

## Christian sermons and the law of defamation in Cameroon: A common Law approach

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*Abstract:* The statutory guarantee of the right to worship and practice any religion in Cameroon entails the freedom to make utterances within Christian sermons and an obligation not to attack the reputation of individuals. Christian sermons have served as a medium for defamation, especially with revivalist or Pentecostal churches as they are commonly known. These institutions establish strong links with their worshipers causing them not to see any defects in their practices even if an injury to their reputation might lead to ostracism. Thus, persons whose reputations are injured hardly lay claims, as they fear being termed evil. This paper has been accomplished through visits to some churches, informal interviews, analysis of legal instruments, and content analysis of relevant literature. It establishes that even though Christian sermons have an impact on building good morals, they may also take advantage of the obedience of worshipers, ruining the lives of some individuals by injuring their reputations through false statements in sermons. This paper, therefore, demonstrates the possibility of laying claims for defamation in Christian sermons and proposes that massive sensitization on the existence of civil and criminal liabilities for defamation should be done to create awareness among aggrieved persons and to reduce the negative effect of fanaticism.

*Keywords:* Christian; sermons; defamation; common law; Cameroon.

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## 1. *Introduction*

The right to worship and practice any religion in Cameroon is guaranteed by its Constitution<sup>1</sup>. Article 18, in fact, states that "Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance". Therefore, freedom of worship states that any person practicing any form of religion has the right to make any utterances in line with each religious practice, connoting freedom of speech but not implying the right to injure any other person in his or her physical integrity and reputation.

Among many religions practiced in Cameroon, Christianity, as the International Religious Freedom Report shows, was the most

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1. See art. 18 of Law No. 2008/001 of 14 April 2008, which amends and supplements some provisions of Law No. 96/06 of 18 January 1996 and the 1972 Constitution of Cameroon.

dominant among Cameroonians in 2005, involving statistically 69.2% of the population. However, a remarkable Muslim minority is also present, despite the fact that the 2010 Pew-Templeton Global Religious Futures Project indicates that the number is dropping to the advantage of Christian believers<sup>2</sup>.

Instead, from a geographical point of view, Christians are concentrated primarily in the southern and western parts of the country. The two Anglophone regions are largely Protestant, and the five southern Francophone regions are mostly Catholic. The Fulani (Peuhl) ethnic group is mostly Muslim and lives primarily in the northern Francophone regions; the Bamoun ethnic group is also predominantly Muslim and lives in the West Region. Many Muslims, Christians, and members of other faiths also adhere to some aspects of animist beliefs<sup>3</sup>.

Christian ideologies and beliefs are mostly communicated to followers through sermons. A sermon can be defined as a talk on a moral or religious subject, usually given by a religious leader during service<sup>4</sup>. Christian sermons can generally be understood as a discussion on a religious or moral subject, especially those given during church services and based on passages from the Bible. Such talks are usually delivered in public or open spaces reserved for worship or other religious manifestations and done by clergies, pastors, men of God, or other religious leaders called by different names<sup>5</sup>. During such sermons, those involved are bound to respect the law relating to the protection of the reputation of individuals, while enjoying their right to freedom of worship. Any statement made during a sermon which injures the personality of any individual would amount to defamation and can attract both criminal and civil liabilities under Cameroonian law.

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2. See *International Religious Freedom Report for 2020*, United States Department of State, Office of International Religious Freedom, available at <https://www.state.gov/reports/2020-report-on-international-religious-freedom/> (last visited November 4, 2022).

3. See *ibid.*

4. See Albert S. Hornby, *Oxford Advanced Learner's Dictionary of Current English* at 1348 (Oxford University Press 8th ed 2010).

5. A visit to several revivalist or Pentecostal churches revealed that most followers who are so attached to their denominations have adopted different appellations for their leader e.g., Papa, daddy, prophet, major one, general overseer etc.

Defamation simply denotes the act of harming the reputation of another by making false statements to a third person<sup>6</sup>. Such statements can either be written (libel) or oral (slander). Defamation can also be defined as oral or written communication of a false statement about another that unjustly harms their reputation and usually constitutes a tort or crime<sup>7</sup>. Therefore, in the context of Christian sermons, defamation would be a false statement delivered during a biblical talk which has the effect of harming the reputation of someone. Christian sermons have served as a medium for committing defamation, through the exploitation of worshipers' (could also be referred to as congregants or communicants) unconditional trust in their denominations. Persons who are injured in their reputation would hardly lay claims because of attachment to their churches, especially in cases where the church leader is seen as a demi-god. In Cameroon, most denominations, especially revivalist and Pentecostals, whose number has strongly increased, establish strong attachments with congregants such that they would never find anything wrong even when an injury to their reputation might amount to ostracism<sup>8</sup>. This has made it difficult for the few who might find something wrong to lay claims and even when they do that, they can be termed evil. The law of defamation in this light tries to balance competing interests. On one hand, freedom of worship should not ruin other people's lives by making false statements about them; but on the other hand, people and Christian leaders should enjoy their freedom of religion by making their sermons freely without fear of litigation over every statement which might convey insults.

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6. See Bryan A. Garner, *Black's Law Dictionary* at 479 (Thomson Reuters 9th ed 2009).

7. See Roger LeRoy Miller, *Business Law Today: The Essentials* at 127 (South-Western Cengage Learning 9th ed 2011).

8. The researcher from an informal discussion with some worshipers from churches like Omega Fire, Eshadi Shall Never Die International, My Righteousness, Church of Christ, True Church of God, Rama, Faith Ministries International, Deeper life ministries, etc. discovered that some of their Christians have become fanatics and believe in no other thing than their churches to an extent that they would never find anything wrong. Informal discussions were implored here because of the sensitive nature of the research interest given the degree of fanaticism involved.

## 2. Freedom of worship and prohibition of defamation in Cameroon

It has earlier been mentioned that the law of defamation in this dimension seeks to balance two interests, that of ensuring freedom of worship which involves freedom of speech through sermons, and that of protecting the reputation of individuals. There is a legal guarantee on the freedom of worship which is the corollary of freedom to deliver sermons as well as a prohibition on the use of false statements which can amount to defamation.

