

Death News Publications, Reputational And Proprietary Interests: A Man's Good Name is Far More Precious Than His Habitation

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Abstract:

A person's good name is far more precious than their habitation. When a person dies his heirs inherit his properties amid so much excitement, activity and interest over the physical wealth and properties to the detriment of the reputational interests. Inheritance is the devolution of property on an heir or heirs upon the death of the owner. In the European Civil Law, it is referred to as succession. While personal rights (rights in person am) only affect the parties that originally created the right, proprietary interest (rights in rem) are capable of affecting third parties, not just the people who originally created it. The law protects the person's property through probate overseen by a court after the death of the owner.

Since it is said that person's reputation is very important and outlives the dead, it safe to presume that, what is said about a person after death should have effect and receive matching protective, determination as procedures. This author seeks to address the question whether a dead person can be defamed and, if yes, what happens in such situations. Who can inherit and enforce those interests and claim for any breach arising therefrom, under what laws and legislations, if any? The crux of this article is whether or not newspaper and electronic media death announcements, obituaries or death news can infringe on reputational interests of the dead and their living.

Methodology and Conclusions:*Through gathering, sifting, review, analyses and synthesis of literature and cases, this study proposes answers and recommendations to the questions raised about DEATH NEWS PUBLICATIONS, REPUTATIONAL AND PROPRIETARY INTERESTS. In conclusion the study cautions that reputational interests are capable of having implications on heirs and third parties who may sue and be able to collect on behalf of the dead cases of misrepresentation, defamation and false light claims against the media.*

Key Words:

Death, Proprietary Interests, Reputation, Defamation, False Light, Obituary Publication,

Date of Submission: 01-05-2021

Date of acceptance: 15-05-2021

I. Introduction

Defamation actions and False Light invasion often arise from publications. While each requires evidence of falsity published to a third party, defamation is generally a false statement made about a person whereas False Light is a misattribution of a person's actions or beliefs. Hence, defamation must be false whereas False Light torts need only be misleading though they must be offensive. For instance, if an article about sex offenders in the community includes a smiling photo of you, and people could conclude that your smiling face demonstrates your endorsement of the criminal conduct, you might have a false light action due to the photo's misleading context, which mischaracterizes your opinions or beliefs;

1. truthful statements cannot be defamatory no matter how damaging they are to someone's reputation; and
 2. opinions are, in general, not defamatory because they cannot be true or false.
- Firstly, let's understand what the basic terms mean; defamation, death, proprietary interests, obituary publications.

II. Death, Proprietary Interests, Reputation, Defamation, False Light and Obituary Publication

Death, for the purpose of this article, refers to a dead person. It is the act of passing away, the end of life of a person or organism. A dead person cannot talk, he cannot make a claim, he cannot save himself and he cannot defend himself.

Proprietary interests refer to the profiles, rights, ownership shares or advantages held by the full owner or partial owner of a tangible or intangible asset. A person that is next of kin to a dead person or a person listed in the testator's will usually get proprietary rights over that which the dead owns. For tangible things, it is well set out in most jurisdictions.

Reputation assets are intangible and there are many things that form the basis for the embodiment of property. As time goes by and our world changes, and the concept of property has evolved to include reputation and the good name of a dead person.

Defamation is an act or statement that damages a person's reputation. It is the attacking of a person's reputation by a false publication tending to bring the person into disrepute. Basically, it makes a person look bad. In order to establish defamation some things have to be proved. Firstly, it must prove to be that the statement is false, otherwise your claim can be barred with truth which is a defence. Secondly, it must be proved that the person making such statement knew it to be false at the time he was making it. Finally, the statement must be published. The most common examples are; posting online, inclusion in a newspaper or magazine, or repetition on a news broadcast. Once the above have been established, the court is of the opinion that the person defamed has suffered damage. Truth is a complete defence to defamation.

False light is affected by the truth defence differently. A defendant's true statement about a plaintiff may not be used to save the defendant if the implication is false.

Obituary publication occurs when disreputable words, photographs and things are done to, or said about, the dead. Death is inevitable and when a loved one passes on, it needs to be announced no matter how hard it could be for the survivors. These announcements are done through the mass media, including newspapers, radios, television. It is in line with some of these announcements that a dead person's reputation can be defamed or tainted. Most times, published obituaries may not say the truth about the dead but, whether true or false, oftentimes they are caught in false light misrepresentations.

