**ABEKHE**

**V.**

**ALPHA MERCHANT BANK PLC.**

COURT OF APPEAL (LAGOS DIVISION)

CA/L/244/2012

FRIDAY, 7 JULY 2017

**LEX (2017) - CA/L/244/2012**

OTHER CITATIONS

3PLR/2017/8 (CA)

**BEFORE THEIR LORDSHIPS:**

M. L. GARBA JCA (Presided and Read the Lead Judgment)

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO JCA

JAMILU YAMMAMA TUKUR JCA

**BETWEEN**

MR. SOLOMON ABEKHE

AND

1. ALPHA MERCHANT BANK PLC.

2. NIGERIA DEPOSIT INSURANCE CORPORATION

3. CENTRAL BANK OF NIGERIA

**ORIGINATING COURT**

HIGH COURT OF LAGOS STATE .

**ISSUES FROM THE CAUSE(S) OF ACTION**

ADMINISTRATIVE LAW AND GOVERNMENT - STATUTORY BODIES - CENTRAL BANK OF NIGERIA AND NIGERIA DEPOSIT INSURANCE CORPORATION:- Abuse of power – What constitutes - Notifying a banker of a report of fraud against its employee in discharge of their oversight functions - Whether constitutes abuse of power.

BANKING AND FINANCE LAW – BANK OPERATIONS:- Legal personality of bank – Basis of - Revocation of banking licence by Central bank - Whether amounts to the dissolution of the legal personality of the company

BANKING AND FINANCE LAW – – BANK OPERATIONS:- Bank which licence has been withdrawn by the Central Bank and placed under administration by the Nigerian Deposit Insurance Corporation – Legal implication for corporate status – Whether deemed bereft of legal status so as to be able to sue and be sued

BANKING AND FINANCE LAW - CENTRAL BANK OF NIGERIA AND NIGERIA DEPOSIT INSURANCE CORPORATION - Notifying a banker of a report of fraud against its employee in discharge of oversight functions - Whether constitutes abuse of power or libel

COMMMERCIAL LAW - CONTRACT - BREACH OF CONTRACT - When a third party is liable for inducing breach – Legal; effect of

COMPANY LAW – INSOLVENCY AND WINDING DOWN OF COMPANY:- A company carrying on business as bank – Conditions precedent thereto – Necessity of being incorporated under the Company and Allied Matters first before applying for banking licence – Where banking licence withdrawn – Whether automatically amounts winding down of company and loss of its corporate status so as to be able sue and sued

EMPLOYMENT AND LABOUR LAW - MASTER AND SERVANT - DISMISSAL OF EMPLOYEE – Legal implication of - Right of to resign - When exercise of would be deemed effective – Employee who has resigned - Whether may be queried for breach of staff handbook by former employer and subsequently dismissed on that basis

JUDGMENT AND ORDER – DAMAGES:- Award of damages by trial court – Invitation of appellate court to interfere therewith - Attitude of appellate court thereto.

TORT AND PERSONAL INJURY LAW - ACTION FOR:- Double compensation for the same wrong –Legal propriety and validity of

TORT AND PERSONAL INJURY LAW – LIBEL:- Action for - Assessment of damages in respect thereof - Factors to be considered.

TORT AND PERSONAL INJURY LAW : LIBEL - Words - When may be held defamatory – Relevant considerations - Opinion of oneself – Whether relevant .

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - REPLY BRIEF:- Meaning and essence of - When would be deemed necessary and properly filed

APPEAL - RESPONDENT WHO HAS NOT FILED A CROSS-APPEAL:- Where intends to challenge trial court’s judgment - Proper step to take.

JUDGMENT AND ORDERS – DAMAGES:- Award of damages by trial court – Duty of court thereto - Attitude of appellate court to invitation to interfere therewith

JUDGMENT AND ORDERS - OBITER DICTUM :- What constitutes - a specific and positive legal opinion of a court on the issues joined by the parties and the reliefs sought in the case before it – Whether amounts to obiter dictum

WORDS AND PHRASES:- “Reply Brief” – “Obiter Dictum” – Meanings of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant was a former staff of the 1st respondent, where he voluntarily resigned in 1993 before joining Pinnacle Commercial Bank Limited. On or about 7 April 1994, he was served with a query to respond to certain allegations relating to his erstwhile employment including the running of a private business while in the employ of 1st respondent, diversion of deposits and the unauthorised use of 1st respondent’s address, telephone and fax number for the said private business.

The appellant did not answer the query on grounds that he was no longer a staff of 1st Respondent and was therefore exempted from its disciplinary procedures. Nonetheless, the 1st Respondent purportedly proceeded with some disciplinary action against the appellant including the notification of the 2nd and 3rd respondents of its decision to terminate appellant’s appointment. The 1st respondent also circulated its monthly list of staff dismissed on grounds of fraud to 2nd and 3rd respondents and chief inspectors of all commercial and merchant banks in Nigeria which included appellant’s name. Based on recommendation of the 2nd respondent, the appellant’s new employment was terminated and being aggrieved, the appellant filed an action in the High Court of Lagos State seeking declaratory and injunctive reliefs to the effect that the disciplinary proceedings initiated against him after having resigned from 1st respondent’s employment was null and void. He also contended that the decision of 1st respondent to request the 2nd and 3rd respondents to inform appellant’s new employer about appellant’s purported misconduct as well as the purported dismissal were invalid and void. The appellant also sought damages for libel against the 1st respondent.

The trial court granted the reliefs sought by the appellant in part. Dissatisfied, the appellant appealed to the Court of Appeal contending that the lower court erred in not granting some of his claims on grounds that the 1st respondent and Pinnacle Commercial Bank Ltd who was appellant’s new employer had ceased to exist.

**DECISION(S) APPEALED AGAINST**

The trial Court entered judgment in favour of the Claimant/Appellant on 14 November, 2011, granting reliefs 1, 2, 3, 4 and 9 sought and also awarded in favour of the Appellant the sum of N1,000,000.00 (one million naira) as damages for libel while refusing reliefs 5, 6, 7, 10, 11 and 12 on the ground that “Alpha Merchant Bank and Pinnacle Merchant Bank have been dissolved and no longer exist “ Not satisfied with the latter part of the judgement, the appellant brought this appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

“3.1.1 Whether this Honourable Court should interfere with the findings of the learned trial judge to the effect that the allegations in the query of the 1st respondent (Exhibit E) were left unchallenged and uncontroverted by the appellant, that the appellant breached his contract with the 1st respondent and therefore the 2nd and 3rd respondents were right in informing Pinnacle Commercial Bank of their findings on the appellant on the grounds that these findings were perverse thereby occasioning a miscarriage of justice and that the learned trial judge cannot approbate and reprobate;

3.1.2 Whether the learned trial judge was right in holding that the appellant failed to show that the 2nd and 3rd respondents induced Pinnacle Commercial Bank Limited to terminate the appellant’s appointment because his letter of termination (Exhibit J) did not state any reason and the 2nd and 3rd respondents cannot be held responsible for the actions of Pinnacle Commercial Bank Limited who was not a party to the suit thereby denying the appellant’s claims for damages and injunction;

3.1.3 Whether the learned trial judge should have awarded the appellant more than N1,000,000.00 (one million naira) as damages given the circumstances of this case, and,

3.1.4 Whether the learned trial judge rightly held that claims 5, 6, 7, 8, 10, 11 and 12 failed because the 1st respondent and Pinnacle Commercial Bank Limited have been dissolved and no longer exist.”

*BY RESPONDENTS*

*1st and 2nd Respondents:*

i. Whether the lower court was correct to have found that the appellant conducted his own business while still in the employment of the 1st respondent and thereby breach his contract of employment and whether the appellant who refused to avail himself the opportunity to defend himself, based on his counsel’s advice, can now complain against the decision of the 2nd and 3rd respondents to sanitize the banking industry by communicating the result of their findings to all commercial banks in Nigeria in furtherance of their statutory responsibilities.

ii. Whether the judgement of the lower court complained of is perverse.

iii. Whether it is not an obiter dictum when the lower trial judge, after considering the evidence and had awarded damages of N1,000,000.00 (one million naira) only to the appellant, said:

“Claims 5, 6, 7, 8, 10, 11 12 fail as the banks Alpha Merchant Bank and Pinnacle Commercial Bank have been dissolved and no longer exist.”

*3rd Respondent:*

“3.01 Whether the 3rd respondent’s supervisory powers in respect of bank officers is limited to only officers currently in the employment of suspect banks under investigation. (Grounds 1, 2 and 3)

3.02 Whether the trial court exercised its discretion correctly in fixing the amount of damages against the 1st respondent and refusing claims Nos. 5, 6, 7, 8, 10, 11 and 12. (Grounds 4 and 5)”

*AS ADOPTED BY COURT*

[The Court adopted the Issues presented by the Appellant]

DECISION OF SUPREME COURT

1. The position by the High Court on the appellant’s reliefs in question is not an obiter dictum (a mere passing remark), but rather, it is a specific and positive legal opinion of that court on the issues joined by the parties and the reliefs sought in the case before it. It is a finding by that court which in its decision on the said issues and reliefs sought that touched on and go to the substance of the dispute between the parties and against which the appellant is vested with a right of appeal.

