

**SUPREME COURT OF NIGERIA**  
FRIDAY 7<sup>TH</sup> DECEMBER, 2012. SC. 97/2010  
**CORAM:- M. MUHAMMAD, M. S. MUNTAKA-  
COOMASSIE, N. S. NGWUTA, M. D. MUHAMMAD,  
C. B. OGUNBIYI, JJSC**

GABRIEL JIM-JAJA ..... APPELLANT  
AND  
1. COMMISSIONER OF POLICE  
RIVERS STATE  
2. INSPECTOR ALARI (SIIB) ..... RESPONDENTS  
3. NELSON DOUGLAS

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APPEALS - Ground of law - Where the substance of ground reveals misapplication of law to facts proved - The ground is of law and not of mixed law and fact - Or a ground of fact (H1)

APPEALS - Issue - Failure to raise - 3<sup>rd</sup> respondent who did not cross appeal nor file respondent's notice - Cannot raise issue of fraud which did not arise from ground of appeal (H2)

EVIDENCE - Unchallenged evidence - Evidence relevant to issue in controversy and is admissible - But has not been contradicted - Is reliable evidence to which probative value ought to be ascribed (H3)

FUNDAMENTAL RIGHTS - Damages - Proof - Once appellant proved violation of his fundamental right by respondent - Damages in form of compensation and even apology should follow (H4)

**FACTS**

Appellant borrowed N1.4 million from 3<sup>rd</sup> respondent (Registered money lender). The loan was to be repaid with accruing interest. The loan was equally secured with a Certificate of Occupancy. Appellant however failed to repay the loan. In an attempt to convert the security into cash, 3<sup>rd</sup> respondent claimed that the Certificate of Occupancy was forged. He then wrote a petition to the police and as a result, appellant was arrested but was released on bail by 1<sup>st</sup> and 2<sup>nd</sup> respondents on his undertaking to repay the loan. Appellant was

later arrested and released on bail at the instance of 3<sup>rd</sup> respondent.

In the meantime, appellant filed an application at the High Court of Rivers State, seeking to enforce his fundamental right in terms of the reliefs set out in the statement attached to the application for leave. After hearing the application, the learned trial Judge dismissed same on the ground that appellant's rights have not been violated. Aggrieved, appellant appealed to the Court of Appeal Port Harcourt Division. The court held that although appellant's rights were violated, no damages would be awarded as appellant did not plead any. Aggrieved further, appellant appealed to Supreme Court.

**ISSUE FOR DETERMINATION**

*“...from the available evidence on the records and the finding of the lower Court was the Appellant entitled to be awarded exemplary damages...”*

**HELD** (Unanimously allowing the appeal per **NGWUTA JSC**)

*APPEALS - Ground of law*

**1. A ground of law, as distinct from a ground of mixed law and fact and a ground of fact, was clearly explained by Onnoghen JSC in *Ehinlanwo v. Oke & ors* (supra), an authority cited and relied on by both the 3<sup>rd</sup> Respondent and the appellant. In the said case, His Lordship held, inter alia that:**

***“A ground of law arises where the ground of appeal shows that the Court of trial or appellate Court misunderstood the law or misapplied the law to the proved or admitted facts.”***

**Where the substance of a ground of appeal reveals a misapplication of law to facts proved or admitted at the trial the ground of appeal is a ground of law and not of mixed law and fact or a ground of fact.**

**The facts are not in dispute. The purport of the sole ground of appeal and issue distilled therefrom is that in a proper application of the applicable law - s.35 (6) of the Constitution (supra), the lower Court, having found as a fact that the respondents violated the fundamental right of the appellant ought to**

**have awarded him damages.**

**I hold that the lone ground of appeal is a ground of law and not a ground of mixed law and fact as argued by the Respondents. The preliminary objection raised and argued in the 3<sup>rd</sup> Respondent's brief and the similar objection raised and argued in the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' joint brief are devoid of merit and are hereby dismissed. (p. 3619 E)**

*APPEALS - Issue - Failure to raise*

**2. This claim by the 3<sup>rd</sup> respondent is in conflict with the fact as stated in the 3<sup>rd</sup> Respondent's brief. The criminal allegation of forgery was a ploy by the respondents to settle a purely civil matter - the recovery of the loan obtained from the 3<sup>rd</sup> Respondent by the appellant. It is unfortunate that the 1<sup>st</sup> and 2<sup>nd</sup> respondents at the instance of the 3<sup>rd</sup> respondent, on the pretext of investigating a case of forgery, converted their office into a debt recovery outfit. There is no appeal against the finding of the lower Court that the Appellant's right was violated by the Respondents thereby setting aside the contrary decision of the trial Court. In any case, the 3<sup>rd</sup> Respondent who did not cross-appeal nor did he file a Respondent's notice cannot raise the issue of fraud which did not arise from the ground of appeal. (p. 3620 G)**

*Unchallenged evidence*

**3. It is the law that evidence that is relevant to the issue in controversy and is admissible, admitted and not successfully challenged, contradicted or discredited is good and reliable evidence to which probative value ought to be ascribed and which ought to influence the Court in the determination of the dispute before it. (p. 3621 D)**

*FUNDAMENTAL RIGHTS - Damages - Proof*

**4. A community reading of section 36 (6) and 46 (2) of the Constitution (supra) will give effect to the principle of *ubi jus ibi remedium*. By section 35 and 46 of the Constitution, Fundamental right matters are placed on a higher pedestal than ordinary civil matters in which a claim for damages resulting**

***from a proven injury has to be made specifically and proved. Once the appellant proved the violation of his fundamental right by the respondents damages in form of compensation and even apology should have followed.***

***In my view and with profound respect to their Lordships, the Justices of Appeal, erred when, having determined that the respondents violated the fundamental right of the appellant, they declined to award damages because none was claimed. I have demonstrated that the appellant claimed N2 million as damages and even if the appellant did not so claim, he is entitled to compensation on proof of violation of his right by the respondent pursuant to s.35 (6) of the Constitution.***  
(p. 3622 A)

