

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 5<sup>TH</sup> DAY OF OCTOBER, 2022.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**

**SUIT NO.:-FCT/HC/CV/3405/2020**

**BETWEEN:**

**PASTOR ENGR. OKEREAFOR:.....CLAIMANT**

**AND**

**EUCHARIA EKE:.....DEFENDANT**

Ugwuoke Martins Chijioke for the Claimant.  
Defendant unrepresented.

**JUDGMENT.**

The Claimant, by a Writ of Summons dated and filed the 9<sup>th</sup> day of December, 2020, brought this suit against the Defendant, claiming for the following;

- a) The sum of N10,000,000 (Ten Million Naira) damages against the Defendant for defamation of his character, reputation, credit and person in addition to money for investment trapped in the transaction, lost(sic) of business deals/contracts as well as friends.
- b) An order of injunction restraining the Defendant, her agents or privies and those working for/with or on her behalf from further defamation of his character, reputation, credit and person.
- c) Cost of this action to the tune of N600,000 (Six Hundred Thousand Naira) only.

The case of the Claimant against the Defendant, as distilled from the statement of claim, is that he entered into an oral agreement with the Defendant to go into a joint venture restaurant business. That the Defendant agreed to be giving him day to day updates on the transactions to be run by the prospective joint venture.

In furtherance of this agreement, the Claimant transferred, at different dates, a total sum of N6,800,000.00 to the Defendant.

The Claimant averred that inspite of the agreement he had with the Defendant and the monies transferred to her for the business, the Defendant never cared to give him the accounts of the various transactions she embarked upon on behalf of the proposed joint venture. That the Defendant would not give satisfactory response to the Claimant's enquiries, but chose to keep the Claimant in the dark regarding the affairs of the business.

The Claimant stated that when the Defendant realized that he has discovered her evil plot to divert his investment for her permanent use, the Defendant resorted to lies via a plethora of defamatory statements she made in her responses during several WhatsApp chats between the parties. That in one of such chats, the Defendant falsely claimed to have gone to bed with him, just to confuse those who are not aware of the agreed intention of the parties that prompted the Claimant to start sending the money he sent to her.

The Claimant further stated that when he drafted a joint venture agreement and sent to the Defendant to sign in order to have their agreement defined on paper, the Defendant refused to sign but rather sent him more defamatory text messages via WhatsApp. That he then wrote a letter of demand to the Defendant, asking her to pay back his entire investment, but

what he got in response was a much more grievous defamatory letter from the Defendant through her lawyer.

On the particulars of libel (defamation) by the Defendant, the Claimant averred that in the 4<sup>th</sup> paragraph of the letter by her lawyer, the Defendant stated thus: ***“Recall that after exchange of phone numbers with our client, you started calling her, you approached her for love affairs to which she agreed after which you instructed that she must not disclose your affairs with her to Chief VitalisNworgu and pledged to take care of all her financial needs.”***

Also, that in the 7<sup>th</sup> paragraph of the letter, the Defendant stated as follows: ***“Things got to its acme when our client politely declined your proposal to marry her with reasons that since you already have a wife and children, she was not ready to break another woman’s home despite your persuasion and assurance that as a chief, you were entitled to many more than one wife. Subsequently, you sent the above subject matter letter in which you tend to change the narratives and vent your anger on our client for not allowing you to take over her business and for turning down your marriage proposal.”***

On the publication of the alleged libellous statements, the Claimant averred that the foregoing statements by the Defendant, attracted the attention of friends, well-wishers and relatives, including the Claimant’s wife, yet the Defendant grossly refused and neglected to withdraw the defamatory statements after several attempts to settle the issue out of Court by the above group of persons before whom both the letter written by the Defendant’ lawyer and the main issue were presented.

The Claimant stated that this has seriously weakened the relationship between him and his wife, as his wife now casts doubt on the trust she formally held for him, coupled with the fact that his reputation is at stake before his family members. Also, that fellow pastors and members of his church are inquisitive about the defamatory statements of the Defendant, to know whether they should distance themselves from him and sanction him accordingly, if the libellous statements turn out to be true or is not openly disproved.

He averred further, that family members, friends and members of his community who held him in high esteem are already of their own view that except there be a public reversal of the defamatory comments, he would never be allowed to hold a public sensitive post for them. That the friendship ties between him and his old time friend Chief VitalisNworgu, has been destroyed by the said statements.

The Claimant averred that as a pastor, he can never and would never think of a second wife let alone bringing the above alleged proposal.

That even the Chieftaincy title he has, came to him as an honour from his community, and not acquired license for having many wives.

Also, that he has never and is never ready to have any immoral affair with the Defendant as his faith as a pastor, totally forbids sexual immorality. He stated that despite the above true information about him, which the Defendant is aware of, the Defendant has continued in her persistent defamation on him. That the said defamatory statements have caused him a lot of emotional, financial and social disharmony, and that he has lost a lot of business negotiation deals and business partners as a result of the comments of the Defendant.

