

SUPREME COURT OF NIGERIA
17TH DECEMBER, 1999. SC. 249/1993
CORAM:- S. M. A. BELGORE, I. L. KUTIGI,
U. MOHAMMED, O. ACHIKE, U. A. KALGO, JJSC

1. CALABAR EAST CO-OPERATIVE THRIFT
& CREDIT SOCIETY LTD

2. JAMES UDO EKONG APPELLANTS

3. ROBERT HOGAN ARCHIBONG

4. JOHN BOCO ASUQUO

AND

ETIM EMMANUEL IKOT RESPONDENT

***APPEALS** - Damages - Concurrent findings in respect of special and general damages - Not having been shown to be perverse - Will not be interfered with.*

***APPEALS** - Grounds of appeal - Omnibus ground - Cannot be relied on in raising an issue of law.*

***APPEALS** - Issue - That is incompetent - Should be struck out - And not pronounced upon - As any such pronouncement will be mere obiter dictum.*

***APPEALS** - Issues - To be considered - Are only those predicated on good ground of appeal - To avoid taking the other side by surprise.*

***APPEALS** - New issue - Reference to exemplary damages by lower court - Is a mere obiter - And does not amount to introducing new issue.*

***DAMAGES** - Special damages - Must be pleaded - And strictly proved by satisfactory evidence.*

***DAMAGES** - Special damages - Proof - Is to be based on balance of*

probabilities - Subject to pleadings and circumstances of each case.

DAMAGES - *Special damages - Pleadings - In the face of insufficient traverse - Strict proof of special damages being necessary - Was still achieved vide satisfactory evidence.*

DAMAGES - *Special damages - Pleadings and evidence led in proof - Where not controverted by cross examination - Court is to accept and act on the evidence.*

DAMAGES - *Special damages - Proof of exclusive ownership of goods damaged - As required in Sommer's case - Is not necessary in this case.*

LANDLORD & TENANT - *Ejection - By resorting to self help - Is contrary to law - And must be condemned by the court.*

FACTS

The plaintiff/respondent was a shoemaker occupying a store situate at 10 Barracks Road Calabar as a sub-tenant of one M. Etuk. The said Etuk was a tenant of the 1st defendant/appellant. On 10th May, 1980, the 2nd to 4th defendants acting on behalf of the 1st defendant, without any lawful reason or excuse broke into the said store, dismantled the roof thereof and caused considerable damage to the plaintiffs goods, machines equipment and tools of trade. It rained later that same date and the said store was flooded leading to destruction of the receipts documents of the plaintiff. The defendants contended that they gave notice to all tenants to vacate the premises before dismantling the roof under the directives of the Calabar Municipal Government to demolish certain structures. The plaintiff was not put into possession by the defendants.

Plaintiff claimed jointly and severally from the defendants the sum of N53,490.00 damages, N23,490.00 therefore being special damages and N30,000.00 general damages. The defendant counter claimed for forfeiture of the store, N5,000.00 damages for trespass and perpetual injunction restraining plaintiff from further acts of trespass on the said

store. The trial court found in favour of the plaintiff and awarded a total of N35,000.00 damages, N23,490.00 being special damages and N10,510.00 general damages. Defendants appealed to the court of Appeal which dismissed their appeal. Being dissatisfied, they have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

" (1) Whether the Appeal Court was right in holding that the plaintiff/Respondent had successfully proved his special damages as claimed and entitled to an award of damages.

(2) Whether the award of N10,510.00 as damages was not excessive, punitive and not in tune with the weight of evidence adduced by the plaintiff/Respondent at trial.

(3) Whether the evidence led by the plaintiff/Respondent was sufficient enough for the trial court and the Court of Appeal to award him N23,490.00 as special damages. Etc. see p. 3243

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

Special damages - Must be pleaded

1. In contrast to general damages, it is now a firmly established rule that special damages must not only be expressly and fully pleaded but must be strictly proved by credible and satisfactory evidence because the court is powerless to tinker with the amount so expressly constituted as special damages. What has always exercised the courts is what quantum of evidence must be adduced in proof of special damages. (p. 3245 F)

Special damages - Proof

2. What amounts to evidence in proof of special damages, in my view, cannot be understood in the sense of "unusually credible or satisfactory evidence" because, in law, nothing is known by this superlative quality of evidence. After all, generally, the law insists on only two standards of proof, namely, proof beyond reasonable doubt as a prerequisite in criminal cases in order to obtain conviction of the accused person, or proof on preponderance of evidence or on balance of probabilities, which is re-

quired to obtain judgment in civil cases. Special damages are claimable in civil cases involving tort so also for breach of contract. Like the standard of proof prescribed for civil cases, proof of special damages must mean no more than such proof wherein the amount of evidence led preponderates in favour of the plaintiff's claim so that the court has no alternative than to award the particularized damage that has been proved. The result is that if a plaintiff is unable to elicit satisfactory and credible evidence in proof of the particularized heads of claim and since the court can only award to the plaintiff by way of special damages that which he has so proved, he would be obliged to settle for only general damages. It will follow from the above, that the sufficiency of evidence necessary in proof of special damages is fluid and depends on the state of the parties' pleadings and the evidence that can be elicited having regard to all the circumstances of the case. (p. 3245 H)

Special damages - pleadings

3. It is manifest that this is insufficient traverse of the Respondent's claim. Ordinarily, such traverse is so lame that on the pleadings alone the Respondent would only be expected to lead enough evidence to introduce the necessary evidence in respect of the particularized special damages. Undoubtedly, because strict proof is mandatory in proof of special damages, unlike in other situations of defective traverse, the determination of the claim for special damages on the parties' pleadings alone may not be prudent; see Ademora v Ajufo (1988) 3 NWLR (Pt. 80) 1. Conscious of the risk of resting the issue of special damages on the pleadings alone, the respondent led what, in my view, was sufficient, credible and satisfactory evidence on the items of special damages. No effort, even a feeble one for that matter, was made by counsel for the defendants/appellants to attack the items of claim for special damages under cross-examination. (p. 3247 A)

