

SUPREME COURT OF NIGERIA
FRIDAY 5TH JUNE, 2015. SC. 127/2004
CORAM:- I. T. MUHAMMAD,
M. S. MUNTAKA-COOMASSIE, O. RHODES-VIVOUR,
N. S. NGWUTA, J. I. OKORO, JJSC

1. CENTRAL BANK OF NIGERIA
2. MR. SAM INEGBENOSUN
3. THE INSPECTOR GENERAL OF POLICE
4. MR. S. G. EHINDERO (CP) APPELLANTS
5. MR. MONDAY TIM (ASP)
6. MR. EMMANUEL E. UDUBOR (CSP)
7. MR. WAHEED O. KASSIM (CP)
AND
AITE OKOJIE RESPONDENT

FUNDAMENTAL RIGHTS - Enforcement - Jurisdiction - Right of action accrued to respondent to seek redress in FHC - Over malicious prosecution by appellants' police officers (H1)

FUNDAMENTAL RIGHTS - Pleadings - Averments - Not supported by evidence - Absence of evidence to establish the legality of respondent's arrest - Renders the arrest unlawful (H2)

FUNDAMENTAL RIGHTS - Enforcement - Unchallenged evidence - Of respondent that he was unlawfully arrested and prosecuted - Is credible and compelling (H3)

ACTIONS - Limitation - Public officers - Where actions are brought against them - The same must be filed within 3 months - After accrual of cause of action - Otherwise the right is unenforceable (H4)

ACTIONS - Public officers - Liability of - They are protected if they act in good faith in dispensation of their duties - But would be afforded no protection for acts that amount to abuse of office (H5)

ACTIONS - Commencement - Statute bar - By virtue of P.O.P. Law s. 2 - Respondent's action is not statute barred - Since it was filed within

three months after his cause of action arose (H6)

DAMAGES - Exemplary damages - Proof - Claim for such damages need not be pleaded expressly - It is enough if facts in the pleadings support award of the damages (H7)

DAMAGES - Exemplary damages - Award - Purpose of - It is awarded to punish defendant for his conduct in inflicting injury on plaintiff - And can be made in addition to normal compensatory damages (H8)

SUPREME COURT - Judgment - Binding nature of - Decisions of SC are binding on all courts - But where there are conflicts in the decisions - All courts are bound by its latest decision (H9)

DAMAGES - Award - Basis - Amount of damages awarded by trial court - Is based on evidence before the court - And where there is no evidence in support - The claim would be dismissed (H10)

DAMAGES - Award - Interference - Damages are awarded at the discretion of trial Judge - And appeal court does not interfere unless - The exercise is tainted with irregularity (H11)

DAMAGES - Award - Correctness of - Damages awarded to respondent was correct - As there was nothing from appellants - To dispute the facts on which the award was made (H12)

ACTIONS - Determination - Basis - A case is decided on credible evidence led in trial court - And where no evidence is led - Nothing much can be achieved on appeal (H13)

FACTS

Plaintiff/respondent filed this action at the Federal High Court Lagos against defendants/appellants. Respondent's claim is for the sum of N10 million Naira being the sum for unlawful arrest, unlawful/wrongful detention, malicious prosecution and abuse of legal process. Respondent's case is that appellants unlawfully arrested and maliciously prosecuted him while he was acting in his professional capacity as a legal practitioner. At the trial, respondent filed a 35 para-

graphs statement of claim. 1st and 2nd respondents filed a 4 paragraph statement of defence. 3rd to 7th respondents did not file any statement of defence.

Some documents were tendered and admitted as exhibits in the matter. Hearing commenced in the matter and at the end of which the learned trial Judge entered judgment in favour of respondent. The court awarded the sum of N6.5 million as exemplary and general damages. Dissatisfied with the judgment, appellants appealed to the Court of Appeal Lagos Division. The court dismissed the appeal. Not yet satisfied, appellants appealed to Supreme Court, raising inter alia the issue of jurisdiction of the trial court and award of excessive damages to respondent.

ISSUES FOR DETERMINATION

1. Whether the judgment of the Federal High Court which the court below affirmed was not a nullity having been delivered on a matter or cause in which the court has no jurisdiction.

2. Whether the court below was right when it affirmed the decision of the trial court finding the 1st and 2nd Appellants' liable for wrongful arrest, wrongful detention and malicious prosecution and awarding exemplary damages against them.

3. Whether the court below was right when it affirmed the decision of the trial court and held that the claims of the Plaintiff was not statute barred or caught by Section 2(a) of the Public Officers Protection Act Cap. 379 Laws of the Federation of Nigeria.

4. Whether the award of the sum of N6,500,000.00 as exemplary and general damages in favour of the Respondent by the trial court and upheld by the Learned Justices of the Court of Appeal was right in Law, having due regards to the obvious facts that the Respondent did not in his Writ of Summons and/or statement of claims plead exemplary damages.

5. Whether the award of the sum of N6,500,000.00 in favour of the Respondent by the trial court was not manifestly too high and excessive in the circumstances.

6. Whether it was right in law for the trial court to award the sum of N6,500,000.00 as lump sum for exemplary and general damages without assessing the various items of damages under separate heads.

7. Whether the arrest, detention and prosecution of the Re-

spondent in the instant case by the police authorities was unlawful, illegal and unconstitutional.

HELD (Unanimously dismissing the appeal per

B **RHODES-VIVOUR JSC)**

FUNDAMENTAL RIGHTS - Enforcement - Jurisdiction

1. The malicious prosecution of the Respondent by the Appellants' police officers, who are agents of the Federal Government gave rise to the filing of this case culminating in this appeal.

D **Malicious prosecution, unlawful arrest and wrongful detention of the respondent by the Appellants are all wrong executive or administrative decisions of the Nigeria Police, an agency of the Federal Government. A right of action accrued to the Respondent to seek redress and the proper forum to hear this action is the Federal High Court by virtue of Section 230(s) of the 1979 Constitution, now Section 251(1)(r) of the 1999 Constitution. The judgment of the Federal High Court affirmed by the Court of Appeal is not a nullity since the Federal High Court had jurisdiction to hear the Respondent's action.** (p.2167 A)

F *Pleadings - Averments - Not supported by evidence*

2. Agreeing with the learned trial judge, the Court of Appeal was correct when it held that the Appellants failed to adduce evidence at the trial to establish the legality of the Respondent's arrest and detention.

G **On this reasoning, the Court of Appeal had no difficulty in affirming the finding by the trial court that the arrest and detention of the Respondent was unlawful and the subsequent prosecution of the Respondent by the appellants was malicious. I am in complete agreement with the Court of Appeal.**
H **Pleadings are no evidence. The Defendant must call evidence to support his averments. Where this is not done, the Defendant is deemed to have abandoned his defence.** (p.2170 A)

FUNDAMENTAL RIGHTS - Enforcement - Unchallenged evidence

3. Evidence that is not challenged or discredited should be accepted and relied on if such evidence is adduced to establish a relevant fact.

If I may add, the Respondent as plaintiff pleaded facts and led credible evidence which was unchallenged by the Appellants, that he was arrested, detained and maliciously prosecuted while carrying out his professional duties as a legal practitioner. The elementary position of the law is that the burden of proof shifted to the Appellants (Defendants) to lead evidence that the arrest, detention and subsequent prosecution of the Respondent were necessary in the circumstances. See Section 131-133 of the Evidence Act, 2011. The Appellants failed woefully to challenge credible and compelling evidence led by Respondent. I have no hesitation in the circumstances to affirm the findings of the Court of Appeal. The Respondent is indeed a witness of truth.

