

SUPREME COURT OF NIGERIA
FRIDAY 24TH APRIL, 2015. SC. 62/2005
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
M. U. PETER-ODILI, M. D. MUHAMMAD,
J. I. OKORO, JJSC

CHIEF S. I. AGU APPELLANT
AND
GENERAL OIL LIMITED RESPONDENT

CONTRACTS - Breach - Damages - Court is concerned with damages which are natural and probable consequences of the breach - Or damages within the contemplation of parties (H1)

CONTRACTS - Breach - Speculative damages - Court should not consider damages which are speculative - Unless they are specifically provided for - By express terms of the contract (H2)

CONTRACTS - Breach - Damages - Pleadings - Award of general damages based on the unsubstantiated allegation - In addition to special damages awarded - Amounted to double compensation (H3)

FACTS

This action was filed at the High Court of Delta State sitting at Warri by plaintiff/appellant against defendant/respondent, claiming for a declaration nullifying a Deed of Mortgage created by respondent, special and general damages for breach of a lease agreement. Appellant gave his piece of land on sublease agreement to respondent for ten years term, subject to renewal. The agreement stated in Clause 4B is that respondent shall not sublet or part with possession of the property without the consent of appellant. Contrary to the agreement, respondent mortgaged the property to First Bank of Nigeria Plc.

As a result of the mortgage, appellant could not rent, lease or use his landed property for two years. At the trial of the matter, the parties filed and exchanged their pleadings. At the end of the trial, the court dismissed appellant's claim 1 and granted claims 2 and 3. The court awarded the sum of N300,000.00 and N7,500,000.00 as

special and general damages respectively. Respondent was not pleased with the judgment. Hence, he appealed to the Court of Appeal Benin City. The court affirmed the award of special damages and set aside the award of general damages. Aggrieved, appellants appealed to Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was wrong in setting aside the general damages of N7.5 Million awarded to the appellant by the trial court.”

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

CONTRACTS - Breach - Damages

1. It is now well settled that in a claim for damages for breach of contract, as in the instant case, the court is concerned only with damages which are natural and probable consequences of the breach or damages within the contemplation of the parties at the time of the contract. The essence of damages in breach of contract cases is based on what is called restitutio in integrum i.e. the award of damages in a case of breach of contract is to restore the plaintiff to a position as if the contract has been performed. It has been held by this court that in an action for breach of contract, the measure of damages is the loss flowing naturally from the breach and is incurred in direct consequence of the breach. (p. 1163 B)

CONTRACTS - Breach - Speculative damages

2. As was rightly submitted by the learned counsel for the respondent, a court, when considering damages arising from a breach of contract, there is no room for damages which are merely speculative or sentimental unless these are specifically provided for by the express terms of the contract. Also, in awarding damages in such a claim, the court must be careful not to compensate a party twice for the same wrong. By the law against double compensation, a party who has been fully compensated under one head of damages for a particular

breach or injury cannot be awarded damages in respect of the same breach or injury under another head. (p. 1163 E)

CONTRACTS - Breach - Damages - Pleadings

3. It is trite that parties are bound by their pleadings. And evidence led on facts not pleaded goes to no issue.

It is my well considered decision in this matter that both the pleadings of the appellant and the sublease agreement did not disclose that the respondent was under any obligation to build a petrol station and make him a dealer. Any award of general damages based on unsubstantiated allegation as in this case in addition to special damages already awarded to the appellant amounts to double compensation which this court does not tolerate. The court below was right to have set aside the award of N7.5 Million general damages to the appellant. The N300,000.00 awarded him for breach of clause 4B of the sublease agreement, was, in my view sufficient for the two years which he was unable to rent out the property. This, he pleaded and proved. Accordingly, I resolve the sole issue in this appeal against the appellant. (p. 1165 D)

NOTABLE POINT OF INTEREST

ONNOGHEN JSC

1. Damages – Interference on appeal

It is settled law that where damages have been awarded by a trial court, an alteration of the award will be made by an appellate court only where it is shown that the award is either manifestly too low or too high or was made on wrong principles. (p. 1166 E)

REPRESENTATION

Inam Wilson Esq., for the Appellant

G. C. Igbokwe, Esq. with Chief A. T. Udechukwu, Peter Ekweme, Esq. and Nnaba Francis Esq., for the Respondent

CASES REFERRED TO

UBA v. Achoru (1990) 6 NWLR (pt. 156) 254

Ijebu-Ode L.G. v. Adedeji Balogun & Co. (1991) 1 NWLR (pt. 166)

136

Onaga v. Micho & Co. (1961) 2 NSCC 189

Akinfosile v. Mobil Oil Nigeria Ltd (1969) 6 NSCC 376

Gonzbee Nig. Ltd v. NERDC (2005) 22 NSCQR 735

Chitex Ind. Ltd v. Oceanic Bank (2005) 23 NSCQR 148

^B Nigerian Arab Bank Ltd v. Shuaibu (1991) 4 NWLR (pt. 186) 450

Tsokwa Motors Nig. Ltd v. UBA Plc (2008) 2 NWLR (pt. 1071) 347

Osho v. Foreign Finance Corporation (1991) 4 NWLR (pt. 184) 157

Buraimoh v. Esa (1990) 4 SC 1

^C Atolagbe v. Shorun (1985) LPELR-SC 14/1984

UNB Plc v. Chimaeze (2014) LPELR-SC 204/2006

Kusfa v. U.B.C. Ltd (1994) 4 SCNJ

LEAD JUDGMENT BY OKORO JSC

^D This is an appeal against the judgment of the Court of Appeal sitting in Benin delivered on 27th May, 2004 wherein the lower court allowed in part the appeal of the respondent herein against the judgment of the High Court of Delta State. A brief facts leading to this appeal will suffice.

