IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 9TH DAY OF JUNE 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/490/2015

ANDREW OKOH …….. PLAINTIFF

AND

1. ROSES HOTELS
2. NGOZI (OVERALL MANAGER OF ROSES HOTELS) } DEFENDANTS

JUDGMENT

By Writ of Summons and Statement of Claim dated 16th December, 2015 and filed on the same date, the Plaintiff commenced the instant suit against the Defendants claiming as follows;

i. *A Declaration that actions of the Defendants in detaining the Plaintiff beyond his working hours (without his consent) on the 11/9/2013 at the premises of the 1st Defendant was illegal and same amounts to false imprisonment.*
ii. *A Declaration that the detention of the Plaintiff by officers of the Garki police station for more than 2 days at the active orders of the Defendants amounts to false imprisonment.*
iii. *A Declaration that the prosecution of the plaintiff at active orders/instigation of the Defendants (with full participation of the staff of the Defendants which resulted in the discharged of the Plaintiff) amounts to malicious prosecution.*
iv. *An Order of the Honourable Court awarding the sum of N100,000,000 (One Hundred Million Naira) only in the favour of the Plaintiff against the Defendants as damages for false imprisonment.*
v. *An Order of this Honourable Court awarding cost of the suit put at N750,000 (Seven Hundred and Fifty Naira) only in favour of the Plaintiff against the Defendants.*

vi. *An Order of the Honourable Court awarding 20% interest on the Judgment sum per month until the Judgment is liquidated completely.*
vii. *Any other further orders as the Honourable Court may deem fit to make.*

The Defendants reacted to the originating processes served on them by filing a Joint Statement of Defence on 19th February, 2018.

At the trial of this matter, the Plaintiff testified as PW1 in proof of his case. The Defendants called one witness, Ngozi Okoro (the 2nd Defendant), who testified as DW1 in their defence. The witnesses were cross-examined by respective Counsel.

The following were admitted in evidence and marked as exhibits as such;

1. Exhibit A:-The CTC of Ruling of Chief Magistrate Court II of the FCT dated 21st November, 2014.
2. Exhibit B:-Duty Roaster captioned 'Security Department' dated from 9th September, 2013 to 15th September, 2013.

In adducing evidence in support of his case, the Plaintiff adopted his written witness statement on oath deposed to by him on 16thDecember, 2015 as his oral testimony.

A summary of the Plaintiff's case as presented by his pleading and testimony is that he was a staff of the 1st Defendant and employed as a security operative since the year 2012. The Plaintiff testified that the 2nd Defendant is the overall manager of the 1st Defendant which operates a hospitality business within Durumi district, Garki Abuja. That staff of the 1st Defendant work in morning and night shifts and the Plaintiff was not feeling well when he resumed duty for the night shift on 11th September, 2013. It is the Plaintiff's averment that on that night shift there were the following personnel; 1 night manager, 2 armed police officers, 1 female cook, 1 security supervisor, 4 security guards and 1 other staff from another department. That upon resumption, the Plaintiff reported his deteriorating health to his

immediate supervisor (Mr. N. Nwoko) who asked him to proceed to the 'boys-locker-room' to rest and the Plaintiff complied by proceeding to the said locker room where he slept off. He said on his way to the locker room he had noticed a security guard who was off duty.

The Plaintiff further testified that he was woken up by his supervisor between 5am – 6:30am the following day that one of the TV (plasma TV) situated at the swimming pool side was missing. It is the Plaintiff's testimony that had no option but to join in the search of the 1st Defendant's premises for the stolen TV. That everyone gave up the search by 7:30am when the morning shift staff started resuming. The Plaintiff testified that when he wanted to leave the 1st Defendant's premises along with other staff at the end of the night shift, the 2nd Defendant detained him and called for the CCTV operator to get the CCTV footage. They all watched the blurred, black and white CCTV footage in the 2nd Defendant's office but no one could see clearly who the culprit was. The 2nd Defendant however suddenly alleged that it was the Plaintiff and ordered the police officers to deal with him upon which one of the police officers 'double slapped' him by the ears causing the Plaintiff's ears to swell and bleed.

It is the Plaintiff's case that his pleas of innocence and ill-health fell on deaf ears as the 2nd Defendant ordered the police officers to detain him amidst torturing him till about 12pm before taking him to the Garki police station. That nothing was found on him after police investigations but the Defendants insisted that the Plaintiff be detained for over three days despite his lawyer's plea for administrative bail. The police invited the 2nd Defendant who insisted against all advice that the Plaintiff should be charged to court. The Plaintiff testified that, instigated by the Defendants, the police eventually charged the Plaintiff to the FCT Magistrate Court Karu. That the Defendants called the security guards, CCTV operators and other staff of the 1st Defendant as witnesses in an attempt to implicate the Plaintiff but refused to produce the CCTV footage as evidence in court. That after months of trial the Plaintiff was discharged and acquitted by the learned trial Magistrate. A CTC of the Ruling of the

Magistrate Court was admitted at trial as Exhibit A. The Plaintiff testified that he filed this action when there was no appeal by the Police.

