

ERROR.... whether???

**SUPREME COURT OF NIGERIA**  
15TH APRIL, 1994. SC. 180/1989  
**CORAM:- M. L. UWAI, O. OLATAWURA,**  
**M. E. OGUNDARE, E. O. OGWUEGBU, Y. O. ADIO, JJSC.**

ALHAJI MUSTAPHA ALIYU KUSFA ..... PLAINTIFF/APPELLANT  
AND  
UNITED BAWO CONSTRUCTION CO. LTD ..... DEFENDANT/RESPONDENT

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**CONTRACTS** - General damages - Breach of Contract - Claim for general damages on account of inconvenience and hardship - Deemed considered along with claim for special damages.

**CONTRACTS** - General damages - Claimed on ground of hardship and inconvenience - No evidence to show the parties contemplated this ground at time of contract - (Whether) there is no ground for the award of general damages.

**CONTRACTS** - Damages for breach of contract - Where plaintiff claims the outstanding contract sum as special damages - (whether) he is not entitled to succeed in both special and general damages.

**DAMAGES** - Breach of contract - Award of special and general damages by the trial court - (whether) plaintiff is adequately compensated by award of only special damages - (Whether) the award of general damages is necessary. **It**

**FACTS**

The Plaintiff/Appellant entered into a building sub-contract with the Defendant/Respondent whereby the plaintiff was to construct a bungalow on behalf of the Defendant at an agreed sum of N51,666.66 within three months duration. Plaintiff was paid the sum of N24,541.00 by the Defendant upon his constructing the building to the lintel level. Plaintiff continued work on the site as requested notwithstanding the Defendant's failure to pay instalments due at various stages of the work. Plaintiff had virtually completed the building sub-contract project, painting being the only outstanding work, when the Defendant's main building contract with the Ministry of Defence was termi-

nated. The Defendant refused to pay the balance of the contract sum to the Plaintiff.

Being aggrieved, the Plaintiff instituted this action against the Defendant before the Kaduna High Court claiming N27,525.66 balance of the contract sum as special damages and N22,474.00 being general damages for breach of contract. The trial court found for the Plaintiff, awarded N25,125.66 to him as special damages and N1 0,000.00 as general damages. Defendant's appeal to the Court of Appeal was upheld in part as that court sustained the awarded special damages but quashed the N 10,000.00 general damages as being tantamount to double compensation. Plaintiff has now appealed to the Supreme Court to determine whether the Court of Appeal's finding of double compensation was correct and whether the award of only N25,125.66 special damages was adequate compensation in the circumstances of this case.

**HELD** (*dismissing the appeal, Olatawura JSC dissenting*)

1. The inconvenience and hardship alleged by the Plaintiff was considered along with his claim for special damages. This apart, there is no evidence to show that the hardship and inconvenience complained about was in the contemplation of the parties at the time they made their contract, as a probable result of any breach of the contract between them nor of any pecuniary loss occasioned thereby as to ground an award of general damages being made in the plaintiff's favour. (p. 69 L15)

2. On the principles of law reviewed and having regard to the facts of this appeal, there is no legal basis whatsoever for the award of general damages made by the trial court and the Court of Appeal was right in setting aside that award. On the facts, the Plaintiff has been adequately compensated by the award of special damages. (p 74 L 16)

3. The Plaintiff having been awarded virtually the entire contract sum there is no necessity for the award of general damages, more so when such claim for general damages is based on hardship and inconvenience occasioned by the Defendant's failure to pay the balance due to the Plaintiff in time. (p. 74 L 21 )

## NOTABLE POINTS OF INTEREST

### OGUNDARE JSC

*Action for breach of contract - Whether general damages could be claimed.*

1. "I agree with the learned counsel for the Plaintiff that it is not the law that general damages could not be claimed in an action for breach of contract".  
(p. 70 L 11)

*Breach of contract - When Plaintiff may claim special or general damages*

2. Where a Plaintiff has no difficulty in quantifying his actual pecuniary loss for the breach of the contract with him he may claim special damages but where however, he has difficulty in quantifying the actual loss, he may claim in general damages. (p. 72 L 6)

*Damages that may be awarded in cases of breach of contract*

3. The law is that in cases of breach of contract, the damages that would be awarded are the pecuniary loss that may fairly and reasonably be considered as either arising naturally from the breach itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach. (p. 73 L. 32)

*Breach of contract - What will amount to double compensation.*

4. The law however, goes on to lay down that in an action for breach of contract a Plaintiff who is well compensated under one head of damages for a particular claim cannot also be compensated in respect of the same claim under another head of damages as this will amount to double compensation.  
(p. 73 L.39)

### OLATAWURA JSC (Dissenting)

*Claim in quantum meruit - Not possible to also claim general damages*

5. A party who decides to sue for a breach of contract on a quantum, meruit for work done, materials supplied has confined himself to a specific damage and will not be allowed to claim for general damages in respect of the breach of contract. (p.79 L. 28)

*Breach of contract - When general damages may be claimed in addition to special damages*

6. “Unlike this case where part of the work done had been evaluated before the breach of the contract, the party in my view has the right to sue for the balance  
5 of the amount on the contract and in addition claim general damages for the breach of the contract. This is in line with the finding of the court of trial which has not been impugned before us or the court below.” (p. 79 L. 31)

10 *Breach of contract - Implications of allowing Plaintiff to claim only special damages*

7. I do not, with respect, share the views expressed in the lead judgment of my learned brother Ogundare, J.S.C. when considering paragraph 19 of the State-  
ment of claim that it is patent from the above that the inconvenience and  
15 hardship alleged in paragraph 19 was considered along in his claim for special damages. This will be contrary principle of law that special damages must be claimed and proved strictly. The amount in paragraph 19 relates in substance only to the balance due after the part-payment. To allow that to stand, i.e. the special damages being the amount left out of the original contract sum as the  
20 only amount due is for the court to give encouragement to contract brakers to say, however glaring the breach of contract, that you will not pay more than the balance left unpaid’ and to allow a party to break his contract with impunity . (p. 79 L 36)

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*Purpose of the rule against double compensation*

8. The rule against double compensation is to prevent a party from claiming twice in respect of the same item of claim. To claim for balance due in respect of work done in respect of a contract breached by the other party is no bar for  
30 general damages in breach of the contract. Each case must be decided on its peculiar facts. The Plaintiff in this appeal has not based his claim on a quantum meruit but sued for the balance due on job done and the breach of contract freely entered into by the parties. (p. 80 L. 16)

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*Absurdity of not making contract breaker pay for the breach*

9. “It seems to me absurd that a contract breaker will only pay for the balance of the amount due on the contract without making him to pay for its breach. The objection is not a question of the general damages being exces-

*sive and that nominal damages should be paid but that no award under this claim of general damages should be paid. I will therefore agree with the submission of Mr. Daudu that there are no hard and fast rules in the award of general damages. It will be wrong to say that an award of general damages when special damages have been proved and awarded will invariably amount to double compensation.” (P. 80 L. 34)*

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### **OGWUEGBU.JSC**

*Breach of contract - Part of loss recoverable*

10. In cases of breach of contract the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach. What was at that time reasonably foreseeable depends on the knowledge then possessed by the parties, or, at all events, by the party who literally commits the breach. (p. 84 L. 34)

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*What parties contemplate at the time of making the contract*

11. It has often been pointed out that parties at the time of contracting do not contemplate a breach of the contract but its performance. (p. 85 11)

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### **REPRESENTATION**

J. B. Daudu Esq. for the Appellant

Mrs. F. Adekoya with Miss N Olafimihan for the Respondent.

