IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 30TH DAY OF SEPTEMBER, 2022

FCT/HC/CV/1990/2018

BETWEEN:

1. **SANI ABDULLAHI GABRIEL**
2. **ABDULKADIR M. AHMAD** ……**CLAIMANTS**

AND

1. **BRITISH NIGERIA ACADEMY**
2. **MRS. NENNA UKACHUKWU** ……..**DEFENDANTS**

JOHN IYAFOKHAI *for the claimants*
S. M. ANIECHEBE *for the defendants*

JUDGMENT

The claim of the claimant against the defendants are as follows:

(a) A declaration that the defendants acted outside the powers vested on it as provided on the school extant rules and regulation when it rusticated the plaintiffs from school.

(b) A declaration that the defendant acted in violation of due process and were in breach of the rights of the plaintiff to fair hearing, equity, fair treatment as a student of the school under its care when it rusticated them from school.

(c) A declaration that the decision taken by the school to rusticate the plaintiff from school was excessive, harsh and draconian, and

unjustified having regard to the allegation of indiscipline made against them and the general circumstances of the case.

(d) An order directing the defendant to refund the sum of **₦4,630,000.000** received from the plaintiff as school fees.

(e) **₦5, 000,000.00** as general damages.

The case of the plaintiffs as contained in the statement of claim which is in pari-material with the witness statement on Oath of the next of friend and the guardian of the plaintiffs (PW1) is captured s follows;

The 1st claimant is said to be the biological child of the plaintiff's witness, Alhaji Mohammed Sani who is also the uncle to the 2nd plaintiff. Both plaintiffs are students of British Nigeria Academy, a co-educational post primary school in Abuja up to sometimes in February, 2017 when they were rusticated from the school. Both of them were said to be in their third and final year of their six year program otherwise called Senior Secondary School (SSSIII) it is a year students were prepared to sit for external examination coordinated by West African Examination Council, National Examination Council (NECO) joint admission and Matriculation Board (JAMB) and other International Examinations like **IGCSCE, SAT, TOEFL** and **IECTS**. The guardian was said to have paid their school fees for the year 2016/2017 academics season in the sum of **₦2,315,000.00** for each of the plaintiffs as full session school fees. On the 30th of January 2017, the PW1 received a telephone call from the Vice principal saying that his attention was required in the school. On the following day, he went to the school to see the principal and upon arrival at the principal's office, he sent for the 1st plaintiff who was asked to inform him what he had done. The 1st plaintiff informed him that he was one of the students who slapped a student who allegedly stole a co-student money in the hostel. The vice principal informed the PW1 that he had obtained the written statement of all the students who were involved in the incident including his son which was shown to them. He apologized to the

school on behalf of the children for daring to take laws into their hands however, notwithstanding the fact that the claimants were first offender who had never been involved in any act of indiscipline, the principal told him that the decision of the school was that the children had to be suspended indefinitely. He appealed to the principal to reconsider his decision for another punishment bearing in mind that the students are in their various examination year, that JAMB, NECO and WAEC were first barely two-three months to commencement. The principal refused to listen to his appeal and asked that he should go and expect to hear from the school via email their decision on how long the suspension will last by the next day. When there was no response from the school, this prompted him to write through Minister for the Federal Capital Territory for his intervention. As a parent, the Honourable Minister for Federal Capital Territory, through the FCT Education Secretariat Department of Quality Assurance sat with claimant's next of friend, the school principal, the 2nd defendant and members of the department with the view to resolving the imbroglio, the PW1 alleged that the school did not informed the claimants the nature of punishment to be served. That even when the meeting suggested a meeting between the parent of the affected students, the school authorities and particularly the 2nd defendant did not do anything to make that happen. That the Parent Teachers Association executive and or general meeting of parent and teachers were also not called to address the issue. The PW1 felt that the school ought to have given the affected children the opportunity to reconcile, reunite and apologize to one another in the interest of future which the school claims it was building or developing for the children.

