

SUPREME COURT OF NIGERIA
7TH DECEMBER, 2012. SC. 92/2009
CORAM:- M. S. MUNTAKA-COOMASSIE,
S. GALADIMA, N. S. NGWUTA, M. D. MUHAMMAD,
C. B. OGUNBIYI, JJSC

ALHAJI GANIYU MARTINS APPEL-
LANT
V.
COMMISSIONER OF POLICE RESPONDENT

SUPREME COURT - Appeals - Determination - The court has no jurisdiction to sit on appeal from Chief Magistrate court - But sits on appeal from Court of Appeal (H1)

STATUTES - Interpretation - Literal rule - Where words of enactments are clear and unambiguous - Courts must give such words their ordinary meaning (H2)

COURTS - Chief Magistrate court - Powers - Penal Code s.78 & CPC s.365(1) - It must be shown inter alia that offence for which accused was charged - Is within jurisdiction of the court (H3)

FACTS

Accused/appellant was an imports manager at NECCO Sweet Company. He was responsible for procuring raw materials for the use in the production line of the company. In the course of the discharge of his duties, the company allegedly suffered a loss of the sum of N2.5 million. The matter was thus reported to the police. In the course of investigation, appellant owned up the liability to the tune of N753,078.85. Appellant then agreed to settle this amount by the payment of N30,000.00, N40,000.00 monthly installments. A written agreement to this effect was signed by the appellant and the company.

On failing to honour the undertaking in the agreement, appellant was then arraigned before the Chief Magistrate Grade

I, Kano State. At the end of the trial, appellant was sentenced to 2 years imprisonment with the option of a fine of five thousand naira. The court stated that it lacks jurisdiction to order appellant to pay the N2.5million but that appellant should pay what he earlier agreed. Appellant then paid the fine but declined to pay compensation ordered by the Chief Magistrate. He then appealed against his conviction and sentence to the State High Court. The court after hearing the appeal dismissed same. Appellant was again dissatisfied and he unsuccessfully appealed to the Court of Appeal, Kaduna Division. Being further aggrieved, appellant filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

“The gist of this appeal is the determination of whether the compensation of N753,075.85 awarded by the Chief Magistrate Grade I pursuant to the provisions of Section 78 of the penal code and section 365(1) of the CPC was validly made”

HELD (Unanimously dismissing the appeal per MUNTA-KA-COOMASSIE JSC)

SUPREME COURT - Appeals - Determination

1. I have carefully and closely too considered the criticism of the respondent vis-à-vis the way and manner the appellant formulated his two issues for determination. The issues were formulated in such a way that suggests that this court was sitting on appeal against the judgment of the chief Magistrate Grade I. Far from it, this court has no jurisdiction to sit on appeal against the judgment of the chief Magistrate court. The court can only entertain an appeal against the judgment of the Court of Appeal. Therefore, any appeal to this court must be challenging the judgment of the Court of Appeal. Any issue thus formulated for determination must not only arise from the grounds of appeal but also relate to issues determined by the Court of Appeal which correctness or otherwise is put before us for determination. (p. 3174 E)

STATUTES - Interpretation - Literal rule

2. At this juncture I must point out that the words of these enactments are not only clear but also unambiguous. The rule of interpretation of statutes enjoins courts to give such words their natural literal and

ordinary meaning. (p. 3176 A)

COURTS - Chief Magistrate court - Powers

3. In my considered view for a Chief Magistrate or a criminal court to validly exercise the powers conferred by the provisions of sections 78 Penal Code and Section 365(1) of the C.P.C respectively it must be shown that: -

(a) The offence for which the accused person was charged is within the jurisdiction of the court:

(b) The accused person must have been convicted of the said offence;

(c) There must be evidence before the court which evidence must be such that, in the opinion of the court, would be capable of making the amount of compensation to be awarded recoverable by civil suit.