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### **CASES REFERRED TO**

Ezeani v. Ejidike(1964) 1 All NLR 462

N.R.C. v. Odemuyiwa (1974) 1 SC 13

Hadley v. Baxendale 1843-1860 All E.R. Rep. 461, 465

Onaga v. Micho (1961) All NLR 324 at 328

Ukoha v. Okoronkwo (1972) 5 SC. 260

Overseas Construction Ltd. v. Creek Ent. Ltd. (1985) 3 NWLR 407, 421

Aeria Advertising Company v. Batchelors Peas Ltd. (Manchester) (1938) 3 All E.R. 788, 795

Sodipo & Co. v. Daily Times of Nigeria Ltd. (1972) 1 All NLR (pt.2) 6 406 at p.409

Warner & Warner International v. Federal Housing Authority (1993) 6 NWLR 148, 176 D.H.

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- Shell BP Petroleum Development Company v. Jammal Engineering (Nigeria) Ltd. (1974) 4SC. 33, 87-88  
Maiden Electronics Works Ltd. Attorney-General of the Federation (1974) 1 SC 53
- 5 Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd (1949) 2K.B. 528  
East Ham Corporation v. Bernard Sunley & Sons Ltd (1966) A.C. 406 at pages 450-451  
Koufos v. Czarnikwo Ltd (1967) 3. W.L.R. 1491  
Agbaje v. National Motors (Nigeria) Ltd S.C. 20/68
- 10 Ekpe v. Fagbemi (1978) 3 SC 209  
Marzetti v. Williams (1830) 1B of Ald. 415  
P.Z. & Co. Ltd. v. Ogedengbe (1972) All NLR 206, 210

**BOOK REFERRED TO**

- 15 Hudson's Building and Engineering Contracts 10th Ed. p. 585

**LEAD JUDGMENT BY OGUNDARE JSC**

- 20 The only question calling for determination in this appeal is as to whether or not the plaintiff in an action for breach of contract is entitled to award of general damages where his claim for special damages for the contract sum nearly wholly succeeds.

- The plaintiff (who is now the appellant before us) had sued the  
25 defendant (now respondent) claiming as hereunder:-

*"The plaintiff's claim as against the defendant is for the sum of N50,000.00 being special and general damages arising out of a breach of a building sub-contract.*

- By an agreement dated the 5th of July, 1982 between the parties,*  
30 *the plaintiff agreed to construct one block of COI/LT COL. Quarters on behalf of the defendant for the use of Nigerian Army Engineers Ministry of Defence Lagos at Jaji Kaduna for a consideration of N51,999.00 after due completion of the structure by the plaintiff the defendant refused to issue the plaintiff with certificate of payment and consequently withheld the balance*  
35 *of N27,525,66 due to him.*

**PARTICULARS**

*The plaintiff has therefore suffered financial losses and claims from the defendant as follows:*

i. N27,525.66 as special damages being the balance of the contract sum due to the plaintiff.

ii. N22,474.00 being general damages for breach of contract."

Pleadings having been ordered, filed, delivered and exchanged the action proceeded to trial at the conclusion of which the learned trial Judge found for the plaintiff and awarded him the sum of N25,125.66 as special damages and N10,000.00 as general damages. In making the award of special damages the learned trial Judge S. U. Mohammed C.J. (as he then was) observed as follows:-

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"Is the plaintiff entitled to all this sum of N27,125.66 bearing in mind that he had not painted the building. There is no doubt that the only part of the contract plaintiff had not performed was the painting. The defence has not led any evidence on what the painting cost and the only evidence I have is that of plaintiff who said it should not have cost more than N300.00. I do not however agree that only N300 would paint a widely (sic) constructed house for an officer in the Nigerian Army of the rank of Col/Lt. Col. as Exhibit 1 shows. I think something in the region of N2,000.00 is more reasonable and I assess the painting of the house at N2,000.00. When this is deducted from the unpaid balance of N27,125.66. I accordingly enter judgment for plaintiff against defendants in N25,125.66 as special damages."

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And in making the award of general damages, he also observed as follows:

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"On general damages Mr. Obeya for defendants conceded that defendants are in breach. By clause 7(b) for Exh. "1" provides mode of interim payments to plaintiff by defendants which defendants clearly breached. Indeed the defendants have not offered any excuse for taking the remaining contract from plaintiff. The plaintiff is clearly entitled to damages for thus (sic) breach but the difficult thing is the quantum. The contract was in 1982 and plaintiff clearly performed it within time. He expended his money to perform the contract and defendants have refused to pay him for about 5 years. Taking into account all relevant matters I assess general damages for breach at N10,000.00 which is a little over 7% of N25,125.66 per annum for a period of five years."

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Being dissatisfied with that judgment, the defendant appealed to the Court of Appeal which Court allowed the appeal in part. The award of special damages made by the trial Judge was affirmed but the award of  
 5 general damages was set aside. U. Mohammed, J.C.A. (as he then was) in setting aside the award of N10,000.00 general damages observed:-

*"The governing principle of awarding damages, in respect of  
 10 breach of contract is to put the party whose rights have been violated in the same position, so far as money can do so, as if his rights had been observed. The damages recoverable are the losses reasonably foreseeable by the parties and foreseen by them at the time of the contract as inevitably arising if one of them broke faith with the other. In the contemplation  
 15 of such a loss there can be no room for claims which are merely speculative or sentimental, unless these are specifically provided for by the terms of the contract. See Hadley v. Baxendale (1854) 9 Exch. 341 at 354. Mr. Onekutu, learned counsel for the appellant, is correct in his reference to the case of Onaga v. Micho (supra) that in a breach of a building con-  
 20 tract, an aggrieved contractor is entitled to claim balance of payment for work done and loss of profit on the work he has been prevented from doing. It is a fact that builders work for profit and apart from his entitlement to the price, the damage to a builder caused by any breach of contract by the employer will be assessed in the light of its impact upon his  
 25 profit. See also Ukoha v. Okoronkwo (1973) 5 SC 260.*

*The parties in the case in hand had agreed that the respondent shall build the bungalow at the contract sum of N51,666.66. After the  
 30 respondent had completed some work on the building he was paid N24,541.00, leaving a balance of N27, 125.66. In the Writ of Summons the respondent, as plaintiff, at the lower court, claimed N27,525.66 as special damage and N22,474.00 general damages for breach of contract. Can the respondent, under the common law, claim both under special  
 35 damages and general damages in the same suit and in respect of the same injury? Courts have always avoided allowing such awards because it would amount to double compensation. It is not a hard and fast rule, but several authorities warn against the award for the plaintiff under general damages after the court had earlier compensated him with awards*



*under special damages. See Ezeani v. Ejidike (1964) 1 All NLR 402. Even the loss of expected profit must be claimed under the head of special damages. Elias, C.J.N in the case of N.R.C. v. Odemuyiwa (1974) 1 SC 13 had the following to say:*

