

**SUPREME COURT OF NIGERIA**

3RD APRIL, 2009. S.C. 235/2003

**CORAM:- D. MUSDAPHER, I. F. OGBUAGU, F. F. TABAI,  
J. O. OGBE, S. M. MUNTAKA-COOMASSIE, JJSC**

1. FEDERAL MINISTRY OF HEALTH  
2. AFROLUX AVIATION LTD ..... APPELLANTS  
AND  
COMET SHIPPING AGENCIES LTD ..... RESPONDENT

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ADMIRALTY - Carriage - Loss of goods - Liability of an agent - In view of the failure of the respondent - To produce evidence of warehousing the goods with NPA PLC - Trial judge was right to have invoked s. 16 (3) of the Act against him (H1)

PRACTICE & PROCEDURE - Joinder - Document not produced - S. 149 (d) Evidence Act - Respondent ought to have applied to join NPA as 2nd defendant - If indeed it delivered the goods to them - Failure to do so justifies the invocation of s. 149 (d) (H2)

ADMIRALTY - Loss of goods - Apportionment of liability - S. 16 (1), (2) & (3) of Admiralty Jurisdiction Act - The subsections provide for separate, specific & distinct situations - They do not need to be read together (H3)

CONTRACTS - Creation of - Carriage of goods - The trial judge was right to have held that a combination of the Debit note - Issued by the respondent to the appellant - And the receipt voucher - Created a contract between the parties (H4)

BAILMENT - Action for breach - Presumption of fault - The loss of or damage to goods in bailee's possession - Places the onus of proof on the bailee - To show that it occurred without his fault (H5)

APPEALS - Judgments - Misconceived - Fate of - Where it is a product of a misconception of the case contained in the records - It is liable to be set aside (H6)

COURTS - Issues - Raised but not resolved - Propriety of - Except

the Supreme Court, all Courts generally have the duty - To resolve all issues put before it (H7)

COURTS - Issues - Where irrelevant - Non-reference to it - Propriety - There is nothing wrong with it, considering that an appellate court is entitled - To formulate its own issues - If it considers those of the parties irrelevant (H8)

### **FACTS**

The plaintiffs/appellants sued the defendant/respondent claiming a declaration that they were entitled to the delivery of some goods allegedly in the possession of the respondent. In the alternative, appellants claimed damages for loss of the goods. It was in evidence that the respondent, who was the agent of a carrier company, took possession of the goods but was unable to explain what happened to them eventually.

After hearing, the learned trial judge found in favour of the appellants and gave judgment accordingly. Dissatisfied, the respondent appealed to the Court of Appeal which allowed the appeal. Aggrieved, the appellant has brought this appeal against the judgment of the Court of Appeal.

### **ISSUES FOR DETERMINATION**

*“2.2 Whether in the circumstances of the case the Learned Justices of the Court of Appeal were right in holding that there was no relationship between the Appellants and the Respondent creating a bailment and if the issue is resolved in the negative what is the liability of a bailee to the bailor. (sic) no?*

*2.3 Whether it was proper for the Court of Appeal not to make pronouncement one way or the other on the issues formulated in the matter before it”.*

**HELD** (Unanimously allowing the appeal per **OGBUAGU JSC**)

### **ADMIRALTY - Carriage - Loss of goods**

1. The learned trial Judge, in my respectful view, rightly invoked Section 16 (3) of the Act against the Respondent. I had reproduced earlier in this Judgment, the finding of fact and holding of the court below, that the Respondent who should or ought to have produced documentary evidence by which it delivered to or

warehoused the said goods with the NPA PLC, did not so produce.  
(p. 870 F)

***Joinder - Document not produced***

2. I or one will expect that the Respondent, if it was standing on a firm ground that it actually delivered the goods of the Appellants which it admitted, it received, especially when the 2nd Appellant had in writing, drawn its attention to the fact that the NPA had stated also in writing, that it had not received the said goods will immediately, confront the NPA with documentary evidence of such delivery by it and receipt of the same by NPA. As found as a fact by the two lower courts, there was no such documentary evidence. Even, when it was sued by the Appellants, it should have applied to the trial court, for the joinder of the NPA as a second or co-defendant he should have alerted the carrier/master of the development. In my respectful view, in all the circumstances, I hold that the learned trial Judge, was right in the invocation of Section 149(d) of the Evidence Act.  
(p. 871 D/G)

***ADMIRALTY - Loss of goods - Apportionment of liability***

3. Section 16(1), (2) & (3) of Act, in my respectful view, are clear and unambiguous. There is/are no word or words that need any interpretation whatsoever. The sub-sections, provide for separate, specific and distinct situations. They are not vague. There will be no need reading them together. What for? I or one may ask. I hold with profound humility and greatest respect to the learned Justices of the court below, that they were in error to state that the learned trial Judge should have not relied on Section 16(3) of the Act and that he/she should have invoked Section 16(1) of the Act which was not applicable in the circumstances of the case that had led to the instant appeal. The situation or circumstances, with respect, did not arise. I so hold. (p. 873 A)

***CONTRACTS - Creation of - Carriage of goods***

4. As found out rightly in my view, by the learned trial Judge that a combination of Exhibit C - Debit note issued by the Respondent to the 1st Appellant for the sum of three hundred and twenty five naira (#325), stated therein being “supervision charges and Documenta-

*tion fees*”in respect of 109 cartons on Komsomolta on Bill of Lading 155 and Exhibit D which was Receipt Voucher for the said sum of #325.00 issued to the 1st Appellant by the Respondent, was/is to create a contract between the 1st Appellant and the Respondent. I agree. (p. 875 G)

B

***BAILMENT - Action for breach - Presumption of fault***

5. In cases of bailment, the onus of proof, (as held by the court below (supra), is always on the bailee to show that the loss or damage to the property received by him or it or entrusted to him or it, occurred without negligence and in the words of the court below, what the defendant or respondent, did with the 1st plaintiff's goods. In other words, the law is that the loss of, or damage or injury to a chattel or goods while it is in the bailee's possession, places the onus of proof on the bailee to show that it occurred without his fault or negligence. (p. 877 B)

