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IN THE PRIVY COUNCIL

No. 19 of 1956

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

B E T W E E N:

THE HON. OBAFEMI AWOLowo (Plaintiff) Appellant

- and -

1. ZIK ENTERPRISES LTD.,
2. A.Y.S. TINUBU (Defendants) Respondents

CASE FOR THE RESPONDENTS
ZIK ENTERPRISES LIMITED

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.

Solicitors and Agents for
Zik Enterprises Limited.

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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 RESPONDENTS
ZIK ENTERPRISES LIMITED

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1. This is an appeal from so much of a Judgment of the West African Court of Appeal dated the 11th March, 1955, as relates to one of two consolidated actions for libel, being Suit No.270/1952 (herein-after called "the action"), whereby the Judgment of Jibowu J., dated the 13th April, 1953, given in the Supreme Court of Nigeria, in the Lagos Judicial Division, in favour of the Appellant (Plaintiff) in the action against the Respondents (Defendants), for the sum of £2,000 damages and fixed costs, was reversed, and judgment was entered in favour of the Respondents with fixed costs.

pp. 87-96.

pp.1,2-5; 9-11.
pp.17-47

p.81, L1.9-10.
p.96, L1.30-33.

2. The libels the subject of the action, and as pleaded therein by the Appellant, were portions of articles in the issues respectively of the 10th and 11th June, 1952, of the "West African Pilot" a daily newspaper, as follows :-

p.3, l.28 p.4,
l.14.

30

10th June, 1952

"ACTION GROUP THREATENS CRISIS TO WIN OVER GOVERNMENT.

SECRET BEHIND PLAN DISCLOSED

.....

Political observers believe that the motive

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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 crisis. Apart from the walkout 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. 10

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.

....." 20

11th June, 1952.

"GOVERNMENT TURNS BACK ACTION GROUP WITH NO TO ALL DEMANDS

.....
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.

....." 30

The whole of the article in the said issue of the 10th June, 1952, will be found (Exhibit "B") on pages 1 and 2 of an agreed volume of certain unprinted exhibits; and the whole of the article in the said issue of the 11th June, 1952, (Exhibit "B1") on page 3 thereof.

3. The appeal is principally concerned with two interwoven though separate questions which compendiously stated are -

(a) Whether the said articles both or either of them - allegedly defamatory, not in their primary, 40

ordinary and natural meaning, but by way of innuendo only - referred, not to a large and indeterminate class of persons associated together as a political party called the "Action Group", but as separate, distinct and unassociated therefrom, to the Appellant; and

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(b) Whether the said articles bore the defamatory meaning in the innuendo alleged in regard to each of them respectively.

- 10 4. The case for the Appellant was based in its entirety, both as regards the said reference to himself - which was not expressly or specifically alleged - and the defamatory meaning alleged in regard to them, upon the said innuendos; hence the reason for the said statement that the said questions though separate are interwoven. p.4, Ll.28-35; 36-42, paras. 24, 25.
5. The grounds alleged upon which the said articles referred to the Appellant, as aforesaid, are that -
- 20 (a) On the 10th June, 1952, the Appellant and all the Ministers of the Government of the Western Region of Nigeria with the addition of four Ministers of the Central Government appointed from the representatives of the Western Region had a conference with His Excellency the Governor of Nigeria. p.3, Ll.18-21; para.16.
- (b) The conference was given wide publicity in the Nigerian Press. p.3, Ll.22-23; para.16.
- 30 (c) The purpose of the conference was to discuss constitutional issues and the matters relating to the administrative procedure under the new Nigerian Constitution. p.3, Ll.23-26; para.18.
- 40 6. As regards the said innuendos, the defamatory meaning alleged therein was, in regard to the said article in the said issue of the 10th June, 1952, that the Appellant and the other Ministers, as set forth in paragraph 5(a) supra, had (a) held the conference referred to in the said paragraph in order to get the Government to interfere with the course of justice in a certain suit (No. 276 of 1949), in the article of the 10th June, 1952, referred to as the Iga Idunganran Civil Suit, pending before the West African Court of Appeal and p.4, Ll.28-35.

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(b) threatened to create a constitutional crisis in order to force the hands of the Governor.

p.2, Ll.30-35;
p.3, Ll.1-8;
paras.6,7,8,9,
10,11. p.63,
Ll.11-12.

The said suit, as alleged in the Statement of Claim (for which the Particulars of Claim stood), was that -

(a) In 1949 there was a civil case between members of the House of Docemo and His Highness Oba Adeniji II in which the former claimed against the latter a declaration of title and recovery of possession of a building and land known as "Iga Idunganran".

10

(b) The said action was determined on the 18th January, 1951, when judgment was entered in favour of Oba Adeniji II.

(c) The members of the House of Docemo had lodged an appeal to the West African Court of Appeal and the appeal was pending.