### 2.1. Constitutional guarantee of freedom of worship

The constitutional guarantee of freedom of worship is regulated under the head "freedom of religion and worship"<sup>9</sup>. Stating both as such is not very relevant because freedom of religion connotes freedom of worship. With this regard, one of the best definitions of freedom of religion which covers worship was given by the Canadian Supreme Court in *R v. Big M Drug Mart Ltd*<sup>10</sup> to the effect that:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest belief by worship and practice or by teaching and dissemination. But the concept means more than that. Freedom can primarily be characterised by the absence of coercion or constraint. If a person is compelled by the State or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition, and he cannot be said to be truly free.

The Constitution of Cameroon in its preamble guarantees individuals' freedom of religion and worship. Moreover, an additional clause requires the national government to remain secular and neutral with regard to religion in order to further the respect for all faiths.

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9. See Law No. 2008/001 of 14 April 2008 (cited in note 1).

10. See *R. v. Big M Drug Mart, Ltd.*, 1 S.C.R. 295 (1985).

The foregoing is crystalized with a provision to the effect that no person shall be harassed on grounds of his origin, religious, philosophical, or political opinions or beliefs, subject to the respect of public policy. These provisions in the preamble of the Constitution affirm the state's commitment to international human rights instruments on the subject of freedom of religion and worship. Examples include the 1948 Universal Declaration of Human Rights, which in article 18 strengthens the Constitutional Preamble's protection of religious freedom by broadly interpreting the term to include religious teachings, practices, observances, and worship. This article goes further to protect religious actions whether they are performed by an individual or group and whether they are performed in a private or public setting. This provision is replicated in the International Covenant on Civil and Political Rights<sup>11</sup>, article 1 of the Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion and Belief<sup>12</sup> and African Charter on Human and Peoples' Rights<sup>13</sup>.

The above provisions on freedom of religion and worship imply the right to practice any form of religion and this covers even the most dominant religion in Cameroon, which is Christianity. It equally covers the right to manifest belief by worship and practice or by teaching and dissemination which is mostly done through sermons which they are free to do. Therefore, sermons are guaranteed by the preamble of the constitution of Cameroon by affirming the state's commitment to international instruments on the subject. But this does not imply the right to make false statements as it would amount to defamation, which is prohibited.

## *2.2. Prohibition on defamation*

The preamble of the constitution guarantees the freedom of worship and equally sets a standard for equal rights and obligations for all citizens in Cameroon. This entails the right to freedom of worship and a corresponding obligation not to infringe on any other person's

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11. See art. 18, International Covenant on Civil and Political Rights.

12. See art. 1, Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion and Belief.

13. See art. 8, African Charter on Human and Peoples' Rights.

rights be it in his or her physical integrity or reputation in any form. Thus, Christian sermons should not harm the reputation of individuals as this would amount to defamation.

### 2.1.1. *Statutory Prohibition of defamation*

Defamation in Cameroon constitutes both civil and criminal wrongs. That is to say it is a civil wrong or a tort which attracts damages for civil liabilities and a crime which attracts criminal sanctions. This, therefore, implies that any statement in a Christian sermon, which has the effect of harming someone's reputation to the public to which it is addressed, is prohibited as it would attract liabilities where necessary.

English law applicable in the Anglophone regions of Cameroon classifies libel both as civil and criminal wrong actionable per se (without proof), while slander only constitutes a civil wrong, actionable upon proof of special damage, if the statement does not come within one of the categories of statement actionable per se<sup>14</sup>. This is probably because libel endures longer, is easy to disseminate and is borne with premeditation. In the case under consideration, this would be applicable to sermons which are recorded or printed. Unlike the position under English law, Cameroon criminal law does not make such distinction as it proscribes defamation in 305(1) providing that:

Whoever by any of the means described in section 152 injures the honour or reputation of another by imputation, direct or indirect, of facts which he is unable to prove shall be punished with imprisonment for from 6(six) days to 6(six) months and with a fine of from CFAF 5000 (five thousand) to CFAF 2 000 000 (two million) or with only one of the penalties<sup>15</sup>.

The penal code from the above provision punished defamation in non-permanent or oral form (slander) as indicated in section 152 and

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14. See Joseph Nzalie Ebi, *Electoral Campaigns in Cameroon and the Law of Defamation*, in *La gouvernance électorale en Afrique subsaharienne*, 16 *Annales de la Faculté des Sciences Juridique et Politiques*, Université de Dschang 92 (2012).

15. See art. 305 (1), Penal Code of Cameroon.

permanent or recorded form in section 305(2). This therefore implies that any Christian sermon which carries defamatory statements in either of the forms is sanctioned by the penal code. In dealing with defamation, section 152 talks of contempt which shall mean "any defamation, abuse or threat conveyed by gesture, word or cry uttered in any place open to the public, or any procedure intended to reach the public". Section 305(2), on its part, refers to defamation in the print or audio-visual media. More discussion on the identification of the various forms of defamatory statements in Christian sermons is explained below in point 3.2.1. of this article.

### *2.1.2. Biblical Prohibition of defamation*

A sermon has earlier been defined as a talk on a moral or religious subject, based on passages from the bible and usually given by a religious leader during church service. Even though the Bible from which Christian sermons are delivered prohibit defamatory statements, most preachers or church leaders, especially in Pentecostal churches, deviate from it. According to the Bible, slander is a serious sin which is not supposed to be practised by Christians and which is prohibited in several verses<sup>16</sup>. The Bible in Psalms 101:5 says that God will destroy those who slander their neighbours secretly. It goes further to provide that whoever has a haughty look, and an arrogant heart will not endure. This briefly, but significantly demonstrates that the Bible condemns any form of oral or spoken or gesticulation which amounts to defamation not leaving out sermons bearing such characteristics.

The foregoing analysis establishes the existence of the right to worship and a corresponding obligation not to indulge in statements amounting to defamation, implying that it is prohibited by statute and the Bible from which Christian sermons are preached. The next step is to identify who can sue in the advent of defamatory statements

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16. See *The Holy Bible, English Standard Version* (Crossway Bibles 2016). Proverbs 11:9, Proverbs 12: 6, Proverbs 16:28. For more on the biblical prohibition of defamation, see James 4:11, 2 Timothy 3:1-5, 1 Peter 2:1, Ephesians 4:31-32, Proverbs 20:19, Exodus 23:1, Mark 7:20-23, 1 Peter 3:10, Colossians 3:8, Proverbs 6:19, 1 Corinthians 4:13, Leviticus 19:16, Romans 1:30, Proverbs 26:28, Proverbs 25:23, Jeremiah 9:4, Psalms 109:2, 1 Timothy 3:11, Galatians 5:19-21, Mark 10:19, Jeremiah 6:28, Romans 1:29, Titus 2:3, etc.



from a sermon and what the claimant is expected to establish to lay his or her claims.

