

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

SUIT NO: CV/926/2022

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN
BETWEEN:**

**PRINCE (ENGR) ARTHUR EZE OFRCLAIMANT
AND
A. BENBELLA ANACHEBE, SAN.....DEFENDANT**

RULING

The claimant, by the writ of summons with No. CV/296/2022 dated the 15th February, 2022 claims as follows:

1. A declaration that the words “this is all because the complainant is a billionaire. He is Authur Eze and he has bought up the whole judicial system. This is unfair. Author Eze is behind this” uttered by the defendant against the claimant at the High Court of the Federal Capital Territory Abuja sitting at Gudu presided over by Hon. Justice Modupe R. Osho-Adebiyi at the proceedings in criminal charge No. FCT/HC/CR/1106/2020 between **Federal Republic of Nigeria V. Eze Onyeka Nnadozie and 4 Ors** on the 26th day of January, 2022 are false, malicious and defamatory of the claimant for which the defendant is liable in damages.
2. An order compelling the defendant to apologise to the claimant and retract the defamatory words uttered in at least 2 National Dailies that circulate all over Nigeria and beyond.
3. An order of perpetual injunction restraining the defendant, his privies, agents, servants and/or other persons whomsoever from further writing or uttering such defamatory words against the claimant.

4. The sum of N100,000,000,000.00 (One Hundred Billion Naira) being aggravated damages for defamation.

The defendant, in his no case to answer submission, proposed lone issue for determination, thus:

Whether a plea of no case submission is not sustainable against the claimant who inter alia abandoned his pleading and witness statement on oath, moreso against the backdrop of the defence of absolute privilege which avails the defendant a legal practitioner, in the cause of representing his client in court?

The counsel submitted that, the case being for tort of defamation, the claimant's claim that the defendant's alleged words uttered concerning him have occasioned damages to the claimant's reputation and his good name is in danger of destruction because of the said words, and therefore the claimant has put his character in issue, and he wonders why the claimant, having put his character in issue would shy away from testifying on oath to defend his good name. The counsel submitted that the claimant is a vital witness whose absence is fatal; and he cited the case of **Iloabachie Esq V. Iloabachie (2005) 13 NWLR (pt 943) 695 at 714** to the effect that a plaintiff in an action for libel has invariably put his character in issue and put his reputation at stake.

The counsel submitted that the PW1 did not even testify as to how long he has known the claimant, but presumes to testify as to his character and his evidence is without foundation and is bereft of any probative value.

The counsel submitted that the claimant in paragraph 13 of the statement of claim pleaded this hinges has character/reputation, good name, on his clean business activities is best to testify to this, and in the circumstances of this case where the sole witness, does not know anything

about the claimant's business, except the same pleadings, the PW1 gave no evidence in this regard leaving all important allegation bereft of evidence and abandoned, and the claimant has the legal burden to prove all essential elements of the tort of defamation, and he cited the case of **Standard Chartered Bank (Nig.) Ltd V. Ameh (2022) 15 NWLR (pt 1854) at 559 – 573** to the effect that the burden is put on the claimant to prove the elements of the tort of libel or defamation he alleges.

The counsel submitted that the claimant must prove six co-existing ingredients in order to succeed, and he cited the case of **Federal Ministry of Health V. Dascon (Nig) Ltd. (2019) 3 NWLR (pt 1658) at 127** where the court held that a claimant in an action for defamation must prove that:

- (a) **The offending words were published;**
- (b) **That the words complained of referred to him;**
- (c) **That the words were defamatory of the plaintiff;**
- (d) **That the words were published to third parties;**
- (e) **That the words were false; and**
- (f) **That there was no justifiable legal grounds for the publication of the words.**

On the ingredient in paragraph (a), the counsel cited the case of **Anate V. Sunusi & Ors (2001) 1 NWLR (pt 725) 542 at 556** where the court expounded that the statement was defamatory of the claimant in the sense that:

- i. **It lowered him in the estimation of right thinking members of the society;**
- ii. **It exposed him to hatred, ridicule or contempt;**
or
- iii. **Injured his reputation in his office, trade or profession or**
- iv. **Injured his financial credit.**

The counsel further submitted that the claimant pleaded in paragraph 12 of the statement of claim that the defamatory words have reduced the claimant's reputation to nothing in the sight of right thinking members of the society, and the counsel submitted that no evidence was led towards the foregoing allegation as the PW1 did not testify positively that the alleged defamatory words allegedly uttered concerning the claimant lowered the latter in the estimation as a right thinking member of the society, and with the claimant not testifying, there is absolutely no evidence that the claimant has been exposed to ridicule or his reputation reduced.

