IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
BEFORE HIS LORDSHIP: A. S. ADEPOJU
THIS 29TH DAY FEBRUARY, 2024

SUIT NO: FCT/HC/CV/162/19

BETWEEN:

PATRICK OLASEHINDE DANIELS ----------CLAIMANT

AND

1. RESORT SAVINGS AND LOANS
2. CRC CREDIT BUREAU LIMITED ----------DEFENDANTS

KARINA WILLIAMS *for the Claimant.*
Defendant's Counsel aware of today's date.
Defendant not in Court.

JUDGEMENT

In the writ of summons dated the 29th of October 2019, the claimant claims against the defendant as follows:

1. A declaration that the claimant is not indebted to the 1st defendant in any amount whatsoever.

2. A declaration that by the letter of non-indebtedness issued to the claimant on the 18th of May 2016, the claimant is absolved of any indebtedness to the 1st defendant.
3. A declaration that the continued publication, listing and profiling of the claimant's details as a debtor to the 1st defendant on the website, platform or any other media of information, dissemination of the 2nd defendant, its libellous and defamatory of the claimant's name.
4. An order directing the 2nd defendant to remove the claimant's name from its website, platform or any other media of information dissemination as a debtor to the 1st defendant.
5. An order directing the 1st and 2nd defendants to issue a letter of apology to the claimant for a wrongful malicious and defamatory publication of his name as a debtor within ten days from the date of the judgment.
6. An order directing the 1st defendant to pay the claimant the sum of **N20,000,000 (Twenty Million Naira)** as damages for defamation and libellous report/publication of the claimant's name as a debtor to the whole world using the 2nd defendant's platform.
7. An order directing the 1st defendant to immediately return the unutilized National Housing Fund loan to the Federal Mortgage

Bank within ten days from the date of judgment and send the claimant a letter confirming that the fund has been refunded to the Federal Mortgage Bank.

The 1st defendant, according to the claimant, is a primary mortgage institution while the 2nd defendant is a company licensed by the Central Bank of Nigeria to collect, receive, and or obtain data regarding credit standing of customers of financial institutions and banks in Nigeria, document and publish same on his platform and other media of information dissemination. The claimant also averred that sometimes between 2011 and 2012 he applied for a National Housing Fund loan of **N15,000,000 (Fifteen Million Naira)** from the Federal Mortgage Bank through SunTrust Bank Nigeria Limited for the purpose of purchasing of a four-bedroom flat at **Mahfas Sunshine Estate, Kurudu** from its developers **Mahfas Investment Limited.** That sometimes in 2013 he received a phone call from the 1st defendant informing him that **Mahfas Investment Limited** were no longer in partnership with SunTrust Bank Nigeria Limited rather their bank, Crystal Savings and Loan PLC, has been chosen as the primary mortgage bank through which the claimant can access the National Housing Fund loan for the purchase of the property.

Consequent upon which the 1st defendant further instructed the claimant to open an account with her to enable him to access the National Housing Fund to purchase the house at **Mahfas Sunshine Estate**. The claimant claimed that he complied as instructed and perfected all necessary documents and even provided additional documents to better facilitate the mortgage process. The 1st defendant invited him sometimes in 2014 to come to its Abuja office to sign an offer letter and other documents towards the grant of the loan and on getting to the office, he was given an offer to sign as part of the documents to execute in order to conclude the documentations for the National Housing loan and to have a flat at Mahfas Estate transferred to him. That at first he refused to accept the offer because he was aware that the houses at Mahfas Estate were not completed or allotted to anybody including the claimant. Therefore, there were no existing houses from which the loan was to be used as payment for. He was however assured by the staff of the 1st defendant that signing the letter of offer did not mean that the National Housing Fund will be transferred to the developer, but rather it will be transferred when the house is completed and the claimant executes a consent form and letter of authority and the transfer of the National Housing Fund loan to the developer. Upon this information, he reluctantly executed the letter of offer, but did not sign any other documents for the transfer of the

fund/loan to the developer. He never heard from the 1st defendant nor the developer regarding the property. No house was allocated to him at any time whatsoever.

He averred further that in 2015, he applied for a loan from Guarantee Trust Bank, but in 2016, Guarantee Trust Bank informed him that his name and details had been published on the platform of the 2nd defendant as having been blacklisted and that he cannot access the loan facility from her. Upon this information, he logged into the 2nd defendant's platform and to his dismay, he discovered that the 1st defendant had made the report to the 2nd defendant that he had taken both a term loan and overdrafts which were overdue in the amount of **N1,000,000 (One Million Naira)** and that his account was in debt. He wrote to the 1st defendant complaining about the wrongful and false publication of his name as debtor on the 2nd defendant's platform based on the false information by the 1st defendant and that based on his letter of complaint to the 1st defendant, the 1st defendant carried out an investigation which revealed that he was not indebted in any way to the bank and that he never utilized the National Housing Fund/loan facility for the purchase of any property.

Consequently, the 1st defendant issued him a letter of non indebtedness dated 18th May, 2016. And it was stated in the letter of

non indebtedness that the repayment for the property loan facility was erroneously triggered and has been reversed along with all debits, interests that arose as a result of the error. That despite the letter the 1st defendant did not make any move nor take any step to clear or delete his name or delists his name or inform the 2nd defendant that there was an error in their report or information and documents and that his name and details be pulled down and or erased from their platform.

Again on the 2nd January 2019 the claimant said he applied for another loan facility from Guarantee Trust Bank but the application was also refused on the ground that his name was published as his debtor on the 2nd defendant's platform as a debtor to the 1st defendant. The claimant stated that he was put in the position of having to explain to the Guarantee Trust Bank that he was not indebted to the 1st defendant albeit shamefacedly. That he also met with a company called Aquila Leasing Limited for a business of leasing and this company also informed him that his name was listed on the platform of the 2nd defendant as a debtor. Thus the leasing business was declined and refused. Consequently he lost business opportunities and was unable to carry on the project which cost him financial loss and loss of reputation.