### 3. *Persons entitled to sue/claim for defamation in Christian sermons and elements to establish*

#### 3.1. *Persons entitled to sue*

The capacity to sue in law encompasses human beings and persons in contemplation of the law or corporate bodies and legal fictions. In Cameroon, living human beings of adult age have the capacity<sup>17</sup> to sue for defamation. These would be those persons who can prove that the defamatory words in the Christian sermons were referred to them and were intended to bring down their reputation. They can generally be referred to as claimants.

Persons in contemplation of the law refer to corporate bodies such as companies registered and incorporated under companies' legislation granting it legal personality<sup>18</sup> or other associations registered under specific statute like political parties in Cameroon<sup>19</sup>. Such bodies have the capacity to sue for defamation and they can equally be sued. As an instance, in the case *Upjohn v. BBC and Others*<sup>20</sup>, a trading corporation which was a maker of the drug "Halcion", was sued over allegations regarding dangerous side effects. The decision of the court rejected charges of dishonesty levelled by the BBC and by Ian Oswald, a vocal, long-time critic of the US Company. Hence, like human beings, Corporations may sue for defamation if they can show that the published material has caused them or is likely to cause them financial loss.

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17. With regards to the capacity to sue in civil and commercial litigations, see generally Joseph Mbah-Ndam, *Practice and Procedure in Civil and Commercial Litigation* at 135 (Press Universitaires d'Afrique 2003).

18. See *Salomon v. Salomon & CO Ltd*, A.C. 22 (1897).

19. See section 12, Law 19 December 1990, No 90/056.

20. See Vivienne Harpwood, *Principles of Tort Law* at 369-70 (Cavendish Publishing Limited London-Sydney 4th ed 2000).

### 3.2. *Elements Claimants/Plaintiff Must Prove*

Just like in all defamation actions or claims, the plaintiff or claimant is expected to establish four elements in the Christian sermons to wit- that the words or statements in the sermon were defamatory, that the statement(s) referred to him or her and the statement(s) were or was published and the existence of malice.

#### 3.2.1. *The Statement(s) or word(s) in the Christian Sermon was/were defamatory*

The determination as to whether statements or words in a Christian sermon were defamatory is to be made by the judge. The test is not what the claimant or plaintiff thinks of the words or of the statements, but what a reasonable man or right-thinking member of the society thinks of them. The usual practice is to construe words in their ordinary meaning or by the use of innuendo. Innuendo can be referred to as defamation in an indirect form or hidden form. Certain statements may not be defamatory on their face value but can contain an innuendo which has a defamatory meaning. The hidden meaning must be one that could be understood from the words themselves by people who knew the claimant. Therefore, the defamatory sense of the words is established connotatively in the context in which they are used. This is in line with the quote made by Lord Hodson in *Lewis v. Daily Telegraph*<sup>21</sup> referring to the ascertainment of this element as "no more than an elaboration or embroidering of the words used without proof of extraneous facts". Innuendo could either be true or false. In true innuendo, extrinsic evidence is adduced to support the allegation that the statement is defamatory<sup>22</sup>, while a false innuendo does not require such evidence. In Cameroon, a person is guilty of criminal defamation, according to section 305(1), if he or she injures the honour or reputation of another by imputation, direct or indirect, of facts which he is unable to prove. On a charge of defamation, if an innuendo is

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21. See *Lewis v Daily Telegraph Ltd*, A.C. 234 (1964).

22. See *Cassidy v. Daily Mirror Newspaper Ltd*, 2 KB 331 (1929), *Davis v. Boenheim*, 110 A.D.3d 1431 (NY 2014)

alleged, it must be pleaded otherwise the charge will fail<sup>23</sup>. In *Nchang Boniface Chinje v. The People and Anor*<sup>24</sup>, the finding of the trial court was that the words qualifying Tabong as an "insane man" amounted to an innuendo which was not proven, and that the appellant's conduct was actuated by malice. The appellant was accordingly found guilty of defamation under section 305(1) of the Cameroon Penal Code.

The abuse of reputation has skyrocketed with the proliferation of Pentecostal churches operating within Cameroon mostly in Anglophone regions. Most of these churches operate unregistered as required by the 1990 Law of Freedom of Association. This lack of registration can be attributed to the lengthy procedure requiring a presidential decree under which most applications are pending approval. Thus, many have been operating illegally and some have taken advantage of this to operate even without introducing their applications for authorization. Most of these Pentecostal churches through their sermons indulge into testimonies related to exaggerated miracles they perform. Some sermons make allusion to followers who have repented from what they might term as evil (for instance referring to someone as an occultist who has killed several persons and repented, or someone who was suffering from deadly disease like HIV/AIDS etc and has been healed through miracles). Such persons after their claimed miracles may be excluded by other members and parishioners or church members may ascribe defamatory meanings to such utterances which are sometimes recorded and broadcasted for churches with television channels, having the effect of destroying the reputation of persons they make allusion to. Such statements can cause someone to be regarded with feeling of hatred (especially with allusion made to murder), contempt, ridicule, and fear.

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23. See Carlson Anyangwe, *Criminal Law in Cameroon, Specific Offences* (Langaa RPCIG 2011).

24. See *Nchang Boniface Chinje v. The People and Anor*, Appeal No. BCA MS/31c/2003. (The judgement was set aside on Appeal as the Court pointed out that an innuendo in a defamation charge must be pleaded but that, in the instant case, the lower court had relied on an alleged innuendo which had not been explained in the charge. The Appeal Court therefore concluded that, on a careful evaluation of the facts of the case, malice cannot be imputed on the appellant and that the letter he wrote falls within the terms of section 306(8) of the Penal Code). See to this effect, Anyangwe, *Criminal Law in Cameroon, Specific Offences* at 403 (cited in note 23).

