IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/2077/2020

BETWEEN:

HON. ENGR IBRAHIM SHEHU GUSAU, PHD……..CLAIMANT
AND
THE GUARDIAN NEWSPAPER LIMITED……DEFENDANT

JUDGMENT

By the endorsement on the writ and the statement of claim in a suit with No. CV/2077/2020, the claimant seeks for the following reliefs:

1. An order of the court directing the defendant to pay the sum of ₦100,000,000.00 as general and exemplary damages for libel published against the claimant.
2. An order of the court directing the defendant to write a letter of apology to the claimant and publish same in both her newspaper print as well as online through her website; www.guardian.ng.
3. An order of the court directing the defendant to pay 10% judgment sum per month from the date of judgment until final liquidation of the judgment sum.
4. An order of perpetual injunction restraining the defendant either by themselves, servants, privies, agents or otherwise from further publishing or causing to be published same words or any word similarly defamatory of the claimant.

It is stated by the claimant in the statement of claim that the publication of the defendant on the 29th day of May, 2019 and 30th day of May, 2020, in their newspaper

and online platform www.guardian.ng in the articles titled "AFN President Gusau impeached over IAAF's missing $135,000.00" and "AFN may trouble mirror tragedy of a broken system" respectively, read by millions of Nigerians and the world at large is defamatory of the claimant, and there are following words:

> **"The president of Athletics Federation of Nigeria (AFN), Ibrahim Gusau paid the big price yesterday, as he was impeached by the board following his alleged role in the missing $135,000.00 erroneously paid to the country two years ago by world athletics body IAAF.**
>
> **The guardian reported at the weekend that a sharp division had emerged among board members of the AFN, following their meeting with the sports minister, who revealed that he approved N39 Million to Gusau to be refunded to the IAAF shortly after the Asaba 2018 African Senior Athletics Championships.**
>
> **Instead of following the minister's directives, Gusau and Adeleye allegedly used the money to purchase kits for Nigerian athletics without informing other board members".**

The claimant averred that when his attention was drawn to the said defamatory publication by his friends who read it, he immediately instructed his solicitor: Chinedu G. Udora, Esq of Clemesis Associate to write a letter to the defendant on the said libelous publication and requesting that they retract the said publication in their subsequent editorial, and the solicitor wrote a letter to the defendant dated the 8th day of July, 2019 through its Editor in Chief and the letter was delivered on the 10th July, 2019 to the defendant through DHL Express Services, and the letter

contained the true state of facts as regards the defamatory words published by the defendant as well as flash drive containing the true state of facts on the issue from various press conferences given by the claimant, yet the defendant refused to publish the true vide of the story given to him, rather the defendant continued to malign the integrity of the claimant and his reputation without justification while suppressing the truth of the matter.

The claimant averred that the defendant on the 30th day of May, 2020 further published or cause to be written and published the below stated words through an article titled: AFN's many troubles mirror tragedy of a website "www.guardian.ng (https./guardian.ng/sport/atns/many-troubles-mirror-tragedy-of-a-broken system) which said wards are defamatory.

The claimant averred that in line 6 paragraph 1 "Even before Sunday Dare came on board as a minister, the AFN had been embroiled in a leadership crisis, which stemmed from corruption and underhand practices allegedly perpetrated by its former president, Shehu Ibrahim Gusau"

In line 3 paragraph 3 "There is the issue of an N13 Million fund for the African Youth and Junior champion ships in Abidjan, which was allegedly mismanaged, as well as the allegation that Gusau and a few others secretly obtain N35 Million (about $92,000) for the IAAF, world championships in Doha"

Paragraph 4 "the allegations eventually led to the ouster of Gusau as AFN president, but that was after Nigeria's image had been damaged severely at the world stage"

Paragraph 11 " Like every other federation in the country, the AFN has been a source of embarrassment to the nation without any attempt by the government to call

the officials to order" Adelabu told the Guardian "considering the huge corruption charges against the federation president, the question that readily comes to mind is why was he in charge of funds?

Paragraphs 23, 24, 26, 29 "Among other things, Gusau's administration was accused of violating the constitution of the AFN, misappropriation and misapplication of funds, a penchant for taking unilateral decisions without the board's approval and non-payment of athlete's allowance in full or none at all in some cases.

The new president, George, had alleged that Gusau obtained N35 Million (about $92,000) for the IAAF World Championships in Doha in September and October last year without the board's knowledge, adding that he gave $38,000 to the former Secretary-General to pay athletes allowances"

"The money was not enough as the 25 athletes are owed $300 each as they were only able to get $1,000 out of the $1,300 agreed on for each member of the team "he said.

"The coaches are also owed $300 each. What did Gusau do with the balance of $54,000 especially when you take into cognisance that World Athletics (IAAF) took care of all 25 athletes' travel and accommodation 100 percent".

Gusau collected N13 Million for the African Youth and Junior Championships in Abidjan in April last year. The sports Ministry released the money after the event. The young athletes who traveled by road for three days to the event and three days on their return were not paid a dime. It was the sports minister, Sunday Dare who paid the athletes soon after he came in. We heard Mr. Gusau said he used the money to pay for Nigeria's participation in the World Relays

in Yokohama, Japan, in May last year. This is clearly a case of misapplication of the fund."

"Do you know that no participation in the World Relays was partly funded by World Athletics? Mr. Gusau had also deprived the Secretary-General of his constitutional function as the custodian of the Federation's records, documents and properties by changing the password of the federation's email server with World Athletics since April last year "George stated.

AFN also accused Gusau of nominating a private bank account, Dynamic Sporting Solutions owned by Sunday Adeleye to warehouse payments said to have been made by PUMA on behalf of the federation, a clear breach of not only the AFN constitution, which makes the secretary-general the 'A' signatory to the federation's bank account, but also Nigeria's extant laws".

The claimant averred that the above defamatory words in their natural and ordinary meaning were understood to refer to the claimant as the claimant is a public office holder and is not the president of Athletics Federation of Nigeria (AFN) having been purportedly impeached for being corrupt.

That the claimant is a criminal who is not one to be trusted with public funds. That the claimant is corrupt and has misappropriated funds belonging to AFN. That the claimant has been charged with criminal offence for corruption.

That the claimant is red headed and takes unilateral decisions without board's approval. That the claimant is the cause of the problems bedeviling the AFN largely as a result of his being corrupt by way of embezzlement and misappropriation of funds.

The claimant averred that the defamatory words published were calculated to disparage him as a politician and a public office holder whom should not be trusted with public office and funds.

In his statement of defence, the defendant admitted to paragraphs 6 and 2 and to the extent that it is a publisher of the Guardian Newspaper but denies all other claims.

The defendant denied paragraphs 1, 3, 4, 5, 7, 8, 9, 10, 11, 12 and 13 of the statement of claim and put the claimant to strictest proof.

The defendant award that in the publication, nothing concerning, relating or referring to the claimant anything that is maliciously offensive, false or defamatory, nor does it in any way disparage the claimant's person.

The defendant pleads defence of qualified privilege on the following particulars:

a. That the defendant is the publisher of a National Newspaper and is obliged to report makers of public interest including the activities and policies of the government way of its agencies;
b. AFN is the governing body for the sports of athletics in Nigeria and its activities are matters of public interest and concern. That the publication is fair and accurate;
c. The defendant does not hold the claimant in malice or contempt and never made any publication against the claimant anywhere.

In the course of the trial, the claimant put in two witnesses while the defendant put in one witness, and they were all cross examined by the adverse counsel.

At the end of the trial, the two counsel proffered final written address and adopted same.

