

SUPREME COURT OF NIGERIA
8TH JANUARY, 1998. SC. 158/1991
CORAM:- M. L. UWAI CJN, S. M. A. BELGORE, E. O.
OGWUEGBU, U. MOHAMMED, A. I. IGUH, JJSC.

CRYRIL OJINI APPELLANT
AND
OGO OLUWA MOTORS NIGERIA LTD. RESPONDENT

DAMAGES - Absurd and unreasonable award - What the court must take into consideration - In awarding damages.

DAMAGES - Review by appellate court - Where satisfied that the amount awarded is a wholly erroneous estimate of the damage - Disturbing the trial court's award is justified.

TORTS - Conversion - What plaintiff may claim - Is the value of the chattel - Though special damages may also be claimed - It does not include loss of ordinary earnings after the date of conversion.

TORTS - Trespass or conversion - Court of Appeal rightly held that plaintiff's action is in trespass and not in conversion or detinue - Circumstances under which action can be maintained in conversion or trespass.

FACTS

The plaintiff/appellant, a transporter, bought a Peugeot saloon car on higher purchase from one Mr. Titus Ogbara who is defendant's/respondent's agent. The plaintiff paid a deposit of N3,000.00 and promised to liquidate the balance of N6,600.00 in ten equal monthly instalments. Plaintiff was to pay the last due instalment on 18-8-80. On or about the 25-8-80, the defendant seized and took away the car. The plaintiff who used the car as a taxi claimed he was earning a daily income of N80.00. He therefore filed an action before the high Court claiming the sum of N64,000.00 being the loss he incurred for the period of 800 days at the

rate of N80.00 per day. The defendant denied the claim, alleging that it sold the same car on higher purchase to a different person who defaulted in making the agreed instalmental payment. The defendant seized the car as a result of this default in payment and the sum of N5,270.00 was outstanding at the time of the seizure. But pursuant to a court order by the magistrate who handled the criminal aspect of this matter, the defendant returned the car to the plaintiff. Defendant counter-claimed the value of the car as at November, 1982.

The trial court found in favour of the plaintiff, dismissed the defendant's counter-claim and awarded the sum of N64,000.00 to the plaintiff being special damages for the detention and conversion of the plaintiff's car. Defendant's appeal to the Court of Appeal succeeded in part as that court held that the plaintiff can only succeed in trespass and reduced the damages awarded to the sum of N15,000.00. Being dissatisfied, the plaintiff has now appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

"1. Was the plaintiff also entitled to succeed in conversion?"

2. Was the Court of Appeal justified in interfering with the damages awarded by the trial judge without showing that the judge acted on wrong principle?"

3. In interfering with the damages awarded by substituting the sum of N15,000.00 it assessed for N64,000.00 awarded by the trial Court, whether the Court of Appeal applied the wrong principle?"

HELD (Unanimously dismissing the appeal per lead judgment of OGWUEGBU JSC)

Torts - Trespass or conversion

1. The court below was right in its conclusion that the plaintiff's cause of action was in trespass and not in conversion or detinue. This is so because the cause of action in conversion, accrues on the date of the conversion and it is based on an unequivocal act of ownership by a defendant of goods of the plaintiff without any authority or right in that behalf, for example, an action such as acquiring, dealing with or disposing of

goods which is consistent only with the rights of an owner as distinct from the equivocal acts of one who is entrusted with goods. See Beaman v. A.R.T.S. Ltd. (1948) 2 K.B. 89 and Fauldes v. Willoughby (1841) 8 M & W 544 at 548; 151 E.R. 1153. In order to constitute a conversion, it is necessary either that the party taking the goods should intend some use to be made of them by himself or by those for whom he acts, or that, owing to his act, the goods are destroyed or consumed to the prejudice of the lawful owners. Trespass, unlike conversion and detinue, is actionable per se, that is, without any proof of damage and it can be committed without any denial of or interference with title but it lies only in favour of a plaintiff who has possession as the appellant in this appeal or at the suit of a person having the immediate right to possession. (p.22 A)