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***Judgments - Misconceived - Fate of***

6. It is now settled that where a court of law - trial or Appellate, misconceives the case contained in the Records and reaches a conclusion in that misconception, the court will certainly, set aside the Judgment which is a product of the misconception. With profound humility and the greatest respect, this is what happened in this case by the court below. (p. 878 B)

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***Issues - Raised but not resolved - Propriety of***

7. In respect of the second issue of the parties, generally it is settled that except in this Court, all issues, ought and must be considered or dealt with by the intermediate court. In other words, unless or except in the clearest of cases, an intermediate court such as the Court of Appeal, should endeavour, to resolve or pronounce on all issues put before it. (p. 878 D)

G

***H Issues - Where irrelevant - Non-reference to it - Propriety***

8. It is settled that where the issue placed before the Judge, is one not relevant or crucial to the determination of the case before the court, non-reference to it, is not a denial of fair hearing and I will add, that it will not occasion a miscarriage of justice.

I find nothing wrong in the court below's decision to deal only with the fifth issue of the Respondent. Afterwards, an Appellate Court, is entitled to reject any issue or issues of the parties and formulate its own issue or issues which it considers to be germane and crucial to or in the determination of any appeal before it. (pp. 879 H/880 E)

B

### **NOTABLE POINT OF INTEREST** **MUSDAPHER JSC**

#### *1. Law of bailment overlaps that of contract, tort & of property*

Though bailment of goods is quite often associated with a contract, this is not always the case. An action against a bailee can be presented, not only as an action in contract, nor in tort, but as an action on its own SUI GENERIS, arising out of the possession of the goods of another had by the bailee of the goods. The law of bailment overlaps the categories of the law of contract, tort and indeed property. (p. 881 B)

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### **REPRESENTATION**

Otunba Yomi Oshikoya, Esq.,- for the Appellants, with him, S A. Akorede-Lawal, Esqr.

E

Adegboyega, Thompson, Esqr.,- for the Respondent.

### **CASES REFERRED TO**

Archbishop Jatau v. Alhaji Ahmed & 4 ors. (2003) 1 SCNJ. 382 @ 388

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Calabar East Co-operative Thrift & Credit Society Ltd. & 3 ors. v. Etim E. Ikot (1999) 12 SCNJ. 321 @ 338

Light Industries Ltd. v. P.N. Chmukwe & anor. (1995) 4 NWLR (Pt.390) 379. (1995) 4 SCNJ. 162

G

Ogunbiyi v. Ishola (1996) 6 NWLR (Pt.452) 12 @ 24: (1996) 5 SCNJ. 143

Naka B.B.B. Manufacturing Co. Ltd, v. A.C.B.. Ltd. (2004) 1 SCNJ. 193 @ 202 - 203

Federal College of Education; Okene v. Anyanwu (1997) 4 NWLR H (Pt.501) 533 C.A

Chief Okparaeke v. Egbuonu (1941) 7 WACA 53

Owosho v. Dada (1984) 7 S.C. 149(3), 163-164

Uredi v. Dada (1988) 1 NWLR (Pt.69) 237 @ 246: (1988) 2 SCNJ.

128

Jinkatoro & 6 ors. v. Alhaji Dantoro & 6 ors. (2004) 5 SCNJ. 152

**STATUTES REFERRED TO**

Admiralty Jurisdiction Act, 1991, s. 16 (1), (2) & (3)

B Evidence Act, s. 149 (d)

**LEAD JUDGEMENT BY OGBUAGU JSC**

This is an appeal against the decision of the Court of Appeal,  
C Lagos Division (hereinafter called “the court below”) delivered on  
2nd December, 2002 allowing the appeal of the Respondent and  
setting aside, the Judgment of the trial court delivered on 16th No-  
vember, 1999.

D Dissatisfied with the said decision, the Appellants, have ap-  
pealed to this Court, on four grounds of appeal. Without their par-  
ticulars, they read as follows:

“A. Error in Law

The learned justices of the court of appeal erred in Law when  
they held:

E *“the lower court should have invoked Section 16(1) which  
makes the carriers liable for the wrongs committed by their agent  
rather than Section 16(3) which is only concerned with wrongs done  
by the ship)”.*

F *[the underlining mine]*

B. Error in Law

The learned justices of the court of appeal erred in law when  
they held:

G *“On the facts available I think that the plaintiff ought to have  
brought their claim only against the carrier and not the Defendant.  
The facts neither established that the Defendant had a contract with  
the Plaintiff nor a relationship creating a bailment”.*

C. Error in Law

H *The learned justices of the court of appeal erred in Law when they  
failed to make any pronouncement one way or the other on the  
issues raised by the Appellant and the Respondents in their respec-  
tive briefs”, (sic)*

D. *The judgment is against the weight of evidence.*

The Appellants who were the Plaintiffs in the trial court, at the

Federal High Court, Lagos, in paragraph 16 in their 4th Amended Statement of Claim dated 27th May, 1998, on which they prosecuted or fought the case, claimed from the Defendant/Respondent, as follows:

“(a) *A declaration that the Plaintiffs are entitled to the delivery of 109 cartons (10,909 packs) of essential drugs more particularly described in the commercial invoice No. CWP93-070 dated 16 February, 1993 carried to Apapa sea ports Lagos from Republic of South Korea. EX KOMOSMOLSK of 28/5/93 which goods are in the custody and possession of the Defendant.*

(b) *An order releasing the said 109 cartons of essential drugs to the Plaintiffs.*

#### ALTERNATIVELY

(c) *The sum of US \$108,928.14 or its equivalent in Naira at the prevailing exchange rate at the time of the purchase of the drugs and N350,500.00 being special damages respectively and the sum of #1,000,000 being general damages for the negligence of the Defendant in handling the consignment and for illegal and continued detention of the said drugs.*

#### PARTICULARS OF SPECIAL DAMAGES

1. Cost of goods	US \$108,928.14
2. Loss of earning on professional fees	N350,000.00
General Damages	1,000,000.00

*Interest on the said sum at the rate of 21 % per annum from 2nd June, 1993 until judgment and thereafter at 6% until the final liquidation of the judgment debt with costs “.*

The Respondent’s case was fought on its 2nd Amended Statement of Defence dated 22nd December, 1997. At the close of pleadings, the matter went into trial. While four (4) witnesses testified for the Appellants, only one witness - DW1, testified for the Respondent. A number of exhibits were tendered by the Appellants while the Respondent tendered two exhibits. At the close of the respective case of the parties and addresses by their respective learned counsel, the learned trial Judge -Ukeje, J. (as he/she then was), in a very well considered Judgment in my respectful view, found in favour of the Appellants that the Respondent, was liable as a Bailee for the loss of the Appellants’ said goods.