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*'We think that the respondent's case lies on contract and that without pronouncing ourselves on whether or not general damages may never be awarded pari pasu with special damages in the same suit, we consider that the damages awarded (other than general damages) under the other heads of claim in the plaintiff/respondent's statement of claim are adequate as a fair estimate of the loss arising out of his wrong suspension by the defendant/appellant.*

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*The appeal in the case, reported above in respect of the award on general damages was allowed because the learned trial Judge made an award of general damages over and above the award he made as special damages. The Supreme Court only sustained the award in special damages."*

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It is against the setting aside of the award of general damages that the plaintiff has now appealed to this Court upon three grounds of appeal. Briefs of argument were filed and exchanged and in the appellant's Brief the following questions are set down as calling for determination in this appeal:

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*"1. Whether the Court of Appeal was correct in holding that the award of N10,000.00 as general damages in addition to the proved special damages of N25,125.66 amounted to double compensation having regard to the pleadings, evidence and findings of the Court of first instance?*

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*2. Whether it could be said, having regard to all the peculiar facts and circumstances of this appeal that the appellant has been adequately compensated by the sustained award of N25,125.66.*

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*3. Whether it is forbidden in law to award general damages upon special damages in disputes involving a breach of contract?*

4. *What is the scope and extent of the award of general damages in civil matters relating to breach of contract?"*

5 In the respondent's Brief however, only one question to wit:  
*"1. Whether or not, on the pleadings and evidence in this case the Court of Appeal was right in holding that the award of the sum of N10,000.00 general damages by the trial court was based on wrong principles of law and amount to double compensation to the appellant who had been awarded*  
 10 *the sum of N25, 125.66 damages."*

is set down as calling for determination. This question is in line with Question 1 in the appellant's Brief and in my respectful view represents the only question calling for determination in this appeal. Questions 2-4 as set out  
 15 in the appellant's Brief are issues to be considered in determining Question 1. Questions (3) and (4) were, however, withdrawn at the hearing of the appeal and were accordingly struck out by us.

The facts are rather simple and straight forward. The defendant was  
 20 awarded a contract by the Ministry of Defence to build a number of units of bungalows for the use of the Nigeria Army Engineers. On the 5th of July, 1982, the defendant entered into a sub-contract agreement with the plaintiff to build one of the units awarded to it by the Ministry of Defence. The sub-contract was to be executed at the Nigeria Army School of Infantry Jaji at an agreed  
 25 contract sum or N51,666.66 with three months as the conclusion period. The plaintiff commenced work at the site and constructed the building to lintel level when, according to the contract, he was paid N24,541.00 by the defendant. The plaintiff continued with work on the site notwithstanding the failure of the defendant to pay him installments due at various stages of the work. It  
 30 would appear however, that the other sub-contractors abandoned work when the defendant could not make payment to them. Subsequently the Ministry of Defence terminated the main contract for non-performance by the defendant. At the time of the termination of the main contract the plaintiff had virtually completed his own unit of bungalow leaving only painting to be done. He  
 35 assessed the cost of painting that was not done by him at N300.00. He made several demands for payment of the money due to him from the defendant but to no success. Eventually he instituted the action leading to this appeal claiming as hereinbefore stated.

The learned trial Judge after a review of the evidence on both sides and appraisal of same, found that the defendant was liable to pay to the plaintiff the contract sum less the amount already paid and less also the sum of N2,000.00 which the learned trial Judge held was the cost of painting not carried out by the plaintiff. He made a total award of N25,125.66 as special damages. He also awarded the plaintiff N10,000.00 general damages. On appeal by the defendant to the Court of Appeal (Kaduna Division) the award of general damages was set aside but the award of special damages was confirmed. It is against that part of the judgment of the Court of Appeal setting aside that award of general damages that the plaintiff has now appealed to this Court. The Court of Appeal had held that the award of general damages amounted to double compensation.

In appellant's brief learned counsel, Mr. Daudu relying on the dictum of Alderson B. in *Hadley v. Baxendale* 1843-1860 All E.R. Rep. 461,465, submits that upon the critical analysis of the facts the award of general damages made by the trial court is properly within the safe confines of the rule in that case. Learned counsel seek to distinguish the case on hand from the cases of *Onaga v. Micho & Co* (1961) 2 SCNLR 101; (1961) All NLR 328 and *Ukoha v. Okoronkwo* (1972) 5 SC. 260 where this Court had held that in a building contract, an aggrieved contractor could only claim for balance of payment for work done and loss of profit on the work he had been prevented from doing. Learned counsel argues that in the present case unlike in the two cases cited by him above where the contracts were unlawfully terminated, there was no termination rightly or wrongly. Learned counsel states that the evidence is clear that the plaintiff fulfilled all the terms of the contract to the letter and it was the defendant that breached the contract by its refusal to pay the appellant sums due to him by withholding same. He further submits that the plaintiff's claim from the commencement of the suit manifested a case warranting general damages for breach of contract. He referred to the evidence of the plaintiff where he testified that he suffered financial losses. In learned counsel's submission, taking the facts of the case as a whole into consideration such as the length of time from the date of breach to date of redress the plaintiff was entitled to an award of general damages. Mr. Daudu in justifying the quantum of the award of general damages submits that the use by the learned trial Judge of 7% as a yardstick for awarding general damages was merely to show that the sum of N10,000.00 awarded was not excessive and to demonstrate that the defendant had unduly punished plaintiff by depriving him of funds due to him and by

this act of deprivation the defendant was damnable in general damages. He relies on the dictum of Oputa, J.S.C. in Overseas Construction Ltd v. Creek Ent. Ltd. (1985) 3 NWLR (Pt.13) 407, 421. Learned counsel relies on Aerial Advertising Company v. Batchelors Peas Ltd. (Manchester) (1938) 2 All E.R. 788, 795 which decision was approved by this Court in  
5 Sodipo & Co. v. Dairy Times of Nigeria Ltd. (1972) 1 All NLR (Pt.2) 406 at p. 409. Learned counsel also argues that the case of NRC v. Odemuyiwa (1974) 1 All NLR (Pt.1) 429 at p. 430 relied upon by the Court of Appeal does not support the conclusion reached by that Court and he refers in this respect to the dictum of Elias CJN at page 435 of the report. Finally,  
10 learned counsel urges this Court to allow the appeal, set aside the judgment of the Court of Appeal and restore the award of general damages made by the trial court. At the oral hearing of this appeal, Mr. Daudu further relies on Warner & Warner International v. Federal Housing Authority (1993) 6 NWLR (Pt.298) 148, 176 D-H.

