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## Application of the Laws of Defamation and Sedition in Nigeria's Jurisprudence: Still Relevant?

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### Abstract

The prevalence of defamatory and seditious statements in Nigeria prompts some degree of investigation. These actions typically occur on the platforms of radio, television, public debates, political meetings as well as other public gatherings. Moreover, several persons indulge in this illegality under the 'guise' of exercising their constitutional right of expression. The objective of this paper is to ascertain the continued relevance of the law of defamation and sedition in Nigeria, coupled with a need to overhaul the legal framework in this respect. Hence, due engagement with mass media organizations and civil society groups provides a veritable mechanism to mitigate incidences of defamation and sedition.

**Key words:** constitution; defamation; freedom of expression; sedition.

**JEL Classification:** K14; K42.

### Introduction

The unfolding democratic experience in Nigeria provides a veritable laboratory to explore the continued relevance of the laws regulating the exchange or flows of sensitive information in the public space. In particular, the issues of defamation and sedition come to the fore when exploring the practicalities of safeguarding the rights, interests of person's and contending parties. Hence, the extents to which certain facts and circumstances can be ascertained will ultimately further the cause of one party at the expense of the other. Freedom of expression as captured in Section 39 (1) (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) expressly provides for the freedom of expression and the liberty of every Nigerian to discuss issues openly, to hold opinions and to impart ideas without restrictions, restraint or fear of punishment or intimidation in Nigeria. In other words, there is minimum legal benchmark by which the level of compliance can be assessed. It is against this backdrop that specific laws and provisions on defamation and sedition are construed.

Defamation law protects an individual's reputation from unprovoked attacks. Defamation is the publication of a statement which exposes a person to ridicule, hatred, contempt, damages his office, trade or profession and

which causes him to be disparaged or avoided by any right-thinking member of the society<sup>14</sup>. It is the publication of false statement about a person in order to discredit him or her. Section 373-381 of the Criminal Code considers defamation as a crime in Nigeria, especially where the acts in issue tend to breach public peace and order.

Variants of defamation are commonly referred to as libel and slander in certain aspects of Nigeria's legal jurisprudence (*i.e.* law of torts). Defamatory statements are usually made in perceptible or permanent form such as written or printed in a newspaper, book, circular caricature, photography, film, recorded audio materials, recorded radio programmes and television broadcast. It is actionable (*per se*) without proof of damage by mere publication. The law presumed damages in favor of the defendant. In Chief P.N. Nsirim v. E.A. Nsirim<sup>15</sup> the Court held that in an action for libel, failure to prove publication to a third party renders the libelous statement or publication a nullity.

All living persons, firms, Companies or small group of persons may be defamed within Nigeria's jurisdiction. A dead person, secret societies, government, goods or product cannot be defamed except it amounts to an injurious falsehood. A trader is not defamed if his good or services are criticized without defaming his person. Where defamatory statement is expressed in a spoken word or gesture and not in a permanent form it is slander. In order to succeed in an action for slander, the plaintiff must prove special damages such as loss of income and loss of contract.

A mere vulgar abuse is not slander and not defamation<sup>16</sup>. Where vulgar abuse alleges a specific act of crime, which may cause the person to be shunned by public or being arrested by the law enforcement agency such vulgar abuse will be defamatory. Vulgar abuse if written may result to award of damages. Repetition of defamatory statement in writing, orally or otherwise is a fresh publication, which creates a new cause of action. Where books, newspapers or other print media material is established as being defamatory, the printer, publisher, author, library and the bookseller are liable and will be bound by consequential court orders in this regard.

However, the recent rate of defamation and sedition in Nigeria especially during electioneering campaigns has drawn attention to the relevance of the laws regulating defamation and sedition in Nigeria. The problem is not lack of laws regulating defamation and seditious but lack of enforcement mechanisms, strong *political will* to set the machineries of laws in motion against defamatory statements, inadequate awareness of Nigerians on what represents defamation, sedition; rights to freedom of expression and protection of one's reputation against any damage. As the legal-regulatory theme of this paper is further explored, there is need to tread carefully owing to the far-reaching and irremediable damage that may occasioned to one's reputation in the eyes of right-thinking member of the society.

