

SUPREME COURT OF NIGERIA
8TH APRIL, 2005. SC. 9/1999
CORAM:- M. L. UWAISS CJN, N. TOBI, D. O. EDOZIE, G. A.
OGUNTADE, S.A. AKINTAN, JJSC

THE SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED DEFENDANT/APPELLANT
AND

1. CHIEF G. B. A. TIEBO VII

(Amananaowei of Peremabiri)

2. Ex-COMMISSIONER J. S. B.

ALFRED OLOTU

3. CHIEF IBARALAYOU M. JOHN ... PLAINTIFFS/RESPONDENTS

4. MR. ISRAEL WARDE-BANFA

5. MR. TIMIPIRI KOMA

(For themselves and as representing

Peremabiri Community in the Yenagoa

Local Government Area of Rivers State)

ACTIONS - Jurisdiction - Mining matters - Federal High Court now has
exclusive jurisdiction - In mines and minerals matters (H1)

ACTIONS - Commencement - Jurisdiction - Oil fields matter - Existing
law when the cause of action arose - Did not invalidate State High Court's
jurisdiction (H2)

DAMAGES - Special damages - Judicial precedents - Trial court misun-
derstood two precedents - It relied upon (H3)

DAMAGES - Special damages - Judicial precedents - Statement of the
law in Oshinjin case - Is a general guide - But did not lower the required
standard of proof (H4)

DAMAGES - Special and general damages - Same latitude of discretion -

In awarding general damages - Does not avail the court - In the award of special damages - As special damages require strict proof (H5)

DAMAGES - Distinction - Between special and general damages - Where plaintiff failed to prove special damages - Court cannot award general damages in lieu (H6)

DAMAGES - Appeals - General damages - Alteration of the award by appellate court - Will not be granted - As the amount was not manifestly too high (H7)

APPEALS - Issues - Supreme Court - Jurisdiction - Appeal against excessive cost - Awarded by trial court - The issue will be struck out - As it was not raised before Court of Appeal (H8)

FACTS

Before the then Yenagoa High Court of Rivers State plaintiffs/respondents commenced an action against the defendant/appellant on 6-6-1988. They claimed over N64 million naira being special and general damages for the negligence of the defendant in allowing crude oil it was mining to spill into their lands, swamps and other properties. The plaintiffs called nine witnesses in support of their case and the defendant called three. At the end of hearing, the learned trial Judge in his judgment delivered on 27-2-1991, awarded general damages in favour of the plaintiffs totalling 6 million naira, and costs of one million naira.

The defendants being dissatisfied with the damages awarded and trial court's method of arriving at the amount on some items of special damages, appealed to the Court of Appeal. For instance, whereas the trial court found that no credible evidence was led towards establishing the sum of one million naira claimed as special damages to young raffia palms, it awarded N400,000 general damages for that item of claim. The Court of Appeal dismissed defendant's appeal, and wrongfully confirmed the trial court's error in awarding general damages in lieu of special damages. Dissatisfied, defendant has further appealed to the Supreme Court. The

issue of jurisdiction was also handled by the apex court.

ISSUES FOR DETERMINATION

“(1) *Was the judgment of the court below ultra vires?*

(2) *Was the court below right in confirming the award of N400,000.00 as special damages in respect of raffia palms allegedly destroyed by crude oil after the trial court found that there was no credible evidence to support the claim for special damages for raffia palms and there was no appeal from this finding?*

(3) *Was the court below right in upholding the award of N600,000.00 as general damages for money spent in buying water for drinking and other domestic uses when there was no credible evidence supporting purchase of water anywhere?*

(4) *Was the court below right in confirming the award of general damages of N5,000,000.00 for hazards, general inconveniences and miscellaneous losses and expenses after holding that fear was not a recognized head of damages in negligence.*

(5) *Did the award of costs of N1,000,000.00 confirmed by the court below follow the principles laid down by law for indemnifying a successful party in litigation?”*

HELD (Unanimously allowing the appeal in part per **OGUNTADE JSC**)
Jurisdiction - Mining matters

1. It is manifest that the State High Court lost its jurisdiction to adjudicate in oil and mining matters first on 30th December, 1991, under Decree No. 60 of 1991. However, under Decree No. 16 of 1999, the operation of the new Section 7 under Decree No. 60 of 1991 was suspended. But on 17/11/93, under Decree No. 107 of 1993, the jurisdiction to adjudicate on mines and minerals and allied matters was given exclusively to the Federal High Court. This remained the position before the 1999 Constitution came into force. Under Section 215(1) of the 1999 Constitution, the Federal High Court now possesses and exercises exclusive jurisdiction in “*mines and minerals (including oil fields, oil mining, geological surveys and natural gas).*” (p. 936 D)

Oil fields matter - Existing law when the cause of action arose

2. In the instant case, the cause of action accrued to the plaintiffs on 16th January, 1987, and they commenced their suit on 6th June, 1988. Judgment was delivered on 27th February, 1991. On these various dates, a
B State High Court had jurisdiction to entertain matters and causes on mines and minerals and oilfields. It is settled that the law applicable to an action is the law existing when the cause of action arose.

The result is that the Rivers State High Court had jurisdiction to
C entertain plaintiffs' suit and that jurisdiction was not in any way impaired between the commencement of the action on 6th June, 1988, and the delivery of judgment on 27th, February, 1991. (p. 936 G)

Special damages - Trial court misunderstood two precedents

D 3. It is now well established that special damages claimed by a plaintiff must be strictly proved.

In Oshinjirin v. Elias (1970) 1 All NLR 153 at 156, this court, per Coker, JSC., discussed the nature of proof required in cases where special
E damages is claimed thus:

*“undoubtedly, the rule that special damages must be strictly proved applies to cases of tort. In effect the rule requires anyone asking for special damages to prove strictly that he did suffer such damages as he
F claimed. This however does not mean that the law requires a minimum measure of evidence to establish entitlement to special damages. What is required is that the person claiming should establish his entitlement to that type of damages by credible evidence of such character as would
G suggest that he indeed is entitled to an award under that head, otherwise the general law of evidence as to proof by preponderance or weight usual in civil cases operates.”*

It would appear, however, that these views have been relied upon in this case by the trial court as a justification to award general damages
H in lieu of special damages which the court held were not strictly proved. I think that the trial Judge misunderstood the import of the guidance given in the two cases. (p. 937 H)

Special damages - Statement of the law in Oshinjirin case

4. It must be stated that the statement of the law in Oshinjirin v. Elias (supra) and other cases where similar views were expressed was not meant to lower the standard of proof required to establish a claim for special damages. What the statement connotes is that what is required is qualitative and credible evidence in order to establish entitlement to special damages. In other words, it is a general guide and arises from the fact that it is impossible to prescribe the quantity and nature of evidence required in a given case to justify entitlement to special damages. In some cases, it may be necessary to show documentary proof of loss sustained while in others it may be unnecessary. The important thing is that the evidence proffered must be qualitative and credible and such as lends itself to quantification. Each case depends on its own facts and circumstance. There are cases where it will be impossible to pass the test required unless documentary proof is produced to show the loss sustained. In others, oral evidence which is credible may be sufficient. The character of the evidence called must measure up to the circumstance of the occasion or the expectation of a reasonable man. (p. 938 F)

Special damages require strict proof

5. In the awards made by the learned trial Judge, he minced no words in stating that he was awarding general damages in lieu of a claim for special damages which was not made out as there was no credible evidence. Clearly, the trial Judge had not adverted his mind to the distinction between a claim for special and general damages and the differing standards of proof required in each case. The court below in the lead judgment, per Onalaja, JCA., considered several judicial authorities before coming to the conclusion not to disturb the awards.