A basic definition of defamatory statement can be seen in the articulation Lord Atkin in *Sim v. Stretch*<sup>25</sup> where he stated that a defamatory statement is "A statement which tends to lower the claimant in the estimation of right-thinking members of society generally, and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear and disteem". Thus, statements which reflect on a person's moral character or professional competence will be defamatory.

### 3.2.2. *Statement in the Christian Sermon referred to the claimant*

The claimant must be able to demonstrate that the defamatory words in the sermon referred to him or her. This implies that the words must have been defamatory of the claimant and no other person real or imaginary<sup>26</sup>. This does not in any way mean that the claimant's name has to appear, but merely that anyone who knew the claimant would know that the words referred to him or her. This is the case with most Christian sermons which make allusions to confessions of individuals relating to particular aspects, to the extent that such persons could easily be identified by closed persons or others who know them. Most sermons make use of indirect references like the plaintiff's initials, verbal descriptions or by reference to the particular group to which the claimant belongs.

Liability for defamation would hardly lie where the claimant is part of a class or group. In fact, the general rule is that a class or group of persons cannot be defamed, with the exception of a company with legal personality. Such statements are so loose and general that they are not taken seriously, and, in any case, no single member of the group could claim to have been set apart for defamation<sup>27</sup>. If a class of people is defamed, there will only be an action available to individual members of that class if they are identifiable as individuals<sup>28</sup>. It would not be defamatory to describe all jurors as incompetent, but it would be defamatory to describe all 12 members of a particular

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25. See *Sim v Stretch*, 2 All ER 1237 (1936).

26. See *Bruce v. Odhams Press Ltd*, 1KB, 697 (1936).

27. See William Vaughan Horton Rogers, Percy Henry Winfield and John Anthony Jolowicz, *Winfiled & Jolowicz on Torts* at 410 (Sweet & Maxwell 15th ed 1998).

28. See Harpwood, *Principles of Tort Law* at 376 (cited in note 20).

jury as incompetent<sup>29</sup>. This issue of class defamation was addressed in *Knupffer v. London Express Newspaper*,<sup>30</sup> where the House of Lords held that, where a class of peoples is defamed, no individual can succeed in defamation proceedings unless he or she can prove that the statement was capable of referring to him or her and that it was in fact actually understood to refer to him or her.

### 3.2.3. *The Statement was or has been published*

The standard requirement for actionable defamation is that the defamatory statement must have been published. This goes in line with the provision of section 152(1) of the Penal Code of Cameroon which prescribes that the actionable defamation consists in statements made "in any place open to the public or by any procedure intended to reach the public". This therefore implies that the defamatory statement in the Christian sermon must be published to persons other than the claimant alone.

Publication assumes a special meaning in defamation, implying to make the defamatory statement or matter known to persons other than the claimant<sup>31</sup>. What is necessary is for the statement to be communicated to at least one person other than the complainant. Publication in the context of this write-up is not limited to Christian sermons being preached in the open like in churches during service and other open places like crusade grounds where messages are open to all. It can be printed in books, magazines, newspapers, church news, etc. Publications can equally take the form of audio-visual dissemination where church sermons are recorded and broadcasted and re-broadcasted through television channels which are owned by churches. Examples of these church channels include My Righteous TV, Emmanuel TV, Resurrection TV, Glory TV Bamenda, Champion TV, Kingship TV Bamenda, Zion Light TV Bamenda etc.

Since defamation seeks to protect a person from loss of reputation among other people, communication to a third party is therefore of essence. Thus, making a defamatory statement to the claimant alone

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29. See *ibid.*

30. See *Knupffer v. London Express Newspaper*, AC 116 (1944).

31. See *Pullman v. W. Hill & Co Ltd*, 1 QB 534 (1891).

out of the ear-shot of a third person would not enable an action for defamation. Nevertheless, if a defamatory letter is sent to a claimant who decides to show the letter to someone else, there is a defense of *volenti* as the claimant, not the defendant, has published the statement. In *Hinderer v. Cole*<sup>32</sup>, the claimant was sent a letter by his brother-in-law which was addressed to "Mr Stonehouse Hinderer". It contained a vicious personal attack on his character, describing him as "sick, mean, twisted, vicious, cheap, ugly, filthy, bitter, nasty, hateful, vulgar, loathsome, gnarled, warped, lazy and evil". The defamatory words in the letter were shown by the claimant to other people, but the defendant had only sent them to him. There was therefore no publication by the defendant to a third party, and those words could not form the basis of a libel action. However, the claimant did obtain damages of £75 because the word "Stonehouse" was held to be defamatory, as it implied that the claimant was like John Stonehouse, an MP who had recently disappeared by faking his death to escape paying his debts. Also, in the Cameroonian case of *W.N.O Effiom v. Mpame Ashu*<sup>33</sup>, the libel was allegedly made in a circular letter by the defendant as "secretary for the Ejagham Block Victoria" during the Southern Cameroons Parliamentary election campaign of 1961. The defendant was said to have made allegations of corruption against the plaintiff, Minister of Natural Resources running for Member of Parliament (MP) on the KNDP ticket, in furtherance of the campaign of one Mr. J.O Takim, a prospective candidate for MP in the same constituency as the plaintiff. The Court held that the letter was indeed defamatory.

#### 3.2.4. *Malice*

In many areas of the law of tort, the presence or absence of malice is irrelevant, or if it is relevant, it may only go to enhancing the number of damages payable to the claimant. However, in defamation actions, it may be especially important to consider whether the statement was published maliciously, not only to allow the claimant to recover a higher award of damages but because it is a necessary element in the law itself. For this reason, it is important to appreciate

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32. See Harpwood, *Principles of Tort Law* at 370-71 (cited in note 20).

33. See *W.N.O Effiom v. Mpame Ashu*, W.C.L.R. 21 (1962-1964).

the meaning of the term malice as it is used in the law of defamation. This means that the publication was made spitefully, or with ill will or recklessness as to whether it was true or false. The bad feeling must have led to the words being published and must, in particular, have been directed toward the claimant. The presence of malice will destroy defenses of justification in relation to spent convictions, unintentional defamation, fair comment on a matter of public interest, and qualified privilege.

#### 4. *Defenses in Defamation for Christian sermons*

In bringing out the requirement for actionable defamation by the claimant/plaintiff, the law is liberal in that it establishes defenses on which the defendant could rely to limit or refute liability. The defenses can be categorized under two heads to wit- defense as to time bar or limitation period for actions in defamation and defenses proper to defamation.

