

SUPREME COURT OF NIGERIA
16TH APRIL, 2004. SC. 127/2000
CORAM: I.L. KUTIGI, A.I. KATSINA-ALU, S.O. UWAIFO, A.O.
EJIWUNMI, D. MUSDAPHER, JJSC

KRAUS THOMPSON ORGANISATION LTD APPELLANT/
CROSS-RESPONDENT

AND

UNIVERSITY OF CALABAR RESPONDENT/
CROSS-APPELLANT

COURTS - Judgment - Issue not before the court - Should not be raised by it suo motu (H1)

COURTS - Issues - Suo motu raising of - Court has power to raise suo motu issue - But it must hear the prejudiced party - Before resolving the issue (H2)

APPEALS - Issue - Suo motu raising of - Was not done in this case - As the issue in question was raised by the parties (H3)

APPEALS - Issues - Finding of trial court - Not appealed against - Is binding on the court and the parties - Court of Appeal's mention of it - Does not amount to raising suo motu issue (H4)

WORDS & PHRASES - "Reside" - Used by trial court on quote - Meaning ascribed to it - Court of Appeal's omission of the quotation marks - Did not change the meaning (H5)

WORDS & PHRASES - "Reside" - Trial court's use of it - And Court of Appeal's reference to it without the quotation marks - Did not alter anything - And no miscarriage of justice was occasioned (H6)

ACTIONS - Contracts - Place of action for breach - Is where the con-

tract was made - Amongst other options - Under O. IA r. 3 High Court Rules of Lagos State 1972 (H7)

ACTIONS - Corporation - Residence of - For purpose of determining venue of court action - Is the place of its central management - Which for a University is the main campus - not the Liaison Office (H8)

COURTS PROCESSES - Company - Actions - Originating process - Service on a corporate body or statutory corporation - Can only be given to any director, etc. - Or by leaving it at its registered or head office (H9)

APPEALS - Actions - Venue - Findings of trial court - On issue of residency of respondent - Not appealed against before Court of Appeal - The issue cannot be raised before Supreme Court (H10)

APPEALS - Issues - Duty of appellate court - To determine all issues properly raised - Failure to do so may cause miscarriage of Justice - In some cases - And Supreme Court may examine the issue (H11)

APPEALS - Interlocutory appeal - Preliminary objection before Court of Appeal - Based on the grounds of appeal, and no leave of court - Is without merit - Since the grounds of appeal - Are based on questions of law (H12)

FACTS

Before the Lagos High Court the plaintiff appellant filed an action against the defendant/respondent seeking to recover some amount of money. The amount is an unpaid outstanding sum of money due to the appellants in respect of supplies of books and/or journals. The originating processes were duly served on the respondent at their liaison office in Lagos. The case proceeded to a point where the respondent filed its statement of defence and the appellant applied for summons for judgment pursuant to the Lagos High Court Rules. It was at this point that the respondent filed a notice of preliminary objection to the hearing of the

suit for want of jurisdiction.

The objection was based on the fact that the University of Calabar (respondent) has its seat in Calabar, Cross /River State. And the contract, subject matter of this suit was not executed in Lagos. In other words, the respondent does not reside in Lagos though it has liaison office in Lagos. The trial court ruled that the service of process was proper and that it has jurisdiction to entertain the matter. Respondent's appeal to the Court of Appeal was upheld. In its use of the word "reside" while quoting the trial court, Court of Appeal failed to add the quotation marks. Appellant has now appealed to the Supreme Court while the respondent cross-appealed.

ISSUES FOR DETERMINATION

"i. Whether the finding of the Court of appeal that the lower court had reached a finding of fact to the effect that the defendant/appellant/respondent does not reside within the jurisdiction of the court i.e. Lagos State which the plaintiff/respondent/appellant has not appealed against was based on any specific issue submitted to the court for determination and if the answer to the issue is no, whether the court could rule on an issue without inviting the parties and or their counsel to address the court on such an issue.

ii. Whether the Court of appeal in stripping the word reside of the quotes as used by the trial judge i.e. ("Reside") in his ruling had not deprived the word i.e. reside of its intended meaning in the context.

iii. Whether the High Court of Lagos State has jurisdiction to hear and determine the appellant's suit against the respondent based on a contract when the respondent has a Liaison Office/Residence in Lagos.

iv. Whether it was judicious and judicial exercise of the Court of Appeal's discretion to refuse to rule on the appellant's preliminary objection against the respondent's Notice, and Grounds of appeal.

v. Whether on the totality of the evidence and materials before the Court of Appeal, the respondent's appeal ought not have failed."

HELD (Unanimously dismissing the appeal and cross-appeal per lead judgment of **MUSDAPHER, JSC**)

Judgment - Issue not before the court

1. Now, it is settled law that when an issue is not placed before a court,
B such court has no business whatsoever to deal with it as decisions of a
Court of Law must not be founded on any ground in respect of which it
has neither received argument from or on behalf of the parties before it
not even raised by or for the parties or either of them. The law is also
C well established that it is not competent for any court suo motu to make
a case for either or both of the parties and then proceed to give judgment
on the case so formulated contrary to the case of the parties before it.
(p. 882 A)

D ***COURTS - Issues - Sua motu raising of***

2. There can be no doubt that courts of law have the power to raise suo
motu relevant issue or issues which are not before the court for the
determination of the case. In exercising this power, however, the court
E must adhere strictly to the principles of natural justice and in particular,
to the audi alteram partem rule. Accordingly, the law is also well settled
that on no account should a court raise a point or issue suo motu no
matter how clear it may appear to be, and then proceed to resolve it one
F way or the other without inviting the parties to address it on the point. If
it does so, it will be in flagrant abuse and breach of the aggrieved party's
right to fair hearing as entrenched in the Constitution. See Ugo v. Obiekwe
[1989] 1 N.W.L.R. (pt. 99) 566. Oje v. Babalola [1991] 4 N.W.L.R.
(pt.185) 267. In other words, when a court for any compelling reasons
G finds it necessary and particularly in the interest of justice, to raise a point
or issue suo motu, the parties must be given an opportunity to be heard
on such point or issue, particularly the party that may be prejudiced as
the result of the point raised suo motu. (p. 882 D)

H

Sua motu raising of - Was not done in this case

3. Now the question whether the respondent/defendant was resident at
Lagos and therefore by virtue of that fact clothing the Lagos State High

