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PRINCE BURUJI KASHAMU VS. CHIEF OLUSEGUN OBASANJO; WHERE HON. JUSTICE ASHI ERRED

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PRINCE BURUJI KASHAMU Vs. CHIEF OLUSEGUN OBASANJO: WHERE HON. JUSTICE VALENTINE ASHI ERRED.

BY:

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“When a judge sits to try a case he is himself on trial before his fellow countrymen (gathered in the courtroom.) It is on his behavior that they will form their opinion of our system of justice. He must be robed in the scarlet of the Red Judge – so as to show that he represents the majesty of the law. He must be dignified – so as to earn the respect of all who appear before him. He must be alert – to follow all that goes on. He must be understanding to show that he is aware of the temptations that beset everyone. He must be merciful – so as to show that he too has the quality which ‘droppeth as the gentle rain from heaven upon the place beneath’.”


It has been a while I made contribution to very many issues besetting our dear Nation especially on the political front. The reasons for my temporal withdrawal, for the moment are best known to me.

Notwithstanding the foregoing, I am fully convinced and reasons abound, that the exchange of hot words between a South West PDP Chieftain, Prince Buruji Kashamu and a former President of Nigeria, Chief Olusegun Obasanjo deserves and even commands my attention as the said hot exchanges have assumed another dimension. Indeed, the unrepentant combatants have shifted their battlegrounds to the law court as their grouse has transmogrified into a subject of litigation. It has snowballed into a defamation suit. Their choice of venue is the High Court of the Federal Capital Territory, Abuja. On the last adjourned date, the matter came up at the Apo Division of the High Court presided over by the Honourable Justice Valentine B. Ashi.

OBJECT OF THE WRITE-UP:

I was privileged to be present at the Apo Division of the F.C.T. High Court on the 4th February, 2015 when this matter came up for hearing with the suit No:
CV/472/14. Being present throughout the proceedings that lasted for over two hours with the additional benefit of perusing through the processes before the court gave me a clearer view of the pith of the action founded on the tort of defamation. At the end of the day’s proceedings, I went home to deeply reflect on the issues very vigorously and ably canvassed before the court by two eminent and very distinguished Senior Advocates of Nigeria – Dr. Alex Izinyon, S.A.N. (for the Plaintiff) and Chief Kanu Godwin Agabi, S.A.N. (for the Defendant) both leading a host of other Lawyers.

Of the entire issues already joined by the warring parties, the sole attention of this piece is narrowed down to the Court Order made and dated 5th December, 2014 following a Motion Ex-Parte dated 5th December, 2014 filed by the Plaintiff with Motion Number: FCT/HC/M/2392/2014.

The vigorous argument of this piece is that the substance of the Order of Court made Ex-Parte is one that would have totally not been made if the Honourable Court had been more circumspect in the light of ancient of authorities insisting that the jurisdiction available to the court under the circumstance the court was faced with is ‘a most delicate jurisdiction to exercise’ as Lord Esher, M.R. cautioned in the venerable case of COULSON & SON VS. JAMES COULSON (1887) 3 TLR 846. This short contribution therefore seeks no more than to advance and deepen our jurisprudence of defamation law.

**THE BACKGROUND FACTS:**

Prince BURUJI KASHAMU sued a former President of Nigeria, Chief OLUSEGUN OBASANJO for ruining his good reputation based on the scathing remarks made on his person in a letter the former President addressed to the current President of Nigeria, Dr. Goodluck Ebele Jonathan, GCFR and other defamatory words contained in a yet to be published book entitled ‘MY WATCH’.

After the initiation of the suit and sometimes in December, during the pendency of the suit, the Plaintiff, through his Counsel, brought an application ex-parte with Motion Number: FCT/HC/M/2392/2014 seeking the following reliefs from the Court;

1. An Order of interim injunction restraining the defendant, Chief Olusegun Obasanjo, either by himself, his agents, servants, privies or any other
person howsoever described from publishing or cause to be published in the book called “My Watch” or any autobiography or biography and any extracts of same, by whatever name called or howsoever titled, pending the hearing and determination of the Motion on notice.

