**ENGR. YAKUBU IBRAHIM AND OTHERS**

**V**

**SIMON OBAJE**

SUPREME COURT OF NIGERIA

15TH DAY OF DECEMBER 2017

SC. 60/2006

**LEX (2017) - SC.60/2006**

OTHER CITATIONS

2PLR/2017/154 (SC)

**BEFORE THEIR LORDSHIP**

OLABODE RHODES-VIVOUR, JSC (Presided)

CLARA BATA OGUNBIYI, JSC (Read the Lead Judgment)

AMIRU SANUSI, JSC

AMINA ADAMU AUGIE, JSC

SIDI DAUDA BAGE, JSC

**BETWEEN**

ENGR. YAKUBU IBRAHIM AND OTHERS – Appellant

AND

SIMON OBAJE – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, ABUJA JUDICIAL DIVISION

2. HIGH COURT OF FEDERAL CAPITAL TERRITORY, ABUJA

**REPRESENTATION/LAWYERS**

FESTUS AKPONQUALINO Esq. with M. J. MURNA; U. ONYECHE - for the Appellant.

T. NWAZOTA Esq. - for the Respondent.

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

COMMERCIAL LAW - CONTRACT - INTENTION OF PARTIES:- Importance of in proof of the existence of a contract – Legal implication

REAL ESTATE AND PROPERTY LAW - LAND - GOVERNOR’S CONSENT:- Need to obtain in transferring title or interest in land - Intendment of section 22 of the Land Use Act thereon

REAL ESTATE AND PROPERTY LAW - LAND - POWER OF ATTORNEY:- Definition of – Legal effect

REAL ESTATE AND PROPERTY LAW - LAND - POWER OF ATTORNEY:- Donee of power of attorney acting in his own name:- Propriety of.

**PRACTICE AND PROCEDURE ISSUES**

ACTION - PARTIES BEFORE COURT:- Court making a case for - Impropriety of

COURT – JUSTICE ADMINISTRATION – TECHNICALITY:- Duty on court to do justice and avoid.

COURT - TRIAL PROCEEDINGS:– Technical procedural irregularity in - Attitude of appellate court thereto.

JUDGMENT AND ORDER - DAMAGES - GENERAL AND SPECIAL DAMAGES - Award of – criteria for determining – Distinction between - Evidence led in support thereof - Opposing party’s failure to rebut – Effect.

JUDGMENT AND ORDER - DAMAGES - SPECIAL DAMAGES:- Need to specifically plead and strictly prove - Standard of proof required to establish - When will be awarded

PLEADINGS:- Bindingness of on parties – Duty of court thereto

WORDS AND PHRASES – “POWER OF ATTORNEY”:- Definition of.

WORDS AND PHRASES – “PRINCIPAL” AND “AGENT”:- Definition of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The respondent bought a plot of land known as Plot F96, Dutse Alhaji, Abuja from its owner, one Mr. Otitoju Bonte vide an irrevocable Power of Attorney for value. The land was covered by a Certificate of Occupancy given by the Busari Area council. A building plan was approved by the supervisory authority for the development of the land.

Upon commencement of development on the land, the appellants interrupted the workers on site and in their absence, destroyed the structure erected on the land.

The respondent initiated an action at the High Court of Abuja, where he sought declaratory, injunctive and special damages for the appellants trespass and destruction of the property.

The trial court heard parties and in its decision, granted the reliefs sought.

Dissatisfied, the appellants appealed to the Court of Appeal, which court in its decision upheld the trial court’s judgment.

Dissatisfied still, the appellants appealed to the Supreme Court and questioned inter alia, the legality of transfer of land without requisite Governor’s consent and propriety of transfer of title to land effected through a power of attorney.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the trial court that found for the respondent. Dissatisfied, the Appellants appealed to the Supreme Court.

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

*BY APPELLANTS:*

(1) Whether the Court of Appeal applied well known principle of law regarding proof of special damages in this case, when it held that the evidence as put forward by the respondent is sufficient (relates to ground 1).

(2) Whether the Court of Appeal was right when it held that “non commencement of action by a donee in the principal’s name is an indulgence in fancy.” (Relates to ground 3).

(3) Whether in law a Power of Attorney can transfer interest in land to a donee. (Relates to ground 4).

(4) Whether the consent of the Minister of Federal Capital Territory is not necessary before the title of the property in contest in this case could be said to have been validly passed to the respondent. (Raised suo motu).

*BY RESPONDENT:*

[The Respondent adopted the issues formulated by the Appellants].

**MAIN JUDGMENT**

OGUNBIYI JSC (DELIVERING THE LEAD JUDGMENT):

This is an appeal against the decision of the Court of Appeal, Abuja division delivered on 19 January 2005 dismissing the appellant’s appeal from the High Court of Justice, Abuja.

*Facts of the case*

The respondent then plaintiff, issued a writ of summons against the appellants, then defendants at the High Court of Justice, Abuja on 7 March 2001 claiming the following reliefs:

i. Declaration of title over plot F96 in his favour.

ii. An order of perpetual injunction restraining the defendants/appellants and their servants, agents and privies from and further trespass to the land.

iii. N1,600,000 (one million, six hundred thousand naira) special damages and listed are the items of the damages and value.

Also claimed is interest on the judgment sum at the current bank rate until the judgment is delivered and thereafter at such rate and for such period as the court should think fit.

From the statement of claim, the plaintiff/respondent asserted that he is the owner of the landed property known and described as Plot F96, Dutse Alhaji, Abuja, and that he also had possession of the said parcel of land; that he bought the plot from the former owner, Mr. Otitoju Bonte who conveyed title to him, (Respondent) by virtue of an irrevocable Power of Attorney dated 19 October 2000 given for value; that the said Plot F96 Dutse Alhaji is covered by a Certificate of Occupancy No. FCT/M2TP/OD/276 of 15 June 1995 granted by Bwari Area Council; that a building plan for development of the plot was applied for and approved, by the Supervisory Authority.

