**SHELL PETROLEUM DEVELOPMENT**

**V.**

**PRINCE OGAN MAFIMISEBI & ORS.**

IN THE COURT OF APPEAL OF NIGERIA

ON MONDAY, THE 26TH DAY OF APRIL, 2010

CA/B/206/04

**LEX (2010) - CA/B/206/04**

OTHER CITATIONS

2PLR/2010/59 (CA)

**BEFORE THEIR LORDSHIPS**

AMINA ADAMU AUGIE, JCA

OYEBISI FOLAYEMI OMOLEYE, JCA

CHIOMA EGONDU NWOSU-IHEME, JCA

**BETWEEN**

SHELL PETROLEUM DEVELOPMENT COMPANY LIMITED - Appellant(s)

AND

1. PRINCE OGAN MAFIMISEBI

2. CHIEF BISI ILA WOLE

3. CHIEF CLAUDIUS ATIMISE

4. CHIEF ADEYEMI ATIMISE

(For themselves and on behalf of the affected Individuals, Associations and Communities in Ilaje Local Government Area, Ondo State) - Respondent(s)

**REPRESENTATION**

I. L. ALABI Esq., - For Appellant

AND

FUNSO NETUFO Esq., - For Respondent

***ORIGINATING COURT***

FEDERAL HIGH COURT HOLDEN AT AKURE (A. Abdu-Kafarati J., Presiding)

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

ENVIRONMENTAL AND NATURAL RESOURCES LAW:- Pollution of aquatic and ecological environment by oil spill leading to destruction of fish farms, fishing equipment, waterways, rivers, coastal line, livestock and vegetation – Claim for compensation thereto – What claimant must prove – Need to attach claim to legally provable principles in special or general damages – Effect of failure thereto

OIL AND GAS LAW:- Oil pollution due to spillage emanating from Flow Station of and oil company leading to destruction of fish farms, fishing equipment, waterways, rivers, atlantic coastal line, livestock and vegetation – How proved – Use of Joint investigation visit, (JIV) to ascertain cause cause of the spillage and the extent of the damage – Where report of the JIV is that, the spillage was as a result of acts of vandalisation by some unknown persons – Duty on claimants for compensation for damages to establish claim on established legal principles relating thereto – Effect of failure thereto

AGRICULTURE AND FOOD LAW:- Claim for compensation due to destruction of fish farms, fishing equipment, waterways, rivers, coastal line, livestock and vegetation by oil spillage – Headings of damages – Duty of claimant to observe legally supported principles thereto – Whether damages may be awarded for general damages where special damages only claimed and unproved

**PRACTICE AND PROCEDURE ISSUES**

APPEAL:- Assessment of damages made by trial court – Attitude of appellate court to invitation to interfere therewith - When an appellate court may properly intervene in same

COURT:- Court of Appeal - Powers to deal with any appeal before it and make any order as it thinks just to ensure the determination on the merits of the real issues in controversy between the parties who have submitted themselves to its jurisdiction - Section 15 of the Court of Appeal Act, 2004 – When invocation of same proper

COURT:- Courts of law – Characterisation as most serious and sacred institution – Duty to refrain from hypothetical inquiries and academic judgments

COURT - JUDGMENT AND ORDERS:- Duty of court not to grant to a party a relief which he has not sought or which is more than he has sought – Need for claim and reliefs granted to be within the confines and precinct of pleadings – Effect of failure thereto

EVIDENCE:- Proof of special damages – Duty of claimant thereto - Need for same to be strictly and satisfactorily proved – Duty of court where special damages not proved

JUDGMENT AND ORDERS – DAMAGES:- Claim based on special damages – Duty on claimant thereto – Where not proved - Duty of court not to substitute general damages for special damages

JUDGMENT AND ORDERS:- Perverse judgment – Meaning of – Duty of an appellate court thereto

JUDGMENT AND ORDERS – DAMAGES:- Rule that a party can be awarded either special damages or general damages or both – Condition precedent – Need for same to be founded on success at establishing a sought claim – Effect of failure thereto

JUDGMENT AND ORDERS:- Academic judgments – Meaning of – Duty of court to refrain therefrom – Duty of appellate court where trial court engages in its making

INTERPRETATION OF STATUTES:- - Section 15 of the Court of Appeal Act, 2004 – Effect

WORDS AND PHRASES:- “Academic judgment” – Meaning of

**MAIN JUDGMENT**

OYEBISI F. OMOLEYE, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal from the judgment of the Federal High Court sitting in Akure per A. Abdu-Kafarati, delivered on 15th November, 2002.

