IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIERO

ON FRIDAY

THE 17TH DAY OF MAY, 2024.

BETWEEN ***SUIT NO: B/115/2022***

BARR. MATTHEW EDAGHESE ----------CLAIMANT

VS

1. ***EDO STATE GOVERNMENT***
2. ***ATTORNEY GENERAL, EDO STATE***
3. ***EDO STATE TRAFFIC CONTROL AND MANAGEMENT AGENCY (EDSTMA)***

-----DEFENDANTS

JUDGMENT

The Claimant instituted this suit against the Defendants vide a Writ of Summons and Statement of Claim filed on the 9th of February, 2022, seeking the following reliefs:

1) ***A DECLARATION that the towing of the Claimant's Mercedes Benz ML Car with Registration Number: USL 484 SS was illegal, null and void;***
2) ***Special damages of ₦665,000.00 (Six Hundred and Sixty Five Thousand Naira) only***

Particulars of special damages:

1. Panel beating	***N25,000.00***
2. Buying of the bumper	***N175,000.00***
3. Spraying of the car	***N150,000.00***
4. Cab fee for 21days at N15,000.00 per day	***N315,000.00***
TOTAL	***N665,000.00***

3. The sum of N50, 000,000.00 (Fifty Million Naira) only as general damages for the unlawful towing and illegal detention of the Claimant's Mercedes Benz ML with Registration No: USL 484 SS

At the hearing, the Claimant testified and tendered some documentary evidence. The Claimant's case is that on the 16th of November, 2021 he drove his Mercedes Benz ML car with Registration Number: USL 484 SS along Akpakpava Road, in Benin City, parked it by the gate of house No 91 without causing any obstruction, and went into the office of MTN to carry out some transactions.

He alleged that upon the completion of his business at the MTN office, he came out and was shocked to discover that his car was no longer at the spot where he parked it.

He said that he first concluded that his car must have been stolen until he received information that it had been towed away by the officials of the 3rd Defendant to their office at Sapele Road. He said that immediately he boarded a taxi to the 3rd Defendant's office where he found his car parked and in a damaged state.

According to him, the officials of the 3rd Defendant completely damaged his car bumper while towing the vehicle from where he parked it at Akpakpava Road to their office at Sapele Road. He said that he demanded to speak to the superior officer of the 3rd Defendant but they refused to allow him and insisted on detaining his car. He said that he left the office of the 3rd Defendant and proceeded to write a protest letter dated the 17th day of November, 2021 and addressed to the customer complain office of the Edo State Traffic Management Agency. The letter was admitted as Exhibit "A" during the trial.

The Claimant alleged that the Head of Operations of the 3rd Defendant admitted that they had wrongly towed his car and promised to fix it within two days but failed to do so. He said that after two weeks, he went to their office to see if they

had repaired his car and discovered that the front bumper and the number plate had been completely removed from the car.

He said that he was compelled to take the car away from the 3rd Defendant's office on the 30th day of November, 2021 for repairs at his own expense to avoid any further vandalisation of the car. He tendered a copy of the receipt for the repairs of some of the damaged parts which was admitted as Exhibit "B".

He alleged that for the entire period when his car was in the custody of the 3rd Defendant, he had recourse to the use of a taxi for his movements within the state at his own expense. He said that the conduct of the 3rd Defendant's agents prompted him to consult a firm of legal practitioners who wrote another letter dated the 7th day of December, 2021 to the Managing Director of the Edo State Traffic Control and Management Agency informing him of his intention to institute an action in court against his agency and the letter was admitted as Exhibit "C".

Under Cross Examination, the Claimant said that he was aware that there are some areas in Benin that he cannot ordinarily park his vehicle. He said that he did not refuse to take his car from the premises of the 3rd Defendant on the day it was towed there because they refused to repair his damaged bumper. He alleged that the officials of the 3rd Defendant insisted that he must pay a fine before collecting his vehicle and he told them that he did not park his car in a prohibited place. He said that he paid a Panel Beater the sum of N25, 000.00 to fix a new bumper which he purchased and that he had to spray the bumper and the entire car after fixing the new bumper.

In their joint defence to this suit, the Defendants called two witnesses who are officials of the 3rd Defendant who witnessed the incident. In their evidence the witnesses alleged that on the day of the incident, there was a serious traffic jam between Akpakpava Road, 1st East Circular Road and Dawson road junction such that between 15 – 30 minutes there was no movement of vehicles from either side of the junction to the other side.

They said that upon investigation, they discovered that one of the reasons for the traffic holdup was because some vehicles were wrongly parked in some unauthorized areas.

They alleged that in a bid to ensure the free flow of traffic, they instructed all those who parked their cars in the no parking zone to remove their cars to allow for the free flow of traffic. They alleged that the gridlock was caused by four vehicles that were parked immediately after M.T.N office by Dawson and Akpakpava road junction when going towards Ring Road. They alleged that the officials of the 3rd Defendant made a public announcement that those four vehicles should be removed from that area to allow for the free flow of traffic and the owners or drivers of three of the vehicles came out from M.T.N office and drove their cars away from that area.