The counsel submitted that with the assertion of the claimant's solicitor that the claimant debunked the alleged words purportedly uttered against him, has no probative value, and with the absence of the claimant's testimony. There is no credible evidence that the PW1 or any other person on the express that their estimation of the claimant has been lowered by the alleged words of the defendant, and he cited the case of **Ogolo & Ors V. Ogolo & Ors (1997) 7 NWLR (pt 512) 310 at 320** to the effect that where a party's case before a court is such that he is expected to swear to his truth and be cross-examined or is such that he needs to give evidence or certain facts that are peculiarly restricted to or within his own personal knowledge, and he fails to submit to giving such evidence himself without any satisfactory explanation for his inability to do so, such failure may be a point that can go against the credit and be a good ground for rejecting his case.

The counsel submitted and told the court during cross examination that he knew nothing of the defendant's accusing the claimant herein of toasting to pervert the course of justice therein in the said charge with No. CR/1106/2020 and the facts relating to the criminal

proceedings were within the peculiar knowledge of the claimant, hence the necessity of his being fielded if his case is to stand the chance.

The counsel gave a recount of what happened during cross examination wherein the PW1 told the court that he knew nothing regarding cross allegations on oath of corrupt influences at the bail hearing in the aforesaid criminal charge.

The counsel submitted that it is even more significant that the claimant has not established the words which he alleges the defendant uttered against his person on the 26th January, 2022 in the proceedings charge No. CR/1106/2020. In the claimant's attempt to prove the alleged words, the counsel submitted, he tendered in evidence two discrepant documents, to wit: claimant solicitor's (Bayo Ojo Co.) letter (Exhibit A2) and Record of Proceedings in CR/1106/2020 EXH. A3.

The counsel submitted that by the claimant's pleadings and concurrence of PW1 under cross examination on the 1st November, 2023, the alleged defamatory words were spoken by the defendant as counsel in the course of judicial proceedings in court.

The counsel submitted that it is worthy of note that the 2nd paragraph of the letter from Bayo Ojo & Co. to the defendant (EXH. A2) also affirmed that the alleged defamatory words were uttered by the defendant as counsel during the aforesaid bail hearing, and it is contended that statement of counsel uttered while representing his client in court is absolutely privileged and counsel is immuned from civil claim or liability in defamation therefore, and he cited the case of **Fawehinmi V. Akilu (1994) 6 NWLR (pt 351) p. 387 at 448**, and submitted further that the concept of absolute privilege of court process and/or proceedings is founded on the fact that it is in the

interest of public/society that there be no impairment for full speech or fear of sanctions on the quest for attainment of justice and no action under whatever guise can lie there from, and he cited the case of **Fawehinmi V. Akilu (supra)** as per the dictum of Uwaifo JCA (as he then was) to the effect that for words written or spoken in the course of any proceedings before any court recognised by law, and this though the words written and spoken were written or spoken maliciously, without any justification or excuse and from personal ill-will and anger against the person defamed.

The counsel submitted that to further underscore the necessity of immunity of counsel from liability in the course of performing his legal duties to his client, he cited the case of **Effiong & Ors V. Ironbar & Ors (2000) 11 NWLR (pt 678) at p. 359**, the court had this to say;

“I believe it will not augur well for the society, the development of the law and the entire administration of justice to sue a counsel merely because he is rendering service to his client in a professional capacity as counsel.”

To the counsel, this settled position to shield judges, lawyers and witnesses even if malice can be inferred and he cited the case of **Okonkwo V. FRN & Anor (2022) NWLR (pt 1833) 427 at 450** to the effect that it is of considerable interest to the administration of justice and the stability of our society and constitution that the thin and fragile fabric of our judicial wall should be protected from wanton attacks of irate litigants.

