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THE COMPANY'S RIGHT TO SUE FOR DEFAMATION UNDER THE NIGERIAN LAW: AN APPRAISAL

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Abstract

Defamation is one of the actionable wrongs at common law that has to do with injury to character which is usually attributed to human beings. This paper examines if a company, being a juristic legal person also has power and authority like every other normal human being to institute action for defamation. In doing this, the paper examines the concept of juristic personality of a company, its locus standi to sue for an action in defamation, legal provisions for the proof of defamation and gravity of injury to character that qualifies for defamation. This paper posits that even if there are administrative shortcomings in a company; that does not in any way extinguish her right to maintain an action for defamation since the philosophy behind the recognition of the company's right is the need to protect it from unjustifiable imputation which may affect and lower it in the estimation of the eyes of the right thinking members of the society.

1. Introduction

Defamation either in the form of libel or slander describes the actionable wrong at common law or statute.¹ According to *Black's Law Dictionary*², "defamation is the act of harming the reputation of another by making a false statement to a third person". Defamation is essentially the loss or damages caused by injury to a person's reputation. Under the Nigerian law if a person instituted an action in defamation he has put his character in issue, he is understood to be telling the whole world what a good person of unblemished character he is, and stating that someone is trying to destroy his enviable good name³.

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¹ For instance under sections 50, 59 and 60 of the Nigerian Criminal Code Act Cap C23 LFN, 2004, defamation is criminal offence punishable under the law. See also sections 391-395 of the Penal Code Act Cap C38 LFN, 2004.

² A.G. Bryan (ed.), *Black's Law Dictionary*, (West Group, St. Paul, Minn, 1999), p.427.

³ *Iloabachie v Iloabachie* (2005) 22 NSCQR 672 at 676.

Under the Nigerian law, two categories of person who can sue and be sued are natural person or persons with life, mind and brain and other bodies and institutions having juristic personality⁴. Lord Denning⁵ said that "...a company may in many ways be likened to a human body. It has a brain and nerve centre which control what it does...."

From the foregoing it is clear that a company has inherent right, as juristic legal person or entity to sue or be sued in defamation once it is created and/or vested by or under a statute. The Supreme Court quoting with approval the decision in the English case of *Knight and Seerle v Dove*⁶ in *Attorney General of the Federation v ANPP*⁷ said that;

The proposition was that no action can be brought by or against any party other than natural person or persons unless such party has given (authority) by statute expressly or impliedly or by common law, either (a) a legal person under the name by which it sued (b) or it is sued (c) a right to sue or be sued by that name.

From the above quotation, one can safely conclude by submitting that the law recognizes the following legal personalities as having possessed inherent right to sue and can equally be sued:

- i. Natural person (Human being)⁸
- ii. Companies incorporated under the Companies Act
- iii. Certain unincorporated Associations granted the statute of legal person by law such as:

(a) Registered Trade Union.

(b) Partnership and

(c) Friendly Societies or Sole Proprietorship.

- iv Corporate aggregate and corporate sole with perpetual succession⁹.

A corporate sole is a body politic having perpetual succession constituted in a single person, who, in right of some office or function, has capacity to take, purchase, hold and demise land in some particular instances, under qualification and restrictions

⁴ A company once incorporated is a legal entity (possesses juristic personality) that can sue and be sued. See *Alhaji Afia Trading and Transport Ltd v Ventas Insurance Co. Ltd* [1986] 4 NWLR (Pt. 38) 802.

⁵ In *H. L. Bolton (Engineering) Co Ltd v J. J. Graham & Son Ltd* [1957] 1 QB 159, where it was recognized that certain people in the company represent the directing mind and control what it does.

⁶ (1986) 2 All ER 309.

⁷ [2003] 12 SC (Pt. II) 146 at 159-160.

⁸ Individuals can sue on defamation for damages caused to them by defamatory publications. Individuals can also be sued for defamatory statement which caused injury to others' reputation. See Environmental Defenders Office (South Africa): Environmental Law Fact Sheet 14 (2006) p.1.

