

SUPREME COURT OF NIGERIA
18TH JUNE, 1999. SC. 8/1993
CORAM:- A. G. KARIBI-WHYTE, E. O. OGWUEGBU,
U. MOHAMMED, S. O. UWAIFO,
A. O. EJIWUNMI, JJSC.

1. A. O. ODIBA APPELLANTS
2. GBOKO LOCAL GOVERNMENT COUNCIL

AND

AKAAZUE MUEMUE RESPONDENT

***APPEALS** - Evidence - Findings of fact - By a court of first instance - Which is based on a dispassionate appraisal of the evidence - It is not the function of an Appeal Court to interfere with such findings*

***DAMAGES** - Aggravated and special damages - Award of both damages is justified in the present case - Where the conduct of the 1st appellant depicted a gross abuse of official power.*

***PLEADINGS** - Statement of defence - Special traverse - Positive and distinctive allegations - In the statement of claim - Must be specifically denied.*

FACTS

The plaintiff/respondent filed a suit at the Benue High Court claiming N1,470,401.00 being general and special damages against the 1st defendant/appellant for the demolition of his property along J.S. Tarka Way, Gboko. The 2nd defendant/appellant was latter joined in the suit. In November, 1984, the Task Force on Environmental Sanitation for Gboko Local Government Area decided to demolish some buildings in Gboko Town which had encroached on the streets and sanitary lanes. The house of the respondent was one of the buildings earmarked for demolition and he received a letter to this effect from the Task Force. On

receiving the letter the respondent filed a suit against the Task Force at the High Court, Gboko. He applied also for an injunction to restrain the Task Force from demolishing his house pending the determination of the suit. Before the High Court granted the prayer for the injunction it got a letter served on the Task force directing the committee not to demolish the building of the respondent pending the hearing of a suit he filed against the Task Force. The directive of the High Court as contained in the letter was complied with by the Task Force. However, the 1st appellant who was at the material time the sole Administrator of Gboko local Government Area visited the office of the Task Force and told the members of the Committee that the demolition should go on, the High Court's Order notwithstanding. Thereafter, the 1st appellant secured a bulldozer, went and identified some buildings earmarked for demolition, including the house of the respondent and ordered the structures to be demolished. Hence the respondent instituted the action. *[Amongst the buildings demolished on the order of the 1st appellant in the present case is the house of Tule Azege. The case of Tule Azege which is on all fours with the present case came up on appeal to the Supreme Court: ODIBA V. AZEGE (1998) 7 KLR (Pt. 68) 1731. The damages totalling N312,652.80 amounted to Tule Azege in that case was approved of by the Supreme Court.]*

After the completion of the hearing the learned trial judge entered judgment in favour of the respondent and awarded him N313,033.50 as general and special damages. The appellants appeal to the Court of Appeal, against the decision of the High Court was dismissed. Dissatisfied, the appellant has appealed to the Supreme Court raising four issues but the three issues raised by the respondent was considered by the court to be more pertinent for the determination of the appeal.

ISSUES FOR DETERMINATION

"(1) Whether the Learned Judge and the Court of Appeal were justified in holding that paragraph 4 of the 1st Appellant's defence do not constitute a valid denial of Respondent's averments in paragraphs 6-9 and 11 of the Statement of Claim.

(2) Was the trial court and the Court of Appeal right in holding

that it was the 1st Appellant that demolished the respondent's house.

(3) *Whether the trial court and the Court of Appeal were justified in awarding to the respondent:*

(i) *Special Damages of N133, 033.50;*

(ii) *aggravated General Damages of N150,000.00."*

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

Pleadings - Statement of defence

1. Learned counsel is right that positive and distinctive allegations in the Statement of Claim must be specifically denied. This is called a special traverse. In a special traverse the defence shall explain or qualify the denial of facts in a Statement of Claim. Now if one reads the averments in paragraphs 6,8 and 9 one will see that letters with their reference numbers and dates have been pleaded. Also in paragraph 11 minutes of the meeting of the Gboko Local Government Task Force on Environmental Sanitation had been pleaded. All these positive and distinctive allegations must be traversed specifically. Where the defence pleaded "as he is neither a member of the said Task Force nor dose he attend their meetings and he has no knowledge of the existence of the averred facts" in answer to the specific averments in paragraphs 6, 8, 9 and 11 the denial in my view is insufficient. In support of my view I will refer to the case of Wallersteiner v Moir (1974) 1 WLR 991 at 1002. In the case in hand, the defence of the 1st appellant in paragraph 4 amounted to a general denial to a positive and distinctive allegation in the Statement of Claim. The two courts below are therefore justified in holding that the averment in paragraph 4 of the Statement of Defence did not constitute a valid denial of respondent's averments in paragraphs 6-9 and 11 of the Statement of Claim. (p. 1921 H)

