

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT NYANYA – ABUJA

MONDAY THE 18TH DAY OF NOVEMBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/2908/2022

BETWEEN:

BARR. DAVID O. EZEH.....CLAIMANT

AND

MR. NWOLISA INNOCENT TOCHUKWU.....DEFENDANT

JUDGMENT

The claimant by a writ of summons dated the 2nd day of September 2022 filed on the same date claims the following

A DECLARATION that the following words:

It will be recalled that on September 11th 2017 Bar Ezeh David Obuneme, prepared a duly signed (by him) land Agent's commission Agreement Chukwudiodika (buyer) and Nwoliza Innocent Tochukwu (Primary Agent)

In that Agreement I humbly plead for your good office to look into the issue raised by Bar Ezeh David O. Especially on Recital Item 7, and Items 2 and 3 on the Primary Agent's covenants as enclosed herein

That any attempt by me to request for my commission balance is seen as a threat or harassments hence I engaged the services of a lawyer, Bar. Anthony O. Utuagha, to do a follow up on my demand of primary agent balance on agreed commission.

Sirs, with due respect, I also present his second memo/reply titled Re-letter of demand dated September 12th 2017' item 8 for which he claimed I have been paid the sum of N9,200,00,00 (Nine Million Two Hundred Thousand Naira only), all letters he wrote was with the NBA seal.

PETITION FOR EXPLANATION

After careful study of the two official letters enclosed herein, (Agreement and letter of demand) I discovered that his claim was unfair and untrue the original debt to be paid to me by his client is N 6,100,000 (one million one hundred thousand naira only (sic) but Bar. Ezeh David O in his letter to me claimed in one of his letters that his client was only owing the sum of N 1,000,000,00 (One Million Naira) while in another letter he claimed that his client is owing me N800,000,00 (Eight Hundred Thousand Naira)

Please I humbly ask on your committee to impress on Bar Ezeh David O. to be honest and to explain in details the disparity in payment claims he put in writing which was never true. In all honesty in late 2016 when he invited me in his shop at D4 No. 114 Dei- Dei Building Material Market, he orally told me that if I should give him the 10% of the total agree commission to paid (sic) by his client which is N1,500,000,00 (One million Five Hundred Thousand only) that he will make the payment possible or he will frustrate for initial agreed commission. This was a property sale proceed and agreement for which he was never there from the ab initio but he was involved letter (sic) by the buyer.

Published of and concerning the Claimant by the Defendant to the Nigerian Bar Association vide a letter received on the 9th day of August, 2019 within the jurisdiction of this Honourable Court, are highly libelous of the Claimant, has tarnished his image as a lawyer of integrity and has reduced the assessment of him in the eyes of reasonable members of the Nigerian Bar Association and society at large.

A DECLARATION that the publication by the Defendant to Mr. ChukwudiOdika of the following words:

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Contained in his petition to the Nigerian Bar Association against the Claimant is highly malicious and has greatly lowered him in the estimation of right-thinking members of the public including the said Mr. ChukwudiOdika who, in consequence of the publication, disengaged the Claimant's legal services.

iii. AN ORDER directing the Defendant to issue a formal letter of apology to the claimant, published in a daily newspaper circulated within the Federal Capital Territory and copied to the Nigerian Bar Association and Mr. ChukwudiOdika.

iv. AN ORDER directing the Defendant to write a formal letter of withdrawal of his malicious petition to the Nigerian Bar Association.

AN ORDER OF PERPETUAL INJUNCTION restraining the defendant whether by himself or through his agents, personal representatives and assigns from further issuing the above libellous and slanderous statements that gave rise to this suit or any other libellous or slanderous statements or doing of any acts against the person of the Claimant in connection with the words complained of in this suit.

The sum of Twenty-five Million Naira (N25, 000,000.00) as General Damages.

One Million Naira (N1, 000,000.000) being the cost of this suit.

