

Count 6, the alleged defamatory word is "Obi bu onye occult, onajem akarakam, mee na ma ada aga niru. Omelu m nam amutala nwa" if translated it means that "Obi is an occultist and he took my destiny and made me childless". For the reasons given above I shall discharge and acquit the defendant in count 1, 3 and 4. I found him guilty in count 2, 5 and 6. I convict him accordingly.

Allocutus - The defence applies for the court to temper justice with mercy. In passing sentence on the defendant. I shall have regard to certain facts, the fact that the parties are brother of full blood and that this case travelled far and wide without being resolved.

I shall sentence the defendant to 5 months imprisonment in count 2, 5 months in count 5 and 5 months in count 6. The sentence to run concurrently.

Singed:

Mike Anyadiegwu Esq.

Snr. Mag. Grade II

CHECKED BY:

GEORGE OBI

CERTIFIED TRUE COPY

P.N. OTUKWU (MRS.)

DL/ACR

IN THE CHIEF MAGISTRATE COURT OF ANAMBRA STATE OF NIGERIA
IN THE MAGISTRATE COURT OF AWKA MAGISTERIAL DISTRICT
HOLDEN AT AWKA
BEFORE HIS WORSHIP MIKE ANYADIEGWU ESQ. SNR. MAG. GRADE II

MAW/168^c/2016

COMMISSIONER OF POLICE

VS.

JOSEPH NDUBUISI NNAJIOFOR

Defendant present.

Chief G.O. Osigwe Prosecutes with a fiat

C. E. Okeke for defendant.

JUDGMENT

The defendant was charged with 5 count charge but subsequently during the trial the prosecution amended the charge and came up with 6 count charges.

The 1st count is a charge of defaming the character of Ozo Obi Nnajofofor by publishing to the hearing of one Onyebuchi Nwobu in Igbo Language in the following way “Obi Gbulu Arinze, Oji Arinze tuo utu Ndi Occult. Obi hu onye occult” and which is translated to mean that “Obi killed Arinze. He sacrificed Arinze to occult. Obi is a member of occult” and contrary to Sec 325 of the Criminal Code Cap 36 Vol. II Revised Laws of Anambra State 1991 as amended.

Count 2 is a charge that the defendant did publish on 7th December 2014 to Mrs. Maria Nwachukwu A.K.A Mama Iruka the following defamatory words “Obi bu onye occult. Onajem Okaraka m mee na m ada aga na iru. O melu m amutara nwa” the said words translated from Igbo language to English Language roughly mean that “Ozo obi Nnajofofor is an Occultist. He took my destiny, stunted my progress and made me childless to the hearing of one Mama Iruka of Umuokpu Amachalla knowing same to be false contrary to

Sec. 325 of the Criminal Code Cap 36 Vol. II Revised Laws of Anambra State as amended.

Count 3 - That the defendant publish to the hearing of Anthony Ngene, Okechukwu Nnajiofor and others the following defamatory words " Obi gworo ogwu ego, na Pastor gwalum ebem jelu ekpere na nwanne nwoke obi gworo ogwu ego. Na onwelu uno onwelu na beya madu ada aba" which if translated means that "Obi did money ritual. My pastor told me where I went for prayers that he did money rituals and has a room in his house which nobody enters" contrary to Sec 325 of the Criminal Code Cap 36 Vol.

II Revised Laws of Anambra State of Nigeria 1991 as amended.

Count IV - That the defendant, at Umuzuocha Awka published to the hearing of Engr. Christopher Okafor, Gozie Onuorah, Arinze Nwaekwu, Charles Arinze and others that "Ozo Obi Nnajiofor gbulu Arinze, Oji ya tuo utu ndi occult o nya melu na m amutala nwa" knowing same to be false which said words translated to mean that "Ozo Chienemeze killed Arinze. He sacrificed him to the occult. He is responsible for my childlessness" contrary to Sec 324 of the Criminal Code Cap 36 Vol. II Revised Laws of Anambra State of Nigeria 1991 as amended.

