

SUPREME COURT OF NIGERIA
FRIDAY 1ST JULY, 2016. SC. 58/2005
CORAM:- I. T. MUHAMMAD, N. S. NGWUTA,
K. B. AKA'AH, C. C. NWEZE, A. SANUSI, JJSC

JOHN ENEH APPELLANT
AND
1. KEVIN OZOR
2. CHRISTOPHER NEBORESPONDENTS

APPEALS - Grounds - Validity of - Grounds should be against ratio decidendi not against obiter - Ground 1 here not having violated this principle is valid. (H1)

APPEALS - Grounds - Competence of - Is not based on its allegation of both error in law and misdirection in fact per se - But on vagueness inter alia (H2)

APPEALS - Issues for determination - Competence of - Issues that flow from valid grounds of appeal are competent (H3)

DAMAGES - Special and general damages - Claim for - Must each be classified - As special damages must be specifically pleaded - And strictly proved (H4)

DAMAGES - Special damages - Need for strict proof of - Was not satisfied by plaintiff - Who merely listed some items - Without leading credible evidence court can rely on (H5)

DAMAGES - Assessment of - That court can rely on plaintiff's mere ipse dixit - Does not avail plaintiff whose evidence is incapable - Of proving anything close to special damages (H6)

LAND LAW - Trespass - Though general damages need not be pleaded or proved - Failure to prove any injury or interference with plaintiff's possession - Cannot permit award of general damages by court (H7)

LAND LAW - Trespass - General damages - Presumption of and dis-

cretionary award by court - Can only be made where the alleged trespass is proved (H8)

FACTS

Before the Enugu State High Court, the plaintiff/appellant filed an action against the defendants/respondents for trespass, and claimed N50,000.00 as special and general damages for trespass. And an injunction restraining the defendants from acts of trespass on No. 3 Akwata, Ogbete Main Market Enugu. Plaintiff claimed that he was the owner of the open space at the above stated address where he built his shed, having secured the approval of the then Sole Administrator of Enugu. That in 1997 the defendants/respondents laid claim to same shed. That on 23rd May 1997 they removed empty bags, sticks and structures belonging to him from the shed. That he had been paying rent on the shed to the Enugu-North Local Government since August 1985.

Defendants/respondents' claim was that they were the true owners of the property in dispute and had been in possession of the open space which was allocated to them by the same Enugu North Local Government and had also since, been paying rent on same. Plaintiff failed to prove the alleged trespass. He did not separate the damages he claimed into special and general damages nor did he prove the special damages claimed. No survey plan was attached to show the area trespassed on. But the trial Court found in favour of plaintiff as the owner and awarded N50,000.00 damages without stating how it arrived at that amount. Defendants' appeal to the Court of Appeal succeeded as the lower court held that the award was arbitrary. Being dissatisfied Plaintiff has now appealed to the Supreme Court raising two issues.

ISSUES FOR DETERMINATION

(1) Whether the learned justices of the Court of Appeal were right in holding that the 2 grounds of appeal filed are competent and valid and therefore the two issues for determination flow from the said 2 grounds.

(2) Whether the Court of Appeal was justified in upsetting the findings of fact made by the trial judge in respect of the N50,000 damages.

HELD

(Unanimously dismissing the appeal per **SANUSI JSC**)

APPEALS - Grounds - Validity of

1. It is well settled law that grounds of appeal must arise or flow from or tied to the judgment of the court appealed against. In fact a ground of appeal need to be against the ratio decidendi of a judgment and NOT against obiter dictum or any remarks by the judge except where the obiter or remark is so closely linked with the ratio as to be deemed to have radically influenced the ratio.

It is noted by me, that the trial judge after reviewing the evidence led by the parties drew his conclusion on the extent of the boundary features along common boundary and on the documents of title. Therefore it will not be correct to say that ground No.1 was formulated from the mere remarks made by the trial judge rather than from the ratio decidendi of the judgment. To my mind, ground one is competent and the objection raised on it is therefore not well-taken. (p. 3631 B)

