

SUPREME COURT OF NIGERIA
8TH DECEMBER, 2000. SC.105/1993
CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE, S. U. ONU,
O. ACHIKE, S. O. UWAIFO, JJSC

ALHAJI O. A. OYEKANMI PLAINTIFF/APPELLANT
AND
NATIONAL ELECTRIC POWER AUTHORITY DEFENDANT/
RESPONDENT

***APPEALS** - Discretion of lower Court - Will not be interfered with except if exercised on wrong principles or mistake of law.*

***APPEALS** - Suo motu issue - Raised by appeal Court - Is an unwarranted digression and a grave error leading to miscarriage of justice - And is a basis for setting aside the decision.*

***LEGAL PRACTITIONERS** - Bill of charge - Action to recover - Certain conditions must be observed.*

***LEGAL PRACTITIONERS** - Bill of charge - If not applied to be taxed - Judgment for full sum may be entered - If leave is obtained to sign for final judgment by plaintiff.*

***LEGAL PRACTITIONERS** - Bill of charge - Not objected to - Is subject to litigation as to quantum - It is a matter within the general jurisdiction of the court to resolve.*

***PRACTICE & PROCEDURE** - Legal practitioner's bill of charge - If not sufficiently itemized or particularized - Must be objected to formally.*

FACTS

The appellant who is a legal practitioner was retained by the defendant/respondent to defend a claim against it of over three million naira. Having successfully defended the respondent he then served a bill

of charges on the respondent specifying cost for various services, claiming a total sum of N506,243.20 as professional fees. The bill not having been settled, he brought an action claiming the sum with interest after one month of delivering the bill of charges. The trial Court awarded N200,000 to the appellant. The respondents thereafter appealed to the Court of appeal and the appellant cross appealed equally.

The court below considered whether there was basis for assessing the professional fee awarded by the trial court and held that the bill of charges was not properly drafted to enable the trial judge arrive at a just, reasonable and fair assessment of the appellant's bill and so dismissed the appeal awarding nothing to the appellant despite respondents acceptance of liability to pay up to N150,000. The appellant has therefore appealed against the judgment of the Court of Appeal on seven issues and the respondent formulated four. The issues are however merged into two.

ISSUES FOR DETERMINATION

1. *Whether the failure of the appellant to itemise his bill of charges was fatal to his claim particularly as the respondent neither objected on that ground nor applied for taxation of the same.*

2. *Whether the Court of Appeal was right in disallowing the award of N200,000.00 made at the discretion of the trial particularly as the respondent admitted liability up to N150,000.00.*

HELD - (Unanimously allowing the appeal per lead judgment of **UWAIFO JSC**)

Bill of charge - Action to recover

1. It is to be observed that in order for a legal practitioner to be able to begin an action to recover his fees upon a bill of charges he has to satisfy three conditions namely, first, he must prepare a bill of charges or a bill for the charges which should *duly particularize the principal items* of his claim; second, he must serve his client with the bill; and third, he must allow a period of one month to elapse from the date the bill was served. (p. 3047 F)

Bill of charge - If not sufficiently itemized

2. I have already indicated that our Act does not distinguish between contentious and non-contentious business. It appears in Nigeria all bills of charges should be adequately particularized. At the moment the position does not seem so clear in regard to what is sufficient particularization as to hold, as did the Court of Appeal, that exhibit J was a bad bill. What is sufficient for that purpose does not appear to have received judicial consideration in our courts. But it is clear to me that if there is an issue of insufficiency of particulars, that should be formally raised by objection. Civil cases are fought on the basis of issues joined on the pleadings and on such other matters or objections regularly and properly raised and canvassed. As I said, the adequacy of the bill of charges was at no stage an issue. It was open to the respondent to raise an objection to it or to apply for more particulars to be furnished if it could be shown that the bill actually delivered was not in law a sufficient bill. (p. 3049 F / 3051 F)

Appeals - Suo motu issue

3. In the present case, no objection of any kind was taken to the bill of charges, exhibit J, whether on a preliminary issue or in the statement of defence, or in the course of the hearing at the trial court, or even specifically on appeal. The learned trial Judge adverted for the first time, and *suo motu*, to the question of the adequacy of the said bill of charges by his discussion of *Re A Solicitor* (supra). The issue was not raised or canvassed by any of the parties. What the learned trial Judge did was a digression, which was unwarranted. He was in grave error in that regard. It was not open to the lower court to raise *suo motu* what was at no time an issue, namely, the adequacy of the bill of charges, exhibit J, and to base its decision on it to reverse the trial court. If the lower court had borne it in mind that it must limit the case to the issues joined by the parties on their pleadings, it would not have taken a course outside those pleadings even if it thought it was in pursuit of the justice of the case. Indeed, such a course is seen to lead to a miscarriage of justice: see *Dipcharima v. Umar Ali* (1974) NSCC (vol.9) 596 at 597. I think it has been sufficiently stated as a golden rule of procedure that it is wrong for

a court to raise and decide an issue suo motu without giving the parties an opportunity of being heard on it. It often leads to a miscarriage of justice if it is an issue upon which the judgment substantially rests.
(p. 3051 D / 3058 G)

B

Bill of charge - If not applied to be taxed

4. Over and above that, the respondent in the present case did not take advantage of s.17 (1) of the Act to apply for the taxation of the bill. In such circumstance, the appellant would be entitled to apply for leave to sign final judgment for the amount of the bill unless the respondent was able to show special circumstances to warrant an order for taxation of the bill which was delivered more than twelve months on an application made under s.17 (3) of the Act. Nothing prevented the learned trial Judge in the circumstances from giving judgment for the amount claimed in the bill to the appellant had he taken appropriate procedure to have judgment signed for him, or from taking such other course as the situation demanded. (p. 3052 D)

E

Bill of charge - Not objected to

5. In view of the aspects discussed above in relation to the bill of charges, I will answer issue 1 in the negative and say that in the circumstances of the case, the bill in question, not having been objected to by the respondent nor did it apply for the taxation of the same, at worst remained litigable as to its quantum, unless it was considered proper to sign judgment for the entire sum. It accordingly became a matter falling within the exercise of the general jurisdiction of the court to resolve depending on the issues joined by the parties and the evidence available. (p. 3055 A)

Appeals - Discretion of lower court

6. The law is clear that a discretion properly exercised by a trial or lower court will not be lightly interfered with by an appellate court even if the appellate court was of the view that it might have exercised the discretion differently. It is only when a trial court or a lower court exercised a discretion upon a wrong principle or mistake of law or under a misappre-

hension of the facts or took into account irrelevant or extraneous matters or excluded relevant matters thereby giving rise to injustice, that an appellate court will not abdicate its duty to interfere with the exercise of that discretion in order to correct or prevent the injustice. (3058 B)

B

NOTABLE POINT OF INTEREST

UWAIFO.JSC

1. Written agreement between legal practitioner and client for a sum

A legal practitioner is entitled to make a written agreement with his client in respect of any professional business done or to be done by him for a sum: See s.15 (3)(d) of the Legal Practitioners Act, 1975 (the Act). Such agreement should appear fair and ought to be such that was not made under circumstances of suspicion of an improper attempt by the solicitor to benefit himself at his client's expense: See *Scarth v. Rutland* (1866) LR 1 CP 642; *Clare v. Joseph* (1907) 2 KB 369 at 376. Such an agreement is usually jealously regarded by the court and the tendency is to lean in favour of the client and put the burden of justifying its propriety on the legal practitioner. (p. 3046 F)