**D REPRESENTATION**

E. C. Aguma Esq., for the Appellant  
Eberechi Adele Esq., for 1<sup>st</sup> & 2<sup>nd</sup> Respondents  
Chief M.B.R. Urombo Esq., for 3<sup>rd</sup> Respondent

**E CASES REFERRED TO**

- Federal Minister of Internal Affairs v. Shugaba (1982) 3 NCLR 915  
Incar Nig Ltd v. Adeboye (1985) 2 NWLR (Pt. 8) 453  
John Folade v. AG Lagos State (1981) 2 ACLR 771  
Etiochin NJR Ltd v. Mbadiwe (1986) 1 NWLR (Pt. 4) 47  
F Odogwu v. A-G Federation (1996) 6 NWLR (Pt. 456) 508  
Military Administrator of Akwa Ibom v. Obong (2001) FWLR (Pt. 60) 1456  
Ogbonnaya v. Adapalm Ltd (1993) 6 SCNJ 23  
G Oredoyin v. Arowolo (1989) 4 NWLR (Pt. 114) 172  
Oduwole v. Prof. West (2010) 3-5 SC (Pt. III) 183  
Agip Nig Ltd v. Ezendu (2010) 1 SC (Pt. 11) 98  
Balioli Nig Ltd v. Navcon Nig Ltd (2010) 5-7 SC (Pt. 11) 1  
Ehinlanwo v. Oke (2008) 6-7 SC (Pt. 11) 123  
H Asemota v. Yesufu (1982) 3 WCLR 419  
Ransome-Kuti v. A-G Federation (1985) 2 NSCC 879  
Ogundele v. Agiri (2009) 12 MJSC (Pt.1) 126

**STATUTES & RULES REFERRED TO**

Constitution of Federal Republic of Nigeria 1999, ss. 6(6)(b)-(d), 35(6), 36(l), 233

Supreme Court Act, s. 22

Supreme Court Rules, O. 8 r. 12

B

**LEAD JUDGMENT BY NGWUTA JSC**

This appeal is against the judgment of the Court of Appeal, Port Harcourt Division, delivered in Appeal No. CA/PH/313/2007 on 25<sup>th</sup> February, 2010.

C

Below is a summary of the relevant facts of the case. Appellant borrowed the sum of N1.4 million from the 3<sup>rd</sup> Respondent, a registered money lender. The loan granted on 15/2/2002 was to be repaid with the accruing interest on 15/3/2010. The loan was secured with a Certificate of Occupancy of the property - No. 98, Egede Street, Mile 1, Diobu, Port Harcourt, Rivers State.

D

Appellant failed to repay the loan and the 3<sup>rd</sup> Respondent in his attempt to convert the security into cash, claimed that the Certificate of Occupancy was forged. He then wrote a petition to the Police and as a result the appellant was arrested but released on bail by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on his undertaking to repay the loan, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents arrested him again, but he was again released on bail, this time, at the instance of the 3<sup>rd</sup> Respondent.

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Meanwhile, on his ex parte application, the High Court of Rivers State, presided over by Amadi, J, granted the appellant leave on 7/11/2002 to apply to enforce his fundamental right in terms of the reliefs set out in the Statement attached to the application for leave. The matter was adjourned for the motion on notice.

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On 24/5/05, Kobani J, who heard the motion on notice held that the appellant's fundamental rights have not been violated by the respondents, and accordingly dismissed the motion on notice. Aggrieved by the ruling, the appellant appealed to the Court of Appeal, Port Harcourt Division.

G

In its judgment delivered on 25/2/2010, the Court below held that *"the 3<sup>d</sup> respondent and the 1<sup>st</sup> and 2<sup>nd</sup> respondents worked in tandem at the peril of the appellant."* The Court vacated the ruling of the trial Court but went on to hold that damages could not be awarded as, according to the Court, the appellant did not pray for

H

same.

The appellant appealed to this Court on the issue of award of damages. The lone ground of appeal is hereunder reproduced, shorn of its particulars:

*“Ground of Appeal:*

B *The learned Justices erred in law in holding as follows:... But in law it is not right for any Court of law to award a relief not sought as law Courts are neither charitable organisations not (sic) Father Christmas. Suffice it that the appeal is allowed.... I cannot award damages as none was asked.”* (See page 110-111 of the record).

C In accordance with the rules and practice of the Court, the parties herein filed and exchanged briefs of arguments. In his brief filed on 12/4/2010, learned Counsel for the appellant formulated the following issue for determination:

D *“Was the Court of Appeal right to hold that Appellant as applicant did not seek or ask for damages and in any case from the available.*

E In the joint brief of argument filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents, their learned counsel raised a preliminary objection to the competence of the appeal. In the alternative, learned counsel submitted the following issue for determination:

*“Whether the court below was right in refusing to award the appellant damage that was not claimed.”*

F In his brief of argument, learned counsel for the 3<sup>rd</sup> respondent also raised a preliminary objection to the competence of the lone ground of appeal and in the alternative urged the court to determine:

G *Whether the learned counsel of the court of appeal were right in law and upon the facts on record in not awarding exemplary or any damages at all to the Appellant after holding that his appeal was successful, upon the ground that he had not sought such damages from the court.”*

H Learned counsel for the appellant filed a reply to the preliminary objection and point of law in the 3<sup>rd</sup> respondent’s brief. Arguing the lone issue in his brief, learned counsel for the appellant referred to page 103 of the record and refuted the assertion by the court below that the appellant did not ask for damages. He referred to s. 6(6) (b)-(d) of the constitution of Federal Republic of Nigeria 1999

and case of Federal Minister of Internal Affairs v. Shugaba (1982) 3 NCLR 915 at 954/6 and submitted that the appellant approached the court on the principle of *ubi jus ibi remedium* to seek redress for the violation of his right by the respondents.

