**GUARANTY TRUST BANK PLC**

**V.**

**MR. ADEYINKA AJIBOYE**

COURT OF APPEAL (ILORIN DIVISION)

20TH DAY OF FEBRUARY 2017

CA/IL/130/14

**LEX (2017) - CA/IL/130/14**

OTHER CITATIONS

2PLR/2017/146 (CA)

**BEFORE THEIR LORDSHIP**

MOJEED ADEKUNLE OWOADE JCA (Presided)

HAMMA AKAWU BARKA JCA

BOLOUKUROMO M. UGO JCA (Read the Lead Judgment)

**BETWEEN**

GUARANTY TRUST BANK PLC – Appellant

AND

1. MR. ADEYINKA AJIBOYE

2. MRS. OLABAMIBO ADEYINKA AJIBOYE – Respondent

**ORIGINATING COURT**

HIGH COURT OF KWARA STATE (M. A. Folayan J., President)

**REPRESENTATION/LAWYERS**

OLADIPO OLASOPE Esq. with A.G. ADEMOLA-BANKS Esq., A. A. MOMOH and ADEOLA ADELUSI Esq.) - for the Appellant

TOYIN OLADIPO Esq. with G. OGUNDIRAN – for the Respondents.

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

TORT AND PERSONAL INJURY LAW:– Civil claim arising from a criminal accusation and investigation – Judgment for damages and restoration of unlawfully seized properties made in civil suit – When may be deemed suspended or amended by subsequent order of another court arising from the substantive criminal prosecution – Extent of

CRIMINAL LAW AND PROCEDURE:- Theft of bank monies by bank employee in charge of ATM machines – Duty of prosecution to prove same and to enforce lawful orders made by court – Where bank resorted to extra-judicial self-help in confiscating funds and properties traceable to the alleged theft – Order of a civil court to return seized funds and property back to the accused person along with damages – Whether can be over-ridden or deemed amended by a subsequent order of a criminal court ordering the seizure and forfeiture of same funds and property for the benefit of bank – How treated

CONSTITUTIONAL AND HUMAN RIGHTS LAW - FUNDAMENTAL RIGHTS - Judgment given in favour of applicant under the Fundamental Rights Enforcement Procedure Rules - Whether vitiated by subsequent judgment (in a related matter) against applicant in a criminal trial.

CONSTITUTIONAL AND HUMAN RIGHTS LAW - FUNDAMENTAL RIGHTS - BREACH OF - Whether may be justified in the light of an exercise of a party’s internal control system.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - ISSUES FOR DETERMINATION:- Formulation of in abstract or academic terms - Impropriety of.

APPEAL – JUDGMENT:- Every slip therein - Whether grounds an appeal instituted against.

APPEAL – JUDGMENT:- Impeachment of - Need to found on basis of evidence led before trial court - Fresh evidence on appeal - Party who seeks to introduce same - Onus on.

EVIDENCE - CREDIBILITY OF WITNESSES AND WEIGHT TO ATTACH TO EVIDENCE PROFFERED - Duty of trial court to undertake - Witness who has on a particular issue - Attitude of court to.

EVIDENCE - WITNESS STATEMENT ON OATH:- Copy of - When a party is required to file with application for amendment - Order 28, rule 3, High Court (Civil Procedure) Rules of Kwara State, 2005 considered.

JUDGMENT AND ORDER - DAMAGES - SPECIAL DAMAGES AND GENERAL DAMAGES:– Where awarded simultaneously - Whether amounts to double compensation in all cases.

JUDGMENT AND ORDERS – JUDGMENT:- Every slip therein - Whether grounds success of appeal against.

JUDGMENT AND ORDERS - JUDGMENT GIVEN IN FAVOUR OF APPLICANT UNDER THE FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE RULES:- Whether vitiated by subsequent judgment (in a related matter) against applicant in a criminal trial.

JUDGMENT AND ORDERS – JUDGMENT:- Impeachment of – Need to found on basis of evidence led before trial court – Fresh evidence on appeal - Party who seeks to introduce – Onus on.

INTERPRETATION OF STATUTE - HIGH COURT (CIVIL PROCEDURE) RULES OF KWARA STATE, 2005, ORDER 28, RULE 3:– Construction of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The 1st respondent was a staff of the appellant and was responsible for feeding the latter’s Automated Teller Machine (ATM) with its funds. He alleged that the officials of the appellant had accused him of stealing its money that was supposed to be fed into the ATM and was therefore arrested and detained in appellant’s abandoned guesthouse. He further claimed that all the money belonging to him, his wife and daughter was withdrawn and appropriated by the appellant and his house was ransacked.

Also, that the appellant got him arrested and reported him to EFCC who then filed a criminal complaint against him. The respondents therefore commenced an action in the High Court of Kwara State, seeking declaratory and injunctive reliefs to the effect that his arrest, confiscation and sale of his property, transferring unilaterally the money of 2nd respondent in appellant’s custody to the appellant are null and void. They further sought for the return of the sum unlawfully taken from respondents’ accounts, perpetual injunction restraining the appellant from further trespass to respondents’ house and damages.

The appellant filed a counterclaim and denied the respondents’ claims averring that the 1st respondent had confessed to misappropriating the funds and that it had followed due process in recovering its funds. The trial court granted respondents’ claim in part.

Dissatisfied, the appellant appealed to the Court of Appeal contending that the lower court erred by holding that the appellant did not follow due process.

**DECISION(S) APPEALED AGAINST**

The trial Court entered judgment, granting the respondent’s claims in part. Dissatisfied, the Appellant appealed to the Court of Appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

l . Whether from the facts and circumstances it can be said that the appellant followed due process in the recovery of the stolen property.

2. Whether from the facts of the case the learned trial judge was right in giving judgment in favour of the respondents.

3. Whether the learned trial judge was right in not granting the counterclaim.

4. Whether there was any evidence before the trial court to warrant the award made by it.

5. Whether the claim of the respondents can be granted in view of the judgment in KWS/56C/2011.

6. Whether there was any evidence to support the contention that the respondent was illegally arrested and detained by the appellant.

7. Whether the learned trial judge was right in awarding general damages in this case.

*BY RESPONDENTS:*

1. Whether the evidence of DW1 was reliable.

2. Whether the trial judge rightly found that the 1st respondent (as 1st claimant) whether the appellant could use its internal control mechanism to arrest and detain the 1st respondent.