It is however clear that the two cases relied upon by the court below were inappropriate on the facts in this case as they did not deal with the same situation as we have in the case. This would perhaps explain the error made by the two courts below in believing that the court enjoys the same latitude of discretion in the award of special damages as

it does in the award of general damages. Indeed, in *Nzeribe v. Dave Eng Co. Ltd.* (supra), Iguh, JSC., stressed that special damages must be strictly proved. (p. 940 H)

B Distinction - Between special and general damages

6. The distinction between special and general damages for the purpose of assessment of awards must always be borne in mind. In *Stroms Bruks Aktie Bolag v. Hutchinson* (1905) AC 515, Lord Macnaghten said:

C “General damages are such as the law will presume to be direct, natural or probable consequence of the action complained of. ‘Special damages’ on the other hand are such as the law will not infer from the nature of the act. They do not flow in the ordinary course. They are exceptional in their character and therefore they must be claimed specially and proved strictly.”

D The trial court said so much in its judgment that the plaintiffs failed to prove their entitlement to the special damages claimed. It then stated that it was awarding plaintiffs general damages in place of special damages not proved. If the trial court had borne in mind the difference

E between those awards, it would not have slipped into that error.

F The two courts below were wrong to treat a claim which failed under special damages as a successful one under general damages. The awards of N400,000.00 for damages to raffia palms and N600,000.00 for loss of drinking water must be set aside. (p. 942 G)

General damages - Alteration of the award by appellate court

G 7. With respect to the award of Five Million Naira as general damages, a different consideration applies. This was an award made by the trial Judge sitting as a jury and Judge of the facts. The only circumstance justifying an interference with the award of general damages made by a court of trial by an appellate court is when the award is manifestly too high or

H manifestly too little so as to raise inference that it was an erroneous assessment of the damage suffered or where the trial Judge had made the award relying on wrong principle.

The evidence before the trial Judge which he accepted was that

extensive damage was done to the crops, farms, farmlands, ponds, creeks of the plaintiffs. There was also evidence of widespread environmental pollution. It has not been shown to us in this court that the N5m general damages awarded was manifestly too high as to be classified an erroneous assessment of the damage done to the plaintiffs. This is an area in which the award made by a trial court is not readily interfered with by an appellate court. I must therefore decline the invitation by the appellant to interfere with the award made by the trial court which was affirmed by the court below. (p. 944 D) C

Issues - Supreme Court - Jurisdiction

8. The appellant has also raised an issue to the effect that the award of one million Naira to the plaintiffs as costs was excessive and unreasonable. The appellant however had not challenged the award of costs in its appeal from the High Court to the court below. The jurisdiction of this court enables it to take appeals only from the Court of Appeal and not from the High court. See Sunday Oduntan v. General Oil Limited (1995) 4 NWLR (Pt. 387) 8. The appellant's issue 5 must therefore be struck out. (p. 945 F) D E

NOTABLE POINTS OF INTEREST

TOBI JSC

1. Court cannot award general damages in place of special damages

There is a world of difference between proof of special damages and proof of general damages and courts of law must not mix up the adjectival or procedural requirements of the two claims. While proof of special damages is strict, proof of general damages does not require the strictness in proof of special damages. G

The issue in this appeal is whether a court can award general damages in place of special damages. The answer is, "no". Where, a plaintiff is unable to prove special damages, his case crumbles and a trial Judge cannot compensate him by way of general damages. This is because he has not proved the special damages he claimed. (p. 947 B) H

AKINTAN JSC

2. When items of special damages should be dismissed

Applying the law as declared above to the present case, it is clear that the evidence led in support of the plaintiffs' claim for special damages in respect of loss of raffia palms is very scanty. The number of the raffia palms damaged was, for example, not disclosed and the value of each of the said raffia palms or the income which the plaintiffs expected from them based on similar income and made from other similar raffia palms was not given in evidence. It was therefore wrong of the learned trial Judge to have granted the award and described it as general damages. Similarly, the award of N600,000.00 as damages for loss of drinking water was also not supported with credible evidence. For example, no evidence was led regarding how much it cost the plaintiffs to secure alternative drinking water supply as a result of the pollution of their sources of drinking water. The requirement of strict proof of special damages definitely excludes a situation where the court will be left in a situation where it would start to guess what the losses due to a plaintiff should be. In the result, those items of the awards were not strictly proved and the correct order the trial Judge ought to have made is one dismissing those items of claim. It is not open to a court to award general damages in place of special damages claimed but not strictly proved. Those items of claim were therefore wrongly awarded and the Court of Appeal was in error when it affirmed such awards. (p. 950 F)

REPRESENTATION

Mrs. C. Anyamene-Ezugu, for the Appellant.
Chief J. L. D. Dagogo, for the Respondents.

