

ELF PETROLEUM NIGERIA LIMITED

V

- 1. DANIEL C.UMAH**
- 2. UCHE N. FINEBOY**
- 3. PROMISE U. EJAH**
- 4. ANDREW ORDU**
- 5. ISAAC M. DIBIA**

(for themselves and on behalf of the members of the five fain Families/villages of Obite community in Onelga, Rivers State)

COURT OF APPEAL

(ILORIN DIVISION)

MUHAMMAD S. MUNTAKA-COOMASSIE JCA (Presided) TIJJANI ABDULLAHI JCA
(Read the Lead Judgment) HELEN MORONKEJI OGUNWUMIJU JCA

CA/IL/59/2005

THURSDAY, 13TH JULY, 2006

APPEAL - Damages - General damages - When appeal court will alter award by lower court

CONSTITUTIONAL LAW - Judicial powers of the Federation Where vested - Constitution of the Federal Republic of Nigeria, 1999, section 6(1) construed

COURT - Federal High Court - Jurisdiction of to adjudicate on civil cases relating to mines and minerals - Constitution of the Federal Republic of Nigeria, 1999, section 251(1)(n) considered

COURT- Judicial powers of the Federation - Where vested – Constitution of the Federal Republic of Nigeria, 1999, section 6(1) construed

DAMAGES - General damages -Award of- When appellate court will alter

DAMAGES - General damages - Definition of

DAM A GES - Special or general damages - Party claiming - What must prove to establish

GOVERNMENT - Judicial powers of the Federation - Where vested -Constitution of the Federal Republic of Nigeria, 1999. Section 6(1) construed

JURISDICTION - Mines and minerals - Civil causes relating to - Court vested with jurisdiction to adjudicate on

LAND LAW - Acquisition of land - When an individual can lawfully be deprived of his land

LAND LA W - Claim to land - Applicant for - Land Use Act, section 30 thereof- When can avail applicant

LAND LA W - Compensation for acquisition of property and interest -Party entitled to - Prompt payment of- Access to court afforded him - Constitution of the Federal Republic of Nigeria, 1999, section 44(I)(c)(d) construed

LAND LAW - Ownership and disposal of property - Individual's right to - Right to compensation thereof

STATUTE - Constitution of the Federal Republic of Nigeria, 1999, section 251(l) (n) thereof - Mines and minerals - Civil causes relating to - Court vested with jurisdiction to adjudicate on

STATUTE- Constitution of the Federal Republic of Nigeria, 1999, section 44(l)(c)(d) thereof - Compensation for acquisition of property' and interest - Party entitled to - Need for prompt payment of and access to court in respect of claim for

STATUTE - Constitution of the Federal Republic of Nigeria, 1999,

Section 6(1) thereof - Judicial powers of the Federation - Where vested

STATUTE - Land Use Act, Cap. 202 Laws of the Federation of Nigeria, 1990, section 30 thereof- When will avail an appellant in a claim for title to land

STATUTE - Proviso negating express provision of- Impropriety of WORDS AND PHRASES - 'Damages'- Definition of

Issues:

1. Whether the trial court has jurisdiction and competence to entertain the case of respondents, having regard to the mandatory provisions of sections 29 and 30 of the Land Use Act, 1978 and paragraphs 36 and 37 of Schedule 1 of the Petroleum Act, Cap. P10 Laws of the Federation, 2004.
2. Whether having regard to the pleadings, evidence and the nature of the monetary claim of the respondents, the learned trial Judge was right to have awarded damages of N25 million in favour of the respondents who failed to plead specially or prove their entitlement to any damages.

Facts:

The appellant acquired the respondents' land for the establishment of a gas plant at Obite community in Ogba/Egbema/NDomi Local Government Area of Rivers State. The appellant having paid the sum of M1,995,118.50k (one million, nine hundred and ninety five thousand, one hundred and eighteen naira fifty kobo) for surface rights for the crops and economic trees damaged, refused to pay for the acquisition of the land.

The respondents aggrieved, instituted an action at the Federal High Court Port Harcourt, claiming amongst other reliefs the sum of N2.5 billion as compensation for the acquisition of their land measuring approximately 28.685 hectares. At the conclusion of trial, the learned trial Judge gave judgment in the respondents' favour awarding them the sum of N25 million (twenty five million) as general damages.

The appellant aggrieved, appealed to the Court of Appeal.

Held: (*Dismissing the appeal*)

1. *Where the judicial powers of the Federation is vested section 6(1) of Constitution of Federal Republic of Nigeria, 1999 construed -*

Section 6(1) of the Constitution of the Federal Republic of Nigeria, 1999 vests the judicial power of the Federation in the courts. The section provides:

"The judicial powers of the Federation shall be vested in the courts to which this section relates being courts established for the Federation.

" The courts to which the judicial powers are given, needless to say are created and derived their jurisdictions from the constitution and other enactments validly passed by the National Assembly in case of Federal Courts and by the State Assemblies in case of state courts. [P. 1774, paras. A - C]

2. *Instance where section 30 of the Land Use Act can avail an appellant in a claim for land –*

Section 30 of the Land Use Act can only be called in aid of the appellant where it is established that the land of the respondent had been acquired by the government or his right of occupancy had been revoked and that the only dispute is as to the compensation to be paid by the holder of such land. In the instant case, the appellant had not established before the lower court that the land of the respondents had been acquired. The provisions of section 30 of the Act cannot therefore be called in its aid. [R. 1778, paras. D-E]

3. *Prerequisite of prompt payment of compensation to a party in the acquisition of his moveable property or interest and access to court afforded him, section 44(1)(c)(d) of Constitution construed -*

