IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISON
HOLDEN AT HIGH COURT MAITAMA – ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 32**
CASE NUMBER:	**SUIT NO. FCT/HC/CV/2440/17**
DATE:	**23RD NOVEMBER, 2020**

BETWEEN:

MR. AWAGU PAUL.....CLAIMANT

AND

(1). ECOBANK NIGERIA PLC
(2). CENTRAL BANK OF NIGERIA } .....DEFENDANTS

APPEARANCE:
Gloria David Esq for the Claimant.

B.B. Lawal Esq with E. B. Aigbe Esq for the 1st Defendant.

Anozie Obi Esq with Nonye Enwuzor Esq for the 2nd Defendant.

JUDGMENT

This suit was commenced vide Writ of Summons dated 17th July 2017 but filed on the 8th November 2017. The Claimant claims against the Defendants as follows: -

> ***"(1). A declaration that the 2nd Defendant's publication of the Plaintiff's name in its black book at the instigation of the***

1st Defendant is without lawful justification and is wrongful. Illegal, null and void.

(2). An Order directing the 2nd Defendant to forthwith remove/delete the name of the Plaintiff from its black book.

(3). An Order directing the 1st Defendant to write a letter of apology to the Defendant and publish same in three national dailies within Nigeria.

(4). An Order directing the 1st Defendant to pay to the Plaintiff the sum of N1, 000, 000, 000.00 (One Billion Naira) only as damages for defamation.

(5). An Order directing the 2nd Defendant to pay to the Claimant the sum of N500, 000, 000.00 (Five Hundred Million Naira) only as damages for the 2nd Defendant's previous refusal to remove the name of the Plaintiff from its black book.

(6). Payment of the sum of N100, 000, 000.00 (One Hundred Million Naira) only as general damages for trauma and psychological destruction caused the Plaintiff by the Defendant.

(7). 10% interest on the Judgment sum from the date of Judgment until final liquidation.

(8). Such further Order".

On the other hand, the Defendant upon being served with the originating processes, both filed their respective Statement of Defence. The 1st Defendant filed its Statement of Defence on the 16th November 2018 while the 2nd Defendant filed its own Statement of Defence on the 22nd January 2019.

Pleadings were filed and exchanged by the parties and the case proceeded to full trial.

At the trial, the Claimant called four witnesses namely: -

One Mr. Madubuke Jean Iyke who testified as Pw1. Mr. Kenechukwu Alfred Ikenga-Metu who testified as Pw2, the Claimant himself who testified as Pw3 and one Onoja John Attah who testified as Pw4. The witnesses adopted their Witness Statement on Oath and the following documents were tendered, admitted in evidence and marked as follows:

1. Letter of confirmation of the Plaintiff's appointment by Ecobank to Paul Awagu dated 7th September 2007 as Exhibit A.
2. Letter of promotion written by Eco Bank to Paul Awagu dated 20th December 2020 as Exhibit A1.

3. Letter of promotion written by Eco Bank to Paul Awagu dated 14th June 2020 as Exhibit A2.

4. Letter of commendation by Eco Bank to Paul Awagu dated 8th June 2018 as Exhibit A3.

5. Heritage Bank Offer of Appointment to Paul Awagu dated 13th May 2013 as Exhibit B.

6. Heritage Bank termination letter to Paul Awagu dated 10th June 2014 as Exhibit B2.

7. Eco Bank letter titled, "unlawful Blacklisting of Paul Awagu in the Black Book of CBN" dated 6th September 2016 as Exhibit B3.

8. CBN letter to Enahoro & Associates dated 31st July 2016 as Exhibit B4.

9. A letter issued by the CBN to Henry Chukwudi & Co dated 25th November 2016 as Exhibit B5.

10. Photocopy of Appointment issued by Eco Bank to Paul Awagu dated 1st September 2006 as Exhibit B6.

11. E-mail subject Re: Fraudulent processing of credit at Abuja OAGF branch dated 25th July 2010 as Exhibit B7.

12. A photocopy of letter of Termination of Employment issued by Eco Bank to Paul Awagu dated 24th November 2010 as Exhibit C.

13. Photocopy of suspension letter written by Heritage Bank to Paul Awagu dated 22nd April 2014 as Exhibit C1.

14. E-mail from Heritage Bank to Paul Awagu titled, Query – CBN Black listed staff in HBN Employment dated 22nd April 2014 as Exhibit C2.

15. photocopy of a letter written by Enahoro & Associates to the Director Banking Supervision Department, CBN dated 29th April 2014 as Exhibit C3.

16. Photocopy of a letter written by Enahoro & Associates to the Head, HR Eco Bank dated 5th May 2014 as Exhibit C4.

17. Photocopy of a letter written by Eco Bank to Director Banking Supervision, CBN dated 9th June 2014 as Exhibit C5.

18. Letter written by Henry Chukwudi & Co. to the Managing Director Eco Bank dated 10th August 2016 as Exhibit C6.

19. Letter written by Henry Chukwudi & Co to the Governor of CBN dated 11th August 2016 as Exhibit C7.

20. Letter written by Henry Chukwudi & Co to the Managing Director Eco Bank dated 20th December 2016 Exhibit C8.

21. Eco Bank Human Resources Policy Exhibit D.

22. CTC of CBN letter titled Re: Request to rescind decision on suspension blacklisting of Mr. Paul Awagu by CBN dated 2nd June 2015 and Exhibit D1.

23. CTC of Eco Bank letter titled Re; Request to Rescind Decision on supposed Blacklisting of Mr. Paul Awagu by CBN dated 17th June, 2015 as Exhibit D2.

24. CTC of letter titled Re: unlawful Blacklisting of the name of Paul Awagu former staff of Eco Bank in the Black Book of CBN dated 15th November 2016 a Exhibit D3.

25. CTC of Eco Bank letter titled Re: unlawful Blacklisting of the name of Paul Awagu former staff of Eco Bank in the Black Book of CBN dated 6th December 2016 as Exhibit D4.

26. CTC of CBN letter titled Re: unlawful Blacklisting of the name of Paul Awagu former staff of Eco Bank in the Black Book of CBN dated 29th March 2017 as Exhibit D5.

27. CTC of Eco Bank letter titled Re: unlawful Blacklisting of the name of Paul Awagu former staff of Eco Bank in the Black Boook of CBN dated 5th May 2017 as Exhibit D6.

28. CTC of CBN letter titled Re: unlawful Blacklisting of the name of Paul Awagu former staff of Eco Bank in the Black Book of CBN dated 30th June 2017 as Exhibit D7.

29. CTC of Eco Bank internal memo dated 5th August 2010 as Exhibit D8.

30. CTC of CBN Review of Operational Guidelines for blacklisting as Exhibit E.

31. Photocopy of a letter issued by Eco Bank addressed to Mr. Onoja John Attah dated 17th August 2006 as Exhibit E1.

32. Photocopy of a letter issued by Eco Bank addressed to Mr. Onoja John Attah dated 1st July 2008 as Exhibit E2.

33. Photocopy of handwritten letter by Onoja John Attah addressed to the Branch Manager Eco Bank Nigeria Limited dated 31st February 2012 as Exhibit E3.

34. Photocopy of a letter issued by Heritage Bank addressed to Onoja John Attah for Offer of Employment dated 21st August 2013 as Exhibit E 4.

35. Photocopy of a letter issued by Heritage Bank for termination of appointment addressed to John Attah Onoja dated 10th June 2014 as Exhibit E5.

The Claimant's witnesses were duly cross examined by the Defendants' Counsel respectively.

The Defendant opened their defence and called their sole witness. Miss. Jerumiah Pelem a Human Resources Manager of 1st Defendant

who testified as Dw1 adopted her Statement on Oath deposed to on 16th November 2018. No documents were tendered by the 1st Defendant. Dw1 was cross examined by the Claimant's Counsel as well as Counsel to the 2nd Defendant.

The 2nd Defendant on the other hand opened their defence and called their sole witness. Mr. Bashar Maigari-a Deputy Manager in the Banking Supervision Department of the Central Bank of Nigeria (2nd Defendant), who testified on the 17th of July 2020 as Dw2 adopted his Statement on Oath which was deposed to on the 16th July 2018. The 2nd Defendant relied on the documents tendered by the Claimant ie Exhibits F-F12. Dw2 was duly cross-examined by the Claimant as well as the 1st Defendant's Counsel.

With the testimonies of the Defendants' witnesses, the Defendants closed their case.

Evidence having been concluded, the parties filed and exchanged Written Addresses as stipulated in Order 33 of the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2018.

