

COURT OF APPEAL LAGOS DIVISION
FRIDAY 3RD OF OCTOBER, 2003. CA/L/315/96
CORAM: J. O. OGEBE, P. O. ADEREMI,
M. D. MUHAMMAD, JJCA

1. S. O. BABATUNDE
2. SYMBOL NIG LTD APPELLANTS
AND
MODEL INDUSTRIES NIG LTD RESPONDENT

EVIDENCE - Evaluation - Appraisal and ascription of probative value to testimony is duty of trial court - And appellate court only interferes - Where trial court has made improper evaluation (H1)

COURTS - Evidence - Oral testimonies - Veracity of such testimonies of parties shall be tested against documentary evidence - Where court is left with both kind of evidence (H2)

ACTIONS - Damages - Proof - Where issues are not disputed - Minimum evidence on the side of party who is to prove - Will satisfy the requirement of proof (H3)

FACTS

Plaintiff/respondent claimed to be the owner of plant and machinery for making polythene bags and tyre rethreading that were in a factory at 19 Ijaiye Road, Ogba. It based its ownerships on a joint venture agreement made between respondent and one company by name Dragon Gate Trading Company Limited represented by a man called Yuen Wing Ting. Respondent averred that the said Mr. Ting was deported following his fraudulent intentions towards the installation of the plants at the premises of 1st defendant/appellant. Respondent further stated that following the deportation, 1st defendant/appellant broke into the factory, changed the lock and removed certain machines which he converted to his own usage. The total value of all the machines was put at N560, 000.00.

On his part, 1st appellant (landlord of the premises where the machines were installed) contended that Mr. Ting gave him the keys to the machines sequel to his (Ting's) deportation. By this arrange-

ment, 1st appellant became the bailee of Mr. Ting's machines. Not satisfied with the arrangement, respondent commenced this action at the High Court of Lagos State claiming the sum of one million naira (as special and general damages) against appellants for the conversion of respondent's plants, machines and motor vehicle. Appellants also counter-claimed. At the end of hearing, the sum of N560,000.00 was awarded as damages in favour of respondent, N15,000.00 was awarded as set-off in favour of 1st appellant, the counter-claim of appellants were dismissed. Being dissatisfied, appellants filed appeal in the Court of Appeal, Lagos.

ISSUES FOR DETERMINATION

1. Whether the evidence of the plaintiff's only witness Mr. Michael Alaba Onagoruwa, was admissible in proof of transactions involving the plaintiff that took place both before and after 1987.

2. Whether on its pleadings and the evidence adduced in support of its pleadings the plaintiff proved ownership of the plants and machines that were at 19 Ijaiye Road, Ogba, Lagos State.

3. Whether on its pleadings and evidence adduced in support of its pleadings the plaintiff proved the value of the machines it claimed were converted by the defendants.

HELD (Unanimously dismissing the appeal per

ADEREMI JCA)

EVIDENCE - Evaluation

1. The appeal here clearly attacks findings of facts. I must remind myself that the appraisal of oral testimony and the ascription of probative value thereto is primarily the duty of the trial Judge and a Court of Appeal which this court is, will only interfere with the performance of that exercise if the trial Judge made an imperfect or improper use of the opportunity of hearing and seeing the witnesses or drawing wrong conclusions from accepted facts. (p. 2423 D)

Evidence - Oral testimonies

2. However, where, again as in the instant case a trial court is not left with only the oral testimonies of the parties but as well

as documentary evidence which tell the same story it is the law that the veracity of the oral testimonies of the parties shall be tested against the documentary evidence which is evidence of a permanent character. (p. 2423 F)

ACTIONS - Damages - Proof

3. In his oral evidence plaintiff's/respondent's only witness testified that the plaintiff was claiming N560,000.00 for the machines, N40,000.00 for the Passat Car and N400,000.00 for general damages. He was not shaken under cross-examination. Neither did the 1st defendant give evidence to contradict the testimony of plaintiff's witness on this point. Proof of issues in a civil case is on a balance of probabilities. Where as in the instant case, there is nothing to put on the other side of the imaginary scale of justice, minimum evidence in the side of the party who has the initial duty to prove will satisfy the requirement of proof even where strict proof such as proof of special damages is the matter. (p. 2425 E)