The claimants also stated that sometimes in September 2018 he spoke to the managing director of the 1st defendant Mr. Rabiu Olayemi and Mr. Oshok Aliu its Executive Director of Business Development regarding the removal of his name from the list of debtors published on the 2nd defendant's platform but he was referred to one Mr. Olutayo Akinleye Head of Bank Management who promised to investigate the matter. However since September 2018 no action was taken by the 1st defendant to pull down the defamatory and libellous publication. That also on 30th day of February 2019 the Managing Director of Mahfas Investment Limited in response to the 1st defendant's later dated 8th February 2019 wrote the 1st defendant informing them that at no time did they receive any money either from the claimant, the Federal Mortgage Bank or from the 1st defendant for the purchase of any property in favour of the claimant.

Furthermore the claimant averred that when all his complaints, pleas and cajoling failed to yield any results and the defendant refused to take any step to clear his name and remove details from the CRC Credit Bureau's platform, he instructed his lawyer to write the 1st defendant and demand that they take down his name from their list of debtors. The 1st defendant wrote back to the claimant's lawyer on 26th June 2019 and assured him that they were addressing the issue and will

communicate them, without giving any specific time within which to do so. The claimant averred that he also wrote a letter of complaint to the 2nd defendant dated and emailed on the 25th day of September 2019 concerning the false report. The 2nd defendant's representative, one Zainab Asnari called the claimant's counsel Mr. Bola Olotu to assure him that they would take necessary steps to ensure that the matter is resolved. That the continued listing of his name as a debtor on the 2nd defendant's platform had reduced his creditworthiness and ability to access loan from either banks or financial institution and that puts him to odium, shame and disrepute in the eyes of reasonable men in the society. And that the false publication means that he is a debtor to the 1st defendant and unwilling to pay, that he lacks financial credit worthiness and incapable of repayment of credit facility granted, and should not be recommended or considered for grant of any facility by any financial institution. Also that he is fraudulent, untrustworthy and cannot keep to terms of a contract and that the whole world should take notice that he is a chronic debtor who will not pay back what he borrowed, same as defamatory and libellous.

The 1st and 2nd defendants on the other hand filed a joint statement of defence dated 12th February 2020 while the 2nd defendant also filed a separate statement of defence dated 4th February 2020. The

defendants claimed not to be in the know-how of the arrangement between the claimant and Mahfas Investment. That the arrangement of documentation for national housing fund/loan to have a flat at Mahfas Sunshine Estate is a private arrangement of claimant with Mahfas Investment. The 1st defendant claimed not to be aware of any letter of offer signed by the claimant and that the letter dated 18th of May 2016 was fraudulently obtained by the claimant in connivance with Mahfas Investment Limited and the then Managing Director of the 1st defendant Mr. Abimbola Olayinka. That the matter is still a subject of investigation at the Economic and Financial Crimes Commission, Abuja and that the 1st defendant's Managing Director and his management team were forced to resign as a result of such fraudulent practices, The nefarious action led to the 1st defendant losing over **One Billion Naira** which led to the crippling effects on the bank till date. That the misappropriation issue of Mahfas Investment Limited and purported claim of transferring fund to the 1st defendant as his primary mortgage institution is also subject of litigation in Abuja suit No: FCT/HC/CV/ 0465/2017 (Mahfas Investment Limited V Resort Savings & Loans Plc).

The defendant also averred that the refusal of loan facility by Guarantee Trust Bank and Aquila Leasing to the claimant is not the making of the 1st defendant. The defendants denied making any

defamatory or libellous publication and that investigations revealed that the Claimant was not its customer at any point in time. That the 1st defendant wrote letters to Mahfas Investment Ltd to clear the air since the claimant stated that he paid some money to the 1st defendant through Mahfas Investment Ltd. That the 1st defendant did not receive any amount of money on behalf of the claimant from Mahfas Investment and that in response to paragraph 23, 24, 25, and 26 the defendants admits receiving the letter dated 11th April 2019 but could not respond as her investigation reveals that the claimants was never their customer. That any defamation, libel purportedly suffered by the claimant was not caused by the 1st defendant rather it was as a result of the agreement between the claimants and Mahfas Investments Ltd.

In addition, the 2nd defendant denied knowing any events that transpired between the claimants and the persons named in paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of the statement of claim. That the claimant did not at any time access or log into its platform as the claimants was not authorized to do so. That the platform is not one that can be logged into in the manner stated by the Claimant in paragraph 13 of his statement of claim. And that nowhere was it stated that the claimant had a term loan due in an amount over One Million Naira or any amount whatsoever. And that it did not publish any report stating

that the claimant was a debtor either to Guarantee Trust Bank or any other party whatsoever.

It also denied that the claimant name was published as debtor on the 2nd defendant's platform. That as a credit bureau in the present instance, it merely received credit information and duty bound to do so in the prescribed form from the 1st defendant with whom the claimant had a relationship by virtue of which the claimant's information became lawfully known to the 1st defendant. That apart from not publishing any negative or disparaging reports about the claimant, the 2nd defendant stated that the claimant's application by Guarantee Trust Bank was not refused on the ground that his name was allegedly published on 2nd defendant's platform as a debtor. That the credit report of the claimant is not such that it's capable of grounding the refusal by GTB and Aquila Leasing Limited to do business with the claimant. It denied that the claimant lost any business opportunity or suffered financial loss or reputation as a result of his name being allegedly listed as a debtor by the 1st defendant on the 2nd defendant's platform. And that the practices in the financial industry as approved by the Central Bank of Nigeria is that a credit search is conducted from at least two credit bureaus amongst other requirements.

The 2nd defendant further averred that by the admission of the claimant, he was also in possession of a letter of non-indebtedness from the 1st defendant. And as such, it became aware of the claimant's complaint as to the accuracy of the credit report challenged. It launched an investigation into the complaint and flagged the account to reflect the disputes in line with the enabling laws of the 2nd defendant's operation. That as the account was flagged, any subscriber of the 2nd defendant who was authorized to view it knew that the claimant had disputes and that steps were taken to resolve this dispute. It is also notified the 1st defendant of the complaint of the claimant and was awaiting feedback when it received the originating process in this matter. And that it is not its duty to remove the name of the claimant from the platform without the resolution of the issue of indebtedness and having not received feedback from the 1st defendant before the suit was filed, the 2nd defendant was limited to immediately flagging the claimant's credit report as disputed in accordance with the requirements of law, enabling and establishing the credit bureau.