The 1st Defendant's final Written Address is dated 5th day of August 2020 and filed same day. The 1st Defendant also filed a reply to the Claimant's Final Written Address. The said reply is dated 30th day of September 2020 and filed same day. Also, the 2nd Defendant's Final Written Address is dated 17th day of August 2020 and filed the same day. The 2nd Defendant equally filed a reply on points of law to the Claimant's Final Written Address. The said reply on point of law is dated 30th day of September 2020 and filed same day.

On the other hand, the Claimant's final Written Address is dated 29th September 2020 and filed same day.

In the said 1st Defendant's Final Written Address, learned Counsel formulated three issues for determination to wit: -

(1). Whether the Claimant has sufficiently established its claim of Defamation against the 1st Defendant? (Reliefs A and C).

(2). Whether the Claimant is entitled to Damages for Defamation as well as General Damages? (Reliefs D and F).

(3). Whether the Claimant is entitled to interest on the judgment sum sought? (Relief G).

In arguing the issues Counsel sub-divided issue one into three as follows:

i. Whether the Claimant has established the tort of Defamation against the 1st Defendant.

ii. Whether the 1st Defendant's Disciplinary Report dated 5th August 2010 and 7th December 2010 (Exhibit D8/F7 and F12) is covered by the defence of Justification?

iii. Whether the 1st Defendant's Disciplinary Report dated 5th August 2010 and 7th December 2010 (Exhibits D8/F7 and F12) is covered by the defence of qualified privilege?

On sub-issue one, learned Counsel submitted that the law has since been settled on the point that a Claimant must succeed on the strength of his case and not on the weakness or even absence of a defence. Reliance was placed on the cases of ***ODUTOLA V SANYA (2008) ALL FWLR (Pt. 400) 780 at 793 – Para F – G, HUSSEINI V MOHAMMED (2006) ALL FWLR (Pt. 337) at 600-601. AGURU G AKINLEYE (2006) ALL FWLR (Pt. 337) 526 at 532 Paras F-G.***

Therefore, Counsel submitted that the Claimant's entitlement to the reliefs sought in the Statement of Claim can only be established through the evidence led in support of the claim. As such it was submitted that upon a careful analysis of the entire case of the Claimant; including the evidence led in support of same, it is evident that the Claimant has woefully failed to establish or even substantiate his claim of Defamation against the 1st Defendant.

The learned Counsel referred the Court to Exhibit D8 and submitted that the Claimant has failed to demonstrate (with any credible evidence whatsoever) the defamatory nature of the statements made by the 1st Defendant's Report. In support, Counsel cited the cases of ***CHILEKIED SECURITY SERVICES AND DOG FARMS LIMITED V SCHLUMBERGER NIGERIA LIMITED & ANOR (2018) LPELR-44391 (SC), SKETCH V AJAGBEMOKEFERI (1989) 1 NWLR (PT. 100) 678 at 794, paras A-C.***

In another submission Counsel stated that for the information to be defamatory to the character of the Claimant, same must be false. Reliance was placed on the cases of ***ESENOWO V UKPONG (1999) 6 NWLR (Pt. 608) 671 at 621, Paras F – G, ALHAJI M.K. V. FIRST BANK OF NIGERIA PLC & ANOR (2011) LPELR -8971 (CA).***

Moreso, Counsel referred the Court to the testimony of Pw3 of 24th June 2020 and submitted that the facts contained in Exhibit D8 are not only accurate, but also correct and true and urged the Court to so hold. In that respect, Counsel submitted that the Claimant having failed to demonstrate the defamatory nature of the 1st Defendant's Disciplinary report formulated to the 2nd Defendant, the Claimant's relief to this effect must fail.

On sub-issue two which is whether the 1st Defendant's Disciplinary Report dated 5th August 2010 and 7th December 2010 (Exhibits D8 and F7) is covered by the defence of justification, Counsel stated that the 1st Defendant adopts its submissions under paragraphs 5.9, - 5.13 and submitted that it was prima facie justified in preparing and communicating the facts contained in Exhibit D8 to the 2nd Defendant. He cited the cases of ***ILOABACHIE V ILOABACHIE (2005) 13 NWLR (Pt. 943) at 734 paras B-D; A.C.B LTD V APUGO (2001) 2 SC. 215 at 225 paras 25-30; ANASON FARMS LTD V NAL MERCHANT BANK (1994) 3 NWLR (Pt. 331) 241 at 252 paras B-C.***

It is submitted that the instant facts remain uncontroverted either by oral or documentary evidence placed before this Honourable Court and stated moreso that to the extent that the contents of Exhibit D8 have been established as a truthful and accurate representation of events, the 1st Defendant is availed by the complete defence of justification and the Court is urged to so agree.

Also Counsel urged the Court to discountenance in its entirety the Claimant's erroneous submission that the 1st Defendant's subsequent compassionate plea to remove the Claimant's name from the 2nd Defendant's black book somehow initiates his complicity in the fraudulent transaction aforementioned. Reference was made to Exhibit F12.

In his further submission, learned Counsel stated that the blacklisting of the Claimant was a direct result of his complicity in the aforementioned fraudulent transactions and not due to any error in regarding the nature

of his disengagement from the 1st Defendant. He referred the Court to Exhibits E and F12.

Consequently, Counsel stated that having demonstrated the fact that the Claimant's complicity in the fraudulent transaction led to the termination of his employment, the Court is urged to discountenance all the submissions of the Claimant that 1st Defendant's inadvertence in communicating the nature of his disengagement led to his blacklisting. Counsel referred the Court to Exhibits C4, C5, D2, D4, D7 and F6 respectively.

To that extent, Counsel stated that it is apparent that the 1st Defendant's compassionate plea to the 2nd Defendant, seeking to delist the Claimant from its Black book was never premised on the Claimant's exoneration in respect of his complicity in the fraudulent transaction which led to the termination of his employment with the 1st Defendant and urged the Court to so agree.

Finally on sub issue two, Counsel submitted that the defence of justification will avail the 1st Defendant against any claims of defamation regarding the contents of its Disciplinary Committee Report (Exhibit D) as the 1st Defendant has demonstrated the truthfulness of the contents herein and urged the Court to so agree.

On sub issue three which is whether the 1st Defendant's Disciplinary Committee Report dated 5th August 2010 and 7th December 2010 (Exhibits D8 and F7) are covered by the defence of qualified privilege, Counsel submitted that the 1st Defendant has sufficiently pleaded facts and adduced evidence before this Honourable Court to establish that it was privileged in communicating the termination of the Claimant's employment to the 2nd Defendant. In this regard, reference was made to the cases of ***ADAM V WARD (1917) AC 309, MAMMAN V SALAUDEEN (2005) 18 NWLR (Pt. 958) 478 at 511, paras C-D, AKOMOLFE V GUARDIAN PRESS LTD (2010) 3 NWLR (Pt. 1181) 338 at 358 paras C – E.***

On the word "shall" used in Exhibit E, Counsel cited the cases of ***ABIMBOLA V ADEROJU (1999) 5 NWLR (Pt. 601) 100 at 111, paras F – G, OFFOMAH V AJEGBO (2000) 1 NWLR (Pt. 641) 498 at 505, paras F – G; ADAMS V UMAR (2009) 5 NWLR (Pt. 1133) at 109, paras G – H.***

Furthermore, it is submitted that the 1st Defendant never published its report to any other person other than the 2nd Defendant despite the Claimant's baseless averments to this effect. Therefore, counsel referred the Court to Exhibit E and submitted that the correspondence is covered by the defence of qualified privilege and the Court is urged to so agree.

It is the contention of the learned Counsel that the defence of qualified privilege will only avail the 1st Defendant where it can demonstrate that there was no malice intended by the 1st Defendant in communicating the termination of the Claimant to the 2nd Defendant on grounds of fraud. In this respect, reliance was place on the cases of ***ZABUSKY V DEBAYO DOHERTY (2013) 2 NWLR (Pt. 1338) 320 at 333, paras A – B, EMEAGWARA V STAR PRINTING & PUBLISHING CO. LTD (2000) 10 NWLR (Pt. 676) 489.***

Furthermore, Counsel submitted that there is absolutely no evidence before the Court to establish that the 1st Defendant acted maliciously in communicating the termination of the Claimant's termination to the 2nd Defendant. In support, he cited the case of ***AJERO V UGORJI (1999) 10 NWLR (Pt. 621) 1 at 19, para H.***

Finally on this issue, Counsel submitted that the Claimant has failed to establish (with any shred of evidence) its claim of defamation against the 1st Defendant and urged the Court to determine this issue in favour of the 1st Defendant.

