OGEDENGBE SURA.1UDEEN OLA

V.

1. UNIVERSITY OF ILORIN
2. VICE CHANCELLOR, UNIVERSITY OF ILORIN
3. CHIEF SECURITY OFFICER, UNIVERSITY OF ILORIN

COURT OF APPEAL
(ILORIN DIVISION)

CA/1178/2012

HUSSEIN MUKHTAR, J.C.A. *(Presided)*
ISAIAH OLUFEMI AKEJU. J.C.A.
UCHECHUKWU ONYEMENAM, J.C.A. *Read the Leading Judgment)*

MONDAY. 31ST MARCH 2014

CONSTITUTIONAL LAW - Right to liberty – Constitutional guarantee of - Exception thereto.

DOCUMENT - Documentary evidence - Bindingness of on parts who tenders same.

DOCUMENT - Documentary evidence - Where rightly admitted in court - Purpose of.

EVIDENCE - Affidavit evidence - Counter-affidavit - Meaning of -What it should contain.

EVIDENCE - Affidavit evidence - Further affidavit to counter-affidavit - Purpose of - When necessary to file - When unnecessary.

EVIDENCE - Affidavit evidence - Unchallenged deposition in affidavit - How treated.

EVIDENCE - Affidavit evidence - What it should contain - Need to pass credibility test.

EVIDENCE - Documentary evidence - Bindingness of on parts who tenders same.

EVIDENCE - Documentary evidence - Document tendered and admitted in court - Whether party can choose and pick portion of.

EVIDENCE - Documentary evidence - Where rightly admitted in court - Purpose of.

PRACTICE AND PROCEDURE - Affidavit evidence - Counter-affidavit - Meaning of - What it should contain.

PRACTICE AND PROCEDURE - Affidavit evidence - Further affidavit to counter-affidavit - Purpose, of - When necessary to file – When unnecessary.

PRACTICE AND PROCEDURE-Affidavit evidence – Unchallenged deposition in affidavit - How treated.

PRACTICE AND PROCEDURE - Documentary evidence - Bindingness of on party who tenders same.

PRACTICE AND PROCEDURE - Documentary evidence - Document tendered and admitted in court - Whether party can choose and pick portion of.

PRACTICE AND PROCEDURE - Documentary evidence - Where rightly admitted in court - Purpose of.

WORDS AND PHRASES - Counter-affidavit - Meaning of.

Issues:

1. Whether the trial court was not wrong in believing the respondents' depositions in the counter-affidavit on the footing that they were not denied by way of further affidavit by the appellant.
2. Whether the trial court was not wrong in holding that the content of exhibit S001 was inciting and that the conduct of the appellant was suspicious enough as to justify the respondents' action.
3. Whether the trial court was not wrong in dismissing all the reliefs sought by the appellant considering the totality of evidence adduced in this case.

Facts:

The appellant was given an assignment to deliver letters written by one Dr. Oloruntoba-Oju to the respondents, the registrar of the 1st respondent and some other academic staff of the 1st respondent.

In the course of dispatching the letters, the appellant was handed over to the police by the respondents on the ground that the contents of the letters were inciting and could cause unrest on the campus of the 1st respondent. At the police station, the appellant was detained and some documents and other personal effects were seized from him. After he was released on bail, the appellant filed an application for the enforcement of his fundamental rights at the Federal High Court and claimed damages, apology and restraining orders against the respondents.

The respondents contended the case vide two counter affidavits.

After hearing the parties, the trial court held that the failure of the appellant to file a further affidavit against the respondents' counter-affidavits amounted to the admission of the contended facts raised by the respondents. The court refused all the reliefs claimed and dismissed the application.

Aggrieved, the appellant appealed to the Court of Appeal.

Held (*Unanimously allowing the appeal in part):*

1. *On What valid affidavit should contain –*
By virtue of section 115(1), (3) and (4) of the Evidence Act, 2011, every affidavit used in the court shall contain only a statement of fact and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true. When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief. When such belief is derived from information received from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the informant and the time, place and circumstance of the information. In the instant case, the failure of Akanbi Dare, the deponent to the Ist' counter-affidavit to state the source of information, the facts and circumstances forming the ground of his belief, the name of his informant, if he was so informed, particulars of the said informant and the time, place and circumstance of the information ran contrary to the provisions of

section 115(1)(3) and (4) of the Evidence Act. *{Pp.475-476, paras. H-D)*

Per ONYEMENAM, J.C.A. at pages 475-476, paras. H-C:

> **"The deponent of the 1st counter-affidavit is Akanbi Dare, Legal Officer in the legal unit of the 1st respondent. He did not depose to the fact that he is a police officer nor works at 'F' Division, Tanke Police station. By paragraph 6, Mr. Dare stated that he got to know the appellant was released on bail on the same 6th April, 2011. He did not released on bail on the same 6th April, 2011. He did not say what time he, was released; neither did he say he was present when he was released.**
>
> **Throughout the counter-affidavit Mr. Dare did not state the circumstances surrounding the release of the appellant on bail. The court is left to wonder how the deponent got to know that all the items collected from the appellant were released to him. The deponent did not say that he either handed over all the items or witnessed the handing over of all the items to the appellant. This is to say that the 1st counter-affidavit does not contain the fact that the deponent had personal knowledge of what he deposed to which he believed to be true."**

2. *On Need for affidavit evidence to pass credibility test –*

The deposition in affidavit must not be questionable, incredible, unreliable and unbelievable. It must pass the credibility test. In the instant case, the deposition in paragraphs 7, 8 and 9 of the respondents' 1st counter-affidavit that the police handed over all items seized from the appellant to him on 6th April 2011 and that everything relating to the allegations against the appellant were handed over to the police on 8th April, 2011 by the respondents were inconsistent and failed the credibility test. *[Avanwale v. Atanda* **(1988) 1 NWLR (Pt. 68) 22 referred to.]** *{Pp.476-477, paras. E-B)*

3. *On Treatment of unchallenged deposition in affidavit -*

By virtue of section 124(1) Evidence Act, 2011, the unchallenged depositions of facts in an affidavit are deemed admitted by the opposing party. Such facts would require no further proof and the court is enjoined to accept, consider and act on them as correct, true and established. In the instant case, paragraphs 7 - 13 and 35 of the appellant's affidavit were neither denied nor controverted. They are therefore deemed admitted by the respondents. *[Globe Pishing Industries Ltd. v. Coker* **(1990) 7 NWLR (Pt. 162) 265;** *Okereke v. Ejiojor* **(1996) 3 NWLR (Pt. 434) 90;** *Unihi: Nig. Ltd v. Commercial Bank (Credit Lyonnais Nigeria) Ltd.* (2005) 14 NWLR ***(Pt* 944) 47;** *Nwo.su v. lmo State Environmental Sanitation Authority* ***(1990) 2 NWLR (Pt. 135) 688 referred to.]*** *(Pp.470, paras. F-G., 47J, paras. B-C)* ***Per ONYEMENAM, J.C.A. at pages 471; 472-473, paras. E-H; H-B:***

> **"These are the facts that were not categorically denied by the respondents. The deponent of the 1st counter-affidavit who is a Legal Officer in the legal unit did not deny in his counter-affidavit that a copy of the letter was dispatched to his office. None of the counter-affidavits nor any one from the office of the Registrar denied the fact that the appellant delivered the letter there on 6th April, 2011 for which he was given an endorsed copy. Then again, no counter affidavit nor anybody from the office of the 2nd respondent controverted the fact that the appellant delivered a letter in that office on 6th April, 2011 and was asked to wait for an endorsed copy. The storyline of the respondent that he was found loitering could only be credible if the respondents had**

countered the evidence stated above. Having not done so, the learned trial Judge ought to have considered and acted on the affidavit evidence of the appellant at paragraphs 7, 8, 9, 10, 11, 12 and 13 as admitted facts.