E

REPRESENTATION

A. A. I. Okunade Esq. for the appellant
Chief (Mrs.) C. J. Aremu for the respondent

F

CASES REFERRED TO

Clare v Joseph (1907) 2 KB 369 at 376
Lewis v Primrose (1844) 6 Q. B. 265
Dimes v Wright (1849) 8 CB 831
McCullie v Butter (1961) 2 All ER 554
Ibadan v Lagunju (1954) 14 WACA 549 at 552
Saraki v Kotoye (1990) 4 NWLR (Pt. 143) 144 at 171

G

H

STATUTES REFERRED TO

Legal Practitioners Act 1975 ss. 15 (3) (d) & 16 - 19
Solicitors Act of England 1843

BOOKS REFERRED TO

Halsbury's Laws of England, 4th Vol 44 (i)

The Digest, Annotated British Commonwealth & European Cases Vol 44, 1984

B

LEAD JUDGMENT BY UWAIFO JSC

The relevant facts bearing on this appeal from a judgment of the Court of Appeal, Ibadan Division, given on 14 April 1992, can be stated with much brevity. It is unnecessary to go to full details, much of which I consider irrelevant. That will make it fairly easy to deal with the issues arising from the appeal. The issues raise important questions about a legal practitioner's bill of charges prior to an action to recover the same.

The appellant is a legal practitioner. He was briefed by the respondent to defend a claim of N3, 270,400.00 brought against it in suit No. KWS/227/84 by Paul Okedare and another (for themselves on behalf of Okedare family) at the High Court, Ilorin in Kwara State. It is in respect of land acquired by the respondent in which compensation for crops thereon was sought. The appellant successfully defended the action which was dismissed in a judgment delivered by Hon. Justice T.A. Oyeyipo, Chief Judge of Kwara State, on 26 May 1988.

The Bill of Charges

The appellant thereafter served a bill of charges (which he referred to as a bill of costs) on the respondent dated 9 June 1988. I reproduce the said bill as follows:

SUIT NO KWS/223/84

P. OKEDARE & ORS vs. NATIONAL ELECTRIC POWER AUTHORITY

We are pleased to formally inform you that the above suit in which we defended your Authority had been concluded and judgment delivered on the 26th May 1988 by the presiding Judge Mr. Justice T.A. Oyeyipo – Chief Judge of Kwara State. In the judgment the Plaintiffs' claim against your Authority for the sum of N3, 270,400.00 (Three million two hundred and seventy thousand four hundred naira) was dismissed and N200.00 (Two hundred naira) cost awarded in favour of

your Authority. We have thus by our professional expertise (sic), resourcefulness (sic) and diligence saved your Authority the said sum which the Plaintiffs would have otherwise looted from the treasury all in the name of judicial process.

Pursuant to your Authority's letters of instructions Ref. DLL/ B CF.389/84/561 of 31st December 1984 and DLL/CF.339/85/018 of 21st January 1985 respectively and our's (sic) of acceptance dated 3rd January 1985 and (sic) hereunder submit our Bill for the professional fees and expenses for settlement forthwith.

Nature of Brief - Litigation

Subject Matter - Defending a Claim for N3, 270,000.00

Client - National Electric Power Authority (Defendant)

1) Towards Professional Fees all stages N495,060.00

2) Transport Charges N7,500.00

3) Expenses filing process witness

(official receipts attached) N1, 182.60

4) Sundry expenses on witnesses,
investigation etc.

N2,500.00

5) Accommodation (provided by NEPA)

NIL

TOTAL

N506,243.20

Less Deposit Paid

N30,000.00

Balance Payable

N476,243.20

(FOUR HUNDRED AND SEVENTY-SIX THOUSAND TWO HUNDRED AND FORTY-THREE NAIRA TWENTY KOBO ONLY).

We will appreciate your efforts to make your Authority's cheque for the sum of N476,243.20 available within the next TEN DAYS for collection by any member of the Chambers duly authorized in writing.

The bill was not settled. The appellant consequently brought this action on 29 August, 1988, well after one month after the bill was delivered, claiming the sum of N465,060.10(?) and 15.7% p.a. interest on the said sum from 10 July, 1988. At the hearing, the bill of charges was admitted as exhibit J. In his judgment delivered on 20 July, 1989, the learned trial Judge (Abiodun Alao, J) awarded N200,000.00 to the

appellant. Before reaching that decision, the learned trial Judge adverted to *Re A Solicitor* (1955) 2 All ER 283 based on the Solicitors' Remuneration Order, 1953 (of England) and in particular quoted the observation of Denning L.J. at pages 287-288, which I shall consider later on in this judgment. The learned trial Judge, going by that observation, then made comments as follows:

"Although we do not have an order similar to the Solicitors' Remuneration Order, 1953 in Nigeria, I am of the view the item 1 on the bill of costs, Exhibit J could have been better if the details or the particulars of the work done consisting N495,060.00 have been stated on the bill and the cost of each item of work stated against it. That would enable the client to know and evaluate the work done by counsel. He, the client would know and appreciate what he is paying for. If the bill comes to court as in this case the court would at a glance know the volume of work done by counsel and the fees he charges for every item of work done and be able to decide whether the charges are reasonable and fair."

E At the Court of Appeal

The respondent (as appellant) appealed against the award made by the trial Judge. The appellant (there as respondent) also appealed (by way of a cross-appeal). In the majority decision by the Court of Appeal, Salami JCA who read the leading judgment considered that the only issue which arose for consideration was *"whether there was basis for assessing the professional fees ... awarded to the respondent by the trial court."* Upon that issue the learned Justice discussed *Re A Solicitor* (supra) and came to the conclusion that exhibit J being a bill of charges in respect of a contentious matter *"was not properly got up and could, therefore, not form basis of awarding or taxing the respondent's fees. The learned trial Judge, with due respect to him, had no benefit of sufficient material placed before him to arrive at a just, reasonable and fair assessment of the appellant's (sic: respondent's) bill. In the circumstance, the appeal is successful and it is allowed."*

The learned Justice thereafter, looking at the apparent injustice of the order of allowing the appeal which he said had presented a 'tricky'

situation, proffered the view that the plaintiff ought to have moved the trial court at the close of pleadings “*praying for an order entering judgment against the defendant in the sum of N150,000.00 which it admitted in its statement of defence before proceeding with the trial of the disputed balance. The admission is unequivocal, unambiguous and clear.*” B To add insult to injustice, the learned Justice concluded as follows:

“The appellant is not denying that the respondent worked for it and was prepared to give a reasonable remuneration of N150,000.00 which the respondent any way had spurned. The attitude of the respondent makes it fairly difficult for me to order payment to him of the sum of N150,000.00, which he has rejected. On other hand, I consider it inequitable to dismiss the respondent’s claim. In spite of this, there is no other option open to me other than dismissing the claim. An order of non-suit would be an exercise in futility; the case being already statute barred. I, therefore, allow the appeal, set aside the decision of the court below and dismiss the respondent’s claim.” D

The cross-appeal is not viable since the substratum of the case is the respondent’s bill of fees which is already held to be insufficient to lend itself to fair and reasonable assessment. There is, therefore, no substance in the cross-appeal which fails and it is dismissed.” E

