Privy Council Appeal No. 19 *of* 1956

The Hon. Obafemi Awolowo - - - - - - - *Appellant*

v.

Zik Enterprises Limited and another - - - - - *Respondents*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND OCTOBER, 1958

Present at the Hearing:

LORD TUCKER
LORD BIRKETT
MR. L. M. D. DE SILVA

[*Delivered by* LORD BIRKETT]

This is an appeal from a judgment of the West African Court of Appeal dated the 11th of March, 1955, which set aside the judgment of Jibowu, J., dated the 13th of April, 1953, in the Supreme Court of Nigeria in the Lagos Judicial Division, in the Suit No. 270/1952.

That Suit had been consolidated with Suit No. 273/1952 and the two actions were heard together by Jibowu, J. This appeal is confined to the Suit No. 270/1952 in which Jibowu, J., gave judgment for the appellant for the sum of £2,000 and fixed costs. The West African Court of Appeal reversed the judgment and entered judgment for the respondents with fixed costs.

In Suit No. 270/1952 the appellant claimed damages for libel against the first respondents Zik Enterprises Ltd., as the owners, publishers and printers of a daily newspaper called the West African Pilot, and against the respondent A. Y. S. Tinubu as the editor of the newspaper at the material time.

The words complained of were contained in two articles on the front page of the newspaper, one on 10th June, 1952, and one on 11th June, 1952. On the 10th June the respondents printed and published the words—

"ACTION GROUP THREATENS CRISIS TO WIN OVER THE GOVERNMENT

SECRET BEHIND PLAN DISCLOSED

Political observers believe that the motive behind the delegation to the Government concerns the Iga Idunganran Civil Case, the Ilorin boundary and other issues affecting, directly or indirectly, the Action Group. It is believed also that the party may endeavour to use power politics to enable the Government to yield to certain demands which the Action Groupers feel must be conceded in order to avert a constitutional crisis. Apart from the walk-out threat, reliable sources believe that the Action Group Ministers may resign 'en bloc' in order to effect the demands of the party over the issues at stake. Meanwhile it is understood that the Government will be represented

in the proposed parley with Government by Mr. Eric Himsworth, Financial Secretary, and Mr. Harold Cooper, Public Relations Officer, and others including the Governor himself."

The words complained of were part of an article which was read in full and referred to as Exhibit B.

On the 11th of June the respondents printed and published the words—

"GOVERNMENT TURNS BACK ACTION GROUP WITH NO TO ALL DEMANDS

. . . . . The Ikenne trial also re-echoed in the parley, but the Government felt that it was an issue for the legal department and the court, and not the concern of the Governor. On this matter the Governor refused to make a statement."

The words complained of were part of an article which was read in full and referred to as Exhibit B.1.

An article of 13th June published by the first respondents, and written by one Mbonu Ojike, was the subject of Suit 273/1952 brought by the appellant and consolidated with the action which is the subject of this appeal. That article was referred to as Exhibit B.3. Jibowu, J., gave judgment for the appellant, and the West African Court of Appeal dismissed the appeal against that judgment. From that decision there has been no appeal, but the article B.3. was referred to in the present appeal. At all material times the appellant was the Minister for Local Government in the Western Region of Nigeria, and a member of the Executive Council of that Region, and Leader of the party known as ACTION GROUP.

On the 10th of June, 1952, the appellant, together with all the Ministers of the Government of the Western Region, and the four Ministers of the Central Government appointed from representatives of the Western Region, had a conference with His Excellency the Governor of Nigeria. The appellant alleged that the words published on the 10th of June referred to him, and meant and were understood to mean, that the appellant and the other Ministers who formed the deputation to the conference with the Governor, had asked the Governor and the other officials present at the conference to interfere with the course of justice in an action then pending before the West African Court of Appeal, Suit 276 of 1949, and intended and threatened to create a constitutional crisis in order to force the hands of the Governor.

The appellant alleged that the words published on 11th June, 1952, referred to him, and meant and were understood to mean that the appellant and the other Ministers present at the conference, had asked the Governor to interfere with the course of justice in the appeal of one Sadiku Salami who had been convicted of murder and had appealed to the West African Court of Appeal, and the appeal was then pending.

The respondents raised several defences before Jibowu, J., and the learned trial judge dealt with them all with great care and in much detail. In the Court of Appeal some of these defences were not pursued, and before their Lordships here the submissions made on behalf of the respondents were as follows—

1. That the words complained of in the article of 10th June were not capable in law of referring to the appellant.

2. That, if they were so capable, there was no evidence to show that in fact they did refer to the appellant.

3. That the words complained of in the article of 11th June were capable of referring to the appellant and the witnesses were entitled to think that they did, but that they did not bear the meanings alleged in the innuendoes pleaded.