Considering paragraphs 3, 4, 6, 7 and 8 of the 2nd counter-affidavit, they do not in any way constitute a denial of paragraphs 7, 8, 9, 10, 11, 12 and 13 of the appellant's affidavit. Rather, they are entirely different sets of facts rather than joining issues with the facts deposed to in paragraphs 7, 8, 9, 10, 11, 12 and 13 of the appellant's affidavit. They simply made out a defence parallel with the case made out by the paragraphs of the appellant's affidavit under consideration. Accordingly, I hold that by those said paragraphs, the respondents did not controvert the facts deposed to by the appellant in his affidavit. Therefore, the learned trial Judge was wrong when he failed to act on the uncountered and deemed admitted affidavit evidence of the appellant."

4. *On Meaning of counter-affidavit and what it should*

A counter-affidavit is an affidavit made to contradict and oppose facts in another affidavit. A valid counter-affidavit must contain a valid denial of each fact sought to be denied and the respondent's version of what happened. A valid denial is a denial pointedly directed to the facts intended to be denied. A simple narration of a respondent's different and distinct sets of facts deposed to in an affidavit does not qualify as a counter affidavit which has denied the facts deposed to in an affidavit. [*Citizens International Bank Ltd. v. SCOA Nigeria Ltd.* ***(2006) 18 NWLR (Pt. 1011) 332 referred to.]*** *(P. 472, paras. F-G)*

5. On When necessary to file further affidavit to a counter-affidavit –

It is not in all cases that failure to file further affidavit will be held by a court to amount to an admission of the depositions in a counter-affidavit. A further affidavit must not necessarily be filed just because there is a counter-affidavit filed. A further affidavit is only necessary where a counter-affidavit filed has actually pointedly denied or refuted weighty and substantial facts deposed to in an affidavit and such a counter-affidavit goes further to raise new facts by setting out a credible story line of the respondent. In the instant case, the trial court was wrong to hold that the non-filing of a further affidavit by the appellant to deny paragraph 7 was an admission. Z (P.477, paras. F-H)

6. *On When unnecessary to file further affidavit to a counter-affidavit –*

A **further affidavit is needful when there is a counter-affidavit that has denied and contradicted tithe weighty and substantial facts in an affidavit evidence and further sets out new facts which are credible and which if believed by the court will lead to a finding in favour of the respondent. However, when an affidavit evidence is held not to have been contradicted, it is established and ought to be acted upon by the court. The facts in the affidavit having been established, the need will no longer arise for an applicant to file a further affidavit or for the court to embark on the rigour of calling** *viva voce* **evidence to resolve conflicting fads. In the instant case, there was no need for the appellant to file a further affidavit to controvert the respondents' facts which had not controverted his affidavit evidence.** [*Globe Fishing Industries Ltd. v. Coker* **(1990) 7 NWLR (Pt. 162) 265;** *Bedding Holdings Ltd.* ***v.*** *N.E.C.* **(1992) 8 NWLR (Pt. 260) 428;** *Pan Atlantic Shipping Transport Agencies Ltd. v. Babatunde* **(2007) 13 NWLR (Pt. 1050) 113 referred to.]** (*P.473, paras. C-F*)

7. *On Purpose of documentary evidence rightly admitted in court –*
The purpose of documentary evidence rightly admitted in court and tied to the facts of the case is to assist the court considering it to arrive at a just decision. In the instant case, the appellant, having introduced exhibit S003 in evidence, could not complain that the trial court considered the said evidence and relied upon it to arrive at its decision. [*Onwudinjo v. Dimobi* **(2006) 1 NWLR (Pt. 961) 318;** *Igwe v. A.I.C.E.* **(1994) 8 NWLR (Pt. 363) 459 referred to.]** (*Pp. 482-483, paras. G-A*) **Per ON YEMEN AM, J.C.A. at page 483, paras. A C :**

> **"In my view therefore, the learned trial Judge was merely carrying out his function by considering exhibit S003 placed before it by the appellant. Accordingly, the argument contained at pages 13-15 of the appellant's brief, complaining of the decision arrived at by the court upon the consideration of exhibit S003 is not tenable in law. I hold that the learned trial Judge was entitled to draw inferences from exhibits placed before him especially the ones tendered without objection. The appellant is therefore not allowed in law and in this appeal, to object to the trial court's consideration of exhibit S003 in reaching its decision."**

8. *On Bindingess of document on parts who pleaded and tendered it –*
A party who puts forward a document in evidence to be considered by a court cannot turn round to either impugn, criticize or complain that the court relied on the said document in arriving at a decision. In other words, a party who pleads and tenders a document does so for the court's consideration and aid in arriving at a just decision of the case. Consequently, such a party, especially when the document is tendered without objection, cannot be heard to complain that the court considered the same. This is so even when the party has tendered the document for a specific purpose. A party who has tendered a document in court for consideration cannot pick and choose for the court the portion to consider and the portion to close its eyes to. Such a party cannot also choose to associate himself with the portions that aids him and dissociate from the portions that seem to stand against him. Once a document is admitted in a proceeding as an exhibit, the court is enjoined to have an overview consideration and application of it. As a result, the party who tenders it either sings home happily or cries home with sorrow. [*A.-G. Fnugu State v. Amp Plc.* **(1995) 6 NWLR (Pt. 399) 90;** *Igwe v. A.I.C.E.* **(1994) 8 NWLR (Pt. 363) 459;** *Onwudinjo v. Dimobi* **(2006) 1 NWLR (Pt. 961) 318 referred to.]** (*Pp. 480-481, paras. E-A)*

9. *On Whether parly can choose and pick portion of exhibit court to consider –*
In law and in equity, a party cannot choose and pick the portion of an exhibit the court shall consider and act upon. He can only lay emphasis on portions particularly relevant to him and not to fraternize with a portion of it and junk another portion. In the instant case, the appellant having placed exhibit S003 before the trial court was bound to be rescued or be drowned by it. Either way, he was bound by the exhibit and he would either reap its sweet or bitter fruits. *A.G., Enugu State v. Avop Plc* **(1995) 6 NWLK (Pt. 399) 90 referred to.]** *(P.483, paras. F-G)* **Per ON YEMEN AM, J.C.A. at page 483, paras. C-E:**

> **"In support of the above position is the fact that the appellant at paragraphs 5.09 and 5.10 at page 15 of his brief sought to benefit from exhibit S003 which he had urged the court to hold that the trial court was wrong to have considered in reaching a decision. While it is correct that exhibit S003 strengthens the appellant's position that he was neither charged nor convicted for**

any offence whatsoever, the appellant cannot maintain a summersault position on exhibit S003. He cannot on one breath seek for the discountenance of a decision arrived at by the trial court for the reason that it considered exhibit S003 and on the next breath seek the court to rely on the same exhibit S003 to affirm his submission that there is no evidence that neither the appellant nor Dr. Oloruntoba-Oju, who signed exhibit S001, was charged with or convicted for the offence of incitement."

