

SUPREME COURT OF NIGERIA
1ST JULY, 2005 SC. 10/2001
**CORAM:- S. M. A. BELGORE, A. I. KATSINA-ALU, D. MUSDA-
PHER, G. A. OGUNTADE, S. A. AKINTAN, JJSC**

DANIEL HOLDINGS LTD. APPELLANT

AND

UNITED BANK FOR AFRICA PLC. RESPONDENT

APPEALS - Concurrent findings of fact - Supreme Court will not interfere - Unless they are not justified by evidence - And have occasioned a miscarriage of justice (H1)

DAMAGES - Banking - Special damages - Pleadings - Claim based on shortfall in tellers - Must be specifically pleaded - And strictly proved - By plaintiff calling evidence to prove each shortfall (H2)

PRACTICE & PROCEDURE - Pleadings - Claims - Will be deemed abandoned - Where claim made on the writ of summons - Is not repeated in the statement of claim (H3)

BANKING - Interest - Evidence - Customer/Banker relationship - Where plaintiff paid money into its account - Which the bank failed to credit - It must have lost interest on its money - But there was no evidence on this point (H4)

PRACTICE & PROCEDURE - Rules of court - Statute of general application - Judgment debt - Interest thereon - Where Lagos High Court Rules was not yet applicable - Plaintiff should be awarded interest - Under s. 17 of the English Judgments Act of 1838 (H5)

FACTS

Before the High Court of Lagos State the plaintiff/appellant claimed against the defendant/respondent a total sum of N93,846.50 being monies had and received by the defendant for plaintiff's use. The plaintiff, a trading company lodged in its account with the defendant, a banker the proceeds from its business. The plaintiff filled into a bank teller the amount it intended to pay in. It was recorded on both bank copy and counterfoil. The defendant's counter clerks in acknowledgment of the fact that the amount recorded on the original and counter foil of the teller was paid in affixed the banks stamp impression on both copies of the teller.

The plaintiff's case however was that the amount credited into his account when contrasted with the payment shown on the counter foils of the tellers showed a short fall of N93,846.50. The defendant denied this in his statement of defence. The trial court from evidence produced by the parties held that the stamp impression on the counter foil of the teller were the defendant's and therefore granted plaintiff's claim and awarded interest. The defendant dissatisfied with the judgment went further to the Court of Appeal where the appeal was allowed partially. It set aside the order awarding interest and reduced the principal sum from N93,846.50 to N68,541.50. The plaintiff dissatisfied with the decision of the appeal court has now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether or not the court below was right to have reduced the amount awarded from N93,846.50k to N68,541.50k; and

(2) Whether the court below was correct in failing to award any interest in favour of the plaintiff/appellant.”

(1) Whether the cross-appellant/respondent has not shown by credible evidence on record (particularly) in view of the alterations and/or falsifications evident on the counter-foils tendered as Exhibits 1-7 vis-a-vis the original copies tendered as Exhibits 26-29 that a different sum of money was actually received from plaintiff/appellant as against the sums purportedly acknowledged on the counter-foils.”

HELD (Unanimously allowing the appeal in part per **OGUNTADE JSC**)
Concurrent findings of fact

1. I need to say that the two courts below were agreed that there was a shortfall in the amount credited into the plaintiff's account and the amount actually paid by the plaintiff. The inevitable inference to be drawn from this is that both courts below found that the defendant was negligent in handling the plaintiff's account and that the negligence caused to the plaintiff a loss of money. In other words, there was a concurrent finding of fact by both courts below on the defendant's negligence. The defendant/cross-appellant by its cross-appeal wishes us in this court to disturb or ignore the concurrent finding of fact. This court does not interfere with the concurrent findings of fact made by the two courts below unless they are not justified by the evidence and have occasioned a miscarriage of justice. I am not in this court able to disturb the conclusion that the defendant/respondent's negligence caused a loss to the plaintiff/appellant. This disposes of the cross-appeal. (p. 2154 D)

