IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 6TH DAY OF DECEMBER, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
COURT 26.

SUIT NO.: FCT/BW/CV/53/2016

BETWEEN:

1. **CHERRY IFUNANYA OKEKE** } ---------- **PLAINTIFFS**

AND

1. **ECOBANK NIGERIA LIMITED** } ---------- **DEFENDANTS**

JUDGMENT

Cherry Ifunanya Okeke is the Plaintiff in this Suit. She claimed that the Defendant's (Ecobank PLC) publication in the This Day Newspaper of 4th August, 2015 particularly at page 45, where her name appeared as the 28th person in the list of persons published there on as debtor of delinquent loan, Batch 11 is defamatory. Because of that she claims the sum of Five Hundred Million Naira (N500, 000,000.00) only as damages for the damages the publication has done to her reputation and loss of earning for the rest of her life and for reducing her estimation in the minds of right thinking members of the society, exposing her to ridicule, odium and contempt.

She also claim Five Million Naira (N5,000,000.00) as cost of this suit and concluded asking for any other Order(s) which this Court can deem fit to make and which can meet the Justice of this case. This writ was filed on the 23/2/16 and Defendant was duly served.

On their own side the Defendant denies the claims of the Plaintiff and claims the following in their counter claim:

1. **A Declaration that the Defence to Counter Claim has defaulted in meeting his obligations under the employee credited facility granted to her by the Defendant Counter Claimant.**
2. **A Declaration that the Defendant to counter claim is indebted to the counter claimant in the total sum of eighteen million, two hundred and seventy seven thousand, five hundred and eighty two naira, ninety one kobo (N18,277,582.91) only as at 14/10/16.**
3. **An Order directing the Defendant to counter claim to pay the counter claimant the said sum of eighteen million, two hundred and seventy seven thousand, five hundred and eighty two naira, ninety one kobo (N18,277,582.91) only as at 14/10/16.**
4. **An interest on the on the Judgment sum at the rate of 21% per annum from 14th October, 2016 up to Judgment and at the rate of 10% per annum from Judgment until final liquidation of the Judgment sum.**
5. **Five million naira (N5, 000,000.00) only as cost of this action.**

The parties opened and closed their case calling evidence.

The Plaintiff called a sole witness who is the Plaintiff ---- she testified and tendered documents ten (10) in numbers marked as **EXHIBIT 1 – 9.**

The stair/case of the Plaintiff is that she was employee of the Defendant and was granted credit facility of N5.5 million with a security – Irrevocable Domiciliation of Borrowers Salary Entitlements and other Terminal Benefits – **EXHIBIT 13.** There has been deduction from her monthly salary account to service the facility. The Defendant purportedly

terminated her employment exercising the option of paying her one month salary in lieu of notice. But the said one month salary in lieu has not been paid up till the filing of this suit and now.

The Defendant had not rendered to the Plaintiff an account of all the deductions, outstanding salaries and entitlements. She was shocked when she saw a publication in the This Day Newspaper of 24/10/16 listing her as: **"Customer with Delinquent loan."**

Through her lawyer, she wrote to the Defendant protesting the listing of her name as a "customer with delinquent loan. Which means a customer who is an undischarged Bankrupt -----.

Rather than apologize, the Defendant rationalized the publication by justification reaffirming the word according to her. She claimed the publication had affected her reputation as it renders her unemployable. According to her, her suit is on Defamation – Libel.

The Defendant called one witness and through him tendered 7 documents – EXHIBIT 11 – 17.
The Defendant claimed that they withheld the one month salary in lieu because of the Plaintiff indebtedness to them as a result of the loan facility.
That the entitlement of their ex-staff is only settled upon completion of the standard exit clearance. That the Plaintiff is yet to commence her exit clearance to allow payment of her entitlement if any.
That by the circular issued by the CBN, all banks are to publish a Notice of Delinquent Debtor. Based on that Notice the Defendant issued the said Notice which was published in the 24/10/16 This Day Newspaper in the list of Notice Delinquent Loan and their debtors. They claimed the Plaintiff was included in the account of her indebtedness to the Bank.
They had made the counter claim to recover all the outstanding sum and all the interest accrued on the said facility. Meanwhile, the Plaintiff was suspended since the 14/11/12. That she is not entitle to any salary from

14/11/12 – 2016. On the 6/3/18 the Defendant counter claimant filed their final Address.

Her employment was eventually terminated on the March 2018. They claimed she refused and neglected to fulfill the obligation to repay the loan and did not pay the agreed interest thereon. Hence she owes the Defendant the sum of eighteen million, two hundred and seventy seven thousand, five hundred and eighty two naira, ninety one kobo (N18, 277,582.91) only as at 14/10/16 as the Defendant claims. They also filed the counter as earlier stated.

In their Written Address filed on the 6/3/18, they raised 2 issues for determination which are:

1. **Whether or not this Court has jurisdiction to entertain and effectively adjudicate over this suit.**
2. **Whether Plaintiff proved her case of Defamation on the preponderance of Evidence.**

On issue No.1 the learned Counsel for the Defendant argued and submitted that the issue in dispute is on employment relationship and as such this Court has no jurisdiction to entertain this suit. That all dispute relating to labour and employment should be adjudicated and decided by the National Industrial Court exclusively. He referred the Court to the **Section 254 (c) 1999 Constitution 3rd Alteration Act 2010.**

That Plaintiff's case being a matter relating and incidental to her employment with the Defendant is one within the jurisdiction of the Industrial Court. He referred to the case of;

Pam & others Vs. Abu & others.
(2013) LPELR – 21406 (CA) 54 – 55 paragraph D – B.

UTC Vs. Pamotei
(1989) 4 NWLR (PT117) 517.

That regardless of the nature of the relief sought, the National Industrial Court has exclusive jurisdiction on issue pertaining to labour and

employment disputes. That the grant of relief relates to judicial power of the Court and not on the jurisdiction of Court as Jurisdiction is determined by fantail situation giving rise to the dispute. He referred the Court to the case of **Tinkur Vs. Government of Gongola State (1989) 4 NWLR (PT117) 517.**

That once the matter is properly within a Court's jurisdiction, there is no limit as to the nature of the relief it can grant except as expressly limited by the statute.

That the crux of the Plaintiff's case emanates from employer – employee relationship.

That the appropriate Court for the case of Plaintiff is National Industrial Court and not FCT High Court as all the gamut of Plaintiff's case falls within provision of Section 245 (c) (ii) (k) National Industrial Court Act.

That the defamation suit is a dispute relating to dispute arising from non – payment of salaries, wages, pension gratuities and other entitlements of any employee.

That Court cannot proceed to adjudicate on the principal claim of defamation without adjudicating on the validity or otherwise of the termination of the Plaintiff's employment and her right to the unpaid salaries, employment benefits and entitlement. That it is not within the jurisdiction of this Court to adjudicate on matter of employment. He referred to the case of;

Gafar Vs. Government of Kwara State (2007) 4 NWLR (PT1024) 375.

Unachukwu Vs. Ajuzie (2009) 4 NWLR (PT1131) 336.

That by EXHIBIT 5 the Plaintiff had shown that she instituted an action at the National Industrial Court in NICN/ABJ/290/2015. That under cross – examination she confirmed same. They submitted that by that the National Industrial Court can properly assume jurisdiction to entertain the issue of defamation. That this Court cannot do so as the dispute relates to employment arising from Labour Act. He referred to **Section 14 National Industrial Court Act 2006.** He also referred to the case of;

UBA PLC Vs. Ademola
(2008) LPELR – 5066 (CA).

Utih & others Vs. Oniyivwe & others
(1991) LPELR – 3436 (SC).

