

**SUPREME COURT OF NIGERIA**  
9TH JULY, 2004. SC. 154/2000  
**CORAM:- I. L. KUTIGI, S. U. ONU, S. O. UWAIFO,**  
**N. TOBI, D. O. EDOZIE, JJSC**

SAVANNAH BANK OF NIGERIA PLC ..... APPELLANT  
AND  
OLADIPO OPANUBI ..... RESPONDENT  
(Practising under the name and  
style of Oladipo Opanubi & Co.)

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CONTRACTS - Termination - Legal practitioners - Withdrawal of brief from one's lawyer - Without justification - Is a breach of the contract of service (H1)

CONTRACTS - Damages - Quantum meruit - Repudiatory breach of the contract - Grants right to sue for damages - Or sue for value of the services rendered - On a quantum meruit (H2)

CONTRACTS - Quantum meruit claim - How assessed - Need for the claim to be actually based on quantum meruit - How quantum meruit is regarded (H3)

CONTRACTS - Quantum meruit - Claimed by a legal practitioner - Need to provide parameters and necessary evidence - And a bill of charges - That should particularize his fees (H4)

LEGAL PRACTITIONERS - Quantum meruit - Compensation for services to client - Should be assessed on the basis - Of the particulars of the nature of work done (H5)

LEGAL PRACTITIONERS - Fees - Quantum meruit - Plaintiff's bill of charges contained no particulars - That can ground quantum meruit award - And fees were fixed on erroneous basis (H6)

LEGAL PRACTITIONERS - Withdrawal of brief - Quantum meruit claim - Is not supported by the reliefs sought - As the claim is more like one for damages - For breach of contract - Which cannot stand in the circumstances (H7)

ACTIONS - Claim - Proof - Quantum meruit - Is not substantiated - The claim being defective - Was not proved at all (H8)

### **FACTS**

The plaintiff/respondent was instructed by the defendant/appellant to recover from ICON Limited (Merchant Bankers) the sum of N99,394,689.82 being its indebtedness to the defendant as at 28 April, 1994. Plaintiff filed an action before the Federal High Court for the said debt and also claimed interest on the debt at the rate of 21% per annum. The plaintiff was to be paid 10% of the money actually recovered from ICON as his professional fees. On 3rd, March, 1995, judgment was obtained in terms of the claim and ICON paid N50, 000, 000.00 out of the judgment debt. The plaintiff got N5,000,000.00 as his fees. By a letter dated 23 February, 1996, defendant withdrew his brief from the plaintiff.

Plaintiff filed this action against the defendant to recover the total sum of N7,545,401.50 on quantum meruit for legal work rendered on the defendant's instructions. This claim was based on 10% of the balance of N49,394,689.82 and 21% interest on the entire judgment debt yet to be paid by ICON to the defendant plus other charges raised by the plaintiff. The trial court dismissed the claim. Plaintiff's appeal to Court of Appeal Lagos division was upheld in part as that court awarded him 2/3 of the amount he claimed, i.e., N5,000,000.00, on quantum meruit basis. Being aggrieved, the defendant has now appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(i) In the light of the only issue for determination before the Court of Appeal, was it relevant to the determination of that issue that the defendant did not in Exhibit F attempt in any sensible manner to justify its decision to debrief the plaintiff; in other words, is it a requirement of the law that unless the defendant justified its decision to debrief the plaintiff,*

*the defendant would be liable to the plaintiff?*

*(ii) Was the plaintiff entitled to succeed in his claim in quantum meruit for his services as adjudged by the Court of Appeal when the plaintiff neither pleaded nor proved that the termination of his brief was in breach of his contract with the defendant." (Etc. see p. 2114)*

**HELD** (Unanimously allowing the appeal per UWAIFO JSC)

***Withdrawal of brief from one's lawyer***

1. When there is a concluded binding contract, there is liability if it is terminated without justification. That would amount to a breach of the contract. There is, therefore, an implied term that an enforceable contract will not be brought to an end without just cause. I do not think the court below was wrong to have said that the appellant did not justify having to debrief the respondent in the circumstances in which it did so as per Exhibit F. That was simply to underscore the breach committed by the appellant. All the reason the appellant gave in that letter for terminating the brief was that:

*"Bearing in mind the strained relationship of client and solicitor, we have no other alternative than to withdraw the brief from your Chamber. Please regard the brief as withdrawn."*

I believe all the court below meant when it said that the appellant *"had not in Exhibit 'F' attempted to justify in any sensible manner its decision to debrief"* the respondent, was that the appellant terminated an existing contract without justification. That was the basis of the decision in similar circumstances in *Kahn v. Aircraft Industries Corporation* (1937) 3 All ER 476. I see nothing wrong or improper in the observation of the court below in the circumstances of this case. I therefore answer issue (i) in the affirmative. (p. 2117 A/F)

***Quantum meruit - Repudiatory breach of the contract***

2. The law is that if an innocent party has rendered services (or has supplied goods) under a contract, which has not been fully performed and which has been determined by him because of the defendant's repudiatory breach of contract, he may sue for damages for loss arising from the breach of

contract or bring a restitutionary claim to recover the value of the services rendered or the goods supplied, on a quantum meruit (or a quantum valebat): see *The Law of Restitution* by Goff & Jones 5th Edn, page 531.