Banking - Special damages - Claim based on shortfall in tellers

2. It is apparent from the above passage of the judgment of the trial court that in order to quicken the trial, an abridged method of proof was devised and resorted to in the effort to show that there had been a shortfall of N93,846.50 in the amount credited to the plaintiff. It seems to me that this approach, which differs little from an informed guesswork, is inappropriate to establish a claim for special damages. It is settled law that a claim for special damages must be specifically pleaded and strictly proved. Strict proof required to establish a claim for special damages translates in the context of this case into a necessity for the plaintiff to call evidence to show the shortfall on each of the 135 counter-foils of tellers as pleaded. The plaintiff as it should do specifically pleaded all the 135 tellers but failed to prove each strictly as required by law. The conclusion of the court below that only the sum of N68,541.50 which the evidence properly established could be awarded cannot be disturbed by this court. It was the right conclusion in the circumstances. (pp. 2155 C & 2156 H)

When claims will be deemed abandoned

3. The plaintiff by its Writ of Summons had claimed “interest on the said sum at the rate of 21% from 1st January, 1991, to the date of judgment and thereafter at the rate of 7% until the whole amount is liquidated in its Statement of Claim, the plaintiff claimed interest “at the prevailing market rate.” Thus, the plaintiff varied or altered in the Statement of Claim, the claim it had made on the Writ of Summons. The law is that a Statement of Claim supersedes a Writ of Summons. A claim made on the Writ of Summons which is not repeated in the Statement of Claim, or which is varied in the Statement of Claim will be deemed abandoned or varied. The result is that the plaintiff, not having repeated on its Statement of Claim the claims on interest earlier stated in the writ was to be deemed as abandoned.

The plaintiff, however, still claimed interest at the prevailing rate. But no evidence was led as to what the prevailing rate was at the relevant time. The court below felt unable to award an interest in view of the failure of the plaintiff to call evidence on the prevailing rate. In *Ekwunife v. Wayne (N/A) Ltd.* (1989) 12 S.C. 92; (1989) 5 NWLR (Pt. 122) 422 at 445, this court, per Nnaemeka-Agu, JSC, observed concerning the award of interest:

“Interest may be claimed as a right where it is contemplated by the agreement between the parties or under a mercantile custom, or under a principle of equity such as breach of a fiduciary relationship. Where interest is being claimed as a matter of right, the proper practice is to claim entitlement to it on the writ and lead facts which show such an entitlement in the Statement of Claim. In Nigeria, as the law is that a Statement of Claim supersedes the writ, if even it was not claimed on the writ but facts are pleaded in the Statement of Claim and evidence given which show entitlement thereto, the court may if satisfied award interest.” (p. 2157 E)

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Interest - Evidence - Customer/Banker relationship

4. The plaintiff’s case arose out of a customer-banker relationship. The money which the plaintiff paid to its account was not credited thereto. The plaintiff must have lost interest on his money. But no evidence was called on the point. (p. 2158 E)

B

Statute of general application - Judgment debt

5. Now, under Order 38 Rule 7 of the High Court Law of Lagos State (Civil Procedure) Rules, Cap. 61, 1994, Laws of Lagos, the plaintiff would have been entitled to interest at a rate not exceeding 7½, per centum on the judgment debt. But the judgment of the trial court in Lagos was given on 17-12-93 during which time Cap. 61 was not in force. The relevant court Rules as at 17-12-93 did not make provision for interest but Section 12 of the High Court Law permits recourse to the Practice and Procedure of the High Court in England where no provision is made in the local Rules.