##### 4.1. *Limitation Period*

The limitation period is the amount of time within which an action for defamation could be instituted by the claimant. This period is generally short and usually works in favor of the defendant. In English law, it has moved from an initial six to three months and now one year<sup>34</sup>. It is important to note that this English law position applies to Anglophone Cameroon by virtue of article 68 of the Constitution which authorizes the application of Section 11 of the Southern Cameroons High Court Law 1995, permitting the application of the said English rules equally taking into consideration the provision of section 10 as regards practice and procedure. As concerns criminal defamation, section 305(1) of the Cameroon Penal Code makes allusion to section 152 which in its sub-section 3 sets the limitation period at four

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34. See Robert Francis Vere Heuston and Richard A. Buckley, *Salmond & Heuston on the Law of Torts* at 144 (Sweet & Maxwell 21st ed 1996). See also Rogers, Winfield and Jolowicz, *Winfield & Jolwicz on Torts* at 887 (cited in note 27).

months from the commission of the offense or from the last step in preparation or prosecution.

#### 4.2. *Defenses proper to defamation in Christian sermon*

As earlier mentioned, this refers to those Defenses which can be relied upon by the defendant to limit his or her liability or totally refute or discard liability for defamation. They include communication on church discipline, justification of truth, innocent dissemination, volenti, accord and satisfaction, and privileges.

##### 4.2.1. *Communication regarding Church discipline*

In the law of defamation (libel and slander,) exceptions are made with regard to communications and oral statements of a disciplinary character made by church leaders or ministers and those in charge of, or at the head of religious organizations and societies. The privileges allowed under these exceptions relate only to church proceedings of a disciplinary character, rather than to utterances in ordinary church services. Communications coming within the bounds of church discipline may be qualified or conditional. Anyone publishing defamatory words under a qualified or conditional privilege is liable, but only so upon proof of expressed malice, as held by the Supreme Court of Connecticut<sup>35</sup>. This, therefore, implies that church leaders, pastors, clergies as the case may be to benefit from this defense are supposed to be extremely cautious in what they say to members of a congregation in the way of criticism, whether directly or indirectly, unless a meeting has been specially appointed for disciplinary purposes, dealing with some member of the church or the denomination of which the speaker may be a member. But even then, observance of the requirements should be taken with great care before the publishing of any statement or statements by ministers and officers of a denomination.

If a minister makes a slanderous statement concerning a member of his congregation, as a part of his sermon, on a theory that is necessary for the welfare of his parish, the communication is, at most,

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35. See *Blakeslee & Sons v. Carroll*, 64 Conn. 223 (1894); *Dennehy v. O'Connell*, 66 Conn. 175 (1895).



only a qualified privilege, and hence sufficient to sustain a recovery of damages if proof of expressed malice is shown. Statements made by a clergyman in the pulpit, regarding parishioners, must be guarded with the greatest of care, in order for the clergyman not to become liable for defamation. A priest or pastor may criticize from the pulpit the official acts of a public officer who is a member of his congregation, provided he acts in good faith in so doing; but he cannot make his sermon the medium for bringing false, malicious, and criminal accusations against an individual<sup>36</sup>.

The clergyman, pastor, prophet, or any person in such capacities according to the rules of certain churches may sometimes be called upon to pronounce the sentence of excommunication on certain of his or their members. Such an act, if done in good faith, will not lay the minister open to an action of slander, however much he may have to hurt the feelings of the excommunicated person. However, if the clergyman goes further, and advises his people to shun the excommunicated person in business transactions, and not to come near his or her home or to employ the excommunicated one in any capacity, he then steps outside of his privilege and will be liable to an action of slander or libel<sup>37</sup>.

#### 4.2.2. *Justification of Truth*

It normally would seem logical that only false statements can be subjects of defamation proceedings, meaning that, if the statement made about the claimant is true, there can be no action for defamation. Therefore, the publication of a defamatory statement or matter is justified if the matter or statement is completely true, and it is published for the public interest. However, partial truthfulness would not benefit from the defense. The burden of proof in our case would lie on the clergy, pastor, or preacher of the sermon to establish that the defamatory statement made is true so as to benefit from this defense. In some or most cases claimants would want to bring defamation actions simply to clear themselves of damaging allegations forgetting that

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36. See *Hassett v. Carroll*, 81 A. 1013: 85 Conn. 23 (Conn. 1911).

37. See generally *The Ministry* at 4 (Ministerial Association of Seventh-day Adventists April 1929).

defendants might put up good defenses. In *Irving v. Penguin Books*<sup>38</sup>, the judge delivered a devastating condemnation of the claimant when he failed to establish that the defendants had published false information about the existence of the Holocaust. The claimant's reputation here was damaged further by his efforts to vindicate himself and he faced a bill of £2.5 million in legal costs.

#### 4.2.3. *Innocent dissemination of defamatory Christian sermons*

This defense is designed to protect booksellers, newspaper vendors, and distributors of material that may contain libelous statements or Christian sermons. That is those involved in distributing recorded Christian sermons carrying defamatory statements. The success of this defense depends on the existence of three conditions as explained in *Vizetelly v. Mudie's Select Library Ltd*<sup>39</sup> in which publishers had requested the defendants, a circulating library, to return certain books which were likely to contain libels. They did not do so, and they were liable for defamation. It was held that the defense could apply to libraries, booksellers, and other "mechanical" publishers of libels, provided that: (1) the publication is innocent, in the sense that they did not know that it contained a libel; (2) there were no circumstances which ought to have made them aware that the publication could have contained a libel; and (3) there was no negligence on their part in not knowing of the libel.

#### 4.2.4. *Volenti*

This refers to the consent of the claimant to the publication of a statement, by the claimant showing other people defamatory material which the defendant meant for his/her eyes alone. Where a person claims that he or she has a recording of a sermon that contains defamatory statements given to him by the defendant and later shows it to the third party or other persons without the defendant doing so, this will amount to *volenti*. In *Moore v News of the World*<sup>40</sup>, the singer Dorothy

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38. See Harpwood, *Principles of Tort Law* at 379 (cited in note 20).

