

**SUPREME COURT OF NIGERIA**  
TUESDAY 9TH JULY, 1996. SC. 58/1993  
**CORAM:- M. L. UWAI, A. B. WALI,**  
**M. E. OGUNDARE, S. U. ONU, Y. O. ADIO, JJSC**

JOSEPH ODOGU

..... APPELLANT

AND

1. ATTORNEY-GENERAL OF THE FEDERATION
2. ATTORNEY-GENERAL OF LAGOS STATE
3. DIRECTOR OF PRISONS ..... RESPONDENTS
4. INSPECTOR-GENERAL OF POLICE
5. COMMISSIONER OF POLICE LAGOS STATE
6. CONTROLLER OF PRISONS, IKOYI PRISONS
7. THE CHIEF MAGISTRATE, CHIEF  
MAGISTRATE COURT, YABA,  
LAGOS STATE

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**CONSTITUTIONAL LAW** - *Unlawful detention - Period of detention found-to be about eight years - Where not challenged by either party - It is not open to Court of Appeal to review the period.*

**DAMAGES** - *Exemplary damages - Where a case for it is made out - Whether it will be awarded without any specific claim to that effect.*

**DAMAGES** - *General damages - N25, 000.00 awarded by the lower court for unlawful detention - Whether to be increased.*

**DAMAGES** - *Special damages - Lower court's finding of N20, 000.00 compensation per annum - Whether reasonable.*

**FACTS**

The appellant was arrested by the police on 4th August, 1980, at Festac Town Lagos and charged with the offence of armed robbery. He denied the charge and was arraigned before a magistrate's court. He continued being remanded in prison custody and the prosecution never commenced with the trial on the ground that the Director of Public Prosecutions was yet to give his advice. On 19th December, 1983, the charge was withdrawn and the court struck out the charge and ordered the appellant's release from custody. He was released but promptly rearrested by the police who continued to remand him in custody without any trial.

In December, 1987, the Civil Liberties Organization commenced

proceedings for the enforcement of the appellant's fundamental rights, claiming inter alia an award of N1,000,000.00 damages for unlawful detention. The trial court found that the appellant's detention was unlawful ordered his unconditional release from custody which was effected on 31-3-88. On the issue of compensation, the court awarded the sum of N2,000.00. Appellant's appeal to the Court of Appeal on the quantum of damages was successful, that court awarded N75,000.00. Being dissatisfied, appellant has appealed to the Supreme Court on a lone issue.

***ISSUE FOR DETERMINATION***

Whether the damages awarded by the lower court is unreasonably low having regard to the circumstances of the case.

***HELD*** (Unanimously allowing the appeal per lead judgment of **OGUNDARE JSC**)

***Unlawful detention***

1. There was a definite finding of the trial Judge that that period of unlawful detention spanned a period of about eight years. That finding was not challenged by either party in the appeal before the Court below. It was, therefore, not open to that court to review that finding with a view to arriving at a different period of unlawful detention. That Court, with respect, clearly in error in this regard. (p. 1344 G)

***Special damages***

2. The finding of N20,000.00 per annum as reasonable compensation for the Applicant's collapsed business is in line with the Applicant's claim. Therefore, the proper amount that ought to be awarded to the Applicant in respect of the compensation for the collapse of his business would be N20,000.00 multiplied by 8 years and that is N160,000.00. (p. 1344 H)

***General damages***

3. I have considered the award of N25,000.00 general damages made by the Court below in favour of the Applicant. Considering the findings of the two courts below on the treatment meted out to the Applicant during the period of his incarceration, I think an award of N40,000.00 general damages ought to be made in his favour. As the value of the Applicant's car said to have been destroyed, was not given, no award can be made for its loss. (p 1345 A)

