

SUPREME COURT OF NIGERIA

11TH APRIL, 2008 SC. 316/2002

CORAM:- A. I. KATSINA-ALU, S. A. AKINTAN, M. MO-HAMMED, W. S. N. ONNOGHEN, P. O. ADEREMI, JJSC

PROF. AJIBAYO AKINKUGBE APPELLANT
AND
1. EWULUM HOLDINGS NIG. LTD.
2. CHIEF GODSON C. EWULUM RESPONDENTS

DAMAGES - Pleadings - General damages - Nature of - They are items of loss which plaintiff need not specify in pleadings - In order to recover compensation - They are presumed by law in favour of plaintiff (H1)

DAMAGES - Pleadings - Special damages - Nature of - They consist in items of loss - Which plaintiff must specify in pleadings - Before he is allowed to prove them at trial - They result from particular circumstances of the case (H2)

PRACTICE & PROCEDURE - Crime - Evidence of - Standard of proof - Allegation of crime - Where directly in issue as in the instant case - Must be specifically pleaded and proved beyond reasonable doubt - Respondents did not do so (H3)

COMPANY LAW - Parties - Corporate personality - Subsidiary companies - Are separate distinct personalities - From their holding companies - In the eye of the law - And should be treated as such (H4)

PRACTICE & PROCEDURE - Lis pendens doctrine - Purport of - It prevents effective transfer of rights - In any property which is subject matter of an action pending in court - As Appellant purported to do in this case (H5)

LANDLORD & TENANT - Trespass - Liability for - Landlord who resorts to self-help - To recover possession of premises tenanted by him - Is liable in trespass - And ought to pay damages (H6)

DAMAGES - Quantum of - Reassessment on appeal - Principles of - Appellate courts will not generally reassess amount of damages on appeal - But will do so - Where trial judge proceeded on a wrong principle of law - In his assessment thereof (H7)

FACTS

The Plaintiffs/Respondents had sued the Defendant/Appellant at the High Court of Lagos for wrongful and illegal ejection. The claim of the Respondents was for a declaration and three heads of damages, namely, special damages for trespass and general damages. The undisputed facts of the case were that Respondents were tenants of the Appellant at 53 Talabi Street, Ikeja. The 2nd respondent was the chairman and chief executive of the 1st Respondent who was the person in actual occupation of the leased premises. Upon the expiration of the lease, Respondents had failed to vacate the property and give back possession to the Appellant. Whereupon Appellant proceeded to court and got judgment for possession against the Respondents. However, Respondents applied to the trial court for a stay of execution pending appeal. At the time of hearing the application for stay, both parties subscribed to a consent judgment whereby Respondents were to vacate the premises on 31st December 1993.

But on 15th December, 1993, they brought another application on notice praying for an order extending their time to stay in the premises by another six months. This application was fixed for hearing on 24th January, 1994 by the court. But before that date, the Appellant on 4th January, 1994 broke into the premises by force, evicted the Respondents and took over possession. The story of the Appellant was that he merely met the premises vacant and took over possession peaceably. In this statement of Defence, Appellant had counterclaimed against the Respondents for cost of repairs and general damages. After hearing, trial court dismissed the counterclaim and gave judgment to the Respondents on the main suit, granting all the reliefs sought except the damages for trespass. He awarded N3m as general damages. Appellant's appeal to the Court of Appeal was dismissed, hence the present appeal.

ISSUES FOR DETERMINATION

(i) *whether evidence led met the required standard to sustain claim for special damages and whether evidence led in support of the allegation that some monies were carted away - wherein criminality is imported - satisfies the requirement of the law and*

(ii) *whether the award of N3 million (Three Million Naira) as damages for what was described as unlawful execution and damages for loss of proper feelings of dignity and pride as set out in leg (3) of the reliefs claimed by the plaintiffs/respondents.*

HELD (Unanimously allowing the appeal in part per **ADEREMI JSC**)

General damages - Nature of

1. In the consideration of how a plaintiff must deal with damages in his Statement of Claim, it is often necessary to make a basic distinction between general damage or damages and special damage or damages. General damage often consists in all items of loss which a plaintiff is not required to specify in his pleadings in order to allow him recover monetary compensation in respect of them at the trial. In Mcgregor on Damages 16th Edition, I find paragraphs 2025 and 2027 and pages 1319-1321, very useful and germane to the consideration of this appeal and they are:-

Paragraph 2026:-

“What constitutes general damage in pleading is made clearer when considered in relation to the two other meanings of the term. The first of these goes to liability and the second goes to proof.”

Paragraph 2027:-

“If an item of damage is general for the purpose of liability because it represents a normal loss, a fortiori, it will be general for the purpose of pleading in so far as its existence cannot take the defendant by surprise.

.....
If an item of damage is general for the purpose of proof because it is inferred or presumed by the court a fortiori it will be general for the purpose of pleading since what the law is prepared to infer or presume in the plaintiff’s favour the defendant cannot contend would surprise him at the trial.” (p. 1511 A/ 1512 A)

Special damages - Nature of

2. Special damage consists in all items of loss which must be specified or stated by him in his pleadings before they will be allowed to be proved at the trial and recovery of same granted. This is an action in which the respondents are claiming special and general damages and by rules of pleadings, they (the respondents) must plead special damages and give particulars thereof before they will be allowed to lead evidence in proof thereof. In Mcgregor on Damages 16th Edition, I find paragraphs 2025 and 2027 and pages 1319-1321, very useful and germane to the consideration of this appeal and they are:-

Paragraph 2025:-

Special damage consists in all items of loss which must be specified by him before they may be proved and recovery granted. The basic test of whether damage is general or special is whether particularity is necessary and useful to warn the defendant of the type of claim and evidence or of the specific amount of claim, which he will be confronted with at the trial..... ‘Special Damage’ said Bowen, LJ., in Ratcliffe v. Evans (1892) 2 QB 524 CA at 528:-

‘means the particular damage (beyond the general damage), which results from the particular circumstances of the case, and of the plaintiff’s claim to be compensated, for which he ought to give warning in his pleadings in order that there may be no surprise at the trial.’ (p. 1511 B)

Crime - Evidence of - Standard of proof

3. The 2nd plaintiff/respondent rightly realised that commission of crime is thrown up by the facts of this case, hence he made spirited efforts to show that he reported to the Police; but what he claimed he reported to the Police were series of robbery attacks which had earlier occurred in their premises and with the presence of soldiers in their premisses this time around leading to this case and this prompted him to lodge a complaint at the Bonny Camp against the said soldiers. He did not attack the issue of crime frontally as required by the law. The court below while agreeing that the applicable proof in the instant case is one beyond reasonable doubt nevertheless held that the evidence available in support of the case attained the required standard. With the greatest respect, I am of the clear view that the

conclusion reached by the court below was wrong. The law is sacrosanct that if the commission of a crime by a party to a civil case is directly in issue, the party must prove it beyond reasonable doubt and such crime must be set down specifically in his pleading. That standard required in law has not been met by the plaintiffs/respondents through the evidence led. (p. 1515 H) B

Parties - Corporate personality

4. Very devastating to the claim of the plaintiffs/respondents is the evidence of the 2nd plaintiff/respondent (Ewulum) who held himself out as the Chairman of the 1st plaintiff/respondent, to the effect that some of the items said to have been stolen belonged to some companies, although said to be subsidiaries of the 1st plaintiff, they were never made parties to the suit. Indeed, under cross-examination, he gave the names of the subsidiaries as Zodiac Bureau De Change Ltd. D and Zodiac Travels and Communication Ltd. These two companies are, in the eye of the law, separate and distinct personalities from the plaintiffs/respondents; they ought to have been joined in the suit as parties and if they were not joined as parties, they ought to have given Power of Attorney to the plaintiffs to claim on their behalf for the loss. There is no evidence to this effect before the court. E (p. 1516 F)

