

**SUPREME COURT OF NIGERIA**

10TH JULY, 1998. SC. 20/1992

**CORAM:- A. B. WALI, M. E. OGUNDARE, U. MOHAMMED,  
S. U. ONU, A. I. IGUH, JJSC.**

ANTHONY ODIBA	.....	APPELLANT
AND		
TULE AZEGE	.....	RESPONDENT

---

***DAMAGES*** - Exemplary damages - Unlawful demolition - Of the respondent's house on the orders of the appellant - The behaviour of the appellant falls within the category of cases in which exemplary damages could be awarded.

***TORTS*** - Unlawful demolition - Where the evidence has established beyond any doubt - That the appellant directed the demolition of the respondent's house - He should be answerable for such oppressive act.

***WORDS AND PHRASES*** - " Perverse decision" - What it means.

**FACTS**

The plaintiff/respondent, in the High Court, Gboko, Benue State, claimed against the defendant/appellant N1,000,000.00 (One Million Naira), being special and general damages for the unlawful demolition of his premises situate at Plot No. BN. 6763 along J.S. Tarka Way, Gboko. The respondent's case is that he had been served with a notice that his house was to be demolished. He ran to the High Court and filed a suit seeking inter alia, for an injunction to restrain the Task Force from demolishing his house. He also filed a motion praying for interim injunction restraining the Task Force from carrying on with its threat pending the hearing of the suit. He further complained before a representative of the Ministry of Justice. Both the High Court and the Ministry of justice requested the Task Force to stay their action pending the hearing of the suit.

There is evidence from the witnesses called by both the appellant and the respondent that the Task Force Committee met over the

cases of the houses of the respondent and one Akaazua Muemue and resolved to stay action pending the receipt of an advice from the State Counsel. The appellant is not a member of the Task Force but performed the function of appointing members of the Task Force. Without waiting for the said motion for interim injunction to be determined and in utter disrespect of the said request from the High Court and the ministry of justice to stay action, he went to the house of the respondent with a bulldozer and had it demolished. By reason of the action of the appellant the respondent filed this suit and claimed as stated above.

At the end of the trial the learned trial judge, in a considered judgment, held that the conduct of the defendant was not only oppressive but also reprehensible and bordered on an unwarranted use of Governmental power which deserves a measure of exemplary or aggravated damages. He awarded both special and general damages totalling N312,652.80 to the respondent. Aggrieved by the judgment, the appellant appealed to the Court of Appeal. That Court in its judgment agreed with the appellant that some aspects of the special damages had not been proved. The damages awarded were therefore reduced. The appeal was accordingly dismissed in part. The appellant has further appealed against that decision to the Supreme Court raising the following issues.

#### **ISSUES FOR DETERMINATION**

*"(a) Was the learned judge and the justices of the Court of Appeal justified in concluding -*

*(i) that it was the appellant who had ordered the demolition of the respondent's house,*

*(ii) that the appellant did so in the face of timely warning by the Chairman of the Task Force and against the advice by the Resident State Counsel, and*

*(iii) that this was a proper case to award aggravated general damages.*

*(iv) that the respondent proved and was entitled to the award of special damages*

*(b) was the award of special damages to the respondent in the circumstances of this case, not compensating the respondent twice over*

*for one loss".*

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

***"Perverse decision"***

1. A perverse decision is one which ignores the facts or evidence and, when considered as a whole, it amounts to a miscarriage of justice. See also the case of Atolagbe v. Shorun (1985) 1 N.W.L.R. (Pt. 2) 360 at 375. (p. 1740 F)

***Tort - Unlawful demolition***

2. The evidence of PW5 which the learned trial judge believed and the Court of Appeal affirmed, has established beyond any doubt that the appellant directed for the demolition of the respondent's house. It is therefore quite clear that the appellant, who was not a member of the Task Force, directed for the demolition of the house of the respondent. I agree that the two lower courts found correctly that the respondent should be answerable for such oppressive act. (p. 1742 B)

***Damages - Exemplary damages***

3. What really aggravated the case of the appellant is the fact that he was not a member of the Task Force and therefore had no business or authority to order for the house of the respondent to be demolished. In addition to what I have said above the Task Force whose assignment was to see that illegally constructed premises should be demolished had decided to stay the demolition of the respondent's house pending the determination of his case in court. These aspects made the conduct of the appellant, as quite rightly found by the trial court, reprehensible and oppressive. The behaviour of the appellant falls within the first category of cases listed by Lord Devlin in the case of Rookes v. Barnard (1964) A.C. 1129, in which exemplary damages<sup>2</sup> could be awarded. Lord Devlin held, in that case,

---

<sup>2</sup> In Odogu v. A-G Federation (1996) 7 KLR (pt 43) 1337 and Allied Bank v. Akubueze (1997) 6 KLR (pt 52) 1202 the issue of Exemplary damages was considered.

that exemplary damages could be awarded against oppressive, arbitrary and unconstitutional action by servants of the government. In sum, the appellant has established no convincing argument to warrant my interference with the decision of the Court of Appeal on the award of damages B which it accepted to have been proved before the High Court.(p. 1743 D)