^E The appellant herein subleased his piece of land situate along Effurun/Patani Expressway for a period of ten years subject to renewal to the respondent. Clause 4B of the lease agreement stipulated that the respondent shall not sublet, assign or part with possession of the property without the consent of the appellant. In apparent violation of the said clause 4B, the respondent mortgaged the property to First Bank of Nigeria Plc. As a result of the mortgage between the respondent and First Bank, the appellant was unable to rent, lease or use his landed property for two years. Consequently, ^F the appellant brought an action at the High Court of Delta State ^G against the respondent seeking the following reliefs:-

^H “(i) A declaration that the Deed of Mortgage dated 17/10/1990 created by the 1st Defendant in favour of the 2nd Defendant and registered as No. 33 at page 33 in Volume 783 at the Lands Registry Office Asaba is null and void and of no effect.

(ii) Special Damage of N240,000.00 per annum being receivable rent in respect of the premises effecting from 12:11:93 and to 02:06:95.

(iii) General damages of N10,000,000.00 for the said breach.”

Pleadings were filed and exchanged. At the trial, the appellant testified on his own behalf and called no other witness. One witness also testified for the respondent. After address of counsel, the learned trial judge in a reserved judgment, dismissed the appellant's first claim and granted the other two reliefs. In respect of the appellant's claim for special damages (as plaintiff) the learned trial judge held as follows:

"Thus in the instant case, going by Exhibit "G" and plaintiffs evidence, plaintiff is entitled to special damages as the same is specifically claimed and strictly proved, being rents due to and receivable by plaintiff from 2/11/83 up to 12/11/93 when first defendant refused to renew the sublease after the 1st ten year period. The total receivable rent due and payable to the 1st defendant to the plaintiff is N300,000.00.

Accordingly, I hold that special damages in the sum of N300,000.00 which is pleaded specifically and strictly proved by reference to Exhibit G is hereby awarded plaintiff against the 1st defendant."

With regards to the claim for general damages, the learned trial judge stated that *"damages are the natural or probable consequences of such breach being within the contemplation of parties to a contract."*

He then concluded:

"In the light of the above, and having regard to the available evidence, I hold that 1st defendant is in breach of contract; and that plaintiff suffered damages.

Accordingly, I hereby award the sum of N7.5 Million (Seven Million, Five Hundred Thousand Naira) as general damages in favour of the plaintiff against 1st defendant for breach of contract

Dissatisfied with the above judgment, the respondent herein appealed to the Court of Appeal. After hearing argument from both sides, the lower court allowed the appeal in part in the following words:

"In the result, this appeal succeeds in part. The judgment of Narebo, J, delivered on 1st April, 1999 awarding to the respondent the sum of N7.5 Million as general damages is hereby set aside. The award of N300,000.00 as special damages is hereby affirmed."

Piqued by the setting aside by the court below of the N7.5M general damages awarded the appellant by the trial court, the appel-

lant has appealed to this court via a notice of appeal filed on 7th July, 2004. The said notice contains only one ground of appeal for which a sole issue has been distilled for the determination of this appeal.

In the brief of argument settled by Inam Wilson Esq. counsel for the appellant, the sole issue formulated states thus:

B *“Whether the Court of Appeal was wrong in setting aside the general damages of N7.5 Million awarded to the appellant by the trial court.”*

C G. E. Enyia, Esq., learned counsel for the respondent adopts the only issue for determination as nominated by the appellant. I shall in the circumstance determine this appeal on the said agreed issue.

D Arguing the appeal, the learned counsel for the appellant submitted that where damages have been awarded by a trial court, an alteration of the award will be made by an appellate court only if it is shown to be either manifestly too low or awarded on wrong principles, citing the cases of *U.B.A. v. Achoru* (1990) 6 NWLR (Pt. 156) 254, *Ijebu-Ode Local Government v. Adedeji Balogun & Co.*, (1991) 1 NWLR (Pt. 166) 136; *Onaga & Ors v. Micho & Co.* (1961) E 2 NSCC 189 at 192.

F Learned counsel noted that the decision of the Court of Appeal was based on the premise that having been awarded special damages for the respondent’s breach of the terms of the Deed of sublease dated 4th August, 1985, the appellant could no longer claim general damages as this would amount to double compensation which the law frowns at.

G Learned counsel concedes that in a claim for breach of contract, it is not necessary or desirable to distinguish between the amount claimed as special and general damages. That all that the court is concerned with is the assessment of the damages which the court regards as the natural or probable consequence of the breach complained of irrespective of whether such damages are described as special or general, relying on *Abraham Akinfosile v. Mobil Oil Nigeria Ltd* (1969) 6 NSCC 376 at 381.

H It is counsel’s contention that no situation of double compensation has occurred in the instant case as the N300,000.00 awarded by the trial judge as special damages and the N7.5 Million awarded as general damages were not awarded for the same breach/injury.

