**VALUE LINE SECURITIES INVESTMENT LIMITED**

**V.**

**OBUBOEGBUNAM J. ANAKWUBE**

IN THE COURT OF APPEAL OF NIGERIA

THE 16TH DAY OF JANUARY, 2015

CA/E/382/2007

**LEX (2015) - CA/E/382/2007**

OTHER CITATIONS

2PLR/2015/143 (CA)

**BEFORE THEIR LORDSHIPS**

AMIRU SANUSI, OFR, JCA

TOM SHAIBU YAKUBU, JCA

EMMANUEL AKOMAYE AGIM, JCA

**BETWEEN**

VALUE LINE SECURITIES INVESTMENT LTD - Appellant

AND

OBUBOEGBUNAM J. ANAKWUBE - Respondent

**REPRESENTATION**

B. C. UGWU Esq. - For Appellant

AND

MAURICE C. EFOBI - Esq. For Respondent

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

CAPITAL MARKET LAW: Meaning of capital market operator - Section 30 of the Investment and Securities Act – whether includes securities dealer, a stock broker, sub-broker, jobber, share transfer agent, banker to an issue, trustee of a trust deed, registrar to an issue, merchant banker, issuing houses, underwriter, portfolio manager, investment adviser and such other capital market intermediaries as may be licensed by the Security Exchange commission in accordance with the regulations made under the Act – Implication

CAPITAL MARKET LAW:- Contract between a capital market operator and its client, under which such an operator undertakes to verify the signatures of the owners of certain shares sold to its client and to effect a change in the ownership of those shares to the name of its client in the stock exchange, thereby perfecting the sale and transfer of the shares to its client – Whether a matter covered by or arising under the Investment and Securities Act - Dispute arising out of such a contract – whether a dispute envisaged under the said Act

CAPITAL MARKET LAW:- Type of dispute that the Investment and Securities Tribunal can adjudicate on in exercise of the jurisdiction vested on it by Section 234 (1), (2) (a) to (f) of the Investment and Securities Act 1999 – Unlimited jurisdiction of a State High Court - Whether extends to jurisdiction to entertain any dispute covered by or arising under the Investment and Securities Act including a dispute between a capital market operator and its client - Section 236(1) of the 1979 Constitution of Nigeria [Section 272 of the 1999 Constitution of Nigeria]

CAPITAL MARKET LAW:- Section 242 of the Investment and Securities Act which oust the jurisdiction of a State High Court to entertain disputes arising under the Act – Whether inconsistent with Section 236 (1) of the 1979 Constitution [Section 272 of the 1999 Constitution of Nigeria] and therefore void by virtue of Section 1 (1) and (3) of the 1979 Constitution of Nigeria [Section 1 (1) and (3) of the 1999 Constitution]

CONSTITUTIONAL LAW: Constitutionality of Section 242 of the Investment and Securities Act by purporting to oust the jurisdiction of a State High Court to entertain disputes arising under the Act in the light of Section 236 (1) of the 1979 Constitution [Section 272 of the 1999 Constitution of Nigeria] - superiority of a provision of the Constitution over any Act of the National Assembly Section 242 is void and of no effect to the extent of the inconsistency with Section 272 (1) of the 1999 Constitution – whether the Investment and Securities Tribunal does not share or have concurrent jurisdiction with the Federal High Court over disputes under the Investment and Securities Act - whether the State High Court has concurrent jurisdiction with the Investment and Securities Tribunal over disputes covered by or arising under the Investment and Securities Act – whether while a State High Court has unlimited jurisdiction, the jurisdiction of the Federal High Court is limited to matters listed in 251 of the 1999 Constitution

COMMERCIAL LAW – CONTRACT:- Perfection of sale and transfer of shares through a capital operator - Contract under which such an operator undertakes to verify the signatures of the owners of certain shares sold to client and to effect a change in the ownership of those shares to the name of client in the stock exchange – Basis of - Dispute arising out of such a contract – How treated

**PRACTICE AND PROCEDURE ISSUES**

ACTION - PLEADINGS:-Whether what is admitted in the pleadings, ceases to be in dispute or controversy between the parties, need not be proved by any parties at the trial and will be taken as established. See NIPO vs Thompson Organisation (1969) 1 NWLR 99 at 103 and Uredi v. Dada (1988) 1 NWLR 237." Per AGIM, J.C.A. (P. 25, paras. F-G)

ACTION - PLEADINGS:-Need for a party to be consistent in pleading the facts he relies on for the avoidance of his admission - whether plea of avoidance fails if party pleads two contradicting versions of such facts – whether a party's case on any material issue cannot be sustained on the basis of inconsistent pleadings on that point in his pleadings - trite law that the burden of proving the material facts on which a Defendant relies to avoid the facts he has admitted or confessed to lies on him – how discharged

ACTION - RELIEF:-where there are alternative reliefs, and one of the reliefs is granted – whether the other reliefs cannot be granted as it would amount to double compensation to do so

APPEAL - GROUND OF APPEAL:-Ground of appeal from which no issue for determination of the appeal is raised and which is not argued in an appeal – whether deemed abandoned and must be struck out

APPEAL - INTERFERENCE WITH AN AWARD OF GENERAL DAMAGES BY A TRIAL COURT:-When an Appellate Court will interfere with an award of general damages by a Trial Court – What must be shown - trial court acted upon wrong principles of law - amount awarded by the trial court is ridiculously too high or too low - amount awarded was entirely erroneous and an unreasonable estimate having regard to the facts and circumstances of the case - injustice will result if the appellate court does not intervene – how treated

COURT - POWER OF AN APPELLATE COURT TO REVIEW AN AWARD OF DAMAGES BY A TRIAL COURT: The scope of the power of an Appellate Court to review an award of damages by a Trial Court – whether limited or at large – when the Appellate Court can only interfere with such an award

COURT - JURISDICTION:-Courts with jurisdiction to entertain cases involving disputes covered by or arising from the Investment and Securities Act

JUDGMENT AND ORDER - DAMAGES - SPECIAL AND GENERAL DAMAGES:-Whether in a claim for breach of contract, general damages are not awarded – whether it is not appropriate to categorize damages awardable for breach of contract into general or special damages - whether in the law of contract, there is no dichotomy between special and general damages as is the position in tort – relevant guidelines

JUDGMENT AND ORDER- DAMAGES - DAMAGES FOR BREACH OF CONRACT:-General rule for quantifying damages for breach of contract - whether damages for breach of contract covers losses which are the natural and probable consequences of the breach and which were within the contemplation of the contract – rule in Hadley v. Baxendale (1864) 9 Exch. 341

JUDGMENT AND ORDER - AN UNCHALLENGED FINDINGS OF THE TRIAL COURT:-whether by not challenging the findings of the Trial Court, a party is deemed to have accepted same as correct and binding on them.

**MAIN JUDGMENT**

EMMANUEL AKOMAYE AGIM, J.C.A. (DELIVERING THE LEADING JUDGMENT):

At the instance of the Respondent herein as plaintiff, a writ of summons was issued on 9/4/2002 commencing suit No 0/202/2002 in the Anambra State High Court in the Onitsha Judicial Division, against the Appellant herein as the Defendant.

Both parties filed and exchanged pleadings, namely, statement of claim and statement of defence. The Plaintiff testified as PW1 in support of his statement of claim and closed his evidence without the defence cross-examining him. Following attempts to settle the dispute, the case was in the presence of counsel to both sides and at the instance of the Plaintiff, adjourned to 21/7/2006 for Defence. On that day, the Defendant and its Counsel were absent and sent a letter dated 17/7/2006 to the administrative judge of the Trial Court applying for the suit to be transferred from Court Room No 5 of the Trial Court to another Judge, on the basis of allegations of real likelihood of bias on the part of the learned Trial Judge trying the case. Learned Counsel for the plaintiff reacted to the said application thus:

"I have seen the letter from the Defendant. The case is for defence to open. The Defendants want to delay this case by this letter. I ask that the Defence's case be closed and the matter be scheduled for judgment. This is because this case was fixed for judgment earlier. The Trial court ruled thus: "the case for the Defence is again closed. The case is fixed for judgment on the 26th of July, 2006. Hearing notice to be served on the Defendants."