III. A case study of late High Chief (Dr) O.B Lulu Briggs will be reviewed

A newspaper announcement of the death of High Chief (Dr) O.B Lulu Briggs published The Guardian was followed by a disclaimer in the same newspaper by an aggrieved;

O.B LULU BRIGGS FAMILY OBJECTS TO BIZZARE OBSEQUIES ANNOUNCEMENT

The attention of the family of High Chief Dr O.B Lulu Briggs, OON, DCF, DSSRS has been drawn to a publication on page 46 of the Guardian of 8th March, 2021, ostensibly made on their behalf by Chief Dumo Lulu Briggs announcing the obsequies of their patriarch, High Chief Dr O.B Lulu Briggs with the most prominent font depicting blood, witchcraft and savagery.

The family distances itself from such unwholesome, macabre and juvenile misrepresentation of the respectable person of High Chief Dr O.B Lulu-Briggs.

The family views the grotesque publication as one in bad taste and utterly disrespectful to the memory and life of an honourable man like the late High Chief Dr O.B Lulu Briggs, who was globally distinguished for the statesmanship, industry, generosity and evangelism through the O.B Lulu Briggs Campaign for Christ.

The family apologizes to all friends and associates of High Chief Dr O.B Briggs from across Nigeria and around the world who feel offended. Many have been called in to express their disgust and justified contempt at the noxious publication. The family assures them that such an offensive publication could never have emanated from family members who cherish the legacies of their beloved patriarch and are committed to promoting same. It is the belief of the family that the publication is reflective of the thinking and character of the sponsor and nothing more.

The O.B Lulu Briggs family assures the general public that the priceless memory, life and legacies of their patriarch, High Chief Dr O.B Lulu Briggs, will never be diminished by these momentary, vile and callous showmanship and should therefore discountenance the said publication.

Dr Mrs Seinye O.B Lulu-Briggs. Sombeiro House, Port Harcourt March 8, 2021.

The outright disclaimer caught this author's attention and these questions arise for possible resolution academically, subject to available and verifiable facts;

1. What about the reputation of a person?
2. Since it is said that person's reputation is very important and outlives the owner, can a dead person be defamed?
3. Does what is said about a person after his death have effect and receive matching protection
4. Can newspaper and electronic media death announcements and obituaries infringe on reputational interests of the dead and their living.
5. Are there any remedies that can accrue to the dead and their heirs?

According to Eric Robinson, false light is a cause of action for portraying an individual as something they are not. Some states recognise the concept by either common law or statute, although several states have explicitly rejected it. As defined by the *Restatement (Second) of Torts (1977)*, an individual who publicly gives such a false impression is subject to a false light claim if two criteria are met:

1. The false impression would be highly offensive to a reasonable person, and
2. The actor knew the impression was false, or acted with reckless disregard as to the falsity of the publicized matter and the false light in which the victim would be placed.

Can the Dead be Defamed?

It is unarguable that property is transferred from a person to his next kin or whoever he authorises it be passed unto when he dies. It is unfair how only such person's tangible properties are seen as being transferred. The law only concerns itself with the reputation of a living man through so many defamation, libel, slander and other laws, but the speed with which such rights are forgotten once such person is dead is alarming. It will be of much more value if a person's reputation can also be transferred as a person's reputation is far more precious than rubies. It will protect such person's right to his reputation since he is dead and cannot speak for himself. It is in this regard that *Dr Mrs Seinye O.B Lulu-Briggs* rose to the occasion to save the late chief's name from being dragged in the mud. A dead person is mute and cannot defend himself when his image is tainted, he cannot reach out from the grave and complain, hence people are enjoined not to speak ill of the dead. Since the dead cannot institute any action to defend his reputational right, there ought to be a way of protecting their reputation by passing or devolving same through inheritance, as it is done with properties.

Taking a look at the case of an obituary about Marianne Theresa Johnson-Reddick in which she was described by her daughter as a cruel, abusive and hateful mother. In response to the action by the other sisters, the daughter in question argued that her mother is in no position to be wronged as she was dead and could not be said to be spoken ill of. Reddick could not come out and punish her daughter for having the audacity to publish such a death news or announcement.

On another vein, taking a look at the elements of defamation, a person should be able to bring up an action to save such a dead person's reputation. The elements are;

1. That the statement is false - once it can be established that the statement or writing in question is false, one of the elements is in the bag. Relating it to our topic, once it has been established that the statement about the dead person is not true, it is a step to proving that he has been defamed.
2. That the person making the statement must be aware that the statement is false - in most cases, people are usually aware that what they are saying or writing is not true but they go along with it. In the cases of the dead, the defendants are almost always aware.
3. That it was published and as is the case with the obituary of High Chief Lulu Briggs.
4. It is in this regard that *Dr Mrs Seinye O.B Lulu-Briggs* came up to save late chief's name from being dragged in the mud just because he is dead.