According to him, this was the fundamental fact which the Justices of the lower court did not avert their minds to and which ought to sway this court to allow this appeal.

Learned counsel urged this court to overturn the decision of the Court of Appeal and in its stead an order should be made restoring the award of N7.5M as general damages for the loss of the petrol station which the appellant would have benefited has the contract been performed. B

In response, the learned counsel for the respondent submitted that the essence of damages in breach of contract cases is based on *restitutio in integrum*, which means that the award is to restore the plaintiff to a position as if the contract has been performed. See *UBA Plc v. BTL Industries Ltd* (2006) 28 NSCQR 381 at 387. According to him, in an action for breach of contract, the measure of damages is the loss flowing naturally from the breach and is incurred in direct consequence of the breach, relying on *Gonzbee Nig. Ltd v. NERDC* (2005) 22 NSCQR 735 at 738. C D

Learned counsel further submitted that the only damages suffered by the appellant as a result of the breach of clause 4B of the sublease agreement is special damages claimed by the appellant as a loss incurred in direct consequence of the said breach i.e. inability to utilize the land for two years as a result of the mortgage to First Bank Plc. Referring to the case of *Ijebu-Ode Local Government v. Adedeji Balogun* (1991) 1 NWLR (Pt. 166) 136, he submitted that a plaintiff under a breach of contract can only claim special damages because general damages is known to the law of tort. He opined that having quantified his loss and adequately represented in his claim under special damages, the appellant can no longer claim under general damages; otherwise it would amount to double compensation which the law frowns against in awards of damages under breach of contract. E F G

It is his further submission that the sublease agreement which was tendered and marked exhibit G at the trial court did not contemplate speculative and/or sentimental damages because the said sublease did not contain any term relating to building a petrol station on the land by the respondent. He argues that this presupposes that a loss resulting from failure to build a petrol station was not within the contemplation of the appellant and the respondent at the time the H

contract was entered into. It is his submission that the lower court was right to have set aside the award of general damages awarded by the trial court because the only loss which the appellant suffered as a result of the alleged breach was special damages for appellant's inability to rent out the land for two years.

B Learned counsel pointed out that the evidence at the trial court was emphatic that in 1991 when the appellant realized that the respondent had not built a petrol station on the land he filed an action at the Lagos State High Court against the respondent for failure to develop the land and that the action was settled out of court with the respondent paying the sum of N37,464.00 to the appellant as full and final settlement in respect of same. It is his submission therefore, that having taken the respondent to court in Lagos in 1991 for failure to build a petrol station on the land and the matter settled
C out of court with payment of compensation to the appellant, the appellant is estopped from further claiming reversion due to him if the petrol station was built on the land. He urged the court to resolve
D this issue against the appellant.

E On page 166 of the record of appeal, the court below made the following conclusions which have given birth to the issue under consideration. It states:

"It could be seen that it is settled law that in an action founded on contract, it is wrong to claim both special and general damages. General damages cannot be awarded in an action for breach of contract because general damages properly belong to the realm of tort. To award general damages in action founded on contract is tantamount to double compensation. Indeed the award of general damages is improper where the quantum of loss is ascertainable.

F
G *In our present case, since the action is founded on contract, the learned trial judge erred by awarding the sum of N7.5 Million to the respondent as general damages. This award amounts to double compensation which this court will not allow to stand especially that the learned trial judge had awarded special damages to the respondent."*
H

The above decision of the lower court is the reason for this appeal. The learned trial judge, after awarding the sum of N300,000.00 to the appellant being the rent payable on the appellant's land for the two years which the land could not be used by him due

to the mortgage arrangement the respondent made with First Bank of Nigeria Plc, thereafter proceeded to award the sum of N7.5M to the appellant as general damages. This award of N7.5M was what the court below set aside. I think the law is not recondite in this area of jurisprudence and I shall examine it hereunder.

It is now well settled that in a claim for damages for breach of contract, as in the instant case, the court is concerned only with damages which are natural and probable consequences of the breach or damages within the contemplation of the parties at the time of the contract. See Mobil Oil Nig. Ltd v. Akinfosile (1969) 1 NMLR 227, Arisons Trading & Engineering Company Ltd v. The Military Governor of Ogun State (2009) 15 NWLR (pt. 1163) 26. ***The essence of damages in breach of contract cases is based on what is called restitutio in integrum i.e. the award of damages in a case of breach of contract is to restore the plaintiff to a position as if the contract has been performed.*** See United Bank for Africa Plc v. BTL Industries Ltd (2006) 28 NSCQR 381. ***It has been held by this court that in an action for breach of contract, the measure of damages is the loss flowing naturally from the breach and is incurred in direct consequence of the breach.*** See Gonzbee Nig. Ltd v. NERDC (2005) 22 NSCQR 735.

As was rightly submitted by the learned counsel for the respondent, a court, when considering damages arising from a breach of contract, there is no room for damages which are merely speculative or sentimental unless these are specifically provided for by the express terms of the contract. Also, in awarding damages in such a claim, the court must be careful not to compensate a party twice for the same wrong. By the law against double compensation, a party who has been fully compensated under one head of damages for a particular breach or injury cannot be awarded damages in respect of the same breach or injury under another head. See Chitex Industries Ltd v. Oceanic Bank (2005) 23 NSCQR 148, Onago v. Micho & Co. (1961) ANLR 324 at 328, Nigerian Arab Bank Ltd v. Shuaibu (1991) 4 NWLR (Pt. 186) 450 at 456, Tsokwa Motors Nig. Ltd v. UBA Plc (2008) 2 NWLR (Pt. 1071) 347.