According to the Defendants, when the three vehicles were removed, the Claimant's Mercedes Benz M.L car with Registration Number USL 484 SS being the fourth car was still at this no parking zone hindering the free flow of traffic and all efforts to get the owner to remove same proved abortive, as the owner or the driver could not be found.

The officials of the 3rd Defendant alleged that when all the efforts to locate the owner of the vehicle proved abortive, they were constrained to tow the vehicle to their office to ensure the free flow of traffic in that junction on that day.

They alleged that subsequently, the Claimant came to their office to demand for his vehicle and he was informed that his car was towed to their office because it was obstructing the free flow of traffic and all efforts to get him to remove same proved abortive. They alleged that they told the Claimant to carry his vehicle away but he informed them that the bumper of his car was damaged as a result of the towing and that he will not carry the car until they repaired the damaged bumper.

They maintained that the bumper of the Claimant's car was not in any way destroyed by their officials when they towed the car away from the road to enhance the free flow of traffic. They denied ever detaining the Claimant's vehicle or preventing him from carrying same out of their premises.

Under cross-examination, one of the officials of the 3rd Defendant who testified as the D.W. 1 stated that there is a standard practice for apprehending road traffic offenders. She said that one of the procedures is to have a pictorial view or video evidence of the vehicle parked at a particular spot. She however said that they do not have any such pictorial or video clip in respect of this case. Furthermore, she alleged that there is a no parking sign at the place where the vehicle was towed.

Under cross-examination, another official of the 3rd Defendant who testified as the D.W.2 also maintained that the Claimant parked his vehicle in a no parking zone. He alleged that from Ring Road along Akpakpava Road to the Ikpoba Slope is a designated no parking zone. He alleged that the no parking zones are clearly spelt out in a written document.

Upon the conclusion of their evidence, the learned counsel for both parties filed their written addresses which they adopted as their final arguments in support of their respective cases.

In his final written address, the learned counsel for the Defendants ***E.E. Akhimie Esq., Assistant Director in the Ministry of Justice*** formulated two issues for determination as follows:

1. ***Whether the 3rd Defendant has the power to remove or tow a Vehicle or car that is obstructing traffic from the Road to enhance the free flow of traffic; and***

2. ***Whether the Claimant has proved his claim before this Honourable Court that will warrant this Court to grant him the reliefs he is claiming before this Court.***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE ONE:

Whether the 3rd Defendant has the power to remove or tow a vehicle or car that is obstructing traffic from the Road to enhance the free flow of traffic.

Arguing this issue, learned counsel submitted that the 3rd Defendant is a statutory body established under the ***Edo State Traffic Control and Management Agency law of 2010.*** He submitted that ***Section 8(a) to (s) of the Law*** enumerates some of the functions of the Agency to be inter alia as follows:

a) …"general superintendence as management of Road traffic matters in the State;

d) conducting highly visible day and night traffic patrols to enforce traffic rules and regulations and clear the highways of obstructions;

r) ensuring the smooth flow and operation of traffic on Roads in the State; and

s) clearing all Vehicular and other obstructions on Roads in the State…"

Learned counsel submitted that by virtue of the above provisions, the 3rd Defendant has the right to tow any vehicle from the road in a bid to ensure the free flow of traffic on roads in Edo State. He said that it is common ground from the evidence of both parties that the Claimant parked his car immediately after the M.T.N office when going from Akpakpava road to Ring Road. He referred the Court to paragraphs 5 and 6 of the Claimant's written statement on oath and to paragraph 2 of the written statements on oath of the Defendants' witnesses

Counsel also submitted that there is evidence from the Claimant's witness under cross-examination that before anybody can park his car in a major Road in Benin City like Mission Road and Akpakpava Road the person will be issued with a parking permit in areas where parking of cars is permitted. He said that there is no evidence from the Claimant or his witness, to show that he was issued with a parking permit before he parked his vehicle at the gate of No.91 Akpakapava Road.

He submitted that the inability of the Claimant to show that he was issued a parking permit supports the contention of the Defendants that on the 16th day of November 2021 the Claimant parked his car in an unauthorized area in Akpakpava Road that caused serious traffic gridlock between Akpakpava Road, 1st East Circular Road and Dawson Road junction, hence his car was towed away for free flow of traffic.

He submitted that an Agency cannot be penalized for carrying out its constitutional functions and he referred to the provisions of ***section 8(a), (d), (r) and (s) of the Edo State Traffic Control and Management Agency Law 2010***. He maintained that the 3rd Defendant and her officials have the statutory power to tow vehicles that are obstructing the free flow of traffic and in doing that, they do not need a Court Order or the approval of the owner of the vehicle.

Counsel further submitted that the acts of the 3rd Defendants and her officials on the 16th day of November 2021 were in substantial compliance with the provisions of ***section 8(a),(d),(r) and (s) of the Edo State Traffic Control and Management***

Agency Law 2010 and he referred the Court to ***Section 168 (I) of the Evidence Act 2011(as amended)*** which provides as follows:

"***When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with"***.

