IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI - ABUJA

THIS TUESDAY, THE 25TH DAY OF APRIL, 2023.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/162/2015

BETWEEN:

DR. VINCENT ENEMONA ABU ……. CLAIMANT

AND

DR. TAMUNOMICIBI THOMPSON WAKAMA ..... DEFENDANT

JUDGMENT

By a Writ of Summons and statement of claim dated 13th November, 2015, the Plaintiff prays for the following Reliefs:

i. The sum of 500 Million Naira as aggravated damages for libel.

PARTICULARS

In the addition to the particulars of malice and recklessness elaborated in paragraph 25 above, the Plaintiff avers:

(a) That the Plaintiff was admitted for further studies in the University of Hull in the United Kingdom for (Doctor of Philosophy) Ph.D in Biological Science Haemato-Oncology but was prevented from going to the United Kingdom by his employers (the Nigeria Army) due to the malicious and reckless publication by the Defendant, the Plaintiff was denied permission to further his studies in the United Kingdom.

(b) The Plaintiff had no option than to stay behind in Nigeria because he was not declared to further his studies by his employers (the Nigeria Army) due to the malicious and reckless publication of DR. T.T. WAKAMA.

(c) The Plaintiff future as a Professional and a career in medicine is now in jeopardy.

(d) Generally, the Plaintiff's future is now shrouded in uncertainty.

ii. A written and published letter of apology by the Defendant for the malicious and the Defamation of the person of the of the Plaintiff to:

a. The Nigerian Chief of Army Staff
b. The National Postgraduate Medical College of Nigeria
c. The Registrar, National Postgraduate Medical College of Nigeria
d. The Chairman, National Postgraduate Medical College of Nigeria
e. A publication in 3 daily Newspapers, a letter of apology to the Plaintiff on the malicious and reckless publication.

iii. The sum of two thousand pounds 2000.00 only as the sum of money paid by the Plaintiff in respect of the tuition fee paid for his PHD program.

iv. A declaration that the Defendant has broken his Hippocratic Oath in dealing with the Plaintiff which he swore to uphold.

v. Other Reliefs.

The Defendant filed an Amended Statement of Defence dated 18th January, 2021 and set up a counter-claim against Plaintiff as follows:

1. **₦100,000,000.00 damages for Defamation of character.**
2. **₦100,000,000.00 as damages for assault and/or intimidation.**
3. **Total sum: ₦200,000,000.00.**

The Plaintiff then filed on 12th April, 2017 a Reply to Statement of Defence and a Statement of Defence to the Counter-Claim.

Hearing then commenced. In proof of his case, the Plaintiff called two witnesses.

The **Plaintiff** himself testified as **PW1**. He deposed to two (2) witness depositions dated 13th May, 2015 and 12th April, 2017 which he adopted at the hearing. He tendered in evidence the following documents:

1. Letter by Nigerian Army Headquarters enclosing 5 letters/annexures were admitted as **Exhibits P1 (1-5).**

2. Letter by National Postgraduate Medical College of Nigeria titled Re: Application for the Re-marking of my SCQ Answer Script dated 23rd November, 2011 was admitted as **Exhibit P2.**

3. Letter by Medical and Dental Council of Nigeria titled Re: Application for the Re-marking of my MCQ Answer Script dated 26th January, 2012 was admitted as **Exhibit P3.**

4. Letter of offer of Admission by the University of Hull dated 16th April, 2014 was admitted as **Exhibit P4.**

5. Confidential Medical Report of Plaintiff dated 15th November, 2012 was admitted as **Exhibits P5 (1-4).**

PW1 was then cross-examined by counsel to the Defendant.

Colonel Lawrence Apeh Benjamin testified as **PW2**. He deposed to a witness statement n oath dated 24th March, 2017 which he adopted at the hearing. PW2 was then cross-examined by counsel to the Defendant and with his evidence, the Plaintiff closed his case.

The Defendant on his part called three witnesses. The **Defendant** testified as **DW1** and the first witness. He deposed to a witness statement on oath dated 7th April, 2017 which he adopted at the hearing. He tendered in evidence the following documents:

1. Copy of Affidavit of Compliance dated 12th December, 2018 was admitted as **Exhibit D1.**

2. Three page print out of exchange of text messages was admitted as **Exhibits D2 (1-3).**

3. Five (5) pages of electronic mails admitted in evidence as **Exhibits D3 (1-5).**

4. Letter titled **"letter of Apology"** by V.E Abu dated 7th August, 2015 was admitted as **Exhibit D4.**

DW1 was then cross-examined by counsel to the Plaintiff.

DW2 was **Kenneth Chukwuemeka Iregbu.** He was subpoenaed to court to give evidence. He is a **Chief Consultant Clinical Micro Biologist with the National Hospital Abuja**. He knows both Plaintiff and Defendant.

That in 2012 he got to know that they were having issues when he started receiving mails from Plaintiff. **Exhibits D2 (1 and 2) and D3 (1-5)** are some of the mails he received. That apart from the e-mails, he also got to know that the Plaintiff dragged Defendant to the National Postgraduate Medical college of Nigeria and also took him to court. That Plaintiff copied **Exhibits D2 (1-3) and D3 (1-5)** to other people. That the complaint of Plaintiff is that he failed his exams and believed that the Defendant was influential in the outcome of his failure in the exams.

DW2 testified further that he is the examiner to the postgraduate college and he has been a faculty member twice and has been chairman faculty of Pathology and a Chief Examiner for the faculty. That he has also been a member of the senate of the college and also a member of the governing board.

DW2 reads **Exhibit D2 and D3** and stated that from his experiences, and the positions he has held, that it is not possible that any individual in the college can hold any person's result. That it is not possible.

He further testified that there are processes involved in examination and that with respect to Part 1 of the exams which is the subject matter, that the exam has three (3) stages. The 1st is the **multiple choice question** stage; the 2nd is the **practicals** and the 3rd is the **orals.** For the multiple choice questions, the script are marked using the **scantron machine**. That the machine marks the scripts and prints out the scores for each candidate. That the marking is done under the supervision of Deputy Registrar Academics of the college. He stated that prior to 2012, candidates then proceed to write the essay part of the question. That in marking an essay, at least 2 examiners mark each question after they have jointly developed a marking scheme and no examiner is permitted to mark a script from his own centre.

That on the practicals, one of the key regulations of the college is that at no stage of the examination should an examiner examine candidates from his own centre.

That it is also a very serious offence for any examiner to attempt to influence the result of any exams. To pass any exams and earn a pass, the candidate must pass

the MCQ, and earn an average of not below 50% in the overall provided that in the Haematology Department where the Plaintiff sat for the exams, he must pass the clinical stage of that exam.

That if he passes the clinicals, but gets below 50% in the MCQ, he fails the exams. That if he also passes the MCQ but gets below 50% in the clinicals, he also fails the exams. He further stated that because candidates mixed up the regulations on the results, from about 2012, 2013, once the candidates fails the MCQ, he stops there; he is no longer allowed to continue. He stated that there is no human input to the **scantron machine**. That it is not possible for anybody to influence the machine, not even the chief examiner.

Cross-examined, DW2 said he knows Defendant. He also knows why Plaintiff and Defendant are in Court. That he is aware that the Defendant wrote to the Chief of Army Staff that his life was been threatened. That he is aware that Defendant also wrote to the college.