This court has, in quite a number of pronouncements, sus-

tained this principle against double compensation. In *Alhaji Mustapha Aliyu Kusfa v. United Bawo Construction Co. Ltd. (1994) 4 NWLR (Pt. 336) 1*, it was held that in cases of breach of contract, the damages that would be awarded are the pecuniary loss that may fairly and reasonably be considered as either arising naturally from the breach itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as a probable result of the breach. It also frowned against double compensation. This is the position of the law.

In the instant case, the appellant's complaint at the trial court as I can glean from the writ of summons and the amended statement of claim is for breach of clause 4B of the sublease agreement between him and the respondent. The said clause 4B prohibits the respondent from subletting, assigning or parting with possession of the land without the consent of the appellant. Thus, when the respondent mortgaged the said land by parting with title documents to First Bank Plc, the appellant instituted this case for breach of the said clause 4B of the sublease agreement. For two years, the respondent could not retrieve the title documents from First Bank Plc. What the appellant lost was rent for the two years which the learned trial judge rightly awarded the sum of N300,000.00 which was pleaded and strictly proved. This was accepted by the Court of Appeal.

However, the Court of Appeal set aside a further award of N7.5M general damages. The learned counsel for the appellant submitted in paragraph 4.17 on page 13 of their brief as follows:

"It is clear from the above that the case argued by the appellant which was not duly considered by the Court of Appeal was that his claim for general damages was for loss of the petrol station and dealership of the petrol station which he would have gained had the contract been performed or not been breached. This is clearly different from the appellant's claim for special damages in respect of the receivable rents due and payable by the respondent."

In addition to the above submission on page 28 of the record, the learned trial judge, in summing up evidence stated thus:

"Plaintiff testified that the general damages is for the reversion due to him and to which he is entitled if there was no breach of the contract and the petrol station was built with him as the dealer. Plaintiff testified further that if built, the whole petrol station would

have injured to him. Plaintiff said he lost that due to the breach."

The above summation influenced the learned trial judge to award the sum of N7.5 M to the appellant as general damages. As was clearly found by the court below this was not the case of the appellant at the trial court. It then set aside the N7.5 Million award. The lower court premised its decision on the record placed before it and it is very clear from the said record that both the writ of summons and the amended statement of claim did not aver that the respondent breached a term of the contract to build a petrol station on the land and neither did the appellant rest his claim of general damages on the failure of the respondent to build a petrol station on the land. I have also painstakingly read the amended statement of claim and even Exhibit G, the sublease agreement but I have not seen any averment and/or agreement for respondent to build a petrol station and make the appellant the dealer.

It is trite that parties are bound by their pleadings. And evidence led on facts not pleaded goes to no issue. See American Cyanamid Company v. Vitality Pharmaceuticals Ltd (1991) 2 NWLR (Pt. 171) 15, Osho v. Foreign Finance Corporation & Anor. (1991) 4 NWLR (Pt. 184) 157, Buraimoh v. Esa (1990) 4 SC 1.

It is my well considered decision in this matter that both the pleadings of the appellant and the sublease agreement did not disclose that the respondent was under any obligation to build a petrol station and make him a dealer. Any award of general damages based on unsubstantiated allegation as in this case in addition to special damages already awarded to the appellant amounts to double compensation which this court does not tolerate. The court below was right to have set aside the award of N7.5 Million general damages to the appellant. The N300,000.00 awarded him for breach of clause 4B of the sublease agreement, was, in my view sufficient for the two years which he was unable to rent out the property. This, he pleaded and proved. Accordingly, I resolve the sole issue in this appeal against the appellant.

In the circumstance, I hold that this appeal is devoid of merit and is hereby dismissed. I affirm the judgment of the Court of Appeal which set aside the N7.5 Million award for general damages. I make no order as to costs.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead Judgment of my learned brother Okoro JSC just delivered. I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

The facts of the case, have been stated in detail in the lead Judgment and I therefore do not intend to repeat them herein except as may be needed to emphasize the point being made.

Only an issue calls for determination in this appeal. It is as formulated by learned counsel for appellant in the appellant brief deemed filed on 13/03/08 and adopted in argument of the appeal on 9/2/15. The issue is as follows:

“Whether the Court of Appeal was wrong in setting aside the general damages of N7.5 Million awarded to the Appellant by the trial court.”

It is very clear from the record that the basis on which the lower court set aside the award of N7.5 Million by way of general damages is that the appellant haven been awarded special damages for the respondent’s breach of the terms of the Deed of sub-lease, the appellant could no longer claim general damages because to do so would amount to double compensation, which the law does not approve.

It is settled law that where damages have been awarded by a trial court, an alteration of the award will be made by an appellate court only where it is shown that the award is either manifestly too low or too high or was made on wrong principles. See the case of U.B.A. v. Achoru (1990) 6 NWLR (Pt. 156) 254; Ijebu-Ode Local Court v. Adedeji Balogun & Co. (1991) 1 NWLR (Pt. 166) 136; Onaga v. Miacho & Co. (1961) 2 NSCC 189 at 192.