CASES REFERRED TO

Uwaifo v. Attorney-General, Bendel State (1983) NCLR 1
Adesina v. Kola (1993) 6 NWLR (Pt. 298) 182 at 185
Dumez v. Ogboh (1972) 3 S.C. (Reprint) 188; (1972) 3 S.C. 196
Agunwa v. Onukwe (1962) 1 All NLR 537
Oshinjirin v. Elias (1970) 1 All NLR 153 at 156

Nzeribe v. Dave Eng. Co. Ltd. (1994) 8 NWLR (Pt. 361) 124

West African Shipping Agency v. Kalla (1978) 3 S.C (Reprint) 15; (1978) 3 S.C. 21 at 32

LEAD JUDGMENT BY OGUNTADE JSC

B

The respondents as the plaintiffs commenced their suit on 6th June, 1988, at the Yenagoa High Court of Rivers State, claiming against the defendant for the sum of Sixty Four Million, One Hundred and Forty Six Thousand Naira, being special and general damages for the negligence of the defendant and for allowing crude oil, which the defendant was mining, to spill into the lands, swamps, creeks, ponds, lakes and shrines of the plaintiffs. The plaintiffs sued for themselves and as the representatives of the Peremabiri Community in YELGA. C

The parties filed and exchanged pleadings after which the suit was heard by Blankson, J. In all, the plaintiffs called nine witnesses in support of their case. The defendant called three. At the conclusion of hearing, the learned trial Judge, in his judgment on 27/2/91, awarded in plaintiffs' favour, general damages totalling Six Million Naira and One Million Naira costs. D E

Dissatisfied with the judgment of the trial court, the defendant brought an appeal before the Court of Appeal, Port-Harcourt Division (hereinafter referred to as 'the court below'). On 27th March, 1996, the court below in its judgment dismissed the appeal. The defendant has come before this court on a further appeal. In the appellant's brief, filed for the defendant, the issues for determination in the appeal were identified as the following: F

"(1) Was the judgment of the court below ultra vires?" G

(2) Was the court below right in confirming the award of N400,000.00 as special damages in respect of raffia palms allegedly destroyed by crude oil after the trial court found that there was no credible evidence to support the claim for special damages for raffia palms and there was no appeal from this finding?" H

(3) Was the court below right in upholding the award of N600,000.00 as general damages for money spent in buying water for

drinking and other domestic uses when there was no credible evidence supporting purchase of water anywhere?

(4) *Was the court below right in confirming the award of general damages of N5,000,000.00 for hazards, general inconveniences and miscellaneous losses and expenses after holding that fear was not a recognized head of damages in negligence.*

(5) *Did the award of costs of N1,000,000.00 confirmed by the court below follow the principles laid down by law for indemnifying a successful party in litigation?"*

The respondents formulated four issues but these issues are amply covered by the appellant's five issues.

None of the issues formulated by the appellant contests the correctness of the liability in negligence as ascribed to the appellant by the trial court in its judgment. This makes it necessary for me to discuss only the facts, as are relevant, on the awards of damages and costs which are being challenged in this appeal. It suffices to say by way of a background that the case made by the plaintiffs before the trial court was that the defendant, an oil exploration company, on 16th January, 1987, negligently caused a major crude oil spillage of over six hundred barrels from its flow station and on its pipeline or other installations at or near the plaintiffs' village called Peremabiri.

The plaintiffs in paragraphs 9 to 14 of their Statement of Claim pleaded the nature of the damage done to them by the spillage thus:

"9. Consequent upon the aforesaid oil spillage, the Nun River, the plaintiffs' farms, farmlands, swamps, creeks, fish ponds, fishing nets, raffia palms and juju shrines etc., were extensively polluted and damaged, and fishing and farming their main occupation halted.

10. The plaintiffs who use the aforesaid river and creeks for drinking, irrigation and other domestic purposes also had to spend colossal amount of money in buying water.

11. The plaintiffs also lost much revenue as they could no longer hire out the damaged communal fishing nets to fishermen from the community and neighbouring towns and villages.

12. The plaintiffs spend huge sums of money in appeasing and

resettling their PINAORU, KURUGBO and KOROMODE juju shrines which were defiled and desecrated by the aforesaid oil spillage.

13. The aforesaid oil spillage also occasioned enormous medical expenses to the plaintiffs as the defendant company failed to fly in medical and relief materials. B

14. The plaintiff community number about 50,000 out of which the active fishing population number 20,000.”

And in paragraph 17 of their Statement of Claim, the plaintiffs set out the particulars of special damages claimed thus: C

Particulars of Damage			
Special Damages			
(i) Pollution of 40 fish ponds	2,000.000		
(ii) Damage to communal fishing nets	4,000,000		
(iii) Damage to young raffia palms	1,000,000		D
(iv) Appeasement and resettlement of 3 juju shrines	<u>1,146.000</u>		
	<u>N8,146,000</u>		
General Damages			E
(i) Loss of fishing rights	30,000,000		
(ii) Loss of drinking water	1,000,000		
(iii) Medical Expenses incurred	1,000,000		
(iv) Damage and Hazards from the pollution of the environment	22,000,000		F
(v) General inconvenience and miscellaneous losses, damages and expenses	<u>2,000.000</u>		
	<u>56,000,000</u>		

Finally, in paragraph 31 of the aforesaid Statement of Claim, the G plaintiffs expressed their claims thus:

“Wherefore the plaintiffs have brought this action against the defendants claiming special and general damages in negligence as well as under the rule in Rylands v. Fletcher as follows: H

- (i) Special damages as hereabove pleaded: 8,146.000.00
- (ii) General damages as hereabove pleaded: 56.000.000.00
- Grand Total 64.146.000.00”

Appellant's first issue is a muted challenge to the jurisdiction of the trial court to hear and determine the case. At page 8 of the appellant's brief, counsel stated:

"The question whether a State High Court has jurisdiction to entertain cases for damages in respect of pollution caused by the escape of crude oil during mining operations is before this court in Appeal No. SC.75/97 (Abel Isaiah & Ors. v. The Shell Petroleum Development Company of Nigeria Limited) where this question was argued extensively in the court below so that this court has the benefit of contributions made by the court below. The judgment of this court in the said appeal will determine whether the appellant will pursue its contention herein that the High Court of Rivers State lacked jurisdiction to entertain this suit and as a corollary whether the judgment of the court below is not null and void for hearing an appeal from a null judgment."

It is apparent that the above statement in appellant's brief does not constitute an argument in this appeal. Ordinarily, the approach of this court would be to regard an issue in support of which no argument is canvassed as abandoned.

This court will not however shut its eyes to and treat lightly a complaint before it that the judgment which forms the basis of the appeal was given by a court without jurisdiction. This explains why I have taken it upon myself to examine and consider the judgment of this court in *Shell Petroleum Development Company Nigeria Ltd. v. Isaiah & 2 Ors.* (2001) 5 S.C. (Pt. II) 1; reported as (2001) 11 NWLR (Pt. 723) 168 (stated in appellant's brief). The central issue in the case was whether or not a State High Court has jurisdiction in civil causes or matters connected with or pertaining to mines and minerals including oilfields, oil mining, geological surveys and natural gas. The same question arises in relation to appellant's first issue. I approach the resolution of the issue along the same line as was done in the case.

