NIGERIAN BAR ASSOCIATION
SECTION ON LEGAL PRACTICE

SLP Newsletter

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FROM THE CHAIRMAN

Welcome to yet another issue of your inspiring Newsletter from the NBA - Section on Legal Practice. It is indeed a privilege for me and the Executive Committee to welcome you all to another exciting publication filled with thrilling, incisive discussions, impactful information on our annual events which includes webinars and conferences.

May I use this opportunity to appreciate the President of the Nigerian Bar Association and officers of the NBA, members of the Bar, Committee Chairperson and most importantly the 2025 SLP Conference Planning Committee ably led by Paul Harris Ogbole SAN and his team for a successful conference held in Jos, Plateau State between April 24-27, 2025. From reviews, it was an exciting conference which brought together amazing people from different works of life to learn from professionals.

I must also commend the Executive Committee comprising of Folashade Alli, SAN (Vice Chairman), Otunba Laolu Osanyin (Secretary), Omubo Victor Frank-Briggs (Treasurer), Orowhuo Okocha PhD. (Fin. Sec.), Stanislaus Nwadike (Asst. Sec.), Chief Ferdinand Orbih KSG SAN, Prof. Augustine Agom, Sir Steve Adehi SAN, and Paul Harris Ogbole SAN, and my humble self, who remain committed to the objectives of the Section.

The NBA-SLPwhich is one of the largest section of the Nigerian Bar Association in terms of scope of coverage of practice areas, and relevance to the average attorney in

OBJECTIVES

The objectives of the Section as stated in Article 1 of the Section Bye laws are: -

- To promote the exchange of information and views among members of the Section and other likeminded bodies as to the laws, practices and other procedures; affecting the Section locally and internationally;
- To assist members develop and improve their legal services to the public;
- To undertake such related activities as may be approved by the Section's Council from time to time;
- To promote and provide Continuing Legal Education

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From the Chairman Continues...

any field of practice. Indeed, one can hardly be an all-rounded practitioner without having to engage with the issues the SLP covers as a Section. Issues like Dispute Resolution, Law Firm Management, Professional ethics, continuing legal education, professional development, human rights and advocacy, etc, which matters all fall under our various committees. Our team has since therefore built on the laudable platform achievements, and broaden our offerings in these many other areas of practice, to sharpen the skills of legal practitioners, also expanding the benefits the NBA offers its members through the Sections. While commending our Executive members, I also recognize the Committee Chairpersons for their sacrifices and commitment to expanding the scope of legal practice for practitioners through the work of the Committees. I urge all our registered members to get involved in the work of the section by engaging with their committee and contributing to the great work being done.

This newsletter contains incisive articles and contributions received widely from legal practitioners with different specialization.

I encourage our avid followers and readers to take time out to digest this newsletter and send us your feedback at info@nbaslp.org to ensure we maintain the excellence of our publication.

Please look out for our next event holding near you, and of course our Annual General Meeting which will be held during the NBA-AGC in Enugu State from August 22-29, 2025.

Distinguished colleagues, this is your Section, join us today!!!

Boma Alabi OON SAN
Chairman
Nigerian Bar Association – Section on Legal Practice

THE MALFUNCTIONING OF THE JUDICIARY AND WHY ALL JUDICIAL DUTIES SHOULD BE LAWED UNDER PROCEDURAL LAWS OF THE LAND

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The judiciary recently has been faced with the issues of mal-administration and unjust adjudicatory processes, as complained by the public.

The malfunctioning of the judiciary has been said to have manifested in various ways, and it is a concern in many legal systems around the world. Here are some common issues that has been said to have contributed to the perception or reality of a malfunctioning judiciary:

Backlogs and Delays: Many courts face significant backlogs, leading to delays in the resolution of cases. This has undermined the principle of timely justice and has been particularly detrimental in criminal cases where defendants may have been held in pre-trial detention for extended periods.

Access to Justice: Barriers such as high legal fees, complex procedures, and lack of legal representation has prevented individuals from accessing the judicial system. This has disproportionately affect marginalized communities.

Judicial Independence: In some jurisdictions, the judiciary has been subjected to political pressure or interference, compromising its independence. This has led to biased rulings and a lack of public confidence in the legal system.

