

SUPREME COURT OF NIGERIA
FRIDAY 22ND APRIL, 2016. SC. 113/2005
CORAM:- I. T. MUHAMMAD, M. U. PETER-ODILI,
M. D. MUHAMMAD, J. I. OKORO, A. SANUSI, JJSC

CHIEF CLEMENT O.C. OKAFOR APPELLANT
AND
ANTHONY ABUMOFUANI RESPONDENT

APPEALS - Issues - Determination - Appellate court must consider and resolve all issues formulated by parties - Provided those issues arose from competent grounds (H1)

APPEALS - Grounds - Validity of - For ground to be competent - It must be related to the decision being appealed against - And should constitute a challenge to the ratio of the decision (H2)

APPEALS - Fresh issue - As the parties did not join issues - Issue being canvassed by appellant cannot be said to have been raised - And as such he cannot raise same on appeal (H3)

APPEALS - Brief - Quality of - Embarking on advancing argument on irrelevant and extraneous issues - Does not improve the quality of a party's brief of argument (H4)

EVIDENCE - Contract - Proof - As evidence abound that appellant approached respondent to get buyer of his property - It can be said that there is proof of contractual relationship between the parties (H5)

EVIDENCE - Malicious report - Effect - Where report is made against a person mentioned as a suspect - And the report is later found to be false - The person so reported is entitled to damages (H6)

FACTS

Before the High Court of Enugu State, plaintiff/respondent instituted this action claiming against defendant/appellant inter alia, the sum of N125,000.00k being agency commission due to respon-

dent as remuneration for procuring a buyer of appellant's landed property. It is the case of respondent that appellant had approached him to secure a buyer for the latter's landed property in Enugu town. It was mutually agreed that appellant will pay respondent the above stated sum as his agency fee upon securing a buyer for the transaction. Respondent struggled and got a buyer who eventually made payments for the property. Unfortunately, appellant failed to redeem his promise and agreement to settle the agency fee due to respondent.

Respondent made repeated demands to appellant for the fee. Respondent therefore commenced the action, when it became obvious that appellant was not ready to pay him as agreed. Upon being served with the originating process, appellant refused to enter an appearance. Respondent thereupon moved the Court to enter summary judgment in his favour. The Court entered judgment in respondent's favour and against appellant. Dissatisfied, appellant brought an application seeking to set aside the default judgment against him. The Court refused to set aside the judgment, but rather granted appellant extension of time to file his statement of defence on the third claim of respondent. At the end of the trial, the Court awarded general damages against appellant and in favour of appellant. Dissatisfied, appellant appealed to the Court of Appeal Enugu Division. The Court heard the appeal and dismissed same. It upheld the decision of the trial Court. Aggrieved, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether the Court of Appeal has jurisdiction to disregard the appellant's motion on notice dated and filed on 24/3/2005 challenging the competence of issues 1 and 2 formulated by the Respondent.

(2) Whether the Court of Appeal has any power to discountenance the order which granted leave to the appellant to raise new issues of lack of jurisdiction by the trial Court which was granted by a different panel of the same Court.

(3) Whether the misconstruction of the appellant's case by the Court of Appeal did not occasion miscarriage of justice in the case when there is no proof of any contractual relationship between the appellant and the Respondent? and

(4) Whether the Court of Appeal was justified in finding the appellant liable for arrest and detention of the Respondent by the police.”

HELD (Unanimously dismissing the appeal per **SANUSI JSC**)

APPEALS - Issues - Determination

1. With due deference to the learned appellant’s counsel, the correct position of the law is that, an appellate Court has the responsibility and indeed must consider and make pronouncement or give its decision on all issues formulated by the parties for the determination of the appeal and resolve them provided those issues arose from valid and competent ground or grounds of appeal. Here, I must add that it is within the province of an appellate Court to decide on the real issue in controversy and it is not therefore bound to accept the issues raised by either the appellant or respondent to be the real issue in controversy. (p. 2529 G)

APPEALS - Grounds - Validity of

2. Now a close look at the appellants Ground No1 as reproduced above vis-à-vis the judgment appealed against, there is nowhere in the said judgment where the Court below alluded to the motion in question which formed the basis of and indeed was the crux of the appellant’s complaint. The Court below never made any pronouncement on the appellant’s complaint about the 1st and 2nd respondent’s issues for determination as adumbrated in the appellant’s motion dated and filed on 24/3/2005. There was therefore no decision of the Court below on the issue, as would warrant and justify the appellant to raise a ground on it and formulate the issue or point. There is long unending chain of authorities which establishes that for a ground of appeal to be valid and competent, it must be related to the decision being appealed against and should constitute a challenge to the ratio of the decision on appeal.

It is also trite law, that where a ground of appeal formulated, does not arise from the judgment and purports to raise

and attack an issue not decided by the judgment appealed against as shown in this instant appeal, the same, therefore becomes incompetent and liable to be struck out. Therefore, the appellant's ground of appeal no. 1 in his Notice of appeal, which did not arise from the judgment of the court below, is
B incompetent as well as issue no 1 which was formulated from the said ground of appeal. (p. 2530 A)

APPEALS - Fresh issue

3. It must be noted that the judgment of the trial Court was given in default of defense. The defendant at the lower Court (now appellant) did not file any defense as such parties did not really join issues. As stated by the lower Court in the above quoted excerpt, the issue raised or their subject matter had
D never featured or was never raised at the trial Court and therefore the issues cannot be said to have been raised and as such the appellant cannot raise it here on appeal. I do not see how such finding of the lower Court on that aspect can be assailed, attacked or faulted. Again, since the appellant did not file his
E pleading where such issue he posed could have been raised and no evidence was led at the trial Court for the trial Court to have been opportune to make pronouncements on or take a decision on it, it cannot therefore be raised on appeal.

Thus, from the findings of the lower Court as reproduced supra, I do not think it is correct to say that the lower Court discountenanced the leave it earlier granted to the appellant. All it said is, that issues were yet to be joined by parties since the defendant, (now appellant) was yet to file his defence, and
G that, in my view, is correct, because the judgment appealed against was one given in default of defence. This issue is therefore also resolved against the appellant. (p. 2532 D)

APPEALS - Brief - Quality of

H 4. My lords, permit me to observe here, that the question posed on this issue was simply that there was no proof of any contractual relationship between the appellant and the respondent and that had occasioned miscarriage of justice on him simpliciter. However, in presenting arguments on the issue in

his verbose brief of argument, he went at length to discuss the three issues raised each by him and the respondent at the Court below, and he argued that necessary parties that ought to have been joined by the plaintiff/respondent in the suit filed at the lower Court were not so joined. He went at length to advance arguments on non-joinder of parties and other hosts of irrelevances were argued in the appellant's brief. That was perhaps, why the respondent decisively neglected or refused to be joined in such irrelevances and therefore ignored them but simply went ahead to address the relevant or live points calling for consideration on the said issue. In my view, embarking on advancing argument on irrelevant and extraneous issues does not improve the quality of a party's brief of argument. (p. 2533 H)