See also *Luxor (East-Bourne) Ltd. v. Cooper* (1941) AC 108 at  
 B 140-141, where Lord Wright, in discussing a claim based on quantum  
 meruit said that, it is “*properly made in cases of contracts for work and  
 labour and the like, where the employer, who has got the benefit of part  
 performance but before full completion had repudiated the contract, may  
 be sued either for damages for breach or for restitution in respect of the  
 C value of the part performance which he has received.*” (p. 2120 B)

***Quantum meruit claim - How assessed***

3. All the relevant decisions have not failed to make clear that reasonable  
 D remuneration must be for the actual work or service rendered by a claimant  
 on quantum meruit. How this will be assessed depends, of course, on the  
 way the claim is framed and the evidence adduced in support. It must be  
 a bona fide claim brought upon a quantum meruit basis and not merely  
 E that it is described as such. Where the contract is divisible or severable  
 whether by way of work done, goods supplied or services rendered, the  
 claimant should find no difficulty in stating particulars and leading evi-  
 dence to show that he is entitled to recover payment for the obligations,  
 the performance of which he has completed: See *Ritchie v. Artkinson*  
 F (1808) 10 East 295; (1808) 103 ER 787. Quantum meruit is regarded as  
 an incident in assessing the amount due under a contract in order to arrive  
 at a reasonable compensation for the work done in partial performance  
 of it. (p. 2120 H)

***Quantum meruit - Claimed by a legal practitioner***

4. It follows that the respondent in the present case was expected to provide  
 parameters and necessary evidence upon which the court would assess what  
 is reasonable compensation on quantum meruit for the services rendered  
 by him up to the judgment obtained against the company on behalf of the  
 H appellant when his contract was terminated. He ought to have indicated  
 in the bill of charges the nature of the various aspect of the services he  
 rendered; his experience at the bar which matched the skill the particular

legal matters demanded; and in evidence justified the reasonableness of charges for the services: See *Oyo v. Mercantile Bank (Nigeria) Ltd.* (1989) 3 NWLR (Pt.108) 213. A legal practitioner should be able to present a bill of charges, which, among other facts, should particularize his fees and charges, e.g. (a) perusing documents and giving professional advice; B (b) conducting necessary (specified) inquiries; (c) drawing up the Writ of Summons and Statement of Claim; (d) number of appearances in court and the dates. (p. 2121 G)

***Compensation for services to client***

5. In compensating a legal practitioner upon a quantum meruit for services he has actually rendered, it will be more realistic to make assessment on the basis of the particulars of the nature of work done by him to arrive at what can be considered a reasonable compensation. It is then a sum which D “the Judge appears to have arrived at on consideration of all necessary factors would be a reasonable remuneration in all the circumstances” as observed by Lord Atkinson in *Way v. Latilla* (supra); and I respectfully agree with that. But I need to add that in this particular case where the E plaintiff was to earn 10% of amount actually recovered, it will be necessary to note (i) that the limit 10% would have earned should be taken into account to assess the value of the work rendered since the evidence of what will be reasonable sum to be awarded in respect of the plaintiff’s F work, may depend on what ought to be paid for each aspect of the work stated in the particulars. (p. 2122 D)

***LEGAL PRACTITIONERS - Fees - Quantum meruit***

6. As I have already indicated, in the present case, the respondent gave G no particulars whatsoever in his bill of charges upon which the court may proceed on a quantum meruit assessment of reasonable award of fees. Apart from this, he adopted an erroneous basis upon which he fixed his fees. First, the respondent purported to base his claim on 10% of a figure of H N49,394,689.32. Second, he added multiple interests at 21% on that figure, namely (a) interest on N99,394,689.82 and (b) interest on N49,394,689.32 to the said figure and arrived at N7,545,401.50 which he claimed as his

entitlement. Even if his contract had not been terminated, he would have got just 10% of the money actually recovered by him. But now, he claimed more than what the outstanding judgment debt would have given him by adding interest which he could not possibly prove had been earned from that judgment debt. The court below erroneously calculated on that basis before arbitrarily awarding two-thirds of it to the respondent.  
(p. 2124 B)

***LEGAL PRACTITIONERS - Withdrawal of brief***

7. A perusal of the reliefs sought and the averments in the statement do not support quantum meruit claim, notwithstanding the use of that term in relief 1. This is more like a claim for damages for breach of contract although it will fall flat on the known principle of assessment in breach of contract claim as laid down in *Hadley v. Baxendale* (1854) 9 Exch 341 and restated in subsequent cases. The principle has been adopted in this country. It is based on the notion of restitutio in integrum and it is in two arms: (a) damages that flow naturally from the breach or (b) damages within the contemplation of both parties at the time the contract was made. It is not damages the court may award at large but it is such that ensures restitution to the plaintiff for the breach. It is not calculated on quantum meruit basis. A different principle as stated above applies to that. (p. 2124 F/H)

***Quantum meruit - Is not substantiated***

8. However, the present claim is certainly not one based on quantum meruit. It comes to this that the claim, defective as it is, was not proved at all. The court below ought not to have allowed the appeal, and worse still was wrong to have awarded an arbitrary figure of N5,000,000.00.

I am of the view that the respondent's claim was unmaintainable having regard to what I have discussed above. I have come to the conclusion, therefore, that there is merit in this appeal. I allow it and set aside the judgment of the court below together with the order for costs. Consequently, I dismiss the claim. (p. 2125 C)

## NOTABLE POINTS OF INTEREST

### KUTIGI JSC

*1. Quantum meruit claim - Will not succeed - Where service rendered is not divisible*

Again there is no doubt that the plaintiff herein employed his professional services in prosecuting the entire defendant's claim of N99,394,689.82 up to judgment. He did not do so by installments. He also got paid for N5,000,000.00 being 10% of N50,000,000.00 out of the judgment debt actually collected by him. Where then lies the quantum meruit now being claimed by the plaintiff? If he is right, should the N5,000,000.00 which he has already collected not form part of that claim for "*quantum meruit*"? I have no hesitation therefore in coming to the conclusion that on the facts, the plaintiff's claim founded on quantum meruit was clearly unmaintainable. My view is that the work done or service rendered by him under the contract is not divisible or severable. The plaintiff woefully failed to prove his claim in this case. (p. 2126 D)

### TOBI JSC

*2. Burden Proof lies on the plaintiff*

The burden is on the plaintiff to prove his case as averred in his pleadings. To be specific, a party who erects a case of breach of contract based on quantum meruit must prove his claim. In other words, the party must prove by evidence the reasonable value of services rendered by him, arising from the contract. It is one way of preventing unjust enrichment on the part of the defendant.

