IN HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR

ON THIS DAY THE 30TH NOVEMBER, 2023.

CASE NO.: FCT/HC/CV/540/2018

BETWEEN:

HRM. SIR DR. L.O. ARINZE … CLAIMANT

AND

MR. ADEGOKE ADEDEJI … DEFENDANT

**JUDGMENT**

The Claimant originally instituted this suit by a Writ of Summons filed at the registry of this Court on the 1st March, 2023 and by its 2nd Amended Writ of Summons filed on 1st March, 2023, the Claimant is seeking the following reliefs against the Defendants:

1. The sum of N12,000,000 (Twelve Million Naira) being money had and received for transaction that totally failed.
2. Pre-judgment interest at the rate of 21% per annum from January 2015 to date of judgment.

3. Interest at the rate of 10 percent from the judgment date until the judgment sum is fully liquidated

The case of the Claimant is that the Claimant, a traditional ruler and legal practitioner, entered into an agreement with the Defendant, an Assistant Zonal Land Manager at the FCDA, to purchase three plots of land for N12 Million at N4 Million each. The Defendant insisted on cash payments due to his civil servant status and the Claimant sent N10.5 Million in cash to the Defendant. The Claimant later transferred N1.5 million as requested to the Defendant's bank account. However, the plots' documents proved not to be authentic, prompting the Claimant to demand genuine land or a refund. The Defendant failed to comply, leading to legal action. The Claimant's lawyer sought intervention from the Defendant's employer, but the Defendant denied any transaction with the Claimant. The Defendant continues to withhold the N12 Million, allegedly using it for personal gain. The matter was reported to the ICPC, resulting in the Defendant's arrest and statements provided during the investigation. The Claimant seeks recovery of the funds.

The Defendant on 6th June, 2023 filed his Statement of Defenceand Counter-claim along with a Witness Statement on Oath wherein he sought the following reliefs:

a. The sum of N100, 000, 000. 00 (One Hundred Million Naira only) as damages for the libelous defamatory words published in the letter written by the Claimant/Defendant

to the Counter Claim's solicitors on the instructions of the Claimant to the Counter Claimant's Director

b. An order of perpetual injunction restraining the Claimant/Defendant to the Counterclaim, his agents, privies from further publication of words or any similar words defamatory of the claimant.

c. A written apology from the Claimant/ Defendant to the counterclaim to the Counterclaimant.

The case of the Defendant is that the Defendant is a staff of the FCDA but denies being the Assistant Zonal Land Manager. He refutes several key points in the Claimant's statement and asserts that the suit is legally baseless, citing various defenses. The Defendant argues that the alleged payments made by the Claimant for land were illegal and unenforceable. He denies ever selling land to the Claimant and contests the Claimant's account of cash payments. The Defendant further alleges that the Claimant made false reports to the ICPC and published defamatory statements against him, causing damage to his reputation and professional standing. He contends that the Claimant's actions were malicious and seeks the dismissal of the Claimant's suit.

In a counterclaim, the Defendant asserts that the Claimant's report to the ICPC and his solicitor's letter contained false and defamatory statements. He claims that the publication of these statements has caused significant harm to his reputation and professional standing. The Defendant seeks damages for

the injury to his reputation and the resulting emotional distress. He requests the court to dismiss the Claimant's case entirely.

This suit was set down for hearing. The Claimant on 7th June, 2023 opened his case as CW 1 and testified for himself. He adopted his Two (2)Witness Statements on Oath before this courtand was cross-examined.

The Claimant called Henry Abba, the Chamber Manager of the Claimant's firm as the second witness on 10th July, 2023.

The Defendant on 10th July, 2023 testified for himself, adopted his Witness Statement on Oath and was cross-examined.