Hence the Sections (supra) do not give room to any criminal court to arbitrarily award compensation to any victim of an offence, when there is no sufficient evidence to such amount of compensation. (p. 3176 D)

REPRESENTATION

A. U Mustapha with Obalola Dayo Esq., for the Appellant
Suraj Saeda, (S. G Min. of Justice, Kano State) for the Respondent

STATUTES & RULES REFERRED TO

Penal Code, ss.78, 314 and 322

Criminal Procedure Code, s.365(1)

Magistrates Court Law Cap 89 Laws of Kano State 1991, s.13

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

The Appellant, Alhaji Ganiyu Martins, was arraigned before the Chief Magistrate Court Grade 1, Kano for the offence of Criminal breach of trust by servant and cheating contrary to Section 314 and 322 of the Panel Code. At conclusion the trial the appellant was found guilty of criminal breach of trust by servant. In conclusion the Trial chief Magistrate ordered as follows:-

“The accused is hereby sentenced to 2 years imprisonment or pay a fine of five thousand naira. I will not order the accused to pay

N2.5million naira, rather I will ask him to pay the sum of N753,075.85 which he agreed between himself and the company”.

The facts of the case are quite clear. The appellant was an employee of NECCO Sweet Company as its imports Manager. In that company, the appellant was charged with the responsibility of
B procuring of raw materials for the use in production line of the company. In the course of the discharge of his responsibilities the company allegedly suffered a loss of the sum of N2.5 million. The matter was reported to the police. It was in the course of investigation that the
C appellant owned up the liability to the tune of N753,078.85 out of the alleged sum missing as the result of the transaction handled by him on behalf of the company. The appellant then agreed to settle this amount by the payment of N30,000.00, N40,000.00 monthly installments. A written agreement to this effect was signed by the appellant and the company.

D On failing to honour the undertaking in the agreement to refund the amount to the company, the appellant was then arraigned before the Chief Magistrate Grade I and subsequently charged as follows:-

E “I, Mohammed Nasir Abubakar, Chief Magistrate I Gya-di-Gyadi Kano charge you Ganiyu Martins as follows:- That you between the year January 1993 and September 1995 being a servant in the employment of NECCO Sweets Nigeria Ltd and in your capacity as import manager committed criminal breach of trust in
F respect of the purchase to the tune of N2.5 million naira over the said properties and that you thereby committed an offence punishable under Section 314 of the penal code”. See p.39 of the record.

At the end of the trial, the appellant was found guilty and convicted as earlier stated above see p.65 of the record. The appellant was sentenced to 2 years imprisonment with the option of the fine
G of five thousand naira. The appellant then paid the fine but declined to pay the compensation ordered by the Chief Magistrate. He then appealed against his conviction and sentence to the State High Court of Justice in its appellate jurisdiction. The High Court after hearing the appeal dismissed it for lack of merit. The High Court in its judgment held as follows PP 8 - 18 See especially pp 18.

H “We are Satisfied that the order of compensation in the sum of N753,076.86 was properly made under both Sections 365 of the

Criminal procedure code and Section 78 of the Penal Code. This amount was the one admitted by the appellant in Exhibit 1 and his statement made to the Police on 21/11/95. The learned Trial Chief Magistrate did not exceed his jurisdiction when he made the said order of compensation as same was properly fortified by the provisions of Section 365 C.P.C. and Section 78 of the penal code". B

The appellant was dissatisfied with the judgment of the High Court of Justice Kano and un-successfully appealed to the Court of Appeal, Kaduna Division hereinafter called the lower court. After the hearing of the appeal the lower court in a unanimous decision C dismissed the appeal of the appellant and affirmed the judgment of the High Court of Justice Kano. In its judgment the lower court on pp.114 - 115 held as follows: Per Mahmud Mohammed JCA as he then was.

"The record of this appeal speaks for itself. It shows that this D appeal arose out of the decision of the trial Chief Magistrate court Kano convicting the appellant of the offence of criminal breach of trust by a servant under Section 314 of the Penal Code. The appellant was sentenced to a term of imprisonment of 2 years or fine of five thousand naira in the alternative. In addition to sentence, the appel- E lant was ordered to pay the sum of N753,075.85 as compensation to the victim of crime for which he was convicted. These proceedings were clearly in exercise of the criminal jurisdiction of the trial Chief Magistrate Court. Therefore the provisions of Section 13 of the Chief F Magistrate Court Law of Kano State which deals with the limit of the civil jurisdiction of such courts, is certainly not applicable to the proceedings now on appeal. The relevant provisions of the law which G governed the power of the trial Chief Magistrate Court in exercise of its criminal jurisdiction to award compensation in addition to any sentence imposed on an accused person convicted and sentenced by it, is the one applicable. The relevant provisions of the law in this H respect is partly contained in Section 78 of the Penal Code which states -

78. Any person who is convicted of an offence under this H penal Code may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition or in substitute for any other punishment

From this provision of the Law any court in exercise of its

criminal jurisdiction in trying an accused person in Kano State for any offence under the penal Code, provided the trial ended in a conviction of the accused person, that court may also award compensation to the victim of the offence without any limit in addition to or in substitution for any other punishment for the convicted”.