The Claimant further averred that he has suffered serious economic loss consequent upon the said acts of the Defendant because he could have invested the money in another business and made millions over it since then.

He stated that unless restrained, the Defendant intends to continue in her false and malicious defamation against his character, credit, reputation, and person.

Although the Claimant filed witness statements on oath of three (3) witness who were to give evidence in proof of his case, only the Claimant testified at the hearing of the case.

Testifying as PW1, the Claimant adopted his witness statement on oath wherein he affirmed the averments in his statement of claim. He also tendered the following documents in evidence:

1. Re: Demand for the Repayment of Investment Amount of N6.8million – Exhibit PW1A.
2. Demand for Repayment of Investment Amount of N6.8million – Exhibit PW1B.
3. WhatsApp Chats printout –Exhibit PW1C-C10.
4. Certificate of Compliance – Exhibit PW1C12.
5. Statement of Account – Exhibit PW1D-D60.
6. Certificate of Compliance – Exhibit PW1D61.

The Defendant entered appearance to the suit but failed to be present to cross examine the PW1. She equally failed to file any process in defence of the suit. Consequently, her right to cross examine the PW1 and to defend the suit, was foreclosed on the Claimant's application.

The Claimant subsequently filed final written address which he adopted on the 7<sup>th</sup> day of July, 2022.

In the said final written address, learned Claimant's counsel, Ugwuoke Martins Chijioke, Esq, raised a lone issue for determination, to wit;

***“Whether the Claimant has successfully proved his case to warrant the honourable Court to enter judgment for it to grant the reliefs sought therein?”***

Arguing the issue so raised, learned counsel posited that the Claimant by his pleadings and evidence, established that he invested, through transfers to the Defendant's account, a total sum of N6,800,000, in the Defendant's restaurant business as a partner, as well as the defamatory statement made against him by the Defendant through her letter to the Claimant.

He argued that no evidence was led or called by the Defendant to dispute or challenged the Claimant's claim against her.

He contended that the Claimant has placed sufficient material facts before the Court that would necessarily aid the Court in granting his claims.

Learned counsel further posited that the validity of the unchallenged documents tendered by the Claimant, must be presumed until the contrary is proved.

He urged the Court in conclusion, to hold that the Claimant has proved his case by the tendering of his unchallenged documents, and to enter judgment for the Claimant as per his claims.

The first task in the determination of this suit, is to ascertain the exact claim of the Claimant before this Court. In this regard, the Supreme Court, in the case of **Adeludola&Ors v. Akinde&Ors (2004)LPELR-120(SC)**, held per Edozie, JSC, that:

***“To ascertain the exact claim of a Plaintiff in a suit, one generally must have recourse to the writ of summons, and the claim as endorsed in the statement of claim.”***

In the instant suit, and on the Writ of Summons, the Claimant claimed for N10m damages for defamation, order of injunction and cost of this action.

From the claims/reliefs as endorsed on the Writ of Summons, it is evident that this suit borders on the tort of defamation, which from the averments in the statement of claim, has to do with an alleged libel.

The question then to consider, in the determination of this case, is whether the Claimant has established a case of libel against the Defendant as to be entitled to the award of damages. Adumbrating on the meaning of defamation, the Court of Appeal in **Schlumberger (Nig) Ltd v. Onah (2007)All FWLR (Pt.389) 1327 at 1366**, held per Dongban, Mensen J.C.A. that:

***“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 feelings of hatred, contempt, ridicule, fear, disdain or disesteem. Libel is defamation by publication.”***

From the above definition of defamation, it is clear that the determination of whether a statement is defamatory, is not the effect such statement had on the person to which it was directed, but the effect such statement has on right-thinking

members of the public vis-à-vis their perception of the person to whom the statement was directed.

To succeed in an action for libel, the Claimant must prove the following ingredients, as enunciated by the Court of Appeal in **Guaranty Trust Bank PLC v. Fadlallah (2009) LPELR-8355(CA)**:

- a. That the Defendant published in a permanent form a statement, which is false.
- b. That the statement referred to the Claimant.
- c. That the statement was defamatory of him in the sense that:
  - i. It lowered him in the estimation of right-thinking members of the society, or;
  - ii. It exposed him to hatred, ridicule or contempt, or;
  - iii. It injured his reputation in his office, trade or profession, or;
  - iv. It injured his financial credit, or;
  - v. That it was published to some other person aside the Claimant and the Defendant.

See also **Mbang v. Guardian Newspapers Ltd & Anor (2010) LPELR-4479(CA)**.

