

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : SUIT NO: CV/1511/20**

**DATE: :THURSDAY 10<sup>TH</sup> FEBRUARY, 2022**

**BETWEEN:**

**ALH. IBRAHIM KABIR MASARI ..... CLAIMANT**

**AND**

**ALHAJI MUSTAPHA SALIHU ..... DEFENDANT**

## **JUDGMENT**

The Claimant commenced this action vide Writ of Summons dated 19<sup>th</sup> of March, 2020 and filed on same day. Wherein he claims as follows:

- a. A Declaration that the Claimant, the National Welfare Secretary of the All Progressive Congress (APC), has been defamed by the Defendant when the Defendant called him a rogue, useless thief, worthless, bastard and an idiot in the presence of the members of the National Working Committee (NWC) at the NWC Meeting held on the 14<sup>th</sup> day of January, 2020 inside the All Progressive Congress's Conference Hall.
- b. A Declaration that the verbal statements made by Alhaji Mustapha Salihu, the Defendant has

negatively affected the personality, character and public image of the Claimant, a seasoned politician and a humble, hardworking and law abiding citizen of this Nigeria.

- c. A Declaration that by the statement made by the Defendant on the 14<sup>th</sup> day of January, 2020, the public image and estimation of the Claimant has been grossly eroded when the Defendant who is the National Vice Chairman of the APC, northeast called the Plaintiff Rogue, Useless Thief, Worthless, Bastard and an Idiot in the presence of all members present at the meeting of the National Working Committee (NWC) of the APC.
- d. An Order of this Honourable Court directing and mandating the Defendant to tender an

unreserved apology for the said malicious, false and slanderous comment made against the person of the Claimant on the 14<sup>th</sup> day of January, 2020 and which public apology shall be published in 3 National Daily Newspapers in circulation throughout Nigeria inclusive of the Daily Trust Newspaper.

- e. An Order of Perpetual Injunction restraining the Defendant, his agents, assign, legal representatives, successors in title from making any further derogatory defamatory remarks against the person of the Claimant.
- f. An Order of this Honourable Court directing the Defendant to pay the sum of N500,000,000.00 (Five Hundred Million Naira) only as special damages to the Claimant for the said malicious,

malignant, infamous, derogatory and defamatory statement made against the Plaintiff on the 14<sup>th</sup> day of January, 2020 in the presence of the members of the National Working Committee of the party which slanderous statement has cast negative aspersion on the personality, character and integrity of the Claimant having been put in doubt before his colleagues, clients and the general public.

- g. An Order of this Honourable Court directing the Defendant to pay the sum of N10,000,000.00 (Ten Million Naira) as general and exemplary damages to the Claimant for his acts of abuse, harassment, intimidation, embarrassment, ridicule and psychological trauma occasioned by the Defendant's defamatory statement made against the Claimant.

Upon service of the Writ on the Defendant and after pleadings were exchanged, the suit was set down for hearing.

The case of the Claimant as distilled from the Witness Statement on Oath of the Plaintiff is that on the 14<sup>th</sup> day of January, 2020, the National Working Committee of their party met within the party's conference hall at the National Secretariat of the party to discuss concerning the party and chart out a course that will be beneficial to the party.

That the meeting was presided by the National Chairman of the All Progressive Congress with fourteen (14) other members of the National Working Committee in attendance. While the issues arising from the agenda were being treated, the issue for the replacement of the party's National Secretary

which was zoned to the North-East Zone arose. Members of the National Working Committee who were present at the meeting took turn and made their suggestions and input on the matter and interestingly, when the Claimant rose up to present his own suggestions to the National Working Committee seated, the Defendant stood up abruptly and ordered the Claimant to close his mouth and sit down, laying claims that the Claimant's suggestions were not worthy of note to the gathering. In the process of trying to force the Claimant not to make his contributions, the Defendant insulted the Claimant, calling him such unprintable as useless Thief, Rogue, and Idiot and a Worthless Bastard.

That the particulars of the slanderous and defamatory comments made against him by the Defendant on the 14<sup>th</sup> day of January, 2020 reads

thus: *“that you Mr. Ibrahim Kabir Masari, you are a rogue useless thief, worthless bastard and an Idiot”*. That the said defamatory statement that was made against me was done in the presence of all the members of the National Working Committee who were present at the Conference Hall for the National Working Committee Meeting on the 14<sup>th</sup> day of February, 2020.

The Claimant further states that he has always been fully committed in rendering his services to the All Progressive Congress, APC and has never been found wanting by the party in the discharge of his duty. That he had held several positions of trust in this country and beyond as a politician and with his wealth of experience gathered over the years from the various professional and public/political offices held by him, he is a widely acclaimed and well-

known person in Nigeria. That surprisingly on the 14<sup>th</sup>, 15<sup>th</sup> January, 2020, he started receiving calls from his colleagues, fellow Politicians, Clients, business partners, family members and well-wishers about some defamatory statements that was made against the Claimant.