The subsequent structure of this paper is outlined as follows; part two conceptualizes defamation and sedition and defenses open to defendants in action for defamation under the part three described legal remedies for defamation under the applicable laws. Part four captured the relevance of the law of sedition in Nigeria, as well as the available defenses. Part five concludes with the general and specific recommendations.

## 1. Review of Literature

It is trite that, no society can attain optimal development without protecting the rights' associated with people's freedom of expression. However, it is also instructive to note that freedom of expression is not absolute. There are recognized limitations to this right, which include; law of defamation, law of sedition, the law relating to treason and treasonable felony. Freedom of expression must take into account the right of other citizens to protect their reputation. The courts have a vital role to play in balancing the conflicting interests between freedom of expression and protection of reputation under the Nigerian law. According to the provisions of Article 19 of the Universal Declaration on Human Rights:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information, and ideas through any media and regardless of frontiers<sup>17</sup>.*

Article 19 of the International Covenant on Civil and Political Rights provides for the right to freedom of expression as follows<sup>18</sup>:

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<sup>14</sup> Section 373 of the Criminal Code, Laws of the Federation of Nigeria, 2004.

<sup>15</sup> Nsirim v. Nsirim (2001) FWLR (Pt. 96) P.433.

<sup>16</sup> Sketch Publishing Co.Ltd .v. Ajagbemokeferi (1989) 1 NWLR Pt.100, P.678 SC.

<sup>17</sup> I. J. Udofa 'The Law of Defamation in Nigeria' *International Journal of Advanced Legal Studies and Governance* 2(1) (2011): 76.

<sup>18</sup> E. Malemi, *Mass Media Law and Press Law* (2009 Princeton Publishing Co, Ikeja, Lagos, 3<sup>rd</sup> Edition).

*Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include; freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print in the form of art or through any other medium of his choice.*

Article 9 of the African Charter on Human and Peoples Rights provides for the protection of freedom of expression as follows: *Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinion within the law.*

Sections 39(3) (a), 45(1) of the 1999 Constitution provide for the right to freedom of expression and some other fundamental rights guaranteed in the Constitution have been qualified or subject to certain restrictions, in the interest of defense, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedoms of other person.

Section 375 of the Criminal Code further criminalizes defamation by stating that; subject to the provisions of this chapter, 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.

The aim of the law of defamation is to vindicate the reputation of the person defamed and to compensate the injured party by way of damages. But where the person has no good reputation in respect of what it is said or published about him, the law will not protect him<sup>19</sup>.

Where a person addresses a press conference and makes defamatory statements about another person, he is liable as the author of the defamation; where published by the press, the press will be liable for repeating the defamation. The same principle applies if a person publishes a defamatory statement or information on the internet<sup>20</sup>.

The principles governing assessment of damages were reiterated in *Independent Newspapers v. Idiong*<sup>21</sup> thus: the social standing of the plaintiff; the whole conduct of the defendant from the time the libel was published up to the time the Court gives its verdict and due emphasis will be placed on the impact of the libel on persons who had read the publication.<sup>22</sup> It is important to ascertain the level of damage or injury occasioned to the plaintiff's reputation so as not provide ample opportunity for abuse of this important remedial option in law. This point should be re-echoed, as the public arena is increasingly being inundated with various types of misdescription, manipulations and exaggeration, especially on account of the increased access to as well as the complexities associated with regulation of information technology practices in Nigeria.

As a general rule, to succeed in an action for defamation, the plaintiff must prove the following elements: that the statement was defamatory; that the statement referred to him, that he has suffered damage. In *Sketch Publishing Co.Ltd .V. Ajagbemokeferi* (Supra) where the defendants published in a Muslim's calendar under the picture of the Claimant the following statement clearly in Yoruba Language:

*'Alhaji A.A. Ajagbemokeferi Otun Balogun Oniwasu Oye yi je oye yeye gegebii oye adadale, ti Islam ko patapata Egbo bi Anobi ti wi ki lke ati ola Olorun ki o ma boa. Ina ni ile gbogbo Aladadale'*<sup>23</sup>

This in English Language literally means that the Chieftaincy title of the person next in hierarchy to the Commander of the Muslim Clerics held by the Claimant is pure rubbish and miserable title just like charlatans and contravened the tenets of Islam. By the word of Allah affliction betides such title holders and their place is in the hell fire after death. The Court held that such a statement was referring to the Claimant and it was libelous and damages were awarded in favour of the Claimant.