The counsel submitted that the status of the words spoken in the course of the proceedings in court, being privileged the counsel cited the case of **Amaonwu V. Ahaotu (1998) 9 NWLR (pt 566) 454 at 467** where it was held that absolute privilege attaches to the following statements:

1. Statement made in the course of judicial proceedings, and
2. Statements contained in documents in judicial or quasi judicial proceedings.

The counsel submitted that the claimant's case discloses no cause of action against the defendant as the words spoken are not actionable being absolutely privilege occasion, and he cited the case of **Prof. Jegede V. Akande (2014) 16 NWLR (pt 1432) 43 at 88-89**; and submitted that where the statement of claim has disclosed no cause of action, the remedy is for the court to strike out the claim, and he further cited the case of **Thomas & Ors. V. Olufoyoye (1986) NWLR (pt 18) 669 at 682**.

The counsel submitted that in the absence of cause of action, the court is robbed of jurisdiction and he cited the case of **Forestry Research Institute of Nigeria V. Gold (2007) 11 NWLR (pt 1044) 1 at 18-19**; and the case of **Aremo V. Adekanye (2004) 13 NWLR (pt 891) p. 572**.

The counsel submitted that the court is replete with features which prevent the court from exercising its jurisdiction, and he cited the dictum of the Supreme Court in the case of **Bank of Industry Ltd V. Awojugbagbe Light Industries Ltd (2018) NWLR (pt 1615) p. 220 at 230** to the effect that the claimant's claim therefore patently falls short of the factor in paragraphs (b) and (c) in the above case and imbues the court with competence, and he cited the case of **Madukolu V. Nkemdilim**.

On the court is deprived of the competence to adjudicate, he cited the case of **Nwobike, SAN V. FRN (2022) 6 NWLR (pt 1826) 293 at 344** and submitted that the claimant's suit is irredeemably bad as it has no cause of action and not actionable.

The counsel finally submitted that it is the accrual of cause of action that would in turn cloth the claimant with

the right of action, and he cited the case of **Iliyasu V. Rijau & Ors**, and urged the court to look at its case file vide the case of **Rromosele V. FRN (2018) 11 NWLR (pt 1629) 60** and submitted that the claimant's suit is totally misconceived and premature as the alleged defamatory words are also the subject of a pending motion EXH. AB1 in the said criminal proceedings with No. CR/1106/2020.

In his written address the counsel to the claimant raised this issue for determination, to wit:

Whether it is mandatory for the claimant to give evidence himself to succeed in this case?

The counsel answered the above issue in the negative and submitted that in order to prove his case against the defendant the claimant needs not to testify himself. The counsel submitted that whilst it is desirable that the claimant gives evidence, where from the facts of the case some other person is in a better position to give evidence because that person becomes a more credible and competent witness to give evidence than the claimant, and he cited the case of **Cross River State News Corporation V. J.L.Oni (1995) 1 NWLR (pt 371) p. 270 at 293, paras. D-E** and the case of **Ezennah V. Atta (2004) 7 NWLR (pt 873) p. 468 at 495, paras. D-G** to the effect that while it is desirable that he (the claimant) gives evidence, there are situations where from the facts of the case, some other person is in a better position to give evidence because that person participated on the particular matter and did it and saw it all.

The counsel submitted that in the instant case, the claimant called Mr. Luther King Onyemkpa who testified on his behalf and testified that the defendant after court had taken arguments on as bail application and adjourned for ruling, the defendant stood up and declared "this is all because the complainant is a billionaire. He is Arthur Eze as

he has bought up the whole judicial system. This is unfair. Author Eze is behind this".

The counsel gave a recounts of what happened when Mr. Luther had given evidence and was cross examined, and painstakingly reproduced some questions put to the claimant's witness and the answers he gave during cross examination to demonstrate before this court that the claimant as required by law, has led credible evidence to prove that the defamatory words uttered against him by the defendant were without justification, false, malicious and have reduced his reputation to nothing in the sight of right-thinking members of the society.