The brief background facts of this matter according to the Respondents herein who were plaintiffs at the lower Court are that, the Respondents who are fishermen, farmers and fish pond owners on 28th August, 1998, found their aquatic, and ecological environment covered and polluted by oil due to manifold spillage emanating from the Opuama Flow Station of the Appellant company. As a result of the oil spillage, there was pollution and destruction of fish farms, fishing equipment, waterways, rivers, atlantic coastal line, livestock and vegetation. In this regard, the Respondents caused a valuation exercise to be carried out which valuation was duly documented. The Respondents through their traditional head, the Olugbo of Ilaje land and Ondo State Environmental Protection Agency lodged a complaint of the incident with the Appellant.

The Appellant responded by organizing a joint investigation visit, (JIV) comprising of representatives of Opuama Agency, Tsekelewu Communities, Department of Petroleum Resources, the Nigeria Police and other experts who visited the affected area on 1st September, 1998 to ascertain the cause of the spillage and the extent of the damage. The report of the JIV is that, the spillage was as a result of acts of vandalisation by some unknown persons. Hence, the Appellant refused to pay any compensation to the Respondents. Therefore, the Respondents instituted an action against the Appellant at the lower Court vide their Writ of summons and claimed against the Appellant as follows:

The sum of one billion, two hundred and ninety-six million seven hundred and ten thousand naira (N1,296,710,000.00) special and general damages for damage suffered by the plaintiffs by reason of the 28th day of August, 1998 manifold oil spillage caused by the leakage in the defendant's pipeline enroute Opuama which has a devastating spread to some communities in Ilaje Local Government resulting in destruction of aquatic, ecological and commercial lives of the plaintiffs as quantified in the plaintiffs' valuation report. The defendant having neglected, failed and refused to negotiate and or pay adequate and reasonable compensation nor clean up the affected environment despite repeated demands.

The parties filed and exchanged pleadings and the case went to trial. The Respondents in a bid to establish their claims called two witnesses and tendered in evidence one Exhibit marked "Exhibit 1". The Appellant learned four Witnesses and tendered eighteen exhibits, marked Exhibits 2, 2A15, 3 and 4. During trial, the Respondents withdrew the second limb of their claim, that is, general damages in the sum of five hundred thousand Naira (N500,000), see the statement of claim at page 25 of the record of appeal. The said claim for general damages was struck out accordingly.

The learned trial Judge in his considered judgment found that the Appellant was negligent for the oil spillage which emanated from the Opuama manifold, a facility owned by it. And that the spillage caused damage to the Respondents.

However, the learned trial Judge held that the Respondents did not prove the first limb of their claim for special damages. He went ahead to award the sum of forty million two hundred thousand Naira (N40,200,000) general damages in favour of the Respondents against the Appellant.

The Appellant displeased with the judgment of the lower Court filed an appeal against it to this Court. The notice and grounds of appeal dated 20th November, 2002 filed on the same day contains five grounds of appeal. These are contained in pages 141 to 143 of the record of appeal. Briefs of argument were field and exchanged by the parties' learned counsel.

In the brief of argument prepared for the Appellant which was deemed properly filed and served on 26th September, 2006, two issues were distilled from the five grounds of appeal for determination. These state thus:

(1) Whether the award of the sum of forty million two hundred thousand Naira (N40,200,000) as general damages by the trial Court was justified in law?

(2) Whether the trial Judge properly evaluated the evidence before him?

On the other hand, the Respondents' learned counsel, in the Respondents' brief of argument which was deemed properly filed and served on 22nd October, 2007, formulated three issues for the determination of the appeal.

These are as follows:

(1) Was the award of the sum of forty million two hundred thousand Naira (N40,200,000) as general damages not justified in law having regard to the trial Judge's finding of fact of negligence against the Appellant and resultant injuries to the Respondents?