2. Revocation of a banking licence by the governor of the central bank does not necessarily mean the death of the bank thereby making it incapable of suing or being sued or barring it from becoming an appellant or respondent in an appeal process. The revocation of the licence of a bank could have indicated an ill disposition, all acute and serious ailments. It does not go beyond that to herald and constitute the death of the bank. The bank remains alive possessing its legal personality, as sick as it could have been and as indicated by the revocation of its licence.

3. So the mere fact that the 3rd respondent had revoked the banking licences of the 1st respondent and Pinnacle Bank did not in law mean that the two (2) banks were/are dead and to have ceased to exist because of the revocation.

4. The provisions of section 2(1) of Bank and Other Financial Institution Act provide that: “No person shall carry on any banking business in Nigeria except if it is, a company duly incorporated in Nigeria and holds a valid banking licence issued under this Act.” These provisions show that a bank must be a company duly incorporated in Nigeria, before it can apply to the Central Bank and be granted a banking licence in order to enable it carry on banking business in Nigeria.

5. First and foremost, a bank is a company incorporated under the Companies and Allied Matters Act, and becomes a corporate entity by virtue of the incorporation and it is in that corporate capacity that it is granted a banking licence to carry on banking business in Nigeria.It follows therefore that the revocation of the licence to carry on the business of banking does not affect its corporate status under Companies and Allied Matters Act, as a company incorporated in Nigeria.

6. Section 38 of the Bank and Other Financial Institutions Act, provides that:

“Where the licence of a bank has been revoked pursuant to section 37 of this Act, the corporation shall apply to the Federal High Court for a winding up order of the affairs of the bank.”

Then under section 478(1) and (4) as soon as the affairs of a company are fully wound up, the Corporate Affairs Commission shall register the returns of the winding up and after the expiration of three (3) months of the registration, the company shall be deemed to be dissolved. The dissolution of a company legally signifies its death and automatic loss of its corporate status.

7. Where a victim of tort has been fully compensated under one head of damages for a particular injury, it is ` improper to award him damages in respect of the same injury under another head..

**MAIN JUDGMENT**

**GARBA JCA** (Delivering the Lead Judgment):

The appellant was an employee of the 1st respondent until 20 September 1993 when by a letter of that day, he resigned his employment and was later employed by Pinnacle Commercial Bank Limited. Then on or about 7 April 1994, the 1st respondent served him at his new place of employment, a query to explain within seven (7) days, allegations regarding illegal/unauthorized conducts and action involving running a private business while in the employment of the 1st respondent, diversion of deposits and using the 1st respondent’s address, telephone and fax numbers for the said private business.

The appellant did not answer the query on the ground that he was no longer in the employment of the 1st respondent and so not a member of staff against whom disciplinary procedure could be initiated under the staff handbook. The 1st respondent proceeded with the disciplinary action against the appellant and in a letter dated 5May 1994 notified the 2nd and 3rd respondents of its decision on the allegations against the appellant and sought for approval to terminate his appointment.

The 1st respondent also by a letter dated 1 July 1994 forwarded its monthly list or returns of staff dismissed/terminated on grounds of fraud to the 2nd and 3rd respondents as well as the Chief Inspectors of all commercial and merchant banks in Nigeria which included the name of the appellant.

On the recommendation of the 2nd respondent, the appellant’s new employment was terminated on 1 July 1994, with immediate effect.

Based on these facts, by the amended statement of claim dated 8 November 2006 in the suit No. LD/2093/1994 before the High Court of Lagos State, the appellant made claims for declaratory and injunctive reliefs as well as damages for libel against the respondents; jointly and severally.

The reliefs are as follows:

“1. A declaration that the claimant has fully resigned from the 1st defendant’s employment since 20 December 1993.

2. A declaration that disciplinary proceedings initiated against the claimant and or the purported dismissal of the claimant from the 1st defendant was and invalid and void.

3. A declaration that the claimant is not a staff of an insured bank, dismissed, terminated or advised to retire on the grounds of fraud and therefore can be employed in an insured bank without the 2nd defendant being notified.

4. A declaration that the claimant is not a person whose appointment with a bank has been terminated or who has been dismissed for reasons of fraud, dishonesty or conviction for an offence involving fraud or dishonesty or professional misconduct and can therefore be employed or continue in the employment of a bank in Nigeria.

5. A declaration that the decision of the 1st defendant to request the 2nd and 3rd defendants to inform Pinnacle Commercial Bank Limited of his purported conduct, the nature of his offence and the purported dismissal as stated in the 1st defendants letter to the 2nd and 3rd defendants dated 5 May 1994 is invalid and void.

6. An injunction restraining the defendants and each of them, whether by themselves, their servants as agents or otherwise from communicating or causing to be communicated to Pinnacle Commercial Bank Limited or any other bank in Nigeria the purported conduct, the nature of the alleged offence and the purported dismissal as stated in the defendants’ letter dated 5 May 1994 to the 2nd defendant.

7. An injunction restraining the 2nd and 3rd defendants, and each of them whether by themselves, their servants or agents or otherwise from approving or causing to be approved, the decision of the 1st defendant dismissing or directing a dismissal of the claimant from the 1st defendant’s employment.

8. An injunction restraining the defendants and each of them, whether themselves, their servants as agents or otherwise from disturbing or interfering in any manner whatsoever with the claimant’s employment in any other bank in Nigeria on account of the purported query and decisions taken by the 1st defendant and communicated to the 2nd and 3rd defendants’ letter dated 5 May 1994.

9. Against the 1st defendant. The sum of N10,000,000.00 (ten million naira) damages for libel contained in the 1st defendant’s letter to the 2nd and 3rd defendants dated 5 May 1994.”

In reaction to these claims, the respondents filed their respective statement of defence with 1st and 2nd respondents making counterclaims against the appellant to which he filed statement of defence dated 21 February 2008, incorporating reply to the statement of defence.

At the trial, the appellant testified in support of his claims and the 1st and 2nd respondents called a sole witness while the 3rd respondent did not call any witness. Eventually, in a judgement delivered by the High Court on 14 November 2011, the reliefs 1, 2, 3, 4 and 9 sought by the appellant were granted along with an award of N1,000,000.00 (one million naira) as damages for libel. Reliefs 5, 6, 7, 8, 10, 11 and 12 were said to fail because “Alpha Merchant Bank and Pinnacle Merchant Bank have been dissolved and no longer exist “

Not satisfied with the latter part of the judgement, the appellant brought this appeal by the notice of appeal filed on 13 February 2012, which was amended by the amended notice of appeal filed on 15 July 2016. From the six (6) grounds contained on the amended notice of appeal, four (4) issues are said to arise for decision by the court in the appellant’s amended brief filed on the same date with the amended notice of appeal; 15 July 2016. The issues are:

3.1.1 Whether this Honourable Court should interfere with the findings of the learned trial judge to the effect that the allegations in the query of the 1st respondent (Exhibit E) were left unchallenged and uncontroverted by the appellant, that the appellant breached his contract with the 1st respondent and therefore the 2nd and 3rd respondents were right in informing Pinnacle Commercial Bank of their findings on the appellant on the grounds that these findings were perverse thereby occasioning a miscarriage of justice and that the learned trial judge cannot approbate and reprobate;

3.1.2 Whether the learned trial judge was right in holding that the appellant failed to show that the 2nd and 3rd respondents induced Pinnacle Commercial Bank Limited to terminate the appellant’s appointment because his letter of termination (Exhibit J) did not state any reason and the 2nd and 3rd respondents cannot be held responsible for the actions of Pinnacle Commercial Bank Limited who was not a party to the suit thereby denying the appellant’s claims for damages and injunction;

3.1.3 Whether the learned trial judge should have awarded the appellant more than N1,000,000.00 (one million naira) as damages given the circumstances of this case, and,

3.1.4 Whether the learned trial judge rightly held that claims 5, 6, 7, 8, 10, 11 and 12 failed because the 1st respondent and Pinnacle Commercial Bank Limited have been dissolved and no longer exist.”

In the 1st and 2nd respondents’ brief filed on 28 July 2016, three (3) issues are set out for determination in the appeal as follows:

i. Whether the lower court was correct to have found that the appellant conducted his own business while still in the employment of the 1st respondent and thereby breach his contract of employment and whether the appellant who refused to avail himself the opportunity to defend himself, based on his counsel’s advice, can now complain against the decision of the 2nd and 3rd respondents to sanitize the banking industry by communicating the result of their findings to all commercial banks in Nigeria in furtherance of their statutory responsibilities.

ii. Whether the judgement of the lower court complained of is perverse.

iii. Whether it is not an obiter dictum when the lower trial judge, after considering the evidence and had awarded damages of N1,000,000.00 (one million naira) only to the appellant, said:

“Claims 5, 6, 7, 8, 10, 11 12 fail as the banks Alpha Merchant Bank and Pinnacle Commercial Bank have been dissolved and no longer exist.”