It was alleged further that the respondent commenced development on the plot with the initial structure totally completed; that while construction was on, the defendants/appellants trespassed into the construction site, harassed the workers and disrupted the work. When these acts did not deter the work, the appellants got police who ordered the workers of the respondent to stop work. In the absence of the workers, the appellants got into the plot and destroyed the concrete structure and a report of this destruction was made by respondent to the police and hence, the suit filed before the trial court.

All the appellants as defendants in their joint statement of defence denied all the allegations levied per the plaintiffs claim.

They emphasized further that the plaintiff is not entitled to his claims which should be dismissed in its entirety as it is fraudulent, vexatious and frivolous.

The learned trial judge however found for the plaintiff/respondent and made far reaching orders in accordance with the claim of the respondent. An appeal lodged to the Court of Appeal by the appellant herein was unsuccessful and dismissed. The lower court, in other words, upheld the findings on claim for trespass, declaration and also damages awarded by the trial court.

The appellants are dissatisfied again with the judgment of the lower court and hence their appeal now in this court vide notice of appeal dated 11 February 2005 and filed the same day and containing four grounds of appeal.

In accordance with the rules of court, briefs of arguments were filed by the parties.

(1) The appellants’ amended brief of argument was filed on 21 September 2016. It was settled by Festus Akpoghalino Esq. of counsel.

(2) The respondent’s amended brief of argument was filed on 27 September 2016. Same was settled also by Toehukwu Nwazota Esq. of counsel.

On 3 October 2017, when the appeal was heard, both learned counsel representing the parties adopted and relied on their respective brief of argument. While the appellants’ counsel urged in favour of allowing the appeal, the counsel representing the respondent, however, submitted in favour of the dismissal of the appeal hereof.

The four issues formulated by the appellants’ counsel for determination are as follows:-

(1) Whether the Court of Appeal applied well known principle of law regarding proof of special damages in this case, when it held that the evidence as put forward by the respondent is sufficient (relates to ground 1).

(2) Whether the Court of Appeal was right when it held that “non commencement of action by a donee in the principal’s name is an indulgence in fancy.” (Relates to ground 3).

(3) Whether in law a Power of Attorney can transfer interest in land to a donee. (Relates to ground 4).

(4) Whether the consent of the Minister of Federal Capital Territory is not necessary before the title of the property in contest in this case could be said to have been validly passed to the respondent. (Raised suo motu).

I seek to say, quickly, at this juncture that the appellants have abandoned ground 2 of their notice of appeal. Same is hereby struck out. The respondent has also adopted the appellants’ four issues for the determination of this appeal. The issues will be taken serially.

*Issue 1*

Whether the Court of Appeal applied well known principle of law regarding proof of special damages in this case, when it held that the evidence as put forward by the respondent is sufficient. It is submitted by the appellants’ counsel that the evidence before the trial court which the Court of Appeal held to be sufficient proof of special damages is contained at pages 39, lines 33 - 52 of the record which read thus:

“I sustained losses totaling about N1,600,000 (one million, six hundred thousand naira) as enumerated in the statement of claim.”

While relating to the foregoing findings by the two lower courts, the learned counsel posed the following salient question and asked:-

“Whether a mere reference to what is pleaded in statement of claim and/or adopting particulars of special damages particularized in a paragraph of statement of claim by a witness amount to credible evidence of such a character, as would suggest that the plaintiff is indeed entitled to an award under the law?

The learned counsel responded in the negative and drew attention to the settled principle of law wherein pleadings are no evidence; that mere reference to pleadings in examination-in-chief cannot take the place of credible evidence. In reference are the cases of Durosaro v. Ayorinde (2005) All FWLR (Pt. 260) 167, (2005) 6 NWLR (Pt.927) page 407 at 425; Jekpe v. Alokwe (2001) FWLR (Pt. 47) 1013, (2001) 18 NWLR (Pt. 715) page 252 at 267.

The learned counsel submits further that there was nowhere in the 13 paragraphs statement of claim where special damages were pleaded and particularized, except paragraph 13 (iii) (a) which is the paragraph containing reliefs claimed by the plaintiff/respondent.

In further contention, the counsel reiterates that by merely re-instating the relief contained in the statement of claim, it cannot qualify, as credible evidence required in proving special damages in law. Further authorities to buttress his submission are Incar (Nig.) Ltd v. Benson Transport Ltd (1975) 3 SC Reprint, page 81; and Dumez v. Ogboli (1972) 1 All NLR 241 at 191 - 192.

The court, counsel submits is without power to award general damages in place of the special damages that were not proved, since a court will not grant a relief not prayed for. See S.P.D.C. (Nig.) Ltd v. Tiebo VII (2005) All FWLR (Pt. 265) 990, (2005) 9 NWLR (Pt. 931) page 439 at 470 and 473.

The learned counsel urges that the court should resolve the issue in favour of his clients. On behalf of the respondent, his counsel submits at great extent whereby he made copious reference to the evidence given by the witnesses PW1, PW2, PW3, and PW4 that on the totality of the evidence, before the court, same had not been challenged in any material particular. Counsel cites the case of Hitlar Osazuwa v. S. D. Ojo (1999) 13 NWLP (Pt. 634) 286 at 291 - 292; that the lower court considered adequately the evidence of the respondent before granting the relief for damages. Further reference was made to pages 39 to 43, 52, 101 to 103 of the record.

The lower court, counsel re-iterates, did consider the attitude of the appellants as defendants in the destruction of the respondent’s building construction in arriving at the decision; that the position of the court here is not strictly on special damages but where damages at large is considered.

Also, and contrary to the submission advanced by the appellants’ counsel, it is argued by the respondent’s counsel that there is no strict requirement that the items in the claim must be backed by receipts.

