

**IS A RECORD OF CRIMINAL PROCEEDINGS ADMISSIBLE IN CIVIL PROCEEDINGS IN NIGERIA?: ANALYSIS OF THE LAW AS PROPOUNDED IN ABUBAKAR V JOSEPH<sup>1</sup> AND BAYOL V AHEMBA<sup>2</sup>**

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**Abstract**

The issue of admissibility or otherwise of documentary evidence in trials before a court is a well settled issue under the Nigerian law. However, an aspect of this same issue, i.e, whether a record of criminal proceedings is admissible in a civil trial, remains, in practice, misunderstood, misconceived and/or contentious. This paper x-rays that aspect of admissibility of documentary evidence by critically analyzing two Supreme Court's decisions (*Abubakar v. Joseph*<sup>3</sup> and *Bayol v Ahemba*<sup>4</sup>), among others. In one of these cases,<sup>5</sup> the Court was reported to have held that a record of criminal proceedings should not be admitted in evidence in civil proceedings. This decision raises some concern and points of law worthy of being properly analyzed, understood and/or reviewed. This paper further critically examines the above mentioned decisions of the Court, hand in hand with other extant laws, with a view to arriving at whether, in view of its other decisions, the Court was right. The paper concludes, with due respect to their lordships, that the position of the law is not as painted in *Abubakar v Joseph*,<sup>6</sup> per Ogbuagu, JSC, and that the position of the law on the issue is being misconstrued. The paper recommends, among others, that when faced with admissibility of a record of criminal proceedings in a civil trial, the Supreme Court, and any other court or any judge in Nigeria, should be more meticulous in its/his/her choice of words and decision on the issue.

**1.0 Introduction**

The question of whether a record of criminal proceedings is admissible in civil proceedings, which is ordinarily seen a simple and settled issue, remains a controversial one. This is because even recently, in 2016, it became a point of argument in a malicious prosecution case before the Kano State High Court.<sup>7</sup> In that case, one of the counsel, relying on the decision of the

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<sup>1</sup> (2008) 13 NWLR (Pt. 1104) 307 at pp. 353-354. Also cited as (2008) 8 MJCS 1at 38-39 and (2008) ALL FWLR (PT. 432) 1065 at 1103

<sup>2</sup> (1999) 10 NWLR (PT. 623) 381. Also cited as (1999) 7 S.C.N.J 223

<sup>3</sup> (Supra)

<sup>4</sup> (Supra)

<sup>5</sup> (*Abubakar v Joseph*)

<sup>6</sup> (Supra) at pp. 353-354

<sup>7</sup> Unreported Suit No. K/214/2014 - *Alhaji Musa Hambali & Another vs Economic and Financial Crimes Commission & Another* presided over by Honourable Justice Faruk Lawan in which

Supreme Court in *Abubakar vs Joseph*,<sup>8</sup> urged the court not to rely on and/or attach any weight to Exhibit MH1, the record of civil proceedings of the Kano State High Court in Charge No. K/EFCC/12/2008, which gave rise to the malicious prosecution suit, on the ground that: “**record of proceedings in a criminal proceeding, should not be admitted in evidence in a civil proceeding.**”<sup>9</sup> In response, the opposing counsel, relying on another Supreme Court’s decision, *Bayol v Ahemba*<sup>10</sup>, retorted and argued that the court could admit, rely on and attach probative weight or value to the record of criminal proceedings in the circumstance of the case. The presiding judge, Hon. Justice F. Lawan, while agreeing with the objection of the counsel challenging the admissibility of Exhibit MH1, a document already admitted in the proceedings (though dismissing the objection on a different ground), held that: “**It is true, that is the position of the law. However, that is not the situation here...**”<sup>11</sup>

The Court of Appeal, Kaduna Division, when faced with similar situation, in the case of *Onyewuke vs Sule*<sup>12</sup>, while also relying on *Abubakar vs Joseph*<sup>13</sup>, held that:

**Being criminal proceedings in those courts, the law seriously frowns upon their admission in evidence in the civil proceedings in the lower court**, a fortiori their utilization as template for reaching a decision in its judgement. In other words, the lower court ought not to have received them, exhibits 3 and 4, in evidence since the law has branded them as inherently inadmissible.<sup>14</sup>

(Underlines supplied for emphasis)