My lords, a litigant who fails to file a statement of defence and further fails to cross-examine the adverse party, in this case the Respondent, has by his own hands shut himself out from the proceedings in which the Plaintiff/Respondent makes serious allegations, claims against him. The Defendant has abandoned any defence he might have, and the court is expected to accept the Plaintiff's unchallenged evidence to establish the facts the Plaintiff seeks to establish. (p.2170 D)

ACTIONS - Limitation - Public officers

4. Where actions are brought against public officers, such actions must be brought quickly, that is to say within 3 months after accrual of the Plaintiff's cause of action as provided by Section 2 supra.

The three months time frame for bringing actions against public officers is designed to protect the public officers who are very busy people from being distracted from having to answer frivolous and vexatious litigation or be submerged in a sea of litigation usually at the instance of professional litigants. The Plaintiff must seek prompt action for the breach of his rights in a court of law within the time stipulated. If he fails

to come within 3 months he has a cause of action but sadly one that is unenforceable or cannot be heard by the courts as the courts cease to have jurisdiction over actions brought after three months.

The well laid down interpretation of the limitation law, in this case, section 2 supra is that an action filed in court after three months from the date the cause of action accrued is statute barred, but where the cause of action is a continuing act or a case of continuance of damage or injury, the three months starts to run from the cessation of the continuing act, damage or injury, and if the action is at the instance of a prisoner, he may commence his action within three months after he is allowed home from prison. (pp. 2172 D/2173 B)

D ACTIONS - Public officers - Liability of

5. Public Officers are protected if they act in good faith in the dispensation of their duties, but would be afforded no protection for acts that amount to abuse of office or that cannot be legally justified. (p. 2172 G)

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ACTIONS - Commencement - Statute bar

6. Unchallenged evidence reveals that the Respondent's action arose from a chain of complaints of a continuous nature which commenced with his arrest and detention on 12/5/92, further arrests on 23/5/96 and finally criminal prosecution ending with his acquittal and discharge on 22/11/96. The respondent filed his action on 9/12/96.

In view of the fact that the Appellants' wrongful acts against the Respondent were continuing act which commenced on 12/5/92 and ended on 22/11/96, the Respondent had a cause of action on 22/11/96. His action would be statute barred if he filed his action after three months from 22/11/96. In this case, the Respondent filed his action on 9/12/96. By virtue of Section 2 of the Public Officers Protection Law, the Respondent's action is not statute barred since it was filed within three months, i.e. on 9/12/96 after his cause of action arose on 22/11/96.

Concurrent findings of the two courts below that the

Respondent's claims are not statute barred are correct.

(p. 2173 G)

DAMAGES - Exemplary damages - Proof

7. This is preposterous argument. The age of technical pleading has been put behind. A party cannot be denied his entitlement merely because his pleadings were not couched in technical terms. It is now settled principle of law that to be entitled, a claim for exemplary damages need not be pleaded expressly.

It is enough if the facts in the pleading support the award of exemplary damages to avoid being taken by surprise. To my mind once facts in the pleadings support the award of exemplary damages, the court should award it since the adverse party is in no way taken by surprise. Furthermore since Rules of Court nowhere says that exemplary damages must be specifically claimed, it can be granted if facts are pleaded and evidence led to justify it. I am satisfied in the circumstances that for exemplary damages to be awarded it need not be specifically claimed, but facts to justify it must be pleaded and proved. (pp. 2175 B/2175 G)

DAMAGES - Exemplary damages - Award - Purpose of

8. I agree with both courts below. Exemplary damages are awarded with the object of punishing the defendant for his conduct in inflicting injury on the plaintiff. They can be made in addition to normal compensatory damages and should be made only:

(a) in a case of oppressive, arbitrary or unconstitutional acts by Government servants;

(b) where the defendant's conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the Plaintiff;

(c) where expressly authorized by statute.

The facts pleaded by the Respondent which are undisputed evidence fall under (a) above. (p. 2175 D)

SUPREME COURT - Judgment - Binding nature of

9. The well laid down position of the doctrine of precedence is that decisions of the Supreme Court are binding on all courts, but where judgments of the Supreme Court are in conflict, all courts are bound by the latest decision of the Supreme Court. CEC v. Ikot (supra) supports my reasoning and courts are to be bound by it since it is the last decision on whether exemplary damages should be specifically claimed or if pleaded facts to justify it would do. This issue is again resolved in favour of the Respondent. (p. 2176 A)

DAMAGES - Award - Basis

10. The amount of damages awarded by a trial court is based on evidence before the court. Where there is no evidence to support the claim for damages, the claim would be dismissed. (p. 2177A)

DAMAGES - Award - Interference

11. Damages are awarded at the discretion of the trial judge and so an appeal court is slow to interfere with how the trial judge exercises his discretion unless

(a) the exercise is tainted with illegality or substantial irregularity.

(b) If it is in the interest of justice to interfere

(c) The discretion is wrongly exercised. (p. 2177 B)

DAMAGES - Award - Correctness of

12. On whether the award of N6.5m was too high.

The 3rd to 7th Appellants did not file a statement of defence.

They were absent and unrepresented at the trial of this case. In fact, they returned processes served on them to the court. It is incomprehensible how a party who was never interested in the trial of the case suddenly wakes up on appeal to be interested in the case. The time to complain is at the trial stage and not on appeal. The 3rd to 7th Appellants shut themselves out from the case, it is certainly too late for them to show interest in a case they were never interested in the

outcome.

The evidence led by the Respondent in support of an award of exemplary and general damages was one way. There was nothing from the 3rd to 7th Appellants to challenge it. The trial judge, quite rightly in my view, exercised his discretion and awarded N6.5m, a sum I consider appropriate, more so as there was nothing to dispute the facts on which the award was made. (p. 2177 D) B

ACTIONS - Determination - Basis

13. The Appellants have tried to salvage this appeal by well written briefs. I must remind learned counsel for the Appellants that a case is decided on credible evidence led in the trial court. Where no evidence is led, nothing much can be achieved on appeal. There was absolutely nothing forthcoming from the Appellants by way of evidence. The 1st and 2nd Appellants filed a 4 paragraph statement of defence that turned out to be worthless, while the 3rd to 7th Appellants did not file a statement of defence and were absent and not represented by counsel in the trial court. A well written brief, no matter how alluring can never take the place of credible, compelling evidence and legal proof. The above sums up the plight of the Appellants in this appeal. The resultant effect is that concurrent findings of fact by the two courts below would not be disturbed since there is nothing from the other side to consider. (p. 2178 A) C
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NOTABLE POINTS OF INTEREST

RHODES-VIVOUR JSC

1. Appeals – Court can formulate issues

1. After judgment is delivered, a party wins while the other party loses the case. The party that lost is usually dissatisfied with the judgment and decides that the only way to show that the judgment is wrong is to file and argue an appeal. Aside from the requisites for a valid appeal, the Appellant must file a brief which must include issues for determination formulated from his grounds of appeal. These issues are called issues for determination. An Appeal court has power G
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to adopt or even formulate issues that in its view would determine the complaints of the Appellant. In considering issues for determination, judges should lean towards adopting the issues formulated by the appellant. After all it is the Appellant who filed the appeal. So he ought to know what his grievances are.

