



ROUK & Co

INTERNET DEFAMATION: BEFORE YOU GET SUED

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The advent of the internet has greatly impacted lives. It has enabled humans to communicate easier than ever before. However, with no restrictions on communications, there have been a plethora of cases of inconvenience arising from online abuse. Primarily on social media, false publications have been posted about people or entities and thereby harming their goodwill and reputation. Such an act amounts to internet defamation.

Defamation in Nigeria

In Nigeria, a person can be liable in criminal defamation; and the tort of defamation, a civil wrong. Where one is alleged to have defamed another person, such alleged defamer may be prosecuted criminally and sued for a civil suit concurrently.¹ “Person” in this context, however, includes any body of persons corporate or incorporate.²

Criminal Defamation

One of the laws closely regulating cyber activities in Nigeria is the Cybercrimes (Prohibition, Prevention, Etc) Act, 2015. Concerning this piece, any person who knowingly or intentionally sends a message or other matter employing computer systems or network that - he knows to be false, to cause annoyance, inconvenience danger, obstruction, insult, injury, criminal intimidation,

enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent: commits an offence under this Act and shall be liable on conviction to a fine of not more than N7,000,000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment.³

Under the Criminal Code Act, which applies to the Southern States, a defamatory matter is a *matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. Such matter may be expressed in spoken words or any audible sounds, or words legibly marked on any substance whatever, or by any sign or object signifying such matter otherwise than by words, and maybe expressed either directly or by insinuation or irony.*⁴

Further thereto, the law defined publication⁵ as:

in the case of spoken words or audible sounds, the speaking of such words or the making of such sounds in the hearing of the person defamed or any other person; in other cases, the exhibiting it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with the

¹ Nwaboshi & Ors v FRN (2018) LPELR-45107(CA).

² Section 18(1) of the Interpretation Act.

³ Section 24(b).

⁴ Section 373.

⁵ Section 374 of the Criminal Code.

intent that it may be read or seen by the person defamed or by any other person.

Sounds where recorded shall, if defamatory, be deemed to be published if reproduced in any place to the hearing of persons other than the person causing it to be reproduced. "recorded" means sounds collected or stored through the tape, disc, cylinder or other means whatsoever, where the sounds are capable of being reproduced or are intended for reproduction by electrical or mechanical means at any time or from time to time thereafter and includes the matrix, and cognate expressions shall have the like meaning; "sound" includes speech and mere noise.

Any person who publishes any defamatory matter is guilty of a misdemeanor, and is liable to imprisonment for one year; and any person who publishes any defamatory matter knowing it to be false is liable to imprisonment for two years.⁶

Under the Penal Code⁷, whoever by words either spoken or reproduced by mechanical means or intended to be read or by signs or by visible representations makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that the imputation will harm the reputation of the person, is said,

except in the cases hereinafter excepted, to defame that person.

It can be deduced from the above that, a person will be criminally liable if such person publishes a defamatory statement either in a concrete form or render such via oral rendition; to damage or believe that such broadcast will damage the victim.

For any defamer shall be punished with imprisonment for a term which may extend to two years or with fine or both.⁸

Tort of Defamation

The tort of defamation put succinctly, is a false spoken or written expression, by a person against another, which when published, is deemed harmful or likely to harm the reputation of a person. Anyone found liable for this civil wrong will be liable damages i.e. general, exemplary, and aggravated damages to redress unjustified injury to the claimant's reputation, as decided by the Court.

Elements of Internet Defamation

Ordinarily, as a written form of communication, internet defamation is considered "libel," as opposed to "slander." This however does not exculpate any person that posts defamatory statements in a video from liability.

There is no gainsaying that the elements in traditional libel also apply to internet defamation. To succeed in an action for

⁶ Section 375 of the Criminal Code.

⁷ Section 391(1) of the Penal Code.

⁸ Section 392 of the Penal Code.

libel, the following ingredients must be proved⁹:

The defamatory statement complained of was published: A statement is said to be defamatory if, in its ordinary meaning, it renders the person about whom it was spoken to odium, shame, and disgrace. The test for determining whether a statement is defamatory is whether the statement complained of tends to lower the plaintiff in the estimation of right-thinking members of society generally.¹⁰

The publication was made by the defendant to at least one person other than the plaintiff: A statement is “published” if it is communicated to someone other than the person whom the statement is about.¹¹ The Claimant/Plaintiff must prove that the defamatory publication made on the internet was read and seen by third parties.

*The defamatory words referred to the claimant/plaintiff.*¹²

Defences to Defamation

Some of the exceptions to internet defamation are:

Justification: once it is proved that the publication is true, regardless of minor

inaccuracies, an alleged defamer will be excepted from liability.

Fair comment: Another defence to defamation is an honest comment on a matter of public interest, based on true underlying facts.

Statements against public figures: Except where the statement is malicious and published by those who either knew it was false or were reckless in verifying its accuracy, statements against public figures are exempted from defamation.

Consent: A person who consents to the media’s use of a libelous statement about him cannot later sue if the statement published on the internet does injure his or her reputation.

Fair reporting of judicial and legislative proceedings on the internet are exempted from a defamation action.

Conclusion

While the internet comes guarantees freedom of expression, it is worthy of note that such right is not absolute. Therefore, people are expected to refrain from putting out unjustifiable statements that damage reputations on the internet. There is no gain in clout chasing at the expense of another’s repute.

⁹ Iloabachie v. Iloabachie (2005) 13 NWLR (Pt. 943) 695.

¹⁰ Awoniyi v. Registered Trustees of AMORC (2000) LPELR-SC.182/1999.

¹¹ Emmanuel Bekee & Ors vs. Friday Ebom Bekee (2012) LPELR - 21270 (CA).

¹² Guardian Newspapers Ltd & Anor v. Rev. Pastor C. I. Ajeh (2011) LPELR-SC.234/2005.

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