The learned counsel had called on this court to distinguish the case of Adecentro Nigeria Limited v. Council, Obafemi Awolowo University (2005) All FWLR (Pt. 269) 1783, (2005) 15 NWLR (Pt. 948) 290, wherein the facts of the case are not the same as the one in issue and therefore the court cannot arrive at the same decision; that it is on record that the appellants conceded the fact that they were present on plot F96 and actually carried out the destruction of the building.

For the determination of the 1st issue, recourse should be had to paragraph 13 (iii) at page 7 of the record of appeal relating to the statement of claim wherein the nature of the respondent/plaintiff’s claim for special damages was pleaded as follows:

“whereof the plaintiff claims for:-

(i) -------------------

(ii) -----------------

(iii) (a). The sum of N4, 900.00 for 7 pieces of rod at the cost of N700.00 each.

(b) N140,000 for 4,000 blocks at the cost of N35.00 each

(c) N38,500. 00 being cost for 55 bags of cement at N700.00 each.

(d) N22, 000. 00 for 620 tons truck granite stones.

(e) N15, 000. 00 for 6 trips of sharp sand.

(f) N3,750.00 for 15 planks at N250.00 each.

(g) N1,500.00 cost of clearing the plot.

(h) N1,500.00 cost of filling the pit on the plot

(i) N5, 000. 00 cost of digging trench/foundation.

(j) N7,000.00 cost of water supply of 10 drums per day for 7 days.

(k) N1, 200. 00 cost of woodwork for casting gate concrete pillars.

(l) N7,000.00 engineer’s fees.

(m) N4,900. 00 supervisor’s fees

(n) N32,500.00 for 5 masons and their labours at N4,500. 00 per day for 7 days.

(o) N350, 000. 00 cost of legal action.

(p) Damages, for trespass.”

It is the contention on behalf of the appellants that apart from reliefs (j) (k) and (n), that all other items required the production of documentary evidence to prove them; that there was no receipt tendered for items (L) (M) and (O), the Engineers fees, supervisors fees and legal fees respectively.

The question posed by the counsel for the appellants herein is, whether the evidence before the trial court, which the lower court held to be sufficient in prove of special damages in this case, satisfies the principle of law on proof of special damages. It is trite and well settled as rightly argued by the said counsel that:-

“The person claiming should establish his entitlement to that type of damages by credible evidence of such a character as would suggest that he indeed is entitled to an award under that head...”

See the cases of Oladehin v. Continental Textile Mills Ltd (1978) 2 SC 23, (1978) NSCC page 88 and also Imana v. Robinson (1979) 3-4 SC 1, (1979) 12 NSCC page 1.

The learned counsel for the appellant relates copiously to the evidence before the trial court which the Court of Appeal held to be sufficient proof of special damages as contained at page 39, lines 33 - 52 of the record of appeal which reads thus:-

“I sustained losses totaling about N1,600,000 (one million, six hundred thousand naira) as enumerated in the statement of claim.”

It is the submission of counsel that proof of special damages is not by conjecture or by way of presumption but must be strictly proved. The learned counsel to buttress his submission cites the cases of Durosaro v. Ayorinde and Jekpe v. Alokwe (supra) also the case of Western Publishing Company Ltd & Anor. v. Fayemi (2015) LPELR - 24735 (CA), (2016) All FWLR (Pt. 821) 1400; Incar (Nig. ) Ltd v. Benson Transport Ltd (1975) 3 SC Reprint page 81; Dumez v. Ogboli (1972) 1 All NLR 241 at 191 – 192 and S.P.D.C. (Nig.) Ltd v. Tiebo VII (2005) 9 NWLR (Pt.931) 439 at 470 and 473. Counsel submits on the foregoing authorities that since the respondent alleges that he suffered special damages, the onus is on him to prove same strictly; that the trial court judge used an unknown principle of law in arriving at the award of N1,600,000 (one million, six hundred thousand naira) as special damages and which the lower court wrongly affirmed.

The resolution of the issue herein will necessitate the review of the evidence before the trial court on which the findings were made and which the lower court also found as acceptable.

With reference made to the record of appeal the following facts are clear cut:-

(1) PW1 and PW2, Simon 1 Obaje and Dele Abu respectively gave evidence on record that the respondent had completed the building on plot F96 with the fence and gate in place. See pages 39 and 40 of the record.

(2) PW2, PW3 and PW4, Dele Abu, Inspector Bonet S. Bonet and Cpl. Musa Ogoshi respectively, gave evidence that the appellants pulled down and destroyed the whole building. See pages 40 to 43 of the record of appeal.

(3) PW1 gave evidence that he bought the piece of land known as Plot F96 Dutse Alhaji from one Mr. Otitoju Bonte who conveyed the Certificate of Occupancy over the land to him and further gave the respondent a Power of Attorney.

(4) Respondent registered the Power of Attorney and also obtained approval for his building plan. This evidence was not challenged or rebutted. Respondent was in exclusive possession. See pages 37, 52, 101 to 103 of the record. See also the decision in the case of Hitlar Osazuwa v. S. D. Ojo under reference supra.

The respondent in testifying as PW1 stated that he acquired Plot F96 through a Power of Attorney given to him by Mr. Otitoju Bonte; that Mr. Otitoju Bonte himself had a Certificate of Occupancy. He, the respondent applied for and got a building plan approved by the Area Council. All these were admitted in evidence as exhibits A, B, and C respectively.

Respondent testified further, that he had built there on the plot a one bedroom apartment fenced with a gate in place which was pulled down by the appellants. He also testified that he sustained losses totaling about N1,600,000 (one million, six hundred thousand naira) as enumerated in the statement of claim. It is pertinent to re-state that the evidence of PW1 and all other prosecution witnesses pinned the 2nd appellant/defendant at the site participating in the demolition of the structure and in getting into the premises in the first place when work was in progress and disrupting affairs.

