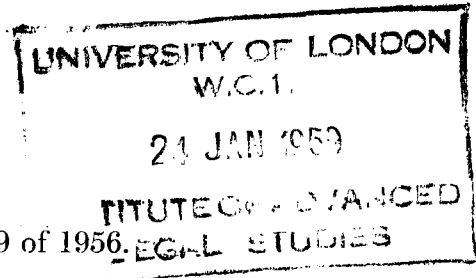


PC  
GH4.69 19, 1958



In the Privy Council.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL  
(NIGERIAN SESSION)

52042

BETWEEN

THE HON. OBAFEMI AWOLowo ... (Plaintiff) Appellant

AND

(1) ZIK ENTERPRISES LIMITED

(2) A. Y. S. TINUBU ... (Defendants) Respondents.

CASE FOR THE APPELLANT

RECORD

1.—This is an appeal from a judgment of the West African Court of Appeal (Foster-Sutton P., de Comarmond C.J., and Coussey J.A.) dated 11th March, 1955, setting aside a judgment of the Supreme Court of Nigeria (Jibowu J.) dated 13th April, 1953. pp. 87-96 pp. 61-81

2.—The action (Suit No. 270/52) was brought by the Appellant as Plaintiff on 21st June, 1952, in the Lagos Judicial Division of the Supreme Court of Nigeria to recover damages for libel and to obtain an injunction in respect of words published in a daily newspaper entitled the "West African Pilot" on June 10th and June 11th 1952. The Respondent Company was sued as the proprietor, publisher and printer of the "West African Pilot" and the Respondent Tinubu as editor thereof. pp. 1-5

3.—The words complained of were contained in two front page articles published in the "West African Pilot" and are as follows :

(June 10th 1952) " ACTION GROUP THREATENS CRISIS TO WIN OVER THE GOVERNMENT  
" SECRET BEHIND PLAN DISCLOSED.

" Political observers believe that the motive behind the  
" delegation to the Government concerns the Iga Idunganran  
" Civil Case, the Ilorin boundary and other issues affecting directly  
" or indirectly, the Action Group. It is believed also that the  
" party may endeavour to use power politics to enable the  
" Government to yield to certain demands which the Action  
" Groupers feel must be conceded in order to avert a constitutional

RECORD

“ crisis. Apart from the walk-out threat reliable sources believe  
 “ also that Action Group Ministers may resign en bloc in order  
 “ to effect the demands of the party over the issues at stake.

p. 4, l. 14

“ Meanwhile, it is understood that the Government will be  
 “ represented in the proposed parley with Government by Mr. Eric  
 “ Himsworth, Financial Secretary and Mr. Harold Cooper, Public  
 “ Relations Officer, and others including the Governor himself.”

The said words will hereinafter be referred to as “ the words complained  
 “ of in Exhibit B.”

(June 11th 1952) “ GOVERNMENT TURNS BACK ACTION GROUP WITH 10  
 “ NO TO ALL DEMANDS.

p. 4, ll. 21-24

“ . . . . The Ikenne trial also re-echoed in the parley, but the  
 “ Government felt that it was an issue for the Legal Department  
 “ and the court, and not the concern of the Governor. On this  
 “ matter the Governor refused to make a statement.”

These said words will hereinafter be referred to as “ the words  
 “ complained of in Exhibit B.1.”

4.—The learned trial Judge held that these words were defamatory  
 of the Appellant and awarded him damages as hereinafter set out. On  
 appeal the West African Court of Appeal held that the Appellant had not 20  
 been defamed and that the Respondent Tinubu was in any event not liable  
 for the publications. The Appellant now seeks to restore the award of  
 damages.

5.—On 10th June 1952 the Appellant, who was at all material times  
 the Minister for Local Government in the Western Region of Nigeria and  
 a member of the Executive Council of the said Region and leader of the  
 Action Group, together with all the Ministers of the Government of the  
 Western Region and the four Ministers of the Central Government appointed  
 from representatives of the Western Region, had a conference with His  
 Excellency the Governor of Nigeria. 30

p. 4, ll. 28-35

6.—The Appellant alleged that the words complained of in Exhibit B  
 meant and were understood to mean that the Appellant and the other  
 Ministers described in paragraph 5 hereof

- (a) were attending the said conference, *inter alia*, to get Government  
 to interfere with the course of justice in the Suit No. 276 of 1949,  
 an appeal in respect of which was then pending before the West  
 African Court of Appeal; and
- (b) intended and threatened to create a constitutional crisis in order  
 to force the hands of the Governor.

