

SUPREME COURT OF NIGERIA
23RD MAY, 2008 SC. 390/2001
CORAM:- A. I. KATSINA-ALU, S. A. AKINTAN, W. S. N.
ONNOGHEN, F. F. TABAI, I. T. MUHAMMAD, JJSC

GABRIEL ATIVIE PLAINTIFF/APPELLANT
AND
KABELMETAL NIG. LTD. DEFENDANT/RESPONDENT

PLEADINGS - Statement of claim - Reliefs - A claim is circumscribed by the reliefs claimed therein - It is the reliefs claimed that determine the nature of an action - Accordingly the instant action is in contract (H1)

MASTER & SERVANT - General damages - Propriety of the award - In ordinary contracts of employment - Where terms provide for period of notice before termination - Award of general damages is inappropriate - Court of Appeal was right to set aside the award (H2)

MASTER & SERVANT - Reinstatement - In ordinary contracts of employment unlike those protected by statute - It is wrong for a court to order reinstatement - As relief for wrongful dismissal (H3)

FACTS

Plaintiff/Appellant sued Defendant/Respondent claiming sundry reliefs for the wrongful termination of his employment in the Respondent company. Among the reliefs claimed were an order for reinstatement and an award of general damages. However, in paragraphs 5 and 11 of the statement of claim and paragraphs 2, 3, 4, 5, and 7 of the reply to statement of defence, Appellant pleaded facts to the effect that while in the employment of the Respondent, he had sustained disabling personal injuries. No relief was specifically claimed for the personal injuries. Indeed the instant action was brought 3 years after the said injuries, consequent to the termination of his employment by the Respondent. Under the terms of his employment, Appellant was entitled to 2 months notice or salary in lieu

before termination of his employment.

After trial, learned trial Judge found that Appellant's dismissal was wrongful. He awarded N11,325.45 and N2m as special and general damages respectively and also ordered the reinstatement of the Appellant by the Respondent. Respondent's appeal to the Court of Appeal was partly allowed as the orders for reinstatement and payment of general damages were set aside. Being dissatisfied, Appellant has brought the instant appeal against the judgment of the Court of Appeal.

ISSUES FOR DETERMINATION

"1. Whether the lower court was right when it held that the appellant's case was on contract and not in tort?

2. Whether the appellant is entitled to the award of the sum of N11,325.45 and N2m awarded by the High Court as special and general damages and/or whether same is a windfall?"

HELD (Unanimously dismissing the appeal per **TABAI JSC**)

Statement of claim - Reliefs

1. The first issue for determination is whether this action is in contract or in tort. The issue is crucial. Its resolution effectively determines the appeal. I have reproduced herein above the substance of the submissions for the appellant. He relied on paragraphs 5 and 11 of the Statement of Claim and paragraphs 2, 3, 4, 5 and 7 of the Reply to the Statement of Defence and submitted that the action is in tort.

The learned trial Judge was swayed by the above pleadings and evidence and found for the appellant without relating same strictly to the reliefs claimed. I think, with respect, that he erred. A claim is circumscribed by the reliefs claimed. The duty of a plaintiff therefore is to plead only such facts and materials as are necessary to sustain the reliefs and adduce evidence to prove same. He may, at the end of the day obtain all the reliefs claimed or less. He never gets more. Nor does he obtain reliefs not claimed. A court is therefore bound to grant only the reliefs claimed. It cannot grant reliefs not claimed. These are the principles in *Okubule v. Oyagbola* (1990) 7 S.C.

I have, at the beginning of this judgment, reproduced the three reliefs claimed in this case. The first is the principal claim, the other two being only ancillary to and dependent on it. The relief is for a

declaration that the termination of his appointment is wrongful, illegal, null and void and of no effect. The second is for a declaration that he is still in the employment of the defendant/respondent. And the third is for his entitlement to N10,000,000.00 special and general damages. It is only the appellant's success in obtaining the first relief that entitles him to the second and third reliefs. Specifically, the appellant's entitlement to the special and general damages claimed in the third relief is dependent wholly on his entitlement to the declaration that the termination was, by virtue of the terms and conditions of the contract of service between them, wrongful, null and void. In so far as the reliefs claimed in this action are concerned, there is no reference whatsoever to any claim in tort. In my consideration, the claim is in contract pure and simple. (pp. 2262 D/2263 E)

General damages - Propriety of the award

2. This takes me to the next issue of whether the appellant is entitled to the award of the sum of N11,325.45 and N2m as special and general damages. It has been settled in a long line of authorities that in cases of ordinary contract of employment where the terms provide for a specific period of notice before termination or salary in lieu thereof, as in this case, the only remedy available to an employee who is wrongfully terminated is the award of salary for the period of the notice and other legitimate entitlements due to him at the time the employment was brought to an end. He gets no more. In such cases the award of general damages is inappropriate.

The finding by the trial court and affirmed by the lower court is that the termination of the appointment of the appellant by the respondent through Exhibit 'C' dated 5th July, 1990, is wrongful and that the appellant is by reason thereof entitled to damages. But going by the principle in the authorities above some of which I have reviewed above, his entitlement in damages is as stipulated in Exhibits 'C' and 'D'. He gets no more than the two months salary covering the period of notice. This was the principle invoked by the court below in setting aside the damages awarded and the reinstatement ordered by the trial court. (pp. 2264 F/2265 F)

MASTER & SERVANT - Reinstatement

3. Nor is the wronged employee entitled to a decree of reinstatement; the rationale being that no servant can be imposed by the court on an unwilling master or employer. It has to be emphasised that such cases of ordinary contracts of service are quite distinguish-
 B able from contracts of service which are statutorily protected such as the case of *Olaniyan & Ors. v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599, where reinstatement can properly be ordered.