B The appellant was again dissatisfied with the judgment of the lower court and thus appealed to this Honourable Court. Parties filed and exchanged their respective briefs of argument as provided by the Rules of this Court. The appellant adopted his Brief of Argument before us on 20th September, 2012. The appellant in his Brief of C Argument formulated two issues for determination thus:-

“1. Whether or not the trial Magistrate can validly award compensation after conviction under Section 365(1) of the criminal procedure code and section 78 of the Penal Code without reference to the limit of its Civil Jurisdiction as affirmed by the Court of Appeal.

D 2. Whether or not the trial magistrate can validly award compensation after conviction under section 365(1) of the criminal procedure code and Section 78 of the Penal Code without reference to the limit of its criminal jurisdiction to impose fine”.

E The respondent criticized the issues as formulated by the appellant and reframed this issues as follows:-

“Whether the Court of Appeal was right in affirming the decision of the High Court upholding the Order of the learned Chief Magistrate compelling the appellant to pay compensation in the sum of N753,075.85”.

F At the hearing of the appeal on 20/9/12, the learned counsel to the appellant adopted its brief of argument and urged this court to allow the appeal. The two issues formulated by the appellant were argued together. It was the submission of the learned counsel to the appellant that by virtue of the provisions of Section 13 of the G Magistrates Court law of Kano State the monetary jurisdiction of Chief Magistrates Court Grade I was limited to N30,000.00. It was therefore submitted that though Section 78 of the Penal Code and Section 365(1) of the Criminal Procedure code which was relied upon to make the Order of compensation in the sum of N753.075.85k did not place any limit to the amount to be awarded as compensation, H the power to award compensation was not being mandatory but discretionary, a court of inferior and limited jurisdiction, like the Chief

Magistrate Grade I must be guided by the limit of its monetary jurisdiction and cannot exceed same. It was contended that the award of compensation was civil in nature, thus the clear intention of Section 365(1) of C.P.C. is that award of compensation should be limited to the monetary jurisdiction of the Chief Magistrates Court. The case of NPA Plc v. Lotus Plastic Ltd. (2005) 12 SC. (Pt.1) 19 at 30 - 31 ^B was cited.

It was further submitted that the combined provisions of section 78 of the Penal Code and 365(1) (b) of the C.P.C. by the use of the word may clearly shows that the Order for payment of compensation to the victim of a crime is not mandatory but discretionary ^C of the option of the court because of the obvious civil nature of the Order, hence the trial court when making such an order, ought to be guided by the limit of its monetary jurisdiction on award of damages. Learned counsel further submitted that section 13 of the Magistrate ^D Court Laws should be given its clear interpretation and read together with Section 78 of the Penal Code and Section 365(1) of the CPC in order to arrive at a just decision. Counsel relies on NPA Plc v. Lotus Plastic Ltd (supra) at 25, and Federal Ministry of Health and Anor ^E v. Comet Shipping Agencies Ltd. (2009) 4-5 SC 110 at 128. It was further contended that the judgment of the lower court amounted to expanding the monetary jurisdiction of the Chief Magistrates Court I far and above the provisions of Section 13(2)(a) of the Magistrates ^F Court Law instead of expounding it; he cited the case of Gafar v. Government of Kwara State and 2 Ors. (2007) 1 - 2 SC 189 at 25. The provisions of Section 78 of the Penal Code and Section 365(1) of the CPC are never intended to increase the civil and criminal jurisdiction of the Magistrates Courts.

Learned Counsel to the respondent Sa'eda, Esq. also adopted ^G his brief of argument and urged the Supreme Court to dismiss the appeal. He criticized the manner the appellant formulated the issues for determination. It was his contention that the manner the issues were framed gives the impression as if this court is sitting on appeal against the judgment of the Magistrates Court instead of the ^H Court of Appeal. He cited the case of Fasoro vs. Beyioku (1988) 2 NWLR (Pt.76) 265 and contended that this Court (Supreme Court) has no jurisdiction to sit on appeal against the judgment of the Chief Magistrate.

