

SUPREME COURT OF NIGERIA
23RD APRIL, 1996. SC. 202/1991
CORAM:- M. L. UWAIS CJN, A. B. WALI, I. L. KUTIGI,
E. O. OGWUEGBU, Y. O. ADIO, JJSC.

DANIEL OKONKWO APPELLANT

AND

FRED OGBOGU & ANOR RESPONDENTS

APPEALS - Issue - Failure of lower court to consider an issue before it - Whether miscarriage of justice was occasioned.

APPAELS - Issue - Not raised in the lower court - Circumstances under which it may be considered.

DAMAGES - Trespass to the person - No matter how slight - Gives right of action to recover damages.

DAMAGES - Principles that guide an appellate Court - In the determination of quantum of damages.

EVIDENCE - Admission - By a party of a fact contained in a statement that was not tendered - Is evidence against that party - Whether it corroborated a written document or not.

TORTS - False imprisonment - Instigating arrest and detention of the plaintiff - Whether malicious and unlawful.

TORTS - False imprisonment - Detention of the plaintiff by the police - Whether the defendant was instrumental in setting the law in motion against the plaintiff.

TORTS - Trespass to the person - No matter how slight - Gives right of action to recover damages - Plaintiff need not give evidence of damage - To establish his claim to any specific amount of damage.

FACTS

The plaintiff/1st respondent before the High Court Asaba instituted an action against the defendant/appellant and the 2nd respondent/defendant, a policeman, claiming the sum of N20,000.00 from them jointly and severally for the tort of false imprisonment. The appellant whose structure was demolished by the owner of the land in the appellant's presence, made report to the Police Station of unlawful damage to his property by the plaintiff and two others. The 2nd respondent was detailed to investigate the report in the process of which he arrested the plaintiff and detained him for some hours before he was granted bail.

The trial court found the appellant liable for false imprisonment and awarded N3,000 damages against him. The 2nd respondent was found not liable. Appellant's appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court raising seven issues.

ISSUES FOR DETERMINATION

"1. Whether a case of false imprisonment was at all made out against the appellant at the trial by the 1st Respondent in view of s. 17 of the Criminal Procedure Law Cap. 49, Laws of Bendel State of Nigeria, 1976, applicable to Delta State governing, Release on bail of a person arrested without warrant, and which point of law was not argued at the court below.

2. Whether the failure of the learned Justices of the Court of Appeal to consider ground 2 of the appellant's ground of appeal occasioned a miscarriage of justice against the Appellant.

3. Whether the onus of proof as regards the Statement of the Appellant to the Police was discharged by the respondent when the statement was not produced as the Primary Evidence of its content and when non-production was never explained out by the Respondents. And accordingly whether section 148 (a) of the Evidence Act enure in favour of the Appellant against the respondent in the circumstance. Etc., see p. 815

HELD (Unanimously dismissing the appeal per lead judgment of **OGWUEGBU JSC**)

Issue - Not raised in the lower court

1. As a general rule, an appellant will not be allowed to raise on appeal a question which was not raised, tried and considered in the court below unless the question involves substantial points of law, substantive or procedural and it is clear that no further evidence could have been adduced

which could affect the decision on them. The point of law must be raised in a ground of appeal and argued as an issue arising from the ground of appeal. It is not competent to raise and argue a point of law as an issue in an appeal when such issue is not based on a ground of appeal. Issue number one and the argument based on it are incompetent. The issue does not arise from any ground of appeal. It is hereby struck out. (p. 819 B)

Failure of lower court to consider an issue

2. Even if the court below had considered the issue, it would still have found against the appellant and the failure of the court below to consider it did not occasion any miscarriage of justice. (p. 822 G)

Evidence - Admission

3. Assuming that the courts below made use of the statement, which was not the case, I fail to see the necessity for its being tendered when the maker has stated on oath what is contained in his statement. Having admitted on oath what he told the police, the admission became part of the plaintiff's case and it is evidence against him. What a party himself admits to be true, can reasonably be presumed to be so. This is more so where the admission was made on oath. The learned trial judge considered the admission along with other evidence before him and preferred that of PW.2. The Court below was correct to have affirmed that conclusion. A party's own Statements are in all cases admissible against him whether they corroborate the contents of a written document or not. (p. 824 A)

Instigating arrest and detention of the plaintiff

4. Instigating the arrest and detention of the 1st respondent was an unlawful act done intentionally without just cause or excuse and therefore malicious in the legal sense. Malice in this form of action is not to be considered in the sense of spite or hatred against the 1st respondent but of malus animus and as denoting that the appellant was actuated by improper and indirect motives, (p. 826 A)