That when the Defendant was shouting, abusing and threatening to beat up the Claimant if he talked, the Claimant, a very responsible politician and well-mannered politician did not bother to challenge the Defendant nor exchange words with him. The Claimant further avers that the Defendant made the said statements knowing the import and without any form of regret as was evident when members intervened and asked him to apologize to the Claimant, he refused and further continued to threaten to beat up the Claimant while still

maintaining all those abusive names he earlier called the Claimant. The Defendant was in full grasp of his senses and faculties when he made the said statements.

That Claimant avers that after the incidence of 14<sup>th</sup> January, 2020, he made several demands which included the retraction of the said defamatory statements, public apology and monetary compensation. A letter of demand was served on the Defendant and same received and acknowledged, but he has not made any effort to remedy or accede to the demands stated therein neither has he written to apologize or debunk the contents of the letter dated 16<sup>th</sup> January, 2020.

That by the abusive and defamatory remarks made against the Claimant by the Defendant, the said

comments has grossly lowered the Claimant's estimation in the eyes of right thinking members of the public and brought him to underserved public contempt, ridicule and odium.

PW1 tendered the following in evidence:

- Demand letter dated.

PW1 was cross-examined and subsequently discharged.

PW2 Hon. AdamuFanda adopted his witness statement on oath and was cross-examined, then subsequently discharged.

PW3 Hon. Ahmed Suleiman Wambai adopted his witness statement on oath and was cross-examined, then subsequently discharged.

Plaintiff closed its case to pave way for defence. The case of the Defendant as distilled from the witness statement on oath of DW1 is that the Defendant is the immediate past National Vice Chairman, North-East Zone of the All Progressive Congress (APC) and a former member of the National Working Committee (NWC) of the All Progressive Congress (APC). That the Defendant has never at any point in time uttered the words that the Claimant ascribed to him. The Claimant contacted the Defendant only one time in his lawsuit; and that was the letter that the Defendant received from his Solicitors.

That the Defendant did not deem it necessary to respond to the letter because the contents were more of a work of fiction than reality as regards what transpired between the parties on the 14<sup>th</sup> January, 2020. The Defendant has always been in full grasp

of his senses and mental faculties, before, during and after the meeting of 14<sup>th</sup> January, 2020 and he knows for a fact that he never uttered the words the Claimant ascribed to him at any point in time. That the Claimant and Defendant had disagreements on the path that the party (All Progressive Congress) should thread i.e on the issue of the replacement of the party's National Secretary but it never degenerated to the level that the Claimant stated in his statement of claim.

That on May 24<sup>th</sup>, 2020, the Defendant exchanged warm Sallah greetings with the Plaintiff via text messages. The Defendant initiated the exchange from his mobile cell phone number **08036890399** to the Plaintiff's mobile cell phone **08033821609** and the Plaintiff responded in kind.

On July 6<sup>th</sup>, 2020, the Defendant again initiated text messages greetings to the Plaintiff from his mobile cell phone **08036890399** to the Plaintiff's mobile cell phone number **08033821609**. Again, the Plaintiff responded to his greetings. These communications were rendered in Hausa Language.

DW1 tendered the following in evidence

- Printout of text messages the Defendant and the Plaintiff exchanged.

DW1 was cross-examined and subsequently discharged.

DW2 Nasiru B. Abubakar, a professional interpreter of Hausa Language to English Language was called.

In his witness statement on oath, DW2 stated that a printout of the text messages exchanged between Alhaji Ibrahim Kabir Masari and Comrade Mustapha

Salihu was handed over to him for translation from Hausa Language to the English Language sometime in December, 2020.

That DW2 translated the portions of the text messages that were written in Hausa Language to the English Language.

DW2 tendered the following in evidence:

- The transcribed message text from English to Hausa and vice versa..marked Exhibits “D1 and D2”.

DW2 was cross-examined and accordingly discharged.

DW3 Hon. Victor Giadom in his witness statement on oath stated, that he was at the meeting of January 14<sup>th</sup>, 2020 that the Claimant referenced in his

statement of claim and he never heard the Defendant utter the words that the Claimant has ascribed to him in this lawsuit.

That the Claimant and the Defendant had disagreements on the path that the party (All Progressive Congress) should thread on the issue of the replacement of the party's National Secretary but it never degenerated to the level that the Claimant in his statement of claim.

DW3 was cross-examined and accordingly discharged.

On his part, the Claimant filed a reply to statement of defence dated 3<sup>rd</sup> of March, 2021.