That this matter ought to be struck out as the Court lack jurisdiction to entertain the suit. He referred to the case of;

Umanah Vs. Attah

(2006) 17 NWLR (PT1009) 503

He urged the Court to so hold and resolve this issue in favour of the Defendant.

On issue No.2 on whether the Plaintiff proved her case on Preponderance of Evidence, answering the question in the Negative, they submitted that going by the evidence before the Court the Plaintiff has not established her claim as set out in the amended statement of claim. That the case should fail and the reliefs dismissed as parties are bound by their pleading. He referred to the case of;

Aremu Vs. Adetoro
(2007) 16 NWLR (PT1060) 244 @ 261
Okwejiminor Vs. Gbakeji
(2008) 5 NWLR (PT1079) 172 @ 208.
That any issue that does not flow from the relief sought cannot be real issue in controversy. He urged the Court to so hold.
That by **Section 131 – 133 EA 2011** he who asserts must prove. That Plaintiff is seeking damages for defamation on allegation. That a false publication of her name a delinquent debtor made by Defendant damaged her reputation.

That Defendant failed to properly terminate her employment by payment of one month salary in lieu of notice and failed to give account of all the entitlements due to her.
That as such she is still in the employment of the Defendant and cannot be indebted.
That allegation by the Plaintiff is untrue and unfounded in fact and law and it is against the principle of equity. They urged the Court to so hold.
That Defendant acted within its right at all times in this suit and therefore cannot be liable for defamation.
That the publication in the This Day Newspaper is based on the CBN circular BSD/DIR/GEN/LAB/08/022 of 22/4/15.
That the circular directed all Banks including the Defendant to publish the names of Delinquent Debtors. That they pleaded, relevant and front loaded.
That Court should note that in line with the provision of **Section 124 EA 2011.** He referred to the case of;
Commissioner of Police Adamawa Vs. Maiyini Century Co. Ltd.
(2017) LPELR CA/YC/61/2016.

That this Court is empowered to take judicial notice of legislation which has direct bearing on the issue in controversy before it.
That Plaintiff had not denied the existence of the said CBN circular. That the Plaintiff's indebtedness and the said directive from CBN and the publication by Defendant where the Plaintiff along with other people indebted to the Defendant like the Plaintiff, cannot be defamatory. They relied on the defence of Qualified Privilege in disputing liability for defamation.
That the qualified privilege the Defendant published the list of delinquent loan customers which includes the Plaintiff because she failed to repay the loan. The Defendant cannot therefore be held reliable. He referred to:

Emeagwara Vs. Star Printing & Publishing Co. Ltd.
(2010) 10 NWLR (PT676) 489.

That the publication by the Defendant was made in fulfillment of its legal obligation under the said CBN circular. That the Defendant did not describe the Plaintiff as an undischarged Bankrupt and unreliable fellow. He referred to the case of:

Ufua Vs. Eborieme
(1993) LPELR – 23764 (CA).

He submitted that the publication by Defendant was made as a legal duty and a matter of public interest and thus covered by qualified privilege.
The learned Counsel also submitted that the Defendant is covered by defence of justification in reiterating their contest of liability for defamation. That as at the date of the publication the Plaintiff was indebted to Defendant for the sum of thirteen million, seven hundred and thirty nine thousand, nine hundred and twenty seven naira, thirty seven kobo (N13, 739,927.37) on the said loan facility granted to her since the 22/6/12 made up of principal sum and accrued interest which she had not serviced since March 2013. He referred to **EXHIBIT 11, 12, 13 & 14.** These documents included the Plaintiff's statement of account showing record of the transaction during the applicable period.
That the Plaintiff did not tender any document to show she had paid up the facility; though she owed up of obtaining the loan. That contrary to the claim of the Plaintiff, the liability to repay the loan does not extinguish with the termination of her employment with the Defendant. This is so because the loan is given to anyone in any employment with evidence of any salary domiciled by such person's employer as immediate means of repayment. He referred to **EXHIBIT 13** which provided that the Plaintiff like any other borrower should notify the bank in case of any

transfer, death, dismissal, resignation, retirement or relocation of the borrower. Again, that the same **EXHIBIT 13** provides that the loan is recoverable by legal action where the borrower fails to pay. It does not provide that the loan dissipates upon disengagement from employment.

That the relationship of the parties as far as the loan is concerned is customer banker relationship with the salary as source of repayment. The fact that the Plaintiff is an employee of the Defendant notwithstanding. It was given in its capacity and under general license and a Banking body regulated by CBN. There is nothing before the Court to show that the said published words were false or inaccurate. All evidence shows that the Plaintiff is qualified as a delinquent debtor. That she has not been able to prove the statement were false to be entitled to the damages sought.

He referred to the case of:

Vanguard Media Limited & other Vs. Olafisoye

(2011) LPELR – 8938 (CA).

He urged the Court to hold that the Plaintiff has not shown any falsity of her indebtedness to the Bank and cannot suffer any damages because of the publication.

On Issue No.2

On whether Plaintiff is entitled to the monetary claims of five hundred million naira (N500, 000,000.00) only damages for defamatory publication and five million naira (N5, 000,000.00) only as cost of this suit, the Defendant Counsel submitted that Plaintiff failed to establish with cogent and credible evidence that she is entitled to the substantive reliefs. That her claim to damages should fail being ancillary to the substantive relief.

He referred to the case of:

Alhaji Tajudeen Babatunde Hamzat & other Vs. Alhaji Saliu Ireyemi Sani & others

(2015) LPELR SC/295/2012.

Olademeji & others Vs. Ajayi

(2012) LPELR 20408 (CA).

That it was **EXHIBIT G – letter from Bauhaus International** that described Plaintiff as a Chronic Debtor Customer. That the said phrase was not used by the Defendant in the said publication in This Day Newspaper or anywhere else in her relationship with the Defendant. He submitted that the declination of the employment by Bauhams International was not as a result of the said publication and that there was never any previous offer of employment from the said company.

He submitted that Plaintiff did not have any document to show her mental health status before and after the publication ordeal. – depression, psychological dislocation and traits of morbid melancholy. But she confirmed that she was aware of and drew down on the facility fully.

He submitted that she failed to prove damages on balance of probability and as such not entitled to the reliefs sought. That she is not also entitled to the cost of five million naira (N5, 000,000.00) only as she had not placed sufficient materials to justify the exercise of the Court's discretion in her favour. He urged Court to dismiss the issue of cost. He referred to the following cases:

1) **NNPC Pension Ltd Vs. Vita Construction Ltd**
   (2016) LPELR – 41259.

2) **Nwanji Vs. CSNL**
   (2004) 11 NWLR (PT885) 552 @ 658.

On the issue whether the Defendant/Counter Claimant has established its counter claim before this Court, the Counsel for the Defendant/Counter Claimant submitted that the Defendant/Counter Claimant have established the counter claim and deserved all the reliefs sought therein.

He submitted that this Court has jurisdiction to entertain the **Counter Claim** as it hinges on Debt – Recovery. More so, as the counter claim is on facility given to the Plaintiff on ground of her having a steady flow of income from the Defendant from which the Defendant can make deduction to satisfy the loan, she never denied that fact. Again, that the counter claim is different from the issue of dismissal of the Plaintiff.

He referred Court to the following cases, laws and exhibits:

1) **Association Discount House Ltd Vs. Amalgamated Trustee Ltd (2006) SC (PT.1) 32 @ 39 – 40.**
2) **Section 257 1999 Constitution (as amended) Order 17 FCT H/CT Rule 2018.**
3) **EXHIBIT 11 & 12.**
4) **Snig Nig Ltd Vs. Wema Bank (2016) LPELR – 40576 (CA).**

That going by the testimony of Defendant Witness 1 the loan was not granted based on employer – employee relationship between the parties. That such loan could have been given to anybody. That she drew down on the loan and failed to fulfill her obligation under the agreement. He referred to **EXHIBIT 17 and certification to support it in compliance with Section 84 EA 2011.**

That there is every evidence that the Plaintiff had access to her account contrary to her denial on that. He referred to:

Ekezie Vs. State
(2016) LPELR 40961 (CA).