The burden is on the plaintiff to prove actual work done by him. The actual work done must be specifically stated or itemized. An agglomeration of work done without specific details will not sustain a contractual claim on quantum meruit. (p. 2127 C)

### EDOZIE JSC

*3. Quantum meruit claim is baseless - Where the contract is divisible*

In the case under consideration, it seems to me that the parties having agreed that the plaintiff/respondent was to be remunerated at the rate of

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10% for the actual amount of the debt recovered on behalf of the defendant/  
appellant the parties are presumed to have intended a divisible contract.  
Therefore, the plaintiff/respondent having been adequately compensated  
for the part of the contract he had performed by his being paid 10% of  
B the actual money recovered, his claim for quantum meruit is baseless.  
(p. 2129 D)

**REPRESENTATION**

P.W.A. Okoh, Esq., for the Appellant.  
C Respondent in person, (with him, T. G. Tyendezwa, Esq.)

**CASES REFERRED TO**

- Ritchie v. Artkinson (1808) 10 East 295; (1808) 103 ER 787  
Luxor (East-Bourne) Ltd. v. Cooper (1941) AC 108 at 140-141  
D Kahn v. Aircraft Industries Corporation (1937) 3 All ER 476  
Oyo v. Mercantile Bank (Nigeria) Ltd. (1989) 3 NWLR (Pt.108) 213  
Oyekanmi v. National Electric Power Authority (2000) 12 S.C. (Pt. 1) 70;  
(2000) 12 NWLR (Pt.690) 414 at 437  
E De Bernady v. Harding (1855) 8 Exch. 822  
Mann Poole & Co. Ltd v. Agbaje (1922) 4 NLR 8  
Taiwo v. Princewill (1961) 1 All NLR 240  
Union Beverages Ltd v. Owolabi (1988) 1 NWLR (Pt.68) 128  
F Alhaji Balogun v. Alhaji Labiran (1988) 3 NWLR (Pt.80) 66  
Egbunike v. A.C.B. Ltd. (1995) 2 NWLR (Pt.375) 34

**BOOKS REFERRED TO**

- The Law of Restitution by Goff & Jones 5th Edn. page 531  
G Halsbury's Laws of England 4th Edn. Reissue, Vol.40 (2), para. 1414

**LEAD JUDGMENT BY UWAIFO JSC**

- The plaintiff (now respondent), a legal practitioner, was instructed  
by the defendant (now appellant) to recover from ICON Limited (Merchant  
Bankers) - hereinafter called the company - its total indebtedness to the  
H defendant. The plaintiff, in pursuance of the said instructions, instituted

an action at the Federal High Court on behalf of the defendant against the company for the sum of N99,394,689.82 owed by the company as at 28 April, 1994. Also claimed was interest on the said sum of 21% per annum from 28th April, 1994 until judgment.

On 3rd March, 1995, judgment was obtained against the company in terms of the claim. The company paid N50, 000,000.00 out of the judgment debt. From the pleadings of the parties in the present suit (paragraph 15 of the Statement of Claim and paragraph 10 of the Statement of Defence), the plaintiff was to be paid 10% of the money actually recovered from the company. The plaintiff got N5, 000,000.00 being 10% of the N50, 000,000.00. Thereafter the defendant by letter dated 23 February, 1996, withdrew its brief from the plaintiff. As a result, the plaintiff brought this action.

In his Statement of Claim, paragraph 26, referring to the said letter of 23rd February 1996, the plaintiff averred:

*“The plaintiff replied the defendant and demanded his fees for legal work rendered by him, up to delivery of judgment, on the balance of N49,399,689.82 (sic) and interest, on the judgment debt of N99,399,689.82. Both the letter and bill of charges dated 19th March, 1996 shall be relied upon at the trial of this suit.”*

From the above, the plaintiff appeared minded to claim on a quantum meruit for the legal work rendered by him up to judgment in regard to the balance of N49, 394,689.82 out of the judgment debt of N99,394,689.82 along with interest on N99,394,689.82. However, the reliefs finally claimed by him against the defendant were stated thus:

*“1. The sum of N7,545,401.50 being the plaintiff’s fees on quantum meruit for legal work rendered by the plaintiff, on the instructions of the defendant, up to judgment*

*(a) On the claim of N49,394,689.32 being the balance outstanding on the judgment debt of N99,394,689.82 against Icon Limited (Merchant Bankers) in favour of the defendant and*

*(b) On the award of interest on the said sum of N99, 394,689.82 at the rate of 21% per annum from 28th April, 1994 up to 8th March, 1996 when the brief was withdrawn from plaintiff by the defendant.*

(2) *Interest on the sum of N7,545,401.50 at the rate of 21% per annum from the 1st day of May 1996 until final liquidation of the judgment debt.*

(3) *General damages of 2,000,000.00.”*

B On 14th November, 1997, the court presided over by Adeniyi, J., dismissed the action. The reason given was that “*A claim on quantum meruit cannot even arise where there is an existing contract for the payment of an agreed sum ..... The intention here is clear; that payment of fees would be percentage of actual amount recovered, so issue of payment of fees on quantum meruit, fails.*”

C The Court of Appeal, Lagos Division reversed the learned trial Judge in a judgment delivered by it on 31st May 1999. First, it said:

D “*There is no doubt that the plaintiff did not recover the balance of N49,394,689.82 from Icon Ltd. There is also no doubt that the plaintiff had employed his professional services in prosecuting the defendant’s claim for N99, 394,689.82 up to the stage of judgment. On 23-2-96, the defendant vide Exhibit ‘F’ withdrew the brief from the plaintiff. The plaintiff was thus disabled from recovering the balance of N49,394,689.82. There was no reason to think that the plaintiff would not recover the balance had not the defendant by Exhibit ‘F’ withdrawn the brief.*”

E Then later, it said:

F “*The defendant had not in Exhibit ‘F’ attempted to justify in any sensible manner its decision to debrief the plaintiff? Were the services of the plaintiff to the defendant in pursuing the matter up to the stage of judgment to be had free in respect of the balance N49,394,689.82 ? This question is pertinent since by the agreement of the parties, the plaintiff was only to be paid his 10% fee in respect of the money actually recovered. No provision had been made for the situation that arose where one of the parties brought the contract to an end before its purpose was fully realized.*”

G The court below came to the conclusion that the plaintiff was entitled to be paid reasonable compensation for work done up to when judgment was obtained against the company. It thought that since the trial court failed to make an assessment of what was reasonable compensation, it could do so. It then engaged in calculating what the plaintiff would have