Conversion - What plaintiff may claim

2. In a claim for conversion, only the value of the chattel at the date of conversion may be claimed. Special damages may also be claimed but it does not include a claim for loss of ordinary earnings after the date of conversion. See Darefooh v. Kareem (1941) 7 W.A.C.A. 113 and Stitch v. Attorney-General of the Federation of Nigeria & Ors. (1986) 12 S.C. 373 at 421-424 and 447-448. The appellant could not therefore have recovered the ordinary earnings of N80.00 per day in an action for conversion and he could not have done so in detinue. On the authorities, the appellant could not have recovered these ordinary earnings in an action for conversion. The court below was fully justified in awarding damages for trespass to his vehicle which was in his possession at the time he instituted the action. He even founded his action in trespass, the addition of the words "and/or conversion" in paragraph 8 of the statement of claim notwithstanding. (p. 22 F & 23 C)

Absurd and unreasonable award

3. I endorse the above reasonings of the court below. The appellant's claim of N80.00 per day for 800 days does not fall or stand by his proof of that amount. It is the duty of the court in assessing the damages suffered by the appellant in this particular case, to determine what is

reasonable earnings of a vehicle of that nature for the period concerned taking into account the wear and tear of the vehicle and the fact that it would have undergone routine servicing and even major repairs during the period coupled with the fact that the commercial driver might have
B fallen sick and unable to attend his duties on some days. For any court to award N64,000.00 for 800 days at the rate of N80.00 per day on the facts and circumstances of this case, was unreasonable and absurd.
(p. 23 H)

C
Damages - Review by appellate court

4. An appellate court is not justified in substituting a figure of its own for that awarded by the lower court merely because it would have awarded a different figure if it has tried the case at first instance. Before it can
D properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law such as taking into account some irrelevant factor or leaving out of account some relevant factor, or that the amount awarded is either so ridiculously low or so
E ridiculously high that it must have been a wholly erroneous estimate of the damage. If the submissions of the learned appellant's counsel is upheld, it means, as rightly reasoned by the court below, that for a car purchased at N9,000.00 the plaintiff/appellant would within three years
F have earned the sum of N34,200.00 and still kept the vehicle. There was therefore every justification in disturbing the award made by the learned trial judge. (p. 24 D)

REPRESENTATION

G Chief E. Nwokoye for the Appellant
A. U. Kalu for the Respondent

CASES REFERRED TO

H Fisher v. Princes (1962) 3 Burr. 1363
Solloway v. McLaughlin (1938) A.C 247 at 258-259
Strand Electric and Engineering Co. Ltd. v. Brisford Entertainments Ltd.
(1952) 1 ALL E.R. 796

Weidemann & Walters (Nig.) Ltd. v. Oluwa Intra-Motors (Nig.) Ltd.
(1968) 1 ALL N.L.R. 383

Ekpe v. Fagbemi (1978) N.S.C.C. 211 at 215

Flint v. Lovel (1935) 1 K.B. 350 at page 360

Sodipo Col Ltd. v. Daily Times (Nig) Ltd. (1972) 11 S.C. 69 at page 79 B

Beaman v. A.R.T.S. Ltd. (1948) 2 K.B. 89

Darefooh v. Karem (1941) 7 W.A.C.A. 113

BOOKS REFERRED TO

Mayne & McGregor on Damages 14th Ed. para. 108 pp. 744 - 755 C

Halsburys Laws of England 3rd Ed. vol 36 para. 1321 p. 795

LEAD JUDGMENT BY OGWUEGBU JSC

This appeal is against the decision of the Court of Appeal, Enugu D
Division delivered on 8th December, 1989 reducing to N15,000.00 the
sum of N64,000 special damages awarded in favour of the plaintiff by
the learned trial judge.

The facts of the case are that the plaintiff who was a transporter E
bought on hire purchase, a Peugeot saloon car registration No. IM 6593
L from the defendant's agent, Mr. Titus Ogbara trading in the name and
style of Doherty Motors & Co. (Nig). The plaintiff paid a deposit of
N3,000.00 with promise to liquidate the balance of N6,600.00 in ten F
equal monthly instalments. The plaintiff used the car as a taxi and made
a daily income of N80.00. The instalmentals were paid as and when due
and the last instalment being on 18th August, 1980.