## NOTABLE POINTS OF INTEREST

### ONU JSC

#### C *1. When the Appellate court will upset an award of damages*

In the instant case, the appellant is unhappy about the damages which he argues are excessive. What he has failed to bear in mind is that the Appellate Court does not upset an award of damages merely because it might itself have awarded a different figure; the appellant must show that D the trial Judge proceeded upon some wrong principle or that the award was entirely an erroneous estimate. See Uwa Printers (Nig.) Ltd. v. Investment Trust Co. Ltd. (1988) 5 NWLR (Part 92) 110; Obere v. Board of Management Eku Hospital (1978) 2 LRN 246 at 251. Indeed, it is E worthy of note that the appellant has not attempted to challenge the respondent's evidence with respect to special damages which was properly admitted. See Omoregbee v. Lawani (1980) 3-4 SC. 108 at 117. (p. 1747 G)

#### F *2. Issue of double compensation*

On whether the respondent has been doubly compensated, it is the law that where special damages are claimed in addition to general damages, special damages will be awarded if strictly proved; invariably, the plain- G tiff ought to sufficiently particularize it to enable the court decide whether all or part of it can be granted. See Eliochin (Nig.) Ltd. v. Mbadiwe (1986) 1 NWLR (Part 14) 47. This is because damages are always deemed to be in issue except expressly admitted. See Osuji v. Isiocha H (1989) 3 NWLR (Part 111) 623 at 640. In the case in hand, there is concurrent finding that special damages have been strictly proved with minor amendment by the court below and that the respondent is also entitled to aggravated damages. There is no question of double compen-

sation (see Ezeani v. Ejidike (1964) 1 ALL NLR 402) and I also find nothing perverse in the concurrent findings of the two courts below. I will therefore, decline to interfere therewith. By his act of ordering the demolition of the respondent's house in flagrant disregard of the law, the appellant exhibited a high degree of recklessness and insensitivity to the social and legal norms of the society in which he lived. As a well-placed civil servant, he ought to have known and behaved better. His conduct is sufficiently outrageous and reprehensible to drag down the heavy toll of damages rightly awarded against him. (p. 1748 C)

### **IGUHJSC**

#### *3. When exemplary damages can be awarded*

It is trite law that in order to justify an award of exemplary or aggravated damages, it is not sufficient to show simply that the defendant has committed the wrongful act complained of. His conduct must be high handed, outrageous, insolent, vindictive, oppressive or malicious and showing contempt of the plaintiff's rights, or disregarding every principle which actuates the conduct of civilized men. See Eliochin (Nig.) Ltd. v. Mbadiwe (1986) 1 N.W.L.R. (Part 14) 47. Exemplary damages, in particular, also known as punitive or vindictive damages can apply only where the conduct of the defendant merits punishment, and this may be considered to be so where such conduct is wanton, as where it discloses fraud, malice, cruelty, insolence or the like, or where he acts in contumelious disregard of the plaintiff's rights. But exemplary damages, to some extent, are distinct from aggravated damages whereby the motives and conduct of the defendant aggravating the injury to the plaintiff would be taken into consideration in the assessment of compensatory damages. See Rookes v. Barnard (1964) 1 ALL E.R. 367 H.C. In this class of case, the injury complained of by the plaintiff has been aggravated by the malice or by the manner of doing the injury, that is, the insolence or defiance by which it is accompanied. Although this can justify an award of exemplary damages, aggravated damages could certainly be awarded in such type of case. Accordingly aggravated damages in this type of case can do most, if not all of the work that could be done by exemplary damages.

See Rookes v. Barnard, (supra) at page 412 per Lord Devlin. In other words, practically all cases of exemplary damages awards could be explained as cases of aggravated damages. (p. 1750 E)

**B REPRESENTATION**

Ocha Ulegede for the appellant

Respondent not present and not represented

**CASES REFERRED TO**

- C** Rookes v. Barnard (1964) A.C. 1129  
Obere v. Board of Management Eku Hospital (1978) 2 LRN 246 at 251  
Ziks Press Ltd. v. Ikokuwu 13 WACA 188 at 189  
Barau v. Cubitts (Nig.) Ltd. (1990) 5 NWLR (Part 152) 630.
- D** Omoregbee v. Lawani (1980) 3-4 SC. 108 at 117  
Odulaja v. Haddad (1973) 11 SC. 35  
Amaye v. A.R.E.C. Ltd. (1990) 4 NWLR (Part 145) 422  
Eliochin (Nig.) Ltd. v. Mbadiwe (1986) 1 NWLR (Part 14) 47
- E** Osuji v. Isiocha (1989) 3 NWLR (Part 111) 623 at 640  
Chinwendu v. Mbamali (1980) 3 SC. 31  
Efe v. The State (1976) 11 SC. 75  
Ebba v. Ogodo (1984) 4 SC. 84 at 98

**F**

**LEAD JUDGMENT BY MOHAMMED JSC**

- This appeal is sequel to proceedings instituted in the High Court, Gboko, Benue State, whereby the respondent, Tule Azege, who was plaintiff in the High Court, claimed N1,000,000.00 (One Million Naira)
- G** against the appellant, Anthony Odida, being special and general damages for the unlawful demolition of premises situate at Plot No. BN. 6763, along J.S. Tarka Way, Gboko, being in possession of the respondent.