Per TIJJANI-ABDULLAHI JCA: [P. 1777, paras. A -D]

"44(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the manner and for the purposes prescribed by a law that, among other things-

- (c) requires the prompt payment of compensation therefore; and
- (d) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria"

The provisions of the said section (*supra*) are self-explanatory and one does not need any aid to interpret same. To acquire movable property or interest in any immovable property, prompt payment of compensation must be made and that any person claiming such compensation has unlimited access to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

4. *Impropriety of a proviso negating express provision of a section of a statute -*

A proviso to a section of law cannot negate the express provision of that section. [Ayeni v. Unilorin (2000) 2 NWLR (Pt. 644) 290; Kukoyi v. Adesina (1999) 10 NWLR (Pt. 624) 63 referred to] [P. 1777, paras. D - E]
5. *What party claiming special or general damages must prove to establish same -*

A party claiming special damage, to succeed must specifically and strictly prove his claim. Whereas if it is general damage he need not specifically prove the loss he suffered. [P. 1780, para. G]
6. *What general damage is -*

General damages are the kind of damages which the law presumes to flow from the wrong complained of. They are damages which the jury may give when the Judge cannot point any measure by which they are to be assessed except on opinion and judgment of a reasonable man. [Aft.-Gen. of Oyo State v. Fair Lakes Hotels Limited (1989) 5NWLR (Pt. 121) 255; UBN Plc v. Ikwe (2000) 2 NWLR (Pt. 646) 223; Yalaju-Amaye v. A.R.E.C. Ltd (1990) 4 NWLR (Pt. 145) 422; West African Shipping Agency Lid v. Kalla (1978) 3 SC 15 referred to [P. 1 782, paras. B - D]
7. *Individual's right Ij own and yet compensated in the disposal of his property -*

The right to own property by an individual is well entrenched in the 1979 Constitution. The right to own carries with it, the right to dispose of the said property. By virtue of the provisions of the fundamental rights enshrined in the Chapter IV of the 1979 Constitution, the government with all its might cannot acquire the land of an individual without paying adequate compensation. [Kukoyi v. Adesina (1999) 10 NWLR (Pt. 624) 63 referred to] [P. 1781, paras, E - F]
8. *Instance when an individual can be lawfully deprived of his land -*

No one shall be deprived of his land unless the land is acquired compulsorily in accordance with the provisions of the Land Use Act e.g. for overriding public interest or public purpose by the local government in accordance with the law and in such a case, compensation must be paid. In the instant case, the land of the respondents was not compulsorily acquired for any public purpose and that being the case; they are entitled to be compensated in accordance with section 44(1) of the Constitution of the Federal Republic of Nigeria. [Ogunleye v. Oni (1990) 2 NWLR (Pt. 135) 745 referred to] [Pp. 1718-1719, paras. G - A]
9. *When an appellate court will alter general damages awarded a party -*

On appeal, general damages will only be altered if they were shown to be either manifestly too high or manifestly too low or awarded on a wrong principle. [Dumez v. Ogboli (1972) 1 All NLR 241, (1972) 2 SC 196 referred to] [P. 1782. paras. E - F]
10. *Court vested with jurisdiction to matters relating to mines and minerals -*

Under section 251(1) (n) of the Constitution of the Federal Republic of Nigeria, 1999, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters relating to mines and minerals including oil fields, oil mining, geological surveys and natural gas. [P. 1774, paras. C - D]

Nigerian Cases Referred to in the Judgment:

Ajayi v. Jolaosho (2004) 2 NWLR (Pt. 856) 89

Akmtennwa v. Oladunjoye (2001) NWLR (Pt. 659) 93

Alhaji Otaru & Sons Ltd v. Idris (1999) 6 NWLR (Pt. 606) 330

Alt.-Gen., Oyo State v. Fair Lakes Hotels Limited (1989) 5 NWLR (Pt. 121)255

Ayeni v. Unilorin (2000) 2 NWLR (Pt. 644) 290

Dumez v. Ogboli (1972) 1 All NLR 241, (1972) 2 SC 196

Federal Mortgage Finance Ltd v. Ekpo (2004) 2 NWLR (Pt. 865) 100

Ferguson v. Commissioner for Works and Planning Lagos State

(1999) 4 NWLR (Pt. 638)315

Gaji v. Paye (2003) FWLR (Pt. 163) 1, (2003) 8 NWLR (Pt. 823) 583

Habib (Nig.) Bank Ltd v. Ochete (2001) FWLR (Pt. 54) 384,

(2001) 3 NWLR (Pt. 699) 114

Kossen (Nig.) Ltd v. Savannah Bank Ltd (1995) NWLR (Pt. 420) 439

Kukoyi v. Adesina (1999) 10 NWLR (Pt. 624) 63

Madukolu v. Nkemdilim (1962) All NLR (reprint) 581

NBC v. Alfijn (mining) (Nig.) Ltd (1993) 3 NWLR (Pt. 287) 346

Nneji v. Chukwu (1988) NWLR (Pt. 81) 184

Odogi v. Alt.-Gen., Federation (1996) 6 NWLR (Pt. 456) 508

Ogunleye v. Oni (1990) 2 NWLR (Pt. 135) 745

Oluigbo v. Umeh (2004) All FWLR (Pt. 196) 823, (2004) 6 NWLR (Pt. 870) 621

Omonuwa v. Wahabi (1976) 4 SC 37

P. N. Lldoh Trading Co. Ltd v. Akere (2001) FWLR (Pt. 57) 900, (2001) 11 NWLR (Pt. 723) 114

POP v. IN EC (1999) 11 NWLR (Pt. 626) 2000

Shell Pet Dev. v. Isaih (1997) 6 NWLR (Pt. 508) 236

UBN Plc v. Ikwe (2000) 2 NWLR (Pt. 646) 223

Unipetrol (Nig.) Plc. v. Adireje (w. A) Ltd (2004) All FWLR (Pt. 231) 1238, (2005) 14 NWLR (Pt. 946) 563

