In the Supreme Court of Nigeria

On Friday, the 16th day of December 2011

Before their Lordships

Mahmud Mohammed	.....	Justice Supreme Court
Muhammad Saifullah Muntaka-Coomassie	.....	Justice Supreme Court
John Afolabi Fabiyi	.....	Justice Supreme Court
Olufunlola Oyelola Adekeye	.....	Justice Supreme Court
Mary Ukaego Perter-Odili	.....	Justice Supreme Court

SC.221/2005

Between

Union Bank of Nigeria Plc *(Substituted for Universal Trust bank Nigeria Limited by Order of Court made on 18th February, 2009)*	.....	Appellant

And

Alhaji Adams Ajabule Adamaco Nigeria Limited	.....	Respondents

Judgment of the Court
delivered by
Mahmud Mohammed. JSC.

This appeal arose from the decision of the Court of Appeal, Benin Judicial Division given on 1st July, 2005 in which the court dismissed, except for the award of general damages where the appeal was allowed by the reduction of the general damages from ₦5,000,000.00 to ₦2,000,000.00, the appeal brought by the Appellant in this appeal against the judgment of the High Court of Justice of Ondo State sitting at Akure.

The 2nd Respondent as a customer of the Appellant maintained two current accounts at the Appellant's branch of the bank at Akure in Ondo State. On his part, the 1st Respondent is the Chairman/Managing Director of the 2nd Respondent. On the request of the 2nd Respondent for credit facilities, the Appellant granted the 2nd Respondent an overdraft facility and a warehouse refinancing facility. The two separate credit facilities were secured by a Tripartite Deed of Legal Mortgage on the 1st Respondent's Mariatun House (Formerly No 40) Isewe Street, Clerk Quarters Owo, Ondo State as well as Hypothecation of the 2nd Respondent's stock of motor batteries.

When the 2nd Respondent failed to repay the credit facilities granted by the Appellant inspite of repeated demands, the Appellant then took steps to enforce its rights under the Deed of Hypothecation of the Stock of Motor Batteries in the custody of the 2nd Respondent. When the 2nd Respondent refused to allow the Appellant to take over the control and management of the Respondents' business premises, the Appellant proceeded by force and sealed the premises which the Respondents challenged by their action at the trial court on 11th August, 1999. The case was heard on pleadings comprising of statement of claim, statement of defence and counter-claim and a reply to the statement of defence and counter-claim. In its judgment delivered on 17th December, 2003, the trial court found for the Plaintiffs/Respondents and granted all their claims for declaratory reliefs, general damages in the sum of ₦5,000,000.00 and special damages in the sum of ₦1,580,000.00 against the Defendant/Appellant for the illegal sealing of the premises of the 2nd Plaintiff/Respondent. The Defendant/Appellant's counter-claim, on the other-hand, was dismissed. Also dismissed was the Appellant's appeal to the Court of Appeal except for the reduction of the general damages awarded by the trial court from ₦5,000,000.00 to ₦2,000,000.00.

Still dissatisfied with the decision of the Court of Appeal, the Defendant/Appellant has now appealed against it on the leave granted by this court on 14th July, 2006. In the Appellant's brief of argument, the following four issues for determination of the appeal were raised and the same issues were also adopted in the Respondents' brief of argument. The issues are -

(i) Whether the Court of Appeal was right in affirming the finding of the trial court as to the existence and contents of the Central Bank Guideline between 1996 and 1999 when the document was not tendered in evidence by the Respondents.
(Ground 1 of the notice of appeal).

(ii) Whether the Court of Appeal was right when it upheld the finding of the trial court that based on the evidence of PW3 the Appellant was responsible for sealing up of the 2nd Respondent's premises on 3rd August, 1999.
(Ground 2 of the notice of appeal).

(iii) Whether on the pleadings and evidence there is any legal basis for the award of special damages to the Respondents or in the alternative, whether the Respondents discharged the burden of proof required to succeed in their claim for special damages.
(Ground 3 of the notice of appeal).

(iv) Whether the Respondents' are entitled to the award of general damages which was upheld by the Court of Appeal and reduced to the sum of ₦2,000,000.00 (Two million naira) having regard to the settled principles of law.
(Grounds 6, 7 & 8 of the notice of appeal)."

Starting with Issue 1 in the Appellant's brief of argument, its learned counsel had argued that the parties having joined issues at the trial court on pleadings on the existence of the Central Bank Guidelines pegging interest rates at 21% between 1996 and 1999, the Court of Appeal was in error in affirming the decision of the trial court on the existence and contents of that document which was not in evidence at the trial court on the evidence of DW2 alone described as an admission against interest of the Appellant. Learned counsel asserted that the evidence of DW2 does not relieve the Respondents of the burden to prove the contents of the document if the decision in the case of *Asafa Foods Factory v Alraine (Nig.) Limited (2002) 5 SC (Part I) 1; (2002) 12 NWLR (Part 781) 353 at 370-371* and *Kano v Oyelakin (1993) 3 NWLR (Part 282) 399 at 422*, are taken into consideration resulting in making the decision of the Court of Appeal perverse and liable to be set aside in allowing the appeal on this issue alone as the case of *Inakoju v Adeleke (2007) 1 SC (Part I) 1; (2007) 4 NWLR (Part 1025) 423 at 607* relied upon by the Respondents, is not applicable to the present issue.