- The facts of the case have been given in the Writ wherein the
- H** respondent as plaintiff averred as follows:

*"1. On or about the 15th day of November, 1984 the Local Government Sanitation Task force, Gboko, wrote to the plaintiff Letter No. GLG/HEA/DHC/T/ENV/SANT/VOL.1/44 ordering the plaintiff to destroy*

*his said premises and in the alternative threatening to destroy same.*

2. *The plaintiff on or about the 19th day of November, 1984, filed an action in the High Court, Gboko, seeking three declarations to the effect that the said Task Force has no powers to order the plaintiff to destroy his said premises and seeking an injunction to restrain the Task Force from carrying out its threat to destroy the plaintiff's said premises.*

3. *At the time of filing the said declarations and injunction, the plaintiff also filed a motion for interim injunction against the said Task Force restraining it in the interim from carrying out its said threat pending the trial of the main suit.*

4. *Even though the said suit and motion were fixed by the High Court for the 5th day of December, 1984, the High Court by letter No. GBD/65/841/1 dated the 20th day of November, 1984, admonished the said Task Force not to do anything on the premises of the plaintiff before the motion for interim injunction had been determined.*

5. *The Honourable Attorney-General of Benue State by Letter No. MOJ/CIV/129/84 dated the 2nd day of November, 1984, also advised the said Task Force not to do anything to the plaintiff's said premises until the said motion for interim injunction had been determined.*

6. *The defendant is not a member of the said Task Force but performed the function of appointing members of the Task Force.*

7. *The defendant at all material times was aware of the said letters from the High Court and the Honourable Attorney-General of Benue State, respectively.*

8. *Without waiting for the said motion for interim injunction to be determined and in utter disrespect of the said letter from the High Court and in complete disregard of the said letter from the Honourable Attorney-General of Benue State, the defendant on or about Friday, the 23rd day of November, 1984, wrongfully entered the plaintiff's said premises situate at plot No. BN 6763 along J.S. Tarka Way, Gboko, and unlawfully broke into and caused to be destroyed the plaintiff's building thereon and stock in trade therein contained."*

By reason of the action of the appellant the respondent filed this suit and claimed N1,000,000.00 (One million naira) being general and

special damages as set out in the following particulars:

- "(a) N200,000.00 being the value of the building destroyed.
- (b) N20,000.00 for loss of use from 23/11/84 until judgment.
- (c) N25,000.00 being value of destroyed Mercedes Benz 911.
- (d) N4,500.00 being value of 25 trips of chippings.
- (e) N18,640.00 being value of 900 crates of More Beer.
- (f) N300.00 being value of 11 bags of Locust Beans.
- (g) N1,012.50 being value of Beans (IVE)".

Pleadings were ordered and duly filed. The case was first heard by Anoliefo J of Benue State High Court, but half way during the hearing Utsaha J took over and started de-novo. Parties gave evidence and called witnesses. At the end of the trial the learned trial judge, in a considered judgment, held as follows:

*"The conduct of the defendant was not only oppressive but also reprehensible and bordered on an unwarranted use of Governmental power. It deserves a measure of exemplary or aggravated damages".*

The learned trial judge whose judgment was delivered on 23/11/89 considered the rising cost of living since the case was registered in 1984 and the conduct of the appellant before awarding the appropriate damages to the respondent. In consequence thereof he awarded both special and general damages totalling N312,652.80 to the respondent.

Aggrieved by the judgment, the appellant appealed to Court of Appeal. The Court of Appeal in its judgment considered all the submissions made by the respective counsel for the parties before it and agreed with the appellant that some aspects of the special damages had not been proved. The damages awarded were therefore reduced. Accordingly, the appeal was dismissed in part.

It is against that decision that the appellant has finally come to this court, armed with one original and six additional grounds of appeal, contesting the judgment of the Court of Appeal. The following issues formulated by the learned counsel for the appellant are the central questions that call for determination of this appeal.

*"(a) Was the learned judge and the justices of the Court of Appeal justified in concluding -*

(i) that it was the appellant who had ordered the demolition of the respondent's house,

(ii) that the appellant did so in the face of timely warning by the Chairman of the Task Force and against the advice by the Resident State Counsel, and

(iii) that this was a proper case to award aggravated general damages.

(iv) that the respondent proved and was entitled to the award of special damages

(b) was the award of special damages to the respondent in the circumstances of this case, not compensating the respondent twice over for one loss".

I however made issue (b) to read (iv) because it is a subparagraph of issue (a). Issue (b) is to remain unchanged. The two issues formulated by the learned counsel for the respondents are based on questions against an appeal from concurrent findings of fact and double compensation of damages.

