

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 9TH DAY OF JULY, 2021

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

SUIT NO.: FCT/HC/CV/0775/18

BETWEEN:

MR. EZE OGU

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PLAINTIFF

AND

1. CHANNELS INCORPORATED LIMITED

2. VANGUARD MEDIA LIMITED

3. PUNCH NIGERIA LIMITED

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----- DEFENDANTS

4. MEDIA TRUST LIMITED

JUDGMENT

On the 27th April, 2018 Mr. Eze Ogu instituted this action against Channels Incorporated Limited, Vanguard

Media Limited, Punch Nigeria Limited and Media Trust Limited claiming the following:

- (1) A Declaration that the publication of the Defendants between the 5th & 6th February, 2017 as they relate to the Plaintiff are entirely defamatory of the Plaintiff's personality by exposing him to public ignominy, hatred, ridicule and odium by lowering his estimation among his business partners family members, friends, colleagues.**
- (2) An Order of Court against all the Defendants compelling a republication in the media platform and other National daily (front page) of the true version of the story with profuse and unqualified apology in term acceptable by the Plaintiff.**
- (3) Two Hundred Million Naira (₦200, 000,000.00) against 1st Defendant for libel.**
- (4) One Hundred Million Naira (₦100, 000,000.00) against 2nd – 4th Defendants for libel.**
- (5) An Order of Perpetual Injunction restraining all the Defendants by themselves, agents, privies, assigns and/or legal representatives from any further publication of the said or subsequent libel against the Plaintiff.**
- (6) Post Judgment Interest at the rate of 10% per annum on the Judgment sum till final liquidation.**
- (7) One Million Naira (₦1, 000,000.00) as cost of the prosecution of the Suit.**
- (8) Omnibus.**

Let me halt at this point to state that:

There are four (4) Defendants in this case – Channels Incorporated Limited, Vanguard Media Limited, Punch Nigeria Limited and Media Trust Limited.

The 1st Defendant filed a Counter-Claim. The 2nd & 3rd Defendants filed their respective Statements of Defence. The 3rd Defendant rested their case on that of the Plaintiff. The 4th Defendant put a few appearance through their Counsel – Omang esq. but did file any Process or call any Witness. The Court ensured that they were served with all Processes and Hearing Notices.

The Plaintiff called a Witness. He testified in person and tendered seven (7) documents – EXH 1 – 7. They are the alleged defamatory publication from the Defendants, the letters demanding refraction of the said publication written to the Defendants; the response to the said letter written by the 1st Defendant to the Plaintiff’s Counsel, Judgment of Justice Ebong on a Suit on violation of Fundamental Right of the Plaintiff – Suit No.: CV/688/2017 – FCT High Court. Delivered on the 19th of October, 2018. The said Suit is against the Director General Department of State Security Service (DG DSS). The 5th document is a Record of Proceeding in Suit No.: PMC/188C/2017. It is a Proceeding of the Magistrate Court which was held on the 6th February, 2017. The next document (EXH 6) is a document titled “Legal Advise” dated 24th May, 2017 from office of DPP Rivers State to the DG DSS in Port Harcourt. It was made for the attention of C.S. Eze – Director of Legal Services. The 7th document is a document from Chief Magistrate Court presided over by K.A. Braide Esq. sitting at Port Harcourt, dated 30th May, 2017. It was not signed by anyone.

On their part, the 1st Defendant called a Witness and tendered four (4) documents – EXH 3 & 8 already

tendered by Plaintiff and EXH 9 & 10 were tendered in Defence of the Counter-Claim. Plaintiff Counsel and 3rd Defendant Counsel Cross-examined the 1DW1. The 3rd Defendant Counsel rested its case on that of the Plaintiff stating that he is satisfied with the evidence already before the Court. The 2nd Defendant fielded a Witness – 2DW1 who was Cross-examined by Plaintiff Counsel.

The Plaintiff Counsel had alleged that the 1st – 4th Defendants had in their respective media outlet/newspaper publications made false malicious publications against him in the news headline:

“DSS arraigns three (3) for Kidnap, Murder of Senior Officer in Rivers.”

That the said headline was seen in the 1st Defendant’s website (www.channelstv.com) which according to him was accessible from every part of the world.

On part of the 2nd Defendant, that it published in her publication of 6th February, 2017 around 4:10 am as:

“DSS arraigns sixty one (61) years old leader of kidnap gang in Port Harcourt.”

That the publication was also seen in 2nd Defendant’s website (www.vanguardng.com).

That the 3rd Defendant in its own publication headlined thus:

“Three (3) in Court for murder of DSS operative.”

The said publication was seen in www.punchng.com.ng. On the part of the 4th Defendant, it was headlined:

“DSS arraigns sixty one (61) years old kidnap kingpin in Rivers.”

That publication was also seen in www.dailytrust.com.ng.

The Plaintiff Counsel had stated that the Plaintiff was never arraigned in Court contrary to what the said publication tried to portray. That the Defendants refused to retract the said publication even after the Plaintiff demanded for them to do so. Evidence in EXH 2. That it was only the 1st Defendant which responded (EXH 4) stating that they reported what transpired in Court.

In summary, the key points in the case of the Plaintiff as stated by him are that he has proved the publication of the defamatory material against him by the Defendants. That the said publications are false as they are malicious and the Defendants have no reason to believe the truth thereof. That the Defences of Privilege, justification and fair comment do not avail any of the Defendants. That the Plaintiff has shown through his testimony and Exhibits that he suffered gross and outward injuries on account of the Defendants' false and malicious publication on him.

Again, that that there is no need to call the evidence of a 3rd party who read the said publications of the Plaintiff (sic) given that same is already and has been in public domain for years and that the Plaintiff fielded the said publication in evidence. Also, that there is need for serious compensation and other remedies by the Defendants to the Plaintiff for the said false and malicious publications. That the Counter-Claim by the 1st Defendant is not recognizable in law. And that the 3rd & 4th Defendants have admitted the Plaintiff's case when they failed to lead evidence in rebuttal of same.

In his Final Written Address, the Plaintiff raised five (5) Issues for determination which are:

- (1) Whether the Plaintiff has proved the test of Libel against the Defendants.**
- (2) Whether there exists any Defence in law to excuse the Defendants' false publication of the Plaintiff.**
- (3) Whether the Defendants are liable in compensation to the Plaintiff for the false malicious publications against him (sic).**
- (4) Whether the 1st Defendant's Counter-Claim is recognizable in law.**
- (5) Whether the 3rd & 4th Defendants has not admitted all the cases of the Plaintiff as proved.**

On Issue No.1 the Plaintiff Counsel submitted that Plaintiff has proved the Tort of Libel against the Defendants. That the publications of the Defendants are defamatory to the Plaintiff. That Plaintiff proved that Defendants proved the publication of Defamatory material against him. That he pleaded the defamatory publications of the 1st – 4th Defendants and tendered evidence to that effect – EXH 1. That Defendants admitted publishing the libelous material against Plaintiff. That the Plaintiff need not prove publication where the Defendants have admitted same. On all the above, he relied on these cases:

Ekong V. Otop
(2014) 11 NWLR (PT. 1419) 549

Achi V. Okonkwo
(2016) LPELR – 41015 CA

Giwa-Amu V. Guardian Newspaper
(1999) 8 NWLR (PT. 616) 568 @ 580

Iwueke V. Imo Broadcasting Corporation

**(2005) 17 NWLR (PT. 955) 447 Paragraph G – A and P.
483 Paragraph E – F**

That the Defendants admitted the libelous publication. That they relied on the defences of justification, fair comment and qualified privilege. That the Defendants' submission and cases relied upon are not applicable in this case. That Plaintiff satisfied all the conditions for prove of defamation and libel as stated by Supreme Court in the case of:

**Skye Bank PLC & Anor V. Moses Bolanle Akinpelu
(2010) 8 NWLR (PT. 1198) 179 SC**

That Plaintiff proved the pleaded and proved libelous material and showed that the said libelous content are in Google network, where it is accessible to people from all over the world. That the publication was read by 3rd parties which is evidence of the effect of the publication on the Plaintiff's life, reputation, family, business and inter-personal relationship with other people.