On or about 25th August, 1980, At Ediba in the Cross River G
State, the defendant seized and took away the said car. By reason of the
said seizure, the plaintiff alleged that he was unable to carry on his taxi
business and was in consequence, deprived of the profits of N80.00 per
day for 800 days. The plaintiff reported the seizure to the police where-
upon Titus Ogbara was tried and convicted by an Ugep Chief Magistrate's H
Court in charge No. MUG/403C/80. The court ordered that the car be
returned to the plaintiff. The defendant surrendered the motorcar to the
plaintiff on 2nd November, 1992 when confronted with the order of the

court. He claimed the sum of N64,000.00 "being general and/or special damages for trespass to goods and or conversion" for the period 25:8:80 to 2:11:82.

The defendant, Ogo Oluwa Motors (Nig) Ltd. denied the plaintiff's claim. It was its case that about 10:12:79, it sold on hire purchase the very same motor vehicle to one Femi Ogbara who paid a deposit of N3,000.00 with an undertaking to liquidate the balance by monthly instalments of N630.00. Femi Ogbara paid only two instalments and in August, 1980 the defendant seized the car through its agents. At the time of seizure, the sum of N5,270.00 was outstanding. Following a court order, he returned the vehicle to the plaintiff. He counter-claimed the value of the said motor vehicle as at November, 1982 and general damages.

After reviewing the evidence and the applicable law, the learned trial judge awarded N64,000.00 as claimed and dismissed the defendant's counter-claim. He stated:

"In the event, there will be judgment for special damages for the detention and conversion of the plaintiff's car from 25-8-80 to 21-11-82. The plaintiff's claim therefore succeeds and there will be judgment for the plaintiff in the sum of N64,000 with costs of N400 in his favour. In the event, the defence and counter-claim of the defendants are hereby dismissed."

Aggrieved by the decision, the defendant appealed to the Court of Appeal, Enugu Division. As stated above, the court below allowed the appeal, set aside the award of N64,000.00 as damages and substituted an award of N15,000.00. Dissatisfied with the decision of the Court of Appeal, the plaintiff appealed to this court.

Briefs of argument were filed by the plaintiff and the defendant who will be referred to as appellant and respondent respectively in this judgment. The appellant formulated three issues for determination in the appeal. The issues read:

1. Was the plaintiff also entitled to succeed in conversion?
2. Was the Court of Appeal justified in interfering with the damages awarded by the trial judge without showing that the judge acted on

wrong principle?

3. In interfering with the damages awarded by substituting the sum of N15,000.00 it assessed for N64,000.00 awarded by the trial Court, whether the Court of Appeal applied the wrong principle?"

On its own part, the respondent urged the court to determine the following questions:

"(i) Was the Court of Appeal right to hold that the Appellant cannot sue the Respondent in conversion?"

(ii) Assuming but without conceding that the appellant could sue in conversion what is the measure of damages?"

(iii) Was the Court of Appeal right to interfere with the trial Court's award of N64,000.00?"

I will determine this appeal on the issues identified by the appellant as they adequately cover the three grounds of appeal filed by him.

On the first issue for determination, it was argued in the appellant's brief that if a person is entitled to possession of a chattel or has a right to the immediate possession thereof, it is conversion to take it out of such possession with the intention to exercise a permanent or temporary control or dominion over it and that once conversion has taken place, it is not erased because the defendant returned the chattel or that the plaintiff otherwise resumed possession of it before instituting an action.

We were urged to hold that the court below was in error when it held that the appellant could not sue in conversion after recovering the vehicle from the respondent. The cases of Fisher v. Princes (1962) 3 Burr. 1363 and Solloway v. McLaughlin (1938) A.C. 247 at 258-259 were referred to us.

On the second issue, it was submitted that in all cases of trespass to goods, special damages may be recovered if they flow directly from the wrongful acts and are claimed. It was further submitted that the appellant pleaded particulars of special damages in paragraphs 5 and 8 of the statement of claim, led evidence in proof of the special damages claimed and tendered Exhibit 10 to prove that the appellant earned N80.00 daily from the time he acquired possession of the vehicle until it was seized by the respondent.