⁹ *Iyke Medical Machandize v Fitzer Inc* [2001] 6 NSCQR (Vol. ii) 997 at 1013.

introduces by statute, power to alienate lands, tenements, and could even hold personal property¹⁰.

The theme of this paper is to examine the competence of incorporated companies to sue for defamation under the Nigerian law with a view to proffering lasting solution to the difficulties usually faced by a company in the bid to sue for defamation

2. Constituents of Defamation under the Nigerian Law

Just like the legal system of most African countries wherein the English Common Law is applied, defamation as a tortious liability occupies an important place in the species of the Nigerian Legal System. It is trite law that defamation as a tort from which liability may arise, is basically concerned with injury to one's reputation resulting from expression, written or spoken in words of mouth that tend to lower a person (natural or legal person) in the estimation of right thinking members of the society¹¹. In Nigeria, the Supreme Court defines a defamatory statement as:

....a defamatory imputation consists of the publication to a third person or persons of any words or matters which tends to lower person defamed in the estimation of a right thinking members of the society generally or to cut him off from society or to injury his reputation in his office, trade or profession or to injure his financial credit¹².

In the spirit of the above definition, for a statement to constitute defamatory imputation, the defamatory statement complained of must not merely tend to injure the person in his reputation and in the case of non natural person i.e. in respect of an incorporated company, the injury to its reputation must relate/concern its office, trade, business or profession calling, or injure its financial credit or cause people to shun or avoid it or expose it to hatred, contempt or ridicule¹³. But defamatory imputation must be such that lower herein its reputation in the estimation of right thinking members of the society and not merely a particular section of the society. A particular section of the society in contrast to members of the society generally was defined as: "A body of person who subscribed to a standard of conduct which is not those of the society generally"¹⁴.

It is pertinent there from to note that, a colleague or a business association partner or professional persons are from the above definition a particular section of society unless if it is shown that their standard of conduct or morality are different

¹⁰ *A. G. Federation v ANPP*, above, note 7.

¹¹ *Ciroma v Ali* [1998] 2 NWLR (Pt 599) 317-390.

¹² *Edem v Ophen Nigeria Ltd* (2003) 7 SC 92 at 101 Per Iguh JSC.

¹³ *Nigerian Television Authority v Ebenezer Babatope* [1996] 4 NWLR (Pt 440) 75.

¹⁴ *Egunna v Amalgamation Press Ltd* (1967) 1 All NLR 25.

from those of right thinking members of the society generally¹⁵. The focus of the law is in relation to a reasonable man's test for the purpose of determination of injurious imputation, i.e. an ordinary member of society whose judgment is regarded as standard devoid of malice, triviality and not usually suspicious nor naive¹⁶. In the case of *African Newspaper Ltd v Adamu Ciroma*,¹⁷ an ordinary member of the society was described as:

The ordinary and natural meaning of the words are to be seen from the eye of a reasonable man of ordinary intelligence guided by a general knowledge and not from the eyes of person who is fettered by legal rules of construction or forced into an unreasonable interpretation.

The position of the law from above explicitly recognizes an incorporated company's right to sue for a defamatory imputation affecting its business and or pocket, provided such injurious imputation tend to lower her in the estimation of the right thinking members of society. The basic proposition of the law of defamation is that a person (natural or artificial) has a right to protect his good name, business and reputation.

3. Jurisprudential Arguments on Juristic Personality of A Company Vis-à-Vis Defamation

Company incorporated according to law and under the Companies and Allied Matters Act (CAMA)¹⁸ becomes a legal personality and independent of its members and thus acquired the legal competence to sue for defamation in protection of its reputation from the moment of incorporation. A company is described by Bukky J. in *Re Stantly*¹⁹ as "...an association of a number of people for some common objects...."²⁰

Historically the concept of a limited liability as a legal personality possessing the status of a natural person distinct from its members was established in the celebrated English case of *Salomon v Salomon & Co. Ltd*²¹, where the House of Lords unanimously held that a company upon incorporation becomes a legal personality having the powers among other, to sue and be used in perpetuity to own property distinct from its members thus having a right ipso-facto similar to a natural person.