Grounds - Competence of

2. Then on ground No.2, the appellant contends that his complaints thereon, relate to misdirection of law but yet the respondent proceeded to give particulars of error. He argued that a ground of appeal can not be a misdirection and an error in law at the same time and even that offends the provisions of Order 3 of Rule 2(2) of Court of Appeal Rules 2002 (as amended). It is my considered view, that that reason alone, cannot render a ground of appeal invalid and incompetent. A ground of appeal is only liable to be struck out or discountenance if it is vague or general in terms or the complaint therein, is not understandable or not in consonance with the form. Where a ground of appeal alleges error in law and misdirection in fact, it does not necessarily become incompetent, provided it is not vague or it discloses a reasonable ground of appeal and gives the respondent sufficient notice of the complaint. See *ADEROUNMU & ORS VS OLOWU* (2000) 2 SCNJ 180 at 190. (2000) 2 KLR (pt 96) 337. I therefore also hold

that the second ground of appeal is also competent and valid.
(p. 3631 E)

Issues for determination - Competence of

3. With regard to the issues for determination decoded from the two grounds of appeal, I hold the view that they flowed from the said grounds of appeal hence both of them are therefore competent. The lower court is therefore correct in holding that the two grounds are competent and valid likewise the issues for determination formulated from them. This Issue is therefore resolve against the appellant. (p. 3632 A)

Special and general damages - Claim for

4. From the above piece of pleading, it is not in dispute that the plaintiff/appellant made a blanket claim of both special and general damages (clamped together) of a sum of N50,000 without stating the amount he was claiming as special damages or the sum he was claiming as general damages. He neither classified them nor specified them. In other words he failed to state the amount representing the claim of special damages and that representing the claim of general damages in different subheads.

The law is well settled, that special damages must be specifically pleaded with distinct particularity and it must also be strictly proved. The court should not act within the realm of conjecture in awarding special damages and also should not rely simply on fluid and speculative estimate of alleged loss or injury sustained by the plaintiff. See B.J. NGILARI V MOTHERCAT LTD (1999) 12 SC (pt.11)1, {(1999 12 KLR (pt 91) 2835. (p. 3632 F)

Special damages - Need for strict proof of

5. The law in fact is also well settled, that special damages must be strictly proved by the person who claims to be entitled to them even though the nature of proof depends on the circumstances of each case. In proof of special damages, the claimant must therefore lead evidence to prove the type of damages of such a character as would suggest that he is in-

deed entitled to such award under the head. In the present case, the plaintiff/now appellant in his pleading fluidly listed some items representing special damages he claimed. He however failed to lead credible evidence on which the court could genuinely rely on to award the damages because the evidence he led was short of being a credible one that should have been relied upon by the court to award the claim as it did. (p. 3633 D) B

DAMAGES - Assessment of

6. I am not unaware of the law that generally, a court can rely on the mere ipse dixit of a plaintiff who is not an expert to assess damages, however such ipse dixit evidence can only be relied on or accepted if it is not challenged and contradicted and in this instant case, the plaintiff contradicted his evidence during cross examination hence that piece of evidence he gave was therefore not reliable. In the present case, the evidence led by the plaintiff/appellant in proof of special damages is in my view, very shallow, hollow and skimpy and this was incapable of proving anything close to special damages. The trial court was therefore wrong in making such award at all. The court below was therefore faultless in setting aside that award. (p. 3633 H) C
D
E

LAND LAW - Trespass

7. Now, coming to general damages, I am aware that it is settled law too, that unlike special damages which is special in nature and must be pleaded specially and proved strictly, the quantum of general damages need not be pleaded or proved. The manner in which general damages is quantified is by relying on what a reasonable man's judgment would be in the circumstance. However, in this instant case the plaintiff who made a claim on trespass did not state any amount he was claiming as general damages in his statement of claim and also did not lead any evidence in that regard even though as I said above, it did not require any proof of such damages. A complaint or claim of trespass however connotes interference with or injury to possession. The evidence led by the F
G
H

plaintiff/appellant at the trial court however fell short of proof of any injury to his possession of shed No.3 Akwata, Ogbete Main Market. (p. 3634 C)

Trespass - General damages - Presumption

B 8. Admittedly, general damages is often presumed and awarded especially in an action of trespass such as this instant case. However, the plaintiff can only be obliged with discretionary powers of the trial court if from the evidence adduced by him, the act of trespass was actually proved by the plaintiff. In other words, without the proof of trespass, the court is bereft of the discretionary power to presume that general damages accrued and award same. It is noted by me, that when making the award of N50,000.00k, the trial court did not do so based on any credible and reliable evidence and it also did not state its reason for making such award or how it arrived at the amount it awarded i.e. N50,000.00k. The award made by the trial court was therefore arbitrarily made and can therefore not be allowed to stand. The learned justices of the court below were therefore justified in salvaging the situation by setting aside that arbitrary award of damages on whatever head it was made by the trial court since the findings of the latter was perverse and was also based on improper evaluation of the evidence adduced before it. This second issue is also resolved against the appellant too.