Corruption: within the judiciary has severely undermined its integrity. This includes bribery, favoritism, or other unethical practices that have distorted the fair application of the law.

Inadequate Resources: Many judicial systems are being underfunded, leading to insufficient staffing, outdated and in updated technology, and inadequate facilities. This has hindered the ability of courts to function effectively.

Public Perception and Trust: The judiciary perceived as malfunctioning has led to a lack of trust among the public. This has resulted in lower compliance with court orders and a general disillusionment with the rule of law.

Inconsistent Rulings: Variability in judicial decisions has created uncertainty in the law. When similar cases are decided differently, it has led to confusion and a lack of predictability in legal outcomes.

Judicial Activism vs. Restraint: The balance between judicial activism (where judges take an active role in policy-making) and judicial restraint (where judges defer to the legislative branch) has been seriously contentious. Disputes over this balance has led to perceptions of a judiciary that is either overreaching or failing to protect rights.

Technological Challenges: The increasing reliance on technology in the legal process has created challenges, especially for those who are not tech-savvy or who lack access to digital resources.

Social and Political Context: The broader social and political environment has impacted the judiciary. Issues such as civil rights, social justice, and public opinion has influenced judicial outcomes and the functioning of the court system.

Addressing these issues often requires comprehensive reforms, including increased funding, training for judges and court staff, measures to enhance transparency and accountability, and initiatives to improve public access to legal resources.

Judicial duties should be codified in the procedural laws of a country to bring satisfactory peace and for several important reasons like:

Clarity and Consistency: Codifying judicial duties provides clear guidelines for judges, ensuring that they understand their responsibilities and the standards to which they are held. This promotes consistency in judicial decision-making and helps to reduce arbitrary or biased interpretations of the law.

Accountability: When judicial duties are explicitly outlined in procedural laws, it establishes a framework for holding judges accountable for their actions. This can help to ensure that judges adhere to ethical

standards and perform their duties with integrity.

Protection of Rights: Clearly defined judicial duties can help protect the rights of individuals involved in legal proceedings. By outlining the responsibilities of judges, procedural laws can ensure that all parties receive fair treatment and that their rights are upheld throughout the judicial process.

Efficiency in Legal Proceedings: Codifying judicial duties can lead to more efficient legal proceedings. When judges know their responsibilities and the procedures they must follow, it can reduce delays and streamline the judicial process, benefiting all parties involved.

Public Confidence: A well-defined set of judicial duties can enhance public confidence in the legal system. When citizens understand the roles and responsibilities of judges, they are more likely to trust the judicial process and believe in its fairness and impartiality.

Guidance for Judicial Training: Codified duties can serve as a basis for training and educating judges. This ensures that new judges are well-prepared to fulfill their roles and understand the expectations placed upon them.

Facilitation of Appeals and Reviews: When judicial duties are clearly defined, it becomes easier to identify potential errors or misconduct in judicial proceedings. This can facilitate the appeals process and allow for more effective oversight of judicial actions.

Adaptability and Evolution: Procedural laws can be amended to reflect changes in societal values, legal standards, and judicial practices. By incorporating judicial duties into these laws, the legal system can evolve to meet contemporary needs while maintaining a foundation of accountability and fairness.

In summary, codifying judicial duties in procedural laws enhances the integrity, efficiency, and fairness of the judicial system, ultimately contributing to a more just society.

In Nigeria today, the activities of the judiciary and judges have been deeply heart felt questioned.

This could be the way forward towards the future of a sound judiciary system.

THE PRACTICE OF SURROGACY IN NIGERIA; IN THE EYES OF THE LAW

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Introduction

An astute consideration of the concept of surrogacy will reveal that its analysis does not lend itself to a simplistic approach. As a lexicon that aligns more with medical science, it has significant bearing on law owing to the fact that majority of the issues that must be resolved in its practice are legal in nature and as such, ought to be regulated by law. This article seeks to analyse the practice of surrogacy vis-à-vis the non-existent legal provisions in Nigeria.

What is Surrogacy?

