

**SUPREME COURT OF NIGERIA**  
25TH APRIL, 1997. SC. 169/1990  
**CORAM:-S. M.A. BELGORE, M.E. OGUNDARE, E. O. OGWUEGBU,**  
**S. U. ONU, A. I. IGUH, JJSC.**

J. E. OSHEVIRE LIMITED ..... PLAINTIFFS/APPELLANTS  
AND  
TRIPOLI MOTORS ..... DEFENDANTS/RESPONDENTS

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**APPEALS** - *Jurisdiction of the Supreme Court - To determine appeals - Cannot allow it hear appeals straight from the high court.*

**CONTRACTS** - *Damages for breach of contract - Where the amount was neither pleaded nor proved - No damages will be awarded - Though the breach is established.*

**CONTRACTS** - *Privity of contract - Insurance - Where the insurance company will pay for repair of damaged vehicle - Whether there is privity of contract - Between the owner of the car and the repairer.*

**CONTRACTS** - *Parol contract - Breach thereof - Though the parties' contract was oral - It was binding - And therefore breached by the defendant.*

**TORTS** - *Detinue - Unequivocal demand and refusal to return the vehicle - Was not established by the plaintiff - To warrant claim in detinue.*

**TORTS** - *Detinue - Damages - Where the action in detinue cannot be maintained - N10,000.00 damages awarded will be set aside.*

**FACTS**

The plaintiff/appellant took its Honda Accord to the defendant/respondent for repairs. It was agreed that the vehicle would be repaired within the period of one month and that all the damaged parts shall be replaced by the respondent. The respondent failed to carry out its obligation under the contract by exceeding the one month period and doing a shoddy work on the car. It was common ground that the appellant's insurer is to pay for the cost of repairs less N400.00 excess to be paid by the appellant. Upon appellant's demand for the return of the car, the respondent declined, insisting that the appellant must sign the satisfaction note before the vehicle can be returned.

Appellant filed an action before the Kano High Court claiming an order for delivery of the car or its value being N54,639.25k and damages for

breach of contract among other claims. The trial judge awarded damages for detinue and breach of contract in favour of the appellant and ordered the immediate return of the vehicle. Respondent's appeal to the Court of Appeal was upheld. Appellant has now appealed to the Supreme Court raising 5 issues.

**ISSUES FOR DETERMINATION**

(i) *Whether there was privity of contract between the plaintiffs/Appellants and the Defendants/Respondents.*

(ii) *Whether there was a breach of that contract by the Defendants/Respondents.* p. 829

**HELD** (Unanimously allowing the appeal in part per lead judgment of **ONU JSC**)

**Privity of contract**

1. From the underlined extracts above, it is glaring that the position in the instant case is by and large analogous to what transpired in these cases. In the result, the court below was wrong when it held that there was no privity between the respondent and the appellants. Accordingly, my answer to issue one is in the affirmative. (p. 834 D)

**Parol contract - Breach thereof**

2. From all I have said in issue one above, my answer to issue 2 is logically in the affirmative. This is because even though the contract between the appellants and the respondents freely entered into by the parties on 28/2/83 was oral, it was binding. The trial court that saw, heard, and appraised the evidence of the witnesses for the appellant especially PW1 and came to the view that there was a breach, was pre-eminently placed to and did, in this case, ascribed values to such evidence. The court below as an appellate court ought not to have disturbed the judgment of the trial court even in the slightest degree just because it would itself have come to a different conclusion on the same facts, albeit that such a conclusion by the trial court is supported by evidence. The oral transaction entered into by the appellants and the respondents, part of which I had earlier set out above, in my respectful view therefore, gave rise to an enforceable contract between the parties. Thus, when after the expiration of the one month the respondents undertook to deliver the vehicle and they failed to do so, there was clearly a breach of contract. The proposition of law is that parties are presumed to have intended what they have in fact said since an agreement ought to receive that construction which its language will admit and which will best effectuate the intention of the parties, and greater regard is to be had to the clear intention of the parties

than to any particular words which they may have used. (p. 834 E)

### **Detinue - Unequivocal demand**

3. To illustrate that Exhibit 2, the letter from the Appellants' solicitors did not constitute an unequivocal demand for the return of the vehicle from the Respondents, nor further still that the imposition by the Respondents that unless the Appellants signed the Satisfaction Note they would not deliver the vehicle to the Appellants constituted an impossible condition, calculated as a clever device to put off the Appellants, can be deciphered from the following excerpt in the trial court's judgment. In the instant case, it cannot be strictly said that there was a demand and a refusal to return, the two essential attributes of detinue vide this court's decision in Odumosu v. A.C.B. Ltd. (1976) 11 S.C. 55 at 74. (p. 835 E & 836 G)

### **Damages - Where action in detinue cannot be maintained**

4. Furthermore, it has been held in Eunice Adefunke v. D. Ikpehai (1958) W.R.N.L.R 33 that "It is no longer the law that in detinue, the claim can only be for return of the chattel or for its value. At the present day a claim, in detinue is to recover the chattel itself and damages for its wrongful detention." Having, however, held elsewhere in this judgment that the claim in detinue cannot be sustained, the award of N10,000 made in favour of the respondents on that head of claim, cannot, in my respectful view, be upheld. It is accordingly disallowed. (p. 840 C)

### **Damages for breach of contract**

5. These two cases and other further submissions made by learned counsel in his supplementary brief, are, in my respectful view, of no avail to the plaintiffs in as much as the amount flowing from the breach of contract was neither pleaded nor proved. As I have stated herein before, that there was breach of contract is undoubted; what is neither pleaded nor established at the trial is the amount of damages flowing from the breach thereof. (p. 841 D & 842 B)

### **Appeals - Jurisdiction of the Supreme Court**

6. The question posed by issue (v) as to whether the Honourable judge came to a right decision based on the totality of evidence before him is, in my respectful view, incompetent and ought therefore to be struck out because by virtue of section 219 of the Constitution of the Federal Republic of Nigeria, 1979 only the Court of Appeal has jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Federal High Court, the High Court of a State, Sharia Court of Appeal of a State and Customary Court of

Appeal of a State. This Court is therefore not competent to hear appeals straight from the High Court, Sharia Court of Appeal or Customary Court of Appeal. A ground of appeal complaining directly against the decision of the High Court is not proper. (p. 842 G)

## B NOTABLE POINTS OF INTEREST

### ONUJSC

#### *1. Detinue - What a successful plaintiff is entitled to*

In other words, by definition, the gravamen of the tort of detinue is the wrongful retention of the chattel. Mere retention is enough to ground a cause of action in detinue but a successful plaintiff will only be entitled to nominal damages. See Abed Brother Ltd. v. Niger Insurance Co. Ltd. (supra) at pages 8 and 9. A successful plaintiff in a case of detinue is entitled to an order of specific restitution of the chattel, or in default its value and also damages for its detention up to the date of judgment. (p. 838 G)

D

#### *2. Distinction between detinue and conversion*

Unlike an action for conversion which is purely a personal action and judgment is for a single sum which is the value of the chattel at the date of the conversion, detinue is in the form of an action in rem whereby the plaintiff seeks specific restitution of his chattel resulting in judgment for the delivery up of the chattel or payment of its value as assessed at the time of judgment and for damages for its detention. (p. 839 C)