Attached to the writ of summons are:

- 1. Statement of claim**
- 2. Witness statement on oath of Barr David .U. Ezeh**
- 3. Certificate of pre-action counseling**

And the following exhibits:

- 1. Contract for sale of land**
- 2. Agreement between Mr Innocent TochukwuNwaolisa and MrChukwudiOdike dated the 21-October-2013.**
- 3. Land Agents Commission Agreement between ChukwudiOdike and Nwaolisa Innocent Tochukwu**
- 4. Letter of Demand dated the 18 September, 2017 by Anthony.O. Utuogha& Associates addressed to MrChukwudiOdike.**
- 5. Re-Letter of Demand from the office of ObumnemeEzeh& Co addressed to the head of practice Anthony.o. Utuogha& Associates dated the 20th of September, 2017**
- 6. Petition and Demand for explanation in Land Agents Commission as prepared by Barr Ezeh David Obumneme for Nwaolisa Innocent Tochukwu dated 9/08/2016.**

7. **Re-Petition from NBA addressed to Ezech David Obumneme Esq dated the 3rd Sept, 2019.**
8. **Letter of Disengagement from C- Rollins Investment Co LTD addressed to Ezech David O Esq dated the 26th September, 2019.**
9. **Re-Petition and Demand addressed to the Gen secretary NBA dated the 26/9/2019.**
10. **Witness statement on oath of Ezech David Obumneme dated the 26th September, 2019.**
11. **Re-Petition and Demand by Edidiong Osungurua addressed to Mr Nwaolisa Innocent Tochukwu dated the 16th June, 2021.**

The Defendant in response to the writ of summons & statement of claim of the claimant filed a statement of Defense and counter claim dated 6-03-2023 attached to the statement of Defense and counter claim is the witness statement on oath of Mr Nwaolisa Innocent Tochukwu of 41 paragraphs and documents annexed being.

1. **Contact of sale of land.**
2. **Resolution of meeting held dated 5-6-2020 between Tochukwu Innocent Nwaolisa and Chukwudi Odike**
3. **Photocopy of Access cheque from Mic-kano ventures dated the 17-6-2020 the sum of #2,100,000.00.**
4. **FIR from Grade 1 Area court Shagari Q Deidei, FCT Abuja in respect of Nwaolisa Innocent Tochukwu.**
5. **Summons before Magistrate court where Tochukwu Innocent Nwaolisa Plaintiff & Mr Chukwudi Odike Defendant.**
6. **Letter of Demand from Anthony. O. Utuogha & Associates addressed to Mr Chukwudi Odike dated 18 September, 2017**
7. **Land agents Commission agreement between Chukwudi Odike & Nwaolisa Innocent Tochukwu dated 11 September, 2017**
8. **Petition written by Nwaolisa Innocent Tochukwu address to the President of NBA dated the 7th November, 2022.**
9. **Petition written by Nwaolisa Innocent Tochukwu addressed to the president of NBA dated 9-08-2016.**
10. **Letter from Nwaolisa Innocent Tochukwu addressed to the president of NBA dated 19-09-2019**
11. **Re-Petition & Demand for explanation in land commission by Nwaolisa Innocent Tochukwu addressed to NBA dated 21-10-2019.**

12.The Constitution of Building materials Dealers Association Dei-Dei Abuja

In response the claimant counsel filed a reply to statement of defense dated 20-2-2023 of 11 paragraphs of the claimant's additional statements on oath deposited by David O. Ezeh.

In the course of evidence the claimant presented two witnesses as PW1 & PW2 where the Defendant defended itself.

This court summarized the evidence of the plaintiff witness testimony thus:

PW1: One Eze David Obumneme of plot 143 ToTo Close, Phase II site 7 Kubwa Abuja. Legal practitioner. That on the 2 September, 2022 he deposed to a witness statement on oath, same identified through his passport photograph, his signature and commissioner for oaths stamp, same which he adopted as his testimony in this suit.

That in paragraph 4 of the witness statement on oath he made reference to sales of land agreement, same identified through handwriting, the contract was between one ChukwudiOdika and as the buyer and the Defendant who represented one Chief Okafor the seller, a stamp of his law firm on the said document, the said document is a photocopy, as the original is with MrChukwudiOdika the buyer.

The document titled the Contract of sale of land between Arthur Okafor Vendor represented by MrNwaolisa Innocent Tochukwu and C-Rollins investment was dated 12-12-2012 admitted as Ext A That in paragraph 7 of the statement on oath he made reference to land agents Commission agreement prepared between ChukwudiOdika and the Defendant same identified being the document he prepared and both parties signed and he signed the front page. The said document titled the land agents Commission agreement between ChukwudiOdika and Nwaolisa Innocent Tochukwu (primary agent dated 30-08-2017 admitted in evidence as exhibit B.