The Defendants admit that the Plaintiff was a staff of the 1st Defendant who worked in shifts as security guard at the material time but nevertheless denied the Plaintiff's claim as frivolous. In support of the defence, the 2nd Defendant (DW1) adopted her written witness statement on oath of 19th February, 2018 as her oral testimony.

The 2nd Defendant is a staff of the 1st Defendant. A brief summary of the 2nd Defendant's testimony is that the Plaintiff was on night duty at the pool bar for the week of 9th September, 2013 to 15th September, 2013 according to the weekly roaster prepared for all departmental staff. Exhibit B was admitted in evidence as the roaster for the said week. The 2nd Defendant testified that she saw the Plaintiff resume duty on 11th September, 2013 and proceed to his duty post within the Bar/Swimming pool area of the hotel. That the Plaintiff neither reported sick to her nor to his supervisor. That the hotel rule is to exempt from duty any staff who reports sick and permit such staff to return home.

It is the 2nd Defendant's testimony that three civilian guards i.e. the Plaintiff, one Ms Jacintha Onuzulike and the security supervisor Mr. NwokeNtima as well as two policemen were on duty on the night of 11th September, 2013. That there is no provision for a sleeping place for workers in the hotel as the 'boys-locker-room' is merely a room for male staff to change into their uniform. That the Plaintiff had charge and responsibility for the safety of the equipment/property and persons within the swimming pool/bar area of the hotel within the period from 5:00pm on 11th September, 2013 to 7:45 on 12th September, 2013. That the 2nd Defendant (who hadnot resumed work) received a call from the operation manager about the theft of a television set at the pool bar which had been reported by the Plaintiff's reliever and the morning duty bar attendant. That upon the 2nd Defendant's arrival, she discovered that the Plaintiff who was on guard duty within the incident area was asked to explain the

disappearance of the television set under his care but he could not offer an explanation. That all staff of the night and morning shifts as well as the two policemen on security duty volunteered to search for the television within and around the hotel but could not find same until the search was called off around 9am.

It is the 2nd Defendant's further testimony that, following these events, she reasonably suspected the security guard on night duty particularly the Plaintiff at whose duty beat the television was stolen and he did not report any robbery incident. That all security personnel and the two police officers were invited to the 2nd Defendant's office where the CCTV footage revealed the Plaintiff lifting the television set till he was out of camera range. That the Plaintiff then admitted the crime and requested for his phone to speak with his accomplices but instead called his mother and brother.

The 2nd Defendant testified that the Plaintiff was not detained in any manner or treated differently from other night duty staff as no staff (including the Plaintiff) was restrained from leaving the hotel at the close of work. That she neither restrained nor ordered the beating of the Plaintiff. That although the Plaintiff's mother pleaded that the matter be resolved without the involving the Police, the Plaintiff's lawyer insisted that the matter be taken to the Police station as according to the lawyer, the Plaintiff's admission was not voluntary. Consequently, the Policemen on night duty, the operations manager (Mr. Garba), Mr. NwokeNtima (the security supervisor), the Plaintiff and his colleague on night duty (Ms Jacintha Onuzulike) as well as the Plaintiff's lawyer all left for Garki Police station where their statements were recorded. That all night duty staff remained behind without coercion as a result of the situation of things and did not leave until noon when the Plaintiff and his lawyer opted for the Police station.

It is the Defendants' defence and the 2nd Defendant's further testimony that she (2nd Defendant) was neither invited by the police to the station nor did she make any statement to the Police in respect of the matter at any police station. That the Defendants neither instigated nor

caused the Police to take any particular action against the Plaintiff such as charging him to the Magistrate Court or any other court. That the management of the 1st Defendant left everything to divine judgment and as such the Defendants had no idea of steps being taken by the Police until three of their staff who were on duty on the day of the incident were invited by the Police to testify in court. That the Defendants have no legal contest with the Plaintiff in any court of law and they were not parties to the Karu Magistrate Court proceedings against the Plaintiff.

At the conclusion of evidence, the Plaintiff's Counsel filed his final written address on 4th of February, 2020 (which he adopted as his oral arguments) wherein he formulated a sole issue for determination to wit;

> *"Whether on the preponderance of evidence, the Claimant has established his case to be entitled to the reliefs sought in this case before this Honourable Court."*

Despite being aware of the date for adoption of final written address, the Defendants were absent and unrepresented by Counsel on that date. Upon the application of the Plaintiff's Counsel, this Court deemed the final written address filed by the Defendants in this suit on the 18th February, 2020 as adopted by the Defendants.

In his final written address, the Defendants' Counsel formulated two issues for determination which are as follows;

i. Whether the Plaintiff was able to proof (sic) his case.
ii. Whether the Plaintiff is entitled to the relief sort (sic).