On the said 26/7/2006 the Defendant and its counsel were absent. The Trial court after finding that "there is a proof of service of the hearing notice on the Defendants", entered judgment in favour of the plaintiff awarding N1,000,000 as damages and N10,000 as cost.

Dissatisfied with this judgment, the Defendant on 1/8/2006, commenced this Appeal No CA/E/382/2007 by filing a notice of appeal containing 2 grounds of appeal which were later amended. The amended notice of appeal filed on 1/12/2010 contains 3 grounds of appeal.

Both parties have filed, exchanged and adopted their respective briefs of argument, namely, Appellant's brief of argument and Respondent's brief of argument. The Appellant's brief of argument raised the following issues for determination of this appeal;

1. Whether the Trial Court had the jurisdiction to entertain this suit

2. Whether the Trial Court was right when it awarded general damages of N1,000,000 in addition to the 13,488 units of shares already awarded to the Plaintiff/Respondent in a claim predicated on breach of contract.

The Respondent's brief of argument reproduced the issues raised in the Appellant's brief of argument and thereby adopted them.

I will determine this appeal on the basis of the issues raised for determination of this appeal in the Appellant's brief of argument.

I will start with issue number 1 which asks whether the Trial court had the jurisdiction to entertain the suit leading to this Appeal.

Learned counsel for the Appellant has argued relying on the decision inUmanah vs Attah (2006) 17 NWLR (Pt.1009) p.503 at 536, that it is the claim of the Plaintiff and the facts averred in the statement of claim that are considered in determining if a Court has the jurisdiction over a case. He submitted that from the reliefs sought by the Respondent in his statement of claim and the evidence of the Respondent, it is clear that the cause of action in this matter arose as a result of a dispute between the Appellant as a capital market operator and its client, the Respondent, over the confirmation, conversion and issuance of certificates in respect of shares quoted on the stock exchange. He then submitted that by a community reading of Sections 224 (1), 234 (1) and (2), 242 and 236 (1) of the Investment and Securities Act Cap 124, LFN 2004, the Investment and Securities Tribunal has exclusive jurisdiction over this dispute. He relied on the decision of this Court inAjayi Vs SEC (2009) 13 NWLR (Pt.1157) page 1 at 26.

Learned counsel further submitted that the Investment and Securities Act came into force on 26th May, 1999 while the suit leading to this appeal was filed on 9th April, 2002 and that in 2002 when the suit was filed, the Trial Court had no jurisdiction to entertain it. He also submitted that though the Investment and Securities Act 2004 applicable at the time material to this suit has been repealed by the Investment and Securities Act 2007, the exclusive jurisdiction of the Investment and Securities Tribunal over this dispute is retained by the 2007 Investment and Securities Act. He urged this court to resolve issue number 1 in favour of the Appellant and strike out the suit at the Trial Court.

Learned counsel for the Respondent argued in reply that since the suit was instituted in 2002, it is the Investment and Securities Act 1999 Cap.124 and not the Investment and Securities Act 2006 and the Investment and Securities Act 2007 that should apply to determine if the High Court has the jurisdiction to entertain this dispute and that by Section 234 (1), (2) (a) and (f) of the Investment and Securities Act 1999, only matters covered by or arising under it are within the exclusive jurisdiction of the Investment and Securities Tribunal and that the disputes the Tribunal has power to deal with are enumerated in Section 234 (1) and 2 (a) to (f). He then submitted that the said Investment and Securities Act deals with the purchase and sale of securities and the role of the Securities Exchange Commission and the registered agencies in the subscription, purchase and sale of securities in Nigeria, but the Plaintiff said that he had completed the purchase of his First Bank of Nigeria Plc shares and there was no dispute whatsoever in the purchase and the handover of the certificates to him. According to Learned Counsel, the complain of the Plaintiff is that the handover of the certificates to the Defendant to verify the signatures and convert same to the name of the Plaintiff and to place them in the central securities clearing system account of the Plaintiff is a transaction not covered by the Act or the procedures and guidelines set out therein for all transactions to be carried out in the securities dealings.

Learned Counsel also submitted relying on Section 284(1) (a) of the Investment and Securities Act 2007, that the 2007 Investment and Securities Act clearly shows that the Tribunal only has exclusive jurisdiction over matters arising under or covered by the Act and which has been referred to the Securities and Exchange Commission. Learned counsel relying on the decision in Peenok Investments Ltd vs Hotel Residential Ltd (1982) 12 SC 1 at 25 and Garba vs FCSC (1988) 1 NWLR (Pt.71) 449 at 477, restated the law that any statute that tends to limit the access of citizens to Court or to limit the jurisdiction of the Court, has to be interpreted strictly and narrowly and then submitted that the Investment and Securities Act 1999, in its entirety, did not specify about lodging certificates for conversion into CSCS account and no guidelines were set out detailing that in the said Act and that it is therefore not covered in the Act and so is within the jurisdiction of a High Court.

Another submission of the Learned Counsel for the Appellant is that the Investment and Securities Act by giving exclusive jurisdiction to the Investment and Securities Tribunal is inconsistent with the 1979 Constitution of Nigeria applicable as at the time the dispute arose and the 1999 Constitution applicable as at the time the suit was filed in the trial High Court in 2002.

He submitted that the successive constitution created the High Court and gave it unlimited jurisdiction. He referred to Section 6 (6) (b) of the 1979 Constitution of Nigeria. He argued that Section 1 of the 1979 Constitution gives the Constitution supremacy over and above all other laws, so that if any other law is inconsistent with the provisions of the Constitution, the latter shall prevail and the other law shall to the extent of the inconsistency, be void. He referred to the decision in the case of Attorney General of the Federation vs Abubakar (2007) ALL FWLR (Pt.389) 1264. Learned counsel also submitted that even though Section 315 (5) of the 1999 Constitution saved the Investment and Securities Act 1999 as an existing law, it did not save the part that is inconsistent with the Constitution and allows the Court to declare such part as void and ineffectual.

Let me now consider the merit of the above argument under issue No 1. I agree with the submission of Learned Counsel for the Respondent that the applicable law regulating transactions between the capital market operator and a client in respect of perfecting the sale and purchase of shares, transferring and registering the purchased shares in the central securities clearing system in the name of their new owner, at the time the dispute arose between 9th April and 30th September, 1999 or 9th April, 2002 when the suit at the Trial Court was filed was the Investment and Securities Act 1999. I however do not agree with the submission that the transaction between the Appellant and the Defendant is not covered by or did not even arise under the said Act.

It is glaring from paragraphs 2 to 10 of the plaintiff's statement of claim and his unchallenged and uncontradicted evidence that the Respondent after buying certain First Bank of Nigeria Plc shares from several individuals, and the sale agreements, share certificates and other documents having been delivered to him by the previous owners of those shares, engaged the Defendant, who was a member of the Nigerian Stock Exchange, delivered the above mentioned documents to him to verify and confirm the signatures of the sellers of the shares as the registered owners of the said shares in the Nigerian Stock Exchange and effect the change of names of the owners of the shares to that of the plaintiff.