He also relied on the case of ***BELLO V.A.G. LAGOS STATE [2007] 2 NWLR [Pt 1017] p115 particularly at page 140***.

He urged the Court to resolve this issue in favour of the Defendants and hold that the 3rd Defendants acted within the confines of the law on the 16th of November, 2021 when they towed the vehicle of the Claimant from the road to enhance free flow of traffic.

ISSUES TWO:

"Whether the Claimant has proved his claim before this Honourable Court that will warrant this Honourable Court to grant him the reliefs he is claiming before this court"

Counsel submitted that the Claimant has failed to prove his claim before this Honorable Court. He posited that since the officials of the 3rd Defendants acted in line with the provisions of ***section 8(a),(d),(r)(s) of the Edo State Traffic Management Agency Law 2010*** they did not act unlawfully.

He posited that the contents of Exhibit 'A' will help this Court to determine "whether the Claimant's car was detained by the 3rd Defendant for 21 days as contended by the Claimant or whether it was the Claimant that chose to live his car in the 3rd Defendants premises until same is fixed as contended by the Defendants. He referred the Court to the last paragraph of Exhibit "A" which states as follows:

"I demand that you look into this matter and resolve the issues earlier stated, as I have no intention to take my car home in its damaged form". He maintained that the purport of the said paragraph is that the Claimant decided to live his car in the premises of the Defendants until the same was fixed.

He therefore urged the Court to hold that reliefs 1 and 3 of the Claimant's s claim have not been proved.

Submitting further on Issue 2, learned counsel emphasised that there is no evidence to show that the bumper of the Claimant's car was damaged as a result of the action of the 3rd Defendant on the 16th day of November 2021. He said that he who asserts must prove and he relied on the provisions of ***sections 131, 132 and 133 of the Evidence Act 2011.***

Furthermore, he submitted that there is no pictorial or video evidence from the Claimant to actually prove that the bumper of his car was damaged as a result of the act or action of the 3rd defendant on the 16th of November, 2021. He said that in paragraph 9 of his Statement of Claim, the Claimant mentioned a disc containing a video recording of damage done to the Claimant's vehicle but the Disc was never tendered at the trial. He maintained that the failure of the Claimant to tender this important document which he pleaded is fatal to his case and he relied on the case of ***ADANKWOR ETUMION VS A.G DELTA STATE (1994) L.P.E.L.R 14361 (CA) at page 1.***

Counsel further urged the Court to invoke the provisions of ***section 149(d) of the Evidence Act 2011(as amended)*** against the Claimant to the effect that evidence that could be produced but is not produced, would if produced be unfavorable to the party who withholds it. He also relied on the case of ***UDOH V OKITIPUPO OIL PALM PLC & ANOR (2005) 24 WRN page 140 at 165 line 20.***

Arguing further, counsel submitted that parties are bound by their pleading so that any evidence of facts not pleaded goes to no issue and ought to be disregarded and he relied on the case of ***SOMMER V FEDERAL HOUSING AUTHORITY (1992) I N W L.R(PT 219) at 548.***

He urged the Court to expunge the evidence of the Claimant during cross examination as follows:

1. ***That the official of the 3rd Defendant demanded the sum of ₦25,000.00. from him;***
2. ***That the Claimant was issued a fine ticket by the official of the 3rd Defendant which he refuse to accept; and***

3. ***That the Claimant put a call across to the then director of legal department of the 3rd defendants who advised him to write a protest letter stating his complaint on it.***

He maintained that there were no facts pleaded by the Claimant to support the above pieces of evidence and urged the Court to expunge them.

Furthermore, learned counsel submitted that just as evidence not supported by pleadings goes to no issue, so also facts pleaded but not supported by evidence are deemed abandoned and he relied on the case of ***REPTICO S.A VS AFRI BANK. (2013) 54 (Pt 1) NSCQR 600 at PP 654-655.*** He posited that the Claimant pleaded his reliefs in his Statement of Claim immediately after his paragraph 17 but in his evidence before this Court, he failed and or neglected to give evidence on the reliefs which are contained in his Statement of Claim. He referred the Court to the written depositions of the Claimant deposed to by the Claimant on the 9th of February 2022 and the one made on the 28th of June 2022 adopted by the Claimant as his evidence in chief.

He maintained that the facts containing the reliefs in the Statement of Claim which he omitted in his evidence before this Honorable Court are deemed abandoned and he relied on the case of ***REPTICO S.A VS.AFRI BANK (2013)54 (PT.I) NSCQR 600 page 654 at 655; NEW BREED ORGANIZATION LTD vs. J.E. ERHOMOSELE (2006) 5 NWLR (PT 974) 499; and OLUSANYA vs OSINLEYE (2013) 54 (PT 2) NSCQR PP 953-954.***

On the claims for special damages, learned counsel submitted that that the claims for special damages were not strictly proved as required by law. He said that there is nothing to show that the Claimant purchased a bumper for ₦17,500.00 as contained in his statement of claim. He said that the receipt tendered as Exhibit "B", under labour charges has panel beating ₦25,000 and spray painting ₦150,000, which brings the total sum to ₦175,000.00. Again, he said that there was no receipt issued to the Claimant by the CW2 to show that for 21 days he paid the sum of ₦15,000.00 per day to support the award of the sum of ₦315,000.00.