Arguing for the grant of the Plaintiff's claim, his Counsel submitted in his final address that the Plaintiff's entire case is about false imprisonment and malicious prosecution. Counsel said of the Plaintiff's cause of action, that evidence shows that the Plaintiff was *(i)* detained at the premises of the 1st Defendant, *(ii)* detained at the Garki Police Station at the instance of the Defendants, *(iii)*maliciously

prosecuted at the instance of the Defendants and *(iv)* the suit was decided in his favour. Counsel identified two elements to be proved for a claimant to succeed in an action for false imprisonment. He argued that although the Defendant denied the Plaintiff's evidence on who was responsible for his detention, it is clear that a staff of the 1st Defendant detained the Plaintiff. He contended that the Defendants failed to call the Operational Manager to whom the 2nd Defendant shifted the blame. He posited that part of the 2ndDefendant's testimony amounts to hearsay. He urged the Court to hold that the Plaintiff was unjustly restrained as he was asked to watch the CCTV footage against his will.

Counsel to the Plaintiff further argued that although the Plaintiff's testimony that he was detained at the Garki Police Station was denied by the Defendants, page 2 of Exhibit A shows that it was the staff of the Defendant that made the criminal allegation against the Plaintiff that led to his arrest, detention and subsequent prosecution. He argued that the only justification which the Defendants had would have been the CCTV footage implicating the Plaintiff which the Defendants did not produce before the magistrate court or this Court. He cited the rather antiquated case of MEERING V. GRAHAM WHITE AVIATION CO. LTD (1920) 122 LT 44 on false imprisonment.

Counsel proceeded to identify what the Plaintiff must prove in his claim for malicious prosecution and once again referred this Court to Exhibit A contending that it was the Defendants' staff Andrew Garba that incidented the case at the Garki Police Station. He contended that although the Defendants tried to deny it, the evidence puts to rest that it was the Defendants who set the law in motion against the Plaintiff by initiating and instigating his arrest, detention and prosecution. He posited that the Defendants' allegation that the Plaintiff and his lawyer opted to go to the Police Station is not corroborated by Exhibit A which further shows that the case terminated in the Plaintiff's favour. He argued that the Defendants had no probable cause as the CCTV footage was not produced and they thus acted maliciously.

He finally urged this Court to resolve his sole issue in favour of the Plaintiff and grant all the reliefs claimed.

Arguing *par contra* in his address, Counsel to the Defendants submitted that the evidence before this Court shows that the Plaintiff lied on oath about his being detained for more than 3 days. Counsel contended that even if, without conceding, the Defendant admits detaining the Plaintiff before handing him over to the Police, it is trite law that a private citizen can make arrest of anyone found with reasonable suspicion before handing him over to the police. He argued that the prosecution of the Plaintiff was not malicious in any way being under suspicion as the only staff that passed through where the missing item was kept. He contended that the Plaintiff's success in this case is determined by the strength of his case and not by the weakness of the defence. He cited ABUBAKAR V. JOSEPH (2008) 43 NSCQR 199. Counsel argued that from his testimony under cross-examination, the Plaintiff has not proved that he was falsely imprisoned or maliciously prosecuted. Counsel to the Defendants submitted that the Plaintiff is therefore not entitled to the reliefs sought as his statement and oral evidence have been inconsistent.

I have carefully considered the pleadings of the parties, the entire evidence adduced and the arguments of both parties via their final submissions. The issues formulated by both parties are similar in content and apt, I would adopt same, particularly as distilled by the Plaintiff. It is:

> **Whether on the preponderance of evidence, the Plaintiff has established his case to be entitled to the reliefs sought in this case before this Honourable Court.**

In the resolution of the issue for determination before this Court, it is pertinent to note that the Plaintiff's claim before this Court is in the realm of the tort of false imprisonment/unlawful detention and malicious prosecution for which he seeks (in the main) declaratory reliefs as per the first, second and third reliefs of his Statement of Claim.

Generally, the law is that the burden of proof in civil cases lies on the party against whom judgment would be entered if no evidence was adduced by either party. – see **EZINWA V. AGU (2003) LPELR-7238(CA) AT P. 14 PARAS. A – B**. Thus, the general burden of proof principally lies on the plaintiff as the initiator of a claim – see **IYAMU V. ALONGE (2007) LPELR-8689(CA) AT PP. 45 – 53 PARAS. D–C**. It is also elementary principle of law that he who asserts must prove – see **ACTION ALLIANCE & ORS V. INEC (2019) LPELR-49364(CA) AT PP. 27 – 28 PARAS. F – D**.

Having sought declaratory reliefs from this Court, the law requires that the Plaintiff must succeed on the strength of his own case and not on the weakness of the defence as a declaratory relief is not to be granted to a party on the admission or default of defence of the other party. – see the cases of **ALAO V. AKANO (2005) LPELR-409(SC) AT P. 9 PARAS. B–C** and **OKONJO V. NWAUKONI (2018) LPELR-44839(CA) AT PP. 15 – 16 PARAS. D–B**.

The Plaintiff in this case has alleged various acts of false imprisonment and unlawful detention against the Defendants.

It is not in dispute that the Plaintiff was a staff of the 1st Defendant at the time material to the instant case. It is not in dispute that the Plaintiff was a security guard on duty on the night shift of 11th September, 2013 at the 1st Defendant's hotel. It is also not in dispute that a television set was discovered missing from the hotel while the Plaintiff was supposed to be on duty and a search was conducted for same in the early hours of the morning of 12th September, 2013 without success.