He urged the Court to dismiss the Plaintiff's evidence in that regard as it is contradictory.

That she never disputed the figures in this case. He urged Court to hold that by EXHIBIT 11, 12 & 17 Defendant/Counter Claimant. Claimant had been able to establish the Plaintiff indebtedness to them.

On debt recovery, she submitted that they had transmitted Demand notices to the Plaintiff going by the content of EXHIBIT 8 & 17. That the

debt became unsecured and payable immediately the security was extinguished. That the obligation to repay the loan is sacrosanct until fully paid whether the borrower still remains in the employment of the Bank.

On the right of lien and set-off the Counsel for the Counter Claimant, he submitted that the bank has a right of lieu over funds of the Plaintiff and right to exercise its right of communicating its election to set off the one month's payment in lien of notice to the employee against Plaintiff benefits. He referred to **EXHIBIT 12 & 13** as well as **EXHIBIT 7** – letter to the Plaintiff's lawyer dated **9/9/15** and one to Plaintiff dated **15/3/13 EXHIBIT 5.**

He also submitted that Plaintiff is liable to pay interest at the rate of 12% pursuant to the agreement of the parties. That she was notified to complete her exit clearance with Defendant to enable Defendant appropriate her exit entitlement in liquidation of her indebtedness. That till date she has not done so.

He urged Court to hold that Defendant had established the Plaintiff's indebtedness to the Bank and she is obliged to repay same.

He finally pray the Court to dismiss the defence of the Plaintiff in the counter claim and grant them all their reliefs in the counter – claim in the interest of justice.

Upon receipt of the Final Address of the Defendant, the Plaintiff filed her own.

In it the Plaintiff Counsel submitted that Plaintiff as an employee of the Defendant obtained an employee credit facility of N5.5 million **EXHIBIT 13** and Deductions made from her salary account to service the loan. Defendant did not pay her one month salary in lieu when her employment was terminated and never rendered account of deduction in her salary and entitlement. She attached documents.

The Plaintiff raised six (6) issues for determination which are;

(1) Whether this Court has jurisdiction to adjudicate on her case.

(2) Whether she can be termed a customer with a delinquent loan as at the day of publication in This Day Newspaper 24/8/15.

(3) Whether she has successfully established the ingredient of Defamation in this case.

(4) Whether the publication listing her as a customer with delinquent loan is defamatory and has affected her adversely.

(5) Whether the Defence of "Qualified Privilege" is available to Defendant and can be raised at stage of final Address.

(6) Whether she is entitled to the five hundred million naira (N500, 000,000.00) only damage claim for damages on her reputation and loss of earning for the rest of her life in the minds of right thinking members of the society exposing her to ridicule, odium and contempt.

On Issue No.1, the Plaintiff submitted that Court has jurisdiction. That the suit meets all ingredients of jurisdiction in the case of:
Madukolum Vs.Nkemdilim Supra.
That the claim of the Plaintiff and applicable law when cause of action arose. That the suit is clean case of Defamation as confirmed by Defendant in paragraph 6.06 – Defendants's Final Address.
That National Industrial Court has no jurisdiction as the Defendant portrays as argued by the Defence and **Section 254 (c) (1) (b) & k 1999 Constitution as amended.**
She relied on **Section 257, 1999 Constitution** that this Court has the jurisdiction to entertain this suit.

On issue No.2, she submitted that she does not qualify as a customer with delinquent loan as presented in the publication.

That she does not qualify as a customer vis – avis her status and the nature of the facility.

That she is not qualified as a customer with delinquent loan where the issue of the disengagement with the Defendant has not been resolved. EXHIBIT 13 she was not at any time considered as a customer by the Defendant and she is not in the category of those listed in the publication.

That the inclusion of her name is fired by malice and ill-motive.

That she can never be considered as a customer with delinquent loan.

That the publication was made during the pendency of staff facility granted to her.

That the facility was given on 22/6/12 to expire on 24/6/16 and publication made on 24/8/15. That her disengagement had not been concluded as at the time of the publication. The one month notice in lieu was still outstanding going by **EXHIBIT 5.**

That Defendant had not rendered account to her as at the time of the publication.

That at the time of publication, the tenure of the credit facility was still running, making her not to qualify as a customer with a delinquent loan.

On Issue No.3, she submitted that she has established a case of Defamation of her character against the Defendant – Libel. That the publication of 24/8/15 was nation wide published on time and read worldwide. Thus the said publication meets criteria for defamation and libel as it is a publication "in rem". The Defamatory words complained by the Plaintiff were published in the Newspaper and the words referred to the Plaintiff. She referred to case of:

Nsirim Vs. Nsirim

(1990) 3 NWLR (PT138) 285 @ 297 – 298.

African Newspaper Ltd Vs. Ciroma
(1996) 1 NWLR (PT423) 156.

Ugo Vs. Okafor
(1996) 3 NWLR (PT438) 542.

That Defendant had affirmed the libelous content and that the word complained of refer to the Plaintiff. Thus the Defendant justified the said publication.

That EXHIBIT 6 shows it was published by the Defendant as their name appeared boldly in front of the publication.

That the publication referred to the Defendant as her name was in the list of the persons described in the NOTICE OF DELINQUENT LOAN, BATCH 11 as No. 28.

That from above all the ingredient of libel are present and have been proved by Plaintiff. She urged the Court to so hold.

On Issue No.4 whether the publication is defamatory and has affected the Plaintiff, she submitted that it is defamatory and has adversely affected her.

That going by the decision of the Court in the case of **Iloabachie Vs. Iloabachie (2005) 22 NSCQLR 672 @ 712 – 713,** she as the Plaintiff has no legal duly to lead evidence to show additional defamatory as understood by person possessing some particular fact. That the defamer is liable based on the reasonable inferences to be drawn from the words attributed to him and not on his intention or whether he meant the words implied or not. She referred to the case of:

ACB Ltd Vs. Apugo
(2001) FWLR (IPT42) 38.

That the onus of proof of defamatory statement is on the Defendant who must prove the truth of the defamatory statement rather than Plaintiff to prove the untruth. She referred to the case of:

Akomolafe Vs. Guardian Press Ltd
(2004) 1 NWLR (PT.853) 1 CA.

That the Plaintiff had proved that there is libel against her and need not prove that she had suffered damages or injury. That she had shown that the publication denied her a job **EXHIBIT 9** and has potential to deny her other job opportunities. That it has exposed her to ridicule and she had suffered depression.

On Issue No.5 on "Qualified Privilege" available to Defendant to be raised at Final Address. She submitted that it is not available the Defendant at this stage as it was not raised in statement of Defence. Again that Defence does not avail the Defendant in this case to publish name as they did. The Defendant has no capacity and are not in the privilege position too. She relied on the decision in:

Ojeme Vs. Momody
(1994) 1 NWLR (PT323) 685.

NTA Vs. Ebenezer Babatope
(1996) 4 NWLR (PT. 440) 75.

That Defendant cannot establish any interest in the publishing of the name of the Plaintiff a staff who was still in the process of disengagement with the Bank and her entitlement and deduction yet to be worked out **EXHIBIT 6.**

That the publication was done out of malice and injurious motive. That the publication was done 24/8/15, ten (10) months before the expiry date of the loan in 24/6/16. Disengagement from the Defendant was still not

concluded. One month in lieu of her disengagement was yet to be paid. Entitlement not yet worked out.

