

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO**

**CLERK: CHARITY
COURT NO. 16
SUIT NO: FCT/CV/268/14
DATE:10 – 2– 2020**

BETWEEN:

ALHAJI ADAMU BIU

PLAINTIFF

AND

**1. MRS. CHARITY EZEOKOLI
2. MRS. ENUMA NWANDO-Obi
3. ALHAJI BELLO MOHAMMED KADEMI**

DEFENDANTS

JUDGMENT

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Plaintiff, Alhaji Adamu Biu is a Businessman. Following a dispute as to what he perceived to be a concluded sale of a shop at Wuse Modern Market he took out a Writ, which he later amended against three Defendants. The Defendants are, Mrs Charity Ezeokoli, Mrs Enuma Nwando-Obi, and Alhaji Bello Mohammed Kademi. The two ladies are well known to him, but Alhaji B.M. Kademi was never known to him until the problem arose. He had dragged them to this Court claiming the following reliefs:

- 1) A Declaration that the agreement for sale between Mrs Charity and Adamu Biu in respect of Block 19, Shop 214, Wuse Modern Market is valid, subsisting and binding and enforceable on the parties to the said agreement.

- 2) An order of specific performance of the agreement of sale between Defendants and the Plaintiff in respect of Block 19, Shop 214, Wuse Modern Market, Abuja in accordance with the terms and conditions agreed upon.
- 3) An order compelling the 1st Defendant to accept the Bank draft of N23.2 Million Naira in the name of the 1st Defendant as full and final payment.
- 4) An order directing the 1st Defendant to sign all necessary documents of transferring title to the Plaintiff forthwith and hand over all original documents and to give vacant possession of the said shop known as Block 19, Shop 214, Wuse Modern Market, Abuja.
- 5) An order of perpetual injunction restraining the Defendants either in person or through her agents or successors in title from selling of the shop to a 3rd party at all.
- 6) And for any further order(s) this Honourable Court may deem necessary to make in the circumstances of this case.
- 7) The cost of this suit to be assessed by the court.

Upon service of the Writ of Summons and Statement of Claim on the Defendants, they filed their respective Statement of Defence, which were further amended at a stage.

The stage was then set for trial.

The Plaintiff in prove of his claim called two (2) witnesses including himself. One Mohammed Ahmed testified for him as PW 1 while he testified as PW 2.

Also, Mr Adanmo Ogbomo was a subpoenaed witness. He came to Subpoena duces tecum. Just to tender a document which was marked as Exhibit A.

PW 1, testified on Affirmation. A policeman, he adopted his written statement on oath as his Evidence-in-Chief.

Under cross-examination by all Defendant's counsel, this PW1 said the transaction that is in dispute started on 9-1-14 and the purported (using his words) agreement for the sale of the shop was entered into on the same date. He however said that he came into contact with the parties as far back as 20-9-13. This Police Officer added that he communicated with the 1st Defendant on the phone about the agreement on 6- 1-14, 7-1-14,8-1-14 and 9-1-14. But he did not say what the subject of their discussion was on phone.

Mr Ahmed (PW1) also stated that no information was given to him by the 2nd Defendant and that he came to know of this matter in his office when the 1st Defendant reported the problem to them. That was on 20-9-13. The 1st Defendant was on that day told it was a civil matter.

PW 2; the Plaintiff himself testified on affirmation. He adopted his two Statements on Oaths made on 2-4-14 and 7-2-17 as his Evidence-in-Chief. Exhibits B,C,D and E were admitted in evidence through him.

Under cross-examination by the 1st Defendant's counsel, the Plaintiff witness said by Exhibit 'B', the agreement for the purchase of the shop was made on 10-1-14; balance of the purchase price was to be paid by 11-1-14 but that he did not pay the balance on that 11-1-14 because of the condition attached to it. However, he was able to raise a draft for the balance on 14-1-14 even though it was never credited to the 1st and the 2nd Defendants account.

Alhaji Biu said he did not talk with the 1st Defendant before he entered into the transaction with the 2nd Defendant because he relied on a Power of Attorney which is Exhibit E.

This PW2, had earlier agreed that by 7-1-14, the 3rd Defendant had validly purchased the shop from the 1st Defendant and was put in possession.

In answers to further questions from the 3rd Defendant's counsel, Alhaji Biu said as follows:

“My paragraph 5 in my witness statement on oath is correct. I stand by it. That is, it was Muhammed Ahmed who told me that the 2nd Defendant told him that the 1st Defendant authorised her to sell the shop.

In paragraph 7, I said that it was the 2nd Defendant that told me the 1st Defendant has decided to sell the shop to me.