Special damages - Pleadings and evidence

4. In contrast, both the pleadings and the evidence led by the respondent clearly identified each item of special damages, so also its value. By

declining to cross-examine on the items of particularized heads of special damages, the inescapable inference was irresistible, to wit, that the defendants/appellants conceded the items of special damages. See Aarons Reefs Ltd v. Twiss (1896) A.C. 273 at 283 and Adimora v Ajufo (supra). Where the head for special damages was not challenged both in the pleadings and in evidence, nor controverted and the said evidence was supported by pleadings and the nature of the evidence by its very nature was quite credible, then the trial court has no option but to accept and act on it. See Omogbe v. Lawani (1980) 3-4 S.C. 108, Bello v. Eweka (1981) 1 S.C. 101. (p. 3247 G) B
C

Special damages - Proof of exclusive ownership

5. Appellants argued that the award of special damages was faulty in law because the respondent did not establish that he was the exclusive owner of the goods lost or damaged, and relies on the same authority of Sommer v Federal Housing Authority (supra). It is important to remind counsel that he should refrain from placing reliance on arguments raised in a particular case as needful and mandatory in another case where such arguments are irrelevant and therefore completely untenable or uncalled for. While no doubt, Sommer case is a good authority for strictness of proof of special damages as well as the necessity of full particularization of such items of special damages, It cannot, permit my being repetitive, be used to impugn a case, such as the one in hand, where the pleadings and evidence led at the trial amply supported the claim for special damages, see Oladehin v Continental Textile Mills Ltd (1978) 1 LRN 60. (p. 3248 C) D
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Issues - To be considered

6. It is elementary that in all superior appellate courts that issues to be addressed are only those predicated on good grounds of appeal. It will be riotous for any counsel to address an issue not postulated from a ground of appeal. It is compactible with ordinary common-sense that such practice should not be tolerated by the sheer force of argument that the adversary party will be taken by surprise. The whole purpose of H

adjudication in our adversary system is for a party to explicitly put his case across the table which will enable the opponent to respond appropriately to that case he has fielded, and then the Judge, as an impartial umpire will adjudicate on the issues in controversy. That and nothing more is the epitome of what justice or fair trial is all about. (p. 3249 F)

Damages - Concurrent findings

7. Both courts were respectively satisfied that the items of special damages were properly pleaded and particularized, and credible and sufficient evidence led in proof therefore. It has not been remotely suggested by the appellants that the findings of fact concurred to by the court of appeal are perverse and not justified by the evidence nor has there been a miscarriage of justice. In the absence of such submission, the law is trite that it is not the duty of the appellate court, nor even the supreme Court, to substitute its own view for the evidence led at the trial; see Lokoyi v Olojo (1983) 2 SC NLR 123 and NEPA v Alli (1992) 8 NWLR (pt. 259) 279, 303 - 304. I am therefore satisfied that no exceptional or special circumstances have been advanced by the appellants why this court should interfere with the concurrent findings of the two lower courts. I am bound to emphasize that it has not been shown that the concurrent findings of fact by the two lower courts in respect of general damages are perverse nor unjustified by the evidence placed before the court, as already stated in respect of general damages. In the circumstance, the appellate court, including the supreme court, is powerless to disturb any findings of fact made by the trial court and concurred to by the court of Appeal as it relates to damages unless the findings proceeded from wrong principle or not supported by credible evidence. (pp. 3250 B/ 3253 E)

Ejection - By resorting to self help

8. The law seriously frowns upon a landlord to disturb the peaceful possession of a tenant by crude resort to self-help rather than conformance with the law that arms him with a valid court's order of ejection; since no notice to quit was duly served on the respondent he remained pro-

tected by the local law that provides for ejectment of a tenant or even a sub-tenant only after the relevant notices have been duly served on the occupier. Even the executive arm of government is powerless to unleash any act of crudity on a tenant or sub-tenant who is in peaceful possession; see Ojukwu v Government of Lagos State (1985) 2 NWLR (pt.10) B 822 and Sule v Nigerian Cotton Board (1985) 2 NWLR (pt. 5) 17. For the court of law and equity to overlook such crudity arising from resort to self-help is unwittingly to arm a landlord with a sledge-hammer for infliction of intolerable hardship upon tenants or sub-tenants who may not even be in arrears of rent. Therefore, on a calm view of the law such barbarism must be roundly condemned. (p. 3252 A) C

Appeals - New issue

9. Reading the whole paragraph in which the phrase 'exemplary damages' was introduced by the lower court, it seems to me very clear that the reference in this regard to exemplary damages was a mere obiter dictum. Thus after giving full consideration to the issue of special damages, Oguntade, JCA (at p. 160) went straight to consider "the award of N10,510.00 made..... as general damages for trespass" and nowhere else did the record show that his Lordship finally approved that sum of money or any other sum of money as exemplary damages. To buttress this point, Uwaifo, JCA (as he then was) in his concurring judgment, had this to say, namely, "The evidence available clearly justified the special damages and in addition the general damages." (p. 3253 B) D E F

Grounds of appeal

10. Rather than limiting the argument or complaint to the weight of evidence, appellants' counsel has expanded it and argued that the appellants were acting under the directives of the Calabar Municipal Government. This is palpably erroneous because an appeal predicated on the omnibus or general ground is not at large. It cannot be used to raise issues of law such as that the appellants were operating as servants or agents of the Calabar Municipal Government. Such issue of law must be raised as a separate ground of appeal and not made an adjunct to the omnibus ground G H

of appeal. See Onaju & ors v Micho & Co (1961) ALL NLR 324 and Davies v Powell Duffyn Collieries (1942) A.C. 60 at pp. 616-617. It follows that the submission made by appellants' counsel as it relates to appellants' operating under the directives of the Municipal Government is wholly incompetent as it is not predicated on any valid ground of appeal. (p. 3255 A)