Learned counsel for the appellant devoted 26 pages of a 34 paged appellant's brief and the entire appellant's reply brief to show that the concurrent findings of the two lower courts are perverse because the findings of the trial court which the Court of Appeal accepted were based on evidence rendered highly unreliable by reason of material inconsistencies and contradictions. Mr. Ulegede made a very serious allegation against the learned trial judge in the appellant's brief wherein he said that some findings of the learned trial judge were based on no evidence at all while yet others were based on evidence manufactured by the learned trial judge himself and credited to a witness.

I have looked into the submission of learned counsel on the manufactured evidence by the learned trial judge and it is pertinent to reproduce what the learned judge said in his judgment which made the learned counsel to say that he manufactured evidence and credited it to a witness. The learned judge said as follows:

*"The plaintiff on the other hand testified that when the Task Force Committee served him a notice to demolish the building he went to*

*see the defendant with all his documents of title. That the defendant not only refused to see him but drove him away."*

I have also gone through the evidence adduced by the respondent and, quite correctly, as the learned counsel had submitted, the respondent did not say that he went to see the appellant after he had received the letter of notice from the Task Force. What he said while giving evidence in court is as follows:

*"Before the Task Force Wrote me the letter, they came and marked the house in bold red paint with crosses. Initially I thought they had made a mistake, so I carried all my documents of title to them together with my approved building plan".*

However, the appellant himself, in answer to a question during the cross-examination testified before the learned trial judge and explained about the visit of the respondent to him as follows:

*"I remember the plaintiff came to me to make representations in respect of the house with all his documents of title. I referred him to the Task Force to settle the matter with it".*

The only error therefore committed by the learned trial judge during the evaluation of the evidence concerning the visit of the respondent to the appellant with his documents of title was where he said that it was the respondent who testified to that fact instead of saying that the appellant told the court that the respondent visited him with his title documents. Is this enough to show that the decision of the learned trial judge which the Court of Appeal accepted is perverse? I think not. **A perverse decision is one which ignores the facts or evidence and, when considered as a whole, it amounts to a miscarriage of justice. See also the case of Atolagbe v. Shorun (1985) 1 N.W.L.R. (Pt. 2) 360 at 375.**

The case of the respondent is quite plain. As explained above, it is clear from the facts that soon after he had been served with a notice that his house was to be demolished he ran to the High Court and filed a suit seeking, inter alia, for an injunction to restrain the Task Force from demolishing his house. He also filed a motion praying for interim injunction restraining the Task Force from carrying on with its threat pending the hearing of the suit. He also complained before a representative of the

Ministry of Justice. Both the High Court and the Ministry of Justice requested the Task Force to stay their action pending the hearing of the suit. There is evidence from the witnesses called by both the appellant and the respondent that the Task Force Committee met on 22/11/84 over the cases of houses of the respondent and one Akaazua Muemue and resolved to stay action pending the receipt of an advice from the State Counsel. On the following day the appellant went to the house of the respondent with a bull-dozer and had it demolished. B

The appellant has a herculean task in this appeal to show that such overwhelming evidence against him has cracks which would lead this court to interfere with the concurrent findings of the two lower courts. See Chief Akin Omoboriowo & Anor. v. Chief Michael Adekunle Ajasin (1984) A.N.L.R. page 105 and Chief Bola Ige v. Dr., Victor Olunloyo (1984) A.N.L.R. page 150. C D

Mr. Ulegede, learned counsel for the appellant, submitted in the appellant's brief, that there was evidence to show that it was not the house of the respondent alone which was demolished on 23/11/84. He said that two other houses were also demolished. But this is not the issue. Even if 10 other houses were demolished if the owners did not complain it does not stop the respondent from going to court and filing a suit against the Task Force. Another flaw in the argument of appellant's counsel is where he said that the central issue is not the presence or otherwise of the appellant at the respondent's house at the time of the demolition but whether it was indeed the appellant and not the Task Force Committee that demolished the house on 23/11/84. Counsel argued that the appellant was not present at J.S. Tarka Way, Gboko, when the respondent's house was demolished. This submission is contrary to the evidence of DW3 and DW4 who were appellant's witnesses and the witnesses called by the respondent. They all told the trial court that the appellant was present when the house was demolished. E F G

It is relevant to note that PW1, PW2 and PW3 were members of H Gboko Local Government Environmental Sanitation Task Force and they told the trial court that the appellant was not a member of the Task Force. To make the case of the appellant worse most of the members of the

Task Force who gave evidence affirmed the assertion of the respondent that when the Task Force knew about the case filed by the respondent the Committee met and agreed to stay action against the house of the respondent pending the determination of his case in court.