4. That the words complained of in the article of 10th June did not bear the meanings alleged in the innuendoes.

5. That the words complained of in both publications referred to a class or body of persons known as the ACTION GROUP and not to the appellant personally.

6. That the words of both publications were not defamatory on their face, and there was no evidence to support the innuendoes alleged.

7. That the evidence called to prove that the second respondent, Mr. Tinubu, was the editor of the paper at the material time was insufficient, and that Mr. Tinubu should have been dismissed from the action.

The submissions for the appellant were that the words complained of were capable of referring to the appellant and in fact were shown to do so by the evidence, that the innuendoes alleged were proved by the evidence, that the evidence was enough to prove that Mr. Tinubu was the editor of the newspaper, and that the decision of Jibowu, J., was right and should be restored.

It would be convenient to deal first with the expressed view of the West African Court of Appeal that Jibowu, J., " might well have taken a different view had consideration of the three articles been more clearly separated in his judgment ", and the further observation that " the trial judge seems to have been influenced in reaching his conclusions on the first two articles by the article of 13th June written by the second defendant in Suit 273/1952, from which he drew the inference that the author had drawn the same conclusions from the articles of 10th and 11th of June as had the witnesses for the plaintiff. In this connection I would observe that the article of 13th June does not contain any reference to the two earlier articles, and so far as I am aware there is no direct evidence to support the conclusion ".

In their Lordships' view these passages from the judgment of the Court of Appeal scarcely do justice to the learned trial judge and the course the proceedings took before him. It would appear from the learned judge's notes that it was agreed by the learned counsel for the respondents that the articles of the 10th and the 11th of June should be read together. This is confirmed by the passage from the judgment in which the learned judge said—

" There are two causes of action on the plaintiff's particulars of Claim in Suit 270/52, but he claimed damages in respect of the two taken as one. The case was conducted on both sides as though there was only one cause of action. Neither the counsel for the plaintiff nor the counsel for the defendants has asked the Court to treat them separately and give a separate verdict and judgment on them, so I shall treat them as one and give one verdict on them."

Furthermore, it would appear that the submission made by the counsel for the appellant before Jibowu, J., was that the article of 13th June was a sequel to and a comment on the articles of 10th June and 11th June. In the learned judge's notes of the trial he records the counsel for the respondents saying in argument—" May be the article (B.3.) was a sequel to Exhibit B and B.1. or not ". In his judgment the learned judge said—

" I shall now consider the position of the third defendant. He wrote the article complained of commenting on the plaintiff and the other Ministers who attended the Conference with the Governor. The delegation he described as iniquitous because they tried to force the Governor to intervene in the ' Atrocious Ikenne Dispute ' and in the ' Iga Controversy case '.

The article reflected the impressions which Exhibits B. and B.1. had given him, which more or less confirmed the impression the articles conveyed to the witnesses called by the plaintiff."

In view of the agreement that Exhibits B. and B.1. should be read together, and the submission that Exhibit B.3. was a sequel to Exhibits B. and B.1., the learned judge was perfectly entitled to look at the three publications together. He was satisfied that Exhibit B.3. was a comment on the articles Exhibit B. and B.1., and the criticism of the Court of Appeal that in some way he fell into error by not treating the three articles in isolation in their Lordships' opinion is not justified. The

learned judge was quite justified in attaching importance to Exhibit B.3. if he was of the opinion that it was in truth a sequel to Exhibits B. and B.1., and expressed the views of what the reasonable reader of Exhibits B. and B.1. understood by the words complained of.

The West African Court of Appeal considered the publications of 10th June and 11th June separately despite the agreement in the court below that they should be read together, and despite the fact that one judgment had been given in respect of both publications without objection, and one sum of damages awarded.

They based their judgment on the ground that the words complained of in the publication of 10th June were incapable in law of referring to the appellant, and in any event the words were incapable of bearing the alleged defamatory meaning as set out in the innuendo, and without the innuendo the words were not defamatory on their face.

With regard to the words complained of in the publication of 11th June they held the words to be capable in law of referring to the appellant and that the witnesses were entitled to think that the words did so refer to the appellant, but the words were incapable of bearing the alleged defamatory meaning as set out in the innuendo, and without the innuendo the words were not defamatory on their face.

In their Lordships' view, the principles which govern the determination of the main question in this appeal are not in doubt. The respondents alleged in this case that the words they had printed and published referred to a party, the ACTION GROUP, and not to any individual such as the appellant.

They therefore relied on the decision in *Knupffer* v. *London Express Newspaper Ltd.* [1944] A.C. 116, as applying to the facts of the present case.