For the Respondents however, it was contended that the documentary evidence on record comprising letters of offer, Exhibits A3 and D1 and the Deed of Hypothecation, Exhibit A2 containing the terms of agreement between the parties, have put the maximum rate of interest agreed as 21% which shifted the burden of proving any rate of interest to the contrary, on the Appellant; that the position of the Respondents on the issue of interest was strengthened by the evidence of the Appellant's witness DW2, an employee of the Appellant, on which by the cases of *Woluchem & Ors. v Gudi & Ors. (1981) 5 SC 291; (1981) 5 SC (Reprint) 178*; and *Niger Construction Limited v Chief A. A. Okungbemi (1987) 11 - 12 SCNJ 133 at 135*, the Respondents were perfectly entitled to rely upon to strengthen their case; that having regard to the decision of this court in the case of *Inakoju & Ors. v Adeleke & Ors. (2007) 1 SC (Part I) 1; (2007) 143 LRCN 1 at 93*, the courts below were right in finding that the existence of the Central Bank Guidelines pegging the interest rates chargeable on loan/overdraft granted by banks between 1996 and 1999, had been proved on the evidence of DW2. Learned counsel pointed out that since there is no appeal against the specific findings of trial court and affirmed by the Court of Appeal that the maximum rate of interest agreed between the parties was 21%, this appeal should be dismissed on this issue.

The central complaint of the Appellant in this first issue for determination is whether the court below was right in affirming the finding of the trial court as to the existence and contents of the Central Bank Guideline between 1996 and 1999, when the document was not tendered in evidence by the Respondents. It is significant to note that the finding on the existence and contents of the Central Bank Guideline between 1996 and 1999, was made by the trial court at Page 78 of the record only after a very careful consideration of the relevant documentary evidence fixing the maximum rate of interest agreed between the Appellant and the Respondents at 21% as confirmed in the evidence of the Appellant's witness DW2 under cross-examination which the Appellant picked to complain up on in the issue at hand. The comprehensive finding on the rate of interest agreed between the parties as found by the trial court in its judgment at Page 78 reads-

"A careful perusal of Exhibit A2 Deed of Hypothetication of Goods. Exhibit A3 - offer letter dated 18th November 1996 and Exhibit D1 - offer letter dated 9th September. 1997 and Exhibit A1 - The Tripartite Legal Mortgage, in my humble opinion constitute agreement in respect of the loan/overdraft/credit facilities granted by the Defendant bank to the Plaintiff. In Exhibits A2, A3 and D1 the maximum rate of interest is 21%.

Exhibit A 1 - Tripartite Legal Mortgage particularly Paragraph 1 of the preamble subjects itself to the terms and conditions in the offer letter. There are *prima facie* two offer letters in this suit and they are Exhibits A3 and D1. The terms and conditions as they relate to rate of interest fixed the rate of interest at 21%.

Reference to the terms and conditions in Exhibit A1 can only be reference to terms and conditions in either Exhibit A3 or Exhibit D1 or both. Since one of the terms and conditions on Exhibits A3 and D1 fixes rate of interest at 21% the rate of interest in Exhibit A1 by necessary implication is 21%.

The evidence of DW.2 also confirms this assertion when under cross- examination he testified to the following effect:

'As stated in Exhibit A2 the maximum rate of interest is 21%. That was in 1998.'

Under re-examination DW.2 testified to the effect that: it is the costs of funds and Central Bank Monetary Guidelines issued from time to time that dictate the rate of interest.'

The above testimony contradicts the testimony of DW1 who gave evidence to the effect that between 1996 and 1999 there was no Central Bank Guidelines. The evidence of DW2 is evidence against interest and is admissible against the Defendants: it amounts to an admission as to the existence of Central Bank regulations. This shows that at all material time between 1996 and 1998 there was in existence Central Bank Guidelines fixing interest rate at 21% and *a fortiori* there was CBN guideline between 1998 and 1999."

What is most relevant in the findings of the trial court above in support of the case of the Respondents as affirmed by the court below is the maximum rate of interest chargeable on the loan/overdraft/credit facilities granted by the Defendant/Appellant to the Plaintiffs/Respondents. That interest rate was found to have been fixed at the rate of 21% even in the absence of the disputed existence of the Central Bank Guideline also fixing the rates at 21% as given in the oral evidence of DW2 being attacked by the Appellant in this issue. Therefore since the rate of interest as agreed between the parties being 21% happened to be in line with the Central Bank Guideline as testified by the Appellant's witness himself DW2, the trial court and the court below were on strong ground in finding that the Respondents could take advantage of that evidence in support of their case in line with the decisions in several cases including the leading one on the subject, *Woluchem & Ors. v Gudi & Ors. (1981) 5 SC 291; (1981) 5 SC (Reprint) 178*. As the evidence in support of the Respondent's case on the rate of interest agreed between the parties is overwhelming on the other documentary evidence, the failure to tender a copy of the Central Bank Guideline in evidence, though desirable, is certainly not fatal to the case of the Respondents whose claims were not entirely dependent on the existence and contents of said Central Bank Guideline.

The second issue for determination is whether the court below was right when it upheld the finding of the trial court based on the evidence of PW3, that the Appellant was responsible for sealing up the 2nd Respondent's premises on 3rd August, 1999. It was argued on this issue that the Plaintiffs/Respondents did not plead sufficient facts to support the evidence of PW3 upon which the trial court found that the Appellant was responsible for sealing the premises of the 2nd Respondent; that on the authority of many cases including *F.A.T.B. Limited v Partnership Investment Company Limited (2003) 12 SC (Part I) 90; (2003) 18 NWLR (Part 851) 35 at 57; Nwanji v Coastal Services (Nig.) Limited (2004) 6-7 SC 38; (2004) 11 NWLR (Part 885) 552 at 570-571 and Ojengbede v Esan (2001) 12 SC (Part II) 1; (2001) 18 NWLR (Part 746) 771*, the evidence of PW3 ought to be expunged from the record to result in making the findings of the courts below perverse warranting allowing the appeal on this issue.

It was argued on this issue by the Respondents that the facts of sealing of the 2nd Respondent's premises are contained in Exhibit D10, a petition written by the Appellant, the contents of which were virtually admission by the Appellant thereby relieving the Respondents of the burden of proof of the fact that its premises had been sealed by the Appellant. The cases of *Ebuke v Amona (1988) 3 SCNJ (Part 11) 207 at 209* and *Karimu Olujinle v Bello Adeagbo (1988) 4 SCNJ I at 15*, were cited and relied upon by the Respondents.