The 2nd defendant further denied Paragraph 21 of the statement of claim and states that no right-thinking member of the society or the world saw the credit report as nearly all that the claimant stated, as meaning all that the claimant stated in Paragraph 28 (i) – (iv), and that

the interpretation of the credit report by the claimant is baseless and incorrect and did not at any time brick-wall the claimant, contrary to his averment in Paragraph 29 of the statement of claim. Finally, it denied being liable to issue of letter of apology to the claimant as it did not make any wrongful, malicious, and defamatory publication of the claimant's name as a debtor. It therefore urged the court to dismiss the claim of the claimant for being baseless and constituting an abuse of court process.

In reply, the claimant denied any EFCC investigation on the letter of 18th May 2016, the 1st defendant's letter of indebtedness obtained by the claimant. The claimant maintained that the wrongful information passed by the 1st defendant to the 2nd defendant that he was indebted and published by the 2nd defendant was defamatory and libellous and that he was able to access the 2nd defendant's publication because he was authorized to do so after paying the necessary fee to the 2nd defendant. The claimant pleaded all the mails between him and the 2nd defendant, online receipts, 2nd defendant's inquiry forms, and also the certificate of compliance for computer-generated documents. He also referred to the 2nd defendant's solicitors' reply to his counsel's letter complaining about the publication of his name on the 2nd defendant's platform as a debtor.

Now, in order to prove the claimant's case, claimants adopted his witness statement on oath which facts are in pari-materia with the statement of claim. He also tendered 19 documents which were admitted and marked as exhibits A1 to A19 respectively. He was cross-examined by the defendant's counsel, claimants closed his case on this case. Similarly, the 1st and 2nd defendant fielded one of the staff of the 1st defendant as their sole witness. She adopted a witness statement on oath and she was also cross-examined. The testimony is also in pari-materia with the statement of defence. All the relevant parts of the testimony will be referred to in the course of this judgment. And at the close of the defendant's case, counsel for the respective parties filed and exchanged their final written addresses.

The defendant's final written address was dated 14 February 2023, and was filed out of time via an order for extension dated the same day to which the claimant filed a reply on point of law dated 20 February 2023. It is apparent that the claimant by his final written address dated and filed on the 8th of December 2023 was first in time. I have therefore calmly gone through the addresses of both parties. I am quick to observe that the issues formulated by the parties are similar and I shall therefore adopt the defendant's sole issue for determination, which is:

Whether or not from the totality of the evidence before this court, the claimant had discharged the onus of proof placed upon him by law or the preponderance of evidence led to warrants a grant of the relief sought in the suit.

The claim of the plaintiff is simply based on libel and defamation following the publication of his name as a debtor on the website of the 2nd defendant. Both parties are at aid-idem that to succeed in an action for libel, the plaintiff must prove four (4) ingredients. They are:

i. *That the words were published.*
ii. *That the words are defamatory of the plaintiff either in their natural meaning or by reason of an innuendo.*
iii. *That the words refer to the plaintiff.*
iv. *That the words were published to a third party.*

It is the evidence of the claimant that as a result of the alleged false publication of his name as a debtor on the 2nd defendant's platform, his application for loan to Guaranteed Trust Bank and a leasing contract with a equivalent leasing company were turned down. He relied on Exhibits A4, A8, A9, and A10 respectively. However the Learned Counsel to the 1st and 2nd defendant contended that it was not indicated that the documents (loan application) were ever received or acknowledged

by Guaranteed Trust Bank or Aquila Leasing Company. He also argued that the documents were secured during the pendency of this suit, and argued further that this was in gross violation of Section 83(3) of the Evidence Act 2011, that there were no documents on which Exhibit A5, the publication from the platform by 2nd defendant could stand.

From the argument of learned counsel to the defendant, it is apparent that the learned counsel is not abreast of what transpired in court as at the time the plaintiff wanted to tender the photocopy of the exhibits of this document he is arguing against. As graphically stated by the claimants counsel in his written address, the documents were tendered after the court ordered that Guaranteed Trust Bank produce the original copies of the loan application and the bank failed to do so. Since the bank is not a party to the case, a formal notice to produce the documents needed not be served on them. Furthermore, it is common knowledge that an applicant for loan is expected to have in his custody copies of the application while the bank retains the original. The claimants having applied for the original of the loan application through his lawyer vide exhibit A3, and upon the refusal of the bank to oblige him with same, is on a good state to tender the secondary copies in his possession. The tendering and the admissibility of the loan application forms are shielded by the provision of Section 89(a)(ii) of the Evidence

Act and Section 154 of the Evidence Act of Presumption of Due Execution of Documents Not Produced. Section 89(a)(ii) says:

"Secondary evidence may be given of the existence, condition, or content of a document when;

(a) The original is shown or appears to be in possession or power of any of the persons legally bound to produce it and when after the notice mentioned in section 91 such person does not produce it."

Now section 154 states:

"The court shall presume that every document called for are not produced after a notice to produce given under section 91 was attested, stamped, and executed in the manner required by law."

The evidence of the claimant under cross-examination was that Exhibit A4, A8, A9, and A10 where his application for loan scanned to his account officer for processing of the loan. This piece of evidence was not refuted by the defendants in any form and thus presumed to be duly executed and produced in the correct form as documents emanating from the bank.

Still on the argument of learned Counsel that no documents were produced during the pendency of this matter by a person of interest in the proceeding, Section 83 (3) of the Evidence Act provides thus;

"Nothing in this section shall render admissible as evidence any statement made by a <u>person interested</u> at a time when the proceeding were pending or anticipated involving a dispute as to any fact with the statement might tend to establish."

The operative word here is a *'person interested'*. The documents admitted as exhibits were already in existence before the court ordered that the claimant requested for the originals from Guarantee Trust Bank. In any case no documents were produced by Guarantee Trust Bank during the pendency of this suit to warrant the invocation of the Provision of Section 3(3) by the defendants' counsel. And assuming it was, nothing would have rendered the documents inadmissible because the documents were produced here on the order of the court and Guarantee Trust Bank was not a party to the suit or an interested party stricto-serso, and neither is the counsel who applied for the document in its representative capacity can be referred to as an interested party.