It seems to me, however, that the plaintiff should have been awarded interest under Section 17 of the Judgments Act of 1838 in England being a pre-1st January, 1900, Statute of General Application, which provides:

“17. Every judgment debt shall carry interest at the rate of four pounds per centum per annum from the time of entering up the judgment until the same shall be satisfied and such interest may be levied under a writ of execution on such judgment debt.” (p. 2158 F)

F

NOTABLE POINTS OF INTEREST**BELGORE JSC*****1. Writ of summons - Can be modified in the Statement of Claim***

The Writ of Summons opens a case in court, it shows in summary what a plaintiff intends to claim even though in some cases not all he wants to claim. The real document for contention between the parties is the pleadings. Once a Statement of Claim is filed, the Writ of Summons is no more of relevance. What is not in the Writ of Summons can be inserted into Statement of Claim; what appears in Writ of Summons and is omitted in Statement of Claim is deemed to be abandoned. From the filing of Writ of Summons to the Statement of Claim a party may change his mind on what

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he originally wanted to claim and insert modifications in the Statement of Claim. To the defendant, Statement of Claim setting out in numbered paragraphs the facts on which plaintiff relies for his claim is the case he must react to by Statement of Defence. Thus once the Statement of Claim is filed, the Writ of Summons goes into oblivion.
(p. 2159 E)

2. Special damages - Every item must have clear evidence

Pleadings indicate facts parties rely upon for court to decide their case. There are matters of general pleadings and specific pleadings. Where there is specific pleading of special damages, it must be proved by evidence clearly showing how the damages arise. Parties and court should not presume court will be their calculator or instant computer. Every item of special damage in Statement of Claim must have clear evidence to support it. To dump over one hundred and thirty documents before the court and lead evidence to some and not to others leaves the court no option than to consider those supported by evidence. Therefore, entries which had not been the subject of oral evidence or examined in court cannot be real evidence. The defect cannot be cured by the examination of the documents by the learned Judge outside the court when considering his judgment because those documents have not been tried and tested by examination and cross-examination to ascertain their authenticity. Thus, only those tellers tendered and testified upon were lawfully before the court and could be considered for their authenticity; the others were merely there for conjecture and nothing more.

The counsel and the learned Judge at trial court by abridging the evidence have done injustice to our adjudicative procedure; they have no right to do so. (p. 2160 A)

REPRESENTATION

Mr. Oluwakemi Pinherio, (with him, A. Kamoru), for the Appellant.
Mr. Segun Demuren, for the Respondent/Cross-Appellant.

CASES REFERRED TO

Osuji v. Isiocha (1989) 6 S.C. (Pt. II) 158; (1989) 3 NWLR (Pt. 111) 623
Kosile v. Folarin (1989) 4 S.C. (Pt. I) 15; (1989) 3 NWLR (Pt. 107)
A-G Oyo State v. Fairlakes Holding Ltd. (1988) 12 S.C. (Pt. I) 1; (No. 2) (1989) 5 NWLR (Pt. 121) 255
Overseas Construction Ltd. v. Greek Ent Ltd. (1985) 3 NWLR (Pt. 13) 407
Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt. 68) 128
Ekwunife v. Wayne (N/A) Ltd. (1989) 12 S.C. 92; (1989) 5 NWLR (Pt. 122) 422 at 445
Udechukwu v. Okwuka (1956) 1 FSC 70, 71
Ekpan v. Uyo (1986) 3 NWLR (Pt. 26) 6
Overseas Construction Ltd. v. Greek Enterprises Ltd. (1985) 3 NWLR (Pt. 13) 407
Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt. 68) 128.

STATUTES & RULES REFERRED TO

High Court Law of Lagos State s. 12
Judgments Act of England, 1838 s. 17
High Court Law of Lagos State (Civil Procedure) Rules Cap. 61, 1994 O. 38 r. 7

LEAD JUDGMENT BY OGUNTADE JSC

The appellant, as the plaintiff, at the High Court of Lagos State claimed against the respondent, as the defendant, for the following:

“..... total sum of N93,846.50 (Ninety Three Thousand Eight Hundred and Forty Six Naira, Fifty Kobo) being the monies had and received by the defendant for the plaintiff's use ”

The parties filed and exchanged pleadings after which the suit was tried by Hunponu-Wusu, J. Each party called one witness. On 17-12-93, the trial Judge, in a reserved judgment, granted plaintiff's claim for N93,846.50. The trial Judge would also appear to have awarded interest, for he concluded the judgment in these words:

“The plaintiff also claims interest on the said N93,846.50 at 21% per annum from 1st January, 1991, until today and at 7% per annum from

today until the whole amount is liquidated. Cost is assessed at N2,000.00”.