The law is indeed well settled that parties are bound by their pleadings and that evidence not supported by pleadings cannot be allowed at the trial court. Indeed it is the law that where such evidence was admitted, then an appellate court is duty bound to expunge such evidence which must not be considered in the determination of the appeal. See *F.A.T.B. Limited v Partnership Inv. Co. Limited (2003) 12 SC (Part I) 90; (2003) 18 NWLR (Part 851) 35 at 57*. The question now is whether the Appellant has made out a case to warrant the application of that law in the present case. The fact that the Appellant was responsible for sealing the premises of the 2nd Respondent as found by the trial court and affirmed by the court below, was adequately pleaded in the Respondents' statement of claim and reply to the statement of defence and counter-claim in Paragraphs 28, 29 and 30 of the statement of claim where it was pleaded that on 3rd August, 1999, the Appellant came to the premises of the 2nd Respondent and forcibly sealed the premises. Those paragraphs read with Paragraph 6 of the Plaintiffs/Respondents' reply to the Defendant/Appellant's statement of defence and counter-claim dealing with the petition written to the Ondo State Commissioner of Police by the Appellant, Exhibit D10 which was quoted in the Appellant's brief of argument, in my view, are enough to support the evidence of PW3 and the concurrent findings of the two courts below that Appellant was indeed responsible for sealing the premises of the 2nd Respondent. In any case, the contents of Exhibit D10 authored by the Appellant are complete admission of the Appellant's responsibility in sealing the premises of the Respondents.

The third issue is whether on the pleadings and evidence, the award of special damages to the Respondents by the trial court and affirmed by the court below can be sustained. In this respect, it was submitted by the Appellant that the facts pleaded in Paragraphs 33 and 34 of the statement of claim, do not contain full particulars required by law to establish the claim for special damages having regard to the decision of this court in *Benin Rubber Products Limited v Ojo (1997) 9 NWLR (Part 521) 388 at 411*; that the average of ₦20,000.00 sale per day claimed by the Respondents fell short of the requirement of the law and that in the absence of credible evidence in proof of the special damages claimed, taking into consideration of the case of *Osuji v Isiocha (1989) 6 SC (Part II) 158; (1989) 3 NWLR (Part III) 623 at 626*, the award on special damages has no leg to stand upon, claimed the learned counsel who urged the court to allow the appeal on this issue.

The Respondents' stand on this issue is that the claim of ₦20,000.00 per day as special damages arising from loss of earnings from the illegal sealing of the 2nd Respondent's premises from 3rd August, 1999 until it was opened on the orders of court after 79 days, had been fully proved as required by law. Learned counsel referred to Paragraphs 26 and 27 of the statement of claim which were said to have been admitted in Paragraph 12 of the statement of defence and counter-claim, the requirement of proof had been satisfied taking into consideration the cases of *Shell Petroleum Development Company of Nigeria Limited v Chief G. Tiebo VII & Ors. (2005) 3-4 SC (Part III) 27; (2005) 127 LRCN 1274* and *Akintunde v Chief E. A. OJ ikere (1971) NMLR 91 at 96.*

What calls for determination in this issue is whether on the pleadings and evidence, there is any legal basis for the award of special damages. In other words what falls for determination is whether the Plaintiffs/ Respondents discharged the required burden of proof placed upon them by law to succeed in their claim for special damages in the sum of ₦20,000.00 per day for 79 days their business premises remained sealed by the Appellant. In this respect, I must emphasised that the law is firmly established that special damages must be pleaded with distinct particularity and strictly proved and as such a court is

not entitled to make an award of special damages based on conjecture or on some fluid and speculative estimate of alleged loss sustained by a Plaintiff. See *Dumez (Nigeria) Limited v Ogboli (1972) 3 SC (Reprint) 188; (1972) 1 All NLR 241; Osuji v lsiocha (1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623* and *Jaber v Basma (1952) 14 WACA 140.* Therefore, as far as the requirements of the law are concerned on the award of special damages, a trial court cannot make its own individual or arbitrary assessment of what it conceives the Plaintiff may be entitled to. What the law requires in such a case is for the court to act strictly on the hard facts presented before the court and accepted by it as establishing the amount claimed justifying the award.

In the instant case therefore, in resolving the issue at hand, what falls for determination is whether the facts pleaded by the Plaintiffs/Respondents in Paragraphs 26 and 27 of their statement of claim contain distinct particulars which were said to have been admitted in Paragraph 12 of the Defendant/Appellant's statement of defence in support of the claim. What was actually pleaded in Paragraphs 26 and 27 of the statement of claim is-

> "The Plaintiffs aver that inspite of the incidents referred to in Paragraphs (12 & 13) above coupled with the said outrageous interest rate, the Plaintiffs were still making reasonable and regular payments of their indebtedness to the Defendant. For instance the payments for the month of July. 1999 speaks for itself:
>
> | | Date | Amount | Teller Number | |
> |---|---|---|---|---|
> | 1. | 2-7-99 | 30,000.00 | 362234 | |
> | 2. | 2-7-99 | 20,000.00 | 362235 | Printing Error |
> | 3. | 5-7-99 | 40,000.00 | 362235 | |
> | 4. | 7-7-99 | 20,000.00 | 362236 | |
> | 5. | 8-7-99 | 60,000.00 | 362237 | |
> | 6. | 13-7-99 | 20,000.00 | 362238 | |
> | 7. | 13-7-99 | 15,000.00 | 362239 | |
> | 8. | 14-7-99 | 20,000.00 | 362240 | |
> | 9. | 16-7-99 | 10,000.00 | 362241 | |
> | 10. | 16-7-99 | 10,000.00 | 362242 | |
> | 11. | 19-7-99 | 5,000.00 | 362243 | |
> | 12. | 23-7-99 | 30,000.00 | 362245 | |
> | 13. | 29-7-99 | Cheque paid and cleared ₦150,000.00 (One hundred and fifty thousand Naira). The said teller and cheque are hereby pleaded. | | |
>
> 27. In addition to Paragraph (25) above some of the Plaintiff's members of staff who confessed as having perpetrated the fraud discovered in the Plaintiff's company have in the said month of July, 1999 made repayment of ₦45,000.00 to the Defendant vide the Plaintiff's account."

