

SUPREME COURT OF NIGERIA
FRIDAY 11TH APRIL, 2014. SC. 204/2006
CORAM:- I. T. MUHAMMAD, O. ARIWOOLA,
M. D. MUHAMMAD, C. B. OGUNBIYI,
K. M.O. KEKERE-EKUN, JJSC

UNION BANK OF NIGERIA PLC APPELLANT
AND
MR. N. M. OKPARA CHIMAEZE RESPONDENT

APPEALS - Perverse finding - Meaning of - Decision is perverse when court ignores facts or evidence before it - Which lapse when considered as a whole constitutes a miscarriage of justice (H1)

APPEALS - General damages - Award - Interference - Appellate court does not interfere - Save it is satisfied that trial court had acted upon wrong principle - Or that amount awarded was so large or so small (H2)

APPEALS - General damages - Award - Interference - Justification - CA rightly interfered as damages awarded in the claim is aggravated - Not only for inconvenience caused respondent - But for loss incurred following wrongful dishonour of his cheque (H3)

FACTS

Plaintiff/respondent instituted this action at the High Court of Edo State Benin City claiming for the sum of N30 million general and special damages for the wrongful dishonour of his cheque in favour Lever Brothers Nigeria Plc by defendant/appellant. Respondent averred that he had sufficient credit in the account he operated as a general trader and distributor of the aforementioned company. In defence, appellant had alleged fraud on the part of respondent and further contended that respondent had no credit enough in his bank account to accommodate the amount on the cheque drawn in favour of the company. Hence the cheque was dishonoured.

At the end of trial, the learned trial Judge in his judgment found that respondent had sufficient credit in his account when ap-

pellant dishonoured his cheque. Respondent was therefore awarded the sum of N100,000.00 as general damages and N250,000.00 being special damages incurred as solicitors fees. Not satisfied, appellant appealed to the Court of Appeal Benin City Division against the special damages, while respondent cross-appealed against the award of N100,000.00 as general damages. The court in its judgment dismissed the appeal on special damages and allowed the cross-appeal by increasing the award of general damages by N1,000,000.00. Both parties were not yet satisfied. As a result, appellant filed main appeal in Supreme Court against the increment as being excessive. Respondent cross-appealed seeking for a further increment in the award of general damages.

ISSUES FOR DETERMINATION

“(1) Whether or not the court below was right in affirming the award of the sum of N250,000.00 (solicitors cost) as special damages to the respondent in the circumstances of this suit.

(2) Whether or not there are circumstances in this case to warrant the increase by the court below of the general damages from N100,000.00k (one hundred thousand naira) to N1,100,000.00k (sic) one million naira in favour of the respondent.”

HELD (Unanimously dismissing the appeal and cross-appeal per M. D. MUHAMMAD JSC)

APPEALS - Perverse finding - Meaning of

1. Learned respondent/cross appellant’s counsel is right in his submission that a finding of a lower court on appeal is only set-aside where same is perverse. In a seemingly endless number of the decisions of this court, it has been held that a decision of a court is perverse when it ignores the facts or evidence before it which lapse when considered as a whole constitutes a miscarriage of justice. In such a case an appellate court is bound to interfere with such a decision and set it aside.

(p. 1465 G)

APPEALS - General damages - Award - Interference

2. This Court has held in a seemingly endless body of cases that it is not the business of the appellate court to interfere with general

damages awarded by the trial court unless it is satisfied that the trial judge had acted upon some wrong principle in the award of such damages or that the amount awarded was so large or so small as to make it a completely erroneous assessment of the damages. The question now to answer is whether the lower court's interference with the general damages awarded by the trial court is on the basis of these principles.

One cannot agree more with the lower court that where the trial judge ignores facts on record in arriving at the general damages he awards a successful plaintiff, an appellate court is duty bound to interfere by making the estimation the justice of the case demands based on the facts ignored by the trial judge. (pp. 1468 D/1469 H)

APPEALS - General damages - Award - Interference - Justification
3. In the case at hand one of the reasons the lower court relied upon in its interference with the general damages the trial court awarded the respondent/cross appellant is the undisputed fact of his being a trader. Award of damages for the dishonour of cheques issued by the respondent who is in fund, is sui generis. The very act of dishonouring a trader's cheque without more, on the authorities, entitles him to substantial damages. Being bound by the foregoing, one is unable to agree with learned appellant/cross respondent's counsel that the lower court's judgment that proceeded on similar vein is perverse. Given the passages reproduced from its judgment, it is glaring that the lower court had taken into consideration all the relevant facts required for a just decision of the amount it awarded. Damages awarded in this class of claims is aggravated not only for the inconvenience caused the claimant but injury done to his reputation, credit, loss incurred following the wrongful dishonour of his cheque and for his overall anguish as well. The object of the award made (sic) the respondent/cross appellant here is to put him, as far as possible, in the position he would have been but for the negligence of the appellant/cross respondent in dishonouring his cheque.
(p. 1470 A)

NOTABLE POINT OF INTEREST

ARIWOOLA JSC

1. Damages – Meaning of

What then is damages generally? Damages are money claimed by or ordered to be paid to, a person as compensation for loss or injury. In other words, damages are the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong. General damages are damages that the law presumes follow, from the type of wrong complained of and do not need to be specifically claimed. While special damages are damages that are alleged to have been sustained in the circumstances of a particular wrong. To be awardable, special damages must be specifically claimed and proved. (p. 1473 G)

REPRESENTATION

Dr. V. J. O. Azinge (Mrs.) with S. Offah and Victor Azubike for the Appellant/Cross Respondent