(d) The Respondents had invariably referred to the appeal in the West African Pilot as "the Iga Idunganran case".

20

(e) The appeal was still pending before the West African Court of Appeal.

(f) The said Oba Adeniji Adele was a prominent member and well known supporter of the Action Group.

p.4, Ll.36-42;
para.25.

7. And in regard to the said article in the said issue of the 11th June, 1952, the defamatory meaning alleged was that the Appellant and the other Ministers aforesaid had asked the Governor and the other officials present at the said conference to interfere in the course of justice namely, in the appeal against conviction of one Sadiku Salami pending before the West African Court of Appeal.

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p.3, Ll.9-17;
paras.12,13,
14,15.

8. The said conviction of the said Sadiku Salami, as alleged in the said Statement of Claim, was that -

(a) On the 28th April, 1952, the said Sadiku Salami a first cousin to the Appellant's wife was convicted of murder and sentenced to death in the Supreme Court of the Ibadan Judicial Division.

40

(b) The alleged murder took place at Ikenne and the case had been referred to in the West African Pilot as "the Ikenne Trial".

(c) The said Sadiku Salami had lodged an appeal to the West African Court of Appeal and the appeal was still pending.

(d) The said Sadiku Salami was a member and supporter of the Action Group in the Appellant's constituency i.e. Remo Division of Ijebu Province.

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9. The respectful submissions of these Respondents upon the said questions are that -

(a) The said articles were published of, referred solely to, and concerned only, and were directed at, the Action Group party as aforesaid and could not, having regard to their language, be regarded as capable of referring to the Appellant, as separate, distinct and unassociated from the said party, and without regard to his membership thereof; and even if they could (contrary to the said submission) be regarded as so capable the said articles did not in fact lead any reasonable person, who knew the Appellant, to the conclusion that they did refer to him as aforesaid.

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(b) The said articles were not capable of bearing nor did they bear, as is alleged they bore as hereinbefore set forth, the said innuendos.

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10. The trial of the action took place before Mr. Justice Jibowu (now Federal Judge) on the 11th, 13th, 20th and 27th February, 6th, 10th, 11th and 12th March, 1953, in the Lagos Judicial Division of the Supreme Court of Nigeria.

pp.17-61.

11. The learned trial Judge in his reserved Judgment delivered the 13th April, 1953, as to the said issue whether the said articles referred to the Appellant said -

pp.61-81.

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"I now come to the next point at issue whether the publications complained of referred to the Appellant, and whether he could sue in respect of them. This issue I find bound up

p.67, Ll.30-45.

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with the issue whether the publications are capable of bearing the innuendos alleged. It is abundantly clear from the evidence that the party known as the Action Group is the party running the Government of the Western Region of Nigeria; that the party has 9 Regional Ministers and 4 Central Ministers; that the Appellant is the Leader of the Action Group and Minister of Local Government; that he is a member of the Western House of Assembly as also of the House of Representatives, and that he is also a member of the Executive Council of the Western Region".

10

As a matter of passing comment it will be noted that the only particulars given of the allegation and by implication only (since it has not been anywhere expressly or specifically alleged), that the said articles referred to the Appellant are what is set forth in paragraph 5(a) supra.

The learned Judge then continued -

p.67, Ll.42-45
p.68, Ll. 1-

"It is also proved that the National Council of Nigeria and the Cameroons, called, for short N.C.N.C., forms a sort of opposition to the Action Group Government. The West African Pilot is one of the voices of the N.C.N.C. and the Tribune at Ibadan and Daily Service in Lagos are organs of the Action Group".

20

With regard to what is here said by the learned Judge as to N.C.N.C., being the opposition party to the Action Group and the said papers through which this opposition is given voice it is, perhaps, not out of place and as being relevant to refer to what he said in regard thereto when dealing with the defence of fair comment set up by the Respondents as follows -

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p.76, Ll.32-41;
Ll.44-46.

"From the evidence of Ikoli, which the learned Counsel for the (Respondents) asked the Court to accept as the evidence of an independent honest, truthful and unbiassed witness and the evidence of Shonibare for the (Appellants), I am satisfied that for the last three years or so the Nigerian Press, namely, The Service and the Tribune, on one side, and the West African Pilot, Defender, and other papers belonging to the Zik's Press Group on the other, had been waging war against one another and attacking persons connected with the papers and the political parties they support.

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Exhibits "U-U3" and "O", "P", "Q", "R" and "S" bear this out.

Exhs. "U-U3"
p.45, Ll.2-5
Exhs. "O", "P",
"Q", "R", "S".
Agreed Volume.
pp.31-32; 33-34;
35-36; 37;
38-39.

I find that the Tribune, whose policy the (Appellant) admitted he was directing as Director, attacked the 3rd Defendant one Ojike, the 2nd Defendant in the other suit No. 273/52, is referred to in this Judgment as the "3rd Defendant" and others in Exhibits "O", "P", and "Q".