On the other hand, Paragraph 12 of the Defendant/Appellant's statement of defence and counter-claim which the Plaintiffs/Respondents' learned counsel claimed to have admitted the Plaintiffs/Respondents' claim of special damages of ₦20,000.00 per day for the period their business premises remained sealed by the Appellant, reads-

> "With reference to Paragraphs 26 and 27 of the statement of claim, the Defendant aver that these payments were only made after the bank had called in the facilities as being due for payment vide its letters dated 22nd June, 1998, 5th August, 1998, 10th September, 1998, 9th February, 1999, 22nd February, 1999, but were not enough to liquidate the indebtedness."

While Paragraphs 26 and 27 of the Plaintiffs/Respondents' statement of claim clearly dealt with the efforts made by the Plaintiffs/Respondents in the settlement of their indebtedness with the Appellant in the month of July, 1999, there is certainly nothing in those paragraphs averring facts, even remotely, in support of the relief of special damages of ₦20, 000. 00 per day being the alleged loss of earnings suffered by the Plaintiffs/Respondents for the 79 days period their business premises remained sealed by the Appellant. In similar vein, Paragraph 12 of the Defendants/Appellant's statement of defence and counter- claim, dealt specifically with the facts that the payments made into the account of the Plaintiffs/Respondents in July, 1999 were made only after repeated demands on them by the Appellant to settle their debt and that those payments were not even enough to off-set the indebtedness of the Plaintiffs/Respondents. It is therefore quite plain on the face of that Paragraph 12 that it contains no admission whatsoever, of the Plaintiffs/Respondents' daily earning of ₦20, 000. 00 per day to support their claim for the loss suffered as special damages within the period of the closure of their business premises by the Appellant.

Although the Plaintiffs/Respondents also pleaded in Paragraphs 33 and 34 of their statement of claim that they were making average sale of ₦20,000.00 per day before their business premises was sealed up on 3rd August, 1999 and therefore suffered loss of earning of the same amount of ₦20, 000. 00 per day for the period their business premises remained sealed, there was no credible evidence on record to support the averments. In other words, the precise loss of earnings suffered by the Plaintiffs/Respondents per day during the period beginning 3rd August, 1999 to the actual date their business premises was opened, was neither pleaded nor credible evidence led to establish the actual loss of earnings suffered during the period. This of course shows that the entire case of the Plaintiffs/Respondents on the relief of special damages claimed by them, was built entirely on estimated sale and expected earnings per day which are not enough to satisfy the requirement of

pleading precisely the actual amount of loss suffered and strictly proving the same by credible evidence in proving their claim for special damages. That claim or relief ought to have failed and be dismissed by the trial court. The court below was therefore in error in affirming the trial court's award of special damages of ₦20,000.00 per day to the Plaintiffs/Respondents. In the circumstances of this case, the decisions of the two courts below which were arrived at in the absence of pleading of the particulars of special damages and credible evidence to prove the same were perverse and therefore liable to be set aside. Accordingly and for the foregoing reasons, the appeal is allowed on this issue. The special damages of the sum of ₦1,580,000.00 awarded to the Plaintiffs/Respondents by the trial court and affirmed by the court below, is hereby set aside and replaced with an order dismissing the claim.

The last and final issue for determination in this appeal is whether the Respondents were entitled to the award of general damages by the trial court which was upheld by the Court of Appeal. The contention of the Appellant on this issue is that the award of general damages was made in error as the amount of loss suffered by the Respondents in the present case was quantifiable and ascertainable on daily basis as stated in *Kerewi v Odegbesan (1967) 1 NWLR 89* and *Union Bank of Nigeria Limited v Odusote Bookstores Limited (1995) 9 NWLR (Part 421) 588;* that since the Respondents had claimed N20,000.00 per day as loss of earning suffered during the same period of sealing of their premises, it was wrong for the court below to uphold the award of general damages; that since it was stated in *Duyile v Ogunbayo & Sons Limited (1988) 1 NSCC (Vol. 19) 385 at 391,* that a company can only be injured as to its earnings and not as to its feelings, the general damages award made to the 2nd Respondent for pain and suffering from ridicule, was made in error as that was not the basis of the claim of the Respondents. The case of *Adebayo v Brown (1990) 3 NWLR (Part 141) 661 at 675*, was relied upon in support of this argument particularly when no evidence was led to show that 2nd Respondent suffered any personal loss following the sealing up of its premises. Finally, learned counsel urged this court to set aside the award of general damages which on the face of special damages awarded, amounted to double compensation which is not permissible in law if the case of *Oshinjinrin v Elias (1970) All NLR 158*, is taken into account.

As for the Respondents on this last issue, it was pointed out that the closure of the 2nd Respondent by the Appellant caused embarrassment to the 1st Respondent who was not only the chairman and managing director of the 2nd Respondent but also the guarantor and mortgagor who provided security for the facilities granted to the 2nd Respondent; that the quantum of loss suffered in this respect is not quantifiable as asserted by the Appellant. On the meaning of general damages, learned counsel referred to the case of *Union Bank of Nigeria Limited v Odusote Bookstore limited (1996) 42 LRCN 1639 at 16*99; and urged the court to dismiss the appeal on this issue as the conduct of the Appellant in resorting to self-help in the present case, justified the award of general damages claimed by the Respondents.

