

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA**

THIS FRIDAY, THE 13TH DAY OF DECEMBER, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/1537/17

BETWEEN:

ALJAZIRAH NEWSPAPER LIMITEDPLAINTIFF

AND

- | | | |
|--|---|-----------------------|
| 1. MR. OLABISI O. JIMOH | } |DEFENDANTS |
| 2. JOINT ADMISSIONS AND MATRICULATION BOARD | | |

JUDGMENT

By a writ of summons dated 27th April, 2017 and filed same date at the Court's Registry, the plaintiff claims the following Reliefs against the Defendants:

- a. The sum N180, 000, 000.00 (One Hundred and Eighty Million Naira) special damages against the Defendants for the lost (sic) of its contract with FAGNA TRAINING & CONSULTANTS LTD., whose monetary value is as stated above and which was terminated as a result of the 1st Defendant's defamation of the Plaintiff's corporate reputation and image without any lawful justification whatsoever.**
- b. The sum N120, 000, 000.00 (Twelve Million Naira) special damages against the Defendants for the lost (sic) of its contract with KESSY PRODUCTIONS NIGERIA LIMITED, whose monetary value is as stated above and which was terminated as a result of the 1st Defendant's**

defamation of the Plaintiff's corporate reputation and image without any lawful justification whatsoever.

- c. The sum N500, 000, 000.00 (Five Hundred Million Naira) as exemplary and punitive damages against the Defendants for the defamation of the plaintiff's reputation by the 1st defendant.**
- d. The sum of N300, 000, 000.00 (Three Hundred Million Naira) as exemplary and punitive damages against the Defendants for the unlawful detention and false imprisonment of the Plaintiff's staff by the 1st Defendant in the Defendant's premises without any lawful justification whatsoever.**
- e. The sum of N300, 000, 000.00 (Three Hundred Million Naira) as exemplary and punitive damages against the Defendants for the unlawful battery and violence applied against the Plaintiff's staff by the 1st defendant in the Defendant's premises without any lawful justification whatsoever.**
- f. An Order directing the Defendants to individually tender an apology to the Plaintiff by publishing same in the Plaintiff's Newspaper and two other National Dailies.**
- g. The Plaintiff further claims the sum of N11, 500, 000.00 (Eleven Million, Five Hundred Thousand Naira) being the cost (sic) filing and prosecuting of this suit as evidenced by the pleaded and tendered legal fee service receipt.**
- h. The plaintiff further claims the twenty one percent (21%) interest on the entire judgment sum entered in the Plaintiff's favour by this noble Court in this suit until it is completely liquidated.**

The 1st Defendant filed his statement of defence on 12th February, 2018 and also set up a **Counter-Claim** against the **Plaintiff** as follows:

- 1. N50, 000, 000.00 (Fifty Million Naira) only being general damages for the libellous publication made against the counter-claimant by the Defendant.**

2. **An Order of injunction, restraining the Defendant whether by itself, its agents, privies or any other person claiming through her from further making any libellous publication against the counter-claimant.**
3. **10% post judgment interest on the total judgment sum from the date of judgment until payment.**
4. **Cost of this action.**

On the part of the 2nd Defendant, they filed a statement of defence on 28th March, 2018.

The plaintiff then filed a Reply to the 1st Defendant's defence and also filed a defence to the 1st Defendant's Counter-claim on 18th February, 2018. The plaintiff equally filed a Reply to the statement of defence of 2nd Defendant.

In proof of its case, the plaintiff called three (3) witnesses. **Mr. Etuk bassey Williams**, the Chief Executive Officer of plaintiff testified as PW1. He adopted his witness statement on oath dated 27th April, 2017. He tendered in evidence the following documents:

1. The Certificate of Incorporation of Aljazirah Newspaper Ltd was admitted as **Exhibit P1**.
2. Letter by Coalition Against Corrupt Leaders dated 4th July, 2016 was admitted as **Exhibit P2**.
3. Letter by plaintiff dated 10th October, 2016 to Mr. Olabisi Jimoh was admitted as **Exhibit P3**.
4. Media Consultant Service Agreement between Fagna Training & Consultants Ltd and Aljazirah Newspaper Ltd was admitted as **Exhibit P4**.
5. Letter by Fagna Training and Consultants Ltd to plaintiff dated 14th October, 2016 was admitted as **Exhibit P5**.
6. Letter by plaintiff to Fagna Training and Consultants Ltd dated 18th October, 2016 was admitted as **Exhibit P6**.

7. Letter by Fagna Training and Consultants Ltd dated 26th October, 2016 to plaintiff was admitted as **Exhibit P7**.

8. The Receipt issued by Beacon Chambers dated 2nd March, 2017 was admitted as **Exhibit P8**.

PW1 was then cross-examined by counsel to the 1st defendant and in the process, a Certified True Copy (CTC) of the Originating Court Processes in **Suit No: CV/97/16: Aljazirah Newspapers Ltd V Olabisi Jimoh and Anor** was tendered and admitted as **Exhibit P9**.

Counsel to the 2nd defendant then cross-examined PW1.

Nelson Ossaieze, testified as PW2. He is the personal assistant to the publisher/CEO of plaintiff. He deposed to three witness depositions dated 27th April, 2017, 18th February, 2018 and 18th April, 2018 which he adopted at the hearing. He tendered in evidence two (2) letters by the firm of solicitors Solar Advocates to the 1st defendant and 2nd defendant which were admitted in evidence as **Exhibits 10a and b**. He was then cross-examined by both counsel to the 1st and 2nd Defendants.

Morgan Omodu testified as PW3. He deposed to two (2) witness statements dated 18th February, 2018 and 13th December, 2018 which he equally adopted at the hearing. He tendered in evidence a Daily trust Newspaper Publication which was admitted as **Exhibit P11**.

He was cross-examined by counsel to the 1st defendant while the 2nd defendant elected not to cross-examine him.

With the evidence of PW3, the plaintiff closed its case.

On behalf of the 1st defendant, he testified in person as DW1 and the only witness. He deposed to two (2) witness statements both dated 12th February, 2018 which he adopted at the hearing. He tendered in evidence the following:

1. Letter by Aljazirah Nigerian Newspapers dated 10th October, 2016 was admitted as **Exhibit D1**.
2. Letter by the Law Firm Solar Advocates dated 17th October, 2016 was admitted as **Exhibit D2**.