On the whole having resolved the two issues for determination against the appellant, this appeal consequently fails for want of merit. It is therefore accordingly dismissed.

G (p. 3634 G)

NOTABLE POINTS OF INTEREST

NGWUTA JSC

H 1. Need to appreciate difference between general & special damages

Both the learned trial Judge and the parties in the trial Court did not seem to have appreciated the difference between general damages on one hand and special damages on the other hand.

In the case of general damages, where the plaintiff proves his

claim the award of damages is determined by the Court based on what is reasonable in the circumstances of the case. Award is on the discretionary power of the trial Judge to make his own assessment of the quantum of damages.

On the other hand, special damages must be strictly pleaded and proved. The Court does not make the award based on conjecture or speculation. (p. 3635 G)

2. Damages - No trespass was proved against respondents

The PW1 said that:

“The 1st defendant was staying with me. I gave him a space to stay when I finished building the shed the second defendant was no longer there. He is still owing me. After that we shared the shed. This is an open store.”

, In my view of the evidence, no trespass was proved against the respondents. They could not have trespassed into an open store which the appellant said he shared with one of the respondents, nor is there evidence that the respondents did any damage for which the appellant could claim N41,300.00 for labour and transportation of material. (p. 3636 D)

AKA’AHS JSC

3. Trespass - When survey plan will be necessary

Since the respondents denied trespassing into the appellant’s stall and claimed that their stall is an open space which lies adjacent to the stall of the appellant and is demarcated by a footpath, the appellant must establish the boundaries of the stall over which he is exercising his possession and the best way to do it is to have filed a plan depicting the boundaries of his stall. The plaintiff failed to prove his claim and the lower court was right in allowing the appeal and setting aside the damages awarded. (p. 3637 B)

NWEZE JSC

4. When a claim for trespass is bound to collapse

In this case, the plaintiff/appellant failed to pitchfork the averments in his pleading and oral evidence at the trial into these constitutive requirements of the proof of a claim for trespass.

His claim was, therefore, bound to collapse. The trial court

failed to make this crucial finding. The lower court was, in consequence, right in dealing a *coup de grace* on the said judgment. (p. 3638 F)

REPRESENTATION

B C. I. Enechi-Onyia for the Appellant
F. A. Onuzulike for the Respondent

LEAD JUDGMENT BY SANUSI JSC

C This appeal is against the judgment of the Court of Appeal (“the lower court” or “court below”) delivered on the 1st of November, 2004 which set aside the judgment of the Enugu State High Court (hereinafter referred to as “the trial court”) delivered on the 8th of October 2001. The Appellant herein as plaintiff at the trial
D court, took a writ of summons against the respondent as defendants thereat seeking the reliefs reproduced hereunder:-

“(1) *N50,000 (Fifty Thousand Naira Only) being damages for trespass at No. 3 Akwata (wholesale) Ogbete Market Enugu.*

E *(2) INJUNCTION RESTRAINING the defendants, their servants, agents or privies from acts of trespass on No.3 Akwata, Ogbete Main Market Enugu.”*

The facts of the case as could be gleaned from the record, are that the appellant as plaintiff claimed that he was the owner of the shed situate at No.3 Akwata Section of Ogbete main market in Enugu,
F which he alleged he built his shed on the space and claimed that one Audu Yakubu transferred the open space to him with the approval of the then Sole Administrator of Enugu. According to him, sometimes in 1997 the defendants now respondents started laying claim of the
G same shed adding that on 23rd May 1997 they removed empty bags, sticks and structures belonging to him from the shed. On seeing that, the plaintiff/appellant said that he reported the matter to the police. The police however did not take any action. The appellant also claimed that he had been paying rent on the shed to the Enugu-North Local
H Government since August 1985.

On the other hand the defendants/respondents claim was that they were the true owners of the property in dispute and had been in possession of the open space which was allocated to them by the same Enugu North Local Government and had also since, been pay-

ing rent on same.

Pleadings were ordered filed and exchanged. At the trial both parties called witnesses and tendered their respective allocation papers and receipts for payments of rents to the local government on the same shed. Later hearing in the suit commenced in earnest and in the end, the learned trial judge delivered judgment in favour of the plaintiff/appellant when he held as below:-

“I therefore hold that the plaintiff is the owner in possession of shed No.03 Akwata, Ogbete main market. Consequently the defendants are liable to pay the plaintiff damages”.