Issue - That is incompetent

11. The court has no powers to engage itself in consideration of issues which do not arise from a ground of appeal. If an issue is incompetent it should be struck out. To do otherwise and give consideration to the issue is to embark on a worthless academic pursuit. It is bad advocacy for learned counsel to ignore prudence and his responsibility as an officer of the court, and expressly urge the court to embark on fruitless academic frolic, all in the perceived interest of justice. I shall not accede to such request. Pronouncements or decisions made on incompetent issues or defective grounds of appeal cannot advance the appellants' case, not even the interest of Justice nor our jurisprudence, one jot, because, at best, such pronouncements are mere obiter dicta. Stricto sensu, an appellate court lacks jurisdiction, in the sense of competence, to entertain an appeal which is not fought on valid grounds of appeal; see Godwin v C. A. C. (1989) 14 NWLR 14 (pt.584) 16 S.C. and Kalu v Potiskum (1998) 8 NWLR (pt.540) 1 SC. (p. 3256 G)

NOTABLE POINTS OF INTEREST

ACHIKE JSC

1. *Approval of use of self help by government - Will not make it lawful*
Even if the argument was based on a valid ground of appeal, the directives of the Calabar Municipal Government wherein a barbaric act of self-help amounting to the tort of trespass was ordered or approved by the said Municipal Government against a person in peaceful possession rather than counselling the Appellants to comply with established rules for ejectment of a tenant or a sub-tenant will not change the unlawful character of the ejectment of the respondent. (p. 3255 E)

KALGO JSC

2. When ipse dixit evidence alone can establish special damages

The learned trial judge visited the scene at the invitation of the parties and believed the respondent on the loss of the receipts. Therefore, with regard to the claim for special damages, I am of the view, that in the circumstances the evidence based on the ipse dixit of the respondent alone, is sufficient, acceptable and reasonable evidence to prove special damage. See IMANA V ROBINSON (1979) 2-4 SC 1 (p. 3259 A)

REPRESENTATION

Chief Richard Efa, with him, Fidelis Ibiang for appellants
Respondent absent - not represented.

CASES REFERRED TO

Sommer v Federal Housing Authority (1992) NWLR (pt.219) 548
Mandrides v A.J. Tanagalakas & Company (1932) 11 NLR 62
Nigeria Produce Marketing Board v Adewunmi (1932) 1 All NLR (part 11) 433
Ademora v Ajufo (1988) 3 NWLR (Pt. 80) 1
Produce Marketing Board v. Adewunmi (1972) 1 All NLR (pt.2) 423
Omoregbe v. Lawani (1980) 3-4 S.C. 108
Bello v. Eweka (1981) 1 S.C. 101
Adel Boshali v. Allied Commercial Exporters Ltd (1961) 4 All NLR 917
Oladehin v Continental Textile Mills Ltd (1978) 1 LRN 60

LEAD JUDGMENT BY ACHIKE JSC

The plaintiff, a shoemaker, was at all material times in possession of a store situate at 10c Barracks Road, Calabar where he kept machines, tool and implements for his shoe-making business. He was a paying tenant i.e. N24,00 per month to one M. Etuk (the landlord) and used part of the apartment for residential purposes. On 10th May, 1980 the 2nd to 4th defendants, action on behalf of the 1st defendant, without any lawful reason or excuse, broke into and entered the said store, dismantled the roof thereof and caused considerable damage to the plaintiff's

goods, machines, equipment and tools of trade. It rained later on 10/5/80 and the said store was flooded. Wherefore, the plaintiff claimed jointly and severally from the defendants the sum of N53,490.00 damages which was broken down into N23,490.00 special damages and N30,000.00 general damages.

The defendants' case was that the 1st defendant as owner of the aforesaid store occupied by the plaintiff, had let out same to Mrs. Maria M. Etuk and after serving a notice to quit on Mrs. M. M. Etuk, the defendant, action under the directives of the Calabar Municipal Government to demolish certain structures, proceeded to dismantle the roof of the said store after giving due notice to all the tenants, including the plaintiff who was not put into possession by them. The defendants counter-claimed against the plaintiff for

- " (a) Forfeiture of the store at 90c Barracks Road, Calabar.
- (b) N5,000.00 damages for trespass
- (c) Perpetual injunction against the plaintiff from committing further acts of trespass on the said store."

After due trial, the learned trial High Court judge, sitting at the Calabar High Court, handed down his Judgment on 23/10/90 in favour of the plaintiff against the defendants. After making the following findings, to wit,

" In conclusion, I must find that the plaintiff was at all times in possession of the store situate at No. 10c Barracks Road, Calabar. That the defendants without any lawful reason or excuse by themselves or servants and / or agents broke into the said store and caused a colossal damage to the plaintiff's machines and other tools of trade. That he has suffered damage and is entitled to damages."

His Lordship, Effanga, J. (as he then was) made the following orders:

" I dismiss the counter-claim of the Defendants as being without merit. I make the following orders:-

- (1) Defendants to pay N23,490.00 special damages to the plaintiff
- (2) Defendants to pay N10,510.00 as general damages for trespass;
- The Total - N35,000.00
- (3) The Defendants will pay N1,000.00 as costs to the plaintiff."

Dissatisfied with the judgment, the defendants appealed to the Court of Appeal holden at Enugu. The appellate court dismissed both the appeal and the counter-and confirmed the judgment of the trial court.

Still dissatisfied, the defendants again appealed to this Court. The parties filed and exchanged briefs of argument. For the Defendants/ Appellants, their learned counsel Chief Richard Efa formulated six issues for determination, to wit,

" (1) *Whether the Appeal Court was right in holding that the plaintiff/Respondent had successfully proved his special damages as claimed and entitled to an award of damages.*

(2) *Whether the award of N10,510.00 as damages was not excessive, punitive and not in tune with the weight of evidence adduced by the plaintiff/Respondent at trial.*

(3) *Whether the evidence led by the plaintiff/Respondent was sufficient enough for the trial court and the Court of Appeal to award him N23,490,00 as special damages.*

(4) *whether the totality of the evidence as adduced by the plaintiff/Respondent was weighty enough for the court to enter judgment in his favour.*

(5) *whether the court of Appeal was right when it dismissed the appeal of the Appellants and confirmed the judgment of the High Court.*

(6) *whether the court of Appeal was right in refusing to consider issues 1 and 6 raised by the Appellants on the grounds that they did not arise from any ground of appeal and whether such a conclusion did not amount to justice on technicalities rather than substantial justice."*

For the Respondent, his learned counsel I. A. Inyang, Esq. was satisfied to adopt appellants' issues for determination.

