**TAIWO KUPOLATI**

**V.**

**MTN NIGERIA COMMUNICATIONS LIMITED**

IN THE COURT OF APPEAL OF NIGERIA

ON WEDNESDAY, THE 18TH DAY OF MARCH, 2020

CA/L/743/2017

**LEX (2020) - CA/L/743/2017**

**OTHER CITATIONS**

3PLR/2020/43 (CA)

(2020) LPELR-49538 (CA)

**BEFORE THEIR LORDSHIPS**

MOHAMMED LAWAL GARBA, JCA

UGOCHUKWU ANTHONY OGAKWU, JCA

JAMILU YAMMAMA TUKUR, JCA

**BETWEEN**

TAIWO KUPOLATI - Appellant(s)

AND

MTN NIGERIA COMMUNICATIONS LIMITED - Respondent(s)

**ORIGINATING COURT(S)**

HIGH COURT OF LAGOS STATE

**REPRESENTATION**

Appellant in person. - For Appellant

AND

Folabi Kuti, Esq. with him, Bright Odia, Esq., Ayodeji Abdul, Esq., & Praise Darego, Esq. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

TELECOMMUNICATION LAW – BREACH OF CONTRACT FOR POST-PAID TELECOMMUNICATION SERVICES:- Disconnecting/blocking a customer from telecommunication without justification – Nature of breach – Relief in General Damages – Duty of trial judge in the exercise of discretion for the assessment of quantum of damages thereto – When appellate court will interfere with Judges’ discretion

COMMERCIAL LAW – CONTRACT – DAMAGES – GENERAL DAMAGES:- Principle that general damages are always made as a claim at large and that quantum need not be pleaded and proved – Standard of determining quantum – Centrality of the discretion of the trial Court – Duty of judge thereto

COMMERCIAL LAW – CONTRACT – DAMAGES – GENERAL DAMAGES:- Rule that assessment of the quantum of general damages is at the discretion of the Court – Nature of judicial discretion thereto - Whether bound by precedent from earlier cases even of superior courts

COMMERCIAL LAW – CONTRACT – DAMAGES – GENERAL DAMAGES:- Where trial Court acted under wrong principles of law in the exercise of its discretion – Where court as a result awards an amount that is too low – Duty of appellate court thereto

**PRACTICE AND PROCEDURE** **ISSUES**

APPEAL - FORMULATION OF ISSUE(S) FOR DETERMINATION:- Principle that a Court can and is entitled to re-formulate issues formulated by the parties or counsel in order to make for precision and clarity – Purpose of

APPEAL - INTERFERENCE WITH AWARD OF DAMAGES:- Centrality of discretion of trial court thereto - Attitude of Appellate Court to invitation to interfere therewith - Circumstances/grounds upon which an appellate Court will interfere with award of damages by the trial Court

JUDGMENT AND ORDER - DAMAGES - GENERAL DAMAGES: Guiding principles for the award of general damages – Discretion of trial court – Exercise of – When will not be interfered with by appellate court

JUDGMENT AND ORDER - DAMAGES - GENERAL DAMAGES:- Principle that general damages need not be specifically pleaded and proved before the same can be awarded by the Court – Distinction from special damages – Duty of Court thereto

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant, a Legal Practitioner, was a post-paid customer of the Respondent on his GSM Line. The Appellant, claimed against the Respondent a breach of its contractual obligations to him when, for a cumulative period of thirty-one (31) days, his GSM line was blocked/disconnected without any justification, consequent upon which he suffered enormous frustration, hardship, inconveniences, loss of income and economic loss. He brought the suit claiming, among others, the following reliefs:

“(a) A DECLARATION that the blocking/disconnection of the claimant’s GSM line No. 0803-720-0757 and Blackberry Internet Services from 6 November, 2011 to 21 November, 2011 and from 6 October 2012 to 22 October 2012, without justification, is wrongful and a breach of the contractual obligations which the defendant owes to the claimant as a post-paid subscriber of the defendant’s network services.

(b) A DECLARATION that the defendant’s wrongful action of blocking/disconnection of the claimant’s GSM line No. 0803-720-0757 and Blackberry Internet Services from 6 November, 2011 to 21 November, 2011 and from 6 October, 2012 to 22 October, 2012, without any justification, foisted enormous frustration, hardship, inconveniences, loss of income, economic loss on the claimant, for which the claimant ought to be assuaged by substantial award of general and exemplary damages against the defendant.

