IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2016

CORAM: AKUFFO (MS.) JSC (PRESIDING)
GBADEGBE JSC
AKOTO- BAMFO (MRS) JSC
APPAU JSC
PWAMANG JSC

CIVIL APPEAL

No. J4/14/2015

20TH APRIL 2016

MESSRS ASKUS. COMPANY - PLAINTIFF/RESPONDENT/ APPELLANT

VRS.

1. **HARRY BOAKYE - DEFENDANTS/APPELLANTS/**
2. **JOJO BONNEY RESPONDENTS**
3. **GUINNESS GHANA BREWERIES GROUP KUMASI**

JUDGMENT

YAW APPAU, JSC:

This is an appeal against the decision of the Court of Appeal dated 31st January 2014. The grounds of appeal are threefold and they are as follows:

a) *That the learned justices of the Court of Appeal erred in law when they substituted their judgment for that of the trial High Court.*

PARTICULARS OF ERROR OF LAW*: Failing to make any Order in respect of certain reliefs granted the appellant herein by the trial High court and yet substituting its judgment for that of the trial High Court though the said reliefs were not appealed against by the defendants/appellants/respondents.*

b) *The learned justices of the Court of Appeal failed to exercise their discretion judicially when they substituted the award of Eighty thousand Ghana cedis (GH₵80,000.00) made in favour of the plaintiff/respondent/appellant by the learned trial judge with Five thousand Ghana cedis (GH₵5,000.00) as General Damages.*
c) *The judgment is against the weight of evidence.*

The facts in this case are straightforward and not in controversy whatsoever. The appellant, who was the plaintiff in the trial High Court and would be simply referred to as 'appellant' in this judgment, was the distributor of the products of the 3rd defendant/appellant/respondent. The 1st and 2nd defendants/appellants/respondents were staff of the 3rd defendant/appellant/respondent. Since all three were sued jointly, they would all be referred to simply as 'respondents' in this judgment.

The respondents and their predecessors supplied the appellant with products from their company under their usual trade agreement on various occasions spanning a period of over thirty years. The agreement was that the appellant was to pay for the supplies by the issuance of cheques to be cleared by the 3rd respondent ten (10) days after each supply.

Between the months of February and March 2006, some cheques issued by the appellant for the payment of supplies made were dishonoured by the paying bank. Due to disagreements between the parties on the said payments, the 3rd respondent, through the 1st and 2nd respondents, solicited the assistance of the Police and went to the premises of the appellant to evacuate all the remaining products supplied to the appellant without the consent or approval of the appellant. In the course of the evacuation of the products, the respondents locked up the two warehouses of the applicant where the products were kept. They again seized two of the vans appellant was using to execute his work as a distributor. These vans were later

released to the appellant upon the orders of the trial court after same had been detained for more than one month.

Not happy with the conduct of the respondents, the applicant took action against them in the trial High Court claiming twelve (12) reliefs. These were made up of three (3) declaratory reliefs, four (4) special damages reliefs, two (2) general damages reliefs including exemplary damages for detinue and trespass, interest on some of the sums claimed, an order for the release of the seized vans and perpetual injunction restraining the respondents from interfering in the operations of the appellant. The respondents defended the action and 3rd respondent counter-claimed for the sum of **₵1,631,083,101.14** (now **GH₵ 163,108.31**) with interest or, in the alternative, the judicial sale of property standing in the name of a Mr. Frimpong.

The trial High Court found for the appellant on all the reliefs with the exception of reliefs (e) and (l), which had become moot as at the close of the case and therefore were of no moment. Accordingly, it awarded in favour of the appellant special damages of **GH₵7,820.00** in respect of relief (d) and a total of **GH₵127,554.00** with regard to reliefs (g) and (h). The total comes to **GH₵135,374.00**. The trial court however, found the special damages claim under relief (k) unproven and in lieu of that, awarded in appellant's favour what it termed 'nominal damages' of **GH₵5,000.00**.