The dispute here is that the Appellant has not completed the change of ownership of all the shares to the name of the Respondent in the central securities clearing system account of the Plaintiff in the Nigerian Stock Exchange in breach of his obligation under the contract between it and the Respondent to perfect the sale and transfer of the shares to the Respondent. I agree with the submission of Learned Counsel for the Appellant that the Appellant is a capital market operator. This is clear from paragraphs 2 to 10 of the statement of claim, the Plaintiff's evidence and paragraph 1 of the statement of defence. The Respondent in his statement of claim stated that the Appellant is a member of the Nigerian Stock Exchange and his statement of claim and evidence stated that he engaged it to perfect his purchase of shares from certain individuals and effect a change in the name of the owners of the shares to the plaintiff. These facts remained admitted on the pleadings and no issue was joined on them. Therefore, they needed no proof. It is settled law that generally, what is admitted in the pleadings, ceases to be in dispute or controversy between the parties, need not be proved by any parties at the trial and will be taken as established. See NIPO vs Thompson Organisation (1969) 1 NWLR 99 at 103 and Uredi v. Dada (1988) 1 NWLR 237. In any case the pleadings and the uncontradicted evidence of the Appellant establishes that the Respondent was engaged as an operator in the capital market and it carried out the transaction as such. Therefore the Appellant is, as Learned counsel for the Appellant has submitted, a capital market operator. A contract between a capital market operator and its client, under which such an operator undertakes to verify the signatures of the owners of certain shares sold to its client and to effect a change in the ownership of those shares to the name of its client in the stock exchange, thereby perfecting the sale and transfer of the shares to its client is clearly a matter covered by or arising under the Investment and Securities Act. A dispute arising out of such a contract is clearly a dispute arising under the said Act. Section 30 of the Investment and Securities Act defines a capital market operator as-

"capital market operator" includes a securities dealer, a stock broker, sub-broker, jobber, share transfer agent, banker to an issue, trustee of a trust deed, registrar to an issue, merchant banker, issuing houses, underwriter, portfolio manager, investment adviser and such other capital market intermediaries as may be licensed by the commission in accordance with the regulations made under the Act".

The pleadings and evidence establish that the Appellant is an issuing house and was contacted by the Respondent as a capital market intermediary and share transfer agent.

It is glaring that the dispute that resulted in the suit at the Trial court was a dispute between a capital market operator (Appellant) and its client (the Respondent) over the failure of the former to verify and confirm the signatures of the sellers of some of the shares in the stock exchange and the failure to effect the change in the ownership of those shares to the name of the Respondent as their owner in the stock exchange. As already held herein, I do not agree with the submission of Learned counsel for the Respondent that this dispute is not covered by or does not arise under the Investment and Securities Act. It is covered by and arises under the Act. The dispute arises from a contract to register and perfect the sale and transfer of shares (securities) the ISA 1999 regulates the registration of securities and transfer of such securities like shares S.234(2) ISA 1999 that States clearly that disputes between Capital Market Operators are disputes arising under it. Therefore Learned Counsel for the Respondent was, with due respect, wrong in his submission that the dispute is not within the type of dispute that the Investment and Securities Tribunal can adjudicate on in exercise of the jurisdiction vested on it by Section 234 (1), (2) (a) to (f) of the Investment and Securities Act 1999 which provides as follows-

(1) The tribunal shall have power to adjudicate on disputes, and controversies arising under this Act and the rules and regulations made thereunder.

(2) The tribunal shall in particular adjudicate on matters relating to-

(a) The interpretation of any law, enactment or regulations to which this Act applies:

(b) Disputes between the Commission and the Securities Exchange or Capital Trade point.

(c) Disputes between Capital Market Operators and Securities exchange or Capital Trade point.

(d) Disputes between Capital Market Operators;

(e) Disputes between Capital Market Operators and their clients; and,

(f) Disputes between quoted companies and the regulators of the Securities Exchanges.

The State High Court equally has jurisdiction to entertain any dispute covered by or arising under the Investment and Securities Act including a dispute between a capital market operator and its client like the dispute in the present case, by virtue of the unlimited jurisdiction of the State High Court to hear and determine any civil or criminal proceedings vested on it by Section 236(1) of the 1979 Constitution of Nigeria, applicable when the cause of action arose and Section 272 of the 1999 Constitution of Nigeria, applicable when the suit was filed and up to date.

Section 242 of the Investment and Securities Act ousts the jurisdiction of the State High Court to entertain such disputes. It provides thus-

"save as provided elsewhere in this Act, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred on the Tribunal by or under this Act".

Generally, the words "Civil Court" is often used to differentiate the ordinary courts from Military or Force Service courts like the court Martial or to differentiate courts exercising criminal jurisdiction from those exercising civil jurisdiction. As used in the Investment and Securities Act, I understand it to mean the ordinary courts different from the Tribunal created for the sole purpose of adjudicating over only disputes arising under the Investment and Securities Act. As used in the Investment and Securities Act, the term Civil Court includes a High Court.

I agree with the submission of Learned counsel for the Respondent that Section 242 of the Investment and Securities Act by ousting the jurisdiction of a State High Court to entertain disputes arising under the Act, conflicts with Section 236 (1) of the 1979 Constitution (then applicable) and Section 272 of the 1999 Constitution of Nigeria. On account of this conflict Section 242 of the Investment and Securities Act is rendered void ab initio by virtue of Section 1 (1) and (3) of the 1979 Constitution of Nigeria and Section 1 (1) and (3) of the 1999 Constitution which provides that;

"(1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void."

The 1999 Investment and Securities Act is an existing law and deemed Act of the National Assembly by virtue of Section 315 (1) (a) and (4) (b) of the 1999 Constitution. As an Act of the National Assembly, Section 242 is void and of no effect to the extent of the inconsistency with Section 272 (1) of the 1999 Constitution. Its recognition as an existing law and a deemed Act of the National Assembly does not save any part of it that is in conflict with the Constitution from being declared invalid by a court. This is expressly stated in Section 315 (3) as follows:

"nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say-

a. Any other existing law;

b. A law of a house of assembly;

c. An Act of the National Assembly; or

d. Any provision of this constitution."

In line with the express provisions of Section 1 (3) of the 1999 Constitution and similar constitutional provisions, the Courts across jurisdictions have always without hesitation declared null and void the provision of any law that conflicts with any part of the Constitution.

On the basis of this supremacy of the Constitution the courts have also held in a long line of cases that the unlimited jurisdiction vested in the State High Court by Section 236 of the 1979 Constitution or now Section 272 of the 1999 Constitution is subject only to the Constitution and can be limited only by the Constitution and no other law. See Odetayo v. Bamidele (2007) 5 SC 72, Okonkwo and Ors v. Okonkwo and Ors (2010) LPELR 9357 (SC) and Adisa v. Oyinwola (2000) 10 NWLR (Pt.674) 116 (SC). In Benin Rubber Producers Co-operative Marketing Union Ltd v. Ojo and Anor (1997) 9 NWLR (Pt.521) 388, the supreme court held that "...more importantly however, there are the provisions of Sections 6 (6) (b), 236 and 274 of the Constitution of the Federal Republic of Nigeria, 1979. The combined effect of these Sections of the 1979 Constitution is, subject to the other provisions of the said Constitution, to confer unlimited jurisdiction on the High Court of a state and all existing laws and/or any provisions in a state Law which are not in conformity with the provisions of the Constitution or tend to derogate from the powers of such courts shall, to the extent of such inconsistency, be void. State Law or any provision of a state Law which purports to oust the jurisdiction of the State High Court is void as being inconsistent with the Constitution of the Federal Republic of Nigeria, 1979." PER IGUH, J.S.C. (P.20, paras. B-E)

As held by the Supreme Court in Odetayo v. Bamidele (Supra) and Benin Rubber Producers Co-Operative Marketing Union Ltd v. Ojo and Anor (Supra) any Act of the National Assembly, State Law or other law that restricts the unlimited jurisdiction vested on the State High Court by the Constitution is inconsistent with the Constitution and shall to the extent of its inconsistency with the Constitution be void. Therefore I declare that Section 242 of the Investment and Securities Act is to the extent of its conflict with Section 236(1) of the 1979 Constitution or Section 272(1) of the 1999 Constitution, void and of no effect. As it is, the State High Court and the Investment and Securities Tribunal have concurrent jurisdiction to entertain cases involving disputes covered by or arising from the Investment and Securities Act. The decision of this court in Ajayi vs SEC (2009) 13 NWLR (Pt.1157) 1 at 26 cannot apply to this case because that case decided inter alia that the Investment and Securities Tribunal does not share or have concurrent jurisdiction with the Federal High Court over disputes under the Investment and Securities Act. The issue in our present case is whether the State High Court has concurrent jurisdiction with the Investment and Securities Tribunal over disputes covered by or arising under the Investment and Securities Act. It is noteworthy that while a State High Court has unlimited jurisdiction, the jurisdiction of the Federal High Court is limited to matters listed in 251 of the 1999 Constitution. So the Constitution itself did not list disputes arising under the ISA as part of its subject matter jurisdiction. The trial court was right to have exercised its jurisdiction to hear and determine the suit leading to this appeal. In light of the foregoing, I resolve issue No 1 in favour of the Respondent.