Court with jurisdiction is not in my view a fresh matter additionally raised suo motu by the Court of Appeal. The issue of jurisdiction is relevant and the live wire of the case before the Court of Appeal. In my view, the Court of Appeal did not raise the issue suo motu; the issue arose from the first ground of the appeal and issue No. 1 and was fully argued by the parties in their respective briefs. (p. 883 A & E) B

Issues - Finding of trial court

4. The trial court has reached this fundamental and crucial decision, which has not been challenged by the appellant. The finding cannot be an issue which the Court of Appeal raised suo motu. The Court of Appeal merely observed the effect of the unchallenged decision of the trial court on the appellant's case, was binding on the parties. In any event, as I mentioned above, the question was raised in the ground of appeal number one and the first issue. This clearly to my mind entitled the Court of appeal to mention the finding of the trial court that the defendant was not resident in Lagos, which was not appealed against by the appellant herein. Since there was no appeal against the finding both parties and the Court of appeal were bound by the finding. I find no merit in this complaint. Issue number one is accordingly resolved against the appellant. (p. 883 H & 884 C) D E

“Reside” - Used by trial court on quote - Meaning ascribed to it F

5. I fail to perceive the importance of the missing quotation marks on the word reside when the Court of appeal was quoting the exact words used by the trial court. The word reside as used by the learned trial court in my view refers to residence of a defendant within the meaning and intentment of Order 1A rule 3 of the High Court of Lagos State (Civil Procedure) rules 1972:- G

“all suits for the specific performance or upon the breach of any contract may be commenced and determined in the jurisdiction in which the contract ought to have been performed or in which the defendant resides.” H

The learned counsel for the appellant has not told us the special

meaning ascribed to the word ‘reside’ by the learned judge when he put the quotation marks. In my view the quotation marks were merely put by the learned trial judge in order to show that the defendant UNIVERSITY OF CALABAR is not a physical person capable of residing as a being. To insist that the quotation marks used by the trial judge mean anything else would amount to *reductio ad absurdum*.¹ (p. 884 H)

WORDS & PHRASES - “Reside” - Trial court’s use of it

6. In my view, the complaint of the appellant is merely academic or linguistic. Accordingly, whether the word “reside” as used by the trial court bearing the quotation marks or reside as used by the Court of appeal without the quotation marks, the meaning and intention, in the context used, is the same, the operative phrase, “does not reside” being in the negative. I am of the view that when the court of appeal quoted the passage of the trial court and omitted to use the quotation marks on the word – reside, such omission did not change in any way the significance of the passage as used by the trial judge. Such omission did not cause any miscarriage of justice. It is not every error or mistake that will cause a reversal of a decision on appeal. There is miscarriage of justice only where there are substantial errors in the adjudication, with the resultant effect that the party relying on such errors may likely have judgment in his favour. See *Amadi v. NNPC* [2000] 10 N.W.L.R. (pt. 674) 76 at 112. There is no miscarriage of justice or failure of justice where it is not shown that the decision reached is prejudicial or inconsistent with the substantial rights of a party. See *Ajuwon v. Akanni & 10 others* [1993] 9 N.W.L.R. (pt. 316) 182.

What the learned counsel is attempting to do is raise a distinction without a difference. There is no merit whatever in this complaint. I reject it and resolve the second issue against the appellant. (p. 885 D)

H Contracts - Place of action for breach

7. Now by virtue of Order 1A Rule 3 of the High Court rules of Lagos State 1972 or as amended by virtue of Order 2 Rule 3 of the 1994 Rules, an action upon a breach of contract may be commenced and determined

in any one of the following three places; namely:

(d) *Where the contract was made; or*

(e) *Where the contract ought to have been performed; or*

(f) *Where the defendant resides.*

Thus, a plaintiff suing for a breach of contract is entitled to take B
advantage of any of the alternatives and rely on it to choose the venue
convenient for him. (p. 886 D)

ACTIONS - Corporation - Residence of

8. It has been judicially pronounced that the residence of a corporation is C
the place of its central management and control. This is normally the
place where the board of Directors function or the place of business of
the Managing Director or that of the parent company and not a branch
office or liaison office. See Unit Construction Company Ltd v. Bullock D
[1960] A.C. 351. The issue as to where the control is, is one of fact. See
Union Corporation v. I.R.C. (1952] 1All E.R. 646 at 657. It does appear
reasonable to say that what could determine the residence of a University E
such as the respondent herein may be the place of its central manage-
ment and control. This is the place where the Vice-Chancellor works or
the main campus. (p. 887 B)

Company - Actions - Originating process

9. The appellant has alluded to the observation made by the court below, F
to the effect that the service of the originating processes in the liaison
office was valid, although not strictly an issue before this court, I am of
the view that the observation is erroneous. A corporate body in this con- G
text, either a company registered under the Companies And Allied Mat-
ters Act, 1990 or a statutory Corporation such as the respondent in this
case, can only be served under the relevant rules of court, by giving the
writ of summons or document to any director, trustee, secretary, or
other principal officer of the corporate body to be served, or by leaving H
the same at its registered or Head office. It is bad or ineffective to serve
the documents at any branch office. See Watkins v. Scottish Imperial
Insurance Co. [1889] 23 Q. B.D. 285. (p. 887 E)

APPEALS - Actions - Venue

10. The trial court had in any event found as a fact that:

B *“There is no doubt that the contract was to be performed at Calabar outside the jurisdiction of this court and there is no doubt also that the defendant does not “reside” within the jurisdiction.”*

There was no appeal to the Court of appeal against that decision.

C In my view, the issue of the residency of the respondent in Lagos has been determined by the trial court. Since there was no appeal on such a finding the appellant cannot raise the issue of residence at this court. I also resolve issues 3 and 5 against the appellant. (p. 887 H)

Issues - Duty of appellate court

D 11. There is no doubt that an appeal court such as the Court of Appeal is duty bound to determine all the issues properly raised before it and the failure to deal with the issues raised before it may lead to an order for rehearing, but an order for rehearing may be inappropriate, where it is E clear, that no miscarriage of justice has been occasioned by the failure to deal with the issue canvassed or that the irregularity is not that of a substantial nature so as to prejudice any of the parties. See *Abilawon v. Akanji* [1995] 7 N.W.L.R. (pt. 406) 129.