That he read the letter of Dr M.A Durosimi to the college. That he did not believe the contents of the email by Plaintiff because the allegations were wild. That it is not possible to stop anybody's result.

That he respects Defendant alot as in the whole history of the faculty of pathology, he was faculty secretary twice and nobody has ever achieved that. That Defendant is a man of integrity. That even when he got the emails, his opinion of Defendant never changed. That he is not aware that the Nigerian Army did not process the Ph.d application of Plaintiff because of the letter of Defendant.

Dr Salami Sule, also on subpoena, testified as **DW3**. He works with the National Postgraduate Medical College of Nigeria in Lagos. That he is the Deputy Registrar at the College. He was summoned to produce certain documents and to also testify. DW3 tendered in evidence the following documents:

1. Certified True Copy (C.T.C.) of letter by Dr. T.T Wakama to the College Registrar, National Postgraduate Medical College dated 4th November, 2011 was admitted as **Exhibit D5.**

2. C.T.C. of letter from the College Registrar to the Registrar, Medical and Dental Council of Nigeria Dated 17th February, 2012 was admitted as **Exhibit D6.**

3. C.T.C of letter by College Registrar dated 23rd November 2011 to Plaintiff titled Re: Application for the re-marking of my SCQ Answer Script was admitted as **Exhibit D7.**

4. C.T.C of letter by Defendant to the Chairman, Faculty of Pathology dated 13th December, 2011 was admitted as **Exhibit D8.**

5. C.T.C of letter by Defendant to Dr D.E. Antia-Ebong, College Registrar, National Postgraduate Medical College of Nigeria dated 9th February, 2012 was admitted as **Exhibit D9.**

DW3 testified that he knows both Plaintiff and Defendant. That the Defendant is a Consultant Pathologist and the Secretary of the Faculty of Pathology. That Plaintiff is a candidate for the Faculty of Pathology part 1 exams of the National Postgraduate Medical College of Nigeria. That Plaintiff sat for the part 1 MCQ multiple choice questions examination while at that time the Defendant was the secretary of the Faculty of Pathology. That when candidates sit for MCQ, they answer the questions on a **scantron** paper.

That when you answer or shade, the answer paper is put in a scantron machine to mark and this is done in the Academic Department of the college. Once the machine finishes marking, the result is printed and handed over to the faculty. DW3 stated that Plaintiff participated in the MCQ in 2011 and his paper was marked like every other candidate. That in the marking in the **scantron sheet**, there is no role by any faculty officer except when the final marked answer sheet is handed over to the faculty.

DW3 stated that from **Exhibits D5-D9,** the Plaintiff made allegations that Defendant was responsible for his failure. That the position of the college to the allegation is that since MCQ are marked in a machine, there is no way a faculty officer can influence the marking or the scores as generated by the machine and handed over to the faculty chairman and secretary. That there is no way anybody can influence the scores or marking because a record of the scores is also kept in the Academic Department. That when he was secretary, it was impossible for Defendant to influence the MCQ scores of the Plaintiff or anybody because we

have a system of marking. That it is not also possible for him to influence the scores of the Plaintiff after he left the faculty.

DW3 further testified that Plaintiff requested for his MCQ to be remarked but they refused. That the college regulations stipulates after 6 months has lapsed and another examination has commenced, no candidate can ask for the remarking.

That they are aware of the allegations made by Plaintiff against Defendant as copies of the allegations were sent to the college.

Under **cross-examination**, he said he knows Defendant; that he was his classmate at Ife University and officially, when he applied at the college as a candidate. That he knows all that transpired between Plaintiff and Defendant. That he knows about the contents of **Exhibit P1** as a copy was sent to the college.

That when they receive complaints against candidates or any member of staff, the school has means of looking into examination complaints. That when there is a complaint related to examination, whether by a candidate or by an examiner, the process is to write a letter to the college registrar. The Registrar will ask the faculty to investigate the matter, if it is necessary. Such investigation and report from the faculty is sent to the college senate. That if the senate deems it necessary, the matter is sent to a disciplinary committee of the senate. Their report is considered by the senate based on their recommendation and the Senate makes or takes final decision on the matter. DW3 said they saw the complaint **Exhibit D9** by Defendant about a verbal assault. That they did not take any action but they noted it. That these are civil matters of assault outside their jurisdiction. He stated that on **Exhibit D8,** they did not take any action. That it was written to the Chairman of Pathology Faculty and that most importantly, they deal mainly with examination related complaints. With the evidence of **DW3**, the **Defendant/Counter Claimant closed his case**.

At the **conclusion of trial**, parties filed and exchanged final written addresses. The Defendants final address is dated 26th May, 2022 and filed on 27th May, 2022. In the address, two issues were raised as arising for determination as follows:

" **1. Whether the Claimant by credible evidence and upon Balance of Probabilities, has proved his case against the Defendant, as to be entitled to the reliefs sought by the Claimant.**

2. **Whether the Defendant/Counter-Claimant has by credible evidence and upon the Balance of Probabilities proved his Counter-Claim against the Claimant, as to be entitled to the reliefs sought against the Claimant."**

On the part of the Claimant, his final address is dated 25th October, 2022 and filed same date at the Court's Registry. In the address, two issues were equally raised as arising for determination as follows:

1. **Whether the Claimant has established a case of libel against the Defendant.**

2. **Whether the Defendant has established its counter-claim to entitle him to reliefs sought therein.**

The Defendant then filed a Reply to Claimant's address on 28th October, 2022.

I have set out above the issues identified by parties as arising for determination and it is clear that even if worded differently, the issues are substantially the same and revolve around whether the Claimant and Defendant have led or proffered credible evidence in proof of their claim and Counter-Claim respectively.

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 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 his claims on a balance of probabilities to entitle him to any or all of the Reliefs sought?**

2. **Whether the Defendant/Counter-claimant has on a balance of probabilities proved his 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 court's 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.

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 Plaintiff. Despite the volume of the processes filed, from the pleadings which has precisely defined and situated the facts in dispute, the Plaintiff's cause of action is essentially premised on **defamation**. The Defendant from his pleadings denied

any wrongdoing in the circumstances. Indeed the Defendant has equally in the context of the disputed facts situated a **counter-claim** against the Plaintiff which I shall treat under issue 2. It is therefore to the pleadings and evidence that we must beam a critical judicial search light in resolving all these contested assertions.

In this case, the Plaintiff filed a **thirty six (36) paragraphs statement of claim and twenty six (26) paragraphs Reply to the Statement of Defence and another thirty seven (37) paragraphs defence to the Counter-Claim of Defendant**.

The Defendant on his part filed a **thirty eight (38) paragraphs Amended Statement of Defence and Counter-Claim**. 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.

Now without doubt, the Plaintiff's cause of action is essentially premised on defamation. The alleged defamatory publication is contained in **Exhibit P1(1).** The inquiry here is simply whether Plaintiff has creditably established on the evidence that the said **Exhibit P1 (1)** is defamatory of him.