The concurring judgment of Ogwuegbu JSC., fully adumbrated the sequence of successive legislations on the jurisdiction of the High Court in matters relating to mines, mining, oilfields, etc. I gratefully adopt the opinion of Ogwuegbu, JSC, at pages 182-184 of the report. He said:

“In order to determine whether the Rivers State High Court had jurisdiction to entertain the claim which the courts below answered in the affirmative, it will be necessary to consider the provisions of various enactments including the Constitution of the Federal Republic of Nigeria, 1999, dealing with jurisdiction of the Federal High Court. They are the Federal High Court Act, Cap. 134 Laws of the Federation of Nigeria, 1990, which is the Principal Act, Decree No. 60 of 1991, Decree No. 16 of 1992, Statutory Instrument No. 9 of 1993, Decree No. 107 of 1993 and the Constitution of the Federal Republic of Nigeria, 1999.

Section 7(1) of Federal High Court Act set out its jurisdiction in civil causes and matters relating to the revenue of the Government of the Federation in which the said government or any of its organs is suing or being sued on behalf of the Federal Government. The provisions of Section 7(1) of the Act do not include such matters as mines and minerals, oil fields, oil mining or natural gas.

The Federal High Court (Amendment) Decree 1991 otherwise called Decree No. 60 of 1991 was enacted by the Federal Military Government. It substituted a new Section 7 for Section 7 of the Principal Act. The new Section 7 reads:

“7 (1) The court shall to the exclusion of any other court have original jurisdiction to try civil causes and matters connected with or pertaining to-

(p) mines and minerals, including oilfields, oil mining, geological surveys and natural gas.

(3) Where jurisdiction is conferred upon the court under subsections (1) and (2) of this section, such jurisdiction shall be construed to include jurisdiction to hear and determine all issues relating to, arising from or ancillary to such subject matter.

(5) Notwithstanding anything to the contrary contained in any other enactment or rule of law including the Constitution of the Federal Republic of Nigeria, any power conferred on a State High Court or any other court of similar jurisdiction to hear and determine any civil matter or proceedings shall not extend to any matter in respect of which jurisdiction is conferred on the court under the provisions of this section.

(6) *Any decision made after the commencement of this section by any court of law in any purported exercise of any power under the Constitution of the Federal Republic of Nigeria or of any Federal or State law shall, as from the date of making of the decision, be null and void.....'*

B Decree No. 60 of 1991 which commenced on 30th December, 1991, was amended by the Federal High Court (Amendment) Decree, 1992, otherwise called Decree No. 16 of 1992. Section 1(1)(b) provides as follows:

C '(1)(b) by substituting for the existing Section 4 the following new section that is-

'4. This Decree may be cited as the Federal High Court (Amendment) Decree 1992 and shall come into force on such a date as the D President, Commander-in-Chief of the Armed Forces, after consultation with the Armed Forces Ruling Council, may by Order published in the Gazette specify.

2. Accordingly, any judgment or order of any court or tribunal E delivered on or before the commencement of this Decree and made pursuant to the Federal High Court (Amendment) Decree, 1991 shall by virtue of this Decree be made null and void and of no effect whatsoever.

The Constitution (Suspension And Modification) Decree, 1993 (Decree No. 107 of 1993) in its First Schedule substituted a new subsection F 1 of Section 230 to Section 230(1) of the 1979 Constitution thus:

230(1) Notwithstanding anything to the contrary contained in the Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of G any other court in civil causes and matters arising from-

(o) mines and minerals (including oil fields, mining, geological surveys and natural gas)'. H

This Decree came into force on 17th November, 1993, after the commencement date of Decree No. 16 of 1992.

The Federal High Court (Amendment) Decree, 1992 (Decree No. 16 of 1992) suspended the operation of Decree No. 60 of 1991 and

nullified all judgments and orders of any court or tribunal delivered before the commencement of Decree No. 16, 1992 pursuant to Decree No. 60 of 1991. Decree No. 16 1992 came into force on 1st January, 1992. It suspended the operation of the jurisdiction conferred on Federal High Court by Decree No. 60 of 1991 until such a date as the President, Commander-in-Chief after consultation with the Armed Forces Ruling Council may by Order published in the Gazette specify. B

The President exercised the powers conferred on him by Section 1(a) of Decree No. 16 of 1992 and specified the commencement date of Decree No. 60 of 1991 as 26th August, 1993. This was brought about by Statutory Instrument No. 9 of 1993. In that case the Federal High Court (Amendment) Decree, 1991, came into operation on 26th August, 1993. It will be recalled that the 1991 Amendment Act gave the Federal High Court exclusive jurisdiction in causes and matters connected with and D pertaining to

‘mines and minerals, including oil fields, oil mining, geological surveys and natural gas.’

We should also not lose sight of subsections (3), (5) and (6) of the 1991 Amendment Decree which have been set out above. By way of recapitulation, subsection (3) states that the jurisdiction conferred upon the court under Section 7(1) and (2) shall be construed to include jurisdiction to hear and determine all issues - E

‘relating to, arising from or ancillary to such subject matter.’ F

Subsection (5) of Section 7 robbed the State High Courts of any jurisdiction conferred on it by any other enactment or even the Constitution on any matter similar to the jurisdiction conferred on the Federal High Court in Section 7(1) and (2) of Decree No. 60 of 1991. Any purported exercise of jurisdiction by any other court under any law or the Constitution of the Federal Republic of Nigeria after 26th August, 1993, is rendered null and void (Section 7(6)). G

Section 251 (1)(n) of the Constitution of the Federal Republic of Nigeria, 1999, provides: H

‘251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be con-

ferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters -

(n) mines and minerals (including oil fields, oil mining, geological surveys and natural gas)’

It came into force on 29th May, 1999.

The judgment of the High Court in this case was delivered on 11th March, 1994 after the coming into force of the Decree No. 60 of 1991 and was caught by Section 7(6) of Decree No. 60 of 1991. In my view, the enactments which apply to this case are the Federal High Court (Amendment) Decree No. 60 of 1991 and Decree No. 107 of 1993. They came into operation on 26th August, 1993 and 17th November, 1993 respectively. The other enactments set out above are for a better appreciation of the legislative history of the jurisdiction of the Federal High Court.”

It is manifest that the State High Court lost its jurisdiction to adjudicate in oil and mining matters first on 30th December, 1991, under Decree No. 60 of 1991. However, under Decree No. 16 of 1999, the operation of the new Section 7 under Decree No. 60 of 1991 was suspended. But on 17/11/93, under Decree No. 107 of 1993, the jurisdiction to adjudicate on mines and minerals and allied matters was given exclusively to the Federal High Court. This remained the position before the 1999 Constitution came into force. Under Section 215(1) of the 1999 Constitution, the Federal High Court now possesses and exercises exclusive jurisdiction in “*mines and minerals (including oil fields, oil mining, geological surveys and natural gas.*”

In the instant case, the cause of action accrued to the plaintiffs on 16th January, 1987, and they commenced their suit on 6th June, 1988. Judgment was delivered on 27th February, 1991. On these various dates, a State High Court had jurisdiction to entertain matters and causes on mines and minerals and oilfields. It is settled that the law applicable to an action is the law existing when the cause of action arose. See *Uwaifo v. Attorney-General, Bendel State*

(1983) NCLR 1 and Adesina v. Kola (1993) 6 NWLR (Pt. 298) 182 at 185.

