IN THE SUPREME COURT OF NIGERIA

On Friday, the 19th Day of October 2012

Before their Lordship

Slyverster Umaru Onu ..... Justice Supreme Court
Nikitobi ..... Justice Supreme Court
Dahiru Musdapher ..... Justice Supreme Court
Sunday Akinola Akintan ..... Justice Supreme Court
Walter Samuel Nkanu Onnoghen ..... Justice Supreme Court

SC 91/2002

Between

Adetoun Oladeji (Nig) Ltd .... Appellant

And

Nigerian Breweries Plc .... Respondent

Judgment of the Court

Delivered by
Niki Tobi. J.S.C.

This appeal involves a fairly narrow area. It is the amount of damages awarded. At the trial court, the learned Judge awarded the sum of N25 million. The Court of Appeal reduced the sum to N833, 333.00. This appeal is against the damages awarded by the Court of Appeal. It is the case of the appellant that the amount is too low.riefs were filed and exchanged. The appellant formulates six issues for determination:

(i) Whether the damages due to the appellant in this case was only the profit it could have made for one month having regards to the terms and conditions of the contract in Exhibit B (Covers ground 1).

(ii) Whether the Lower Court could in law rely on evidence of unpleaded facts by either the Appellant or the Respondent in this case to set aside the sum of N l, 249,000.00 as awarded to the Appellant by the trial court as special damages for wrongful seizure and detention of the Appellant's empty bottles of assorted products? (Cover grounds 3 &7).

(iii) Whether the Lower Court was right in setting aside the sum of N931, 405.30 awarded in favour of the Appellant by the trial court in this case for non- delivery of goods paid for by the Respondent? (Covers ground 4)

(iv) Whether the rule and decision in Hadley V. Baxendale (1854) 9 Exch 341 has a binding force on Nigerian courts any longer having regards to this Court decision in Eloichin (Nig) Ltd. & Ors vs.Victor Mbadiwe (1986) ANLR 1 at 14 (covers ground 5).

(v) Whether the lower court was right in law to reduce the sum of N 25 million general damages awarded in favour of the appellant by the trial court to N833, 333.00 in view of the quantity and quality of the unchallenged evidence and findings of fact which the lower court believed was not perverse.(Covers grounds 6 & 8).

(vi) Whether the decision of the lower court in this case conform with principles of law regulating proper and correct evaluation and appraisal of evidence. (Covers grounds 2 and 9)"

The respondent formulated three issues for determination:

"3.1 Whether the lower court was not right in setting aside the sum of N931, 405.30 awarded in favour of the appellant by the trial court for non-delivery of goods purportedly ordered and paid for by the appellant.

3.2 Whether the lower court was not right to have reduced the general damages of N25 million awarded by the lower court to N833, 333.00.