I will now consider issue No 2 which asks whether the Trial Court was right to have awarded 1 Million Naira as damages, in addition to granting the Respondent's claim for 13,488 units of shares predicated on breach of contract. Learned Counsel for the Appellant in arguing this issue correctly restated the facts relevant to the determination of this issue thus: "in the instant case predicated on the breach of contract, the Respondent claimed a total of-

"In the instant case predicted on breach of contract, the respondent claimed a total number of 5526 shares of First Bank of Nigeria plc. which he said the appellant did not convert in his name. He further claimed a total number of shares the plaintiff would have had as bonus from First Bank of Nigeria Plc from the unconverted shares of 5526 since year 1999 to 2002 and beyond. The total numbers of shares claimed by the Respondent was 13,488 inclusive of the unconverted shares of 5526 and the bonus shares of 7962. The trial court in its judgment ordered the appellant to procure and deliver to the respondent a total of 13,488 units of First Bank of Nigeria Plc shares."

Following this restatement of facts, he argued that the award of 13,488 units of First Bank Plc shares to the Respondent by the Trial Court, which were a sum total of unconverted shares of 5,526 units and bonus shares of 7,962 units, was enough compensation to the Respondent, that it amounts to a double compensation and contrary to the principle for award of damages in breach of contract cases for the Trial Court to have proceeded further to award the sum of 1 Million Naira general damages, after awarding to the Respondent the total number of shares claimed together with the accruing bonuses and that the 13,485 units of shares awarded to the Respondent being in nature of special damages, the Trial Court was wrong to have given the Respondent an extra award of 1 Million Naira. Relying on the decision inX. S. Nigeria Ltd v. Taisei (W.A.) Ltd (2006) 15 NWLR (Pt.1003) 533 at 557 and SPDC (Nig) Ltd v. Katad (Nig) Ltd (2006) 1 NWLR (Pt.960) 198 at 217 and 224, Learned Counsel further submitted that in an action for breach of contract, the Court is concerned only with damages which are natural and probable consequences of the breach or damages within the contemplation of the parties at the time of the contract and that a corollary to this principle is that in a claim for breach of contract, general damages are not awarded.

Relying again on the decision inSPDC (Nig) Ltd v. Katad (Nig) Ltd (supra) and on the decision Ativie v. Kabel Metal (Nig) Ltd (2008) 10 NWLR (pt 1095) 399 at 425. He submitted that damages recoverable in breach of contract cases is to the extent that it will place the Plaintiff in the position he would have been if the loss had not been inflicted on him.

Relying on the decision in Uman v. Owoeyi (2003) 9 NWLR (Pt.825) 221 at 237, Learned counsel also submitted that the Trial Court in awarding the said general damages acted on wrong principles of law and took into account the irrelevant factor that the Respondent did not claim for the bonus of shares and the Dividends that would have accrued to him from the date the cause of action accrued or the date of filing the suit till the date of judgment. He reproduced the part of the judgment he is complaining against here as follows;

"In addition the 5526 units of shares would have translated into 13,488 units of First Bank of Nigeria Plc. Shares by 2002 when this action was held. In my view not only is the plaintiff entitled to those, he is also entitled to all the dividends and bonus shares declared by First Bank of Nigeria Plc. to date. Unfortunately the plaintiff claimed only a total of 13,488 units of First Bank of Nigeria Plc. Shares in addition to general damages. The law is clear that a party cannot be given more than he has claimed...

The plaintiff has failed to amend the statement of claim to update his claim to the date of judgment. He also did not claim for the dividends.

In the circumstances this case succeeds. Judgment is entered in favour of the plaintiff as follows; the plaintiff is entitled to 13,488 units of First Bank of Nigeria Plc. Shares as at today...considering the benefits lost by the plaintiff on these shares from 2000 to date, I am of the new that it (sic) is entitled to damages which is assessed at N1,000,000.00".

He then argued that the Trial Court awarded the said general damages to argument and shore up the special damages that the Respondent failed to plead and prove and that it was wrong to award general damages to compensate the Respondent who failed to plead and prove the dividends accruable from the shares from the date the suit was filed till the date of judgment. Learned Counsel finally urged that issue No 2 be resolved in favour of the Appellant.

Relying on the decision in Mobil Oil Nig Ltd vs Akinfosile (1969) 1 NMLR 217, Learned Counsel for the Respondent opened his reply to the arguments of Learned Counsel for the Appellant under issue No 2 by stating that it is the law that damages in the case of breach of contract are awarded upon the basis of what was reasonably within the contemplation of the parties at the time the contract was made and that is what the Plaintiff can recover from the Defendant as the loss that flows from the breach of it.

After restating the reliefs a, b and c claimed for by the Respondent in paragraph 24 of his statement of claim which are reproduced on page 20 of this judgment, Learned Counsel for the Respondent argued that the Appellant in his pleadings, specifically in paragraphs 11 and 12 of his statement of defence, admitted the Respondent's pleading that the Respondent still has 5,526 units of First Bank Plc shares unconverted in his central securities clearing system (CSCS) account, that each year, First Bank Nig Plc distributed bonuses of 1 share for every 4 shares, and that First Bank Nig Plc paid dividend of N1.00 per share in 1999, N1.00 per share in 2000, N1.30 per share in 2001 and N1.30 per share in 2002. According to him, the Respondent's evidence of these facts remain unchallenged. He also submitted that the Trial Court made findings of fact that from the admission of the parties, the Respondent was entitled to 13,488 units of First Bank shares comprising of the unconverted units and the accrued bonuses and that the Respondent was entitled to the shares declared by First Bank Nigeria plc to date. He then argued that since the Trial Court had found as a fact that the Respondent was entitled to the dividends declared by the said bank till date, it was bound to order the payment of monetary damages because the dividend is assessed in money and it is different from the bonuses already awarded. He argued further that a person who is entitled to shares and bonuses is also entitled to dividends accruable on the shares or bonus shares, that it is not double compensation and that the Respondent would have suffered a grave miscarriage of justice without the award of general damages, as he would have lost all the dividends accruable on his shares.

Learned Counsel also submitted that the above findings of facts by the Trial Court are not challenged by any ground of this appeal, that the absence of an appeal against the said findings is fatal to the case of the Appellant as it is too late for it to complain, that it is on the basis of the said findings that the Trial Court awarded the general damages of 1 Million Naira and that there is no argument proffered by the Appellant as to whether the assessment is wrong, too high or misconceived.

Learned counsel finally argued that the parties were aware and indeed it was within their contemplation as is customary in the securities business that declared dividends are paid to shareholders and that the delay to convert the shares would ordinarily lead to the loss of the dividend that would have accrued on them and relied on the decision of this court in Ijebu Ode Local Government v. Balogun (1991) 1 NWLR (pt.166) 136 and the supreme court decision in Maiden Electronics Ltd v. AG of the Federation (1974) 1 ALL NLR (pt 1) 179 for this submission. Learned Counsel then urged that this appeal be dismissed.

Let me now examine and determine the merit of the above arguments. In paragraph 24 of his statement of claim, the Respondent claimed for the unconverted unit of shares and the accrued bonus shares separate from the relief of special and general damages for breach of contract.

In paragraph 24 (a) and (b), he claimed for;

(a) An order compelling the defendant to obtain and issue to the plaintiff a total of 5526 shares of First Bank of Nigeria Plc being the remaining unconverted shares the plaintiff gave to the defendant under contract to convert for him in his name.

(b) An order compelling the defendant to obtain and issue to the plaintiff a further total of 7962 shares or more being the total number of shares the plaintiff would have had as bonus from the First Bank of Nigeria Plc from the remaining unconverted shares of 5526 since year 1999 to 2002 and beyond.