In his final written address, the counsel to the defendant formulated two issues for determination, thus:

1. **Whether the claimant has made a case of libel against the defendant?**
2. **Whether the defendant is entitled to the defence or qualified privilege in the circumstances of this suit?**

On issue No. 1, the counsel cited the case of **Sule V. Orisajimi (2019) 10 NWLR (pt 1681) 513 at 526 – 527, paras. H-B** and submitted that there are facts the claimant needs to proved in the suit of libel as follows:-

1. **That the defendant published a statement in a permanent form.**
2. **That the statement referred to him.**
3. **That the statement was defamatory of him in the sense that it lowered him in the estimation of right-thinking members of the society; or it exposed him to hatred, ridicule or contempt, or it injured his reputation in his office, trade or profession, or it injured his financial credit, and he cited the cases of Sketch V. Ajagbemokeferi (1989) 1 NWLR (pt 100) 678;** and **A.C.B, LTD V. B.B, Apugo (1995) 6 NWLR (pt 399) 65.**

On the first fact, the counsel submitted that in any case of libel, pleadings are tremendous importance and so the claimant who claims that an article is libelous of him must reproduce the whole article verbatim or the particular passage he complains of his pleadings, no matter how long the article is, and he cited the cases of **D.D.G.A. Pharmaceuticals V. Times Newspapers Ltd (1979) 12 NSCC 43; S.O.N. Okafor V D.O. Ikeanyi & Ors (1979) A.N.LR 65** and **Guardian Newspapers Ltd V. Ajeh (2011) 10 NWLR (pt 1256) 574.**

That counsel submitted that all the elements for the proof of libel must be contained in the words set out in the pleadings as libelous words, and he cited the case of **Guardian Newspapers Ltd V. Ajeh (supra).**

The counsel submitted that the words set out in paragraph 4 of the statement of claim as the defendant's publication of the 29th May, 2019 are different unconnected paragraphs of the supposed publication, stitched together or arranged by the claimant himself as the offensive words published.

The counsel submitted that the words set out in paragraph 8 of the statement of claim as the defendant's publication of the 30th May, 2020 are clearly unrelated words pieced together by the claimant who expressly refers to them respectively as Line 6 paragraph 1, Line 3 paragraph 3, paragraph 11 and paragraphs 23, 24, 26 and 29, and they are not one intelligible text of words as contained in the supposed publication by the defendant, but stitched together or arrangement of words by the claimant himself.

The counsel urged the court to find that the words set out do not comply with the requirement upon which is claimed and thus strike out the suit.

On the fact No. 3, the counsel cited the case of **Sule V. Orisajimi (supra)** where it was held that the statement was defamatory of him in the sense that it lowered him in the estimation of right-thinking members of the society or it exposed him to hatred, ridicule or contempt, or it injured his reputation in his office, trade or profession, or it injured his financial credit, and he cited also the case of **Sketch V. Ajagbemokeferi (supra)** to the effect that the claimant must prove the publication lowered him in the estimation of right-thinking members of the society.

The counsel submitted that the word "reputation" is defined in the Black's Law Dictionary to mean the esteem in which someone is hold, or goodwill extended to or confidence reposed in that person by others with respect to personal character, private or domestic life, professional or business qualifications, social dealings, conduct, status or financial dealings. He submitted that it connotes an assessment by the third party or a perception by others.

The counsel referred to section 126 of the Evidence Act 2011 specifically to paragraph (c) which provides that to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in the manner. The counsel cited the case of **Unity Bank Plc V. Oluwafemi (2017) All FWLR (pt 382) 1923 at 1949, paras. F-H** to the effect that there must be evidence from that third party that he no longer holds the person allegedly referred on the same high regard that he used to do, and he cited the case of **Iwueke V. IBC (2005) 17 NWLR (pt 965) p. 477 at 482 para. G** to the effect that the reaction of the third party to the publication complained of and not who the plaintiff thinks about, and he cited the case of **Nsirim V. Nsirim (1990) 3 NWLR (pt 138) 285 at 285.**

The counsel also cited the case of **Iwueke V. IBC (supra)** and submitted that the claimant was obliged to prove third party evidence, and the claimant failed and or neglected to call requisite third party evidence to establish the fact. That the CW or PW1 was the claimant himself and the evidence of the PW2 purports to be evidence of the lowering of the reputation of the claimant in the estimation of others does not meet the threshold of the required evidence by law because the evidence is that he only read the purported publication of the defendant of the 30th May,

2020, and he never read the supposed earlier publication of 29th May, 2019, and submitted that his evidence must be limited to the said letter publication and not the former.

That there is no third party evidence of lowering of reputation in respect of 29th May, 2019 publication.

That the evidence of PW2 is in fatal breach of section 117 1(b) of the Evidence Act, 2011 and that the PW2 during cross-examination admitted a special close relationship with the claimant as he lived in the claimant's house, and urged the court to expunge the evidence.

On the issue No. 2, the counsel submitted that in paragraph 6 of the statement of defence, the defendant pleaded the defence of qualified privilege to the effect that it is publisher of a National Newspaper and is obliged to report matters of public interest including the activities of government and its agencies, and that the Athletics Federation of Nigeria (AFN) is the governing body of athletics in Nigeria under the Ministry of Sports, and that its publication is a fair and accurate report of the activities of the AFN including that of the appointment into removal from and the general operations of the office of the president of AFN.

The counsel submitted that the defendant did not hold the claimant in malice, and that upon the receipt by the defendant of the claimant's rebuttal of the claims in its publication, it did publish the claimant rebuttals and statement in subsequent edition of 24th July, 2019 and 9th December, 2020.

The counsel submitted that the defendant vide the testimony of DW1 has testified to the above facts as per paragraphs 6 – 12 of the statement on oath.

That the claimant admitted that there was a crisis in AFN and that the allegations made against the claimant

were intact truly made by the other side to the crisis, as per paragraph 3 of the statement of claim and paragraph 4(c) of the reply referred. The claimant also admitted that the defendant had published his rebuttal letters concerning its publication of 29th May, 2019, as per paragraph 4(h) of the Reply.

The counsel cited the case of **Iloabuchie V. Iloabuchie (2005) 13 NWLR (pt 943) 695** to the effect that in order to destroy or neutralize the defence of qualified privilege, it is incumbent to prove malice by filing Reply to a defence of qualified privilege should resonate with facts and particulars that show the malicious intention of the publisher.

The counsel quoted Order 15 Rule 17 (2) of the Rules of this court in support of the above position, and submitted that the rule is consistent with the rule of pleadings which require the filing of a reply and he cited the case of **Philips V. E.O.E & Ind Co. Ltd (2013) 1 NWLR (pt 1336) 618 at 638 – 639 paras. H-B** as to the new issue raised. The counsel cited the cases of **Obot V. CBN (1997) 8 NWLR (pt 310) 140; Spasco Vehicle & Plant Hire Co. V. Alraine (Nig.) Ltd (1995) 8 NWLR (pt 416) 655; Ishola V. SGBN Ltd (1997) 2 NWLR (pt 108) 164; Ali Salihu (2011) 1 NWLR (pt. 228) p. 227 Egesimba V. Onuzurike (2002) 15 NWLR (pt 791) 466.**

The counsel submitted that in the instant case, the claimant did not in any way file a reply to plead express and actual malice, and he did not any particulars from which such express and actual malice may be inferred.

The counsel submitted that what the claimant pleaded in reply is far from being particulars or express and actual malice by the defendant's suppositions and deductions, and the counsel gave an example thus:

In paragraph 4(a) and (i) of the reply, the claimant pleads that there is no finding of guilt against him to warrant the defendant's publication.

In paragraph 4(b) of the Reply, the claimant alleges that the defendant knew that its publication was untrue.