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In the respondent's Brief learned counsel for the defendant restates the principle on the award of damages laid down in Hadley v. Baxendale (supra) as that arising naturally from such breach of the contract itself of such as may reasonably be supposed to have been in the  
20 contemplation of both parties at the time they made the contract as a probable result of the breach of it. Learned counsel cites a number of decisions of this Court where that principle has been applied. He submits that in the case on hand, it has not been shown that the general damages claimed by the plaintiff arose naturally from the breach of the contract or  
25 that it was in the contemplation of the parties at the time they entered into the contract as a probable result of the breach. He submits that the award of general damages amount to double compensation and that the Court below was right in setting it aside. Relying on a number of decided cases learned counsel submits that where a litigant had been adequately compensated under one head of damages he should not be awarded damages  
30 under another head and that therefore, the plaintiff having been fully compensated under the award of special damages, it would amount to double compensation to award him damages under the head of general damages. At the oral hearing, Mrs. Adekoya learned counsel for the defendant opined  
35 that Warner & Warner International v. Federal Housing Authority (supra) made no difference to the defendant's case. She urges the Court to dismiss the appeal.

The modern law on the measure of damages in contract cases was laid down by Alderson B. in *Hadley v. Baxendale* (Supra) wherein the noble and learned Baron said;

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*"Where two parties have made a contract which one of them has broken the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered as either arising naturally, i.e., according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. If special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants and thus known to both parties, the damages resulting from the breach of such a contract which they would reasonably contemplate would be the amount of injury which would ordinarily follow from a breach of contract under the special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such a breach of contract. For, had special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case; and of this advantage it would be very unjust to deprive them."*

The above rule, laid down by Alderson B., has been followed ever since both by the English Courts and our Courts in Nigeria. As a follow up to this principle, the rule of assessment of damages flowing from a breach by an employer in a building contract is well set out in HUDSON'S Building and Engineering Contracts 10th Edn. at page 585 in the following words:

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*"The measure of damages as a legal problem gives little difficulty in the cases of breaches of contract by the employer. It is obvious that builders work for a profit and apart from his entitlement to the price, the damage to a builder caused by any breach of contract by the employer will be assessed in*

*the light of its impact upon his profit."*

.....

"In the case of prevention, that is to say, where the employer has  
5 wrongfully terminated the contract, or has committed a fundamental breach  
justifying the builder in treating the contract as at an end, and the latter  
accordingly ceases work, the measure of damages will be the loss of profit  
which he would otherwise have earned. In the more usual case where the  
work is partly carried out at the time when the contract entitled to the value  
10 of the work done assessed at the contract is repudiated, the builder will  
normally be rates, plus his profit on the remaining work."

This principle was adopted by this Court in *Ukoha & ors. v.*  
15 *Okoronkwo (supra)*. It is not in doubt that the contract the subject matter of  
the action leading to this appeal is a building contract. If the rules above  
stated are applied, the Plaintiff would only be entitled to the value of the work  
actually done by him plus the loss of profit on the work he was deprived of  
doing by the defendant's breach of their contract. In this appeal the liability of  
20 the defendant for breach of contract is not in dispute. What is in dispute is the  
quantum of damages the plaintiff is entitled to. It would appear from the award  
made by the learned trial Judge that the plaintiff was adequately compensated  
for the work he did. What he was not awarded and which he did not claim for  
is the loss of profit on the painting of the house which he was as a result of the  
25 breach of the contract deprived of carrying out. Not only had he not claimed  
for that, he led no evidence whatsoever on it. In any event having regard to  
the award made in his favour under the head of special damages, that loss of  
profit would have been minimal. The Court below, rightly in my view, upheld  
the award of special damages.

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What is in dispute in this Court is the award of general damages  
made by learned trial Judge and set aside by the learned Justices of the Court  
below on the ground that it amounted to double compensation. It is the con-  
tention of the plaintiff that the Court below was wrong in this conclusion. The  
35 plaintiff based its contention on the premise that he suffered inconvenience  
etc. by the failure of the defendant to pay him for work done at the required  
time. True enough, he pleaded in his statement of claim as hereunder;

*"19. The plaintiff avers that the non payment of his balance of  
N252,252.66 (Twenty-seven Thousand five hundred and Twenty-five Naira*

sixty-six Kobo) by the defendant has caused him hardship and inconvenience and inability to liquidate several debts he incurred in the course of executing this contract some of which are; Builders balance N4,000.00, Electricians balance N1,500.00 Plumbing balance N2,500.00 and Alhaji Shehu Kwasau N3,000.00"

In the concluding paragraph of his pleadings he averred as follows:  
"Wherefore the plaintiff claims from the defendant special damages arising from the withholding of the balance of the sum of N27,525.66 due to him.

It is patent from the above that the inconvenience and hardship plaintiff alleged in paragraph 19 was considered along in his claim for special damages. This apart, there is no evidence to show that the hardship and inconvenience complained about was in the contemplation of the parties at the time they made their contract, as a probable result of any breach of the contract between them nor of any pecuniary loss occasioned thereby as to ground an award of damages under that head being made in plaintiff's favour. There is no evidence that the defendant who was the contract breaker had knowledge upon which it could be presumed that the hardship and inconvenience was in the contemplation of the parties at the time they entered into their contract.

As this Court, per G.B.A. Coker J.S.C. it in *Shell BP Petroleum Development Company v. Jammal Engineering (Nigeria) Ltd.* (1974) 4SC. 33, 87-88:

*"The measure of damages appropriately is the loss flowing from the contract and unless the element of speculation was in the contemplation of the parties at the time of the contract, whatever else could have accrued to a party as a result of that speculation on the contract is not relevant. That was in effect the decision of the House of Lords in the case of Bain v. Fothergill (supra). In Wright v. Dean (supra). Wynn-Parry J., as he then was, explained and applied the principle expounded in Hadley v. Baxendale (supra). We are in agreement with his explanation and application of that principle. Hollington Bros v. Rhodes (supra) is a classic example of an assessment of damages based on actual expenses incurred by the plaintiffs as a necessary result of the breach by the defendants of their contract in that case. The principle of assessment established by the authorities is clear generally. It is*

that a party in breach of his contract is liable in damages and the aggrieved party is entitled to such damages calculated generally on the loss sustained by the aggrieved party and flowing necessarily from the breach in that either the injury suffered by the aggrieved was in the contemplation of both parties at the time of the institution of the contract or is an inevitable consequence of the breach."

10 I agree with the learned counsel for the plaintiff that it is not the law that general damages could not be claimed in an action for breach of contract. This is explained by Atkinson J in *Aerial Advertising Company v. Batchelors Peas Ltd. (Manchester)* (supra) in these words:

15 "I come, then, to the claim for general damages, and here a point of law is raised. There is only a claim for general damages in respect of pecuniary loss, and Mr. Roskill says that I cannot give general damages for pecuniary loss in respect of breach of contract, and that I can give damages only by way of special damage for a breach of contract. For that argument Mr. Roskill relies upon *Groom v. Crocker (1)*. I fail myself to see any difference in principle between a claim for special damage and a claim for general damage. One, of course, has to be proved as completely as does the other. The only difference is that, where one is claiming special damages, the circumstances are such that one is able to put one's finger on a particular item of loss and say, 'I can prove that I lost so much there, so much there, and so much there, whereas a claim for general damages means this: 'We cannot prove particular items, but we can prove beyond all possible doubt that there has been pecuniary loss.' Once that has been proved, I cannot myself see any difference in principle between special damages and general damages. When one reads *Groom v. Crocker (1)*, one sees that, so far from saying that there is any difficulty in recovering general damages, to my mind it says precisely the opposite. The relevant passage in the case is quite short. *Groom v. Crocker (1)* was decided so recently that I need not go through the facts. What Sir Wilfrid Greene, M.R. said (and this is what is relied upon) is at p.401:



*'It was said that as a result of the negligence on the part of the appellants, the respondent was subjected to mental suffering, that he was held up to public disapproval, that his reputation as a careful driver was destroyed, and that the jury were entitled to award damages in respect of these matters. It was said that the action was an action in tort, and not in contract, and that, even if it were an action in contract, such damages were recoverable. In my opinion, the cause of action is in contract, and not in tort.'*

Sir Wilfrid Greene, M.R. then goes on to say what the duty was, and proceeds, at p. 402.

