

SUPREME COURT OF NIGERIA
6TH MARCH, 1998. SC. 260/1993
CORAM:- A. B. WALI, M. E. OGUNDARE, E. O. OGWUEGBU,
U. MOHAMMED, S. U. ONU, JJSC.

MERIDIEN TRADE CORPORATION

LIMITED PLAINTIFF/RESPONDENT

AND

METAL CONSTRUCTION (W.A.)

LIMITED DEFENDANT/APPELLANT

PLEADINGS - Traverse - Is not effective - In a claim for liquidated demand in money - Where the allegation had not been denied expressly or by implication - It must be deemed to be indirectly admitted.

PLEADINGS - Proof by evidence - Where the averments in the statement of claim were expressly admitted in the statement of defence - Such averments need no further proof.

PLEADINGS - Traverse - Whether by denial or refusal to admit - Must not be evasive - But must answer the point of substance.

WORDS & PHRASES - Pleadings - "If any sum at all" - Is quite different from or any sum at all - And makes a world of difference to the meaning of the pleading.

FACTS

The Plaintiff (now Respondent) had claimed from the Defendant (now Appellant) as hereunder: "...the sum of N95,220.15 being the price of steel sold to the defendants by the Plaintiffs at the defendants' request together with interest at 17% per annum....." In the Statement of Defence the Defendant denied the claim and went further in paragraph 5 and averred thus:

"with further reference to Paragraphs 6,7 and 8 of the Statement of claim,

the Defendant avers that the total value of its purchases of steel from the Plaintiff was N510,722.94 but denies that the sum of N95,220.15k, if any sum at all remains unpaid".

At the conclusion of trial, the learned trial Chief Judge held that the averment above was an evasive traverse and as such it amounted to admission of the Plaintiff's claim. Judgment was entered in the Plaintiff's favour and the defendant's counter claim was dismissed. The Defendant being dissatisfied appealed unsuccessfully to the Court of Appeal. It had now further appealed to the Supreme Court. And in its written brief of argument, it set out the following two questions as calling for determination:

ISSUES FOR DETERMINATION.

"1. Whether the court was right to give judgment to the plaintiff who having elected to prove his case, failed to do so on the ground that the statement of defence was evasive.

2. Whether the statement of defence in this case was in fact evasive".

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

Traverse - Must not be evasive

1. The basic rule of pleading is that a traverse whether by denial or refusal to admit, must not be evasive but must answer the point of substance. The pleader must deal specifically with every allegation of fact made by his opponent; he must either admit it frankly or deny it boldly. Any half-admission or half-denial is evasive. In Thorp v. Holdsworth (1876) 3 Ch.D. 637 at 639 Jessel, M.R put the rule in these words:

"The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules of Order XIX was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.

(p. 458 E)

Words & phrases - "If any sum at all"

2. In a case such as the one in hand where the plaintiff alleges that a certain amount is owing to him, it is not enough for the defendant to deny that he owes that sum but must go on to deny that he owes any part thereof or else set out how much he owes.

It is submitted in the Appellant's Brief that:

"It is clear from the above that the defendant not only denied that the total value of the goods was N95,220.15 but went on to deny that the sum of N95,220.15 or any sum at all remained unpaid in other words denying any outstanding balance on the total Purchases of N510,722.94" (underlining is mine).

With respect, this cannot be a correct interpretation of paragraph 5 of the statement of defence. The word used in the pleading is not OR but IF and that makes a world of difference to the meaning of the pleading. (p. 460 A)

Allegation that had not been denied expressly or by implication

3. The conclusion I reach is that there has been no proper and/or effective traverse of paragraphs 6,7 and 8 of the statement of claim in this case. The Courts below are quite right in the conclusion reached by them on this point. As the allegation by Plaintiff that the Defendant owed it the sum of N95,220.15 had not been denied expressly or by implication by the Defendant, the allegation must be deemed to be indirectly admitted and the Plaintiff was not obliged to establish it by evidence - see: Economides Vs. Thomopoulos Ltd. (1956) 1 FSC.7. (p. 460 H)

Proof by evidence

4. It is also contended in this appeal that as the Plaintiff who elected to call evidence failed to establish by evidence its case, the latter should have been dismissed. I have considered the arguments advanced in support of this contention. Regrettably, however, I find no substance in those arguments. Nowhere in the pleadings was computation for conversion from foreign to Nigerian currency made an issue. Paragraphs 3,4 and 5 of the statement of claim were expressly admitted by the De-

pendant in paragraph 2 of its statement of defence. The averments in those paragraphs need no further proof. There was evidence from Plaintiff's witness that demands were made on the Defendant to settle its indebtedness to it but there was no response from the Defendants to the demands. (p. 461 B)

REPRESENTATION

Ifeanyi Nweze Esq. for the Appellant

C Respondent's counsel Mr. Ajumogobia absent

CASES REFERRED TO

Thorp v. Holdsworth (1876) 3 Ch. D. 637

D Lewis & Peat (N.R.I) Ltd. v. Akhimien (1976) 1 ANLR Part 1 page 460 at 465 & 466