It is instructive, therefore, to explicate though, a company status as limited liability, is of course an artificial entity, it can sue for any defamatory imputation made against it. But can a limited liability company be injured in its feelings when it

¹⁵ Kodilinye & Aluko, *The Nigerian Law of Torts*, (Ibadan: Spectrum Law Publishing, 1992), p.132.

¹⁶ *Ibid.*

¹⁷ [1996] 1 NWLR (Pt 423) 156.

¹⁸ Section 15 Companies and Allied Matters Act (CAMA) 1990.

¹⁹ (1915) AC 803, *Carle Nig. Ltd v University of Jos* [1994] 1 NWLR (Pt 323) 631.

²⁰ On incorporation, see also *Black's Law Dictionary*, above note 1 at 770.

²¹ (1877) 1 QB 159.

has no such feeling? This position was settled by the Supreme Court in the case of *Edem v Orphen Nig Ltd*²² that:

A company cannot be injured in its feelings; it can only be injured in its pocket. Its reputation can be injured by libel, but that injury must sound in money. The injury needs not necessarily be confined to loss of income its goodwill may also be injured.

In the case of *Borgold Property Ltd v Mirror Newspaper Ltd*,²³ an investment company was able to sue in respect of a newspaper article that conveyed the imputation that it was financially unsound and likely to collapse. It was held that the imputation directly impugned the corporation's business reputation.

The nature of injury which a limited liability company suffers as result of any defamation imputation made against it must be such that affects or lowers its reputation in the eyes of right thinking members of the society in general, to the extent that it affects the company's good will and caused it to loses its earnings and profit, but not that, the injury is such that affect the company in its feelings. This position of the law was further buttressed by the Supreme Court per Belgore JSC in the case of *Duyile v Ogunbayo*²⁴ that:

Unlike a human being, a corporate body suing for defamation seeks only damages for pecuniary loss it suffers and not for thing only possible in personal feelings. It can sue for loss of profit, short fall in turnover or anticipatory loss, but not for natural grief and disadvantages, a company can only be injured by libel as that injury must be related to its loss in money terms. Its loss of earning, loss of profit, loss of good will is matter that libel can bring as misfortune for the company.

The court stated further that

It is because of those special attributes of a company that in an action in defamation, a company does not need to prove special damages even financial loss to recover damages for the injury to its reputation in the way of its trade or business.

It is expedient to state therefore that, the factors that determine a limited liability company's competency to sue in defamation is subject to its acquisition of legal personality which can only be acquired by the operation of the law (CAMA) upon incorporation and evidence by its certificate of incorporation. The Supreme Court²⁵ explained in relation to this position of the law as follows:

²² Above, note 12 per Ogundare JSC.

²³ (1981) 1 NWLR 9.

²⁴ [1998] 1 NWLR (Pt. 72) 601 at 611.

²⁵ *Ibid.*, per Iguh JSC.

In the case of Partnerships, Companies, Trade Unions, Sole proprietorship, Corporation sole or Aggregate the best evidence in the event of dispute as to their juristic personalities or the right to sue or be sued *e nomine*s is the production of their certificate of registration or incorporation under relevant law.

Furthermore, complementing the acquisition of juristic personality by a limited liability company and its legal right to sue in defamation is the injurious imputation which must be such that affects its goodwill generally in monetary terms.

4. Company's *Locus Standi* to Sue For An Action In Defamation.

The term *locus standi* denotes the legal capacity to institute an action in a court of law. It is a status which the plaintiff (company) must have before being heard in court. It is a condition precedent to determination of the merits²⁶. In plethora of cases,²⁷ it has been established that to show *locus standi* the claim of the plaintiff must show:

- i. A legal or juristic right
- ii. Sufficient or special interest adversely affected and,
- iii. A justifiable cause of action

In Nigeria *locus standi* of a corporation/company to sue in defamation is premised on its fictitious, legal and independent nature acquired upon incorporation. Though a company has no hand, mind or body of its own however, all its operations and activities have to be carried out by its organs and agents²⁸. Thus, to institute an action in court for damages in defamation, the agents or organs of a company who are the directing mind of a company can legally institute an action on its behalf²⁹ as was held by the Supreme Court. That "... A company in law is a person that can sue and can be sued, but it can only do these through the agency of its directors who think for and carry out its objectives"³⁰.