G. C. Igbokwe and Chief A. T. Udechukwu for the Respondent/Cross

D Appellant

CASES REFERRED TO

UBA Ltd. v. Ademuyiwa (1999) 11 NWLR (pt. 628) 570

E Sabru Motors (Nig) Ltd v. Rajab Enter. Nig. Ltd (2002) FWLR (pt. 116) 841

Barge v. Ganduma (2001) 13 NWLR (pt. 731) 693

Imhanria v. Nigerian Army (2007) 14 NWLR (pt. 1053) 76

Allied Bank Plc. v. Akubaeze (1997) 6 KLR 1202

F UBN v. Nwoye (1996) 3 LRCN 232

Odulaja v. Haddad (1973) 11 SC 357

Ajomale v. Yaduat (No 2) (1991) 5 NWLR (pt. 191) 266

UBN v. Odusote Bookstores Ltd. (1995) 5 NWLR (pt. 421) 558

ELF v. Sillo (1994) 6 NWLR (pt. 350) 258

Osondu v. Akhigbe (1999) 11 NWLR (pt. 652) 1

G N.E.P.A. v. Ososanya (2004) 5 NWLR (pt. 867) 601

Marine Management v. N.M.A. (2012) 12 SCNj 128

Dumez Ltd. v. Ogboli (1972) 3 SC 196

Onaga v. Micho & Co. (1961) 1 ALL NLR 101

BOOK REFERRED TO

H Black's Law Dictionary 9th Edn. p. 445

LEAD JUDGMENT BY M. D. MUHAMMAD JSC

This is an appeal against the judgment of the Benin Division of the Court of Appeal dismissing the appeal of the appellant/cross respondent herein and allowing the cross appeal of the respondent/cross appellant herein. The judgment appealed against was delivered on the 22nd day of February 2006. The brief facts of the case that brought about the instant appeal and cross appeal are told hereinafter at once. B

The respondent/cross appellant as plaintiff took out a writ at the Edo State High Court, hereinafter referred to as the trial court, against the appellant/cross respondent, the defendant thereat, claiming the sum of thirty million naira general and special damages for the wrongful dishonour of the cheque he drew on the appellant/cross respondent in favour of Lever Brothers Nigeria Plc. It is averred in the writ that the respondent/cross appellant had enough credit in the account which he operated as a general trader and major distributor of the Lever Brothers Nigeria Plc. C

Appellant/Cross respondent's case is that the lodgment of N206,000.00k into respondent/cross appellant's account was fictitious and that the purported documentary evidence that one Miss D. Nwakaeze had deposited the amount is fraudulent. It is contended that a conspiracy between one of the bank's staff and the Respondent/Cross appellant's staff is behind the fictitious entry in the latter's account. The respondent/cross appellant, therefore, never had the required credit in his account to warrant the payment of the cheque he issued and same was duly dishonoured. D

The trial judge, Omege J (as he then was) having found that the respondent/cross appellant had sufficient money in his account and the appellant/cross respondent had wrongly dishonoured his cheque for the sum of N205,936.00k issued in favour of the Lever Brothers Nig Plc, awarded the respondent/cross appellant N100,000 and N250,000.00k general and special damages respectively. Dissatisfied with the trial court's judgment, the appellant/cross respondent appealed to the lower court on an amended notice containing five grounds. The respondent/cross appellant also appealed against the trial court's judgment. E

The lower court in its judgment dismissed appellant's appeal in its entirety, allowed in part respondent's Cross appeal and F

consequentially increased the general damages awarded the latter from N100,000.00 (one hundred thousand naira) by N1,000,000.00 (one million naira). Aggrieved, both parties have appealed against the lower court's judgment with the appellant/cross respondent complaining that the increase of the general damages of N100,000.00k (one hundred thousand naira) awarded to the respondent/cross appellant by the trial court to N1,100,000.00k (one million one hundred thousand naira) by the lower court is excessive. Respondent/cross appellant's grudge in his appeal is that the lower court's increase is still insufficient. He urges that it be further enhanced.

Parties have filed, exchanged and adopted their respective briefs at the hearing of the appeal as their arguments in support and/or opposition of the two appeals. The two issues formulated in the appellant/cross respondent's brief for the determination of his appeal read:-

“(1) Whether or not the court below was right in affirming the award of the sum of N250,000.00 (solicitors cost) as special damages to the respondent in the circumstances of this suit.

(2) Whether or not there are circumstances in this case to warrant the increase by the court below of the general damages from N100,000.00k (one hundred thousand naira) to N1,100,000.00k (sic) one million naira in favour of the respondent.”

The two similar issues the respondent/cross appellant distilled at page 3 of his brief as having arisen for the determination of the appeal are:-

“(1) Whether or not the court below was right in affirming the award of the sum of N250,000 (solicitor's costs) as special damages to the respondent in the circumstances of this suit.

(ii) Whether or not there are circumstances in this case to warrant the increase by the court below of the general damages from N100,000 to N1,100,000.00k (sic) in favour of the respondent.”

Under the 1st issue, it is submitted that the respondent/cross appellant in paragraphs 21 and 22 of his amended statement of claim averred that he had deposited one hundred and fifty thousand naira with the solicitor that charged him two hundred and fifty thousand naira to prosecute his case against the appellant/cross respondent. In joining issue with the respondent/cross appellant, it is further submitted by the learned appellant's counsel, the appellant/cross

respondent not only denied in paragraphs 2 and 20 of its statement of defence but averred in the alternative that the payment of the solicitor's fees by the respondent/cross appellant was not a loss that had arisen from appellant/cross respondent's dishonour of respondent's cheque. Respondent/cross appellant's evidence at pages 26 and 36 lines at 25 and 1-7 respectively that he only paid N150,000 out of the N250,000 fees stand at variance with his pleadings. The lower court's affirmation of the trial court's award of the entire N250,000 special damages, contends learned counsel, is a grave error for at least three reasons.

Firstly, learned appellant's counsel contends. The respondent/cross appellant's failure to strictly prove the special damages disentitles him to the award of the sum he claims. Learned counsel relies on *Neka B.B.B. Manufacturing Co. Ltd V. ACB Ltd* (2004) All FWLR (Pt 198) 117.