On issue two which is whether the Claimant is entitled to Damages for Defamation as well as general Damages (Reliefs D and F). Counsel submitted that once a principal relief fails, all incidental reliefs thereto must also fail. Reliance was placed on the cases of ***AWONIYI V REG. TRUSTEES OF AMORE (2000) 10 NWLR (Pt. 676) 522 at 539, paras D – E, NWAOGU V ATUMA (2013) 11 NWLR (Pt. 1364) 117 at 156, paras B – E.***

In another submission, Counsel stated that the instant relief must fail as the Claimant failed/omitted to adduce either factual particulars or documentary evidence to justify same as it is trite law that a relief is not granted as a substantiated evidence which has been proved in the trial or hearing of the case. That the Claimant has a duty to prove its entitlement to the reliefs sought in its case. In this respect, Counsel cited the cases of ***DIBAL V EGUMA (2016) LPELR – 41236 (CA), UBA***

PLC V EKANEM (2010) 2 NWLR (Pt. 1177) 181 at 196, paras C-D, OGBIRI V N.A.O.C (2010)14 NWLR (Pt. 1213) 208 at 225 para H.

The learned Counsel also submitted that in civil cases, it is the party who asserts a fact that must prove same and contended that the Claimant have failed to substantiate with any shared of evidence (documentary or otherwise) their claim for defamation against the 1st Defendant or any trauma and psychological disorientation suffered as a direct result of same, this relief cannot and should not succeed and urged the Court to so hold and determine this issue in favour of the 1st Defendant. Reliance was placed on Sections 131 to 133 of the Evidence Act 2011.

In another submission, Counsel stated that the Claimant's relief seeking an Order from the Court directing the 1st Defendant to publish a letter of apology in certain national newspapers must also fail, the Claimant having failed to establish its claim of Defamation against the 1st Defendant cannot be entitled to such an Order and urged the Court to so agree.

On issue three which is whether the Claimant is entitled to interest on the judgment sum sought (Relief G). Counsel submitted that the Claimant's having failed to establish its entitlement to the principal sum above, he cannot therefore be entitled to any interest on that sum whatsoever. He referred the Court to Section 131 of the Evidence Act 2011 and the case of ***VEEPEE INDUSTRIES LTD V COCOA INDUSTRIES LIMITED (2008)13 NWLR (Pt. 1105) at 486.***

Finally, Counsel urged the Court to dismiss this suit with substantive costs against the Claimant, same being wholly frivolous, vexatious and gold digging in nature.

On the other hand, the 2nd Defendant raised four issues for determination in their final Written Address to wit: -

(1). Whether having regards to the Claimant's pleadings and evidence in the case, the cause of action does not essentially border on the executive or administrative action or decision by the Federal Government or any of its agencies, such as to divest this Honourable Court of jurisdiction to hear the suit. (S. 251(1)(d) & (r) of the 1999 Constitution FRN (as amended).

(2). Whether this Honourable Court has jurisdiction to entertain this action being one that touches on the employment and employability of the Claimant having regards to the provision of S. 254(1)(a) of the Constitution FRN (as amended) to divest this Honourable Court of jurisdiction to hear the suit.

(3). Whether having regards to Section 2 of the CBN (EST) Act, Cap C4 LFN and Section 48(4) of BOFIA LFN CAP B3 2004 the 2nd Defendant is liable to the Claimant for the executive and administrative actions carried out without malice in fulfilment of its duties as the apex financial regulator in Nigeria.

(4). Whether the 2nd Defendant is liable to the Claimant for damages in the sum of N500, 000, 000.00 and N1, 000, 000, 000.00 claimed as general damages for trauma and psychological disorientation and 10% interest on the judgment sum having regards to the fact that the Claimant failed to establish the essential ingredients of a party must prove in an action for defamation.

In arguing the issues, learned Counsel to the 2nd Defendant submitted on issue one that jurisdiction is a radical and fundamental prerequisite for adjudication, this is so because if the Court is shown to have no jurisdiction the proceedings however well conducted are a nullity. It would in essence amount to an exercise in futility in this respect, Counsel cited the cases of ***MATARI & ORS V DANGALADIMA & ANOR (1993) LPELR – 25714 (SC); ENYADIKE V OMEHIA & 4 ORS (2010) 11 NWLR (Pt. 1204) 92 at 112, NURTIN & ANOR RTEAN & ORS (2012) LPELR – 7840 (SC), DANGANA & ANOR V USMAN & ORS (2012) LPELR – 25012 (SC).***

In his further submission, Counsel stated that it is an established principle of law that it is the pleadings of the Claimant that determines the jurisdiction of a Court to try a particular cause. In support of this, Counsel cited the case of ***F.C.E. OYO V AKINYEMI (2008) 15 NWLR (Pt. 1109) 21 at 51.***

Consequently, Counsel referred the Court to the Claimant's Statement of Claim particularly paragraphs 16 and 17 and 2nd Defendant's Statement of Defence particularly paragraphs 4 and 5 and stated that the claims against the 2nd Defendant in particular arose from the actions of the Central Bank of Nigeria in the course of carrying out its administrative duty as an agency of the Federal Government of Nigeria. Reference

was also made to the testimony of the Claimant under cross examination by the Counsel to the 2nd Defendant.

In the circumstances, Counsel submitted that the Claimant's claim against the 2nd Defendant as per his Statement of Claim in this suit falls under the "civil causes and matters which the Federal High Court shall have and exercise jurisdiction to determine, to the exclusion of any other Court", the 2nd Defendant being the Central Bank of Nigeria is an agency of the Federal Government and the cause of action does not border on simple contract but on the reliability of the administrative action taken by the 2nd Defendant against the Claimant. Reliance was placed on the case of ***F.C.E. NOSPETCO OIL & GAS LTD V OLORUNNIMBE (2012) 10 NWLR (Pt. 1307) 115 at 158.***

In his further submission, the learned Counsel stated that the cause of action in the instant suit did not arise from a simple contract between the Claimant and the 2nd Defendant but arose from the 2nd Defendant's performance of its administrative functions. As such that the High Court of the FCT lacks jurisdiction to hear and determine the suit. Counsel cited Section 251(1)(d) & (r) of the 1999 Constitution (as amended) and Section 7(1)(d) & (r) of the Federal High Court Act and the cases of ***CBN & ORS V OKOJIE (2015) LPELR – 24740; OBIUWEBI V CBN (2011) LPELR – 2185 (SC), CBN N NWAWKA & ORS (2012) LPELR – 22383 (CA) AND CBN V AUTO IMPORT EXPORT & ANOR (2012) LPELR – 7858 (CA).***

Finally on issue one, Counsel submitted that the appropriate Court vested with jurisdiction to hear the suit including the CBN is the Federal High Court.

On issue two which is whether this Honourable Court has jurisdiction to determine this action being one that touches on the employment and employability of the Claimant having regards to the provision of Section 254(1)(a) of the Constitution FRN (as amended) to divest this Honourable Court of jurisdiction to hear the suit, learned Counsel referred the Court to the Claimant's pleadings particularly paragraphs 38 and 39 of the Statement of Claim and paragraph 16 of the 2nd Defendant's Statement of Defence and submitted that this suit touches on the employment and employability of the Claimant which falls squarely under Section 254(1)(a) & (b) of the 1999 Constitution FRN (as amended) which provides that matters arising from work place therein comes under the exclusive jurisdiction of the National Industrial Court.

Reference was made to the cases of ***MADUKOLU & ORS V NKEMDILIM (1962) LPELR – 24023(SC), IMPERIAL MEDICAL CENTER & ANOR V AHAMEFULA (2107) LPELR-42886 (CA).***

It was also submitted that the law is settled that the jurisdiction of a Court is determinable from the Claimant's claims before the trial Court. In support, Counsel cited the cases of ***NWAGBO & ORS V NATIONAL INTELLIGENCE AGENCY (2018) LPELR – 46201; BARCLAYS BANK V CENTRAL BANK (1976) 6 SC 175 AND ADEYEMI V OPEYORI (1976) 9 -10 SC.***

Finally on issue two, Counsel referred the Court to paragraphs 9 and 10 of the Statement of Claim and submitted that this suit touches on employment and this Honourable Court lacks the jurisdiction to entertain it.

On issue three which is whether having regards to Section 2 of the CBN (EST) Act Cap. C4 LFN and Section 38(4) of BOFIA LFN Cap B3 2004 2nd Defendant is liable to the Claimant for the executive and administrative actions carried out without malice in fulfilment of its duties as the apex financial regulator in Nigeria, the learned Counsel submitted that 2nd Defendant acted in good faith and in accordance with the powers and duties conferred on the Central Bank by the "Review of Operational Guidelines for Blacklisting" (BSD/DIR/GEN/LAB/09/033) (Exhibit F8) which it blacklisted the Claimant.