10 As illustrative of the unrestrained extremes of abusive and violent invective vilification and odious epithet resorted to by the said Tribune - the policy of which as has been found by the learned trial Judge was directed by the Appellant - in waging, as described by the learned trial Judge, war, on the side of the Appellant and the Action Group party, against the leader Dr. Azikiwe (for which "Zik" is an abbreviation) of the said N.C.N.C. party and that party, there is hereinafter quoted (infra paragraph 14) some passages from the said Tribune:

20 The learned trial Judge continues:-

"It became necessary for a delegation consisting of Action Group Ministers to interview His Excellency the Governor, on the 10th June, 1952. It is common ground between both parties that the conference with the Governor was given wide publicity in the Nigerian Press.

30 On the 9th June, 1952, the Daily Service, Exhibit "N" published a notice of the impending meeting with His Excellency and gave a list of the names and offices of the 13 Action Group Ministers who were to meet His Excellency.

Exh."N" agreed volume pp.28-30.

Reference was also made in the Daily Service of the 10th June, 1952, Exhibit "L", to the meeting of the 13 Ministers who were to meet the Governor that day.

Exh."L" agreed volume p.27.

40 This is the background to the publication complained of in the West African Pilot of the 10th and 11th June, 1952 Exhibits "B", "B1" respectively

Exhs. "B", "B1" agreed volume pp.1-2; 3.

The question then is whether this publication which the (Appellant) stated to be wholly untrue and malicious, refers to thousands of

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people who are members of the Action Group or whether it refers to Action Group Ministers whose number is limited and ascertainable. From this follows the next question whether the publication is a reflection on each of the Ministers including the (Appellant).

The first sentence refers to the motive behind the delegation to the Government. The 'Delegation' according to the evidence consisted of the 13 Central and Regional Ministers who had a conference with the Governor and other Government Officials. It cannot by any stretch of the imagination be said to refer to all members of the Action Group. It went on to say '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 crisis. 10

Reference to 'Party' and 'Action Groupers' in my view refer to the same Ministers of the Action Group and not to all members of the Action Group. 20

The next sentence mentioned Action Group Ministers specifically and suggested that they might resign en bloc in order to effect the demands of the party over the issues at stake " "

The learned trial Judge then deals with the said article in the said issue of the 11th June, 1952 -

p.69. 1.14 -
et seq.
p.70. Ll.6-15.

"Now with regard to the publication of the 11th June, 1952 Exhibit "B1", the headline is: 'Government turns back Action Group with No to all demands'. 30

This obviously refers again to the delegation of Ministers and not to all the members of the Action Group. This is borne out by the opening words of the article which reads: 'the conference of the Action Group Delegation to the Government House, yesterday ended in fiasco'.

The second paragraph referred in express terms to the leader of the Action Group, which is none other than the (Appellant). 40

The fourth paragraph is the one complained of"

(the underlining is that of these Respondents) and, it referred to 'the Ikenne trial' as having re-echoed at the parley. The Ikenne trial is the murder case in which one Sadiku Salami was involved, Exhibit "J2" " - (which is an issue of the West African Pilot of the 18th June, 1952, i.e. to say 10 days after the said issue of the 10th and 7 days after the said issue of the 11th June, 1952 - It is not printed in the Record) "is quite clear on this point and it reads under 'Votes of no Confidence Await Action Group Leader and Ruler' as follows :-

p.25, Ll.23-34.

'It will be recalled that both of them were witnesses in the Ikenne trial in which the accused person, Sadika Salami, was found guilty of murder'

The West African Pilot referred to the murder trial on the 8th May, 1952, Exhibit "J" under the heading 'S.SALAMI WILL BE HANGED FOR MURDER' The article, inter alia. reported :-

Exh. "J" agreed volume p. 23.

'Sadiku was arrested in the house of an Action Group Leader at Oke Bola where the accused was hiding after the riot'

Further reference was made to the case in the issue of the West African Pilot of the 9th May, 1952, Exhibit "J1" under the heading: 'JUDGE REMARKS AWOLowo FAILED TO HAND MURDERER TO POLICE, KILLER ARRESTED IN HIS HOUSE'.

A full text of the judgment in the case was published in the West African Pilot of the 14th June, 1952, Exhibit "B2". Both the Appellant and S. A. Samuel, Deputy Registrar, W.A.C.A. (West African Court of Appeal) "testified that the accused Sadiku Salami appealed to the W.A.C.A. and that his appeal was pending in June, 1952. that is, at the time of the conference and of the publications complained of.

