

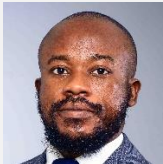


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Criminal liability for defamation in Nigeria: can companies be indicted for wrongful publications?

Introduction

The most important asset of every business is its reputation, and it is important that it is jealously protected. As a matter of fact, the reputation of a company is easily the primary factor that attracts clients to a company's business, products or services and if any harm were done to the company's reputation, the company would suffer a significant loss in revenue. Likewise, if a company engages in the publication of damaging false claims about other businesses or competitors, that company will face criminal indictment notwithstanding that it is an unnatural person without a mind of its own.

Defamation is the act of communicating false statements about a person¹ that injures the reputation of that person – 'person' in this context includes companies and corporations.² It is any statement that is *calculated to expose to hatred, cause avoidance, shunning, contempt, ridicule, or conveying imputations that are injurious to a person's office, profession, trade or business.*³ Defamation is both a tort and a crime under Nigerian law and may be in verbal or written form⁴. It can also happen online or offline.

Online defamation which is mostly in written form refers to defamation that occurs online (i.e., on social media platforms or the internet) and for it to be civilly actionable, a litigant is required to show that the online defamatory statement is false, he suffered actual harm because of the publication and has evidence of the online defamatory statement.⁵ However, while it is settled

¹ Under the Nigerian Interpretation Act, LFN,1990 "Person" includes individuals and firms/corporations.

² Nigerian Supreme Court in Standard Chartered Bank (Nig.) v. Ameh (2022) 15 NWLR (1854) 559.

³ Eyo v. Eastern Nigeria Information Service (1962) 7 ENLR, 144; Okpanachi v. Punch (Nig) Ltd & Ors (2021) LPELR-54887 (CA).

⁴ Defamation in verbal form is referred to as "slander" while defamation in written form is referred to as "libel".

⁵ Giwa v. Ajayi (1993) 5 NWLR (PT. 294) 423.

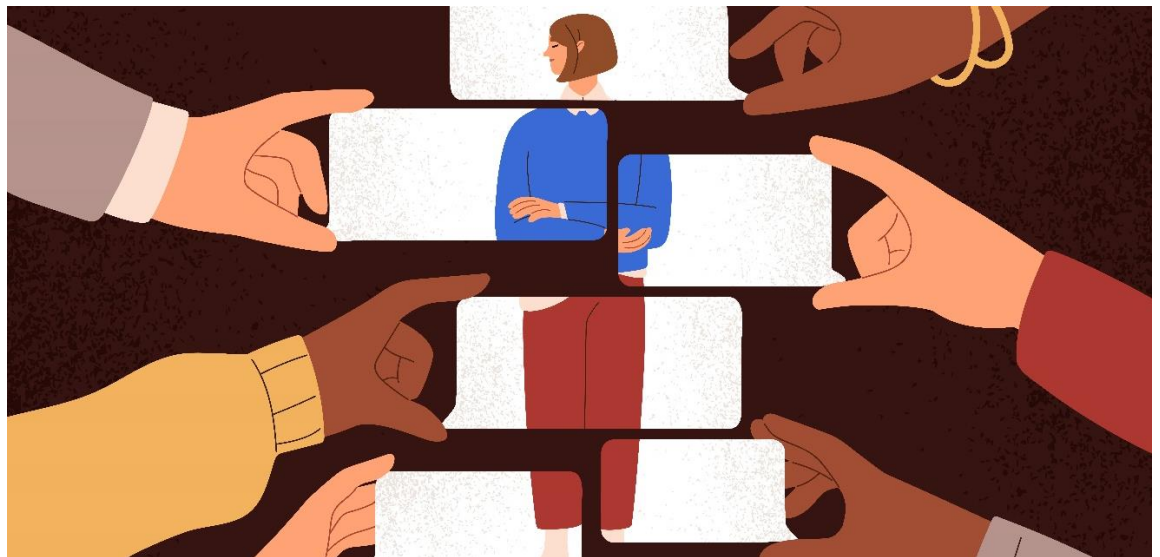
that companies will be civilly liable for online defamation where the above elements exist, the ingredients that are required to establish criminal liability for online defamation are based on the provisions of the penal statute that criminalizes it.

With respect to offline defamation, which is defamation that occurs on traditional platforms such as printed media without the internet, civil liability will arise where there is a defamatory statement about a party and the statement has been published to at least one person other than the party defamed. As for criminal liability in offline defamation, the prosecution is required to show beyond reasonable doubt that the Accused (*who may be an individual or a company*) made or published a defamatory statement; (ii) the statement was against the nominal complainant; and (iii) the statement has harmed the reputation of the nominal complainant⁶. Also, publication in the context of offline defamation means communicating the defamatory statement) to at least one person besides the nominal compliant through any means other than the internet.

As noted above, liability in defamation may be civil or criminal, and applies to both natural and artificial persons such as companies. This article will focus on the criminal liability of companies for defamation in Nigeria.