Only two (2) issues are said to call for determination in the 3rd respondent’s amended brief filed on 17 October 2016, deemed on 2 May 2017, in the following terms:

“3.01 Whether the 3rd respondent’s supervisory powers in respect of bank officers is limited to only officers currently in the employment of suspect banks under investigation. (Grounds 1, 2 and 3)

3.02 Whether the trial court exercised its discretion correctly in fixing the amount of damages against the 1st respondent and refusing claims Nos. 5, 6, 7, 8, 10, 11 and 12. (Grounds 4 and 5)”

Because the issues formulated in the appellant’s brief represent the complaints against specific findings by the High Court, I would use them in the determination of the appeal.

Issue 1:

“Whether this Honourable Court should interfere with the findings of the learned trial judge to the effect that the allegations in the query of the 1st respondent (Exhibit E) were left unchallenged and uncontroverted by the appellant, that the appellant breached his contract with the 1st respondent and therefore the 2nd and 3rd respondents were right in informing Pinnacle Commercial Bank of their findings on the appellant on the grounds that these findings were perverse thereby occasioning a miscarriage of justice and that the learned trial judge cannot approbate and reprobate;

Appellant’s submission:

The submissions by the appellant’s counsel are to the effect that the finding by the High Court that the allegations in the query against the appellant were left unchallenged and uncontroverted is perverse on the ground that of its earlier finding that the query was an exercise in futility since the appellant had resigned his employment with the 1st respondent before it was issued and so was no longer a member of its staff. Portions of the judgement particularly at pages 1031-2, 1039 and 1043-4 of the record of appeal, were set out and it is submitted that the High Court could not approbate and reprobate at the same time on the issue of the allegations on the query issued by the 1st respondent to appellant after his employment had ceased with it. Queen v. Ogodo (1961) 2 SC 366; Baridam v. State (1994) 1 SCNJ 1, (1994) 1 NWLR (Pt. 320) 250 and Udengwu v. Uzuegbu (2003) FWLR (Pt. 179) 1173, (2003) 13 NWLR (Pt. 836) 136 on when a perverse decision can arise and the power of the court to interfere with it, were referred to along with Osolu v. Osolu (1998) 1 NWLR (Pt. 535) 532 where it was stated that a trial judge cannot approbate and reprobate. Then relying on [2017] All FWLR Abekhe v. Alpha Merchant Bank Plc (Garba JCA) 997 - 998 All Federation Weekly Law Reports 4 December 2017

U.N.T.H.M.B v. Nnoli (1994) 8 NWLR (Pt. 363) 37 and Ude v. Nwara (1993) 2 NWLR (Pt. 278) 638, (1993) 2 SCNJ 47, it is submitted that the 2nd and 3rd respondents could only exercise their oversight function in accordance with the method prescribed by the relevant statutes. Sections 35 and 36(1) and (2) of the 2nd Respondent’s Act, Cap. N102, Laws of Federation of Nigeria, 2004 were set out and it is argued that since the 1st respondent did not comply with them, the 2nd and 3rd cannot arbitrarily approve the dismissal of the appellant who was not in the employment of the 1st respondent at the material time to be classified as a person effected by the provisions of section 36(l) of the Act. The court is urged to hold that since the appellant had left the employment of the 1st respondent before the allegations were made against him, the dismissal based on them and the approval given by the 2nd and 3rd respondents, the action was malicious and an unlawful interference with the appellant’s new employment. It is also the case of the appellant that the High Court was wrong to hold that the 2nd and 3rd respondents did not exceed their statutory and regulatory powers by informing the appellant’s new employer of the findings on the allegations against him by the 1st respondent. The court is urged to interfere with the findings by the High Court.

1st and 2nd Respondent’s submissions:

The relevant submissions for the 1st and 2nd respondents on the appellant’s Issue 1 as can be deciphered from the arguments under their own issue 1, are that the High Court was right to hold that the appellant breached the terms and conditions in the 1st respondent’s staff handbook and that because the appellant refused to answer the query issued to him, he cannot be heard to now complain about the findings and recommendations made by the 1st respondent on the allegations against him. Also, because the 2nd and 3rd respondents are regulators in the banking industry and the appellant was still in the employment of a bank, they had the statutory power to notify the appellant’s new employer of the findings and also approve his dismissal from the 1st respondent’s employment. Sections 42 of the Central Bank of Nigeria, Act, 2007, 7(f) and (i) of the 1st Respondents Act, 2006 and 48 (2) of the Bank and Other Financial institutions Act, Cap B3, Laws of the Federation of Nigeria, 2004 (BOFIA) as well as, inter alia, S & D Construction Co. Ltd v. Ayoku (2003) 5 NWLR (Pt. 813) 278 at page 300 and Baba v. Nigeria Civil Aviation Training Centre, Zaria (1991) 5 NWLR (Pt. 192) 388 at page 418, (1991) 7 SCNJ 1 were cited and it is maintained that the allegations against the appellant were unchallenged and uncontroverted and so the respondents acted rightly in dismissing the appellant.

3rd Respondent’s submissions:

It is submitted that under section 33(1) (a) - (d) of the Bank and Other Financial Institution Act, the governor of the 3rd respondent is empowered to order investigation into the books and affairs of a bank if satisfied that it has been carrying out business in a manner detrimental to the interest of depositors and creditors. That the report of investigation ordered by the governor of the 3rd respondent in respect of the books and affairs of the 1st respondent predicated the query issued to the appellant and so not affected by the finding of the High Court on the query.

In addition, it is submitted that the 3rd respondent’s duty in motoring banks under section 480, Bank and Other Financial institutions Act is not limited only to current staff of suspect banks or to staff that were dismissed on account of fraud, dishonesty or conviction or professional misconduct. Appellant’s argument on his issue 1 is said to have misconceived the finding by the High Court on his dismissal by the 1st respondent which was set aside by that court.

It is also contended that there was no evidence before the High Court to show that the 2nd and 3rd respondents’ are liable for inducement of breach of contract between the appellant and Pinnacle Merchant Bank since the bank did not give any reason for dismissal of the appellant in the letter of termination. The High Court is therefore said to be right in so finding and the court is urged not to read into the letter, an implied inducement by the 2nd and 3rd respondents.

In the appellant’s reply to the 1st and 2nd respondents’ amended brief filed on 19 August 2016 deemed on 2 May 2017, the 1st and 2nd respondents’ issue 1 is said to be incompetent on the ground that it is made of or is a combination of two (2) issues, on the authority of Sheshe v. lbrahim (2013) LPEL 22067 (CA).

Other arguments on the Issue 1 are mere repetition and continuation of the submissions already made in the appellant’s brief and are not answers that deal with any new points arising from the 1st and 2nd respondents’ brief.

Perhaps, I should point out that the objection to the 1st and 2nd respondents’ issue has been overtaken by my decision to decide the appeal on the basis of the appellant’s issues. In addition, a reply brief is not an appropriate avenue to raise objections either on issues or arguments contained in the respondent’s brief. As a reminder, the only purpose for which an appellant’s reply brief can properly be used is to deal with all new points arising from the respondent’s brief as stipulated in Order 19, rule 5 of the Court of Appeal Rules2016. (Order 18, rule 5 of the 2011 Court of Appeal Rules). A reply brief cannot be used to raise objections, re-argue or further argue issues already canvassed in the appellant’s briefs or to merely say that the respondent has not responded to the appellant’s issues or arguments.

The filing of an appellant’s reply brief in an appeal only becomes necessary when new points are raised in or arise from the respondent’s brief which call for answer or response from the appellant, usually on points of law, otherwise it would be absolutely unnecessary to file it. Ojiogu v. Ojiogu (2010) All FWLR (Pt. 538) 840, (2010) 3 - 5 SC (Pt. 11) 1, (2010) 9 NWLR (Pt. 1198) 1, (2010) LPELR (2377) 1; Duzu v. Yunusa (2010) 10 NWLR (Pt. 1201) 80. The appellant’s reply to the 3rd respondent’s amended brief on the issue 1 are mere repetition of the arguments in the appellant’s brief on the same issue. The primary complaint under the appellant’s issue 1 is that the High Court after finding that the query issued by the 1st respondent to the appellant after he had left its employment was an exercise in futility, turned around to hold subsequently that the allegations contained in the query were unchallenged and uncontroverted and so the 2nd and 3rd respondents were right in informing the appellant’s new employer.