On the claim for general and exemplary damages for detinue and trespass, the trial High Court awarded a total of **GH₵80,000.00**. In arriving at that figure, the trial court took into consideration the conduct of the respondents in the unlawful locking up of the warehouses of the appellant, the unlawful evacuation of appellant's stock of drinks, the unlawful seizure of appellants two commercial vans for a period of more than thirty days and the manner in which the whole exercise was carried out with the assistance of armed policemen, when there was no need for that. The trial High Court again granted the respondents their counter-claim in the sum of **GH₵55, 087.29** instead of the about **GH₵163, 000.00** that they prayed for in their pleaded case.

The respondents appealed against the decision of the trial High Court to the Court of Appeal on the following grounds:

a. *The award of GHc5, 000.00 and GHc80, 000.00 as nominal and general damages for the same relief against the respondent was excessive, arbitrary and wrong in law;*
b. *The trial Court's judgment was given per incuriam and sinned against the law when the court refused to follow the Supreme Court's decision on the law that the issuer of a dishonoured bill of exchange is liable on the full value of the dishonoured bill of exchange;*
c. *The learned judge erred when he refused to award the full value of the cheques dishonoured; and*
d. *The judgment is against the weight of evidence*

Though the grounds of appeal appear four (4) as re-called above, they are basically three. Grounds (b) and (c) talk about the same subject; i.e. the amount awarded to the 3rd respondent by the trial High Court as the actual debt owed it by the appellant, as prayed for in respondents' counter-claim.

So strictly speaking, it was not the whole of the judgment of the trial High court that was on impeachment before the Court of Appeal but that part of the judgment in respect of: (i) the award of GH₵ 80,000.00 made under reliefs (f) and (j) on general and exemplary damages; (ii) the award of GH₵5,000.00 as 'nominal damages' in lieu of failure to prove the special damages claim under relief (k) and then the award of GH₵55,087.29 to the 3rd respondent in respect of its counter-claim.

Respondents' plaint with regard to the counter-claim in their written submissions before the Court of Appeal was that, even if they were not able to establish the claim of GH₵163,108.31 endorsed in their counter-claim as appellant's total indebtedness to the 3rd respondent, the trial court should have ordered appellant to pay the face value of the six (6) cheques that appellant admitted were dishonoured at its instance but not the GH₵55,087.29 the court ordered appellant to pay. Respondents sought refuge under the decision of this Court in the case of **GUINNESS (GH) LIMITED v RAFSCO DISTRIBUTION LIMITED [2007-2008] SCGLR 151.**

On the award of GH₵80,000.00 and GH₵5,000.00 as general and nominal damages respectively, the submission of the respondents in support of their appeal, as captured in their written submissions filed before the Court of Appeal was as follows: *"It is my humble submission that since the trial*

High court judge had already awarded Special damages for loss of income and awarded the respondent the value of the goods carted away by the appellants, the amount of GH₵*80,000.00 as damages was wholly arbitrary and excessive."* ('Respondent' as used in the above quotation referred to the appellant herein while 'appellants' meant the respondents herein).

With regard to the ground that the judgment of the trial High court was against the weight of evidence, the respondents' main concern was with regard to the refusal of the trial judge to order appellant to pay the full value of the six (6) cheques that were dishonoured and tendered in evidence as exhibits '1A – F', which totalled GH₵**104, 627.11**.

In effect, the respondents never appealed against the awards made by the trial judge in favour of the appellants under reliefs (d), (g) and (h). Neither did they appeal against the grant of reliefs (a), (b) and (c) when the trial High Court made the findings that the conduct of the respondents was unlawful and constituted both trespass and detinue. These reliefs were therefore not a subject-matter of the appeal; respondents having accepted the decision of the trial High court on same.

The Court of Appeal, in its judgment of 31st January, 2014, agreed with the respondents (who were the appellants) that it was wrong for the trial court to award appellant GHc5,000.00 as nominal damages for its failure to prove the special damages claim under relief (k). According to the Court of Appeal, that claim should have been dismissed for the failure of the appellant to prove same.