2. An Order of interim injunction restraining the defendant whether by himself, his servants, agents, privies or whatsoever called from further writing, printing or causing ton be published or printed or circulated or otherwise publishing of and concerning the plaintiff the libel contained in the Daily Sun of 12/12/13, vol 10 at pages 47-49 and The Leadership Newspaper of 12/12/13 at pages 3 to 8 which reproduced the letter written by the defendant to the President and Commander in Chief of the Armed Forces of the Federal Republic of Nigeria titled “BEFORE IT IS TOO LATE” or similar libel, pending the determination of the Motion on Notice.

3. Leave to publish the enrolled Order Ex-Parte in two national Dailies with national circulation.

4. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

After a careful consideration of the Motion Ex-Parte dated 5th day of December, 2014 together with the affidavit in support and the affidavit of Extreme urgency attached deposed to by Buruji Kashamu and upon hearing Dr. Alex Izinyon, S.A.N. (with Alex Izinyon 11 Esq.; J.A. Majebi Miss) of learned Counsel to Plaintiff/Applicant, the Court adjudged the application meritorious and successful and proceeded to grant same.

One is not unmindful of the contempt proceedings that ensued thereafter.

It is also a fact that many well-meaning Nigerians have expressed very many respected opinions of diverse shade on this issue. The substance of this contribution will however be limited to the grant of this Ex-Parte Motion dated the 5th day of December, 2014. This is because the sole interest of this writer is to lay bare the deficiencies in the Nigeria’s law on defamation and to
offer time-tested solutions aimed at advancing and enriching our local jurisprudence on the subject.

To stimulate our quicker appreciation of the issues to be discussed, it has become imperative that the “meaning” of the two recurring concepts in this article be properly examined since understanding them is key and central to the neat and effective disposal and reception of this discuss. The key words are **Interim/Interlocutory Order** and **Defamation**. To the later we shall now focus our attention.

Black’s Law Dictionary, seventh edition at page 427 defines defamation thus;

“A false written or oral statement that damages another’s reputation.”

To shed more light on this concept, we invite the Learned Hand, Salmond. Hear him;

“The wrong of defamation consists in the publication of a false and defamatory statement concerning another person without lawful justification. That person must be in being. Hence not only does an action of defamation not survive for or against the estate of a deceased person, but a statement about a deceased or unborn person is not actionable at the suit of his relatives, however great their pain and distress, unless the statement is in some way defamatory of them.”


Worthy of note is that the tort of defamation is involved in two related harms, libel and slander. A familiar statement is that libel is written whereas slander is oral. (See Rollin M. Perkins & Ronald N. Boyce, Criminal Law 489 3rd ed. 1982)

According to another Learned Writer, Gatley,

“Defamation is the publication of a statement which reflects on a person’s reputation and tends to lower him in the estimation of right-thinking members of the society generally or tends to make them shun or avoid him.”

(See Gatley, Libel and Slander 9th ed.)
The corollary of the foregoing crystallizes to this: the tort of defamation whether libel or slander relates essentially to damage to the character of the person. [See OGBODU V. S.S.A.U.T.H.R.I.A.I. (2013) 3 N.W.L.R. (Pt. 1341) C.A. 261]. Judicial authorities are in accord in stating that a defamatory publication is one that is calculated to lower the person in the estimation of right thinking men or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business [See OKOLIE V. MARINHO (2006) 15 N.W.L.R. (Pt. 1002) C.A. 316]. The basis of the tort of defamation is that a person has a right to the protection of his good name, reputation and the estimation in which he stands in the society of his fellow citizens. Therefore, anybody who publishes anything injuring that good name, reputation or estimation commits the tort of libel (if written) and slander (if oral). [See COMPLETE COMM. LTD V. ONOH (1998) 5 N.W.L.R. (Pt 549) C.A. 197]. The Nigerian Supreme Court has equally outlined the six (6) conjunctive ingredients which a plaintiff has to prove to succeed in action for defamation as including the following:

a. Publication of the offending words;
b. That the words complained of refer to the plaintiff;
c. That the words are defamatory of the plaintiff;
d. That the words were published to third parties;
e. That the words were false or lack accuracy; and
f. That there are no justifiable legal grounds for the publication of the words.