The Claimant in response to paragraph 5 of the statement of defence, further states that as at the 14<sup>th</sup> day of January, 2020 when the act complained about

by the Claimant occurred, the Defendant was still the National Vice Chairman (North East) of the All Progressive Congress, a position he held until the National Working Committee of the party was dissolved on the 26<sup>th</sup> of June, 2020. The averments contained in paragraphs 6,7,8,9,13,14,16 and 19 of the Statement of claim are correct, that a lot of members present intervened and tried to call the Defendant to Order such as Hon. AdamuFanda and Hon. Ahmed Suleiman Wambai amongst others who both pleaded with the Defendant to apologize to the Claimant, for calling him a useless thief, rogue, an idiot and a worthless bastard in the presence of members of the National Working Committee of the party but he refused and continued threatening to beat up the Claimant.

The Claimant states that at no time did he patch-up any differences with the Defendant who deemed it convenient and okay to insult him in public without recourse to the fact that such utterance could be detrimental to the public image of the Claimant. Rather, it was the Defendant who in his wisdom, instead of apologizing to the Claimant sent text messages as stated in his defence. These text messages in no way a retraction nor a withdrawal of his slanderous comments. The Defendant only sent those messages to him as an afterthought as the contents of the said translation exhibited by the Defendant is an acknowledgment that he had wronged the Claimant, hence he cunningly and wittingly sought for forgiveness through the back door rather than do the proper thing.

The Claimant further avers that his reply to the text messages sent to him by the Defendant was simply a show of maturity from him and same did not translate to patching up according to the Defendant. Whereof, the Claimant further urges this Honourable Court to grant his reliefs sought in the statement of claim.

Parties closed their respective cases to pave way for filing and adoption of final written addresses.

Learned counsel for the Defendant formulated two issues for determination to wit;

- ***Whether the Claimant has proved his case against the Defendant.***
- ***Whether the Claimant is entitled to the reliefs sought.***

On issue one, *whether the Claimant has proved his case against the Defendant.*

Learned counsel submits, that the Claimant has failed to prove his case against the Defendant.

***OGUNTADE VS. OYELAKIN (2020) 6 NWLR (Pt. 1719) 41*** was cited.

It further his argument that Claimant's pleading and the evidence adduced at trial depict a total failure on the part of the Claimant to embrace and engage the admonitions of the noble law lords on this score. The Claimant presented two witnesses other than himself. It is rather curious that none of the witnesses testified on how he was impacted by what the Defendant allegedly said about the Claimant. Neither of the witnesses presented testimony to the effect that he thought less of the Claimant as a result

of what the Defendant allegedly said about the Claimant.

Learned counsel contends, that in paragraph 12 of the Statement of claim, the Claimant averred thus;

### **Paragraph 12**

*“The Claimant avers that surprisingly, on the 14<sup>th</sup>, 15<sup>th</sup> January, 2020, he started receiving call from his colleagues, fellow politicians, clients, business partners, family members and well-wishers about some defamatory statement that was made against the Claimant”.*

The Claimant did not lead a scintilla of evidence in support of this paragraph, and that is not surprising because indeed, there is nothing in the paragraph

that places the Defendant in the midst of the scenario. No mention was made of the source of the information that those who allegedly called the Claimant relied on. The averment is nebulous and hydra headed.

***SALAUDEEN VS. MAMMAN (2000) 4 NWLR (Pt. 686) 63, at 85 Paras H – 86 Paras*** was cited.

Learned counsel further contends, that regarding the Witness Statements on oath and the testimonies of PW2 and PW3, it is nowhere mentioned how the remarks allegedly made by the Defendant lowered the estimation of the Claimant in their eyes. The Claimant failed woefully in that regard and as such as should have this case dismissed.

***OLOGE VS. NEW AFRICA HOLDINGS LTD.***  
***(2013) 17 NWLR (Pt. 1384) 449 at 469 Paras A – F***  
was cited.

On issue two, ***whether the Claimant is entitled to the reliefs sought.***

Learned counsel submits, that the reliefs sought by the Claimant against the Defendant are unfounded unsupported by evidence and have no basis in law and should therefore be denied. Reliefs (a – b) are declaratory reliefs. A Plaintiff who seeks declaratory reliefs must succeed on the strength of his own case.

***TAKORI VS. MATAWELLE (2020) 17 NWLR (Pt. 1752) 165 at Pp. 187 – 188 Paras H – B*** was cited.

Learned counsel further submits, that the Claimant in this case did not discharge the burden of proof placed on him by our adversarial system of law. He

did not make out a case against the Defendant. He merely asserted that he was defamed by the Defendant at the January 14<sup>th</sup>, 2020 meeting of the National Working Committee (NWC) of the APC at which he said many members (though unnamed) were present. Regarding reliefs (d) and (e), not only did the Defendant provide testimonies by himself and via DW3 that the words were not uttered, he also testified that he sent messages (Exhibits “D1” & “D2”) to the Claimant to smooth things over between them in the meeting of January 14<sup>th</sup>, 2020. He said that his religion mandated it and he did so in accordance with the tenets of his religion. Regarding reliefs (f) and (g), the Defendant submits that what the Claimant demands of this Court are unreasonable, unfounded and lacking basis in law.