False imprisonment - Whether defendant was instrumental

5. I do not agree with the learned appellant's counsel that the arrest and detention of the 1st respondent by the 2nd respondent was quite independent of the appellant. The courts below found as a fact that the appellant was actively instrumental in setting the law in motion against the 1st respondent. There is abundant evidence upon which the courts below drew the conclusion and they are justified in doing so. (p. 826 D)

Damages - Quantum

6. On the question of damages, the principles on which an appellate court acts when it is called upon to decide on the quantum of damages are well established. An appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it could have awarded a different figure if it had tried the case at first instance. Before it can properly intervene, it must be satisfied either that the judge, in addressing the damages applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of damage. (p. 826 E)

Trespass to the person

7. Any trespass to the person, however slight, gives a right of action to recover at any rate nominal damages. Even where there has been no physical injury, substantial damage may be awarded for the injury to the man's dignity or for discomfort or inconvenience. Where liberty has been interfered with damages are given to vindicate the plaintiff's rights even though he has not suffered any pecuniary damage. It is also not necessary for the plaintiff to give evidence of damage to establish his cause of action or to claim any specific amount of damage. The appellant has not shown to the satisfaction of this court that in the circumstances of this case the award of N3,000.00 was so extremely high as to be an entirely erroneous estimate of the damage. (p. 826 H)

REPRESENTATION

Mr. Ben Anyaduba for the appellant
Respondent is unrepresented

CASES REFERRED TO

Shonekan v. Smith (1964) All N.L.R. 161 (Reprint)
Stool of Abinabi v. Chief Enyimadu (1953) A.C. 209 at 215
Akpen v. Barclays Bank of Nigeria (1977) 1 S.C. 47
Nipol Ltd. v. Bioku Inv. & Property Co Ltd. (1992) 3 N. W.L.R. (Pt. 232) 727
Fashanu v. Adekoya (1974) 6 S.C. 83
Gbajor v. Ogunburegui (1961) All N.L.R. 882 (Reprint)
Payin & Azele v. Aliuah & Agyile 14 W.A.C.A. 267
Mandilas Karaberis Ltd. v. Apena (1969) N.M.L.R. 199

Nance v. British Columbia Rly. Co. Ltd. (1957) A.C. 601 at 613
Thompson v. Adefope (1969) 1 All N.L.R. 322
Ekpe v. Fagbemi (1978) 3 S.C. 209

B

STATUTES REFERRED TO

Evidence Act ss. 148 (d), 96(1), 24, 65
Criminal Procedure Law Cap. 49 Laws of Bendel State 1976 s. 17

C

LEAD JUDGMENT BY OGWUEGBU JSC

This is an appeal by the 1st defendant in the trial court against the judgment of the Court of Appeal, Benin Division dismissing his appeal to that court.

D

The 1st respondent as plaintiff instituted an action in the Asaba Judicial Division of the High Court of the former Bendel State against the appellant as the 1st respondent and the 2nd respondent as the 2nd defendant claiming the sum of N20,000.00 jointly and severally for the tort of false imprisonment.

E

The 1st respondent in paragraph 22 of his statement of claim averred as follows:-

“WHEREFORE the plaintiff brings and claims from the defendants , jointly and severally the sum of N20,000.00 being general damages for false imprisonment in that on or about the 2nd day of May, 1982 at Asaba in the Asaba Judicial Division the 1st defendant falsely and maliciously preferred before the Nigeria Police Asaba a charge of wilful and unlawful damage to his (1st defendant’s) property at Asaba and falsely procured the arrest of the plaintiff by the 2nd defendant on or about the 4th day of May, 1982 on the said charge at about 11.30 a.m. and was detained in police custody until about 6 p.m. when he was released on bail.”

G

The learned trial Judge found the 1st defendant liable for false imprisonment and awarded N3,000.00 damages against him. The 2nd defendant was found not liable. The 1st defendant who is the appellant herein unsuccessfully appealed to the Court of Appeal and has further appealed to this court.

H

The following issues for determination are identified in paragraph 3 of the appellant’s brief of argument:-

“1. Whether a case of false imprisonment was at all made out against the appellant at the trial by the 1st respondent in view of S. 17 of

the Criminal Procedure Law Cap. 49, Laws of Bendel State of Nigeria, 1976, applicable to Delta State governing release on bail of a person arrested without warrant, and which point of law was not argued at the court below.