3.3 Whether the lower court was not right in setting aside the sum of Nl, 249,000.00 awarded by the trial court as special damages for the wrongful seizure and detention of the appellant's empty bottles."Learned counsel for the appellant, Mr. Kole Olawoye, taking Issues Nos. 1 and 5 together, referred to Exhibit B and pointed out that clause (a) and (b) at page 2 of the Exhibit are very germane and relevant to the determination of the two issues. He contended that the respondent did not give the required one month notice to the appellant. He referred to the evidence of DW1 and paragraph 7 (b) and (d) of the Further Amended Statement of Claim.Justifying the award by the learned trial Judge, counsel referred to the evidence of PW6, and portion of the judgment by the trial court and the Court of Appeal at pages 149 to 150 and 236 and 237 of the Record respectively. Relying on Oroke v. Ede (1964) NNLR 118; Ngwu v. Ozougwu (1999) 10 -12 SC. 24; Saraki v. Kotoye (1990) 4 NWLR (Pt. 143) 144; Ajadi v. Okenihun (1985) 1 NWLR (Pt. 3) 484; Abidoye v. Alawode (2001) 3 SC. 1; University of Lagos v. Olaniyan (1985) 1 NWLR (Pt. 1) 156 and Ekwunife v. Wayne W/A Ltd. (1989) 12 SC. 81, learned counsel submitted that the Court of Appeal had no legal basis or justification to embark on the reduction of the damages, an action which is tantamount to the substitution of its own view for the decision of the trial court. Counsel also referred to Shell B. P. Petroleum Development Company v. Jammal Engineering -(Nig) Ltd. (1974) 4 SC. 33 and Ijebu - Ode Local Government v. Adedeji Balogun & Co. Ltd (1991) 1 NWLR (Pt. 166) 136 on the principles of law regulating the assessment of damages for breach of contract. He argued that the case of Mobil Oil (Nig) Ltd v. Akinfosile (1969) NMLR 217 relied upon by the Court of Appeal is distinguishable. On Issue No. 2, learned counsel submitted that the Court of Appeal was wrong in relying on evidence not pleaded to set aside the sum of Nl, 249,000.00 awarded as special damages for wrongful seizure and detention of the appellant's assorted products. He cited Adeniji v. Adeniji (1972) 4SC. 10; Pascutto v. Adecentro (Nig) Ltd (1997) 11 NWLR (Pt. 529) 467; Ochoama v. Unosi (1965) NMLR 321; Otaru v. Idris (1991) 4 SC. (Pt. 2)85; Fadiora v. Gbadebo (1978) 3 SC. 219; A. G. Qyo State v. Fairlakea Hotel (1988) 12 SC. 125; Akpene v. Barclays Bank of (Nig) Ltd. (1977) 1 SC. 47; Oshijinrin v. Elias (1970) 1 All NLR 158; Uwabuoku v. Ottih (1961) 1 All NLR 487 and Omoregbe v. Lawani (1980) 3-4 SC. 108.On Issue No. 3, learned counsel submitted that the Court of Appeal was wrong in setting aside the sum of N931, 405.30 awarded in favour of the appellant by the trial court for non- delivery by the respondent the goods paid for. He relied on Incar (Nig) Ltd v. Adegbove (1985) 2 NWLR (Pt. 8) 453 and