

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

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

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/789/2019

DATE: 5/6/2023

BETWEEN:

DE CHIMEX ENTERPRISES NIG. LTD.....CLAIMANT

AND

ABUJA MUNICIPAL AREA COUNCIL (AMAC)DEFENDANT

APPEARANCES:

I.C. Onwu Esq for the Claimant.

Defendant absent and unrepresented.

JUDGMENT

By a Writ of Summons dated and filed 1st day of January, 2019, the Claimant claims against the Defendant for the following:-

“(a). A declaration that the prosecution of the Claimant by the Defendant at the Magistrate Court Zone 2, Wuse Abuja for failure to disinfect or fumigate its premises as at when due contrary to the provision of Section 7 No. 20 of the Abuja Municipal Area Council Public Pest Control Management and Certification Bye-Law 2012 or contrary to Section 4 of the Abuja Municipal Area Council Pest Control Bye-Law No.20 of 2012 is malicious, illegal and unlawful.

- (b). A declaration that the demand and collection of the sum of N50, 000.00 (Fifty Thousand Naira) from the Claimant by the Defendant as fine charges for Pest Control or failure to fumigate its premises as at when due, without an Order of Court are illegal and unlawful.**
- (c). An Order of this Honourable Court restraining the Defendant from demanding and insisting that the Claimant must fumigate its premises every quarter of the year.**
- (d). An Order of this Honourable Court directing the Defendant to refund the sum of N50, 000.00 (Fifty Thousand Naira) it collected from the Claimant as fine.**
- (e). An Order of this Honourable Court directing the Defendant to pay the sum of N15, 000, 000.00 (Fifteen Million Naira) only to the Claimant as general damages for malicious prosecution and illegal collection of fine.**
- (f). An Order of this Honourable Court directing the Defendant to pay the cost of this action calculated at N1, 000, 000.00 (One Million Naira) only.**
- (g). An Order of this Honourable Court directing the Defendant to pay 15% (Fifteen percent) of the whole judgment sum per annum from the date of judgment until fully paid.”**

Upon being served with the Claimant's originating processes, the Defendant filed its Statement of Defence on 12th day of April, 2019. The Claimant filed its reply to the Statement of Defence on 6th May 2019.

The matter commenced De-novo before this Court on 23rd of March, 2022.

The Claimant called its sole witness, Mr. Elijah Danjuma who testified on 8th November, 2022, adopted his Witness Statement on Oath filed on 12th of September, 2019. Several Exhibits were tendered through the witness. They were admitted in evidence and marked as follows:-

- (1). A Demand Notice dated 29th March 2018 issued by Abuja Municipal Area Council, Environmental Services Department is marked Exhibit A.
- (2). A Record of Proceedings of Senior Magistrate Court of the F.C.T holden at Wuse Zone 2 on 24th October, 2018 is marked Exhibit B.
- (3). A letter of final Reminder written by Head of Operations of Abuja Municipal Area Council Environmental Services Department dated 5th April, 2018 is marked Exhibit C.
- (4). Two certificates of fumigation dated 23rd April, 2018 and 30th October, 2018 are marked Exhibits D1 and D2 respectively.
- (5). A Pre-Action Notice dated 30th November, 2018 is marked Exhibit E1.
- (6). A Judicial Form 2 (FCT) dated 24th October, 2018 is marked Exhibit F.
- (7). An FCMB Deposit Slip and Remita Retrieval Reference (RRR) payment receipt are marked Exhibits G1 and G2 respectively.

Upon failure of the Defendant to appear for cross-examination of CW1 and upon application of Claimant's Counsel, the Defendant's right to cross-examine CW1 was foreclosed.

The Defendant was equally served with hearing notice slated for defence but upon their failure to appear and on application by learned Claimant's Counsel, right of defence was also foreclosed. The Defendant did not call any witness in this suit.

Further hearing notice was severed on the Defendant on the date fixed for final Written Addresses.

However, the Defendant remained absent, unrepresented and did not file any address.

In the determination of this suit, I shall adopt the sole issue formulated by the Claimant in their final Written Address to wit:

“Whether the Claimant has proved its case on the balance of probabilities and entitled to judgment”

It is trite law that he who asserts must prove.