DW1 was not cross-examined by counsel to the 2nd defendant. He was however cross-examined by counsel to the plaintiff and with his evidence, the 1st defendant closed his case.

For the 2nd defendant, they also called only one witness. **Shallom Elejo Akwu**, a staff of 2nd defendant testified as DW2. She deposed to a witness statement dated 30th May, 2018 which she adopted at the hearing. She tendered in evidence **Certified True Copies** of internal memo of Jamb, the letters by Solar Advocates and Aljazirah Nigerian Newspaper and the letter titled **“Re: Letter of inquiry”** dated 20th October, 2016 by 1st defendant to 2nd defendant which all were admitted in evidence as **Exhibits D3a, b, c and d** respectively.

DW2 was not cross-examined by counsel to the 1st defendant but was cross-examined by counsel to the plaintiff and with her evidence, the 2nd defendant closed its case.

At the conclusion of trial, parties filed and exchanged final written addresses. The 2nd defendant’s final written address is dated 16th October, 2019 and filed same date. In the address two issues were raised as arising for determination as follows:

- 1. Whether they (sic) is a Right or reasonable Cause of Action against the 2nd Defendant?**
- 2. Whether the 2nd Defendant can be held vicariously liable for the personal encounter between the Claimant and the 1st Defendant in connection with the purported civil wrong by mere reason that, they both met at the premises of the 2nd Defendant?**

On the part of the 1st defendant/counter-claimant, the final address is dated 14th October, 2019 and also filed on same date. In the address two issues were equally raised as arising for determination as follows:

- 1. Has the plaintiff proved the tort of slander against the 1st defendant?**

If issue No1 is answered in the negative; whether the plaintiff has established its entitlement to Special damages, Exemplary damages, Public Apology and Recovery of its Solicitors fees.

2. Whether the 1st Defendant/Counter-Claimant has not established a case of libel so as to entitle him to the reliefs sought?

The plaintiff in response filed separate responses to the addresses of 1st and 2nd defendants. In response to the final address of 2nd defendant, the plaintiff filed an address dated 9th July, 2021 and in the address two (2) issues were streamlined as arising for determination:

- 1. Whether from the totality of the pleadings and evidence presented before this noble Court in the captioned suit, the Claimant has sufficient and reasonable Cause of Action against the 2nd Defendant in the present suit and hence entitled to the grant of all the reliefs sought in this suit.**
- 2. Whether the 2nd Defendant being the employer of the 1st Defendant can be held vicariously liable for the tortious wrongs committed by the 1st Defendant against the Claimant and her staffs in the course of the 1st Defendant's employment, during his working hours and within the 2nd Defendant's premises.**

In response to the final address of 1st defendant/counter-claimant, the plaintiff filed a rather voluminous address of 122 pages dated 9th July, 2021. In the address two (2) issues were equally identified as arising for determination:

- 1. Whether from the totality of the pleadings and evidence presented before this noble Court in the captioned suit, the Claimant has been able to establish/prove the torts of slander/defamation, false imprisonment, assault and battery against the Defendants and hence entitled to the grant of all the reliefs sought in this suit.**
- 2. Whether from the totality of the pleadings and evidence presented before this noble Court, the 1st Defendant/Counter Claimant has been able to establish/prove the tort of libel against the Claimant/Defendant and hence entitled to the grant of the reliefs sought in the counter claim.**

The 2nd defendant then filed a Reply on points of law to the claimants final address on 16th July, 2021. I have above set out above the issues identified by parties as arising for determination. Except for the question of reasonable cause of action raised by the 2nd defendant, all the other issues raised by the parties are substantially the same and revolve around the question of whether the plaintiff

and 1st defendant have led or proffered evidence in proof of their claim and counter-claim. Even the question of reasonable cause of action is one that can be considered in the light of whether the contested assertions or claim made out by claimant against defendants has been established and therefore need not be treated separately. I shall however still make some comments on the issue because of its legal and factual significance.

As already alluded to, there is a claim and a counter-claim by 1st defendant. It is trite law that for all intents and purposes, a counter claim is a separate, independent and distinct action and the counter claimant like the plaintiff in an action must prove their case against the person counter claimed before obtaining judgment on the counter-claim. See **Jeric Nig. Ltd V Union Bank (2001) 7 WRN 1 at 18, Prime Merchant Bank V Man-Mountain Co. (2000) 6WRN 130 at 134.**

In view of the settled position of the law, both the plaintiff and the 1st defendant have the burden of proving their claim and counter-claim respectively. That been so, the issues formulated by parties can be accommodated under the following issues formulated by court as follows:

- 1. Whether the plaintiff has proved its claims on a balance of probabilities to entitle it to any or all of the Reliefs sought.**
- 2. Whether the 1st Defendant/Counter-claimant has on a balance of probabilities proved its counter-claim and thus entitled to all or any of the Reliefs sought.**

The above issues are not raised as alternatives to the issues raised by parties, but the issues canvassed by parties can and shall be cumulatively considered under the above issues. See **Sanusi V Amoyegun (1992) 4 N.W.L.R (pt.237) 527.** The issues thus raised has in the courts considered opinion brought out with sufficient clarity and focus, the pith of the contest which has been brought to court for adjudication by parties on both sides of the aisle.

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an

issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of the critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd & Anor (1985)3 N.W.L.R (pt13)407 at 418**, the Supreme Court instructively stated as follows:

“By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff’s case collapses and the defendant wins.”

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issues I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel.

Let me however quickly and briefly deal with the question of absence of reasonable cause of action raised by 2nd defendant.

It is settled law that in deciding whether there is a reasonable cause of action, the determining factor is the Statement of Claim. The court needs only to look at and examine the averments in the Statement of Claim of the Plaintiff. See **Ajayi Vs. Military Admin Ondo State (1997) 5 NWLR (pt.504) 237; 7UP Bottling Co. Ltd Vs. Abiola (2001) 29 WRN 98 at 116**.

In considering whether there exists a reasonable cause of action, it is sufficient for a Court to hold that a cause of action is reasonable once the Statement of Claim in a case disclose some cause of action or some questions fit to be decided by a Judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. See **A-G (Fed.) Vs. A-G Abia State & Ors (2001) 40 WRN 1 at 52; Mobil Producing Nig. Unltd Vs. LASEPA (2003) 1 MJSC 112 at 132**.

