Award of Damages by a Trial Court - Circumstances for Interference by an Appellate Court

In The Supreme Court of Nigeria
Holden At Abuja
On Friday, the 21st Day of June, 2024

Before Their Lordships

Uwani Musa Abba Aji
Helen Moronkeji Ogunwumiju
Chidebere Nwaoma Uwa
Stephen Jonah Adah
Abubakar Sadiq Umar

Justices, Supreme Court
SC.789/2017

Between

1. **EL-ASBAB HOTEL & INVESTMENT INDUSTRIES NIGERIA LTD**
2. **MANSUR IBRAHIM BABANGIDA** **APPELLANTS**

AND

1. **ECOBANK NIGERIA PLC** **RESPONDENT**

(Lead judgement delivered by Honourable Stephen Jonah Adah, JSC)

Facts

Sometime in 2007, the 2nd Appellant approached the Respondent for a bank guarantee in the form of bond for the benefit of SOCACIC (W.A) Ltd. The 1st Appellant's Certificate of Occupancy Number — BI/G/2962 was deposited with the Respondent as security for the bond. However, owing to change in government policy, the purpose for the bond could not materialise; thus, at the expiration of the tenure of the bond, the Appellants wrote to the Respondent demanding a return of the Certificate of Occupancy but the Respondent refused. The continued retention of the document caused the Appellants a lot of hardship and economic loss; thus, the Appellants instituted an action against the

Respondent by Writ of Summons challenging the Respondent's continued retention of the original title document of the property used in securing a performance bond facility granted to the 1st Appellant. They sought the following reliefs, *inter alia - An Order of the Honourable Court directing the Respondent to return the document to them; and an Order commanding the Defendant to pay the sum of ₦100,000,000.00 (One Hundred Million Naira) only as exemplary damages for unlawful detention of the Certificate of Occupancy Number - BI/G/2962 property of the Claimants from 2008 till date.*

At the trial, the Appellants averred and led evidence to show that the Certificate of Occupancy is the title deed of a property they intend to construct an international hotel on, and also the only means for them to raise funds to build the hotel. In response, the Respondent claimed it did not release the title document because the Appellants did not return the original bond for cancellation. The 2nd Appellant testified as the sole witness and tendered documents which were admitted in evidence and marked as Exhibits A- A7. They established that the original bond had been returned to the Bank. The Respondent equally called a sole witness who testified on its behalf. At the end of the proceeding, the trial court entered judgement against the Respondent, holding it liable for damages in the sum of ₦30,000,000.00 (thirty million Naira) for retaining the Certificate of Occupancy since 2007 for no reason, and ₦100,000 (one hundred thousand Naira) daily if the Respondent fail to release the Certificate of Occupancy within seven days of the judgement.

Aggrieved by that decision the Respondent appealed to the Court of Appeal, which court resolved the main issue (issue 2) against the Appellants. The award of damages in the sum of thirty million Naira in favour of the Appellants was set aside by the lower court and reduced to the sum of one hundred thousand Naira (₦100,000.00).

The Appellants were aggrieved by this decision; hence, they appealed to the Supreme Court.

Issues for Determination

The apex court adopted two issues for determination of the appeal, to wit:

1. *Whether the learned Justices of the Court of Appeal were not in error when they held that the court having compelled the return of the certificate of occupancy, can only award reasonable damages for the retention of the chattel and found the ₦30,000,000.00 (thirty million Naira) only awarded by trial court as excessive".*

2. *Whether the learned Justices of the Court of Appeal were not in error when they reduced the ₦30,000,000.00 (thirty million Naira) damages in favour of the Appellant to N100,000.00 (one hundred thousand Naira) only for the retention of the Appellants' Certificate of Occupancy".*

Arguments

Counsel for the Appellants submitted that the primary object of an award of damages is to compensate the Plaintiff for the harm done to him or a secondary object is to punish the Defendant for his conduct in inflicting that harm. That damages come into play whenever the Defendant's conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like. Counsel relied on the case of **ODIBA v AZEGE (1998) LPELR - 2215 (SC),** amongst others. He contended further that the illegal detention of the title deed of the Appellants by the Respondent caused hardship and losses to the Appellants because the title deed was to be used to raise fund for building an International Hotel, and this unchallenged evidence can be the very basis upon which an award of damages can be made. He posited that the title deed belonging to the Claimant had been detained since 2008 for no just cause. Counsel then urged the court to resolve issue one in favour of the Appellant and hold that the award of thirty million Naira (₦30,000, 000.00) damages was not excessive. The Respondent countered the submissions, stating that the lower court was right in holding that the damages awarded were ridiculously excessive. He supported the judgement of the lower court that the damages suffered, if any, could have been mitigated if the Appellants had wanted to do that. He contended that the finding of the lower court in that direction was not challenged by the Appellant in the appeal and that the Appellants in consequence should be deemed to have conceded to the findings of lower court in that respect. That failure of the Appellants to take reasonable steps to mitigate their alleged loss barred them from claiming damages. Relying on the case of **ONWUKA v OMOGUI (1992) 3 NWLR (PT. 230) 392, 401,** he urged the court to resolve the issue in favour of the Respondent.

