

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE V.V.M VENDA.  
ON FRIDAY 31<sup>st</sup> DAY OF MAY, 2019**

**SUIT NO FCT/HC/CV/3712/13**

**BETWEEN:**

- |  |   |                   |
|--|---|-------------------|
| <ol style="list-style-type: none"><li>1. DR. NATHANIEL O. ODEDIRAN</li><li>2. MR. JACOB ADAMU WAKILI</li><li>3. MRS. AISHA Y. BUKAR</li><li>4. ALH. HARUNA ABDLLAHI KUMBASHI</li><li>5. MALL. MOHAMMED YUSUF ANIKI</li></ol> | } | <b>PLAINTIFFS</b> |
|--|---|-------------------|

**AND**

1. NIGER PRINTING AND PUBLISHING CO. LTD.
2. UTHMAN SIRAJA \_\_\_\_\_ **DEFENDANTS**

## **JUDGMENT**

This is a case of libel filed by the Plaintiffs against the Defendants by a Writ of Summons No: CV/3712/13 dated and filed on the 21<sup>st</sup> of June 2013 in which the Plaintiffs jointly and severally claim against the Defendants jointly and severally as follows:

- a. A declaration that the publication made by the Defendants on the 31/10/2011 in the Newspaper is libellous of the Plaintiffs.
- b. The sum of N100,000,000.00 (One Hundred Million Naira Only) for each of the Plaintiffs being general and exemplary

damages for the libellous publication contained in the October 30th, 2011 Edition of Niger Printing and Publishing Company Ltd Newspaper Printed and Published by the 1<sup>st</sup> Defendant and authored by the 2<sup>nd</sup> Defendant.

- c. 10% interest of the judgment sum from the date of judgment to the date of final liquidation of the judgment sum.
- d. The cost of this suit.

Accompanying the Writ of Summons are the 5 (Five) Plaintiffs statements of claim and the 5 Plaintiffs' witnesses statements on oath accordingly.

To prove their case the Plaintiffs called five witness and tendered several exhibits.

The Defendants did not show up from the beginning though they were served, so, the case was heard without them.

Testifying before the court as PW1, the first Plaintiff **Dr. Nathaniel O Odediran** who is the provost of the Federal College of Education kotagora, adopted his witness statement on oath dated 21/06/13 as his oral evidence before the court.

He informed the court, in a nutshell, that in the Sunday, October 30<sup>th</sup> 2011 edition of the Newline Newspaper, the 1<sup>st</sup> Defendant falsely and maliciously printed and caused to be published of, and concerning the 1<sup>st</sup> Plaintiff and the other 4 Plaintiffs, a news item

authored by the 2<sup>nd</sup> Defendant captioned 'N1.47 BILLION CONTRACT SCAM: EFCC ARRESTS 5 PRINCIPAL OFFICERS OF THE FCE KONTANGORA'.

That the words used by the Defendants in the paragraphs of the said publication in their ordinary and natural meaning meant and are understood to mean among other things that the 1<sup>st</sup> Plaintiff has no respect for the law by refusing to honour the EFCC's invitation and has to be forcefully conveyed by the EFCC's operatives to their office and that the 1<sup>st</sup> Plaintiff is a dishonest, fraudulent and corrupt civil servant not fit to be entrusted with public funds and office.

That the 1<sup>st</sup> Plaintiff received a letter inviting him for an interview by the EFCC which he (1<sup>st</sup> Plaintiff) honoured as a law abiding citizen and was never detained or arrested by the EFCC. 1<sup>st</sup> Plaintiff avers that he was asked questions on facts relating to some ongoing projects in the college after which he was allowed to go home.

1<sup>st</sup> Plaintiff avers that after the publication was made the management of the College of Education Kontagora through her solicitor wrote a letter to the Defendants demanding a public apology of the malicious publication against the Plaintiffs and a retraction of the story in the same pages of their newspaper but

the Defendants failed, refused or neglected to respond or heed the demand by the college.

Furthermore, 1<sup>st</sup> Plaintiff avers that he has been in the civil service for many years with impeccable records and has never appeared before any panel or disciplinary committee for any wrong doing, professional misconduct or crime or indicted for corruption or its tendencies.

Whereof, 1<sup>st</sup> Plaintiff claim(s) against the Defendants jointly and severally as per Plaintiffs' claim in the statement of claim.

To support his case the 1<sup>st</sup> Plaintiff tendered the following documents:

1. Three degree certificates bearing the name of **Odediran Nathaniel Olaitari**; issued from Bayero University, Kano University of Jos, Plateau State for masters degree and University of Ilorin, Kwara State for doctorate degree all marked as Exhibits 1, 2 and 3 respectively.
2. Curriculum Vitae of **Nathaniel Alaitan Odediran** admitted and marked as Exhibit 4.
3. A copy of the Publication (marked as exhibit 5) of Newline on Sunday-the vigilant watching vol.4 No 326 of October 30<sup>th</sup> 2011 with the caption N1.47bn contract scam. EFCC arrests 5 principal officers of FCE Kontagora certified by Niger State

- Library Board Senal Section admitted and marked as Exhibit 5.
4. Solicitors letter dated 16/01/12 admitted and marked as Exhibit 6.
  5. Letter from EFCC dated 26/10/11 addressed to the provost College of Education Kontagora admitted and marked as Exhibit 7.

There was no cross-examination.

PW2 who is the 3<sup>rd</sup> Plaintiff in this suit, is **Barr. Aisha Yakubu Bukor** and the Registrar of the Federal College of Education Kontagora, also adopted her witness statement on oath dated 21/6/13 as her oral testimony before the court; as contained in paragraphs 11 – 28 of the 1<sup>st</sup> Plaintiff witness statement on oath (save for substitution of the 1<sup>st</sup> Plaintiffs name with 3<sup>rd</sup> Plaintiffs name).

PW2 tendered 4 exhibits and identified exhibit 5 which is the Newspaper.