That in paragraph 13&14 he made reference to a letter of Demand from the Defendant's solicitor and his reply to the letter. Same identified as the letter is on the letterhead paper of one Anthony Utuogha the lawyer signed same and same addressed to Chukwudi. The said letter of Demand written from Anthony.O.Utuogha and Associates dated 18/9/2017 addressed to MrChukwudiOdika as the reply Letter of Demand from ObumnemeEzeh as dated

20-09-2017 addressed to the head of practice Anthony .O.Utuogha and Associates signed by MrEzeh David Obumneme admitted in evidence as exhibit C & C1.

That in paragraph 15, 16,18,20, & 21 made reference to a malicious publication by the Defendant to the NBA against him,petition by one ChukwudiOdika against him for malicious publication and NBA letter to his account of that publication and in response to the NBA and the letter from ChukwudiOdika disengaging his services. That engagement he gave in account of the defendant's publication against me. Same were identified by the witness including the witness statement on oath through his passport and a cover letter addressed to the president of NBA with his seal. He equally identified the letter from ChukwudiOdika on letter headed paper of C-Rollings investment Co. LTD signed by the M.D MrChukwudiOdika addressed to him by the said letter:

- 1. A letter Titled petition and Demand for explanation in land agents Commission prepared by Barr Ezeh David Obumneme for Nwaolisa Innocent Tochukwu dated 9-08-2016 admitted as Ext D.**
- 2. The NBA letter addressed to Ezeh David Obumneme dated 3-08-2019 admitted as Ext E.**
- 3. Letter addressed to the General Secretary NBA titled Re-Petition and Demand for explanation in land agents Commission admitted as Ext F.**
- 4. Letter of Disengagement from C- Rollins Investment Co LTD addressed to Ezeh David O dated the 26th September, 2019 admitted as Ext G.**

That reference to paragraph 22 of the witness statement on oath made reference to evidence arising from the malicious publication on the Defendant the effect of the disengagement by his client and this he wrote to the Defendant demanding a retraction and apology and also made evidence of the service of the letter by the bailiff. Same he identified the said documents through the letterheaded paper of the lawyer signed by one Emmanuel Agabi while the proof of certificate of service was deposed to him by a bailiff of the court. The letter from EdidiongUsungurua&Co addressed to Tochukwu Innocent Nwaolisa dated 16-6-2021 admitted in evidence as exhibit H evidence of proof of service as exhibit H2

The witness who told the court that he can remember filing an additional statement on oath on the 20-3-2023, same identified through his passport photograph, same signed by him and prayed the court to adopt same as his additional evidence in this suit same adopted by the court as the PW1's additional statement in this suit..

That in paragraph 5 of the additional statements on oath he can identify his seal, which has his name and his surname and his supreme Court enrollment No while on the document are letters of allocation of two shops in DeiDei building materials market shop No D4, 114 Q4, 148 while on the original allocation of plot 114 is MMA Holdings LTD while the original allocation of shop 148 is ChukwudiOtti. That the Original seal of David ObumnemeEzeh No: SCN 077448 is admitted as Ext 1 while the original allocation of open space in DeiDei building market dated 26-6-1995 addressed to MMA HOLDINGS LTD dated 26-6-1995 admitted as Ext J & J2 and the power of attorney between MMA HOLDINGS LTD and MrEzeh David Obumneme dated 17-04-2000 admitted in evidence as exhibit K and the one dated 8-08-1996 between MrChukwudiOtti and MrEzeh David Obumneme admitted as Ext K2.

That in paragraph 10 of his additional statement on oath he made reference to a letter of withdrawal dated 16-06-2023 identified same through the suit no CR/62/2019 against ChukwudiOdika while the second with suit no CR/144/2019 is also a letter of withdrawal against the Defendant by the claimant same were tendered as exhibit L&L1

Under cross examination Question and answer.

Q. That he made reference to paragraph 15 of the pleadings as well as the witness evidence of fictitious agreement purportedly prepared by you, by the document which you drafted derived it for malicious publication

A whatit meant is that is an agreement is not in existence

Q you reported the defendant to the police

A yes I did

Q one of the documents tendered is your letter of withdrawal?

A yes it is.

Q before that matter started, you made a complaint to the police that lead to the criminal charge exhibit L

A Yes I did

Q is the statement to the Police your statement?

A that is my Statement

Plaintiff counsel, have no objection

The statement of one Eze David O.

The statement by Eze David O dated the 06-02-2019 is admitted as exhibit L2.