2. Whether the failure of the learned Justices of the Court of Appeal to consider ground 2 of the appellant's ground of appeal occasioned a miscarriage of justice against the appellant. B

3. Whether the onus of proof as regards the statement of the appellant to the Police was discharged by the respondent when the statement was not produced as the Primary Evidence of its content and when non-production was never explained out by the respondents. And accordingly whether section 148(d) of the Evidence Act enures in favour of the appellant against the respondent in the circumstance. C

4. Whether the disclosure by Corporal Akinbowa, a serving police officer of what transpired between him and the complainant (appellant) in this case amounted to a violent violation of the Official Secrets Laws of Nigeria, and whether such evidence purporting to show what transpired between the Corporal and the complainant ought not to be disregarded and any judgment or finding based on it vitiated. D

5. Whether Exhibit "B" is inadmissible and if it is, whether the trial court as well as the Court of Appeal ought not to have expunged that piece of evidence from the record being a secondary evidence of the content of an original document and which document was not produced nor foundation laid for the admissibility of its secondary evidence. E

6. Whether the findings of fact and conclusion of the learned trial Judge and affirmed by the Court of Appeal support the charge and evidence led at the trial. F

7. Whether the award made by the learned trial Judge and affirmed by the Court of Appeal support the evidence led or in the alternative whether the two courts below applied the correct principles of law in reaching the award made.

It was indicated in paragraph 3.01 of the appellant's brief that he would before or at the hearing of the appeal seek leave of this court to raise and argue the first issue for determination. G

Four questions were formulated in the 1st respondent's brief of argument. Those questions embrace all the issues formulated by the appellant. I will in the determination of this appeal confine myself to the issues identified by the appellant which are comprehensive. H

I will set out the material paragraphs of the pleadings of the parties for a better appreciation of the facts of the case and arguments based on

them.

Paragraphs 12 - 20 of the statement of claim read:-

B “12. On or about the 21st October, 1980 at about 10.30 a.m. the 1st defendant was summoned before the Ezenei Executive Committee following upon the report by one Obi B. N. Arinze that the 1st defendant had encroached upon his adjoining land to the 1st defendant’s Head Bridge Approach Road, Asaba (1st defendant’s Petrol Filling Station).

C 13. When the 1st defendant and the said Obi B. N. Arinze appeared and stated their case to the committee, the 1st defendant claimed that he paid the sum of N400.00 and some drinks to the late Obi J. N. Eluaka and that no witnesses were present when he was shown the land.

D 14. The committee rejected his statement as that was contrary to the method of allocation of land by the Committee. The Committee also were not happy that the 1st defendant said nothing of this until after the death of the late Obi Eluaka.

16. All along the dispute had been between 1st defendant and the said Obi Arinze and had nothing to do with the plaintiff. The plaintiff will rely on the said Obi Arinze’s Solicitor’s letter No. MCU/M/Vol. 1/268 of 21st February, 1982 addressed to the 1st defendant at the trial.

E 17. At the trial the plaintiff will also rely on the minutes of the Ezenei Executive Committee and the letter dated 20th March, 1973 addressed to the Secretary, Ezenei Family Asaba.

F 18. On the 2nd May, 1982 when Obi Arinze brought his men to remove the temporary structure left by the 1st defendant on the land the 1st defendant was there in person and witnessed the whole exercise by Obi Arinze and his workers. (Underlining is for emphasis).

G 19. On or about the 4th May, 1982 as a result of the case of wilful and unlawful damage reported by the 1st defendant to the Asaba Police on the 2nd May, 1982 the 2nd defendant came to the house of plaintiff and arrested him and took him to the Police Station Asaba at about 11.30 a.m. and detained him (plaintiff) after he had made his statement.

H 20. The plaintiff pleaded with the 2nd defendant in vain to grant him bail but was only granted bail when a crowd of relatives surged at the Police Station and pressed for his bail which was later granted at about 6 p.m. Plaintiff was taken on bail by one Okonma. The bail bond will be relied upon at the trial.”

The 1st defendant’s essential averments are contained in paragraphs 4-5(i) -(ix) of his statement of defence:-

“4. The 1st defendant denies paragraphs 6, 7, 9,10,11,12,13,14,15, 16, 17, 18, 19, 20 and 22 of the Statement of Claim and puts the

plaintiff to the strictest proof thereof. 1st defendant says that save that he made legitimate complaint to the police he was not in control of the second defendant.

5. In further answer to paragraphs 2, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 22 of the Statement of Claim, the 1st defendant says that his application was approved and 4301, 71 Square Yards of land was given to him. The then 1st defendant's Solicitor M.C.U. Odita prepared a Deed of Conveyance which was duly executed on 26th August, 1974. The 1st defendant pleads the said Deed of Conveyance and will at the trial rely on it.

(i) The signed Deed of Conveyance was submitted to Total Nigeria Limited by the 1st defendant and Total Nigeria Limited said the land was not sufficient for a Standard Petrol Station.