See: ***MAIHAJA V GAIDAM (2017) LPELR-42474 (SC); ELEPHANT INVESTMENT LTD V FIJABI (2015) LPELR-24732 per AUGIE JCA (as he then was); Section 131(1) of the Evidence Act, 2011.***

Relying on the authorities cited on record in that regard learned Claimant's Counsel I.C. Onwu Esq, submitted that in civil cases, (such as in this case) where the evidence of a Claimant is unchallenged and uncontroverted by the Defendant, the standard of proof required of the Claimant becomes minimal. Counsel cited authorities including ***ODEYEMI V NITEL PLC (2009) LPELR-4982 (CA); BALOGUN V UBA LTD (1992) 6 NWLR (Pt.247) 336, among others.***

Submitted moreso that a look at the facts and circumstances of this case clearly shows that the Defendant intimidated and oppressed the Claimant, maliciously prosecuted it and illegally collected fine from it. Submitted further that the Defendant's pest control Bye-Law (No.20) of 2012 clearly and unambiguously provides for two Distinct fumigations with different requirements in Sections 1 and 4 of the Bye-Law respectively.

Indeed, Section1 of the Defendant's Pest Control Bye-Law (No.12) 2012 provides:-

“As from the commencement of this Bye-Law any premises within the territorial jurisdiction of Abuja Municipal Area Council which contains rat holes or rat runs or other similar holes or which are infested with rats shall be de-ratted, disinfected and fumigated for destruction of rats, mice and other kinds of vermins, fleas, bug or other parasites.”

It is submitted by the learned Counsel that the above section of the Bye – Law clearly applies to every premises within the territorial jurisdiction of AMAC which contains rat holes, rat runs or other similar holes or infested with rats and not otherwise. Submitted, therefore, that the Claimant stated through its sole witness before this Honourable Court that its premises does not contain any of the things mentioned in Section 1 of the Bye-Law.

Reference was made to paragraphs 9, 10, 11 and 12 of the Claimant's Witness Statement on oath. They are reproduced hereunder for ease of reference thus:-

- “9. That the Defendant's agents did not show the Defendant's Pest Control Bye-Law to the Claimant but the Claimant later discovered that the Bye-Law is not applicable to it.***
- 10. That further to paragraph 9 hereinabove, the Bye-Law only demands that premises which contain rat hole, rat runs or other similar holes or premises infested with rats are expected to be de-ratted, disinfected and fumigated for the destruction of rats, mice and other kinds of vermins, fleas, bug and other parasites.***
- 11. That the Bye-Law did not require the fumigation mentioned in paragraph 10 hereinabove to be conducted every quarter of a year but requires every regulated food premises/establishment to be fumigated at the beginning of each year and every quarter of the year.***
- 12. That the Claimant does not have rat hole, rat run or other similar holes within its premises at No. 7 Suzan Adoba Street, Life Camp, Abuja.”***

While Section 4 of the Bye-Law provides as follows:-

“All regulated food premises/establishment shall be thoroughly fumigated before registration at the beginning of each year and it should be repeated quarterly.”

To that extent, learned Claimant's Counsel contends that the above section of the Bye-Law which is clear and unambiguous provides for the requirement for fumigation of regulated food premises/establishment at the beginning of each year before registration and the said fumigation to be repeated every quarter of the year and that a certificate issued in that regard shall be one of the requisite conditions for registration and renewal of food premises permit.

Counsel relied on some authorities on record to argue that the words of the statute are clear and unambiguous and the Court ought to give their ordinary literal meaning.

Further submitting that in the instant case, the Claimant stated that it is not regulated food premises or establishment within the provisions of the Bye-Law, and that the chemicals used in the fumigation are hazardous to its staff and products.

It is further contended that there's nothing to show that the Claimant is a regulated registered food premises or that it was ever granted food premises permit by the Defendant or anyone at all. Submitted moreso that the Defendant never demanded the Claimant to register and or renew as a regulated food premises or establishment or even issued the Claimant a food premises permit.

Now let me pause here to consider the arguments canvassed so far on the issue as to whether or not Sections 1 and 4 of the Bye-Law are applicable to the Claimant herein.

From the depositions contained in the Claimant's Witness Statement on Oath, it is clear that the Claimant does not have any issues on its premises as regards rats, rat holes, rat runs etc to bring it within the operation of Section 1 of the Bye-Law, which is clearly in my view unambiguous.

However, the question that comes to mind now here is whether the provisions of Section 4 of the Bye-Law is applicable to the Claimant. From the averments in the Statement of Claim, Claimant is a registered company and a Distributor of drinks from Nigeria Breweries Plc. Further averred that it is a whole saler/Distributor of drinks from Nigeria Breweries Plc, and its office is located at No. 7 Suzan Adoba Street, Life Camp, Abuja within the jurisdiction of this Honourable Court.