What then is a cause of action, which has to be reasonable failing which the Court would strike out the pleadings? The phrase cause of action has been given different definitions in a plethora of cases by our courts. It is however soothing that the array of definitions bear the same meaning and connotation. See the cases of **Egbe Vs Adefarasin (1987) 1 NWLR (pt.47) 1 at 20; Omotayo Vs N.R.C. (1992) 7 NWLR (pt.234) 471 at 483.**

In **Akibu Vs Oduntan (2000) 12 NWLR (pt.685) 446 at 463**, the Supreme Court defined cause of action as:

“A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

- (a) The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and**
- (b) The consequent damage.”**

In so far as can be evinced from the statement of claim, the fact or combination of facts on which the plaintiff has premised its right to sue defendants seem to be pleaded in paragraphs 8 – 33 of the statement of claim. The alleged wrongful acts of defendants and the damage suffered by the plaintiff has been set out in the statement of claim. It is the alleged complaints of slander/defamation of plaintiff; false imprisonment, assault and battery occasioned on some staff of plaintiff levelled against 1st defendant, a staff of 2nd defendant during working hours and at the premises of 2nd defendant. These various complaints, the plaintiff alleged caused it enormous damages as reflected in the reliefs jointly and severally claimed against defendants.

A statement of claim is said to disclose a reasonable cause of action when it sets out the legal right of the Plaintiff and the obligations of the Defendant. It must further set out the action constituting the infraction of the Plaintiff’s legal right or the failure of the Defendant fulfil his obligation in such a way that if there is no proper defence, the Plaintiff will succeed in the relief or remedy which he seeks. See **Nwaka Vs Shell (2003) 3 MJSC 136 at 149, Ibrahim Vs Osim (1988) 3 NWLR (pt.82) 257 at 271 – 272.**

After a careful consideration of the Statement of Claim, I am satisfied that it has clearly set out the legal rights of the Plaintiff and the obligation of the

Defendants. It has further set out the alleged breach of its legal rights by defendants and the damages occasioned. The Statement of Claim clearly discloses a reasonable cause of action. It discloses questions fit to be decided by a court. At the risk of prolixity, any perceived weakness of the Plaintiffs' case is not a relevant consideration when the question is whether or not the Statement of Claim has disclosed a reasonable cause of action. The fact that learned counsel to the 2nd defendant conceives that the plaintiff's action is bound to fail is no ground to strike the action out. No.

As stated earlier, this issue in the context of the facts precisely streamlined on the pleadings is not really decisive. I only treated it out of abundance of caution.

I now proceed with the **substance** of the **case**. I start with **issue 1** relating to the substantive action. I had at the beginning of this judgment stated the claims of the plaintiff. Despite the volume of the processes filed, from the pleadings which precisely streamlines the issues and facts in this case, the plaintiffs' cause of action is essentially premised on defamation, false imprisonment, assault and battery. The defendants from their pleadings both denied any wrong doing in the circumstances. Indeed, the 1st defendant has equally situated a counter-claim on libel against the plaintiff which I will treat under issue 2. It is therefore to the pleadings and evidence that we must beam a critical judicial search light in resolving these contested assertions.

In this case, the plaintiff filed a thirty three (33) paragraphs statement of claim. The 1st defendant on his part filed a 26 paragraphs statement of defence and counter-claim. The 2nd defendant on its part filed a 33 paragraphs statement of defence.

The plaintiff then filed a 26 paragraphs Reply and a 33 paragraphs defence to the defence and Counter-Claim of 1st defendant. The plaintiff equally filed a 31 paragraphs Reply to the defence of 2nd defendant.

I shall in this judgment deliberately and *in extenso* refer to the above pleadings of parties as it has clearly delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in

the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of the evidence led by parties. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;
2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be

were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act**. It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Let us start with the **primary** complaint of **slander/defamation**. The inquiry here will be whether plaintiff has creditably established on the evidence the complaint of slander. The case of the plaintiff here is simply that in the discharge of their duties as media practitioners, they received a petition on corrupt practices against certain public officers of 2nd defendant including 1st defendant. The petition by a group described as **Coalition Against Corrupt Leaders Africa** dated 4th July, 2016 was admitted as **Exhibit P2** in evidence. The plaintiff then through its letter dated 10th October, 2016 vide **Exhibit P3** wrote to 1st defendant seeking for reaction against the complaints levelled against him. This letter was said to have been delivered by two staffs of the plaintiff. In the process of delivering the letter to the 1st defendant, the plaintiff avers that its staff were falsely imprisoned and assaulted and that in the process the 1st defendant made the defamatory remarks which plaintiff contends occasioned damages.

Let us perhaps situate the precise complaint and or remarks and to whom they were uttered from paragraph 17 of the statement of claim as follows:

“The Plaintiff further avers that while its staffs were still detained in the 1st Defendant’s office, the 1st Defendant stated to the hearing of the five other men in his office that: “Aljazeera are Blackmailers, they want to use this letter to blackmail me”. These words directly and unmistakably referred to the Plaintiff and are defamatory of the plaintiff as the said words directly discredits and injures the corporate goodwill and reputation of the Plaintiff in its business, trade or profession as a media organisation in the estimation of right thinking members of the society generally and the said five men before whom the 1st Defendant voiced the aforementioned defamatory statement.”

Now the law relating to proof of defamation is well settled and defamation is usually considered in the context to **slander** when the defamatory words are communicated in a transient form, for example orally; or **libel** when the defamatory words have been reduced into permanent form like a writing. One thing is however common to both, that is that the defamatory words must have been published to a third party, who by law is not entitled or privileged to hear/receive the offending words/writing, the same being damaging to the reputation of the plaintiff. See **Daura V Danhauwa (2011) All FWLR (pt.558) 991**; **Mamman V Salaudeen (2006) All FWLR (pt.298) 469**; and **Independent Newspapers Ltd V Idong (2012) All FWLR (pt.647) 677**.

Indeed in the case of **Daura V Danhauwa (supra)** another distinguishing element was drawn between slander and libel; that whereas the latter (libel) is actionable without the need to prove actual damage (actionable per se), the former (slander), except in certain cases, is only actionable on proof of particular damage, that is, it is not actionable per se.