Dissatisfied with the said Judgment, the Respondent appealed to the court below which allowed the appeal and set aside the said Judgment, hence the instant appeal to this Court.

When this appeal came up for hearing on 13th January, 2009, the leading learned counsel for the appellants - Oshikoya, Esq.,  
B adopted their Brief and urged the Court to allow the appeal, reverse the Judgment of the court below and restore the Judgment of the trial court.

Thompson, Esq. - the learned counsel for the Respondent,  
C also adopted the Respondent's Brief and he urged the court, to dismiss the appeal. He referred to page 236 lines 8 to 36 of the Records as to the comments of the court below. He also referred to page 3 paragraph 4-6 of their Brief and said that they stated the principles, but that their conclusion was rejected. Thereafter, Judgment was re-  
D served till to-day.

The Appellants, have formulated two issues for determination, namely,

*"2.2 Whether in the circumstances of the case the Learned Justices of the Court of Appeal were right in holding that there was  
E no relationship between the Appellants and the Respondent creating a bailment and if the issue is resolved in the negative what is the liability of a bailee to the bailor. (sic) no?"*

*2.3 Whether it was proper for the Court of Appeal not to make  
F pronouncement one way or the other on the issues formulated in the matter before it".*

On its part, the Respondent, has also formulated two issues for determination, namely,

*"2.1 Whether in the circumstances of the case the Learned  
G Justices of the Court of Appeal were right in holding that there was no relationship between the Appellants and the Respondent creating a bailment.*

*2.2 Whether in arriving at their decision that there was no relationship between the Appellants and the Respondent creating a bail-  
H ment, the Learned Justices of the Court of Appeal carried out a thorough consideration of all the issues framed by the parties".*

Although it is not stated in the two Briefs of the parties under which of the grounds of appeal the said issues were distilled from, I will ignore the omission, having regard to the fact that the two issues



of the parties, are similar although differently couched. In my respectful view, the grounds of appeal, relate substantially, to the said issues or vice versa. It is now firmly settled that for an issue for determination to be competent, it must be based on a ground of appeal. In other words, the issue or issues formulated, by either an Appellant or Respondent, must be based on and correlate with the ground or grounds of appeal. See the cases of *Captain Amadi v. NNPC (2000) 10 NWLR (Pt.674) 76; (2000) 6 SCNJ. 1; (2000) 6 S.C. (Pt.1) 66; (2000) FWLR (Pt.9) 1527; (2000) WRN 47; Archbishop Jatau v. Alhaji Ahmed & 4 ors. (2003) 1 SCNJ. 382 @ 388* just to mention but a few. Otherwise, the consequence, is that such issue or issues, will be struck out. See the case of *Ikegwuoha v. University of Jos (2005) All FWLR (Pt.280) 1573*.

I say so, because, there is also an omnibus ground of appeal. It is firmly settled that an appeal predicated on the omnibus or general ground, is not at large. It cannot be used to raise an issue or issues of law, Such issue of law, must be raised as a separate ground of appeal and not made an adjunct to the omnibus ground. See the case of *Calabar East Co-operative Thrift & Credit Society Ltd. & 3 ors. v. Etim E. Ikot (1999) 12 SCNJ. 321 @ 338*.

Now to the merits of this appeal. The learned trial Judge at pages 136 - 137 of the Records, formulated (as he/she was entitled to do), three issues which he/she considered relevant for the determination of the case. See the cases of *Awojugbagbe Light Industries Ltd. v. PN. Chinukwe & anor. (1995) 4 NWLR (Pt.390) 379. (1995) 4 SCNJ. 162* citing other cases therein; *Ogunbiyi v. Ishola (1996) 6 NWLR (Pt.452) 12 @ 24; (1996) 5 SCNJ. 143*, to the effect that a court, can and is entitled to reformulate an issue or issues formulated by a party or counsel, in order to give it or them, precision and clarity. See also the case of *Naka B.B.B. Manufacturing Co. Ltd. v. A.C.B. Ltd. (2004) 1 SCNJ. 193 @ 202 - 203*. The issues formulated, read as follows:

“i. *Whether the Defendant is a Bailee in respect of the Plaintiffs’ goods, the subject-matter of this suit, and in that regard, whether the Defendants did receive and are in possession of and detaining the plaintiffs’ goods, the subject-matter of this suit.*

2. *Whether the Plaintiffs are entitled to a declaration that they are entitled to the delivery of 109 Cartons (10,909 Packs) of essential*

drugs as denied (*sic*) (meaning contained or shown) in the Commercial Invoice, admitted herein as EXHA1; and consequentially an order releasing the 109 Cartons to the 1st Plaintiff.

(ii). An Order granting the sum of \$100,928.14; as well as #350,000 to the plaintiffs as in paragraph 17 of the 4th Amended

B Statement of Claim; and

(iii) Interest as claimed; and

3. Depending on the answer to the *quære* raised under issues 1 and 2 *supra* to make Consequential Orders”.

C His Lordship, then painstakingly, dealt with the first issue and at page 144 of the Records, held as follows.

“I therefore answer the first *quære* in the negative (*sic*) and hold that the Defendants have failed to prove that the goods, the subject-matter herein, were delivered to the Nigerian Ports Authority D by the Defendants; and therefore, has failed to prove that the goods are in the custody of the Nigerian Ports. The Defendants are therefore Bailees by operation of Law under S.16 (3) Admiralty Jurisdiction Act by the facts as proved in this case”.