Surrogacy is the practice by which a woman (surrogate mother) who is, or is to become pregnant, agrees to carry the child for the entire gestation period and permanently surrender the child born of that pregnancy to another person or couple with the intent that the other person or couple will be the parent(s) of the child. It is a form of assisted reproduction and there may or may not be financial compensation for it.

Forms of Surrogacy

There are two forms of surrogacy. In the first which is known as partial/traditional surrogacy, the commissioning man's sperm is used to fertilize the surrogate mother either through sexual activity or artificial insemination. Thus, the surrogate mother has a connection to the child in addition to carrying it. In the second form referred to as full/complete/gestational surrogacy, the commissioning couple give both the sperm and the egg thus ensuring that the child is 100% theirs despite being carried by a different

woman. This is more popularly known as womb leasing.

Existing Legislation on Surrogacy

In other climes, the practice of surrogacy is either permitted or stilted. In the US, most states permit it to some extent while a few prohibit it. In Canada, surrogacy like every assisted reproductive form is authorized and regulated by the Canadian Assisted Human Reproduction Act, 2004. The UK has the Human Fertilization and Embryology Act of 1990 and the Surrogacy Arrangement Act of 1985. These are a few countries, amongst others, with legal regimes regarding surrogacy.

Legislation in Nigeria related to the issue of surrogacy are; the Constitution of the Federal Republic of Nigeria 1999 (As Amended), the National Health Act, the Child Rights Act 2003, the Trafficking in Persons (Prohibition) Enforcement and Administration Act as well as international treaties such as the Optional Protocol to the Convention on the Rights of a Child and the African Children's Charter amongst others. Despite the width of legal provisions, there is no explicit international legal framework governing surrogacy and as such, nations develop appropriate laws to do so in their own jurisdictions.

Surrogacy Agreements

Surrogacy laws and costs vary between countries and this can sometimes lead to unfavourable interstate surrogacy agreements. Sometimes, couples from nations where surrogacy is prohibited travel to other countries where it is allowed to carry out the practice. The

fact is that most persons who legitimately involve in a surrogacy arrangement in Nigeria do so simply on the premise of a contractual agreement and this is due to the fact that Nigeria has no enacted legislation on surrogacy or assisted reproductive technology although there are several pending bills at the legislative houses that relate to same.

The enforceability of such contracts are doubtful especially in the light of acceptable Nigerian customs and lack of defined legislative backing. Consequently, the practice of surrogacy has been littered with several unwholesome practices. There are also several legal issues that may arise from the practice of surrogacy such as; citizenship - a surrogate child is at risk of being stateless, human rights infringement, legal parenthood as well as issues relating to contract enforceability or contractual failures.

Best Interest

It has been ingrained in family law that in any issue that has to do with pregnancies and

children, any decision reached by the court has to be in the best interest of the child even in cases of surrogacy. This was decided by the Court in the case of *Labassee V France (65941/11 Council of Europe: ECHR, 26 June 2014)*. Then again, since there's no consensus on the criteria that should be used to determine the child's best interest, different persons have adopted different ideas on what constitutes a child's best interest and this has necessitated a more specialized approach to regulating international surrogacy.