Learned counsel referred to the statement in support of facts in the High Court and said that the appellant prayed for the sum of N2 million as damages against the respondents for unlawful and illegal detention. He referred to sought in that court. B

Learned Counsel argued that since the evidence led in proof of damages was not challenged or controverted, the appellant ought to have been awarded the damages he claimed and proved. He relied on Incar Nig Ltd v. Adeboye (1985) 2 NWLR (Pt. 8) 453 at 454 ratio 1. With referenced page 102 lines 22-25 and page 103 lines 1-4 of the record, learned Counsel said that the Court below found as a fact that the respondents violated the right of the appellant but failed to award damages on the erroneous finding that the appellant did not ask for damages for violation of his rights. He referred to Federal Minister of Internal Affairs v. Shugaba (supra); John Folade v. AG Lagos State (1981) 2 ACLR 771 at 784. C D

He referred to s. 35(6) and s. 36(l) of the 1999 Constitution of the Federal Republic of Nigeria and argued that on proof of a violation of his rights, the appellant was entitled to compensation and public apology from the respondents. He referred to and relied on Etiochin NJR Ltd v. Mbadiwe (1986) 1 NWLR (Pt. 4) p.47 and Odogwu v. AG Federation (1996) 6 NWLR (Pt. 456) 508 at 519 (Paragraph f). Based on the above, learned Counsel for the appellant urged that Court to allow the appeal and award damages as claimed by the appellant. E F

Arguing his preliminary objection in his brief, learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents urged the Court to strike out the lone ground of appeal and ipso facto, the appeal, for being incompetent. He argued that the sole ground of appeal is of mixed law and fact and the appellant failed to seek leave of Court before filing same. He relied on s.233 of the 1999 Constitution. G H

In the alternative and in pursuit of the issue he framed for determination, he argued that the Court had no jurisdiction to determine an issue which did not arise from the judgment on appeal. He relied on Military Administrator of Akwa Ibom v. Obong (2001) FWLR

(Pt. 60) 1456 at 1461; *Ogbonnaya v. Adapalm Ltd* (1993) 6 JCNJ 23; *Oredoyin v. Arowolo* (1889) 4 NWLR (Pt. 114) 172. He referred to the two grounds of appeal before the Court below and said that the award of court below was right to have declined to award damages to the appellant.

B In his brief of argument, learned Counsel for the 3<sup>rd</sup> Respondent argued his preliminary objection, contending that the lone ground of appeal is of mixed law and fact and since it was filed without leave of Court, the same is incompetent. He relied on s.233 (1) (a) and (g) of the 1999 Constitution as well as case law. He argued that since the sole ground of appeal is incompetent, the appeal itself is incompetent and ought to be struck out.

In the alternative, he argued the lone issue he formulated. He said that the Court is without authority to award what was not claimed. He relied on *Oduwole & 3 ors v. Prof. West* (2010) 3-5 SC (Pt. III) 183; *Agip Nig Ltd & 3 ors v. Ezendu & 9 ors* (2010) 1 SC (Pt. 11) 98; *Balioli Nig Ltd v. Navcon Nig Ltd* (2010) 5-7 SC (Pt. 11) 1.

Learned Counsel conceded that the appellant had sought N2 million damages against the Respondents for wrongful and illegal detention but added that the appellant did not complain about the refusal of the trial Judge to award damages and therefore the said refusal was not an issue before the Court below. He said that the appellant having been shown to have been fraudulent in his dealing with the 3<sup>rd</sup> respondent is not entitled to damages. He urged the Court to strike out the appeal as incompetent or in the alternative to dismiss same with costs as lacking in merit.

In his reply to the preliminary objection, learned Counsel for the appellant described same as misconceived. He referred to *Ehinlanwo v. Oke & ors* (2008) 6-7 SC (Pt. 11) page 123 at 159 relied on by the 3<sup>rd</sup> respondent in his preliminary objection and argued that the case clearly established that an appeal on a ground of law arises where the ground of appeal shows that the trial Court or the appellate Court misunderstood the law or misapplied the law to the proved or admitted facts.

He submitted that the sole ground of appeal did not call for investigation of the existence or otherwise of facts upon which the claim for damages is based. It neither challenged the finding of fact nor did it call in question the evaluation of 1999 Constitution of the



Federal Republic of Nigeria. He urged the court to dismiss the preliminary objection for want of merit. This reply relates also to the similar objection of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

In reply to the 3<sup>rd</sup> Respondent's argument, on the merit of the appeal he relied on Asemota v. Yesufu (1982) 3 WCLR 419 at 421 and Ransome-Kuti & ors v. Attorney General of the Federation & ors (1985) 2 NSCC 879 at 893, 895 and 896 and argued that a remedy for violation of fundamental rights is outside the purview of ordinary action seeking damages within the province of common law and that the appellant's claim to damages is based on the principle *ubi jus ibi remedium*. He argued that appellant's claim for N2 million and evidence adduced went unchallenged. B C

He urged the Court to allow the appeal and invoke its powers under s. 22 of the Supreme Court Act and Order 8 R.12 of the Supreme Court Rules to grant the relief sought by the appellant. D

The respondents' preliminary objections were taken along with the substantive appeal. A preliminary objection is a pre-emptive strike and its resolution will determine whether or not the appeal will be determined on the merit.

***A ground of law, as distinct from a ground of mixed law and fact and a ground of fact, was clearly explained by Onnoghen JSC in Ehinlanwo v. Oke & ors (supra), an authority cited and relied on by both the 3<sup>rd</sup> Respondent and the appellant. In the said case, His Lordship held, inter alia that:*** E

***"A ground of law arises where the ground of appeal shows that the Court of trial or appellate Court misunderstood the law or misapplied the law to the proved or admitted facts."*** F

***Where the substance of a ground of appeal reveals a misapplication of law to facts proved or admitted at the trial the ground of appeal is a ground of law and not of mixed law and fact or a ground of fact. See Ogbechie v. Onochie case or Ogundele v. Agiri (2009) 12 MJSC (Pt.1) 126 at 150. The facts are not in dispute. The purport of the sole ground of appeal and issue distilled therefrom is that in a proper application of the applicable law - s.35 (6) of the Constitution (supra), the lower Court, having found as a fact that the respondents violated the fundamental right of the appellant ought to have awarded*** G H

him damages.