F In my view, this is an appropriate case to invoke the powers of the Supreme Court under section 22 of the Supreme Court Act to examine the preliminary objection of the appellant before the Court of Appeal. (p. 889 B)

G ***Interlocutory appeal - Preliminary objection***

H 12. The appellant’s objection to the respondent’s appeal was that the decision appealed was interlocutory and as such the grounds of appeal must be grounds of pure law, before the appeal can be filed without leave. It is very clear to me, that even though, the decision of the trial court may be interlocutory for which leave may be required, section 241(1)(b) of the 1999 Constitution provides that an appeal may be as of right from the decisions of the High Court to the Court of Appeal in the

following cases: (b) *Where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings.*”

All the five grounds of appeal question the trial court’s application of the law on the question of its jurisdiction to entertain the matter. The issues for determination filed by the appellant referred to above clearly indicated and proved that. I accordingly find no merit in the preliminary objection and I reject it. Consequently the fourth issue is also ruled against the appellant. (p. 889 D & F)

REPRESENTATION

O. JOLAAWO, WITH HIM MISS. P. TARFA, K. OLOWOKERE, AND MISS. O. OBIAJULU, FOR THE APPELLANT/CROSS-RESPONDENT. MRS. SYLVIA SHINABA, WITH HER MRS. M.O. WAYO, FOR THE RESPONDENT/CROSS-APPELLANT.

CASES REFERRED TO

Dr. Augustine Nsa Ani v. University of Ibadan [1992] 5 N.W.L.R. (pt. 240) 217

Umaru v. Abdul-Mutallabi [1998] II N.W.L.R. (pt. 573) 247

Anyabine v. Okolo [1998] 13 N.W.L.R. (pt. 582) 444

Boogom v. Awam [1995] 7 N.W.L.R. (pt. 410) 692

Globe fishing Ind. V. Coker [1990] 7 N.W.L.R. (pt. 162) 265

Amadi v. NNPC [2000] 10 N.W.L.R. (pt. 674) 76 at 112

Ajuwon v. Akanni & 10 others [1993] 9 N.W.L.R. (pt. 316) 182

Okafor v. Ezenwa [2002] 13 N.W.L.R. (pt. 784) 319

Arobo v. Aiyeleru [1993] 3 N.W.L.R. (pt. 280) 126 at 142

Ikoku v. Ekeukwu [1995] 7 N.W.L.R. (pt. 410) 637 at 642

Abilawon v. Akanji [1995] 7 N.W.L.R. (pt. 406) 129

RULES REFERRED TO

High Court of Lagos State (Civil Procedure) Rules 1972, Order 10 rules H (1) and (2) now Order 11 of 1994 Rules, Order 1A rule 3 now order 2 Rule 3 of the 1994 Rules

LEAD JUDGMENT BY MUSDAPHER JSC

These are an appeal and a cross-appeal against the decision of the Court of appeal, Lagos, given on 8th of April, 2000 allowing the appeal of the defendant against the decision of the Lagos High Court Hunponu-
 B Wusu J, whereby he dismissed the defendant's preliminary objection to the jurisdiction of the trial court to entertain the suit. The matter started this way: Kraus Thompson Organisation Limited as plaintiff took out a specially endorsed Writ of Summons with a statement of claim on the 22/
 C 11/1994 against the University of Calabar, the defendant. The plaintiff's claim against the defendant was in the following terms:-

"i. The sum of SW Fr. 31, 840 and 19065.87 US Dollars being unpaid outstanding sum of money due to the plaintiff in respect of supplies of books and/or journals, the equivalent in Nigeria currency at the Central Bank of Nigeria (CBN) exchange rate is N950,540.34 for the purpose of payment of filing fees.

ii. 10% interest per annum on the outstanding judgment sum until
 E *final liquidation of the debt.*

iii. Such further or other sums of money as the defendant may be found liable to the plaintiff at the trial of this suit.

iv. Cost of this litigation."

The originating processes were duly served on the defendant at
 F their liaison office in Lagos within the jurisdiction of the court. The defendant was tardy in appearance to writ and/or in filing a statement of defence. The plaintiff therefore applied on the 21st of December, 1994 for judgment in default of appearance and in default of defence. In the mean-
 G while and on the 11/1/1995, the defendant filed unconditional appearance to the suit and applied for extension of time within which to file and serve statement of defence. On the 6/2/1995, the defendant filed its proposed statement of defence. The plaintiff, pursuant to Order 10 rules (1) and
 H (2) of the High Court of Lagos State (Civil Procedure) Rules 1972, now Order 11 of 1994 Rules, applied for summons for judgment on the 22/2/1995. It was on the 31/3/1995 that the defendant filed a Notice of Preliminary Objection to the hearing of the suit. It is the subject matter of the

appeal. The Notice of Preliminary Objection was in these terms;

“NOTICE OF PRELIMINARY OBJECTION

UNDER THE INHERENT JURISDICTION OF THE COURT

TAKE NOTICE, that the above named defendant intends to raise a preliminary objection to the hearing of this suit and plaintiff’s summons for judgment when the same comes up before his Lordship, Honourable Justice S.O. Hunponu-Wusu at Court 11 on Monday, the 3rd day of April 1995 at Nine O’clock on the ground that this Honourable Court lacks the jurisdiction to entertain the suit. B

GROUNDS OF OBJECTION ARE THAT: C

- i. The Writ of summons in this suit is not properly commenced.
 - ii. The University of Calabar has its seat in Calabar, Cross River State, and that the law establishing it, established it for Calabar.
 - iii. The contract, the subject matter of this suit was not executed in Lagos. Neither the plaintiff nor the defendant reside in Lagos State. D
- FURTHER TAKE NOTICE that the defendant intends to rely on the Writ of Summons pleadings and Motions with Affidavits files in this matter.”

The plaintiff filed a counter-affidavit opposing the preliminary objection. Paragraphs 3, 4 and 5 of the counter-affidavit read; E

“3 That this action was instituted in the Lagos High Court which has jurisdiction in this matter, thus the Writ of Summons was properly commenced.

