IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA HOLDEN AT ABUJA

ON MONDAY, 10TH DAY OF FEBRUARY, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/3367/2013

BETWEEN

AMMEH OGUCHE AMMEH --- CLAIMANT

AND

1. **MR. C. K. OTIABA**
2. **FEDERAL ROAD SAFETY CORPS** } **DEFENDANTS**

JUDGMENT

The claimant [plaintiff], a legal practitioner,filed this suit at the Federal High Court on 12/12/2011. By a Transfer Order made by *Honourable Justice E. S. Chukwu [now of blessed memory]* on 21/5/2013, the suit was transferred to the High Court of the Federal Capital Territory, Abuja. The Honourable Chief Judge later assigned the case to me.

The claimant filed his writ of summons in this Court on 22/11/2013 along withhis statement of claim. In paragraph 36 of the statement of claim, the claimant claims these reliefs against the defendants jointly and severally:

1. A declaration that the seizure, detention and refusal of the 1st defendant to release the plaintiff's vehicle with registration number CF 112 RBC despite the plaintiff's oral and written demands is *[sic: are]* illegal, unlawful and unconstitutional.

2. A declaration that the restraints of the plaintiff's movement, embarrassment, harassment, humiliation and his false imprisonment by the 1st defendant on 24th day of October, 2011 was/is illegal, wrongful, unlawful, unprofessional and unconstitutional without any justification whatsoever.

3. An order of Court directing the immediate and unconditional release of the plaintiff's vehicle with registration number CF 112 RBC in the custody of the 1st and 2nd defendants since 24th of October, 2011.

4. An order of Court directing the defendant to cause a public apology to be published in at least two [2] National Newspapers for the unlawful arrest, trespass, assault, detention, harassment and public humiliation of the plaintiff.

5. The sum of One Hundred Million Naira [N100,000,000.00] as damages/compensation for trespass, detain [sic], slander, insult, harassment, false imprisonment, assault and the discomfort of taking commercial transportation and other inconveniences, psychologically,

mentally, financially and professionally caused by the defendants to the plaintiff.

6. The sum of Two Hundred and Seventy Thousand Naira [N207,000.00; *sic*] only particularly and specifically claimed in paragraph 5 above.

7. And for such order or further orders as this Honourable Court may deem fit to make in the circumstances of this case.

The defendants filed a joint statement of defence on 6/12/2013. At the trial, the claimant testified as thePW1. He adopted his statement on oath filed on 22/11/2013 and tendered Exhibits A, B, C, D, E1-E29, F & G.Mrs. Grace Daku, the claimant's sister, was the PW2. She adopted her statement on oath filed on 22/11/2013.The PW1 & PW2 were cross examined.

1st defendant gave evidence as DW1. He adopted his statement on oath filed on 6/12/2013 and tendered Exhibit H. Augustine AlushiAdamu, an officer of the 2nd defendant, was the DW2. He adopted his statement on oath filed on 18/1/2017. Orji Okechukwu Owen, an officer of the 2nd defendant, testified as the DW3. He adopted his statement on oath filed on 13/3/2017 and tendered Exhibits J1-J6. The DW1, DW2 & DW3 were cross examined.

Evidence of the claimant:

PW1: Claimant stated that he is the owner of the Volkswagen Vento [saloon car] with Registration number CF112RBC; the particulars of thecar are Exhibit

A. 1st defendant is an Assistant Road Commander of 2nd defendant who assaulted and embarrassed him on 24/10/2011 and detained, restrained, and refused to release his car inspite of repeated demands.The 2nd defendant is the employer of the 1st defendant. On 24/10/2011 at about 8.15a.m. while he was going to court, the 1st defendant accosted him at Ahmadu Bello Way around NITEL Plc. Headquarters' junction, Abuja and ordered his junior officer to enter hiscar. In the presence of his sister [Grace Daku] inside the car,the 1st defendant inspected the particulars of his car, which werefree from any defect.