[Refer to OLOGE V. NEW AFRICA HOLDINGS LTD. (2013) 17 N.W.L.R. (Pt. 1384) S.C. 449 at 469]. In a more telling language, while expatiating on the nature of the tort of defamation, the Nigerian Supreme Court held thus;

“The tort of defamation, whether libel or slander, relates essentially to damages to the character of a person. In other words, a plaintiff who institutes an action for libel has invariably put his character in issue. He is understood to be telling the whole world what a good person he is, and stating that someone is trying to destroy his enviable good name. He puts his reputation at stake depending on what the defamation is all about. In the course of the consideration of the case, but
particularly where he has shown through his pleadings what a person of great repute and of unblemished character he is, he has literally thrown his hat on the ring, caution to the wind, and dares the defamer to disprove his good and admirable character. Where in the course of the proceedings, facts elicited in the evidence portray him as an inveterate liar incapable of distinguishing truth from falsehood, he might have unwittingly succeeded, by his inconsistent statements and falsehoods, in destroying his character which he has held out to the world to be clean. In such a case, he cannot complain if the court finds out that he is a chronic or penitus insitus liar.” [Refer to ILOABACHIE V. ILOABACHIE (2005) 13 N.W.L.R. (Pt. 943) S.C. 634]

The principles underpinning the law of defamation are quite vast and their exploration is not necessary to dispose of our discussion save and except the extent I have gone. Having seen the nature of action Prince Buruji Kashamu slammed on Chief Obasano, we shall now quickly look at the meaning of Interim/Interlocutory injunction and marry the two concepts to successfully squire up with the nuances thrown up by this work.

Simply put, injunction is a court order commanding or preventing an action. An interlocutory injunction is an injunction granted during the pendency of a suit. When the application is made to the court without putting the other party on notice, it is called an ex-parte interim/interlocutory injunction where it is granted. All over the world especially in the Commonwealth jurisdictions, interlocutory/interim injunction is granted in cases of urgency. Thus an applicant who is guilty of delay thereby demonstrates the absence of any urgency requiring prompt relief. [See IDEOZU V. OCHOMA (2006) 4 N.W.L.R. (Pt. 970) S.C. 364 at 390]. The main purpose of interlocutory injunction is to preserve the res or subject matter of the litigation from destruction pending the determination of the matter. [See KOTOYE V. C.B.N. (1989) 1N.W.L.R. (Pt. 98) 419.]

From the totality of the foregoing, My Lord, Hon. Justice V. B. Ashi of the F.C.T. High Court, erred in law, in our humble view and with the greatest respect, in granting the interlocutory application made ex-parte dated 5th December, 2014 on two (2) grounds which shall hasten to set forth below forthwith.
1: **THE AIM AND PURPOSE OF INTERLOCUTORY INJUNCTION:**