C. E. C. v. Ikot (1999) 12 SC. (Pt. 2) 133.On Issue No. 4, learned counsel submitted that the Court of Appeal was wrong in holding that the rule in Hadley v. Baxendale (185-4) 9 Exch 34, is binding; a decision, counsel said was responsible for the slashing down of the general damages awarded by trial court to N833,333,00. He cited Eloichin (Nig) Ltd, v. Mbadiwe (1986) 1 All NLR 1; University of Lagos v. Olaniyan (supra) and Araka v. Egbue (2003) 7 SC. 86.On Issue No. 6, learned counsel submitted that the Court of Appeal did not properly and correctly evaluate and appraise the evidence before it. He referred to specific aspects of the judgment of the Court of Appeal and relied on the following cases. Ugoechi v. Onyenwe (1999) 1 SC. 63; Osagie v. Adonri (1994) 6 NWLR (Pt. 349) 131: Odofin v. Mogaji (1978) 4 SC. 91: Woluchem v. Gudi (1981) 5 SC. 291; Okuoja v. Ishola (1982) 5 SC. 314 and Nwobodo v. Chief Electoral Officer (1984) 1 SC. 53. He urged the court to allow the appeal.Learned counsel for the respondent, Mr. W. Ogunkoye, submitted on Issue No. 1 that the appellant failed to prove that it was entitled to the payment of the current market value of N931, 405.30 plus profit at 21% per annum from January 1994 till judgment. A party claiming special damages should prove it by credible evidence of such character as would suggest 'that he is entitled to it, counsel argued. He cited Oshijirin v. Elias (1970) 1 All NLR 153 at 156. None of the witnesses of the appellant gave evidence that the sum of N931, 405.30 was paid to the respondent, counsel maintained. He claimed that the evidence of PW2 and PW4 is at variance with the appellant's pleading. Citing Egonu v. Egonu (1978) 11-12 SC. 111 and Woluchem v. Gudi (1981) 5 SC. 2, learned counsel argued that parties are bound by their pleadings and cannot go outside the case put forward by their pleadings in establishing their case. He urged the court to uphold the decision of the Court of Appeal setting aside the award.On Issue No.2, learned counsel submitted that the Court of Appeal was right in reducing the general damages of N25 million to N833, 333.00. He cited Shell B. P. Co. Ltd, v. Jamal Engineering Nig Ltd (1974) All MLR 489 at 522; Swiss Nigerian Wood v. Bogo (1971) 1 UILR 337 at 341; Imana v. Robinson (1979) 3-4 SC. 1; Jamal Engineering v. Wrought Iron (1970 NCLR 295; Yusufv. NTC (1976) 6 SC. 39; PZ v; Ogedengbe (1972) 3 SC. 98 at 101 - 102; Maiden Electronics Ltd, v. Attorney - General of Federation (1974) 1 All NLR 225; Chukwumah v. Shell Petroleum (1993) 4 NWLR (Pt. 289) 512 at 563 and Garabedian v. Jamakani (1961) All NLR 176 at 190, He faulted the argument of learned counsel for the appellant that the rule in Hadley v. Baxendale is not applicable in the appeal, as the rule was followed in Shell BP Petroleum Development Co. v. Jamal Engineering Nig