***Exemplary damages***

4. Applicant's counsel argued strenuously in favour of award of exemplary

damages. Exemplary damages are usually awarded whenever the defendant's conduct is sufficiently outrageous to merit punishment, as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like. Having regard to the circumstances of this case, I have no doubt in my mind that a case for the award of exemplary damages, if claimed, was made out. There was, however, no specific claim for exemplary damages. Our attention was drawn at the oral hearing to the case of *Shugaha Abdulrahman Darman v. Minister of Internal Affairs* (1981) 2 NCLR 459 where the court awarded exemplary damages. The distinction lies in the fact that in that case aggravated and exemplary damages were specifically claimed and pleaded. In the matter before us, there was no such claim made for exemplary damages. I think it will be wrong in the circumstance to toward it, even though, on the facts, the case was made out for its award, had been claimed; exemplary damages must be claimed and proved before they can be awarded. (p. 1345 B)

## **NOTABLE POINTS OF INTEREST**

### **ONU JSC**

#### ***1. When exemplary damages will be recoverable***

Besides, where pleaded and proved (which is not so here) it ought to be borne in mind that exemplary damages is recoverable if the plaintiff is the victim of the punishable behaviour of the defendant and should be moderate; the means of the parties must be considered and it being true that while a small exemplary award would go unnoticed by a rich defendant, it is equally true that even a moderate award might cripple a poor defendant. (p. 1347 H)

#### ***2. Need to give due regard to human rights***

The Nigerian Constitution also provides guidelines for the law enforcement agents in relation to the exercise of their powers. The aforesaid guidelines make it possible to maintain a balance between law enforcement on the one and giving due regard and recognition to human rights on the other. It is in the light of the foregoing comments that one can appreciate the sort of shabby treatment given to the appellant in this case. At one stage the circumstances were such that the appellant should have been released straight away. He did not constitute a security risk. His further detention was really no longer necessary because the appropriate authority handling the prosecution of the charge preferred against him had made it quite clear that the charge should no longer be pressed as it could not be sustained. (p. 1349B)

**3. *Altering lower court's award of damages***

An appellate court does not ordinarily alter or interfere with an award of damages made by the lower court except where the award is shown to be either manifestly too high or manifestly too low or where it was based on a wrong principle. The appellate court should be convinced that the award of damages made by the lower court was based on an entirely erroneous estimate before it will interfere. Bearing the foregoing legal principles in mind, I think this is a proper case in which this court should interfere. The amount awarded as damages by the learned trial Judge or the amount to which it was increased by the court below was manifestly too low. (p. 1349E)

**C REPRESENTATION**

Olisa Agbakoba, Esq. - For the Appellants  
Tochukwu Onwugbufo, Solicitor - General of the Federation (with him,  
F.N. Molokwu (Mrs.), Director of Civil Litigation and  
C.I. Okpoko, Legal Officer, Federal Ministry of Justice)  
D 2nd and 7th Respondents absent and unrepresented For the Respondents

**CASES REFERRED TO**

Shugaba Abdulrahman Darnian v. Minister of Internal Affairs (1981) 2 NCLR 459  
E Eliochin Nig Limited v. Mbadiwe (1986) 1 NWLR 47 (1986) ANLR 1  
Darman v. Minister of Internal Affairs (1981) 2 NCLR 459  
Bello v. A-G Oyo State (1986) 5 NWLR (Part 45) 828 at page 859  
Williams v. Daily Times (1990) 1 NWLR 1 at 32  
Onagoruwa v. I.G.P. (1991) 5 NWLR (Part 193) 650  
F Stitch v. A-G Federation (1986) 5 NWLR (Part 46) 1007  
Uyo v. Egware (1974) 6 S.C. 103 at 108  
Imana v. Robinson (1979) 3-4 S.C. 1 at 23  
Ijebu-Ode Local Government v. Balogun (1991) 1 N.W.L.R. (Pt. 166) 136  
Elf (Nig) Ltd v. Sillo (1994) 6 N.W.L.R. (Pt. 350) 258

**G STATUTE & RULES REFERRED TO**

Fundamental Rights (Enforcement Procedure) Rules 1979 Orders. 2, 3, 4 &  
6 Constitution of the Federal Republic of Nigeria 1979 s. 32(1) & (6)

