



**IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
BEFORE HIS LORDSHIP HON. JUSTICE BASHAR A. ALKALI
DATE: THURSDAY 23RD JANUARY, 2025
SUIT NO: NICN/KD/08/2022**

BETWEEN:

EX-LCPL MONDAY EDET.....CLAIMANT

AND

- 1. THE NIGERIAN ARMY**
- 2. THE CHIEF OF ARMY STAFF** **DEFENDANTS**
- 3. MECHANISED DIVISION, KADUNA**

REPRESENTATION

S. I. Unoakhe Esq for the Claimant

Defendants Counsel absent

JUDGMENT

INTRODUCTION

The Claimant commenced this suit vide a Complaint with Suit No. NICN/KD/03/2014 which was filed on the 27th of February 2014. The Court

abruptly dismissed the suit upon the ruling delivered by the late Honourable Justice Lawal Mani (of the blessed memory) on the 12th of November 2014. The Claimant appealed the ruling of this Court which dismissed the claim of the Claimant, by the judgment of the Court of Appeal delivered on the 28th of January 2022, the appeal was allowed and the Court of Appeal remitted the suit to this Court for the trial on merit; hence, this suit. The Claimant recommenced this suit vide Suit No: NICN/KD/08/2022 where the Claimants seeks the following reliefs against the Defendants as follows:

- a. A declaration that the summary dismissal of the Plaintiff from the service of the Defendants was wrongful, illegal null and void as same did not comply with the service regulations.

- b. A declaration that the summary trial of Brig. Gen. O. Laleye conducted on 8/3/13 in which he purportedly dismissed the Claimant as unconstitutional as the same was contrary to natural justice.

- c. An order of this Honourable Court re-instating the Plaintiff to the present rank enjoyed by his colleagues who joined the service the same year with him.
- d. An Order of this Honourable Court directing the Defendants particularly the 3rd Defendant to pay the Claimant the sum of N150,000.00 being his Ration Cash Allowance (RCA) which was stopped for ten months as a result of his insanity accusation.

- e. An Order of this Honourable Court directing the Defendants particularly the 3rd defendant to pay the Plaintiff all his outstanding arrears of salaries from 8th March, 2013 up to date as well as his accrued allowance from 8/03/2013 to date.

f. An order of this Honourable Court directing the Defendants to pay - jointly and severally the total sum of N101,517,000.00 to the Claimant which breakdown are as follows:

i. N40,000,000.00: being General damages for ejecting the Claimant forcefully without giving him time to gather himself up and for wrongful dismissal.

ii. N10,000,000.00: Being punitive, aggravated and exemplary damages for traumatizings the Claimant's life, pains and disgrace etc caused by the men of the 1st Defendant.

iii. N50,000,000.00: Being for libel. For falsely accusing the Claimant of being insane and treated him as same despite the Doctor's report that cleared him.

iv. N1,367,000.00 Being special damages for his household items damaged and the cost of his medication since his sudden dismissal from the 1st Defendant's service and had no access to their hospital to treat his neck injury caused by the men of the 1st Defendant.

Particulars of Special Damages:

1. Set of upholstery leather chair	N250,000.00
2. Set of 6 x 6 Bed	N130,000.00
3. Walddrop	N60,000.00
4. Glass Centre Table	N30,000.00
5. Room divider	N30,000.00
6. CPU Computer	N35,000.00

7. Desk jet printer	N15,000.00
8. Broken plate	N5,000.00
9. Traveling bag	N6,000.00
10. Cost of medication	N800,000.00
TOTAL	N1,367,000.00

The Claimant predicated his claims on the Statement of Fact and Witness' Statement on Oath filed on the 27th of February 2014 and Amended Reply and Further Witness Statement filed on the 24th of October 2022. The Defendants premised their defence on the Amended Statement of Defence and a Witness' Deposition on Oath filed on the 17th of May 2022. The Defendants in their defence seek counterclaim reliefs as follows:

1. An Order of the court dismissing the suit for being statute barred having been filed outside the 3 (three) months required by the Public Officers Protection Act, 2004.
2. An Order dismissing the suit for being incompetent and an abuse of court, a similar suit having been filed and concluded at another court of competent jurisdiction and an appeal in that regard pending before the supreme court.
3. An Order dismissing the suit and refusing all the reliefs sought for lacking in merit.
4. Or in the alternative, an Order declining jurisdiction to hear the suit for lack of Jurisdiction as our laws does not allow actions being filed piecemeal.
5. A cost of N500, 000 in favour of Defendants.

The suit proceeded to hearing on the 23rd of March 2024 where the Claimant called a sole witness. The Claimant who testified for himself hereinafter referred to as CW1 identified his Depositions made on Oath made on the 27th of February 2014 and 24th of October 2022 and adopted the same as his evidence in support of his case. CW1 thereafter tendered Exhibits CW001A-H, CW002A-B, CW003, CW004A-B, CW005, CW006, CW007, CW008, CW009, CW010, CW010, CW011, CW012, CW013, CW014 and CW015.

On the 23rd of May 2024, the Defendants opened their defence, Musa Audu hereinafter referred to as DW1 testified for the Defendants. DW1 identified his Statement on Oath filed on the 17th of May 2022 and adopted the same as his evidence in support of the defence of the Defendants. DW1 thereafter tendered Exhibits DW001, DW002, DW003, DW004 and DW005.

After the close of the hearing of the suit, on the 28th of October 2024, the matter came up for the adoption of the Final Written Addresses filed by Counsel. Counsel for the Defendants were not in court for the adoption of the final written addresses filed on behalf of the Defendants, however, the Court pursuant to Order 45 Rule 7 of the National Industrial Court (Civil Procedures) Rules 2017 deemed adopted the Defendants' Final Written Address and Reply on Point of Law respectively filed on the 10th of June 2024 and 30th of September 2024.

Counsel for the Claimant, S. I. Unoakhe, Esq identified his Final Written Address filed on the 12th of July 2024 and adopted the same as his legal submission in the aid of the case of the Claimant while urging this Court to grant the claim of the Claimant.

CLAIM OF THE CLAIMANT

The Claimant stated in his pleading that the Claimant until his wrongful dismissal from the Nigerian Army on the 8/3/13 was lance Copral with identification No: 2002NA/52/4885 attached to 1 Division Garrison, Kaduna. He had served the 1st Defendant for 11 years without a single query and later re-engaged his service to 15 years. His salary with the Defendants was Fifty-Five Thousand, Two Hundred and Sixty-Two Naira only per month. From time to time his superiors, namely, Col. S. A. Audu, Carpt. Y. U. Gabarin and others had had reasons to send him and some of his colleagues to certain locations on special duty which bothered on security matters.

On 7/01/2012, the Claimant and some of his colleagues, namely SSGT Saleh Danjuma, CLP Ahmed Abdullahi, CPL Peter Ocheme and PTC Kefas Nyain were sent to Pambeguwa on such special duty under the umbrella body of Operation Yaki of Kaduna State and under the command of the said SSGT Saleh Danjuma. The conduct of their special assignment was to stop and search incoming vehicles to Kaduna Metropolis, with a view to forestalling threat to life and property and the conduct had gone on well from 7/01/2012 until 20/01/2012. On the later date an unknown man rushed to inform him that a vehicle loaded with arms and ammunition was heading towards their direction. The Claimant stated that he immediately intimated one of his superiors about the information he just received and pointed him to the informant as the latter was hurrying away from their post. A fast-moving Honda Car from Kano direction suddenly pulled up at their checkpoint in bravado fashion letting out in the process one Lt Col. M. F. Babayo an officer of the Defendants attached to the office of the 3rd Defendant and three Civilians. The said LT Col. M. F. Babayo immediately ordered him and his colleagues to dismantle their checkpoints claiming that he had received report that they were extorting money from people.