From the foregoing it is clear that the directing mind of the company (the agents or the director) can legally sue for and on behalf of the company. The court has also held that the question as to the essential legal personality of juristic person to

²⁶ *Basinco Motors Ltd v Woermann Line* (2009), 9 MJSC 66 at 90-93.

²⁷ *Owner of MV Boco Liner v Adeniji* [1993] 2 NWLR (Pt. 274) 195 at 201, *Owodunni v Registered Trustee of CCC* [2000] 10 NWLR (Pt. 675) 315, *Odeneye v Efunnuga* [1990] 7 NWLR (Pt. 164) 618, *Adefulu v Oyesile* [1989] 5 NWLR (Pt. 122) 377 and *Thomas v Olufosoye* [1986] 1 NWLR (Pt. 18) 669.

²⁸ *Lennard's Carrying Co v Asatic Petroleum* (1915) AC 705 at 713-4.

²⁹ Note that it is not all officers of a company that can act as and on behalf of the company. Thus, it is important to identify those natural persons whose acts can be attributed to the company for the purpose of taking an action to redress wrong done to the company.

³⁰ *Edem v Ophen*, above note 12, per Belgore JSC.

commence an action is not to be confused with the question of standing to sue³¹. Where a question as to juristic person or natural person arises, it must be proved that the company is incorporated by the production of certificate of incorporation. It is not enough that a company merely uses the name LTD or PLC in the writ of summons to confer him with a justice personality. In *Bank of Baroda v Iyalabani Co. Ltd.*³² it was held that: "... the correct statement of the law is that where the legal capacity of the plaintiff is challenged by the defendant the onus is on the former to prove his legal capacity"

5. Company's Right to sue for Defamation in Slander and Libel.

It is significant to note that, defamation consist of both slander and libel. Libel relates to a defamatory statement or representation in the permanents form the most common being written or printed word, i.e. statement contained in a talking cinematography, films, newspapers, a book, a letter, a notice, a painting, a cartoon or photograph. Slander relates to defamation conveyed by words of mouth or gesture. A company whose reputation is injured notwithstanding the medium or the manner the injurious reputation is made, can sue for defamation, be it libel or slander. In metropolitan saloon *Omnibus Co V Hakwkins*³³ it was held that:

A corporation at common law can sue in respect of a libel there is no doubt. It would be monstrous if a corporation could maintain no action for slander of title, through which they lose a great deal of money, it could not sue in respect of an imputation of murder, or incest or adultery, because it could not commit those crimes, nor could it sue in respect of a charge of corruption, though the individuals composing it may, but it would be very odd if a corporation has no means of protecting itself against wrong and if its property is injured by slander, it has no means to redress except by action.

The court held further that

...a corporation at common law may maintain an action for a libel by which its property is injured...this is because, to carry on business it is necessary that the reputation of such a corporation be protected and therefore in the cases of libel and slander it must have a remedy by action³⁴.

³¹ *Fawehinmi v Nigerian Bar Association* (Nos 2) [1989] 4 SC (Pt. I) 63 or [1989] 2 NWLR (Pt. 105) 558.

³² [2002] 7 SC (Pt. I) 21 at 47.

³³ (1959) 1 QB 809, per Pollock CB, See also *Edem v Ophen*, above note 12.

³⁴ Other judges of the Court of Exchequer concurred with this decision. Currently in Nigeria, a trading corporation formed under part A sections 19 and 20 Companies and Allied Matters Act Cap C21, LFN, 2004 also have power to institute action if cases of libel and slander were committed against them.

