Neutral Citation Number: [2020] EWHC 3262 (QB)

Case No: QB-2017-002787

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/12/2020

Before:

HIS HONOUR JUDGE LEWIS
(sitting as a Judge of the High Court)

- -

Between:

FELIX NWAKAMMA **PAULLNUS IHENAKARAM** **GERRY O'NWERE**	**Claimants**
- and -	
BARTHOLOMEW UMEYOR	**Defendant**

- -
- -

Mr Adrian Davies (instructed by **Osmond & Osmond Solicitors**) for the **Claimants**
Mr Alastair Panton (instructed by **direct** access) for the **Defendant**

Hearing dates: 13 – 16 July 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE LEWIS

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00am on 1st December 2020.

HIS HONOUR JUDGE LEWIS:

1. The claimants seek damages for libel arising out of emails or letters that they say were sent between 9 and 16 January 2017 to 31 recipients (together, "the first publication"). Further or in the alternative, the claimants seek damages pursuant to s.3(2) of the Protection from Harassment Act 1997 ("the 1997 Act") arising out of the sending of those emails and letters.

2. The first claimant also seeks damages for libel arising out of an "apology" email sent by the defendant on 6 March 2017 ("the second publication"). The claim form says this was sent to the same 31 recipients, as well as to the second and third claimants.

Background

3. The Mbaise Union in London ("the Union") is an unincorporated association with some fifty or sixty members. Its purpose is to promote the welfare of people of the Mbaise community living in or near to London who originate from Imo state in Nigeria.

4. All the parties to this case have been office holders of the Union. The first claimant has been the treasurer. The second claimant has been the financial secretary. The defendant was the president of the Union until 2013 when he was replaced by the third claimant. There is a dispute around what happened in 2013, but it is not particularly relevant to these proceedings save that it appears to have been the start of a period of significant acrimony within the Union. In 2015, the defendant either left, or was suspended from, the Union but he has since become an active member again.

5. When members of the Union are in dispute with one another, the Union expects them to seek to resolve matters without involving the courts where possible, and it provides a dispute resolution process. Notwithstanding this, the Union has featured in a disproportionate number of court cases between its members and former members in the High Court and the County Court.

6. Of the various High Court cases, I note two. Firstly, a 2015 case in which the defendant to these proceedings sued the first claimant for libel. The claim arose out of an email sent (with paper copies posted) to members of the Union, which Jay J found to mean that the claimant had submitted documents to the Union which he had either forged himself or had procured others to forge, and had done so dishonestly with a view to personal gain. The court rejected defences of truth and honest opinion and awarded £2,000 damages and costs: ***Umeyor v Nwakamma*** **[2015] EWHC 2980**. Secondly, a 2016 case in which the defendant to these proceedings sued a prominent member of the Union, Rev Innocent Ibe, for slander. The claim was unsuccessful, see ***Umeyor v Ibe*** **[2016] EWHC 862** (Warby J).

The first publication

7. On 9 January 2017 the defendant sent an email that read as follows:

> "Dear Mr Onwere [the third claimant]
>
> ENOUGH IS ENOUGH

> Find enclosed a copy of the text message by Prophet Ibe dated 11 September 2015 and your email to Prophet Ibe dated 12 September 2015, a day after the threat from Prophet Ibe.
>
> I am highly disappointed that a President of the Mbaise Union, a Knight of the Catholic Church and a married man with children will descend so to engage in such a childish and malicious correspondence with Innocent using the photograph of me and my wife. You went too far and enough is enough. It appears that you do not appreciate the dignity in marriage as I have never seen you in a photograph with your wife, otherwise you would not have involved yourself in this kind of correspondence, especially with Innocent.
>
> If you owe Innocent anything or [are] in possession of his keys as threatened, kindly go and settle [with] him and stop blackmailing me in order to placate him.
>
> As I said before, I am not aware if Mr Ihenakaram [the second claimant] is impotent, and even if he is, it is not my business as he is not the only impotent man. I am also not aware of Felix paternity, whether his biological father is Mr Ogu from Oboama or Mr Nwakamma from Ihitte. The email of 12 September 2015 is nothing but succumbing to the threat of the text message. I am highly concerned with the way three of you are supporting evil acts and it gives me the impression that the contents of the text message might be facts.
>
> Yours faithfully
>
> Mr Umeyor"

8. There was a document accompanying the email ("the Text Message") which read as follows:

> "------ SMS ------
> From: +447424[redacted for this judgment]
> Received: 11 Sep 2015 10:23 AM
> Subject: Message from Prophet Innocent Ibe…
>
> Message from Prophet Innocent Ibe to:
> De Paulinus [the second claimant]
> De Felix [the first claimant]
> De Gerry [the third claimant]
>
> Three of you set me up against Barry and you have now refused to give me witness statement to defend my case. I will now expose you to the Mbaise people. De Pauli [second claimant], remember, I know where you borrowed the sperm for your two children. You went to borrow the third one and it failed.

> De Felix [the first claimant], you know that you are not Mr Nwakamma. You are Mr Ogu from Oboama.
>
> Mr Nwakamma drove your mother away when she became pregnant of you for Mr Ogu your real father. This is why you were raised at Ihitte market square.
>
> De Gerry [the third claimant], bring back the keys to my house and come and watch a video of you having sex in my house with a woman.
>
> This is just the beginning.
>
> Rev Prophet Ibe".

9. The defendant also enclosed an email dated 12 September 2015 between the third claimant and Rev Ibe, which included a photograph of the defendant and his wife and what appears to be some sort of police stamp. Whatever this was all about, and it is far from clear, the defendant says it was the trigger for him sending his email on 9 January 2017, some seventeen months later.