High judicial authorities are ad idem in declaring that where an action sought to restrained has already been completed, the equitable remedy of interlocutory injunction will no longer be available to an applicant as recently restated in the case of *S.P.D.C. V. HOTELS (2007) ALL FWLR (pt. 359).* The underlining philosophy for this long held policy of the law is not far-fetched. Courts of law, like every other institution, do not act in vain. Very recently, the Nigerian Supreme Court has eloquently declared that “when a court is asked to restrain a party from doing an act pending the decision in a matter before it, but the act has been done no order to restrain will be made. This is so because what is sought to be prevented had happened. In other words, an interlocutory injunction is not a remedy for an act which already been carried out, and will not be granted where even the act complained of is irregular.” [Refer to *IDEOZU V. OCHOMA (supra)*]. It is a legal maxim and elementary that the law does not command the impossible. This position of the law is one of unbending rigidity. Being more specific in circumscribing and highlighting the relevance and limits of interlocutory injunction, the Nigerian Supreme Court stated further; “Interlocutory injunction, second in the line of injunctive reliefs, is aimed at attacking or tackling a threatening, continuing or living adverse act or conduct on the part of the owner of the act or conduct. Once the act or conduct is completed, the relief of interlocutory injunction is totally spent as it has no life to attack or tackle the completed act or conduct.”

We have been talking law. It seems we have talked enough law. Let us go the facts. Now, what were the facts before the learned trial Judge? Upon being Ex-Parte Order and the Motion on Notice, the Defendant filed a counter affidavit in opposition of the motion and the paragraphs 5, 13 and 14 bear out and underscore the point we are making. Let us look at them;

5. That contrary to paragraph 4 of the Plaintiff/Applicant's affidavit in support of the Motion on Notice, the Defendant/Respondent’s book/autobiography titled “My Watch” had been published since November, 2014.
6. That the following are the particulars of the publication of the book/autobiography;

i. Publisher: Kachifo Limited under its prestige Imprint.
iii. Released Date: November, 24, 2014.

iv. The book is trimmed at 150 by 235mm, portrait. The page counts are 506, 672, and 400 pages respectively for volumes 1, 2 and 3.

14. Photocopy of the cover is hereby exhibited as exhibit “A2”.

These salient depositions contained in the Defendant/Respondent’s counter affidavit evidence were not controverted by the Plaintiff/Applicant and the unbending position of the law on this score is long settled in a long chain of superior judicial authorities to the effect that when a party refuses to controvert or challenge depositions of fact in an affidavit, he is deemed to have admitted those facts as true and established entitling a Court of Law seised with the matter to act on same without more as recently held in INAKOJU V. ADELEKE (2007) 4 N.W.L.R. (Pt. 1025) S.C. 423 at 665 per the dictum of Katsina-Alu, J.S.C. who stated thus;

“It is not in dispute that the defendants did not file a counter affidavit to the originating summons. In effect, all the depositions in the supporting affidavit were deemed admitted.”


For the very fact that facts put before the court came after the grant of the said interim injunction, the Learned trial Judge ordinarily ought to be exculpated since the court acted under the illusion that the book was yet to be published before it issued the injunction as the Plaintiff/Applicant led the Court to believe by his affidavit of Extreme urgency. However, it is rather mind-boggling that even after the Court became aware of the true position, it still
allowed itself to be moved by yet another application of the Plaintiff/Applicant seeking to compel the defendant to come and show cause why he would not be committed to jail for disobedience (contempt) of a Court Order, an application the learned trial judge sadly granted. On this score, My Lord, Justice Valentine Ashier erred.

There is yet another solid ground on which we stand to contend that the interim order made ex-parte on the 5th day of December of the learned trial judge is starved of established authorities in that area of the law.

2: **NO INTERLOCUTORY INJUNCTION IF DEFENCE IS RAISED:**

The general principle of law under the law of defamation is that the High Court may grant an interlocutory injunction restraining a defendant, whether by himself or his servants or agents or otherwise, from publishing or further publishing a matter which is defamatory or a malicious falsehood. [See *Bonnard v. Perryman (1891) 2 ChD 269 C.A.; Hermann Loog v. Bean (1884) 26 ChD 306, C.A.*]. The case of *Kitcat v. Sharp (1882) 52 LJ Ch 134* bears out the postulation of law to the effect that in exercising this jurisdiction, it is not necessary to show that there has already been an actionable publication or that damage has been sustained. Indeed, in appropriate cases, an injunction may be granted ex-parte and before the issue of a writ.