From the decision of the lower court and as found earlier in this Judgment, it is clear that the lower court is of the opinion that the award of general damages in addition to special damages in an action for breach of contract was made by the trial Judge based on wrong principles of law. The issue before this court is whether the Court of Appeal is right in the conclusion it arrived at in the appeal.

From the facts, it is clear that the N300,000.00 awarded as special damage to appellant was the receivable rent for two years in

which appellant could not rent out the land due to encumbrance on same created by the respondent by mortgaging same to First Bank Plc while the N7.5 Million was awarded as general damages for breach of contract.

The case of the appellant at the trial court, as can be gathered from the record, particularly, the writ of summons and amended statement of claim, is simply for breach of clause 4B of the sub-lease Agreement between appellant and respondent which clause prohibits the respondent from sub-letting, assigning or parting with possession of the land without the consent of the appellant. The action was instituted when the respondent mortgaged the land to First Bank Plc without the consent of appellant. It is the case of appellant that he could not rent out the land for two years that the title documents to the land were with First Bank Plc for which breach he claimed N300,000 by way of special damages. In addition, appellant claimed N7.5 Million by way of general damages for breach of contract.

The case before the trial court was not for breach of contract by the respondent for failure to build a petrol station on the piece of land in question for which the claim for N7.5 Million general damages could have been anchored. It was, as stated supra, simply for breach of clause 4B by the respondent.

It is settled law that the essence of award of damages in breach of contract cases is restitution intergrum, which, in short means that the damages awarded is to restore the plaintiff to a position as if the contract has been performed - See *UBA v. LC v. BTL INDUSTRIES LTD* (2006) 28 NSCQR 381 at 387. In the instant case, if the respondent had not mortgaged the property for the period of two years, and appellant had gone ahead to let out the land, he would have earned the sum of N300,000 he claimed as special damage which was duly awarded him. It is settled law that in an action for breach of contract the measure of damages is the loss flowing naturally from the breach and is incurred in direct consequence of the breach. However, See *Gonzbee Nig. Ltd v. NERDC* (2005) 22 NSCQR 735 at 738.

It is for the above reasons and the more detailed ones contained in the lead Judgment of my learned brother that I too find no merit in the appeal and consequently dismissed same.

I abide by the consequential orders made in the said lead judg-

ment including the order as to costs.

Appeal dismissed.

GALADIMA JSC

B I have been obliged a copy of the judgment of my brother JOHN INYANG OKORO, JSC just delivered. I entirely agree with him for the reasons given herein that this appeal should be dismissed. He has set out the facts and there is no need to repeat them.

C The sole issue formulated by the appellant and adopted by the respondent upon which this appeal was determined reads thus: *“Whether the Court of Appeal was wrong in setting aside the general damages of N7.5 Million awarded to the appellant by the trial court.”*

It is the submission of learned counsel for the appellant that D where damages have been awarded by a trial court, an alteration of the award can only be made by an appellate court if it is shown that the said award is manifestly too low or made on wrong principles of law. He cited in reliance, ONAGA & ORS v. MIACHO & CO. (1961) 2 NSCC 189 at 192; UBA v. ACHORU (1990) 6 NWLR (Pt. 156) E 254; and IJEBU-ODE LOCAL GOVERNMENT v. ADEDEJI BALOGUN & CO. (1991) 1 NWLR (Pt. 166) 136.

On the decision of the court below, learned counsel, has noted that it was based on the ground that having been awarded special damages for the breach of terms of the Deed of Sublease of 4/8/ F 1985, the appellant could no longer claim general damages because this would be tantamount to award of double compensation, which has no basis in law. It is contended that there is no situation that called for double compensation in the case at hand as N300,000 G (Three Hundred Thousand Naira) awarded by the learned trial judge as special damages and the N7.5 Million awarded as general damages were not awarded for the same breach or injury in the circumstance. That if the learned justices of the lower court had adverted their minds to this basic fact, they would have allowed the said N7.5 H Million as general damages. He has urged this court to set aside the decision of that court and to make an order restoring the award of N7.5 as general damages for the loss of Petrol Station which the appellant herein would have been entitled to, had there not been a breach of contract by the 1st respondent.

Responding, the learned counsel for the respondent submitted that the essence of damages in breach of contract cases expressed in Latin Phrase “restitutio in integrum” is to restore the party damaged to his entitlement to such sum of money as if there had not been any breach of contract. He relies on *UBA PLC v. BTL INDUSTRIES LTD* (2006) 28 NSCQR 381 at 387; *GONZBEE NIG LTD v. NERDC* B (2005) 22 NSCQR 735 at 738.

It is contended that the only damages the appellant suffered as a result of the breach of contract of clause 4B of the sublease Agreement is the special damages; the loss he actually incurred. That the Exhibit ‘G’ the Sublease Agreement tendered at the trial did not contain any term which contemplates building a petrol Station by the respondent. Therefore, the lower court was right when it set aside the award of general damages by the trial court. C

The relevant portion of the decision of the lower court that D brought about this appeal, inter alia, states as follows:

“...To award general damages in action founded on contract is tantamount to double compensation. Indeed the award of general damages is improper where the quantum of loss is ascertainable...”