In another submission Counsel submitted that the 2nd Defendant had no prior relationship with or knowledge of the Claimant before his name was submitted by the 1st Defendant as one of those who had been involved in the fraud case that occurred sometime in 2010, therefore, the 2nd Defendant had no interest in the Claimant so as to defame him as alleged. He cited the cases of ***UBN PLC V AJABULE & ANOR (2011) LPELR -8239 (SC) P. 41; CBN V JUDGMENT BUREAU DE CHANGE LTD (2017) LPELR – 43274 (CA) TABIK V GUARANTY BANK (2011) 6 SCNJ 20.***

Again, Counsel referred the Court to Exhibits D8 and F12 as well as the case of ***CBN V IGWILLO (2007) LPELR- 835 (SC)*** and submitted that the 2nd Defendant in dealing with the Claimant did not act outside the scope of the powers conferred on it to blacklist a person found guilty of

fraud as the essence of power by 2nd Defendant was not in any sense ultra vires as and such it remains valid.

Moreso, Counsel referred the Court to Exhibits F and F2 as well as Exhibit F9 and submitted that the 1st Defendant never complied with the provision of the Guidelines. Similarly, Counsel submitted that notwithstanding that the 1st Defendant in the letter stated that the Claimant's name was inadvertently reported to the CBN for blacklisting, the 2nd Defendant exercised its powers to refuse the request for delisting because the 1st Defendant failed to convince the Bank of the Claimant's non-involvement in the fraud.

Finally on issue three, Counsel submitted that the 2nd Defendant having acted within its powers on the information received from the 1st Defendant about activities in which the Claimant had been involved in 2010, the 2nd Defendant is not liable to the Claimant in any manner claimed.

On issue four, which is whether the 2nd Defendant is liable to the Claimant for the damages in the sum of N500, 000, 000 and N100, 000, 000 claimed as general damages for trauma and psychological disorientation and 10% interest on the judgment sum, having regards to the fact that the Claimant failed to establish the essential ingredients a party must prove in an action for defamation, Counsel submitted that it is trite law that in an action of tort for defamation, there are ingredients that must be established and that the Claimant led no evidence whatsoever to satisfy the essential ingredients that must be proved in a case for defamation. He cited the cases of ***SCHLUMBERS (NIG) LTD V DOG FARMS LTD (2016) LPELR – 12622, THE SKETCH PUBLISHING CO. LTD & ANOR V AJAGBEMOKEFERI (1989) LPELR – 3207 (SC); OKEREKE V UGOEBO (2013) LPELR – 21219 (CA).***

It is the contention of the learned Counsel that none of the Claimant's witnesses testified to the effect that their estimation of him was adversely affected in any way, in fact that all of them stated that they believed that he has been vindicated by the 1st Defendant's letter to the 2nd Defendant and as such they regarded him with high esteem. In support, he cited the case of ***BASHORUN & ORS V OGUNLEWE (1999) LPELR – 6006 (CA).***

Again, Counsel stated in his further submission that the Claimant failed to discharge the burden of proof to specifically, prove his entitlement to the principal judgment sums of N500, 000, 000 claimed against the 2nd Defendant and N100, 000, 000 claimed against the 2nd and 1st Defendants jointly and not entitled to any interest on the judgment sum. Reference was made to Section 131 of the Evidence Act 2011.

Finally, Counsel urged the Court to hold that this Honourable Court lacks jurisdiction to determine this suit and strike out the suit. However, that in the event that the Court holds that this Court has jurisdiction to determine the suit, he urged the Court to give judgment in favour of the 2nd Defendant who cannot be held liable for acts done in furtherance of its powers, duties and responsibilities.

On the part of the Claimant in his final Written Address, two issues were formulated for determination to wit: -

(a). Whether the Plaintiff has established his claim for determination against the Defendants.

(b). Whether the Plaintiff is entitled to the reliefs sought against the Defendants.

In arguing the issues, Counsel submitted on the issue one that the Defendants for no justification, maligned and injured the Plaintiff's reputation.

On the element of defamation Counsel referred the Court to the case of ***SKETCH PUBLISHING COMPANY LIMITED V ALHAJI AJAGBENMOKEFERI (1989) 1 NWLR 678; BURAIMOH V BAMOSHO (1989) 3 NWLR 352 at 364 – 5; SKYE BANK PLC V AKINPELU (2010) 9 NWLR (Pt. 1198) 179.***

The learned Counsel referred to the Court to Exhibit F12 and stated that the 1st Defendant made a false publication to the 2nd Defendant wherein it referred to the Plaintiff as a dismissed staff and a fraudulent individual. Reference was also made to paragraph 12 of the 1st Defendant's Statement of Claim and paragraph 5 of the 2nd Defendant's Statement of Defence.

Consequently, Counsel submitted that it is trite and settled principle of law that admitted facts need no further proof. In support, reliance was

placed on the cases of ***VEEPEE INDUSTRIES LTD V COCOA INDUSTRIES LTD (2008) LPELR – 3461; JOLANA V OLUSANYA (1975) LPELR – 3097; DURU V DURU (2017) LPELR – 42490.***

The learned Counsel referred the Court to Exhibits C5, D4, and F11 and stated that the 1st Defendant has admitted that the submission of the Plaintiff's name to the 2nd Defendant as a dismissed /terminated staff on ground of fraud is false and untrue and he submitted that admitted facts need no further proof. In this respect Counsel cited the cases of ***NNPC V KLIFO (NIG) LTD (2011) 10 NWLR (Pt. 1255) 209; IKARE COMMUNITY BANK V ADMEGUN (2005) 7 NWLR (Pt. 924) 275; OGOLO V FUBARA (2003) 11 NWLR (Pt. 831) 231; ADELEKE V SHARIFA (1986) 3 NWLR (Pt. 30) 575; NONYE V ANYICHIE (1989) 2 NWLR (Pt. 101) 10.***

In another submission, Counsel stated that the 1st Defendant acted with malice in sending the Plaintiff's name to 2nd Defendant for blacklisting and urged the Court to discountenance the oral evidence of Dw1 while suggested that the Plaintiff was involved in fraudulent loan transaction and also submitted that it is settled principle of law that oral evidence cannot vary the contents of a document. In this regard, reliance was placed on the cases of ***ANDREW AYEMWENRE V FESTUS EVBUMWAN (2019) LPELR – 47312 (CA); ADIKE V OBIAREN (2002) NWLR (Pt. 131) 1907 AND JELILI V ADEBOMI (2009) LPELR – 4351 (CA).***

Therefore, Counsel urged the Court to hold that the contents of the Report submitted to the 2nd Defendant which led to the blacklisting of the Plaintiff was false and untrue and was deliberately concocted to defame and which indeed defamed the Plaintiff. Reference was made to Exhibit D.

Again, Counsel referred the Court to Exhibits C2, C5 and D4 and stated that the 2nd Defendant published to Heritage Bank that the Plaintiff was dismissed from the service of the 1st Defendant for fraudulent loan transaction. As said, Counsel submitted that the publication defamed the Plaintiff and was actuated by malice. Reference was made to the testimonies of Pw2 and Pw4.

To that extent, Counsel stated that the testimonies of Pw2 and Pw4 were unimpeachable when subjected to crucible of cross examination and submitted that evidence that is neither controverted nor debunked

remains good and credible evidence which should be relied upon by a trial Judge and accorded probative value. In support of his submission, Counsel cited the cases of ***UBANI V THE STATE (2003) 12 SCJ; MAGAJI V NIGERIA ARMY (2008) 8 NWLR (Pt. 1089) 338; AROGUNDADE V THE STATE (2009) 6 NWLR (Pt. 1136) 165 EBINWE V THE STATE (2011) LPELR -985 (SC).***

The learned Counsel equally urged the Court to hold that the Plaintiff's reputation was lowered in the estimation of the right-thinking members of the society and that the false publication made to 2nd Defendant by the 1st Defendant injured the Plaintiff in his profession as the 2nd Defendant blacklisted the Plaintiff on the basis of the false report.

It is the contention of the learned Counsel that the Plaintiff has been greatly injured in his profession by the false publication that emanated from the 1st and 2nd Defendants and urged the Court to so hold.