On the issue for determination distilled by him, learned counsel submitted that the Chief Magistrate had a civil jurisdiction limited to the tune of N30,000.00 by virtue of Section 13 of the Magistrates Court Law Cap 89 Laws of Kano State 1991 and that this limitation only applies to Civil causes or matter. He referred to the provisions of section 13 of the Magistrates Court Law and contended that the law by itself is made subject to any other enactment which, according to him, include the penal code and criminal proceedings section 13 of the Magistrates Court Law does not apply. He therefore contended that the order of compensation made by the learned trial magistrate was in pursuance of his powers under Section 78 of the penal code and section 365(1) of the CPC. The said provisions of penal code and CPC do not give ceiling as to the amount of compensation that the Chief Magistrate was empowered to order, and this is the only plain and natural interpretation that could be given to these provisions. Counsel referred to the case of Nyame vs. F.R.C.N. (2010) 7 NWLR (Pt.1193) 344 at 399. Therefore to limit the amount a Magistrate can order as compensation under Section 365 of CPC would amount to doing violence to the plain provisions of the sections of the laws.

I have carefully and closely too considered the criticism of the respondent vis-à-vis the way and manner the appellant formulated his two issues for determination. The issues were formulated in such a way that suggests that this court was sitting on appeal against the judgment of the chief Magistrate Grade I. Far from it, this court has no jurisdiction to sit on appeal against the judgment of the chief Magistrate court. The court can only entertain an appeal against the judgment of the Court of Appeal. Therefore, any appeal to this court must be challenging the judgment of the Court of Appeal. Any issue thus formulated for determination must not only arise from the grounds of appeal but also relate to issues determined by the Court of Appeal which correctness or otherwise is put before us for determination. The only exception however, is where an application is brought and granted by this court for a party to raise an issue not raised before the Court of Appeal, such an issue must not only be substantial but there must be evidence on it in the record of appeal in order to enable this court determine it. However the respondent did not raise this issue as a preliminary objection as required by the rules and as such I would, in the interest of justice, consider the issues

as formulated particularly when the two issues were argued together.

The gist of this appeal is the determination of whether the compensation of N753,075.85 awarded by the Chief Magistrate Grade I pursuant to the provisions of Section 78 of the penal code and section 365(1) of the CPC was validly made.

The High Court of Justice Kano State sitting on its appellate jurisdiction agreed with the Chief Magistrate and on further appeal to the Court of Appeal, Kaduna Division, the judgment of the High Court of Justice Kano was affirmed, hence a further appeal to the Supreme Court.

Section 13 of the Magistrates Court Law of Kano State (supra) provides thus:-

“S.13 - Subject to the provisions of the constitution, thus edict and any other enactment, a Chief Magistrate Grade I shall have and exercise jurisdiction in any civil cause or matter:-

In all actions for the recovery of any penalty, rates, expenses, contribution or other like demand, which is recoverable by virtue of any law for the time being in force: -

(i) It is not expressly provided by that or any other law that the demand shall be recoverable only in some other court; and

(ii) The amount claimed in the action does not exceed thirty thousand Naira. Provided that for the purpose of this paragraph the expression “penalty” shall not include a time in which any person is liable on conviction for a criminal offence”

While section 365(i)(b) of the Criminal procedure Code provides as follows: -

“Whenever under any law in force for the time being a criminal court imposes a fine, the court may when passing judgment order that in addition to fine, a convicted person shall pay a sum in compensation in whole or in part for the injury caused by the offence committed where substantial compensation is in the opinion of the court recoverable by civil suit”.

Section 78 of the Penal Code similarly provides as follows:-

“Any person who is convicted of an offence under this penal code may be adjudged to make compensation to any person injured by his offence and such compensation be either in addition to or in substitution for any other punishment”.

At this juncture I must point out that the words of these enact-

ments are not only clear but also unambiguous. The rule of interpretation of statutes enjoins courts to give such words their natural literal and ordinary meaning. See *N.P.A. Plc v. Lotus Plastic Ltd* (supra) at 30, *Nyame v. FRN* (supra) at 399. Looking at this provision of section 13 of the Magistrate Court Law Kano, it is clear that it only applies to
B “Civil cause or matter”. Thus a Chief Magistrate Grade I Kano does not have jurisdiction to entertain any “civil cause or matter” whose claim is in excess of N30,000.00 while sections 78 of the panel code and 365(1) of the Criminal Procedure Code relate to the criminal
C jurisdiction of the Chief Magistrates Court or any criminal court that have jurisdiction to hear and determine criminal cause or matter.