10. *On Constitutional right to liberty and exception thereto –*
By virtue of section 35(1)(c) Constitution of the Federal Republic of Nigeria, 1999, every person shall be entitled to his personal liberty save for the purpose of bringing him before a court in execution of an order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence. In the instant case, the appellant's constitutional right to liberty was not breached since the respondents needed to be cautious and at the same time apprehensive of the possible industrial unrest, disaffection and insecurity that exhibit S001 being carried around by the appellant could lead to. Moreso, the appellant did not prove allegations of gross assault, mental and psychological tortue, harrassement, intimidation and violation of human dignity. Thus, section 35(l)(c) of the Constitution could not avail the appellant. *(P.485, paras. A.-G.,)*

Nigerian Cases Referred to in the Judgment:

A.-G., Anambra Slate ***v.*** *U.B.A.* (2005) 15 NWLR (Pt. 947) 44
A.-G.. Enugu State v. Avop Plc (1995) 6 NWLR (Pt. 399) 90
Abiodun v. C.J. Kwara State (2007) 18 NWLR (Pt. 1065) 109
Adeogun v. Fasogbon (2011) 8 NWLR (Pt. 1250) 427
Adinuso v. Omeire (2006) All FWLR (Pt. 310) P59
Ajide v. Kelani (1985) 3 NWLR (Pt. 12) 248
Ajomale v. Yadual (No. 2) (1991) 5 NWLR (Pt. 191) 266
Ajuwa v. S.P.D.C.N. Ltd. (2011) 18 NWLR (Pt. 1279) 797
Amadi v. Acho (2005) 12 NWLR (Pt. 939) 386
Asol (Nig.) Ltd. v. Access Bank (Nig.) Plc (2009) 10 NWLR (Pt. 1149) 283
Ayanru v. Mandilas Ltd. (2007) 10 NWLR (Pt. 1043) 462
Ayanwale v. Alanda (1988) 1 NWLR (Pt. 68) 22
Bedding Holdings Ltd. v. NEC (1992) 8 NWLR (Pt. 260) 428
Citizens International Rank Ltd. v. SCOA Nig. Ltd. (2006) 1 8 NWLR (Pt. 1011)332
Edokpolor v. Ohehen (1994) 7 NWLR (Pt. 358) 5 11
Ekanem v. Assistant I.G.P. (2008) 5 NWLR (Pt. 1079) 97
F.A.A.N v. W.E.S (Nig.) Ltd. (2011) 8 NWLR (Pt. 1249) 219
Globe Fishing Industries Ltd. v. Coker (1990) 7 NW1 R (Pt 162) 265
Igwe v. A.I.CE. (1994) 8 NWLR (Pt. 363) 459
Jumbo v. *Brvanko Ltd. (1995) 6 NWLR (Pi. 403) 545*
Minister, P.M.R. v. EL. (Nig.) Ltd. (2010) 12 NWLR (Pt. 1208)261
Mkpa v. Mkpa (2010) 14 N WLR (Pt. 1214) 612
N.N.P.C. v. *Eamfa Oil Ltd.* (2012) 17 NWLR (Pt. 1328) 148
Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (Pt. 135) 688
Odogu v.A.-G.. Fed. (1996) 6 NWLR (Pt. 456) 508
Ogunsola v. Usman (2002) 14 NWLR (Pt. 788) 636
Oje v. Babalola (1991) 4 NWLR (Pt. 185) 267
Okereke v. Ejiofor (1996) 3 NWLR (Pt. 434) 90
Onwudinjo v. *Dimobi* (2006) 1 NWLR (Pt. 961) 318
Osawe v. Osawe (2003) FWLR (Pt. 183) 97
PA.S. & TA. Ltd. v. Babatunde (2007) 13 NWLR (Pt. 1050) 113
Unibiz Nig. Ltd. v. Commercial Bank

(Credit Lvonnais Nigeria) Ltd. (2005) 14 NWLR (Pt. 944) 47

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria 1999 S.35(l)(c) Evidence Act, Cap. E12. Laws of the Federation of Nigeria, 2004 Ss. 115(1). (3), (4), 124(1)

Evidence Act, Laws of Federation of Nigeria, 2011 S.l 15 (1), (3) (4)

Penal Code (Northern States) Provisions Act, Cap. P3, Laws of the Federation of Nigeria, 2004, Ss. 416, 417, 418, 419, Chapter XXVII

Appeal:

This was an appeal against the decision of the Federal High Court which refused and dismissed the application of the appellant for the enforcement of his fundamental rights. The Court of Appeal, in a unanimous decision, allowed the appeal in part.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Ilorin

Names of Justices that sal on the appeal: Hussein Mukhtar. J.C.A. (*Presided*); Isaiah Ohilemi Akeju. J.C.A.; Uchechukwu Onyemenam, J.C.A. *(Read the Leading Judgment)*

Appeal No.: CA/1L/8/2012

Date of Judgment: Monday, 31st March 2014

Names of Counsel: Y.A. Alajo *(with him,* L.O. Bello) - *for the Appellant*

Yakub Dauda (*with him,* M.T. Adekilekun.T.E. Akintunde [Mrs.], A .A Balogun, A.A. Mustapha, S. Arikewulo) - *for the Respondents*

High Court:

Name of the High Court: Federal High Court. Ilorin

Suit No.: FHC/1L/CS/20/2011

Date of Judgment: Wednesday, 23rd November 2011

Counsel:

Y.A. Alajo *(with him,* L.O. Bello) - *for the Appellant*

Yakub Dauda (*with him*, M.T. Adekilekun, T.E. Akintunde [Mrs.], A.A Balogun, A.A. Mustapha, S. Arikewulo) - *for the Respondents*

ONYEMENAM, J.C.A. (Delivering the Leading Judgment): By the decision of the Federal High Court, Ilorin Division, delivered on 23rd November, 2011, the trial court in a well considered judgment refused all the reliefs sought by the appellant and dismissed his application in suit no. FHC/IL/CS/20/2011; whereupon the appellant being dissatisfied has filed a notice of appeal containing 14 grounds of appeal after obtaining leave of the trial court. The appellant obtained the leave of the trial court on 20th February. 2012 and filed his notice of appeal on 21st February, 2012.

At the trial court, the appellant filed an application for the enforcement of his fundamental rights. The application with its accompanying affidavits, exhibits and written address in support are at pages 1 - 39 of the record. The reliefs claimed as per the statement are as follows:

1. A declaration that the unlawful arrest and detention of the applicant by agents of the 1st respondent when he went to dispatch letters in the office of the 2nd respondent constitute a flagrant violation of the applicant's right *to* personal liberty.
2. A declaration that the assault, mental and psychological torture, harassment and intimidation meted out to the applicant by the 1st respondent constitute a grave violation of the applicant's right to dignity of human person.
3. A declaration that the unjustified seizure of the phones of the applicant and documents

(including his personal documents) by the agents of the 1st respondent constitute a violation of the applicant's right to private and family life.

4. An order of mandatory injunction compelling the 3rd respondent to return all the documents (including personal document belonging to the 3rd applicant) which are in custody of the 3rd respondents.

5. An order of mandatory injunction compelling the 3rd respondent, jointly and severally to write an unalloyed and unmitigated letter of apology to the applicant as required under the 1999 Constitution of the Federal Republic of Nigeria and a publication of same in one of the national dailies.

6. An Order of perpetual injunction restraining the 3rd respondents by themselves, agents, privies or whomsoever acting through them or for them from further -arresting, detaining, intimidating or harassing the applicant herein.

7. A sum of Ten Million Naira only, jointly and severally against the 1st - 3rd respondents as general, exemplary and aggravated damages to assuage the feelings of the applicant for the mental and psychological damage done to his person by the respondents"

In the 36 paragraphs affidavit of the appellant, he exhibited the following 3 exhibits.;

"Exhibit SOOl: A copy of letter addressed to the 2"d respondent which is copied to the Registrar as well as the Director Legal Unit of the 1st respondent.

Exhibit S002; A Police Investigation Report dated 18th April, 2011 prepared by the Divisional Police Officer and addressed to the Commissioner of Police.

Exhibit S003: A copy of the Police Investigation Report

Exhibit S004: An endorsed copy of the letter written by solicitor to the registrar and secretary to council of the 1st respondent and copied to the 2nd respondent as well as the Deputy Vice Chancellor of the F1 responded).

Exhibit S005: An endorsed copy of the covering letter of exhibit S004 copied to the 2nd respondent."

In reaction, the respondents filed two counter:- affidavits with two exhibits and a written address in opposition to the appellant's application. See pages 40 - 58 of the record. The two exhibits exhibited in the counter-affidavit are.

"Exhibit Unilorin 1: written statement of the applicant Exhibit Unilorin 2: letter from ASUU Secretary denying knowing the applicant or anybody with his kind of name as their staff member."

The facts of the case at the trial court is that, while the appellant on 6th April, 2011 was on an assignment to dispatch letters written by Dr. Oloruntoba - Oju to the 2nd respondent, the Registrar and some other academic staff of the F' respondent; he was handed over to the security of the Is' respondent who harassed, intimidated, assaulted and detained him for six hours, after which he was handed over to the Police at Tanke, 'F' Division, Unilorin.