- B But where the issues formulated by the Appellant are not properly couched, prolix, or vague, or do not properly address grave errors in the judgment, the court would be at liberty to formulate issues that properly address the grievance of the Appellant. At times, issues formulated by the Respondent are better formulated. The court should have no hesitation adopting such issues. (p. 2162 G)

2. Jurisdiction – Fundamental nature of

- Nowadays, the interpretation of Section 251 of the Constitution comes before the courts usually in preliminary objections. A Defendant would argue that the case against him ought to have been heard by a State High Court and not the Federal High Court or vice versa depending on the argument that can delay the hearing of his case for strange motives. I hope in explaining and resolving this issue, it will be of assistance to judges who have the task of applying the law in this difficult area. Jurisdiction, when raised in court is a very serious matter. It is the basis on which a case is tried. Where a court lacks jurisdiction and it goes ahead to hear and decide a matter, no matter how well the case is conducted and decided it would in the end amount to a nullity.

- Jurisdiction is derived from the Constitution or some specific law. It is a threshold issue, so once raised it must be decided quickly. The issue of jurisdiction is fundamental to the hearing of all cases. Jurisdiction can be raised in the trial court, on appeal or in the Supreme Court for the first time as in this case.

The well settled position of the law is that the plaintiff's pleading determines jurisdiction. (p. 2164 D)

H 3. Limitation law – Purpose of

Limitation Law sets out the time within which an action must be brought. It protects a defendant from the injustice of having to face a stale claim. For example if a claim is brought a long time after the events in question, there is a strong likelihood that evidence which

was available earlier may no longer be available, the memories of witnesses may have faded. (p. 2172 C)

REPRESENTATION

R. Oguneso SAN, for the 1st and 2nd Appellants
O. Obeya, with C. I. Okpoko Assistant Director of Civil Litigation B
Federal Ministry of Justice, for the 3rd to 7th Appellants
Prince O. Okojie; for the Respondent

CASES REFERRED TO

Ikegwuoha v. Ohawuchi (1996) 3 NWLR (pt. 433) 146 C
Aduku v. Adejoh (1994) 5 NWLR (pt. 346) 582
Adigun v. Ayinde (1993) 8 NWLR (pt. 313) 516
Oladipo v. NCSB (2009) 12 NWLR (pt. 1156) 563
Onnorah v. KRPC Ltd (2005) 6 NWLR (pt. 921) 393 D
Bronik Motors Ltd v. WEMA Bank Ltd (1983) 1 SCNLR 296
Madukolu v. Nkemdilim (1962) 1 ANLR 587
Okoebor v. Police Council (1998) 9 NWLR (pt. 566) 534
PCHSC Ltd v. Migfo Nig. Ltd. (2012) 6 SC (pt. iii) 1
Inakoju v. Adeleke (2007) 1 SC (pt. i) 1 E
NEPA v. Edeghero (2002) 18 NWLR (pt. 798) 79
NERDC v. Gonze Nig (2000) 9 NWLR (pt. 673) 542
Elelu-Habeeb v. A-G Federation (2012) 2 SC (pt. 1) 145
Obiweubi v. CBN (2011) 2-3 SC (pt. 1) 46 F
Ezenduka v. Maduka (1997) 8 NWLR (pt. 518) 635

STATUTES REFERRED TO

Public Officers Protection Act Cap. 379 LFN 1990, s. 2(a)
Constitution of the Federal Republic of Nigeria 1999, s. 251 G

LEAD JUDGMENT BY RHODES-VIVOUR JSC

The Respondent as Plaintiff sued the Appellants as defendants on a Writ of Summons and Statement of claim which reads:

“The Plaintiff claims against the Defendants jointly, severally or H in the alternative as follows:

1. The sum of N10,000,000.00 (Ten Million Naira) being the sum for unlawful arrest, unlawful/wrongful detention, Malicious prosecution and abuse of Legal process.

2. *And for such further orders the court deems fit to meet with the Justice in this case."*

The Plaintiff filed a thirty-five paragraph statement of claim on the 10th day of February 1997.

The Appellants i.e. the 1st and 2nd Defendants filed a 4 paragraph statement of defence on the 5th day of March, 1997.

The 3rd to 7th Appellants as the 3rd to 7th Defendants did not file a statement of defence.

At the trial which commenced on the 21st day of January, 1998 it was only the Respondent as Plaintiff who testified in support of his case. Documents were admitted in evidence as Exhibits A, A1, A2, B, B1, C, C1, C2, D, E, F, G, H, J, K, L and M. Learned counsel for the 1st and 2nd Defendants Mr. Adesami barely cross-examined the Plaintiff. The 3rd to 7th Defendants did not join issues with the Plaintiff and did not file a written address. It was only the Plaintiff and the 1st and 2nd Defendants counsel who filed written address. In a well considered judgment delivered on the 27th day of August, 1998, judgment was entered in favour of the Plaintiff. The judge said:

"I therefore hereby award exemplary and general damages to the Plaintiff against the defendants in the sum of N6, 500,000.00 (Six Million Five Hundred Thousand Naira) with 6% interest rate per annum until the whole judgment debt is entirely liquidated..."

The Appellants and the 2nd to 6th Respondents (sic) as Appellants lodged an appeal before the Court of Appeal, Lagos Division. In a considered judgment delivered on the 15th day of March 2004, the Court of Appeal affirmed the decision of the trial Federal High Court and dismissed the appeal. This appeal is against that judgment. At the hearing of the appeal on the 9th day of March, 2015. Learned counsel for the 1st and 2nd Appellants Mr. R. Oguneso, SAN adopted his brief filed on the 15th day of November 2013 and urged this court to allow the appeal.

Learned counsel for the 3rd to 7th Appellants Mr. C. I. Okpoko adopted his brief filed on the 5th day of November 2004. He urged this court to allow the appeal.

Learned counsel for the Respondent, Mr. O. Okojie filed two briefs as follows:

(a) Respondent brief filed on the 20th of January 2014 in response to 1st and 2nd Appellants' brief.

(b) Respondent's brief duly filed and served on the 9th day of March 2015, in response to the 3rd to 7th Appellants brief.

He urged this court to dismiss the appeal.

Learned counsel for 1st and 2nd Appellants' formulated three issues for determination of this appeal. They are:

1. Whether the judgment of the Federal High Court which the court below affirmed was not a nullity having been delivered on a matter or cause in which the court has no jurisdiction. B

2. Whether the court below was right when it affirmed the decision of the trial court finding the 1st and 2nd Appellants' liable for wrongful arrest, wrongful detention and malicious prosecution and awarding exemplary damages against them. C

3. Whether the court below was right when it affirmed the decision of the trial court and held that the claims of the Plaintiff was not statute barred or caught by Section 2(a) of the Public Officers Protection Act Cap. 379 Laws of the Federation of Nigeria. D

Learned counsel for the 3rd to 7th Appellants' formulated four issues for determination. They are:

1. Whether the award of the sum of N6,500,000.00 as exemplary and general damages in favour of the Respondent by the trial court and upheld by the Learned Justices of the Court of Appeal was right in Law, having due regards to the obvious facts that the Respondent did not in his Writ of Summons and/or statement of claims plead exemplary damages. E

2. Whether the award of the sum of N6,500,000.00 in favour of the Respondent by the trial court was not manifestly too high and excessive in the circumstances. F

3. Whether it was right in law for the trial court to award the sum of N6,500,000.00 as lump sum for exemplary and general damages without assessing the various items of damages under separate heads. G

4. Whether the arrest, detention and prosecution of the Respondent in the instant case by the police authorities was unlawful, illegal and unconstitutional. H

Learned counsel for the Respondent filed two briefs. In the Respondent's brief in response to the 1st and 2nd Appellants' brief, three issues were formulated. They are:

1. Whether the judgment of the Federal High Court which the

court below affirmed was not a nullity having been delivered on a matter or cause in which the court has no jurisdiction.