Q. This statement that the document exists, did you report the Defendant anywhere for a case of forged document.

A. That the document first came to his notice when the N.B.A served him the petition with the document attached.

Q. Did you have any police report.

A. I don't have any police report, as i answered it inthe answer to the petition

Q. When was the first time you got knowledge of the alleged petition on the fictitious document?

A. I can't remember the exact date

q. is Exhibit L2 your statement to the police

A. Yes it is my statement to the police

Q. That in paragraph 9 of the addressed statement on oath, are you aware that the Defendant was paid N27 million in full final payment?

A. yes i am aware i.e. i was at the meeting

Q. Have you looked at the document recorded by you

A. Yes

The document dated 5- 06- 2020 being a proceeding of the meetings admitted as exhibit M.

Q. You stated in the document that the Defendant described you as a trader

A. Yes

B. Did you participate in the election process by voting

- A. Yes i did
- Q. Do you agree that it is only members and traders that participated?
- A. Shop owners are allowed to vote
- Q. You are also one of the persons who drafted the constitution of the association
- A. i was a member of the constitutional review committee
- Q. Do you have any document engaging you for the purpose of the work you did
- A. There is no document as it is pro-bono service
- Q. That one exhibit 'M' do you agree that the total sum owed the Defendant as represented in the alleged fictitious document tallies with what was paid in document exhibit M N1.1 million?
- A. I can't tell until I see the document in question
- Q. You will agree with me that there is no document in the company where your client wrote to the company on the issue of burners statement?
- A. We don't have any document as no body made such document available to me.
- Q. Confirm to the court that the Defendant was actually paid 1.1m on a condition to setup difference head over time.
- A. Yes he was paid no re-examination

Pw2 one Chukwudi Dika, a businessman, a trader at D4127-130 Dei-Dei-international market. That he knows the Claimant's business. Told this court that the Barr, claimed is in Dei-Dei and later studied law, because the lawyer also knows the Defendant who is also in Dei-Dei, he knows him as an agent.

That in the year 2013 the defendant showed him a land besides his land which he said is for sale. They negotiated and he bought the land.

That he has an agreement to pay the Defendant N10million as a commission. That the original of the agreement got lost e he could not lay his hands on it. That he honoured the agreement to pay the Defendant the commission that he can remember paying the Defendant the sum of N11, 000but the agreement was for N10, 000. That later came to tell him that the negative was for N15,000 he told him it was not possible nothing like that happened that the agreement was N10 million. He commenced payment instalmentally until he completed the payment.

That the Defendant was like he went to make trouble, he then called for peace meeting and letter agreed for 11 million.

That he disengaged the Defendant when he got an information that he went for N1.5 million from Defendant that the petition was written by the Defendant

Under cross examination

Q. The document exhibit A was the first date you met the Defendant about the land?

A. Yes it was the first day i had discussion with the Defendant that exhibit A was made.

Q The plaintiff acted for you as a solicitor within the timethis happened.

A. Yes

Q. Was there any document, petition or complain written by the Defendant to you?

A. None to my knowledge

No re-examination

The defence counsel closed the case for the Defendant the matter adjourned for Defence.

This court in summarizing the evidence of Defendant thus.

DW1, one Mr.Nwodiso innocent Tochukwu a trader in Dei-Dei building material market leave at Kubwa Byegi. That he made a written statement on oath dated 6 –

3- 2023, which said statement contains his picture and signature. Adopted same and urged the court to adopt same as his oral evidence by this court. The counsel made reference to the constitution of the building materials market, a summons to obtain judgment by default. The document titled petition i.e. demand for explanation in land agents commission dated 7th Nov, 2022 addressed to the President NBA admitted in evidence as exhibit AA1. The constitution of building materials dealers association Dei-Dei Abuja admitted as exhibit BB2.

Summons to obtain judgement by default from the district court of the FCT Magistrate court between Mr.Tochukwu Innocent Nwaolis and Mr.Chukwu Odila admitted in evidence as exhibit CC3.

Under cross-examination

Q. Exhibit D confirms to the world that you are the author of the exhibit

A. Yes i am the author of Exh. D

Q. Confirm also that Exh. D was submitted to NBA

A. Yes it was

Q. confirm further that the petition refers to the claimant in this case

A. Exactly

Q. in Exhibit D it is your allegation that the claimant asked you for the sum of N1.5 million to enable him prevail on the Odika to pay him the sum of N15 million instead of the sum agreed between you and Mr.Odika.