3. Whether the trial court rightly held that the appellant did not report the matter relating to the 1st respondent to the police immediately DW1 arrived in Ibadan with the 1st respondent and whether the trial court rightly held that what the bank did amounted to self-help which is illegal.

4. Whether the trial court rightly found that the staff of the appellant forcefully entered the respondents’ house and carted away the household items without resort to the police.

5. Whether the appellant proved its counterclaim.

6. Whether the claims of the respondents were supported by any evidence.

7. Whether the award of N300,000 as general damages to the respondents amounted to double compensation.

8. Whether the evidence adduced by the 1st respondent (as 1st claimant) was credible or deserving of any weight.

**MAIN JUDGMENT**

UGO JCA (DELIVERING THE LEAD JUDGMENT):

This appeal is against the judgment of the High Court of Kwara State of 5 February 2014 in suit No KWS/6/2012, in which the learned trial judge, M.A. Folayan J., entered judgment for the respondents as per their claim and dismissed appellant’s counterclaim.

The respondents, who were claimants in that court and defendants to appellants’ counterclaim, are husband and wife. 1st respondent was a staff of the appellant’s bank at its Tanke Junction, llorin branch at all times relevant to the suit and was responsible for feeding its ATM machine with its funds. On 13 July 2009 while he was on duty, two officials of the appellant, one of which was DW1, Afolabi Habeeb Tolulope, came from its Regional Office in Ibadan and accused him of stealing appellant’s monies running to as much as N46,000,000 (forty-six million) entrusted to him for its Automated Teller Machines (ATM). They also informed him that they were instructed to take him to its said Regional Office in connection with the fraud. The 1st respondent said he denied the allegation but the two men nonetheless arrested, manhandled and handcuffed him and took him first to his house, seized his vehicles and later whisked him away to Ibadan where they detained him for two weeks in a room in appellant’s abandoned guesthouse. He stated that the appellant’s officers who were acting on the instructions of appellant did not even give him food for the duration of his detention, so, he had to beg people around to buy food for him and it was an empty bucket of paint he was made to use to answer the call of nature for the duration of his detention.

A day after his arrest, being 14 July 2009, DW1 and his partner, one Dotun Olorundero, he said, brought him from Ibadan back to Ilorin where they took him to several other banks where himself, his wife and two-year-old daughter had accounts and made him withdraw all the funds in those accounts and appropriated it for appellant. In appellant’s Ilorin branch office in particular, respondents alleged, appellant simply transferred all the funds in 2nd respondent and their daughter’s account to the appellant.

While 1st respondent was detained by appellant, respondents claimed, appellant’s staff went to his house in Ilorin, forced their way in, ransacked the house and carted away electronics and other household goods belonging to the respondents and later unilaterally sold the seized items. It was when he was compelled to commence proceedings for enforcement of his fundamental rights against appellant, they alleged, officials of the appellant quickly bundled him to police station at Ibadan where he was further detained and later taken to Special Anti-Fraud Unit of the Lagos command of the police and again detained for eight (8) days before he was granted bail.

Not long after that, appellant, they further claimed, reported 1st respondent again to the Economic and other Financial Crimes Commission (EFCC) on the same issue, and EFCC, after investigation, filed a criminal complaint No. KWS/56C/2011: F.R.N. v. Adeyinka Ajiboye against him on 9 November 2011 in the High Court of Kwara State.

It is while that criminal complaint was pending that the respondents, on 18 January 2012, instituted the instant civil suit in the same High Court against appellant to get redress for what they described as 1st respondent’s unlawful arrest, humiliation, brutalization by appellant and its illegal and forceful seizure of their goods and unlawful sale, illegal withdrawal of their funds in various banks (most of them in millions of naira) and so forth allegedly perpetrated on them by the officials of the appellant at its behest. They claimed against the appellant:

i. Declaration that the unilateral arrest, handcuffing and detention of the claimant by the defendant in its private prison in Ibadan is unlawful and illegal.

ii. Declaration that the confiscation of the 2nd claimant’s money found in their house, to wit N700,000.00 (seven hundred thousand naira) and their personal properties including 2 nos. television sets, deep freezer, fridge, 2 nos. generating sets, home theatre electronic, Samsung hand phone, laptop computer, 2 nos. Sienna vehicles, and the 1st claimant’s Honda Vehicle, Samsung and Nokia handsets and their unilateral sale are unconstitutional, illegal, unlawful and consequently null and void.

iii. Declaration that the act of the defendant in unilaterally directing the liquidation of the claimant’s fixed deposit accounts at Oceanic bank Plc and Guaranty Trust Bank Plc respectively, confiscation of the amounts totalling N2,500,000.00 (two million, five hundred thousand naira) therein is unconstitutional, illegal, unlawful and consequently null and void.

iv. Declaration that the act of the defendant in compelling the 1st claimant to sign out his money in Guaranty Trust Bank Plc, First Bank of Nigeria Plc, Oceanic bank plc and Intercontinental Bank is unconstitutional, unlawful and consequently null and void.

v. Declaration that the act of the defendant in unilaterally transferring the sum of N259,000.00 (two hundred and fifty-nine thousand naira) in the 2nd claimant’s savings account No. 4424406351590 in Guaranty Trust Bank Plc to its own account is illegal, unconstitutional, null and void.

vi. Declaration that the act of the defendant in unilaterally transferring the sum of N89,000.00 (eighty-nine thousand naira) in the claimants’ daughter’s savings account in Guaranty Trust Bank Plc to its own account is illegal, unconstitutional, null and void.

vii. An order for the return of the sum of N7,807,580.00 (seven million, eight hundred and seven thousand, five hundred and eighty naira) unlawfully taken from the claimants’ accounts and unilaterally confiscated.

viii. Perpetual injunction restraining the defendant and its agents from further trespassing in the claimants’ house or seizing or confiscating their properties.

ix. N5,376,900.00 (five million, three hundred and seventy-six thousand, nine hundred naira) special damages being the total cost of the claimants’ personal items illegally seized or confiscated and sold by the defendant and/or its agents.

x. N5,000,000.00 (five million naira) damages for trespass, unlawful arrest and detention.