Appeals - Evidence

2. I agree that the primary function of accrediting one witness or set of witnesses and discrediting the other is that of the trial court which had the advantage of watching the witnesses testify and not the duty of the

appellate court: Ebba v. Ogodo (1984) 4 SC. 84. From the evidence before the trial court there is overwhelming and direct evidence that the 1st appellant was aware of the letter from the High Court ordering the Task Force to suspend the demolition of the house of the respondent B pending the hearing of the suit he (respondent) filed before the court. There was also evidence before the trial court that the 1st appellant, in spite of his knowledge of the High Court's order, secured the services of a bull-dozer and directed the driver to demolish the house of the respondent. C The learned trial judge analyzed all the evidence before him and from his judgment it is clear that he placed all the evidence on an imaginary scale before he found in favour of the respondent. The court below also looked into the whole evidence before it affirmed the decision of the High Court. It is not the function of an Appeal Court to substitute its D own views for those of a court of first instance with respect to facts found by the court based on a dispassionate appraisal of the evidence before it. See Kasunmu and Anor. v. Abeo (1972) 2 S.C. 69. The appellants have not advanced any convincing argument for me to disturb the E findings of the two courts below on this issue. (p. 1923 A)

Damages - Aggravated and special damages

3. It is without doubt that the wanton demolition of the respondent's F house despite the Order of the High Court directing the Task Force not to carry out the committee's threat to demolish the house is unexcusable. In my judgment in the case of Anthony Odiba v. Tule Azege (1998) 9 N.W.L.R. (Part 566) 370 at 382 where the 1st appellant was made to pay both special and aggravated damages for the demolition of Tule Azege's G house I opined as follows:

"What nearly 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. H In addition to what I have said about 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 con-

duct of the appellant, as quite rightly found by the trial court, reprehensible and oppressive".

I will make the same remark in this case and add what my learned brother, Iguh J.S.C., in his judgment in Tule Azege's case said. He said that having regard to the concurrent findings of both courts below these were as aggravated in nature as they were reckless, vindictive, high handed and utterly oppressive. They also depicted gross abuse of official power on the part of a public officer. I need not say more in this case. (p. 1924 D)

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NOTABLE POINTS OF INTEREST

OGWUEGBU JSC

1. The distinction between aggravated and exemplary damages

As to the complaint by the appellants that this was not a proper case for an award of aggravated general damages, the learned trial judge found that the appellant's conduct was sufficiently outrageous to merit exemplary damages. The dividing line between aggravated and exemplary damages is not easy to keep apart. The courts below used both expressions in the course of their judgments and it is clear that they confined themselves to exemplary damages which they awarded in order to teach the defendants that "tort does not pay" and to deter them and others from similar conduct in the future. See Broome v. Cassell & Co. Ltd. (1972) A.C. 1027 at 1073.

Exemplary damages may be awarded only in cases:

- (i) of oppressive, arbitrary or unconstitutional acts by government servants.;
- (ii) where the defendants' conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the plaintiff;
- (iii) where expressly authorized by statute. See Eliochin Nig Ltd v. Mbadiwe (1986) 1 NWLR (Pt.14) 47 at 67 and Rookes v. Barnard & Ors. (supra) at pages 1221, 1226-1228 and 1232-1233.

On the other hand, aggravated damages may be awarded where the damages are at large and the conduct of the defendant was such as

to injure the plaintiff's proper feeling of dignity and pride. The exemplary damages suffered by the plaintiff came under category (i) above. I have no doubt also that the courts below took into account everything which aggravated or mitigated the defendants' conduct. I do not agree with the submission of the learned appellants' counsel that the sum awarded as exemplary damages amounted to double compensation. (p. 1931 B)

UWAIFO JSC

2. *When a case of aggravated damages is made out*
I cannot imagine a more appropriate case for aggravated damages on the combined authority of Rookes v Barnard (1964) A.C. 1129 and Eliochin (Nig) Ltd v Mbadiwe (1986) 1 NWLR (pt.14) 64. Briefly stated, the principle there established as may be relevant to the present case is that when a government servant engages in an oppressive, arbitrary and unconstitutional action (Rookes v Barnard) against the background that he had no court order or no other legal justification for invading the proprietary right of another (Eliochin (Nig) Ltd v Mbadiwe), a case of exemplary or, at any rate, aggravated damages is made out. In such a case, I think the court should consider the circumstances properly to award such damages that not only meet the occasion but also to serve "to teach a wrongdoer that tort does not pay" : see Rookes v Barnard (supra) at 1227 per Lord Devlin which was cited in Drane v Evangelou (1978) 1.W.L.R. 455 at 462. (p. 1933 D)

REPRESENTATION

O. P. Ulegede, Asst. Director, Public Prosecutions, Ministry of Justice,
Benue State for the Appellants
E. K. Ashiekaa for Respondent

CASES REFERRED TO

Wallersteiner v Moir (1974) 1 WLR 991 at 1002.
Ebba v. Ogoto (1984) 4 SC. 84
Kasunmu v. Abeo (1972) 2 S.C. 69
Odiba v. Azege (1998) 9 N.W.L.R. (Part 566) 370 at 382

Broome v. Cassell & Co. Ltd. (1972) A.C. 1027 at 1073

Eliochin Nig Ltd v. Mbadiwe (1986) 1 NWLR (Pt.14)47 at 67

Rookes v Barnard (1964) A.C. 1129

Rookes v Barnard (1964) A.C. 1129

Eliochin (Nig) Ltd v Mbadiwe (1986) 1 NWLR (pt.14) 64

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Drane v Evangelou (1978) 1.W.L.R. 455 st 462.