*'No authority was cited to us which supports the proposition that, in an action based on breach of contract, damages can be recovered in respect of the matters to which I have referred (which did not include pecuniary loss). No pecuniary loss arose from them, and no reasonable probability of pecuniary loss in the future could be shown.'*

*Surely, if that means anything at all, it means that this is not a case of pecuniary loss, where, of course, damages could be given, but something quite different. Sir Wilfrid Greene, M.R., then says, at p.402:*

*'Reliance was placed on Wilson v. United Counties Bank Ltd., (2) In that case, bankers, who had been entrusted with the supervision of a trader's business, by their negligence caused his bankruptcy. In addition to damages for the loss occasioned to the bankrupt's estate, the jury awarded \$7,500 damages for the injury to his credit and reputation, and it was held by the House of Lords that this award was good. The decision rested upon the special terms of the contract, under which the bank agreed to take all reasonable steps to maintain the plaintiff's credit and reputation. Lord Birkenhead, L.C., put the case in the same class as that of the case where a banker dishonours a cheque although the customer's account is in funds. In such cases, it is the commercial credit of the customer that is injured, and the inference arises that pecuniary loss will necessarily ensue.'*

*I repeat that I do not regard that as an authority for the proposition that general damages are not recoverable for pecuniary loss. Difficulty of proof does not dispense with necessity of proof. In considering damages on this part of the case, one has to be very careful that one is not giving dam-*

*ages for injury to reputation and that type of thing. One can only give general damages in respect of the pecuniary loss which has been sustained."*

5 This statement of the law was cited with approval by this Court in Sodipo and Co. Ltd v. Daily Times of Nigeria Ltd. (supra). Where a plaintiff has no difficulty in quantifying his actual pecuniary loss for the breach of the contract with him he may claim special damages but where however, he has difficulty in quantifying the actual loss, he may claim in general damages. An  
10 example of this can be found in the case of Maiden Electronics Works Ltd. v. Attorney-General of the Federation (1974) 1 SC. 53 where this Court reviewed that law as regards award of damages in breach of contract cases. Fatayi-Williams J.S.C. (as he then was), delivering from the majority judgment of the Court (Ibekwe J.S.C., as he then was, dissenting) observed at pages 97-98 of  
15 the report:

*"The plaintiffs/respondents claimed the sum of 10,000pounds as general damages for this breach. The learned trial Judge awarded them 400pounds. We have had cause to comment before on the confusion that can  
20 arise by the use of term 'special' and 'general' damages in cases of breach of contract (ss. Khawam v. Chanrai & Co. (1965) 1 All NLR 182; and Akinfosile v. Mobil Oil Nigeria Ltd. SC 724. 1966 delivered on 28th November, 1969). The rule governing the award of damages in contract has been clearly stated in Hadley v Baxendale (1954) 9 Exch. 341 and it is this. Where two parties  
25 have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally, i.e. according to the usual cause of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contempla-  
30 tion of the parties, at the time they made the contract, as the probable result of the breach of it. The rule has been referred to with approval in Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd. (1949) 2KB 528; East Ham Corporation v. Bernard Sunley & Sons Ltd. (1966) AC 406 at pages 450-451; and Koufos v. Czarinkow Ltd. (1967) 3 W.L.R. 1491. Again in  
35 Agbaje v. National Motors (Nigeria) Ltd., S.C. 20/68 delivered on 13th March, 1970, this court observed as follows:*

*It is undesirable to refer in contract to general or special damages as normally the only damages, other than those arising naturally, flow from*

*consequences specifically provided for by the parties which would not otherwise naturally arise from a breach of the contract."*

After referring to a passage in HUDSON'S Building Engineering Contracts which passage I have earlier quoted in this judgment, the learned Justice went on at pages 99- 100 thus.

*"Nowhere in the judgment in the present case did the learned trial Judge advert to the above principle of assessment, with which we agree, or employ any of the methods of assessment. All he said was that the plaintiff/respondents gave no evidence of the damages suffered by the Ministry as a result of the breach and then went on to award them the sum of 400pounds. Nevertheless, it is our view that all the plaintiffs/respondents are entitled to by way of damages cannot be more than the expenses which they would have had to incur in employing another contractor to complete the installation. The contract for the installation of the two links is 1,350pounds and although this amount has not been paid to the defendants/appellants, we do not think, having regard to all the circumstances, including the undue delay; that we should disturb the award of the sum of 400pounds made to the plaintiff/respondents by the learned trial Judge."*

See also: Ukoha v. Okoronkwo (supra) where the head of damage claimed under "general damages" was, infact, an estimated loss of profit in respect of work the plaintiff was prevented from doing by the breach. In both cases, the plaintiffs claimed general damages and were so awarded. But, in effect, they claimed for pecuniary loss suffered by them as a result of the defendants' breach of their respective contracts. I only need to reiterate what Fatayi- Williams. J.S.C. said in the Maiden Electronics Works Ltd. case that, in order to avoid confusion, one should avoid the use of the term "special" and "general" damages in cases of breach of contract. The law is that in cases of breach of contract, the damages that would be awarded are the pecuniary loss that may fairly and reasonably be considered as either arising naturally from the breach itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach.

The law however, goes on to lay down that in an action for breach of contract a plaintiff who is well compensated under one head of damages for a particular claim cannot also be compensated in respect of the same claim

under another head of damages as this will amount to double compensation. See *Nigeria Railway Corporation v. Odemuyiwa* (1974) 1 ANLR 388 (Reprint); *Onaga & ors v. Micho & Co.* (supra) where the award of general damages by the trial court was set aside by this Court on the ground that by the award of special damages the loss sustained by the plaintiff was adequately taken care of. The law frowns against double compensation whether in contract or tort. See for example: *Ekpe v. Fagbemi* (1978) 3SC 209. The case of *Warner & Warner International v. Federal Housing Authority* (supra) was cited to us by learned counsel for the plaintiff. I cannot see anything in that case which supports the contention of the plaintiff in the appeal before us. On the contrary, the case affirms the rule laid down in *HUDSON'S Building and Engineering Contracts* earlier set out by me in this judgment.

On the principles of law reviewed above and having regard to the facts of this appeal, I can find no legal basis whatsoever for the award of general damages made by the trial court. In my considered view the Court below is right in setting aside the award of general damages. On the facts, the plaintiff in my respectful view has been adequately compensated by the award of special damages made by the trial Judge. Having been awarded virtually the entire contract sum, I cannot see the necessity for the award of general damages, more so that the case for this, based as it were on hardship and inconvenience occasioned by the defendant's failure to pay the balance due to the plaintiff in time, it cannot be said to be grounded in legal basis as it has not been shown that this was in the contemplation of the parties at the time they entered into their contract as the probable result of a breach nor was it shown to result in pecuniary loss.