2. Whether the court below was right when it affirmed the decision of the trial court finding the 1st and 2nd Appellants; liable for wrongful arrest, wrongful detention and malicious prosecution and awarding exemplary damages against them.

3. Whether the court below was right when it affirmed the decision of the trial court and held that the claims of the plaintiff was not statute barred or caught by Section 2(a) of the Public Officers Protection Act Cap. 379 Laws of the Federation of Nigeria.

In the Respondent's brief in response to the 3rd to 7th Appellants' brief four issues were formulated. They are:

1. Whether the award of the sum of N6,500,000.00 as exemplary and general damages in favour of the Respondent by the trial court and upheld by the learned Justice of the Court of Appeal was right in law, having due regard to the obvious facts that the Respondent did not in his Writ of Summons and/or statement of claim plead exemplary damages.

2. Whether the award of the sum of N6,500,000.00 in favour of the Respondent by the trial court was not, manifestly, too high and excessive in the circumstances.

3. Whether it was right in law for the trial court to award the sum of N6,500,000.00 as lump sum for exemplary and general damages without assessing the various items of damages under separate heads.

4. Whether the arrest, detention and prosecution of the Respondent in the instant case by the Police authorities was unlawful, illegal and unconstitutional.

After judgment is delivered, a party wins while the other party loses the case. The party that lost is usually dissatisfied with the judgment and decides that the only way to show that the judgment is wrong is to file and argue an appeal. Aside from the requisites for a valid appeal, the Appellant must file a brief which must include issues for determination formulated from his grounds of appeal. These issues are called issues for determination. An Appeal court has power to adopt or even formulate issues that in its view would determine the complaints of the Appellant. In considering issues for determination, judges should lean towards adopting the issues formulated by

the appellant. After all it is the Appellant who filed the appeal. So he ought to know what his grievances are.

But where the issues formulated by the Appellant are not properly couched, prolix, or vague, or do not properly address grave errors in the judgment, the court would be at liberty to formulate issues that properly address the grievance of the Appellant. At times, issues formulated by the Respondent are better formulated. The court should have no hesitation adopting such issues. See *Ikegwuoha v. Ohawuchi* (1996) 3 NWLR (pt. 433) p. 146; *Aduku v. Adejoh* (1994) 5 NWLR (pt 346) p. 582.

The 3 issues formulated by the 1st and 2nd Appellants, are identical with the 3 issues formulated by the Respondent in response. The 4 issues formulated by the 3rd to 7th Appellants, are also identical with the 4 issues formulated by the Respondent in response.

After a careful examination of the issues, I shall consider all the issues formulated by the Appellants, more so as the Respondent adopted them. They are concise and properly address the appellants' grievances, though their plight is of their own making. I hereby adopt them.

ISSUE 1

Whether the judgment of the Federal High Court which the court below affirmed was not a nullity having been delivered on a matter or cause in which the court has no jurisdiction.

Learned counsel for the 1st and 2nd Appellants' submitted that this appeal should be decided on Section 230(1) of the 1979 Constitution since it was the law in force at the time the cause of action arose. Reliance was placed on *Adigun v. Ayinde* (1993) 8 NWLR (PT. 313) P. 516.

He argued that since the Respondent's causes of action are all tortuous in nature, it does not fall within any of the enumerated items in Section 230(1) of the 1979 Constitution as amended by Decree No.107 of 1993, submitting that Section 230 of the 1979 Constitution, now Section 251 of the 1999 Constitution did not confer jurisdiction on the Federal High Court to entertain Tort cases. Reliance was placed on *Oladipo v. NCSB* (2009) 12 NWLR (pt. 1156) p. 563; *Onnorah v. KRPC Ltd* (2005) 6 NWLR (pt.921) p.393.

Concluding, he submitted that the Federal High Court lacked jurisdiction to entertain Respondent's action for damages for unlaw-

ful arrest, wrongful detention, malicious prosecution and abuse process contending that the Federal High Court judgment is a nullity.

In response, learned counsel for the Respondent argued that the Federal High Court has jurisdiction to hear the Respondent's claims for damages since his complaint or cause of action arose out of an administrative action or decision of an agency of the Federal Government. Reliance was placed on *C.O. Osakwe v. FCE Asaba* (2010) 10 NWLR (pt. 1201) p.

Concluding, he observed that the Federal High Court had jurisdiction to entertain matters under Section IV of the Constitution, the Fundamental Rights Enforcement, and these are mostly claims in tort.

Concluding he observed that the Federal High Court has jurisdiction to hear the Respondent's claims and that concurrent decisions of the two courts below should be affirmed.

Nowadays, the interpretation of Section 251 of the Constitution comes before the courts usually in preliminary objections. A Defendant would argue that the case against him ought to have been heard by a State High Court and not the Federal High Court or vice versa depending on the argument that can delay the hearing of his case for strange motives. I hope in explaining and resolving this issue, it will be of assistance to judges who have the task of applying the law in this difficult area. Jurisdiction, when raised in court is a very serious matter. It is the basis on which a case is tried. Where a court lacks jurisdiction and it goes ahead to hear and decide a matter, no matter how well the case is conducted and decided it would in the end amount to a nullity. See *Bronik Motors Ltd & anor v. WEMA Bank Ltd* (1983) 1 SCNLR p. 296; *Madukolu v. Nkemdilim* (1962) 1 ANLR p. 587.

Jurisdiction is derived from the Constitution or some specific law. It is a threshold issue, so once raised it must be decided quickly. The issue of jurisdiction is fundamental to the hearing of all cases. Jurisdiction can be raised in the trial court, on appeal or in the Supreme Court for the first time as in this case. See *Usman Dan Fodio University v. Kraus Thompson Organisation Ltd* (2001) 15 NWLR pt. 736 p. 305.

The well settled position of the law is that the plaintiff's pleading determines jurisdiction. See *PCHSC Ltd & 3 ors v. Migfo Nig. Ltd* (2012) 6 SC (pt. iii) p.1; *Inakoju v. Adeleke* (2007) 1 SC (pt. i) p. 1.

The issue is whether the Federal High Court has jurisdiction to hear the Plaintiff's claims.

The Plaintiff's claim reads:

The Plaintiff claims against the defendants jointly and severally or in the alternative as follows:

1. The sum of N10,000,000 (Ten Million Naira) being the sum for unlawful arrest, unlawful/wrongful detention, malicious prosecution and abuse of legal process. B

2. And for such further orders the court deems fit to meet with the justice in this case. C

Venue or proper forum is the issue for determination and the court vested with jurisdiction at the time the Plaintiff's cause of action arose is the proper court to hear the Plaintiffs action.