4. That the defendant/appellant carries on business and or resides in Lagos through its Liaison Office at No 71, Adelabu Street, Surulere, Lagos within the jurisdiction of this Honourable Court. F

5. That to confirm paragraph 4 above, a copy of plaintiffs’ motion for judgment dated 21st December, 1994 was served on the defendant/applicant through its Liaison Office at No. 71, Adelabu Street, Surulere, Lagos and the document was received by one Mr. Adeniyi Z.O., Secretary of the defendant University who is an Officer of the defendant/applicant who is resident in Lagos.” G H

The trial court after hearing counsel on the preliminary objection ruled on the 24/11/1995 that the service of the processes on the defendant was proper and that the trial court had the necessary jurisdiction to

entertain the matter. Thus, it dismissed the preliminary objection on the issue of residence.

The defendant felt unhappy with the decision dismissing the preliminary objection., it appealed to the Court of Appeal. The three issues
B for determination submitted by the defendant were found to be more in line with the grounds of appeal than the five issues submitted by the plaintiff. The issues decided by the Court of Appeal were:

C *“1. Whether the Lagos State High Court was right in assuming jurisdiction to hear this suit when the course of action has no legal nexus with Lagos State, the territorial jurisdiction of the said Honourable court.*

*2. Whether the learned trial judge was right in relying on and applying the findings in the case of Dr. Augustine Nsa Ani v. University of Ibadan [1992] 5 N.W.L.R. (pt. 240) 217 when the subject matter of
D the dispute before him and the relationship between the appellant and the respondent was contractual.*

*3. Whether service of the Originating Processes on the appellant at its Liaison Office in Lagos is proper and good service capable of
E activating the jurisdiction of the Lagos State High Court in the circumstances of this suit.”*

In his Judgment Oguntade, J.C.A., with which was Galadima and Akaahs, JJ.C.A. concurred. Observed:

F *“However, the lower court at page 72 of the record of proceedings said: “There is no doubt that the contract was to be performed at Calabar outside the jurisdiction of this court and there is no doubt also that the defendant does not reside within the jurisdiction.”*

G *“I am surprised that the lower court made the above finding because there was nothing placed before it by way of evidence from which it could have correctly come to the conclusion. But the plaintiff has not appealed against the above finding and I must take it that it was correctly made.*

H *So if a defendant in a case of breach of contract that was to be performed outside Lagos State (i.e. Calabar) and in which the defendant does not reside within Lagos State, happened to have been served in Lagos State, then the Lagos State High Court has jurisdiction? I think*

not. The case Ani v. University of Ibadan [1992] 5 N.W.L.R. (pt. 240) 217 is irrelevant for the purpose of determining the issue of jurisdiction in this case. It could only have been used to determine the validity of service. While I am able to say that the defendant was validly served. I am unable to say that the Lagos State High Court has jurisdiction to hear and determine this suit. In view of the finding which the lower court made and which has not been challenged on appeal, this appeal therefore succeeds. I make an Order striking out the suit by the plaintiff. XXXXXXXXXXXX."

The plaintiff felt unhappy with the decision of the Court of Appeal and has now appealed with the leave of that court to this court on a Notice of Appeal containing five grounds of appeal. Distilled from the grounds of appeal, the plaintiff (hereinafter referred to as the appellant or cross-respondent and the defendant as the respondent or cross-appellant as the circumstances may determine) has identified formulated and submitted to this court the following five issues for the determination of the appeal:

"i. Whether the finding of the Court of appeal that the lower court had reached a finding of fact to the effect that the defendant/appellant/respondent does not reside within the jurisdiction of the court i.e. Lagos State which the plaintiff/respondent/appellant has not appealed against was based on any specific issue submitted to the court for determination and if the answer to the issue is no, whether the court could rule on an issue without inviting the parties and or their counsel to address the court on such an issue.

ii. Whether the Court of appeal in stripping the word reside of the quotes as used by the trial judge i.e. ("Reside") in his ruling had not deprived the word i.e. reside of its intended meaning in the context.

iii. Whether the High Court of Lagos State has jurisdiction to hear and determine the appellant's suit against the respondent based on a contract when the respondent has a Liaison Office/Residence in Lagos.

iv. Whether it was judicious and judicial exercise of the Court of Appeal's discretion to refuse to rule on the appellant's preliminary objection against the respondent's Notice, and Grounds of appeal.

v. *Whether on the totality of the evidence and materials before the Court of Appeal, the respondent's appeal ought not have failed.*"

As alluded to above, the respondent has also filed a cross-appeal against the judgment of the Court of Appeal. The complaint is against the following observations of the Court of Appeal:

"(i) *There was no evidence from the defendant as to any matter of fact why the lower court had no jurisdiction in the matter.*

(ii) *There was nothing placed before the lower court from which that court could have correctly held that "There is no doubt that the contract was to be performed at Calabar outside the jurisdiction of this court and there is no doubt also that the defendant does not reside within jurisdiction" and*

(iii) *That the defendant was validly served.*"

Distilled from the Notice of the Cross-appeal, the following are the issues formulated for the determination of the cross-appeal:

"i. *Whether the Court of appeal was right to have held that there was no evidence from the defendant as to any matter of fact why the lower court had no jurisdiction in the matter;*

ii. *Whether the lower court was right to have held that there were no facts before the learned trial judge to justify the findings of the learned trial judge that the defendant resides outside the jurisdiction of the Lagos state High Court and that the contract was to be performed at Calabar.*

iii *Whether the defendant/cross-appellant was properly served at its liaison office in Lagos."*

The cross respondent formulated more or less the same issues for the determination of the cross-appeal. I shall however, deal with the cross appeal on the basis of the cross appellant's brief of argument.

At the hearing of the appeal and the cross-appeal, both learned counsel relied on and adopted their respective written briefs and in addition made oral submissions elaborating the arguments canvassed in their written briefs. I shall in this judgment deal firstly with the appeal and secondly with the cross-appeal.

THE APPEAL

ISSUE NO. 1

The complaint of the appellant under issue No. 1 is that the Court of Appeal raised as an issue a matter which was not submitted to it for the determination of the appeal and further that when the court raised the issue suo motu, it went ahead and decided the issue without calling upon the parties to address the court on that issue. It is said that the Court of Appeal was in error to have found, that the trial court “had reached a finding of fact to the effect that the defendant/appellant/respondent does not reside within the jurisdiction of the court i.e. Lagos State, which the plaintiff/respondent/appellant has not appealed against” because the finding was not based on any issue submitted to the Court of Appeal for determination.