(2) Whether the guiding principles in the assessment and award of general damages were followed by the trial Court?

(3) What is the attitude of the appellate court to award of damages by a trial court?

On 1st February, 2010 when this appeal was heard by this Court, Mr. I.L. Alabi learned counsel for the Appellant adopted, relied upon the brief of argument of the Appellant and urged this Court to allow the appeal. While the learned counsel for the Respondents, Mr. Funso Netufo adopted, relied upon the Respondents' brief of argument and urged this Court to dismiss this appeal.

As stated above in this judgment, the general damages initially claimed by the Respondents had been struck out having been withdrawn by them. See lines 13 to 18 at page 104 of the record of appeal, where the Respondents' learned counsel stated as follows:

We concede to the submission of the learned SAN in respect of N500,000 general damages claimed by the plaintiffs. In the light of theat (sic) we truly withdraw that claim. We stand by our claim in respect of the various amounts claimed by the plaintiffs jointly and severally...

The effect of the above is that the only remaining relief claimed by the Respondents was that for special damages. The lower Court having found that the said special damages were not proved, the question is; was the general damages awarded to the Respondents by it proper in law? In my strong opinion, this is the crux of this appeal.

I wish to observe that all the three Issues formulated by the Respondents are a proliferation. The purport of all three are adequately contained in issue one, which has to do with the propriety of the award of forty million two hundred thousand Naira as general damages by the learned trial Judge for whatever reason(s). From this reasoning, I am of the firm view that, issue one formulated by the Appellant is sufficient for the determination of this appeal. I shall consider the said issue together with the three issues formulated by the Respondents vis-a-vis the submissions of both counsel in respect thereof.

It is the contention for the Appellant that, in the course of the Respondents' learned counsel's submission at the lower Court, he conceded to the submission of learned counsel for the Appellant that, the claim for five hundred thousand Naira as general damages was bad in law. The learned counsel for the Respondents withdrew that leg of the Respondents' claim and the trial Court struck out same accordingly. Consequently, the Respondents were only left to adduce evidence to prove their claim for special damages. The Appellant's learned counsel argued that the trial Court in its judgment rightly found that the Respondents failed as required by law to strictly prove their claims which were based on special damages. However, it was his, contention that the award of forty million two hundred thousand Naira (N40,200,000) as general damages to the Respondents was wrong. This is because in his opinion, the court is not a Father Christmas to give to litigants what they have not claimed. That the said sum awarded as general damages had no foundational basis going by the pleadings and evidence before the lower Court. On this standpoint, reliance was placed on the cases of:

(1) A - G of the Fed. v. A.I.C Ltd. (2000) 10 NWLR (Pt. 675) p. 293 at pgs. 305 - 306; and

(2) Obajinmi v. A. - G. of Western Nig. & Drs. (967) All NLR p. 31 at p. 36.

It was further submitted in favour of the Appellant that, the learned trial Judge having disallowed the catalogued items under the special damages claim ought not to have turned round to inflate and award general damages predicated on those same items so as to accommodate the items already disallowed. What is more, the original sum claimed as general damages has been withdrawn by the Respondents and struck out accordingly. On this stance, he relied on the cases of:

(1) N.B.C. Plc. & Anor. v. Borgundu (999) 2 NWLR (pt. 591) p. 408 at p. 430

(2) West African Shipping (Nig.) Ltd. & Anor. v. Alhaji Musa Kalla (1978) 3 S.C. p. 21; and

(3) U.B.N. Ltd. v. Odusote Bookstores Ltd. (1995) 9 NWLR (Pt. 421) p. 558 at p. 586 para. D.

The Appellant's learned counsel reiterated the legal principles that, the award of general damages is improper where the quantum of loss is ascertainable. And that an appellate court will interfere with outrageous damages awarded by a trial court. On this legal principle, reference was made to the cases of:

(1) Comet S.A. (Nig.) Ltd. v. Babbit (Nig.) Ltd. (2001) 7 NWLR (Pt. 712) p. 442 at p. 454 para. B; and

(2) U.B.N. Ltd. v. Odusote Bookstores supra at pgs. 585 - 586, paras. E-A & pgs. 586 - 587, paras. H -A.