Contract - Proof

5 At any rate, since this issue basically borders on proof, it will be apt to consider the evidence led by the plaintiff in the suit before the trial Court. Firstly, if one considers the pleading filed by the plaintiff/respondent at the trial Court, it will be noted that he had in Paragraphs 7, 8, 9, 10 & 11 of his Amended Statement of Claim, revealed or pleaded that the defendant/appellant reported him to the police maliciously. That was not denied by the appellant specifically or in general, hence it can be regarded as an admission which need no proof. Again, from the statement of claim the respondent as plaintiff, had the capacity to institute the action at the trial Court, since and he showed that he sued merely in his personal and not representative capacity and therefore he needed not join any body. Similarly, the police needed not be joined by him as necessary parties. With regard to whether there was agreement between the appellant and the respondent, it is not in dispute and indeed evidence abounds that the appellant approached the respondent to get a buyer of his property on a specified percentage of commission of 5% commission to be paid to him. Therefore, it is my view, that there was proof of contractual relationship between the two parties. Also in the light of the surrounding circumstance of this case, I am

unable to see how or where a miscarriage of justice was occasioned on the appellant. He also did not show how the alleged miscarriage of justice was occasioned on him. This issue is therefore also resolved against the appellant without any hesitation. (p. 2534 D)

EVIDENCE - Malicious report - Effect

6. Now in the instant case, the appellant pleaded in Paragraphs 4 (4) (9) and (1) of his statement of defence, that the Respondent broke into his house in 1997 and he reported the matter to the police. However, the respondent gave evidence on the report made by the appellant to the police against him in three sections of the police, whereupon he was invited by police, arrested and detained on each of the occasions before being admitted to bail. His case was pasted on police Notice Board for the public to see. The police did not however prosecute him after their investigations. It is trite law, that where a report is made against a person specifically mentioned as a suspect or accused person and the report is later found to be false, malicious, ill-motivated and unfounded, the person so reported, arrested and detained is entitled to damages to be paid to him by the person who made the false report since he is the person who set the law in motion against the victim falsely. The victim also needs not join the police as party as he can sue in his personal capacity as done by the respondent in the present case. This issue is also resolved against the appellant. (p. 2535 G)

REPRESENTATION

J.O.N. Ikeyi, Esq. with him, F.U Oraekeyi, for the Appellant
Respondent absent and not represented

CASES REFERRED TO

Chukwuogor v. Obuora (1987) 2 NSCC 1063
Onyekwuluje v. Animashaun (1996) 3 NWLR (pt. 439) 639
Onigemo v. Opoetu (2000) 9 NWLR (pt. 673) 556
Mobil Producing Nig. Unltd. v. Monokpo (2004) 18 NWLR (pt. 852) 346

Ishola v. Ajiboye (1994) 19 LRCN 35

Titiloye v. Olupo (1991) 7 NWLR (pt. 205) 519

Atoyebi v. Govt. of Oyo State (1994) 5 NWLR (pt. 344) 290

Saraki v. Kotoye (1992) 9 NWLR (pt. 264) 156

Ikweki v. Ebele (2005) 11 NWLR (pt. 936) 397

Daggash v. Bulama (2005) All FWLR (pt. 246) 1327

Adeniyi v. Adeniyi (1972) All NLR 301

NHDS Ltd. v. Mumuni (1977) 2 SC 57

Lucer (Nig) Plc v. Bolex Ent. Nig. (2001) 12 NWLR (pt. 728) 646

Edolco Nig Ltd v. UBA Plc (2001) 2 NWLR (pt. 698) 492

UTC (Nig) Ltd. v. Wema Bank Plc (2002) 12 NWLR (pt. 781) 222

RULES REFERRED TO

Court of Appeal Rules 2002, O. 5 r. 3(1)

LEAD JUDGMENT BY SANUSI JSC

This appeal is against the judgment of the Court of Appeal, Enugu Division (the lower Court) delivered on 31st day of May, 2015 which affirmed the decision of the High Court of Enugu State (Coram Ahanonu J) (“the trial Court”) delivered on 21st November 2002. The Respondent, herein, as the plaintiff at the trial Court, instituted the suit before the trial Court claiming the under mentioned reliefs against the present appellant who was the defendant thereat. The reliefs claimed by the plaintiff/respondent against defendant now appellant are as follows:-

“1. N125,000.00k being agency commission due to the plaintiff as remuneration for procuring a buyer of the defendant’s landed property.

2. Interest on the aforesaid amount at the rate of 21% per annum until the date of the judgment and 5% per annum on the judgment debt.

3. N100,000.00k and N200,000.00k as special and general damages respectively for the humiliation suffered by the plaintiff by virtue of his arrest, detention and molestation by the police as a result of malicious and false report alleging criminal conduct against the plaintiff which cannot be substantiated”.

The facts which gave rise to the above mentioned claims in the suit filed before the trial Court by the plaintiff (now respondent) against

the defendant (appellant) are briefly summarised as below. As could be gleaned from the Record of appeal, the defendant, who is the present appellant had entered into an agreement with the plaintiff (now respondent) for the plaintiff to secure somebody to purchase his landed property situate at No.5, Igwesi Close in Trans Ekulu Qtrs of Enugu town in Enugu State on an agreed commission to be paid by the appellant to the respondent. The respondent, in the light of the agreement, struggled and secured a buyer of the said landed property in person of one Dan Obele who agreed to buy the land at a cost of Two Million, Five Hundred Thousand Naira only (N2,500,000.00). The purchase price was paid through the respondent herein, who acted as an agent for both the appellant and the purchaser of the said landed property. However, before the property was paid for, it was discovered that the property was not free from encumbrances, because the same property was earlier used as collateral for a loan applied for and collected by the appellant at the Nigerian Agricultural Bank.

That notwithstanding, the buyer Dan Obele agreed and did pay the outstanding bank loan owed by the appellant to the Nigerian Agricultural Bank in settlement of the bank loan and thereafter, the balance of the sum of One Million, Eight Hundred and Seventy Thousand Naira (N1,870,000.00) was paid to the appellant. All these payments were made through the respondent herein, in the presence of the appellant's representative one George Okonkwo who negotiated on behalf of his principal the appellant, and who incidentally was also the appellant's in-law.

At the end of the transaction, the appellant refused or failed to honour his agreement with the respondent by paying him the commission of N125,000.00 as earlier agreed upon which represents 5% of the purchase price, despite repeated demands by the latter. Instead, the appellant resorted to the use of acts of harassment and intimidation against the respondent which culminated into lodging complaint to the police against the respondent leading to the arrest and detention of the latter, all aimed at suppressing and frustrating and scaring him and discouraging the respondent from pursuing his legitimate claims of the agreed commission due to him from the appellant.

When it became apparent that the appellant was not ready to

pay him his entitlement, the respondent took the last option by seeking redress in Court and filed Writ of Summons against the appellant at the trial Court and made the claims or reliefs earlier adumbrated in the fore paragraphs of this judgment. Upon being served with the Writ of summons and the Amended statement of Claim by substituted means, the appellant as defendant at the trial Court, refused or failed to enter appearance. The plaintiff now respondent thereupon moved the trial Court by filing a motion praying it to enter Summary/Default judgment in his favour. The trial Court consequently entered judgment in part in favour of the plaintiff/respondent against the defendant now appellant on the first and second claims/reliefs and adjourned the third claim/relief which relates to special and general damages. Piqued by the partial judgment delivered against him, the appellant/defendant filed a motion on notice at the trial Court praying it to set aside the Default judgment vide a motion dated 24/1/2000. The said motion was heard. The trial Court in the end, refused to set aside its default judgment, but it however granted the appellant extension of time to file his statement of defence on the third claim contained in the plaintiff's/respondent's Amended Statement of claim. At the conclusion of the case, the trial Court awarded to the respondent a sum of N35,000.00 as general damages against the defendant/appellant.