E I note that at the tail end of page 233 and part of page 234 of the Records, the court below, stated as follows;

“..... At the close of pleadings therefore both parties were ad idem that the defendant was only a Shipping Agent or bailee or independent contractor to the carriers of plaintiffs goods with whom F the plaintiff had a contract of affreightment of cargo”.

The court below at page 236 of the Records, significantly and remarkably, stated inter alia, as follows:

G “From the reasoning of the trial judge as revealed in the passage of the judgment reproduced above, it would seem that the approach adopted was that since it was the Defendant’s case that it collected plaintiffs goods and had them warehoused with the Nigerian Ports Plc., the onus was on the Defendant to provide documentary proof by which the goods were received by the NPA Plc; and since the Defendant failed to produce such proof, it would be deemed H to be in possession of Plaintiff’s goods”.

It then concluded as follows:

I do not see how the reasoning of the lower court could be faulted in its approach if it was the Defendants case that it warehoused the goods with NPA Plc; surely it ought to produce the docu-

*mentary evidence by which it did so. I do not therefore accept the argument of the appellant that because the plaintiff did not call any witness who saw the goods in the defendant's warehouse, the plaintiff did not prove its case as to the possession by the defendant of plaintiff's goods. It seems to me that once the defendant accepted that it had dominion over the goods whether physical or merely documentary, the onus was on the defendant to show what it did with the plaintiffs goods".* B

*[the underlining mine]*

This should have been the end of this appeal in favour of the Appellants. C

In spite of the above findings of fact, with respect, it made a rather strange twist, at the last paragraph of page 236 and continued at page 237 of the Records, as follows:

*"But the crucial question is - was the defendant liable to the plaintiff in bailment? The plaintiffs did not sue the carriers with whom they had a contract of affreightment for the failure to deliver the goods. Rather they sued an agent to the carriers. Now it is a settled principle of law that an agent could not be sued for the wrong of a disclosed principal.* D E

*The facts of this case disclosed that the defendant was only an agent for the carriers. In everything it did in relation to plaintiffs goods the defendant was an agent for the carriers. It did not negotiate with the plaintiff on any matter in its own name. The law is that where an agent makes a contract solely in his capacity as agent for his principal and a third party, he is not liable to a third party on it: See *Montgomerie v. U.K. Mutual Association Ltd.* (1891) 1 Q.B. 370 at 371. The position of the defendant here was that he had the duty as a shipping agent to ensure that plaintiff's goods were discharged from the conveying vessel and landed. The case of the plaintiff was that the defendant negligently performed that duty. It ought to be borne in mind here that the plaintiffs did not plead that they had an independent contract with the defendant".* F G

Regrettably, the court below, did not, with respect, advert its "mind" firstly, to the Statutory provision of Section 16(3) of the Admiralty Jurisdiction Act, 1991 (hereinafter called "the Act"), which made or recognized the Respondent, as a Statutory Agent and secondly, that the Respondent as earlier found as a fact and held by it as H

afore shown, admitted in its evidence, that it took delivery of the said goods of the Appellants and was unable to explain what happened to the said goods.

For the avoidance of doubt, I will reproduce the provisions of Section 16(1) and (3) which are relevant in this case leading to this appeal as was done by the learned trial Judge at page 140 of the Records. They provide as follows:

“16(1) *The Charterer, Manager or Master of any ship in a Nigeria Port or Territorial Waterways who authorises an Agent to act for the ship in relation to any purpose for which the ship is in Nigeria, shall be liable for any act, declaration, default, omission or commission of his Agent in carrying out his agency.*

“16(3) *A person who acts as an Agent of the Owner, Manager or Operator of the ship may be personally liable irrespective of the liability of his principal for the act or default, omission or commission of the ship in respect of anything done or failed to be done in Nigeria*”.

[the underlining mine]

In paragraph 5 of the 2nd Amended Statement of Defence, as also noted by the learned trial Judge, it is/was averred as follows::

“*The Defendant avers that in relation to Plaintiff’s cargo it carried out the duties referred to in paragraph 4 above as Agent of the carrier and supervised the discharge of the cargo from the vessel into the custody of the Nigerian Ports Plc*”.

***The learned trial Judge, in my respectful view, rightly invoked Section 16 (3) of the Act against the Respondent. I had reproduced earlier in this Judgment, the finding of fact and holding of the court below, that the Respondent who should or ought to have produced documentary evidence by which it delivered to or warehoused the said goods with the NPA PLC, did not so produce.*** I repeat, the court below, stated inter alia;

“*It seems to me that once the defendant accepted that it had dominion over the goods whether physical or merely documentary, the onus was on the defendant to show what it did with the plaintiffs goods*”

[the underlining mine]

The learned trial Judge had invoked the provisions of Section 149(d) of the Evidence Act Cap. 112 Laws of the Federation, 1990

against the Respondent. It is noted by me as the trial court found as a fact at page 141 of the Records, that the PW4 who is/was, the Manager in the Nigerian Ports Authority (hereinafter called "the NPA") in-charge of claims, documentation and administration, swore that all investigations into their records, revealed that there is no record that the cargo, was received into the shed and that this fact, was conveyed to the 2nd Plaintiff/Appellant by Exhibit N. I also note that the 2nd Appellant, was/is the Sole Clearing Agent appointed by the 1st Plaintiff. By his letter of 4th July, 1994, he informed the NPA, that it had not located the consignment or the goods and the NPA replied that the said consignment, was not received into their shed. When the 2nd Appellant, wrote to inform the Respondent that the NPA have informed it that it had not received the said goods, the Respondent, replied that the Appellants' claim, are statute barred. All these are borne out from the records.