The Plaintiff has averred that after everyone gave up the search for the television by 7:30am, he wanted to leave as the other staff on night shift were leaving but the 2nd Defendant detained him and called for the CCTV operator to get the CCTV footage. That after the 2nd Defendant accused the Plaintiff of being the culprit, she ordered the police officers to detain him till about 11:am on that day before taking him to Garki Police Station.

The Plaintiff also averred that after police investigation nothing was found on him but the Defendants insisted that the Plaintiff should be detained for over 3 days in spite of his pleas through his lawyer for bail.

In Nigeria, the fundamental right of freedom of movement is guaranteed by the Constitution and any unlawful curtailment of a person's freedom of movement or personal liberty may lead to an action for breach of fundamental right or false imprisonment. – see the case of **OKECHUKWU & ANOR V. NWOSU & ANOR (2018) LPELR-44893(CA)AT P. 8 PARAS. C-D**.

Detention or imprisonment means the restraint of a man's liberty whether it be in the open field, or in a cage or in the street, or in a man's own house, or in the common jail. In all places, the party so restrained is said to be a prisoner so long as he has no liberty to freely go (at all times) to all places where he would willfully like to go. The prisoner may be confined within a definite space by being put under lock and key or his movements may simply be constrained by the will of another. – See the cases of **AGBALUGO & ANOR V. IZUAKOR (2017) LPELR-43289(CA) AT PP. 46–48PARAS. D-A**.

Unlawful detention or false imprisonment is thus the complete deprivation of liberty for anytime however short without lawful cause. See **AGBALUGO & ANOR V. IZUAKOR (SUPRA)** and **ARAB CONTRACTORS (O.A.O.) NIG. LTD V. UMANAH (2012) LPELR-7927(CA)AT PP. 23–24PARAS. D-C**.

The position of the law is that where a person admits the detention of another, the onus is on the person who detained to show that such detention is lawful. See the case of **EJIOFOR V. OKEKE (2000) 7 NWLR Pt. 665 P. 363**.

In the instant case however, the Plaintiff's allegation of his detention by the Defendants or upon their instructions at the premises of the 1st Defendant's hotel and by the police was denied by the Defendants.

The onus therefore rests on the Plaintiff to satisfactorily prove that he was indeed detained by the Defendants or on their instructions as alleged by him. It is only after this is proved that the onus shifts to the Defendants to justify such proven detention/imprisonment. See the case of **SHELL PETROLEUM DEVELOPMENT COMPANY & ANOR V. DANIEL PESSU(2014) LPELR-23325(CA)AT PP77 PARAS A-C**where the Court of Appeal held that although it is trite law that the burden of proving that a detention is legal is on the party who effected the detention, this burden will only arise where the person alleging unlawful detention has adduced *prima facie* evidence of detention.

In the case of **ADEYEMO V. AKINTOLA (2004) 12 NWLR PT. 887 P. 390; (2003) LPELR-10905(CA) AT PP. 13 – 16 PARAS. F - E**the Court of Appeal held per Omage JCA as follows;

> *"The aspect of the slander which require consideration is the testimony of the plaintiff; that the 1st defendant/appellant on the instruction of the 2nd defendant/appellant, locked the door of the house against him, the plaintiff and the two shouted that they were in the house, the plaintiff/respondent described it as a false imprisonment. False imprisonment may be defined as the restraint of a man's liberty whether it be in an open field or in a cage. The relevant fact to look for is whether the victim had, at the time, liberty freely to go at all times; as enshrined in our 1999 Constitution, see section 35(1). However, the detention must be total, in that there should be no means of escape from the detention known to the victim, see Meering v. Graham While Aviation Coy. Ltd. (1920) 122 Law Times 44, 51 and 53. In the instant claim, in the court below, the defendants/appellants deny locking the door to prevent the plaintiff/respondent from leaving the house; and that the plaintiff/respondent had not entered the defendants/appellants house for up to three years.*
>
> *The conclusion as to whether or not the plaintiff entered the house of the 1st defendant is a matter of fact on which the court below has ruled. An appellate court does not lightly set aside*