The two respondents became disenchanted with the trial court’s judgment, hence they successfully appealed to the Court of Appeal which upturned the decision of the trial court and set aside its judgment. The court below thereupon allowed the appeal by the two respondents, when it held as follows:-

“I have already observed that throughout the trial, nothing in the respondent’s evidence that there was any injury or damages done to his stall. It must be shown that the appellant did interfere with the respondent’s possession of the stall so as to attract general damages. A successful action in trespass per se, attracts damages however minimal. But no court will simply award damages without giving any reason as to how it arrived at it. It is my considered view that the award of the sum of N50,000 to the respondent as special and general damages against the Appellants was done arbitrarily. This can not be justified in law in the circumstance. In sum therefore, this appeal succeeds and is allowed. The judgment of AGBATAH (J) is hereby set aside. I assess and fix cost at N5,000 in favour of the Appellant”.

Aggrieved by the judgment of the court below, the appellant now appealed to this court. Sequel to that he filed a Notice of appeal dated 8th December 2004 which had in it, five grounds of appeal. In keeping with the rules and procedure in this court, the parties filed and exchanged briefs argument. The appellant’s brief of argument settled by *H.B.C. OGBOKO ESQ* dated 30th of September 2005 was deemed properly filed and served on 8th October 2008. On their part, the two respondents herein filed their joint brief of argument on 27/5/2008. The said brief of argument settled by one *F.C. OKAFOR ESQ* was however, deemed filed and served on 18th April 2016. In the Appellant’s brief of Argument two issues were proposed

for the determination of his appeal by this court from the five grounds of appeal contained in his notice of appeal. The issues for determination are set out below:-

(1) *Whether the learned justices of the Court of Appeal were right in holding that the 2 grounds of appeal filed are competent and valid and therefore the two issues for determination flow from the said 2 grounds.*

(2) *Whether the Court of Appeal was justified in upsetting the findings of fact made by the trial judge in respect of the N50,000 damages.*

In their joint brief of argument, the learned counsel for the respondents adopted the two issues for determination decoded by the appellant even though he proceeded to reproduce them verbatim in his brief of argument. I feel it will be unnecessary or futile to reproduce them here again since they virtually have the same wordings with the two issues contained in the appellant's brief of argument since this court has no luxury of time to do so. I will therefore proceed to consider the two issues together.

On the first issue for determination, the learned appellant's counsel submitted that a good ground of appeal must cover and be specifically described so that the other side will know the exact complaint against the judgment. He argued that it must also be based on ratio decidendi of a case and NOT on obiter dictum. He contended that once a ground of appeal is faulty, issues formulated therefrom cannot stand. It is also his submission that issues for determination having flowed or derived from faulty and incompetent grounds of appeal ought to be discountenanced by the lower court. He urged this court to uphold his preliminary objection and allow the appeal.

In his reply on this issue, the learned counsel for the respondents urged us to hold that the two grounds of appeal filed by them were valid and competent as held by the court below and that the issues raised on them were also competent and valid as they flowed from the grounds of appeal. He added that the appellant can not turn round to complain that the respondents formulated ground one from the remarks made by the trial judge, when he himself neglected to state the ground upon which he based his objection. Learned respondents' counsel contended that this argument was not canvassed at the court below and therefore the appellant should not be allowed

to raise that issue here as that would amount to him, making case different from the one he presented before the lower court. - He insisted that ground one was formulated from ratio decidendi of the judgment and not from obiter dictum.

On the appellant's counsel's submission on the second ground of appeal, to the effect that it was not a ground of law and that the complaint borders on misdirection of law and yet the respondents proceeded to give particulars, the learned counsel for the respondents replied that that contention lacks merit and should be dismissed. He argued that the mere fact that ground No.2 in the Respondents' notice of appeal alleged misdirection of law and that they proceeded to give particulars of error cannot make the said ground invalid and incompetent. Learned respondents' counsel submitted that this court had repeatedly pointed out that it is only when a ground of appeal is vague or when no reasonable ground is disclosed that the ground may be struck out. He said once the complaint of the appellant is clear, understandable and reasonable, that it is NOT prolix, inelegant or not consonance with form, that can never lead to it being struck out. He cited and referred to the case of *ADEROWUMI & ORS VS OLOWU* (2002) 2 SCNJ 180 at 190. He then urged this court to hold that ground No.2 is not vague and to resolve this issue against the appellant.

