

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, THE HON. JUSTICE E.O. AHAMIOJE, JUDGE ON
WEDNESDAY THE 10TH DAY OF FEBRUARY, 2016

BETWEEN:

SUIT NO. B/465/2010

MR. PATRICK OMOROGIUWA

.....

CLAIMANT

AND

1. MR. FRANCIS OCHEKWE
2. NOSAKHARE IYIMBOR
3. COMMISSIONER OF POLICE
(EDO STATE)

.....

DEFENDANTS

J U D G M E N T

The Claimant in paragraph 16 of his Amended Statement of Claim dated the 9th day of May, 2012 claimed against the Defendants jointly and severally thus:

- (a) The sum of Two Million Naira being general damages suffered by the Claimant for false imprisonment of the Claimant at the cell of the 2nd and 3rd Defendants at Ugbor Police Station, Benin City from 11:00am – 9:00pm on 21/8/2007.
- (b) The sum of Three Million Naira general damages suffered by the Claimant for malicious prosecution from August, 2007 – 3/6/2010 when the Claimant was discharged and acquitted.
- (c) Interest at the rate of 10% per annum from the date of Judgment till whenever the judgment debt is paid.

- (d) An order of perpetual injunction restraining the Defendants his servants tenants and privies from further acts of trespass on Claimant's land.

Pleadings were duly filed and exchanged by the parties. The 1st Defendant equally Counter-Claimed against the Claimant in paragraph 19 of his Statement of Defence dated 27th day of July, 2010.

The case of the Claimant can be summarized brief as follows:-

The Claimant adopted his sworn deposition on the 3/6/13 wherein he averred that the 1st Defendant was his tenant in the premises known as No. 120, Sapele Road, Benin City. And by the judgment of the Oredo Area Customary Court, Benin City, vide Exhibit "A", the 1st Defendant was ordered by the Court to vacate and deliver up possession of the Claimant's premises on or before the 31/12/2001.

He stated that by the Ruling in the suit, Exhibit "B" delivered by the Court on the 10/10/2006, the 1st Defendant's motion for a stay of Execution of the Judgment of the Court in Exhibit "A", was dismissed. After the Ruling, he applied to the Court for issuance of a writ of possession of the said premises against the 1st Defendant which was duly issued on the 16/8/2007, vide Exhibit "C". On the 21/8/2007, the writ of execution of the 16/8/2007 was executed by the Court Bailiffs

and policemen in the presence of the Claimant and the 1st Defendant by dismantling the wooden structure of the 1st Defendant in the premises. The Claimant further stated that immediately possession was taken, the 1st Defendant went and lodged a complaint to the 2nd Defendant at Ugbor Police Station, Benin City against the Claimant alleging a case of stealing, conspiracy and malicious damage.

Based on the complaint, the Claimant was arrested and detained in the cell despite his protest that it was a Court of competent jurisdiction that gave him possession, and also despite the 2nd Defendant being shown a copy of Exhibit "C". He said that himself and the 2nd Defendant proceeded to the Area Customary Court for investigation, and it was confirmed to the 2nd Defendant that the Court actually gave possession to him. He averred that immediately after his arrest, the 1st Defendant took carpenter to the premises of the Claimant, rebuilt the wooden structure and is still occupying the premises till date in spite of the Court order. He stated that he was arrested at about 11.00 am and was not allowed to go on bail until 9.00 p.m. after the 2nd Defendant has collected the sum of N15, 000 for bail from him. He stated that even though investigation revealed that he

did not commit any offence, the Defendants connived amongst themselves and had he prosecuted in Evbuoriarua Magistrates' Court in charge No. MEV/734c/2007 from August 2007 till 11/3/2010 when he was discharged on a no case submission vide Exhibit "D". He said that the 2nd and 3rd Defendants were influenced in prosecuting him as a result of the gratification (money) given to them by the 1st Defendant who swore to deal with him for bringing bailiffs to dismantle his wooden shop on the one hand, and his refusal to yield to the monetary demands of the 2nd Defendant. He finally urged the Court to grant his reliefs as per his Amended Statement of Claim.

In answer to question under cross-examination by J. O. Ugowe, Esq. of learned Counsel for the 1st Defendant, the Claimant stated that the judgment he obtained against the 1st Defendant who is his tenant was for arrears of rent and possession. He stated that it was the bailiffs and the policemen who destroyed the 1st Defendant's wooden structure erected in the premises, and the 1st Defendant and himself were present at the scene. That there is PHCN high tension wire over the building. He denied the fact that Edo State Government acquired all the land under the high tension wire. That the 1st Defendant never told him that he was paying rents to Edo State Government. He stated

that the 1st Defendant gave evidence as a prosecution witness against him in the Magistrates' Court, Evboriaria.

