

CASE DIGEST

DAMAGES: GENERAL DAMAGES;
DO GENERAL DAMAGES NEED
TO BE SPECIFICALLY PLEADED?

NITEL TRUSTEES LIMITED (IN LIQUIDATION)
& ANOR. v. SYNDICATED INVESTMENT
HOLDINGS LIMITED

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NITEL TRUSTEES LIMITED (IN LIQUIDATION) & ANOR. v. SYNDICATED INVESTMENT HOLDINGS LIMITED

SUPREME COURT OF NIGERIA

(*ARIWOOLA; ABBA-AJI; GARBA; JAURO; ABUBAKAR, JJ.SC*)

Background Facts

Through an advertisement in This Day Newspaper of 2/5/2007, Nitel Trustees Limited (In Liquidation) and Otunba Olusola Adekanola (Liquidator of Nitel Trustees Ltd.) (the Appellants) advertised several properties for sale to the public with conditions for bid of the said properties. Syndicated Investment Holdings Limited (the Respondent) bid for property No. 44, Gerrard Road, Ikoyi, Lagos for 36.1 million Naira and deposited 10% of ₦36.1M with the Appellants which was subsequently reserved for the bidding. The Respondent affirmed that the contract of sale was concluded on 6/7/2007 subject to the sitting tenant's right of first refusal. However, the Appellants offered and sold the said property to Oystelcom International Limited, as having fulfilled its conditions and as a preferred bidder since the Respondent failed to fulfil all the conditions attached to the offer. The Appellants consequently returned to the Respondent its 10% deposit of ₦36.1M. The Respondent sued the Appellants to the trial court, which dismissed the suit but awarded 21% per annum cost against the Appellants for the period the 10% deposit of N36.1 M was in their custody. On appeal by the Appellant, ₦20M was awarded as damages against the Appellants for the ₦36.1M paid as 10% deposit by the Respondent in lieu of the cost of 21% per annum made by the trial cost.



Further aggrieved by the decision of the lower court, the Appellant appealed to the Supreme Court. One of the issues raised for determination was: *Whether the lower court was right to have awarded the sum of ₦20m as damages after finding that the Respondent did not plead or lead evidence of any loss?*

Arguments

Learned counsel for the Appellant argued that the Respondent had chosen to accept the breach by the Appellants by accepting its deposit, abandoning his claim for specific performance of the contract and settling for damages. Submitting further, counsel stated that it was unreasonable of the court below to have awarded the sum of ₦20 Million Naira damages as appropriate compensation for the sum of ₦36.1 Million deposited by a party who has suffered no loss and has been refunded its deposit. Counsel stated that though an award of damages is within the discretionary powers of the court, however, the exercise of such discretion must be based on the evidence before the court, and that the sum of ₦20 Million Naira awarded against the Appellants by the court below as damages for ₦36.1 Million which had been fully refunded to the Respondent is outrageous and urged the court to so hold.

In response, and by a Cross-Appeal, the Respondent (as Cross-Appellant in the Cross-Appeal) represented by the learned silk contended that the bifurcation of damages into special and general damages is irrelevant to the assessment of contract damages. Learned Silk further submitted that in the present appeal, if the respondents had not repudiated the contract, the Respondent would have acquired unconditionally the property for ₦36.1 Million plus 5% transaction cost, which it was willing and able to pay. Arguing further, learned silk stated that where there is a breach of contract for the sale of property, the measure of damages is prima facie the difference between the contract price and the value of the property as at the date of the breach and that the lower court should have awarded the sum of ₦591.95 million as damages for breach of contract against the Appellant (Cross-Respondents in the Cross-Appeal). Learned silk submitted that the essence of this principle is that the innocent party should be placed in the position he would have been if the contract was performed and urged the court to so hold.

Decision of the Court

In resolving this issue, the Supreme Court held that:

General damages are such as the jury may give when the Judge cannot point out any measure by which they are to be assessed, except the opinion and management of a reasonable man. The Court stated that it is a loss which flows naturally from the defendant's act. It need not be specifically pleaded, it arises by inference of law, and need not be proved by evidence. It suffices if it is generally averred. Thus, assuming the Respondent failed to plead or prove its claim for damages as submitted by the Appellants' counsel, having held that the Appellants were liable for breach of contract, it naturally flows that the Respondent would be compensated in damages as held by the court below.

Issue resolved in favour of the Respondent.

Oluwole Aladedoye, Esq., for the Appellants

Prof. Fidelis Oditah, SAN, Onyeka Enunna, Esq., and Johnson Agwu, Esq., for the Respondent

This summary is fully reported at (2023) 5 CLRN.

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info@clrndirect.com