(ii) The 1st defendant then discussed with S.C. Onyia and J. N. Eluaka who after consultation with other members of the Ezenei Executive Committee delegated Obi. J. N. Eluaka to show the 1st defendant the area of the extension of land granted him which was 1704.92 Square Meters of land.

(iii) The 1st defendant's complain (sic) to the Committee on 8th March, 1975 was in respect of the land granted to the 1st defendant at Jarret Street, Cable Point, Asaba which was cut across by a new constructed Road and the replacement allocation of land at Niger Bridge Road opposite Maha Hotel was claimed by Mr. Nwokolo.

(iv) In further answer to paragraph 12 of the Statement of Claim on or about the 21st October, 1982 (sic) the 1st defendant and his brother J. O. Okonkwo were invited to the Ezenei Executive Committee Meeting to declare their stand on ABOHNKPA LAND and not in connection with any report made by Obi B.N. Arinze against the 1st defendant.

(iv) In answer to paragraph 16 of the Statement of Claim the 1st defendant says that on 21st February, 1982 the Committee through their Solicitor wrote a letter Reference No. MCU/M/Vol. 1/268 to the 1st defendant to remove any structure he the 1st defendant had on his own land.

(v) That on 2nd May 1982 the temporary structure was destroyed by somebody unknown in the absence of the 1st defendant.

(vii) The 1st defendant reported the matter to the Nigeria Police Asaya and made a statement to the 2nd defendant.

(viii) The 2nd defendant asked the 1st defendant whether he suspected any person the 1st defendant told him that he suspected the members of the Ezenei Executive Committee based on the letter mentioned in paragraph (v) above. The defendant pleads the said letter and will at the

trial rely on it.

(ix) The 2nd defendant in the cause of his investigation invited the important and active members of the Committee including the plaintiff to the Police Station and took their statement."

B Paragraphs 6 - 12 of the statement of defence of the 2nd defendant are also relevant:-

"6. The 1st defendant made a report of unlawful damages by the plaintiff and two others to the 1st defendant's store along Bridge Road, Asaba, on 3rd May 1982 to the Nigeria Police, Asaba. The 2nd defendant will rely on the relevant Crime Diary entry of 3rd May, 1982 at the trial.

C *7. The 2nd defendant avers that on the strength of the 1st defendant's report the 2nd defendant was detailed to investigate the report.*

8. The 2nd defendant avers that the 1st and 2nd defendants went to inspect damaged store on 3rd May, 1982.

D *9. The 2nd defendant found the damaged store. The store was built with planks and iron corrugated sheets. The 2nd defendant decided to arrest the plaintiff, Obi Arinze and Obi J.I.G. Onyia who the 1st defendant claimed destroyed the 1st defendant's store.*

10. The 2nd defendant avers that the 1st and 2nd defendants went to the plaintiff, J.I.G. Onyia and Obi Arinze's houses on 3rd May, 1982.

E *The defendants found none of them. The 2nd defendant advised the 1st defendant to report at the Nigeria Police Asaba on 4th May, 1982.*

11. The 2nd defendant avers that on 4th May, 1982, the 2nd defendant left with the 1st defendant to the plaintiff's house.

F *12. The 2nd defendant avers that on 4th May, 1982, the 2nd defendant met the plaintiff in the plaintiff's house. The 2nd defendant informed the plaintiff about the report of unlawful damage to the 1st defendant's store by the plaintiff and two others along Bridge Road, Asaba. The 2nd defendant further informed the plaintiff that the 2nd defendant was there to arrest the plaintiff."*

G It was argued in paragraph 5.01 of the 1st respondent's brief that grounds 1 to 9 of the grounds of appeal styled "Error in Law" are strictly not errors in law but at best could be "Errors of Mixed Law And Fact" and that ground four of the grounds of appeal is being raised for the first time in this court and that leave of this court was not obtained. It was submitted that grounds 1 - 9 of the grounds of appeal are incompetent.

H At the hearing of the appeal, learned appellant's counsel informed the court that leave of this court was obtained to file and argue grounds 1-3 and 5-9. In respect of ground 4, he applied to withdraw it together with argument based on it since no leave was obtained to file and argue it.

The court is satisfied that leave of this court was sought and obtained to file and argue grounds 1-3 and 5-9 of the grounds of appeal. The application to withdraw ground 4 and the argument on it is hereby granted by this court. They are accordingly struck out.