7.—The Appellant alleged that the words complained of in Exhibit B.1 40  
 meant and were understood to mean that the Appellant and the said  
 Ministers had asked the Governor and the other officials present at the  
 conference to interfere in the course of justice namely in the appeal of one

p. 4, ll. 36-42

Sadiku Salami against his conviction for murder which appeal was then pending before the West African Court of Appeal.

RECORD

8.—The Appellant relied in support of the above innuendoes on the facts and matters set out in paragraphs 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Particulars of Claim. pp. 2-4

9.—In aggravation of damages the Appellant relied on two matters set out under paragraph 27 of the Particulars of Claim. p. 5, ll. 6-17

10.—The Respondents delivered separate Statements of Defence. The two defences are substantially identical save that the Respondent Company in their Statement deny that they are the proprietors, printers and publishers of the “ West African Pilot ” while the Respondent Tinubu denies in his Statement that he was the editor of the said newspaper. p. 9 p. 11

11.—The Respondents’ defences may, therefore, conveniently be summarised as follows :—

- (i) the Respondents did not publish any of the words complained of ;
- (ii) the words complained of did not refer to the Appellant ;
- (iii) the words complained of did not bear the meanings respectively alleged in the innuendoes ;
- 20 (iv) the words complained of were a fair and *bona fide* comment upon a matter of public interest, namely the meeting between the Action Group and the Governor ;
- (v) the publication of the words complained of was the subject of privilege.

12.—On 2nd February 1953 another action (Suit No. 273/52) brought by the Appellant against the Respondent Company and one Mbonu Ojike was consolidated with the action which is the subject of the appeal. It is submitted that this is relevant to the appeal only in so far as inevitably the judgments of both the learned trial Judge and the West African Court of Appeal deal with the consolidated action. p. 16

30 13.—The action was heard in February and March 1953 before Jibowu J. sitting without a jury, and judgment was given on 13th April 1953 for the Appellant against both Respondents in the sum of £2000 damages and 300 guineas costs. The claim for the injunction was taken to have been abandoned. pp. 17-61 pp. 61-81.

14.—The learned trial Judge in the first place held that the Respondent Company was properly sued as the printer and publisher of the words complained of, and that the Respondent Tinubu had been the editor of the “ West African Pilot ” at the material time. p. 65, l. 14 p. 67, l. 29

40 15.—The learned Judge further found, *inter alia*, the following facts : That at all material times

## RECORD

- p. 67, l. 34 (i) a party known as the Action Group was the party running the Government of the Western Region of Nigeria ;
- p. 67, l. 36 (ii) 9 of the Ministers of the Western Region were members of the Action Group ;
- (iii) 4 of the Central Ministers of the Council of Ministers were members of the Action Group ;
- p. 67, l. 37 (iv) the Appellant was Leader of the Action Group ;
- p. 67, l. 39 (v) the Appellant was a member of the Executive Council of the Western Region, Minister of Local Government in the Western Region and a member of the Western House of Assembly and of 10 the House of Representatives ;
- p. 68, l. 42 (vi) the case of *Oyekan v. Adele*, Suit No. 276 of 1949, was pending in the West African Court of Appeal ; the case arose out of a claim for possession of the Iga Idunganran and judgment at first instance had been given in favour of the Defendant Adele ; the only Iga controversy case before the Court was the said case of *Oyekan v. Adele* ;
- p. 69, l. 5
- p. 70, l. 37 (vii) the said Adele was a strong supporter of the Action Group ;
- p. 68, l. 42
- p. 70, l. 6 (viii) the Appeal of one Sadiku Salami against a conviction for murder in a case popularly known as the Ikenne trial was pending in the 20 West African Court of Appeal ;