He submitted that the Claimant's claim for proof special damages is not supported by his evidence and he relied on the case of ***ODOGWU VS ILOMBU (2007)52. W.R.N 190 AT 209 LINES 10-25.***

Finally, he urged the Court to dismiss the claims of the Claimant.

In his final written address, the learned counsel for the Claimant ***T.A.Akahomen Esq.*** formulated two issues for determination as follows:

1. ***Whether from the evidence adduced in this case, the Defendants have established before this court the alleged offence of obstructing the high way or inhibiting the free flow of traffic along Akpakpava Road, on the 16th day of November, 2021 by a Vehicle with Registration Number USL 484 SS parked by the Claimant; and***
2. ***Whether the Claimant has not successfully placed facts before this court enough to award both specific and general damages against the Defendants in his favour.***

Thereafter, the learned counsel argued the two issues seriatim.

***ISSUE ONE*:**

Arguing the first issue, learned counsel submitted that from the evidence adduced in this case, the Defendants have failed to establish that the Claimant obstructed the high way or inhibited the free flow of traffic along Akpakpava Road, on the 16th day of November, 2021 by his vehicle which he parked along the road.

He said that the Claimant in paragraphs 5 to 17 copiously pleaded the facts leading to this action and led corresponding evidence in his Written Statement on Oath and an Additional Statement on Oath to establish the facts of his case.

He said that the Defendants in their pleadings and evidence on oath did not deny that they towed the vehicle of the Claimant because it was allegedly causing an obstruction.

He said that the D.W.1 admitted that she did not know when the car of the Claimant was parked and the two defence witnesses admitted that the standard practice to establish the offence of obstruction by wrong parking is by tendering a video or pictorial evidence of the vehicle parked at the exact location. He said that the witnesses also admitted that in the instant case, there was no such pictorial or video evidence. He said that they also failed to tender the alleged document designating that area as a no parking zone.

Counsel submitted that the burden is on the Defendants to prove the allegation of obstruction or wrong parking of his vehicle by the Claimant and the Defendants failed to lead evidence to prove these allegations. He submitted that it is settled law that he who asserts a given state of affairs must prove same and he relied on the case of ***RUBICON PROPERTY DEVELOPMENT LTD V. NACRB LTD (2021) LPELR 54820 (CA) PAGE 21 – 22 PARAS C – B.***

He maintained that the burden of proof in a traffic offence is squarely on the Defendants that allege violation of same and he relied on the cases of ***ORJI V. DORJI TEXT. MILL NIG. LTD & ORS (2010) VOL. 182 LRCN PAGE 129 AT PAGE 150 PARAS ZEE; OWOR V. CHRISTOPHER & ORS (2008) LPELR 4813 (CA) PAGE 35 – 42 PARAS D – A; OSUJI V. EKEOCHA (2009) 52 WRN; BUNGE V. GOV. RIVERS STATE (2006)6 6 SC; AND JONASON TRIANGLES LTD V. C.M. & P LTD (2002) 15 NWLR (PT. 759) 194.***

Furthermore, he submitted that allegation of violation of traffic regulations is criminal in nature so the standard of proof is beyond reasonable doubt in accordance with ***Section 135 (1) of the Evidence Act***, ***2011***. He cited the following cases: ***JEREMIAH V. STATE (2012) 14 NWLR PT 1320 P. 248 AT 284; ANI V. STATE (2009) 16 NWLR PT 1168 P. 443 AT 457 – 458***.

Counsel pointed out that curiously; the Claimant who was said to have committed a traffic offence was not charged for any offence or even booked by the 3rd Defendant. He submitted that this act of the 3rd Defendant bothers on the constitutionality of their action as an agency of government on that day. He said that it is trite law that no person can be convicted of any criminal offence unless the offence is defined and the penalty thereof is clearly prescribed by a written law and he cited section ***36(12) of the 1999 Constitution of the Federal Republic of Nigeria*** and the cases of ***AOKO V. FAGBEMI & ANOR (1961) 1 ALL NNLR 400; AND AG FEDERATION V. ISONG (1986) 1 QLRN 75.***

He submitted that the Claimant has proved his case as required by law and urged the Court to grant the reliefs sought in his claim.

ISSUE TWO:

Arguing this second issue, learned counsel submitted that the Claimant adduced sufficient evidence to entitle him to the award of both general and special damages.

He submitted that general damages are damages, which the law implies or presumes to have accrued from the wrong complained of and he relied on the cases of ***FIDELITY BANK PLC V. KATE ASSOCIATED IND. LTD (2012) LPELR 9790 (CA) AT PAGE 40 PARAS A – D;TANKO & ANOR V. MAI – WAKA & ANOR (2009) LPELR 4277 (CA) PAGE 29 – 30 PARA A; AND OLOKUNLADE & ORS V. ADEMILOYO (2011) LPELR 3943 (CA) PAGES 36 – 37 PARAS F – D).***

He submitted that the Claimant led evidence to show that the Defendants wrongfully removed his car from where it was parked, took it to the office of the 3rd Defendant, damaged it and detained it for weeks. He said that the Claimant tendered proof of payment for the damage done to his car and called his only witness who he hired to take him round for his daily activities as a lawyer and for each day, he paid the sum of N15,000.00 (Fifteen Thousand Naira) only.