CASES REFERRED TO

Fashanu v. Adekoya (1974) 1 All NLR (Pt.1) 35
Omoregbe v. Lawani (1980) 3 - 4 SC 108
Kimdey v. Mil. Gov. Gongola State (1988) 2 NWLR (Pt.77) 445
Ugorji v. Onwu (1991) 3 NWLR (Pt.178) 177
Odulaja v. Haddad (1973) 11 SC 357
N.M.S. Ltd. v. Afolabi (1978) 2 SC 79
Mogaji v. Odofofin (1978) 4 SC 91
Nwabuoku v. Ottih (1961) 2 SCNLR 232, (1961) 1 All NLR 487
Onubogu v. The State (1974) 1 All NLR (Pt. 2) 5
Oluma v. Onyuna (1996) 4 NWLR (Pt.443) 449
Ayinde v. Abiodun (1999) 8 NWLR (Pt. 616)
George v. U.B.A. Ltd. (1972) 1 All NLR 347.
George v. Dominion Flour Mills Ltd. (1963)

STATUTES & RULES REFERRED TO

Evidence Act, s. 91(a)
Partnership Laws of Lagos State, ss. 2, 21, 22
Court of Appeal Rules 2002, O. 6 r. 9(5)

LEAD JUDGMENT BY ADEREMI JCA

The plaintiff (hereinafter referred to as the respondent) claimed against the defendants (hereinafter referred to as the appellants) jointly and severally the sum of N1 million (One million Naira) being special
 B and general damages for the conversion of the respondent's plants, machines and motor vehicle. Pleadings filed and exchanged between the parties are the statement of claim and reply to amended statement of defence and counter-claim by the respondent and with the
 C leave of the court, amended statement of defence and counter-claim.

Briefly put, the plaintiff/respondent's case per its pleadings is thus: The respondent claimed to be the owner of plant and machinery for making polythene bags and tyre retreading that were in a factory at 19 Ijaiye Road, Ogba. It based its ownerships on a joint
 D venture agreement dated 21st March, 1977 between the respondent and one company by name Dragon Gate Trading Company Limited represented by a man called Yuen Wing Ting who was later to be deported. Dragon Gate Trading Company Limited, through its
 E representatives, Yuen Wing Ting imported the plants and machinery which were the company's consideration under the joint venture agreement plus the technical know-how supplied. The respondent further avers that Ting, the representatives of the defendant, set up the plant and machines at 19 Ijaiye Road, Ogba under the name
 F Standard Industries Company Limited with fraudulent intention. As a result of the discovery of the fraudulent intent, the Standard Industries Company Limited and the plaintiff/respondent entered into terms of settlement dated 12th July, 1984, however Ting was deported out of Nigeria by the Nigerian Security Organisation. The respondent
 G further averred that following the deportation the 1st defendant/appellant broke into the factory changed the lock and removed certain machines which he sold or converted to his own. The total value of all the machines was put at N560, 000.00.

The defendants/appellants' case gleaned from their pleadings,
 H is that the 1st defendant/appellant was the landlord of the property and premises at 19 Ijaiye Road, Ogba and Ting was his tenant. The plaintiff/respondent was Ting's customer and bought polythene bags from him. For the reason that Ting lacked proper work permit, the plaintiff/respondent got him to enter into terms of settlement with it

which enabled it (respondent) to co-habit with him on the premises. Sequel to the deportation of Ting, he (Ting) gave the keys of his factory to the 1st defendant/appellant requesting him to look after his machines. By this arrangement, the 1st defendant/appellant became the bailee of Mr. Ting's machines. By the force of an order of interlocutory injunction obtained by the respondent in suit No. ID/1642/87, it (respondent) removed all the machines and 125 KVA electricity generating set which set it was claimed was jointly owned by Ting and the 1st defendant/appellant. B

Both sides called evidence in support of the averments in their respective pleadings. Thereafter, written addresses were submitted by both sides. Judgment was delivered on the 8th of September, 1995 wherein N560,000.00 was awarded as damages in favour of the plaintiff/respondent for the conversion of its machines; N15,000.00 was awarded as set-off in favour of the 1st defendant/appellant, the counter-claim of the defendant/appellants were dismissed. Being dissatisfied with the said judgment, the defendants/appellants filed a notice of appeal dated and filed on 6th of November, 1995 which carries 14 (fourteen) grounds. Distilled from these grounds of appeal for determination by this court are four issues and as set out in their brief of argument they are in the following terms: C D E

1. Whether the evidence of the plaintiff's only witness Mr. Michael Alaba Onagoruwa, was admissible in proof of transactions involving the plaintiff that took place both before and after 1987. F

2. Whether on its pleadings and the evidence adduced in support of its pleadings the plaintiff proved ownership of the plants and machines that were at 19 Ijaiye Road, Ogba, Lagos State.