General principles of corporate criminal liability

An important feature of companies and corporations, be it state-owned or individual enterprise, is the 'corporate personality' which confers the unique identity usually accorded living persons on companies. Corporate personality is the status bestowed in law on registered companies which gives them an independent legal existence from that of its officers, directors, and shareholders. It encompasses the capacity of a corporation to exist as an entity of its own, responsible for its corporate actions, with the ability to sue and be sued.



⁶ *Iwundu v. State* (2024) LPELR-61730 (CA)



Person

It should be noted that the word “person” is defined under the Nigerian Interpretation Act to include both natural and juristic persons such as companies and corporations..

Considering that companies have the status of 'corporate personality' with the capacity to sue or be sued under Nigerian law, companies can be indicted for offences in Nigeria if they engage in criminal activity either directly or indirectly through their natural human agents or representatives. This means that companies can be held to account for their actions or suffer criminal liability just as individuals when they engage in criminal activity even though they do not have a mind of their own. In imputing criminal liability to companies, Section 89 of the Companies and Allied Matters Act, 2020 provides that *any act of the members in general meeting, the board of directors, or a managing director while carrying on the usual business of the company, shall be treated as the act of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person*⁷. This means that companies – despite being juristic entities without a mind of their own – can be indicted for offences under Nigerian law.

Can a company be indicted for defamation in Nigeria?

As mentioned earlier, defamation may occur online or offline and is actionable under Nigerian law irrespective of where it occurs. Liability may also be civil or criminal because it is a tort as well as a crime under Nigerian penal/criminal laws.

Nigeria has two system of penal statutes, namely – the Penal Code Act (“PCA”) which applies to the Northern part of the country and the Criminal Code Act (“CCA”) which applies to the Southern part of the country.⁸ By the provisions of Section 391 (1) of the PCA,⁹ *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 imputations concerning a person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said to defame that person*. It should be noted that the word “person” is defined under the Nigerian Interpretation Act to include both natural and juristic persons such as companies and corporations.¹⁰ Therefore, the view of the writers is that a company can be indicted for defamation in Nigeria if it publishes any statement concerning any person or business with intent to harm the reputation of that person or business.

In the case of *Iwundu v. State*¹¹, the Nigerian Court of Appeal held that section 391 of the PCA is intended to protect the reputation of persons from damaging claims and went on to identify the basic ingredients that are required to sustain a charge of defamation. The ingredients which the prosecution is required to establish beyond reasonable doubt are that: (i) the Accused (*which can be an individual or a company*) made or published an imputation, sign or visible representation; (ii) the imputation, sign or visible representation was against the nominal complainant; and (iii) the imputation, sign or visible representation has harmed the reputation of the nominal complainant such that its estimation is directly or indirectly lowered in the society.¹² In like manner, in the case of *Aviomoh v. Commissioner of Police*¹³ where the Supreme Court was invited to determine whether it is an offence to sell, offer for sale or publish any printed or engraved substance that contains a defamatory matter, the Court relied on sections 391-395 of the Penal Code Law and held that it is

⁷ Also see the case of *Abacha v. AG Federation* (2014) 18 NWLR (part 1438) 21, where the court held that a company can be prosecuted for offences as if it is a natural person.

⁸ The inapplicability of the PCA to the south is a settled matter, however, the CCA may sometimes apply in the Northern part because in *Adamu v FRN* (2021) LPELR-54598(CA) the Defendant was convicted by a Gombe Division of the Federal High Court for offences under the CCA. That notwithstanding, the position is that the CCA is inapplicable to the North.

⁹ Which are adopted verbatim in section 391 of the Jigawa, Niger, and Kwara State PCLs.

¹⁰ Penal Code Act defines "Person" to include "a company or an association or body persons, whether incorporated or not".
¹¹ (2024) LPELR-61730(CA)

¹² *Iwundu v. State* (2024) LPELR-61730(CA).

¹³ (2022) 4 NWLR (pt. 1819) 69 SC.

an offence to print, cause to be printed or publish false statements about a person. In other words, the right to freedom of expression under the Nigerian Constitution is restricted by the right of others to not be defamed. Persons or companies cannot trample upon the rights of others in the guise of exercising their freedom of expression or *advertising their products or services*.

The provisions of the CCA concerning criminal defamation are not different from the provisions of the PCA. However, under the CCA, there is an additional qualification which is that publication must not be to a third party for it to be actionable¹⁴ – a company can be indicted for defamation even where the publication was read by only the person defamed¹⁵.

Unlike Section 391 of the PCA which focuses on offline/traditional defamation that occurs without the use of the internet, we note that companies may also be criminally liable for online defamation under the criminal laws of States that proscribe it since crimes are matters under residual list¹⁶ which States within the Nigerian Federation have the legislative prerogative to legislate upon. Apart from Edo, Ekiti, and Lagos State where defamation was recently decriminalized, defamation (online and offline) is a crime in other States of the Federation and is punishable under the State criminal laws¹⁷. In Kaduna State for instance, section 371 of the Penal Code law of Kaduna State expressly proscribes online defamation. The section provides that “*whoever by words either spoken or reproduced by mechanical or electronic means or by means of Internet communication intended to be read or by signs or by visible representations, makes or publishes any imputation concerning a person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, has defamed that person and is guilty of an offence*.”