Was that an award of interest or not? The language used is certainly ambivalent. However, given the issues raised before the Court of Appeal and this court, the parties appeared to have accepted that the trial court awarded interest in the passage reproduced above. The defendant was dissatisfied with the judgment. It brought an appeal before the Lagos Division of the Court of Appeal (hereinafter referred to as ‘the court below’). The court below, in its judgment, partially allowed the appeal. It set aside the order awarding interest and reduced the principal sum from N93,846.50 to N68,541.50.

The plaintiff was dissatisfied with the judgment of the court below. It has brought this appeal against it. In the appellant’s brief filed, the issues for determination in the appeal were identified as these:

“(1) *Whether or not the court below was right to have reduced the amount awarded from N93,846.50k to N68,541.50k; and*
(2) *Whether the court below was correct in failing to award any interest in favour of the plaintiff/appellant.*”

The defendant before the trial court was also dissatisfied with the judgment of the court below. It brought a cross-appeal; and the solitary issue formulated from the grounds of cross-appeal reads:

(1) Whether the cross-appellant/respondent has not shown by credible evidence on record (particularly) in view of the alterations and/or falsifications evident on the counter-foils tendered as Exhibits 1-7 vis-a-vis the original copies tendered as Exhibits 26-29 that a different sum of money was actually received from plaintiff/appellant as against the sums purportedly acknowledged on the counter-foils.”

The issues raised from the appeal and the cross-appeal could be conveniently considered together. I intend to so deal with them. But I should first briefly discuss the facts leading to the dispute out of which this appeal arose.

The plaintiff was a trading company. On a regular basis, it caused to be lodged in its accounts with the defendant, a banker, the proceeds from its business. The plaintiff had its account at the defendant’s Lagos East branch. 12 Broad Street, Lagos. The plaintiff filled into a bank teller,

consisting of the bank copy and the customer’s copy (hereinafter referred to as the counter-foil), the amount it intended to pay in. This was recorded on both the bank copy (hereinafter referred to as the original) and the counter-foil. The money was taken to the bank by the employees of the plaintiff. The defendant’s counter-clerks or officials, in acknowledgment of the fact that the amount recorded on the original and counter-foil of the teller was paid in affixed the bank’s stamp impression on both the original and counterfoil. The counter-clerk receiving the money then appended his signature or initials to both the original and counter-foil.

It was plaintiff’s case that between 1/2/87 and 1/7/89, the amount edited into its account, when contrasted with the payments shown on the counter-foils of the tellers which were used to make the payments, showed a shortfall of N93,846.50. In simple language, it was the contention of the plaintiff that the defendant credited his account with N93,846.50 less money than was actually paid in by the plaintiff going by the relevant counter-foils of tellers which the plaintiff had.

The defendant in its Statement of Defence denied the averments in plaintiff’s Statement of Claim. It contended that the impression-stamp used on the counter-foil tellers was not its own; and that its staff did not initial any false entries contained in the counter-foil tellers. The defendant also denied that there was any shortfall between the amount actually recorded in the original tellers and the amount credited into plaintiff’s account.

Guided by the parties pleading, one might have thought this would be simple issue to resolve. The plaintiff needed to produce the counter-foils of the tellers by which the payments were made at the relevant period, with a view to showing that the amounts recorded on them were on each occasion more than the amounts actually credited into its account. In view of the denial by the defendant that its employees stamped and initialled the tellers, the plaintiff would need to establish the authenticity of the counter-foils by showing that they were indeed impression-stamped and initialled by the defendant’s staff/employees.