Conclusion and Recommendations

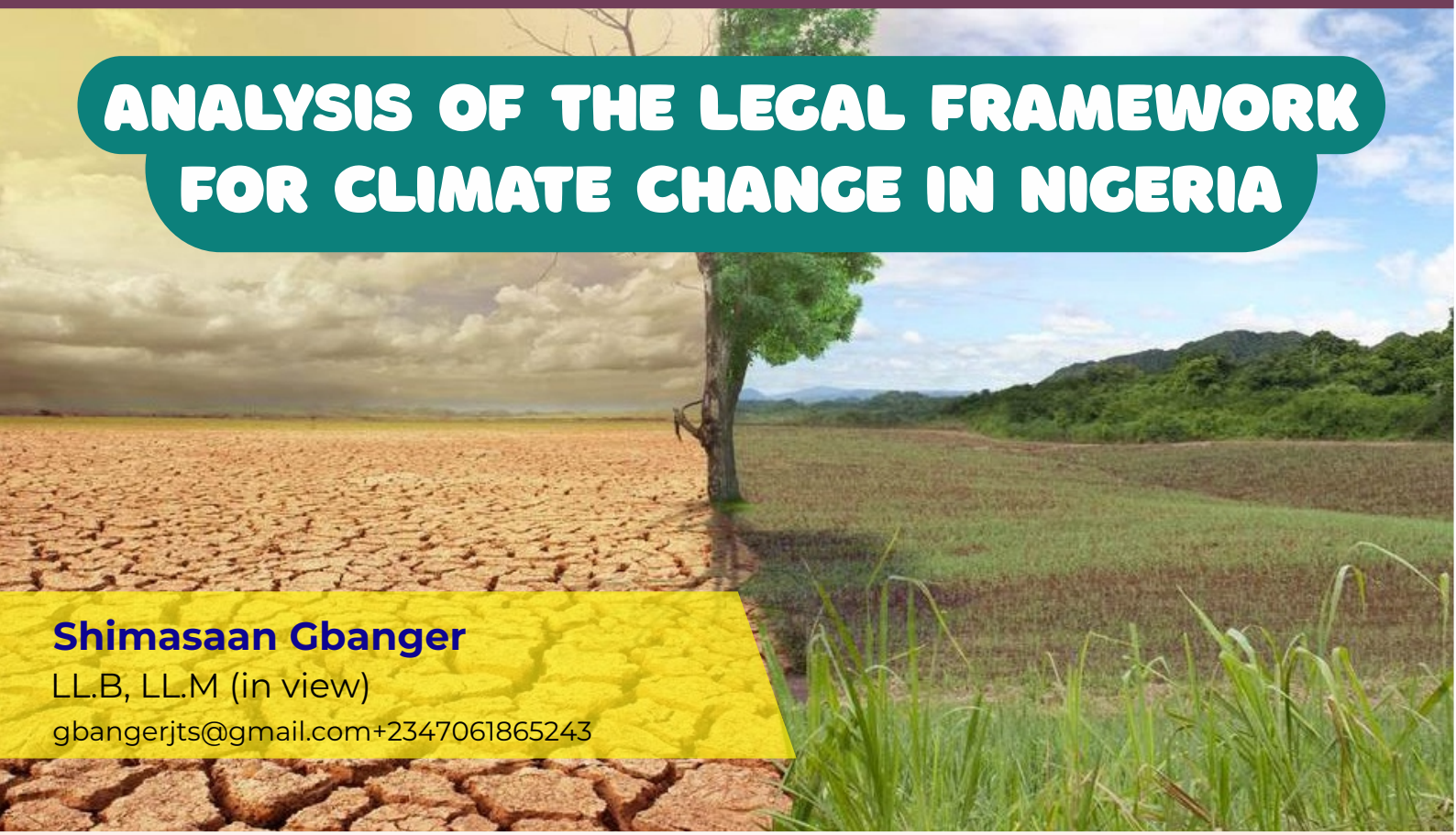
Despite the practice of surrogacy in Nigeria for a while, the country still lacks surrogacy-specific restrictions. However, surrogacy is not outlawed and its popularity is rising. The only option left for prospects is to secure agreements between the parties through contracts but even those cannot be considered as a solid base for support. Records show that a bill on assisted reproduction was submitted to the National Assembly in 2014 and another on surrogacy in 2016 but no statute has resulted from either. It is recommended that there should be a comprehensive regulation to safeguard the interests of the child as well as parties to the surrogacy arrangement. The Child Rights Act needs to be reviewed to accommodate and properly regulate an acceptable practice of surrogacy that will consolidate the social fabric and promote unity. The Act also needs to be domesticated in all 36 states of Nigeria.

There isn't much evidence to suggest that the fears surrounding surrogacy's negative outcomes are warranted. Again, it's important to remember that infertility does not only affect women, it's an issue that affects both genders and can be quite embarrassing and worrisome. Thus, resolving this issue by establishing a holistic legal framework for the full operation of surrogacy will enrich countless families and bring lasting harmony. Although the practice of surrogacy may sometimes be tainted with some unwholesome practices by the parties or facilitators to the agreement, we should ensure its proper regulation rather than banishing the practice completely as it is highly beneficial. As some scholars would say, “We are not to throw away the baby and the bath water.”

