

What if Farotimi's allegations are not false?

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BY TONNIE IREDIA

According to Section 39 of the Constitution of the Federal Republic of Nigeria 1999, “every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference.” To underscore the importance of this right, the constitution further expands the empowerment beyond private discussions by recognizing the use of the media to effect communication across the globe by anyone desirous of consummating the freedom of speech provided by the section. Hence, Section 39(2) explicitly empowers citizens to “own, establish and operate any medium for the dissemination of information, ideas and opinions.” It is perhaps to avoid the misuse of this powerful right, that Nigeria also has a law of defamation which protects citizens from being hurt by reckless statements made by anyone under the guise of freedom of speech.

It can therefore be argued that although the law of defamation derogates from the constitutional provision on freedom of expression, it is certainly one of those laws which Section 45 of the constitution regards as reasonably justifiable in a democratic society. For those who may not fully comprehend what defamation entails, the Nigerian judiciary has since made it easy by defining the concept as an attack on the reputation of a person which lowers one in the estimation of people or causes him/her to be shunned or avoided or exposed to hatred, contempt and ridicule. But then, not every criticism can qualify to be defamatory. A defamatory statement must not only be clearly false; it must also have been made known to not just a few people but to several persons or the world at large. The damaging statement must also have targeted a specific, identifiable person and not just some group of people.



When the above is applied to the ongoing popular case of legal giant, Afe Babalola and human rights activist Dele Farotimi, many can easily see a pointer to a case of defamation especially its stronger dimension of Libel. This is because the alleged offending statement is clearly published in a book written by Dele Farotimi which is in circulation worldwide. The statement also refers specifically to Babalola. What may be difficult to quickly conclude upon at this

point is whether the allegations credited to Farotimi are true of Babalola. It is therefore in order that the aggrieved has sued the accused to prove his allegation or be penalized for making reckless weighty allegations. The case looks quite straight forward because Farotimi has not denied that he made such allegation. In the circumstance, it is a case that the judiciary can easily establish guilt. However, the simplicity of the case has become complicated with the involvement of the police.

With the main issues in the case clearly laid out, not many have been able to understand what exactly the police have been or are still investigating to justify the continued detention of Farotimi in police custody. Is it so that the activist does not escape from trial or is he facing punishment for his alleged refusal to present himself early enough? If the truth must be told, the involvement of the police in the case merely reminds many people of the posture of the colonial police used by authorities and the elites to compel strong-headed citizens to fall in line. Police involvement in the case has actually created a bigger court on the subject – the court of public opinion. Indeed, the two people involved in the case are very well known to the public. In the case of Babalola, there is hardly any lawyer that is known to have made a bigger success of his career. On the other hand, no one is likely to believe that Farotimi would timidly dodge police invitation.

From the comments made by the Nigerian Bar Association and some senior lawyers including the fiery Femi Falana, the case has since moved away from that of defamation to the misuse of police power to suppress an underdog. Many people could not have been comfortable with the report that Farotimi's arrest was done by operatives of the Ekiti State Police Command without prior notification to the Lagos State Police Command or even the higher Zone 2 Command. It is reported that the arrest took the 'gestapo' style just as it was done without the convention of logging or booking the case in Lagos thereby leaving Assistant Inspector General of Police (AIG) Zone 2 Command, Adegoke Fayoadé and the Lagos State Commissioner of Police Olanrewaju Ishola in the dark until the incident went public. This gives an impression that some actors in the game are more interested in toying with Farotimi's right to liberty than ensuring justice.

Many questions have since been asked and irrespective of what side anyone chooses to support, Nigerians would no doubt gain from answers to such questions. First, having allegedly invaded Dele Farotimi's chambers, why was it necessary for the Ekiti operatives to also harass the staff by seizing their phones? Was the choice to use the Ekiti police instead of their colleagues in Lagos where the accused works and lives strategic? Put differently, is it true that Lagos was being avoided because 'the state of excellence' has since 2011 decriminalized defamation? Again, how true is the allegation that the arrest of the activist was premature? This question has been asked because DSP Abutu Sunday, the Public Relations Officer of the Ekiti State Command issued a press statement that Farotimi "was in custody and will be arraigned as soon as investigation is concluded."

It is worthy of note that some persons are also asking questions in favour of Afe Babalola. For example, should Babalola keep quiet and watch his hard-earned reputation destroyed through what looks to him as reckless statements? There is also the issue of the state of the law. Is defamation only a civil wrong? Here, attention is being drawn to the subsisting provisions of the Criminal Code on defamation which establishes clearly that in Nigeria, defamation is also a criminal offence. In addition, it is argued that no amount of compensations can repair the damage which the allegations have done to Babalola's hitherto impeccable reputation. As we all await the verdict of the court, not much has been said about two aspects of the case. The first is the issue of veracity; who says Farotimi's allegations cannot be true? Do we know what Farotimi knows about Afe Babalola that could make him think the legal giant does not deserve the high esteem of



Nigerians?

The second is the dicey nature of defamation. Indeed, because defamation matters are usually premised on reputation, some defendants could bring up a dirty past that the plaintiff may have forgotten and which could be to the embarrassment of the parties and their children. Here, let's recall the 1985 libel case instituted against NewsWatch Magazine by the late Chief Frederick Rotimi Alade Williams SAN. NewsWatch hired Chief Gani Fawehinmi who came to court to argue that his clients were justified in their publication insisting that Chief Williams who at the time was arguably the most respected lawyer in Nigeria had no reputation to protect. To illuminate his position, Gani exhumed a 1949 case in which Chief Williams was lampooned in court for a dishonorable conduct of misapplication of his client's funds. Not much could be said thereafter.

This piece cannot end without reference to the fact that it is one thing for the court to uphold a person's reputation but quite another thing for the public that a person wishes to please to fixatedly hold-on to a different opinion. Today, some segments of the Nigerian public and other international activists have already taken sides against Babalola. Many people are said to have rushed to purchase every available copy of the 'forbidden' book making Amazon to declared the book which initially recorded low sales to have attained a best seller status. Next Tuesday, activists are billed to gather at Kings College London to put pressure on the institution to cancel its Afe Babalola Centre for Transnational Education named after the legal giant for what the group perceives as Babalola's abuse of power. We can only hope that the court case itself will not end in pyrrhic victory – one obvious reason why cases of defamation by great men should be left to the courts without involving other exuberant actors.