Now, the facts I have summarized at the beginning of this judgement are that the appellant, who admittedly was an employee of the 1st respondent and that he resigned from the employment by the letter dated 20 September 1993 which resignation took effect from 20 December 1993.

By the 1st respondent’s staff handbook which contained the terms and conditions of the contract of employment between the appellant and the 1st respondent as employer and employee, each of the parties was entitled to bring the contract to an end by termination as provided in paragraph 3.21 of the Staff Handbook.

It provides that:

“An employee may be summarily dismissed for serious misconduct, in which case no notice is given and all privileges are forfeited”. In all other circumstances employment can be terminated by the party giving to the other notice (or salary in lieu) as follows: Staff levels 15 - 18 -one month’s notice in writing

“8 - 14 - Two months’ notice in writing.”

Apparently, the appellant was entitled to terminate the contract of employment between him and the 1st respondent in accordance with the above terms and conditions of the employment which bind both parties on all issues arising from or related to the employment. See D.A. (Nig) A.T.E.P. Ltd v. Oluwadare (2007) 7 NWLR (Pt. 1033) 336 cited in the appellant’s brief, U.B.N. Plc v. Chinyere (2010) 10 NWLR (Pt. 1203) 453; Baba v. C.A. T. (supra).

The appellant in line with the terms and conditions above, wrote the letter dated 20 September 1993 of resignation from the employment of the 1st respondent with effect from 20 December 1993, thus effectively terminating and bringing to an end, the contract of employment between him and the 1st respondent by that date.

For all legal and practical purposes, the appellant’s employment with the 1st respondent was terminated and ceased to exist by 20 December 1993 after which the appellant was no longer an employee of the 1st respondent and a member of its staff to who the 1st respondent’s staff handbook was applicable from thence. (However, whilst the employment lasted, and before the appellant resigned, he was, as a member of staff of the 1st respondent, bound by the terms and conditions of his employment with the 1st respondent as embodied in the staff handbook).

If the appellant was not a member of staff of the 1st respondent to who the terms and conditions in the staff handbook were applicable by 20 December 1993, it means that the disciplinary procedure provided for in the staff handbook did not apply and so could not be initiated and used by the 1st respondent against him thereafter since he was no longer a member of its staff and had ceased to be one. On premises, the High Court rightly found that the query dated 7 April 1994 issued to the appellant by the 1st respondent was not validly issued by it since the appellant was at the material time, not a member of its staff who was bound by the staff handbook. Although the allegations against the appellant in the query issued by the 1st respondent were on actions or conduct said to have been taken by the appellant while was still in the employment of the 1st respondent and so bound by the terms and conditions in the staff handbook which he allegedly breached, such allegations could not form the basis of a dismissal from an employment that was no longer in existence because it was effectively and validly terminated in accordance with the said staff handbook, by the appellant when it was applicable to him.

The general rule is that every employee has the right to resign from his employment/appointment whenever he desires and the resignation takes effect as indicated in the notice of resignation or as may be stipulated in the terms and conditions of the employment. In law, the resignation would take effect even when the employer did not expressly accept it since there is no need for the employer to reply to the letter of resignation before it becomes effective. See Benson v. Onitiri (1960) SCNJ 177, (1956 - 60) 1 NSCC 52, (1960) 5 FSC 69.

Being an exercise of a right under the terms and conditions of the contract of employment between him and the 1st respondent, the issuance of the letter of resignation by the appellant to the 1st respondent automatically ended the employment/appointment from the stated date of 20 December 1993. See Faponle v. University of Ilorin Teaching Hospitals Mgt. Board (1991) 4 NWLR (Pt. 183) 43, Benson v. Onitiri (supra).

The allegations against the appellant by the 1st respondent after his employment had ceased and ended, did not vest the 1st respondent the right and power to embark on disciplinary procedure provided under the terms and conditions of the non-existing employment, against the appellant. In the absence of such right and power, the 1st respondent could not have validly found the appellant guilty of such allegations and to have sought approval for his dismissal from its non-existent employment and for the 2nd and 3rd respondents to have exercised their oversight functions as regulators and to have given a valid approval for the dismissal of the appellant from the employment of the 1st respondent. The bottom line is that, at the time of the purported disciplinary action taken by the 1st respondent and later by the 2nd and 3rd respondents against the appellant on the basis of the allegations contained on the query issued by the 1st respondent, there was no employment between the 1st respondent and appellant from which the latter could have been validly dismissed. A dismissal of an employee presupposes the existence of an employment between an employer and the employee and it is only an employer that can dismiss an employee from an existing employment.

Consequently, whether or not the allegations contained in the query were unchallenged and uncontroverted, they cannot be basis of dismissal from a non-existent employment between the 1st respondent and appellant. The High Court was right in this regard when it found in its judgement that:

‘As at 20 December 1993, the claimant’s employment with the 1st defendant had been effectively terminated by the claimant. He was no longer an employee of 1st defendant. Secondly, an employee cannot be dismissed after his employment had ceased to exist. Therefore, he does not fall under the category of employees, dismissed terminated or advised to retire on the grounds of fraud. Thirdly, the findings of the Interim Management Board established by NDIC to look into the affairs of 1st defendant were not conclusive ... A careful perusal of exhibit E shows that the allegations contained therein were acts of misconduct or offences which breached the terms of the claimant’s contract and if he had been in the employment of the 1st defendant would have earned him a dismissal. However, in view of the fact that the claimant had resigned, the best the bank could have done was to sue the claimant for damages for breach of contract during his employment or report him to the police for fraud.”

With the above findings by the High Court, there was no legal basis for the 1st respondent to have forwarded its monthly returns to the 2nd and 3rd respondents as well as the chief inspectors of all commercial and merchant banks in Nigeria, in which the name of the appellant was indicated as a staff dismissed/terminated on the grounds of fraud for the months of April to June, 1994.

It was also wrongful for the 1st respondent as well as the 2nd and 3rd respondents to inform the appellant’s new employer that he was such a member of staff of the 1st respondent who was dismissed/terminated on ground of fraud, when in fact the appellant was not a member of staff and not in the employment of the 1st respondent during the period covered by the monthly returns set out by the 1st respondent. Before exercising their statutory oversight functions as regulators of the banking industry in Nigeria, the 2nd and 3rd respondents are expected to be trenchant and fastidious in their consideration of reports received from any bank on the disciplinary action on members of its staff which border on fraud before acting on them in the exercise of their functions.

The report sent to the 2nd and 3rd respondents by the 1st respondent in respect of the purported dismissal of the appellant on ground of fraud gave the wrong impression that at the time of the disciplinary action against the appellant by the 1st respondent, the appellant was an employee of the 1st respondent who was subject to the terms and conditions in its Staff Handbook. The 1st respondent knew at the time of its report to the 2nd and 3rd respondents that the appellant was no longer in its employment and could not be disciplined under its staff handbook but deliberately misrepresented that position in its report. However, the 2nd and 3rd respondents as regulators who have statutory obligations and duties in the banking industry; had the duty to monitor and control any activity, including employment of staff by the banks, that may be detrimental the depositors and owners of the bank. In that regard, sending the information contained in the report submitted to them by the 1st respondent as required by provisions of sections 35 and 36(1) of the Act to the appellant’s new employer, the 2nd and 3rd respondents as regulators of the banking industry in Nigeria acted within their statutory functions of oversight. The act of informing or notifying the appellant’s new employer was not arbitrary or outside the statutory oversight functions of the 2nd and 3rd respondents.

I should say that the validity of the 1st respondent’s purported dismissal of the appellant from a non-existent employment did not effect the duty on the 2nd and 3rd respondents to exercise their statutory oversight functions of notifying the appellant’s new employer of the report sent to them by the 1st respondent, as it affected the appellant since the new employer was also a bank under their statutory supervision and regulation in the conduct of its affairs.

I accordingly agree with the finding by the High Court because it is right, that the 2nd and 3rd respondents did not exceed their statutory and regulatory powers informing Pinnacle Commercial Bank of their findings on the report submitted by the 1st respondent. In sending the information to the Pinnacle Commercial Bank, the 2nd and 3rd respondents have not been shown to have breached the procedure for or in the discharge of their statutory oversight regulatory functions in respect of the statutory report from the 1st respondent to have ran foul of the principle of law stated in the cases of U.N.T.H.M.B v. Nnoli (supra) and Ude v. Nwara (supra). In that regard, the 2nd and 3rd respondents cannot be said to have unlawfully interfered with the employment of the appellant with Pinnacle Commercial Bank merely on the ground that they notified that bank of the findings in the report submitted to it by the 1st respondent.

In the result, I find no merit in the arguments of the appellant on the issue 1 and it is resolved against him.