**B The evidence of PW5 which the learned trial judge believed and the Court of Appeal affirmed, has established beyond any doubt that the appellant directed for the demolition of the respondent's house. PW5 testified thus:**

*C "On 23rd November, 1984 I was in office when my cleaner came to inform me that the defendant wanted to see me. When I came out I saw the defendant outside. There was a bull-dozer being carried by a vehicle which was parked outside the offices between the secretariat buildings and the Tor Tiv's palace. The defendant directed me to lead the D vehicle to the following buildings: Stephen Kungwa, Madam Shitile Aava, Tule Azege, Akaazua Muemue and J.I. Kajo. My instructions were to take the driver of the bull-dozer and show him the buildings belonging to the people mentioned above. The defendant also accompanied us.*

*E I eventually directed the driver of the bull-dozer to the plaintiff's house. The defendant was also in our company. When we got to the plaintiff's house, the defendant ordered the driver of the bull-dozer to take the bull-dozer from the vehicle carrying it down and demolish the F house. While the bull-dozer was demolishing the plaintiff's house, the defendant was around, directing the driver of the bull-dozer on what part to demolish."*

**G It is therefore quite clear that the appellant, who was not a member of the Task Force, directed for the demolition of the house of the respondent. I agree that the two lower courts found correctly that the respondent should be answerable for such oppressive act.**

**H I now turn to the issue on the award of special and exemplary damages. Learned counsel for the appellant submitted, in the appellant's brief, that the Task Force took a decision to demolish the house of the respondent and that there was no satisfactory evidence that the Task Force had communicated to the appellant its decision to suspend the**

resolution reached to demolish the house of the appellant. Counsel further argued that if the appellant directed PW5 to order the bull-dozer driver to the respondent's house in order to demolish it the appellant cannot be said to have demolished the house out of spite or cruelty or in flagrant disregard of the law. Counsel finally submitted that there was no basis for the conclusion that the appellant's conduct warranted the award against him of exemplary or aggravated damages. B

In reply to the above submission, learned counsel for the respondent, in the respondent's brief, submitted that the demolished building had not yet been condemned as a building that must be demolished since the question whether the building contravened the law or was illegally built was a matter that was to be determined by the court. The suit was the case filed by the respondent against the Task Force in the High Court. Learned counsel is quite correct here. **What really aggravated the case of the appellant is the fact that he was not a member of the Task Force and therefore had no business or authority to order for the house of the respondent to be demolished. In addition to what I have said above the Task Force whose assignment was to see that illegally constructed premises should be demolished had decided to stay the demolition of the respondent's house pending the determination of his case in court. These aspects made the conduct of the appellant, as quite rightly found by the trial court, reprehensible and oppressive.** In the case of Eliochin (Nigeria) Ltd. v. Victor Mbadiwe (1986) 1 N.W.L.R. (Pt. 14) 47 at 65. Obaseki JSC, contributing to the lead judgment held; D E F

*"The primary object of an award of damages is to compensate the plaintiff for the harm done to him or a possible secondary object is to punish the defendant for his conduct in inflicting that harm. Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damage, punitive damages, vindictive damages, even retributory damages come into play whenever the defendant's conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like".* G H

The behaviour of the appellant falls within the first category of cases listed by Lord Devlin in the case of Rookes v. Barnard (1964) A.C. 1129, in which exemplary damages could be awarded. Lord Devlin held, in that case, that exemplary damages could be awarded against oppressive, arbitrary and unconstitutional action by servants of the government.

In sum, the appellant has established no convincing argument to warrant my interference with the decision of the Court of Appeal on the award of damages which it accepted to have been proved before the High Court. This appeal has therefore failed and it is dismissed. The judgment of the Court of Appeal is hereby affirmed. I award N10,000.00 in favour of the respondent.

---

D

#### WALI JSC

I have read in advance the lead judgment of my learned brother Uthman Mohammed, JSC and I entirely agree with his reasoning and conclusion for dismissing the appeal. My learned brother Uthman Mohammed, JSC has exhaustively dealt with issues raised and canvassed and I have nothing more useful to contribute.

I dismiss the appeal and affirm the judgment and order of the Court of Appeal. I award N10,000 costs to the respondent.

---

F

#### OGUNDARE JSC

I agree entirely with the judgment just delivered by my learned brother Mohammed J.S.C. I have nothing more to add. I, too, dismiss this appeal with N10,000.00 (ten thousand naira) costs to the Respondent.

---

H

#### ONU JSC

I had the privilege of a preview of the judgment of my learned brother Mohammed, JSC just delivered. I am in entire agreement with

his reasoning and conclusion that this appeal lacks merit and must therefore fail.

My learned brother Mohammed, JSC has taken care of the facts that I do not intend to review them here. Suffice it to say, that I consider the two issues submitted as arising for the determination of this court at the instance of the respondent, as relevant and worthy of consideration to be:

*"1. Whether the Court of Appeal was correct in affirming the finding of fact made by the trial court. In other words, whether the concurrent findings were perverse."*

*2. Whether the special damages and the aggravated damages awarded the respondent amounted to double compensation."*

In his argument of issue one, the learned counsel for the appellant submitted how the respondent's main complaints related to issues of fact wherein our appellate courts have always expressed a readiness to intervene where the appellant has successfully shown that the judgment appealed from is perverse or that the trial Judge failed to appreciate the weight or bearing of circumstances admitted or proved or has committed a radical error of law or procedure and that in any of the circumstances, a miscarriage of justice has been occasioned. The cases of Ntiaro v. Akpan (1914) 3 NLR 10 at 11; Woluchem & ors. v. Gudi & ors. (1981) 5 SC. 291 at 326 - 327 were relied upon. The court below, he argued, had affirmed the decision of the trial court, adding that in adopting this posture, that court had not fared better than the trial court.