Furthermore, Counsel referred the Court to Exhibit E and submitted that the 1st Defendant did not observe the Guidelines for Blacklisting before submitting the name of the Plaintiff for blacklisting and that the 1st Defendant also did not communicate the decision of the Committee, if any to the Plaintiff. Reliance was placed on the case of RUFUS FEMI MAOKEDO V INSPECTOR GENERAL OF POLICE & ANOR (no citation). Also, the Court was referred to the testimony of Dw1 under cross examination.

On the defence of justification raised by the 1st Defendant's Counsel, Counsel to the Claimant submitted that the 1st Defendant did not raise the defence of justification in its Statement of Defence and it is an afterthought to raise in its address. In a similar submission, Counsel stated that in order to succeed upon a plea of Justification, the onus lies upon the 1st Defendant to prove that the whole of the defamatory matter complained of, that is to say, the averments themselves and any reasonable inference to be drawn from them are substantially true. Therefore, Counsel referred the Court to Exhibits C, C5, B6, D4 and F11 and submitted that the 1st Defendant stated that the Plaintiff was not found culpable of fraud and that his name was submitted in error/inadvertence and that the Plaintiff was not dismissed/terminated for any wrong doing as alleged by the 1st Defendant.

To this extent, Counsel submitted that having established that the publication made to the 2nd Defendant by the 1st Defendant was false,

the 1st Defendant cannot rely on defence of justification and urged the Court to so hold.

On the defence of qualified privilege raised by the 1st Defendant's Counsel, the Plaintiff's Counsel submitted that the defence of qualified privilege will not avail an author/publisher of a defamatory statement where his actions were actuated by malice. In support, Counsel cited the cases of ***UKO V MBABA (2017) 4 NWLR (Pt.794) 460 CA; NTA V BABATOPE (1996) 4 NWLR (Pt. 440) 756; ATOYEBI V ODUDU (1990) 6 NWLR (Pt. 157) 384 SC; NEWBREED ORG.LTD V ERHOMESELE (2006) 5 NWLR (Pt. 974) 499 SC.***

In another submission, Counsel stated that the defence of qualified privilege is not available to the 1st Defendant because same was not pleaded and malice defeats the defence of qualified privilege. In this respect, he cited the cases of ***ARE FRANCE V OKWUDIAFOR (2010) LPELR – 3664 (CA); COMPARE AMIEKHAL V OKWILAGE (1962) 2 ALL NLR AND ESENOWO V UKPONG (1999) 6 NWLR (Pt. 608) 611.***

On the issue of justification raised by the 2nd Defendant in their final Written Address, learned Counsel to the Plaintiff submitted that the 2nd Defendant is estopped by raising same as it was determined by Hon. Justice Ashi (of bless memory) in this suit by a considered ruling delivered on 12th November 2018 and Court referred to the record of this Court and urged the Court to take judicial notice of same. He also relied on the case of ***AMOS O. ARO V SALAMI FABOLUDE (1983) LPELR – SC 106 (1986) at pages 21 – 22 (Para E).***

Consequently, Counsel submitted that the 2nd Defendant is stopped from raising same in this suit and urged the Court to so hold.

Furthermore, it is the submission of the Counsel that this Honourable Court has the jurisdiction to entertain the instant case as the law is trite that a Plaintiff's claim determines the jurisdiction of a trial Court. Reference was made to the cases of ***ATT. GENERAL OF FEDERATION (1993) 6 NWLR (Pt. 302) 692; OKOROCHA V UNITED BANK FOR AFRICA PLC (2011) 1 NWLR (Pt. 1228) 348 at 373; OBIUWEUBI V CBN (2011) 7 NWLR (Pt. 247) 465 at 474, paras F – H.***

As such, Counsel referred the Court to the claim of the Plaintiff before the Court and paragraphs 28 and 29 of the Statement of Claim and submitted that the claim is purely on defamation.

In his further submission, Counsel stated that Section 251(1)(D) and (R) of the 1999 Constitution of Federal Republic of Nigeria (As amended) does not affect or is inapplicable to the action of the Plaintiff in this case. And that it is not in every case where the agency of the Federal Government is a party in a suit that the Federal High Court must exercise exclusive jurisdiction. He referred to the case of ***NNOROM V A.G. IMO STATE & ANOR (No citation); OBIUWEBI V CBN (2001) LPELR – 2185 (SC).***

To this extent, Counsel submitted that the Court should discountenance the submission of the 2nd Defendant's Counsel and hold that this Honourable Court has the requisite jurisdiction to hear and determine this matter.

Similarly, Counsel stated that it is the position of the 2nd Defendant that the National Industrial Court has jurisdiction over the instant matter. Therefore, it was the learned Counsel to the Plaintiff's submission that the jurisdiction of the National Industrial Court is fully set in Section 254(1) of the Constitution of FRN 1999 (as Amended) and Section 7(1) of the National Industrial Court Act, 2006 and none of these provisions cover the tort of defamation. That the National Industrial Court is a Court of limited jurisdiction in terms of subject matter which are limited to labour and employment matters. Reference was made to the cases of ***ALIDU ADAH V NATIONAL YOUTH SERVIE CORPS (2004) 13 NWLR (Pt. 891) 639 at 648 (paras B - C); EMMANUEL SABASTIAN AKPAN V UNIVERSITY OF CALABAR (2016) LPELR – 41242.***

The learned Counsel equally submitted that tort of defamation is not ancillary claim but sui generis and the law required to decide the issue cannot be employment or labour law. Moreso, the learned Counsel submitted that the fact that the right of a person is infringed in a work place is not sufficient to confer jurisdiction on the National Industrial Court except employment issues are involved. Reliance was placed on the cases of ***DR. R.E.G. AYO AKINYEMI V CRAWFORD UNIVERSITY (2011) 2 NWLR (Pt. 61) 90 at 110; MR. C. E. OKEKE & 2 ORS V UNION BANK OF NIGERIA PLC (2011) 3 NWLR (Pt. 61) 161 at 183; AGBON V CENTRAL BANK OF NIGERIA (1996) 10 NWLR (Pt. 418) 370.***

To this end, Counsel urged the Court to hold that this Court is the proper Court to determine the instant suit and not the National Industrial Court.

In another submission, Counsel referred the Court to Exhibit E and stated that the 2nd Defendant is required to be circumspect in blacklisting any staff whose name was submitted to it to ensure there was fairness in the processing of the Disciplinary Committee of the Federal Institution involved. Consequently, Counsel submitted that the 2nd Defendant acted ultra vires its powers where it blacklisted the Plaintiff for an offence he did not commit.

In addition, Counsel submitted that the 2nd Defendant acted with malice when it refused to delist the Plaintiff's name from the Black book and urged the court to so hold.

On issue two which is whether the Plaintiff is entitled to the reliefs sought against the Defendants, Counsel submitted that once a case of libel has been established, the victim is entitled to general damages as compensation to vindicate his reputation, for the injury to his feeling and also aggravated damages where the author/publisher is unapologetic or remorseful and where his actions are calculated out of malice or where he persists in a plea of justification that cannot be substantiated. Reliance was placed on the cases of ***OJUKWU V NNORUKA (2001) 1 NWLR (Pt. 641) 348 CA, BASORUN V OGUNLEWE (2000)1 NWLR (Pt. 640) 221 CA.***

Also, the learned Counsel stated that the Court takes into account the station in life of the defamed person and any damage which he may have suffered as a result of the publication of the defamatory matter. In support of this, Counsel cited the case of ***UYO V NIGERIAN NATIONAL PRESS LTD (1974) NSCC VOL. 9 Page 304.***

Finally, Counsel urged the Court to hold that on the balance of probability the Plaintiff is entitled to the reliefs sought against the Defendants in this suit.

I have carefully gone through the Statement of Claim, the witnesses' Statement on Oath and the 1st and 2nd Defendants Statement of Defence and their respective witnesses Statement on Oath. I have equally considered the entire evidence adduced by the parties at the trial including the documentary evidence. In addition, I have studied extensively the final Written Addresses filed and the replies on points of law.

Therefore, having painstakingly done all these, it is my humble view that the various issues for determination raised by Counsel in their respective final Written Addresses can be summed up thus: -

> **"Whether the Claimant has established his claim for defamation against the Defendants on the preponderance of evidence to be entitled to the reliefs sought."**

Before I dwell on the issue, it is germane to begin by stating that it is the case of the Claimant briefly that he was employed by the 1st Defendant on the 1st day of September 2006 pursuant to an interview and he resumed work with the 1st Defendant on 18th September 2006. That on 7th day of September 2007, his appointment with the 1st Defendant was confirmed. That he has served the 1st Defendant meritoriously which earned him series of promotions and commendation by the management of the 1st Defendant.