In paragraph 4(c) of the Reply, the claimant similarly alleges without any particular that the defendant knew that the allegations were falsehood.

In paragraph 4(d) and (e) of the Reply, the claimant only claims that he informed the defendant of the true state of facts.

In paragraph 4(f) (g) and (h) of the Reply, the claimant claims that after the defendant had published its rebuttal in its 24th July, 2019 and 9th December, 2019 editions, it yet went ahead to publish another defamatory story on the crisis, and the letter of rebuttal concerning 29th May, 2019 publication does not deal with the substance of the latter publication of May, 30, 2020, and the counsel cited the case of **Mr. Viswanathan V. Mr. Godwin Etim & Anor. (2021) LPELR – 56396 CA,** and he urged the court to hold that defence of qualified privilege succeeds and dismiss the claimant's suit.

On the claim of exemplary damages made by the claimant, the counsel to the defendant cited the case of **N.D.L.E.A V. Omidina (2013) 16 NWLR (pt 1381) p. 589 at 616, paras. C-D,** and the case of **Rookes V. Barnard (1964) AC 1129** to the effect that where exemplary damages may be awarded in cases of:

1. Oppressive, arbitrary and unconstitutional actions of servants of the government;
2. Where the defendant's conduct had been calculated by him to make a profit for himself which

might well exceed the compensation payable to the claimant.

3. Where expressly authorised by statute; and he cited the cases of **Williams V. Daily Times (1990) 1 NWLR (pt 124) p. 1; Alele Williams V. Sagay (1995) 5 NWLR (pt 396) p. 454, paras. A-D;** and **Odiba V. Muemue (1999) 10 NWLR (pt 662) p. 189 paras. H-C**, to the effect that the claimant must plead and prove any of the circumstances which would entitled him to such relief. The counsel submitted that paragraph 10 of the statement of claim does not plead any specific fact but pleads a conclusion or a submission by the claimant, and even if it is a valid pleading, the claim does not provide evidence to support it; and the PW1 does not provide any evidence as to how he arrived at that belief or the basis or same. The counsel quoted the provision of section 115 (3) 2(4) of the Evidence Act, 2011, and he urged the court to hold that the claimant has neither properly pleaded nor proved an entitlement to exemplary damages.

On the claim of general damages made by the claimant, the counsel to the defendant submitted that the claimant has not established that the defendant has committed libel against him and as such the claimant is not entitled to the general damages.

The counsel submitted that the reliefs and the heads under which they are sought are unclear and liable to be declined.

The counsel submitted that the relief is incompetent for being speculative and imprecise as the claimant does not say specifically how much he claims for general damages, and how much for aggravated damages in his reliefs, and he cited the case of **Emmanuel V. Adebayo – Doherty**

(2009) 1 NWLR (pt 1123) p. 505 at 522, paras. A-B where the Court of Appeal in endorsing the case of **Lufthansa V. Odiaje (2006) 7 NWLR (pt 978) p. 34** held that every relief must be clear, precise and qualifiable and must be devoid of speculation.

The counsel submitted that the court has no obligation to formulate, modify or clarify the plaintiff's claims, and he cited the case of **Reptico V.S.A. Geneva V. Afribank Nig. Plc (2013) 14 NWLR (pt 1373) 172,** and submitted that the claimant cannot saddle this court with the arithmetic task of gearing which amount the claimant claims as aggravated and exemplary damage, and urged the court to dismiss the claim.

In his written final address, the counsel to the claimant raised the following issue for determination:

> **Whether the claimant has proven his case to be entitled to the reliefs sought?**

The counsel started with the definition of qualified privilege as provided in section 9 of the Defamation Act of FCT to the effect that a publication in a Newspaper shall be privileged unless the publication is proved to be made with malice, and the provision of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the Newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and the defendant has refused to do so, or has done so in a manner not adequate or reasonable having regards to all the circumstances. The counsel continued and submitted that though the Defamation Act of the FCT did not expressly define the term "defamation", its definition can be found in decided authorities, and to succeed in action for

defamation, there are five ingredients that must co-exist and be proved as follows:

a. That the defendant published the defamatory words to person or persons other than the claimant.
b. That the defamatory words referred to the claimant.
c. That the words complained of must have been published.
d. That the words published were defamatory in that sense that it lowered him in the estimation of right-thinking person or injured his reputation or character.
e. That the publication and imputation therein were false, and he cited the case of **Guardian Newspapers Ltd. V. Ajeh (2001) 10 NWLR (pt 1256) 574 at 588.**

On the ingredient in paragraph (a) the counsel to the defendant submitted in paragraph 4.1.1 of its final orders that the claimant ought to have reproduced in its statement of claim the whole words published in their two newspapers as against the manner it was set out in paragraph 4 of the statement of claim, the counsel submitted that the claimant is required to plead only the words that are alleged to be defamatory to him and not the entire publication, and he cited the case of **Afribank Nigeria Plc V. Onyima & Anor. (2003) LPELR – 5207 (CA)** and he urged the court to discountenance the submission of the learned counsel to the defendant on this point in favour of the claimant.

The counsel submitted that it is not in dispute that the defamatory words complained about were published in the newspaper and the defendant is the publisher of the Guardian Newspaper, and it is not in dispute that the defendant's Newspaper has vendor coverage which is read both inside and outside Nigeria, and the defendant

did not deny that the said publication were made to persons other the claimant, and by the defendant's admission in its address, the counsel submitted that the claimant has proved that the defendant published the defamatory words persons other than the claimant.

The counsel submitted that the claimant proved this fact through the PW1, who testified to have read the defamatory publication of 30th May, 2020, and the evidence was not controverted, and he cited the case of **Imoh V. Union Bank & Anor. (2021) LPELR – 53825 (CA)** to the effect that it is sufficient if it is proved that the publication of the alleged defamatory words was made to at least one person other than the claimant in such a manner that it would convey the defamatory meaning and that the person acquainted with the claimant understood it to refer to the claimant, and that the law infers publication to a third party without the need to call such third party in evidence, and he referred to sections 145 and 167 of the Evidence Act, and the case of **R.F. V. Houston** in his book titled: **Salmond on law of Torts, 16th Edition, page 156.** He cited the case of **GTB Plc V. Fadlallah (2009) LPELR – 8355 (CA)** to the effect that an inference can be drawn to how publication in an action for libel from Newspaper publication, if it is made a matter of reasonable inference that such was the fact, a prima facie case of publication would be established. This is particularly so where book, magazine or newspaper containing a libel is sold by the defendant, and a libel in any of such documents is therefore prima facie evidence of publication by proprietor, Editor, Printer and Publisher and any person who sells or distributes it. The counsel submitted that the claimant need not call a third party evidence to prove that he read the publication of 29th May, 2019, and further submitted that the

claimant proved that the defendant published the defamatory words to persons other than himself and urged the court to so hold.

On the ingredient in paragraph (b) the counsel submitted that the claimant sufficiently proved that the defamatory words published on the 29th May, 2019 and 30th May, 2020 referred to him, and this can be seen from the said publication where the name of the claimant was severally mentioned in EXH. 'A1' as the claimant in paragraph 2 of his witness statement on oath stated that he is the president of AFN, a fact that was not denied on the defendant, and the claimant continued this during cross-examination.

On the ingredient in paragraph (c) the counsel submitted that the publication means making known the defamatory words to a person other than the claimant, that is publishing the defamatory words to a third party, and he cited the case of **Basorun V. Ogunlewe (2000) 11 NWLR (pt. 640) 223 at p. 238,** and submitted that the PW1 testified that he read the said defamatory publication of 30th May, 2020, which means that they were published.

The counsel urged the court to so hold that the law presumes that the presumption of publication to a third party in defamatory words in Newspaper.