Defamation therefore involves a false statement that defames or harms another person's reputation. Generally in case of defamation, the plaintiff must prove three things which include the following:

1. That the words complained of are defamatory
2. That the words referred to him
3. That the words were published to at least one person other than plaintiff.

See **Emmanuel Bekee & Ors V Friday Ebom Bekee (2012) LPELR – 12270 (CA)**.

The point to perhaps underscore is that **proof of libel** would be easier upon production of the offensive document by the plaintiff for inspection and assessment by the court; that cannot be said of **slander** which requires the pleading and capturing of the exact words or gestures complained of and leading evidence to establish same. And the plaintiff must be present, when the alleged slanderous words are spoken, so that he does not carry it as “hear say” evidence. See **Emmanuel Bekee & Ors V Friday Ebom Bekee (supra)** and **Asaa V Ojah (2015) LPELR – 24278**.

The onus of establishing the elements highlighted above is on the plaintiff and failure to establish them will result in a dismissal of the action. See **Onu V.**

Agbese (1985)1 N.W.L.R (pt.4)704 and New Nigerian Newspapers V. Oteri (1992)4 N.W.L.R (pt.372)626 at 634.

I will now proceed to consider each of these elements or ingredients to see if the Plaintiff has established same. The first key ingredient that the Plaintiff must establish in an action for libel is the **publication** of the alleged defamatory material. It is trite principle that no civil action can be maintained for libel or slander unless the words complained of have been published. Indeed it has been held that publication is the live wire of and fundamental to an action in libel or slander. See **Nitel V Tugbiyele (supra)334; Nas V Adesanya (2003)2 N.W.L.R (pt803)97.**

Let me perhaps further underscore what the concept of publication is all about. I find the definition by the learned authors of **GATLEY ON LIBEL AND SLANDER 18TH EDITION** at **pg. 141-142 paragraph 6.1** very instructive. They sated with considerable force thus:

“No civil action can be maintained for libel or slander unless the words complained of have been published.

The material part of the cause of action in libel is not the writing but the publication of the libel. In order to constitute publication, the matter must be published or (communicated to) a third party, that is to say at least one person other than the Plaintiff...Defamation protects a person’s reputation and his reputation is not the good opinion he has of himself but the estimation in which others hold him... A defamatory statement about the Plaintiff communicated to the Plaintiff alone may injure his self-esteem but it cannot injure his reputationit is not sufficient that the matter has been merely communicated to the third party, it is also necessary that it be communicated in such a manner that it may convey the defamatory meaning and that persons acquainted with the Plaintiff could understand it to refer to him...”

I had earlier in this judgment referred to **paragraph 17** of the statement of claim containing the text of the alleged **defamatory remark** said to have been made by 1st defendant and the persons who were said to be present when the remarks were made. These persons were again mentioned in the **Reply** filed by plaintiff. The paragraph alluded to two staffs of plaintiff and “five other men”.

Let us start with the “five other men”. In evidence, **none** of these “**five other men**” who were said to have been present when the remark “**Aljahirah are Blackmailers, they want to use this letter to blackmail me**” was uttered or made was presented in court by plaintiff to testify as to what they heard and how it impacted on their perception of the plaintiff.

Without the evidence of these **unidentified five men**, the aspect of the pleadings, both in the claim and the Reply filed by plaintiff relating to them shall be deemed as abandoned. The law is settled that where evidence is not led in proof of facts averred in pleadings, the said averments will be deemed as abandoned and discountenanced. It is trite law that pleadings, however strong and convincing the averments may be, without evidence in proof thereof go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence and this is critical, must be led to prove the facts relied on by the party or to sustain the allegations raised in pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 F-G.**

We are thus left with **two other persons** who were said to have heard the statement and they are both staff of plaintiff namely **Mr. Segun Ogedengbe** and **Mr. Nelson Ossaieze** who it was stated came to deliver the letter, **Exhibit P3** to 1st defendant.

Again on the evidence, **Mr. Segun Ogedengbe** was not in court to give evidence as to what was said by 1st defendant. Again the aspect of the pleadings relating to **Segun Ogedengbe** must equally be discountenanced. The principle cannot overstated that facts deposed to in pleadings must be substantiated and proved by evidence. In the absence of which, the averments are deemed abandoned and without value. See **Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594 A-B.** We are thus left with only the evidence of **Mr. Nelson Ossaieze** who is said to have heard the remarks in question. He testified as PW2.

Now on the pleadings of both 1st and 2nd defendants, the case made out in particular by 1st defendant is that apart from denying he made any such statement, he stated that he only met with **Mr. Segun Ogedengbe** and never met **Mr. Nelson Ossaieze**. **DW2** who shares a twin office with 1st defendant and whose office on the evidence, the plaintiff’s staff must pass to reach the office of 1st defendant also in evidence stated that she never saw **Mr. Nelson**

Ossaieze but that only **Mr. Segun Ogedengbe** passed through her office to see 1st defendant.

Mr. Nelson Ossaieze who testified as **PW2** for the plaintiff however stated that he was present. Beyond the bare challenged viva voce evidence of Mr. Nelson, the plaintiff however did not tender any other evidence to situate or support his presence at the office of 1st defendant when the said **defamatory statement** was made. The question that arises here is whether Mr. Nelson was really at the premises or office of 1st Defendant on the day in question. Let us here evaluate the documentary evidence tendered. It is trite law that documentary evidence is usually the best form of evidence in proof of a case. It usually confers credibility to oral evidence particularly where the two are consistent. Indeed it is settled principle of general application that where documentary evidence supports oral evidence, oral evidence becomes more credible. This is so because, documentary evidence serves as a hanger from which to assess oral testimony. See **Mil. Gov. Lagos v Adeyigu (2012) 5 NWLR (pt.1293) 291; Kimdey V Mil. Gov. Gongola State (1988) 2 NWLR (pt.77) 445; Buraimoh V Esa (1990) 2 NWLR (pt.135) 406.**

Indeed in **Bunge v Gov. Of Rivers State (2006) 12 NWLR (pt.995) 513 at 629 – 630 A-B**, the Supreme Court further underscored the importance of documentary in that it could be used to resolve an issue or conflicting oral testimony. The court also re-emphasised the point that it could be used as a hanger from which to test the veracity of oral testimonies.