1. Certificate of call to Bar of **Aishat Yakubu Mambo Bukar (Mrs)** admitted as Exhibit 8.
2. The C.V in respect of Barr. (Mrs) Aisha Y. Bukar admitted as Exhibit 9.
3. The letter of commendation admitted as Exhibit 10 while

4. The letter of invitation from EFCC addressed to the provost Federal College of Education Kontagora Niger State in respect of the Registrar is Exhibit 11.

There was also no cross-examination or re-examination.

PW3, is **Haruna Abdullahi Kumbashi**. He is the 4<sup>th</sup> Plaintiff. He testified and tendered 4 exhibits and prayed the court to adopted his witness statement on oath dated 21/06/13 as his oral testimony before the court. He stated that he is the Bursar at the Federal College of Education Kontagora, Niger State.

PW3 tendered the following documents in evidence.

1. Degree Certificate from Usman Danfodio University Sokoto is Exhibit 12.
2. Letter from EFCC dated 24/10/11 addressed to the provost of FCE Kontagora containing the officer of the Bursar, the Director of Works and the Secretary Procurement Planning Committee is Exhibit 13.
3. C.V of **Abdullahi Haruna Kumbash** is Exhibit 14.
4. Certificate of membership from association of National Accountant of Nigeria is Exhibit 15.

There was no cross-examination.

PW4; who is the 2<sup>nd</sup> Plaintiff in this suit is **Jacob Adamu Wakili**. He is a lecturer at the Federal College of Education Kontagora but

was the deputy provost of the said College as at the time this suit was instituted. He adopted his written evidence dated 21/06/13 and tendered 3 exhibits.

1. The degree certificate from A.B.U Zaria dated 11/9/86 is Exhibit 16.
2. Nigeria certificate in education from A.B.U Zaria is Exhibit 17.
3. C.V. of **Adamu Jacob Wakili** is Exhibit 18.

He was not cross-examined.

PW5; **Moh'd Aniki Yusuf** who was the College Librarian as at the time this suit was filed and he is also the 5<sup>th</sup> Plaintiff in this suit. He adopted his written evidence on oath and tendered 5 exhibits.

He states further that he was never at any material time invited by the EFCC neither did he visit the officials of EFCC in their office in Abuja as was alleged in the Defendants publication.

He tendered the following documents in evidence:

1. The degree certificate from Bayero University in the name of **Moh'd Aniki Yusuf** dated 21/8/85 is Exhibit 19.
2. The post graduate certificate dated 10/8/2000 is Exhibit 20.
3. The Certificate of regularization from librarian's registration Council of Nigeria is Exhibit 21.

4. The Certificate of Registration with the Teachers Registration Council of Nigeria in the name of Yusuf Mohammed Aniki is Exhibit 22.
5. C.V of Moh'd Aniki Yusuf is Exhibit 23.

There was also no cross-examination.

In their defence, Defendants filed a Defendants statement of defence dated 21<sup>st</sup> March 2014 and filed on the 25<sup>th</sup> of March 2014 after the Plaintiffs had closed their case. Some of the facts, most relevant to this case and contained in their 17 paragraphed averments include:

1. That the 1<sup>st</sup> Defendant is a Limited Liability Company wholly owned by Niger State Government publishers of News line on Sunday (not News line) with Limited Circulation in Kontagora, Bida Kagara, Suleja, Kuta New Bussa and Minna excluding FCT and the 2<sup>nd</sup> Defendant **Uthman Siraja** is an editorial staff in the employment of Niger State Government.
2. 1<sup>st</sup> Defendant admits that on the front page of its October 30<sup>th</sup> 2011 Sunday edition, it published a news item authored by the 2<sup>nd</sup> Defendant titled c1.47 bn Scam: EFCC arrests 5 principal officers of Federal College Education Kontagora but that 1<sup>st</sup> Defendant published the said story pursuant to its constitutional role of holding the Government, its agencies or functionaries accountable to the people.



3. 1<sup>st</sup> Defendant denies that the content of the News Publication were malicious and false in its entirety but that the content came from a petition sent to the 2<sup>nd</sup> Defendant who sought confirmation from the EFCC.
4. The Defendants admit receiving mail on February 26<sup>th</sup> 2012 four months after the publication from the Plaintiffs' solicitors demanding a public apology for alleged malicious publication and a retraction of the story on the same pages of the newspaper.
5. That the 1<sup>st</sup> Defendant after due consideration caused an apology to be published expeditiously as demanded by the complainants on the front page of March 4 2012 edition and was duly signed by the editor of the Newspaper **Alhaji Hadi Mohammed Pandogari**.

Whereof, the Defendants pray the court to dismiss the present suit for being frivolous and vexatious.

The Defendants called one witness; **Alh. Mohammed Hadi Pandogari** the Editor of News line on Sunday Newspaper and the DW1 in this suit. He prayed the court to adopt the 1<sup>st</sup> Defendant's witness statement on oath dated and filed 1/4/14 as his oral testimony before the court.

He tendered in evidence as exhibit D1 the Sunday, March 4<sup>th</sup>, 2012 edition of the News line on Sunday News paper.

Under cross examination, DW1 stated that he is a professional journalist with a 1<sup>st</sup> degree in languages and a Diploma in Mass Communications. He informed the court that when they receive any report, they confirm the truth of same before publishing and the duty of investigation of reports is the responsibility of the reporter who is the 2<sup>nd</sup> Defendant in this suit. DW1 states that they contacted the spokesperson of the federal College of Education, **Yusuf Dema**, for confirmation of the report before publishing. DW1 states further that while investigating they did not mention specific names but broadly enquired about the 5 (five) principal officers. He however, does not have evidence of the communication between himself and the spokesman.

Witness states that the front cover page of the News line newspaper publication for N1.47bn scam heading is more than ½ a page while the size of the retraction statement is 2x2.

He conceded that if he had done thorough investigation he would have known that the EFCC did not arrest the Plaintiffs but only invited them.