LEAD JUDGMENT BY MOHAMMED JSC

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The respondent was the plaintiff before the Benue High Court. He was the owner of a piece of land covered by Certificate of Occupancy No. BP 1503. The land is situated along J.S. Tarka Way, Gboko. The respondent built a Single storey house on the land. He later constructed an extension to the building.

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In November, 1984, the Task Force on Environmental Sanitation for Gboko Local Government Area, observed that some buildings in Gboko Town had encroached on the streets and sanitary lanes. The Task Force decided to demolish the buildings. The house of the respondent was one of the buildings earmarked for demolition. The respondent received a letter dated 15th November, 1984, from the Task Force notifying him that his house was earmarked for demolition.

On receiving the letter, the respondent went to the High Court, Gboko and filed a suit against the Task Force. He applied also for an injunction to restrain the Task Force from demolishing his house pending the determination of the suit. Before the High Court granted the prayer for the injunction it got a letter served on the Task Force directing the committee not to demolish the building of the respondent pending the hearing of a suit he filed against the Task Force. On receiving the letter of the High Court, the Task Force Committee resolved not to demolish the house of the respondent until the matter in court was determined. Mr. Odiba, the first appellant, in this appeal was the sole Administrator of Gboko Local Government in November, 1984. When information reached Mr. Odiba that the Task Force had resolved to obey the Order of the High Court restraining it not to demolish the house of the respondent he visited

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the office of the Task Force and told the members of the Committee that the demolition should go on, the High Court's Order notwithstanding.

Thereafter, the 1st appellant secured a bull-dozer, went and identified some building earmarked for demolition, including the house of the respondent and ordered the structures to be demolished. The respondent went to court and filed a claim for N1,470,407.00 being general and special damages against the 1st appellant for the demolition of his property along J.S. Tarka Way, Gboko. The 2nd appellant was later joined in the suit.

Pleadings were called and delivered. At the completion of the hearing the hearing the trial judge, Utsaha J, entered judgment in favour of the respondent and awarded him N313,033, 50 as general and special damages. The appellants appealed to the Court of Appeal against the decision of the High Court . The Court below dismissed the appeal. It however found that the claim for N30,000.00 as special damages for loss of use of the premises was not established before the trial High Court. It therefore allowed the appeal against that award.

Dissatisfied with the decision of the Court below the appellants filed this appeal. From the nine grounds of appeal filed the following 4 issues have been identified, in the appellant's brief as having arisen for the determination of this appeal:

"(a) Was the Learned Trial Judge and Court of Appeal justified in their conclusion that the averments in paragraph 4 of the Statement of Defence do not constitute a valid denial of respondents averments in paragraphs 6-9 and 11 of the Statement of Claim and, are therefore, on the authority of Lewis Peat (N.R.I.) Ltd. Vs. Akhimien (1976) 1. F.N.L.R. 80 at 83, deemed to be admission of the allegation by the respondent, which facts need no further proof by evidence by the respondent at the trial?

(b) Were they justified in their conclusions

(i) That it was the appellant who carried out the demolition of the respondent's house?

(ii) That the appellants did so in the face of timely advice against it from both the Chairman of the Task Force and the then Resident State

Counsel? and

(iii) *That this was a proper case to award aggravated general damages?*

(c) *Were they justified in awarding to the respondent the sum of N133, 033.50 as special damages?* B

(d) *By awarding aggravated general damages to the respondent in the circumstances of this case were they not compensating him twice over for one loss? "* .

The learned counsel for the respondent formulated what, in my view, are the pertinent issues to be considered for the determination of this appeal. Those issues are: C

"(1) *Whether the Learned Judge and the Court of Appeal were justified in holding that paragraph 4 of the 1st Appellant's defence do not constitute a valid denial of Respondent's averments in paragraphs 6- 9 and 11 of the Statement of Claim.* D

(2) *Was the trial court and the Court of Appeal right in holding that it was the 1st Appellant that demolished the respondent's house.*

(3) *Whether the trial court and the Court of Appeal were justified in awarding to the respondent:* E

(i) *Special Damages of N133, 033.50;*

(ii) *aggravated General Damages of N150,000.00."*

Before considering the issues raised above I should mention that learned counsel for the respondent, during the hearing of this appeal, drew our attention to a case quite similar to this one in which the 1st appellant was directed by the High Court to pay damages for the wrongful demolition of a house belonging to one Tule Azege. The case came up on appeal before this court and the appeal was dismissed. The case is Anthony Odiba v. Tule Azege (1998) 9 NWLR, (Part 566) at pages 370-388. The facts of that case are similar to this present appeal. Tule Azege's house was one of the buildings demolished in Gboko town on the order of M.A.O. Odiba, the 1st appellant, in the case in hand. F G H

The demolition of the house of Tule Azege and that of Akaazua Muemue, the respondent in this appeal, took place on the same day. Tule Azege tried to stop the demolition of his house by filing a case against the

Task Force in the High Court. He also applied for an injunction, just like the present case, restraining the Task Force from demolishing his house pending the determination of the suit he filed in court. The High Court sent a letter to the Task Force directing the Committee to withhold their threatened demolition pending the determination of the suit filed by Azege.