The following Exhibits were tendered in the course of hearing:

1. Exhibit A - Zenith Bank Fund Transfer form dated 30/01/2015.
2. Exhibit B - Zenith Bank Fund Transfer form dated 3/02/2015
3. Exhibit C - Zenith Bank Statement of Account from 01/01/2015
4. Exhibit D - Certificate of Identification dated 13/3/2023
5. Exhibit E Demand for Refund ofN12 million dated 16/7/2018

6. Exhibit F - Complaint over abuse of office and obtaining money by false pretense against Mr. Adegoke Adedeji dated 15/11/2018.

7. Exhibit G - Re- Complaint over abuse of office and obtaining by false pretense dated 26/11/2018

At the close of hearing, the suit was set down for adoption of Final Addresses.

The Defendant on 11th September, 2023 filed his Final Written Address where in Seven (7) issues were raised as follows:

1. **Having regard to section 4 of the Statute of Fraud, 1677, was the claimant entitled to institute his action upon an alleged contract for sale of land against the defendant when there is no evidence of any written agreement, memorandum or note of the alleged contract for sale of land signed by the defendant who is the person to be charged in this case?**

2. **Whether from the pleadings and evidence of the Claimant, the alleged upon which Claimant action is founded is not illegal and incapable of giving rise to a justiciable cause of action?**

3. **Whether the Claimant proved that the documents allegedly given to him by the defendant were not authentic to enable him resile from the alleged land transaction between them?**

4. **Whether Claimant even proved payment ofthe cash sum of N10, 500, 000. 00 (Ten Million, Five Hundred Thousand Naira) to the Defendant for the alleged transaction by credible evidence?**

5. **Assuming but not conceding that the Claimant proved payment of cash sum of N10, 500, 000. 00 (Ten Million, Five Hundred Thousand Naira) for the purchase and acquisition of land, whether that payment is legal and refundable?**

6. **Whether the claimant proved payment of N1,500, 000. 00 (One Million, Five Hundred Thousand Naira) to Zenith Bank?**

7. **Whether the Defendant has proved his counterclaim against the Claimant?**

The Claimant on 26th September, 2023, filed his Final Address and in it were distilled two (2) issues for determination as follows:

1. **Whether the claimant has proved his case on the preponderance of evidence so as to be entitled as claimed.**

2. **Whether the defendant/counterclaimant has proved his counterclaim against the claimant/defendant to counterclaim.**

The Defendant on 6th October, 2023 filed a Reply on Points of

Law to the Claimant's Final Addressand canvassed arguments.

I shall make reference to the said arguments when necessary

in the course of this Judgment.

**ARGUMENTS**

The main contention of the Defendant is that the Claimant does not have a right to pursue legal action based on an alleged contract for the sale of land, specifically addressing the absence of a written agreement or memorandum signed by the Defendant, as mandated by Section 4 of the Statute of Frauds, 1677. The argument contends that the Claimant lacks the entitlement to bring forth such an action in the absence of the required written documentation, emphasizing that the Court should declare the claim void due to a lack of jurisdiction as the transaction is tainted with illegality. Section 4 of the Statute of Frauds, 1677, is cited as a pivotal legal provision, stipulating that no action can be brought to charge a person regarding a contract for the sale of land unless there exists a written agreement or memorandum signed by the party to be charged or another person lawfully authorized.

Citing the case of **OBIJURU V OZIMS (1985) 6 NWLR (PT. 167) 179-181**, it is affirmed that the Statute of Frauds, 1677, is applicable to Nigeria. The statute's primary objective, as highlighted, is to prevent fraudulent claims related to contracts for the sale of land by necessitating written documentation. It is considered a protective measure,

rendering contracts void and precluding legal actions based on them if proper written evidence is absent. In essence, the argument asserts that adherence to the statutory requirements is essential for establishing a valid claim, and the court is urged to recognize the jurisdictional implications of non-compliance with the Statute of Frauds, 1677, in the present case.