West African Shipping Agency Ltd r. Kulhi (1978) 3 SC' 15

Yalaju-Amaye v. A.R.E.C. Lid (1990) 4 NWLR (Pt. 145) 422

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria. 1979, sections 1 (1), 3, 40(1), 251 (1) (n), 274, Chapter IV

Constitution of the Federal Republic of Nigeria. 1999, sections 44(2) (m) & 47 Land Use Act, 1978, sections 29 and 30 Land Use Act, Cap. 15 Laws of the Federation of Nigeria, 2004, Sections 29 and 30, paragraphs 36 and 37 of the 1st Schedule Land Use Act, Cap. 202 Laws of the Federation of Nigeria, 1990. Sections 29 & 30

Oil Pipe Lines Act Petroleum Act, Cap. 10 Laws of the Federation, section 207, Paragraphs 36 and 37 of Schedule 1

Counsel:

Mr. K. K. Eleja [with him, M. O. Ektmdayo (Miss) and B Akintunde] -for the Appellants.

Chief F. A. Eneawaji - for the Respondents.

TIJJANI-ABDULLAHIJCA (Delivering the Lead Judgment): This is an appeal against the decision of the Federal High Court Judge. Ilorin, in case No. FHC/PH/152/97 delivered on 8/04/2005. The background facts are:-

The plaintiffs/respondents filed suit No. FHC/PH/152/97 at the Federal High Court Port-Harcourt on the 27/5/97 in a representative capacity for themselves and on behalf of the 5 family units or villages G that constitute the Obite community In Ogba/Egbema/Ndoni L.G.A. of River State claiming amongst other reliefs the sum of N2.5 billion representing compensation for the acquisition of the plaintiffs/ respondents" land measuring approximately 28.685 hectares (about 286.840 sq. mtrs) by the appellant company for the establishment of a gas plant at Obite Community in Ogba/Egbema/Ndoni L.G.A. of River State.

Pleadings were ordered, filed and exchanged by the parties and trial subsequently commenced on 2nd June, 2000. The respondents as plaintiffs in the court below called 3 witnesses and tendered a number of documents as exhibits.

After the conclusion of the evidence of both parties, his lordship P. F. Olayiwola J. presiding over the matter was transferred to Ilorin Division of the Federal High Court and upon application, the Chief Judge of the Federal High Court ordered both counsel to file written addresses and the case transferred to the Federal High Court Ilorin for conclusion. Judgment was delivered thereafter on 8/4/2005 in favour of the respondents in the sum of N25 million naira

(twenty five million naira). The appellant against that judgment had filed a notice and ground -- of appeal with a single ground of appeal which was amended to 5 grounds of appeal subsequently.

On the 23/01/2006, counsel for the appellant argued a motion on notice praying inter cilia for leave and order of this court to raise a fresh issue in the appeal to wit, the issue of jurisdiction of the trial court to ID entertain the case and same was heard and granted accordingly.

In accordance with the rules of this court, counsel filed and exchanged briefs of arguments which were adopted on the 15/05/2006. In his oral submission, counsel to the respondents submitted that the appellant did not complain of the Land Use Act in their pleadings and therefore abandoned that issue. The question of general damages, he further submitted is at the discretion of the court. On his part, counsel for the appellant submitted that the case presented was not for general damages but compensation which had not been proved.

In a brief, settled by Yusuf AH (SAN), learned senior counsel distilled from the amended grounds of appeal three issues for determination as follows:

- “1. Whether the trial court has jurisdiction and competence to entertain the case of the respondents, having regard to the mandatory provisions of sections 29 and 30 of the Land Use Act, 1978 and paragraphs 36 and 37 of Schedule 1 of the Petroleum Act, Cap. 10 Laws of the Federation.
2. Whether having regard to the pleadings, evidence and the nature of the monetary claim of the respondents, the learned trial Judge was right to have awarded damages of N25 million in favour of the respondents who failed to plead specially or prove their entitlement to any damages.
3. Whether in view of the poor quality of the pleadings and evidence tendered by the respondents, their case ought to have been dismissed as lacking in merit by the trial court rather than finding in their favour.”

Counsel for the respondents on his part, in a brief settled by Chief F. A. Eneawaji, in response to the 3 issues formulated by the appellant formulated two issues for determination to wit:

- "1. Whether the provisions of the Land Use Act, Cap. 202 LFN 1990, the Oil Pipe Lines Act or Petroleum Act could override the mandatory provisions of the 1979 and 1999 Constitutions of the Federal Republic of Nigeria providing for payment of adequate compensation to the respondents for their land acquired.
2. Whether from the state of the pleadings and the evidence led before the trial court, the claim of the respondents could not be said to be founded on general damages i.e. compensation as to leaving the trial court with all unfettered discretion to decide on what award to make in the circumstance of the case before it"

It seems to me that issue No. 1 as formulated by the appellant is to a large extent similar to issue No. 1 as formulated by the respondents. Again, issue No. 2 as formulated by the appellant is not dissimilar with the issue No 2 as formulated by the respondents' counsel. I am of

the considered view that this appeal can be disposed of by giving consideration to the first two issues formulated by both counsel.