As quite rightly pointed out by learned counsel for the 1st and 2nd Appellants, Section 230 of the 1979 Constitution is now Section 251 of the 1999 Constitution. They are identical. So, for ease of reference I shall rely on Sect. 251 of the 1999 Constitution. It reads:

251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters. E

(p) the administration or the management and control of the Federal Government or any of its agencies;

(g) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies; F

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; G

Provided that nothing in the provisions of paragraphs (p), (q), (r) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity. H

Under Section 230 of the 1979 Constitution now Section 251 of the 1999 Constitution, the Federal High Court is conferred with exclusive jurisdiction in civil causes and matters that arise from the

administration, management and control of the Federal Government; the operation and interpretation of the Constitution as it affects the Federal Government and any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government. The jurisdiction also affects the agencies of the Federal Government.

The proviso is clear. It cannot be invoked where no relevant enactment, law or equity authorizes an action for damages, injunction or specific performance. NEPA v. Edeghero (2002) 18 NWLR (pt.798) p.79; NERDC v. Gonze Nig (2000) 9 NWLR (PT.673) P542; Elelu-Habeeb & anor v. A.G. Federation & 2 ors (2012) 2 SC (pt.1) p.145; Obiuweubi v. CBN (2011) 2-3 SC (pt.1) p.46.

Under Section 251(1)(a) to (c) of the Constitution, the Federal High Court would have exclusive jurisdiction if and only if:

(a) The Plaintiff's action is one of the causes of action, under Section 251(1)(a) to (s) of the Constitution.

(b) The parties or a party must be the Federal Government or an agency of the Federal Government.

(c) There must be a claim against the Federal Government or the agency of the Federal Government.

(a), (b) and (c) above must be present before a Federal High Court can have jurisdiction under Section 251(1) of the Constitution.

Applying the above to the facts of this case, the Appellants are agencies of the Federal Government.

The Respondent as Plaintiff claimed the sum of N10m from them for malicious prosecution, unlawful arrest and wrongful detention.

Does the Respondent's claim come within Section 251(1), (a) to (s)?

Section 251(1)(r) of the Constitution reads:

251(1) notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters -

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or de-

cision by the Federal Government or any of its agencies.

Administration is the management or direction of the affairs of an organization, while executive is a person or group of people who run an organization.

The malicious prosecution of the Respondent by the Appellants' police officers, who are agents of the Federal Government gave rise to the filing of this case culminating in this appeal. ^B

Malicious prosecution, unlawful arrest and wrongful detention of the respondent by the Appellants are all wrong executive or administrative decisions of the Nigeria Police, an agency of the Federal Government. A right of action accrued to the Respondent to seek redress and the proper forum to hear this action is the Federal High Court by virtue of Section 230(s) of the 1979 Constitution, now Section 251(1)(r) of the 1999 Constitution. The judgment of the Federal High Court affirmed by the Court of Appeal is not a nullity since the Federal High Court had jurisdiction to hear the Respondent's action. ^C

I shall take the 1st and 2nd Appellants' issue 2 and the 3rd to 7th Appellants' issue 4 together as issue No. 2.

ISSUE 2

Whether the court below was right when it affirmed the decision of the trial court finding the 1st and 2nd Appellants' liable for wrongful arrest, wrongful detention and malicious prosecution and awarding exemplary damages against them, and ^F

Whether the arrest, detention and prosecution of the Respondent in the instant case by the police authorities was unlawful, illegal and unconstitutional. ^G

Learned counsel for the 1st and 2nd Appellants observed that none of the averments in the statement of claim disclosed any reasonable cause of action against the 1st and 2nd Defendants (1st and 2nd Appellants) with regard to the tort of malicious prosecution, contending that the Respondent must plead and lead evidence to prove all the essential ingredients of the case even if the 1st and 2nd Defendants did not deny the allegation in the statement of claim and did not lead evidence. Reliance was placed on Okoebor v. Police Council (1998) 9 NWLR (pt. 566) P. 534. ^H

He further observed that the pleading of the Plaintiff/Respondent did not point to the fact that the 1st and 2nd Defendant/Appellants arrested the Plaintiff contending that the Plaintiff failed woefully to plead and prove a case of wrongful or unlawful imprisonment against the 1st and 2nd Defendant/Appellants. He urged the court to
 B resolve this issue in favour of the 1st and 2nd appellants.

Learned counsel for the 3rd to 7th Appellants argued that there was no question of unlawful arrest or wrong detention of the Respondent as the 3rd to 7th Appellants did so within the ambit of the
 C law. Reliance was placed on *Ezenduka v. Maduka* (1997) 8 NWLR (pt. 518) p. 635.

Learned counsel further observed that there was a reasonable and probable cause for the investigating police officer to proffer a criminal charge for the offence of forgery against the Respondent on
 D the complaint by the Director of Foreign Exchange and Trade of the 1st Appellant that the Local purchase orders were forged. Reliance was placed on Section 23 of the Police Act and Commissioner for Works, *Benue v. Devcon Ltd* (1988) 3 NWLR (pt. 83) p. 407.

He urged this court to resolve this issue in favour of the 3rd to
 E 7th Appellants.

Learned counsel for the Respondent observed that the Appellants failed to challenge the evidence of the Respondent. The 1st and 2nd Appellants filed a 4 paragraph statement of defence, while the
 F 3rd to 7th Appellants failed to file a defence and failed to appear in court. He further observed that the only available evidence was that of the Respondent which the trial court accepted and acted upon in arriving at its judgment.

He submitted that the Appellants have the burden of proving
 G the legality of the arrest, imprisonment of the Respondent but failed to discharge the burden. Relying on *Oteri v. Okorodudu* (1970) 1 ANLR p.194

He urged this court to dismiss the appeal.

The 1st and 2nd Appellants as the 1st and 2nd Defendants,
 H filed a 4 paragraph statement of defence in response to the Plaintiff/Respondents 35 paragraph statement of claim. The entire 4 paragraph statement of defence of the 1st and 2nd Defendants/Appellants reads:

1. Save and except as hereinafter expressly admitted the first

and second defendants deny each and every allegation of fact contained in the statement of claim as if each had been specifically set out and denied seriatim.

2. The 1st and 2nd defendants admit paragraphs 2 and 3 of the statement of claim.

3. That the 1st and 2nd defendants deny paragraph 21 of the statement of claim and state that none of the events alleged therein took place.

At trial the 1st and 2nd Appellants did not lead evidence.

Mr. F. Adesami appeared for them. He cross-examined the Respondent on the 17th of March 1998. The whole cross-examination is hereby reproduced.

“PW1 - The contract for the supply of some drinks, food and building materials was between SICAL Trading of Italy and the Nigeria Police Force Co-operatives.

The CBN was not a party to the contract. I was arrested and detained by the Director of Trade.

The arraignment and the criminal trial was a joint effort of all the Defendants

Mr. Adesanmi - That is all for this witness.”

The 3rd to 7th appellants were the 3rd to 7th Defendants.

They did not file a statement of defence and were absent and unrepresented by counsel at the trial court. It is very disheartening and most unfortunate that they returned to the court processes served on them.

The learned trial judge examined in detail the ingredients of malicious prosecution, unlawful arrest, unlawful detention and concluded saying that:

“From the foregoing modest exposition of the law on the subject of this suit, I am of the view that having regards to the circumstances of this case, the 3rd to 7th Defendants are deemed to have admitted all the averments contained in the Plaintiff’s statement of claim. With respect to the statement of defence of the 1st and 2nd Defendants, I am of the view that all the 4 paragraphs of the statement of defence are very evasive and none can be said to amount to a denial of the material allegations, and other positive averments contained in the statement of claim. I therefore hold that the Defendants herein have admitted the claim of the Plaintiff by their failure to ad-

duce evidence to challenge or contradict his statement of claim and his oral testimony in open court. I am fully satisfied that the Plaintiff is a witness of truth worthy of being believed. I therefore accept his oral testimony as being the truth."