findings of fact made by the court below, unless such a finding or conclusion is perverse. See (1) ***Kate Enterprises Ltd. v. Daewoo (Nig.) Ltd.*** *(1985) 2 NWLR (Pt.5) 116 at 120 (2)* ***Ajadi v. Okenihun*** *(1985) 1 NWLR (Pt. 3) 484, (1985) NSCC (3)* ***Nwaezema v. Nwaiyeke*** *(1990) 3 NWLR (Pt.137) at 230; one issue which inevitably comes to one's attention is the whereabouts of the plaintiff/respondent's father at the time the door of the house was said to have been locked. There is conflicting evidence as to the presence in the house of the plaintiff's father. While one witness said the plaintiff's father could be seen peeping through a window in the 1st defendant house after the door was opened and the crowd gathered; another said that the plaintiff's father was not in the house of the 1st defendant. The plaintiff's father was the 1st witness for the 1st defendant and he did not say that he was in the house of the 1st defendant/appellant. In fact, the testimony of Akinbola, the 1st defendant's 1st witness who is the plaintiff's father, showed that he was not in the house of the defendant at the time of the alleged locking of the door: He said in cross examination "The plaintiff came to me to say that certain people called him ole, ole." The relevant question which should have determined the issue of false imprisonment claim made by the plaintiff is this: As the plaintiff/respondent had been to Ajawa for fund raising; and excused himself to go over to see his father; should the plaintiff have entered the house of his known adversary at all? Would it not have been clear to him on enquiry that his father was not in the house of the 1st defendant? If so why did the plaintiff say he entered the house of the 1st defendant. He is reported even by his father to have refused to enter the 1st appellant's house over three years. The plaintiff's father, witness for the defendant said, in evidence thus, "he would not say whether the plaintiff entered the 1st defendant's house, if he went there at all, he went there to cause trouble." The question to be determined to establish whether in fact there was a locking up of the plaintiff/respondent is this; was there any entry by the plaintiff into the 1st defendant's house to make any imprisonment or detention of the plaintiff in the house possible?*

The testimony of the 1st defendant's witness who is the father of the plaintiff thus "if he went there at all" that is if the plaintiff went there at all, tends to support the view that the plaintiff did not enter the house of the 1st defendant and that it is untrue that the plaintiff was locked up in the 1st defendant's house at all.

There was therefore no false imprisonment of the plaintiff. It is in my view a story made up to increase the plaintiff's chance of success in his claim before the court. In my view the trial court failed to evaluate and conclude on the veracity of the evidence before him to arrive at a probable and logical conclusion."

I have carefully considered the evidence on record adduced by both parties in respect of the allegation of unlawful detention/false imprisonment in the instant case.

The Plaintiff's testimony is bedeviled by a sizeable number of inconsistencies and material contradictions regarding the events surrounding the alleged detention/imprisonment.

Two pieces of evidence contradicts one another when they are themselves inconsistent on material facts and the law is that such materially contradictory evidence must be rejected as the Court can not pick and choose which version to believe. – see the cases of

HARDROCK CONSTRUCTION ENGINEERING CO. & ANOR V. STATE & ORS (2018) LPELR-46538(CA) AT PP. 52–53 PARAS. B-E

and

ASSOCIATED BUS CO. PLC V. ASHIMOLOWO (2017) LPELR-45714(CA) AT P. 29 PARAS. B-C.

In his evidence in chief, the Plaintiff had testified that when he resumed work, he reported his deteriorating health to his immediate supervisor (Mr. N. Nwoko) who asked him to proceed to the 'boys-locker-room' to rest and the Plaintiff complied. Under cross-

examination however, the Plaintiff testified that his said evidence isnot correct as it was his night supervisor that asked him to go to the locker room to sleep because of his health. He further stated under cross-examination that it was NtimaNwoke that told him to go to the locker room to sleep having noticed the he wasn't feeling well and he didnot go to his supervisor as stated in his evidence in chief.

On the allegation of detention which is a material issue in this case, the Plaintiff testified in his evidence in chief that the Defendants insisted that he should be detained by the police for over 3 days. He however testified under cross-examination that he was arrested on the date of the incident which is 11th September 2013 and taken to court on the 13thof same month which is 3 days.

Also, the Plaintiff who had testified in his evidence in chief that he had no option but to join other staff in searching the 1st Defendant's premises for the stolen television proceeded to admit under cross-examination that he was not forced to do so. This supports the Defendants' defence that all staff of the 1st Defendant joined the search voluntarily.

The Plaintiff who alleged and testified that he was detained by the 2nd Defendant at the 1st Defendant's premises and that the Defendants insisted on his detention for over 3 days by the police, did not provide sufficient evidence and facts of how exactly he was detained while at the 1st Defendant's premises. He only stated rather generally in his evidence in chief that he wanted to leave along with other night staff but was "*detained"* by the 2nd Defendant. How exactly was his freedom curtailed against his will? He however did say under cross-examination that the gate to the hotel was not locked and he stayed back after the search simply because the manager asked all the workers to stay. All these imply that his continued stay after the search on the 1st Defendant's premises was voluntary.

There's the averment also that the Defendants insisted that the Plaintiff be detained for over 3 days by the police after investigation. Even though the Plaintiff's testimony appears to be inconsistent as

regards the period the Defendants allegedly insisted he be detained by the police, the general rule is that an action for falseimprisonment would lie against a partyinstrumental to the incarceration of a plaintiffquiteapart and separate from whatever actionagainst the party whoactually physicallyrestrained him. – see **FBN PLC & ORS V. AG FEDERATION & ORS (2013) LPELR-20152(CA) AT 27 PARAS. C-D** and **MCLAREN & ORS V. JENNINGS (2002) LPELR-5784(CA)**.