There was no re-examination of DW1.

Parties filed their final written addresses.

In Defendants' final written address dated 12/3/18 and filed 13/3/18 the Defendants raised 2 issues for consideration viz:

1. Whether this court has the jurisdiction to hear and determine this suit.
2. Whether from the totality of evidence adduced at trial, the Plaintiffs are entitled to the reliefs claimed.

On issue one; counsel on behalf of the Defendants submits that the jurisdiction of this court is not automatic for all cases and from all places, it is, and have to be statutorily conferred else any step taken by the court in the case will amount to a nullity. Counsel cited **ECOBANK NIGERIA PLC VS INTERCONTINENTAL BANK PLC (2012)5 NWLR (pt. 1293) pg 219 @ 234** paragraphs D – E and p. 239 – 240 paragraph H – A and submits that this suit is for defamation and does not fall under any of the classes and categories listed in Rules 1, 2 and 3 of Order 9 FCT High Court Rules and cannot also be commenced in accordance with Rule 4 of Order 9 in this court except the Defendant resides or carry's on business within the FCT or the cause of action arose within the FCT.

Furthermore, counsel submits that the Defendants from all claim reside in Minna, Niger State and all the Defendants business including the one forming the cause of action in this suit happened in Niger State where all the Plaintiffs were also at the material time resident there. That the cause of action from all available facts and evidence occurred in Niger State and no effect of same was felt outside the state (Niger State).

Counsel urged the court to hold that this suit should have been brought in the High Court of Niger State.

On issue two, counsel on behalf of the Defendants submits that the Plaintiffs' only problem with the said report published by the Defendants is that it is false only to the extent that they were never arrested by the Economic and financial Crimes Commission (EFCC) as claimed by the report.

Relying on the case of **VANGUARD MEDIA LTD. VS OLA FISOYE (2011) 14 NWLR (pt 1267) p 207 @ 258** paragraph B – E, counsel submits that the Defendant ran the story in contention so titled, on its October 30<sup>th</sup> Edition 2011 as it has the legal and constitutional responsibility to do being a media organization and a member of the fourth Estater of the realm.

That the Defendants before running the story sought confirmation from the spokes person of Federal College of Education Kontagora, the Plaintiffs' employers and the spokesperson of EFCC.

Counsel submits further that the alleged publication was a fair comment considering the circumstances of this case. He states that the story concerns illegal disbursement of public funds in Government owned Educational institution for which several petitions had already been written.

Also relying on **UBA VS OMIYI (2010) 1 NWLR (pt. 1176) p 640 @ 660**, Defendant's counsel submits that the Plaintiffs' conduct is reprehensible as they instituted this action even though their demands in Exhibits 6 were timously met in Exhibit D1 and Plaintiffs have also not proved by evidence any wide spread publication or how it has negatively affected them.

Defendants' counsel urged the court to grant the Defendant prayers.

Plaintiffs final written address dated 26<sup>th</sup> April 2018 was filed on the 27<sup>th</sup> of April 2018, counsel representing the Plaintiffs adopted same as his oral submission before the court and raised 2 issues for deliberation viz:

1. Whether from the facts in evidence before this court the Plaintiffs have proved the elements of libel as well as this charged the evidential burden on them to entitle them to judgment.
2. If issue one above is resolved in the affirmative, whether the Plaintiffs are entitled to damages and other reliefs as per their statement of claim.

In his legal argument on issue one, counsel on behalf of the Plaintiffs submits that the Plaintiffs' suit against the Defendant is for libel, and is premised on the fact that the 1<sup>st</sup> Defendant falsely and maliciously printed and caused to be published a defamatory

article concerning them, authored by the 2<sup>nd</sup> Defendant in their October 30, 2011 publication (Exhibit 5).

Relying of **GUARDIAN LTD VS AJEH (2011) 46 NSCQR pt 1 pg 254 @ 270** paragraphs B – C and **EDEM & ANOR VS ORPHEO NIGERIA LTD & ANOR (2003) 15 NSCQR 192 at 206 – 207** at paragraph E-F. Also, **NATIONAL ELECTRIC POWER AUTHORITY VS CHIEF ETIM INAMETI (2002) 11 NWLR (pt 778) 397.**

Counsel submits that the burden of proof which is not static lie n the Plaintiffs who must prove on the preponderance of evidence that they are entitled to the claim.

Counsel submits further that in paragraph 35 of Plaintiffs statement of claim, Plaintiffs averred that the defamatory article was published in 1<sup>st</sup> Defendants Sunday October 30, 2011 edition which the Defendants admitted in paragraph 3 of their statement of defence.

He referred the court to paragraphs 39, 40, 41 and 42 of Plaintiffs statement of claim that the said publication is false as they were never arrested by EFCC and while the 1<sup>st</sup> – 4<sup>th</sup> Plaintiffs were invited to answer questions on an on-going investigation at the EFCC, the 5<sup>th</sup> Plaintiff was never invited neither did he visit any EFCC office.

Counsel argued that the Defendants never sought clarification

from the spokes person of both Federal College Education Kontagora and the EFCC before publishing because if they did, they would not have included the 5<sup>th</sup> Plaintiffs name.

Furthermore, counsel submits that the Defendants did not lead any evidence to show that the Plaintiffs were arrested like they claimed and that DW1 when confronted with Exhibits 7, 11 and 13 under cross-examination, he confirmed the content but stated that the defamatory article (Exhibit 5) was based on a petition addressed to the Defendants, same, of which, was never tendered before the court and on further cross-examination, DW1 Stated that they confirmed the allegation through a phone conversation between himself and the spokesperson of EFCC but stated that he didn't have the phone number of the said spokes person of EFCC.

Plaintiff counsel argued further that there is no evidence before the court that the Defendants sought confirmation from the spokesperson of FCE Kontagora as they claimed in their DW1's testimony under cross examination which fact he did not state in his statement of defence or witness statement on oath. Counsel submitted that evidence of facts not pleaded goes to no issue and cited **OKONKWO VS COOPERATIVE AND COMMERCE BANK NGERIA PLC (2003) 13 NSCQR 688** at 710 paragraph D.