**LEAD JUDGMENT BY OGUNDARE JSC**

H The only issue arising for determination in this appeal relates to the quantum of damages. The facts appear not to be very much in dispute. The applicant, Joseph Odugu, now appellant in this appeal, was arrested by the Police on 4th August 1980 at Festac Town and charged with the offence of armed robbery. He denied the charge. He was taken into cus-

today. On 17th December 1980 he was arraigned before a magistrate's court where a formal charge of armed robbery was preferred against him. He was remanded in prison custody and taken to Ikoyi Prison. Between that date and 1983 he was taken a number of times to the Magistrate's court but was on each occasion further remanded because the prosecution told the court that the advice of the Director of Public Prosecutions was yet to be obtained. On 19th December 1983, the charge against him was withdrawn by the prosecution and the court struck out the charge and ordered his release. He was released from Ikoyi prisons on that date but was promptly re-arrested by the Police and detained at the Panti Street Police Station. On 27th March 1984 he was moved to the Kirikiri Maximum Security Prisons where he was held until 7th July 1986 when again he was taken back to the Panti Street Police Station and thereat detained. On 11th July 1986 he was arraigned yet again before the Magistrate's Court Yaba, Lagos on a charge of armed robbery and was again remanded in prison custody where he remained until the proceedings leading to this appeal commenced in 1987.

In December 1987 the Civil Liberties Organisation commenced proceedings in the name and on behalf of the applicant, claiming, pursuant to Orders 2, 3, 4 and 6 of the Fundamental Rights (Enforcement Procedure) Rules 1979.

*"1. A declaration that the continued detention of the applicant at Ikoyi Prisons is unconstitutional, unlawful, illegal, null and void.*

*2. An order to remove into this Honourable Court to be quashed the entire proceedings in charge No. C/146/86 conducted between 11th July 1986 and 4th November 1987 at the Yaba Magistrates Court No.3 Yaba, Lagos together with all the orders made therein.*

*3. A declaration that the applicant's constitutional guarantee for a fair hearing is being infringed and violated by the respondents.*

*4. An order releasing the applicant from unlawful custody forthwith.*

*Alternatively*

*5. An order releasing the applicant from detention at Ikoyi Prisons pending the commencement of his trial for any offence or offences which the State may wish to charge the applicant with, upon such condition or conditions as this Honourable Court may deem necessary to impose therein.*

*And thereafter*

*6. An order compelling the respondents to put the applicant up for immediate trial.*

*7. An award of N1 million damages for unlawful detention."*

In the course of the proceedings in the Lagos High Court (Agoro, J. as he then was), it was disclosed by Mr. Olokodana, State Counsel (Lagos State) that a case file concerning one Joseph Odogu was received in the office of the Director of Public Prosecution (DPP) from the Police on 3rd December 1980 and that on 24/3/81 the DPP wrote to the Police advising that there was no sufficient evidence to sustain a charge of armed robbery against the subject and that further investigations be carried out. There was no reply from the Police notwithstanding the reminders sent by the DPP on 4/6/81 and 21/3/88. Mr. Olokodana further informed the court that the DPP was of the view that there was no reason for the continued detention of the subject and raised no objection to the applicant's unconditional release from custody.

After addresses by learned State Counsel (Federation) appearing for the 1st, 4th and 5th respondents and learned leading counsel for the applicant, Agoro J, on 31/3/88, ordered that the applicant *"be released from detention or from custody unconditionally forthwith"*. The applicant was on that day released from custody.