***I or one will expect that the Respondent, if it was standing on a firm ground that it actually delivered the goods of the Appellants which it admitted, it received, especially when the 2nd Appellant had in writing, drawn its attention to the fact that the NPA had stated also in writing, that it had not received the said goods will immediately, confront the NPA with documentary evidence of such delivery by it and receipt of the same by NPA. As found as a fact by the two lower courts, there was no such documentary evidence. Even, when it was sued by the Appellants, it should have applied to the trial court, for the joinder of the NPA as a second or co-defendant he should have alerted the carrier/master of the development -*** see the case of *Ranson v Plan* (1911) 2 K.B. 291, 300, 305, 308 referred to in *Coldman v. Hill* (*infra*) if it was sure it was standing on solid ground or strong wicket. ***In my respectful view, in all the circumstances, I hold that the learned trial Judge, was right in the invocation of Section 149(d) of the Evidence Act.*** As noted by the learned trial Judge, what is admitted, need no farther proof. He/she cited and relied on the case of *Federal College of Education; Okene v. Anyanwu* (1997) 4 NWLR (Pt.501) 533 C.A. See also the cases of *Chief Okparaeke v. Egbuonu* (1941) 7 WACA 53; *Owosho v. Dada* (1984) 7 S.C. 149(3), 163-164; *Uredi v. Dada* (1988) 1 NWLR (Pt.69) 237 @ 246; (1988) 2 SCNJ. 128 and *Jinkatoro & 6*

*ors. v. Alhaji Dantoro & 6 ors. (2004) 5 SCNJ. 152 @ 172 C.A.* and too many others. See also Section 75 of the Evidence Act and referred to and relied on by the trial court. Afterwards, apart from facts admitted need not be proved, it is also settled that an admission, is relevant against the party, who made it or his agent. See the cases of  
 B *Edosomwan v. Ogbeyfun (1996) 4 NWLR (Pt.442) 266; (1996) 4 SCNJ. 20; (1996) 36 LRCN 432 @ 450* and *Insurance Brokers of Nig. v. Atlantic Textiles Manufacturing Co. Ltd. (1996) 9-10 SCNJ. 171; (1996) 42 LRCN 1523 @ 1542*. See also Sections 19, 20, 21,  
 C 22 and 28 of the Evidence Act. I have also noted earlier in this Judgment, that the court below, had stated that at the close of pleadings, the parties were *ad idem* that the Respondent, was only “a Shipping Agent or *bailee* or independent contractor to the carriers of the Appellants goods with whom the plaintiff had a contract of affreight-  
 D ment of cargo.

The court below at page 240 of the Records, faulted the trial court’s reliance on Section 16(3) of the Act and thought that in order to know the import of Section 16(3), the whole Section, ought to be read together. It reproduced Section 16(1), (2) & (3) of the Act and  
 E at page 241 of the Records, stated *inter alia*, as follows:

“It seems to me that Section 16(3) of Admiralty Jurisdiction Act cannot be used indiscriminately as a basis of the general liability of an agent even where there is an affreightment contract in existence between the carrier his principal and the consignee. The lower  
 F court should have invoked Section 16(1) which makes the carriers liable for the wrongs committed by their agent rather than Section 16(3) which is only concerned with wrongs done by the agent”.

With the greatest respect to the court below, I do not agree  
 G with it. I concede that it is now settled that in the interpretation of a Statute, the whole of the statute, must be read in order to determine the meaning and effect of the words being interpreted. See the cases of *Eze Akuneziri v. Chief Okenwa & ors. (2000) 15 NWLR (Pt.691) 526 @ 553; (2000) 12 SCNJ. 242* - per Ayoola, JSC; *Action Congress & anor. v. INEC (2007) 12 NWLR (Pt.1048) 222 @ 257 - 260; (2007) 6 SCNJ. 65; (2007) 6 S.C. (Pt.II) 212; (2007) All FWLR (Pt.378) 1012; (2007) 155 LRCN 291; (2007) KLR 295; (2007) Vol. 10 SCM 125; (2007) 12 SCM (Pt.2) 57*- per Katsina-Alu, JSC, citing the case of *Buhari & anor. v. Chief Obasanjo & 264 ors. (2005)*

13 NWLR (Pt.219) 1 @ 219.

**Section 16(1), (2) & (3) of Act, in my respectful view, are clear and unambiguous. There is/are no word or words that need any interpretation whatsoever. The sub-sections, provide for separate, specific and distinct situations. They are not vague. There will be no need reading them together. What for? I or one may ask. I hold with profound humility and greatest respect to the learned Justices of the court below, that they were in error to state that the learned trial Judge should have not relied on Section 16(3) of the Act and that he/she should have invoked Section 16(1) of the Act which was not applicable in the circumstances of the case that had led to the instant appeal. The situation or circumstances, with respect, did not arise. I so hold.** Rather, Section 16(3), was the relevant sub-section that was applicable at least when the Respondent and the court below, are claiming and holding respectively, that the Respondent, is an Agent to a disclosed principal. So, assuming the Respondent, was/is an agent, *stricto sensu* in the circumstances of the case, the Act provides that he may be personally liable irrespective of the liability of the principal. Period! Afterwards, the court below at page 242 of the Records, stated that “each case must be considered on its own facts. So be it in the instant case leading to this appeal. What is more, it is now firmly settled that where the words in a statute, are clear and unambiguous, they should be given their plain ordinary meaning. See the cases of *Buhari & anor. v. Chief Obasanjo & ors.* (supra) @ 206, 274 ; *Eze Akuneziri v. Chief Okenwa & ors.* (supra) and *Chief Okotie-Eboh v. Chief Ehiomo Manager & ors.* (2004) 12 SCNJ. 139 just to mention but a few.

I now come to “*the main the main*” so to speak. - i.e. Whether the Respondent was/is a Bailee or an Agent to a disclosed principal. The court below, unjustifiably, with respect, stated firstly at page 237 of the Records that the trial court, one noticed, that “*it was at great pains to identify the basis of the liability ascribed to the Defendant as a bailee*”. Again with respect, I do not agree. Rather or instead, he/she admirably and painstakingly, relied on the settled law by both English decided authorities and that of the two Appellate Courts of this land, in arriving at the correct and right decision, that the Respondent, on his admission and in the circumstances of the instant

cases, was a bailee.

