IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY THE 16TH DAY OF JUNE, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/32/15

BETWEEN:

PROF. ANTHONY EMERIBE ---------- } PLAINTIFF

AND

GREGORY UCHONU ---------- } DEFENDANT

JUDGMENT

The Plaintiff, a Professor of Medical Laboratory Science was appointed the Registrar and CEO Medical Lab Science Council of Nigeria in 2010. Gregory Uchonu is a staff of the Council in Zaria, Kaduna State as at the time this action was instituted in 2015.

Sometime in 2015 the Prof. Was alerted of a written petition against him by the Gregory dated August 14th, 2015. He later received a copy of the petition in which the Gregory accused the Prof. Of being fraud and a corrupt person and that he is deserved to be investigated, prosecuted and dismissed from office. The petition was addressed to the President, copied to the

Ministry of Health, Secretary to the Federal Government, Government MDAS Professional bodies and Civil Society Organizations.

He responded to the said petition to the President and other Organizations who were copied. No investigation, query or indictment has been initiated or issued against him. Subsequently, the Prof. instituted this action against Gregory Uchonu for maliciously defaming his character, reputation, integrity and his person, claiming damages. The Professor who is the Plaintiff in this case is Professor Anthony Emeribe. Gregory Uchonu is the Defendant.

In a Writ predicated on defamation, the Professor Claims the following:

(1) A Declaration finding Defendant liable for defamation (libel) of his character vide the said malicious written petition against the Prof. and which said petition has subjected the Prof to ridicule odium and opprobrium and total disclaim including the taint of corruption and outright criminality.

(2) A written letter of apology from the Defendant and which same is to be delivered to all the adduces or recipients of the libellous petition.

(3) An award of Seventy Five Million Naira (₦75, 000,000.00) only being general aggravated and punitive damages for the libel.

(4) Perpetual Injunction against the Defendant from further acts against Plaintiff of the

defamation and libel in whatsoever form or manner.

(5) **Five Million Naira (₦5, 000,000.00) only as legal expenses/cost including the Solicitor's fees.**

The Professor testified in person as the Sole Witness for the Plaintiff. The Defendant filed an amended Statement of Defence. The Plaintiff tendered five (5) documents. He was recalled as a Witness. He closed his case on 16th March, 2017. It took the Defendant several failed attempts to open its Defence eventually on the 14th March, 2018 almost a year after the Professor had testified and closed his case. The Defendant was the only Witness and he tendered documents. Both parties tendered subpoenaed documents.

DEFENDANT'S FINAL WRITTEN ADDRESS

1.0 **INTRODUCTION**

1.1 The Plaintiff via a writ of summons instituted this action against the Defendant. The said writ of summon is dated and filed 28th October, 2015 claiming for the following;

a. A declaration finding the Defendant liable for the defamation (libel) of Plaintiff's character vide Defendant's malicious written petition against Plaintiff and which said petition has subjected Plaintiff to public ridicule odium and opprobrium and total disdain including the taint of corruption and outright criminality
b. A Letter of apology from the Defendant and which same is to be delivered to all the addresses or recipients of the libellous petition.
c. An award of the sum of 75 Million Naira Only being general, aggravated and punitive damages for libel

d. A perpetual injunction against Defendant from further acts against Plaintiff of defamation and libel in whatever form and manner.
e. An award of the sum of 5 Million Naira only in legal expenses/costs including solicitor's fees.

1.2 In response to the Plaintiff's claim the Defendant filed his amended statement of defense dated 21st November 2017 and filed 27th November, 2017.

However, in the cause of trial the Plaintiff testified as the P.W.I while the Defendant testified as D.W.I several documents were tendered and admitted in evidence.

2.0 **BACKGROUND FACT**

2.1 The Defendant who is a civil servant working under medical laboratory science council of Nigeria.

The Defendant has also served in the capacity as the chairman of the Medical Laboratory Science Council of Nigeria Council Branch.

The Defendant as the chairman and co-chairman obliged to looking out for the welfare of members, and as a responsible citizen to report any suspicious act of corruption and criminality.

2.2 The Defendant in keeping to his legal responsibilities observed series of irregularities in the Medical Laboratory Science Council of Nigeria lead by Prof. Anthony Emeribe as the Registrar/CEO, led to a petition which the Defendant addressed to the president of the Federal Republic of Nigeria.

2.3 That the Plaintiff upon discovering that there was a complaint/petition against him which was addressed to the president immediately instituted this legal action against the Defendant for defamation and also wrote a letter to the office of the President of the Federal Republic of Nigeria to stop all investigation in the petition against him pending the determination of the action filed against the Defendant for defamation.

2.4 The facts surrounding reasons of the Defendant's complaint/petition was discovered as a result of his sensitive and strategic position in Medical Laboratory Science Council of Nigeria which was done for the purpose of investigation as clearly stated in the last paragraph of the said petition.

2.5 The Plaintiff rather than wait for the constitution of investigation/inquiry committee rushed to this Honourable Court, file an action against the Defendant for defamation and as stated hereinbefore, wrote to the office of the President of the Federal Republic of Nigeria to stop any move that might warrant his being investigated for the purpose of exonerating him from the series of allegation/complaint against him pending the determination of the suit.

2.6 The Plaintiff was sacked after very few months to his secure tenure due to the action he took by running to court to stop investigation into the petition written against him by the Defendant.

The petition endorsed by the Defendant was also done in conjunction with the concerned members of the medical laboratory science council of Nigeria.

3.0 **ISSUE (S) FOR DETERMINATION**

The Defendant formulates for the determination of this Honourable court two issues to wit:

1. Whether the Plaintiff has proved that the Defendant's petition/complaint dated 14th August, 2015 calling for the investigation of the Plaintiff amount to defaming the Plaintiff?
2. Whether the Plaintiff is entitled to the reliefs claimed?

Respectfully, we propose to argue these issues jointly/together as argument on them would flow into each other.

4.0 **LEGAL ARGUMENT**

4.1 The two issues are distilled from the proceedings of this Honourable Court, after reviewing the evidence led by the witnesses the evidence led by the witnesses to the Plaintiff and Defendant.

While determining the issue of defamation it is pertinent, the word defamation is defined and is considered as follows:

According to the **Black Law Dictionary**, "DEFAMATION" means "Holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community; may be criminal as well as civil" it states further that defamation is the unprivileged publication of false statements which naturally and proximately result in injury to another.

4.2 From the above, it is important to note the integrals of libel, as there are 3 (three) constituents of libel namely;

a. Publication
b. Whether the words complained of were published by the Defendant, and
c. whether the words referred to the Plaintiff

See **AFRICAN NEWSPAPER LTD vs CIROMA (1996) NWLR (PT. 423) 156 and UGO vs OKAFOR (1996) 3 NWLR (PT. 438) 542**

4.3 The Plaintiff via his statement of claim and evidence before this Honourable Court testified that sometimes towards the end of September, his attention was drawn via sources with Federal Ministry of Health to the existence of a written petition against him by the Defendant.

The Plaintiff also testified that from the very wordings of the subject matters that is person, including family life as well as professional official and public services life has been battered abused ridiculed and totally rubbished by the Defendant.

The Plaintiff further tendered some documents in evidences, and further states that the Defendant made references of him in the petition as

(a) Fraud/fraudulent
(b) Corrupt
(c) Pillage
(d) Tribalism/Nepotism
(e) Threat
(f) Threat/Threaten
(g) Shady deals
(h) Rape
(i) Alliances
(j) Sins
(k) Inducement
(l) Self-aggrandizement
(m) Fiefdom
(n) Holier than thou
(o) Wrongful appropriation
(p) Extortions

5.0 The questions calling for clarification is whether the Defendants petition which was endorsed on behalf of the concern members of the Medical Laboratory Science Council of Nigeria amount to defamation?

5.1 In establishing the Defendants defense, the Defendant in his statement of defense and in his evidence/testimonies before the Honourable Court testified and maintained that the allegation of financial impropriety, high handedness parochialism and abuse of office contained in the Defendant petition to the president of the Federal Republic of Nigeria are borne out of patriotic zeal and the genuine concern of the Defendant to protect the agency from the corrupt officials and other unscrupulous elements who are bent on swindling the agency of its scarce resources.