Lispendens doctrine - Purport of

5. It cannot be denied that the appellant was aware that the application of the respondents for an order extending the time to vacate the premises was to be heard on the 24th of January, 1994 and by this, that application was still pending in the court as at 4th January, 1994, when he and his agents broke into the premises and evicted the respondents. Judicial authorities abound that it has always been a doctrine common to all courts and the doctrine rests upon the foundation that it would plainly be impossible that any action or suit or even motion or application could be brought to a successful end if alienation pendente lite were permitted to prevail. This, in a nutshell, is a practical explanation of the doctrine of lis pendens - which doctrine prevents the effective transfer of rights in any property, as in the instant case, which is the subject-matter of an action pending in F G H

court during the pendency in court of the action or application.
(p. 1518 B)

LANDLORD & TENANT - Trespass - Liability for

B 6. A landlord who resorts to self-help in a bid to recover possession
of the premises tenanted by him runs foul of the law and he is liable
in damages. The law is common place that a claim for damages for
trespass is at the instance of a person in lawful possession of the land
such as in the instant case where the occupation of the premises by
C the respondents has the backing of the law. Therefore, the act of
forceful entry into the premises and the subsequent eviction of the
occupants together with their property is one of clear case of trespass
for which damages ought to be paid by the appellant to the respondents.
(p. 1518 G)

D ***DAMAGES - Quantum of - Reassessment on appeal***

7. I am not oblivious of the principles which are applicable and are
indeed applied to appeals on quantum of damages. The law is sacrosanct
that the appellate courts are generally very much reluctant to
E exercise their power and attempt to re-assess the amount of damages
which the trial Judge had awarded. They (appellate courts) will
however exercise that power when it is established that the trial
Judge proceeded upon a wrong principle of law or that the award
was clearly an erroneous estimate since the amount is manifestly too
F large or even too small. Here, it is very clear that the learned trial
Judge in his summation on the issue of this head of award, proceeded
on a wrong principle of law and that for a mere trespass, an award
of N3 million is very much on a high side. The Uyo I's case
G cited supra, is an authority for the proposition that an appellate court
is entitled to interfere with an award of damages made by a Judge
where circumstances calling for such interference, again as in the instant
appeal are shown. Armed with this decision of this court, I am
of the clear view that the sum of N10,000.00 (Ten Thousand Naira)
H as damages for trespass in favour of the respondents will meet the
justice of this case. I therefore set aside the award (N3 Million Three
Million Naira) so awarded by the trial court and substitute it with
N10,000.00 (Ten Thousand Naira). (p. 1519 E)

NOTABLE POINT OF INTEREST**ONNOGHEN JSC***1. Tenancy - Trespass - When nominal damages will meet justice*

I hold the further view that since there was an act of trespass committed by the appellant on the possession of the respondents thereby entitling the respondents to an award of damages for same, the actual amount awardable cannot be outrageous in the circumstance. This is a tenant whose tenancy had expired but he refused to relinquish possession resulting in an action for possession which was granted. The tenant, by consent was granted six months within which to hand over the property but before the end of the six months the respondents brought an application for extension of the period by another six months. In other words, the respondents wanted to continue their possession of the property for a period of one year after the expiration of their tenancy and without paying the requisite rent for the period!! In the circumstance of this case I hold the view that an award of nominal damage for trespass will meet the justice of the case. (p. 1532 D)

REPRESENTATION

Prof. A. B. Kasunmu, SAN., (with him; A.A. Odunsi and Tunde Osadare), for the Appellant.

Chief K.H.C. Nwokolo, (with him; C.J. Omekuagu), for the Respondents.

CASES REFERRED TO

Ikoku v. Oni (1967) 1 All NLR 194,

Okuarumo v. Obabokor (1966) NMLR 47

Sofekun v. Akinyemi & Ors. (1980) 5 S.C 1

A.P. Ltd. v. Owodunni (1991) 11-12 S.C. 56

Aglim BV v. Cohim (1955) 1 AER 785

Eliochin Nig. Ltd. v. Mbadiwe (1986) 1 NWLR (Pt.14) 47

Ihenacho v. Uzochukwu (1997) 2 NWLR (Pt.487) 257

Mil. Gov. of Lagos State v. Ojukwu (1986) 2 S.C

Agunwa v. Onukwe (1962) 2 SCNLR 275

Oladehin v. C.T.M.L. (1978) 2 S.C. 2; (1978) 2 S.C

Imana v. Robinson (1979) 3 - 4 S.C. 1 at 23; (1979) 3-4 S.C
Kurubo v. Zach Motison Nigeria Limited (1992) 5 NWLR (Pt. 239)
102.

Coker v. Oguntola & Ors. (1985) 6 S.C 223

Chinwendu v. Mbamali & Anor. (1980) 3-4 S.C

B

BOOK REFERRED TO

Mcgregor on Damages, 16th Edition Paragraphs 2025 - 2027, pages
1319 - 1321.

C

LEAD JUDGMENT BY ADEREMI JSC

The present appeal is from the judgment of the Court of Appeal (Lagos Division) in appeal No. CA/L/74/2000: Prof. Ajibayo Akinkugbe v. Ewulum Holdings (Nig.) Ltd. & Anor. delivered on the
D 30th of May, 2002. The respondents, who were the plaintiffs before the trial court (the High Court of Lagos State in the Ikeja Judicial Division) had instituted an action against the appellant herein who was then the defendant before that court claiming as follows: -

E “(1) *A declaration that the ejecting of the plaintiffs from the premises No. 53, Talabi Street, Adeniyi Jones Avenue, Ikeja, Lagos State on the 4th day of February, 1994, is unlawful, the same having been carried out vi et armis and without lawful authority.*

F (2) *An order directing the defendant to enter into an undertaking as to unlimited damages indemnifying the plaintiffs for all or any expense or loss that they may incur directly or incidental to the loss of the Airline Tickets.*

(3) *N5,000,000.00 (Five Million Naira) damages for unlawful execution and damages for loss of proper feelings of dignity and pride.*

G (4) *N100,000.00 (One Hundred Thousand Naira) damages for trespass.*

(5) *Special damages as follows:-*

(a) *N650,000.00*

(b) *US Dollars - 113,000.00*

H (c) *UK Pounds - 41,000.00*

(d) *German Marks - 80,000.00 for value of damaged property, monies lost due to wilful act and/or negligence of the defendant, his servants and/or agents.*

In paragraph 31 of his Amended Statement of Defence and counter-claim, the defendant/appellant counter-claimed against the plaintiffs/respondents as follows: -

“The defendant repeats all the allegations in the second Amended Statement of Defence and counter-claim against the plaintiffs for N2,114,715.00 (Two Million One Hundred and Fourteen Thousand Seven Hundred and Fifteen Naira Only) as general and special damages for breach of covenant to repair at the end of the lease:

Particulars

Cost of Repairs – N1,114,715.00

General Damages – N1, 000,000.00.”

Pleadings filed and exchanged between the parties at the trial court with leave of court, are: (a) the Amended Statement of Claim dated 21st February, 1995, (b) Amended Statement of Defence and counter-claim dated 10th July, 1995 and (c) the Amended Reply dated 20th February, 1997. Both parties led evidence in proof of the averments in their respective pleadings. Sequel to taking the final addresses of the counsel, the learned trial Judge, in a reserved judgment delivered on the 4th of March, 1998, granted reliefs numbers (1), (2), (3) wherein Three Million Naira was awarded to the plaintiffs against the defendant/appellant and (5) whereupon being satisfied with the evidence led by the plaintiffs/respondents, he awarded all the various sums of money claimed as special damages. The claim for N100,000.00 as damages for trespass was however refused. Also, the counterclaim of the defendant/appellant was refused.