They filed a statement of claim and frontloaded witness statements along with their writ of summons but later amended their statement of claim. The two of them also testified as CWs 1 and 3 and called the 1st respondent’s elder brother Olasunkanmi Olugbenga Ajiboye as CW2. In its defence, appellant denied any wrongdoing in the whole affair or ever using self-help in the process of recovering what it called its stolen funds from the respondents or sale of their properties. It rather maintained that upon a tipoff that the 1st respondent had heavily defrauded it of monies entrusted to him for feeding its Automatic Teller Machine and was living a lifestyle that was out of proportion with his means, it sent two of its staff from its regional office at Ibadan to 1st respondent’s Tanke, Ilorin branch and confronted him with the charge and evidence, whereupon he admitted defrauding it and voluntarily took its said officers to the banks where he had stashed away the said funds and wilfully withdrew them for it. It is by the same process, it also averred, he also wilfully took its staff to his residence in Ilorin and sold his properties including cars illegally acquired by him with the stolen funds and handed over same to it. It denied that its officers manhandled, detained or in any way il-ltreated 1st respondent in the process, but rather claimed that it was to document 1st respondent’s confession that its officers even took him to its regional office in Ibadan. It maintained, too, that at Ibadan, its staff promptly reported the matter to the State Criminal Investigation Department (C.I.D.) of the police which, after granting him bail, required him to be reporting to it on daily basis and it was to avoid the cost/stress on him of coming daily from Ilorin to Ibadan that it made available to him at his request a room in its guesthouse in Ibadan for the duration of the investigation. It (appellant) then went on to counterclaim against 1st respondent for a declaration that it was rather he (1st respondent) that was liable to it in the sum of N30, 800,000.00 (thirty million, eight hundred thousand naira) as outstanding sums misappropriated by him while in its employment.

It presented its case through its aforementioned Afolabi Habeeb Tolulope of its Ibadan Regional Office.

In its judgment of 5 February 2014, the trial judge disbelieved appellant’s assertion of following due process in the manner it went about the whole business of arresting 1st respondent, seizing and confiscating respondents’ funds and seizing and selling their properties, and rather held that appellant took the law into its hands by adopting self-help. He strongly condemned appellant’s said conduct, describing it as exercise of ‘might is right’ and ‘the end justifies the means’. He also said he believed 1st respondents’ evidence, which he observed was neither challenged nor controverted, that he (1st respondent) was arrested by appellant’s officers on 13 July 2009 in Ilorin and taken to Ibadan and detained till the second day in its `abandoned guesthouse’ without food till 14 July 2009 when he was brought back to Ilorin for the search and seizure of his properties and the confiscation of bank accounts. The judge described the subsequent report appellant made to the police against 1st respondent as ‘medicine after death.’

The same trial judge who had the peculiar advantage of hearing and seeing all the witnesses testify described the evidence of appellant’s only witness, Afolabi Habeeb Tolulope as ‘evasive’ and ‘slippery’ both in examination-in-chief and cross-examination. It held that the story of the same DW1 that 1st respondent begged him and his partner to be allowed to stay in appellant’s guesthouse so as to be reporting to the State CID ‘was not supported by any concrete truth and does not represent the truth in this matter.’ It went on to also hold that on the preponderance of evidence, the evidence of the respondents was ‘preferable as representing the truth,’ as to whether or not he was arrested or stayed in the appellant’s guesthouse on his own volition: It concluded this issue of the manner of the 1st respondent’s arrest by saying that ‘there are laws governing the people of this country and in criminal cases nobody as individual has the right to take the laws into his hands and resorting to self-help.’

It made similar adverse comments against appellant concerning the seizure of respondents’ properties and bank accounts, describing appellant’s conduct as ‘illegal and unlawful.’

It said that appellant had ‘no right under the law’ to take laws into its hand in doing what it did through its agents/staff. It consequently ordered it to return the said properties to the accounts from which they were withdrawn, ‘for their failure to follow due process of law’.

Coming to proof of the amounts the respondents claimed for their seized properties, the Judge said the respondents merely allocated prices to each of them without stating how they came about them. He thus held that they were ‘unsubstantiated’ and he could `not go by them,’ but said he ‘found it more comfortable’ to order the defendant to replace them, and ordered likewise. That was after he had also granted “all the declaratory reliefs (6 of them) sought by the claimants.”

Despite making all these orders however, the lower court (per Folayan J.) was very commendably conscious of the fact that 1st respondent was facing a criminal trial in case No. KWS/56C 2011 before a brother judge (Abdulgafar J.) of that same court on the same allegations of stealing appellant’s same funds and, realizing that the result of that case could impact on its decision that appellant return their goods, proceeded to add this important caveat at page 22 of its judgment (page 302 of the records of appeal):

“If the defendant [appellant] succeeded in proving her case before the High Court handling the criminal case, that court may make necessary orders that would enable the defendant recover whatever amount the court declares as owed before it as having being stolen by the 1st claimant [1st respondent].”

It finally awarded N300,000 (three hundred thousand naira) as general damages in favour of the respondents (against the appellant) ‘for the unlawful arrest, detention, inhuman treatment by handcuffing, inconveniences suffered by the seizure of their properties and the embarrassment suffered by the claimants by the unlawful forceful entry and seizure of their properties,’ and dismissed appellant’s counterclaim which it held not proved.

The appellant is miffed by that judgment and is of the view that it is erroneous, hence, this appeal which it first lodged on an eight-ground notice and grounds of appeal on 6 February 2014 and then added further 14-grounds on 11 April 2012 before finally securing the leave of this court to condense all its grounds of appeal in an amended notice of appeal of twenty-one grounds which it duly filed on 11 June 2015.

In its brief of argument dated 14 July 2016 but filed on 28 September 2016 by Mr Oladipo Olasope, it formulated the following seven issues for determination:

l . Whether from the facts and circumstances it can be said that the appellant followed due process in the recovery of the stolen property.

2. Whether from the facts of the case the learned trial judge was right in giving judgment in favour of the respondents.

3. Whether the learned trial judge was right in not granting the counterclaim.

4. Whether there was any evidence before the trial court to warrant the award made by it.

5. Whether the claim of the respondents can be granted in view of the judgment in KWS/56C/2011.

6. Whether there was any evidence to support the contention that the respondent was illegally arrested and detained by the appellant.