He therefore urged the Court to grant the claim for general damages.

On the issue of special damages, he submitted that the Claimant clearly pleaded, particularized and led evidence as required by law. He said that the unchallenged evidence of the Claimant and his witness gives no room for any form of conjecture or speculation. He said that the Claimant gave facts and figures with mathematical accuracy and he referred to the decision of the Supreme Court in the case of ***ENEH V. UZOR & ANOR (2017) VOL. 263 LRCN PAGE 60 AT PAGE 78 PARA P – Z***; and ***APUGO & SONS LTD V. OHMB (2016) VOL 261 LRCN PAGE 1 AT PAGE 56 PARAS F – K***.

Finally, he urged the Court to resolve the two issues in favour of the Claimant and grant the reliefs.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the parties.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimant is entitled to the reliefs claimed in this suit.***

This is a civil case and the standard of proof is on the balance of probabilities and preponderance of evidence.

The law is firmly settled that in a civil suit, the burden of proof lies on the person against whom the judgment of the Court would be given if no evidence was led on either side. However, the burden of proof of particular facts in a civil suit is not static, as the initial burden is on the person who asserts a particular fact and once that fact is established to the satisfaction of the Court, the burden shifts to the other party and so on until all the issues in controversy between the parties have been disposed of. See ***Sections 131, 132, 133 and 134 of the Evidence Act, 2011*** and the cases of ***Iroagbara v. Ufomadu (2009) LPELR-1538(SC);*** and ***Oyetunji v. Awoyemi & Ors (2013) LPELR-20226(CA).***

In the instant case, the Claimant's claims against the Defendants are for a declaration that the towing of his Mercedes Benz Car by the officials of the 3rd Defendant on the 16th of November, 2021 was illegal; and for damages which he suffered as a result of the alleged acts of the said officials.

From the pleadings and evidence led at the trial, it is apparent that the Claimant's cause of action against the Defendants is that of trespass to chattel, to wit: his vehicle. Trespass to Chattel is defined in ***Black's Law Dictionary, 8th Edition at page 1542*** as: ***"The act of committing, without lawful justification, any act of direct interference with a chattel possessed by another."*** There are two salient factors to be established for a cause of action in the tort of trespass to chattel. These are ownership of the chattel and the fact of unlawful interference with the same. Thus, the Claimant's case falls squarely within the tort of trespass to his vehicle. See the cases of ***Davies vs. L.C.C Caretaker (1973) 10 C.C.H.C.J 151 at 154; Ogunbiyi v. Adewunmi (1988) 5 NWLR (Pt. 93) 215 at 221;*** and ***Onagoruwa v. Adeniji (1993) 5 NWLR (Pt. 293) 350.***

To establish his case, the Claimant led evidence to show that on the day in question, he parked his vehicle somewhere along Akpakpava road in Benin City and went into the MTN office nearby to carry out some transactions. He said that before he came back, some officials of the 3rd Defendant had towed away his vehicle

without his consent on the ground that the vehicle was parked in a no-parking area and it was obstructing the free flow of traffic on the road. In this suit, the Defendants did not deny the act of towing the Claimant's vehicle from the scene without his consent. They however consistently maintained that the Claimant violated an extant traffic regulation which designated that place a no-parking zone.

The law on burden of proof in civil cases is that the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleading. See ***section 133(1) of the Evidence Act, 2011***. See the case of ***NEPA vs. INAMETI (2002) 11 NWLR (PT.778) 397***.

After the Claimant has discharged this primary burden, the burden shifts to the Defendant to rebut the Claimant's case by leading evidence in his defence. See ***section 133(2) of the Evidence Act, 2011*** and the case of ***WEMA BANK PLC V. FOLORUNSO (2013) LPELR-22040(CA) (PP. 33 PARAS. A).***

In their defence, the Defendants called two officials of the 3rd Defendant who alleged that the place where the Claimant parked his vehicle on the day in question was a prohibited zone. In his evidence, the Claimant denied parking his vehicle in an unauthorized area on the day in question.

At the trial of this suit, under cross-examination, one of the officials of the 3rd Defendant who testified as the D.W. 1 stated that one of the procedures for proving the offence of unlawful parking is by tendering the picture a or video evidence of the vehicle parked at the particular prohibited spot. She however admitted that they do not have any such picture or video clip in respect of this case.

Furthermore, under cross-examination, another official of the 3rd Defendant who testified as the D.W.2 also maintained that the Claimant parked his vehicle in a no parking zone. He alleged that there is an official document which designated the stretch of the Akpakpava Road from the Ring Road to the Ikpoba Slope as a no parking zone. Unfortunately, the Defendants did not tender the alleged document during the trial.