On issue No. 1, learned senior counsel argued that, the court is being called upon to consider and construe the provisions of sections 29 and 30 of the Land Use Act, Cap. 15 Laws of the Federation, 2004 and the provisions of paragraphs 36 and 37 of the 1st Schedule of the Petroleum Act, Cap. P10 Laws of the Federation, 2004. In the same vein, their lordships would also construe the provisions of section 44(2)(m) of the Constitution of the Federal Republic of Nigeria, 1999. Learned senior counsel, copiously set out the provisions of the said laws stated supra and submitted that when the provisions are read together, as the law enjoins they should be done, the lack of jurisdiction of the trial court to entertain the case becomes crystal clear. He relied on the cases of *Shell Pet Dev. v. Isaih* (1997) 6 NWLR (Pt. 508) 236 at P. 246, *Per Kalsma-Alu JCA* (as he then was); *POP v. INEC* (1999) 11 NWLR (Pt. 626) 2000 at P. 241 and *Madukolu & Ors. v. Nkemdilim* (1962) All NLR (reprint) 581 at pages 589-590. Learned senior counsel further submitted that a union reading of the above provisions of the law and Constitution deny the trial court of the vires and competence to entertain the case of the respondents.

Referring to the case of *Madukolu and Ors. v. Nkemdilim* (supra) learned senior counsel argued that the competence of a court to adjudicate over a matter depends on the following:

1. Is it properly constituted as regards numbers and qualifications of the members of the bench, and that no member is disqualified for one reason or another; and
2. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and
3. the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Learned senior counsel submitted that the lack of jurisdiction being canvassed in this appeal is anchored on the second leg of the exposition in *Madukolu's* case (supra).

It is the submission of the learned counsel that, there is also the lack of fulfillment of a condition precedent under the third leg of the case of *Madukolu s* (supra) as exemplified by section 30 of the Land

Use Act supra', i.e. lack of fulfillment of a condition precedent and on the lack of vires on the subject matter. The case of the respondents, learned counsel contended was for a claim for compensation for land, nothing more nothing less. He relied on the cases of *Kossen (Nig.) Ltd v. Savannah Bank Ltd* (1995) NWLR (Pt. 420) 439 at 451 and *Habib (Nig.) Bank Ltd v. Ochete* (2001) FWLR (Pt. 54) 384, (2001) 3 NWLR

(Pt. 699) 114 at 135.

Learned senior counsel argued that the appellant is the owner of oil mining license 58 which by virtue of section 207 of the Petroleum Act (supra) entitles the appellant to take benefit of the provisions of the

1st Schedule of the said Petroleum Act. He referred us to paragraphs 1, 5, 7, 36 and 37 of the 1st Schedule of the Act.

Learned senior counsel submitted that, from the foregoing, the trial Federal High Court lacks the jurisdiction to have entertained the case of the respondents and he urged us to so hold.

For his part, learned counsel for the respondents contended that the Land Use Act, Cap. 202 LFN, 1990 in sections 29 and 30 thereof do not and cannot forbid or prohibit the payment of adequate and fair compensation for the compulsory acquisition of the respondents' land. This is so, because the said Land Use Act is an inferior legislation to the LI provisions of the 1999 Constitution of the Federal Republic of Nigeria, he further contended. He relied on the case of *Provost Lagos State College of Education NWLR (Pt. 870) 476 at 509*.

Learned counsel further contended that the supremacy of the 1979 and 1999 Constitutions over any other law be it Land Use Act, Petroleum Act etc. have never been in doubt by the courts; He relied on sections 1(1) and 3 of the 1999 Constitution of the Federal Republic of Nigeria.

It is the submission of the learned counsel that the right to own property carries with it the right to dispose of the said property. Even the Government with all it might not to talk of a multinational oil and gas producing company i.e. appellant in this case cannot acquire the land of the respondents without paying adequate compensation to them. The 1979 Constitution forbids this. He relied on the case of *Kukoyi & Ors. v. Aino (1999) 10 NWLR (Pt. 624) 233 at 645*.

Learned counsel submitted that the Land Use Act is an ordinary legislation by section 274 of the 1979 Constitution and being an Act of the National Assembly, the court has been given power to declare any section of it or any other legislation whose provisions are in conflict or inconsistent with the provisions of the Constitution. He relied on the cases of *Ogunleye v. Oni (1990) 2 NWLR (Pt. 145) 745 at 722 - 773*; *Ferguson v. Commissioner for Works and Planning Lagos State (1999) 4 NWLR (Pt. 638) 315 at 328*.

Learned counsel argued that, the appellants, throughout its pleadings did not state or say that the respondents' land was compulsory acquired for any public purpose and no notice of any public acquisition was pleaded and tendered but rather appellant gave evidence that it is a multinational oil and gas company operating the Obite Gas Plant on the respondents' land. He urged us to discountenance the submissions of learned senior counsel that the respondents never resorted to the Land Use Allocation Committee to decide the issue of compensation to be paid to the respondents.

Learned counsel argued that the provision of section 44(2) m of the Constitution cannot be called in aid of the appellant for it is trite law that the provision of a sub-section or proviso of any law cannot override or negate the mandatory provisions of the main section of that law. He relied on the cases of *Ayeni v. Unilorin (2000) 2 NWLR (Pt. 644) 290 at 307*.

Learned counsel contended that, assuming without conceding that there is any limitation imposed on the respondents by section 29 of the Land Use Act to resort to the Land Use Allocation Committee in the face of the mandatory provisions of section 40(1) of the 1979 Constitution, the appellant having paid the respondents the sum of N1,995,118.50k for surface rights for the crops and economic trees damaged on the respondents' land cannot afterwards as in

this appeal argue successfully that the respondents did not exhaust that avenue before resorting to the court below as to divest the trial court of its jurisdiction to entertain the respondents' claims before it. This the learned counsel further contended is unnecessary reliance on technicality which is forbidden by the law. He referred to the cases of *Oluigbo v. Umeh* (2004) All FWLR (Pt. 196) 823, (2004) 6 NWLR (Pt. 870) 621 at 647 and *Nneji v. Chukwu* (1988) NWLR (Pt. 81) 184 at 196.