References

1. Abayomi Bolaji Ajayi & Victor Dayo Ajayi, 'Gestational Surrogacy in Nigeria' in Scott Sills edition, Handbook of Gestational Surrogacy(Cambridge University Press: 2016) at 212.
2. SerahOnyecheSanni, 'Legal Approach to Surrogacy in Nigeria' Available at https://www.academia.edu/40171530/Legal_Approach_to_Surrogacy_in_Nigeria?sm=b (accessed 24 October, 2024).

ANALYSIS OF THE LEGAL FRAMEWORK FOR CLIMATE CHANGE IN NIGERIA



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Abstract

Climate change is a problem of great concern the world over. The international community has through various instruments encouraged countries to adopt measures to mitigate and adapt to climate change. Using the doctrinal research method, it is found that Nigeria has enacted different laws and provided different policies to promote climate action. Nigeria is also a party to several international treaties on climate action. It is similarly found that in spite of the existing framework, Nigeria faces several challenges including weak framework. It is concluded that to overcome these challenges, the country must take practical steps aimed at strengthening the legal framework and transitioning to renewable energy. It is recommended among other things that at least 15 percent of the funds designated for exploring the frontier basins should be assigned to the promotion of renewable energy pursuant to section 15(2) (j) of the Climate Change Act 2021.

Key Words: Climate Action, Climate Change, Renewable Energy

1.1 INTRODUCTION

Climate Change has given rise to global warming and other challenges which affect the health and livelihood of human beings and other biological life.[1] Temperatures are rising, storms are being witnessed like never before, droughts are becoming a norm, species are being lost, poverty and displacement from climate change issues are being witnessed, food production is dwindling and the health of human beings is at great risk.[2] This paper considers the extant legal framework for climate change in Nigeria as well as challenges of the framework. In the end, suggestions are made towards ameliorating the challenges.

2.1 WHAT IS CLIMATE CHANGE AND CLIMATE ACTION?

Obada and others posit that climate change 'entails the long-term distortion in weather patterns due to global warming predominantly caused by an imbalance in atmospheric GHGs such as water vapor, methane...'[3] It follows that climate change disturbs the natural atmospheric condition thereby modifying the expected atmospheric outcome. In this sense, the earth may become hotter or colder or wetter. Climate change has several causes but the largest cause is the burning of fossil fuels (coal, oil and gas) which accounts for more than 75 percent of global emissions into the atmosphere.[4]

3.1 LEGAL FRAMEWORK FOR CLIMATE CHANGE IN NIGERIA

3.2 INTERNATIONAL FRAMEWORK

3.2.1 United Nations Framework Convention on Climate Change 1992 (UNFCCC)

The UNFCCC was opened for signature at the Earth Summit in Rio de Janeiro, Brazil in 1992.[5] Among other things, the UNFCCC recognised both the human activities that drive climate change as well as the effect of climate change on earth.[6] Parties agreed to formulate policies and programs aimed at mitigating climate change.[7] This included national programs, international cooperation and the commitment to address sources of greenhouse gas emissions.[8]

3.2.2. The Paris Agreement 2015

At the 21st session of the Conference of the Parties held in Paris in December 2015, an agreement to tackle climate change and the acceleration of efforts to reducing carbon emissions was reached – the Paris Agreement.[9]

The Paris Agreement is aimed at enhancing the implementation of the UNFCCC, strengthening the current efforts towards combating climate change within the context of sustainable development and eliminating poverty.[10]

3.3 Domestic Framework

3.3.1 Constitution of the Federal Republic of Nigeria 1999

Section 20 of the Constitution of the Federal Republic of Nigeria 1999 (The Constitution) mandates the State – federal government, to safeguard and improve the environment. This includes the responsibility to keep water bodies, land, air, forests – biodiversity, safe and protect them from destruction. Unfortunately, this provision is not justiciable under the present regime.[11]

3.3.2 Climate Change Act 2021

The Climate Change Act was enacted in 2021 to signify Nigeria's commitment towards climate action. The Act aims at reducing greenhouse emissions by adopting the necessary measures for attaining net-zero GHG emission by 2050-2070.[12] The Act provides that this will be done by, among other things, initiating programmes to mitigate climate change and adaptation.[13]

3.3.3 Policy Frameworks

Three policy frameworks touching on climate change have also been put in place at one point or another. These include National Climate Change Policy and Response Strategy (NCCPRS) 2012, Vision 2020 and the National Climate Change Policy (NCCP).