At the Supreme Court

The appellant now complains against that judgment on twelve grounds of appeal. This matter is such that, in my view, the said grounds are not only unwieldy but also largely irrelevant. The appellant has formulated seven issues and the respondent four from the grounds of appeal. The seven issues set down by the appellant are as follows: F

- “1. Whether the majority decision of the Court of Appeal was right in view of the findings that the respondent had admitted the sum of one hundred and fifty thousand naira (N150,000.00).”* G
- 2. Whether the failure of the appellant to itemise his Bill of Cost is fatal and incurably bad and makes his claim irrecoverable.”* H
- 3. Whether a claim based on unitemised Bill of Costs which was not subject of a complaint by the respondent either before, during or after trial could be rejected by the Court of Appeal.*

4. *Whether the decision in Re Solicitors case was applicable to this case.*
5. *Whether the learned Justices of (the) Court of Appeal who delivered the majority judgment properly and rightly directed themselves as to the laws applicable to the facts of this case.*

B 6. *Whether the learned Justices of (the) Court of Appeal were right in dismissing the appellant's claim in which the learned trial Judge applied his discretion to award.*

C 7. *Whether the learned Justices of the Court of Appeal were right in dismissing the appellant's claim when the respondent failed to appeal against the findings of facts of the learned trial Judge who held that there was no order similar to the Solicitors Remuneration Order 1953 in Nigeria."*

Out of the said issues, four are enough for the purposes of this appeal. I intend to merge issue 2 with issue 3, and issue 1 with issue 6, so as to have two issues which pertinently arise as follows:

1. *Whether the failure of the appellant to itemise his bill of charges was fatal to his claim particularly as the respondent neither objected on that ground nor applied for taxation of the same.*

E 2. *Whether the Court of Appeal was right in disallowing the award of N200,000.00 made at the discretion of the trial particularly as the respondent admitted liability up to N150,000.00.*

Issue No. 1

F (i) *Fees by agreement*

A legal practitioner is entitled to make a written agreement with his client in respect of any professional business done or to be done by him for a sum: See s.15 (3)(d) of the Legal Practitioners Act, 1975 (the Act).

G Such agreement should appear fair and ought to be such that was not made under circumstances of suspicion of an improper attempt by the solicitor to benefit himself at his client's expense: See *Scarth v. Rutland* (1866) LR 1 CP 642; *Clare v. Joseph* (1907) 2 KB 369 at 376. Such an agreement H is usually jealously regarded by the court and the tendency is to lean in favour of the client and put the burden of justifying its propriety on the legal practitioner. However, settlement of a bill of costs between a solicitor and a client upon a special agreement precludes an order being made upon

application for taxation. The agreement must first be set aside by action before the matter of taxation can be reopened: See *Re Whitcombe* (1844) 14 L.J. Ch.19. Of course there would be occasions where, although no real contract could be found on by a legal practitioner, there might be quasi-contract or other circumstances giving rise to fees claimed on a *quantum meruit* basis: See *Aburime v. Nigerian Ports Authority* (1978) NSCC (Vol.11) 231 at 240; *Oyo v. Mercantile Bank (Nig.) Ltd* (1989) 3 NWLR (pt.108) 213 at 230-232.

(ii) *Fees through bill of charges*

The recovery of a legal practitioner's charges where it is necessary to rely on a bill of charges is subject to ss. 16-19 of the Act. By the provision of s.16(1) of the Act, a legal practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction. However, s.16(2) provides that "*a legal practitioner shall not be entitled to begin an action to recover his charges unless –*

(a) *A bill for the charges containing particulars of the principal items included in the bill and signed by him or in the case of a firm by one of the partners or in the name of the firm, has been served on the client personally or left for him at his last address as known to the practitioner or sent by post addressed to the client at that address; and*

(b) *The period of one month beginning with the date of delivery of the bill expired.*"

It is to be observed that in order for a legal practitioner to be able to begin an action to recover his fees upon a bill of charges he has to satisfy three conditions namely, first, he must prepare a bill of charges or a bill for the charges which should *duly particularize the principal items of his claim*; second, he must serve his client with the bill; and third, he must allow a period of one month to elapse from the date the bill was served. In England, for the purposes of a bill of charges, a distinction is made between non-contentious and contentious business. Before the Solicitors' Remuneration Act General Order 1920 there was no distinction. By that Order (as re-enacted by the Order of 1934) a solicitor was authorized to charges, but it was provided that the client could insist within six months on a detailed bill of charges. This can

be found stated in *Re A Solicitor* (supra) at page 287. In Nigeria, it does not appear there is need to distinguish between contentious and non-contentious business for the purposes of a bill of charges just as it was in England before the said Order of 1920. Both the trial court and the Court of Appeal relied on the observation of Denning L.J. at pages 287-288 as to what a solicitor's bill for non-contentious business should contain to hold that the present appellant's bill of charges, exhibit J, was bad. As Denning L.J. put it at p.287 in respect of a bill for non-contentious business:

"It need not contain detailed charges as it used to do before 1920. Nor need it contain all the details which the solicitor will have to give, if required, to the Law Society or the taxing master. But I think that it must contain a summarized statement of the work done, sufficient to tell the client what it is for which he is asked to pay. A bare account for 'professional services' between certain dates, or for work done in connection with your matrimonial affairs' would not do. The nature of the work must be stated, such as advising on such and such a matter, instructing counsel to do so and so, drafting such and such a document, and so forth."

I think exhibit J submitted by the appellant went beyond for "professional services" rendered or for "work done in connection with your litigation" as the case may be. It was more specific than that although not detailed as to what was claimed in respect of different items of the services rendered. The above observation of Denning L.J. Which envisages a lump sum claim for the nature of work done could not really have been a sufficient guide as to how to make itemized claim in a bill of charges which the Court of Appeal felt the appellant did not comply with. Although Denning L.J. had earlier suggested at page 286, which is more relevant to the present case than his observation earlier quoted, that a bill of charges for contentious business should contain some detailed items for which a specific amount ought to be stated against each item, what really was in issue in *Re A Solicitor* (supra) was the propriety of merging in one bill, charges for non-contentious business and contentious business without distinguishing between the two. I will quote Denning L.J. at p.286

inter alia:

“... where the work done before writ is such that, if the case went to trial, it would properly be allowed as against the other party on a party and party taxation, then it is contentious business, even though a writ is not in fact issued; but, if the work would not be allowed on a party and party taxation, it is not a contentious business. I am aware that this test sounds vague and indefinite, but the managing clerks in solicitors’ offices have a very good idea of what business will or will not be allowed on taxation, and I feel sure that they will be able to apply this test and say without difficulty what is contentious business and what is not. All work done in the cause itself after writ is, of course, contentious

Applying the principles which I have stated I have no doubt that a good deal of the business contained in this bill was contentious business. The drafting of the petition for judicial separation and all the work connected with it was clearly work which would have been allowed on a party and party taxation. The solicitors should have delivered a separate bill of costs for all this contentious business, with detailed items and charges. Another bill should have been delivered for the non-contentious business, and that could have been for a lump sum. The bill which was in fact delivered was a bad bill, because it did not distinguish between the two and treated it all as non-contentious business, which was wrong.”