10. A printout of the email dated 9 January 2017 shows that it was sent to five people:

    i) The third claimant, to whom it was addressed;

    ii) The first claimant;

    iii) The current President of the Union, Chief Ezeakchi Ogugua;

    iv) Chief Nzenwa Maduka; and

    v) Rita Okigbo - the defendant says that he sent the message to Ms Okigbo to pass to her husband Mr A. Agbasonu, who is not on email.

11. The defendant says that he also sent the email (with enclosures) by post to each defendant, but not their wives. He denies posting it to anybody else.

12. On 15 January 2017, the defendant sent a further email to the third claimant, similar but not identical to the first. On 16 January 2017, this second email was forwarded by the defendant to seven people[1]:

    i) The first claimant – who had received the 9 January message;

    ii) Chief Ezeakchi Ogugua – who had received the 9 January message;

    iii) Chief Nzenwa Maduka – who had received the 9 January message;

    iv) The second claimant;

    v) Mr Ranti Nwaosu;

[1] The email was sent to ten email addresses, but it appears on the evidence that these belong to seven different people.

vi) Mr Chinedu Njoku; and

vii) Mr Ernest Ndulor – who emailed the first claimant on 24 January 2017 to say that he had seen the "nonsense" that the defendant had been writing.

13. The claimants' pleaded case is that copies were also sent by post to eight other people:

i) Mrs Evelyn Ananwu

ii) Mr Angela Anisionwu

iii) Mrs Stella Emenyonu

iv) Mr Matthew Nwosu

v) Mrs Ngozi Njoku

vi) Mr Val Eze

vii) Mrs A Ihenakaram, the second claimant's wife

viii) Mrs Caroline Nwakamma, the first claimant's wife

14. There is, however, little evidence to support this:

i) There is no written evidence from any of the first six named above that they received copies by post, or at all.

ii) The defendant has contacted some of the people on the list, for example Val Eze and Matthew Nwosi, and they have confirmed that they did not receive anything, although we only have the defendant's word for this. The claimants say that these two gentlemen are friends of the defendant.

iii) In respect of the first claimant's wife, Caroline Nwakamma:

a) The first claimant said in cross-examination that his wife received a letter posted 16 January 2017. He was unclear on the detail, including whether his wife read it.

b) Mrs Nwakamma's witness statement does not say that she received a copy of the offending email by post, or at all. She says she was aware that the first claimant had received an email. She also says that subsequently she received some letters in the post which elaborated on what had been said in the email, which must be a reference to the Eagle Eye gossip sheets that are considered below.

c) In oral evidence, Mrs Nwakamma confirmed that two days afterwards she did receive a letter in the post with the same message from the email. There is an envelope in the bundle addressed to the first claimant's wife. The original has been held by solicitors during these proceedings, and this was brought to trial. The trial bundle incorrectly

stated that the enclosure was the 15 January 2017 email, whereas in fact on inspecting the original it became apparent that the envelope only contained a printout of the Text Message and of the email between the third defendant to Rev Ibe dated 12 September 2015. The envelope that was produced had a strange home-made address label stuck to the front of it.

d) I am not satisfied that Mrs Nwakamma received a copy of the first publication by post.

iv) In respect of the second claimant's wife, Akudo Ihenakaram, her witness statement does not say that she received a copy of the offending email. In fact, she uses wording almost identical to that used by the first claimant's wife, and talks of later letters elaborating on the same issues.

15. The claimant's pleaded case is that copies of the original email were also sent by email to eleven or so other recipients. There is simply no evidence that the message was sent to these people, save that the first claimant himself forwarded the message to Rev Ibe on 11 March 2017. The first claimant's oral evidence on this point was confused, and during cross-examination he conceded that there is no evidence of further publication.

16. I am satisfied that the first publication was sent directly to the three claimants and six or so others.

The Text Message

17. The Text Message was first sent on 11 September 2015. The defendant says it was sent to most members of the Union at that time, including himself and all the recipients of his January 2017 emails dated 9 and 15 January 2017. The defendant's wife says she also received it at that time.

18. The first claimant says he did not receive the Text Message when it was sent in 2015 but someone forwarded it to him. He says he could not trace the message and so deleted it and did not tell his wife. He says he does not know how many members of the community knew about it then. The second claimant's evidence about the Text Message was somewhat unclear. He accepted that in 2015, most of the Mbaise community knew about it. His wife confirmed that the second claimant shared the Text Message with her in 2015. The third claimant confirmed that he received the Text Message in 2015.

19. The Text Message was the subject of discussion at a meeting of the Union on 27 September 2015, and I was told in evidence that around 30-40 people attend such meetings. The third claimant was at that meeting and accused the defendant and a third party of having been responsible for it. The first claimant could not recall if he attended the September 2015 meeting, but says he was not at a meeting where the Text Message was read out. It seems apparent from the evidence that in 2015 many members of the Union were aware of the Text Message and what it said. There is no suggestion in the evidence that anybody at the time (2015) believed what was said in the Text Message, or viewed or treated the claimants differently.

20. The Text Message also featured in libel proceedings in 2016 brought by Rev Ibe against Chief Ezeakchi Ogugua (who replaced the third claimant as President of the Union in October 2015, at a time when the first and second claimants also lost their executive positions). Chief Ezeakchi Ogugua's defence dated 13 February 2017 referred to it as the "infamous text message". He said that "at the monthly meetings in September 2015 the issue came up and most people including myself condemned the text message in its contents". He goes on to explain that the three claimants in this case accused the defendant at that time of having sent the message.