Learned appellant's counsel further contends that appellant/cross respondent's evidence as to the sum he paid his solicitor remains contradictory. Whereas he stated in his evidence in chief that he paid the solicitor N150,000.00k and tendered a receipt, under cross examination, the respondent/cross appellant told the trial court that he paid the sum of N250,000.00k. The affirmation of the award by the trial court on the basis of such contradictory evidence having occasioned grave injustice should be set-aside. The damages, it is also contended, has not been established by the respondent to have flowed from the alleged wrongful dishonour of respondent's cheque. Lastly, it is submitted, the award of the special damages on fees paid to solicitor is against public policy.

Under their 2nd issue, learned appellant's counsel argues that the hike of the general damages of N100,000.00k the trial court awarded to N1,100,000 by the lower court is wrong. The respondent did not satisfy the lower court that the award by the trial court had contravened any known principle. The increase by the lower court, learned counsel submits, on the authority *UBA Ltd v. Mudasiru Oladipo Ademuyiwa* (1999) 11 NWLR (Pt 628) 570 at 591 and *Nigerian Bank for Commerce and Industry v. Integrated Gas (Nig) Ltd* and another (1998) 8 NWLR (Pt 613) 119 at 131 should be interfered with. The lower court cannot substitute its own view of what damages the respondent/cross appellant should be awarded with what the trial

court adjudged he was entitled to.

Further relying on *Sabru Motors (Nig) Ltd v. Rajab Enterprises (Nig) Ltd* (2002) FWLR (Pt 116) 841 at 852 - 853, learned counsel insists that the award by the trial court that had complied with the applicable principles for such award should be restored. The respondent/
 B cross appellant, it is contended, was unable to establish the damages he sustained to enable any award and even the trial court's award had proceeded without the benefit of the required evidence. The trial court's highly generous award, contends counsel, is gratuitous.
 C The lower court's further hike being all the more gratuitous must be revisited. Citing and relying on the decision in *Basheer v. Same* (1992) 4 NWLR (Pt 236) 49 at 502, learned counsel urges that the issue be resolved in appellant's favour. The appeal, learned counsel urges, should be allowed as well.

Learned counsel for the respondent submits that the affirmation
 D of the trial court's finding by the lower court of the N250,000 solicitor's fees as special damages was made on the basis of the pleadings, evidence on record and the law relating to wrongful dishonour of cheques. The apex court, learned respondent's counsel submits, does not make a habit of overturning concurrent finding of
 E facts which does not constitute miscarriage of justice.

It is further contended that the special damages awarded had arisen after the cause of action and the respondent had satisfied the court as to how same was quantified. The evidence led in proof of
 F respondent's amended statement of claim, submits learned respondent's counsel, contrary to what the appellant asserts, is devoid of any contradiction. Findings on such solid evidence, it is argued, disentitles an appellate court from interfering. Finally, learned counsel submits, a court cannot refuse damages in a proper case on the basis of public policy and the lower court has rightly stated the principle
 G in that regard. Relying inter-alia on *Barge v. Ganduma* (2001) 13 NWLR (Pt 731) 693, *Imhanria v. Nigerian Army* (2007) 14 NWLR (Pt 1053) 76, *Allied Bank Plc v. Akubaeze* (1997) 6 KLR 1202, *UBN v. Nwoye* (1996) 3 LRCN 232, *Odulaja v. Haddad* (1973) 11 SC 357 and *Ajomale v. Yadaut* (No 2) (1991) 5 NWLR (Pt 191) 266,
 H learned respondent's counsel urges that the issue be resolved against the appellant.

On the 2nd issue, it is submitted that the lower court's increase

of the general damages awarded by the trial court from N100,000.00k to N1,100,000.00k in favour of the respondent/cross appellant is justified. The increase that proceeded from the court's thorough and unimpeachable examination of the entire surrounding circumstances of the case, submits learned respondent's counsel, cannot be revisited by this Court. The respondent/cross appellant being a trader, even without pleading and proving actual damages or loss, is entitled to recover substantial damages for the wrongful dishonour of his cheque. Damages for wrongful dishonour of cheques, concludes learned respondent's counsel, occupies a special class. The lower court's findings at page 185 lines 15 - 18 which rightly captures and applies the principle, it is submitted, cannot be faulted. On the authority of the decisions in, among others, U.B.N. v. Odusote Bookstores Ltd (1995) 5 NWLR (Pt 421) 558, ELF v. Sillo (1994) 6 NWLR (Pt 350) 258 and Ifeanyichukwu Osondu v. Akhigbe (1999) 11 NWLR (Pt 652) 1 at 22 learned counsel prays, the issue be resolved in respondent/cross appellant's favour. He also urges that the appeal be dismissed.

I agree, for all the right reasons advanced by learned respondent/cross appellant's counsel that the lower court's decision cannot be interfered with. The appellant seeks this court's interference, given the two issues it coded for the determination of the appeal, firstly because the lower court in its affirmation of the special damages awarded by the trial court and secondly the court's increase of the general damages from the N100,000.00k awarded by the trial court to N1,100,000.00k, are both wrong. Learned respondent/cross appellant's counsel is right in his submission that a finding of a lower court on appeal is only set-aside where same is perverse. In a seemingly endless number of the decisions of this court, it has been held that a decision of a court is perverse when it ignores the facts or evidence before it which lapse when considered as a whole constitutes a miscarriage of justice. In such a case an appellate court is bound to interfere with such a decision and set it aside. See N.E.P.A. v. Ososanya (2004) 5 NWLR (pt. 867) 601 and Marine Management v. N.M.A. (2012) 12 SCNJ 128 at 159.

In the case at hand, therefore, the appellant succeeds only if it establishes that in its findings in respect of the special and general damages the lower court has ignored the evidence on record and/or wrongly applied a principle to the evidence. The appellant/

cross respondent must establish, too, that the lapse has occasioned a miscarriage of justice. The pleadings and evidence proffered by the respondent/cross appellant in proof of same immediately call for some scrutiny.