Thereafter, the 1st defendant wrongly and mischievously alleged that he and his sister were not using the vehicle's seat belts.He and his sister were conspicuously seated with the fastened seat belts across their shoulders.On being satisfied that they had their seat belts on, the 1st defendant collected the car particulars and walked away to a stationed pick-up vehicle and sat down indefinitely. Hewent to 1st defendant and politely told him that he is a legal practitioner and he would be late in court should the false imprisonment persist.The 1st defendant to the hearing of his sister said: *"Charge and bail "Lawyer"I will deal with you as several other lawyers… you people don't know me lawyer my foot, we are all graduates".*

The claimant further testified that he and his sister waited for almost an hour and decided to get into the car without his particulars to drop his sister at her office in Wuse II and rush to court notwithstanding the ordeal he experienced

from the 1st defendant. While he was driving along AdetokunboAdemola Crescent, the vehicle belonging to 2nd defendant conveying the 1st defendant and his junior staff suddenly overtook his vehicle and abruptly obstructed him by placing the vehicle obliquely across his. He suddenly applied his brakes to avoid mishap and his car stopped. The 1st defendant ordered the arrest and detention of his car; and ordered him to park his car at the premises of the 2nd defendant opposite New Federal Secretariat.On getting to the 2nd defendant's premises, the 1st defendant ordered the deflation of his tyres and this was carried out.

Barrister AmmehOgucheAmmehfurther stated that he was restrained, constrained and unlawfully detained along with his car till 11.50a.m. when he was released.The 1st defendant did not allow his properties like case file, books, etc. in the said car to be removed. He was embarrassed, humiliated, assaulted, and his professional repute dragged to public odium by the 1st defendant in the presence of his sister and other officers of the 2nd defendant.1st defendant intentionally elected to defame his person and his profession by saying:*"I even deal with Senior Advocates so who are you that I will afraid …, I will teach you a lesson, after all, we are all graduates."*He engaged the services of a commercial driver and went to court at Zone 2, by which time the court had already called his matter and adjourned it. Consequently, his client refused to pay his appearance fee and threatened to withdraw the brief from him.

The further testimony of PW1 is that since 24/10/2011, he hired the services of a commercial driver for his transportation needs within and outside Abuja to meet up with his professional responsibilities till date. 29 receipts issued by Alh. A. Tiamiyu to the claimant areExhibits E1-E29. He repeatedly went to the 2nd defendant and passionately pleaded with the 1st defendant to release his car to no avail. Heengaged the services of the Firm of Mamman Mike Osuman [SAN]& Co. to write the 2nd defendant for the release of his car to no avail; the letter dated 27/10/2011 is Exhibit C. The 2nd defendant's reply dated 14/11/2011 is Exhibit D. In spite of the efforts to secure the release of his car, the car is still detained by the defendants without any justifiable reason.

When cross examined, PW1stated that he had never met the 1st defendant before the date of the incident.It is not true that he refused to produce the car particulars until a junior officer [called Orji] pleaded with him to do so.He denied that he was chased because he absconded with a Road Safety officer in his car. PW1 explained that he pleaded with the officers to allow him drop his sister in her place of work but they refused to talk to him. The officer who sat in his car gave him the *"go-ahead to move"* to drop his sister and return back to face whatever they arrested him for. When he was stopped, he was not issued any ticket for worn-out tyres.

The claimant further stated that when he was taken to the defendants' office opposite the Federal Secretariat, he cannot remember if he released his car keys to the officers of the 2nd defendant or he went away with the keys. It is

not true that his car tyres were deflated because he refused to hand over his car keys. PW1 later said that nobody asked him for the car keys. The claimant denied that he was given a ticket while he was in the defendants' office.His car was released around April 2012 on a court order. As at the date of the incident, he had only that car.

PW2: In her evidence, the PW2 [Grace Daku] confirmed the evidence of the claimant. She stated that when the claimant told the 1st defendant that he is a legal practitioner and was due in court that morning, the 1st defendant to her hearing said: *"Charge and bail "lawyer" I will deal with you as several other lawyers…. you people don't know me."*Grace Daku concluded that because of what happened on the road, she hated her brother [the claimant] and lawyers generally, even though she used to have a lot of respect for lawyers before the incident. She thought that treatment was meted out to the claimant because he was a lawyer as the 1st defendant said*"Lawyer! Lawyer!! Lawyer my foot".*

During cross examination, PW2 stated that the claimant's car was impounded because the officers of the 2nd defendant claimed that the tyres were bad; but that was not true because his brother bought new tyres a week before then and the issue of tyres did not arise on that day. As a6t the time the claimant decided to go and drop her in her office, there was no Road Safety officer inside the car. She was not there when the car was impounded; when the claimant got home that day, he told her that the car was impounded. When claimant's car was impounded, a taxi always came to carry him and she

joined him several times in the taxi.PW2 maintained that the officers of the 2nd defendant called the claimant *"charge and bail lawyer."*

<u>Evidence of the defendants:</u>

<u>DW1:</u>He testified that on 24/10/2011, he and his team members were on patrol duty at Central District not far from the Federal Secretariat when they sighted the claimant with his passenger driving without seat belts. When the claimant was asked to stop, he hurriedly put his seat belt under the*"watchful eyes"* of his team members and himself. He requested for the claimant's car particulars for inspection but he refused to release same. At that point, he observed that his tyres were badly worn.The claimant's animosity and argumentative disposition compelled them to ignore the seat belt violation to maintain peace and instead issued him a ticket for his badly worn out tyres which were obvious for all to see.The notice of offence sheet dated 24/10/2011 is <u>Exhibit H</u>. The claimant refused to pick up his ticket saying that he was on his way to court and already late.The claimant's stubbornness attracted the attention of a junior officer[Orji] who appealed tohim to release his car particulars for inspection.