I am of the firm view on reading the entire record of proceedings that the court below was in no doubt as to the facts established before the trial court and as to who was responsible for the demolition of the respondent's house. Said Mukhtar, J.C.A. who wrote the leading judgment:-

*"I believe the Learned Trial Judge did a good job on the evaluation and appraisal of the evidence before him, most especially as he crystallized and scrutinized them individually as follows on page 75 of the records in his judgment."*

She further held on the same page thus:

"..... I therefore agree with the Learned Counsel for the respondent that the trial court having heard the evidence and watched the performance of the witnesses was in the best position to come to the conclusions of fact and unless they are perverse this court cannot interfere."

It is in this wise that I agree with the submission of the learned counsel for the respondent that the appellant had accepted this much in his brief that he has an uphill task in trying to convince this court to interfere with the concurrent findings of fact. Even if the court below was in doubt as to whether the trial court was right or wrong as to the findings that the appellant demolished the respondent's house, the court below was duty bound on the preponderance of evidence adduced before the trial court to intervene to make its own findings of fact where the trial court failed to do so. See Ajadi v. Okenihun (1985) 1 NWLR 484. This the court below is entitled to do or equally capable of drawing as an inference as there was a preponderance of evidence before it from the admissible or disputed facts to draw the correct legal conclusion, inference or deduction. See Okpiri v. Jonah (1961) 1 ALL NLR 102; J.E. Ehimare & Anor. v. Okaka Emhonyon (1985) 1 NWLR 117 following Metalimpex v. A. G. Leventis (Nig.) Ltd. (1976) 2 SC. 91 at 92. See also Obodo v. Ogba (1987) 2 NWLR (Part 54) 1 at 11. The pleadings of the parties in the instant case manifestly bear out the decisions of the two courts below as unimpeachable. See for instance, paragraph 3 of the appellant's Statement of Defence where he (appellant) was evasive in attempting to deny the contents of paragraphs 4, 5, 6, 7, 8, 9 and 10 of the Statement of Claim. It is settled law that a refusal to admit or deny an opponent's pleading as in paragraph 3 of the Statement of Defence (ibid), does not raise an issue of fact, in order to raise an issue of fact that will go to trial, there must be a proper traverse either expressly or by necessary implication. See Olale v. Ekwelendu (1989) 2 NWLR (Part 115) 326 at 360 and Adeleke v. Aserifa (1990) 2 NWLR (part 136) 94 following Lewis and Peat (NRI) Ltd v. Akhimien (1976) 1 ALL NLR (Part 1) 460. As the appellant did not categorically deny that it was he who took it upon himself to carry out the duties to demolish the respondent's house and the

respondent had the support of witnesses both from the appellant's camp and his own side which remained unrebutted, the decision of the trial court which the court below affirmed, could not be impeached as being perverse. See Obodo v. Ogba (supra); Balogun v. Agboola (1974) 1 ALL NLR (Part 2) 66; Uzo Idika v. Erisi Ndukwe & ors. (1988) 2 NWLR B (Part 78) 563 at 580; Lucy Onowan v. Iserhien (1976) 1 NWLR 263; Ugwu v. Ogboru & ors. (1974) 1 ALL NLR (Part 2) 187 and Ogbero v. Uperi (1974) 1 NMLR 22.

The court below having reheard the cases and came to the same conclusion as the trial court, I can see no basis for the appellant's complaint which is lacking in substance. C

On the 2nd issue as to whether the special damages and the aggravated damages awarded the respondent amounted to double compensation, emphasis must be laid on the fact firstly that the demolished building had not yet been condemned as a building that must be demolished for contravening the Town and Country Planning Law, Cap. 130 Laws of Northern Nigeria applicable in Benue State or was illegally built - a matter that was yet to be determined by a court of competent jurisdiction in Suit No. GBD/65/84: TULE AZEGE V. TASK FORCE ON ENVIRONMENTAL SANITATION - a Suit the appellant did not want to hear about. As Exhibit A (minutes containing the resolution of the Gboko Local Government Task Force to abide by the decision of the Court) F which was yet to be carried into effect upon such a decision being arrived at, the appellant had failed to establish by due process of law that the structure was an illegal one along with its Certificate of Occupancy as well as its approved building plan. He (appellant) has to pay for his rashness. And since the special damages as reduced or modified by the court below were pleaded and the respondent has not complained to this court over the awards, the appellant cannot be heard to complain. In the instant case, the appellant is unhappy about the damages which he argues are excessive. What he has failed to bear in mind is that the Appellate H Court does not upset an award of damages merely because it might itself have awarded a different figure; the appellant must show that the trial Judge proceeded upon some wrong principle or that the award was en-

tirely an erroneous estimate. See Uwa Printers (Nig.) Ltd. v. Investment Trust Co. Ltd. (1988) 5 NWLR (Part 92) 110; Obere v. Board of Management Eku Hospital (1978) 2 LRN 246 at 251; Ziks Press Ltd. v. Ikokwu 13 WACA 188 at 189 and Barau v. Cubitts (Nig.) Ltd. (1990) 5 NWLR B (Part 152) 630. Indeed, it is worthy of note that the appellant has not attempted to challenge the respondent's evidence with respect to special damages which was properly admitted. See Omoregbee v. Lawani (1980) 3-4 SC. 108 at 117; Odulaja v. Haddad (1973) 11 SC. 35; Nigerian Maritime Services Ltd. v. Alhaji Bello Afolabi (1978) 2 SC. 81 at 82 and Yalaju Amaye v. A.R.E.C. Ltd. (1990) 4 NWLR (Part 145) 422. C

