Nigeria

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In Nigeria, the award of damages in civil cases is an essential and common remedy available to litigants who have suffered some form of loss or injury.[1] An award of damages plays a crucial role in the Nigerian legal system, serving as a mechanism for compensating individuals or entities for losses or injuries caused by wrongful acts of others. Compensatory measures vary in scope and purpose, depending on the nature of the wrong and the impact it has on the claimant. Orders of injunction will not be granted where damages may adequately address wrongs.[2] This article explores the different types of damages that may be awarded in civil cases in Nigeria, including general, special, exemplary, aggravated, nominal, and liquidated damages and will highlight their unique characteristics and the

[1] Other remedies awarded by courts in Nigeria include injunctions, specific performance, rectification, and recission.

[2] *Okomu Oil Palm Co. v. Tajudeen* (2016) 3 NWLR (Pt. 1499) 284. All case citations cite to Nigerian cases unless otherwise noted.

principles guiding their application in Nigerian law.

A. General Damages

General damages are awarded by the courts to successful litigants as monetary reparations for the injuries or losses they suffered as a result of the actions of defendants.[3] General damages are those damages that are a natural or probable consequence of the breach of a claimant's right.[4] An award of general damages typically follows where a court finds a defendant liable. General damages do not need to be specifically pleaded or proved in exact terms. They are implied by law and considered the inevitable result of the defendant's conduct.[5] An award of general damages for loss of reputation will, for example, naturally flow from a successful defamation claim.[6]

General damages are inherently unquantifiable. They are an entirely discretionary remedy available to a successful litigant. The amount awarded in each case depends on the court's assessment of what is just and reasonable in the circumstances.[7] Accordingly, general damages are the most fitting award in cases of intangible loss, for example pain and suffering, emotional distress,[8] loss of reputation,[9] or future losses[10] which cannot be quantified in monetary terms.

Even though the law does not require general damages to be specifically pleaded and proved, the claimant is required to, at least, supply the court with sufficient facts to make a fair assessment of the amount the claimant is entitled to for the wrong done to him. A valid award of general damages cannot result from an arbitrary exercise of the court's discretion.[11] Discretion must be exercised judiciously and judicially, and the award must be justifiable in the light of available evidence. The court is legally obligated to indicate the factors and reasons it relied on in arriving at the quantum of damages to be awarded for the established wrong.[12]

In determining the amount of general damages, courts consider factors such as the severity of the

[3] *Mekwunye v. Emirates Airlines* (2019) 9 NWLR (Pt. 1677) 191.
[4] *Consolidated Breweries Plc. v. Aisowieren* (2001) 15 NWLR (Pt. 736) 424.
[5] *U.B.A Plc v. Ogundokun* (2009) 6 NWLR (Pt. 1138) 450.
[6] *F.B.N. Plc v. Associated Motors Co. Ltd.* (1998) 10 NWLR (Pt. 570) 441.
[7] *Yau v. Dikwa* (2001) 8 NWLR (Pt. 714) 127.
[8] *Ifeanyi Chukwu Osundu Co. Ltd. v. Akhigbe* (1999) 11 NWLR (Pt. 625) 1.
[9] *W.P.C. Ltd. v. Fayemi* (2017) 13 NWLR (Pt. 1582) 218.
[10] *Strabag Const. (Nig.) Ltd. v. Ogarekpe* (1991) 1 NWLR (Pt. 170) 733.
[11] *Maja v. Samouris* (2002) LPELR-1824 (Sup. Ct.).
[12] *Ezennaka v. COP, Cross River State et al.* (2022) LPELR-59628 (Sup. Ct.).

injury, the conduct of the defendant, and the socio-economic context.[13] The overarching goal is to provide fair and reasonable compensation to the claimant for the damage suffered as a result of the wrongful action of the defendant, premised on the guiding principle of *restitutio in integrum* – that is, to put the claimant, as far as money can do it, in the position in which he would have been if he had not suffered the wrong for which he is being compensated.[14] The loss suffered must not be too remote,[15] and the claimant must endeavor to mitigate his losses because he will not be compensated for any loss which he could have avoided by reasonable effort.[16]

B. Special Damages

Special damages are also a category of compensatory damages that are awarded for specific, quantifiable financial losses directly resulting from the defendant's wrongful act. They differ from general damages because they must be specifically pleaded and proved with evidence.[17]

In a personal injury case, the cost of hospital treatment and medication would be covered under special damages.[18] In certain cases, loss of future profits may also be claimed as special damages if the claimant can demonstrate loss of definite sums as a result of the defendant's actions (i.e. with receipts, invoices and documents).[19] In every case, the burden is on the claimant to establish special damages with clear and convincing evidence.[20] A court will not award special damages based on conjecture or speculation.[21]