Issue 2

Whether the learned trial ,judge was right in holding that the appellant failed to show that the 2nd and 3rd respondents induced Pinnacle Commercial Bank Limited to terminate the appellant’s appointment because his letter of termination (Exhibit J) did not state any reason and the 2nd and 3rd respondents cannot be held responsible for the actions of Pinnacle Commercial Bank Limited who was not a party to the suit thereby denying the appellant’s claims for damages and injunction;

Appellant’s submission:

Relying on Quinn v. Leathern (1901) AC 495 at page 510, it is submitted that the law is settled that it is a cause of action to interfere with contractual relationship recognized by law in the absence of justification for the interference. The essential ingredients for the tort of inducement of breach of contract are said to be:

“(i) the wrongdoer knew or acquired knowledge of the contract in question and its essential, although not necessarily its precise, terms,

(ii) he so acted or “interfered” whether by persuasion, inducement or procurement or other means so as to show that he intended to cause a breach of the contract or prevent its performance by one party to the detriment of the other party,-

(iii) the breach of contract was directly attributable to such act or interference,- and,-

(iv) damages was occasioned or was likely to be occasioned to such other party See: Thomson D. C. & Co. v. Deakin (1952) Ch. 646, approved by the house of lords in Merkur Island Shipping Corpn. v. Laughton (1983) A.C. 570.”

Allen v. Flood (1898) AC 107 and Sparkling Breweries Ltd v. United Bank of Nigeria Ltd (2001) FWLR (Pt. 71) 1682, (2001) 15 NWLR (Pt. 737) 539, (2000) All NLR 575, were also referred to.

It is then contended, after citing the High Court finding that the appellant failed to show that the 2nd and 3rd respondents induced Pinnacle Commercial Bank into terminating his appointment, that the 2nd and 3rd respondents used unorthodox methods to procure, induce and unlawfully interfere with the appellant’s employment resulting in its termination because even without a reason for the termination, it was the respondents who set in motion the machinery for the termination. Exhibit G from the 1st respondent and exhibit DF4 from the 2nd respondent were referred to and it is maintained that in view of the outline of the undisputed facts by the High Court, its finding that the appellant did not show that the 2nd and 3rd respondents induced the termination of his employment by Pinnacle Bank, as was perverse for shutting its eyes to those facts. The court is urged to hold that the 2nd and 3rd respondents’ unlawfully interfered with the appellant’s employment with their overbearing regulatory authority functions and should be held responsible even though Pinnacle Bank was not a party since the employment was terminated as a result of the interference by them. Maximum Insurance Co. Ltd v. Owoniyi (1994) 3 NWLR (Pt. 331) 178 and Pratt v. British Medical Association (1919) 1KB 244 at page 28, on the purpose of factors to be taken into account in the award of damages were cited and it is submitted that the High Court should have awarded substantial damages against the respondents for the unlawful interference with the appellant’s employment. The court is urged to award damages and injunction claimed in reliefs 11 and 12 by the appellant.

1st and 2nd Respondents’ submissions:

Under their issue 2, it is submitted that the 2nd and 3rd respondents did not act outside the procedure provided by the statutes mandating them to regulate and supervise the affairs of all banks through oversight functions. It is the further submitted that the appellant failed to avail himself of the opportunity to answer the allegations against him and in the circumstances, the 2nd and 3rd respondents had the statutory duty to take the actions of approving the dismissal of the appellant and notifying his employer over which they also exercise regulatory oversight function. Sections 42 of the Central Bank of Nigeria, Act; 7(f) and (j), 27-31 of the ADIC Act, 2006 and 31-38 and 48(2) (d) of Bank and Other Financial institutions Act, were referred to for the argument that the actions by the 2nd and 3rd respondents’ actions cannot be said to be inducement for the termination of the appellant’s employment by Pinnacle Bank. The finding by the High Court is said to be supported by evidence and so not perverse. Cases on evaluation of evidence and when an appellate court may interfere therewith, were cited and it is also contended, on the authority of Yusuf v. Union Bank of Nigeria Ltd (1996) 6 NWLR (Pt. 457) 632 at page 644, (1996) 6 SCNJ 203, that it is not a requirement of the Constitution that before an employer may summarily dismiss his employee, the employee must have been tried before a court of law; if the allegation against him is one of misconduct involving dishonesty.

3rd Respondent’s submission: The issue was briefly argued under the 3rd respondent’s issue 1 and it is submitted that the High Court was right in finding that there was no evidence to support the claim that the 2nd and 3rd respondents were liable for inducement of the appellant’s contract of employment with Pinnacle Bank since the bank did not state any reason for terminating the appointment of the appellant in the letter of termination. The High Court is also said to be right in not reading “any meaning” into the letter on the authority of Obu v. Ekanem (2011) 4 WRN 135 at page 146-7. The court is urged not to read an implied inducement by the 2nd and 3rd respondents into the letter of termination. In the appellant’s reply to the 1st and 2nd respondents’ amended brief once again, an objection was raised on the issue 2 in their brief on the ground that it did not arise from the appellant’s grounds 3, 4 and 6 and so incompetent since the 1st and 2nd respondents did not cross-appeal or file a respondents’ notice. Without the need to waste verbiage, the objection has been effectively overtaken by the decision of the court to decide the appeal on the appellant’s issues. No practical and useful purpose would be served by a consideration of the objection on the merit and it is also one not for a reply brief. Oduwole v. David-West (2010) FWLR (Pt. 532) 1643, (2010) 10 NWLR (Pt. 1203) 598, (2010) 3-5 SC (Pt. 111) 183, (2010) 5 SCNJ 97 and Ighrerimovo v. SCC Nigeria Limited (2013) 10 NWLR (Pt. 1361) 138 at page 154 were referred to in further answer to the 1st and 2nd respondents submissions under the issue.

The same cases as above were cited in the appellant’s reply brief to the 3rd respondent’s amended brief under the issue on the award of damages in libel claims and consideration of the value of the naira in the award of damages.

The pith of the complaint by the appellant under the issue is that the High Court found that there was no evidence from the appellant to show that the 2nd and 3rd respondents induced Pinnacle Bank to terminate his employment. Apart from the argument by the learned counsel that the chronicle of the actions taken by the 2nd and 3rd respondents in the exercise of their statutory oversight functions as regulators of all banks in Nigeria, including Pinnacle Bank, in approving the recommendation by the 1st respondent in the statutory report submitted by it to them and subsequently notifying Pinnacle, as they have the statutory duty to do, about the decision, he did not specifically point out any other credible evidence placed before the High Court that the 2nd and 3rd respondents’ in fact unlawfully interfered with the contact of the appellant’s employment with Pinnacle Bank to be said to have induced a breach thereof.

The law is in no doubt that where a 3rd party knowingly and without reasonable justification, facilitated or intentionally induced a party to a contract known to him, to breach the contract, would be liable for inducing or procuring the breach of such contract. See Nissan (Nig.) Ltd v. Yoganathan (2010) 4 NWLR (Pt. 1183) 135 at pages 153-4. However before such a party could be held liable for inducing and procuring a breach of contract between the contracting parties, there must be evidence of the deliberate actions taken by him, knowingly and with the clear intention of causing a breach of the contract by the party so induced. It is the appellant here who asserted and alleged the unlawful interference by the 2nd and 3rd respondents in the contract of employment between him and Pinnacle bank, which he alleged again, was breached. He bears the burden of proving not only that the 2nd and 3rd respondents in fact unlawfully interfered with the said contract, but also that the contract was in fact breached by Pinnacle Bank under the terms and conditions agreed thereto by the parties.

The first burden is to prove the breach by Pinnacle in line with the terms and conditions which governed the contract and must be put in evidence by him. The second duty is then to show how the 2nd and 3rd respondents acted unlawfully to induce and procure the alleged breach. The mere fact that the appellant’s employment was terminated by Pinnacle Bank is no credible evidence, ipso facto, that the bank breached the contract with the appellant in the absence of the terms and conditions of the contract. It is merely simplistic to assume that the termination amounted or constituted a breach of the contract between the appellant and that bank without knowing what the terms and conditions thereof were.

In addition, it may also be recalled that I have under issue 1 found that from the evidence before the High Court, the actions by the 2nd and 3rd respondents in the events that led to the information contained in the statutory report sent by the 1st respondent to Pinnacle Bank were within the statutory supervisory and regulatory duties and functions of the 2nd and 3rd respondents over all bank in Nigeria, including Pinnacle Bank.

These actions do not, without more, constitute unlawful interference with the appellant’s employment or/and inducement of an alleged breach of the contract of such employment. In these premises, the High Court was right in the finding that there was no edible evidence before it to prove the allegation, assertion and claim by the appellant that the 2nd and 3rd respondents in fact induced a breach of his contract of employment with Pinnacle Bank. The finding is not perverse because the only evidence adduced by the appellant was that the 2nd and 3rd respondents did not take any action or step outside their statutory supervisory and regulatory duties and functions in relation to the information sent to Pinnacle Bank in respect of the statutory report they received from the 1st respondent.

I find no merit in the issue as argued for the appellant and it is resolved against him.