The Claimant in his Address argued that the claimant has successfully proven his case based on the preponderance of evidence, specifically regarding a failed land transaction with the defendant. He emphasized that parties are bound by their pleadings, and unchallenged facts need no further evidence. The claimant contends that he paid the Defendant N12,000,000 for three plots of land, which later turned out to be non-existent.

The Claimant argued that he has presented unimpeachable oral and documentary evidence, including transfer forms and the Defendant's statement of account, to support his case. He further argued that theDefendant's visits to the claimant's law firm were corroborated by a litigation officer in the claimant's firm. He argued that the defendant's pleadings did not specifically deny the core allegations, and crucially, his final address sought evidence on issues not joined during the trial.

He posited that the defendant's defense of illegality is inadequate, and it is asserted that the defendant essentially admitted the Claimant's case through his pleadings. Therefore, the Claimant's case stands supported

by credible evidence, and the Defendant's counterarguments lack substantive denial of key allegations.

**RESOLUTION**

I have in a bid to resolve the issues before the Court raised an issue which in my mind will put the questions before this Court to rest to wit:

**"Whether, based on the pleadings, evidence, and legal arguments presented, the Claimant has successfully established a valid cause of action and the validity of the counterclaim, warranting the court to rule in favor of the Claimant or Defendant, as appropriate."**

It is settled law that the burden of proof of the existence of a term of an agreement squarely rests on the party asserting such a term. It is clearly a matter of evidence which has to be established by the party who asserts it. Failure to establish a vital term of an agreement where its existence is of *conditio sine qua non* towards the successful prosecution of a suit upon which the contract is founded, renders such suit subject to dismissal. **See L.C.R.I. v. Ndefoh (1997) 3 NWLR (PT 491) 72 at*P. 78, paras. G-H.***

See also **ODUTOLA V. PAPERSACK (NIG.) LTD. [2006] 18 NWLR Part 1012 at *P 491, PARAS. D-H*** where the Court held thus:

**"Accordingly, where a party alleges the existence of an oral agreement, which is a unique method and procedure, he must give credible evidence as to the modalities of such agreement. In other words, a party alleging an oral agreement is duty bound to prove such an agreement to the hilt. *[Broadline Ent. Ltd.* v. *Monterey Maritime Corp.* (1995) 9 NWLR (Pt. 417) *Chime* v. *Chime* (1995) 6 NWLR (Pt. 404) 734; *Usman* v. *Ram* (2001) 8 NWLR (Pt. 715)449; A. *-G., Lagos State* v. *Purification Tech. (Nig.) Ltd.* (2003) 16 NWLR (Pt. 845) 1; *Archibong v. Ita* (2004) 2 NWLR (Pt. 858) 590 referred to."**

It was equally held in **CONOIL PLC V. NWUKE 2017 4 NWLR (P. 313, PARAS. G-H)**that:

**"Where a party alleges the existence of an oral agreement, he must give credible evidence as to the modalities of such agreement. He is duty bound to prove such an agreement."**

The basis of the Claimant's lawsuit is the alleged agreement between him and the Defendant for the sale of three plots of land valued at N12 Million. Despite the absence of a written agreement, CW 2 provided testimony, stating that he witnessed the Defendant visiting the Claimant's office and observed the Claimant giving money to the Defendant during this visit.

The Defendant's counterargument is centered on the claim that CW 2 was at his own desk and not in the Claimant's office during the alleged agreement. Furthermore, the Defendant asserts that CW 2 was not privy to the discussions or aware of the sum of money supposedly given to him.

In my perspective, the evidence presented by CW 2 serves as valuable corroboration for the testimony of CW 1 (the Claimant). Importantly, one of the crucial elements in proving an oral agreement is the testimony of a third party, in this case, CW 2. The Defendant's contention that CW 2 was not physically present in the office when the discussions occurred is weakened by CW 2's testimony, which clearly states that the he witnessed the Claimant handing money over to the Defendant and he is aware that thevisits were connected to the agreement to purchase the properties.