4.1 CHALLENGES OF THE LEGAL FRAMEWORK ON CLIMATE CHANGE

Tari and Diah have itemized four key challenges of the framework for climate change in Nigeria –

1. Ineffective enforcement of the existing framework
2. Non-justiciability of chapter II of the Constitution
3. Failure to domesticate international treaties on climate change
4. Weak institutional framework.[14]
5. A fifth challenge is the provision for the Frontier Exploration Fund under the Petroleum Industry Act 2021 (PIA).[15]

5.1 CONCLUSION AND RECOMMENDATIONS

It is the conclusion of this researcher that to overcome the challenges, practical steps must be taken to embrace renewable energy. It is therefore recommended as follows;

a. Nigeria should assign 15 percent of the amount designated for the frontier exploration fund to renewable energy.

b. The enforcement mechanisms for climate action must be strengthened and adequately funded.

c. Through tax exemptions and reliefs, Nigeria should encourage local and international investment in the renewable energy sector.

Endnotes

1. United Nations, 'Causes and Effects of Climate Change' <https://www.un.org/en/climatechange/science/causes-effects-climate-change> accessed 16 October 2024.
2. Ibid.
3. David O Obada and others, 'A Review of Renewable Energy Resources in Nigeria for Climate Change Mitigation' (2024) 9 *Case Studies in Chemical and Environmental Engineering*<https://doi.org/10.1016/j.cscee.2024.100669> accessed 7 October 2024.
4. United Nations (n 1).
5. United Nations, 'Conferences: Environment and Sustainable Development' <https://www.un.org/en/conferences/environment> accessed 31 August 2024.
6. Preamble to the UNFCCC.
7. See Generally Article 4 of the UNFCCC.
8. Ibid.
9. Ibid.
10. Article 2 (1) of the Paris Agreement.
11. Section 6 (6) (c) of the Constitution.
12. Section 1 of the Climate Change Act 2021.1
13. Section 1 (a) of the Climate Change Act 2021.
14. VahyalaAdamu Tari and Emmanuel Christopher Diah, 'Challenges and Prospects of the Legal Frameworks for Combatting Climate Change in Nigeria' [2024] 4(1) *AKSU Journal of Administration and Corporate Governance* 109). These challenges give rise to several day-to-day issues such as energy insecurity, unhealthy dependence on the use of fossil fuels, etc.,
15. Section 9 (4) of the PIA.

Is Name Calling Tantamount to Defamation?

USING THE VERYDARKBLACKMAN (VDM) EXAMPLE VIZ A VIZ THE CRIMINAL CODE ACT AND OTHER AUTHORITIES

When it comes to defamation and its proof the colouration is not black and white. Chapter 33 of the Criminal Code Act[1] makes sundry provisions on defamation and what constitutes defamatory matter. Defamatory matter per section 373 of the Criminal Code Act refers to a matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by any injury to his reputation. Interestingly, apart from defining defamatory matter, this section of the code goes on to emphatically spell out examples of defamatory matter and their expressions.

According to section 373 of the Criminal Code Act, defamatory matter may be expressed in spoken words legibly marked on any substance whatever, or in any audible sounds, or in or by any sign or object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony. The concern here is spoken word and audible sounds (or more precisely audiovisual) seeing the vituperations by VDM are of this nature. According to section 374, publication of defamatory matter is in the case of spoken words or audible sounds, the speaking of such words or the making of such sounds in the hearing of the person defamed or any other person.[section 374 (1) (a) Criminal Code Act]. More importantly, sounds where recorded shall, if defamatory, be deemed to be published if reproduced in any place to the hearing of persons other than the person causing it to be produced. [Section 374 (2) Criminal Code Act] This is what the law says simply.