***I hold that the lone ground of appeal is a ground of law and not a ground of mixed law and fact as argued by the Respondents. The preliminary objection raised and argued in the 3<sup>rd</sup> Respondent's brief and the similar objection raised and argued in the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' joint brief are devoid of merit and are hereby dismissed.***

I have considered the three issues distilled, one each, by the appellant, 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the 3<sup>rd</sup> Respondent, from the appellant's lone ground of appeal. The issues are similar and I think the sub-issue in the appellant's brief is more appropriate. It is here-under reproduced as amended:

*"...from the available evidence on the records and the finding of the lower Court was the Appellant entitled to be awarded exemplary damages..."*

Be that as it may, I will restrict the issue to whether or not the appellant is entitled to award of damages. The single issue in this appeal falls within a narrow compass.

In the Statement of Facts in Support of his application, the appellant, as applicant in the trial Court, claimed *inter alia*:

*"N2 million against the Respondents for unlawful and illegal detention."*

The claim was predicated on the fact that:

*"Appellant's arrest and detention since 23<sup>rd</sup> September, 2002 without any bail or charge is unlawful, illegal and ultra vires the powers of the Respondents."* (See pages 19-20 of the record)

The above facts were not disputed nor can it be said that the appellant was arrested and detained on the allegation of forged Certificate of Occupancy. If the respondents arrest and detention resulted from the allegation of forgery, which is a crime, the appellant could not have been released on bail on a mere undertaking to repay the loan, a civil matter.

***This claim by the 3<sup>rd</sup> respondent is in conflict with the fact as stated in the 3<sup>rd</sup> Respondent's brief. The criminal allegation of forgery was a ploy by the respondents to settle a purely civil matter - the recovery of the loan obtained from the 3<sup>rd</sup> Respondent by the appellant. It is unfortunate that the 1<sup>st</sup> and 2<sup>nd</sup> respondents at the instance of the 3<sup>rd</sup> respondent, on***

**the pretext of investigating a case of forgery, converted their office into a debt recovery outfit. There is no appeal against the finding of the lower Court that the Appellant's right was violated by the Respondents thereby setting aside the contrary decision of the trial Court. In any case, the 3<sup>rd</sup> Respondent who did not cross-appeal nor did he file a Respondent's notice cannot raise the issue of fraud which did not arise from the ground of appeal.**

However, the court below erred when it refused to award damages on the ground that the appellant did not claim damages for two reasons:

(1) Appellant claimed the sum of N2 million as damages against the respondents for unlawful arrest and detention. That claim, verified on affidavit evidence was not really contested.

***It is the law that evidence that is relevant to the issue in controversy and is admissible, admitted and not successfully challenged, contradicted or discredited is good and reliable evidence to which probative value ought to be ascribed and which ought to influence the Court in the determination of the dispute before it.*** See Chabasaya v. Anwasi (2010) 3-5 SC 208. Though the appellant did not specifically ask for exemplary damages for the violation of his right by the respondent, the Court below ought to have awarded him the damages he claimed and proved.

(2) Section 46 of the Constitution of the Federal Republic of Nigeria confers on a High Court special jurisdiction to deal with cases of violation of fundamental right of any person within the borders of this country. Section 46 (2) provides:

*hear and determine any application made to it in pursuance of the provision of this Section and may make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing of' securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter."* (Underlining mine for emphasis).

The Chapter referred to in the provision reproduced above is Chapter IV dealing with Fundamental Rights. Section 35 (1) guarantees to every person his/her personal liberty. The appellant's case does not fall within the exceptions numbered (a)-(f) in section 44 (2) of the Constitution. The respondents did not attempt to bring their

case within any of the exceptions. Section 35 (6) provides:

*“s. 35 (6): Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person...”*

**A community reading of section 36 (6) and 46 (2) of the Constitution (supra) will give effect to the principle of *ubi jus ibi remedium*. By section 35 and 46 of the Constitution, Fundamental right matters are placed on a higher pedestal than ordinary civil matters in which a claim for damages resulting from a proven injury has to be made specifically and proved. Once the appellant proved the violation of his fundamental right by the respondents damages in form of compensation and even apology should have followed.**

**In my view and with profound respect to their Lordships, the Justices of Appeal, erred when, having determined that the respondents violated the fundamental right of the appellant, they declined to award damages because none was claimed. I have demonstrated that the appellant claimed N2 million as damages and even if the appellant did not so claim, he is entitled to compensation on proof of violation of his right by the respondent pursuant to s.35 (6) of the Constitution.**

The respondents at the court below was wrong to have denied him damages by relegating him to the status of a panhandler approaching the Court for a handout.

In conclusion, I allow the appeal and pursuant to s.22 of the Supreme Court Act and Order 8 r.12 of the Supreme Court Rules, I order the Respondents, jointly and severally to pay to the appellant the sum of N2 million as damages/compensation for a violation of his fundamental right in arresting and detaining him unlawfully. No order as to costs.

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### **MOHAMMED JSC**

The Judgment just delivered by my learned brother Ngwuta, JSC was read by me in draft before today and I entirely agree with him that this Appeal has merit and ought to be allowed. On the main issue raised in this appeal as to whether the Court below was right after allowing the Appellant's appeal and affirming his claim that his

Fundamental Rights have been violated by the Respondents and yet refused to award him damages on the grounds that no such damages were claimed, the answer is quite obvious. The records of appeal show quite plainly that one of the reliefs claimed by the Appellant as Plaintiff at the trial Court was “N2 Million against the Respondents for unlawful and illegal detention.” In the circumstances of this case even by virtue of Section 35(6) of the Constitution of the Federal Republic of Nigeria 1999, the Appellant was entitled to compensation as of right having proved his unlawful and illegal detention by the Respondents.

It is therefore for the above and more comprehensive reasons given in the leading Judgment that I also allow this appeal and abide by the orders made in the leading Judgment.

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### **MUNTAKA-COOMASSIE JSC**

I have read before now the judgment just delivered by my learned brother Nwale Sylvester Ngwuta JSC. I agree with his reasoning and conclusions herein stated.