As far as the grant of interlocutory/interim injunction during the pendency of defamation suit is concerned, the principles we have stated above remain no more than the general principles and therefore merely constitute a side of the coin only. We shall now focus our minds on the other side of the coin which are the exceptions to the general principles outlined above.

The law is firmly settled that interlocutory injunctions are generally less readily granted in defamation proceedings and according to different principles. [See *Herbage v. Pressdram Ltd (1984) 1 WLR 1160 at 1162, C.A., per Griffiths LJ; Hubbard v. Pitt (1975) 3 All ER 1 at 16, C.A., per Stamp LJ*]. The reason is not any difficult to fathom. It is because of the court’s reluctance to fetter free speech before a trial. This is more so, when freedom of speech is a constitutionally-guaranteed right. It is therefore for the plaintiff to show that the words are defamatory, false, and where relevant, published
with actual malice. [See ARMSTRONG V. ARMIT (1886) 2 TLR 887 DC]. In addition, he must prove that there is reason to believe that publication or further publication of the defamatory statement is threatened or intended. [Refer to LONDON MOTOR CAB PROPRIETORS ASSOCIATION AND BRITISH MOTOR CAB CO LTD. V. TWENTIETH CENTURY PRESS (1912) LTD. (1917) 34 TLR 68]. It is a mere statement of the obvious that where no publication has yet taken place, a plaintiff may well be unable to prove with sufficient certainty what defamatory allegation the defendant is threatening to publish as played out in BRITISH DATA MANAGEMENT PLC V. BOXER COMMERCIAL REMOVAL PLC (1996) 3 ALL ER 707, C.A.

The corollary of the foregoing inevitably crystallizes to the settled principle of law to the effect that interim/interlocutory injunction will NOT be granted if the defendant states his intention of pleading a recognized defence unless the plaintiff can satisfy the court that the defence will fail. For this all-important principle to be roundly appreciated and its import in all its ramifications internalized, it has become of compelling necessity that we discuss the locus classicus case of FRASER V. EVANS (1969) 1 ALL ER 8; (1969) 1 QB 349. The facts of the case are as follows;

The plaintiff was a consultant in public relations. His firm was employed by the government of Greece and in the course of that employment was required to make reports for them. The firm's contract, which was in writing, contained an express provision imposing on it an obligation of confidence, but there was no corresponding undertaking by the Greek government. In June, 1968, the plaintiff made a report for the Greek government on the public relations programme for Europe. It was translated into Greek in Athens, nine copies being sent to high officers of the government in Greece or government departments, and a tenth being kept by the plaintiff and his firm. One of the Greek translations was obtained surreptitiously and came into the hands of a journalist employed by the defendants. He had an English translation made of it and thought that he would write an article about it for a Sunday newspaper owned by the defendants. Two journalists from the newspaper interviewed the plaintiff who answered questions and was shown the English translation of the report. The plaintiff, being concerned that the newspaper might publish an article on the subject in their next issue, obtained an interim injunction restraining the defendants from publishing the report or any matter
incorporating information derived from it. The newspaper admitted that the article would be defamatory of the plaintiff but said that, if they were sued, they would plead justification and fair comment.

The appeal of the defendant (newspaper) was unanimously allowed by the Court of Appeal, England. In his forensically brilliant lead judgment traditional of him, the ever-indomitable Lord Denning, M.R. restated the principle of law thus;

“\textit{Insofar as the article will be defamatory of the plaintiff, it is clear he cannot get an injunction. The court will not restrain the publication of an article, even though it is defamatory, when the defendant says that he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since the case of Bonnard v. Perryman. The reason sometimes given is that the defences of justification and fair comment are for the jury.....and not for a judge; but a better reason is the importance in the public interest that the truth should be out. As the court said in that case(2);}

‘The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done.’ There is no wrong done if it is true, or if it is for fair comment on a matter of public interest. The court will not prejudice the issue by granting an injunction in advance of publication.”