In spite of the letter from the High Court the 1st appellant went and supervised the demolition of Tule Azege's house. Tule Azege sued the 1st appellant and was awarded damages totalling N312,652.80 for what the High Court called reprehensible and oppressive behaviour. The 1st appellant failed in his appeals to both the Court of Appeal and in this Court.

I now go back to the issues identified for the determination of this appeal. It is axiomatic that the issues raised by the learned counsel for the respondent are more appropriate for the determination of this appeal taking into consideration the grounds of appeal filed. I will therefore refer to those issues in this judgment.

The question in issue I is whether the learned trial judge and the Court of Appeal were justified in holding that paragraph 4 of the 1st appellant's defence do not constitute a valid denial of respondent's averments in paragraphs 6-9 and 11 of the Statement of Claim. Paragraphs 6-9 and 11 read as follows:

"1. On or about the 15th of November, 1984 the Task Force Environmental Sanitation Gboko Local Government by a letter GIG/HEA/AMK.ENV/SANT/VOL.1/47 ordered the plaintiff to demolish the plaintiff's building aforesaid. The said letter will be made available at the trial hereof and relied upon.

2. On the 19th November 1984 the plaintiff filed suit NO./GBD/64/84 at the Gboko High Court seeking three declarations aimed at perpetually preventing the Task Force from demolishing his house aforesaid. The plaintiff also filed a motion to prevent the Task Force in the interim from demolishing his house aforesaid.

3. The High Court by a letter No. GBD/64/84 of 20th November, 1984 ordered the Task Force not to demolish the Plaintiff's premises until the motion for interim injunction was heard. The said letter will be

made available at the trial hereof and relied upon.

4. *By a letter reference No. MOJ/CIV/125/84 of 22nd November, 1984 the Attorney-General of Benue State advised the Task Force not to take any action on the plaintiff's premises pending the hearing of the motion for interim injunction. The side letter will be made available at the trial hereof and relied upon.* B

5. *The Task Force had by its 7th meeting, held on the 20th November, 1984 and subsequent dates resolved not to demolish the plaintiff's house. The minutes of the 7th meeting of the Task Force held on the 20th November, 1984 and other subsequent dates shall be relied upon at the trial of this case".* C

Learned Assistant D.P.P Benue State, Mr. Ulegede, for the appellants, submitted in the appellants' brief that the appellants answered the above averments in paragraph 4 in the Statement of Defence. Paragraph 4 reads as follows: D

"Defendant is not in position to admit or deny paragraphs 6-9 and 11 of the claim as he is neither a member of the said Task Force nor does he attend their meetings and he has no knowledge of the existence of the averred facts, the plaintiff shall be put to the strictest proof thereof" E

Both the High Court and the Court of Appeal held that the averment in paragraph 4 amounted to admission of the facts in paragraphs 6-9 and 11 of the Statement of Claim. The case of Lewis and Peat (N.R.I.) Ltd. v. Akhimien (1976) 7 S.C.. 157 was referred to in support of the decisions. Learned counsel for the appellants submitted, in the appellant's brief, that paragraph 4 of the Statement of Defence did not amount to admission of facts averred in paragraphs 6-9 and 11 of the Statement of Claim. Counsel argued that the general rule of pleading is that facts shall be positively and distinctively alleged by the plaintiff, and the defendant shall specifically deny all such facts as he does not intend to admit. F G

Learned counsel is right that positive and distinctive allegations in the Statement of Claim must be specifically denied. This is called a special traverse. In a special traverse the defence shall explain or qualify the denial of facts in a Statement of Claim. Now H

if one reads the averments in paragraphs 6,8 and 9 one will see that letters with their reference numbers and dates have been pleaded. Also in paragraph 11 minutes of the meeting of the Gboko Local Government Task Force on Environmental Sanitation had been pleaded. All these positive and distinctive allegations must be traversed specifically. Where the defence pleaded "as he is neither a member of the said Task Force nor dose he attend their meetings and he has no knowledge of the existence of the averred facts" in answer to the specific averments in paragraphs 6, 8, 9 and 11 the denial in my view is insufficient. In support of my view I will refer to the case of Wallersteiner v Moir (1974) 1 WLR 991 at 1002. In that case there was an allegation of fraud and dishonesty against Mr. Wallersteiner who was plaintiff in the main suit. In his defence to the counterclaim filed by Mr. Moir Mr. Wallersteiner did not refer to the particulars of the fraud and dishonesty which was alleged in the counterclaim. But pleaded simply thus:

"The plaintiff denies that the plaintiff has been guilty of fraud, dishonesty, misfeasance or breach of trust, as alleged in paragraph 103 of the amended counterclaim or at all" .