Count 5, that the defendant, did publish defamatory words concerning Obi Nnajiofor to the hearing of Rev. Cannon Kenneth Maduka in Igbo Language that "Obi gbulu Arinze. Oji Arinze tuo utu ndi occult. Obi bu onye occult" which means that obi killed Arinze, he sacrificed Arinze to Occult. Obi is a member of occult contrary to Sec 325 of the Criminal code Cap 36 Vol. II Revised Laws of Anambra. State as amended.

Count 6 - That the defendant did publish in Igbo Language to the hearing of Engr. Christopher Okafor the following words that "Obi bu onye occult, one eji akaragam, mee nam ada aga niru" which translated to mean that "Obi is an occultist, he took my destiny, he stunted my progress" Contrary to Sec.

325 of the Criminal Code Cap 36 Vol. II Revised Laws of Anambra State 1991 as amended.

The defendant was arraigned on 21st June 2016 and was duly admitted to bail.

PW1, Rev. Cannon Kenneth Maduka, stated he is a native of Amachalla Village Awka and that he is a Vicar of St. John's Parish Ufuma and presently at St. Marks Ogbu as a Vicar in Charge. He stated that he knows the defendant as well as the complainant as members of his community. He stated that he was driving down from Ufuma in his car on one fateful day and I met the defendant on the road and that he stopped and picked him as a brother. He stated that while in the car along the road that the defendant told him that Ozo Obi Nnajofo is a member of Occult and that the said Ozo killed Arinze the younger brother. He stated that he dropped him and drove off and that he dropped him at Amaku Awka. He said he was invited to the village when the villagers gathered and he told them the same thing he heard from the defendant. Under cross-examination he admitted that he picked the defendant at Awka on 30th August 2014. He however stated that he could not remember the time of the day but that he was with his Mercedes Saloon Car with Reg. No. HS811LSR Lagos State number. Still under cross examination, the PW1 admitted that he has no room in his brother's house but stated that the grave yard is his home when asked that he is homeless by the defence counsel.

PW2, Engr. Christopher Okafor, stated that his mother and the father of the parties are from the same parent. He said that on 7th December 2014, both the wife of the defendant as well as the wife of the complainant came to my house at Nnewi with the father of the parties came and told him that his sons were having problems. He stated that the defendant was reported to have prepared a charm with which to kill the complainant. The defendant and the complainant were also present on that Occasion. PW2 stated further that the defendant said that the complainant is in occult and that

he is spoiling his business. The PW2 stated further that the defendant said he got to know that through his pastor. The complainant according to PW2 stated that the defendant was reported again by the complainant to have borrowed money and refused to pay back and that the amount borrowed was in millions. So the PW2 stated he volunteered to go to the said church and that it was discovered that the pastor did not say any such things. He stated thereafter that the defendant was told to kill a goat to appease the gods of the land by trying to kill his brother and that he the defendant killed the goat.

PW2 stated that the defendant also removed the Idol and the father latter had stroke and was taken to Nnewi Hospital where he passed on. PW2 stated further that their mother took up the case again and after a shrot while their younger brother who came in from South Africa by name Arinze died while jogging at Ekwueme Square in mysterious circumstances. It was discovered that Arinze was telling the defendant to remove some Idols still remaining and that Arinze went ahead to force the defendant and the Idol was brought out. PW2 stated Arinze died shortly after the exercise.

PW2 stated that he was present in a meeting of the extended family when the defendant said that the complainant killed Arinze. This case was reported to Amachalla Village and the defendant repeated the same allegation again that it was the complainant that killed Arinze. PW2 Stated that subsequently, Arinze was buried. PW2 went further to say that after sometime that he could not reach out to their mother again and that he went to pay her a visit and their mother told him that her phone had a problem. So I bought a new phone and sent to her but I was surprised that Anayo, a younger brother to the defendant return the phone back in forming me that they can buy phone for their mother and shortly their mother fell sick and passed on.