Ugochukwu v. Cooperative & Commerce Bank (1966) 6 NWLR 524 at p. 537

Attah v. Nnacho (1964) ALL NLR 307 at 313-314

E A.C.E. Jimona Ltd. v. Nigerian Electrical Contracting (1966) ANLR 112

M & K Ltd. v. Lamidi Apena (1969) ALL NLR 382 at 384 - 385

Nigerian Produce Marketing Board v. Adewunmi (1972) ALL NLR 870 at 878

F Tildesley v. Harper (1877) 7 Ch.D. 403

Harris v. Gamble (1878) 7 Ch. D. 877

Economides v. Thomopoulos Ltd (1956) 1 FSC. 7

RULES REFERRED TO

G High Court of Lagos (Civil Procedure) Rules 1972 Order 18 rule 1.

LEAD JUDGMENT BY OGUNDARE JSC

H The Plaintiff (now Respondent) had claimed from the Defendant (now Appellant) as hereunder: "...the sum of N95,220,15 being the price of steel sold to the defendants by the plaintiffs at the defendants' request together with interest at 17% per annum up to 30th April, 1982 and thereafter from the 1st of May, 1982 until final satisfaction.

PARTICULARS:-

"1. Invoice No. META/20106/80	N8,280.72	
interest @ 17% for 352 days	1,313.33	
2. Invoice No. META/20196/80	5,742.42	
interest @ 17% for 314 days	812.43	B
3. Invoice No. META/20118/80	66,681.03	
interest @ 17% for 382 days	<u>12,390.14</u>	
	<u>N95,220.15"</u>	

In its statement of claim, the Plaintiff averred:

"3. By an order No. NKC/L0091403/80 dated 8th August, 1990 the Defendants ordered mild steel from the Plaintiffs. The order was shipped on the vessel "SOKOTO" under a Bill Of Lading No. 10 dated 14th November, 1990 and invoiced by the Plaintiffs to the Defendants on Invoice No. META/20106/80 valued at N8,280.72.

4. Based on the same order as stated in paragraph 3 above the Plaintiffs shipped on the vessel "AFRICAN PALM" mild steel universal beans to the defendant under a bill of lading No.33 dated 31st December, 1980 and invoiced by the Plaintiffs to the Defendants through Invoice No. META/20196/80 valued N5,742.42.

5. On the Defendants' order No. NKC/LPO/850/80 of 28th May, 1990 the Plaintiffs shipped to the Defendants universal beans on the vessel "ISRICISS" through a Bill of Lading dated 15th October, 1980 and invoiced by the Plaintiffs to the Defendants vide invoice No. META/20118/80 dated 13th October, 1980 and valued N66,681.03.

6. All the 3 consignments were supplied on 180 days credit terms attracting 17% interest per annum.

7. As at the 30th day of April, 1982 the interest due on Invoice No. META/20106/80 is N1,213.33. i.e. for 352 days, on Invoice No. META/20196/80 is N812.43. i.e. for 314 days and on Invoice No. META/20118/80 is N12,390.14 i.e. for 382 days.

8. The total value of the said goods is N95,220.15. which sum has not been paid in spite of demands from the Plaintiffs' solicitors Messrs. Fred Egbe & CO. by letter dated 1st February, 1982. WHEREOF THE PLAINTIFFS claim from the Defendants the sum of N95,220.15 with

interest at the rate of 17% per annum from the 1st of May, 1982 until final satisfaction."

The Defendant, in its further amended Statement of Defence and Counter claim (hereinafter is referred to as statement of defence), pleaded thus:

B *"2. The Defendant admits paragraphs 2,3,4 and 5 of the Statement of Claim subject to the production in court of the documents therein pleaded for a full construction of their terms and effect.*

C *4. The Defendant denies paragraphs 6,7 and 8 of the Statement of Claim and puts the Plaintiff to the strictest proof thereof.*

C *5. With further reference to paragraphs 6,7 and 8 of the Statement of Claim, the Defendant avers that the total value of its purchases of Steel from the Plaintiff was N510,722.94, but denies that the sum of N95,220.15, if any sum at all, remains unpaid.*

D *6, The 3 orders of steel referred to in the Statement of Claim were required by the Defendant (who as the Plaintiff well knew is a going concern in the business of undertaking building and other civil works requiring the use of weldable steel structures) for the performance*
 E *of diverse construction contracts for third parties. It was therefore an implied condition that the goods should be of merchantable quality.*

F *7. Further, or in the alternative the said goods were bought by description from the Plaintiff who deals in goods of that description and there was an implied condition that the goods should be of merchantable quality.*

G *8. Further, and/or in the alternative, by their said written orders dated 28th May, 1980 and 5th August 1980, the Defendant, by specifying the various grades of steel required, by implication made known to the Plaintiff (who supplies steel of that description in the course of their business) that the said steel was required for the purposes stated in paragraph 6 above, so as to show, as was the fact, that they relied upon the skill and judgment of the Plaintiff to supply steel which should be rea-*
 H *sonably fit for such purposes.*

9. In breach of the said conditions, the said goods were not fit for the said purposes and were unmerchantable. (Particulars omitted)

10. Thereupon the defendant became entitled to reject the said

goods, and/or to withhold payment for same for breach of the conditions referred to above, and the Defendant so informed the Plaintiff under cover of its letter dated 15th March 1982 to the Plaintiff.