However, I think I should chip in one or two comments of mine in support of the lead judgment. I proceed to do just that.

The Appellant sought and obtained the leave of the High Court of Justice Port-Harcourt, Rivers State to enforce his fundamental human rights pursuant to the provisions of Order 2 Rules 1 & 2 of the Fundamental Human Rights Enforcement Rules. Consequently, a motion on Notice was filed in which the following reliefs were claimed:-

(1) An immediate release of the applicant from Police detention.

(2) N2 million against the respondents for unlawful and illegal detention

(3) An order restraining Respondents from further arresting and detention of the applicant in respect of the same debt.

The application was heard by the trial court, and in its ruling dated 24/5/2005 dismissed the application. In conclusion the trial judge per J. M. Kobani J, held as follows:-

*“I have held that the applicant’s fundamental rights have not been violated. I have also held merely reporting an alleged commis-*

*sion of a criminal offence to the Police without more does not render the person liable for a subsequent violation of the suspect's fundamental rights. Now I have held that I have jurisdiction to hear and determine this application for the enforcement of the fundamental rights of the applicant, it still does not stand him in good stead with the finding that his fundamental rights have not been violated which is the subject matter of the application. In the event the application fails and is hereby dismissed". See page 66 of the Record proceedings.*

Dissatisfied with the decision of the trial court, the applicant successfully appealed to the Court of Appeal, Port Harcourt Division. In its considered judgment unanimously allowed the applicant's appeal on 25/2/2010.

The lower court found as follows:- per the lead judgment of Eko JCA at pp102 - 103 of the Record.

*"The appellant, apparently was in Police custody at the time his application for leave to enforce his fundamental right was filed on 8<sup>th</sup> October 2002. Even if I believe that appellant was re-arrested on 26<sup>th</sup> September 2002 for failing to pay back his debt to 3<sup>d</sup> respondent; as the 3<sup>d</sup> respondent wants it believed, this admission further corroborates the malicious and capricious harassment of the appellant by the police at the instance of the 3<sup>d</sup> respondent to brake him down and compel him to pay his debts to the 3<sup>d</sup> respondent. The learned trial judge was clearly in error in holding, as he did, that because the appellant suffered detention for less than 24 hrs he was not unlawfully imprisoned.*

*For the monstrous and capricious behaviour exemplary damages would have been awarded to demonstrate that the law, indeed the fundamental rights provisions of the constitution cannot be broken with impunity. For this lawless and high handed conduct of the respondents one would invoke the principles for award of exemplary damages laid down in Rookes V. Barnara (1964) 1 All ER 367 at 411 and applied in Drake V. Evangelous (1978) 2 All ER 437. But in law it is not right for any court of law to award a relief not sought as law courts are neither charitable organisation nor Father Christmas. Suffice that the appeal is allowed. The learned trial judge was wrong in not holding that the appellant's right to personal liberty guaranteed by Section 35 (1) of the 1999 Constitution was unjustifiably violated*

*with impunity. The cold blooded callousness of the 3<sup>rd</sup> Respondent is only matched by Shakespearean shyness. The shame of it is that the police were available tools to be used to perpetrate this dastardly conduct. I cannot award damages as none was asked”.*

The applicant was again dissatisfied with that part of the judgment of the lower court in which it refused to award damages. In its Notice of Appeal to the court below, the appellant sought the following reliefs:-

*“An order setting aside the decision of the honourable court dated 25/05/05 including the order as to costs and substitute therefore an order granting the reliefs sought by the applicant as stated in his statement in support of the application dated and filed on 8<sup>th</sup> September 2002”.*

In accordance with the rules of this court both parties filed and exchanged their respective briefs of argument. The appellant in his brief of argument formulated one issue for determination thus:-

*“Was the Court of Appeal right to hold that appellant as applicant did not seek or ask for damages and in any case from the available evidence on the record was the appellant entitled to be awarded exemplary damages”.*

Whilst the 1<sup>st</sup> and 2<sup>nd</sup> respondents formulated their issue for determination as follows:-

*“Whether the court below was right in refusing to award the appellant damages on the ground that damages was not claimed”.* The 3<sup>rd</sup> respondent also formulated only one issue for determination in the following terms.

*“Whether the learned justices of the Court of Appeal were right in law and upon the facts on record in not awarding exemplary or any damages at all to the appellant after holding that his appeal was successful, upon the ground that he had not sought such damages from the court”.*

At the hearing of the appeal on 20/09/2012 the parties adopted their respective briefs of argument.

The respondents raised in their brief of argument preliminary objection to the appeal. The respondent challenged the competence of this appeal on the following grounds:-

1. That the said ground by its nature, couching and contents is a ground of mixed law and facts, alleging a refusal by the Court of

Appeal to award damages to the appellant, as the appellant claims that same was claimed contrary to the court's decision.

2. No leave was obtained by the appellant either from the Court of Appeal or this honourable court to appeal on the said issue or grounds of facts or mixed law and facts as required by law.

B 3. Consequently, the said ground is incompetent and bound to be struck out and afortiori the appeal is incompetent ad bound to be struck out by court.

C In arguing the preliminary objection the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that any determination by this court regarding the sole ground of appeal must necessarily involve an evaluation of available evidence to determine the right of the appellant to an award of damages. A ground of law is determined where the trial court or court below misunderstood or misapplied the law to the proved or D admitted facts. See the cases of *Ogbechie V Onochie* (1986) 2 NWLR (Pt.23) 484; *Ehinlawo V. Oke* (2008) 6 - 7 SC. (pt. 11) 123.

E The argument of the 3<sup>rd</sup> respondent is the same with that of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The 3<sup>rd</sup> respondents however referred to Section 233 (1) of the Constitution of Federal Republic of Nigeria 1999 and contended that the ground of appeal a ground of mixed law and facts required the leave of either the lower court or this honourable court to be competent. He also cited the case of:- *Bello V. Fayose* (1999) 7 SC. (Pt. 2) 8.