On issue two, counsel for the Appellants argued that an Appellate court cannot altar or set aside an award of damages merely because it might have awarded a different figure, if it had heard the case itself. He pointed out that the Appellate court could only interfere where it is shown that the award was made on a wrong principle, or that the damages awarded are manifestly too high. He therefore, urged the Supreme Court to invoke its general powers under Section 22 of the Supreme Court Act to interfere with the findings of the lower court which reduced the judgement sum of (thirty million Naira) ₦30,000,000.00 to (one hundred thousand Naira) ₦100,000.00. Responding to the submission, the Respondent contended that the lower court considered the evidence and the submissions made by the Appellant before arriving at the decision and urged the Supreme Court not to interfere with it.

Court's Judgement and Rationale

At the onset of its judgement, the Supreme Court clarified that the issue before it was not rooted in any contract but in the tort of detinue as there was nothing contractual about the failure of the Respondent to release the Certificate of Occupancy back to the Appellants. The court defined detinue as *"a retention of a Plaintiffs chattle or goods by Defendant which is significantly evidenced by the refusal of the Defendant or his agent to release or return the goods to the Plaintiff on demand. A successful Plaintiff is entitled to an Order of specific restitution of the chattel or goods, or in default its value and of paramount importance, damages for its detention up to the date of judgement."*

The apex court noted that in the case before it, the Respondent could not defend the retention of the title document of the Appellants and there was a concurrence of findings of fact by the trial court and the lower court that the refusal to release the Certificate of Occupancy since 2008 caused the Appellants great hardship and economic loss to the extent that they would have completed the hotel they were to build and start business on the land covered by the said Certificate, if the Certificate was released to them. Their Lordships then proceeded to hold that *"It is therefore strange and wrong with all due respect for the lower court to place any blame on the Plaintiffs by saying they did not try to mitigate losses. A look at the property in question will indicate that no circumstances existed for the Claimants to mitigate their losses since the property is the original title deed to their land. The facts on the record showed that the Appellants made several demands in vain for the return of their title deed."*

The court noted that even after the Appellants had obtained judgement for the release of the Certificate of Occupancy at the trial court, the Respondents refused to release same to the Appellants and that this attitude was not only inexplicable, but an extremely callous and barbarous act that could never find any line of tolerance in the society.

Their Lordships then held that ***An award of damages can only be upset or interfered with by an appellate court, if it is shown by the appellant, either that: (a) the trial court acted or proceeded upon wrong principles of law, or (b) the amount awarded by the trial court, is manifestly and extremely high or low, or (c) the amount, was on an entirely erroneous estimate which no reasonable tribunal, will make."***

The Supreme Court found that the lower court evidently supported the findings of fact of the trial court and the conclusion on those findings by the trial court but the lower court was misdirected when it *suo motu* introduced the issue of mitigation of loss without calling on the parties to address it as this issue was neither raised by the parties in their pleadings nor raised in their arguments in their briefs before the lower court. The issue raised by the court *suo motu* was not a jurisdictional issue; therefore, the failure to call the parties to address it infringed on their rights to fair hearing.

Their Lordships held further that *an award of damages is usually an exercise of discretion, and a valid exercise of discretion is one which is exercised judicially and judiciously, having regard to the facts and circumstances of the case.* The exercise of the lower court's discretion to reduce or interfere with the award of damages was arbitrary, without due reference to the facts and circumstances of the case before the court.

Consequently, the apex court noted that there was sufficient justification for the trial court to award punitive damages but altered the award to a sum of twenty million Naira (₦20,000,000.00). The court also Ordered a release of the Appellants' documents to them within seven days, and a further Order that if the Respondent refuse to release the documents to the Appellants within seven (7) days after the judgement, the Respondent will be liable in the sum of one hundred thousand Naira (₦100,000.00) daily for the unlawful retention of the title document.

The Supreme Court adjudged the appeal as meritorious and resolved the issues in favour of the Appellants.

Appeal allowed.

Appearances

S.A. Oshodi, Esq., for the Appellants.

Nick O. Omeye, Esq. with C.O. Ezugwu, Esq., for the Respondent.

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