The 1st appellant/defendant as DW1 in his evidence said he was outside the country at the material time. He did not tender any travel documents to show that claim; he did not also call any witness in support of that claim. The witness further said that 2nd appellant/defendant, who is his wife was not in Abuja on the day in question but in Benin with her parents.

The 2nd appellant/defendant as DW2 under cross-examination, however, said she was in Dutse Alhaji, in Abuja on the day of incident even though she denied being at the site at the time of the incident.

The 1st appellant/defendant claimed to have bought the land in dispute from one Mohammed Kalgo by an agreement admitted as exhibit D, which was made in 1996; that he had paid N45,000.00 (forty-five thousand naira) but was yet to apply for a Certificate of Occupancy. He admitted under cross-examination that the Certificate of Occupancy of Mr. Otitoju Bonte was made in 1995, which was the root of title of the respondent/plaintiff.

It is obvious as shown on the record before us that the appellants’ attitude to the claims of damages made by the respondent was a blanket denial of such structure and that there was no destruction and is the basis upon which appellants say the special damages had not been proved and should not have been granted by the learned trial judge.

The learned justices of the lower court per Peter Odili JCA (as she then was) in the lead judgment, disagreed with the appellants’ contention and had this to say in the judgment in page 102 of the record of appeal as follows:-

“ ... the items of special damages were properly stated in pleadings and the evidence sufficient as put forward by the respondent since, really, the appellants neither countered those special damages in their own pleadings and in evidence merely dismissed the issue of injury or damages in an off-handed way. I am resting my new having referred to the case of Permanent Secretary, Federal Ministry of Education v. Akinlaye (2000) 14 NWLR (Pt. 686) 100 at 105 per Ige JCA wherein she said:

“1. Where a plaintiff is claiming some specific amount as special damages, he must particularize it and prove it strictly in order to succeed. (Osuji v. Isiocha (1989) 3 NWLR (Pt. 111) 623; Oshijirin v. Elias (1970) 1 All NLR 153 referred to.

2. The standard of proof required from a plaintiff in support of a claim for damages when unchallenged is minimal because strict proof of special damages does not mean an unusual or extra-ordinary proof. Imana v. Robinson (1979) 3 - 4 SC 1; Adejumo v. Ayantegbe (1989) 3 NWLR (Pt. 110) 417 referred to).

I am in full agreement with the conclusion arrived at by their lordships of the lower court which I also endorse same as unassailable.

Furthermore, and in the case of Imana v. Robinson, reference (supra), at page 23 of the report, this court held that the term “strict proof” required in proof of special damages means no more than that the evidence must show the same particularity as is necessary for its pleading. It should therefore normally consist of evidence of particular losses, which are exactly known or accurately measured before the trial.

The appellants, as rightly observed by the respondent’s counsel, dwelt so much on the volume and quantity of evidence to support a claim for special damages. Judicial decisions have shown that there is no particular type or quantity of evidence to warrant special damages. See the case of S.P.D.C. (Nig.) Ltd v. Tiebo VII (2005) All FWLR (Pt. 265) 990, (2005) 9 NWLR (Pt. 931) 439 wherein this court said:-

“... in other words, it is a general guide and arises from the fact that it is impossible to prescribe the quantity and nature of evidence required in a given case to justify entitlement to special damages. In some cases, it may be necessary to show documentary proof of the loss sustained, while in other, it may be unnecessary. The important thing is that the evidence proffered must be qualitative and credible and such as lends itself to quantification. Each case depends on its own facts and circumstances.” Pages 461-462 paragraphs F - B of the report.

The appellants also contended that the items in the claim must be backed by receipts. As rightly submitted on behalf of the respondent, there is no strict requirement for this. I seek to say as shown on the record that the building was put up and the appellants destroyed it; the existence of the building was not denied by the appellants. It is confirmed by the evidence on the record which is very overwhelming. There was also no contrary evidence adduced by the appellants that the building was not constructed with the items so stated in the claim. The claims are verifiable and the appellants never challenged or contradicted the evidence by the respondent.

At pages 466 and 472 of the case of SPDC Ltd v. Tiebo VII under reference further, it was also held that:

“... Special damages are given in respect of any consequences reasonably and probably arising from the breach complained of, no general rule can therefore be laid down as to what amounts to “strict proof”. Therefore, an item of special damages need not be proved with mathematical exactitude in every case in order to satisfy the strict proof...”

The learned counsel for the appellants relied on the case of Adecentro (Nig.) Ltd v. C, OAU (supra) which facts as rightly submitted by the respondent’s counsel are distinguishable from the case in dispute herein. In other words, evidence herein shows that a building was standing on Plot F96 and it was also shown by unchallenged evidence that the appellants were on the plot on the day the building was destroyed and indeed carried out the destruction. The facts are not on all fours with the case under reference as such, this court cannot arrive at the same decision.

In considering the principles enumerated in the foregoing authorities, it is obvious that what the respondent did in evidence was sufficient to prove his losses which were properly itemized and costed in pleadings and were not rebutted either in the statement of defence or in the evidence of the defence in court.

The appellants did not show that the facts so found and accepted by the lower courts were not borne out by evidence in the printed records or that there is miscarriage of justice or a violation of some principle of law or procedure. See again Durosaro v. Ayorinde under reference supra. There is no reason that I should disagree with the findings of the lower court in affirming the trial High Court. The said issue 1 is resolved against the appellant and in favour of the respondent.