Lord Denning M.R in his judgment in the case referred to the above traverse and held that that was no good defence. He went further in his judgment and said:

"The master did not give leave for it to be served. R.S.C. Ord 18, r. 13(3) states expressly that a general denial is not a sufficient traverse of the allegations. So there was no valid traverse. The counterclaim stood without any contradiction. So under R.S.C., Ord. 19.r. 7, Mr. Moir was entitled to judgment".

Similarly, in the case in hand, the defence of the 1st appellant in paragraph 4 amounted to a general denial to a positive and distinctive allegation in the Statement of Claim. The two courts below are therefore justified in holding that the averment in paragraph 4 of the Statement of Defence did not constitute a valid denial of respondent's averments in paragraphs 6-9 and 11 of the Statement of Claim.

The question in the second issue is whether the trial court and the Court of Appeal were right in holding that it was the 1st appellant that demolished the respondent's house. **I agree that the primary function of accrediting one witness or set of witnesses and discrediting the other is that of the trial court which had the advantage of watching the witnesses testify and not the duty of the appellate court: Ebba v. Ogodo (1984) 4 SC. 84.** From the evidence before the trial court there is overwhelming and direct evidence that the 1st appellant was aware of the letter from the High Court ordering the Task Force to suspend the demolition of the house of the respondent pending the hearing of the suit he (respondent) filed before the court. There was also evidence before the trial court that the 1st appellant, in spite of his knowledge of the High Court's order, secured the services of a bull-dozer and directed the driver to demolish the house of the respondent. The learned trial judge analyzed all the evidence before him and from his judgment it is clear that he placed all the evidence on an imaginary scale before he found in favour of the respondent. The court below also looked into the whole evidence before it affirmed the decision of the High Court.

It is not the function of an Appeal Court to substitute its own views for those of a court of first instance with respect to facts found by the court based on a dispassionate appraisal of the evidence before it. See Kasunmu and Anor. v. Abeo (1972) 2 S.C. 69. The appellants have not advanced any convincing argument for me to disturb the findings of the two courts below on this issue.

In opening his submission against the award of what the learned counsel for the appellants termed double compensation an excerpt of the judgment of the learned trial judge was reproduced in the appellant's brief. It is pertinent to look into that excerpt with a view to assessing what convinced the learned trial judge to award aggravated damages in addition to special damages. The considered decision of the learned trial judge reads:

"What then was the conduct of the 1st defendant in the commission of the tort? The evidence of PW1 and that of the plaintiff is rel-

evant. PW1 said he advised the defendant against his decision to proceed to demolish the house. That he warned the defendant that there was a pending action in court and that it would be wrong to proceed to demolish the house. That when the defendant would not heed his advice
 B he appealed to the then Residents State Counsel, both of them whom (sic) prevailed on the defendant not to go ahead with his plan, but to no avail. The plaintiff himself said when he called on the defendant to plead with him to intervene; the defendant said he was not a member of the Task
 C Force Committee. And when the Task Force Committee resolved not to carry out its plan, he turned round to do the act. In assessing the measure of damage under this heading I shall take into consideration the above conduct, which in my view, was not only harsh but an unwarranted abuse of Governmental power" .

D It is without doubt that the wanton demolition of the respondent's house despite the Order of the High Court directing the Task Force not to carry out the committee's threat to demolish the house is unexcusable. In my judgment in the case of Anthony
 E Odiba v. Tule Azege (1998) 9 N.W.L.R. (Part 566) 370 at 382 where the 1st appellant was made to pay both special and aggravated damages for the demolition of Tule Azege's house I opined as follows:

"What nearly aggravated the case of the appellant is the fact
 F 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 about 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
 G 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".

I will make the same remark in this case and add what my
 H learned brother, Iguh J.S.C., in his judgment in Tule Azege's case said. He said that having regard to the concurrent findings of both courts below these were as aggravated in nature as they were reckless, vindictive, high handed and utterly oppressive. They also de-

picted gross abuse of official power on the part of a public officer. I need not say more in this case.

This appeal is therefore devoid of any merit and it is dismissed. The judgments of the two courts below are hereby affirmed. No costs awarded.

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KARIBI-WHYTE JSC

I have read the leading judgment of my learned brother Uthman Mohammed, JSC in this appeal. I agree entirely with his reasons and the conclusion that the appeal is completely devoid of merits. I also will, and hereby dismiss the appeal.

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Appellant shall pay N10,000 as costs to Respondent.

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OGWUEGBU JSC

I have had a preview of the judgment just delivered by my learned brother Mohammed, J.S.C. And I agree with his reasoning and conclusion on the issues raised in this appeal.

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The issues are:

"(a) Was the Learned Trial Judge and the Court of Appeal justified in their conclusion that the averments in paragraph 4 of the statement of defence do not constitute a valid denial of respondents averments in paragraphs 6-9 and 11 of the statement of claim and are therefore, on the authority of Lewis Peat (N.R.I.) Ltd. vs. Akhimien (1976) 1F NLR 80 at 83, deemed to be admission of the allegation by the respondent, which facts need no further proof by evidence by the respondent at the trial?

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(b) Were they justified in their conclusions

(i) that it was the appellants who carried out the demolition of the respondent's house?