The present appellant became dissatisfied with the decision of the trial Court, hence he appealed to the Court of Appeal (hereinafter referred to as "the lower Court"). After hearing the appeal, the lower Court dismissed same and affirmed the decision of the trial Court. In its considered judgment dated 31/5/2005 the lower Court at page 186 of the Record of Appeal held as follows, per Adekeye JCA (as she then was).

"The trial Court was right in holding that the respondent is entitled to general damages. This Court finds the conclusion of the trial Court impeccable and has no justifiable reason in law and facts to interfere with same. This appeal is unmeritorious it is therefore dismissed. N10,000.00 cost is awarded in favour of the respondent".

It is pertinent at this stage to say, that after the trial Court delivered its judgment, the appellant filed four different appeals before the lower Court with leave of the latter, and it consolidated the said appeals. Both the appellant and respondent formulated three similar

issues for the determination of the consolidated appeals in their respective briefs of arguments filed before the lower Court. But on the day the appeal was fixed for hearing, the appellant filed a motion on notice praying the lower Court to strike out both issues one and two proposed for determination in the respondent's brief of argument
 B on the ground that the said two issues did not arise from the grounds of appeal he had filed earlier. The lower Court after hearing the motion on notice filed by the appellant, proceeded to hear the appeal as it found that the issues raised by both parties were very much
 C similar and it thereafter adopted the issues raised in the appellant's brief of argument in determining the appeal. It ultimately dismissed the appellant's appeal in its judgment delivered on 31st of May, 2005.

Aggrieved further by the judgment of the lower Court, the appellant appealed to this Court vide a Notice of appeal dated 21st
 D of June, 2005 containing four grounds of appeal.

From the four grounds of appeal, the appellant decoded four issues for determination in the Appellant's brief of Argument settled by Chief Obile Onukwuli dated and filed on 9/9/10, which read as below:-

E *"(1) Whether the Court of Appeal has jurisdiction to disregard the appellant's motion on notice dated and filed on 24/3/2005 challenging the competence of issues 1 and 2 formulated by the Respondent.*

F *(2) Whether the Court of Appeal has any power to discountenance the order which granted leave to the appellant to raise new issues of lack of jurisdiction by the trial Court which was granted by a different panel of the same Court.*

G *(3) Whether the misconstruction of the appellant's case by the Court of Appeal did not occasion miscarriage of justice in the case when there is no proof of any contractual relationship between the appellant and the Respondent? and*

H *(4) Whether the Court of Appeal was justified in finding the appellant liable for arrest and detention of the Respondent by the police."*

On his part, the respondent distilled three issues for the determination of the appeal from the four grounds of appeal in the appellant's Notice of Appeal. The three issues raised in the Respondent's of Brief of argument are as below:-

“(a) Does the lower Court not have the right in deciding the issues for determination in the appeal, notwithstanding the formulation of issues by the appellant and the respondent.

(b) Whether the appellant could rely on leave granted by the lower Court in order to raise the issues of lack of jurisdiction of the trial Court and absence of locus standi not raised at the trial as basis to canvass issues of law and facts not supported by any pleading or evidence before the trial Court; and

*(c) Has the appellant disclosed any error on the face of the record occasioning a miscarriage of justice to warrant the intervention of this Court having regard to the settled principle of practice and procedure that this Court will not otherwise disturb concurrent findings made by two or more courts below.”*Chukwuogor vs Obuora (1987) 2 NSCC 1063 at 1073.

Appraising the two sets of issues couched by the learned counsel to the parties in this appeal as reproduced supra, the issues raised in the appellant’s brief of argument appear to me to have captured all the grievances or complaints against the judgment of the lower Court hence, I choose to be guided by them in the determination of this appeal and in doing so, I will consider them serially.

Issue No.1

On this issue the appellant submitted in his brief of argument, that the lower Court’s record showed that he filed a motion on notice on 24/3/2005 dated the same day challenging the competence and jurisdiction of the said Court below to entertain the Respondent’s issues Nos 1 & 2 formulated and the arguments therein in his brief of argument filed on 14/10/2004 by the Respondent. He stated that the motion on notice filed by him was reproduced on pages 168 to 170 of the Record. He submitted further, that the said motion on notice was argued by his counsel Chief O.I.E Onukwuli who on the hearing date of the motion, reminded the Court about its pendency and thereby moved the motion on notice though was not replied to by the Respondent’s counsel Dr. AJC Mogbana as clearly shown on the lower Court’s proceeding of Monday 14/4/2005 as recorded on page 1171 of the Record.

Learned counsel for the appellant further submitted that he had also filed and argued a Preliminary objection in the Court below, objecting to the competence of the Respondent’s issues nos 1 and 2,

but the lower Court did not firstly determine the objection before it went ahead to hear and consider the arguments of the respondent. He argued that the attitude of the lower Court in not considering and determining both the motion and preliminary objection first, was not in the spirit of this Court's decision in *Onyekwuluje v Animashaun* B (1996) 3 NWLR (pt 439) 639 at 644. See also *Onigemo vs Opoetu* (2000) 9 NWLR (pt 673) 556 at 565.

The learned appellant's counsel also submitted that the failure or refusal by the Court below to express its opinion in writing and state whether it agreed with the objection by the appellant or not, but instead ignoring the motion, amounted to denial of the appellant's right to fair hearing. He cited and relied on the case of *Mobil Producing Nigeria Unlimited vs Monokpo* (2004) 18 NWLR (pt 852) 346 Ratio 7, 8 & 9. He finally submitted that the competence of issues 1 D and 2 raised by the respondent in his brief of argument before the Court below and on which the latter Court considered and gave its judgment for the respondent, could not be waived or acquiescence. He cited and relied on the decision of this Court in *Ishola vs Ajiboye* (1994) 19 LRCN 35 at 139.

E In his response to the arguments advanced by the learned appellant's counsel on this issue, the learned counsel for the respondent submitted that in Order 5 Rule 3(1) of the Court of Appeal Rules 2002, it was provided that appellant's brief of argument should contain what the appellant's views or regards as the issue arising for F determination of the appeal and similarly, Rule 4 (2) of the same Order states that the Respondent's brief of argument should also conform with Rule 3(1), (2) (4) and 5 of the same Order. He then argued that the issues raised by the two parties need not agree with G each other as issue in controversy in the appeal, and no party has the power to question the propriety of the issue or party to the appeal. He also argued that it is only the appellate Court that has the power to decide which are the real issues raised in the ground of appeal and resolve them. The appellate Court is not bound to accept and/or be H guided by the issues for determination raised by either of the parties. See *Titiloye v Olupo* (1991) 7 NWLR (pt 205) 519 at 529,535 & 537. It is only when the Court fails to properly formulate and pronounce on issues arising from the grounds of appeal that the Court can be accused of failing to perform its statutory function and as such

may lead to a miscarriage of justice. See *Titiloye vs Olupo* (supra).