He submits further that the Plaintiffs reproduced the defamatory words in paragraphs 35 and 36 of their statement of claim and whether the words used in the publication are defamatory is for

the determination of the trial judge as stated in **OLAWIYE VS OGUNSANYA (2004) 4 NWLR pt 861 p.487 at 516** paragraphs G – A.

On whether the libellous publication was made to a third party, counsel answered in the affirmative and referred the court to the case of **EMANTOR VS NIGERIA ARMY (1999) 9 SCNJ pg 52 at 59.**

On issue two, counsel on behalf of the Plaintiffs submits that libel is actionable per se, without need to prove special damages and urged the court to so hold.

In his legal argument before the court counsel submits that the quantum of general damages need not be pleaded or proved, for it is the loss which flows naturally from the Defendants' act and generally presumed by law. He cited **ANDREW VS MTN NIGERIA (2016) LPELR - 41181 (CA) pp 12 - 14** paragraphs B – A and **HASTON (NIG. LTD VS AFRICAN CONTINENTAL BANK PLC (2002) 11 NSCQR p. 195 at 217** paragraph E.

Counsel submits that the Plaintiffs are all principal officers of the Federal College of Education Kontagora and a cursory look at Exhibits 4, 9, 14, 18 and 23 will show that the Plaintiff its have good standing in the society.

Counsel submits further that even though Defendants contended in paragraph 11 of their statement of defence that they caused an



apology to be published expeditiously as demanded by the Plaintiffs on the front page of their March 4 2012 edition, DW1 during cross examination testified that the size of the defamatory article (Exhibit 5) was a quarter page while the apology Exhibit D1 published on 4/3/12 was only '2x2' almost invisible portion of the newspaper.

He argued that the implication of the apology made by the Defendants is admittance of wrong and referred the court to **BRITISH AMERICAN INSCO. LTD VS SULE (2001) FWLR pt 58 pg 1178 at 1185** paragraphs C – D and submitted further that a Plaintiff's right of action is not precluded merely on the ground of an apology or a retraction by the Defendants in a case of libel but is considered as a plea in mitigation of damages but not as exoneration for the defamation committed.

Counsel submits on the issue of jurisdiction that for the court to determine its jurisdiction the process the court looks at is the statement of claim of the Plaintiff and not the statement of defence as it is the claim of the Plaintiff that determines the jurisdiction of the court and cited **IKINE VS EDJERODE (2001) 8 NSCQR p 341 at 373** paragraphs B – D.

Plaintiffs' counsel submits further that in cases of Libel or defamation, the residence or place of business of the parties does not determine jurisdiction of the court but the publication of the

material of persons who might have read it or had the opportunity of reading the publication.

Counsel urged the court to take judicial notice of the Ruling of Justice **P.O Affen** delivered on 15<sup>th</sup> of January 2013 in **DR. NATHANIEL O. ODEDIRAN & 4 ORS VS NIGER PRINTING & PUBLISHING LTD & ANOR** in suit No FC/HC/CV/3544/12 and submits further that fair comment is available only in respect of expressions of opinion which are based on facts which are proved true and on statements of fact not proved true but which were made on a privileged occasion. Counsel cited **OKOLIE VS MARINHO (2006) 15 NWLR (pt. 1002) p 338** paragraphs A – B and submits that the defence of fair comment cannot avail the Defendants as the publication was not a comment based on the expression of the 2<sup>nd</sup> Defendants opinion, but rather, as assertion of fact, albeit wrong facts.

Counsel urged the court based on the decision in **SKETCH PUBLISHING CO. LTD VS AJAGBEMOKEFERI (1989) 1 NWLR pg 675** and the fact that the basis of the tort of defamation is that every person has a right to the protection of his good name reputation and the estimation in which he stands in the society of this fellow citizens to enter judgment in favour of the Plaintiffs as per their statement of claim and award maximum damages against the Defendants.

The issues for determination in this case perceived by the court are:

1. Whether this court has the jurisdiction to hear and determine this suit.
2. Whether from the totality of evidence adduced at trial, the Plaintiffs are not entitled to the reliefs sought.

On issue one, this court dealt with the issue of jurisdiction at the inception of this suit and delivered its ruling on the topic on the 22/09/2016 and ruled that the court had jurisdiction to hear the case.

The issue of jurisdiction raised in 2014 and ruling delivered there from centred more on the premise of the Defendant being public servants and the case being statute barred.

I found in that instance, that the Defendants were not public servants, in that, there was no evidence that the Niger Printing & Publishing Company was government owned, as the evidence before the court at that time was grossly inadequate to prove that the Defendants were owned by the Niger State Government.

The issue of jurisdiction now raised is on a different premise and that is that the news paper in which the publication was made circulates only in Niger State.

This was mentioned then through counsel's submission, which never takes the place of evidence in law. The court based its ruling of 22/09/16 on the facts and evidence on the issues raised then, and ruled that the court had jurisdiction.

Presently, the Defendants have brought again the issue of jurisdiction and led evidence that the Newspaper circulates only in Niger State and the claimants have no contrary evidence to that. They did not dispute that the said defamation circulated only in Niger State.

DW1 states that the Newline on Sunday, the Newline and the Tauraruwa Newspapers are all local Newspapers with circulation in seven principal towns in Niger State Viz Bida, New Busa, Kagara, Kontagora, Kuta, Suleja and Minna, where they have accredited vendors and not in the FCT or any state capital in Nigeria where for reasons of technology and inability to employ, commission or retain correspondents and vendors thus do not circulate in those places at all.

For a party who is making a case of lack of jurisdiction, this is a material piece of evidence which ought to be contradicted.