Exh. "B2" agreed volume pp. 4-20

I am satisfied from the evidence that Sadiku Salami's appeal was pending in June, 1952. It is abundantly clear from Exhibits "B2", "J" and "J1" and "J2" that the (Appellant) was connected with Sadiku Salami's case. The implication appears clear that the Ministers including the (Appellant) raised the question about Sadiku

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Salami's case with a view to getting the Governor to intervene in order to save Sadiku Salami and (the Appellant). To do that is to attempt to get the Governor to interfere with the course of Justice. In my view, the innuendo alleged arises from the publication".

It thus clearly appears, it is submitted, that the learned trial Judge has, as he has stated, dealt with the question as to whether the said articles referred to the Appellant as being bound up with that of the other question as to whether the said innuendo bore the defamatory meaning alleged and has done so, wrongly, it is respectfully submitted, in such a way as if the two were completely and inextricably and inseparably bound up and were to be treated in law and in fact as if they were one and the same question and to be resolved accordingly, instead of, as he should have done, considered them, although interwoven by the act of the Appellant, as two separate and distinct questions. 10 20

12. Having, as it is submitted, then dealt with the other action with which the action was, as aforesaid, consolidated, in the same way as the action, as is hereinbefore submitted, the learned trial Judge then said -

p.71, l. 44
et seq.

"Reference was made by Counsel on both sides to Knupffer v. London Express Newspaper Ltd. reported in 1942. 2. All. England Reports, 555 and in 1944 1 All. England Reports, 495," 30
- (also reported (1944) A.C. 116) - "in which it was held by both the Court of Appeal and the House of Lords that 'when defamatory words are 'written or spoken of a class of persons it is 'not open to a member of that class to say that 'the words were spoken of him unless there was 'something to show that the words about the 'class referred to him as an individual'.

In that case there was nothing to show that the words referred to the Respondent as an individual and his claim therefore failed." 40

The learned trial Judge, it is respectfully submitted, has not properly appreciated the said case of Knupffer v. London Express Newspapers or the said passage he has himself quoted from it. The

emphasis is, it is submitted, on the "class". Stated in terms of the instant case the question is, was there anything in the said articles (that is to say the said portions thereof alleged to refer to and to bear an innuendo defamatory of the Appellant) - which ex hypothesi were published of a class namely, the Action Group - to show that the said articles about the said class referred to him as an individual?. The correct approach is thus stated in the said Knupffer case by Viscount Simon L.C. (1944) A.C. 116, at p. 121.

10

"There are two questions involved in the attempt to identify the Appellant as the person defamed. The first question is a question of law - can the article, having regard to its language, be regarded as capable of referring to the Appellant? The second question is a question of fact - Does the article, in fact, lead reasonable people, who know the Appellant to the conclusion that it does refer to him? Unless the first question can be answered in favour of the Appellant, the second question does not arise, and where the trial Judge went wrong was in treating the evidence to support the identification in fact as governing the matter, when the first question is necessarily, as a matter of law, to be answered in the negative

20

The learned trial Judge then says, having quoted from a passage of the Judgment in the Court of Appeal in the Knupffer case of MacKinnon L.J., as follows :-

30

p.72, Ll.7-19.
p.72, Ll.20-23.

"There are cases in which the language used in reference to a limited class may be reasonably understood to refer to every member of that class, in which case every member may have a cause of action. He cited Browne V. Thompson & Co., 32 Digest 16, 66 iii." (Browne v. Thompson 1912 S.C. 359) "as a case in point."

40

It is submitted that the learned trial Judge in his approach on the lines of this statement of the law made by him errs in regarding the Appellant not as a member of the class concerned namely, the Action Group, but as if he were a member of another different separate, and limited, and individually identifiable class and thus misapplies what he states as to the law.

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The case of *Browne v. Thompson* is demonstrative of this being so, since it was an action for libel by seven Roman Catholic clergymen defamed as a group. As further demonstrative of this the learned trial Judge refers to the speech of Lord Russell of Killowen in the report in (1944) 1 A.E.R. at p.498 of the *Knupffer* case and says -

" Lord Russell of Killowen said: 'When the construction of the matter complained of comes under consideration there may be something in the defamatory' (as it was accepted as being, it would be observed, by these Respondents) 'matter, or in the circumstances in which it is published which indicates and enables a jury to find, that particular individuals are defamed, although they are not named'

10

Le Fanu v. Malcomson (1848, 1 H.L.C., 637.....) is an instance of this. Or the class or group can be identified, and is such that each member thereof is necessarily defamed. *Browne v. Thompson & Co.* is an example of this. A body of trustees or directors would furnish another instance in which defamation of the body involves defamation of each member thereof."

20

The said case of *Le Fanu v. Malcomson* is an authority for the proposition stated thus in *Gatley on Libel and Slander* 4th Ed. p.117 -

"Though defamatory matter may appear only to reflect on a class of individuals, yet if the words are capable of being shown to point to any one individual an action for libel will be at the suit of such individual"

30

It is submitted that as a member of the class called the Action Group the Appellant stood in exactly the same position as every other member of it and that no action could lie by him any more than it could by any other member of the said class, so styled as aforesaid.

p.72, Ll.34-40;
Ll. 41-45.
p.73, Ll. 1-2.