In paragraph 8, I said it was Muhammed Ahmed that called the 1st Defendant. And Muhammed now told me what the the 1st Defendant told him.

When Muhammed Ahmed met the 1st Defendant, I was not there. He only told me.

I would be surprise if the 2nd Defendant now said, the 1st Defendant never authorised him to sell the shop...”.

Still under cross-examination by 2nd Defendant's Counsel, PW2 said he paid no agency fee to the 2nd Defendant, even though he knew 2nd Defendant was merely acting as agent of the the 1st Defendant who was the owner of the shop in question. This is because Exhibit E, i.e. Power of Attorney was given to him by 2nd Defendant.

On Exhibit C, the witness agreed the amount of money shown on it was never credited to the account of the 1st Defendant. PW2 said finally that the sale transaction for the shop, Block 19, Shop 214 was between him and the 2nd Defendant was never completed and he never suffered any loss.

The following were the Exhibits admitted in evidence through the witness:

Exhibit B: A document called collection of part payment for shop No 19, Block 214.

Exhibit C: A Bank Draft.

Exhibit D: A Survey and Valuation Report on shop No 177, Block 18.

Exhibit E: A Power of Attorney.

First to enter her Defence was the 2nd Defendant – Mrs Enuma Nwando-Obi. She testified on Oath with the Bible and was styled DW2. A business woman, DW21 said that she knows the Plaintiff as well. The witness/Defendant then adopted her Statement on Oath which she made on 10-9-14 as her Evidence-in-chief.

Under cross-examination by the Plaintiff's Counsel and when shown Exhibit B, she agreed that she signed it even though the shop mentioned in it i.e. Block 19, Shop 214, was not her own but that of the 1st Defendant. And when asked why she did that, she answered;

"I did that because the shop belongs to Mrs Charity. I also did that because she is my friend."

This 2nd Defendant Witness (DW21) went further to say she did not sell any property to the Plaintiff. And she denied being an agent of the 1st Defendant.

Answering a question from 1st Defendant Counsel under cross-examination, the 2nd Defendant said:

“there is no express instruction, no Power of Attorney given to me by the 1st Defendant to sell the shop in issue.”

DW11 was the witness called by the 1st Defendant. He testified on oath with the Bible and his name is Mbah Ikechukwuma. This witness made 2 statements on oath dated 26-2-14 and 2-2-15.

Under cross-examination he said the shop was sold Alhaji Bello (3rd Defendant) and that he was the agent of the 1st Defendant for many years for the shop.

DW12 – was the 1st Defendant herself. She is a businesswoman and gave evidence on oath with the Bible. She made a statement on oath on 22-2-17 which she adopted as her evidence. This witness claimed she resides ordinarily outside Nigeria even though she owns the shop in question and another at Balogun Area of Lagos.

This 1st Defendant witness denied knowledge of Exhibit B – Power of Attorney. She said she never gave any Power of Attorney and the signature on it was not her signature. She even referred to paragraph 16 of her statement on oath that her lawyer wrote the Plaintiff to that effect.

Under cross-examination by the Plaintiff’s Counsel, DW12 said:

“I know the 2nd Defendant in this case. She is my friend. I did not give her the instruction to sell the property. I did not receive any money from anybody or Adamu.....”

“...I have seen Exhibit E. My name is there. The Shop in Exhibit E is the shop in dispute. The signature on my statement on oath is my own.”

Further under cross-examination by the 2nd Defendant's counsel and when shown Exhibit 'B', the DW12 said she did not authorise the 2nd Defendant to make Exhibit 'B' on her behalf and that she is not her agent with respect to shop 214, Block 19.

Lastly, the witness DW12 was consistent in answers to questions from the 2nd Defendant and 3rd Defendant's counsel that she sold the shop to Alhaji Bello – 3rd Defendant, who had been her tenant for many years.

The last witness in this case was the 3rd Defendant – Alhaji Ibrahim Bello Kademi. He testified on affirmation through an interpreter because he speaks Hausa only. DW31 adopted his statement on oath which he made on 28-11-14 as his evidence in this case.

According to this witness, the Plaintiff is his neighbour in the market and they live on the same Kaduna road in Suleja.

Exhibits F1, F2, G1, G1 and H were admitted in evidence through him. To wit:

Exhibit F1: A letter of offer dated 6th day of April, 2006.

Exhibit F2: A Deed of Sub-lease dated 16th day of May, 2007.

Exhibit G1: A Power of Attorney dated 7th January, 2014.