In my considered view for a Chief Magistrate or a criminal court to validly exercise the powers conferred by the provisions of sections 78 Penal Code and Section 365(1) of the C.P.C respectively it must be shown that: -

- D (a) The offence for which the accused person was charged is within the jurisdiction of the court:
- (b) The accused person must have been convicted of the said offence;
- E (c) There must be evidence before the court which evidence must be such that, in the opinion of the court, would be capable of making the amount of compensation to be awarded recoverable by civil suit.

Hence the Sections (supra) do not give room to any criminal
F court to arbitrarily award compensation to any victim of an offence, when there is no sufficient evidence to such amount of compensation.

In the instant case the appellant had on its own volition admitted the sum of N753,075.85k as the amount fraudulently gained from the assignment give to him by its employers.

Finally, this is an appeal against the triple decision of the three
G lower courts. The attitude of this court against concurrent decisions of lower courts is settled. It is that this court will not interfere with the concurrent findings of the lower courts except there is establishment of miscarriage of justice or a violation of some principles of law or procedure or the judgment is perverse. I refer to

H National Insurance Corporation of Nigeria v. Power and Industrial Engineering Company Ltd (1986) 1 NWLR (pt.14) 1 at 36, Enang v. Adiu (1981) 11 - 12 SC. 25 at 42

Nwagwu v. Okonkwo (1987) 3 NWLR (Pt.60) 314 at 325

Igwego v. Ezeudo (1992) 6 NWLR (Pt.249) 561 at 574

In the appeal at hand, there is no slightest suggestion that there was any miscarriage of justice or a violation of substantive law or of any procedure to warrant any interference with the judgment of the court below now on appeal. B

My lords, on the whole and in the light of the foregoing therefore I hold that this criminal appeal lacks merit and is hereby dismissed the judgment of the lower court affirming the conviction, sentence and order of compensation against the appellant by the Chief Magistrates Court are hereby further affirmed. C

GALADIMA JSC

I have had the privilege of reading in draft the Judgment of my learned brother MUNTAKA-COOMASSIE J.S.C. just delivered. I am in complete agreement with him in his conclusion that the appeal lacks merit and it should be dismissed. D

The learned trial Chief Magistrate was quite right, when in making the order for compensation against the convict, that is the appellant herein he invoked the provision of S.78 of the Penal Code. This Section does not affect the jurisdiction of a trial Magistrate in civil or criminal proceeding. No limit is placed on the amount of compensation to the victim of the offence charged once the accused is convicted. E F

I cannot disturb the concurrent finding of the trial Chief Magistrate Court, the State High Court and the Court of Appeal as it has not been shown by the Appellant that the findings were perverse and not supportable by the relevant provisions of the law. G

In the light of the above and for fuller reasoning of my learned brother on the lead Judgment, I too, dismiss the appeal.

H

NGWUTA JSC

I have had the privilege of reading in draft the lead judgment just delivered by My Lord, Muntaka-Coomassie, JSC and I agree conclusion therein.

In making the order for compensation against the convict (appellant) the learned trial chief Magistrate invoked the provision of S.78 of the Penal Code. The section provides:

The section provides:

B “S.78: Any person who is convicted of any offence under the Penal Code may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition or in substitute for any other punishment.”

C The section does not affect or alter the jurisdiction of any Magistrate in civil or criminal proceedings. Once the Magistrate convicts the accused, s.78 of the Penal code places no limit on the amount of compensation to the victim of the offence charged. The appellant who assumed the Herculean task of having the concurrent findings of the chief Magistrate’s court, the High Court and the Court of Appeal set aside has failed to adduce any reason for this Court to
D interfere with the judgment. See

Njoku & ors v. Eme & ors. (1973) 5 SC. 293 at 306

Kale v. Coker (1982) 12 SC. 252 at 271.

E He failed to convince this Court that the order for compensation pursuant to s.78 of the Penal Code ought not to have been made or that the Chief Magistrate had no jurisdiction to make the order after convicting the appellant.