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earned as 10% of the amount of the judgment involved as follows:

*“If the plaintiff had been allowed to conclude his assignment, he would have been entitled to 4.935 Million Naira on the sum of N49,394,689.82 being the unpaid balance. The plaintiff would in addition have been entitled to 10% on the interest of 21% on the whole of N99,394,689.82 from 28-4-94 to 8-3-96 when the brief was withdrawn. The plaintiff is also claiming 21% interest on the amount due to him from 8-3-96. The interest of 21% on N99,394,689.82 from 28-4-94 to 8-3-96 alone would amount to about 21 Million Naira. 10% of this which would have been payable to the plaintiff would amount to about 2.5 Million Naira. The plaintiff would have been entitled to 7.5 Million Naira as claimed.”*

After arriving at this amount of N7.5 million, the court below decided upon a fraction of it as compensation for the plaintiff said to be on the basis of quantum meruit. It went about it by saying:

*“Since this claim is being assessed on the basis of quantum meruit. I would award to the plaintiff only 2/3 of the amount he would have earned had he been allowed to exhaust the instructions to him. This would amount to about 5 Million Naira. I do not see any need to award any further interest on this amount 21% from 1st May, 1996. I award only <sup>2/3</sup> because although plaintiff got judgment for the defendant he would still have needed to follow execution processes to recover the balance outstanding.*

*In the final conclusion, judgment is given in favour of the plaintiff/appellant against the defendant respondent for N5,000,000.00 (Five Million Naira).”*

The defendant has appealed against that decision. In the brief of argument filed, it has submitted four issues for the determination of the appeal. They are:

*“(i) In the light of the only issue for determination before the Court of Appeal, was it relevant to the determination of that issue that the defendant did not in Exhibit F attempt in any sensible manner to justify its decision to debrief the plaintiff; in other words, is it a requirement of the law that unless the defendant justified its decision to debrief the plaintiff, the defendant would be liable to the plaintiff?*

*(ii) Was the plaintiff entitled to succeed in his claim in quantum*

*meruit for his services as adjudged by the Court of Appeal when the plaintiff neither pleaded nor proved that the termination of his brief was in breach of his contract with the defendant.*

B (iii) *Alternatively, was it right for the Court of Appeal to hold (based on the authorities relied upon and the sentiments expressed) that the plaintiff ought to have succeeded in recovering a reasonable recompense for his services up to the stage where he got judgment against Icon Limited?*

C (iv) *Whether the Court of Appeal was right in its application of the principle of quantum meruit which applies to compensate a plaintiff for the actual value of work done, when in the instant case the plaintiff's claim was for what he would have been paid if he had rendered his professional services to completion."*

D I shall henceforth refer to the defendant as the appellant and the plaintiff as the respondent.

E I think issues (ii), (iii) and (iv) can be taken together. I intend in the meantime to discuss issue (i) briefly. This issue has arisen from the observation made by the court below in connection with the letter per Exhibit F by which the appellant withdrew its brief to the respondent. The court below said that the appellant had not in that letter "*attempted to justify in any sensible manner its decision*" to debrief the respondent. The appellant argues that the law does not require that a term be implied F in a contract of service or agency not to be brought to an end by an employer or principal without just cause. The further submission is that the court below erred in suggesting that the appellant should have attempted in Exhibit F to justify its decision to debrief the respondent.

G The respondent did not react to the above submission in his brief of argument. This is obviously because the respondent stated two issues for the determination of this appeal without including issue (1) or similar issue as framed by the respondent. The two issues are:

H "1. *Whether having regard to the evidence at the trial court and decision of the Court of Appeal, the respondent is entitled to an award on quantum meruit and what compensation on quantum meruit should be awarded to the respondent.*

2. *What are essential for the respondent to prove in this case to be entitled to fee based on quantum meruit?*”

On the basis of these issues, the respondent argued mainly as to the compensation he is entitled to be paid.

The learned counsel for the appellant, Mr. Okoh, argued issue (1) in some detail citing *George Trollope & Sons v. Martyn Brothers* (1934) 2 KB 436 and similar cases and the opinion of the House of Lords in *Luxor (East Borne) Ltd. v. Cooper* (1941) 1 All ER 33, which approved Scrutton, LJ.’s dissenting Judgment in *George Trollope’s* case (supra). But, with due respect, I think Mr. Okoh failed to limit what was said in those cases to situations where there is indeed no binding contract but matters are merely still in negotiation. In those situations, there can be no implied term that a vendor, for instance, who proposes a sale of property, will not refuse to go on with the negotiation of the proposed sale; that is to say, so long as there is no binding contract yet reached between the vendor and the purchaser, it would be wrong to imply a term that the vendor would not abandon any on-going negotiation without just cause for the purpose of guaranteeing the commission an agent who introduced a likely purchaser would have earned if negotiation succeeded. In *George Trollope’s* case it was decided that such term would be implied, Scrutton, LJ., dissenting. The House of Lords in *Luxor’s* case overruled that decision and upheld Scrutton, LJ.

The rationale is that there is no sense in implying such a term in circumstances where whether there would be a contract depended on some contingency as to conditions acceptable to both parties to the negotiation. How can a vendor be made to justify his refusal of a particular condition, for instance? Viscount Simon, LC., tried to demonstrate the difficulties in implying such a term in *Luxor’s* case „ as pragmatically stated at page 38 thus:

*“The implied term upon which the respondent relies, following Trollope (George) & Sons v. Martyn Bros. (1934) 2 KB 436, amounts to saying that, once he has introduced his duly qualified nominee, the appellants must look in no other direction for a purchaser, but are bound, in the absence of ‘just excuse,’ to do their best to sell to that nominee. It appears to me that this proposition leads to great difficulties in its application,*

and to great uncertainty as to what might amount to a just excuse. In the present case, the respondent was not appointed sole agent, and there might have been half-a-dozen competitors for the proffered commission. If the respondent's introduction of his nominee had been immediately followed by a better offer through another agent, would the appellants have been bound to refuse the latter; or to accept it only with the consequence of paying two commissions? If, after receiving the respondent's 'name', and before becoming bound by contract to sale, the appellants sold the property to another purchaser without the intervention of any agent at all, would this expose the appellants to a claim by the respondent for damages?"