The positions credited to the Supreme Court in the above cited cases and the decisions of Hon. Justices Faruk Lawan and Ogbuninya, JCA, of the Kano State High Court and the Court of Appeal respectively, raise some concern on points of law, worthy of being examined. This paper critically analyses the Supreme Court’s decisions in both *Abubakar v Joseph*<sup>15</sup> and *Bayol v Ahemba*<sup>16</sup> with a view to finding out what actually was the position of the Supreme Court in each of the two cases, and whether, based on the decisions and other relevant extant laws, a record of criminal proceedings is admissible in civil proceedings. The issue at hand requires a critical research and analysis, such as this one, in view of the position of the law, among others, which requires that in an action for damages for malicious prosecution, the plaintiff must prove:

- a. That the defendant prosecuted him in the sense that the defendant set the law in motion against him;
- b. That consequent upon the prosecution, the plaintiff was discharged, that is to say, that the prosecution was determined in favour of the plaintiff;

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judgement was delivered on the 28<sup>th</sup> of October, 2016.

<sup>8</sup> (Supra)

<sup>9</sup> *Abubakar v. Joseph* (supra) per Hon. Justice Ogbuagu, JSC, at pp. 353-354

<sup>10</sup> (1999) 10 NWLR (PT. 623) 381

<sup>11</sup> (Supra) at page 64 of the record of proceedings

<sup>12</sup> (2011) LPELR-9084 (CA)

<sup>13</sup> (Supra).

<sup>14</sup> Per Ogbuninya, JCA. See also the Court of Appeal’s decisions in the case of *Nwachukwu v. Egbuchu* (1990) 3 NWLR (PT. 139) 435 at 443 and *Osemwenkhaa v. Osemwenkha* (2012) and *Okunore v. USA* (1951) 20 NLR 25

<sup>15</sup> (supra)

<sup>16</sup> (1999) 10 NWLR (PT. 623) 381

- c. That the prosecution was without a reasonable and probable cause; and
- d. That the prosecution was actuated by malice by the defendant against the plaintiff.<sup>17</sup>

The question that may be asked is, is it possible for a plaintiff to prove that he was unjustifiably prosecuted and discharged without tendering the record of proceedings of the court that entertained the matter? These, among others, are the issues this paper seeks to address.

## **2.0 Facts of the Case of Abubakar V Joseph**

On 9<sup>th</sup> December, 1991, a motor vehicle belonging to the 1<sup>st</sup> appellant and driven by the 2<sup>nd</sup> appellant collided with a motor vehicle belonging to the 2<sup>nd</sup> respondent and driven by the 1<sup>st</sup> respondent.

Both the 2<sup>nd</sup> appellant and the 1<sup>st</sup> respondent were prosecuted by the Police at the Magistrate's Court in respect of the collision. The 1<sup>st</sup> respondent was convicted while the 2<sup>nd</sup> appellant was discharged.

Subsequently, the 1<sup>st</sup> appellant sued the respondent at the High Court for special and general damages he claimed he suffered as a result of the collision of the motor vehicles. The 1<sup>st</sup> appellant pleaded that the collision of the motor vehicles occurred because the 1<sup>st</sup> respondent drove at excessive speed and that he failed to keep any proper look out for other traffic on the road, or failed to keep proper control of the motor vehicle he was driving. The 1<sup>st</sup> appellant also pleaded the doctrine of *res ipsa loquitur* in the alternative to the acts of negligence averred in his statement of claim.

The respondents denied the negligence ascribed by the 1<sup>st</sup> appellant to the 1<sup>st</sup> respondent. They averred that the collision of the motor vehicles was caused by the 1<sup>st</sup> appellant's driver who they alleged drove negligently in the course of overtaking another motor vehicle and in the process collided with the 2<sup>nd</sup> respondent's motor vehicle. The respondents also raised a counter-claim for general and special damages jointly against the appellants. Consequently, the 2<sup>nd</sup> appellant was joined as a party to the suit.

At the trial, the 2<sup>nd</sup> appellant testified that the collision of the motor vehicles occurred when the 1<sup>st</sup> respondent veered off his lane of the road to collide with the motor vehicle the 2<sup>nd</sup> appellant was driving. The evidence of the 2<sup>nd</sup> appellant was corroborated by the sketch map drawn by a Police officer who testified as a witness for the appellants and tendered the sketch map in evidence. The appellants, however, did not adduce evidence on the particulars of negligence on how the collision of the motor vehicles occurred or at what speed the 1<sup>st</sup> respondent was driving before the collision of the motor vehicles.

The appellants also tendered the record of proceedings of the criminal trial at the Magistrate's Court in evidence without any objection from the respondents. The 1<sup>st</sup> respondent, on the other hand, gave unchallenged evidence as to how the collision of the motor vehicles occurred. He testified that he was driving at 45 kilometers per hour at that time.