Under cross-examination he stated that the church he was taken to was a white garment church. He also stated under cross-examination that the parties are related to him.

PW3, Onyebuchi Nwobu stated that sometime in March 2015, in Amudo that they were 3 in a house of a friend and the defendant came along and that after exchanging pleasantries with the defendant and condoling him over the death of his brother and that he was with "Emma Japan" when the defendant said that Obi his younger brother killed Arinze. He stated that James Ozoekwe was also there with them. Under cross-examination he admitted that he is also called "enyi nwa" he stated that he does not know one Emeka Mbanefo and Friday Otugo whom the defence counsel alleged that he (PW3) defrauded.

PW4, Maria Nwachukwu, stated that both the complainant as well as the defendant are brothers of full blood to her. She stated that on 7th December 2014, the complainant, Joseph alleged that Obi killed our younger brother Arinze because Obi is in an occultic society. PW4, stated further that the defendant stated further that there is a room in the house of the complainant that nobody enters. PW4 stated that as a daughter of the family that she made effort to stop the matter. PW4 stated that the defendant kept saying that the complainant is also responsible for his childlessness. Under cross examination he stated that the father of the parties is his elder brother. Under cross examination she stated that she made effort to stop this matter but that the defendant did not stop his allegations.

PW5, Obiekwe Nnajofofor (Ozo), stated that on 7th December, 2014, at Amachalla that he invited all the Umunna called "Umuobu". He stated that he paid ₦200 with 4 Kolanut and that the defendant brought the same thing. PW5 stated that the defendant stated before the kindred that PW5 is a member of occult and that I took his destiny as well as made him childless. PW5, stated further that many people were there including but

not limited to Okechukwu Nnajiolor, Maria Nwachukwu, Ejike Nnajiolor, Christopher Okafor. He stated further that ₦200, was given back to him by the kindred after warning the defendant to desist from further publication of the defamatory words. PW5 stated that the defendant continued to defame him and on 1st March 2015 that he reported the matter to Amachalla Village meeting which is a larger decision making body. PW5 stated that the defendant came again and said that he is an occultic person and that there is a room that nobody enters in the complainant's house. He said the Amachalla meeting said he should bring 2 cartons of beer and the defendant was told to bring the same thing. PW5 stated that they both complied and that the Amachalla meeting warned him to desist from it. He went further to say that Arinze Nweke-Aku, Gozie Onuorah and Charles Arinze all from his mother's family came to the meeting. He said he latter reported the matter to the police because the defendant was very reluctant in his conduct. Under cross-examination the PW5 maintained that the defendant said he is an occulting person and that he killed Arinze and that it is contained in the Village meeting minute's book. When asked by the defence counsel why he refused to honour Amudo/Amachalla invitation the PW5 denied being invited by the said body. He maintained that he has not rejected "Igba-Ndu" covenant up till today. He also stated that Maria Nwachukwu is a daughter of his father's eldest brother.

PW6, Anthony Ngene, stated that he is the chairman of Amachall Villgae. He stated the matter was referred to them and the parties brought drink and we decided that there will be oath taking and that the defendant must appease the gods for being involved in charm practice. PW6 stated that later the defendant said he is not going to comply with the recommendation of the Amachalla meeting. PW6 was duely cross-examined and he maintained that all that transpired are contained in the minute book. He also maintained that cleansing must be done by the defendant before "Igba-ndu" covenant.

PW7, Henry Eyo Isa, stated that a petition endorsed by the Commissioner of Police was given to him on 10th May 2016 for investigation by his department. He tendered the petition as Exhibit "C". He stated that he also arrested the defendant and he made a statement. He tendered the extrajudicial statement of defendant as Exhibit "D". He said that the defendant did not bring any witness but the complainant brought some witnesses. He tendered the investigation report as Exhibit "E".