At page 241 of the Records, there is, with respect, the uncomplimentary statement/observation that,

*“The lower court in an attempt to find a contractual link between the Defendant and the plaintiffs relied on Exhibits “C” “D” which were debit notes and receipt respectively for supervision charges and documentation. I do not think that exhibits “C” and “D” establish a contract of any form between the defendant and the plaintiff. The better view to hold is that the defendant issued those exhibits in furtherance of his contractual duties with the carriers”.*

With respect again, I do not agree.

The court below, reproduced at page 239 of the Records the meaning of bailment in Halsbury’s Laws of England, 4th Edition Vol.2 paragraph 1501 thus:

*“A bailment, properly so called, is a delivery of personal chattels on trust, usually on a contract, express or implied, that the trust shall be duly executed, and the chattels redelivered in either their original or an altered form, as soon as the time or use for, or condition on,, which they were bailed shall have elapsed or been performed”.*

The above, was referred to and reproduced by this Court - per Iguh, JSC in the case of Broadline Enterprises Ltd. v. Monterey Maritime Corporation & anor. (1995) 9 NWLR (Pt.417) 1 @ 49, which was/is reproduced at page 137, 144 - 145 of the Records by the learned trial Judge (it is also reported in (1995) 10 SCNJ. 1). The court below, continued thus;

*“The legal relationship of bailor and bailee can exist by the voluntary taking into custody of goods which are the property of another, as in cases of sub-bailment or of bailment by finding. The element common to all types of bailment is the imposition of an obligation, because the taking of possession in the circumstances involves an assumption of responsibility for the safe keeping of the goods”.*

I note again, that the above, was also referred to and reproduced by the learned trial Judge at page 144 of the Records in the case of Kepler v. Ofosia (1995) 3 NWLR (Pt.384) 415 C.A..

In fact as stated in the said Halsbury’s, an action against a bailee, can be regarded as an action on its own, *sui generis*, arising out



of the possession had by the bailee of the goods (as in the instant case where the Respondent, admitted receiving the consignment and as found as a fact by the two lower courts).

Indeed in *Broadline Enterprises Ltd.*, case (*supra*), this Court, as noted by the trial court at page 145 of the Records, also held, inter alia, that, B

*“The liability of a bailee may rest on express contract between him and the owner of the goods concerned. However, this notwithstanding, there is generally the collateral liability in Tort for negligence which arises from the breach of a legal duty owed by the Bailee to the owner of the goods”.* C

In the case of *Hill Station Hotel Ltd. v. Adeyi* (1996) 4 NWLR (Pt.442) 294 @ 304 C.A. also referred to and reproduced by the learned trial Judge, it was held inter alia, as follows:

*“The law regarding bailment overlaps the categories of the laws of contract, tort or property. A bailee’s duty to take care with regard to the subject-matter of the bailment can be in contract or in tort. A plaintiff establishes a justiciable cause of action by proving bailment on which a duty of care arises at common law on the part of the Defendant, not to be negligent in respect of plaintiffs goods independently of any contract and in breach of that duty”.* E

*[the underlining mine]*

Yet, and most regrettably with respect, the lower below court that even reproduced the holdings of the two Appellate Courts in the above three cases, stated at page 237 of the Records as I earlier noted, that reading through the judgment of the trial court, one notices that it was at great pains to identify the basis of the liability ascribed to the Respondent as a bailee. To say the least, this is unfortunate. F

***As found out rightly in my view, by the learned trial Judge that a combination of Exhibit C - Debit note issued by the Respondent to the 1st Appellant for the sum of three hundred and twenty five naira (#325), stated therein being “supervision charges and Documentation fees” in respect of 109 cartons on Komsomolta on Bill of Lading 155 and Exhibit D which was Receipt Voucher for the said sum of #325.00 issued to the 1st Appellant by the Respondent, was/is to create a contract between the 1st Appellant and the Respondent, I agree.*** G H

This is because, I note that significantly, the court below, at page 242 of the Records, had this to say, inter alia;

"I am aware that the liability of a bailee may rest upon a contract express or implied. It may also arise independently of contract as in breach of a legal duty. But each case must be considered on its own facts....." -

[the underlining mine]

See also the cases of Co-operative Supply Association Ltd. v. Intercontra Ltd. and Panalpina World Transport (Nig Ltd. v. Wariboko [1975] 2 S.C 2 just to mention but a few.

I agree and this fact, has been settled law in both Book Authorities and a number of English and our local decided cases. See Halsbury's Laws of England (supra), Clerk & Lindsell on Torts 14th Edition page 156 paragraph 269 and the cases of Brabant & Co. V. Thomas Mulhall King (1895) A.C. 632 @, 640, 641 (P.C) - per Lord Watson; Turner v. Stallibrass & ors. (1989) 1 Q.B. 56 @ 59-50 - per Collins, L.J.; Coldman v. Hill (1919) 1 K.B. 443 @ 454 - per Scrutton, L.J.; Holts Transport Ltd, v. K. Chellarams & Sons (Nig.) Ltd. (1973) All NLR 165 @ 171 - 174 - per Coker, JSC citing some other cases therein, Broadline Enterprises Ltd, v. Monetary Maritime Corporation anor. (supra); Halliburton Nig Ltd v. Cletus Chapele (1996) 8 NWLR (Pt.468) 554 @ 563, 564 C.A. citing some other cases therein, just to mention but a few. I note that the Respondent, is still keeping the money paid to him by the 1st Appellant for his professional services as evidenced in the said Exhibits "C" & "D".

Yet, and in spite of this awareness or concession and the earlier holding of the court below that it could not fault, the approach of the learned trial Judge and that once the Respondent, accepted that it had dominion over the goods whether physical or merely documentary, the onus was on the Respondent to show, what it did with the 1st Appellant's goods, it concluded thus:

"There is certainly no contract express or implied between the plaintiff and the defendant. It will be stretching the facts too much to say that the defendant was in breach of the legal duty owed to the plaintiff by the defendant. The facts at the highest only show that the defendant negligently performed its contractual duties in the contract between it and the carriers" .