That on the reliance of the 2nd Defendant relying on (EXH 8 – Detention Warrant and Charge Sheet EXH 8 & 9 respectively), defence of absolute privilege cannot avail them. That relying on it can only arise when the publication has been established. That Defendants relying on it means that they have admitted the publications. He relied on the case of:

**Ayeni V. Adesina
(2007) LPELR – 4932 (CA)**

That the Plaintiff has established that he lost business communication and opportunity, his wife was meted with odium and opprobrium when she was called the wife of an armed robber. That his foreign partners abandoned him and that the government of Imo State withheld staff of office on account of the same publication. Again, that

the false allegation was published even before the alleged arraignment.

That on all the above, the Plaintiff had led uncontroverted evidence to show how the publication has lowered his estimation in the sight of reasonable and right-thinking persons of the society. That the Plaintiff has proved the case of libel when it is evidently clear that the publication was visible and accessible on the portals of the Defendants as well as on the National Library where copies of the publications were deposited as a matter of law for public access. They urged Court to hold that there is no need to call another (third party) as a Witness.

That the publications are false as the Plaintiff was not arraigned before the Court on 3rd February, 2017 or any other day as falsely alleged in the publication by the Defendants. He relied on the cases of:

**Royal Mortgage Finance V. Akpovi
(2014) LPELR – 24527 (CA)**

**Ologe & Ors V. New African Holding Limited
(2013) LPELR – 20818**

That Plaintiff has shown in the evidence he let before this Court that he was discredited by folks, abandoned by business associates, had issue with his wife, family members and staff because of the said publications.

That it is immaterial for the Defendants to aver that they did not set out to defame the Plaintiff. That Plaintiff continued to suffer the injuries to his reputation, business, coronation and not due to his arrest and detention by the DSS as the Defendants submitted. That the detention rather attracted public sympathy. He referred to the Judgment of Justice Ebong on

Fundamental Right Violation based on long incarceration by the DSS.

That a Charge Sheet is not Record of Proceeding. That the Court Process prepared by a Counsel cannot take the place of Record of Proceeding. That the Defendants relying on EXH 8 prepared by C.S. Eze and EXH 9 – Remand Warrant, cannot suffice as proof of arraignment. That the Defendants failed to tender the Record of Proceeding for the Proceeding of 3rd February, 2017 as it does not exist. That EXH 5 & 7 are Records of Proceedings for 6th February, 2017 and 30th May, 2017. That EXH 5 shows that there was no arraignment that took place on the 3rd February, 2017.

That the conducts of the Defendants were malicious. That where a defamatory publication proved, malice is readily inferred. He referred to the case of:

**Chilkied Security & Dog Farm Limited V. Schlumberger Nigeria Limited
(2018) LPELR – 44391 (SC)**

That there is no need for Plaintiff to prove malice as same is implied. He relied on the cases of:

**New Breed Organization Limited V. Erhomosele
(2006) LPELR – 1984 SC**

**Bakare & Anor V. Ibrahim
(1973) LPELR – 710 SC**

That putting the picture of the Plaintiff in their publication and stating that they published what their representatives told them is malicious and defamatory. That not publishing when the Plaintiff was discharged shows malice. They urged Court to hold that malice is proved against the Defendants.

That the Defendants failed and their witnesses evaded the questions put to them under Cross-examination by the Plaintiff Counsel. He urged Court to hold that the witnesses lack credibility and their testimonies should not be trusted. He urged Court to resolve Issue No.1 in Plaintiff's favour.

On Issue No.2 – whether any Defence exists in law to excuse the Defendants' false publication. The Plaintiff Counsel submitted that no Defence exists for the Defendants in that regard. That 1st Defendant raised issue of justification, fair comment and qualified privilege. That 2nd Defendant raised the Defence of absolute privilege. But that those Defences do not avail them. That the Defendants are duty bound to give true and accurate report of event to the public including the Plaintiff. That the Defendants failed to do so in the publication in issue before this Court. That none of the Defendants were a party to the case in Port Harcourt; they are not lawyers, Witnesses or Court staffs or offer of the State. That they were only reporters. So they are not covered by Defence of absolute privilege. That they were not covered by Defence of fair comment as their report was false and inaccurate.

That EXH 8 & 9 are inaccurate as they did not show that the Plaintiff was arraigned since a Charge Sheet is not Record of Proceeding. That the fact that what the Defendants reported was a judicial Proceeding does not ipso facto absolve them of the liabilities in libel. He urged Court to hold that the Defence of absolute privilege for the 2nd Defendant or any of the Defendants is unavailable. He referred to the case of:

Royal Mortgage Finance V. Akpovi

That the Defence of Qualified Privilege is also lacking in that malice defeats privilege. That since the publication is malicious; the Defendants cannot run under the canopy of Qualified Privilege for protection in this case. That the 1st Defendant has not made out any case for qualified privilege as they did not plead same, their publication was inaccurate and false, there is lack of interest and malice. That the public cannot have any interest in the malice publication. They urged Court to discontinuance the Defendants' Defence of privilege whether qualified or absolute.

On Defence of Justification and Fair Comment, the Plaintiff submitted that those defences are not available to the Defendants also. That the cases cited by the Defendants in support of their Defence of Justification and Fair Comment are not same with the present case as their publications are false unsupportable in facts and law, malicious and brazen.

That justification thrives in truth. That malice can be deduced from the falsity of the publication of the Plaintiff's photograph boldly engraved on the said publication which was not true. That the Defendants had not proved arraignment of the Plaintiff on the 3rd of February, 2017 and the adjournment to the 6th February, 2017 for further Hearing. That shows that the Defendants justification and fair comment does not avail them as they have proved the truth of their publication and that the fact that they were acknowledged to be true. That truth of the publication is a cardinal indices of the defence of fair comment as held in the case of:

Anya V. A.N.N Limited
(1992) 75 SCNJ 47

Akomolafe V. Guardian Press Limited & 3 Ors

(2010) 1 SC (PT.1) 58

**G. Cappa Limited V. Daily Times of Nigeria
(2013) LPELR – 22028 (CA)**

**Makinde & Ors V. Omagbemi
(2010) LPELR – 4461 (CA)**

That in this case, the Defence of Qualified Privilege and Fair Comment are forfeit because the defamatory words were published more extensively and maliciously. He referred to the case of:

**FBN & Anor V. Aboko
(2005) LPELR – 7494 (CA)**

He urged the Court to hold that there is no defence to excuse the Defendants from the false and malicious publications against the Plaintiff.