5.2 The Defendant also testified via his witness statement on oath that when he perused the contents of the official memo in the discharge of his duties as the vice-chairman of Association of Medical Laboratory Scientist of Nigeria (AMLSN) he discovered that they contained fake figures

deliberately designed to swindle the Medical Laboratory Council of its hand earned resources.

The Defendant also states unambiguously in his evidence that the petition against the Plaintiff to the president of the Federal Republic of Nigeria contains true facts without any iota of falsehood, spite or malice as the exhibit tendered by the Defendant speaks for itself, and will be fully established if the Plaintiff is investigated.

We seriously rely on the Defendant petition/complaint dated 14th August, 2015 together without its annexures known attachments A, B, C, D, E, F, G, H, I, J, K ,L, M, N, O, P, Q, R, S, VI, V2, W, XI, X2, X3, X4, X5, X6, X7, X8, X9, T, U and Y in establishing the truth of the allegations against the Plaintiff, and is quit glaring that the whole 34 annexures to the petitions speaks for its selves.

5.3 Interestingly, the Plaintiff was also queried by the Office of the Auditor-General for the Federation via a letter dated 3rd May, 2017 captioned "Medical Laboratory Science Council of Nigeria Periodic Check Report for the period January to December, 2015" wherein several observations and recommendation were made by the office of the Auditor General for the Federation against the Plaintiff during his tenure as follows; wherein paragraph 2.0 of the Auditor General reviewed that the financial activities of the council disclosed that store items worth ₦2,182,931.45 (Two Million, One Hundred and Eight-two Thousand, Nine Hundred and Thirty-one Naira, Forty-Five Kobo) were purportedly purchased and used up during the period under review, without routing them through the store for proper documentation.

This effect implies payment for items without documentary evidence of actual supply of the items. This is contrary to the provisions of the financial regulations on store management, which requires that all stores items should be taken on store ledger charge requested for and issued in proper manger before usage.

Base on the above lapses the Auditor-General for the Federation recommended that the Plaintiff gives explanation for violating the financial regulations regarding purchases of store items, and all store items purchased should be made to pass through the store for proper documentation before being put to use.

The Defendant petition/complaint against the Plaintiff on raising of fake vouches was also corroborated in paragraph 3.0 of the Auditor General's Query to the Plaintiff wherein it as stated that Audit Examination of the payment vouchers revealed that payments totalling ₦6,026,982.00 (Six Million, Twenty Six Thousand, Nine Hundred and Eighty Two Naira) were made to payees other than actual beneficiaries, in contravention of Federal Treasury Circular TRY/A8 & B8/2008-OAGF/CAD/026 VOL. 11/465 of 22/10/08 which stipulates direct payment to the bank account of actual beneficiary.

The Auditor General's Query as captioned in paragraph 6.0 observed that "the Plaintiff payment vouchers used to pay a total amount of ₦9, 166,860.00 (Nine Million, One Hundred and Sixty-Six Thousand, Eight Hundred and Sixty Naira) as duty tour allowances were without proper evidence of official Journey. Amount purportedly paid as course fee and conference registration fee were not accounted for evidence of remittance to appropriate organizers of the course or workshop were not produced. This is contrary to financial Regulation 603 (i) part (b) which says that all vouchers shall be supported by relevant documents".

Paragraph 8.0 of the Auditor General's query to the Plaintiff in his capacity as the Registrar of the Medical Laboratory Science Council of Nigeria showed that "Audit Examination of payment vouchers of the council revealed that a total amount of ₦12, 176,607.36 (Twelve Million, One Hundred and Six Thousand, Six hundred and Seven Naira, Thirty Kobo) was paid for overseas journeys". Stating that an approval for the Journeys were obtained from inappropriate authorities i.e. Board of Directors instead of the supervising Minister or Head of the Civil Services of the Federation contrary to the Administration Guidelines on

Board of Directors which says that "The Board shall not normally be involved directly in the day to day management of parastatals but be responsible for setting out programmes, targets and introducing Board policy measures and measuring performance against targets".

5.4 The Above positions of the Auditor General of the Federation and observation gave credence to the Defendant's petitions against the Plaintiff, which calls for serious investigation.

The Plaintiff in his answer to a cross examination put to him on the 3rd of March 2020, admitted the above query issued to him by the Auditor General of the Federation via the Medical Laboratory Council on his irregularities as the Registrar of the Medical Laboratory Science Council of Nigeria when he answered as follows; "far from it, the query from Auditor General of the Federation to Council was an annual query visit to the council.

5.5 Outside the allegation of corrupts tendency and irregularities raised by the Defendant as seen from the evidence before this Honourable Court, the Defendant also raised the issue of wrongful recruitment exercise. In establishing the allegation, the Defendant in his amended statement of defense and testimony before this Honourable Court stated that "In 2014, ten staffs of the MLCSN resigned, consequently upon which the Plaintiff applied to the office of Head of service via a letter with Reference No. MLSCN/REG/CEO/88/VOL.3, dated 16th January, 2014 to make a replacement. The Defendant further provided the details of the 10(ten) staff that their resignation necessitated the Plaintiff application for recruitment exercise.

The Defendant also testified that on 11th February, 2014, the office of the Head of service of the federation in letter with Reference No. HCSF/CMO/002/S.I/VOL. 4 approved the Plaintiffrequest to replace the 10 staff who resigned.

The both letters cited above were tendered and admitted before this honourable. The Defendant in his testimony as seen in his witness statement on oath was disappointed as he states that consequently upon the approval of the recruitment exercise the registrar in fragrant abuse of the federal character principles employed 15 staffs, out of which 7 of the staff are from the east including his biological son known as Mr. Emeribe Anthony Uchenna. The above conduct seriously calls for serious investigation.

The Plaintiff, when answering his cross-examination questions in the light of the above wrong recruitment exercise of recruiting more than the approved number of staff, employing his son and more of his tribal staff is enough reason to call for his investigation.

The above breaches were clearly acknowledged and admitted when answering his cross-examination question from our submission above and the documentary evidence before this Honourable court, it is clear that the Defendant allegation is actually factual and did not amount to falsehood, spite or malice.

5.6 In adding weight to the Defendant's complaint/petition against the Plaintiff on the allegation of wrong recruitment exercise, the Defendant testified that a staff of the Medical Laboratory Science Council of Nigeria and a head of Human Resources unit at the headquarters by name Mrs. Amobi N.F via her letter dated 15th January, 2014 and captioned "Wrong recruitment exercise" petition the Plaintiff, on the Plaintiff alleged act of wrongful recruitment exercise.

The above petition by Mrs. Amobi N.F was also tendered before this Honourable court. The said letter was also attached on the Defendant petition marked as "Attachment X1".

It is also glaring that from the list of the newly recruited staff that the Plaintiff's son was employed, who is a family member of the Plaintiff, and the Plaintiff claim that the Defendant wrongly mention his family in his petition should be discontented, as the

Plaintiff also admitted in his cross examination that his first son was indeed employed by the Medical Laboratory council of Nigeria during his tenure as the Registrar of the council.

6.0 Question that calls for answer is whether the Defendant's letter/petition addressed to the president of Federal Republic of Nigeria amount to defamation against the Plaintiff.

6.1 In answering the above question it is ideal we reiterate the element or ingredients for a publication to amount to defamation in law.

It is established principle of law and the position of the law that for a publication to amount to defamation, the 3 (three) constituents of libel are as follows;

a. Publication
b. whether the words complained of were published by the Defendant and;
c. whether the words referred to the Plaintiff

See **UGO VS OKAFOR (1996) 3NWLR (pt. 438)542**

6.2 Base on the above number one requirement which is (a) Publication.

It is important to define the word publication.

According to the Black Law Dictionary Eight Edition, it defined publication generally as the act of declaring or announcing to the public, or offering or distribution of copies of a work to the public.

Base on the Defendant's petition the said petition was addressed to the president of the Federal Republic of Nigeria who is the employer of both the Plaintiff and the Defendant. The Defendant also became instrumental in writing the petition as a result of his position in the Medical Laboratory Science Council of Nigeria as the Council's Branch Chairman. The Defendant made up his mind not to be intimidated likewise other concern member of the

council who met the Defendant and resolved on the need to raise the said complaint against the Plaintiff for investigation.