Ltd cited by counsel for the appellant. He distinguished the case of Eloichin (Nig) Ltd v. Mbadiwe (1986) All NLR 1 at 14 from the case of Hadley v. Baxendale.Although the award of general damages is a matter for the trial court, an appellate court will interfere in appropriate cases, counsel argued, He contended that this is one such case and the Court of Appeal rightly interfered in the award. He did not see the evidence of PW6 as evidence of proof of damages for breach of contract but as proof of the appellant's annual profit.On Issue No.3, learned counsel submitted that a plaintiff in an action for detinue must first establish that he is the owner of the thing, the recovery of which he is seeking. He cited Sodimu v. Nigerian Ports Authority (1975) All NLR 151 at 160. This appellant failed to do as it neither pleaded nor proffered evidence required to sustain the claim for detinue before the trial court, counsel argued. He went into the pleadings, particularly, paragraphs 4 and 12 of the Further Amended Statement of Claim, paragraph 11 of the Statement of Defence, the evidence before the trial court and submitted that the appellant failed to prove strictly the claim before the trial court. Citing Saliba v. Yassin (2002) 4 NWLR (Pt. 75) 1 at 18 - 19 and Udechukwu v. Okwuka (1956) 1 FSC 70 at 71, learned counsel submitted that the appellant's claim to detinue must fail.

Learned counsel did not agree with the contention of the appellant that the issue of detinue was a new issue. He referred to paragraph 19(iii) of the pleadings of the appellant and argued that the case of the appellant at the trial court was in detinue. He cited Labode v. Otubu (2001) 7 NWLR (Pt. 712) 256 at 276 and urged the court to uphold the decision of the Court of Appeal 2nd dismiss the appeal.

Learned counsel for the appellant stated the grounds of appeal and their particulars from pages 3 to 7 in the appellant's brief in detail. I must say that brief is not the place to enumerate grounds of appeal and their particulars. They belong exclusively to the Notice of Appeal; not the brief. Parties take issues which deal with the grounds of appeal in their briefs. In other words, grounds of appeal start and end their journey in the Notice of Appeal and issues which reflect the grounds are argued in the brief. I will therefore not consider pages 3 to 7 coaling with the grounds of appeal and their particulars, unless these are specifically attacked in the arguments in the brief. I do not think they were attacked.The appellant asked for N75, 000.000.00 general damages. The learned trial Judge awarded N25, 000.000.00. In making the award, the learned trial Judge distinguished the case of Mobil Oil Nigeria Ltd v. Akinfosile (1969)1 NMLR 217 and said at pages 148 to 150 of Record: "The instant case is however not a case of breach of agreement simpliciter and the facts are distinguishable from Mobil's case. Here the plaintiff has given evidence to the effect that before the allegation of fraud it had paid for supply of 1,900 cartons of assorted drinks to the defendant which the defendant refuses to supply. It also gave evidence that it had 4,619 cartons of empty bottles of assorted products which the defendant seized and detained. I had earlier on held all these as established. Further evidence given by the plaintiff was that it could no longer continue in business as a result of the act of the defendant. It is pertinent to observe that the defendant did not formally terminate the agreement of the plaintiff but kept on asking it to wait for the outcome of the investigation into the fraud. I feel that the plaintiff is entitled to substantial damages which I assess at N25, 000.000.00"The Court of Appeal did not agree with the award of N25, 000.000.00 general damages. Delivering the judgment of the Court of Appeal, Onalaja, JCA said at pages 230 and 237 of the Record."The contract between the parties was Exhibit B which provided for a term of one month previous notice of intention to determine the contract to be given to the other party.... The appeal on Issue 1 succeeds with the appeal allowed in part with the reduction of the damages for breach of contract of Exhibit B to N833, 330.00"Exhibit B is the agreement between the parties.. It is the letter appointing the appellant as a distributor. The meaning to be placed on a contract is that which the plain, clear and obvious result of the terms used in the agreement. See Aouad v. Kessrawani (1956) N.S.C.C.33. When constructing document in dispute between the parties, the proper course is to discover the intention or contemplation of the parties and not to import into the contract ideas not potent on the face of the document. See Amadi v. Thomas Aplion Co. Ltd. (1972) 7 N. S. C. C. 262. Where there is a contract regulating any arrangement between the parties, the main duty of the court is to interpret that contract to give effect to the wishes of the parties as expressed in the contract document. See Oduye v. Nigeria Airways Limited (1987) 2 NWLR (Pt.55) 126. In the construction of documents, the question is not what the parties to the document may have intended to do by entering into that document, but what is the meaning of the words used in the document. See Amizu v. Dr. Nzeribe (1989) 4 NWLR (Pt.118) 755. However, where the meaning of words used is not clear, the court will fall back on the intention behind the words.Above all, it is not the function of a court of law to make agreements for parties or to change their agreement as made. See African Reinsurance Corporation v. Fantaye (1986) 1 NWLR (Pt.14) 113.Exhibit B provided in part that without prejudice to accrued rights and liabilities of the parties to the agreement, it could be terminated by one month notice in writing and mat it may be suspended or terminated immediately by notice in writing by the respondent upon the occurrence of same eventIn awarding the damages of N833, 333.00, the Court of Appeal said at page 237 of the Record:"... applying the cases referred to the learned trial Judge found as a fact that the annual profit of Respondent/cross appellant was N10 million per annum being a finding of fact it was borne out in Exhibit N to N2. As an