The notice of appeal filed by the appellant is at pages 148-157 of the record. Consequent upon the appeal, the parties filed and exchanged their briefs of argument and the appeal was heard on 17th March, 2014. Whereas Mr. Y. A Alajo who represented the appellant adopted the appellant's brief filed on 2nd November, 2012 but deemed properly filed and served on 31st October, 2013; and his reply brief filed on 19th February, 2014. He relied on the submissions in the said briefs as the appellant's arguments in the appeal in urging the court to allow the appeal and to set aside the judgment of the

trial court. Mr. Yakubu Dauda for the respondents adopted and relied on the respondents' brief filed on 12"' December, 2013 but deemed properly filed and served on 19"' February. 2014 as their argument in the appeal. He urged the court to dismiss the appeal and to uphold ihe decision of the Federal High Court, Ilorin A Division.

In the appellant's brief. Mrs. .l. A. Airmen who settled the brief formulated 3 issues for the determination of the appeal. On their own. Mrs. T.E. Akintunde who prepared the respondents' brief adopted the 3 issues distilled by the appellant's counsel. These 3 issues which 1 shall adopt in the determination of this appeal are:

"1. Whether the trial Judge was wrong in believing the respondents' depositions in the counter-affidavit on the footing that they were not denied by way of further affidavit by the appellant.

2. Whether the learned trial Judge was not wrong in holding that the content of exhibit S001 is inciting and that the conduct of the appellant was suspicious enough as to justify the respondents' action.

3. Whether the learned trial Judge was not wrong in dismissing all the reliefs sought by the appellant considering the totality of evidence adduced in this case."

I shall resolve the above issues seriatim.

Issue 1

Mrs. Aimien in the appellant's brief submitted that the learned trial Judge was wrong in believing the counter-affidavit of the respondents on the footing that they were not denied by way of further affidavit. Referring to the holding of the trial court at page 127 of the record as it relates to paragraph 7 of the 1st counter-affidavit, Mrs. Aimien contended that the trial court was wrong having regard to the depositions of the appellant at paragraphs 21, 27, 34 and 35 of the appellant's affidavit. She argued that with exhibits S004 and S005 which were annexed to the affidavit in addition to the above referred paragraphs of the affidavit, any other affidavit in the name of further affidavit would be no more than a mere surplursage at best.

It was further argued that paragraph 7 of the counter affidavit deposed to by the legal officer offends section 115 (1), (3) and (4) of the Evidence Act. Also that failure of the respondent to exhibit any document to-support the averment that the appellant signed and collected all his items which were seized from him removed the credibility that should have been attached to paragraph 7.

The learned counsel for the appellant contended that the learned trial Judge was wrong in not striking out paragraphs 5,7 and 8 of the 1st counter-affidavit which she submitted contravened Section 115 (1) (3) and (4) of the Evidence Act; Cap. E, 12. Laws of the Federation of Nigeria, 2004 (as amended).

Referring to the case of *Abiodun v. Chief Judge of Kwara State* (2008) All EWLR (Pi. 44ft) 340 at 337; (2007) 18 NWLR (Pt. 1005) 109. it was submitted that paragraphs 5. 7 and 8 of the 1st counter-aflidavit were not only defective in form but also in substance and as such ought to have been struck out.

Mrs. Aimien in the appellant's brief referred to paragraphs 8, 9, 10, 11, 12, 13. 14, 15. 10, 18, 20, 23, 25 and 34 of the appellant's affidavit at pages 6- 9 of the record to submit that the respondents in their 1st counter-affidavit did not specifically deny them. She therefore urged the court to infer from the instance that the respondents are deemed to have admitted the aforesaid averments. She cited: *Ajomale v. Yuduat* (2003) FWLR (Pt. 182) 1913 at 1925. (No. 2) (1991) 5 NWLR (Pt. 191) 266: *Amadi v. Acho* (2006) All FWLR (Pt. 334) 1949; (2005) 12 NWLR (Pt. 939) 380. Section 124 (1) of The Evidence Act (as amended). It was her argument that the respondents having admitted the above referred paragraphs of the appellant's affidavit, the appellant did

not need to tile a further affidavit. She urged the court to hold that the learned trial Judge ought to have accepted and acted upon the averments of the appellant not countered and to have taken them as true.

On paragraphs 19. 21, 22. 24, 27 and 28 of the appellant's affidavit, the learned counsel for the appellant submitted that the respondents by paragraphs 13, 14 and 15 of the 2"° counter-affidavit only made sweeping denials which is not allowed in law. She referred to: *Osawe v. Osawe* (2003) FWLR (Pt.183) 97 at 107; *Ogunsola v. Usman* (2003) FWLR (Pt. 180) 1465 at 1482, (2002) 14 NWLR (Pt. 788) 636.

The learned counsel finally urged the court to resolve the issue in favour of the appellant.

In response, Mrs. Akintunde referred to: *Asol (Nig.) Ltd. v. Access Bank (Nig.) Plc* (2009) 10 NWLR (Pt. 1149) 283; to submit that it is well settled principle of law that where a party has deposed to (acts in a counter-affidavit which the other party ought to rebut in a further affidavit but fails to do so, he is deemed to have admitted such facts in the counter-affidavit and the conn will be bound 1o rely on the uncontroverted depositions.

From paragraph 6.03 to 6.08 at pages 4 – 8 of the respondents' brief, the learned counsel for the respondents summarized and analysed some reproduced depositions of the parties and contended that the depositions of the respondents were more detailed and raised new facts winch required the appellants to file a further affidavit. She cited: *Minisier, P.M.H. v. EL. **(Nig.)** Ltd.* (2010) 12 NWLR (Pt. 1208) 261 at 285. She submitted that failure to file further affidavit to controvert the depositions contained in the respondents' counter-affidavit amounted to an admission of the said depositions which entitled the trial court to act on the respondents' facts. She relied on *Minister, P.M.R. v. EL. (Nig.) Ltd.* (supra); *F.A.A.N. v. W.E.S. (Nig.) Ltd.* (2011) 8 NWLR (Pt. 1249) 219: *Ajuwa v. S.P.D.C.N. Ltd.* (2011) 18 NWLR (Pt. 1279) 797.

On the contention of the learned counsel for the appellant that the respondents did not counter paragraphs 19, 21, 22. 24. 27 and 28 of the appellant's affidavit, Mrs. Akintunde submitled that paragraphs 4 17 of the 2nd counter-affidavit adequately controverted p, p paragraphs 8-25 of the appellant's affidavit. She referred to *N.N.P.C. v. Famfia Oil Ltd. (2012)* 17 NWLR (Pt. 1328) 148 SC at 189; to submit that the respondents' denial was direct and frontal.

The learned counsel listed the cases cited by the appellant's
counsel to submit that they were cited out of context.

She finally urged the court to hold that the said failure to controvert the depositions in the respondents' counter-affidavit, made it right for the trial court to rely on the facts deposed to in the respondents' counter affidavit. She urged the court to resolve issue 1 in favour of the respondents.

The law is settled beyond citation of authorities in support that; the unchallenged depositions of facts in an affidavit are deemed admitted by the opposing party. Such facts would require no further proof and the court is enjoined to accept, consider and act on them as correct, true and established. See: *Globe Fishing Industries Ltd. v. Coker* (1990) 11 SCNJ 56; (1990) 7 NWLR (Pt. 162) 265; O*kereke v. Ejiofor* (1996) 3 NWLR (Pt. 434) 90; Section f 24 (13 of the Evidence Act. 2011.

From the record, the grouse of the appellant is that the ***j*** trial was wrong to have believed the depositions in the counter-affidavits on the ground that they were not controverted by way of further affidavit when the said counter-affidavits did not deny the depositions in the appellant's affidavit.

