

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2002. SC. 192/1999
CORAM:- S. M. A. BELGORE,
I. L. KUTIGI, S. U. ONU, A. I. KATSINA-ALU,
A. O. EJIWUNMI, JJSC

TEXACO OVERSEAS (NIG)
PETROLEUM CO. UNLTD APPELLANT
AND
PEDMAR NIGERIA LTD RESPONDENT

JURISDICTION - Federal High Court - Admiralty jurisdiction of the court cannot be invoked - Once goods carried by a ship have been discharged - Or delivered to destination point of the cargo (H1)

APPEALS - Cross appeal - Need for - Respondent ought to file cross appeal - To specifically challenge the admission of Exhibits C-C2 (H2)

APPEALS - Damages - Interest - Award - Basis - For cross appellant to be awarded anything above statutory interest - There must be evidence of right to that sum on record (H3)

FACTS

Plaintiff/respondent commenced this action against defendant/appellant in the High Court of Lagos State, wherein it claimed inter alia, the sum of \$66,780.00 being amount due and payable to respondent on the chartering of its ship M. V. Coastal Carrier to appellant. With issues joined as per the pleadings, both parties at the trial gave evidence in support of their respective cases.

At the end of the trial, the learned trial Judge upheld the case of respondent that appellant has not paid the various sums of money being claimed from it. The learned trial Judge then awarded in its entirety the total sum including interest as claimed by respondent. Being dissatisfied, appellant appealed to the Court of Appeal, Lagos Division. The court partly allowed the appeal. As a result, both parties further appealed to Supreme Court. Appellant filed main appeal while respondent cross-appealed.

ISSUES FOR DETERMINATION

“1. Whether the Lagos State High Court had jurisdiction to entertain the claim of the respondent in view of s. 2(2)(f) of the Admiralty Jurisdiction Act No. 59 of 1991 and s. 230(1)(g) of the Constitution (Suspension and Modification) Act No. 107 of 1993 (the applicable act as at the time the suit was determined by the Lagos State High Court) now s. 251 (1)(g) of the Constitution of the Federal Republic of Nigeria 1999.

2. Whether the learned Justices of the Court of Appeal reached the right conclusion having regard to the credible evidence placed by the appellant before the court, particularly, with respect to the additional evidence furnished by the appellant on appeal.

HELD (Unanimously dismissing the appeal per
EJIWUNMI JSC)

JURISDICTION - Federal High Court

1. It must be observed that from the above pronouncements by the learned Justices of this court, the Admiralty Jurisdiction of Federal High Court cannot be invoked once the goods carried by a ship have been discharged in the harbour or delivered to the point of destination of the cargo. In any event, for a claim in admiralty to arise, the cargo or goods must still be in the vessel. (p. 2457 D)

Cross-appeal - Need for

2. I now return to the question raised for the appellant. This being as to whether exh. C - C2 were considered by the court below. I do not think that anyone reading the above passages from the judgment of the court below would have any doubt that the additional pieces of evidence were duly considered in the said exhibits. I must therefore reject that contention made for the appellant that the court below did not consider them in its evaluation of the evidence before it. Though learned counsel for the respondent had in the brief filed on their behalf by their learned counsel, I do not however think that the argument of counsel that the exhibits were wrongly admitted would be considered in this appeal. This is because the respondent

should have had filed for them a cross appeal to specifically challenge the admission of the exhibits. (p. 2459 H)

Damages - Interest - Award - Basis

3. Though this court was in that case construing the provisions of Order 27 rule 8 of the Plateau State (Civil Procedure) Rules 1976, the principles enunciated in the judgment apply with equal force to Order 38 rule 7 of the High Court of Lagos State (Civil Procedure) Rules, as they are in pari materia. Having regard to the above abiding principles, it is my view that for the cross appellant to be awarded anything above the statutory interest awardable to it, there must be evidence of the right to that sum on record. The evidence may be the agreement between the parties or evidence of the mercantile custom relevant to the transaction between the parties that led to the claim. It does appear clear that it is not enough to claim the additional interest in the writ without pleading facts in support thereof. The cross appellant having failed to plead such facts and give evidence thereon is not entitled to be awarded any sum beyond the 70% interest on the judgment debt with effect from the date of judgment. (p. 2462 G)