It is my view that contrary to the argument of the Defendant's Counsel, the testimony of CW 2 was not controverted in cross-examination. Below is the evidence of CW 2 under cross examination:

**Q**: I will be correct to say that in paragraph 8 of your witness statement on oath, you told this court that you were the one that ushered the defendant into the Claimant's office. Is that correct?

**CW2**: Yes.

**Q:** Tell this Court what you did thereafter.

CW2: I returned back to my office.

This is not enough to disprove CW 2's evidence as per his Statement on Oath wherein he stated that on one occasion he brought a nylon bag for the Defendant to put money given to the Defendant by the Claimant in.

Where the evidence adduced by a witness is in line with pleaded facts and admissible in law; and it is not challenged, contradictedor shaken under cross- examination,
the evidence must be accepted by the court as the correct version of what was expected to be proved. See **Saipem SPA vs. India Tefa (2001) FWLR (pt 74) 377 @p. 394**

A written receipt is not the only means of proving payment of money. Oral evidence of persons who witnessed the transaction in which the payment was made is as good as any written receipt.

The Defendant in paragraph 8 of his evidence averred that he did not authorize the Claimant to transfer the sum of N1, 500, 000. 00 (One Million, Five Hundred Thousand Naira) into the Defendant's account and that if the Claimant had transferred any such sum of money into the Defendant's account, the Defendant did so of his own volition.

From the evidence before the courtand the pleadings, the Defendant has not denied receipt of the 1.5Million Naira, his contention is that the said amount of money was a gift from Segun Abolaji through the Claimant. It is worthy of note that

the Defendant did not tender before the Court any deed of gift or any proof whatsoever to show that N1.5Million sent to him by the Claimant was a gift from Segun Abolaji.Moreso,the said Segun Abolaji was not called as a witness before this Court.

The Claimant's assertion that he made a transfer of 1.5 million Naira to the Defendant and provided evidence to substantiate this claim is a clear indication of a financial transaction between the two parties. Additionally, the claimant states that he equally made a payment of 10.5 million Naira.

From the evidence and facts before me, it can be reasonably inferred that the transfer of the 1.5 million Naira mentioned earlier and proved by the Claimant is part of the larger sum of 10.5 Million Naira and is included in or constitutes a portion of the total payment of 12 million Naira. This implies that the transactions are interconnected components of a single financial interaction or agreement between the Claimant and the Defendant.

Also worthy of note is the fact that one of the ways of proving the existence of a contract is evidence of part payment effected.

The Defendant pleaded the Defense of Volentinon fit injuria but failed to establish that the Claimant had clear knowledge of the risk, voluntarily and freely agreed to incur it, and impliedly waived their right to take action. The law requires a finding of fact that the Claimant had full knowledge of the

risk, and without such knowledge, the defense will not be valid.

The Defendant is not entitled to the defense of volentinon fit injuria since he failed to demonstrate that the Claimant had full knowledge of the risk and voluntarily agreed to incur it.

This was the position of the Court of Appeal in **AFRAB CHEM LTD v. OWODUENYI (2014) LPELR-23613(CA)Per AMINA AUDI WAMBAI, JCA (Pp 35 - 35 Paras C - F)**

**"The maxim "volentinon fit injuria" relied upon by the learned appellant's counsel at the lower Court and in his brief of argument before us, as a defence to negate any wrong or blame on the part of the respondent and to prevent the respondent from complaining or claiming damages is predicated on the principle that to what a man consents, he cannot complain, as he is deemed to have waived his right. "Volentinon fit injuria" is usually a defence to defeat a plaintiff's case who has consented to the act complained against. However, for a defendant to succeed in relying on the principle, he must obtain a finding of fact that the plaintiff voluntarily and freely with full knowledge of the risk he ran, impliedly agree to incur it. Both knowledge and consent are necessary and there cannot be consent before knowledge."**

The Defendant in his evidence before the court in one breath averred that at no time did he sell any plot of land to the

Claimant and in another breath averred that the said transaction is illegal and of no effect.