The counsel submitted that evaluation of evidence of witnesses is not based on the number of witnesses but in credibility, and the witness who has first had knowledge of that which he testifies to, will be the front line burner and the evidence is credible because the evidence is within his personal knowledge, and he cited the case of **Omisore V. Aregbesola (2015) 15 NWLR (pt 1482) p. I at 324, paras. F-G.**

The counsel submitted further that in the instant case, the claimant's sole witness did not only state his witness on oath that he was in court when the defendant uttered the defamatory words against the claimant, he also reproduced during cross examination the exact defamatory words uttered by the defendant, and urged the court to so hold that the claimant has led credible evidence to prove his case against the defendant.

The counsel submitted that heavy weather has also been made by the defendant that the claimant made his character an issue, in this suit, therefore he must give evidence to prove how his character has been injured by the words complained of, and submitted further that the defendant did not cite any authority to support this erroneous submission, which is an attempt to say that the

claimant must prove his character is unblemished before he can succeed in defamation.

The counsel also submitted that the law is settled that where the defamatory words complained of refer to the plaintiff by name or contain some keys or pointers indicating that they refer to the plaintiff, as in this case, the plaintiff would have no need of proving how his character has been injured by the defamatory words uttered by the defendant, this is because defamatory words once established are actionable per se, and he cited the case of **Cross River State News Corporation V. Oni (supra)** to the effect that defamation spoken or written is always actionable if damage is proved, and even if it is not, the law will infer the damage needed to found the actions when the words spoken impute a crime punishable with imprisonment.

The counsel submitted that the words the claimant complained of in this case are clearly defamatory as they contained an imputation of a crime, a very heinous crime indeed as provided in section 118 of the Penal Code Act, and damage must be presumed in the circumstances of this case.

The counsel raised another issue, thus:

Whether the defence of absolute privilege avails the defendant in this suit?

The counsel submitted that the defence of absolute privilege does not avail the defendant in this case because, the defendant being a lawyer has the responsibility of ensuring that he uses same properly, and it is not in all circumstances that he will enjoy such a privilege, and he cited the case of **Akilu V. Fawehinmi No. 2 (1989) 2 NWLR (pt 102) 173** to the effect that offences against fellow citizens in court made recklessly, careless, whether the allegations are true or false. The liberty to make any accusation is circumscribed both by right to make it, a duty not to injure

another by the accusations and the right of any person wrongly accused an injured and thereby to seek appropriate redress in the court. That they are not established to protect citizens who falsely, or even erroneously believe in the existence of the right.

The counsel so submitted that the defendant, a very senior lawyer, accused the claimant falsely of buying the whole judicial system, and presented the whole judiciary in Nigeria as very corrupt and that a billionaire could buy them over. The counsel submitted that these defamatory words were uttered by the defendant after the cause of proceedings when the court had adjourned the defendant's case.

The counsel asked this question:

Whether a statement made by a counsel after his matter has been effectively adjourned, falls within the definition of a statement made in the course of proceedings?

The counsel referred to EXH. A annexed to the defendant's Notice of Preliminary Objection which is still pending before this Honourable Court, and the said EXH. Is a motion No. M/5506/2022 filed by the defendant on the 13th May, 2022 after he realized what he said before His Lordship Hon. Modupe R. Osho-Adebiyi on the 26th January, 2022. The counsel further argued that on the said motion, the defendant sought for an order of court deleting the defamatory statements as same was "extraneous to counsel" submissions and proceedings of court of the said date". The counsel quoted the segment of the relief sought by the defendant in the motion, and submitted that there can be no better piece of evidence to prove that the defamatory words uttered by the defendant against the claimant were made by the defendant after the proceedings of the 26th January, 2022 before the other

court, than the motion filed by the defendant himself where he admitted that the statements were not part of the day's proceedings, and that the defamatory statements not being made during the course of the proceedings, as admitted by the defendant himself, the defence of absolute privilege does not avail him.

The counsel adopt and rely on his counter affidavit and written address filed on the 24th January, 2023 in urging this court to find that the defence of absolute privilege does not avail the defendant in this case.

The counsel finally submitted that this submission of no case is an abuse of court process, this because the defendant filed a motion with No. M/1258/2022 on the 11th November, 2022, and a Notice of Preliminary Objection with No. M/3253/2023 on the 13th January, 2023 wherein he substantially canvassed the same issues he is now rehashing in this no case submission, and he referred to the case of **Okafor V. Anambra State (1991) 6 NWLR (pt 200) p. 659 at 616 paras. C-E** to the effect that an abuse of court process is where two similar processes are used against the same party in respect of the exercise of the same right and subject matter; and urged the court to find the defendant's submission of no case as an abuse of court process and to dismiss same.