It is settled law that general damages are always made as a claim at large. The quantum need not be pleaded and proved. The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items. See *Odulaja v Haddad (1973) 11 SC 357; (1973) 11 S.C. (Reprint) 216; Lar v Stirling Astaldi Limited (1977) 11-12 SC 53; (1977) 11-12 SC (Reprint) 106* and *Osuji v lsiocha (1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623.*

In the case at hand, at the trial court, the Respondents claimed the sum of ₦5,000,000.00 as general damages for the illegal sealing of their premises at No 28A, Ondo Road, Akure in Ondo State by the Appellant. The Respondents clearly stated the circumstances giving rise to this claim in Paragraphs 35 and 36 of their statement of claim as follows-

> "35. The Plaintiffs aver that by reason of the illegal sealing of their business premises, they have been exposed to public ridicule, odium and that their reputation have been greatly damaged.
>
> 36. Further to Paragraph (35) above, the Plaintiffs aver that by reason of the said illegal sealing, which is unconstitutional, illegal and *ultra vires*, that the Plaintiffs are entitled to damages.

It is certainly undisputed from these paragraphs of the statement of claim that the Respondents' claim for general damages arose directly from the conduct of the Appellant in unconstitutionally and illegally sealing the 2nd Respondent's premises which subjected the Respondents to public ridicule and odium resulting in greatly damaging the reputation of the Respondents in general and subjecting the 1st Respondent to humiliation and embarrassment in the hands of the Police in the course of investigating the petition or complaint of the Appellant against the Respondents to the Police. Having regard to the decision of this court in *Chief Ojukwu v Governor of Lagos State (1986) 1 NWLR (Part 18) 62;* in which this court condemned in strong terms that self-help has no place in our civilized world as it is against the observance of the rule of law in a democratic set up like ours, certainly, the Respondent's claim for general damages in the present case is quite in order as found by the court below. Consequently, I see no reason to disturb the award of ₦2,000,000.00 as general damages by the court below to the Respondents. The law is trite that where general damages are claimed, if the issue of liability is established as in the present case, the trial judge is entitled to make his own assessment of the quantum of such general damages and, on appeal, such general damages will only be altered or varied if they were shown to be either so manifestly too high or so extremely too low or that they were awarded on an entirely wrong principle of law as to make it, in the judgment of the appellate court, an entirely erroneous estimate of the damage to which the Plaintiff is entitled. See the cases of *Zik Press Limited v Ikoku (1951) 13 WACA 188; Idahosa v Orosanye (1959) 4 FSC 166; Bola v Bankole (1986) 3 NWLR (Part 27) 141 and 1iebu-Ode Local Government v Balogun and Company Limited (1991) 1 SC (Part I) 1; (1991) 1 NWLR (Part 166) 136.* The trial court in its judgment at Pages 87 to 88 of the record, found there was credible, unchallenged and uncontroverted evidence in support of the claim for general damages and therefore awarded the entire sum of ₦5,000,000.00 claimed by the Plaintiffs/Respondents. However on appeal the court below was of the view that the amount

of ₦5,000,000.00 awarded as general damages in the circumstances of this case, was manifestly too high to justify its reduction to the sum of ₦2,000,000.00. In the absence of a cross-appeal from the Respondents against this decision of the Court of Appeal reducing the amount of general damages awarded by the trial court, there is no reason whatsoever to interfere with the decision of the court below. Consequently, the appeal must fail on this last issue as well, because the argument of the Appellant that the award would amount to double compensation having regard to the award of special damages in the same case cannot stand in view of the decisions of this court in the cases of *Eliochin (Nig.) Limited v Mbadiwe (1986) 1 NWLR (Part 14) 47; Odiba v Azegbe (1998) 61 LRCN 4605 at 4626* and *Ezeani v Egidike (1964) 1 All NLR 402*. In any case, having allowed the appeal on the award of special damages which I have just set aside, the complaint of double compensation is no longer alive in the present case.

On the whole, except for the appeal against the award of special damages in the sum of Nl,580,000.00 which succeeds resulting in the setting aside of that award by the courts below in favour of the Respondents and replacing that order with an order dismissing the Plaintiffs/Respondents' claim in that regard, the appeal must fail on all the remaining three issues and the same is hereby dismissed.

There shall be ₦50,000.00 costs in favour of the Respondents.

Judgment delivered by
Muhammad Saifullah Muntaka-Coomassie. JSC

I have the privilege of reading in draft the leading ruling rendered by my learned brother, Mohammed, JSC., just delivered.

I ponder very much on all the four issues presented to us for our deliberation in this appeal. I agree with my learned brother that the 3rd issue is unique. What happened in the trial did not support the Respondents' position. I agree that, in law, there is no legal basis for the award of special damages to the Respondents in the trial court having regard to the facts and evidence. This issue must and is hereby allowed by me. In other words, the appeal against the award of special damages succeeds, that award is hereby set aside, in its place I enter an order dismissing the Plaintiffs/Respondents' claim in that regard.

For the avoidance of any possible doubt the appeal succeeds' in part. In that the other issues are resolved in favour of the Respondents. They are therefore dismissed. The third issue is resolved against the Respondents and in favour of the Appellant, thus the appeal is allowed. I abide by the consequential orders made in the leading judgment. I endorse the order as to costs in favour of the two Respondents and to be paid by the Appellant.

Judgment delivered by
John Afolabi Fabiyi. JSC

I have had a preview of the judgment just delivered by my learned brother, M. Mohammed, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal, in substance, should be dismissed.

The facts of the matter have been graphically captured in the leading judgment and I do not need to restate them. I only wish to say a word on the treatment of the issues relating to the awards of special and general damages by the Court of Appeal.

Special damages are those alleged to have been sustained in the circumstances of a particular wrong. To be awardable, special damages must be specifically pleaded and proved. They are also termed particular damages. Same cannot be left to conjecture or guess work. In this matter, I find it difficult to see the evidence garnered by the Respondents in proof of the sum of ₦20,000.00 per day for 79 days when the siege engineered by the Appellant and carried out by the Police lasted. It goes without saying that the appeal should be allowed in respect of this issue.

I now move to the issue relating to the award of general damages to the tune of ₦2,000,000.00 *(Two million naira)*. General damages are said to be damages that the law presumes and they flow from the type of wrong complained about by the victim. They are compensatory damages for harm that so frequently results from the tort for which a party has sued; that the harm is reasonably expected and need not be alleged or proved. They need not be specifically claimed. They are also termed direct damages; necessary damages.