The principle of "approbate and reprobate" disallows a party from adopting inconsistent positions, or, in other words, blowing hot and cold simultaneously. In this context, the defendant stated in his evidence that he did not sell any lands to the Claimant. However, intriguingly, he also asserted that the transaction he purportedly denied ever occurred was, in fact, illegal. This contradictory stance raises questions about the credibility and coherence of the defendant's position, as it seems he is attempting to disown a transaction while simultaneously criticizing its legality. Such inconsistency has undermined the defendant's credibility and weakens the overall strength of his defense.

The Apex court has on numerous occasions put to the fore the effects of approbating and reprobating. One of such cases is the case of **JULIUS BERGER (NIG) PLC v. ALMIGHTY PROJECTS INNOVATIVE LTD & ANOR (2021) LPELR-56611(SC)," Per EJEMBI EKO, JSC (Pp 16 - 17 Paras E - A)**

**"...By the doctrine of estoppel, a party is not allowed to blow hot and cold, to affirm one time and deny at the other time, that is to approbate and reprobate at the same time on the same issue. See UDE v. NWARA & ANOR (1993) 2 NWLR (pt. 278) 602 at 638; Section 169 Evidence Act, 2011."**

The Contradictory evidence presented by the Defendant, wherein they maintain two opposing positions, carries a

significant consequence in legal proceedings. The inherent effect of such contradictory testimony is that the court, in its assessment of evidence, is likely to discredit or not give substantial weight to it. When a party's statements or assertions within their evidence conflict or are inconsistent, it introduces an element of doubt regarding the credibility and reliability of their testimony.

In **BASSEY v. STATE (2012) LPELR-7813(SC)**, **OLABODE RHODES-VIVOUR, JSC (Pp 23 - 23 Paras E - F)**held:

"**Evidence contradicts another evidence when it says the opposite of what the other evidence has stated, and not when there is just a minor discrepancy between them. See Gabriel v. State 1989 5 NWLR pt.122 p.460. Two pieces of evidence contradicts one another when they are themselves inconsistent on material facts."**

Where a party in an action gives contradictoryevidence, the court will not embark upon speculationof which contradictory evidence to prefer. The courtwill simply ignore or reject both pieces or evidence and this Court will not give credence to the inconsistencies of the Defendant's case.

It was held in the case of **Ekweozorv.Reg.Trustees,S.A.C.N. part 1434 2014 16 NWLR 433 pageat(P.475, paras. B-C)**

**"Where a witness gives contradictory evidence on thesame issue, the court is not in a position to chooseone and reject the other, the two pieces of evidencemust be rejected, and such a witness is not capableof being believed. In this case, DW1's under cross-examination contradicted his evidence-in-chief."**

It is a well-established legal principle that if the defendant fails to present any convincing evidence to sway the balance in his favor, the court is likely to rule in favor of the claimant.

"It is trite law that if the defendant fails to lead any credible evidence to tilt the scale to his side, judgment will be for the claimant. SeeDARMA & ORS v. MUSTAPHA (2014) LPELR-23734(CA) **Per HABEEB ADEWALE OLUMUYIWA ABIRU, JCA (Pp 59 - 59 Paras E - E)**

In the fourth paragraph of Exhibit G Letter dated 26th November, 2018 written by the Counsel to the Defendant to the Claimant's firm it was stated as follows:

"Our client categorically denies your allegations in the said letter and states further that he had nothing to do with either your client or the mentioned Segun Abolaji…"

Under cross-examination, the Defendants stated as follows:

"Yes, I know Segun Abolaji"

"This money, I went for surgery in the United States it was Segun Abolaji, it was later he told me he sent somebody to

send money to my account. I never had any contact with the Claimant”

Q: did you ask him the person that gave you that gift

DW1: I don't need to. I told you it was Segun who said he will send somebody to pay money into my account. So, there is nothing for me to ask. He said it was because I was on sick bed that he said he will use something to assist me.