The result is that the Rivers State High Court had jurisdiction to entertain plaintiffs' suit and that jurisdiction was not in any way impaired between the commencement of the action on 6th June, 1988, and the delivery of judgment on 27th, February, 1991.

I now consider together the remaining issues two to five. The plaintiffs had in their statement of claim made claims for One Million Naira each as special damages for young raffia palms which were damaged and for loss of drinking water. On both heads of claim, the trial Judge concluded that the evidence called by the plaintiffs did not establish their entitlement to the award of One Million Naira each as claimed. The trial Judge nevertheless awarded N400,000.00 and N600,000.00 being general damages respectively for damage to raffia palms and for loss of drinking water. In making the awards, the trial Judge said he was relying on Oshinjirin v. Elias (1970) 1 All NLR 153 at 176 and Odulaja v. Haddad (1973) 11 S.C. (Reprint) 216; (1973) 1 All NLR 191. The trial Judge also awarded to plaintiffs N5m as general damages.

These awards were all affirmed by the court below. The appellant's counsel has argued in his brief that since the trial Judge expressed that the evidence called in proof of the claims for damage to raffia palms and loss of drinking water was insufficient, he could not properly award as general damages lesser amounts than claimed as special damages. It was also argued that the sum of N5m awarded as general damages was excessive and not in consonance with established guidelines on the award of general damages.

The court below in affirming the awards of N400,000.00 and N600,000.00 respectively as general damages for damage to raffia palms and loss of drinking water relied on Nzeribe v. Dave Engineering Co. Ltd. (1994) 8 NWLR (Pt.361) 124 and Agaba v. Otubusin (1961) 1 All NLR 153 at 156.

It is now well established that special damages claimed by a plaintiff must be strictly proved. See Dumez v. Ogbob (1972) 3 S.C. (Reprint) 188; (1972) 3 S.C. 196 and Agunwa v. Onukwe (1962) 1 All

In *Oshinjirin v. Elias* (1970) 1 All NLR 153 at 156, this court, per Coker, JSC., discussed the nature of proof required in cases where special damages is claimed thus:

B “undoubtedly, the rule that special damages must be strictly
proved applies to cases of tort. In effect the rule requires anyone asking
for special damages to prove strictly that he did suffer such damages as
he claimed. This however does not mean that the law requires a mini-
C mum measure of evidence to establish entitlement to special damages.
What is required is that the person claiming should establish his enti-
tlement to that type of damages by credible evidence of such character
as would suggest that he indeed is entitled to an award under that
D head, otherwise the general law of evidence as to proof by preponder-
ance or weight usual in civil cases operates.”

In *E. K. Odulaja v. Haddad* (1973) 11 S.C. (Reprint) 216; (1973)
11 S.C. (1973) 1 All NLR 191 at 196 similar views as in *Oshinjirin v. Elias*
(supra) were expressed by this court.

E It would appear, however, that these views have been relied
upon in this case by the trial court as a justification to award gen-
eral damages in lieu of special damages which the court held were
not strictly proved. I think that the trial Judge misunderstood the
F import of the guidance given in the two cases.

It must be stated that the statement of the law in *Oshinjirin*
v. Elias (supra) and other cases where similar views were expressed
was not meant to lower the standard of proof required to establish
a claim for special damages. What the statement connotes is that
G what is required is qualitative and credible evidence in order to
establish entitlement to special damages. In other words, it is a
general guide and arises from the fact that it is impossible to pre-
scribe the quantity and nature of evidence required in a given case
H to justify entitlement to special damages. In some cases, it may be
necessary to show documentary proof of loss sustained while in
others it may be unnecessary. The important thing is that the evi-
dence proffered must be qualitative and credible and such as lends

itself to quantification. Each case depends on its own facts and circumstance. There are cases where it will be impossible to pass the test required unless documentary proof is produced to show the loss sustained. In others, oral evidence which is credible may be sufficient. The character of the evidence called must measure up to the circumstance of the occasion or the expectation of a reasonable man.

At page 141 of the record, the learned trial Judge in evaluating the evidence called by the plaintiffs said:

‘The plaintiffs claimed damages of N1,000,000.00 for young raffia palms. P.W.1 testified that the pollution affected the plaintiffs’ economic trees including raffia palms, he did not put any value on them as units or collectively. P.W.2 put their collective value at N1,000,000.00. At page 5 of Exhibit ‘A’, the unit cost of one young raffia palm was put at N40.00 and a total of 25,000.00 stands were claimed for totalling N1,000,000.00. Exhibit ‘E’ did not show how P.W.8 arrived at the figure N25,000.00 for the raffia palms nor did he state how he put a value of N40.00 for a stand of each palm

The end result is that the plaintiffs did not establish by credible evidence the sum of N1,000,000.00 they have claimed as special damages for the said raffia palm.

Moreso Exhibit ‘E’ did not state whether those palms are yielding palm wines or not. It is thus not possible to precisely calculate the economic value placed on them. That does not mean that they do not have any economic value, what it means is that the plaintiffs could not put their case across properly.”

Those were the words of the learned trial Judge himself and anyone familiar with the principle of law that special damages must be strictly proved would have thought that what was to follow the above statement was a dismissal of plaintiffs’ claim for the raffia palms; but strangely however, the trial Judge in an obvious volte face expressed that he was placing reliance on *Oshinjirin v. Elias* (supra) and *Odulaja v. Haddad* (supra) to reach the conclusion to convert damages claimed as special to general. He said:

“Based therefore on the foregoing, I find and hold that the plaintiffs are entitled to be paid damages for loss of their young raffia palm trees as general damages. Even though they could not prove special damages as pleaded, the law is that once a person is entitled to a remedy provided by law, it does not matter that he has applied for it under a wrong law. See *Edewor v. Uwegba* (1987) 1 NWLR (Pt. 50) 313. See also *Henry Stephen’s Engineering Co. Ltd. v. Complete Home Enterprises Ltd.* (1987) 1 NWLR (Pt. 47) page 40.

The law as I pointed out earlier regards general damages as such damage the law will presume to have resulted in the defendant’s tortuous conduct and which the plaintiff need not plead expressly. For the reasons stated above I will award the sum of N400,000.00 as general damages.”