Issue 3:

“Whether the learned trial judge should have awarded the appellant more than N1,000,000.00 (one million naira) as damages given the circumstances of this case”

Appellant’s submissions:

The cases of Iloabachie v. Iloabachie (2005) All FWLR (Pt. 272) 223, (2005) 13 NWLR (Pt. 943) 695; Din v. African Newspapers (1990) 3 NWLR (Pt. (139) 392 and Onyejike v. Anyasor (1992) 1 NWLR (Pt. 218) 437 were cited on what the tort of libel is and when it is committed and it is argued that High Court was wrong to have found that some of the allegations against the appellant in exhibits G and H from the 1st respondent to the 2nd and 3rd respondents and chief inspectors of banks, were substantiated. Page 4 of exhibit DF 11; the report sent by the 1st respondent to the 2nd and 3rd respondents was set out and it is submitted that the allegations were not substantiated and that the appellant led credible and unchallenged evidence that his personal and business reputation have been seriously damaged. That the words contained in exhibits G and H were calculated to disparage the appellant in his carrier and maliciously punish him by bringing him to opprobrium and ridicule citing the statement by Oguntade JSC in Jombo v. Petroleum Equalisation Fund (Management) Board (2005) All FWLR (Pt. 280) 1430, (2005) 14 NWLR (Pt. 945) 443 at page 467. Learned counsel urges the court to hold that the 1st respondent was not justified in any way at all to have published exhibits G and H since exhibit DF 11 did not substantiate the allegations in exhibit E. The cases of UBA v. Oninyi (2010) 1 NWLR (1176) 640 at Page 862; Akomolafe v. Nigeria Exchange Insurance Company Ltd (2000) 13 NWLR (Pt. 683) 181, (2000) FWLR (Pt. 2016) at page 2027 and Guardian Newspaper Ltd v. Ajeh (2011) All FWLR (Pt. 584) 1, (2011) 10 NWLR (Pt. 1256) 574 on factors to be taken into account in the assessment of damages for libel were referred to and it is submitted that the appellant is entitled to the damages claimed against the 1st respondent. The court is urged to hold that the libel against the appellant was the publication-of exhibits G and H and because the naira has been devalued, the N1,000,000.00 (one million naira) awarded to the appellant was ridiculously low since the High Court did not consider all the relevant factors but took into account irrelevant facts in awarding the sum. The court is also urged to substantially increase the award to the appellant so as to truly compensate him for the libel by the respondents.

1st and 2nd Respondents’ submissions: It is submitted that the sum awarded to the appellant by the High Court for libel is sufficient since he did lead credible evidence of how his personal and business reputation was damaged or his standing or position to justify a higher sum. Oduwole v. David-West (2010) FWLR (Pt. 532) 1643, (2010) 10 NWLR (Pt. 1203) 598 at page 614, (2010) 3-5 SC (Pt. 111) 183, (2010) 5 SCNJ 97, was cited for the submission that compensation is not awarded for defamation where the injury did not lead to peculiarly loss. It is contended that the High Court considered all the relevant evidence in the assessment of the amount of damages to award the appellant and the court is urged to so hold.

3rd Respondent’s submissions:

It is submitted that the High Court properly evaluated the evidence and exercised its discretion properly as to the quantum of damages to be awarded. Guardian Newspaper Limited v. Ajeh (supra) was referred to and it is argued that the appellant did not show reason why the court should interfere with the award by the High Court.

I have already mentioned under issue 2 that in the appellant’s reply brief to the 1st and 2nd respondents’ amended brief, mainly on the award of damages, merely cited the named cases on the factors to be taken into consideration in award of damages in actions for libel.

The same cases were cited in respect of the 3rd respondent’s arguments on the award of damages. The law is known that an appellate court does not, as a matter of course, make a practice of interfering with the award of damages made by a trial court on the slightest complaint by an appellant against the award. In the case of Elf (Nig.) Ltd v. Sillo (1994) 6 NWLR (Pt. 350) 258, (1994) 7-8 SCNJ 119, the Supreme Court per Adio JSC, it was held that it is only where an appellate court is convinced that an award of damages by a trial court is entirely an erroneous estimate or is shown to be either manifestly too high or too low or it was made on wrong principles of law, taking into consideration irrelevant matters or ignoring the relevant and material matters, that it can justifiably interfere with an award made by lower court. The apex court in the case of Adim v. Nigerian Bottling Co. Ltd (2010) All FWLR (Pt. 527) 690, (2010) 9 NWLR (Pt. 1200) 543, (2010) 3-5 SC (Pt. III) 155 per Mustapha JSC had held that:

“It is also the law, that the appellate court ought not to upset an award of damages merely because if it had tried the matter it would have awarded a higher or lesser amount.”

In law therefore, the circumstances under which an appellate may properly interfere with the award of damages by a lower or trial court are established broadly, to be where it is convinced or satisfied that:

(a) A trial court, in assessing the damages applied wrong principles in the sense of taking into consideration some irrelevant facts or ignoring or leaving out relevant ones;

(b) That the amount awarded is either so ridiculously low or high that it must have been wholly, an erroneous estimate of the damages in the peculiar circumstances of the case.

See Shodipo & Co. Ltd v. Daily Times of Nigeria Limited (1972) 1 ALL NLR 406; (1972) 11 SC 69; James v. Midwest Motors (Nig.) Ltd (1978) 11 - 12 SC 31; Uwa Printers (Nig.) Ltd v. Investment Trust Company Ltd (1988) 5 NWLR (Pt. 92) 110, (1988) 12 SC (Pt. 2) 102; Williams v. Daily Times (1990) 1 SC 23, (1990) 1 NWLR (Pt. 124) 1; Olurotimi v. Ige (1993) 8 NWLR (Pt. 311) 257, (1993) 10 SCNJ 1; African Newspapers Ltd v. Ciroma (1996) 1 NWLR (Pt. 423) 156; International Textile Industries (Nig.) Ltd v. Aderemi (1999) 6 SC 1, (1999) 6 5CNJ 46; Nwobosi v. A.C.B. Limited (1995) 6 NWLR (Pt. 404) 658. In the case of Harka Air Services (Nig.) Ltd v. Keazor (2011) All FWLR (Pt. 591) 1402, (2011) LPELR - 1353, (2011) 6 -7 SC (Pt. II) 1. The above 2 broad situations under which an appellate may justifiably interfere with an award of damages by a trial court were broken down by the apex court as follows:

(a) Where the trial court acted under a misapprehension of facts or law;

(b) Where the trial court failed to take into account relevant matters.

(c) Where the trial court took into account irrelevant matters;

(d) Where the amount awarded is either too low or too high in the circumstances of the case;

(e) Where failure to interfere would amount to injustice.

See also Peter v. Asst. Inspector Gen. of Police (2001) FWLR (Pt. 49) 1449, (2001) 7 NWLR (713) 602; Ministry of Defence v. Ephraim (2014) LPELR 24245 (CA); Ahmed v. C.B.N. (2012) LPELR 9341, (2013) All FWLR (Pt. 660) 1228, (2013) 47 WRN 51; Offoboche v. Ogoja Local Government (2001) [2017] All FWLR Abekhe v. Alpha Merchant Bank Plc (Garba JCA) 1015 1016 FWLR (Pt. 68) 1051, (2001) 16 NWLR (Pt. 739) 458.

As shown in the cases of Akomolafe v. Nigeria Exchange Industry Camgany Limited and Guardian Newspapers Limited v. Ajeh (both supra), the factors that are relevant and to be considered in the assessment of damages in actions for libel include:

(a) The award must be adequate to repair the injury to the plaintiff’s reputation and this does not require proof of pecuniary loss;

(b) The award must atone for the assault on the plaintiff’s character and pride which were unjustifiably invaded;

(c) It must reflect the reaction of the law to the impudent and illegal exercise in the course of which the libel was unleashed by the defendants;

(d) It must also take into account the loss of social esteem and the natural grief and distress to which the plaintiff may have been put;

(e) The fact that the defendant did not show any remorse and did not care whether or not the plaintiff’s reputation or feeling was injured;

(f) The social standing of the plaintiff must also be considered;

(g) The rate of inflation which has adversely affected the value of the national currency.”

The complaint of the appellant is that the High Court did not consider the relevant evidence adduced by him on the conduct of the respondents and his standing and reputation as a young person who had a burgeoning banking career. That also because the value of the naira has been devalued, he is entitled to more amount of damages than the sum awarded.

The fulcrum of the evidence by the appellant is that because he was no longer a member of staff of the 1st respondent by the time the allegations were made against him by it, his dismissal and report sent to the 2nd and 3rd respondents and chief inspectors of other banks, he has been libelled or defamed in his career as a banker.