Wonderful! However, with respect, I again, do not agree. The

evidence clearly shows that the Respondent even charged the 1st Plaintiff “*supervision charges and documentation fees*” in respect of the delivery of the said goods by it to the 1st plaintiff see Exhibits C and D. This was in respect of its legal duty owed to the 1st plaintiff by the Respondent. It is settled firstly, that the law relating to the liability of a bailee for breach of bailment, is founded on the principles of *restitutio in intergrum*. Secondly, **in cases of bailment, the onus of proof, (as held by the court below (supra), is always on the bailee to show that the loss or damage to the property received by him or it or entrusted to him or it, occurred without negligence and in the words of the court below, what the defendant or Respondent, did with the 1st plaintiff's goods. In other words, the law is that the loss of, or damage or injury to a chattel or goods while it is in the bailee's possession, places the onus of proof on the bailee to show that it occurred without his fault or negligence.** See the cases of *Broadline Enterprises Ltd's case (supra)*, The *General Manager, Nigerian Railway v. The U.A.C. Ltd. (1954) 14 WACA 631 @ 633; Halliburton Nig. Ltd. v. Chapele (supra)*. Afterwards, a person is said to be negligent, if he omits or fails to do something which a reasonable man under similar circumstances would do or the doing of something which a reasonable and prudent man, would not do.

In fact, it appears to me with respect, that the court below, was dealing in this case as if it was/is the general principle as to the liability of an agent for a disclosed principal. In this case, the Respondent, as I have stated earlier in this Judgment, was/is a Statutory Agent. I say so because, in his concurring Judgment, Aderemi, JCA (as he then was), stated inter alia, as follows:

“..... The appellant is a stranger to that contract. The law remains sacrosanct that an agent of a disclosed principal, such as in the instant case, is not ordinarily personally liable on a contract he enters on behalf of the said principal see (1) *KHONAM VS. JOHN (1939) 15 NLR. 12* (2) *NIGER PROGRESS LTD. VS. NORTHEAST LINE CORPORATION (1989) 3 NWLR (PT. 107) 68* AND (3) *UNION BANK OF NIGERIA LTD. VS. EDET (1993) 4 NWLR (PT.287) 288*”.

In concluding this issue, I hold that from the evidence in the Records and the circumstances, there was indeed, a relationship of Bailor and Bailee, between the Appellants and the Respondent. I

also hold that the liability of a Bailee to the Bailor, is a question of law as I have demonstrated in this Judgment. I have noted in this Judgment and as found by the two lower courts, that the Respondent, admitted having possession of the goods of the 1st Appellant. I will not bother myself (as it is unnecessary), going into the five different types of or kinds of Bailment as demonstrated/stated in the cases of Keepeler & anor. v. Ofosia (supra) — per Onalaja, JCA and Martchem Industries Nig. Ltd. v. M.F. Kent West Africa Ltd (2005) 5 SCNJ. 235 @ 257; (2005) 5 S.C. (Pt.II) 121 @ 134, 135 - per Oguntade. JSC.

**It is now settled that where a court of law - trial or Appellate, misconceives the case contained in the Records and reaches a conclusion in that misconception, the court will certainly, set aside the Judgment which is a product of the misconception.** See the cases of Oyowale v. Oyesoro (1998) 2 NWLR (Pt.539) 663 referred to in the case of Oba Adelugba & anor. v. Engr. Ologunja (2004) 2 SCNJ. 179 @ 199 - per Niki Tobi, JSC. **With profound humility and the greatest respect, this is what happened in this case by the court below.**

**In respect of the second issue of the parties, generally it is settled that except in this Court, all issues, ought and must be considered or dealt with by the intermediate court. In other words, unless or except in the clearest of cases, an intermediate court such as the Court of Appeal, should endeavour, to resolve or pronounce on all issues put before it.** See the cases of Ifeanyiichukwu (Osondu) Co. Ltd. v. Solel Boneh (Nig.) Ltd. (2000) 5 NWLR (Pt.656) 322; (2000) 3 SCNJ- 18 @. 38; Owodunni v. Registered Trustees of Celestial Church of Christ: & 3 ors. (2000) 10 NWLR (Pt.675) 315 @ 326; (2000) 6 SCNJ. 299 @ 426-427 - both by Ogundare. JSC: Odunayo v. The State (1972) 8-9 S.C. 290 @ 296 - per Sowemimo, JSC (as he then was) and Wilson & anor. v. Oshin & 3 ors. (2000) 6 SCNJ. 371 @ 397 just to mention but a few. The Appellants, have cited and relied on the case of Alkali Balogun v. Alhaji Labiran (1988) 3 NWLR (Pt.80) 60 @ 80 (it is also reported in (1988) 6 SCNJ. 75).

This is because, the principle of adjudication fundamental to the administration of justice, is that the court, is bound to consider, every material aspect of a party's case validly, put before it.

The Appellants referred to page 226 of the Records where the

court below — per Oguntade, JCA (as he then was), stated inter alia, as follows:

“I shall be guided in this judgment by the Appellant’s issues”.

It is submitted in paragraphs 5.6 and 5.7 of their Brief, that it is clear that the five (5) issues formulated by the Respondent before the court below, will be the issues to be considered and pronounced upon one way or the other by that court. That in the consideration of the issues indicated at page 228 of the Records lines 4 -25, it intended to take all the issues together and thereafter, at lines 25 - 30, pronounced that it would accord the fifth (5th) issue formulated by the Respondent/Appellant, before that court, a pride of place. The Appellants complain, that the court below, did not consider the other four (4) issues formulated by them and therefore, failed to make any pronouncement on the said issues contrary to the accepted and established principles of adjudication. That by the approach adopted by the court below, the issues formulated by the parties were not considered. The Appellants further complain that the said approach of the court below, occasioned a miscarriage of justice. The Court is therefore, urged to consider and pronounce on the said issues which they believe will, tilt the scale of justice in their favour. The case of Ukatta & 8 ors. v. Ndianaeze & 4 ors. (1997) 4 NWLR (Pt.499) 251 @ 268 is cited and relied on. (it is also reported in (1997) 4 SCNJ 117).