Lt. Col. M.F. Babayo subsequently conducted search on him and his colleague but found nothing incriminating on them; and he still insisted that they should dismantle their checkpoint for reasons best known to him. About an hour after they have dismantled and returned to their make shift camp by the road side, the same Lt. Col. M.F. Babayo again pulled up at their resting camp; this time ahead of twenty special force men on Hilux Vans. Lt. Col. M.F. Babayo further ordered them to move to his own camp along the same Pambeguwa road.

On getting to the Lt. Col. M.F. Babayo's camp, he suddenly pointed to the Claimant and subsequently ordered the Claimant to follow him (Lt. Col. M.F. Babayo) and others to Zaria for purposes of testifying against certain Policemen whom he claimed he arrested on the same allegation of extortion. The Claimant claimed that the Claimant whispered to their guard commander, requesting him to quickly put across all to their 1 Div Garrison Commander and to intimate him with what Lt. Col. M.F. Babayo was requiring him to do in Zaria. As soon after the voice of their Garrison commander was heard loud on the speaker of a cell phone requesting to speak with Lt. Col. M.F. Babayo, but the latter refused to do so when his attention was called to it. When Lt. Col. M.F. Babayo turned his attention to him, he spoke up in clear respectful tone to

the effect that "sir, how can I testify about what I have not personally witnessed?" His humble question met with Lt. Col. MF. Babayo's rain of verbal abuses.

Lt. Col. M.F. Babayo who had since increased anger and rage over the said question of the Claimant ordered his men to disarm the Claimant and tie his hands behind his back. While being surrounded by Lt. Col. M.F. Babayo's men who were training their loaded rifles at him at the same time, he (Lt Col. M.F Babayo) has made loud boast to the effect that "I am a Fulani... I can order the soldiers to shoot at you and nothing will come out of it". Lt. Col. M.F. Babayo barked out an order to his men to "hold him tightly", while he descended on him with beatings, calling him all sort of names, including "Idiot" "Shege" "Banza" and "Karfir", before subsequently ordering the said twenty special force men and three unknown civilians to give the Claimant the beating of his life.

The Claimant further stated that for more than twenty minutes these men descended on him with heavy beating, slapping, kicking and stepping on him with their different sizes of Jackboot, hitting his head - especially his neck area with the butt of their rifles, amidst verbal abuses such as "idiot" "yeye soldier", "Kafir" etc. He later noticed after the beating to his horror that his uniform had been torn around his armpit and pelvic areas, he was also bleeding profusely and soon discovered that he could no longer move about his neck as a result of being hit repeatedly with butt of several rifles. He was still pulled, pushed about like a common criminal and dragged on the ground for several meters in the full view of the watching public and thrown on to a waiting Hilux Van for onward force transportation to Defendants' Nigerian Army Depot at Chindit Barracks, Zaria.

On arrival at the Zaria Depot of the 1st Defendant, he was taken straight to the Military Police Guard room for the second leg of his torture. Despite being covered with blood and dirt from his head down, Lt. Col. M.F. babayo further ordered that the legs of the Claimant should be chained to an iron and that he should be hung upside down "till I come back" that Lt. Col. M.F. Babayo did not come back to his torture Room till the next day being 21/01/2012. While hanging upside down in that torture room, that he temporarily passed out with the heavy chains still on his legs, before being revived. On being released on the said 21/01/2012 he was driven back to Kaduna weak and in excruciating pains from his neck down, and have since not been able to move

about the later part of his body as before. On his return to Kaduna, he managed to drag his body to the office for purposes of showing his sorry physical conditions to both superiors and colleagues. Fully satisfied that he was indeed in physical pains and agony, his superiors in turn ordered him to rush to the 1 DIV Hospital for examination and possible treatment.

Further stated that the initial examination on 23/01/12 the Doctor diagnosed the cause of the excruciating pain on his neck as neck muscle spasm and trauma. Subsequently the Doctor issued him with an excuse duty certificate on which he wrote down the said diagnosis, prescribed drugs and "ten (10) days excuse duties for him. On 2/02/2012 he returned to the same Doctor with the same complaint of serious neck and body pain, who after, re-examining him again issued him an excuse duty certificate on which he wrote down the new diagnosis as stiffness of neck trauma. Not getting any relief despite the doctor's repeated drug prescriptions, he has again returned to the doctor on 2/11/2012 with the same complaint of unceasing neck pain. The doctor not knowing what else to prescribe merely advised that the Claimant must ensure that the Claimant buy and take the prescribed drugs before this develops to something else. On 6/11/2012 the doctor has written an official report in which he confirmed the Claimant repeated complaint of neck pain despite his repeated drug prescription, but merely expressed the hope that the Claimant would heal with time.

The neck and body pain have grown worse to date and he is barely able to either fall asleep at night or move his head about as before. Lt. Col. M.F Babayo had later gone to tell his unit commander that the Claimant was insane and should never again be allowed to carry weapon for the performance of his usual military duties. His unit commander invited him and re-assigned the Claimant to arm store without his weapon and stopped the payment of his daily allowance of N500 which now stands to N150,000.00. Since then, the Defendants and their men had been treating the Claimant with disfavour as an insane soldier. On the 28/11/12 he was forcibly bounded to the 1st Defendant's hospital at 1 DIV for Psychiatry checkup. Report of the Doctor cleared him of insanity, which is that "after interrogation, it was observed that the soldier shows feeling of resentment at having been unfairly treated after all his effort to seek redress on the case failed."

Despite the doctor's report which cleared him of insanity, the Defendants refused to restore him to his position and to pay his Ration Cash Allowance

(RCA) despite all entreaties. On the 18/04/2012 that he has written a letter (through A.O) to his 1 Div Garrison Commander in which he complained passionately about Lt. Col. M.F. Babayo's death threat, series of arrests, and torture meted out to him under his direct orders. He has written and served a reminder letter dated 21/05/2012 to his 1 Div Garrison Commander Cl. S.A. Audu) pleading that he should use his good office to redress his case and he claimed the sum of N200,000,000.00 against Lt. Col. M.F. Babayo and his troops. On 26/06/2012 he wrote another letter to Headquarter 1 Division of the 1st Defendant pleading for him to use his good office to redress his case but no reply. Three months after he did not get any response of his previous letters, he wrote another dated 3/08/2012 and repeated his whole story. Few days later he wrote another reminder dated 24/8/12. On the 23/10/12 he wrote and sent by expedited mail yet another reminder to the 1st Defendant through its Nigeria Army Council Abuja in which he repeated his story.