The learned trial Judge followed the same reasoning and approach in the award of N600,000.00 as general damages in lieu of N1,000,000.00 special damages claimed for loss of drinking water. The learned trial Judge said in relation to the award for loss of drinking water:

“With regard to the claim of N1,000,000.00 for loss of drinking water P.W.2 testified under cross-examination that the plaintiffs bought potable water from badges (sic) brought from Port Harcourt and elsewhere and sold water to them. P.W.2 emphasised that the plaintiffs did not obtain receipts for the water they bought.

I hold and find that the plaintiffs suffered general damages because their potable water was polluted. No community, especially like the plaintiffs who are a riverine community in the lower Niger Delta Area of Nigeria, can exist without water for their domestic and social needs, especially for drinking.

That being the case, they did not have to plead and prove that they suffered damages as a result of the pollution of their sources of drinkable water.

Based therefore on my reasoning when considering the claim for young raffia palms and the authorities cited therein, I will award damages for their loss of their sources of water for drinking and other domestic uses.”

In the awards made by the learned trial Judge, he minced no

words in stating that he was awarding general damages in lieu of a claim for special damages which was not made out as there was no credible evidence. Clearly, the trial Judge had not adverted his mind to the distinction between a claim for special and general damages and the differing standards of proof required in each case. The court below in the lead judgment, per Onalaja, JCA., considered several judicial authorities before coming to the conclusion not to disturb the awards. The court below in arriving on its decision relied on *Nzeribe v. Dave Eng. Co. Ltd.* (1994) 8 NWLR (Pt. 361) 124 where this court said:

“The law is well settled that in order to justify interfering with any decision of a trial Judge on the amount of damages awarded, it is necessary for the appellate court to be convinced either:

(a) that the Judge acted upon some wrong principles of law or
(b) that the amount awarded was so extremely high or very small as to make it in the judgment of the appellate court an entirely erroneous estimate of the damage to which the plaintiff is entitled. In the present case, the learned trial Judge neither acted upon any wrong principle of law nor is the amount awarded so high as to make it an entirely erroneous estimate of the damage to which the respondent is entitled. On the contrary what the learned trial did was to award much less than the respondents established by evidence. This he was entitled under the law to do. Thus there is no reason for the Supreme Court to interfere with the decision of the trial court on the award. (Zik’s Press Ltd. v. Ikoku) (1951) 13 WACA 188, Idahosa v. Oransanye (1959) SCNLR page 407, Bola v. Bankole (1986) 3 NWLR (Pt. 27) page 141, Onaga v. Micho & Co. (1961) 2 SCNLR page 101, Ijebu-Ode Local Government v. Adedeji Balogun & Co. Ltd. (1991) 1 NWLR (Pt. 166) page 136.”

The court below also relied on *Agaba v. Otubusin* (1961) 1 All NLR where views similar to those above in *Nzeribe v. Dave Engineering Co. Ltd.* (supra) had been expressed by Bairamian, F.J. It is however clear that the two cases relied upon by the court below were inappropriate on the facts in this case as they did not deal with the same situation as we have in the case. This would perhaps explain the

error made by the two courts below in believing that the court enjoys the same latitude of discretion in the award of special damages as it does in the award of general damages. Indeed, in *Nzeribe v. Dave Eng Co. Ltd.* (supra), Iguh, JSC., stressed that special damages must be strictly proved. At page 140 of the report, he said:

“In the first place, I entirely agree with learned appellant’s counsel that a claim in special damages must, to succeed, be proved strictly and that the court is not entitled to make its own estimate on such an issue. See Dumez (Nig.) Ltd. v. Ogboli (1972) 1 All NLR 241 and Jaber v. Basma 14 WACA 140. The rule that special damages, unlike general damages, must be strictly proved is well founded in law and has been repeatedly emphasized by this court. What this rule requires, in effect, is that anyone making a claim in special damages must prove strictly that he did suffer such special damages claimed. This, however, does not mean that the law requires an extra-ordinary measure of evidence or that the law lays down or requires a special category of evidence to establish entitlement to special damages. It does not mean either that an award in special damages cannot be made unless such damages are established beyond reasonable doubt as is the position in criminal cases. All that the rule requires is that the person making a claim in special damages should establish his entitlement to that type or class of damages by credible evidence of such character as would satisfy the court that he is indeed entitled to an award under that head, otherwise the general law of evidence as to proof on the balance of probabilities or by preponderance or weight of evidence which ordinarily applies in civil cases operates. See Oshinjinrin & Ors. v. Alhaji Elias & Ors. (1970) 1 All NLR 153 at 156. See too Dumez (Nig.) Ltd. v. Patrick Ogboli (1972) 3 S.C. (Reprint) 188; (1972) 1 All NLR (Pt. 1) 241.”

The distinction between special and general damages for the purpose of assessment of awards must always be borne in mind. In *Stroms Bruks Aktie Bolag v. Hutchinson* (1905) AC 515, Lord Macnaghten said:

“General damages are such as the law will presume to be direct, natural or probable consequence of the action complained of. ‘Special

damages' on the other hand are such as the law will not infer from the nature of the act. They do not flow in the ordinary course. They are exceptional in their character and therefore they must be claimed specially and proved strictly."

In *The Susquehanna* (1926) AC 655 at 661, Lord Dunedin observed on the distinction between general and special damages:

"If there be any special damage which is attributable to the wrongful act, that special damage must be averred and proved and if proved will be awarded. If the damage be general, then it must be averred but the qualification is a jury question."

And finally on the point is the statement of Martin B., in *Prehin v. Royal Bank of Liverpool* (1870) LR 5 Ex. 92:

"General damage are such as the jury may give when the Judge cannot point out any measure by which they are to be assessed except the opinion and judgment of a reasonable man. Special damages are given in respect of any consequences reasonably and probably arising from the breach complained of."

The trial court said so much in its judgment that the plaintiffs failed to prove their entitlement to the special damages claimed. It then stated that it was awarding plaintiffs general damages in place of special damages not proved. If the trial court had borne in mind the difference between those awards, it would not have slipped into that error. This court in *West African Shipping Agency v. Kalla* (1978) 3 S.C (Reprint) 15; (1978) 3 S.C. 21 at 32, per Eso, JSC., admonished against such practice thus:

"..... it is true that in so far as awards of general damages are concerned, a trial Judge must make his assessment of such general damages and as pointed out by this court in Dumez (Nig.) Ltd. v. Ogboli (1972) 3 S.C. (Reprint) 188; (1972) 1 All NLR 241 as per Lewis JSC., (Pt. 250) -

'On appeal to this court such general damages will only be altered if they were shown to be manifestly high or manifestly too low or awarded on a wrong principle.'