REPRESENTATION

K.G. Raji, for the Appellant

Chief Ladi Williams, SAN with Olagbegi-Adelabu [Mrs.], for the Respondent

CASES REFERRED TO

Akinsanya v. United Bank for Africa (1986) 4 NWLR (Pt. 35) 273

Central Bank of Nigeria v. Manexport S. A. (1987) 1 NWLR (Pt. 47) 86

American International Insurance Co. v. Ceekay Traders Ltd (1981) SC 81

Petrojessica Enterprises Ltd. v. Leventis Technical Co Ltd (1992) 5 NWLR (Pt. 244) 675

Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156

Adesanya v. President of Nigeria (1981) 1 NCLR 358

Niger Construction Co Ltd v. Okugbeni (1987) 4 NWLR (Pt. 67) 787

Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 546

Ekwunife v. Wayne West Africa Ltd (1989) 5 NWLR (Pt. 122) 422

Himma Merchants Ltd. v. Aliyu (1994) 5 NWLR (Pt. 347) 667

Namsho v. The State (1993) 5 NWLR (Pt. 292) 129

B STATUTES & RULES REFERRED TO

Admiralty Jurisdiction Act No. 59 of 1991, s. 2(2)(f)

Constitution of the Federal Republic of Nigeria 1999, s. 251(1)(g)

Federal High Court Act, s. 22(2)

C High Court of Plateau State (Civil Procedure) Rules 1976, O. 27 r. 8

High Court of Lagos State (Civil Procedure) Rules, O. 38 r. 7

LEAD JUDGMENT BY EJIWUNMI JSC

This action was commenced in the High Court of Lagos State
D by the plaintiff against the defendant with a writ of summons. By its
amended statement of claim, the plaintiff's claims are as follows:-

"(i) The sum of \$66,780.00 being the amount due and payable to the plaintiff on invoice no. 5485D referred to in paragraph 4 of this statement of claim being money due and payable to the plaintiff on the chartering of its vehicle M. V. Coastal Carrier to the defendant during the month of May, 1995.

(ia) Interest thereon at the agreed rate of 100% per month from the 27th of June, 1995 till judgment and thereafter at the rate of 21% per annum till the said sum is finally liquidated.

(ii) The sum of \$6,913.20 being the amount due and payable to the plaintiff on invoice no. 5484D referred to in paragraph 4 of this statement of claim being money due and payable to the plaintiff on the chartering of its vessel M. V. Brasil IV to the defendant during the month of April, 1995.

(iia) Interest thereon at the rate of 100% per month from the 29th of May, 1995 till judgment and thereafter at the rate of 21% per annum till the said sum is finally liquidated.

(iii) The sum of \$69,824.16 being the amount due and payable to the plaintiff on invoice no. 5454D referred to in paragraph 4 of the statement of claim being money due and payable to the plaintiff on the chartering of its vessel M. V. Coastal Courier to the defendant during the month of April, 1995.

(iiia) Interest thereon at the agreed rate of 100% per month

from the 1st of May, 1995 till judgment and thereafter at the rate of 21% per annum till the said sum is finally liquidated.

(iv) Costs of this action."

The defendant by their statement of defence averred inter alia in paragraphs 3, 4, 5, 6, 7 and 8 thus:-

"Para. 3: The defendant admits paragraph 2 of the amended statement of claim to the extent that it is an incorporated company under the laws of the Federal Republic of Nigeria and that it is involved in the petroleum business but states that its liability is unlimited.

Para. 4: The defendant states in answer to the averment in paragraph 3 of the amended statement of claim that it indeed chartered certain vessels, namely, M. V. Brazil IV and M. V. Coastal Carrier at various times in 1995 and for various periods of charter.

Para. 5: The defendant states further to paragraph 4 that the total amount due on the various charters was the sum of \$136,683.20 net of 5% Federal Government withholding tax deduction.

Para. 6: The defendant states that contrary to the averment in paragraph 5 of the amended statement of claim it neither refused nor neglected to pay the sums which fell due and payable in respect of the various charters, but did in fact effect payment of the total sum due of \$136,683.20 on 16th August, 1995 by bank transfer from its account to the account designated for payment by the vessel owners at Barclays Bank Plc., St. Heller, Jersey, Channel Islands.