Issue 2

Whether the Court of Appeal was right when it held that non- commencement of action by a donee in the principal’s name is an indulgence in fancy. In answer to the foregoing question posed, learned counsel for the appellants contends that any action to be commenced by the holder of the Power of Attorney in his personal name was incompetent as there is no proper plaintiff. Several authorities cited by the counsel are United Nigeria Company Ltd v. Nahman (2000) FWLR (Pt.27) 1988, (2000) 9 NWLR (Pt. 177) at 187 - 188, Katto v. C.B.N. (1999) 6 NWLR (Pt. 607) 390, (1999) 5 SCNJ 1; Melwani v. Five Stars Ind. Ltd (2002) FWLR (Pt. 94) 31, (2002) 3 NWLR (Pt. 753) page 217 at 236 - 237 and Ude v. Nwara (1993) 2 NWLR (Pt. 278) 638, (1993) 2 SCNJ 47 at 68.

The learned counsel submits emphatically that if, a done of Power of Attorney intends to sue, he must sue in the name of the donor, as an indulgence on a fancy, that in the instant case, the lower court failed to adduce any reason for its decision and which is contrary to the law. See Katto v. CBN (1999) 6 NWLR (Pt.607), page 390 at 411 - 412.

Counsel re-iterates again, the well established principle of law that, an agent must sue in the name of his principal and calls on the court to answer issue 2 in the negative therefore.

In response, the learned counsel for the respondent submits his client having complied with the provision of the Evidence Act and sections 3 and 15 of the Land Registration Act, Cap. L15 Laws of the Federation of Nigeria 1990; that the decision of the court in Ude v. Nwara and United Nigerian Company Ltd v. Nahman cited supra are distinguishable from the present case under consideration. This, learned counsel submits is because the situation and facts are not the same as in the case cited in reference; that the content and nature of a particular Power of Attorney must be considered in arriving at a decision; that the submission of the appellants in paragraph 5 of the amended appellants’ brief is misconceived. The lower court, counsel submits, arrived at its decision by endorsing the trial court based on the evidence before it.

The learned counsel submits further that the decision of Katto v. CBN supra and cited by the appellants’ counsel has no relevance to their submission and does not support the proposition; that the case of Melwani v. Five Star Industries Ltd (supra) and Vulcan Gases Ltd v. G F Ind. Gas verwertung A. G. (2001) FWLR (Pt. 53) 1, (2001) 9 NWLR 610 are both distinguishable from the present case as the facts are totally at variance.

From the facts of the present appeal, a pertinent question to ask, as rightly submitted by the respondent’s counsel is, whether the respondent herein is an agent to Mr. Otitoju Bonte, the donor of exhibit A. In the case of Vulcan Gases Ltd (supra), this court explained the terms “principal” and “agent” as, “the one on whose behalf an act is to be done, is called the principal and the one who is to act is called the agent.”

When the fact of the case from the record is placed against the definition of principal and agent supra, it is apparent that the respondent is not an agent for the donor of exhibit A and was not acting and neither was he meant to act on behalf of the donor of exhibit A.

Also, in the case of Vulcan Gases Ltd (supra), this court defined Power of Attorney as a formal instrument by which one person empowers another to represent or to act in his stead for a certain purpose. See pages 662 and 663 of the report. The respondents therein engaged a solicitor to recover money owed to it by the appellant (Vulcan Gases Ltd). In the present appeal, the respondent bought and paid for the respondent and Mr. Otitoju Bonte the donor of exhibit A was therein removed from the scene. The respondent is not meant to have recourse to the donor.

The decision of Melwani v. Five Star Industries Ltd (supra) also relied upon copiously by the appellants is very much distinguished from the present appeal as the facts are so much at variance. Mr. Otitoju Bonte, herein sold his plot F.96 out rightly to the respondent.

In further consideration, I seek to rely on the authority of United Nigeria Company Ltd v. Nahman (supra) which was also relied upon extensively by the appellants, especially the aspect requiring that “an agent acting under a Power of Attorney should as a general rule act in the name of the principal.”

In the said same authority at page 188, the court proceeded further and said:-

“... But the donee of the Power of Attorney may, where so authorized by the donor of the power, execute any instrument with his own signature and, where sealing is required with his own seal and act in his own name.” (emphasis supplied).

Contrary to the contention held by the counsel for the appellants, the lower court gave reasons for stating that the proposition that a donee of Power of Attorney must sue in donor’s name as an “indulgence infancy.” There is an overwhelming evidence on record that the respondent bought over the plot in question. See pages 37 and 52 of record of appeal.

Also, and in the same case of United Nigeria Co. Ltd (supra), the court had the following to say further at page 188 of the report. “Where there is a technical procedural misnomer in the trial of a case at the lower court, an appeal court should not interfere with the decision of the trial court, unless it hold the opinion that there is a miscarriage of justice...”

Technicality will always leads to injustice and the court should always aim at doing justice, which is the purpose why it is put in place. The entire justice of this appeal will be served if the issue No. 2 is resolved against the appellant and I so hold.

Issue 3

Whether in law, a Power of Attorney can transfer interest in land to a donee.

The learned counsel on behalf of the appellants on this issue submits that it is the content of exhibit A’ i. e. the Power of Attorney that can enable the Court of Appeal to hold that the Power of Attorney transferred the donor’s title in the land to the donee.

Regrettably, counsel submits that the lower court did not consider the content of the aforesaid Power of Attorney before reaching that decision; that Power of Attorney cannot transfer interest in land in law. The counsel again cites in support the case of Ude v. Nwara under reference supra. Several other persuasive authorities were in reference to buttress the contention. Counsel urges that the issue be resolved in favour of the appellant.

The learned respondent’s counsel in response to the appellants’ contention, contended that there is no law that states that parties cannot enter into various contractual positions in ways and manner most suitable to them. Counsel cites the case of Cardoso v. Daniel (1986) 2 NWLR (Pt.20) 1 at 45. Counsel also distinguishes the case of Ude v. Nwara under reference from the appeal herein; that from the facts on the record, the Power of Attorney given to the respondent by Mr. Otitoju Bonte transferred the interest on Plot F96. The learned counsel urges that the court should uphold the concurrent findings and decisions of the lower courts.