On Issue No.3 – whether the Defendants are liable to pay compensation. The Plaintiff Counsel submitted that the Defendants are liable to pay compensation for defaming the Plaintiff and for libelous publications. That the compensation is for loss of reputation, for suffering loss of good will and association. That libel and slander are actionable wrongs. That Plaintiff had through his evidence shown the untoward hardship/losses suffered on account of the said false publication. He referred to the old case of:

**Dingle V. Asso. Newspaper Limited
(1961) 2 QB 162**

ACB V. Apugo Supra

**Ezegbo & Anor V. Igbokwe
(2016) LPELR – 40784 (CA)**

That libel being an actionable wrong, once a claim is established, damages are presumed. Again, that a

successful party in libel need not prove damages. He referred to the case of:

**Guardian Newspaper V. Ajeh
(2011) LPELR – 1343 (SC)**

That Plaintiff has narrated his ordeal and injuries suffered as a result of the publication. That it has affected his business and relationship with his family and colleagues and his relationship with his country. That the conduct of the Defendants, especially 1st Defendant, warrants award of serious Punitive Damages as they have not shown any remorse or taken any step to assuage the Plaintiff's tarnished image. That they continued to injure the Plaintiff by retaining the libelous material in their websites. He relied and cited the Supreme Court decision in the case of:

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

That there is need for Court to Order the Defendants to bring down immediately the said publication from their respective websites and retract the said publication with well-worded apologies to the Plaintiff. They urged the Court to hold that the Defendants are liable to pay punitive, exemplary and aggravated damages to the Plaintiff and resolve the Issue in Plaintiff's favour.

On Issue No.4 – whether 1st Defendant's Counter-Claim is recognizable in law, the Plaintiff Counsel submitted that it is not supportable in law. That the claim of Three Million Naira (₦3, 000,000.00) as the Fee charged by 1st Defendant's Solicitor – Amaechi Nwaiwu SAN & Co. is not part of the cause of action in this Suit. That the Counter-Claim can only be considered where the main claim fails. That the Solicitor's Fee in this case is the contract between the 1st Defendant and their lawyer. That Plaintiff

is not privy to that contract and cannot therefore be liable to pay the Solicitor's fee for the 1st Defendant. He relied on the case of:

**Ibe & Anor V. Bonum Nigeria Limited
(2019) LPELR – 46452 (CA)**

**Michael V. Access Bank
(2017) LPELR – 41981 (CA)**

**Bluenest Hotels Limited V. Aero bell Nigeria Limited
(2018) LPELR – 43568 (CA)**

He urged the Court to dismiss the 1st Defendant's Counter-Claim for being without basis and lacking in merit.

On Issue No.5 – whether the 3rd & 4th Defendants have not admitted the Claims of the Plaintiff as prove. The Plaintiff Counsel submitted that they have admitted the Claim without any challenge. That o 7th October, 2020 the 3rd Defendant who filed a Statement of Defence did not call any Witness to testify on its behalf. It rested its case on that of the Plaintiff. That the 4th Defendant which was represented by Omang C. Omang Esq. never flied any Statement of Defence or Counter-Claim notwithstanding that the said 4th Defendant Counsel appeared before the Court on five (5) occasions and a cost of Thirty Thousand Naira (₦30, 000.00) was made against it by the Court. That the cost is still unpaid. The 4th Defendant never defended the case or called any Witness.

That the 3rd & 4th Defendants were given all opportunities to defend the Suit but they failed to do so. They never challenged the case of the Plaintiff. That the Plaintiff has discharged the onus on him and the onus shifted to 3rd & 4th Defendants, but the 3rd & 4th Defendants failed to discharge same. That the Plaintiff has discharged the

burden placed on it by proving the publication of the libelous content by all the Defendant by adducing credible evidence and the testimony of the Plaintiff in person and tendering the false publications. The 4th Defendant not filing any Statement of Defence and not calling any Witness is clear indication that the 4th Defendant had admitted the allegation of defamation and libel. The Plaintiff Counsel relied on the following cases which he cited extensively:

**Chidoka V. First City Finance Co. Limited
(2012) LPELR – 9343 (SC)**

**MTN V. Mundra Ventures Limited
(2016) LPELR – 4043 (CA) P. 33 Paragraphs B – C**

**Okoye & Ors V. Nwankwo
(2014) LPELR – 23172 (SC)**

**Ofole V. Obiorah
(2015) LPELR – 24530 (CA)**

The Plaintiff Counsel further submitted that the decision of the 3rd Defendant to rest its case on that of the Plaintiff is a well thought-out strategy. That it means that the 3rd Defendant believes all that the Plaintiff claims and has no Defence to the case of the Plaintiff. He urged Court to hold that the 3rd & 4th Defendants have not challenged the case of the Plaintiff and have admitted same as proved by Plaintiff. He finally urged the Court to resolve the Issue in Plaintiff's favour and discontinuance the Defendants' submission and uphold the case of the Plaintiff and award all the Reliefs sought.

The 1st Defendant filed its Final Written Address and a Reply on Point of Law to the Plaintiff's Final Address. The 1st Defendant called one (1) Witness and tendered four (4) documents – EXH 3 & 8 and EXH 9 & 10. It tendered EXH 10 in proof of its Counter-Claim. It is imperative to

state in details the Counter-Claim. The Counter-Claims are as follows:

- (1) That Plaintiff wrongly and maliciously set the law in Motion against the 1st Defendant/Counter Claimant.**
- (2) That Plaintiff's Suit is without substance yet Plaintiff alone went ahead and instituted the action without the other persons charged with him thereby threatening the business reputation and the financial earnings of the 1st Defendant/Counter Claimant.**
- (3) That Plaintiff knows that he was brought to Court on 3rd February, 2018 and the matter adjourned to 6th February, 2018 as the Court Record reveals but still went on to maliciously sue the 1st Defendant simply to make money from the 1st Defendant.**
- (4) That 1st Defendant avers that the Suit commenced by Plaintiff led 1st Defendant to lose substantial revenue due to the needless cost it has occasioned to 1st Defendant in defending this Suit.**
- (5) That the 1st Defendant avers specifically that it was billed Three Million Naira (N3, 000,000.00) only by the Managing Partner of Kelechi Nwaiwu Esq. at the Law Firm of Amaechi Nwaiwu SAN & Co. The 1st Defendant pleads its Solicitor's invoice.**

The 1st Defendant claims the following:

- a) Declaration that the Plaintiff wrongfully set the law in Motion against the 1st Defendant/Counter Claimant.**
- b) General Damages of Ten Million Naira (N10, 000,000.00).**

c) Three Million Naira (₦3, 000,000.00) as cost of defending the Suit.

The 1st Defendant tendered the following:

EXH 3 – Letter of response to the letter written to it by the Plaintiff demanding an apology and adequate compensation for the defamatory publication.

EXH 8 – Copy of the Charge filed by C.S. Eze at Port Harcourt Magistrate Court PMC/188C/17 dated 3rd February, 2017.