DW1 further stated that it was at this point that the claimant realised that he was in trouble and he obliged Mr. Orji with the photocopies of his car particulars. They were inspected by Mr. Orji and returned to the claimant immediately. At no point were the particulars of the claimant's car withheld

from him.PW1 said he never referred to the claimant as a *"Charge and bail lawyer"*and he did not say to the claimant that *"I will deal with him as several other lawyers"*; or *"you people don't know me… lawyer my foot, we are all graduates"*. He never abused or insulted the claimant. It was the claimant who was arrogantly boasting of how he was going to deal with him [the DW1] for daring to stop a legal practitioner who was on his way to court. The whole encounterdid not take more than 10-15 minutes to investigate and a junior officer named A. A. Adamu was asked to impound the vehicle based on the worn out tyres and the claimant'srefusal to collect the ticket.

A. A. Adamu was asked to enter the claimant's car and direct him to the Unit Command by the Federal Secretariat and impound the car. Rather than turn around in obedience to the arresting officer, the claimant took off at a terrific speed with the junior officer in his car to an unknown destination.He had no choice than to pursuethe claimant's car, overtookitand carefully parked to obstruct him from going further or absconding with his team member [A. A. Adamu]. Theclaimant was then escorted by the patrol van to the defendants' station nearthe Federal Secretariat. He informed the claimant that his car had been impounded till he paid the penalty for the offence. The claimant was advised to remove all sensitive materials from the car, lock same and submit the key to him[DW1] and pick up his ticket.Claimant packed all his court files and books from the car, locked up the car and walked away arrogantly and refused to pick the ticket or submit his car key.

Chukwudi Kingsley Otiaba [DW1] further testified that he was left with no choice than to deflate the tyres to prevent a situation where the claimant would come back for his car without the defendants' knowledge and claim theft of same and hold the defendants liable. The claimant was not at any time restrained, constrained or unlawfully detained. He did not make the statement credited to him by the claimant as he has never had any encounter with any Senior Advocate. Moreover, he was trained to treat members of the public with utmost respect and courtesy irrespective of their rank, position or profession. Claimant could not have paid the sums alleged to a commercial driver when he refused, neglected or failed to replace his worn out tyres or pay the penalty of N3,000.00 charged for the violation.

The further evidence of DW1 is that the only time the claimant showed up at the station was when he came with a court order to collect his vehicle. At that time, he also demanded for the ticket, which he earlier refused to collect, and same was given to him. The ticket is still unpaid till now. The claimant made no effort to collect his car; rather he abandoned same and his car was legally detained as he refused to pick his offence ticket and pay for same. The acts of execution were validly done in the exercise of his duties and within the limits of the power conferred on him by the National Road Traffic Regulation, 2004. If the claimant could afford to pay such a huge amount for public transport within a short period, he could have paid the penalty of N3,000.00 and saved himself a lot of money and trouble. The claimant ought to be a law abiding

citizen by the very fact that he is a lawyer and cannot hold him and his team members liable for his own recklessness or lawlessness.

When DW1 was cross examined, he stated thathe told the claimant that he was impounding his vehicle for worn out tyres violation and because he had photocopy of his vehicle particulars. He had the discretion to issue him a ticket on account of the tyres if he had original vehicle papers. If the claimant had collected the ticket initially when he was told the offence for which he was booked, he would have paid the fine and the vehicle released. He did not charge the claimant to court because initially he refused to collect the ticket. Mr.Otiaba denied that his act was condemned by his superiors in the office.

DW2: The evidence of Augustine AlushiAdamu [the DW2] is similar to that of DW1. He stated that the 1st defendant never referred to theclaimant as a*"Charge and bail Lawyer"*nor did he tell the claimant that he will deal with him as several other lawyers. The 1st defendant never insulted the claimant but only carried out his duty diligently and respectfully.