In another submission, the learned respondent's counsel argued that the motion referred to by appellant that the motion he said he filed was premature and totally misconceived and could not have properly been brought pursuant to O. 3 R. 15(1) of Court of Appeal Rules 2002, as those provisions deal with a situation where a Respondent who had good grounds to rely upon could file preliminary objection to forestall the hearing of an appeal for same being incompetent or for otherwise not properly before the Court of Appeal. B

Other submission by the learned respondent's counsel is to the effect that in this circumstance, the lower Court did not make any pronouncement on the appellant's submission on the said motion challenging the competence of the respondent's issues Nos 1 & 2 formulated by the respondent and therefore since there was no decision of the lower Court on that, it can not be the basis on which a competent ground of appeal can be raised as Ground No. 1. Hence, ground of appeal No 1 is incompetent. See *Atoyebe vs Government of Oyo State* (1994) 5 NWLR (pt 344) 290 at 305. See also *Saraki v Kotoye* (1992) 9 NWLR (Pt 264) 156, 184, *Ikweki v Ebele* (2005) 11 NWLR (Pt 936) 397 at 424/ 425. He finally urged this Court to resolve this issue in his favour and to strike out the issue. C D E

Let me commence the consideration of this issue by critically examining the pith of the appellant's complaint on this issue. Looking at the first issue, the appellant is questioning the jurisdiction of the Court below, for disregarding his motion on notice dated and filed on 24/3/2005 in which he challenged the competence of issues Nos 1 and 2 as formulated by the respondent. More over even at that, could the Court below be faulted in not considering the said issues formulated by the respondent? Or to put it in another way, must an appellate Court consider the 1st and 2nd issues formulated by the respondent at all costs in the present circumstance? F G

With due deference to the learned appellant's counsel, the correct position of the law is that, an appellate Court has the responsibility and indeed must consider and make pronouncement or give its decision on all issues formulated by the parties for the determination of the appeal and resolve them provided those issues arose from valid and competent ground or grounds of appeal. Here, I must add that it is within H

the province of an appellate Court to decide on the real issue in controversy and it is not therefore bound to accept the issues raised by either the appellant or respondent to be the real issue in controversy. Now a close look at the appellants Ground No1 as reproduced above vis-à-vis the judgment appealed against, there is nowhere in the said judgment where the Court below alluded to the motion in question which formed the basis of and indeed was the crux of the appellant's complaint. The Court below never made any pronouncement on the appellant's complaint about the 1st and 2nd respondent's issues for determination as adumbrated in the appellant's motion dated and filed on 24/3/2005. There was therefore no decision of the Court below on the issue, as would warrant and justify the appellant to raise a ground on it and formulate the issue or point. There is long unending chain of authorities which establishes that for a ground of appeal to be valid and competent, it must be related to the decision being appealed against and should constitute a challenge to the ratio of the decision on appeal.

It is also trite law, that where a ground of appeal formulated, does not arise from the judgment and purports to raise and attack an issue not decided by the judgment appealed against as shown in this instant appeal, the same, therefore becomes incompetent and liable to be struck out. Therefore, the appellant's ground of appeal no. 1 in his Notice of appeal, which did not arise from the judgment of the court below, is incompetent as well as issue no1 which was formulated from the said ground of appeal.

I must state here however, that the appellant's complaint on the said motion is premature and indeed misconceived. This issue is therefore resolved against the appellant.

Issue No.2

On this issue, the appellant queries whether the Court below has power to discountenance its order granting leave to the appellant to raise new issues of lack of jurisdiction by the trial Court which was granted by a different panel of the same Court. The appellant referred in his brief of argument, to a motion for leave containing five prayers which was granted on 2/3/2002 and 22/4/2004 by the Court

below differently constituted from the panel that heard and delivered the judgment now being appealed against. He argued rightly too, that the decision of the earlier panel is valid and subsisting and cannot be upturned. Learned appellant's counsel submits that even though he obtained leave to raise and argue new issue on want of jurisdiction, yet the Court below observed that the issue was not raised before the trial Court and parties did not join issues on same and that the issue before the trial Court was one on breach of contract of agency and not whether the respondent was acting in a professional capacity. Learned counsel for the appellant submits further, that having obtained leave to raise new issue, the Court below was wrong to have scuttled him in raising and arguing the new issue as per its stance mentioned supra. He also argued that the lower Court was wrong and its decision was therefore perverse as it lacks the power to vary or review its earlier decision. He cited *Daggash vs Bulama* (2005) All FWLR (Pt.246) 1327 at 1346/1348.

Responding to the above appellant's counsel submission on this issue, the respondent's counsel submitted that all the arguments posed by the appellant's counsel were misconceived as they were not pleaded because there was no statement of defense filed by the appellant as defendant at the trial Court before judgment was delivered in respect of those items of the plaintiff's claim since judgment was given in default of defense. Learned respondent's counsel contended that the leave obtained by the appellant at the lower Court to raise aforesaid issues of law did not arise from the pleadings and evidence given at the trial and the first two arms of the plaintiff's claim did not entitle the appellant to canvass such issues in the lower Court to challenge the decision on those arms of claim. He further argued that the leave given to him by the lower Court to raise issues of lack of locus standi and absence of jurisdiction could only be restricted to such points relating to excess of the amount awarded, or that the judgment obtained was irregular or that proceeding is tainted with fraud or that the respondent had no locus standi to bring the action against him right from the outset.

The gravamen of the appellant's complaint in this issue as I stated above is that, the lower Court had discountenanced the order of the lower Court earlier given to him to, inter alia, raise new issue on want of jurisdiction on the part of the trial Court and the lack of

locus standi on the part of plaintiff/respondent to institute the suit which said issue was not raised earlier. The appellant was disenchanted particularly, with the finding of the lower Court with regard to the said leave he obtained when it stated at page 184 of the Record as follows:-

B *“My first reaction to this issue is to find out where this issue relates to the judgment of the lower Court which is the subject matter of this appeal, this issue raised before the trial Court and did the parties join issues on same. Where the appellant did not file a defense*
 C *in reply to the claim of the respondent and issue was not raised for consideration of the Court the appellant cannot raise it in appeal...”*

The lower Court went further to opine thus:

“...the issue before the Court was a breach of the contract of agency and not on issue of whether the Respondent was acting in a
 D *professional capacity, which was not an issue raised for the determination of the lower Court”.*

It must be noted that the judgment of the trial Court was given in default of defense. The defendant at the lower Court (now appellant) did not file any defense as such parties did
 E ***not really join issues. As stated by the lower Court in the above quoted excerpt, the issue raised or their subject matter had never featured or was never raised at the trial Court and therefore the issues cannot be said to have been raised and as such***
 F ***the appellant cannot raise it here on appeal. I do not see how such finding of the lower Court on that aspect can be assailed, attacked or faulted. Again, since the appellant did not file his pleading where such issue he posed could have been raised and no evidence was led at the trial Court for the trial Court***
 G ***to have been opportune to make pronouncements on or take a decision on it, it cannot therefore be raised on appeal. See Adeniyi v. Adeniyi (1972) All NLR 301 at 308 or (1972) 2 SC 57, NHDS Ltd vs Mumuni (1977) 2 SC 57.***

Thus, from the findings of the lower Court as reproduced
 H ***supra, I do not think it is correct to say that the lower Court discountenanced the leave it earlier granted to the appellant. All it said is, that issues were yet to be joined by parties since the defendant, (now appellant) was yet to file his defence, and that, in my view, is correct, because the judgment appealed***

against was one given in default of defence. This issue is therefore also resolved against the appellant.