At paragraphs 21 and 22 of his amended statement of claim,
B the respondent/cross appellant as plaintiff avers as follows:-

“21 Plaintiff avers that he ran and briefed his solicitors Messrs. G.C. Igbokwe & Co who charged him N250,000 (two hundred and fifty thousand naira) only to prosecute this action.

C 22. Plaintiff avers that he made a deposit of N150,000 to the said solicitors who issued him a receipt. The solicitor’s receipt No. 045 of 2405/94 shall be funded upon at the trial of this action.”

In joining issue with the respondent/cross appellant the appellant/cross respondent avers in paragraph 20 of its statement of defense thus:-

D “20 In answer to paragraphs 21 and 22 of the statement of claim, the defendant says that the plaintiff did not pay his solicitor the sum of N150,000.00k (One hundred and fifty thousand naira) as alleged. Alternatively, the payment of the said solicitors fee is not a loss arising from the return of the plaintiff’s cheque No 5053”

E In proof of his pleadings in paragraphs 21 and 22 of his statement of claim, the respondent/cross appellant as PWI testified at page 26 lines 25 - 26 of the record inter-alia thus:-

“My solicitor charged me N250,000 but I paid him N150,000.

F I see the receipt of deposit to my counsel”

The receipt issued to the respondent/cross appellant copied at page 68 of the record is hereunder reproduced for ease of reference.

“Exhibit MOC.7:

G.C. IGBOKWE & CO.

Legal Practitioners & Consultants

G 136, Upper Mission Road, Benin City,

Official Receipt No.045

Date: 24/5/1994

Received from Chief N.M. Okpara Chimaeze the sum of One Hundred and Fifty Thousand Naira only being payment for Deposit in Suit against Union Bank Plc.N150,000.00k

H Bal. N100,000

(sgd)

Receiver's Signature."

In affirming the trial court's award of special damages to the respondent/cross appellant the lower court at page 157 of the record firstly stated thus:-

"In reply to the above paragraphs, the appellant made a general traverse to the claim in paragraph 2 of his statement of defense... It is trite law that mere general denials in pleadings are never sufficient traverse and amounts to no denials at all with end result that the particular pleaded fact remains unchallenged and only required minimal evidence or none at all to be admitted as proved by the trial court."

Notwithstanding the foregoing, the court proceeded at page 158 of the record as follows:-

"The respondent pleaded that his solicitors charged him N250,000.00k to prosecute this case for him. He also went further to claim the said sum as special damages in paragraph 25 of his amended statement of claim among his other heads of claim before the trial court. It is therefore my considered view that even if paragraphs 21 and 22 of the appellant's statement of defence (sic) were denied by the appellant, the respondent has established same by preponderance of evidence before the trial court and I therefore so find."

The foregoing finding of the lower court given the pleadings and the testimony of PW1, the respondent/cross appellant, as well as Exhibit MOC.7 is unassailable. The N250,000.00k naira claimed was not only specifically pleaded but, from the available evidence, clearly proved. In *Neka B.B.B. Manufacturing Co. Ltd v. ACB Ltd* (2004) 2 NWLR (Pt 858) 521 at 540 this Court held on the point thus:-

"It is trite law that where the claimant specifically alleges that he suffered special damages he must per force prove it. The method of such proof is to lay before the court concrete evidence demonstrating in no uncertain terms easily cognisable the loss or damages he has suffered so that the opposing party and the Court as umpire would readily see and appreciate the nature of the special damages suffered and being claimed. A damage is special in the sense that it is easily discernible and quantified. It should not rest on a puerile conception or notion which would give rise to speculation, approximation or estimate or such fractions."

In the case at hand appellant's contention that the lower court's affirmation of the trial court's award of special damages is wrong is manifestly incorrect. The trial court's award that proceeded on the basis of respondent's specific pleadings and evidence in strict proof of the pleaded facts, on the authorities, cannot be faulted. See
B Dumez Ltd. v. Ogboli (1972) 3 SC 196 and Marine Management Associates INC. & Anor. v. NMA (2012) 12 SC (Pt.11) 141.

Appellant/cross respondent's 1st issue, therefore, fails. It is resolved in favour of the respondent/cross appellant.

C Under appellant's 2nd issue, it has been argued that the lower court's interference with the trial court's award of general damages is erroneous.

This Court has held in a seemingly endless body of cases that it is not the business of the appellate court to interfere with general damages awarded by the trial court unless it is satisfied that
D the trial judge had acted upon some wrong principle in the award of such damages or that the amount awarded was so large or so small as to make it a completely erroneous assessment of the damages. See Onaga v. Micho & Co. (1961) 1 ALL NLR 101 at 105 - 106, Ifeanyi-Chukwu Co Ltd v. Akhigbe (1999) 7 SC (Pt. 1) 1, Odogu v.
E A.G Federation (1996) 6 NWLR (Pt 456) 508 and Imah v. Okogbe (1993) 12 SCNJ 57. The question now to answer is whether the lower court's interference with the general damages awarded by the trial court is on the basis of these principles.

F The lower court's decision varying the general damages awarded the respondent/cross appellant is founded on his evidence in chief at page 26 lines 26-36 of the record of appeal inter-alia thus:-

"...By the action of the Bank, I lost an annual profit of N5 million naira, I also lost the goodwill of Lever brothers. I am a first class chief in my town. The people threatened to withdraw my title.
G My annual turnover with LBN Plc is between N55 - 60 million naira per annum. The Lever Brother have not written to restore my credit facility."

The respondent/cross appellant further stated under cross examination as follows:-

H "I paid tax and VAT of N5,000 and a personal tax of N5,000.00 as Director of a company. I make profit of over N15 million naira..."