The appellant in paragraph 3.01 of his brief raised an issue not raised, tried or considered by the trial court or the Court of Appeal. It was indicated in the said paragraph that before or at the hearing of the appeal, he would seek the leave of this court to raise and argue the issue. B

As a general rule, an appellant will not be allowed to raise on appeal a question which was not raised, tried and considered in the court below unless the question involves substantial points of law, substantive or procedural and it is clear that no further evidence could have been adduced which could affect the decision on them. See *Shonekan v. Smith* (1964) 1 All NLR 164 (Reprint); *Stool of Abinabina v. Chief Kojo Enyimadu* (1953) A.C. 209 at 215 and *Akpene v. Barclays Bank of Nigeria & Or.* (1977) 1 S.C. 47. C D

The point of law must be raised on a ground of appeal and argued as an issue arising from the ground of appeal. It is not competent to raise and argue a point of law as an issue in an appeal when such issue is not based on a ground of appeal. Issue number one and the argument based on it are incompetent. The issue does not arise from any ground of appeal. It is hereby struck out. E

The contention of the appellant's counsel in issue two is that there is no conflict in the evidence of the appellant in court and any documentary evidence made by him; that the trial Judge had nothing before him to find the conflict since the statement which the appellant made to the police was not produced and that Exhibit "B" (an Extract from Police Diary) was not shown or proved to have been made by the appellant. F

It was further submitted that the court below did not consider the issue based on the ground of appeal before that court and that the failure of the court below to do so occasioned a miscarriage of justice. It was further argued that if it had done so, it would have found that Exhibit "B" is not a legal document to ground any finding of fact; that Exhibit "B" was not shown to have been made by the appellant, that the appellant's statement to the police ought to have been tendered and that failure of the plaintiff to tender the statement is fatal to his claim. He referred to section 148(d) of The Evidence Act and *NIPOL Ltd. v. Bioku Inv. & Property Co. Ltd.* (1992) 3 NWLR (Pt.232) 727. We are urged upon to consider ground two of the additional grounds of appeal in the court below which that court G H

failed to consider. The learned counsel for the 1st respondent submitted that the trial court and the court below were right having regard to the evidence and the findings of fact. He referred us to the pleadings and the evidence adduced by the parties.

B The offending passage of the judgment of the learned trial Judge which was appealed against and which the court below failed to consider reads thus:-

“In the case in hand, the 1st defendant knew that the plaintiff did not demolish the structure but tried to pin the crime on him.

C *This takes me to the evidence of PW.2, Obi Arinze who testified that he and his children went into the land and demolished the structure and as they were doing so, 1st defendant emerged but was unable to dare them due to the instruction given out by PW.2. I have read Exhibit “B” written by PW.2 to the 1st defendant, although I do not understand whether only beacons were then erected on the land by 1st*
D *defendant, but I am satisfied that PW.2 was referring to the land in dispute. I am reinforced in this finding by the evidence of the 1st defendant himself when he said that he received a copy of Exhibit “B” and that the matter was reported to the Diokpa. The Diokpa invited PW.2 three times so that the matter may be looked into and the PW.2 refused to attend. I*
E *therefore prefer the evidence of PW.2 to the conflicting averments of 1st defendant made to the police during the report of the case and his evidence in court which tried to show that the 1st defendant merely reported that the plaintiff (sic) suspected as one of those who demolished the structure.”*

There is some confusion in the passage. The learned trial Judge said
F that he read Exhibit “B”. There is no doubt that he meant Exhibit “D”. He also said in the same passage that the Diokpa invited PW.2 three times so that the matter might be settled and PW.2 refused to attend. Here again, the learned trial Judge meant the 1st defendant and not PW.2. These are borne out by the evidence led. These observations notwithstanding, the
G learned trial Judge never referred to Exhibit “B” specifically as one of the conflicting averments of the appellant to the police. It is true that the statement made by the appellant to the police was not tendered. However, the nature of the report by the appellant to the police was an issue to be determined by the learned trial Judge and there was abundant oral evidence on it.

H In paragraph 22 of the statement of claim, the 1st respondent claimed N20,000.00 “being general damages for false imprisonment in that on or about the 2nd day of May, 1982 at Asaba in Asaba Judicial Division, the 1st defendant falsely and maliciously preferred before the Nigeria

Police, Asaba a charge of wilful and unlawful damage to his (1st defendant's) property at Asaba and falsely procured the arrest of the plaintiff by the 2nd defendant on or about the 4th day of May, 1982 on the said charge"

In paragraphs 5(vi) - 5(ix) of the statement of defence, the appellant averred as follows:-

"5(vi) That on 2nd May 1982 the temporary structure was destroyed by somebody unknown in the absence of the 1st defendant.

(vii) The 1st defendant reported the matter to Nigeria Police Asaba and made a statement to the 2nd defendant.

(viii) The 2nd defendant asked the 1st defendant whether he suspected any person the 1st defendant told him that he suspected the members of the Ezenei Executive Committee based on the letter mentioned in paragraph (v) above. The defendant pleads the said letter and will at the trial rely on it.