The claimant contended that they were not afforded the opportunity to face their alleged victim to contradict some of the claims made against them to the authorities. The claimants said that the process adopted as well as the punishment meted out by the school were outside the school extant

regulations. That they were force to stay at home to continue studying for their various external examination. The result of which clearly manifested in the outcome of their examination as they barely managed to pass their WAEC and NECO. That if not for the rustication, they would have passed their exams in flying colors. The claimants therefore finds it difficult to accept the school keeping their parents hard earned money as school fees amounting to **N4, 630,000.00** for service not fully rendered by the school. That the fees paid by their parent or guardian to the school authorities as fees was meant to take care of their boarding, feeding and learning which the school were obliged to provide for their entire one year academic session ending July, 2017 which was abruptly cut short on the day of the alleged incident being the 30th January, 2017. The PW1 tendered receipts for payment of school fees, the parent-student Handbook and other sets of documents which shall be referred to in the course of this judgment as Exhibits A1-A9, B1-B5 respectively.

Under cross examination by the defence counsel, the witness contended that he was informed that the 2nd claimant slapped the boy that was alleged to have stolen money. The money he said belonged to the 2nd claimant. He also confirmed that the school called his children and other who were involved to explain in writing what happened. Although he claimed that his son told him that he was teleguided by the principal when he wrote his statement. He further stated that his sons despite their suspension wrote their WAEC examination in the school, but said they did not pass successfully that the 1st claimant failed literature and Visual Aids while the 2nd claimant failed Biology. The defendant tendered the Admission Forms signed by the claimants through the witness as Exhibits B6 & B7 respectively.

The witness was asked to look at the 2nd line of the document and read out the last paragraph on Parent/Guadiana declaration in Exhibit B6, after

reading he was asked, on that ground are you seeking for a refund, he said he paid for his children to be in school but were denied the opportunity, that he had to employ four teachers, and also had to take them every morning for the examination. And were not allowed to talked to their colleagues, they were asked to leave immediately the examination finished. The plaintiff's closed their case on this note.

DEFENCE:

The 1st and 2nd defendants filed a joint statement of defence though out of time sequel to an order for extension of time. The case of the defendants as averred by their sole witness the Vice Principal of the school in the witness statement on Oath is that the expulsion was carried out in full accordance with the laid down procedure in the 1st defendant's parent/students Handbook. That sometime In January 2017, the claimants were involved in serious act of bullying and physically assaulting of a minor who is also a junior student of the 1st defendant to the extent that the victim was severely injured, bruised beyond what is tolerable under the school rule and regulations as contained in the parent/student Handbook. That the 1st defendant carried out extensive investigation into the matter before inviting, writing statement from various students who were at the scene of the mob action. The injured boy was said to be hospitalized as a result of the injury sustained. That the conducts of the claimants against their fellow student led to their expulsion after due investigation.

That their expulsion had nothing to do with their preparation and writing of external examination as they were permitted to write all their external examination within the premises of the 1st defendant and under the supervision of the relevant official of WAEC and NECO without any hindrance whatsoever from the defendants. That the defendant did not delay their decision on the case involving the claimants but rather made it clear in their letters to the claimants parents that they be removed from the

school and will be allowed back into the school premises to write their examination under supervision. Furthermore, the witness said that it was the victim's parent that refused to discuss the situation with the claimants' parent and same was communicated to him. And that the state of health of the victim was not exaggerated. That pages 40 and 49 of the handbook which the claimant referred to do not deal with serious offence resulting to hospitalization and medical attention. That under the handbook serious offence such as the instant one attract expulsion and not one week suspension as the claimant postulate. That previous cases involving severe bullying and mob action being given the same strict approach and that there is no partiality in the way and manner the claimants' case was handled.

And that contrary to the statement of claim, and following the intervention of the Honorable Minister of the FCT, through the Director of the Department of Quality Assurance, Education Secretariat FCT, the management of the 1st defendant conveyed a meeting with the Parent Teacher Association of the school, and among others matters discussed, the issue concerning the claimants was tabled and discussed and at the end the PTA sanctioned the expulsion handed to the claimants. That the claimants were given fair hearing as they were invited to appear before a panel set up by the 1st defendant to investigate the alleged bullying and assault, the claimant volunteered a written statement. That the school does not have the obligation to reconcile erring and recalcitrant students with their victim but rather to apply the provisions of the handbook at each given situation.

He further asserted that the claimants were allowed to take their external examination and they passed in flying colors, and that the defendants do not take fees from parent apart from the normal school fees which is fully utilized to the benefit of the student as in the instant case where the claimants have written their examinations successfully. He maintained that

the claimants are not entitled to any refund of the sum of **₦4,603,000.00**, which clearly stated the terms and conditions of admission. The defendants on this note pray the court dismiss the suit in its entirety with substantial cost as being frivolous gold digging and lacking in merit.