12 By reason of the said breaches the Defendant has suffered loss and damage, and claims the sum of N1,500,000,00 as damages suffered as a result of the Plaintiff supplying inferior steels to the Defendant, thereby causing the Defendant's clients to refuse to pay for the Defendant's services. (Particulars omitted)

13 In the alternative, the Defendant claims to set off against the Plaintiff's claim damages for breach of contract."

The Plaintiff filed a Reply to the Defendant's pleadings wherein it pleaded, inter alia, as follows:

3. The Plaintiffs deny paragraphs 4,5,6,7,8,9,10,11,12 and 13 of the Amended Statement of Defence and Counter-claim and puts the Defendants to the strictest proof thereof.

4. With regard to paragraphs 4,5 and 7 of the Amended Statement of Defence the Plaintiffs aver that the steel (sic) supplied covered under Bills of Lading dated 15th October, 1980, 14th November, 1980 and 31st December, 1980 was as per the Defendant's orders i.e. all merchantable quality steel. The steel were ordered from Salzgitter Stahl GmbH one of the finest steel manufacturers in the world.

8. With further respect to paragraphs 4,6,7,8,12 and 13 of the Amended Statement of Defence and Counter-claim, the Plaintiffs will prove that the Defendants accepted the consignments of steel in October, November and December, 1980 and were satisfied with the quantity and quality of same but they only complained of the quality of the steel and only after the Plaintiffs had made several demands for payment. The Plaintiffs will rely on their letters to the Defendants dated 5th August, 1981, 4th January, 1982 and 14th April, 1982 and expect the Defendants to produce same at the trial of this action."

The action proceeded to trial at which each side called one witness and tendered a number of documents in support of its respective case. After addresses by learned counsel for the parties, the learned trial Chief Judge, in a reserved judgment, found the Plaintiff's case proved

and entered judgment in its favour -

"..... in the sum of N95,220.15 with interest at 17 percent per annum from the 1st May, 1982 until the whole judgment debt is fully liquidated....."

B The Defendant's counter-claim was dismissed.

Being dissatisfied, the Defendant appealed unsuccessfully to the Court of Appeal. It has now further appealed to this Court. And in its written brief of argument filed, pursuant to the rules of this Court, it set out the following two questions as calling for determination, that is to say,

"1. Whether the court was right to give judgment to the plaintiff who having elected to prove his case, failed to do so on the ground that the statement of defence was evasive.

D *2. Whether the statement of defence in this case was in fact evasive".*

The Plaintiff, for its part, formulated the question as follows:

"Whether paragraphs 4 and 5 of the Appellants further amended statement of defence and counter claim (hereinafter referred to as the Statement of Defence) did not constitute an admission of the sum claimed by the Respondent such as to render proof of the said sum unnecessary."

F From the question posed, and the arguments proffered in the briefs of the parties it is clear that the main issue calling for determination in this appeal is the effect of paragraphs 4 and 5 of the Defendant's final pleadings, that is, the further amended statement of defence and counter-claim. There is, of course, a subsidiary issue which is whether Plaintiff, by evidence, proved its case.

G I have earlier in this judgment set out the penultimate paragraphs of the parties' final pleadings; I do not need to quote them here again. The learned trial Chief Judge expressing his opinion on the effect of the defendant's pleadings, particularly paragraph 5 thereof, had this to say:

H *"It is contended by the plaintiff that a total sum of N95,220.15 remains unpaid on the orders made. The question is, is that claim admitted by the defendant?, if it is, that would be the end of the matter. Let us now examine what the defence is on this issue. That is to be found in*

paragraph 5 of the amended statement of defence and counter-claim which I had earlier quoted but which for emphasis I shall here repeat." After quoting paragraph 5 and the relevant rule of the Lagos State High Court and after citing a passage from Bullen & Leake and Jacob's Precedents of Pleadings, 12th Edition, at page 83 under the heading "Traverse must not be evasive" and the case of Thorp V. Holdsworth (1876)3 Ch D.637, the learned trial Chief Judge went on to say:

"Looked at against the background of the principles above quoted, would the averment in paragraph 5 of the amended statement of defence and counter-claim be regarded in Law as a denial of the specific sum claimed by the plaintiff? The answer in my view must be in the negative. The defendant in not contending that he owes no amount at all to the plaintiff, but says "I deny that the sum claimed, if any sum at all remains unpaid." It is by implication admitted that some sum is owing to the plaintiff, but it refused to say how much it is. Plaintiff, of course, has claimed specific sum the defendant has put no other sum, even though he admits owing, to contradict the specific sum put forward by the plaintiff. That situation in my considered view shows an evasive stand by the defendant and amounts in law to an admission of the sum claimed by the plaintiff."