In paragraph 24 (c), he claimed for;

(c) The sum of N5 Million damages being both special and general damages for breach of contract.

Dated the 5th day of March, 2003.

The relief of special and general damages was not claimed for as an alternative to the claims for the shares. There is no doubt that relief (a) above is the primary relief because the Respondent's entitlement to reliefs (b) and (c) is dependent on his entitlement to the unconverted shares to have same issued and registered in his name after the Respondent contracted the Appellant to change the name of the owner of the said shares to that of the Plaintiff in the central securities clearing system of the stock exchange.

The case of the Respondent as stated in his unchallenged and uncontroverted evidence is that –

"The total number of units I gave to the defendant is 8019 units of shares. On payment of the commission, the defendant promised to provide me with a computer print out to cover the entire units of shares I gave them reflecting my name as the owner. They also assured me that henceforth I shall be receiving my bonus share certificates and dividend warrants. Subsequently I went to see the defendants at it gave me a computer printout showing the number of units that was then corrected to my name, this was in September 1999. The computer printout they gave me showed only 2199 units of First Bank of Nigeria Plc shares in my name. This is the computer printout.  
  
COURT: C.S.C.S. free quarterly stock position as at September 30, 1999 is admitted in evidence and marked Exhibit P. 3.  
  
P.W.1. I later went back to the defendant who gave me another computer printout, Exhibit P. 3 continues investors account. This is the 2nd computer printout which the defendants gave me.  
  
EFOBI. I seek to tender the computer printout in evidence.  
  
COURT: the CSCS free quarterly stock point as at June 30th, 2000 is admitted in evidence and marked Exhibit P. 4.   
  
P.W.1 continues: this 2nd printout Exhibit p.4 was the same investor account number. It shows a total of 2493 units of shares in my name as at 30th June, 2000. I continued going for the remaining units of 5526 units until I got tired and instituted this action against the defendant. I have not received dividend or bonus shares in respect of the 5526 units not converted in my name. I am entitled to receive dividends and bonus shares on those units since 1998. I have been receiving dividends and bonus from the share already converted which total only 2493 units."

This evidence is consistent with the Respondent's statement of claim and supported by the Appellant's statement of defence. Paragraphs 7 and 8 therein which plead the existence of the contract to confirm the signature of the sellers of the 8,019 units of shares and convert same to the Plaintiff are admitted in paragraph 3 of the statement of defence. In paragraph 9 of the statement of claim, it is pleaded that the Appellant performed the part of the contract of having the signatures of all the sellers of the shares confirmed in the stock exchange and the Respondent being satisfied with the part performance then paid for the conversion of the shares to the name of the Respondent by the Appellant. Paragraph 4 of the statement of defence that tried to deny paragraph 9 of the statement of claim, ended up admitting it. It admitted that the Appellant took the shares for verification and confirmation and did not deny that this was done and that the Respondent upon being satisfied with the part performance paid it to carry out the conversion. Paragraphs 72, 13 and 14 which in substance state that as at the month of June 2000, the Appellant had converted only 2,493 shares to the name of the Respondent, leaving a balance of unconverted shares of 5.526. Paragraph 7 (a) to (e) of the statement of defence admitted the said paragraphs 12, 13 and 14 of the statement of claim but avoided responsibility for failure to convert the remaining shares and return the certificates therefore, explaining inter alia that "it never decided not to give back to the Plaintiff, his, at the material time, unconverted certificates but because it was then in the process of being cleared in the system could not give it back." Contrary to its position in paragraph 7 of the statement of defence, the Appellant in paragraph 8 of its statement of defence alleged that "the Plaintiff has suffered no damage or loss as his stocks are all cleared a long time ago, and the benefits accruing therefrom are standing in his name and to his credit." He had alleged in paragraphs 7 (a) to (e) thus-

(a) "The defendant in answer to paragraphs 12, 13 and 14 avers that it in part admit the said paragraphs but in part deny its purport to the extent that at neglected and or refused to convert the remainder of the plaintiff's stock and would not give back to the plaintiff the Certificates.

(b) The defendant further avers that because the certificates were not in a lump and owned by one person and signature, but in bits from different individuals it was as such cleared at different times. A process of go and come for the staff of the defendant, to see that all are cleared which made the transaction to take time, and thus requires patience.

(c) The defendant further avers that with the introduction of the Central Securities Clearing Systems Limited, certificates cleared or in process of being cleared are not sent back, but now in the system in the name of the person it belongs or accrues to. Being an electronic depository system, that demobilizes physical certificates and thus creates liquidity in the market, removing bottlenecks and risks associated with physical certificates, there was no way for the defendant to return the certificates to the plaintiff. Rather what obtains initially was quarterly print out showing the position of one's stock, and now monthly printouts.

(d) The defendant avers that at the trial it will lead evidence to show that this suit was actuated by paucity of knowledge of the new system and refusal or impatience of the plaintiff to approach the defendant in a customer like manner to know the position of his stocks.

(e) The defendant avers that it never decided not to give back to the plaintiff his at that material time, unconverted certificates, but because it was then in the process of being cleared in the system could not give it back."

The above paragraphs of the statement of defence amount to an admission that the Appellant had a contractual duty to clear all the 8,019 shares and amounts to an avoidance that it is responsible for the failure to clear all the shares and return the certificates due to changes in the central security clearing system or because they are in the process of being cleared and that it has cleared all the shares and the benefits accruable to the shares are standing to his credit in his name. But the Appellant in paragraph 12 of its statement of defence in response to paragraph 21 of the statement of claim contradicted the reason it gave in paragraph 7 of its statement of defence for the avoidance of its admission. Paragraph 21 of the statement of claim states that "the plaintiff has not received any dividend or bonus shares of 5525 since the date the later receipt pleaded in paragraph 8 supra was issued as agreed, that is to say the 5th day of March, 1999 until today". The Appellant in paragraph 12 of the statement of defence responded that "in answer to paragraph 21 of the statement of claim, the defendant avers that it is not its making, rather because the plaintiff took out an action against the defendant, to rectify and regularize issues concerning his stocks deposited through the Defendants who were his stock brokers with regards to the said 5526 shares or stocks."

The Defendant must be consistent in pleading the facts relied on for the avoidance of his admission. If he pleads two contradicting versions of such facts then the plea of avoidance fails. A party's case on any material issue cannot be sustained on the basis of inconsistent pleadings on that point in his pleadings. It is trite law that the burden of proving the material facts on which a Defendant relies to avoid the facts he has admitted or confessed to lies on him. He can only discharge that burden on the preponderance of consistent and credible evidence that supports his pleading. In the face of its contradicting versions of the facts relied on for the avoidance of admission it would have been impossible for the Appellant to have led consistent evidence on the issue or evidence that would not conflict with part of his statement of defence. In any case the Appellant led no evidence to prove the said facts alleged in paragraphs 7 and 8 of its statement of defence by which it sought to avoid its admission. so the evidence of the Respondent in support of his statement of claim that the Appellant neglected or refused to convert the remaining 5,526 unit shares to the Respondent's name remained uncontradicted.

I agree with the submission of Learned counsel for the Respondent that both parties to the contract knew of the benefits that would ordinarily accrue to the Respondent upon the conversion of the said shares name of the plaintiff and that such benefits were therefore within their reasonable contemplation. The Appellant in paragraph 5 of its statement of defence, responding to paragraph 10 of the statement of claim admitted that "the Defendant told the Plaintiff that upon the transfer of the certificates to his name by the Central Security Clearing System, then all dividends, bonuses including all other benefits derivable therefrom shall be accruable to the Plaintiff and enjoyed by him." It is clear from paragraph 10 of the Respondent's statement of claim that he engaged the Appellant to perfect his holding of the said shares in the stock exchange to enable him enjoy the bonuses, dividends and other benefits which the Appellant informed him would accrue to the holder of shares except that he expected the benefits to start accruing from the date he paid the Appellant to convert the shares. The Appellant who alleged in paragraph 8 of its statement of defence that the Respondent's "stock are all cleared a long time ago, and the benefits accruing therefrom standing in his name to his credit" did not adduce any evidence to prove that he effected the clearing of all the Respondent's shares and the enjoyment by the Respondent of all benefits attached to the shares. Meanwhile, the evidence of the Respondent that as at June 2000 and until the time of filing the suit to date, the Appellant has not effected the conversion of the 5,526 units of First Bank Nigeria Plc shares to his name and as a result he has not enjoyed any dividend or share bonus from the said unconverted shares till date remained uncontradicted.