At the close of the case for the Claimant, the 1st Defendant testified on oath in his Defence. He adopted his sworn witness statement on oath on the 16/12/14, wherein he averred that he is the person occupying the business premises situate at No. 120, Sapele Road, Benin City. That he occupied the said premises as a tenant of the Claimant up to the 31/11/2001 as per the judgment of Oredo Area Customary Court, Benin City delivered on 20/1/2001, Exhibit "A". Thereafter, the Edo State Government took over the premises on the ground that it is Government property in that it lies beneath the Power Holding Company of Nigeria PLC. overhead electricity transmission cable line. He said that after the take over, he has been paying rents to Edo State Government, vide Exhibit "G". He said that at the time the judgment in Exhibit "A" was executed by the Court Bailiff and policemen, he was in lawful occupation and possession of the premises on the authority of Edo State Government. That in the course of enforcing the said judgment of the Court, they destroyed the wooden structure he erected on the land. He said that he later rebuilt the wooden structure on the Authority of Edo State Government. He

stated that he reported a case of stealing and malicious damage to his property against the Claimant to the Police for which he was duly prosecuted in the Magistrates' Court, Evbuoriararia, Benin City in charge No. MEV/734C/2007. He finally urged the Court to grant his counter-Claim and dismiss the Claimant's claim.

In answer to questions under cross-examination by Mr. C. Aghoja, of learned Counsel for the Claimant, the 1st Defendant stated that he was not present when the Bailiff and Policemen destroyed his wooden structure on the land. That he did not appeal against the judgment of the Oredo Area Customary Court, Exhibit "A". He said that he has no document with which the Edo State Government acquired the Claimant's land. That he arrested the Claimant with Police on the same day the wooden structure on the land was destroyed. He admitted that he gave evidence against the Claimant in the criminal charge at the Magistrates' Court, Benin City, and the Claimant was discharged. He said that he is claiming the sum of N5 million against the Claimant in his Counter-Claim because his vehicle they towed was damaged, and did not say so in his sworn deposition.

At the close of the 1st Defendant's case, and in compliance with the Rules of Court, the learned Counsel for the parties filed their respective Written Addresses.

The 1st Defendant's written address was filed on the 16/7/15.

John E. Ugowe, Esq. of learned Counsel for the 1st Defendant gave a brief introduction and distilled six issues for determination in his written address thus:

- (a) Whether or not the Claimant's action against the 1st Defendant is properly constituted.
- (b) Whether or not the doctrine of *quic quid plantatur solo solo cedit* is applicable to a case between landlord and tenant, where title is not in issue.
- (c) Whether in view of Exhibits "F" and "G" the judgment of the Oredo Area Customary Court delivered on the 20/11/2001 in Suit No: OR/ACC/391R/2001 Exhibit "A" and the consequential orders made therein were enforceable as at 21/8/2007 or had become spent.
- (d) Whether or not the writ of possession, Exhibit "C" was duly executed in accordance with the due process of law as provided in the Recovery of Premises Law Cap. 142 Vol. V. Laws of the Defunct Bendel State of Nigeria 1976 as applicable to Edo State.
- (e) Whether in the circumstances of this case the Claimant has proved his claim against the 1st Defendant.
- (f) Whether the 1st Defendant has proved his Counter-Claim against the Claimant.

Arguing issue (a), learned Counsel submitted that the Claimant's action against the 1st Defendant is improperly constituted. That the Claimant in this suit is claiming various sums of money being general damages for malicious prosecution and false imprisonment respectively against the 1st Defendant. He submitted that this is a case of misjoinder of causes of action in that the tort of false imprisonment is separate and distinct from the tort of malicious prosecution. That the ingredients that constitute the tort of false imprisonment are different from the ingredient that constitute the tort of malicious prosecution, and therefore they cannot be joined together and determined in one and the same action or suit. He relied on Street on Tort, 6th Edition page 23 at 28, pages 395 to 401 respectively.

He argued that in this case, it is not clear from the pleadings of the Claimant and his evidence in Court whether his action against the 1st Defendant is founded in the tort of false imprisonment or in the tort of malicious prosecution. He urged the Court to hold that the Claimant's action is improperly constituted and his case against the 1st Defendant is bad for uncertainty and misjoinder of causes of action. He urged the Court to resolve this issue in favour of the 1st Defendant, and cited THE GOVERNOR OF KOGI STATE & OR. VS. COLONEL HASSAN

YAKUBU & ANOR. (2001) 5 NSCQR 598 AT 600 RATIO 3; AYORINDE VS. ONI (2000) 1 NSCQR 180.

On issue (b), he submitted that the doctrine of quic quic plantatur solo solo cedit is not applicable to a case between landlord and tenant, where title is not in issue as in the instant case. That it is only applicable in an action for a declaration of title to land, damages for trespass and injunction. He further submitted that the execution of a writ of possession in both situations is different. That the execution of a writ or warrant of possession in a case between a landlord and tenant is as provided in sections 22 and 24 of the Recovery of Premises Law, Cap 142, Vol. of the Laws of the Defunct Bendel State of Nigeria, 1976 now applicable to Edo State. That the mode or procedure for the execution as prescribed in Forms N and O of the schedule to the Law was not complied with. He submitted that it is clear from the provisions of sections 22 and 24 of the said Law that the said doctrine does not apply and a landlord is not entitled to levy execution on the tenant's properties whether real or personal or to destroy same in the course of executing a writ or warrant of possession. He urged the Court to resolve this issue in favour of the 1st Defendant.