There are two sets of evidence before the court, one from the claimants, which stood uncontradicted, therefore proving the claimants' case and the other from the Defendant that the court has no jurisdiction to entertain the claimant's case because the

Newspaper was published in Niger State and circulates **only** in Niger State, therefore the proper forum for the trial of this case is the Niger State High Court. None of the 5 claimants' witnesses said anything to contradict this fact, on which, the witness gave evidence which appear credible unless otherwise proved.

Apart from the evidence of DW1 on the issue of jurisdiction, Defendants' counsel in the Defendants' final written address, raised two issues for determination one of which is, whether this court has the jurisdiction to hear and determine this suit.

The claimants' counsel, though he did not raise the issue of jurisdiction for determination, he addressed the court on the issue citing the case of **DAIRO VS UNION BANK (2007) 31 NSQR 475** and conceded that in an action for libel the proper venue for adjudication of the matter is where the alleged libel was published and not where the Defendants reside. Yet there is no credible evidence that the paper was published in the F.C.T.

While I agree that the claimants' statement of claim is to be considered in determining whether the court has jurisdiction, my understanding is that, after evidence has been led to support the Defendants' averments in their statement of defence, that evidence supersedes averments in pleadings and must be controverted. That is why issue of jurisdiction can be raised even on appeal. At that stage, the matter is beyond the issue of pleading

but goes further to the issue of territorial jurisdiction as in the instant case.

The evidence of the Defendants' DW1 is that this Newspaper in which the defamatory words were made, circulates only within the seven principal cities of the state in which they have accredited vendors. There is no evidence either that there are also accredited vendors of this Newspaper in FCT where this action is brought, or that same was read by any person in the FCT before the commencement of this action.

It is pertinent to note that all the claimants said is that, as soon as the publication was made, they each received several calls from concerned friends and family members who wanted to confirm the story and commence arrangement for their bail.

This is good ground to sue for the tort of libel. However there is no evidence that any of these concerned friends and family members called from the FCT Abuja. Even if there is no accredited vendor in Abuja or any state capital in Nigeria, in my opinion, if there is evidence that the people read the paper in Abuja, that evidence will suffice to confer jurisdiction on this court to adjudicate on the matter. It is the place or places where the paper or publication is read that those who read it can form an opinion of the claimants, that they are dishonest, fraudulent and corrupt civil servants.

I can only presume that since Niger State is near FCT the paper must have been read in Abuja as well and indeed anywhere else. The law on presumption does not extend to the tortuous liability of libel, sacrosanct. It is a matter of fact.

Jurisdiction is fundamental in the adjudication process. It is the power of the court to competently perform its judicial functions in respect of a given matter. The issue of jurisdiction has been held in a plethora of cases to be the blood that gives life to the survival of an action in a court of law. See **UPS VS ADEYOGOYE (2010) LPELR - 8668 (CA)** and **UNTC PLC VS ABU & ORS (2014) LPELR - 23605 (CA)**.

There is no evidence on this all-important issue to convince the court that it has jurisdiction even though the paper was not circulated in the FCT, Abuja.

The Plaintiff's counsel has not referred or cited any law to show that in libel matters the court has a universal jurisdiction as enjoyed in Matrimonial Causes.

In **ANOZIE VS EMERENINI & ANOR (2016) LPELR-40968 (CA)** the court held:

Now jurisdiction of a court is pivotal and vital, in the adjudication of a cause or matter brought before a court or tribunal and where a court is devoid or bereft of jurisdiction, the trial will be a complete nullity no matter how well

conducted the proceedings might have been. In other words if there is no jurisdiction in a court it means there is no case before the court worthy of any adjudication....

I think the Defendants have successfully convinced the court that it has no jurisdiction over this case whose cause of action arose in Niger State.

The position will be different if it is discovered and stated that the people in Abuja FCT also read the publication before the commencement of this action.

It is trite law that whenever the issue of jurisdiction is raised it must be treated and determined first.

I am sure and I so find, that this court has no jurisdiction to hear and determine this case but the Niger State High Court. I hereby decline to adjudicate over this action.

In the circumstance, this suit No. FCT/HC/CV/3712/13 dated 23/09/13 and filed same date is hereby struck out for lack of jurisdiction to entertain same.

*Signed*  
*Hon. Judge*  
*31/05/19*

**APPEARANCES**

EMMANUEL C. UDEGBUNAM FOR PLAINTIFFS

NO APPEARANCE FOR DEFENDANTS



## **AUTHORITIES**

1. **ECOBANK NIGERIA PLC VS INTERCONTINENTAL BANK PLC (2012) 5 NWLR (pt. 1293) pg 219 @ 234.**
2. **VANGUARD MEDIA LTD. VS OLA FISOYE (2011) 14 NWLR (pt 1267) p 207 @ 258.**
3. **UBA VS OMIYI (2010) 1 NWLR (pt. 1176) p 640 @ 660,**
4. **GUARDIAN LTD VS AJEH (2011) 46 NSCQR pt 1 pg 254 @ 270.**
5. **EDEM & ANOR VS ORPHEO NIGERIA LTD & ANOR (2003) 15 NSCQR 192 at 206 – 207.**
6. **NATIONAL ELECTRIC POWER AUTHORITY VS CHIEF ETIM INAMETI (2002) 11 NWLR (pt 778) 397.**
7. **OKONKWO VS COOPERATIVE AND COMMERCE BANK NIGERIA PLC (2003) 13 NSCQR 688 at 710.**
8. **OLAWIYE VS OGUNSANYA (2004) 4 NWLR pt 861 p.487 at 516.**
9. **EMANTOR VS NIGERIA ARMY (1999) 9 SCNJ pg 52 at 59.**
10. **ANDREW VS MTN NIGERIA (2016) LPELR – 41181 (CA) pp 12 – 14.**
11. **HASTON (NIG. LTD VS AFRICAN CONTINENTAL BANK PLC (2002) 11 NSCQR p. 195 at 217.**
12. **BRITISH AMERICAN INSCO. LTD VS SULE (2001) FWLR pt 58 pg 1178 at 1185.**
13. **IKINE VS EDJERODE (2001) 8 NSCQR p 341 at 373.**
14. **DR. NATHANIEL O. ODEDIRAN & 4 ORS VS NIGER PRINTING & PUBLISHING LTD & ANOR.**