With regard to issue No.2, which has to do with the lower court's upsetting the grant of N50,000 damages earlier granted by the trial court, the learned counsel for the appellant submitted that a plaintiff in an action of trespass is not required to prove actual physical damage to his property before he can succeed. He said trespass consists of any unjustifiable interference by one person upon the land in possession of another. He stated that since the damages flow from the established liability of the defendant towards the plaintiff, it is within the province of the trial court to determine the question of such damages based on the circumstances on which liability is founded. He further submitted that the award of N50,000 special and general damages against the respondents was not done arbitrarily as according to him, it flowed from a meticulous evaluation of facts proven by evidence. Learned appellant's counsel referred to the evidence of PW1 who testified that he lost to the tune N41,000 as a consequence of the illegal acts of the respondents and he tendered Exhibit F to

support his claim. He finally urged this court to allow this appeal.

Reacting to the appellant's counsel's submission on this second issue, the learned counsel for the two respondents submitted that in an action for trespass, the plaintiff in order to succeed, must prove exclusive possession. Similarly, in an action for trespass, the plaintiff must also establish the identity of the land or the stall over which he is exercising control of. Moreso, when the respondents denied trespassing into the appellant's stall, and claimed that their stall is an open space lying adjacent to the stall of the appellant's stall and demarcated by foot path. He contended that the appellant did not prove any injury done to his stall by the respondents.

On the award of general and special damages, he submitted that the learned justices of the court below rightly reversed the award of damages made by the trial court as such award was made without any evidence in support of it and that it cannot be justified in law. Learned counsel for respondents further argued that, from the evidence led at the trial, the respondents neither trespassed nor did they cause any damage or injury to the appellant's stall. On the issue of special damages, he contended that the amount claimed was nowhere pleaded in the statement of claim and no evidence was led in proof of such damages. Therefore, the court below according to him, was right and justified in setting aside the judgment of the trial court as it was not based on any evidence on the printed record. He urged that this appeal be dismissed.

As could be gleaned from the record of appeal, the respondents herein, filed two grounds of appeal challenging the decision of the trial court at the court below (See pages 43 to 45 of the Record). A cursory look at the two grounds of appeal clearly shows that the first ground of appeal was supported by seven particulars of error, whereas the second ground of appeal which simply alleged misdirection of law, also contained seven particulars. In his brief of argument at the court below, the learned appellant's counsel contended that the two grounds of appeal filed by the respondents were invalid and incompetent and urged the lower court to strike them out for being incompetent. I have closely studied the Appellant's brief of arguments which he filed (at the) lower court and I am unable to see any reason given by him as to why the said grounds of appeal should be struck out. As shown on page 62 of the record, he only proceeded to prof-

fer arguments on the issues which he formulated for the determination of his appeal. He also did not state the pedestal on which he mounted his preliminary objection on the alleged incompetence of the grounds of appeal. It is the contention of the appellant that a ground of appeal should constitute a complaint which touches on the issue of facts or law or procedure which if it failed to do so, will lead to the appeal being allowed. ***It is well settled law that grounds of appeal must arise or flow from or tied to the judgment of the court appealed against. In fact a ground of appeal need to be against the ratio decidendi of a judgment and NOT against obiter dictum or any remarks by the judge except where the obiter or remark is so closely linked with the ratio as to be deemed to have radically influenced the ratio.*** See NDULUE & ANOR VS OJIAKOR & 2 ORS (2013) 1-2 SC (pt.11) 91; XTOUDUS SERVICES NIG. LTD VS TAI SEI (WA) LTD (2006) 6 SC 200.

It is noted by me, that the trial judge after reviewing the evidence led by the parties drew his conclusion on the extent of the boundary features along common boundary and on the documents of title. Therefore it will not be correct to say that ground No.1 was formulated from the mere remarks made by the trial judge rather than from the ratio decidendi of the judgment. To my mind, ground one is competent and the objection raised on it is therefore not well-taken.