(iii) *Particularization of bill and objection thereto*

I have already indicated that our Act does not distinguish between contentious and non-contentious business. It appears in Nigeria all bills of charges should be adequately particularized. At the moment the position does not seem so clear in regard to what is sufficient particularization as to hold, as did the Court of Appeal, that exhibit J was a bad bill. What is sufficient for that purpose does not appear to have received judicial consideration in our courts. But it is clear to me that if there is an issue of insufficiency of particulars, that should be formally raised by objection. In *Cobbett v. Wood* (1908) 2 K.B.420, the plaintiffs had acted as solicitors for the defendant’s wife on a petition by her in the High Court for a judicial separation. The petition

was dismissed, but the defendant was ordered to pay the costs as between party and party, and accordingly the plaintiffs delivered to him a bill of party and party costs. That bill having been taxed, the defendant paid to the plaintiffs the amount allowed upon the taxation. The plaintiffs then delivered to the defendant a bill in respect of the extra costs of the proceedings on the petition as between solicitor and client, which bill did not contain the items allowed in respect of party and party costs. The bill was not paid and the plaintiffs sued on it.

A preliminary objection was taken by the defendant that it was not a proper bill in accordance with s.37 of the Solicitors Act, 1843 which required a solicitor's bill to specify the fees, charges and disbursements for any business done by the solicitor. In spite of the objection, the trial Judge gave judgment for the plaintiffs. On appeal, the judgment was set aside on the unanimous basis that there was no proper bill. Fletcher Moulton L.J. at pp. 428-429 said:

"The bill purports to be a bill of costs in respect of a petition for judicial separation, and to contain only the extra costs as between solicitor and client, including costs not allowed as between party and party. Such a bill does not appear to me to be a complete bill of the fees, charges, and disbursements due in respect of the business done by the solicitors within the meaning of the section. The only way in which it can be suggested that it is such a bill is by saying that it must be read together with the previous bill which was delivered to the same person for taxation in the High Court and taxed as between party and party, and the amount allowed on which has been received by the plaintiffs. But, if I take the bill, and treat it as part of a total bill made up by reading it with the former bill, it appears to me impossible even so to make out that a proper bill has been delivered within the meaning of the Act. Taking one of the items by way of illustration, I find an item in respect of instructions for brief, which is stated to be in addition to the amount allowed on taxation as between party and party. What amount was so allowed would not appear from the signed bill delivered to the husband for taxation as between party and party. So that, taking the two signed bills together, they do not purport as regards that item to be a bill giving all necessary information as to the claim made

by the plaintiffs against the defendant.”

It will be appreciated from the reason given that the bill was structurally so defective that what was claimed in it did not add up even when taken in conjunction with the information in an earlier bill to give an idea of the fees, charges and disbursements as required by the relevant provision of the statute. As already seen in *Re A Solicitor* (supra), the structural defect was that contentious and non-contentious matters were merged in one bill when they ought to have been delivered separately in line with the legal requirements and for the purpose of separate taxation. Indeed, an objection was taken and an order was made for the delivery of itemized bill of costs. It was that order that was appealed, and the appeal was dismissed. So, in each of the cases discussed above, a preliminary objection was taken to the bill and, in one, a request for better particulars was sought and granted.

In the present case, no objection of any kind was taken to the bill of charges, exhibit J, whether on a preliminary issue or in the statement of defence, or in the course of the hearing at the trial court, or even specifically on appeal. The learned trial Judge adverted for the first time, and *suo motu*, to the question of the adequacy of the said bill of charges by his discussion of *Re A Solicitor* (supra). The issue was not raised or canvassed by any of the parties. What the learned trial Judge did was a digression, which was unwarranted. He was in grave error in that regard. Civil cases are fought on the basis of issues joined on the pleadings and on such other matters or objections regularly and properly raised and canvassed. As I said, the adequacy of the bill of charges was at no stage an issue. It was open to the respondent to raise an objection to it or to apply for more particulars to be furnished if it could be shown that the bill actually delivered was not in law a sufficient bill: See *Re Pomeroy and Tanner Solicitors* (1897) 1 Ch.284. In that case, it was held by Stirling J. that where a country solicitor employed a London agent he ought to incorporate in his bill of costs the details of the charges of the London agent, and that until the details of such charges were stated, either in the original or a supplementary bill, there was no complete bill

capable of taxation so as to entitle the solicitor to rely upon its delivery for twelve months as a ground of refusing taxation. It was further observed that as between the country solicitor and the client the whole of the work was done by the country solicitor and not partially by the London agent.

B The implication being that the items which made up the London agent's bill were not mere disbursements but were items taxable in the real sense as between the client and the country solicitor, just as much as items in respect of work done by the country solicitor personally. Not having incorporated the London agent's bill as part of the country solicitor's bill C for the purpose of taxation, the country solicitor's bill was an insufficient bill. I have no doubt that is a correct statement of the law on the matter of taxable items, which should therefore be duly reflected in a legal practitioner's bill of charges.

D **Over and above that, the respondent in the present case did not take advantage of s.17 (1) of the Act to apply for the taxation of the bill. In such circumstance, the appellant would be entitled to apply for leave to sign final judgment for the amount of the bill**
 E **unless the respondent was able to show special circumstances to warrant an order for taxation of the bill which was delivered more than twelve months on an application made under s.17 (3) of the Act. Nothing prevented the learned trial Judge in the circumstances from**
 F **giving judgment for the amount claimed in the bill to the appellant had he taken appropriate procedure to have judgment signed for him, or from taking such other course as the situation demanded.**
 Such was the position under the relevant provisions of the Solicitors Act, 1843 of England, similar to the provisions of s.17 (1)&(3) of our Act,
 G which read as follows:

"17(1) except where a direction providing for the giving of security is given under subsection (3) of section 16 of this Act and security is not given in accordance with the direction, the Court shall, on an
 H *application made by a client within the period of one month from the date on which a bill of charges was delivered to him, order that the bill shall be taxed and that no action to recover the charges shall be begun until taxation is completed.*

(Subsection (2) provides for an order that the bill be taxed)

(3) No order shall be made under subsection (2) of this section -

(a) in any case, after the period of twelve months from the date on which the bill in question was paid;

(b) except in a case where the court determines that there are special reasons for making such an order, if twelve months have expired since the date of the delivery of the bill or if judgment has been given in an action to recover the charges in question, and an order made by virtue of paragraph (b) of this subsection may contain terms as to the costs of the taxation.”

In *Jones & Sons v. Whitehouse* (1918) 2 K.B.61, a solicitor sued by specially endorsed writ to recover the amount of a bill of costs which had been delivered more than twelve months before action brought. The defendant did not apply for the taxation of the bill. The solicitor then applied for leave to sign final judgment under RSC Order 14. It was held that in the absence of special circumstances entitling the defendant to have the bill taxed at that stage, he was not entitled, even upon showing a reasonable ground of objection to a few only of the items in the bill as being unreasonable in amount, to have the whole bill taxed, but that the court, in the exercise of its general jurisdiction, would give leave to defend as to the items objected to so as to have those items inquired into. See also *Re Wilton* (1843) 13 LJQB 17 which decided that the fact of the non-payment of fees due to a barrister did not constitute special circumstances to warrant an order for referring to taxation a bill which had been delivered more than twelve months. There should be some other factors or circumstances, which are special to move the court to allow that indulgence. Failure to settle a bill in due time is a default under s.17 (3)(a) of the Act on the part of the client and he cannot rely on that default as an excuse or reason for seeking to be allowed taxation after twelve months.