Based on the pleadings, both parties agreed that the unconverted shares attracted dividends of N1.00 per share in 1999 and 2000 and N1.30 per share in 2001 and 2002 and that First Bank Nigeria Plc distributed bonuses of one share for every four shares held by a shareholder every year. Paragraphs 19 and 20 of the Respondent's statement of claim states thus:

19. Evidence shall be lead at the trial to show that the year ended 1999, each First Bank of Nigeria Plc share attracted the sum of N1.00k as dividend and the year ended 2000 each share also attracted the sum of N1.00k while the sum of N1.30k each share was distributed for the year 2001 and N1.30k each share for the year 2002 as dividend.

20. Further, evidence shall be lead at the trial to show that each year First Bank of Nigeria Plc distributed bonuses of one share to every four share each year to all its shareholders. The plaintiff who has other shares with First Bank of Nigeria Plc has been given several other certificates of shares received as bonus from the First Bank of Nigeria Plc and shall rely on the various certificates at trial and they are hereby pleaded."

Paragraph 11 of the Appellant's statement of defence states that "the Defendant admits paragraph 19 and 20 of the statement of claim." The evidence in examination in chief of the Respondent on this point went thus- PW1 -"There were other shares I bought in 1998 and handed over to another stock broker in Lagos known as Premium Securities. They have converted them in my name and I have been receiving dividend and bonus therefrom. Premium Securities had given me the computer printout showing my stock position on at least two occasions. These are the computer printouts I am talking about.

EFOBI: I seek to tender the document.

COURT: the CSCS free quarterly stock as at June 30, 2001 is admitted in evidence and marked Exhibit p.5 whilst the CSCS free quarterly stock position as at September 30, 1998 is admitted in evidence and marked Exhibit P.5A.

P.W.1 continues; Exhibit P5 and Exhibit P5A have different investors account from Exhibit P. 3 and Exhibit P. 4. I am aware that from 2001 First Bank of Nigeria Plc issue notices of the number of bonus shares they give and the ratio to the existing shares. In 2001 the Company FBN Plc issued a bonus of one share to four existing shares. This is a notice to that effect.

EFOBI: I seek to tender the notice in evidence.

COURT: the notice is admitted in evidence and marked Exhibit p.6.

P.W.1 Continues: this is the notice for 2002, the bonus issued was one bonus share to 4 existing shares.

EFOBI: I seek to tender the notice in evidence.

COURT: the notice is admitted and marked Exhibit p7.

P.W.1 continues: apart from bonuses, I also received dividends from 1999 till date. These are the counter foil of the dividend warrants I have received.

EFOBI: I seek to tender the documents.

COURT: the documents are admitted and marked as follows:

(a) For year ending 31/3/99     Exhibit P8

(b) For year ending 31/3/00     Exhibit P8A

(c) For year ending 31/3/2002 Exhibit P8C

(d) For year ending 31/3/2003 Exhibit P.D

(e) For year ending 31/3/2004 Exhibit P.E

P.W.1 Continues: I was issued with bonus share certificates for this period on the shares already converted to my name.

These are the Certificates.

EFOBI: I seek to tender them in evidence.

COURT: the bonus share certificates are admitted in evidence and marked as follows:

(a) BONUS ISSUE 1999     Exhibit P.9

(b) BONUS ISSUE 2000     Exhibit P.9

(c) BONUS ISSUE 2001/2002     Exhibit P. B

(d) BONUS ISSUE 2002/2003     Exhibit p.9C

(e) BONUS ISSUE 2003/2004     Exhibit P.9D

P.W.1 Continues: I have not received any dividend or bonus shares for the 5526 units which the defendants did not convert in my name.

In year 2000 FBN PLC gave one bonus share for every 4 shares held by the existing shareholders. It also paid N1.00 per share as dividend.

In 2001 FBN PLC gave one bonus share for every 4 shares held by the existing shareholders. It paid N1.30 per share as dividend.

In 2002, FBN PLC gave one bonus share for every 4 shares held by the existing shareholders. It also paid N1.30 as dividend for that year.

From the above I would have earned dividend of N47,102.70 on the share not converted up to 2002. As at that day I would have had 12,488 units of bonus shares on the unconverted shares.

Uptil 2004, I have received dividends and bonus shares on my other shares with First Bank of Nigeria PLC."

This evidence was not challenged or contradicted. The Trial Court held that- "the Plaintiff's case was unchallenged and uncontradicted. Because the testimony is not otherwise credible, this Court has no reason not to act on it. See Nwabuoku v. Otti (1961) ANLR 507."

The Trial Court found as follows;

"There is evidence which this court accepts that, by Exhibit P.2 and P.2A, the defendant acknowledged receipt of 8019 units of First Bank of Nigeria Plc shares from the plaintiff. Exhibit P.4 is evidence that as at 30th June, 2000, the defendant had only transferred 2493 units of the shares to the plaintiffs name leaving 5526 units outstanding. A close study of Exhibit P.8 to P.8E and Exhibits P9 to P9D reveal that at the rate of dividend and bonus shares declared by First Bank of Nigeria Plc since 1999 the plaintiff would have been entitled to N47,102.70 as dividend on the 5526 units of First Bank shares. In addition the 5526 units of shares would have translated into 13488 units of First Bank of Nigeria Plc shares by 2002 when this action was filed. In my view, not only is the PLAINTIFF entitled to those, he is also entitled to all the dividends and bonus shares declared by First Bank of Nigeria Plc to date. Unfortunately the plaintiff claimed only for a total of 13488 units of First Bank shares in addition to general damages. The law is clear that a party cannot be given more than he has claimed. See IGE V. OLUNLOYO (1984) 1 SC 258. AWONIYI V. REGD TRUSTEES, AMORC (2000) 10 NWLR (Pt 676) 522"

It then proceeded to adjudge thusly;

"In the circumstances, this case succeeds. Judgment is entered in favour of the plaintiff as follows. The plaintiff is entitled to 13,488 units of First Bank Shares as at today. The defendant shall procure a total of 13,488 units of First Bank of Nigeria Plc shares for delivery to the plaintiff. It is further ordered that until the shares are procured and registered in the plaintiff's name he shall be entitled to the dividend and bonus shares that accrue thereon from today."

I agree with the submission of Learned Counsel for the Respondent that the above findings and decision have not been challenged by any ground of this appeal or any other legal process. It is trite law that by not challenging the findings of the Trial Court, the parties have accepted same as correct and binding on them. See NBCI V. Integrated Gas (Nig) Ltd (2005) 4 NWLR (Pt.916) 617, Iyoho v. Effiong (2007) 4 SC (Pt.111) 90 and Adedayo v. Babalola (1995) 7 NWLR (Pt.408) 383.

The above part of the judgment of the Trial Court is therefore not part of the issues in this appeal.

The complaint of the Appellant under ground 1 of the amended notice of appeal and issue no 2 in the Appellant's brief of argument is against the part of the judgment of the Trial Court awarding the Respondent the sum of 1 Million Naira as damages for the benefits the Respondent lost on the unconverted shares from 2000 to date. The said part of the Trial court's judgment reads thusly;"Considering the benefits lost by the plaintiff on these shares from 2000 to date, I am of the view that it is entitled to damages which is assessed at N1,000.000. There shall be cost of N10,000 in favour of the plaintiff."

I do not agree with the submission of learned Counsel for the Appellant that the award of 1 Million Naira damages for the Respondent's loss of benefits by the Trial Court after ordering that the Appellant procure and give to him 13,488 units of shares amounts to double compensation.