That relying on the CBN directive to make the said publication is completely misplaced as it was not tendered as evidence in this case. She urged Court to hold that the defence of Qualified Privilege fails completely.

On Issue No.6 whether she is entitled to five hundred million (N500, 000,000.00) only as damages, she submitted that when libel is established general damage is awarded. She cited the case of:

Guardian Newspaper Ltd Vs. Rev. Pastor C. Ajeh

(2011) FWLR (PT584) page 1 SC.

Such damage must be adequate giving the circumstance of the case. She referred to the case of:

Suleiman Vs. Adamu

(2016) LPELR 40316 (CA).

That she need not prove she had suffered actual physical injury to her reputation.

Salmon Vs. Makinde

(2003) 1 WRN 91 @ 104.

That conduct of Defendant has been malicious, unrepentant and high landed. She referred to **EXHIBIT 7 8.** She urged Court to hold that she is entitled to the said five hundred million (N500, 000,000.00) as damages.

On Issue No.7 – Counter Claim, the Plaintiff submitted that Defendant is not entitled to the reliefs in the counter claim since they have not been able to establish those claims with credible facts and exhibits.

That she is not owing the Defendant eighteen million, two hundred and seventy seven thousand, five hundred and eighty two naira, ninety one kobo (N18, 277, 582.91) as Defendant is not entitled to the claims therein.

That contrary to paragraph 8.1.2 of Defendant Final Address, the Defendant never testified to the effect that the Employee Credit Facility was not on basis of Employer – Employee relationship.
That the facility is clearly employer-employee facility as shown in **EXHIBIT 12 & 13. EXHIBIT 13** is the irrevocable Domiciliation of the Borrower's (Plaintiff) salary entitlements and other Terminal Benefits which is the Plaintiff's salary in the Defendant Bank. **That EXHIBIT 5** was clear on that though the requirements was not met till date. That she was not required to complete any exit clearance going by the said **EXHIBIT 5.** That Defendant only attempted to communicate to her the outstanding indebtedness only after the publication **EXHIBIT 6.**
That **EXHIBIT 14 & 17** are on belated letters of Demand Notice dated 17/1/17 written after the said publication and the filing of this suit.
She submitted that Defendant failed to establish the claims made in its counter-claim. She urged the Court to dismiss same and grant all the reliefs in her claim.

In their reply to the Final Address of the Plaintiff, the Defendant/Counter Claimant submitted taking the seven (7) issues senatim:
On Issue 1, the Defendant replied that reiterating their submission in paragraph 5.0 to 5.2.7 that Court lacks jurisdiction to entertain this suit going by **Section 254 (c) (1) a, b, & k 1999 Constitution as amended.**
That their counter-claim is a different claim in that it emanates from breech of the loan facility agreement jurisdiction is not rested in any Court as this Court has jurisdiction over debt recovery action. That the Court is bound to look at whether there is a breach or not in the repayment of the loan. That this Court should not look at employer-employee relationship as it has no jurisdiction to do so. Contrary to submission of the Plaintiff, the counter-claim does not have the same coloration of jurisdiction as the defamation claim. They urged Court to so hold.

On Issue 2, the Defendant replied that Plaintiff qualifies as an employee and customer of the Defendant by virtue of having an account with the Defendant. That all rights, obligation and privilege involved are applicable under employer - employee, Bank - customer relationship respectively. He relied on the case of:

ITPP Vs. UBA PLC

(2006) LPELR 1519 SC.

That since the Plaintiff has account with the Bank, she is qualified as a customer contrary to the misconceived submission of the Plaintiff.

In response to paragraph 6.1 of the Claimant Final Address, the domiciliation, entitlement and other benefits as security does not prevent the Plaintiff's duty to pay up the loan when the security becomes unavailable and insufficient. She is duly bound to ensure that her Account is funded at all times to meet up with its loan obligation but she failed to do so. The loan was to be repaid and serviced through her salary account. She was also supposed to make money available in the said account to enable Defendant deduct the money there from March 2013 to August 2015 when the publication was made.

That the obligation which was to be met monthly but failed for over 26 months qualified as delinquent and qualified her to be classified as person who failed to perform or meet requisite obligation. They urged Court to so hold. The Plaintiff was aware and had access to her account as she confirmed under cross-examination. The expiry date of the loan was clearly stated 24/6/16, but she consistently defaulted in her monthly repayment as agreed for 26 months. That is why she is qualified as Delinquent Debtor. He referred to the case of:

APC Vs. Agbaje & others

(2015) LPELR 26668 CA.

He urged Court to interpret the word Delinquent in its ordinary everyday meaning and hold that Plaintiff qualifies as one and justify the Defendant for making the publication.

On payment extricately linked to her salary by EXHIBIT 13 Plaintiff gave a promissory Note to pay Defendant on demand N5.5 million together with the interest, cost, commission and expenses thereon. This implies that whether the account is funded by the Plaintiff's salary or other entitlements. She is obligated to repay the loan. They urged the Court to so hold. That there was no ill-motive or malice to call the Defendant to repay the loan and interest she took from the Defendant in the face of the CBN Directive.

On Issue 3, 4 & 5, the Defendant responded as follows:-

That Plaintiff failed to show how the publication has exposed her to odium and shame. Her account has been in debit and she admitted not to have funded the account since her disengagement from the Defendant Bank.

Her submission that her disengagement had not been completed is of no issue going by **EXHIBIT 5,** coupled with the fact that the National Industrial Court had held that her disengagement was validly terminated in line with the Terms of Employment and Labour Laws in the Judgment **EXHIBIT 15** of 17/4/18.

That it is evidence that she had been in default of her monthly repayment for 26 months as at August 2015 when the publication was done. That being the case, the publication based on the Directive of the Central Bank of Nigeria which Plaintiff was aware of was not defamatory to warrant any payment of Damages as the Plaintiff is claiming as the publication was simplicata the list of customers indebted to the Defendant of which the Plaintiff is one.

On Qualified Privilege, the Defendant replied as follows:-

That paragraph **12, 16 & 17 Statement of Defence** the issue of Qualified Privilege and Absolute Privilege were raised. They urged Court to discountenance the submission of Plaintiff that the said defence was raised at Final Address as Plaintiff established that and Defence of Justification at trial.

That there is no ill-motion occasioned or intended by the Defendant as shown in **paragraph 6.0 – 7.08** of the Defendant Final Address. That Plaintiff was not in the process of disengagement as her employment was effectively determined by virtue of **EXHIBIT 5.** She was fully aware of her indebtedness to Defendant as per time as **EXHIBIT 8** & 17 accounts for the said indebtedness.

On Issue No 6, the Defendant replied that Plaintiff has not established any wrongdoing occasioned by the Defendant to warrant damages. They referred to **EFCC Vs. Inuwa & others Supra.**
He urged Court to refuse award of damages since the Defendant has not done anything wrong and **EXHIBIT 9** has been by **paragraph 7.07 – 7.10** in the Defendant Final Address and dismiss discountenance he suit of the Plaintiff.

On the Counter-Claim, the Defendant/Counter Claimant submit that they had proved the Plaintiff indebtedness to them which stood at **eighteen million, two hundred and seventy seven thousand, five hundred and eighty two naira, ninety one kobo (N18, 277, 582.91) only** as at 14/10/16 in line with the Supreme Court guideline in their decision in the case of **Agala & others Vs. Okusin & others (2010) LPELR 221 – SC.** That the Defendant Witness 1 clearly stated in his testimony that the loan was attached to the Plaintiff's salary from which the monthly deduction was paid/deducted which is in line with **EXHIBIT 13** in which the parties positions were delineated. Again that the Plaintiff had stated in under

cross-examination, that she can get her statement of account anytime she wants if she calls it up.