On appeal to the Court of Appeal, that Court, per Babalakin JCA (as he then was), opined:

"Furthermore the law is that where the plaintiff makes a specific pleading in his Statement of Claim the Defendant must specifically deny those matters he disputes and a general traverse is inadequate in the circumstances. See the case of Attorney General of Anambra State v. C.N. Onuselogu Enterprises Limited (1987) 11 - 12 SCNJ 44. This requirement is further discussed in Bullen and Leake and Jacob's Precedents of Pleadings; 12th Edition page 83"

After quoting the relevant passage from Bullen & Leake & Jacob's the learned Justice of Appeal went on to say:

"The law is that the Defendant must make the purport and effect of his denial clear and distinct..

Looking at these pleadings particularly paragraph 5 of the

Amended Statement of Defence and Counter Claim one cannot say that Appellant had made a specific denial of the sum claimed by the Respondent. The position is that the Respondent had claimed a specific amount but the Appellant although admitting that he owed some money had not stated the sum of money owed, thus by implication and by rules of Pleadings he is deemed to have admitted the amount claimed by the Respondent.

The importance of pleadings in cases in High Court cannot be overlooked because invariably the pleadings portray the state of mind of the parties when issues litigated upon are fresh in their minds. On the state of pleadings in this case the Respondent is entitled to judgment because of the evasive nature of paragraph 5 of the Statement of Defence and Counter Claim quoted above and the learned trial Chief Judge D was right to so hold."

Both in the Appellant's brief and Reply brief and in oral arguments before us Mr. Nweze, learned counsel for Defendant contends that in view of the general traverse in paragraph 1 of the statement of defence and the specific denial in paragraph 4 thereof of paragraphs 6,7 and 8 of the Statement of Claim, it is erroneous to say that there was no valid denial, or that there was an admission of the Plaintiff's claim. It is further contended that paragraph 5 of the statement of defence constituted a proper and correct traverse of Plaintiff's claim. It is contended that by the said paragraph 5 the Defendant "not only denied that the total value of the goods was N95,220.15 but went on to deny that the sum of N95,220.15 or any sum at all remained unpaid in other words denying any outstanding balance on the total Purchases of N510,722.94." We are referred to a number of authorities, that is, Lewis & Peat (N. R. I.) Ltd v. Akhimien (1976) 1 ANLR Part 1 page 460 at 465 & 466; Ugochukwu v. Cooperative & Commerce Bank (1966) 6 NWLR 524 at p.537; Edward Attah v. Nnacho (1964) All NLR 307 at 313-314; A.C.E. Jimona Ltd. v. Nigerian Electrical Contracting (1966) ANLR 112; M & K Ltd. v. Lamidi Apena (1969) All NLR 382 at 384-385 and Nigerian Produce Marketing Board v. Adewunmi (1972) All NLR 870 at 878.

For the Plaintiff it is argued in its brief as follows:

"It is submitted that paragraph 5 of the Appellants' statement of defence constituted an evasive and therefore inadmissible denial. The Appellants failed to specifically deny either the principal sum or interest rate claimed. To constitute an effective denial of the entire sum alleged to be owed the Appellant was required to deny that he owed the sum claimed "or any sum at all" "or any part thereof" or other language to such effect, making it categorically clear that the entire debt is in dispute and thereby requiring proof of same by evidence. It is submitted that the expression used by the Appellant viz "if any sum at all" amounts in law to an inadmissible general denial. For where the dispute is with regard to part of the sum claimed, the Appellant was then required to state in precise terms how much he considered to be due out of the sum claimed. See Thorp v. Holdsworth (1876) 3 Ch.D. 637 at 639, 640; Tildesley v. Harper (1877) 7 Ch. 403; Harris v. Gamble (1878) Ch D 877. By failing to do so the Appellant was properly held by the lower Court to have admitted the amount claimed."

I have given careful consideration to arguments proffered by the parties. I regret I find no merit in the arguments for the Defendant. Order 18 rule 1 of the High Court of Lagos (Civil Procedure) Rules 1972 (applicable in these proceedings) provided "In action for a debt or liquidated demand in money a mere denial of the debt shall be inadmissible." It is not disputed that Plaintiff's claim was one for "a debt or liquidated demand in money."

The Plaintiff pleaded, inter alia, as hereunder:

"6. All the 3 consignments were supplied on 180 days credit terms attracting 17% interest per annum.

7. As the 30th day of April, 1982 the interest due on Invoice No. META/10106/80 is N1,213.33 i.e. for 352 days, on Invoice No META/20196/80 is N812.43 i.e. for 314 days and on Invoice No. META/20118/80 is N12,390.14 i.e. for 382 days.

8. The total value of the said goods is N95,220.15 which sum H has not been paid in spite of demands from the Plaintiffs' solicitors Messrs. Fred Egbe & Co. by letter dated 1st February, 1982."