On receipt of his letter dated 23/10/12 the G.O.C. of 1 DIV Kaduna summoned him to his office on 5/12/2012 and ordered him to just forget the matter adding that the Claimant cannot continue in your right, unless of course you intend to leave the Army and that he could never tell the officer in question to write a letter of apology to the Claimant. The words of G.O.C devastated, discouraged and broke his heart that he wrote and sent another letter to the 1 DIV Garrison of the 1st Defendant (through C.O. Admin) dated 7/12/12. He was still deeply hurt by the words of G.O.C of 1 DIV, that he got to brief his lawyers and who have in turn wrote letters demanding the immediate remedy. On receipt of his lawyers' letters dated 14/01/13 and 26/2/13 he was summoned and interrogated by men of the Defendants who were primarily bent on knowing whether or not he was the one who instructed the lawyers to write and mailed those letters and he answered in affirmative. The Claimant stated that he was arrested on 20/2/13 and was not released until the evening of 25/2/13 with hard labour and without food or drink. In one of the days of his arrest and detention he beacons on a passer-by to take him a snapshot in cell.

On the 6/3/2013, he was handed a charge sheet by military police which reads "Him at Kaduna instructed his lawyer to write to Chief of Defence Staff directly punishable under section 103 of Arm Forces Act. On the said charge sheet, he appended his signature and handed it back to the military police as demanded. On the 7 day of March 2013, he was summoned before Ag C. O. Admin Maj. Jimoh with other soldiers for trial. While he was before the said

Maj. Jimoh, he was charged with wrong channel of Communication and in defence he has shown him (Maj. Jimoh) copies of all the letters he has written to the Defendants through the normal process of his unit before he engaged the services of lawyers who have in turn written to chief of Defence staff. And that the said Maj. Jimoh has not found him not guilty.

On the 8/03/2013 he was summoned again to appear before Brig. Gen. O. Labeye and his two orderlies who subsequently told him that he was charged with wrong channel of communication and subsequently informed him that he had been dismissed from Nigerian Army owing to the Claimant's refusal to toe established due process in the pursuit of his violated right. When he got his "Part 2" order of dismissal, some of his vital documents including some receipts got missing. His household belongings were littered along the street by soldiers on that same 8/3/13 and that most of them were destroyed beyond repairs. Brig. Gen. O. Laleye later gave an order to the men of the 1st Defendant to eject the Claimant out of the Barrack with his personal belongings with immediate effect.

DEFENCE OF DEFENDANTS

The Defendants stated that the Claimant was alongside other soldiers deployed to mount a road block on the Highway in accordance with the Federal Government, Nigerian Arm Forces Security Policies and measures aimed to maintaining security of life and Properties. Upon deployment and stationing at the various road blocks on all the highways, the instructions given to the soldiers including the Claimant were clear and that does not include extortion of money from motorists. Rather than concentrate on his special duty which was very clear and direct, the Claimant developed the habit of extortion of money from the motorists that ply the road where he and other soldiers were on the road blocks, embarrassing and intimidating passers-by and the residents of the area where they mounted the road block.

The headquarters of the Nigerian Army I Mechanized Division had severally received reports of intimidation, harassments and extortion of motorists by soldiers on the road block especially on the Kaduna-Zaria Road. The Claimant developed the acts of intimidation, harassment and extortion of motorists and the passers-by and when he developed this act, the other soldiers who were on duty with him resisted the same and as a result reported the Claimant's conduct to the Team Adjutant who in turn reported same to the Claimant's Commanding Officer. Upon the report of this conduct of the Claimant which

coincided with the several reports of misconduct of soldiers at the road blocks, the Claimant's team and area of operation was placed under specific surveillance and monitoring. The Claimant's team alongside other soldiers deployed on that road were under the monitoring of Lt. Col. M. F. Babayo, who commands the Army Monitoring Troops within the axis covered by the Claimant's area of duty.

There was never a reported case of armed robbery, possession of arm etc. in the area where the Claimant was on duty during the period in review. On the 20th of day of January, 2012, the Claimant as usual alongside other soldiers were on the road block at the Kaduna/Zaria road and unknowingly for the Claimant, he encountered the Commander of the Monitoring Team, Lt. Col. M. F. Babayo who was not on military uniform but in the company of other civilians in a car. The Claimant stopped the vehicle driven by Lt. Col. M.F. Babayo, directed him and other passengers in the vehicle to come down from the vehicle, searched the vehicle, their luggage and as well searched them, the Claimant further requested for the vehicle papers and Lt. Col. M.F. Babayo told him that he does not have the vehicle papers with him. The Claimant as a result demanded for a settlement before he will allow Lt Col. M.F. Babayo and others to proceed. The Claimant further threatened to punish them if he fails to cooperate. It was at that point that Lt. Col. M.F. Babayo brought out his identify card, identified himself to the Claimant and informed him that he was under arrest.

Lt. Col. M.F. Babayo quickly called the patrol team under his command to come and pick up the Claimant, he ordered other soldiers on the road block to quickly disarm the Claimant and place him under arrest. The Claimant was informed by Lt. Col. M.F Babayo that he is being arrested for extortion of motorists, intimidation and harassment of the members of the public contrary to service discipline. Rather than comply with the arrest order and remain calm, the Claimant resisted the arrest and threatened to shoot anybody that comes close to him (as he was armed with a rifle), And it was by God's grace and experience that one of the soldiers was able to disarm the Claimant. While Lt. Col. M.F Babayo and the other soldiers were still with the Claimant who was fighting with the soldiers that were trying to arrest him, the patrol team arrived, the Claimant was thereupon arrested and taken to the military guardroom (which is the usual practice). The Claimant was not dragged on the ground as alleged; he was not chained and he was not tortured by anyone.

The incident was duly reported to the Claimant's Commanding Officer, the Claimant who was initially detained at Nigerian Army Zaria Depot guardroom was subsequently processed and moved to Kaduna for debriefing and proper investigation. He was immediately released to enable proper investigation procedure and actions concerning the case. In the course of the investigation by the Military Police, the Claimant was invited for questioning several times but while the investigation was still ongoing, the Claimant started behaving strangely, stopped participating in the usual parades, neglected his assignments on the grounds that he was not in good health.

Owing to the Claimant's subsequent conducts and also as a result of complaints from his colleagues that the Claimant has recently started to act like someone that is mentally unfit, these conducts were reported to the Claimant's Adjutant who in turn reported same to the Claimant's Commanding Officer. The Claimant was summoned for questioning by the Commanding Officer. During the questioning with the Claimant's Commanding Officer, the Claimant complained that he was passing through body pains which started since his arrest. The Claimant was therefore upon the complaint, referred to the medicals for proper examination and needed to be exempted from parades, duties and other activities pending when the Claimant's health normalizes.

At the medicals, after examination, medication and proscriptio were given to the Claimant, he was also instructed to follow the prescription properly and limit the level of duties or exercise he participates in, the medical prescription necessitated temporary exemption of the Claimant from duty, while investigation of the complaint's conducts at the road block was still ongoing. Rather than stick with the medical instruction and prescription, the Claimant completely ignored the medical prescriptions, started embarrassing other soldiers, the Claimant developed the habit of shouting and talking unnecessarily on most occasions to himself. The Claimant's subsequent conducts were reported to his Commanding Officer again and the need to prevent the Claimant from bearing arms was advised going by the way the Claimant was behaving. The Claimant's Commanding officer thereupon directed that the Claimant be redeployed to a unit where he would not be bearing arms directed that a proper mental and physical examination be conducted on the Claimant.