### IGUHJSC

#### F *3. Detinue - When the action can arise*

Accordingly for an action in detinue to succeed, the defendant must have shown a definite intention to keep the chattel in defiance of the plaintiff's rightful claim thereto and this is usually manifested by proving a demand by the plaintiff and a refusal by the defendant to return or deliver the chattel to the plaintiff. When, however, the refusal is conditional, a case of withholding the chattel against the will of the plaintiff is not necessarily established, provided the condition is reasonable and not a mere device to put off the plaintiff. (p. 844 H)

#### H *4. Tripartite contract between the parties*

The law is well settled that in a situation where the owner of a vehicle takes it to a garage for repairs, and indicates that the cost of repairs would be settled by his insurers, and introduces his said insurers to the repairers and his insurers expressly agree to settle the cost of repairs, there exists a tripartite con-

tract involving the owner of the vehicle, the repairer and the insurers and each can acquire rights and come under obligations thereunder. Under such circumstances, it would be entirely wrong to rule out the existence of a contract between the owner of the car and the repairers. (p. 847 F)

**REPRESENTATION**

B

P. U. Oge for the Appellants

Respondent absent and not represented

**CASES REFERRED TO**

Charnock v. Liverpool Corporation (1983) 3 ALL E.R. 473 at 475

C

Brown Davis Ltd. v. Galbraith (1972) 3 All E.R. 31 at 36

Abed Bros. Ltd. v. Niger Insurance Co. Ltd. (1976) N.N.L.R. 1 at 8

Ogundulu v. Philips (1973) 1 NMLR 267 at 272

Nzekwu v. Nzekwu (1989) 2 NWLR (Part 104) 373 at 393

Kosile v. Folarin (1989) 3 N.W.L.R. (part 107) 1

D

Hadley v. Baxendale (1854) 9 Exch. 341

Balogun v. Agboola (1974) 1 All N.L.R. (Part 2) 66

Udechukwu v. Okwuka 1 F.S.C. 71

Ekpenyong v. Nyong (1975) 2 S.C. 71 at 81 -82

E

**STATUTE REFERRED TO**

Constitution of Nigeria 1979 s. 219

**BOOK REFERRED TO**

Chitty on Contracts 23rd Ed. p. 453 para 971

F

**LEAD JUDGMENT BY ONU JSC**

In the High Court of Kano State sitting in Kano, the appellants herein as plaintiffs, instituted an action against the respondents who were then the defendants on 10th September, 1983, upon a writ of summons containing G items of claims which were later superseded by a statement of Claim and then by an Amended Statement of Claim dated 25th May, 1987, whose paragraph 14 states as follows:-

*"14. By reason of the matters aforesaid, the plaintiffs have been put to considerable trouble, inconvenience and expense, and they have H thereby suffered loss and damage.*

**PARTICULARS OF DAMAGE**

*1. The current value of the said Car N54,639.25k or alternatively the return of the Car to the plaintiffs.*

2. *Loss of use of the said Car for 247 days at N20.00 per day N4,940.00.*

3. *Refund of N400.00 being money had and received to the plaintiffs' use.*

*And the plaintiffs claim:-*

B 1. *An order for the delivery up of the said motor car or its value N54,639.25k*

2. *Damages for its detention at the rate of N20.00 per day from 1st April, 1983 till date of judgement.*

3. *Damages for breach of the said agreement.*

C 4. *Costs."*

The case went to trial. In a well considered judgment, the learned trial judge (coram: Ubbaonu, J.) on 24th November, 1987 entered judgment in favour of the plaintiffs wherein he stated, inter alia thus:

"At the end of the day, I find and hold that the plaintiff has established its case on the balance of probabilities. The issue to be discussed is how much should be awarded to the plaintiff as damages. The plaintiff is claiming N20 per day from 1st April, 1983 to date of judgment. The plaintiff also claims N20 per day for 247 days which totalled N4,940.00. I do not know how plaintiff got the 247 days for which he is claiming N4,940.00 and again N20 per day from 1st April, 1983 till date of judgment; it means that for 1984 which was a leap year, the plaintiff will get N7,320.00; 1985, N7,300.00; 1986, N7,300.00 and from January 1st, 1987 to November 24th, 1987 which is the date of judgment N6,560 for a period of 328 days. The plaintiff will then get N5,500.00 from 1st April, 1983 to Dec., 1983 a period of 275 days .....

From 1/4/83 there were 100 days. N20 per day for 100 days will be N2,000.00. I shall therefore award N2,000.00 to the plaintiffs against the defendants for breach of contract ..... The defendants should return the said vehicle immediately to the plaintiffs without tempering (sic) with the vehicle KN, 5962 KM in any way that will be detrimental to the plaintiffs.

*Judgment is therefore entered in favour of the plaintiffs against the defendants ....."*

Being aggrieved by this decision, the respondents appealed to the Court of Appeal, Kaduna Division (Coram: Aikawa, J.C.A. concurred in by Mohammed, J.C.A. as he then was and Achike, J.C.A.) which I shall in the rest of this judgment refer to as "the court below." That court on 16th August, 1989 allowed the appeal and set aside the judgment of the trial court, giving among other reasons for so doing as follows:-

*“With regard to question number two for determination i.e. whether the appellant will be liable in damages for retaining the respondent’s car with him has already been answered in dealing with question number (1) that is to say: since there is no detainee it follows therefore that there is also no damages against defendant, therefore both amounts of money entered by the learned trial judge in favour of the respondent for detainee and damages will be set aside.”*

And later further down in its judgment, the court below said in conclusion thus:

*“I am satisfied on the evidence as a whole that at no stage was there any contract of any kind between the appellant and respondent. I am therefore of the opinion that in the circumstances of this case there was no contract between them. If the averment in the statement of claim can be one, it had not been supported by evidence since the statement of claim is not evidence.”*

*In conclusion, I hereby set aside the judgment of the lower court and in substitution order that the appellant should release the vehicle in question to the respondent. After the respondent has fully satisfied the conditions for the repairs, namely the signing of note of satisfaction while damages awarded for detainee and breach of contract are hereby set aside.”*

Dissatisfied with this decision, the appellants have appealed to this Court on a Notice of Appeal containing three grounds dated 16th November, 1989. The parties hereto did not subsequently exchange briefs of argument as required by the rules of this Court since only the appellants filed and served one on the respondents in which counsel on their behalf, identified five issues as arising for our determination to wit:

(i) *Whether there was privity of contract between the plaintiffs/Appellants and the Defendants/Respondents.*

(ii) *Whether there was a breach of that contract by the Defendants/Respondents.*

(iii) *Whether that breach gives rise to two reliefs i.e. (a) Damages for breach of contract, and (b) Damages for detainee*

(iv) *Whether the award of damages for breach of contract and damages for detainee amounted to double compensation.*

(v) *Whether the Honourable Judge came to a right decision based on the totality of evidence before him.*

Before I proceed to consider the issues set out above for our consideration in this appeal, I deem it pertinent to first set out the facts giving rise thereto which, in my view, are not in dispute.