On whether the respondent has been doubly compensated, it is the law that where special damages are claimed in addition to general damages, special damages will be awarded if strictly proved; invariably, D the plaintiff ought to sufficiently particularize it to enable the court decide whether all or part of it can be granted. See Eliochin (Nig.) Ltd. v. Mbadiwe (1986) 1 NWLR (Part 14) 47; Sommer v. F.H.A. (1992) 1 NWLR (Part 219) 548 and Obimiami Brick & Stone (Nig.) Ltd. v. A.C.B. E (1992) 3 NWLR (Part 229) 260 at 312. This is because damages are always deemed to be in issue except expressly admitted. See Osuji v. Isiocha (1989) 3 NWLR (Part 111) 623 at 640.

In the case in hand, there is concurrent finding that special dam- F ages have been strictly proved with minor amendment by the court below and that the respondent is also entitled to aggravated damages. There is no question of double compensation (see Ezeani v. Ejidike (1964) 1 ALL NLR 402) and I also find nothing perverse in the concurrent find- G ings of the two courts below. I will therefore, decline to interfere there- with. See Chinwendu v. Mbamali (1980) 3 SC. 31; Abdullahi v. The State (1985) 1 NWLR 523 at 528; Efe v. The State (1976) 11 SC. 75 and Ebba v. Ogodo (1984) 4 SC. 84 at 98, to mention but a few.

By his act of ordering the demolition of the respondent's house H in flagrant disregard of the law, the appellant exhibited a high degree of recklessness and insensitivity to the social and legal norms of the society in which he lived. As a well-placed civil servant, he ought to have known and behaved better. His conduct is sufficiently outrageous and repreh-

sible to drag down the heavy toll of damages rightly awarded against him.

For these reasons and the more elaborate ones contained in the lead judgment of my learned brother Mohammed, JSC I too, dismiss the appeal and make the same order as to costs as contained therein.

B

---

### IGUH JSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Mohammed, J.S.C and I agree entirely that this appeal is without merit and ought to be dismissed.

C

The facts of the case have been fully set out in the leading judgment. It suffices to state that on the 23rd day of November, 1984, the respondent's building known as Plot No, BN 6763 along J. S. Tarka Way, Gboko was unlawfully broken into and part thereof completely destroyed. It was as a result of this unlawful demolition that the respondent filed an action against the appellant claiming N1,000,000.00 as special and aggravated damages.

D

E

The appellant denied all liability to the respondent.

The case turned on the credibility of the witnesses and the trial court had no difficulty in holding that it was the appellant, who against all official advice, ordered the demolition of the respondent's building. It added that those who deliberately go out to cause wrongful injury to other persons must be prepared to accept the legal consequences of their action. The learned trial judge awarded a total of N312,652.80 special and aggravated damages to the respondent against the appellant whereof N162,652.80 represented special damages and N150,000.00 represented aggravated damages. This award, on appeal, was reduced to N219,012.00 whereof N119,012.00 represented special damages and N100,000.00 represented aggravated damages. The appellant has further appealed to this court.

F

G

H

On the alleged conduct of the appellant complained of by the respondent, it is clear, having regard to the concurrent findings of both courts below, that these were as aggravated in nature as they were reck-

less, vindictive, high handed and utterly oppressive. They also depicted gross abuse of official power on the part of a public officer. The conduct of the appellant in ordering the destruction of the respondent's building without any justifiable excuse was also reprehensible to the extreme and B showed gross disregard for the rule of law. No miscarriage of justice or a violation of any principle of law or procedure was established by the appellant before us and this court has no reason to interfere with the said concurrent findings of both courts below. See Enang v. Adu (1981) 11-  
C 12 S.C. 25 at 42, Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Part 67) 718, Igwego v. Ezeugo (1992) 6 N.W.L.R. (Part 249) 561 at 574 etc. I therefore endorse them fully and hold that both courts below were right in holding that liability was established by the respondent against the appellant. This must be so as it was not established that the respondent's  
D building in question was an illegal structure.

On the issue of special damages, there are concurrent findings by both courts below that these were strictly proved. Both courts were also in agreement that this was a proper case for the award of aggravated  
E damages against the appellant.