This is supported by extant definitions and legal positions present that, generally, inheritance or succession is the devolution of property on an heir or heirs upon the death of the owner. While personal rights (rights in personam) only affect the parties that originally created the right, proprietary interest (rights in rem) are capable of affecting third parties, not just the people who originally created it.

Section 10(7) of the 2015 Rhode Island General Laws covers liability for damages for libel of a dead person. It provides that whenever a deceased person shall have been slandered or libelled in an obituary or similar account in any newspaper or on any radio or television station within 3 months of his or her date of death, and the account would, if death had not been ensued, have entitled the party injured to maintain an action and recover damages in respect to the libel, the person who, or corporation which, would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person.

In Georgia, common law has held that a pending libel action may be continued by survivors upon the death of the plaintiff upheld in **Johnson v Bradstreet Co.**¹

Taking a look at the laws provided above, it points thus that there is indeed an argument for the fact that a dead person can be defamed. People think that the dead cannot sue for defamation but the European Court says otherwise in a particular case. The case involved **Vladlen Putistin**, as reported by the Law Society Gazette, whose father was involved in the so-called Death match in the second world war, when a team of German military players took on former professional footballers from Dynamo Kiev and Lokomotiv Kiev in 1942. The match became notorious because it was reported that some Soviet players were executed after they beat the Germans. Putistin, whose father played in the Death Match, took a claim to the European court of Human Rights, in which he alleged that a report of the match suggested his father, who is dead, was a Nazi collaborator, and thus was in breach of his own rights to a private and family life. The court rejected his claim quite alright but said in theory basis he would have succeeded in a claim on this basis.

On the contrary, the other school of thought belongs to the view that a dead person cannot be defamed. A dead person is mute and has no rights again, so how can we say such a person has been wronged in any way, let alone defamed. Under common law, deceased individuals cannot be defamed. Defamation is defined as an act or statement that damages one's reputation. The dead do not have reputations to damage. Survivors or descendants of the dead have no legal claim on behalf of a deceased relative's good name, nor can they collect on behalf of their own interests relative to that person's reputation. They can only have such cause of action if the defamation affects their own reputation. Generally, pending court action on a defamation claim does not survive the death of a plaintiff. The above depends on the state's laws or statutes. For example, using Ohio as a base, **Ohio Revised Code 2311.21** states that actions for libel and slander will end upon the death of a plaintiff as upheld **Oakwood v Makar**².

A rational thinking towards this will lead to an assumption that the dead cannot be defamed. It does not make sense that a person who is no longer alive be given defamatory rights. Once a person is dead, he is like we say in our homeland Nigeria, he "resting in peace". Therefore, if a person is really resting in peace, it may be bad if his reputation is diminished but neither he nor his relatives can sue since he suffers no damage from it.

United Kingdom

Only a living individual can sue for defamation, which means that the dead cannot be defamed. An estate or individual cannot sue for libel over defamatory statements made about the deceased person.

Apparently, "while the living can fight tooth and nail to keep their good name, there is little that can be done in England and Wales once they have passed on." The laws of libel are intended to only protect the living against unjustified attacks on their reputation. Of dead relatives, there are no circumstances under which a family can sue for libel.

The living can only take action on behalf of the dead where it affects them. For example, if a newspaper claims the deceased committed crimes on behalf of their family, the family could sue. They can also take action on the grounds of malicious falsehood where a claim survives for the benefit of the estate. For example, should an article falsely claim that the death of a person meant their business had closed, the estate could sue if the piece was intended to damage the firm or business and it did so.

In the Defamation Bill published in March 2011 for public consultation and was considered by the Joint Committee on the Draft Defamation Bill, there was no mention of defamation of deceased persons. The issue of defamation of deceased persons was raised in the Second Reading on 12 June 2012. In Committee on 19 June 2012, Helen Goodman proposed an amendment by which a close relative may bring a case if they consider the character of a deceased person has been defamed. The proposed amendment was defeated on division. Eventually, the **Defamation Act 2013** was passed without any provision for the defamation of the dead. In the United Kingdom in accordance with Common Law and the statutes in place like the Defamation Act, there is no provision for the defamation of the dead.