13. The learned trial Judge states his conclusion as follows :-

40

"I am satisfied on the evidence and from my own construction of the alleged defamatory words

10 that they referred to the 13 Ministers of the Action Group, who had a conference with His Excellency the Governor on the 10th June, 1952. Their number is small and limited and they can be identified. The nature of the charge made against the Ministers, of which the (Appellant) was not only one but the leader, is such that every Minister had been defamed. I agree with the submission of learned Counsel for the (Appellant) that the charge was tantamount to accusing the Ministers of conspiring to interfere with the course of Justice by bringing pressure to bear on the Governor to interfere with Iga Indunganran Civil Case and the Ikenne Murder case which were both pending before the Appeal Court.

I therefore hold that each Minister had been defamed and that each can bring an action in respect of the publications".

20 And, as hereinbefore set forth, the learned trial Judge gave judgment against both Respondents in the action for £2,000 damages and a fixed amount of costs.

30 14. The learned trial Judge has (paragraph 11 supra) referred to the background of political warfare being conducted between the opposing parties, the Action Group and the N.C.N.C. through their respective newspapers. Some few examples of the manner in which it was conducted on the side of the Action Group (the Appellant, as was found by the learned trial Judge, directing the policy of their newspapers in this regard) would serve to emphasise, as it is submitted, that in the said articles the Respondents were concerned solely with the said Action Group as a class and such examples taken from issues of the "Tribune", the said organ of the Action Group, Exhibits "O" "P" "Q" "R" and "S" to be found on pages 31 to 39 of the agreed Exhibit "O" volume of certain unprinted exhibits are as follows:-

40

4th Dec. 1951.

"Several Eastern papers streaming into this office have kept up their attacks on the fraudulent N.C.N.C. alias National Council of Nuisance and Confusionists. Fellow comrades in the East are aware of the fact that the moral depravity

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of that organisation has helped to create spritual bankruptoy in Nigeria

.....
If Azikiwe" (the said leader of the N.C.N.C. party) "still believes that he has staunch N.C.N.C's in Lagos, he would be committing a serious blunder Many independent parties and Western House members have already joined the Action Group. What a shock to those who had thought that a one-man fictitious club could save them." The credit got by a lie only lasts till the truth comes out. The exposure of the hypocrite meets with a universal approbation
The N.C.N.C. is morbid, and its prestige waning at a rapid rate

10

Exhibit "P"

15th Oct. 1951.

"In fairness to Dr. Nnamdi Azikiwe, barring one or two occasions, on which he collected public money without rendering any accounts he has been trying to make an honest living.

20

He is on the whole earning his keep.

One of the things that vitiates Dr. Azikiwe's leadership is the type of noisy and dishonest followers who proclaim him 'God of Africa'

.....
They have all waxed rich at the expense of the honest but credulous public

30

.....
How evil must an evil be to deserve the condemnation of Dr. Azikiwe? Mr. Adedoyin is so far the most disreputable political character Nigeria has ever known.

Dr. Azikiwe parleys with him.

Exhibit "Q"

14th June, 1952

"
The ultimate result of a conglomeration of such professional quacks in a newspaper establishment is the dissemination of falsehood, unprovoked aggression against their more prosperous comrades, malicious attacks against religious

40

organisations, persistent efforts to ridicule Yoruba natural rulers, and the instigation of party animosities as the surest precursors of foreign aggression".

.....

There is a reference to the said meeting of the Ministers and the Governor in these, in the circumstances it is submitted, surprising terms -

10 "The fictitious reports being published in the mouth-piece of the N.C.N.C. of the secret meeting between A.G. Ministers and the Governor show a total absence of moral background in the illiterates responsible for such publication which is likely to lead the people of this Country astray. Party politics exist in every civilised country but have never led to perpetual enmity between two parliamentary parties. The fact that this has come to be the order of the day in Nigeria" (Respondents' underlining)
20 "clearly indicates that some people are educated idiots, who should be avoided in our national life."

Exhibit "R"

6th Feb. 1952

"The Scriptures confirm that the wicked shall never go unpunished. There must be a retributive judgment for all acts of man.

.....

30 The 'West African Perversion'" (an offensive abusive reference to the West African Pilot) "did not proclaim the betrayal of Dr. Ajibade.. as a result of the treachery of the N.C.N.Clers. there

.....
Azikiwe," (with the deliberate omission of his academic title of 'Dr') "or whoever is the federal president of the N.C.N.C., did not even set up an enquiry to unravel the mystery surrounding Dr. Ajibade's betrayal.