The Plaintiff in **paragraph 28** of the claim, pleaded without the particulars of malice, as follows:

"The Defendant falsely and maliciously published to the Nigerian Army the following libel, to wit:

On the basis of his accusations, Dr. Abu has been sending to my mobile phone threat text messages repeatedly. I have also occasionally received calls from an unknown mobile phone by someone claiming to be a colonel and has been hired to assassinate me. The various text messages to my phone have been downloaded (through email format) for ease of printing some of these text messages are attached for your perusal....The Board Found NO SUBSTANCE in his accusations. Despite the intervention of the faculty board and other well meaning very senior colleagues and senior officers. Dr. Abu has refused to relent but rather has become more "vicious" in his threats. I feel that my life and that of my family member is at risk because of his threat especially against the background of his military training."

The **Exhibit P1 (1)** dated 16th August, 2012 was addressed directly to the **Chief of Army Staff Nigerian Army, Army Headquarter Abuja**. **It was not copied to anybody**. I will shortly return to this point again.

Now it is to be noted that in **paragraph 25 of his claim**, the plaintiff pleaded as follows:

The Plaintiff while in the United Kingdom, received a letter from his employers "THE NIGERIAN ARMY" the letter is hereby pleaded and shall be relied upon at the trial, copies of the said letter and the attached documents printed from the mail box via the computer from the office of the Plaintiff to prove his case against the Defendant. The letter was dated 11th of October 2012. The letter however include attachments of other letters, this was however forwarded to the Plaintiff via his email address as he was not in Nigeria to receive the letter but on the instruction of the Chief of Army Staff who caused the said letter to be scanned to his email box and order that a reply be made available not later than the 17th of October, 2012 as to the allegation contained therein, the letters includes:

" **(a) The letter by Dr. T.T. Wakama to the College Registrar of National Postgraduate Medical College of Nigeria.**

(b) The letter by Dr. T.T. Wakama to the Chairman National Postgraduate Medical College of Nigeria (NPMCN).

(c) The Chairman National Postgraduate Medical College of Nigeria. (NPMCN) letter to the Register of the College Registrar of National Postgraduate Medical College of Nigeria.

(d) Dr. T.T. Wakama letter to the Chief of Army Staff.

(e) The downloaded text messages enclosed with Dr. Wakama letter to the Chief of Army Staff.

(f) etc.

All these letters shall be relied upon at the trial, these letters are hereby pleaded, the plaintiff however printed copies of the said letters from his e-mail box including the downloaded text messages."

I have deliberately referred to the above paragraph to situate the fact that the paragraph may have referred to documents said to have been attached to **Exhibit P1 (1)** but it is clear that these other documents vide **Exhibits P1(2-5)** do not form the crux of the complaint in this case. There is no clear indication in the pleadings of Claimant whether these documents were sent along with **Exhibit P1(1)** to the Chief of Army Staff because going through the attachments, they were all addressed to a specific named person and not copied to any other person or body. I will also return to this point later on.

The alleged document containing the alleged defamatory remarks which the court will shortly examine is that vide **Exhibit P1 (1)** titled **"threat to my life and my family by Lt. Col. Vincent E. Abu (N/1024)"** written by the Defendant to the Chief of Army Staff.

As stated earlier, the issue is whether the Plaintiff has creditably established on the evidence that the said **Exhibit P1 (1)** is defamatory of the Plaintiff. Let us start by situating what defamation connotes.

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 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 the 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. See **Nitel V Tugbiyele (supra)334; Nas V Adesanya (2003)2 N.W.L.R (pt803)97**.

Having stated the importance of publication in an action for libel, it is perhaps necessary to define 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 reputation ….it 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…''

The text of the defamatory publication said to have been published, I have already set out above. I will situate the whole contents later on. The Defendant in his pleading vide **paragraph 20** and in his evidence admitted publishing the petition but contends that the words are not defamatory of Plaintiff and or that they were not falsely or maliciously published or written. The publication in a permanent form was tendered as **Exhibit P1 (1).** There is thus a publication in a permanent form. It is settled law that the essence of libel is that the libellous material exists in a permanent form. Every time the libelous material is made known to another, publication takes place and every publication and re-publication of libelous material is complete in itself in founding a cause of action. See **Offoboche V. Ogoja Local Government (2001)36 WRN 1 at 12, 13.**

Whether the publication is false statement would be determined when the defences raised by Defendant is considered in the course of this judgment.

The second element or ingredient is that the statement referred to the Plaintiff. Again I take my bearing from the text of the publication as pleaded and the document itself vide **Exhibit P1(1)** which clearly targets the Plaintiff directly in

the publication. There is here on a confluence of these established facts no doubt that the statement or publication complained of refer to Plaintiff.

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 plaintiffs 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 sence. 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 sence. See **Sketch V Ajagbemokefri (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 the publication **Exhibit P1(1).** The publication to the Chief of Army Staff dated 16th September, 2012 is titled **"threat of my life and my family by Lt. Col. Vincent E. Abu (N/10241)"**

The letter in substance made an allusion to a rather difficult relationship between Plaintiff and Defendant at the National Hospital where Defendant served as one of his supervisors in training. That the Plaintiff accused Defendant of deliberately failing him by manipulating his marks which culminated in the alleged threat to the Defendant's life and that of his family members.

Now in determining whether the contents of the above document or letter 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.

As a logical corollary and in practical and legal terms, the evidence of Plaintiff in this present context has no probative value in the circumstances. In law, where a defamatory statement is alleged to have been published to someone, that person has to be called to testify as to his reaction to the publication. See **Bank of the North Ltd V Adehi (2002)29 W.R.N 84 at 97; Otop V Ekong (2002)9 N.W.L.R (pt986)533 at 555-556 H-A; Zenith Plastics Industries Ltd V. Samotech Ltd (2007)16 N.W.L.R (pt1060)315 at 347F**.

Now from the pleadings and evidence, apart from the **Chief of Army Staff**, no one was identified as a recipient of the letter. There is equally no indication that it was copied to anyone beyond the Chief of Army Staff. **The Chief of Army Staff who the letter was written to did not testify in this case for his reaction to the publication**. The officers who forwarded the letter **Exhibit P1(1)** to the Plaintiff did not also testify. Even if these category of officers had testified, the value of their evidence would have been open to question to the clear extent that the letter was not written to them or copied to them and there is no pleading or evidence that in the normal course of events, the Defendant ought to know that the letter may come to their knowledge. In real terms nobody who was identified in the pleadings

as a recipient of the letter was brought to testify as to his reactions, if any to the contents of **Exhibit P1(1).**

The Plaintiff may have produced **PW2, Col. Lawrence Apeh** but his evidence did not in any significant matter support or aid the case of plaintiff. Let me here allow his deposition speak for itself thus:

" **5 That I am conversant with this case...**

7 That one DOCTOR TAMUNOMICIBI THOMPSON WAKAMA wrote a letter dated 16th of September, 2012, to the Nigerian Army, specifically to the Chief of the Army Staff, Nigerian Army about threat to his life and that of his family.

8 That one Dr. Vincent Abu, N/10241, a Lt. Col in the Nigerian Army Medical Corps sent a Colonel in the Nigerian Army as claimed by Dr. Tamunomicibi Thompson Wakama was hired to assassinate him and his family.

9 At that time (Dr) Vincent Enemona Abu was in England for further studies in his medical field of study.

10 The chief of Army Staff however gave instructions that the said letter including the attachment to the letter which contained other series of letters or petition written by Dr. Tamunomicibi Thompson Wakama be sent via email to Dr. Vincent Enemona Abu together with a query given him three (3) days within which to react or reply to the said letter and the allegation contained therein.