The Defendant in his testimony before this Honourable Court stated that he only served the petition to the president of the Federal Republic of Nigeria wherein he went further calling on the investigation of the Plaintiff act of corruption and irregularities in the course of his duty as the Registrar of the Medical Laboratory Science Council of Nigeria.

It is quite crystal that the said petition was strictly addressed to the president of the Federal Republic of Nigeria.

The Plaintiff throughout his testimony in the court was unable to establish if the Plaintiff addressed or made the petition or complaint to the public as defined above, or either published the same petition in any broadcast media or print media, for the purpose of establishing the requirement of publication in the case of defamation.

6.3 It is our submission therefore that the Defendant's complaint/petition against the Plaintiff did not amount to defamation whatsoever as the said complaint/petition was never made public outside addressing and delivering same to the president of the Federal Republic of Nigeria.

6.4 The second condition to be considered is (b) whether the word(s) complained of were published by the Defendant? In considering the above condition it is settle from the 1st condition above that the Defendant did not announce the said complaint/petition public or distribute the said complaint, but as a committed executive member of the council, in addition, being a responsible citizen of Federal Republic of Nigeria deemed it fit that the suspected act of corruption and irregularities by the registrar be brought to the notice of the president of the Federal Republic of Nigeria for the purpose of investigation, and without malice or bad faith.

Also, the Defendant in his cross-examination answer, states that it is not true that his petition was sent to the Secretary of the Federal Government, Ministry of Health, ICPC, EFCC, Media Houses and Civil Society Organization.

6.5 The third condition which is (c) whether the word(s) referred to the Plaintiff is addressed as follows:

In the Plaintiff statement of claim and testimony before the Honourable Court, he states that the Defendant defamed him by stating the following words in the complaint, fraud/fraudulent, corrupt, pillage, tribalism/nepotism, threat, threaten, shady deals, rape, avarices, sins, inducement, and self-aggrandizement, fiefdom, holier than thou, wrongful appropriation and extortion. The Plaintiff in his testimony before this Honourable Court also alleged that Defendant petition was to smear his image and character.

In the light of the above claim of the Plaintiff the Defendant maintained that the word stated by the Plaintiff as amounting to defaming his person were not published and did not in any way insult Plaintiff rather they were used to explain and described the nature of the Plaintiff complained and suspected act of corruption and irregularities.

The Defendant in answering a question put to him by the Plaintiff counsel during his cross examination clearly stated that he never said that the Plaintiff raped his wife, and he never said any of those things, and we humbly submit that the Defendant did not defame or commit any act of defamation against the Plaintiff.

7.0 On whether the president indeed acted on the Defendant's petition or considered investigating the Plaintiff as a result of the Defendant's petition/complaint?

It is our humble observation that the Plaintiff, when testifying as PW I, testified that he was never investigated or any panel constitute to investigate him, this position of the Plaintiff is indeed misleading and false. Upon receipt of the petition by the President of the Federal Republic of Nigeria,

the secretary to the Federal Republic of Nigeria directed the Ministry of health to investigate and report back. Ministry of Health being the supervising body to Medical Science and Laboratory Council immediately wrote the Plaintiff to answer to the Defendant's petition. The Plaintiff upon the receipt of the Defendant petition from the Ministry of Health, ran to this Honourable court to file this case and also notified the office of the President of the Federal Republic of Nigeria of this pending case and advised that investigation should stop pending the determination of the case.

We submit further that immediately after the Presidency received the letter from the Plaintiff informing the office of the pending action he filed against the Defendant, the Presidency ordered the sack of the Plaintiff when he was just few months to his second tenure.

7.1 Also it is in evidence that upon the receipt of the Defendant's petition/complaint by the President of the Federal Republic of Nigeria, that the president via the Secretary to the Government of the Federation responded to the Defendant's petition through a letter dated 29th December, 2015.

It is pertinent to state the content of Mr. President response to the Defendant's petition as follows; "I am directed to acknowledge the receipts of your petition dated 19thNovember, 2015 on the above subject matter and to inform you that since the matter is sub-judice (before a Court of competent Jurisdiction) it is the advice of the SGF that you wait for the legal process to be concluded".

Base on the above response from the President, it will be out of place for the Plaintiff to maintain that he was never investigated or invited by anybody as a result of the Defendant petition.

It is clear that base on the President's response, the Plaintiff smartly rushed to institute this case upon discovering the petition of the Defendant against him, so as to frustrate or delay any move of investigating him.

The position was also corroborating by the Plaintiff in his answer to a cross examination question addressed to him on the 4th of July, 2016 when he stated thus; "The petition was written to Mr. President and when I got the slanderous and fallacious petitions to smeamy image, character I felt strong about, wrote a response and filed this suit for libel".

We further submit that the Plaintiff has a very serious allegation to clarify and the court cannot be used as a clog to shield him from being investigated of his irregularities.

The Defendant action by raising the said petition was borne out of the Defendant urge to ensure that any form of corruption did not strife around him and the council, and was not done out of malice or bad faith.

It is important to state that the Plaintiff deliberate act of frustrating and delaying the pending investigation that awaits him cannot be given credence to, by this Honourable Court of competent Jurisdiction is legally constituted to adjudicate on matters and not to investigate our petitions or complaints of criminalities.

8.0 Assuming without conceding that there is a prima facie case of defamation established against the Defendant, it is our submission that the Defendant having qualified privilege is obliged and expected to bring to the notice of the Plaintiff's employer the same petition disclosing the Plaintiff's act of irregularities.

It is also in the evidence before this Honourable Court that while the Plaintiff acted in the capacity of the Registrar of the Medical Laboratory Science Council of Nigeria, the Defendant also served the same Council as the branch Chairman of the Medical Laboratory Science Council of Nigeria.

By the said position and being a responsible citizen, the Defendant is obliged to raise an alarm as to any suspected act of corruption and irregularities, and ought to be commended for such courage amidst intimidation by whosoever may be involve.

8.1 It is a settle law that qualified privilege is immunity (Protection). From the penalty of a lawsuit usually a lawsuit for defamation for acts committed in the performance of a legal or moral duty and acts properly exercised and free from malice.

See **Osayande Vs Etuk (2008) NWLR (PT. 1068) 2110 P. 239 Paras D-E; P. 229 Paras A-B, P.239. Paras C-F. Mamman Vs, Salaudeenak (2005) 18 NWLR (PT. 958) 478.**

However, it will be a serious setback in the investigation and prevention of crime in this country. See **Mamma Vs. Salauden (2005) supra.**

Also members of the public have a duty to complain of another to the constituted authority or police and no publication of libel is made in such event against the maker and the receiver. Also see the case of **OSAYANDE vs ETUK (2008) Supra.**

9.0 It is our submission that the Plaintiff has not proved his case of defamation against the Defendant as the Defendant petition against the Plaintiff's act of irregularities did not amount to defamation.

It is the law that the general burden of proof in a suit of proceedings lies on that person who would fail if no evidence at all were adduce on either side. While the burden of proof of any issue before evidence is gone into; is upon the party asserting the affirmative of the issue see **ARE vs ADISA (1967) NWLR 304 OGBA vs ASADE (2004) 43 WRN 123** and we urge the Court to hold.

10.0 On whether the Plaintiff is entitled to this relief sought.

We submit that the Plaintiff has not in any way suffered any wrong nor damages, as the Defendant petition is a complaint as it relates to the Plaintiff suspected act of corruption and irregularities yearning for investigation.

10.1The Purpose of an award of damages is to compensate the Plaintiff for damages, injury or loss suffered. The guiding

principles is restitution, integrum, which is a situation where a court is called upon to assess that a party which has been damnified by the act which is in issue must be put in the position in which he would have been if he has not suffered damage for which he is being compensated. See **BETA GLASS PLC vs. EPACO HOLDING LTD (2011) 4 NWLR) (PT. 1237) 223.**

In this instant case the Defendant as a responsible citizen member and executive of the Medical Laboratory Science Council of Nigeria observed and came across Plaintiff, suspected act of corruption and irregularities complained to the president of the Federal Republic of Nigeria, which in return the President responded to the Defendant's petition via a letter dated 29th December, 2015, intimating the Defendant that his petition has been received, but due to the Plaintiff's act of instituting this action that they wait for the legal process (i.e. the suit) to be concluded.