Let me also state that several documents including school handbook, medical reports of the victim, statement of the claimant and the victim were tendered and admitted as Exhibits DA1-DA14 respectively.

The defendants closed their case with the testimony of their sole witness. And subsequently filed written address dated 15/8/2021.

Two Preliminary objection were raised to the competency of this suit.

(a) That there is no proper claimants before the court.
(b) That the suit was not properly instituted or commenced following due process of law requiring rules of pre-action counseling certificate by the claimant's lawyer.
(c) That the suit discloses no cause of action against 2nd defendant.

On issue 1, the learned counsel argued that in line with the provisions of Order 13 Rules 4 and 12 of the High Court Civil Procedure Rules 2018 the suit purportedly brought on behalf of the two claimants who are minors by reason of being 16 years at the time of the commencement of action shall be accompanied by a written authority for that purpose and signed by the minor. That failure to comply with the rules of court before the commencement of the suit renders it incompetent and liable to be struck out.

Issue 2, He also argued that failure to file a pre-action counseling certificate by the claimants' was a fundamental omission and in breach of the provisions of Order 2 Rule 2(2) of the Rules of the court. That the purported pre-action certificate accompanying this suit was in respect of ***Shelter Affairs Ltd*** an Organization which was not a party in this suit.

On the effect of non-compliance with the rules of court, the counsel relied on the case of **ADENIYI & ANOR VS. TINA, GEORGE INDUSTRIES LTD & ORS(2019)LPELR 48891 SC, NS EFIK(SINES & READ)& ORS VS. MUNA & ORS(2013) LPELR 21862 SC, BROAD BANK OF NIGERIA LIMITED VS. ALHAJI S. OLAYINO & 8 ORS. LIMITED & ANOR (2003) LPELR 806 SC.**

On issue 3, the court was urged to strike out the name of the 2nd defendant as there was no where any reasonable cause of action or liability of any kind was attributed to any cause carried out by the 2nd defendant against the claimant. The cases of **NKIRU ENECHEBE VS. CETO INTERNATIONAL NIG. LTD (2017) LPELR 45365 CA, CIL RISK & ASSET MANAGEMENT LTD VS. EKITI STATE GOVT & ORS(2020)LPELR 49565 SC.**

In reply the claimant's counsel urged the court to treat the failure to file an authority from the claimants as an irregularity and apply the provisions of Order 5 Rule (1) of the High Court of the Federal Capital Territory civil procedure Rule.

On the non filing of pre-action counseling notice, the counsel argued should be treated as mistake of counsel that filed the process copied and wrongly pasted the name of the party that appeared under.

On whether a party can be liable for the error or mistake of his counsel, the counsel referred to the case of **KOTOYE V. SARAKI & ANOR(1995) LPELR 1709 SC.** And finally on whether the suit discloses a reasonable cause of action against 2nd defendant the claimant's counsel replied by saying that the 2nd defendant is a director and alter ego of the 1st defendant. He placed reliance on the case of **STANDARD TRUST BANK LTD V. INTERDRILL NIG. LTD & ANOR (2006) LPELR 9848 CA.** He prayed the court to dismiss the preliminary objection and consider the addresses of the parties.

RESOLUTION OF THE PRELIMINARY OBJECTION

On failure to obtain the written consent of the claimants by the representatives and in compliance with the provisions of order 13 Rule 1 and 12 of the High court of Federal Capital Territory Civil Procedure Rules 2018, while the word "shall" used in the rule connote command or mandatory, I do not think that the non-compliance violate the entire proceedings or render the proceedings (suit) incompetent and liable to be struck out for the following reasons;

(1) The entirety of the fact alluded to in the statement of claim and the sworn witness statement of the representative and guardian of the 1st and 2nd claimants (PW1) show that he is their parent/guardian who had fulfilled parental responsibilities over them. For instance, by paying their school fees amongst others responsibilities. There is therefore other no f doubt in my mind that the said Alhaji Muhammed Sani is the guardian./next or friend of the claimants as in the writ of summons and other processes. In other words he has the locus to sue on their behalf in law.