11 That Dr. Vincent Enemona Abu had to respond to the said letter sent to him via email on the 15th of October, 2012.

12 That the then Dr. Vincent Enemona Abu explained all that transpired as regards the petition or the query in respect of the Nigerian Army as regards Dr. T.T. Wakama's letters and also in respect of the allegation on the issue of assassination of Dr. T.T. Wakama.

13 That based on his reply it was apparent that Dr. T.T. Wakama just cooked up a story of assassination attempt to truncate and bring to a

hault(sic) the entire career of Dr. Lt Col. Vincent Enemona Abu because the Nigerian Military does not take lightly with any issue as regards assignation attempts.

14 That I am in the Nigerian military still serving.

15 That based on Dr. T.T. Wakama story that the then Major Vincent Enemona Abu sent a Col to assassinate him and his family...

20 That it is impossible in the Nigerian Army for a Major in the Nigerian Army to send a Superior officer, a colonel in the Nigerian Military, his senior, and order him to go for an assassination mission.

21 That the Nigerian Army does not take lightly such an allegation.

22 That a panel was set up to look at Dr. Lt. Col. Vincent Enemona Abu's reply and dismissed the petition of Dr. T.T Wakama as baseless, unwarranted and a cheap blackmail because there is no where in the world where a junior officer in the Nigerian Military or the world where a junior officer will start dishing out command or orders as the case may to a superior officer."

The above depositions are clear. There is again nowhere in his evidence where he indicated that he was served with this letter or that he was copied. Indeed he stated in paragraph 7 above that the letter was sent to the Nigerian Army **"specifically to the Chief of Army Staff Nigerian Army about threat to his life and that of his family."**

The PW2 never said he was in the office of the Chief of Army Staff or served or worked there at the material time. PW2 was therefore curiously silent with respect to how he came about this letter in the first place or whether he infact saw the letter in question.

Indeed under cross-examination, PW2 stated unequivocally that he was not in anyway involved in the enquiry over the petition written by Defendant. Still under cross-examination, he said he was not privy to the decision of the Chief of Army Staff on the petition. He equally does not have the report of the Chief of Army Staff on the petition and has not seen the official decision of the Army on the petition.

He equally stated that as at the time of the dispute between the Plaintiff and Defendant in 2012 when the letter **Exhibit P1(1)** was written by Defendant, he was then at the Peace Keeping Department of the Nigerian Army at the Headquarters and had nothing to do with personnel administration. He added that as at 2012 he had no official business with personnel administration. He finally stated that the petition was **"dismissed"** according to him because nothing was done about it. That the Plaintiff was only asked to respond to the petition and that the Army has not taken a decision till date and that as far as he was concerned, there is no decision to be taken in the matter.

I have at length situated the evidence of PW2 to show clearly that he was not a recipient of the letter; it was not copied to him and in real terms he has no business or has nothing to do with the letter in question.

As he himself stated, he was at the material time in the Peace Keeping Department of the Nigeria Army. He had no official business with the personnel department of the Nigerian Army and one then wonders how he could have had access to the letter written **"specifically to the Chief of Army Staff."**

I am therefore in no doubt, that PW2 really had no business with **Exhibit P1(1)** and was therefore in no position to give evidence of any negative imputations that **Exhibit P1(1)** may have had. Indeed in the entire evidence of PW2, nowhere did he state has reactions or how the letter impacted on his perception to Plaintiff in a negative sence. Indeed his evidence contradicts the case made out by claimant that the Army reacted in a negative way to Plaintiff on Receipt of **Exhibit P1(1).** His evidence shows that they actually did nothing and this is telling!

The bottom line as I have found is that **Exhibit P1(1)** was written only to the **Chief of Army Staff** at the material time in 2012 who was not called upon to give evidence. As stated earlier, there is neither any allegation in the Plaintiff's pleadings nor is there evidence before the court that the Defendant ought to have known that the contents of **Exhibit P1(1)** would have come to the knowledge of PW2 or any other person in the ordinary course of events.

I note in the final address of Plaintiff that reliance was placed on an aspect of evidence of DW3 to prove publication. Now DW3 may have indicated that he knows about the contents of **Exhibit P1(1)** as a copy was sent to the college. The

Defendant in paragraph 20 averred that he also complained to the college but there is absolutely nothing in the evidence of DW3 to support the case of defamation made out by Plaintiff.

As he himself stated, the college deals only with **examination related complaints** and the college clearly was in no position to deal with the complaints situated in **Exhibit P1(1).** And most importantly, the **DW3** was not asked and he did not say in evidence his reaction to it or whether the letter impacted negatively on his perception of Plaintiff. The evidence of DW3 relied on by Plaintiff did not help his case, unfortunately.

At the risk of sounding prolix, it is apposite to underscore the point that a person's 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 N.W.L.R (pt955)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 a third party thinks of the plaintiff as regards his reputation that is important. See also **Nsirim V Nsirim (1990)3 N.W.L.R (pg138)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..."***

Again as stated earlier, the evidence of Plaintiff himself in my considered opinion is not relevant in the determination of whether the contents of **Exhibit P1(1)** conveys a defamatory meaning to those to whom it was published. While **Exhibit P1(1)** may injure his self esteem, what the law of defamation is concerned with is how the said exhibit affects the estimation which others hold of him.

In this case, no such **"others"** were presented to establish this important criteria or threshold which is critical in a case of defamation/libel. It may perhaps be relevant to add here that the Plaintiff stated vide **paragraphs 27-28** of his deposition that the letter had injured his credit and reputation and has brought him into scandal, odium, ridicule and contempt amongst his professional colleagues at the National Hospital, his place of work and the Nigerian Army, but **nobody from these defined institutions** gave evidence to support the allegations made by Claimant.

In addition, the deposition of Claimant in **paragraph 32** that the Nigerian Army Medical Corp refused to process his application for Ph.D at the university of Hull until the petition of Defendant was resolved was contradicted by the evidence of **PW2** who stated under cross examination that the Nigerian Army took no actions whatsoever on the petition. The evidence of PW2 who had no business with the letter **Exhibit P1(1)** was thus wholly unreliable. If he did not see the letter at the time and had no official business with the office that likely dealt with the letter at the material time, his estimation of Plaintiff could thus not have been affected. Crucially, he himself did not say in evidence how the letter affected his estimation of Plaintiff.

Again, at the risk of sounding prolix it is settled principle of law that a defamatory statement 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.**

From the evidence on record, there is nothing to show that the esteem with which Plaintiff is regarded was lowered or in anyway affected by **Exhibit P1(1).** It is not a matter for address of counsel, however well articulated the address may be. There is really no proved disposition of hostility, hatred, contempt or ridicule for Plaintiff as alleged or at all. Even if Plaintiff considered **Exhibit P1(1)** defamatory, the principal point of importance is for there to be credible evidence that the defamatory publication lowered the plaintiff in the estimation of right thinking members of the society. See **Iwueke V IBC (2005)17 N.W.L.R (pt955)447; Sketch V Ajagbemokeferi (supra).** I see no such evidence in this case and this is fatal to the whole case.

Furthermore, and this is important, it is obvious as alluded to even by PW2, that after the response by Plaintiff to the petition, **no further action was taken**. There is no pleadings or evidence of what the outcome of the investigation was and if the Chief of Army Staff took any further actions in the matter.

