erroneous estimate “ when one applies the tests laid down in the authorities to which I have referred.

It follows, therefore, that, in my view, this appeal fails and must be dismissed.

**VERITY, C.J**.

I concur.

**M. DE COMARMOND, S.P.J**.

I concur.

Appeal dismissed.