11.5**CONCLUSION**

Base on the above we submit that the Plaintiff has not suffered any damages, and should submit himself for investigation for the law to take its cause and Justice be done in the allegation against him.

We urge this distinguished Court to dismiss the Plaintiff's case for being misleading, baseless and lacking in merit.

We also asked for the cost of ₦2, 000,000.00 (Two Million Naira) against the Plaintiff for expenses incurred by the Defendant.

Most obliged!

In the Final Address, the Defendant raised two (2) Issues for determination which are:

(1) Whether the Plaintiff has proved that the Defendant's petition/complaint dated 14/8/15 calling for Investigation of the Plaintiff amounts to defaming the Plaintiff?

(2) **Whether the Plaintiff is entitled to the Reliefs claimed.**

Arguing the two (2) Issues together, the Defendant through his Counsel submitted that the petition was borne out of patriotic zeal and genuine concern of the Defendant to protect the Agency from corrupt officials and other scrupulous elements from swandling the Agency's source resources. That the petition is without malice or spite. That the facts will be established if Plaintiff is investigated. He referred to the EXH 1 and annexure thereto especially on letter from Auditor General on issue of purchases worth Two Million, One Hundred and Eight Three Thousand, Nine Hundred and Thirty One Naira, Forty Five Kobo (₦2, 183, 931.45) which was alleged that he have been rooted through the store. There is also the issue of alleged fake vouchers which revealed payment of Six Million, Twenty Six Thousand, Nine Hundred and Eighty Two Naira (N6, 026, 982.00) made to payees other than actual beneficiaries. But Defendant did not call the so called actual beneficiaries to attest that the payment meant for them were made to the non-beneficiaries.

That remittance for conference fees and duty tower allowances were without proper evidence of remittance. He referred to the general query to the Plaintiff on the journey in which approval was obtained from the Board of Director as delegated by the Minister.

That the Defendant has established that seven (7) out of fifteen (15) staff recruited based on approval from the Head of service were from the same region as Plaintiff including his son.

That the letter of petition does not amount to defamation as it was addressed to the President and not to the public. He submitted that the petition did not amount to defamation as it was not made public outside addressing and serving the President with it. That the Defendant wrote the petition but did not publish same to ICPC, EFCC, Civil Organizations or any Media House. That the words used in the petition did not insult the Plaintiff and was not published, but were used to describe the nature of complain and suspected act of corruption and irregularities. That Defendant did not defame Plaintiff.

That the Plaintiff stopped investigation by filing this Suit and he was subsequently removed from office while investigation was stopped. That that does not amount to non-investigation of Plaintiff. That Plaintiff has very serious allegation against his and should be investigated too. That the petition is not done out of malice. That Defendant has qualified privilege to bring to file the petition disclosing the Plaintiffs irregular acts by virtue of his position as branch Chairman of the Association of the Council. That he has right to raise the alarm and should be commended for doing so. He referred to the case of:

Osayemade V. Etuk
(2008) NWLR (PT. 1068) 239

Maman V. Salaudeenak
(2005) 18 NWLR (PT. 958) 478

That, like members of the public, the Defendant has duty to complain to constituted authority or to the police. That Plaintiff has not proved defamation against the Defendant as the petition did not amount to defamation.

On whether the Plaintiff is entitled to the Reliefs sought, he submitted that Plaintiff has not suffered any wrong or damage because of the petition as the petition is on Plaintiff suspected act of corruption and irregularities. He is not entitled to his Claims. He referred to the case of:

Beta Glass PLC V. Epaco Holdings Limited
(2011) 4 NWLR (PT. 1237) 223

That base on all the above, Plaintiff has not suffered any damages and therefore should submit himself for investigation made against him. He urged Court to dismiss the Suit for being misleading and lacking in merit. He urged Court to award Two Million Naira (₦2, 000,000.00) against the Plaintiff as cost for the expenses which the Defendant incurred.

In his Final Written Address, the Plaintiff Counsel – Baba-Panya Musa raised two (2) Issues for determination which are:

(1) Whether the Plaintiff has discharged the burden of proof as to be entitled to the Judgment of this Court.

(2) **Whether the Defendant has successfully made out a tenable Defence of Justification of fair comments and qualified privilege.**

On Issue No.1 whether the Plaintiff has discharged the burden of proof as to be entitled to the Judgment of this Court, he submitted that the Plaintiff has more than ample evidence that proves Plaintiff's case as canvassed. He submitted that in the instant case all ingredients are fully established by the Plaintiff. That Defendant had admitted all the items but item B which is an in-light of

his pleading and alleged Defence of Justification of fair comment and qualified privilege. That since the Defendant admitted those items, they need no further proof. That the defamation is in writing. That the question is not about the offensive words being defamatory. That the Plaintiff has established that Defendant wrote the petition, used the defamatory words which are offensive and were duly published that the Defendant evidence of the Plaintiff was not challenged. He referred to **Paragraph 8 – 12 & 16 – 17 Claim and paragraph 10 -12 & 14 – 16 Witness Statement on Oath.**

That EXH 1 – the petition, not only was repleted with those offensive and disparaging words which are defamatory. Those words were explicitly defamatory and they do not require further imputation or proof. That the petition, EXH 1 personified the most slanderous, vicious and malicious publication possible. That the petition was intended to malign the Plaintiff's reputation and out-rightly criminalize him with the sole aim of getting him investigated, prosecuted and disgraced out of public office without justification. That the said Exhibit 1 was widely published and circulated to various government offices and MDAs as well as to private bodies like Coalition of Civil Society Organization against Corruption. But that by the pleadings of the Plaintiff and testimony too with the Exhibits, the Plaintiff established and proved his case against the Defendant. That though evidence are unchallenged by the Defendant.

That the publication is true and that Defendant admitted publishing the said EXH 1 though the Plaintiff need not

prove the defamatory words to be false. He referred and relied on the case of:

ACB Limited V. Apugo
(2001) LPELR – 9 (SC)

That in his testimony the Plaintiff denied the veracity of all the several allegations made of him both as contained in the heading of the EXH 1 and the imputation of fraud and corruption and criminality as contained in the body of the EXH 1. This he did by promptly responding to the petition, specifically answering to all the allegations made against him by the Defendant. That response is **EXH 2.**

That since the petition was written and the response by the Plaintiff there is no form of investigation or indictment of the Plaintiff based on the petition till date. That even the **EXH 4** tendered by the Defendant which is the only document he tendered, that is a letter from the Secretary General of the Federation (SGF), it amounted to nothing.

It is the law that outcome of libel once established is damages.

That it is at the Court's discretion to determine the quantum of damages. That by the wording of the petition the Defendant malice the Plaintiff calling him all sought of disgracing names. That by his testimonies and Exhibits the Plaintiff had established the allegation of libel. He therefore deserves the award of damages to be qualified by the Court bearing in mind that the damage done to the Plaintiff's reputation by the said libellous petition is irreparable. He urged the Court to so hold and

award a damage "befitting" the libel and enter Judgment in Plaintiff's favour. He relied on the case of:

Odewole & Ors V. West
(2010) LPELR – 2263 (SC)

On Issue No.2 whether the Defendant has successfully established his Defence of Justification of fair comment and qualified privilege, the Plaintiff submitted that it is incumbent on the Defendant to adduce evidence to support the Defence of Justification of fair comment and qualified privilege. That the Defendant failed to do so in this case. That mere mention of intention to rely on that Defence does not suffice because the Defendant who has raised that Defendant has not established same on strength of his defence/case. He failed to adduce credible evidence to attest to the veracity of his publication. He failed to state the particulars of facts he relied upon to show that the matter is true. That the Defendant failed to establish the defence as contained in the provision of Order 15 Rule 17 (3) FCT High Court Rules 2018. He referred to the case of:

ACB Limited V. Apugo Supra

Having failed to establish the Defence of Justification, the Plaintiff's Suit is unchallenged and "undefended". The Defendant's defence cannot be sustained and it is not tenable too.