Q: To your own understanding, it was Segun that gifted you that money.

DW1: Yes

The evidence adduced from the letter is inconsistent with the statement of the Defendant under cross-examination. Inthe former evidence he denied having anything to do with SegunAbolajiwhile in the latter evidence he claimed that the 1.5 Million Naira was sent to him by Segun Abolaji through the Claimant as a gift.

I had earlier dealt sufficiently with the effects of contradictions in evidence and see no need to rehash it but I will simply state that these contradictions have shown the Defendant to be an unreliable witness and the court will not rely on his testimony.

An oral agreement can be inferred by the conduct of the parties.

It was held in the case of **TRADE BANK PLC. V. DELE MORENIKEJI (NIG.) LTD. [2005] 6 NWLR pt. 921 page 309 at P 332, paras. D-F** that:

**"An agreement can be oral, or can be implied from the conduct of the parties thereto. In the instant case, although the initial agreement between the parties was written, the conduct of the parties show that there was an extension of the agreement to cover the transaction relating to the importation of caustic soda, though not in writing**".

It is my view that from the conduct of the Claimant and alsothe Defendant it can be said that there was an agreement between the Parties.

The main contention of the Defendant in this suit is to the effect that the transaction leading to this suit is illegal and so the Claimant is not entitled to any reliefs sought.

It is crucial at this point to remind the Defendant that a party cannot be allowed to benefit from his own wrong and later rescind from it on the basis of illegality.A party who has knowledge or is presumed to have knowledge of the existence of an illegality in a transaction and enters into the transaction cannot later label it as illegal and raise illegality as a defence. Equity shall not condone it, as one cannot approbate and reprobate. In the instant case, as the Respondents themselves originated or perpetuated illegalities and *ultra vires* acts, they cannot rely on it as a defence.See **Oyegoke v.**

**Iriguna (2002) 5 NWLR (Pt.760) 417 at *Pp. 500-501, paras. G-A.***

In **SALEH V MONGUNO & ORS (2006) LPELR – 2992 (SC)** the Supreme Court per Tabai JSC at page 31 paragraphs C-D held that a party who has committed an illegality cannot be allowed to benefit from same. In ALHAJA AUDU GARBA MAINAMA V KEYSTONE BANK LIMITED (2015) LPELR-40877 CA, PAGE 18 PARA B-D, Adetope-Okojie JCA held that:-

**"Furthermore and most importantly, the law is that a party who has benefitted from an agreement cannot turn around to say that the agreement is void. In the words of Onu JSC in the said case, "it is inequitable and morally despicable for the appellant, after obtaining a loan and after utilizing same, to now turn around and allege that the agreement (Exhibit E) between it and the grantor of the loan i.e the 2nd respondent, is null and void."**

It is now settled law that a party who willingly enters into a contract they know is illegal and even benefited from the contract cannot turn around to claim unenforceability of the same contract when they are called upon to perform their obligations under the said contract. See **Max Blossom Limited v. Mr. Maxwell T. Victor &Ors (2019) LPELR47090(CA); African International Bank Ltd. v. Integrated Dimensional System Ltd. (2012) 17 NWLR (Pt. 1328), pg. 1 at 43-44 paras. H-A; Artra Industries**

**Ltd. v. Nigerian Bank for Commerce and Industries (1997) 1 NWLR (Pt. 483), pg 574 at 593, paras. F-H; Chanchangi Airline (Nig.) Ltd. vs. A.P. Plc. (2015) 4 NWLR (Pt. 1449), pg. 256, 274-275, paras. F-H** among others. He who comes to equity must come with clean hands.