On Issue 7, the Defendant responded that the Defendant having satisfied that the cause of action can arise in debt recovery by transmitting **EXHIBIT 8 & 17** to Plaintiff and having shown the Plaintiff indebtedness to Defendant/Counter Claimant in her statement of account. They urged Court to discontinue the submission of the Plaintiff and hold that the Plaintiff is obligated to pay the sum of **eighteen million, two hundred and seventy seven thousand, five hundred and eighty two naira, ninety one kobo (N18, 277, 582.91)** only being the outstanding principal sum and accrued interest on the loan as at 14/10/15.
They urged Court to dismiss the suit of the Plaintiff with substantial cost and grant the relief in the counter-claim.

COURT:

After this detailed summary of the case and submissions of both parties, can it be said that the publication done on the 24/8/16 in page 45 of the This Day Newspaper where the Plaintiff was listed along with several others in the publication titled:

NOTICE OF DELINQUENT LOAN BATCH 11

is defamatory and the content libelous in that the Plaintiff has suffered odium and depression and her reputation watered down, and as such she should be paid damages of five hundred million naira (N500, 000,000.00) only, having in mind that she as former employee of the Defendant **while in the Defendant employment** obtained a loan of N5.5 million only, which she drew down fully in which her salary, entitlement and allowances were used as collateral, having in mind that since 15th March, 2013 her employment was terminated after she was earlier suspended by the Defendant since November 14th , 2013?

And should this Court grant the counter-claim in that the said loan was granted to Plaintiff based on Bank – Customer relationship not withstanding that Plaintiff was still in the employment of the Defendant as at the day the loan was granted and the fact that from 22/3/15 till the time of filing this suit, the Plaintiff had not repaid the said loan and the accrued interest despite the demand notice is the action of Defendant justified in this counter claim.

Most importantly, does this Court have the jurisdiction to entertain this suit which is predicated on the defamation having in mind that the Court is only to delivery unto what is before it and that the cause of action determines the locus stand which in turn determines jurisdiction of the Court to entertain a case as no Court has power to cloth itself with jurisdiction to entertain a case where it has none?

What are the issues in dispute before this Court going by the reliefs of the Plaintiff and that of the Defendant in the counter claim?

Does the dispute in this case entail the determination of whether the employment of the Plaintiff was rightfully or wrongly terminated, in that this Court has jurisdiction to determine, entertain or not to entertain this suit as the Plaintiff and Defendant are postulating respectively?

Again, does the Defendant have the Qualified Privilege and defence of justification in publishing the names, in that they did no wrong in ensuring that the said names were published in the EXHIBIT 6 and therefore their action is not defamatory?

Not taking the questions seriatim, it is not secret that the case of action and the reliefs sought are what determines if the Court has jurisdiction to entertain the suit, such cause of action are predicated on the relief sought where the cause of action which is determined by the reliefs and locus stand, contains what a Court can entertain, it is said that the Court has jurisdiction to entertain the suit. It is the Plaintiff's claims that give Court its jurisdiction.

See Onucha Vs. KRPC Ltd. (2009) 6 NWLR (PT921) 393 @ 304. PDP Vs. Adeyemi (Supra). In this case going by the Reliefs sought by the Plaintiff, the issue in dispute which Plaintiff is taking redress against is the defamatory publication/libel in EXHIBIT 6 – publication in This Day Newspaper of 24/8/15 and nothing move.

On the part of the Defendant, the dispute and cause of action is on the Plaintiff/Defendant to counter claim refusal and inability to pay the outstanding and accrued interest and the principal sum in the loan facility granted to the Plaintiff while she was in the employment of the Defendant.

The bottom line in both cases: was there defamation by Defendant and or did the publication defame the Plaintiff. Again is the Plaintiff's failure to repay the loan facility justified going by her submission in her testimony and documents she tender in support?

Without any iota of doubt, this Court has the jurisdiction to determine the issue of defamation and the dispute of failure to repay the loan. It is imperative to state that this Court is not called upon in both the claim and counter claim to determine the justification or otherwise the termination of the Plaintiff's employment with the Defendant/Counter Claimant. Such issue is a matter open only to the National Industrial Court (NIC). See the following cases/laws:

1. **Inakoju Vs. Adeleke**
2. **Section 14 National Industrial Court Act 2006**
3. **Charles Vs. Government of Ondo.**
4. **UBA Vs. Adenola (2008) LPELR 5066 CA.**
5. **Government of Ekiti State Vs. Fakiyesi**
6. **Section 254 (c) 1999 Constitution 3rd Alteration 2010.**

See also EXHIBIT 15which the Defendant did not deny. It is imperative to point out that the Court has a right to look at every document before it. Again Court has power to admit any document which it has previously rejected and marked as rejected once it has at the time of evaluation of

Exhibit and all documents before it realized that such documents though rejected can be of value in getting to the resolution of the issues in dispute between the parties. In this case, the Court had earlier in the cause of taking evidence rejected a letter from Central Bank of Nigeria Banking Supervision Department, Reference No. BSD/DIR/GEN/LAB/08/022 dated 22/4/15.

Titled: **Letter to All Banks & Discount Houses**

Recovery of Delinquent Credit Facilities.

This Court hereby reverse its Ruling on the Rejection of the document and hereby admit same in evidence and mark it as **EXHIBIT 18** as if it was admitted in evidence as at the time the Defendant Witness 1 sought to tender same to be admitted as EXHIBIT. That means that in this case, the said document forms part of the Exhibits tendered and admitted in this suit.

The reasoning behind the above is that the contents of the said letter is very relevant and will greatly aid the Court in determination of the Defamation occasioned by the publication which is at the centre of the debacle between the parties going by the claims of the Plaintiff.

Apart from the relevancy of the said document, it was pleaded by the Defendant and in accordance with the due process of law. Based on all these, this Court admitted it though marked rejected during the proceeding at time it was sought to be tendered. It forms part of the EXHIBIT in this suit.

It is the law that parties are bound by their pleading. Again, parties are bound by the contract they entered into be it Employer – Employee Agreement or Banker – Customer Agreement.

See the case of:

Okwejiminor Vs. Gbakeji

(2008) 5 NWLR (PT1079) 172 @ 208.

Defamation as held in the case of **Akhie Vs. Ochulor (2015) LPELR 24552 – CA** entails or involves false statement made against a person which defames that person or harming the person's reputation. For such statement to be defamatory it must clearly refer to the person alleging defamation, must be published or communicated to through another person – 3rd party; it must be a false statement and must have no justifiable ground for such words published. See the case of:

1. **Izejiobi Vs. Egbebu**
   (2016) LPELR – 40507 (CA)

2. **Vanguard Media Ltd. Vs. Olafisoye**
   (2011) LPELR – 8938 (CA)

In any action based on defamation, it is incumbent on the Plaintiff to prove that the statement in issue is defamatory – false and damaging. That is the decision of the Court of Appeal (CA) in the case of:

Suleiman Vs Adamu
(2016) LPELR 4031 (CA).

The Plaintiff must show that the words spoken was to odium shameful and disgraceful.

By virtue of the provision **S.12AEA** and it is trite that our Courts are empowered to take judicial notice of any legislation, case law or government/presidential Orders and directives. That is the decision in the case of:

C.P. Adamawa Vs. Maiyini Century Company Ltd & Another
(2017) LPELR CA/YOLA/61/2016.