Agreeing with the learned trial judge, the Court of Appeal was correct when it held that the Appellants failed to adduce evidence at the trial to establish the legality of the Respondent's arrest and detention.

On this reasoning, the Court of Appeal had no difficulty in affirming the finding by the trial court that the arrest and detention of the Respondent was unlawful and the subsequent prosecution of the Respondent by the appellants was malicious. I am in complete agreement with the Court of Appeal. Pleadings are no evidence. The Defendant must call evidence to support his averments. Where this is not done, the Defendant is deemed to have abandoned his defence. See *Okechukwu v. Okafor* (1961) 2 SCNLR p.369. **Evidence that is not challenged or discredited should be accepted and relied on if such evidence is adduced to establish a relevant fact.** See *Incar (Nig) Ltd v. Adegboye* (1985) (pt. 8) p. 453.

If I may add, the Respondent as plaintiff pleaded facts and led credible evidence which was unchallenged by the Appellants, that he was arrested, detained and maliciously prosecuted while carrying out his professional duties as a legal practitioner. The elementary position of the law is that the burden of proof shifted to the Appellants (Defendants) to lead evidence that the arrest, detention and subsequent prosecution of the Respondent were necessary in the circumstances. See Section 131-133 of the Evidence Act, 2011. The Appellants failed woefully to challenge credible and compelling evidence led by Respondent. I have no hesitation in the circumstances to affirm the findings of the Court of Appeal. The Respondent is indeed a witness of truth.

My lords, a litigant who fails to file a statement of defence and further fails to cross-examine the adverse party, in this case the Respondent, has by his own hands shut himself out from the proceedings in which the Plaintiff/Respondent makes serious allegations, claims against him. The Defendant

has abandoned any defence he might have, and the court is expected to accept the Plaintiff's unchallenged evidence to establish the facts the Plaintiff seeks to establish.

The above highlights the sorry state of the 3rd to 7th Appellants. As for the 1st and 2nd Appellants, their case is no better. Their statement of defence was worthless and the cross-examination further showed that the Respondent is indeed a witness of truth. B

I am very satisfied that the Respondent has shown by unchallenged evidence that his arrest, detention, and malicious, prosecution by the Appellants' was unlawful, illegal and unconstitutional. C

ISSUE 3

Whether the court below was right when it affirmed the decision of the trial court and held that the claims of the plaintiff was not statute barred or caught by Section 2(a) of the Public Officers Protection Act Cap 379, Laws of the Federation of Nigeria. D

Learned counsel for the 1st and 2nd Appellants observed that the cause of action disclosed against the 1st and 2nd Appellants occurred on 12/5/92, contending that the suit is statute barred since it was filed on 8/12/96, well after 3 months prescribed by Section 2 of the Public Officers Protection Act. He urged the court to resolve this issue in favour of the Appellants. E

Learned counsel for the Respondent observed that the Appellants' injury to the Respondent was a continuing act which ran from 12/5/92 through 5/1/96, 23/5/96 until 22/11/96 which is the date of the ceasing of the injury as contemplated by Section 2(a) of the Public Officers Protection Act. He submitted that time started to run from 22/11/96 when the injury to the Respondent ceased and the 3 months limitation period lapsed on 22/3/97. He observed that the Respondent's action is not statute barred since his action was commenced on 9/12/96. He urged this court to resolve this issue in favour of the Respondent. F G

Section 2(a) of the Public Officers Protection Act states that:

"2. Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any act or law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, Law, duty or authority, the following provisions shall have effect-

(a) *Limitation of time- the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after, the ceasing thereof-*

B *Provided that if the action, prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of such person from prison..."*

C Section 2(a) supra is a Limitation provision.

Limitation Law sets out the time within which an action must be brought. It protects a defendant from the injustice of having to face a stale claim. For example if a claim is brought a long time after the events in question, there is a strong likelihood that evidence which was available earlier may no longer be available, the memories of witnesses may have faded. **Where actions are brought against public officers, such actions must be brought quickly, that is to say within 3 months after accrual of the Plaintiff's cause of action as provided by Section 2 supra.**

E **The three months time frame for bringing actions against public officers is designed to protect the public officers who are very busy people from being distracted from having to answer frivolous and vexatious litigation or be submerged in a sea of litigation usually at the instance of professional litigants.**

F **The Plaintiff must seek prompt action for the breach of his rights in a court of law within the time stipulated. If he fails to come within 3 months he has a cause of action but sadly one that is unenforceable or cannot be heard by the courts as the courts cease to have jurisdiction over actions brought after three months. Public Officers are protected if they act in good faith in the dispensation of their duties, but would be afforded no protection for acts that amount to abuse of office or that cannot be legally justified.** See *Olagunju & anor v. PHCN* (2011)

H 4 SC (pt. 1) p. 152; *Yare v. NSWIC* (2013) 5-6 SC (pt. 1) p. 108.

The trial court found that the Respondent's (as Plaintiff) action was brought within three months after his cause of action accrued. The Court of Appeal agreed. This is what that court said:

"The respondent was discharged and acquitted on 22/11/96

vide exhibit 'M'. The Appellants' injury caused to the Respondent was a continuing act running from 12/5/92 through 5/1/96, 23/5/96 until 22/11/96 ...the said injury ceased by the acquittal of the Respondent contemplated by Section 2(a) of the Act. Respondent's action was commenced well within 3 months period provided by the Act. It was commenced on 9/12/96 which was only 28 days from B
ceasing of continuing injury to the Respondent on 22/11/96..."

The well laid down interpretation of the limitation law, in this case, section 2 supra is that an action filed in court after three months from the date the cause of action accrued is C
statute barred, but where the cause of action is a continuing act or a case of continuance of damage or injury, the three months starts to run from the cessation of the continuing act, damage or injury, and if the action is at the instance of a prisoner, he may commence his action within three months after D
he is allowed home from prison.

The Respondent's ordeal with the Appellants began on 12/5/92 when he was arrested and detained by the 1st and 2nd Appellants from 9a.m. to 7p.m. He was subsequently handed over by them to the 3rd to 7th Appellants, where he experienced similar deprivation of his liberty, culminating in his prosecution by the same appellants, and wherein the 1st and 2nd Appellants testified as prosecution witnesses. The criminal trial turned out to be malicious with the Respondent's acquittal and discharge on 22/11/96. It amounts to E
inverse reasoning for the 1st and 2nd Appellants to say that they are only responsible for the Respondent's detention on 12/5/92. The subsequent deprivation of the liberty of the Respondent and malicious prosecution arose from the events of 12/5/92. The 1st and 2nd Appellants who started the Respondent's ordeal acted in concert with F
the 3rd to 7th Appellants. They are all principally liable. G

Unchallenged evidence reveals that the Respondent's action arose from a chain of complaints of a continuous nature which commenced with his arrest and detention on 12/5/92, further arrests on 23/5/96 and finally criminal prosecution ending with his acquittal and discharge on 22/11/96. The H
respondent filed his action on 9/12/96.

In view of the fact that the Appellants' wrongful acts against the Respondent were continuing act which commenced

on 12/5/92 and ended on 22/11/96, the Respondent had a cause of action on 22/11/96. His action would be statute barred if he filed his action after three months from 22/11/96. In this case, the Respondent filed his action on 9/12/96. By virtue of Section 2 of the Public Officers Protection Law, the Respondent's action is not statute barred since it was filed within three months, i.e. on 9/12/96 after his cause of action arose on 22/11/96.