The defendants' counsel also argued that the claimant has not proved publication. He submitted that the claimant stated under cross-examination that he got the information in exhibit A5 by privileged information, that he brought his way into where exhibit A5 was kept. He relied on the case of **AJAKAYE V OKONDEJI (1971) 1 SC 92**, where the court said that publication of words complained would not ground libel until a third person testified that he had read the words complained of. Learned Counsel further submitted that the act of the claimant to purchase or buy his way into the scheduled details is frolicking and he must abide by that. It is a matter of volerti non fot injuria.

Counsel also argued that the information stored in the data bank of the 2nd defendant is one done honestly reasonably and without malice, that the claimant was on a frolic paid to access the closed database of the 2nd defendant and therefore would not be heard complaining of the content of the 2nd defendant's database. He also contended that by the guideline of licensing operation and regulation of the credit Bureau there is now an enactment of the National Assembly known as Credit Report Act 2017 which makes duty bound for the 2nd defendant to give and receive credit information.

On whether the words were defamatory of the plaintiff either in the natural meaning or by reason of an innuendo, Counsel submitted that a personal reputation is not based on the good opinion he has of himself but the estimation on which other person holding that the material evidence in defamation or libel is a reaction of third party to the publication complained of and not what the claimant thinks about himself. That the claimant did not in any way adduce evidence establishing that the purported publication lowered him in the estimation of a right-thinking member of the society and that the claimant was a public servant with Assets Management Corporation of Nigeria when he purportedly applied for loan in 2015 and still remains a staff as at 4 February 2020 when he testified before this honourable court.

Still on the proof of defamation, defendants' Counsel contended that exhibit A5 relied on by the claimant stated that the documents are strictly confidential and shall not be disclosed to any other person. That if there's any publication it goes against the provision of the exhibit and no one should be blamed for that save the claimant himself. Counsel further relied on the email of November 1, 2016, correspondence between the claimant and Aquila Leasing which has a disclaimer that boldly stated that***; "This email, any files transmitted with it***

confidential and intended solely for the use of the individual or entity to which they are addressed." He contended that these documents are not referring to the claimant.

It is trite that publication of an alleged defamatory word is the hearts of an action for defamation. An action for defamation succeeds once a claimant is able to lead credible and sufficient evidence that the defamatory was published to a third party. See the case of **OKOROJI V OMWEWU (2016) LPELR 41285 CA** where the court of appeal held:

"In the law of deformation/libel publication is the life wire of illegal action or claim by a person against another on the basis of defamatory/libel. Publication of the alleged defamatory word is a fundamental and crucial element that must be proved or established by sufficient and credible evidence to be adduced by the claimant if the action was to succeed. In simple terms publication is the deliberate act of making the defamatory words known to at least one person other than the person about whom they were written. It is therefore publication for the purpose of a claim for defamation if it is proved that the defamatory words were intentionally brought to the knowledge of at least one person or that and the claimants who knows or is acquainted with him and understand them to refer to him. See NAS V ADESANYA (2003) 2 NWLR (803) 97, NITEL V TUGBIYALE

(2005) 2 NWLR 912, 334, NSIRIM V NSIRIM (Supra), DAIRO V UBN PLC (2007) 16 NWLR (1059) 99." – Per **Garba JCA**.

See also the case of **EBONG V UNIVERSITY OF UYO (2019) LPELR 48730 CA** where the court held that:

"I agree that a third party is not important factor in establishing defamation as publication becomes complete only when it has been published to a third party."

GBEMIRE V GBEMIRE (2023) LPELR 60532 CA, VANGUARD MEDIA LTD V ALH SIDI H. ALI & ORS (2022) LPELR CA, KUKU V OLUSOGA (1962) LPELR 25149 SC, KATO V CBN (1999) LPELR 1677 SC.

On whether the claimant needs to call evidence of a third party to testify that he said or heard or read the publication as argued by the defendants' counsel, the Claimant's Counsel submitted on her own part that it is not when a third party who reads a libellous or defamatory publication comes forward to testify that it can be said that there has been a publication of a libellous material. that the criteria is and has always been whether what was published and seen by another person other than the person whom the libellous material is about is false inaccurate and exposed the claimant to hatred, ridicule, contempt, lowered in the estimation of right thinking people in the

society. The defendants' Counsel relied on the case **AJAKAYE V OKUNDEJI (1971) 1 SC 92**. He however did not avail the court with the authority **AJAKAYE V OKUNDEJI Supra** and due to paucity of time this court cannot also lay its hand on the said authority. However, the authority was referred to copiously by the Court of Appeal in the case of **EBONG V UNIVERSITY OF UYO & ANOR (2019) LPELR 48730 CA** where the court answered the poser on what a claimant who alleges libellous publication to an indeterminate class of person must plead whether the third party to whom libellous publication is made must be named and identified. The court held:

"The question the trial court answered in the judgment was simply that the appellants did not prove publication to a third party and that arose from the defendant pleading in not naming the third party the appellants admitted not naming or describing the third party in the pleading paragraph 7 and 11 of the amended statements of claim plead and averred that the publication to the Nigerian public and the world at large through the 2nd defendant's newspaper. The Nigerian public and the world at large is an indeterminate class of person it did not plead that a third party read the disclaimer nor did he identify PW2 as the third party who read the offending article and in whose opinion of the appellant changed as a result of the publication. The

appellant did not plead foundational basis for the calling of an unidentified third party as was done in the old case EZOMO V OYAKHIRE (Supra) where it was held that in a situation where the libel was published to an indeterminate crowd the party must plead and allege as follows; 'That the plaintiff believes that the said words were also published to some other persons whom he cannot at present specify but will rely upon. That the publication thereof to every person to whom he may discover the same to have been published.' The rationale is simple the claimants may not be certain of a particular person who read the libellous material at the time of taking out the writ and a publication in a newspaper is indeed to an indeterminate crowd he cannot know each and every person who has read it … … … but pleadings most adequately lay such a foundation. That is what is lacking in this case. The trial judge was therefore right to hold that there was no publication as required by law… … …The trial judge relied on the case of AJAKAYE V OKUNDEJI Supra and the case of ANATE V SANUSI Supra which held that a claimant must plead publication to a named and identifiable third party… … … The third party PW2 was not named or identified in the pleading and that was the rationale for the claim being dismissed. Indeed a plethora of authorities are on the side of the trial court with just a few not being so forward or the issue of identifying and naming the third party. The

third party is the most important factor in establishing defamation because it is the opinion of third party upon publication that is relevant and publication because complete only when it has been published to a named third party… … … The crux of the matter here is whether the appellant was duty bound to plead the identity of the third party. The appellant agreed that the apex court in the case of AJAKAYE V OKUNDEJI Supra relied on the track relied on by the trial court decided that the third party of person to any material was published should be specifically named… … … The same decision was relied upon in several decisions of the court. In the case of ANATE V SANUSI Supra the claimants did not plead publication at all. What several other authorities consider as proof of publication is that the material be published to a name or identified party. See GIWA V AJAYI Supra, NSIRIM V NSIRIM (1990) 3 NWLR (PT. 128) 23J and SULEIMAN V ADAMU Supra. That being the requirement of law, the trial judge was therefore right in finding that the appellant failed to plead the essential aspect of publication. Per Wimper JCA PP26 -29 PAR E – F."