Para. 7: Further to paragraph 6 hereof, the defendant states that it is no longer liable to the plaintiff or indeed any other party for payment of any sum whatsoever for the past chartering of the vessels named in paragraph 4 hereof."

The plaintiff filed a reply to the statement of defence which G reads:-

"1. Save in so far as the same consists of admissions, the plaintiff joins issue with the defendant upon its statement of defence.

2. The plaintiff denies paragraph 6 of the statement of defence in its entirety and avers that:-

(i) at no time did it ever receive payment in the sum of US\$136,683.20 (one hundred and thirty-six thousand, six hundred and eighty-three dollars, twenty cents) from the defendant; and

(ii) at no time did it ever authorise the defendant to effect

payment to Barclays Bank Plc., St. Heller Jersey, Channel Islands.”

With issues joined as per the pleadings both parties at the trial gave evidence in support of their respective cases. At the end of the trial and following addresses by learned counsel for the parties, the learned trial Judge delivered a considered judgment. By that judgment, the learned trial Judge upheld the case of the plaintiff that the defendant has not paid to the plaintiff the various sums of money being claimed from the defendant. The learned trial Judge then awarded in its entirety the total sum including interest as claimed by the plaintiff. Being dissatisfied with the judgment of the trial court, the defendant’s appeal to the Court of Appeal was partially unsuccessful, hence the two parties have further appealed to this court. The defendant from henceforth shall be referred to as the appellant, and the plaintiff, the respondent/cross appellant.

The parties, in obedience to the rules of this court filed and exchanged their briefs of argument. The appellant filed an appellant’s brief, a cross respondent’s brief and also a reply brief. The respondent also filed a respondent’s brief and a cross appellant’s brief. At the hearing, learned counsel for the parties adopted and placed reliance on their respective briefs. Learned counsel who appeared at the hearing also addressed us in expatiation of the arguments in their briefs. These are the issues identified in the appellant’s brief for the determination of the appeal:

“1. *Whether the Lagos State High Court had jurisdiction to entertain the claim of the respondent in view of s. 2(2)(f) of the Admiralty Jurisdiction Act No. 59 of 1991 and s. 230(1)(g) of the Constitution (Suspension and Modification) Act No. 107 of 1993 (the applicable act as at the time the suit was determined by the Lagos State High Court) now s. 251 (1)(g) of the Constitution of the Federal Republic of Nigeria 1999.*

2. *Whether the learned Justices of the Court of Appeal reached the right conclusion having regard to the credible evidence placed by the appellant before the court, particularly, with respect to the additional evidence furnished by the appellant on appeal. Or*

Whether there were sufficient material evidence placed before the Court of Appeal to enable it set aside the judgment of the Lagos State High Court in favour of the appellant.”

The respondent in the brief settled for it by its learned counsel,

Chief Ladi Williams, SAN set down the following as the issues calling for determination:

“1. Whether the appellant can raise the issue of jurisdiction.

2(a) Whether there is a miscarriage of justice as a result of the Court of Appeal ignoring exhibits A, B, C and to which purports to be fresh evidence or additional evidence to show payment by the defendant to the plaintiff.

(b) Whether exhibits A, B, C and E are admissible.

3. Whether ground 2 of the grounds of appeal is competent.

4. Whether the Supreme Court should interfere with the concurrent findings of facts herein.”

Before arguing issue (1) in the appellant’s brief, learned counsel concedes it and that quite rightly that the issue of jurisdiction was not raised in the courts below. But he then contends quoting Belgore, J.S.C., in Petrojessica Enterprises Ltd. v. Leventis Technical Company Ltd. (1992) 5 NWLR (Pt. 244) 675 that as “jurisdiction is the very basis on which any tribunal tries a case; it is the life line of all trials, a trial without jurisdiction is a nullity.”