It does appear to us that the award of general damages in this case

was a way of compensating the plaintiff for the loss of ‘expected profits and freight on goods’ which the learned trial Judge said was proved but not claimed on the writ. This cannot be justified. It is wrong for the learned trial Judge to take into consideration for the award of general damages matters which he should have considered in his award of special damages. The plaintiff in this case has been adequately compensated under the head of special damages in respect of the claim put up under that head. He should not be given compensation for any item he never claimed.....”

I think that the same ought to be said here. **The two courts below were wrong to treat a claim which failed under special damages as a successful one under general damages. The awards of N400,000.00 for damages to raffia palms and N600,000.00 for loss of drinking water must be set aside.**

With respect to the award of Five Million Naira as general damages, a different consideration applies. This was an award made by the trial Judge sitting as a jury and Judge of the facts. The only circumstance justifying an interference with the award of general damages made by a court of trial by an appellate court is when the award is manifestly too high or manifestly too little so as to raise inference that it was an erroneous assessment of the damage suffered or where the trial Judge had made the award relying on wrong principle. In making the award, the trial Judge said at page 145 of the record:

“I have found in this case and as was admitted by the defendant that crude oil spilled or gushed or escaped from their Diebu Creek Flow Station Well 12T and flowed from the defendant’s acquired land on to the lands, waters, creeks and ponds of the plaintiffs and consequently the plaintiffs suffered general damages for the pollution environmental, land, river, pond, lakes et cetera.

The defendant’s tortuous conduct therefore entitles the law (sic) and this court to presume that the loss suffered by the plaintiffs from the pollution caused by the defendant will entitle them, the plaintiffs, to be compensated with general damages, which I hereby assess to be

N5,000,000.00.”

The court below while affirming the award said at pages 252-253 of the record:

“After a critical and cool calm view of the principle of law to guide an appellate court in its attitude to interfere with the award of general damages laid down in UBN v. Odusote Bookstore Ltd. With consideration of the pleading, evidence and the law as stated above as to what constitutes general damages there is no legal basis to disturb the award of general damages of the sum of N5,000,000.00 awarded in favour of the respondents against the appellant as amply justifiable in the circumstances of this case. The amount is not ridiculously too high or too low. As the appellant allowed crude oil, which is dangerous to escape into a neighbour’s land (that) amounted to negligence, as rightly found.....”

The evidence before the trial Judge which he accepted was that extensive damage was done to the crops, farms, farmlands, ponds, creeks of the plaintiffs. There was also evidence of widespread environmental pollution. It has not been shown to us in this court that the N5m general damages awarded was manifestly too high as to be classified an erroneous assessment of the damage done to the plaintiffs. This is an area in which the award made by a trial court is not readily interfered with by an appellate court. I must therefore decline the invitation by the appellant to interfere with the award made by the trial court which was affirmed by the court below.

The appellant has also raised an issue to the effect that the award of one million Naira to the plaintiffs as costs was excessive and unreasonable. The appellant however had not challenged the award of costs in its appeal from the High Court to the court below. The jurisdiction of this court enables it to take appeals only from the Court of Appeal and not from the High court. See Sunday Oduntan v. General Oil Limited (1995) 4 NWLR (Pt. 387) 8. The appellant’s issue 5 must therefore be struck out.

In the final conclusion, this appeal partially succeeds. The awards

of N400,000.00 as general damages for damage to raffia palms and N600,000.00 for loss of drinking water are set aside. I affirm the award of Five Million Naira (N5,000,000.00) as general damages and One Million Naira as costs in the trial court. I award to plaintiffs/respondents against the appellant costs assessed and fixed at N10,000.00.

UWAIS CJN

I have had the advantage of reading in draft the judgment read by my learned brother, Oguntade, JSC. I entirely agree with him.

Accordingly I too hereby allow the appeal in part. I adopt the order contained in the said judgment.

TOBI JSC

This is yet another case of oil spillage. On or about the 16th January 1987, crude oil from the appellant's oil bearing installations and pipelines spilled into and polluted the plaintiffs/respondents' environment, swamp lands, creeks, rivers and drinking water. The appellant offered the sum of N5,500 to the plaintiffs/respondents who rejected the amount. The plaintiffs/respondents sued claiming damages of N64,146,000.00 made up of special and general damages. The items of relief are nine in number.

The learned trial Judge rejected items (i), (ii), (iv), (v) and (vii) on pollution of forty fish ponds, damages to communal fishing nets, appeasement and resettlement of three jujus, loss of fishing rights and medical expenses, respectively on the ground that the plaintiffs/respondents did not establish by credible evidence that they suffered the said losses. The Court of Appeal upheld the awards of the learned trial Judge, some on grounds other than those relied on by the Judge.

Dissatisfied, the appellant has come to this court. It has raised the issue of jurisdiction, amongst other issues. Reliance is placed on the case of *Abel Isaiah & Ors. v. The Shell Petroleum Development Company of Nigeria Limited* (2001) 5 S.C. (Pt. II) 1; (2001) 11 NWLR (Pt. 723) 168.

My learned brother, Oguntade, JSC., has adequately dealt with the case and I need not go into it. The important point here in the determination of the jurisdiction of the State High Court is the applicable law when the cause of action arose. In view of the fact that the plaintiffs/respondents filed the action on 6th June, 1988, and judgment delivered on 27th February, 1991, it is my view that the High Court of Rivers State had jurisdiction to entertain the action. B

There is a world of difference between proof of special damages and proof of general damages and courts of law must not mix up the adjectival or procedural requirements of the two claims. While proof of special damages is strict, proof of general damages does not require the strictness in proof of special damages. C

The issue in this appeal is whether a court can award general damages in place of special damages. The answer is, “no”. Where, a plaintiff is unable to prove special damages, his case crumbles and a trial Judge cannot compensate him by way of general damages. This is because he has not proved the special damages he claimed. D

The learned trial Judge awarded N400,000.00 as general damages for raffia palms and N600,000.00 as general damages for loss of drinking water. The damages for raffia palms and purchase of potable water from barges are certainly claims in special damages and not general damages and so the learned trial Judge was wrong when he awarded general damages in respect of the items. In the circumstances, I set aside the awards of N400,000.00 and N600,000.00 for general damages to raffia palms and loss of drinking water, respectively. E F

Like my learned brother, I do not see anything wrong with the award of N5,000,000.00 general damages on this matter. It is trite law that an appellate court cannot substitute its own award of damages in the place of the damages awarded by the trial court merely because it is convenient to do so and in the exercise of appellate power. An appellate court can so substitute in the light of the evidence before the court and not by its whims and caprices. I also affirm the award of N1,000,000.00 costs by the learned trial Judge. I award N10,000.00 costs to the plaintiffs/respondents. G H

EDOZIE JSC

I had the benefit of reading in advance the draft of the leading judgment just read by my learned brother, Oguntade, JSC. I entirely agree with his reasoning and conclusions in partially allowing the appeal. I also partially allow the appeal, set aside the awards of N400,000.00 for damage of young raffia palms and N600,000.00 for loss of drinking water respectively and uphold the award of N5,000,000.00 general damages and N1,000,000.00 costs made by the trial court. I also endorse the order as to costs made in the leading judgment.