The counsel to the defendant filed a reply on points of law and submitted that the motion filed that the correction of record of proceedings of 26th January, 2022 was to disown in its entirety the words alleged to have been spoken by the defendant's counsel as ascribed to him in the said records. The counsel referred to the grounds for the application, to the effect that the alleged defamatory words were not a part of the proceedings. The counsel submitted that in the event, the case of the claimant is not that the alleged words are not that alleged words uttered

outside the court proceedings, but rather that the alleged word were uttered in the proceedings of 26/1/2022 in FCT/CR/1106/2020, the counsel proceeded and quoted the claimant's first relief in the suit and submitted that the defamatory words were made contrary to the pleadings. He also contended that a party is to remain consistent in his case throughout, and he cited the case of **Ajide V. Kelani (1985) 3 NWLR (pt 12) 248 at 269.**

The counsel submitted that the pendency of the motion in CR/1106/2020 seeking to correct the record of proceedings of 26/1/2022, the existence of which motion was duly conceded by the claimant, makes the case of the claimant founded on the said proceedings as manifestly untenable, because by the claimant's pleadings is that on the 26/1/2022 on the proceedings in CR/1106/2020, the defendant uttered concerning the words defamatory to him, and the words are allegedly comprised in the record of proceedings of that court, and on the definition of cause of action, the counsel cited the case of **Onudunmi V. Registered Trustees of CCC (2000) 10 NWLR (pt 675) 315 at 365.**

The counsel further submitted that until the said motion to correct record of proceeding is decided, the challenged records cannot form the basis for the claimant's case in the instant suit, that is to say, the cause of action in the instant suit which is founded on the disputed record cannot accrue or form the basis of this suit until the propriety of correctness of the disputed record of court is determined, and he cited the case of **Bello V. Governor of Gombe State (2016) 8 NWLR (pt 1514) 219 at 285;** and the case of **UBA V. Etiaba (2008) 6 NWLR (pt 1082) 154 at 185 – 186.**

On the question posed by the counsel to the claimant, the counsel to the defendant submitted that document speaks for itself and the claimant does not dispute the said

records, and it is therefore not open to the claimant to detract from the said records as he alleged that the words uttered were not in the course of proceedings of 26/1/2022 which is contrary to his pleadings and reliefs.

The counsel referred to paragraphs 4.22 to 4.25 of his address and made reference to the existence of cross allegations of corrupt interference in the judicial process between the defendant and the nominal complainant in a case with No. CR/1106/2020 were not denied and they remains uncontroverted on the claimant's reply on the no case submission, and having not denied the claimant must be deemed to have admitted the fact of cross allegation in the proceedings before Osho-Adebiyi J., and no cause of action could have crystallized to warrant the instant suit, and he referred to the case of **Onudunmi V. Registered Trustees of CCC (supra)**.

The counsel submitted that the dictum quoted by the counsel to the claimant in the case of **Akilu V. Fawehinmi No. 2 (supra)** purporting same to have been made by learned jurist is false, as the dictum was made not whether statement of counsel made in court is privileged or qualified privilege, but the dictum was made obiter. The counsel submitted that cases are authorities only for what they actually decided and he cited the case of **Adegoke Motors Ltd. V. Adesanya (1989) 3 NWLR (pt 109) 280 at 266**.

The counsel submitted that the Preliminary Objection is jurisdictional in nature and so can be taken at any stage of the proceedings, and the rider for taking preliminary objection along with substantive matter is only that the preliminary objection must be disposed of first, if necessary resolving the substantive matter, and the contention that the no case submission contains some of the issues raised in the preliminary objection is of no moment, and he urged the court to hold that the no case submission has been

made out, the claimant having failed to make out a prima facie case.