After expatiating on the position of the law, Lord Denning in a tone of finality very authoritatively concluded thus;

“\textit{The Sunday Times assert that, in this case, there is a matter of public concern. They admit that they are going to injure the plaintiff’s reputation, but they say they can justify it; that they are only making fair comment on a matter of public interest; and; therefore, that they ought not to be restrained. We cannot prejudge this defence by granting an injunction}
against them. I think that the injunction which has been granted should be removed. The Sunday Times should be allowed to publish the article at their risk. If they are guilty of libel or breach of confidence, or breach of copyright, that can be determined by an action hereafter and damages awarded against them. But we should not grant an interim injunction in advance of an article when we do not know in the least what it will contain.” (Underlining supplied by the writer for emphasis).

It was on the above ratio that the Court of Appeal allowed the appeal accordingly and discharged the injunction granted by the High Court. Even, their Lordships of the Court of Appeal refused the Respondent leave to appeal to the House of Lords.

Riding on the back of the foregoing authorities, it cannot be emphasised too strongly that in cases where the defendant in a defamation action raises any recognised defence or states his intention of so raising in his Statement of Defence, a court of law is without power (or would be wrong) to grant an interlocutory injunction stopping the defendant from publishing a material which the plaintiff alleges is defamatory of him where such a plaintiff has failed to adduce evidence to convince the court satisfactorily that the defences raised by the defendant would definitely collapse when and if taken and examined on their merits by the court.

In the case under our consideration, the processes before the F.C.T. High Court amply reveal that among other defences, the former President, Chief Olusegun Obasanjo, raised the defences of (a) qualified privilege and (b) justification. We shall now visit the Statement of Defence already before the court to see these defences. Some of the paragraphs are reproduced hereunder;

2.(b) It is established from available Courts' records that the plaintiff has no reputation locally and internationally as he remains a fugitive under the laws of the United States of America with a criminal indictment and international arrest warrant hanging on his neck.

30. **PARTICULARS OF JUSTIFICATION**
b. That the plaintiff is aware of his indictment and arrest warrant and has made several strenuous but unsuccessful attempts to have the indictment quashed and the arrest warrant cancelled.

w. That the Federal High Court in its judgment granted the plaintiff's relief restraining the Federal Government from extraditing the plaintiff to the United States. However, the judgment of the Federal High Court was set aside by the Court of Appeal in its judgment delivered on the 2nd July, 2013 in Appeal No: CA/L/668/2011

Now, towing the line ably drawn by the now venerable authority of \textit{BONNARD V. PERRYMAN (supra)} and followed in a host of subsequent authorities including \textit{HARAKAS V. BALTIC (1982) 2 ALL ER 769; FRASER V. EVANS (supra)} and others too numerous to mention, it would no longer be difficult to see that the plaintiff herein (Prince Buruji Kashamu) was not entitled to the interim/interlocutory injunction of the Court since the defendant has raised recognised defences of qualified privilege and justification which Prince Kashamu has not satisfied the Court that they (the defences) would fail when taken and examined on their merit by the court which is a \textbf{condition precedent} to the grant of the interim injunction. No less an institution than the Nigerian Supreme Court has defined the \textbf{doctrine of condition precedent} to mean that \textit{where there is a provision for a precondition for the doing of a thing or for the attainment of a particular situation, the precondition must be fulfilled or satisfied before the particular situation will be said to have been attained or reached.} \cite[See \textit{INAKOJU V. ADELEKE (supra); SYSTEM APPLICATIONS PRODUCTS (NIG.) LTD. V. C.B.N. (2004) 15 N.W.L.R. (pt.879) 655}. In this instance, the \textbf{precondition} for the grant of interim/interlocutory injunction in a defamation action is the satisfactory prove by the Plaintiff/Applicant that the defences hoisted by the Defendant/Respondent in his Statement of Defence are failure-bound.