The High Court had found that some of the actions taken by the respondents were not justifiable because he was at the material time, not a member of staff of the 1st respondent who could have been properly queried by it and it then also stated that:

“ The claimant gave evidence of his work with the 1st defendant and how he rose from officer-in-training to manager. He also gave evidence of awards and commendations for excellent service. The claimant was not cross-examined on these facts. Till date there has no apology from the defendants and it is obvious that the 1st and 2nd defendants acted recklessly in publishing materials which were untrue. In the light of this, I award the sum of N1,000,000.00 (one million naira) only as damages to the claimant.”

It cannot seriously be argued that in the above finding, the High Court did not consider the relevant factors in its assessment of the amount of damages the appellant is/was entitled to in the circumstances of the case. It has been argued that the appellant gave unchallenged evidence to show that his personal and business reputation has been seriously damaged and that he had denied being a signatory to the account of Gilascome Nigeria Limited, but that his wife and brother were. However, it needs to be pointed out that the appellant did not, admittedly, answer the allegations made against him in exhibit E which eventually led to the events that led to the action by him before the High Court.

So, when did he deny the allegations made against him? The denial in the pleadings before the High Court was at best an afterthought since the appropriate and proper stage for him to have effectively done so was when he was initially confronted with them in exhibit E and afforded the opportunity to either deny or offer any explanations in defence.

It should also be pointed out that the finding by the High Court that the dismissal of the appellant by the 1st respondent was an exercise in futility was entirely predicated on the finding that at the material time, the appellant had ceased to be a member of the 1st respondent and not on the ground that the allegations against him in exhibit E were not substantiated.

It was because the appellant deliberately decided not to utilize the opportunity afforded to him through exhibit E, to answer the allegations against him that the High Court found that:

“ The appellant did not respond to the query issued to him because he claims he had left the employment of 1st defendant when query was issued. However, this leaves the allegations of the 1st defendant unchallenged and uncontrovented.”

I have not seen any credible evidence adduced by the appellant to established the claim that his personal and business reputation were damaged by the actions of the respondents so much so that the sum awarded by High Court can reasonably, in the circumstances of the case before it, be said to be ridiculously so low as to make it an entirely or wholly erroneous estimate or assessment of the damages for the libel found by that court to have been committed against the appellant. The only case made out by the appellant in his evidence is how much he estimates his standing and reputation among his peers or community, as a young bank employee who had risen to the position of a manager and not how ordinary right thinking members of the society saw, thought of and treated him before and after the actions of the respondents. In the case of Vanguard Media Ltd v. Olafisoye (2011) 14 NWLR (Pt. 1267) 207, (2011) LPELR 8938 (CA), (2012) All FWLR (Pt. 634) 97, it was held that:

“It is also trite law that a person’s reputation is not based on the opinion he-has of himself but rather the estimation in which others hold of him.”

Then in the case of Unity Bank Plc v. Oluwafemi (2006) LPELR -9846 (CA), (2007) All FWLR (Pt. 382) 1923, it was held “there is a plethora of cases, some already cited here that for words to be defamatory of a party, the said words must have lowered that party in the estimation of right thinking members of the public and there must be evidence of this from a person whose views of that party have been so adversely affected. A person’s estimation of himself after the publication of the alleged defamatory matter is irrelevant. It is the impression a third party forms of that person allegedly defamed that matters and unless and until that third party voices out his new impression of the party allegedly defamed, there can be no defamation in the legal sense.”

In the absence of credible evidence from the appellant to show what his personal and business reputation was before and after the actions by the respondents, he is not entitled to claim that that is a relevant factor that should have been considered by the High Court in assessment or estimation of the damages he was entitled to.

I agree with the learned counsel for the appellant that in the estimation of amount of damages to be awarded, a trial court is entitled to and has the requisite power to take into account and consider the value of the currency in which the award is to be made at the material time. In particular, the court is entitled to consider the value of the naira in its assessment or estimation of the amount of damages to be awarded in all cases before it.

See A.S.E.S.A. v. Ekwenem (2009) All FWLR (Pt. 491) 838, (2009) 13 NWLR (Pt. 1158) 410; N.E.P.A. v. Alli (1992) 8 NWLR (Pt. 259) 279; Allied Bank (Nig.) Ltd v. Akabueze (1997) 6 NWLR (Pt. 509) 374, (1997) 6 SCNJ 116.

The appellant here did not demonstrate that the High Court did not consider the value of the naira or that at the time of the award in 2011, the naira was devalued in such a way that the sum or amount awarded to him, was so ridiculously low to make it wholly an erroneous estimate or assessment to warrant an interference with or to disturb the award made to the appellant by the High Court.

I find no merit in the appellant’s arguments on the issue and it is resolved against him.

Issue 4:

Whether the learned trial Judge rightly held that claims 5, 6, 7, 8, 10, 11 and 12 failed because the 1st respondent and Pinnacle Commercial Bank Limited have been dissolved and no longer exist.”

Appellant submissions:

Citing section 478(1) of the Companies and Allied Matters Act, (CAMA) 2004 and Musa v. Ehidiamhen (1994) 3 NWLR (Pt. 334) 544 at page 557 on when a company is dissolved, it is submitted that there was no evidence that the 1st respondent and Pinnacle Banks were dissolved. It is argued that the mere fact that winding up proceedings were commenced for a company does not mean that it has come to an end and that since the 2nd respondent has not submitted its final report and account to the Corporate Affairs Commission (CAC), it was wrong for the High Court to have held that the 1st respondent and Pinnacle Bank were dissolved and no longer exist. In addition, it is contended that because the appellant was granted leave by the court in the case of Abekhe v. N.D.I.C. (1995) 7 NWLR (Pt. 406) 228, to continue against the respondent, until all litigation between him and the respondents were completely and finally determined, the 2nd respondent cannot submit the said report to Corporate Affairs Commission.

It is also argued that under section 425 of Companies and Allied Matters Act, the 2nd respondent has the power to pay/settle the claims including monetary award and that the respondents still exist.

The court is urged to hold that the High Court was wrong to have held that claims 5, 6, 7, 8, 10, 11 and 12 failed because the 1st respondent and Pinnacle Bank have been dissolved and no longer exist.

1st and 2nd Respondent’s submissions:

It is argued that the appellant’s submissions on the issue are misconceived since they relate to an opinion by the High Court which was an obiter dictum and reliance was placed on Babatunde v. State (2014) 3 NWLR (Pt.1395) 568 at page 611 and Anyaola v. Obioha (2014) 6 NWLR (Pt. 1404) 445 at page 470, on the definition of obiter dictum. According to counsel, the opinion was expressed after the decisions on the claims by the appellant and before the decision on the counter claim. In the alternative, it is submitted that the High Court was right on the claims even if wrong reason was given for the finding since they cannot be granted in view of the statutory oversight functions of the 2nd and 3rd respondents.

3rd Respondent’s submission:

It is submitted that the licenses of 1st respondent and Pinnacle Bank have been revoked and so they can no longer carry on banking business and that any relief granted against them would be in vain. The claims 5 and 7 are said to be repetitions of reliefs 1, 2, 3 and 4 granted by the High Court and that claims 6, 8 and 12 cannot be granted to restrain the lawful statutory functions of the 2nd and 3rd respondents on the authority of Attorney-General, Anambra State v. Uba (2005) All FWLR (Pt. 277) 909, (2005) 15 NWLR (Pt. 947) 44 and that claim 11 was not substantiated. In further argument, it is said that under section 53(1) of Bank and Other Financial Institution Act and 52(1) of the FBN Act, the reliefs would be unenforceable by the authority of Ekpenyong v. Nyon (1975) 2 SC 71, (1975) 9 NSCC 28 at page 32. The court is urged to resolve the issue in favour of the 3rd respondent.

In the appellant’s reply to the 1st and 2nd respondents’ amended brief, it is argued that the finding of the High Court on the dissolution of the 1st respondent and Pinnacle Bank and the claims 5-8 and 10-12 by the appellant was not an obiter dictum but a decision on reliefs claimed in the case by the appellant and so the cases relied on by the 1st and 2nd respondents on the issue do not avail them. Cases on definitions of obiter dictum and ratio decidendi and the duty of a court to make pronouncement on all reliefs claimed in a case were cited.

Claims 9 and 10 are said to be distinct and relate to libel in respect of letters dated 5 May 1994 and 1 July 1994, respectively, from the 1st respondent. In the appellant’s reply brief to the 3rd respondent’s amended brief, the court is urged to discountenance the arguments on the grant of reliefs 4 and 5 in the absence of a cross-appeal or a respondent’s notice by the 3rd respondent. It may be observed that I did not consider the 3rd respondent’s arguments on the grant of the appellant’s reliefs 4 and 5 by the High Court in my review of the submissions in the 3rd respondent’s brief above. The reason for that is the ground of the objection raised by the appellant in the reply brief that the 3rd respondent who had not filed a cross-appeal, cannot challenge the grant of the reliefs 4 and 5 to the appellant by the High Court.