The appellant did not effectively challenge the averments and evidence of the respondents but gave contradictory and inconsistent evidence which are materially at variance with its pleadings, i.e. statement of defence. DW3 Chibuzo Ugwuoha gave evidence to the effect that the Land Use Act forbids payment of compensation for the acquired land which evidence is at variance with paragraphs 8, 9, 10 and 11 of the appellant's statement of defence and the evidence of DW.2. This makes the appellant's case unbelievable. He urged us to dismiss the appeal even on this ground alone and confirm the judgment of the lower court.

In a reply brief, learned senior counsel contended that a fresh Issue of law can be raised once requisite leave had been obtained. He relied on *Gaji v. Paye* (2003) FWLR (Pt. 163) 1, (2003) 8 NWLR (Pt. 823) 583. The appellant is right not to have pleaded sections of the Land Use Act, Petroleum Act and the Constitution as facts not law are to be pleaded. He referred to *P. N. Udoh Trading Co. Ltd v. Akere* (2001) FWLR (Pt. 57)900, (2001) 11 NWLR (Pt. 723) 114 at 128.

Learned counsel submitted that first resort to Land Use Committee is a threshold issue and fundamental to the adjudicatory power of the trial court failure of which robs the court of its entire jurisdiction in the matter. The case of *Menakaya v. Menakaya* (supra) is not apposite to the facts in the instant case. The right to submit the matter of the compensation to the Land Use Committee as provided by the Land Use Act is not a right vested in the appellant and therefore it cannot waive it and the appellant cannot be estopped from challenging the jurisdiction of the court at any time.

Learned counsel contended that the respondents misconstrued the position of the law because section 29(4), (a), (b) and (c) strictly regulate how compensation payable are to be compiled. If any in this case is the last rent in the year of revocation. The respondents having failed to prove the last rent cannot apply to the Judges' discretion. Paragraphs 4.16 - 4.20 of the respondents' brief is highly misconceived and liable to be discountenanced.

Issue No. 1, is whether the trial court has jurisdiction and competence to entertain the case of the respondents, having regard to the mandatory provisions of sections 29 and 30 of the land use Act 1978 and paragraphs 36 and 37 of Schedule 1 of the petroleum Act, Cap. P10 Laws of the Federation, 2004

Now, the starting point on this issue section 6(1) of the Constitution of the Federal Republic which vests the judicial power of the Federation in the courts. The section provides thus

"The judicial powers the federation shall be vested in the courts to which this section relates being courts established for the Federation."

The courts to which the judicial power given, needless to say are created and derived their jurisdictions from the Constitution and other enactments validly passed by through National Assembly in case of Federal Courts and by the State Assemblies in case of state courts.

Under section 251(1) (n) of the Constitution of the Federal Republic of Nigeria, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters relating to mines and minerals (including oil fields, oil mining, geological surveys and natural gas).

Section 44(1) of the said Constitution provides thus:

- "44(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the manner and for the purposes prescribed by a law that, among other things;
- (a) requires the prompt payment of compensation therefore; and
 - (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria"

It is appropriate at this stage to pause and consider the provision of sections 1(1) and 3 of the 1979 Constitution which are in pari materia with the provision of sections 1(1) and 3 of the 1999 Constitution they provide as follows:

- "1(1) This Constitution is supreme and its provision 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." I now proceed to examine the provisions of sections 29 and 30 of the Land Use Act and paragraphs 30 and 37 of the 1st Schedule of the Petroleum Act, Cap. 10 Laws of the Federation, 2004 with a view to finding out whether or not they are inconsistent with the provision of the Constitution stated (supra). However before I delve into that, I would like to say at this juncture that, section 274 of the 1979 Constitution incorporates the Land Use Act into the Constitution as an existing law and makes it an ordinary legislation by section 274(5) of the said Constitution.

A long look at the provision of section 29 of the Land Use Act will reveal the fact that it deals with how compensation will be paid in case of revocation of right of occupancy by the Governor in certain cases. But the said section is subject to section 28(1) of the said Act, which provides thus:

"It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest"

Though sub-section 3(b) of the said section defines public interest to include the requirement of the land for mining purposes or oil pipelines or for any purpose connected

therewith, where such power of revocation is exercised, the provision of section 28(6) must be complied with. The p said section provides thus:

"The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder."

Learned senior counsel also made reference to section 30 of the 1 and Use Act, section 36 of the Petroleum Act and submitted that a union reading of the above provisions of the law and the Constitution deny the trial court of the vires and competence to entertain the case of the respondents. With due respect to the learned senior counsel, the submission would have been valid and correct if it had been established G by evidence that the land in dispute had been revoked by the Government in accordance with laid down procedure as provided by the Land Use Act.

The pleadings and evidence led by the appellants are to the effect that the land in dispute was acquired by the Government and that the pr appellant is the owner of oil mining license 58, by virtue of section 2 of the Petroleum Act (supra) entitles it to take benefit of the provisions of the 1 st schedule of the said Petroleum Act. That being the case, the appellant has a duty to prove under section 135 of the Evidence Act that the land in dispute had in fact been acquired by the Government and the respondents were entitled to compensation for surface rights only.

