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## TEMPLARS ThoughtLab

### Presumption Of Falsity Under Nigerian Law of Defamation – Analysing the Case of Abalaka V. Akinsete & 2 Others

#### Introduction

The recent judgment from the Supreme Court in **Abalaka v. Akinsete**<sup>1</sup> offers a fascinating insight into the evolving jurisprudence of defamation law in Nigeria, particularly concerning the presumption of falsity. In this case, the Supreme Court solidified the shift from the longstanding presumption that once a publication is shown to be defamatory, it is presumed false unless the defendant proves its truth. By the decision of the Court, A claimant is now required to not only establish that the publication is defamatory but to also prove its falsity. This development not only has significant implications for Nigerian jurisprudence but also contributes to the global discourse on balancing freedom of expression with the protection of individual reputation.

Historically, common law jurisdictions, including Nigeria, adhered to the principle that defamatory statements were presumed false, placing the burden of proving its truth on the defendant. This approach, rooted in English common law, was designed to protect individual reputations in an era when personal honour was paramount, inevitably prioritising the protection of reputation over and above the freedom of expression. However, the judgment under review suggests a subtle yet significant shift in Nigerian defamation law, aligning it more closely with modern global trends that prioritize freedom of expression.

#### Historical appreciation of the Presumption of Falsity

The presumption of falsity in defamation law refers to the legal principle that, once a statement is shown to be defamatory (i.e., harmful to someone's reputation), the court automatically presumes that the statement is false unless the defendant proves otherwise. In other words, in a defamation case, the burden of proving the truth of the defamatory statement typically shifts to the defendant.

<sup>1</sup> [2023] 13NWLR343

The presumption of falsity in English defamation law has its roots in the development of common law when reputation was regarded as a valuable asset, and courts sought to protect individuals from harm caused by false and damaging statements. The law of defamation evolved to recognize that when a person's reputation is attacked through slander or libel, the court would automatically assume that the defamatory statement was false unless the defendant could prove otherwise. This presumption of falsity was integral to defamation claims, reducing the plaintiff's burden of proof. The defendant was given the opportunity to rebut this presumption by proving the truth of the statement under the defence of justification.<sup>2</sup>

One of the early landmark cases in the development of this principle was **Roberts v. Camden**<sup>3</sup>, where Lord Ellenborough CJ held that if the defendant does not prove the truth of the defamatory matter, the law assumes it to be false. The presumption of falsity in defamation cases became a consistent feature of English law, and this approach made it easier for plaintiffs to seek redress against damaging false statements. The rule reflected the idea that a person's reputation should not be damaged based on unverified claims.<sup>4</sup>

Over time, the presumption of falsity was confirmed and reinforced in other cases such as **Rowe v Roach**<sup>5</sup> where the court again reiterated that a plaintiff in a defamation suit need not prove the falsity of the words published to maintain an action in defamation.

Historically, defamation law in Nigeria leaned heavily on the principle that defamatory statements were presumed false, placing the burden of proof on the defendant. This presumption allowed claimants to establish a prima facie case of defamation merely by demonstrating that the publication was defamatory. In **A.C.B. Ltd. v. Apugo**<sup>6</sup>, the court held that once a plaintiff proves defamatory publication, the burden shifts to the defendant to justify the truth of the published statement. This aligns with the global understanding of justification as a defence, where truth serves as a complete defence against defamation claims. The Supreme Court in **Iloabachie v. Iloabachie**<sup>7</sup> relying on Gartley on Libel and Slander<sup>8</sup> further echoed this traditional view.

More recently, Nigerian courts have begun shifting away from the traditional presumption of falsity. In **Ekong v. Otop**<sup>9</sup>, the Supreme Court explicitly placed the burden on the claimant to prove the falsity of the statement in question. In this case, the court required the plaintiff to establish not only that the words were defamatory but also that they were false.

The most recent case that represents the current position of the law on the presumption of falsity is **Agbalaka v. Akinsete**. In this case, the Supreme Court reaffirmed its stance from **Ekong v. Otop**, holding that the claimant in a defamation case must not only prove that the statements were defamatory but also establish their falsity. This case underscores the evolving legal principle that falsity is no longer presumed automatically.

<sup>2</sup> The Defamation Act of 2013 has provided for the statutory defence of Truth in place of the defence of Justification.

<sup>3</sup> (1807) 9 East 93 (KB) at 94; 103 ER 508 at 509

<sup>4</sup> The 3<sup>rd</sup> element proposed by Lord Ellenborough CJ is that malice is to be "necessarily inferred from making a false charge.

<sup>5</sup> (1813) 1 M & S 304; 105 ER 114.