It is however also a well settled principle that an action for false imprisonment will not lie against a private individual who merely gave information which led the police, on their own initiative, to apprehend a suspect. For an action for false imprisonment to lie against a private individual therefore, the complainant has an onerous duty of establishing that the defendant was actively responsible for setting the law in motion against him. – see the cases of **ISHENO V. JULIUS BERGER (NIG) PLC (2008) LPELR-1544 (SC) AT PP. 15 – 16 PARAS. E – D**and**ARAB CONTRACTORS (O. A. O.) NIG LTD V. UMANAH (2012) LPELR-7927(CA) AT P. 24 PARAS. D-F**.

In **AGBALUGO & ANOR V. IZUAKOR (SUPRA) AT 47 – 48 PARAS. B-A** the Court of Appeal held thus

> *"The position of the law is that an action for false imprisonment will not lie against a private individual who merely gave information which led the police on their initiative to arrest a suspect and this is because every private individual has the right to report a crime or a suspected crime to the police - Isheno Vs Julius Berger (Nig) Plc (2008) 6 NWLR (Pt 1084) 582, Arab Contractors (O.A.O.) Nigeria Ltd Vs Umanah supra . To succeed in an action for false imprisonment, a plaintiff must show that it was the defendant who was actively instrumental in setting the law in motion against him. In other words, the plaintiff must show that the defendant did not only lodge a complaint against him to the Police, <u>but also that he was actively instrumental to his arrest and detention</u> - Okonkwo Vs*

Ogbogu (1996) 5 NWLR (Pt 449) 42}, Ejefor Vs Okeke (2000) 7 NWLR (Pt 665) 363, Macleans Vs Jennings (2003) 3 NWLR (Pt 808) 470, Arab Contractors (O.A.O.) Nigeria Ltd Vs Umanah supra, First Bank of Nigeria Plc &Ors Vs Attorney General of Federation &Ors (2013) LPELR- 20152(CA).”

The extent of the onus on a plaintiff alleging false imprisonment against a defendant whom he alleged set the law in motion against him was put quite clearly by the Court of Appeal in **FBN PLC & ORS V. AG FEDERATION & ORS (SUPRA) AT PP. 27–28 PARAS. B-A** where it was held per Akomolafe-Wilson JCA as follows;

“However, it is the principle of law that a person is not ordinarily responsible for the detention of another simply because he makes a complaint to the appropriate law enforcement authorities. To succeed against a defendant in an action for false imprisonment, the plaintiff must show that the defendant did not only set the law into motion by lodging a complaint to the appropriate authorities, but he was actively instrumental to his arrest and detention. See OKWONKWO v. OGBOGU (1996) 5 NWLR [pt.449] 420 at 433; EJEOFOR v. OKEKE (supra); MCLAREN v. JENNINGS (2003) 3 NWLR [pt.808] 470 at 484 Para E - H, 485 - 486 Paras G - R. The onus rests squarely on the party alleging false imprisonment to show that the defendant, that is, the party who lodged a complaint, did more than merely making a report to the authorities, but that he took further overt steps and actively participated and/or directed and influenced the arrest and detention of the plaintiff.” – (underlining supplied by mefor special emphasis).

It is not in dispute that a television set went missing or was stolen when the Plaintiff was supposed to be on security guard duty in the 1st Defendant’s premises. In the peculiar circumstances of this case, it is not enough (for the purpose of finding of false imprisonment against the Defendants) that the Plaintiff was reported to the police on suspicion of being the culprit of the theft. It must be shown that the

Defendants played an active role in influencing the action of the police in detaining the Plaintiff.

Beyond the Plaintiff's rather general averment that the Defendants insisted that he be detained 'for over 3 days' by the police after investigation, the Plaintiff did not provide sufficient facts as to how exactly he came to know this or came to this conclusion. The allegation having been denied by the Defendants with contrary oral evidence, there is simply not enough evidence before this Court to convince it of the Plaintiff's allegation that it was the Defendants that insisted that he be detained by the police for 'over' 3 days. Beyond the police acting on the information of the Plaintiff being the plausible suspect of the theft of the television, the Plaintiff has failed to establish his allegation that the Defendants were actively instrumental to and indeed controlled his detention by the police.

Against the backdrop of all these inconsistencies and contradictions in the Plaintiff's evidence as well as insufficiency of evidence, the Plaintiff has failed to establish his allegations that he was detained by the 2nd Defendant and that she directed his detention at the 1st Defendant's premises. He also failed to establish with sufficient and credible evidencehis allegation that the Defendants insisted he be detained by the police after investigation.

The Plaintiff has thus failed to establish his case of false imprisonment against the Defendants.

Part of the Plaintiff's claim before this Court also consists of allegations of malicious prosecution against the Defendants.

Malicious prosecution simply means prosecution that is actuated by malice and entirely undertaken against a person without any reasonable or probable cause. *Malice will arise for instance where at the end of investigations of a complaint by the police no case was revealed but the complainant insist that the police must charge the plaintiff to Court*. Malicious prosecution is a tort or a civil wrong which enables a person who is a victim of baseless and unjustified

Court proceedings to seek a civil claim for damages against his prosecutor, in the event of his discharge and acquittal. – see **M. I. (NIG) LTD V. HARRY (2009) LPELR-4445(CA) AT PP. 11–12PARAS. E-B**and**NWOKOLO V. OLAJUBU (2021) LPELR-55983(CA) AT P. 13 PARAS. C-E**.