In fact, the point had earlier been decided in *In re Park* (1889) 41Ch.D 326 that where the bill of costs had been delivered more than twelve months before, and therefore the period which the client was entitled to have the bill taxed under the Solicitors Act, 1843 had expired,

it is permissible to treat the claim upon the bill of costs as if it were an action at law in which the defendant would be allowed to question the reasonableness of the particular items in the bill which could have been objected to had there been taxation. It was there stated as a matter of principle by Cotton L.J. in his observation at pages 337-338, and it is that principle I merely intend to reproduce as follows:

"The solicitors delivered their bills of costs much more than a twelve month before the death of the testator, he paid money on account, and had not referred the bills neither for taxation, nor in any way objected to them. It is not contended that there are any special circumstances, which would entitle the client to have the bills taxed under the Solicitors Act after the length of time that has elapsed. But that to my mind does not settle the question. The solicitors are bringing in a claim against the estate of the deceased client, and that claim is to be dealt with as if it was an action at law. If it were so, of course the fact of the testator's having had those bills of costs so long without making any objection is prima facie evidence, and if any objection were taken that objection would have to be considered, and the matter would have to be dealt with upon hearing the evidence on both sides, unless it could be referred to the Taxing Master, who is the usual and proper person to decide whether costs are reasonable."

It was obviously a matter, in the present case, which could not be referred to a taxing officer because there would be nothing in the bill he could proceed to tax. The appellant failed to break down the sum of N495,060.00 claimed as his professional fees into itemized amounts as he should have done. I think, looking at what transpired in the present case, the learned trial Judge did the best that could have been done, particularly when the reasonableness of the fees claimed by the appellant was inquired into by the judge as if he were treating a mere action at law, and settling the same. I cannot see that there is anything objectionable in that. Indeed adjudication will only be beneficial if it is in pursuit of the justice of a case and this ought to be the abiding ethos of a court of justice and equity wherever a lawful remedy is available for a wrong. It is sometimes put in short form in the Latin maxim: *ubi jus ibi remedium*.

Such a remedy was available in the present case.

In view of the aspects discussed above in relation to the bill of charges, I will answer issue 1 in the negative and say that in the circumstances of the case, the bill in question, not having been objected to by the respondent nor did it apply for the taxation of the same, at worst remained litigable as to its quantum, unless it was considered proper to sign judgment for the entire sum. It accordingly became a matter falling within the exercise of the general jurisdiction of the court to resolve depending on the issues joined by the parties and the evidence available.

However, legal practitioners are well advised that where they have to present their bills of charges, it is interest to draw up the same with due care in order that they may be Explicit. This is likely to prevent unnecessary litigations over such bills but rather will make for easy understanding by clients, for proper taxation by taxing officers where necessary and for appropriate fees to be earned by legal practitioners in respect of services duly rendered. I realized that there might not have been sufficient guidelines laid down on this for legal practitioners in this country.

(iv) *Form and contents of a bill*

It is appropriate at this stage to refer again to s.16 (2)(a) of the Act as to the contents of a bill of charges. That provision requires that a bill of charges shall contain particulars of the principal items. I think there is need to offer some suggestions As to what may fall under principal items. I have already indicated that there is really no distinction between contentious and non-contentious matters in regard to particulars expected in a bill of charges in this country. A general guideline as to the form, contents and purpose of a bill of charges, in my view, would be: (1) the bill should be headed to reflect the subject matter. If it is in respect of litigation, the Court, the cause and the parties should be stated: see *Lewis v. Primrose* (1844) 6 Q.B. 265; *Dimes v. Wright* (1849) 8 CB H 831. (2) The bill should contain all the charges, fees and professional disbursements for which the legal practitioner is making a claim: see *McCullie v. Butler* (1961) 2 All ER 554. Professional disbursements

include payments, which are necessarily made by the legal practitioner in pursuance of his professional duty such as court fees, witness' fees, cost of production of records etc. if paid by him. (3) Charges and fees should be particularized e.g. (a) perusing documents and giving professional advice, (b) conducting necessary (specified) inquiries or using a legal agent in another jurisdiction for a particular purpose; see *Re Bishop, exp. Langley* (1879) 13 Ch.D 110; *Re Pomeroy and Tanner Solicitors* (supra), (c) drawing up the writ of summons and statement of claim or defence, (d) number of attendances in court and the dates, and (e) summarized statement of the work done (in court), indicating some peculiar difficult nature of the case (if any) so as to give an insight to the client as to what he is being asked to pay for: see *Re A Solicitor* (supra) at p.287. (4) It is required to give sufficient information in the bill to enable the client to obtain advice as to its taxation and for the taxing officer to tax it: see *Keene v. Ward* (1849) 13 Q.B. 515; *Slingby v. Attorney-General* (1918) Probate 236. It is necessary therefore to indicate against each of the particulars given in the bill of charges a specific amount, taking into account the status and experience of the legal practitioner, and the time and efforts involved. See generally, *Halsbury's Laws of England*, 4th edn., vol. 44(1), paras. 192 and 193; *The Digest, Annotated British, Commonwealth and European Cases*, Vol.44, 1984 reissue, paras.2338-2483.

Issue No. 2

Although the learned trial Judge made reference to *Re A Solicitor* (supra) and held the view that the bill of charges, exhibit J, ought to have contained particulars of the work done by the appellant for which he claimed N495,060.00, he made the following observation:

“However what it did not contain had been supplied by the plaintiff in his evidence before me and in his several correspondence to the defendant particularly Exhibit H. The plaintiff assembled evidence which he used to settle the defendant's statement of defence from the officials of the defendant both at Jebba and in Lagos, officials of the Kwara State Ministry of Lands and Survey in Ilorin, the emir of Jebba, through private investigations as a result of which he obtained the opinions of ex-

perts like eminent Estate Surveyor and valuer, Academics who specialized in forestry and agriculture all of whom gave evidence for the defendants to demolish the claim of over three million naira against the defendant. In addition he went on a number of times to the site of acquired land over which the compensation for crops thereon was claimed. Having assembled the evidence, he ought to have carefully studied them before drafting the defendant's statement of claim (sic: defence), which only an experienced and skilful counsel can do well. That done and filed, as counsel to conduct the case in court he has to prepare the witnesses for the court so that none of them would falter. He had to prepare the cross-examination of the plaintiff's witnesses in the case and the evidence in chief of the defendant's witnesses. Then comes the conduct of the case in court, which is a no mean task. After that he had to prepare his final address by going through a plethora of judicial authorities." B C D

In para. 21 of the statement of defence, the respondent averred as follows:

"The defendant admits making an offer of N150,000.00 (one hundred and fifty thousand naira) to the plaintiff in full and final settlement of his professional charges in the matter and the defendant will contend at the trial that that amount is very fair and reasonable in the circumstances." E

In his evidence-in-chief, Theophilus Onyeazor, the respondent's secretary and legal adviser (d.w.1), said: F

"It is not true that the fees demanded by the plaintiff is not negotiable. We look at the complexity of the case, the standing or the seniority of the counsel at the bar and the quantum of claim if it is monetary to determine the fees paid to counsel. We took all these factors into consideration when we arrived at the sum of N150,000.00 as the fees to be paid to the plaintiff." G