The statement must have been published to at least one person other than the plaintiff<sup>24</sup>. Also, it must be established that, the said plaintiff has suffered damage. Hence, the defamatory act has lowered his estimation in the eye of right thinking members of the society<sup>25</sup> and that the statement is false.<sup>26</sup>

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<sup>19</sup> V. Mitter 'Summary of Papers of Judicial Officers on Defamation: Its Civil And Criminal Liability' available online at: <http://mja.gov.in/Site/Upload/GR/Summary%20DefamationCivilCriminalFinal.pdf> (visited October 26, 2016)

<sup>20</sup> *Godfery v. Demon Interne Ltd* (1999)4 ALL ER 342.

<sup>21</sup> *Independent Newspapers v. Idiong* (2011) 46 WRN 99

<sup>22</sup> *Supra*, p. 5; Per Aka'ahs, JSC. at 122 paras 15-25

<sup>23</sup> *The Sketch Publishing Co. Ltd. v. Alhaji Azeez Ajagbemokeferi* Available at: <http://unnlawdocs.com/index.php/index/read/6966> (Visited October 18, 2016) pp.1-51.

<sup>24</sup> *Ejabulor v. OSHA* (1990) 5 NWLR (Pt 148) 1 at 20

It is the role of the Courts to ensure that the fundamental rights of the citizens are upheld and protected except under the exceptions clearly stated in the Constitution. Hence, this mode of legal intervention, which must be optimized so as to allocate the appropriate remedies amongst the contending parties. In other words, when there are intermittent gaps in addressing substantive claims, it fosters the perpetuation of the acts and impairs the capacity to effectively deal with such matters over the long-term. The courts and the requisite administrative agencies need to be proactive towards achieving substantive and procedural gains in this sphere of administration of justice.

A claim for damages in respect of an action for slander shall not be brought in Nigeria after the expiration of three years from the date on which the cause of action accrued. It is trite that slander uttered in a foreign language must first be set out in the original language it was uttered and followed by literal translation to English language; otherwise the action is not properly constituted to give rise to a reasonable cause of action before the Court and would be struck out, subject to a due application in this respect. An expert in the language must do the translation.<sup>27</sup> It is not enough that the defamatory words be pleaded; the correctness of its English translation must also be proved before the legal expectations could be discharged.<sup>28</sup>

## 2. Defenses Open to Defendants in Action for Defamation under the Nigerian Law

The defendant can put up a defense of consent especially, where the plaintiff willfully consents to the publication. For instance, where a media or press organization is invited to cover an event and the publisher publishes what is false. In such circumstances, where a case is duly established with relevant supporting evidences, the plaintiff for defamation against an offending party may institute an action. A plea of fair comment on a matter of public interest is another good defense<sup>29</sup>, this is a comment or opinion on matter of public interest based on facts truly stated. Malice on the part of the defendant may destroy the plea. A plea of justification or truth, where the statement is substantially true, a person may be justified in law<sup>30</sup>. Qualified Privilege is another defense available to the defendant where there is a mutual duty to give, receive information and when the comment is made honestly without malice<sup>31</sup>.

Absolute Privilege applies to comments made by legislature during legislative proceedings or public officers in the course of official communication. However, statements made during the conduct of cases in the court by judges, lawyers, witnesses or judicial proceedings and communication between counsel and his client are not defamation. It constitutes an absolute immunity to legal liability; a right of action does not exist against such defendant.

Where an offer of amendment or correction has been made by defendant and accepted in respect of unintentional defamation, the plaintiff cannot sue for defamation thereafter. Where the defendant innocently disseminates defamatory statement, articles such as books film containing defamatory statement without knowing the contents he may be avail of defamation action.