On issue (c), learned Counsel submitted that in view of the contents and effects of Exhibits “F and G” and the evidence of the 1st Defendant in relation to these Exhibits, the judgment of the Oredo Area Customary Court delivered on the 20/11/2001 and the consequential orders made in Exhibit “A” had become spent and unenforceable as at 21/8/2007 when the writ of possession, Exhibit “C” was issued and executed. He further submitted that Exhibit “F” constitutes implied and constructive notice to the 1st Defendant that Edo State Government had taken over the ownership, possession, management and control of all lands lying beneath the PHCN overhead transmission cables including No. 120 Benin – Sapele Road, Benin City. That Exhibit “G” is one of the rent receipts issued by the Edo State Government to the Defendant in respect of No. 120, Benin-Sapele Road, Benin City. It was submitted that the combined effects of Exhibits “F and G” is that the relationship of landlord and tenant between the Claimant and the 1st Defendant was brought to an end by a supervening event. Consequently, Exhibit “A” became spent and unenforceable. He referred to the evidence of the 1st Defendant which was unchallenged and uncontroverted. He urged the Court to

also resolve this issue in favour of the 1st Defendant.

On issue (d), learned Counsel submitted that the writ of possession, Exhibit "C" was not duly executed in accordance with the due process of the law, and cited Sections 22 and 24 of the Recovery of Premises Law, Cap 142 Vol. V. Laws of the Defunct Bendel State of Nigeria, 1976 now applicable in Edo State. That the execution of Exhibit "C" was wrongful, illegal, null and void and referred to the evidence of the Claimant and the 1st Defendant respectively.

On issue (e), learned Counsel submitted that from the totality of evidence adduced in this case and the submissions on issues (a) – (d) above, the Claimant has failed woefully to prove his claim against the 1st Defendant that his arrest, detention and prosecution for the offence of conspiracy, stealing and malicious damage to the 1st Defendant's properties were justifiable in law and they were done with reasonable and probable cause.

He finally on this issue submitted that there is no evidence before this Court that it was the 1st Defendant that set the law in motion against the Claimant and that the prosecution of the Claimant was as a result of malice on the part of the 1st Defendant. He urged the Court to resolve this issue against the Claimant.

On issue (f), learned Counsel submitted that the 1st Defendant has proved his Counter-Claim against the Claimant on preponderance of evidence. He contended that it is common ground as between the Claimant and the 1st Defendant that the writ of possession, Exhibit "C" was executed on the 21st of August, 2007 during which the wooden structure erected by the 1st Defendant for his office accommodation was demolished. That the 1st Defendant under cross-examination stated that some of his goods and properties were destroyed in the process including two cars that were parked in the premises. He submitted that it is clear from the evidence of the Claimant and the 1st Defendant that the execution of Exhibit "C" was carried out in a manner reminiscent of a commando military operation without regard to due process of law. He reiterated his submissions on issue (e) above and submitted that the 1st Defendant has proved his Counter-Claim on preponderance of evidence, and urged the Court to resolve this issue in favour of the 1st Defendant.

He finally urged the Court to dismiss the Claimant's claim against the 1st Defendant, and grant the reliefs sought by the 1st Defendant in his Counter-Claim against the Claimant.

Claimant's written address was filed on the 4/8/15. Chris Aghoja, Esq. of learned Counsel for the Claimant gave a brief introduction, summary of facts of the case and formulated three issues for determination thus:

- (1) Whether the Claimant has by his evidence established the tort of false imprisonment against the Defendants.
- (2) Whether the Claimant has led credible evidence to establish the tort of malicious prosecution against the Defendants.
- (3) Whether on the facts of this case the Claimant is not entitled to an order of perpetual injunction against the Defendants from further acts of trespass to Claimant's land.

Arguing issue one, learned Counsel submitted that the evidence led in this case are mostly documentary. That in proof of his case the Claimants tendered Exhibits "A – D" which clearly established that the Claimant was legally on the premises unlawfully occupied by the 1st Defendant on 21/8/2007 to enforce the judgment of the Oredo Area Customary Court with the Court Bailiffs and Police Officers. He contended that the 1st Defendant admitted this fact in paragraphs 4, 8, 9 and 10 of his statement on oath made on 1/7/2013. He reproduced paragraphs 10 and 14 of the 1st Defendant deposition and referred to

his evidence under cross-examination. He argued that the sole reason why the 1st Defendant concocted the alleged crimes against the Claimant which he reported to the 2nd Defendant was the destruction of his office by the Bailiffs of the Area Customary Court, not because he honestly believes that any crime was committed by the Claimant. That the conclusion becomes inevitable as he was present when possession was taken. That Exhibit "C", the Writ of Possession was duly signed by him.

He submitted that it is trite law, that documentary evidence supersedes oral evidence, and cited SKYE BANK PLC. VS. AKINPELU (2010) ALL FWLR (PT. 526) 460. He urged the Court to hold that the 1st Defendant was present when possession of the premises was taken by the Bailiff who also in their official capacity put the Claimant in possession of the land. He also urged the Court to hold that the 1st Defendant had no justification inviting the 2nd Defendant to effect the arrest of the Claimant. He contended that there is unchallenged and uncontradicted evidence of the Claimant in paragraphs 9, 10 and 11, that despite Exhibit "C" which he gave to the 2nd Defendant and confirmation from the Area Customary Court that they gave possession

to the Claimant, the 2nd Defendant detained the Claimant in their cell from 11.00 am – 9.00 pm on 21/8/2007. He urged the Court to hold that unchallenged and uncontradicted evidence as the truth, and cited *MAGAJI VS. NIGERIAN ARMY (2008) 8 NWLR (PT. 1087) 338*; *PROVOST L.S.C. OF EDUCATION VS. EDUN (2004) WRN 11 AT 29*.