The trial court was clearly wrong to order the reinstatement of
 C the appellant in the respondent's company. It had no jurisdiction to decree the appellant's reinstatement and thus impose him on the unwilling respondent company. For the foregoing reasoning fully endorse the decision of the court below. (pp. 2265 A/2266 A)

D NOTABLE POINTS OF INTEREST
TABAI JSC

1. Wrongful termination gave rise to suit and informs relief

On this issue of the propriety or otherwise of the damages awarded
 E by the trial court, there is yet another reason why the award cannot be sustained. It is related to the first issue of whether the claim was in contract or in tort. I have, on the resolution of that issue, held that the claim was founded in contract. It is clear from the reliefs claimed that but for his termination, the appellant would not have filed this
 F suit. But the termination of his appointment has nothing to do with his entitlement for injuries he sustained in the course of his employment. If the appellant genuinely felt that he could recover damages for injuries he suffered in the course of his employment with the defendant/ respondent company he was free to seek redress in that
 G behalf. The appellant was involved in the accident on the 2nd of April, 1987 and the termination was on the 5th July, 1990, a period of over three years. There were a number of correspondences between the parties. None of which raised the issue of the accident in the course of the appellant's employment. Although facts about the
 H accident and the consequences thereof were pleaded in paragraphs 5 and 11 of the Statement of Claim and some evidence led in support thereof, such evidence was strictly not relevant to the reliefs claimed. The learned trial Judge ought not to have allowed himself

to be swayed by such evidence. (p. 2266 C)

ONNOGHEN JSC

2. Reliefs should be precise

Legal Practice is a science based on precise use of words. That is why a lawyer is always careful in the art of choice and use of words in conveying whatever his complaint(s) is (are) and in formulating the reliefs he seeks from the court. Where a party seeks a particular relief from the court, the court is duty bound, where he established the right to it, to award same to him. On the other hand it is settled law that a party cannot be awarded a relief he did not seek and where such is awarded an appellate court is duty bound to set same aside upon appeal to that effect. It is when we have the above principles in mind that the substance of the instant appeal becomes very simple and straight forward. The question before this appeal can be solved by determining the cause of action of the appellant and the reliefs sought from the court. Is the cause of action of the plaintiff/appellant founded in contract or tort or contract and tort? A party may have two or more causes of action but make claims for one or two of them. (p. 2272 C)

3. Restitutio in integrum is aim of damages in contract

On the issue of damages, it is settled law that the principles of assessment of damages for breach of contract is restitutio in integrum - that is, that in so far as the damages are not too remote, the plaintiff shall be restored, as far as money can do it, into the position in which he would have been if the breach had not occurred. It is in line with the above principle that award of damages in breach of contract cases should be such as:-

“(a) may fairly and reasonably be expected to arise naturally i.e. according to the usual course of things from such breach of contract itself; or

(b) may reasonably be supposed to have been in contemplation of both parties at the time they made the contract, as the probable result of the breach of it - See Okongwu v. NNPC (1985) 4 NWLR (Pt.115) 290 at 299.”

It is also settled that the term “general” and “special” damages

are normally inapt in the categorization of damages for the purpose of awards in breach of contract cases; that apart from damages naturally arising or resulting from the breach, no other form of general damages can be contemplated. In other words, in an action for breach of contract, the plaintiff, where he succeeds, is not entitled to any
 B award under the general damages head of claim in addition to the damages (special) fairly or reasonably expected to arise naturally from the breach which damage must have been in the contemplation of both parties at the time of entering into the contract as the probable
 C result of the breach of same. In terms of breach of contract of employment therefore, the damages recoverable by the plaintiff are the losses reasonably foreseeable by the parties thereto at the time of entering into the contract. (p. 2274 G)

D *4. Counsel should show due care and skill*

This case brings to focus the need for legal practitioners to be very careful in handling clients cases right from the drafting of the claims to the actual conduct of the proceedings in the courts. In the instant case, though learned counsel for the appellant pleaded facts that
 E could ground a cause of action arising from personal injury under the law of tort, no specific claim was made in the Statement of Claim for same, the reliefs being simply for breach of contract of employment. This is not a case where the sins of counsel are not to be visited
 F on the party; it is simply a case of not awarding to a party what he never asked for, it is also a case of not allowing counsel to hide under the principle of not visiting the sins of counsel on the party to shy away from his professional responsibilities to his client in the conduct of his case. The standard of legal practice in this country is very high
 G and counsel are advised to either retain it at that high level or raise it higher, they are definitely not to lower it under any guise.
 (p. 2275 F)

REPRESENTATION

H N. A. Okoye, for the Appellant.
 Oladosu Ogunniyi, (with him; Julius Nwodo), for the Respondent.

