



HAMU
LEGAL

TRUST & EXCELLENCE

SUBURBAN FIBER COMPANY LIMITED
V. OLAWALE FAMUYIDE
(SUIT NO: CV/108/19)

CASE STUDY

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Introduction

Hamu Legal was instructed by Alpha Reach Limited to defend a claim brought for defamation against its employee Olawale Famuyide, by Suburban for a tweet published on August 27, 2019 of his dissatisfaction with the service and response from Suburban Fiber Company Limited (“Suburban”) for the internet services provided.

On August 27, 2019, Olawale made a post on Twitter of his disservice with an Internet Service Provider, Suburban Fiber Company Limited. He said:

“I am in an abusive relationship with @suburbanonline. I am officially tired. Please if you know any ISP Providers(sic) in #Abuja that offers Fiber Optic option, please send them my way. 24 hours after my first call to Suburban. Placed 3 more calls after that. Not(sic) attempts to fix the issue. “I do not want to enter one chance”.

Two months later, Suburban filed an action in court on the ground that the tweets made by Olawale were defamatory, prejudicial and claimed damages in the sum of One Hundred Million Naira (₦100, 000, 000). Olawale raised a defense of justification and that his rights to freedom of expression is constitutionally protected¹. After two years of instituting the action, Suburban filed a notice of discontinuance and the suit was struck out.

Case Analysis

The test in determining whether Olawale’s post on twitter were defamatory, prejudicial and injurious to the reputation of Suburban was enunciated in the case of **Yahaya v. Munchika**² where it was established that, before a statement is considered defamatory, there are guidelines the court ought to consider in determining whether it is defamatory or capable of a defamatory meaning:³

1. *Are the alleged defamatory words a product of strained, forced or utterly unreasonable interpretation by the Claimant?*
2. *Under the circumstance which the statement was published, would reasonable men likely understand/interpret the statement to be libelous?*

¹ Freedom of Expression, Section 39 (1), 1999 Constitution of The Federal Republic of Nigeria (as amended).

² (2000) 7 NWLR PT 664 Page 312

³ Yahaya v. Munchika, (2000) 7 NWLR PT 664 Page 312

It has also been established for a defamation claim to become enforceable, it must meet the following elements:

1. A false statement concerning another;
2. The statement must be defamatory;
3. A publication to a third party; and
4. Harm to the plaintiff's reputation.

Suburban argued that Olawale's tweet is a defamatory statement which affected its ability to carry on business, and that Olawale was not one of its registered customers, therefore the tweet was a false statement. Suburban requested that Olawale provide evidence to prove the truth in his publication/tweet.

Olawale on his part argued that his tweet was a statement of fact and lawful as Suburban was fully aware that he is an employee of Alpha Reach, a subscriber of Suburban's services since 2017. Olawale relied on the defense of justification, that as an employee of Alpha Reach, he was a User of Suburban's service and acting during the course of his employment whilst making the tweet.

To prove the truth in his publication, Olawale asserted that his tweet was a factual opinion and, presented several correspondences with Suburban and him acting on behalf of Alpha Reach filing complaint of the poor service. There have also been several [complaints](#) from members of the public on Twitter and other social media platforms on the poor service from Suburban.



Part of the reasons of going ahead with the MTN system is because the customer service from [@ExploreLegend](#) is shockingly bad. I am blessed with very good blood pressure. When things cause me too much stress, I just let it go and stop worrying about it. That's what I did.

9:05 PM · Jun 25, 2020 · Twitter for iPhone

Olawale, further relied on his right to Freedom of Speech, a fundamental right guaranteed to every citizen of the Federal Republic of Nigeria. The provisions of Section 39 (1) (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) expressly provide as follows:⁵

(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall to own, establish and operate any medium for the dissemination of information, ideas and opinions.

In view of the above, Olawale has right to express his dissatisfaction on any social media platform including, Twitter, and the court is duty bound to protect those rights.

After two years of instituting the action, Suburban filed a notice of discontinuance, the suit was struck out and no cost was awarded to Olawale. The court holds the duty to ensure to strike a balance in protecting citizen's right to freedom of speech and a citizen's business reputation.

Our Opinion

Rights to Freedom of Expression as guaranteed under the 1999 Constitution of the Federal Republic of Nigeria (as amended)

The constitution has placed a high standard to prove defamation as the freedom of expression even if not absolute is guaranteed in the Constitution.