and that

- (ix) the Appellant was a relative of the said Sadiku Salami, and had given evidence for him at the said trial ;
- p. 68, l. 5 (x) immediately prior to 10th June 1952 there was wide Nigerian press publicity for the conference to be held on that date between the Governor of Nigeria and the thirteen Action Group Ministers referred to above ;
- . 68, l. 11 (xi) one Nigerian newspaper, "The Daily Service," published on 9th June 1952 a list identifying the thirteen Ministers including 30 the Appellant who were to meet the Governor on the following day ;
- p. 70, l. 39. (xii) witnesses called on behalf of the Appellant in Suit No. 270/52, namely Ernest Ikoli, Olujide Somolu, Joseph Kosioniola Randle, and Nathaniel Kotoye, were reasonable persons and witnesses of truth ; the said witnesses understood the words complained of in Exhibit B to refer to the aforesaid 13 Action Group Ministers including the Appellant and to mean that the said Ministers tried to use pressure on the Governor to intervene in the *Oyekan v. Adele* suit pending in the West African Court of Appeal ; the said 40 witnesses understood the words complained of in Exhibit B.1 to refer to the aforesaid 13 Ministers and to mean that the said Ministers had tried to make the Governor intervene in the Appeal of the said Sadiku Salami then pending in the West African Court of Appeal. The said witnesses understood the words " Leader

“ of the Action Group ” in the words complained of to refer to the Appellant ; the said witnesses were aware of the facts set out in sub-paragraphs (i)-(xi) hereof.

RECORD  
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16.—The learned trial Judge found that the words complained of referred to and were defamatory of the Appellant. p. 72, l. 34  
p. 73, l. 2

17.—The learned trial Judge went on to find that the facts upon which the words complained of were alleged to be based were untrue, that the occasions of publication were not privileged, and that the Respondents were malicious and he accordingly held that the pleas of fair comment and 10 privilege failed. p. 73, ll. 21-28  
p. 74, ll. 32-36  
p. 75, ll. 24-34

18.—Relying on the conduct and tacit consent of both parties and the authority of *Barber v. Pigden* 1937 1 K.B. 664 the learned trial Judge treated the two causes of action in respect of the two publications on 10th and 11th June 1952 as one cause of action and gave one judgment against both Respondents awarding the Appellant £2000 damages and 300 guineas costs. p. 80, ll. 11-39  
p. 81, l. 10

19.—On 1st June 1953 the Respondents gave notice of appeal and included in their notice several grounds of appeal ; at the hearing of the appeal, however, which took place before the West African Court of Appeal 20 in November 1954, the following grounds only were argued on behalf of the Respondents. pp. 81-83  
pp. 83-87

- (i) that the learned trial Judge misdirected himself in receiving in evidence the oral testimony of witnesses alleged to be at a meeting when better evidence was available ;
- (ii) that the learned trial Judge erred in law in holding :  
“ In my view the innuendo alleged is well-founded ”  
and  
“ Their evidence bears out the innuendoes alleged.”
- (iii) that the learned trial Judge erred in law in holding :  
30 “ I am satisfied on the evidence and from my own  
“ construction of the alleged defamatory words that they  
“ referred to the 13 Ministers of the Action Group who had  
“ a conference with His Excellency the Governor on 10th June  
“ 1952.”
- (iv) that the learned trial Judge erred in law in his assessment of damages ;
- (v) that the learned trial Judge erred in law in not dismissing the Appellant’s claim for an injunction instead of holding that it must be taken to be abandoned ;
- 40 (vi) that the finding that the Respondent Tinubu was editor of the “ West African Pilot ” at the material time was against the weight of the evidence.

pp. 87-96

20.—The judgment of the West African Court of Appeal was delivered by Foster-Sutton P. on 11th March 1955. The Respondents failed in their appeal on grounds (i) (iv) and (v) enumerated above, but succeeded on grounds (ii), (iii) and (vi). Against this judgment the Appellant obtained leave on 20th June 1955 to appeal to Her Majesty's Privy Council.

21.—The following, therefore, are the substantial questions to be considered on this appeal :

- (i) Whether the West African Court of Appeal were right in holding that the words complained of in Exhibit B could not and did not refer to the Appellant ; 10
- (ii) Whether the West African Court of Appeal were right in holding that the words complained of in Exhibit B and Exhibit B.1 were not defamatory of the Appellant and could not be defamatory of him in the sense alleged in the respective innuendoes ;
- (iii) Whether the West African Court of Appeal were right in holding that the Appellant had failed to prove that the Respondent Tinubu was the editor of the " West African Pilot " at the material time.