Learned counsel then submits that the claim of the respondent can be entertained only in the Federal High Court having regard to the provisions of sections 1(1)(b); 2(2)(f), s. 19 of Admiralty Jurisdiction Act No. 59 of 1991 and s. 7(1)(g) of the Federal High Court (Amendment) Act No. 60 of 1991. So also, it is argued that by virtue of s. 230(1)(g) of the Constitution (Suspension and Modification) Act No. 107 of 1993, the applicable law at the relevant time the suit was filed, only the Federal High Court to the exclusion of all other High Courts, was vested with the power to hear and determine matters that relate to the chartering of vessels. It is also argued for the appellant, that the issue of the jurisdiction of a court can be determined by the nature or subject matter or substance of the claim. In support of that submission, he cited, *Akinsanya v. United Bank for Africa* (1986) 4 NWLR (Pt. 35) 273; *Central Bank of Nigeria v. Manexport S. A.* (1987) 1 NWLR (Pt. 47) 86.

He then submits that as the respondent’s claim arose from the chartering of vessels, the suit ought not to have been instituted at the Lagos State High Court but at the Federal High Court. The case of *American International Insurance Co. v. Ceekay Traders Ltd.* (1981) S.C. 81 at 101-105, where this court interpreted Admiralty Jurisdic-

tion to mean “..... *any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship.*”

For the respondent, it is argued that the facts of this case that led to the action is strictly whether or not a debt for services rendered has been paid by the appellant to the respondent. The State High Court upon such facts had jurisdiction to determine the dispute between the parties. With the greatest respect to the learned counsel for the appellant, I do not consider that he is right in his submission that this case is one sounding in admiralty. From the facts accepted by the trial court and affirmed by the court below, the dispute arose from the failure of the appellant to pay for services rendered to it by the respondent. There is nothing to suggest from the facts that anything beyond that happened between the parties. The case of *Petrojessica Enterprises Ltd. v. Leventis Technical Company Ltd. (1992) 5 NWLR (Pt. 244) 675* is not of any assistance to the appellant with regard to whether the matter under consideration in the instant appeal is an admiralty matter. In that case, cargo from a ship was warehoused in the 2nd appellant’s warehouses within Burutu Port of which 1st appellant was warehouseman. The cargo remained there for 472 days before the respondent and its agents, without tendering to the warehouseman the relevant bills of lading, and without securing the release of the cargo by the warehouseman’s consent, took away the cargo from the warehouses. The appellant filed their claim at the Federal High Court, Benin Division.

Before that court, one of the objections raised against the hearing of the claim was that the Federal High Court lacked jurisdiction to hear the matter. The objection was upheld by the learned trial Judge, and rather than striking out the claim, he transferred the suit to the High Court of Bendel State pursuant to s. 22(2) of the Federal High Court Act. The appeal to the Court of Appeal also failed, and the appellant appealed further to this court, and the appeal was dismissed. It is apposite to refer to some of the pronouncements made by some of the Justices of this court who heard the appeal. Belgore, J.S.C. at pages 692 - 692;

“The mere fact that goods at one stage in their movement had a voyage on a ship is not ipso facto giving rise to jurisdiction in admiralty for cargo already discharged and only to be collected by the consignee or his agent.”

Uwais, J.S.C. (as he then was) in his own judgment said further thus at p. 694:

“With the discharge of the cargo at Burutu and its being kept in a warehouse any dispute arising therefrom cannot come under the ambit of section 1 subsection (1)(h) of the Administration of Justice Act, 1956 of England which defines admiralty jurisdiction to inter alia relate to:

(h) Any claim arising out of any agreement relating to the carriage of goods in a ship or to the use of hire in a ship.”

For in Aluminium Manufacturing Co. Ltd. v. Nigerian Ports Authority (1987) 1 NWLR (Pt. 51) 475, this court held per Obaseki, J.S.C. at p. 486 as follows:-

“It will amount to ridiculous interpretation to say that because the goods had been carried in a ship any claim for damage or loss occurring after the completion of the journey by sea to Apapa occurring anywhere on land falls within the paragraph.”

It must be observed that from the above pronouncements by the learned Justices of this court, the Admiralty Jurisdiction of Federal High Court cannot be invoked once the goods carried by a ship have been discharged in the harbour or delivered to the point of destination of the cargo. In any event, for a claim in admiralty to arise, the cargo or goods must still be in the vessel.