A. That the claimant and not give him any letter or i have not tendered any document/in respect of the same

Q. In your statement on oath, and indeed exhibit D confirm to the world, that you did not indicate that any other person was with you when the claimant demanded that sum from you.

A. No i did not but we were with somebody

Q. Exh BB1 (constitution) to the court that 16 does not list the names of the members

A. It does not

Q (confirm to the court that you wrote Exh. AA1 after the action has been instituted before the court

A. I don't know

Q. Your alleged statement on oath that a certain document was prepared by the claimant in raising the amount payable. Confirm to the court that you have not tendered anything documentary before the court reference to paragraph 4 and 6 of the additional statement on oath

A, The document is not in evidence

Q. Are you one of the signatories to the document titled agreement between Mr. Innocent Tochukwu and Mr.Chukwudi. This document was sought to be tendered but objected to because the document was a photocopy. The objection was overruled since the witness is the maker of the document.

The document was tendered and admitted in evidence as exhibit EE1, and agreement between Mr. Innocent TochukwuNwadlise and Mr.Chukwudi Dike dated 21-10-2013.

Q do you have any evidence showing the court invoice or sales receipt issued by the claimant to authenticate your claim that he is a trader in Dei-Dei Market.

A. UI have not brought any document but he is a trader in Zone B.

No – re examination

The Defence counsel then closed the case of the Defendant and the matter was adjourned for adoption of final written address.

The Defence counsel filed his final written address dated 10th July, 2024 filed the same date and in it's final written address formulated a sole issue distilled for determination to wit.

“Whether the instrument authored by the claimant to the Nigeria Bar Association in respect of his experience with the claimant amounted to a defamation of character and evidence presented by him before this court has established his claims in order to be entitled to the reliefs sought.

The complainant counsel in response to the Defined written address filed the claimant's final written address dated 19th day of June 2024 filed the same date in its final written address formulated one issue as arising for the first determination of this case to wit:

“Whether from the evidence(s), the claimants has not established his case to be entitled to the relief sought.

Both parties adopted their final written address dated 11th July, 2024. The Defence counsel in adopting its final written address had urged the court to dismiss the entire action. On the side of the claimant counsel, adopted same and submitted that, the Defendant raised a defence of qualified privilege for the first time. That the law is trite that the Defence of qualified privilege must not only be pleaded but must be specifically pleaded with particulars. See registered Trustees of ATMV Frivonuyi 91994) 7 NWLR (pt. 355) 154 of 180 part par. G – IH in urging this court to discountenance the defence erroneously caused at the final written address.

Upon a careful consideration of the acts of this case, the brief of learned counsel presented / or the parties, the court upon a careful consideration of the one issues donated by both parties, i shall adopt the sole issues distilled by both parties, as their are the same. In doing so, the perspectives of the parties response shall also be considered in resolving the issue.

Now to the Defendants arguments on the lone issue of formulated submitted chip, the Defendant has furnished evidence of the truth of the content of the said letter to the Nigerian bar Association. That it is the law that truth or justification is a defence in actions of this nature. That the Defendants has displaced the presumption of defamation contained in the letter he wrote to the Nigeria Bar Association. This he slated, the defence has done by printing the truth of the contents of the letter. See Lana V University of Ibadan (1987)4 NWLR (pt 64) 245 Punch Nig Ltd v Eytene (2002) FWLR (pt 125) 678 of 697 (CA)

Furthermore submitted that, the Defendant has also provided by evidence the accuracy of his complaint to the NBA, submits that slight in-accuracies in the defect of the expression cannot reject the truth of the letter. It is equally his submission that the complainant of the Defendant can also go beyond with the amount of qualified privilege since the claimant is a member of the NBA and the association has a duty or interest to receive complaints or petitions against her members.