He submitted that at the point of arrest and immediately after the arrest there was sufficient evidence before the 2nd Defendant that the Claimant has not committed any crime neither was there any basis for suggesting that the Claimant was about to commit any criminal offence. That it must be pointed out that the power of the police to arrest a Nigeria citizen is not absolute. That it is subject to the provision of section 35 (A – F) of the Constitution of the Federal Republic of Nigeria which has been shown to be inapplicable to the facts of this case. He urged the Court to hold that Claimant was detained by the 2nd Defendant on the instigation of the 1st Defendant who lodged a false complaint to the 2nd Defendant, and cited *BORNO STATE GOVERNMENT VS. ACH. ABBA ASHIEK & ORS. (2007) ALL FWL (PT. 357) 1066 AT 1012*. He contended that the 1st and 2nd Defendants connived to deprive the Claimant of his liberty for no reasonable or probable cause which is the tort of false imprisonment. He submitted that the law is settled that it

is not enough for a Claimant in a claim for false imprisonment to plead and lead evidence that the Defendant merely made a report in which his name was mentioned as a suspect, but must also lead and establish that there was no reasonable cause, and cited U.A.C. (NIG.) PLC. VS. SOBODU (2007) 48 WRN 34 AT 58 – 59. He referred to paragraph 11 of his deposition and his evidence under cross-examination. He submitted that the 1st and 2nd Defendants being joint tortfeasors are jointly and severally liable to the Claimant for his false imprisonment. That there is no doubt that the 2nd Defendant is under the employment, management and control of the 3rd Defendant. The 3rd Defendant is thus jointly liable with the 1st and 2nd Defendants on the principle of vicarious liability, and cited IFEANYI VS. SOLEH BONEH (2000) 12 WRN 1 RATIOS 3 AND 5. He urged the Court to grant the sum of two million naira claimed to the Claimant under this head of claim at least to show the Defendants that impunity does not pay.

On issue (b), learned Counsel cited BALOGUN VS. AMUBIKAHUN (1987) 3 NWLR (PT. 107) 18 AT 19. He contended that Exhibit “D”, the judgment in charge No. MEV/743C/2007: C.O.P. VS. PATRICK OMOROGIUWA & 4 ORS, the Claimant has established by credible

evidence that he was prosecuted by the Defendants, and that he has been discharged and acquitted. He adopted his submissions on issue one above. He submitted that the law is elementary that a party has no legal duty to prove what is admitted. That the Court takes an admitted fact and uses it in its judgment. He cited EGESIMBA VS. ONUZURIKE (2002) 15 NWLR (PT. 791) 466 AT 538.

He stated that the 1st Defendant has admitted that his wooden structure was demolished in the course of enforcing an order of possession of a Court against him but he went to report a case of stealing, conspiracy and malicious damage to the 2nd Defendant. He referred to paragraphs 10 and 15 of the Claimant's deposition oath. That these depositions were never challenged nor contradicted by any of the Defendants. That the law is settled that where facts are provable by affidavit evidence and a party fails and or refuses to controvert the evidence of the other party such unchallenged evidence must be accepted as the truth. He relied on AJOMALE VS. YADUAT (1991) 3 LRCN 950 AT 968 RATIO 3. He contended that there is also the unchallenged and uncontrodicted evidence of the Claimant that he gave Exhibit "C" to the 2nd Defendant who proceeded to the Area Customary Court with the Claimant and it was confirmed that it was

Bailiffs who took possession of the premises and delivered same to the Claimant. That the 1st Defendant during the ordeal of the Claimant rebuilt the wooden structure on the land. He stated that can it reasonably be said in the light of the above admitted, unchallenged and uncontradicted pieces of evidence that the Claimant has not established that there was no reasonable and probable cause for his prosecution and or that the prosecution was not actuated by malice? He urged the Court to answer the question in the affirmative. That the act of the Defendants in prosecuting the Claimant is clearly illegal and contrary to sections 24 and 25 of the Recovery of Premises Law Cap. 142 laws of the Defunct Bendel State of Nigeria 1976, as applicable to Edo State which provides complete immunity from prosecution for anybody assisting a Bailiff to take possession of property over which a warrant of possession has been issued.

He submitted that the facts of this case are distinguishable from the case of ISHENO VS. JULIUS BERGER NIGERIA PLC. (2008) ALL FWLR (PT. 415) 1632; AND FAJEMIROKUN VS. COMMERCIAL BANK (NIG.) LTD (2007) ALL FWLR (PT. 487) 1. That there is no doubt that the arrest and prosecution of the Claimant was completely lacking in bona fide

but was influenced by sinister and improper motives. He reproduced part of page 8 of Exhibit "D". He submitted that the conduct of the Defendants in prosecuting the Claimant was not only without reasonable and probable cause, malicious but also clearly illegal and it is only right that this Court award the entire sum claimed at least to dissuade impunity. He urged the Court to resolve this against the Defendant.