(c) N50, 00,000 (Fifty Million Naira) as general and exemplary damages against the defendant.

DECISION(S) APPEALED AGAINST

The trial Court held that the Respondent was in breach of its contract with the Appellant and awarded the sum of N1, 000,000.00 as damage. There is no complaint about the decision that the Respondent was in breach of contract but the Appeal is against the quantum of damages awarded by the Lower Court.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

“i. Having specifically found that the respondent was in breach of contract which disenabled the appellant from having access to GSM line and Blackberry internet services for 31 days, whether the award of N1,000,000.00 is not inordinately low and inequitable, which warrants the interference by the honourable Court.

ii. Whether, on the locus classsicus of the Supreme Court decision of Shodipo v. Daily Times, and other relevant judicial decisions, the appellant is duty bound by law to specifically establish economic/pecuniary loss before substantial damages can be awarded in the peculiar circumstances of this case.”

*BY RESPONDENTS*

“Whether in the circumstance of this case, the appellant is entitled to the award of exemplary and general damages of N50, 000,000.00 (Fifty Million Naira) or any sum more than N1, 000,000.00 (One Million Naira), having failed to by any thread of evidence prove injury directly or remotely suffered as a result of the blockade/suspension of his telephone line by the respondent. (This issue has been formulated from Ground 1 of the Notice of Appeal).”

*AS ADOPTED BY COURT*

The Court formulated one issue for the determination of the appeal viz:

“Whether the circumstances of this matter are such for an Appellate Court to interfere with the quantum of damages awarded by the Lower Court.

DECISION OF COURT OF APPEAL

1. The issue for determination as distilled by the Court is resolved in favour of the Appellant. The Court ought to interfere in order to redress the injustice occasioned by the erroneous estimate of damages awarded by the Lower Court. The appeal succeeds and it is hereby allowed.

2. The award of the sum of N1Million as damages by the trial court set aside. In its stead, the sum of N5,000,000.00 (Five Million Naira) is awarded as damages in favour of the Appellant. The Appellant is entitled to the costs of this appeal assessed at N200, 000.00.

**MAIN JUDGMENT**

UGOCHUKWU ANTHONY OGAKWU, J.C.A. (Delivering the Leading Judgment):

The Appellant is a Legal Practitioner. He is a post-paid customer of the Respondent on his GSM Line No. 0803-720-0757. The Appellant, contending that the Respondent breached its contractual obligations to him when, for a cumulative period of thirty-one (31) days, it blocked/disconnected his said GSM Line without any justification, consequent upon which he suffered enormous frustration, hardship, inconveniences, loss of income and economic loss; instituted proceedings before the High Court of Lagos State in SUIT NO. LD/1666/2012: TAIWO KUPOLATI vs. MTN NIGERIA COMMUNICATIONS LTD. The Appellant claimed the following reliefs:

“(a) A DECLARATION that the blocking/disconnection of the claimant’s GSM line No. 0803-720-0757 and Blackberry Internet Services from 6 November, 2011 to 21 November, 2011 and from 6 October 2012 to 22 October 2012, without justification, is wrongful and a breach of the contractual obligations which the defendant owes to the claimant as a post-paid subscriber of the defendant’s network services.

(b) A DECLARATION that the defendant’s wrongful action of blocking/disconnection of the claimant’s GSM line No. 0803-720-0757 and Blackberry Internet Services from 6 November, 2011 to 21 November, 2011 and from 6 October, 2012 to 22 October, 2012, without any justification, foisted enormous frustration, hardship, inconveniences, loss of income, economic loss on the claimant, for which the claimant ought to be assuaged by substantial award of general and exemplary damages against the defendant.

(c) N50, 00,000 (Fifty Million Naira) as general and exemplary damages against the defendant.

(d) Cost of this action.”