On 23/9/88, Agoro, J. delivered his ruling on the issue of damages. He found:

(1) That the applicant suffered *"ordeal and deprivation ..... During the period from his arrest on 4th August 1980 and his release from custody by this court on 31st March 1988, which period the learned counsel for the applicant said was upwards on years 5 months and 20 days,"* and

(2) That the applicant *"was never brought before a court or Tribunal of competent jurisdiction within a reasonable time or at all as required under section 32(4) of the 1979 Constitution of the Federal Republic of Nigeria."*

The learned trial Judge, in assessing damages, observed:

*"In assessing the compensation payable to the applicant, I take into consideration the pain, suffering and deprivation of personal liberty resulting from the interference with the person of the present applicant by the Police, as well as the indignity, emotional stress, disgrace and humiliation arising from the long incarceration or remand in Prison Custody and Police Stations in the Lagos State. It seems to me that a sum of N2,000.00 would be a fair and reasonable compensation to the applicant."*

He awarded that amount to the applicant.

The applicant was unhappy with the award and appealed to the Court of Appeal on the following two grounds:

*"(1) The damages awarded by the lower court is unreasonably low"*

*having regard to the circumstances of the case.*

*Particulars of Error*

*The learned trial Judge erred in law in awarding N2,000.00 damages without considering the fact that the appellant was arrested and detained for a period of 8 years (August 4, 1980 to March 21, 1988) without any justification.*

*(2) The learned trial Judge erred in law in failing to consider the unchallenged affidavit evidence of the appellant to the effect that:*

*(i) The appellant was engaged in selling wares and fashion clothings but as a result of his arrest his business folded up and he was thrown out of his shop at Ojo Road Ajegunle Lagos by the Landlord."*

*(ii) Prior to his unlawful arrest and subsequent detention the appellant's business yielded an average annual profit of N20,000.00.*

*(iii) Consequent on his incarceration the appellant lost his Peugeot Saloon Car.*

*(iv) The appellant lost contact with his family.*

*(v) The appellant suffered tremendous mental and psychological anguish and his health has been greatly impaired."*

The respondents did not cross-appeal on any issue arising from the decision of the trial court.

The Court of Appeal allowed the appeal and increased the award of compensation the applicant was entitled to N75,000.00. In reaching this decision, the court below, per Ayoola, J.C.A. after restating the principle that guides an appellate court in an appeal against award of damages, observed:

*"In this case, notwithstanding the blanket pronouncement of the learned Judge that the amount he awarded would be fair and reasonable compensation, it seems to me clear from the judgment that he completely ignored a relevant factor which he should have taken into consideration in his assessment of compensation. That factor is the financial loss which flowed directly from the appellant's prolonged incarceration about which there was uncontroverted evidence. Besides, although the learned Judge made reference to the 'ordeal and deprivation' suffered by the applicant during the period of his arrest on 4th August 1980 and his release on 31st March, 1988 and he mentioned a few other things which he said he took into consideration, which had been alluded to earlier in this judgment, it is manifest that the amount awarded as compensation for deprivation of liberty of such obvious enormity with consequential personal and sentimental impact as profound and grave as the learned Judge himself mentioned, was so grossly low as to be an erroneous estimate. Where interference with*

*a right is of substantial proportions and real damage has been shown, as in this case, it is erroneous to award in the name of compensation an amount which is almost contemptuous and derisory. In this case, I feel no hesitation in holding that this is a case in which this court should interfere with the amount of compensation awarded by the court below. Whatever compensation is awarded in such cases as this should truly reflect not only the actual pecuniary loss of the victim but also the abhorrence of Society and the law for such gross violation of human rights, particularly the right of personal liberty, as in this case. An unwitting trivialization of a serious matter by an inordinately low award should be avoided. Personal liberty of the individual is a commodity of an inherently high value."*

C I agree entirely with the passage above.

Ayoola, J.C.A. then went on to find:

*"From the uncontroverted evidence, the financial loss suffered by the appellant by reason of the collapse of his business consequent on his prolonged detention was, on the average, N20,000.00 annually."*

D In applying this finding, which is not challenged by either party in the appeal before us, the learned Justice of Appeal observed:

*"In my judgment, the period of the appellant's unlawful detention was the period from the end of 1983 to about the middle of 1986 during which he was held in custody but was not taken to court."*

E Multiplying the period of unlawful detention as found by him to the finding of N20,000.00 per annum, the learned Justice of Appeal awarded N50,000.00 as reasonable compensation for the applicant's collapsed business, and N25,000.00 general damages. He refused to award exemplary damages.