At the oral hearing, neither the Respondent nor his counsel was present, and in accordance with the Rules of this court, Respondent's brief was deemed duly argued.

Issues 1, 2 and 3

Appellants' learned counsel elected to argue the first three issues together. Issues 1, 2 and 3 are predicated on grounds of appeal questioning the quantum of damages awarded by the trial Judge and confirmed

by the court of Appeal. In attacking the quantum of special damages, appellants' learned counsel harped on the observation by Oguntade, JCA in the leading judgment in the court below which runs thus:

" *There is no doubt that the evidence called by the plaintiff in proof of special damages was weak.*"

Having so observed, His Lordship went further to note that the appellant testified to the fact that the rain destroyed a lot of his things, including files and purchase receipts. All that plaintiff sought to convey, according to his Lordship, was his inability to produce "purchase receipts" for his goods lost or damaged by the rain. Learned appellants' counsel picked holes with the conclusion reached by Oguntade JCA in his leading judgment in the construction given to Respondent's testimony, namely, "the rain destroyed a lot of my things including files and purchase receipts" (vide page 6 of appellants' brief and page 158 of record of appeal). I would like to go straight on and dispose of this point. The paraphrase of the respondent's evidence quoted above does not, in my view, permit of any other construction, and reading that piece of evidence in the context of the entire testimony of the respondent, it is palpably untrue for the learned appellants' counsel to submit that the conclusion was untenable having regard to the evidence on the printed record. The submission is arid.

As earlier noted, learned appellants' counsel, in his wisdom, chose to argue ' Issues 1, 2 & 3 together. I think it was perfectly open to him to so decide. I entirely agree with counsel's approach. No doubt, this approach is to avoid repetitiveness in the treatment of the three issues. It is for this reason that I have deemed it expedient to deal with these three issues together. The main plank on which attack was launched against the award of special damages was that even though the appellants did not cross-examine as to the authenticity of respondent's claim, that did not constitute an admission of the damages claimed as reasonable or that the appellants were deprived of their right to have the damages against them judicially assessed. It was further submitted by counsel that the fact that the respondent itemized the goods he claimed were lost or damaged, and then went on to fix prices for them did not establish the fact that he

actually owned the said properties and that they cost the prices which he attached to them. It was also his submission that respondent was obliged to prove exclusive ownership of the property he said were lost or damaged. Finally, he submitted that it was necessary for respondent to plead the prices and dates of purchase of the good lost. For this proposition, B reliance was placed on Sommer v Federal Housing Authority (1992) NWLR (pt.219) 548.

Respondent's counsel, in his reply, submitted that the conclusion of the learned Justice of the Court of Appeal under fire was amply C borne out by the evidence before the court, and such deduction was permissible to be drawn from the undisputed evidence on record. Counsel further submitted that the authority of Mandrides v A.J. Tanagalakas & Company (1932) 11 NLR 62 and Nigeria Produce Marketing Board v Adewunmi (1932) 1 All NLR (part 11) 433 cited and relied on by appel- D lants' counsel to show that appellants' failure to reply in their pleading to the claim of special damages and to cross-examine in respect of same were not fatal to appellants' case was untenable, and that those authorities were only applicable to claims for dismissal in contract of employ- E ment as opposed to a claim for the tort of trespass.

What seems to me to have been called to question in the submissions of both counsel with regard to issues 1, 2 and 3 is, first the law's demand for proof of special damages. It may then be asked, what is the F nature of special damages? Whenever the term 'special damages' spoken of in award of damages, it seems to me to mean exactly what it says, that is, in the sense that it is such damages suffered by the plaintiff (or the counter-claimant) that is quantifiable in money's worth. **In contrast G to general damages, it is now a firmly established rule that special damages must not only be expressly and fully pleaded but must be strictly proved by credible and satisfactory evidence because the court is powerless to tinker with the amount so expressly constituted as special damages. What has always exercised the courts is H what quantum of evidence must be adduced in proof of special damages. What amounts to evidence in proof of special damages, in my view, cannot be understood in the sense of "unusually credible or**

satisfactory evidence" because, in law, nothing is known by this superlative quality of evidence. After all, generally, the law insists on only two standards of proof, namely, proof beyond reasonable doubt as a prerequisite in criminal cases in order to obtain conviction of the accused person, or proof on preponderance of evidence or on balance of probabilities, which is required to obtain judgment in civil cases. Special damages are claimable in civil cases involving tort so also for breach of contract. Like the standard of proof prescribed for civil cases, proof of special damages must mean no more than such proof wherein the amount of evidence led preponderates in favour of the plaintiff's claim so that the court has no alternative than to award the particularized damage that has been proved. The result is that if a plaintiff is unable to elicit satisfactory and credible evidence in proof of the particularized heads of claim and since the court can only award to the plaintiff by way of special damages that which he has so proved, he would be obliged to settle for only general damages. It will follow from the above, that the sufficiency of evidence necessary in proof of special damages is fluid and depends on the state of the parties' pleadings and the evidence that can be elicited having regard to all the circumstances of the case.