But the learned Lord Chancellor acknowledged situations where such term could be implied - necessarily where a contract has been made - when he said further at pages 39-40:

"If A employs B for reward to do a piece of work for him which requires outlay and effort on B's part, and which depends on the continued existence of a given subject-matter which is under A's control (as in *Inchbald v. Western Neielgherry Coffee, Tea, & Cinchona Plantation Co. Ltd.* [1864] 34 LJ CP 15), there may be an implied term that A will not prevent B from doing the work by destroying the subject-matter; and, generally speaking, where B is employed by A to do a piece of work which requires A's co-operation - e.g., to paint A's portrait - it is implied that the necessary cooperation will be forthcoming - e.g., A will give sittings to the artist. The work which the respondent was invited to do, however, was to produce an offer for the property - a piece of work which does not require the appellants' cooperation at all (except in giving a prospective purchaser reasonable opportunity to inspect the property, which no doubt would be an implied term) - and I am unable to deduce from the fact that the respondent was invited to produce an offer the implication that the appellants promised the respondent that they would accept it unless 'just excuse' for refusal existed ....

There is, I think considerable difficulty, and no little danger, in trying to formulate general propositions on such a subject, for contracts with commission agents do not follow a single pattern, and the primary necessity in each instance is to ascertain with precision what are the express terms of the particular contract under discussion, and then to consider

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*whether these express terms necessitate the addition, by implication, of other terms.”*

**When there is a concluded binding contract, there is liability if it is terminated without justification. That would amount to a breach of the contract. There is, therefore, an implied term that an enforceable contract will not be brought to an end without just cause. I do not think the court below was wrong to have said that the appellant did not justify having to debrief the respondent in the circumstances in which it did so as per Exhibit F. That was simply to underscore the breach committed by the appellant All the reason the appellant gave in that letter for terminating the brief was that:**

***“Bearing in mind the strained relationship of client and solicitor, we have no other alternative than to withdraw the brief from your Chamber. Please regard the brief as withdrawn.”***

What led to that was that respondent demanded to be paid the 10% commission of N47,500,000.00 being the balance of N50,000,000.00 the judgment debt actually paid by the company. The appellant appeared to resist on the curious ground that the money was not paid through the effort of the respondent. But it was. There had been an order for instalmental payment. One instalment of N2,500,000.00 had been paid and on that the respondent got his 10% commission, which was N250,000.00. Then the company decided to pay all outstanding installments on the judgment at once, which was N47,500,000.00. The commission due on this was what the respondent demanded and which the appellant resisted. The respondent successfully filed a suit for payment of his commission. The appellant reacted by withdrawing the brief per Exhibit F. **I believe all the court below meant when it said that the appellant “had not in Exhibit ‘F’ attempted to justify in any sensible manner its decision to de-brief” the respondent, was that the appellant terminated an existing contract without justification. That was the basis of the decision in similar circumstances in Kahn v. Aircraft Industries Corporation (1937) 3 All ER 476. I see nothing wrong or improper in the observation of the court below in the circumstances of this case. I therefore answer issue (i) in the affirmative.**

I have already indicated that I shall discuss issues (ii), (iii) and (iv)

together. Mr. Okoh argues along three main lines: (a) That the respondent has no right to claim on quantum meruit because he has not shown that the refusal of the appellant to accept performance (or further performance) of the contract was wrongful, citing *Planche v. Colburn* 131 ER 305: Chitty on Contracts. 25th Edn. Vol. 1, para. 1405; G. H. Treitel on The Law of Contract. 1962 Edn. Page 528. (b) The present action is founded upon an alleged breach of contract but the respondent did not prove what damages he is entitled to for the alleged breach of contract, (c) Although the respondent referred also to quantum meruit. he did not show what is reasonable remuneration he may lawfully be paid, since the measure of entitlement is the value of the actual services rendered by him.

The substance of the respondent's argument, made in line with the two issues set down by him, may be briefly stated thus: (1) The basis on which the respondent instituted this action for quantum meruit was breach of contract of retainer; but he claimed for this on a new contract which had been created by operation of law in place of the original contract of retainer. (2) That the court below awarded compensation upon a quantum meruit basis and that it is either for this court to agree with the amount or to increase or reduce it. (3) A claim for breach of contract sounds in damages whereas compensation on quantum meruit is remedy for actual work done. The respondent has shown that by his debriefing, he is entitled to compensation on quantum meruit.

The term "*quantum meruit*" is used in different contexts but in the present case where there had been a contract which was in a sense breached, we are concerned with the restitutionary aspect of quantum meruit. Let me give here a resume of the facts of this case again. The respondent had a contract with the appellant. The whole purpose was for the respondent to recover from the company (ICON Limited (Merchant Bankers)) what it was owing to the appellant. The respondent was to be paid 10% of the amount actually recovered by him. By court action, the respondent obtained judgment for N99,394,689.82. Eventually, the company paid N50,000,000.00 leaving a balance of N49,394,689.82. The respondent was able to get 10% of the amount of N50,000,000.00 paid as his commission. That amount was regarded as actually having been recovered by the respondent. The appellant then debriefed him and on its

own got the balance paid by the company. It must be admitted that the appellant had at that point obtained an incontrovertible benefit from the services rendered by the respondent.

The respondent, in pursuit of what he conceived to be his entitlement as fees, sent to the appellant a bill of charges as stated below:

To our professional charges in respect  
of taking instructions, writing letters,  
holding meetings on the recovery of  
debt from Icon Limited (Merchant Bankers).)

B

C

To instituting legal proceedings against  
Icon Limited (Merchant Bankers) in  
the Federal High Court) in Suit No.  
FHC/L/CP/40/94, High Court of Lagos  
State in Suit No. LD/1342/94, also in  
the Federal High Court in Suit No.  
FHC/L/CS/1307/94.