During cross examination, DW2 said he was there when argument ensued between the claimant and the 1st defendant. When the 1st defendant requested for the claimant's car particulars, the claimant refused and said he is a lawyer and that he is going to the court; he did not talk to the 1st defendant politely. The 1st defendant became angry because the claimant did not talk to him politely; and argument ensued. He heard what the claimant and 1st defendant

were saying. DW2 agreed with the claimant's counsel that the scenario he painted in his statement on oath lasted for about 3 to 4 hours. They charge offenders to court if they refuse to pay their fine or if they drive dangerously.

DW3: The testimony of DW3 [Orji Okechukwu Owen] is similar to the 1st defendant's evidence. He confirmed that he appealed to the claimant before he released his car particulars for inspection. The car particulars were in order and they were returned to the claimant immediately. The 1st defendant never referred to the claimant as a *"Charge and bail Lawyer"* and he did not tell the claimant that he will deal with him as several other lawyers. 1st defendant never insulted the claimant but only carried out his duty diligently and respectfully. After inspecting the claimant's car particulars, Mr.Adamu was instructed by the 1st defendant to impound the car based on the worn out tyres and the fact that the claimant refused to collect the ticket for same.The pictures of thedeflated tyres are Exhibits J1-J5.

During cross examination, DW3 stated that they did not issue the claimant a ticket for the offence of not putting on seat belt and he was not taken to court. This was because they found that the claimant had so many offences; so, they used their discretion. Apart from the seat belt offence and worn out tyres, the claimant committed the offences of dangerous driving and obstructing marshals on duty. Their procedure is that when you commit an offence and you have the original documents of the car, they confiscate the documents and allow you to go. Since the offender had photocopies, the only option was

to impound the car. When Mr. Orji Okechukwu Owen was asked by the cross examiner if there was serious argument and insult between the 1st defendant and the claimant on that day, he explained that:

> *"It was the lawyer's shouting that brought my attention because I was in another vehicle close to them attending to another offender. I heard the lawyer shouting and said: 'I am a lawyer, I am going to deal with you.' That was how I came into their discussion. All the while, the offender had refused to tender the particulars of the vehicle. I then used elderly wisdom to talk to the driver. He later gave me the car particulars which were photocopies; I gave the particulars to my team leader as I said before."*

DW3 maintained that the 1st defendant did not call the claimant *"Charge and bail Lawyer"* and he did not say that: *"I have dealt with many of your type even SANs"*. When there are no lines where they are supposed to be in a tyre, it means that the tyre is worn-out. That was what they noticed in the claimant's car tyres which made them to give him ticket for worn-out tyres. They spent about 15 minutes at the scene where the claimant was arrested.

Issues for determination:

At the end of the trial, N. I. OkpoEsq. filed the defendants' final address on 26/4/2019. On the same date, B. J. AkomolafeEsq. filed the claimant's final address. The final addresses were adopted on 12/11/2019.

Learned counsel for the defendants formulated these three issues for the Court's determination:

1. Whether the defendants have the power to impound the plaintiff's car.
2. Whether the plaintiff has proved the act of defamation against the defendant to entitle him to the reliefs sought.
3. Whether the plaintiff is entitled to the other reliefs sought in his claim against the defendants.

For his part, learned counsel for the claimant also posed three issues for the Court's determination. These are:

1. Whether or not the cause of conduct of the defendants amounts to harassment of the claimant to warrant the award of damages against the defendants in the circumstances.
2. Whether or not the claimant is entitled to specific damages in the reimbursement of the losses incurred for the unwarranted seizure of his vehicle by the defendants between the day of the seizure and the day of the release.
3. Whether or not the defendants have the power to impound the claimant's car in the circumstances.

From the case presented by the parties and the submissions of both learned counsel, the Court is of the considered opinion that there are three issues for determination. These issues are:

1. Whetherthe claimant proved that the detention of his car by the defendants on 24/10/2011 was wrongful or unlawful.
2. Whether the claimant proved the tort of defamation [i.e. slander]against the1st defendant.
3. Is the claimant entitled to his reliefs in this action?

ISSUE 1

Whether the claimant proved that the detention of his car by the defendants on 24/10/2011 was wrongful or unlawful.