In the instant case, the facts disclosed in the record indicate that the respondent is a limited liability company incorporated under the laws of the Federal Republic of Nigeria and is in the business of hiring out ships on charter to oil producing and oil services company. The appellant company too is also in the petroleum business. Between the months of April and May, 1995, the appellant chartered two vessels from the respondent for valuable consideration. The respondent subsequently raised invoices in respect of the charter agreement.

The invoices are three in number, viz:

1. Invoice No. 54840 dated 27/5/95 and the amount due was \$66,780.00 as at that date.

2. Invoice No. 54850 dated 18/4/95 and the amount due was \$6,913.20 as at that date.

3. Invoice No. 54880 dated 30/4/95 and the amount due was

\$69,824.16 as at that date.

With regard to the first invoice, interest accruing on it up to 30th June 1988 was \$110,693.62. On the second invoice, interest accruing on it up to 30th June, 1998 was \$11,610.90. And on the third invoice, interest accruing on it up to June 30th, 1998 was B \$118,690.04. The evidence of the only witness for the respondent shows that the appellant has not paid either the principal sum or the interest thereon. The appellant's case is that, it indeed chartered certain vessels, viz M. V. Brazil and M. V. Coastal Carrier at various times in 1995 and for various periods of charter.

C From these facts, it seems clear enough, though chartered vessels must have carried goods for the appellant, they have since been delivered without any mishap during the voyage of delivery. The appellant cannot obviously resile from that fact as they had even D according to them paid what they considered to be the sum for the charter of the various vessels. The sum they so paid was put at \$136,683.20, net of 5% Federal Government withholding tax deduction. However, that claim of the appellant was disputed by the respondent by the averment to that effect in the respondent's reply E to its statement of defence. After due consideration of the facts narrated above, I am in no doubt that the contention of the appellant that this is a case whose facts are sound in admiralty cannot be right. This is simply a case of debt owed by the appellant to the respondent. The goods, which the chartered vessels carried, have quite clearly F been delivered to the appellant as agreed. I must therefore resolve this question against the appellant.

Issue 2 now falls to be considered. Here the appellant is asking whether the learned Justices of the Court of Appeal reached the right G conclusion having regard to the credible evidence placed by the appellant before the court particularly with respect to the additional evidence furnished by the appellant on appeal. In the argument for the appellant in the appellant's brief, learned counsel for the appellant conceded it that this court will not ordinarily disturb the concurrent H findings of the lower courts. But he went on to argue that the court would interfere if it is manifest from the evaluation of evidence and the statutory provisions that the finding of facts of the lower courts is misconceived or out rightly perverse.

According to learned counsel for the appellant, the question

that has agitated his mind is, whether the court below can ignore relevant additional evidence it had earlier admitted. In this context, I should immediately refer to the records to see whether there is any justification for the anxiety of counsel. The relevant portion of the judgment of the court below per Oguntade, J.C.A., reads:-

"The defendant having admitted that they (sic) it chartered plaintiff's vessels, bore the onus to show that it had paid for the service. This is the more so since the plaintiff stood its ground that it had not been paid. Exhibits C to C2, tendered by the defendant were the defendant's internal documents and did not show that money was actually paid to the plaintiff. They were therefore irrelevant for the purpose of showing that the plaintiff has been paid. The result is that the defendant never established before the lower court that the plaintiff had been paid."

Earlier in that judgment, the court had made the following observation:-

"The defendant tendered exhibits B, B1 and B2 to prove this; and in order to show that the payment was made to the nominated account, the defendant exhibits C, C1 and C2. The plaintiff on the other hand had pleaded in its reply to the statement of defence that it did not authorize the defendant to effect payment to Barclays Bank Plc., St. Heller, Jersey, Channel Islands. Its only witness also in his evidence in chief:

'we did not authorise the defendants to pay the accounts to Barclays Bank, St. Heller, Jersey.'

