

SUPREME COURT OF NIGERIA'S CASE JUDGMENT REVIEW: ESENOWO Vs UKPONG & MOBIL PRODUCING NIGERIA (1999) LPELR-1166 (SC)

Written by Emmanuel Ugwu

FSS MSS pscBA (1st Class Hons) MIRSS LL.B (Hons) LL.M Ph.D Law Lecturer, Philomath University, Abuja Adjunct Lecturer, Defense Institute of International Legal Studies (DIILS) Rhode Island, USA

ABSTRACT

Some scholars and authors make comments on judgments of superior courts on reading the ratio decidendi without reading the facts or the entire judgment to decipher the reasons behind the judgments. This is one of such cases where, on the surface of it or after glancing through an online review, one may shout blue murder and exclaim, 'why did the court fall into this technicality trap' and that is the research problem. Doctrinal research methodology was applied wherein the law report that contained the case was studied. The crux of the matter is that a medical doctor got angered by the fact that when he applied for reimbursement concerning a patient he treated in his hospital with a document he signed as Dr E.J Esonowo, the respondent on checking the register of medical doctors as prepared by the Nigerian Medical Council, did not see Dr E.J Esonowo on the list and based on that, minuted to another staff in the organization that the name did not exist among the medical doctors as contained in the Nigerian Medical Council's register of doctors and therefore that the reimbursement should not be paid. There was however a name; Dr J.E Esonowo on the register. Dr Esonowo felt infuriated and sued both Dr I.Ukpong who sent out the minute and Mobil Producing Nigeria, for libel. As simple as the case appeared, it went from High Court up to the Supreme Court wherein the appeal of Dr Esonowo was dismissed as the Supreme Court held that there is a big difference between Dr E.J Esonowo and Dr J.E Esonowo. This work found that there was no resort to alternative dispute resolution which would have solved the problem in the beginning and that the matter which lasted for 15 years could have been solved if the appellant exercised a little patience to confirm the veracity of what the respondent wrote. It recommends alternative dispute resolution and exercise of patience to verify a matter before suing, that people should

generally follow the rules on writing of names and that there should be quicker dispensation of justice by Nigerian courts.

Keywords: Court, Esonowo, Judgment, Libel, Nigerian Medical Council, Register.

INTRODUCTION

In the words of Belgore, Justice of the Supreme Court of Nigeria (JSC) while delivering the leading judgment of the Supreme Court of Nigeria on this matter on 30th April 1999, the appeal was in respect of an alleged libelous publication concerning the plaintiff/applicant, Dr Esonowo Johnson Esonowo. The applicant is a medical doctor who was at the material time of the alleged offensive publication the Medical Director in charge of Memorial Specialist Clinic, Uyo, Nigeria. The first defendant/respondent is also a medical doctor employed, at the material time of the alleged libel, by the Mobil Producing Nigeria Limited, the second defendant/respondent.ⁱThe matter moved from the High Court, to the Court of Appeal and to the Supreme Court where it was finally decided.

FACTS OF THE CASE

In or about the month of May 1984, Dr Esonowo forwarded the bill of the treatment of a staff of Mobil Producing Nigeria to the company for reimbursement and Dr Ukpong the first respondent who was working for Mobil then after examining the bill referred to the list of medical doctors registered by the Nigerian Medical Council as at 1980. In the list, there was no Dr E.J Esonowo. Dr Ukpongminuted the bill to another staff of Mobil, named Moses I. Itam, (MII) whose duties included reimbursement of medical fees to the employees of Mobil, in the following words, “Dr E.J Esonowo is not registered with Nigerian Medical Council. Bill cannot therefore be reimbursed.”ⁱⁱThe bill was in respect of the treatment of MrItrechio which he had in the clinic of Dr Esonowo. The Nigerian Medical Council produces the list of qualified medical doctors in Nigeria. On the list, there was Dr J.E. Esonowo but not Dr E.J. Esonowo. Dr Esonowo got infuriated and sued both Dr Ukpong and Mobil Producing Nigeria for Libel at the High Court which gave judgment in his favour. The matter was appealed and the Court

of Appeal reversed the judgment, dismissing the appeal. Dr Esenowo, not being satisfied appealed to the Supreme Court which equally dismissed the appeal.

LEGAL ARGUMENTS

The appellant set out four issues for determination namely; “whether the learned Justices of the Court of Appeal were right in holding that the defence of justification was available to the respondents when that defence was neither pleaded, canvassed at the trial nor an issue before the Court of Appeal, Whether upon the evidence the defence of justification had, in fact, been established, even if pleaded, whether the learned Justices of the Court of Appeal were right in holding that the publication of the words complained of to the appellant’s guests, Gabriel Effiong Edet (PW5) and Chief E. A. Udoh, was not made by the 1st respondent and was a slander not libel and whether the learned Justices of the Court of Appeal applied the correct principles of law in assessing the damages having regard to the circumstances of this case. He averred that what the first respondent wrote amounted to libel.