For the above and the fuller reasons in the lead judgment, I also dismiss the appeal.

F _____

MUHAMMAD JSC

G My learned brother Muntaka-Coomassie had obliged me a preview of his lead judgment and I am in complete agreement with his reasonings and conclusion that the appeal lacks merit. I also dismiss the appeal.

H Appellant is convicted by the trial Chief Magistrate Court in Kano State on the 5th July 1997 and sentenced to two years or a five thousand naira fine in the alternative. He is further ordered to pay compensation to the victim of his crime, criminal breach of trust by a servant and cheating contrary to Section 314 and 372 of the Penal Code respectively, of the sum of N753,075.85k. The victim of Appellant’s crime is his employer. Dissatisfied, he appealed to the

Kano State High Court that dismissed the appeal and affirmed both the conviction and sentence of the Appellant including the monetary compensation ordered against him in favour of the victim of his crimes. Appellant's further appeal to the court below, the Kaduna Division of the Court of Appeal, was similarly dismissed. Still dissatisfied, he has filed the instant appeal with the order of monetary compensation sustained by all the lower courts as his only complaint. B

The only issue, though split into two in the Appellants brief, See page 5 thereof, that arises for the determination of the appeal is whether the trial court's award of monetary compensation after conviction pursuant to s.78 of the Penal Code and S.365(1) of the Criminal Procedure Code without reference to the court's civil and criminal jurisdictions is valid. Section 13(c) of the Kano State Magistrate Court Law, it is submitted, limits the Civil jurisdiction of the trial court to N30,000. Though section 78 of the Penal Code does not set any limit as to what sum the court could award as compensation to a victim, when the order is made under section 365(1)(b) of the criminal procedure code with the view to redressing the proprietary rights of the victim, the award must take cognisance of the limits of the trial court's civil jurisdiction. In its award of such compensation, it is contended, the limits of the court's civil jurisdiction cannot be exceeded. The compensation contemplated by section 365 (1) (b), learned Appellant counsel further stresses, is by way of civil damage notwithstanding the provision of section 78 of the Penal Code, Relying on the decisions in C
D
E
F

Onwudiwe v Federal Republic of Nigeria (2006) 4 SC (Pt.11) 70 at 98,

A.G. Federation v A.G. Abia State (2001) 11 NWLR (pt.2001) 689 G

NPA Plc. v. Lotus Plastic Ltd (2005) 12 SC (pt.1) 19 at 30 learned Appellant counsel concludes that the enabling provisions do not confer on the trial court the powers it purportedly exercised. The two Appellate courts are wrong, therefore, to have affirmed the trial court's perverse award. H

Learned counsel for the Respondent has, and quite rightly in my view, challenged on the authority of the decision of this court in S.P.D.C.N Ltd. v. Edamkue (2009) 14 NWLR (1160) 1 at 24, the competence of the two issues formulated in the appellant's brief

which attack the judgment of the trial Magistrate Court instead of the decision of the court below.

For the justice of the case, irrespective of this lapse, I shall proceed to consider the appeal on The basis of whether or not the trial court’s award of compensation as further affirmed by the two
 B appellate courts below is lawful. In determining this vexed issue, the lower court at page 114 of the record of appeal correctly noted that the award of compensation made by the trial court arose in proceedings conducted in the exercise of the court’s criminal jurisdiction. Section
 C 13 of the magistrate court law learned Appellant counsel extensively referred to, does not, since, it deals with the trial court’s civil jurisdiction, apply to the proceedings now on appeal. Section 78 of the Penal Code as well as Section 365 of the Criminal Procedure Record are undoubtedly the source of the trial court’s powers to award the compensation it did. Section 78 of the Penal Code provides:-

D “78 Any person who is convicted of an offence under the Penal Code may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to or in substitution for any other punishment.”

E “365 (1-) Whenever under any law in force for the time being a criminal court imposes a fine, the court may, when passing judgment, order that in addition to a fine a convicted person shall pay a sum.”