That in the instant dispute between the Claimant and the Defendant is totally covered by the principle of qualified privilege. That the Defendant did not go to the Market place with the claimant name but rather complained to his professional association of the dispute he had with the claimant therefore submits that, the letter is within the realm of qualified privilege. That the Defendant went further to state that the claimant has not shown or established by evidence that the Defendant acted with malice. See *AbammonSalaudeen (2005) 18 NWLR (1958) v. Obasujj V. Ezeigwu (1991) 3 NWLR (pt. 181) 585*

Furthermore, that submitted they, there is no malice associated with the letters of the Defendant, as the Defendant did not publicize the letter beyond the N.B.A. therefore submits that, qualified, privilege could be exceeded when communication has been made to a too broad on audience” that is to recipients who have no legitimate interest in the subject matter. That the qualified privilege will not apply to information that is not after one or is irrelevant of the duty or interest that firstarises to the privilege, notwithstanding that the recipients has the necessary interest to receive some information. On this urge the court that the Defendant has not executed the limit of qualified privilege.

The learned defence counsel went further to submit that there is nowhere in the evidence led by the claimant this court where the claimant proved that the complaint written by the Defendant to the NBA was copied to the claimant’s clients neither did the claimant Mr.Odika who testified as a subpoena witness (Mr) for the claimant say that the Defendant informed him of any letter of complaint authorized by the Defence. That on the instance of the letter of disengagement of the services of the claimant written by Mr.ChukwudiOdika, there is nothing also to prove the sources of the alleged information Mr.Odika heard. That he was acting upon, and that, the conjectured and fillers cannot be left in the hands of the court to bill up by assumption. Therefore urged this court to hold not exhibit G10 a scheme i connected evidence of the claimant to give him a result of action, the claimant as the content of exhibit G is ascheme and concocted evidence of the claimant to give him a result of action the claimant as the content of exhibit G does not disclose the defendant as the sources of whatever information Mr.Odika has that compelled him to author the should exhibit G.

The counsel went further to state that the alleged fictions agreement purportedly prepared by and published by the Defendant to the Nigeria Bar association is the crux of the claimant’s case. That the same documents is what the claimant claims

is attached to the complainants/petition the Defendant sent to NBA. This the claimant has refused to bring it by the court under the guise that it is an unsigned document. That the claimant also admits that Exhibit B is a false/tagged document but also accepted he did not report forgery to the police. Also admitted in cross-examination that he made a statement to the police, but failed to call it a target document only said it is an unsigned document. See Each. U E That the Claimant who claims that the Defendant did not tender the fictitious agreement he had attached to the letter he wrote to the NBA, but went further to make the court to believe he was defamed based on the court 5 of the said document that is not by once court. Reference to the case of MACFOY V UAC to hold that this court cannot place something on nothing i expected it to stand.

That exhibit M also proves that not only is the claimant a member of the building materials. Traders association but he's very much a participant in the signing of the association's constitution. We Therefore urge the court to add that there is no sentiment but to agree that the claimant is what he is (a trader) and nothing more.

In conclusion we urge the court in the interest of justice to look at the merit of all exhibits tendered by the Defendant especially LIEL2 including exhibit M to find conclusively that the Defendant has provided a meritorious defence to the instant case and dismiss the action of the Claimant with cost.

The Claimant counsel in his argument on the same issues submitted that from the evidence led in this case, the claimant has established his case against the Defendant and is accordingly entitled to the reliefs in this case. That the Claimant has proved that the publication (E.Y.D) by the Defendant which is complained of in this instant case, is highly defamatory of him.

The learned counsel to the Claimant submitted that the action is founded on defamation, in the suit on libel for a claimant to be entitled to the reliefs sought he must establish the existence of certain essential ingredients. The ingredients are as slated in the case of Skye Bank Plc v Akinpelu (2010) 9 NWLR (pt. 1198) 179 of 196 E.E. There are

- 1. That there is the publication of the trial complained of by the Defendant.**
- 2. That the publication refers to no other person but the plaintiff conclusively.**
- 3. That the publication is defamatory of the plaintiff.**

On the first ingredients, it is the submission of the claimant counsel that the claimant tendered in evidence the petition to the NBA which is the defamatory material complained of exhibit D alleged to have published to one Chukwudi Odika shows clearly that it was not only authored by the Defendant but was also published by him.

That on publication of the Defamatory materials made by the Defendant, against the Claimant in exhibit D written to the NBA. The second is the publication made to one Chukwudi Odika (PW2) in this instant case.