7. Whether the learned trial judge was right in awarding general damages in this case.

The respondents also filed and adopted a brief of argument prepared on their behalf by Toyin Oladipo Esq, on 22 February 2016. In it they first preliminarily objected to grounds 6, 8, 11, 17 and 21 of the appellant’s grounds of appeal and then went on to formulate the following eight issues which they considered as arising from all the grounds of appeal:

1. Whether the evidence of DW1 was reliable.

2. Whether the trial judge rightly found that the 1st respondent (as 1st claimant) whether the appellant could use its internal control mechanism to arrest and detain the 1st respondent.

3. Whether the trial court rightly held that the appellant did not report the matter relating to the 1st respondent to the police immediately DW1 arrived in Ibadan with the 1st respondent and whether the trial court rightly held that what the bank did amounted to self-help which is illegal.

4. Whether the trial court rightly found that the staff of the appellant forcefully entered the respondents’ house and carted away the household items without resort to the police.

5. Whether the appellant proved its counterclaim.

6. Whether the claims of the respondents were supported by any evidence.

7. Whether the award of N300,000 as general damages to the respondents amounted to double compensation.

8. Whether the evidence adduced by the 1st respondent (as 1st claimant) was credible or deserving of any weight.

Let me first take on the respondents’ preliminary objection. They first attacked ground 6 of appellant’s grounds of appeal. They asserted that it was abandoned because, in their view, the said ground complained about the lower court’s finding that appellant’s only witness DW1 was unreliable yet no issue was framed on it. Mr Oladipo Olasope for the appellant in reply argued that appeals are not argued on grounds of appeal but on issues; that in this case, the issue complained of in ground 6 of the lower court’s finding of unreliability of DW1 is argued in paragraph 5.05 of appellant’s brief of argument. I agree with the appellant. The finding of the unreliability of the evidence of DW1 is copiously attacked by the appellant not only in paragraph 5.05 of its brief but especially in paragraph 5.09 of that same brief where it argued that “we submit that on the balance of probabilities, the evidence of DW1 should have been believed by the court as it was not shown that he was a liar nor of questionable character’ This ground of the objection therefore fails too.

The attack on ground 8 of the appeal is that the issue raised therein by the appellant that the actions it took in arresting and investigating the 1st respondent were its internal control measures, which it was entitled to take and so same did not amount to unlawful or illegal arrest, was not canvassed before the lower court neither was it part of its judgment and so cannot be raised without the leave of this court. The appellant’s response in its reply brief was that these issues were pleaded by it in paragraphs 12, 13, 15, 16 and 17 of its statement of defence but the lower court failed to look at them hence the complaint in ground 8. I have looked at the said paragraphs 12, 13, 15, 16 and 17 of appellant’s statement of defence and cannot see averred there any right of it to exhaust its internal control mechanism. All it simply did in those paragraphs was to deny the respondents’ allegation that its officers ill-treated and physically assaulted 1st respondent and forcefully confiscated his funds and properties, and then assert, in further answer, that it was rather the 1st respondent that voluntarily made a confessional statement and returned his stolen fund and properties to offset his fraud. Ground 8 is thus incompetent, even more so as it did not arise from the judgment of the lower court. It is accordingly struck out.

Respondents’ objection to ground 11 of the grounds of appeal is that appellant therein complained about making recoveries, yet issue F formulated from it talks about illegal arrest and detention and so that ground is deemed abandoned. I do not agree with them here. Ground 11 complains of the lower court’s finding of the unlawfulness of the 1st respondent’s arrest from which the recoveries were made and not just about the recoveries itself.

Respondents’ objection against ground 17 is that even though the ground complains of the lower court’s order that the seized items be returned, no issue was formulated by appellant from it.

The appellant in answer in its reply brief argued that issue B covers that ground. I agree with the appellant; issue 2 of its brief, where it argued whether from the facts of the case the learned trial Judge was right in giving judgment in favour of the respondents seems to cover it.

Respondents’ grouse against ground 21 is that (1) particular No. 1 there does not have anything to do with the issue of double compensation raised therein, and (2) that case No KWS/56C/2011 referred to therein in support of the appellant’s argument of double compensation is a criminal case to which appellant was not a party, and (3) that particular 3 of that ground is just a rehash of the ground and will be unable to support it and so it is vague and liable to be struck out. In response, appellant argues that the said ground 21 discloses what it is all about and so valid and respondent’s objection against it is based on technicality.

Now, the complaint in ground 21 of the appeal runs thus:

The learned trial judge erred in law in granting the claims of the claimant and by so doing doubled the compensations of the claimants.

Particulars

1. The 1st applicant was charged to court in suit No KWS/56C/2011 Federal Republic of Nigeria v. Adeyinka Ajiboye.

2. In a judgment delivered by the said court, all the claims of the claimant in the civil case were given to the claimant in the criminal case.

3. Granting his claims in this matter amounted to double compensation.

I must confess that I also find the complaint of the appellant in this ground most difficult to understand, especially as the judgment in the criminal case No. KWS/56C/2011 it is founding her complaint of double compensation was given on 11 February 2014 - six days after the judgment in this case - going by what is shown in the supplementary records containing it. That also naturally means that it was not, and could not have been referred to in the judgment of the lower court on appeal and so cannot form the basis for deciding the wrongness of the judgment of that court. A judgment can only be impeached on the basis of the evidence presented before it; so if a party feels that a document not presented before that court is relevant to the appeal and could have affected the decision, it is up to that party to bring appropriate application to introduce that fresh evidence on appeal; and then the appellate court will subject the application to the relevant principles applicable to it to see if it can receive it. That has not been done in this case so I cannot see how we can, subject to what I will say later on the lower court’s earlier mentioned pronouncement on the effect of that decision on its order for return of the respondents’ properties, rely on that judgment to decide if the lower court was right or wrong. For this reason, this ground and issue five of appellant formulated from it where the appellant argued that the claim of the respondents ought not to have been granted in view of the judgment in KWS/56C/2011 and granting it amounted to doubly compensating respondents is incompetent and hereby struck out.

And that leaves the field clear for me to consider the remaining issues in the appeal.

The appellant argued its issues 1, 2, 6 and 7 together.

These issues are:

1. Whether from the facts and circumstances it can be said that the appellant followed due process in the recovery of the stolen property.