While the appellant contended that paragraphs 7.8,9, 10. 11, 12. 13, 14. 15, 16, 18, 20, 23, 25 and 34 of the affidavit were not controverted, the respondents maintained that paragraphs 4 - 17 of the 2nd counter - affidavit countered paragraphs 8 25 of the appellant's affidavit.

I have read and considered the .appellant's affidavit and the respondents' 2nd counter-affidavit particularly the paragraphs mentioned above, paragraphs 4-17of the respondents' 2nd counter-affidavit adequately denied and controverted paragraphs 14, 15, 16. 18., 20, 23 and 25 of the appellant's affidavit. The rest of the paragraphs which are paragraphs 7, 8, 9. 10, 11, 12. 13 and 35 were neither denied

nor controverted. They are therefore deemed admitted by the respondents.

By the said paragraphs deemed admitted, the appellant deposed generally that he had dispatched the letter in question to the legal unit of the 1st respondent and was asked to come back for an endorsed copy. He had also dispatched same letter copied to the Registrar and Secretary of Council at the Registrar's office for which he collected an endorsed copy. It was after he had delivered the letter at the 2nd respondent's office that he ran into problems. The appellant deposed that after delivering the letter in the 2nd respondent's office, he was asked to wait to collect the endorsed copy. It was while he was waiting that someone from the 2nd respondent's office called him to come and collect the endorsed copy. As he followed the person he was now taken to the 1st respondent's security unit.

These are the facts that were not categorically denied by the respondents. The deponent of the 1st counter-affidavit who is a legal officer in the legal unit did not deny in his counter-affidavit that a copy of the letter was dispatched to his office. None of the counter-affidavits nor any one from the office of the Registrar denied the fact that the appellant delivered the letter there on 6th April, 2011 for which he was given an endorsed copy. Then again, no counter affidavit nor anybody from the office of the 2nd respondent controverted the fact that the appellant delivered a letter in that office on 6th April, 2011 and was asked to wail for an endorsed copy. The storyline of the respondent that he was found loitering could only be credible if the respondents had countered the evidence stated above. Having not done so, the learned trial Judge ought to have considered and acted on the affidavit evidence of the appellant at paragraphs 7, 8, 9. 10. 11, 12 and 13 as admitted facts. See: *Unibiz Nig. Ltd v. Commercial Bank (Credit Lyonnais Nigeria) Ltd.* (2005) LPELR - 3381 (SC); (2005) 14 NWLR (Pt. 944) 47; *Nwosu v. Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt.135)688.

The respondents contended at paragraph 6.09, that in view of the new facts raised by the respondents, the appellant ought to have |**b** filed a further affidavit as found by the learned trial Judge. Many authorities were cited. From paragraph 6.16 of the respondents' brief the new facts are depositions made at paragraphs 3, 4, 6, 7 and 8 of the 2nd counter-affidavit.

By the above referred paragraphs of the 2nd counter-affidavit, the chief security officer of the 1st respondent deposed that upon an alert of a young man loitering and aimlessly wandering around the Senate Building of the respondent, they found the appellant standing around the 2nd respondent's office, accosted and quizzed him and obtained necessary information before handling him over to the Police. The learned trial Judge believed these facts as stated by the respondents and held that failure of the appellant to deny the counter-affidavit by filing further affidavit amounted to an admission of the facts. He relied on this to find against the appellant.

The question that need be answered at this point is whether having regard to the facts and circumstances of the case, the learned trial Judge was right to hold that failure of the appellant to file a further affidavit amounted to an admission of the facts deposed to in the counter-affidavit.

A counter-affidavit is an affidavit made to contradict and oppose facts in another affidavit. A valid counter-affidavit must contain a valid denial of each fact sought to be denied and the respondent's version of what happened. A valid denial is a denial pointedly directed to the facts intended to be denied. A simple narration of a respondents' different and distinct sets of facts deposed to in an affidavit does not qualify as a counter affidavit which has denied the facts deposed to in an affidavit. See: *Citizens International Bank Ltd. v. SCOA Nigeria Ltd. & Anor.* (2006) LPELR - 5509 (CA); (2006) 1 8 NWLR (Pt. 1011) 332.

Considering paragraphs 3, 4, 6, 7 and 8 of the 2nd counter-affidavit, they do not in any way constitute a denial of paragraphs 7. 8, 9, 10, 11.12 and 13 of the appellant's affidavit. Rather, they are entirely different sets of facts. Rather than joining issues with the facts deposed to in paragraphs 7, 8. 9. 10, 1 1 . 1 2 and 13 of the appellant's affidavit, they simply made out a defence parallel with the case made out by the paragraphs of the appellant's affidavit under consideration. Accordingly, I hold that by those said paragraphs, the respondents did not controvert the facts deposed to

by the appellant in his affidavit. Therefore, the learned trial Judge was wrong when he failed to act on the uncountered and deemed admitted affidavit evidence of the appellant.

By extension of my holding, the learned trial Judge ought not to have believed nor acted on the alleged new facts raised by the respondents as same were legally incredible in the face of the unchallenged paragraphs 7, 8,9,10, 11, 12 and 13 of the appellant's affidavit. It follows further that there was no need for the appellant to file a further affidavit to controvert the respondents' facts which had not controverted his affidavit evidence.

A further affidavit is needful when there is a counter-affidavit that has denied and contradicted the weighty and substantial facts in an affidavit evidence and further sets out new facts which are credible and which if believed by the court will lead to a finding in favour of the respondent. Thus, when an affidavit evidence is held as in this case not to have been contradicted; it is established and ought to be acted upon by the court. The facts in the affidavit having been established, the need will no longer arise for an applicant or in this case for the appellant to file a further affidavit nor for the court to embark on the rigour of calling *viva voce* evidence to resolve conflicting facts. See: *Globe Fishing Industries Ltd. v. Coker* (1990) 1 SCNJ 567, (1990) 7 NWLR (Pt. 162) 265; per Nnaemeka Au J.S.C. (as he then was); *Bedding Holdings Ltd. v. NEC* (1992) 8 NWLR (Pt. 260) 428; *Pan Atlantic Shipping Transport Agencies Ltd. v. Abayomt Babatunde* (2007) LPELR - 4826 (CA), (2007) 13 NWLR (Pt. 1050) 113.

From the foregoing 1 hold the view that the learned trial Judge would have treated the facts in paragraphs 7, 8, 9, 10, 11, 12 and 13 of the affidavit which were not denied as proof for the purpose of the motion. The cases cited in paragraphs 6.02, 6.09 and 6.15 of the respondents' brief are in apposite. Unlike in the cases cited, the respondents herein did not deny the substantial facts in the appellant's affidavit.

In challenging the decision of the learned trial Judge at page 127 of the record to the effect, that paragraph 7 of the respondents' E' counter-affidavit was not denied and as such deemed true, Mrs. Aimien for the appellant contended that the trial court was wrong in its decision in the face of the averments in paragraphs 21.27, 34, and 35 of the affidavit and exhibits S004 and S005.

In considering this issue, let me reproduce the relevant affidavit and 1st counter-affidavit evidence which are paragraphs 21, 27, 34 and 35; and 7, 8, 9 respectively.

Paragraphs 21, 27, 34 and 35 of the appellant's affidavit state thus:

"21. That seeing that I had nothing incriminating on me, the security officials seized my phones, my bag containing documents which include printed copies of my curriculum vitae, copies of letter to the Deans of the various faculties as well as the endorsed copy ' of the letter which was dispatched to the office of the registrar.

27. That my phone which had hitherto been seized by the agents of the 1st respondent, were released to me through the Divisional Police Officer 'F' Divisional Tanke, Ilorin the following day after 1 had been denied access to them for 24 hours or - thereabout.

34. That I wrote a letter through my lawyer dated 13th April, 2011, to the
Registrar of the 1st respondent and 2nd respondent, demanding the return of the documents in their possession and a letter of apology to be published in one of the national dailies. Now shown to me are:

(a) an endorsed copy of the said letter written by my solicitors to the Registrar and secretary to council of the 1st respondent as well as Deputy Vice Chancellor of the 1st respondent. This is marked as exhibit S004.