In answer to the above averments, the Defendant pleaded thus:

"4 *The Defendant denies paragraphs 6,7 and 8 of the Statement of Claim and puts the Plaintiff to the strictest proof thereof.*

5. *With further reference to paragraphs 6, 7 and 8 of the Statement of Claim, the Defendant avers that the total value of its purchases of Steel from the Plaintiff was N510,722.94, but denies that the sum of N95,220.15, if any sum at all, remains unpaid."*

Paragraph 4 was a mere denial of the debt or liquidated demand in money of the Plaintiff and was inadmissible by virtue of Order 18 rule 1 of the Lagos State High Court Rules then applicable. Paragraph 5, however, went a little further than mere denial; it averred that Defendant's total purchases from the Plaintiff amounted to N510,722.94. I may pause here to point out that Plaintiff's Claim was not in respect of the Defendant's total purchases but in respect of 3 specific orders/purchases pleaded in paragraphs 3,4 & 5 of the statement of claim which paragraphs were admitted in paragraph 2 of the statement of defence.

Paragraph 5 of the statement of defence went on to deny that- "the sum of N95,220.15, if any sum at all, remains unpaid." (underlinings are mine). Is this a proper traverse? The Courts below thought rather not. The Defendant says they are wrong. Are they?

The basic rule of pleading is that a traverse whether by denial or refusal to admit, must not be evasive but must answer the point of substance. The pleader must deal specifically with every allegation of fact made by his opponent; he must either admit it frankly or deny it boldly. Any half-admission or half-denial is evasive. In Thorp v. Holdsworth (1876) 3 Ch.D. 637 at 639 Jessel, M.R put the rule in these words:

"The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules of Order XIX was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.

Commenting on a pleading in the defendant's statement of defence to the effect that "The Defendant denies that the terms of the agreement between himself and the Plaintiffs were definitely agreed upon as alleged", the learned Master of the Rolls, at page 641 of the Report, observed:

"Now that is evasive.....He (defendant) is bound to deny that any agreements or any terms of arrangement were ever come to, if that is what he means; if he does not mean that, he should say that there were no terms of arrangement come to except the following terms, and then state what the terms were; otherwise there is no specific denial at all."

See also: Lewis & Peat (N.R.I.) Ltd. V.A.E. Akhimien (supra); (1976) ANLR.365, 369 where this Court held:

"When as a result of exchange of pleadings by parties to a case a material fact is affirmed by one of the parties but denied by the other, the question thus raised between the parties in an "issue of fact." We must observe, however, that in order to raise an issue of fact in these circumstances there must be a proper traverse; and a traverse must be made either by a denial or non-admission either expressly or by necessary implication. So that if a defendant refuses to admit a particular allegation in the statement of claim, he must state so specifically;

See also; Tildesley V. Harper (1877) 7 Ch.D. 403; Harris V. Gamble (1878) 7 Ch. D. 877 for examples of insufficient traverses.

The two Courts below, in their respective judgments relied on a passage at pages 83-84 of Bullen & Leake and Jacob's: Precedents of Pleadings (12th edition) wherein it is stated:

"Where the defendant traverses any allegation of fact in the statement of claim, whether by denial or refusal to admit, he must not do so evasively but must answer the point of substance. This is a basic rule of pleading, since a traverse which is evasive, or ambiguous, or equivocal or does not answer the point of substance will not amount to a specific traverse of the allegation. Thus, if it be alleged that the defendant received a certain sum of money, it will not be sufficient to deny that he received that particular sum, but he must deny that he received that sum or any part thereof or else set out how much he received;....."

In my respectful view, this passage sums up correctly the true and cor-

rect application of Order 18 rule 1. **In a case such as the one in hand where the plaintiff alleges that a certain amount is owing to him, it is not enough for the defendant to deny that he owes that sum but must go on to deny that he owes any part thereof or else set out how much he owes.**

It is submitted in the Appellant's Brief that:

"It is clear from the above that the defendant not only denied that the total value of the goods was N95,220.15 but went on to deny that the sum of N95,220.15 or any sum at all remained unpaid in other words denying any outstanding balance on the total Purchases of N510,722.94" (underlining is mine).

With respect, this cannot be a correct interpretation of paragraph 5 of the statement of defence. The word used in the pleading is not OR but IF and that makes a world of difference to the meaning of the pleading.

The authorities relied on by the Defendant are, in my view, not apposite to the issue under consideration in this appeal. They relate essentially to the effect of the general traverse usually contained in pleadings. But a general traverse is not enough to controvert material and important averments in pleadings particularly where the claim is one in debt or liquidated demand in money - see: Order 18 rule 1. The dictum of Lord Denning in Warner V. Simpson (1959) 1 QB. 297 at 310 followed in these cases does not support what the Defendant has done in this case. For in that case Lord Denning spoke thus:

"Since so much effect has been given to this general denial, I would say a word about it. It is used in nearly every defence which goes out from the Temple. It comes at the end. The pleader has earlier gone through many of the allegations in the statement of claim and dealt with them. Some he admitted. Others he had denied. Whenever he knows there is a serious contest he takes the allegation separately and denies it specifically."