Further averred that it does not sell food or deal in food at its address as aforesaid, or anywhere within the F.C.T and its premises at the mentioned address is not a regulated food premises or establishment.

Now Section 9 of the AMAC Bye-Law defines premises as:-

“Premises” means and includes tenements, building, lands, vehicles, restaurants, shop, stores, warehouses and structures of any kind.”

It further defines ***“Fumigation” to mean elimination of insect pest with strong smelling smoke, gas or chemical.”***

Food on the other hand is not clearly defined in the Bye-Law, therefore the Court shall have recourse to definitions of food in some other legislations.

For instance, the Food and Drugs Act, Cap 32 LFN 2004, defines “food” thus:

“Food includes any article manufactured, processed, packaged sold or advertised for use as food or drink for human consumption, chewing gum and any ingredient which may be mixed with food for any purpose....”

(Underlining mine for emphasis).

Similarly, the NAFDAC Act, Cap N1 LFN 2004 defines food as follows:-

“Food” means any article manufactured, sold or advertised for use as food or drink and includes drinking water, chewing gum, and such other ingredients as may be mixed with food for any purpose including supplements for addition to animal and poultry feeds....”

(Underlining mine for emphasis).

Therefore, it is clear from the two definitions above, that food includes drinks. The Claimant herein has averred in its Statement of Claim that it is a distributor of drinks from Nigeria Breweries. It has equally averred that its office is situate at No. 7 Suzan Adoba Street, Life Camp, Abuja.

It is therefore expected that before distributing these drinks from Nigeria Breweries to its various customers, the products will no doubt be kept either in its office, warehouse or any building which clearly comes within the definition of “premises” in the AMAC Bye-Law.

In addition, the drinks to be distributed by the Claimant to its customers are clearly drinks meant for human consumption. Therefore, they must be fit enough to be consumed by the general public i.e. customers of the Claimant.

Moreso, by implication of the definitions of both “food” as well as premises, it is safe to say that the Claimant herein is a regulated food establishment, though not registered. But, in my view comes within the application of Section 4 of the AMAC pest control Bye-Law (No.20) 2012. I so hold.

Therefore, in consequence of its refusal to comply with Section 4 of the Bye-Law of the Defendant, the Defendant issued and served a Demand Notice on the Claimant i.e. Exhibit A, pursuant to Section 7 No. 20, Part 1 - 6(a)(b)(c) of the Environmental Bye-Law of Abuja Municipal Area Council (2012) on Pest Control Management and Certification and requested the Claimant to pay a charge of N100, 000 as an offence under the Bye-Law. The Demand Notice is dated 19th March, 2018,

A final reminder was subsequently issued and served on the Claimant, i.e 5th April 2018, for the refusal to pay the N100, 000 charged. Whereof the Defendant threatened to seal off the premises unless the charges were paid and a comprehensive fumigation is carried out. The third paragraph in Exhibit C however states that if the amount stated on the charge is disputed, the premises should visit the Claimant’s address or call their number.

Subsequently, a criminal summons to an accused was issued and served on the Claimant i.e Exhibit F, for failure to disinfect or fumigate their premises as at when due contrary to Section 7 No. 20 Part 3 of AMAC Public Pest Control Management and Certification Bye-Law 2012.

The summons was issued by the Senior Magistrate Court 6 Zone 2 on the 24th day of October, 2018.

Exhibits D1 and D2 show that the Claimant complied with Section 7 of the Bye-Law and allowed the premises to be fumigated and was issued two certificates of fumigation dated 14th April, 2018 and 30th October, 2018.

The Claimant contends that it has proved a case malicious prosecution against the Defendant for wrongful and illegal collection of fine from the

Claimant, by intimidating, oppressing the Claimant and unlawfully collecting money from it, in that Exhibits A and C clearly show that the Defendant set out from the beginning to intimidate and oppress the Claimant and to collect a charge for an offence (fine) even without conviction.

Counsel submitted in paragraph 4:14 of their address that the Prosecution ended in favour of the Claimant as the same did not lead to its conviction. That the law is that for purposes of malicious prosecution, the criminal proceedings end in favour of the accused or Defendant if it does not lead to conviction even if it was withdrawn by the Complainant and or struck out by the Court as in the instant case.

Counsel relied on the case of **WICKS V LEE (189) 151 ER 115 and CASOY AUTOMOBILE RENAULT OF CANADA LTD (1963) 42 D.L.R (2D) 481** among others.