15. **OKOLIE VS MARINHO (2006) 15 NWLR (pt. 1002) p 338.**
16. **SKETCH PUBLISHING CO. LTD VS AJAGBEMOKEFERI (1989) 1 NWLR pg 675.**
17. **DAIRO VS UNION BANK (2007) 31 NSQR 475.**
18. **UPS VS ADEYOGOYE (2010) LPELR - 8668 (CA).**
19. **UNTC PLC VS ABU & ORS (2014) LPELR - 23605 (CA).**
20. **ANOZIE VS EMERENINI & ANOR (2016) LPELR-40968 (CA).**

What is libel? “Libel has been defined as a statement in written form which causes a person to be exposed to hatred, ridicule or contempt ie to be shunned or avoided and to be lowered in the estimation of right thinking people in the Society” see **EZEGBO & ANOR VS IGBOKWE (2016) LPELR - 40784 (CA)**.

Simply put “Libel is to defame someone in a permanent medium, especially in writing. See Blacks Law Dictionary ninth edition page 999.

What must a claimant prove to establish the tort of libel? To prove libel the claimant must prove the following ingredients:-

1. The words complained of must have been written ie published.
2. The publication must be false.
3. The words must be defamatory or convey a defamatory imputation.
4. The words must refer to the Plaintiff.
5. It must be the defendant who published the words.

The onus is therefore on the Plaintiff to prove that he was the one referred to, in the alleged libel.

See **OGBONNAYA VS FIRST BANK NIGERIA PLC (2015) LPELR - 24731 (CA)** and **GUARDIAN NEWSPAPERS LTD & ANOR VS REV. PASTOR AJEH (2011) LPELR - 1343 (SC)**.

It is clear therefore that the requirement for proving libel is not the same as that required for proving other civil cases where admission of facts in pleadings is considered sufficient proof of same and need no further proof.

The Plaintiffs were all taking these elements one after the other how does it apply to the claimants in the instant case.

The elements for proving libel as:

1. That the words complained about must have been published publication of the words is the most important element in libel cases.

Publication means that the words expressed were so expressed to the hearing or seeing of a third party.

The words must be written giving it a status of permanence of some sort.

If the audience is illiterate the words could be read to their hearing.

In the instant case the words were written in the Newline Newspaper which is a paper that can be read in any part of the

world. In the said publication of the Newsline Newspaper and the  
October 30 2011 edition of same

### **RULING/JUDGMENT**

Upon being granted leave to go on with the case learned counsel to the 1<sup>st</sup> Respondent/Applicant informed the Court of their intention to move their motion dated and filed on the 11/05/2011 which was brought pursuant to the inherent jurisdiction of the Court as provided for by section 6 (6) of the 1999 constitution of the Federal Republic of Nigeria. Praying for the following orders:

An order of this Court dismissing the sustentative suit on the ground that this Court lacks the jurisdiction to entertain same.

And for such further orders as the Court may deem fit to make in the circumstance and the grounds upon which the application was brought were that:

There is an earlier suit on the same subject matter pending before Justice Kutigi of High Court 29 Wuse Zone 5, Abuja with motion No. M/4331/11 dated 21/03/2011 and filed on 22/03/2011.

Following this present suit to continue will amount to abuse of Court process.

Counsel further submitted that they have also filed and will rely on all the averment in their paragraphs affidavit in support of the motion on notice deposed to by one Doris Eze a litigation secretary in their firm and a certified true copy of processes filed in Justice Kutigi's Court motion number: M/4331/11 between Dr. Ikenna Ihezub Vs Inspector General police & 3 Ors annexed and marked as exhibit 'A' that they also filed a written address and same was adopted as their oral argument in this suit.

Finally counsel urge the Court to dismiss the suit. Because the Respondent/Applicant in this suit is also the Applicant in the case before Justice Kutigi's Court while 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in this suit were also Respondent with two others. And same were the subject matter of these two suits pending before Courts of co-ordinate jurisdiction at the same time.

Counsel submit that this amount to an abuse of Court process and referred the Court to the case of Onalaja Vs Oshinubi Cited in his written address.

Applicant/Respondent counsel did not file a counter affidavit but respond on point of law by opposing the said application and submitted that it is a ploy to delay hearing of their application which rules of Court frown at. He further submitted that the parties subject matter, and reliefs sought were not the same and referred the Court to page 12 of the annexure under the heading 1 preliminary statement where the car registration number: is JHMCM 56894-CO 35926 whereas in the application before this Court the car Reg. No. is BV 645 RSH.

Learned counsel to the Applicant/Respondent further stated that in the suit before Court 29 of the High Court of FCT. N1,000,000.00k damages was claimed against all the Respondents and Applicant in this suit who the 1<sup>st</sup> Respondent in the above mentioned case whereas the Applicant in the instant suit is claiming N10,000,000.00 against the 1<sup>st</sup> Respondent alone. Learned counsel to the Applicant/Respondent cited the case of Ubeng Vs Usua (2006) 12 NWLR (pt 994) 244 at pg 255 Paragraph E – H Ratio 1 and urge the Court to dismiss the application because there is no evidence that the Applicant/Respondent in this suit has instituted several suits against the Respondents.

Further more learned counsel to the Applicant/Respondent adopted the argument of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents counsel where they assert that the parties, subject matter and the reliefs sought in the two different suits before the two different Courts pending at the same time were not the same. He submitted that the authorities relied upon by the 1<sup>st</sup> Respondent do not apply

in this suit and referred the Court to the case of Ette Vs Edoho (2009) 8 NWLR (pt 114) 601 at 603 Ratio 3.