It is clear from the tenor of the judgment that the benefits the Trial Court referred to as having been lost on the said shares are the dividends that ought to have accrued on those shares if they had been converted. The grant of the reliefs in paragraphs 24 (a) and (b) of the statement of claim by the order that the Appellant procures and gives to the Respondent 13,488 units of shares which includes the unconverted shares claimed for in paragraph 24 (a), and the total of the bonus shares that ought to have accrued on the unconverted shares from 1999 to 2002 when the suit was filed, claimed for in paragraph 24 (b), takes care of the aspect of the benefits relating to share bonuses.

What was left therefore was the dividends that ought to have been paid on the unconverted shares. It is obvious that the award of One Million Naira damages was meant to compensate the Respondent for the loss of the said dividends.

It is clear from paragraph 2a (c) of the statement of claim that special and general damages were claimed as a separate remedy from the claims in paragraph 24 (a) and (b) and not as an alternative to them. If the relief in paragraph 24 (c) was claimed as an alternative to the reliefs in paragraph 24 (a) and (b), then the argument that it cannot be granted since the reliefs in paragraph 24 (a) and (b) had been granted, would have been valid. It is trite law that where there are alternative reliefs, and one of the reliefs is granted, the other reliefs cannot be granted as there would be no need to do so. To grant it would amount to double compensation. See GFK Investment (Nig) Ltd v. NITEL Plc (2009) 15 NWLR (pt 1164) 344 (3C). In the instant case there was no claim for alternative reliefs. The order that the Appellant procure and give the Respondent the unconverted shares is remedy for the Appellant's breach of contract by neglecting to convert the shares to the Respondent's name. The order that the Appellant procures and gives to the Respondent, units of shares, is remedy for the loss of bonuses directly resulting from the breach of contract. The award of damages of 1 Million Naira is remedy for the loss of dividends directly resulting from the breach of contract. It is not the price of the shares. Therefore it cannot validly be argued that the Respondent cannot be awarded the shares as well as their monetary value. The Respondent did not claim for the price of the shares. He claimed for the dividends he would have earned from the shares if they had been perfected by the appellant. Therefore the grant of the relief in paragraph 24(c) after the grant of the reliefs in paragraph 24 (a) and (b) cannot by any stretch of imagination be regarded as double  
compensation.

Since it was within the reasonable contemplation and expectation of both parties under the contract that the shares if converted to the name of the Respondent would attract dividends and bonus shares, then it is obvious that both would naturally expect that if the shares are not converted or until they are converted to the name of the Respondent he would not derive and therefore lose any dividend and bonus that ought to accrue to the shares. So the loss of the dividends and bonuses accruable to the shares upon conversion to the name of the respondent, is a loss foreseeable and expected by the parties as likely to result directly from the failure to convert the shares to the name of the Respondent. It is the natural and direct consequence of the breach of the contract. The award of damages for such loss resulting from a breach of the contract is justified. Learned Counsel for the Appellant correctly restated the law relying on X. S. Nig Ltd v. Laissen (WA) Ltd (Supra), that damages for breach of contract covers losses which are the natural and probable consequences of the breach and which were within the contemplation of the contract. As held by the Supreme Court in Balogun v. NBN Ltd (1978) 3SC 11, the general rule for measuring or quantifying damages for breach of contract was that established by the leading case of Hadley v. Baxendale (1864) 9 Exch. 341 which is that the party in breach is liable in damages for the loss which flows directly and naturally from his failure to keep his own part of the contract or bargain, provided, that such damages or the loss which it compensates could reasonably have been within the contemplation of the parties at the time when the contract was made.

I do not think that Learned counsel for the Appellant correctly stated the law in his submission that "in a claim for breach of contract, general damages are not awarded. The generally held view is that it is not appropriate to categorize damages awardable for breach of contract into general or special damages. See U. Chitex Industries Ltd v. Oceanic Bank International Ltd (2005) 7 SC (Pt.11) and Maiden Electronics Ltd v. AG Federation (1974) 1 SC 37. The Supreme Court in GKFI (Nig) Ltd v. NITEL Plc (2009) 15 NWLR (pt 1164) 344 held that "it must be stressed that in the law of contract, there is no dichotomy between special and general damages as is the position in tort. The narrow distinction often surmised is one without a difference. In contract it is damages simpliciter for loss arising from the breach. Loss must be in contemplation of the parties. The loss must be real, not speculative or imagined." However, the same Supreme Court held in U. Chitex Industries Ltd v. Oceanic Bank International Ltd (supra), that special and general damages are appropriate in an action for breach of contract but there are special circumstances where the parties do make contracts and bind themselves knowingly that a breach of contract under the special circumstances would also attract damages which the parties agreed at the time of the contract. It is rightly submitted by Learned Counsel for the Respondent that in many cases the Courts have accepted the characterization of damages for breach of contract as special or general damages. See Acme Builders Ltd v. Kaduna State Water Board and Anor (1999) 2 SC 1, where the Supreme Court held that "now in the law of contract, general damages are those damages which the law implies in every breach and in every violation of a legal right. It is the loss which flows naturally from the Defendant's act and it... need not be pleaded or proved as it is generally presumed by law. The manner in which general damages is quantified is by relying on what would be the opinion and judgment of a reasonable person in the circumstances of the case. Indeed the courts have repeatedly stated that apart from the damages naturally resulting from the breach, no other form of general damages can be contemplated." I think that where the loss reasonably foreseeable and contemplated or naturally flowing from the breach is incapable of exact arithmetic calculation in monetary value, an amount which is reasonable in the circumstances can be awarded as general damages. If such loss is capable of exact quantification in monetary value, it can be awarded as special damages. The categorization into general and special damages helps to distinguish between damages for losses that cannot exactly be quantified and those that can be so quantified, and also helps to avoid the injustice of not granting damages to a party who has actually suffered a loss that cannot be quantified with arithmetical exactitude in monetary terms. This view finds support in the holding of the Supreme Court in Balogun vs NBN (supra) that "as it is always extremely difficult to have an accurate estimate of the extent of damage under this head", it has, therefore, been laid down by a long line cases beginning with that of Mazetti v. Williams (1830) 1 B and Ad 415 that damages in such cases are "at large" which is to say that in such cases a jury may within reason make an award of any such sum as they consider the circumstances of the breach of contract or dishonor of cheque warrant although there has been no proof of any actual loss (i.e. special damages) to the customer.." In Yalaju- Amaye V. AREC Ltd & Ors (1990) 6 SC 157 the Supreme Court held that "It is settled law that general damages is the kind of damage which the law presumes to now flow from the wrong complained of. They are such as the court will award in the circumstances of a case, in the absence of any yardstick with which to assess the award except by presuming the ordinary expectations of a reasonable man. "See also Wahabi v. Omonuwa (1976) LPELR 3469 (SC). In any case, the Trial Court did not describe the award it made as general damages. It simply called it damages. In the light of the foregoing, even if it had done so, such categorization would not have vitiated the award. The Trial Court adopted the approach in Mazarett v. Williams (supra) approved by the Supreme Court in Balogun v. NBN (supra).

