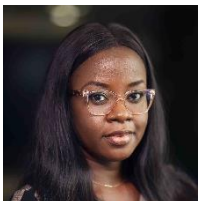


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# PARSING EMOJIS – Legal Considerations and More

## Introduction

Emojis are visual representations of emotions, expressions, and ideas, allowing individuals to add nuance and context to their messages. They can help convey tone, introduce youthful exuberance, humour, or emotions that might be difficult to express through text alone.

The use of emojis in social and professional circles has indeed become prevalent and despite the rapid growth in the cyber space, informal rules around emotional expressions,<sup>1</sup> most of which are implicit, remain poorly understood.

In this write up, we examine the legal considerations around the emerging trend of using emojis as a medium of expression within and outside the workplace and the extent to which emojis can convey legal intent as construed by the courts.

## What are the legal considerations?



In recent times, a lot of unintended results have emerged from the misinterpretation of emojis, especially in workspace interactions and some of these issues have started making their way into the court room for resolution.

Often, people use emojis in formal and informal communications without necessarily considering the context or the meaning that the recipient could derive from it. For example, is the use of a gun, bomb or knife emoji considered a terror threat? Does a heart emoji sent by a boss to an employee constitute sexual harassment? Can an emoji be defamatory? These are only but a few of the issues that have arisen for judicial interpretation on the use of emojis.

Due to various cultural perspectives, the interpretation of emojis is severely complicated by the lack of a universal meaning. What is acceptable to one person might be grossly offensive to another. For instance, the thumbs up emoji which generally signifies acknowledgement, confirmation of mutual collaboration and agreement, in some context, is considered rude and abrasive in other instances especially by younger users<sup>2</sup>.

<sup>1</sup> importance of context, knowing your audience and target of use are a few of the informal rules that guide interpretation of emojis.

<sup>2</sup> <https://www.forbes.com/sites/johnbrandon/2022/10/16/gen-z-have-canceled-the-thumbs-up-emoji-and-heres-why-we-should-worry/?sh=775edff94744>  
last accessed 27 November 2023

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Clearly, the importance of exercising caution when using emojis, especially in formal correspondences, cannot be overemphasised given its subjectivity to varied interpretations.

Although, there isn't an abundance of judicial opinions carefully parsing the meaning of emojis or even discussing the methodology for discerning their meanings, there is a strong likelihood that soon enough, the legal space would be awash with emoji-related cases. We hold this view because, despite the informality associated with their usage, emojis are rapidly becoming recognised as a valid form of business communication, evident from some of recent decisions of foreign courts which we will discuss subsequently<sup>3</sup>

## Can Emojis create Binding relations?

They sure can. In a recent decision<sup>4</sup>, the Court of King's Bench in Saskatchewan, Canada, ruled that the use of a thumbs-up emoji in a text message satisfied both the writing requirement of Saskatchewan's Sale of Goods Act<sup>5</sup> and also constituted acceptance of an offer even though the defendant insisted that his use of the thumbs-up emoji in a text message only served to acknowledge receipt of the draft contract that was shared, but did not signify his acceptance of its provisions. In reaching this decision, the Judge considered the similar nature of past correspondences between both parties and concluded that a reasonable person would understand the emoji as an acceptance of the contract terms offered. The judge, in compelling the farmer to pay \$61,442 for breach of the contract, reasoned that the emoji is just as valid as a signature and that courts must adjust to the "new reality" of how people communicate.



A key takeaway from the above decision, is that the days of strictly viewing contracts as a formal document filled with technical language and legalese is gradually eroding. The reality is that as technology advances and communication become more casual, we are likely to see more business activities including contract negotiations and executions concluded through newer forms of communications and digital platforms like WhatsApp, Facebook, or Instagram.

## Can Emojis be Defamatory?

Emojis may seem harmless, but recent case law suggests that emojis can give rise to an action for defamation because they can convey a defamatory meaning. In an Australian case<sup>6</sup> where the defendant tweeted a link to an article about the plaintiff's disciplinary case with a zipper-mouth face emoji, the judge, referencing an online emoji dictionary, opined that most social media users would have negative impressions of the plaintiff as the tweet conveyed false and defamatory assertions, including that she had been disciplined due to misconduct.

## Can the use of emojis trigger sexual harassment claims?

Whether or not the use of certain emojis during communications can lead to a sexual harassment claim or be enough to ground a lawsuit is one that is still evolving. Sexual harassment is punishable under both Federal and State law in Nigeria<sup>7</sup> and even as there are several agitations for a more robust legal framework and punishment for sexual harassment, the National Industrial Court of Nigeria has been applauded for taking the lead on addressing workplace sexual harassment through its judgments and

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rules of court. Order 14 of the National Industrial Court of Nigeria (Civil Procedure) Rules 2017, is to the effect that Sexual harassment includes an unwelcome display of sexually explicit pictures and objects, sex related jokes or insults, or unwelcome graphic comments about a person's body, etc.