<sup>6</sup> (2001) LPELR 9 SC

<sup>7</sup> [2005] 13 NWLR 695 at

<sup>8</sup> 7<sup>th</sup> edition, Paragraph 351 at 152.

<sup>9</sup> (2014) LPELR - 23022(SC), (2014) 11NWLR (Pt.1419) 549.

## Procedural History of the Case

The Appellant initiated legal proceedings on 19th February 2001 against the 1st, 2nd, and 3rd Respondents, claiming that they defamed him in the eyes of the public. He sought N500 million in damages for libel and slander, a perpetual injunction to stop further defamatory publications about him and his vaccines, and a public apology from the Respondents. During the trial, the Appellant testified and called four witnesses, while the 2nd and 3rd Respondents did not file any defence or call witnesses. Despite this, the trial court ruled against the Appellant on 25th April 2006.

Unhappy with the trial court's judgment, the Appellant appealed to the Court of Appeal on 26th June 2006. However, on 8th July 2010, the Court of Appeal upheld the lower court's judgment, leading the Appellant to file a further appeal to the Supreme Court.

The major issue for determination was whether the Appellant had the obligation to prove that the defamatory statements were false given that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent neither filed a defence nor called witnesses at the trial court.

On the other hand, the 1st Respondent's counsel, also raised the issue of Whether the Court of Appeal was right in affirming that the Appellant failed to prove his claims against the Respondents. Additionally, the 2nd and 3rd Respondents' counsel distilled sole issues for determination, focusing on whether the courts' concurrent findings should be set aside by the Supreme Court.

## Background fact

Dr. Jeremiah O. Abalaka (the Appellant) claimed to have discovered a cure for HIV/AIDS, a significant and bold assertion given the global scale of the disease and its elusive treatment. His grievance arose from statements made by the 1st, 2nd, and 3rd Respondents—Prof. Ibironke Akinsete, Dr. Tim Menakaya, and Auwalu Mohammed Farouk—during a televised press conference, which was later reported in print media. During the press conference, the 3<sup>rd</sup> Respondent had asserted that he was treated with the vaccines of the Appellant by the military, but he was not cured of HIV/AIDS. He went further to state that some of his other colleagues who had used the vaccines were dead hence, the Appellant and all other persons who paraded themselves as having found the cure to HIV/AIDS were liars and cheats. He then asked the anchor what the government intended to do for people like him who had been used as guinea pigs.

Dr. Abalaka contended that the statements made at the press conference were defamatory, and he argued that they damaged his reputation in the eyes of the public. The claims made by the Respondents, according to him, questioned the legitimacy of his vaccine and undermined his credibility as a medical professional.

## Findings of the Supreme Court

In dismissing the appeal, the Court per Ogunwumiju JSC held an Appellant in a defamation case must prove that the defamatory statement was published, the statement referred to him, **the statement was false**, the statement conveyed a defamatory meaning to those who read or heard it and that the defamatory statement caused harm to his reputation, lowering him in the estimation of right-thinking members of society or exposing him to hatred, ridicule, or contempt. The court consequently held that Appellant in this case bore the burden of proving the falsehood of the statements made by the Respondents.

## Why is this judgment significant?

The significance of this judgment lies in its clarification of the burden of proof in defamation cases under Nigerian law, particularly regarding the presumption of falsity. Traditionally, once a claimant establishes that a defamatory statement was published about them, Nigerian courts have presumed that the statement is false, placing the burden on the defendant to prove that the statement is true as a defence. This principle was affirmed in earlier cases, such as *A.C.B. Ltd. v. Apugo*<sup>10</sup>, where the court held that defamatory words are presumed false unless the defendant can justify them by proving their truth. In this judgment, however, the court highlights a shift towards placing a heavier burden on claimants, requiring them to prove not only that the statements were defamatory but also that they were false.

This judgment underscores the evolving stance of Nigerian courts on defamation law, particularly in cases involving public interest or issues of significant public concern, such as health claims. By emphasizing the claimant's responsibility to prove falsity, especially in situations where the truth of the statement may be in the public domain (e.g., the efficacy of a claimed HIV/AIDS cure), the court signals a more rigorous approach to protecting freedom of expression. This is particularly relevant in cases where the defendant makes statements about public health or scientific matters, where public interest may require such claims to be scrutinized. The court's insistence that the Appellant prove the falsity of the claims about his HIV cure reflects the importance of balancing individual reputation against the need for truth in public discourse.

Ultimately, this judgment marks a shift towards greater accountability for claimants in defamation cases. The Appellant's failure to establish the falsehood of the statements about his HIV/AIDS cure resulted in the dismissal of his claim. This outcome signals to future litigants that Nigerian courts may increasingly require plaintiffs to prove falsity, rather than relying solely on the presumption of falsity once defamatory words are published.

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<sup>10</sup> *Supra*.