***IWUEKE VS. I.B.C (Supra)*** was cited.

Learned counsel also contends, that the Claimant in his statement of claim made heavy weather that alleged words were uttered in the presence of about 20 members of the National Working Committee (NWC) of the APC. What then would be the justification for an award of N500,000,000.00 (Five Hundred Million Naira)? The answer to the question above is that, there is no basis for such an award to be made. In an action for defamation, in considering the assessment of damages, the Court will take into consideration the conduct of the Defendant before the action, after the institution of the action, and in Court during the trial; the nature of the publication and the absence of retraction or an apology.

***AWOLOWO VS. THE WEST AFRICAN PILOT (1961) ALL NWLR 896*** was cited.

Learned counsel concluded by urging this Honourable Court that the Claimant's case should be dismissed in its entirety with substantial cost for lacking merit.

On their part, Claimant filed final written address wherein sole issue was formulated for determination to wit;

***- Whether from the facts presented before the Court, the Claimant has proved his case as to be entitled to the reliefs sought.***

Learned counsel submits, that the Claimant in proof of his case, testified in person as PW1 and tendered in evidence a letter dated the 16<sup>th</sup> January, 2020 written on behalf of the Claimant to the Defendant demanding for apology and the retraction of the defamatory statement made by the Defendant which

letter was admitted by this Honourable Court and marked as Exhibit “A”. The Claimant further called two other witnesses who testified as PW2 and PW3. The testimony of PW2 was credible, unshaken and not discredited at all by the Defendant under cross-examination. Testimony of PW3 was also credible, unshaken and not discredited at all by the Defendant under cross-examination.

Learned counsel further submits, that by the provision of Section 131 of the Evidence Act 2011 (as amended), in civil cases, the burden of proof is on the party who asserts a fact to prove same, for he who asserts must prove. The standard of proof required is on a preponderance of evidence and balance or probabilities. This position of the law is well settled and very trite.

***DAODA VS. N.N.P.C (1998) 2 NWLR (Pt. 538)  
355 at Paras D – E.***

The Claimant's case here is very clear and unambiguous. Though the Defendant made a lame/weak attempt in trying to deny this fact, but the testimony of PW3 (Hon. Ahmed Suleiman Wambai) who stated before this Honourable Court that he actually sat between the Claimant and the Defendant is very important and vital in this suit.

Learned counsel also submits, that the words used by the Defendant when he freely defamed the Claimant, were words that ridiculed, shamed and denigrated the Claimant in addition also disgracing the Claimant in the presence of his colleagues who are also members of the National Working Committee. The Defendant in paragraph 5 of his

statement of defence said that he did not utter the words ascribed to him and said no more, he failed and/or neglected **to lead evidence to state what he said to the Claimant.** It is never a defence for the Defendant to say that he did not say anything to the **Claimant when the testimony of the Hon. Suleiman Wambai who testified as PW3 equivocally stated that he sat between the Claimant and the Defendant and he heard the Defendant say the words ascribed to him by the Defendant, PW3, went further to state that the Defendant even said that the Claimant “collected money from them, that is why you want us to compromise”.**

The admission of the Defendant in paragraph 6 of the Statement of Defence where the Defendant stated that the only one demand for apology was

made to him by the Claimant by way of Exhibit “A”. The Defendant admitted in his pleading and under cross-examination that he received the letter marked Exhibit “A”. The Defendant equally did not reply to Exhibit “A” even if just to debunk the contents of the said letter. The act of the Defendant is a clear admission of the contents therein.

***AKINLAGUN VS. OSHOBOJA (2006) 12 NWLR (Pt. 993) 60 at 84 Paras B – C and 92 paras C – D*** was cited.

These facts were not contradicted under cross-examination; therefore these facts are admissions on the part of the Defendant that he said those words.

***OKOEBOR VS. POLICE COUNCIL (2003) 12 NWLR (Pt. 834) 444 SC.*** was cited.

Learned counsel contends, that for the testimony of DW3, the Defendant's last witness in paragraph 6 of his witness statement on oath stated thus;

***“That I was at the meeting of January 14<sup>th</sup>, 2020 that the Claimant referenced in his statement of claim and I never heard the Defendant utter the words that the Claimant has ascribed to him in this law suit.”***

Given the ordinary meaning of the phrase, the literal meaning is not that the Defendant did not utter the defamatory words complained of by the Complainant but rather the deponent DW3 did not hear the Defendant utter words. DW3 under cross-examination when he was asked by the Claimant's counsel the following, responded as follows:-

Qst:- Do you know what a statement of claim is?