The question that we must now tackle is whether the burden of proof of special damages placed on the plaintiff/Respondent in the instant case was appropriately discharged. It is incontestable that the list of items claimed under the head of special damages in the Respondent's pleading was quite long but fully particularized and each item showed the value of the goods concerned. Thereafter, the total of the values of the goods was set down as N23,490.00. The record shows (see p. 45) that the respondent (as plaintiff) religiously testified to the items of goods claimed as special damages. It is worthy of note that while the Respondent set out clearly in paragraph 9 of his statement of Claim the particularized items and values of each item of goods subsumed under special damages, the appellants, as defendants, in their response, as set out in paragraph 17 of their statement of Defence, merely averred as follows:-

" 17. In answer to paragraph 9 of the Statement of Claim, Defendants state that it cannot accept responsibility for any pretended or false damage alledged to have been suffered by the plaintiff or any pretended claim".

It is manifest that this is insufficient traverse of the Respondent's claim. Ordinarily, such traverse is so lame that on the pleadings alone the Respondent would only be expected to lead enough evidence to introduce the necessary evidence in respect of the particularized special damages. Undoubtedly, because strict proof is mandatory in proof of special damages, unlike in other situations of defective traverse, the determination of the claim for special damages on the parties' pleadings alone may not be prudent; see Ademora v Ajufo (1988) 3 NWLR (Pt. 80) 1. Conscious of the risk of resting the issue of special damages on the pleadings alone, the respondent led what, in my view, was sufficient, credible and satisfactory evidence on the items of special damages. No effort, even a feeble one for that matter, was made by counsel for the defendants/appellants to attack the items of claim for special damages under cross-examination. The respondent's case was not like the unsatisfactory pleading illustrated in Sommer v. Federal Housing Authority (supra) which did not permit of meaningful cross-examination because under the items of special damages only a monolithic sum was pleaded in respect of all the various items of special damages. Obviously, in such a situation, it was prudent for a well-informed defence counsel to refrain from cross-examining the claimant on this head of claim as the situation did not, and could not, permit of any meaningful cross-examination. This is clearly not the situation in the case in hand. **In contrast, both the pleadings and the evidence led by the respondent clearly identified each item of special damages, so also its value. By declining to cross-examine on the items of particularized heads of special damages, the inescapable inference was irresistible, to wit, that the defendants/appellants conceded the items of special damages. See Aarons Reefs Ltd v. Twiss (1896) A.C. 273 at 283 and Adimora v Ajufo (supra). I am to say that the authorities of**

Mandrides v A.J. Tanglakis & Company (Supra) and Nigeria Produce Marketing Board v. Adewunmi (1972) 1 All NLR (pt.2) 423 relied on by the appellants are inapplicable. Where the head for special damages was not challenged both in the pleadings and in evidence, nor controverted and the said evidence was supported by pleadings and the nature of the evidence by its very nature was quite credible, then the trial court has no option but to accept and act on it. See Omoregbe v Lawani (1980) 3-4 S.C. 108, Bello v. Eweka (1981) 1 S.C. 101, Adel Boshali v Allied Commercial Exporters Ltd (1961) 4 All NLR 917 and Okulaja Hooldad (1973) 11 357 at 362.

Appellants argued that the award of special damages was faulty in law because the respondent did not establish that he was the exclusive owner of the goods lost or damaged, and relies on the same authority of Sommer v Federal Housing Authority (supra). It is important to remind counsel that he should refrain from placing reliance on arguments raised in a particular case as needful and mandatory in another case where such arguments are irrelevant and therefore completely untenable or uncalled for. In Sommer case, it may be recalled, that a controversy raged over whether the plaintiff in that case had exclusive ownership of the goods in dispute; in fact, the plaintiff's evidence contradicted his pleadings on the question of ownership. Both the Court of Appeal and the Supreme Court on this major discrepancy on the issue of exclusive ownership of the goods, held, in effect, that the plaintiff failed to prove that which he set out in his pleadings and the contradictory evidence in respect of the pleadings on exclusive ownership was inescapably fatal to his case. That was the undisputed situation in Sommer case. No question or dispute, in the instant case, arose with regard to the ownership of damaged goods of the respondent. We have not been show any where in the record where appellants, or any other person, contested the ownership of the items damaged either in their pleadings or evidence as to put ownership in issue. It is a complete disservice to the appellants for their learned counsel to argue on their behalf matters which are alien to their case and therefore wholly irrelevant to the determination of their case. Perhaps, learned

appellant's counsel would have refrained completely from relying on Sommer case as it cannot, by any imagination, be a precedent to control the case in hand. **While no doubt, Sommer case is a good authority for strictness of proof of special damages as well as the necessity of full particularization of such items of special damages, It cannot, permit my being repetitive, be used to impugn a case, such as the one in hand, where the pleadings and evidence led at the trial amply supported the claim for special damages, see Oladehin v Continental Textile Mills Ltd (1978) 1 LRN 60.**

It was feebly submitted by appellants' learned counsel that the two lower courts did not take into consideration the depreciation in value of the items of special damages . The question of depreciation was never raised as ground of appeal either before us nor before any of the two lower courts. Again, as already noted, there was no meaningful cross-examination by the learned counsel Chief Richard Efa, who, incidentally, was counsel to the appellants at the two lower courts nor were the items of special damages attacked in appellants' pleading as having depreciated in value. How can learned counsel, in all seriousness, as it were, from the blues and at the eleventh hour address the issue of depreciation of the items of special damages ? That cannot be in step with the norms of legal practice and good advocacy. I only need to cursorily refresh the mind of learned counsel that the two lower courts as well as this court are superior courts of Record and are creatures of the 1979 Constitution and appeals to and fro those courts are strictly governed by the relevant Law and Rules of Court. **It is elementary that in all superior appellate courts that issues to be addressed are only those predicated on good grounds of appeal. It will be riotous for any counsel to address an issue not postulated from a ground of appeal. It is compactible with ordinary common-sense that such practice should not be tolerated by the sheer force of argument that the adversary party will be taken by surprise. The whole purpose of adjudication in our adversary system is for a party to explicitly put his case across the table which will enable the opponent to respond appropriately to that case he has fielded, and then the Judge, as an**

impartial umpire will adjudicate on the issues in controversy. That and nothing more is the epitome of what justice or fair trial is all about.