It is apparent that from the authority of **OKANDEJI Supra**, the principle of law enumerated therein is that a third party to whom an alleged libellous or defamatory material was published must be named and or identified. Also the reaction of the third party must be pleaded and

proved by the claimant. This is the whole essence of publication of libellous or defamatory material, the foundation upon which an action for defamation can be sustained. A peep at the pleading of the claimant, shows that in paragraph 12, he pleaded that in 2015 he applied for a loan from Guarantee Trust Bank, but sometimes in 2016, Guarantee Trust Bank Limited informed him that his name and details had been published on the platform of the 2nd defendant as having a non-performing loan with the 1st defendant and have been blacklisted. And having been blacklisted, he cannot access the loan facility from her. In paragraph 13, the claimant also averred that upon the information given to him by Guarantee Trust Bank Limited, he logged unto the 2nd defendant's platform and to his shock, he discovered that the 1st defendant had made a report to the 2nd defendant that he had taken both a term loan and an overdraft, both of which were overdue in the amount of over One Million Naira, and that his accounts was in debit, which report was totally false and misleading. The claimant also adduced evidence in support of the pleaded facts in paragraphs 14 and 15 of his adopted witness statement on oath.

On whether the third party must be called to give evidence that he saw or he read the publication, I do not think so that in all cases, a third party to whom a libellous or defamatory material was published must

be called to give evidence. In this digital era, where information is circulated electronically to the whole world, it may be practically impossible to call anybody or a reader or a hearer of a libellous or defamatory material to testify on behalf of a complainant. The third party in most cases are indeterminate in cases of online or widely read newspaper or material circulated to the whole world. In my view, it is enough if the complainant or claimant is able to plead and prove the negative effect of the libellous/defamatory material on him, his reputation, his way of life, his business, his association, his work, his circle of friends, his criteria. I therefore endorse the submission of Learned Counsel to the claimant that the criteria is whether what was published was false, inaccurate, and that exposed the claimant to ridicule contempt and being lowered in the estimation of the right thinking society. Now, by the evidence of the claimant, he was able to access the platform of the 2nd defendant after due payment, an application to the 2nd defendant. See Exhibits A18, which encompassed the receipt for payment for search of credit status with the 2nd defendant and mails evidencing the request, exchange between the complainant and one Suleiman Okesola of the 2nd defendant. Exhibit A6 shows the credit status of the claimant with the 1st defendant on the platform of the 2nd defendant. The 2nd defendant in accordance with the law setting it up is to provide information on the credit status

of an intending applicant for loan in a bank or other financial institution. The information on the platform of the 2nd defendant is a notice to any person or persons, including financial or corporate institutions who may be privileged to have access to it. The status of the platform was aptly described by the Court of Appeal in the case of **CRC CREDIT BUREAU LIMITED V LONGTERM GLOBAL CAPITAL LIMITED & ORS (2021) LPELR 55674 CA** where the court held:

"Publication, which is the lifeline of defamation, means making known of the defamatory material or matter to some persons other than the person to whom it was written. See NSIRIM V NSIRIM (1990) 3 NWLR (PT. 138) 285, DAIRO V UBN PLC (2007) 16 NWLR (PT. 1059) 99. There are an avalanche of evidence from the record that the 1st respondent credit status report, exhibit L2 was authored by the appellants and published to the 2nd respondent, which made it known to individuals and institutions. The points must be emphasized that the publication was done electronically. In the digital world today, such dissemination of information by dint of electronic module that allows unfettered access to citizens constitutes a publication to the whole world." – Per **Ogbuinya JCA**.

The argument of the 1st and 2nd defendants' counsel that the statement of claim must show that the words complained of were

published in a stated occasion and to a named person is of no moment and immaterial as rightly submitted by the claimant's counsel in the reply on points of law to the defendant's final address. I also found the argument of learned counsel that the claimant bought his way to where exhibit A6 was kept laughable. While it may be true that the information are privileged, they are accessible by individual or financial institution who have business with the information on the platform and that is why an applicant have to formally pay necessary fee before given access to the platform. From the testimony of the claimant and the document tendered, it is an irresistible fact that the information on the platform of the 2nd defendant on the credit status of the claimant was supplied by the 1st defendant. This can be gleaned from exhibit A7, a letter of non-indebtedness in respect of your loan dated 18th May 2016 at paragraph 3 wherein the 1st defendant stated; ***"More so the said repayment which was erroneously triggered had been reversed accordingly."*** It is also clear that the information on the platform was published for the purpose of being accessed by banks and other financial institution who may want to offer loan or credits to the claimants. In exhibits A8, A9 and A10, it is wrapped up the application for top-up loan by the claimant to GTB. The application form dated 22/1/2019 and electronic mail sent by the claimant to one mosesadeyi@gtb.com. In the mail, the claimant stated:

"Dear Moses,

Please find attached a letter of non-indebtedness from Resort Savings and Loans. I thought they have cleared my name from the credit bureau because I complained to them separately and I have never took the mortgage loan. Kindly process with the attached letter while I follow up with the remaining Resort team because I understand they have issue now.

Regards."