EXH 9 – Commitment on Remand/Remand Warrant dated 3rd February, 2017. The last document is EXH 10 – Invoice of Professional Fees in Mr. Eze Ogu V. Channels Incorporated Limited. That document is in the letter head of Amaechi Nwaiwu SAN & Co. dated 1st August, 2018 signed by Kelechi Nwaiwu.

It is the 1st Defendant's Defence that the Claimant was charged before the Magistrate Court based on EXH 8 which was filed 3rd February, 2017. That its publication did not establish any criminal liability on Plaintiff but showed that there was a pending charge against the Claimant for alleged offence of kidnapping and murder. That the Remand Warrant was issued on 3rd February, 2017 in respect of the charge requiring the Plaintiff's presence in Court on the 6th February, 2017.

That Plaintiff did not lose any business or reputation because of the publication because according to 1st Defendant, as at the time of the publication on the 5th February, 2017 it was already public knowledge that Plaintiff was in custody of DSS. That that necessitated the filing of EXH 4 by the Plaintiff's wife (Fundamental Right Suit). That Plaintiff's family knew that he was already arrested before that publication. That 1st Defendant has and is covered by Defence of Qualified

Privilege and Justification. That 1st Defendant is entitled to damages for losses suffered by the Plaintiff's case and also payment of their Solicitor's Fee – EXH 10.

In the said Final Address, they raised four (4) Issues for determination which are:

- (1) Whether Plaintiff has established that 1st Defendant/Counter Claimant publication was libelous against the Plaintiff.**
- (2) Whether the Defence of Justification and Fair Comment avails the 1st Defendant/Counter Claimant.**
- (3) Whether the Defence of Qualified Privilege avails them too.**
- (4) And whether the 1st Defendant/Counter Claimant is entitled to the grant of its Counter Claim.**

On Issue No.2, He submitted that the publication was not false, not defamatory against the Plaintiff. That Plaintiff admitted in paragraphs 34 & 35 of his Statement of Claim that he was arrested by DSS on the 12th January, 2017. That Plaintiff also admitted been brought to Court on 12th January, 2017. That there was a formal charge against the Plaintiff filed on 3rd February, 2017 – EXH 8. That the matter was adjourned for 6th February, 2017. That it was based on that that the 1st Defendant made the said publication on the 5th February, 2017. That as at 3rd February, 2017 there was already a pending charge. That based on that the said publication did not defame the Plaintiff. That the said charge was filed two (2) days before the publication. That Court should consider the whole article and not the excerpts or words used in the publication which the Plaintiff is taking out of context. They relied on the case of:

Achu V. Okonkwo
(2016) LPELR – 41015 (CA)

That it is immaterial if the Plaintiff took a plea or not as it is not taking of plea that may lower the Plaintiff's estimation in the eyes of others but the fact that there was a pending charge against the Plaintiff. That if the fact of the pendency of the Suit was found to be falsely made by 1st Defendant, the Plaintiff claim may be more meaningful. That Plaintiff not taking a plea will not render the 1st Defendant's publication libelous. That it is not the publication but it is the seriousness of the allegation involved which the Plaintiff is charged with. He relied on the case of:

Ayeni V. Adesina
(2007) LPELR – 4932 (CA)

That the imputation may have been different in respect of the offences alleged or if the 1st Defendant's publication could be read to mean that the Plaintiff was found guilty. He urged Court to so hold. He referred to the case of:

Esenewo V. Ukang
(1999) 6 NWLR (PT. 608) 612 – 613

That the Plaintiff failed to prove that he suffered any consequence from the 1st Defendant's publication. That Plaintiff failed to call the second Witness. That for Plaintiff to successfully plead loss of business, he should have availed Court with the financial record or Statement of Account of his company/businesses before and after the publication. The 1st Defendant urged the Court to so hold.

That the Plaintiff's claim of what he suffered by the said publication by 1st Defendant cannot stand, as his ordeal in the hand of DSS was already known to his family. That by instituting the Suit further confirms the Plaintiff

was already in custody and the reason for his arrest was already well known. That Plaintiff would not have suffered any loses because his detention was already known long before the publication. That Plaintiff failed to prove element of libel and as such his case should be dismissed. He referred to the case of:

Anate V. Sanusi

(2001) 11 NWLR (PT. 725) 542 @ 556

That Plaintiff failed to establish malice against the 1st Defendant. That the action of the Plaintiff therefore fails. He referred to the case of:

Otop V. Ekong

(2006) 9 NWLR (PT. 986) 552 Paragraph B – G

That Plaintiff failed to establish ingredients of offence of libel and defamation against 1st Defendant and therefore its case must fail. He urged Court to resolve the Issue in his favour and therefore dismiss the Suit for lacking in merit.

On Issue No.2 – Defence of Justification and Fair Comment, the 1st Defendant Counsel submitted that the publication is true and justified as at the time the publication was made. That Defence of Justification avails the 1st Defendant. They relied on the decision in the case of:

Babalola & Ors V. Otoki

(2019) LPELR – 46887 (CA)

Registered Trustee of Rosicrucian Ord (AMORC) Nigeria V. Henry Awoniyi & Ors

(1994) LPELR – 3198 (SC)

That the 1st Defendant need not prove the truth of the case but to establish that the main substance of the libelous statement is true and justified. That the words

used in the publication did not convey any message or imputation of falsehood. That the underlined words in the publication had in no way any defamatory connotation against the Plaintiff.

That the Plaintiff was charged before the Magistrate Court for offences stated therein. The 1st Defendant is therefore justified to have made the publication on the 5th February, 2017 as the said publication is the true state of events that occurred. They referred to the case of:

**ACB V. Apugo
(2001) 3 SC 23**

That Defence of Fair Comment avails the 1st Defendant. They relied on the case of:

**The Sketch Company Limited & Anor V. Ajagbemokeferi
(1989) LPELR – 3207 (SC)**

He urged the Court to resolve Issue No.2 in 1st Defendant's favour.

On Issue No.3 – Defence of Qualified Privilege, the 1st Defendant submitted that the publication can be defended by the Defence of Qualified Privilege. He relied on the decision in the case of:

**Schumbager (Nigeria) Limited V. Onah
(2007) AFWLR (PT. 389) 1327 Paragraph D – I**

That the said publication was done pursuant to the 1st Defendant's duty to sensitize the public on events and occurrences within the nation and outside. That it was to enlighten them on the fact that there is a pending charge against the Plaintiff for the offences charged. That the publication was made devoid of any malicious intentions but in the discharge of its duty to the public. He urged Court to hold that the Defence of Qualified Privilege avails the 1st Defendant.

On Issue No.4 – whether the 1st Defendant/Counter Claimant is entitled to the grant of its Counter-Claim, the 1st Defendant Counsel submitted that the 1st Defendant is forced to engage the service of a legal practitioner to protect and defend the image of the 1st Defendant. That the legal fee is Three Million Naira (₦3, 000,000.00) as shown in the Solicitor’s invoice – **EXH 10**. That 1st Defendant is right to claim Ten Million Naira (₦10, 000,000.00) General Damages.