Concurrent findings of the two courts below that the Respondent's claims are not statute barred are correct.

Issue 4 is the 3rd to 7th Appellants' issue 1 and it reads
ISSUE 4

Whether the award of the sum of N6, 500, 000.00 as exemplary and general damages in favour of the Respondent by the trial court and upheld by the learned Justices of the Court of Appeal was right in law, having due regard to the obvious facts that the Respondent did not in his Writ of Summons and/or statement of claims plead exemplary damages.

Learned counsel for the 3rd to 7th Appellants submitted that exemplary damages must be specifically pleaded, claimed and proved before it can be awarded. Reliance was placed on *Odugu v. A-G of the Federation* & 6 ors (1996) 6 NWLR pt.456 p.508; *Eliochim (Nig) Ltd v. Mbadiwe* (1986) 1 NWLR (pt.14) p.47

Concluding, he submitted that the trial court was wrong to award exemplary damages suo motu and the Court of Appeal was equally wrong to affirm the award.

Learned counsel for the Respondent observed that the cases relied on by learned counsel for the 3rd to 7th Appellants support the position of the law that exemplary damages must be specifically pleaded, claimed and proved before it can be awarded but that *Calabar East Co-operative Thrift & Credit Society & 3 ors v. E.E. Ikot* 1999 12 SCN (pt.ii) p.133, says that exemplary damages can be awarded once evidence is led to justify it. It need not be specifically claimed.

Concluding, he argued that where there are conflicting judgments of the Supreme Court, the Court of Appeal and indeed all courts are bound by the last decision of the Supreme Court. He submitted that the Court of Appeal was right to follow the last deci-

sion of the Supreme Court on the issue of whether exemplary damages should be specifically claimed or not. He urged the court to resolve this issue in favour of the Respondent.

This is what the Court of Appeal had to say on exemplary damages.

“...the 3rd to 7th Appellants’ main argument is that exemplary damages was not expressly pleaded. B

This is preposterous argument. The age of technical pleading has been put behind. A party cannot be denied his entitlement merely because his pleadings were not couched in technical terms. It is now settled principle of law that to be entitled, a claim for exemplary damages need not be pleaded expressly. C

It is enough if the facts in the pleading support the award of exemplary damages to avoid being taken by surprise. See D
C.E.S. v. Ikot 1999 12 SC (pt. ii) p. 133.

I agree with both courts below. Exemplary damages are awarded with the object of punishing the defendant for his conduct in inflicting injury on the plaintiff. They can be made in addition to normal compensatory damages and should be made only: E

(a) in a case of oppressive, arbitrary or unconstitutional acts by Government servants;

(b) where the defendant’s conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the Plaintiff; F

(c) where expressly authorized by statute. See Gov. of Lagos State v. Ojukwu (1986) 1 NWLR (pt 18) p. 621; Alele Williams v. Sagay (1995) 5 NWLR (pt. 396) p. 441. G

The facts pleaded by the Respondent which are undisputed evidence fall under (a) above.

To my mind once facts in the pleadings support the award of exemplary damages, the court should award it since the adverse party is in no way taken by surprise. Furthermore since Rules of Court nowhere says that exemplary damages must be specifically claimed, it can be granted if facts are pleaded and evidence led to justify it. I am satisfied in the circumstances that for exemplary damages to be awarded it need not be spe- H

cifically claimed, but facts to justify it must be pleaded and proved.

The well laid down position of the doctrine of precedence is that decisions of the Supreme Court are binding on all courts, but where judgments of the Supreme Court are in conflict, all courts are bound by the latest decision of the Supreme Court. CEC v. Ikot (supra) supports my reasoning and courts are to be bound by it since it is the last decision on whether exemplary damages should be specifically claimed or if pleaded facts to justify it would do. This issue is again resolved in favour of the Respondent.

Issue 5 is the 3rd to 7th Appellants' issues 2 and 3. They read:
ISSUE 5

Whether the award of the sum of N6,500,000 in favour of the Respondent by the trial court was not manifestly too high and excessive in the circumstances, and

Whether it was right in law for the trial court to award the sum of N6,500,000 as lump sum for exemplary and general damages without accessing the various items of damages under separate heads.

Issue 5 asks the questions

(a) whether the award of N6,500,000 is not too high

(b) whether the sum of N6,500,000 should have been awarded under separate heads of exemplary and general damages.

Learned counsel for the 3rd to 7th Appellants observed that the award of N6,500,000 was too high and there was no evidence to justify such a huge sum.

On (b) learned counsel observed that the general principle of law in the award of damages is for the court to assess the damages under separate heads of damages, contending that the trial court ought to have assessed the items of exemplary and general damages separately. He urged this court to resolve the issue in favour of the 3rd to 7th Appellants.

Learned counsel for the Respondent observed that the award of damages is a matter within the discretion of the court and an appeal court will not interfere with an award except it was based on wrong principles of law, or mistake of law or that there was a misapprehension of facts. He submitted that the requirements are lacking in this case.

On (b) he submitted that the award of exemplary damages was valid and in accordance with the laid down principles of law.

The amount of damages awarded by a trial court is based on evidence before the court. Where there is no evidence to support the claim for damages, the claim would be dismissed.

See WAEC v. Kotoye 1977 2 SC p. 45.

Damages are awarded at the discretion of the trial judge and so an appeal court is slow to interfere with how the trial judge exercises his discretion unless

(a) the exercise is tainted with illegality or substantial irregularity.

(b) If it is in the interest of justice to interfere

(c) The discretion is wrongly exercised. See University of Lagos v. Aigoro (1985) 1 NWLR (pt.1) p.143; Salu v. Egibon (1994) 6 NWLR (pt. 348) p. 27.

On whether the award of N6.5m was too high.

The 3rd to 7th Appellants did not file a statement of defence.

They were absent and unrepresented at the trial of this case. In fact, they returned processes served on them to the court. It is incomprehensible how a party who was never interested in the trial of the case suddenly wakes up on appeal to be interested in the case. The time to complain is at the trial stage and not on appeal. The 3rd to 7th Appellants shut themselves out from the case, it is certainly too late for them to show interest in a case they were never interested in the outcome.

The evidence led by the Respondent in support of an award of exemplary and general damages was one way. There was nothing from the 3rd to 7th Appellants to challenge it. The trial judge, quite rightly in my view, exercised his discretion and awarded N6.5m, a sum I consider appropriate, more so as there was nothing to dispute the facts on which the award was made.

Once facts are pleaded to justify an award of exemplary damages and the Respondent (in this case) led undisputed evidence to justify the award, there would be no further need to claim exemplary damages under a separate head. The award of N6.5m for exemplary

and general damages was correct.

The Appellants have tried to salvage this appeal by well written briefs. I must remind learned counsel for the Appellants that a case is decided on credible evidence led in the trial court. Where no evidence is led, nothing much can be achieved on appeal. There was absolutely nothing forthcoming from the Appellants by way of evidence. The 1st and 2nd Appellants filed a 4 paragraph statement of defence that turned out to be worthless, while the 3rd to 7th Appellants did not file a statement of defence and were absent and not represented by counsel in the trial court. A well written brief, no matter how alluring can never take the place of credible, compelling evidence and legal proof. The above sums up the plight of the Appellants in this appeal. The resultant effect is that concurrent findings of fact by the two courts below would not be disturbed since there is nothing from the other side to consider.