The conclusion I reach is that there has been no proper and/or effective traverse of paragraphs 6,7 and 8 of the statement of claim in this case. The Courts below are quite right in the con-

clusion reached by them on this point. As the allegation by Plaintiff that the Defendant owed it the sum of N95,220.15 had not been denied expressly or by implication by the Defendant, the allegation must be deemed to be indirectly admitted and the Plaintiff was not obliged to establish it by evidence - see: Economides Vs. Thomopulos Ltd. (1956) 1 FSC.7. B

It is also contended in this appeal that as the Plaintiff who elected to call evidence failed to establish by evidence its case, the latter should have been dismissed. I have considered the arguments advanced in support of this contention. Regrettably, however, I find no substance in those arguments. Nowhere in the pleadings was computation for conversion from foreign to Nigerian currency made an issue. Paragraphs 3,4 and 5 of the statement of claim were expressly admitted by the Defendant in paragraph 2 of its statement of defence. The averments in those paragraphs need no further proof. There was evidence from Plaintiff's witness that demands were made on the Defendant to settle its indebtedness to it but there was no response from the Defendants to the demands. E

For the reasons given in this judgment I have no hesitation in dismissing this appeal which is completely bereft of any merit. The appeal is dismissed with N10,000 (ten thousand Naira) costs to the Plaintiff. I affirm the judgment of the Court below affirming the judgment of the trial High Court. F

WALI JSC

I have read before now the lead judgment of my learned brother Ogundare JSC and I entirely agree with the reasoning for dismissing the appeal. I endorse the same as mine and hereby dismiss the appeal with N10,000.00 costs to the Respondent. G

H

OGWUEGBU JSC

I agree with the judgment of my learned brother Ogundare, J.S.C. the draft of which I have the advantage of reading before now.

The only issue for determination in this appeal is whether paragraphs 4 and 5 of the appellant's further amended statement of defence and counterclaim constituted an admission of the sum claimed by the respondent.

By a writ of summons issued on 30-6-82, the plaintiff claimed the sum of N95,220.15 being the balance of the unpaid price of steel sold by the plaintiff to the defendant plus interest at the rate of 17% per annum up to 30-4-82 and thereafter at the same rate from 18-5-82 until final satisfaction.

In paragraphs 4 and 5 of the defendant's further amended statement of defence and counterclaim, the defendant pleaded as follows:-

"4 The Defendant denies paragraphs 6,7 and 8 of the Statement of Claim and puts the Plaintiff to the strictest proof thereof.

5. With further reference to paragraphs 6, 7 and 8 of the Statement of Claim, the Defendant avers that the total value of its purchases of steel from the Plaintiff was N510,722.94 but denies that the sum of N95,220.15, if any sum at all, remains unpaid."

The courts below held that the plaintiff was entitled to judgment because of the evasive nature of paragraph 5 of the Statement of Defence and Counterclaim quoted above. As a rule each party should admit whatever facts can be proved against him without trouble and it looks weak to deny everything in an opponent's pleading. It is not sufficient for a defendant in his defence to deny generally the allegations in the statement of claim, or for a plaintiff in his reply to deny generally the allegations in a counterclaim. Each party must traverse specifically each allegation of fact which he does not intend to admit. The party pleading must make it clear how much of his opponent's case he disputes. A traverse must not be evasive, but must answer the point of substance.

The plaintiff claimed a liquidated sum of money. It was not sufficient for the defendant to deny that he owed that particular sum; he must deny that he owed that sum or any part thereof, or else set out how

much he owed or he must deny the existence of those facts alleged which gave rise to the debt. See Thorp V. Holdsworth (1876)3 Ch.D.637.

Paragraph 5 of the further amended statement of defence and counterclaim was by implication an admission of the plaintiff's claim. It was bad pleading which was in violation of the rules.

I see no reason to interfere with the concurrent findings of the courts below. The appeal fails and it is dismissed by me. I endorse the order as to costs contained in the lead judgment of my learned brother Ogundare, J.S.C.

MOHAMMED JSC

I agree with the opinion of my learned brother, Ogundare, J.S.C., in the lead judgment, just read, that this appeal has failed.

The issue canvassed in this appeal is whether paragraph 5 of the appellant's Statement of Defence amounted to admission of the Plaintiff/ Respondent's claim. The respondent's claim against the appellant is for payment of N95,220.15 being price of steel sold to the appellant by the respondent at the appellant's request, together with interest at 17% per annum. In the Statement of Defence the appellant denied the claim and went further in paragraph 5 and averred thus;

"With further reference to paragraphs 6, 7 and 8 of the Statement of Claim, the Defendant avers that the total value of its purchases of steel from the Plaintiff was N510,722.94, but denies that the sum of N95,220.15k, if any sum at all remains unpaid".

The trial High Court, in it's judgment held that the averment above amounted to an admission of the claim of the respondent. The learned trial Chief Judge after considering the relevant paragraphs of the respective pleadings of the parties held that in paragraph 5, the appellant, by implication has admitted that some sum was owing to the respondent but the appellant refused to say how much it was. It was held that this was an evasive traverse and as such it amounted to admission of the respondent's claim. The Court of Appeal affirmed this view.