Ans:- I do not know.

Qst:- I know that you have read the Claimant's statement of claim given to you.

Ans:- I did not read it.

The answers given to these questions are in clear contradiction and contrast with the averment contained in paragraph 6 of the witness deposition of DW3.

Having admitted under cross – examination that he did not read the statement of claim, DW3 cannot state in paragraph 7 of his witness deposition that (it never degenerated to the level that the Claimant stated in his statement of claim).

DW3 having not read the statement of claim, failed to state to the court from where he obtained the

information contained in paragraphs 6 and 7 of his witness deposition, the said paragraphs are in contravention of section 115 (3) of the Evidence Act 2011 and should be expunged.

Learned counsel concludes by urging this Honourable Court to grant the reliefs of the Claimant as contained in the statement of claim.

On their part, Defendant filed reply on points of law to the Claimant's final written address. Wherein issues were formulated as arguments in support of legal points.

Whether the Claimant can rely on testimony that was not pleaded.

Learned counsel submits, that parties are bound by their pleadings. ***NIPC VS THOMPSON ORGANISATION (1969) ALL NLR 13 was cited.***

What the Claimant referred to in paragraph 3.6 of the Claimant's written address is completely different from what the Claimant pleaded and what DW3 testified to under cross – examination. In his testimony as captured by the court's record, PW3 said the following:-

***“Salihu Musa then referred to Masari as a rogue, blackmailer and that he received money from them and that is why he is asking him to keep quiet”***

This was not the Claimant's case as contained in his statement of claim and such, the testimony referred to above should be discountenanced. It makes no difference whether the testimony of un-pleaded facts was obtained under evidence in - chief or during cross – examination.

***OKWEJIMINOR VS GBAKEJI (2008) 5 NWLR (Pt. 1079) 172 at 212 – 213 Paragraphs F-A was cited.***

***Whether the Defendant's failure to do a written reply to Exhibit "A" amounted to an admission of its content.***

What the Claimant espoused in the above referenced paragraph does not represent the position of the law. This is an action in the tort of defamation in which the onus of proof lies on the Claimant.

***Whether DW3's testimony contravened the positions of section 115 (3) of the Evidence Act and should therefore expunged.***

Section 115 (3) of the Evidence Act, 2011 is not applicable in this instance. Paragraphs 6 and 7 of the witness statement on oath are facts within the

knowledge of DW3. The assertions were repeated in the paragraphs 23(a), (c) and (f) of the statement of claim and they are also contained in the writ of summons.

Learned counsel further submits that the Claimant's submissions in paragraphs 3.9 and 3.11 are pure speculations. No testimonies were offered in proof thereof. The law is well settled that no matter how brilliant the address of counsel is, it cannot be a substitute for pleadings or evidence.

Courts are enjoined to limit and restrict themselves to pleaded and proved facts.

***OKWEJIMINOR VS GBAKEJI (Supra)***, was cited.

Learned counsel on the whole concludes by urging this Court to dismiss the claims of Claimant with cost.

## **COURT:-**

I have gone through the evidence adduced by the Claimant and the Defendant on the one hand and the respective final written addresses and arguments on the other hand.

Issues 1 and 2 formulated by Defendant for determination is same and one thing with the lone issue formulated by Claimant for determination.

In the opinion of Court, the lone issue formulated by Claimant for determination which encompasses the Defendant's issues 1 and 2 is apposite and therefore adopted as issue for determination of this suit by this Court; i.e

***Whether Claimant has proved its case against the Defendant to be entitled to the reliefs sought.***

From the statement of claim as indorsed on the Writ of Summons, the claim of Claimant is predicated tort of slander which is a specie of defamation.

What then is the meaning of Defamation and Slander in law?

Defamation has been judicially defined through numerous cases as the making of a statement which has a tendency to injure the reputation of the person to whom it refers, which statement also tends to lower him in the estimation of right thinking members of the society generally. The said statement must also cause the person to be regarded with feeling of hatred, contempt ridicule, fear, disdain or disesteem.

Defamation has two arms, i.e libel and slander; libel is defamation in a permanent form mostly written or

printed words in a book, letter, notices, newspapers etcetera etcetera; whereas slander usually is expressed through speech.