On issue three, learned Counsel submitted that on the facts of this case, the Claimant is entitled to an order of perpetual injunction restraining the Defendants from further acts of trespass to Claimant land. He posited that the 1st Defendant admitted under cross-examination that there is no appeal against Exhibits "A, B and C" and none of them has been set aside by any Court of law in Nigeria. That they are valid and subsisting order(s) of a Court of competent jurisdiction. He further submitted that for every day the 1st Defendant remains on the land, he is liable for continuing trespass. That the 1st Defendant has spuriously submitted that title to the land has passed to the committee on Protection of Government property by virtue of Exhibits "E and F". He posited that the committee is neither a natural

person nor a juristic person, and therefore is capable of owing land. That the Land Use Act came into force in 1978 and the mode of revocation of a right of occupancy is stated in section 28 of the Land Use Act, 1978. He further posited that there is no evidence of revocation to support the spurious submission of the 1st Defendant in issue (c) of his written address that Edo State Government has acquired the land. That the law is settled that non compliance with section 28 renders any purported acquisition null and void, and cited IBRAHIM VS. MOHAMMED (2003) 5 NWLR (PT. 817) 615. He submitted that having established that his legal rights to possession of the land has been infringed by the Defendants and the Defendants having failed to justify their presence on the land, he urged the Court to restrain them perpetually from further acts of trespass to the Claimant's land.

Replying to 1st Defendant's issues (a) to (f), learned Counsel on issue (a) of the 1st Defendant submitted that the 1st Defendant submission has no foundation because it is contrary to the provision of Order 14 Rule 1 of the Edo State High Court (Civil Procedure) Rules, 2012. That the two cases are also irrelevant as they relate to failure to join a proper party and on fundamental right enforcement respectively.

On 1st Defendant issue (b), he submitted that the issue is completely irrelevant as no party in the suit canvassed the issue of quic quid platatur solo solo cedit.

On issue (c), he submitted that this issue is spurious as Exhibits “F and G” are not any of the known ways in law of divesting a party of title to land.

On issue (d), he submitted that the issue did not arise as it was not only pleaded but also no evidence was led on it.

He finally urged the Court to dismiss the counter-claim as section 25 of the Recovery of premises law preclude the Counter-Claim, and that the entry of the Claimant is legal as it is based on the order of a Court of competent jurisdiction.

It is pertinent to state that in every civil action, the burden of proof falls squarely upon the Claimant alleging it, as he who asserts must prove. In other words, the onus of proof lies on he who asserts. This principle is enunciated in section 133(1) of the Evidence Act, 2011. See ATANE VS. AMU (1974) 10 S.C. 227; AGAGU VS. MIMIKO (2009) 7 NWLR (PT. 1140) 342, RATIO 24.

In the instant case, it can be gleaned from the Amended Statement of Claim particularly paragraph 16 that the action is founded on the tort of false imprisonment and malicious prosecution.

Now, the tort of false imprisonment consists in the act of arresting or imprisoning any person without lawful justification from exercising his/her right of leaving the place in which he or she is. It may also be committed by continuing a lawful imprisonment longer than is justifiable. See *IYALEKHUE VS. OMOROGBE* (1991) 3 NWLR (PT. 179) 94.

In other words, false imprisonment is the restraining or detaining of a person, if the person doing or causing the imprisonment has no right in law to imprison that other person. See *MANKILAS KARABERIS VS. APENA* (SUPRA).

To success in an action for false imprisonment, the Claimant must establish that the Defendant was instrumental in setting the law in motion against him; passing information to the Police is not enough. The Police are nominal party as they act upon the invitation of or on information made by some persons. If, therefore, the reporting party upon suspicion of a felony made a complaint to the Police upon which

the Police themselves acted, an action for false imprisonment cannot be upheld – See ABDULLAHI VS. RAJI (1995) 1 NWLR (PT. 534) 841; OKONKWO V. OGBODU (1996) 5 NWLR (PT. 449) 420.

In my view, the only issue for determination in this case falls within a narrow compartment. The issue is whether from the evidence and circumstances of this case, the Defendants can be held liable for the false imprisonment and malicious prosecution of the Claimant?

In the instant case, the Claimant in his evidence in Court gave a clear account of how he was arrested by the Defendants after the Bailiffs and Policemen have executed the Writ of Execution in the presence of the Claimant and the 1st Defendant by dismantling the wooden structure erected by the 1st Defendant on the land based on a judgment of Court, Exhibit "A". The Claimant stated that the 1st Defendant who was not happy by the demolition of the wooden structure immediately lodged a report at Ugbor Police Station of stealing and malicious damage against him. This led to his arrest and detention between the hours of 11.00 am to 9.00 pm. The Claimant also stated how the 2nd Defendant in spite of the confirmation that the Writ of Execution,

Exhibit "C" was issued by a competent Court i.e. Oredo Area Customary Court, Benin City, proceeded to arraign him for the offences of stealing and malicious damage.