The above averment and evidence were also taken into consideration by the learned trial judge. As I have discussed and concluded H earlier in this judgment, the bill of charges, exhibit J, had in the surrounding circumstances of the case become litigable as to what the liability should be. The resolution of this had fallen within the exercise of the

general jurisdiction of the court. The learned trial Judge had before him some relevant facts and evidence of admission of N150,000.00 as reasonable fees due to the appellant. He was then left to exercise his discretion as to what he considered was reasonable and fair. He came to the conclusion that it was the sum of N200,000.00 which he then awarded to the appellant. **The law is clear that a discretion properly exercised by a trial or lower court will not be lightly interfered with by an appellate court even if the appellate court was of the view that it might have exercised the discretion differently:** see *Resident, Ibadan v. Lagunju* (1954) 14 WACA 549 at 552; *Kudoro v. Alaka* (1956) SCNLR 255 at 257; *Williams v. Williams* (1987) 1 NSCC (vol.18) 454 at 465; *Saraki v. Kotoye* (1990) 4 NWLR (pt.143) 144 at 171; *Ngwu v. Onuigbo* (1999) 13 NWLR (pt.636) 512 at 524-525. **It is only when a trial court or a lower court exercised a discretion upon a wrong principle or mistake of law or under a misapprehension of the facts or took into account irrelevant or extraneous matters or excluded relevant matters thereby giving rise to injustice, that an appellate court will not abdicate its duty to interfere with the exercise of that discretion in order to correct or prevent the injustice:** see *Solanke v. Ajibola* (1968) NSCC (vol.5) 40 at 44-46; *Odusote v. Odusote* (1971) NSCC (vol.7) 231 at 235. In the present instance, the Court of Appeal had no justification to interfere with the discretion properly exercised by the trial court. I accordingly answer issue 2 in the negative.

Conclusion

It will be seen that the lower court took a completely wrong view of the case presented at the trial court. The pleading and evidence showed that the respondent was willing to settle for N150,000.00. The learned trial Judge took this into consideration in the exercise of his discretion to arrive at what he regarded as fair professional fees for the services rendered by the appellant. **It was not open to the lower court to raise *suo motu* what was at no time an issue, namely, the adequacy of the bill of charges, exhibit J, and to base its decision on it to reverse the trial court. If the lower court had borne it in mind that it must limit the case to the issues joined by the parties on**

their pleadings, it would not have taken a course outside those pleadings even if it thought it was in pursuit of the justice of the case. Indeed, such a course is seen to lead to a miscarriage of justice: see *Dipcharima v. Umar Ali* (1974) NSCC (vol.9) 596 at 597.

I think it has been sufficiently stated as a golden rule of B
procedure that it is wrong for a court to raise and decide an issue
suo motu without giving the parties an opportunity of being heard
on it. It often leads to a miscarriage of justice if it is an issue upon
which the judgment substantially rests: see *Governor of Gongola* C
State v. Tukur (1989) 4 NWLR (pt.117) 592; *Adegoke v. Adibi* (1992) 5
NWLR (pt.242) 400; *Eholor v. Osayande* (1992) 6 NWLR (pt.249) 524;
Imah v. Okogbe (1993) 9 NWLR (pt.316) 159; *Ajuwon v. Akanni* (1993)
1 NWLR (pt.316) 182. I therefore do not hesitate to allow this appeal,
set aside the judgment of the lower court together with the order for D
costs, and restore the judgment of the trial court. I award costs of
N10,000.00 to the appellant against the respondent.

KARIBI-WHYTE JSC

I have read in draft the leading judgment of my learned brother
S.O. Uwaifo, JSC in this appeal. I am in complete agreement with the
reasoning and the conclusion therein allowing the appeal. I also award
the costs of N10,000 in this appeal in favour of the Appellant. F

OGUNDARE JSC

I have read in advance the judgment of my learned brother Uwaifo
JCS just delivered. I agree with him that there is merit in this appeal and
it ought to succeed. G

I like to say a few words on the bill of charges the Appellant, a
legal practitioner served on the Respondent, his client. By paragraph 14
of the statement of claim the Appellant pleaded –

“14. *The Plaintiff on the successful conclusion of the suit for the Defen-* H
dant assessed his professional fees and expenses and made up a Bill of
cost. The said bill took into account all the factors of the case. The said
bill of cost dated 9th July 1988 for a net sum of N476,243.20k (profes-

sional fees and expenses) were delivered to the defendant almost immediately. The plaintiff pleads and will tender the copy of the bill of cost which is in his possession (original being with the Defendant) at the trial of this action.”

B The Respondent in paragraph 17 of its statement of defence denied the above averment. Paragraph 17 reads:

“17. Paragraph 14 of the Statement of Claim is denied. The Plaintiff who had been handing cases for the Defendant very well knows the Defendant’s system of payment and accepted instructions to defend the said suit with that knowledge.”

C It is not disputed that the Appellant acted for the Respondent in Suit No. KWS/227/84: Paul Okedare & Ors. V. National Electric Power Authority. The case ended in Respondent’s favour. It was subsequent to the conclusion of the case that the Appellant averred he forwarded his bill of charges to the Respondent.

By the state of the pleadings the issue between the parties was whether or not the Appellant served the Respondent with a bill of charges.

E The inadequacy of that bill was never raised as an issue by the Respondent in its pleadings. Appellant’s bill of charges was admitted in evidence at the trial. Even at the trial, the defence did not contend that the bill did not comply with the law. Rather, the defence was geared towards showing that the fees claimed were exorbitant. The learned trial Judge rightly, in my humble view, stated the issue between the parties. He said:

“The only issue for determination in this case is the fee to be paid by the defendant to the plaintiff, a legal practitioner who asked for the defendant to defend it in Suit No. KWS/223/84 Paul Okedare & Ors. V. National Electric Power Authority. Although Section 15 of the Legal Practitioners Act, 1975 empowers a legal practitioner to recover his charges by action in the high court, the Act is silent on the mode of assessing such fees as no appropriate order has been made under Section 14 of the Act

H prescribing the fees in this type of transaction.”

The learned trial Judge then proceeded to determine what was fair and reasonable remuneration due the Appellant. And after taking into consideration various factors appearing on evidence including the concession

by the Respondent that the sum of N150,000.00 was fair and reasonable, found as a fact that Appellant was entitled to a sum of N200,000.00.