An action for defamation cannot be brought on behalf of a dead person. Reputation damage lawsuit is a personal action; it is only the person who is alive that can sue in respect of it. The death of a defendant brings the action to an end, but it may subsist in relation to surviving co-defendants. This does not however close the option of interested persons from making valid claims through other alternative legal processes and structures. The point being that, in so far as the matter is appropriately captured, with the substantive and procedural jurisdiction duly established, litigants are free to obtain the legal remedies they seek subject to the discretion of the Court.

Another defense is the principle of *Res judicata*, which is based on the belief that there should be an end to litigation<sup>32</sup> in Nigeria. It operates as estoppel, stopping the plaintiff from filling a fresh suit on the ground that one has been filed by him, contested, won or lost. Lastly, under the statute of limitation law, a claim of defamation must be filed within the time permissible by statute otherwise it will become statute barred. The essence of a time bar, being the need to encourage timely institution of such matters, especially when the applicable evidence is still accessible for purposes of achieving a valid determination of the issues before the court and the need to put end to unending litigations on the ground of public policy.

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<sup>25</sup> Iwueke v. I.B.C (2005) 17 N.W.L.R (Pt. 955) 447 at 482 p, 483 p. E-F

<sup>26</sup> Ayeni v. Adesina (2007) 7 NWLR (Pt.1033) 233

<sup>27</sup> Per Chukwuma Eneh, JSC, (as he then was) in Oruwari v. Osler (2013) 22 WRN 1 at 20 lines 15-22;29 lines 30-35

<sup>28</sup> Per Ogunbiyi, JSC in Oruwari v. Osler (2013) 22 WRN 1 at 35 line 40.

<sup>29</sup> Concord Press (Nig) Ltd v. Olutola (1999) 9 NWLR (Pt 620) 578 at 595

<sup>30</sup> Punch Nig Ltd Anor v. Eytene (2001) 17 NWLR (Pt 741) Pg 228 at 255

<sup>31</sup> Oloyede v. Sketch Publishing Co. Ltd. (1977) 1 OYSC (Pt.2) 255

<sup>32</sup> E. Malemi, Administrative Law. (4th Ed. Lagos: Princeton Publishing Co. 2012), 75.

### 3. Legal remedies for defamation under the Nigerian law

The Court may award monetary compensation called damages<sup>33</sup> in favor of the plaintiff. Swift retraction of defamatory statement and apology can have the salutary effects of appeasing the victim of any defamation in Nigeria. It is also not uncommon for there to be a corporate award depending on circumstances of each case, particularly where a claim for such an award has been made and the court is moved to favorably exercise its discretion in this regard.

In *Asiwaju Bola Ahmed Tinubu v. Daar Communications PLC*<sup>34</sup>. The plaintiff sued the defendant, claiming damages in the sum of ₦150 billion as damages against the defendant for tarnishing his reputation over alleged documentary titled: 'Unmasking the Real Tinubu: The Lion of Bourdillon'. In this case, the plaintiff argued that, the said documentary had lowered his reputations in the eyes of the public. He stated that the documentary was politically sponsored to tarnish his reputation in the public eye. DAAR Communications, owned by Chief Raymond Dokpesi tendered an unreserved apology to the plaintiff over the documentary<sup>35</sup>. It appears both parties are satisfied with the *status-quo* as there has not been any further legal maneuverings on the matter in question, at the least nothing evident to interested by-standers.

There are several types of injunction that the Court may award to the plaintiff as long as it is captured in the pleading. The court may award *quia timet* injunction to stop the intended publication before it is been circulated. Interlocutory injunction may also be awarded to stop further dissemination of defamatory statements until the case is concluded. Perpetual injunction may be obtained to stop further publication of such defamatory statement perpetually. The remedies are mutually exclusive and are awarded after careful determination of the specifics of each case.

It is trite law that award of damages in libel is not limited to any specific pecuniary loss, but the damage resulting from an unjustifiable attack on the reputation of the plaintiff ensures directly from such imputation.<sup>36</sup> The discretion of a trial judge to assess and award damages should not be exercised arbitrarily at the whims and caprices of the trial judge but on certain well settled principles thus: actual pecuniary loss; anticipated pecuniary loss; social disadvantage which results; natural injury to the plaintiff's feelings and social standing of the plaintiff in the society<sup>37</sup>.