(2) The said Alhaji Muhammed Sani can be said to have shown sufficient interest in the subject matter of this suit and its outcome. In my view the provisions of order 13 Rule 12 should be interpreted with the liberality in order to attain the justice that this case deserves. Furthermore, another question, that I ask myself, in respect of the written consent or authorization by the claimants is; assuming the claimant cannot read and write, does it mean that they will not be able to pursue their rights through their next of friend or guardian because there was no written authorization? I do not think so, I am of the view that the provision is not meant to deprive a claimant (minor) who did not give a written consent the rights to sue through a next friend or guardian. The essence of the provisions is

to ensure that anybody suing in a representative capacity as a next friend or guidance is not a busy body or someone with self-interest to serve. The consent or authority to sue is implied in such circumstances, and in the case at hand. The objection of the learned counsel to the defendants is therefore discountenanced.

(3) On filing of a pre-action counseling certificate which has inserted in it, the name of another party by the legal practitioner representing the claimant. By the provisions of Order 2 Rule 2 (2) of the High Court of FCT Civil Procedure Rule 2018. Civil proceedings commenced by writ of summons shall be accompanied by;

a. Statement of claim
b. List of witnesses to be called at the trial
c. Written statement on Oath of witness(es) and except for subpoenaed witness.
d. Copies of documents to be use at the trial and relied on at the trial and certificate of pre-action counseling as in Form 6.

It is upon a fulfillment of the above conditions, that a suit is said to have been duly initiated. The non compliance as stated by the provisions of Order 2 Rule 4 is that the originating process shall not be accepted for filing. Having accepted the process for filing with the fault in it is it fundamental so as to affect the competence of the suit, or it is a irregularity? This is not a case of non-filing of pre-action counseling at all, but the filing of an irregular pre-action notice by counsel to the applicant which in my view does not affect the competence of the suit before the court, and on whether it has taken away the jurisdiction of the court to determine the claimant's claim on its merit, I am mindful of the fact that this court has the inherent power to ensure compliance with the rules of court and may strike out any process and that is not in tandem with the Rules, however if the non-compliance is not so fundamental and could be saved by the court if the rule so permit, so

be it. See **IKOH VENTORS & ORS LTD VS. SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD (2008) LPELR 4300 CA.**

The rules of court are meant to ensure speedy and efficient dispensation of justice and are therefore meant to be obeyed. It is not in doubt that the court may condone irregularity and not incompetence. The case of the claimants in this instance is an irregularity that is curable by the provision of Order 5 Rule 1(1) of the High Court Civil Procedure Rules 2018 which states:

"Where in beginning or proposing to begin any proceedings there has by reason of anything done or undone, been a failure to comply with the requirement of these rules such failure shall met nullity of the proceedings"

In the case at hand the defendants were not misled as to who the claimants are, and have not claimed that they suffered any damages or injustice by reasons of the wrong name of the claimant so described in the pre-action counseling certificate. The defendants have dealt with the claimant in their names as they appear in the writ of summons and other processes by filing their statement of defence reflecting the real names of the claimants.

I therefore do not aceed the arguments of learned counsel to the defendants Prince Orji Nwafor Orizu that the filing of the pre-action certificate as it is reflected on record affects the competency of the suit and have to be struck out. Furthermore, the objection to the irregularity ought to have been raised timeously before the defendants took steps to file their statement of defence, having not done so, they are deemed to have waived their right to complain about it at this stage. See the following cases; **ACCESS BANK V. SUNSHINE OIL & CHEMICAL DEV. LTD. (2021) LPELR 53348 CA. AMOLOJA & OR V. IFE COOPERATIVE PRODUCE MARKETING UNION LTD.(2016) LPFLR 41335 CA. RASAKI & ANO V.AJIBOLA & ANOR 2017 LPELR 47013 SC.**

See also Order 5 Rule 2(1):

"An applicant to set aside for irregularities any step taken in the cause of any proceedings, they be allowed where it is made within a reasonable time and before the party applying has taken any fresh step after becomes aware of the irregularity."

SEE ALSO SKYPOWER EXPRESS & ANOR NIG. LTD. V. UBA PLC. & ANOR where the Supreme Court held:

"If Procedural irregularity can be waived or claimed to have been waived if the adversary taken steps. In the proceedings in spite of the defeat. The court in ARIORI V. ELEMO (1983) 1 SC 13 held that a party in whom a legal right entitles can waive the legal right including his right to object to any `defect appearing ex facie the process such conduct of failing or neglecting to object timeously to the procedural defect appearing ex facie to process create stopped by conduct against the prospective objector under Section 169 of the Evidence Act 2011." Dissenting per Eko JSC Pp. 42-43 PAR E-A.