The foregoing provisions of the two legislations are clear and
 F unambiguous. The plain and ordinary meaning of the words which make them up must prevail in giving effect to the intention of the lawmakers therein See

Abubakar v. INEC NSCQR Vol. 49 (2012) 786

Olofu v. Itodo NSCQLR Vol. 44 (2010) 558

Obiuweubi v. CBN NSCQLR Vol. 45 (2011) 51 at 77 - 78;

G Dangana v. Usman NSCQR Vol.44 (2010) 558

Obiuweubi v. CBN NSCQLR Vol. 45 (2011) 51 at 77 - 78;

Dangana v. Usman NSCQR Vol. 49 (2012) 1064 at 1094
 - 1095. It must be observed that whereas Section 78 of the Penal Code makes provision for the award of compensation in addition to
 H any sentence the court imposes on a convict for any reference under the Penal Code, Section 365 (5) (1) (b) is an adjectival provision that provides for the award of such compensation pursuant to all

convictions arising from criminal proceedings under any law including the Penal Code. What is significant is that under either section 78 of the Penal Code which provides specifically for compensation arising from conviction for references under the Penal Code and so applicable to the instant case, or under Section 355(1)(b) which is a general provision in respect of all convictions under any law, no limit has been set as to the amount the court, on convicting the offender, can award the victim of the offence by way of compensation. B

The court below fully appreciates this much when at page 119 of the record per Mahmud Mohammed JCA (as he then was) opined thus:- C

“Therefore it is my view that to read any limit to the amount of compensation to be awarded by any criminal court under section 78 of the Penal Code and Section 365 of the Criminal Procedure Code, would amount to doing violence to the plain provision of the laws. Thus on the correct interpretation of section 78 of the Penal Code and Section 365 (1)(b) of the Criminal Procedure Code, the award or order of compensation made by the trial Chief magistrate Grade 1 in the sum of N753,075.85k against the Appellant after convicting him of the offence of Criminal Breach of Trust under section 313 of the Penal Code was quite in order having been made within the powers of that court under the law. Consequently the lower court was also right in affirming that decision in its judgment delivered on 16/12/1998.” E

I cannot agree more with his lordship. With the similar finding of the High Court before the foregoing by the court below, the task of the Appellant has been very daunting from the onset. Having failed to demonstrate that the concurrent findings of the two courts below have proceeded on wrong principles and occasioned miscarriage of justice, he has, not surprisingly, failed in his last bid. F

For the foregoing and, more so, the reasonings marshaled in the lead judgment, I also dismiss the appeal and affirm the decision of the court below as well. G

H

OGUNBIYI JSC

The facts of this case have been well spelt outline in the lead judgment of my learned brother Muntaka-Coomassie, JSC and are not therefore in dispute. In other words, it is the said facts which

culminated into the conviction and sentence of the appellant after having been charged for the offence of Criminal Breach of Trust contrary to section 314 of the Penal Code. As a consequence the appellant was sentenced to two years imprisonment or fine of the sum of five thousand Naira. Also in addition, he was ordered to pay compensation in the sum of N753,075.85 to the victim of his crime; that is to say his employer.

Successively the High Court Kano sitting in its appellate jurisdiction as well as the Court of Appeal Kaduna division both affirmed consecutively the judgment of the trial chief magistrate court which is now the reason for the appeal before us.

It is relevant to restate that the grouse of the appellant's complaint squarely centres on the question of compensation awarded by the trial magistrate court. In other words and in summary it was submitted on behalf of the appellant that the sum of N753,075.85 (seven hundred and fifty-three thousand seventy-five Naira and eighty-five kobo) awarded as compensation against the appellant is beyond the jurisdictional limit of chief magistrate Grade I.

The relevant legal authorities relied upon to substantiate this argument are the provisions of sections 78 of the penal code as well as 365 (1)(b) of the Criminal Procedure Code. The learned appellant's counsel in his argument submitted that the sections cannot be interpreted to supersede the provisions of sections 13(c) and 16 (2) (a) of the magistrate court Laws of Kano State read together with section 13(2)(a) and 15(a) of the Criminal Procedure Code. In order to appreciate the intentions of the foregoing sections in particular 78 and 365 of the Penal code and Criminal Procedure Code respectively, it is necessary to understand the contextual reasonings within which they are to operate as well as the purpose which they are intended to serve.