In its judgement, the trial court found that the appellants proved their case, and granted some of the reliefs claimed by the 1<sup>st</sup> appellant. On the other hand, it dismissed the respondents' counter-claim.

Aggrieved, the respondents appealed to the Court of Appeal, which found that the evidence adduced by the appellants on how the collision of the motor vehicles occurred was not pleaded and contrary to the particulars of negligence pleaded by the appellants. So, the Court of Appeal

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<sup>17</sup>*Bayol v. Ahemba* (1999) 7 S.C.N.J at 232; *C.C.B Nig. Ltd v. Odogwu* (1990) 3 NWLR (PT. 140) 646; *John holt PLC V. Allen* (2014) 17 NWLR (PT. 1437) 443

held that there was no evidence to support the appellants' claim. The Court of Appeal upheld the appeal and dismissed the appellants' suit. The Court of Appeal also found that the trial court did not consider the respondents' counter-claim. Consequently, the Court of appeal remitted the counter-claim to the High Court for a trial *denovo* by another Judge of the court.

The appellants were dissatisfied with the judgement of the Court of Appeal and they appealed to the Supreme Court. The Supreme Court dismissed the appeal through a unanimous decision of all the justices that presided over the matter. In his judgement, Honourable Justice I. F. Ogbuagu JSC, held that:

I will pose here to state, on decided authorities, that the admission of the said (exhibit D) –the Criminal Proceedings in a civil trial or proceeding, was wrong. **Such proceedings, was certainly inadmissible in any event. In other words, record of proceedings in a criminal proceeding, should not be admitted in evidence in a civil proceeding.** See the cases of *Oyewole v. Kelani* (1948) 12 WACA327; *Okunoren v. U.A.C Ltd.* 20 NLR 25 at 27; *Nwachukwu v. Egbuchi* (1990) 3 NWLR (PT. 139) 435 at 443; *Gabriel Agu v. NwakanmaAtuegwu* 21 NLR 83 at 84 and *Hollington v. Hewthorn & Co. Ltd.* (1943) 2 A.E.R 35, just to mention but a few. That exhibit D was admitted in evidence without objection, is/was of no moment. This is because and this is also settled in a line of decided authorities, that where inadmissible evidence has been admitted, it is the duty of the court not to act upon it.

(Underlining supplied for emphasis).

### **3.0 Facts of the Case of *Bayol v. Ahemba***

On 20<sup>th</sup> December, 1985 the respondent made a report against the appellant to the police alleging that the appellant with his two wives and brother went to the respondent's rice farm to steal his rice by harvesting the rice therein. Subsequently, the appellant, his two wives and brother were arrested and prosecuted at the Upper Area Court, alleging theft of the respondent's rice. The appellant and the other accused persons were however discharged.

Consequently, upon the termination of the criminal proceedings, the appellant instituted an action against the respondent claiming damages for malicious prosecution. In proof of the claim, the appellant tendered the record of proceeding in the criminal trial, which the trial court considered and held that the evidence therein did not support the appellant's claim.

At the conclusion of the trial, the trial court dismissed the appellant's claim. Having unsuccessfully appealed to the Court of Appeal, the appellant appealed further to the Supreme Court. The Supreme Court unanimously dismissed the appeal.

In his judgement, Honourable Justice Achike, JSC, held that:

It is now convenient to elaborate on the position of the law in relation to relevance and admissibility of evidence given in an earlier proceeding. It is this: evidence of a witness given in an earlier judicial proceeding is neither relevant nor admissible (except as we shall presently under section 34 (1) of the Evidence Act) in a subsequent judicial proceeding. Although such evidence may be used for purposes of cross-examination of the same witness as to

credit. See *Alade v. Aborishade* (1960) SCNLR 398; (1960) 5 FSC 167; *Folarin v. Durojaye* (1988) 1 NWLR (PT. 70) 351 at 369 and *Olunjunle v. Adeagbo* (1988) 2 NWLR (PT. 75) 238 at 250. In other words, the evidence of PW3 in the previous criminal proceeding did not constitute legal evidence in the civil proceeding before the trial judge in this case, **but Exhibit 1, as a document evidencing the prosecution of the Appellant that terminated in his favour was not only relevant but was also admissible in evidence in proof of one of the major ingredients in the action for malicious prosecution.**<sup>18</sup>

(Underling supplied for emphasis).