It is submitted that the respondent as the appellant in the Court of Appeal merely made a passing reference to the fact only in particular (b) Of ground No. One. It is again submitted that appeals are argued based on issues for determination and not based on particulars of a ground of appeal. It is further argued that there was no issue raised by either of the parties for the Court of Appeal to deal with it. It is also argued that the Court of appeal was wrong to raise the issue and decide upon it without calling on the parties to react to it when the decision on the point materially affected the case of the appellant. Learned counsel refers to and relies on the case of *Ejowhomo v. Edok Eter Limited* [1986] 5 N.W.L.R. (pt. 39) 1 S.C. It is also argued that whenever a court raises an issue different from those raised by the parties, an opportunity must be given to the parties to be heard on the issue before a decision is reached. Learned counsel refers to *Umaru v. Abdul-Mutallabi* [1998] II N.W.L.R. (pt. 573) 247. *Anyabine v. Okolo* [1998] 13 N.W.L.R. (pt. 582) 444.

The learned counsel for the respondent on the other hand argued, that the respondent as the appellant in the Court of Appeal had properly raised the issue under Ground of Appeal number one and as also specifically under issue No. 1. The learned counsel for the appellant conceded that the issue was raised specifically under particular (b) of ground of appeal number one. Learned counsel refers to *Boogom v. Awam* [1995] 7 N.W.L.R. (pt. 410) 692, *Globe fishing Ind. V. Coker* [1990] 7 N.W.L.R. (pt. 162) 265. It is submitted that the Court of appeal did not raise any

additional issue suo motu.

Now, it is settled law that when an issue is not placed before a court, such court has no business whatsoever to deal with it as decisions of a Court of Law must not be founded on any ground in respect of which it has neither received argument from or on behalf of the parties before it not even raised by or for the parties or either of them. See *Shitta-Bay v. F.P.S.C.* [1981] 1 S.C.N.C.L.R. 372, *Saude v. Abdullahi* [1989] 4 N.W.L.R. (pt. 116) 387. **The law is also well established that it is not competent for any court suo motu to make a case for either or both of the parties and then proceed to give judgment on the case so formulated contrary to the case of the parties before it.** See *Commissioner for Works, Benue State and Anor. v. Devcon Development Consultants Ltd.* [1988] 3 N.W.L.R. (pt. 83) 407. *Nigerian Housing Development Society Lt. And Anor. V. Mumini* [1977] 2 S.C. 57, *Adeniji v. Adeniji* [1972] 1 AII N.L.R. (pt. 1) 298, *A.C.B. Ltd. v. Northern Nigeria* [1967] N.M.L.R.231. **There can be no doubt that courts of law have the power to raise suo motu relevant issue or issues which are not before the court for the determination of the case. In exercising this power, however, the court must adhere strictly to the principles of natural justice and in particular, to the audi alteram partem rule. Accordingly, the law is also well settled that on no account should a court raise a point or issue suo motu no matter how clear it may appear to be, and then proceed to resolve it one way or the other without inviting the parties to address it on the point. If it does so, it will be in flagrant abuse and breach of the aggrieved party's right to fair hearing as entrenched in the Constitution.** See *Ugo v. Obiekwe* [1989] 1 N.W.L.R. (pt. 99) 566. *Oje v. Babalola* [1991] 4 N.W.L.R. (pt.185) 267. **In other words, when a court for any compelling reasons finds it necessary and particularly in the interest of justice, to raise a point or issue suo motu, the parties must be given an opportunity to be heard on such point or issue, particularly the party that may be prejudiced as the result of the point raised suo motu.** See *Ejowhomu case supra*. *Adegoke v. Adibi* [1992] 5 N.W.L.R. (pt. 242) 410. *Atanda v. Lakanmi* [1974] 3

S.C. 109, Odiase v. Agho [1972] 1 AII N.L.R. (pt. 1) 76.

Now the question whether the respondent/defendant was resident at Lagos and therefore by virtue of that fact clothing the Lagos State High Court with jurisdiction is not in my view a fresh matter additionally raised suo motu by the Court of Appeal. The issue of jurisdiction is relevant and the live wire of the case before the Court of Appeal. The first issue as argued by the respondent as the appellant in the Court of Appeal reads:

“Whether the Lagos State High Court was right in assuming jurisdiction to hear this suit when the cause of action has no legal nexus with the Lagos State, the territorial jurisdiction of the Said Honourable Court.”

It is clearly spelt out that the “territorial jurisdiction” of the Lagos High Court was in issue and if the defendant was found to be resident in Lagos, the Lagos High Court will have “territorial jurisdiction” in the matter. Again in treating the issue in its brief the respondent recalled the specific finding of the trial court that:

“There is no doubt that the contract was to be performed at Calabar outside the jurisdiction of this court and there is no doubt also that the defendant does not ‘reside’ within jurisdiction.

(See page 72 of the record).

In my view, the Court of Appeal did not raise the issue suo motu; the issue arose from the first ground of the appeal and issue No. 1 and was fully argued by the parties in their respective briefs.

There is no doubt whatever, that the trial court has found as a fact at page 7 of his ruling, which can be found at page 78 of the record of appeal lines 1-3 thus:

“There is no doubt that the contract, was to be performed at Calabar outside the jurisdiction of this court and there is no doubt also that the defendant does not ‘reside’ within jurisdiction.”

The appellant did not appeal against this decision and the Court of appeal, in my view is entitled to refer to it in its consideration of the jurisdiction of the trial court to entertain the matter. **The trial court has reached this fundamental and crucial decision, which has not been challenged by the appellant. The finding cannot be an issue which**

the Court of Appeal raised suo motu. The Court of Appeal merely observed the effect of the unchallenged decision of the trial court on the appellant's case, was binding on the parties. In any event, as I mentioned above, the question was raised in the ground of appeal number one and the first issue. Curiously the issue number one in the Court of appeal by the appellant herein as the respondent read:

*"Whether the High Court of Lagos State has jurisdiction to entertain the suit arising from contract where the appellant has a liaison of-
fice in Lagos within the jurisdiction of the court."*

This clearly to my mind entitled the Court of appeal to mention the finding of the trial court that the defendant was not resident in Lagos, which was not appealed against by the appellant herein. Since there was no appeal against the finding both parties and the Court of appeal were bound by the finding. I find no merit in this complaint. Issue number one is accordingly resolved against the appellant.