Learned counsel for the appellant further submitted in the brief that the court below agreed that the award of special damages by the trial court was based on evidence not challenged by the respondent who had the opportunity of doing so and that the court below did not identify any wrong principle of law upon which the trial court acted or that the award was so extravagant before interfering with it. We were referred to Strand Electric and Engineering Co. Ltd. v. Brisford Entertainments Ltd. (1952) 1 ALL E.R. 796, Onaga v. Micho (1961) 1 ALL N.L.R. 324 at 328, Ekpe v. Fagbemi (1978) N.S.C.C. 211 at 215 as well as Mayne and McGregor on Damages 14th ed. paragraph 108 pages 744-755 and Halsburys Laws of England, 3rd edition, Volume 38, paragraph 1321 page 795.

On the third issue, it was submitted on behalf of the appellant that by awarding the sum of N15,000.00 as damages for trespass, the court below would have readily confirmed the N64,000.00 awarded by the trial court if the court below had considered the detention and conversion of the vehicle for eight hundred days during which time the respondent made use of it. It was further submitted that the court below did not appreciate the principles enunciated in Weidemann & Walters (Nig.) Ltd. v. Oluwa Intra-Motors (Nig.) Ltd. (1968) 1 ALL N.L.R. 383. We were urged to hold that the Court of Appeal applied the wrong principle in determining the amount it awarded to the appellant.

It was the contention of the respondent's counsel that at the time the appellant commenced his action, the latter having regained possession of the vehicle he could not sue in conversion and that the court below was right in so holding. He referred to the case of Kosile v. Folarin (1989) 3 N.W.L.R. (Pt. 107)1 at page 10.

On interference of the Court of Appeal with damages awarded by the learned trial judge, it was submitted on behalf of the respondent that before an appellate court can properly intervene, it must be satisfied either that the Judge in assessing the damages applied a wrong principle of law such as taking into account some irrelevant factors; or leaving out of account some relevant factors; or that the amount awarded is either so ridiculously low or high that it must have been a wholly erroneous estimate of the damages. He cited and relied on the following decided cases:

Obere v. Board of Management of Eku Baptist Hospital (1978) 6-7 D.C. 15 at 24., Flint v. Lovel (1935) 1 K.B. 350 at page 360, Sodipo Col Ltd. v. Daily Times (Nig) Ltd. (1972) 11 S.C. 69 at page 79, Onaga v. Micho supra, Agaba v. Otubusin (1961) 1 ALL N.L.R. 299 at page 300 and Uwa Printers (Nig) Ltd. v. Investments Trust Co. Ltd. (1988) 5 B N.W.L.R. (Pt. 92) 110 at page 218. It was further submitted that the case of Weidemann & Walters (Nig) Ltd. v. Oluwa Intra Motors (Nig) Ltd. & Or. supra is apposite. We were urged to dismiss the appeal.

The two complaints of the appellant are in respect of the finding of the court below that the appellant is not entitled to recover in conversion after regaining possession of the vehicle and the reduction it made in the amount of damages awarded by the learned trial judge.

The learned trial judge awarded the sum of N64,000.00 as special damages for the detention and conversion of plaintiff's car. (underlining is for emphasis). He concluded his judgment as follows:

"In the event, there will be judgment for special damages for the detention and conversion of the plaintiff's car from 25/8/80 to 2/8/82. The plaintiff's claim therefore succeeds and there will be judgment for the plaintiff in the sum of N64,000.00 with costs of N400 in his favour." The Court of Appeal came to the conclusion that the appellant could not have sued in conversion or in detinue. It held:

"The action was commenced on 7th December, 1982 when the Writ of summons was issued. In paragraphs 4 and 5 of the Statement of Claim, the plaintiff pleaded thus:

"....."

From the above extracts of the plaintiff's statement of claim, the plaintiff made it clear that he had had back in his possession the vehicle in dispute since 2/11/82. So, when he commenced his action on 7/12/82, he could not be suing for conversion per se. And also the claim could not be one in detinue since a claim in detinue is primarily for the return of the chattel detained against the will of the person entitled to its possession. The plaintiff could therefore not have been suing for the return of a vehicle which he had in his possession at the time of the commencement of the action. This looks to me like an action for damages

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arising in trespass."