In the case of **BALOGUN V. AMUBIKAHUN (1989) 3 NWLR PT. 107 P. 18**; **(1989) LPELR-725(SC) AT PP. 9 – 10 PARAS. E-B**the Supreme Court held that in an action for malicious prosecution, the plaintiff must plead and show by evidence that he was prosecuted by the defendant, to wit; he must show;

a) clearly that the defendant set in motion against the plaintiff, the law leading to a criminal charge.
b) as a result of the prosecution aforementioned the plaintiff was discharged and acquitted, in short that the prosecution was determined in the plaintiff's favour.
c) by evidence that the prosecution by the defendant was completely without reasonable and probable cause.
d) that the prosecution was as a result of malice by the defendant against the plaintiff.

See also

BAYOL V. AHEMBA(1999) LPELR-761(SC) AT PP. 17-18 PARAS. B-D;

M. I. (NIG) LTD V. HARRY (SUPRA) ATPP. 12–14PARAS. F-B

and

NWOKOLO V. OLAJUBU (SUPRA) AT PP. 13–15PARA. E-E.

It was held by the Supreme Court in **BALOGUN V. AMUBIKAHUN (SUPRA)** that all the four elements above must be present for a successful action for malicious prosecution, and the onus is always on the plaintiff to prove each and every one of them. – See

also the decision of the Court of Appeal in **M. I. (NIG) LTD V. HARRY (SUPRA)**.

The first condition which the Plaintiff must establish (as earlier itemized) to succeed in this case for malicious prosecution is that the Defendants prosecuted the Plaintiff in the sense that they set the law in motion against him.

In his particulars of allegation of malicious prosecution against the Defendants, the Plaintiff specifically testified that after the incident of the missing television set and he was taken to the police, the police decided to invite the 2nd Defendant who insisted against all advice that the Plaintiff should be charged to court. He averred that the police, instigated by the 1st Defendant through the 2nd Defendant, eventually charged the Plaintiff to the FCT Magistrate Court.

The Defendants denied the allegation that they had anything to do with charging and prosecuting the Plaintiff for the offence for which he was charged, prosecuted and discharged.

The Ruling of the FCT Magistrate Court discharging the Plaintiff in the charge brought against him by the police is Exhibit A. I have carefully perused Exhibit A. There is nothing therein that remotely suggests that the Defendants personally conducted the prosecution of the Plaintiff in the criminal charge brought against him.

Counsel to the Plaintiff has in his address directed this Court's attention to the portion of the Magistrate Court's summary of the First Information Report (FIR) in Exhibit A wherein one Andrew Garba of Rose Hotel was said to have reported the Plaintiff to the Police as having stolen the missing television set.

Even if it were established that the Defendants reported the Plaintiff to the Police on suspicion of his having stolen the missing television set, would this report without more establish the first condition i.e. 'setting the law in motion' for the purpose of an action for malicious prosecution?

On the first condition which is that the defendant prosecuted the plaintiff in the sense that he set the law in motion against the plaintiff, the Supreme Court has held that where the defendant merely made a report to the police but did not actively instigate the actual prosecution of the plaintiff, having left it open for the police, in its discretion to decide whether to prosecute or not, it cannot in such circumstance be said that the plaintiff was prosecuted by the Defendant. – see the Supreme Court's decision in **BAYOL V. AHEMBA(SUPRA) AT PP. 17-18 PARAS. B-D**.

See also **NWOKOLO V. OLAJUBU (SUPRA) AT PP. 13–15PARA. E-E**.

The law is thus very clear that mere information or report (without more) to the police in respect of a suspected criminal offence, does not make the person who reported liable for malicious prosecution where the police decides to charge and prosecute the person reported. For a defendant to be liable for malicious prosecution, he must be proved to have done more than merely reporting an incident involving the plaintiff to the Police. – see the more recent decision of the Court of Appeal in **NWOKOLO V. OLAJUBU (SUPRA) AT PP. 18–19 PARAS. F-B**.

Very instructive and apposite to the instant case before this Court is the decision of the Court of Appeal per Garba JCA in **M. I. (NIG) LTD V. HARRY (SUPRA)PP. 20–22 PARAS. D-C** where it was held that;

> *"For the purposes of the claim for malicious prosecution, to be liable, a defendant must be actively instrumental in setting the law in motion for the prosecution of a plaintiff. Within the context, to prosecute is to deliberately and actively initiate or instigate by way of a direct appeal to or pressure on a person with judicial authority with regard to a complaint or report made that the plaintiff be charged and put to trial.*

Thus, for a defendant to be shown to have set the criminal law in motion against a plaintiff, it must be proved by evidence that the defendant had in any manner directly influenced the police in the decision to charge the plaintiff to Court on the complaint made.