AKINTAN JSC

The present respondents, as plaintiffs, instituted this action against the appellant as defendant at Yenagoa High Court in Rivers State. Their claim was for special and general damages caused by spillage of crude oil arising from crude oil exploration by the defendant. A break down of their claim shows that they claimed specific sums as special damages for losses arising from pollution of 40 fishponds, damage to communal fishing nets, damage to young raffia palms, and claim for appeasement and resettlement of 3 juju shrines. They also claimed specific amounts as general damages which they categorized under different headings, viz, loss of fishing rights, loss of drinking water, medical expenses incurred, damages and hazards from pollution of the environment, and general inconveniences and miscellaneous losses, damages and expenses. Their total claim for both special and general damages was N64,146,000.00. At the conclusion of the trial, the learned trial judge entered judgment in favour of the plaintiff for a total sum of N6,000,000.00 (Six Million Naira) with N1,000,000.00 as costs. The breakdown of the awards is as follows: N5million as a general damages; N400,000.00 as general damages for loss and damage to raffia palms, and N600,000.00 as general damages for loss of drinking water.

The defendant was not satisfied with the judgment. Its appeal to the Court of Appeal was dismissed. The present appeal is against the

judgment of the Court of Appeal. Two main questions arose in the appeal in this court. They are: whether the trial court had jurisdiction to entertain the claim and whether the awards made by the trial court and affirmed by the lower court should be allowed to stand.

The question whether the trial High Court had jurisdiction to entertain the claim was premised on the amendment introduced by Decree No. 69 of 1999 by which the Federal High Court was conferred with the additional jurisdiction in respect of certain matters hitherto being adjudicated on by the State High Courts. Among such items so transferred from the State High Courts to the Federal High Courts are cases of claims arising from petroleum explorations as in the present case. But that Decree came into force on December 30th, 1991. The present cause of action, however, arose on 16th January, 1987, and the present action was instituted on 16th January 1988. Judgment of the trial High Court was delivered on 27th February, 1991. It is therefore clear from the history of the present case that the case was completed at the High Court before the Decree No. 60 of 1991 came into force. The provisions of the said Decree could therefore not be applicable to the present case which had been completed before the Decree was promulgated. The State High Court therefore had jurisdiction to entertain the claim.

The other question raised in the appeal is whether some of the awards of damages made by the trial court and affirmed by the Court of Appeal should be allowed to stand. Among such claims are the N400,000.00 awarded for special damages for loss and damage to raffia palms, fishing nets, and the N600,000.00 as the amount spent in appeasing the shrines and for purchasing drinking water. These are items of special damages which must be specially pleaded and proved strictly. The rule that special damages, unlike general damages, must be strictly proved is well founded in law. What this rule requires is that anyone making a claim in special damages must prove strictly that he did suffer such special damages claimed. All that the rule requires is that the person making a claim in special damages should establish his entitlement by credible evidence of such character as would satisfy the court that he is indeed entitled to an award under that head. What amounts to strict proof

depends on the facts and circumstances of each case. No general rule can therefore be laid down as to what amounts to strict proof. It follows, therefore, that an item of special damages needs not be proved with mathematical exactitude nor must a receipt be tendered in every case in order to satisfy a strict proof requirement.

In *A.C.B. v. Neka B.B.B. Manufacturing Co. Ltd.* (1996) 4 NWLR (Pt. 444) 564 at 583, I had cause to state the position of the law on what amounts to strict proof of special damages, inter alia, as follows:

"It is settled law that special damages must be strictly proved. Failure of the defendant to challenge the items of claim does not lessen the burden of strict proof on the plaintiff. See Okoronkwo & Ors. v. Chukweke & Anor. (1992) 1 NWLR (Pt. 216) 175, Agbaje v. James (1967) NMLR 49; and Imana v. Robinson (1979) 3-4 S.C. (Reprint) 1; (1979) 3-4 S.C. 1. The term "strict proof" needed in support of a claim for special damages means no more than adducing credible evidence in support of the claim. It does not mean an unusual proof or proof beyond reasonable doubt which is only applicable in criminal cases. See Odinako v. Zach Motison (1992) 5 NWLR (Pt. 239) 102; Oshinjinrin v. Elias (1970) 1 All NLR 153; and West African Shipping Agency Nig. Ltd. v. Kalla (1978) 3 S.C (Reprint) 15; (1978) 3 S.C 21. What amounts to credible evidence in support of a claim, however, definitely excludes evidence led to establish a speculative claim for loss of profit not supported by concrete gain or loss suffered in previous or similar transaction."

Applying the law as declared above to the present case, it is clear that the evidence led in support of the plaintiffs' claim for special damages in respect of loss of raffia palms is very scanty. The number of the raffia palms damaged was, for example, not disclosed and the value of each of the said raffia palms or the income which the plaintiffs expected from them based on similar income and made from other similar raffia palms was not given in evidence. It was therefore wrong of the learned trial Judge to have granted the award and described it as general damages. Similarly, the award of N600,000.00 as damages for loss of drinking water was also not supported with credible evidence. For example, no evidence was led regarding how much it cost the plaintiffs to secure

alternative drinking water supply as a result of the pollution of their sources of drinking water. The requirement of strict proof of special damages definitely excludes a situation where the court will be left in a situation where it would start to guess what the losses due to a plaintiff should be. In the result, those items of the awards were not strictly proved and the correct order the trial Judge ought to have made is one dismissing those items of claim. It is not open to a court to award general damages in place of special damages claimed but not strictly proved. Those items of claim were therefore wrongly awarded and the Court of Appeal was in error when it affirmed such awards. C

Finally, it is necessary to comment on the N1,000,000.00 costs awarded by the trial court. Although the appellant has appealed against that award in this court, it is however, discovered that there was no appeal on costs at the Court of Appeal and as the appellant failed to seek and obtain leave of this court to appeal on a fresh issue not canvassed at the lower court, the appeal filed against costs is therefore incompetent and cannot be entertained. D

I had a preview of the leading judgment prepared by my learned brother, Oguntade, JSC., which has just been delivered. I agree with his conclusion as set out therein. For the reasons I have given above and the fuller reasons given in the leading judgment, which I also adopt, I hold that the appeal partially succeeds in that the awards of N400,000.00 and N600,000.00 respectively made as I have set out above, are set aside while I affirm the award for N5,000,000.00 general damages. I abide by the order on costs made in the leading judgment. F

G

H