CASES REFERRED TO

Saraki v. Kotoye (1990) 6 S.C. 1; (1990) 4 NWLR (Pt. 143) 147
Okongwu v. NNPC (1989) 7 S.C. (Pt.I) 127; (1989) 4 NWLR (Pt. 115) 296 at 315

Okubule v. Oyagbola (1990) 7 S.C. (Pt. II) 60; (1990) 4 NWLR (Pt. 147) 733 at 744

Olurotimi v. Ige (1993) 6 NWLR (Pt. 311) 257

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Katto v. C.B.N. (1999) 5 S.C. (Pt.II) 21

Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt.68)

Union Bank of Nigeria v. Ogboh (1995) 2 NWLR (Pt. 380) 647 at 664

C

Olarenwaju v. Afribank Plc. (2001) 7 S.C. (Pt.III) 1; (2001) 13 NWLR (Pt.731) 691

Olaniyan v. University of Lagos (1985) 2 NWLR (Pt. 9) 599

Garba v. University of Maiduguri (1986) 1 NWLR (Pt. 18) 550

D

LEAD JUDGMENT BY TABAI JSC

In the High Court of Lagos, the plaintiff who is the appellant herein claimed against the defendant which is the respondent herein:-

"(a) A declaration that the termination of his appointment on the 5/7/90, was wrongful, illegal, null and void and therefore of no effect.

E

(b) A declaration that the (plaintiff) was still in the employ of the defendant/respondent company and as such he was entitled to his monthly salary(s) and allowances and an order to restore same from the 5th of July, 1990, until he voluntarily retires from the service of the defendant company.

F

(c) That he (plaintiff) was entitled to the sum of N10,000,000.00 from the defendant/respondent as general and special damages with interest thereon at 21 % banking rate till the said sum is paid."

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The claim was filed on the 26th October, 1990. Filed along with the Writ of Summons was a 12 paragraph Statement of Claim. The defendant/respondent filed an 11 paragraph Statement of Defence on the 10/1/91. In reaction thereto the plaintiff/appellant filed a seven paragraph Reply to the defendant Statement of Defence.

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The matter went on trial. In his judgment on the 23rd of September, 1994, the learned trial Judge, S. O. Adagun, J., allowed the claim and entered judgment for the appellant which he expressed as

follows:-

B *"I am inclined to believe that the plaintiff had suffered personal injuries and suffering which it could be calculated from the day of his wrongful termination of his employment up to date, to the tune of N2,000,000.00, the amount which is considered reasonable to be paid to the plaintiff as general damages. In addition the plaintiff is to be reinstated to his employment and pay him all his dues. The defendant company is to pay the amount of N2,000,000.00 to the plaintiff only for his sufferings to the injuries accidentally met in the course of his employment."*

C The defendant/respondent was not satisfied and went on appeal to the court below. By its judgment on the 24th of April, 2001, the appeal was partially allowed. The Court of Appeal per Sanusi, JCA., concluded in the following terms:-

D *"In consequence, the appeal succeeds in part and is partially allowed. The decision of the trial court to the extent that the termination of the respondent's appointment by the appellant was wrongful is affirmed. All other awards made by the trial court are hereby set aside. For the avoidance of doubts, the respondent is entitled to be paid two months salary and all other allowances payable to him upon termination of his appointment as provided in the terms and condition of the contract of service. These should be paid to him accordingly. The trial court's order reinstating the respondent and award of N2m general damages and all other awards made by*

E *the lower court are hereby set aside."*

F

G The plaintiff was aggrieved by the decision and has come on appeal to this court. In the Notice of Appeal dated 23rd of July, 2001, the appellant raised two grounds of appeal. Before this court, Briefs were filed and exchanged. The undated appellant's Brief filed on the 15/10/02, was prepared by N.A. Okoye of Abumchukwu Okoye & Co. Two issues for determination were formulated therein as follows:-

- H *"1. Whether the lower court was right when it held that the appellant's case was on contract and not in tort?*
- 2. Whether the appellant is entitled to the award of the sum of N1 1,325.45 and N2m awarded by the High Court as special and general damages and/or whether same is a windfall?"*

Oladosu Ogunniyi prepared the respondent's Amended Brief

of Arguments also undated but filed on the 22/3/07. In it the respondent formulated the following single issue for determination:-

"Whether having found that the termination of the appointment of the appellant was wrongful, the lower court was right in setting aside the award of N2 million as general damages for the breach, considering the facts and circumstances of the case and the status of the appellant?"

On behalf of the appellant Mr. Okoye proffered the following arguments. On the appellant's first issue, counsel referred to paragraphs 5 and 11 of the Statement of Claim and paragraphs 2,3,4, 5 and 7 of the Reply to the Statement of Defence and submitted that the cause of action is in tort. It was argued that the appellant not only pleaded but also tendered evidence of personal injuries which was accepted by the trial court and which formed the basis of the awards made. There was therefore no basis for the interference in the damages awarded by the trial court, appellant contended. Learned counsel referred to the statement of the lower court to the effect that there was no justification for the award of damages for personal injuries in a claim of purely wrongful termination of appointment and submitted that the finding was not supported by the evidence before the court. It was argued that the damages awarded by the trial court were neither windfall nor gratuitous.