D

N7,545,401.50

E

To making appearances in court and  
obtaining judgment on that part of the  
debt owed by Icon Limited (Merchant  
Bankers) to Savannah Bank of Nigeria  
Plc that is N49,394,689.82 plus  
interest on the judgment debt of  
N99,394,689.82 at the rate of 21% per  
annum from 28th April 1994, part  
payment of N50m having been settled.

F

G

#### INTEREST CALCULATION

1. Interest on N99,394,689.82  
from 28th April 1994 to 14th  
August 1995 when N47,500,000.00  
was paid by Icon Limited (Merchant  
Bankers).

H

N20,872,884.00

2. Interest on N49,394,689.82 from  
14th August 1995 to 8th March 1996  
when your letter of withdrawal was  
received in our Chambers. 5,186.442.00

B

N26,059,326.00

**The law is that if an innocent party has rendered services (or has supplied goods) under a contract, which has not been fully performed and which has been determined by him because of the defendant's repudiatory breach of contract, he may sue for damages for loss arising from the breach of contract or bring a restitutionary claim to recover the value of the services rendered or the goods supplied, on a quantum meruit (or a quantum valebat) : see The Law of Restitution by Goff & Jones 5th Edn. page 531; Halsbury's Laws of England 4th Edn. Reissue, Vol.40 (2), para. 1414; see also Aburime v. Nigerian Ports Authority (1978) 4 S.C. 111 at 132. This derives from such cases as Cutter v. Powel (1795) 6 Term. Rep. 320; (1795) 101 ER 573; Appleby v. Myers (1867) LR 2 CP 652 and like cases; and the brisk observation of Alderson, B., in De Bernardy v. Harding (1853) 3 Exch. 822, 824; (1853) 155 ER 1586, 1587 that:**

*"Where one party has absolutely refused to perform, or has rendered himself incapable of performing, his part of the contract, he puts it in the power of the other party either to sue for a breach of it, or to rescind the contract and sue on a quantum meruit for the work actually done."* (Emphasis mine)

**See also Luxor (East-Bourne) Ltd v. Cooper (1941) AC 108 at 140-141, where lord Wright, in discussing a claim based on quantum meruit said that, it is "*properly made in cases of contracts for work and labour and the like, where the employer, who has got the benefit of part performance but before full completion had repudiated the contract, may be sued either for damages for breach or for restitution in respect of the value of the part performance which he has received.*"**

**All the relevant decisions have not failed to make it clear that reasonable remuneration must be paid for the actual work or service**

rendered by a claimant on quantum meruit. How this will be assessed depends, of course, on the way the claim is framed and the evidence adduced in support. It must be a bona fide claim brought upon a quantum meruit basis and not merely that it is described as such. Where the contract is divisible or severable whether by way of work done, goods supplied or services rendered, the claimant should find no difficulty in stating particulars and leading evidence to show that he is entitled to recover payment for the obligations, the performance of which he has completed: See *Ritchie v. Artkinson* (1808) 10 East 295; (1808) 103 ER 787. Quantum meruit is regarded as an incident in assessing the amount due under a contract in order to arrive at a reasonable compensation for the work done in partial performance of it. What this entails and how it should be done can be seen reflected in the leading opinion of Lord Artkinson in *Way v. Latilla* (1937) 3 All ER 759. In discussing how remuneration may be ascertained for services rendered on a quantum meruit in various situations, the learned law Lord observed at pages 764-765 inter alia:

*“As I have said, the rule applied in fixing the amount of the remuneration necessarily applies to the basis on which the amount is to be fixed. I have therefore no hesitation in saying that the basis of remuneration by fee should, in this case, on the evidence of the parties themselves, be rejected, and that Mr. Way is entitled to a sum to be calculated on the basis of some reasonable participation.*

*What this should be is a task primarily to be undertaken by the trial Judge. He did make an alternative award, and arrived at the sum of £5,000 ..... I think that the sum of £5,000 which the Judge appears to have arrived at on consideration of all the necessary factors would be a reasonable remuneration in all the circumstances.”* (Emphasis mine)

**It follows that the respondent in the present case was expected to provide parameters and necessary evidence upon which the court would assess what is reasonable compensation on quantum meruit for the services rendered by him up to the judgment obtained against the company on behalf of the appellant when his contract was terminated. He ought to have indicated in the bill of charges the nature of the various aspect of the services he rendered; his experience at the bar**

which matched the skill the particular legal matters demanded; and in evidence justified the reasonableness of charges for the services: See **Oyo v. Mercantile Bank (Nigeria) Ltd. (1989) 3 NWLR (Pt.108) 213.** A legal practitioner should be able to present a bill of charges, which, among other facts, should particularize his fees and charges, e.g. (a) perusing documents and giving professional advice; (b) conducting necessary (specified) inquiries; (c) drawing up the Writ of Summons and Statement of Claim; (d) number of appearances in court and the dates; (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; (f) the standing of counsel at the bar in terms of years of experience and/or the rank with which he is invested in the profession. It is necessary to indicate amount of fees against each of these items: See **Oyekanmi v. National Electric Power Authority (2000) 12 S.C. (Pt. 1) 70; (2000) 15 NWLR (Pt.690) 414 at 437.** In compensating a legal practitioner upon a quantum meruit for services he has actually rendered, it will be more realistic to make assessment on the basis of the particulars of the nature of work done by him to arrive at what can be considered a reasonable compensation. It is then a sum which “the Judge appears to have arrived at on consideration of all necessary factors would be a reasonable remuneration in all the circumstances” as observed by Lord Artkinson in **Way v. Latilla (supra)**; and I respectfully agree with that. But I need to add that in this particular case where the plaintiff was to earn 10% of amount actually recovered, it will be necessary to note (i) that the limit 10% would have earned should be taken into account to assess the value of the work rendered since the evidence of what will be reasonable sum to be awarded in respect of the plaintiff’s work, may depend on what ought to be paid for each aspect of the work stated in the particulars.