3. Whether on its pleadings and evidence adduced in support of its pleadings the plaintiff proved the value of the machines it claimed were converted by the defendants. G

4. Whether the learned trial Judge correctly evaluated the evidence given by the 1st defendant in coming to the determination that the defendants had failed to prove their counter-claim.

The respondent for its part identified four issues from the aforementioned grounds and contained in its brief of argument they are as follows: H

1. Is the trial court not right in holding that there was a contract between the respondent and Mr. Yeun Wing representing him-

self and a company known as Dragon Gate Trading Co. Ltd. by which ownership of the plants and machineries at 19, Ijaiye Road, Ogba, Lagos was covered on the plaintiff/respondent.

2. Is the trial Judge not right in admitting the evidence of the plaintiff's only witness.

B 3. Based on the evidence adduced at the trial, is the respondent not entitled to the amount awarded to it as value of the machines and plants, converted by the appellants.

C 4. Based on the evidence adduced at the trial, is the trial court not right in holding that the appellant had not proved their counter-claim.

When this appeal came before us on the 23rd of September, 2003, the appellants were absent so also their counsel. Exercising the power of this court under Order 6 rule 9(5) of the Court of D Appeal Rules 2002 we treated the appeal as having been argued as the briefs on both sides have been duly filed. Suffice it to say that Mr. Adefioye, learned counsel for the respondent who was present in court announced his reliance on and adoption of the respondent's E brief filed on 26th February, 2003 and urged that the appeal be dismissed.

I have had a close study of all the issues for determination and I am clear in my mind that issue No.1 on the appellants' brief can be taken together with issue No.2 on the respondent brief. Issue No.2 F on the appellants' brief can be considered together with issues Nos. 1 and 3 on the respondent's brief. While issue No.4 on the appellant's brief is identical with issue No.4 on the respondent's brief. I shall consider all the issues together as they dovetail into one another.

G In arguing issues Nos. 1 and 2 on the appellant's brief which I have earlier said can be taken together with issues Nos. 1, 2 and 3 on the respondent's brief, the appellants in their brief contended that Michael Alaba Onagoruwa never proffered any believable evidence that he was an employee of the plaintiff/respondent. Honorarium other than salary was established as money flowing from the respon- H dent to him. The testimony of Onagoruwa was therefore hear say; it lacks evidential value and decision in *Kate Enterprises Ltd. v. Daewoo (Nig.) Ltd. (1985) 2 NWLR (Pt.5) 116* could not advance the case of the respondent. That evidence, it was further submitted is inadmissible or in the alternative no weight should be attached to it; and the

piece of evidence that the machines were installed at Adekunle village is inadmissible and having been admitted wrongly as there is no fact pleaded backing it up, it should be expunged reliance was placed on the decision in *George v. Dominion Flour Mills Ltd.* (1963) 1 All NLR 71 and *George v. U.B.A. Ltd.* (1972) 1 All NLR 347. It was their further contention that there is no credible evidence of transfer of the machines to the respondent's exhibit A tendered made no reference to the goods that were at 19 Ijaiye Road, Ogba; exhibit A, the business agreement wherein it was stated that Ting was to be given 40% of the shares in the respondent contradicts exhibit B minutes of meeting purportedly held between the respondent and Dragon Gate Ltd. which stipulates the shares to be given to Ting as 47%. The contradictions, they further argued rendered the whole evidence unreliable and should be rejected; reliance was placed on the decision in *Onubogu v. The State* (1974) 1 All NLR (Pt. 2) 5; *Oluma v. Onyuna* (1996) 4 NWLR (Pt.443) 449; and *Ayinde v. Abiodun* (1999) 8 NWLR (Pt. 616) 587. It was finally submitted that based on the evidence before the court below it was obvious that the respondent failed to prove ownership of the plant and machines.