Also reference was made to paragraphs 15 – 16 & 19 of the statement on oath filed on the 2nd Sept, 2022. That on paragraph 15 – 16 of the statement on oath the claimant led evidence to show publication of defamatory materials against him by the Defendant to the NBA. Ex 19 further led evidence to show that the Defendant also published the Defamatory material to one Chukwudi Odika. On this it is his submission that the Defendant failed to test the veracity of his own evidence to the effect that apart from the publishing of Exh. D to the NBA, the Defendant also published the Defamatory material to one Chukwuemeka Odika. On this it is his submission that the defendant failed to test the veracity of PW1 evidence to the NBA, the defendant also published the defamatory material to PW3. That this evidence stands unchallenged. Reference to the case of Gaji V Paye) (2003) 8 NWLR (pt. 823 583 while the court held that a piece of evidence that is not challenged through cross-examination is a fact accompanied by that evidence which evidence urged to be believed by the court.

Furthermore that in exhibit d, there is a stand of NBA of indicating receipt of the malicious publication on the 9th day of August, 2019. On this stated that PW2 testified that Exh D was authored by the Defendant that he disengaged the services of the claimant in the circumstance of that publication. Exh. G. By the letter of disengagement, that Exh. G. Confirms that PW2 was indeed aware of the publication of Exh D by the Defendant against the claimant.

That the Defendant admitted that he published the Defamatory materials complained by the Claimant. That under cross examination, the Defendant admitted that he is the author of Exh. D that the said Exh D complained of was published by him. Therefore submits that those omissions constitute commission against interest which amounts to conclusive proof of the truthfulness, cogency and unassailability of the facts admitted, reference to Chief Walter Akpanesor V Chief

Edo EkongUmoh e ors (1999) 11 NWLR (pt 627) Ntom Mali JSC the supreme court held

“It is trite that what is admitted required no further proof by evidence whether oral or documented”

On the 2nd element or ingredient, it is the learned counsel’s submission that the name of the document splashed all over. Reference paragraph 7 of the exhibit ‘D’ where the claimants name is mentioned in 6 of items as the Defendant on the heading of the Exhibit that the above leaves no one in doubt that the publication refers to the claimant and no other person.

Furthermore that the Defence admitted that Exh. D is authored by him to the claimant. That he represented Exh. E, requesting for the response of NBA was not a doubt that, Exh. D was referring to him. That PW2 knew that Exh. D referred to the claimant, pursuant to which he disengaged him from acting as his counsel / attorney in further Exh D, the publication complained of was written by the Defendant. Therefore urged the court to know that the claimant, responded that Exh. D referred to him.

On the 3rd ingredient.

It is the claimant counsel’s submission that, Exh. D is defamatory of the claimant. That the said Exh D, is calculatedhim. In the estimation of right thinking people or calculated to causing him to be shunned or avoided or to be reposed to hatred, contempt as ridicule or to convey an importation on him disparaging injuries to him in his office, profession calling, trade in business.

That in the instant case, the Defendant by claiming that the claimant sought a kick – back of N1.5m, from him, clearly caused the Claimant to be shunned& avoided. That the allegation exposed the claimant to hatred, contempt, or ridicule also injured him in his profession in the main practice of your own account of which his service to PW2 were disengaged. That exh D lowered the claimant in the eyes of many right thinking members of the society caused him to be shunned by many including PW2. The contents of Exh G. reads

Received the news (allegation) of your demanding the sum of N1.5m from one Mr.NwadilisaInnocent Tochukwu to enable you prevail on me to pay him the sum of N15m instead of 10m (which was agreed agency fee with so much pay and dismay considering the type of trait I here built on you over the years.

In considering part PW2 wrote, please note that you have 7 days from the receipt of the letter to hand over all my documents relating to my properties of court related matters in your custody to my secretary in the office.

That the community reading of the two paragraph in Exh. G, it is without doubt that the malicious publication by the Defendant caused the Claimant to be shunned and or avoided by PW2 which further made him to be exposed to the ridicule of being nosed to hand over all documents of PW2 in his custody.

The Claimant counsel further submitted that the test from you confirming whether words complained of were defamatory is always that of a reasonable man. That it is the impression that such a publication conveys to the reasonable reader or member of the society. That the courts resort to see *Eloge V New Africa Holdings Ltd* (2013) 17 NWLR pt. 1384 1149 p. 469, that applying the above case in the instant case submits that Exh. D is defamatory of the complainant because it conveyed a negative impression of the Claimant.

The Claimant counsel further asked the pertinent question thus

“Are the contents of Exh.D in their natural / primary since not defamatory of the claimant?”