ISSUE 2

The second issue submitted by the appellant for the determination of the appeal by this court is whether the Court of appeal in stripping the word reside of the quotes as used by the learned trial judge i.e. (reside) in his ruling had not deprived the word i.e. reside of its intended meaning in the context.

It is submitted that the Court of appeal took away the quotes to the word reside as used by the learned trial judge when quoting the learned trial judge. It is submitted that the word "reside" as used by the trial judge is different in meaning from the word reside as used by the Court of appeal.

The learned counsel for the appellant relies on the book Building English skills, Yellow Level, by Mc Dougal, Litter and Company at page 755 on the intended use of quotes:

"14.6 Words used in special ways or special senses are endorsed in quotation mark."

I fail to perceive the importance of the missing quotation marks on the word reside when the Court of appeal was quoting the

exact words used by the trial court. The word *reside* as used by the learned trial court in my view refers to residence of a defendant within the meaning and intendment of Order 1A rule 3 of the High Court of Lagos State (Civil Procedure) rules 1972:-

“all suits for the specific performance or upon the breach of any contract may be commenced and determined in the jurisdiction in which the contract ought to have been performed or in which the defendant resides.”

The learned counsel for the appellant has not told us the special meaning ascribed to the word ‘*reside*’ by the learned judge when he put the quotation marks. In my view the quotation marks were merely put by the learned trial judge in order to show that the defendant UNIVERSITY OF CALABAR is not a physical person capable of residing as a being. To insist that the quotation marks used by the trial judge mean anything else would amount to *reductio ad absurdum*.

In my view, the complaint of the appellant is merely academic or linguistic. Accordingly, whether the word “*reside*’ as used by the trial court bearing the quotation marks or *reside* as used by the Court of appeal without the quotation marks, the meaning and intention, in the context used, is the same, the operative phrase, “*does not reside*” being in the negative. I am of the view that when the court of appeal quoted the passage of the trial court and omitted to use the quotation marks on the word – *reside*, such omission did not change in any way the significance of the passage as used by the trial judge. Such omission did not cause any miscarriage of justice. It is not every error or mistake that will cause a reversal of a decision on appeal. There is miscarriage of justice only where there are substantial errors in the adjudication, with the resultant effect that the party relying on such errors may likely have judgment in his favour. See *Amadi v. NNPC* [2000] 10 N.W.L.R. (pt. 674) 76 at 112. There is no miscarriage of justice or failure of justice where it is not shown that the decision reached is prejudicial or inconsistent with the substantial rights of a party. See *Ajuwon v.*

Akanni & 10 others [1993] 9 N.W.L.R. (pt. 316) 182.

What the learned counsel is attempting to do is raise a distinction without a difference. There is no merit whatever in this complaint. I reject it and resolve the second issue against the appellant.

ISSUES NOS. 3 & 5.

The issues raise the question whether the High court of Lagos State has jurisdiction to hear and determine the appellant's suit against the respondent based on contract when the respondent has liaison office/residence in Lagos. It is submitted that the Court of Appeal having found that the respondent was properly served in Lagos, clearly shows that the fact that the respondent has a liaison office/residence in Lagos, the Lagos high Court has jurisdiction to try the matter. See order 1A rule 3 of the High Court of Lagos state (Civil Procedure) Rules 1972 now order 2 Rule 3 of the 1994 Rules.

Now by virtue of Order 1A Rule 3 of the High Court rules of Lagos State 1972 or as amended by virtue of Order 2 Rule 3 of the 1994 Rules, an action upon a breach of contract may be commenced and determined in any one of the following three places; namely:

(d) Where the contract was made; or

(e) Where the contract ought to have been performed; or

(f) Where the defendant resides.

Thus, a plaintiff suing for a breach of contract is entitled to take advantage of any of the alternatives and rely on it to choose the venue convenient for him. In the instant case, the plaintiff purportedly chose where according to him the defendant resides – i.e. the Liaison Office in Lagos. See *Okafor v. Ezenwa* [2002] 13 N.W.L.R. (pt. 784) 319. It is common ground that the contract in the instant case was not made in Lagos and was not to be performed in Lagos. So it is the residence of the defendant, that the appellant was using in order to clothe the Lagos State High Court with the jurisdiction to entertain the matter. The appellants argue that the respondents have a liaison office in Lagos and they were served with the processes in that office and that being so, they say, the action was properly instituted in Lagos and that the Lagos State

High Court has jurisdiction on the grounds of residency of the respondent. Because the respondents have a liaison office in Lagos can one say that the respondents are resident in Lagos for the purposes of giving the High Court of Lagos jurisdiction to entertain a case of breach of contract?

There is no dispute that in addition to its main office, place of business the respondent has a liaison office in Lagos. In my view its residence or place of business can only be determined from the test applied to corporations or companies under the Civil Procedure Rules. **It has been judicially pronounced that the residence of a corporation is the place of its central management and control. This is normally the place where the board of Directors function or the place of business of the Managing Director or that of the parent company and not a branch office or liaison office. See Unit Construction Company Ltd v. Bullock [1960] A.C. 351. The issue as to where the control is, is one of fact. See Union Corporation v. I.R.C. (1952) 1All E.R. 646 at 657. It does appear reasonable to say that what could determine the residence of a University such as the respondent herein may be the place of its central management and control. This is the place where the Vice-Chancellor works or the main campus. The appellant has alluded to the observation made by the court below, to the effect that the service of the originating processes in the liaison office was valid, although not strictly an issue before this court, I am of the view that the observation is erroneous. A corporate body in this context, either a company registered under the Companies And Allied Matters Act, 1990 or a statutory Corporation such as the respondent in this case, can only be served under the relevant rules of court, by giving the writ of summons or document to any director, trustee, secretary, or other principal officer of the corporate body to be served, or by leaving the same at its registered or Head office. It is bad or ineffective to serve the documents at any branch office. See Watkins v. Scottish Imperial Insurance Co. [1889] 23 Q. B.D. 285. The trial court had in any event found as a fact that:**

“There is no doubt that the contract was to be performed at Calabar outside the jurisdiction of this court and there is no doubt also that the defendant does not “reside” within the jurisdiction.”

There was no appeal to the Court of appeal against that decision. In my view, the issue of the residency of the respondent in Lagos has been determined by the trial court. Since there was no appeal on such a finding the appellant cannot raise the issue of residence at this court. I also resolve issues 3 and 5 against the appellant.