The Court of Appeal further held that the amount of GH₵80,000.00 awarded as general damages for detinue and trespass in favour of the appellant was excessive and oppressive. It accordingly reduced it to GH₵5,000.00. The reason advanced for saying so was that, it was wrong for the trial court to award that colossal amount as general damages, having already ordered the respondents to pay for the value of the drinks and empty crates carted away, in addition to the loss of income for the use of the two vans which were unlawfully seized for a period of over thirty days.

From the judgment of the Court of Appeal, the appeal that the 1st appellate court said had succeeded was in respect of the complaint against the award of GH₵80,000.00 and GH₵5,000.00 to the appellant by the trial court and

then the refusal of the trial court to order the appellant to pay the full value of the six (6) dishonoured cheques. After upholding these two grounds of appeal, which did not touch on the decision of the trial High Court on reliefs (a), (b), (c), (d), (g) and (h), the Court of Appeal strangely concluded its judgment as follows: ***"In conclusion this appeal succeeds and it is hereby allowed. The judgment of the High Court appealed from is hereby set aside and in substitution thereof the parties shall abide the orders and directions hereinbefore made in this judgment".*** {Emphasis added}

Having made no orders with regard to reliefs (d), (g) and (h) which the trial court granted and which were not appealed against, the order of the Court of Appeal setting aside the judgment of the trial court and substituting same with its own orders and directions, appear to be out of the ordinary. It was that confusion created by the concluding part of the judgment of the Court of Appeal that gave birth to this appeal.

Appeal to the Supreme Court

The grounds of appeal filed in this Court have been quoted supra and there would be no need to repeat them.

On ground **(a)**, we agree with the appellant that it was wrong for the Court of Appeal to say that the judgment of the trial High Court appealed from had been set aside. What this statement means is that the whole judgment of the trial High Court has been set aside, when there was no appeal specifically against the grant by the trial High Court of reliefs (a), (b), (c), (d) (g) and (h).

In fact, respondents were silent on reliefs (a), (b) and (c) which shows that they never challenged the trial court's findings that their conduct was unlawful and constituted the torts of trespass and detinue. Again, they did not challenge the orders of the trial High Court directing them to pay the amounts as stated in appellant's reliefs (d), (g) and (h), as varied in the judgment.

The crux of their appeal at the Court of Appeal was that; (i) having granted appellant special damages under reliefs (d), (g) and (h) for the sums stated therein, the grant by the trial High Court, of another GH₵80,000.00 as general damages plus GH₵5,000.00 as 'nominal damages', was too

excessive and, (ii) It was wrong on the part of the trial High Court to order appellant to pay only GH₵55,087.29 in respect of 3rd respondent's counter-claim instead of the amount of GH₵104,687.11, which is the true value of the six (6) dishonoured cheques issued by the appellant to the 3rd respondent, contrary to a decision of this Court on a similar matter.

Basically, the whole of the Court of Appeal's judgment was centred on these three grounds of appeal. The Court of Appeal concluded that having failed to prove relief (k), which was a special damages relief, the trial court erred in awarding appellant nominal damages of GH₵5,000.00 after it had already awarded appellant general damages of GH₵80,000.00.

As the Court of Appeal rightly said; **'nominal damages'** does not stand on its own, separate from General Damages. Nominal damages are an aspect of General Damages. They are the type of general damages that are awarded when no actual harm has been caused by the tort complained of, or the contract breached. Black's Law Dictionary, 9th Edition defines it as; ***"1. A trifling sum awarded when a legal injury is suffered but where there is no substantial loss or injury to be compensated; 2. A small amount fixed as damages for breach of contract without regard to the amount of harm".*** Aside of nominal damages, there are other types of damages that also fall under General Damages. Examples are; substantial damages, aggravated and parasitic damages, exemplary or punitive damages and incidental or consequential damages.

From the judgment of the trial High Court, the court based its decision to award appellant nominal damages of GH₵5,000.00 in lieu of want of proof of special damages on the authorities of YIRENKYI v TARZAN INT. TRANSPORT [1962] 1 GLR 75 and AHENKORA v MOUBARAK [1972] 2 GLR 429.