The cardinal requirement in an action for libel is that the Claimant must prove that the alleged defamatory statement was published to some other person other than the Claimant. In **Guaranty Trust Bank PLC v. Fadlallah (supra)**, the Court held thus:

***“It is trite law that where the mode of publication of libellous words was by letter, the statement of claim must, in principle, show that the words were published on a stated occasion to a named person or persons other than the Plaintiff. The Plaintiff should specify the***



***date on which and the person/persons to whom the libel was published.”***

In other words, to constitute publication of defamatory words there must be communication to another person other than the Claimant. Clearly, from the above definition, the exhibition or publication of the words to a third person is deemed sufficient publication.

In the instant case, the Claimant tendered Exhibit PW1A as the libellous publication by the Defendant. The said exhibit, is a letter addressed directly to the Claimant by the Defendant's counsel. There is nothing on the letter showing that same was copied to another person or persons other than the Claimant.

In paragraph 20 of the statement of claim, the Claimant averred that ***“...the above libellous statements, attracted the attention of friends, well-wishers and relatives including the wife of the Claimant... before whom both the letter written by the defendant's lawyer and the main issue were presented.”***

The purported defamatory letter Exh PW1A dated 4<sup>th</sup> October, 2020 authored by the solicitors of the Defendant at the instruction of the Defendant in response to Exh PW1B being letter of demand to the Defendant by the Claimant for payment of N6.8m plus RO1 N3m. I took deep patience in going through the processes filed to see if I could discover any defamatory documents as deemed by the Claimant. I failed to find any other than Exh PW1A the purported defamatory document being a letter in response to Exh PW1B authored by the Claimant. I can only assume and rightly, too that the Exh PW1A was an instruction given to the Defendant's counsel. Under the professional ethics rules, solicitors privileges include a communication which includes a document or instructions

between a lawyer and client for purposes of seeking or providing legal advice which is intended to be kept confidential. It is trite law that a solicitor-client privilege belongs to the client and can only be waived by the client.

A privilege in the legal sense, means legal rule that protects communications within certain relationships from compelled disclosure in a Court proceedings. Commonly cited are three known privileges thus;

- a) Solicitor and client.
- b) Doctor/therapist and patient.
- c) Priest and parishioner.

From common law which we inherited, legal professional privilege protects all communications between lawyer and client from being disclosed to a 3<sup>rd</sup> party. Generally the position of the law is that the lawyer acting on the instructions of his client is covered by the privileges. With privileges, a lawyer's instructions cannot be a publication. It is the duty of those in the legal profession to receive information/instructions related to defamation and other litigations to prepare pre-action notice to the other party and as such the lawyer cannot be sued for 'defamatory words' or unkind words stated in the letter informing the other party of the issues that gave rise or would give rise to the litigation. Once litigation is completed the litigation privilege is invoked which covers confidential communications between client/solicitor as it is passed on to the intended litigant. I believe the Defendant's counsel was merely doing his job and is protected by the litigation privilege and equally should not attract litigation on the client. The Exh PW1A contains issues resulting from the relationship between the Claimant and Defendant, or involvement. Even though the expression of the words were harsh, the purpose of Exh PW1A was created for settlement and in its failure in contemplation

of litigation. The purpose of PW1A was not fact finding and therefore privilege will apply.

Having said these, again there was no disclosure of Exh PW1A to a 3<sup>rd</sup> party outside the knowledge of the Claimant. The Claimant has failed to disclose to this Court where and how the Exh PW1A a solicitor's letter to him was published and made known to a 3<sup>rd</sup> party or group of people. I observed again, in Exh PW1B authored by the Claimant that the Claimant copied to persons known to him. Exh PW1B generated a response from the Defendant through his counsel and 3<sup>rd</sup> person was not copied. In the circumstances, there was no publication and the Claimant cannot by legal principles accuse the Defendant of defamation by reason of the letter her counsel wrote to Claimant. The Defendant made the statements to her counsel who is privileged to know the truth and has the duty to communicate it to the Claimant. Such communication was not any publication to a 3<sup>rd</sup> party and therefore the Claimant cannot claim that his reputation was lowered and thereafter exposed him to hatred. The statements made in the Exh PW1A were content of Defendant's instructions to the Counsel. It was not a publication to some other persons aside the Claimant and Defendant. It was only for their consumption.

From the foregoing analysis, it is the finding of this Court that the Claimant has failed to prove publication of the alleged libellous statement to any other person or persons other than the Claimant himself. Thus, the allegation of defamation is not proved by the Claimant, as required by law.

In the circumstances, the claim for damages for defamation fails.

In the same veins having not established the allegation of defamation, an order of injunction restraining further defamation, cannot lie, or be made by this Court.

From the totality of the foregoing, this Court holds that the Claimant's case failed in its entirety for want of proof. Accordingly the same is hereby dismissed with a cost of N50,000.00 (Fifty Thousand Naira).

**HON. JUSTICE A. O. OTALUKA**  
**5/10/2022.**