Contrariwise, the learned counsel for the Respondents submitted that, the award of general damages was predicated on the finding of facts by the lower Court that the damages suffered by the Respondents were caused by the Appellant's negligence. In his opinion, neither the finding of facts nor the inference drawn therefrom was perverse or unreasonable. He referred to the legal maxim "ubi jus ibi remedium" which means that, where there is a legal right, there is a remedy. On this position, he relied on the cases of:

(1) Chikere v. Okegbe (2000) 12 NWLR (Pt. 681) p. 274 at pgs. 287 - 28.8.paras. H-A; and

(2) Aliu Bello & 13 Ors. v. A-G of Oyo State (1986) 5 NWLR (Pt. 45) p. 828 at p. 890.

Arguing further, he stated that once a person is entitled to remedy proved by law, it does not matter that the person has applied for the remedy under a wrong law. In this regard, he referred to the cases of:

(1) Edewor v. Uwegba & Ors. (1987) 1 NWLR (Pt. 50) p. 313; and

(2) Henry Stephens Engineering Co. Ltd. v. Complete Home Enterprises Nig. Ltd. (1987) 1 NWLR (Pt. 47) p. 40.

What is more, according to learned counsel, the Appellant has not challenged the validity of the lower Court's evaluation of the said facts adduced before it. He rested his opinion on the cases of:

(1) Cobra Ltd. v. Omole Estate and Inv. Ltd. (2000) 5 NWLR (Pt. 655) p. 1 at p. 15, paras. A - D & F; and

(2) Oshodi v. Evifunmi (2000) FWLR (Pt. 8) p. 1271.

It was postulated in favour of the Respondents that the trial Court was guided by the following principles in the assessment and award of the general damages as it did viz:

(i) General damages are presumed in law to be direct and natural consequences of the act complained of.

(ii) The quantum need not be pleaded and proved.

(iii) The award is quantified by what in the opinion of a reasonable person, is considered adequate loss which flows naturally, from the act of the defendant.

(iv) It does not depend upon calculation made and figure arrived at from specific items.

On this position, he relied on the cases of:

(1) Rockonoh Prop. Co. Ltd. v. NITEL Plc. (2001) 14 NWLR (Pt. 733) p. 468 at pgs. 493, paras. E - G & pgs. 509 - 510, paras. H-E; and

(2) Incar (Nig.) Ltd. v. Benson Transport Ltd. (1975) N.S.C.C. p.115.

The learned counsel for the Respondents opined that, the amount awarded by the trial Court is within the total amount claimed by the Respondents even though, the original claim of general damages was withdrawn. It was contended by the Respondents' learned counsel that the Appellant must specify with particularity the principle of law breached by the lower Court in awarding the general damages in dispute before this Court can be moved to interfere with the said award. That it must also be shown by the Appellant that the said general damages awarded is extravagant thereby making the estimate entirely erroneous. On this standpoint, he relied on the cases of:

(1) Onaga v. Micho (1961) All NLR p. 24; and

(2) Stirling Civil Engineer Nig. Ltd. v. Ambassador Mahmood Yahaya (2005) Vol. 127LRCN p. 1174 at p. 1199.

Having reiterated the opposing positions of the parties herein, it is apposite to restate that, it is trite law that special damages must be strictly and satisfactorily proved. See the cases of:

(1) Momodu v. N.U.L.G.B. & Ors. (1994) 8 NWLR (Pt. 362) p.336; and

(2) Otaru & Sons Ltd. v. Audu Idris & Anor.(1999) 4 S.C.N.J. p.156.