*“Slander in general terms, is a defamatory assertion expressed usually in a transitory form especially through speech. It is expressed viva voce. Damages for slander, unlike those in libel, are not presumed and thus, must be proved by the Plaintiff; unless the defamation is slander per se. The act of making such a statement must be proved. Slander is a civil injury only. Slander per se is one for which special damages need not be proved because it imputes to the Plaintiff anyone of the following:*

*1. A crime involving moral turpitude;*

2. *A loathsome disease such as a sexually transmitted disease;*
3. *Conduct that would adversely affect one's business or profession or*
4. *Unchastily, especially of a woman.?*

*Slander is said to be an injurious falsehood.*

*It is a disparaging statement or utterance. If it imputes criminal motive, it is ordinary actionable per se and damages for such is presumed..It is actionable without proof of special damages.”*

*See EGBE VS. ADEFARASIN (1987)1 SC. 1 at Page 20.*

The following are the essential ingredients of slander;

- a. False Communication

- b. Unprivileged statement of fact (not opinion)
- c. It was made about the Claimant.
- d. Caused damage to Claimant

In establishing the fact that there was slanderous utterance made by the Defendant against him, the Claimant called in two witnesses to testify before this Court, as captured in the preceding part of this Judgment.

For avoidance of doubt, the slanderous statement that the Defendant made is hereby reproduced;

***“Useless Thief, Rogue, an Idiot and a worthless bastard”.***

I need to restate the age long position of law with respect to the burden of proof. Whoever desires any Court to give him Judgment as to any legal right or

liability dependent on the existence of facts which he asserts shall prove that those facts exist.

See Section 131(1) of Evidence Act, 2011,

***UGBO VS. ABUBAKAR (1993) 2 NWLR (Pt. 273) 101, 109.***

It is the evidence of PW1 i.e Claimant himself (Alh. Ibrahim Kabir Masari) that Defendant referred to him as a rogue, useless thief, worthless bastard and an idiot.

Claimant stated in his evidence that the name calling by Defendant was done in the presence of members of the National Working Committee of APC when Claimant indicated interest to contribute on the issue of replacement of the Party's National Secretary which was zoned to the North-East Zone.

It is the evidence of PW1 that Defendant appreciated the impost of what he uttered and without any form of regret as all efforts to have him apologize to Claimant fell on deaf ears. Defendant equally threatened to beat-up Claimant.

Claimant further gave evidence that Defendant refused to retract the said defamatory statements, give public apology to the Claimant despite serving him with such letter which was tendered as Exhibit “A”.

The evidence of PW1 (Claimant) was corroborated by PW2 and PW3 in the persons of Hon. AdamuFarda and Hon. Ahmed Suleiman Wambai who were both Treasurer of APC and National Vice Chairman North-Central Zone and member of the National Working Committee of the APC and were

at the meeting of 14<sup>th</sup> January, 2020 when Defendant called Claimant the said names and even threatened to beat Claimant up.

Both PW2 and PW3 confirmed the fact that Defendant called Claimant Rogue, Useless Thief, Worthless Bastard and Idiot.

On the part of Defendant, however, he denied making such slanderous utterance but did not deny making any utterance at all. He contended that he merely made an utterance towards the Defendant and is protected by the doctrine of fair comment as a defence.

The Defendant also presented evidence before this Court that is to lead this Court into believing that he had made amends with the Claimant.

The Defendant in his defence tendered the following documents to show that he had made amends with the Claimant and all is presumed to be well.

- The transcribed text message from English to Hausa and vice versa marked Exhibits “D1” and “D2”.
- Printout of text messages that the Defendant and Claimant exchanged.

The printout of the text messages that the Defendant and Claimant exchanged is hereby reproduced, as we descent.

***“Defendant: Salaam, I called to wish you eid el mufida. Also to seek forgiveness for all misgivings between. I have forgiven and forgotten all the ill feelings I wish you will do***

*the same. Allah(swt) yayafemanaalbarkachin wannawata. Ayisallahlafiya*

*Claimant: Allah forgive all of us Alh. Mustapha AyiSallahLafiya”*

*Defendant: Thank you very much I am happy we resolved. Allah yakare mudagashaidan”.*

Defendant denied uttering the words Claimant ascribed to him at any point in time.

Defendant equally gave evidence on the fact that he never responded to Claimant’s letter for retraction and apology because he felt it was more of a fiction than reality.

DW2 merely gave evidence on how he was contracted to interpret the text message exchanged

between the Claimant and Defendant which was earlier tendered and admitted in evidence.

On the part of the DW3 (Chief Hon. Victor Giadom), who was the acting National Chairman of APC, he said he held the positions of Deputy National Secretary of APC and Acting National Secretary of APC and a member of the National Working Committee (NWC) of APC.

DW3 denied hearing such words uttered by Defendant as stated in this lawsuit.

DW3 however stated that Claimant and Defendant had disagreement on the issue of the National Secretary but that it never degenerated to what Claimant said.

DW3 however stated under cross-examination that he does not know what statement of claim is and that he did not also read the statement of claim.