This is in tandem with the Supreme Court's decision in **IBRAHIM VS. OSIM (1988) 3 NWLR (PT. 82), PG. 257, 279, PARAS. A-B**, where the apex Court held as follows:

**"If it is an illegal transaction, the Appellant by his conduct in all the Courts below and in this Court, is praying that his crime be condoned with all the benefits that accrued to him by way of financial gains and to let it end there. That will not only be unjust but will also not be equitable. No person shall, after reaping benefit from a transaction of which he is a party, be heard to say such a transaction is illegal or void or voidable when it comes to him to fulfill his obligation under the transaction so far the other party has done all he pledged to do under it."**

The Defendant's recourse to the defense of illegality is inconsistent, given the well-established legal principle that one cannot both enjoy the benefits of an action and disown its legality simultaneously. This situation is akin to attempting the impossible feat of eating one's cake and yet retaining it. In legal terms, the doctrine against approbating and reprobating dictates that a party cannot selectively accept the favorable aspects of a situation while disclaiming its legality when it

becomes inconvenient. The Defendant, having accepted money from the Claimant, cannot now use the shield of illegality to evade responsibilities or obligations arising from that transaction. This legal inconsistency raises questions about the credibility and coherence of the Defendant's defense.

The Defendant, in his Counterclaim, is seeking remedies for the defamation of his character arising from the contents of Exhibit F.The Defendant to Counter claim respondedthat Exhibit F is justified because it is only aimed at inviting the intervention of Defendant's boss to advise the Defendant of the moral and legal implication of obtaining the N12million from the Claimant under false pretence. He also stated that the letter of complaint was written under qualified privilege and the Director, Urban &Regional Planning of FCDA was eminently qualified to receive same and act on it.

In the case of **EMEAGWARA v. STAR PRINTING & PUBLISHING CO. LTD & ORS(2000) LPELR-1122(SC), SYLVESTER UMARU ONU, JSC** held at **(Pp 31 - 31 Paras D - E)**as follows:

**"It is for the judge who is trying the case to determine whether the defendant was under a duty to make the communication. The judge is entitled to take the entire prevailing circumstances into account in reaching a decision."**

A privileged occasion is, in reference to qualified privilege, 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. Reciprocity between the parties is, therefore, essential.

It is well settled that in order to succeed in an action for defamation, whether libel or slander, a Claimant is required in law to lead credible evidence to establish the presence of the following basic ingredients, without exception, namely:

1.That there was publication of the allegedly defamatory matter to some person other the claimant of and concerning whom the defamatory statement is written or spoken;

2. That the alleged defamatory words must convey defamatory meaning to those to whom it is published;

3.That the words must be false in their content;

4. That there are no justifiable legal grounds for the publication of the words

5.The complainant has the onus of establishing that he was the subject of the alleged libel; and

6. It was the Respondent who published the defamatory words

See **Zenith Plastics Industries Limited Vs. Samotech Limited [2007] 16 NWLR (Pt. 1060) 315; Asheik Vs. Media Trust Nigeria Ltd. & 3 Ors. [2010] 15 NWLR (Pt. 1215) 114; Chilkied Security Services & Dog Farms Limited Vs. Schlumberger (Nig.) Ltd & Anor. [2018] LPELR-44391 (SC)**.

The challenge facing the Court is to ascertain whether, considering the entirety of the evidence presented, the Claimant in this case has effectively demonstrated the existence of each essential element. If so, the next consideration is whether the Claimant is eligible for the damages and other remedies sought.

Established legal doctrine asserts that the essence of a defamation claim, whether in the form of libel or slander, hinges crucially on publication. This element must be meticulously proven, as defamation cannot exist without it. Publication, in the context of defamation, involves revealing the purportedly defamatory content to individuals other than the subject of the content.