(b) an endorsed copy of the covering letter of exhibit S004, copied to the 2nd respondent. This is marked exhibit S005.

35. That the 2nd respondent rebuffed the solicitors' letter and this has necessitated the filing of this suit."

Paragraphs 7, 8 and 9 of the 1st counter-affidavit state as follows:

"7. That I know as a fact that all the items collected from the applicant were returned to him by the Police and the applicant signed that he received them and did not complain of any property not being released to him.

8. That I know as a fact that the applicant was asked by the Police to report at the 'F' Division the following day i.e. 7th April 2011 but he failed to show up throughout that day.

9. That I know as a fact that the management of 1st respondent formally handed over everything relating to the allegations against the applicant to the Police by writing the letter dated 8th April, 2011 to the DPO for purpose of prosecuting the applicant appropriately."

At lines 26-27 of page 127 of the record, the trial court found that paragraph 7 of the 1st counter-affidavit is deemed true since the appellant did not file any further affidavit to deny it and in view of paragraph 27 of the affidavit which deposed to the fact that the appellant's phones were returned to him.

It is worthy of note that the said paragraph 7 was one of the paragraphs the appellant's counsel urged the trial court to strike out for diverse reasons. While not leaving out the provisions of the Evidence Act, I shall also consider the credibility of paragraph 7 in the face of the depositions in paragraphs 8 and 9, exhibits S002 and S004.

Paragraph 7 of the Is' counter-affidavit has 3 arms to wit;

- That all the items collected from the applicant were returned to him by the police.
- That the applicant signed that he collected them.
- The applicant did not complain of any property not released to him.

By exhibit S002 dated 8th April, 2011 the management of the 1st respondent formally handed over everything relating to the allegations against the appellant to the DPO, 'F' Division, Tanke, Ilorin. The last paragraph of the letter reads:

> "Attached are the copies of the inciting document and others, please".

The deponent of the 1st counter-affidavit is Akanbi Dare, legal officer in the legal unit of the 1st respondent. He did not depose to the fact that he is a police officer nor works at 'F' Division, Tanke Police station. By paragraph 6, Mr. Dare stated that he got to know the appellant was released on bail on the same 6th April, 2011. He did not say what time he was released; neither did he say he was present when he was released.

Throughout the counter-affidavit Mr. Dare did not state the circumstances surrounding the release of the appellant on bail. The court is left to wonder how the deponent got to know that all the items collected from the appellant were released to him. The deponent fi did not say that he either handed over all the items or witnessed the handing over of all the items to the appellant. This is to say that the 1SI counter-affidavit does not contain the fact that the deponent had personal knowledge of what he deposed to which he believed to be true. The failure of Mr. Dare therefore, to state the source of his information, the facts and circumstances forming the ground of his belief; the name of his informant if he was so informed; particulars of the said informant and the time, place and circumstance of the information runs contrary to the provisions of section 115(1)(3) and (4) of the Evidence Act, Laws of the Federation of Nigeria, 2011.

The learned trial Judge was therefore wrong when he failed to strike out paragraph 7 for offending the Evidence Act (supra) but rather believed the same to arrive at a wrong conclusion that all the items seized from the appellant were all returned to him.

Even if I hold that paragraph 7 does not offend the Evidence Act, its credibility in the face of the deposition in paragraphs 8 and 9 of the counter-affidavit remains highly questionable. The trial court did not believe the appellant when he deposed to the fact that he was only given his phones upon his release on 6th April, 2011. The trial court also held that failure of the appellant to file a further affidavit in answer to the deposition in paragraph 7 amongst other paragraphs meant admission that all the items seized from the appellant were handed over to him upon his release. By paragraphs 8 and 9, Mr. Dare deposed that the appellant failed to show up the following day (7th April. 2011) as ordered by the Police and that everything relating to the allegations against the appellant was handed over to the police on 8th April, 2011. The question is, how could the Police have handed over all items seized from the

appellant on 6th April, 2011 if everything relating to the allegations against him were handed over to the Police on 8th April, 2011 by the respondents? This inconsistence makes the storyline of the respondent particularly paragraph 7 incredible, unreliable and unbelievable.

For the failure to pass the credibility test expoused in the ease *Ayanwale v. Atanda* (1988) 1 SCNJ 1 at 13; (1988) 1 NWLR (Pt. 68) 22, the learned trial Judge was wrong to believe that all items seized from the appellant were handed over to him on 6th April, 2011 based on paragraph 7. Also, the trial court arrived at a wrong conclusion when it concluded that the appellant for failure to file further affidavit to deny paragraph 7 tailed to prove that he was only handed his phones when he was released on 6th April, 2011.

What I have said in the last paragraph is firmly supported by exhibit S002 which is the letter referred to in paragraph 9 of the 1st counter-affidavit. Exhibit S002 confirmed that documents and other things relating to the allegations against the appellant were not handed over to the appellant on 6th April. 2011 when he was released on bail. Exhibit S004 which is the letter of the appellant's counsel to the 1st respondent's registrar complaining *inter alia* of withholding of his documents seized from him on 6th April, 2011 also witnesses that contrary to paragraph 7, the appellant was only given his phones when he was released on bail. The formal complaint letter which was written on 13th April, 2011 is a documentary evidence exhibited by the appellant to show he made a formal complaint that all the items seized from him on 6"' April, 2011 were all not handed over to him on his release. This also counters the third arm of paragraph 7 of the 1st counter-affidavit which deposed that the appellant did not complain of any property not being released to him.

With exhibit S004 therefore the learned trial Judge was wrong to hold that the non filing of a further affidavit by the appellant to deny paragraph 7 was an admission. It is not in all cases that failure to file further affidavit will be held by a court to amount to an admission of the depositions in a counter-affidavit. A further affidavit must not necessarily be filed just because there is a counter-affidavit filed. A further affidavit is only necessary where a counter-affidavit filed has actually pointedly denied or refuted weighty and substantial facts deposed to in an affidavit and such a counter-affidavit goes further to raise new facts by setting out a credible story line of the respondent.

From all I have said above, I hold that the learned trial Judge was wrong in believing the respondents' depositions in their counter-affidavit on the basis that they were not denied by way of further affidavit by the appellant.

Issue 1 is resolved in favour of the appellant.

Issue 2

Mrs. Aimien for the appellant referred to the holding of the trial court at page 130 of the record to submit that the court was f wrong in holding that the letter delivered by the appellant (exhibit S001) was inciting thereby justifying the acts of the respondents. She noted that the learned trial Judge erroneously relied on exhibit S003 to conclude that exhibit S001 was inciting. When there is nowhere in exhibit S003 that it claimed that S001 was inciting.

It was further contended for the appellant-that failure of the security of the 1st respondent to contact Dr. Oloruntoba-Oju as the author of exhibit S001 when the security was questioning the appellant showed act of malice. She argued that the respondents just made the appellant to unduly suffer as a result of the union activism of Dr. Oloruntoba-Oju in the 1st respondent. She urged the Court to rely on: *Edokpolor v. O he hen* (1994) 7 NWLR (Pt. DD 358) 511; to hold that the appellant is no more than a victim of circumstances.

The learned counsel submitted that the learned trial Judge failed to properly evaluate exhibits S001 and S003 and so arrived at a wrong conclusion that exhibit S001 is capable of causing disaffection in the 1st respondent and that the author of exhibit; S001 was found to have been involved in incitement disturbance by exhibit S003. She relied on: *Ayanru v. Mandilas Ltd.* (2007) 7 M.J.S.C. 163 at 175; (2007) 10 NWLR (Pt. 1043) 462 to invite the court to review the facts of the case and to draw the appropriate inference from the proved facts.

On the issue of appellant behaving in a suspicious manner to justify his arrest and detention by the security of the 1st respondent, the learned counsel for the appellant argued that this is not tenable in the light of the facts that there was a document in his possession to show that he was an alumnus of the 1st respondent and that the letter he was dispatching was written by a staff of the 1st respondent. She added that the fact that the respondents did not deny that the appellant had dispatched a copy of exhibit S001 to the

registrar of the 1st respondent as deposed to in paragraph 8 of the appellant's affidavit made his arrest a violation of his right.