Assuming, therefore, that the publication of the alleged defamatory material by the Defendant had not been published to the knowledge of the court as at the time the Plaintiff moved his interlocutory application for an interim order, the trial High Court would have seen been wrong to have granted the application where it is glaringly obvious that the Plaintiff/Applicant did not satisfy the \textbf{condition precedent} to the grant of the said interim/interlocutory application. Indeed, since the inception of this matter, there is no process
before the court showing that the plaintiff has ever led evidence to demobilize the defences of qualified privilege and justification stated in the defendant’s Statement of Defence. This assertion is a matter of common knowledge to all the parties in the suit including My Lord, the learned trial Judge.

It is therefore on this second leg of reasoning that we, very respectfully, submit and hold the firm view that the exercise of discretion by the trial F.C.T. High Court in favour of the plaintiff/Applicant’s Motion No: FCT/HC/M/2392/2014 would not enjoy the approval of higher judicial authorities if eventually challenged on appeal in the light of the well established principles enunciated above.

CONCLUSION:

This article has sought to show that the interim/interlocutory injunction issued by the F.C.T. High Court presided over by Hon. Justice Valentine B. Ashi stopping Chief Olusegun Obasanjo from publishing his book “My Watch” is one that the court, with the greatest respect, ought not to have made under the prevailing circumstances as have been hereinbefore x-rayed. Against the backdrop of the Supreme Court decision in IDEOZU V. OCHOMA (supra) which was also cited to the learned trial Judge, it would be correct to note that the learned trial Judge sadly turned a blind eye to, side-tracked and failed to apply a subsisting judgment of the Supreme Court unquestionably binding on him in the circumstances the lower court found itself. No doubt, the posturing of My Lord Justice Ashi on this issue does not bode well for (and undermines the sacred) doctrine of *stare decisis* otherwise called the doctrine of judicial precedence. This is a doctrine of judicial precedence requiring all subordinate courts to follow decisions of superior courts and to apply such decisions in the cases before them. [See *DALHATU V. TURAKI (2003) 15 N.W.L.R. (pt. 843)*].

Expatiating further on this all important doctrine, My Lord, Edozie, J.S.C. stated thus;

"The doctrine of judicial precedence otherwise known as *stare decisis* is not alien to our jurisprudence. It is a well settled principle of judicial policy which must be strictly adhered to by all lower courts. While such lower courts may depart from their own decisions reached per incuriam, they
cannot refuse to be bound by the decisions of higher courts even if those decisions where reached per incuriam. The implication is that a lower court is bound by the decision of a higher court even where the decision was given erroneously” [Refer to DALHATU V. TURAKI (supra) at pages 274-275.

It was indeed in circumstances such as those in the present case that the full panel of the Nigerian Supreme Court expressed its displeasure and unsparingly deprecated the refusal of the then Hon. Justice I.U. Bello of the same F.C.T. High Court to follow the principle of law well laid down by the Supreme Court in the case of ONUOHA V. OKAFOR (1983) 14 NSCC 497; even when His Lordship was commended to the said decision.

Leading the pack was Katsina-Alu, JSC who read the Lead judgment. Hear him;

"Now the case of ONUOHA V. OKAFOR (supra) was brought to the attention of the trial judge. Regrettably, for reasons best known to him, he chose to ignore it….The conduct of the learned trial Judge, I.U. Bello is to say the least most unfortunate... A refusal, therefore, by a Judge of the court below to be bound by this court’s decision, is gross insubordination (and I dare say such a judicial officer is a misfit in the Judiciary).”

In firing the second salvo, My Lord Justice Kutigi, JSC knocked the learned trial Judge in these telling words;

“His action has been variously described as ‘gross insubordination’, ‘judicial rascality’, ‘reckless’, ‘judicial impertinence’ amongst others. I think he richly deserved the descriptions....”