40
Let Azikiwe bear his spiritual agony with fortitude. His plight is just retributive judgment."

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Exhibit "S"

3rd Dec. 1951

"The burning desire of the leaders of the Action Group to get cracking at the operation of the New Constitution has been mistaken in Zikist as well as in Imperialist's quarters" (It was alleged that the meeting of the Ministers with the Governor was to discuss constitutional issues)

" 10

It may not be generally known that the average net annual income of (the Appellant) during the past four fiscal years, is over £4,500 What monetary attraction then does Ministerial Appointment or Membership of the Legislatures offer to Action Group Assemblymen? Surely, Sir John, Sir Chandos and their colleagues are not unaware of these facts. But they like to pretend that they do not in order that their imperialist ends may be achieved. For, whilst raising the salaries of Heads of Departments they keep on parading and publicising the sum of £900 per annum as a fit and proper salary for a Regional Minister;

20

Their secret intention for doing this is obvious. It is to scare away the competent and incorruptible members of the Action Group from accepting a Ministry and to attract the incompetent, corrupt money-grabbing, and unemployed political jobbers who abound in the N.C.N.C.

30

It is only the unwary that can be deceived by Government's bland but hypocritical statement that the suggested salaries were only given in answer to questions.

.

The new Constitution is said to be the pet child of Sir John Macpherson. He is still carrying his baby in his own hands. If he and Sir Chandos and their fellow imperialists are faithful to their present tactics, the baby will, by God's grace, drop headlong and fatally on a political rock within the next three months."

40

of Appeal on the 17th, 18th and 19th November, 1954, before Sir Stafford William Powell Foster Sutton, President, Joseph Henri Maxime De Comarond, Acting Chief Justice, Nigeria, and Sir James Henley Coussey, Justice of Appeal; Judgment was reserved.

16. On the 11th March, 1955, the Judgment of the said Court of Appeal was delivered. pp.87-96

17. In his Judgment, in which the other two members of the Court concurred, the learned President said-

10 "The first suit" (i.e. the action) "is a claim in respect of two causes of action the first being in respect of a portion of a front-page article published in (these Respondents) paper on the 10th June, 1952 and the second cause of action is in respect of a portion of another front-page article published in the same newspaper on the 11th June, 1952 p.88, Ll.9-10 Ll. 27-29; Ll. 36-39.

20 In neither instance was it suggested that the words complained of are defamatory in their primary and natural meaning. The action is based entirely upon the innuendos pleaded in paragraphs 24 and 25 of the Statement of Claim. p.4, Ll.28-42.

30 In these circumstances it was necessary to prove that the matter published in each of the articles conveyed to the mind of a reasonable person cognisant of special facts or circumstances that which it would not convey to the mind of a reasonable person, unacquainted therewith. p.89, Ll.8-43.

The learned President then as regards the question whether the said articles referred to the Appellant said as follows -

"Mr. J. Taylor who appeared for the Appellants in both cases submitted inter alia, that the words complained of were written about a class of persons, that is to say the Action Group as a whole, and that there was nothing to show that they referred to the Plaintiff as an individual.

40 Subsequently he also submitted that the innuendos were not proved.

Since the claims are in respect of three causes of action, relating to three publications, I

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think it is important that each of the articles and the evidence led in respect of them should be examined separately, and this I propose to do. There are two questions involved in the attempt to identify the (Appellant) as the person said to be defamed.

The first question is a question of law - can the article, having regard to its language, be regarded as capable of referring to the Plaintiff? The second question is a question of fact, namely, does the article in fact lead reasonable people, who know the (Appellant) to the conclusion that it does refer to him? Unless the first question can be answered in favour of the (Appellant) the second question does not arise, Viscount Simon L.C., in Knupffer v. London Express Newspaper Ltd. (1944) 1 All. E.R. 497" (1944 A.C. 116 at p. 121)

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The learned President then in regard to the article of June 10th said -

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"Taking the article in the West African Pilot of June 10th as a whole, I am unable to agree that, upon a reasonable construction, it can be regarded as referring to the (Appellant). It seems to me that the whole tenor of the article shows that it is the policy of the Action Group as a party which is aimed at, not any particular individual.

It is true that witnesses for the (Appellant) gave evidence that the fact that Action Group Ministers were to have a conference with the Governor on June 10th had received wide publicity in the press, and that several of the witnesses testified that they had read the issue of the Daily Service newspaper published on the 9th June Exhibit "N" which discussed the proposed conference and gave the names of the thirteen Ministers including the (Appellant's) who were to attend it.

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Exh. "N" agreed
volume pp. 28-30

The learned trial Judge treated this evidence led to support the identification in fact as governing the matter and I am of the opinion that he erred in doing so."

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Coming to the article in the issue of the 11th June

he said -

"The article in the issue of the 11th June, contains reference to the leader of the Action Group, taken as a whole, I am satisfied that it is capable of referring to the (Appellant) and that it was reasonable for the witnesses to think that it did."

p.89, l.44 -
p.90, Ll.1-2

Then dealing with the questions as regards the innuendos alleged the learned President said -

p.90, Ll.3-32.