In conclusion therefore, I find no merit in this appeal which I hereby dismiss. I affirm the judgment of the Court below and I award N1,000.00 costs of this appeal to the defendant/respondent.

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### UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Ogundare, J.S.C. For the reasoning and conclusion therein, which I adopt, I too will dismiss the appeal and confirm the decision of the Court of Appeal with N1,000.00 costs to the respondent.

**OLATAWURA JSC (Dissenting:)**

The only contentious issue raised in this appeal is whether it is an invariable rule that once special damages are awarded in a breach of contract the court cannot award general damages in addition.

5

The facts relied upon by the appellant pointed unmistakably to a breach of contract. This breach was admitted by the respondent's counsel. The appellant and the Respondent will hereafter be referred to as the plaintiff and defendant respectively. The plaintiff and the defendant entered into an agreement dated 5th July 1982 whereby the plaintiff agreed to construct a block of COL/LT. COL. Quarters on behalf of the defendant for the use of Nigerian Army Engineers, Ministry of Defence Lagos. It was a sub-contract. The main contract was between the defendant and Ministry of Defence. The place of performance of this sub-contract was Jaji Kaduna, and the consideration was for the sum of N51,666.66. The plaintiff averred that on 6th July 1982 he commenced the construction work after clearing the site; he continued with the construction up to the lintel level. He submitted his claim which was valued at 50% of the entire sub-contract by the defendant's engineer. It was in August 1982 that the defendant paid the plaintiff the sum of N24,541.00. After this payment and in accordance with the terms of the sub-contract, the plaintiff carried out the plastering of the walls and floor, plumbing, roofing, ceiling and electrification of the entire premises. There was some reluctance on the part of the defendant to value the project again. He later agreed to do so but on the condition that the plaintiff completed the two abandoned projects by the two other sub-contractors before he could be paid. This was not part of the original agreement. The plaintiff agreed provided his own legitimate claims on the original agreement entered into by them were paid. There were correspondence between the two of them. The defendant refused to pay the amount due; it proved difficult. This unfortunate position continued until March 1984 when the plaintiff discovered to his surprise that another contractor had started painting the building he had built. He averred specifically in paragraph 19 of his Statement of Claims as follows:

*"19. The plaintiff avers that the non-payment of his balance of N27,525.66 (Twenty-seven Thousand Five Hundred and twenty-five Naira Sixty-six Kobo) by the defendant has caused him hardship and inconvenience and inability to liquidate several debts he incurred in the course of executing this contract some of which are, Builders, balance N4,000, Electricians balance N1,500, Plumbing balance N2,500 and Alhaji Shehu*

76     Kusfa v. United Bawo Const. Co. Ltd. (1994) 5 KLR Olatawura JSC  
*Kwasau N3,000."*

The plaintiff claims as follows:

5     *"Wherefore the plaintiff claims from the defendant special damages arising from the withholding of the balance of the sum of N27,525.66 due to him.*

**PARTICULARS OF SPECIAL DAMAGES**

10     *Plaintiff carried out the project from the 1st stage to the final stage. Valuation report of the Nigerian Army Engineers Lagos will be relied on. Plaintiff had materials on the site particulars of which will be given at the trial.*

15     *And the plaintiff also claims N22,474.00 being general damages for a breach of contract, inconvenience and hardship caused by defendant's conduct".*

20     In the statement of Defence the defendant denied virtually all the averments and averred that it was a term of the sub-contract that the works should be completed within fifteen weeks from the date of the sub- contract and the plaintiff was in breach in that "the plaintiff not only did not complete the work on schedule but abandoned the said work which led to the revocation of the main contract" and further the payment to the plaintiff depended solely on payment by the defendant's employer. Evidence was led by the plaintiff. He called another witness and closed his case. The defendant did not call witness and rested its case on that of the plaintiff. The sub-contract agreement was tendered and admitted as Exhibit 1. Both counsel addressed the Court. In his address the learned counsel for the defendant said:

30     *"On general damages I say this is for court. We concede we breached the contract. We say plaintiff is only entitled to what he spent which he must prove but which he has not proved."*

Mr. Daudu in his own address said:

*"The sum claimed by the plaintiff N27,525.66 is wrong, the sum should be N26, 125.66 less N300 will be N25,725.66.*

35     *General damages - N22,474,00 is claimed. This is court's discretion - matters to be taken into account - length of time, hardship suffered by plaintiff etc."*

*"OBEYA: Nothing to add except that court should bear in mind that we have conceded certain aspects of the claim."*

I will point out at this stage the only aspect of the claim conceded 5  
was the general damages for a breach of the contract.

The learned trial Chief Judge, S.U. Mohammed, C.J. (as he then was)  
of blessed memory entered judgment for the plaintiff for the sum of N25,125.66  
as special damages. With regard to the issue of general damages, the learned  
trial Chief Judge said:

10

*"On general damages Mr. Obeya for defendants conceded that de-  
fendants are in breach. By clause 7 (b) of Exh. 1 provides mode of interim  
payment to plaintiff by defendants which defendants clearly breached. In-  
deed the defendants have not offered any excuse for taking the remaining 15  
contract from plaintiff. The plaintiff is clearly entitled to damages for thus  
(sic) breach but the difficult thing is the quantum. The contract was in 1982  
and plaintiff clearly performed it within time. He expended his money to  
perform the contract and defendants have refused to pay him for about 5  
years. Taking into account all relevant matters I assess general damages for 20  
breach at N10,000.00 which is a little over 7% of N25,125.66 per annum for  
a period of five years."*

The defendant appealed against the judgment to the Court of Appeal  
and in a unanimous decision by the court, Coram Uthman Mohammed, J.C.A. 25  
(as he then was), Aikawa and Achike, JJ.C.A. the Court allowed the appeal in  
respect of the award of general damages. In the lead judgment, the court per  
Uthman Mohammed, J.C.A. (as he then was) said:

*"It is obvious from the facts of this case, and also from the submis-  
sions of the learned counsel for the appellant, that the learned trial chief 30  
Judge was quite right in finding that the appellant was in breach of the  
contract which the company signed with the respondent. The respondent  
therefore was entitled to claim the balance of work done and the loss of  
profit on the work which he had been prevented from doing. See Ukoha v.  
Okoronkwo (supra)."*

35

The lower court described the award of N10,000.00 general damages  
as an award which amounted to double compensation. Reliance was placed  
on Hadley v. Baxendale (1854) 9 Exch. 341 at 354; Onaga v. Micho & Co. (1961)  
1 All NLR 324/328. The plaintiff has now appealed to this court on a number of

grounds. Briefs were filed by the parties. Four issues were formulated by the appellant, but at the hearing of this appeal, Mr. Daudu, the learned counsel for the appellant abandoned the last two issues which were accordingly struck out. He made oral submissions. The remaining two issues are:

- 5 "1. *Whether the Court of Appeal was correct in holding that the award of N10,000.00 as general damages in addition to the proved special damage of N25,125.66 amounted to double compensation having regard to the pleadings, evidence and findings of the Court of first instance?*
- 10
- 15 2. *Whether it could be said, having regard to all the peculiar facts and circumstances of this appeal that the appellant has been adequately compensated by the sustained award of N25,125.66.*

*In its own brief, the respondent formulated one issue and that is:*

20 *"Whether or not, on the pleadings and evidence in this case the Court of Appeal was right in holding that the award of the sum of N10,000.00 general damages by the trial court was based on wrong principles law (sic) and amounted to double compensation to the appellant who had been awarded (sic) the sum of N25,125.66 damages."*

25 The oral submission by Mr. Daudu, learned counsel for the plaintiff was that the Court of Appeal was in error when it found that N10,000.00 amounted to double compensation and that the cases relied upon by the lower court do not support the proposition that award of general damages does not relate to building contract: Warner and Warner International v. Federal Housing Authority (1993) 6 NWLR (Pt.298) 148 at 176 D-H. Learned counsel then contended that there was sufficient material before the trial court before making the award of general damages.