2. Whether from the facts of the case the learned trial judge was right in giving judgment in favour of the respondents.

3. Whether there was any evidence to support the contention that the respondent was illegally arrested and detained by the appellant.

4. Whether the learned trial judge was right in awarding general damages in this case.

These issues in the main question the lower court’s decision finding appellant liable for failing to follow due process in the manner she went about the whole affair of arresting and detaining 1st respondent and confiscating his bank accounts and properties along with those of his wife and little daughter.

Relying on its averments in paragraphs 20 and 21 of its statement of defence and the witness statement of its sole witness, where it asserted that 1st respondent wilfully\ took its officers and the police to Ilorin to sell his properties and withdrew monies in their bank accounts to offset his fraud on it, appellant through its counsel argued that it showed that it complied with due process and the lower court was wrong to hold otherwise. It maintained that it had to exhaust its internal control mechanism and not only did that but even went further to involve the police in the matter so it cannot be rightly accused of sidestepping due process, and for that reason the case of Fidelity Bank Plc v. Bojuya Ventures Ltd (2012) All FWLR (Pt. 646) 546 at 573 - 574 relied on by the lower court in support of its decision was inapplicable. It proceeded to label 1st respondent as a liar and unreliable witness and excoriated the lower court for believing his evidence. It gave a number of reasons for its poor view of 1st respondent chief among which was that he allegedly gave evidence in the proceeding that conflicted with his evidence in the trial-within trial in the criminal trial of case No KWS/56C/2011: F.R.N. v. Adeyinka Ajiboye, which proceeding (trial-within-trial) was tendered as exhibit 7. It argued that where it is apparent that a witness lied, his evidence ought not to be believed - for which she cited Adewumi v. NEFML (2014) LPELR-22557. It also submitted that besides the evidence of 1st respondent, respondents had nothing to prove their case, and in any case, the evidence of its sole witness should have been believed by the lower court on the balance of probabilities more so as, in its view, his character was not questionable and he did not lie like 1st respondent. It thus argued that on the whole, there was no unlawful arrest or detention of 1st respondent and the lower court was wrong to award against it damages of N300, 000 (three hundred thousand naira) and same ought to be set aside, too, not only for the fact that it was made on a wrong premise but because it amounted to double compensation since the same court had earlier granted respondents what it referred to as special damages. In support of its argument that the court ought not to award general damages where it has awarded special damages and same amounts to double compensation, its counsel referred us to the cases of British Airways v. Atoyebi (2015) All FWLR (Pt. 766) 442 at 468 and Artra Industries (Nig) Ltd v. N.B.C.I (1998) 4 NWLR (Pt. 546) 357, (1998) 3 SCNJ 97.

On its issue 4 of whether there was any evidence before the trial court to warrant the awards made by it, appellant argued that since the respondents in amending their statement of claim by the court’s order of 13 May 2013 did not depose to a further witness statement to accompany it, they had no evidence to support their pleadings and so practically abandoned it as pleadings cannot take the place of evidence. It cited the cases of Mustapha v. Abubakar (2012) All FWLR (Pt. 651) 1519 at 1526 and Alkali Edu Consulting v. Yobe State Government (2012) All FWLR (Pt. 627) 780 at 781. For that reason, it argued, the lower court was wrong to enter judgment in their favour for return of their goods seized by it, especially when the same court had also identified that flaw in respondents’ case. It submitted that the case of the respondents was bound to fail even on this point alone of lack of evidence to back it up.

Coming to its issue 3 which questions the lower court’s decision dismissing her counterclaim, appellant argued that it was wrong to say that it was duty bound to prove beyond reasonable doubt its allegation that 1st respondent stole its monies but failed to do so. It asserted that this is a civil case and so proof is by balance of probabilities; and in any case, it proved that 1st respondent actually stole its N46,000,000 (forty-six million) out of which it had recovered N15,200, 000 (fifteen million, two hundred thousand naira), leaving a balance of N30.800,000 (thirty million, eight hundred thousand naira), and further referring us to page 268 of the records of appeal, it asserted that even 1st respondent admitted under cross-examination that he actually suppressed N46,000,000 (forty-six million) of her money that was meant to be put in the ATM.

It urged us to reverse the decision of the lower court by dismissing the case of the respondents and making an order granting its counterclaim.

Responding first on the appellant’s attack on the credibility of the 1st respondent and his account as to his arrest, detention and confiscation of his accounts and properties which the lower court believed, and also appellant’s submission that the evidence of its only witness was credible and the lower court was wrong in rejecting it, respondents, through their counsel Toyin Oladipo Esq., submitted that the lower court had the peculiar advantage of seeing DW1 and 1st respondent testify and properly evaluated their evidence in coming to the conclusion that DW1 was unreliable; and that being the case, it was outside the province of an appellate court to interfere by substituting its view for that of the trial judge. He cited Isiaq v. Soniyi (2009) All FWLR (Pt. 498) 347 at 383.

Coming to the legality of the arrest, detention and ill-treatment of 1st respondent by the appellant and confiscation of his money and other properties by the appellant which the lower court said was illegal and amounted to self-help for which it granted the respondents N300, 000 (three hundred thousand naira) damages, respondents’ counsel took us through the pleadings and evidence presented before the lower court by both sides and argued that the lower court’s decision was justified. On the issue of internal control mechanism now being invoked by appellant to justify its actions, counsel argued that it was not even raised by appellant in its pleadings and so not available to it, and in any case such internal control mechanism even if available cannot derogate from or override the respondent’s rights guaranteed under the Nigerian Constitution. No internal control mechanism, he submitted, allows an employer to arrest and detain its employee without resort to the law and in the manner the appellant did as found by the lower court.

On the appellant’s argument that respondents did not make any additional witness statement on oath in support of their amended statement of claim and the lower court should have dismissed their case as their pleading was in effect abandoned, same having not been supported by evidence, counsel referred to the records and argued that an additional statement was in fact made and adopted by 1st respondent in his evidence-in-chief as CW3 and the lower court so recorded, as shown in page 276 of the records of appeal. It was therefore quite unfortunate, he observed, that the same court that recorded that “the further and additional statement on oath of 1st claimant (CW3) stands adopted and is taken as further evidence on oath of the witness,” should turn around and hold without giving the parties the opportunity of being heard on it that respondents did not make additional statement to support their amended statement of claim, which pronouncement is now being pounced upon by the appellant for its contention that respondents’ pleading was not supported by evidence and so abandoned and should have been dismissed.