Issue no. 3: On the objection that this suit discloses no reasonable cause of action against the 2nd defendant. I agree with the claimant's counsel that the 2nd defendant is one of the directors of the 1st defendant and therefore cannot be absolved from the liability as agent of the 1st defendant. The preliminary objection on the whole lacks merits and are hereby dismissed.

SUBSTANTIVE SUIT

With respect to the substantive suit, the defendants formulated two issues for determination to wit;

(1) *Whether the claimant's tortuous acts of bullying one of their fellow student was not a breach of the extant rules and regulations of the 1st defendant and does not justify the punishment of expulsion meted on them"*

(2) *Whether the claimant's having regard to the fact and circumstances of this case have proved their case on a balance of probability to warrant their entitlement to the refund of the school fees paid and the general damages opened.*

I have to gone through the written address of the claimant's counsel, the issues raised therein are also not in any way different from that of the defendants. Both counsel in their written addresses are in agreement that the claimants were in breach of the extant rules and regulation of the school as contained in the Exhibits A1 & DA1, the British Nigeria Academy handbook. The parties are however differed on the punishment meted out to the claimants. The claimants were alleged to have bullied & assaulted a junior student. Both counsel referred to page 35 of the handbook which categorized bullying and assault as serious offences which may result in suspension or expulsion according to the circumstances. The claimant's counsel contended that page 35 lists the general offences which may attract suspension or expulsion while page 49 of the handbook, deals with specific offences and prescribed punishment for each offence to be meted out to every student and in this case bullying attracts 1 week suspension, he submitted that there is a specific provision, a general punishment cannot be applied. The specific rule he argued overrules the general rule. He commended to the court the case of **UBAH V. OKAFOR (2013) LPELR 21261, AJAYI V. ALALADE (2013) LPELR 20185 CA.**

He submitted that since there is a specific section that deals with the punishment to be meted out as it relates to bullying which is 1 week suspension the 1st defendant cannot by public opinion or majority decision rely on general provision over a punishment not prescribed by the specific provision of the handbook which he says is binding on the party. The learned counsel argued that the burden proof on the claimant to prove that the punishment for bullying is one week suspension has been discharged by the

claimants, whereas the defendants failed to discharge the burden of proof on them to establish that there is another page of the handbook which specifically prescribes a different punishment for bullying.

In swift response to the arguments of the claimant the defendant's counsel submitted that even though page 49 at item 9, step 4 deals on infraction and punishment, for bullying to be 1 week suspension, the facts and circumstances of this case supports the punishment of expulsion meted out to the claimants which is in line with the provisions of the handbook at page 35. He further stated that the facts and circumstances that might have weighed heartily on the minds of the authority of the 1st defendant in meting out the punishment to the claimants are;

1. That both claimants were head boy and class or house prefect respectively held position of trust in the school among their peers which warrant that they must be above board in their conduct and dealing with both the students and the school management.

2. That victim of the bullying incident was also a student of the school who was in a lower class than that of the claimants and the school rules and regulations as captured in the handbook had it that *"No student is allowed to punish another student"*.

3. The claimants were in breach of the school's rules and regulation and policy which forbids some items including money in the school.

4. The claimants did not report to the school authority or to the parties appointed by the school authority to oversee each of the hostel concerning any incident of stealing in the school involving the student that was bullied.

5. The claimants took the law into their own hands by electing to bully the junior student who allegedly stole their money rather than the proper channel to get the issue sorted out by the school authorities.

6. The action of the claimants would have set a bad precedents in the school, a private institution, which warrants that action be taken to nip The ugly action in the bud as was done by the actions of the 1st defendant.

7. The claimants procured some students who witnessed the act of bullying of their fellow student in order to fully rob in the shame on the allegedly theft.

8. The attitude of the claimants could lead to formation of gang groups and gang war among students in the school or outside the school such that a strong signal needed to be sent that such act will not be condoned in the school under any guise.

9. The act of bullying was classified as a serious offence in the school's handbook which might lead to expulsion depending on the circumstances of the case.