On appeal to the Court below, that Court, per Salami JCA, took up the non-compliance of the bill of charges with “*the guideline or propositions of the learned trial Judge.*” Such a question was never an issue at the trial. The learned trial Judge referred to the bill of charges as not helpful in his determination of what was fair and reasonable remuneration due to the Appellant in this case since there was no breakdown of the figure for “*professional fees all stages.*” The Court below, on the other hand, held that the bill “*was not properly got up and could, therefore, not form the basis of awarding or taxing the respondent’s (that is Appellant’s) fees.*” It concluded –

“*The learned trial Judge, with due respect to him, had no benefit of sufficient material placed before him to arrive at a just, reasonable and fair assessment of the appellant’s bill. In the circumstance, the appeal is successful and it is allowed.*”

Ogwuegbu, JCA (as he then was) in his concurring judgment observed:

“*The award made by the learned trial Judge is arbitrary and without basis in law or common sense. The courts in this country will interfere directly with charge or fees of counsel by virtue of the Legal Practitioners Act Cap.20 Laws of the Federation of Nigeria, 1990. See Aburime v. N.P.A. (1978) 4SC. 111 at 128.*”

With profound respect to their Lordships that constituted the majority if the Court, I think their approach to the facts of the case was wrong. The proper approach, in my humble view, should have been to ascertain whether or not the finding of the learned trial Judge as to the fair and reasonable remuneration payable to the Appellant, could be supported by the evidence. Taking the evidence as a whole, I think the learned trial Judge came to a right conclusion. His award ought not to have been interfered with. The approach of Ogundere JCA is more to be preferred. In his dissenting judgment, he reasoned thus:

“*I have given deep thought and consideration to the Record of this appeal, the briefs of the parties in the light of the findings and orders of the lower court. It is clear beyond peradventure that DWI provided*

the criteria for assessing fees payable to counsel to whom the Electric Corporation of Nigeria give litigation briefs. And no one can deny that in any profession, particularly the legal profession, proficiency in law and advocacy are not attained by a sudden flight, but through years of hard work leading to an accumulation of experience. One can take judicial notice that the plaintiff was called to the Bar in July 1964. He is therefore a senior counsel. That is why a senior counsel or Senior Advocate of Nigeria would command twenty or thirty times what a lawyer of say four years standing, given the same brief will earn Indubitably, any other judge might have arrived, after due exercise of his discretion, at a much higher or lower figure. But is a Court of Appeal entitled to substitute its own discretion for that of a trial judge. And if so under what circumstances? Prima facie what are the rules that guide the exercise of a courts's discretion. It has been said first that a judge must act judicially, on known principles. He should not take into consideration extraneous matters, and he should not fail to consider something which he ought to have taken into consideration. Egerton v. Jones [1939] 3 All E. R. R; Solanke v Abiola [1968] 1 All N. L. R. 46, 52. The judge should also act judiciously. There would be a balanced consideration of the facts for each party before he arrives at a proper exercise of his discretion. University of Lagos v. Aigoro [1985] 1 N. W. L. R. (Pt. 1) 143, per Bello J. S.C. at 148. Once there are grounds on which a judge has exercised his discretion judicially and judiciously and in the interest of justice, a Court of Appeal cannot interfere even if it could have exercised the court's discretion differently. Demuren v Asuni [1967] 1 All N. L. R. 94, 101; Ceejay Traders Ltd v General Motors Co Ltd. [1992] 2 N. W. L. R. (Pt. 222) 132, 156; Nwabueze v Nwosu [1988] 9 S. C. N. J. 52, 59; [1988] 8 N. W. L. R. (Pt.88) 257, 262; University of Lagos v Aigoro [1985] 1 N. W. L. R. (Pt. 1) 143, 145, Princewell v. Usman [1990] 5 N. W. L. R. (Pt.150) 274, 286. The learned trial judge herein exercised his discretion based on his findings, supported by admissible evidence, both judicially and judiciously in the interest of justice. His judgment cannot be impaired on any score."

I agree entirely with him.

For the reasons given herein and for the fuller reasons given in the lead judgment of my learned brother Uwaifo, J.S.C. I too allow this appeal, set aside the majority decision of the Court of Appeal and restore the judgment of the trial High Court awarding to the Appellant the sum of N200,000.00 being balance of the professional fees payable by the Respondent to the Appellant in respect of suit No. KWS/227/84. I abide by the order for costs made by my brother Uwaifo JSC.

C

ONU JSC

In the High Court of Oyo State holden at Ibadan before Alao, J. the plaintiff, herein Appellant, claimed against the defendant, now Respondent as follows:

“(a) The plaintiff’s claim against the defendant for the sum of N465,060.10 (Four hundred and sixty five thousand, sixty naira, ten kobo) being the balance of professional fees and expenses due and payable to the Plaintiff as such for the services rendered by the Plaintiff to the Defendant in Suit No. DWS/227/84: Paul Okedare & Ors. V. National Electric Power Authority and which the Defendant has failed to pay despite repeated demand (sic) by the Plaintiff. The said services were rendered at Jebba and Ilorin, Kwara State from 1985 – 1988.

(b) 15.7% bank rate interest on the said sum from 10th July, 1988 to date of payment with substantial costs.”

After pleadings had been ordered, filed and exchanged by the parties, the case went to trial on the issues joined. In a considered judgment, the learned trial Judge, (Abiodun Alao, J) “entered judgment against the defendant in favour of the plaintiff in the sum of N200,000.00 being balance of the professional fees payable by the defendant to the Plaintiff who conducted the defence of the defendant in Suit No. KWS/227/84; Mr. Paul Okedare & Ors. V. National Electric Power Authority.”

Being dissatisfied with the said decision, the Defendant/Respondent, appealed to the Court of Appeal sitting in Ibadan which by a major-

ity of two to one, allowed the appeal and proceeded to dismiss the appellant's claim in its entirety with costs.

In allowing the appeal, the learned Justice of Appeal who wrote the leading judgment (Salami, J.C.A.) and concurred in by one of his two brethren (Ogwuegbu, J.C.A. as he then was) but dissented from by the other (Ogundere, J.C.A.) held as follows:

"There is no doubt that the bill set out above is in respect of a contentious matter. See Pecheries Ostendalse (Soc. Anon.) v. Merchants' Marine Insurance Co. Ltd. (1928) 1 K.B. 750 and Frankenbury v. Famous Lasky Film Service, Ltd (1931) 1 Ch.428. It is therefore required to set out the items that go into the bill in details. The bill however, prima facie does not comply with the guideline or proposition of the learned trial Judge because the first item on it which is styled "towards professional fees all stages," failed to itemise the details or particulars of work done together with their respective costs to arrive at the colossal sum of N495,060.00 comprised in that item of the bills. If the bill on which the respondent went to court does not satisfy the acid test laid down by the learned trial Judge is there any redeeming feature? I do not think so. It follows that the court would not be in a position at a glance to determine whether the bill was fair or reasonable."

However, the learned trial Judge in a passage which came under strictures of the learned counsel for the appellant made some spirited attempt to rescue or save or salvage the bill when he stated that the details missing from the bill had been supplied by the respondent in his evidence before the court and his several correspondent (sic) to the appellant especially Exhibit H. What is it that exhibit J. did not supply and it is contained in exhibit H?" (Underlining is mine for emphasis).

Continuing, the learned Justice said:

"The order to make having allowed the appeal appears trickish. It is by no means an easy task. One appears to be at a crossroad. The burden would have been less irksome if the respondent, who was the plaintiff in the court below, after pleadings had been settled at the trial court, had moved that court under Order 27 rule 3 of the Rules of Supreme Court, England, 1965 praying for an order entering judgment

against the defendant in the sum of N150,000.00 which it admitted in its statement of defence before proceeding with the trial of the disputed balance. The admission is unequivocal, unambiguous and clear. That would have secured for him the sum of N150,000.00 pending the determination of the disputed part of the claim. See National Bank of Nigeria Ltd. V. Guthrie (Nig.) Ltd. & Anor. (1987) 2 NWLR (part 56) 255, 263; Mosheshe General Merchants Ltd. V. Nigeria Steel Products Ltd. (1987) 2 NWLR (part 55) 110, 120 and Pas (Nig.) Ltd. V. New Nigeria Salt Co. Ltd. (1998) 6 NWLR (Part 159) 764 772.