In the instant case the learned trial judge, after awarding the E sum of N300,000 to the appellant as rent due on the appellant’s land he was unable to use as a result of its being mortgaged to the First Bank Plc proceeded to award N7.5 Million to the appellant as general damages. To my mind the court below rightly set aside this F award. In a claim for damages for breach of contractual obligation, the court is concerned with such damages which are natural and probable consequences of the breach or damages within the contemplation of the parties.

The basic object of an award of damages is to compensate G the plaintiff for the damages, loss or injury he has suffered. The guiding principle is restitution in integrum. The principle envisages that a party which has been damaged by the act which is called in question must be put in position in which he would have been if he had not suffered the wrong which he is now being compensated for. See *NEPA H v. R. O. ALLI & ANOR* (1992) 10 SCNJ 34. *ANAMBRA STATE ENVIRONMENTAL SANITATION AUTHORITY & ANOR v. EKWENEM* (2009) 6-7 (Pt. II) SC 5.

Once a party has been fully compensated for the loss or harm

suffered, it should not be open to the court to proceed to award him any other kind of additional damages that may look like a bonus. For to do this is to compensate a party twice of the same wrong complained of. This is tantamount to double compensation which the court will always frown at. See *ALHAJI MUSTAPHA ALIYU KUSFA v. UNITED BAWO CONSTRUCTION CO. LTD* (1994) 4 NWLR (Pt. 336) 1.

The appellant have been compensated for breach of clause 4B of the sublease agreement by the respondent in the sum of N300,000 which was pleaded and strictly proved. The court below accepted this claim and rightly set aside the award of N7.5 Million as general damages. It predicated its decision on the record placed before it. It is clear from the record that both the writ of summons and the Amended Statement of Claim of the appellant he did not aver that the respondent breached the term of contract to construct a Petrol Station on the land; neither did he rest his claim of general damages on the failure of the respondent to build a Petrol Station. The appellant's claim and indeed Exhibit 'C' did not show that there was an agreement to build a Petrol Station and thereby to appoint the appellant the dealer. Therefore, it would be wrong to award to the appellant general damages based on the allegation that was not substantiated in addition to the special damages already awarded to him, as double compensation.

It is for the foregoing and more detailed reasons in the lead judgment of my learned brother OKORO, JSC that I too dismiss this appeal, with no costs.

PETER-ODILI JSC

I agree completely with the judgment just delivered by my learned brother, John Inyang Okoro, JSC and to show support for the reasoning, I shall make my comments.

This is an appeal against the judgment delivered on the 27th day of May, 2004 by the Court of Appeal Benin Division Coram: Muhammad, Augie, Ngwuta, JJCA. The decision allowed in part the appeal of the Respondent herein against the judgment of D. Narebo J. of the High Court of Delta State Holden at Warri delivered on the 1st day of April, 1999 wherein the learned trial judge entered judg-

ment in favour of the Appellant herein and awarded the sum of N300,000.00 as special damages and the sum of N7.5 Million as general damages for breach of contract. The Appellate Court allowed the part of the decision of Narebo J. awarding N300,000.00 as special damages and set aside the award of N7.5 Million general damages. B

FACTS:

The Appellant herein had a leasehold interest of 99 years in respect of a landed property lying and situate along Effurun/Patani Expressway, Warri Delta State. Sometime in 1983, the Appellant and Respondent negotiated a sub-lease agreement in respect of the said land with a deed of sub-lease granted to the Respondent for a term of 20 years that is for a period between 1st August, 1985 - 1st of August, 1995 being the first ten year period with an option to renew. C

After the sub-lease Agreement was entered into the Appellant demanded to be a dealer in the proposed petrol station to be built on the land by the Respondent. Consequently, the Respondent issued a credit note to the Appellant withholding the rent of N25,000.00 as part payment for the offer of dealership of the petrol station with a balance of N35,000.00 to be paid by the Appellant to the Respondent which said balance was never paid up to the institution of Suit No. LD/431/91 at Lagos State High Court of Justice in 1991 by the Appellant against the Respondent. D E

The proposed building of the petrol station on the leased land was not part of the terms of the contract between Appellant and Respondent and so was not reflected in the sub-lease Agreement. On realizing that Respondent had not erected the proposed petrol station on the land for Appellant to act as a dealer, the Appellant took out the action of 1991 in Suit No. LD/431/91 in Lagos which was later settled out of Court with Respondent paying the sum of N37,464.00 in full settlement to the Appellant. F G

At the expiration of the first ten years rent paid by the Respondent to the Appellant the Appellant approached the Respondent to renegotiate the rent for the remaining ten years, but the Respondent declined such a renewal of the contract. It took the Respondent two years to execute and handover a Deed of Surrender to the Appellant due to the creation of a mortgage by the Respondent on the leased property. H

In creating the mortgage, the Respondent handed over the title documents to First Bank of Nigeria PLC while keeping possession of the land.

The Appellant could not rent the said land within the two years it took the Respondent to hand over a Deed of Surrender to the Appellant and so the Appellant commenced the action against the Respondent and First Bank of Nigeria PLC, later struck out at the Warri High Court. It was the breach of the sublease Agreement particularly clause 4B of the Sublease Agreement which gave rise to this action at the trial Court and the action was contested on that ground at the trial Court. Each party called a witness and Appellant in testifying introduced the issue of the petrol station and dealership for the first time when he testified which issue was neither pleaded in the Plaintiff's Amended Statement of Claim nor reflected in the Sublease Agreement.