On the ingredient in paragraph (d) the counsel submitted that it is trite law that the test for determination of whether the words published are defamatory or not, is the test of the ordinary and right thinking members of the society, and such words must be interpreted in its natural and ordinary meaning, and he cited the case of **Dina V. New Nigeria Newspapers Ltd. (pt. 1096) 2 NWLR p. 353.** The counsel submitted that the Court of Appeal in the case of **Access Bank V. Muhammad (2013) LPELR – 22599 CA**

outlined instances that will assist the court to determine when the words published are defamatory in their natural and ordinary meaning:

a. Imputation of crime
b. Imputation of certain diseases such as sexually transmitted diseases
c. Imputation of unchastity or adultery especially of a woman.
d. Imputation affecting professional business reputation.

The counsel cited the case of **Adeyemo and Anor. V. Akintola (2003) LPELR 10905 (CA)** to the effect that this includes an imputation that the plaintiff has committed an offence punishable by death or imprisonment or the lettering of words which leads to injure the plaintiff in his profession or trade; and he cited the case of **Salawu V. Makinde & Anor (2002) LPELR – 12318 (CA)** to reaffirm this argument.

The counsel submitted that the words published by the defendant in their newspaper publication of 29th May, 2019 and 30th May, 2020 in the ordinary and natural meaning imputes commission of crime, and they contained words which lend to injure the claimant's position as a politician and the president of AFN thereby making him unfit for holding public office or to be trusted with public funds. The counsel referred to defamatory words the published words in EXH. 'A1' in the publications of 29th May, 2019 and 30th May, 2020.

The counsel submitted that at the trial, the claimant called PW1, who testified to have read the defamatory statement published in the Guardian Newspapers of 30th May, 2020 and his estimation of the claimant after he read the said article, and the defendant did not controvert the evidence, rather the defendant submitted in paragraph 3

of page 1 of the final address that the PW1's evidence offends section 115 of the Evidence Act.

The counsel argued that section 115 of the Evidence Act is not applicable to the testimony of the PW1 as the said section deals only in affidavit evidence, and further submitted that the said PW1 during his evidence in chief gave his name, his address and his trade and urged the court to take cognisance of these facts.

On the ingredient in paragraph (e), the counsel submitted that the claimant proved that the publication and imputation were false, and submitted further that the claimant proved that:

i. he was not impeached as the president of AFN over any alleged missing funds and was still the president of AFN.
ii. That there was no criminal charge against him for the alleged missing funds
iii. That he did not mismanage any funds of AFN
iv. That there was no finding of decision of the AFN indicting him of any criminal offence.
v. That he was not a criminal.

The counsel submitted that the defendant failed to produce any evidence of the proceedings or findings of the AFN indicting the claimant, and the defendant could not produce any evidence of interview she had with any officials of the AFN wherein the alleged defamatory statement was made, and the DW1 claimed to had interview with opposing AFN Board, but could not produced it; and he cited the provision of section 169 (1) (d) of the Evidence Act in urging the court to presume that the evidence of the alleged decisions of the AFN indicting the claimant of the purported interview conducted by the defendant on the officials of the opposing AFN board which

were not produced in evidence by the defendant will be adverse to them if produced. The counsel urged the court to so hold.

On the defence of qualified privilege raised by the defendant, the counsel to the claimant relied on the provision of section 9(1) of the Defamation Act of the FCT to the effect that defence of qualified privilege is depeated by malice, and he cited the case of **Cappa Ltd. V. Daily Times of Nig. Ltd (2013) LPELR – 22028 (CA)** to buttress the position. He cited the case of **Emeagwara V. Star Printing & Publishing Co. Ltd & Ors (2000) LPELR – 1122 (SC).**

To prove malice, the counsel cited Margaret Brazier in **Street on Torts,** 8th edition at page 411 where it is stated the ways that a claimant can prove malice where a defence of qualified privilege is raised, and that if a man is proved to have stated that which he knew to be false, no one need inquire further. Those a solicitor who writes that his client has admitted his negligence when he knows that he has not admitted it has abused the privilege, and the counsel cited the case of **Punch (Nig.) Ltd V. Ovberedjo (2018) LPELR – 44540 CA** on how malice is proved. The counsel submitted that flowing from the authorities of **Street on Torts** and the case of **Punch (Nig.) Ltd V. Ovberedjo supra, that:**

a. **That the defendant's statement was false.**
b. **That the defendant did not believe in the truth of her statement or was recklessly careless whether the statement be true or false.**
c. **That the defendant failed to prove that the statement was true.**
d. **That strict proof is required by the defendant to prove that the statement was true.**

The counsel submitted that the law is trite that he who asserts must prove; and the burden of proof is on the party

who asserts the existence of a fact to prove, and he cited the case of **Atoyebi V. Odudu (1990) LPELR – 594 (SC).**

The counsel submitted further that the defendant who relied on the defence of qualified privilege is strictly required by law to prove that the statement published was true, and the defendant failed to produce the report on the activities of AFN and its management purportedly made and did not produce any evidence of interview conducted on any member/management of the AFN when it was requested under cross-examination of DW1.

The counsel gave an excerpts of the cross examination of DW1, which he said is relevant.

According to the counsel, it is settled law that the evidence which is available but not produced, will if produced be adverse to the party withholding it, and he urged the court to hold that the failure of the defendant to produce in court evidence of the report of the activities of the AFN alleged to have indicted the claimant of the allegation of misappropriation and embezzlement, means that the statement were false and untrue, and if produced would be adverse to the defendant, and urged the court find that the claimant has proved malice.

On the privilege that applies only to decisions or findings of an Association, the counsel referred to the schedule to the Defamation Act of the FCT which limits that defence of qualified privileges for Newspaper publication to fair and accurate reports of findings or decisions of an association such as AFN, and does not extend to statements made in Newspaper from interviews or opinions obtained from individuals in the course of interviews, and this can be seen from paragraph 9 of the schedule to the Defamation Act, part 3. The counsel submitted that from section 9 of the schedule to the Defamation Act, the defence of qualified

privilege is not available to the defendant when the defamatory statements published is not fair and accurate report of the findings or decisions of AFN, and it is obvious that the words used in this section is clear and unambiguous and should be given it natural and literal meaning.

The counsel submitted that the words published against the claimant is not from any report of the proceedings or decisions of the AFN.

The counsel submitted that it is the law that when a statute has laid down procedure for doing an act, the compliance with that procedure becomes a condition precedent for doing that act, and he cited the case of **Ifaramoye V. State (2013) LPELR – 20533 (CA),** and submitted that the defendant is not entitled to the defence of qualified privilege unless and until he satisfies that the publications were from the decisions or findings of the AFN, its board or governing council.

On the inadequacy or reasonability of the rebuttal published, the counsel cited the provision of section 9 (2) of the Defamation Act of the FCT which provides for a condition precedent for reliance on the defence or qualified, as the defence will not be available to the defendant when the claimant has requested for a rebuttal and the rebuttal published is not adequate or reasonable having regards to the circumstances of this case.

The counsel submitted that looking at EXH. 'A2', the claimant request to the defendant to publish an immediate suitable retraction, correction and apology in their next editorial, however the defendant failed to comply with the conditions stated in section 9(2) of the Defamation Act, as the defendant did not publish any apology to the claimant as requested; the purported claimant's version published is not adequate and reasonable; and the subsequent

defamatory publication of 30th May, 2020 was not published with the claimant's version of the allegation available to the defendant at the time of the said publication.

The counsel submitted and gave the reasons why he submitted that the retraction is not adequate and reasonable and even referred to Article 2 of the Code of ethics for Nigerian Journalist.