Counsel submitted that the respondents’ motion for amendment of their statement of claim was in any case in order even without the additional statement of the CW3 being attached to it, as Order 28 of the Kwara State High Court (Civil Procedure) Rules 2012 only requires that witness statement be filed along with the motion for amendment where an additional witness is to be called consequent upon the amendment; that since the respondents did not intend to and did not call additional witness, there was no need to file one along with their motion. It was therefore submitted that the comments of the learned trial judge about pleadings not supported by evidence and deemed abandoned and pleadings not being substitute for evidence as regards the prices of their property seized by the appellant and same not substantiated by evidence and so forth were not properly made.

On appellant’s argument that the award of general damages of N300,000 (three hundred thousand naira) by the lower court for the respondents’ unlawful arrest; detention, inhuman treatment by handcuffing and inconvenience suffered by the seizure of their properties, Mr. Oladipo, referring to the said award as ‘paltry’ and even ‘insufficient’ considering what he said the appellant put the respondents through, wondered how it can amount to ‘double’ compensation when the court did not make any other award for those damages, it found that the respondents actually suffered in the hands of the appellant. He argued that it is within the exclusive province of the trial judge to award damages and an appellate court will only interfere where it is shown that it acted on wrong principles or it considered irrelevant matters in making the award or same is abysmally low or outrageously high, none of which is the case here, he submitted. He said the fact that the trial judge ordered that the properties and monies of respondents confiscated by appellant be returned to them did not make the award of N300,000 (three hundred thousand naira) in their favour double compensation. Obviously, referring to the 11 February 2014 judgment of the criminal case in KWS/56C/2011 contained in the supplementary records transmitted to this court by the appellant on 3 November 2014, counsel urged us not to succumb to the temptation of relying on any document contained in the said supplementary record as it was not part of the evidence before that court but proceedings subsequent to it by way of motion for stay of execution of the judgment now on appeal.

On the appellant’s argument that it proved its counterclaim and the lower court was wrong to deny it judgment, counsel argued that the appellant’s contention that 1st respondent misappropriated its ATM funds of N30,000,000 (thirty million naira) entrusted to him was a criminal allegation which required the criminal standard of proof beyond reasonable doubt, and that standard, he further argued, appellant failed to discharge going by the evidence she presented and so the lower court was right in holding likewise for reasons it gave at page 306 of the records of appeal in dismissing the said counterclaim and so we should not interfere.

Resolution of issues

In considering the issues arising from the appeal, I want to first observe that the complaints of the appellant in its surviving grounds of appeal do not seem to me to deserve as much as seven and eight issues respectively formulated from them by it and respondents. It appears to me that parties simply duplicated the issues and in some cases even formulated abstract issues which even when resolved favourably cannot have any bearing on the appeal for either party. Issues in appeal must be formulated in concrete terms and not in academic or abstract terms: Buraimoh v. Bamgbose (1989) 3 NWLR (Pt. 109) 352 at 361, (1989) 6 SCNJ 36, per Nnaemeka-Agu JSC I note, for instance, that much effort and energy was expended by the appellant; and by the respondents in rebuttal, on whether the evidence of 1st respondent was credible given that he denied what he is alleged to have admitted in the trial-within-trial in the criminal case.

Counsel seemed to forget that deciding credibility of witnesses and weight to attach to their evidence not only primarily belongs to the trial judge, a witness can also be disbelieved on part of his evidence and believed on other issues (see Obiode v. The State (1970) 1 All NLR 35; Audu v. The State (2003) FWLR (Pt. 153) 325 at 369; Lawson v. Afani Continental Co. (Nig.) Ltd (2002) FWLR (Pt. 109) 1736 at 1768, (2002) 2 NWLR (Pt. 752) 585 ), hence it is not automatic that a party’s case must be dismissed once he is shown to have lied on any particular issue.

Besides, it also depends on the materiality to the trial of the issue on which the witness lied.

Having said that, I think the real issues in the appeal can be conveniently reduced to the following:

1. Whether from the facts and circumstances of the case, it can be said that the learned trial judge was right in giving judgment for the respondents on their claim.

2. Whether the award of N300, 000 general damages can be truly said to be double compensation in the circumstances.

3. Whether the trial judge was right in dismissing appellant’s counterclaim.

These issues also encompass the appellant’s complaint of the credibility of her witness or witnesses called by the respondents in proof of their case and whether there was evidence in proof of respondents’ claim or same ought to have been dismissed for lacking evidence to prove it.

Taking the first issue of whether from the facts and circumstances of the case it can be said that the learned trial judge was right in giving judgment for the respondents on their claim, one must not lose sight of the fact, and it is apparent from the judgment, that the lower court’s main reason for entering judgment for the respondents on their claim against the appellant and awarding general damages of N300,000 (three hundred thousand naira) in their favour was its dissatisfaction with the manner it said appellant went about taking the laws into its hands by unilaterally arresting and detaining 1st respondent, ill-treating him in the course of that, and generally investigating its allegation against 1st respondent in its own queer manner, passed judgment and turned itself to a sheriff by ‘executing’ that ‘judgment’ without any recourse to the agencies established by law for such duties. Going through the records before this court, I have no doubt that the lower court properly evaluated the evidence given by both sides and gave valid reasons for coming to its conclusion that the appellant resorted to very condemnable self-help and exercised what that court properly labelled exercise of might is right and the end justifies the means. Mr. Olasope for the appellant in his submissions before us has not in any way effectively shown that it was wrong in its evaluation and conclusions; rather, all he has done in essence is to first simply refer us to appellant’s pleadings and the evidence of its sole witness on the course they took, which evidence the lower court rightly labelled ‘evasive’ and ‘slippery,’ and then tried to further justify appellant’s actions by asserting that it had a duty to first exhaust what counsel called her internal control mechanism system. Incidentally, that submission of exhaustion of internal mechanism rather lends further credence to the lower court’s conclusions and exposes the working of appellant’s mind, showing it as operating at cross-purposes with everything decent in our legal system. As rightly pointed out by Mr. Toyin Oladipo for the respondents, no such internal control mechanism the existence of which was not even proved, I must further observe, can override the extant laws and Constitution of this country, guaranteeing every person a right to fair hearing, freedom from inhuman treatment and torture and right to liberty (save for exceptions clearly stated in the Constitution), all of which the appellant in the purported exercise of its internal control mechanism breached in this case. It has been said that even a convicted felon is not bereft of all rights under the laws and particularly the Constitution of this country: see Bello v. Attorney-General of Oyo State (1996) LPELR- 764 at page 97, per Oputa JSC. I should also add that the lower court having tried the case and saw witnesses on both sides testify and decided how creditworthy each of them was or was not, it is not open to this court to interfere, even if this court would have taken a different position had it tried the case itself. That is, even as I am not suggesting that we would have in fact taken a different position had we tried the case: see Onwugbufor v. Okoye (1996) 1 NWLR (Pt. 424) 252 at 293, (1996) 1 SCNJ 36, per Uthman Mohammed JSC; Agboinfo v. Aiwenoba & Anor (1988) 7 NSCC 237 at 243; Odofin v. Ayoola (1984) NSCC 711 at 733, (1984) 11 SC 72.