A hard look at the pleadings and the evidence adduced at the court below did not establish that the land of the respondents was compulsorily acquired for any public purpose and no notice of any public acquisition was tendered or pleaded by the appellant in accordance with section 28(6) of the Land Use Act (supra).

Learned senior counsel submitted that there is also lack of fulfillment of a condition precedent under the third leg of the case of Madukohi (supra) and relied on section 30 of the Land Use Act to buttress his submission.

He also relied on the cases of Kossen (Nig.) Ltd v. Savannah Bank Ltd and Hahib Bank Ltd v. Ochite (supra).

Now, section 30 of the Land Use Act referred to by the learned senior counsel deals with a situation where there is a dispute as to the amount of compensation to be paid in accordance with the provisions of section 29 of the Act. Such dispute shall be referred to the appropriate Land Use Allocation Committee. I am of the considered opinion that this section can only be called in aid of the appellant where it is established that the land of the respondents had been acquired by the government or their right of occupancy had been revoked and that the only dispute is as to the compensation to be paid by the holder of such land. I have already held that the appellant had not established before the lower court that the land of the respondents had been acquired. The provision of section 30 of the Act cannot therefore be called in aid of the appellants.

In the cases of Kossen (Nig.) Ltd v. Savannah Bank (Nig.) Ltd and Habib (Nig.) Bank v. Ochete (supra) I am of the considered view that they are not apposite to the case we have at hand. The two cases deal with a situation where there is a difference between jurisdiction over subject matter, which is unlimited and covered by the 1979 Constitution, and procedural jurisdiction. The former cannot be expanded or compromised. But procedural jurisdiction could be waived or

acquiesced. I am of the view that in the light of the pleadings and evidence adduced by both sides at the lower court, the matter at hand is beyond procedural jurisdiction but lack of total evidence of acquisition of the respondents' land by the appropriate authority.

Learned counsel for the appellant, referred to section 44(2)(m) of the Constitution and submitted that, read together with other provisions of the law referred to earlier on, it is very clear that the court below has no jurisdiction to entertain the matter. Section 44(2)m must be read together with section 44 which is the main section and it reads thus:

"44.(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the manner and for the purposes prescribed by a law that, among other things-

- (c) requires the prompt payment of compensation therefore; and
- (d) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria"

The provisions of the said section (supra) are self-explanatory and one does not need any aid to interpret same. To acquire movable property or interest in any immovable property prompt payment of compensation must be made and that any person claiming such compensation has unlimited access to a court of law or tribunal or body having jurisdiction in that part of Nigeria. In the case of *Omoniyi Ayeni v. University of Harm* (2000) 2 NWLR (Pt. 644) 290 at 307 it was held that a proviso to a section to law cannot negate the express provision of that section. Again the said section 44(1) of the said Constitution provides unequivocally that no movable property or any interest in immovable property shall be taken possession of compulsorily without payment of compensation. See the case of *Kukoyi v. Adesina* (1999) 10 NWLR (Pt. ^ 624) 63 at 65.1 hasten to say in the light of the above, any law that is in conflict with this provision ought to be declared null and void.

In sum, in the light of all that I have said, this issue must be and it is hereby resolved against the appellant.

Issue No. 2 is whether having regard to the pleadings, evidence and the nature of the monetary claim of the respondents, the learned trial Judge was right to have awarded damages of N25 million in favour of the respondents who failed to plead specially or prove their entitlement to any damages. Learned senior counsel for the appellant after copiously referring to the pleadings, evidence and the judgment of the lower-court u submitted that, a claim for compensation for land like in the present case is a claim for special damages that requires specific pleadings and strict proof as laid down by many decided authorities.

It is his further submission that for the respondents to succeed. The must plead and prove the following:

1. The quantum of extent of the acquired land.

2. The price of such land either by per square metre or per hectare or the cost of an ascertainable size.
3. The comparative cost of land in the adjoining area where the land acquired is suitable.
4. the general or special uses to which the land is being made before it was acquired.
5. The cost of the improvement undertaken by the claimant on the land.
6. Ownership of the acquired land.

Learned senior counsel for the appellant referred to the pleadings, evidence of the respondents and the area of the land in contention and submitted that the respondents were not even sure of the extent of the land acquired not to talk of putting proper value thereon. Learned senior counsel further submitted that the law is settled that, special damages must be specifically pleaded and strictly proved. He relied on the cases of *Alhaji Otaru & Sons Ltd v. Idris* (1999) 6 NWLR (Pt. 606) 330 at 345 - 346, *Per Onu .ISC and Unipetrol (Nig.) Plc. v. Adireje (W.A) Ltd* (2004) All FWLR(Pt. 231) 1238, (2005) 14 NWLR (Pt. 946) 563 at 621.

Learned senior counsel contended that the trial Judge ought not to have awarded N25 million damages since it was not made out by the respondents. Even if it could be said that the damages were general damages which is not conceded, it must still fail.

It is the submission of the learned senior counsel that in the award of general damages even though at the discretion of the trial Judge, such discretion is not at large but must be exercised judicially, judiciously and within reason. Learned counsel further submitted that from the judgment of the court below, the learned trial Judge was himself at sea as to the basis of the award of N25 million. He relied on the case of *Att.-Gen., Oyo State v. Fair Lakes Hotels (No. 2)* (1989) 5 NWLR (Pt. 121) 255 at 277 - 278. On this ground, learned counsel urged us to set aside the award of N25 million.

Again, learned counsel argued that the award cannot be sustained because by virtue of section 44(2)(m) of the 1999 Constitution, the only entitlement of the respondents was to damage to buildings, economic trees or crops. The N1.9 million paid to the respondents represented payments for the surface crops and structures as testified to by DW1 at pages 102-103 of the record and as stated also by DW3 at pages 109 -110 of the record.