Exhibit G2: A Deed of Assignment dated 7th January, 2014.

Exhibit H: A letter dated 24th February, 2014 for change of name.

Under cross-examination, the 3rd Defendant witness said he paid for the shop through KDM Textile Ventures of which he is a Director. He

paid 38 Million Naira in bits – N3 Million cash, then N20 Million and N15 Million through Zenith Bank Plc in that order accordingly.

With the end of the evidence of DW13, we adjourned to enable counsels file their final addresses. We had then adjourned to 23-1-18 but it was not to be, as the Defendant's counsel were to file and serve their respective final addresses. Actually, the 3rd Defendant's counsel moved a motion for extension of time to enable them do so while the 2nd Defendant's counsel hinted that they prepared the address and motion for extension of time but were yet to effect service. 1st Defendant counsel was not in court that day. We consequently adjourned to 26-2-18 to enable all of them file their written addresses.

On 26-2-18, all the Defendant's counsel were absent in court and no final address(es) were yet filed.

On 3-7-18, when the court resumed sitting on the case, only the Plaintiff and the 3rd Defendant's counsel were in court. 3rd Defendant's counsel, H.G Grema held the brief of the 1st and 2nd Defendant's counsel. He moved two motions i.e. M/2547/18 and M/1899/18 which were filed by 1st and 2nd defendants' counsel respectively. The two motions prayed for extension of time to enable them file their final addresses. I granted the prayers. We adjourned to 26-9-18.

By 26-9-18, I had proceeded for Election Petition Tribunal assignment for Ekiti State Gubernatorial Elections.

We resumed on 13-3-19 and all counsel adopted their final addresses as their arguments in this case. We then adjourned to 30-5-19 for judgment.

Again, before that 30-5-19, I was nominated to serve in the Delta State Gubernatorial Election Petition Tribunal. I resumed back in this court on 2-10-19.

On 3-12-19, the date the parties had earlier picked for judgment, I adjourned the case at my instance to enable me prepare the judgment.

The above, in brief, is the short synopsis and antecedent facts of the circumstances that led to the delay in the delivery of this judgment.

Be all the above as it may, I now move to the substance of this case.

1st Defendant's counsel, Celestine Osili, submitted 3 issues for determination.

They are:

- 1) Whether the Plaintiff has shown by credible evidence that there is a valid, subsisting, binding and enforceable contract for sale of Shop 214, Block 19, Wuse Modern Market, Abuja (now the shop in dispute) between him and the 1st Defendant.
- 2) Whether the Plaintiff is entitled to the equitable remedy of order of specific performance, given peculiar facts and circumstance of this case.
- 3) Between the Plaintiff and the 3rd Defendant, who has a better title to the shop in dispute.

The 2nd Defendant's counsel, O.D. Okeke Esq, framed only one issue for determination which is:

“Whether the Plaintiff has established a cause of action against 2nd Defendant to entitle him to a right of action against the

2nd Defendant and whether the Plaintiff is entitled to any claim against the 2nd Defendant.”

For the 3rd Defendant’s counsel, there are 3 issues for consideration, to wit:

- 1) Whether the Plaintiff has proved his case to be entitled to the judgment of this Honourable Court in his favour.
- 2) Whether the Defence of *Nemo dat quod non habet* will not avail in favour of the 3rd Defendant against the Plaintiff, the 1st and 2nd Defendant.
- 3) Whether the 3rd Defendant has not proved his counterclaim to entitle him to the reliefs he is seeking before the honourable court.

Lastly, Mr. W.Y. Mamman of counsel to the Plaintiff distilled a sole issue for determination. Just like his learned colleague, for the 2nd Defendant. This issue reads;

“Whether the Plaintiff has proved his case on the balance of probability to be entitled to the reliefs sought.”

To my mind, all the learned counsel have proliferated issues. However, it gladdens my heart that they all agreed that we have to decide whether or not the Plaintiff has made out a case as to be entitled to judgment. The 1st issue framed by the 1st, 2nd, 3rd and the sole issue each as put forward by the 2nd Defendant and Plaintiff counsel says as much though in different words and phrases. The other issue that needs to be added and considered with it having regard to the counter-claim of the 3rd Defendant, is the 3rd issue spotted by the 3rd Defendant’s counsel. In a nutshell therefore, I am strongly fixed in my opinion that 2 issues stand out for determination.

These two issues when considered and examined would settle other salient and inherent issues in this case. I mean for instance, the issue of specific performance, issue of whether the 2nd Defendant can be sued by the Plaintiff, issue of operation of the doctrine of *Nemo dat quod non habet* etc.