It remains to remind ourselves that the case under reference is one involving concurrent findings of fact both by the trial court and the court below on the question of special damages. **Both courts were respectively satisfied that the items of special damages were properly pleaded and particularized, and credible and sufficient evidence led in proof therefore. It has not been remotely suggested by the appellants that the findings of fact concurred to by the court of appeal are perverse and not justified by the evidence nor has there been a miscarriage of justice. In the absence of such submission, the law is trite that it is not the duty of the appellate court, nor even the supreme Court, to substitute its own view for the evidence led at the trial; see Iokoyi v Olojo (1983) 2 SC NLR 123 and NEPA v Alli (1992) 8 NWLR (pt. 259) 279, 303 - 304. I am therefore satisfied that no exceptional or special circumstances have been advanced by the appellants why this court should interfere with the concurrent findings of the two lower courts. See Dawodu v Danmole (1962) 1 All NLR 702, Iroegbu v Okwordu (1990) 6 NWLR (pt. 159) 643 and Uche v Eke (1998) 9 NWLR (pt. 564) 24. In the absence of such exceptional or special circumstances, I am satisfied that what I have said so far would be sufficient to confirm the concurrent findings of fact on special damages by the two lower courts.**

I now turn to the award of N10,510 general damages. It is the submission of learned counsel for the appellants that due notice was given by the appellants to the respondent about the works that were to be carried out by them, as was the situation for the other tenants in the building coupled with the fact that respondent failed to mitigate damages. Thus in the circumstances, he submitted that the amount of general damages awarded was excessive and punitive and urged that the amount be reduced. It was also counsel's further submission that it was erroneous for the Court of Appeal to have awarded that sum of money by way of exemplary damages when there was no basis for such award, and calls

in aid the authority of Rookes v Barnard (1964) 1 All ER 367 to show that only in three circumstances that exemplary damages may be awarded but the instant case does not fit into the framework of this authority. Furthermore, counsel contended that the claim for exemplary damages was neither pleaded nor was evidence led in respect thereof.

Respondent's learned counsel submitted that the award of N10,510.00 general damages was supportable having regard to the surrounding circumstances of this case, particularly bearing in mind the humiliating nature of appellants' conduct. Finally, counsel submitted that the lower court's observation that "It is deserving (that is, appellants' conduct) of our award of exemplary damages" was supportable, having regard to the authority of Drane v Evangelou (1978) 2 All ER 437, where a tenant, like in this case, was forcibly ejected.

Where the plaintiff avers in his pleadings that some damage has been suffered without being in a position to quantify or calculate its value in terms of specifics but ordinarily, the said damage in any event would be presumed to have resulted naturally from the action of the defendant, the plaintiff is adverting his mind to what is usually referred to as 'general damages'. In a claim for general damages it is the court that has the responsibility to calculate what sum of money will be reasonable in the circumstances of the case to be awarded by way of general damage. In order to ensure that the court makes a reasonable assessment of general damage, the plaintiff must adduce such evidence showing the damage resulting from the defendant's action. In the instant case, there was proof of the humiliating and pathetic circumstances under which the act of trespass was committed and executed by appellants. The resultant effect was observed by the learned trial judge during the visit to the locus in quo who also made findings of fact that the purpose of removing the roof of respondent's building was an attempt to force the respondent out of the property vi-et-armis. Proceeding on the basis of the correctness of these findings, then to say the least, appellants' act of trespass was a barbaric exhibition of self - help. Such lawlessness is morally reprehensible as it is legally indefensible. Respondent, upon the evidence before the trial court, was a sub-tenant of the 1st defendant's tenant (Mrs. M.

M. Etuk) who was in physical and peaceable possession, and whose sub-tenancy could only be determined by the court. Resort to one's exercise of right of self-help is reasonable circumscribed. **The law seriously frowns upon a landlord to disturb the peaceful possession of a tenant by crude resort to self-help rather than conformance with the law that arms him with a valid court's order of ejectment; since no notice to quit was duly served on the respondent he remained protected by the local law that provides for ejectment of a tenant or even a sub-tenant only after the relevant notices have been duly served on the occupier. Even the executive arm of government is powerless to unleash any act of crudity on a tenant or sub-tenant who is in peaceful possession; see Ojukwu v Government of Lagos State (1985) 2 NWLR (pt.10) 822 and Sule v Nigerian Cotton Board (1985) 2 NWLR (pt. 5) 17. For the court of law and equity to overlook such crudity arising from resort to self-help is unwittingly to arm a landlord with a sledge-hammer for infliction of intolerable hardship upon tenants or sub-tenants who may not even be in arrears of rent. Therefore, on a calm view of the law such barbarism must be roundly condemned.**

I think that I have said enough to show and confirm the opinions of the two lower courts that the pathetic and deplorable conduct of the appellants justifiably attracted substantial award of general damages. Learned appellants' counsel had contended that Oguntade, JCA in his leading judgment in the court of Appeal had erred when he said that "it (meaning the pathetic conduct of the appellants) is deserving of an award of exemplary damages". This remark by the learned Justice of the lower court should not be read in isolation. His lordship observed, rightly in my view, that the plaintiff did claim the sum of N30,000 as general damages, and did not use the term 'exemplary damages' in his pleading, yet, he was of the view that if the pleadings and circumstances under which the plaintiff suffered the damages clearly support the award of exemplary damages, the award of exemplary damage could be made even though the word 'exemplary' was not expressly pleaded. His Lordship then cited the English court of Appeal decision of Drane v Evangelou (1978) 2 All

ER 437 where lord Denning, MR. Opined that exemplary damages need not be pleaded in cases tried at the county court under the Rules of that court but that, by the amendment made under Rules of the Supreme Court (Ord. 18, v.8 (3)) " a claim for exemplary damages must be specifically pleaded together with the facts on which the party pleading relies." B
The record shows that it was after citing the above decision of the English Court of Appeal that justice Oguntade, JCA opined that the case in hand, with similar facts as in Drane v Evangelou (supra) ' is deserving of an award of exemplary damages,' **Reading the whole paragraph in which the phrase 'exemplary damages' was introduced by the lower court, it seems to me very clear that the reference in this regard to exemplary damages was a mere obiter dictum.** Thus after giving full consideration to the issue of special damages, Oguntade, JCA (at p. 160) went straight to consider " the award of N10,510.00 D made..... as general damages for trespass" and nowhere else did the record show that his Lordship finally approved that sum of money or any other sum of money as exemplary damages. To buttress this point, Uwaifo, JCA (as he then was) in his concurring judgment, E had this to say, namely, "The evidence available clearly justified the special damages and in addition the general damages." (emphasis supplied).