Furthermore, while the criminal laws of some states do not specifically use the word “internet” or “online defamation” in their language, it should be borne in mind that companies or persons may still be indicted for online defamation in those States because the definition of publication¹⁸ under the laws have been judicially interpreted to include statements published online. An example is the case of *Stanbic IBTC Bank v. Longterm Global Capital Ltd & Ors*,¹⁹ where the Court of Appeal held that electronic dissemination of information qualifies as publication in today’s digital age²⁰.

Liability of companies for Cyber stalking in Nigeria

Under the Cybercrimes Act 2015, the offence of “cyber stalking” was criminalized. The ingredients of the offence under section 24(1)(b) of that Act were that a person (including artificial persons such as companies) intentionally sent messages that are false by means of computer systems or networks; and for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill-will or needless anxiety to another person.²¹ To establish conviction for that offence which is akin to online defamation in substance, the prosecution was

¹⁴ Section 373 of CCA. Unlike in civil defamation where communication of the defamatory matter to the plaintiff alone will not constitute publication.

¹⁵Section391(1).

It is immaterial whether at the time of the publication of the defamatory matter, the person concerning whom such matter is published is living or dead.

¹⁶ Residual list is a reference to list of items that are not listed in the exclusive and concurrent legislative lists provided in second schedule to the constitution of the Federal Republic of Nigeria, 1999.

¹⁷ Under Section 391 (1) of the Penal Code Act, a company can be criminally liable if it defames an individual

¹⁸ Publication is the deliberate act of making the defamatory words known to at least one person other than the person about whom they were written. In States where the Criminal Code Act is applicable, publication includes when the defamatory statement is read by the Defendant alone.

¹⁹ (2021) LPELR-55610(CA).

²⁰ Also, in *Wala v. FGN* (2020) LPELR – 51082, the Court of Appeal held that a post that was made on Facebook qualified as defamation and convicted the Defendant.

²¹ (2021) LPELR-54201(CA).



Cyber Stalking

If the prosecution failed to establish this, the defendant would be exonerated.

required to present evidence to show that annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety resulted from the publication made by the defendant. If the prosecution failed to establish this, the defendant would be exonerated. In the case of *Raymond Akolo Julius v. Federal Republic of Nigeria*²² where section 24 of the Act came up for consideration, the Court dismissed the charges against the defendant because the prosecution failed to establish the elements of the offence. The implication of this decision is that, if the prosecution succeeded in establishing the elements of the offence against the defendant, the defendant would have been convicted for cyberstalking/online defamation irrespective of whether it is a natural or juristic person.

Section 24 of the Cybercrimes Act was recently amended by the Nigerian legislature to reckon with the directive of the Ecowas Community Court of Justice in the cases of ***Laws and Rights Awareness Initiative v. Federal republic of Nigeria***²³ and ***Socio-Economic Rights and Accountability Project v. the Federal Republic of Nigeria***.²⁴ In these cases, the ECOWAS Community Court nullified section 24 of the Act and directed the Nigerian government to amend the provision to enable the law conform with the fundamental rights of Nigerian citizens to freedom of expression guaranteed under the Constitution of the Federal Republic of Nigeria²⁵ and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.²⁶

The provisions have consequently been amended in the Cyber Crimes (Prohibition, Prevention, etc.) (Amendment) Act 2024²⁷ (the “**New Act**”). The New Act has replaced paragraphs (a) and (b) of the 2015 Act with an entirely new provision which is restricted to publications that are intended to cause a breakdown of law and order or threat to life.

Conclusion

In sum, it should be borne in mind that companies may be criminally liable for offline and online defamation in Nigeria (especially in States where online defamation is expressly proscribed) irrespective of the fact that companies are unnatural entities – without a mind of their own. Also, even though online defamation has been decriminalized under the amended Cybercrimes Act and the defamation law of Edo, Ekiti, and Lagos States, companies can still be indicted for online defamation under the laws of the State where the defamatory publication is made. We therefore recommend that companies stay abreast with the legislative enactments in Nigeria on defamation and always review publications that are made in the ordinary course of their businesses to avoid criminal indictment.

²² (supra).

²³ Suit No. ECW/CCJ/APP/53/18 (Judgement No. ECW/CCJ/JUD/16/20).

²⁴ Suit No ECW/CCJ/APP/09/19 (Judgement No. ECW/CCJ/JUD/12/21).

²⁵ Section 39 of the Constitution of the federal Republic of Nigeria, 1999, as amended

²⁶ Cap. A9, Laws of the Federation of Nigeria 2004, article 9

²⁷ The Cybercrimes (Prohibition, prevention, etc.) (Amendment) Act 2024 was signed into law by President Bola Ahmed Tinubu on Thursday, February 28, 2024.