Issue No.3

This third issue has to do with proof of the case by the plaintiff respondent at the trial Court. The learned counsel for the appellant submitted the issue of locus standi to institute the action by the respondent was never his case at the Court below, but that the respondent failed to discharge the duty placed on him by the law, to prove his case through credible evidence. He argued that the Court below was wrong when in its judgment it opined that the capacity to sue is dependent on the statement of claim filed by the respondent/plaintiff and the evidence on the Record. He said from the judgment of the trial Court there is no shred of evidence to support the findings of the trial Court by the Court below. B C

Learned counsel for the appellant further submitted that there was no contract between appellant and the respondent since there was no consideration. See *Lucer (Nig) Plc vs Bolex Ent. Nigeria (2001) 12 NWLR (Pt 728) 646*, *Edolco Nig Ltd vs UBA Plc (2001) 2 NWLR (Pt 698) 492*. He then argued that the respondent did not prove himself to be an agent. See *UTC (Nig) Ltd vs Wema Bank Plc (2002) 12 NWLR (Pt 781) 222*. D E

The appellant's learned counsel also contended that though the respondent had locus standi, however the processes he filed did not disclose the capacity in which the action was brought by him. He finally urged this Court to resolve this issue in his favour. F

In his reaction, the learned counsel for the respondent submitted that contrary to the learned appellant's counsel's submission, the respondent's processes clearly show that the suit was brought by the respondent in his personal and sole capacity as the plaintiff since the action was not filed by him in representative capacity. The learned respondent's counsel commented briefly on the appellant's counsel's submission that necessary parties were not joined by stating that the law does not impose any duty on the Court to determine who are necessary parties to be joined especially as in this instant case, where no other person was found to be such a necessary party at the time the Default judgment was given. G H

My lords, permit me to observe here, that the question posed on this issue was simply that there was no proof of any

contractual relationship between the appellant and the respondent and that had occasioned miscarriage of justice on him simpliciter. However, in presenting arguments on the issue in his verbose brief of argument, he went at length to discuss the three issues raised each by him and the respondent at the Court below, and he argued that necessary parties that ought to have been joined by the plaintiff/respondent in the suit filed at the lower Court were not so joined. He went at length to advance arguments on non-joinder of parties and other hosts of irrelevances were argued in the appellant's brief. That was perhaps, why the respondent decisively neglected or refused to be joined in such irrelevances and therefore ignored them but simply went ahead to address the relevant or live points calling for consideration on the said issue. In my view, embarking on advancing argument on irrelevant and extraneous issues does not improve the quality of a party's brief of argument.

At any rate, since this issue basically borders on proof, it will be apt to consider the evidence led by the plaintiff in the suit before the trial Court. Firstly, if one considers the pleading filed by the plaintiff/respondent at the trial Court, it will be noted that he had in Paragraphs 7, 8, 9, 10 & 11 of his Amended Statement of Claim, revealed or pleaded that the defendant/appellant reported him to the police maliciously. That was not denied by the appellant specifically or in general, hence it can be regarded as an admission which need no proof. Again, from the statement of claim the respondent as plaintiff, had the capacity to institute the action at the trial Court, since and he showed that he sued merely in his personal and not representative capacity and therefore he needed not join any body. Similarly, the police needed not be joined by him as necessary parties. With regard to whether there was agreement between the appellant and the respondent, it is not in dispute and indeed evidence abounds that the appellant approached the respondent to get a buyer of his property on a specified percentage of commission of 5% commission to be paid to him. Therefore, it is my view, that there was proof of contractual relationship between the two parties. Also in the light of the surrounding circumstance of this case, I am unable to see how

or where a miscarriage of justice was occasioned on the appellant. He also did not show how the alleged miscarriage of justice was occasioned on him. This issue is therefore also resolved against the appellant without any hesitation.

Issue No.4

On this issue, the appellant queries whether the Court below was justified in finding the appellant liable for causing the arrest and detention of the Respondent by the police. The appellant's learned counsel submits that there was no evidence shown in the record establishing that the appellant was the person who detained or caused the detention of the respondent, hence the two lower Courts were wrong in law and facts, when they held that the respondent had established a case of false imprisonment against the appellant. He also contended that the respondent failed to establish that the police did not act on its own volition in arresting and detaining the respondent after he made the report to them. See *Nwadinobi vs Botu* (2000) 9 NWLR (Pt 672) 220. B
C
D

Learned appellant's counsel further submitted that the police have power to arrest and investigate any allegation of crime and in this instant case, there is allegation of house breaking against him hence police have power to arrest and detain him. See *Aroyewu vs COP* (2004) 16 NWLR (Pt 899). 414. He also stated that the failure by the respondent to join the police in his suit at the trial Court was fatal to his case. See *Fajemirokun vs CB (CC) (Nig) Ltd* (2002) 10 NWLR (pt 774) 94 9110. E
F

Replying, the learned counsel for respondent submitted that when a report made to the police which is totality false, malicious and unlawful, the maker of such report is liable in damages to the plaintiff for false imprisonment. See *Nwodinobi vs. Ogbogu* (1996) 5 NWLR (Pt.449) 420. *Ajibade v Mayowa* (1978) 9110 SC; *Elendu vs Ekwuoba* (1998) 12 NWLR (Pt 578) 320. He urged this Court to resolve this issue against the appellant. G

Now in the instant case, the appellant pleaded in Paragraphs 4 (4) (9) and (1) of his statement of defence, that the Respondent broke into his house in 1997 and he reported the matter to the police. However, the respondent gave evidence on the report made by the appellant to the police against him in three sections of the police, whereupon he was invited by H

police, arrested and detained on each of the occasions before being admitted to bail. His case was pasted on police Notice Board for the public to see. The police did not however prosecute him after their investigations. It is trite law, that where a report is made against a person specifically mentioned as a suspect or accused person and the report is later found to be false, malicious, ill-motivated and unfounded, the person so reported, arrested and detained is entitled to damages to be paid to him by the person who made the false report since he is the person who set the law in motion against the victim falsely. The victim also needs not join the police as party as he can sue in his personal capacity as done by the respondent in the present case. See Okonkwo vs Ogbogu (supra). This issue is also resolved against the appellant.

Thus, all the four issues for determination raised by the appellant are resolved against him. There are also in the present case, concurring findings of the two lower Courts all pointing to the fact that the present respondent who was plaintiff at the trial Court, had established his case against the appellant who was defendant at the trial Court. As a matter of practice, this Court does not normally disturb or interfere with concurrent findings of two Courts below except on special circumstance such as where the findings is/are perverse. I have not seen any perversion in this instant appeal in the two lower Courts' findings in this case as would justify or warrant me to deviate from the practice of not disturbing or interfering with such concurrent findings. The appellant as I said earlier has also been unable to show or establish that miscarriage of justice was occasioned on him, hence I will decline to interfere with or disturb the findings of the two Courts below.

On the whole, this appeal lacks merit and is accordingly dismissed. The judgment of the lower Court delivered on 31st May 2005, affirming the decision of the trial Court, is hereby also further affirmed. N100,000.00k (Hundred) Thousand Naira Only) is awarded to the respondent against the appellant herein.

I. T. MUHAMMAD JSC

I read in advance a draft copy of the judgment just delivered

by my learned brother Sanusi, JSC. I am in agreement with his reasoning and conclusion which I adopt. I abide by consequential orders made therein including one on costs.

PETER-ODILI JSC

B

I agree with the judgment just delivered by my learned brother, Amiru Sanusi JSC and in support of the reasoning. I shall make some comments.

This is an appeal against the decision of the Court of Appeal or lower Court or Court below in which it affirmed the judgment of the High Court of Enugu State per E. C. Ahanonu J. C

The facts leading to this appeal are well adumbrated in the lead judgment and there is no need to repeat then.