For the determination of this issue, the documents exhibits A, B, and C are very relevant. In other words, the lower courts in arriving at the decision considered, the evidence and document tendered during trial, vis-a-vis Power of Attorney, exhibit A, Certificate of Occupancy, exhibit B and approved building plan, exhibit C.

Again and at page 98 lines 13 - 19 of the record of proceedings, the lower court per Peter Odili JCA (as she then was) in the lead judgment held and said:- “ I am of the clear view that depending on the particular Power of Attorney, that is; its contents and its intendment it can transfer interest to a donee or the donee can equally hold unto all the rights or powers of the donor and since in this instance, the donor’s Certificate of Occupancy is clearly evident and on display. The appellant has not shown any serious challenge in that regard and I hold that issue No. 3 has been answered in the affirmative.”

The learned appellants’ counsel to fortify their argument in challenging the view held by the lower court at page 92 supra, anchored their argument on the case of Ude v. Nwara (supra) wherein Nnaemeka Agu JSC stated thus:- “A Power of Attorney merely warrants and authorizes the donee to do certain acts in the stead of the donor and so is not an instrument which confers, transfers, limits, charges or alienates any title to the donee; rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party.”

I seek to say at this point that the decision in Ude v. Nwara supra is distinguishable clearly from the present case under consideration. For purpose of recapitulation, the 2nd respondent in Ude v. Nwara issued a Power of Attorney to the 1st respondent while statutory lease period of the appellant had not been properly terminated as required by the Eastern Nigerian Law. The 2nd respondent therein who was the Attorney-General of the state who donated this Power of Attorney should not have done so since government cannot revoke land (except for public use) and reallot same land to private person. The lower court did consider the facts in the decision of Ude v. Nwara (supra) before it concluded that the facts are not on all fours and as such should be distinguished. From the facts on the record, the Power of Attorney given to the respondent by Mr. Otitoju Bonte has transferred the interest in Plot F96. As rightly submitted by the respondent’s counsel, the lower courts gave their judgments on the merit and the legal right of the parties as distinguished from the technicality of the law. See again the case of Cardoso v. Daniel supra and U.T.C. (Nig.) Ltd. v. Pamotei (1989) 2 NWLR (Pt. 103) 244, (2001) 43 WRN 63 at 113, (2002) FWLR (Pt. 129) 1557; also United Nigeria Co. v. Nahman (supra).

I seek to say more importantly that I have perused the entire joint statement of defence by the appellants/defendants before the trial court at pages 23 - 25 of the record. It is intriguing to say that the assertion on the matter of the absence of consent was not made part of the defence by the appellants.

In fact, there is no mention of such in their pleadings, without having to be labour the point further, the absence of consent cannot be entertained at this point. The appellants, in other words, neither pleaded same nor canvassed or even inadvertently brought that in evidence at any point in time. It is not open for the appellant to make out a case at the lower court without having originated it at the trial court.

The law is trite and held as very elementary that parties are bound by their pleadings and cannot make out a different case on appeal, which is alien to that stated at the trial court. The observation in that respect was rightly made by the lower court and I so endorse.

The issue of the absence of the Governor’s consent was an after-thought which did not form part of the appellant’s case. As rightly held by the lower court, the appellants have not shown any serious challenge in that regard and I endorse the conclusion that issue 3 is answered in the affirmative and same is resolved also against the appellants.

Issue 4

Whether the consent of the Minister of Federal Capital Territory is necessary before the title of the property in contest in this case could be said to have been validly passed to the respondent.

In answer to the question raised, the learned counsel for the appellant relied copiously on section 22(1) of the Land Use Act and also the case of Oredola Okeya Trading Co. v. Attorney-General, Kwara State (1992) 7 NWLR (Pt. 254) page 412, (1992) 9 SCNJ 18. Counsel in the circumstance is emphatic that failure to obtain the consent of the Honourable Minister of the Federal Capital Territory, before the purported transfer or alienation as claimed by the respondent ran foul of section 22 of the Land Use Act and hence a nullity. Counsel cites in reference the case of Savannah Bank (Nig.) Ltd v. Ajilo (1989) 1 NWLR (Pt. 97) 305, (1989) 1 SC (Pt. II) page 90. Further reference was made again to the case of Ude v. Nwara supra. The appellants’ counsel submits however that, “where a party who tendered same (Power of Attorney), maintained that the source of its ownership or title to the land comes from the Power of Attorney, the court will methodically scrutinize its content to know whether it transferred ownership as claimed.” See paragraph 7.3 at page 17 of the appellants’ amended brief of argument. Counsel cites in support again the case of Oredola Okeya Trading Co. v. A.G. Kwara State under reference supra.

On the totality, it was submitted on behalf of the appellants that the transaction between the respondent and the original holder of the Certificate of Occupancy, which purports to confer or vest in the respondent interest or right over the plot of land having no consent of the Hon. Minister of the Federal Capital Territory is a nullity according to section 26 of the Land Use Act, and that this court should so hold.

In response to the foregoing submission, the learned counsel on behalf of the respondent relates to the definition of consent as described in the Black’s Law Dictionary (5th Edition) at page 323. The counsel drew the court’s attention to the Land Use Act, 1978 which he submits was largely drawn from the minority report of the Land Use panel set up in May, 1977. Counsel relates with particular reference to the preamble and general intendment of the Act; that citizens are allowed to transact on their properties without unnecessary and undue interference by the state; that in a bid to acquire or alienate land for use and enjoyment, individuals buy into law suits; See verity J. in Ogunbambi v. Abowab (1951) 13 WACA 222 at 223.

It is the contention of counsel further that the provision of section 28 of the Land Use Act, on service of notice by the Governor for the acquisition of land for overriding public interest, would clearly support, that private transactions between individuals who hold statutory right of occupancy, would not require any consent from the Governor who can well revoke any land for overriding public interest where necessary. Counsel cites the case of Abioye v. Yakubu (1991) 5 NWLR (Pt.190) 130, (1991) SCNJ 69 per Karibi-Whyte JSC.