The case for the appellants was that they took their vehicle, a Honda Accord car Registered No. KN, 5962 KM, which was earlier involved in an accident, to the respondents for repairs and the respondents gave an undertaking to complete the repairs within one month and in addition to replace the damaged parts with new parts. It was common ground that the respondents were to be paid for their services by the appellants' insurers, the Royal Exchange assurance Company, less N400.00 for excess, the latter to be paid by the appellants upon being satisfied that the vehicle was properly repaired. The respondents failed to carry out their obligation under the contract to effect the repairs skilfully and in a workmanlike manner within the time stipulated; rather what the respondents produced was a shoddy type of work that fell short of the appellants' expectation. Such that when the appellants demanded for the return of the vehicle, the respondents refused; instead they insisted that unless the appellants signed the satisfaction Note, they would not return the vehicle to them and this, despite the fact that they (appellants) had paid them (respondents) the N400 excess and kept the vehicle till judgment.

The gravamen or strong point of defence put forward by the respondents was that there was no privity of contract between them and the appellants. Consequently, they denied every averment contained in the appellants' statement of Claim. They further contented that the only contract they had was between them and the Royal Exchange Assurance which were not made parties to these proceedings.

At the hearing of this appeal on 19th November, 1996, learned counsel for the appellants, Mr. Oge, who had hitherto filed a brief, after adopting same, was heard in a short oral argument or expatiation thereof. The respondents who this time around were represented by counsel, one Mr. Ainoko, were not heard in oral submission since they filed no brief.

In dealing with the issues set out above serially it is, in my view, necessary to commence with issue one, as follows:-

That in the light of the findings by the trial court, buttressed by the decisions in Charnock v. Liverpool Corporation & anor. (1983)3 All E.R. 473 at 475; Brown Davis Ltd. v. Galbraith (1972)3 All E.R.31 at 36 and Abed Bros. Ltd. v. Niger Insurance Co. Ltd. (1976) N.N.L.R.I at 8; the latter in which it was held that in a situation where the owner of a vehicle takes his vehicle to a repairer and indicated that costs of repairs will be paid by his insurers and introduced his insurers to the repairer, there is a tripartite contract involving the owner of the vehicle. That the repairer and the insurers, "and each can acquire rights and each can come under obligation." We were therefore urged to hold that there was privity of contract between the respondents and the



appellants.

I see the force in this submission. Although the respondents had joined issues with the appellants on privity of contract when they averred in paragraph 2 of their statement of Defence in reply to appellants' paragraph 3 of the statement of claim that

*"The defendant will at the trial of this suit contend that there was no privity of contract between it and the plaintiff and accordingly the defendant denied paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of the statement of claim."* there was a body of evidence proffered before the trial court from which that court could logically arrive at the conclusion that there was indeed a contract between the parties, thus establishing privity beyond peradventure - See Wakama v. Kalio (1995) 9 NWLR (Part 418) 131. The doctrine of privity of contract, according to Chitty on Contracts, 23rd Edition Page 453, paragraph 971, may be stated as follows: a contract cannot confer rights or impose obligations arising under it on any person except the parties to it.

Narrating how his accident car found its way from the Leventis Motors, Kano where it was first taken for repairs to the respondents' workshop in Kano on 28th February, 1983, where an oral agreement was made between the respondents and the Managing Director of the appellants (P.W.1), the latter stated inter alia as follows:-

*"Following that, I went to the defendants and told them about the car for repairs. The defendants replied me orally on 28/2/83 that they had all the necessary spare parts for the repair of the vehicle KN.5962 KM. I asked the defendants to tell me the time it would take them to finish repair of the vehicle. The defendant told me that they could finish the repairs within a month on receipt of the vehicle. The defendants further asked me the terms of the payment for repairs. I told them that there was no problem in paying for the repairs as the car is comprehensively insured car. I told them that after the repairs to my satisfaction, I would pay the excess while the insurance would pay the full cost less the excess, the excess being N400.00k.*

*The Defendants agreed to these terms of payment. I advised them to get their recovery van and their driver in order to go to Leventis Motors Kano and to my insures - Royal Exchange Assurance - Kano. On reaching Leventis Motors Kano the Manager there said that I should get a letter from Royal Exchange for the release of the vehicle to Tripoli Motors - defendants.*

*The Royal Exchange Assurance then gave me a letter for the release of the vehicle to the defendants I gave the same letter to the defendants driver and escorted him back to Leventis Motors Kano where I left the defendants' driver. I asked Royal Exchange Assurance to write a letter to the defendants instructing them to effect repairs to my satisfaction ..... "*continuing, P.W.1

**further said in examination in Chief:**

“..... The commencement of the contract between me and the defendants was from 1st March, 1983, bearing in mind the 1 month completion period agreed by me and the defendants. From that day - 1/3/83 I took it that the work was being done. I went back to the defendants on 2/4/83 but to my dismay, the defendants told me that they had not complete (sic) the work. They asked me to give more seven days in order to complete the work.

I consented to their request of giving them an extra period of 7 days in order to enable the defendant finish the repairs. At the expiration of the 7 days, the car was still not completely repaired. From then the defendants continued to ask me to come next week. This question of come next week continued and I protested at one time to the Insurers but they told me that they had no hand in it, because I was the person that chose the defendants to repair the vehicle. The Insurers said that they would pay for the repairs excluding excess if the car was repaired to my satisfaction.” (The underlining above is mine for comment).

PW2, James Oshevire, son to PW1 as well as PW3, Lawal Abdu Basirka, claims Superintendent with Royal Exchange Assurance, gave much the same evidence as PW1 before them which supported the appellants’ case to the hilt. Besides, under cross-examination P.W.3 (Lawal Abdu Basirka - claims Superintendent of Royal Exchange Assurance Company) said as follows:-

“We have a credit facility with the defendant company. The agreement to repair the plaintiffs’ car is between my company and the defendant company.”

When later further cross-examined, P.W3 said in conclusion thus:

“We have a credit facility with the defendant company. The agreement to repair the plaintiffs’ car is between my company and the defendant company.”

And finally, when re-examined, PW3 had this to say:-

“We have paid the cost of towing the vehicle from the premises of Leventis Motors to the premises of the Defendant Company. We paid the cost of towing it to the Defendant company. I do not know why the Defendant company has not sent the bill for the repairs to the vehicle in issue.”

The learned trial judge therefore, rightly in my view, agreed with the appellants that there was privity of contract between them and the respondents when he held as follows:-

“But in the present case, PW1 who is the Managing Director of the Plaintiff Company contacted the defendants and the defendants admitted that they had the necessary spare parts to effect repairs. The defendants driver was escorted to the garage of Leventis Motors, Kano where the ve-

hicle KN.5962 KM was parked and the PWI got a letter from the insurers and handed same over to the defendants to enable them collect the vehicle.

