

**DEFAMATION CLAIMS IN TERMINATION OF
EMPLOYMENT: A BALANCING ACT**

INTRODUCTION



Mr. James Okoro was a distinguished employee at the National Development Agency (NDA) in Abuja, known for his exemplary work record, advanced academic qualifications, and reputable public image. Mr. Okoro claimed that during the course of his employment, the Acting Director-General (ADG) of the NDA, Ms. Sarah Bello, harboured malice against him, and that this persisted for about three months. In September 15, 2021, Ms. Bello issued a dismissal letter to Mr. Okoro, which contained defamatory statements accusing him of crimes and dishonesty.

This letter was not only delivered to him but also publicly posted in various conspicuous locations within the agency and circulated among his colleagues and business associates, damaging his reputation.

Mr. Okoro asserted that all the accusations contained in the letter were baseless, and of no effect as he had neither been convicted of any crime, nor had he been invited to respond to any allegations through a formal panel or query. He further claimed that the directors of the company he was accused of extorting categorically denied ever filing a complaint against him with the NDA.

Mr. Okoro also contended that Ms. Bello did not have the authority to issue the dismissal letter, as the NDA Board had been dissolved at the time. Mr. Okoro alleged that Ms. Bello's actions were driven by malice, aiming to defame him publicly and tarnish his reputation as a civil servant. He claimed that the public posting of the defamatory letter caused him significant personal and professional harm. Despite his repeated requests that the defamatory statements be retracted, Ms. Bello remained unyielding and continued to act with malice.

Feeling aggrieved, Mr. Okoro filed an action at the Industrial Court seeking legal redress for the defamation and unlawful termination. He requested the court to declare the dismissal unlawful, order his reinstatement, and award damages for the injury to his reputation and career.

Honourable Justice O.O. Arowosegbe of the National Industrial Court of Nigeria considered issues of law arising from similar facts in ***Suit No. NICN/EN/35/2021- Engr. Chibuzor Albert***

Agulana v. Dr. Fabian Okonkwo (unreported) judgment which was delivered on April 17, 2024. In a considered judgment, the Court found that a case of libel was made against the defendant and granted significant monetary damages against the defendant and a retraction of the defamatory statement in two Newspapers.

FACTS AND FINDINGS

On August 27, 2021, the claimant, an employee of the Project Development Institute (PRODA) Enugu, was issued a dismissal letter by the Director-General (DG) of PRODA issued to the claimant. The claimant contended that the accusations of dishonesty and crimes were baseless as he had never been convicted, and was never given a chance to defend himself before any panel or query. The claimant stated that, instead of serving the dismissal letter on him personally, the defendant maliciously pasted it on conspicuous places in the workplace with the intent of defaming him and thus, negatively impacted his standing as a civil servant. He asserted that as a result of all these, he has suffered injuries and that every attempt to make the defendant retract the said malicious publication was unsuccessful. He therefore filed this action with the reliefs claimed.



In response, the defendant pleaded justification, fair comment and privilege. The defendant also claimed that the claimant was given the opportunity to answer for his unauthorized absence but failed to appear before the Board when summoned, leading to his dismissal. The defendant denied any event of malice, stating that the claimant's dismissal letter was circulated only within the necessary internal channels. The defendant also cited the claimant's knowledge of the Board's extant status and raised objections to the court's jurisdiction, seeking compensation for the alleged frivolous lawsuit.

Upon a review of the facts and evidence presented including evidence of the defamatory publications, a certified true copy of the dismissal letter and documentation of the libelous statements, the court found the defendant liable for defamation against the claimant. The court also ruled that the defamatory actions were conducted personally by the defendant and not on behalf of PRODA.

The Court established that the defendant failed to provide sufficient evidence, such as meeting records or relevant documents, to justify the guilt finding against the claimant, and emphasized that the claimant's reputation should remain untarnished unless proven guilty by a competent court for a crime with proof beyond reasonable doubt, which the defendant did not meet. The court also noted that the defendant's failed attempt to justify the defamatory acts only worsened the libel.