The receiver of the above mail is one Moses of Guaranteed Trust Bank. When exhibit A10 is juxtaposed with exhibit A15, a letter titled; 'Removal of Mr. Patrick Olasehinde's Name from your Bank Debtors List/Record With The Credit Bureau' dated April 2019, Exhibit A17 dated 25 September 2019 and also a letter seeking for the removal of the claimant's name as a debtor from the portal of the 2nd defendant and exhibit A19 dated October 18, 2019, a reply from the firm of Banwo & Ighodalo to the firm of Bola Oloma & Co, titled; 'RE: Removal of Mr. Patrick Olasehinde Daniel's name from your Platform as a debtor to Resort Savings & Loan Limited.' They resonates the fact that Guarantee Trust Bank accessed the portal of the 2nd defendant to know the claimant's credit status and found that the claimant was indebted to

the 1st defendant, a primary mortgage institution in the sum stated on the portal of the 2nd defendant. Hence, the complaints embedded in the various correspondents admitted as exhibits further lend credence to the oral testimony of the claimant that when he applied to Guarantee Trust Bank for loan, he was declined and was told that his details were published on the platform of the 2nd defendant as having a non-performing loan with the 1st defendant and have been blacklisted. As can be reasonably inferred from the said exhibits and the assertion of the claimant in his witness statement on oath, the court can reasonably infer that the GTB had access to the portal of the 2nd defendant. The law also gives this court the latitude to make inference. See the case of **APC V BUBA & ORS (2022) LPELR 57495 CA, AMUZIE V STATE (2014) LPELR 22830 CA**.

Having held that the name of the claimant was published in exhibit A6, the portal of the 2nd defendant to a third party, what then are the implications? It implies that the claimant is indebted to the 1st defendant. In the case of **STANBIC IBTC BANK V LONGTERM GLOBAL CAPITAL LTD & ORS (2021) LPELR 55610** the court held that:

"Indebtedness implies a state of owing money or something owed or debts to another person."

See the case of **BARBADOS VENTURES LIMITED V. FIRST BANK OF NIGERIA LIMITED (2016) 4 NWLR (PT. 1609) 24**. However, Exhibit A7, the letter of non-indebtedness issued to the claimant by the 1st defendant drowns the veracity of the indebtedness of the claimant as contained in exhibit A6, the portal of the 2nd defendant. The said exhibit A6, therefore, is a falsehood and untrue credit status report of the claimant.

The Learned Counsel to the defendants raised the defence of qualified privilege, stating that the Credit Report Act 2017 makes a duty bound for the 2nd defendant to receive information. On what the defence of qualified privilege entails, the court in the case of **STANBIC IBTC BANK V LONGTERM GLOBAL CAPITAL LTD Supra** held:

"Qualified privilege is a defence usually contrived as a defence to a true publication. An occasion is privileged when the person who makes the documentation has moral or public duty to make it to the person to whom he does make it. The person who receives it also has an interest in hearing it. The twin condition must coexist to make an occasion privileged. Reciprocity of interest between the parties is a sine qua non for a successful plea of defence."

As rightly observed by the claimant's counsel, the defence was raised for the first time by the defendant's counsel in his final written address. The defence was never pleaded by the defendants. The provision of Order 15, Rule 7, one of the rules of this court, makes it mandatory that such special defence must be specifically pleaded and evidence led in proof thereof. It is not to be left to mere conjecture or speculation. See the case of **AKOMOLAFE V GUARDIAN PRESS LTD (2010) 3 NWLR (PT. 1181) 338, OLOGE & ORS V NEW AFRICA HOLDINGS LTD (2013) LPELR 20181 SC**. The failure of the defendant to plead the defence of qualified privilege cannot be raised via the address of counsel. I endorse the submission of Learned Claimant's Counsel that since the 1st and 2nd defendant failed to prove the defence of qualified privilege, the argument of their Counsel in respect of the defence is hereby discarded. Moving forward, assuming that the 2nd defendant published the name of the claimant in the normal course of its duty to protect the interest and the benefit of the public, such publication must not be actuated by malice or recklessness. See the case of **AKOMOLAFE V GUARDIAN PRESS LTD Supra** where the Court of Appeal held:

"By the defence of qualified privilege, a defendant is saying no more that even though the publication complained of by the plaintiff may be defamatory of him. However, since this was published to the

generality of the public, who the law recognizes as having a corresponding interest to receive it from the defendant that has a standing duty to publish it on account of public policy. Such a defendant cannot incur any legal ability so long as the publication has not been actuated by malice… … … When a defence of this nature is put up, it practically means that public convenience or interest must be preferred to private convenience or interest in the dissemination of the information which is of paramount interest and benefit to the public, but the dissemination must be without malice." – Per Aderemi JCA.

A defence of qualified privilege, therefore, is said to thrive in the presence of fair and accurate public publication and not a false or inaccurate publication. See the case of The courts in the case of **CRC CREDIT BUREAU LIMITED V LONGTERM GLOBAL CAPITAL LIMITED Supra** also held:

"A defence of qualified privilege loses steam in the adamant face of malice."

The 1st defendant appears to me to have deliberately allowed the name of the claimant remain on the platform of the 2nd defendant. In their defence, the witness for the 1st and 2nd defendants claimed that

the letter of non-indebtedness was fraudulently obtained by the claimants in connivance with Mahfas Investment Limited and the then Managing Director of the 1st defendant. That the matter is still subject of investigation at the Economic and Financial Crime Commission, Abuja. This claim was not substantiated in any form. There was no record of any report to the EFCC by the 1st defendant tendered by the witness or anybody. Furthermore, other sundry allegations of financial appropriation by the 1st defendant's Managing Director stated in paragraph 7 and 8 of the adopted witness statement on oath of the 1st and 2nd defendants' witness also remain unfounded, spurious, and unproven. The 1st defendant failed to establish any nexus between the alleged misappropriation of funds by the staff of the 1st defendant and the claimant. I agree with the submission of claimant's counsel that despite the complaints in series of correspondences between the claimant's lawyer and the defendants, the 1st defendant still defiantly refused to remove the claimant's name from the list of debtors and neither instructed the 2nd defendant to do so. Also, the submission of the claimant's counsel, the defence defendant's action was actuated by malice and therefore cannot avail them of the defence of qualified privilege, is also endorsed by this court. The claimant's counsel also submitted that the 2nd defendant with malice or actual malice, when without justification, or excuse, it recklessly disregarded the law and