In that case the words complained of referred to a body of persons, some thousands in number, who belonged to a society whose members were to be found in many countries of the world.

Viscount Simon said at page 121—

> "No facts were proved in evidence which could identify the appellant as the person individually referred to. Witnesses called for the appellant were asked the carefully phrased question: 'To whom did your mind go when you read that article?' and they not unnaturally replied by pointing to the appellant himself, but that is because they happened to know the appellant as the leading member of the society in this country and not because there is anything in the article itself which ought to suggest even to his friends that he is referred to as an individual"

The West African Court of Appeal adopted the language of Viscount Simon and applied it to the trial judge in the present case, when he said,

> ". . . Where the trial judge went wrong was in treating evidence to support the identification in fact as governing the matter, when the first question is necessarily as a matter of law to be answered in the negative."

Viscount Simon also said at page 119—

> "There are cases in which the language used in reference to a limited class may be reasonably understood to refer to every member of the class, in which case every member may have a cause of action"

and Lord Porter at page 125 said—

> "Whatever the tribunal the first question is: Are the words in conjunction with the relevant circumstance reasonably capable of being understood to apply to the plaintiff?"

The respondents' principal submission on the article of 10th June, was that the words could not and did not refer to the appellant and that his claim should be dismissed. For the appellant it was contended that where the words complained of reflect on each and every member of a determinate

body or class then each and every member of the body or class can maintain a separate action. Though it might appear that defamatory words reflected on a class, yet if the words are capable of being shown to point to any one individual, an action for libel will lie at the suit of that individual. Even when the plaintiff is not mentioned by name in the words complained of, extrinsic evidence may be given to " connect the libel with the plaintiff ". Witnesses may be called to testify that they understood from reading the alleged libel in the light of the circumstances known to them and their acquaintance with the plaintiff that he was the person referred to.

They relied on *Hough* v. *London Express Newspaper Ltd.* [1940] 2 K.B. 507, where it was held by the Court of Appeal that in order to support an innuendo that the words have the secondary and defamatory meaning, it is sufficient for the plaintiff to allege and to prove that there are persons who know the special facts and so might understand the words in that secondary and defamatory sense without proving that any person did in fact understand them in that sense.

Reference was also made to *Browne* v. *D. C. Thomson and Co.* [1912] S.C. 359 ; *Le Fanu* v. *Malcolmson* (1848) 1 H.L.C. 637: and *Abraham* v. *The Advocate Company Ltd.* [1946] 2 W.W.R. p. 181.

Applying these principles to the facts of the present appeal, the first question is whether the West African Court of Appeal was right in saying that the words complained of published on 10th June were incapable in law of referring to the appellant. It is said that the whole tenour of the article shows that the Action Group party is aimed at, and not any individual: and that the learned trial judge treated the evidence led to support the identification in fact as governing the matter, and that he erred in so doing. What the learned trial judge did was to set out with great care what he called the background of the three articles and considered the question whether the appellant could sue in respect of them. Part of this background was the personality and position of the appellant, his public offices, the publicity given to the conference between the delegation of Action Group Ministers and similar matters. It is true that in the words complained of the Action Group is named, but the headlines are connecting the secret plan of the Action Group with the delegation of Ministers to the Government. The delegation was clearly a determinate body or class of persons. The motive behind the delegation is also stated as being something that " concerns the Iga Indunganran Civil Case, the Ilorin boundary and other issues affecting the Action Group."

Their Lordships are clearly of opinion that the words published on 10th June are capable in law of referring to the appellant, and the evidence that they did so in fact is quite overwhelming. If Exhibits B. and B.1. are read together, as it was agreed that they should be, the decision of the West African Court of Appeal that Exhibit B.1. was capable of referring to the appellant and that the witnesses called before the learned trial judge were justified in so thinking puts the matter beyond all doubt. The " parley " referred to in Exhibit B.1. is quite obviously the " parley " referred to in Exhibit B. and the Headline of Exhibit B.1. is only intelligible in the light of the words in Exhibit B. and is clearly making reference to it.

But the West African Court of Appeal reversed the judgment of the learned trial judge on the further ground that the words complained of in the publications of 10th June and 11th June were not defamatory on their face, and that the innuendoes alleged by the appellant had not been proved. It is of course well settled that in order to prove that the words complained of were understood in the meaning ascribed in the innuendo, the plaintiff can give evidence of any facts or circumstances which would lead reasonable persons to infer that the words were understood in that meaning, provided that such facts or circumstances were known to those persons when the words were published, and that such facts or circumstances existed at the time the words were published. In *Tolley* v. *J. S. Fry*

& Sons Ltd. [1930] 1 K.B. at page 480, Greer, L.J., said: " The evidence required is evidence of special facts causing the words to have a meaning revealed to those who knew the special facts, but not revealed by the words used in the absence of such knowledge."