#### **4.0 Conceptual Framework**

The issue under consideration may not be satisfactorily dealt with unless some other legal issues directly or remotely connected thereto, are brought out and addressed. These legal issues include: admissibility of evidence; documents; admissibility of documentary evidence; decision of court; ratio decidendi and obiter dictum. These issues, if properly addressed, will serve as a framework upon which the main issue under consideration would be placed. These issues are hereunder treated.

#### **4.1 Admissibility of Evidence**

In any proceedings where any piece of evidence (whether documentary or otherwise) is sought to be admitted, the governing law is the Evidence Act. In *Nigeria Customs Service v Bazuaye*,<sup>19</sup> the Court of Appeal, per Abba Aji, JCA, held that:

“Admissibility of evidence in any judicial proceedings before any court of law in the Federal Republic of Nigeria is governed by the Evidence Act. A court of law is expected to admit and act only on evidence which is admissible in law.”

#### **4.2 Document**

Section 258 (1) (a)-(d) of the Evidence Act, 2011, defines document as including:

- (a) books, maps, plans, graphs, drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;
- (b) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and

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<sup>18</sup> Per Achike, JSC, at 395

<sup>19</sup> (2005) LPELR 5948 (CA); (2006) 3 NWLR (PT. 967) 303

- (c) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it;
- (d) any device by means of which information is recorded, stored or retrievable including computer output.

#### **4.3 Admissibility of Documentary Evidence**

It is trite law that a document is admissible in evidence if it is relevant and admissible in law.<sup>20</sup>

While relevance and weight to be attached to any piece of evidence are questions of facts, depending on the circumstance and peculiarity of the facts of each case, admissibility is strictly a question of law and is a precondition for the reception of evidence at any trial.<sup>21</sup> In *Okafor v Union Bank of Nigeria PLC*<sup>22</sup>, it was held, per Sanusi JCA, that “admissibility should be based on relevance. Once a matter, be it a document or oral evidence is relevant, it is admissible.”

Section 83 of the Evidence Act, 2011, provides:

- (1) In any proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document which seems to establish that fact shall, on production of the original document, be admissible as evidence of that fact, if the following conditions are satisfied-
  - (a) if the maker of the statement either-
  - (b) if the maker of the statement is called as a witness in the proceedings:
    - provide that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Nigeria and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success,
- (2) In any proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence notwithstanding that-
  - (a) the maker of the statement is available but is not called as a witness;

<sup>20</sup>Abubakar v. Chuks (2008) 2 M.J.S.C 190 at 204

<sup>21</sup>Imhanobe, S. O (2010) Lawyer’s Desk Book. Volume 2, 2nd Edition. Temple Legal Consult, Maitama, Abuja. P.652

<sup>22</sup> (1999) LPELR 5400 (CA). Also cited as (2000) 3 NWLR (PT.647) p.45



- (b) the original document is not produced, if in lieu of it there is produced a copy of the original document or a material part of it certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be

Section 63 (2) of the Evidence Act, 2011, provides that:

If in any civil proceedings it is proved in accordance with subsection (1) of this section that **any person has been convicted of an offence by a court of competent jurisdiction,**

- (a) That person shall be presumed to have committed the offence unless he proves to the contrary, and
- (b) Without prejudice to the admission of any other evidence for the purpose of determining the facts upon which the conviction is based, **the contents of any information, complaint, or charge sheet according to which that person has been convicted shall also be admissible in evidence for this purpose.**<sup>23</sup>

(Underlining supplied for emphasis)

Section 128 (1) of the Evidence Act, 2011, provides that:

- (1) **When any judgement of any court or any other judicial or official proceedings,** or any contract, or any grant or other disposition of property has been reduced to the form of a document or series of documents, **no evidence may be given of such judgement or proceedings or of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under this Act; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence:**

(Underlining supplied for emphasis)

#### **4.4 Decision of a Court**

In *Ihedioha v. Okorocho*,<sup>24</sup> the Supreme Court held, per Okoro, JSC, that:

Under section 318 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) the word “decision” is defined in relation to a court as **“any determination of that court** and includes judgement, decree, order, conviction, sentence or recommendation.”

(Underlining supplied for emphasis)

The question that may naturally arise, from the above definition, is, what does ‘any determination of that court’ mean? To answer this question properly, one needs to understand the twin legal concepts of ‘*ratio decidendi*’ and ‘*obiter dictum*’.