The court below was right in its conclusion that the plaintiff's cause of action was in trespass and not in conversion or detinue. This is so because the cause of action in conversion, accrues on the date of the conversion and it is based on an unequivocal act of ownership by a defendant of goods of the plaintiff without any authority or right in that behalf, for example, an act such as acquiring, dealing with or disposing of goods which is consistent only with the rights of an owner as distinct from the equivocal acts of one who is entrusted with goods. See Beaman v. A.R.T.S. Ltd. (1948) 2 K.B. 89 and Fauldes v. Willoughby (1841) 8 M & W 544 at 548; 151 E.R. 1153. In order to constitute a conversion, it is necessary either that the party taking the goods should intend some use to be made of them by himself or by those for whom he acts, or that, owing to his act, the goods are destroyed or consumed to the prejudice of the lawful owners.

Trespass, unlike conversion and detinue, is actionable per se, that is, without any proof of damage and it can be committed without any denial of or interference with title but it lies only in favour of a plaintiff who has possession as the appellant in this appeal or at the suit of a person having the immediate right to possession. The sole question to be determined is whether the defendant had directly interfered with the plaintiff's possession.

In a claim for conversion, only the value of the chattel at the date of conversion may be claimed. Special damages may also be claimed but it does not include a claim for loss of ordinary earnings after the date of conversion. See Darefooh v. Kareem (1941) 7 W.A.C.A. 113 and Stitch v. Attorney-General of the Federation of Nigeria & Ors. (1986) 12 S.C. 373 at 421-424 and 447-448. The appellant could not therefore have recovered the ordinary earnings of N80.00 per day in an action for conversion and he could not have done so in detinue. The appellant in paragraph 8 of his statement of claim, claimed the sum of N64,000.00 being general and/or special damages for trespass to goods thus:

"8. And the plaintiff claims the sum of N64,000.00 (Six four thousand naira) being general and/or special damages for trespass to goods and/or conversion as per particulars set out in paragraph 5 above, that is profits or earnings of the said vehicle at N80.00 per day for 800 days."

B

And paragraph 5 of the said statement of claim reads:

"5. The plaintiff in consequence lost the value of the said taxi car for the period from 25/8/80 to 2/11/82 and was unable to carry on his said business and was deprived of the profits of N80.00 per day for 800 days which he would otherwise have made, and he has thereby suffered loss and damage."

C

On the authorities, the appellant could not have recovered these ordinary earnings in an action for conversion. The court below was fully justified in awarding damages for trespass to his vehicle which was in his possession at the time he instituted the action. He even founded his action in trespass, the addition of the words "and/or conversion" in paragraph 8 of the statement of claim notwithstanding.

D

The next complaint of the appellant is the interference of the court below with the damages awarded by the learned trial judge. The court below said:

"But as I had said earlier, the damages awarded are in my view excessive. I should in this case award such damages as (sic) do justice to both parties. The plaintiff respondent if indeed he made N80.00 per day on the car would have earned N19,200 in the first 8 months when he had the vehicle before it was seized. The car had been purchased for only N9,600.00 so that the plaintiff would have more than doubled his outlay on the car within those eight months. Even now he still has the vehicle with him. It seems to me that, given the fact that the use of the expression "special damages" is inappropriate in a case as this, I think the lower court should have used the evidence as a guide in determining the damages to be awarded. It is obviously absurd to award N64,000.00 on the facts and circumstances."

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I endorse the above reasonings of the court below. The appellant's

claim of N80.00 per day for 800 days does not fall or stand by his proof of that amount. It is the duty of the court in assessing the damages suffered by the appellant in this particular case, to determine what is reasonable earnings of a vehicle of that nature for the period concerned taking into account the wear and tear of the vehicle and the fact that it would have undergone routine servicing and even major repairs during the period coupled with the fact that the commercial driver might have fallen sick and unable to attend his duties on some days. For any court to award N64,000.00 for 800 days at the rate of N80.00 per day on the facts and circumstances of this case, was unreasonable and absurd. See Weidemann & Walters (Nig) Ltd. v. Oluwa Intra Motors (Nig) Ltd. & or. (supra) and General & Finance Facilities Ltd. v. Cooks Cars (Romford) Ltd. (1963) 1 W.L.R. 644.