After a plenary hearing at which testimonial and documentary evidence was adduced, the Lower Court found and held that the Respondent was in breach of its contract with the Appellant when it blocked/disconnected the Appellant’s said GSM line. It then proceeded to award the sum of N1, 000,000.00 to assuage the Appellant for the frustration, hardship and inconvenience occasioned by the wrongful disconnection of his said GSM line for the cumulative period of thirty-one (31) days. There is no complaint about the decision that the Respondent was in breach of contract. The Appellant is however dissatisfied with the quantum of damages awarded by the Lower Court; so he only appealed against the decision on the quantum of damages awarded. The judgment of the Lower Court which was delivered on 10th May, 2016 is at pages 339-379 of the Records, while the Notice of Appeal which was filed on 13th June, 2016 is at pages 380-385 of the Records.

Upon the compilation and transmission of the Records, the parties filed and exchanged briefs of argument. The briefs of argument which the learned counsel for the parties urged the Court to uphold the submissions therein in the determination of the appeal are:

1. Appellant’s Brief filed 18th January, 2019.

2. Respondent’s Brief filed on 30th May, 2019 but deemed as properly filed on 20th January, 2020.

3. Appellant’s Reply Brief filed on 28th November, 2019 but also deemed as properly filed on 20th January, 2020.

The Appellant distilled two issues for determination, as follows:

“i. Having specifically found that the respondent was in breach of contract which disenabled the appellant from having access to GSM line and Blackberry internet services for 31 days, whether the award of N1,000,000.00 is not inordinately low and inequitable, which warrants the interference by the honourable Court.

ii. Whether, on the locus classsicus of the Supreme Court decision of Shodipo v. Daily Times, and other relevant judicial decisions, the appellant is duty bound by law to specifically establish economic/pecuniary loss before substantial damages can be awarded in the peculiar circumstances of this case.”

The Respondent on its part formulated a sole issue for determination, namely:

“Whether in the circumstance of this case, the appellant is entitled to the award of exemplary and general damages of N50, 000,000.00 (Fifty Million Naira) or any sum more than N1, 000,000.00 (One Million Naira), having failed to by any thread of evidence prove injury directly or remotely suffered as a result of the blockade/suspension of his telephone line by the respondent. (This issue has been formulated from Ground 1 of the Notice of Appeal).”

It is pertinent to state that there is no disceptation arising in this appeal as to the decision of the Lower Court that the Respondent is in breach of contract. There is further no confutation on the decision of the Lower Court that the Appellant is not entitled to the award of the exemplary damages he claimed. There is equally no contest with the decision of the Lower Court that the Appellant is entitled to compensatory damages flowing from the Respondent’s breach of contract. The only dispute which circumscribes the contest in this appeal is the quantum of the damages awarded by the Lower Court and if this Court can interfere with the award made and review the same upwards. It is against the background of the narrow compass within which the contest falls that I would review the submissions of learned counsel on the material question and issues in contest in the appeal. In this wise, therefore and in order to capture the pith of the contest in the appeal, I will take the liberty to nominate a sole distensible issue on the basis of which I would consider the relevant submissions of learned counsel and resolve this appeal. It is hornbook law that a Court can and is entitled to re-formulate issues formulated by the parties or counsel in order to make for precision and clarity.

In the words of Uwaifo, JSC in MUSA SHA (JNR) vs. DA RAP KWAN (2000) 5 SCNJ 101 at 127:

“The purpose of framing or re-framing an issue or issues, it is stated: is to lead to a more judicious and proper determination of an appeal. The purpose of re-formulating it or them, is in order to narrow the issue or issues in controversy in the interest of accuracy, clarity and brevity.”

See also UNITY BANK PLC vs. BOUARI (2008) ALL FWLR (PT 416) 1825 at 1846-1847.

The expansive issue, which is not an alternative to the issues crafted by parties, but is rather cumulative with the said issues: SANUSI vs. AMEYOGUN (1992) 4 NWLR (PT 237) 527 at 550-551 and NEKA B. B. B. MANUFACTURING LTD vs. A.C.B. LTD (2004) 17 NSCQR 240 at 250-251, and on the basis of which I will consider and resolve this appeal is:

Whether the circumstances of this matter are such for an Appellate Court to interfere with the quantum of damages awarded by the Lower Court.