It is further contended that the Claimant was forced to have illegal and hazardous fumigation, and served Demand Notice and final reminder to pay N100, 000 as a charge, later charged the Defendant to Court when the Defendant knew that the Claimant did not commit any offence.

That the same Defendant collected a fine of N50, 000 from the Claimant even though the Claimant was never convicted, contrary to Sections 5 and 8 of the said Pest Control Bye-Law of the Defendant.

Reference was equally made to Exhibits G1 and G2 to argue that Courts have deprecated the imposition and collection of fine by anybody or authority without an Order of a Court, this is because a fine is a punishment for an offence.

That in this case the Defendant was the law maker, the complainant, the investigator, the prosecutor and by imposing and collecting fine, the Court, all in its own case.

The Court is urged to consider the actions and conducts of the Defendant as being a good definition of malicious prosecution and to hold in favour of the Defendant.

Counsel relied in some authorities on record including ***ABDULLAHI V KANO STATE (2015) LPELR-25928 (CA); NOSDRA VS EXXON MOBIL (supra)***.

I have held earlier in this Judgment that the provisions of Section 4 of the AMAC Bye-Law is applicable to the Claimant since it falls under the definition of regulated food premises as envisaged in the Bye-Law.

However, the provision of Sections 5, 7 and 8 of the Bye-Law as regards penalty, conviction and payment of fine are clear and unambiguous. For purpose of clarity I hereby reproduce them hereunder as follows:-

“Section 5

“Any person(s) who contravenes any of the forgoing provisions of this Bye-Law shall on conviction be liable to a fine of N50, 000 (Fifty thousand Naira) for individual and N100, 000 (One Hundred Thousand Naira) for corporate body and closure of the premises until comprehensive fumigation is carried out.”

Section 7

“Any person(s) who obstructs an Environmental Health officer in the process of performing his/her duty under this law shall be deemed to have committed an offence under this Bye-Law, and on conviction shall be liable to a fine of N50, 000 (Fifty thousand Naira) for individual and N100, 000 (One Hundred Thousand Naira) in case of corporate firm, or imprisonment for three (3) months.

Section 8

A Magistrate Court established for the FCT shall have jurisdiction for the trial of offences under this Bye-Law.”

(Underlining mine for emphasis).

Now, looking at the above provisions, it seems to me that whenever there's a violation of the provisions of the Bye-Law, the procedure is for the AMAC to charge the offender to Court for the violation. And on conviction, it is the Magistrate Court established under the FCT for trial of such offences that has the jurisdiction to Order for payment of penalty or fines in accordance with the provisions of the Bye-Law.

Furthermore, Section 5 reproduced earlier goes further to provide in addition to fine, the closure of the premises until a comprehensive fumigation is carried out.

However, it is clear from the facts of this case, that the Defendant was in clear breach of the above provisions of AMAC Bye-Law when it proceeded to impose charges of N100, 000 and fine of N50, 000 without an Order of the Magistrate Court pursuant to Section 8 of the Bye-Law.

On this premise I too commend the decision of the Court of Appeal in the case of **NOSDRA V EXXON MOBIL (supra)** cited by Claimant where the Court held:-

“It is very well known in law that a fine is a criminal sanction. This Court in Abdullahi vs. Kano State (2015) LPELR-25928 (CA) per Abba Aji, JCA defines fine as a payment of money ordered by a Court from a person who has been found guilty of violating law...I must here underline the fact that awarding a fine is a judicial act and it is the sole prerogative of a Court of law under Section 6 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended). No other organization or bodies can usurp that power.”

Likewise, in the case of **AHMED & ORS V ODUTOLA (2019) LPELR-51022 (CA)**, the Court of Appeal on whether a statute/law empowering an administrative body to enforce its provisions can also confer to impose fines and penalties held as follows:-

“....The question that must therefore be asked is whether it is proper for a law to empower an administrative body to have power to not only enforce its provisions, but perform acts which seem to input guilt and punish for same, thus usurping the functions of the Judiciary and the answer is in my view the

negative....on the facts and circumstances of this case, I am of the firm view that the imposition of penalties by the Appellant was ultra vires its powers, especially where no platform was established to observe the principles of natural justice. Penalties or fines are imposed as punishment for an offence or violation of the law....”

I therefore find that the Defendant had no power to impose the fine and charges on the Claimant. They are therefore illegal, null and void.