I have already set out the testimonies of the witnesses on both sides of the divide regarding the encounter between the claimant and the 1st defendant and his team members on 24/10/2011. In paragraphs 13, 14 & 21 of the statement of defence, the defendants averred:

> *13. Further to the above, the defendants assert that the reason why the plaintiff was stopped in the first place was because the plaintiff and his passenger were in gross violation of the seat belt regulation and upon being stopped they hurriedly applied the seat belt under the watchful eyes of the 1st defendant and his team members and denied ever being in violation.*

14. *The defendants aver further that plaintiff's animosity and argumentative disposition compelled the 1st defendant and his team to ignore the violation not because the plaintiff was not in violation but to maintain the peace and instead issued him a ticket or charge sheet for his badly worn out tyres which were obvious for all to see including the plaintiff.*

21. *… the whole encounter with the plaintiff did not take more than 10-15 minutes to investigate and a junior officer named A. A. Adamu was asked to impound the Vehicle based on the worn out tyres and the fact of the plaintiff's refusal to collect the ticket, that A. A. Adamu was asked to get into the Vehicle and direct the plaintiff to the Unit Command by the Federal Secretariat and impound same.*

The defendants tendered and relied on Exhibits J1-J5 as pictures of the worn out tyres; and the notice of offence sheet dated 24/10/2011 [Exhibit H] to prove the averments that the claimant's car tyres were worn out and that he was issued a notice of offence, which he refused to collect.

In paragraph 3.11 of the claimant's final address, Mr.Akomolafereferred to the avermentsof the defendants that the claimant's car tyres were visibly worn out and that he was issued a ticket. He argued that this allegation was not substantiated by any evidence. Rather, it is in evidence and not disputed that the claimant bought new tyres for the car one week before 24/10/2011 when he had the unfortunate encounter with the defendants. Learned counsel

relied on section 131 of the Evidence Act, 2011 and the case of **Ajigbotosho v. R.C.C. Ltd. [2019] 3 NWLR [Pt. 1659] 287** to support the principle that he who asserts must prove his assertion.

Now, from the pleadings of the defendants set out above, the defendants made it clear that the claimant's car was impounded *"based on the worn out tyres and the fact of the plaintiff's refusal to collect the ticket"* issued to him *"for his badly worn out tyres"*. The claimant did not file a reply to the statement of defence to react to, or challenge,these averments. In **Achonye&Anor. v. Eze&Anor. [2014] LPELR-23782 [CA],** the position of the law was restated that where the statement of defence raises new issues of fact not arising from the statement of claim, the plaintiff has a duty to deal with the new issues of fact in his reply otherwise, the facts will be deemed admitted by the plaintiff.

Also, in **Cyprian v. Uzo [2015] LPELR-40764 [CA],** it was held that where the plaintiff fails to file a reply to averments in a statement of defence which have not been taken care of by averments in his statement of claim, he would be deemed to have admitted the averments in the statement of defence. The Court of Appeal relied on several decisions including **Adeleke v. Aserifa [1986] 3 NWLR [Pt. 30] 575** and **Ansa v. Ntuk [2009] 9 NWLR [Pt. 1147] 557.** In the instant case, I hold that the averments in the statement of claim did not take care of the averments in paragraphs 13 & 14 of the statement of defence. Failure of the claimant to file a reply to join issues on the said averments amounted to an admission of the averments.

During cross examination, the PW2 was asked why the claimant's car was impounded. She stated that *"… The car was impounded because they claimed that his tyres were bad, but that was not correct because I know my brother bought new tyres a week before then and the issue of tyres did not arise on that day."* For his part, the claimant stated during cross examination that when he was stopped, he was not issued any ticket for worn-out tyres. The submission of Mr.B. J. Akomolafe that it is in evidenceand undisputed that claimant bought new tyres for the car one week before 24/10/2011 is based on the above evidence of the PW2 under cross examination.

It is trite law that parties are bound by their pleadings and evidence given on a fact not pleaded goes to no issue. See the case of**Longe v. F.B.N. Plc. [2010] LPELR-1793 [SC].** The legal effect is that the above evidence of PW2 and the submission of Mr.Akomolafewill not take the place of facts which the claimant ought to have pleaded in a reply to the statement of defence. In the light of the claimant's admission of the pleadings in paragraphs 13 & 14 of the statement of defence and the notice of offence sheet [Exhibit H], the Court finds as a fact that the defendants issued the claimant a ticket and later impounded his car on 24/10/2011 because the tyres of his car were worn out.

It remains to determine whether the defendants have power to impound or detain the claimant's car on account of worn out tyres.

Learned defence counsel posited that the Federal Road Safety Commission [Establishment] Act 2007 empowers the officers [corps members] of the Commission to act within the powers enshrined in the Act. Counsel referred to the provisions of section 10[4][v] & [ee], [5][h]&[6] of the Act, which read:

Section 10[4][v] & [ee]:

In the exercise of the functions conferred by this section, members of the Corps shall have power to arrest and prosecute persons reasonably suspected of having committed any traffic offence including the following offences and serve such person with court processes or notice of offence sheet -

[v] driving a motor vehicle without a spare tyre or with a tyre whose threading are worn out.