Counsel on the totality submits that the justice of this case should be resolved against the appellant. For purpose of resolving this issue, it will be pertinent to resort to the preamble to the Land Use Act, 1978 (which was largely drawn from the minority report of the Land Use panel set up in May, 1977. This report nationalized land in Nigeria and the general intendment of the Act can be deduced from the preamble which states; “Whereas, it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law. And where, as it is also in the public interest, that the right of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured protected and preserved.”

Following from the foregoing re-statement, it is clear that the essence of the Act is to preserve and protect the rights of Nigerians to enjoy and use land, and further enjoy the fruits from the land. Citizens should be allowed to transact on their properties without unnecessary and undue interference by the state. The phrase, “the enjoyment of the land and the fruits thereof” should be given a simple and ordinary interpretation. In other words, the fruits of the land can be houses, installations, minerals and plants.

I agree with the respondent’s counsel that it is not the intendment of the legislature that section 22 of the Land Use Act, on consent would limit and deny parties of their rights to use and enjoy land and the fruits thereto in a non-contentious transaction or alienation. The section cannot be given a literal interpretation as would be seen from the preamble.

Section 22(1) of the Land Use Act provides that:-

“It shall be unlawful for a holder of a right of occupancy to alienate same or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise, without the consent of the governor first had and obtained.”

The preamble to the Land Use Act, if looked at carefully and relating it to the case at hand, would reveal that the provision for consent of the Governor must not be applied to transfer of title or alienation of rights between private individuals where there is no overriding public interest or conflict between the parties.

The application of the various sections and provisions of the Land Use Act must be done with a view to the intendment of the drafters of the law, which is expressed often in the preamble.

I seek to buttress and support the forgoing contention with the view held by the learned jurist; Karibi-Whyte JSC in the case of Abioye v. Yakubu (supra) wherein he said:-

“...in construing a law like the Land Use Act, it is always of considerable assistance to consider the history and purpose of the law as enshrined in it’s preamble, and if possible, the social objectives...the intention of the Act as clearly stated is to assert and preserve the rights of all Nigerians to the land of Nigeria in the public interest. It is also in the public interest that the right of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof to sustain themselves and their families should be assured protected and preserved.”

As rightly submitted on behalf of the respondent, the Act was enacted to address the problems of uncontrolled speculations in urban lands, make land easily accessible to every Nigerian irrespective of gender, unify tenure system in the country to ensure equity and justice in land allocation and distribution, and amongst others, to certain extent prevent fragmentation of rural lands arising from the application of the traditional principle of inheritance. The consent clause in the Act, therefore, gives the Governor the required supervisory control of lands in the territory.

The learned counsel for the appellants related strongly to the case of Oredola Okeya Trading Co. v. A. G. Kwara State (supra) to support the contention that the consent of the Governor and of the Minister of FCT (as the case may be) is a pre-requisite requirement. One of the necessary considerations laid down by this court was “the true import of the document.”

In the matter under consideration herein, the import of the parties intention can be construed from exhibits A, B and C.

The Certificate of Occupancy of Mr. Otitoju Bonte is dated 15 June 1995, and he made an irrevocable Power of Attorney to plaintiff/respondent on 19 October 2000. The 1st defendant/appellant who claimed the unregistered agreement, exhibit D between him and the Mohammed Kalgo, (whose source was in 1996) cannot qualify to have acquired an interest earlier than that of respondent, who had by Power of Attorney stepped into the shoes of Mr. Otitoju Bonte.

I seek to relate again to the case of Cardoso v. Daniel (supra), wherein it was held that the court owes it the duty to consider the case and claim of parties on its merit and not allow the coverings and clouds of technicality to dim its vision on the road to justice. The court in other words, is enjoined to resolve dispute between the parties as presented by them and not make a case for either or both, different from the initial case set out before the court. See the case of Adebanjo Housing Dev. Society Ltd v. Mumini (1977) SC 57; and G. S. Pascutto v. Adecentro (Nig.) Ltd (1997) 12 SCNJ 1, (1997) 11 NWLR (Pt.529) 467.

The court also has an inherent obligation not to sacrifice justice on the altar of technicality. See the plethora of authorities in support - Obadiaru v. Uyigue (1986) 3 SC 39; British American Insurance Co. Ltd v. Esema Sillo (1993) 2 NWLR (Pt.277) 570; Osita Nwosu v. Imo State Environmental Sanitation Authority & Others (1990) 2 NWLR (Pt.135) 685.

For all intents and purposes, the general rule relating to Power of Attorney is apt and as restated in the plethora of authorities cited, especially, by the learned counsel for the appellants. However, and like every general rule, there could be exceptions to allow room for the fulfillment of the intention of the parties to an agreement, which they entered into voluntarily and based on the meeting of their minds.

In the case at hand, it is revealed on the record that the parties intended to enter an irrevocable Power of Attorney as evidenced at paragraph 4 of the plaintiff’s statement of claim and supported by his uncontradicted evidence before the trial court. The peculiar situation of exhibits A, B and C is very clear and raises the question:-

Whether it is just and equitable to refuse parties the benefit of their agreement/intention which was reduced into writing on account of the general rule relating to and governing Power of Attorney?

In response to the question raised, I hold the firm view that the imposition of the general rule to the matter herein, would inhibit the right to free contractual agreement. This is in view of the peculiar circumstance of this case, thus resulting in gross injustice and giving room to sheer technicality, which this court had consistently warned against. This is more so, especially when regard is had to the general intendment of the Act as was reproduced earlier from the preamble to the Land Use Act, 1978.