Learned counsel submitted that the compensation paid by the appellant to the respondents covers the respondents' right to the land and the developments thereon. The learned trial Judge was wrong to have held otherwise, he further submitted.

Learned senior counsel urged us to set aside the damages awarded in this matter since this is a proper case for the court to intervene. He relied on the cases of *Omonumi v. Wahabi* (1976) 4 SC 37; *NBC v. Alfijri (mining) (Nig.) Lid* (1993) 3 NWLR (Pt. 2K7) 346.at 300. 346 and *Odogi v. All.-Gen.. Federation* (1996) 6 NWLR (Pt. 456) 508 at 523. Learned counsel urged us to resolve the issue in favour of the appellant.

Learned counsel for the respondents on his part, referred to paragraph 15a of their statement of claim and submitted that the respondents were claiming the sum of N2.5 billion only, being compensation for acquisition of the respondents' vast area of land measuring approximately 28.684 hectares about 286.840 square metres by the appellant

company. Learned counsel argued that the claim is hinged and founded on general damages leaving the trial court with unfettered discretion to decide on what is reasonable, fair and adequate, considering the nature and circumstances of the respondent's case and the antecedent of the fact that the respondents' land acquired was an agricultural land which cannot revert to the original user again. He relied on the cases of *Akmterinwa v. Oladunjoye* (2001) NWLR (Pt. 659) 93 at 115; *UBN Plc v. Ikwe* (2000) 2 NWLR (Pt. 646) 223 at 237.

Learned counsel urged us to discountenance and jettison the contention that PW1 did not prove the exactitude of the land as the appellant had already admitted having the Obite Gas Plant on the respondents' land. He contended that in the award of general damages, a wide spread of power is given to the court comparable to the exercise of discretion of the court. It is enormous and therefore far-reaching. It is awarded to assuage such a loss which flows naturally from defendant's act. It need not be specifically pleaded. It suffices, if it is generally averred. He relied on the cases of *Federal Mortgage Finance Ltd v. C. Hope Effiong Ekpo* (2004) 2 NWLR (Pt. 865) 100 at 132; *Dumez v. Ogboli* (1972) 2 SC 196 and *Wasa v. Kalia* (1978) 3 SC 21.

Learned counsel submitted that an appellate court is wary and cautious at disturbing or reversing the finding fact and award of a trial court especially when it is not perverse and miscarriage of justice not done in the circumstance. He relied on the case of *Ajayi v. Jolausho* (2004) 2 NWLR (Pt. 856) 89 at 98.

Learned counsel further submitted that the respondents knew what they wanted from the trial court, i.e. general damages, pleaded same and were awarded N25 million against which they have not cross-appealed to demand for more.

Learned counsel contended that the judicial discretion of the court below in awarding N25 million should not be disturbed, interfered with or overturned as the said discretion exercised both judiciously and judicially and taking into consideration the facts and circumstances of the respondents' case.

Learned counsel submitted that discretion is not questioned by an appellate court when it is not exercised wrongly. The trial court awarded the said sum, relying on the authorities of *Kukoyi v. Ajilo* and *Ogunleye v. Oni* (supra) and section 44 of the 1999 Constitution which is in par material with section 40 of the 1979 Constitution. Learned counsel then posed this question that, can it be fair and equitable both in law and in fact to say that the discretion of the court below in awarding N25 million which is 1 % of the respondents' total claim of N2.5 billion is unwarranted, injudicious and unjustifiable for a matter of over 8 years? Learned counsel answered the question in the negative and urged us to dismiss the appeal as lacking in merit.

In his reply brief, learned senior counsel for the appellant submitted that the contention of learned counsel for the respondents that, issue of compensation for land compulsorily acquired is a matter of general damages and at the discretion of the court is unsustainable. He submitted that the counsel misconstrued the position of the law because section 29(4)(a)(b) and (c) strictly regulate how compensation payable are to be compiled.

It is the submission of the learned senior counsel that in the instant case the compensation payable, if any, on the land is the last rent in the year of revocation. The respondents having failed to prove the last rent cannot resort to the Judge's discretion when they have abdicated their duty

and failed to discharge the onus of proof placed on them by law. He urged us to allow the appeal in its entirety and set aside the decision of the trial court.

Now, the crucial point for consideration on the onset on this issue is the type of damages the respondents are entitled to. Are they entitled to special or general damages? If special damage, for them to succeed, they must specifically and strictly prove their claim. Whereas if it is general damage they need not to prove specifically the loss they suffered. It is trite that general damages are damages which the jury may give when the Judge cannot point any measure by which they are to be assessed except on opinion and judgment of a reasonable man. See the case of *Alt.-Gen. of Oyo Stale & Another v. Fair Lakes Hotels Limited & Anor.* (1989) 5 NWLR (Pt. 121) 255 at 278. Having disposed of the type of proof needed to prove the two types of damages, I can now consider the all important question as to whether, on the evidence adduced by both sides, the respondents' loss is within the realm of general or special damages.