[ee] driving a vehicle not fitted with seat belt or where fitted, not wearing same while the vehicle is in motion.

Section 10[5]:

In the discharge of the functions of the Corps by or under this Act and notwithstanding the provision of section 18[1] of this Act, a member of the Corps shall have power to –

[h] Impound any vehicle by which the offence under this Act is reasonably suspected to have been committed.

Section 10[6]:

The driver or owner of a vehicle shall be liable to pay a sum of two hundred Naira for every day or part thereof during which the vehicle is detained

Provided that if the driver or owner of the vehicle fails to reclaim such vehicle within six months of the date of its detention the Corps may apply to the High Court for an order forfeiting the vehicle to the Corps which may thereafter dispose of the vehicle by public auction and deposit the proceed of the sale in the Government Treasury.

N. I. OkpoEsq.referred to paragraphs 13 & 14 of the statement of defence and argued that the defendants had a reasonable cause to stop the claimant and impound his vehicle given that he ran short of the safety requirement laid down by law. The defendants have power by virtue of section 10[5][h] & [6] of the Act to impound the claimant's vehicle and to keep the impounded or detained vehicle for a period of 6 months for the owner or driver to reclaim it. Learned counsel for the defendants concluded that the defendants acted within the ambit of the law.

In the course of adopting the claimant's final address, Mr. B. J. Akomolafe drew the Court's attention to the National Road Traffic Regulation 2004, which is a subsidiary legislation to the Federal Road Safety Act of 2004. By letter dated 25/11/2019 addressed to the Registrar of the Court - and a copy endorsed to learned defence counsel -Mr.B. J. Akomolafeforwarded the said Regulation to the Court. In his letter, he rightly stated that the Regulation

was retained as part of the Federal Road Safety Commission [Establishment] Act, 2007 by virtue of section 29[2] thereof, which provided that: *"Without prejudice to this Act, the National Road Traffic Regulations 2004 remain in force until a new regulation is made pursuant to this Act."* The new Regulation is the National Road Traffic [Amendment]Regulations 2016 made on 4/1/2016.

Learned counsel for the claimant then submitted that there is only one way to bring up the allegation of worn out tyres made against the claimant, and that is in accordance with Regulations 73[6] & [8] of the National Road Traffic Regulation 2004. He submitted that since the defendants have not proved the allegation as provided by the law, the claimant has no burden to disprove what is irregular before the Court. For clarity, the said Regulations read:

Regulation 73[6]:

> *Where a vehicle is found not to be roadworthy in any respect whatsoever the owner of the vehicle shall be served with a notice in writing as specified in Form MVA 24 set out in Schedule 3 of these Regulations by the appropriate authority setting out the defects to be remedied, and a red sticker pasted on the windscreen of the vehicle and the owner shall not after such notice permit the vehicle to be used or submit the vehicle for license to any authority until such time as the defects have been remedied.*

Regulation 73[8]:

A notice "OFF THE ROAD" shall be affixed on the windscreen of any vehicle found to be unroadworthy by the appropriate authority. The notice shall be as prescribed in Form MVA 25 of Schedule 3.

My respectful view is that the said Regulations 73[6] & [8] are not applicable to this case and are therefore not helpful to the claimant. The said Regulations relate to vehicles found not to be road worthy. In the case before me, thedefendants did not say that the claimant's car was not roadworthy. The above provisions of the Federal Road Safety Commission [Establishment] Act 2007 are clear and unambiguous. The Court agrees with the submission of learned defence counsel that the defendants acted within the said provisions when they impounded the claimant's car on account of worn out tyres and issued him a ticket for the offence.

Before I conclude Issue No. 1, it is necessary to comment on the argument of Mr.Akomolafethat the evidence that the 1st defendant was onlyenforcing his duty was contradicted by his action when he maliciously and recklessly pursued the claimant when the latter drove off to catch up with his case that was coming up that day. Learned claimant's counsel asked:

"What more could prove malice than the pursuit of the claimant on the high way, the double crossing of his vehicle and the blockage of his vehicle on the road regardless of other road users who were put at risk of road mishap from the action of the 1st defendant all because he wanted to apprehend the Claimant

at all cost and deal with him in the like manner with which the 1st defendant had done to other lawyers as was boasted by him."