In spite of the foregoing evidence, the trial court at page 63 lines 29-32 of the record of appeal held:-

“Throughout the hearing no evidence was given of the actual value of loss sustained by the plaintiff as a result of the refusal of the Defendant to honour the plaintiff’s cheque to it when evidence shows that the plaintiff had sufficient sums in his account No 85053.” B

Not surprisingly, the lower court, in relation to the foregoing findings of the trial court, authoritatively held at page 184 as follows:-

“The mere dishonour of a cheque by a banker is injurious to a person in trade. This is the rationale of the award without proof of actual loss. Where a Banker without justification dishonours a customer’s cheque, he is liable to a customer in damages for injury to his credit and if the customer is also a trader then damages for such injury to the customer’s credit will also be at large and the court may award substantial damages although there is no evidence from such a customer of any actual damage suffered by him. ...I agree with the Learned Cross appellant’s counsel that the circumstances of this case warrant a much more enhanced award of damages especially when the court found... that the Cross Appellant was a major distributor to Lever Brothers Nigeria Plc who suspended its credit facilities and with whom he had an annual business turnover of over N50,000,000.00k as distributor in Edo, Delta and Kwara States. Based on the above facts, even without the declining value of the Naira being taken into consideration, which is quite legitimate for a court to take into consideration in appropriate cases and in a proper manner in the award of general damages, the Cross Appellant deserves a much more enhanced damages.” C D E F

One cannot agree more with the lower court that where the trial judge ignores facts on record in arriving at the general damages he awards a successful plaintiff, an appellate court is duty bound to interfere by making the estimation the justice of the case demands based on the facts ignored by the trial judge. See *Ukoma v. Nicol* (1962) NSCC (vol. 2) 73. G

In the case at hand one of the reasons the lower court relied upon in its interference with the general damages the trial court awarded the respondent/cross appellant is the undisputed fact of his being a trader. Award of damages for the dishonour of cheques issued by the respondent who is in fund, is sui generis. The very act H

of dishonouring a trader's cheque without more, on the authorities, entitles him to substantial damages.

In *Hirat Aderinsola Balogun v. The National Bank of Nigeria* (1978) 3 SC 111 a case from which the lower court rightly drew, this Court held that a banker's act of wrongly dishonouring the cheque of a trader is calculated to be particularly injurious. At page 126 of the report, the apex court for this very reason allowed the appeal before it and consequentially ordered thus:-

"This appeal succeeds on the question of damages. Accordingly the judgment of the High Court of Lagos State in Suit LD/23/73 dated 26th May, 1975, in so far only as it makes an award of N10 to the appellant is hereby set aside and in substitution therefore it is ordered that judgment be entered in favour of the plaintiff (appellant herein) against the defendants (respondents herein) in the sum of N1000."

Being bound by the foregoing, one is unable to agree with learned appellant/cross respondent's counsel that the lower court's judgment that proceeded on similar vein is perverse. Given the passages reproduced from its judgment, it is glaring that the lower court had taken into consideration all the relevant facts required for a just decision of the amount it awarded. Damages awarded in this class of claims is aggravated not only for the inconvenience caused the claimant but injury done to his reputation, credit, loss incurred following the wrongful dishonour of his cheque and for his overall anguish as well. The object of the award made (sic) the respondent/cross appellant here is to put him, as far as possible, in the position he would have been but for the negligence of the appellant/cross respondent in dishonouring his cheque. See *Agbanelo V. Union Bank of Nigeria* (2000) 4 SC (Pt 1) 233 at 245.

Appellant/cross respondent's 2nd issue is accordingly resolved also in favour of the respondent/cross appellant.

As a whole, finding no merit in the appeal same is hereby dismissed.

THE CROSS APPEAL

The respondent/cross appellant has submitted a lone issue for the determination of his cross appeal thus:-

"Having regard to his proved trader status, the value of his dishonoured cheque, the volume of his trade and losses and the

entire circumstances of this matter whether the enhanced award of N1,100,000 (one million one hundred thousand naira) by the court below hundred thousand naira) by the court below was too low to warrant further interference of the Supreme Court by an upward review.”

The appellant/cross respondent neither formulated any issue nor adopted the respondent/cross appellant’s issue (supra). The appellant/cross respondent has not, also, proffered any argument in opposition to the cross appeal. The cross appeal was argued on the cross appellant’s brief alone. B

Learned respondent/cross appellant counsel contends that given the surrounding circumstances to this case the lower court’s hike of the general damages awarded to him by the trial court is still insufficient. He urges us that the amount be further enhanced. C

The respondent/cross appellant who had argued in the main appeal, and rightly too, that the lower court had acted correctly in its enhancement of the general damages awarded to him by the trial court, would seem to be gold digging at this breath to be asking for more.

It must be answered at this point whether on the facts of the case at hand if this Court can further vary the damages awarded the respondent/cross appellant against the appellant/cross respondent. E

The principle remains that an appellate court will not entertain an appeal against the award of general damages unless it is shown that such award was so low or too excessive as to amount to an erroneous estimate having regard to the evidence. See *Nigeria Bottling Co Ltd V. Ngonadi* (1985) 1 NWLR (Pt 4) 74. F

In the course of resolving appellant’s/cross respondent’s 2nd issue in the main appeal I alluded to the evidence on record varied the general damages awarded the respondent/cross appellant. The same facts and principles inform my resolution of the issue raised by the cross-appeal herein. It is my considered view that the lower court in varying the award made by the trial court acted judicially and judiciously such that this Court cannot, in the circumstance, legally interfere. In hiking the general damages to N1,100,000.00k the court had taken all the facts surrounding respondent/cross appellant’s claim and applied the relevant legal principles. The lower court’s findings in this regard which have not been shown to be perverse must invariably H

endure. I so hold. It is for that reason that I resolve respondent/cross appellant's lone issue against him. The cross appeal accordingly fails and it is hereby dismissed.

Parties in the two appeals should bear their respective costs.

B

I. T. MUHAMMAD JSC

I read before now the judgment just delivered by my learned brother, M. D. Muhammad, JSC. I am in agreement with him in his reasoning and conclusion which I adopt as mine. I do not intend to add anything. I abide by all orders made in the leading judgment.