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<sup>23</sup> C.G.G (Nig.) Ltd. V. Ayovuare (2016) 5 NWLR (PT. 1504) 1 at 17-18

<sup>24</sup> (2016) 1 NWLR (PT. 1492) 147 at 173

#### 4.5 Ratio Decidendi and Obiter dictum

In *Amobi v. Nzegwu*<sup>25</sup>, the Supreme Court, per Kekere-Ekun, JSC, held that: *Ratio decidendi* means ‘the reason for deciding’ or the reasoning, principle or ground upon which a case is decided. The legal principle formulated by the court, which is necessary in the determination of the issues raised in the case. In other words, the binding part of the decision is its *ratio decidendi*, as against the remaining parts of the judgement, which merely constitute obiter dicta...An obiter dictum is a statement made in passing, which does not reflect the reasoning of the court or ground upon which a case is decided.

In *Odessa v. F.R.N.*<sup>26</sup> the Court of Appeal, per Mohammed, JCA (as he then was), held that: Before proceeding to resolve the 1<sup>st</sup> issue for determination in this appeal, I think there is need to consider and dispose of the argument of the 1<sup>st</sup> respondent in its brief of argument which is in the nature of preliminary objection **that the decision being appealed against is a mere obiter which is not appealable in law. It is indeed the law that a mere statement or observation made by a court in its decision which is not related to the issue before that court for resolution in the case, cannot sustain any appeal being an obiter dictum** as stated by the Supreme Court in *Abacha v. Fawehinmi* (2000) FWLR (PT.4) 533 , (2000) 6 NWLR (PT. 660) 228 at 351. **An opinion expressed by a court which does not affect its decision in a suit is an obiter dictum ...This is because such statement or observation in the form of obiter dictum does not qualify as a decision within the meaning of that word** under section 277 (1) of the Constitution of the Federal Republic of Nigeria, 1979.

(Underling supplied for emphasis).

#### 4.6 Lead/Leading and Concurring Judgement

Leading judgement is different from concurring judgement. While the former is taken as the judgment of the court delivered by one of the justices of the court, the latter is the individual judgement of a justice which does not represent the court’s decision. In *Abimbola Daramola v Wale Aribisala & Anor*,<sup>27</sup> in differentiating between a leading and concurring judgements and the legal implication of the difference between the two, it was held, per Nweze, JCA, that:

Issues for determination based on a ground of appeal from **a concurring judgement which is different from the leading judgement** can only be obiter dicta...concurring judgement ..which differs from the lead judgement...amounts to obiter dicta and are not valid. In *Abacha & Ors. V Fawehinmi* (2000) All NLR 351,

<sup>25</sup> (2014) All FWLR (PT. 730) 1284 at 1310

<sup>26</sup> (2005) All FWLR (PT. 282) 2010

<sup>27</sup> (2009) LPELR -8515 (CA)



Achike JSC, in obvious elaboration of the above terse statement of the law, posed the question: “One may then ask: what is the judgement of the court?” The distinguished Justice of the Supreme Court answered the question thus: where a single judge presides, the situation does not admit of any difficulty;...His Lordship continued: the problem...arises when three justices...or five justices...preside over a case or an appeal wherein **one of them is assigned the responsibility to write the leading judgement and others, under the mandatory provision of the Constitution, are obliged to render either their concurring or dissenting judgements. In such a situation, it is the leading judgement that is, in legal circles, regarded as the judgement of the court.**

### **5.0 Is the Record of Criminal Proceedings Admissible in Civil Proceedings?**

In answering this question, we first have to submit that a record of criminal proceedings falls within the definition of document as contemplated by section 258 (1) of the Evidence Act, 2011.

By the decisions in the cases of *Okafor v Union Bank of Nigeria PLC*<sup>28</sup> and *Abubakar v Chuks*,<sup>29</sup> if read together with the provisions of sections 63 (2) (b), 83 (2) and 128 (1) of the Evidence Act, 2011 (copiously quoted earlier in this paper), one has no option but to answer the question whether a record of criminal proceedings is admissible in civil proceedings, in the affirmative. This position is clearly supported by the reason that there are classes of claims in civil proceedings that cannot be established without tendering of record of criminal proceedings. For instance, claims for damages for malicious prosecution<sup>30</sup> and claims for dissolution of marriage on the ground of rape under section 16 (1) (a) of the Matrimonial Causes Act<sup>31</sup>

### **6.0 Review of the Cases of *Abubakar v Joseph and Bayol v Ahemba***

These two cases, from the brief analysis of their facts made earlier on, are distinguishable for the following reasons that the former was a case of claim for damages for negligence occasioned by dangerous driving while the latter was a case of claim for damages for malicious prosecution. The pieces of evidence needed for the proof of the claims in the two cases are entirely different. While the claim for damages for malicious prosecution cannot be sustained without the evidence of prosecution and conviction as contained in the record of criminal proceedings, it is not the necessary requirement in the case of claim for negligence.