### 4. Relevance of the Law on Sedition in a Democratic Society

Sedition constitutes a mode of communication or engagement that is set in motion with the principal object of stirring up acts of treason; lesser commotion, and defamation of government. A seditious speech is any oral advocacy to overthrow the government or destruction of the State by force of violence. Sections 50-52 of the Criminal Code and sections 416- 422 of the Penal Code provide for the offence of sedition in Nigeria. Penalty for sedition under the law constitutes; sentence to a term of imprisonment, fine and forfeiture of seditious publication. Section 59 of the Criminal Code provides that any person who publishes or reproduce any statement, rumors or report which is likely to cause fear, alarm to the public or disturb public peace knowingly that such statement is false shall be liable to imprisonment for three years.

The British colonialist to secure compliance with their dictates and political intentions enacted sedition law. Consequently, it was necessary to devise such mechanism to maintain law and order amongst the local citizens or indigenous people. As Nigeria's democratic process evolves, it is also expected that the required *political will* shall foster necessary adjustments. Specifically, in terms of making the required legal reforms on the law of sedition in Nigeria. Moreover, the Constitution, coupled with other Federal and State laws may be adapted and interpreted to deliver the positives embedded in the somewhat controversial laws on sedition.

In order to advance the fundamental tenets of democracy and nationhood; processes must be deployed to guarantee a reasonable degree of freedom of expression. Sedition denies people the right to self-determination. It does not allow constructive criticism, which is a key factor that fosters accountability and also facilitates proactive response to developmental needs. However, if the government feels its reputation has been injured; a libel suit can be filed according to the rules and procedure that applies to every other citizen within Nigeria's territorial boundaries. After all the government having derived its legitimacy on the platform of the law and the mandates of

<sup>33</sup> Guardian Newspaper Ltd v. Ajeh (2005) 12 NWLR (Pt 938) 205 at 229.

<sup>34</sup> Suit No: ID/196GCMW/2015 (unreported)

<sup>35</sup> Available online at; Naija247 News; <http://naija247news.com/2016/02/aits-lion-of-bourdillon-documentary-dokpesi-bows-before-tinubu/> (visited August 14, 2016)

<sup>36</sup> Per Mukhtar, JSC (as she then was) in *UBA v. Davies* (2011) 32 WRN 119 at 149 line 10 CA.

<sup>37</sup> *Supra*, p. 8 pp 145-146 lines 30-10.

the people, should boldly submit to the decisions and directions of the Court. Such outlook will indeed further elevate the trust level of the public in the judiciary, which is usually referred to as the last resort of the common man.

Also, the International Covenant on Civil and Political Rights provide that law shall prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The United Nations Convention on the Elimination of All Forms of Racial Discrimination state that; States shall declare an offence punishable by law, all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination acts of violence or incitement to such acts against any race or group of persons of another culture or ethnic origin. This is further testimony on the issue that hate speeches should not be tolerated in Nigeria's political landscape.

### 5. Defenses to a charge of sedition in Nigeria

In order to preserve law and order, the enabling law prescribes specific defenses to a charge of sedition. As it is obtainable in Nigeria, such defenses will only avail the defendant when such is based on established or verifiable evidence tendered and admissible in the appropriate Court of law. Hence, it lies on the defendant show reasonable cause why a particular defense or sets of defenses will preclude the applicability of the punitive consequences attached to a given seditious charge. The defenses are captured in the following paragraph: That such speech or publication was mere exercise of the defendant's freedom of expression and press; that the publication or the material was not seditious<sup>38</sup>. Prosecution was not initiated within six months of the commission of the offence as stated under the Statute of Limitation Law. Consent of the relevant Attorney General was not obtained before the prosecution was initiated. Uncorroborated evidence of one witness is insufficient to secure conviction for sedition in Nigeria and that he was neither the publisher nor a party to the sedition. That the publication was made to show the ruling government that it has been misled in taking integral policy decisions that affect the welfare of the citizens.