*The defendants promised the PWI that they could repair the said vehicle all within one month from 1/3/83."*

His reliance thereafter on the cases of Charnock v. Liverpool Corporation and anor., Brown & Davis Ltd. v. Galbraith and Abed Brothers Ltd. v. Niger Insurance Co. Ltd. & anor. (supra) cannot, in my respectful view, be faulted. In the Charnock v. Liverpool Corporation Case (supra), the facts were as follows:-

The Plaintiff sued the insurers and the repairs for the amount he spent for the extra 3 weeks (i.e. five out of 8 weeks) during which the accident vehicle the repairers agreed to repair it was in fact not so repaired. The court gave judgment against the repairers for the sum claimed and against the insurers for the main sum spent for the repairs. While the insurers did not appeal, the repairers appealed, arguing that there was no contract between them and the plaintiff (respondent in the Court of Appeal), Mr. Charnock, who was the owner of the car. The repairers lost the appeal. As Harman, LJ at page 475 said:

*"I must confess that when I first heard that proposition put it seemed to me that, in spite of the strenuous advocacy of Mr. Leech, it was "all my eye." if I may use a vulgar phrase, and that it would not do at all, and that when a man takes his car into a garage and asks the garage to repair it, as is done everyday, and the garage agrees to do so, there a contract is made to do the repairs with reasonable skill and in a reasonable time. The fact that the insurance company will indemnify the car owner is well known in all insurance cases to both parties. The practice has grown up that the insurance company shall agree the sum for which it will stand surety and a contract is very often made by the repairer with the insurance company. Let it be so in this case. That does not, in my view, at all rule out the existence of a contract between the person who owns the car and the repairer."* (Underlining is mine for comments)

In Brown & Davis v. Galbraith (supra) at page 39 Sachs, L.J. opined:

*"Any decision in this type of case must necessarily depend on the facts established in evidence. In general, however, in those everyday transactions - there must be thousands each week - when, upon a car owner bringing his damaged car to a repairer for repairs, which in practice will be paid for by the insurers' and the insurers are then brought into the negotiations, the resulting arrangements produce an agreement which in law is properly termed a tripartite agreement. I prefer the term to "two separate agreements" though in the present case, as indeed in most cases, it makes no difference which terminology is used.*

*That tripartite agreement is one to which there are three parties, the owner, the repairer and the insurers, and each can acquire rights and each can come under obligations.” (Underlining is also mine for comments).*

In the case of Abed Brothers Ltd. v. Niger Insurance Co. Ltd. (supra) B wherein wheeler, J. (as he then was) referred to the decision in Brown & Davis Ltd. v. Galbraith (supra), he said Inter alia at page 8:

*“This line of authority showed that where the owner of a damage vehicle took it to repairers and informed them that he was insured and the repairers sent to the insurers an estimate for the cost of repairs which were C then carried out on the insured’s instructions, that there were two contracts entered into. First, a contract between the repairers and the insurers whereby the insurers undertook to pay the cost of repairs, less any excess. Secondly, a contract between the repairers and the owner of the car whereby the repairers undertook to do the repairs efficiently and expeditiously and the D car owner to pay any insurance excess.” (Underlining is also mine for comments).*

From the underlined extracts above, it is glaring that the position in the instant case is by and large analogous to what transpired in these cases. In the result, the court below was wrong when it held that there was no privity E between the respondent and the appellants. Accordingly, my answer to issue one<sup>14</sup> is in the affirmative.

From all I have said in issue one above, my answer to issue 2<sup>15</sup> is logically in the affirmative. This is because even though the contract between the appellants and the respondents freely entered into by the parties on F 28/2/83 was oral, it was binding. The trial court that saw, heard, and appraised the evidence of the witnesses for the appellant especially PW1 and came to the view that there was a breach, was pre-eminently placed to and did, in this case, ascribed values to such evidence. The court below as an appellate court ought not to have disturbed the judgment of the trial court even in G the slightest degree just because it would itself have come to a different conclusion on the same facts, albeit that such a conclusion by the trial court is supported by evidence. See Ajumobi Ogundulu v. Chief E. O. Philips (1973)

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<sup>14</sup> Issue 1 - Whether there was privity of contract.

H \_\_\_\_\_

<sup>15</sup>Issue 2 - Whether there was a breach of that contract see p.

INMLR. 267 at 272; Nzekwu v. Nzekwu (1989) 2 NWLR (part 104) 373 at 393; Anyaoke v. Adi (1986) 3 NWLR (part 13) 73; Adeleye v. Ajiboye (1987)3 NWLR (part 61) 432 at 451 and Issac Stephen v. The state (1986)5 NWLR 978

at 1005.

**The oral transaction entered into by the appellants and the respondents, part of which I had earlier set out above, in my respectful view therefore, gave rise to an enforceable contract between the parties.** See Aouad v. Kessrawani (1956) 1 F. S. C. 35; Nwangwu v. Nzekwu & anor. (1957) 2 F.S.C. 36. and Shell B.P. v. Jammal; Engineering (1974) 4 S. C. 33. **Thus, when after the expiration of the one month the respondents undertook to deliver the vehicle and they failed to do so, there was clearly a breach of the contract** (see Obimiami Brick & Stone (Nig.) Ltd. v. A.C.B. (1992) 3 NWLR (part 229)260), which was oral. **The proposition of law is that parties are presumed to have intended what they have in fact said since an agreement ought to receive that construction which its language will admit and which will best effectuate the intention of the parties, and greater regard is to be had to the clear intention of the parties than to any particular words which they may have used.** See Nwangwu v. Nzekwu & anor (supra).

On issue No. 3 which asks whether the breach gives rise to two D reliefs i.e. damages for breach of contract and damages for detinue, I will first deal with whether damages for detinue was rightly awarded.

Now, for the claim in detinue the appellant is relying on the period from July when a demand for the vehicle's return was made until the 24th of November, 1987 for loss of use of the said vehicle. **To illustrate that Exhibit 2, the letter from the Appellants' solicitors did not constitute an unequivocal demand for the return of the vehicle from the Respondents, nor further still that the imposition by the Respondents that unless the Appellants signed the Satisfaction Note they would not deliver the vehicle to the Appellants constituted an impossible condition, calculated as a clever device to put off the Appellants, can be deciphered from the following excerpt in the trial court's judgment:-**

*"On reaching the defendants workshop, the defendants had not finished repairing the vehicle and he was told to be patient. This witness had earlier on stated that the defendants had been promising to finish repairing the car before 9/7/83 but had failed to repair same. Towards the closing hours on 9/7/83 the witness was asked to pay N400.00 excess which he did and he was given the vehicle and was asked to sign a certain form but PW2 then collected the car and was given the form to give to PW1 for him to sign later. P.W.2 went on to say that when the PW1 returned, he found that the car was not repaired according to his stipulations and so he asked the PW2 to return the car No. KN.5962. KM to the defendants.*

**PW2 said that the defendants changed the left hand front rim with the left hand rear rim which was not affected in the accident. The silver**

**chromes were not changed instead the old ones were panel beaten and put again.**

*The screws holding the chromes were missing. The battery had run down when the P.W.2 wanted to start the car. The P.W. 2 sent back the car to the defendants and pointed out all the defects to the defendants who promised to repair the vehicle the next day. It was on 11/7/83 that the 2nd P.W. sent back the car to the defendants. On 12/7/83, the PW2 went back to the defendants to collect the car but it was not repaired. On 23/7/83, the PW2 went back to the defendants to get the car repaired or get back the N400.00 excess which was paid. The PW2 went to the defendants' Manager and gave the receipt which the said Manager threw away and asked the PW2 to get away with the useless paper.*