On the proof of facts within the knowledge of a party, ***section 140 of the Evidence Act, 2011*** provides thus: ***"When a fact is especially within the*** knowledge ***of any person, the burden of proving that fact is upon him."*** "The existence of the document designating that area as a prohibited parking zone appears to be peculiarly, within the knowledge of the 3rd Defendant in the peculiar circumstances of this case and by ***section 140 of the Evidence Act, 2011*** the burden of proving that fact is upon them. See the case of ***FEDERAL REPUBLIC OF NIGERIA v. MR. FRANCIS ATUCHE & ORS (2022) LPELR-58733(CA).***

As the learned counsel for the Claimant rightly submitted in this case, the allegation of the Claimant parking his vehicle in a prohibited place is clearly an allegation of crime and it is settled law that ***Section 135 of the Evidence Act, 2011*** is very explicit on the standard and burden of proof in civil matters where there are allegations of criminal conduct. ***Section 135(1) & (2) of the Evidence Act, 2011*** provides as follows:

"(1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt; and

(2) The burden of proving that any person has been guilty of a crime or wrongful act is... on the person who asserts it, whether the commission of such act is or is not directly in issue in the action."

See the following cases on the point: ***ALHAJI ISIYAKU YAKUBU V ALHAJI USMAN JAUROYEL & 2 ORS (2014) 11 NWLR (PT.1418) 205 AT PAGE 226 PARAGRAPHS A-D; NWOBODO V. ONOH (1984) 1 SCNLR1 AT 27-28, OMOBORIOWO V. AJASIN (1984) 1 SCNLR 108; SECTION 138 OF EVIDENCE ACT, CAP 112 LFN, 1990.***

Furthermore, it is trite law that where criminal allegations are made in a civil trial, the allegation must be specifically pleaded and proved beyond reasonable doubt. See ***MOHAMMED V. WAMMAKO & ORS (2017) LPELR-42667 (SC)*** the case of ***MAERSK (NIG) LTD & ANOR V. MAERSK (NIG) LTD & ANOR (2017) LPELR-43578(CA)*** where the Court held thus:

"... These are clearly allegations of criminal offences made in a civil suit. That being the case, the law requires that they should set out in sufficient details particulars of the said criminal allegations in their pleadings, which they should then proceed to prove to the standard required by law in criminal cases, which is beyond reasonable doubt."

In the instant case the Defendants failed to set out in sufficient details, particulars of the said criminal allegations in their pleadings. Moreover, the evidence adduced by the Defendants in proof of the criminal allegations fell far short of the standard of proof beyond reasonable doubt. It is pertinent to note that apart from impounding the Claimant's vehicle, the 3rd Defendant never made any attempt to charge the Claimant to court for any traffic offence. The Defendant relied on the mere ipse dixit of their witnesses who alleged that the Claimant parked in a prohibited zone. The failure of the Defendants to tender the document which allegedly designated that area as a prohibited parking zone coupled with the absence of any pictorial or video evidence of the exact place where the Claimant parked his vehicle made the case of the Defendant to be quite unbelievable and unreliable.

Upon a juxtaposition of the evidence adduced by the Claimant with that of the Defendants I must state that the Claimant and his witness testified before me with candour and their evidence was unshaken under cross-examination. On the other hand, I was not impressed with the evidence of the two witnesses who testified for the Defendants. They struck me as officials who were determined to cover up their lapses with bare assertions that the Claimant parked in a prohibited zone. They did not appear to be the actual officials who were on duty at the designated spot during the incident. They were unable to give a vivid description of the exact spot where the Claimant parked his vehicle; the absence of any form of documentary evidence from them clearly demonstrated their un-seriousness.

In his very brilliant address, the very learned counsel for the Defendant made some salient submissions in a bid to dislodge the Claimant's case which I need to address at this stage.

Firstly, he submitted that there is no pictorial or video evidence from the Claimant to actually prove that the bumper of his car was damaged as a result of the act or action of the 3rd defendant on the day in question. He pointed out that in

paragraph 9 of his Statement of Claim, the Claimant mentioned a disc containing a video recording of damage done to the Claimant's vehicle but the Disc was never tendered at the trial. He urged the Court to invoke the provisions of ***section 149(d) of the Evidence Act 2011(as amended)*** against the Claimant to the effect that evidence that could be produced but is not produced, would if produced be unfavorable to the party who withholds it. He also relied on the case of ***UDOH V OKITIPUPO OIL PALM PLC & ANOR (2005) 24 WRN page 140 at 165 line 20.***

On the presumption of the alleged withheld evidence, the point must be made that before the Court can presume that evidence which could be produced by a person and is not produced by that person was withheld by him, the Court must be satisfied of the following facts:-

(1) That the evidence exists;

(2) That it could be produced;

(3) That it has not been produced; and

(4) That it has been withheld by the person who could produce it.

Furthermore, before the Court can make such a presumption in the instant case, there must be proof that such pictorial evidence or video clip actually exists and that it can be produced but it was withheld by the Claimant. In the case of ***MUSA & ORS V. YERIMA & ANOR (1997) LPELR-1928(SC) (PP. 37-39 PARAS. F)*** the Supreme Court held thus:

"Merely not producing evidence would not necessarily amount to withholding such evidence. The two are not synonymous. The Court would have to be satisfied however in each case whether the circumstance justifies a finding that the evidence has been withheld."