(ix) The 2nd defendant in the cause (sic) of his investigation invited the important and active members of the committee including the plaintiff to the Police Station and took their statement."

In his amended statement of defence, the 2nd respondent averred as follows in paragraphs 6-9.

"6. The 1st defendant made a report of unlawful damages by the plaintiff and two others to the 1st defendant's store along Bridge Road, Asaba on 3rd May, 1982 to the Nigeria Police, Asaba. The 2nd defendant will rely on the relevant Crime Diary entry of 3rd May, 1982 at the trial.

7. The 2nd defendant avers that on the strength of the 1st defendant's report, the 2nd defendant was detailed to investigate the report.

8. The 2nd defendant avers that the 1st and 2nd defendants went to inspect the damaged store on 3rd May, 1982.

9. The 2nd defendant found the damaged store

The 2nd defendant decided to arrest the plaintiffs, Obi Arinze and Obi J.I.G. Onyia who the 1st defendant claimed destroyed the 1st defendant's store."

The 1st respondent led evidence through P.W.2 that the appellant saw P.W.2 and his children remove the structures which the appellant put on his land (P.W.2's), that the appellant challenged him and he ordered his children to beat up the appellant if he interfered with any of them. P.W.2 further testified that he did not notify the 1st respondent about what he was going to do and that the 1st respondent was not present when the structure was demolished.

In his evidence the appellant testified in-chief as follows:-

"As a result of the information I received, I concluded that the damage was the handiwork of the Committee because of the letter they

wrote to me earlier. I went to the police and reported what happened to my property. I was asked by the police whether I suspected any person. I reply that I suspected members of the Ezenei Committee. I named 3 of the members of the Committee to wit: Obi Onyia J.I.G., FN. Ogbogu and Obi Arinze.”

In answer to cross-examination by Mr. Oji, the appellant stated:-

“I made a report at Police C.I.D. Office. My report was recorded at the counter before I was asked to go to C.I.D. Office. It was not the 2nd defendant who recorded the report. The case was referred to 2nd defendant for investigation. I named three persons to the 2nd defendant as principal members of the Executive Committee. I took the 2nd defendant to their house.”

Under cross examination, by Efekeze, learned Senior State Counsel who appeared for the 2nd defendant, the appellant stated:-

“I made a statement to the 2nd defendant. I wrote the statement myself. I can still remember what I wrote in my statement. I admit that in my statement to the 2nd defendant, hold him that it was infact the plaintiff, J.I.G. Onyia and PW.2 who demolished my hut.”

It was the evidence of PW.2 which the learned trial Judge preferred as against the conflicting averments of the 1st defendant (appellant) reproduced above. The learned trial Judge neither referred specifically to Exhibit “B” nor to the alleged statement of the appellant to the police which was not tendered in evidence. The conflicts referred to by the learned trial Judge are those that are contained in the evidence of the appellant and his statement of defence as to the exact nature of his report to the police. In one breath, he said that he suspected three active members of the Ezenei Committee including the 1st respondent and in another breath, he stated that it was infact the 1st respondent, PW.2 and Obi J.I.G. Onyia who demolished his hut. In answer to the cross examination by Mr. Efekeze, it was no longer a question of suspicion hence the learned trial Judge preferred the evidence of PW.2.

Even if the court below had considered the issue, it would still have found against the appellant and the failure of the court below to consider it did not occasion any miscarriage of justice.

The appellant’s counsel submitted that the Court of Appeal erred when it affirmed the judgment of the trial court based on hearsay evidence of the 2nd respondent when there is no evidence that the written statement of the appellant to the police was lost and cannot be found after search was made. He further submitted that the trial court and the court below

were wrong to have allowed evidence as to the contents of the appellant's statement to the police when the conditions under section 96(1) of the Evidence Act were not satisfied.

Counsel submitted that the courts below held that the appellant admitted in his evidence under cross examination that he specifically mentioned the plaintiff/respondent as one of the persons who demolished his structures and even if it was an admission, it is no proof of the contents of the statement of the appellant to the police. He referred the court to section 24 of the Evidence Act and contended that the so called admission by the appellant and the evidence of the 2nd defendant/respondent are rendered irrelevant by section 24 of the Evidence Act. We were urged to invoke the provision of section 148(d) of the Evidence Act against the respondent.

The learned counsel for the 1st respondent submitted that the appellant contradicted the case set up in his pleadings. He referred to the evidence of the appellant in-chief where he said that he named three persons who were the principal members of the Ezenei Executive Committee and in answer to cross examination, he said that he wrote his statement himself and that he told the 2nd respondent that the appellant, J.I.G. Onyia and the PW.2 demolished his hut. Counsel submitted that the pieces of evidence contradicted the pleadings of the appellant and that parties are bound by their pleadings.