21. The Text Message also apparently featured in the 2016 slander proceedings brought by the defendant against Rev Ibe, and was included within the trial bundle.

22. The claimants' case in respect of the Text Message is somewhat confused:

    i) The claimants' pleaded case is that the defendant was the author of the Text Message in 2015, not Rev Ibe. The defendant denies he is the author.

    ii) The pleaded claim is limited to the publication, or re-publication, of the Text Message by the defendant to the 31 named recipients in January 2017, whether or not the defendant was the actual author of the Text Message.

    iii) In the claimants' skeleton argument for trial, they accept that the defendant was not the author or publisher of the Text Message in 2015. The gist of the claimants' oral evidence was that they believe that the Text Message was sent by one of three people, including the defendant, but they do not have the evidence to prove this.

23. Given the lack of evidence that the defendant was the author or original (2015) publisher of the Text Message, and the concession made by the claimants' counsel during trial, I proceed on the basis that the defendant was not the author or original publisher of the Text Message.

24. In fairness to the Rev Ibe, who is not a party to these proceedings, I should record that he denies responsibility for the Text Message. He emailed the first and third claimants on 19 January 2017 to confirm this, and said that he will circulate his email to the wider Mbaise community so they know the Text Message was nothing to do with him. None of the claimants believe that Rev Ibe wrote the Text Message.

Events after the first publication

25. The 9 and 15 January 2017 emails were discussed at a meeting of the Union in late January 2017. A Mrs Evelyn Anyanwu raised the matter and said that the allegations against the claimants were "rubbish". The first claimant says that everybody at the meeting said they had received the message and people were angry. The first claimant said that he and the other claimants had not intended to raise the issue, but accepted that they did discuss the email given that it had been raised.

26. A letter of claim signed by the first claimant (and emailed by the third claimant) was sent on 16 February 2017. The email shows that it was sent to the "Mbaise Members Email List", whatever that might be. The claimants sought various remedies, including an unqualified withdrawal of the allegations. They also sought "a proper

apology to each of us in terms to be agreed. It must be circulated to all the publishees of your email of 9 January".

27. The defendant sent a response on 22 February 2017 by recorded delivery and email. In this, he explains that he was just trying to clear his name. He says very clearly that he regrets any inconvenience or stress caused to the three claimants, and withdraws any allegations that his email might be understood to make, on an unqualified basis. He confirms he has no intention of making any allegations against any of them re the Text Message. The defendant also explains that at the last Union meeting (ie the one at the end of January), the three claimants and the first claimant's wife published the information themselves to the entire membership, which is when many apparently heard it for the first time.

28. On 23 February 2017, the defendant forwarded his letter of 22 February to:

    i) The first claimant;

    ii) The second claimant;

    iii) The third claimant;

    iv) Mr Ranti Nwaosu;

    v) Mrs Rita Okigbo;

    vi) Mr Ernest Ndulor;

    vii) Mr Chinedu Njoku;

    viii) Sabinus Ukachi, Secretary of the Union;

    ix) Mr Ifeanyi Onwere Djify Onwere;

    x) Mr Chris Diala;

    xi) Ms Charles Uttams; and

    xii) Mr Christopher Ahamefule Azubike

29. The apology was sent to all the email recipients of the first publication save for Chief Ezeakchi Ogugua (the President of the Union) and Chief Nzenwa Maduka. Five named recipients of the 23 February email, including the Secretary of the Union, had not been sent the original January emails by the defendant.

The second publication

30. The letter of 22 February 2017 was insufficient for the claimants. The first claimant wrote around 4 March 2017 to say that they will be issuing proceedings in the absence of what he referred to as an "offer of amends".

31. On 6 March 2017 the defendant sent an email to the first claimant and a number of others. The text of the email read: "Your letter before action. Find attached my

response to your email of 4 March 2017. In accordance with your request, I have copied the letter to the recipients of my email of 9 January 2017 so that they will note that I have provided you with an apology and retracted my letter, and ready to discuss your losses and serious harm caused to you. I look forward to hearing from you with a view of resolving the matter amicably without need for court proceedings which will simply escalate costs and prolong matters".

32. Attached to the email was a letter:

i) It stated that the contents of the email of 9 January were "fully withdrawn" and retracted "in an unqualified way".

ii) The defendant gave an undertaking not to make any allegations against the claimants in respect of the contents of the Text Messages, nor to quote the contents of the Text Messages in future correspondence.

iii) The defendant agreed to pay damages. He asks for more information. He flagged the need for the claimants to prove serious harm pursuant to s.1 of the Defamation Act 2013.

iv) The letter then went on to say the following (the word in bold having been in bold in the published version):

> "On a different note, Mr Nwakamma [the first claimant] on 14 February 2017 at the assessment hearing for my costs against you in the previous proceedings, you made an application for a stay of execution of the costs order on the grounds that you intended to sue me, and that I will not be able to pay your costs if you are successful. You also stated that I am at the point of insolvency and that I was only able to pay Mr Ibe the sum of £16,000 because I sold my land in Nigeria. Who told you that I sold a land in Nigeria to pay Mr Ibe?
>
> You were quite aware that I did not travel to Nigeria within that period, and quite aware that I did not sell any land to pay Mr Ibe, but you **deliberately** lied to the court with full intention of misleading the court in order to obtain a stay of execution of the costs order. I paid Mr Ibe as a matter of principle and if you are successful in any court proceedings against me, I will pay you."