The learned counsel urged the court to hold that there was no basis for the said suspicion of the appellant and to hold that the appellant's right under section 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) was violated.

In response, Mrs. Akintunde for the respondents referred to paragraphs 2; (3) (ii); 7(a), (b) and (c) at pages 11, 12 and 13 of the record respectively: to submit that a profound consideration of the statements therein reveal that are unfounded, baseless, inciting, stirring and provocative.

Further referring to sections 417 and 419 and a communal construction of Chapter XX VII of the Penal Code (Northern States) Provisions Act, Cap. P3, Laws of the Federal Republic of Nigeria, 2004, the act of the appellant disturbing exhibit S001 which is an inciting document constitutes an offence under criminal law and justifies the decision of the respondents to hand him over to the Police.

On the argument of the appellant that the court was wrong to rely on exhibit S003 which is not a judgment of a court of law in arriving at the conclusion that exhibit S001 was inciting; Mrs. Akintunde submitted that it is trite law that a party who pleaded and tendered a document cannot be heard to complain about the court's consideration of the document. She cited: *Onwudinjo v. Dimobi* (2006) 1 NWLR (Pt. 961) 318; *Ajide* v. *Kelani* (1985) 3 NWLR (Pt. 12) 248; *Oje v. Babalola* (1991) 4 NWLR (Pt. 185) 267; *A . G., Enugu State v. Avop Plc* (1995) 6 NWLR (Pt. 399) 90; give *v. A.I.C.E.* (1994) 8 NWLR (Pt. 363) 459.

On whether the actions of the respondents were prompted by malice, the learned counsel for the respondents submitted that the issue of malice arising from an alleged legal tussle between the respondents and Dr. Oloruntoba-Oju, was never part of the whole gamut of the case of the appellant at the trial court. She relied on: *Adeogun v. Fasogbon* (2011)8 NWLR (Pt. 1250) 427 at 454; *Ajide v. Kelani* (1985) 3 NWLR (Pt. 12) 248; *Jumbo v. Bryanko Ltd.* (1995) 6 NWLR (Pt. 403) 545; *Mkpa v. Mkpa* (2010) 14 NWLR (Pt. 1214) 612.

She submitted further that assuming without conceding that the issue of malice based on the alleged clash between Dr. Oloruntoba-Oju and the respondents was part of the case of the appellant at the trial court, the issue of malice will still be immaterial since the actions of the respondents are justified by section 416-418 of the Penal Code (supra).

On the fact that the learned trial Judge was wrong to justify the actions of the respondent on the ground that the conduct of the appellant was reasonably suspicious, Mrs. Akintunde argued that the conduct of the appellant as revealed in the 2nd counter-affidavit of the respondents was enough to agitate the mind of the 1st respondent as to his person or the genuineness of purpose I within the 1st respondents' premises. This she added, justified the j respondents' actions.

She further contended that section 35 of the Constitution does not avail the appellant; submitting that anyone who is part of an act that will disturb the peace of a community which is a punishable offence divests himself of the constitutional protection.

Again, the learned counsel submitted that the appellant failed to prove that he was illegally maltreated; consequently he cannot successfully allege violation of his fundamental right. She cited: *Ekanem v. Assistant J.G.P.* (2008) All FWLR (Pt. 420) 775; (2008) 5 NWLR (Pt. 1079j 97; *Odogu v. A.-G., Federation* (1996) 6 NWLR (Pt. 456) 508; *A.G., Anambra State v. U.B.A* (2005) All FWLR (Pt. 277) 909; (2005) 15 NWLR (Pt. 947) 44; *Aduwso v. Omeire* (2006) All FWLR (Pt. 310) 1759.

She finally urged the court to resolve the issue in favour of the respondents.

A party who puts forward a document in evidence to be considered by a court cannot turn round to either impugn, criticize or complain that the court relied on the said document in arriving at a decision. See: *Igwe v.A.I.C.E.* (1994) 8 NWLR (Pt. 363) 459; *Onwudinjo v. Dimobi* (2006) 1 NWLR (Pt. 961) 318.

This position of the law follows the elementary principle that a party who pleaded and tendered a document did so for the court's consideration and aid in arriving at a just decision of the case. Consequently such a party, especially when the document was tendered without objection, cannot be heard to complain that the court considered the same. This principle applies even when the party had tendered the document for a specific purpose. In law a party who has tendered a document in court for consideration G^ cannot pick and choose for the court the portion to consider and the portion 1o close its eyes to. Such a party cannot also choose to associate himself with the portions of the document that aid him

and disassociate from the portions that seem to stand against him. Once a document is admitted in proceedings as an exhibit, the court is enjoined to have an over view consideration and application of it. As a result, the party who tendered it either sings home happily or cries home with sorry. See: *A. G. Enugu State v. Avop Plc.* (1995) 6 NWLR (Pt. 399) 90.

Under this issue, the grouse of the appellant stands on two less. Firstly, he contends that the trial court was wrong to have held that the content of exhibit SO01 is inciting and secondly, that the trial court ought not to have held that the conduct of the appellant was suspicious to justify the actions of the respondents.

Exhibit S001 is a document that was found on the appellant during his interrogation by the office of the 3rd respondent. The learned trial Judge at page 130, 11 - 16 of the record found thus:

> "To my mind this shows that the letters in question had the potential of arousing disaffection in the University Community and that the respondents were right m the manner they approached the issue. Looking at the entire circumstances therefore I do not see anything wrong in what the respondent did. There was no unlawful arrest and detention of the applicant by 1st respondent's agents. The steps taken were reasonable in the circumstances."

I have considered paragraphs 2, 3 and 7 (a) (b) and (c) of exhibit S001 at pages 11, 12 and 13 of the record respectively. I wish to note that the said exhibit was also copied to the members of the academic staff. I do agree with the learned trial Judge that the referred portions of exhibit S001 contain words that could reasonably incite or provoke the members of the staff as they have the potential of arousing disaffection and causing unrest with the University Community.

The main contention of the appellant on the propriety of the learned trial Judge holding that exhibit S001 had the potential of arousing disaffection in the 1st respondent is that he based his decision on exhibit S003. It is correct as submitted by the learned counsel for the appellant that exhibit S003 is not a judgment of a court and cannot be held out as such. It is equally a fact that no court has convicted either Dr. Olonmtoba-Oju nor the appellant of inciting disturbances. However, exhibit S003 annexed to the appellant's affidavit for the court to consider under 'conclusion', stated thus;

> "Owing to the above facts and findings, it is clear that there was a case of inciting disturbances emanating from power contest between two different factions in the University-'.'"

Also under "Findings', it has this to say;

> "(i) That there was incitement disturbance by Dr. Olorunloba-Oju and his team.

See: page 17 of the record.

Accordingly, it is not correct as contended by the appellant that exhibit S003 in no way contained the claim that exhibit S001 t g was capable of causing disaffection.

The learned trial Judge did not find Dr. Oloruntoba-Oju and his team guilty of incitement disturbance as no criminal charge was before him. He also did not adjudge exhibit S003 an incitement document since he was not hearing a criminal matter where the ingredients of the offence would have been proved before he could in law pronounce exhibit S003 a document that constitute an offence under the law and subsequently find Dr. Oloruntoba-Oju and team guilty. Rather the learned trial Judge relying on exhibit S003 described exhibit S001 as a document that has the potentials to cause disaffection in the 1st respondent.

Even without exhibit S003, I had earlier expressed the view that exhibit S001 contains words that could reasonably cause disaffection in the 1st respondent. I also brought to bare by reproducing the relevant paragraph of exhibit S003 to show that contrary to the contention of the appellant, exhibit S003 stated clearly that Dr. Oloruntoba-Oju and his team were involved in incitement disturbance. Therefore from the contents of exhibit S001 and exhibit S003, the learned trial Judge was right when he held that exhibit S001 was capable of arousing disaffection in the 1st respondent's community. This holding does not in any way arrogate exhibit S003 the status of a judgment of a court of law.