The two parties herein are "ad idem" that, the second leg of the Respondents' claim, that is, the sum of five hundred thousand Naira (N500,000) was withdrawn by the learned counsel for the Respondents and the lower Court struck same out accordingly. I refer in this regard to the submissions of the Respondents' counsel at page 104 lines 13 to 18 of the record of appeal. I agree with the Appellant's learned counsel that, the Respondents were only left to establish their claim for special damages. At the close of the cases for both parties, the learned trial Judge "inter alia" held as follows:

"Since the plaintiffs claims are based on special damages then they will have to prove it strictly which I find in this judgment they have failed to do...Thus, a party asking for special damages must prove strictly that he did suffer such special damages as he claimed. He must establish his entitlement by credible evidence of such a character as would suggest that he indeed is entitled to any award under that head. None of the claimants has come forward to tell the court how many nets he/it lost and what the actual market price is. Similarly none has stated how many fish ponds he/it lost to the spillage. What PW2 said was that he used his previous experience and assumption in arriving at the amount claimed/or all the claimants. What is required for them to succeed on (sic) a claim for special damages is actual loss/damage and not loss/damage based on experience and assumption...

The above is contained in page 139 of the record of appeal.

The line of reasoning of the learned trial Judge reproduced above on the face of it can be regarded as sound. However, despite the sound reasoning, the learned trial Judge went ahead to hold that, the Respondents having suffered damages arising from the negligence of the Appellant were entitled to be compensated by way of general damages. The said line of reasoning and conclusion drawn therefrom, with respect to the learned trial Judge are incongruous and therefore perverse. It is trite law that an appellate court will interfere with and disregard a wrong and perverse finding of a trial Court. A finding is said to be perverse where the record of the trial Court discloses no evidence to support such findings as expected by the applicable law. See the cases of:

(1) Anyanwu v. Mbara (992) 8 NWLR (Pt. 242) p. 386; and

(2) Adegoke v. Adibi (992) 5 NWLR (Pt. 242) p. 410.

In the instant matter, I hold that the finding of the learned trial Judge did not flow from the evidence adduced before him. Hence, he cannot be said to have properly and diligently evaluated the evidence before him the way expected of him by law in the given circumstances of the case. Consequently, the submission of the learned counsel for the Respondents that the second limb of the Respondents' claim for general damages having been withdrawn, the amount awarded as general damages by the lower court was covered by the first limb of their claim for special damages, can only be tagged an illogical legal argument. See the case of: West African Shipping (Nig.) Ltd. & Anor. v. Alhaii Musa Kalla supra at p. 32, wherein it was held that:

"It does appear to us that the award of general damages in this case was a way of compensating the plaintiff for the loss of "expected profit and the freight on goods" which the learned Judge said was proved but not claimed in the writ. This cannot be justified. It is wrong for the learned trial Judge to take into consideration for the award of general damages matters which he should have considered in his award of special damages.

I have set out above the exact claim of the Respondents. Specifically therein, the amount listed in front of general damages is, "N500,000." This claim was withdrawn and struck out. Therefore, the lower Court having found again that the Respondents had failed to prove their claim for special damages, by arithmetical computation, there is actually no claim left for them to prove. To put it in other words, it cannot be said that the Respondents sought a relief of general damages either in his writ of summons or pleadings.

Technically, it is my firm view and I hold that the Respondents did not seek general damages as a relief. What is therefore the effect of the sum awarded as general damages to the Respondents by the lower Court? The law is solidly settled that, a court must not grant to a party a relief which he has not sought or which is more than he has sought. Although this principle of law is only in so far as the reliefs granted are completely outside those sought in the pleadings, the most important thing is that the claim must be within the confines and precinct of pleadings. In the instant matter, the relief of general damages granted by the learned trial Judge is completely strange to and outside the ambits of the pleadings. The relief was not incorporated in the pleadings of the Respondents. The trial Court was in law forbidden from importing same into the pleadings thereby making for the parties a completely different case not contemplated by any of the parties therein. The trial Court lacked jurisdiction to engage in such a voyage. See the cases of:

(1) Kalio v. Kalio (1975) 2 S.C. p. 15 at pgs. 17 -19;

(2) Union Beverages v. Owolabi (1988) 2 NWLR (Pt. 68) p. 128 at p. 133; and

(3) Enigbokan v. A.I.I. Co. (Nig.) Ltd. (1994) 6NWLR (Pt. 348) p. 1.