I do not agree with the submission of Learned Counsel for the Appellant that the Trial Court in awarding 1 Million Naira damages, took into account the fact that the Respondent did not plead and prove the bonus shares that would have accrued to him from the date of filing the suit in 2002. There is nothing in the judgment of the Trial Court suggesting so. Rather the judgment clearly and expressly states that the Trial Court held that even though the Respondent was entitled to bonus shares up to the date of the judgment, he wouldn't be granted more than 13,488 units of shares he claimed for, which include the share bonuses that had accrued up to the date of filing the suit. As I had held herein, the benefits lost on the unconverted shares by the Respondent in making the award of damages refers to the dividends that would have accrued thereon. The Argument of Learned Counsel for the Appellant "that the Trial Court ought not to have used the award of damages of 1 Million Naira to further compensate the Respondent who failed to plead and prove dividends accruable on the shares from the time of institution of the action in 2002 till the date of the judgment", shows that he also understood that award as having been made in consideration of the dividends lost by the Respondent. The above submission cannot be sustained for the following reasons. It is agreed by both parties on the pleadings that upon the conversion of those shares to the name of the Respondent he was entitled to the dividends and other benefits that accrue on those shares and that the Respondent has been receiving dividends on the units of shares already converted. The evidence of the Respondent contained in his testimony in Court and exhibits 8, 8A to BE, counter foils of dividend warrant for dividends accrued on shares and paid to him, establish or prove clearly that First Bank Nig Plc declared and paid dividends on its shares to shareholders from 2002 to 2006. Exhibits 8 to 8E show that the Respondent who has other bank shares from the ones it handed over to the Appellant to perfect, has been receiving dividends on these shares up to the date of his testimony in Court. This is consistent with his pleadings in paragraphs 17 and 18 of his statement of claim. As I had held herein, the reasonable expectations of the parties under the contract at the time the Appellant was engaged to perfect the change of ownership of the shares was that the perfection of the change of ownership would enable the Respondent receive dividends and other benefits like the share bonuses that accrue on the shares and therefore would suffer loss of same if the ownership change was not perfected. The Appellant in paragraph 8 of its statement of defence contended that "the Plaintiff has suffered no damages or loss as his stocks are all cleared a long time ago and the benefits accruing therefrom standing in his name and to his credit." In paragraph 12 of its statement of defence is also contended that it is not its making that the Respondent has not received any dividend on the unconverted shares of 5,526 and that it is because the Respondent "refused to approach the Defendant, to rectify and regularize issues concerning his stocks deposited through the Defendants who were his stock brokers with regards to the said 5,526 shares or stocks." The evidence of the Respondent that he had not received any dividend on the unconverted shares and that "it is not true that I refused to go to the Defendant's office to go and collect my share certificate or any dividend warrant. I attended at their office on several occasions over a period of years before I filed this suit", remained unchallenged and uncontradicted. It is obvious from the foregoing that there is no dispute that the Respondent has suffered loss of dividends that actually accrued on First Bank shares up to 2006 and dividends that may have accrued on such shares up to the date of the judgment. It is glaring from the evidence that the there is no accurate estimate of the monetary value of the dividends lost from 2002 to the date of the judgment. In any case the Respondent did not claim for a specific sum of money as the value of the dividends lost in the shares. He claimed for damages for breach of contract. It is in circumstances like this that the law permits the Court to judiciously and judicially award such sum as it considers reasonable in the circumstances of the case as damages or general damages to meet the substantial justice of the case.

Since it is obvious that such loss flows directly from the breach and it was within the contemplation of the parties at the time of the contract, the Trial Court was right to compensate the Respondent for the loss by awarding him an amount it considers reasonable in the circumstances of the case, in absence of evidence of the exact amount. See Balogun v. NBN Ltd (supra) and ACME Builders Ltd v. Kaduna State Water Board and Anor (supra). The measures of damages is the loss which is reasonably within the contemplation of the parties at the time of the contract. See G. Chitex Industries Ltd v. Oceanic International (Nig) Ltd (supra) and Yalaju-Amaye v. AREC Ltd (supra).

Learned Counsel has not argued or shown that the award of 1 Million Naira as damages for breach of contract is excessive and did not show any wrong principles or irrelevant factors that the Trial Court acted upon in making the award. He has not argued or shown that the Trial Court did not exercise its discretion judicially and judiciously in making the award. The scope of the power of an Appellate Court to review an award of damages by a Trial Court is limited. It is not at large, the Appellate Court can only interfere with such an award where it proceeded on wrong principles, it is not supported by the evidence, the amount is too high or too low or is unreasonable. See Williams v. Daily Times of Nigeria Ltd (1990) 1 SC 23 and Adim v. NBC Ltd (2010) 9 NWLR (pt 1200) 543 (SC). I will therefore refuse the invitation of Learned Counsel for the Appellant to intervene and set aside the award of 1 Million Naira as damages for breach of contract. There is no basis for such intervention. In the light of the foregoing, I resolve issue No 2 in favour of the Respondent.

The Appellant framed no issue from ground 2 of the amended notice of appeal which essentially complained that the Appellant was denied fair hearing and did not argue same. The Appellant hereby abandoned the said ground of appeal. It is settled law that a ground of appeal from which no issue for determination of the appeal is raised and which is not argued in an appeal is deemed abandoned and must be struck out. See Iyoho v. Effiong (2007) 4 SC (pt 111) 90, Sapo and Anor v. Sunmonu (2010) 11 NWLR (pt 1205) 374 (SC) and Teriba v. Adeyeno (2010) 13 NWLR (pt 1211) 242 (SC). Ground 2 of this appeal having been abandoned is hereby struck out.

On the whole, this appeal lacks merit and therefore fails. It is accordingly dismissed. The judgment of the High Court of Anambra State in suit no 0/202/2002 at Onitsha per Nweze J delivered on 26/7/2006 is hereby upheld and affirmed. The Appellant shall pay cost of N100,000 to the Respondent.

**AMIRU SANUSI, J.C.A.:**

I have had the advantage of reading in advance the Judgment just rendered by my learned noble lord **Agim JCA.** All the salient issues raised and argued in the appeal have been adequately considered in the lead Judgment. I have nothing useful to add except to agree with the reasoning and conclusion arrived at that the appeal is devoid of merit. It fails and is accordingly dismissed by me. I abide by the order on cost made in the Judgment.

**TOM SHAIBU YAKUBU, J.C.A.**:

I had the opportunity of reading the draft of the judgment rendered by my learned brother - **EMMANUEL AKOMAYE AGIM, JCA**. I am in agreement with his Lordship's reasoning and conclusion that this appeal is lacking in merits and it deserves a dismissal.

Let me chip in a word with respect to the award of One Million Naira (N1m) as damages for breach of contract, against the appellant. The facts of this case were well articulated in the lead judgment, so I need not rehash them again. It is clear to me that the appellant breached the terms of the contract between it and the respondent with respect to the perfection of change of ownership of some bank shares entrusted by the respondent to the appellant so that with the perfection of the change of ownership, by the appellant, in favour of the respondent, the latter was to be receiving dividends and shares bonuses that accrue on his shares. That was the contractual agreement and the parties were bound by it. Anyaegbunam v. Osaka (2000) 1 SCNLR 403 AT 418; Koiki v. Magnusson (2001) 63 FWLR 167 at 193-194 (SC). The anticipated/agreed change of ownership was not perfected by the appellant and therein lied the breach of contract. The appellant could not have successfully argued that the respondent suffered no loss when the change of ownership was not perfected by the former, to enable the respondent receive dividends and share bonuses on his shares. Therefore, I am of the considered opinion that the respondent was eminently entitled to award of damages for breach of contract.

Generally, an appellate court will not interfere with an award of general damages by a trial court unless it is manifestly shown:-

(a) That the trial court acted upon wrong principles of law: or

(b) That the amount awarded by the trial court is ridiculously too high or too low;

(c) That the amount awarded was entirely erroneous and an unreasonable estimate having regard to the facts and circumstances of the case;

(d) That injustice will result if the appellate court does not intervene. Oyeneyin Akinkugbe (2010) 1 SCNJ 101 at 116; (2010) 4 NWLR (Pt.1184) 265 at 288; Shukka V. Abubakar (2012) 4 NWLR (Pt.1291) 497 at 526.

In the circumstances of the instant case, I am satisfied that the award of N1 Million to the respondent as damages for breach of the contractual agreement between the parties herein, is neither excessive nor too low. The learned trial judge has not been shown to have acted upon any wrong principle of law in the award of damages, hence no injustice will be occasioned if this court refuses to intervene. I therefore refuse to be persuaded by the invitation of the appellant, for me to intervene and tamper with the award of N1M as damages which flowed from the breach of contract, in favour of the respondent.

It is for this and the more elaborate reasons articulated in the lead judgment that I, too dismiss this appeal as being devoid of merits.

I, also award N100,000.00 costs in favour of the respondent against the appellant.