35 In her reply, Mrs. Adekoya, learned counsel for the respondent adopted the defendant's brief. She submitted that there was no evidence before the trial court to award the general damages claimed. According to the learned counsel, she submitted that the decision in Hadley v. Baxendale (supra) has stated the rule to be: What is the total damage arising from the breach? She submitted that WARNER'S case will not affect her submission.



Mr. Daudu in reply referred to the pleadings, the damages pleaded and the fact that the money was withheld for five years.

I will set down the findings of fact made by the learned trial Chief Judge and which findings were not attacked either in this court nor in the court below. They are: 5

1. That the plaintiff performed the contract within time.
2. That the plaintiff expended money for the performance of the contract and that the defendant refused to pay him for five years. 10

It appears to me elementary and is incontestable that once there is a breach of contract damages will follow: *M. Marzetti v. Williams* (1830) 1 Ald. 415. Both in the law of tort and contract there is one common factor: concept of foreseeability. This concept is the dominant test in all cases of torts. This brings me to the rule in *Hadley v. Baxendale* (supra) where Alderson B. said: 15

*"Where two parties have made a contract which one of them has broken the damages which the other party ought to receive ..... should be such as may fairly and reasonably be considered either as arising naturally i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it."* 20

The principle of remoteness of damage takes its root from this decision. 25

A party who decides to sue for a breach of contract on a quantum meruit for work done, materials supplied has confined himself to a specific damage and will not be allowed to claim for general damages in respect of the breach of contract. Unlike this case where part of the work done had been evaluated before the breach of the contract, the party in my view has the right to sue for the balance of the amount on the contract and in addition claim damages for the breach of the contract. This is in line with the finding of the court of trial which has not been impugned before us or the court below. I do not, with respect, share the views expressed in the lead judgment of my learned brother Ogundare, J.S.C. when considering paragraph 19 of the Statement of Claim that *"it is patent from the above that the inconvenience and hardship alleged in paragraph 19 was considered along in his claim for special damages"*. 30 35

This will be contrary to the principle of law that special damages must be claimed and proved strictly. The amount in paragraph 19 relates in substance only to the balance due after the part-payment. To allow that to stand, i.e. the special damages being the amount left out of the original contract sum as the only amount due is for the court to give encouragement to contract breakers to say, however glaring the breach of contract, that 'you will not pay more than the balance left unpaid' and to allow a party to break his contract with impunity. Unless we now equate pecuniary loss with special damages, the claim in torts for pain and suffering will be difficult to prove if we go by the principle of strict proof in special damage. It is not arguable that a party cannot prove strictly the ascertainable figure due to anguish or pain suffering, and also loss of sleep. It is in these areas that general damages are awarded based on the nature of evidence admitted and found credible by the Court. The rule against double compensation is to prevent a party from claiming twice in respect of the same item of claim. To claim for balance due in respect of work done in respect of a contract breached by the other party is no bar for general damages in breach of that contract. Each case must be decided on its peculiar facts. The plaintiff in this appeal has not based his claim on a quantum meruit but sued for the balance due on job done and the breach of contract freely entered into by the parties.

I now consider some of the cases relied upon by both parties. In *Nigerian Railway Corporation v. Odemuyiwa* (1974) N.S.C.C. 33, (1974) NMLR 115 this court was careful in saying that it could not say that claim for general damages "may never be awarded *pari passu* with special damages in the same suit". The court then considered the damages awarded in the Statement of claim under the heads of claim as adequate and a fair estimate of the loss sustained. In this appeal, the general damages are for breach of contract, inconvenience and hardship which can hardly be quantified. The sum of N27,525.66 was the "balance of the contract sum". This, no doubt, was the special damages in his amended statement of claim. It seems to me absurd that a contract breaker will only pay for the balance of the amount due on the contract without making him pay for its breach. The objection is not a question of the general damages being excessive and that nominal damages should be paid but that no award under this claim of general damages should be paid. I will therefore agree with the submission of Mr. Daudu that there are no hard and fast rules in the award of general damages. It will be wrong to say that an

award of general damages when special damages have been proved and awarded will invariably amount to double compensation. In *Wilfred Omonuwa v. Wahahi* (Trading as B. A. Wahabi and Sons) 1976 N.S.C.C. (Pt. 76) 4 S.C 37 (1976) 1 All NLR (Pt.1) 357, this court held that in a breach of contract the measure of damages is generally the loss flowing naturally from the breach and incurred in direct consequence of the violation, but that such a loss will not include speculative or sentimental claims unless specially provided for in the contract. In *Omonuwa's* case it was the builder who was in breach as a result of his failure to handover the building within a period of 20 weeks from the execution of the contract, the other party claimed an amount for general damages for rent that would have accrued to him if the house had been completed within the stipulated time. This Court on page 236 of the report said:

*"there is nothing on the face of Exhibits A & A1 to show that the building was required by the respondent for purposes of letting to third parties, or, at least, for purposes of other than his own use and that of his family .....* "

It was in that case that this court stated that the circumstances of each case must be considered as to when general damages can be awarded. The reasoning of the Court strengthens my own conclusion in this appeal that the award of general damages in the circumstance of this case cannot amount to double compensation. The Court per Idigbe, J.S.C. on page 238 of the report said:

*"There can be no doubt that the delay in the completion of the job contracted for by the appellant must and did in the circumstances of this case result in loss in the respondents and for which the appellant must pay. General damages are those which the law implies in every breach of contract (See also Marzetti v. Williams (1830) 1 B of Ald. 415), and where no real damage has been suffered may be a trifling amount. Although we agree with the learned counsel for the appellant that the evidence on which the trial court could properly have assessed the general damages suffered by the respondent is somewhat deficient, we certainly do not share his views that only "nominal damages" are due, in the circumstances of this case, to the respondent. Perhaps the greatest difficulty in the way of the respondent, at any rate is the absence of evidence of the monetary value of the ultimate short-fall in the performance of the entire work (i.e. the amount required for completion of the building by the appellant). There is no evidence before the*

trial court that the building was ultimately completed by the respondent and, if so, at what extra cost but there is evidence from one of his witnesses, (even if only an estimated value) that it will take as much as 10,000pounds  
 5 (N20,000) to complete the building at the time when this case was filed in court; and although the learned trial Judge accepted this figure with some reservation, we think it is some basis for the view that this, certainly, is not a case for the award of "nominal damages".

