

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

MUSILIU OBANIKORO,
Plaintiff,

Index No.: 152332/2015

Motion Date: _____

- v -

Motion Seq. No.: 001

OMOYELE SOWORE, SAHARA REPORTERS, INC., and
SAHARA REPORTERS MEDIA GROUP, INC.,

Defendants.

The following papers, numbered 1 to 3, were read on this motion to dismiss on grounds of forum non conveniens _____.

PAPERS NUMBERED	
Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____	1
Answering Affidavits - Exhibits _____	2
Replying Affidavits - Exhibits _____	3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted in accordance with the attached Memorandum Decision and Order.

This is the decision and order of the court.

Dated: January 27, 2017

ENTER:


DEBRA A. JAMES **J.S.C.**

Check One: **FINAL DISPOSITION** **NON-FINAL DISPOSITION**

Check if appropriate: **DO NOT POST** **REFERENCE**

SETTLE/SUBMIT ORDER/JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 59

-----X
MUSILIU OBANIKORO,

Plaintiff,

-against-

Index No.152332/15

OMOYELE SOWORE, SAHARA REPORTERS, INC.,
and SAHARA REPORTERS MEDIA GROUP, INC.,

Defendants.
-----X

DEBRA JAMES, J.:

Defendants move for dismissal of the complaint, pursuant to CPLR 327, on the ground of forum non conveniens.

This is a defamation action. The complaint alleges as follows.

Plaintiff Musiliu Obanikoro is a Nigerian politician, who served as Minister of State Foreign Affairs for Nigeria under former President Goodluck Jonathan from March 2015 to late May 2015 when then outgoing President Jonathan dissolved his cabinet. Plaintiff was previously President Jonathan's Minister of State for Defense, as well as a Senator for Lagos from 2003 to 2007 and High Commissioner to Ghana.

Defendant Omoyele Sowore (Sowore) is a Nigerian journalist and political activist who was born in Nigeria and lived there until 1999, when he moved to the United States. He currently resides in New Jersey. Defendant Sahara Reporters, Inc. (Reporters) is an online news website and Internet network

founded by Sowore that provides news programming about Nigerian public affairs, including political reporting. Defendant Sahara Reporters Media Group, Inc. (Media Group) is a New York media corporation, of which Sowore is the Chief Executive Officer and sole shareholder.

The complaint alleges that Sowore, individually and as a principal of the other defendants, delivered a speech in Nigeria on February 14, 2015, specifically calling plaintiff a "murderer" and a person who has "killed many people in Lagos." Moreover, on February 5, 2015, defendants allegedly published a statement on their website stating that they had an audio recording of a meeting between plaintiff and other politicians which evidences that (1) soldiers were paid to rig an election in Ekiti; (2) a General Aliyu Momoh was bribed for his participation in election fraud; (3) Governor Fayose revealed that he had already bribed an official; (4) there was a forgery of ballots; and (5) the military prevented certain voters from reaching the polls.

Plaintiff contends that there is no basis for the allegedly defamatory statements, which statements have damaged plaintiff's reputation in Nigeria and in the United States, where he claims to have lived for eight years. The alleged damage to his reputation here in the United States is a reason for commencing this action in New York County. Plaintiff seeks damages, as well as reasonable attorney's fees, for the two alleged acts of

defamation.

Defendants move for dismissal on the ground of forum non conveniens, based on several factors.

First, defendants claim that plaintiff has a legal action also for defamation related to the recording of the subject meeting against them pending in Nigeria. Defendants contend that the commencement of such action in Nigeria demonstrates that such is an adequate alternative forum. Defendants state that if their motion is granted, they will consent to the jurisdiction of the Lagos High Court, where the pending action is being litigated. While the February 14 speech is not part of that action, defendants will not object to plaintiff amending his claim to include that speech as part of his defamation suit.