On the damages in defamation action, the counsel cited the case of **Cross River State Newspapers Corporation V. Oni & Ors (1995) LPELR – 898 (SC)** where the Supreme Court stated the principle of law on whether defamation is actionable per se, and in essence what the Supreme Court says, he submitted, that the claimant does not need to prove that he has suffered damages from the defamation to be entitled to it. The counsel further submitted that damages in libel suit will naturally be inferred if the defamatory publication is found to have been printed or imputes crime punishable with imprisonment.

The counsel cited the case of **Oduwole & Ors V. West (2010) LPELR – 2263 (SC)** and submitted that in defamation action, the court tend to grant aggravated damages, and no measurement can be used to assess the quantum of damage to a person's reputation.

The counsel cited the case of **Ujam V. Onyia & Anor. (2013) LPELR – 22581 (CA)** to the effect that the court enumerated the principles guiding award of damages in Libel cases as follows:

(a) The position of and standing of the plaintiff in the society.
(b) The nature of the libel
(c) The mode and extent of its publication
(d) The effect of its publication on the plaintiff.

(e) The absence or refusal of retraction and apology by the defendant.
(f) The recklessness with which the libel was published
(g) The value of the Nigerian Naira.

The counsel to the claimant aligns himself with the ratio of **Oduwole & Ors V. West (supra)** and submitted that the Newspaper publication of the defamatory words against him was read all over the world, and that the claimant is an engineer, a public figure, a politician who at a time was elected into the house of representatives of the Federal Republic of Nigeria and a governorship candidate of PDP in Zamfara State. He is also the president of Athletics Federation of Nigeria. It is also submitted that these qualifications, titles and description of the claimant were not contradicted by the defendant and were proved in court.

The counsel submitted that an action for defamation, the courts have advocated by increase the damages awarded against the defendant, which is called aggravated damages, and further submitted that the court on **Western Publishing Co. Ltd. & Anor. V. Fayemi (2015) LPELR – 24735 (CA)** gave instances where it will be proper to award aggravated damages for example, repetition of a published libel, or failure to contradict it, may have this effect, failure to apologise. Although failure to apologise is not normally evidence of actual malice, it may in some cases be a factor which can properly be placed before the fury as tending to aggravate the damages.

The counsel submitted that the claimant has shown that the defendant repeated the defamatory publication in its newspaper of 30th May, 2020 despite the claimant's letter to them informing of the true facts, the defendant failed and refused to apologise to the claimant, and failed to

contradict the original defamatory publication against the claimant. The counsel, on the strength of the cases of **Ujam's** case, **Okereke V. Uzoebo (supra) and Western Publishing Co. Ltd V. Fayemi (supra)** urged the court to award aggravated damages.

The counsel submitted that the defendant noted in his submission that the claimant wrote exemplary/general damage, and submitted that in defamation in cases where injury is pleaded, the court will award damages if the elements of libel are proved, and that there is no law that the court will not award damages to the claimant on prove of defamation, and he cited the case of **Eliochin Nig. Ltd V. Mbadiwe (1986) 1 NWLR (pt 14) 47** and urged the court to resolve the issue of damages in favour of the claimant.

The counsel to the defendant in his reply on points of law submitted and re-iterated that the words set out in paragraph 4 of the statement of claim as the defendant's publication of the 30th may, 2019 whether as a whole or as a libelous passage are different, unconnected paragraphs, stitched together or arranged by the claimant, and in paragraph 8 of the statement of claim the words set out as libelous in the defendant's publication of the 30th May, 2020 are clearly unrelated words pieced together by the claimant, and they are one intelligible text or words as contained in the supposed publication. The counsel submitted that what is required by law, it is the words as ordinarily published that ought to be extensively set out in the pleadings and not bits and pieces linked by the claimant to show libelous meaning, and he cited the case of **Afribank Nig. Plc V. Onyima & Anor (supra)** where he argued actually supported the defendant's argument rather than contradict it, and the decision in **D.D.G.A. Pharmaceutical V. Times Newspapers Ltd and S.O.N. Okafor**

V. D.O. Ikeanyi & Ors (supra) and **Guardian Newspapers Ltd V. Ajeh (supra)** which he referred to.

The counsel also argued and re-iterated that 3rd party evidence is required to prove publication or lowering the claimant in the perception or estimation of the public/3rd parties; and submitted that the decision in **Sule V. Orisajimi (supra)** and **Sketch V. Ajagbe Mokefere (supra), Inuake V. IBC (supra) and Chief Nsirim V. Nsirim (supra) and Unity Bank Plc V. Oluwafemi (supra)** already referred to in the defendant's address supported the argument and it is supported by section 126 of the Evidence Act.

The counsel argued that in form a witness statement on oath is an affidavit and bound by the mandatory provisions of the Evidence Act, but the difference is in use, and he cited the case of **Aliyu V. Bulari (2019) LPELR – 46513 (CA),** and the fatal effect of non compliance with the Act, he cited the case of **Osasuyi V. Mudashiru (2015) 4 NWLR (pt 1449) 201** where the Court discountenanced an affidavit that did not contain the profession and address of the deponent as incompetent. The counsel cited the case of **GTB Plc V. Abiodun (2017) LPELR – 425511 (CA)** to the effect that an affidavit which is otherwise incompetent for its defect will not be remedied by oral testimony in open court.

The counsel submitted that qualified privilege is a defence to an untrue publication, and it can only be claimed, however, when the occasion is privileged. An occasion is privileged when the person who makes the publication has a moral duty to make it to the person whom he does make it and the person who receives it has an interest in hearing it and both conditions must exist in order that the occasions may be privileged.

The counsel submitted that paragraph 9 of the schedule to the Defamatory Act of the FCT, part 3 only

describes a situation in which the defence of qualified privilege is available to the defendant, and he quoted the provisions of the section, arguing that it lists at least 18 situations in which qualified privilege will avail a defendant (inclusive of newspaper) in parts 1 – 3 of the schedule, and in this case not what is claimed by the defendant, that is to say, the defendant just reported the event that occurred in the AFN.

The counsel submitted that by section 9(1) and (2) of the Defamation Act, there is no requirement for express comparism as the claimant has demanded or a requirement that every material particular must be controverted, but the text ought to be whether the publication was a reasonable explanation of the claimant's side of the story, and the evidence before the court is that when EXH. DW1 and DW2 are read against the original story, they do sufficiently and reasonably make the claimant's case of contradiction and explanation, thus, the defendant is entitled to defence of qualified privilege under this sections; and he urged the court to dismiss the suit.

I adopt the issue for determination already formulated by the counsel to the defendant as I found it so suitable, to wit:

> **Whether the claimant has proven his case to be entitled to the reliefs sought in this case?**

Before proceeding to resolve the issue, let me evaluate the evidence of the parties with a view to ascribe a probative value to the one that is credible. See the case of **Enukora V. FRN (2019) All FWLR (pt 979) p. 346 (SC).**

In the course of cross examination of the PW1, he told the court that the claimant is his mentor and that he did not read the published article of the 29th May, 2019; but read the one of 30th May, 2020.

The PW1 is not challenged nor discredited during cross-examination. No questions as to his knowledge of the facts to which he deposed and testified, his integrity is intact and no contradiction in his answers to the questions put to him. He was not asked of his interest in the matter, rather he told the court the claimant is his mentor. So, the evidence of the PW1 is worthy of acceptance and it is hereby accepted accordingly. See the case of **Ogunbayo V. State (2003) FWLR (pt 247) p. 1107 at 1124, paras. A-B.**

The PW2, was not challenged and nor discredited during cross examination and his evidence too is worthy of acceptance and it is hereby accepted. See the case of **Access Bank Plc V. Orjieh (2018) All FWLR (pt 939) p. 1973.**

The DW1 was asked as to where did she get the information in the publication, and she could not provide the answer as to where she got it. The DW1 was also asked whether it was the Athletics Federation of Nigeria or the Ministry of Sports that provided her with the information, that the claimant misappropriated $134,000.00 dollars, and the DW1 told the court that it was not mentioned in the publication that any individual has given the information.