The following substantive defamation cases amongst others, had been decided upon by various established Nigerian courts of record. Individuals as wells as corporate entities filed claims and depending on the weight of evidence requisite judgments and awards were obtained by successful litigants. It is noteworthy a wide range of defamation cases have been brought to the light in the law courts and this can be verified by from different law reports that have catalogued such cases or judicial precedents. These available sources include; The Nigerian Weekly Law Reports, The Nigeria Federated Law Reports and All Nigerian Law Reports.

**Table 1.** Some Cases of Defamation and the Judgments of the Nigerian Courts

S/N	Names of the Parties	Claims	<i>Ratio Decidendi</i> (Reason for the Decision)	Verdicts
1.	Asiwaju Bola Ahmed Tinubu v. Daar Communications PLC Suit No: ID/196GCMW/2015 (unreported)	A claim of ₦150 billion as damages against Defendant for tarnishing his reputation.	Parties eventually settled out of Court.	An unreserved apology was tendered to the Plaintiff.
2.	Guardian Newspapers Ltd V. Rev. Pastor C. I. Ajeh Suit No: SC.234/2005	A claim of Ten Million Naira as damages for publication of libelous article with a restraint order.	The appeal was dismissed for lacks merits, frivolities and for failure to prove publication.	Five Hundred Thousand Naira damages awarded in favor of the Respondent by lower Court was affirmed on appealed. A restrained order from further publication was also made.
3.	Isaac D. O. Ejabulor v. His Highness D. B. Osha SC 161/1987	Publication of a slanderous speech at a Press Conference in a Newspaper. A claim of two Million Naira as damages.	Sufficient evidence that the Defendant authorized the publication of the libelous speech.  The appeal was dismissed for lack of merits.	₦7,500 was awarded as damages against the Respondent at the Court of Appeal. On appeal to the Supreme Court the appeal was dismissed with a cost ₦5000

<sup>38</sup> E. Malemi, Mass Media Law and Press Law (2009 Princeton Publishing Co, Ikeja, Lagos, 3<sup>rd</sup> Edition).

S/N	Names of the Parties	Claims	<i>Ratio Decidendi</i> (Reason for the Decision)	Verdicts  awarded against the Respondent.
4.	Chief P.N. Nsirim v. E.A. Nsirim SC 101/1988	Action for libel with a claim of One Hundred Thousand Naira as general damages.	Publication is necessary element which must be proved if an action for libel is to succeed in Nigeria.	Appeal dismissed for failure to prove publication.
5.	The Sketch Publishing Co. Ltd. V Alhaji Azeez Ajagbemokeferi SUIT NO. SC 47/1988.	A claim of One Million Naira as damages for publication of libel in 1979 Muslim's Almanac.	The publication referred to the plaintiff and it was held to be defamatory.	Damages were awarded in favor of the Plaintiff/Respondent.

The incidents itemized below could have resulted to actions for defamation if the parties are conscious of their right to protection of one's reputation as well as the limitations on issue of freedom expression, as enshrined in section 39 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Below are possible instances where any of the parties could sue for defamation and claim damages, ask for apology or retraction of defamatory statements or publication<sup>39</sup>. However, it is instructive that to restate the notorious fact about the reformatory state attributable to the Nigerian judicial system. The relative slow process of judicial reformation in terms of, administration of justice, access to courts and other ancillary matters has by implication has constrained the full appreciation of matters on defamation.

**Table 2.** Potential Political Contemporary Defamatory Incidents in Nigeria

S/N	Parties	Facts	Status /Remark
1.	Jimoh Ibrahim v. INEC	There is an ongoing factional dispute at the primary election level within a major political party in Ondo State, Nigeria. This has precipitated allegations that are libelous in nature. That the officials of the electoral body solicited \$1million gratification to perform their statutory functions in the Gubernatorial election coming up in Ondo State. This is against the back drop that the said candidate had obtained a valid judgment which is still pending on appeal filed by other faction in same party <sup>40</sup> .	This was published in National newspapers. This could warrant an action for defamation by the electoral body. The statement has the potential to relegate the reputation of the INEC officials in Nigeria.
2.	Buhari v. AIT	At the last general election in 2015, a private electronic media outfit aired purported defamatory contents against one the flag bearer of then opposition party. The content imputed indirect embezzlement on the flag bearer tenure as the PTDF chairman. This act impairs the reputation of an important watchdog (the press) in the nascent democracy. The chairman of that Television outlet has an ongoing litigation bordering on monies purported to have accepted for electioneering campaigns during the 2015 presidential election in Nigeria <sup>41</sup> .	This ought to have warranted an action for defamation by that particular flag bearer who eventually won the election because the allegations were unfounded. Till date the then flag bearer has initiated no defamatory action.