From the above decision, it can rightly be concluded that a company whose reputation has been injured either through libel or slander is competent to maintain an action. However, the injury suffered must as already stated above, relate to loss in its pocket/earning or loss of profit or loss of goodwill, which are matters that can bring misfortune to the company and not injury to its feelings.

6. Proof of Damages in an Action for Defamation

It should be noted that, whereas a libel is actionable per se, that is without proof of special (or actual) damages; slander is not actionable *per se* except in certain cases. The basis for this distinction was stated by Brown L.J. in *Ratchliff v Evans*³⁵ that:

Every libel is of itself a wrong in regard to which the law implies general damages ... Akin to action for libel are those actions, which are brought for oral slander, where such slander consists of words actionable *per se*, and the mere use of which constitute an infringement of the plaintiff's right. The very speaking of such words apart from damages, constitute a wrong and give rise to a cause of action the law in such case presume general damages.

Be that as it may, a corporation in order to succeed in an action in libel and slander, it is not necessary to prove that special or general damages occurred but a company can show that its reputation or goodwill is injured.

Therefore it is our humble submission that a trading corporation may sue for libel calculated to injure them in respect of their business and may do so without any proof of damages if there be no such evidence, the awarded damages may be meager.

6.1 Proof of Essential Ingredients of Defamation

The essential ingredients of defamation to be proved by a company to succeed in an action for defamation are *impairi-materia* with those to be proved by a plaintiff and / or natural person with little additions and exceptions which are to the extent that, it must prove that:

- i. The imputation has lowered it in the estimation of right thinking members of the society and:
- ii. The injury has caused it loss of money, or loss of earning, loss of profit and loss of goodwill

The other points relevant to prove defamation are stated in *Sketch v Ajagbemokeferi*³⁶ to include:

- i. Publication of a statement and in the case of libel in permanent form:

³⁵ (1892) 2 QB 524 at 529-530. See also Kay L.J. in *South Hetton Coal Company v North Eastern News Association* (1894) 1 QB 133

³⁶ [1989] (Pt. 100) 683.

- ii. The statement referred to the plaintiff
- iii. The statement conveys defamatory meaning to those to whom it was published
- iv. The words are defamatory³⁷.

The company must prove these essential elements just as required of a natural person in order that a company succeeds in an action for defamation.

7. Conclusion

From the foregoing, it could be gleaned that injury to a company's business or reputation may be of varying nature, it may be direct or indirect or it may even be in form of decrease in market value of the company. Injury to a company may also be in form of erosion of employee's morale or detrimental to the relationship between the company and its employee or it may even be detrimental to the company to attract future employee, etc. Therefore, a company being a legal entity can also be injured in its earnings, loss of profits and loss of goodwill, all of which can cause misfortune to the company as a result of any defamatory imputation. Further still, just like human beings, a company enjoys the right to protect itself from injurious imputation be it libels or slander that can affect its business. The philosophy behind the recognition of the company's right is the need to protect it from unjustifiable imputation which may affect and lower it in the estimation of the eyes of the right thinking members of society generally and which may eventually cause a great and / or substantial loss to its pocket.

Conclusively therefore, the existence of any fault in a company in a way does not extinguish it of her right to maintain an action against any injurious publication or expression that is tantamount to injurious imputation aimed at and capable of affecting her business. A company's competency to sue for defamation is recognized and protected from unjustifiable imputation notwithstanding the fact that the company may not transparently be without blemish since, it is not the law that one's general character to reputation must be transiently stainless, unimpeachable and without any blemishes whatsoever before one can successfully maintain an action for defamation³⁸

³⁷ See generally *Nigerian Television Authority v Ebenezer Babatope* [1996] 4 NWLR (Pt. 440), *New Breed Org. Ltd v Erhomosele* [2006] 2 SC (Pt. 1) 136, *Sketch v Ajagbemokeferi* [1989] (Pt. 100) 683.

³⁸ See *Iguh JSC in Ugbunor v Itadomeh* [1997] 9 NWLR (Pt. 520) 307 and *Ugo v Okafor* [1996] 3 NWLR (Pt. 438) 542.