

The following Bill, which will in due course be presented to Parliament for enactment, is published for general information.

DEFAMATION

EXPLANATORY MEMORANDUM

This Bill seeks to improve the existing law of defamation by making provisions whereby any person who claims the publication of any defamatory words was made innocently can, under certain conditions, be exonerated from liability for damages. It also places the law relating to pleas of qualified privilege by newspapers on a new basis. Other provisions of the Bill relate to broadcasting, slander of persons holding official, professional or business positions, slander of title to goods and other forms of malicious falsehood.

The whole purport of the Bill is to bring our law of libel and slander up to date.

T. O. ELIAS,
*Attorney-General of the Federation
and Minister of Justice*

Bills 757

DEFAMATION

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.
2. Interpretation.
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4. Slander affecting official, professional or business reputation.
5. Slander of title, etc.
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A BILL FOR

AN ACT TO MAKE PROVISIONS WITH RESPECT TO LIBEL SLANDER AND
OTHER MALICIOUS FALSEHOOD AND FOR PURPOSES CONNECTED
THEREWITH

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Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria
in this present Parliament assembled and by the authority of the same
as follows—

1. This Act may be cited as the Defamation Act, 1961, and shall
5 apply to the Federal Territory of Lagos.

Short title,
etc.

2.—(1) In this Act, unless the context otherwise requires,—

Interpreta-
tion.

“broadcasting by means of wireless telegraphy” means publication
for general reception by means of wireless telegraphy within the
meaning of the Wireless Telegraphy Ordinance or any Act replacing
10 the same, and “broadcast by means of wireless telegraphy” shall be
construed accordingly;

“court” means in relation to any claim, the court or arbitrator, as
the case may be, by or before whom the claim falls to be determined
and in all other cases, any court of competent jurisdiction.

15 (2) Any reference in this Act to words shall be construed as in-
cluding a reference to pictures, visual images, gestures and other methods
of signifying meaning.

(3) The provisions of Part I of the Schedule to this Act shall have
effect for the purposes of the interpretation of that Schedule.

20 (4) Where words broadcast by means of wireless telegraphy are
simultaneously transmitted by telegraph as defined by the Telegraphs
Ordinance, in accordance with a licence granted thereunder by the
Minister of Communications, the provisions of this Act shall apply as
if the transmission were broadcasting by means of wireless telegraphy.

25 3. For the purposes of the law of libel and slander, the broadcasting
of words by means of wireless telegraphy shall be treated as publication
in permanent form.

Broadcast
statements.

Slander affecting official, professional or business reputation.

Slander of title.

Unintentional defamation.

4. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

5.—(1) In an action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage,—

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

(b) if the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(2) Section 3 of this Act shall apply for the purposes of this section as it applies for the purposes of the law of libel and slander.

6.—(1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section; and in any such case—

(a) if the offer is accepted by the party aggrieved and is duly performed, no proceedings for libel or slander shall be taken or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);

(b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (b) of subsection (1) of this section no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

(3) An offer of amends under this section shall be understood to mean an offer—

(a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words;

(b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(4) Where an offer of amends under this section is accepted by the party aggrieved—

(a) any question as to the step to be taken in fulfilment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the court whose decision thereon shall be final;

(b) the power of the court to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the publication in question, or in proceedings in respect of the offer under paragraph (a) of this subsection, shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question;

and if no such proceedings as aforesaid are taken, the court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purposes of this section words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say—

(a) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or

(b) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,

and in either case that the publisher exercised all reasonable care in relation to the publication; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Paragraph (b) of subsection (1) of this section shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

7. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

Justification.

8. In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

Fair comment.

9.—(1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule to this Act shall be privileged unless the publication is proved to be made with malice.

Qualified privilege of newspapers.

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances. 5

(3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit. 10

(4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting immediately before the commencement of this Act. 15

(5) In this section, the expression "newspaper" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published in Nigeria either periodically or in parts or number at intervals not exceeding thirty-six days. 20

Newspaper reports of proceedings in court privileged.

10. A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority within the Federal Territory of Lagos shall, if published contemporaneously with such proceedings, be privileged :

Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter. 25

Extension of certain defences to Broadcasting.

11.—(1) Sections 9 and 10 of this Act shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station within Nigeria, and in relation to any broadcasting by means of wireless telegraphy of any such report or matter, as they apply in relation to reports and matters published in a newspaper and to publication in a newspaper ; and subsection (2) of the said section 9 shall have effect in relation to any such broadcasting, as if for the words "in the newspaper in which" there were substituted the words "in the manner in which". 30 35

(2) In this section "broadcasting station" means any station in respect of which a licence granted the Minister of Communications under the enactment relating to wireless telegraphy is in force, being a licence which (by whatever form of words) authorises the use of the station for the purpose of providing broadcasting services for general reception. 40

Limitation on privilege at elections.