F It is against this judgment that the appellant has further appealed to this court contending, in the main, that it was not open to the Court of Appeal to curtail the period of unlawful detention as found by the trial High Court, since this was not an issue before it. It is also the contention of the applicant in the appeal before us that exemplary damages ought to be awarded as the circumstances justify it.

G There was a definite finding of the trial Judge that the period of unlawful detention spanned a period of about eight years. That finding was not challenged by either party in the appeal before the court below. It was, therefore, not open to that court to review that finding with a view to arriving at a different period of unlawful detention. That court, with respect, is clearly in error in this regard. The finding of N20,000.00 per annum as reasonable compensation for the applicant's collapsed business is in line with the applicant's claim. Therefore, the proper amount that ought to be awarded to the applicant in respect of the compensation for the



collapse of his business would be N20,000.00 multiplied by 8 years and that is N160,000.00

I have considered the award of N25,000.00 general damages made by the court below in favour of the applicant. Considering the findings of the two courts below on the treatment meted out to the applicant during the period of his incarceration, I think an award of N40,000.00 general damages ought to be made in his favour. As the value of the applicant's car said to have been destroyed, was not given, no award can be made for its loss.

Applicant's counsel argued strenuously in favour of award of exemplary damages. Exemplary damages are usually awarded whenever the defendant's conduct is sufficiently outrageous to merit punishment, as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like. See: *Eliochin (Nigeria) Limited & Ors v. Mbadiwe* (1986) 1 NWLR (Pt.14) 147; (1986) ANLR 1. Having regard to the circumstances of this case, I have no doubt in my mind that a case for the award of exemplary damages, if claimed, was made out. There was, however, no specific claim for exemplary damages. The applicant came to court by way of an application for the enforcement of his fundamental rights. His application was supported by a 36-paragraph affidavit sworn to by one Clement Nwankwo, Legal Practitioner. Nowhere in the application itself nor in the affidavit in support was any claim made for exemplary damages. Our attention was drawn at the oral hearing to the case of *Shugaba Abdulrahman Darman v. Minister of Internal Affairs* (1981) 2 NCLR 459 where the court awarded exemplary damages. The distinction lies in the fact that in that case aggravated and exemplary damages were specifically claimed and pleaded. In the matter before us, there was no such claim made for exemplary damages. I think it will be wrong in the circumstance to award it, even though, on the facts, the case was made out for its award, had it been claimed; exemplary damages must be claimed and proved before they can be awarded - See: *Eliochin (Nig.) Ltd. & Ors. v. Mbadiwe* (supra).

From all I have been saying above, the conclusion I reach is that this appeal succeeds and it is hereby allowed. The award of N75,000.00 made by the court below is increased to N200,000.00 (two hundred thousand Naira).

I award to the applicant/appellant a sum of N1,000.00 as costs of this appeal.

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**UWAIS CJN**

I have had the privilege of reading in draft the judgment read by

my learned brother Ogundare, J.S.C. I entirely agree with his reasonings and conclusion. Accordingly I too will allow the appeal and make order as contained in the said judgment.

### **WALI JSC**

B I have had a preview of the lead judgment of my learned brother Ogundare, J.S.C. and I agree with him that on the issue of the damages awarded in this case, the appeal has merit and it should succeed.

C For the reasons contained in the lead judgment I also hereby allow the appeal and adopt the consequential orders made therein, including that of costs.

### **ONU JSC**

D I had the advantage of reading the draft of the judgment of my learned brother, Ogundare, J.S.C. just delivered and with it, I am in entire agreement that the appeal is meritorious and ought to succeed and it is allowed by me.