Mr.Akomolafecited the case of **Orji v. Amara [2016] 14 NWLR [Pt. 1531] 21** for the meaning of malice, which is the intent, without justification or excuse, to commit a wrongful or an illegal act; and the reckless disregard of the law or of a person's legal rights, ill-will or wickedness of heart. In paragraph 3.10 of the claimant's final address, he referred to the meaning of harassment. He relied on the evidence of the claimant and submitted that the conduct of the 1st defendant amounted to flagrant harassment by words and conduct with the intent to irritate, annoy and/or intimidate the claimant.

Both parties agree that on that day, the 1st defendant instructed one of his team members [Mr. A. A. Adamu] to enter the claimant's car. It is not in dispute that the claimant drove out of the scene with Mr.Adamuin his car. The 1st defendant used the 2nd defendant's vehicle and pursued the claimant, overtook his car and obstructed him from going further.

Was the claimant justified when he drove off with DW2? Claimant explained under cross examination that:*"The officer who was asked to sit in my car gave me the go-ahead to move to drop my sister and return back to face whatever they arrested me for."* During cross examination, PW2 said at the time the claimant decided to go and drop her in her office, there was no Road Safety officer inside the car. From the evidence of DW2 [Mr.Adamu] in paragraphs 11 & 12 of his

statement on oath, it is clear that he did not give the claimant *"go-ahead"* or permission to drive out of the scene in the manner he did.

I have referred to the above pieces of evidence to show that the claimant was not justified to have driven offwith the DW2 in the car. Thus, the allegation of malice made against the 1st defendant is untenable.It was proper in the circumstance for the 1st defendant to have pursued the claimant who drove off with his team member [Mr.Adamu]. Having found that defendants acted within the ambit of the Federal Road Safety Commission [Establishment] Act 2007, I also hold that the claimant's allegations of harassment, embarrassment and humiliation were not proved.

ISSUE 2

> ***Whether the claimant proved the tort of defamation [i.e. slander] against the 1st defendant.***

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 his fellow citizens. Slander is a genre of the tort of defamation; it is defamation by spoken words.A defamatory statement is one which has the tendency to injure the reputation of the person to whom it refers, and tends to lower him in the estimation of right thinking members of the society generally and in particular, to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, disdain and disesteem. See the

cases of **Alawiye v. Ogunsanya [2004] 4 NWLR (Pt. 864) 486;** and **Oruwari v. Osler [2013] 5 NWLR [Pt. 1348] 535**.

To succeed in an action for defamation, claimant must prove the following elements: [a] that the words were publishedby the defendant to at least one person other than the claimant; [b] that the words referred to the claimant; [c] that the words are defamatory; and [d] that the words are defamatory of the claimant either in their natural [or ordinary]meaning or by reason of an innuendo. See **Iloabachie v. Iloabachie [2005] 13 NWLR [Pt. 943] 695**;and **Asheik v. Medi Trust Nig. Ltd. [2010] 15 NWLR [Pt. 1215] 114.**

The words complained of by the claimant, which form the basis of the claim for defamation, are pleaded in paragraphs 13 & 23 of his statement of claim where he averred:

> *13. On being told that he was a Legal Practitioner and was due in Court that morning, the 1st defendant to the hearing of his [Plaintiff's] sister, said thus: "CHARGE AND BAIL "LAWYER" I will deal with you as several other lawyers … you people don't know me lawyer my foot, we are all graduates".*
>
> *23. The plaintiff avers that the 1st defendant intentionally elected to defame him being a Legal Practitioner by saying that "I even deal with Senior Advocates so who are you that I will afraid …, I will teach you a lesson, after all, we are all graduates."*

N. I. OkpoEsq.argued that claimant failed to establish the words allegedly uttered by the 1st defendant and that the words are defamatory of him. The case of **Ayubav. Sule [2016] LPELR-40263 [CA]**was referred to. Learned counsel submitted that the statement in paragraph 23 of the statement of claim was not admitted by the 1st defendant and the other defence witnesses. Thus, the words could not have been communicated to a third party. Also, assuming that the 1st defendant uttered the said words,the words cannot constitute defamation because there is nothing bringing the reputation of the claimant to ridicule. At best, such words could be classified as words spoken in the heat of anger, which are not defamatory. I pause to note that Mr. B. J. Akomolafe did not canvass any argument in his final address to support the claim for slander.