On the 25th day of January 2016, learned counsel for the appellant, J. O. N. Ikeyi Esq. adopted his Brief of Argument settled by Chief Obi I. E. Onukwuli and filed on the 9/9/2005. In the Brief were distilled four issues for determination which are thus:

“1. Whether the Court of Appeal has any jurisdiction to disregard the appellant’s motion on notice dated and filed 24/3/2005, challenging the competence of the Issues Nos. 1 & 2 formulated by the respondent?” E

2. Whether the Court of Appeal has any power to discountenance the Order which granted “Leave” to the appellant to raise new issue of lack of jurisdiction by the trial Court which was granted by a different panel of the same Court?” F

3. Whether the misconstruction of the appellant’s case by the Court of Appeal did not occasion a miscarriage of justice in this case, when there is no proof of any contractual relationship between the appellant and the respondent?” G

4. Whether the Court of Appeal was justified in finding the appellant liable for the arrest and detention of the respondent by the police?” H

On that date of hearing neither the respondent nor the counsel was in Court even though there was proof of service on the 20/1/16 and so the Court adopted the Brief of Argument of the respondent settled by Dr. A. J. C. Mogbana and filed on the 5/12/2005 and it was taken as argued. In the said Brief were formulated three issues

for determination which are, viz:

“(a) Does the lower Court not have the right in deciding the issues for determination in the appeal, notwithstanding the formulation of issues by the appellant and the respondent;

(b) Whether the appellant could rely on leave granted by the lower Court in order to raise the issues of lack of jurisdiction of the trial Court and absence of locus standi not raised at the trial as basis to canvass issues of law and fact not supported by any pleading or evidence before the trial Court; and

(c) Has the appellant disclosed any error on the face of the record occasioning a miscarriage of justice to warrant the intervention of this Court, having regard to the settled principle of practice and procedure that this Court will not otherwise disturb concurrent findings made by two or more Courts below.” (Chukwuogor v Obuora D (1987) 2 NSCC 1063 at 1073 - 4 inter alia).

For ease and convenience I shall make use of the questions as raised by the appellant.

ISSUE 1 & 2

These raise questions of the jurisdiction of the Court of Appeal disregarding the appellant’s motion on notice doted and filed 24/3/2005, challenging the competence of the Issues Nos. 1 & 2 formulated by the respondent. Also If the Court of Appeal had the power to discountenance the Order which granted leave to the appellant to raise new issue of lack of jurisdiction by the trial Court which was granted by a different panel of the same Court.

Canvassing the position of the appellant, learned counsel said there was a duty cast upon the Court below to firstly determine the objection raised by the appellant before considering the arguments in the brief of the respondent. He cited Onigemo v. Opoetu (2000) 9 NWLR (Pt.673) 556 at 565; Onyekwuluje v Animashaun (1996) 3 NWLR (pt. 439) 639 at 644. That the refusal of the Court below to express in writing its Ruling on the objection by the appellant was a breach of the appellant’s right of fair hearing. He cited Mobil Producing Nigeria Unlimited v. Monokpo (2004) 18 NWLR (Pt.852) 346.

On the matter of the grant of the leave to appeal, against the panel which granted the reliefs sought learned counsel submitted that they ought to have been acknowledged as valid and subsisting even though the appeal was heard by another panel. He cited Odeh v

Ameh (2004) 4 NWLR (Pt.863) 309 at 322.

That the Court of Appeal in its judgment lacked the power to either vary, review its earlier decision in the same suit or to set aside the orders made by the other panel. He referred to Daggash v Bulama (2005) ALL FWLR (Pt. 246) 1327 at 1346 - 1348.

Responding, learned counsel for the respondent submitted that the appellant's notion on notice challenging the competence of the issues for determination formulated by the respondent in the lower Court is both premature and totally misconceived. That Order 3 Rule 15 (1) of the Court of Appeal Rules relied upon by the appellant did not avail him. That since the lower Court did not pronounce on the appellant's submissions on the motion challenging the competence of Issues Nos. 1 & 2 formulated by the respondent there is really no decision upon which ground one of the appeal may be founded. He cited Atoyebi v. Government of Oyo State (1994) 5 NWLR (PT.344) 290 at 305; Saraki v. Kotoye (1992) 9 NWLR (Pt.264) 156 at 184; Ikweki v Ebele (2005) 11 NWLR (Pt.936) 397 at 424.

For the respondent was further contended that the matter of the leave obtained at the lower Court to raise issues of law which did not arise from the pleadings and evidence given at the trial relating to the first two arms of the plaintiff's claim, did not entitle the appellant to canvass such issues in the lower Court to challenge the decision on those arms of claims as the leave was restricted in content.

The summary of the opposite positions of the parties is captured on the part of the appellant that the refusal by the Court of Appeal to dispense with the objection by the appellant, and ignoring the said motion is a clear breach of the appellant's right to fair hearing. Also that the Court below left out the order which granted the appellant "leave" to raise the new issues of lack of jurisdiction and the issue of lack of locus standi by the respondent and this occasioned a miscarriage of justice against the appellant. Again that the Court below suo motu made an order against for the respondent.

On the part of the respondent is that the appellant had no right to object to the issues formulated by the respondent. That having failed to file a defence in respect of the first and second arms of the plaintiff's claim the appellant is precluded from canvassing issues not founded on the pleadings and evidence relating thereto which were not on record when the judgment was given.

The objection of the appellant to the issues as couched by the respondent is strange since the appellate Court to whom the presentation of the said issues is made is not bound to use those issues as crafted by either the appellant or the respondent if the Court feels the real questions in controversy would be better resolved by fresh issues framed by the Court itself so long as no crucial aspect in issue is left out. In this regard the Rules of the Court of Appeal, Order 6 Rule 3(1) of 2002 Rules and Rule 4 of the same Order have not been breached. The Rules have provided that an appellant's brief of argument shall contain inter alia what in the appellant's view, the issues that have arisen in the appeal. Then the respondent in Rule 4(2) is provided with the right to conform with rule 3(1), (2) (3), (4) and (5) of the said order. The implication is that there may be divergence in the views expressed as issues on either side since each party has projected his question within his territory and not in the company of the other and so to contest the right of the other to formulate his issues as he has seen fit to do is in my humble view out of place. I rely on *Titiloye v Olu* (1991) 7 NWLR (Pt. 205) 519 at 529, 535.

Again is the grouse of the appellant that the lower Court did not make a pronouncement on the appellant's submissions on the motion challenging the competence of the Issues Nos. 1 & 2 formulated by the respondent. This point is really neither here nor there and since no miscarriage of justice has been shown to have been occasioned since the lower Court in the determination of the appeal had come to the conclusion that the issues raised by the appellant were similar to those crafted by the respondent and that Court had gone ahead to utilise the questions as formulated by the appellant. The complaint of the appellant therefore on those issues cannot be part of this appeal. See *Atoyebe v Government of Oyo State* (1994) 5 NWLR (Pt. 344) 290 at 305; *Saraki v. Kotoye* (2005) 11 NWLR (Pt.936) 397 or 424 (2005) 11 NWLR (Pt.936) 397 at 424 - 5.