In the circumstance, based on in-depth analysis of the decision of the Court in *Bayol v Ahemba*,<sup>32</sup> we did not find any single ground for faulting the Court’s decision to warrant a call for

<sup>28</sup> (Supra)

<sup>29</sup> (Supra)

<sup>30</sup> *Bayol v. Ahemba*(1999) 7 S.C.N.J at 232; *C.C.B Nig. Ltd v. Odogwu* (1990) 3 NWLR (PT. 140) 646; *John holt PLC V. Allen* (2014) 17 NWLR (PT. 1437) 443

<sup>31</sup> Cap. M7 Laws of the Federation of Nigeria, 2004

<sup>32</sup> (Supra)

review. This however, is not the case in *Abubakar v Joseph*.<sup>33</sup> We are unable to find any justification, with due respect, for the decision of the Court with regard to the subject of this research when the Court held that: “**Such proceedings, was certainly inadmissible in any event. In other words, record of proceedings in a criminal proceeding, should not be admitted in evidence in a civil proceeding.**”<sup>34</sup>

Our discomfort with the Court’s decision as cited above is on the assumption while not conceding that that is even the decision of the Court as is being presented. One may be tempted to ask, did the Supreme Court really hold in *Abubakar v Joseph* that: “**record of proceedings in a criminal proceeding, should not be admitted in evidence in a civil proceeding?**” A follow up question which may have the same effect with the earlier one is: is the judgement of Hon. Justice Ogbuagu, JSC in that case the judgement of the Supreme Court in that case?

In *Abubakar v Joseph*, the leading judgement was delivered by G.A. Oguntade, JSC (as he then was) while S.U Onuh, JSC presided. The other justices in the panel were M.A. Mukhtar, JSC (as she then was); Niki Tobi, JSC (of blessed memory) and I.F. Ogbuagu, JSC (as he then was). The judgement of I.F. Ogbuagu, JSC, where it was held that: “**record of proceedings in a criminal proceeding should not be admitted in evidence in a civil proceeding**” was only a concurring judgement (though the longest). It does not represent the judgement of the Court. In any case, none of the four issues for determination touch on admissibility or otherwise of record of criminal proceedings in a civil proceeding and the judgement of the Court dismissing the appeal was not because a record of criminal proceedings was admitted or tendered at the trial.

It is our view, in the circumstance, that the Supreme Court did not, in *Abubakar v Joseph*, hold that “**record of proceedings in a criminal proceeding should not be admitted in evidence in a civil proceeding**”.

In *Bayol v Ahemba*,<sup>35</sup> there were five justices in the panel which was presided over by A.B. Wali, JSC (as he then was). Achike, JSC, who held that: “**Exhibit 1, as a document evidencing the prosecution of the Appellant that terminated in his favour was not only relevant but was also admissible in evidence in proof of one of the major ingredients in the action for malicious prosecution.**”<sup>36</sup>, actually delivered the leading judgement, which was the judgement of the Court in that case.

## **7.0 Conclusion**

The question whether or not record of criminal proceedings is admissible in civil proceedings, has, for quite some time, been seen as a controversial one. The basis of the seeming controversy was the Supreme Court’s case of *Abubakar v Joseph*,<sup>37</sup> being heavily relied upon by lawyers and judges. This paper observes that the question is not a controversial one in view of the provisions of the Evidence Act and the Supreme Court’s decision in *Bayol v Ahemba*.<sup>38</sup> Ultimately, records of criminal proceedings is admissible in civil proceedings. This paper, as revealed, further finds that the position of the law in this respect is being misunderstood.

<sup>33</sup> (Supra)

<sup>34</sup> *Abubakar v. Joseph* (supra) per Hon. Justice Ogbuagu, JSC, at pp. 353-354

<sup>35</sup> (Supra)

<sup>36</sup> Per Achike, JSC, at 395

<sup>37</sup> (Supra)

<sup>38</sup> (Supra)

In the circumstance, it is recommended that the justices of Supreme Court when faced with a similar situations as in *Abubakar V. Joseph*, should be meticulous in their choice of words to avoid giving a blanket prohibition where the situation at hand does not warrant.