On his part, the 1st Defendant admitted that he lodged a complaint of stealing and malicious damage against the Claimant at Ugbor Police Station, Benin City, which resulted in the arrest, detention and subsequent arraignment of the Claimant at the Evboriaria Magistrates' Court, Benin City. The 2nd Defendant who was served with the Court processes failed or neglected to file his Statement of Defence and also failed to appear to defend the suit. It is clearly not the business of this Court to find out why he opted out of the proceedings.

I have carefully and painstakingly considered the totality of the evidence adduced by the parties in line with their pleadings. I have also given anxious consideration to the written arguments of learned Counsel for the parties and the plethora of judicial authorities cited. After a calm and dispassionate consideration of the entire evidence, it is demonstrably clear that the Claimant gave evidence of the nature of complaint lodged by the 1st Defendant at Ugbor Police Station which led to his arrest, detention and subsequent arraignment in the

Magistrates' Court, Benin City, by the 2nd Defendant. It is manifestly clear, from the nature of the complaint that the Claimant was arrested and detained in the cell by the 2nd Defendant in consequence of a false and spiteful allegation of the 1st Defendant that the Claimant stole and destroyed his property. The 1st Defendant was clearly aware that it was the Court Bailiffs and the Police Officers who carried out the Writ of Execution based on the judgment of competent Court of jurisdiction, vide Exhibit "A", yet went ahead to lodge a false report against the Claimant. More importantly, the 1st Defendant was present when the execution of the writ of execution was carried out by the Bailiffs and the policemen, and he signed, the writ of execution, Exhibit "C".

In the case of AC (O.A.O.) NIG. LTD. V. UMANAH (2013) 4 NWLR (PT. 1344) 323 AT 351 – 352, the Court of Appeal (Lagos Division) held thus:

“The law will support a person who has good reasons to make a report to the Police on an offence so long as he wants them to use their own discretion in taking further steps. An action for false imprisonment will not lie against an individual who merely gave information to the police before the police on their own initiative arrest the suspect. However, a party to action for false imprisonment may succeed if he can prove that it was the other party that was responsible in setting the law in motion against him.”

See EBENIGHE V. ACHI (2011) 2 NWLR (PT. 1230) 65.

In this case, it is patently clear from the entire evidence that the 1st Defendant was actively responsible in setting the law in motion against the Claimant by the falsity of his complaint to the Ugbor Police which led to the arrest and detention of the Claimant. The report to the police resorted to by the 1st Defendant was unwarranted and unreasonable. Thus, the attitudinal disposition of the 1st Defendant was despicable and rather reprehensible. It is also inferable from the overall circumstance of the case that the action of the 1st Defendant was actuated by malice for the destruction of the wooden structure of his office by the Bailiffs of Court and Police Officers. It is my view, and I so hold that the complaint of the 1st Defendant that the Claimant stole and maliciously damaged his property was fabricated purely to advance the malice and retake possession of the premises. I hold that the 1st Defendant had no justification in inviting the 2nd Defendant to effect the arrest of the Claimant. In the circumstances, it is my view, that the Claimant's action against the 1st Defendant for unlawful arrest and detention has been proved by the Claimant.

As earlier stated, the 2nd Defendant who was duly served with the Court processes failed to appear to defence the suit. The Claimant

also gave evidence to the effect that despite his confirmation that the writ of execution was issued by the Oredo Area Customary Court, yet he proceeded to detain him in the cell, and subsequent arraigned him before the Evboriaria Magistrates' Court Benin City, for the offences of stealing and malicious damage. Interestingly, the 2nd Defendant in his testimony before the Evboriaria Magistrates' Court Benin City in the criminal trial of the Claimant, Exhibit "D" at page 8 stated as follows:

"The investigating Police Officer in this case (PW 2) while testifying in Chief stated that due to the statement of the 1st Accused person that it was a Court order, they booked and left for the Area Customary Court at Forestry to find out if they actually sent their Court Bailiff and Policemen to No. 120, Sapele Road, Benin City. That the Court Registrar said "yes". Under cross-examination, P.W. 2 stated that it is true from his investigation that policemen and Court Bailiff were present when the office of the PW 1 was dismantled. That it is true that the Bailiffs and policemen came from Area Customary Court, Benin City."

Curious and strange as it may seem, in the face of this clear evidence of the 2nd Defendant's investigation, he still went ahead to detain and later charged the Claimant to Magistrates' Court for the offences of stealing and malicious damage. It is, my humble and candid view, that the entire scenario points irresistibly to the 2nd Defendant acting rashly and impetuously. The behaviour of the 2nd

Defendant amounts to complete abdication of his responsibility having confirmed that a competent Court issued the warrant of Execution, Exhibit "C", and the Court Bailiffs and Police Officers carried out the execution. It is the most abdication of his responsibility leading to the suggestion that he was most unlikely working in tandem with the 1st Defendant at the peril of the Claimant. In the result, there is no doubt whatsoever that the Claimant was falsely imprisoned, and the detention by the 2nd Defendant was illegal and unlawful.

In the case of JIM-JAJA V. COP (2011) 2 NWLR (PT. 1231) 375 AT 392 – 393, the Court of Appeal, (Port-Harcourt Division) succinctly stated as follows:

“If the Plaintiff was arrested and detained as a result of a report of a third party and such detention is without lawful excuse, both the party and the police are liable in an action for false imprisonment. Such unlawful arrest and detention, no doubt, amounts to a violation of the personal liberty of the person so arrested and detained.”