As a general principle an appellate court would not interfere with an award of damages by a trial court simply because faced with a similar situation and circumstance, it would have awarded a different amount. There are, however, some guiding principles. An appellate court will interfere with an award by a trial court where it is clearly shown-

1. that the trial court acted upon wrong principles of law; or

2. that the amount awarded by the trial court is ridiculously too high or too low;

3. that the amount was an entirely erroneous and unreasonable estimate having regard to the circumstances of the case.

For the above, see: *James v Mid-Motors (1978) 12 SC 31; (1978) 11-12 SC (Reprint) 25; Bola v Bankole (1986) 3 NWLR (Part 27) 141; Oduwole v West (2010) 3-5 SC (Part III) 183; (2010) 5 SCNJ 97 at 108.*

The trial court awarded the sum of ₦5,000,000. 00 *(Five million naira)* as general damages to the Respondents. The Court of Appeal took a careful look at the circumstances surrounding the matter and slashed the award down to ₦2,000,000.00 *(Two million naira).* The Court of Appeal felt that the award of ₦5,000,000.00, the sum claimed by the Respondents as general damages, was too high. I have no cause to disagree with the court below. And same is hereby sustained.

For the above remarks and of course the detailed reasons set out in the leading judgment, the appeal, in substance, should be dismissed. I order accordingly and hereby endorse all the consequential orders contained in the leading judgment; that relating to costs inclusive.

Judgment delivered by
Olufunlola Oyelola Adekeye. JSC

I was privileged to read before now the judgment just delivered by my learned brother, M. Mohammed, JSC. I agree entirely with his meticulous reasoning and conclusion. The background facts and the issues distilled for the determination of this court in this appeal are as narrated by my learned brother in the leading judgment. I intend to add a few words by way of emphasis. As my learned brother observed in the leading judgment, the issue for determination on the question of special damages is, whether on the pleadings and oral evidence led there was any legal basis for the award of special damages. Averments in Paragraph 26 Pages 6-7 of the record reads-

> "The Plaintiff avers that inspite of the incidents referred to in Paragraphs (12 & 13) above coupled with the said outrageous interest rate, the Plaintiffs were still making reasonable and regular repayments of their indebtedness to the Defendant.
>
> For instance, the payments for the month of July 1999 speak for itself -

	Date	Amount	Teller Number	
1.	2-7-99	30,000.00	362234	
2.	2-7-99	20,000.00	362235	
3.	5-7-99	40,000.00	362235	Printing Error
4.	7-7-99	20,000.00	362236	
5.	8-7-99	60,000.00	362237	
6.	13-7-99	20,000.00	362238	
7.	13-7-99	15,000.00	362239	
8.	14-7-99	20,000.00	362240	
9.	16-7-99	10,000.00	362241	
10.	16-7-99	10,000.00	362242	
11.	19-7-99	5,000.00	362243	
12.	23-7-99	30,000.00	362245	
13.	29-7-99	Cheque paid and cleared ₦150,000.00 (One hundred and fifty thousand Naira). The said teller and cheque are hereby pleaded.		

The foregoing lodgements were supposed to offset the Respondents' indebtedness to the bank.

Paragraph 33

> "The Plaintiff aver that the Plaintiffs company was making an average sale of ₦20,000 (Twenty thousand naira) per day (see Paragraph (26) before the business premises was sealed on the 3rd of August, 1999."

Paragraph 34

> "Further to Paragraph (33) above the said company in the circumstance is entitled to ₦20,000 loss of earning per day from the 3rd day of August, 1999 until when the said business premises is re-opened or until when judgment is delivered."

The Respondents relied on the lodgements in Paragraph 26 to request the trial court to grant a sum of ₦20,000 per day to cover the loss of earning from the 3rd of August, 1999 until when the said premises is re-opened or until judgment is delivered. The court relied on that evidence to grant the sum of ₦l,558,000.00 as special damages to the Respondents.

I shall not hesitate to emphasise that special damages are damages which the law does not infer from the nature of an act but which are exceptional in character. Special damages denote those pecuniary losses which have crystallized in terms of cash and value before trial. It is the kind of damages which though based on the discretion of the trial court; such must be

backed up by credible evidence adduced before the trial court which strictly proves the Plaintiffs' entitlement to the award. It is therefore settled principle of law that special damages must not only be specifically pleaded with relevant particulars, but must also be strictly proved with credible evidence. Without such proof, no special damages can be awarded. See *Ijebu-Ode Local Government v Adedeji Baloqun & Co. (1991) 1 SC (Part I) 1; (1991) 1 NWLR (Part 166) 136; Osuji v Isiocha (1989) 6 SC (Part II) 158; (1989) 3 NWLR (Part 111) 623; Alhaji -Otaru & Sons Ltd. v Idris (1999) 4 SC (Part II) 87; (1999) 6 NWLR (Part 606) 330.*

The table of payments made to the bank for the purpose of repayment of the indebtedness were not record of day to day sales of the Respondents. It was speculative of the trial court to have granted the request of ₦20,000.00 being loss of daily earnings based on these lodgements. It did not satisfy the requirements to specifically plead and strictly prove such head of claim. I agree with my learned brother in the leading judgment that the court ought to have dismissed that item of claim while the lower court was in error to have affirmed it. I hold that the decisions of the two lower courts were perverse on the ward of special damages.

Another complaint of the Respondents as Plaintiffs before the trial court was the excessive interest rate charged by the Plaintiffs on their loan. The relevant paragraphs pleaded in the statement of claim reads:-

Paragraph 11

> "The Plaintiffs aver that at all material time, the interest rate on the overdraft facilities stood at 21 % per annum."

Paragraph 13

> "The Plaintiffs state that another reason facing the 2nd Plaintiff Company as it affects repayment is the outrageous way the Defendant is charging interest on the 2nd Plaintiff's accounts."