Then on ground No.2, the appellant contends that his complaints thereon, relate to misdirection of law but yet the respondent proceeded to give particulars of error. He argued that a ground of appeal can not be a misdirection and an error in law at the same time and even that offends the provisions of Order 3 of Rule 2(2) of Court of Appeal Rules 2002 (as amended). It is my considered view, that that reason alone, cannot render a ground of appeal invalid and incompetent. A ground of appeal is only liable to be struck out or discountenance if it is vague or general in terms or the complaint therein, is not understandable or not in consonance with the form. Where a ground of appeal alleges error in law and misdirection in fact, it does not necessarily become incompetent, provided it is not vague or it discloses a reasonable ground of appeal and gives the respondent sufficient notice of the com-

plaint. See ADEROUNMU & ORS VS OLOWU (2000) 2 SCNJ 180 at 190. {(2000) 2 KLR (pt 96) 337}. I therefore also hold that the second ground of appeal is also competent and valid.]

With regard to the issues for determination decoded from the two grounds of appeal, I hold the view that they flowed from the said grounds of appeal hence both of them are therefore competent. The lower court is therefore correct in holding that the two grounds are competent and valid likewise the issues for determination formulated from them. This Issue is therefore resolve against the appellant.

Coming to the second issue for determination which relates to the award of damages, I think the proper point from where to kick start its consideration is to look at the Statement of Claim filed by the plaintiff at the trial court now appellant.

As shown on page 4 of the record, the plaintiff/appellant as per his statement of claim, sought the under mentioned relief;-

“WHEREFORE, the plaintiff claims-.

(a) a total of N50,000 (Fifty Thousand Naira) being special and general and general damages jointly and severally against the defendants.

PARTICULARS OF DAMAGES

(i) Pieces of hard wood for construction of the stall bought on 8/5/97 and transportation N38,800.

(ii) Labour - N2,500 = N41,300

(b) Injunction restraining the defendants, their servants, agents and/or privies from acts of trespass on stall/store No. 03 Akwata, Ogbete Main Market, Enugu.

From the above piece of pleading, it is not in dispute that the plaintiff/appellant made a blanket claim of both special and general damages (clamped together) of a sum of N50,000 without stating the amount he was claiming as special damages or the sum he was claiming as general damages. He neither classified them nor specified them. In other words he failed to state the amount representing the claim of special damages and that representing the claim of general damages in different subheads.

The law is well settled, that special damages must be specifically pleaded with distinct particularity and it must also

be strictly proved. The court should not act within the realm of conjecture in awarding special damages and also should not rely simply on fluid and speculative estimate of alleged loss or injury sustained by the plaintiff. See B.J. NGILARI V MOTHERCAT LTD (1999) 12 SC (pt.11)1, (1999) 12 KLR (pt 91) 2835;] *OSUJI V ISIOCHA* (1989) 6 SC (pt.II) 158. In the case of *NEKA BBB MANUFACTURING CO. LTD VS AFRICAN CONTINENTAL BANK LTD* (2004) 1 SC (pt.I) 32 this court stated thus.

“Where the claimant specifically alleges that he suffered special damages he must perforce prove it. The method of such proof is to lay before the court concrete evidence demonstrating in no uncertain terms, easily cognizable, the loss or damages he has suffered so that the opposing party and the court will see and appreciate the nature of the special damages suffered and being claimed”.

The law in fact is also well settled, that special damages must be strictly proved by the person who claims to be entitled to them even though the nature of proof depends on the circumstances of each case. See GABRIEL O. OKUNZUA VS MRS E.B. AMOSU & ANOR (1992) NWLR (pt.248) 416 or (1992) 7 SCNJ243. In proof of special damages, the claimant must therefore lead evidence to prove the type of damages of such a character as would suggest that he is indeed entitled to such award under the head. See OSHINJINRIN& ORS V SELIAS AND ORS (1970) All NLR 153 at 156. In the present case, the plaintiff/now appellant in his pleading fluidly listed some items representing special damages he claimed. He however failed to lead credible evidence on which the court could genuinely rely on to award the damages because the evidence he led was short of being a credible one that should have been relied upon by the court to award the claim as it did.

For instance, in his ipsi dixit the plaintiff stated thus:-‘

“I sustained loss to the tune of N41,300 (Forty One Thousand and Three Hundred Naira) in consequence of their illegal action. Here is the receipt Exhibit “F”.

However, when being cross examined he stated that the amount he was claiming was for labour, transportation of materials, etc., for the construction of the stall. **I am not unaware of the law that generally, a court can rely on the mere ipse dixit of a plaintiff**

who is not an expert to assess damages, however such ipse dixit evidence can only be relied on or accepted if it is not challenged and contradicted and in this instant case, the plaintiff contradicted his evidence during cross examination hence that piece of evidence he gave was therefore not reliable. See

B A.G. OYO STATE VS FAIRKLAKES HOTELS (NO.2) (1988) 12 SC (pt.1) 1. In the present case, the evidence led by the plaintiff/appellant in proof of special damages is in my view, very shallow, hollow and skimpy and this was incapable of proving anything close to special damages. The trial court was therefore wrong in making such award at all. The court below was therefore faultless in setting aside that award.