The law is well established that in slander, the precise words spoken by the defendant must be set out in the statement of claim and proved in evidence. See**Odikanwo v. Iheanacho [2009] LPELR-8856 [CA]** and **Bekee&Ors. v. Bekee [2012] LPELR-21270 [CA].**It is clear that the averments in paragraphs 13 & 23 of the statement of claim are different. Thus, it would appear that the claimant was not sure of the exact words allegedly spoken by 1st defendant. In other words, the exact words allegedly uttered by the 1st defendant were not set out; more so as the claimant did not aver that the 1st defendant uttered the words pleaded at different times or separately.

Be that as it may, the testimonies of the claimant and his sister [PW2] are that 1st defendant uttered the words complained of. The 1st defendant, DW2 & DW3 denied that the words were spoken. By section 131 of the Evidence Act, the claimant has the evidential burden to prove that the 1st defendant uttered the words complained of. There is no independent evidence to enable the Court make a decision that the 1st defendant uttered the words complained of. The legal effect is that the claimant did not discharge the burden of proof.

However, assuming the claimant proved that the 1st defendant uttered the said words,the law requires him to plead and prove that the said words convey or have a defamatory meaning. In **Ekong v. Otop&Ors. [2014] LPELR-23022 [SC],** it was held that it is not every statement which is made and which annoys a person that is defamatory. It is also not every vulgar statement, mere abuse or insult which is actionable. Thus, I take the view that the claimant has a duty to plead and lead evidence to prove thedefamatory meaning of the spoken words; or what a reasonable man would understand the words to mean; or the innuendo that may arise from the said words. In **Musa v. Arbico Plc. &Ors. [2018] LPELR-44810 [CA],** it was restated that to succeed in a case of defamation, the plaintiff must plead and prove that the words complained of are defamatory.

In the instant case, the claimant ought to plead and adduce evidence to prove that the words: *"Charge and bail Lawyer"* or *"Lawyer my foot"* or *"I will deal with you as several other lawyers"* or *"I even deal with Senior Advocates so who are you*

that I will afraid …, I will teach you a lesson, after all, we are all graduates" conveyed a defamatory meaning. The claimant failed in this regard; this failure is fatal to his case.

I am mindful of the evidence of PW2 that she hated the claimant [her brother] and lawyers generally even though she used to have a lot of respect for lawyers before the incident.However, in the absence of any averment that the said words conveyed a defamatory meaning, this piece of evidence goes to no issue. In addition, it is my view that the saidevidence of PW2is not credible. During cross examination, the PW2 stated that when the claimant's car was impounded, a taxi always came to carry him and she joined him several times in the taxi. In my humble opinion, this piece of evidence rendered incredible and/or unreliable the evidence of PW2 that she hated her brother after his encounter with officers of the 2nd defendant on 24/10/2011.In all, there is no pleading or evidence that the said words injured the claimant's professional standing or reputation.

For the reasons I have given, the decision of the Court is that the claimant failed to prove the allegation of slander against the 1st defendant.

ISSUE 3

Is the claimant entitled to his reliefs in this action?

N. I. OkpoEsq.reiterated the submission that the detention of claimant's car by the defendants was done *intra vires.* Also, the claimant's refusal to pick up the offence sheet andpay the penalty put him in a position where he cannot be heard to complain of infringement of his right. Learned counsel reasoned that the payment for the offence committed would have ended all these but the claimant defiled good wisdom in order to fervent trouble.

For his part, B. J. AkomolafeEsq.put forward arguments to the effect that the claimant is entitled to the award of general damages for the humiliation, harassment and emotional torture he suffered. Also, claimant is entitled to special damages forthe losses he incurred for the unwarranted seizure of his vehicle by the defendants from 24/10/2011 to 30/3/2012 when the car was released to him. He stressed that the claimant went through inconveniences, humiliation and losses *"simply because of the hatred of the 1st defendant to Legal Practitioners"* and the 2nd defendant is vicariously liable for the acts of the 1st defendant.Mr.Akomolafe urged the Court to grant the reliefs of the claimant *"in the interest of justice, to protect the common harassment of Legal Practitioners from vicious and envious public officers."*

The Court adopts its decisions in respect of Issue Nos. 1 & 2 and hold that the claimant is not entitled to any of the reliefs claimed.

CONCLUSION

The claimant's relief 3 for the immediate release of his vehicle has been overtaken by events, the car having been released to him sometime in 2012. Relief 3 is struck out. The other reliefs lack merit and are dismissed. The parties shall bear their costs.

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HON. JUSTICE S. C. ORIJI
[JUDGE]

<u>Appearance of counsel:</u>

1. B. J. AkomolafeEsq. for the claimant; with M. M. AdejuwonEsq. and U. C. MbieluEsq.
2. N. I. OkpoEsq. for the defendants.