Thus, the defendant/counter claimant filed this process tagged “no case submission of the defendant, and as the response of the claimant, it was contended that this process (no case submission) is an abuse of court process because the defendant’s motion filed with No. M/1258/2022, and a Notice of Preliminary Objection with No. M/3253/2023 filed on the 13th January, 2023 wherein the same issues were canvassed were now rehashed in this no case submission, and therefore, two or more process were used against the same party in respect of the exercise of the same right and subject matter, while, it is the contention of the counsel to the defendant that the contention of the counsel to the claimant is misconceived as the Preliminary Objection is jurisdictional in nature and so can be taken at any stage of the proceedings, and it is settled that for economy of time, the law can take the preliminary objection together with the substantive matter only that the preliminary objection must be disposed of first before resolving the substantive matter.

It is further contended by the counsel to the defendant that the argument that some of the issues raised in the preliminary objection are in no case submission is of no moment. The counsel further submitted that the no case submission arose at the close of the claimant’s case whereby no prima facie case was made by the claimant to warrant rebuttal and at which point the defendant is entitled to review the entirety of the claimant’s case, hence the complaint of overlapping of issues with the preliminary objection is untenable.

The Supreme Court in the case of **Allanah V. Kpolokwu (2016) All FWLR (pt 830) p. 1213 at 1222, paras. B-E** enumerated the features that constitute abuse of court process even though not exhaustive to include where two

or more similar processes are used in respect of the exercise of the same right, for instance, a cross appeal and a respondent's notice. See the case of **A.C.B V. Nwaigwe (2011) All FWLR (pt 568) p. 949 at pp. 954 – 955, paras. E-A (SC)**.

So, let me look at the motion on notice dated the 11th November, 2022 and the Notice of Preliminary Objection dated the 11th January, 2023, to put by side by side with the no case submission to see whether they are similar in respect of the exercise of the same right of the defendant.

In the motion on notice, the defendant alleges that the pivot of the claimant's claim against the defendant/counter claimant in this suit is for declaration that the words purportedly spoken by him as counsel/advocate in course of a criminal proceedings in court are defamatory of the claimant, and posited that the alleged defamatory words being undoubtedly words purportedly uttered by counsel in the course of proceedings in court while representing a litigant is absolutely privileged, and do not yield any cause of action. In the notice of Preliminary Objection, the entire grounds upon which the application filed were issues bothering on the defamatory words by counsel to the defendant in CR/1106/2020 which court processes contained cross allegations of corrupt interference in the judicial system, which the counsel made heavy weather that the defence of absolute privilege avails him and that there is no cause of action which culminated into abuse of judicial process and that bereft the court of the jurisdiction to entertain this matter, while on the other side of the no case submission, the issue raised is:

Whether a plea of no case submission is not sustainable against the claimant who inter alia abandoned his pleadings and witness statement on oath, more so against the

backdrop of the defence of absolute privilege which avails the defendant, a legal practitioner, in the course of the representing his client in court?

Now, having looked at the three processes, it could be inferred that they are similar, having regard to the defence of absolute privilege, raised by the counsel to the defendant in this case against the claimant and are all targeted toward the striking out or dismissal of this suit, and I therefore so hold. I agree with the submission of the counsel to the claimant this process tagged submission of no case is an abuse of court process having filed similar processes before this court, and having determined that it is an abuse of court process, the appropriate thing to do is to strike out the process, and the no case submission is hereby struck out. See the case of **Commissioner of Education V. Amadi (2013) All FWLR (pt 705) p. 212 at 220, paras. B-F.**

Order 32 Rule 12(1) of the rules of this court provides that:

- (1) “A party shall close his case when he has concluded his evidence. The claimant or defendant may make an oral application to have his case closed.**
- (2) Notwithstanding the provisions of sub rule I above, the court vary su motu where he considers that either party fails to conclude his case reasonable time, close the case for the party.”**

CT-DC: In the spirit of the above quoted rules, I ask whether you intend to call witnesses in defence?

Hon. Judge
Signed
26/9/2024

Appearances:

The parties are not in court, and no representation.

A.O. Okpalah Esq appeared with Charles Jibuaku Esq for the defendant/counter claimant.

CT: The matter is adjourned to 30th day of October, 2024 for the defendant to tell the court whether he has closed his case or he intends to call witness in this case.

Hon. Judge

Signed

26/9/2024