F In response the appellant referred to *Ehinlawo V. Oke* (supra) at 159 and contended an appeal on ground of law arises where the ground of appeal shows that the court of trial or the appellate court misunderstood the law or misapplied the law to the proved or admitted fact. The learned justices of the Court of Appeal found that G the appellant was unlawfully detained by the respondents in contravention of Section 35 (1) of the Constitution of the Federal Republic of Nigerian 1999. He cited Section 35 (6) of the Constitution and submitted that what naturally follows this proved finding is compensation and apology.

H My Lords, I have carefully analysed and considered this preliminary objection and it is my view that it has long been settled that the principles guiding the courts is the determination of whether a ground of appeal is one of law or fact or mixed law and fact are as follows:-



1. Whether the court is being invited to investigate the existence or otherwise of certain facts upon which the award of damages to the respondent was based such a ground is of mixed law and fact.

2. A ground which challenges the findings of facts made by the trial court or involves issues of law and fact can only be argued with the leave of the appellate court, if the judgment being challenged is that of the Court of Appeal. B

3. Where the evaluation of facts established by the trial court before the law in respect thereof is applied is under attack or question the ground of appeal is that of mixed law and fact. C

4. Where the evaluation of evidence tendered at trial is exclusively question, it is a ground of fact.

5. A ground of law arises where the ground of appeal shows that the court of trial or appellate court misunderstood the law or misapplied the law to the proved fact or admitted fact. D

I am fortified in making the above analysis by the following authorities:-

a. Ogbechie vs. Onochie (Supra) at 491

b. Ehinlawo vs. Oke (Supra) at 159,

c. Joy Vs. Dom (1999) 7 SC (Pt.3) 4, E

d. Comex Ltd vs. NAB Ltd (1992) 3 NWLR (Part 496) 626 at 658, and Ajuwa Vs. SPDC (Nig) Ltd (2011) 12 SCNJ 596.

In the instant appeal, the Court had found that the fundamental right to liberty of the appellant has been violated by the respondents. This finding has not been challenged by the respondents by way of cross-appeal. Thus, the appellant's complain is against the failure of the lower Court to award damages on the ground that there was no claim for damages. F

It is clear by virtues of Section 35(6) of the 1999 constitution of Federal Republic of Nigeria, what ought to follow the lower Court's finding is compensation and/apology. For the sake of clarity it says: G

S. 35(6) - "Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person". (Underlining mine for clarity) H

That being the case, I hold that the complaint is against the lower Court to apply the law to the proved facts as found by the lower Court. I therefore hold that this preliminary objection has no substance, and it is hereby dismissed. I hold that the appeal is com-

petent and I will proceed anon to determine the main appeal on its own merit.

The appellant on 20/9/12 adopted his own brief of argument and urged us to allow the appeal. It was the contention of the learned counsel to the appellant that it was not correct to say that the appellant went to father Christmas shop to ask for a gift or any charitable organisation, rather the appellant approached the court of law to seek justice in its temple for the wrong done to him by the respondents, and to remedy those wrongs. He referred to his statement in support of facts in his application where he claimed the sum of N2 million only against the respondents for unlawful and illegal detention. He also refers to the reliefs claim before the lower court in its Notice of Appeal. He submitted that the evidence as to damages claimed in the lower court were never challenged or controverted by the respondents. He therefore further submitted that where, in a claim for damages, the party claiming gives evidence to support his claim for a specific amount which evidence is unchallenged or uncontroverted by other party, the judge would be entitled to accept the evidence in support of that amount. He relies on the case of: *INCAR Nig. Ltd V. Adegboye* (1985) 2 NWLR (pt.8) 453 at 454.

Learned counsel cited Section 35 (6) of the Constitution of the FRN and submitted that the lower court did not consider the above constitutional provisions. He contends that the said Section 35 (6) of the 1999 Constitution provides penalty for any person who violates a Nigerian Fundamental rights as contained in the constitution. He again cited the following authorities:-

- i) *Eloichin Nig. Ltd V. Mbadiwe* (1986) 1 NWLR (pt.14) 47
- ii) *Odogwu V. A-G of the Federation* (1986) 6 NWLR (pt. 456)

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Learned counsel to the 1<sup>st</sup> and 2<sup>nd</sup> respondents also adopted his brief of argument and urged us to dismiss it. Learned counsel contended that in an appeal before the court an appellate court only have jurisdiction to determine issues properly raised before it. An appeal court cannot make pronouncement on issues which do not arise from the ground of appeal. An appeal must challenge the decision of the lower court through a complaint properly made in a ground of appeal. The following cases were cited.

*Mil. Admin. Akwa-Ibom V. Obong* (2001) FWLR (pt.60)

1456 at 1461; Ogbonnaya V. Adapalm Ltd (1993) 6 SCNJ. 23. He therefore submitted that on the two grounds of appeal there was no complaint concerning the issue of award of damages.

Learned counsel to the 3<sup>rd</sup> respondent also adopted his brief of argument and urged this court to dismiss the appeal. It was submitted that parties and the appellate court are bound by the grounds of appeal and the issues distilled for determination, the issues for determination in every appeal must flow or arise from the grounds of appeal. He relied on the following cases:- Oseni V. Bajulu (2009) 12 SC (pt.11) 80; SPDC Nig. Ltd V. Edamkue (2009) 6 - 7 SC 74.

Learned counsel then contended that though in the appellant claim in his statement of facts in support of his application, the sum of N2m against the respondents for wrongful and illegal detention, in his grounds of appeal, he made no complain about the trial Judge's refusal to award him the claimed damages and therefore, counsel submitted, it was not an issue for determination by the Justices of the Court of Appeal. He further submitted that the reliefs claimed in the Notice of Appeal were not enough basis upon which the court of Appeal would have proceeded to award him the damages sought as the reliefs sought in every appeal must be tied to the grounds of appeal and the appellant's success. This is so because it is settled law that damages must be specifically pleaded and proved and consequently where they are not awarded by the trial court as in this case, an appellant aggrieved by the decision must specifically plead and appeal against the non-award of damages before the Court of Appeal can have jurisdiction to review, consider or award same as appropriate; cites the case of Akinkugbe V. Ewulum Holdings Nig Ltd (2008) 4 SC.