The Claimant was as a result redeployed to a unit where he will not be bearing arms, the Claimant was also medically examined but was not found to be properly insane but was mentally unfit. However, while the Claimant was still undergoing treatment and the investigation ongoing over his conducts, the Claimant without regards to the established Military practice, procedures and oath of services allegiance started writing all manner of letters and petitions making demands for payment of compensation by Lt. Col. M.F Babayo. The Claimant by - passed all available chain of command and wrote to the General Officer Commanding (GOC) I Division, Nigerian Army, Kaduna demanding that he be paid compensation, upon receiving his petition, the GOC invited the Claimant and advised him to calm down and allow proper military procedures in handling issues to be followed and that the matter is still under full investigation.

Regardless of the GOC's advice to the Claimant, the Claimant chose to take laws into his hands and insisted on continuing with his writing of letters and petition in complete violation of the practice and procedure of settlement of disputes in the Nigerian Army. Meanwhile, the investigation for the conducts of the Claimant was still ongoing and most times when the Claimant was invited for questioning by the Military police, he hardly ever obliged them because he will always claim to be sick and not strong enough.

And it was only on 20th of day of February, 2013 that the Claimant finally appeared before the military police for questioning which was inconclusive that same day, the Claimant was further detained for a period of about 8 hours and was subsequently released. While the case of the unlawful extortion, intimidation and harassment by the Claimant was still ongoing, the Claimant continued with the conduct of writing incessant petitions and letters to the Chief of Army Staff without following the established procedures of addressing grievances in the Nigerian Army. Whereas, Claimant's case and complaint was being reviewed with a view to conclusively resolve same with a finding on the allegation of conduct prejudicial to service discipline, the Claimant as a serving soldier at that point in time approached the Federal High Court, Kaduna Judicial Division and filed an application for the enforcement of his fundamental rights. The application was filed based squarely and almost on the same facts with that of the present suit by the Claimant's counsel O.M. Ozowara Innocent, Esq. of Peniel Law Firm. The application is dated 11th of March, 2013 and was filed on 19 March, 2013.

While Claimant's case was still under review in accordance with the rules and regulations of services of the Nigerian Army, the Claimant in breach of the provisions of the traditions, customs and ethics of the Nigerian Army by - passed the chain of command and instructed his solicitors to petition the Chief of Defence Staff, a conduct which is contrary to service discipline and ethics. The Claimant as a result, was summoned before his Commanding Officer, charged and to be tried summarily for the offence of Conduct Prejudicial to Service Discipline contrary to and punishable under section 103 of the Armed Forces Act, CAP, A20 Laws of the Federation of Nigeria, 2004. On the 8th of day of March, 2013, the summary trial of the Claimant for the stated offence was concluded. The summary trial of the Claimant followed due process of the law and the Claimant was convicted for the said offence and having been convicted, the Claimant was accordingly dismissed in accordance with the Armed Forces Act.

Having been dismissed, the Claimant lost the right to still be in the occupation of the Nigerian Army property and therefore his further stay in the Nigerian Army Barrack was unlawful. The Claimant was directed to vacate the quarters which he previously occupied having been dismissed from the Nigerian Army

ISSUES FOR DETERMINATION

Counsel for the Claimant nominated three issues for the determination of this suit to wit:

1. Whether the trial, conviction and dismissal of the Claimant was not wrongful illegal and/or unconstitutional in that the Claimant 's act of writing to the Chief of Defence Staff through his Lawyers does not constitute an offence known to either Section 103 of the Armed Forces Act or any other law
2. Assuming that the offence can be subsumed under Section 103 of the Armed Forces Act, which is not conceded, whether the conviction and dismissal of the Claimant was not wrongful and illegal in that the Claimant was tried and dismissed by Brig Gen O Laleye who had no capacity to try the said offence or the Claimant

3. Assuming that Brig Gen O Laleye had the capacity to try the Claimant, Brig Gen O Laleye (sic: the Claimant) which is not conceded whether the trial, conviction and dismissal of the Claimant was not wrongful illegal and or unconstitutional in that the sentence passed on the Claimant by Brig Gen O Laleye was higher than the sentence prescribed for an offence under Section 103 of the Armed Forces Act

4. Whether the trial conviction and sentence of the Claimant was not in breach of the Claimant's right to fair hearing and the Constitution of the Federal Republic of Nigeria, 1999, as amended.

5. Whether the Claimant has proved his claims in this matter as to entitle him to the reliefs sought

Counsel for the Defendants nominated two issues for the determination of this suit to wit:

1. Whether in view of the Judgment of the Federal High Court Kaduna Division in suit Number No: FHC/KD/CS/25/2013, which granted the sum of N1, 000, 000. 00 (One Million Naira) in favour of the Claimant against the Defendants on the footing of general damages on the same facts leading to the instant suit, the Claimant is entitled to the grant of his Claims in paragraphs F (i) and (ii) of his Claim before this Honourable court?

2. Whether on the preponderance of Evidence, the Claimant is entitled to the rest of his claims as contained in the writ of summons and the Statement of Claim?

Having carefully perused the pleading, evidence and legal submission of the parties in this suit, issue two nominated by the Defendants subsumed the four issues nominated by the Claimant. Thus, I hereby adopt the two issues nominated by Defendants in determining this suit.

LEGAL SUBMISSION OF THE CLAIMANT

Counsel for the Claimant submitted that the Claimant's employment or service in the Nigerian Army was regulated by the Armed Forces Act, Cap. A20 Laws of the Federation of Nigeria, 2004 and any subsidiary legislation made thereunder, in this case the Military Manual. The relationship between the Claimant and the Nigerian Army is that of an employee and an employer respectively. The Claimant's enlistment (engagement) in the service of the Nigerian Army was in accordance with Section 28(1-2), 29(1-2) and 30 (1-3) of the Armed Forces Act, Cap, A20 LEN, 2004. Submitted that the employment of the Claimant was clothed with or had statutory flavor and any determination of same must be in accordance with the statute regulating the employment. Cited *OLANIYAN VS. UNIVERSITY OF LAGOS* (1985) 2 NWLR (PT9) 599 and *U. N. T. H. VS, NNOLI* (1994) 10 SCNJ. 71 @ 85.93. Submitted further that the Armed Forces Act, CAP A20 LEN 2004 makes provisions regulating the employment of the Claimant and all officers of the Defendants including matters of discipline.

Counsel for the Claimant submitted that the Claimant's employment can only be terminated in accordance with the Armed Forces Act. Thus, the acts of the Claimant must constitute an offence under the Armed Forces Act in order to render the Claimant punishable under the Act. Submitted that the act of the Claimant writing through his lawyers to the Chief of Defence Staff does not constitute an offence under the Armed Forces Act particularly under Section 103 of the Act. The offence for which the Claimant was allegedly tried and dismissed is very clear that wrong channel of communication" because he allegedly caused his lawyers to write to the Chief of Defence Staff when all his personal letters were not responded to. The letters written by the Claimant's Solicitors were written as a last resort because the earlier written complaint and reminders of the Claimant were not responded to by the Defendants. submitted that the Claimant was entitled to write through his Lawyers in the manner he did by virtue of Section 179 of the Armed Forces Act especially subsection 2, 3, 4 and 5, Section 179 of the Armed Forces Act. That the trial, conviction and sentence of the Claimant contravened the provisions of Section 179(6) of the Armed Forces Act.