The trial court, from the evidence produced by the parties, came to the conclusion that the stamp impressions on the counter-foils of the tellers with which the plaintiff made the payments were the defendant’s

and that the defendant's employees initialled the counter-foils. The court below also agreed with this finding. The point of departure between the two courts below was the procedure adopted in the proof of the shortfalls involved. At the trial court, the counter-foils of tellers upon which the plaintiff relied to show that there was a shortfall of N93,846.50 were 135 in number. Instead of showing, one after the other, the shortfall on each of the tellers, the parties, with the sanction of the trial court, agreed that the proof of the shortfall be done by a random sampling of twenties. This entailed tendering together at a time twenty counter-foils and if there was a shortfall successively on the batches of twenty, then plaintiff's loss of N93,846.50 was assumed to have been established.

I need to say that the two courts below were agreed that there was a shortfall in the amount credited into the plaintiff's account and the amount actually paid by the plaintiff. The inevitable inference to be drawn from this is that both courts below found that the defendant was negligent in handling the plaintiff's account and that the negligence caused to the plaintiff a loss of money. In other words, there was a concurrent finding of fact by both courts below on the defendant's negligence. The defendant/cross-appellant by its cross-appeal wishes us in this court to disturb or ignore the concurrent finding of fact. This court does not interfere with the concurrent findings of fact made by the two courts below unless they are not justified by the evidence and have occasioned a miscarriage of justice. See Lokoyi v. Olojo (1983) NSCC (Vol. 14) 386; Ojomu v. Ajao (1983) 9 S.C 22 at 53; Akeredolu v. Akinremi (1989) 5 S.C. 102; (1989) 3 NWLR (Pt. 108) 164 and Osho & Anor. v. Foreign Finance Corporation and Anor. (1991) 4 NWLR (Pt. 184) 157 at 196. I am not in this court able to disturb the conclusion that the defendant/respondent's negligence caused a loss to the plaintiff/appellant. This disposes of the cross-appeal.

As to the procedure adopted by the trial court in the proof of the amount lost by the plaintiff, the trial court in its judgment at pp. 78-79 had said:

"It was also contended by the defendant's counsel that the particulars as itemized in paragraph 7 of the Statement of Claim were in the nature of special damages and each item must be proved specifically.

This view of the defendant's counsel I am unable to agree to because it was agreed to by both counsel and with the leave of court that only some items taken at intervals of 20 should be proved. The plaintiffs have therefore gone ahead to prove each of the 8 items. It would take a very long trial period to require the plaintiff to prove each of the 135 items as contained in the Statement of Claim."

It is apparent from the above passage of the judgment of the trial court that in order to quicken the trial, an abridged method of proof was devised and resorted to in the effort to show that there had been a shortfall of N93,846.50 in the amount credited to the plaintiff. It seems to me that this approach, which differs little from an informed guesswork, is inappropriate to establish a claim for special damages. It is settled law that a claim for special damages must be specifically pleaded and strictly proved. See Osuji v. Isiocha (1989) 6 S.C. (Pt. II) D 158; (1989) 3 NWLR (Pt. 111) 623; Kosile v. Folarin (1989) 4 S.C. (Pt. I) 15; (1989) 3 NWLR (Pt. 107) and A-G Oyo State v. Fairlakes Holding Ltd. (1988) 12 S.C. (Pt. I) 1; (No. 2) (1989) 5 NWLR (Pt. 121) 255.