The defendant in its brief has submitted that it was not shown that  
 10 the general damages claimed by the plaintiffs arose naturally from the breach of the contract nor that it was within their contemplation as at the time they entered into the contract. The case of Shell BP Petroleum Development Co. Ltd. v. Jammal Engineering Nig. Ltd. (1974) 4 S.C. 33 or (1988) (Pt.11) vol 19 N.S.C.C. (56-88) (MS) N.S.C.C. I was relied upon. This submission overlooked  
 15 the findings of the learned trial Chief Judge already quoted above. In Jammal's case, this court on page 27 of (56-88) MS N.S.C.C. said:

*"The principle of assessment established by the authorities is clear generally. It is that a party in breach of his contract is liable in damages and the aggrieved party is entitled to such damages calculated generally on the  
 20 loss sustained by that aggrieved party and flowing necessarily from the breach in that either the injury suffered by the aggrieved party was in contemplation of both parties at the time of the institution of the contract or is an inevitable consequence of the breach."*

I believe on the evidence before the trial court, the learned Chief  
 25 Judge came to a correct decision with regard to the award of general damages in this case.

With regard to Onanuga's case (supra) the ratio is where the court has taken into account an item of claim in awarding special damages, it will be  
 30 wrong to award general damages in addition. That is not the position in this case.

I will therefore allow the appeal, set aside the judgment of the Court of Appeal dated 7th July, 1988 and restore the judgment of the Court of first instance. Costs awarded in the Court of Appeal are assessed at N500.00 and  
 35 the costs of N1,000.00 awarded in this court in favour of the appellant.

## OGWUEGBU JSC

5

I had before now read in draft the judgment just delivered by my learned brother Ogundare, J.S.C. I agree with his reasoning and conclusion.

The main issue for determination in this appeal is whether the court below was correct in holding that the award of N10,000.00 as general damages in addition to the award of N25,125.66 as special damages amounted to double compensation having regard to the pleadings, the evidence and the law. 10

By an agreement dated 5th July, 1982 (Exhibit 1), the defendant as the main contractor engaged the plaintiff as a sub-contractor to execute a contract awarded to him by the Nigerian Army Engineers, Ministry of Defence, Lagos. The plaintiff was to construct "*one block of officers' Quarters (Col/Lt. Col.) as per drawings supplied and as per specifications of the client and the satisfaction of the client viz: The Nigerian Army Engineers, M.O.D.*" 15

The contract price was N51,666.66 and the place of performance of the contract was Jaji, Kaduna. The plaintiff executed the contract up to lintel level and was paid N24,541.00 by the defendant. This payment was evidenced by Exhibit 2. This plaintiff continued work on the building and demanded payment for various stages reached. The defendant instead of paying for stage reached, urged the plaintiff to continue and he did so. The plaintiff virtually completed the work except for painting and the defendant was promising to pay. Thereafter, the plaintiff discovered that another person was painting the house. The plaintiff brought an action in the High Court of Kaduna State holden at Kaduna. In paragraph 19 of his Statement of claim he averred as follows: 20 25

"Wherefore the plaintiff claims from the defendant special damages arising from withholding the balance of the sum of N27,525.66 due to him. 30

*Particulars of Special damage*

*Plaintiff carried out project from the 1st stage to the final stage valuation report of the Nigerian Army Engineers will be relied on. Plaintiff had materials on the site particulars of which will be given at the trial.* 35

And the plaintiff also claims N22,474.00 being general damages for a

breach of contract, inconvenience and hardship caused by the defendants conduct."

5 The learned trial Judge in a reserved judgment entered judgment for the plaintiff against the defendant for the sum of N25,125.66 as special damages and N10,000.00 as general damages. On appeal to the Court of Appeal by the defendant against the award of N10,000.00 general damages, that court allowed the appeal and set aside the award of general damages because such  
10 an award would amount to paying double compensation in one cause of action to the respondent.

The plaintiff appealed to this court against the decision of the court below setting aside the award of N10,000.00 general damages.

15 Both learned counsel cited and relied on the principle laid down in Hadley v. Baxendale supra. It was further submitted that the plaintiff did not show that the general damages claimed by him arose naturally from the breach of the contract (if any) or that it was in the contemplation of the parties at the time they entered into the contract as the probable result of its breach. We  
20 were referred to the case of Shell BP Petroleum Development Co. Ltd. v. Jammal Engineering Nigeria Ltd. (1974) 4 S.C. 33 at 87.

Two rules are contained in the principle laid down in the case of Hadley v. Baxendale supra. They are as follows:

25 *"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered as:*

1. *Either arising naturally i.e. according to the usual course of things from such breach of contract itself, or*
- 30 2. *Such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."*

In cases of breach of contract the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach. What was at  
35 that time reasonably foreseeable depends on the knowledge then possessed by the parties, or, at all events, by the party who later commits the breach.

Two questions may be asked:

1. Whether the parties to this case possessed actual or imputed knowl-

edge or as reasonable persons were taken to know the usual course of things and consequently what loss was liable to result from a breach of that usual course?

2. Did the defendant in this particular case possess knowledge of special circumstances outside the usual or ordinary course of things of such a kind that a breach of those special circumstances would be liable to cause more loss?

In my humble view, I would answer the two questions in the negative. It has often been pointed out that parties at the time of contracting do not contemplate a breach of the contract but its performance. See *Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd.* (1949) 1 All E.R. 997.

The damages recoverable by the plaintiff would be such as might fairly and reasonably be considered as arising naturally, that is, according to the usual course of things, from the breach of the contract itself, or such as might be reasonably supposed to have been in the contemplation of the parties at the time they made the contract as the probable result of the breach of it.

It cannot be said that both parties to the contract contemplated at the time they made the contract that the plaintiff would suffer such inconvenience and hardship from the breach for which damages would be recoverable.

In *P.Z. & Co. Ltd. v. Ogedengbe* (1972) 1 All NLR (Pt.1) 202 at 210, this court held:

*"In the preparation of the claim for, as well as in the consideration of an award in consequence of a breach of contract, the measure of damages is the loss flowing from the breach and is incurred in direct consequence of the violation. The damages recoverable are the losses reasonably foreseeable by the parties and foreseen by them."*

In *Onaga v. Micho & Co.* (1961) 1 All NLR 324, this court decided that a contractor whose contract was wrongly terminated was entitled to recover any balance of payment for the work done and also to the loss of profit on the work he had been prevented from doing. The plaintiff herein was awarded the balance of payment of the work done. He claimed no amount for loss of profit on the work he was prevented from doing.

The sum of N10,000.00 awarded the plaintiff as general damages by the

learned trial Judge was unjustified and rightly set aside by the court below as being in the nature of double compensation.

Accordingly, I too will dismiss the appeal and it is hereby dismissed.

5      The decision of the Court of Appeal is affirmed. The defendant is entitled to costs which I assess at N1,000.00.

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**ADIO JSC**

10      I have had a preview of the judgment just delivered by my learned brother, Ogundare, J.S.C., and I agree with it. The appeal has no merit and I too dismiss it with N1,000.00 costs to the respondent.

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