By these provisions, the Claimant is allowed or entitled to make a further complaint to any Army officer under whom he is serving not below the rank of Brigadier or corresponding rank if his initial complaint to his commanding officer is not redressed or properly redressed to his satisfaction. Specifically, by Section 179 (4) of the Amed Forces Act, the Claimant is entitled to "embark

on any other action" which in this case was instructing his lawyers to write to the Chief of Defence Staff after exhausting the administrative remedies available to him under the subsections.

On issue two nominated by the Claimant, it is submitted that after the trial and dismissal of the Claimant, the Defendants came out with Part 2 ORDER dated 3/4/2013, tendered as Exhibit CW0018, which stated the offence the Claimant was allegedly charged and dismissed for. The Defendants stated therein, with reference to the Claimant. However, in the charge sheet, tendered as Exhibit CW0019 and in the letters written by the Defendants tendered as exhibits CW0016 and CW0017 the Defendants alleged that the Claimant was charged and dismissed for wrong channel of communication by writing to the Chief of Defence State through his lawyers. A careful reading of the provision of Section 103(1) of the Armed Forces Act shows that conviction for an offence under the Section shall be by a Court-Martial. It does not make allowance for conviction by an individual officer. Submitted that the provisions of the Section are clear and unambiguous on this point and should be interpreted as such by the court.

On issue three, Counsel for the Claimant submitted that a person convicted is liable to imprisonment for a term not exceeding two years or any less punishment provided by the Armed Forces Act. There is no provision in the Section for dismissal. No penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was allegedly committed albeit no offence was committed by the Claimant in this case. Counsel refers to the provisions of Section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), and *OLADIMEJI VS. STATE* (2002) FWLR (PT13) 2004 AT 2015-2016 and *HON. EGWABA VS. FEDERAL REPUBLIC OF NIGERIA* (2004) ALL FWLR (PT.232) 1512 AT 1525-6.

On issue four, Counsel for the Claimant submitted that the trial, conviction and sentence of the Claimant violated all known rules of fair hearing and therefore liable to be set aside by this court.

LEGAL SUBMISSION OF THE DEFENDANTS

The Defendant submitted that in view of the Judgment of the Federal High Court, Kaduna Division in suit Number No: FHC/KD/CS/25/2013, which granted the sum of N1, 000, 000. 00 (One Million Naira) in favour of the Claimant against the Defendants on the footing of general damages on the

same facts leading to the instant suit, the Claimant is no longer entitled to the grant of his Claims in paragraphs F (i) (ii) and (iii) of his Claim before this court. that in the said suit Number No: FHC/KD/CS/25/2013 at the Federal High Court, the same set of facts and the same issue relied upon by the Claimant in his claims before that is the same set of facts that make up the instant suit and upon which the Claimant relied in prosecuting this instant suit. A cursory observation of the contents of Exhibit DW003 of this court, clearly agrees with the truth that the facts of the instant suit is the same sets of facts in the earlier suit Number NO: EHC/KD/CS/25/2013 at the Federal High Court Also the two sets of claims above shows clear similarity Since the Federal High Court had found on the Claim and granted the sum of N1. 000. 000, 00 (One Million Naira) on footing of general damages in favour of the Claimant. It will amount to double compensation if any other grant is made by this court in favour of the Claimant on the same Claim.

Counsel submitted on issue two that on the preponderance of Evidence, the Claimant is not entitled to the rest of his claims as contained in the writ of summons and the Statement of Claim as the Claimant has failed to proffer credible and reliable evidence in prove of his case before this court. That the Claimant has not led any cogent and believable evidence to be entitled to any of the reliefs contained in his Writ of Summons. Cited OHOCHUKWU V.A.G., RIVERS STATE [2012] LPELR- 7849 p. 35 paras. D-E and TRADE BANK PLC v. CHAMI [2003] 13 NWLR PT 836 page 158 particularly at page 204 paras. A

COURT'S DECISION

I have carefully analyzed all the processes filed by Parties, the evidence adduced and the exhibits tendered. Before going into the merit of this suit, I note with dissatisfaction how Counsel for the Claimant altered the Statement of Fact and the Final Written with pen in the guise of correcting clerical mistakes. Though, the alteration does not mislead the Court, neither did it affect the substance of the case before this Court; however, the National Industrial Court (Civil Procedure) Rules 2017 sets out the procedure for the amendment of a pleading or the process of the Court; be it substantial or minor amendment. The practice of altering or correcting the clerical errors without following the proper procedure is condemnable.

Again, I find the pleadings of the Claimant tedious to read, in that, when you are narrating a past event as in this case, the appropriate tense to use is past tense or past perfect tense as the case may be but counsel used present

perfect tense to narrate the fact of the case of the Claimant. While the Court does not expect error-free processes from counsel after all infallibility is in the realm of divinity; but counsel who do not write with rules of grammar make the evaluation confusing. The English language has its rules of grammar and syntax. In the case of **SHESHE V. IBRAHIM** (2021) 2 NWLR (Pt. 1760) 187 the Supreme Court noted that:

As if the bad grammar is not bad enough; it makes it very difficult for one to easily understand the complaint. Lawyers who do not speak good or laconic English have made our assignment more arduous and burdensome.

I therefore advise counsel to be guided with rules of grammar when drafting legal documents.

On issue one raised by Counsel for the Defendants which was adopted for the determination of this suit, the Defendants contended that the Claimant in this suit had earlier gotten a judgment from the Federal High Court and the said Judgment was tendered as Exhibit DW002, that the Federal High Court awarded the sum of N1,000,000.00 to the Claimant and the Claimant is no longer entitled to the grant of his Claims in paragraphs F (i) (ii) and (iii) of his Claim before this court.

It is important to note that the claim of the Claimant against the Defendants before the Federal High Court bothers on the enforcement of the fundamental rights of the Claimant as enshrined in the 1999 Constitution of the Federal Republic of Nigeria. While the claim of the Claimant against the Defendants before this Court bothers on employment relationship. Even though, the Claimant predicated his claims in the two cases on the same facts but the claims are different. I am mindful of the case of **ABUBAKAR V. BEBEJI OIL AND ALLIED PRODUCTS LTD** (2007) 8 NWLR (Pt. 1066) 319 where the Supreme Court held that:

In considering the application or applicability of the principle or doctrine, the court should remind itself of the tricks the parties, at times, play to beat its application. This is the only way to meet such parties' full length rather than half-length. This arises when a party, at times, include nominal or docile parties and

he will be quick in telling the court, for example, that the previous matter had three defendants as opposed to the current one which has four defendants. The inclusion of the fourth defendant could be a charade or farce. There are also instances when the party includes an additional relief or reliefs, which are inactive, as functioning only as appendage or peripheral to the main issue or issues to the extent it does not add anything substantial to the main issue or issues. There are times when parties play with words to present a camouflage that the issues are different when in reality they are not. The trial Judge has to use of the eyes of an eagle, will be able to remove the chaff from the grain and decide whether the principle or doctrine of res judicata is applicable or inapplicable.

The property in dispute in suit No. K/378/82 is at No. 59 Lamido Road, Kano. So too is the property in dispute in suit No. K/291/94. The reliefs as itemized on pages 447 to 449 of the record by the Court of Appeal are substantially the same. The parties in the dispute are materially or substantially the same: Alhaji Madu Bukar v. Bebeji Oil and Allied Product Ltd., formerly known as Kano State Oil and Allied Products Ltd. It is in the light of the above that I agree with the Court of Appeal that the two suits have substantially the same parties and reliefs.