Paragraph 14

> "Further to Paragraph (14) the Plaintiffs complained several times that the interest being charged by the Defendant is well and above 21% but each time the Defendant would deny such allegations."

Paragraph 17

> "Further to Paragraph (16) above the firm of chartered accountants stated further in their report that between 1996 and 1997 the Defendant charged interest in excess of ₦1,827.17 which should be refunded to the 2nd Plaintiff. The said report dated 3rd September, 1997 is hereby pleaded."

Paragraph 19

> "Further to Paragraph (18) above in the said letter, the interest rate to be charged by the Defendant on the 2nd Plaintiff's account is 33% and 12% on expired and outstanding credit facility thereby making a total of 45% interest."

Paragraph 25

> "Further to Paragraph 23 above the Plaintiffs aver that the lending rate is a clear violation of the Central Bank of Nigeria Lending Policy or guidelines."

About the allegations of arbitrary interest rate charged, the Appellants pleaded in the statement of defence and counter-claim that-

Paragraph 4

> "The Defendant avers with reference to Paragraphs 7, 8, 9, 10 and 11 of the statement of claim that the terms and conditions of the loan and overdraft facilities were merged in the Defendants' letter dated 9th September, 1997 and the terms and conditions of the facilities were accepted by the Plaintiffs."

Paragraph 8

> "Further to Paragraph (7) above the Defendant avers that since 1996 the interest rate regime has been deregulated concerning the ..... available and such issues are predicated on what bankers call cost of funds."

Paragraph 10

> "The Defendants aver that facts contained in Paragraphs 18, 19, 20, 21, 22 and 23 of the statement of claim are indicative of the fact that the Plaintiffs were always informed of change in the interest rate as allowed by the contract between the parties and the Plaintiffs never resisted this."

Paragraph 11

> "With reference to Paragraphs 23, 24 and 25 of the statement of claim, the Defendant avers that there is no Central Bank Lending Policy guideline regulating interest on loan and overdraft facilities and/or limiting same to a maximum of 21% per annum."

The interest rate agreed by the parties was 21%. As at the time the Respondents commenced this suit against the Appellant, their banker, the rate of interest charged on the loan and overdraft facilities had soared to 47%. The interest rate which the Respondents described as outrageous in the averments in their statement of claim aggravated their inability to meet up with the repayment of their loan. The Respondents claimed to have been charged interest rates in excess of ₦1,827,017.00.

The Appellant attributed the variation in the rate of interest to Central Bank Guidelines and what bankers call cost of funds. In law and practice of banking, the relationship between a bank and its customer is contractual. In the law of contract the law is that a written contract entered into by parties is binding on them. Where there is any disagreement between the parties to such written agreement on any particular point, the only reliable evidence to resolve the claim is the written contract of the parties. The reason being that where the intention of the parties to a contract are clearly expressed in a document the court cannot go outside the document in search of other document not forming part of the intention of the parties. See *S.P.D.C. (Nig) Ltd. v Emehuru (2007) 5 NWLR (Part 1027) 347; Larmie v D.P.M.S. Ltd. (2005) 12 SC (Part I) 93; (2005) 18 NWLR (Part 955) 438; Dalek (Nig) v OMPADEC (2007) 2 SC 305; (2007) 7 NWLR (Part 1033) 402; Nneji v Zakhem Con (NigJ Ltd. (2006) 5 SC (Part II) 78; (2006) 12 NWLR (Part 994) 297.*

According to the evidence, the terms and conditions of the loan and overdraft facilities were merged in Defendants' letter dated 9th September, 1997. This letter dated the 9th of September, 1997 was not exhibited during the trial of this case. Another letter dated the 19th of November, 1996 Exhibit A3 captioned offer letter was written by the Appellant to the Respondent. It was an advice from the Appellant to the Respondent about the approval of renewal of credit facilities under the terms and condition mentioned in the letter. One of such conditions under Facilities A and B captioned Pricing; the interest rate was indicated as UTB's maximum lending rate currently 21% per annum. In the letter dated 11th of May, 1999 Exhibit A4 written to the Respondents about review of interest rates, it was communicated that the interest rate shall be 33% per annum from the 14th of May, 1999 and another 12% per annum excess above the advised credit limit by way of additional interest. The 33% per annum interest rate by way of explanation was attributed to present volatility in the money market rates occasioned by incessant debit of banks by the Central Bank of Nigeria. The Appellant failed to exhibit the directive from the Central Bank to explain the review of interest rate from 21% agreed upon to 33% to a customer whose repayment credit facilities would be adversely affected, neither was the additional 12% interest based on any Central Bank directive. The genesis of such additional 12% interest ought to be explained to the satisfaction of the customer else it would amount to an illegal interest charge. The Appellant failed to give such needed explanation - at least it did not form part of the exhibits in the court record. The laws regulating banker and customers relationship in the banking law and practice are unambiguous, in fact they are as clear as crystal. By virtue of Section 15 of the Banking Act. Cap. 28, Laws of the Federation of Nigeria, 1990, the Central Bank is conferred with powers to regulate and control banking activities in Nigeria. In the exercise of this power it controls by law, the interest rate chargeable by any bank and dictates the fluctuation in the rate of interest. See *Union Bank of Nigeria v Albert Ozigi (1994) 3 SCNJ 42; (1994) 3 NWLR (Part 333) 385. U.B.N. v Sax (Nig) (1994) 8 NWLR (Part 361) 150.*

Section 15 of the Bank Act, 1969 mandates all licensed banks to charge interest rates on advances, loans, credit facilities or deposits in accordance with the Central Bank of Nigeria Guidelines on minimum and maximum rates of interest. Where the terms of the agreement between the bank and the customer are clear with regards to the agreed rate of interest and there is no provision for variations, the bank cannot vary the agreed interest rate to accord with the guidelines of the Central Bank on interest rate. The law will always frown at any arbitrary charges by banks on the account of their customers, like the 12% excess interest charged in the instant appeal.