ARIWOOLA JSC

D I had the privilege of reading in draft the lead judgment of my learned brother, Dattijo Muhammad, JSC just delivered. I am in total agreement with the reasoning and the conclusion arrived thereat.

E The appellant was a defendant in the action initiated by the respondent at the trial court in Edo State High Court, claiming the sum of thirty million Naira (N30m) special and general damages for the wrongful dishonour of the cheque he drew on his account with the appellant in favour of Lever Brothers Nigeria Plc. It was the F respondent's case that he had enough credit in his bank account to accommodate the cheque he had drawn. He was a general trader and a major distributor of the Lever Brothers Nigeria Plc.

In defence, the appellant had alleged fraud on the part of the respondent and had contended that the respondent had no credit enough in his bank account to accommodate the amount on the G cheque drawn in favour of the Lever Brothers Plc, hence the cheque was dishonoured. Indeed, the appellant gave a general denial to the respondent's averments in his pleadings.

H The trial court had in my view, rightly found in favour of the respondent against the appellant and held that the respondent's cheque was wrongly dishonoured by the appellant. The sum of two hundred and fifty thousand Naira (N250,000) and one hundred thousand Naira (N100,000) special and general damages respectively,

were awarded in favour of the respondent.

Dissatisfaction with the decision of the trial court led to the appeal to the Benin Division of the Court of Appeal, hereinafter referred to as the lower court, by the appellant to which the respondent cross appealed on the damages awarded.

The appellant's appeal was found lacking in merit and was dismissed in its entirety while the cross appeal succeeded and was allowed in part. The sum of one hundred thousand Naira (N100,000) awarded as general damages was increased to one million Naira (N1million). The respondent/cross appellant has prayed for further increase of the damages awarded in his favour.

The issues distilled by the appellant for the determination of the appeal are:-

"1. Whether or not the court below was right in affirming the award of the sum of N250,000 (Solicitor's costs) as special damages to the respondent in the circumstances to this suit.

2. Whether or not there are circumstances in this case to warrant the increase by the court below of the general damages from N100,000 (one hundred thousand Naira) to N1,100,000 (sic) one million Naira in favour of the respondent."

It is on record that the appellant had challenged the award of special and general damages in favour of the respondent by the trial court and the affirmation of same and increasing the general damages by the lower court.

What then is damages generally? Damages are money claimed by or ordered to be paid to, a person as compensation for loss or injury. In other words, damages are the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong. General damages are damages that the law presumes follow, from the type of wrong complained of and do not need to be specifically claimed. While special damages are damages that are alleged to have been sustained in the circumstances of a particular wrong. To be awardable, special damages must be specifically claimed and proved. See Black's Law Dictionary, Ninth edition, pages 445, 446 and 448; Shell Petroleum Development Co. (Nig.) Ltd. Vs. Teibo & Ors. (1996) 4 NWLR (pt. 445) 657 at 680; Iyere Vs Bendel Feed & Flour Mills Ltd (2008) 18 NWLR (pt. 1119) 300; (2008) 12 SCM (pt. 1) 66 at 96; Yalaju Amaye vs AREC (1990)

NWLR (pt. 145) 422.

The respondent in paragraphs 21 and 22 of his statement of claim filed on 6/7/1994 pleaded specifically his special damages, in particular, the solicitors' fees as follows:

“21. Plaintiff avers that he ran and briefed his Solicitors Messrs
B G.C. Igbokwe & Co. who charged him N250,000 (two hundred and fifty thousand Naira) only to prosecute this action

22. Plaintiff avers that he made a deposit of N150,000 to the said Solicitors who issues him a receipt. The Solicitors receipt No.
C 045 of 24/5/94 shall be founded upon at the trial of this action.”

On page 26 of the record is the testimony of the plaintiff in respect of the averment on his claim for special damages. The receipt obtained for the deposit paid to the counsel for his services was tendered, admitted and marked Exhibit MOC7 by the trial court. It is noteworthy that this evidence was neither challenged nor controverted by the appellant. There is no doubt that the respondent's
D Solicitor was entitled to the balance of his fee.

The object of an award of damages is to give compensation to the plaintiff for the damages, loss or injury which he has suffered. However, before damages can be recovered by a claimant, there
E must be a wrong committed. In other words, recoverable damages by a plaintiff must be attributable to the breach of some duty by the defendant. See *Bourhil Vs Young* (1943) AC 92; *Ademe Vs. Dantunbu* (1994) 2 NACR 74.

In the instant case, the appellant is a fiduciary to the respondent. It owes the respondent a duty to exercise a high standard of care in managing the respondent's money. Therefore, for dishonouring his cheque when his account was in credit to accommodate the amount on the cheque, the appellant had breached the fiduciary relationship between them, to which the respondent was entitled to compensation
F by way of damages.
G

However, it is settled already that the award of damages by a trial court will not ordinarily be disturbed or interfered with and can only be upset or reviewed by an appellate court if that court feels that the trial court acted on wrong principles of law or that the amount awarded by the trial court is extremely high or low. The
H appellate court ought not to upset the award of damages by a trial court merely because it would have awarded a lesser amount, if it

had tried the matter. See; Flint Vs. Lovel (1935) 1 K.B. 354; James Vs. Mid Motors (Nig.) Limited (1978) 12 SC 31. Williams Vs. Daily Times of Nigeria Limited (1990) 1 SC 23; (1990) LPELR 3487 (SC).

On special damages, it has been held that where the plaintiff plead the special damages and gives necessary particulars and adduce some evidence of it without the defendant challenging or contradicting the evidence, he has discharged the onus of proof placed on him and unless the evidence adduced is of such a quality that no reasonable tribunal can accept, it ought to be accepted. The reason is that where evidence called by the plaintiff in a civil case is neither challenged nor contradicted, his onus of proof is discharged on a minimal of proof. See; Elijah Oladeji Kosile Vs. Amuba Olaniyi Folarin (1989) NWLR (Pt 107) 1; (1989) 4 SC (Pt 1) 150; S.O. Nwabuoku vs. P.N. Ottih (1961) 1 All NLR 487; Boshali Vs. Allied Commercial Exporters (1961) 1 All NLR 917 at 921; Ugwe Ukuha & Ors. Vs. Golden Okoronkwo (1972) 1 All NLR (Pt 11) 100 at 105.