*On the basis of the defendants behaviour the plaintiffs consulted a solicitor ..... ” It has been held by this court in Weidman & Walters (Nigeria) Ltd. v. Mojibola Oluwa & ors. (1968) 1 All NLR. 383 in which the case of General Finance and Facilities Ltd. v. Cooks Cars (Romford) Ltd. (1963) 1 W.L.R. 664 at 650-651 (per Diplock, L.J.) was cited with approval, that a plaintiff who has a right of action in detinue has three remedies open to him and it is up to him to decide which option of the following to take:-*

(a) Claim for value of the chattel and damages for its detention. The value of the chattel is as proved at the time of judgment at the trial court and the onus is on the plaintiff to prove the value. He is also to show by evidence the damage suffered by the detention;

(b) Claim for the return of the chattel and damages for its detention;

(c) Claim for the return of the chattel or its value as assessed, and damages for its detention. This option appears to be the best form of action for if the chattel has otherwise been removed from jurisdiction or hidden away and out of the sight of the sheriff there is no alternative other than a distraint for the value of the chattel as assessed plus damages for its detention. See also Alidu v. Manu (1944) 10 W.A.C.A. 217; Okoroji v. Ezuma (1961) All NLR. 183; Christopher Udechukwu v. Isaac Okwuka (1956) 1 F.S.C. 70 at 71 and Sachs v. Miklos (1948) 2 K.B.23

**In the instant case, it cannot be strictly said that there was a demand and a refusal to return, the two essential attributes of detinue vide this court's decision in Odumosu v. A.C.B. Ltd. (1976) 11 S.C. 55 at 74.** This is because after Exhibit 2 was received in evidence, P.W.1 further testified to the following effect:-

*“On 27/7/83, the defendants' Manager and the claims Manager of Royal Exchange Assurance come to my office but I was not in the office. On that very 25/7/83, I called to the office of Royal Exchange Assurance to ask*

them whether they got a copy of the letter which my lawyer wrote to the defendants.

The Manager was not in the office too. The Manager later met me as I was about to leave their office. He told me that he and the defendants manager had been to my office. The claims Manager of Royal Exchange told me that he would mediate so that the matter could be settled out of court. I told him that I was going on tour but after my return, I would see my solicitor. I asked him to see my solicitor and tell him (my solicitor) that he the claims manager had seen me and that when I returned, I would see him (my solicitor). Up till now I have not got my car from Tripoli Motors - the defendants.

On my return, I met my solicitor to tell him that Royal Exchange claims Manager said that he would intervene to see if the matter would be settled out of court but instead my lawyer showed me a letter written to him by the defendants ..... The car KN. 5962 KM is still held by the defendants. The defendants had not refunded the N400 which they collected from the plaintiff as excess. I want the court to order the defendants to return the car Reg. No.KN.5962 KM or its value and pay N4940.00 damages for detention at the rate of N20 per day for 247 days and also the defendants should be ordered to pay damages for breach of contract and the refund of N400.00 paid by the plaintiff to the defendants as excess." (Underlining above is mine for emphasis and comment.).

From the underlined portion of PW1's testimony in the trial court above, it is clear that while there was a demand, there was demonstrably no refusal on the Respondents' part to return the car as such.

Lewis, J.S.C. in Wiedmann and Walters (Nig.) Ltd. Case (supra) referring to Ezeani v. Ejidike (1964) 1 All N.L.R. 402 at page 405, commented on the form that claims for general damages often took to wit: that in conversation (sic conversion) apart from the market value of the goods, there may be damages for consequential loss if not too remote. The basis of assessment of damages in detinue in this court's helpful view, he opined, is that set out in Strand Electric & Engineering Co. Ltd. v. Brisford Entertainments Ltd. (1952) 2 W.B. 246 where Denning, L.J. (as he then was) is reported at page 254 thereof as saying:-

"..... If a wrong doer has made use of goods for his own purpose, then he must pay a reasonable hire for them, even though the owner has in fact suffered no loss. It may be that the owner has in fact suffered no loss. It may be that the owner would not have used the goods himself, or that he had a substitute readily available, which he used without extra cost to himself. Nevertheless the owner is entitled to a reasonable hire. If the wrongdoer has asked the owner for permission to use the goods, the owner would be en-

*titled to ask for a reasonable remuneration as the price of his permission. The wrongdoer cannot be better off because he did not ask permission. He cannot be better off by doing wrong than he would be doing right. He must therefore pay a reasonable hire. This will cover, of course, the wear and tear which is ordinarily included in a hiring charge; but for any further damage B the wrong doer must pay extra. I do not mean to suggest that an owner who has suffered greater loss will not be able to recover it. Suppose that a man used a car in his business, and owing to its detention he had to hire a substitute at an increased cost, he would clearly be able to recover the cost of the substitute. In such cases the plaintiff recovers his actual loss. I am not C concerned with those cases.*

*I am here concerned with the cases where the owner has in fact suffered no loss, than is presented by a hiring charge. In such cases if the wrong doer has in fact used the goods he must pay a reasonable hire for them. Nor do I mean to suggest that a wrong doer who has merely detained D the goods and not used them would have to pay a hiring charge. The damages for detention recoverable against a carrier or a warehouse man have never been measured by a hiring charge. They are measured by the loss actually sustained by the plaintiff, subject, of course, to questions of remoteness. They are like cases of injury to a ship or a car by negligence. If it is put E out of action during repair the wrongdoer is only liable for the loss suffered by the plaintiff. (See the principles set out in the Susquehanna, (1926) A.C.655, and may other cases). The claim for a hiring charge is therefore not based on the loss to the plaintiff, but on the fact that the defendant has used the goods for his own purposes. It is an action against him because he had the F benefit of the goods. It resemble, therefore, an action for restitution rather than action of tort.*

*But it is unnecessary to place it into my formal category. The plaintiffs are entitled to a hiring charge for the period of detention, and that is all that matters."*

G In other words, by definition, the gravamen of the tort of detainee is the wrongful retention of the chattel. Mere retention is enough to ground a cause of action in detainee but a successful plaintiff will only be entitled to nominal damages. See Abed Brothers Ltd. v. Niger Insurance Co. Ltd. (supra) at pages 8 and 9. A successful plaintiff in a case of detainee is entitled to an H order of specific restitution of the chattel, or in default its value and also damages for its detention up to the date of judgment. See the Court of Appeal decision in Oluwa Glass Co. v. Ehinlanwo (1990) 7 NWLR (Part 160) 14 at pages 32-33; this Court's decision in Kosile v. Folarin (1989) 3 N.W.L.R. (part 107) 1 in which Nnaemeka-Agu, J.S.C. quoted with approval the English deci-



sion in Rosential v. Alderton & Sons (1946) K.B. 371 at 374-5 as well as the dictum of Idigbe, J.S.C. in Odumosu v. A. C. B. (supra) at pages 65 - 66; (1976) NSCC. 635 at page 642 (in a case involving, inter alia, the return of documents of title) wherein the learned justice stated succinctly thus:

*“As already pointed out a claim in detinue is basically for the return of the specific chattel detained or its value (as known or assessed); B general damages for unlawful detention may, if any is established, be awarded (for they are not to be presumed in this type of action); and even then they are, generally nominal, unless the evidence establishes a case for substantial award under this head of damages.”*

Unlike an action for conversion which is purely a personal action C and judgment is for a single sum which is the value of the chattel at the date of the conversion, detinue is in the form of an action in rem whereby the plaintiff seeks specific restitution of his chattel resulting in judgment for the delivery up of the chattel or payment of its value as assessed at the time of judgment and for damages for its detention. See Kosile v. Folarin (supra) at page 17 and Ordia v. Piedmont (Nig.) Ltd (1995) 2 NWLR (part 379) 516 at page 532 - 533. In the later case, Iguh, J.S.C., stressing the distinguished features between detinue and conversion, held inter alia as follows:-

*“The gist of liability on detinue is the wrongfully detention of the plaintiff’s chattel by the defendant after the plaintiff has made a demand for E its return. In conversion, on the other hand, the person entitled to the possession of a chattel is permanently deprived of that possession and the chattel is converted to the use of someone else. In the latter case, the wrong is not merely an interference with the plaintiff’s possessory interest in his chattel but also an injury to his right or title in them.”* F

The Federal Supreme Court in a situation analogous to the one in hand in the case of Udechukwu v. Okwuka (supra) said:

*“What must be established in a suit of detinue is wrongful detention by the defendant that is to say the defendant must have shown an intention to keep the car in defiance of the plaintiff. This is shown by proving a demand G and a refusal to deliver. When however, the refusal is conditional it does not necessarily show withholding the chattel against the will of the plaintiff, proving that the condition is reasonable and not merely a device to put off the plaintiff.”*

I therefore take the view that the court below in this regard was right when it H observed, firstly that:

*“Applying those requirements to the instance (sic) case, it is clear that the appellant did not refuse to deliver the vehicle to the respondent. He delivered it but the respondent returned it complaining that it was not prop-*

erly repaired and refused to sign the satisfaction note which will make the Royal Exchange Assurance not to pay the cost of repairs to the appellant” and secondly, that: “In view of the foregoing and on the authority of Christopher udechukwu v. Issac Okwuka (supra) I am of the opinion that the defendant did detain the vehicle subject to the prearranged condition reached at the commencement of the negotiation of the repairs. Therefore the claim for detinue should not have been accepted by the lower court since evidence adduced before that court was not sufficient to warrant a finding of the claim in detinue. The finding of the lower court under this heading of the claim will in the end be set aside.”

**C Furthermore, it has been held in Eunice Adefunke v. D. Ikpehai (1958) W.R.N.L.R 33 that “It is no longer the law that in detinue, the claim can only be for return of the chattel or for its value. At the present day a claim in detinue is to recover the chattel itself and damages for its wrongfully detention.” Having, however, held elsewhere in this judgment that the claim in detinue cannot be sustained, the award of N10,000 made in favour of the respondents on that head of claim, cannot, in my respectful view, be upheld. It is accordingly disallowed.**

Now, coming to whether the breach gave rise to damages, I am of the respectful view that even though in their Amended Statement of Claim under **E PARTICULARS OF DAMAGE** headed: “And the plaintiffs Claim -

- 1. ....
- 2. ....
- 3. Damages for breach of the said agreement.”

the appellants stipulated neither such particulars of the damages i.e. whether **F** general or special damages were what they were asking for, nor gave evidence at the trial as to what quantum of such damages they were claiming. Thus, while the learned trial judge, in my opinion, was correct when he held:

*“I had already decided from the facts that there is a contract between the plaintiff and defendants that the defendants would repair the vehicle to the satisfaction of the plaintiff within one month and the plaintiff would pay N400.00 excess which the plaintiff had already paid.*

*The defendants have therefore breached the contract by not finishing the repairs on 31/3/83 but only delivered the vehicle on 9/7/83 in an unsatisfactory condition. Therefore by not efficiently and expeditiously re-*  
**H** *pairing the said vehicle as agreed by the plaintiff and the defendants, the defendants have breached the contract between them and the plaintiffs.*

*When the defendants refused to repair the vehicle when the PW2 came to collect the vehicle, the defendant ordered the said PW2 to go away ..... At the end of the day, I find and hold that the plaintiff has established*

*its case on the balance of probabilities. The issue to be discussed is how much should be awarded to the plaintiff as damages ....."* he was palpably wrong in so far as he thereafter proceeded to make the following award:-

*"From 1/4/83 to 9/7/83 were 100 days. N20 per day for 100 days will be N2,000.00. I shall therefore award N2,000.00 to the plaintiffs against the defendants for breach of contract."*

I have arrived at the above conclusion irrespective of the further submission made to us by the learned counsel for the appellants, Mr. Oge, who in his supplementary brief of argument, relied on Hadley v. Baxendale (1854) Exch.341 and Maiden Electronics Works Ltd. v. A.G. of the Federation (1974) 1 S.C.53 at 97-98, the latter in which the principle enunciated is that "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 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 contemplation of the parties at the time they made the contract as the probable result of the breach of it."

**These two cases and other further submissions made by learned counsel in his supplementary brief, are, in my respectful view, of no avail to the plaintiffs in as much as the amount flowing from the breach of contract was neither pleaded nor proved** and this, notwithstanding the ingenious argument of learned counsel that the concept of the award of general or special damages giving rise to a nominal award of say, N2,000 minimum, or an enhanced amount due to the depreciation in the value of the naira over the years as becoming imperative and providing the basis for such an award.

It would appear clear that the learned trial judge in the case in hand misconceived the claim of the Appellant in item 3 of the Particulars of Damage as set out on page 2 of this judgment by not stating the specific sum asked for and mixing up same with their claim in detainue. Since the damages of N2,000 awarded by the learned trial judge can neither be categorized as general nor special, the award cannot be said to have any rational backing. The maxim Ubi jus ibi remedium (where there is a right there is a remedy) would, in my view, have no sway here because

(i) the Appellant did not specifically plead the amount recoverable from the breach, and

(ii) it is trite that a court ought not to award to a party that which he did not claim. See Ekpenyong & ors. v. Nyong & ors. (1975) 2 S.C.71 at 80 and Obajimi v. A.G. Western Nigeria (1967) NMLR. 96.