12. A defamatory statement published by or on behalf of a candidate in any election to a local government authority or to Parliament shall not be deemed to be published on a privileged occasion on the ground that it is material to a question in issue in the election, whether or not the person by whom it is published is qualified to vote at the election. 45

Agreement for indemnity.

13. An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe there is good defence to any action brought upon it. 50

14.—(1) It shall be competent for a judge or the court upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect of the same, or substantially the same, libel shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

Consolidation of actions for slander, etc.

(2) In a consolidated action under this section the judge shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the judge shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, he shall proceed to apportion the amount of damages which he shall have so found between and against the said last-mentioned defendants; and if the judge awards to the plaintiff the costs of the action, he shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants.

(3) This section shall apply to actions for slander and to actions for slander of title, slander of goods or other malicious falsehood as it applies to action for libel; and references to the same, or substantially the same, libel shall be construed accordingly.

15.—(1) This Act applies for the purposes of any proceedings begun after the commencement of this Act, whenever the cause of action arose, but does not affect proceedings begun before the commencement of this Act.

Proceedings affected and saving.

(2) Nothing in this Act affects the law relating to criminal libel.

SCHEDULE

(Sections 2, 9)

NEWSPAPER STATEMENT HAVING QUALIFIED PRIVILEGE

PART I.—INTERPRETATION

1. In this Schedule the following expressions have the meaning hereby respectively assigned to them, that is to say—

“international court” means the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States;

“legislature” in relation to any territory comprised in Her Majesty’s dominions which is subject to a central and a local legislature, means either of those legislatures;

“local authority” means any authority or body established under the following enactments or any legislation amending or replacing the same—

(a) Lagos Local Government Ordinance, 1959.

(b) Western Region Local Government Law, 1957.

(c) Northern Region Native Authority Law, 1954, and

(d) Eastern Region Local Government Law, 1955.

“part of Her Majesty’s dominions” means the whole of any territory within those dominions which is subject to a separate legislature.

2. In relation to the following countries and territories, that is to say, India, the Republic of Ireland, any protectorate, protected state or trust territory within the meaning of the British Nationality Act, 1948, any territory administered under the authority of a country mentioned in subsection (3) of section 1 of that Act, the Sudan and the New Hebrides, the provisions of this Schedule shall have effect as they have effect in relation to Her Majesty's dominions, and references therein to Her Majesty's dominions shall be construed accordingly.

PART II.—STATEMENT PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION

3. A fair and accurate report of any proceedings in public of the legislature of any part of Her Majesty's dominions outside Nigeria.

4. A fair and accurate report of any proceedings in public of an international organisation of which Nigeria or Her Majesty's Government in Nigeria is a member, or of any international conference to which that Government sends a representative.

5. A fair and accurate report of any proceedings in public of an international court.

6. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of Her Majesty's dominions outside Nigeria, or of any proceedings before a court-martial held outside Nigeria under the Royal Nigerian Army Act, 1960, or the Royal Nigerian Navy Act, 1960.

7. A fair and accurate report of any proceedings in public of a body or person appointed to hold a public inquiry by the Government or legislature of any part of Her Majesty's dominions outside Nigeria.

8. A fair and accurate copy of or extract from any register kept in pursuance of any enactment which is open to inspection by the public, or of any other document which is required by the law of any part of the Federation of Nigeria to be open to inspection by the public.

9. A notice or advertisement published by or on the authority of any court within Nigeria or any judge or officer of such a court.

PART III.—STATEMENT PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION

10. A fair and accurate report of the findings or decision of any of the following associations, or of any committee or governing body thereof, that is to say—

(a) an association formed in Nigeria for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;

(b) an association formed in Nigeria for the purpose of promoting or safeguarding the interest of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with trade, business, industry or profession, or the actions or conduct of those persons;

(c) an association formed in Nigeria for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudication upon persons connected with or taking part in the game, sport or pastime,

being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

11. A fair and accurate report of the proceedings at any public meeting held in Nigeria, that is to say, a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

12. A fair and accurate report of the proceedings at any meeting or sitting in any part of Nigeria of—

(a) any local authority or committee of a local authority or authorities;

(b) any magistrate or judge of a customary court acting otherwise than as a court exercising judicial authority;

(c) any commission, tribunal, committee or person appointed for the purposes of any inquiry by law, by the Governor-General, or by a Minister of the Crown;

(d) any person appointed by a local authority to hold a local inquiry in pursuance of any enactment;

(e) any other tribunal, board, committee or body constituted by or under, and exercising functions under, any enactment, not being a meeting or sitting admission to which is denied representatives of newspapers and other members of the public.

13. A fair and accurate report of the proceedings at a general meeting of any company, association registered or certified by or under any enactment or incorporated by Royal Charter, not being a private company within the meaning of the Companies Ordinance.

Cap. 37.

14. A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of any government department, officer of state, local authority or the Inspector-General of the Nigeria Police.