D Now, coming to general damages, I am aware that it is settled law too, that unlike special damages which is special in nature and must be pleaded specially and proved strictly, the quantum of general damages need not be pleaded or proved. The manner in which general damages is quantified is by relying on what a reasonable man's judgment would be in the circumstance. See HON NZE HERBERT OSUJI & ANOR VS E ANTHONY ISIOCHA (supra). However, in this instant case the plaintiff who made a claim on trespass did not state any amount he was claiming as general damages in his statement of claim and also did not lead any evidence in that regard even though as I said above, it did not require any proof of such damages. F A complaint or claim of trespass however connotes interference with or injury to possession. The evidence led by the plaintiff/appellant at the trial court however fell short of proof of any injury to his possession of shed No.3 Akwata, Ogbete G Main Market.

H Admittedly, general damages is often presumed and awarded especially in an action of trespass such as this instant case. However, the plaintiff can only be obliged with discretionary powers of the trial court if from the evidence adduced by him, the act of trespass was actually proved by the plaintiff. In other words, without the proof of trespass, the court is bereft of the discretionary power to presume that general damages accrued and award same. It is noted by me, that when making the award of N50,000.00k, the trial court

did not do so based on any credible and reliable evidence and it also did not state its reason for making such award or how it arrived at the amount it awarded i.e. N50,000.00k. The award made by the trial court was therefore arbitrarily made and can therefore not be allowed to stand. The learned justices of the court below were therefore justified in salvaging the situation by setting aside that arbitrary award of damages on whatever head it was made by the trial court since the findings of the latter was perverse and was also based on improper evaluation of the evidence adduced before it. This second issue is also resolved against the appellant too.

On the whole having resolved the two issues for determination against the appellant, this appeal consequently fails for want of merit. It is therefore accordingly dismissed. The judgment of the court below which set aside the judgment of the trial High Court is hereby affirmed. Costs follow events. A sum of N100,000 costs is awarded jointly and severally in favour of the two respondents against the appellant herein. Appeal dismissed.

NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Mary U. Peter-Odili, JSC (sic, Sanusi, JSC) and I entirely agree with His Lordship's reasoning leading to the conclusion that the appeal lacks merit and ought to be dismissed.

I want to comment on the award of damages made by the trial Court. In the judgment of 8/1/2001, the learned trial Judge held, *inter alia*:

"Consequently the defendants are liable to the plaintiff in damages. The DW1 and DW2 are to pay N50,000.00 jointly to the plaintiff as special and general damages (as claimed) ..."

Both the learned trial Judge and the parties in the trial Court did not seem to have appreciated the difference between general damages on one hand and special damages on the other hand.

In the case of general damages, where the plaintiff proves his claim the award of damages is determined by the Court based on what is reasonable in the circumstances of the case. Award is on the discretionary power of the trial Judge to make his own assessment of

the quantum of damages. See *Odulaja v. Haddad* (1973) 11-12 SC 357.

On the other hand, special damages must be strictly pleaded and proved. The Court does not make the award based on conjecture or speculation. See *Osuji v. Isiocha* (1989) 6 SC (Pt. 11) 158.

B In his evidence PW1 said *inter alia*:

"I sustained loss to the tune of N41,300 in consequence of their illegal action. Here is the receipt, Exhibit F. I am asking Court to order them to pay me back the damage they cost me as claimed."

C Under cross-examination, he said, *inter alia*:

"The amount I am claiming is for labour, transportation of materials, etc." The actual damage the plaintiff suffered as claimed in his evidence is N41,300.00, yet the Court awarded "N50,000.00 being special and general damages as claimed."

D The PW1 said that:

"The 1st defendant was staying with me. I gave him a space to stay when I finished building the shed the second defendant was no longer there. He is still owing me. After that we shared the shed. This is an open store."

E In my view of the evidence, no trespass was proved against the respondents. They could not have trespassed into an open store which the appellant said he shared with one of the respondents, nor is there evidence that the respondents did any damage for which the appellant could claim N41,300.00 for labour and transportation of material.

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

Appeal dismissed.