Now in **paragraph 27 of the statement of claimant**, the plaintiff pleaded a letter by its Solicitors, the law firm of Solar Advocates, dated 17th October, 2016 to the defendants complaining about the alleged unlawful actions on its staff and demanding for an Apology. In paragraph 17 of the Reply it filed to the 1st Defendant's defence and defence to 1st Defendant's Counter-Claim, the Plaintiff again pleaded this same letter and stated thus:

“... In the said subsequent letter, the Plaintiff through its counsel rightfully demanded for an apology for the slander and malignant acts which the 1st defendant perpetrated against the plaintiff and two (2) of plaintiffs staff on the 10th October, 2016 in his office.” This letter was tendered as **Exhibit P10a** in evidence by the plaintiff.

This letter however directly conflicts with the pleadings of plaintiff and contradicts the evidence of plaintiffs' witnesses in particular **PW2** that he was present when the letter, **Exhibit P3** was delivered to the 1st defendant. This letter was written by solicitors to the plaintiff barely a few days after the incident, so the alleged incident clearly was fresh on the minds of all concerned and there cannot be a legitimate complaint of memory loss as is said in popular parlance.

Let me perhaps allow the letter **Exhibit P10a** written by plaintiff's solicitors speak for itself thus:

“A DEMAND FOR APOLOGY”

“We are a firm of Legal Practitioners representing Aljzirah Nigeria Newspapers (hereinafter referred to as “Our Client”) on whose behalf and instructions we write.

It is our client's brief that on October 10, 2016 she sent her staff, one Mr. Segun Ogedengbe, to your office to dispatch a to you (sic) concerning allegation of corruption made against you by their confidential source wherein, in line with the principles of fair hearing they sought to hear your own side of the story for the purpose of balancing their facts before publishing same.

However, rather than seizing the opportunity afforded you to clarify the issues raised in our client's letter dated October 10, 2016 and addressed to you, you resorted to the use of military and police officers to harass, manhandle and threatened the life of our client's staff who was carrying out a lawful and official duty...”

The above letter speaks clearly to the fact it was **“Mr. Segun Ogedengbe”** that was sent by plaintiffs to deliver the letter in question to 1st defendant. As stated earlier, Mr. Segun Ogedengbe was not produced in court and so there is really nothing on the evidence to give credibility to the challenged assertion of PW2 that he was at 1st Defendant's office. The evidence by PW2 that he was with Mr. Ogedengbe when the letter was delivered clearly is inadmissible and will not fly in the light of this clear and unambiguous letter by plaintiffs solicitors vide **Exhibit P10a** which is the same document as **Exhibit P10b**. The law is settled that oral or parol evidence will not be admissible among other things to

contradict or alter a document such as **Exhibit P10a** which is clear and unambiguous. See **Bunge v Gov. Of Rivers State (supra) 573 at 616-617 G-A**. See also **Section 132 of the Evidence Act**.

Indeed even by **Exhibit P9, the writ of summons and statement of claim in CV/97/16** earlier filed by the plaintiff against defendants which was equally tendered by plaintiff, clearly again situates in **paragraph 8** that it was one **Mr. Segun Ogedengbe** who delivered the letter to 1st defendant. Indeed in the paragraph, this is what the plaintiff pleaded:

“8. The said letter in paragraph (6) above was delivered by plaintiffs staff, Mr. Segun Ogedengbe to the 1st Defendant in his office at 2nd Defendant’s premises on October 20, 2016...”

No mention at all was made of **Mr. Nelson Ossaieze (PW2)**. Again it is interesting to note that this process was filed some few months after the incident and no mention or allusion was made to the presence of PW2 when the letter in question was delivered to 1st defendant.

Flowing from above, it is too late in the day for **PW2** to seek to impugn or alter the contents of in particular their solicitors letter vide Exhibit P10a to suit a particular purpose. These documentary evidence tendered by plaintiff therefore stand un-impugned and show unequivocally that PW2, Nelson Ossaieze was not present when the letter, **Exhibit P3** was delivered to 1st defendant and was therefore not there when the defamatory statement was allegedly made by 1st defendant.

The bottom line as I have demonstrated above is that there is absolutely no credible evidence before court situating that the alleged defamatory remark attributed to 1st defendant was made and most importantly there is absolutely no credible evidence situating a **publication** or **communication** of the alleged defamatory statement to a third party or indeed anybody and that completely undermines the case of **slander/defamation made by plaintiff**.

As stated earlier, no civil action can be maintained for **libel or slander** unless the words have **been published**. Indeed in law, an action for libel or slander must fail if the defamatory matter is not proved. This proof must be given by admissible evidence as it is the publication that donates a cause of action. There must therefore be positive proof of a publication to a third person and the onus

is on he who alleges publication of libel or slander to prove same. Where a plaintiff does not prove publication of the defamatory material, no cause of action has arisen. See **Gatley on libel and slander (supra); Amuzie V Asonye (2011) 6 NWLR (pt.1242) 19.**

As a logical corollary, without the **publication** or communication to a third party, it is then really difficult to situate the complaint of plaintiff that it suffered any damages in the circumstances on indeed how its estimation in the eyes of right thinking member of the society will be lowered. It is really difficult if not impossible to be affected by defamatory words not heard by anybody on the evidence. As stated repeatedly and as demonstrated, nobody was presented by plaintiff who heard the words allegedly uttered by 1st defendant. The publisher/M.D. of plaintiff who testified as PW1 and the third witness, Mr. Morgan Omodu who testified as PW3 were not there when the alleged defamatory statement was made of plaintiff and therefore their evidence is of no value on the question of publication to a third party.

On the whole, on defamation, a company such as plaintiff can no doubt maintain an action for libel or slander in respect of words which are calculated to injure its reputation in the way of its trade or business. Therefore where a statement is made with regard to the mode in which a company conducts its business, such as to convey to right thinking members of the society generally that it conducts its business in a dishonest, improper or inefficient manner, the company can maintain an action for libel or slander. Where however no such statement on the evidence was made to any person or third party, or where the statement does not reflect on the business reputation of a company, no action for defamation will lie as in the present case or situation. See **Inland bank (Nig.) Plc V FLS Co. Ltd (2010) 15 NWLR (pt.1216) 395, Edem V Orpheo (Nig.) Ltd (2003) 13 NWLR (pt.838) 537.**

With the failure to prove **publication**, it will therefore no longer be necessary to consider the other elements to sustain the complaint of slander. The consideration of other elements will in the circumstances be entirely academic. No court has the luxury to engage in such an exercise. I leave it at that.