In the consideration of this appeal, it must be noted' that the trial court dismissed the appellant's application before it. Hence there was no basis for the said court to make any comment or finding on the award. It was the trial court's position that the appellant's fundamental right to liberty has not been violated. It was against these findings that the appellant appealed to the court below. In his Notice of Appeal before the lower court two grounds of appeal were raised thus:

(1) *"The learned trial Judge arrived at a perverse conclusion/ findings that the arrest and detention of the appellant was not illegal*

*and unconstitutional without relying on material facts before him and when the 1<sup>st</sup> and 2<sup>nd</sup> Respondent did not depose to facts justifying the arrest and detention of the Applicant.*

(2) *The learned trial Judge erred in law in relying upon the affidavit of the 3<sup>rd</sup> Respondent in justifying the arrest and detention of the Applicant which facts were inadmissible”.*

The appellant then claimed as follows:

*“An order setting aside the decision of this Honourable Court dated 24-05-05 including the order as to cost and substitute” there-fore an order granting the reliefs sought by the applicant as stated in his statement in support of the application and filed on 8<sup>th</sup> September, 2002”.*

My Lords, in my view, the grounds of appeal filed by the appellant before the lower adequately challenged the findings and decision of the trial court. A ground of appeal to be competent must be a challenge to the particular findings of the court and its decisions and not against passing comments of the Judge. I refer to *Ogunbayo vs The State (2007) 3 SCNJ 119*, *Ezekwu vs Ukachukwu (2004) 7 SCNJ 189*. Also in the Notice of Appeal the rules of court makes provisions for the appellant to state the reliefs he seeks from the Court of Appeal. Order 6 Rule 2(1) of the Court of Appeal 2011 provide thus:

2 - (1) All appeals shall be by way of re-hearing and shall be brought by Notice (hereinafter called the Notice of Appeal) to be filed in the registry of the court below which shall set forth the grounds of appeal, stating whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part) and shall state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal which shall be accompanied by a sufficient number of copies for service on all such parties, and it shall also have endorsed on it an address for service”.

From the above the “grounds of appeal” and the “relief sought are two different requirements in the Notice of Appeal. While the “grounds of appeal” attacks the specific finding and decision of a court, the “reliefs” set out the appellant’s claims before the Court of Appeal. It is in view of the above that I found the submissions of the respondents very strange. To submit that the grounds of appeal of

the appellant ought to complaint about the claims when its application was dismissed for lacking in merit by the trial court' is strange and I according reject same. The appellant had duly stated his claims under the "Reliefs Sought" in its 'Notice of Appeal and the lower court having held that the appeal is meritorious ought to have awarded him his claims. B

The appellant's claim is in connection with the breach of his fundamental rights to his liberty by the respondents. The onus is on him to show that he was unlawfully arrested and detained i.e. that his fundamental right has been violated. If this is proved, by virtue of the provisions of Section 35(6) of the 1999 Constitution Federal Republic of Nigeria, the complainant is entitled to compensation and apology, where no specific amount is claimed. Where a specific amount is claimed, it is for the court to consider the claim and in its opinion, the amount that would be justified to compensate the victim of the breach. In this respect the common law principles on the award of damages do not apply to matter brought under the enforcement of the Fundamental Human Rights procedure as submitted by the learned counsel to the 3<sup>rd</sup> Respondent. The procedure for the Enforcement of the Fundamental Human Right was specifically promulgated to protect the Nigerians fundamental rights from abuse and violation by authorities and persons. When a breach of the right is proved the victim is entitled to compensation even if no specific amount is claimed. C D E

My noble lords, it is for the above reasons that I hold that the lower court was wrong with respect, for its failure to award damages to the appellant. Contrary to the position of the court below, the appellant's claim was properly before it under the reliefs claimed in the Notice of Appeal and statement of facts in the application. In the circumstance, the lower court having held, properly and correctly in my opinion, that the fundamental rights of the appellant had been violated by the respondents, it should award the sum N2m claimed by appellant as damages for the said violation. F G

My lords, this appeal is pregnant with a lot of merits deserving to be allowed. H

In the light of this my little contribution and for the much fuller reasons stated in the lead judgment I too find that the preliminary objection has no substance same is hereby dismissed. The main

appeal has tremendous merit same is therefore allowed. I abide by the consequential orders adumbrated in this lead judgment.

That part of the judgment wherein the Court of Appeal held that the applicant/appellant was not entitled to award of damages for the breach of 'his fundamental rights as he had failed to make a claim  
B before the court, is hereby set aside. Consequently the sum of N2 million is hereby awarded to the appellant as damages for the violation of his fundamental rights to liberty by the respondents.

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**MUHAMMAD JSC**

I had a preview of the lead judgment of my learned brother Ngwuta JSC and for the reasons he advanced therein I entirely agree with the conclusion he arrived at that the appeal has merits and that  
D same should succeed.

Before joining him in dismissing the appeal, I also overrule the preliminary objections raised by the Respondents as to the competence of the appeal.

Learned appellant counsel is on a firm terrain that a ground  
E of appeal which challenges the trial court's wrong application of the law to ascertained facts is certainly a ground of law. Learned counsel's reliance on the decision in *Ehinlanwo V Oke & Ors* (2008) 6-7 SC is apposite. The grounds of appeal in appellant's Notice of Appeal being of this fold, appellant does not have to obtain leave of either the  
F court below or this Court for his appeal to be competent. By virtue of Section 233 (2) (a) of the 1999 Constitution (as amended), he appeals as of right.

The court below has found at pages 19-20 of the record that  
G appellant had been unlawfully arrested and detained. Appellant's statement of facts in support of the application for the enforcement of his fundamental right evidently seeks the trial court's order for a Two Million Naira damages against the respondents for his unlawful and illegal detention. The provision of Section 35 of the 1999 Constitution  
H equally speaks for itself. Yet the court below insists that appellant is not entitled to that relief having not asked for same. The court is manifestly wrong!