In this case, the 2nd Defendant did basic preliminary investigation on the complaint of the 1st Defendant and confirmed that the Claimant was innocent of the allegation. I hold that the arrest and detention of the Claimant by the 2nd Defendant is illegal and unlawful. I hold that the 2nd Defendant being under the employment and management of

the 3rd Defendant, the 3rd Defendant is jointly liable with the 2nd Defendant.

Let me now turn to consider the issue of malicious prosecution.

The Claimant in order to succeed must establish in evidence the following:

- (1) That he was prosecuted by the Defendant. In this regard, it must be shown clearly that the Defendant set the law in motion against the Claimant leading to a criminal charge.
- (2) That the prosecution was determined in favour of the Claimant.
- (3) That the prosecution of the Claimant was completely without reasonable and probable cause; and
- (4) Finally, it must be as a result of malice by the Defendant against the Claimant.

All the four elements above must be present for a successfully action for malicious prosecution, and the onus is always on the Claimant to prove each and every one of them. See the following cases:

- (1) BAYOLM VS. AHEMBA (1999) 71 LRCN 2347 AT 2354 RATIO 5.
- (2) IYALEKHUE VS. OMOREGBE (1991) NWLR (PT. 179) AT 101.
- (3) C.C.B. (NIG.) LTD. VS. ODOGWU (1990) 3 NWLR (PT. 140) 646 AT 653 – 654.

- (4) OWOMERO VS. FLOUR'S MILLS (NIG.) LTD. (1995) 9 NWLR (PT. 421) 622 AT 625 RATIO 3.
- (5) APOSTLE JEREMIAH TOTOR VS. PHILIP AWEH (2000) 2 NWLR (PT. 644) 309, 311 RATIO 2.
- (6) OJO VS. LASISI (2003) 28 WRN 31 AT 35, RATIO 2.
- (7) ODUIWOLE VS. WEST (2010) 10 NWLR (PT. 1203) 598.

In the instant case, I had earlier recanted the evidence leading to the arrest, detention and subsequent prosecution of the Claimant at the Evboriaria Magistrates' Court, Benin City. There is no doubt, that both parties are *ad-idem* that the Claimant was indeed charged and prosecuted before the Chief Magistrates' Court, Evboriaria, Benin City for the offences of conspiracy, stealing and malicious damage punishable under sections 517, 451 and 390 of the Criminal Code Cap 48 Vol. 11 laws of Bendel State of Nigeria 1976, (as applicable in Edo State). It is also not in dispute, that at the conclusion of the trial, the Claimant was discharged of all the Counts on a no case submission on 11/3/2010, by the learned Chief Magistrate, Exhibit "D". I hold that the Claimant has successfully established the 1st and 2nd ingredients as required by law that the Claimant was prosecuted by the Defendants, and that the prosecution was determined in favour of the Claimant.

I shall proceed to consider whether the prosecution of the Claimant was without reasonable and probable cause.

In the case of BAYAM V. AGANA (2010) 9 NWLR (PT. 1199) 215 AT 235, it was held thus:

“A reasonable and probable cause entails the Defendant having in his possession, as a reasonable and sane person, a set of facts which an ordinary man would lead to the conclusion that the person about whom a complaint was made to the Police had committed a criminal offence.”

See BALOGUN V. AMUBIKANHUN (1989) 2 NWLR (PT. 107) 18.

It is, trite that where a Defendant makes a false report against the Claimant leading to the latter prosecution, this is a clear evidence that the Defendant had no reasonable and probable cause for making the report to the Police. Thus, if to his knowledge, the charge was baseless or groundless, he would be liable.

See: INIEH V. ARUEGBON 14 WACA 73 AT 74;

BALOGUN V. AMUBIKANHUN (SUPRA).

In order to determine the question of reasonable and probable cause, it is necessary first to find out what were the facts known to the 1st Defendant at the time of making the charge or report, and then decide whether these facts constitute reasonable and probable cause.

If the Defendant honestly believes that the act of the Claimant amounts to an offence even if the Claimant is discharged and acquitted, the prosecution cannot be said to lack reasonable and probable cause.

The onus of proving this element rests with the Claimant.

See: USIFOH 11 VS. EDO UKE (1959) 3 FSC 59.

In this case, the Claimant gave cogent and credible evidence that the 1st Defendant lodged a report to the Police that he stole his property. I have earlier held that the report lodged by the 1st Defendant to the Police against the Claimant which led to his arrest, detention and arraignment at the Magistrates' Court Benin City was false in all material particulars. The 1st Defendant knew that it was the Bailiffs and Police Officers who dismantled his wooden structure on the land based on a writ of execution, yet proceed to lodge a report of stealing and malicious damage against the Claimant not because he honestly believed that any crime was committed by the Claimant. It seems clear that the action of the 1st Defendant in reporting to the Police was actuated by malice because of the dismantling of the wooden structure of his office and supposedly to punish the Claimant. The 2nd Defendant also acted recklessly, illegally and unlawfully by arraigning the Claimant at the Magistrates' Court, Benin City on a

criminal charge of stealing and malicious prosecution when his preliminary investigation revealed that the writ of execution was issued by a Court of competent jurisdiction, and the execution was done by the Court Bailiffs in conjunction with police officers.