The learned trial judge, Narebo J. entered judgment in favour of the Appellant and awarded the sum of N300,000.00 as special damages being the receivable rent for the two years the Appellant could not rent the land due to the mortgage which produced an encumbrance and N7.5 Million as general damages for breach of contract.

Not satisfied with that decision, the respondent herein appealed to the Court of Appeal or Lower court which allowed the appeal in part and reversed that part of the decision of the trial Court also awarding general damages of N7.5 Million for breach of contract. The Lower court upheld the part of the decision of the trial Court awarding N300,000.00 as special damages for breach of contract. The Appellant, dissatisfied has come before this Court.

On the 9th day of February, 2015 date of hearing, learned counsel for the Appellant, Inam Wilson adopted the Brief of Argument settled by himself, filed on 10th March, 2008 and deemed filed on the 13th March, 2008. He raised a question as to the propriety of the learned Justices of the Court of Appeal setting aside the award by the learned trial Judge of general damages after awarding special damages on the ground that it amounts to double compensation.

Mr. G. C. Igbokwe of counsel for the Respondent adopted the Brief of Argument settled by G. E. Enyia, filed on the 28/4/2008 and adopted the single issue for determination as raised by the Appellant

which is thus:-

SOLE ISSUE:

Whether the Court of Appeal was wrong in setting aside the general Damages of N7.5 Million award to the Appellant by the Trial Court?

This single issue as crafted is sufficient in the light of the very narrow area of disagreement in this appeal and so I shall use it in the determination of the appeal. B

In canvassing the stand of the Appellant, learned counsel said that no situation of double compensation has occurred in the instant case as the N300,000.00 awarded as special damages by the trial judge and the N7.5 Million awarded as general damages were not awarded for the same breach/injury. That the Court below fell into error in not adverting their minds to the distinction of the two awards. That the case put forward by the Appellant at the Court of trial was that Appellant's claim for general damages was for loss of the petrol station and dealership of the petrol station which he would have gained had the contract been performed if not for the breach which is different from the claim for special damages in respect of the receivable rents due and payable by the Respondent. C D E

Learned counsel for the Respondent submitted that where as in this case the trial court made the erroneous award of special damages and general damages then the court of Appeal was right to reverse the decision mistakenly made. He cited *New Bread Organisation Ltd v. J. E. Erhomosele* (2006) 26 NSCQR (Pt. 1) 47. F

That the essence of damages in a breach of contract case is based on *restitutio in integrum* which is to restore the Plaintiff to the position as if the contract had been performed and the measure of damages being the loss flowing naturally from that breach and incurred in direct consequence of the breach which is not the case here. He referred to *UBA PLC v. BTL Industries Ltd* (2006) 28 NSCQR 381 at 387; *Gonzbee Nig. Ltd v. NERDC* (2005) 22 NSCQR 735 at 738. G

For the Respondent was further contended that for the breach of contract, the Appellant was only entitled to a claim in special damages since general damages is known in the law of tort. He cited *Ijebu-Ode Local Government v. Adedeji Balogun* (1991) 1 NWLR (Pt. 166) 136 at 142 etc. H

The disparate positions of the two contending parties would be briefly shown to be that while Appellant claims the decision of the Court of Appeal should be overturned as the two awards of special damages and general damages by the Court of trial were justified in the peculiar circumstances of the case, the stance of the Respondent was that the earlier contrary position is not correct in that the Appellant was compensated long before the institution of the present case and so the Court below was right in not allowing what would amount to a double compensation.

From what is stated in summary, the different positions of the Appellant and Respondent respectively, a reiteration at the risk of repetition of the principles guiding awards of damages in contract would shown hereunder. The first point is that the object of an award of damages is to compensate a plaintiff for the harm done him which is based on the principle of *restitutio in integrum* which is to restore the plaintiff to the position he would have been if the contract had been performed.

This translates to the fact that in an action for breach of contract, the measure of damages is the loss flowing naturally from the breach and is incurred in direct consequence of the breach. See *United Bank for African PLC v. BTL Ind. Ltd* (2006) 28 NSCQR 381 at 387; *Gonzbee Nig. Limited v. NERDC* (2005) 22 NSCQR 735 at 738.

This Court had held in the case of *Ijebu-Ode Local Government v. Adedeji Balogun* (1991) 1 NWLR (Pt. 166) 136 at 142, that although the distinction between special and general damages in cases of breach of contract is still being made it is improper and misleading to so dichotomize damages in cases of breach of contract.

The warning above stems from the fact that under a breach of contract the plaintiff can only claim special damages as general damages is known in the law of tort.