For one to have qualified privilege to take an action, it must be an action taken in compliance with the person's obligation to obey a directive which commonly comes from the government or its organ. It must be in obedience to such directive. It must be based on an action or statement made in performance of the markers duty in which it and the public have

legitimate interest in. To enjoy that rear privilege such report or action taken must be proved to be fair, just and accurate. That is the decision of the Court of Appeal (CA) in the case of:
Emegwara Vs. Star Printing & Publishing Co. Ltd.
(2000) 10 NWLR (PT676) 489.

Qualified Privilege is referred to buttress the fact that alleged defamatory words are true, the comments, if any fair and justified on a matter of public interest or to the interest of the person whom it is addressed or that of the person making the statement. That is the decision of the Court in the case(s):
Ufua Vs. Eborieme
(1993) LPELR – 23674 (CA)

Dumbo Vs. Idugbo
(1982) 2 SC 14.
For the allegation of Defamation to stand, the words complained of must be truly defamatory.
That brings the Court to another Defence open to anyone who is alleged to have defamed another person.
That is Defence of justification. It is incumbent on Plaintiff who alleges defamation to show and establish that there is no iota of justification to warrant the malicious publication. On the other hand, it is incumbent on any one alleged to have defamed someone by publication to show that such publication is justified and not malicious at all.
Once the defamatory words contained in the allegation of defamation is the truth. It is said that the truth of such words complained of is the complete answer to the civil action brought against the maker of such words in an action for defamation.
See Gatley on Libel and Slander 7th Edition Gowon Law Library No.8 Page 11 Paragraph 11.

So where a person publishes to a 3rd party or public words or matters concerning another person which are true and does not in any way input against the reputation of the person mentioned in the publication. It must be said that that person who has published the words if sued has not committed any defamation/libel as such person is covered by the defence of justification. In other words, once the words published is the truth particularly when it is based on directive from government or its organ and contain no imputation but true statement to that effect. It is said that the publisher has not committed any wrong and is protected/covered by Defence of Justification. See;

Vanguard Media Ltd. Vs. Olafisoye & Supra.

It has been held in plethora of cases that a party can only be entitled to relief which it has proved with credible evidence and cogent facts. Reliefs are not granted based on emotions and sentiments. It must be earned. That is the decision of the Court in the case of:

Bossom Ventures Ltd Vs. FCDA & Another

Unreported CA/A/95/09.

A Plaintiff must satisfy the Court that he is entitled to the reliefs which he must have adduced credible evidence by water-tight testimony of his witness in proving his claim. The exercise of discretionary power of the Court in granting declaratory relief is not done on charity basis. It must be earned by the submission of the party made in support of his case in form of facts supported by exhibits. **Oladimeji Vs. Ajayi (2012) LPELR 20408 (CA).**

To earn the relief sought in any case, the case of the Plaintiff must stand on a very strong foundation made up of credible and cogent facts and evidence. That foundation must be so solid that that the Defendant was not able to dismantle it with his defence, the testimony of Defendant Witnesses and under cross-examination of the Plaintiff witness. That is what SC said in:

Sken Consult Vs. Ukey
(1981) 1 SC 6.
Alh. Tajudeen Babatunde Hamzat & Another Vs. Alh. Saliu Ireyemi Sani & Others
(2015) LPELR SC 295/2012.

Award of damage is earned and not given out as a matter of course sentiment or on charity grounds. In cost, there must exit an event which that cost follows.
The event must be based on the things already paced before the Court which in the mind of the Court makes the cost justifiable and meritorious. At the end of the day the Court feels that it is judicial and judicious to award the cost in exercise of its discretionary power.

Stabilini Visinoni Vs. Mallison & Partur
(2014) 12 NWLR (PT.1420) 134.

GFK Investment Ltd Vs. NITEL PLC
(2009) 15 NWLR (PT1164) 344.

UBN Ltd Vs. Nwokolo
(1995) 6 NWLR (PT400) 127.

It is the facts that are placed before the Court that the Court considers to determine whether or not and to what extent it can exercise its discretionary power in favour of any party before it. Without further ado.

After all these, can it be said that the publication in EXHIBIT 6 in This Day Newspaper of 24/8/16 is defamatory and has caused the Plaintiff Odium and depression.

It is my humble view that the said publication though it contain the name of the Plaintiff as No.28 in the list, though it was titled Notice of Delinquent Loan Batch 11, though it was published in the This Day Newspaper at the instance of the Defendant, it was not done maliciously. Its content is not a false or untrue. The Plaintiff's name is not singled out personally to be attached in the said EXHIBIT 6. Most important the publication and the action of the Defendant were based on Central Bank of Nigeria Directives occasioned as stated in EXHIBIT 18 which was originally rejected but now admitted as credible relevant EXHIBIT in this case.

The use of the word delinquent debtor was used by CBN in the said circular and not by the Defendant/Counter-Claimant.

For clarity, posterity, fair hearing, history and justice to the parties and the public, it is imperative to state verbatim the content of the said EXHIBIT 18 Directive from the CBN on Delinquent Credit Facilities and Delinquent Debtors.

> **The CBN has observed the rising trend of non-performing loans (NPL) in the (Banking) Industry.**
>
> **In order to ensure that NPL ratio does not exceed the prudential limits of 5% and to improve the credit culture in the banking industry, Banks and Discount Houses are DIRECTED (emphasis mine) to observe prudent credit underwriting and monitoring standards:**
>
> **Furthermore, Banks and Discount Houses are required (by this Directive) (emphasis mine) with effect from May 1, 2015 to:**
>
> 1. **Give the delinquent debtors 3 months of grace to turn their account from non-performing to performing status.**

2. **PUBLISH the list of DELIQUENT DEBTORS "that remain non-performing in/at three National Dailies Newspapers quarterly. (The Delinquent Debtors and those whose Accounts have been classified lost and include the persons entities, Directors, Subsidiaries and other related parties). The list MUST BE SENT TO CBN as soon as the publication is made.**

Banks and Discount Houses are also to note that DELINQUENT DEBTORS in the category described above will be blacklisted by the CBN and are therefore:

i. **Banned from participating in Nigerian Foreign Exchange Market.**

ii. **Banned from participating in the Nigeria Government Securities Market.**

Please be guided accordingly."

The above letter was signed by the Central Bank of Nigeria Director of Banking Supervision, the department from where the letter emanated.
The said letter without any iota of doubt is a CBN Directive going by the following from the said letter in **paragraph 1 line 3 – 4**

> **"…. Banks and Discount Houses are DIRECTED to observe prudent credit underwriting and monitoring standard."**

The Defendant is a bank. The letter was directed to it and all banks in Nigeria. They have no option than to follow the directive to the later. That is what they did in this case. Their action in that regard is NOT wrong, libelous or defamatory. So this Court holds.
The Defendant as a bank was further directed to publish the names of affected persons, entities directors, subsidiaries, after giving them the 3

months with effect from 1/5/15 to turn their account from non-performing to performing, the Defendant (Bank) like all other Banks has the right to:

Paragraph 2: …

(i) PUBLISH the list of the DELINQUENT DEBTORS that remain in the non-performing …" list (emphasis mine)

Who are still with the Non-performing loan after 3 months of grace. That publications is to be published:

Paragraph 2:

(ii) "… in at least three National Dailies Newspapers."

The above is clear, there is no need for elucidation. It is important to point out that the "This Day Newspaper" is one of the prominent National Dailies.

The phrase "Delinquent Debtors", "Delinquent Credit Facilities", contrary to the submission of the Plaintiff were all used not by the Defendant but by Central Bank of Nigeria (CBN) in describing all debtors whose loan facility were affected by the directive of the CBN which are those that have non-performing loan, the Plaintiff inclusive. The letter was titled: "**Recovery of Delinquent Credit Facility."**

In the body of the letter, the phrase **"DELINQUENT DEBTORS"** were mentioned three (3) times in **paragraph 2** in **line 2, 3 & 4,** while it was mentioned once in paragraph 3.