It must be emphasised that the situation under which the High Court in the two cases cited above arrived at its decision, arises only where plaintiff fails to seek any relief for general damages aside of special damages. If a plaintiff who only seeks a relief for special damages fails in his bid to establish it, but there is evidence establishing the tort or breach of contract complained of, the courts normally award nominal damages in lieu of the failure to prove special damages. However, this situation does not arise

where the plaintiff has sought a separate relief for general damages aside of the special damages claim.

We agree with the Court of Appeal that having awarded the appellant GH₵80,000.00 as general damages, the trial court erred in making another general damages award of GH₵5,000.00 termed as 'nominal damages' in lieu of failure to prove the special damages claim under relief (k). The setting aside of this award was therefore in order.

After setting aside this award of GH₵5,000.00, the Court of Appeal went ahead to reduce the general damages award from GH₵80,000.00 to GH₵5,000.00. This was what the 1st appellate court per Tanko, J.A. said in its judgment on these two awards of GH₵80,000.00 and GH₵5,000.00.

"I cannot but agree with the appellants' contention that the award of GH₵80,000.00 as general damages for the detinue of the said vehicles and trespass is excessive and unreasonable. In my respectful view and with all due respect to the learned trial judge and respondent's counsel who supported the award, there appears to be a clear misapprehension of the law on damages as there are no separate heads for nominal and general damages. The true legal position is that, it is the award of general damages where available which must in all cases be nominal – See DELMAS AGENCY GHANA LTD Vs FOOD DISTRIBUTORS INT. (supra). And because general damages are such as the law will presume to be the direct, natural or probable consequence of the wrong complained of, they are distinct from special damages. Being nominal, they are awarded where the court decides in the light of all the facts that no actual damage may have been sustained except that it is awarded as a mark of vindication. That is why they are normally awarded where the tort complained of is actionable per se under the head of claim for 'general damages'.

The learned trial judge was therefore clearly in error, when he made separate awards for general and nominal damages. This, in my view, is not merely excessive as alleged by the appellants but oppressive and not in accord with law. The same ought to be set aside. In coming to that conclusion, I have taken note of the award of special damages for loss of income relating to the said vehicles and as well as the award for the value of the stocks/drinks, empty bottles and crates carted away by the appellants…" {Emphasis added}

If the Court of Appeal took into considerations the awards made by the trial High Court under reliefs (d), (g) and (h), which were not on appeal before it, in reducing the general damages award from GH₵80,000.00 to GH₵5,000.00, then why did it say it has set aside the judgment of the High Court appealed from?

It was therefore wrong on the part of the Court of Appeal to purport to set aside wholly the judgment of the trial High Court including decisions that were not appealed against and which the Court of Appeal appeared to have approved of in its judgment as quoted above. On this score, ground (a) of the grounds of appeal succeeds.

On the GH₵80,000.00 claim, which the Court of Appeal reduced to GH₵5,000.00, it appears the Court of Appeal misapprehended the rationale behind the award of the amount as general damages for detinue and trespass. The fact is that, appellant requested that the general damages to be awarded for the trespass and detinue must be exemplary. Appellant did not ask for general damages simpliciter. Appellant testified and provided facts to support his claim for exemplary damages.

Exemplary damages, also known as punitive damages, are awarded in excess of actual or substantial damages just to make an example of the defendant or to punish him. This Court in the case of AYISI v ASSIBEY III & Others [1964] GLR 695 @ 696-697 held that even in damages for trespass, exemplary damages could be awarded in addition to the normal nominal and actual damages suffered. The Court held: ***"In assessing damages for trespass consideration should be taken not only of the extent of the land on which the trespass had been committed by the individual defendants, but also the length of time that the plaintiff had been wrongfully kept off the land…"***

Also, in the case of MAHAMA v KOTIA & Others [1989-90] 2 GLR 24, the plaintiff brought an action against the defendants for damages for the demolition of her building and the surrounding wall and the taking away of her iron rods and using them. The trial judge, having found that the defendants had no authority to demolish the building awarded the plaintiff, inter alia (i) ₵594,000.00 as the replacement value of the building and, (ii) ₵300,000.00 as exemplary damages for trespass. On appeal by the

defendants against the quantum of the award, the Court of Appeal held, dismissing the appeal at holding (2) as follows:

"In addition to the replacement value the plaintiff was entitled to damages for being deprived of the use of her building. If she had to find an alternative accommodation, as in the instant case, that would have to be considered in the award of damages. Furthermore, where the damages were at large the manner of the commission of the tort might be taken into account; and if it was such as to injure the plaintiff's proper feelings of dignity and pride, it might lead to a higher award than would otherwise have been appropriate. Since on the evidence the defendants did not demolish the plaintiff's house out of spite and ill-will and without any authority but even took away the iron rods and used them in their own building, the award of ₵300,000.00 as exemplary damages was reasonable"

It was therefore a wrong proposition of the law for the Court of Appeal to conclude that having granted appellants reliefs (d), (g) and (h), it was wrong for the trial High Court to further make an award of GHc80,000.00 as general damages. The trial judge gave reasons for making that award and it was neither contrary to law, nor excessive or oppressive as the Court of Appeal contended. The trial judge made reference to the judgment of Lutterodt, J (as she then was); now Wood, C.J., in the case of NICOL v CUSTOMS, EXCISE & PREVENTIVE SERVICES (CEPS) [1992] 1 GLR 135, in arriving at his decision to award exemplary damages of GHc80,000.00.

As Lutterodt, J stated in that case and rightly so; ***"exemplary damages are awarded when the tortfeasor's conduct was reprehensible and so outrageous that it deserved condemnation, as for example where he was actuated by malice, fraud, cruelty, insolence, brutal show of force or the like…"***

The rationale behind such awards is to do something for the defendant to know that the tort he/she/it has committed does not pay.

In the instant case, there was no justification for the respondents' invasion of the business premises of the appellant, whom it had worked with for a period of over thirty (30) years, with armed policemen to lock up its warehouses and cart away products already supplied to appellant together

with the seizure of appellant's own sales vans for a period of thirty-four (34) days, when the issue at stake was with regard to some balance yet to be settled in their lawful business dealings.

That singular act of the respondents, which attracted a sizeable crowd to the business premises of the appellant, created a bad impression in the mind of the public then present and even beyond, about the hitherto good reputation of the appellant who, from the evidence on record, had won several awards, including the best distributor award (national) for the over thirty years that he had operated as a distributor for the 3rd respondent and its predecessors. It therefore injured appellant's feelings of dignity and pride.

The trial High Court was within the confines of the law when it made the award of GH₵80,000.00 as exemplary damages for both detinue and trespass. The Court of Appeal therefore erred when it substituted that amount with the meagre sum of GH₵5,000.00 as damages for both torts of detinue and trespass.

On the counter-claim, the Court of Appeal did not err when it ordered the appellant to pay the actual value of the six (6) dishonoured cheques, which total GH₵104, 697.11. Since the appellant did not appeal against that part of the judgment of the 1st appellate court, it is better to leave it untouched.

The appeal before us therefore has merits. The orders of the trial High Court in respect of reliefs (d), (g) and (h) are hereby restored. They are to the effect that appellant is entitled to; (d) the sum of GH₵7,820.00 being loss of use of the two vans for thirty-four (34)days at GH₵230.00 per day, (g) the sum of GH₵127,544.30 representing the total value of stocks of drinks carted away and (h) GH₵10,404.00 representing the total value of empty crates and cartons respondents took away. Again, the GH₵80,000.00 that the trial High Court awarded as exemplary damages under the general damages claim for detinue and trespass is neither excessive nor oppressive under the circumstances. It is accordingly restored in place of the GH₵5,000.00 awarded by the Court of Appeal.

The costs of GH₵10,000.00 awarded in favour of the appellant against the respondents and the GH₵2,000.00 awarded in favour of the 3rd respondent

against the appellant on its counter-claim are also restored since there was no appeal against same. Flowing from the above, the appeal is allowed.

(SGD) YAW APPAU

JUSTICE OF THE SUPREME COURT

(SGD) S. A. B. AKUFFO (MS)

JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO – BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

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