I, therefore have no hesitation in holding that the complaint of the 1st Defendant against Claimant was fabricated to punish and embarrass the Claimant for the judgment he obtained against him which led to the dismantling of the wooden structure of his office on the premises. I further hold that the 1st and 2nd Defendants have no reasonable and probable cause to prosecute the Claimant as the allegation was unsubstantiated and totally false. By these findings therefore, I am satisfied that all the legal requirements needed to proceed in an action for malicious prosecution have been effectively established against the 1st and 2nd Defendants.

In this case, the 1st Defendant set-up a Counter-Claim against the Claimant.

It is, settled law, that a Counter-Claim is a cross-action with the Claimant becoming a Defendant to the Counter-Claim. Therefore, the onus of proof of the Counter-Claim rests upon the Counter-Claimant.

He must lead evidence in support of the Counter-Claim in order to succeed.

See: ANOZIA V. A.G., LAGOS STATE (2010) 15 NWLR (PT. 1216) 207 AT 217.

RAPHAEL V. EZE (2015) 12 NWLR (PT. 1472) 39.

In this case, the 1st Defendant is claiming the sum of N5 million being damages for trespass against the Claimant in that on or about the 21/8/2007, the Claimant in the company of the two Policemen and Court Bailiffs broke and entered the said premises at No. 120, Sapele Road, Benin City in the lawful possession of the 1st Defendant and destroyed the wooden structure erected thereon for his office accommodation and other goods and properties belonging to his customer without lawful and justifiable cause.

The 1st Defendant testified on his own behalf and tendered Exhibits "A", a Certified True Copy of the Ruling in suit No. OR/ACC/391/2001 Exhibit "F" a Notice issued to the 1st Defendant by the Committee on Protection of Government Property dated 24/5/2004, and Exhibit "G", an official receipt dated 23/2/2007. In his testimony, the 1st Defendant stated that he was the tenant of the Claimant up to 31/11/2001. Thereafter, the Edo State Government

acquired the premises of the Claimant because it lies beneath the PHCN high tension wire.

It is interesting to note that the 1st Defendant who alleged that the premises of the Claimant at No. 120, Sapele Road, was compulsorily acquired by the Edo State Government failed woefully to produce any Gazette of the said acquisition by the Edo State Government. It is instructive to note, that under the Land Use Act of 1978, the mode of revocation of a right of occupancy is stated in section 28. There is no oral or documentary evidence from the 1st Defendant of the purported revocation of the premises of the Claimant by the Edo State Government. He failed to adduce any iota of evidence of any compensation paid to the Claimant for the purported revocation of the premises. It is, my view, that Exhibits "E, F and G" tendered by the 1st Defendant showed nothing and proved nothing with regard to the purported revocation of the Claimant premises at No. 120, Sapele Road, Benin City. In the result, I hold that the Claimant has failed woefully to establish by credible evidence that the premises of the Claimant at No. 120, Sapele Road was compulsorily acquired by the Edo state Government. I hold that the 1st Defendant was a tenant or at best a licensee on the Claimant's land and has failed to justify his legal

presence on the Claimant's land. I hold that by the Judgment of the Oredo Area Customary Court, Exhibit "A" which granted possession of the demised premises to the Claimant, the 1st Defendant is now a trespasser on the premises of the Claimant. There is no Appeal by the 1st Defendant against the judgment of the Oredo Area Customary Court, or a stay of the writ of execution. Therefore, they are valid and subsisting orders of a competent Court of jurisdiction.

It is, also important to restate, that the writ of execution, Exhibit "C" was carried out by the Court Bailiffs and Police Officers based on the order or judgment of a competent Court of jurisdiction.

Therefore, the claimant cannot be held liable for the lawful act of the Court Bailiffs and the police officers who dismantled the wooden structure erected by the 1st Defendant on the premises of the Claimant, and any other acts of the aforesaid officers. I hold that the entry of the Claimant into the premises is legal as it is based on the order of a Court of competent jurisdiction.

In the result, I hold that the 1st Defendant has failed to prove his Counter-Claim as required by law. Consequently, I hereby dismiss the Counter-Claim in its entirety as totally lacking in merit.

I further hold that the Claimant has successfully proved his claim on the balance of probability as required by law. I accordingly enter judgment in favour of the Claimant as follows:

- (1) I award the sum of N1 million naira as general damages suffered by the Claimant for false imprisonment and malicious prosecution against the 1st Defendant.
- (2) I award the sum of N2 million naira as general damages suffered by the Claimant for false imprisonment and malicious prosecution against the 2nd and 3rd Defendants jointly and severally.
- (3) I hereby decree an order of perpetual injunction restraining the 1st Defendant, his servants, tenants and privies from further acts of trespass on the Claimant's land.

I award costs of N30, 000 against the defendants in favour of the Claimant.

E. O. AHAMIOJE,
JUDGE.
10/2/2016.

COUNSEL:

CHRIS AGHOJA, ESQ. FOR THE CLAIMANT

JOHN E. UGOWE, ESQ. FOR THE 1ST DEFENDANT

2ND & 3RD DEFENDANTS ARE UNREPRESENTED