On his part, Mr. Oladosu Ogunniyi submitted firstly that there was no issue as to whether the action was in contract or tort and that the appellant's issue one be struck out. With respect to ground two on which appellant's issue two is predicated, learned counsel submitted that the ground is a mere general statement of opinion and vague that no sustainable and valid issue could be distilled from it. For this submission counsel relied on *Saraki v. Kotoye* (1990) 6 S.C. 1; (1990) 4 NWLR (Pt. 143) 147. It was further submitted that in breach of contract cases the damages to be awarded should be such as fairly and reasonably supposed to be within the contemplation of the parties. *Okongwu v. NNPC* (1989) 7 S.C. (Pt.I) 127; (1989) 4 NWLR (Pt. 115) 296 at 315. The principle of assessment of damages in breach of contract cases, counsel submitted, is *restitutio in integrum*. It was further submitted that the categorisation into general and special damages for the purpose of awards is unnecessary in

breach of contract cases since apart from damages that flow naturally from the breach no form of general damages can be contemplated. He cited *U.T.C. v. Nwokokuku* (1993) 3 NWLR (Pt. 281) and submitted that general damages is known only in the law of tort. Counsel referred to Exhibits “C” and “D” and the terms therein that either party to the contract could terminate it by giving the other, two months notice or payment in lieu thereof and submitted that where there is wrongful termination, two months payment in lieu is all the damages within the contemplation of the parties. Therefore, the award of N2,000,000.00 is completely out of tune with the principles guiding the award of damages, learned counsel argued. It was submitted therefore that the court below rightly intervened with the damages awarded. Learned counsel finally urged that the appeal be dismissed.

I have considered the pleadings, the evidence in support thereof, the judgment of the trial High Court, that of the Court of Appeal and the submissions of counsel for the parties in their respective Briefs. ***The first issue for determination is whether this action is in contract or in tort. The issue is crucial. Its resolution effectively determines the appeal. I have reproduced herein above the substance of the submissions for the appellant. He relied on paragraphs 5 and 11 of the Statement of Claim and paragraphs 2, 3, 4, 5 and 7 of the Reply to the Statement of Defence and submitted that the action is in tort.*** In paragraph 5 of the Statement of Claim the appellant pleaded thus:-

“The plaintiff avers that prior to his employment in the defendant company, he had no disability whatsoever and that on 27th April, 1987, he was involved in an accident in the course of his employment in consequence whereof the plaintiff sustained severe physical and internal injuries in respect of which he was treated in various hospitals and clinics and which resulted in the plaintiff’s permanent disability and a report of which was made to the defendant company. By reason of the aforesaid accident, the plaintiff suffered (and still suffers) considerable pains, loss and expenses. Certificate of disability shall at the trial of this suit be relied upon.”

And in part of paragraph 11 of the Statement of Claim he pleaded as follows:-

“(11) The plaintiff avers that the termination of his appoint-

ment is unlawful and void as follows:-

(i) It was done in breach of his conditions of service and contract of employment.

(ii) The plaintiff was never confronted with any allegation, and if the defendant company had any allegation in mind he was not given a fair hearing before the termination of the said appointment. B

(iii) That he was terminated without justifiable cause, particularly in view of to his said involvement in an accident and to robbery attack which have left him disabled and poverty stricken.

General Damages

The plaintiff claims the sum of N9,974,557.13 as general damages for; the unlawful breach of the 1985 contract of employment; the permanent disability arising from the plaintiff's involvement in a motor accident in the course of his employment and the cost of this action." C D

He then went on to plead particulars of special damages in the rest of the said paragraph 11. In paragraphs 2, 3, 4, 5 and 7 of the Reply to the Statement of Defence, the appellant pleaded more details and particulars about the accident, the injuries and disability resulting therefrom. He also pleaded the facts of his admission and treatment in various hospitals at Uromi, Fugar and Lagos. E

At the trial the appellant was at great pains to tender oral and documentary evidence to prove these assertions. **The learned trial Judge was swayed by the above pleadings and evidence and found for the appellant without relating same strictly to the reliefs claimed. I think, with respect, that he erred. A claim is circumscribed by the reliefs claimed. The duty of a plaintiff therefore is to plead only such facts and materials as are necessary to sustain the reliefs and adduce evidence to prove same. He may, at the end of the day obtain all the reliefs claimed or less. He never gets more. Nor does he obtain reliefs not claimed. A court is therefore bound to grant only the reliefs claimed. It cannot grant reliefs not claimed. These are the principles in Okubule v. Oyagbola (1990) 7 S.C. (Pt. II) 60; (1990) 4 NWLR (Pt. 147) 733 at 744, Kalio v. Kalio (1975) 2 S.C. 15; (1975) 2 S.C (Reprint) 14, Olurotimi v. Ige (1993) 6 NWLR (Pt. 311) 257.** F G H

I have, at the beginning of this judgment, reproduced

the three reliefs claimed in this case. The first is the principal claim, the other two being only ancillary to and dependent on it. The relief is for a declaration that the termination of his appointment is wrongful, illegal, null and void and of no effect. The second is for a declaration that he is still in the employment of the defendant/respondent. And the third is for his entitlement to N10,000,000.00 special and general damages. It is only the appellant's success in obtaining the first relief that entitles him to the second and third reliefs. Specifically, the appellant's entitlement to the special and general damages claimed in the third relief is dependent wholly on his entitlement to the declaration that the termination was, by virtue of the terms and conditions of the contract of service between them, wrongful, null and void. In so far as the reliefs claimed in this action are concerned, there is no reference whatsoever to any claim in tort. In my consideration, the claim is in contract pure and simple. On this question of whether the action is in contract or tort the court below had this say:-

"It is clear from the printed record of proceedings that the cause of action before the trial court as shown in the Writ of Summons and Statement of Claim is that of breach of contract of service. There has not been any distinct claim of damages arising from personal injuries under tort or Workman's Compensation Act. The action before the trial court was not an action in tort."