The DW1 was also asked whether in her style of after or before the publication, she gave the other side opportunity to the other side to balance the story, and the DW1 told the court that is not always what they do.

The DW1 was asked whether in paragraphs 23, 24, 26 and 29 of the statement of claim, at page 6, the information that George stated and that they published, whether there is any document indicating that the claimant embezzled $135,000.00 and the DW1, answered that the interview was granted by George who was an authority in that Federation, and it was recorded, written and published.

The DW1 was also asked if George has shown to her any proof of the claimant misappropriating $135,000.00, and the DW1 answered that once a statement is made in an open in a press conference the media around will published it.

The DW1 was asked if she has any proof that George has granted the interview, and the DW1 told the court she has it, but was not in the court.

The DW1 was asked whether she has any document to support that the either the claimant was indicted of embezzling the sum of $135,000.00 or that the claimant gave PUMA a private account No. of Dynamic Sporting Solutions owned by Sunday Adeleye, and the DW1 that when any government official emanate with an issue against another, the media uses "accused" or "alleges" and the defendant adopted the words "George accuses" and is the only persons that will produce the document.

The DW1 was also asked whether the publication in EXH. 'A1' the DW1 has proof that George stated that in the interview, and the DW1 answered that it is impossible for a journalist to quote the name of a person without written or oral interview.

The DW1 was asked, if she has given the claimant the opportunity to state his own side of the story before the publication of 30th May, 2020, and the DW1 answered that he was given adequate time to respond given in the media.

The DW1 was asked whether there is proof before the court, and the DW1 answered that there was an interview granted to the claimant in the media.

The DW1 was asked whether there was the interview in the court, and the DW1 told the court it is in this court and not with her.

From the questions and answers series in the course of cross-examination, it can be seen that the DW1 was seriously challenged to produce any evidence that the Athletics Federation of Nigeria made that statement, or that George granted the interview, this answer has not been provided by the DW1.

To my mind, the evidence of the DW1 is seriously challenged during cross examination, and it is not worthy of acceptance, and I so hold. The evidence of the DW1 is rejected. See the case of **Saraki V. Federal Republic of Nigeria (2020) All FWLR (pt. 1028) p. 933 (SC).**

Let me evaluate the exhibits of both parties. See the case of **Olomoda V. Mustapha (2020) All FWLR (pt 1034) p. 1022 (SC).**

EXH. 'A1' is the certified true copy of the Guardian Sports of Wednesday, 29th May, 2019, and the caption of that report by Gowon Akpodonor is "**AFN President, Gusau impeached over IAAF 'Missing' $135,000.00",** and in the publication, it was published that the president of Athletics Federation of Nigeria (AFN) Ibrahim Gusau was impeached by the board following his alleged role in the 'missing' $135,000.00 erroneously paid to the country two years ago by world athletics body, IAAF.

EXH. 'A2' is a letter dated the 8th July, 2019 written by the solicitor of the claimant demanding for the retraction, correction and apology from the defendant of editorial of 29th May, 2019.

EXH. 'A3' is the letter written by the claimant inviting the Independent Corrupt Practice Commission (ICPC) to investigate the alleged missing money dated the 31st May, 2019, which is the certified true copy of it.

EXH. 'A4' is the Code of Ethics for Nigerian Journalists, and it is part of the preamble that truth is the cornerstone of

journalism and every journalist should strive diligently to ascertain the truth of every event.

The defendant tendered EXH. 'D1' which is a Guardian Newspaper of Monday, 9th December 2019 and this refers to the publication caption.

"They are preventing me because I went to anti-corruption agencies, says Gusau", and EXH. 'D2' which is the Guardian Newspaper of Wednesday, 24th July, 2019 and a caption **"AFN President states position on IAAF's 'missing' $130,000.00"** was referred.

Thus, it is the contention of the defendant in his final written address that the words set out in paragraph 4 of the statement of claim as the defendant's publication of the 29th May, 2019 are different, unconnected paragraphs of the supposed publication, stitched together or arranged by the claimant himself as the offensive words published, meaning that they are not as contained in the defendant's purported publication EXH. 'A1', and that in paragraph 8 of the statement of claim as the defendant's publication of 30th May, 2020 are clearly unrelated words pieced together by the claimant, while it is the contention of the claimant that a plaintiff must set out the exact words which he alleges are defamatory, I considered the provision of Order 15 Rule 3(c) which provides that:

> **"In an action for libel or slander if the claimant alleges that the words or matter complained of were released in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation."**

See the case of **Guardian Newspaper Ltd V. Ajeh (2011) All FWLR (pt 584) at pg. 13, paras. E-F** and **p. 21, para. C.** where the Supreme Court held that the precise words

alleged to be libelous were sufficiently pleaded. See also the case of **Afribank Nigeria Plc V. Onyima & Anor (supra)** to the effect that a plaintiff must set out the exact alleged words which he alleges are defamatory. In the instant case, the words used by the defendant in the publication were captured sufficiently which the claimant holds that they are defamatory to his person, and the argument of the counsel to the defendant on this is discountenanced.

The counsel to the defendant argued that the PW1 said he read the supposed earlier publication of 30th May, 2020, and he never read the publication of 29th May, 2019 and his evidence must be limited to the publication of 30th May, 2020, and there is accordingly no 3rd party evidence of lowering of reputation in respect of the 29th May, 2019 publication.

The counsel contended further what the PW1's deposition as per his statement on oath is in fatal breach of section 117 (1) (b) of the Evidence Act, 2011 which requires that every affidavit taken in a cause or matter shall state full name, trade or profession, residence and nationality of the deponent, and the PW1 did not state indicate his profession or trade in the statement on oath, and he urged the court to expunged and discountenance the oath. While the counsel to the claimant argued that it is not necessary in all cases to prove that the libelous matter was actually brought to the notice of some 3rd party if it is made a matter of reasonable inference that such was the fact, a prima facie case of publication would be established. This particular so where book, magazine or newspaper containing a libel is sold by the defendant, and he cited the case of **GTB Plc V. Fadlallah (supra)** and he further argued that the claimant need not to call a 3rd party evidence to prove that he read

the publication of 29th May, 2019 as had presumes publication to a 3rd party.

The counsel to the claimant argued further that section 117(1) (b) of the Evidence Act does not apply to the testimony of the PW1 as the said section deals only on affidavit, and that the PW1 during examination in chief gave his name, address and trade, and this is in the record of the court. I consider the case of **Lambert V. Okujagu (2015) All FWLR (pt 808) p. 654 at 665 – 666, paras. E-A** where the Court drew a distinction between affidavit and witness statement on oath and held that the form of an affidavit under the Evidence Act is specified under sections 117 and 118 of the Evidence Act, 2011. There is no law that specified that all sworn documents or oaths must comply with the provisions of the Evidence Act as it relates to affidavit. The innovation of filing written statement on oath of the witnesses to be called in a civil case is a very good proactive and progressive innovation of the draftsmen. The import is not to clone an affidavit or to set or parallel affidavit evidence. The import is to reduce the time expanded in taking notes from witnesses in court and by extension, reducing the stress of the trial judges whose lot it is within the court's jurisdiction and adjudicatory clime to record in long hand viva voce evidence of witnesses. The rules of the High Court do not intend to encrust the written statement on oath with the formal garb of an affidavit as far covered by sections 107 to 120 of the Evidence Act. In the instant suit, it does not necessarily means, the provision of section 117 (1) (b) of the Evidence Act, 2011 must be applied to witness statement on oath, and I so hold that the argument of the counsel to the defendant is discountenanced.