I am bound to emphasize that it has not been shown that F the concurrent findings of fact by the two lower courts in respect of general damages are perverse nor unjustified by the evidence placed before the court, as already stated in respect of general damages. In the circumstance, the appellate court, including the supreme G court, is powerless to disturb any findings of fact made by the trial court and concurred to by the court of Appeal as it relates to damages unless the findings proceeded from wrong principle or not supported by credible evidence.

It is for the reasons stated above that I resolve issues No. 1, H No.2 and No. 3 jointly and severally against the appellants. Issue No.4

It is needful to set out issue No.4 It reads:

" whether the totality of the evidence as adduced by the plaintiff / Re-

spondent was weighty enough for the court to enter judgment in his favour.

It is the submission of appellants' learned counsel that they acted on the directives or instructions of the government to demolish unauthorized structures which included that of the respondent. Counsel further submitted that the appellants' trespass in demolition of respondent's store was not 'the deliberate intention of the Appellants' but they acted under the order of the Government, and therefore urged that the trial court was wrong to have adjudged the appellants trespassers when the evidence did not establish that the appellants were in fact trespassers. Respondent's learned counsel submitted that even the third Appellant, testifying as DW2, admitted that at the time of destruction of respondent's store, he, the respondent, was in peaceful possession and further submitted that even if the appellants acted on the instructions of the Calabar Municipal government it made no difference to the wanton act of trespass. In aid to his submission, he relied on the authority of Ogunsanya v Arab Brothers Ltd 14 WACA 10. Finally, counsel submitted that there was sufficient evidence for the two courts to enter judgment in respondent's favour.

First, it is useful to look at the excerpt of the judgment of the trial court. It says, in part, after a thorough evaluation of the evidence led at the trial:

"In conclusion, I must say that the plaintiff was at all times in possession of the store situate at No. 10c Barracks Road, Calabar. That the defendants without any lawful reason or excuse by themselves or servants and/or agents broke into the said store and caused a colossal damage to the plaintiff's machines and other tools of trade. Thus he has suffered damage and is entitled to damages. I therefore enter judgment for the plaintiff."

The above findings have not been shown to be perverse and that obviously explains why the lower court found no difficulty in confirming it. The discussions under issues 1, 2 and 3 are equally relevant to the resolution of Issue 4 but I do not think that any useful purpose will be served by reproducing or repeating them. Appellants make it clear that Issue No.4 relates to ground 3 of the grounds of Appeal, dealing with judgment being against the weight of evidence. This ground is otherwise referred

to as an appeal on the 'general or omnibus ground.' The complaint is that the evidence relied on by the trial court does not support the finding made by the trial court. That, as we have earlier stated, cannot be the situation in this case. **Rather than limiting the argument or complaint to the weight of evidence, appellants' counsel has expanded it and argued that the appellants were acting under the directives of the Calabar Municipal Government. This is palpably erroneous because an appeal predicated on the omnibus or general ground is not at large. It cannot be used to raise issues of law such as that the appellants were operating as servants or agents of the Calabar Municipal Government. Such issue of law must be raised as a separate ground of appeal and not made an adjunct to the omnibus ground of appeal. See Onaju & ors v Micho & Co (1961) ALL NLR 324 and Davies v Powell Duffyn Collieries (1942) A.C. 60 at pp. 616-617. It follows that the submission made by appellants' counsel as it relates to appellants' operating under the directives of the Municipal Government is wholly incompetent as it is not predicated on any valid ground of appeal.** Even if the argument was based on a valid ground of appeal, the directives of the Calabar Municipal Government wherein a barbaric act of self-help amounting to the tort of trespass was ordered or approved by the said Municipal Government against a person in peaceful possession rather than counselling the Appellants to comply with established rules for ejectment of a tenant or a sub-tenant will not change the unlawful character of the ejectment of the respondent. The advice to resort to self-help, as already noted, was most unfortunate and cannot be tolerated even from the executive arm of government. See Ojukwu v Government of Lagos State (supra).

In the result, I resolve issue 4 against the Appellants.

Issue 5

This issue questions whether the Court of Appeal was right when it dismissed the Appellants' appeal to that court and affirmed the judgment of the trial court. Appellants' counsel submits that there was sufficient reason for the lower court to vary the trial court's order as to damages and concedes that the arguments under this issue have already been

covered under the earlier issues. Respondent's counsel, in reply, submits that the submission under the fifth issue is repetitive of the previous arguments advanced by Appellant's counsel.

I must make bold to say that nothing new has been urged by
 B Appellants' counsel that would change the state of this appeal. For example, nothing concrete whatsoever has been urged why the Court of Appeal or this Court should vary the quantum of damages awarded by the trial court. On the contrary, I entirely agree with learned respondent's
 C counsel that the submission under the fifth issue is essentially repetitive of the earlier submissions made by appellants' counsel. However, I only wish to add that mere repetition of an argument does not improve an earlier arid, weak or completely unacceptable argument.

There being no substance in the submission under Issue 5, the
 D same is accordingly resolved against the Appellants.