It is common knowledge that to ground a conviction or claim in defamation there must be undoubted publication to the public with intent. Apparently, one may find section 377 of the Criminal Code Act very interesting. First, truth is an absolute defence in an allegation of defamation. This takes another dimension in section 377 which declares that publication, as at the time it is made, if made for the public benefit is not an offence. What is the implication of this provision? So if a matter is made public for the public benefit the maker is absolved from being criminally liable for defamation? That is absolutely encouraging and is in line with the Freedom of Information Act 2011[2] to encourage public disclosures. Is there any one interested in the success of the Nigerian nation that would fault VDM for the public disclosures of alleged prison racketeering in the Nigerian correctional system? It is indeed food for thought.

There is the issue of whether VDM mentioning Femi Falana SAN and Folarin Falana (Falz) in the light he did considering the status and reputation of the legal juggernaut as a crusader for justice and national judicial reforms activist himself, amounted to defamation. However, could it be inferred that whatever disclosures VDM was making was for public benefit and not really intended to

defame anyone *ab intio* except probably his social media enemy Bobrisky and on whose account if the allegations are true would have no case against VDM. What has been discussed so far with reference to the criminal code is criminal defamation. Tortuous defamation though similar consists of communicating to third party false statements about a person that result in damage to that person's reputation. The three ingredients that must be proved are;

a) **publication**

b) **that words refer specifically to a person, and**

c) **damage to a person's reputation**.

We can go on to tick the box for publication as VDM's platform is well followed, we can also tick the box on specific mentions (Falz and Falana SAN). It is the third ingredient of resulting damage to reputation that may be dicey. Still on the issue of ingredients to prove then publication must be made to right thinking members of the society generally (The case of ***Byrne v Dean***[3] ***Egbuna v Amalgamated Press Nig Ltd***[4] emphasized the point that right thinking members of society generally does not necessarily specifically mean some sections of the public but the general public and the basic standard is what the reasonable man on the *moluwe* omni bus would think. There is another dimension to the current situation that is part of the last ingredient but was not mentioned in the Criminal Code but was mentioned in ***Chilkied Security Serviced Dog Farms Ltd v Schlumberger Nig Ltd & Anor***[5] where the current Chief Judge Hon Justice Kekere Ekun JSC held that defamation as a tort whether as libel or slander consist of publication to third parties words which lowers the person's estimation of right thinking members of society generally or cut him off from society or to expose him to hatred, contempt, opprobrium or ridicule to injure his reputation in his office, trade or profession or to injure his financial credit.

The question then is simply whether the mention or name calling of Falz and Falana

SAN have reduced their estimation in the eyes of right thinking members of the society on the one hand or the lawyers' community on the other hand or have they suffered damage of some sort. Remember the Cab Rank Rule allows lawyers to accept briefs that clients bring their way not unreasonably rejecting briefs. So even if Bobrisky went to the Falana's on the possibility of being a client to facilitate obtaining a pardon, there is absolutely nothing wrong with that. Now does the legal community look at Falana SAN with opprobrium or any disrepute because VDM mentioned his name? Absolutely not! And I speak as a reasonable man part of the legal profession one who still sees Falana SAN as an ideal model for human rights activism. Also all who follow VDM knows he is a crusader rabble rouser sometimes for so many ends. In this particular instance name calling was not defamatory or intended to be so and even VDM has come out to apologize.

In conclusion, defamation under Nigerian law exceeds merely name calling in a broadcast, there needs to be proof of consequential loss of reputation or damage caused by such a libelous or slanderous publication. In this particular instance there seems to be paucity of proof of defamation whether criminal or tortuous especially since truth is an absolute salvation/defence if Bobrisky did indeed reach out to the Falana's which they have not denied.

~~ENDNOTES~~:

1. Criminal Code Act Cap C.38 LFN 200D
2. Freedom of Information Act 2011
3. Byrne v Dean (1937) 1 K B 818;
4. Egbuna v Amalgamated Press Nig Ltd (1967) 1 ALL NLR 25
5. Chilkied Security Serviced Dog Farms Ltd v Schlumberger Nig Ltd & Anor (2018) CLR 4 (F) (SC)

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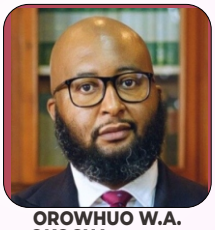

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