Second, while defendants concede that one of the defendants is headquartered in this state, they insist that New York lacks a significant nexus regarding this case. Defendants contend that because most of the underlying events behind the defamation claims occurred in Nigeria, and nearly all the relevant witnesses and evidence are located there, litigation in New York would impose a great hardship on them and inconvenience nonparty witnesses, as well as this court. Specifically, defendants argue that military witnesses who can testify about the military's role in the Ekiri election are in Nigeria, as are civilian witnesses who can testify about the public's experience during those

elections. According to defendants, the cost of their transporting such witnesses would be prohibitive.

In opposition, plaintiff contends that New York has a substantial connection to his case. He states that defendant Media Group has its main office in New York and is a New York corporation. He also states that a New York entity, Guardian Consulting, issued a report that authenticated the voices, including plaintiff's voice, on the audio recording in defendants' possession. Plaintiff claims that three of his witnesses in Nigeria are ready and willing to travel to New York to testify. He argues that the damage resulting from the alleged defamation has affected his reputation in the United States, because he has lived and worked in New York for several years. Plaintiff states that he would be willing to discontinue the Nigerian action without prejudice if this motion is denied.

CPLR 327 sets forth the forum non conveniens doctrine and authorizes the court in its discretion to dismiss an action on conditions that may be just, based upon the facts and circumstances of each particular case. In determining a motion seeking to dismiss on forum non conveniens grounds, the court should take into consideration any or all of the following factors: the burden on New York courts, potential hardship to the defendants, availability of the plaintiff to bring an action in the alternative forum, whether the parties to the action are non-

residents, whether the location of the event that is the basis for the claim is primarily in a foreign jurisdiction, the location of available evidence and potential witnesses, and the applicability of laws of the foreign jurisdiction. See Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 479 (1984); Shin-Etsu Chem. Co., Ltd. v ICICI Bank Ltd., 9 AD3d 171, 175-176 (1st Dept 2004); World Point Trading PTE v Credito Italiano, 225 AD2d 153, 158-159 (1st Dept 1996); Finance & Trading Ltd. v Rhodia S.A., 28 AD3d 346, 347 (1st Dept 2006).

Examining those factors, the foreign situs of both of the incidents at the heart of the alleged defamatory statement militate in favor of dismissal. Nigeria is where both Sowore allegedly spoke at an event and publically slandered plaintiff and the meeting between plaintiff and other political figures occurred. Plaintiff asserts that the meeting involved events related to a election held in Ekiti, Nigeria.

It cannot be gainsaid that most of the evidence is located in Nigeria, where the non-party witnesses reside. Defendants assert that many of the witnesses would have been in Ekiti, at the time of the election, and would testify as to alleged conduct by the military and civilians. The documents related to the alleged incidents are no doubt located in Nigeria. The fact that some of plaintiff's witnesses could testify here is outweighed by the convenience of other witnesses testifying in Nigeria.

Nor does the fact that one of the defendants is a New York-based corporation compel a different result. See Union Homes Sav. & Loans, 16 AD3d at 291. The authentication of the audio recording by the New York company is not of major moment. In analyzing the papers, the court finds that the issue regarding the recording lies more in the proper interpretation of what was spoken at the meeting, rather than the authenticity of the recording. Moreover, plaintiff's witnesses have provided affirmations which acknowledged plaintiff's presence at that meeting. Plaintiff's reputation in New York is overshadowed by and arises from his reputation in Nigeria, where he was a public figure who recently held a high government office there.

Finally, as the defamation is highly political in nature, the Nigerian government has a compelling interest in resolving this matter through its judicial process. See Union Homes Sav. & Loans, Ltd. v Afri-Finance LLC, 16 AD3d 291, 291 (1st Dept 2005).

In considering these relevant factors, the court finds that this action has a substantial nexus with Nigeria and that the matter should be litigated there. It should also be noted that defendants have consented to appear before plaintiff's pending defamation suit in Lagos. Upon balancing the appropriate factors, they have sustained their burden of showing that Nigeria is a superior forum for the resolution of this dispute.

Accordingly, it is

ORDERED that the motion by defendants to dismiss this complaint on the ground that New York is an inconvenient forum is granted and the complaint is dismissed with costs and disbursements to defendants upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: January 27, 2017

ENTER:



DEBRA A. JAMES
J.S.C.