In the same manner, other professionals or indeed other persons or bodies rendering services which may need to be assessed for compensation on a quantum meruit would be required to particularize their claim or at any rate, give helpful information for fair assessment. As already indicated, it is on the basis of such particulars or information that a trial

Judge may be expected to reach a decision as to what is reasonable or fair remuneration for the work done. I have looked at random for an example and it seems to me I can, with profit, present the way Barry, J., went about it on the particulars submitted to him in William Lacey (Hounslow) Ltd. v. Davis (1957) 1 NWLR 932 to make a quantum meruit award when he said at page 940:

*“As to amount, I have considered the plaintiffs’ charges as set out in the schedule with some care. On the rather scanty information available to me, I have come to the conclusion that while some of the items may well be undercharged, certain of the larger items cannot be fully justified. The plaintiffs are entitled to a fair remuneration for the work which they have done, but they cannot, in my view, quantify their charges by reference to professional scales. Doing the best I can, I think the plaintiffs would be fairly recompensed if I deducted £100 from the amount claimed, leaving a balance of £250 13 s. 5d.”*

It will be seen that the plaintiffs in that case itemized the different aspects of the services rendered, giving some idea of what was involved in each item, and then indicated an amount against each item. Upon the available information, the trial Judge was able to exercise his judicial discretion to make what he considered a reasonable remuneration.

The court below fell into multiple errors in its approach to that award of reasonable remuneration. First, it took into account the unrecovered judgment debt (which is irrelevant in the present quantum meruit award) and over and above that, added interest which that amount would have earned for a given period, and arrived at a prospective figure. Second, it failed to realize that the claim as constituted by the respondent was in the nature of a breach of contract action, and that even so, it was defective. Third, it regarded the claim as having been made upon a quantum meruit. Whereas there was no particularization or itemization of the services rendered upon which what is reasonable remuneration could be assessed. Fourth, it calculated 10% of the prospective amount arrived at and used an arbitrary fraction of 2/3 of the 10% to make an award to the respondent. Fifth, had the court below realized that the quantum meruit would have been in regard to the work done to get judgment for that

balance of the judgment debt standing at N49,394,689.32, it would have seen the difficulty involved. It would be near impossible to itemize the services rendered or efforts made in respect of that amount different and separable from those for the entire N99,394,689.82, having regard to the B fact that the respondent had been fully paid for N50,000,000.00.

**As I have already indicated, in the present case, the respondent gave no particulars whatsoever in his bill of charges upon which the court may proceed on a quantum meruit assessment of reasonable C award of fees. Apart from this, he adopted an erroneous basis upon which he fixed his fees. First, the respondent purported to base his claim on 10% of a figure of N49,394,689.32. Second, he added multiple interests at 21% on that figure, namely (a) interest on N99,394,689.82 and (b) interest on N49,394,689.32 to the said figure and arrived at D N7,545,401.50 which he claimed as his entitlement. Even if his contract had not been terminated, he would have got just 10% of the money actually recovered by him. But now, he claimed more than what the outstanding judgment debt would have given him by adding interest which he could not possibly prove had been earned from that judgment E debt. The court below erroneously calculated on that basis before arbitrarily awarding two-thirds of it to the respondent.**

The respondent's case is indeed more disturbing than that. He purported that his claim was on a quantum meruit. **A perusal of the reliefs F sought and the averments in the statement do not support quantum meruit claim, notwithstanding the use of that term in relief 1.** As I already said, the respondent calculated interest on the judgment debt and added the result to the balance of the judgment debt. He then asked for 10% of the total. He was assuming that the 10% commission as agreed G originally could be claimed by him on the judgment debt and interest not yet recovered on behalf of the appellant. In addition, he asked for general damages of N2,000,000.00. **This is more like a claim for damages for breach of contract although it will fall flat on the known principle of assessment in breach of contract claim as laid down in Hadley v. H Baxendale (1854) 9 Exch 341 and restated in subsequent cases. The principle has been adopted in this country. It is based on the notion**

of restitutio in integrum<sup>1</sup> and it is in two arms: (a) damages that flow naturally from the breach or (b) damages within the contemplation of both parties at the time the contract was made: See Mann Poole & Co. Ltd v. Agbaje (1922) 4 NLR 8; Taiwo v. Princewill (1961) 1 All NLR 240; Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt.68) 128. It is not damages the court may award at large but it is such that ensures restitution to the plaintiff for the breach. It is not calculated on quantum meruit basis. A different principle as stated above applies to that. However, the present claim is certainly not one based on quantum meruit. It comes to this that the claim, defective as it is, was not proved at all. The court below ought not to have allowed the appeal, and worse still was wrong to have awarded an arbitrary figure of N5,000,000.00.

I am of the view that the respondent's claim was unsustainable having regard to what I have discussed above. I have come to the conclusion, therefore, that there is merit in this appeal. I allow it and set aside the judgment of the court below together with the order for costs. Consequently, I dismiss the claim. I award the appellant N10,000.00 costs against the respondent.

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### KUTIGI JSC

There is no doubt that the defendant by letter instructed the plaintiff to recover from ICON LTD (Merchant Bankers), its total indebtedness to the defendant. The plaintiff filed a suit at the Federal High Court Lagos and got judgment against ICON LTD for the sum of N99,394,689.82 and interest thereon at the rate of 21% per annum. The ICON Company made part payment of the judgment debt in the sum of N50,000,000.00 leaving a balance of N49,394,689.82. The plaintiff, as agreed, got paid for N5,000,000.00 being 10% of the N50,000,000.00 he actually recovered.

Meanwhile, the defendant by another letter determined the plaintiff's retainerhip and withdrew its brief from him. The plaintiff was therefore no longer in a position to recover the balance of N49,394,689.82

and the interest accruing on the judgment debt of N99,394,689.82. The plaintiff thereafter instituted this action claiming N7,545,401.50 being fees on a quantum meruit for legal work rendered by him in respect of the balance of N49,394,689.82 on the instructions of the defendants up to judgment, and interest on this sum at the rate of 21% per annum. He also claimed general damages of N2,000,000.00.