I agree with the opinion expressed above and I adopt same. The result is that this first issue is resolved against the appellant.

This takes me to the next issue of whether the appellant is entitled to the award of the sum of N11,325.45 and N2m as special and general damages. It has been settled in a long line of authorities that in cases of ordinary contract of employment where the terms provide for a specific period of notice before termination or salary in lieu thereof, as in this case, the only remedy available to an employee who is wrongfully terminated is the award of salary for the period of the notice and other legitimate entitlements due to him at the time the employment was brought to an end. He gets no more. See *Katto v. C.B.N.* (1999) 5 S.C. (Pt.II) 21; (1999) 6 NWLR (Pt. 607) 890 at

406 Western Nigeria Development Corporation v. Abimbola (1966) 4 NSCC 172, Nigeria Produce Marketing Board v. Adewunmi (1972) 7 NSCC 662. **In such cases the award of general damages is inappropriate' Nor is the wronged employee entitled to a decree of reinstatement; the rationale being that no servant can be imposed by the court on an unwilling master or employer.** See Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt.68), See Union Bank of Nigeria v. Ogbob (1995) 2 NWLR (Pt. 380) 647 at 664.

It has to be emphasised that such cases of ordinary contracts of service are quite distinguishable from contracts of service which are statutorily protected such as the case of Olaniyan & Ors. v. University of Lagos (1985) 2 NWLR (Pt. 9) 599, where reinstatement can properly be ordered.

As I indicated above this case falls within the category of 'ordinary contracts of employment which terms are those stipulated in the contract itself. Exhibit 'D' is the terms and conditions of service for Senior Staff. Paragraph 4 thereof states:-

"CONFIRMATION OF APPOINTMENT

After successful completion of the probationary period, confirmation of appointment will be notified to the employee in writing after which appointment may only be terminated by either party giving two months notice or two months pay in lieu thereof."

This was conveyed to the appellant in Exhibit C and expressed in the last paragraph therein as follows:-

"Henceforth, your appointment may only be terminated either side by two months notice or pay in lieu thereof."

The finding by the trial court and affirmed by the lower court is that the termination of the appointment of the appellant by the respondent through Exhibit 'C' dated 5th July, 1990, is wrongful and that the appellant is by reason thereof entitled to damages. But going by the principle in the authorities above some of which I have reviewed above, his entitlement in damages is as stipulated in Exhibits 'C' and 'D'. He gets no more than the two months salary covering the period of notice. This was the principle invoked by the court below in setting aside the damages awarded and the reinstatement ordered by

the trial court. The trial court was clearly wrong to order the reinstatement of the appellant in the respondent's company.

It had no jurisdiction to decree the appellant's reinstatement and thus impose him on the unwilling respondent company. On this point see further the cases of *Onalaja v. African Petroleum Ltd.* (1991) 7 NWLR (Pt.206) 691, *Union Bank of Nigeria v. Ogboh* (supra). Similarly the trial court had no justification to award the N2m damages. ***For the foregoing reasoning fully endorse the decision of the court below.***

On this issue of the propriety or otherwise of the damages awarded by the trial court, there is yet another reason why the award cannot be sustained. It is related to the first issue of whether the claim was in contract or in tort. I have, on the resolution of that issue, held that the claim was founded in contract. It is clear from the reliefs claimed that but for his termination, the appellant would not have filed this suit. But the termination of his appointment has nothing to do with his entitlement for injuries he sustained in the course of his employment. If the appellant genuinely felt that he could recover damages for injuries he suffered in the course of his employment with the defendant/ respondent company he was free to seek redress in that behalf. The appellant was involved in the accident on the 2nd of April, 1987 and the termination was on the 5th July, 1990, a period of over three years. There were a number of correspondences between the parties. None of which raised the issue of the accident in the course of the appellant's employment. Exhibit BB dated 4th May, 1988, was made by the appellant. It contained no assertion that the accident occurred in the course of his employment. And after his termination the appellant reacted through his solicitors by Exhibit G 'M' dated 10th August, 1990. The termination of his appointment was the main issue in focus. It is not surprising therefore that he claimed no relief for his entitlement to damages that arose from the accident. Although facts about the accident and the consequences thereof were pleaded in paragraphs 5 and 11 of the Statement of Claim and some evidence led in support thereof, such evidence was strictly not relevant to the reliefs claimed. The learned trial Judge ought not to have allowed himself to be swayed by such evidence.

On the whole, I am satisfied that the learned trial Judge erred

in granting the reliefs for damages and reinstatement. I fully endorse the decision of the court below setting aside the order damages and reinstatement. The result is that the appeal fails and is accordingly dismissed. I make no orders as to costs.

B

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Tabai, JSC. I agree with it and, for the reasons he gives I also dismiss the appeal. I also make no order as to costs.

C

AKINTAN JSC

The appellant was the plaintiff in this action which he instituted at Ikeja High Court, Lagos while the respondent was the defendant. The plaintiff's claim in the case was inter alia, for: (a) a declaration that the termination of the plaintiff's appointment by the defendant company was wrongful, illegal, null and void; (b) a declaration that the plaintiff is still in the employment of the defendant company; and (c) N10 million as general and special damages with 21% interest thereon till the said sum is paid. Pleadings were filed and exchanged and evidence was led by the parties in support of the respective pleadings at the trial before Adagun, J.