While on this, let me also briefly comment on the lower court’s comment in its judgment that the respondents needed but failed to depose to additional statement in respect of their amended statement of claim and therefore their pleading was abandoned, which comment Mr. Olasope for the appellant has tried to make a big issue of in this appeal by saying that the lower court should have dismissed respondents’ case on the basis of that observation.

Unfortunately for him, like Mr. Oladipo for the appellant, also think that comment of the lower court, innocuous as it later turned out to be as I shall show, was quite rather unfortunate, because the High Court (Civil Procedure) Rules of Kwara State 2005, specifically Order 28, rule 3 thereof; only require compulsory filing of copy of witness statement on oath along with an application for amendment where the applicant intends to call ‘additional witness’. That was not the case with respondents’ application for amendment as they never indicated calling, and did not call, any new witness. What is more, in this case the 1st respondent, as rightly pointed out by Mr. Oladipo, had even deposed to an additional witness statement on 23 April 2013, same day he filed the motion for amendment and adopted that statement with the express leave of that same court as clearly stated in page 276 of the records. His lordship’s observation was therefore a mere ‘irritating faux pas’ (if I may borrow from the vocabulary of Uwaifo JSC in Jekpe v. Alokwe (2001) FWLR (Pt. 47) 1013 at 1027-1028 H-D) and a slip on its part to suggest that the amendment was not covered by an additional statement, which comment has now provided cannon fodder for Mr. Olasope’s contention that respondents’ case should have been dismissed on that ground. I do not however share his view, for it is not every slip in a judgment that results in an appeal being allowed. Where an error or slip is inconsequential and has not caused a miscarriage of justice as it is in this case, the blue pencil rule, of the appellate court figuratively circling the slip with a blue pencil, so to speak, to retain the judgment, will apply see Agu v. Nnadi (2002) 18 NWLR (Pt. 798) 103, (2003) FWLR (Pt. 139) 1537, (2003) MJSC 51 at 58; Bankole v. Pelu (1991) 8 NWLR (Pt.211) 523, (1991) 11- 12 SC 116 at 120 (Reprint); IfeanyiChukwu Osondu v. Soleh Boneh Ltd (2000) FWLR (Pt. 27) 2046, (2000) 5 NWLR (Pt. 656) 322, (2000) 1 SCNJ 18; Olubode v. Salami (1985) 2 NWLR (Pt. 7) 282, (1985) 16 NSCC (Pt. 1) 392 at 396; Onifade v. Olayiwola (1990) 7 NWLR (Pt. 161) 130, (1990) 11-12 SC 1 at 15; Ume v. Okoronkwo (1996) 10 NWLR (Pt. 477) 133, (1996) 12 SCNJ 494 at 411; Ukaegbu v. Ugorji (1991) 6 NWLR (Pt. 196) 127 at 147, (1991) 7 SCNJ (Pt. II) 244). I also note that the lower court, despite that comment, did not discountenance the respondents’ case but did the right thing by considering it on its merit.

Furthermore, the said comment of the lower court, it should also be realized, related to proof of the prices of the property of the respondents seized by the appellant; which that court said was not proved because of the clearly wrong view it took of the respondents’ case as regards additional statement. It is as a result of that that it ordered that the said properties be returned to respondents by appellant, it being ‘more comfortable,’ as it said, to do that. As I shall soon show, that order was made with a proviso which, as it turned out, shall later nullify it thereby making all the arguments of counsel on both sides on this vexed comment of the lower court academic.

It is for all these reasons that I also resolve this issue against the appellant.

And that takes me to the other complaint of the appellant that the lower court doubly compensated the respondents in awarding them general damages of N300,000 (three hundred thousand naira) for the manner of 1st respondent’s arrest, detention, ill-treatment, trespass to and seizure of their goods and so forth by the appellant after it had awarded them what appellant referred to as special damages. I find this complaint of appellant about double compensation most misplaced, not only for the fact that in truth, no other damages of any sort, let alone special damages was awarded by the lower court, it is not even the law that general damages cannot be awarded once special damages are awarded.

The case of British Airways v. Atoyebi (2015) All FWLR (Pt. 766) 442 at 468 cited by Mr. Olasope on it does not also establish such proposition. While it is true that the rule against double compensation applies to both actions for contract and tort (see Ezeani v. Ejidike (1964) 1 All NLR 395 at 399, (1964) 3 NSCC 306, per Brett JSC; Badmus v. Abegunde (1999) 7 SCNJ 96 at 102, (1999) 11 NWLR (Pt. 627) 493; Lagos City Council Caretaker & Anor v. Benjamin Unachukwu & Anor (1978) All NLR 92, (1998) 3 SC 137 at 141; N. E. Ekpe v. Fagbemi (1978) All NLR 107, (1998) 3 SC 143 at 148 Reprint; Susainah (Trawling Vessel) v. Abogun (2007) 1 NWLR (Pt. 1016) 456), it has to be noted, that the measure of damages in an action for tort is not the same as that for breach of contract which British Airways v. Atoyebi (supra) was. In actions for breach of contract, the only applicable standard of measure of damages is simply restitution (otherwise called restitutio in integrum in Latin) of the innocent party to the position he would have been had the breach not taken place (See G. Chitex Ind. Ltd v. Oceanic Bank Int. (Nig.) Ltd (2005) All FWLR (Pt. 276) 610 (SC), yet the court in British Airways v. Atoyebi, after compensating the claimant/respondent, Atoyebi SAN for all the expenses incurred by him in travelling back to the UK to retrieve his luggage which the defendant, British Airways, had left behind in Heathrow, London, in breach of their contract to convey same to Nigeria, went further to also erroneously award him ‘general damages’ of £100,000.00, the learned claimant Senior-Advocate of Nigeria having claimed such damages in addition to what he actually lost. It is this additional award the Supreme Court commendably set aside as constituting double compensation and not in line with the principles for award of damages for breach of contract.