As earlier stated, the evidence of Plaintiff alone about the impugning of his integrity or character is irrelevant and immaterial as it does not come within the contemplation of "**right thinking members of the society''** whose estimation of

his person and the effect, if any, that the alleged defamatory publication may have had on them is what the court is concerned with.

On the basis of the evidence led, it is clear that no credible evidence was led by Plaintiff on the defamatory meaning the publication conveyed to those to whom it was allegedly published. See **Okolo V. Mind West Newspaper Corp (1977) NSCC ii; Dumbo V. Idugbone (1983)1 SCNLR 23**

As a logical corollary, I am not satisfied that the Plaintiff has established by credible evidence all the essential ingredients required to sustain an action for libel.

Having so decided, on the authorities, no useful purpose will be served considering the defence of **justification** and **qualified privilege** on which both parties have addressed on particularly here where from the pleadings of Defendant, these defences were not clearly and precisely delineated with particulars in compliance with the provisions of **Order 23 Rule 23(2) and (3) of the Rules of Court. In Bullen & Leake & Jacobs** precedent of pleadings (12th Ed.), the learned authors stated instructively at page 1171 paragraph 4 thus:

"If the Plaintiff proves publication, the law will presume the words to have been false and malicious until the Defendant proves either a justification or privilege (Penrhyh V. Licensed Victuallers Mirror (1870)7 T.L.R 1) both justification and privilege and every ground of defence relied on must be specifically pleaded, setting out the facts on which the Defendant relies on to show that publication was privileged or justified (Elkington V. London Association for the Protection of Trade (1921)21 T.L.R 329.)"

See also **Inland Bank Nig. Plc & Anor V. Fishing & Shrimping Co. Ltd (2010)15 N.W.L.R (pt 1216), 395 at 415 para A-B, Atoyebi V. Odudu (1990)6 N.W.L.R (pt 157), 384, NTA V. Babatope (1996)4 N.W.L.R (pt 440), 75**. The failure to comply with these rules in clear terms perhaps explains why the Plaintiff only made general averments in response in his Reply and defence to the counter-claim.

By the same **Order 23**, when in an action for libel, the defence of privilege is raised, then the plaintiff shall file a reply giving particulars of facts and matters on which malice is to be inferred. All these are missing in this case and one then

cannot fathom the legal and factual basis for the submissions made on these issues by counsel on both sides in such clearly haphazard manner.

Out of abundance of caution especially since parties have addressed extensively on the issues, I will treat the entirety of the defence as having provided the necessary particulars to evaluate the defences.

Similarly since on the part of the Plaintiff he has pleaded in his claim and generally in the Reply that the publication was false and malicious and that the Defendant enjoys no priviledge. I shall treat the paragraphs as anticipatory or advance averments to negative the subsequent defence of priviledge raised in the Statement of Defence.

Now on the plea of **justification**, the Defendant in his defence would appear to rely on the entire defence to situation the defence of justification. The Plaintiff contends otherwise. It is not in doubt that in law where a publication is true in point of fact and accurate in the picture it represents, then it cannot be defamatory of anybody. It is settled principle that in construing whether a publication is defamatory, the entire publication should be construed as a whole. It is equally the position that to ascertain if the defence of truth and justification is availing, the entire publication must also be construed. In law to succeed in a plea of justification, the burden is on Defendant to prove the truth of the imputation complained of. See **Albata V. Apugo (2001)5 NWLR (pt.707)483.**

Let us perhaps situate or take our bearing from the letter **Exhibit P1(1)** itself and in doing so situate justification, if any, within the context of the interplay of facts in this case. The letter in whole reads as follows:

"THREAT TO MY LIFE AND MY FAMILY BY LT. COL VINCENT E. ABU (N/10241)

My name is Dr. Tamunomieibi Thompson Wakama, a native of Okrika in Rivers State. I work at the National Hospital Abuja as a Chief Consultant Haematologist and up to November 2011, the Faculty Secretary, Faculty of Pathology, National Postgraduate Medical College of Nigeria.

I am writing to report that my life and that of my family members is being threatened by Dr. Vincent E. Abu, a Lt. Col in the Nigerian Army Medical Corps No. N/10241.

Up to November 2011, Dr. Vincent Abu was a Supernumerary Resident Doctor at the Department of Haematology, National Hospital Abuja having come from the Nigerian Army Medical Corp in 2008 to undergo a postgraduate Medical training at the National Hospital Abuja.

As part of the requirements for the residency medical training, Dr. Abu sat for the Part I Fellowship examinations in the Faculty of Pathology, National Postgraduate Medical College of Nigeria from October/November 2010 to November 2011 (the exams are conducted every six months). At each attempt, he was adjudged not to have met the requisite requirements for a PASS at the examinations.

As one of the Consultant haematologist at the National Hospital, the department in which Dr. Abu was training, I was one of the supervisors for his training. I also had an oversight function of coordinating and supervising the Fellowship examinations in the Faculty of Pathology of the National Postgraduate Medical College as the Faculty Secretary- the examination that Dr. Abu had taken.

Dr. Abu therefore accused me of deliberately failing him by 'manipulating' his marks especially the MCQ paper which is marked using Scantron (Computer) by the College under the supervision of the Faculty Secretary and the Deputy Registrar Academics immediately after the paper while the candidates are still writing the second paper.

On the basis of his accusations, Dr. Abu has been sending to my mobile phone threat text messages repeatedly. I have also occasionally received calls from an unknown mobile phone by someone claiming to be a Colonel and has been hired to assassinate me. The various text messages to my phone have been downloaded (through e-mail format) for ease of printing. Some of these text messages are attached for your perusal.

Dr. Abu's appeal to the College to remark his May 2010 MCQ answer script (a move which myself and the Faculty Chairman supported) failed on

technical grounds. However, the matter was reviewed by the Board of the Faculty of Pathology after I had finished my terms as Faculty Secretary (to avoid bias). The Board found NO SUBSTANCE in his accusations. Despite the intervention of the Faculty board and other well meaning very senior colleagues and senior Officers, Dr. Abu has refused to relent but rather has become more 'vicious' in his threats.

I feel that my life and that of my family members is at RISK because of his threats, especially against the background of his military training.

I therefore use this medium to appeal to you sir, to use your good office to intervene in this matter.

I am ready to provide every necessary document and materials that may be required for any investigation in this matter.

I thank you sir.

Yours faithfully,

Signed
Dr. T.T. Wakama"

Now from the pleadings and evidence on both sides of the aisle, it is not in dispute that at the material time, the Defendant was the Chief Consultant Haematologist at the National Hospital and up to 2011, the faculty Secretary, Faculty of Pathology, National Postgraduate Medical College of Nigeria. It is equally not in dispute that the Plaintiff, a military officer, was a resident doctor at the Department of Haematology, National Hospital undergoing a postgraduate medical training at the National Hospital. It is equally common ground that as part of the residency medical training, the Plaintiff sat for part 1 fellowship examinations in the faculty of pathology, National Postgraduate Medical College which is conducted every six months and at each attempt he failed.

The Defendant was one of the supervisors of the training who had oversight function of coordinating and supervising the fellowship examinations in the faculty. The Plaintiff on the evidence accused Defendant of deliberately failing him and manipulating his scores especially the MCQ paper. There is no real

dispute on the above narrative as this provided the background facts leading to the letter, **Exhibit P1(1).**

On the pleadings, it would appear parties did not have a particularly positive and healthy relationship which culminated in the threat allegedly made by Plaintiff when he attributed his failure to the Defendant.