39. See *Vizetelly v. Mudie's Select Library Ltd*, 2 QB 170 (1900).

40. See *Moore v News of the World*, 1 QB 441 (1972).

Squires, in an attempt to launch a musical comeback, gave a detailed account to the News of the World reporter of her life with her former husband Roger Moore. The piece was written in the first person as she actually made the statements, but she said that it was complete fiction, and sued for libel because she claimed that the article portrayed her as the sort of person who was prepared to discuss her private life in intimate detail in front of the entire world. She succeeded in her action, but had she been willing to give an account of herself in that way, the newspaper would have had a defense of *volenti*.

#### 4.2.5. *Privilege*

Privilege as a defense in defamation is based on the fact that public interest would justify the publication of certain statements no matter how defamatory they are. Privilege is absolute or qualified. While absolute privilege cannot be defeated, qualified privilege can be. This implies that the defense of absolute privilege is available even if the maker of the defamatory statement was actuated by malice when making it. It is therefore intended to protect statements made in certain instances when public interest requires complete freedom of speech. These instances include (a) Statements made in the House of Parliament during Parliamentary proceedings and Parliamentary papers and proceedings published<sup>41</sup>. (b) Statements made in the course of judicial proceedings. These include statements made out of court during the investigation of and in court during the trial. The defense covers statements made by judges, parties, lawyers (counsels), and witnesses in so far as it relates to the case at hand. The defense equally extends to no malicious accounts of judicial proceedings and publications relating to the judgment of the case at hand<sup>42</sup>. (c) Statement made by high-ranking members of the executive. This involves the protection of defamatory statements made by state officials in the performance of their duty. This defense of absolute privilege here is justified on the ground that these officials may be discouraged in the

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41. This position is regulated as an exception to defamation in section 306 (1) of the Cameroon Penal Code.

42. Also regulated as an exception to defamation *id.* at section 306 (3) and (4) and (5).

performance of their duties if they feel themselves threatened by actions in defamation<sup>43</sup>.

The defense of absolute privilege discussed above cannot be available in situations of defamation within the context of a Christian sermon. Therefore, a defendant, in this case, can only make use of qualified privilege<sup>44</sup>. Qualified privilege operates to protect statements that are made without malice. It exists in honest and faithful accounts of statements made in circumstances of absolute privilege<sup>45</sup>.

The defense of qualified privilege can be available in situations where statements are made on matters of public interest, matters of interest to the publisher, matters of interest to others, and matters of common interest<sup>46</sup>. It is predicated on the existence of a legal, moral, or social duty on the maker of the statement and a corresponding duty on the person meant to receive it<sup>47</sup>. This indicates an element of reciprocity requiring the maker of a statement not to venture into any information given without the duty to do so and to an audience not entitled to receive it. Christian sermons which involve talks or discuss morals to ensure peaceful co-existence among communicants and society at large can also be considered matters of interest to the public as well as the preacher of the sermons. There is therefore an implied duty on the part of the preacher (pastors, clergy, prophet, etc.) to deliver sermons and a corresponding duty on the part of communicants or the public as the case may receive it. Consequently, statements made without malice would not be actionable in defamation.

In Cameroon, Churches have several outlets through which their sermons and ideas are disseminated to a wider public in view of not only limiting their messages on good morals and peaceful co-existence to their members. Some churches run television stations, radio stations, newspapers, websites, etc. These mediums under the auspices of their various churches have a moral or social duty to communicate their sermons to the public, willing to receive them. Such

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43. This is also regulated as a defense to defamation *id.* at section 306 (7).

44. See *id.* at section 306 (9) and (10).

45. This is available as an exception to defamation *id.* at section 306 (2).

46. See Simon Deakin, Angus Johnston and Basil Markesinis, *Tort Law* at 633 (Clarendon Press 4th ed 1999).

47. See *Stuart v Bell*, 2 QB 341 (1891); *Spring v Guardian Assurance*, IRLR 173 (1992); *Watt v Longsdon*, 1 KB 595 (1930); *Adam v. Ward*, AC 309 (1917).

sermons could be covered by the defense of qualified privilege if they contain defamatory statements made in the absence of malice. In the English case of *Reynolds v. Times Newspaper Ltd and Others*<sup>48</sup>, the Court of Appeal gave careful consideration to the application of qualified privilege in relation to newspaper publications and, after reviewing the Porter Committee Report of 1948 and the Faulks Committee Report of 1975, laid down a series of tests. In order to maintain a proper balance between freedom of speech and the right of individuals in public life to protect their reputations, the Court of Appeal held that the defense of qualified privilege was available to newspapers, as long as the following tests were satisfied:

the newspaper must have had a legal, moral, or social duty to the general public to publish the material in question;

the general public must have had a corresponding interest in receiving the information; and

the nature, status, and source of the material and the circumstances of its publication must have been such as to justify the protection of such privilege in the absence of malice.

#### 4.2.6. *Fair Comment*

Unlike the defense of qualified privilege discussed above, the defense of fair comment is wider in the sense that it is available to everyone provided the matter is of public interest not predicated on reciprocity required under the qualified privilege. Fair comment can be described as a fair and honestly held opinion on matters of public interest<sup>49</sup>. This comment, which mostly involves honest criticism, is important for the efficient functioning of any public, or para-public institutions and is equally salutary for private persons who make themselves or their activities the object of public interest.

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48. See *Reynolds v Times Newspapers Ltd*, 3 WLR 862 (1998). (When this case proceeded to the House of Lords, the last of these three criteria was rejected. It was made clear that, if the statement or communication goes beyond the class of persons with a reciprocal interest or duty to receive it, the communication to the wider class of people is in excess of the privilege and the defense cannot be relied upon in respect of this further communication).

49. See J. E. Nzalei, *Electoral Campaigns in Cameroon and the Law of Defamation* at 107 (cited in note 15).

This is mostly the case with religious leaders in Cameroon. They have made their activities public in the sense that, through their sermons, they tend to address public morality, criticizing state practices and institutions that they consider not to work in the interest of the citizenry<sup>50</sup>. Some of their criticisms at times touch on the personality of both public and private individuals involved in activities geared towards serving the public interest. Consequently, they could claim that their sermon consisted of fair comments on matters of public interest. The courts as guardians of public interest, on the one hand, and reputation, on the other, must have very strong reasons to set aside a defense of fair comment in favor of the plaintiff's reputation; and they have been known to readily accept the defense as long as they are convinced that the statement was not made maliciously<sup>51</sup>. Note should be taken of the fact that there are four requirements for the defense of fair comment to wit: the comment must be on a matter of public interest, it must be an expression of opinion and not as an assertion of fact, it must be fair and not be malicious.