The court below deprecated the procedure adopted by the trial court in the proof of special damages when it said at pp. 152-153 of the record in its judgment:

"It is my view that the nature of proof in a given case must be dictated by the peculiar circumstances of the available evidence. In this case the plaintiff/respondent pleaded 135 items of special damages stating clearly the various specific amounts involved in the shortfalls. He proceeded further to give evidence in support of the various amounts by tendering 7 payment tellers, i.e.. Exhibits 1-7 showing payments made into appellant Bank. These payments were made into plaintiff's account No. 20112563. The shortfalls were compiled from the statements of account produced by the appellant Bank for the relevant periods of shortages - See Exhibits 18-24. Normally the statements of account should reflect the amount entered into the tellers but this has not happened in this case hence the accumulation of shortfalls as per paragraph 7 of the Statement of Claim.

The learned trial Judge knew there was sufficient credible evidence to cover most of the items of special damages but he circumvented the laid down procedure and adopted a short circuit system which portrays a line

of least resistance ending in a quick questionable summary.

Learned trial Judge should have gone the whole hog with the correct laid down procedure and arrive at a just conclusion. Failure to do this should however not vitiate the proceedings in this case in view of the overwhelming credible evidence in favour of the respondent. Moreover there is no miscarriage of justice erupting from this wrong procedure.

Upon a careful perusal of each item of shortfall supported by the amounts portrayed in the statements of account issued by the appellant Bank the following items in paragraph 7 of the Statement of Claim have been strictly proved as required by the Law. I quote ITEMS 1-9, 11-14, 15-24, 60-72, 75-102, 103-127 and 131-135. When the amounts involved in these items are totalled up they amounted to a grand total of N68,541.50. There is no evidence of 'payments into the Bank' to support 11 other items hence the judgment of the lower court will be varied to read -

'Judgment is given in favour of the plaintiff for the sum of N68,541.50 being the monies had and received by the defendants to the plaintiff's use as per particulars mentioned in the following items under paragraph 7 of the Statement of Claim items 1-9, 11-24, 60-72, 75-127, 131-135. This sum is based on what is proved in the statement of claim which of course supersedes the Writ of Summons....'

I have no doubt that the court below was correct in its views in the above passage. Strict proof required to establish a claim for special damages translates in the context of this case into a necessity for the plaintiff to call evidence to show the shortfall on each of the 135 counter-foils of tellers as pleaded. The plaintiff as it should do specifically pleaded all the 135 tellers but failed to prove each strictly as required by law. The conclusion of the court below that only the sum of N68,541.50 which the evidence properly established could be awarded cannot be disturbed by this court. It was the right conclusion in the circumstances.

The court below in setting aside the award of interest made by the trial court said at page 154 of the record:

When one looks carefully at paragraph 11 of the plaintiff/respondent's Statement of Claim, it is very clear that the plaintiff never asked

for interest at 21% per annum from 1st January, 1991, until today and at 7% per annum from today until the whole amount is liquidated. What they wanted as per Statement of Claim, which has superseded the Writ of Summons, was interest at the prevailing market rate. Rather than grant the plaintiff what they asked for, the learned trial Judge decided to grant the interest as claimed on the Writ of Summons. This is very wrong. There is even no evidence on record as to what the prevailing market rate is, hence this court cannot make any award which the lower court omitted to make in its judgment."

The plaintiff by its Writ of Summons had claimed "interest on the said sum at the rate of 21% from 1st January, 1991, to the date of judgment and thereafter at the rate of 7% until the whole amount is liquidated in its Statement of Claim, the plaintiff claimed interest "at the prevailing market rate." Thus, the plaintiff varied or altered in the Statement of Claim, the claim it had made on the Writ of Summons. The law is that a Statement of Claim supersedes a Writ of Summons. A claim made on the Writ of Summons which is not repeated in the Statement of Claim, or which is varied in the Statement of Claim will be deemed abandoned or varied. See Overseas Construction Ltd. v. Greek Ent Ltd. (1985) 3 NWLR (Pt. 13) 407 and Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt. 68) 128. The result is that the plaintiff, not having repeated on its Statement of Claim the claims on interest earlier stated in the writ was to be deemed as abandoned.