This above holding of the Supreme Court has put this Court on check not to make hasty decision that will end leading to injustice.

Relief F as contained in the Statement of Fact is tied to ejecting the Claimant forcefully without giving him time to gather himself up and for wrongful dismissal, aggravated and exemplary damages for traumatizing the Claimant's life, pains and disgrace etc. caused by the men of the 1st Defendant and falsely accusing the Claimant of being insane and treated him as the same despite the Doctor's report that cleared him. This does not have a fundamental human right colouration.

In Exhibit DW002, the Court found that the actions of the Defendants in this suit amount to a gross violation and infringement of the Claimant's right to personal liberty, and dignity of human person in contravention of Sections 34 and 35 of the 1999 Constitution and therefore unconstitutional. It is based on the finding of the court that made the Court awarded the sum of N1,000,000.00 to the Claimant against the Defendants. This does not have an employment relationship connotation.

In view of the clear distinction between the claim of the Claimant against the Defendants before this Court and the claim of the Claimant decided by the Federal High Court in Exhibit DW002, issue one is resolved in favour of the Claimant. I so hold.

Regarding issue two, as a basis for the claim of the Claimant, the Claimant claimed that the Claimant was enlisted into the Nigerian Army by the 1st Defendant as a soldier on the 12th of August 2002. Though the Claimant did not tender the letter of his enlistment, the Defendant in paragraph 1 of their Amended Statement of Defence admitted that the Claimant was an employee of the 1st Defendant. It is trite that a fact admitted in the pleadings of the parties does not require further proof: see the case of **EJIOGU V. N.D.I.C.** (2001) 3 NWLR (Pt. 699) 1.

It is pivotal to note that there are three categories of employment contracts: pure master and servant relationship; servants who hold their office at the pleasure of the employer; and employment with statutory flavour. In the master-and-servant relationship, the master has an unfettered right to terminate the employment; however, he must comply with the procedure stipulated in the contract. In a contract with statutory flavour, the employment is protected by statute. In the event of termination of employment with statutory flavour, strict adherence must be had to the statute creating the employment: see the cases of **OVIVIE V. DELTA STEEL CO. LTD.** (2023) 14 NWLR (PT. 1904) 203, **LONGE V. F.B.N. PLC** (2010) 6 NWLR (PT. 1187) 1, **MOBIL PRODUCING (NIG.) UNLIMITED V. JOHNSON** (2018) 14 NWLR (PT. 1639) 379; and **OFORISHE V. NIGERIAN GAS CO. LTD.** (2018) 2 NWLR (PT. 1602) 35.

Under the provision of Section 122(2)(a) of the Evidence Act, the Court shall take judicial notice of all laws or enactments and any subsidiary legislation made under them having the force of law now or previously in force in any part of Nigeria. Thus, Section 1 of the Armed Forces Act 2004 establishes the

Armed Forces which comprises the Nigerian Army, the Nigerian Navy and the Nigerian Air Force. By implication, the 1st Defendant is a creation of statute. Nevertheless, the fact that the 1st Defendant is a creation of the Armed Forces Act does not ipso facto make the employment/enlistment of employees of the 1st Defendant enjoy statutory flavour. The Court of Appeal in the case of **AZENABOR V. BAYERO UNIVERSITY, KANO** (2009) 17 NWLR (Pt. 1169) 96 held that:

An employment is said to have statutory flavour when the appointment is protected by statute, and an employment is protected by statute when statutory provisions govern the appointment and termination. Except in employment governed by statute wherein the procedure for employment and discipline of an employee are clearly spelt out, any other employment outside the statute is governed by the terms under which the parties agreed to be master and servant. Where an appointment is not governed by any statutory provision, it does not enjoy statutory protection and cannot be said to have statutory flavour. The fact that an organization is a statutory body does not mean that the conditions of service of its employees are protected by statute. Thus, it is not enough to merely prove that the employer is a creation of statute, there must also be proof that the employment is directly governed or regulated by a statute or a section of the statute delegating power to an authority or body to make the regulations or conditions of service as the case may be.

Now, what the Court will consider in determining whether the Claimant is governed by statute is the letter of appointment or enlistment. In any action in which any of the parties claims a breach of any of the terms or conditions agreed to by the parties as set out in the letter of appointment, the letter of appointment becomes a *sine qua non* to the maintenance and success of the action: see the cases of **UMERA V. N.R.C.** (2022) 10 NWLR (PT. 1838) 349; **KATTOV. C.B.N.** (1999) 6 NWLR (PT. 607) 390; **AMODU V. AMADE** (1990) 5 NWLR (PT. 150) 356; **IYERE V. BENDELFEED & FLOUR MILL LTD.** (2008) 18 NWLR (PT. 1119) 300; **OLALEKAN V. MANAGEMENT BOARD U.M.T.H.** (2017) 11 ACELR 199; **RAJI V. O.A.U.** (2018) 12 ACELR 182; **EKUNOLA V. C.B.N.** (2013) 15 NWLR (PT. 1377) 224; **OKOMU OIL PALM**

CO. LTD. V. ISERHIENRHIEN (2001) 6 NWLR (PT. 710) 660; and **IWUCHUKWU V. NWIZU** (1994) 7 NWLR (PT. 357) 379. However, the Court of Appeal in the case of **SAVANNAH BANK (NIG.) PLC. V. FAKOKUN** (2002) 1 NWLR (Pt. 749) 544 PP 556 - 557 Paras H – C where it was held that:

I agree with the submission of the appellant's counsel that it is necessary for the respondent to plead and tender in evidence his letter of appointment, and failure to do so may be fatal to his case. But where there is otherwise ample evidence to establish the terms of the contract of employment, failure to tender the letter of appointment will not necessarily be fatal to the respondent's case. In the instant case the respondent pleaded his letter of appointment but failed to tender it in evidence, but there are other letters tendered in evidence to show that the respondent was appointed by the appellant bank and he was even promoted and commended by his employers - See Exhibits B, C & D. In Exhibit D, the bank made reference to the Senior Staff salary between the Nigerian Employers' Association of Banks, Insurance and Allied Institutions and Association of Senior Staff of Banks, Insurance and Financial Institutions' Employees before agreeing to implement the new harmonized salary structure. By this the appellant cannot now be heard to say that Exhibit A does not apply to the case of the plaintiff/ respondent in the court below. The learned trial Judge was right in giving consideration to Exhibit A along with other documents as part of respondent's terms of employment.

See also the case of **KADUNA TEXTILES LTD. V. UMAR** (1994) 1 NWLR (Pt. 319) 143.

From pleading and evidence before this Court, the Defendants dismissed the Claimant pursuant to the provision of Section 103 of the Armed Force Act, the reasonable inference from the foregoing is that the employment of the Claimant with the 1st Defendant enjoys statutory flavour and the Defendants cannot act in contravention of the provision of the Armed Force Act in dismissing the Claimant. I so hold.