On the part of the Respondent, it is submitted that in arriving at their decision, that there was no relationship between the Appellants and the Respondent creating a bailment, the learned Justices, “carried out a thorough consideration of the issues framed by the parties”.

I note that at page 228 of the Records, the court below stated inter alia, as follows:

*“I shall be guided in this judgment by the appellant’s issues. I intend to take all the issues together. Because of the nature of the case however, Appellant’s fifth issue which seeks a determination as it were of the nature of the relationship between the parties must be accorded a pride of place,...”*

***It is settled that where the issue placed before the Judge, is one not relevant or crucial to the determination of the case before the court, non-reference to it, is not a denial of fair***

**hearing and I will add, that it will not occasion a miscarriage of justice.** It is very well known and accepted, that a case, can be

decided on more than one issue. See the case of Wilson & anor. v. Oshin & ors. (supra). In my respectful view, it does not constitute a denial of fair hearing or occasion a miscarriage of justice, merely because a trial or an Appellate Court, did not consider a particular issue or issues for consideration in the determination of the or a case.

In this case leading to this appeal, the crucial point as found by the two lower courts, is the relationship between the parties. The said fifth (5<sup>th</sup>) issue as found by the court below, sought/seeks a determination of the relationship between the parties. In this Judgment, I have also noted that this relationship is whether or not is that of a bailee or an Agent or even both. In this Court, after answering an issue that it considers to be crucial or cogent, and it is enough to dispose the appeal, there will be no need or any useful purpose, considering other issues. See the case of Anyaduba & anor. v. Nigeria Renowned Trading Co. Ltd. (No.2) (1992) 5 NWLR (Pt.243) 535; (1992) 6 SCNJ. 204 and Okonji & ors. v. Njokanma & ors. (1991) 7 NWLR (Pt.202) 131; (1991) 9- 10 SCNJ. 27 to mention just a few.

The Appellants have urged this Court to consider all the said issues formulated by the parties in the court below. With respect, I do not think that it is necessary in the circumstance of what I have adumbrated earlier in this Judgment. But **I find nothing wrong in the court below's decision to deal only with the fifth issue of the Respondent. Afterwards, an Appellate Court, is entitled to reject any issue or issues of the parties and formulate its own issue or issues which it considers to be germane and crucial to or in the determination of any appeal before it.** I had already said so earlier in this Judgment and referred to some decided authorities in respect thereof..

In the final analysis, I find as a fact and hold that this appeal, is meritorious and it succeeds. I allow it and hereby set aside the said decision of the court below together with the costs awarded in favour of the Respondent. I hereby affirm the said Judgment of the trial court in its entirety.

Costs follow the event. The Appellants are awarded N50,000.00 (fifty thousand naira) costs payable to them by the Respondent.

**MUSDAPHER JSC**

I have read before now the judgment of my Lord Ogbuagu, JSC with which I entirely agree. As usual, his Lordship has meticulously and comprehensively discussed all the relevant issues submitted by the parties for the determination of the appeal. I respectfully adopt the reasonings as mine. I only want to add briefly and merely for the purposes of emphasis, my comments. B

Though bailment of goods is quite often associated with a contract, this is not always the case. An action against a bailee can be presented, not only as an action in contract, nor in tort, but as an action on its own SUI GENERIS, arising out of the possession of the goods of another had by the bailee of the goods. See **BROADLINE ENTERPRISES LTD. Vs. MONTEREY MARITIME CORP** [1995] 9 NWLR (Pt. 417) 1. The law of bailment overlaps the categories of the law of contract, tort and indeed property. Bailment for reward, as in this case requires even higher standards of care on the part of the bailee See **IKE Vs. MANGROVE** [1986] 5 NWLR (Pt. 41) 350. That is why I disagree with the decision of the court below, that there was no contractual relationship between the appellant and the respondent and therefore the respondent was not responsible for the loss of the goods. C D E

I accordingly allow the appeal and set aside the decision of the Court of Appeal and restore the decision of the trial court. I abide by the order for costs contained in the aforesaid leading judgment. F

**TABAI JSC**

I had a preview of the lead judgment of my learned brother, Ogbuagu, J.S.C. and I agree with his reasoning and conclusion that the appeal has merit. In the judgment of the trial court the learned trial judge R.N. Ukeje J (as she then was) after an analysis of some oral and documentary evidence held at page 1445 of the record to the effect that the defendants (who are respondents herein) failed to prove that the goods, the subject-matter therein were delivered to the Nigerian Ports Authority by the defendants and therefore failed to prove that the goods are in the custody of the Nigerian Ports Authority. She concluded that the defendants were therefore bailees by operation of law under section 16(3) of the Admiralty Jurisdiction G H

Act and by the facts as proved in the case.

Section 16(3) of the Admiralty Jurisdiction Act Cap. A5 Laws of the Federation of Nigeria 2004 provides:

*“Any person who acts as an agent of the owner, charterer manager or operator of a ship may be personally liable irrespective of the liability of the principal, for the act, default, omission or commission of the ship in respect of anything done or failed to be done in Nigeria.”*

In view of this clear provision and the totality of the oral and documentary evidence on record, the learned trial judge was right in its reasoning and conclusion about the defendant/respondent’s liability. There was, therefore, no basis for the interference by the court below.

The result is that I also allow the appeal. The judgment of the court below is accordingly set aside. And the judgment of the trial court be and is hereby restored and affirmed. I abide by the costs as contained in the lead judgment.

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**OGEBE JSC**

I read in advance the lead judgment of my learned brother Ogbuagu, JSC just delivered and I agree with his reasoning and conclusion. I also allow the appeal and set aside the judgment of the lower court. I restore the judgment of the trial court. I award costs of N50,000.00 in favour of the appellants against the respondent.

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**MUNTAKA-COOMASSIE JSC**

I have had the preview of the judgment delivered by my learned brother Ogbuagu JSC in draft. I agree with him that the court below erred and its decision cannot possibly stand. The trial court’s decision is un-assailable and must be restored. The appeal is therefore meritorious and it actually succeeds. Same is allowed. I endorse the order as to costs.