“The evidence of D.W.I had ominous implications for the case of the defendant. The evidence revealed that the defendant knew that as at 22/12/93, the plaintiffs were still in the premises. The defendant would also know that plaintiff’s motion for extension of time to vacate was still in court and fixed for hearing on 24/1/94. The question is, what happened between 22/12/93 and 29/12/93, to prompt the defendant to believe that the plaintiffs had vacated only for the same plaintiffs to apply after 4/1/94 to be reinstated to the premises?... .. appellant’s counsel was not contending that the sum of N3m awarded as general damages was excessive. Rather, the argument

was that the trial Judge did not assess the quantum of damages or state the nature of damages awarded.....

The litigation in court between the parties on the defendant's claim for possession against the plaintiffs was quite prolonged and might have been frustrating for the defendant. The plaintiffs had not been keeping with undertakings given to the defendant to give up possession. It is, I believe this situation which drove the defendant into a state of desperation which led him to what he did. However, the law does not excuse such conduct even if the plaintiffs did not behave well. They were in occupation and could not be evicted except in accordance with the due process of law.

.....
The truth is that there was before the court evidence showing the unjustifiable circumstances in which the appellant had forcible ejected the plaintiffs.

The plaintiffs had in their Amended Statement of Claim asked for aggravated damages..... It seems sufficient to note that aggravated damages are at large as it is in general damages.

I might myself think that perhaps N 3 Million as aggravated damages was excessive but that was not the issue raised before us by the appellant and I say no more on the matter..... It is enough to say that the appellant has not made a case for this court to intervene by reducing the sum of N3 Million awarded as damages.

Under the 2nd issue..... there is in my view no merit in the argument. The plaintiffs pleaded the items they list including foreign currencies. The evidence on the point was not challenged. The lower court accepted such unchallenged evidence as he is entitled to do..... I see no reason to disturb the award as special damages.....

.....
I agree that the applicable standard is proof beyond reasonable doubt. I am satisfied however that the evidence available in support of plaintiffs' case attained the standard required."

As I have said, being dissatisfied with the said judgment, the appellant appealed to this court against the judgment of the court below as it relates to the substantive claim and the counterclaim. With the leave of court, the original Notice of Appeal was amended and

the Amended Notice of Appeal on which the appeal is founded is the one filed on the 24th of May, 2006. Again, with the leave of the court, the parties also amended their respective Briefs of Argument. In his Amended Brief of Argument filed on the 24th of May, 2006, the appellant raised three issues for determination; as set out in the said Brief, they are as follows:- B

“(1) Was the Court of Appeal right in confirming the decision of the trial court when that court granted the plaintiffs relief for a declaration that the defendant forcefully and unlawfully ejected the plaintiffs from the premises at 53, Talabi Street, Ikeja, Lagos on the 4th of January, 1994?” C

“(2) If the trial court was right in granting the declaration sought for by the plaintiffs, was the Court of Appeal right in confirming the award of damages as assessed and awarded by the trial court in favour of the plaintiffs?” D

“(3) Was the Court of Appeal right in affirming the decision of the trial court to dismiss the defendant’s counter-claim?”

For their part, the respondents also identified three issues for determination, which as stated in their Amended Brief of Argument, are in the following terms:- E

*“(1) Whether the Court of Appeal was right in confirming the decision of the trial court when it granted that the plaintiffs/respondents had successfully led credible oral and documentary evidence in support of their claim for a declaration that the defendant/appellant forcefully ejected the respondents from the premises at No. 53, Talabi Street, Ikeja, Lagos State on the 4th day of January, 1994, same having been carried out *vi et armis*.”* F

“(2) Whether the Court of Appeal was wrong in upholding the findings of the trial court in accepting the evidence of the plaintiffs/ G respondents in support of award of damages as assessed which incidence is unchallenged, uncontradicted and uncontroverted by the appellant.”

“(3) Whether the Supreme Court will interfere with concurrent findings of fact by the trial court and the Court of Appeal.” H

When this appeal came before this court for argument on the 14th of January, 2008, Prof. Kasunmu, SAN., learned senior counsel for the appellant while relying on his client’s Amended Brief of

Argument filed on the 24th May, 2006 submitted, on points of law, that special damages must be proved by credible evidence and in the instant case by documentary evidence, adding that the General Manager of the 1st respondent called as a witness, failed to tender any document relating to the special damages claimed; he finally urged
B that the appeal be allowed. Chief Nwokolo, learned counsel for the respondents while relying on his clients' Amended Brief of Argument filed on the 11th of December, 2006, urged that the appeal be dismissed.

C I have carefully examined the issues raised for determination in this appeal as contained in the Briefs of the parties, it is my view that two cardinal issues that call for thorough examination and determination are (i) *whether evidence led met the required standard to sustain claim for special damages and whether evidence led in support of the allegation that some monies were carted away - wherein criminality is imported - satisfies the requirement of the law and (ii) whether the award of N3 million (Three Million Naira) as damages for what was described as unlawful execution and damages for loss of proper feelings of dignity and pride as set out in leg (3) of the reliefs claimed by the plaintiffs/respondents.* The trial court in allowing the claims of the plaintiffs/respondents substantially had in its final judgment reasoned:-
D
E

F *"I am satisfied that the plaintiffs have proved their case and are entitled to the declaration sought. It is hereby granted."*

On the claim for damages, the learned trial Judge awarded N3 Million naira to the plaintiffs/respondents. On the claim for special damages, the learned trial Judge said:-

G *"I am satisfied with the evidence adduced for the plaintiffs. I hold that they have proved the special damages. I therefore award in favour of the plaintiffs against the defendant the following:-*

(1) N650,000.00

(2) 113, 000 US Dollars

(3) 41,000 Pounds Sterling

H (4) 80,000 German Marks or the equivalent in naira at official rate of the claims."

Suffice it to say that the fourth leg of the reliefs which is one for N 100,000.00 (One Hundred Thousand Naira) as damages for tres-

pass was refused. The learned trial Judge awarded both general and special damages in favour of the plaintiffs/respondents in the judgment delivered at the end of the trial before him. ***In the consideration of how a plaintiff must deal with damages in his Statement of Claim, it is often necessary to make a basic distinction between general damage or damages and special damage or damages. General damage often consists in all items of loss which a plaintiff is not required to specify in his pleadings in order to allow him recover monetary compensation in respect of them at the trial. But special damage consists in all items of loss which must be specified or stated by him in his pleadings before they will be allowed to be proved at the trial and recovery of same granted. This is an action in which the respondents are claiming special and general damages and by rules of pleadings, they (the respondents) must plead special damages and give particulars thereof before they will be allowed to lead evidence in proof thereof.*** See *B.E.O.O. Industries (Nig.) Ltd. v. Maduakoh & Anor.* (1975) 12 S.C. (Reprint) 68. ***In McGregor on Damages 16th Edition, I find paragraphs 2025 and 2027 and pages 1319-1321, very useful and germane to the consideration of this appeal and they are:-***

Paragraph 2025:-

“General damage consists in all items of loss which the plaintiff is not required to specify in his pleadings in order to permit proof and recovery in respect of them at the trial. Special damage consists in all items of loss which must be specified by him before they may be proved and recovery granted. The basic test of whether damage is general or special is whether particularity is necessary and useful to warn the defendant of the type of claim and evidence or of the specific amount of claim, which he will be confronted with at the trial..... ‘Special Damage’ said Bowen, L.J., in Ratcliffe v. Evans (1892) 2 QB 524 CA at 528:- ‘means the particular damage (beyond the general damage), which results from the particular circumstances of the case, and of the plaintiff’s claim to be compensated, for which he ought to give warning in his pleadings in order that there may be no surprise at the trial.”