It is further the case of the Claimant that he was invited in October 2010 to the 1st Defendant's Disciplinary Committee (DC) on alleged fraudulent processing of credit at Abuja OAGF Branch. That the Committee commenced and concluded deliberation as scheduled and wrote a report to the 1st Defendant on her finding and recommendation. That he was suspended indefinitely without pay for four (4) months by the 1st Defendant. Thereafter in November 2010, he was called by the 1st Defendant and handed over a letter of termination of appointment dated the 24th day of November 2010 and he was paid one month salary in lieu of notice and other accrued allowances. And that his appointment was not terminated based on issue of any fraudulent activities and he was neither dismissed by the 1st Defendant.

Moreso, it is the case of the Claimant that after the 1st Defendant terminated his appointment, he applied and was employed by Heritage Bank as banking officer in the cowry banking Group Abuja and he resumed normal Banking duties with Heritage Bank in May 2013.

That pursuant to his satisfactory performance with Heritage bank and prior to his confirmation, Heritage bank concluded a background check on his fact record as is the practice in most financial institutions.

That he was informed by Heritage Bank that the result of the background check from the Defendant portrayed him in a very bad light that he was

dismissed by the 1st Defendant for fraudulent processing of credit. As a result, Heritage bank asked him to proceed on indefinite suspension without pay and was served with a query to explain why he should not be punished having been dismissed by the 1st Defendant on grounds of fraud.

That the 1st Defendant defamed him by sending his name to the 2nd Defendant to blacklist him as having been dismissed for fraudulent activities. That due to the defamatory action of the 1st and 2nd Defendants. Heritage bank terminated his appointment with effect from 10th day of June 2014.

Having pointed out the facts above, I will now proceed to dwell on the issue for determination. But before then, it is on record that the 2nd Defendant raised the issue of jurisdiction of this Honourable Court to hear and determine this suit. Although, the learned Counsel to the Claimant in his response to this issue of jurisdiction argued among other things that since the issue of jurisdiction was earlier raised before my learned brother Hon. Justice Valentine Ashi (of blessed memory) who has overruled same in his considered ruling while handling the matter before his demise, the 2nd Defendant is therefore estopped from raising same here again.

On the other hand, the learned Counsel to the 2nd Defendant in his reply on point of law submitted that trial in this suit started before this Honourable Court de novo and as such he is not estopped from raising again the issue of jurisdiction. He relied on the cases of ***ALHAJI ISIAYAKU YAKUBU ENT. LTD V TARFA & ANOR (2014) LPELR – 24223 (CA); NANA & ORS V NINGI (2018) LPELR – 46399 (CA) NGIGE V OBI (2012) ALL FWLR (Pt. 617) 738 at 757 – 758.***

I have considered the line of argument of both Counsel and I align myself with the submission of the learned Counsel to the 2nd Defendant and hold that the 2nd Defendant's Counsel is not estopped from raising the issue of jurisdiction again since trial in this suit started before this Honourable Court de novo. The consequence of which everything started afresh. In support of this, see the case of ***ORISA V STATE (2015) LPELR-24636 (CA) at PP 23 – 25 para C***.

> **"It is settled law that when a case is begun de novo by another Court or Judge, the current trial supersedes the first and any finding or decision in the first trial is of no moment as**

the finding or action of the Judge or Court who was unable to complete the trial and decision reached by him fizzled out or got rid of when the action is sent for a new trial....”

See also the case of **SAMUEL FADIORA & ANOR V FESTUS GBADEBO & ANOR (1978) 3 SC 219 AT 236.**

Consequently and in the light of the above the submission of the learned Counsel to the Claimant in this respect is hereby overruled.

Having cleared this, it is worthy of note that whenever issue of jurisdiction is raised, it should be give topmost priority being a threshold issue. Therefore, it is settled law that jurisdiction is intrinsic and paramount and any defect in jurisdiction renders any action that may be taken by the Court no matter how well taken and well intentioned, null and void and of no effect. In this respect, see the case of ***NGERE V OKURUKET ‘XIV’ (2017) 5 NWLR (Pt. 1559) 440*** where it was held thus*:* -

“Jurisdiction is the pillar upon which an entire case stands. Instituting an action in a Court of law presupposes that the Court has jurisdiction. But once the Defendant shows that the Court has no jurisdiction the case crumbles. In effect, there is no case before the Court for adjudication. The parties cannot be heard on the merits of the case....”

See also the case of ***LADO V CPC (2011) S.C.N.J 383 at 4031.***

It is the law that in determining whether or not a Court possesses jurisdiction to entertain an action, one of the most fundamental matters to consider is the Writ of Summons and Statement of Claim. In this regard, see the case of ***NAS. V ADESANYA (2003) 2 NWLR (Pt. 803) 97 at 106, paras F – G*** where it was held thus: -

“....At the risk of overemphasising the point we repeat that it is a fundamental principle of law that it is the claim of the Plaintiff which determines the jurisdiction of a Court to entertain same, this is because only too often this point is lost sight of by Courts of trial, as has happened in the instant case....”

See also the cases of ***MADUKOLU V NKEMDILIM (1962) LPELR – 24023 (SC); AZAGBA V NIGERIA COLLEGE OF AVIATION TECHNOLOGY & ANOR (2013) LPELR – P17 paras A – G.***

From a careful examination of the Claimant's claims as endorsed on the Writ of Summons vis-a-vis the facts and surrounding circumstances of this case as enumerated in the Statement of Claim, particularly paragraphs 23, 28 and 29, will show clearly that the gamut of the Claimant's case centres or borders on defamation. For ease of reference, I shall reproduce here under the said paragraphs.

Paragraphs 23 reads thus:

> ***"The Plaintiff avers that the 1st Defendant defamed him by sending his name to the 2nd Defendant to blacklist him as having been dismissed for fraudulent activities".***

Paragraph 20 reads thus:-

> ***"That the defamatory publication was widely read by members of the society within and outside Nigeria, included but not limited to Mr. Busola Onayemi, who resides in Abuja Nigeria, Mr. Kenechukwu Ikenye-Metu, Mr. Ebinaso Obinna Alexander and Mr. Madubuke Jean Iyke".***

Paragraph 29 reads thus:-

> ***"The Plaintiff avers that due to the defamatory action of the 1st and 2nd Defendants that Heritage bank terminated his appointment with effect from 10th day of June 2014"***

In view of the foregoing, the submission of the learned Counsel to the 2nd Defendant that it is Federal High Court that has jurisdiction to hear and determine this suit is overruled because as stated earlier, the claim of the Claimant is not challenging any administrative powers of 2nd Defendant in making an administrative decision in its capacity to blacklist the Claimant as submitted by the learned Counsel in their Written Address.

In addition, Courts being creation of the Constitution, the jurisdiction of the Federal High Court is clearly spelt out in Section 251 (1) of the 1999

Constitution of the Federal Republic of Nigeria (As amended) therefore, I have taken judicial notice of same and there is nowhere defamation is captured therein. As such, it is my considered opinion that defamation being the subject matter of this case, this Honourable Court has unfettered jurisdiction to hear and determine this suit as presently constituted. I so hold. See the cases of ***NAS V ADESANYA (2003) 2 NWLR (Pt. 803) 201; EDEM & ANOR V. ORPHED (NIG) LTD & ANOR (2003) 13 NWLR (Pt. 838) 537.***

At this juncture, it must be emphasised that it is not in every case that once a Federal Government Agency is a party to a suit that automatically confers jurisdiction to the Federal High Court. The Court is enjoined to look beyond parties and also consider the subject matter of the suit.

I must equally add, that I need not waste too much time on the other leg of the argument that whether or not National Industrial Court has jurisdiction to hear this suit as presently constituted. Having held earlier that this suit borders on defamation, there is no gain saying that National Industrial Court has no jurisdiction to hear this suit because it is elementary law that jurisdiction of National Industrial Court is limited to labour and employment matters. See Section 254C of the 1999 Constitution of the Federal Republic of Nigeria (As amended).

In the circumstances, I am of the firm view that this Honourable Court has unfettered jurisdiction to hear and determine this suit. I so hold.

Having resolved the issue of jurisdiction, I will now turn to the issue for determination which is whether the Claimant has established his claim on the preponderance of evidence to be entitled to the reliefs sought.

It is germane to begin by knowing what a defamation is in law. Defamation is defined in Black's Law Dictionary Ninth Edition at page 479 to mean thus: -

> ***"The act of harming the reputation of another by making a false statement to a third person. A false written or oral statement that damages another's reputation..."***

It was particularly defined in the case of **F.M.B.N. V. ADESOKAN (2000) 11 NWLR (Pt. 677) at Page 124, paras E – F, ONNOGHEN JCA** thus.