This then logically leads me to the complaints of **false imprisonment, assault and battery**. As already highlighted, the case made out here on the pleadings by plaintiff is that when **Mr. Segun Ogedengbe** and **Mr. Nelson Ossaieze** went to deliver the letter vide **Exhibit P3**, to 1st defendant, they were falsely

imprisoned, harassed and assaulted by 1st defendant and some of the men with him and that the 1st defendant invited some military men to come over to threaten and beat them up.

These assertions were as stated earlier all denied by defendants and thus it became now a matter for proof by credible and admissible evidence. Again on the evidence, and flowing from our consideration of the issue of slander, I had found on the basis of the evidence particularly the unchallenged documentary evidence tendered by plaintiff vide **Exhibits P9** and **P10 a** and **b** that PW3 or **Mr. Nelson Ossaieze** was not with **Mr. Segun Ogedengbe** when he went to deliver **Exhibit P3** to 1st defendant. Since he was not there, the various complaints of **false imprisonment, threats, assault and battery** copiously pleaded but not backed by any scintilla of evidence clearly would lack value and goes to no issue. As stated earlier, **Mr. Segun Ogedengbe** never gave evidence in this case and indeed nobody who may have been present at 1st defendant's office gave any evidence supporting or situating any acts of false imprisonment, assault and battery against any staff of plaintiff. To further cast doubt on the case made out by plaintiff on this point, no complaint of any kind was made to the Nigerian Police for the acts complained of or even the Nigerian Armed Forces for the alleged involvement of Military men in a purely civil case in which the plaintiff is carrying out its lawful duty as a media outfit. Indeed it is difficult to fathom how 1st defendant who is not a military officer can summon "Military men" to come to his office to threaten and manhandle staff of plaintiff.

The bottom line here is that the complaints of false imprisonment, assault and battery are wholly unsubstantiated allegations. A court of law only acts and decides on the basis of what has been clearly demonstrated and creditably proved in open court. The court does not engage in the business of speculating and therefore bare averments of infraction(s) in a claim devoid of any scintilla of evidence will lack any value particularly where they are seriously controverted or challenged. A plaintiff who fails to creditably establish the allegation as streamlined in his pleadings with evidence to support the Reliefs he seeks must fail.

The above findings on critical aspects or elements of the case of plaintiff provides both factual and legal template to situate whether the Reliefs sought by claimant are availing.

Relief (a) seeks for the sum N180, 000, 000.00 (One Hundred and Eighty Million Naira) special damages against the Defendants for the lost (sic) of its contract with FAGNA TRAINING & CONSULTANTS LTD., whose monetary value is as stated above and which was terminated as a result of the 1st Defendant's defamation of the Plaintiff's corporate reputation and image without any lawful jurisdiction whatsoever.

Now in the light of the finding that there was no **publication** of the alleged defamatory statement, it is difficult to situate the factual or legal foundational basis of this Relief. Let us out of caution however evaluate the evidence on Record. Now the case of plaintiff is that it had a service agreement with Fagna Consultants vide **Exhibit P4** and that on the day the alleged defamatory remarks was made, the M.D. of Fagna Training Consultants Ltd was present and heard the remark. That the said M.D. of Fagna, one **Falolu Ajadi** then vide **Exhibit P5** wrote plaintiff demanding for explanation and that despite the explanation they offered vide Exhibit P6, the company terminated the agreement with them vide Exhibit P7.

As stated already in this judgment, nobody appeared in court on behalf of plaintiff to give evidence with respect to the alleged defamatory remarks uttered by 1st defendant. If it is taken that **Falolu Ajadi**, the M.D/CEO of Fagna was one of the five (5) people present in the office of 1st defendant as pleaded by plaintiff, then he ought to have been produced in court to give evidence as to what he heard and how it impacted on his relationship with plaintiff and then of course he will necessarily be subjected to cross-examination. As stated earlier, nobody including the said Mr. Ajadi gave evidence in this case and this is fatal.

The critical point to underscore in matters of defamation is that it is not sufficient that the matter has been communicated or published to a third party (And that is where there is even a publication), it is also necessary that it be communicated in such a manner that it may convey the defamatory meaning and that the persons acquainted with the plaintiff could understand it to refer to him and that is where the presence in court of **Falolu Ajadi** is critical.

The answer to what he may have heard and or how it impacted his impression of plaintiff cannot be a matter for assumptions or inferences. The tendering therefore of **Exhibits P4** and especially **P5** and **P7** said to have been written by Falolu Ajadi is of no moment and adds no value to the proof of the critical element of publication to a third party.

There is in law a clear dichotomy between admissibility of a document and placing probative value on it. While admissibility is based on relevance, probative value depends not only on relevance but also proof. An evidence has probative value if it tends to prove an issue. See **Buhari V INEC (2008) 19 NWLR (pt.1120) 246 at 414 G-H**. Exhibits P5 and P7 lack probative value in the circumstances.

Relief (a) which cannot be situated or based on a finding of defamation clearly lacks any legal or factual foundation and fails.

Relief (b) which seeks for the sum **N120, 000, 000.00 (Twelve Million Naira) special damages against the Defendants for the lost (sic) of its contract with KESSY PRODUCTIONS NIGERIA LIMITED, whose monetary value is as stated above and which was terminated as a result of the 1st Defendant's defamation of the Plaintiff's corporate reputation and image without any lawful justification whatsoever** must for reasons advanced in this judgment and under Relief (a) also fail.

The only point to add here is that unlike **Relief (a)** no scintilla of evidence was even tendered situating any contract between plaintiff and **Kessy Productions Nig. Ltd** or that any one from the said company was present when the alleged defamatory statement was made or that any contract was terminated because of the alleged defamatory statement. **Relief (b)** fails without much ado.