At the conclusion of the trial, the learned trial Judge delivered his reserved judgment on 23rd September, 1994. The learned Judge came to the following conclusion in the said judgment.

"I am inclined to believe that the plaintiff had suffered personal injuries and suffering which it could be calculated from the day of his wrongful termination of his employment up to date, to the tune of N2,000,000 the amount which is considered reasonable to be paid to the plaintiff as general damages. In addition, the plaintiff is to be reinstated to his employment and pay him all his dues. The defendant is to pay the amount of N2,000,000 to the plaintiff only for his sufferings to the injuries accidentally met in the course of his employment."

The defendant at the trial was dissatisfied with the judgment and an appeal was filed against it to the court below. The appeal was

allowed and the award of N2,000,000 made by the trial court was set aside. Also set aside is the order for reinstatement which was replaced with an award of two months salary in lieu. The present appeal is from that judgment.

The brief facts of the case are that the plaintiff/appellant was first employed by the defendant/ respondent company on the 4th February, 1985. His appointment was confirmed on 23rd September, 1985. He was a Senior Marketing Executive in April, 1987, when the incident that led to the termination of his appointment with the company occurred. As Senior Marketing Executive, he was in charge of marketing the company's products (cables) in five States. The States are Ogun, Oyo, Ondo, Kwara and Delta. The plaintiff's case was that while he was on working leave in Delta State, he sustained a ghastly motor accident on 27th April, 1989, as result of which he was unconscious in hospital for about 21 days. He was treated at the hospitals in Uromi, Fuga and Lagos. When he was discharged, he was ordered to be placed on light duties. But he was served with a letter terminating his employment with the company.

The case for the defence was that the appellant was on his annual leave in his home State, Delta State, when he was involved in the motor accident. The company denied having working leave arrangement with its staff. While the appellant was on leave, one Mr. Dada was said to be covering his duties. It was confirmed that the appellant's appointment was terminated in accordance with the company's conditions of service and all his entitlements due to him were offered to him but that he refused to collect them.

The parties filed their respective Briefs of Argument in this court. The following two issues were formulated' as arising for determination in the appeal:-

"1. Whether the lower court was right when it held that the appellant's case was in contract and not in tort?"

2. Whether the appellant is entitled to the award of the sum of N1 1,325.45 and N2,000,000 awarded by the High Court as special and general damages and or whether same is a windfall?"

It is clear from the facts pleaded by the parties and the evidence led at the trial that the relationship between the appellant and the respondent arose as a result of the contract of employment by

which the respondent employed the appellant as one of its sales executives. The terms and conditions which were to govern the relationship are set out in a written form which was tendered at the trial. Under the terms, the appointment of the appellant could be terminated by giving appropriate notice or payment in lieu of such notice. The respondent claimed that what it did in the instant case was in line with the terms and conditions of appellant's contract of service with the respondent. The respondent's case was that it was not the practice within the company to grant working leave to any of its' staff and that the appellant was involved in the motor accident while he was away on leave in his home State. The appellant was therefore not in the course of the respondent's employment when the accident occurred.

The appellant has failed to point out any of the provisions of the company's conditions of service which supports his contention that he could be on working leave. The appellant's contention that he was entitled to the special and general damages he claimed could therefore not stand.

The law is settled that, the court will not compel an unwilling employer to retain any worker. Similarly, an employer is not bound to give any reason for terminating the appointment of a servant where such employment is not one with statutory flavour: See *Olarenwaju v. Afribank Plc.* (2001) 7 S.C. (Pt.III) 1; (2001) 13 NWLR (Pt.731) 691, *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599, and *Garba v. University of Maiduguri* (1986) 1 NWLR (Pt. 18) 550. Also, a claim for damages could only arise if there is a breach of any legal duty to the claimant. In the present case, the appellant has failed to prove that the respondent was in breach of any of its legal obligations arising from the contract of service to him. In the result, I hold that there is no merit in the appeal. I therefore agree with the conclusion reached in the leading judgment written by my learned brother, Tabai, JSC., that the appeal should be dismissed. I accordingly dismiss the appeal with costs as assessed in the leading judgment.

ONNOGHEN JSC

By a Statement of Claim filed on the 26th day of October, 1990, the appellant as plaintiff claimed against the defendant, now respondent, as follows:-

“WHEREOF the plaintiff claims against the defendant as per his Writ of Summons as follows:-

“(a) A declaration that the termination of the appointment of the plaintiff by the defendant company on the 5th day of July, 1990, is wrongful, illegal, null and void and therefore of no effect.

(b) A declaration that the plaintiff is still in the employment of the defendant company and as such he is entitled to his monthly salary(s) and allowances and an order to restore same from the 5th day of July, 1990, until he voluntarily retires from the service of the defendant company.

(c) That the plaintiff is entitled to the sum of N10,000,000.00 (Ten Million Naira) from the defendant company as general and special damages with interest thereon at 21% banking rate till the said sum is paid.”