This position was firmly established by the Supreme Court in **NSIRIM VS. NSIRIM [1990] 3 NWLR (PT. 136) 285**, where it was held, per Obaseki, JSC, as follows:

**"By publication, it is meant the making known of the defamatory matter to some person other than the person of whom it is written... it is the reduction of libelous matter into writing and its delivery to any person other than the person injuriously affected thereby. That is publication. The name of the person to whom the libelous document was made must be pleaded."**

It is trite that a privileged occasion arises if the communication is of such a nature that it could be fairly said

that those who made it had an interest in making a communication and those to whom it was made had a corresponding interest in having it made to them. Where those two co-exist, the occasion is privileged. The publication must be a common interest between the maker of the statement and the person to whom it was made to sustain the defence of qualified privileged.

In the present case, the Defendant to the Counter claim asserts a defense of qualified privilege, contending that the communication was made in a context where there existed a legitimate interest. The defendant to the Counter claim had a discernible interest in making the communication to the Counter claimant's boss, and this interest aligned with the recipient's interest in receiving it. This mutual interest establishes the privileged nature of the occasion, providing a foundation for the defense of qualified privilege.

The case of **MAINSTREET BANK & ANOR v. BINNA(2016) LPELR-48351(SC)** is on all fours with the case at hand. In MAINSTREET BANK & ANOR v. BINNA (supra) the Appellant believing that the Respondent was indebted to it, wrote to the Respondent's employer intimating the Respondent employer of the indebtedness of the Respondent to the Appellant. The Apex Court per **WALTER SAMUEL NKANU ONNOGHEN, JSC (Pp 33 - 35 Paras G - E)**held as follows:

**"It is settled law that an occasion of qualified privilege is one in which the maker of a publication has an interest or duty,**

**whether legal, social or moral, to make it to a person who has a corresponding interest or duty to receive it. It is the existence of such an interest or duty that destroys the inference that the maker of the publication was actuated by another, which the law usually makes in areas of defamation, and allows for the occasion to be privileged, except there is evidence of actual or express malice. See Ojeme v. Momodu (1994) 1 NWLR (Pt. 323) 685 at 201; M.T.S. Ltd. v. Akinwunmi (2009) 16 NWLR (Pt. 1168) 633 at 652-653, etc... The letter was addressed to the employers of the respondent who were the guarantors of the loan extended by 1st appellant to the respondent and therefore had the interest, or duty to receive the information conveyed in the letter. So, you have a situation in which the appellants had both an interest in recovering, and a duty to recover the loan facility granted the respondent, which they honestly believed was yet to be repaid in full at the time of the publication by them. The recipient of the letter (publication) complained of being the guarantor of the credit facility, had both an interest in knowing the state of affairs of the facility and a duty to make the necessary redress. It is in the above circumstances that we hold that the defence of qualified privilege availed the appellants for the publication in issue."**

One of the ingredients which must exist to warrant the grant of reliefs for defamation is that the said publication must be false and untrue. See **OJU v. EGBEWOLE & ORS (2019) LPELR-48335(CA).**

I had earlier stated in considering the Claims of the Claimant that I believe the case put forward by the Claimant and also believe that the Defendant is liable of the allegations against him including the contents of Exhibit F.

The Defendant has failed to established sufficient evidence to allow the grant of the reliefs sought by him, hence judgment is entered in favour of the Claimant/ Defendant toCounter-claim.

The Counter claim of the Counter-claimant/Defendant is lacking in merit and hereby fails. Accordingly, the Counter-claim is hereby dismissed.

I hereby make the following orders:

1. That the Defendant should pay the sum of N12,000,000 (Twelve Million Naira) being money had and received for transaction that totally failed.

2. The Defendant is further ordered to pay Pre-judgment interest at the rate of 10% per annum from January 2015 to date of judgment.

3. Interest at the rate of 10% from the judgment date until the judgment sum is fully liquidated is hereby awarded in favour of the Claimant.

HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Claimant;Chidi Nwankwo, Ph.D.

For the Defendant; Chief O.E.B. Offiong, SAN, Dr. G.O.A. Ogunyomi, Esq. and Clementina Fakoya, Esq.