Appellant's unlawful detention by the respondents constitute a breach of his right to personal liberty as guaranteed under Section

35 (1) of the Constitution. The same Constitution has provided under Section 35 (6) thus:-

*“35 (6): Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.”* (Underline supplied for emphasis).

From the foregoing, the appellant does not have to ask for compensation once he has established the fact of his being unlawfully detained, a fact which the court below itself held he has. The compensation is automatic by the operation of the law. In any event, the record of appeal has clearly shown that appellant has specifically asked for a N2 million Naira damages. The lower court’s decision that discountenanced the content of Section 35 (6) of the Constitution as well as appellant’s specific claim for the award of Two Million Naira damages arising from the breach of his constitutionally guaranteed right to liberty is manifestly perverse. This and the fuller reasons stated in the lead judgment informs my resolve to allow the appeal. I allow the appeal and abide by the consequential order reflected in the lead judgment including those on costs as well.

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### **OGUNBIYI JSC**

I have read in draft the lead judgment just delivered by my learned brother Sylvester Ngwuta, JSC and I agree with the reasons and conclusion arrived thereat that the appeal has merit and should be allowed.

Briefly on the preliminary objection raised by the respondents whereby they challenge the competence of the only ground of appeal, recourse ought be had to various decided judicial authorities wherein certain principles must first be put in place for appeal to lie either as of right or with leave as the case may be. In otherwords, it is the factors that will determine the distinction between appeal on grounds of law or mixed law and facts. For instance in the case of Nwadike & Ors. V. Ibekwe & Ors. (1987) 2 IV S.C.C. 1219 at 1235 the learned jurist Nnaemeka-Agu JSC laid down a general guide line in determining when a ground of appeal is that of law. The deductive summary is that the distinction as to whether a ground is of law or mixed law and fact is not as easy like the obvious difference between night and day.

His Lordship therefore in the foregoing authority distinctively held thus amongst others and said:-

*“iv. Where a tribunal states the law on a point wrongly it commits an error in law”*

In applying the foregoing principle to the context of the case at hand their Lordships of the Court of Appeal, with all respect while interpreting the law as relating relief not asked for did so wrongly especially with reference made to the appellants’ relief at pages 19 and 20 of the record of appeal wherein relief (2) specifically asked for N2 million Naira against the respondent for unlawful and illegal detention. The grouse of the complaint of the ground of appeal is alleging that the learned justices of the court below either misunderstood or misapplied the law to the proved or admitted facts. It is evident to state that the question of the unlawful detention of the appellant by the respondent in contravention of section 35(1) of the Constitution was not an issue but a finding proved as a fact by their Lordships. The issue however is whether or not the appellant having regard to his relief did in fact come within section 35(6) of the Constitution.

I hasten to point out clearly that with the nature of the claim subject of appeal seeking enforcement of fundamental Rights, the appeal therefrom lies as of right and hence the question of mixed law and facts are not applicable.

The said ground of appeal as rightly submitted by the learned appellant’s counsel is a ground of law and which needed no prior leave to raise same. The preliminary objection raised is also overruled and dismissed by me.

On the merit of the appeal and at pages 102 and 103 of the record, the learned justices of the Court of Appeal held thus:-

*“The learned trial Judge was clearly in error in holding, as it did, that because the appellant suffers detention for less than 24 hours he was not unlawfully imprisoned.*

*For this monstrous and capricious behaviour exemplary damages would have been awarded to demonstrate that the law, indeed the fundamental rights provision of the constitution, cannot be broken with impunity. For this lawless and high handed conduct of the respondents one would have invoked the principle for award of exemplary damages laid down in Rookes V. Barnara (1964) 1 All E.R.*



367 at 411 and applied in *Drake V. Evangelous* (1978) 2 All E.R. 437. But in law it is not right for any court of law to award a relief not sought as law courts are neither charitable organizations nor father Christmas. Suffice that the appeal is allowed.”

The issue before this court and which arises from the foregoing judgment is whether the lower court was right in holding that the appellant as applicant at the trial High court did not in fact seek or ask for damages. Also and closely following is the question of whether the appellant is in the circumstance of this case entitled to be awarded exemplary damages? The Court of Appeal in its considered judgment found as a fact that the appellant never asked for exemplary damages. The determination and answer to the foregoing deductions would seek that reference be made to the relief sought by the appellant on his notice of appeal to the Court of Appeal. The Relief specifically at page 69 of the record sought for:-

“(1) An order setting aside the decision of the Honourable court dated 24-05-05 including the order as to cost and substitute therefore an order granting the reliefs sought by the Applicant as stated in his statement in support of the application dated and filed on 8<sup>th</sup> September, 2002.” (Emphasis is mine)

The statement in support of the application dated 8<sup>th</sup> October, 2002 can be found at pages 19 - 20 of the record of appeal and are as follows:-

“(1) An immediate release of the applicant from police detention and

(2) N2 million against the Respondents for unlawful and illegal detention.

(3) An order restraining the Respondents from further arrest and detention of the applicant in respect of this same debt issue.” (Emphasis is mine).

On the totality of the case before their Lordships of the Court of Appeal, it is obvious on perusal of the record that they appreciated the wrong done to the appellant who should have been awarded damages as compensation against the respondents. However and nevertheless, for a strange reason which was not substantiated, their Lordships did not see it appropriate to award the damages which they held ought to have been exemplary in nature. Intriguingly enough the lower court in other words veered off from its reasoning and

therefore somersaulted due to their inability to appreciate the relief for compensation by the appellant and which was clearly laid before their Lordships.

B Contrary to the findings by the lower court and as rightly submitted by the learned appellant's counsel, there was a relief for award of damages before the court and which ought to have been granted. The Court of Appeal therefore erred in refusing to award the claims which was very specific. The issue is therefore resolved in favour of the appellant.

C On the totality of this appeal and in the same vein I also concur with my/learned brother Sylvester Ngwuta, JSC that the appeal has merit and I hereby allow same in terms of the lead judgment.

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