On Issue No.2, the appellant complaining that the lower Court ought to have agreed with him that the trial judge should have taken into account in his judgment all the points raised. In pushing across this grouse the appellant had at the Court below sought to raise issues of lack of jurisdiction and absence of locus standi and proffered grounds for bringing forth the new issues such as that the persons entitled to the agency commission acted for both the buyer and seller

and the fact that one of the agents who testified later did not cede his right to any person in respect of the N125,000.00 commission and so the respondent could not claim that amount without joining the witness as a party to the suit or as being represented as a plaintiff. Also that the case of *Odudu v Onyibe* (2000) 12 NWLR (Pt. 729) 140 applied to this case and disqualified the agents who are not Professional Estate Surveyors and valuers from, claiming agency commission for the service rendered to the appellant. B

Having set out in brief the stance of the appellant, it is clear that the respondent's contention on what the law says in regard to what the appellant had contended represents the applicable law. I say so because the facts relied upon by the appellant were not pleaded as no statement of defence had been filed before judgment which anyway was a judgment in default of defence. It is settled that a judgment must be restricted to a decision of the issues raised on the pleadings which stated another way is that pleadings is the roadmap upon which a judgment would be based and not outside it. Therefore since the judgment of the trial High Court was in respect of the first two arms of the plaintiff's claim which were not set aside, the lower Court in its appellate jurisdiction cannot go outside that to visit an area which did not arise from the pleadings and evidence given of the trial. It is to be emphasized that the fact that leave was obtained at the lower Court to raise the issues that is, law of lack of jurisdiction and locus standi does not open the door wider than allowed to bring in matters outside the claim before the Court. The leave did not entitle the appellant to canvass issues beyond the restricted areas of the following: C D E F

- "1. That the amount awarded is in excess of what was due;
2. The proceedings is tainted with fraud; or
3. The judgment has been obtained irregularly, or G
4. The respondent has no locus standi to bring the action. It is therefore to be said that the appellant went outside the facts not pleaded and no evidence given before the decision challenged and so the Court below was right in not accommodating that luxury." See *Adeniji v Adeniji* (1972) ALL NLR (Pt.1) 297 *Ochonma v Unosi* (1965) H NWLR 321; *Nigerian Housing Development Society Ltd v Mumuni* (1977) 2 SC 57.

It is clear that the Issues 1 & 2 are resolved against the appellant.

ISSUE 3 AND 4

Whether there was a miscarriage of justice in the misconstruction of the appellant's case and whether the Court of Appeal was justified in finding the appellant liable for the arrest and detention of the respondent by the Police.

B Learned counsel for the appellant contended that it is not the duty of the Court to supply evidence neither pleaded nor positively testified to by the parties as was done in this instant case. That the Court below breached its duty of impartiality and fairness when they
C failed to confine themselves to the issues raised by the parties and so occasioned a miscarriage of justice. He referred to *Spasco Vehicle & Plant Hire Co v Alrairie (Nig) Ltd* (1995) 8 NWLR (Pt.416) 655 at 673; *Onyia v Onioh* (1985) 3 NWLR (Pt. 11) 1; *Iheanacho v. Chigere* (2004) 7 SCNJ 270; *Agbeje v. Ajobola* (2002) 2 NWLR (Pt.750)
D 127.

That from all that transpired there was no contractual relationship between appellant and respondent. He cited *Adejugbe v. Ologunna* (2004) 6 NWLR (Pt. 868) 46 or 70 &76.

E On the matter of the arrest and detention of the respondent, learned counsel for the appellant stated that respondent failed to establish that the report of the appellant to the police was false, malicious and without basis. That the fact that respondent had not been prosecuted before any Court did not mean that the report to the police is false. He relied on *Nwadinobi v Botu* (2000) 9 NWLR (Pt.672)
F 220. That the police was a necessary party to the suit.

Responding, learned counsel for the respondent said that it is not the duty of the Court to find out whether any other person has on interest in the subject matter of the suit before hearing the suit.

G The issues herein pose whether the appellant had disclosed any error in the face of the record occasioning a miscarriage of justice crying for the intervention of this Court to disturb the concurrent findings of the two Courts below. Also whether the two Courts below were right in holding that the report to the police was false and malicious.
H

To tackle these questions I shall go to the Record with particular reference to pages 185 - 187, the judgment of the Court per Adekeye, JCA (as she then was) and that is thus:

"Issue number three is whether the Police must necessarily be

joined before the trial Court could consider the respondent's claim for damages against the appellant in respect of the arrest, detention and putting the respondent's name on the notice board of detainees pursuant to the complaint lodged to the police and basically whether the appellant is dandified in damages for lodging a complaint to the police. Section 35(1) (c) of the 1999 Constitution provided that everybody shall be entitled to his or her personal liberty except for the purpose of bringing before a Court in execution of Court order; upon reasonable suspicion of his having committed a criminal offence or to prevent his committing a criminal offence.

Section 215(2) of the 1999 Constitution and Sections 3 and 4 of the Police Act restates the duty of the police in the maintenance of law and order and securing of public order. Every citizen has a right to complain of any crime or suspected crime against his person or property to the police. But in the case in hand the respondent pleaded in Paragraphs 7, 8, 9, 10 and 11 of the amended statement of claim malicious and false reports made by the appellant to the police against him and the 2nd PW before the Court and how the police in turn meted out to then underserved maltreatment and molestations. The appellant did not specifically deny or traverse these allegations in his defence. The lower Court was right in its conclusion that the appellant admitted the allegations. The Court held that his oral evidence denying the reports to the police was contradictory.

The appellant pleaded in Paragraphs 4(4) (g) and (1) of the statement of defence that the respondent broke into his premises in 1997, and he reported the incident to the police. The respondent returned some of the stolen items. As against this the respondent gave evidence of the report made by the appellant to three sections of the police whereupon he was invited by the police, interrogated and detained on each occasion he was admitted to bail. His names were displayed on the police notice board. The police did not prosecute him after their investigation. Where a report is made and one is specifically mentioned as a suspect, and the report is found to be malicious, unfounded and ill motivated, the victim is entitled to damages. In decided cases, Courts have always rejected the argument that the arrest and detention of the victim were independent of the will of the complainant since the complainant was found to be the person who set the law in motion against the victim falsely. The victim

does not have to make the police a party to the suit before the defendant can be held liable. *Okonkwo v Ogbegu* (1996) 4 NWLR 810.

Section 122(b) Torts Law Cap 135 Laws of Anambra State 1986 as applicable in *Enugu State* presumes that a person is liable to false imprisonment if without lawful justification he causes another person's liberty to be totally restrained for however short a time by use of threat or force or by confinement. The onus is on the defendant in these cases to establish that his act is justified. *Ojo v Lasisi* (2003) 7 NWLR (Pt. 819) P9. 237. After police investigation and the respondent were not prosecuted, the appellant has no lawful excuse for using the police to harass the respondent particularly, when his allegation of crime could not be substantiated. In the circumstance the detention of respondent for whatever period when no allegation of crime was eventually established against him was wrongful and illegal. On the other hand there is overwhelming evidence that the appellant resorted to police intervention as a ploy to renege from the agreement between him and the respondent to pay him the commission the later was entitled to after the sale of his property. The trial Court was right in holding that the respondent is entitled to general damages. This Court finds the conclusion of the trial Court unimpeachable and has no justifiable reason in law and facts to interfere with same. This appeal is unmeritorious, it is therefore dismissed."

I have quoted extensively excerpts of the judgment of the Court below to highlight that Court's consideration of what was before it in the light of what the Court of trial did, this because the two Courts made concurring findings and conclusions. Therefore what the appellant now seeks is on interference or intervention by this Court on those findings and conclusions. Such a course of action is not done off-hand as there are guiding principles embedded in a long line of decisions even of this Court which guides are that such disturbance should not be done lightly or unadvisedly. That is that such on interference should be done where the appellant has disclosed an error on the face of the record occasioning a miscarriage of justice or a misconstruction of the appellant's case or a misapplication of law or procedure.