Again learned counsel to the Applicant/Respondent argued that the Court can hear his application that day even as the 1<sup>st</sup> Respondent/Applicant which ought to have file a counter affidavit by that time is yet to do same. Also referred the Court to order 8 rule 4 of the Fundamental Human Right Enforcement procedure rules and the case of Abia State University Vs Chima Anya Ibe (1996) 1 NWLR (pt 439) 646 at 660.

Finally, learned counsel urged the Court to dismiss the preliminary objection of the 1<sup>st</sup> Respondent/Applicant and grant their reliefs as contained in the Applicant motion on notice dated 24/03/11 and filed the same date.

Going through the processes filed by all the parties and their oral submission on point of law, it is trite principle of law that once as issue of jurisdiction is raised that the Court should first decide on it first. This is because if at the end, it is found out that Court acted without jurisdiction all the proceedings shall be rendered null and void see the case of Madukolu Vs Nkemdilim (1962) 2 SCNLR R 341 and Arowolo Vs Adsina (2011) 2 NWLR (pt 1231) 315. It is on that strength that the issue of jurisdiction as raised by the 1<sup>st</sup> Respondent shall be considered first.

We have earlier on stated the prayer of the 1<sup>st</sup> Respondent/Applicant in his motion to dismiss suit for lack of jurisdiction on the ground that the suit is an abuse of judicial process that there is a similar suit between the parties pending before Justice Kutigi's Court in High Court 29.

This been the contention of the 1<sup>st</sup> Respondent/Applicant, thus the term abuse of Judicial process has been Judicially defined to mean that the process of the Court has not been used bonafide and properly. It also connotes the employment of judicial process by a party in improper use to the irritation and annoyance of his opponent and the efficient and effective administration of Justice see the case of Umeh Vs Iwu (2008) 8 NWLR (pt 1089) 225. In order to sustain a charge of abuse of process there must Co-exhibit inter alia



- (a) A multiplicity of suits
- (b) Between the same opponents,
- (c) On the same subject matter, and
- (d) On the same issues.

It is against this backdrop of these laid down condition that there arises the need to glance through the aforesaid suits No: M/4611/11: Miss Chika Ogu Vs Dr. Ikenna Ihezvo & 2 Ors and suit No: M/4331/11 Dr. Ikenna Ihezvo Vs I.G.P & 3 Ors. It is obvious from the faces of the two suit that the parties are not the same as a result both parties are entitled to initiate and air their grievance at the law Courts as when there is a right, there must be a remedy.

On the question of the same subject matter in both aforesaid suits. The instance suit No: M/4611/11 has been instituted for a relief against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to release her car Honda Accord with registration number Abuja BV 645 RSH which was detained upon the instigation by the 1<sup>st</sup> Respondent and Ten Million Naira (10,000,000.00) against the 1<sup>st</sup> Respondent as exemplary damages for the unwarranted and malicious infringement of the Applicant's Fundamental Rights. Whereas suit No: M/4331/11 on the other hand is a declaration against the Inspector General of Police and 3 Ors that the continuous detention of the Applicant's vehicle, a red 2004 Honda Accord with Vehicle identification number JHMCM 56894 CO35926 by the Respondents is illegal, unconstitutional, oppressive and a gross violation of the Applicant's Fundamental Rights as guaranteed by section 44 (1) of the constitution of the FRN 1999; an order releasing the said Applicant's vehicle being detained by the Respondents, and an order awarding the sum of One Million Naira (N1,000,000.00) only against the Respondents jointly and severally being general damages for the violation of the Applicant's Fundamental Rights.

In view of the above the subject matter in issue in suit No: M/4611/11 is the releasing of 2004 Honda Accord car with registration number Abuja BV 645 RSH to the Applicant and the particulars were exhibited as per exhibits 'G', 'A',

'J' 'K' in the Applicant's paragraph 32 of her affidavit in support of the motion and N10,000,000.00k exemplary damages. While on the other hand the subject matter in issue in suit No: M/4331/11 is a recovered stolen car from the suspects (Names Unknown) and N1,000,000.00 general damages. It is difficult here to state that both suits were the same to sustain charge of abuse of Court process in addition base on the careful perusal/appraisal of the two suits, the contending issues in both suits are not the same.

It is therefore in the interest of Justice that the application for dismissal of the instant suit is hereby refused since there is no prove to show any abuse of Court process by the 1<sup>st</sup> Respondent/Applicant.

#### **SUBSTATIVE CASE**

The Applicant in this suit brought an application dated 24/03/2011 and filed the same day to enforce her Fundamental Human Rights against the Respondents pursuant to sections 44, 46 (1) and (2) of the 1999 constitution of the Federal Republic of Nigeria (as Amended) and order 2, Rules 1,2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 seeking the following reliefs:

A declaration that the seizure and or detention of the Applicant's Honda Accord car with registration number Abuja, BV 645 RSH since October, 29<sup>th</sup> 2010 by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on a false allegation and instigation of the 1<sup>st</sup> Respondent is unlawful unwarranted and contrary to section 44 of the constitution of the Federal Republic of Nigeria.

An order directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to release the said Honda Accord car with registration number Abuja, BV 645 RSH to the Applicant forth with without my conditions whatsoever.

Ten Million Naira (10,000,000.00k) against the 1<sup>st</sup> Respondent as exemplary damages for the unwarranted and malicious infringement of the applicant's Fundamental Rights.

And for such further order or orders as this Honourable Court may deem fit to make in the circumstance.