The appellant is not denying that the respondent worked for it and was prepared to give a reasonable remuneration of N150,000.00 which the respondent any way had spurned. The attitude of the respondent makes it fairly difficult for me to order payment to him of the sum of N150, 000.00 which he has rejected. On the other hand, I consider it inequitable to dismiss the respondent's claim. In spite of this, there is no other option open to me other than dismissing the claim. An order of non-suit therefore, allows the appeal, set aside the decision of the court below and dismiss the respondent's claim.

The cross-appeal is not viable since the substratum of the case is the respondent's bill of fees which is already held to be insufficient to lend itself to fair and reasonable assessment. There is, therefore, no substance in the cross-appeal which fails and it is dismissed.

I assess costs of this appeal at N500.00 in favour of the appellant/cross-respondent."

The appellant filed five grounds of appeal attacking the decision of the court below whereas he formulated seven issues which, at a glance in my view, are a proliferation or too many to be good. For the purposes of this appeal, I hereby adopt the two issues identified in the leading judgment of my learned brother Uwaifo, JSC which I intend to consider together, both of which read:

1. Whether the failure of the appellant to itemise his bill of charges was fatal to his claim particularly as the respondent neither objected on that ground nor applied for taxation.
2. Whether the Court of Appeal was right in disallowing the award of

N200,000.00 made at the discretion of the trial Court particularly as the respondent admitted liability up to N150,000.00.

I would like to point out how legislation and the Exhibits in this case formed the basis for arriving at the conclusions by the two courts below from which the appeal herein stemmed.

The Legal Practitioners' Act Cap. 207, Laws of the Federation of Nigeria, 1990, Section 16 gives the Appellant (a legal practitioner) the right to recoup himself of the sum due on his lawyer's bill of charges (Exhibit J.) founded upon a quantum meruit, fairly assessed by the trial court as representing what the Appellant had earned or ought to earn as fees but which the court below overturned upon appeal. See the cases of Aburime v. Nigerian Ports Authority (1978) NSCC (Vol.11) 231 at 240; Oyo v. Mercantile Bank (Nig.) Ltd (1989) 3 NWLR (Part 108) 213 at 230 – 232.

On the principle of “*Ubi jus Ibi Remedium*,” in Bello and 13 others v. Attorney-General of Oyo State (1986) 5 NWLR (Part 45) 828 at Page 890 this Court per Oputa, JSC held that if from the facts available before the Court it is satisfied:

- (i) that the defendant was under a duty to the plaintiff;
- (ii) that there was a breach of that duty;
- (iii) that the defendant suffered legal injury;
- (iv) that that injury was not too remote.

It will surely provide a remedy i.e. create one irrespective of the fact that no remedy is provided either at common law or by statute.

In the instant case where the court below had set aside the award of N200,000.00 made by the trial court wherein the Respondent in it's defence had admitted only N150,000.00, the poser is whether it was not bound to pay to the Appellant the Bill of costs of N476,243.20K (professional fees and expenses) contained in paragraph 14 of the Statement of Claim but denied by the Respondent in its paragraph 17 of the Statement of Defence?

The established principle of law is that a court of law being no 'Father Christmas' ought not to award to a party a relief he did not ask for vide Union Beverages Ltd. V. M.A. Owolabi (1988) NWLR (Part 68)

128; Unilag v. Dada (1971) All NLR (Part III 344; Makanjuola v. Balogun (1989) 3 NWLR (Part 192) 206 and Bonny v. Yougha (1969) 1 All NLR 396 at 402. Albeit, in the instant case, the Court below ought to have used its discretion and based upon the evidence adduced in the trial court, to have awarded the Appellant more than the N200,000.00 assessed B thereat. However, it awarded only N200,000.00 to the Appellant.

On the Solicitor's right to recover charges vide Section 16 – 19 (ibid): -

(i) Section 16(1) thereof (ibid) provides that a legal practitioner shall C be entitled to recover his charges by action in any court of competent jurisdiction etc.

Mindful of this, the court below held inter alia that “*the admission of the respondent (NEPA) is unequivocal, unambiguous and clear.*” Yet it went on to dismiss the appellant's claim. This, in my view, is wrong since it D has thereby occasioned a miscarriage of justice.

On the point whether the failure of the Appellant to itemise his Bill of costs was fatal or incurably had as to make his claim irrecoverable, I am of the firm view that the decision in Re A Solicitor (1955) 2 All E E, R, 283 upon a correct and proper application would only be bad or incurably bad unless there are no redeeming features. This is because of the admission made in paragraph 21 (ibid) of the respondent's Statement of Defence hereinbefore referred to. Thus, whereas an itemized Bill of F costs as required by Section 16(1) of the Legal Practitioners Act is desirable, failure to itemise the Bill of Costs on the part of the appellant with particularity would not, in my view, render it a nullity for non-conformity with the law or Act. See Re Van Ladri (1907) 1 K.B.162 affirmed in G (1907) 2 K.B. 23 (C.A.) for the proposition that delivery of a Bill of Costs can in fact be waived.

The concept of waiver presupposes that the person who is to enjoy the benefit or who has a choice of two benefits is fully aware of his rights in the benefit or benefits, but he either neglects to exercise his right H to the benefit or where he has a choice of two, he decided to take one or bother. See R. Ariori & Ors. V. Muraino Elemo & Ors (1983) 1 SC.1 at 13, 17; Adegoke Motors Ltd. V. Adesanya & Anor. (1989) 3 NWLR

(Part 109) 250 at 292 C – D.

Thus, in the instant case on appeal, irregularity, if any contained in the Bill of Costs must be deemed to have been waived.

In view of the foregoing, I hold that the learned Justices of the B Court below were wrong to have dismissed the appellant's claim when the respondent had failed to appeal against the finding of facts of the learned trial Judge who held among other things, that there was no order similar to the Solicitors Remuneration Order, 1953 in Nigeria. Thus, I C hold that Exhibit J is not incurably bad. Besides, the respondent not having protested against the insufficiency of particulars contained in Exhibit J. whether before and during the trial, it must have been deemed to have waived its right of objection. *A fortiori*, the Justices of the Court D below who wrote the majority judgment of the court below were therefore palpably in error when they relief on insufficiency of particulars in Exhibit 'J.' to dismiss the appellant's claim. Indeed, had the court below allowed itself to be guided by the brass facts of the case herein, which in my view, boil down to the old tested biblical saying – the labourer is E worthy of his hire – it would not have arrived at the erroneous conclusion that the appellant should be sent away from the judgment throne empty-handed. It is for this reason that an award higher than or equal to the sum the appellant asked for, to wit N200,000.00 ought to have been F awarded in his favour.

For these reasons and the fuller ones contained in the leading judgment of my learned brother Uwaifo, JSC, a preview of which I had had before now, I too allow the appeal and make similar consequential G orders inclusive of costs as contained therein.

ACHIKE JSC

I have had the privilege of reading, in advance, the judgment just delivered by my learned brother, Uwaifo, J.S.C. I agree with his reasoning and conclusions that the appeal has merit and accordingly too would H allow the appeal. I abide by the order as to costs.