<sup>39</sup> H. McLean and J. Wiley Sons 'Legal Issues in Retractions and Corrections' (2013) COPE Asia Pacific Seminar. Available at: [http://publicationethics.org/files/HelenMcLean%20\(1\)\\_0.pdf](http://publicationethics.org/files/HelenMcLean%20(1)_0.pdf) (visited October 31, 2016), pp.1-18.

<sup>40</sup> Independent National Electoral Commission 'INEC denies \$1m bribery allegation by Jimoh Ibrahim'. Available at: <http://www.vanguardngr.com/2016/10/inec-denies-1m-bribery-allegation-jimoh-ibrahim/> (Visited October 26, 2016)

<sup>41</sup> Breaking Times 'The Real Buhari' (2016) Available at: <http://www.thebreakingtimes.com/the-real-buhari-here-is-the-muhammadu-buhari-documentary-aired-by-ait-everyone-is-talking-about/> (Visited October 26, 2016)



**Table 3.** Potential Fraudulent Defamatory Incidents in Nigeria

S/N	Names of the Parties	Facts	Status /Remark
1.	Patience Jonathan v. EFCC	The alleged \$15Million said to be domiciled in certain accounts belonging to the spouse of the last president of Nigeria.	Action for defamation ought to have been instituted by the innocent party but investigation is still on going by the anti-corruption agency in Nigeria.
2.	Jubrin v. Dogara	The budget paddling saga which led to the allegations of corruption and lack of transparency by the chairman Appropriation Committee, House of Representative against the speaker of the House.	This allegation of budget padding against the speaker is serious defamatory statement against the speaker if found innocent he could sue in court for defamation. It may occasion loss of reputation and integrity of the speaker in the eyes of right-thinking Nigeria citizens.
3.	Saraki v. Ekwereamadu	The purported allegation of forgery of the House Rules the two principal officers' of the senate: the Senate President and his deputy.	Saraki and Ekwereamadu could as well sue the Federal government for defamation despite the fact that the Federal government has withdrawn the suit.
4.	Justice Nwguta v. DSS	The arrest of sitting judges on the alleged corruption. The implication of such arrest especially the person involved has impaired the reputation of the judiciary. Moreover, the Nigerian Bar Association is disposed to protecting the image of the judiciary and also ensures the people do not lose confidence in the sanctity of the judicial process. Nigerian Bar Association advocated that the arrested judges should go on compulsory leave pending the determination of the allegations	One would have expected the arrested judges to sue for defamation and enforcement of their fundamental human rights. Investigation is still on going by the DSS.
5.	Goodie Ibru v. EFCC	The EFCC recently declared wanted and issued a warrant of arrest against one of the member of an aristocratic family for alleged conspiracy and diversion of N1.8 billion property of Ikeja Hotel PLC. The former Petroleum Minister under the last administration was alleged to have diverted N1.2 trillion from the Nigerian treasury. She has also been accused of awarding multibillion naira contracts without due process. All these allegations have a defamatory undertone but the substantive matters are still pending before the court.	The declaration in the newspapers and other electronic media is defamatory. One would ordinarily expect him to sue for defamation.
6.	MTN V.FGN	The alleged repatriation of funds out of Nigeria which did not comply with the Central Bank of Nigeria Financial and Miscellaneous Act. Regulation of Certificate of Capital Importation.	This has really impacted negatively on the corporate image of the Company and one would have expected the Company to sue for defamation especially if the allegation is untrue. Investigation is still on going by Senate Committee and anti-corruption agency to unravel the facts.