In other words, the essence of the Act is to preserve and protect the rights of Nigerians to enjoy and use land, and further, enjoy the fruit from the land. I will repeat again that it is not, therefore, the intention of the legislature that section 22 of the Land Use Act, should limit and deny parties of their rights to use and enjoy land and the fruits thereto in non-contentious transaction or alienation. The case at hand is a private transaction between individuals. Again, the view held by this court per Karibi-Whyte JSC in Abioye v. Yakubu (supra) is in point and comes to force.

The intention of parties are given due respect in private contractual agreements. This is paramount and the contrary should not be forced upon them. I wish to emphasize without any fear of contradiction that the Supreme Court authorities cited by the appellants’ counsel are applicable in the contexts and terms of agreement within which the Power of Attorney was executed and agreed upon. It is correct to say also that those terms in the authorities under reference are distinguishable from the case in issue which is an exception to the general rule. The parties herein have bonded themselves to an irrevocable term of agreement and their intention ought to be respected and given full effect.

The said issue like the other foregoing issues 1, 2, and 3 is also resolved against the appellants. Hence, the answer to the said issue 4 is in the negative therefore. On the totality of this appeal, the two lower courts are concurrent in their findings. I also find no reason why the judgment of the lower court should be disturbed. I hereby also endorse the conclusion arrived at by the lower court wherein it affirmed the judgment of the trial court.

The appeal lacks merit and I also dismiss same. The judgment of the lower court is hereby affirmed also by me and I make an order N500,000.00 (five hundred thousand naira) costs in favour of the respondent against all the appellants.

Appeal is dismissed with N500,000.00 (five hundred thousand naira) costs.

**RHODES-VIVOUR JSC:**

I have had the advantage of reading in draft the lead judgment of my learned brother, Ogunbiyi JSC. I agree that this appeal should be dismissed. I intend to comment on special damages awarded by the trial court and affirmed by the Court of Appeal.

There is no yardstick for awarding general damages. In awarding general damages, the trial judge should examine the circumstances of the case and grant an award guided by what a reasonable man would expect. Special damages on the other hand, must be pleaded and particularized. Evidence must be given in support and of losses which are known. That is to say, special damages must be strictly proved, and unchallenged evidence can constitute credible and sufficient proof of special damages. See Oshijirin v. Elias (1970) 1 All NLR page 153; N.M.S.L. v. Afolabi (1978) 2 SC page 79.

In paragraph 13(1) of the pleadings, the respondent as plaintiff pleaded special damages and particularized it in subsections (a) - (o) of paragraph 13. PW1, PW2, PW3 and PW4 gave evidence in support of special damages.

The trial court was satisfied that special damages was properly proved and awarded the sum of N1,600,000 (one million six hundred thousand naira) as special damages. This was affirmed by the Court of Appeal.

Special damages were properly pleaded in the statement of claim and proved with sufficient evidence led in support. On the other hand, the appellants (defendants) made a feeble attempt to deny the pleading and did not properly challenge evidence in support, which I find compelling in support of the award of special damages. I am satisfied that both courts below were correct in awarding special damages. For this brief reason, as well as those more fully given in the lead judgment, I, too dismiss the appeal with costs of N500,000 (five hundred thousand naira) in favour of the respondent.

**SANUSI JSC:**

The lead judgment in this appeal prepared by my learned brother, Ogunbiyi JSC, was made available to me before now. Having perused same, I am in entire agreement with the reasoning and conclusion reached therein that this appeal is unmeritorious and deserves to be dismissed and I too accordingly do same.

I however wish to comment on the distinction between “general damages” and “special damages.” In the legal parlance, general damages’ are regarded as those damages that the law presumes to be direct, natural or probable consequence of the act complained of. On the other hand, ‘special damages’ are simply such damages which the law will not infer from the natural consequences of the act complained of. They must always be proved, of course, after it was specifically pleaded. In otherwords, in general damages, a court can make an award when it cannot point out any measure of assessment, except what it can hold in the yardstick of measurement by a reasonable man. But on the other hand, specific damages must be specifically pleaded item, by item each item duly and specifically proved in order to succeed in the award of such item. See Adekunle v. Rockview Hotel Ltd (2004) FWLR (Pt. 188) 1037, (2004) 1 NWLR (Pt. 853) 161 at 173/174; Adedo v. Ismaila (1969) NCLR 253; Ijebu-Ode local Government v. Adedeji Balogun & Co Ltd (1991)1 NWLR (Pt. 166) 135, (1991)1 SCNJ 1.

In the present case, the record show that the respondent, as plaintiff at the trial court, specifically pleaded the special damages claimed vide paragraph 13(1) of the statement of claim. He also led evidence through PWs 1-4 in proof of the specified items of the claim for special damages and such evidence convinced the trial court that the items claimed were strictly proved before it awarded the damages. The evidence led by the appellant/defendant did not disparage or challenge the plaintiff/respondent’s case at all. It is my conviction, therefore, that the two lower courts acted on the right path when they endorsed the special damages award.

They cannot be faulted at all.

Thus, for these few remarks and in view of the fuller and more detailed reasons given in the lead judgment of my learned brother, Ogunbiyi JSC, which I entirely agree with and endorse, I also find this appeal to be of no merit whatsoever. While allowing this appeal, I also endorse the order on costs made in the lead judgment.

**AUGIE JSC:**

I had a preview of the lead judgment delivered by my learned brother, Ogunbiyi JSC, and I agree with him that the appeal lacks merit. He dealt meticulously and comprehensively with the issues raised in the appeal; I really have nothing useful to add and will simply adopt his reasoning and conclusion as mine. Thus, I also dismiss the appeal, and I abide by the order as to costs that he made in the lead judgment.

**BAGE JSC:**

I have had the benefit of reading in draft the lead judgment of my learned brother, Clara Bata Ogunbiyi JSC, just delivered. I agree entirely with the reasoning and conclusion reached. I do not have anything to add. The appeal lacks merits, and it is accordingly dismissed by me. Judgment of the Court of Appeal Abuja Division is hereby affirmed.

Appeal dismissed