10 "The next question which has to be considered is whether the innuendos were proved.

Although, having regard to the conclusion I have reached on the first point in respect of the article of 10th June, the question of the innuendos does not arise in relation to it, I propose to consider this aspect in respect of both the articles complained of in the first action.

20 In considering this aspect of the case I am of the opinion that the position is as stated by Lord Blackburn in his Judgment in the case of Capital and Counties Bank v. Henty (1881-2) 7 A.C. at 776 when he said -

30 "Whenever a verdict was passed against a defendant in a case of libel, and Judgment has been given in the Court below, those who bring their writ of error on the ground that there is no libel, assert that both the jury and the Court below have gone wrong but they are not called upon to say that the words were incapable of conveying the libellous imputations; it is enough if they can make out, to the satisfaction of the Court in error, that the onus of showing that they do convey such an imputation is not satisfied."

As Viscount Haldane said (in) John Leng and Co. Limited v. Langlands, 114 L.T. 667,

40 "The question which we have to deal with we have to decide as judges of the law. It is whether it is possible, if the language used is read in the ordinary sense, to say that it is such as can reasonably and naturally support

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the innuendo. It is not enough for the pursuer to say 'The language is ambiguous it is capable of one of two meanings either is equally probable, and it is for the jury to choose which it will put on it.'

The pursuer must make out his case, and the pursuer must therefore, if he wishes to succeed, when he puts forward his innuendo, put it forward either on the footing that the language taken by itself supports the innuendo, or that there is extrinsic evidence, extrinsic to the libel itself, which shows that that was the sense in which the words were intended to be construed'" 10

p.2, l.30
et seq.
p.3, Ll.1-17.

The learned President then states the special circumstances as set out in paragraphs 6 to 15 of the Statement of Claim (summarised supra paragraphs 6, 7, and 8) and then continues -

p.91, Ll.26
et seq -
p.92, Ll.1-40.

"Of the four witnesses called by the (Appellant) to prove the innuendo, two were members, and one a strong supporter of the Action Group. They all gave evidence to the effect that the article of the 10th June gave them the impression that the leaders of the Action Group were bringing pressure to bear on the Governor to interfere with the course of justice in the Iga Idunganran case, not one of them gave evidence that he had knowledge of any special facts or circumstances which caused him to form his opinion. The (Appellant) gave evidence that the 'Oba Adele is a very strong supporter of the Action Group', that before the Civil Case there had been a dispute as to who should be the Oba of Lagos in which the Government had intervened, and that the Iga is the official residence of the Oba of Lagos, but that does not seem to me to carry the matter any further. The same four witnesses gave evidence regarding the article of 11th June. Mr. Ikole said - 20

p.36. Ll.2-5.

'The publication conveys to me the impression that the leader of the Action Group (Appellant) had put pressure on the Governor to intervene in the Ikenne trial which I knew to be a murder case'. 30

pp.38-40; p.41,
p.38-42.
p.41, Ll.1-30;
p.42. Ll.1-38.

Messrs. Somolu and Randle gave evidence to the effect that they considered it improper for the delegation to see the Governor over the Ikenne case 40

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p.43, Ll.18-43 -
p.44, Ll. 1-32.

which was then on appeal, and Mr. Kotoye said that he gained the impression that the Ikenne murder trial had been discussed at the meeting. It seems clear from the evidence that the Ikenne trial was the sequel to an incident which occurred during the disturbances at Ikenne in Ijebu Remo Division on the 14th January, 1952, arising out of a dispute between the Alakanne's party and the Apena's supporters over a chieftaincy matter. Mr. Randle testified that he knew of the dispute, and he went on to say -

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'Maybe the murder arose out of the dispute'.

He also said that he read the issue of the West African Pilot of the 9th May, 1952, Exhibit "J1", which refers to the Appellant, and to the remarks of Abbott J., who presided at the murder trial, regarding the (Appellant's) alleged failure to hand over the accused man to the police.

Exh. "J1"
agreed.
volume pp.24-26

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The only other witness called by the (Appellant) who testified to knowledge of any special circumstances was Mr. Kotoye who said he had read the issue of the West African Pilot of the 8th May, 1952 Exhibit "J", which contains an article on the Ikenne trial referring to the fact that the accused man Sadiku Salami 'was arrested in the house of an Action Group member', but the article does not contain any direct reference to the (Appellant), and the witness does not aver that he had any other special knowledge when he read the article of the 11th June. On the evidence of these four witnesses can it be fairly said that the (Appellant) discharged the onus of proving that the article of the 11th June conveyed to the mind of a reasonable person the imputation that 'the (Appellant) and the other Ministers asked the Governor and the other officials present at the Conference to interfere in the course of justice namely in the conviction of Sadiku Salami pending before the West African Court of Appeal'? After most anxious consideration I have come to the conclusion that the inference suggested by the innuendo is not such as a reasonable person would draw, and I am therefore, of the opinion that the answer to the question should be in the negative.