Section 44(1) of the Constitution of the Federal Republic of Nigeria provides thus:

"44(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the manner and for the purposes prescribed by a law that, among other things-

- (e) requires the prompt payment of compensation therefore; and
- (f) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria"

In the case of *Kokoyi v. Adesina* (supra) this court held as follows:

"The right to own property by an individual is well entrenched in the 1979 Constitution. The right to own carries with it the right to dispose of the said property.- By virtue of the provisions of the fundamental rights enshrined in the Chapter IV of the 1979 Constitution, the government with all its might cannot acquire the land of an individual without paying adequate compensation"

The apex court, in the case of *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) 745 at 750 held inter alia as follows:

"No one shall be deprived of his land unless the land is acquired compulsorily in accordance with the provisions of the Land Use Act e.g. for overriding public interest or public purpose by the local government in accordance with and in such a case, compensation must be paid"

It is instructive to note that I have held elsewhere in this judgment that the land of the respondents was not compulsorily acquired for any public purpose and that being the case, they are entitled to be compensated in accordance with section 44(1) of the Constitution of the Federal Republic of "Nigeria. I am of the firm view that the loss suffered by the respondents was within the realm of general damages and that they need not specifically prove the loss they

suffered. All the cases and authorities cited and relied on by the learned senior counsel are not apposite to the case at hand, since they are all based on special damages.

On the amount awarded by the court below, learned senior counsel urged us to set it aside because the trial Judge himself was at sea as to the basis of the award of N25 million. With due respect to the learned senior counsel, it is settled in a long line of decided authorities that general damages are the kind of damages which the law presumes to 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 the cases of *UBN Plc v. wen* (2000) 3 NWLR (Pt. 648) 223 at 237, *Yalaju - Amaye v. A.R.E.C. Ltd* (1990)4 NWLR (Pt. 145) 422 at 45 - 451.

Again, in the case of *West African Shipping Agency Ltd and 1 other v. Alhaji Musa Kalla* (1978) 3 SC 15 at 23, the apex court held inter alia thus:

" it is true that in as far as awards of general damages are concerned, a trial Judge must make his own assessment of the quantum of such general damages" Also in the case of *Dime: v. Ogboli* (1972) 1 All NLR 241 at 250 it was held as follows:-

"On appeal to this court such general damages will only be altered if they were shown to be either manifestly too high or manifestly too low or awarded on a wrong principle" In the light of all that I have said, the trial Judge was right to have held thus:

"In my opinion however, the sum of N25 million naira would be adequate compensation to the plaintiffs for the interest in the land transferred to the defendant, apart from what was already paid for surface rights." This issue, like the previous one is also resolved against the appellant in favour of the respondents. Having come to this conclusion, it will be an exercise in futility to give any consideration to issue No. 3 formulated by the appellant's counsel.

On the totality of the appeal before us, with both two issues have been resolved against the appellant, this appeal lacks merit and ought to be dismissed and same is accordingly dismissed. The judgment of

"A learned trial Judge Mr. Justice P. F. Olayiwola of the Federal High Court, Ilorin delivered on 8/04/2005. in awarding N25 million as general damages to the respondents is hereby affirmed. I awarded N 10,000.00 costs against the appellant in favour of the respondents.

MUNTAKA-COOMASSIE JCA: I read in advance the elaborate judgment just delivered by my learned brother, Tijjani Abdullahi JCA. I agree with his reasoning and conclusions. I agree that that appeal lacks merit. Same is hereby dismissed.

The decision of the lower court is hereby affirmed. I endorse the award of costs.

OGUNWUMUU JCA: I have had the benefit of reading before hand the erudite judgment just delivered by my learned brother, Tijjani Abdullahi JCA. I am in complete agreement with his clear and thorough treatment of the live issues in this appeal. I wish to add a few words.

A thorough reading of the records and the 1st issue canvassed by the appellant's counsel does not show how or why the trial court lacked jurisdiction to hear the case. No nexus was made in the argument between the provisions copiously quoted and any law or provision depriving the trial court of competence or jurisdiction to hear the case. In fact, the two sections of the law referred to by appellant's counsel show that the respondents were entitled to seek for compensation. See section 29(3) of the Land Use Act, pages 7-8 of the appellant's brief:

"29(3) If the holder or the occupier entitled to compensation under this section is a community, the Governor may direct that any compensation payable to it shall be paid -

- (a) to the community; or
- (b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or
- (c) into some fund specified by the Governor for the purpose of being utilized or applied for the benefit of the community."

Section 37 of the Petroleum Act states as follows-

"The holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provisions of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any persons who owns or is in lawful occupation of the licensed or leased lands."

Nothing in all the laws cited by appellant's counsel removes the-jurisdiction of the Federal High Court. Throughout the appellant's brief the condition precedent which the respondents had failed to fulfil was not specifically pointed out. Section 30 of the Land Use Act provides that any dispute as to the amount of compensation calculated in accordance with section 29 shall be referred to the Land Use Allocation Committee, If the argument of learned appellant's counsel is that the respondents should have gone to the allocation committee first to settle the dispute, then that argument is based on false premise

At the trial court, there was no evidence that the government properly revoked the right of occupancy of the respondents community in order to make the provision of section 30 of the land use Act applicable.

It is unconscionable for the appellant to go on the respondents land and proceed to conduct oil exploration by merely waving an oil mining licence awarded by whatever authority without prior resources and recognition of the rights of the land owners That is against the spirit and letters of section 40(1) of the 1979 Constitution which provided that compensation must be paid for land compulsorily acquired The land for which an oil mining licence was granted was never compulsorily acquired by the Federal Government.

The right of occupancy of the community over the land should have been revoked and the land compulsorily acquired by the Federal Government. Then appropriate procedure for compensation initiated before an oil mining licence could be granted,

I agree with my learned brother that the land being not revoked and acquired for public use in accordance with the Land Use Act. the appellant were trespassers on the land with no cognizable legal rights whatever.

In the circumstances, award of general damages would be applicable. I am also of the opinion that the amount awarded is within the ordinary expectation of a reasonable man who has been deprived of possession of his landed property without lawful backing and justification. The appeal is dismissed. I abide by the consequential orders.

Appeal dismissed