The current social context in Cameroon is influencing religious practice with the proliferation of churches in most metropolitan cities. Their ideologies and doctrines are disseminated through sermons addressing aspects of public and private morality, not leaving out criticisms and opinions on the functioning of the state in relation to the population and integrating matters of public interest.

A comment is fair when it is based on facts that are in existence at the time of the comment. Fairness is not synonymous with correctness. The test is subjective to the defendant and is not based upon what

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50. Examples include several criticisms made by Church leaders with respect to government response measures to crises plaguing the North West and the south West Regions of Cameroon. Measures which they term cosmetic and marred by corruption. See generally Moki Edwin Kindzeka, *Reopened Cameroon Churches Fear Criticizing Government* (VOA Africa, October 30, 2015) available at <https://www.voanews.com/a/reopened-churches-in-cameroon-not-criticizing-biya-government/3029686.html> (last visited October 31, 2022). Some churches have been critical of President Paul Biya's long stay in Power. Examples include Reverend Atana Dieudonne of the Seed of Life church who said the government has kept his church door closed because he is still critical of President Biya's long stay in power.

51. See Nji Akonnumbo Atangcho, *Defamation: Jurisdiction of Court, Elements of Action in Defamation, Defenses - Defense of Fair Comment*, 48 *Juridis Périodique* 50 (2001).

a reasonable man would consider "fair", but on whether the defendant honestly held the view expressed on matters of public interest. This test for this defense is available without considering whether the expression of the defendant conveys defamatory imputations, is wrong or exaggerated, or even prejudicial, and does not matter whether those who read the statement interpret all sorts of innuendos into it. Honesty is therefore the test for fairness<sup>52</sup>. This implies that a dishonest statement would be malicious. This position was given judicial recognition in *Thomas v. Bradbury*<sup>53</sup>, where it was held that a statement that is objective and *prima facie* fair may become unfair if made with a malicious motive. The absence of any genuine belief in the truthfulness of the comment would be conclusive evidence of malice. No person can hold a proper motive for making a defamatory statement that he does not believe to be true. Therefore, the person who makes the comment has the burden to establish that it was made honestly. Consequently, those who suggest that a person is corrupt, dishonest, immoral like is the case with most Christian sermon criticisms, must be ready to justify these accusations by proving truthfulness. This sets in a limitation on the right of criticism as engrafted in *Campbell v. Spottiswoode*<sup>54</sup> in which it was held actionable to suggest however honestly, that the editor of a religious magazine, in advocating a scheme for missions to the heathen, was, in reality, an impostor motivated by motives of pecuniary gains.

##### 5. Remedies for Christian Sermon based defamation

The remedies for defamation in Cameroon as applicable within the common law jurisdiction are both criminal sanctions as regulated by the penal code and civil redress which include injunctions and damages.

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52. See *Turner v. Metro Goldwyn Mayer Pictures*, 1 ALL ER 449, 461 (1950). (Where Lord Porter held that "The question is not whether the comment is justified in the eyes of the judge or jury, but whether it is the honest expression of the commentator's real view and not mere abuse or invective in the guise of criticism").

53. *Thomas v Bradbury, Agnew & Co Ltd*, 2 KB 627 (1906).

54. *Campbell v. Spottiswoode*, 176 E.R. 188 (1863).

### 5.1. *Criminal Sanction/Penalty*

Criminal sanctions otherwise referred to as penalties, in this case, are intended to punish the wrongdoer i.e., the author of the defamatory statement, and to deter future commission. Section 305 (1) of the Cameroon Penal Code prescribes both imprisonment and fines for the offense of defamation. Imprisonment runs from six days to six months while the fine runs from five hundred thousand CFAF to two million CFAF. Worthy of note is the fact that such penalties can be put in place only when an individual has been charged and found guilty of committing the offense beyond reasonable doubt as required under criminal prosecutions.

A general reading of section 305 indicated that the Penal Code punishes the offenses of defamation in its simple and aggravated form. The penalties in subsection one as indicated above are its simple form. Under subsection 7, half the penalty prescribed in 305 (1) in cases where defamation is not made public, is established. Defamation is punished in its aggravated/doubled form under section 305 (8) which implies that the penalties indicated in subsection one would be doubled when they concern anonymous defamation. A criminal sanction for defamation was passed in the case of *E.L Woleta and M.N Namata v. The Commissioner of Police*<sup>55</sup>, where the appellants, the owner, and editor respectively of the Cameroon Champion newspaper, were convicted of knowingly and falsely publishing a defamatory article in their paper on 25<sup>th</sup> May 1962 and were each sentenced to 3 months imprisonment by the then Victoria Magistrate's Court.

### 5.2. *Injunction*

An injunction is a court order commanding or preventing an action<sup>56</sup>. To get an injunction, the complainant must show that there is

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55. *E.L Woleta and M.N Namata v. The Commissioner of Police*, WCLR.3 (1962-1964). (The accused appealed to the then High Court of West Cameroon and lost. Per Gordon C.J, "The totality of the evidence and the article itself prove every justification to the Magistrate's finding of the fact that the article in question was false and scurrilous and that it was likely to injure the reputation of Mr. Vincent Nchami, the Senior District Officer to whom it unmistakably referred").

56. Garner, *Black's Law Dictionary* at 855 (cited in note 6).



no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted. Thus, any person who fears an imminent threat to their reputation may obtain an injunction to prevent the publication of the defamatory material. In Anglophone Cameroon, an injunction may be obtained through an interlocutory order to the High Court requiring it to grant an interim relief through what is termed an interim injunction. In the case of defamation, this can happen prior to the publication of the potentially defamatory statement. These interlocutory injunctions are issued at any time during the pendency of the action for the short-term purpose of preventing irreparable injury to the claimant or applicant prior to the time that the court will be in a position to either grant or deny the permanent relief on the merits<sup>57</sup>.