What baffles me is that if the plaintiff had obtained judgment for N99,394,689.82 in a single or one suit and got N5,000,000.00 being 10% of the N50,000,000.00 actually recovered by him from the entire judgment debt, how could he now turn round to claim N7,545,401.50 as fees on a quantum meruit for legal work rendered by him in respect of the balance of N49,394,689.82? Clearly, this is not a case where two different suits were filed or instituted by the plaintiff. The subject matter of this case, that is, the N49,394,689.82 is only part of the entire judgment debt of N99,394,689.82. Again there is no doubt that the plaintiff herein employed his professional services in prosecuting the entire defendant's claim of N99,394,689.82 up to judgment. He did not do so by installments. He also got paid for N5,000,000.00 being 10% of N50,000,000.00 out of the judgment debt actually collected by him. Where then lies the quantum meruit now being claimed by the plaintiff? If he is right, should the N5,000,000.00 which he has already collected not form part of that claim for "*quantum meruit*"? I have no hesitation therefore in coming to the conclusion that on the facts, the plaintiff's claim founded on quantum meruit was clearly unmaintainable. My view is that the work done or service rendered by him under the contract is not divisible or severable. The plaintiff woefully failed to prove his claim in this case.

It is for what I said above and the reasons ably stated in the lead judgment of my learned brother, Uwaifo, JSC. Which I read before now, that I agree to allow the appeal. The appeal is therefore allowed. The judgment of the Court of Appeal is set aside while the one delivered by the trial court is restored. I endorse the order for costs.

H

I have had the advantage of a preview of the judgment of my learned brother, Uwaifo, JSC., just delivered. I am in entire agreement with him that the appeal is meritorious and ought to be allowed. In consequence, I allow the appeal, set aside the judgment of the court below together with the order for costs. I dismiss the claim and award the appellant N 10,000.00 costs against the respondent. B

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### TOBI JSC

I have read in draft the judgment of my learned brother, Uwaifo, JSC, and I agree with him. The burden is on the plaintiff to prove his case as averred in his pleadings. See Alhaji Balogun v. Alhaji Labiran (1988) 3 NWLR (Pt.80) 66; Egbunike v. A.C.B. Ltd. (1995) 2 NWLR (Pt.375) D 34. To be specific, a party who erects a case of breach of contract based on quantum meruit must prove his claim. In other words, the party must prove by evidence the reasonable value of services rendered by him, arising from the contract. It is one way of preventing unjust enrichment on the part of the defendant. E

The burden is on the plaintiff to prove actual work done by him. See De Bernady v. Harding (1855) 8 Exch. 822; Graven-Ellis v. Canons Ltd. (1936) 2 All ER 1066. The actual work done must be specifically stated or itemized. An agglomeration of work done without specific details will not sustain a contractual claim on quantum meruit. What was the claim of the respondent? He claimed a total sum of N7,545,401.50 in his Bill of Charges. That is the claim on quantum meruit. How did he come by the above sum? I have carefully examined the Bill of Charges and I am of the firm view that it lacks specific and essential details of work done by him. In the Bills of Charges, the respondent omnibusly claimed for (a) professional charges in respect of taking instructions etc; (b) institution of legal proceedings; (c) making appearance in court; and (d) interest on the sum of N99,394,689.82 and N49,394,689.32. And he in a lump sum claimed N7,545,401.50. I ask: How did he come by this sum? A Bill of Charges must give room to specific monetary or financial details. Where such details are lacking, a claim on quantum meruit, being compensation F G H

as reasonable value of services rendered will not be awarded a plaintiff.

I am of the view that the learned trial Judge was right when he dismissed the respondent's claim for N7,545,401.50 on quantum meruit. The Court of Appeal, with respect, was wrong in awarding the sum of 5 B Million Naira to the respondent.

In sum, the appeal is allowed. I set aside the judgment of the Court of Appeal and restore that of the trial court. The claim is dismissed. I also award the appellant N10,000.00 costs against the respondent.

C \_\_\_\_\_  
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### EDOZIE JSC

D I am in agreement with the leading judgment of my learned brother, Uwaifo, JSC. My brief comment is by way of emphasis and is based on the facts of the case as lucidly summarized in the aforesaid judgment.

The plaintiff/respondent's claim as constituted, on the basis of quantum meruit, is with great respect, spurious and misconceived. The Latin term quantum meruit means "*as much as he has earned*". Thus, E where one person has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstances of the request imply that the service is to be paid for, there is implied, a promise to pay quantum meruit that is, so much as the party doing the F service deserves.

In its application to contractual obligations, a distinction must be drawn between entire and divisible contracts. In an entire contract, complete performance by one party is a condition precedent to the liability of the other. For example, if a person by the term, of a contract is to do a G certain piece of work for a lump sum, and he does only part of the work, or something different, he cannot claim under the contract but he may be able to claim on a quantum meruit as where the completion of the work has been prevented by the act of the other party to the contract: See Cutter v. Powel (1795) 6 TR 320, Planche v. Colburn (1836) 8 Bing 14.

H The opposite of an entire contract is a divisible contract which is separable into parts, so that different parts of the consideration may

be assigned to severable parts of the performance, e.g., an agreement for payment pro rata, the obligation to pay for a divisible part of the performance is independent of the performance of other parts of the contract: Roberts v. Haveloak (1832) 3 B & Ad 404; Taylor v. Laird (1856) LH & N 266. According to Black's Law Dictionary, 6th Edition at p.323,

*"The effect of the breach of a contract depends in a large degree upon whether it is to be regarded as indivisible or divisible; i.e. whether it forms a whole, the performance of every part of which is a condition precedent to bind the other party, or is composed of several independent parts the performance of any one of which will bind the other party pro tanto. The only test is whether the whole quantity of the things concerned, or the sum of the acts to be done, is of the essence of the contract. It depends therefore, in the last resort, simply upon the intention of the parties."*

In the case under consideration, it seems to me that the parties having agreed that the plaintiff/respondent was to be remunerated at the rate of 10% for the actual amount of the debt recovered on behalf of the defendant/ appellant the parties are presumed to have intended a divisible contract. Therefore, the plaintiff/respondent having been adequately compensated for the part of the contract he had performed by his being paid 10% of the actual money recovered, his claim for quantum meruit is baseless.

For this reason, in addition to the detailed reasons contained in the leading judgment, I, also allow the appeal with N10.000.00 costs to the appellant against the respondent.

G

H