In paragraph 11 and 12 of the defence, the Defendant pleaded as follows:

11. The Plaintiff employed telephone calls, text messages (sms) and emails in issuing deadly, serous and provocative threats against the Defendant and his family members. The Defendant will at the hearing find and rely on the computer printout of the text messages and emails.

12. The Defendant also petitioned the college for a remark of his scripts particularly the MCQ paper which he alleged was "manipulated" by the Defendant to ensure his failure.

In Response to the above paragraphs, the Plaintiff in his Reply stated as follows:

7 In Response to paragraph 11 of the Statement of Defence, the Plaintiff vehemently deny all the allegations thereof and put the Defendant to the strictest prove (sic) of the allegation thereof the Plaintiff however admit sending the Defendant text messages and email this is here by (sic) pleading with the Defendant to turn a new live and leave his old ways of victimization, intimidation, coercion of Medical Doctors who practice under him. Out of the nine messages, the Defendant complained of six of the messages were sent to Dr Paul Jibrin, one to Dr. Patrict Oche Ogbe and two were to the Defendant the photocopy of these nine messages are here by pleaded as the original are with the Defendant.

8 The Plaintiff admits paragraphs 12 of the defence statement of defence.

The above averments by plaintiff in Response are clear. The Plaintiff here admits to sending text messages and emails to the Defendant. I shall highlight excerpts of some of the messages. By **Exhibits D2(2) and D2(1)** the Plaintiff sent these messages on the following dates: 8th August, 2012, 9th August, 2012, 15th September, 2012, 15th September, 2012, 16th September, 2012 and 16th October,

2012. From the emails, **Exhibits D3 (4) and (5)** are relevant and I will highlight its contents thus:

"I told you last year that my part one exam success that you sole is a malignant cancer that will eat you and the college up!
Wakama, I stand by that statement even now! Except there is no God in heave that over sees the affairs of men.
U are writing the Army. What do you want the Army to do for u?
To withdraw the case from court or to deploy 1000 men to protect president Wakama!!!!
U wrote the police last year. Tom. Don't be in a hurry. You don't even know the meaning of assignation!
Who are you that someone would want to assassinate? You will surely pay for my success that you stole in this life and in the life to come. You will cry. But your tears will come but too late. I don't even understand your mind frame. if I were you, I will rather be sober and look for the guy and beg forgiveness.
I have replied your letter. Tell your gladiators in the Army to get you a copy of my reply and peruse it carefully. Read verse 15 to 20 in particular and your conclusion of my person, is my mine too. Now that the case is in the court, let us wait for the outcome.

(5): When you got my mail, you should have been sober and not opening your mouth to show your ignorance. Ask Dr. Wakama, everything I told him since last year that I will do I have kept my words. What do you know about ethics and oath? Go on the net and read about me. Get some text books on history, read about life events from 500 BC to the present day.
Dr. Ada, do you know the sweetest thing in life? I asked your friend Wakama and Dr. Jibrin, they didn't know. I will tell you, it is vengeance!!! Revenge!!! Unless the college gives me my result, I promise you, there will be collective payment!!!! I forwarded that mail to you so that you can talk to your college. That this shall not be business as usual! I shall never accept the attitude "he can go to hell" then we will all go to hell together!! It is not a threat. My family and many godly men and women have been pleading with me to leave it for God but I prefer to die for a course I believe in than to leave for my doubt. I will wait for the court. I have the dossier of your college, I shall soon release it to both the local and international press. Does your college and you

consultant pathologists in Nigeria have integrity? Was it not one of you that cover up a case of murder after a post-mortem because of religious alliance? I saw professors cheating in the part one exams for their candidates. I shall call their names and that of the candidates. Where is the character and oath?"

The above **excerpts** in the **text messages and e-mails of Plaintiff** are self inculpatory and clearly contains implicit and explicit threats against the Defendant. I don't see any way how the threats can somehow be garnished to dilute the essence of the messages. As much as I have sought to be persuaded, I am not persuaded that any gloss can really be put to some of the words and expressions used by the Plaintiff in his text and email messages.

As stated earlier, the **Plaintiff admitted** he sent these text and email messages which in effect confirms the contents. Indeed the Plaintiff never challenged or impugned these exhibits at any time. The trajectory of the narrative is clear that the Plaintiff believed completely in the allegations he levelled against Defendant that he somehow had a hand in his inability to pass his part 1 exams. The evidence of DW2 and DW3 confirm unequivocally that the Defendant by the nature of the mechanised or computerised marking process could not manipulate the result of Plaintiff. The Plaintiff however held on to his beliefs which led to the messages sent. The messages clearly were not benign or innocuous messages. The petition and the contents by the Defendant to the Chief of Army Staff cannot therefore be said to be outlandish, unnecessary or unjustified in the circumstances or dynamics of the facts of the case. The petition appear to fairly and accurately represents the facts as at the time the petition was written. The defence of **justification is thus availing in the circumstances**.

Now on **qualified priviledge** and as stated earlier, the defence was not precisely raised in the defence with particulars precisely defined. I have out of abundance of caution decided to consider the totality of the pleadings as providing the necessary particulars.

I also referred to the provision of **Order 23 Rule 23** on the need for a reply to be filed by Plaintiff from which malice can be inferred. This was not done clearly in this case. I decided also in the interest of justice to consider the relevant averments in the claim and the Reply filed by claimant as constituting facts on which malice

can be inferred and be taken as anticipatory averments to rebut the defence of privilege.

Now it is settled law that once a defamatory statement was made on a **privileged occasion**, the claim for defamation based on such a statement, **if there is no evidence that the Defendant exceeded his privilege is bound to be dismissed**. See **Mamman V. Salaudeen (2005)18 N.W.L.R (pt.958)478 at 508.** The pertinent question is whether the petition written by the Defendant was on a privileged occasion and if it was, whether there was malice which would defeat the privilege. A privilege occasion in reference to qualified privilege is an occasion where the person who makes a communication has an interest or a duty, whether legal, social or moral to make it to the person to whom it is made and the person to whom it is so made has a corresponding interest or duty to receive it. **This reciprocity of interest is essential**; **Mamman V. Salaudeen (supra) at 510 and Iloabachie V. Phillips (2000)8 WRN 79 at 88.** A statement made on a subject matter in which a Defendant has a legitimate interest have been held to constitute a privileged communication.