33. The email was sent to the three claimants and the following:

i) Mr Ranti Nwaosu;

ii) Mrs Rita Okigbo;

iii) Mr Ernest Ndulor;

iv) Chief Ezeakchi Ogugua;

v) Mr Chinedu Njoku;

vi) Chief Nzenwa Maduka;

vii) Mr Ifeanyi Onwere Djify Onwere (the third claimant's twin);

viii) Mr Chris Diala;

ix) Mr E. Nwawudu, Secretary of the Union;

x) Christopher Ahamefule Azubike;

xi) Mr Adrian Davies; and

xii) Charles Uttams.

34. The first six of these had also received the first publication. There is no evidence that the email was sent to anybody other than these people, one of whom is the claimants' trial counsel.

The Claim

35. The claim for was issued on 23 March 2017, with the defence served around 11 May 2017.

36. The defendant says that he sent a further letter on 10 April 2017 to try and compromise matters, which the parties agree was on an open basis. In this letter, the defendant also withdrew the allegation that the first claimant had intended to mislead the court and made an open offer of £1,000 damages to each party. The claimants deny having received this letter, pointing out that there is no evidence that it was sent by email and that it was not referred to in the defence served just a month later, despite the defendant having pleaded his other retraction. I am not satisfied that the letter was, in fact sent - the defendant sent everything else by email or recorded delivery and it seems unlikely that he would suddenly send a key letter by post. Even if he had done so, on his case the letter was only sent to the claimants and not to the other recipients of the second publication.

37. A formal letter was sent by the Union on 6 October 2017 asking the claimants to suspend the action to allow issues to be settled out of court. The Union formed a Peace and Reconciliation Committee to seek to resolve the issues in this case, but it appears the claimants declined to take part. The claimants to this case have since been suspended from the Union for bringing these proceedings.

Eagle Eye

38. From August 2017, a series of "newsletters" started to circulate to members of the Mbasie community in London. These made wide-ranging allegations against a number of people, including the claimants and defendant to this case. Amongst the allegations made were those from the Text Message. Eagle Eye was apparently posted monthly from Romford, with the last one dated February 2018. The letters were branded rather grandly as "Eagle Eye Publications", although they are clearly not professionally produced and have the look of something put together by someone in their bedroom. The anonymous content consisted of a stream of spiteful ramblings with a somewhat juvenile tone.

39. These letters do not form part of the claimants' pleaded case and I do not think it is necessary to repeat what they say. The claimants' skeleton argument for trial confirmed that it is not the claimants' case that the defendant directed or procured the publication of the Eagle Eye letters.

40. At trial, the claimants did however seek to pursue an un-pleaded case that the damage caused to the claimants by Eagle Eye was a consequence of the first publication, and that there is a sufficient causative link between the two. I return to this later.

Evidence

41. For the claimants I heard evidence from all three claimants, the first and second claimants' wives, the third claimant's brother and an elder from the community. For the defendant, I heard evidence from the defendant himself and his wife.

42. There is a significant problem with the witness statements of the claimants and their wives: some of them are almost identical, with core paragraphs copied from one to another. It became clear from cross-examination that the statements had, in fact, been written by the first claimant. Despite it being obvious that some of the statements had simply been copied, some witnesses refused to acknowledge this. For example, when the second claimant was giving evidence he maintained that he had written his statement himself, giving the absurd explanation that the reason it was almost word-for-word identical to that of the first claimant was because they were both telling the truth.

43. There is also an issue with the third claimant's oral evidence. Due to the pandemic, the court was told that he was shielding and so unable to leave his home, although the defendant believes he has in fact been working as a mini-cab driver. Arrangements were made for him to give evidence by video-link. The impression given to the court during the third claimant's evidence was that he was at home near Romford: there was a fireplace in the background, and he even explained why he was shielding and unable to leave the house. His evidence finished towards the end of the court day. Some minutes later, the third claimant was spotted outside the Royal Courts of Justice amongst the crowds that had formed for a high-profile libel trial. It transpired that he had, in fact, given evidence from his solicitors' offices around the corner, and was waiting in the crowd for a lift. It is difficult to see why he could not have attended court in person to give his evidence in the usual way, with the other parties also present. Of course, I remind myself that just because this has happened, it does not follow that what the third claimant said in evidence is untrue, or that I should necessarily give less weight to what he had to say. Nevertheless, the position is far from satisfactory.

The first claimant

44. The first claimant is a social worker. He is articulate and came across as a confident witness. I did, however, observe him struggling to provide straightforward, factual answers to questions. He sought to try and slant what he was saying to fit his claim. He is clearly heavily immersed in the dispute, and wider community politics, and spoke a lot about who had said what to whom. I felt at times that he was unable to appreciate that just because someone had said something to him, it does not mean that what they were saying was necessarily true.

45. The first claimant says he was particularly upset at the suggestion that his late mother had an affair. His statement says that because of the publications, he has suffered with anxiety and had panic attacks when leaving the house. He says that his wife became too nervous to leave the house as she was worried the community would be gossiping about her, or saying nasty things. He says his wife was very distressed when she read the correspondence, which he says also reached his family in Nigeria. The first claimant says members of the community now ignore him, or do not engage in conversation with him. He says he wants his name cleared so that he can be involved with the community again.

46. The first claimant stated that the messages had harmed his social and business circles. He was asked more about this in cross-examination given that he is a social worker, and so not in business. The first claimant explained that he lost confidence in himself and believed others would think differently of him. He said he had been accused of lying. The first claimant did not seek medical advice in respect of anxiety or panic attacks.