Exh. "J" agreed
volume p. 23.

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It seems to me that there might have been a number of matters connected with the Ikenne trial which could quite legitimately have been mentioned at the Conference. As I have already pointed out, only one of the four witnesses Mr. Ikoli, a very good friend of the (Appellant) and a supporter of his party, gave evidence that the article in question gave him the impression that the (Appellant) had put pressure on the Governor to intervene in the Ikenne trial, and he did not testify to having knowledge of any extrinsic facts which might have led him to the opinion he says he formed. 10

Because some persons may choose, not by reason of the language itself, but by reason of some fact to which the article refers, to draw an unfavourable inference, it does not follow that a reasonable person could do so. The learned trial Judge held that the article of the 10th June 'bears the innuendo alleged', and when dealing with the article of 11th June he said, inter alia, 'The implication appears clear that the Ministers including the (Appellant) raised the question about Sadiku Salami's case with a view to getting the Governor to intervene in order to save Sadiku Salami and the (Appellant)'. The latter remarks seems to me, on any view of the evidence, to be an overstatement of the position, and the implication he draws certainly goes beyond the innuendos pleaded. I cannot help feeling that he might well have taken a different view had consideration of the three articles been more clearly separated in his judgment." 20 30

The learned President then makes a criticism of the learned trial Judge's Judgment as follows :-

p.96, Ll.21-26.

"Finally learned Counsel for the Appellants (Respondents) took objection to the passage in the judgment which reads: 'I therefore hold that each Minister had been defamed and that each can bring an action in respect of the publications' It is clear that the remarks go beyond the necessities of the position, and, I think, with respect to the learned trial Judge, that it would have been better if they had not been made. I am quite sure, however, that if any further actions are taken in respect of this 40

matter that they will be decided on their merits, and that no regard will be had to be the passage in question".

18. The Respondents' appeal in the action was accordingly allowed and the judgment of the learned trial Judge set aside and judgment was entered for the Respondents with costs below taxed at 50 guineas.

p.96, Ll.30-33.

10 19. It is submitted that the West African Court of Appeal in holding in its Judgment that, with respect to the article in the issue of the 11th June, 1952, that it was capable of referring to the Appellant, and that it was reasonable for the witnesses to think that it did, was wrong in law, and was against the evidence and the weight thereof; it is submitted that the contrary should have been held in both respects. Save as aforesaid it is submitted that the said Judgment was right and for the reasons therein given therefor.

p.89, l.44 -
p.90, l.2.

20 20. It is submitted that the said Judgment of the West African Court of Appeal in allowing the Respondents' appeal thereto and setting aside the Judgment of the learned trial Judge and entering Judgment in favour of the Respondents with costs was right and should be affirmed and this appeal dismissed with costs for the following, amongst other

R E A S O N S

- 30 1. BECAUSE with respect to each of the said articles in the issues of the 10th and 11th June, 1952, they were not capable in law of referring to the Appellant.
2. BECAUSE with respect to each of the said articles, even if they were capable in law of referring to the Appellant, there was no evidence in proof thereof nor was it in fact proved that they did so refer.
- 40 3. BECAUSE each of the said articles was published of and concerned only the Action Group aforesaid as such and with no section or individual member thereof.
4. BECAUSE the innuendo, as alleged, with respect to each of the said articles was not

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capable of bearing the defamatory meaning alleged.

5. BECAUSE even if the said innuendo with respect to each of the said articles was capable of bearing the defamatory meaning alleged, there was no evidence in proof thereof nor was it in fact proved that they did bear the said defamatory meaning.

6. BECAUSE the said Judgment of the learned trial Judge was wrong. 10

7. BECAUSE, save in regard to what was held in regard to the said article in the said issue of the 11th June, 1952, as set forth in paragraph 19 supra, for the reasons given therein and other good and sufficient reasons the Judgment of the West African Court of Appeal is right.

8. BECAUSE the Judgment of the West African Court of Appeal in allowing the Appeal of the Respondents and setting aside the Judgment of the learned trial Judge and entering Judgment for the Respondents with costs was right and should be affirmed. 20

S. N. BERNSTEIN.

IN THE PRIVY COUNCIL

No. 19 of 1956

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

B E T W E E N:

THE HON. OBAFEMI AWOLowo (Plaintiff) Appellant

- and -

1. ZIK ENTERPRISES LTD.,
2. A.Y.S. TINUBU (Defendants) Respondents

CASE FOR THE RESPONDENTS
ZIK ENTERPRISES LIMITED

A.L.BRYDEN & WILLIAMS,
53, Victoria Street,
London, S.W.1.

Solicitors and Agents for
Zik Enterprises Limited.