That failure of the Plaintiff to Cross-examine 1DW1 on the Counter-Claim means that the Counter-Claim was not challenged. He referred to the cases of:

Egwumi V. State
(2013) LPELR – 20011 (SC)

Okafor V. Isiadinso
(2014) LPELR – 23015 (CA)

He urged Court to resolve the Issue in the 1st Defendant’s favour and grant the Counter-Claim by awarding the damages claimed thereon and dismiss the Suit in its entirety with substantive cost.

In the Reply on Point of Law to the Plaintiff’s Final Address, the 1st Defendant took the five (5) Issues one after the other.

On Issue one paragraph 4.1 to 4.1.46 the 1st Defendant Counsel submitted that Plaintiff made allegations which were not substantiated, not Plaintiff’s evidence were uncontroverted. That the cases referred and relied on by Plaintiff:- **Ugo V. Okafor and Royal Mortgage Finance Limited (Supra)** are irrelevant in relation to the Plaintiff’s submission as the Plaintiff failed to establish that publication is libelous.

On Issue of false and defamatory publications, the 1st Defendant Counsel submitted that Plaintiff did not respond to the Defendants' position that a pending charge was in existence as at the time of the publication. That the fact clearly trumps up any allegation. That the **paragraphs 4.1.30 to 4.1.34** are of no monument.

On paragraph 4.1.35 to 4.1.46 on 1st Defendant's evasiveness and lack of credibility, the 1st Defendant Counsel submitted that it is of no monument as the Plaintiff failed to prove the libel. Again, on paragraph 4.2 to 4.2.32 on Issue No.2 that the Plaintiff is confused with the pleadings of the different parties. That 1st Defendant Counsel had pleaded qualified privilege and made it out. That all the cases cited thereon by the Plaintiff have no judicial benefit to the Plaintiff in this case. That Plaintiff failed to respond to the dictum in the case of **Ayeni V. Adesina Supra** cited in 1st Defendant's Final Address which required the interpretation of any publication in the natural and ordinary meaning of the words. That the Plaintiff had failed to do so and that shows that the publication is not libelous.

He urged Court to discontinuance the Plaintiff's argument in paragraphs **4.3 - 4.3.16** as there is no compensation where there is no injury. That Plaintiff has not made out any breach or injury and cannot expect any compensation. He urged the Court to so hold.

In reply to the Issue No. 4.4 to 4.4.8 on the Solicitor's fee, the 1st Defendant referred to the cases of:

Ibe & Anor V. Bonum and

Michael V. Access Bank Supra

and submitted that Solicitor's fee does not rise in the cause of action for libel. That it is different from the 1st Defendant's case where the claim is being made as a

result of spurious action filed by the Plaintiff warranting the 1st Defendant to incur expenses to defend it. That the Counter-Claim is in respect of the Plaintiff's malicious action of setting the law in motion against the 1st Defendant. That the Plaintiff did not deny the evidence of the 1st Defendant in that regard or Cross-examined 1DW1. It means that he had admitted same. He urged the Court to so hold.

He concluded by submitting that the Plaintiff's case are mere allegations without proof to show that the words were libelous and defamatory or that Plaintiff has not suffered damages to his reputation. He urged the Court to dismiss the case of the Plaintiff with cost for lacking in merit.

On their part, the 2nd Defendant filed their Final Address. It is the defence of the 2nd Defendant that that the alleged malicious publication was justified based on the documents they tendered through the Witness 2DW1. The said Charge Sheet – **EXH 8** and the alleged offending publication the 2nd Defendant made on the 6th February, 2021. The other document they relied on is **EXH 9**, the purported Warrant of Remand dated as the Charge Sheet.

In the said Final Address, the 2nd Defendant raised the following Issues for determination:

- (1) Whether having regard to the facts of this case, the Defence of Absolute Privilege availed the 2nd Defendant?**
- (2) Whether having regard to the evidence before this Court and the entire circumstance of the case, the Plaintiff made out a case for libel against the 2nd Defendant without calling other Witnesses to prove his case?**

(3) Whether the Plaintiff is entitled to the Reliefs sought?

On Issue No.1 the 2nd Defendant submitted that the publication is absolutely privileged being report about proceedings of a Court of law. That the documents relied upon by the Plaintiff on the libel corroborates the story published by the 2nd Defendant. That the 2nd Defendant's reliance is based on the following:

That Plaintiff was charged to Court. The publication reported the story about the Court Proceeding and Processes. That there was actually a Charge and Court Proceeding involving the Plaintiff as Plaintiff and two (2) other persons were brought before the Court on an Eight (8) Count Charge. That the public is interested in knowing the activities of the Court. And that the publication was made without malice.

That the publication on the fact that a sixty one (61) years old man was dragged before a Magistrate Court in Port Harcourt. He referred to **EXH 1 - Vanguard Newspaper Publication of 6th February, 2017.**

That the content of **EXH 9 - Charge Sheet** is exactly same as EXH 8 which is the alleged arraignment of the Plaintiff and two (2) others on the said 3rd February, 2017. That the publication was done on the 6th of February, 2017.

That Defence of Absolute Privilege avails the 2nd Defendant because the publication is accurate report of the Court's Proceeding. They referred to **S. 10 Defamation Act.** They referred to the last page of the Charge Sheet where they claimed that the date of the arraignment is clearly written to establish that the Defence of Absolute Privilege avails them. That they are

immured under the liability of Defamation Law and Defence of Absolute Privilege avails them.

That any Proceeding of Court exercising its judicial authority is absolutely privileged and cannot right form basis of an action on libel. They relied on the case of:

Akalie V. Ochulor
(2015) LPELR – 24552 (CA)

That the combine effect of **EXH 8 & 9** is the fulcrum of the 2nd Defendant's Defence of Absolute Privilege. That these documents as well as the FREP case in the Judgment of Hon. Justice A.O. Ebong points to the fact that the publication in question was published contemporaneously with the case before the said Magistrate Court. They cited **S. 128 EA 2011 as amended** and relied on the case of:

NIOB V. Olalomi Industries Limited
(2002) 5 NWLR (PT. 761) 532

That content of EXH 8 is clear on what transpired in Court on 3rd February, 2017 the day of the arraignment. So also is EXH 9, the Remand Warrant, which shows that the matter was adjourned to 6th February, 2017 for Hearing. That Plaintiff did not adduce evidence to show that the publication was done before the arraignment took place. They referred to a case on the meaning of arraignment. That case is:

Vincent Eze V. State
(2019) LPELR – 48773 (CA)

That the said publication cannot give rise to cause of action for defamation. They relied on the case of:

Boniface Osuji & Or V. Friday Osuji
(2019) LPELR – 49533 (CA)

That by virtue of **SS 24 (a) & (b)** as well as **S. 39(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended** the 2nd Defendant has the fundamental right to freedom of expression which includes right to receive and impact ideas and information without interference.

They urged Court to hold that Defence of Absolute Privilege avails them as the publication is fair and accurate report of the Proceeding.