Special damages are always the subject of meticulous assessment by the courts. Claims for special damages once established and proved will be awarded by the court in the exact sum claimed. The award of special damages is not subject to the discretion of the court once proved. Where the loss proved is less than the amount claimed, the court will only award a lesser amount equivalent to the loss proved.[22]

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[13] *See Akhigbe*, *supra* note 8 (" [I]t is quite legitimate to take into account, in appropriate cases and in a proper manner, in the award of general damages, the change in the value of money.").
[14] *Shukka v. Abubakar* (2012) 4 NWLR (Pt. 1291) 497; *Cameroon Airlines v. Otutuizu* (2011) LPELR-827 (Sup. Ct.).
[15] *Ezeani et al. v. Ejidike* (1964) LPELR-25144 (Sup. Ct.).
[16] *U.B.A. Pic v. BTL Ind. Ltd.* (2006) 19 NWLR (Pt. 1013) 61.
[17] *Ajagbe v. Idowu* (2011) 17 NWLR (Pt. 1276) 422 at 446C-D.
[18] *Akhigbe*, *supra* note 8.
[19] *Vital Inv. Ltd. v. CAP Plc* (2022) 4 NWLR (Pt. 1820) 205.
[20] *Nwanji v. Coastal Serv. (Nig.) Ltd.* (2004) 11 NWLR (Pt. 885) 552.
[21] *U.B.N. Plc v. Ajabule* (2011) 18 NWLR (Pt. 1278) 152 at 174, para. E
[22] *Olufosoye v. Fakorede* (1993) 1 NWLR (Pt. 272) 747; *Eliochin (Nig.) Ltd. v. Mbadiwe* (1986) 1 NWLR (Pt. 14) 47.

C. Exemplary (or Punitive) Damages

Exemplary damages, also known as punitive damages, are non-compensatory. They are awarded to punish the defendant for particularly egregious or malicious conduct and deter others from engaging in similar behaviors. These damages go beyond compensating the claimant for the harm suffered and focus on punishing the wrongdoer.[23] The amount the court may award is intended to reflect the gravity of the defendant's misconduct.

Exemplary damages are awarded only in those exceptional cases where the defendant's conduct is deemed to be wanton, malicious, oppressive, or grossly negligent. Courts are typically cautious in awarding exemplary damages and apply a high threshold. There are limited instances where an award of exemplary damages may be made:

- **oppressive acts by government agents**: If a public official or government agency acts in an oppressive, arbitrary, or unconstitutional manner, the court may award exemplary damages;
- **malicious or fraudulent conduct**: Courts may award exemplary damages to send a strong message where the defendant's conduct involves fraud, deliberate wrongdoing, or malice. Typical examples are cases of defamation where a defendant maliciously defames the claimant with the intent to damage his/her reputation, fraudulent misrepresentation or intentional infliction of harm; and
- **profit-motivated wrongdoing:** If the defendant's conduct is aimed at making a profit at the expense of the claimant, the court may award exemplary damages to deprive the defendant of any illicit gains.[24]

Exemplary damages are only awarded when the defendant's conduct is reprehensible or shows willful disregard for the rights of the claimant.[25] Even then, the award should not be excessive, as the goal

[23] *Zenith Bank Plc v. Ekereuwem* (2012) 4 NWLR (Pt. 1290) 207.

[24] *Onagoruwa v. I.G.P.* (1991) 5 NWLR (Pt. 193) 593.

[25] *Mbadiwe,* 1 NWLR (Pt. 14) 47.

is to punish, not bankrupt, the defendant.[26]

D. Aggravated Damages

In Nigeria, aggravated damages represent a category of compensation awarded based on the injured feelings or emotional distress of an individual, rather than a breach of contract or tortious liability. The facts and circumstances leading to a claim of aggravated damages may stem from either contractual violations or tortious acts committed against the individual.

The Supreme Court of Nigeria has delineated aggravated damages as compensation arising from malice on the part of the tortfeasor, manifested either through spite or the manner in which the wrongful act is perpetrated, thereby infringing upon the plaintiff's sense of dignity and self-worth.[27] Aggravated damages ameliorate the plaintiff's experience of heightened emotional injury. While the mere occurrence of a tort may suffice to justify an award of either general or specific damages, the recurrent nature of the tort, particularly if intended to undermine the victim's dignity, necessitates an additional award of aggravated damages.[28]

The contention surrounding the requisite persistence of the offending act raises an important debate about whether damages awarded on this basis should be construed as compensation for the victim's distress or as punitive measures aimed at deterring the tortfeasor and the public at large.[29] This form of compensation differs from exemplary damages, as exemplary damages are intended for punitive purposes and applicable only in specified cases.[30]

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[26] *Nwarata v. Egboka* (2005) 10 NWLR (Pt. 933) 241 ("[t]he claim for N200 million as exemplary damages if granted would amount to judicial debauchery and may amount to inflicting an unjustifiable punishment. The circumstances of this matter simply do not warrant such punitive measure.").