The plaintiff, however, still claimed interest at the prevailing rate. But no evidence was led as to what the prevailing rate was at the relevant time. The court below felt unable to award an interest in view of the failure of the plaintiff to call evidence on the prevailing rate. In Ekwunife v. Wayne (N/A) Ltd. (1989) 12 S.C. 92; (1989) 5 NWLR (Pt. 122) 422 at 445, this court, per Nnaemeka-Agu, JSC, observed concerning the award of interest:

"Interest may be claimed as a right where it is contemplated by the agreement between the parties or under a mercantile custom, or under a principle of equity such as breach of a fiduciary relationship. See London, Chatham & Dover Railway v. S. E. Railway (1893) AC 429 at p. 434. Where interest is being claimed as a matter of right, the proper

practice is to claim entitlement to it on the writ and lead facts which show such an entitlement in the Statement of Claim. In Nigeria, as the law is that a Statement of Claim supersedes the writ, (for which see Udechukwu v. Okwuka (1956) 1 FSC 70 at p.71; (1956) SCNLR 189; Ekpan & Anor. v. Uyo (1986) 3 NWLR (Pt. 26) 63, if even it was not claimed on the writ but facts are pleaded in the Statement of Claim and evidence given which show entitlement thereto, the court may if satisfied award interest."

The plaintiff's case arose out of a customer-banker relationship. The money which the plaintiff paid to its account was not credited thereto. The plaintiff must have lost interest on his money. But no evidence was called on the point. Now, under Order 38 Rule 7 of the High Court Law of Lagos State (Civil Procedure) Rules, Cap. 61, 1994, Laws of Lagos, the plaintiff would have been entitled to interest at a rate not exceeding 7 1/2, per centum on the judgment debt. But the judgment of the trial court in Lagos was given on 17-12-93 during which time Cap. 61 was not in force. The relevant court Rules as at 17-12-93 did not make provision for interest but Section 12 of the High Court Law permits recourse to the Practice and Procedure of the High Court in England where no provision is made in the local Rules.

It seems to me, however, that the plaintiff should have been awarded interest under Section 17 of the Judgments Act of 1838 in England being a pre-1st January, 1900, Statute of General Application, which provides:

"17. Every judgment debt shall carry interest at the rate of four pounds per centum per annum from the time of entering up the judgment until the same shall be satisfied and such interest may be levied under a writ of execution on such judgment debt."

See Ekwunife v. Wayne (W/A) Ltd. (supra)

In the final conclusion, this appeal partially succeeds. I affirm the order of the court below granting the plaintiff N68,541.50 instead of the N93,846.50 earlier awarded by the trial court. The said sum of N68,541.50 is, however, to attract interest at the rate of four per centum per annum with effect from 17-12-93 until the judgment debt is fully paid. The cross-appeal is dismissed. The appellant is entitled to costs fixed at N10,000.00.

BELGORE JSC

I agree with my learned brother, Oguntade, JSC., that this appeal succeeds in part. The Writ of Summons opens a case in court, it shows in summary what a plaintiff intends to claim even though in some cases not all he wants to claim. The real document for contention between the parties is the pleadings. Once a Statement of Claim is filed, the Writ of Summons is no more of relevance. What is not in the Writ of Summons can be inserted into Statement of Claim; what appears in Writ of Summons and is omitted in Statement of Claim is deemed to be abandoned. From the filing of Writ of Summons to the Statement of Claim a party may change his mind on what he originally wanted to claim and insert modifications in the Statement of Claim. To the defendant, Statement of Claim setting out in numbered paragraphs the facts on which plaintiff relies for his claim is the case he must react to by Statement of Defence. Thus once the Statement of Claim is filed, the Writ of Summons goes into oblivion. (Udechukwu v. Okwuka (1956) 1 FSC 70, 71; Ekpan v. Uyo (1986) 3 NWLR (Pt. 26) 63; Overseas Construction Ltd. v. Greek Enterprises Ltd. (1985) 3 NWLR (Pt. 13) 407; Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt. 68) 128.