47. It is of note that the first claimant's evidence does not refer to the second publication at all. He does not say anywhere that it has caused him any harm whatsoever, and all the harm that he says he has suffered appears to derive from the first publication.

The first claimant's wife, Mrs Nwakamma

48. As noted earlier, Mrs Nwakamma's statement says that she received a number of different publications by post, which must have been the Eagle Eye letters. In cross-examination, she was not able to distinguish between the different publications. Her statement refers to the harm that these letters had caused to her family in the community. Her evidence was that she was very distressed when she read the correspondence and became too nervous to leave the house, as she could tell that members of the community thought her family were corrupt. For a while she says that she suffered with anxiety and panic attacks when she left the house. She repeats what is said in other statements about members of the community ignoring them or not engaging. She says she has now left the Union, not believing that it is possible for their relationship with the community to revert to how it was before. She is also angry at the way the community has treated the family.

49. Mrs Nwakamma said in cross-examination that she had not heard of the Text Message until 2017 when her husband showed her, and had not attended the Union meeting in 2015. Despite an average of 30-40 people attending Union meetings, she said nobody told her in 2015 about the text, yet after the 2017 meeting she says she was called by lots of people – although she could not name them. I do not accept Mrs Nwakamma's evidence on this point, and it seems more likely than not that she was aware of the Text Message in 2015.

50. Mrs Nwakamma gave a somewhat exaggerated account in evidence of her reaction to the content of the email. She says that she started to question whether her husband of 30 years could be trusted, and she said it made her start to doubt her marriage.

51. The first claimant was evasive in evidence about his wife's continued involvement with the Mbaise community. I heard evidence from various witnesses about the Ugonwanne Social Club. It is a women's group, independent to the Union but for

Mbasie women or those married to Mbasie men. It meets every two months. Mr Nwakamma was keen to stress in evidence that this group is independent to the Union, but did accept that his wife attended some of the meetings. Mrs Nwakamma confirmed that she was one of the founders of the club and has continued to attend meetings throughout the relevant period.

52. I do not accept the first claimant's wife's evidence of the effect of the words complained of. Leaving aside the fact that her statement was clearly written by her husband and copied over content from others, it became clear from her oral evidence that her responses were exaggerated and unconvincing. For example, her suggestion that she started questioning 30 years of marriage when she read the 9 January email, even though there was nothing in it to justify this and she would have heard the allegations two years before. A more striking example is when she says she felt that she couldn't leave the house through fear of being ostracised by the community. This clearly was not true – she confirmed in evidence that she continued to attend the women's social group, which had a significant overlap of membership. It is also relevant to note that the first claimant's wife lives in London, and works for a local authority, and so even if what she says is correct about not being able to face other Union members, the chances of her bumping into one of the handful of people who received the emails would have been close to nil.

The second claimant

53. The second claimant explained more than once in evidence that he a busy man. He came across as extremely confident, and seemed unemotional when answering questions.

54. The second claimant's statement explains how the letters have caused tension within his family. He says that he had to ask his wife if she had had an affair, although in cross-examination he accepted that this was because of allegations made by Eagle Eye, not the publications complained of in these proceedings. Bizarrely, he also felt the need to read the letters to his children, which he found very upsetting. He says the community has started to treat him differently, often ignoring him or not engaging in conversation. He thinks he is taken less seriously as a member of the Union. The second claimant continues to be stressed and embarrassed when he thinks about others having received the correspondence.

55. The second claimant was asked why people would be suspicious and doubtful of him simply reading that he was impotent. He said it meant he did not want to attend the Union. He said there were people who believed these allegations but could give no names. The second claimant accepted in evidence that he has continued to socialise with members of the Mbaise community, including at a party in May 2019 and a larger party for the defendant's wife's cousin in August 2019 at which he accepted there were a reasonable number of Union members present. The second claimant eventually conceded that the allegations have not stopped him from socialising, but he pointed out that he does not attend the Union anymore. Of course, we know that this is because the claimants have been expelled or suspended from the Union for bringing these proceedings.

The second claimant's wife, Mrs Ihenakaram

56. Mrs Ihenakaram displayed dramatic emotion in court. She was very agitated and upset in the witness box. She came across as a very assertive person. She did not always answer the questions asked of her, with her responses often focussed more at trying to argue her husband's case. I got the sense that the Eagle Eye publications were the primary cause of her upset.

57. Mrs Ihenakaram's statement is virtually the same as the one written for the first claimant's wife. It also forgets to mention how she is an active member of the Ugonwanne Social Club, and attends wider Mbaise community social events. She went to some lengths to stress that the club is separate from the Union, which legally it might be, but it seems clear that there is a considerable overlap, with everybody attending the group having a connection with the Mbaise community. Mrs Ihenakaram says that she no longer attends Union meetings as a matter of principle, because of the way in which all the publications have been dealt with

58. Mrs Ihenakaram is silent about having received the first publication. She said in evidence that her husband showed her the email, and a few days later she received a copy in the post. The envelope produced in court was, however, from March.

The third claimant

59. The third claimant's statement mirrors much of what the second claimant says. The main difference is that he confirms that his wife knew that the correspondence was nonsense and it did not affect their relationship. He is, however, concerned that his daughter believed the allegations. The third claimant confirmed that his wife and brother received the first publication, although there is no evidence from them to this effect. The third claimant said in evidence that he had not seen any of the open offers to settle, and if he had he would have gone along with them.