Adding his own voice, Ogundare, JSC (of blessed memory) expressed his own displeasure thus;

“This to my mind, this is the height of judicial impertinence ever exhibited by a Judge of a court lower than the Supreme Court. The doctrine of stare decisis is fully entrenched in our jurisprudence to ensure certainty of the law. Had the learned trial Judge in this case cared to read that case and various
dicta of their Lordships of this Court, he would not have exhibited such crass ignorance that ran through his judgment.” [To the same effect, see the dicta of KALGO, EJIWUNMI, TOBI and EDOZIE, JJSC.]

It is only time that will tell where the Ex-Parte Order of My Lord Justice Ashi would be classified by their Lordships of the Higher Courts when and if eventually the matter comes before them.

Coming nearer home, our humble effort has established that where there is any recognised defence raised by the defendant in a defamation suit, an application for an interim/interlocutory order will surely hit the brick wall where the plaintiff/applicant has woefully failed (as here) or has lifted no finger in convincing the court that the defences raised by the defendant, when and if properly considered, will surely go the way of the wind.

Since the defendant herein has raised two lines of defence nay qualified privilege and justification, we have to inevitably take a shot at these two defences, before we sign off our discussion, so as to appreciate what a Plaintiff/Applicant in an application for interim injunction in defamation cases is up against.

On the one hand, qualified privilege is a defence to an untrue publication. An occasion is privileged when the person who makes the publication has a moral duty to make it to the person to whom he does make it and the person who receives it has an interest in hearing it. Both conditions must co-exist in order that the occasion may be privileged. [See NIGERIA TELEVISION AUTHORITY V. BABATOPE (1996) 4 N.W.L.R. (pt. 294) 423]

The Law is equally settled that in order to neutralize or destroy the defence of qualified privilege, it is incumbent on the plaintiff to prove malice. [See WINFIELD & JOLOWICZ ON TORT, sixteenth Edition, W.V.H. ROGERS pages 429-437]. A reply to a defence of qualified privilege should resonate with facts and particulars that show the malicious intention of the publisher of the statement. It is to say that implicit in such a publication would readily depict a mind poisoned or jaundiced by the prejudice and evil disposition bent on destructive calumny against the plaintiff. [Refer to the dictum of Pats-
Acholonu, JSC in the case of *ILOABACHIE V. ILOABACHIE (supra) at pages 716-717 of the report*.

On the other hand, when a defendant raises the defence of justification, all what he is saying is that his statement being complained of is the truth. Where it succeeds, it is a complete defence to an action in defamation. The truth of the imputation is an answer to the action, not because it negatives malice, but because the plaintiff has no right to a character free from that imputation, and if he has no right to it, he cannot in justice recover damages for the loss of it. It is *damnus absque injuria*. [Refer to *REGISTERED TRUSTEES OF AMORC V. AWONIYI (1991) 3 N.W.L.R. (pt. 178) 245; BARDI V. MAURICE (1954) 14 WACA 414*]

It is only when a plaintiff is able to puncture and successfully deflate the defences mounted by the defendant that the interim/interlocutory Order of Court could possibly issue and inure to his benefit. The entire gamut of our analysis, wading through the labyrinth of case-laws, has justified the two grounds on which we stand to stoutly maintain that the interim Order of the F.C.T. High Court dated 5th day of December, 2014 in Motion Number FCT/HC/M/2392/2014 carries so many death wounds and irredeemably bad in law. The two grounds we stand on are also crystal clear. Firstly, the Court Order, contrary to established and venerable principles, issued against a completed act. Secondly, the Court Order issued, contrary to law, against the backdrop of established authorities, at a time when all available evidence point to the fact that the plaintiff/applicant could not and did not satisfy the conditions precedent to the grant of the order. Here, we find a convenient place to stop.