However, in an adumbration to ward off any possible confusion that could arise and probably dispatch the merit of a claim with a wave of the hand just because a categorization of special damages and general damages are made in the same suit in a claim for breach of contract - *Karibi-Whyte, JSC* in the said case of *Ijebu-Ode Local Government v. Adedeji Balogun & Co.* (supra) at page 158 stated:

“Although, this Court has observed in Maiden Electronics v. Attorney-General (1974) 1 All NLR 179 that it is improper in cases of

breach contract to categorize damages by the use of the words “general” and “special”; the distinction though misleading and likely to confuse is still made to determine the nature of the loss flowing from the breach.... the common error is the two are mutually exclusive.... The expressions are usually contracted; kept separate for better elucidation of the nature of the damages flowing from the breach of contract.”^B

What can be read in between the lines is that while it is not encouraged to make claims for special damages as well as general damages in a breach of contract doing so would not vitiate the suit or make it impossible for the Court to award that damage that would put the plaintiff in the position he would have been if the breach had not occurred. That is a sifting of the wheat from the shaft done bearing in mind that on no account is a double compensation should be made leaving no room for speculative and or sentimental damages. In that vein and juxtaposing it with the case in hand, the Agreement of sublease, Exhibit ‘G’ did not contain any term relating to building of a petrol station on the land of the Respondent and so a loss resulting from failure to build a petrol station was not within the contemplation of the Appellant and the Respondent at the time the contract was entered into; See *Chitex Industries Ltd v. Oceanic Bank* (2005) 23 NSCQR 148 at 151. ^C ^D ^E

Furthermore, the evidence led at the trial Court is that in 1991 when Appellant found that the Respondent had not built a petrol station on the land, he filed an action at the Lagos State High Court against the Respondent for failure to develop the land which action was settled out of court with the Respondent paying the sum of N37,464.00 to the Appellant in full and final settlement of the same which payment was duly acknowledged with a receipt tendered and marked as Exhibit ‘5’ at the trial Court and so reflected in the judgment of that court of first instance. It is clear that the Appellant is estopped from further claiming reversion due to him if the petrol station was built on the land and any other payment having earlier received and acknowledged the full payment of the rent of N37,464.00. I refer to *Oyerogba v. Olaopa* (1998) 64 LRCN 5291 at 5294. ^F ^G ^H

In the conclusion therefore, there is no faulting what the Court of Appeal did in setting aside the award of the general damages for

breach of contract. This appeal fails as lacking in merit and in full agreement with the lead judgment. I also dismiss it. I abide with the consequential orders as made.

B

MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother, Inyang Okoro, JSC. I entirely agree with his lordship's reasoning and conclusion therein that this appeal being unmeritorious be dismissed.

C

The lone issue the appellant distilled as calling for determination in the appeal reads:-

“Whether the Court of Appeal was wrong in setting aside the general damages of N7.5 Million awarded to the appellant by the trial court.”

D

The appeal, on the authorities, only succeeds if the decision of the court below, the Court of Appeal is shown not to have drawn from the evidence on record or consequent upon the court's application of a wrong principle. See *Atolagbe v. Shorun* (1985) LPELR-SC 14/1984 and *UNB Plc v. Chimaeze* (2014) LPELR-SC 204/2006.

E

The appellant's claim against the respondent as correctly found by the trial court, is for breach of contract arising from a lease agreement, exhibit “G”, between the two. In addition to the total receivable rent due from and payable by the respondent to the appellant, which the latter specifically pleaded and was held proved, the trial court further awarded the claimant the sum of N7.5 Million Naira in general damages.

F

It is against the trial court's award of the N7.5 Million Naira general damages that the respondent herein appealed to the court below. The court in allowing the appeal, see page 166 of the record of appeal, concludes thus:-

G

“In our present case since the action is founded on contract, the learned trial judge erred by awarded the sum of N7.5 Million to the respondent as general damages. This award amounts to double compensation which this court will not allow to stand especially that the learned trial judge had awarded special damages to the respondent.”

H

The lower court's foregoing decision is unassailable.

It is trite that a plaintiff who has established his claim for breach

of contract against a defendant would only be entitled to such damages that he established to have naturally resulted from or are the probable consequences of the breach of the contract occasioned by the defendant. In the award of the damages by the court, the plaintiff is restored to the position he would have been if the contract had not been breached. B

Undoubtedly, the award of damages lies primarily within the domain of the trial court. It discharges the function by a judicious estimation of the loss suffered by the plaintiff.

A plaintiff who has no difficulty in quantifying the actual pecuniary loss occasioned by the breach, as in the instant case, recovers his loss if same has been specifically pleaded and proved. It is only where the plaintiff has difficulty in quantifying his actual loss that he claims in general damages and, on establishing defendant's liability, entitles the trial judge to make an assessment of the quantum of damages that can be said to have been a natural or probable consequence of the breach of the contract occasioned by the defendant. C D

In the case at hand, the appellant had no difficulty in and in fact resolutely quantified and claimed in respect of the injury respondent's breach of the contract inflicted on him. And this much he has been awarded. He cannot justly benefit from a further award in general damages. He has been restored to what position he would have been had the respondent not breached the contract between them. E

In ensuring that the appellant does not benefit beyond what the law and justice entitles him to recover from the respondent, the lower court is on a firm terrain. The court's decision must endure. See *West African Shipping Agency (Nig) Ltd & Owner v. Alhaji Musa Kall* (1978) 3 SC 15, *Xtoudous Services Nigeria Ltd and Anor v. Taisei (W.A) Ltd & Anor* (2006) 6 SCNJ 300 and *Kusfa v. U.B.C. Ltd* (1994) 4 SCNJ. F G

It is for the foregoing and more so the fuller reasons contained in the lead judgment that I find the appeal lacking in merit and dismiss it. I abide by the consequential orders including the one on costs made in the lead judgment. H