Suffice it to say that the law vide section 13(c) of the magistrate court Law of Kano State had generally laid down the monetary jurisdictional limit of chief magistrate Grade I to the sum of N30,000.00 (Thirty thousand Naira). In the context of the appeal before us, the jurisdictional limit of the chief magistrate as provided supra should not be read in isolation but along with the provisions of sections 78 and 365 of the Penal Code and Criminal Procedure code respectively. Doing so would serve to interpret the sections in their

proper perspective. This is especially having regard to the facts on the record of appeal which are not disputed. In other words, it is on record that the appellant admitted on his statement the charge levied against him in respect of part of the money, which he had agreed to pay as evidenced per Exhibit E, a document he voluntarily signed with the complainant. B

The provisions of sections 78 and 365(1) of the Penal Code and Criminal Procedure Code respectively have been reproduced in the lead judgment. Both sections are clear and specific on the discretionary award of compensation on the part of the court convicting the culprit. The sections did not specify the class or nature of the court. What is of significance however is that the court imposing the compensation must have the power to convict the person of the criminal offence charged. C

The chief magistrate grade I and in fact any other court of criminal jurisdiction has the power to award compensation. It is also relevant to emphasize that the two provisions did not specify, the limit amount of compensation which is to be awarded. The learned appellant's counsel sought to draw a comparison between the Penal Code and the Magistrate Court law which he argued must not be allowed that one should supersede the other. E

Suffice it to say that at the time of the trial, the learned chief magistrate had a civil jurisdiction limited to the tune of thirty thousand Naira only by section 13 (c) Magistrate Court Law Cap 89 Laws of Kano State 1991. Be that as it may, the contention by the appellant's counsel is completely misconceived wherein he submitted that chief magistrate in the award of the compensation must be guided by the limit of its monetary jurisdiction. F

As rightly submitted and argued by the learned respondent's counsel, the said section 13 of the magistrate court Law is limited to civil cause or matter. Reliance on that section would certainly operate to undermine the provision of sections 78 and 365 of the Penal Code and Criminal Procedure Code respectively. It follows therefore that the comparison analogy envisaged and submitted by the learned appellant's counsel doer not arise. The power endowed to the court under sections 78 of the Penal Code and 365 of Criminal Procedure Code did not exclude the Trial Chief Magistrate or any other magistrate for that matter. The trial magistrate, as rightly affirmed by the lower G H

court acted in pursuance of the power conferred on him under the said provisions of the law. The sections are plain and unambiguous and should therefore be given their natural interpretation. See the case of *Nyame v. FRN* (2010) 7 NWLR (Pt.1193) 344 SC at 399 wherein this court held and said:-

- B “In the interpretation of the provision of a statute or the constitution where the language used is plain and unambiguous, effect must of necessity be given to its plain and ordinary meaning. It is that clear and unambiguous language that conveys the intention of the lawmaker. The lawmaker must be taken to have intended the meaning expressed in such clear unambiguous language and the court will not be at liberty to go outside the very provision. The obvious duty of the court in such a situation therefore is not the determination of what the lawmaker meant, but the meaning of the plain language used which best expresses his intention....Effect should be given to each word.”

The sections 78 and 365 of the Penal Code and Criminal Procedure Code respectively ought to be given their clear meaning wherein the award of compensation made b5r the chief magistrate Grade 1 was within the exercise of the powers conferred on him. The award was made after the appellant was properly convicted of the offence of Criminal Breach of Trust under section 314 of the Penal Code. It was not, in other words made at large but very well within its proper context of jurisdictional competence.

- F Briefly and worthy of note is the fact that the appellant is appealing against three concurrent findings of conviction and sentence by the trial chief magistrate, High Court Kano in its appellate jurisdiction and also the Court of Appeal Kaduna division. The law is trite and well settled that an appellate court will not interfere with the concurrent findings of the lower courts on issues of facts except there is established a miscarriage of justice or a violation of some principles of law or proceedings. See the case of *National Insurance Corp of Nigeria v. Power and Industrial Engineering Co Ltd* (1986) 1 NWLR (pt.14) page 1 at 36. There is no evidence of any miscarriage of justice or violation of substantive law or of procedure in the case at hand to warrant the interference by this court of the successive concurrent findings.

My learned brother Muntaka-Coomassie, JSC has adequately

dealt with the appeal and I also agree that same is devoid of any merit and dismissed in terms of the lead judgment. The appeal is hereby dismissed while the judgment of the lower court affirming the conviction, sentence and order of compensation against the appellant by the High Court and Chief Magistrate Court are hereby further affirmed. B

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