## Conclusion

The established judicial precedents as well as the probable scenarios on actions for defamation, provide ample evidence or grounds for the continued relevance of the law on sedition. This assertion is made bearing in mind the peculiarities of the Nigerian judicial context, which accounts largely for the practicalities or applicability of this law amongst several others. The paper has reviewed applicable laws on defamation, sedition and selected provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended). This paper opined that the law of sedition is outdated and has been over taken by social and contextual realities of the Nigerian democratic experience. It suppresses the right of Nigerians to hold their elected leaders accountable and thus brings to the fore need for legislative reform in this regard. There are several laws that can address defamatory statements and also mitigate seditious act. Thus, if the requisite laws are identified and effectively harmonized, such an

approach will contribute substantially to resolve matters that are expressly, impliedly and constructively related to defamation, likewise sedition.

In the light of the above views and discussion, there are plausible social and legal foundations to regulate exchange of opinions and views across various platforms, especially in this era where innovations in technology have impacted on the context and pace of communication space. Nigeria must be mindful of the negative implications of not effectively regulating the information space. Such a posture further highlights the depth of apathy for a robust policy understanding and implementation. It will be beneficial for the development of jurisprudence in this aspect of law (Torts) to integrate societal advances, innovations and contextual realities. This approach will in the long run provide a veritable platform to protect the interests of aggrieved parties, whilst also securing the well-being of the larger society.

Furthermore, there is need for proactive enforcement of our laws prohibiting defamatory statements and hate speeches in Nigeria. The deploying of legal framework robust enough to deter prevalence of defamation and promote a mature and responsible culture of expression is indeed long overdue in Nigeria. This is of heightened importance even as Nigeria seeks to improve its corporate image in the local and global arena. Freedom of expression and the press is sine qua non for the sustenance of our democracy. There are plethora of laws dealing with breakdown of law and order in Nigeria such as the Criminal Code and penal Code which can effectively address the objectives of the law of sedition in Nigeria. There is a need to increase the enlightenment of Nigerians on their fundamental rights, which include the right to freedom of expression and the right to the protection of their reputation. Instructively, where people reasonably appreciate the essence of securing their rights; will attract foreign investment and promote robust economic development. Thus, as all stakeholders gain increased access and protection under the applicable laws, the greater the opportunity to appraise the continued relevance of such laws in Nigeria.

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### International Conventions:

- \*\*\* Article 19 of the Universal Declaration on Human Rights.
- \*\*\* Article 9 of the African Charter on Human and Peoples Rights.
- \*\*\* The United Nations Convention on the Elimination of All Forms of Racial Discrimination.

### Statutes:

- \*\*\* Section 39 (1) (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- \*\*\* Section 45(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- \*\*\* Section 373 of the Criminal Code, Laws of the Federation of Nigeria, 2004.

### Decided Cases:

- \*\*\* *Nsirim v. Nsirim* (2001) FWLR (Pt. 96) P.433.
- \*\*\* *Sketch Publishing Co.Ltd .v. Ajagbemokeferi* (1989) 1 NWLR Pt.100, P.678 SC.
- \*\*\* *Oloyede v. Sketch Publishing Co. Ltd.* (1977) 1 OYSC (Pt.2) 255
- \*\*\* *Godfery v. Demon Interne Ltd* (1999)4 ALL ER 342.
- \*\*\* *Independent Newspapers v. Idiong* (2011) 46 WRN 99
- \*\*\* *Asiwaju Bola Ahmed Tinubu v. Daar Communications PLC* Suit No: ID/196GCMW/2015 (unreported)
- \*\*\* *Guardian Newspaper Ltd v. Ajeh* (2005) 12 NWLR (Pt 938) 205 at 229.
- \*\*\* *Ejabulor v. OSHA* (1990) 5 NWLR (Pt 148) 1 at 20

\*\*\* Iwueke v. I.B.C (2005) 17 N.W.L.R (Pt. 955) 447 at 482 p, 483 p. E-F

\*\*\* Ayeni v. Adesina (2007) 7 NWLR (Pt.1033) 233.

\*\*\* Concord Press (Nig) Ltd v. Olutola (1999) 9 NWLR (Pt 620) 578 at 595

\*\*\* Punch Nig Ltd and Anor v. Eytene (2001) 17 NWLR (Pt 741) p. 228 at 255