The Applicant also filed and relied on her statement of fact which was brought pursuant to order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, 38 paragraphs in support of the motion on notice deposed to by the Applicant she relied on all the averment and the attached exhibits thereto and marked as follows:-

- (i) A copy of the invitation card to the traditional wedding ceremony between the 1<sup>st</sup> Respondent and her sister. Marked Exhibit A.
- (ii) Two pictures of the traditional wedding ceremony between the 1<sup>st</sup> Respondent and her sister. Marked Exhibits B and B1.
- (iii) A copy of the Applicant's statement of account from United Bank for Africa Plc Domiciliary Account Number 049013000472 showing two transfers of \$4,500 to Salome Chizoba Ogu. Marked Exhibit C.
- (iv) Teller showing deposit of the sum of N140,000 into Zimus Resources Limited account with intercontinental Bank Plc. Marked Exhibit D.
- (v) Teller showing deposit of the sum of N130,000 into Zimus Resources Limited account with Intercontinental Bank Plc. E.
- (vi) A copy of the Applicants statement of account from United Bank for Africa Plc Account Number 049002001874 showing transfer of N47,200 to Callistus Onyenaobi. Marked Exhibit F.
- (vii) Shipping documents given to the Applicant by Fano Shipping Agencies Limited covering the two 2004 Honda Accord vehicles and two other vehicles. Marked Exhibit G.
- (viii) Copies of Vehicle License and proof of Ownership Certificate for Honda Accord with registration number BG 16 GWA. Marked jointly as Exhibit H.
- (ix) Copies of registration papers for Honda Accord with registration number BV 645 RSH (the subject matter of this suit). Marked jointly as Exhibit J.
- (x) Picture showing the 1<sup>st</sup> Respondent and his wife standing in front of the Honda Accord with registration number BV 645 RSH at the family

house of the Applicant in Aboh Mbaise, Imo State in April 2010.  
Marked Exhibit K.

Finally a written address in support of the Applicant's application was equally filed by learned counsel to the Applicant. Formulating one issue for determination '**whether the Respondents have violated the Fundamental Right of the Applicant to own and keep movable property so as to warrant a grant of the reliefs sought by the Applicant**'.

Counsel affirm the lone issue formulated by him and referred the Court to provisions of section 44 (1) of the constitution of the Federal Republic of Nigeria which provides that 'No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquire compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:

- (a) Requires the prompt payment of compensation therefor; and
- (b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a Court of law or tribunal or body having jurisdiction in that part of Nigeria.

Learned counsel to the Applicant/Respondent contend that the Applicant has put before the Court evidence to enable the Court hold that the Honda Accord car with registration number BV 645 RSH belongs to the Applicant and she is entitled to a protection of her right to own same. Even though they were not unmindful of the limitation placed by the provisions of section 44(2)(k) of the constitution which provides as follows:

- (2) Nothing in subsection (1) of this section shall be construed as affecting any general law –
- (k) relating to the temporary taking possession of property for the purpose of any examination, investigation or enquiry;

Counsel further urge the Court to hold that the continued seizure and or detention of the Honda Accord car the subject matter of this suit since October 29, 2010 without charging anybody to Court for any offence or releasing the car to the Applicant by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is unreasonable and can no longer qualify as **‘temporary taking possession of a property for the purpose of any examination, investigation or enquiry’**. Counsel referred the Court to the case of Nawa Vs A.G. Cross River State (2008) ALL FWLR (pt 401) pg 807 at 840 where it was held that it is the duty of Court to safe guard the Rights and liberties of individual and to protect him from any abuse or misuse of power.

Learned counsel to the Applicant also submitted that the Applicant has made out a case against the 1<sup>st</sup> Respondent through the averment in her affidavit and the documents attached as exhibits for the violation of her right to own and keep movable property by the Respondents and urge the Court to grant all the reliefs sought particularly the relief of Ten Million Naira (N10,000,000.00k) exemplary damages against the 1<sup>st</sup> Respondent. On this counsel referred the Court to the cases of Odogu Vs A.G. Federation & Ors (2000) 2 HRLRA 82 and Jimoh Vs A.G. Federation (1998) 1 HRLRA 513.

Learned counsel to the Applicant/Respondent moved his motion in terms of the motion paper on the 12/05/2011 and further relied on the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent Counter Affidavit especially paragraph 5(iii) and 5(vii) and urge the Court to grant their reliefs as prayed because all their facts and the attached exhibits were unchallenged by the Respondents.

Learned counsel to the 1<sup>st</sup> Respondent/Applicant submitted that they do not file any Counter Affidavit to enable them contradict the Applicant/Respondents position but choose to reply on point of law.

Counsel then referred the Court to Exhibit ‘G’ where at the 2<sup>nd</sup> page the name of the 1<sup>st</sup> Respondent/Applicant appears at the column of Exporter /Importer. Counsel then submitted that the 1<sup>st</sup> Respondent is the owner of the said vehicle and has not transferred his ownership to the Applicant/Respondent even from the attached exhibits to the motion.

By way of response to the 3<sup>rd</sup> relief ieN10,000,00k exemplary damages sought by the Applicant/Respondent against 1<sup>st</sup> Respondent, counsel further submit that the 1<sup>st</sup> Respondent/Applicant did not violate her Fundamental Human Rights but rather contest the vehicle's ownership with her and that if the Court so hold, it wasn't with malice because there were several letters from him to the police to investigate his stolen car. Counsel urge the Court to be guided by principle of fair play in its ruling.

In another breath learned counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent also informed the Court that they opposed the 1<sup>st</sup> relief sought by the Applicant/Respondent against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent and in view of their opposition they filed and relied on 8 paragraphs Counter Affidavit deposed to by on Jonah Wutu police officer and litigation clerk in the legal department of the Force C.I.D. Abuja. In further opposition to the said relief one, counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent having filed also adopted his written address where it contended that up till that day, 1<sup>st</sup> Respondent is still contesting the ownership of the said vehicle with the Applicant/Respondent and that their action was not actuated by malafide but promise to handover the car to the true owner when a Court of competent jurisdiction ordered same.

Finally counsel urge the Court to dismiss relief one sought by the Applicant/Respondent against 2<sup>nd</sup> and 3<sup>rd</sup> Respondent but conceded to the 2<sup>nd</sup> relief and stated that the 3<sup>rd</sup> relief do not affect them.





































