That the letter from SGF EXH 4 and letter of Accountant General of the Federal to the Council which the Defendant relied on are of no merit as same did not make any reference to the said petition. That the Plaintiff has transverse all the Defendant's submission with his **EXH**

11 – letter from Ikwueto SAN & Co written to both the SGF and the Council dated 16/6/17. That by the decision in the case of:

Ewegwara V. Star Printing & Publishing Co. Ltd & Ors
(2000) LPELR – 1122 (SC)

Once the Plaintiff had proved malicious intent the Defence of Justification, fair comment and qualified privilege will not avail. He referred to the case of:

Iloabachie V. Iloabachie
(2005) LPELR – 1492 (SC)

Nwakoby V. Aham & Ors
(2016) LPELR – 41511 (CA)

That it was the intention of the Defendant to criminalize the Plaintiff so that he is investigated, prosecuted and removed from office going by the said publication. That intent was voiced out by Defendant during Cross-examination.

That that further confirms the Defendant's malicious intentions. That Plaintiff contended "malice" and has through his evidence proved same which evidence the Defendant could not challenge. He answered the 2nd question in the negative and urged the Court to so hold.

In response to the Defendant's Final Address, the Plaintiff Counsel – Baba Panya Musa responded on behalf of the Plaintiff thus: that though the Defendant claimed to have annexed thirty three (33) documents but he could not present any or attach any to the petition.

That once a malicious publication containing defamatory statement is served or known to anyone other than the

Plaintiff it amount to libel. That the Defendant had agreed that the document was sent to the President and no other. But in reality, it was served on SGF and other Civil Society Organizations. That failure to present even one of the documents and incriminating vouchers puts a dent on the Defendant's defence. That he could not substantiate the allegation of corruption, fraud, rape, extortion and pillage. That the Defendant mentioned only the EXH 1 not withstanding that the Subpoenaed Witness tendered some documents too. That the Defendant tendered these documents without establishing any nexus with them. That that amounted to dumping. He referred to the case of:

Abia V. INEC & Ors
(2019) LPELR – 48951 (CA)

That the submission of the Counsel to the Defendant, Precious Okoro Esq. is of no merit.

That the case of the Plaintiff is undefended, it is meritorious, the defence of justification, fair comment and qualified privilege were all disproved. He urged the Court to enter Judgment in Plaintiff favour and grant the Plaintiff all his Reliefs as sought.

COURT:

Once anyone makes or publishes anything which is false and without lawful justification, such publication is held to be defamatory. The person who was castigated in that publication can take up an action against the author of such publication.

The law requires the Plaintiff to strictly prove that there was publication. That is a burden the Plaintiff must discharge before it can shift to the Defendant. But where the Defendant has made direct and positive admission of the publication in his pleadings, there is no need for Plaintiff to prove publication. See the case of:

Amuzie V. Asonye
(2011) 6 NWLR (PT. 1242) 19

Ndukwe V. LPDC
(2007) 5 NWLR (PT. 1026) I

That is also what the Court decided in the case of:

Salawu V. Yusuf
(2007) 12 NWLR (PT. 1049) 707

Ofoegbu V. Onwuka
(2008) All FWLR (PT. 412) 1141

Any statement made or written against anyone which is true can never become defamatory. It is only become defamatory where such written statement is false and without justification. That is the decision in the case of:

Sketch Publishing Co. V. Ajegberuo Keferi
(1989) 1 NWLR (PT. 100) 678

Esenowo V. Ukpong
(1999) 6 NWLR (PT. 608) 611

In an action predicated on defamation, the Plaintiff must specifically establish that there were certain words used. He must identify those words which he claims defamed him. Those words must be culled from the publication or statement. He must prove that the words complained of

were defamatory. To consider that, the nature of the claim and the language used must be looked at to determine whether reasonable men could come to the conclusion that the use of those words were intended to convey and that all those who read the words in the letter/petition or publication would understand them as conveying imputations suggested by the Plaintiff. That means that the reasonable men who read the words complained of indeed believes that the words complained of is capable of being defamatory.

Once the Court finds that the said words were false, the Court will then consider the effect of those published on the Plaintiff on whom they were published and not whether the words were maliciously published. That is the decision of the Court in the case of:

UBA PLC V. Davis
(2011) 11 NWLR (PT. 1259) 591

Once a Plaintiff is able to prove that the publication of the offending words, that the words defamed him and that those words refer to him and was published to 3rd parties that the words are false and not accurate and there is no justifiable legal ground for the publication of the words, the Court will hold that there is merit in the allegation of defamation of Plaintiff. That is the Court decision in the following cases:

Iloabachie V. Iloabachie
(2005) 13 NWLR (PT. 943) 695

Guardian Newspaper Limited V. Ajeh
(2005) 12 NWLR (PT. 938) 205

NACB Limited V. Adeagbo

(2004) 13 NWLR (PT. 894) 551

In establishing defamation, Plaintiff must show that those words complained of, to the reasonable man that those words were actually defamatory and that they refer to the Plaintiff. That is the Court decision in the case of:

Ayeni V. Adesina
(2007) 7 NWLR (PT 1033) 233

Once the words complained of in their ordinary meaning render the person/Plaintiff about whom they are spoken of odium, shame and disgrace, it is held that those words are defamatory. An action on that will be held to be meritorious if Plaintiff establish that. See the case of:

Ogbodu V. T.U.R.I.A.I
(2013) 3 NWLR (PT. 1341) 261

Once the words had damaged the Plaintiff in the eyes of his colleagues, a sector of the society or community, has amounted to disparagement of his reputation in the eyes of average and right thinking man and woman, those words are said to be defamatory. So the Court decided in the case of:

Punch Nigeria Limited V. Eyitere
(2001) 17 NWLR (PT. 741) 228

Any imputation which tends to cause a person to be hated by his colleagues, his community and family at large is said to be defamatory of him. Anyone who is the harbinger of such imputation or defamatory words is held to be "civilly guilty" of such act of defamation. That is the decision of the Court in the case of:

Makinde V. Omagbomi

(2011) 5 NWLR (PT. 1240) 249

Once the statement made or written tend to lower the Plaintiff in the estimation of right thinking member of the society generally, it is held to be defamatory more so, when such statement is based on falsity and is unsubstantiated. Once the words published amounts to disparagement of the Plaintiff's reputation in the eyes of right thinking people generally, it amounts to defamation. That is the Court decision in the case of:

Access Bank PLC V. Muhammed
(2014) 6 NWLR (PT. 1404) 613

For the Plaintiff to succeed he must establish that all such words must be based on untruth or falsity. See **Access Bank V. Muhammed Supra.** Once such words are imputation of crime or affecting the Plaintiff's professional reputation, they are defamatory. Once the words or statements expose the Plaintiff to hatred, contempt, ridicule, cause other people or his professional colleagues to shun the Plaintiff and avoid him or discredit Plaintiff in his office or profession or lowers him in the estimation of right thinking members of the society generally, those words are defamatory. See the following cases:

Inland Bank V. F & S Co. Limited
(2010) 15 NWLR (PT. 1216) 395

Labati V. Badmus
(2007) 1 NWLR (PT. 1014) 199

Edem V. Orphed
(2003) 13 NWLR (PT. 838) 537 and the old case of:

Awolowo V. Kingsway Stores Nigeria Limited
(1968) 2 All NLR 230

In an action for defamatory, the onus is on the Defendant to prove the truth of the defamatory statement. While the Plaintiff has the onus to also prove that the statement is untrue.

Inland Bank V. F & S Co. Limited Supra

Akomolafe V. Guardian Press Limited
(2004) 1 NWLR (PT. 853) I

Once a Defendant can prove that the statements are truth, an action on defamation will fail. See the case of:

Amuzie V. Asonye Supra

Iloabachie V. Iloabachie Supra

Esenowo V. Ukpong Supra

Once the words are true and lawfully justified, they cannot amount to defamation.

Where a Defendant has disclosed evidence that the Plaintiff is a liar and that his character is successfully impugned and that the statement or words are justifiably legal, the Defence of Justification is established and allegation of defamation will fail.