See also the case of: Ekpenyong v. Nvong (1975) 2 S.C. p. 71 at pgs 81 - 82, wherein the Supreme Court had this to say:

...we think that, as the reliefs granted by the learned trial Judge were not those sought by the Applicant, he went beyond his jurisdiction when he purported to grant such reliefs. It is trite law that the court is without the power to award to claimant that which he did not claim. This principle of law has time and again been stated and re-stated by this Court that it seems to us that there is no longer any need to cite authorities in support of it. We take the view that this proposition of the law is not only good law, but good sense.

A court of law may award less, and not more than what the parties have claimed, "A fortiori the court should never award that which was never claimed or pleaded by either party. It should always be borne in mind that a court of law is not a charitable institution, its duty in civil cases, is to render unto everyone according to his proven claim...

It follows from the above principle of law that a party can be awarded either special damages or general damages or both. However, this right flows only from the party's success at establishing a sought claim. In the instant matter, the Respondents cannot be said to have any subsisting claim because their only claim after the withdrawal by them of the claim for general damages was rightly held by the lower Court not proved. Consequently, the general damages awarded to the Respondents by the lower Court was not attached to or predicated upon any relief.

In answer to the question posed by the learned Respondents' counsel regarding the attitude of an appellate court to the award of damages by a trial Court, this Court has wide powers to deal with any appeal before it and make any order as it thinks just to ensure the determination on the merits of the real issues in controversy between the parties who have submitted themselves to its jurisdiction. In this regard, see Section 15 of the Court of Appeal Act, 2004.  
It is now a basic legal principle that an appellate court ought not to upset the award of damages by a trial Court; merely because if it had tried the matter, it would have awarded a lesser amount. See the cases of:

(1) James v. Mid-Motors (Nig.) Ltd. (1978) 12 S.C p. 31, and

(2) A.C.B. Ltd. & Ors. v. B.B. Apugo (2001) 2 S.C p. 215.

However, an appellate court may properly intervene where it is satisfied that the trial Judge in assessing the damages applied a wrong principle of law such as taking into account some irrelevant factors or leaving out of account some relevant factors, or that the amount awarded is either so ridiculously low or so ridiculously high that it must have been a wholly erroneous estimate of the damage. See the cases of:

(1) Harold Shodipe & Co. Ltd. v. Daily Times (Nig.) Ltd. (1972) 11 S.C p. 6 and

(2) A.C.B. Ltd. v. Apugo supra.

In the instant case, the learned trial Judge had rightly proclaimed that, the claim of the Respondents was based on special damages which they had to prove strictly but that, they failed in attaining this measure or standard of proof. I refer in this regard to the last paragraph of page 139 of the record of appeal where the learned trial Judge held that, none of the claimants came forward to tell the court the actual loss suffered by them either collectively or individually. In the given circumstances of this matter as can be gleaned from the record of appeal, I am of the strong view and I hold that no actual loss/damage was proved by the Respondents to entitle them to the award of special damages. What is more, they did not either collectively or severally claim or prove any damage/loss. Therefore, no damages could be said to have arisen as wrongly held by the learned trial Judge. With due respect to the learned trial Judge, his conclusions did not flow from his findings on the facts placed before him by the parties in this matter.

Consequently, regarding issue two of the Appellant, having held that the lower Court properly founded that the only remaining relief claimed by the Respondents, that is, special damages, had not been proved, the question whether or not the lower Court made proper specific findings is an academic issue which I intend to and hereby discountenance. My resolve is strengthened by the settled principle of law that, it is not the business of a Court of law or Tribunal to engage in academic exercises, hypothesis and moot arguments. See the case of: D.E.N.R. Ltd. v. Trans Int'l Bank Ltd. (2008) 18 NWLR (Pt. 1119) p. 388, Muhammad Muntaka-Commassie J.S.C. at pages 420 - 421, had this to say:

"When an issue becomes academic or hypothetical in nature, a court of law will have no jurisdiction to hear or determine it ...mere academic issue ...will not affect the outcome of the appeal."