The third claimant's twin brother

60. The third claimant's twin brother, Paul O'Nwere gave evidence. He is an active member of the Union, and a former office holder. He says he received the first message complained of by email (although he is not on the list of known recipients), and the Eagle Eye letters by post. He says the third claimant had a stroke after the publications complained of, and he believes all the publications contributed to this illness, or affected the recovery. I note this is not something the third claimant says. This witness confirms that he does not believe the allegations. In oral evidence, it was clear that much of what he was talking about relates to Eagle Eye.

61. Mr O'Nwere corrected a significant error in his statement, which says that he had spoken to some members of the Union who thought the allegations were "completely true". He looked horrified when this was brought to his attention and explained in cross-examination that he meant to say the opposite, that he has spoken to people who thought the allegations were "completely untrue". He had not drafted his statement.

The defendant and his wife

62. I heard relatively brief evidence from the defendant and his wife, Mrs Umeyor. Much of what they say is not challenged, or has been identified elsewhere. Mrs Umeyor came across as a straightforward witness, who appeared to be truthful.

Other evidence

63. There was also evidence from an elder statesman from the Union, Cyracus Eneremadu. He also came across as very confident. He received four or so publications from January 2017. He considered it to be "false propaganda". He wrote a letter to the Union complaining about the correspondence. He explained how some of the allegations made will affect the reputations of family members in Nigeria, because of the way in which families live in that country.

The claims for libel

64. The determination of whether a published statement is defamatory of an individual claimant is now a three-stage process. It must be decided whether, to the extent this is disputed, the statement (1) refers to the claimant; (2) bears a meaning that is defamatory of the claimant; and (3) has caused or is likely to cause serious harm to the reputation of the claimant. Stage (2) sometimes must be sub-divided into two separate elements: (a) the identification of the meaning of the words, and (b) the determination of whether that meaning is defamatory, ***Lachaux v Independent Print Limited*** **[2015] EWHC 2242 (QB)**, per Warby J.

Meaning

65. The approach to be taken by court when determining meaning was summarised by Sir Anthony Clarke MR in ***Jeynes –v- News Magazines Ltd*** **[2008] EWCA Civ 130** at [14]:

> "(1) The governing principle is reasonableness.
>
> (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
>
> (3) Over-elaborate analysis is best avoided.
>
> (4) The intention of the publisher is irrelevant.
>
> (5) The article must be read as a whole, and any 'bane and antidote' taken together.
>
> (6) The hypothetical reader is taken to be representative of those who would read the publication in question.

> (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the product of some strained, or forced or utterly unreasonable interpretation'
>
> (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense'."

Pleaded meanings

66. The claimants' pleaded meanings of the first publication complained of are

    i) "The third claimant had been blackmailing the defendant, being a criminal offence under section 21 of the Theft Act 1968 by fourteen years' imprisonment;

    ii) All three claimants support evil acts;

    iii) The contents of [the Text Message] might be facts".

67. The claimants have also pleaded what they say are inferential meanings, all of which relate to the Text Message:

    i) The first claimant is not his father's son, but the illegitimate son of a man called Mr Ogu with whom his mother had formed an adulterous liaison.

    ii) That the first claimant was brought up as a bastard in a public market place.

    iii) That the second claimant is impotent and that his children were conceived with sperm that he had purchased; and

    iv) That the third claimant has been filmed at the household of the Rev Innocent Ibe in the very act of adultery with an unnamed woman.

68. The third claimant has also pleaded what he says is an innuendo meaning on the same terms as identified in (iv) above, relying upon the fact that many if not all of the recipients would have known that the third claimant is married so that if he had been having sex with an unnamed woman he was committing adultery.

69. In respect of the second publication, the first claimant's pleaded meaning is that on 14 February 2017, the first claimant lied to the court with the intention of misleading the court to obtain a stay of execution of a costs order that the defendant had obtained against him.

70. The defendant prepared his own defence and so has not put forward pleaded meanings.

71. I consider that the words bear the following meanings:

i) The third claimant had been attempting to blackmail the defendant to try and placate Rev Ibe, by circulating malicious correspondence that included a photograph of the defendant and his wife.

ii) All three claimants have been supporting unspecified evil acts.

iii) The first claimant's conduct in supporting evil acts gives rise to grounds to suspect that he is the child of Mr Ogu and not Mr Nwakamma.

iv) The second claimant's conduct in supporting evil acts gives rise to grounds to suspect that he is impotent and that his children were conceived using borrowed sperm.

v) The third claimant's conduct in supporting evil acts gives rise to grounds to suspect that he had sex with a woman in the house of Rev Ibe.

vi) The first claimant lied to the court in costs proceedings in order to obtain a stay of execution of a costs order made against him.

72. I am not satisfied that meanings (iii), (iv) or (v) above are defamatory, when viewed objectively to a hypothetical reasonable person. It is unlikely that the ordinary person today would think significantly less of someone because they are impotent, or are discovered to have a different father, or had sexual intercourse in a minister's home.

73. The pleaded innuendo meaning is a separate cause of action, arising from facts passing beyond general knowledge, namely that the third claimant is married. I accept that the recipients of the first publication would know that the third claimant is married to a woman. Whilst the Text Message does not say that the woman in question is not the third claimant's wife, I am satisfied that the first publication carried an innuendo meaning that the third claimant's conduct in supporting evil acts gives rise to grounds to suspect that he was unfaithful to his wife when he had sex with a woman in the house of Rev Ibe.