The complaint of the appellant is against concurrent findings of fact of the lower courts. The courts below did not act on the said statement of the appellant which was not before it. There are the statement of defence of the appellant and his oral testimony before the court which are in conflict. In paragraph 5(viii) of his statement of defence, the appellant averred that he told the 2nd defendant/respondent that he suspected the members of the Ezenei Executive Committee. But this averment contradicted his evidence in answer to cross examination by Mr. Efekeze counsel for the 2nd defendant where he specifically mentioned the names of the 1st respondent and two others.

As I said earlier, the complaint is against concurrent findings of fact. The attitude of this court with regard to concurrent findings of fact of the lower court is well established in numerous decisions of this court. In this case no special circumstances have been shown to justify interference with the findings. See *Fashanu v. Adekoya* (1974) 6 S.C.83.

From the above conclusion, sections 24, 96(1) and 148(d) of the Evidence Act do not call for my consideration. In any case, when the appellant was cross examined by Mr. Efekeze, he replied that he wrote his

statement to the police; that he could still remember what he wrote and that in the said statement, he told the 2nd respondent that it was the 1st respondent, J.I.G. Onyia and P.W.2 who demolished his hut.

B Assuming that the courts below made use of the statement, which was not the case, I fail to see the necessity for its being tendered when the maker has stated on oath what is contained in his statement. Having admitted on oath what he told the police, the admission became part of the plaintiff's case and it is evidence against him.

C What a party himself admits to be true, can reasonably be presumed to be so. This is more so where the admission was made on oath. The learned trial Judge considered the admission along with other evidence before him and preferred that of P.W.2. The court below was correct to have affirmed that conclusion. A party's own statements are in all cases admissible against him whether they corroborate the contents of a written document or not. See *Slatterie v. Poolly* 151 Exch. 579.

D On whether the appellant was instrumental to the arrest and detention of the 1st respondent, the learned appellant's counsel submitted that all the appellant did was to report the matter to the police and escort the police to the 1st respondent's house where a message was left by the police for the 1st respondent to report to the Asaba Central Police Station. He
E contended that the finding of the trial court that the appellant was actively instrumental in setting the law in motion and affirmed by the Court of Appeal was perverse. The court was referred to the evidence led by the parties. It was submitted that the evidence of the 2nd respondent that if the appellant had merely suspected the 1st respondent, he would not have
F arrested him is an opinion and therefore inadmissible and irrelevant. We were referred to section 65 of the Evidence Act. He cited the cases of *Gbajor v. Ogunburegui* (1961) All NLR 882 (Reprint).

To succeed in an action for false imprisonment, the plaintiff must show that it was the defendant who was actively instrumental in setting the law in motion against him. See *Danby v. Beardsley* (1880) 43 L.J.R. 603;
G *Payin & Azele v. Aliuah & Agyile* (1953) 14 WACA 267 and *Mandilas Karaberis Ltd. v. Apena* (1969) NMLR 199.

As to the arrest of the 1st respondent, the learned trial Judge held as follows:-

H *"It is my view and I so hold that the 2nd defendant did infact arrest and detain the plaintiff on 4:5:82, as testified by the plaintiff.*

..... *Mr. Makwe, learned counsel for the 1st defendant had cited the case of Koji Gbajor and Ogunburegui (1961) All NLR Part 4, page 853,*

In the case in hand, it is my view and I so hold that the 1st defendant specifically mentioned the names of the plaintiff, Obi J.I.G. Onyia and PW.2 as the people he saw demolishing his structure. The authority referred to about (sic) is therefore not on all fours with the instant case. The law is that the defendant shall not be liable if there is no evidence that he was actively instrumental in setting the law in motion against the plaintiff, so that if a complaint is made to the police and the name of the plaintiff is merely mentioned as one of the suspects, the defendant cannot be said to have actively instigated the arrested (sic) or prosecution of the plaintiff. From the evidence before me, I hold the view that the plaintiff has shown that the defendant was actively instrumental in setting the law in motion against him. In the case in hand, the 1st defendant knew that the plaintiff did not demolish the structure but tried to pin the crime on him .

..... Having so held that the 1st defendant actually saw PW.2 and his children pulling down the structure, it was unreasonable for the 1st defendant to have reported to police that innocent people were involved in the havoc. The onus is on the 1st defendant to establish whether his act was justified: See Owen Oke Chukwu v. Anigbogu & ors. (1974) 4 U.I.L.R. 262. This the 1st defendant hopelessly failed to do. It was therefore the 1st defendant who initiated and caused the arrest and detention of the plaintiff after giving false information to law enforcement agents, thereby involving the plaintiff."