On Issue No.2 the 2nd Defendant submitted in the alternative thus: that the Plaintiff should discharge the onus on him and prove the essential ingredients of the offence of libel in order to succeed. The relied on the decision of Court in the case of:

Skye Bank PLC & Anor V. Chief Moses Bolanle Akinpelu (2010) LPELR – 3073 (SC)

That Plaintiff never called a third party or another Witness to testify in the Suit on how the publication affected his estimation of the Plaintiff. That the Plaintiff failure to do so shows that he did not discharge that onus placed on him and as such he failed to establish the fact of injury to his reputation and loss of earnings. They relied on the case of:

Punch (Nigeria) Limited & Anor V. Adewunmi & Anor (2019) LPELR – 47564 (CA)

That the Plaintiff has not shown that the said publication defamed him since he failed to call any other Witness to state how it affected his reputation.

That the Plaintiff has legal duty to prove the important ingredients of the offence of libel by calling a third party as a Witness. That failure to do so means that he has not discharged that onus. They relied on the case of:

Suleiman V. Adamu
(2016) LPELR – 40316

That Court should dismiss the Plaintiff's case in its entirety and hold that the Plaintiff has not established case of libel against the 2nd Defendant.

On Issue No.3 – whether the Plaintiff is entitled to his Reliefs, the 2nd Defendant submitted that Plaintiff is not entitled to the said Reliefs since he failed to adduce cogent and credible evidence to prove his case of libel and defamation. They referred to and relied on the case of:

Chief (Sir) Alfred Ogbobo Eghobamien SAN FCIS Arb
V. Solomon I. Egbobamien Esq.
(2017) LPELR – 42464 (CA)

That there is nothing before the Court to warrant any award of damages against the 2nd Defendant in favour of the Plaintiff. That the alleged defamatory publication is fair and accurate report of the Court Proceedings. That Plaintiff is not entitled to the Reliefs. They urged the Court to so hold. That the 2nd Defendant is protected by Defence of Absolute Privilege as they have led evidence to that effect.

They urged Court to refuse the grant of any Relief and dismiss the case in its entirety by resolving the Issue No.3 in the 2nd Defendant's favour.

COURT

Having summarized the respective parties stances above, can it be said that the Plaintiff – Mr. Eze Ogu has established the case of allegation of defamation and libel with his lone testimony against the Defendants in this case, that the Court should hold that actually the said publication by the Defendants actually defamed his

reputation, lowering his estimation in the eyes of right thinking Nigerian or members of the public and society at large and that he suffered injuries as a result of the said publication and as such he is entitled to the Reliefs sought in this case?

Again, can it be held that the Defendants had through their respective Witnesses shown that their publication is a fair and accurate report of the Proceeding of the Court on the 3rd February, 2017 and as such the Defence of Absolute Privilege avails them and that their action – publication is covered under the provision of **S. 24** and particularly **S. 39(1) of the 1999 CFRN as amended** on freedom of expression including the freedom to inter alia receive and impart ideas and information without interference? Was the publication libelous as the Plaintiff claimed?

It is the humble view of this Court that the Plaintiff Mr. Eze Ogu has established, through his credible testimony, that the publication by the Defendants defamed him, is libelous and as same had exposed him to public ignominy, hatred, ridicule and odium by lowering his estimation among his business partners, family members, friends, colleagues and members of his community where he is their Traditional Ruler and the public at large. He deserve to be compensated by an Order of this Court made for the Defendants to pay damages for the said defamation made against him.

It is also the considered view of this Court that the Defendants are not in any way availed by the Defence of Absolute Privilege or Justification because their publications was froth with malice and was not based on fact and not contemporaneous with the Proceeding of the Court. The report was not fair and accurate of the

Proceeding of the Magistrate Court sitting at Port Harcourt on the 3rd February, 2017.

The publication is defamatory and the words used were libelous. It was a clear defamatory publication froth with malice. It was not in line with what the Defence of Absolute Privilege could avail. So this Court boldly holds.

To start with, it is not in doubt as also confirmed by the Defendants that there is a publication of the matter complained of going by the words used thereon. It is not in doubt that the publication referred to the Plaintiff. It is not in doubt that the said publication is defamatory to the Plaintiff.

In the publication the Defendants specifically mentioned the name of the Plaintiff thus:

EXH 1 Paragraph 1

“The Department of State Service (DSS) has arraigned three persons for alleged kidnap and murder of senior personnel of the agency.”

In paragraph 2

“In a matter between the Director-General of DSS and Jonkin Nkwozor, Okechukwu Onyegbosi and Mike Ogu” – (the Plaintiff in this case, emphasis mine).

The Defendants in the said publication further stated that:

“The accused persons have been remanded in prison custody. Matter adjourned ... further Hearing.”

The above is as published by the 1st Defendant. The 2nd Defendant had also published the same thus:

“The suspect and two other members of the GANG, Okechukwu Collins Onyegbosi and Mike Eze Ogu were charged for kidnap of the DSS personnel.”

The 2nd Defendant even published picture of the suspect. The other Defendants – Daily Trust and Punch also published the same libelous material.

The Defendants did not deny that the wordings used like **“kidnap”, “murder”, “using pump action to kill/murder the personnel of DSS”, “suspects arraigned and remanded in prison for further Hearing”**, put no one in doubt that these words defamed the Plaintiff and ridiculed him in the eyes of his family and colleagues.

The fact that this defamatory and libelous publication was in the online news of the Defendants, open to the public and continued being in the said online news of the Defendants, confirms that it was open to the public and had obviously created wrong impression about the Plaintiff, portraying him as a kidnapper, murderer, thief and dealer in stolen goods especially cars in the mind and face of the public, his family, country, business colleagues and the public at large. These publications and the words used had actually exposed the Plaintiff – Eze Ogu, to public ignominy, hatred, ridicule and odium by lowering his estimation among his business partners, family member, friends, his country and village where he is a traditional Ruler and among his colleague and age grade. So this Court holds.

The Plaintiff tendered these publications by the Defendants as EXH 1. He wrote to the Defendants to withdraw the said publication after explaining that such publication was not true. But the Defendants failed to do

so. Publishing the pictures of the Plaintiff on the said online news is derogatory and defamatory. More so where such publication is not in line with the laid down procedure. This is because the Plaintiff was never arraigned before the Court. He was not charged. He was apprehended by the DSS but he never conspired to murder the DSS official as stated in the publications. No pump action was found in his possession. All those allegations published were untrue. The Plaintiff had written to the 1st – 4th Defendants that the publication was untrue as shown in EXH 1 & 2. The Plaintiff through the letters EXH 1 & 2 by his lawyer, had asked the Defendants to expunge the name of the Plaintiff from the publication but the Defendants refused to do so. They refused to retract the said publication against the Plaintiff and to republish the true version of the story. The Defendants confirmed receipt of the said letters and they confirmed that they did not retract the publication or expunge the name of the Plaintiff from it.

In fact, the 1st Defendant even responded to the said letter – **EXH 3**, still maintaining that their action and publication was from a Court Proceeding and that they have the power and the right to do so. Thus justifying their action. The 1st Defendant even erroneously, though had stated that the said arraignment, which never existed, had already taken place before the publication based on the report confirmed to them by Prosecutor C.S. Eze. Hence justifying their publication and allegation of arraignment of the Plaintiff and denying any liability. The 1st Defendant had attached a copy of the charge dated 3rd February, 2017 when the Defendants had claimed that the Plaintiff was arraigned together with the others before the Magistrate Court in Port Harcourt, Rivers State. The 1st Defendant had also

attached a copy of the said charge in the letter EXH 3. That same charge was also tendered as EXH 8.