The view I have held above does not of course derogate from my earlier

opinion that the court below was wrong when it held, *inter alia* that

*“I am satisfied on the evidence as a whole that at no stage was there any contract of any kind between the appellant and the respondent. I am therefore of the opinion that in the circumstances of this case there was no contract between them.”*

**B As I have stated herein before, that there was breach of contract is undoubted; what is neither pleaded nor established at the trial is the amount of damages flowing from the breach thereof.**

On whether the learned trial judge properly evaluated the evidence led before him before arriving at the conclusion that the respondents were guilty of a breach of contract, I am of the firm view that from the totality of the evidence adduced by the parties in support of their respective cases, the learned trial judge, even though he seemed to have given the impression that he believed P.W.1 as well as D.W2 alike, arrived at the right conclusion after weighing the evidence on both sides when he held: “suffice it to say that where the evidence of the plaintiffs’ witness differs with that of the defence witness, I prefer that of the plaintiffs’ witness.” It is trite that the Court of Appeal will not substitute its own findings with those of the trial court and even though the evaluation of evidence and findings of facts are matters within the exclusive province of the trial court, an appellate court, will only interfere where they are found to be perverse and misapprehensive of the facts. See Balogun v. Agoola (1974) 1 All N.L.R. (Part 2) 66 and Iyaro v. The State (1988) 1 NWLR (Part 69) 256. Be that as it may, the amount flowing from the breach not having been pleaded and proved, I will make an order striking out Head 3 under “Plaintiffs’ Claim” in the PARTICULARS OF DAMAGE.

F My answer to this issue is accordingly rendered in the negative.

In the light of my answer to issue (iii) above, my answer to issue (iv) which enquires whether the award of damages for breach of contract and damages for detinue amounted to double compensation is rendered otiose.

**The question posed by issue (v) as to whether the Honourable judge came to a right decision based on the totality of evidence before him is, in my respectful view, incompetent and ought therefore to be struck out because by virtue of section 219 of the Constitution of the Federal Republic of Nigeria, 1979 only the Court of Appeal has jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Federal High Court, the High Court of a State, Sharia Court of Appeal of a State and Customary Court of Appeal of a State. This Court is therefore not competent to hear appeals straight from the High Court, Sharia Court of Appeal or Customary Court of Appeal. A ground of appeal complaining directly against the decision of the High Court is not proper. See Adio & ors. v. The State (1986)**

2 NWLR (Part. 24) 581; Harriman v. Harriman (1987) 3 NWLR, (Pt. 60) and Ogoyi v. Umagba (1995) 9 (Part 419) 283. It is only section 213 of Constitution (ibid) which conferred appellate jurisdiction on this court and it is indeed the only court in Nigeria which can hear and determine appeals from the Court of Appeal. The issue raised for our consideration herein is therefore incompetent and it is accordingly struck out. B

In the result, this appeal partly succeeds. Their decision of the court below dismissing the appellants' claim in respect of detinue is hereby affirmed. The judgment of the court below which dismissed the appellants' claim for breach of contract is hereby set aside. As no amount was however claimed by the appellants under Head 3 of their Claim that claim is accordingly C struck out.

I make no order as to costs of this appeal. The costs awarded in the court below are set aside.

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**BELGORE JSC**

I read the judgment of my learned brother, Onu, J.S.C., and I agree with his conclusions on this appeal. The claim for detinue had failed at trial court and no appeal was lodged on it at the Court of Appeal; however the courts below in error awarded damages as if the claim for detinue had been proved. D E

In the present circumstance the plaintiff never claimed any special damage and never proved any. I therefore agree with the judgment of my learned brother, Onu, J.S.C. and I adopt his reasonings and conclusions as mine. F

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**OGUNDARE JSC**

I have had the advantage of a preview of the judgment just delivered by my learned brother Onu, JSC. For the reasons given by him in the said judgment I too affirm the judgment of the Court below dismissing the plaintiff's claim in detinue. I also agree that a case for breach of contract was made out G by the plaintiff but as it did not claim a specific sum by way of special and/or general damages, the claim for breach of contract must be, and is hereby, struck out.

I abide by the consequential order as to costs, both in this Courts and in the Courts below, made by my learned brother, Onu, JSC. H

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**OGWUEGBE JSC**

I have had the privilege of reading the judgment of my learned brother Onu, J.S.C. He has dealt adequately with the issues of law and of fact that

have arisen for determination in this appeal. I agree with him that the appeal partly succeeds. The appeal of the plaintiffs' appeal of the plaintiffs/appellants against the decision of the court below dismissing their claim in detinue is affirmed by me but the decision of the said court also dismissing the plaintiffs/appellants' claim for breach of contract is set aside.

B The defendants/appellants as rightly found by the learned trial judge breached the contract with the appellants by not finishing the repairs on 31:3:83 but he went wrong to make an award of N2,000.00 to the plaintiffs in the following terms:

*"The defendants should pay to the plaintiffs the sum of N2,000.00 C for breach of contract."*

In paragraph 14 of the amended statement of claim under item 3 of the particulars of damage, the plaintiffs claimed as follows:

*"3. Damages for breach of the said agreement."*

This is vague and most unsatisfactory. No specific amount was pleaded and D proved as damage suffered either special or general. The award of N2,000.00 by the learned trial judge cannot be justified in law. Neither the maxim Ubi jus ibi remedium nor the case of Hadley v. Baxendale (1854) 9 Exch. 341 has any application in this case. Item 3 of the particulars of Damage is struck out.

I abide by all the orders made by my learned brother Onu, J.S.C. E including the order as to costs.

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### IGUHJSC

I have had the advantage of reading in draft the leading judgment just delivered by my learned brother, Onu, J.S.C., and I agree entirely with the F reasoning and conclusions therein reached.

The facts of this case have been fully set out in the leading judgment of my learned brother that no useful purpose will be served in my repeating them all over again. It suffices to state that the claims before the trial court were founded in both detinue and breach of contract. I will now examine both G claims.

The gist of liability in detinue is the wrongful detention of the plaintiff's chattel by the defendant after the plaintiff has made a demand for its return. Without proof of wrongful detention on the part of the defendant, a claim in detinue case arise. A detentions not wrongful unless the defendant's H possession is adverse. Accordingly for an action in detinue to succeed, the defendant must have shown a definite intention to keep the chattel in defiance of the plaintiff's rightful claim thereto and this is usually manifested by proving a demand by the plaintiff and a refusal by the defendant to return or deliver the chattel to the plaintiff. When, however, the refusal is conditional, a case of

withholding the chattel against the will of the plaintiff is not necessarily established, provided the condition is reasonable and not a mere device to put off the plaintiff. See Christopher Udechukwu v. Issac 1 F.S.C. 71.

In the present case, the respondents did not refuse to deliver the car in issue to the appellants. On point of fact, there is uncontroverted evidence on record that the respondents delivered the car to the appellants after alleged completion of repairs thereto. The appellants kept the car for some days but subsequently returned it voluntarily to the respondents, complaining that it was poorly repaired. Accordingly, the appellants refused to sign the respondents satisfaction note without which the said respondents would not be paid their cost of repairs by the appellants' insurers, the Royal Exchange Assurance.

Quite clearly, the Royal Exchange Assurance was prepared to pay the balance of the cost of repairs if the satisfaction certificate was signed by the appellants. It however failed to pay in the absence of the production of the said signed certificate of completion of repairs. As already observed, it is not disputed that the car was voluntarily returned to the respondents' garage by the appellants. It seems to me clear in the circumstances that no case in detainee was established by the appellants.