Relief (c) for the sum N500, 000, 000.00 (Five Hundred Million Naira) as exemplary and punitive damages against the Defendants for the defamation of the plaintiff's reputation by the 1st defendant equally fails. With the failure to prove **publication**, any claim for exemplary and punitive damages for **defamation** is a non-starter and must fail.

Relief (d) is for the sum of **N300, 000, 000.00 (Three Hundred Million Naira)** as exemplary and punitive damages against the Defendants for the unlawful detention and false imprisonment of the Plaintiff's staff by the 1st Defendant in the Defendant's premises without any lawful justification whatsoever and **Relief (e)** is for the sum of **N300, 000, 000.00 (Three Hundred Million Naira)** as exemplary and punitive damages against the Defendants for the unlawful battery and violence applied against the Plaintiff's staff by the 1st defendant in the Defendant's premises without any lawful justification whatsoever.

I have found that there is absolutely no credible evidence of unlawful detention, false imprisonment, unlawful battery and violence applied on any staff of the plaintiff. The only staff of plaintiff at the premises of 1st defendant, **Mr. Segun Ogedengbe** did not give evidence in this case. There was no report of any kind to the security agencies for the alleged involvement of certain military personnel in the violation of the alleged Rights of the Staff of plaintiff and no case was filed for the enforcement of the Fundamental Rights of these staff. These set of Reliefs equally must fail for complete want of evidence.

Reliefs (d) and (e) in the absence of evidence must fail.

With the failure of the substantive complaint of defamation, **Reliefs (f)** for an apology; **Relief (g)** for cost of the action and **Relief (h)** for interest clearly must also fail.

On the whole, **issue 1** raised with respect to the substantive action of plaintiff is answered in the negative. The claims and or Reliefs sought by plaintiff are **wholly unavailing**.

This then leads me to the **second issue** based on the counter-claim of 1st defendant. I had earlier stated that the counter-claimant must like the plaintiff in the main action establish its case on the same principles to entitle him to the Reliefs sought.

The 1st defendant's cause of action in the counter-claim is premised on defamation, but this time unlike the case of plaintiff, it is situated on **libel**. The alleged defamatory publication is contained in **Exhibit D1**.

This same letter was attached to the letter of demand for apology which was written to the 1st defendant by plaintiff and copied to the Registrar of 2nd defendant vide **Exhibits D3b and D3c**. The inquiry here is whether the counter-claimant has creditably established on the evidence that the said **Exhibit D1** is defamatory of the 1st defendant counter-claimant. Let me perhaps at the risk of prolixity say some few words on defamation, again. In law defamation has been defined to mean, a statement which tends to injure or lower the reputation of a person to whom it refers in the estimation or assessment of ordinary and right thinking members of the society and thereby expose such person to hatred, ridicule and contempt and it does not matter whether or not such statement is believed by those to whom it was published. See **Salawu V. Makinde (2003)1**

WRN 91 at 102. The question as to whether the words complained of are in their natural and ordinary meaning, defamatory is one of fact. The question whether or not the words are capable of conveying a defamatory meaning in the minds of reasonable persons in a particular case is for a Judge to decide upon the evidence before him. See **Sketch V. Ajagbemokeferi (1989)1 N.W.L.R (pt.100)678 and Alawiye V. Ogunsanya (2003)39 WRN 140 at 161.**

The Plaintiff in an action for libel must prove the following elements or ingredients, namely:

- a. That the Defendant published in a permanent form a false statement.
- b. That the statement referred to the Plaintiff.
- c. That the statement conveys a defamatory meaning to those to whom it was published, and
- d. That the statement was defamatory of the Plaintiff in the sense that it lowered him in the estimation of right thinking members of the society.

See **Sketch V. Ajagbemokeferi (supra) at 704 and Anate V. Sanusi (2001)27 WRN 26 at 41.**

The onus of establishing these elements is on the Plaintiff or 1st defendant/counter-claimant in this case and failure to establish them will result in a dismissal of the action. See **Onu V. Agbese (1985)1 N.W.L.R (pt.4)704 and New Nigerian Newspapers V. Oteri (1992)4 N.W.L.R (pt.372)626 at 634.**

I will now proceed to consider each of these elements or ingredients to see if the 1st defendant has established the same. The first key ingredient that the 1st defendant must establish in an action for libel is the publication of the alleged defamatory material. It is trite principle that no civil action can be maintained for libel or slander unless the words complained of have been published. Indeed it has been held that publication is the live wire of and fundamental to an action in libel. See **Nitel V Tugbiyele (supra)334; Nas V Adesanya (2003)2 N.W.L.R (pt803)97.**

I had earlier stated the importance of **publication** when considering the substantive claim. I need not repeat myself.

As stated earlier, the text of the defamatory statement is contained in Paragraph 19 of the counter-claim and it was tendered in evidence in a permanent form

vide **Exhibit D1**. The counter-claim in paragraph 22 stated that a copy of this letter was served on the **Registrar** of 2nd defendant.

The plaintiff and defendant to the counter-claim in its defence in paragraphs 5 and 8 in essence admitted writing the letter in question, **Exhibit D1** and also copied the Registrar but contended that the letter was simply to elicit a response from the counter-claimant to the allegations levelled in line with its duty as a media outlet to balance every information it gets before publishing.

There is therefore no doubt on the evidence that plaintiff and defendant to the counter-claim published **Exhibit D1** concerning defendant/counter-claimant and it was copied to a third party, the Registrar of the 2nd defendant.

Now the said **Exhibit D1** clearly posits that based on a petition plaintiff said it got or received from an anonymous source which made allegations of corrupt activities against the counter-claimant, it wanted the defendant/counter-claimant to respond to enable it balance its story.

The letter may have contained serious allegations, against counter-claimant, but according to plaintiff its real essence is to elicit a response one way or the other and these may include even a rebuttal. There is therefore no doubt on the pleadings and evidence that the plaintiff published **Exhibit D2** and it no doubt referred to counter-claimant. Whether the publication is false or not would be seen when the other elements or ingredients of libel are considered. The only point to add is that an imputation may be defamatory whether or not it is believed by those to whom it is published. It can also be defamatory whether or not it is true. See **Vanguard Media Ltd V. Olafisoye (2014) 14 NWLR (pt.1267) 207 at 233 A-B**.