Consequently, as stated elsewhere in this judgment an action for malicious prosecution will not lie against a person who merely gave information to the police by way of a report or complaint of the commission of an offence, which led the police on their own initiative to arrest, and eventually charge another to Court after their investigation of the complaint. The position is also the same in respect of a report or complaint made to the police where a particular person is named [as in the present appeal] as the person suspected of stealing the missing property of the complainant and the person is subsequently arrested and charged or prosecuted by the police on their own volition. In these situations, a defendant cannot be said to have been instrumental or actively set the law in motion for the prosecution because the police had the option and liberty to deal with the matter in accordance with the outcome of their investigations of the complaint made to them. If the evidence did not show that the defendant influenced the police in any way in the decision to prosecute a plaintiff, then the prosecution cannot and will not properly be attributable to the defendant, but to the police. See BALOGUN v. AMUBIKAHUN [supra] BWAVDU NIVU v. BOTU [20] 9 NWLR [672] 220, SPDC v. OLAREWAJU [2] 16 NWLR [792] 38, ADEYEMO v. AKINTOLA [04] 12 NWLR [887] 390, OJO v. LASISI [supra].” – (Underlining above supplied by me for emphasis).

See also **AINA V. JAMES (2020) LPELR-50300(CA) AT PP. 24 – 25 PARAS. D-D**.

In **MAYALEKE & ANOR V. OKENLA (2015) LPELR-41700(CA) AT PP. 26–27 PARAS. F-C** the Court of Appeal held per Dongban-Mensem JCA (now PCA) thatwhere there is no iota of evidence that after reporting to the Police, the defendant took any

untoward steps in influencing the Police to prosecute the plaintiff, the fact that the police were unable to adduce sufficient evidence to secure a conviction is not sufficient reason for a claim of malicious prosecution to lie against the defendant.

It is not in dispute amongst the parties to this case that a television set went missing while the Plaintiff was supposed to be on security guard at the 1st Defendant's premises particularly in his beat of duty. In the peculiar circumstances therefore, the mere complaint of the theft of the television made against the Plaintiff to the Police is insufficient to ground liability for malicious prosecution against the Defendants *except the Plaintiff can show with evidence that the Defendants did more than just complain to the police i.e. they took active and extra steps (outside normal procedure) to ensure that the Police charged and prosecuted the Plaintiff*.

The Plaintiff in this case testified in his evidence in chief that the police invited the 2nd Defendant and she insisted 'against all advice' that the Plaintiff should be charged to court. The same Plaintiff however testified under cross-examination that he cannot know if the 2nd Defendant was at the police station as he couldnot see anybody. He testified under cross-examination that he couldnot see people who came to see the DPO or IPO from the cell where he was detained at the Police station.

It follows therefore that Plaintiff's piece of oral testimony, that the 2nd Defendant was invited by the police at which time she insisted that he be charged to court, has been discredited under cross-examination. It has been rendered very unlikely and thus unbelievable.

In the circumstances, the Plaintiff has failed to prove his allegations that it was the 2nd Defendant that insisted that the Police should charge him to court and that the Plaintiff was thus charged to court by the Police upon the instigation of the Defendants. The Plaintiff has therefore failed to establish with credible evidence that the Defendants did more than report him to the police on suspicion of the offence of having stolen the missing television set.

It is the law that the mere report of the Plaintiff to the Police by the Defendants on suspicion of the criminal offence of stealing the missing television set does not satisfy the first condition to be established in a claim of malicious prosecution. The Plaintiff has been unable to show that the Police did not act on its own in prosecuting him. The Plaintiff has consequently failed to establish the first condition i.e. that the Defendants prosecuted him by setting the law in motion against him. Having failed to establish this, the Plaintiff has failed to establish his claim of malicious prosecution against the Plaintiff. This is moreso when the Police is not a party to this action.

I have noted with some pensiveness, the Plaintiff's Counsel's submissions in his final address. His arguments about the Defendant's defence and hearsay. Counsel to the Plaintiff appears to be trying to build his case of unlawful detention/false imprisonment and malicious prosecution on perceived weaknessesin the Defendants' case. That cannot be. This is because the main reliefs sought by the Plaintiff in respect of these claims are declaratory in nature. The Plaintiff can only succeed in obtaining such declaratory reliefs on the strength of his own case and not on the weakness of the Defendants' case or even their admission. –see**ALAO V. AKANO (SUPRA)**, **OKONJO V. NWAUKONI (SUPRA)** and**MRS. OLORUNSHOLA GRACE & ORS V. OMOLOLA HOSPITAL & ANOR (2014) LPELR-22777(CA)**.

Having failed to establish his claims of unlawful detention/false imprisonment and malicious prosecution before this Court, the declaratory reliefs sought in the first, second and third reliefs in respect of same must be refused.

With the failure of the main reliefs, the remaining fourth, fifth, sixth, seventh and eight reliefs of the Statement of Claim for damages and cost must also fail being ancillary reliefs.

In sum, the issue for determination is hereby resolved by this Court against the Plaintiff and in favour of the Defendants.

The Plaintiff's claim fails in its entirety and it is hereby accordingly dismissed.

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Honourable Justice M. E. Anenih

APPEARANCES:

E.M.D UmukoroEsq appears for the Plaintiff.

Defendants unrepresented.