That is not by any means the case here where the action is founded on tort and general damage proved and awarded. Trespass, whether to land, person or goods, is actionable per se and attracts damages (see Eliochin (Nig.) Ltd v. Mbadiwe (1986) 1 NWLR (Pt. 14) 47 at 61 - 62, (1986) 1 SC 99 (SC), and where it is proved that the claimant also suffered special damage, that will be awarded in addition. Besides, a person who takes the laws into his hands and inflicts damage on another by arresting; slapping him in the process and detains another in the circumstances or this case like the appellant did should expect nothing less from the court. To hold otherwise is to go back to Thomas Hobbes’ state of nature where might is equated to right and life brutish. That jungle system of justice has no place among a people that profess to be civilized and operating under the rule of law: See Governor of Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621, (1986) All NLR 235 (S.C.) (2001) FWLR (Pt. 50) 1779; Fidelity Bank Plc v. Bojuya Ventures Ltd (2012) All FWLR (Pt. 646) 546 at 573 - 574. See also the pronouncements of Denning M.R. in Agbor v. Metropolitan Police Commissioner (1969) 1 WLR 703 at 707 cited approvingly by justices of the Supreme Court in Governor of Lagos State v. Ojukwu. One even shudders to think of what would have happened had something untoward happened to the 1st respondent while in appellant’s custody in Ibadan or being ill-treated by appellant’s officers in the course of his arrest. Certainly, the story would have been different. This complaint of double compensation and improper award of general damages in effect fails and is resolved against the appellant.

The other complaint is whether the appellant proved its counterclaim and the lower court was wrong in dismissing it. Without prejudice to the very useful caveat by the lower court to the effect that “If the defendant [appellant] succeeded in proving her case before the High Court handling the criminal case, that court may make necessary orders that would enable the defendant recover whatever amount the court declares as owed before it as having being stolen by the 1st claimant [1st respondent];” I again agree with the lower court and the respondents that appellant had a duty to prove her claim of misappropriation of its monies against the 1st respondent beyond reasonable doubt as that allegation is criminal in nature. That is, the clear requirement of section 135 (1) and (2) of the Evidence Act, 2011. On the evidence before that court and the reasons given by it, for instance; that appellant failed to tender necessary available documentary evidence that could have helped prove its allegation; one can hardly fault the lower court’s conclusion on the counterclaim. In the event, this issue is also resolved against appellant.

But that is not the end of this matter, for while this court cannot, and will not, judge the correctness of the decision of the lower court on the basis of the judgment in criminal case No. KWS/56C/2011, one cannot also totally turn a blind eye to that judgment given by the lower court’s (Folayan J.’s) own earlier mentioned directive that if the defendant [appellant] succeeded in proving her case before the High Court handling the criminal case; that court may make necessary orders that would enable the defendant recover whatever amount the court declares as owed before it as having being stolen by the 1st claimant [1st respondent]. As it finally turned out, the appellant proved its case in the criminal court and that court, per its judgment of 11 February 2014 by Abdulgafar J. as shown in the supplementary records, not only found 1st respondent guilty of defrauding the appellant to the tune of N25,000,000 (twenty-five million) as alleged there and therefore sentenced him to three years imprisonment without option of fine to be served at Federal Prisons, Ilorin, it equally ordered too, in agreement with the submission of counsel to EFCC, the prosecutor; that the properties of respondents the appellant seized and sold as well as their monies recovered by it, all amounting to N15,000,000 (fifteen million naira ), be forfeited to the appellant while 1st respondent shall still pay to the appellant the balance of N10,000,000 (ten million naira) that court adjudged as his outstanding loot less those recoveries. For ease of reference, I here reproduce its said order which runs thus as shown at page 349 of the supplementary records:

“I order that the accused pay compensation to GT Bank Plc in the sum of N25,000,000 (twenty-five million) which he admitted to have filched from the bank less the amount of N15,000,000 (fifteen million naira ) that PW1 said was recovered. The accused shall therefore pay the sum N10,000,000 (ten million naira) to GT Bank Plc. I also exercise the power under sections 19 and 20 of EFCC Act to order the forfeiture to GT Bank Plc of the property admittedly built by the accused from the proceeds of the fraud.”

It follows, therefore, that the orders, declaratory and otherwise, of Folayan J. nullifying the seizure and confiscation by appellant of respondents’ properties, including monies in their various bank accounts, and ordering return of same to respondents shall be and stand suspended and shall remain so unless and until the judgment and orders of Abdulgafar J. in the said criminal case No. KWS/56C/2011 are set aside by a superior court. It is accordingly so ordered here.

Barring that, this appeal fails in every other respect, especially, the challenge to the award of general damages in favour of the respondents for the manner of 1st respondent’s arrest, ill-treatment and detention by appellant; which award is hereby further confirmed. Two wrongs don’t make a right.

Parties are to bear their costs.

**OWOADE JCA:**

I read in advance, the judgment just delivered by my learned brother, Boloukuromo Moses Ugo JCA. I agree with the reasoning and conclusion. I also dismiss the appeal.

I abide by the order as to costs.

**BARKA JCA:**

This appeal complains about the judgment of the Kwara State High Court of Justice sitting in Ilorin in suit No. KWS/6/2012 delivered on 5 February 2014.

The germane facts leading to this appeal has been set out admirably in the lead judgment, which I had the fortune of reading before now.

The four issues germane to the resolution of the appeal had been appropriately identified and resolved to my liking. I also agree with the reasoning and conclusions reached to the effect that the appeal fails, barring the order made in the criminal action in KWS/56C/2011.

Finally, I do agree with the consequential order made including the order as to costs.

Appeal dismissed.