Paragraph 2026:-

“What constitutes general damage in pleading is made clearer when considered in relation to the two other meanings of the term. The first of these goes to liability and the second goes to proof.”

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“If an item of damage is general for the purpose of liability because it represents a normal loss, a fortiori, it will be general for the purpose of pleading in so far as its existence cannot take the defendant by surprise.

***.....
If an item of damage is general for the purpose of proof because it is inferred or presumed by the court a fortiori it will be general for the purpose of pleading since what the law is prepared to infer or presume in the plaintiff’s favour the defendant cannot contend would surprise him at the trial.”***

Having stated what general damage and special damage con-
note in law, I shall now examine the pleadings of the parties and the
evidence led in proof of the averments therein contained to see
whether the awards made by the trial Judge are justified in law. The
relevant paragraphs of the Statement of Claim are 35, 36, 37, 38,
39, 40, 47 and 51; the averments therein contained are hereunder
reproduced:-

Paragraph 35:-

***“The plaintiffs state that the defendant by himself, his servants and armed agents stormed the premises, broke down the doors, pil-
laged the plaintiffs’ property and littered them in the streets to the
dismayed (sic) and awe of neighbours and passers-by.”***

Paragraph 36:-

***“The plaintiffs aver that the defendant, his servants and agents
carried out the said illegal and forcible ejection without regard to the
due process of law by reason of which the execution thereof was and
is unlawful.”***

Paragraph 37:-

***“The plaintiffs aver that by reason of the matters aforesaid, the
plaintiffs suffered loss and damage to their proper feelings of dignity
and pride.”***

Paragraph 38:-

“The plaintiff aver that the defendant carried out the said unlawful execution with malice and spite with the notice and intention to disparage and ridicule the plaintiff and bring him low and despicable in the estimation of his peers and right thinking members of the public.” B

Paragraph 39:-

“The plaintiff shall as much as possible claim on the footing of aggravated damages.

Particulars of Damage

- | | | |
|---|-----------------|---|
| (a) Damages for wrongful execution | -N 2.000.000.00 | C |
| (b) Aggravated damages for loss of proper feelings of dignity & pride | -N 3.000.000.00 | D |

Paragraph 40:-

“The plaintiffs states that at the time the 2nd plaintiff returned from his Christmas Vacation, save for the destruction and pillage on the property aforesaid, neither the defendant, his agents or the soldiers were in sight. They merely wrecked havoc in the premises and left.” E

Paragraph 47:-

“The plaintiffs aver also that the 2nd plaintiff kept in the same movable safe box his personal collections of articles of vertu (sic) and cash.” F

Paragraph 51:-

“The plaintiff aver that before the record plaintiff travelled, the said safe box which was in the second plaintiff’s bedroom but removed during the said unlawful ejection exercise by the defendant contained the first plaintiff’s stock-in-trade, cash in foreign and local currencies and the second plaintiff’s valuable watches, gold chains and cash all of which were consequently.....”

Particulars of Loss

The said missing/loss safe box contained:- H

“A. The 1st Plaintiff’s

- | | |
|----------------|-----------|
| (i) US Dollars | 98,000.00 |
| (ii) UK Pounds | 41,000.00 |

	(iii) German Marks	80,000.00
	(iv) Local Currency (Cash)	N50,000.00
	(v) 50 copies of blank Nigeria Airways Ltd. Tickets	
	(vi) 25 pieces of blank KLM Tickets.	
	(vii) 9 pieces of blank Alitalia Tickets.	
B	<u>B. 2nd Plaintiff's</u>	
	(i) 5 Rolex Watches valued	
	US Dollars	N15,000.00
	(ii) 8 Wrist Watches all	
	valued	N 150,000.00
C	(iii) 5 Assorted gold chains	
	valued	N 150,000.00
	(iv) 2 Gold rings valued	N 100,000.00
	(v) 4 Cameras all valued	N 100,000.00
D	(vi) 1 Video Machine valued	<u>N 12,000.00</u>
	<u>TOTAL</u>	<u>N512,000.00."</u>

What is the evidence led? PW.1 and PW.2 security guard and a Public Relation Officer with Zodiac Housing respectively, never in their testimonies, said they saw anybody cart away the valuables which constitute the basis for the special damages. PW.3's evidence did not advance the plaintiffs' case in the direction of award of general and special damages. PW.4 who was the General Manager of the 1st plaintiff/respondent said inter alia:-

"It was agreed that the plaintiffs should stay there in the house till December, 31st 1993. The 1st plaintiff did not vacate the premises in (sic) the 31/12/93. The plaintiffs asked for extension of time to enable them move to a new place. The plaintiffs filed a motion in court. The defendant filed a motion to dismiss the plaintiffs motion. The defendant's motion was dismissed and the plaintiffs' motion was adjourned till 24/1/94.

.....

The defendant thereafter broke into the house and ejected the 2nd plaintiff on 5/1/94. I came back from the East Onitsha. I went into the premises. I saw that the door was broken. Anytime we were going on holidays - in (sic) security reasons we consigned company's articles like travel tickets, money - dollars, pounds, dutch makes (sic) to the Chairman who has a cash box at home. This box contains

98,000.00 US Dollars, 41,000.00 Pounds Sterling, 80,000 German Deuch (sic) and 50,000.00 Naira, 50 pieces of blank Nigeria Airways Tickets and pieces of Airline Tickets. The 2nd plaintiff did not return the items to the office. I discovered that the cash box got lost during the ejection. I called at Police at Area "F" I reported the loss to the Police and the Airlines." B

The 2nd plaintiff/respondent who at the material time to this case was the Chairman of the 1st plaintiff/respondent -company, in his testimony said inter alia:-

"I was away for Christmas vacation. I came back on the 4th C January with my family, when I got to the house No. 53, Talabi Street. I saw my properties in the street and some in the compound. My properties were damaged, wardrobe broken, dress torn. The bed were (sic) broken. The value is N20,000.00 then. Bar unit destroyed beyond repairs. The value then should be about N20,000.00. Suit D cases torn into two. These were 2. They cost N80,000.00 mobile Safe Box. It was scarted (sic)' away. I could not find it. I have in the box both official and private belongings. I have rolex wrist watch which is 15,000 dollars and eight other wrist watches of different E kinds or makes. The value is N 150,000,00 then. Five gold chains of N 150,000. 24 carat gold rings valued N100,000.00. Official money in the safe is N8,000 = US Dollars, 41,000 pounds sterling, 80,000 dutch Makes (sic) and N50,000.00. Blank Nigeria Airways Tickets. 25 KLM Blank Tickets, 9 Alitalia Blank Tickets. The monies and the F tickets belong to Ewulum Holdings (Nig.) Ltd., the 1st plaintiff specifically to Zodiac Travels and Zodiac Bureau De Change both subsidiaries of the 1st plaintiff/company. I keep these articles in my safe at home because my office was vacating for Christmas at the time."