[27] *Williams v. Daily Times* (1990) 1 NWLR (Pt. 124) 1 (P.31, para. B; p.57, para. E).

[28] *Id.*

[29] In *Mbadiwe*, *supra* note 25, the Supreme Court posited that "[I]t is not possible to demarcate exemplary damages from aggravated damages. In the main, exemplary damages are cases of aggravated damages."

[30] *See Ilouno v. Chiekwe* (1991) 2 NWLR (Pt. 173) 316 (P.616, paras. C-D) (exemplary damages are distinct from aggravated damages); *see also Odiba v. Muemue* (1999) 10 NWLR (Pt. 622) 174 ("the dividing line between exemplary and aggravated damages is not easy to keep apart. . . . Exemplary damages may be awarded only in cases (i) of oppressive, arbitrary or unconstitutional acts by government servants; (ii) where the defendant's conduct had been calculated by him to make a profit for himself which might well exceed the

Notwithstanding the often-ambiguous distinction between aggravated and exemplary damages, aggravated damages are primarily designed to compensate the victim for emotional harm, as opposed to serving a punitive function.[31]

In assessing the quantum of aggravated damages to be awarded against a tortfeasor, the judge's discretion is paramount. A claimant may only claim a specific amount, which may or may not be fully granted by the court.[32] Aggravated damages are not awarded *ex officio* but must be explicitly pleaded and proved.[33] The court's primary consideration in assessing aggravated damages is the conduct and motive of the tortfeasor.[34] It is insufficient for the victim merely to demonstrate that a tort was committed; the claimant must establish that the tortfeasor's actions were egregious, outrageous, contemptuous, or malicious, reflecting a blatant contempt of the victim's right or in disregard of every decent conduct of civilized men.[35]

The principles governing a judge's discretion mandate that discretion should be exercised both judicially and judiciously in adjudicating claims for aggravated damages.[36]

E. Nominal Damages

Nominal damages constitute a category of compensation awarded in the absence of demonstrable injury sustained by the claimant as a result of a violation of their legal rights. Although no substantive damages have been pleaded, established or proved, the infringement of a legal right itself warrants a claim for nominal damages.[37]

compensation payable to the plaintiff; (iii) where expressly authorised by statute. Aggravated damages [on the other hand] may be award (sic) where the damages are at large, and the conduct of the defendant was such as to injure the plaintiff's proper feeling of dignity and pride.").

[31] *NDLEA v. Omidina* (2013) 16 NWLR (Pt. 1381) 589.

[32] *Multichoice (Nig.) Ltd. v. M.C.S.N. Ltd. Gte.* (2020) 13 NWLR (Pt. 1742) 415.

[33] *Afribank (Nig.) Plc v. Onyima* (2004) 2 NWLR (Pt. 858) 654.

[34] *African Newspapers Ltd. v. Ciroma* (1996) 1 NWLR (Pt. 423) 156.

[35] *M.M.A. Inc. v. N.M.A* (2012) 18 NWLR (Pt. 1333) 506.

[36] *Multichoice (Nig.) Ltd.*, *supra* note 32, at 535, paras. A – B.

[37] *Associated Motors*, 10 NWLR (Pt. 570) 441.

A common misapprehension regarding nominal damages is the belief that the absence of any injury or real damage necessitates a trivial compensation amount. This notion is misleading. Nigerian courts have consistently held that nominal damages need not correspond to a minimal quantum of damages.[38] However, the inherent nature of nominal damages does not support the award of excessive amounts, as they are granted without any evidence of injury or damage incurred. An award solely based on nominal damages should not transform into unwarranted windfalls of damages; otherwise, such awards would likely be overturned by on appeal.[39]

The quantum of nominal damages is not determined by legal rules but by the court's discretion and the facts presented by the claimants.[40] This discretion must be exercised with due caution and prudence, considering the remoteness of any damages.[41] Where a court exercises its discretion to award nominal damages, an appellate court typically refrains from interfering with the court's judgment unless it is demonstrably inadequate or founded upon a fundamentally erroneous assessment.[42]

F. Liquidated Damages

Liquidated damages is a specific sum of money that is due and payable, and which amount is already ascertained or capable of being ascertained by some calculation using a stated formula, without the need for any further investigation.[43] It is a form of compensation agreed upon by the parties to a contract, which fixes the amount to be paid by the defaulting party in the event of a breach. This definition has been given judicial cognizance in several authorities.[44]

Parties to a contract may provide that in the event of a default by one party, the defaulting party should pay a certain predetermined amount to compensate the other

[38] *Artra Ind. Ltd. v. N.B.C.I.* (1997) 1 NWLR (Pt. 483) 574; *Obere v. Board of Management of Eku Baptist Church* (1978) 1 LRN 246 at 250-251.