DW1, Emmanuel Nwoye Agunmadu Nnajoior, stated that he was in his house in 2015 when Ozo Nnajoior came in with 2 police men to his house and that he wants to report the complainant to the police. He stated that he knows the defendants and complainants as brothers who enjoy a cordial relationship but not until now that they are in court. He stated further that he suggested oath taking since the 2 parties are suspecting each other but the complainant refuse. PW7 stated further that during the meeting of Amachalla Village that the Chairman did not allow anybody to talk and stated that the defendant must buy a fat goat, 25 tubers of yam and 25 carton of beer which will be taken to Nze Shrine before the defendant will be allowed to communicate. He stated further that ₦50,000 was imposed on any person who attends the burial of the defendants mother in the defendant's house. He said that by Amachalla Nabo after a complaint was lodged to them by the defendant having been aggrieved by the decision of the Amachalla Village meeting. He stated further that the complainant was invited 3 times by the meeting of Amachalla Nabo but he did not come. Thereafter 2 persons from their maternal home come to me and I invited and summoned Nnajoior family meeting and the emissaries from their maternal home said they should take the covenant and bury their daughter. Thereafter the defendant, the mother of the parties was buried. I did not make statement to the police because IPO did not invite me.

Under cross-examination he admitted that he is alone in his position of what happened because he cannot be bought over by the complainant.

DW2, Joseph Nnajofofor, the defendant on record, stated that the complainant has arrested and detained Anthony Nnajofofor his brother and when Anthony was released he ran away and that he does not know where he is now. That he has another brother Arinze who dies recently while jogging in 2014. He stated further that he was relating with the complainant well until Arinze died in 2014. He stated further that he did not say that the complainant is in occultic society and that the complainant killed Arinze he maintained that he also brought ₦200 to the meeting of Amachalla and that the complainant presented his case that I am calling him an occultic person and that I said he killed Arinze and that I have a charm called Ijele which I want to use to kill him. DW2 went further to say that he was called upon to reply and that he told the meeting that he was innocent and after that the both parties were told to step aside and when they came back the recommended Igba ndu for both parties but the complainant refused. DW2 stated that the complainant went to Amachalla meeting to report me and that he bribed the chairman of Amachalla meeting. He said both of them bought drinks. He stated that one Christopher Nwoka asked if this matter has been deliberated by Nwobu family meeting and that one of the elderly men called Christopher Anara stood up and said that Umuobu has completed the issue and decided that Igba ndu be done. He said he now discovered that the chairman has been bribed and others in the meeting. He said the chairman did not allow him to talk and the Amachalla meeting said that I should do cleansing ceremony by bringing a dwarf from Agunkwu Nri, and appease Otutenze with 40 cartons of beer, 25 tubers of yam, one goat and fowl as well as other things and that in addition that I should leave the society for 7 years before I come back and live again here and that I should not greet any person in Amachalla and I said no and the meeting dispersed. DW2 stated further that Christopher Nwoka was sent to inform the complainant when I reported the case to Amachalla Nabo but the complainant refused to come to the meeting of Amachalla Nabo that he was also invited again by the said Christopher Nwoka as a messenger. He stated

further that the said Nwoka was sent the 3rd time to inform the complainant but still the complainant did not appear. So I later got injunction from the court to conduct the burial and it was admitted as Exhibit "F".