The first defendant averred that he did not publish any libelous material and that what he minuted was an internal memo of Mobil Producing Nigeria and could not have amounted to libel. He equally averred that what he wrote was a statement of fact as he did not find the name Dr E.J Esenowo in the register of the Nigerian Medical Council. The Court of Appeal came to its conclusion by holding that the plaintiff/appellant caused the confusion by the way his name was registered in the Medical Directory of 1980, which was the then current edition with second defendant, the name entered was J. E. Esenowo, this is Exhibit E. This prompted the first defendant to minute as he did in Exhibit H as follows:-“Dr. E. J. Esenowo is not registered with the Nigerian Medical Council, Bill cannot therefore be reimbursed.” The defendant/respondent maintained that Libel is the publication of false and disparaging matter against a person to a third partyⁱⁱⁱ of which in his view, what he wrote was a statement of fact which was not disparaging. He further maintained that no civil action for defamation will be maintained unless the words complained of have more than their ordinary meaning and the onus will be on the plaintiff to prove the extraordinary meaning of the words used.^{iv}

JUDGMENT OF THE SUPREME COURT IN THE MATTER

The judgement is reproduced verbatim as follows: It must be borne in mind that the only meaning, ordinary meaning, in the words complained of is that "E.J. Esenowo is not registered with the Nigerian Medical Council." No innuendo has been pleaded and none was proved throughout the hearing. What the first defendant was doing therefore was to take care that a person practicing medicine was patronised by the second defendant company. Is it true that the register of Nigerian Medical Council for 1980 and 1981 did not contain plaintiff/appellant's name? There is a world of difference between "J.E. Esenowo" and "E.J.Esenowo" for the purpose of registering a name in a professional register sanctioned by law. It allows for crooks and quacks to infiltrate into the profession if at random a person can re-arrange his initials or order in which his names are written. Exhibit H written by first respondent queried the medical bills brought by PW6 as Exhibit E at page 9 (i.e. register of medical and dental practitioners for 1980) contained an entry thus: "Esenowo, Johnson Esenowo." The surname is Esenowo, the first and middle names being "Johnson" and "Esenowo" respectively. This will be rendered into "Dr. J.E. Esenowo" not "Dr. E.J. Esenowo" that the appellant in his pleading and evidence clearly claimed to be the correct name.

Libel is the publication of false and disparaging matter against a person to a third party.

(Sketch Publishing Co. Ltd. v. Ajagbemokeferi (1989) 1 NWLR (Pt.100) 678. The defendants in the statement of defence deny the words complained of are libellous of the appellant and that at any rate it was written in the course of duty by the first respondent as an employee of the second respondent. It is true E. J. Esenowo was not listed in the 1980 edition of the Nigerian Medical and Dental register, Exhibit E. No civil action for defamation will be maintained unless the words complained of have more than their ordinary meaning and the onus will be on the plaintiff to prove the extraordinary meaning of the words used. The words complained of were published to PW6, Moses Itam Itam otherwise called MII. This witness has not attributed any meaning other than the ordinary meaning to the words. First respondent stated clearly that "E. J. Esenowo" was not in Exhibit E, and that is very true. PW6 understood that the words meant the appellant's name was not in Exhibit E and he did not know how the memorandum got to the possession of the appellant. The words complained of certainly refer to the appellant but the storm raised by the appellant on it was a little one in a cup of tea. By explaining that he was the same one called J. E. Esenowo in Exhibit E, and that it was an

erroneous entry, and a simple letter explaining his impeccable professional background; this matter would not have arisen.

It is therefore not actionable to state the obvious as in this case and it has not been proved that the words convey meaning other than the ordinary meaning. The letter Exhibit A, written by the solicitor to the appellant stating that the appellant had been on the full register since 1960 would not have been necessary. It is worthy of note that the register for 1981 contained the same error of "J. E. Esonowo" in the main body of the register and in portion of members of the Nigerian Medical Council. The bills brought by PW7 for reimbursement to all intents and purposes might have been issued to him by an impostor and not the appellant and it was the first respondent's duty to check from the register - Exhibit E, which was the current one with him - that it contained the correct name. That was his duty to protect the second respondent from paying unjustified money as medical expenses for its employees. The words used cannot by any dint of imagination convey defamation because they reflect the situation as first defendant saw it, as it truly was. I can hardly find fault in the decision of the Court of Appeal which set aside the judgment of the trial High Court. Once what has been published is true, no libel can be sustained on it. I find no merit in this appeal and I accordingly dismiss it with N10,000.000 costs to the respondents.^v This leading judgment was delivered by Salihu, Modibo Alfa Belgore (JSC) and supported by other four Justices of the Supreme Court that sat on the matter, namely; Michael Ekundayo Ogundare, Sylvester Umaru Onu and Godfrey, Okey Achike.