ISSUE NO. 4

The fourth issue submitted for the determination of the appeal is whether it was judicious and judicial exercise of the Court of appeal’s discretion to refuse to rule on the appellant’s preliminary objection against the respondent’s Notice and grounds of appeal.

It is submitted that the appellant as the respondent in the court below in its respondent’s brief at pages 3-7 raised preliminary objection to the appeal filed by the respondent herein. The respondent also replied in their reply brief. It is submitted that the Court of appeal failed to consider the preliminary objection in its judgment contrary to the decisions of this court in *Okonji v. Njokanma* [1991] 7 N.W.L.R. (pt 202) 131.

The respondent on the other hand argued, that the issue of the competency of the respondent’s appeal before the Court of Appeal was decided by the trial court when the respondent applied to that court for the stay of proceedings pending appeal. It was submitted that the appellant argued that the appeal was incompetent on the same basis and the trial court ruled against the appellant and the appellant did not appeal. The respondent argued that the preliminary objection cannot be relitigated against as between the parties vide *Arobo v. Aiyeleru* [1993] 3 N.W.L.R. (pt. 280) 126 at 142, *Ikoku v. Ekeukwu* [1995] 7 N.W.L.R. (pt. 410) 637 at 642.

It is further submitted, that even though the Court of appeal did not directly rule on the preliminary objection, the failure to rule did not occasion any miscarriage of justice, because the issue raised in the Notice of Appeal which was filed on time has to do with jurisdiction for

which no leave was required. It is again argued that this court should invoke its powers under section 22 of the Supreme Court Act, to decide the merit or otherwise of the preliminary objection.

There is no doubt that an appeal court such as the Court of Appeal is duty bound to determine all the issues properly raised before it and the failure to deal with the issues raised before it may lead to an order for rehearing, but an order for rehearing may be inappropriate, where it is clear, that no miscarriage of justice has been occasioned by the failure to deal with the issue canvassed or that the irregularity is not that of a substantial nature so as to prejudice any of the parties. See Abilawon v. Akanji [1995] 7 N.W.L.R. (pt. 406) 129.

In my view, this is an appropriate case to invoke the powers of the Supreme Court under section 22 of the Supreme Court Act to examine the preliminary objection of the appellant before the Court of Appeal.

The appellant's objection to the respondent's appeal was that the decision appealed was interlocutory and as such the grounds of appeal must be grounds of pure law, before the appeal can be filed without leave. I have carefully examined the five grounds of appeal filed by the respondent and in my view all the grounds were grounds of pure law attacking the jurisdiction of the trial court to adjudicate in the matter. It is very clear to me, that even though, the decision of the trial court may be interlocutory for which leave may be required, section 241(1)(b) of the 1999 Constitution provides that an appeal may be as of right from the decisions of the High Court to the Court of Appeal in the following cases:

“(a) Not relevant.

(b) Where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings.”

All the five grounds of appeal question the trial court's application of the law on the question of its jurisdiction to entertain the matter. The issues for determination filed by the appellant referred to above clearly indicated and proved that. I accordingly find no

merit in the preliminary objection and I reject it. Consequently the fourth issue is also ruled against the appellant.

All the issues canvassed on behalf of the appellant having failed, this appeal deserves to fail and it is dismissed by me.

B I shall now deal with the cross-appeal.

The issues raised by the cross-appellant and agreed to by the cross respondent are:

C *"i. Whether the Court of appeal was right to have held that there was no evidence from the defendant as to any matter of fact why the lower court had no jurisdiction in the matter.*

ii. Whether the lower court was right to have held that there were no facts before the learned trial judge to justify the findings of the learned trial judge that the defendant resides outside the jurisdiction of the Lagos State High Court and that the contract was to be performed at Calabar.

D *iii. Whether the defendant/cross-appellant was properly served at its liaison office in Lagos."*

In my consideration of the main appeal, these issues arose and E were adequately dealt with. The fundamental and crucial issue that the court below adverted its mind to was the fact that the trial court found that the respondent was not resident in Lagos and the fact that the contract was not to be performed in Lagos clearly deprived Lagos State of F the geographical jurisdiction to deal with the matter. All these issues are minor and do not affect the main reason for the decision of the Court of Appeal. As mentioned above, I have dealt with them when considering the main appeal.

G In the end both the appeal and the cross-appeal are dismissed by me. The appellant's case filed before the trial court is hereby struck out I make no order as to costs.

H **KUTIGIJSC**

I read before now the judgment just delivered by my learned brother, Musdapher, JSC, I agree with his reasoning and conclusion. Both the appellant suit No. LD/528/90 filed before the trial High Court is hereby

struck-out. Each side to bear its own costs.

KATSINA-ALU JSC

I have read before now, in draft. The judgment delivered by my B learned brother, Dahiru Musdapher, J.S.C. in this appeal. I entirely agree with him that both the main appeal and the cross-appeal lack merit and must fail. The central issue in this appeal is ISSUE No. I. It states as follows:

“1. Whether the finding of the Court of Appeal that the lower C court had reached a finding of fact to the effect that the Defendant/Appellant/Respondent does not reside within the jurisdiction of the court i.e. Lagos State which the Plaintiff/Respondent/Appellant has not appealed against was based on any of the specific issues submitted to the D court for determination and if the answer to the issue is no. Whether the court could rule on such an issue without inviting parties and or their counsel to address the court on such an issue.”

This issue has no merit whatsoever,. Let me explain. The respon- E dent herein. University of Calabar was the appellant in the Court of appeal, Ground 1 of the Grounds of appeal in that court states as follows:

“1. The learned trial judge erred in law in assuming jurisdiction in the matter arising from contract when the cause of action had no legal F nexus with Lagos State.

PARTICULARS

(A) Section 236(1) of the 1979 Constitution (as amended) has provided each State of the Federation with a High Court and by the provisions of Order 1A rule 3 of the High Court of Lagos State [Civil Proce- G dure] rules 1972. All suits for the specific performance or upon the breach of any contract may be commenced or determined in the jurisdiction in which such contract ought to have been performed or in which the Defendant resides. H

[b] It is agreed by the parties and the learned trial judge found as a fact that the contract, the subject herein, ought to have been performed at Calabar in cross river State and that the Defendant resides in Calabar.

Cross-River state-outside his jurisdiction.”