From the above, it is clear that the words "Delinquent Debtors" were the words of the CBN and not that of the Defendant. Those words are not defamatory. They are the words used by CBN in its Directives to Banks to describe those who have non-performing loan of which the Plaintiff in this case is one. This was not used in Isolation of the Plaintiff and it was not used on the Plaintiff alone or maliciously. It would not have affected her personally as she tried to portray.

Again the use of the word/phrase **"Delinquent Loan"** and the titling of the publication **"NOTICE OF DELINQUENT LOAN BATCH 11"** to describe the people in the list in the publication is NOT DEFAMATORY/ or LIBELOUS. The title was culled from the name for which the CBN had on its own volition described all those who have failed to turn their non-performing loan to performing loan.

Most importantly, the publication itself and its content and use of words are based on the Directives of CBN not on the making of the Defendant. The Defendant only carried out the directives as spelt out in EXHIBIT 18 letter of Central Bank of Nigeria dated 22/4/15.

It is important to note that the **EXHIBIT 18** was dated 22/4/15 and had stated that from 1/5/15 after 3 months banks can publish the names of delinquent debtors – customers. The publication in EXHIBIT 6 was done on the 24th August, 2015, more than the 3 months required as stated in the CBN Directives.

EXHIBIT 18 "Banks and Discount Houses are required …

… from 1st May, 2015."

1. **Give the Delinquent Debtors three 3 months of grace..."**

The Defendant published this list more than 3 months after – on 24/8/19. The directives talked about Blacklisting of Delinquent Debtors not by the Defendant but by CBN itself.

In paragraph 3 the EXHIBIT 18 stated that:

"Banks … are to note that Delinquent Debtors … will be blacklisted by CBN …"

The above shows that the Defendant are not the ones who blacklisted the Plaintiff and people in the publication. The Defendant asked for the publication in order to carry out or and in accordance with the Directives of the CBN as given in the said letter EXHIBIT 18.

That being the case, the Defendant's action on the publication did not do any wrong. The publication is not malicious. The Defendant is most importantly, protected under the defence of Qualified Privilege and

defence of Justification in that regard. They cannot and will never be held liable for defamation or libel because they have the right to and are duty bound to carry out the Directives of the Apex Bank – CBN which is their supervisor.
The Plaintiff claim on Defamation and all the argument and submission in support of defamation is not meritorious. This Court refuses and rejects such submission coupled with the testimony of the Plaintiff Witness 1 in that regard. This Court holds that the allegation of Defamation was not established. That it is therefore DISMISSED in its entirety.
This Court also holds that the Plaintiff, going by the above reasoning of the Court, is a Delinquent Debtor as named by the CBN going by EXHIBIT 18.

This Court reasoning is this:

To start with, it is not in doubt that the Plaintiff worked with the Defendant. The issue of facility is not in doubt either. So also the issue of outstanding balance of interest on the accrued and the principal sum of N5.5million.

This Court does not believe that the loan was on Employer-Employee basis, because it is not so.
This Court strongly believe that it was the usual employed Customer-Bank relationship in that such loan is open to any employee that maintains a salary account with the Bank or any Bank. That is why the form for the loan is titled:

“Employee Credit Application and Approved Form.”

That is also why the Agreement is titled:
“Employee Credit Agreement.”

It is not a secret that if the Defendant (Bank) had meant or wanted it as exclusive for their employees only, it should have been titled differently maybe "Ecobank Employee Credit Agreement."

Titling the Agreement and the form the way it is, means that it is for all salaried customers of the Bank wherever such salaried customer works.

This Court holds that whoever belongs to that or who has ever taken such facility as the Plaintiff in this case did so on Customer-Bank relationship.

And any of the employee of the Defendant that take the facility, takes it on the same basis of Customer-Bank relationship and not on Employer-Employee relationship.

It is therefore the reasoning and view of this Court that the facility in issue in this case which the Plaintiff took from the Defendant was on Customer-Bank relationship not on Employer-Employee relationship. That means that the Plaintiff is liable to all the condition given to any other Borrower of the Bank who does not work with the Defendant. If Defendant had meant otherwise, they would have clearly stated that to demarcate their employer-borrower from other borrowers whose loan was also tied to their salary as collateral like the Plaintiff in this case. That is what this Court strongly holds.

A closer look at the Application Form EXHIBIT 12 shows that the Form has a heading "Employment Details" where borrowers like the Plaintiff was asked to state the job she does, name of her employer and her employer's address and office phone number etc. It also asked the length of occupation and date of employment, length of service in current employment, the nature of Industry or occupation salary details and whether the person's employment with the employer have been confirmed. Of a very big interest is what this Court will call "Oath column" in the said form.

It is titled:

"CUSTOMER DECLARATION."

If the Defendant had meant that this form is for Bank employee only, it would not have been titled the Oath Column as Customer Declaration. By calling it Customer Declaration means that it is for all customers of the Bank who are employee of different organization and business outfits who come for such facility and whose salaries are used as collateral for the loan. To qualify, the borrower must maintain a salary account with the Defendant, and must be employed since the money is domiciliated with the salary.

In EXHIBIT 3, a letter titled "Grade Harmonization" dated 24/4/12 written to Plaintiff by the Defendant, the Plaintiff was given the salary, her rank and most importantly she was given her staff number. In the letter EXHIBIT 3 paragraph 2, it states:

> **"… as an employee of Ecobank Nigeria, you are on Band N, Senior Banking Officer Grade. Your Staff Number with Ecobank Nigeria is 7397."**

There is no where that the above number reflected in the Loan Form or Agreement. If actually the loan was given on employer-employee relationship ground as the Plaintiff and her Counsel are postulating, then the number 7397 would have reflected in the form, so that the Defendant will use same to distinguish the Plaintiff from other staff borrowers.

This Court holds that the Form that heralded the Agreement was on Bank-Customer basis and the loan is not on employer-employee relationship (loan). So whatever applies to other customers is applicable to Plaintiff as a Borrower. The Plaintiff is just like any other borrower in that category. That is what this Court holds.

Again, a closer look at the loan Agreement – **EXHIBIT 13** titled "Employee Credit Agreement" shows that the Agreement is what applies to all employee customer of the bank. The 1st column is on personal information of a Borrower. This is followed by the second column Titled:

"Irrevocable Domiciliation of Borrowers Salary, Entitlement and Terminal Benefits."

In the second column, the employer of whosoever is the Borrower like the Plaintiff in this case was to identify the Borrower so that the Bank (Defendant) is sure that the Borrower actually has an employer. It is that among other things qualifies a Borrower to get the facility. In it the employer must be stated as employer.
The Agreement provides:

> **"… They hereby identify the … (Borrower) as their employee and irrevocably undertake to domicile the salary, entitlements and terminal Benefits of the employee (Borrower) to her account domiciled with ECOBANK NIGERIA PLC and confirm that no change of Bank account will be affected without a written confirmation from Ecobank of the liquidation of the facility. We confirm the net monthly income …"**

The above further shows that the person (borrower) has a Customer-Bank relationship. Again, that such facility is open to all other salaried employees from any organization. It further shows that the facility taken by and given to the Plaintiff by Defendant in this case is not on Bank-employer-employee Basis. It is on Bank-customer basis. That is why the bank insists that the employer of any borrower must confirm that by completing that segment of the Agreement.
Again, the later part of that segment is of interest too. It states/show the further confirmation by the Employer.