These he answered in the affirmative that the publication contained therein are defamatory of the claimant. That rewords in Exhibit ‘D’ conveys on him the importation of moral...., he is painted as a person without principles and or ethics. That he is also imported to be corrupt, in his dealings with people including his clients or paints, him as vindictive.

I have carefully gone through the evidences and the submission of counsel on their respective arguments, cases cited. To me, all the issues boil down on exhibit D&G as to whether the words used conveyance we reformatory to the claimant?

On this I wish to state that, for a claimant to succeed in an action for defamation, the claimant must be able to prove, that the words were defamatory not to only few members of the public but the general public. That the words were published to at least one person other than the plaintiff. By this can it be said that the exhibit d being the publication made on the Defendant concerning the claimant is defamatory

Exhibit d goes thus:

Petition for explanation

After a careful study of the two office letters enclosed herein, agreement and letter of demand, i discovered that his claim was unfair and untrue as the original debt to be paid to me by his client is N100,000 (One Million One Hundred Thousand Naira (sic) but Bar. EzechDavido in his letter to me claimed that one of hisclient was only owing the sum of N1, 000,000 (One Million naira) while in another letter he claimed that his client is owing me N800, 000.00 (Eight thousand naira).

Please i humbly ask on your committee to impress on Barr Ezech David O. To be honest and to explain in details the disparity in payment claims put in writing which was never true. In all honesty, in late 2016 when he invited me to his shop at D4 no. 114 Dei-Dei Building Material market, he orally told me that if i should find him the 10% of the total agreed commission to place (sic) in his client, which is N1, 500,000.00 (One million five hundred thousand only) that he will make his payment possible or he will frustrate for initial agreed commission. This was a property sale proceed and agreement for which he was never there from the albinitio but he was involved later (SCC) by the buyer.

My hope and belief is that Nigeria Bar association is one of the most formidable and respected associations in Nigeria because NBA among other issues stand tall in the fight for justice and human right and above all is the hope for the hopeless. In view of this therefore, i hereby urge you to direct Barr Ezech David O. To show good example in discharging his legal duties by explaining the reason for all this disparities stated above. I will be readily available to be invited by your honourable committee in due course.

Thank you.

Yours faithfully, Mr.Nwosu / Innocent

This petition as captured above was addressed to NBA disciplinary committee whose duty is to investigate and report on this i wish to refer to Rule 4(1) (a-f) of the legal practitioners or disciplinary committee rules 2020, on originating supplication by any person against a legal practitioner shall be forwarded in writing by the Applicant or the person aggrieved to any of the following persons. That is

- 1. The Chief Justice of Nigeria**
- 2. The A.G.P**
- 3. The president of the court of Appeal**
- 4. The chairman, body of Bencher**
- 5. The president of Nigeria Bar Association or the chairman of branch of the Nigeria Bar Association and**
- 6. The legal practitioner disciplinary committee.**

In the instant case the petition was written to the president Nigeria Bar Association being a body in charge of the legal practitioners or on whose behalf the petition was addressed. Can this letter or petition and details contain therein amount to defamation? The petition seeks the intervention of the chairman of Nigeria Bar Association and not defamation. On the other hand by untrue of rules 14(2) of the rules of professional conduct ensues of legal practitioner text, lawyer shall keep the client informed of the progress and any important development in a matter as may be reasonably necessary.

The submission by the learned counsel to the claimant that, the ordinary primary meaning of the publication is that the claimant demanded bribe / kick back from the defendant in the sum of N1, 500,000 to enable him to prevail on PW2 to pay him or else he will frustrate payment to him and that the above words/publicize cast the claimant in a very terrible light, the impartation of more depravity and also imputed him to be corrupt in his dealings with his people including his clients cannot amount to defamation. All he needs is in explanation and response to the president Nigeria Bar Association and nothing more. They are hold that, the argument by the learned counsel to the claimant that the words amounts to defamation, I do not think so. I Hold therefore, this leg of issues is resolved the favour of the Defendant.

From the foregoing and after thoroughly examining the publication hold that the Declarative reliefs sought by the claimant is not grantable final reliefs 1,2,3,4,5, 5,6, and 7 are not availing in this case. Hence, this suit as it stands is reasonable to be dismissed in its entirety.

In summation, judgement is hereby given in favour of the Defendant and this case is hereby dismissed.

Parties to bear their respective cost.

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Hon Justice A. Y. Shafa

Appearance:

1. EdidiongUsungurua for the Claimant.
2. T. G. Sambo for the