The counsel to the defendant contended that the PW1 is a close relation of the claimant when he stated that he lived in the claimant's house, thus becoming essentially a member of the claimant's household, and the evidence is accordingly not evidence of a 3rd party of an ordinary member of a public, and the Court of Appeal, Port Harcourt Division held in the case of **Abah V. Owei (2015) All FWLR (pt 780) p. 1353 at pp. 1376-1377, paras. H-B** that relationship of a witness to any of the parties to a case is not one of the relevant and material factors to be taken into account or consideration by a trial court in the assessment or evaluation of the probative value or worth of any piece of evidence before it. In the instant case, the argument of the counsel to the defendant on this is also discountenanced.

Thus, it is in EXH. 'A1', a publication of Guardian Newspaper of Wednesday, 29th May, 2019 where it was published that "the president of Athletics Federation of Nigeria, Ibrahim Gusau paid the big prize yesterday, as he was impeached by the board following alleged role in the 'missing' $135,000.00 erroneously paid to the country two year ago by world athletics body IAAF.

In EXH. 'A1' which is a publication of the Guardian Newspaper of Sunday 30th May, 2020 wherein it was published "Even before Sunday Dare came on board as Minister, the AFN had been embroiled in a leadership crisis, which stemmed from corruption and underhand practices allegedly perpetrated by its former president, Shehu Ibrahim Gusau. The image of the AFN has been painted by the many troubles within the last one-year and the many battles fought by the gladiators, including Gusau. The issues range from IAAF 'missing' $130,000.00 an agreement with kits manufacturing company, PUMA, which was purportedly signed without the knowledge and consent of the board.

There is the issue of a N13 million fund for the African youth and Junior Championships in Abidjan, which was allegedly mismanaged, as well as the allegation that Gusau and a few others secretly obtained N35 million (about $92,000) for the IAAF world championships eventually led to the ouster of Gusau as AFN president, but that was after Nigeria's image had been damaged severely at the world stage."

These publications are part of the publications made by the defendant against the person of the claimant, which the claimant sees them as false and were calculated to disparage him as a politician and a public office holder whom should not be trusted with public office and funds, and in consequence of the defendant's action, his reputation has been seriously damaged and embrassed, hence the statement of the PW2 on oath which he adopted, and also the statement of the PW1 on oath which he also adopted.

The claimant is not feeling to be the president of Athletics Federation of Nigeria (AFN) having been purportedly impeached for being corrupt, that as a public office holder, he is a criminal who is not to be trusted with public funds, that he is corrupt and has misappropriated funds belonging to AFN. That he has been charged with criminal offences for corruption. That he is red headed person and take unilateral decisions without the board's approval and that largely as being corrupt by way of embezzlement and misappropriation of funds, and consequence upon all the defendant's actions his reputation has been seriously damaged.

The PW1 understood the said words to mean that the claimant is a public office holder and is not the president of the Athletics Federation of Nigeria (AFN) having been purportedly impeached for being corrupt. That the claimant

is a criminal who is not to be trusted with public funds. That the claimant is corrupt and has misappropriated funds belong to AFN. That the claimant has been charged with criminal offence for corruption. That the claimant is a red-headed person who takes unilateral decisions without the board's approval, and after reading the said publication, he lost respect for the claimant whom he before now, he used to respect as an honest person, who is not corrupt, and he felt saddened that the claimant is such a corrupt person whom he cannot associated with or trusted with funds.

EXH. 'A2' is a letter written by the solicitor to the claimant demanding that the publications be retracted and apology be tendered dated the 8th July, 2019 and this prompted the defendant to publish the editorial of Monday 9th December, 2019 with the caption "why we suspended Gusau as AFN president" and a caption titled: "They are persecuting me because I went to anti-corruption agencies", says Gusau.

From the EXH. 'A1' to EXH. 'D1' is barely six months, that is to say, it took the defendant six months before publishing EXH. 'D1', and what the defendant carried in EXH. 'D1' are an interviews conducted by the claimant and George (who was alleged to be the acting president of the AFN, and is therefore not a retraction and an apology).

EXH. 'D2' is the Guardian Newspaper of Wednesday, 24th July, 2019 at page 46 with a caption titled: "**AFN president states position on IAAF's 'missing' $130,000.00 – EXH. 'D2' is a response of the claimant on the missing $130,000.00** which was alleged he misappropriated, and not a retraction and an apology offered by the defendant. Now, from the date of the Demand EXH. 'A3' for retraction

letter dated 8th July, 2019 to the date of the EXH 'D2' was two weeks.

The claimant's counsel contended that in the defendant's averment in paragraph 6(e) of the statement of defence, the defendant expressly admitted receiving a request from the claimant to publish a retraction, where she alleged that she published the claimant's version of the account of the event in EXH. 'D1', and looking at EXH. 'A2', the claimant specific request to the defendant to publish an immediate suitable retraction, correction and apology in their next editorial and the defendant failed to comply with the conditions stated in section 9(2) of the Defamation Act of the FCT which provides:

> **"In an action for libel in respect of the publication of a report or matter as is mentioned in part 3 of the schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and the defendant has refused or neglected to do so, or has done so in a manner not adequate or reasonable having regards to all the circumstances"**

The defendant failed to comply with the conditions of the above section because, the defendant did not publish any apology to the claimant as requested, and the purported claimant's version published is not adequate or reasonable as in regards to the circumstances of this case and the subsequent defamatory publication of 30th May, 2020 was not published with the claimant's version of the

allegation available to the defendant at the time of the said publication, the counsel to the claimant submitted.

It is also argued by the counsel to the claimant that the reasons the submission that the defendant failed to comply with the conditions stated in section 9(2) of the Defamation Act FCT are that the defendant did not publish any apology to the claimant in view of the defamatory publication of May, 29th 2019, in regards to the defendant's admission in paragraph 6(e) of the statement of defence, that the defendant's defamatory words that the claimant was impeached as the president of AFN, the rebuttal in EXH. 'D1' and 'D2' did not contradict the allegation of the impeachment of the claimant. So, the counsel contended that what was sought by the claimant's letter are the retraction telling the world that the claimant is to fill the president of the Athletics Federation of Nigeria and he was not impeached at any time of the board meeting of the AFN.

The counsel to the claimant contended that there should have been the rebuttal that Mr. George Olamide was not the president of the AFN, and therefore for there to be a correction/retraction of the original publication, the subsequent publication must of necessity refer to the original publication which it seeks to correct/retract in such a manner that the person reading the subsequent publication, will readily known that the subsequent publication was made to rebut the defamatory words in the original publication or to contradict, and in the circumstances of EXH. 'D1' and 'D2', they did not contradict the allegations that the claimant was impeached for the missing AFN fund, and therefore does not qualify under section 9(2) of the Defamation Act. While the counsel to the defendant in his reply on point of law

contended that there is no requirement for express comparism as the claimant has demanded or a requirement that every material particular must be controverted. To him, the test ought to be whether the publication was a reasonable explanation of the claimant's side of the story, and EXH. 'D1' and 'D2' are read against the original story, and they do make sufficiently and reasonably the claimant's case of contradiction and explanation.

Thus, I have gone through the EXH. 'D1' and its caption titled: **"They are persecuting me because I went to anti-corruption agencies"** says Gusau, and it can be inferred that it was the claimant that responded to the allegations made in publication EXH. 'A1' and therefore, it is not the correction or retraction made by the defendant, and I so hold.