E I only wish to add on this mono-issue appeal on the quantum of award where it had been established beyond per-adventure by the learned trial Judge who rightly, in my view, found in appellant's favour:

- (1) That the applicant suffered *"ordeal and deprivation ..... during the period from his arrest on 4th August, 1980 and his release from custody by this court on 31st March, 1988, which period the learned counsel for the applicant said was upwards on years 5 months and 20 days"* and
- F (2) that the applicant *"was never brought before a Court or Tribunal of competent jurisdiction within reasonable time or at all as required under section 32(4) of the 1979 Constitution of the Federal Republic of Nigeria."*

G This court has held that where there is no appeal against the quantum of damages, the court cannot interfere with the award. Thus, as Bello, J.S.C. (as he then was) said in *Bello v. A.-G., Oyo State (1986) 5 NWLR (pt.45) 828* at page 859:

*"There is no appeal or cross-appeal against the quantum of damages awarded by the trial court and confirmed by the Court of Appeal. On this account this court cannot interfere with the award."*

H In *Ejowhomu v. Edok-Eter Ltd. (1986) 5 NWLR (Pt.39) 1* at 24 this court held as follows:

*"The locus classicus of the grounds upon which the appellate court will interfere in the assessment of damages was enunciated in Flint v. Lovell (1935) 1 K.B. 354 and has been adopted by this court. In Mutual Aids*

*Society v. Akerele (1965) 1ANLR. 336, this court held that it will interfere with the award of damages where the award is based on some wrong principles of law. This view has been repeated in other cases and in Eboh v. Akpotu (1968) 1 ANLR 220.*

*In each of these cases damages were awarded on wrong principles of law.”* B

Not so in the instant appeal in which the court below (Per Ayoola, J.C.A.) held, inter alia, confirming the decision of the trial court but stepping up the quantum of damages by stating that:

*“..... it is manifest that the amount awarded as compensation for deprivation of liberty of such obvious enormity with consequential personal and sentimental impact as profound and grave as the learned judge himself mentioned, was so grossly low as to be an erroneous estimate. Where interference with a right is of substantial proportions and real damage has been shown, as in this case, it is erroneous to award in the name of compensation an amount which is almost contemptuous and derisory. In this case, I feel no hesitation in holding that this is a case in which this court should interfere with the amount of compensation awarded by the court below. Whatever compensation is awarded in such cases as this should truly reflect not only the actual pecuniary loss of the victim but also the abhorrence of society and the law for such gross violation of human rights, particularly the right of personal liberty, as in this case. An unwitting trivialisation of a serious matter by an inordinately low award should be avoided. Personal liberty of the individual is a commodity of an inherently high value.”* C D E

I cannot agree more. Be that as it may, on whether the appellant is entitled to exemplary damages which in essence is punitive, retributive or vindictive damages (See: *Rookes v. Barnard (1964) A.C. 1129 at 1226*) the court below said:

*“There is a passing hint in the appellant’s brief that exemplary damages ought to have been awarded. Although I would have entertained reservations whether the award of exemplary damages, which is punitive in essence, has a place in the award of compensation under the fundamental human rights provisions in the Constitution, this court had made such an award in Minister of Internal Affairs v. Shugaba A. Darman (1982) 3 NCLR. 915. Happily, it suffices that this appeal can be decided without awarding exemplary damages and on the issues fully argued.”* G

The truth of the matter, however, is that in the instant case exemplary damages was not pleaded or claimed and proved as in *Shugaba A. Darman v. Minister of Internal Affairs (1981) 2 NCLR. 459* where the same was specifically claimed and proved. Besides, where pleaded and proved H

(which is not so here) it ought to be borne in mind that exemplary damages is recoverable if the plaintiff is the victim of the punishable behaviour of the defendant and should be moderate; the means of the parties must be considered and it being true that while a small exemplary award would go unnoticed by a rich defendant, it is equally true that even a moderate award might cripple a poor defendant. See *Williams v. Daily Times* (1990) 1 NWLR (124) 1 at 32; *Onagoruwa v. I.G.P.* (1991) 5 NWLR (Pt.193) 650. Compare *Stitch v. A-G., Federation* (1986) 5 NWLR (Pt.46) 1007.