I had already alluded to the position of the Defendant as the Chief Consultant Haematologist at the National Hospital and the oversight functions he has of coordinating and supervising the fellowship examinations in the faculty of pathology of the National Postgraduate medical college as a faculty secretary. I had also situated that the Plaintiff is a serving military officer who was at the National Hospital from the Nigerian Army Medical Corp to undergo a postgraduate medical training at the National Hospital. If a serious dispute as demonstrated in this case arose involving **both parties**, in which **threats were made against Defendant**, it won't be out of place in my opinion for the Defendant to have complained to the Chief of Army Staff being the person officially, with authority and control, over Claimant. The petition thus written to him cannot be said to be out of place or order. It seems to me therefore that the publication by Defendant to the Chief of Army Staff was made on a priviledges occasion. There existed a common interest between the Defendant, the subject of the threat and the Chief of Army Staff being a person having a duty to receive such information or complaint levelled against an officer under him. See **Edoro V. Gurara Finance (2001)47 WRN 113 at 128-129; Mamman V. Salaudeen (supra).** In view of the foregoing, the defence of qualified privilege is available to the Defendant, but it is

a defence which can be defeated by proof of actual or express malice. See **Iloabachie V. Phillips (supra) at 89, Uko V. Mbaba (2002)14 WRN 23 at 42.** In order for qualified privilege to be upheld, the publication must be a fair and accurate publication. See **Emeagwara V. Star Printing and Publishing Company (2000)14 WRN 89 at 106.** Recklessness in publishing words complained of without proper investigation has been held to constitute evidence of malice. See **Duyile V. Ogunbayo (1988)1 N.W.L.R (pt.72)601 and Benue Printing and Publishing Corporation V. Gwagwada (1989)4 N.W.L.R (pt.116)439 at 452.**

In this case, I had already held that the complaint by Defendant cannot be said to be reckless or unreasonable in the context of the interplay of facts of the case. The complaint or petition was a fair reflection of the disputation involving parties and cannot be said to have been made without any regard to whether the words were true or false. There is therefore no proof of malice. As stated earlier, if evidence had disclosed malice in the petition made on a priviledge occasion, the defence of qualified priviledge is defeated and would not apply. See **Iloabachie V. Philips (supra) at 89; Uko V. Mbaba (supra) at 42.** The defence of qualified priviledge is thus availing to Defendant.

In conclusion and for the avoidance of doubt, I had out of abundance of caution considered the **defences of justification and qualified priviledge** and found them to avail Defendant which would have enured in his favour if the court had found that a case of libel had been made out. The point to make abundantly clear is that even without these defences, I had found that the Plaintiff on a calm view of the evidence has not successfully established by credible evidence, all the key elements or ingredients required to sustain an action for libel. The Plaintiff has failed to prove that **Exhibit P1(1)** conveyed a defamatory meaning to those to whom it was published. The issue raised with respect to Plaintiff's case is answered in the negative. **The Plaintiff's action thus fails**.

This leads me to the **second issue based on the counter-claim of Defendant**. I had earlier stated that the counter-claimant must like the Plaintiff in the main action establish his case on the same principles to entitle him to the Reliefs sought.

The Defendant's cause of action in the Counter-Claimant is also like that of Plaintiff premised on **defamation or libel**. The alleged defamatory publication is

contained in **Exhibit D3(1).** The inquiry here is whether the Counter-Claimant has equally creditably established on the evidence that the said **Exhibit D1(3)** is defamatory of the Defendant/Counter-Claimant.

I had in the substantive Judgment defined what defamation means and its elements. I need not repeat them. I simply adopt them.

The onus of establishing these elements or ingredients is equally on the Defendant/Counter-Claimant and failure to establish them will result in a dismissal of the action.

I will now proceed to consider each of these elements or ingredients to see if the defendant has established the same. The first key ingredient that the 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. Again, I need not repeat myself.

The text of the defamatory statement was pleaded in **paragraph 33 of the Counter-Claim** and it was tendered in evidence in a permanent form vide **Exhibit D3(1).** The Plaintiff and Defendant to the Counter-Claim in his defence in paragraph 3 put up a general defence or traverse to the above paragraph 33. In law it is settled that regarding essential and material allegations as made in paragraph 33 of the Counter-Claim, a general denial as made here ought not to be adopted; essential allegations should be specifically traversed. See **Adesanya V. Otuewu (1993)1 NWLR (pt.270)414 at 455G-H.**

Indeed, in law in order to raise any issue of fact, there must be a proper traverse; and a traverse must be made either by a denial or non-admission, either expressly or by necessary implication. So that, if a Defendant refuses to admit a particular allegation in the statement of claim, he must state so specifically; and he does not do this satisfactorily by pleading thus: **"defendant is not in a position to admit or deny...and will at the trial put the plaintiff to proof."** A plea that Defendant **"puts Plaintiff to proof"** amounts to insufficient denial; equally a plea that **"the**

Defendant does not admit the correctness" (of a particular allegation in the statement of claim) is also an insufficient denial. See **Ekwealor V. Obasi (1990)2 NWLR (pt.131)231 at 251 para B; C-D**.

Most importantly in **paragraph 7 of the Reply to the defence**, the Plaintiff/Defendant to the Counter-Claim admitted sending **"the Defendant text messages and email"** and when the messages were tendered in evidence including **Exhibit D3 (1),** the Plaintiff did not challenge their admissibility or impugn the contents. I hold on the basis of the evidence that the Plaintiff sent the email message in question. Indeed in paragraph 7 of the Reply, he stated that the messages were sent so that Defendant can change from **"his old ways of victimization, intimidation and coercion of medical doctors who practice under him."**

Now by **paragraph 33** of the Counter-Claim, the Counter-Claimant identified one **"Dr. Wale Ajala Pathology"** who was sent the email and four other persons who were copied. In **paragraphs 34** and **35 of the Counter-Claim**, the counter-claimant alluded to wide circulation of these messages to **"Defendant's students and professional colleagues."**

There is no doubt on the pleadings and evidence, that the Plaintiff/Defendant to the Counter-Claim published **Exhibit D3(1)** and it no doubt referred to the **Counter-Claimant**. With respect to the falsity of the allegations in the **Exhibit D3(1),** we had in the substantive Judgment referred to the unchallenged evidence of DW2 and DW3 who categorically asserted that the marking process at the college was such that nobody including Defendant could have interfered with. They unequivocally stated that nobody interfered with the part 1 result of Plaintiff which completely undermined the contention of Plaintiff as alleged in **Exhibit D3(1).** The evidence of DW2 and DW3 was not challenged at all under cross-examination.

The law is settled that where evidence is unchallenged under cross-examination, the court is not only entitled to act on or accept such evidence, but it is infact bound to do so, provided such evidence by its very nature is not incredible. Thus, where the adversary fails to cross-examine a witness upon evidence of the falsity of a particular matter, the implication is that he accepts the trust of the matter as led in evidence. See **Ofortele V. State (2000)12 NWLR (pt.681)415 at 436.** The Plaintiff on the issue of the falsity of his allegations has not placed any admissible

evidence to rebut or challenge the evidence of DW2 and DW3 from the college and he had every opportunity to do so. In such situations, it is always open to the court seised of the matter to act on such unchallenged evidence. See **Insurance Brokers of Nig V. ATMN (1996)8 NWLR (pt.466)316 at 327G.**

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 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 sence. 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 sence. See **Sketch V Ajagbemokefri (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 D3 (1)**. 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.

In this case, neither **Dr. Wale Ajala or any of the other persons copied this e-mail** message was brought to court to give evidence on how **Exhibit D3(1)** affected their perception of Defendant in any way. Equally true is that none of the unidentified students of Defendant and his professional colleagues who Defendant claimed Plaintiff sent the e-mails to gave evidence and this is fatal. As stated earlier, the conception by Defendant on how the email impacted on his integrity is of no moment in the circumstances. Even DW2 and DW3 who were not copied this letter still affirmed their belief in professional integrity and competence of the Counter-Claimant at all times.