Although, emojis can be part of a harassing conduct or messaging, one thing that is clear from the few cases on this issue is that the court will always consider the surrounding facts and context of use (e.g. the type of emojis, frequency of the incidents) in arriving at a reasonable decision. In an American case,<sup>8</sup> the District Court for the Middle District of Louisiana found that although a "winking smiley" coupled with commentary about a plaintiff's good looks could be regarded as flirtatious, such "insensitive, boorish, uncouth, or even offensive" conduct, standing alone, would not rise to the level of sexual harassment.

Notwithstanding the court's reasoning above, it would be foolhardy to think that the use of emojis cannot contribute to the finding of sexual pervasiveness in a modern-day workspace. This was precisely why the court in, yet another American case<sup>9</sup> decided that a supervisor sending a female subordinate late-night message about her physical looks, asking her to go to dinner with him, sending her a "winking" emoji, and texting her "sweet dreams" even after the employee asked him to stop contacting her about non-work matters was objectively and subjectively severe enough to create a hostile work environment for the subordinate. The court looked at the surrounding facts and analysed the totality of the circumstances including the emojis used in denying the defendant's motion for judgment on the pleadings.



## Is Nigeria Ready?

Considering the growing adaptation to the use of emojis in digital communication, Nigerian courts need to review and adapt to; the place of emojis, their interpretation and their legal implications in written communication. Although, there is currently no known Nigerian case law on this subject, it is nonetheless opined that the Nigerian legal jurisprudence is somewhat prepared to embrace these technological developments. This is evidenced by various domestic laws, including but not limited to the Business Facilitation (miscellaneous provisions) Act 2023, Evidence (Amendment) Act 2023 and the Finance Act 2023 that now make provisions for e-voting, e-transfer of shares, e-oath taking and the likes.



Nigeria has experienced a significant impact from the rise of digital and electronic transactions, as evidenced by the notable increase in reported electronic transactions conducted through digital

<sup>3</sup> *South West Terminal Ltd. v Achter Land* 2023 SKKB 116

<sup>4</sup> *South West Terminal Ltd. v Achter Land* 2023 SKKB 116

<sup>5</sup> S. 6(1) of The Sale of Goods Act

<sup>6</sup> *Burrows vs. Houda*, [(2020) NSWDC 485],

<sup>7</sup> Section 46 of The Violence Against Persons (Prohibition) Act 2015 states that sexual harassment means "unwanted conduct of a sexual nature or other conduct bases on sex or gender which is persistent, serious and demeans, humiliates or creates a hostile or intimidating environment and this may include physical, verbal or non- verbal conduct." See similar provision in Section 63 of the Ekiti State Gender – Based Violence (Prohibition) Law 2019.

<sup>8</sup> *Bellue v. East Baton Rouge Sheriff No. 17-00576*, 2018 WL 4365529 (M.D. La. Sept. 13, 2018)

<sup>9</sup> *Herman v. Ohio Univ. No. 19-201*, 2019 U.S. Dist. LEXIS 202806 (S.D. Ohio Nov. 22, 2019)

channels<sup>10</sup>. Section 17(1)(a) of the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 ("Cybercrimes Act"), provides that documents executed by e-signature are binding. This point is further buttressed by section 93(2) & (3) of the Evidence Act. The Evidence Act has been amended to define electronic records to mean data, record, or data-generated image or sound stored, received, or sent in an electronic form or microfilm. It expands the requirement for admissibility of computer-generated evidence to include electronic records as defined. All these innovative provisions of the law underscore Nigeria's commitment to keeping up with global standards. The Nigerian judicial system must therefore continue to stay apprised and brace up to attend to nuanced and curious issues that may arise from the imminent technological evolution to businesses and contractual communications, including in the use of emojis - which can be classified as data-generated images as defined by the Evidence Act 2023.

## Key Takeaways

- The above recent decisions of foreign courts underscore the growing recognition of emojis as valid forms of communication, not just within the social spaces but in business circles and the significant implications of this recognition for the global legal and business communities, including Nigeria. Thus, the new reality is, the use of emojis in responding to a party's email may be as effective as actual words in a contract.
- With the proliferation of emojis in digital communication, the legal system will continue to face new challenges as emojis are adopted into everyday interactions and new icons are released. Courts may need to adopt a universally recognised and acceptable "Terms of Use" for emoji interpretation, considering their changing cultural importance and interpretations. Legislators may also need to explicitly address the use of emojis in legislation, especially when used in the workplace or for business communications.
- While the cases to date where emojis have led, or contributed, to a finding of severe or pervasive conduct are few, all signs indicate that employers should remain vigilant about them in a work environment, as there is a possibility that employees may rely on them to substantiate their claims.
- As AI evolves and use of emojis continue to shape how we express business ideas and emotions within and outside the workplace, Nigerians and the rest of the world must stay alert and apprised of the state of legal jurisprudence in this regard.

<sup>10</sup> <https://nairametrics.com/2018/09/03/nigerias-e-payment-transactions-hit-record-n65-3-trillion-in-first-half-of-2018/>