An appellate court is not justified in substituting a figure of its own for that awarded by the lower court merely because it would have awarded a different figure if it has tried the case at first instance. Before it can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law such as taking into account some irrelevant factor or leaving out of account some relevant factor, or that the amount awarded is either so ridiculously low or so ridiculously high that it must have been a wholly erroneous estimate of the damage. See Flint v. Lovel (1935) 1 K.B. 354 at 360, Sidipo & Co. Ltd. v. The Daily Times of Nigeria Ltd. (1972) 11 S.C. 69 at 77, Uwa Printers Nig. Ltd. v. Investment Trust Co. Ltd. (1988) 19 NSCC (Pt. 3) 195 at 205. Baptist Hospital (1978) 6-7 S.C. 15 at 22-23 and Agaba v. Otabusin (1961) 1 ALL N.L.R. 299 at 300.

If the submissions of the learned appellant's counsel is upheld, it means, as rightly reasoned by the court below, that for a car purchased at N9,000.00 the plaintiff/appellant would within three years have earned the sum of N34,200.00 and still kept the vehicle. There was therefore every justification in disturbing the award made by the learned trial judge.

In the result, I dismiss the appeal and affirm the judgment of the Court of Appeal dated 8th December, 1989. I award the respondent N10,000.00 costs in this appeal.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Ogwuegbu, J.S.C. I agree that the appeal lacks merit for the reasons stated therein.

Accordingly, the appeal is hereby dismissed with N10,000.00 costs to the Respondent.

BELGORE JSC

I read in advance the judgment of my learned brother Ogwuegbu, J.S.C. with which I am in full agreement. When a person, by deliberate act, deals with the chattels of another in a manner inconsistent with that other's right whereby he is deprived of the use and possession thereof, the tort of conversion is committed. To be liable for conversion the defendant need not intend to question or deny the plaintiff's rights but it is enough that his conduct on the chattel is inconsistent with the plaintiff's rights. In the instant case on appeal there is no proof of conversion; what has been clearly proved is the issue of trespass to chattel of the appellant. The Court of Appeal was therefore right to have held that the trial Court was in error to have found in conversion. I find no merit in this appeal and I also dismiss it with N10,000.00 costs to the respondent.

MOHAMMED JSC

I have had the preview of the judgment just read by my learned brother, Ogwuegbu J.S.C., in draft, and I agree with him that this appeal has failed. The appellant, has failed to advance any convincing reason for me to disturb the judgment of the court below. The appeal is accord-

ingly dismissed. I also award N10,000.00 costs to the respondent

IGUH JSC

I have had the advantage of a preview of the leading judgment
B just delivered by my learned brother, Ogwuegbu, J.S.C. and I agree entirely that this appeal is without substance and ought to be dismissed.

The appellant's claim against the respondent is for N64,000.00
being general and special damages for trespass to the Peugeot Saloon car
C No. IM 6593 L bought by the said appellant under a hire purchase agreement. The appellant, in the alternative, has claimed the said amount being general and special damages for conversion. The Court of Appeal had affirmed the finding of the learned trial Judge to the effect that the appellant had established an actionable wrong against the respondent by the
D unlawful seizure of the said car.

It is plain to me that both courts below were right on the issue of liability against the respondent in so far as the tort of trespass to the said car was concerned. Although the trial court entered judgment for the
E appellant against the respondent in the sum of N64,000.00 as claimed, I entertain no doubt that the disturbance of this award by the court below by reducing the amount to N15,000.00 is fully justified, having regard to the cogent reasons advanced by that court for so doing.

It is for the above and the more detailed reasons contained in the
F judgment of my learned brother, Ogwuegbu, J.S.C., with which I fully agree, that I, too, dismiss this appeal as unmeritorious. I abide by the order for costs therein made.

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