In this regard, the Court of Appeal per Aikawa, J.C.A., commented thus -

*"In view of the foregoing, ..... I am of the opinion that the defendant did detain the vehicle subject to the pre-arranged condition reached at the commencement of the negotiation of the repairs. Therefore the claim for detainee should not have accepted by the lower court since evidence adduced before that court was not sufficient to warrant a finding of the claim in detainee. The finding of the lower court under this heading of the claim will in the end be set aside."*

Similarly, Achike, J.C.A., in his own contribution on the issue expressed the following opinion -

*"The learned trial judge made an award of the sum of N10,000,00 for detainee. I have earlier in this judgment held that such an award is untenable. An award for a sum of money for detainee only arises in the event of the defendant's failure to produce and release the detained goods. That is not the case here because there was evidence, which the court rightly accepted, as to the availability and willingness on the part of the defendants to release the motor vehicle; ..... There was clearly no justification for the award of any sum o money for detainee."*

I agree entirely with the above observations of the Court of Appeal.

On the issue of breach of contract, however, the court below, revers-

ing the finding of the trial court, held that there was no privity of contract, between the parties in this action. Said Aikawa, J.C.A. -

*“I am satisfied on the evidence as a whole that at no stage was there any contract of any kind between the appellant and respondent. I am therefore of the opinion that in the circumstances of this case there was no contract between them.”*

Achike, J.C.A., for his own part held -

*“In the light of the foregoing, I hold that there was no privity of contract between the plaintiffs and defendants for the repairs of the former’s vehicle. It follows that Issue Nos. 1 and 5 which were considered together must be resolved in favour of the appellants. It goes without saying that where the plaintiff has failed to establish the existence of a binding contract with the defendant, there will be no basis whatsoever for considering the breach of the alleged contract, the quantum or damages to be awarded for the breach of the contract .....*”

D In this regard the learned trial judge after a careful consideration of the evidence arrived at the following facts -

*“(a) That the vehicle No. KN 5962 KM was comprehensively insured with the Royal Exchange Assurance.*

*(b) That the vehicle was damaged in an accident.*

E *(c) That the vehicle was sent to Leventis Motors Kano but the company had no ready parts to effect the repairs.*

*(d) That PW1 went to the defendant company and the defendant company told the PW1 that they had the spare parts to effect the necessary repairs.*

F *(e) That the PW1 went to the Royal Exchange Assurance, the Insurers and arranged with them to tow the vehicle from the premises of the Leventis Motors Kano to the premises of the defendant company for repairs.*

G *(f) That PW1 got a letter from the Insurers authorizing the defendant company to tow the vehicle to their garage for repairs from Leventis Motors Kano.*

*(g) That the PW1 followed the defendant’s driver to the premises of the Leventis Motors Kano and handed over the letter of authorization to the driver before the PW1 went away.*

H *of Leventis Motors Kano.*

*(i) That the PW1 went to the defendants and the defendants promised to finish the repairs within one month from 1/3/83.*

*(j) That the Royal Exchange gave the defendants the approval to effect repairs and collect N400 as excess from the plaintiff.*



*(k) That the defendants did not repair the vehicle within one month as agreed with the PW1.*

*(i) That the vehicle was not repaired satisfactorily on 9/7/83 which was a Saturday when the defendant released the vehicle to PW2.*

*(m) That the defendants received the sum of N400 excess from the plaintiff.”*

B

None of the above findings was appealed against or seriously challenged whether in the Court of Appeal or before this court. Accordingly the position is that the appellants, through P.W.1, their Managing Director, contacted the respondents who admitted that they had the necessary spare parts with which to effect to the appellants' car which, at all material times, was insured by Royal Exchange Assurance. With the written consent and approval of the appellants' insurers, the car was taken to the respondents' workshop for repairs. This was on the express condition and agreement by all concerned, that is to say, the appellants, the respondents and the appellants' insurers, Royal Exchange Assurance, that repairs to the vehicle would be completed within one month from the 1st March, 1983.

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D

Following this understanding, the appellants paid the excess of N400.00 to the respondents. The appellants insurers had undertaken to pay the balance of the cost of repairs to the respondents on production by the said respondents of certificate of completion of repairs duly signed by the appellants. It is on these facts that the court below reversed the trial court's finding that there was privity of contract between the appellants and the respondents to this appeal.

E

With the greatest respect to the court below, I find myself unable to accept that there was no privity of contract between the parties hereto. The law is well settled that in a situation where the owner of a vehicle takes it to a garage for repairs, and indicates that the cost of repairs would be settled by his insurers, and introduces his said insurers to the repairers and his insurers expressly agree to settle the cost of repairs, there exists a tripartite contract involving the owner of the vehicle, the repairer and the insurers and each can acquire rights and come under obligations thereunder. Under such circumstances, it would be entirely wrong to rule out the existence of a contract between the owner of the car and the repairers. The tripartite agreement is one to which there are three parties, namely, the owner of the car, the repairers and the insurers and each can acquire rights and come under obligation as aforesaid - See Brown & Davis Ltd. v. Galbraith (1972) 3 All E.R. 31 at 36, Charnock v. Liverpool Corporation and Another (1968) 3 All E.R. 473 at 475. See too Obed Brothers Ltd. v. Niger Insurance Co. Ltd. and Another (1976) N.M.L.R. 1 at 6. I entertain no doubt that on the facts of the present case, there exists a

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definite privity of contract between the appellants and the respondents.

The appellants' vehicle was not satisfactorily repaired as at the 9th July, 1983, more than three months after the date contracted by the parties within which repairs to the appellants' vehicle would be completed. It seems to me clear that the respondents were in definite breach of their tripartite B agreements with both the appellants and their insurers. I will now examine the question of the damages claimed.

The trial court made an award of N2000.00 to the appellants as damages for breach of contract whilst the court below set this award aside on the ground that no breach of contract was established by the appellants. The C appellants' final claims against the respondents as amended by various orders of court are, however, as follows -

*"And the plaintiffs claim -*

*(1) An order for the delivery up of the said motor car or its value N54, 639,25.*

D *(2) Damages for its detention at the rate of N20.00 per day from 1st April 1983 till date of judgment.*

*(3) Damages for breach of the said agreement.*

*(4) Costs."*

It will be observed that the appellants' only claim in respect of breach E of contract was reflected in the third arm of their claims. That relief simply claimed damages for breach of contract. It did not specify the precise sum of money claimed in respect of court fees would have been assessed and paid for in order to render the claim competent.

It is settled law that a court must not grant to a party, a relief which he F has not sought or which is more than he has claimed. See Ekpenyong v. Nyony (1975) 2 S.C. 71 at 81 -82, Nigeria Development Housing Society Ltd. v. Mumuni (1977) 2 S.C. 57 at 81, Olurotimi v. Ige (1993) 8 N.W.L.R. (Part 311) 257 at 271, Obayagbona v. Obazee (1972) 5 S.C. 427 etc. To award any pecuniary sum of money to the appellants would clearly involve granting to them more G than what they have claimed which the law does not allow.

In the final result, this appeal succeeds in part and the decision of the court below dismissing the appellants' claim in respect of detinue is hereby affirmed. The judgment of the court below which dismissed the appellants' claim for breach of contract on the ground that there was no privity of contract H between the parties is hereby set aside. A case for breach of contract was made out by the appellants but as no amount of money was claimed in that regard, no award would be made under this head.