A traverse which is evasive amounts to an implied admission.

Every allegation of fact made in a Statement of claim or counter-claim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counter-claim, as the case may be, and a general denial of such allegations or a general Statement of non-admission of them, is not sufficient traverse of them. See Order 18 Rule 13 of Supreme Court Practice (White Book) 1991 Edition and Order 25 Rule 35 of Uniform Court Rules. See also Samson Ajibade v. Mayowa and Another (1978) 9 & 10 S.C. 1 at page 6; and Thorp. v. Hosdsworth (1876) 3 Ch. D. 637.

I agree with the Court of Appeal that the appellant's traverse was evasive and not specific. The trial High Court is therefore right to hold that the appellant had impliedly admitted the sum claimed by the respondent.

This appeal has failed and it is dismissed. I award N10,000.00 costs in favour of the respondent.

ONU JSC

I was privileged to read before now the judgment just delivered by my learned brother Ogundare, JSC. I am in entire agreement with him that the appeal lacks substance and should be dismissed.

This case brings to the fore once more the role a proper traverse plays in pleadings and how and when properly handled, aids in the proper and effectual disposition of suits. Thus, in Lewis & Peat (N.R.I) Ltd v. Akhimien (1976)7 SC. 157 at pages 168 - 179; (1976) 1 All NLR (Part 1)460; (1976)1 FNL 8, this Court while following such English decisions as Harris v. Gamble (1876)7 Ch.D 877; Varen v. Sampson (1959)1 QB 287 - 310 at 311; Joseph Steamship v. I.S.C. (1952) AC 154 and Wallensteiner v. Moir (1974)1 WLR 991 at 1002 held *inter alia* that -

"In order to raise an issue of fact on pleadings there must be proper traverse and a traverse must be made by a denial or non-admission either expressly or by necessary implication. Merely saying the defendant is not in a position to confirm or deny a particular fact and that the petitioner will be put to the strictest proof thereof is no such denial or traverse that

will raise an issue of fact."

This Court did not stop with Lewis & Peat (NRI) Ltd v Akhimien (supra). It had occasion to make further pronouncements on what amounts to sufficient or insufficient traverse in Akintola v. Solano (1986)2 NWLR (Part 24) 598; Ojo Ajao & 5 others v. Opoola A. Alao (1986)5 NWLR B (Part 45) 802; Otapo v. Sunmonu (1987)2 NWLR (Part 58) 587 and A.G of Anambra State v. Onuselogu (1987)4 NWLR (Part 347); (1987)11 - 12 SCNJ 44, to mention but a few.

I will make a random reference to some of these cases and others not earlier mentioned to exemplify the point I wish to make as follows:- C

In Ajao v. Alao (supra), an appeal involving a land dispute this court held (per Karibi-Whyte, JSC) amongst other things that - "The rule in Lewis & Peat (NRI) Ltd v. Akhimien (supra) applied only where D the pleadings of the defendant is ambiguous by merely not denying or admitting without saying more. But where the defendant goes further to state his case in his statement of defence, the rule is not fishing. In this case the respondents have in paragraphs 6-24 given comprehensive account of their title to the land in answer to paragraphs E 4,5,6,7,8,9,10,11,12,13,20,30 and 31 of the Statement of Claim....." See also Omorie v. Idugiemwanye (1985)2 NWLR (Part 5) 41 where it was stated that the law is that where a Defendant F wants to make the Plaintiff's plan an issue, he must specifically put in issue the aspect of the plan he proposes to challenge as a mere general traverse is not sufficient.

In A.G. Anambra State v. Onuselogu (supra) it was held that a defendant who wishes to deny an allegation must do so clearly and unambiguously so that the court and his adversary will with certainty know G he is not admitting. This requirement is further discussed in Bullen & Leake and Jacobs Precedents of Pleadings 12th Edition, Chapter 7 at pages 84-85 under the heading - H

"Traverse must not be evasive." thus: "Where the defendant traverses any allegation of fact in the Statement of Claim, whether by denial or refusal to admit, he must not do so evasively but must answer

the point of substance. This is a basic rule of pleading, since a traverse which is evasive, or ambiguous or equivocal or does not answer the point of substance, will not amount to a specific traverse of the allegation. Thus, if it be alleged that the defendant received a certain sum of money, B it will not be sufficient to deny that he received that sum or any part thereof or else set out how much he received; and if the allegation is made with diverse circumstances it will not be sufficient to deny it along with those circumstances and in such case, the allegation of each circumstance should be traversed specifically" See also Thorp v. Holdsworth C (1876)CH.D 637 and Order 18 Rule 1 of the High Court (Civil Procedure Rules) 1972 (then applicable in these proceedings): "In action for a debt or liquidated demand in money a mere denial of the debt shall be inadmissible."

D In the case herein on appeal, the Defendants/Appellants having lost to the Plaintiffs/Respondents in the latter's claim which, in my view, consists of a liquidated demand and couched in terms:

"WHEREOF THE PLAINTIFFS claim from the Defendants the E sum of N95,220.15 with interest at the rate of 17% per annum from the 1st of May, 1982 until final satisfaction."