Issue 6

This brings us to the last issue. It ought not to take much of our time. Appellants contend that their Issues 1 and 6 before the Court of
 E Appeal ought to have been given consideration even though they were not predicated on grounds of appeal, if for nothing else, at least on the basis of justice. It is strange that after Appellants counsel had conceded that issues not predicated on grounds of appeal are incompetent, yet he
 F went further to urge that such issues, should have been given consideration on the nebulous reason or ground of justice. Respondent's counsel submits that to give consideration to issues not based on grounds of appeal, and therefore incompetent, is to engage the court in an academic exercise.

G These is a long unending chain of authorities which establishes that an issue is incompetent unless it is predicated on a ground of appeal.
The court has no powers to engage itself in consideration of issues which do not arise from a ground of appeal. If an issue is incompe-
 H **tent it should be struck out. To do otherwise and give consideration to the issue is to embark on a worthless academic pursuit. It is bad advocacy for learned counsel to ignore prudence and his responsibility as an officer of the court, and expressly urge the court to**

embark on fruitless academic frolic, all in the perceived interest of justice. I shall not accede to such request. Pronouncements or decisions made on incompetent issues or defective grounds of appeal cannot advance the appellants' case, not even the interest of Justice nor our jurisprudence, one jot, because, at best, such pronouncements are mere obiter dicta. Stricto sensu, an appellate court lacks jurisdiction, in the sense of competence, to entertain an appeal which is not fought on valid grounds of appeal; see Godwin v C. A. C. (1989) 14 NWRL 14 (pt.584) 16 S.C. and Kalu v Potiskum (1998) 8 NWLR (pt.540) 1 SC. In the result, Issue No. 6 is baseless and is bereft of substance; the same is accordingly struck out.

All in all, the appeal lacks, merit and the same is dismissed with N10,000.00 costs to the Respondent.

D

BELGORE JSC

I have read in advance the judgment of Achike JSC with which I am in full agreement. I also find no merit in the appeal and for the fuller reasons in the said judgment I dismiss it with N10,000.00 Costs to respondents.

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KUTIGI JSC

I read in advance the judgment just delivered by my learned brother Achike, J.S.C I agree with his reasoning and conclusions so ably set out. I also find no merit in the appeal. It is accordingly dismissed with N10,000 costs in favour of the plaintiff / Respondent.

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MOHAMMED JSC

I agree to dismiss this appeal. The appellants behaviour in removing the roof of the premises in which the respondent lives in order to force the respondent to vacate the premises is reprehensible and condemnable. The trial High Court is right in awarding damages against the

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appellants for their lawlessness in taking law into their hands. If indeed the appellants have a case against the respondent for the recovery of the premises they would have gone to court to seek the court's order to do so. But for them to resort to self help the law would come to the rescue of the victim.

I entirely agree with the opinion of my learned brother, Achike, JSC, that this appeal has failed. It is also dismissed by me. I award N10,000.00 costs in favour of the respondent.

C

KALGO JSC

I have had the privilege of reading in advance the judgement of my learned brother Achike JSC in this appeal and I entirely agree that there is no merit in the appeal. I therefore dismiss it for the reasons set out in the said judgement and accordingly affirm the decision of the Court of Appeal.

It was clearly wrong for the appellants to force the respondent out of the store at 10c Barracks Road, Calabar, which he lawfully rented from Moses Samuel Etuk, pw2.

The respondent was not their tenant and they could not force him out of the store without a proper court order. Therefore, when they removed the roof of the store which was then in his possession they committed the tort of trespass for which they could be penalized in damages, and are liable for the consequences of their act. There is evidence that as a result of the removal of the roof of the store, the store was filled up with rain water which destroyed the properties of the respondent in the store.

The respondent in his statement of claim at the trial, set out with detailed particularity, the properties destroyed and their respective values as a result of the acts of the appellants. He gave evidence in support thereof. He was not challenged on the value of any of the items he listed as damaged nor was any iota of evidence produced by the appellants to contradict his evidence at the trial. He testified that all his receipts for the items were destroyed by the rain water when the roof of the store was

removed. The learned trial judge visited the scene at the invitation of the parties and believed the respondent on the loss of the receipts. Therefore, with regard to the claim for special damages, I am of the view, that in the circumstances the evidence based on the ipse dixit of the respondent alone, is sufficient, acceptable and reasonable evidence to prove special damage. See IMANA V ROBINSON (1979) 2-4 SC 1 OSHINJINRIN & ors v ELIAS & ors (1970) 1 All NLR 153 at 156 In the case of NEPA v ALI (1992) 8 NWLR (pt.259) 279 at 297 this court per Ogwuegbu JSC held that:-

"The claims for the machines destroyed were items of special damage which are required to be proved strictly but strict proof of special damage means no more than such proof as would readily lend itself to quantification. The nature of proof in a given case must be dictated by the peculiar circumstances of the available evidence. See ODULAJA V HADDAD (1973) 1 All NLR (pt.11) 191 at 196 and INCUR NIGERIA LIMITED V ADEGBOYE (1985) 2 NWLR (pt.8) 453".

There is no doubt that apart from the loss of his properties in the store as a result of the acts of the appellants, the respondent also suffered some discomfort and humiliation. He was using the store as his place of abode and his business centre. He must have suffered some inconvenience and injured feelings especially as this incident happened during the rainy season in that area. He is therefore entitled to general damages in compensation for these.

The court of Appeal affirmed the decision of the trial High Court. This is based on a concurrent finding of fact which this court would not interfere with except on special circumstances already laid down by this court. There are no such circumstances shown by the appellants in this appeal.

On the whole, I find the damages awarded to the respondent at the trial, both special and general, were reasonable and based on the acceptable evidence at the trial and did not amount to double compensation in law. I am also satisfied that the counterclaim of the appellants was baseless and was properly dismissed. Finally, I agree with Court of Appeal that issues (I) and (vi) formulated by the appellant in that court

did not arise from the grounds of appeal there and were properly dis-
countenanced by the Court of Appeal.

For the above and more detailed reasons given by my learned
brother Achike, JSC in the leading judgement, I dismiss this appeal and
B abide by the order of costs made in the leading judgment.

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