Having determined the status of the employment of the Claimant with the 1st Defendant, it is prudent to note that the Claimant was not dismissed on the allegation of extortion but for writing a complaint or letter to the Chief of Defence Staff of the 1st Defendant through his lawyer without following the prescribed manner. The questions that deserve judicial consideration here are as follows:

- i. Is it an offence under the Armed Forces Act for an employee of the 1st Defendant to write a complaint to the Chief of Defence Staff of the 1st Defendant?
- ii. what is the established mode of channelling complaints to the 1st Defendant by the aggrieved employees of the 1st Defendant?
- iii. who has the authority to punish the erring employees of the 1st Defendant.

On question one, the Claimant pleaded that on the 8th of March 2013, the Claimant was summoned to appear before Brig. General O. Laleye and his two orderlies informed the Claimant that the Claimant was charged with the wrong channel of communication and that the Claimant had been dismissed from the Nigerian Army owing to the Claimant's refusal to toe the established due process in the pursuit of his violated right. The Defendants admitted this averment in paragraphs 36, 37 and 38 of their amended statement of defence.

Section 103 of the Armed Forces Act provides that:

103. (1) A person subject to service law under this Act who is guilty of a conduct or neglect to the prejudice of good order and service discipline is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) It shall be a defence to a charge under subsection (1) of this section that the conduct or neglect of the accused had already been charged under sections 45 to 102 and sections 104 to sections 114 of this Act.

A crucible perusal of the provisions of the Armed Forces Act will unmistakably reveal that no provision in the Armed Forces Act provides for the channel of the communication of the complaints of the aggrieved employees of the 1st Defendant. The Defendants pleaded and led evidence to state that the Claimant breached the provisions of the traditions, customs and ethics of the Nigerian Army by bypassed the chain of command and instructed his solicitors to petition the Chief of Defence Staff, a conduct which is contrary to service discipline and ethics. Unfortunately, the Defendant did not tender any condition of service or employees' manual which contained the so-called provisions of the traditions, customs and ethics of the Nigerian Army purported to have been breached by the Claimant.

The Defendants cannot claim the Claimant violated the provisions of the traditions, customs and ethics of the Nigerian without tendering the same before this Court. The Defendants who alleged the existence of the provisions of the traditions, customs and ethics of the Nigerian Army have the burden to prove the same, failure to tender the alleged provisions of the traditions, customs and ethics amounts to withholding evidence. The Court of Appeal in the case of **KWENEV V. STATE** (2022) 13 NWLR (PT. 1847) 273 PP. 329-330, PARAS. F-H the Supreme Court held that

Commonly, this provision relates to the withholding of documentary evidence. Where a party is in possession of a document, contents of which are material, he is expected to produce it. If he fails to, it may reasonably be presumed that if the party had produced it, the contents would have spoken against that party.

It is therefore the finding of this Court that the alleged offence upon which the Claimant was dismissed is unknown to any law. I so hold.

The next question is, is there any established mode of channelling complaints to the 1st Defendant by the aggrieved employees of the 1st Defendant? Having held that the Defendants failed to prove by tendering the 1st Defendant's condition of service that was made pursuant to the provision of the Armed Forces Act which provides for the provisions of the traditions, customs and ethics of the Nigerian Army in which the Defendants alleged the Claimant to have been breached, it is the finding of this Court that there is no such provisions of the traditions, customs and ethics of the Nigerian Army which

provides for the mode of channeling complaints of the Claimant to the 1st Defendant. Thus, the Claimant flouted no law which undermined the regulations set by the Defendants. I so hold.

On the last question set by the Court, the Claimant pleaded and led evidence to state that on the 8th of March 2013, the Claimant was summoned to appear before Brig. General O. Laleye and his two orderlies informed the Claimant that the Claimant was charged with the wrong channel of communication and that the Claimant had been dismissed from the Nigerian Army owing to the Claimant's refusal to toe the established due process in the pursuit of his violated right.

The Defendants pleaded and led evidence to state that the Claimant breached the provisions of the traditions, customs and ethics of the Nigerian Army bypassed the chain of command and instructed his solicitors to petition the Chief of Defence Staff, a conduct which is contrary to service discipline and ethics. The Claimant was summoned before his Commanding Officer, charged and to be tried summarily for the offence of Conduct Prejudicial to Service Discipline contrary to and punishable under section 103 of the Armed Forces Act, CAP, A20 Laws of the Federation of Nigeria, 2004. On the 8th of day of March, 2013, the summery trial of the Claimant for the stated offence was concluded. The summary trial of the Claimant followed due process of the law and the Claimant was convicted for the said offence and having been convicted, the Claimant was accordingly dismissed in accordance with the Armed Forces Act.

A critical consideration of Section 103 of the Armed Forces Act under which the Claimant was dismissed shows that it is the court martial established pursuant to the provision of Section 133 of the Armed Forces Act has power or jurisdiction to try and punish the Claimant. Section 133 of the Act provides that:

133. (1) Subject to the provisions of sections 128 and 129 of this Act, a court-martial shall be duly constituted if it consists of the President of the court-martial, not less than two other officers and a waiting member.

It is conspicuously clear before this Court that gleaning from Exhibit DW005 no court martial was constituted. The Claimant was tried and found guilty of the purported breach of the provisions of the traditions, customs and ethics of

the Nigerian Army in flagrant disobedience to the provision of Section 133 of the Armed Forces Act. There is no evidence before this Court that delineates that Brig Gen. Laleye who solely presided over the charge against the Claimant was the president of the court martial. Even if Brig Gen. Laleye was the president of the court-martial, the president of the court-martial cannot solely preside over charge of the offences under the Armed Forces Act without other officers who shall not be less than two and a waiting member. In the case of the **STATE V. OLATUNJI** (2003) 14 NWLR (Pt. 839) 138 at 161 para. G-H, the Supreme Court held that:

Any court martial which is not constituted as required by the provision of the Armed Forces Decree is just like a court or a tribunal which is not Properly constituted. And if a court is not properly constituted, any process issued or trial conducted by it is a complete nullity ab initio.

Again, in the case of **AGBITI V. NIGERIAN NAVY** (2011) 4 NWLR (Pt. 1236) 175 the Supreme Court held that:

The act of omission committed by the Court Martial amounts to noncompliance with condition precedent with the trial of officers for any criminal allegations preferred against them before the court. The composition of member of the court is a condition precedent imposed by statute. Non-compliance with the provisions of the statute strips the Tribunal of competence where the tribunal is not competent; it therefore lacks the jurisdiction to try the appellant. All the proceedings in the trial and the verdict automatically become a nullity.

Given the foregoing, the trial and dismissal of the Claimant by Brig Gen. Laleye without subjecting the Claimant to trial by the court martial in line with the provision of Section 133 of the Armed Forces Act is null and void. The trial and dismissal of the Claimant by Brig Gen. Laleye, having been held to be null and void, is hereby set aside. I so hold.

The Claimant pleaded and led evidence to state that Brig. Gen. O. Laleye later gave an order to the men of the 1st Defendant to eject the Claimant out of the Barrack with his personal belongings with immediate effect. His household

belongings were littered along the street by soldiers on the 8th of March 2013 and most of his belongings were destroyed beyond repairs. The Claimant tendered Exhibits CW001C, CW001D, CW001E, CW001F, CW001G and CW001H which are photograph pictures of his belongings that were littered on the street. Exhibit CW020B is the receipt of some of his household belongings and Exhibit CW020A is the receipt for the payment of his treatment. Given these exhibits, the Claimant has proved that the Claimant is entitled to be awarded the special damages as claimed.