The main defence opened to a Defendant in an action predicated on defamation is Defence of Justification. That means that the Defendant words are true and are based on statement of facts and that any imputation which the words intend to convey in context is/are also true. See the case of:

Amuzie V. Asonye Supra

It then means that the libel is true in its allegation of facts but also in the comments made thereon. The Defendant need not prove the truth of every word but he is obliged to prove that the main "charger" is the truth. That is Court decision in the cases of:

Din V. African Newspapers
(1990) 3 NWLR (PT. 139) 392

Dumbo V. Idugboe
(1983) 1 SC NLR 29

ACB V. Apugo
(2001) 5 NWLR (PT. 707) 483

Defendant must justify the imputation complained of in order to succeed with the Defence of Justification. He must strictly prove the truth of all the material statement and the words used which are injurious to the Plaintiff. See the case of:

Amuzie V. Asonye Supra

One other fundamental defence open to a Defendant in a case of libel/defamation is the defence of qualified privilege. Since defence is on two (2) conditions which must co-exist. They are that there must be a common interest of the maker of the statement and the person to whom it was made. There must be reciprocity of interest for qualified privilege to stand. Again, the fact relied on by the maker (Defendant) must be true and not false. So mere belief that the statement is true will not sustain such defence of qualified privilege. See Court decision in the following cases:

Atoyebi V. Odudu
(1990) 6 NWLR (PT. 157) 384

UBA V. Davis Supra

Iloabachie V. Iloabachie

The mere fact that the occasion is privileged does not make any publication made in it a privilege. A Defendant will not be entitled to the privilege if he uses the occasion for any other purpose other than that which makes the occasion privileged. That means that where a Defendant uses the occasion to achieve some political recognition in a bid to win a position of Chairmanship of an Order, the defence of qualified privilege will not avail him. Defendant must be duty bound to do so. He must have interest and which must not be made out of malice. See the case of:

UBA V. Davis Supra

So where a Plaintiff has established the allegation of defamation, he is entitled to damages. The Plaintiff need not allege or prove that he has suffered damages. Once he has shown that that he has been libelled without justification or excuses, it is assumed in law that he has been injured. Award of damages in a libel Suit is not limited to specific pecuniary loss suffered. It extends to damages resulting from any unjustifiable attack on a person's reputation and inures directly from such imputations.

In award of damages, in that regard, the Court considers actual pecuniary loss, anticipated pecuniary loss, social disadvantages, natural injuries to the Plaintiff's feelings, social standing of the Plaintiff and rate of Inflation.

Damages are assessed by reference to the evidence in the case and the subject matter of the action. So the Court in such a case considers the conduct of the Defendant before it may award punitive or exemplary damages against him. That means considering neterrent effect of it. See the case of:

UBA V. Davis Supra

Liability in a case of defamation is based on the fact of the defamation not on the intension of the Defamer/Defendant and not on what the Defendant intend to convey.

The Plaintiff need not prove that he has suffered damages before he is entitled to damages. Once he has proved that the publication is without justification, he is entitled to damages. See the cases of:

Oduwole V. West
(2010) 10 NWLR (PT. 1203) 598

Ejabulor V Osha
(1990) 5 NWLR (PT. 148) I

Award of damages must be adequate to reflect the reaction of the law to the impudent. It must be adequate to assuage for the injury to the Plaintiff's reputation. It must at once for the assault on the Plaintiff's character, pride and reputation which were unjustifiably attached and invaded by the act of defamation. Where defamation is established, the Defendant must pay for the injury the defamed Plaintiff has suffered. There is element of compensation in the award of damages. See the case of:

Ofoboche V. Ogoja Local Government Area

(2001) 16 NWLR (PT. 739) 458

In the computation of damages, the Court must consider the following factors which are social standing of the Plaintiff the whole conduct of the Defendant from time of publication till the Court gives its verdict – Defendant's conduct before publication, during and within the time of trial in the Court. The Court also considers the impact of the libel on the person who read same. See the cases of:

Williams V. DTN
(1990) 1 NWLR (PT. 124) I

Oduwole V. West Supra

Ofoboche V. Ogoja Local Government Area Supra

In order to deflate the defence of qualified privilege, it is incumbent on the Plaintiff to prove malice by Defendant. Such proofs are with facts showing the malicious intention of the Defendant. That is the decision of the Court in the cases of:

Inland Bank V. F & S Co. Limited
(2010) 15 NWLR (PT. 1216) 395

Iloabachie V. Iloabachie Supra

There are no set Rules for determining quantum of damages. It is based on the discretion of the Court and peculiar circumstance of each case. See the case of:

Ukachukwu V. Uzodinma

(2007) 9 NWLR (PT. 1038) 167

On awarding damages the Court also considers the conduct of the Plaintiff, his position and standing. The

nature of the published words and its effect on Plaintiff and extent of such publication. See the cases of:

Maman V. Salaudeen
(2005) 18 NWLR (PT. 958) 478

UBA V. Omiyi
(2010) 1 NWLR (PT. 1176) 640

From the above and the summary of the stance if the parties as set out above, can it be said that the Plaintiff, Professor Anthony Emeribe was defamed by the publication and words used in the publication made by the Defendant, such publication the Defendant did not deny? Can it be said that the Professor Anthony Emeribe had established the offence of defamation against the Defendant by his testimony and evidence he had tendered before this Court so much so that this Court should so hold and award him damages as sought in this Suit? Was the publication malicious/libelous?

Again, has the Defendant been able to explore and establish the defence of qualified privilege and has he any justification in making the publication? Are the words used in the petition defamatory so much so that the Defendant should be made to pay and tender apology to the Plaintiff too?

It is the strong but humble view of this Court that the publication was malicious; the words used were very defamatory. The Plaintiff has been able to establish defamation that the Defendant will not be protected by the defence of qualified privilege and the Defendant has no justification to make the publication not withstanding that he is the vice Chairman of the Council Association.

The allegations made were wrong, false and full of falsity without any fundamental justification whatsoever.

It is glaringly clear that the publication was false and malicious.

To start with, the publication was made to the President as the Defendant claimed but was more or less to the public. The Secretary to the government received same as well as the Ministry of Health. In the Defendant's own words in his Final Address it stated that **"the Plaintiff was queried by the Auditor General based on the same petition or content thereof."** That the Secretary to the Federal Government also wrote to the Plaintiff in that regard. Again that the Ministry also wrote and the Plaintiff was removed from office after the publication. All have proven that the words used by Defendant in his write up were published publicly. Those words defamed the Plaintiff and made him to be mistrusted by both the Ministry that eventually sniped him of his position and the presidency which Defendant claimed wrote to Plaintiff.

To start with, the allegation was false because most of the alleged sums of money claimed to have been embezzled by Plaintiff were all approved by the Board after due procedure. The alleged unapproved duty tour allowances were actually approved by the right authorities following due procedure. The appointment of ten (10) persons were done following due procedure going by the letters from the Head of Service and the responses thereto. There is no law that provides that a person who is heading a parastatal or ministry or agency or government cannot employ his child/children, members

of his family who are qualified to take up the position. Again, the employment of the son of the Plaintiff followed due procedure permitted by law. The Plaintiff did not singlehandedly employ those thirteen (13) persons, one of whom is the son of the Plaintiff. It was the decision of the governing board. In the employment letter of the S.A to the Plaintiff, it states:

> **"Following due deliberation and consideration of the governing board, I am pleased to inform you that you have been offered opportunity as Deputy Director ...."**

The above shows that the appointment was done and approved by the board though the letter was signed by the Plaintiff as the CEO. The board had earlier approved the appointment. The S.A is well qualified for the position. There is evidence that where position is vacant the persons who are within the organization are entitled to be considered first before external persons.

The approval of that appointment was based on meritorious performance of the S.A in discharging his duty. The S.A was already in the "employ" of the Council before then as the S.A to the Plaintiff. The conversion was for the same salary grade level. It was also in line with other government agencies. The only "crime" of the S.A is that the Plaintiff as CEO wrote the letter which is his duty to do. The Defendant, raising that issue in his petition is based on pure malice.

The height of malice is in the fact that the Plaintiff employed seven (7) people from his ethnic inclination. This allegation also portrays vividly the Defendant malicious, nepotic and tribalistic tendencies.

To start with, there was permission obtained by the Plaintiff and the Board from the HOS to replace the vacant position. Those replaced were all qualified. They were duly assessed and interviewed by the Board. They were all chosen based on the set down criteria. Their crime is that majority of them came from the same region with the Plaintiff.

There is no law that states that where a group of persons who best qualified for a job who comes from the same ethnic group should be disenfranchised because they come from the same ethnic group as the CEO of the Organization.