SUBMISSIONS OF THE APPELLANT’S COUNSEL

The Appellant submits that the N1 million awarded by the Lower Court was inadequate compensation for the breach of contract for thirty-one (31) days and that there was no legal requirement for the Appellant to provide specific proof of his economic loss in order to be entitled to substantial damages. This Court was urged to interfere with the low estimate of damages awarded. The cases of ADEKUNLE vs. ROCKVIEW HOTEL LTD (2004) FWLR (PT. 188) 1037, UBN LTD vs. ODUSOTE BOOK STORES LTD (1995) 9 NWLR (PT. 421) 558, SPDC (NIG) LTD vs. TIEBO VII (1996) 4 NWLR (PT 445) 657, ALLIED BANK vs. AKUBUEZE (1997) 6 NWLR (PT. 509) 374 and ONWU vs. NKA (1996) 7 NWLR (PT. 458) 1 were referred to.

The Appellant maintained that the evidence adduced on the effect of the suspension of his GSM line was not properly considered by the Lower Court in assessing damages. The Court was urged to hold that the Lower Court acted under a mistake of law and in disregard of the applicable principles for assessment of damages. It was stated that the Lower Court did not consider the decline in the purchasing power of the Naira vide OZIGBU ENGR. CO., LTD vs. IWUAMADI (2011) ALL FWLR (PT. 553) 1975 and ONWU vs. NKA (supra) at 19. It was asserted that the Appellant was not required to establish the loss claimed as the claim for general damages for the loss is inferred by law from the breach. The case of IJEBU-ODE LG vs. ADEDEJI (1991) 1 NWLR (PT 166) 136 was relied upon.

It is the further submission of the Appellant that the Lower Court was under a misapprehension of the law as there was no requirement for the Appellant to prove specific economic/pecuniary loss in order to be entitled to the award of substantial general damages. The proof of specific pecuniary loss in the circumstances of the case, it was opined, was “well-nigh impossible.” The case of HAROLD SHODIPO & CO. LTD vs. THE DAILY TIMES OF NIGERIA LTD (1972) 7 NSCC 635 at 637 was called in aid. The approach to assessment and award of damages in the circumstances, it was submitted, was to base the same on the available evidence of the professional standing of the Appellant and how he suffered a communication blackout during the thirty-one (31) days he was disconnected and arrive on a quantum by relying on the opinion and judgment of a reasonable man vide OSUJI vs. ISIOCHA (1989) 3 NWLR (PT III) 623 at 636 and ANDREW vs. MTN NIGERIA COMMUNICATIONS LTD (2017) ALL FWLR (PT 900) 518.

In the alternative, the Appellant argues that the evidence adduced afforded sufficient evidence of the economic loss he suffered as a result of the thirty-one (31) day communication disconnection. It was contended that the Lower Court did not properly evaluate the evidence as it relates to what the Appellant suffered and only considered the evidence as to the disruption of the Appellant’s participation in the Accelerated Membership Programme of the Chartered Instituted of Arbitrators.

SUBMISSIONS OF THE RESPONDENT’S COUNSEL

The Respondent submits that damages is the pecuniary compensation which the law awards to a person for the injury he sustained as a result of a breach of contract or in tort vide FIRST BANK vs. A-G FEDERATION (2018) LPELR-46084 (SC) and A. E. BRIGHT FUTURE MOTORS (NIG) LTD vs. CHIZOBA (2017) LPELR-42828 (CA). The purport of award of damages was stated to be to compensate a wronged party for the injury suffered and not to unjustly enrich him or to punish the defaulting party. The case of IYERE vs. BENDEL FEED AND FLOUR MILL LTD (2008) LPELR-1578 (SC) was referred to. The classes of damages and the differences between them were highlighted and it was posited that the assessment of damages awarded by a Court is informed by the classification of the damages it awards.

General damages was stated to be in the nature of non-pecuniary loss and are damages which flow from the wrong complained about and does not need to be specifically claimed. The cases of UBN PLC vs AJABULE (2011) LPELR-8239 (SC) and IBOK vs. SPRING BANK PLC (2012) LPELR-7856 (CA) were relied upon. The quantum of damages to be awarded for non-pecuniary loss was stated to be solely within the discretion of the Trial Court and that an Appellate Court will not ordinarily interfere with the assessment except in certain circumstances which were set out. The cases of AYANGOKE vs. KEYSTONE BANK LTD (2013) LPELR-21806 (CA) was called in aid. The Appellant, it was asserted, failed to adduce any evidence of the injury he suffered or the pecuniary loss due to the disconnection of his GSM line and was therefore not entitled to the amount he claimed as exemplary or general damages.