In a judgment delivered on the 23rd day of September, 1994, the trial court awarded the sums of N1 1,325.45 (Eleven Thousand, Three Hundred and Twenty-five Naira Forty-Five Kobo) and N2,000,000.00 (Two Million Naira) respectively for special and general damages for injuries sustained by the plaintiff/ appellant in the course of his employment with the defendant/ respondent and for continuing pain and suffering while the claim for re- instatement was dismissed. The defendant/respondent was not satisfied with that judgment and consequently appealed to the Court of Appeal, holder at Lagos in Appeal No. CA/L/177/98, which court allowed the appeal in part, in a judgment delivered on the 24th day of April, 2001 and set aside the judgment of the trial court except the decision to the effect that the termination of the appointment of the plaintiff/appellant by the defendant/respondent was wrongful which was accordingly affirmed. The lower court also held that “for the avoidance of doubts the respondent is entitled to be paid two months’ salary and all other allowances payable to him upon termination of his appointment as

provided in the term and condition of the contract of service.”

Being dissatisfied with the above judgment, the appellant has appealed to this court where the issues for determination, as identified by the learned counsel for the appellant, N. A. Okoye, Esq., in the appellant’s Brief of Argument filed on 15th day of October, 2002, are stated as follows:- B

“1. Whether the lower court was right when it held that the appellant’s case was in contract and not in tort?”

2. Whether the appellant is entitled to the award of the sums of N11,325.45 (Eleven Thousand, Three Hundred and Twenty-Five Naira Forty- Five Kobo) and N2,000.000.00 (Two Million Naira) awarded by the High Court as special and general damages and or whether same is a windfall?” C

In arguing the appeal, learned counsel for the appellant submitted that the plaintiff’s cause of action was grounded both in contract and tort referring to paragraphs 5 and 11 of the Statement of Claim and paragraphs 2,3,4,5 and 7 of the Reply to the Statement of Defence as well as the evidence of PW.1 and PW.2; that the appellant pleaded and gave evidence in support of the issue of personal injury and that the finding by the trial court to the personal injury was never reversed by the lower court and urged the court to resolve the issues in favour of the appellant and restore the award on personal injury and set aside the decision of the lower court by restoring that of the trial court. D E

In his argument, learned counsel for the respondent, Oladosu Ogunniyi, Esq., in the respondent’s Amended Brief filed on 22nd March, 2007, submitted that the issue as to whether the action as constituted was in contract or in tort was not an issue before the lower court neither did it form part of the determination of the said court; that in any event, the trial court did find specifically at page 102 of the record that the action “was for contract of service.....;” that the appellant did not cross-appeal against that finding; that appellant’s issue (1) arose from an orbiter dicta of the lower court and ought to be struck out. F G H

On issue (2), learned counsel submitted that ground 2 from which the issue was distilled is not a proper ground of appeal, the same being a mere general statement of opinion and a vague com-

ment and ought to be struck out; that the ground which complained of the unreasonableness of the decision of the lower court setting aside the award of damages, no grounds or particulars of the alleged unreasonableness were provided to enable the court see the ground of the unreasonableness of the decision; that the principle of assessment of damages for breach of contract is that apart from damages naturally resulting from the breach, no other form of general damages can be contemplated, relying on *UTC v. Nwoker - Uku* (1993) 3 NWLR (Pt.281) 295 at 312, *Agbarelo v. UBN* (2000) 4 S.C. (Pt.I) 233 at 244.

Legal Practice is a science based on precise use of words. That is why a lawyer is always careful in the art of choice and use of words in conveying whatever his complaint(s) is (are) and in formulating the reliefs he seeks from the court. Where a party seeks a particular relief from the court, the court is duty bound, where he established the right to it, to award same to him. On the other hand it is settled law that a party cannot be awarded a relief he did not seek and where such is awarded an appellate court is duty bound to set same aside upon appeal to that effect. It is when we have the above principles in mind that the substance of the instant appeal becomes very simple and straight forward. The question before this appeal can be solved by determining the cause of action of the appellant and the reliefs sought from the court. Is the cause of action of the plaintiff / appellant founded in contract or tort or contract and tort? A party may have two or more causes of action but make claims for one or two of them,

Before going into the above questions, it is necessary to comment on the learned counsel for the respondent's strange objection or 'Preliminary Objection' as to the competence of the two grounds of appeal in this appeal. I describe the objection as strange because there is no Notice of Preliminary Objection filed by the learned counsel neither did he present argument thereon specifically by way of Preliminary Objection. That being the case, it is my view that the objection as to whether the action was on contract or tort not being raised before the lower court nor that court deciding thereon and that ground 2 of the grounds of appeal being vague, a general statement of opinion etc, are incompetent and deserve to be ignored in

this judgment.

On the merits of the issue raised for determination, it is clear from the record that appellant's action is founded on breach of contract of service or employment, as concurrently found by the lower courts. At page 102 of the record, the trial court found as a fact that ".....in any event the action which was filed by the plaintiff was for Contract of Service....." and that the respondent was wrong in terminating the said contract and therefore liable in damages. The above position was accepted at pages 375-376 of the record where it stated thus:-

"From what I have said above I agree with the learned trial Judge that the termination of the defendant (sic)/respondent's appointment was not made in accordance with the condition laid in Exhibit D, the terms and conditions of service, and was therefore wrongful."

Learned counsel for the appellant has referred the court to paragraph of the Statement of Claim and submitted that the said paragraph constitutes a cause of action based on tort, which he further submitted is in addition to one cause of action founded on breach of contract. The said paragraph 5 pleads as follows:-

"5. The plaintiff avers that prior to his employment in the defendant company, he had no disability whatsoever and that on 2nd April, 1987, he was involved in an accident in the course of his employment in consequence whereof the plaintiff sustained severe physical and internal injuries in respect of which he was treated in various hospitals and clinics and which resulted in the plaintiff's permanent disability and report of which was made to the defendant company. By reason of the aforesaid accident, the plaintiff suffered (and still suffers) considerable pains, loss and expenses.