The above are the salient pieces of evidence led by the plain- G tiffs/respondents upon which they have predicated their claim for the reliefs set out above. As I have earlier said in this judgment, the totality of the evidence led by P.W.1, P.W.2 and P.W.3 does not meet the standard of proof required in this case since, from the facts pleaded, element of criminality is involved. **The 2nd plaintiff/respondent H rightly realised that commission of crime is thrown up by the facts of this case, hence he made spirited efforts to show that he reported to the Police; but what he claimed he reported to**

the Police were series of robbery attacks which had earlier occurred in their premises and with the presence of soldiers in their premisses this time around leading to this case and this prompted him to lodge a complaint at the Bonny Camp against the said soldiers. He did not attack the issue of crime

B *frontally as required by the law. The court below while agreeing that the applicable proof in the instant case is one beyond reasonable doubt nevertheless held that the evidence available in support of the case attained the required standard.*

C *With the greatest respect, I am of the clear view that the conclusion reached by the court below was wrong. The law is sacrosanct that if the commission of a crime by a party to a civil case is directly in issue, the party must prove it beyond reasonable doubt and such crime must be set down specifically in*

D *his pleading.* See (1) Ikoku v. Oni (1967) 1 All NLR 194, (2) Okuarumo v. Obabokor (1966) NMLR 47 and Sofekun v. Akinyemi & Ors. (1980) 5 S.C 1; (1980) 5-7 S.C (Reprint) 1. ***That standard required in law has not been met by the plaintiffs/respondents through the evidence led.*** The evidence reproduced supra, is not

E *of the quality required in law, to grant the award of special damages in favour of the plaintiffs/respondents. As I have said earlier, the plaintiffs/respondents attempted to bring in the Police and Army as independent bodies but no effort was made by them to call witnesses from the two sectors to lend credence to their case.*

F ***Very devastating to the claim of the plaintiffs/respondents is the evidence of the 2nd plaintiff/respondent (Ewulum) who held himself out as the Chairman of the 1st plaintiff/respondent, to the effect that some of the items said to have been stolen belonged to some***

G ***companies, although said to be subsidiaries of the 1st plaintiff, they were never made parties to the suit. Indeed, under cross-examination, he gave the names of the subsidiaries as Zodiac Bureau De Change Ltd. and Zodiac Travels and Communication Ltd. These two companies are, in the eye of the***

H ***law, separate and distinct personalities from the plaintiffs/respondents; they ought to have been joined in the suit as parties and if they were not joined as parties, they ought to have given Power of Attorney to the plaintiffs to claim on their be-***

half for the loss. There is no evidence to this effect before the court. Again, let me say that special damages are in a class of their own requiring strict proof which can only be established by credible and ascertainable facts which must have been specifically pleaded and of course strictly proved. This is not the case here. Issue No. 2 on each of the appellant's Amended Brief and that of the respondents' B Brief is each answered in the negative. For the avoidance of doubt, each is resolved in favour of the defendant/appellant.

I now go on to issue No. 1 on each of the two Briefs - this relates to whether the court below was right in affirming the judgment of the trial court to the effect that the defendant forcefully and unlawfully ejected the plaintiffs from the premises at 53, Talabi Street, Ikeja, Lagos. It is commonly agreed between the parties, that the relationship of landlord/tenant existed between them; the plaintiffs/ respondents were the tenants of the defendant/appellant. It is equally D common ground between the parties that at the expiration of the tenancy, the appellant sought to recover possession of the premises from the respondents. This led to series of litigations between them for the retention of possession of the premises by a party on the one hand and recovery of possession by another party on the other hand. E It is not in dispute between them that by the judgment of the High Court of Lagos State in Suit No. ID/431/92, delivered on the 23rd of February, 1993 V the respondents were ordered to vacate the premises. Dissatisfied with the said judgment, the respondents lodged F an appeal against it to the Court of Appeal and simultaneously brought an application for stay of execution of the judgment ordering him to give up possession pending the determination of the appeal. At the time of hearing the application for stay, both parties subscribed to a consent judgment whereby the respondents were to vacate the G premises on 31st December, 1993. But on the 15th of December, 1993, the respondents brought another application praying for an order extending their time to stay in the premises by six months. The appellant however countered this application by a Preliminary Objection to dismiss the respondents' application with a view to enable H him (appellant) take possession by 31st December, 1993. That application was argued before the court on the 22nd December, 1993 and same was dismissed. The motion of the respondents' for an or-

der extending the time within which they should vacate was thereafter set down for hearing on the 24th January, 1994, by the court. It is not in dispute between the parties that before 24th of January, 1994, when the motion of the respondents was to be heard, the appellant, precisely on the 4th of January, 1994, by himself and with the aid of some people, broke into the said premises and threw out all the belongings of the respondents therein and took possession of the place. ***It cannot be denied that the appellant was aware that the application of the respondents for an order extending the time to vacate the premises was to be heard on the 24th of January, 1994 and by this, that application was still pending in the court as at 4th January, 1994, when he and his agents broke into the premises and evicted the respondents. Judicial authorities abound that it has always been a doctrine common to all courts and the doctrine rests upon the foundation that it would plainly be impossible that any action or suit or even motion or application could be brought to a successful end if alienation pendente lite were permitted to prevail. This, in a nutshell, is a practical explanation of the doctrine of lis pendens - which doctrine prevents the effective transfer of rights in any property, as in the instant case, which is the subject-matter of an action pending in court during the pendency in court of the action or application.*** I pause to say that a landlord can unilaterally take possession of a premises tenanted by him if he can do so peacefully upon the termination of the tenancy. See (1) A.P. Ltd. v. Owodunni (1991) 11-12 S.C. 56; (1991) 8 NWLR (Pt.210) 391 and (2) Aglim BV v. Cohim (1955) 1 AER 785. The overriding condition to do so is that the tenancy has lawfully come to an end.

In the instant case, as I have said, an application by the respondents was still pending before the court of law when the appellants went and took over possession of the premises. ***A landlord who resorts to self-help in a bid to recover possession of the premises tenanted by him runs foul of the law and he is liable in damages*** (1) Eliochin Nig. Ltd. v. Mbadiwe (1986) 1 NWLR (Pt.14) 47, (2) Ihenacho v. Uzochukwu (1997) 2 NWLR (Pt.487) 257 and (3) Mil. Gov. of Lagos State v. Ojukwu (1986) 2 S.C. 277. ***The law***

is common place that a claim for damages for trespass is at the instance of a person in lawful possession of the land such as in the instant case where the occupation of the premises by the respondents has the backing of the law. Therefore, the act of forceful entry into the premises and the subsequent eviction of the occupants together with their property is one of clear case of trespass for which damages ought to be paid by the appellant to the respondents. In the instant case, the trial Judge awarded N3 million (Three Million Naira) against the appellant but in favour of the respondents as damages for trespass. In making that award, the trial Judge had in his judgment said, *inter alia*: -

“The primary object of award of damages is to compensate the plaintiff for the harm done to him. The secondary object of award of damages is to punish the defendant for his conduct in inflicting harm on a plaintiff. This secondary object can be achieved by awarding in addition to the normal compensatory damages, exemplary, punitive, conductive (sic) or retributory damages..... In this case, I award to the plaintiffs a sum of N3 million.”

I am not oblivious of the principles which are applicable and are indeed applied to appeals on quantum of damages. The law is sacrosanct that the appellate courts are generally very much reluctant to exercise their power and attempt to re-assess the amount of damages which the trial Judge had awarded. They (appellate courts) will however exercise that power when it is established that the trial Judge proceeded upon a wrong principle of law or that the award was clearly an erroneous estimate since the amount is manifestly too large or even too small. See (1) His Highness Uyo I v. Egware (1974) 6 S.C (Reprint) 90; (1974) 1 All NLR (Pt. I) 293 and (2) Zik's Press Ltd v. Alvan Ikoku (1951) 13 WACA 188. **Here, it is very clear that the learned trial Judge in his summation on the issue of this head of award, proceeded on a wrong principle of law and that for a mere trespass, an award of N3 million is very much on a high side. The Uyo I's case cited supra, is an authority for the proposition that an appellate court is entitled to interfere with an award of damages made by a Judge where circum-**

stances calling for such interference, again as in the instant appeal are shown. Armed with this decision of this court, I am of the clear view that the sum of N10,000.00 (Ten Thousand Naira) as damages for trespass in favour of the respondents will meet the justice of this case. I therefore set aside the award
 B ***(N3 Million Three Million Naira) so awarded by the trial court and substitute it with N10,000.00 (Ten Thousand Naira).*** Issue No. 1 on each of the Amended Briefs of the parties to the extent to which the court below confirmed the decision of the trial court granting the plaintiffs relief for a declaration that the defendant forcefully and unlawfully ejected the plaintiffs from the said premises is answered in the affirmative.