Consequently, the claimant was awarded Twenty Million Naira in aggravated damages for economic deprivation and violations of due process by the defendant, as well as post-judgment interest until full payment. The court also ordered the defendants to take out a mandatory publication of apologies in two newspapers within 30 days, and awarded Five Hundred Thousand Naira for the costs of the action.

COMMENTARY



Defamation arising from issues in the workplace can and would, in the modern world of work, have profound implications for both employers and employees. Generally, defamation, encompassing both libel (written defamation) and slander (spoken defamation), involves the act of making false statements that damage an individual's reputation. In the context of employment, defamation can occur through various channels such as performance reviews, internal communications, and references provided to prospective employers.

In the workplace, employers are responsible for maintaining accurate and factual records of employee performance and behaviour. This means documenting workplace incidents and

violations, and obtaining feedback objectively. To properly achieve this, employers must create clear communication policies for both internal and external interactions, particularly concerning employee performance and termination to ensure that all communications remain professional and fact-based. Employers should ensure that performance reviews are based on objective and well-structured criteria, and supported by documented evidence. When providing references and conducting background checks, employers are also expected to stick to factual information regarding employment dates and roles, avoiding personal opinions.

Employers who comply with the above can rely on the defence of qualified privilege for statements made in performance reviews and references, provided these statements are made without malice and to individuals with a legitimate interest.

Employees, on the other hand, should be aware of their rights to review and challenge any inaccurate record in their employment files and are enjoined to understand the communication policies set by the employer, as such policies inform employees about the appropriate channels for addressing concerns regarding potential defamatory statements. During performance reviews, employees should be given the chance to respond and discuss the feedback, fostering transparency and fairness in the evaluation process. Furthermore, employees have the right to request copies of references provided about them and to know who has requested such references, ensuring that they are aware of, and can respond to any potential defamatory information being shared.



Obtaining written consent from employees before sharing information can also protect employers from claims of defamation and employees should do well to carefully review any consent forms they sign. The significant business and reputational risks in defamation claims should motivate employers to ensure regular training for managers and HR personnel on defamation law/torts and best practices, as well as educating employees about their rights and procedures for addressing defamation.

In the case of ***Engr. Chibuzor Albert Agulana v. Dr. Fabian Okonkwo*** discussed above, the National Industrial Court concluded its judgment by expressing displeasure at the reluctance of PRODA to properly handle allegations of financial crimes and economic sabotage by not referring those allegations to the appropriate investigative and prosecutorial authority. The court held that, as recognized in the Nigerian labour jurisprudence, statutory provisions and best practices, employers cannot punish the employee on crimes until a court conviction is secured. The proper interim action for employers is to suspend the employee pending investigation and trial. While the case before the NICN presented unresolved allegations of financial misconduct, a finding of guilt by a competent court of record would have been the basis of the statements now considered defamatory. In the absence of such guilty finding, the claims of the claimant were well established.

As an aside and in line with relevant data privacy regulations, compliance with privacy obligations of employers particularly when dealing with sensitive information related to allegations of misconduct or crimes, also drives the necessity for employers to handle information with utmost confidentiality and care, so as not to prematurely disclose or mishandle information that could defame an employee.

Clearly, the case of ***Engr. Chibuzor Albert Agulana v. Dr. Fabian Okonkwo*** discussed above accurately addresses the risks of workplace defamation even at the point of termination of employment and extending to post employment. Workplace defamation can damage reputations, careers, and result in costly legal battles. It is therefore crucial for both employers and employees to ensure accurate and factual communications and records, and implement clear policies on communication and privacy to significantly reduce exposure to business and reputational risks.



Lagos: I, Perchstone & Graeys Close, off Remi Olowude, Lekki Epe Expressway, Lagos; Tel: +234- 1-3429131, 7611051
Abuja: D3, Jima Plaza, 1627 Ahmadu Bello Way, Area 11, Garki Abuja; Tel: +234 92919191, 07045984792
Benin City: 40, Adesogbe Road, Benin City, Edo State; Tel: +234 7068518650, 07045984776
Email: ; counsel@perchstoneandgraeys.com

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