Assessment and employment is based on who is best qualified and not on geopolitical spread. That is why that aspect of the complaint by the Defendant – Gregory Uchonu, is very malicious, full of hatred for those who were employed, who were ably qualified, who happens to come from the same ethnic group as the Plaintiff. What the Defendant said about the Plaintiff on that ground is pure malicious and full of hatred, just to create hatred of the Plaintiff in the eyes of the President, the Ministry and the public at large. That aspect of publication is malicious. So this Court holds.

It is most unfortunate that the Defendant who eagerly presented the letter acknowledging withdrawal of service by the son of the Plaintiff, was not bold enough to put forward the letter of withdrawal written by the young man where he stated that he was giving the Council a one month notice of the intended withdrawal and the reason for the said withdrawal.

In the letter of the son of the Plaintiff, he stated:

> **"I wish to give one (1) month notice to withdraw my services from MLSCN ... with effect from 1st February, 2015."**

Based on the above, the same young man is still in the employment of the Council till 31st January, 2015. He is entitled to salary. He had specifically stated that the withdrawal is with effect from 1st February, 2015. He was paid salary and was entitled to salary for January 2015 – See **E Sub. Document No.5.** So the allegation that they paid salary in January 2015 to him was wrong is false and malicious. It was set to portray the Plaintiff in bad light and obviously defamed the Plaintiff.

The payment instruction given to credit the account of the young man is legal. Paying him the said salary is proper contrary to the malicious unsubstantiated allegation made by the Defendant in that regard in EXH 6.

The letter of Withdrawal of Service attached by the Defendant in EXH was fraught with malice. To start with, the Plaintiff's son stated in the letter that withdrawal was to be with effect from 1st February, 2015. The letter said with effect from 12th December, 2014. The Defendant was not bold enough to state in his letter/petition that the Council corrected their mistake as to the effective date of the withdrawal of service where they stated that the letter of 18th December, 2014 was in error. That error was corrected by the letter of 22nd December, 2014 **EXH S – D3** in which the Council stated:

> **"Please note that this letter supersedes the one issued earlier on 18th December, 2014."**

Based on the above, this Court holds that the allegation raised against the Plaintiff by the Defendant on the employment of his son and payment of January 2015 salary is malicious and untrue. Allegation of promotions done wrongly are false too. Going by EXH S – D1, the Promotions were done following due procedure as it was conducted by Appointment, Promotion and disciplinary Council of the Board. The Board gave its approval to it. The promotion was not done by the Plaintiff as alleged by the Defendant. That allegation is equally false and malicious.

Even the employment of Ekwebelam was done following due process before he was duly converted later as Deputy Director Admin (Registry) for the position before he was converted to head same as spelt out in the document of approval for the conversion. That conversion was not done by the Plaintiff but by the Board. Even the letter of Offer of Employment indicated that too. In paragraph 1 the letter states:

EXH S – D9

> **"I write on behalf of the MLSCN to offer you full time appointment as Director Admin Registry."**

The above speaks for itself. The Plaintiff did not singlehandedly employ the S.A. It was the Board that did. The crime Plaintiff committed is that he signed/authored the letter. He has the right to sign/author it based on the fact that he is the CEO of the Council and it falls on his line of duty.

EXH 4 – Letter to Defendant by Secretary General of the Federation.

The letter from the Secretary General of the Federation did not indict the Plaintiff as Defendant erroneously and maliciously claimed. From the length and breadth of all the documents tendered by the Defendant in support of his malicious defamation in his petition, it did not show that the Federal Government, Secretary General of the Federation or Ministry has indicted the Plaintiff in any way or on any of the erroneous and malicious petition the Defendant wrote against the Plaintiff.

In the reply to the petition, the government stated thus:

EXH 4 stated:

> **"Since the matter is subjudice ... you are to wait for the legal process to be conducted."**

That statement in EXH 4 is not an indictment. So this Court holds.

Even the allegation of interdiction of Mrs. Amobi and her subsequent posting to Lagos was not done by the Plaintiff. It was done by the Board. The letter was based on the normal routine posting and reshufflement in the Council. The first paragraph of the letter states thus:

> **"In line with the ongoing re-organization of the Council aimed at promoting higher efficiency and productivity, I am directed to inform you that the management has approved your posting."**

The said posting was done in the normal cause of reorganization. It was approved by the management

which means that there was due recommendation before the management gave its approval to it. The letter ended by stating thus:

> **"That Mrs. Amobi ... you are expected to bear your wealth of experience in your new assignment while wishing you success in your new posting."**

There is no law that gives a staff of an organization the right to state where she likes to serve. Staff knows that they can be transferred at any time to any part/branch of the organization with little notice. Doing so in this case is not and should not be counted as a wrong or a crime by the CEO. More so, when the due procedure was followed in doing that. Meanwhile, the posting was done on the 23rd of January, 2015 long before the said malicious petition.

Even the letter on wrong recruitment exercise written by the Mrs. Amobi which the Defendant anchored on to malign the Plaintiff was maliciously and procedurally wrong. To start with, the lady who is the head of a unit under the Admin Department has no right to write a letter to the CEO. She ought to have written to her Head of Department – Head of Department of Admin – Director of Admin. Her writing directly to the CEO without evidence that the letter was routed through the Deputy Director Admin or the Director Admin was wrong and violates the PSR provisions. Her doing so shows that she has a hidden interest in the recruitment plan which she could not fulfil then she was so hurt that she broke all protocols by writing directly to the CEO. That action is an affront on Civil Service Procedure and Rules. All that

shows that the Defendant who claimed to be a whistle blower did not ensure that he whistle-blow on the right facts. That also is malicious. All aimed at damaging the image of the Plaintiff to the public especially the Presidency, Head of Service, Secretary to the Federal Government and their parent Ministry of Health. That is most unfortunate.

In **EXH S – D5** Mrs. Amobi had advised that officers are to be instructed to purchase form from source in order to avoid the issue raised in the query on purchase of form from open market. The Plaintiff advised that Mrs. Amobi communicate that to the officers. Rather than do so, she decided to issue warning instead of letter of advise as instructed. That shows that she and the Defendant who had laid emphasis on her case were all out to paint the Plaintiff bad in the eyes of the staff of the Council, the government and the public.

Mrs. Amobi interdiction came several months after she was posted to Lagos. Again, the interdiction was not done by the Plaintiff. It was the Board's decision to do so.

The Board listed the ground upon which the interdiction was made which was mainly based on serious misconduct – See **PSR030402** and **PSR030301** against the Mrs. Amobi. The Plaintiff did not author the letter. He did not singlehandedly interdict the woman as the Defendant had malicious insinuated; all in his bid to belittle the Plaintiff in the face of well meaning reasonable men and women in both the Council and the public at large. It was equally the same management that lifted the said interdiction in the letter of 14th April, 2016. The management of the Council also set up a Committee

which deliberated on the said interdiction just like it did before interdiction.

As stated earlier, there was approval for replacement of the officers, going by **EXH Sub 2 & 3** – Letter from the Head of Service of 11th February, 2014 contrary to the insinuation of the Defendant.

Again, EXH Sub 8 – the Letter on the Replacement Exercise. The Board had directed for the replacement as per the approval of the Head of Service. IN **EXH Sub 3 – letter dated 22nd October, 2014** states thus:

> **"The Appointment Promotion and Discipline Committee as directed by the Board conducted the replacement recruitment Exercise in line with the approval of the Head of Service of the Federation.**
>
> **In attendance were representatives of the Federal Character Commission.**
>
> **The following candidates were successful and are hereby recommended for Board approval."**

The above is self explanatory. The Claimant did not conduct the interview, the Board did. The interview as done in the presence of the representatives was from Federal Character Commission. So the allegation of Plaintiff employing only people from his ethnic group is false, untrue and malicious. The replacement was done following due procedure permitted by law. It was done in the presence of people from Federal Character Commission who were there to ensure that Federal Character is observed in the recruitment.

Funny enough the Defendant could not point out the fact that those who were to be replaced were all from the same ethnic group same as to one or two persons.