[39] *U.B.A. Plc v. Salman* (2019) 2 NWLR (Pt. 1656) 304.

[40] *Edosa v. FBN* (2011) LPELR-8785(Ct. App.).

[41] *Ojukwu v. Ojukwu* (2023) LPELR-60848 (Sup. Ct.).

[42] *Id.*

[43] *GMO Nworah & Sons Company Ltd v. Akputa* (2010) 9 NWLR (Pt. 1200) 443 (Sup. Ct.).

[44] *See Maja v. Samouris* (2002) 7 NWLR (Pt. 765) 78; *Iron Products v. Sentinel Assurance Co. Ltd.* (1992) 4 NWLR (Pt. 238) 734; *Okeke v. NICON Hotels Ltd.* (1999) 1 NWLR (Pt. 658) 651; *Faro Bottling Co. Ltd. v. Osuji* (2002) 1 NWLR (Pt. 748) 311; *AIB Ltd. v. Packoplast (Nig.) Ltd.* (2003) 1 NWLR (Pt. 802) 502; *Vanguard Media Ltd. v. Ajoku* (2003) 11 NWLR (Pt. 831) 437; *Iwueke v. IBC* (2005) 17 NWLR (Pt. 955) 447.

party for the loss occasioned by that default. Such agreed compensation qualifies as liquidated damages and automatically becomes payable upon the occurrence of a breach.

To qualify as liquidated damages, the amount agreed must be a genuine pre-estimate of the damage which arises out of the breach. This test of genuine pre-estimation was established in the English case of *Dunlop Pneumatic Tyre Co. Ltd. v. New Garage & Motor Co. Ltd.*[45] and has found expression under Nigerian law.[46] In *Koumoulis v. Leventis Motors Ltd,*[47] the Supreme Court posited that:

> "[W]here a simple sum is agreed to be paid as liquidated damages on the breach of a number of stipulations of varying importance, and the damage is the same in kind for every possible breach and is incapable of being precisely ascertained, the stipulated sum, provided it is a fair pre-estimate of the probable damage and not unconscionable, will be regarded as liquidated damages and not a penalty."

Any agreed sum which does not pass the litmus test of genuine pre-estimation will be considered a penalty clause and therefore unenforceable. If the amount is unreasonable and is in inserted *in terrorem* i.e., to punish a party for breach rather than to compensate the other party for the loss caused by that breach, the clause will be construed a penalty clause in which case it would be declared unenforceable.[48] The test of genuine pre-estimation is critical for determining whether an agreed sum in a contract qualifies as liquidated damages or penalty.

G. Unliquidated Damages

In contrast, unliquidated damages are not ascertainable or capable of being ascertained using any definite formula. Such damages are awarded by courts using the general principles guiding the award of damages. The fundamental principle guiding the award of damages is that damages must represent an adequate compensation for the loss or inconvenience which flows naturally from the action leading to the loss.[49] The aim is to restore the plaintiff as much as possible to the

[45] (1915) AC 79, 87-88 (U.K.).
[46] *Oyeneyin v. Akinkugbe* (2010) 4 NWLR (Pt. 1184) 265 (Sup. Ct.).
[47] (1973) LPELR-1710 (Sup. Ct.)
[48] *See Oyeneyin*, *supra* note 46; *Lordsvale Finance Plc v. Bank of Zambia* (1996) QB 752 (U.K.).
[49] *Yalaju v. Associated Registered Engineering Contractors Ltd.* (1990) LPELR – 3511 at 47; *Rockonoh Properties Co. Ltd. v. NITEL Plc.* (2001) LPELR – 2951 at 11-12.

position he would have been had the conduct leading to the loss did not occur.

H. Conclusion

Damages are a fundamental aspect of civil litigation in Nigeria, providing a range of remedies tailored to the specific circumstances of each case. In every case, ranging from the broadly discretionary nature of general damages to the strict evidentiary requirements for special damages, to the punitive aim of exemplary damages, courts must carefully exercise discretion in their awards. These legal principles ensure that claimants receive fair and just compensation while preventing undue financial windfalls. By understanding the various types of damages available to claimants, parties can better protect their rights and interests in both contractual and non-contractual disputes.