The two questions that naturally arose therefrom were whether the concurrent judgments of both courts are sustainable firstly, on the pleadings in the light of which the Appellants were by virtue of the evasive denial F contained in their paragraphs 4 and 5 of their Further Amended Statement of Defence deemed to have admitted that the claim set out above remained due and unpaid; that consequently particular proof of these averments were unnecessary. Secondly, that whether having unconditionally accepted the steel which they ordered with ample opportunity for examination, the Appellant's defence that the steel supplied was of G unmerchantable quality was not an after-thought or a mere ruse upon the commencement of the Respondents' action.

H In my consideration of the above propositions I adopt the lone issue as formulated by the Respondents which is: Whether paragraphs 4 and 5 of the Appellants' Further Amended Statement of Defence and Counterclaim did not constitute an admission of the sum claimed by the

Respondents such as to render proof of the said sum unnecessary. The Appellant in paragraphs 4 and 5 of its Further Amended Statement of Defence and Counterclaim averred as follows:-

"4. The Defendant denies paragraphs 6, 7 and 8 of the Statement of Claim and puts the Plaintiff to the strictest proof thereof. B

5. With further reference to paragraphs 6, 7 and 8 of the Statement of Claim, the Defendant avers that the total value of its purchases of steel from the Plaintiff was N510,722.94, but denies that the sum of N95,220.15, if any sum at all, remains unpaid." C

The learned trial Chief Judge had held after evaluating the evidence adduced and hearing the addresses of counsel as follows:-

"Looked at against the background of the principles above quoted, would the averment in paragraph 5 of the amended statement of defence and counterclaim be regarded in law as a denial of the specific sum claimed by the plaintiff? The answer, in my view is in the negative. The defendant is not contending that he owes no amount at all to the plaintiff, but he says "I deny that the sum claimed, if any sum at all remains unpaid." It is by implication admitted that some sum is owing to the plaintiff, but it refused to say how much it is. Plaintiff, ofcourse, has claimed specific sum the defendant has put on other sum, even though he admits owing, to contradict the specific sum put forward by the plaintiff. That situation, in my considered view, shows an evasive stand by the defendant and amounts in law to an admission of the sum claimed by the plaintiff." D E F

Here is what T. Akinola Aguda has to say in paragraph 18.76 of his book: Practice & Procedure of the Supreme Court, Court of Appeal and High Court of Nigeria - G

"Evasive denial (0.16 r.15 L) When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall H

not be sufficient to deny it along with those circumstances."

Paragraph 18.77 of the book then goes on to state that -

"The effect of the rule is, for reasons of practice and convenience, to require the party to tell his opponent what he is coming to court to prove."

B Robinson's Settlement, Grant v. Hobbs (1912) 1 Ch.717, 728 per Buckley L.J.

In the instant appeal, the court below confirmed the findings of fact arrived at by the learned trial Chief Judge and in upholding his judgment stated inter alia thus:

C *"The importance of pleadings in cases in High Court cannot be overlooked because invariably the pleadings portray the state of mind of the parties when issues litigated upon are fresh in their minds. On the state of pleadings in this case, the Respondent is entitled to judgment because*
D *of the evasive nature of paragraph 5 of the Statement of Defence and Counterclaim quoted above and the learned trial Chief Judge was right to so hold."*

I cannot agree more.

E Had the Appellant not failed in his Statement of Defence and Counterclaim, I dare say that he must perforce have failed on the other evidence adduced since on the preponderance such evidence was not
F *weighty enough to tilt the scale against the Respondent. It was not therefore surprising that the learned trial Chief Judge towards the tail end of his judgment held rightly, in my judgment, as follows:-*

"Learned counsel for the plaintiff contended that the goods were accepted and used by the defendants for different purposes and that such acceptance and user is evidence of waiver of any conditions as to origin
G *of the goods and/or the production of the certificate. It must be noted as pointed out by the learned counsel for the plaintiff that the only evidence on the issue of merchantable quality was that of an employee of the defendant put up as an expert witness. I must say that the court treats the*
H *evidence of that witness for the defendant as not only tainted but suspect by reason of interest.....It is apparent that no challenge or claim that the steel was bad was made until a writ was taken out in 1982."*

In conclusion, the learned trial Chief Judge said inter alia:

"The defendant has failed to present any meritable defence to this claim." and so proceeded to give judgment in favour of the Respondent which, as earlier pointed out, the court below rightly affirmed in the following concluding words:

*"I have read the printed record of proceedings of this appeal and B
I do not find that the findings of the learned trial Chief Judge are per-
verse. I find that the findings are in accordance with the evidence led in
this case. I have no cause to interfere with same."*

I am of the view that the above concurrent findings of fact being impec- C
cable, I will decline to disturb the decisions of the two courts below.

For the above reasons given by me and the more detailed ones set out in the leading judgment of my learned brother Ogundare, JSC, I too, dismiss this appeal with the same consequential orders including D
those relating to costs as therein awarded.

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