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(ii) that the appellants did so in the face of the timely advice against it from both the Chairman of the Task Force and the Resident Counsel? and

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

(c) *Were they justified in awarding to the respondent the sum of N133,033.50 as special damages?*

B (d) *By awarding aggravated general damages to the respondent in the circumstances of this case were they not compensating him twice over for one loss?*

The complaint of the learned appellants' counsel on Issue (a) is against the finding of the trial court and the court below that paragraph 4 of the amended statement of defence did not constitute a sufficient denial of paragraphs 6, 7, 8, 9 and 11 of the amended statement of claim. He submitted that the case of Lewis Peat (N.R.I) Ltd v. Akhimien (1976) 1 FNLR 80 relied on by the courts below is distinguishable from the case in hand and that the said paragraph 4 of the statement of defence amounted to sufficient denial of the facts averred in paragraphs 6, 7, 8, 9 and 11 of the statement of claim. He further submitted that the respondent was bound to lead evidence in strict proof of those paragraphs at the trial and that he failed to do so.

I will set out here under paragraphs 6,7,8,9 and 11 of the amended statement of claim together with paragraph 4 of the statement of defence before I proceed to determine whether infact, the said paragraph 4 was a sufficient denial of paragraphs 6, 7, 8, 9 and 11 of the said statement of claim.

Further Amended Statement of Claim:

"6. *On or about the 15th of November, 1984 the Task Force on Environmental Sanitation Gboko Local Government by a letter GLC/HEA/AMC/ENV/SANT/VOL 11 VOL.1/47 ordered the plaintiff to demolish the plaintiff's building aforesaid. The said letter will be made available at the trial hereof and relied upon.*

7. *On the 19th November, 1984 the Plaintiff filed suit No. GBD/64/84 at the Gboko High Court seeking three declarations aimed at perpetually preventing the Task Force from demolishing his house aforesaid. The Plaintiff also filed a Motion to prevent the Task Force in the interim from demolishing his house aforesaid.*

8. *The High Court by a letter No. GBD/64/84 of 20th November, 1984 ordered the Task Force not to demolish the plaintiff's premises until the motion for interim injunction was heard. The said letter will be made available at the trial hereof and relied upon.*

9. *By a letter reference No. MOJ/CIV/125/84 of 22nd November, 1984 the Attorney General of Benue State advised the Task Force not to take any action on the Plaintiff's premises pending the hearing of the motion for interim injunction. The said letter will be made available at the trial hereof and relied upon.*

10. C

11, *The Task Force had by its 7th meeting, held on the 20th November, 1984 and subsequent dates resolved not to demolish the Plaintiff's house. The minutes of the 7th meeting of the Task Force held on the 20 November, 1984 and other subsequent dates shall be relied upon at the trial of this case.* D

Further Amended Statement of Defence:

"4. *Defendant is not in a position to admit or deny paragraphs 6, 7, 8, 9 and 11 of the claim as he is neither a member of the said Task Force nor does he attend their meetings and he has no knowledge of the existence of the averred facts, the plaintiff shall be put to the strictest proof thereof.* "

On issue (a), both the learned trial judge and the court below F held that the defendant did not in paragraph 4 of the amended statement of defence deny the specific allegations contained in paragraphs 6, 7, 8, 9 and 11 of the amended statement of claim and that on the authority of Lewis Peat (N.R.I.) Ltd. v. Akhimien (supra), it amounted to insufficient denial of those allegations. G

In affirming the conclusion reached by the trial court on the issue, the Court of Appeal said:

"*If the defendant had wished to deny the specific allegations in paragraphs 6, 7, 8, 9 and 11 of the Statement of Claim, he would have done so. Rather he chose to say that he was 'not in a position to admit or deny'. If he was not in a position to deny, how can it now be said that what he pleaded amounted to a denial. Surely, that would amount to*

speaking from both sides of his mount at the same time. Specific allegations must be specifically traversed - Lewis Peat (N.R.I) (supra). Those not specifically denied shall be deemed to be admitted. The learned trial judge was therefore right when he said that paragraph 4 of the statement of defence amounted to insufficient denial. "

The averments in paragraphs 6,7,8,9 and 11 are essential and material allegations which should be specifically traversed. A defendant's pleading or defence should deny all such material allegations in the statement of claim as the defendant intends to deny at the hearing for every allegation of fact, if not denied specifically or by necessary implication, or stated to be not admitted, shall be taken as established at the hearing. See Order 25 of the High Court (Civil Procedure Rules) Edict, 1988 of Benue State. See also Lewis Peat (N.R.I.) Ltd. v. Akhimien (supra), Harris v Gamble (1877/78)7 Ch. D.877, Rutter v. Tregent (1879/80)12 Ch.D.758 and Warner v. Sampson (1959) 1 Q.B. 297 at 310 and 311. The rule of practice must be strictly followed and I agree with the courts below that there was no sufficient denial of the facts alleged by the plaintiff in paragraphs 6, 7, 8, 9 and 11 of the amended statement of claim.