### 5.3. Damages

At Common Law, damages are a remedy in the form of a monetary award to be paid to a claimant as compensation for loss or injury. The general aim of an award of damages in tort is to put the injured in the same position as they would have been if the tort had not occurred. Therefore, damages in tort are aimed to restore the claimant to their pre-incident position. Damages are the primary remedy in a defamation action; they have the purpose to vindicate the claimant's good name and reputation. These damages can take the form of nominal damage, contemptuous damages, and exemplary damages.

Nominal damages are usually of a token sum, awarded where a tort is actionable per se and where the plaintiff is unable to prove any injury, loss, or damage. It provides mere recognition that the wrong has occurred, but it was not a serious infringement of the plaintiff's rights. It can take the form of a trivial sum of money awarded to a plaintiff who, even though his legal rights have technically been violated, is not entitled to compensatory damages. They are awarded to commemorate the plaintiff's vindication in court. Such awards for a

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57. For the powers of the High Court to grant interlocutory injunction in Anglophone Cameroon, see Order 21, *The Supreme Court Civil Procedure Rules* in Neville John Brooke, *The Laws of the Federation of Nigeria* at chapter 211 (Government Printer 1948).

trivial sum of money could be requested by the plaintiff to restore his reputation as was in the case of *Ministere Public et Gregoire Owona C/. Jean-Pierre Amougou Belinga*<sup>58</sup>, where Mr. Gregoire Owona, the then Minister at the Presidency of the Republic in charge of relations with the National Assembly of Cameroon, requested symbolic damage of a single franc for defamation even though the accused was sentenced to four months prison term and ordered to pay a fine of one million as well as the single franc requested.

Contemptuous damages, like nominal damages, are a very small sum of money, usually as low as one cent or one penny or one CFAF, that a court awards to a winning claimant to show that the case should never have been brought to court. They are awarded when the level of harm caused to the claimant's reputation is low and the successful claimant is made to pay damages for bringing the lawsuit.

Exemplary damages on its part unlike nominal and contemptuous damages are punitive in nature. They are awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit<sup>59</sup>. It is therefore awarded in an action for tort where the defendant has not only committed a legal wrong but has also behaved in an outrageous and insulting manner. Consequently, exemplary damages are awarded to punish or penalize the wrongdoer and to set an example for others. Furthermore, exemplary damages may be awarded in defamation cases, if it emerges that the defendant published the statement in a calculated attempt to increase sales or circulation. This can be attributed to the case of Christian sermons where the message was disseminated or published in an attempt to attract more members and extend the influence of their various ministries. Most of these acts are done with financial motives attached to them, especially with the sale of church gadgets like wristbands, church stickers, holy water, anointing oil, etc<sup>60</sup>. The award of damages in this situation will then

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58. See Andrew Ewang Sone, *Examination of Witnesses and Joint Trial under the Cameroon Criminal Procedure Code* in Andrew Ewang Sone, *Readings in the Cameroon Criminal Procedure Code* 113, 123-24 (Press Universitaire d'Afrique 2007).

59. See Garner, *Black's Law Dictionary* at 446-48 (cited in note 6).

60. A visit to most revivalist churches revealed that they are miracle oriented which the researcher finds a lot of pecuniary motives attached to their actions. They are involved in excessive requests for tithes, involved in the sale of anointing oil, holy or anointing water, wrist bands, stickers which they claim possess miraculous powers

be inflated in an attempt to express disapproval of the unscrupulous conduct of the defendant. In *Cassell & Co v. Broome*<sup>61</sup>, the House of Lords upheld what was then an extremely high award of damages against the defendants because they had been reckless about the statements made and hoped that their sensational nature would increase sales.

Exemplary damages for the purpose of punishing the wrongdoer are also regulated by section 305 of the Cameroon Penal Code, which sanctions defamation with a fine added to an imprisonment term as has been discussed in this paper. The application of this was seen in *Ministere Public et Gregoire Owona C/. Jean-Pierre Amougou Belinga*<sup>62</sup>, where the plaintiff Gregoire Owona filed an action in the Yaoundé Magistrate's Court for defamation relating to statements asserting that he was involved in acts of homosexuality. Based on an inability of the defendant to establish satisfactory evidence of Owona's involvement in acts of homosexuality, the defendant (Belinga) was sentenced on the basis of section 305 (1) and (2) of the Penal Code to (4) four months imprisonment term and a fine of (1) one million CFAF as well as additional (1) one symbolic CFAF requested by the plaintiff Gregoire Owona. The Court further ordered the defendant to publish the said judgment in over fifty (50) news outlets (both national and international) or pay a fine of 300, 000FCFA for each day he fails to do so. A similar ruling was taken by the same Yaoundé Magistrate's Court in *Ministere Public et Jean-Pierre Mayo C/. Biloa Ayissi*. The defendant Mr. Biloa Ayissi, publisher of Nouvelle Afrique Newspaper, was sentenced to months' imprisonment while asking to pay one million CFAF to the Court, three million CFAF, and a symbolic one CFAF to Mr. Jean-Pierre Mayo, Director of the CNPS hospital Yaounde, as compensation for character defamation.

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from God. Some of the churches even go to the extent of allocating entrance fees and fees for seats. All of these acts go against the general dictation of the bible to the effect that salvation is free and does not require any one to pay any money. See the Bible in the following books; John 3:16, John 4:10, Romans 5:15, Romans 6:23, Romans 8:32, Ephesians 2:8, John 3:16, Hebrews 5: 8-9, Mark 16:16, etc.

61. See *Cassell & Co v. Broome*, 1 All ER 801 (1972).

62. See Ewang Sone, *Examination of Witnesses and Joint Trial under the Cameroon Criminal Procedure Code* at 123-24 (cited in note 58).

## 6. *Conclusion*

The right to worship and practice any religion is guaranteed by the constitution of the Republic of Cameroon. This connotes the freedom of speech in the dissemination of Christian ideologies through sermons. Nevertheless, such freedom is not a fiat to indulge in statements that are defamatory. The law of defamation, in this respect, tries to balance the difference between freedom of worship and the protection of the reputation of individuals. As far as defamatory statements in Christian sermons are concerned, the worrisome aspect is the absence of their existence caused by the high level of fanaticism and attachment to ideologies instigated by the various churches through their leaders. It is therefore important that massive sensitization of the existence of defamation in Christian sermons is made to break the myth of fanaticism and to make people aware of the existence of both criminal and civil liabilities for defamation in such circumstances. This could finally lead people to denounce it, making this offense more punishable and visible.