However, on the contention of the Claimant that it was forced to fumigate its premises with hazardous materials, I’m afraid there is no evidence before the Court to prove that the substances used to fumigate premises of the Claimant are hazardous. This is on the trite principle of law that he who asserts must prove. The Claimant can only succeed on the strength of his case and not on weakness of the defence. I so hold.

I’m not unmindful that the suit is unchallenged per se. However, the onus is on the Claimant to adduce evidence to prove all its claims. I so hold.

See: ***ADAMU V NIGERIAN AIR FORCE & ANOR (2022) LPELR-56587 (SC); CIVIL DESIGN CONSTRUCTION (NIG) LTD V SCOA (NIG) LIMITED (2007) LPELR-870 (SC).***

I have considered the averments contained in the Claimant’s Statement of Claim, Witness Statement on Oath and submissions of Counsel in the final Written Address on the issue of malicious prosecution against the Claimant by the Defendant.

Malicious prosecution could be defined as a tort arising from unsuccessful criminal or civil proceedings, instituted against another party with malice and without probable or reasonable cause. Where any person has been maliciously prosecuted, such person may bring an action in tort seeking damages against the accusers.

See: ***OGBONNA V OGBONNA & ANOR (2014) LPELR-22308 (CA).***

For a Claimant to succeed in an action for malicious prosecution, he or she must plead and prove the following:

1. The prosecution proceedings (normally criminal) were initiated by the Prosecution against the Plaintiff;
2. Termination of the prosecution proceedings was in Plaintiff's favour;
3. No reasonable or probable cause for the prosecution;
4. Evidence of malice on the prosecution's part; and
5. That the Plaintiff suffered actual damage.

See: ***EJIKEME V NWOSU (2002)A 3 NWLR (Pt.754) 356; (2001) LPELR-CA/J/76/94.***

It is equally trite, that the onus is on the Plaintiff to prove each of the elements stated above.

Indeed, in the instant case, from paragraph 23 of the Claimant's Witness Statement on Oath and Exhibits B and F, that the Defendant initiated criminal proceedings against the Claimant on failure to fumigate its premises as at when due contrary to Section 7 No. 20, Part 5 of AMAC Public Pest Control Management and Certification Bye-Law 2012.

The case was subsequently withdrawn on 14th November, 2018 and its name struck out from the list of Defendants as seen in Exhibit B.

The basis for the withdrawal as seen in Exhibit B is that the Defendant i.e Claimant in this suit had complied.

From paragraph 21 of the Claimant's Witness Statement on Oath, it fumigated its premises on 14th April, 2018, and certificate was issued to it by the Defendant on 23rd of April, 2018.

However, it is deposed in paragraphs 23, 24 and 25 thereof as follows:-

"23. That on 22nd October 2018 the Defendant through the Magistrate Court served the Claimant a Criminal Summons having charged the Claimant to Court for failure to disinfect or fumigate its premises as at when due contrary to the provision of Section 7 No. 20 Part 5 of Abuja

Municipal Area Council Public Pest Control Management and Certification Bye-Law 2012.

- 24. That the Defendant did not serve the Claimant and Demand Notice and or Reminder in that quarter of the year before charging it to Court and the Defendant only charged the Claimant to Court in order to oppress it because there is no reason for the criminal charge.**
- 25. That when the Claimant appeared in Court on 24th October, 2018 at the Magistrate Court Zone 2 Wuse, Abuja as directed by the Criminal Summons, the counsel to the Defendant herein at that Court, Mr. A. A. Salim said that the Claimant was charged to Court for failure to fumigate its premises contrary to Section 4 of the Defendant's Pest Control Bye-Law (No. 20) of 2012."**

Furthermore in paragraphs 30, 32, 34 and 37 thereof, it is deposed thus:-

- "30. The Claimant states that after collecting the monies mentioned in paragraphs 28 and 29 hereinabove and imposing a fumigation on the Claimant, the Defendant gave the Claimant a Certificate of fumigation dated 30th October, 2018.**
- 32. After the Defendant's antics and its well orchestrated plan and scheme to intimidate the v and extort money from it, on 14th November, 2018, the Defendant withdrew its charge before the Court against the Claimant and the same was struck out as can be seen from the Record of the Proceedings from the Court.**
- 34. That the Defendant truly knew that the Claimant committed no criminal offence but the Defendant maliciously charged it to Court and maliciously prosecuted the Claimant in order to intimidate it and extort money from it and the Defendant was clearly not carrying out any statutory duty imposed by law.**

37. That unless this Honourable Court intervenes and restrains the Defendant, the Defendant will continue to threaten, harass, intimidate, oppress and extort money from the Claimant and to wrongfully and maliciously prosecute the Claimant.”