I shall ask PW3 the following question; as follows:

1. If DW3 did not read the claim against the Defendant, how come his evidence that he did not hear Defendant utter the words Claimant ascribed to him?
2. What were the things Claimant and Defendant said in the disagreement they had on the issue of National Secretary?
3. Were Claimant and Defendant the only ones that spoke on the issue of the National Secretary?

It is my firm judgment that PW3 who was drafted to Court to give evidence for Defendant, did not know

clearly what is in issue but for the fact that he needed to support the Defendant.

I dare say that the evidence of DW3 is not helpful to the case of the Defendant..at all.

I further wish to state that the messages initiated by Defendant to Claimant which was transcribed and tendered evidence as afore-reproduced, wherein Defendant stated as follows...

***Thank you very much; I am happy we resolved...,***  
has compromised the evidence of Defendant.

What was between the Defendant and Claimant was happily resolved!

What and what!

It is enough to show that the words complained of, are completely false. Where defamatory words are

uttered without lawful excuse, the law conclusively presumes that the Defendant is motivated by what is often described as malice in law.

Indeed going by the evidence before this Honourable Court, particularly the evidence of DW1 put side by side with the exhibits tendered, can it be said that the Defendant is entitled to safety from the law merely because he denies making the slanderous utterances? DW3 in his evidence before this Court stated that he never heard the Defendant utter the words that the Claimant has ascribed to him in this case.

There is neither evidence before this Court to prove that the Defendant despite denial, did not make any slanderous utterance nor evidence of what the Defendant actually said to the Claimant on the 14<sup>th</sup> day of January, 2020.

Moreso, DW3 called by the Defendant admitted under cross-examination by the Claimant's counsel whether he knows what a statement of claim is, his answer was "*I do not know*". And when the Claimant's counsel said "I know that you have read the Claimant Statement of claim, his answer was "*I did not read it*". Having admitted under cross-examination that he did not read the Claimant's statement of claim, DW3 cannot then reference paragraph 7 of his witness statement on oath that it never degenerated to the level that the Claimant stated in his Statement of Claim.

To any rational thinking person, it clearly means DW3 did not even know what he was talking about. I daresay, it was merely an occasion of aimlessly and ignorantly giving information to this Honourable Court.

It is instructive to state here that, while everyone has (or should have) a fundamental right to freely speak their minds, your freedom of expression is not absolute. Accordingly, there are consequences for making statements that you know are untrue. Especially when said utterances cause harm to another person's reputation.

I have read the text messages initiated by Defendant to Claimant as afore-reproduced.

What was the intendment of such a message, if I may ask?

What have Claimant and Defendant resolved as stated in the text message sent by Defendant to Claimant, if I may ask?

Defendant by the said text message reached-out to the Claimant in search for peace, but refused to

comply with Exhibit “A” which was a letter from Claimant to Defendant seeking retraction and apology.

Under cross-examination, Defendant stated that his first message to Claimant was not just a Sallah pleasantry but also an effort to settle their difference with Claimant in accordance with the tenets of his religion.

This is clearly an admission on the part of Defendant that he called Claimant all the unprintable names as mentioned by Claimant.

This is clearly an admission against interest pursuant to Section 24 of the Evidence Act, 2011.

For admission against interest to be relied on and accepted by the Court as prove of the matter or fact in issue; it must be weighed along with the entire

evidence on record in order to determine its correct and proper probative value, since an admission based on mistaken belief of the facts and true position of the law is not an admission against interest.

See ***KAMALU & ORS VS. UMUNNA & ORS (1997) LPELR – 1657 (SC)***.

Claimant and the witnesses who gave evidence as PW2 and PW3 dwelled on what had transpired between Claimant and Defendant. The evidence of PW2 and PW3 were not discredited under cross-examination. I am minded to believe and use the evidence.

See the case of ***ADELAKUN VS. OTUKU (2006) ALL FWLR (308) 1360 at 1373***.

Defendant merely denied the Claimant without more, but failed to state his own side of the story.

Other than the fact that DW3 said he simply did not hear Defendant utter words Claimant ascribed to him; DW3 did not state what he heard Defendant say when they both had the argument with relation to the party's Secretary, as he puts it.

The lone issue formulated for determination on the face of the admission by Defendant is hereby resolved in favour of the Claimant.

The principal relief sought on the face of the statement of claim are declaratory reliefs. The law is clear on the fact that such declaratory reliefs are not granted based on admission or absence of defence, but shall be granted based on evidence adduced before the Court.

Claimant clearly has made out a case for defamation against the Defendant. Reliefs 1, 2 and 3 on the whole succeed and hereby granted.

The other reliefs touching on apology, injunction, damages become clearly grantable in view of the success of reliefs 1,2 and 3 earlier granted.

The Claimant was both the National Welfare Secretary and Member of the National Working Committee (NWC) of the All Progressive Congress (APC).