Significant harm

74. Section 1(1) of the Defamation Act 2013 provides: "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant"

75. The current approach to be taken when considering issues of significant harm was summarised by Nicklin J in ***Turley v Unite the Union and another*** **[2019] EWHC 3547(QB)**

> "107. This provision was considered by the Supreme Court in Lachaux -v-Independent Print Ltd [2019] 3 WLR 18. Although, the Supreme Court agreed with the ultimate decision of the Court of Appeal dismissing the defendant's appeal ([2018] QB 594), it disagreed with its reasoning and held that Warby J's analysis of the law, at first instance ([2016] QB 402), was "coherent and correct, for substantially the reasons he gave" [20] per Lord Sumption. The Supreme Court held:

i) s.1 raised the threshold of seriousness above the tendency of defamatory words to cause damage to reputation; the application of the test of serious harm must be determined "by reference to actual facts about its impact and not just to the meaning of the words" [12]-[13].

ii) Reference to the situation where the statement "has caused" serious harm is to the consequences of publication, and not the publication itself [14]: "It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated."

iii) Reference to the situation where the statement "is likely to cause" serious harm was not the synonym of "liable to cause" in the sense of the inherent tendency of defamatory words to cause damage to reputation: [14].

iv) The conditions under s.1 must be established as facts [14] and "necessarily calls for an investigation of the actual impact of the statement": [15]; a claimant must demonstrate as a fact that the harm caused by the publication complained of was serious [21].

v) If serious harm could be demonstrated simply by the inherent tendency of statements to damage reputation, little substantive change would have been effected by the Act [16]: "The main reason why harm which was less than 'serious' had given rise to liability before the Act was that damage to reputation was presumed from the words alone and might therefore be very different from any damage which could be established in fact. If, as Ms Page submits, the presumption still works in that way, then this anomaly has been carried through into the Act. Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement."

vi) A claimant may produce evidence from publishees of the statement complained of about its impact on them, but his/her case does not necessarily fail for want of such evidence; inferences of fact as to the seriousness of harm done to reputation may be drawn from the evidence as a whole [21].

vii) In Mr Lachaux's case, the finding that serious harm had been proved was based on a combination of (a) the meaning of the words; (b) the situation of the claimant; (c) the circumstances of publication; and (d) the inherent probabilities.

viii) A judge's task is to evaluate the material before him/her and arrive at a conclusion, recognising that this is an issue on which precision will rarely be possible [21].

ix) The judge can consider the impact of the publication upon people who do not presently know the claimant but might get to know him/her in the future [25].

108. At first instance in Lachaux, Warby J expressed his conclusion on s.1 as follows:

[65] In summary, my conclusion is that by section 1(1) of the 2013 Act Parliament intended to and did provide that a statement is not defamatory of a person unless it has caused or will probably cause serious harm to that person's reputation, these being matters that must be proved by the claimant on the balance of probabilities. The court is not confined, when deciding this question, to considering only the defamatory meaning of the words and the harmful tendency of that meaning. It may have regard to all the relevant circumstances, including evidence of what has actually happened after publication. Serious harm may be proved by inference, but the evidence may or may not justify such an inference.

109. Finally, and consistently with Lord Sumption's analysis in Lachaux, there are three further relevant principles:

i) In an appropriate case, a Claimant can also rely upon the likely 'percolation' or 'grapevine effect' of defamatory publications, which has been "immeasurably enhanced" by social media and modern methods of electronic communication: Cairns -v-Modi [2013] 1 WLR 1015 [26] per Lord Judge LCJ. In the memorable words of Bingham LJ in Slipper -v-British Broadcasting Corporation[1991] 1 QB 283, 300: "... the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs."

ii) It is well-recognised that a claimant may struggle to identify, or to produce evidence from, all those to whom an article was published and in whose eyes the claimant's reputation was damaged: Doyle -v-Smith [2019] EMLR 15[122(iv)];

> Sobrinho-v-Impresa Publishing SA [2016] EMLR 12[48]; Ames -v-Spamhaus [2015] 1 WLR 3409 [55].
>
> iii) Assessment of harm to reputation has never been just a 'numbers game': "one well-directed arrow [may] hit the bull's eye of reputation" and cause more damage than indiscriminate firing: King -v-Grundon[2012] EWHC 2719 [40] per Sharp J. Very serious harm to reputation can be caused by publication to a relatively small number of publishees: Sobrinho[47]; Dhir-v-Sadler [2018] EWHC 2935 (QB) [55(i)]; Monir -v-Wood[2018] EWHC 3525 (QB)[196].

76. I note too what is sometimes known as the rule in *Dingle*, namely that a defendant cannot rely in mitigation of damages on the fact that that similar defamatory statements have been published about the same claimant by other persons. Previous publications to the same effect are inadmissible: ***Associated Newspapers Ltd v Dingle* [1964] AC 371**. This applies equally to a consideration of significant harm under s.1, ***Lachaux*** (ante), per Warby J.

77. At trial, the claimants attempted to argue that the damage they have suffered as a result of the first publication includes consequential harm caused by the subsequent republication of the defamatory allegations in Eagle Eye, relying on the principle in ***Slipper v BBC* [1991] 1 QB 283**. It was further said by the claimants that there is no need for a claimant to have to plead such a claim.

78. I can deal with this *Slipper* point quite quickly: such a claim must be pleaded so that the defendant can understand the claim he or she has to meet, and prepare evidence (see for example Gatley para 26.8, and the former CPR PD53 para 2.10, which applies to this claim). There is no application to amend the particulars of claim, and so for this reason alone it seems that any form of *Slipper* claim must fail. I should add, from what I have seen, the evidence does not support there being sufficient connection between the republication of the 2015 Text Message by the defendant in 2017 and the subsequent re-re-publication of the allegations by Eagle Eye.