Now did exhibits B, B1 and B2 show that the plaintiff authorised that payment be made to Barclays Bank, St. Heller, Jersey, Channel Islands? In any case, did exhibits C, C1 and C2 show that payment was made to the plaintiffs. On each of exhibits B, B1 and B2, there is a typewritten directing that payment be made to "Barclays Bank Plc." P. O. Box 630, Library Place

*St. Heller, Jersey, Channel Islands
UK. A/C Name Pedmar Nigeria Ltd.
A/C H.20.45.05/48603877"*

I now return to the question raised for the appellant. This being as to whether exh. C - C2 were considered by the court below. I do not think that anyone reading the above passages from the judgment of the court below would have any

doubt that the additional pieces of evidence were duly considered in the said exhibits. I must therefore reject that contention made for the appellant that the court below did not consider them in its evaluation of the evidence before it. Though learned counsel for the respondent had in the brief filed on their behalf by their learned counsel, I do not however think that the argument of counsel that the exhibits were wrongly admitted would be considered in this appeal. This is because the respondent should have had filed for them a cross appeal to specifically challenge the admission of the exhibits. See Saraki v. Kotoye (1992) 9 NWLR (Pt.264) 156; Adesanya v. President of Nigeria (1981) 1 NCLR 358; Niger Construction Co. Ltd. v. Okugbeni (1987) 4 NWLR (Pt.67) 787; Egbe v. Alhaji (1990) 1 NWLR (Pt.128) 546, 590.

It is therefore my respectful view that what was in issue between the parties still remains whether the appellant duly established that they paid the sum due to the respondent as claimed. The learned trial Judge who saw and heard the witnesses during the trial found that the various sums of money claimed by the respondent were not paid. The court below also came to the same conclusion. Now, as these are concurrent findings of facts by the courts below, the appellant in order to justify the intervention of this court to disturb those findings, must show that those findings were made erroneously, or were arrived at through the wrongful evaluation of the facts or the applicable laws. I am afraid that the appellant has failed to discharge that burden. In the result, this appeal must be dismissed and it is hereby dismissed.

The cross appeal of the respondent will now be considered. In this cross appeal, it is the contention of the cross respondent in the court below there is no dispute on the agreement to pay 100% per month as penalty charge on the outstanding sum. That agreement it is submitted is legally binding on the parties. It is therefore contended for the cross appellant that the Court of Appeal should have upheld the late payment charges of 100% interest per month claimed by the cross appellant. In support of that contention, reference was made to the case of Reuben Ekwunife v. Wayne West Africa Ltd. (1989) 5 NWLR (Pt.122) 422. And then it was contended for the cross appellant that in the instant case there was an agreement between the

parties that 100% per month interest would be payable until the sums due are finally liquidated. This interest he argued being a claim for interest on the debt based otherwise than on the provisions of the statute should run contemporaneously with the 70% per annum awarded by the Court of Appeal. The Court of Appeal in its consideration of the award of 21% interest by the trial court from the date of judgment said thus: B

“Now to the interest of 21 % awarded with effect from the date of judgment, Order 38 rule 7 of the High Court of Lagos State (Civil Procedure) Rules, Cap. 61 provides:

7. The Court at the time of making any judgment or order or at any time afterwards may direct the time within which the payment or other act is to be done, reckoned from the date of judgment or order or from other point of time as the court thinks fit, and may order interest at a rate not exceeding seven and half centum per annum to be paid upon any judgment, commencing from the date thereof or afterwards.” C

The court below then held that the trial court ought not to have awarded more than 70% as interest on the judgment with effect from the date of judgment. See on the point NIDB v. De Easy Life Electronics (1999) 4 NWLR (Pt. 597) 8 at 21. The case of Ekwunife v. Wayne West Africa (supra) was rightly referred to by the cross appellant. In that case, the governing principles for the award of interests was analysed by Nnaemeka-Agu, J.S.C. at page 445 of his judgment thus: E

“It appears to me that for a meaningful construction of the rule, it is important to note that interest may be awarded in a case in two distinct circumstances, namely:

(i) As of right; and G
(ii) Where there is a power conferred by statute to do so, in exercise of the court’s discretion.