From the totality of the evidence before me, I am unable to make a finding that the alleged video evidence actually exists and that the Claimant deliberately withheld it from the Court in this proceedings.

Furthermore, the learned counsel submitted that during this trial, the Claimant pleaded his reliefs in his Statement of Claim but in his evidence before this Court, he failed to give evidence on the reliefs which are contained in his Statement of Claim. He maintained that the reliefs contained in his Statement of Claim which he omitted in his evidence before this Honorable Court are deemed abandoned and he relied on

the case of ***REPTICO S.A VS.AFRI BANK (2013)54 (PT.I) NSCQR 600 page 654 at 655; NEW BREED ORGANIZATION LTD vs. J.E. ERHOMOSELE (2006) 5 NWLR (PT 974) 499; and OLUSANYA vs OSINLEYE (2013).***

I must observe that as the learned counsel for the Defendants actually pointed out, the Claimant did not capture his reliefs in his deposition which he adopted as his evidence before this Court. Upon confirming this fact, my first impression was that the omission is fatal to the Claimant's case. However, upon a careful examination of the authorities relied upon by the learned counsel for the Defendants, I observed that all the decisions are on the general principle that when evidence is not led on facts pleaded, the pleadings are deemed to have been abandoned. None of the authorities covered the aspect of the reliefs not been replicated in the deposition which was adopted as evidence before the court.

What then is the position such as in the instant case where the Claimant omitted to give evidence of the reliefs stated in the Statement of Claim? ***AGIM J.S.C*** addressed the situation quite authoritatively in the recent case of in ***NATIONAL ELECTRIC POWER AUTHORITY v. MALLAM MUHAMMED AUWAL (2022) LPELR-59473 (SC)***when he exposited thus:

"...There is no law that requires that the reliefs claimed for must be restated in the testimony of the claimant or his witness in open Court. What the law requires is that the claimant plead and prove by evidence facts that justify the grant of the reliefs claimed for in the statement of claim. If the reliefs expressly sought for in the statement of claim are not expressly withdrawn, the Court must determine their merit or otherwise on the facts pleaded and proved. There is nothing like giving evidence of the reliefs claimed for. The practice of a claimant's witness stating in his testimony the reliefs claimed for has become common. But the failure to do so cannot be treated as not claiming for any relief or an abandonment of the reliefs claimed for in the statement of claim. The material or relevant part of the testimony of the claimant or his witness is the evidence to justify the grant of the reliefs claimed for in the statement of claim, which claim are usually reasserted in the final address of the claimant's counsel. The argument of learned counsel for the appellant that the trial Court adopted and granted the respondent reliefs he did not claim for lacks merit and is baseless as it is not supported by the record."

Relying on the above authority, it is apparent that the failure to reproduce the reliefs in the Claimant's evidence is not fatal to his case.

Thus from the preponderance of the evidence before me, I hold that the Claimant has established the fact that the officials of the 3rd Defendant unlawfully towed his vehicle from where he parked it on the day in question and in the process they damaged his bumper and made him to incur some expenses in effecting the necessary repairs of the damaged vehicle. He is therefore entitled to a declaration that the towing of his vehicle on the day in question by the officials of the 3rd Defendant was unlawful.

In this suit the Claimant is also claiming the sum of N665, 000.00 (Six Hundred and Sixty Five Thousand Naira) only as special damages and the sum of N50, 000,000.00 (Fifty Million Naira) only as general damages for the unlawful towing and illegal detention of his vehicle.

In law, General damages refer to those damages, which flow naturally from the wrongful act of the Defendant but special damages are those damages which denotes those pecuniary losses which have crystallized in terms of cash and values before the trial. See the following cases: ***Ijebu Ode Local Government V. Adedeji Balogun & Co (1991) 1 NWLR (Pt. 166) 36. See also Bello V. AG Oyo State (1986) 5 NWLR (Pt. 45) 828; UBN Ltd. V. Odusote Book Stores Ltd (1995) 9 NWLR (Pt. 421) 558.***

The law is well settled that though there is need to specifically plead and strictly prove special damages, the rule does not mean that the law requires a minimum measure of evidence or a special category of evidence to prove special damages.

In any case in the instant case, the Claimant clearly pleaded, particularized and led evidence in proof of his claims for special damages as required by law. The failure of the Defendants to lead any evidence in rebuttal did not help the Defence.

Furthermore, general damages are losses which flow naturally from the Defendant and the quantum need not even be pleaded or proved as it is generally presumed by law. They are presumed to flow from the negligence complained of and

proved and in appropriate and deserving cases shall be awarded to assuage the injury done to the successful Claimant against the Defendant.