In the light of all that I have been saying the appeal is dismissed, with costs of N100,000 in favour of the Respondent.

MUHAMMAD JSC

I read in advance the judgment just delivered by my learned brother, Rhodes-Vivour, JSC. I adopt his reasoning and conclusion and the orders made in the judgment.

MUNTAKA-COOMASSIE JSC

The plaintiff instituted an action before the Federal High Court Lagos by filling a writ of summons and statement of claim against the defendants jointly and severally for the sum of Ten Million Naira being the sum for unlawful arrest, unlawful/wrongful detention, malicious prosecution and abuse of legal process. After exchange of Statement of claim and statement of defence by both parties, trial commenced in earnest. The plaintiff filed a 35 paragraphs statement of claim. 1st and 2nd defendants filed a 4 - paragraph statement of defence. The 3rd to 7th Defendants did not file any statement of defence. Some documents were tendered and admitted as exhibits.

Some written addresses were also filed by the plaintiff and the 1st and 2nd defendants filed their written addresses.

The trial court, in a well considered judgment, entered judgment in favour of the plaintiff.

The Appellants who were aggrieved by the decision of the trial court unsuccessfully lodged an appeal to the court of Appeal, herein-after called court below. It held that the claims of the plaintiff in the trial court were never statute barred. B

Further aggrieved, the Appellants appealed to the Supreme Court and filed a Notice of appeal containing some grounds of appeal, the Appellant then distilled their issues for the determination of the Appeal. C

The Respondents also formulated equally three (3) issues. My learned noble lord permitted me to have a preview of his lead judgment rendered by him. I had a very close analysis of the said judgment and found myself agreeing with the reasoning and conclusions reached by my learned brother Rhodes-Vivour JSC. I therefore agree with his lordship that appeal lacks merit. D

This court cannot disturb the concurrent findings of facts by the two lower Courts. I endorse the order as to costs. E

NGWUTA JSC

I read in draft the lead judgment prepared and just delivered by my learned brother, Rhodes-Vivour, JSC, and I entirely agree with the reasoning leading to the conclusion that the appeal is devoid of any merit. F

I desire to put in only a few words of my own.

For defendants faced with N10 million claim, it was foolhardy for the 1st and 2nd Appellants to have filed a 4 paragraph Statement of Defence to the Respondent's 35 paragraph Statement of Claim. If there jurisprudential magic in these four paragraphs, it did not manifest at the trial as the 1st and 2nd appellants did not testify or call any other witness. G H

Their learned Counsel's half-hearted cross-examination of the respondent served only to enhance the respondent's claim. Pleadings are not evidence. See *Ojukutu v. Fella* (1954) 14 WACA 6 28; *Okeke v. A-G Anambra State* (1991) 1 NWLR (Pt.215) 60 at 65;

Osawaru v. Ezeruika (1978) 6-7 SC 135.

Pleadings without evidence to prove the facts averred is of no use in settling a dispute one way or the other. Pleadings require evidence to be of any help to the parties and the Court of trial. The 1st and 2nd appellants, having abandoned their Statement of Defence, did not join issues with the respondents and are deemed to have admitted the material averments in the Statement of Claim. See *Salzgitter Stahl (GMBH) v. Tunji Dosunmi Industries Ltd* (2010) 42 (Pt.2) NSQR 1085 at 1109.

My Lords, if the 1st and 2nd appellants were lackadaisical in their reaction to the claim of the respondent, the 3rd to 7th appellants cared far less. They did not file a Statement of Defence. Therefore they did not join any issue with the respondent upon which they could adduce evidence. See *Mobil Producing Nigeria Ltd v. Monokpo* (No.2) (2000) FWLR (Pt.78) 1210 ratio 8. They filed no written address and so could not have relied on any point of law inherent in the Statement of Claim.

On the whole the appellants who would want the Court to interfere with the concurrent findings of facts of the two courts below - the trial Court and the Court of Appeal - have not demonstrated any perversity in the said findings, nor shown therein a substantial error either in substantive or procedural law which, if not corrected, would lead to a miscarriage of justice. See *Efe v. State* (1976) 11 SC 75; *Ibanga v. Usang* (1982) 5 SC 103; *Obisanya v. Nwoko* (1974) 6 SC 69.

For the above and the lucid reasoning in the lead judgment I also dismiss the appeal. I adopt the order on costs.

G

OKORO JSC

I have had the privilege of reading in advance, the Judgment of my learned brother, Olabode Rhodes-Vivour, JSC just delivered with which I agree with the reasons ably adumbrated therein to arrive of the conclusion that this appeal lacks merit and warrants an order of dismissal.

There is no doubt that the arrest, detention and prosecution of the respondent by the appellants were unlawful acts for which they have not been able to give any cogent or justifiable reasons. Evi-

dence discloses that the respondent was arrested on 12th May, 1992 and detained by the 1st and 2nd Appellants from 9am to 7pm. Subsequently, he was handed over to the 3rd to 7th Respondents where he was further detained. When the respondent refused to withdraw his suit against the appellants, he was charged to court in a prosecution which lasted until 22nd November, 1996 when the court found him not guilty and he was discharged and acquitted. The said prosecution was adjudged to be malicious. It was contended that this suit was statute barred having not been filed within three months after he was arrested and detained on 12/5/92; the date the cause of action arose in view of the fact that the appellants are public officers/institutions.

It is trite that where a statute of limitation prescribes period within which an action must be commenced, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Where an action is statute-barred, a plaintiff who might have had a cause of action loses the right to enforce it by judicial process because the period of the time laid down by the limitation of time for instituting the action has elapsed. See *Aremo II v. Adekanye & Ors* (2004) 13 NWLR (Pt.891) 572, *Eboigbe v NNPC* (1994) 5 NWLR (Pt.347) 649, *Odubeko v. Fowler* (1993) 7 NWLR (Pt.308) 637.

The facts of this case show that the respondent was arrested and detained on 12/5/92 which culminated in the malicious prosecution which lasted till 22/11/96 when he was discharged and acquitted by the court. I strongly agree with learned counsel for the respondent that injury suffered by the respondent was a continuing one which ceased on 22/11/96. Section 2(a) of the Public Officers Protection Act provides:

“Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any act or law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, law, duty or authority, the following provisions shall have effect-

(a) Limitation of time - the action or prosecution shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance

of damage or injury, within three months next after the ceasing thereof
”

By the above provision, where the injury complained of is continuous, the limitation period shall not start to run until the seizure of the act causing the injury. In the instant appeal, the injury ceased on
B 22/11/96. This suit was filed on 9/12/96, barely a month after the ceasing of the injury. Thus, this action is not caught by Section 2(a) of the Limitation Act. It is proper and I so hold.

The appellants did not give evidence in this case. All that is
C available is the evidence of the Respondent which the two courts below have made findings which in legal parlance is called “concurrent findings.” This court hardly tampers with concurrent findings of the two courts below without any serious issue to enable us in that regard.

D The brief of counsel for the appellants in this matter no matter how colourful, cannot take the place of evidence. The evidence led by the respondent is so cogent, precise and very heart breaking that no reasonable tribunal will do anything to disturb the judgment he got from the trial court as affirmed by the court below.

E It is on the above reasons and the more elaborate ones contained in the lead judgment that I agree that this appeal is devoid of merit and is hereby dismissed. I abide by the order as to costs.

F

G

H