Interest may be claimed as a right where it is contemplated by the agreement between the parties, or under a mercantile custom, or under a principle of equity such as breach of a fiduciary relationship. See: London, Chatham & Dover Railway v. S. E. Railway (1893) A.C. 429 at p. 434. Where interest is being claimed as a matter of right, the proper practice is to claim entitlement to it on the writ and plead fact which show such an entitlement in the statement of claim. H

In Nigeria, as the law is that a statement of claim supersedes the writ, (for which see Udechukwu v. Okwuka (1956) 1 F.S.C. 70, at p. 71; (1956) SCNLR 189; Ekpan & Anor. v. Uyo (1986) 3 NWLR (Pt. 26) 63, if even it was not claimed on the writ but facts are pleaded in the statement of claim and evidence given which show entitlement thereto, the court may, if satisfied with the evidence, award interest. Adjudication on the plaintiff's right to interest in such a case is, like on any other issue in the case, based on the evidence placed before the court. The evidence called at the trial in such a case will also establish the proper rate of interest and the date from which it should begin to run whether from the accrual of the cause of action or otherwise."

Agbaje, J.S.C. at Pp. 454 - 455 explained the meaning of the rule thus:

"On the other hand, the expression, in my judgment, governs the word immediately following in the enactment, that is to say "interest" and its rate. So in my judgment the statutory interest will apply unless the court orders otherwise, that is to say unless the court orders that the interest of more or less than 10% shall be paid having regard to the circumstances brought to its notice. Because of what I have said earlier in this judgment that Order 27 rule 8 of the Plateau State High Court Rules provides for what is in essence statutory interest on judgment debt, it is not necessary, in my judgment, for a beneficiary of the statutory provision to state in the endorsement of his claim on the writ or to plead in his statement of claim, that fact or the grounds of his entitlement thereto. The latter requirements will obtain, in my judgment where there is a claim for interest on the amount claimed up to the date of judgment and, after judgment, there is a claim for interest on the judgment debt based otherwise than on the provisions of Order 27 rule 8." See also Himma Merchants Ltd. v. Alhaji Inuwa Aliyu (1994) 5 NWLR (Pt. 347) 667 at 678 - 679 and 682.

Though this court was in that case construing the provisions of Order 27 rule 8 of the Plateau State (Civil Procedure) Rules 1976, the principles enunciated in the judgment apply with equal force to Order 38 rule 7 of the High Court of Lagos State (Civil Procedure) Rules, as they are in pari materia. Having regard to the above abiding principles, it is my view that for the cross appellant to be awarded anything above

the statutory interest awardable to it, there must be evidence of the right to that sum on record. The evidence may be the agreement between the parties or evidence of the mercantile custom relevant to the transaction between the parties that led to the claim. It does appear clear that it is not enough to claim the additional interest in the writ without pleading facts in support thereof. The cross appellant having failed to plead such facts and give evidence thereon is not entitled to be awarded any sum beyond the 70% interest on the judgment debt with effect from the date of judgment.

The judgment of the lower court is therefore upheld by me. In the result, the main appeal is dismissed in its entirety. The cross appeal of the respondent is also dismissed. I award costs in the sum of N10,000.00 in favour of the respondent for its success in the main appeal.

BELGORE JSC

I also dismiss this appeal for the reasons advanced in the judgment of my learned brother, Ejiwunmi, JSC to which I have nothing to add. I dismiss the cross appeal for the same reasons with consequential orders made as to costs.

KUTIGI JSC

I read in advance the judgment just read by my learned brother Ejiwunmi, JSC. I agree with his reasoning and conclusions. I accordingly dismiss the appeal and dismiss the cross appeal with costs as assessed.

ONU JSC

I had a preview of the judgment just delivered by my learned brother Ejiwunmi, JSC. I agree with his reasoning and conclusion that the main appeal fails in its entirety while the cross appeal fails and it is accordingly dismissed. I award costs in the sum of N10,000.00 in favour of the respondent for its success in the main appeal.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother Ejiwunmi, JSC. I entirely agree with it. It is not in dispute that the appellant chartered respondent's vessels. Clearly the
B onus was on the appellant to show that it had paid for the service. The learned trial Judge and the Court of Appeal found as a fact that the appellant did not pay the undisputed sums claimed by the respondent. This court will not normally interfere with the concurrent
C findings of fact of the lower courts unless such findings are perverse. See *Namsho v. The State* (1993) 5 NWLR (Pt. 292) 129.

The appellant has not shown that this finding was perverse. I would also dismiss the appeal. With regard to the cross appeal I am also of the view that it is without merit. I also dismiss it. Appeal and
D cross appeal dismissed.

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