From all indication, there was no way the said charge would have been filed on 3rd February, 2017; served on the Defendants and the matter assigned to the said Magistrate Jamabo and listed in the Cause-list for them to be arraigned the same day as the Defendants alleged. It is clear that there is a charge dated 3rd February, 2017 but this Court does not believe that the Plaintiff in this case was arraigned on the same 3rd February, 2017 when the charge was filed. It is not possible that arraignment took place same day.

A look at the said EXH 8 shows that there was the so called date of arraignment. But there was no date of adjournment on the face of the document which makes it suspicious and further confirms that there was no arraignment. Again, no Court can arraign a Suspect who has no Counsel to defend them. To the extent of the above, this Court boldly holds that the Plaintiff was never arraigned before the Court as falsely and maliciously published by the Defendants in the alleged libelous publication. The charge would not have been filed the same day as they the Defendants claimed that the Plaintiff was arraigned. That is why this Court holds that the publication was malicious and not published contemporaneously with the proceedings. The publication was not a fair and accurate report in the said online news. So this Court holds.

It is evidently clear that the case before Justice A.O. Ebong and the Judgment show that the publication was in the public domain. That the publication had created a very bad impression in the mind of the public and especially the family of the Plaintiff. That is why his wife sued the DSS to Court on the violation of the Plaintiff's

fundamental Right. The Judge gave Judgment in favour of the Plaintiff in that case and also refused to set aside the Judgment as sought by the DSS. The content of the Judgment shows that the Plaintiff was not anywhere around where the alleged killing/murder took place – at Ngor-Okpala. Plaintiff was not involved with the kidnapping as alleged and never met the other persons alleged to have been arraigned together with him on the alleged date 3rd February, 2017. The Judgment of Justice A.O. Ebong is clear for all to see. It further exonerated Plaintiff from the allegation/publication and confirmed the stance of the Plaintiff.

It is the law that no Magistrate Court has the jurisdiction/power to arraign suspect accused of capital offence like offence of murder, kidnapping and armed robbery. The said Plaintiff in this case would not have been arraigned at the said Magistrate Court for such offences. So the Defendants claiming that their publication was based on what actually transpired in Court on the said day (- arraignment of Plaintiff as confirmed by C.S. Eze as they claimed) could not have been based on fair and accurate report of the proceeding in Court on the 3rd February, 2017 as the Defendants falsely and maliciously published.

That being the case, the Defendants cannot rely on the Defence of Absolute Privilege and Justification as the said Defence cannot avail them. This is because their publication was not based on fair and accurate report. What they reported on arraignment of the Plaintiff did not take place that said day. There was no arraignment carried out by the Court on the said day. So this Court holds. Again, date of arraignment is not ordinarily stated in a Charge Sheet. Even if it is stated as the Defendants are erroneously claiming, it would not have been the

same date that the Charge was filed. It should have equally shown the day the matter is adjourned to. The Defendants knows that those publications are false that is why the 3rd & 4th Defendants never bothered to field any Witness(s) in Court to defend the Suit. By doing so, abandoning their Statement of Defence, it means that they have admitted all that the Plaintiff said. – that their publication is defamatory, libelous, inaccurate and unfair to the Plaintiff.

Even in the face of the EXH 8 boldly written on the column where the names of the Defendants in the said case were written, is the word “discharged.” Does it then means that as at the day the document was filed – 3rd February, 2017 that the Plaintiff in this case was already discharged even before the purported alleged arraignment on 3rd February, 2017? To say the least, even the EXH 8 and the marking on it shows that the document is froth with falsity and illegal markings all in the bid by the Defendants to justify their libelous and malicious publication which was done unfairly and inaccurately.

One wonders why the same C.S. Eze Esq. the Prosecutor was not called to testify before this Court as the Defendants’ Witness. The simple reason is that the testimony of the said Counsel would have fundamentally marred the Defence of the Defendants.

The Commitment on Remand and the Remand Warrant heavily relied on by the Defendants – **EXH 9** cannot avail the Defendants from the defamatory publication claiming that the Plaintiff was charged to Court and arraigned on the offence of murder, kidnapping and armed robbery. To start with, the said EXH is only to show that the Plaintiff came to Court and that the prison should take custody of them. It does not tantamount to arraignment. It does not

show that the Plaintiff was arraigned for the offences contained thereon. That document is not the record and has nothing to confirm the false allegation published by the Defendants that Plaintiff was arraigned on 3rd February, 2017. It only showed that the Plaintiff be taken into custody of the prison from the police custody where he was. That document does not confirm arraignment. That is why this Court holds that the publication stating that the Plaintiff was arraigned is malicious, unfair and inaccurate. It was not based on the proceeding that took place in the Court on the 3rd February, 2017. That publication portraying Plaintiff as member of the gang of kidnapper is unfounded, unfair and inaccurate and published with malice.

The said EXH 9 did not even state the day that the Plaintiff was to be brought before the Court. It only stated that Hearing being adjourned. The document is not evidence of arraignment. It is not evidence that the Plaintiff was charged for the alleged offence. The said Exhibit 9 has no evidential value to justify the malicious publication.

By the content of EXH 5 – the Record of Proceeding, it shows that it was the Proceeding of 6th February, 2017. That Proceeding shows that the publication was done hours before the said Proceeding took place going by the date written under the name of the Magistrate J. M.F. Jamabo Esq. The Defendants had alleged that the Plaintiff was arraigned on 3rd February, 2017 a fact the Plaintiff denied. The marking proved that the Plaintiff was not arraigned on 3rd February, 2017 as the Defendants maliciously claimed. The 1st Defendant had published the libelous article on the 5th February, 2017 before the Plaintiff was purportedly arraigned on 6th February, 2017. That is almost 24 hours before the

Proceeding of 6th February, 2017 going by EXH 5. The 3rd Defendant made its own publication on 6th February, 2017 at 2:00 am, some hours before the Proceeding of 6th February, 2017. The 2nd Defendant – Vanguard also made its publication at 4:10 am on the 6th February, 2017 also some hours before the said Proceeding of 6th February, 2017 at the Magistrate Court presided by His Worship J. M.F. Jamabo Esq.

Even on the said 6th February, 2017 going by the content of EXH 5 – Proceeding of 6th February, 2017; the Plaintiff was in Court, he was not arraigned. He did not take any plea as it relates to the alleged charges which the Defendants published in their respective online news.

It is imperative to state the content of EXH 5. In the said Proceeding it states:

“The charge was read ... each of the Defendants could not take plea due to the nature of the charge.”

From the above, there was no arraignment on 3rd February, 2017 as falsely and maliciously published by all the Defendants. The Defendants in that case did not take plea. So the Plaintiff could not have been charged with the offence as the Defendants had portrayed. Besides, the charge, going by EXH 5, was read on the 6th February, 2017 long after the damaging publication was trending in the News Stands of the Defendants. That is why this Court holds that the Defence of Absolute Privilege and Justification cannot avail and justify the action of the Defendants in this Suit. Their various publications are all malicious, unfair, incorrect and inaccurate. The publication maligned the Plaintiff and created an erroneous impression of him in the mind and

face of his family, colleague, community, business partners and the public.