It is the contention of the Respondent that the Appellant is not entitled to any sum more than the N1 Million awarded by the Lower Court, since the Appellant is only entitled to a nominal amount having failed to prove any special damages. The Respondent conceded that the Appellant need not specifically prove general damages before the same can be awarded. The cases of ARTRA INDUSTRIES (NIG) LTD vs. N. B. C. I. (1998) 4 NWLR (PT 546) 357, IBOK vs. SPRING BANK PLC (supra) and EDOSA vs. FIRST BANK (2011) LPELR-8785 (CA) were cited in support. The Respondent maintained that the Appellant not having proved any loss suffered, the award of N1Million by the Lower Court was adequate.

The Respondent contended that the decline in the value of the naira was not a factor to be taken into account in the peculiar circumstances of this matter since the action is not for violation of fundamental rights where the value of the Naira is usually taken into account in assessing damages vide ARULOGUN vs. C. O. P. LAGOS (2016) LPELR-40190 (CA), NZEGBUNA vs. OKOYE (2018) LPELR-43943 (CA) and NPF vs. OMOTOSHO (2018) LPELR-45778 (CA). It was conclusively submitted that the cases of ONWU vs. NKA (supra) and SHODIPO & CO. LTD vs. DAILY TIMES OF NIG LTD (1972) LPELR-3065 (SC) relied upon by the Appellant were not applicable.

APPELLANT’S REPLY ON LAW

In the Reply Brief, the Appellant submits that the Respondent’s submissions on exemplary damages and restitutio in integrum do not arise in the appeal. (This contention is correct on account of which I did not bother to review the submissions of the Respondent on exemplary damages and special damages). The award made by the Lower Court, it was opined, was general damages and that it need not be specifically pleaded or proved by evidence as it is awarded for the loss which flows naturally from the defendant’s act. The case of GTB PLC vs. OBOSI MICROFINANCE BANK LTD (2018) LPELR 44518 (CA) was referred to and it was maintained that the Appellant need not prove pecuniary loss to be entitled to the award of general damages in the circumstances of the case. The award of N1million as damages, it was asserted, was inordinately low relative to the award of damages made in cases like HAROLD SHODIPO & CO., LTD vs. DAILY TIMES OF NIGERIA LTD (supra), MTN COMMUNICATIONS LTD vs. AMADI (2013) ALL FWLR (PT 670) 1329 at 1354-1355 and ANDREW vs. MTN (supra).

RESOLUTION

Let me iterate that the part of the decision of the Lower Court subject of this appeal is the quantum of damages awarded by the Lower Court. The Lower Court found the Respondent liable for breach of contract. There is no appeal against that finding. The Lower Court held that the Appellant was not entitled to the award of exemplary damages and did not award any. There is also no appeal against that aspect of the judgment. The Lower Court however awarded the Appellant the sum it assessed at N1Million to assuage the Appellant for the frustration, hardship and inconvenience occasioned by the wrongful suspension of the Appellant’s GSM Line for a cumulative period of thirty-one (31) days. It is this amount assessed as compensation that the Appellant contests in this appeal.

The law is settled beyond peradventure that general damages are always made as a claim at large. The quantum need not be pleaded and proved. The award is quantified by what, in the opinion of a reasonable person, is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act of the defendant. It does not depend upon calculation made and figure arrived at from specific items. The issue of award of damages in any given case is a matter based on the discretion of the trial Court. See YALAJU-AMAYE vs. ASSOCIATED REGISTERED ENGINEERING CONTRACTORS LTD (1990) LPELR (3511) 1 at 47, ROCKONOH PROPERTY CO. LTD vs. NITEL PLC (2001) LPELR (2951) 1 at 11-12, HAMZA vs. KURE (2010) LPELR (1351) 1 at 28-29 and OKOKO vs. DAKOLO (2006) LPELR (2461) 1 at 39.

In DIAMOND BANK PLC vs. WELLCARE ALLIANCE LTD (2015) LPELR (40762) at 27-28, this Court, per Abba Aji, JCA (now JSC) stated:

“The law is trite that where general damages are claimed if the issue of liability is established as in the present case, the trial judge is entitled to make his own assessment of the quantum of such general damages and on appeal, such damages will only be altered or varied if they were shown to be either so manifestly too high or so extremely too low or that they were awarded on an entirely erroneous estimate of the damages to which the plaintiff is entitled.”