79. Turning to significant harm, in respect of the first publication there are the following factors that appear particularly relevant:

    i) The email was only sent to a very small number of people. I note that the first publication was raised as an issue at a meeting of the Union, suggesting a degree of percolation but it appears from the evidence that it was the claimants themselves who were partly responsible for this.

    ii) Given the past acrimony within the Union, and the wide circulation and discussion of the Text Message in 2015, it does not appear that anybody believed what was said in the first publication. Quite understandably, almost everybody appears to have treated it as nonsense, and been more concerned about the spat between the parties resuming. The reference to "evil acts" in the first publication was vague and somewhat meaningless.

    iii) There was an email retraction provided on 22 February in fulsome terms. This went to many of the recipients of the first publication.

iv) There is no credible evidence of any harm, let alone significant harm. The claimants' accounts are exaggerated and unconvincing. They have all continued to socialise in the same circles. It is correct that the claimants no longer attend Union meetings, but that is because they brought these proceedings and not because of the defendant or his publications.

80. I am not satisfied that any of the claimants have satisfied the test in s.1 and proved that the first publication caused, or was likely to cause, serious harm. It follows that each of their claims in respect of the first publication must be dismissed.

81. In respect of the second publication, there is no evidence that this caused harm. As noted above, the first claimant does not say anything about it in evidence. He does not say he suffered harm. His wife is silent on the issue as well. The evidence taken as a whole does not support the drawing of an inference of fact as to the seriousness of the harm. The accusation of lying to a court may well give rise to such an inference in other cases, but the evidence in this case is insufficient. The second publication had very limited circulation to people who would have been fully aware of the on-going feud between these two men, and their previous litigation.

82. I am not satisfied on the evidence that s.1 has been satisfied in respect of the second publication. It follows that the claim in respect of the second publication must be dismissed.

83. Although I do not need to consider any of the other defences, I will do for completeness.

Section 8, Defamation Act 2013

84. I have already identified that the defendant has not been shown to have been the original author or publisher of the Text Message. It follows that a s.8 defence is not open to him. The single publication rule under s.8 applies to the situation where a person publishes a statement to the public (the first publication) and subsequently republishes that statement or a statement which is substantially the same. I accept that if the defendant had been the original author of the 2015 text, then it seems likely that he would be able to rely on the s.8 defence given that the subsequent publication was in a form that was substantially the same.

Section 10, Defamation Act 2013

85. The defendant sought to rely at trial on an un-pleaded case under s.10. A defence of this sort does need to be pleaded. No application has been made for permission to amend. In the circumstances, I do not propose to consider it further.

Absolute privilege – second publication

86. The defendant pleaded that the second publication was published on an occasion of absolute privilege given that it was sent in contemplation of proceedings or in the course or proceedings. This was not pursued at trial and it is difficult to see on what basis it could have been.

Truth

87. During closing submissions, the defendant sought to rely on an un-pleaded defence of truth in respect of the second publication. Whilst the first claimant could not really explain the basis for saying in a court statement that the defendant had to sell land in Nigeria to pay costs from one of the earlier cases, a defence of truth was not pleaded and so cannot be pursued at trial.

Harassment

88. All three claimants pursue a claim for harassment, confined to what they say are the sending of the first publication to 31 different persons. I have already found that it was, in fact, sent to nine, including the claimants themselves.

89. The relevant parts of the Protection from Harassment Act 1997 are as follows:

> "1.Prohibition of harassment.
>
> 1(1) A person must not pursue a course of conduct (a)which amounts to harassment of another, and (b)which he knows or ought to know amounts to harassment of the other.
>
> 1(1A) …
>
> 1 (2) For the purposes of this section… the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
>
> 1(3) Subsection (1)… does not apply to a course of conduct if the person who pursued it shows—(a)that it was pursued for the purpose of preventing or detecting crime, (b)that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or (c)that in the particular circumstances the pursuit of the course of conduct was reasonable.
>
> 3(1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.
>
> (2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

90. If the first publication had comprised a single email to multiple recipients, this would not constitute a "course of conduct" for the purposes of the 1997 Act because there would not have been at least two acts. Here, the first publication was disseminated in two non-identical emails sent on different days. On these specific facts, I am prepared to proceed on the basis that this was sufficient to constitute a "course of conduct"

under the 1997 Act, although I have not had the point argued fully and I can see that in another case the position might be different.

91. There is a threshold of seriousness that must be met for a claim to be brought under the 1997 Act. Conduct needs to be "oppressive and unreasonable" (***Thomas v News Group Newspapers*** **[2001] EWCA 1233**), and cross "the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable" (***Majrowski v Guy's and St Thomas's NHS Trust*** **[2007] 1 AC 224**). The conduct needs to be grave before the tort of harassment is proved ***Ferguson v British Gas Trading Ltd*** **[2009] EWCA Civ 46**.

92. In this case, we have a defendant who decided for no good reason to start regurgitating old material to irritate, annoy or embarrass the claimants. It was an unpleasant and unattractive thing for him to do, and it is apparent from the evidence that some members of the Union were exasperated that the tit-for-tat arguments between its members had flared up again.

93. If the defendant had continued to publish information such as this, over a longer period of time, or to more people, or had also been responsible for any of the Eagle Eye publications that referred to the claimants, then I could see that this might be sufficient to cross the threshold of seriousness to bring a claim for harassment. On its own, however, I am not satisfied that what the defendant has done is enough to turn what is clearly unpleasant behaviour into conduct that could be said to be grave or oppressive. For this reason, I dismiss the claim under the 1997 Act.