It is never enough merely to call witnesses to say that they understood the words complained of in a defamatory sense; it is essential that they should prove some fact known to them which would be enough to entitle a reasonable man in possession of such knowledge to interpret the words in a defamatory sense. See *Tolley* v. *J. S. Fry & Sons Ltd.* [1931] A.C. at pages 333 and 338 in the speech of Viscount Hailsham: and *Hough* v. *London Express* [1940] 2 K.B. 507.

In the present case the appellant called four witnesses—Ernest Ikoli, Olujide Somolu, Joseph Kosomiola Randle and Nathaniel Kotoye—to testify to facts and circumstances which led them as reasonable persons to infer that the words were understood by them in the meanings ascribed by the innuendo. The learned trial judge had the advantage of seeing these witnesses and of hearing them give evidence. He discussed the credibility of the witnesses and said—

> " All the witnesses who testified about the publications complained of are in my view reasonable persons and by their evidence I find the innuendoes alleged to have been proved ".

The extrinsic evidence which was accepted by the learned trial judge proved that the appellant was the leader of the Action Group party; that he was a Minister; that he was a member of the delegation referred to in Exhibits B., B.1. and B.3.; that the civil case known as Iga Indunganran was pending before the West African Court of Appeal; that Oba Adeniji Adele in whose favour judgment had been given was a prominent member and supporter of the Action Group party; that Sadiku Salami was a first cousin of the appellant's wife and had been convicted of murder and that an appeal was pending to the West African Court of Appeal.

Apart from the evidence of the four witnesses and the evidence of the appellant, the learned judge was entitled to look at Exhibit B.3. published by the first respondents. Their Lordships regard it as a document of the first importance in considering the evidence of the witnesses. For the West African Court of Appeal had no doubt that the appellant had made out his case in that action and dismissed the respondent's appeal from the decision of Jibowu, J. As the submission of the appellant was that Exhibit B.3. was a sequel to and a comment on Exhibits B. and B.1., it is perhaps important to observe that the West African Court of Appeal when dealing with the interpretation to be put upon Exhibit B.3. said— " . . . the articles of 10th and 11th of June provide evidence of circumstances sufficient to entitle any reasonable man with knowledge of them to interpret the words in the article now under consideration in the defamatory sense alleged ". The West African Court of Appeal also said of Exhibit B.3., " . . . it must I think be regarded in the light of the article of the 11th of June ". In their Lordships' view the learned trial judge was bound to examine the relation between Exhibit B.3. and Exhibits B. and B.1. in view of the submissions made and he could not fail to be impressed by the contents of Exhibit B.3. The article asked, " Does the party wish Government to interfere with the course of justice in relation to the atrocious Ikenne dispute? " and " Will the Iga controversy case already in court be cancelled by the Governor in order to placate Action Groupers? " and ends by saying, " Western Local Government Minister, behave like a statesman. . . . Thanks to West African Pilot for unmasking Groupers woes. Shame to Daily Times for calling Groupers iniquitous delegation to Government House a ' Top Secret '."

The learned counsel for the defence before Jibowu, J., stated according to the note made by the learned judge that " Ojike (the author of the article of 13th June) published Exhibit B.3. from Exhibits B. and B.1.; and this will be referred to later when dealing with damages ". Their Lordships are of opinion that the learned trial judge came to a right conclusion on the matters he had to decide and that he fell into no error.

It was reasonable for him to take the view that as the words complained of in Exhibit B.3. were based upon the words in Exhibits B and B.1. that the meanings put upon the words by Mbonu Ojike " more or less confirmed the impression the articles conveyed to the witnesses called by the plaintiff " and " There can be no doubt that the same meaning has been conveyed to many other reasonable readers of the articles. . . ." It only remains for their Lordships to add that in their view the evidence of the witness Akanbi Giwa, the editor of the Nigerian Statesman, was sufficient to prove that Mr. Tinibu was the editor of the West African Pilot in June of 1952 and that the learned trial judge was justified in so holding for the reasons stated by him, and that the West African Court of Appeal was wrong in holding that the onus of proof had not been discharged.

Their Lordships will therefore humbly advise Her Majesty that this appeal ought to be allowed the Order of the West African Court of Appeal in so far as it relates to Suit No. 270/1952 set aside and the judgment of the learned trial judge restored.

The respondents will pay the costs of this appeal and of the appeal to the West African Court of Appeal.

(39494) Wt. 8021—25 110 10/58 D.L.

In the Privy Council

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DELIVERED BY LORD BIRKETT

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