The elements that constitute defamation as considered must be presented before any court of law. The fact that the right to freedom of expression is not absolute, does not elude service-providers from performing their duties and if there is an act of non-performance, customers have the right to express their opinion and complaint about it on any platform.

In a social media driven world, the courts today is saddled with the onerous task of striking an acceptable balance between the interest in protecting a person's reputation and protecting the freedom of speech.

⁴ Freedom of Expression, Section 39 (1), 1999 Constitution of The Federal Republic of Nigeria (as amended).

Duty of Internet Service Providers

The Nigerian Communication Commission (“the Commission”)⁶, has the responsibility for regulation of communications in Nigeria and designed the Internet Code⁷ and several guidelines for the purpose of regulating Service Providers activities and protecting consumers rights in Nigeria. Part VII rule 39 of the Consumer Code of Practice Regulations, 2006, mandates all Licensees to provide its consumers a Complaint and Response Mechanism (“CRM”) where complaints can be made and resolved.

Suburban is yet to observe the above-referenced regulation, even though a customer care unit is provided for on its website. This is a call to all Licensees to provide an effective and efficient CRM system that allows consumer report complaints for speedy actions. All Licensees are therefore advised to improve its customer-service experience, observe and implement the provisions of extant regulations in the industry.

The Nigerian Communication Commission has a codified complaint handling procedure and powers to resolve disputes between customers and internet service providers. If dissatisfied with services rendered, a Consumer shall first file the complaint with the ISP, and obtain a ticket number. If the complaint is not satisfactorily resolved the Consumer can write directly to the Commission. The NCC complaints commission bureau resolves all licensee related complaints including poor services delivery, inappropriate or deceptive advertisement, and exploitation or invasion privacy.

Consumer’s Rights

The rights of consumers are protected under the Federal Consumer Protection Act⁸, and enforced the Federal Consumer Protection Commission (FCCPC).⁹ In particular, part of the responsibilities of a consumer as specified by the FCCPC is informing other consumers of their experience with a product or service. Therefore, consumers sharing their [experience](#) online is further protected by the FCCPA.

5/31/22, 2:57 PM

Legend by Suburban, 44 Aguiyi Ironsi St, Wuse 900271, Abuja, phone +234 700 6953 4363

Kashinath Vajpai

^ 0 v

09 February 2022 14:59

Still a customer for the legend, but the worst I have faced from the initial phases of installation in 3 months to rectifying small issues in a time period of two to three weeks. Getting their legal notices even after paying them in advance for three months when I had to approach Nigerian internet authorities (NCC). They are kind of pathetic in responding and providing services. But, we do not have choices here in Nigeria, and among the worst, one has to opt kind of get going with basics. On three occasions I had to approach NCC Abuja, and the authorities, really helped me to resolve it, with their intervention, one can imagine how much time it would have taken first to complaint legend team, wait for their response, if not done the follow-up, then send them warning letter, then approaching NCC, and then waiting for the response. Mostly it was almost 3-4 weeks affair, and the time, money, and mental agony we face one can imagine. I hope someday my Nigerian fellows will get better services. But, legend became a kind of nightmare. If internet is slow, they will insist you to buy their other equipment, and you have no other choice. Getting paid for bad services. That's the story.

report reply

5 The Nigerian Communications Commission was created by the Nigerian Communications Act, 2003.

6 Nigerian Communication Commission Internet Code and Practice, Issued on: 26 November, 2019.

7 <https://www.fccpc.gov.ng/uploads/FCCPA>

8 <https://www.fccpc.gov.ng/>

We are of the opinion that the tweet complaint by Olawale is not only protected by his guaranteed constitutional rights but is also further protected by the FCCPC.

Conclusion

The use of social media has proliferated society, and people will continue to rely on platforms like Twitter, Facebook, Google Reviews to share their opinions and reviews on businesses; this case represents one of many to come in a digitally savvy world. The courts have a responsibility to balance the protection of the fundamental rights to free speech to protect citizens from the burden of frivolous law suits like this, which infringes on their rights and business interest.

The FCCPC also has a responsibility of creating awareness of the rights of consumers to post reviews, comments and opinions, and to ensure that citizens are not censoring themselves to avoid the burden of a meritless suits like this and the burden of legal fees. Over all, the objective in a consumer rights society is to not only protect customers' right to post negative reviews, but to also educate and inform other users.

The Hamu Legal team that represented Olawale and Alpha Reach in this suit were:

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