The court below in fact did not award exemplary damages and rightly so since the appellant claimed none. However, that court awarded N50,000 as reasonable compensation for the appellant's collapsed business and N25,000 general damages. I think these constitute inordinately too low an estimate. See *His Highness Uyo I v. Felix Egware* (1974) 6 S.C. 103 at 108. If the sum of N20,000 for appellant's collapsed business used as basis for calculation be multiplied by the number of years he was unlawfully detained i.e. for about 8 years (7 years, 5 months and 20 days to be precise), that will amount to N160,000.00. That sum, plus N40,000 general damages which amounts to N200,000 as assessed in the lead judgment of my learned brother looks to me accurately measured, based on the affidavit evidence proffered at the trial. See *J.O.O. Imana v. Madam Jarin Robinson* (1979) 3-4 S.C. 1 at 23.

It is for the above reasons and the fuller ones contained in the judgment of my learned brother Ogundare, J.S.C. that, I too, will step up the award of the damages to N200,000.00, a sum of damages I conceive, will adequately compensate the appellant for the indignity, etc. and inhuman treatment he suffered at the hands of the agents of the defendants.

I make the same consequential orders inclusive of costs to the appellant.

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### **ADIO JSC**

I have had the benefit of reading, in draft, the judgment just delivered by my learned brother, Ogundare, J.S.C., and I agree that the appeal succeeds. I allow it and abide by the consequential orders, including the order for costs.

I however, wish to make some comments by way of elucidation. My learned brother, Ogundare, J.S.C., has given a comprehensive summary of the facts of this case. This country has a written Constitution guaranteeing certain fundamental rights. A fundamental right is a right guaranteed in the Nigerian Constitution and it is a right which every person is entitled, when he is not subject to the disabilities enumerated in the

Constitution, to enjoy by virtue of being a human being. They are so basic and fundamental that they are entrenched in a particular chapter of the Constitution. One of them is the right to personal liberty which is guaranteed by section 32(1) of the Constitution.

Section 32(6) of the same Constitution makes provision for a sanction in case of any breach of section 32(1) as any person who is unlawfully arrested or detained is entitled to compensation and public apology from the appropriate authority or person. The Nigerian Constitution also provides guidelines for the law enforcement agents in relation to the exercise of their powers. The aforesaid guidelines make it possible to maintain balance between law enforcement on the one hand and giving due regard and recognition to human rights on the other. It is in the light of the foregoing comments that one can appreciate the sort of shabby treatment given to the appellant in this case. At one stage the circumstances were such that the appellant should have been released straightaway. He did not constitute a security risk. His further detention was really no longer necessary because the appropriate authority handling the prosecution of the charge preferred against him had made it quite clear that the charge should no longer be pressed as it could not be sustained.

Accordingly, the court discharged the appellant. However, instead of accepting the order of discharge and letting the appellant go away, he was re-arrested and his detention was continued. Eventually, and at long last he had to be released after further detention without trial for any criminal offence.

An appellate court does not ordinarily alter or interfere with an award of damages made by the lower court except where the award is shown to be either manifestly too high or manifestly too low or where it was based on a wrong principle. See: *Ijebu-Ode Local Government v. Balogun*, (1991) 1 NWLR (Pt.166) 136. The appellate court should be convinced that the award of damages made by the lower court was based on an entirely erroneous estimate before it will interfere. See: *Onaga & Ors v. Micho & Co.* (1961) 1 All NLR 324; and *Elf (Nig.) Ltd. v. Sillo* (1994) 6 NWLR (Pt.350) 258. Bearing the foregoing legal principles in mind, I think this is a proper case in which this court should interfere. The amount awarded as damages by the learned trial Judge or the amount to which it was increased by the court below was manifestly too low. It is for the foregoing reasons and for the fuller reasons given in the lead judgment of my learned brother, Ogundare, J.S.C., that I agree that the appeal succeeds. I allow it and abide by the consequential orders, including the orders for costs.