I will now consider the third and fourth elements, *id est*, whether the statement conveys a defamatory meaning to those to whom it was published and whether it lowered the 1st defendant in the estimation of right thinking members of society.

It is an established principle of the law of defamation and I have already alluded to it that the first step in determining whether a statement is defamatory is to consider what meaning the words would convey to the ordinary person. The next step is then to consider the circumstances in which the words were published and determine whether in those circumstances, the reasonable man

would be likely to understand them in a defamatory sense. See **Agbanelo V. Union Bank (2000)23 WRN 1 at 12.**

In determining these questions, the salutary approach is that the alleged defamatory words must be construed according to the fair and natural meaning that would be given them by reasonable persons of ordinary intelligence and not what persons who set themselves to work to deduce some unusual meaning might succeed in extracting from them. See **Okafor V Ikeanyi (1973)3-4 SC 99.**

The court must therefore first make findings of fact whether the publication complained of is capable of bearing a defamatory meaning or imputation and then proceed to inquire and find answer to the question whether the plaintiff was actually defamed by the publication bearing in mind that the guiding test is one of reasonableness i.e whether reasonable men to whom the publication was made would understand it as referring to the plaintiff in a defamatory sense. See **Sketch V Ajagbemokefiri (supra) 678; Agbanelo V UBN (supra) 534; Complete Communications Ltd V Onoh (1998)5 N.W.L.R (pt 549)194 at 218-219 H-A.**

The question as to whether the words complained of are in their natural and ordinary meaning defamatory is one of fact. The question whether or not the words are capable of conveying a defamatory meaning in the minds of reasonable persons in a particular case is for a judge to decide upon the evidence before him. See **Sketch V Ajagbemokeferi (supra) Alawiye V Ogunsanya (2003)39 WRN 140 at 161.**

I had earlier referred to the text of **Exhibit D1**. Now in determining whether the contents of above document is in its ordinary meaning defamatory and whether the words are capable of conveying a defamatory meaning in the minds of reasonable persons, we must now obviously have recourse to the evidence on record. Defamation as we have stated elsewhere in this judgment is all about protecting a person's reputation but that reputation is not the good opinion he has of himself but the estimation in which others hold him. The emphasis is on what these "**others**" think of him.

Flowing from the above, in practical and legal terms, the **evidence of 1st defendant**, who is the only witness that appeared in respect of his counter-claim has no probative value in the circumstances.

It is true that by **Exhibit D3a**, the internal memo of 2nd defendant, the 1st defendant was asked by the management of 2nd defendant to comment on both the letters of both the plaintiff and its solicitors vide Exhibit D3b and D3c but nobody from 2nd defendant came to court to give evidence on behalf of 1st defendant situating that the letters in question in any way impacted in a negative sense their perception of 1st defendant. Nobody who may have seen **Exhibits D1 or D3b and c** in 2nd defendant was called or produced to give evidence to add credibility to the case made by 1st defendant/counter-claimant.

Indeed by **Exhibit D3d** the 1st defendant responded to the Query by his employers and denied the allegations and clearly that was how the **matter ended**. On the pleadings and evidence, the 2nd defendant never took any further actions either to sanction or reprimand 1st defendant.

As already alluded to but the point needs to be underscored that it is settled principle of general application that a defamatory publication is one which has the tendency to injure the reputation of the person to whom it refers and which tends to lower him in the estimation of right thinking members of the society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear or disdain. See **NEPA V INAMETI (2002)13 WRN 108 at 128**. There is really no credible evidence showing that the alleged defamatory publication lowered the 1st defendant in the estimation of right thinking members of the society. See **Iwweke V IBC (2005) 17 N.W.L.R (pt.953) 447; Sketch V Ajagbamokeferi (supra)**.

The evidence of 1st defendant on how the documents **Exhibits D1 or D3 (a) and (b)** injured his reputation is wholly irrelevant. Defamation as already alluded to is all about protecting a persons' reputation but that reputation is not the good opinion he has of himself but the estimation in which others hold of him. The emphasis is on what these **"others"** think of him.

While it is conceded that the alleged statement may injure his self esteem, what the law of defamation is concerned with is how the statement affects the estimation which others hold of him. At the risk of sounding prolix, it is apposite to reiterate that a persons reputation is not based on the good opinion he has of himself but the estimation in which others hold him. In **Iwueke V Imo State Broadcasting Corp (2005) 17 NWLR (pt.955) 447**, it was held that what is important in a case of defamation is the reaction of a third party to the publication complained of. That it is not what the plaintiff thinks of or about

himself but rather what third party thinks of the plaintiff as regards his reputation that is important. See also **Nsirim V Nsirim (1990) 3 NWLR (pg.138) 285.**

Similarly the authors of **Gatley on Libel & Slander (supra)** stated that *“Defamation protects a person’s reputation and his reputation is not the good opinion he has of himself but the estimation others hold him...”*

On the whole, and on the basis of the evaluation of the entirety of the evidence led by 1st defendant/counter-claimant, I am not satisfied that he has led credible evidence on the defamatory meaning the publication conveyed to those to whom it was published. See **Okolo V Midwest Newspaper Corp. (1977) NSCC 11; Dumbo V Idugboe (1983) 1 S.C.N.L.R 23.**

In the light of the foregoing, the 1st defendant has clearly not established by credible evidence all the essential ingredients required to sustain an action for libel. The 1st defendant/counter-claimant has therefore failed to prove that **Exhibit D1** conveyed a defamatory meaning to those to whom it was published and this is fatal.

On the whole, the issue also raised with respect to the counter-claim is answered in the negative. The counter-claim is equally undermined and is not availing.

In the final analysis and for the avoidance of doubt, I hereby make the following orders:

ON PLAINTIFFS CLAIMS/RELIEFS

The Plaintiffs claims fails in its entirety and is accordingly dismissed.

ON 1ST DEFENDANT’S COUNTER-CLAIM

The 1st Defendant’s Counter-Claim equally fails in its entirety and is also dismissed.

.....
Hon. Justice A.I. Kutigi

Appearances:

- 1. David Maduka, Esq., for the Plaintiff/Defendant to the Counter-claim.**
- 2. P.I. Oyewole, Esq., for the 1st Defendant/Counter-claimant.**
- 3. Charles O. Audu, Esq., for the 2nd Defendant.**