p. 89, ll. 30-43

22.—As to the first question referred to in paragraph 21 hereof it is submitted that Exhibit B read as a whole contains several references to the Appellant as leader and member of the delegation whose motives are the subject of the article and further that the article draws a distinction between the alleged wishes of the Action Group party or some of its members and the wishes of the Appellant or the other members of the delegation. Accordingly it is submitted that the learned President was wrong in holding that the article aimed at the policy of the Group and not that of an individual. It is further submitted that the learned trial Judge was right in accepting the evidence of the witnesses for the Appellant led to support the identification in fact and that the learned President was wrong in rejecting this evidence. A reasonable construction of the article as a whole involves references to the Appellant both in his own name and as a member of the small group of delegates, and further the evidence of these witnesses supported and reinforced this construction. 20 30

p. 91, l. 21

23.—As to the second question referred to in paragraph 21 hereof it is submitted that the words complained of in Exhibits B and B.1 were shown to be defamatory of the Appellant and that in any event the words complained of in either Exhibit would, if libellous, justify the award of damages made by the learned trial Judge. The West African Court of Appeal were wrong it is submitted in holding that none of the witnesses gave evidence of having knowledge of any special facts or circumstances which caused him to form his opinion (as to the improper intention and behaviour of the delegation). The Appellant will refer to the evidence of the witnesses Ikoli, Somolu, Randle and Kotoye, supported as it is by that of the Appellant himself. It is further submitted that the learned trial Judge did not err if in fact he failed clearly to separate in his judgment 40

p. 35  
p. 36  
p. 38-41  
p. 42

the two articles published on 10th and 11th June 1952 from that published on 13th June 1953 in the "West African Pilot" which latter article was the subject of the Appellant's claim in Suit No. 273/52. p. 92, ll. 38-40

24.—As to the third question referred to in paragraph 21 hereof it is submitted that the uncontradicted evidence was that the Respondent Tinubu was editor of the "West African Pilot" containing the libellous articles and that there was no reason to reject this evidence. The weight of this evidence was for the trial Judge to assess and his finding of fact after seeing the witnesses ought not to be disturbed. p. 42-43  
p. 66, l. 34  
p. 67, l. 29

10 25.—The Appellant submits that so much of the judgment of the West African Court of Appeal as decided (a) that the Respondent Tinubu was not the Editor of the "West African Pilot," (b) that the words complained of in Exhibit B could not refer to the Appellant, and (c) that the words complained of in Exhibit B and B.1 could not defame the Appellant, should be reversed and the whole of the judgment of the learned trial Judge should be restored.

#### REASONS

- 20 1. BECAUSE there was evidence upon which the learned Judge could properly find, as he did in fact find, that Exhibit B was reasonably understood to refer and did refer to the Plaintiff.
2. BECAUSE the learned trial Judge was right in finding that Exhibit B was reasonably understood to refer and did refer to the Plaintiff.
3. BECAUSE there was evidence upon which the learned trial Judge could properly find, as he did in fact find, that Exhibits B and B.1 were reasonably understood to bear and did bear the respective defamatory meanings alleged.
- 30 4. BECAUSE the learned trial Judge was right in finding that Exhibits B and B.1 were reasonably understood to bear and did bear the respective defamatory meanings alleged.
5. BECAUSE there was evidence upon which the learned trial Judge could properly find, as he did in fact find, that the Respondent Tinubu was the Editor of the West African Pilot at the time of publication of the words complained of and in law responsible for such publication.
6. BECAUSE the learned trial Judge was right in finding that the Respondent Tinubu was the Editor of the West African Pilot at the time of publication of the words complained of and in law responsible for such publication.
- 40 7. BECAUSE the learned trial Judge did not err in law.
8. BECAUSE the findings of fact made by the learned trial Judge were right.

9. BECAUSE there were no grounds upon which the West African Court of Appeal could properly disturb the findings of the learned trial Judge.
10. BECAUSE the decision of the West African Court of Appeal in so far as it reversed the judgment of the learned trial Judge was wrong.

F. DONALD McINTYRE.

HELENUS MILMO.



In the Privy Council.

No. 19 of 1956.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL.  
(NIGERIAN SESSION.)

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BETWEEN

THE HON. OBAFEMI AWOLOWO  
*(Plaintiff) Appellant*

AND

(1) ZIK ENTERPRISES LIMITED  
(2) A. Y. S. TINUBU  
*(Defendants) Respondents.*

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CASE FOR THE APPELLANT

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