There was no basis for the appellants to canvass this issue up to this court when the courts below had ruled against them. Assuming that paragraph 4 of the amended statement of defence was held by the courts below to be sufficient traverse which was not the case, the plaintiff adduced enough evidence in support of the averments in those paragraphs of the statement of claim. The letter from the Task Force mentioned in paragraph 6 of the statement of claim was tendered and admitted in evidence as Exhibit "4". The plaintiff tendered in evidence through Sylvester Veerlumum (P.W.4 and Secretary of the Task Force in 1984) minutes of the 7th Meeting of the Task Force held on 20th November, 1984 and subsequent dates as Exhibit "1". In addition to Exhibits "1" and "4", the plaintiff proved the averments in paragraphs 6, 7, 8, 9 and 11 through the evidence of P.W.1, P.W.2, P.W.4, and P.W.5. The courts below were right when they held that the 1st appellant and not the Task Force on Environmental Sanitation demolished the plaintiff's building and that he did so in the face of the advice of both the Chairman of the Task Force,

Mr. Timothy C. Onyeiwu (P.W.1) and Mr. Yakubu, the Principal Resident State Counsel in charge of Gboko.

As to whether this is a proper case to award aggravated damages, the learned counsel for the appellants submitted that there was no evidence that the appellants were responsible for the demolition of the plaintiff's building and that there was no satisfactory evidence that the defendants/appellants' conduct was sufficiently outrageous to merit exemplary damages. He referred the court to the case of Elochin (Nig.) Ltd & Ors. v. Mbadiwe (1986) 1 N.W.L.R. (Pt.14) 47 at 64 and 65. Learned counsel further submitted that exemplary damages are in the nature of general damages and that having awarded N133,033.50 as special damages representing the amount required to rebuild the house, there was no justification for the lower courts to award anything additional and that it amounted to compensating the plaintiff twice for the same loss. The court was referred to the case of Ezeani & Ors v. Ejidike (1964) 1 All N.L.R. 402 at 404.

The learned counsel for the plaintiff/respondent submitted in his brief that from the pleadings and the evidence, the trial court rightly awarded aggravated damages against the 1st appellant in that his conduct was sufficiently outrageous and an unwarranted abuse of governmental power. He cited the cases of Elochin & Ors. v. Mbadiwe (supra) and Rookes v. Barnard (1964) A.C.1129.

The learned trial judge was satisfied that the plaintiff suffered damage and relying on the evidence before him and particularly the evidence of P.W.7 - an Estate Valuer and Exhibit 5 (Valuation Report), awarded the plaintiff the sum of N133,033.50 as special damages being the value of the building which was demolished. The sum of N150,000.00 was awarded as exemplary damages. The learned trial judge said:

"The law is that where injury is occasioned by wrongful act damages flow unless the persons causing the injury or wrongful act is (sic) protected by law. There is no doubt that by the act of the 1st defendant the plaintiff had suffered damage by way of demolition of his house. The 1st defendant can avoid liability if he can show that his wrongful act is protected by law. He was neither a member of the Task Force Commit-

tee. Equally it has not been shown that in his capacity as the sole Administrator for Gboko Local Government Area, he has the legal right to demolish the house of another person without the due process of the law. His conduct was wrong and at best an unwarranted use of Governmental powers..... The 1st defendant acted without authority or justification, it was therefore wrongful and the plaintiff is entitled to compensation upon proof of damages I therefore award the sum., that is N133,033.50 kobo to the plaintiff in respect of the damage to his building. The plaintiff also claimed a sum of N1,200,000.00 by way of aggravated damages The principle which a court of law considers in awarding aggravated damages are well settled..... When then was the conduct of the 1st defendant in the commission of the tort? The evidence of P.W.1 and that of the plaintiff is relevant. P.W.1 said he advised the defendant against his decision to proceed to demolish the house. That he warned the defendant that there was a pending action in court and that it would be wrong to proceed to demolish the house. That when the defendant would not heed his advice he appealed to the then Resident State Counsel, both of whom prevailed on the defendant not to go ahead with his plan, but to no avail..... In assessing the measure of damage (sic) under this heading I shall take into consideration the above conduct, which in my view, was not only harsh but unwarranted abuse of Governmental power. "

The Court of Appeal endorsed the above findings and conclusions and said:

" Thus it will be seen that the award of exemplary damages in this case, is in order: See Rooks (sic) v. Barnard (1964) A.C.1129; Eliochin (Nig) Ltd. v. Mbadiwe (supra). I am satisfied that the learned trial judge considered all the available evidence adduced before him and carefully made findings on them before coming to his judgment."