Those publications were out for all to see and read by so many people. The Plaintiff need not call anyone to convince this Court that the said publication had a terrible damaging effect on the Plaintiff. It exposed him to public ignominy, hatred, ridicule and odium, lowering his estimation among his business partners, family members, friends and colleagues. So this Court holds.

Any such publication is viral and open to the public. Particularly there is no how some person who knows the Plaintiff would not have come across the said publication. More so, when his picture was published with a caption **“The Suspects in Court.”**

One wonders why the Defendants never called their personnel who were in Court on the 3rd February, 2017 – when they all claimed that the Plaintiff was arraigned and that their publication was based on the Proceeding of the Court on that day.

This Court believes strongly that as the Plaintiff said that the Court did not sit. This is premised on the content of the EXH 5. If actually the Court sat on the 3rd February, 2017 as the Defendants claimed, the same Magistrate would not have adjourned the case to 6th February, 2017 and would not have ordered for transfer of the case to DPP on the 6th February, 2017. He would have done so on the said 3rd February, 2017. The Defendants knew that what they published was not accurately what happened on the said 3rd February, 2017.

Going by the dates of the publication, it means and confirms that their publication was inaccurate and not based on the Proceeding of the Court on 3rd February, 2017.

The submission of the 2nd Defendant Counsel that the arraignment would have been done subsequently after 3rd February, 2017 but before 6th February, 2017 equally makes the publication more malicious and inaccurate. This is because the 4th February, 2017 was a Saturday and 5th February, 2017 was a Sunday. The Court would not have sat on those days which were weekend. That further makes the publication unfair and inaccurate, false and unjustified.

In the body of the publication going by the words by Punch – the 3rd Defendant, it states thus:

“The Suspect was said to have carried out the act in the company of two other gang members Okechukwu Onyegbosi and MIKE OGU.”

The above words give the impression that the Plaintiff was actually present in the Ngor-Okpala – Etche Road on the 16th November, 2016 when the DSS personnel was murdered; a fact which is not true and which the Defendants cannot substantiate.

The words used and the phrases too shows that the publications were not fair; that the words were defamatory and libelous.

“The suspect and two other members of his gang ... Mike Ogu were charged for kidnap of the DSS Personnel, his wife, their two children ... on November 16th along Ngo-Okpala/Etche Road, Rivers State.”

The above says it all.

Those words obviously creates the negative impression about the Plaintiff, portraying him as a kidnapper and giving the impression that he was there at Ngor-Okpala

when the event took place as the 2nd Defendant portrayed in the publication.

The use of the phrase **“suspects conspiring to murder the DSS Personnel”** also is defamatory and libelous.

The words used by the 1st Defendant were no less defamatory, malicious and inaccurate too. The 1st Defendant stating that the Magistrate B. Jamabo at the weekend:

“Senior Magistrate B. Jamabo at the weekend ordered that the suspects (which the 1st Defendant had listed to include the Plaintiff) be remanded in prison custody till further notice”

clearly shows that the 1st Defendant was nor making a true fair and accurate report. To start with, the Magistrate could not have sat on the weekend. There is no evidence to show that she made the said Order to remand the Plaintiff and the others at the weekend.

The 1st Defendant knows that Court does not sit on weekends. They know ab initio that their publication was with malice, inaccurate and unfair to the Plaintiff. It was not based on the report of the Proceeding of the Court.

The publication stating in part thus:

“The other two members of the gang Okechukwu Collins and Mike Eze Ogu were charged for kidnap of”

The words above portray the Plaintiff as a kidnapper which he is not. It was inaccurate too. It created odium and impeded on the Plaintiff’s integrity and estimation in the heart of those who read the publication and more so, on all those who know him.

The use of the phrase:

“Charge accused the suspects of conspiring to murder the DSS”

From the above, this Court holds that those words were defamatory and libelous. The Plaintiff had through his testimony and documents tendered established that the Defendants’ publications defamed him. He had proved and established the offence of libel against all the Defendants too. So this Court holds.

The content of EXH 7 is also clear. The discharge was based on the legal report not on the trial of the Plaintiff by the Court. It shows that the Plaintiff was never arraigned as the Defendants falsely published.

The content of EXH 6 is very clear and exhaustive too. It shows that the Plaintiff was arrested going by the document attached as EXH 8. But the Plaintiff was not arraigned on 3rd February, 2017 though he was in Court. The said report had stated that the charge be dropped against him as the allegations was baseless, unfounded, unsubstantiated, malicious, inaccurate as the publication of the Defendants are false. That document EXH 6 further confirms the stance of the Plaintiff in establishing his case.

This Court strongly believes him. That is why it held repeatedly that the publication was malicious, inaccurate. The language was very defamatory and the action of the Defendants libelous.

One can imagine how the members of the family of the Plaintiff – his wife and especially his children will feel when they heard the news that their father who they revere and who is their role model is paraded online globally as a kidnapper, gang member, murderer and dealer in stolen vehicles.

The publication definitely created hatred, ridicule and odium. It definitely lowered the Plaintiff in the eyes of the family, friends, colleagues and business associates and partners. The said publication obviously made the Plaintiff to suffer treble psychological trauma, business losses and lowered his reputation before all who read it. It must have raised his blood pressure. What he suffered in the face of his subjects, ndi-iche and his kinsmen cannot be quantified.

There is no monetary quantification for what the man had suffered psychologically.

The Plaintiff deserves to be paid some damages for what he lost materially and bodily. So this Court holds.

On the Counter-Claim by the 1st Defendant, it is very obvious that they did not loose anything rather they have made some gains by the publication going by the followership of the said publication. They sold their wares as it were. Definitely the number of people who visited the sites and bought or subscribed into the news is enormous. It is the Plaintiff that suffered loss. He deserves to be paid damages. So this Court holds. The 1st Defendant did not loose anything. So this Court holds.

The document attached EXH 10 – Notice of Professional Fee is of no judicial weight. To start with, the 1st Defendant employed the services of the Amaechi Nwaiwu SAN & Co. They should bear the cost of the services rendered to them by the law firm. Besides, they did not attach the so called receipt evidencing payment. Again, there is no how the 1st Defendant can pay such money if it ever exist without a written instruction or copy of the charge. Moreover, the law firm did not state if the money was credited into their account. The documents have no place in this case. So this Court holds.

From all indication the Plaintiff established his case. He discharged the onus and proved the ingredients of the offence in this Suit. His case is very meritorious and the Court grants the Reliefs to wit:

- (1) Prayer No. 1 & 2 granted as prayed.
- (2) The 1st Defendant to pay to the Plaintiff the sum of Three Million Naira (₦3, 000,000.00) for libelous publication.
- (3) 2nd – 4th Defendants to pay to the Plaintiff the sum of Two Million Naira (₦2, 000,000.00) each for the libel established against them based on the said publication.
- (4) Prayer No. 5 granted as prayed and as far as the issues raised in the publication are concerned.
- (5) The Defendants to pay to the Plaintiff 5% Post Judgment Interest on the Judgment sum.
- (6) The Defendant to pay to the Plaintiff the sum of One Hundred Thousand Naira (₦100, 000.00) as cost of this Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2021 by me.

K.N. OGBONNAYA
HON. JUDGE