Certificate of disability shall at the trial of this suit be relied upon

PARTICULARS OF LOSS AND EXPENSES N

- | | | |
|--|----------|--|
| (a) Cost of hiring a lawyer | 1,908.50 | |
| (b) Transport to and fro (N96.50) for 2 days | 193.00 | |
| (c) Hotel bills (N96.50) for 2 nights | 193.00 | |
| (d) Hospital bill as follows: | | |

(i)	<i>Oriafor Hospital, Uromi</i>	1,450.98
(ii)	<i>Nazareth Hospital, Fugar</i>	4,795.30
(iii)	<i>LUTH, Idi-Araba, Lagos</i>	1,809.69
(iv)	<i>Drugs, Ex-rays and pints of blood bought for 25 treatment</i>	974.98

B *Total* N 11.325.45

At the trial, the plaintiff shall rely on receipts, letters, certificates and other documents to support the particulars under this paragraph."

It should be noted that the appellant, in paragraph 7 of the Statement of Claim specifically pleaded thus:-

C *"7. On 5th of July, 1990, the defendant company wrongfully and in breach of the contract of employment purportedly terminated the appointment of the plaintiff without stating any reason(s) or cause whatsoever. The plaintiff shall rely on the letter of termination at the trial."*

D I had at the beginning of this judgment produced the reliefs claimed by the appellant in the Statement of Claim. From the reproduced reliefs, it is very clear that the appellant made no claim for any tortuous act of the respondent. From the three (3) reliefs, it is obvious that the appellant sought declarations to the effect that the termination of his appointment was wrongful etc and that he is still an employee of the respondent (i.e. reinstatement) and thirdly general and special damages of N10,000,000.00 (Ten Million Naira) with interest of 21% thereon obviously for the wrongful termination of the appointment of the appellant. There is no relief in respect of the alleged injuries sustained in the course of employment with the respondent and it is settled law that parties and the court are bound by the pleadings of the parties and that the court, not being a father Christmas cannot give to a party what he has not asked for. In the circumstance, I agree with the lower court that the action of the appellant is founded on contract only.

G On the issue of damages, it is settled law that the principles of assessment of damages for breach of contract is *restitutio in integrum* H - that is, that in so far as the damages are not too remote, the plaintiff shall be restored, as far as money can do it, into the position in which he would have been if the breach had not occurred. It is in line with the above principle that award of damages in breach of contract cases

should be such as:-

“(a) may fairly and reasonably be expected to arise naturally i.e. according to the usual course of things from such breach of contract itself; or

(b) may reasonably be supposed to have been in contemplation of both parties at the time they made the contract, as the probable result of the breach of it - See Okongwu v. NNPC (1985) 4 NWLR (Pt.115) 290 at 299.” B

It is also settled that the term “*general*” and “*special*” damages are normally inapt in the categorization of damages for the purpose of awards in breach of contract cases; that apart from damages naturally arising or resulting from the breach, no other form of general damages can be contemplated. In otherwords, in an action for breach of contract, the plaintiff, where he succeeds, is not entitled to any award under the general damages head of claim in addition to the damages (special) fairly or reasonably expected to arise naturally from the breach which damage must have been in the contemplation of both parties at the time of entering into the contract as the probable result of the breach of same. In terms of breach of contract of employment therefore, the damages recoverable by the plaintiff are the losses reasonably foreseeable by the parties thereto at the time of entering into the contract. D E

From the contract of employment between the parties; the appellant is entitled to be paid two months’ salary in lieu of notice and all other allowances payable to him and no more as found and held by the lower court. F

This case brings to focus the need for legal practitioners to be very careful in handling clients cases right from the drafting of the claims to the actual conduct of the proceedings in the courts. In the instant case, though learned counsel for the appellant pleaded facts that could ground a cause of action arising from personal injury under the law of tort, no specific claim was made in the Statement of Claim for same, the reliefs being simply for breach of contract of employment. This is not a case where the sins of counsel are not to be visited on the party; it is simply a case of not awarding to a party what he never asked for, it is also a case of not allowing counsel to hide under the principle of not visiting the sins of counsel on the H

party to shy away from his professional responsibilities to his client in the conduct of his case. The standard of legal practice in this country is very high and counsel are advised to either retain it at that high level or raise it higher, they are definitely not to lower it under any guise.

B When one realizes that the instant case is simply one for damages for breach of contract of employment, it becomes obvious that the award of any other damages by the trial court apart from the payment of two months' salary in lieu of noticed and relevant allowances that remained outstanding at the time of the wrongful termination, particularly the award of N2,000.000.00 (Two Million Naira) by
C way of general damages, has/have no foundation in our law and therefore liable to be set aside. I agree, therefore with the lower court in that respect.

D In conclusion, I agree with the reasoning and conclusion of my learned brother, Tabai, JSC., in the leading judgment that the appeal is without merit and should be dismissed. I therefore order accordingly and abide by the consequential orders made in the leading judgment of learned brother, including the order as to costs.

E

MUHAMMAD JSC

I have had the advantage of reading the judgment of my
F learned brother, Tabai, JSC. I agree with him that the appeal lacks merit and it should be dismissed. I hereby dismiss the appeal. I abide by orders made in the leading judgment including order as to costs.

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