The qualification of all the candidates were all stated therein. There was no one who was not qualified for the position given to him/her. That list naturally must get to the Head of Service. The list contained all the people interviewed who qualified and were successful. It is not for the Defendant to inform the Head of Service about the extra persons employed. Besides, anyone employed by the Council who is pay-rolled must be sent to the Head of Service and invariably the Secretary General of the Federation must know about it. This is because any salaried person must be detailed in the Nominal Role of the organization that employed that person. Moreover, there is no law that states that Plaintiff must employ people from every State of the Federation. Employment is based on merit. The Defendant may borrow a leaf from other government organizations on appointment.

An organization has a right to create a unit where the exigencies and circumstance of the situation arise or where there is need to do so. In the Council, they have Department of Admin. Registry is an arm or Admin Department. So the allegation of the Defendant on that is false and untrue. The action of the Plaintiff based on Board approval is proper in the conversion of the S.A to Deputy Director Admin (Registry).

A closer look at the documents attached to EXH 1 on the purchase of Generator Sets, the minutings of the several Heads of Units and Departments shows that the due process was followed in the purchase made by the

Council under the leadership of the Plaintiff contrary to the malicious allegation by the Defendant especially on the 250KVA Generator.

Approval was also given by the Board on the Two Hundred and Fifty Thousand Naira (₦250, 000.00) welfare for the Chairman and Board members. This approval was by the Board not by the Plaintiff as the Defendant portrayed. Going by the minuting, on the documents, due process was followed. Approval of welfare package for Board members in a government agency is not news to anyone. These moneys are duly accounted for.

In the estimated duty Allowance attached for 2/12/14 it shows that the sitting allowance and welfare for 14th – 20th December, 2014. There was a voucher raised according to the accounting principles for that period. There was voucher raised to that effect also. That voucher was prepared by Umeh Ijeoma. It was checked by Onuorah C. It was authorized by Idu I.B. and checked by the personnel from the Audit Department. These vouchers were never authorized or checked by the Plaintiff. The same was done on the purchase of the armoured cable.

Due process was also followed in the renovation of the Plot 1502 (No. 49) Norman Nasir Street Asokoro. The minutings of the documents puts no one in doubt. The payment made out was based on the approval of the Board. The payment was made by voucher duly raised, checked, prepared, authorized and audited. All were signed. So also the publication and advert for the

construction and installation of the office Signboard. Payment instruction was duly raised on the 1st of July, 2014. There is no law that stipulate that all minutes should be type-setted.

The contract was prequalified. The documents of all the companies were assessed. It is within the Board's discretion to choose the company which the Board feels will best perform the job. There is no law that states that the company with the highest score must be given the contract. A company may score high but might be indebted to several banks and may be in Court with several of their clients.

The positions given to the three (3) persons were advertised just like the positions of the ten (10) persons replaced. The Plaintiff and the Board did not commit any wrong thereon as due process was followed going by the job opportunity/internal Advertisement the Plaintiff attached in EXH A. The position given to Plaintiff's son was advertised as No. 4 in Attachment X8.

The document titled "Vote of No Confidence" by the Joint Health Sector Union was on the Board and not on the Plaintiff. Such Vote of No Confidence is of no monument as it is not specifically on the Plaintiff. It is very evident that it was orchestrated by the Defendant as an acting member and Vice Chairman of the Union. All in his bid to achieve his calculated malicious attempt to impugn on the image, character and person of the Plaintiff, who from all indication, he hates and who he had made up his evil mind to portray as a bad

leader. The so called Vote of No Confidence written on the 15th of May, 2014 shows that, long before the petition, the Defendant was already biased about the person of the Plaintiff and the management.

On the query by the Auditor General, it is evidently clear that contrary to the submission of the Defendant that the petition was made to the presidency alone. It is clear that it was made not just to the Presidency but to the Ministry of Health, Head of Service and Secretary to the Federal Government and the Auditor General's office too. All in Defendant's bid to paint the Plaintiff bad by his malicious, falsified and highly unsubstantiated petition obviously he defamed the Plaintiff by the use of uncivilized and malicious words and phrases.

The so called query from the Auditor-General of the Federation is not an indictment of the Plaintiff as the Defendant erroneously tries to portray. It is only for the Plaintiff to explain the issues raised thereon. To that extent, the Plaintiff was not investigated and indicted. So this Court holds.

Again, the detailed explanation and succinct clarification by the Plaintiff through his Counsel's response thereon further shows that the issues raised in the petition were clarified in the response. The response in the said document by Counsel to the Plaintiff clears the false and untruthful allegation on improper payment for Oversea trips, payment of DTA without official journey, irregular payment of several allowance among others. There are several of those

documents attached showing approval for the trip evidencing that the trips were taken and approval given for the various payments.

On allegation of payment for trip to attend two (2) occasions in one day, evidence are abound. There is nothing strange that one can attend two (2) occasions in one day. There are evidence of the Plaintiff making presentation on such trips – particularly those done within and outside Nigeria.

One does not need any soothsayer to know that Oversea trips are scheduled and planned ahead of time. There is nothing strange in applying for an Oversea duty/tour/workshop/symposium or the like in advance. This helps to be able to apply for the necessary visa well in advance so as to be able to meet up and avoid delays.

The Plaintiff has been able to establish defamation against the Defendant. To start with, the words used by the Defendant in the petition – EXH 1, are very defamatory. The publication was libellous too. Such words and phrases as:

"the sins of Prof. Anthony Emeribe"
"corruptive, self-aggradizament"
"nepotism and tribal jingoism"

are very defamatory. These words are also insulting. Those words were used without substantiation. So also the use of the word/phrase:

"wrongful appropriation of their practice fees"

is defamatory. Also statement that:

> **"Lucid proof of how Prof. Emeribe has defrauded innocent Medical Laboratory Scientist through wrongful appropriation"**

is highly defamatory, more so, when the Defendant has not been able to substantiate such claims. All moneys spent in the Council was approved and due procedure followed. These approvals were made by the Board after the due process was followed.

Using and mentioning the name of the Plaintiff put no one in doubt that the Defendant deliberately and maliciously defamed the erudite Professor.

The use of the phrase:

> **"holier than thou and corrupt tendencies of Prof. Emeribe ..."**

All are libellous and clearly defamatory. The words **"defraud" "defrauded"** were used several times in the malicious petition. The phrase **"with this indictment"** is equally defamatory. The Plaintiff was not indicted by anyone.

The allegation that the Board erroneously extended the time of Prof Emeribe is false because there was a document of approval from the Board to do so.

To show that the Defendant meant evil in his false allegation and defamation, he even attacked the Plaintiff on an action taken by other management members of the Council. There is no evidence to substantiate that Ogbonna Offurum is the brother of

the Plaintiff as the Defendant falsely claimed. Besides, the payment to Mr. Ogbonna Offurum was done based on approval of the Board as shown in the document attached to the EXH 1.

Again, allegation on correction of signage without due process is wrong. Due process was followed. The signage was done as per specification. Payment was made following Board approval. The Finance Department paid for the contract after it was duly prepared, checked and authorized by the Audit Department. The Plaintiff was able to rebuff all the allegations raised in the publication by documents in **EXH 2 – letters and approval** attached to the answer to the petition.

Based on all the above as analyzed, this Court holds that the Defendant – Gregory Uchonu, defamed the Plaintiff – Professor Anthony Emeribe by the unsubstantiated false statement and claim he made in his petition written to the President on the 14th day of August, 2015 against Professor Anthony Emeribe. The said petition was based on falsehood and issues raised were not true. The Defendant could not substantiate those claims.

The defence of Qualified Privilege Position which the Defendant anchored on cannot avail him because of the untruthfulness and falsity of his allegation made against the Professor Anthony Emeribe. Besides, the words and phrases used in the publication are all defamatory. The Defendant did not deny making the statement and using the said words and phrases.

The Plaintiff was able to establish the offence of defamation against the Defendant. He is entitled to his claims. So this Court holds. He is entitled to damages too.

This Court therefore grants his Reliefs to wit:

1. Relief No.1 granted.
2. Relief No.2 granted.
3. Relief No.4 granted.

Five Hundred Thousand Naira (₦500, 000.00) granted as general aggravated and punitive damages for the libel.

One Hundred and Fifty Thousand Naira (₦150, 000.00) granted as cost of the Suit and legal expenses.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2021 by me.

_____

K.N. OGBONNAYA
HON. JUDGE