G _____

MUHAMMAD JSC

I have had advantage of reading in draft the judgment just delivered by my learned brother, Sanusi, JSC in which he dismissed the appeal for lack of merit. I am in agreement with him that there is no merit in this appeal. I, too, dismiss it. I abide by consequential orders, including one on costs, made in the lead judgment.

AKA'AH'S JSC

I had a preview of the judgment of my learned brother, Amiru Sanusi JSC. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. The claim by the plaintiff/appellant at the trial court was predicated on trespass, injunction and damages and in order to succeed in his claim, the plaintiff must establish the identity of the land (which in this case is the stall/shed described as No.3 Akwata, Ogbete main market) and also prove that he is in exclusive possession. See: *Oriorio v. Osain* (2012) 16 NWLR (Pt. 13271 560). Since the respondents denied trespassing into the appellant's stall and claimed that their stall is an open space which lies adjacent to the stall of the appellant and is demarcated by a footpath, the appellant must establish the boundaries of the stall over which he is exercising his possession and the best way to do it is to have filed a plan depicting the boundaries of his stall. See: *Karama & Anor. v. Aselemi & Ors.* (1938) 4 WACA 150; *Onu v. Agu* (1996) 5 NWLR (Pt. 451) 652. The plaintiff failed to prove his claim and the lower court was right in allowing the appeal and setting aside the damages awarded. For these reasons and the detailed reasons contained in the leading judgment of my Lord, Sanusi JSC I too find that there is no merit in the appeal and it is hereby dismissed.

I endorse the award of costs of N100,000.00 in favour of the respondents against the appellant.

NWEZE JSC

I had the advantage of reading the draft of the leading judgment which my Lord, Sanusi JSC, just delivered now. I endorse the conclusion that this appeal, being wholly unmeritorious, should be dismissed. I shall however, in this contribution, make a point or two about counsel's submission on the plaintiff's entitlement to the relief based on the alleged trespassory acts of the respondents herein [defendants at the trial court.

As shown in the leading judgment, at the trial court, the plaintiff/appellant anchored his claim on trespass, etc. However, at the actual trial, he failed to prove the alleged trespassory acts of the present respondent. That notwithstanding, the trial court favoured him with judgment. The Court of Appeal, rightly, quashed the said judgment.

Like my Lord has demonstrated in the leading judgment, this appeal is, totally, devoid of merit. Trespass to land is a wrongful entry into the land in actual or constructive possession of another, *Olaniyan v. Fatoki* (2003) 13 NWLR (pt 837) 273, 286. In effect, a person who cannot prove that he is in possession cannot sue in trespass, *B Akibu v Azeez* (2003) 5 NWLR (pt 814) 643, 670. That must be so for trespass is rooted or based on exclusive possession or right to possession, *Unakamba v Nze* (2002) 28 WRN 53, 64.

That is the rationale for the prescription that any unlawful interference with possession, however slight, amounts to trespass, *Oyebanji v Fabiyi* (2003) 12 NWLR (pt 834) 271, 302; *Dantosh v Mohammed* (2003) 6 NWLR (pt 817) 457, 488.

Being rooted in exclusive possession, all a plaintiff needs to prove is that he has exclusive possession or that he has the right to such possession of the land in dispute, *Oyebanji v Fabiyi* (supra) 290; *Amakor v Obiefuna* (1974) NMLR 331.

Indeed, the tort of trespass is so, inextricably, tied to possession that a person in possession of land, even as a trespasser, can sue another person who thereafter comes upon the land. In other words, *E a person who has no title over a piece of land, but who is in possession, may successfully sue for trespass if an entry is made into the land without his consent* *Olaniyan v Fataki* (supra) 286; *Olowolagba v Bakare* (1998) 3 NWLR (pt 543) 528.

However, such a person cannot proceed against the owner or *F someone who shows some title which gives him a better right to be on the land, Aromire v Awoyemi* (1972) 2 SC 182; *Tumo v Murana* (2000) 12 NWLR (pt 681) 370; *Eze v Atasie* (2000) 9 WRN 73, 83.

In this case, the plaintiff/appellant failed to pitchfork the averments in his pleading and oral evidence at the trial into these constitutive requirements of the proof of a claim for trespass. *G*

His claim was, therefore, bound to collapse. The trial court failed to make this crucial finding. The lower court was, in consequence, right in dealing a *coup de grace* on the said judgment.

H It is for these, and the more elaborate, reasons in the leading judgment that I too shall enter an order dismissing this appeal. I abide by the consequential orders in the leading judgment. Appeal dismissed.