It is trite law that in order to justify an award of exemplary or aggravated damages, it is not sufficient to show simply that the defendant has committed the wrongful act complained of. His conduct must  
F be high handed, outrageous, insolent, vindictive, oppressive or malicious and showing contempt of the plaintiff's rights, or disregarding every principle which actuates the conduct of civilized men. See Eliochin (Nig.) Ltd. v. Mbadiwe (1986) 1 N.W.L.R. (Part 14) 47. Exemplary damages,  
G in particular, also known as punitive or vindictive damages can apply only where the conduct of the defendant merits punishment, and this may be considered to be so where such conduct is wanton, as where it discloses fraud, malice, cruelty, insolence or the like, or where he acts in contumelious disregard of the plaintiff's rights. But exemplary damages,  
H to some extent, are distinct from aggravated damages whereby the motives and conduct of the defendant aggravating the injury to the plaintiff would be taken into consideration in the assessment of compensatory damages. See Rookes v. Barnard (1964) 1 ALL E.R. 367 H. C. In this

class of case, the injury complained of by the plaintiff has been aggravated by the malice or by the manner of doing the injury, that is, the insolence or defiance by which it is accompanied. Although this can justify an award of exemplary damages, aggravated damages could certainly be awarded in such type of case. Accordingly aggravated damages in this type of case can do most, if not all of the work that could be done by exemplary damages. See Rookes v. Barnard, (supra) at page 412 per Lord Devlin. In other words, practically all cases of exemplary damages awards could be explained as cases of aggravated damages. The next question must be whether there was such conduct on the part of the appellant aggravating the injury to the respondent in this case to warrant the respondent's claim of aggravated damages.

In this regard, the learned trial Judge observed as follows:-

*"What then was the conduct of the defendant just before and at the time when the wrongful act was committed? This is to be inferred from the evidence of PW 1 and the plaintiff. PW 1 stated that he, as the Chairman of the Task Force Committee, advised the defendant not to carry out the demolition, since the matter had been taken to court. That when the defendant would not listen to him, he appealed to the Resident State Counsel to prevail on the defendant to change his mind, and that both himself and the Resident State Counsel called at the defendant in his office and advised him of the need to respect an order of the Court.*

*The plaintiff on the other hand testified that when the Task Force Committee served him a notice to demolish the building, he went to see the defendant with all his documents of title. That the defendant not only refused to see him but drove him away. And when the defendant appeared with a bull-dozer in company of a strong police force, he, the plaintiff asked the defendant why he should concern himself with a matter which was essentially between him (the plaintiff) and the Task Force, and the defendant retorted with an order directing him to ask the question at the pains of arrest and detention. The conduct of the defendant was not only oppressive but also reprehensible and bordered on an unwarranted use of Government power. It deserves a measure of exemplary or aggravated damages. What sum then is adequate having regard to the*

*entire circumstances of the case?"*

The Court of Appeal, for its own part, considered the above observations of the trial court and concluded thus:-

B *"Once recklessness and over confidence is allowed to rule the mind, then one should be prepared to face the consequence of his act. That is to say, the defendant/appellant has made his bed and so he must lie on it. I agree with the learned trial judge's observation in the judgment that:-*

C *"That conduct of the defendant was not only oppressive but also reprehensible and borders on an unwarranted use of governmental power. It deserves a measure of exemplary or aggravated damages."*

This is a classical example of a case that deserves the award of exemplary damages. In my own consideration the award of exemplary D damage is in order and has not proceeded from a wrong principle of law. I thus affirm the decision of the lower court on that."

I, too, agree and fully endorse the above views of both courts below.

E On the question of whether the respondent was doubly compensated as argued by learned counsel for the appellant, the law is firmly established that where in a trespass action, general damages are claimed and established, it is the duty of the court of trial to proceed to assess, F quantify and award the appropriate amount it considers reasonable, having regard to all the circumstances of the case. Similarly, where, additionally, special damages are pleaded, claimed and strictly proved, these will also be awarded to the plaintiff by the court. See Eliochin (Nig.) Ltd. v. Mbadiwe, (supra).

G In the present case, there is concurrent finding that certain special damages identified in the judgments of both courts below were strictly proved and duly awarded. Both courts below are also in agreement that the respondent is additionally entitled to aggravated damages, having re- H gard to the reckless, high handed, outrageous, oppressive, and aggravating nature of the appellant's conduct against the respondent. In Eliochin (Nig.) Ltd. v. Mbadiwe, Obaseki, J.S.C. had cause to observe as follows:-

*The primary object of an award of damages is to compensate the plaintiff for the harm done to him or, a possible secondary object is to punish the defendant for his conduct in inflicting that harm. Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damages which go by various names, to wit, exemplary damages, punitive damages, vindictive damages, even retributory damages can come into play whenever the defendant's conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like".*

I entertain no doubt that the above observation of Obaseki, J.S.C. represents the true position of the law. In my view, the appellant's conduct in this case more than fits into the class of action in which aggravated damages may be successfully claimed and I am unable to agree that the appellant had established a case of double compensation in the awards of the two courts below against him.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Mohammed, J.S.C. that I, too, find this appeal lacking in substance and the same is hereby dismissed with costs as assessed in the leading judgment.

F

G

H

B

C

D

E

F

G

H