On the other hand, Defendant was the National Vice Chairman North-East Zone of the All Progressive Congress (APC) and also a Member of the National Working Committee of the APC.

Both Claimant and Defendant who were Member of the National Working Committee (NWC) of the All

Progressive Congress (APC) were at the meeting of the National Working Committee (NWC) held at the National Secretariat of the Party with 14 other members, and the said meeting was presided by the National Chairman of the APC.

The APC is the ruling Party in Nigeria with a very large followership cut across the 36 States and Local Governments.

Defendant who insulted Claimant by the words carefully used, clearly gave away the image and integrity of the Claimant regardless of the people around. These words targeted at the Claimant have travelled far and wide.

It is pertinent to note, that in slander cases, once the utterances are found to be slanderous of the

Claimant, damages follows, and the damages to be awarded is general damages.

On the award of damages, once the Court finds that the utterances complained of are defamatory of the Claimant, the Supreme Court has developed the following principles which should serve as a guide.

1. That the award must be adequate to repair the injury to the Plaintiff's reputation and this does not require proof of pecuniary loss.
2. That the social standing of the Plaintiff must also be considered.
3. That the rate of inflation which has adversely affected the value of the National Currency must also be taken into account.

4. The Court must also take into account the fact that the Defendant did not show any remorse.
5. That it must reflect the reaction of the law to the impudent and illegal exercise in the course of which the slander was made against the Defendant.
6. That the Court must also take into account the loss of social esteem and the natural grief and distress to which the Plaintiff may have been put.
7. That the award must at one for the assault on the Claimant's character and pride which were unjustifiably invaded.

***OFFOBOCHE VS. OGOJA LOCAL GOVT. & ANOR (2001) 12 SCM 185;***

***GUARDIAN NEWSPAPER LTD. & ANOR VS. AJEH (2011) 5 SCM 111 at 133 Paragraphs F – I.***

Above is in agreement with the latin maxim, “ubi jus ibiremedium”, which Holt C.J in the famous case of ***ASHBY VS WHITE (1703) 2 LD RATM 938*** postulated the principle that, ***if the Plaintiff has a right he must of necessity have the means to vindicate it, and a remedy, if he is injured in the enjoyment or exercise of it; and indeed, it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal.***”

The maxim ubi jus ibiremedium is simply the Latin rendition of the above principle. The maxim is so fundamental to the administration of justice that where there is no remedy provided either by the

common law or by statute, the Court has been urged to create one.

The court cannot therefore be deterred by the novelty of an action. They usually look at the facts.

If from those facts a court is satisfied:

- i. That the Defendant was under a duty to the Plaintiff.
- ii. That there was breach of that duty
- iii. That the Defendant suffered legal injury
- iv. That the injury was not too remote.

If all these factual situations exist, the Court will surely provide a remedy. That was why Denning, **M.R** in ***PACKER VS PACKER (1954) (Pt. 15) at Page 22 was able to assert:***

*“What is the argument on the other side? Only this that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything, which has not been done before, we shall never get anywhere.*

*The law will not stand still whilst the rest of the world goes on and that will be bad for both.’ The law is an equal dispenser of justice, and leaves none without a remedy for his right.*

*It is a basic and elementary principle of the common law that wherever there is a wrong, legal wrong or injuria that is, there ought to be a remedy to redress that wrong. Ubi jus ibi remedium is thus essentially a common law principle.”*

Claimant who was called names reserves the right to claim both special and general damages as it were. The only issue is that, as it relates to special damages, Claimant is under an obligation to particularize such a claim and lead evidence in prove of same.. Whereas in the case of General damages, there isn't such.

General damages are presumed to flow from directly from the wrong complained of..

There is no yardstick to guide the court in its award except the ordinary expectation of a reasonable man.

See ***LAR VS. STIRLING ASTALDI LTD. (1977) 11/12 SC. 53.***

Claimant has carefully led evidence in support of the particulars of special damages. He has every reason to be granted special damages.

I hereby award N50,000,000.00 (Fifty Million Naira) against the Defendant as special damages.

In the estimation of this court, I am also minded to award general damages against the Defendant.

I hereby award the sum of N5,000,000.00 (Five Million Naira) against the Defendant.

I hereby also further Order Defendant to apologize in writing to the Claimant.

Relief “E” for perpetual injunction is also hereby granted.

In deciding this case, I made sure only the value, credibility and quality as well as probative essence of evidence were allowed into the imaginary scale of justice.

This, I hope, represents the true justice of this case.  
May God bless.

*Justice Y. Halilu*  
*Hon. Judge*  
*10<sup>th</sup> February, 2022*

**APPEARANCES**

Alfred N. Agu, Esq. with Wushi Rejoice B., Esq. -  
for the Claimant.

WoleAfolabi, Esq. with O.C Ugwu, Esq. – for the  
Defendant.