DW2 stated that Amachalla imposed ₦50,000 levy on Agumadu Emmanuel for participating in my mother's burial and ostracized him. The defence sought to tender the document which is a C.T.C of the High Court matter. the prosecution objects that it can only be tendered to contradict the witness. He relied on Sec 231 and 232 of Evidence Act. The document was marked Exhibit "G" and ruling reserved in judgment. I shall proceed to deal with the admissibility or otherwise of the said document. The law is trite that the only piece of evidence admissible as a public document is a CTC of the said document. I think the requirement of certification has been complied with and such document is admissible. It is accordingly admitted in evidence as Exhibit "G". DW1 stated that PW1 who testified in this case was sacked by Bishop Okpara. He said all other witness are bought over witnesses. Under cross-examination he stated that he does not know if Ozo Nnajofo is a secret cult member and if the said complainant has a room nobody enters as well as a ritualist and to all these questions he said he does not know. He also said that as brothers that they help each other. He also stated that he does not know the church where PW1 was dismissed. He also admitted that he did not know how the chairman of Amachalla meeting was bribed by the complainant as well as other witnesses. He agreed that many elders were at the Amachalla meeting and that he did not have problem with the chairman of the meeting of Amachalla prior to the incident. He also admitted that his father died in 2009 or thereabout. He also mentioned the name of Joseph Ifeatu Okonkwo as the Chief of Amachalla and that he was present at the Amachalla meeting. DW2 also said he did not know why Anthony was locked up when he allegedly forged a land agreement to sell the land of their brother Arinze (Deceased). DW2 also stated that he did not know how Christopher Nwoka invited the complainant 3 times to the meeting Amachalla Nabo.

The defence has argued *inter alia* that the evidence of PW3 as it relates to count 1 is contradictory since he stated that the alleged publication of defamation occurred in March 2015 but the charge stated that it occurred sometime in 30th day of August 2014. This is to me is a material contradiction and it is trite law that any material contradiction in the evidence of prosecution witness will be resolved in favour of a defendant who is presumed to be innocent until proven guilty. See *Olalekan Vs. State* 2001 18 NWLR Pt 746 Sic. See also *Kalu Vs. The State* 1988 4 NWLR Pt. 90.

It has also been argued by the defence that Count 2 and 4 offends of Sec 36(9) of the 1999 Constitution of the Federal Republic of Nigeria. The defence has argued that count 2 and 4 are one and the same and that it is bad for multiplicity. It is proper to set the record straight. Count 2 was alleged to have occurred on the 7th day of December 2014 where the said defamatory words was alleged to have been published to the hearing of one Maria Nwachukwu.

Count 4 was alleged to have occurred on 21st day of June 2015 at Umuzuocho Awka before the hearing of Umuzuocho Kinsmen whose names were set out in the count. The law is that for every distinct offence with which any person is charged there shall be a separate charge. This rules however forbids that no count shall contain more than one offence except in permitted circumstances. A charge is therefore bad for duplicity if it contains more than one offence. See *Okeke Vs. The Police* 10 WACA. See also *Awobutu Vs. The State* 1976 5 Sic.

A defendant must be charged for each of the offences committed by him separately on the charge sheet or information. This rule has just been adhered and observed in Count 2 and 4 respectively.

PW4, Maria Nwachukwu stated that the alleged defamatory word was made on 7th December 2014 in her presence by the defendant. Exhibit "D" which is the Extra-Judicial statement of the defendant did not say anything or

deny the incident of 7th December 2014. The DW2 evidence in chief only stated that all the witness are bought over by the complainant.

In count 4, DW2 denied making any publication of the alleged defamatory matter. I have carefully studied the testimony of PW2 Engr. Christopher Okafor as relates to count 4 and I am of the view that there is no evidence to show or prove the alleged defamatory matter on 21st day of June 2015 at Umuzuocha. Gozie Onuorah, Arinze Nwaekaku, Charles Arinze all were never called to testify. The only eye witness of the alleged defamatory word is Engr. Christopher Okafor whose evidence dwelt extensively on the incident of 7th December 2014 and the visiting of a Church in Nnewi which evidence was of variance with the charge count 4 collapses.

PW6, Anthony Ngene in his evidence in chief stated that a case of defamation of character was reported to them and the deliberated upon it and decided that there will be cleansing to be done by the defendant and that the defendant refuse to comply with their decision and recommendation. Anthony Ngene in Exhibit "B" stated that after the death of Arinze that there was series of rumor accusing Ozo Obi Nnajofof of being responsible for the death of Arinze. He stated that what happened was in the minute of the meeting. However, they did not tender the minute of the meeting to enable the court to hold whether such defamatory statement was infact made or reported by some other person or whether it was the rumor of the defamatory word that was deliberated upon. The absence or refusal to tender the minutes of the meeting deals a fatal blow to count 3.