With fuller reasons given by my learned brother in the leading judgment, I agree that this appeal lacks merit and it is accordingly dismissed. I abide the consequential orders including the order of costs.

Judgment delivered by
Mary Ukaego Peter-Odili. JSC

This appeal arose from the judgment of the Court of Appeal, Benin Judicial Division delivered on 1st July, 2005 whereby that court dismissed the appeal from the trial high court except for the award of general damages which the Court of Appeal allowed but reduced the general damages from ₦5,000,000.00 awarded by the trial high court to ₦2,000,000.00. The Appellant, dissatisfied with that judgment has appealed to this court.

Briefly the facts leading to this appeal are that the 2nd Respondent being a customer of the Appellant maintained two current accounts at the Appellant's branch of the bank at Akure in Ondo State. 1st Respondent is the chairman/managing director of the 2nd Respondent and on request of the 2nd Respondent for credit facilities, the Appellant granted to the 2nd Respondent an overdraft facility and a warehouse refinancing facility. The two separate credit facilities were secured by a Tripartite Deed of Legal Mortgage on the 1st Respondent's Mariatun House (formerly No 40) Isewe Street, Clerk Quarters Owo, Ondo State as well as Hypothecation of the 2nd Respondent's stock of motor batteries.

As the 2nd Respondent failed to repay the credit facilities granted by the Appellant inspite of repeated demands, the Appellant then took steps to enforce its rights under the Deed of Hypothecation of the stock of motor batteries in the custody of the 2nd Respondent. When the 2nd Respondent refused to allow the Appellant to take over the control and management of the Respondents' business premises, the Appellant proceeded by force and sealed the premises which the Respondents challenged by their action at the trial court on 11th August, 1999. The case was heard on pleadings comprising statement of claim, statement of defence and counter-claim and a reply to the statement of defence and counter-claim.

The trial court in its judgment delivered on the 17th December, 2003, found for the Plaintiff/Respondents' declaratory reliefs, general damages in the sum of ₦5,000,000.00 against the Defendant/Appellant for the illegal sealing of the premises of the 2nd Plaintiff/Respondent. The Defendants/Appellant's counter-claim was dismissed. Also dismissed was the Appellant's appeal to the Court of Appeal except for the reduction of the general damages awarded by the trial court from five (5) million naira to two (2) million naira.

Dissatisfied with that decision of the court below, the Defendant/Appellant has appealed to this court.

In the Appellant's brief were couched four issues for determination which were adopted by the Respondents and they are as follows:-

1. Whether the Court of Appeal was right in affirming the finding of the trial court as to the existence and contents of the Central Bank Guideline between 1996 and 1999 when the document was not tendered in evidence by the Respondents.
   (Ground 1 of the notice of appeal).

2. Whether the Court of Appeal was right when it upheld the finding of the trial court that based on the evidence of PW3 the Appellant was responsible for sealing up of the 2nd Respondent's premises on 3rd August, 1999.
   (Ground 2 of the notice of appeal).

3. Whether on the pleadings and evidence there is any legal basis for the award of special damages to the Respondents or in the alternative, whether the Respondents discharged the burden of proof required to succeed in their claim for special damages.
   (Ground 3 of the notice of appeal).

4. Whether the Respondents are entitled to the award of general damages which was upheld by the Court of Appeal and reduced to the sum of ₦2,000,000.00 (*Two million naira)* having regard to the settled principles of law.
   (Grounds 6, 7 and 8 of the notice of appeal).”

I would like to restrict myself to the matter of the general damages awarded both at the trial high court and affirmed by the Court of Appeal save for the reduction from the ₦5,000,000.00 (Five million naira) awarded at the trial court to the sum of ₦2,000,000.00 by the court below.

The findings of the trial court and agreed to by the Court of Appeal backed by the pleadings was that the Appellant was responsible for sealing up the premises of the 2nd Respondent on the 3rd August, 1999. Indeed there was abundant evidence which Appellant could not dislodge that the Appellant through arbitrariness and strong hand with agents sealed the premises of 2nd Respondent.

That settled in my view, the Appellant contended strongly that general damages cannot be awarded when special damages was awarded. That awarding general damages would in the circumstances amount to double compensation as the court of trial and affirmed by the Court of Appeal had granted the ₦1,500,000.00 *(One million, five hundred thousand naira)* special damages. On this matter of the special damages, the pleadings had not been sufficiently pleaded and the evidence not within the ambit of strict proof as required by law and therefore ought not to be granted. However assuming the special damages were available to the Respondents. That would not be a bar to the award of general damages in a situation such as the prevailing one where the injury to the Respondents is not quantifiable. It is only where the damages or injury are quantifiable that general damages cannot be awarded and that is not the case here.

The issue of general damages is available as in the case in hand where clearly the reputation of the 1st Respondent as chairman/managing director of the 2nd Respondent has been damaged and by implication, the 2nd Respondent being the corporate body has had its credibility in question in circumstances that no one including the court can put a hand as to the quantum of loss to be ascertained. It therefore has fallen squarely as a claim at large and it is within the power of court to consider what it sees or thinks an adequate award as that flowing naturally in favour of the Respondents. That was the concurrent finding of the two courts below and I have no problem with it. See *Osuji v Isiocha (1989) 6 SC (Part II) 158; (1989) 3 NWLR (Part 111) 623; Union Bank of Niaeria Limited & Odusote Bookstore Limited (1996) 42 LRCN 1639 at 1699.*

In conclusion therefore and for the fuller reasons of my Lord, Mahmud Mohammed, JSC, I refuse the special damages of ₦l,500,000.00 awarded by the Court of Appeal which I set aside. I affirm the general damages of ₦2,000,000.00 awarded by that court below and I dismiss the appeal.

I also award ₦50,000.00 costs to the Respondents.

Counsel

Olatunde Adejuyigbe	.....	Appellant
with him	.....	
O. T. Dike	.....	
P. O. Abdullahi	.....	
Tokunbo Adegboye	.....	Respondents
with him	.....	
Azeez Ali	.....	