But the damages for trespass awarded by the trial court must and are hereby reduced from N3 million (Three Million Naira) to N
 D 10,000.00 (Ten Thousand Naira) only. Issue No. 3 on the respondents' Brief has been answered in the pronouncements I made above. For the umpteenth time I wish to say that an appellate court can interfere with concurrent findings of facts where there is a substantial error apparent on the face of the record of proceedings and where
 E not to do so will occasion a substantial miscarriage of justice. See (1) Coker v. Oguntola & Ors. (1985) 6 S.C 223 and (2) Chinwendu v. Mbamali & Anor. (1980) 3-4 S.C (Reprint) 31. There is no error of law or even of facts in the finding that the defendant/appellant trespassed on the premises but the award of damages for trespass, as I
 F have said, is outrageous.

On issue No. 3 on the appellant's Amended Brief of Argument protesting the dismissal of his counter-claim, I have read over and over again the pieces of evidence adduced in support of the counter-
 G claim which is in the following terms:-

- (1) Cost of repairs of the building tenanted out N 1,114,715.00
- (2) General damages N 1,000,000.00;"

the counter-claim itself is gold digging. The evidence adduced in proof
 H of same is incredible, no reasonable tribunal would believe it. I subscribe to the view of the learned trial Judge when he said:-

"It is inconceivable that a landlord of the status of the defendant would incur expenses over N1 million in decorating his house

and wait until he was sued by the tenant he ejected before he (the landlord) filed a counter-claim.”

The decision reached by the trial Judge dismissing the counter-claim and which decision was subscribed to by the court below cannot be faulted. Issue No. 3 in the appellant’s Amended Brief of Argument is consequently answered in the affirmative. B

In the final analysis, it is my judgment that the appeal is substantially allowed. The judgment of the court below affirming the judgment of the trial court awarding special damages to the plaintiffs/respondents is hereby set aside and the claim for the special damages C consequently dismissed. The judgment of the court below affirming the declaratory judgment of the trial court cannot be faulted and it is accordingly upheld. But the damages of N3 million (Three Million Naira) awarded in favour of the respondents but against the appellant for the trespass found to have been committed by him (the appellant) is hereby reduced to N10,000.00 (Ten Thousand Naira) in D favour of the respondents. The court below is equally right in affirming the trial court’s decision dismissing leg (4) of the relief wherein the plaintiffs/ respondents claimed N 100,000.00 (One Hundred Thousand Naira) as damages for trespass; having earlier awarded N3 Million E Naira which I have now reduced to N 10,000.00. Leg 4 of the relief sounds like a double compensation. The dismissal of the counter-claim cannot be faulted.

I make no order as to costs. F

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother, Aderemi, JSC., in this appeal. I G agree with it, and have nothing useful to add.

AKINTAN JSC

The dispute in this appeal arose over a break down in the H relationship between a landlord (the appellant) and his tenants (the respondents). The appellant had leased his property at 53, Talabi Street, Ikeja to the respondents. The 2nd respondent as the Chair-

man and Chief Executive of the 1st respondent was the person in actual occupation of the leased property. The dispute arose when the lease expired and the respondents failed to vacate the property and give back possession to the appellant. The appellant then filed an action at Lagos High Court claiming possession of the property. Judgment was entered in his favour against the respondents.

The respondents however applied to the High Court for a stay of execution of the judgment. But the parties eventually agreed that the respondents should give up possession of the property at the end of December, 1993. But before the agreed date for the surrender of possession, the respondents brought another application at the High Court seeking a further extension of time and for permission to remain in the property for a further six months after the December, 1993, previously fixed for surrender of the property. The appellant's objection to the application was dismissed by the court which then fixed the hearing of the application for a date in January, 1994. The appellant, however, took possession of the property from the respondents before the date fixed for the hearing of the application in January, 1994. This was the immediate cause of the action that led to this appeal. The respondents' reacted to the appellant's action by filing an action at the same High Court. Their claim, *inter alia*, was for (1) a declaration that the ejection of the plaintiffs from the premises was unlawful the same having been carried out *vi et armis* and Without lawful authority; (2) an order directing the defendant to enter into an undertaking as to unlimited damages indemnifying the plaintiffs for all or any expenses or loss they may incur directly from or incidental to the loss of the airline tickets; (3) N5 million damages for unlawful execution and damages for loss of proper feelings or dignity and pride; N100,000 damages for trespass; and also claimed N650,000; US \$113,000; UK £ 41,000 and German Marks DM 80,000 as special damages.

The appellant, as defendant, counter-claimed for a total sum of N2,114,715 as general and special damages for breach of covenant to repair the leased property at the end of the lease.

The trial took place and at the end, the learned trial Judge entered judgment for the plaintiffs by granting all the reliefs they claimed and the counter-claim was dismissed. The appellant's appeal

to the Court of Appeal against the judgment was dismissed, hence the present appeal.

The issues canvassed by the appellant in this court boil down to two - viz: whether the court below was right in confirming the judgment of the trial High Court granting all the respondents' claims; and whether the same lower court was right in affirming the dismissal of the appellant's counter-claim. B

The main submission of Prof. Kasunmu, SAN., learned leading counsel for the appellant, was that the respondents failed to lead credible evidence in support of the various heads of their claim which could warrant granting them. It is settled law that, special damages are required to be proved strictly. Thus, in the instant case, the evidence led by the respondents, as plaintiffs, was mere assertion that the box or safe, where the various sums of money claim was kept was looted and carted away, was not supported by any evidence of any witness who saw the carting away of the safe or any evidence of a report made to the Police of the carting away of the safe or box containing such valuables. The same defects were highlighted in respect of all the items of claim erroneously granted by the trial High Court and confirmed by the court below. C D E

For the above reasons and the fuller reasons given in the leading judgment prepared by my learned brother, Aderemi, JSC., a draft of which I had the privilege of a preview, I allow the appeal as it relates to all the items of claim for special damages. 'I also agree that the claim for trespass should stand and to that end, I make similar orders as are made in the leading judgment. F

As regards the counter-claim, the fact that the respondents' claim for trespass was affirmed meant that the story of the respondents that the appellant seized possession of the property *vi et armis* was accepted by the two lower courts and this court. It follows therefore that the appellant's counter-claim for cost of renovation or restoring the property into proper shape would be difficult to ascertain. This is because it was not clear which of the damages repaired by the appellant was attributable to those caused by him in the process of the forcible action he took in repossessing the property. For the above reasons, I too agree that the appeal against the counter-claim should be dismissed. G H

In final conclusion, the appeal is substantially allowed in that

the items of special damages awarded are set aside; but the award of damages for trespass is upheld but reduced to N10,000 while, the appeal against the counter-claim is dismissed. I abide by the order on costs made in the leading judgment.