The respondent on issue No.1 on its brief submitted that based on exhibit 2 and the evidence of 1st defendant under cross-examination there was a clear admission by the 1st defendant that the respondent was the owner of the plants and machineries. On the face of the admission, it was again contended that it would not avail the appellants to set up "jus tertii" i.e. that it must be shown that Dragon Gate and Ting was entitled to the plants and machineries or that Dragon Gate Limited had a better title. They advanced their argument by contending that from all the exhibits and the totality of the evidence adduced transfer of the ownership of the plants and machineries passed to the respondent. Reviewing the whole evidence, it was submitted that the plaintiff/respondent's only witness was admissible, he being the executive manager; the weight to be attached to the evidence is quite a different matter citing *Kate Ent. Ltd.* case supra; the evidence is not hear-say. The documents tendered without any objection cannot now be rendered a nullity by an objection which was not taken initially citing *Olukade v. Alade* (1976) 1 All NLR 67. Referring to the whole evidence, the respondent contended that the amount awarded for the plaintiff by the trial court is for the full

value of the machines and not for special damages; the testimony of the plaintiff/respondent was uncontradicted and citing the decision in *F.H.A. v. Horst Sommer* (1986) 1 NWLR (Pt.17) 533. It was again submitted that the value must be accepted as proof of the replacement value of the machines.

B On issue No.2 on the respondent's brief which poses the question whether the learned trial Judge was right on admitting the evidence of the plaintiff's only witness, who according to the appellants, had been shown from the materials before the court not to be an employee of the plaintiff/respondent, it was submitted through the C brief that employment need not in all cases be of a formal contract in which there would be a formal agreement stating all terms with precision. The evidence of the said witness was based on documents it was further argued and documentary evidence being a direct one D could be given by any officer of the company. The documents tendered by the said witness were admissible by virtue of section 91(a) of the Evidence Act.

E What is the evidence of the only witness of the plaintiff by name Michael Alaba Onagoruwa which is being contended to be inadmissible? He said under examination-in-chief:

"I am the executive manager of plaintiff/company ...

On 21/3/77, there was an agreed joint venture between Mr. Okunuga and Chief Fayemi representing Model Industries and Yeun Wing Ting representing himself and company known as Dragon Gate F Trading Co. Ltd. which was registered in Nigeria. By an agreement, plaintiff/company and Dragon Trading Company Limited both agreed (sic) write a joint venture. I am identifying the agreement. This is the agreement...

G *After exhibit A there were meetings of the parties, discussions of the meetings were recorded and signed by members...*

Minutes is admitted exhibit B...

The shipping documents are for enquiry in all the machines and equipment for the business venture...

H *Shipping documents were tendered and admitted as exhibits C - C'8. Dragon Gate transferred exhibits C - C'8 as its participation of on the business of Model Industries. This represents 47% of the business of plaintiff/company. Mr. Ting was representing himself and Dragon Gate Trading Company ...*

Plaintiff/company had to apply for permit for Ting to enable him work in Model Industry we applied to the Federal Ministry of Internal Affairs."

The Resident permit was tendered as exhibit D ... Mr. Ting also removed all the machines to 19, Ijaiye Road, without the permission or consent of the plaintiff/company. Ting wrote apologizing to plaintiffs on knowing that his activities have been known by the plaintiff/company. A copy of the said letter of apology was tendered as exhibit G. B

"All parties were brought together in the presence of the landlord - 1st defendant. It was agreed that Ting should no longer be the tenant." C

The agreement was tendered in evidence as exhibit "H":

"It was agreed plaintiff should pay N500. Plaintiff/company is as a result of exhibit H took over (sic). The tenancy of 19 Ijaiye Road, plaintiff/company paid N300.00 rent." D

Again the receipt was tendered as exhibit "J". Continuing his evidence-in-chief he said:

"The 1st defendant wrote the letter to the chairman asking the chairman to pack (sic) out the machinery." E

When cross-examined he said:

"I became the executive manager of plaintiff's company in December 1989 ... As executive manager, I do general administration ..."

The company functioned at Adekunle village. I was not a staff then..." F

I was employed as a security man in 1987. I was not given a letter of appointment. I do not remember my salary as a security officer..." G

I became executive manager in 1989. I was not issued a letter to that effect. I was not on a regular salary, I only received an honorarium."