the claimant's legal rights by publishing a false libellous and inaccurate report, i. e. Exhibit A6 which falsely stated that the claimant is indebted to the 1st defendant. Counsel submitted further that at the last page of the exhibit, it was stated that; ***"Any complaint about the information in this credit report should be communicated to CRC either by email as support at crcreditbureau.com or by phone of 08072090622. CRC undertakes to review and investigate the complaint and provide the proposed resolution thereto within the shortest time possible. During the time of investigation, the data subject with CRC shall be regarded as disputed."*** That to shows the bad faith and malice and actual malice of the 2nd defendant, the 2nd defender never and did not carry out any investigation whatsoever in spite of the above write-up on its platform as evidence at the last page of the said exhibit A6. In spite of the phone calls between the claimant's counsel and the 2nd defendant's staff, as seen in paragraph 26 of the statement of claim, the 2nd defendant never pleaded and carried out any investigation and also the 2nd defender merely stated in exhibit A19 that the claimant's credit report has been tagged disputed while in addition to this, it is mandatory for the 2nd defendant to investigate and take reasonable steps to verify the accuracy of the claimant's alleged indebtedness to the 1st defendant, as this is one of the functions of the 2nd defendant under the Credit Report Act 2017 which Section 33(1) and 33(3) provides thus:

"A credit bureau shall perform the following functions; Shall, where the information reported or submitted to it appear to be inaccurate, incomplete, misleading, or contain any manifest error, take a reasonable step to verify the accuracy of such credit information."

Counsel referred to the argument of the 1st and 2nd defendant that the 2nd defendant was performing a duty when it published the libellous publication and the statement of the counsel when he said; *'if the occasion is privileged, it is for some reason, and the 2nd defendant is only entitled to the protection of the privilege if he uses the occasion for that purpose.'* Then the counsel argued that the objective of the Credit Reporting Act 2017, which guides and regulates the duty of the 2nd defendant stated the objective in Section 1(b); *"The objective of this Act are to promote access to accurate, fair, and reliable credit information, and to protect the privacy of such information."* That other function of the 2nd defendant under Section 3(a) of the Credit Reporting Act is creating and maintaining a database of credit and credit related information in accordance with provision of the Act, that in view of the above submission, the inexcusable action of the 2nd defendant to act with malice or actual malice to deliberately and without justification publish the libellous publication with reckless regard as to whether the statement is true or not, and reckless regard to the law and the

claimant's legal rights by refusing to investigate and take all reasonable steps to verify the accuracy of exhibit A6 is a demonstration of the 2nd defendant not carrying out its duty, which can be said to be an occasion privilege within the Act as it contravenes the objective of the said Act. The counsel relied on the case of **AFOLABI V ALAREMU (2013) AFWLR (PT. 691) PG 621 @ PG 1647 PAR D – E**.

The counsel further submitted that since the 1st and 2nd defendant never admitted the contents of the libellous publication or proved that the contents were true, the defence of qualified privilege cannot also avail the 1st and 2nd defendant. Furthermore, the claimant's counsel also said that the 1st and 2nd defendant did not provide any reason whatsoever to all of their submission in paragraph 5.1 to 5.12 of the claimant's final written address filed on October 8, 2022. She submitted that not providing a response to submission of opponent in the written address is deemed as an admission. She urged the court to deem the submissions in paragraphs 5.1 to 5.12 as admitted by the 1st and 2nd defendants and also to act on all the submission and grant the claimant's judgment accordingly.

It is a notorious fact that the defence of qualified privilege is a justification for publication of libellous material. It also implies that the publisher or maker of the libellous material has an honest and bona fide

belief in the truth of what was published and also has a moral or legal duty to publish the information. See the cases of **IROEGBU V OKEKE (2016) LPELR 40620 CA, ENERTECH ENG CO. LTD V ALPHA PRAXIS NIG LTD (2014) LPELR 41105 CA**. As observed by the claimant's counsel, the 1st and 2nd defendant took umbrage under the provision of Credit Reporting Act 2017 that makes it a duty bound for the 2nd defendant to give and receive credit information, an occasion which the defendant's counsel argued is privileged. Counsel for the claimants have highlighted the relevant provision of the Credit Reporting Act 2017, and I have also examined same. It is true that it is the burden duty of the 2nd defendant to warehouse the credit status of an intending applicant for loan from banks or financial institutions. This is to protect and also to protect the privacy of such information and the database must contain verified and accurate information. This makes it imperative for the 2nd defendant to observe the provision of the Act without any reservation and the reason why the provision of Section 3 (3)(d), and Section 3(3)(c) provides that;

"A credit bureau shall provide the following function; shall where the information reported or submitted to it appears to be incomplete, misleading or contain any manifest error, take reasonable steps to verify the accuracy of such credit information."

I agree entirely with the contention of the claimant's counsel that the 2nd defendant failed to carry out any investigation to determine the veracity or accuracy of the credit reports of the claimant supplied by the 1st defendant. Exhibit A7 was written to the 2nd defendant by the claimant's solicitor cataloguing the complaints of the claimant. Consequent upon which the counsel for the 2nd defendant also wrote exhibit A19. Exhibit A17 was dated 25 September 2019 while exhibit A19 was dated October 28, 2019. In paragraph 5A at page 2 of exhibit A19, the 2nd defendant claimed to have sought clarification from the 1st defendant upon receipt of the claimant solicitor's letter and the 1st defendant verbally affirmed the information in CRC database about Mr. Daniel's indebtedness. The 2nd defendant advised the Claimant to direct all his request to the 1st defendant who has the duty to provide accurate credit data to it. And in the event the dispute is not resolved, the Claimant should avail himself of the dispute resolution options provided under Section 13 of the Act.

The provision of the Section 13 of the Act provides a step by step guide on how complaints/dispute submitted to the Credit Bureau are expected to be resolved by the Credit Bureau. Part VI of the Act is on complaints and dispute resolution and states thus:

"Section 13(1) - (6)

(1) Where a data subject has any complaint regarding the accuracy, validity, completeness or otherwise of any credit information or the contents of a credit report, the Data Subject shall submit a complaint in writing (whether by electronic mail or other written means) to the Credit Information Provider or Credit Bureau.

(2) A credit information provider or credit bureau shall upon receipt of a complaint investigate, determine and communicate the outcome of the determination of such complaint to the Data Subject within 10 working days following the receipt of the complaint.