"By defamation we mean any imputation which may tend to lower the Plaintiff in the estimation of right-thinking members of society generally and expose him to hatred, contempt or ridicule. An imputation may be defamatory whether or not it is believed by those to whom it is published. In the case of libel and slander actionable per se, the matter containing defamatory imputation is actionable without proof of damage. The law will presume that damage flows from such publication...."

Similarly, it was held in the case of ***EDEM V ORPHEO (NIG) LTD (2003) 13 NWLR (Pt. 838) 537 at 558 paras A – B*** thus: -

"...Now, a defamatory imputation consists of the publication to a third person or persons of any words or matter which tend to lower the person defamed in the estimation of right thinking members of society generally or to cut him off from society or to expose him to hatred, contempt or ridicule or to injure his reputation in his office, trade or profession or to injure his financial credit".

Moreso, it is the law that for a Claimant to succeed in an action for defamation, he needs to prove with credible evidence the basic ingredient as enumerated in the cases of **F.M.B.N V. ADESOKAN (2000) 11 NWLR (Pt. 677) at pages 124 – 125, paras H – A** thus: -

"1. Publication of the offending words;

2. That the words complained of refers to the Plaintiff;

3. That the words are defamatory of the Plaintiff;

4. Publication to third parties;

5. Falsity or lack of accuracy in the words used.

6. That there are no justifiable legal grounds for the publication of the words."

It was also held in the same case of **F.M.B.N V. ADESOKAN (supra) at page 122 paras F - H per AMAIZU, J.C.A** that: -

> ***"It is trite law that a person commits the tort of defamation when he or she publishes to a third party word containing an untrue imputation against the reputation of another...."***

See also the cases of ***SKETCH PUBLISHING CO LTD V ALHAJI AJAGBEMOKEFERI (1989) 1 NWLR (Pt. 100) 678; AND NITEL V. TUGBIYELE (2005) 3 NWLR (Pt. 912) 334.***

Let me pause here and evaluate the evidence adduced by the Claimant as the law is trite that he who asserts must prove with credible and admissible evidence. See Section 131(1) of the Evidence Act 2011. Cap E14 LFN 2004.

From the evidence before the Court, there is no dispute as to the fact that there was publication. In other words, there was publication made to the 2nd Defendant by the 1st Defendant which same refers to the Claimant. See Exhibit F12 titled:-

> ***"Re: Staff Dismissed/Terminated/Compulsorily Retired on Grounds of fraud & forgeries".***

See also paragraphs 21 and 23 of the Sta5ement of Claim and paragraph 12 of the 1st Defendant Statement of Defence and paragraph 5 of the 2nd Defendant Statement of Defence.

At this juncture, on what constitutes publication as it relates to the instant case, I refer to the case of ***YAHAYA V MUNCHIKA (2000) 7 NWLR (Pt. 664) 300 at page 314, para A*** where it was held that: -

> ***"....In order to constitute publication, the defamatory matter must be published to a third party and not merely to the Plaintiff himself...."***

Although, as pointed out earlier that there is no dispute as to the fact that there was publication from the evidence before the Court, nevertheless , on importance of publication, I refer to the case of ***NAS V ADESANYA (SUPRA) at 109, paras A – D*** thus: -

> ***"Publication is the life wire of an action in defamation. Indeed, a plaintiff has, prima facie, established a cause of action in defamation as soon as he proved the publication of the defamatory words..."***

Consequently, it is elementary law that admitted facts need no further proof. See the case of ***BAIPHOYS ENT. LTD V. N.DI.C. (2019) 8 NWLR (Pt. 1674) 235.***

The next hurdle which the Claimant needs to cross to prove defamation is are the words used defamatory of the Claimant. The Claimant pleaded in paragraphs 27 and 28 of the Statement of Claim among other things that the 1st and 2nd Defendants defamed him and lowered his estimation before the members of the society and the said defamatory publication was widely read by members of the society within and outside Nigeria.

At the trial, Pw2 testified under cross examination inter alia thus: -

> ***"In the past we were close but after I heard issues relating to the allegation of fraud and the allegations, I felt uncomfortable and I severed all relations with him and I stopped him from coming to my office so, severed the relationship with him".***

Also, the Claimant pleaded in paragraph 29 of the Statement of Claim that due to the defamatory action of the 1st and 2nd Defendants, his appointment with Heritage Bank was terminated with effect from 10th day of June 2014. The Claimant tendered Exhibits B2 and C2.

I have taken my time and gone through the said Exhibits B2 and C2. Exhibit C2 reads in part thus: -

> ***"Feedback from CBN reveals you were dismissed by ECOBANK on November 25, 2010 for fraudulent processing of credit."***

In this respect, I refer to the case of ***BENUE PRINTING AND PUBLISHING CORPORATION V. ALHAJI GWAGWADA (1989) 4 NWLR (Pt. 116) at 439*** where it was held thus:-

> ***"Now, defamation generally is any imputation which tends to lower a person in the estimation of right thinking men or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade, or business..."***

Consequently, I am of the considered opinion that the Claimant in the instant case has proved that the defamatory statement has lowered him in the estimation of right thinking members of the society and injured him in his profession. I so hold.

Furthermore, it is elementary law and well settled that the alleged defamatory statement must be published to a third party. To put it differently, the law requires that apart from the Claimant and the Defendant, other person must have equally read the said published defamatory statement. See the case of **F.M.B.N V ADESOKAN (SUPRA).**

Therefore, in the instant case, from the evidence before the Court, it shows that apart from the Claimant and the Defendant, other persons have equally read the said published defamatory statement.

It is on record that Pw1 statement in his Statement on Oath at paragraph 10 that: -

> ***"That I know as a fact that my perception of the Plaintiff changed especially when I read the query issued to the Plaintiff that the 1st Defendant dismissed the Plaintiff for fraudulent processing of credit".***

Under cross examination of Pw1 by the 1st Defendant's Counsel he stated among other things that: -

> ***"I was not happy with Mr. Paul based on the letter I read from the bank".***

Similarly, Pw2 stated under cross examination inter alia that: -

> ***"The matter pertaining to the query was something that as a banker I got to learn about through colleagues in the banking sector, in Heritage Bank I used to do so during my business interactions there brought to my attention that my friend got querred due to allegation of fraud. It was with them that I first sighted the document".***

In addition, Pw3 equally testified under cross examination among other things that: -

> ***"I came to the conclusion because that was the reason his appointment was terminated with Heritage Bank. Before the termination of his appointment there was a mail which came from Heritage Bank HR with the heading CBN Blacklisted staff and Paul's name was part of the names on the list while I worked at Heritage Bank".***

See also Exhibit C2.

To this end, it is my humble view that apart from the Claimant and the Defendants, there are others who also read the defamatory statement. I so hold.

Furthermore, the next element which the Claimant needs to prove or establish is falsity or lack of accuracy in the words used. In this respect, the Claimant averred in paragraphs 16 and 17 of the Statement of Claim to the effect that his appointment with the 1st Defendant was not terminated based on issue of any fraudulent activities and he was not dismissed by the 1st Defendant. Again, the Claimant averred in paragraph 14 of the Statement of Claim that upon the termination of his appointment, the 1st Defendant paid him one month salary in lieu of notice and other accrued allowances. The Claimant tendered in evidence Exhibits C, C5, D4 and F11.

It must be re-echoed at this juncture that it is trite law that documents speak for themselves. In support of this, I refer to the case of ***AIKI V IDOWU (2006) 9 NWLR (Pt. 984) 47 at 65, paras A – C*** where Court of Appeal held thus:

> ***"Documents when tendered and admitted in Court are like words uttered and do speak for themselves..."***

See also the case of ***AKINBISADE V STATE (2006) 17 NWLR (Pt. 1007) 184 at 201, paras G – H.***

On that note, I have taken my time and studied carefully the said Exhibits C, C5, D4 and F11 and I find from the contents of the said Exhibits that the Claimant was not dismissed by the 1st Defendant and was also not found culpable of the fraud by the 1st Defendant's Disciplinary Committee. Moreso, the 1st Defendant from the Exhibits referred particularly Exhibits C5 and F11 admitted that the Claimant was

not dismissed from its service and equally not found culpable of the said fraud. To this extent, as stated before, it is trite law that admitted facts need no further proof. See the case of ***BAIPHOYS ENT. LTD V N.D.I.C (SUPRA).***

At this point, the question that comes to mind is, why did the 1st Defendant submit the name of the Claimant to the 2nd Defendant for blacklisting?