The first defendant in corroborating the testimony said:

"It is true I wrote Model Industries to (sic) need clear the machines. I did because I want to confirm ownership of the machines." H

That letter written by the 1st defendant was tendered and admitted in evidence as exhibit "Z". In evaluating the viva voce evidence of the 1st defendant the contents of exhibit Z which the 1st

defendant admitted he wrote to the plaintiff /respondent - Model Industries Nigeria Limited, the learned trial Judge said:

“There is no evidence of contract with either of the defendants until December 1986. It is therefore quite clear that 1st defendant were (sic) of the relationship between the plaintiff/company and Ting.

B *1st defendant’s evidence that plaintiff/company was never his tenant was believed (sic) by exhibits H, J, and Z! His evidence that the machines and plant belong to Wing Ting was also believed (sic) by exhibit Z. Contents of exhibit Z written by the 1st defendant portrayed*
C *1st defendant as a white liar. Contrary to the evidence that Wing Ting gave him the keys of the factory, he wrote specifically in exhibit Z that you have locked up the premises and kept the keys without any arrangement as regard payment of rent of (sic) surrender of the pre-mises.*

D *Furthermore, 1st defendant wrote “this letter serves to request you to remove all your machines and surrender the premises as it were on or before 15th February, 1986.*

1st defendant acknowledged the machines as properties of plaintiff/company. The letter exhibit Z was written to plaintiff/
E *company’s solicitors. Suffice it to say at this stage that the machines which property had been vested in plaintiff/company remain property of the plaintiff/company until Wing Ting decides otherwise.*

I find plaintiff/company established ownership of the machines and had exercised right of ownership when they were used in producing the polythene sheets on behalf of plaintiff/company.”
F

Of exhibit A - the agreement between the plaintiff and Ting, the learned trial Judge had held thus:

“It is evident from exhibit A which is called business agreement
G *that the promoters who are the plaintiff/company are desirous of exploring the areas of cooperation with the partner (who then was Ting) whereby both promoters and partner will contribute jointly for the smooth running of the joint venture ...*

What was the position of the machines as at December 1984
H *when Wing Ting was deported? Without doubt Wing Ting by virtue of exhibit A had agreed to provide the machines and plant for the venture. The machines automatically therefore became plaintiff/company’s property on arrival and installation by Wing Ting being his own contribution to the venture.”*

That there is serious conflict in the evidence adduced by both parties in this case admits of no doubt. Bearing in mind as it must always be the case in the citadel of justice that the object of the Judge, in all cases before him, is above all, to find out the truth to do justice according to law and at the end, to make up his mind where the truth lies. By the time both parties to a civil litigation have explored every point which they think may help them or damage their adversary, such as in the instant case, not much remains obscure and I would like to believe that it cannot be a complaint for any Judge at the end of such a case that the material submitted has been inadequate in quantity. In the instant case, while the oral testimonies as to the ownership of the plants and machines are conflicting; both sides were agreeable as to the tendering of documentary evidence the likes of exhibits A and Z - the agreement of partnership and letter written by the 1st defendant/appellant to the plaintiff/respondent to them respectively.

The appeal here clearly attacks findings of facts. I must remind myself that the appraisal of oral testimony and the ascription of probative value thereto is primarily the duty of the trial Judge and a Court of Appeal which this court is, will only interfere with the performance of that exercise if the trial Judge made an imperfect or improper use of the opportunity of hearing and seeing the witnesses or drawing wrong conclusions from accepted facts.

However, where, again as in the instant case a trial court is not left with only the oral testimonies of the parties but as well as documentary evidence which tell the same story it is the law that the veracity of the oral testimonies of the parties shall be tested against the documentary evidence which is evidence of a permanent character. See Fashanu v. Adekoya (1974) 1 All NLR (Pt.1) 35; Omoregbe v. Lawani (1980) 3 - 4 SC 108; and Kimdey v. Mil. Gov., Gongola State (1988) 2 NWLR (Pt.77) 445. The salient contents of exhibits A and Z recapitulated in the findings of the trial Judge which I have quoted supra point conclusively to the fact that both, the plants and the machines belong to the plaintiff/respondent - the object of the partnership. As I have said the oral testimonies of the parties are vexatiously conflicting. The learned trial Judge had rightly judged them against the background not only of

what the parties agreed to have happened but also and most importantly what plainly did happen even though the parties do not agree; both exhibits A and Z represent what plainly happened, I cannot fault in the findings of the court below. Two little points must also be dealt with before I am done with these issues. Both parties are ad
B idem that Ting procured the plants and machines for the use of the partnership - even they were his (Ting) contributions. By the intention of both parties gathered from their pleadings such materials became partnership property.