He submitted that from the undeniable facts and circumstances of this case, the action taken by the school authority by the 1st defendant to expel the claimants is justified and ought to exculpate the defendants from any liability. He urged that the claimants should not be allowed to benefit from their own wrongs. He cited the case of **PDP V EZEONWUKA & ORS (2017) LPELR 42-563 SC; OGUNPEHIN V NUCLEUS VENTURES (2019) LPELR 48772 SC; CIVIL DESIGN CONSTRUCTION NIG. LTD & ORS V SCOA (NIG) LTD. (2007) LPELR-870 SC; ENEKWE V. INT'L MERCHANT BANK OF NIG. LTD. & ORS (2006) LPELR 11490 SC** and urged the Court to dismissed the claim of the claimant.

RESOLUTION OF ISSUE

I have carefully perused the testimonies of the witnesses for the party and the exhibits tendered. I have equally read and digested the arguments in support of the case of the respective parties. It is worthwhile to mention

that the burden of proof in civil matter is on the party who asserts. It places the obligation on the party who asserts a claim to adduce sufficient evidence in proof of his claim. Further in civil matter, the onus probande is not static, It shifts from one party to another. See section 131(1) of the Evidence Act 2011 which states:

"1. Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of fact that which he asserts shall prove that those facts exist.

2.When a person is bound to prove the existence of any fact it is said that the burden of proof lie on that person."

Section 133(1);

"In civil cases the burden of first proving existence or non-existence of fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings."

As rightly stated by the claimant's counsel, the contention of both parties is rooted in the British Nigeria Academy student's Handbook. Exhibits A9 and DA1 respectively. The claimants were punished for the offence of bullying which was categorized as No. 19 step 4 @ page 49 of the Exhibit DA1 and attract a 1 week suspension. The same offence was referred to at page 35 of the same Exhibit DA1 as serious offence amongst other offense listed and said to attract suspension or expulsion according to the circumstances. The circumstances in my view depends on each case meaning each case has its own peculiarity. That means each case has to be determined on its own merit, to attract either expulsion or suspension. I want to agree with the counsel to the claimant that where there is a specific provision applying to a particular issue, the general provision take a back seat. The parent/teachers handbook is the law or rules and regulation guiding the school both

parent/teachers and students in the conduct of their relationship with each other. And like a statute or rule of court, all the sections have to be read together in order to determine the intentions of the framers of the rules.

The defendants in their final written address at par. 4.12 referred to the definition of bullying as it is in Collins English Dictionary as; ***"The repeated use of threats or violence in an attempts to harm or intimidate others while the Cambridge English Dictionary defines bullying as the behavior of a person who hurts or frightens someone smaller or less powerful."*** The defendant also referred in paragraph 4.02 that from the general rule in the handbook at page 20 Exhibit A9, Exhibits DA1, 42 stipulated that; ***"Students must refrain from bullying of any kind as include physical, verbal or written."***

The defendant's witness Mr. Abdulmuftau Hamzat at paragraph 11-13 of his adopted witness statement on Oath stated:

Paragraph 11 - ***"That the defendants state that sometime in January, 2017, the claimants were involved in a serious set of bullying and physically assaulting a minor who is also a junior student of the 1st defendant British Nigeria Academy to the extent that the victim was severely injured and bruised beyond what is tolerable under the school rules and regulation as contained in the parent/teachers handbook."***

Paragraph 12 - ***"That the 1st defendant carried out an extensive investigation into the matter by inviting written statements from various students who were at the scene of the mob action in which it discovered that the minor was badly injured leading to him being hospitalized. Copies of the written statement from the claimants and other students of the school in respect of the bullying, apology letter from one of the claimants, reports of the incidents is recorded by patrons of SS2, SS3 are hereby attached and marked as Annexure 2 (a)-(1). Also attached is the medical report, medical form, and receipts from Zankli Medical Service Ltd and X-***

ray report in respect of the victim of the bullying, Onyebuchi Emmanuel are hereby attached and marked as Annexure 3 (a)-(h).”