appellate court the finding of fact is not perverse so there is no legal basis or justification to disturb the said finding of fact...
From the foregoing the reasonable damages for breach of contract of Exhibit B as there is no monthly profit but yearly profit, I proceed to divide the sum of N10 million by twelve to get the monthly profit which is N833,333.00. I therefore award the said sum of N833.333.00 as damages for wrongful determination and breach of the contract created by Exhibit 3 between the parties."Appellant did not accept the award of the Court of Appeal. Reliance was placed on the evidence of PW6. What did the witness say? He said at page 88 of the Record:"I know the plaintiff in this case. I started auditing the accounts of the plaintiff in 1992. I am auditor to the plaintiff company. The documents now produced and states all the audit accounts made in the name of my Firm Olayiwola Brothers and Company Chartered Accounts. They were produced on the instruction of the plaintiff. They are audited account for the year ended September 1991, September 1992 and September 1993. I signed all the documents. Tendered without objection and admitted as Exhibit N to N2. Looking at the audited account, the plaintiff was making profit. In 1991, the profit was N10, 413,813.00. In 1992, the profit was N l0, 809,434.00 and in 1993 the plaintiff made N9, 529,536.40k profit."While I entirely agree with the submission of learned counsel for the appellant that the above evidence of PW 6 was not challenged by the respondent, I do not agree with him on the result or effect of the non-challenge of the evidence, that he wants this court to arrive at. The evidence of PW6 was on a yearly profit running through the year on the average of N10 million per year. Relating this yearly profit margin to Exhibit B, the Court of Appeal divided that by 12 on the basis that 12 months make a year. This clearly vindicates the content of Exhibit B. What is the quarrel the appellant has with the Court of Appeal? I have taken one and it is in respect of the evidence of PW6. The Court of Appeal accepted the evidence of the witness. All that the court did was to subject the evidence to some arithmetical calculation, which gave the court the figure it awarded as damages. Can this court fault the Court of Appeal? I think not.Let me take the second quarrel and it is that the Court of Appeal by reducing the amount was involved in substituting its own view for the decision of the trial court. Counsel cited Ngwu v. Ozougwu (1999)10 - 12 SC 24 where Onu, JSC said at page 29:"It is the business of a trial court to decide disputes by trying cases. It is not the business of an appeal court to re-open disputes by trying case again. An appeal court's duty is to see whether trial courts have used correct procedure to arrive at the right decisions. An appeal court does not inquire into disputes. It inquires into the way in which disputes have been tried and decided since a dispute is to be decided by the trial court and not in the Appeal Court."With respect, the case is not on the side of the appellant. It is rather on the side of the respondent. The Court of Appeal in this matter did not inquire into the dispute, which I entirely agree is the exclusive adjudicatory function of the trial court. On the contrary, the Court of Appeal in line with Ngwu inquired into the way in which the dispute have been tried and decided. The Court of Appeal went into the dispute as decided by the trial Judge and held that it was wrongly decided. That is the decision of this court in Ngwu and that is what the Court of Appeal did.
The Court of Appeal built its findings on the findings of the trial Judge. It was all based on the Exhibit N group of exhibits.In my view, it is the adjudicatory function of an appellate court to correct errors of trial court and as long as such errors emanate from the Record, an appellate cannot be accused of substituting its own views for those of the trial court. How can an appellate court correct errors of a trial court without reviewing the decision of the trial court in the context of the law and the facts?It is the submission of learned counsel for the appellant that the Court of Appeal wrongly followed the decision of this court in Mobil Oil (Nig) Ltd, v. Akinfosile (Supra) Counsel enumerated what he regarded as differences in paragraphs 4.24 and 4.25 of the appellant's brief. At times when counsel distinguishes cases to the minutest and infinitesimal way they do, I chuckle. While I can hardly blame them, considering their professional sentiments for the case of their clients, some of the distinctions are without distinction or difference. Factual distinctions or differences in cases can only avail a party when they are germane or material to the stare decisis of the case. I say this because stare decisis which means to abide by or adhere to decided cases, as a policy of courts to stand by precedent, is based on a certain state of facts which are substantially the same and here the word is substantially. This means that the facts that give rise to the principle of stare decisis are the material facts, devoid of or without the unimportant details. This also means that the facts need not be on all fours in the sense of exactness or exactitude. And I must say here that there can hardly be two cases where the facts are exactly the same, and the doctrine of stare decisis which has been built by the judicial system over the years does not say that the facts must be exactly the same. And so there could be inarticulate differences which will not necessarily be a poison in or to the application of the doctrine. One major criterion in the determination of the matter is that the facts of the previous case are major, substantial, and material to the facts of the current case begging for the application of the previous case. Before the application of the previous case, the Judge should ask a question: Could the court have arrived at the decision but for the particular facts or could the court have arrived at a different decision in the absence of the particular facts? An unequivocal answer to the above double barrel question will pave the way for the applicability or inapplicability of the doctrine.
The case may have one ratio decidendi. As a matter of fact, most cases have more than one ratio decidendi. Ratio decidendi is tied to material facts and not just facts which are peripheral or intangible. In our legal practice, counsels make use of ratio decidendi that will be of use to their client's case, in the sense of giving their clients victory. It is the duty of the Judge to examine the totality of the case and arrive at the appropriate or correct ratio decidendi in the case.I think I have theorized