In this see *Ojomo v. Ajao* (1983) 9 SC 22; *Akeredolu v. Akinremi* (1989) 3 NWLR (Pt.108) 164; *Osho v. Foreign Finance Corporation* (1991) 4 NWLR (Pt.189) 157.

Some of the points raised by the appellant to persuade this Court to disturb the concurrent findings of the two Courts below include that a necessary party or persons ought to have been joined by the Court and this not having been done at the Court below, the intervention herein to rectify the anomaly is called for. From the details in the Court of Appeal's Judgment, that Court did not buy the argument canvassed by the appellant of a necessary party who ought to have been brought in either by the Court of trial or the Court of Appeal. B

In this argument I am inclined to the position of the respondent that there was no basis for the Court joining any other person since none of the two Courts had been shown such need. It is a correct representation of the law that if a report as in this case is made to the police which has been found to be totally false, malicious and without foundation, it is the maker of the report that is liable in damages to the plaintiff for false imprisonment. This is because it is the maker of the report which complaint ignited the action of detention carried out by the police, that does not bring in the police as a party to the action in the false report and false imprisonment. I place reliance on *Nwadinobi v. Botu* (2000) 9 NWLR (PT.672) 220; *Okonkwo v. Ogbogu* (1996) 5 NWLR (Pt.449) 420; *Elendu v. Ekwuoba* (1998) 112 NWLR (Pt.578) 320. C D E

It is clear that the concurrent findings and conclusions of the two Courts below cannot be impeached or faulted and so I resolve these issues against the appellant. F

In conclusion all the issues resolved against the appellant and within the fuller and better reasoning of the lead judgment, I too dismiss this appeal.

I abide by the consequential orders made. G

M. D. MUHAMMAD JSC

I read in advance the very elaborate leading judgment of my learned brother Amiru Sanusi JSC, just delivered. I adopt the judgment as mine in dismissing the unmeritorious appeal. I abide by the consequential orders in the said judgment. H

OKORO JSC

The facts leading to this appeal have been succinctly captured in the lead judgment of my learned brother, Amiru Sanusi, JSC and it is unnecessary for me to repeat the exercise except as may be referred to in the course of this judgment. The facts show that the learned trial Judge entered judgment for the respondent herein. That judgment was affirmed by the Court below. Still not satisfied, the appellant has appealed to this Court via a notice of appeal filed on 21/6/05 with four grounds of appeal. The appellant has distilled four issues for determination as follows:-

“Whether the Court of Appeal has any Jurisdiction to disregard the Appellant’s Motion on Notice dated and filed 24/3/2005, challenging the competence of the issues Nos: 1 & 2 formulated by the Respondent?”

Whether the Court of Appeal has any power to discountenance the order which granted ‘leave’ to the appellant to raise new issue of lack of jurisdiction by the trial court which was granted by a different panel of the same Court?

Whether the misconstruction of the appellant’s case by the Court of Appeal did not occasion a miscarriage of justice in this case, when there is no proof of any contractual relationship between the appellant and the respondent?

Whether the Court of Appeal was justified in finding the appellant liable for the arrest and detention of the respondent by the police?”

On pages 1 - 2 of the Respondent’s brief, three issues are however submitted for determination. They are:-

“(a) Does the lower Court not have the right in deciding the issues for determination in the appeal, notwithstanding the formulation of issues by the appellant and the respondent;

(b) Whether the appellant could rely on leave granted by the lower Court in order to raise the issues of lack of jurisdiction of the trial Court and absence of locus standi not raised at the trial as basis to canvass issues of law and fact not supported by any pleading or evidence before the trial Court; and

(c) Has the appellant disclosed any error on the face of the record occasioning a miscarriage of Justice to warrant the intervention of this Court, having regard to the settled principle of practice

and procedure that this Court will not otherwise disturb concurrent findings made by two or more Courts below (Chukwuogor v Obuoro (1987) 2 NSCC 1063, 1073- inter alia). ”

I deem it necessary to state clearly that this appeal turns on the concurrent findings of the two Courts below i.e. the trial High Court and the Court of Appeal. There is therefore the need to remind us, My Lords, a well settled rule of practice of this Court in respect of this type of an appeal. This Court has held in quite a number of cases that it will not disturb the findings of facts of two Courts below unless there is manifest error which leads to same miscarriage of justice, or a violation of some principle of law or procedure. See *Amadi v Nwosu* (1992) 6 SCNJ 59, *Onwujuba v Obieniu* (1991) 4 NWLR (Pt 188) 16, *Odofin v Ayoola* (1984) 11 SC 72. None of these conditions has been shown to be present in the instant appeal. This Court has therefore found no reason to disturb these concurrent findings.

The above notwithstanding, the learned counsel for the appellant has argued that there is nowhere on the record of the trial Enugu State High Court that the appellant was the person who detained the respondent. That both the trial Court and the Court of Appeal were wrong both in fact and in law to hold that the respondent made out a case of false imprisonment against the appellant.

In response, the learned counsel for the respondent submitted that the argument of the appellant and the case of *Nwadinobi v Botu* (2000) 9 NWLR (Pt 672) 220 cited in support thereof, confirm the position of the law that if a report made to the police is totally false, malicious and without foundation, the maker of the report is liable in damages to the plaintiff for false imprisonment. He also cited the cases of *Okonkwo v Ogbegu* (1996) 5 NWLR (Pt.449) 420, *Ajibade v Mayowa* (1978) 9 & 10 SC 1, *Elendu v Ekwooba* (1998) 12 NWLR (Pt 578) 320.

The two Courts below found and the record of appeal show clearly that the appellant engaged the services of the respondent to find a buyer to purchase his landed property situate at No. 5 Igwesi Close in Trans Ekulu Quarters, Enugu. The agreement was that the appellant shall pay 5% of the purchase price to the respondent as commission. The respondent found a buyer who paid for the land. The appellant suddenly developed wings and reneged on the terms of the agreement. In order to cheat the respondent and scare him

from demanding what rightly belongs to him, the appellant resorted to the use of police to intimidate the respondent. The respondent was in the process arrested and detained by the police as a result of the false and malicious report made by the appellant against the respondent. Although the respondent was arrested and detained on three occasions, investigations did not lead to any prosecution as the reports were false anyway.

It is trite that where a person makes a genuine complaint against another to the police and the later is arrested, detained and prosecuted by the police, he cannot be said to have put the law in motion against him. See *Gbajor vs Ogun buregui* (1961) All NLR 853, *Ishno v Julius Berger Nig. Plc* (2008) 6 NWLR (Pt 1084) 582. However where a report is made to the police and the suspect is specifically mentioned, and the report is found to be false, malicious, ill motivated and tissues of lies, in a claim for damages, the victim of the report shall be entitled to damages. In such a suit, the police are not a necessary party because part of their duties is to receive complaint and act on it accordingly. Where the police investigation reveals that the report was made mala fide, there is no cause of action against the police except it can be shown that the appellant connived with the police in making the false report. See *Okonkwo v Ogbegu* (1996) 5 NWLR (Pt 449) 420.

My Lords, I hold a strong view that the appellant did not behave well in this matter. After breaching the agreement with the respondent, he maliciously set the law in motion which led to the arrest, detention, molestation and humiliation of the respondent by the police. This behavior is highly condemnable. I accept entirely the decision of the two Courts below and agree with my learned brother *Amiru Sanusi, JSC* that this appeal is devoid of any scintilla of merit and deserves an order of dismissal. I accordingly dismiss the appeal and abide by all the consequential orders made in the lead judgment, that relating to costs, inclusive. Appeal Dismissed.

H