> **"We also confirm that EcoBank Nigeria Plc will be provided with due notice in the event of transfer, dismissal, resignation, retirement, relocation or death of the Borrower, we further confirm that his or her terminal benefits …"**

The above segment of the agreement is signed and dated by whoever is the employer of the Borrower. In this case, the said confirmation was done by the Bank as employer of the Plaintiff who is described in the said agreement as a Borrower and not as employee of the Defendant.
The last segment in that part of the form further confirms that the Plaintiff was a Borrower of a loan facility as a customer not a Bank employee as she claims in this case.

That segment provides:

> **"The Borrower hereby applies for an employee credit facility from Ecobank PLC (the Bank) against her salary from her employer."**

The Defendant on their part in the agreement had stated in the same segment of the Agreement thus:

> **"Ecobank Nigeria PLC (Ecobank/Bank) has agreed to grant the employee credit facility/Banking facilities … to the BORROWER on terms and condition …"**

The above need no much elucidation. It distinctly shows that the Agreement for the facility is on customer-Bank relationship, no matter who is involved provided the loan is tied to the salary of the person no matter the person's employer.
It is the humble view of this Court that the present loan is customer (Borrower) – Bank relationship. So the Plaintiff's submission on the contrary is misconceived and as such is dismissed to that extent.
Parties are bound by the agreement they have entered "pacta sunt saveranda."

The Plaintiff had stated that she had read and understood the condition set in the loan agreement.

> **"All forms and condition in the Ecobank Employee Credit Facility Package and Agreement have been read, understood by me and explained satisfactorily to me by my solicitors. I hereby accept the terms and conditions as evidenced by my signature below …"**

It is imperative to say that the Plaintiff as an experience banker knows and ought to know and is lettered enough to know that the facility in question was given to her not as an employee of the Defendant but as a customer Borrower of the Bank.

On issue of the Defendant not having notified the Plaintiff about the entitlement, that submission is misconceived and totally misunderstood by Plaintiff.

Going by the undertaking by employer of a/any beneficiary Borrower of such facility, it is the employer who has identified the Borrower as their employee who have irrevocably undertaken to domicile the salary of their employee in the Bank that suppose to provide the Bank with notice in the event of transfers, dismissal, retirement, termination or death.

Where the borrower is so affected, it then means the employer of the Borrower should notify Ecobank.

In this case, the employer of the Defendant is Ecobank as the Defendant they are not bound to notify the Plaintiff, because the Bank is the one to be notified and invariably notify itself.

In fact, they are to notify themselves about the termination of the employment of the Plaintiff. So the Defendant notifying the Plaintiff is ex gracia.

This Court therefore holds that the Defendant – Ecobank are not duly bound to notify the Plaintiff because by the letter EXHIBIT 4, 5 & 6 are

due notification if it can be called so. By EXHIBIT 14, the Defendant had done all that is needful. They need not send the Plaintiff any special details of her account standing with them. After all, the Plaintiff can as an ex banker like most bank customer access her account any time she wants. She confirmed that in her testimony.

In her testimony she said under cross-examination when she was asked:

> Defendant Counsel Question: "Did you at any time apply for your bank statement?"
>
> Plaintiff Answer: "No there was no need to apply since I can see my statement if I call it up."

The above settles it. The excessive emphasis of the Plaintiff Counsel on the Defendant not giving the Plaintiff her statement on the loan is misconstrued and misconceived. The Defendant are not under obligation to notify her. The Plaintiff as a banker knows she is indebted to the Defendant on the loan facility.

She knows she had not lived up to her obligation, then she knows that her appointment with the office has long been terminated. She never border to ask for her entitlement if any because she knows she is indebted to her former employer, the bank, because of the Credit Facility.

She knows that for close to 26 months she did not pay anything to offset the interest or the principal in the facility. She cannot feign ignorant of that fact. Even if she does, this Court will not and has not believed her submission to that effect. She is indebted to the Bank and she knows it.

Raising issue of defamation cannot make her to be exonerated from that obligation. She is bound by the terms of that agreement which she voluntarily and joyfully entered into on the 22nd day of June, 2012.

The bank asking her to pay what she owes and obeying the directives of the CBN cannot be termed defamation because the Defendant action in that regard is not defamatory and publication is not libelous.

The word – "Delinquent Debtor", "Delinquent Loan" is not libelous. It is not meant for her personally. It is a phrase used by the CBN to identify those who have non-performing loan facility of which the Plaintiff is one of them.

This Court does not believe that the publication caused the Plaintiff any loss of job, reputation, odium, stress and depression. The word **"Chronic Debtor Customer"** was used by the Bauhaus International Ltd who had made their investigation on the Plaintiff.

Their letter to Plaintiff **EXHIBIT 9** is a letter dated 2/5/15. The said letter was written after the publication.

In it the company had stated in paragraph 1:

> **"… we hired you as our human resources manager, subject to your clearance from your last employers Ecobank PLC.**
>
> **You would also recall that we have called your attention to the response from Ecobank requiring you to settle outstanding issues with it.**
>
> **But our attention has been drawn to This Day Newspaper … you were listed as**
> **Chronic Debtor Customer…"**

The above shows that the employment of Plaintiff was subject to clearance from the Defendant.

Again, the company Bauhaus International Ltd had their resentment from the response from Ecobank who required the Plaintiff, based on the Defendant response to Bauhaus International requires Plaintiff to clear

outstanding issues. The company had called the attention of the Plaintiff to the said response. The company had their resentments long before the issue of the publication.

The Plaintiff must have been given a copy of Ecobank response to the Bauhaus company. One wonders why she did not display it to confirm that she was called Chronic Debtor Customer by the Defendant.

Since the phrase "Chronic Debtor Customer" was contained in the letter by Bauhaus and not letter from the Defendant, there is no how Plaintiff can claim that the Defendant called or listed her as a "Chronic Debtor Customer." It was the Bauhaus that used that phrase not the Defendant.

Moreover, if actually the Defendant described her as such, the company would have written the "Chronic Debtor Customer" with invited comma opening and closing it to show they were quoting the Defendant. This Court does not believe that the Defendant described the Plaintiff as Chronic Debtor Customer as the Plaintiff is claiming. That phrase was coined by the company Bauhaus International Ltd and not the Defendant. So the Defendant did not defame the Plaintiff and that publication and letter were not libelous. So this Court holds.

Again, the Plaintiff did not loose her job because of the publication because she is indebted to the Defendant on the facility which she had not serviced for over 26 months.

Her employment with the Bauhaus was subject to clearance with her former employer, the Defendant and when the company in EXHIBIT 13 discovered that she had not done the clearance with her former employer as shown in the publication based on the CBN Directive, the company naturaly called off the employment which was all the while under probation.

Plaintiff is not entitled to any damages because there was no defamation or libel.

From all indications, the Defendant have been able to establish their counter claim.
It is not in doubt that Plaintiff is indebted to the Defendant/ Counter Claimant. The Defendant/Counter Claimant is entitled to the reliefs sought as follows: in the counter claim to wit:

Relief 1 & 2 granted.

On Relief No.3 the Plaintiff is to pay to the Defendant/Counter Claimant all the outstanding interest on the loan – Employee Credit Facility and as well as the principal sum as accrued as at 14/10/16 as per the said Agreement, which is still substituting.

The Defendant/Counter Claimant **SHALL NOT** pay any interest on the judgment form. That means no interest awarded

Parties are to bear the cost of their respective actions.

Parties are always bound by the agreement they voluntarily entered into. The Defendant is not obligated to writ to the Plaintiff.

This is the Judgment of this Court Delivered today the ------ day of -------, 2019.

_____

JUSTICE K.N. OGBONNAYA

HON. JUDGE

APPEARANCE:

1.

2.