B

MOHAMMED, JSC

The parties in this appeal are landlord and tenant. The 1st respondent was the tenant of the appellant in respect of a property at No. 53, Talabi Street, Ikeja, Lagos State. The 2nd respondent as the Chairman and Chief Executive of the 1st respondent was the actual person in occupation of the property. Following the expiration of the lease and the failure of the respondents to give up possession of the property, the appellant went to court and got judgment against the respondents for possession of the property. Although the 1st respondent in an application sought for stay of execution of the judgment, the parties agreed that an order of the court be made for the 1st respondent to yield up possession of the property at the end of December, 1993. However, before this agreed date, the 1st respondent brought an application for extension of time to remain on the property for 6 months after December, 1993. The appellant's Preliminary Objection to the application was dismissed by the trial court which fixed the 1st respondent's application for hearing in January, 1994.

However, before the agreed date for yielding up possession of the property by the 1st respondent and the hearing of its pending application for extension of time to remain on the property for six months, the appellant recovered possession of the property in circumstances which gave rise to further disputes between the parties. Aggrieved by the action of the appellant, the respondents brought their action in trespass against the appellant claiming among others -

"N 5,000.000.00 damages for unlawful execution and damages for loss of proper feelings of dignity and pride. N100,000.00 damages for trespass. N 650,000.00; 113,000.00 US Dollars; 41,000.00 U.K. Pounds and 80,000.00 German Marks as special damages.

The Statement of Defence filed by the appellant also incorporated a counter-claim of N 1,114,715.00, as cost of repairs and N

1,000,000.00, as general damages. -

At the end of the hearing, the learned trial Judge in his judgment delivered on 4th March, 1998, granted the declaratory relief and other reliefs for general and special damages sought by the respondents. The counter-claim of the appellant was however dismissed. Following the dismissal of his appeal against the judgment of the trial court by the Court of Appeal, the appellant is now on a further appeal. The three issues formulated by the appellant for the determination of the appeal are:-

“1. Was the Court of Appeal right in confirming the decision of the trial court when that court granted the plaintiffs relief for a declaration that the defendant forcefully and unlawfully ejected the plaintiffs from the premises at 53, Talabi Street, Ikeja, Lagos on 4th of January, 1994?”

2. If the trial court was right in granting the declaration sought for the plaintiffs, was the Court of Appeal right in confirming the award of damages as assessed and awarded by the trial court in favour of the plaintiffs?”

3. Was the Court of Appeal right in affirming the decision of the trial court to dismiss the defendant’s counter-claims.”

These issues were ably considered and effectively resolved by my learned brother, Aderemi, JSC., in his leading judgment which I have had the privilege of reading well in advance and with which I entirely agree. However, I have a comment or two on some aspects of the issues, particularly issue two dealing with the award of damages. From the facts and circumstances of this case and the manner the appellant framed the second issue for determination, it is apparent that the appellant is not seriously contesting the declaration granted by the trial court and affirmed by the court below that the ejection of the respondents from the property was unlawful. This is because at the time the parties left the trial court in December, 1993, to await the hearing of the respondents’ application for extension of time to remain on the property for six months in January, 1994, it was quite clear that the 1st respondent was in possession of the property. However, when the parties came back to the trial court for the present action for trespass, the appellant was clearly in possession of the property. The explanation of this position by the appellant that he merely

met the property vacant and took over possession, was not believed by the trial court and the court below which preferred the version of the respondents as to what actually happened. I may perhaps add here that I also do not believe the appellant. In this respect, the respondents claim for damages for trespass had been plainly proved on the evidence before the trial court as found by the court below.

The rule with regard to the award of special damages is that the burden of proof is on anyone claiming it to prove strictly that he did suffer such special damages claimed. What is required is that the person claiming it should plead its particulars and lead credible and admissible evidence of such character as would establish that he is indeed entitled to an award under that head. The evidence of particulars of the losses must be known exactly and accurately measured before the trial court. See Agunwa v. Onukwe (1962) 2 SCNLR 275, Oladehin v. C.T.M.L. (1978) 2 S.C. 2; (1978) 2 S.C. (Reprint) 17, Imana v. Robinson (1979) 3 - 4 S.C. 1 at 23; (1979) 3-4 S.C. (Reprint) 1 and Kurubo v. Zach Motison Nigeria Limited (1992) 5 NWLR (Pt. 239) 102.

Turning now to the plaintiffs/respondents claims for special damages in the present case, particularly the contents of the cash box allegedly containing cash in Naira and various other foreign currencies, were not at all proved to the standard required in law to sustain the claim. The fact that the appellant led no evidence in his defence to the claims, does not in any way relieve the plaintiffs/respondents of the burden of strictly proving the claims for special damages as required by law.

For the reasons I have given above, and the fuller reasons given in the leading judgment by my learned brother, Aderemi, JSC., I also entirely agree that this appeal be allowed in part. Accordingly, the appeal against the award of general and special damages against the appellant by the trial court and affirmed by the court below is allowed. The judgments of the courts below in this respect are set aside. The appellant's appeal against the concurrent decisions of the courts below finding him liable in damages for trespass and the dismissal of his counter-claim are however, hereby dismissed. I abide with the consequential orders made in the leading judgment including the order on costs.

ONNOGHEN, JSC

This is an appeal against the judgment of the Court of Appeal holden at Lagos in appeal No. CA/L/74/2000, delivered on the 30th day of May, 2002, dismissing the appeal of the appellant against the decision of the High Court of Lagos State delivered on the 4th day of March, 1998, in Suit No. LD/134/94, instituted Suit No. LD/134/94. B

The respondents instituted Suit No. LD/134/94, against the appellant claiming the following reliefs:-

“1. A declaration that the ejecting of the plaintiffs from the premises No. 53, Talabi street, Adeniyi Jones Avenue, Ikeja, Lagos State on the 4th day of January, 1994, is unlawful, the same having been carried out *vi et armis* and without lawful authority. C

2. An order directing the defendant to enter into an undertaking as to unlimited damages indemnifying the plaintiffs for all or any expenses or loss they may incur directly from or incidental to the loss of the Airline Tickets. D

3. N 5,000,000.00 damages for unlawful execution and damages for loss of proper feelings or dignity and pride. E

4. N 100,000.00 damages for trespass.

Special damages as follows:-

(a) N 650,000.00

(b) US Dollars - 113,000.00

(c) UK Pounds - 41,000.00 F

(d) German Marks - 80,000.00

While the appellant counter-claimed against the respondents in paragraph 31 of the 2nd Amended Statement of Defence and counterclaim as follows:- , G

“31. The defendant repeats all the allegations in the 2nd Amended Statement of Defence and counter-claim against the plaintiffs for N2,114,715 general and special damages for breach of covenant to repair at the end of the lease

Particulars H

Cost of repairs N 1,114,715.00

General damages N 1,000,000.00.”