In respect of the claim of the Claimant in Relief F(iii) which bothers on libel, it has been held that this Court does not have jurisdiction to entertain a suit bothering on libel which is the species of defamation. the Court of Appeal in **ECOBANK NIG LTD & ORS VS IDRIS** (2021) LPELR-52806(CA), held that the National Industrial Court Nigeria does not have jurisdiction over defamation. In the words of His Lordship Saidu Tanko Hussaini, JCA:

It is clear from the list of items specified at Section 254C(1) of the Constitution and indeed Section 254C(2) (3), over which the NIC had jurisdiction to entertain, cases or matters which border on defamation of character is not one of those items and it should not be so construed to confer jurisdiction on the National Industrial Court (NIC) merely because those defamatory remarks were made in the course of Respondents employment with the 1st Appellant and thus, the defamatory remarks and claims for damages thereto should not be entertained by the NIC...hence the National Industrial Court cannot assume jurisdiction under Section 254C(1)(a) over cases or matters founded on a claim for damages for defamation of character...

The Claimant pleaded and led evidence to state that his unit commander invited him and re-assigned the Claimant to arm store without his weapon and stopped the payment of his daily allowance of N500 which now stands to N150,000.00. Since then, the Defendants and their men had been treating the Claimant with disfavour as an insane soldier. On the 28/11/12 he was forcibly bounded to the 1st Defendant's hospital at 1 DIV for Psychiatry checkup. Report of the Doctor cleared him of insanity, which is that after interrogation, it was observed that the soldier shows feeling of resentment at having been unfairly treated after all his effort to seek redress on the case failed. Despite

the doctor's report which cleared him of insanity, the Defendants refused to restore him to his position and to pay his Ration Cash Allowance (RCA) despite all entreaties. The Claimant tendered Exhibit CW004 in proving that the Claimant is mentally fit and proper at the material time.

The Defendants, in defence of the assertion of the Claimant, pleaded that the Claimant's conducts were reported to his Commanding Officer again and the need to prevent the Claimant from bearing arms was advised going by the way the Claimant was behaving. The Claimant's Commanding officer thereupon directed that the Claimant be redeployed to a unit where he would not be bearing arm directed that a proper mental and physical examination be conducted on the Claimant. The Claimant was as a result redeployed to a unit where he will not be bearing arms, the Claimant was also medically examined but was not found to be properly insane but was mentally unfit.

Having carefully evaluated evidence of parties from both sides, the Defendants directed their division medical service to conduct medical examination on the Claimant and the result of the medical result of the Claimant from the division medical service was forwarded to the Defendants vide a letter dated 30th of November 2012 which was tendered as Exhibit CW004. Exhibit CW004 cleared the Claimant of any psychotic disorder.

Evidence of DW001 is unreliable for two reasons, firstly, oral evidence of DW001 cannot discredit the content of Exhibit CW004. No oral evidence will be allowed to discredit or contradict the contents of documents except in cases where fraud is pleaded: see the case of **IBRAHIM V. ABDALLAH** (2019) 17 NWLR (Pt. 1701) 293.

Secondly, Exhibit CW019 shows that the Claimant was dismissed on the 8th of March 2013, DW1 stated under cross-examination that DW1 was posted to the 1 Division Garrison legal services from 2013 to 2014 and DW1 was not in 1 Division Garrison where the Claimant served when the incident of the Claimant happened, DW1 was not privy to what had happened to the Claimant from the posting history. This means that DW1 only came to this Court to give evidence based on what DW1 was told about the travail of the Claimant in the hand of the Defendants. Hearsay evidence or second-hand evidence of a witness is evidence of what he was told or what he heard from someone else. Such evidence is inadmissible to prove a fact: see the case of **DOMA V. I.N.E.C.** (2012) 13 NWLR (Pt. 1317) 297. The Supreme Court in the case of **F.R.N. V. USMAN** (2012) 8 NWLR (Pt. 1301) 141 held that:

Hearsay evidence is secondary evidence of an oral statement best described as secondhand evidence. What a witness says he heard from another person is unreliable for many reasons. For example he may not have understood the informant/interpreters, or he may say things that were never said. Such evidence remains hearsay evidence because it cannot be subject to cross-examination in the absence of the informant/interpreters.

Thus, DW1, who had not been deployed to 1 Div at the time the Claimant was going through maltreatment and neglect of his complaints by the Defendants, as it can be seen from documentary evidence before this Court, cannot give evidence to disprove the claim of the Claimant. Thus, I cannot attach a dot of probative value to evidence of DW1 because his evidence is hearsay. I so hold.

On the whole, the Claimant has successfully proved all his claims against the Defendants on the preponderance of evidence, save the claim on libel which the National Industrial Court lacks jurisdiction to entertain the same. It is hereby ordered as follows:

- a. A declaration that the summary dismissal of the Claimant from the service of the Defendants was wrongful, illegal null and void as same did not comply with the service regulations.
- b. A declaration that the summary trial of Brig. Gen. O. Laleye conducted on 8/3/13 in which he purportedly dismissed the Claimant as unconstitutional as the same was contrary to natural justice.
- c. An order of this Honourable Court re-instating the Claimant to the present rank enjoyed by his colleagues who joined the service the same year with him.
- d. An Order of this Honourable Court directing the Defendants particularly the 3rd Defendant to pay the Claimant the sum of N150,000.00 being his Ration

Cash Allowance (RCA) which was stopped for ten months as a result of his insanity accusation.

e. An Order of this Honourable Court directing the Defendants particularly the 3rd defendant to pay the Plaintiff all his outstanding arrears of salaries from 8th March, 2013 up to date as well as his accrued allowance from 8/03/2013 to date.

f. An order of this Honourable Court directing the Defendants to pay - jointly and severally the total sum of:

i. N5,000,000.00 (Five Million Naira) being general damages for wrongful dismissal.

ii. N1,367,000.00 being special damages for his household items damaged and the cost of his medication since his sudden dismissal from the 1st Defendant's service and had no access to their hospital to treat his neck injury caused by the men of the 1st Defendant.

g. Relief F (iii) is struck out for lack of jurisdiction.

h. All terms of this Judgment are to be complied with within 30 days from without prejudice to right of appeal.

Lest I forget, the Defendants counterclaim against the Claimant. The counterclaim raised by the Defendants is irrational and moonshine. The issue of statute bar was earlier raised by the Defendants and this Court upheld the objection of the Defendants vide the Ruling the Court delivered on the 12th of

November 2014. The Claimant appealed the ruling of this Court and the Court of Appeal upheld the appeal of the Claimant by setting aside the ruling of this Court and remitted the suit to this Court for the trial on merit. I cannot fathom the basis of the raising objection based on statute bar where it had been decided even to the Court of Appeal.

On the issue of a similar suit pending before the Court of Appeal, I have earlier held that the suit of the Claimant which was decided by the Federal High Court and this present suit are distinct and dissimilar. Thus, the counterclaim of the Defendants lack merit and is accordingly dismissed.

Judgment is hereby entered accordingly.



HON. JUSTICE BASHAR A. ALKALI
PRESIDING JUDGE
KADUNA DIVISION
NATIONAL INDUSTRIAL COURT OF NIGERIA