The principle of law backed the learned trial Judge to rely on exhibit S003 which was put in evidence before the court and relied (G upon by the appellant in support and proof of his affidavit evidence. The appellant having

introduced exhibit S003 in evidence cannot complain that the trial court considered the said evidence and relied upon it to arrive at its decision. After all, the purpose of documentary evidence rightly admitted in court and tied to the facts of the case is to assist the court by considering it to arrive at a just decision. See: *Omvudinjo v. Dmwbi* (2006) 1 NWLR (Pt. 961) 318; *Igwe v. A.I.C.P.* (1994) 8 NWLR (Pt. 363) 459.

In my view therefore, the learned trial Judge was merely carrying out his function by considering exhibit S003 placed before it by the appellant. Accordingly, the argument contained at pages 13-15 of the appellant's brief, complaining of the decision arrived at by the court upon the consideration of exhibit S0O3 is not tenable in law. I hold that the learned trial Judge was entitled to draw inferences from exhibits placed before him especially the ones tendered without objection. The appellant is therefore not allowed in law and in this appeal, to object to the trial court's consideration of exhibit S003 in reaching its decision.

In support of the above position is the fact that the appellant at paragraphs 5.09 and 5.10 at page 15 of his brief sought to benefit from exhibit S003 which he had urged the court to hold that the trial court was wrong to have considered in reaching a decision. While it is correct that exhibit S003 strengthens the appellant's position that he was neither charged nor convicted for any offence whatsoever, the appellant cannot maintain a summersault position on exhibit S003. He cannot on one breath seek for the discountenance of a decision arrived at by the trial court for the reason that it considered exhibit S003 and on the next breath seek the court to rely on the same exhibit S003 to affirm his submission that there is no evidence that neither the appellant nor Dr. Oloruntoba-Oju, who signed exhibit S001, was charged with or convicted for the offence of incitement. In law and in equity, the appellant who placed exhibit S003 before the trial court cannot choose and pick the portion of that exhibit the court shall consider and act on. He can only lay emphasis on portions particularly relevant to him and not to fraternize with a portion of it and junk another portion. The appellant having placed exhibit S003 before the trial court was bound to be rescued or be drowned by it. Either way the appellant was knotted with exhibit S003 to either reap its sweet or bitter fruits. See: *A.-G., Enugu State* v. *AVOP Pic* (1995) 6 NWLR (Pt. 399) 90.

It is my view that the court properly evaluated exhibit S001 and S003 and arrived at the right conclusion that exhibit S001 is capable of arousing disaffection in the respondent and that the author of exhibit SO01 was found to be involved in incitement disturbance by exhibit S0O3.

From the 2nd counter-affidavit, the deposition of the Chief Security Officer of the 1st respondent shows that in their interrogation of the appellant. Dr. Oloruntoba-Oju that authored j exhibit SOOI was not contacted. Ironically, the security rather embarked on a wild goose chase in the 1st respondent community seeking for information while tactically avoiding to approach the source of their required information. I do agree with the learned counsel for the appellant that failure of the respondents to contact Dr. Oloruntoba-Oju who signed exhibit S001 clearly smacks of malice. However, having found that exhibit S001 contained words that could reasonably cause disaffection in the 1st respondent's community, I do not flow with the appellant's contention that the only logical inference that arises from the fact that the respondents failed to contact Dr. Oloruntoba-Oju is that the appellant was made to unduly suffer as a result of the Unionist activism of Dr. Oloruntoba-Oju in 1st respondent. Rather, I agree with the learned trial Judge that the respondents were right to have interrogated the appellant, seized what he had on him and handed him over to the Police for further investigations.

On whether the appellant behaved in a suspicious manner, the learned trial Judge relied on the respondent's 2nd counter-affidavit particularly paragraphs 3, 4. 6, 7 and 8 to hold that the behaviour of the appellant was suspicious and this justified the actions of the respondents.

I had while resolving issue 1 arrived at the conclusion that the learned trial Judge was wrong to believe and act on, inter alia; the F p above referred paragraphs of the 2nd counter-affidavit on the ground that the appellant who did not file a further affidavit admitted them. I held that; on the face of paragraphs 7.8,9, 10. 11, 12 and 13 of the appellant's affidavit which were not denied; the

facts deposed to in the paragraphs of the 2nd counter-affidavit which the trial G *q* court relied on did not arise as the respondents in law are deemed to have admitted the referred appellant's affidavit evidence. The line of story of the respondents in paragraphs 3, 4, 6, 7 and 8 of the 2nd counter-affidavit having not arisen in law, the appellant had no legal benefit to file a further affidavit. This means that the credible evidence before the trial court was that the appellant who after dispatching two copies of exhibit S001, dispaiched that of 2nd respondent and was asked to wait and collect the endorsed copy while he was waiting he was invited to collect the said endorsed copy by someone who works in 2"d respondent's office, however rather than give him the said copy he was led to the security post of the 1st respondent.

From the credible and uncontradicted facts deposed to by the appellant, I do not agree with the respondents that the conduct of the appellant was suspicious nor posed any threat to warrant the respondents' action. However before I conclude on this, having held while resolving this issue that exhibit S001 could reasonably cause disaffection in the 1st respondent, it is my view that by reason of exhibit S001 the respondents needed to be cautious and at the same time apprehensive of the possible industrial unrest, disaffection and insecurity exhibit S001 could lead to in the 1st respondent. So, for what I held exhibit S001 stands for, I agree with the learned trial Judge that the respondents were right in their actions since the appellant did not prove allegations of gross assault, mental and psychological torture, harassment, intimidation and violation of human dignity.

Also by reason of the fact that exhibit S001 was a document that could reasonably incite the 1st respondent community, the question of the right of the appellant who distributed the said exhibit does not arise under section 35 of the Constitution. For clarity, I reproduce section 35(1)(c) of the 1999 Constitution (as amended).

> "Section 35(1) Every person shall be entitled to his personal liberty save in the following cases and in accordance with the procedure permitted by law –
>
> (c) For the purpose of bringing him before a court in execution of order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence."

The provisions of section 35 of the Constitution cannot assist the appellant in view of the nature of exhibit S001 which he was distributing.

From all I have said above. I hold that the respondents were right in accosting, interrogating and handing the appellant over to the Police as was held by the trial court.

I therefore resolve issue 2 in favour of the respondents.

Issue 3

There is nothing left to be resolved under this issue, what is to be answered is: in the light of the resolutions of the two issues, was the learned trial Judge right to have dismissed all the reliefs sought.

The reliefs sought had earlier been set out in this judgment. From the resolutions made above, I hold that the learned trial Judge was wrong when he dismissed the entire reliefs sought.

Having resolved the issues the ways I did, this appeal succeeds narrowly and it is to that extent allowed.

I set aside the decision of the Federal High Court, llorin Division delivered on 23rd November, 2011 in suit no. FHC/1L/ CS/20/2011 to the extent that, it refused to make;

(a) An order of mandatory injunction compelling the 3rd respondent to return all the personal documents belonging to the appellant which I held have not been returned to him.

I award a cost of N50,000.00 in favour of the appellant.

MUKHTAR, J.C.A.: I have had the privilege of reading in advance the judgment just delivered by my learned brother Uchechukwu Onyemenam, J.C.A. I agree with the reasoning and the conclusions reached therein that the appeal partly succeeds on the resolution of issue 3 and should, to that extent, be allowed. In result, I allow the appeal in part and abide by the consequential orders made in the leading judgment including the one as to costs.

AKEJU, J.C.A.: My learned brother, Uchechukwu Onyemenam, J.C.A., gave me the privilege of reading before now the lead judgment just delivered.

I agree entirely with the conclusion that the appeal succeeds narrowly based on the reasons well advanced in the lead judgment. I abide by the consequential order including the award of costs.

Appeal in part