Looking at EXH. 'D2' in the caption titled: AFN president states position on IAAF's missing $130,000.00, it can be inferred that it was the claimant who had offered explanation as to the position of things regarding the IAAF's money $130,000.00, and not the defendant that categorically and unequivocally retract or correct the publication made in EXH. 'A1', and I so hold. The expression "not adequate or reasonable can be interpreted by the court relatively, the word "adequate" according Black's Law Dictionary, 8th Edition, page 43 means "legally sufficient" and the expression "reasonable means "fair" and therefore the expression "not adequate or reasonable" means not legally sufficient and fair, and in the circumstances of this case, the rebuttal in 'D1' and 'D2' do not appear to be legally sufficient and fair because the reasons set out by the claimant in his submission, and I

therefore so hold by virtue of section 9(2) of the Defamation Act of the FCT.

Article 2(ii) of the Code of Ethics provides:

> **"A journalist should refrain from publishing inaccurate and misleading information. Where such information has been inadvertently published, prompt correction should be made. A journalist must hold the right of reply as a cardinal rule of practice"**

The counsel to the claimant argued that based upon this above quoted paragraph of the Code of Ethics, there is the need that for publication of the various versions of the stories on the same publication. While the counsel to the defendant did not proffer any argument on this and the implication is that the counsel to the defendant has admitted the submission. See **FRCN V. Nwankwo (2012) All NWLR (pt 641) p. 1550 at 1565.** I therefore so hold that the defendant is in breach of the Article 2(ii) of the Code of Ethics that the correction or the two versions of the stories in EXH. 'A1' should have been in the same publication.

Thus, the ingredients required in proving libel are:

a. **That the defendant published in a permanent form a statement, which is false.**
b. **That the statement referred to the plaintiff.**
c. **That the statement was defamatory of him in the sense that:**
    i. **It lowered him in the estimation of right-thinking members of the society, or**
    ii. **It exposed him to hatred, ridicule or contempt or**
    iii. **It injured his reputation in his office, trade or profession; or**
    iv. **It injured his financial credit; or**

v. **That it was published to some other person aside the plaintiff and the defendant.**

See the case of **Guaranty Trust Bank Plc V. Fadlallah (2010) All FWLR (pt 537) p. 743 at 760, paras. D-F.**

EXH. 'A1' and its attachment constitute the ingredient in paragraph (a) above.

In EXH. 'A1' the publication referred to the claimant, and therefore satisfies ingredient in paragraph (b) above.

It is evident, the publication in EXH. 'A1' has by the evidence of the PW1, lowered the claimant in the estimation of the right-thinking member of the society, and it injured his reputation as per his profession is concerned to the extent that the claimant will not be trusted with public fund. And this publication circulated within Nigeria and abroad to reach the members of the public. I therefore so hold that the ingredients have been established against the defendant.

The counsel to the defendant submitted that the claimant did not in any way file a reply to plead express or actual malice, and he also did not give any particulars from which such express or actual malice may be inferred, and the counsel made reference to paragraph 4 of the Reply and submitted that no particulars were provided of express and actual malice.

The counsel to the defendant cited the case of **Mr. Viswanathan Kamachadran V. Mr. Godwin Etim & Anor. (2021) LPELR-56396 (CA).** While the counsel to the defendant cited the case of **Emeagwara V. Star Printing and Publishing Co. Ltd & Ors (supra)** to the effect that where a defendant's statement is proved to be false and malicious, the defendant cannot be entitled to the defence of privilege. He also cited the case of **Punch (Nig.) Ltd V. Ovberedjo (supra)** as to how malice is proved and when

defendant will not be entitled to the defence of privilege as follows:

a. **That the defendant's statement was false,**
b. **That the defendant did not believe in the truth of her statement or was recklessly careless whether the statement be true or false.**
c. **That the defendant failed to prove that the statement was true.**
d. **That strict proof is required by the defendant to prove that the statement was true.**

The counsel to the claimant went further to submit that the defendant unsuccessfully pleaded the defence of qualified privilege when it merely stated in paragraph 6(c) of the statement of defence that the said publication was fair and accurate report on the activities of AFN and its management, but failed at the trial to produce the alleged report on the activities of AFN and its management wherein the statement published was purportedly made and did not produce any evidence of interview conducted on any member/management of the AFN when it was requested under cross examination of DW1.

He further submitted that evidence which is available but not produced will if produced be adverse to the party withholding it under section 169 (d) of the Evidence Act.

I have painstakingly gone through the record and discovered that the DW1 when asked to produce any report for the AFN or its management about the publication, and the DW1 could not produce it, and to this, I hold that the publication was maliciously published and this negates the defence of qualified privilege made by the defendant. I also hold that the claimant had succinctly replied the defendant on his statement of defence and in

paragraph 4, in its entirety, the claimant explained how the defendant was actuated by malice.

Based upon the above consideration, I therefore hold that the claimant has been able to prove with credible evidence that the publications contained defamatory words and are libelous and the defendant is therefore liable.

The counsel to the defendant, on the claim of damages, submitted that the relief is incompetent for being speculative and imprecise as the claimant does not specifically say how much he claim for general damages, how much for aggravated damages and how much for exemplary damages, but lump them together for the court to pick and choose by itself, and he cited the case of **Emmanuel V. Debayo Doherty (supra)**; and **Lufthansa V. Odiase (supra),** while the counsel to the claimant contended that the award of damages in an action for libel follows automatically whether or not the claimant pleads particulars of injury and will be awarded by the court to the claimant, one of the five elements of libel is proved, and there is no law that states that the court will not award damages to the claimant on prove of defamation against him merely because he asked for exemplary damages in his claim.

In resolving the arguments, I consider the case of **Oduwole V. David-West (2010) All FWLR (pt 532) p. 1648 at pp. 1657-1658, paras. H-A** where the Supreme Court held that every libel is at itself a wrong in regard to which the law imputes general damages. If a plaintiff proves that a libel has been published of him without legal justification, his cause of action is complete. He needs not prove that he has suffered any resulting actual damage or injury to his reputation for such damages is presumed. In the instant

case, claimant need not prove any damage to his reputation or actual damage before entitling general damages as it is presume that he has suffered such damage, and to this I so hold.

Thus, an award must be adequate to assuage for the injury to the plaintiff's reputation. It must atone for the assaults on the plaintiff's character and pride which were injustifiably invaded. To the extent that the person who has injured a person in his reputation must pay for the injury he has suffered, there is an element of compensation in the award of damages made. But that is usually not on the basis that such word restore the plaintiff to the position he was, before he was defamed as if he had not been defamed where the injury he has suffered did not lead to pecuniary loss. This is the position of the Supreme Court in the case of **Oduwole V. David-West (supra) at page 1658, paras. C-D.** The Supreme Court went further to hold at page 1659, para. F that factors which should be considered in assessing damages in libel cases are social standing of the plaintiff and the rate of inflation which has adversely affected the value of the national currency. In the instant case, for the fact that the claimant has been proven to be engineer, a public figure, a politician who at a time was elected into the House of Representatives of the Federal Republic of Nigeria and a governorship candidate of PDP in Zamfara State, as well as the president of Athletics Federation of Nigeria, will not hesitate to award general damages of N50,000,000.00 payable by the defendant without further delay. The reliefs in paragraphs 2, 3 and 4 of the reliefs sought are hereby awarded to the claimant against the defendant.

Hon. Judge
Signed
20/9/2024

Appearances:

Chinedu G. Udora Esq appeared with Winifred I. Obunda Esq for the claimant.

Okanlawon Olabisi Esq appeared for the defendant.