But for the objection raised by the appellant, the best approach to the arguments or issues not related to any of the grounds of the appeal, is to simply discountenance them without mention. In the appellate courts, the law is now elementary that the primary duty of a respondent who has not filed a cross-appeal, is to defend the decision of the lower court before the appellate court. See Lagos City Council v. Ajayi (1970) 1 All NLR 293; Eliochin (Nig.) Ltd. v. Mbadiwe (1986) 1 NWLR (Pt. 14) 47; Kotoye v. Central Bank of Nigeria (1989) 1 NWLR (Pt. 98) 419, (2001) FWLR (Pt. 49) 1567. Such a respondent cannot attack the judgment of a lower court by way of a respondent’s notice and if he is not satisfied with or aggrieved by any part of it, he should file a cross-appeal to challenge it. See Ohiaeri v. Akabeze (1992) 2 NWLR (Pt. 221) 1, (1992) 2 SCNJ (Pt.1) 76; Williams v. Daily Times (1990) 1 SC 23, (1990) 1 NWLR (Pt. 124) 1; Nigeria Bottling Company Plc v. Ogundele (1997) 9 NWLR (Pt. 521) 446 at page 464.

The learned counsel for the 1st and 2nd respondents has argued that the finding by the High Court that the appellant’s reliefs 5-8, 10-12 failed because the 1st respondent and Pinnacle have been dissolved and no longer exist, was an obiter dictum by that court. Simply put, an obiter dictum by a court is a passing remark by it in the course of its decision or judgement which did not affect or go to any of the issues joined by the parties in the case and so unnecessary in the determination of such issues. See Salami v. New Nigerian Newspaper Ltd (1999) 13 NWLR (Pt. 634) 315 at page 330; Onafowokan v. Wema Bank Plc (2011) All FWLR (Pt. 585) 201, (2011) 12 NWLR (Pt. 1260) 24, (2011) 5 SC (Pt. II) 1; Bamgboye v. University of Ilorin (1999) 10 NWLR (Pt. 622) 290, (1999) 6 SCNJ 295, (1999) 6 SC (Pt. II) 72, (1999) 70 LRCN 2146, (2001) FWLR (Pt. 32) 12; National Democratic Party (NDP) v. Independent National Electoral Commission (INEC) (2012) 12 SC (Pt. IV) 24; Nguma v. Attorney-General, Imo State (2014) All FWLR (Pt. 737) 699, (2014) 7 NWLR (Pt. 1405) 119, 2014 LPELR - 22252 (SC).

Without any difficulty, it can be seen from the above definition of what an obiter dictum by a court is, that the position by the High Court on the appellant’s reliefs in question is not just a mere passing remark, but rather, a specific and positive legal opinion of that court on the issues joined by the parties and the reliefs sought in the case before it. It is a finding by that court which in its decision on the said issues and reliefs sought that touched on and go to the substance of the dispute between the parties and against which the appellant is vested with a right of appeal.

The objection by the learned counsel for the 1st and 2nd respondents is, in the above premises, misconceived and is dismissed.

Now back to the arguments on the issue. I have perused the record of appeal and agree with the learned counsel for the appellant that there were no pleadings and evidence before the High Court that the 1st respondent and Pinnacle Bank, which was not a party to the case, and against who the appellant made no claim, were dissolved under the law, for them to be said to be no longer in existence. A case was made by the 2nd and 3rd respondents that the licenses of the two (2) banks were revoked and so could no longer conduct banking operations. In the case of C.C.B. (Nig.) PLC v. O’ Silvawax International Ltd (1999) 7 NWLR (Pt. 609) 97 at page 103, it was held that:

“Revocation of a banking licence by the governor of the central bank does not necessarily mean the death of the bank thereby making it incapable of suing or being sued or barring it from becoming an appellant or respondent in an appeal process. The revocation of the licence of a bank could have indicated an ill disposition, all acute and serious ailments. It does not go beyond that to herald and constitute the death of the bank. The bank remains alive possessing its legal personality, as sick as it could have been and as indicated by the revocation of its licence.”

See also Oredola Okeya Trading Company v. BCC1(2014) LPELR - 22011 (SC); Nzom v. Jinadu (1987) 1 NWLR (Pt. 51) 533; Opebiyi v. Oshoboja (1976) 9 - 10 SC 195; Afribank v. Homelux (2008) LPELR - 9020 CA .

So the mere fact that the 3rd respondent had revoked the banking licences of the 1st respondent and Pinnacle Bank did not in law mean that the two (2) banks were/are dead and to have ceased to exist because of the revocation. The provisions of section 2(1) of Bank and Other Financial Institution Act provide that:

“No person shall carry on any banking business in Nigeria except if it is, a company duly incorporated in Nigeria and holds a valid banking licence issued under this Act.”

These provisions show that a bank must be a company duly incorporated in Nigeria, before it can apply to the 3rd respondent for and be granted a banking licence in order to enable it carry on banking business in Nigeria. First and foremost, a bank is a company incorporated under the Companies and Allied Matters Act, and becomes a corporate entity by virtue of the incorporation and it is in that corporate capacity that it is granted a banking licence to carry on banking business in Nigeria.

It follows therefore that the revocation of the licence to carry on the business of banking does not affect its corporate status under Companies and Allied Matters Act, as a company incorporated in Nigeria. Section 38 of the Bank and Other Financial Institutions Act, provides that:

“Where the licence of a bank has been revoked pursuant to section 37 of this Act, the corporation shall apply to the Federal High Court for a winding up order of the affairs of the bank.”

Then under section 478(1) and (4) as soon as the affairs of a company are fully wound up, the Corporate Affairs Commission shall register the returns of the winding up and after the expiration of three (3) months of the registration, the company shall be deemed to be dissolved. The dissolution of a company legally signifies its death and automatic loss of its corporate status.

In the present appeal, the learned counsel for the appellant is right that there was nothing (evidence) before the High Court that the 1st respondent or Pinnacle Bank was fully wound up and dissolved as provided for by the law for them to be said to be no longer in existence or to have ceased to exist as corporate entities capable of being sued or suing. To that extent, there is merit in the argument by the learned counsel that the finding by the High Court is not supported by any evidence before it and so it is perverse.

This position, however, does not mean that the appellant is automatically entitled to the grant of the named reliefs. From the case presented by the appellant, the findings by the High Court in respect of the other claims, reliefs 5, 6, 7 and 8 were overtaken by events and rendered ungrantable by the court. The communication had already been done and the appellant’s appointment with Pinnacle Bank has admittedly been terminated by that bank which was/is not party to the case. Since reliefs 11 and 12 are in the alternative to reliefs 6, 7 and 8, they are equally overtaken by events and rendered ungrantable. Relief 10 is subsumed in the grant of relief 9 on the award of damages for libel by the 1st respondent against the appellant. The two reliefs are in respect of the same libelous act or conduct by the 1st respondent in respect of the appellant in the letters dated 5 May 1994 and 1 July 1994. The 1st respondent cannot be condemned twice for the same words said to have constituted libel of the appellant and the appellant is not entitled to be compensated twice or to double compensation for the same tort of libel. In the case of Ejowhomu v. Edok-Eter Mandilas Ltd (1986) 5 NWLR (Pt. 39) 1, it was held by apex court that:

“In Lagos City Council Caretake Committee & Anor. v. Benjamin O. Unachukwu & Anor. (1978) All NLR 92, (19781) 3 SC 199 at page 206. “It has been stated by this court in numerous cases that where a victim of tort has been fully compensated under one head of damages for a particular injury, it is improper to award him damages in respect of the same injury under another head.”

See also Gamboruma v. Borno (1997) 3 NWLR (Pt. 495) 530; Uman v. Owoeye (2003) FWLR (Pt. 152) 38, (2003) 9 NWLR (Pt. 825) 221; Abdullahi v. Manza (2013) LPELR – 21964 (CA).

For the above reasons, the claims in reliefs 5, 6, 7, 8, 16, 11 and 12 of the appellant fail for being overtaken by events and rendered ungrantable.

In the result, the issue is resolved in substantial part, against the appellant. In the final result, for lacking in merit, the appeal fails and is dismissed accordingly.

Parties to bear costs of prosecuting the appeal.

**OBASEKI-ADEJUMO JCA**:

I have had the privilege of reading before now, the judgment just delivered by my learned brother, Mohammed Lawal Garba JCA. I agree with the limpid reasons advanced therein to arrive at the inevitable conclusion that reliefs 5, 6, 7, 8, 10, 11 and 12 of the appellant’s statement of claim fails for being overtaken by events and cannot be granted by the court. Having also read the records of appeal and the brief of argument of the learned counsel to the respective parties, I hold that the appeal lacks merit and it hereby dismissed. I abide by the consequential order(s) made in the leading judgment.

**TUKUR JCA**:

My learned brother Mohammed Lawal Garba JCA, afforded me the opportunity of reading in draft before today, the lead judgment just delivered and I agree with same, adopt it as mine with nothing to add.

Appeal dismissed