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TEMPLARS successfully Defends Google in a Precedent-Setting Online Defamation Claim in Nigeria

TEMPLARS has, yet again, helped define the information and communication technology space in Nigeria.

On 22 November 2022, a High Court (HC) sitting in Lagos, in a precedent-setting decision, dismissed a multi-million naira claim, on the liability of an Internet Service Provider (ISP) or internet intermediary for defamatory third-party content published through a digital platform, against Google.

The fast-paced development in communications and technology has ushered in a new regime of defamation which occurs when an internet user or subscriber publishes offending content about the character of another individual using any of the digital platforms on the internet, i.e., online defamation. Many of the legal actions or claims for online defamation are targeted at the ISPs and this often raises the question about the existence or lack of it, scope and limit of the liability of these ISPs for such claims.

Considering the unique services that ISPs provide to e-commerce and the online ecosystem in general, and their inability to practically monitor billions of third-party contents shared through their digital platforms in real time, a special defence, the defence of innocent dissemination, evolved as a form of protective shield for the ISPs.

In this case¹, the Claimant, a businessman, sued a blogger (the 1st Defendant), Google LLC (Google), and Google Global Services Nigeria Limited (Google Nigeria) for online defamation in connection with a post made by the blogger between 6 and 12 April 2012 on her blog (the Blog). The Blog is hosted on Google's Blogger.com platform.

¹ Nicholas Okoye v. Google LLC & 2 others - Suit No. LD/1701/2012 (Unreported).

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The said post elicited some defamatory comments from third party commenters on the 1st Defendant's Blog, although the original post itself appeared innocuous.

The Claimant alleged that the 1st Defendant, as the owner or registered user and subscriber of the Blog, together with Google as the owner of the Blogger.com platform, and Google Nigeria as sole representative of Google in Nigeria, manage, control and exercised editorial control over the Blog as well as posts or contents made on the Blog.

He further alleged that the Defendants (1st Defendant and the two Google entities), had a responsibility to ensure that such posts or contents posted on the 1st Defendant's Blog are previewed or edited to avoid them being offensive or defamatory or contrary to best ethical practices in journalism. He further claimed that neither the 1st Defendant, Google nor Google Nigeria verified the truth or authenticity of the information contained in the 1st Defendant's Blog in before it was published and transmitted across the globe.

Against the above backdrop, the Claimant sought for a declaration that the 1st Defendant, Google LLC and Google Nigeria are jointly and severally liable for the defamation of his character by the negative posts and comments made on the 1st Defendant's Blog, as well as monetary compensation and injunction against all the Defendants.

In its defence on behalf of Google LLC, TEMPLARS submitted among others, that: (a) Google as an ISP only operates the Blogger.com platform as a mere passive or technical host without any editorial control over the posts made on the individual blog spots hosted on its platform but owned and operated by users and subscribers; (b) owing to the size of the Blogger platform-it is estimated to contain more than half a trillion words with approximately 250,000 words added every minute, Google LLC does not, and is practically unable to have actual knowledge of the contents generated on individual blogs hosted on the Blogger.com platform until a complainant, such as the Claimant in this case, makes a formal complaint regarding the publication; and (c) in any case, the blog post complained of had already been taken down by the 1st Defendant at the time the Claimant notified Google LLC of the blog post.

In the resolution of the issue of liability for online defamation, the HC held that the 1st Defendant was liable for online defamation because her blog post initiated the chain of events that led to the defamatory comments from third-party commenters, and was, therefore, the enabler of the defamatory contents about the Claimant.

The HC, however, found and agreed with TEMPLARS' argument on behalf of Google, that Google is not liable for the online defamation because, Google operates the Blogger Service platform as a mere internet intermediary who was neither the author, editor nor publisher of the defamatory contents. The HC also agreed that Google had no actual knowledge (and could not be reasonably expected to have had actual knowledge) of the defamatory contents.

In addition, the HC found that Google's lack of knowledge of the defamatory contents was not borne out of its negligence, owing to the huge size of the Blogger.com platform and its structure, and in view of its visible efforts through its contests user's policy and policy on contents removal, to curb reckless proliferation of offending content by users of the platform. Moreover, the HC found, as contended on behalf of Google LLC, that by the time Google was notified of the defamatory content, it had long been removed from the platform by the 1st Defendant.

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Accordingly, the HC upheld the submissions made by TEMPLARS on behalf of Google, that as a mere internet intermediary who was neither the author of the defamatory content, editor nor publisher, and who had no actual knowledge of same, and whose lack of knowledge was not borne out of its own negligence, is entitled to the full complement of the common law defence of innocent dissemination, and thus, totally absolved of liability for the defamation.

The HC, presided over by the Honourable Justice Akintoye, has, with this epoch making decision, introduced a new legal precedent into the Nigerian legal system to the effect that an ISP, such as Google in the instant case, being a mere intermediary, is not generally, a publisher of the third party contents made on its digital platform, and will thus not be held liable for such infringing or defamatory contents by reason of the concept of innocent dissemination. The only exception, however, is where it is shown to have had knowledge of the offending contents and yet, fails to act within a reasonable period.

TEMPLARS has continued to contribute to the development of the evolving dynamics of information and communication technology jurisprudence in Nigeria. Only recently, TEMPLARS had successfully defended Google in a landmark claim ([Hillary Ogom v. Google](#))² bordering on the novel issue of the right of a data subject to be forgotten.

The TEMPLARS' team was led by Sadiq Ilegieuno, a partner in the Disputes Resolution & METIS (Media, Entertainment, Technology, Intellectual Property and Sport) Practice Groups, assisted by Senior Associate, Jacob Obi and Associates, Collins Ogbu and Lawal Kazeem.

² (<https://www.templars-law.com/wp-content/uploads/2021/12/Right.To.Be.Forgotten.article.pdf>)