C By virtue of section 2 of the Partnership Law, Laws of Lagos State of Nigeria volume 6 which came into operation on the 14th of August 1958 wherein thus: Interpretation section defines Partnership Property to mean:

*"All property and rights and interests in property originally
D bought with the partnership stock or acquired whether by purchase or otherwise or account of the firm or for the purposes and in the course of the partnership business."* See also section 21 and 22 of the said Partnership Law.

E I must not fail to mention that in paragraph 38 (1) of the counter-claim the defendants/appellants averred that the machines plants and equipment at 19, Ijaiye Road, Ogba, Ikeja belong to Yeun Wing Ting who is not a party to the suit. Suffice it to say that the averment is what is known and called in Latin term *jus tertii* - pleading title in a third party as a defence. That is not valid in law - see
F Ugorji v. Onwu (1991) 3 NWLR (Pt.178) 177.

All I have been saying in my considered view has incorporated issue No.4 on each of the briefs as well as issues No.1 and 2 on the appellants brief and issues Nos. 1, 2 and 3 on the respondent brief.
G Consequently, having regard to all I have said supra, issues Nos. 1, 2 and 3 on the appellants' brief of argument are answered in the affirmative. Issues Nos. 1, 2 and 4 on the respondent's brief and also answered in the affirmative. Having regard to issue No.3 on the respondent's brief which issue reads:

H *"Based on the evidence adduced at the trial, is the respondent not entitled to the amount awarded to it as value of the machines and plants converted by the appellants."*

Also, I wish to observe that issue No.3 on the appellants brief reads:

“Whether on its pleadings and the evidence adduced in C support of its pleadings the plaintiff proved the value of the machines it claimed were converted by the defendant’s”

Both issues are materially similar.

The main contention of the appellants in support of this issue is that having failed to particularize the value of each items and the claim for damages for conversion being one of special damages the court below ought to have dismissed the suit. With due respect that submission cannot be correct for in paragraph 30 of the statement of claim, the plaintiff averred and I quote:

“The plaintiff claims the sum of N1, 000,000.00 (one million naira) being special and general damages for unlawful and illegal conversion of the plaintiff’s plants and machineries and motor vehicle.”

PARTICULARS

(a) Value of Machines	-	N560, 000.00	D
(b) Value of Passat Car			
Reg. No. LA 254 KC	-	N 40, 000.00	
(c) Special and General damages	-	N400, 000.00	
TOTAL	-	N1, 000, 000.00	E

In his oral evidence plaintiff’s/respondent’s only witness testified that the plaintiff was claiming N560,000.00 for the machines, N40,000.00 for the Passat Car and N400,000.00 for general damages. He was not shaken under cross-examination. Neither did the 1st defendant give evidence to contradict the testimony of plaintiff’s witness on this point. Proof of issues in a civil case is on a balance of probabilities. Where as in the instant case, there is nothing to put on the other side of the imaginary scale of justice, minimum evidence in the side of the party who has the initial duty to prove will satisfy the requirement of proof even where strict proof such as proof of special damages is the matter. See Odulaja v. Haddad (1973) 11 SC 357; N.M.S. Ltd. v. Afolabi (1978) 2 SC 79; Mogaji v. Odofoin (1978) 4 SC 91; and Nwabuoku v. Ottih (1961) 2 SCNLR 232, (1961) 1 All NLR 487. The evidence adduced by the plaintiff/respondent satisfied the requirement of the law as to support the making of the award made by the court below issues No.3 on the appellants’ brief is therefore answered in the affirmative and I also answer

issue No.3 on the respondent's brief - the affirmative.

The result is that this appeal is unmeritorious and it is accordingly dismissed with N5,000.00 cost to the respondent, but against the appellants.

B

OGEBE JCA

I read before now the lead judgment of my learned brother, Aderemi, JCA just delivered and I agree entirely with his reasoning and conclusion. Accordingly, I also dismiss the appeal with costs of N5,000.00 in favour of the respondent.

MUHAMMAD JCA

D I have read in draft the lead judgment of my learned brother, Aderemi, JCA, with whose reasoning and conclusions I agree. The appeal has no merit, I dismiss it and abide by the consequential orders made in the lead judgment. Appeal dismissed.

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H