In count 5, PW2 Rev. Cannon Kenneth Madoka, stated that on 30th August 2014, that he was in his car with the defendants when the said defamatory statement was made. He said he could not remember the exact time of the incident but gave particulars of his car as a Mercedes benz saloon car. DW2, the defendant on record in Exhibit "D" which is his extrajudicial statement to the police stated that "the person mentioned above on 30th day of August 2014 at Amudo Village Awka is Onyebuchi Nwobu and Rev.

Cannon Kenneth Maduka, to be sincere I don't know any of them, so therefore I didn't tell them anything concerning my brother". Exhibit "D" which is a documentary evidence, tendered and not challenged by the defendant as not being the maker are like words uttered and do speak for themselves. They are more reliable and authentic than words from the vocal cord of a man. This is because they are neither transient nor subject to distortion and misinterpretation, but remain permanent and indelible through ages. Thus documentary evidence or the Exhibit "D" in the instant case is used as a hanger to test the credibility of oral evidence made by the defendant. DW2, the defendant on record stated in his oral evidence in court that the said "Rev. Cannon Maduka was sacked by Bishop Okpara" whom he sincerely said that he didn't know. This does not present an attitude of an honest person. In State Vs. Yusuf 2007 5 ACLR at 310. The court cannot pick and choose which of the 2 conflicting versions to ascribe probative value. Both should be rejected. See Adele Vs. State 2001 2 ACLR 420. I hold count 5 proved.

Count 6 - PW2 stated that on 7th December 2014 that in the presence of the wife of both the defendant and the wife of the complainant with the father of the defendant and the complainant that the defendant told him that the complainant is an occultic person and that the complainant is responsible for his childlessness as well as making him not to progress. He said the defendant informed him that it was a pastor that told him that and that he went to the church with the defendant to ascertain the truth but that the pastor denied it. He stated that it is a white garment church at Nnewi. The defendant in his evidence in chief did not challenge this piece of evidence. The defendant in his evidence in chief said that he witnesses were all bought over by the complainant but could not establish how they were bought over. He also did not call the wife who was alleged to be present as an eye witness to the said defamatory publication to testify and clear any doubts. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admits

factual possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of "Course it is possible but not in the least probable" the case is proved beyond reasonable doubts. See *Agbo Vs. State* 2006 6 NWLR Pt 977 Sic. I agree that the burden of proving a defendant guilty is upon the prosecution. Where, however, the prosecution has adduced evidence which shows that the defendant is guilty of the offence charged, the burden of proving that the defendant is innocent shift to him by virtue of see Sec 139 (1) and (2) and 141 of Evidence Act 2011. Accordingly, the onus is not static it shifts from time to time. I also find count 6 proved.

Defamatory matter is 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 an injury to his reputation. Such matter may be expressed in spoken words or in any audible sounds or in words legibly marked on any substance whatever, or by any sign or object signifying such matter otherwise than the words and may be expressed either directly or by insinuation or irony. For the offence to be committed there must be publication. In the case of spoken word as in the instant case, the speaking of such word to the hearing of the person defamed or any other person. In count 2, the alleged defamatory word "Obi bu onye occult, onajem akarakam mee na m ada aga na iru. Omelu m nam anutala nwa" which if translated to English Language means that "Ozo Obi Nnajofofor is an Occultist. He took my destiny, he stunted my progress and made me childless" to the hearing of one Maria Nwachukwu is defamatory. Count 5, the alleged defamatory words was made to Rev. Cannon Kenneht Maduka in the following way "Obi gbulu Arinze. Oji Arinze tuo utu. Obi bu.onye occult" if translated it means that "Obi killed Arinze. He sacrificed Arinze to occult. Obi is a member of occult". The above words has also been held to be defamatory.