It is in evidence before the Court via Exhibit F12 that the 1st Defendant submitted the name of the Claimant to the 2nd Defendant for blacklisting. And, the 2nd Defendant acted on same and blacklisted the name of the Claimant as shown in Exhibit C2.

Before I proceed, let me pause and refer to Exhibit E titled "Review of Operational Guidelines for Blacklisting" at page 5, paragraph 4.2. I will reproduce same here for ease of reference.

> ***"CONDITIONS FOR BLACKLISTING, the blacklisted person is anyone who has been terminated or dismissed strictly and as a result of: -***
>
> ****Fraud***
> **** Act of dishonesty***
> **** Conviction".***

From the clear workings of Exhibit E, particularly paragraph 4.2 quoted above, it is abundantly clear that for a person to have his name blacklisted, his appointment must have been terminated or he must have been dismissed strictly as a result of any of the three grounds only. That is, fraud, act of dishonesty and conviction. However, from the totality of evidence before the Court, the Claimant's appointment with the 1st Defendant was not terminated on any of the listed grounds. For clarity and avoidance of doubt, I shall reproduce hereunder paragraph 2 of Exhibit C3. It reads thus: -

> ***"Mr. Awagu Paul Ugochukwu joined the bank on September 18 2006 and was disengaged on November 25, 2010 because his services were no longer required. A copy of the letter of termination dated November 24 2010 is endorsed".***

Consequently, it is trite law that where a procedure is laid down for doing an act, such procedure must be strictly followed. In this respect, see the case of ***UNTHMB V NNOLI (1994) 5 NWLR (Pt. 363) at page 401*** where it was held that:

> ***"When a statute directs that certain procedure be followed before a person can be deprived of his right whether in respect of his person, property or office, such procedure must be strictly followed..."***

To this end, it is my considered opining that the 1st Defendant did not follow the laid down procedure before sending the name of the Claimant whose appointment was not terminated on any of the grounds listed in Exhibit E, to the 2nd Defendant for blacklisting. I so hold.

On the other hand, from the 2nd Defendant's Statement of Defence and the evidence adduced by the 2nd Defendant, it was stated among other things that the 2nd Defendant acted solely on the report submitted by the 1st Defendant indicating that the Claimant's appointment with the 1st Defendant was terminated on grounds of fraud and forgeries which necessitated their action of blacklisting the Claimant. See paragraphs 5 and 7 of the 2nd Defendant's Statement of Defence and paragraphs 3,4,5,7 and 10 of the 2nd Defendant's Witness Statement on Oath.

In addition, under cross examination, Dw2 stated inter alia that: -

> ***"Based on the established procedure, CBN relied on the report from Eco Bank and put the name of Mr. Paul Awagu in the blacklist".***

Consequently, it is my considered opinion in line with the evidence before the Court that the report submitted to the 2nd Defendant by the 1st Defendant ie Exhibit F12 which included the name of the Claimant is inaccurate. I so hold.

To this end, it should be pointed out that the learned Counsel to the 1st Defendant brilliantly submitted in his final Written Address and reply on points of law among other things that the 1st Defendant is covered by the Defence of justification and qualified privilege but sadly, same were not pleaded and no evidence adduced at the trial to that effect. In that regard, it is settled law that address of Counsel however brilliant it is, cannot take the place of evidence. In support of this, see the case of

NNADI & ORS ARIRI (2015) LPELR – 24575 (CA) at page 38, paras A – C, where it was held that: -

> ***"Firstly address of Counsel no matter how erudite, no matter how brilliant and no matter how scintillating or fanciful cannot take the place of hard facts or evidence on record. In other words no amount of ingenious address by learned Counsel can be a substitute for the evidence the Respondent ought to have pointed out from the record. Addressed of Counsel cannot be in vaccum".***

See also the case of ***NATHANIEL OYEKAN & ORS V AMOS AKINRINWA & ORS (1996) LPELR – 2871 (SC).***

In view of the above, the said submission of the learned Counsel to the 1st Defendant cannot stand for the reason stated above. As such, same is hereby overruled. On that note, it is my opinion that Claimant from the evidence before the Court has proved that the 1st Defendant has defamed him by sending his name via Exhibit F12 to the 2nd Defendant. I so hold.

However, I must also state here clearly that on the part of the 2nd Defendant although 2nd Defendant exercised its duties as apex bank but from the evidence before the Court particularly Exhibit E, the 2nd Defendant in my opinion was not diligent in doing so.

Nevertheless, the Claimant's claim of N500, 000, 000.00 (Five Hundred Million Naira) against the 2nd Defendant for the 2nd Defendant's refusal to remove the name of the Claimant from its black book is not sustainable because in my opinion, as stated earlier, the 2nd Defendant acted strictly on the report of the 1st Defendant. See Exhibit F12.

In addition, the 2nd Defendant from the evidence before the Court directed the 1st Defendant on the procedure to follow for the name of the Claimant to be delisted from the black book. See paragraphs 9, 14 and 15 of the 2nd Defendant's Statement of Defence and paragraphs 4,5,7,8, 9 and 10 of the 2nd Defendant Witness's Statement on Oath. See also Exhibit B5.

Therefore the 2nd Defendant having directed the 1st Defendant to follow the procedure for the name of the Claimant to be delisted and there's no evidence before the Court to show that the 1st Defendant did follow the

procedure, this claim against the 2nd Defendant cannot see the light of the day. I so hold.

In the final analysis, from the totality of the evidence before the Court, it is clear that the act of the 1st Defendant submitting the name of the Claimant to the 2nd Defendant for blacklisting has caused the Claimant his employment with Heritage Bank and has rendered Claimant jobless. In this regard, I refer to the case of ***NTA V A.I.C LTD (2018) LPELR – 45320 (CA) at 36 – 37 paras D – E*** where it was held that: -

> ***"....In case of defamation, the assessment of damages to be awarded does not depend on any legal rules but rather, is governed by the peculiar facts and circumstances of a particular case, on the authority of ATOYEBI V ODUDU (SUPRA). Consequently, the Courts are to consider all the relevant and material facts and peculiar circumstances as disclosed in the evidence for the purpose of assessing the quantum of damages a successful party would be entitled to. However, an award of damages must be adequate to assuage for the injury to the Claimant's reputation and atone the character and pride which were assaulted by the defamation...."***

Similarly, it was held in the case of ***EDEM V ORPHEO (NIG) LTD (2003) 13 NWLR (pt. 838) 337 at 558, paras E – G*** that: -

> ***"....Where as in a case of libel or slander actionable perse, the publication of the offensive matter is actionable without proof of actual or special damages, the law will presume that some damage flows from such publication in the ordinary course of things from the mere inclusion of the Plaintiff's absolute right to reputation..."***

In the light of the foregoing and without much ado based on the evidence before the Court, I hereby resolve the sole issue for determination in favour of the Claimant against the 1st Defendant and hold very strongly that the Claimant has proved on the balance of probability that the report of the 1st Defendant i.e. Exhibit F12 submitted to the 2nd Defendant which led to the Claimant being blacklisted is defamatory of the Claimant.

On the whole, the claims of the Claimant before the Court succeeds in part and other fail. Consequently, judgment is hereby entered in favour of the Claimant and it is declared as follows: -

(1). That the 2nd Defendant's publication of the Claimant's name in it black book at the instigation of the 1st Defendant is without justification and is wrongful, illegal null and void.

(2). 2nd Defendant is hereby ordered to forthwith remove/delete the name of the Claimant from its black book.

(3). 1st Defendant is hereby ordered to write a letter of apology to the Claimant and publish same in three National Dailies circulating within Nigeria.

(4). 1st Defendant is hereby ordered to pay the Claimant the sum of **N80, 000, 000.00 (Eighty Million Naira) only** as damages for defamation.

(5). 1st Defendant is hereby ordered to pay to the Claimant the sum of **N5, 000, 000.00 (Five Million Naira) only** as general damages for trauma, and psychological disorientation caused the Claimant by the 1st Defendant.

(6). **10% of interest** is awarded on the judgment sum from the date of judgment until final liquidation.

(7). The claim for the sum of N500, 000, 000.00 (Five Hundred Million Naira) only against the 2nd Defendant has failed and is hereby refused.

I award no cost. Parties shall bear their respective cost.

Signed:

Hon. Justice Samirah Umar Bature

Claimant's Counsel: we are grateful for the well considered Judgment.

B. B. Lawal Esq: We thank your Lordship for the Judgment.