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 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 **defendant** on how the document **Exhibit D3 (1)** 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 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 defendant has clearly not established by credible evidence all the essential ingredients required to sustain an action for libel. The defendant/counter-claimant has therefore failed to prove that **Exhibit D3 (1)** conveyed a defamatory meaning to those to whom it was published and this is fatal.

Relief 1 of the Counter-claim is thus not availing.

The **final relief** on the counter-claim is for assault and or intimidation. Assault in law is an attempt or threat to use unlawful force on a person by putting him in the immediate apprehension that such force is about to be used on him by a person having the intention and ability to apply the force. It is both a civil and criminal wrong. The word is used to cover both assault and battery with the latter being the

actual application of unlawful force. See **First Bank of Nig Plc V. Ernest G.A Onukwugha (2005)16 NWLR (pt.950)120 at 132.** Proof of Assault in civil matters is on a balance of probabilities. See **Esi V. CNPC/BGP Int'l & Anor (2014) LPELR-22807(CA).**

On the other hand, the **tort of intimidation** is the unlawful use of threats or violence on a person to get him to do or abstain from doing a thing. It is constituted by the following elements:

(i) Communication from A to B
(ii) The threat must be to do something unlawful so as to compel B to obey A's wishes.
(iii) There must be intention of injuring B thereby
(iv) B must comply with the demand rather than risk the threat been carried out. See **Lawan V. Zenon Petroleum & Gas Ltd (2014)LPELR-23206**

The question is now one of proof on established legal threshold. Now in the pleadings of the Counter-Claimant, he pleaded in the following relevant paragraphs as follows:

18 The Plaintiff, who was very bitter with the Defendant for not assisting him to pass the examination, issued death threats against the Defendant and in fact assaulted the Defendant on an occasion.

19 The Plaintiff, who is an army officer, instigated and procured the support of his fellow military officers and they persistently harassed and intimidated the Defendant through anonymous computer calls and threat messages.

20 The Defendant who was alarmed, frightened and trouble was compelled to petition and complain to the Chief of Army Staff who is the boss of the Plaintiff, and to the college authorities wherein the Plaintiff is a student.

36 The Plaintiff by his threat messages intended to subdue and overawe the Defendant and to bring him to the submission of the Plaintiff and thereby lowered his personal esteem.

37 The Plaintiff by his acts of threat and intimidation assaulted the Defendant and subjected him and his family to live in fear and apprehension of danger."

The Plaintiff/Defendant to the Counter-Claim denied or joined issues with this averments in paragraphs **14-19 of the Reply** to the defence. In evidence the Counter-Claimant did not really proffer any evidence to support the allegation that Claimant issued death threats and that he instigated and procured support of fellow military officers who persistently harassed and intimidated Defendant through anonymous computer calls. The question here is **who are these military officers and where is the evidence to situate these acts of harassment and intimidation**? The Defendant even alluded to the fact that he was **"physically assaulted"** but the circumstances of the alleged physical assault was again not defined or situated and precisely where it occurred? If it was at the **National Hospital** where the physical attack occurred, then there certainly must be people or colleagues who would have witnessed the attack? Nobody was really brought forward to testify and add credibility to this narrative.

Most importantly, I find it strange that in the petition to the Chief of Army Staff vide **Exhibit D3 (1),** no allusion was made at all to the **"death threat and persistent harassment and intimidation"** by fellow military officers at the instigation of Plaintiff.

Even in the petition, the Defendant alluded to having **"occasionally received calls from an unknown mobile phone by someone claiming to be a colonel and has been hired to assassinate me."**

On the evidence, again nothing was proffered linking the Plaintiff with the unknown number and there is equally nobody identified as the **"colonel"** and who has any established link with Plaintiff who made the alleged threat to assassinate Defendant. I equally find it strange that for such a serious allegation of **"assassination,"** no report at all was made to any law enforcement agency like the police with the necessary expertise and competence to carry out the necessary investigation to unravel those behind the alleged threat to assassinate Defendant.

The bottom line is that the **Defendant/Counter-Claimant** may have pleaded various acts of assault, harassment and intimidation but the evidence to support

these assertions are **largely missing**. I had made the point already but it needs to be underscored that facts deposed to in pleadings must be substantiated and proved by evidence, in the absence of which the averments are deemed as abandoned. See **Aregbesola V. Oyinlola (2011)9 NWLR (pt.1253)458 at 594 A-B.**

Pleadings however strong and convincing the averments maybe, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must be led to prove the facts relied on by the party or to sustain the allegations raised in the pleadings. See **Union Bank Plc V. Astra Builders (W/A) Ltd (2010)5 NWLR (pt.1186)1 at 27.**

Now in my evaluation of the evidence in this case, I found some of the text messages and emails sent to Defendant/Counter-Claimant as threatening but from my calm observation of the demeanour of the Defendant, I am not on firm ground that the threat was such to put him in a reasonable apprehension of imminent harmful or offensive contact and that explains why no report was made at all to the police or relevant Law Enforcement Agencies. There is no pleadings or evidence of any acts of hostility all through the time they worked at the National Hospital. The Plaintiff/Defendant to the Counter-Claim may have complained of manipulations of his result but there was no complaint of any proved assault or intimidation at the work place. If there was, because of the nature of the work place, there would certainly be evidence to support such occurrences.

Again on the facts, the Plaintiff averred in **paragraph 23** of his claim that after he failed has third attempt at passing the part 1 exams, he was released by the Nigerian Army to go for his Masters of Science Programme in Hematology at the University of West England and that the very day he arrived in England was when the petition was written on 16th September, 2012. The Defendant Counter-Claimant only provided a general denial of this assertion in paragraph 5 of his Amended Defence which in law as already demonstrated is an insufficient denial.

Flowing from the above, the bottom line is that as at the time **the petition was written by defendant**, the **Plaintiff was not even in the country which in my opinion and in the absence of contrary evidence, strengthens the contention that there was really nothing concrete to cause Defendant to have a reasonable apprehension of imminent harmful or offensive contact**. On the

rather unclear and fluid facts as demonstrated above, I have not been put in commanding height by credible evidence to hold that assault and or the elements of intimidation was established. There was really no established threat on Defendant to do anything unlawful. There was equally no proven intention to injure Defendant and the Defendant did not comply with any demand rather than risk the alleged threat been carried out.

Damages in such fluid and unclear circumstances cannot be availing. Generally, the object of an award of damages is to give compensation to a party for the damages, loss or injury which he has suffered. However before damages can be recovered by a Claimant, there must be a wrong committed by the party against whom the damages is recoverable. In other words, recoverable damages by the Plaintiff must be attributable to the breach of some duty by Defendant. See **Gabriel Ndibe & Ors V. Patrick Sunday Ndibe (2008) LPELR-4178 (CA).**

On the whole, the issue also raised with respect to the Counter-Claim is answered in the negative. The Counter-Claim on the basis of absence of clear evidence is equally undermined and not availing.

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

ON PLAINTIFF'S CLAIMS/RELIEFS

The Plaintiff's claims fail in its entirety and it is accordingly dismissed.

ON DEFENDANT'S COUNTER-CLAIM

The Defendant's Counter-Claim equally fails in its entirety and it is also dismissed.

……
Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Kelechi Uzoho (Miss) with Francis Nnegbunan, Esq., for the Claimant/Defendant to the Counter-Claim.***

2. ***S.M. Nwosu with S.M Nwosu (Jnr.) for the Defendant/Counter-Claimant.***