enough. I should go to the realities of the case and that takes me to the decision of this court in Mobil Oil Nigeria Ltd v. Akinfosile (supra) where Fatayi Williams, JSC (as he then was) said at page 221:"As we have earlier pointed out, the agreement (Exhibit A) did not leave the duration of the contract at large. In fact, it is clearly stated in clause 3(b) thereof that either party could terminate it merely by giving one month's notice. In our view therefore, the only damages which with justification could be said to have area out of the peremptory termination of the Agreement by me defendant/applicant is that resulting from their failure to give the plaintiffs\respondent one month's notice. In other words it is to be determined by what he would have earned had he been given due notice"

Like in Mobil Oil (Nig) Ltd., this case involved breach of an agreement. While that agreement was Exhibit A in Mobil, it is Exhibit B in this appeal .Again like in Mobil, the breach was failure to give the respondent a month's notice; the distinction made by appellant in paragraph 4.24 and 4.25 is to no avail. The Court of Appeal correctly identified the relevant ratio decidendi and correctly applied it.That takes me to Issue No. 2 formulated by the appellant. It has to do with the award of special damages for wrongful detention of appellant's empty bottles of assorted products. The learned trial Judge said at pages 146 and 147 of the Record:"The plaintiff in leg two is asking for an order that the defendant should deliver to the plaintiff 1,900 cartons of assorted products as set out in paragraph 9 of its statement of claim or its current market value of N931, 405.30 plus profit at 21% per annum from January 199 till judgment. The plaintiff has not been supplied... It gave details of the various brands ordered from the defendants... I therefore agree with the submission of learned counsel for the plaintiff that the plaintiffâ€™s evidence on this point remained unchallenged... I hold that the plaintiff is entitled to judgment as claimed in its leg 2. I hold the same view as regards the plaintiffs claim in leg 3 of her claim. Its evidence in this regard was also unchallenged and accordingly it is entitled to judgment as claimed."The learned trial Judge gave judgment to the plaintiff as in pages 150 and 151 of the Record.The Court of Appeal, with the greatest respect, from nowhere, introduced the law of bailment and held that the findings of the learned trial Judge were perverse having been based on wrong principles. The court set aside the awards. Let me quote a bit of what the Court of Appeal said at pages 239 and 240 of the Record:"The bottles are in form of bailment which arises by way of contract wherein the delivery of personal property by one person (the bailer) to another (the bailee) who holds the property for a certain purpose under the express or implied ...contract. From the evidence adduced the appellant is the bailer whilst the respondent is the bailee... In the instant appeal as the contract of bailment is tied to purchase of products of appellant with content and their credit given to respondent and no evidence of payment separately for bottles the learned trial Judge erred in law to have awarded the bailee the cost of the goods entrusted to by the bailer when the purpose for the delivery has not materialised so after careful consideration of the pleadings and the evidence I find the findings to be perverse with the award of the sum of Nl,249.000 based on its having been based on wrong principle of law, is hereby set aside" As correctly contended by learned counsel for the appellant, none of the parties claimed on bailment. The plaintiff in its statement of claim did not claim on bailment. So too the defendant in its counter claim. And so, how and why did the Court of Appeal go into the law of bailment to set aside the award of N l, 249,000.00 by the learned trial Judge?It is good law that parties, the owners of their cases, are in the best position to know their claims or reliefs and the courts cannot go outside the claims or reliefs in search for other clams or reliefs not before them. The role of a court of law is to adjudicate on the claims or reliefs placed before it by the parties. A claim or relief is made at the trial court and this is in the pleadings. The statement of claim contains the claim or relief. If the defendant has E. counter claim, this is contained in the statement of defence. The trial Judge goes into the pleadings and decides one way or the other. An appellate court has to go into the Record and decide only on the Record. An appellate court has no jurisdiction to go outside the record to search for possible claim or relief. It is sad that the Court of Appeal introduced the law of bailment suo motu in its judgment and resolved it suo motu. The parties were not given any opportunity to address the court on the law of bailment. That is never done and it is bad that the Court of Appeal did so. I will say no more.And that takes me to the issue whether the rule and the decision in Hadley v. Baxendale has a binding effect in Nigerian court. The straightforward answer is that decisions of English courts or any foreign court are not binding on Nigerian courts. They are merely of persuasive authority. See Dada v. The State (1977) NCLR 135; Elioclin Nig. Ltd v. Mbadiwe (1986) 1 NWLR (Pt. 14) 47; National Supply Co. Ltd, v. Alhaji Hamajoda Sabana Co. Ltd (1938) 5 NWLR (Pt.40) 2005; Senator Adesanya v. President of the Federal Republic of Nigeria (1982) 2 NCLR 358.Although this court is not bound by the decision in Hadly v. Baxendale, I will persuade myself any day to use the beautiful principle stated therein.The learned trial Judge without justification awarded a large sum of N25, 000.000.00 as damages. He did not justify it and there was really no basis to justify it. I think his awards of N931, 405.30 and N 1, 249,000.00 are justified. I therefore award the appellant the total sum of N2, 180,405.30 over and above what the Court of Appeal awarded. The appeal therefore succeeds partially. I make no order as to costs.

Judgment delivered by
Slyverster Umaru Onu, J.S.C.

I have been privileged to read before now the leading judgment of my learned brother Tobi, JSC just delivered, I am in agreement with him that the appeal is meritorious and ought to succeed in part.

The Court of Appeal (hereinafter referred to as the court below) in setting aside the award of N1, 249, 000.00) made by the trial court in favour of the Appellant herein, held thus:

"It is common ground that Appellant owned the franchise on the empty bottles but possession was in respondent by way of deposit towards the cost of purchase of Appellants' product.In the custom of trade of the business between the parties, the empty bottles are owned by the Appellant who put liquid content to be sold to respondent in the sale the cost of the empty bottles is given as credit note with the amount deducted from the overall price with respondent taking advantage of the credit note. The bottles are in form of bailment which arises by way of contract wherein the delivery of personal property by one person (the bailor) to another (the bailee) who holds the properly for a certain purpose under an express or implied term of contract. From the evidence adduced, the appellant is the bailor whilst the respondent is the bailee.In the instant appeal as the contract of bailment is tied to purchase of product of the appellant with content and then credit given to respondent and no evidence of payment separately for bottles, the learned trial judge erred in law to have awarded the bailee the cost of the goods entrusted to it by the bailor when the purpose for the delivery has not materialized ....." (Emphasis supplied.)It is on the basis of the above .that the court below set aside the award of N l, 249, 000.00 made by the trial court in favour of the present Appellant.Having carefully perused the pleadings of the parties herein as well as the evidence produced at the trial in support of their respective cases, I have not seen therein any where the facts of a contract of bailment are made out nor evidence of same given by parties on record. It is therefore apparent that the issue of contract of bailment was raised suo motu by the court below without calling on the parties to address it on same before basing its decision to set aside the award in issue thereon. It is settled law that it is not for the court to make a case of its own or to formulate its own from the evidence before it and thereafter to proceed to give a decision based upon its own postulation quite separate from the case the parties made before it. See Adeniji v. Adeniji (1972) 4 SC 10 at 17. It is also settled law that parties are bound by their pleadings. See Lewis & Peat (NRI) Ltd v. Akkhimien (1976) 1 All MLR 460 at 465; Otuaha Akpapuna v. Obi Nzeka II & ors (1983) 2SCNLR 1 at 14 and Rowland Omoregie & 2 ors v. Idugiemwanye & ors (1985) 6 SC 150 at 185. No party is allowed to present a case contrary to its pleadings. Thus, in the appeal herein, the parties neither having pleaded contract of bailment nor based their case thereon, the court below was in error when it raised the issue contrary to the pleadings of the parties. It is for the above reasons and those more articulately set out in the leading judgment of my learned brother Tobi, JSC that 1 too partially allow the appeal and make no order as to costs. Appeal succeeds partially.

Judgment delivered by
Dahiru Musdapher, J.S.C.

I have read before now the judgment of my Lord Tobi, JSC with which I entirely agree. For the same reasons so lucidly and comprehensively set out, which I adopt as mine, I too, allow the appeal in part. I abide by the award of damages as contained in the lead judgment. I make no order as to costs.

Judgment delivered by
Sunday Akinola Akintan, J.S.C.

I had the privilege of reading the draft of the leading judgment written by my learned brother, Niki Tobi, JSC. All the issues raised in the appeal are well set out and fully discussed in the judgment. I entirely agree with his reasoning and conclusions as set out in the said judgment. I will, however, like to further comment on some aspects by way of emphasis.The facts of the case are not in dispute. The appellant was for many years a major distributor of the respondent's products. The dispute that led to a breakdown of the cordial relationship between them arose when the appellant discovered that some payments made to the respondent were not reflected in the accounts presented by the respondent. The matter was referred to the police for investigation. The respondent immediately stopped further supplies of its products to the appellant. This was initially said to be for the duration of the police investigations. But the stoppage continued after the police had concluded their investigations. The appellant had to institute the present action in which he claimed, inter alia, damages for breach of contract; refund of money deposited for respondent's products which were yet to be supplied as at the time the respondent decided to stop further supplies of its products to the appellant; and cost of appellant's empty bottles in possession of the respondent.The respondent denied the claim. At the end of the trial, the learned trial Judge entered judgment for the plaintiff/appellant. But on appeal to

the lower court, some of the awards made were drastically reduced while some were totally refused. The present appeal is against the judgment of the lower court.