(3) If the complaint is not resolved within 10 working days of receiving same, the Credit Provider shall immediately (but not more than 3 working days) refer the complaint to the Bank and the Bank shall resolve the complaint within 10 working days of the receipt of the complaint.

(4) If the Bank does not resolve the complaint within ten (10) working days or a party to the complaint is otherwise dissatisfied with the decision of the Bank, the dissatisfied party shall have a right to proceed to a court of competent jurisdiction for resolution of the dispute.

(5) A dispute shall be deemed resolved where the Credit Information Provider which provided the contested information admits that the information is inaccurate, invalid, incomplete or out-of-date and forwards the rectified Credit Report to the Credit Information Provider and the Data Subject.

(6) For the duration of the investigation or resolution of any complaint under this section, or any other section of this Act, the Credit Information in the Credit Bureau must indicate that the Data Subject's Credit Information is under dispute."

Section 13 of the Act goes thus;

'An aggrieved data subject who has a complaint concerning the accuracy or validity of his/her credit information the right to make a formal complaint to a credit bureau concerning a credit report and where such issues remains unresolved, he/she has the right to escalate such complaint to the Central Bank of Nigeria before finally filing a case before a court of competent jurisdiction.'

Furthermore, a cursory look at Section 13(3) (4) (5) gives a timeline within which a complaint submitted to the 1st and 2nd defendant shall be resolved. Apart from the tagging of the disputed credit information of the claimant on its platform, none of the steps mentioned in Section

13 was carried out by either the 1st or 2nd defendant. There is no iota of proof of compliance with the provision of Section 13 of the Act by the defendants. Consequently, the submission of the Claimant's counsel that since the 1st and 2nd defendants never admitted the contents or the publication of the libellous publication in Exhibit A6 or prove that the contents are true, the defence of qualified privilege cannot aid the defendants.

The 2nd defendant ought to have complied fully with the provisions of Section 13 of the Act by investigating the complaint of the claimant upon receiving the letter from the Claimant's solicitor. The 2nd defendant was reckless in the discharge of their duties as enjoined by Section 13 of the Act. I therefore hold that the 1st and 2nd defendants are liable for the false and defamatory publication of the credit status of the claimant on the platform of the 2nd defendant. The implication of Exhibit A6 is that the claimant is a chronic debtor, and there is no bank or financial institution who would want to loan money to him or have any financial deal with him having found his name on the platform of the 2nd defendant. The publication exposes the claimant to being shunned, avoided and being disparaged in his trade or business. The claimant is therefore entitled to damages jointly and severally from the 1st and 2nd defendants.

However the claimant have asked for damages in the sum of **N20,000,000 (Twenty Million Naira)** against the 1st defendant only. The Court will only award what is proved and claimed by a party. It is settled that a party should not get from the court that which he has not claimed, the court not being a Father Christmas. See **ANOZIE & ANOR V IROEGBU (2014) LPELR 24319 CA, U. O. O. PLC V OKOAFOR & ORS (2016) LPELR 4150 CA, NNAJI V MADAKI & ANOR (2012) LPELR 20097 CA**.

Damages have been defined as that pecuniary compensation which law awards to a person for the injury he has sustained by reason of the act or default of another whether that act or default is a breach of contract or not. See **IYERE V B. F. F. M LTD (2008) 18 NWLR (PT. 119300) @ 345 Per Muhammed JSC**. See also the case of **CRC CREDIT BUREAU V LONGTERM GLOBAL CAPITAL Supra** where general damages is defined as those damages that the law presumes as flowing from the wrong complained by the victim. They need not be specifically pleaded and strictly proved. The court also held in the case that an award of general damages is at the discretion of the court. Discretion is described in the case thus:

"Discretion signifies the right or power of a judge to act according to the dictates of his personal judgement and conscience. Uninfluenced by the judgement or conscience of the other persons."

See **SULEIMAN V C. O. P PLATEAU STATE (2008) 8 NWLR (PT. 1089) 298, AJUWA V S. P. D. C. N. LTD (2011) 18 NWLR**.

There is no doubt that the effect of Exhibit A6 inhibits the access of the Claimant to loan from Guarantee Trust Bank and Aquila Leasing Company, and as long as his name is on Exhibit A6, no financial institution or bank would want to deal with him. This is a loss of integrity, reputation and creditworthiness. Therefore for the battered reputation of the Claimant, the sum of **N10,000,000 (Ten Million Naira)** is awarded as general damages against the 1st defendant.

Before I move on to the other reliefs sought by the claimant, I wish to point out that the submission of claimant's Counsel that the defendants' final written address did not respond to all the submissions of the claimant in paragraphs 5.1 – 5.12 was found to be true. The effect of which is that the 1st and 2nd defendants admitted all the facts contained therein and could be acted upon by this court. I agree that the claimant have sufficiently proved his case before this court on the preponderance of evidence and balance of probabilities. The sole issue

distilled for determination by the court is hereby resolved in favour of the claimant, and judgement entered for the claimant as follows:

I. That the claimant is not indebted to the 1st defendant in any amount whatsoever.

II. That by the letter of non-indebtedness issued to the claimant on the 18th of May 2016, the claimant is absolved of any indebtedness to the 1st defendant.

III. The continued publication, listing and profiling of the claimant's details as a debtor to the 1st defendant on the website, platform or any other media of information, dissemination of the 2nd defendant, its libellous and defamatory of the claimant's name.

IV. The 2nd defendant is herby directed to remove the claimant's name from its website, platform or any other media of information dissemination as a debtor to the 1st defendant.

V. The 1st and 2nd defendants are to issue a letter of apology to the claimant for a wrongful malicious and defamatory publication of his name as a debtor within ten (10) days from the date of the judgment.

VI. The 1st defendant is to pay the claimant the sum of **N10,000,000 (Ten Million Naira)** as damages for defamation and libellous

report/publication of the claimant's name as a debtor to the whole world using the 2nd defendant's platform.

VII. The 1st defendant is to immediately return the unutilized National Housing Fund loan to the Federal Mortgage Bank within ten (10) days from the date of judgment and send the claimant a letter confirming that the fund has been refunded to the Federal Mortgage Bank.

Sign

Hon Judge
29/2/2024