The court below affirmed the above conclusion when it held:-

"Having regard to these pieces of evidence it is very clear to me that the learned trial Judge was fully justified in holding that the appellant went to the police and falsely and maliciously told them he saw the respondent taking part in demolishing his structures."

I agree with the courts below on these findings. When PW.2 testified that the appellant saw him and his children remove the structure and challenged them, PW.2 ordered his children to beat up the appellant if he interfered with them.

The appellant did not cross examine PW.2 on this piece of evidence. It stood unchallenged. It was also within the knowledge of the appellant that the 1st respondent did not take part in the demolition of his hut. He must therefore show probable cause for reporting the appellant to the police. This he failed to do. The 1st respondent was able to show want

of reasonable or probable cause on the part of the appellant. Instigating the arrest and detention of the 1st respondent was an unlawful act done intentionally without just cause or excuse and therefore malicious in the legal sense. Malice in this form of action is not to be considered in the sense of spite or hatred against the 1st respondent but of malus animus and as denoting that the appellant was actuated by improper and indirect motives. See Payin & Azele v. Aliuah & Agyili (supra).

The 2nd respondent in this evidence denied the suggestion that the appellant reported to him that members of the Committee of Ezenei were the people who destroyed his structure. He stated that if the report was based on suspicion and no name mentioned, he would not have arrested anyone. He went on:-

*"I arrested the plaintiff because the 1st defendant said that the former demolished his (1st defendant) structure
The plaintiff was not allowed to go before he signed the bail bond. The plaintiff was in my custody after he had made statement to the police."*

I do not agree with the learned appellant's counsel that the arrest and detention of the 1st respondent by the 2nd respondent was quite independent of the appellant. The courts below found as a fact that the appellant was actively instrumental in setting the law in motion against the 1st respondent. There is abundant evidence upon which the courts below drew the conclusion and they are justified in doing so.

On the question of damages, the principles on which an appellate court acts when it is called upon to decide on the quantum of damages are well established. See Nance v. British Columbia Rly. Co. Ltd. (1957) A.C. 601 at 613. An appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it could have awarded a different figure if it had tried the case at first instance. Before it can properly intervene, it must be satisfied either that the Judge, in addressing the damages applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of damage. See Nance v. British Columbia Rly. Co. Ltd. (1951) A.C. 601; Thompson & Or. v. Adefope (1969) 1 All NLR 322 and Ekpe v. Fagbemi (1978) 3 S.C. 209.

Any trespass to the person, however slight, gives a right of action to recover at any rate nominal damages. Even where there has been no physical injury, substantial damage may be awarded for the injury to the man's dignity or for discomfort or inconvenience. Where liberty has been

interfered with damages are given to vindicate the plaintiff's rights even though he has not suffered any pecuniary damage. It is also not necessary for the plaintiff to give evidence of damage to establish his cause of action or to claim any specific amount of damage.

The appellant has not shown to the satisfaction of this court that in the circumstances of this case the award of N3,000.00 was so extremely high as to be an entirely erroneous estimate of the damage. B

For the foregoing reasons, the appeal wholly fails and I hereby dismiss it with N1,000.00 costs to the 1st respondent.

UWAIS CJN.

I have had the opportunity of reading in draft the judgment read by my learned brother Ogwuegbu, J.S.C. I agree that the appeal lacks merit and that it should be dismissed.

Accordingly, I too hereby dismiss the appeal with costs as assessed in the said judgment. C

WALI JSC

I have read in advance the lead judgment of my learned brother Ogwuegbu, J.S.C. with which I entirely agree. E

For the same reasons ably articulated in the lead judgment which I hereby adopt, I also find no merit in this appeal and it is accordingly dismissed with N1,000.00 costs to the 1st respondent. F

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Ogwuegbu, J.S.C. I agree with his reasoning and conclusions. There was ample evidence before the trial court that the appellant actually went to the Police and falsely and maliciously told them that he saw the respondent demolishing his (appellant's) structures. The appellant was thereby actively instrumental in setting the law in motion against the respondent for his arrest and detention as a result of the false information. He was therefore liable. (See *Mandilas Karaheris Ltd. v. Apena* (1969) NMLR 199). G

H

The appellant also failed to show that the trial court applied wrong principles in the assessment of N3,000 damages awarded against him. The appeal therefore fails and it is accordingly dismissed with N1,000 costs against the appellant.

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ADIO JSC

I have had the advantage of reading, in advance, the judgment just read by my learned brother, Ogwuegbu, J.S.C., and I agree that the appeal fails. I abide by the order for costs.

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