It is necessary to mention at this stage that the relationship between the parties was governed by a written agreement tendered and admitted at the trial as Exhibit B. By that written agreement, the parties agreed that either party to be said agreement could terminate the contract by giving the other side one month notice.One of the issues raised in the appeal before the lower court was that the award of N 25,000,000 damages calculated on the profits the plaintiff made during a three year period preceding the stoppage of supplies to it, as reflected in the plaintiffs audited account, was erroneous. The lower court reduced that award to the profit the said plaintiff appellant could have made for a period of one month. The calculation was also based on the returns shown on the same 3 years balance sheet (Exhibits N-N2).I entirely agree with the principle of law followed by the lower court in arriving at the reduced damages awarded. This is because it would have been unreasonable to hold that the respondent would be liable to pay as compensation the profit the appellant would have made for three years under a contract that either of the parties could terminate by giving one month notice. Such an award could not have been contemplated by the parties as at the time they entered into the agreement between them.The other point I will like to deal with is the controversy as to whether or not the principles of law laid down in Hadley v. Baxendale (1854) 9 Ex. 341 is applicable in Nigeria and binding on the courts in Nigeria. I agree with the view expressed in the lead judgment that generally speaking, decisions of English courts or any foreign courts are not binding on Nigerian court but they are merely persuasive. I will, however, like to add that where Nigerian courts have followed a particular principle adopted from a foreign decision over the years, such as in the one in the Hadley v. Baxendale case, it will be totally erroneous hold to that such principle still remains, foreign in nature. Thus in the Hadley v. Baxendale case, supra, the principle of law relating to remoteness of damages in breach of contracts enunciated in that case have been cited with approval and followed by this court in numerous decisions of this court: for example: Imana v. Robinson (1979) 3-4 SC (Reprint) 1; Niger Insurance Co. Ltd. V. Abed Brothers Ltd.(1976) 7 S. C. (Reprint) 20; Omonuwa v. Wahabi (1976) 4 S.C. (Reprint) 62; Maiden Electronics Works Ltd. V. Attorney General of Federation (1974) 1 S.C (Reprint) 37; S.P.D.C. v. Jammal Eng. (Nig.) Ltd. (1974) 4 S. C. (Reprint) 24: and Yusufv. N. T. C. Ltd.(1977) 6 S.C.(Reprint) 25. I believe and hold that the said principle has ceased to be regarded as foreign in Nigeria. It has, no doubt, become part and parcel of our case law of contract. This is because mere statement of the principles and citing any of the numerous decisions of this court where the principle had been adopted, some of which I have cited above, as authority to back up the principle, will be sufficient to make it binding on all courts in Nigeria.For the above reasons, and the fuller reasons given in the said lead judgment, which I hereby adopt, I also hold that the appeal partially succeeds in that the appeal against the reduction of the damages awarded is dismissed while the appeal in respect of the value of the empty bottles is allowed. I agree with the orders made in the lead judgment, including that on costs.

Judgment delivered by
Walter Samuel Nkanu Onnoghen, J.S.C.

I have had the opportunity of reading in draft, the lead judgment of my learned brother Tobi, JSC just delivered.At pages 239 and 240 of the record, the Court of Appeal held as follows:-"It is common ground that appellant owned the franchise on the empty bottles but possession was in respondent by way of deposit towards cost of purchase of appellants' products.In the custom of trade of the business between the parties the empty bottles are owned by the appellant and put liquid content to be sold to respondent in the sale the cost of the empty bottle is given as credit note with the amount deducted from the overall price with respondent taking advantage of the credit note. The bottles are in form of bailment which arises by way of contract wherein the delivery of personal property by one person (the bailor) to another (the bailee) who holds the property for a certain purpose under an express or implied in fact contract. From the evidence adduced the appellant is the bailor whilst the respondent is the bailee....In the instant appeal as the contract of bailment is tied to purchase of product of appellant with content and then credit given to respondent and no evidence of payment separately for bottles the learned trial judge erred in law to have awarded the bailee the cost of the goods entrusted to it by the bailor when the purpose for the delivery has not materialized....." (Emphasis supplied.)It is on the basis of the above that the Court of Appeal set aside the award of N1, 249,000.00 made by the trial court in favour of the present appellant.I have carefully gone through the pleadings of the parties and the evidence produced at the trial in support of their contending positions and have seen no where therein where the facts of a contract of bailment is pleaded nor evidence of same given by the parties on record, it is therefore very clear that the issue of contract of bailment was raised suo motu. by the Court of Appeal without calling on the parties to address it on same before basing its decision to set aside the award in issue thereon. It is a cardinal principle of law that it is not for the court to make a case of its own or to formulate its own case from the evidence before it and thereafter to proceed to give a decision based upon its own postulation quite different from the case of the parties before it. See Adeniji vs Adeniji (1972) 4

S.C 10 at 17; Pascute vs Adecentro (Nig) Ltd (1997) 11 NWLR (pt. 529) 467 at 481. . .

It is also settled law that parties and the court are bound by the pleadings of the parties and no party is allowed to present a case contrary to the pleadings. In the instant appeal, the parties not having pleaded contract of bailment nor based their case thereon, the Court of Appeal was in error when it raised the issue contrary to the pleadings of the parties.In the circumstance I agree with my learned brother Tobi, JSC that the appeal has merit and should be allowed. I therefore order accordingly and abide by the consequential orders contained in the said lead judgment including the order as to costs.

Appeal allowed in part.

Counsel

Kola Olawoye ..... For the Appellant

Obafemi Ogunleye
With him
K.O. Popoola ..... For the Respondent