United States

The United States law generally does not permit libel actions in respect of the deceased, some individual statutes provide for protecting the dead and their surviving names from defamation.

Georgia: A person commits the offence of criminal defamation when, without a privilege to do so and with intent to defame the another, living or dead, he communicates false matter which tends to blacken the memory

¹ (1891)13 S.E.250,252

² (1983)11 Ohio pp.3d 46

of **one who is dead** or which exposes one who is alive to hatred, contempt, or ridicule and which tends to provoke a breach of peace in accordance with **Georgia Code Section 16**.

Idaho: Libel is a malicious defamation, expressly either by writing, printing or by signs or pictures, or the like, tending to blacken the memory of **one who is dead**, or to impeach the honesty, integrity, virtue or reputation, or publish the natural or alleged defects, of one who is alive, and thereby to expose him to public hatred, contempt or ridicule as contained in **Idaho Code, Section 18**.

Nevada: A libel according to **Nevada Revised Statutes, section 200** is a malicious defamation, expressed in writing, signs, pictures or the like, tending to blacken the **memory of the dead**, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of a living person or persons, or community of persons, or association of persons, and thereby expose them to public hatred, contempt or ridicule. In the United States of America, it is a general rule that there is no cause of action for a dead person's defamation. However, certain states like Nevada, Idaho, and Georgia take a different position.

Republic of Ireland

The Defamation Act in the Republic of Ireland had a long development period. A Legal Advisory Group on Defamation which reported in 2003, proposed that there should be a new cause of action in respect of defamation of the dead and that it should be dealt with by a body rather than legislation. The Defamation bill was introduced on 7 July 2006 and was enacted on 23 July, 2006. Defamation of deceased persons was raised by Mr J Walsh in the second stage debate saying there should be a way in which the dead's reputation can be protected. Similar issues were raised in the later sittings of the Committee Stage but there were no significant amendments made in line with defamation of the dead.

The act was passed and no provision was made regarding defamation of the deceased. **Section 39** provides that there is no cause of action for defamation for a person that is already dead. It provides that a cause of action for defamation vested in a person immediately before his death should survive the death of the person for the benefit of his estate. In Ireland, you cannot bring a cause of action for a dead person being defamed however, where there was a case of defamation ongoing and the person dies, such case can be continued.

Australia

Uniform defamation laws apply across all states and territories in Australia and a common **Section 10** of relevant statutes provides for no cause of action for defamation of, or against, deceased persons. This provision, however has not been included in the relevant statute passed in the Australian Island state of Tasmania. In Australia, action cannot be brought for defamation against a dead person and it applies through the whole of Australia.

Philippines

Article 353 of the Revised Penal Code states the definition of a libel to be public and malicious imputation of crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonour, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead. Looking at the law provided in Philippines above, an action can be brought in defamation for a dead person.

Nigeria

Section 191 of the Nigerian Penal Code states that whoever by words either spoken or reproduced by mechanical means or intended to read or by signs or by visible representations makes or publishes any imputation concerning any person intending to harm or knowing or having reasons to believe that such imputations will harm the reputation of such person is said to defame the person.

Section 373 of the Criminal Code defines defamatory matter as 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 an injury to his reputation...such defamatory matter could be in respect of living or dead persons. In the case of dead persons, no prosecution shall be instituted without the consent of the Attorney General of the Federation.

From the above, we can see that in Nigeria it is possible to bring an action for defamation of a dead person it will engage stricter protocols but it is possible.

IV. Conclusion

The conclusive assumption of this article is that in order to balance the controversy. It is really unfair and unjust that the law is only concerned about the proprietary rights of a person being passed on and not his reputation (good name). A person's reputation is more important to him than riches so even when he dies, his reputation and legacy should not be tainted and laid to rest underground. However, there are not enough legal provisions or statutes to support the above. In conclusion, though the perfect answer should be that a dead man can be defamed and his defamatory right should be protected, there will be so many problems and issues that will be encountered in arriving at a fair resolution future. Also, it depends on what the law provides in each country as seen from our comparative analyses of different positions in other jurisdictions.

Rosuvastatin 20 mg on every other regimen had equal effect when compared to daily dose regimen of atorvastatin 40 mg & rosuvastatin 20mg.

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Victor Aganbi. "Death News Publications, Reputational And Proprietary Interests: A Man's Good Name is Far More Precious Than His Habitation." *IOSR Journal of Research & Method in Education (IOSR-JRME)*, 11(3), (2021): pp. 27-32.