The Appellant has argued that the proper award in a claim for general damages is now the policy of this Court and that the approach of the Court in the cases of HAROLD SHODIPO & CO. LTD vs. DAILY TIMES OF NIGERIA LTD (supra), MTN COMMUNICATIONS LTD vs. AMADI (supra), ONWU vs. NKA (supra) and ANDREW vs. MTN (supra) ought to have been followed by the Lower Court in assessing damages as adequately as it best can on the available evidence. Let me restate that the assessment of the quantum of general damages is at the discretion of the Court. Judicial discretion is a vital tool in the administration of justice. Judicial discretion is a sacred power which inures to a Judge. It is an armour which the judge employs judicially and judiciously in order to arrive at a just decision. In matters of judicial discretion, since the facts of two cases are not always the same, Courts do not make it a practice to lay down rules and principles that would fetter the exercise of its discretion or the discretion of the Lower Courts. In matters of discretion, no one case is an authority for the other. Also, the fact that the Appellate Court would have exercised its discretion differently from that of the Lower Court is not sufficient reason to interfere with the exercise of discretion by the Trial Court. A Court cannot be bound by a previous decision to exercise its discretion in a regimented way because that would be putting an end to discretion. The Court will not interfere with the exercise of discretion in the absence of proof that it was wrongly exercised. No hard and fast rules can be laid down as to the exercise of judicial discretion by a Court, for the moment that is done, the discretion is fettered. See ANYAH vs. AFRICAN NEWSPAPERS (NIG) LTD (1992) LPELR (511) 1 at 20 -21, AJUWA vs. SPDC (2011) 12 SCNJ 596, ADISA vs. OYINWOLA (2000) 10 NWLR (PT 746) 116, NWADIOGBU vs. ANAMBA IMO RIVER BASIN DEVT AUTHORITY (2010) 12 SCNJ 212, NNPC vs. CLIFCO NIG LTD (2011) 4 SCNJ 107 at 127-128 and VANDIGHI vs. HALE (2014) LPELR (24196) 1 at 52-53. To accede to the Appellant’s contention to willy-nilly assess the quantum of damages in the manner done in the cases he relied upon will be to fetter the discretion of the Court since facts are the fountainhead of law and the facts of the said cases are not the same as the facts of this matter.

Howbeit, the fact that the quantum of damages is at the discretion of the Court does not mean that there are no circumstances when an Appellate Court would interfere with the award of damages. An Appellate Court will interfere with the award of damages by a Trial Court in situations which include:

a) Where the Court acted under wrong principles of law

b) Where the Court acted in disregard of applicable principles of law

c) Where the Court acted in misapprehension of facts

d) Where the Court took into consideration irrelevant matters and disregarded relevant matters while considering its award

e) Where injustice will result if the Appellate Court does not act

f) Where the amount awarded is ridiculously low or ridiculously high that it must have been an erroneous estimate of the damages

See ACB LTD vs. APUGO (2001) 5 NWLR (PT. 707) 653, UBN LTD vs. ODUSOTE BOOK STORES LTD (1995) 9 NWLR (PT 421) 558, B. B. APUGO & SONS LTD vs. OHMB (2016) LPELR (40598) 1 at 61-62, SPDC LTD vs. TIEBO (2005) LPELR (3203) 1 at 25 and ODUWOLE vs. WEST (2010) LPELR (2263) 1 at 15.

The parties are agreed on the abecedarian law that general damages need not be specifically pleaded and proved before the same can be awarded by the Court. They are awarded to assuage a loss caused by an act of the adversary: UBN LTD vs. ODUSOTE BOOK STORS LTD (supra), CAMEROON AIRLINES vs. OTUTUIZU (2011) LPELR (827) 1 at 31, OSUJI vs. ISIOCHA (1989) 3 NWLR (PT 111) 623 and ROCKONOH PROPERTY CO. LTD vs. NITEL PLC (supra). I have set out the Appellant’s reliefs. He did not claim for special damages which would require to be specifically pleaded and strictly proved. The relief for exemplary damages was refused by the Lower Court and there is no appeal against the refusal. What the Lower Court awarded the Appellant as compensation for the Respondent’s breach of contract, the liability of which the Respondent has not contested, is general damages. At page 376 of the Records, the Lower Court correctly stated the legal position when it held thus:

“As afore-stated, general damage is the kind of damage which the law presumes to be the consequence of the act complained of and unlike special damages, a Claimant for general damages does not need to be specifically pleaded and specially proved by evidence.”