On the general damages claimed, it needs not be specifically pleaded. It arises from inference of law and need not be proved by evidence. It suffices once generally averred in the pleadings. As I stated earlier, they are presumed by the law to be the direct and probable consequence of the act of the defendant complained of. Unlike special damages, it is generally incapable of substantially exact calculation. See Yalaju-Amaye vs. Associated Registered Engineering Contractors Limited & Ors. (1990) NWLR (Pt.145) 422; (1990) 6 SC 157; (1990) LPELR 3511 (SC); Incar Vs. Benson (supra).

Furthermore, generally, the relationship of a bank customer and a banker is contractual. In other words, a customer to a bank in relation to the business of banking is any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank. See; Nigeria Deposit Insurance Corporation (Liquidator of Allied Bank of Nigeria Plc) Vs. Okem Enterprises Limited & 1 Or. (2004) 10 NWLR (Pt 880) 107; (2004) 50 WRN 1 at 108, (2004) 4 SC (Pt 11) 77.

It is the duty of a banker to its customer to honour and pay cheques drawn on it by the customer as long as it has in its possession at the material time, sufficient and available funds for the purpose. Therefore, when there is sufficient and available fund in customer's account and a cheque is presented but payment is refused, the holder

is entitled to treat the cheque as dishonoured, even if requested to represent. See *Ide Chemists Limited vs. National Bank of Nigeria Limited* (1976 - 1984) 3 NBLR 111 at 118.

In *Allied Bank (Nig.) Limited Vs. Akubueze* (1997) 6 NWLR (Pt 509) 374; (1997) 6 SCNJ 166 this court held, inter-alia, that a bank is bound to honour cheque issued by its customer if the customer has enough funds to satisfy the amount payable on the cheque in respect of the relevant account and that refusal to honour the cheque will amount to a breach of contract which would render the banker liable in damages.

In the same vein, in *Union Bank of Nigeria Limited Vs. Nwoye* (1996) 3 NWLR (Pt 435) 135, this court held that the liability of a banker to its customer arises in contract when a banker refuses to pay a customer's cheque when the customer holds in his account an amount equivalent to that endorsed on the cheque.

I am therefore not in the slightest doubt that the lower court was right and perfectly in order in their alteration upward, of the amount awarded as general damages by the trial court in favour of the respondent in addition to the special damages affirmed for the breach of the contractual relationship between them.

On the cross appeal by the respondent there is no further review the general damages awarded. The cross appeal lacks merit and should be dismissed.

For the above reason and the fuller and detailed reasoning in the well considered lead judgment of my learned brother, Dattijo Muhammad, JSC, I too will dismiss the appeal and cross appeal for lacking in merit. Accordingly, both the appeal and the cross appeal against the judgment of the lower court delivered on 22/02/2006 are hereby dismissed. I abide by the consequential orders including the order on costs in the lead judgment.

OGUNBIYI JSC

I read in draft the lead judgment of my learned brother M.D. Muhammad, JSC and I agree that both the main appeal and also the cross appeal are to be dismissed for want of merit.

The judgment of my brother is very well researched and comprehensive. Consequently, I hereby adopt all the reasonings and

conclusions arrived thereat as mine. I do not in the circumstance have anything useful to add.

In dismissing the appeal, and cross appeal therefore, I also abide by the order made as to costs.

B

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment of my learned brother, MUSA DATTIJO MUHAMMAD, JSC just delivered. I agree with the reasoning and conclusion that both the main appeal and cross-appeal lack merit and should be dismissed. In support of the lead judgment, I wish to add a few words.

The respondent/cross appellant (as plaintiff) took out a writ of summons at the High Court of Edo State sitting in Benin (the trial court) for the sum of N30 million (under several heads) for the wrongful dishonour of his cheque. The trial court found that he had established his case. He was awarded the sum of N100,000.00 as general damages and N250,000.00 being special damages incurred as solicitors fees. The appellant/cross-respondent appealed against the award of N250,000.00 as special damages while the respondent/cross-appellant appealed against the award of N100,000.00 as general damages. The Court of Appeal, Benin Division (the lower court) on 22/2/2006 dismissed the main appeal on special damages and allowed the cross appeal, increasing the award of general damages by N1 million bringing it to N1,100,000.00. The appellant/cross-respondent was dissatisfied with this decision and has further appealed to this court against the dismissal of its appeal on the award of special damages and the enhancement of the general damages. The respondent/cross-appellant is also dissatisfied with the enhancement of the award of general damages on the ground that the increased award of N1,100,000.00 is still too low, hence the cross-appeal. Thus, both appeals are on the issue of damages only.

The two issues distilled for the determination of this appeal by the appellant are:

1. Whether or not the court below was right in affirming the award of the sum of N250,000.00 (Solicitor's cost) as special damages to the respondent in the circumstances of this case.

2. Whether or not there are circumstances in this case to warrant the increase by the court below of the general damages from N100,000.00 to N1,000,000.00 in favour of the respondent.

With regard to the first issue, it is settled law that in cases of breach of contract for wrongful dishonour of cheques (which are sui generis) damages are said to be “at large”. A successful plaintiff is entitled to recover under several heads of damages. See: Balogun Vs N.B.N. Ltd. (1978) 3 SC (Reprint) 111 @ 117 lines 19 - 24, 35 - 38 & 118 lines 4 -11 where this Court held:

“...it has long been established that refusal by a banker to pay a customer’s cheque when he holds in hand an amount equivalent to that endorsed on the cheque, belonging to the customer amounts to a breach of contract for which the banker is liable in damages. The only question which arose in these circumstances, has been that relating to question or amount of damages.