See also the case of: Adeogun & Anor. v. Fashogbon & Ors. (2008) 17 NWLR (Pt. 1115) p. 149, at p. 180 paras. B - H & p. 181 para. A wherein Tobi JSC, meticulously reiterated the definition of academic land hypothetical suits in these words:

In Plateau State of Nigeria v. Attorney General of the Federation (2006) 3 NWLR (Pt. 967) 346. I defined academic and hypothetical suits at page 419:

A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity... A suit is hypothetical if it is imaginary and not based on real facts. A suit is hypothetical if it looks like a "mirage" to deceive the defendant and the court as to the reality of the cause of action. A suit is hypothetical if it is a semblance of the actuality of the cause of action or relief sought.

In Chief Olafisoye v. Federal Republic of Nigeria: (2004) 4 NWLR (Pt. 846) 580, I also said at pages 654 and 655:

Courts of law, as most serious and sacred institutions, do not build upon hypothesis which is an idea suggested as a possible way of explaining facts or providing argument. The adjective "hypothetical" really means that which has not been proved or shown to be real. It also connotes imaginary ... Hypothesis by their very nature generally have no limitation and courts of law by their judgments have limitations.

Academic and hypothetical issues or questions do not help in the determination of the live issues in a matter. They are merely on a frolic or they are frolic-some; not touching or affecting the very tangible and material aspects in the adjudication process. As a matter of law, they add nothing to the truth searching process in the administration of justice. This is because they do not relate to any relief. See further Oladoye v. Administrator, Osun State (1996) 10 NWLR (Pt. 476) 38; Bamgboye v. University of Ilorin (1999) 10 NWLR (Pt. 622) 290; Anyankpele v. Nigerian Army (2000) 13 NWLR (pt. 684) 209; Moriki v. Adamu (2001) 15 NWLR (Pt. 737) 666; Adewumi v. Attorney-General of Ekiti State (2002) 2 NWLR (Pt. 751) 474; Kentebe v. Isangedighi (2002) 8 NWLR (Pt. 768) 134.

In conclusion, I hold that this appeal is meritorious. It is hereby allowed. In view of the foregoing grave error into which the learned trial Judge have fallen in his judgment under review, without hesitation, I have come to the conclusion that the said judgment of Abdul-Kafarati J., delivered on 15th November, 2002 together with the order purported to have been made therein should not be allowed to stand, and they are hereby set aside accordingly. I make no order for costs.

**AMINA A. AUGIE, J.C.A.:**

I have read in draft the lead Judgment just delivered by my learned brother, Omoleye, JCA, and I agree that the appeal should be allowed. It is an elementary principle that a Court of law cannot give and should never award a relief not specifically pleaded or sought.  See N. B. C. I. V. Standard (Nig.) Eng. Co. Ltd. (2002) 8 NWLR (pt. 768) 104; Ndulue V. Ibezim (2002) 12 NWLR (pt 780) 139; Ogun V. Asemah (2002) 4 NWLR (pt 756) 208. See also Ayalogu V. Agu (2002) 3 NWLR (pt. 753) 168, where this Court per Olagunju, JCA observed.

Notwithstanding the lofty and magnanimous gesture of the learned trial Judge, the law as it stands, is not predisposed to beneficent philanthropy of doling out bounties on the basis of need rather than supplication that identifies the need. On the duty of a suppliant to ask for a relief before it can be granted, particularly apposite is the dictum of Babalakin, JCA (as he then was) in Ladejobi V. Shodipo (1989) 1 NWLR (pt 99) 596 that the rule is to ask and thou shall be given if you are legally qualified for your request. The bifurcated error that mars the decision is taking the initiative unsolicited to grant the relief, which the beneficiary did not ask for.

The lower Court in this case definitely erred when it awarded general damages that were not hinged on any relief, and its decision, as my learned brother put it, should not be allowed to stand, and it will not be. In the circumstances, I also allow the appeal. I abide by the consequential orders in the lead Judgment including that on no costs.

**CHIOMA EGONDU NWOSU-IHEME, (Ph. D) J.C.A.**:

I had a preview of the Judgment just delivered by my learned brother, OYESISI F. OMOLEYE, JCA. I agree with the reasoning contained therein and the conclusion arrived there at.

I, too for the reasons stated in the lead Judgment, allow the appeal and set aside the decision of the trial court. I abide by all the consequential orders, including the order as to costs contained in the lead Judgment.