Now, it is quite clear from the above averments that the Defendant had prosecuted the Claimant on the basis of not fumigating its premises, when in fact it had done so and the Defendant had even issued it its first Certificate on 23rd of April, 2018. It further continued to harass and intimidate the Claimant to pay the charges and fine while the matter was still pending in Court, which it had no power to do. Thus, Claimant has proved its contention that the prosecution was indeed without any reasonable or probable cause. See: **GARBA V MAIGORO (1992) 5 NWLR (Pt.243) 588.**

Moreso, the Defendant withdrew the case against the Claimant only after it had paid the illegal fines, further proving that the termination of the prosecution proceedings was in the Claimant's favour.

In the case of **FADEYI & ANOR V OWOLABI & ANOR (2014) LPELR-22475 (CA)** the Court of Appeal held that an action on malicious prosecution would fail if it is shown that the trial ended in the conviction of the accused.

Further held thus:-

“Where in the criminal proceedings instituted against the Plaintiff, a nolle prosequi (Prosecutor discontinues prosecution) is entered on behalf of the Plaintiff, the Plaintiff does not need to positively prove his innocence to recover damages for malicious prosecution.”

See: **OGBONNA V OGBONNA & ANOR (supra).**

The Claimant equally averred in paragraph 36 of its Witness Statement on Oath that it was made to spend much money to prosecute this case and had also made the Claimant to spend money to defend the case at the Magistrate Court, thereby proving that Claimant has indeed suffered actual damages, since it incurred cost in the litigation.

In the same vein, the Claimant must equally prove malice which is one of the elements to prove in an action on malicious prosecution.

Now, the word malice, is defined in the Black's Law Dictionary, Abridged 9th Edition, at Page 818 as follows:-

“1. The intent, without justification or excuse, to commit a wrongful act. 2. Reckless disregard of the law or of a person's legal rights. 3. Ill wills, wickedness of heart.”

From the facts and circumstances of this case, the genesis of this suit, was founded on the Claimant's erroneous view that the provisions of Section 4 of the Abuja Municipal Area Council Bye-Law did not apply to it. It refused to fumigate its premises in accordance with the Bye-Law, which triggered the series of events leading to the threats and imposition of fumigation by the Defendant pursuant to its Bye-Law, particularly Section 7 thereof.

The Claimant by its business of storing/distributing drinks in its address, which is meant for public consumption, owes a duty of care to the general public to ensure it maintains the highest health standards required by law for public safety and health.

Although the procedure adopted by the Defendant in carrying out its lawful duties and responsibilities under the Abuja Municipal Area Council Bye-Law was the wrong procedure, I do not see its actions as malicious in any way.

In the case of ***EROMOSELE V WERMER & ORS (2014) LPELR-22183 (CA)***, the Court held as follows:-

“Etymologically, the term malice, as a noun, invariably denotes the intent, without any justification or (lawful) excuse, to commit a wrongful act. It connotes a reckless (negligent) disregard of the law or a person's legal rights. Invariably, malice is characterised by ill-will, wickedness of the heart....the latin malicia means badness, physical or moral wickedness in disposition or in conduct-not specifically or exclusively ill-will or malevolence, hence the malice of English law, including all forms of evil purpose, design, intent, or motive. (But) intent is of two kinds, being either immediate or ulterior, the ulterior being

commonly distinguished as the motive. The term malice is applied in law to both these forms of intent and the result is somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive...”

From the above, it is my considered opinion that in this case, the Claimant has not proved that the action of the Defendant was intentional or that it was done with some wrongful or ulterior motive, or that there was any ill-will etc which would be termed malicious or made mala fide. I so hold.

It is my view that the Claimant has not proved malice which is one of the elements under the law on proof of malicious prosecution.

It is trite that all the elements must be proved conjunctively. I so hold.

Claimant is not entitled to any damages in this regard.

The sole issue for determination is partly resolved in favour of the Claimant.

Reliefs A and C fail and are refused. The Court hereby grants reliefs B and D.

On Relief E, the Court hereby awards **N500, 000.00** as general damages for illegal collection of fine.

On Relief F, the Court hereby assesses cost of this action at **N500, 000.00** and hereby awards same, accordingly.

No Post-Judgment sum is awarded,

Relief g is refused.

Signed:

***Hon. Justice S. U. Bature
5/6/2023.***