In a seeming volte-face, the lower Court stated as follows at page 378 of the Records:

“The Honourable Court therefore finds that the Claimant has not satisfied this Court that he is entitled to the award of general damages which he seeks from the Court having not sufficiently proved same as required by law...

...the Honourable Court finds that the Claimant in this instance has not sufficiently established the injury/economic loss suffered by his person premised upon the wrongful suspension of his GSM line...” (Emphasis supplied)

Having so found and held, the Lower Court then awarded N1million in favour of the Appellant.

The above pericope from the decision of the lower Court is limpid that the Lower Court acted under wrong principles of law, as the law remains that general damages need not be specially proved; the Lower Court acted in disregard of applicable principles of law which did not place any burden on the Appellant to specifically plead and prove general damages. It is on account of acting under wrong principles of law and in disregard of the applicable principles of law that the Lower Court took irrelevant matters of proof of general damages and disregarded the relevant matters that general damages need not be specifically proved and accordingly awarded as damages an amount which is ridiculously low, thus lucently showing that it is an erroneous estimate of the damages. In the circumstances, in order to obviate injustice, an Appellate Court will interfere with the damages awarded. See ACB LTD vs. APUGO (supra), UBN LTD vs. ODUSOTE BOOK STORES LTD (supra) and SPDC LTD vs. TIEBO (supra).

In considering the appropriate assessment of damages and what would be considered adequate in the opinion of a reasonable person, due regard will be had to the evidence on record. The evidence shows that the Appellant, a legal practitioner of twenty-five years post-call experience at the time of the incident had his GSM Line wrongfully disconnected by the Respondent in breach of contract as a result of which he suffered frustration, hardship and inconvenience, going by the unchallenged finding of the lower Court, for a cumulative period of thirty-one (31) days. The first period of disconnection was for fifteen (15) days and as though it was the new normal and not a breach of contract, the Respondent yet again disconnected the Appellant for another period of sixteen (16) days. In the circumstances, it seems to me that the sum of N5, 000,000.00 (Five Million Naira) as damages is a fair estimate and assessment of the damages that the Appellant is entitled to as a result of the Respondent’s breach of contract.

The concatenation of the foregoing is that the issue for determination as crafted by the Court is resolved in favour of the Appellant. In the diacritical circumstances of this matter, the Court ought to interfere in order to redress the injustice occasioned by the erroneous estimate of damages awarded by the Lower Court. The appeal succeeds and it is hereby allowed. The part of the decision of the Lower Court complained about, id est, the award of the sum of N1Million as damages is hereby set aside. In its stead, the sum of N5,000,000.00 (Five Million Naira) is awarded as damages in favour of the Appellant. The Appellant is entitled to the costs of this appeal which I assess and fix at N200, 000.00.

**MOHAMMED LAWAL GARBA, J.C.A.:**

I have read the lead judgment written by learned brother Anthony Ogakwu, JCA in this appeal, before now and find myself in agreement with the conclusion that the appeal is meritorious in respect of the sum assessed as damages and awarded to the Appellant by the Lower Court. Although an appellate Court sparingly interferes with the assessment and award of general damages by a Trial/Lower Court, there are recognized and accepted situations when it has a duty and should do so, as demonstrated in the lead judgment. See UBA PLC v. BTL Ind. Ltd. (2004) 18 NVWLR (1098) 375, AKUDO v. GUINESS NIGERIA PLC (2012) 15 NWLR (PT.1322) 150.

I allow the appeal in terms of the lead judgment.

**JAMILU YAMMAMA TUKUR, J.C.A.:**

My learned brother UGOCHUkWU ANTHONY OGAKWU JCA afforded me the opportunity of reading in draft before today the Judgment just delivered and I agree with the reasoning and conclusion contained therein, adopt the Judgment as mine with nothing further to add.