There is no principle of law that forbids the Court, in appropriate and deserving cases in an action founded in tort unlike in contract, from granting both special damages as pleaded and proved and general damages as found flowing naturally and directly from the injury done to the Claimant by the Defendant, in so far as in the circumstances of the case it does not amount to double compensation. See ***Ijebu Ode Local Government V. Adedeji Balogun & Co (1991) 1 NWLR (Pt. 166) 36. See also Bello V. AG Oyo State (1986) 5 NWLR (Pt. 45) 828; UBN Ltd. V. Odusote Book Stores Ltd (1995) 9 NWLR (Pt. 421) 558; Oshinjirin V. Elias (1970) All NLR 153; Warner International V. Federal Housing Authority (1993) 6 NWLR (Pt. 298) 148; and ZENITH BANK V. ATO PROPERTIES LTD (2019) LPELR-47783(CA) (PP. 56-60 PARAS. B).***

In the instant case the Defendant's counsel submitted that the claims for special damages were not strictly proved as required by law because certain receipts were not provided.

In the case of damages in respect of a motor vehicle the Plaintiff is entitled to claim for loss of use of the motor vehicle for a reasonable period of repairs or replacement. The measure of damages is for such sum as would compensate the owner for the loss of earnings and the inconveniences of being without a car during the period when he was deprived of the use of the car. See: ***BELLO v. PATEGI (2000) 8 NWLR Pt. 667 Pg. 21. KEREWI v. ODUGBESAN (1965) 1 All NLR Pt. 95. UMAN v. OWOEYE (2003) 9 NWLR Pt. 825 Pg. 221 SHELL PET. DEV. CO. v. TIEBO VII (1996) 4 NWLR Pt. 445 Pg. 657; DARE & ANOR V. FAGBAMILA (2009) LPELR-8281(CA) (PP. 37-38 PARAS. F).***

In the instant case, the Claimant tendered a receipt to cover some items of the claim for special damages and did not produce receipts for others**.** The law is that special damages can be proved by oral evidence without the tendering of receipts. Where oral evidence is cogent and relevant, there is no need for documentary evidence as the oral evidence has properly covered the entire evidential scene. See the following cases- ***Ajao Vs Ashiru (1973) 11 SC 23, Odulaja Vs Haddad (1973)***

11 SC 357; Okupe Vs Ifemebi (1974) 3 SC 97; Alalade Vs ICAN (1975) 4 SC 59; and Inakoju Vs Adeleke (2007) 4 NWLR (Pt 1025) 423.

Such oral evidence equates to concrete and credible evidence in proof of a claim for special damages See- ***Boshali Vs Allied Commercial Exporters Ltd (1961) All NLR (Pt IV) 917, Obembe Vs Wemabod Estates Ltd (1977) 5 SC 115 at 140, Nigeria Maritime Services Ltd Vs Afolabi (1978) 2 SC 79 at 81-82, Incar Nigeria Limited Vs Adegboye (1985) 2 NWLR (Pt 8) 453, Araba Vs Elegba (1986) 1 NWLR (Pt 16) 333, Kosile Vs Folarin (1989) NWLR (Pt 107) 1, Elf (Nig) Ltd Vs Sillo (1994) 7-8 SCNJ 119, Obasuyi Vs Business Ventures Ltd (2000) 5 NWLR (Pt 658) 668***.

Thus, non-production of receipts to further prove such oral evidence is not fatal to the claim for special damages - ***Audu Vs Okeke (1998) 3 NWLR (Pt 542) 373 at 382-383, Aluminum Manufacturing Company of Nig. Ltd Vs Volkswagen of Nigeria Ltd (2010) 7 NWLR (Pt 1192) 97, Ibrahim Vs Obaje (2017) LPELR-43749(SC).***

In the instant case, the Defendants did not lead any evidence whatsoever to disprove the Claimant's oral and documentary evidence in proof of his claims for special damages. In the absence of any evidence in rebuttal of the Claimant's claims for special damages, I hold that the Claimant has established his claims for special damages.

On the whole, I hold that the Claimant is entitled to his claims for both general and special damages.

The sole issue for determination is resolved in favour of the Claimant and his reliefs are granted as follows:

1) ***A DECLARATION that the towing of the Claimant's Mercedes Benz ML Car with Registration Number: USL 484 SS was illegal, null and void;***
2) ***Special damages of N665,000.00 (Sixty Hundred and Sixty Five Thousand Naira) only against the Defendants.***

Particulars of special damages:

i. ***Panel beating ----------N25,000.00;***
ii. ***Buying of the bumper ----------N175,000.00;***
iii. ***Spraying of the car ----------N150,000.00;***

iv. Cab fee for 21days at N15,000.00 per day ----------N315,000.00

TOTAL ----------N665,000.00

3. *The sum of N3, 000,000.00 (Three Million Naira) only as general damages against all the Defendants for the unlawful towing and illegal detention of the Claimant's Mercedes Benz ML with Registration No: USL 484 SS.*

The sum of N200, 000.00 (Two Hundred Thousand Naira) costs is awarded in favour of the Claimant against the Defendants.

P.A.AKHIHIERO
JUDGE
17 /05/2024

<u>COUNSEL:</u>

T.A. Akahome Esq. ----------Claimant.

E.E. Akhimie Esq. ----------Defendants.