Paragraph 13 – “***That it was after the due investigation and given the severity of the conduct of the claimants against a fellow student that it become necessary to expel the claimants in accordance with the school parent/teachers handbook.”***

From the evidence of the defendant’s witness, he claimed that the victim was badly hurt, there was injury and assault. The witness also testified that the claimant also breach the school rule and regulation by keeping contraband .i.e. money with them which they alleged was stolen by the victim of the bullying. The aggregate of all these, and the fact that the claimants were Head boy and Class Prefect respectively who were supposed to be good examples to other and not take law into their hands made the defendants to expel them from the school. The poser for determination is whether the defendant were justified in their action. Have they brought proof in support of their claim and the act of expelling the Claimants from school? I do not think so, for the following reasons:

1. No injury on the victim was proved by the defendant. The medical report which they sought to tender was rejected by the court because it was a photocopy with no foundation as to the whereabouts of the original in accordance with Section 89 of the Evidence Act 2011.

2. The disk which the defendant pleaded and tendered as containing the X-ray of the alleged minor or victim was dumped on the court. This court was not privy to its contents, and it was also not tendered by a medical personnel who had knowledge of the content or who attended to the victim of the alleged bullying.

3. The receipts for the treatment were also rejected for being photocopies.

Furthermore at page 33 of the handbook Exhibit DA1, under forbidden items particularly "h" 'money or credit card"; the punishment for it as stated at page 34 is; ***"Items h-m on the list will result in 1 week external suspension. Parents will be informed and items or money will not be returned, they will be donated to local charity."*** Let us assume that the defendants wanted to punish the claimants for being in possession of money against the school rule, the punishment ought to be 1 week external suspension according to the handbook. Also punishment for bullying, assault under Infraction & p

Punishment at page 49, items 19 and 20 step 1 is 1 week suspension. Cumulatively therefore, if the defendants wanted to apply the punishment for the alleged offences according to the handbook, it ought to be;

1. Being in possession of both contraband (money) 1 week external suspension, in addition to confiscating the money.
2. Bullying 1 week suspension.
3. Assault 1 week suspension.

The defendants have failed to prove the severity of the assault or willful infliction of injury on the victim, a minor. The recommendation of the PTA, endorsing expulsion of the claimants was based on sentiments and not cogent facts presented before it. The defendants acted outside the punishment prescribed for the offences as contained in their handbook. I am therefore not satisfied with the justification reeled out by the learned counsel to the defendants in his address, most of them were mere speculation, they are in his imaginations; the facts are not backed with any proven or cogent evidence. The punishment meted out to the claimants by expelling them from the school is unjustified, draconian and excessive.

On whether the claimants are entitled to the refund of their school fees to the tune of **₦4,630,000.00 (Four Million Six Hundred and Thirty Thousand Naira)** I am not minded of awarding a refund of the school fees, because

the claimant have spent substantive part of their time in the school before their expulsion, they had also the opportunity of coming to school to write their examinations within the ambience of the school. Would they have performed better in the examination save for their expulsion for the school? What was their performance before their expulsion from the school? The results of the claimants exhibited before the court showed that the claimants passed their examination. The witness did not place any fact that they would have done better if not for their expulsion by tendering their previous performance cards. I therefore refrain from granting the relief (d) as contained in the writ of summons.

With respect to the award of general damages of **₦5,000.000.00 (Five Hundred Thousand Naira)** while I concede that the defendants were high handed in with punishment meted out to the claimants by expelling them, the consequences of the act was the inability of the claimants to be at the school premises to write their examination and also to enjoy all the facilities like the feeding, the ambience of the hostel and the school etc. however, inspite of that the claimants wrote and still passed their examination. The whole essence of their expulsion is to take them away from the boarding school and not to take them away from the school completely. The letter written to the PW1, reads in part; "giving the severity of the situation the school have no option than to invite you to remove Gabriel from the premises and he will only be allowed back into the premises to take his SS3 examinations under suspension." The letter was written on the 9th of February, 2017, external Examination like WAEC, NECO etc. are written in May/June. The claimants by my estimation were expected to serve 1 week suspension for bullying but ended up serving about three months psychologically they are deprived of being with their fellow students during the period of that expulsion. And to me that is what the punishment was meant to achieve because of their condemnable act.

However the punishment is not commensurate to the allegations against them. They are entitled to damages, very nominal in the circumstances of this case. I hereby award the sum of **One Hundred Thousand Naira (₦100,000.00)** as nominal damages against the defendants, and written apology to the claimants for the high handedness.

Signed

Hon. Judge
30/9/22