Pleadings indicate facts parties rely upon for court to decide their case. There are matters of general pleadings and specific pleadings. Where there is specific pleading of special damages, it must be proved by evidence clearly showing how the damages arise. Parties and court should not presume court will be their calculator or instant computer. Every item of special damage in Statement of Claim must have clear evidence to support it. To dump over one hundred and thirty documents before the court and lead evidence to some and not to others leaves the court no option than to consider those supported by evidence. Therefore, entries which had not been the subject of oral evidence or examined in court cannot be real evidence. The defect cannot be cured by the examination of the documents by the learned Judge outside the court when considering his judgment

because those documents have not been tried and tested by examination and cross-examination to ascertain their authenticity. Thus, only those tellers tendered and testified upon were lawfully before the court and could be considered for their authenticity; the others were merely there for conjecture and nothing more.

The counsel and the learned Judge at trial court by abridging the evidence have done injustice to our adjudicative procedure; they have no right to do so.

It is therefore, one of those instances whereby appellate court can disturb concurrent findings of fact if they are perverse and lead to miscarriage of justice. Claim for special damages must be strictly proved (Attorney-General, Oyo State v. Fairlakes Holdings Ltd. (1988) 12 S.C. (Pt. I) 1; (No. 2) (1988) 5 NWLR (Pt. 121) 255; Osuji v. Isiocha (1989) 6 S.C. (Pt. II) 158; (1989) 3 NWLR (Pt. 111) 623; Kosile v. Folarin (1989) 4 S.C. (Pt. I) 15; (1989) 3 NWLR (Pt. 107).

As for interest on judgment debt it is either based on what the parties agreed to in their contract or the current bank rate. Bank rate issued by Central Bank of Nigeria in occasional circulars is not a matter to take judicial notice of under the Evidence Act; there must be some evidence of it. But luckily, in the judgment of my learned brother, he adverted to Judgments Act, 1838, (an English Statute of General Application up to 1900) whereby he quoted Section 11 of that statute of general application as appropriate to the matter. I agree entirely with the lead judgment on this. For the foregoing and the reasons advanced by my learned brother, Oguntade, JSC., in the lead judgment, this appeal partially succeeds and I order the same N10,000.00 as costs in this appeal to the appellant.

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KATSINA-ALU JSC

My Lords, I have had the advantage of reading in draft the judgment delivered by my learned brother, Oguntade, JSC. I entirely agree with it, and for the reasons stated in it. I too would affirm the order of the court below granting the plaintiff N68,541.50 instead of the N93,846.50 earlier awarded by the trial court. The said sum of N68,541.50 is however to attract interest at the rate of 4% per annum with effect from 17th

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December, 1993, until the judgment debt is fully paid. I also abide by the order for costs.

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MUSDAPHER JSC

I have had the honour to read in advance the judgment of my Lord, Oguntade, JSC., just delivered, with which I entirely agree. In the aforesaid judgment, his Lordship has meticulously, lucidly and comprehensively discussed all the issues of facts submitted for the determination of the appeal and the cross-appeal. I adopt the reasonings as mine and I accordingly dismiss the cross-appeal and partially allow the appeal. I affirm judgment in favour of the appellant in the sum of N68,541.50 and I also order interest at rate of 4% p.a with effect from 17/12/93 until its total liquidation and I abide by the order for costs proposed in the said lead judgment.

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AKINTAN JSC

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I had the privilege of reading before now the leading judgment written by my learned brother, Oguntade, JSC., which has just been delivered. All the issues raised in the appeal and the cross-appeal are well set out and fully discussed. I therefore need not repeat them. I entirely agree with his reasoning and conclusion that the court below was right in reducing the award made by the trial court. I also agree that the appellant is entitled to interest on the reduced award at 4% per annum with effect from 17-12-93 and that there is no merit in the cross-appeal. I hereby dismiss the cross-appeal. I abide by the order on costs made in the leading judgment.

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