The Respondent as Appellant raised issue No. 1 based on the above ground 1. It reads:

“(1) *Whether the Lagos State High Court was right in assuming jurisdiction to hear this suit when the cause of action has no legal nexus with Lagos State, the territorial jurisdiction of the said Honourable Court.*”

The record shows that this was exhaustively argued by the parties in their respective briefs of argument. Surely, it cannot now be seriously contended that the Court of appeal raised the issue suo motu. It did not. I therefore answer this issue against the appellant.

As I have already indicated. I am in total agreement with the judgment of my learned brother Dahiru Musdapher. In the result I also dismiss both the main appeal and the cross-appeal. The appellant’s case is accordingly struck out. I also make no order as to costs.

UWAIFO JSC

I had the opportunity to read in draft the judgment of my learned brother, Musdapher, J.S.C. I agree with it for the reasons he has given. I shall express my views in support briefly.

The short issue in the main is whether the High Court of Lagos State has jurisdiction to entertain an action in respect of a contract, which was made and was performed outside Lagos, even though the defendant has a liaison office in Lagos. The relevant Rule of Court is Order 1A Rule 3 of the High Court of Lagos State (Civil Procedure) Rules 1972 as amended. It provides that:

“*All suits for the specific performance or upon breach of any contract may be commenced and determined in the jurisdiction in which the contract ought to have been performed or in which the defendant resides.*”

In the present case, the contract was for supply of books and journals. It is not in dispute that the alleged contract was said to have been made in Calabar and performed also in Calabar. Obviously the University of Calabar which is the defendant is located in Calabar. But it has

a liaison office in Lagos. The question is, would that also make Lagos the residence of the said University?

In order to determine the venue in which an action can be brought against the University of Calabar in respect of this contract, consideration must be given to where the contract was made, or was performed or to be performed, or where the said University resides. The venue will be decided upon either of those alternatives as already established by the authorities of this court; see *University Press Ltd. v. I.K. Martins (Nig.) Ltd.* [2000] 4 N.W.L.R. (pt. 654) 584 at 598-599; 603; *Okafor v. Ezenwa* (2002) 13 N.W.L.R. (pt. 784) 319 at 335 –336.

The meaning of “*residence*” could at times be ambiguous and effort should be made to give it an appropriate meaning, depending on the facts, particularly if a person is known to have two places of abode: see *In Re Bowie ex parte Breull* [1880] 16 Ch. D. 484. In *R v. The Mayor of Exeter*, *Wescomb’s case* [1868] 4 L.R.Q.B. 110 at 113, Blackburn, J., said:

“The question is whether there has been a degree of inhabitation as to be, in substance and in common sense, a residence. When a person has a country and a town house, it is a mere question of fact whether he has two, or only one residenceit is a pure question of fact.”

But in respect of a corporal body, like a University, it may depend on the place of its central management and control: see *Union Corporation v. I.R.C.* [1952] 1 All E.R. 646 at 657; or where the parent body is located and at which the Chief Executive may reside but most certainly works. In the case of a University that will be the Vice-Chancellor’s office, or the main campus: see *Unit Construction Co. Ltd v. Bullock* [1960] A.C. 351.

In the present case, a liaison office established by the University of Calabar in Lagos for purposes other than the management and control of the University can hardly be regarded as the residence of the said University. I am of the view that Calabar, where the University of Calabar is located, is the residence of that University.

For these reasons and those more fully stated by my learned brother, Musdapher, J.S.C, I too find no merit in the appeal. I accordingly dismiss

and make no order for costs.

EJIWUNMIJSC

B I have had the opportunity reading before now the judgment prepared by my learned brother, Musdapher, J.S.C., and which has just been delivered by him. For the reasons given in the said judgment. I will also dismiss the appeal and the cross appeal filed in this matter.

C It is manifest from the appeal and the cross-appeal that the main question for determination is, whether the High Court of Lagos State has the jurisdiction to try and determine the case that arose from an alleged breach of contract between the parties. Although there was some argument raised as to whether the trial court properly determined that the
D contract took place in Calabar, that contention cannot however be sustained. It is manifest from a careful reading of the printed record that the trial court made that finding and it is also clear that there was no appeal from that finding. Therefore, if the contract between the parties took
E place in Calabar, then the question is whether the High Court of Lagos State can be a proper venue to determine any breach of contract between the parties.

Now, while the point that I am about to consider did not directly
F form part of the argument, yet it seems to me that the heart of the argument in this case is, whether a contract that took place in Calabar in Cross River State could be the subject of litigation in a Lagos High Court. In this regard. I wish to advert to the provisions of the Constitution of Nigeria 1979 (as amended), which was applicable when this action must
G have commenced. These are sections 236(1) &(2). They read:

*“236(1) Subject to the provisions of this constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the State shall have unlimited jurisdiction to hear and deter-
H mine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is an issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect*

of an offence committed by any person.

(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a state and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.”

And due to the amendment with regard to jurisdiction of a State High Court, I deem it apposite to set out section 272(1) of the 1999 Constitution which reads:

“Subject to the provisions of section 251 and other provisions of this Constitution, the High court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.”

I do not think that it requires any elaborate argument to show from the above provisions of the Constitution that each State of the federation shall be seized to and determine suits that occurred within the territorial area of each state. So in the instant case as the contract between the parties was executed in Calabar, it seems to me that it is the High Court of Cross River State that has the jurisdiction to hear and determine any dispute between the parties with regard to the contract.

Turning to the question as to whether the service of court processes on the officer of the respondent working in the Liaison Office of the respondent, is sufficient to proceed in the matter in the High Court of Lagos state, it is my view that such service is not competent. It could probably be taken as proper service if it was a term of the contract between the parties that such service would be binding on the respondent. But that may also be subject to section 239 of the 1979 Constitution which reads;

“The High Court of a State shall exercise jurisdiction vested in it by this Constitution or by any law in accordance with the practice and procedure (including the service and execution of all civil and criminal processes of the court) from time to time prescribed by the House of

assembly of the State.”

Upon the above premise with regard to the Constitution. I think the practice now developing of using Liaison Offices, be it of State Governments or Corporations to found an action against the Government or any other body should and must be discouraged.

As I have observed at the beginning of this judgment, this appeal is dismissed by me for the above reasons and the fuller reasons given in the leading judgment of Musdapher, J.S.C. I also abide with the orders made as to costs.

D

1. In logic, the method of disproving an argument by showing that it leads to an absurd consequence.

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