Having regard to the evidence before the learned trial judge and his findings which were affirmed by the court below, I am unable to see where the courts below went wrong and it was most improper to allege that the judgment appealed against is perverse. A careful reading of the record of appeal does not justify it. The plaintiff's building which was

valued at N133,033,50 was specially pleaded. The law requires strict proof of the special damages claimed and he established by credible evidence which was accepted by the trial court and affirmed by the court below his entitlement to the type of damages he claimed. See Oshinjinrin & Ors. v. Elias & Ors. (1970) 1 All N.L.R. 153. B

As to the complaint by the appellants that this was not a proper case for an award of aggravated general damages, the learned trial judge found that the appellant's conduct was sufficiently outrageous to merit exemplary damages. The dividing line between aggravated and exemplary damages is not easy to keep apart. The courts below used both expressions in the course of their judgments and it is clear that they confined themselves to exemplary damages which they awarded in order to teach the defendants that "tort does not pay" and to deter them and others from similar conduct in the future. See Broome v. Cassell & Co. Ltd. (1972) A.C. 1027 at 1073. C D

Exemplary damages may be awarded only in cases:

(i) of oppressive, arbitrary or unconstitutional acts by government servants.; E

(ii) where the defendants' conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the plaintiff;

(iii) where expressly authorized by statute. See Eliochin Nig Ltd v. Mbadiwe (1986) 1 NWLR (Pt.14)47 at 67 and Rookes v. Barnard & Ors. (supra) at pages 1221, 1226-1228 and 1232-1233. F

On the other hand, aggravated damages may be awarded where the damages are at large and the conduct of the defendant was such as to injure the plaintiff's proper feeling of dignity and pride. G

The exemplary damages suffered by the plaintiff came under category (i) above. I have no doubt also that the courts below took into account everything which aggravated or mitigated the defendants' conduct. I do not agree with the submission of the learned appellants' counsel that the sum awarded as exemplary damages amounted to double compensation. H

The learned trial judge had a clear view of the factors to be taken

into consideration in assessment of exemplary damages.

The special damages he awarded were compensation for the plaintiff's building which was demolished. In awarding the sum of N133,033.50 as special damages, the learned trial judge did not regard it as an expression of his disapproval of the conduct of the defendants/appellants. He expressed his disapproval and indignation at their wrongful conduct when he made the additional award of N150,000.00 as exemplary damages. There is nothing wrong in fixing one sum as compensation and an additional sum as exemplary damages. See Rookes v. Barnard (supra) at page 1228 and Broome v. Cassell & Co. Ltd. (supra) at pages 1099-1100. In the latter case, the jury awarded a distinct sum as exemplary damages in addition to another sum as compensatory damages. The two awards were upheld by the majority of the House of Lords. The facts of the case of Ezeani & Ors. v. Ejidike (supra) cited in the appellants' brief, are distinguishable from the facts of this case on appeal. In Ezeani's case, the plaintiff had been awarded the full value of his building materials removed by the defendants. The claim did not ask for exemplary damages and the trial judge made a further award in the name of general damages. He did not give separate consideration to the claim for general damages. On appeal, this court did not find any justification for the award of general damages and accordingly, set it aside.

For the above reasons and the fuller reasons contained in the judgment of my learned brother Mohammed, J.S.C., 1, too, will dismiss the appeal and I hereby dismiss it without any order as to costs.

G **UWAIFO JSC**

I read in advance the judgment of my learned brother Mohammed JSC. I am in full agreement with it for the reasons he has given. There is no redeeming feature in the behaviour of the 1st appellant. He abused his office to demolish the respondent's building and constituted himself a challenge to law and order having regard to the pending High Court action at that time of which he was warned by the court in advance.

As regards the merit of the case, the pleadings and evidence show that the appellants were without any defence at all. Their attempt at the curious denial of involvement in the tortious act was crushed by the irrefutable evidence of witnesses who were under the control of the 1st appellant. So apart from being a law-breaker, the 1st appellant is also a dishonourable person who having taken the law into his own hands could not stand up to justify his action but resorted to a grand denial.

The respondent led such solid evidence in proof of his case and to describe the very high-handed manner the 1st appellant caused his premises to be invaded and demolished that the learned trial judge had no choice but to accept it. He proved his title to the land involved by virtue of the certificate of occupancy covering it and also that he was duly given approval to erect the building which was demolished by the 1st appellant.

I cannot imagine a more appropriate case for aggravated damages on the combined authority of Rookes v Barnard (1964) A.C. 1129 and Eliochin (Nig) Ltd v Mbadiwe (1986) 1 NWLR (pt.14) 64. Briefly stated, the principle there established as may be relevant to the present case is that when a government servant engages in an oppressive, arbitrary and unconstitutional action (Rookes v Barnard) against the background that he had no court order or no other legal justification for invading the proprietary right of another (Eliochin (Nig) Ltd v Mbadiwe), a case of exemplary or, at any rate, aggravated damages is made out. In such a case, I think the court should consider the circumstances properly to award such damages that not only meet the occasion but also to serve "to teach a wrongdoer that tort does not pay" : see Rookes v Barnard (supra) at 1227 per Lord Devlin which was cited in Drane v Evangelou (1978) 1.W.L.R. 455 st 462. My only regret in the present case is that the award would appear grossly inadequate in the circumstances of the case and that no appeal for an increase of them was taken. I took dismiss the appeal as completely lacking in merit. I make no order for costs.

EJIWUNMI JSC

I have had the privilege of reading the leading judgment of my learned brother Mohammed JSC, in this appeal. I have no doubt that this appeal is completely bereft of any merit. I also dismiss it for all the reasons given in the leading judgment. I make no order as to costs.

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