ANALYSIS OF THE JUDGEMENT

On the face of this case, it looks so simple that the arrangement of initials and surname dragged from High Court up to the Supreme Court between 1984 and 1999, a whole 15 years. From all indications, the appellant did not verify whether it was J.E. Esonowo or E.J Esonowo that was written in the register of the Nigerian Medical Council. Coincidentally, the two Es on his name mean Esonowo. His first and middle names are Johnson and Esonowo while his surname is Esonowo. Ordinarily, the names are his and no other person contended that it was his or her name and not that of the appellant. From all indications also, there was probably no other Esonowo in the register of the Medical Council of Nigeria at that moment to bring about doubts as to whether it was the appellant that was the Osonowo in the register. The problem was therefore because the appellant drew the first blood and did not exercise patience in the

beginning to verify what was written in the register. If he had not flared up to the extent of instituting a suit, the matter as rightly pointed out by the Supreme Court would have been resolved without even going to court. Did Dr Ukpong who wrote the minute do anything wrong? In the opinion of this writer, he did no wrong. He was only being meticulous to avoid a situation where his employer pays bills to a wrong person. If the Medical Council made a mistake in writing the name, should Dr Ukpong or Mobil Nigeria Producing Limited be the ones to bear the brunt? In the opinion of this writer, the answer is still no. It is the duty of the appellant to ensure that what was registered as his name was correct. He could sue the Nigerian Medical Council for writing his name wrongly if it was not what he submitted to his school which in turn submitted it to the Medical Council. This researcher found out that it is the College of Medicine of the university a student attended that submits names of qualified doctors to the Medical Council and it would not have been the fault of the first or second respondents the way the name was arranged.

Is it also possible that Dr E.J. Esenowo can be different from Dr J.E. Esenowo? This researcher answers in the affirmative. It is even possible to have two or more persons who answer the same three names and arranged the same way. The only difference sometimes is the registration number which cannot be the same for more than one person in such a professional body. This matter did not need to go to court, not to talk of reaching Supreme Court if alternative dispute resolution method was used in the beginning. One other critical question is, assuming that it is an issue of entitlement as a medical doctor wherein this matter arose, which was not brought in the manner this one was brought, would it be proper to deny the doctor his entitlement? This researcher answers in the negative. It would have been better to verify whether the E.J Esenowo is the same as J.E Esenowo by confirming the registration number of the doctor which would have resolved the matter as it would have shown that it is the same Esenowo and that would have saved the time, resources and energy invested in the matter from 1984 to 1999, 15 whole years. Why is the matter coming up now? It started making waves in different social media platforms hence the need for this review to bring out the facts and make it clear to readers. The names are arranged as surname; first name and middle name except where it is specifically required to arrange it otherwise like first name, middle name and surname.

CONCLUSION

This matter which simply bordered on arrangement of surname, first name and middle name seemed to be very simple but turned out to be a big case that got to the highest court in Nigeria. This work found that the fact that the appellant did use alternative dispute resolution in the beginning caused the escalation of the matter to the level it did. In addition, the matter lasted from 1984 to 1999, a whole 15 years and points to the fact that litigations should be avoided when avoidable like the case in point and that many cases take too long a time to resolve in courts. The work equally found that it is important to be patient in situations like this and not to act in anger. It is true that it could be annoying for the medical doctor to be told that his name was not in the register of the Nigerian Medical Council but patience would have saved all the energy, resources and time spent in pursuing the matter for 15 years. Rising from the findings, the paper recommends that alternative dispute resolution should be used at the beginning of conflicts when appropriate and that people should exercise some patience and take a second look at issues before instituting a legal action which could solve a lot of problems. It is also recommended that this case should not be applied strictly in any other matter if they are not in all fours and that registration number should be checked along with the arrangement of names in order not to over rely on technicalities. Nigerian courts should equally strive to dispense justice faster.

REFERENCE

Esenowo v Ukpong & Another (1999) Law Pavilion Electronic Law Report (LPELR)- 1166 (Supreme Court).

ENDNOTES

ⁱEsenowo vs Ukpong& Anor (1999) LPELR-1166 (SC) p.iii.

ⁱⁱ Ibid.

ⁱⁱⁱ Sketch Publishing Co. Ltd. v. Ajagbemokeferi (1989) 1 NWLR (Pt.100) 678.

^{iv}Esenowo vs Ukpong& Anor, Ibid. p.8.

^vEsenowo vs Ukpong& Anor, Ibid. pp 7-10.