...it is on this account that damages awarded for wrongful dishonour of cheques by a banker are generally nominal, save in the instances which the law has come to regard as exceptional; and these constitute exceptions with which we shall deal anon.

...As it is always extremely difficult to have an accurate estimate of damages under this “head” it has therefore been laid down by a long line of cases beginning with that of Marzetti Vs Williams (1830.) 1 B & Ad 415 that damages in such cases are “at large”, which is to say that in such cases a jury may within reason make an award of any such sum as they consider the circumstances of the breach of contract or dishonour of cheque warrant although there has been no proof of any actual loss (i.e. special damage) to the customer”.

The respondent pleaded in paragraphs 21 and 22 of his amended statement of claim and proved through Exhibit MOC 7 that he was charged a fee of N250,000.00 by his solicitors, out of which he had paid N150,000.00, leaving a balance of N100,000.00. His claim was for the total solicitor’s fee of N250,000.00. Even if he had only paid N150,000.00 he was still liable for the balance. The appellant/cross-respondent made a general denial of the averments in paragraphs 21 and 22 of the amended statement of claim in paragraphs 2 and 20 of its statement of defence.

A general traverse is not an effective denial of essential or material averments in the opposing party’s pleading. See: Balogun

Vs U.B.A. Ltd. (1992) 6 NWLR (Pt.247) 336 @ 349 D; Akintola Vs Solana (1986) 2 NWLR (Pt.24) 598; Bamgbegbin vs Oriare (2009) 13 NWLR (Pt.1158) 370. In the instant case the appellant/cross-respondent failed to rebut the credible evidence led by the respondent in this regard. I therefore agree with the concurrent findings of the two lower courts that the respondent/cross-appellant was entitled to his claim for special damages. No reason has been advanced to warrant interference with these findings as they are fully supported by the evidence on record.

With regard to the second issue, the circumstances that would warrant interference with an award of general damages made by a trial court are:

1. If the court is satisfied that the trial Judge acted in the award of such damages, upon some wrong principle; or
2. That the amount awarded was so large or so small as to make it a completely erroneous assessment of the damages; or
3. Where a finding of the trial court is found to be perverse. See: U.B.A. Ltd. Vs Mudashiru O. Ademuyiwa (1999) 11 NWLR (Pt.628) 570 @ 591 A - C; NBCI Vs Integrated Gas Ltd. & Anor. (1998) 8 NWLR (Pt.613) 119 @ 131 D - E.

In the case of: Balogun vs N.B.N. Ltd. (1978) 3 SC (Reprint) 111 @ 117 - 118, this court held thus:

“Direct and/or natural damage arising from a breach of contract by a banker to honour the cheque of his customer apart, there it however also the serious likelihood of considerable danger to the reputation of a customer and generally to his business; (if he - the customer - is engaged in business). People generally, whether or not in business, do not deal with a person whose cheques are not paid, although it is conceded that instances of disinclination to deal with such a person more readily abound in the field of business. As it is always extremely difficult to have an accurate estimate of the extent of damages under this “head”, it has therefore been laid down by a long line of cases beginning with that of Marzetti v. Williams (1830) 1 B & Ad 415 that damages in such cases are “at large”, which is to say that in such cases a jury may within reason make an award of any such sum as they consider the circumstances of the breach of contract or dishonor of cheque warrant although there has been no proof of any actual loss (i.e. special damage) to the customer. In

the case of Marzetti (supra) in which a trader sued his bankers for wrongful dishonor of cheque although there was no evidence to show that the plaintiff had sustained any injury from the banker's mistake, Lord Tenterden, C.J. remarked:

B 'I cannot forbear to observe that it is a discredit to a person and therefore injurious in fact to have a draft refused payment for a small sum, for it shows that the bankers had very little confidence in the customer. It is an act particularly calculated to be injurious to a person IN trade'. See: 109 E. R. 842: (1830) 1 B Ald. 415 @ 424

C ... The case of Marzetti (supra), therefore put it beyond doubt that where a banker without justification dishonours his customer's cheque, he is liable to the customer in damages for injury to his credit and the case of Rolin v. Steward makes it clear that if the customer is also "in trade" ...at the time of such dishonor then damages for such injury would be at large and a jury may within reason award substantial damages although there is no evidence from such customer of any actual damage suffered by him."

D Thus, a trader is entitled to recover substantial damages for the wrongful dishonour of his cheque without pleading and proving actual damage or loss. The trial court based its award of N100,000.00 E general damages on the fact that the respondent did not prove actual loss. On the authority of Balogun Vs N.B.N. Ltd. (supra) he was not required to do so.

F However, as rightly found by the lower court at pages 184 - 186 of the record, in the instant case there was in fact undisputed evidence that:

1. The respondent was a major distributor of Lever Brothers in Edo, Delta and Kwara States.

2. That he had sufficient funds in his account to cover the cheques.

G 3. That his distributorship was suspended on account of the unlawful dishonor of his cheques.

4. That he had an annual turnover of over N50,000,000.00.

5. He is a first class chief.

H The court judiciously exercised its discretion when it made an upward review of the award of general damages from N100,000.00 to N1,100,000.00. This issue is accordingly resolved against the appellant.

The appeal therefore fails and is hereby dismissed.

Cross-Appeal

The main contention of the respondent/cross-appellant in the cross-appeal is that the declining value of the Naira was not taken into account in assessing the award. I agree with my learned brother, M. D. Muhammad, JSC, that in reviewing the award, the court below took all relevant factors into account, including the declining value of the Naira. I see no reasons to disturb the enhanced award of N1,100,000.00. B

For these and the fuller reasons ably marshaled in the lead judgment, I also find no merit in the cross-appeal and dismiss it accordingly. I affirm the judgment of the lower court delivered on 22/2/2006. The parties shall bear their respective costs in the appeal. C

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