At the end of the trial, the learned trial Judge entered judg-

ment for the plaintiffs and granted all the reliefs claimed while the counter-claim of the defendant was dismissed. The defendant was not satisfied with the judgment and appealed to the Court of Appeal which appeal was dismissed resulting in the instant appeal to this court where the issues for determination, as identified by learned senior
 B counsel for the appellant, Prof. Kasunmu, SAN., in the Amended appellant's Brief deemed filed on 30/4/07, are stated as follows:-

"1. Was the Court of Appeal right in confirming the decision of the trial court when that court granted the plaintiffs reliefs for a dec-
 C *laration that the defendant forcefully and unlawfully ejected the plaintiffs from the premises at 53, Talabi Street, Ikeja, Lagos on the 4th of January, 1994?*

2. If the trial court was right in granting the declaration sought for by the plaintiffs, was the Court of Appeal right in confirming the
 D *award of damages as assessed and awarded by the trial court in favour of the plaintiffs?*

3. Was the Court of Appeal right in affirming the decision of the trial court to dismiss the defendant's counter-claim?"

On his part, the learned counsel for the respondents, Chief
 E K.H.C. Nwokolo also identified three issues for the determination of the appeal, in the Amended respondents' Brief of Argument filed on 11/2/06. These are as follows:-

"2.1 Whether the Court of Appeal was right in confirming the
 F *decision of the trial court when , it granted that the plaintiffs/respondents had successfully led credible oral and documentary evidence in support of their claim for a declaration that the defendant/appellant forcefully and unlawfully ejected the respondents from the premises at No. 53 Talabi Street, Ikeja, Lagos State on 4th day of January,*
 G *1994, same having been carried out vi et armis.*

2.2 Whether the Court of Appeal was wrong in upholding the findings of the trial court in accepting the evidence of the plaintiffs/
 H *respondents in support of award of damages as assessed which evidence is unchallenged, uncontradicted and uncontroverted by the appellant.*

2.3. Whether the Supreme Court will interfere with concurrent findings of fact by the trial court and the Court of Appeal."

The facts of the case, as can be gathered from the record, in-

clude the following:-

The 1st respondent was the tenant of the appellant in the property known as and situate at No. 53, Talabi Street, Ikeja in Lagos State which was in the actual occupation of the 2nd respondent, the Chairman and Chief Executive Officer of the 1st respondent. At the expiration of the term, the respondents failed to give up possession of the property making it necessary for the appellant to approach the court for recovery of possession and obtained judgment for same but the respondents filed an application for stay of execution. It was agreed by the parties that an order of court be made for the 1st respondent to give up possession by the end of December, 1993, which was accordingly done. Two weeks to the expiration of the consent order, the 1st respondent filed a motion in court for extension of time for it to remain in possession of the property for another six months. The appellant raised a Preliminary Objection which was overruled while the respondents' motion for extension of time was set down for hearing sometime in January, 1994.

However, while the application for extension of time was still pending in court, the appellant recovered possession of the property in question without obtaining an order of court for that purpose. It is the case of the appellant that he took vacant possession of the property - without the use of force - while the respondents contend that possession was taken by the use of force while they were still in possession of the property. It is also the case of the appellant that the respondents covenanted to surrender possession of the property at the end of the tenancy in a state of tenantable repair.

In arguing the appeal, the learned senior counsel for the appellant submitted that the judgment of the trial court was based on wrong principles as the court first demolished the case of the defendant before considering that of the plaintiffs and even never evaluated the cases of the parties after summation of the evidence adduced; that the lower court did not appreciate the submission of counsel for the appellant which resulted in a miscarriage of justice; that having found that the standard of proof required by the plaintiffs in the case was proof beyond reasonable doubt, the lower court ought to have set aside the judgment of the trial court on the ground that the evidence adduced were not credible; that the lower court erred in af-

firming the judgment of the trial court based on principles of law relating to demeanor of witnesses rather than the burden of prove placed on the respondents with regard to standard of proof required; that it is not correct, as found by the lower court that the evidence adduced on behalf of the respondents was unchallenged as the same
 B was challenged under cross-examination; that in affirming the decision of the trial court dismissing the counter-claim, the lower court accepted findings of the trial court which were based on wrong principles of law and failed to give adequate consideration to the evidence adduced on behalf of the appellant. Learned senior counsel
 C finally urged the court to allow the appeal.

It is the submission of learned counsel for the respondents that the trial court rightly evaluated the evidence of the parties and arrived at the correct findings in the judgment and that the lower court
 D was right in affirming the said judgment; that there was no misdirection by the lower courts as to the determination out of the standard of proof as they rightly found that the respondents not only discharged the evidential burden of proof but that their evidence preponderates that of the appellant; that the lower courts were right in coming to
 E the decision that the counter-claim was a sham and thereby striking out same and urged the court to dismiss the appeal.

From the facts of the case as accepted by the lower courts there is no doubt that at the time appellant took over the possession of the property in issue, the motion of the respondents for extension
 F of time within which to quit the property was still pending. From the evidence it can also be said that the respondents were still in possession of the said property as at the time of the recovery of same by the appellant. Even though it is the case of the appellant that he took
 G over vacant possession, there is no evidence of the handing over of the keys to the property by the respondents to the appellant which would normally have been the case if possession was peaceably handed over. So it is clear that since the keys to the property were still in the possession of the respondents, the respondents remained in
 H possession of the property and it follows therefore that the appellant actually ejected the respondents from the property while their motion for extension of time was pending.

It is my considered view that to the appellant have ejected the

respondents from the property in question in the circumstances of the case, the appellant committed an act of trespass against the respondents since trespass is a wrong against possession and is therefore liable to the respondents in damages for the trespass.

The problem that arises from the facts of the case is with regard to the quantum of the damages payable. The respondents have claimed both special and general damages which were duly awarded by the lower courts. The question is whether the courts are right in making and confirming the awards so made. B

It is settled law that special damages must not only be pleaded by the party claiming same, but must also be strictly proved by him. In the instant case, the items of special damage were duly pleaded by the respondents. The question is whether that head of claim was established by the evidence on record adduced at the trial. To determine that question, it is necessary to note that due to the circumstances allegedly surrounding the loss of the items claimed under the head of special damages which circumstances allude to the commission of crime by the appellant, the standard of proof required of the allegation of forcible ejection as well as the loss of the items is therefore proof beyond reasonable doubt not the normal standard of proof on the balance of probability usually associated with or applied to purely civil matters. While it is the case of the appellant that the respondents did not meet the required standard of proof, the respondents contend that they did. The lower courts have agreed with the respondents that they did meet the said standard. The question before us is which of them is correct. C D E F

It is settled law that an appellate court will not make a practice of interfering with damages awarded by a lower court except under certain circumstances, such as where the principles of law adopted in making the award is wrong; the said award was either too high or too low etc. In the instant case, the proper standard of proof is that of proof beyond reasonable doubt not on the balance of probability. The question is therefore whether upon the application of the said principle on the facts of the case, it can be said that the respondents did prove the items of special damages so as to entitle them to the award. I hold the view that once the lower courts failed to apply the right principle as to the standard of proof and strict proof before G H

making the award, this court is in law entitled to review the award and if found wanting make the appropriate award in the circumstances of the case.

To begin with some of the items of special damages belong to persons who are not parties to the action and there is no evidence on record of any authority for the respondents to act in relation of those items on behalf of the said owners. Secondly, no single document such as purchase receipt was tendered in evidence in relation to the existence of any of the items and their ownership by the respondents. There is also no single eye witness account as to the actual taking away of the said items of special damages by the appellant. In the circumstance, I hold the view that the items of special damages were not strictly proved and consequently the trial court erred in awarding same and the lower court in confirming the said award.

I hold the further view that since there was an act of trespass committed by the appellant on the possession of the respondents thereby entitling the respondents to an award of damages for same, the actual amount awardable cannot be outrageous in the circumstance. This is a tenant whose tenancy had expired but he refused to relinquish possession resulting in an action for possession which was granted. The tenant, by consent was granted six months within which to hand over the property but before the end of the six months the respondents brought an application for extension of the period by another six months. In other words, the respondents wanted to continue their possession of the property for a period of one year after the expiration of their tenancy and without paying the requisite rent for the period!! In the circumstance of this case I hold the view that an award of nominal damage for trespass will meet the justice of the case.

It is for the above and the fuller reasons given in the leading judgment that I agree with the reasoning and conclusion of my learned brother, Aderemi, JSC., that the appeal is meritorious in part and should be allowed.

I accordingly allow same in part and abide by the consequential orders contained in the said leading judgment including the order as to costs.