In essence the following two issues are to be considered now:

- 1) Whether the Plaintiff has proved his case against the Defendants to be entitled to a grant of all the reliefs he is claiming in this court.
- 2) Whether the 3rd Defendant has proved his case to be entitled to a favourable grant of his claim or reliefs in the counterclaim.

Before proceeding further, I ask very intuitively, what are the facts firmly, and cogently established in this case? Let us quickly go through them.

1. The Plaintiff was aware and never in doubt that the 1st Defendant was the owner of the shop he wanted to buy.
2. The Plaintiff was told by the PW1 (One M. Ahmed) that the 2nd Defendant (Mrs Enuma Nwandi-Obi) told him that the 1st Defendant (Mrs Charity Eze-Okoli, the owner of the shop) had decided to sell the shop. He (Plaintiff) never for a moment spoke or held any meeting or discussion with the 1st Defendant.
3. The Plaintiff relied entirely on PW1's representation or information or assertion that he PW1 had a further telephone conversation with the 1st Defendant on the issue.
4. He (PW1) was fortified in his believe when Exhibit E (a power of Attorney) was shown to him by the duo of PW1 and 2nd Defendant.

5. The Plaintiff then entered into an agreement for sale of the shop in dispute to him on 10-1-14.
6. However, the Plaintiff did not pay the full price of sale on that 10-1-14. The balance was to be paid by 11-1-14.
7. The Plaintiff did not pay by that 11-1-14 because of the conditions attached.
8. The bank draft which he obtained for purposes of payment as balance of the purchase price was never paid into the account of the 1st Defendant nor to the account of the 2nd Defendant. No consideration furnished.
9. As at the time the Plaintiff's transaction was going on, on 10-1-14, the 3rd Defendant had purchased the shop from the 1st Defendant and was put into possession.
10. Plaintiff did not suffer any loss as a result of Exhibit 'B' i.e. transaction with the 2nd Defendant.

The above 1 – 10 facts were elicited from the admission of the Plaintiff himself during his examination-in-chief and clearly during cross-examination.

The law is settled, facts admitted need no further prove. Whether oral or documentary. See **GABARI VS ILORI (2002) 14 NWLR (PT. 786) 78; AKPAN VS UMOH (1999) 11 NWLR (PT. 629) 349; AGBANELO VS UNION BANK NIG LTD (2000) 4 SC (PT. 1) 233.**

11. The 2nd Defendant has no express authority or instruction to sell the shop.

12. The 2nd Defendant was not given any Power of Attorney by 1st Defendant to sell the shop. This technically and by inference is a denunciation of Exhibit 'E'.

Facts (11) and (12) above were clearly stated and agreed to by the 2nd Defendant herself. A sort of admission against interest that requires no further prove. See **ATANZE VS ATTAH (1999) 3 NWLR (PT 596) 647. ISO VS ENO (1999) 2 NWLR (PT 590) 204.**

13. One Mba Ikechukuma is the agent of the 1st Defendant for the shop and he has been so for many years.

This last fact (13) was never denied by the Plaintiff and the 2nd Defendant. Fact not denied is taken as true. See **AKINLAGUN VS OSHOBOJA (2006) 12 NWLR (PT. 996) 60 SC.**

I now move to the 1st issue.

A. **“Whether the Plaintiff has proved his case against the Defendants to be entitled to a grant of all the reliefs he is claiming in this Court.”**

All counsel made submissions in argument with respect to the above issue. Their full arguments are on record and would only be referred to as appropriate when necessary.

Suffice to say for now that the Plaintiff's counsel – W. Y. Mamman argued that the Plaintiff has proved his case. He argued at pages 8 – 18 that the 2nd Defendant acted as the agent of the 1st Defendant and coupled with the fact of Exhibit B & E, the 1st Defendant is estopped from denying the existence of agency relationship between her and the 2nd Defendant. He cited for all his arguments the cases of **UWAH VS AKPABIO (2014) ALL FWLR (PT. 738) 889; SONGO VS AKURE (2014) ALL FWLR (PT. 753) 1944; DANIEL VS INEC (2015) ALL FWLR (PT. 789) 993; UTC (NIG) LTD VS WEMA BANK PLC (2002) 12**

NWLR (PT. 781) 211; KHONAM VS JOHN (1939) 15 NLR 12; LAGOS STATE GOVERNMENT VS TOLUWASE (2013) 1 NWLR (PT. 555);
among others.

On their part, the 3 learned counsel for the 3 Defendants vehemently disagreed with the position of the Plaintiff's counsel. According to Mr. Celestine Osili of counsel to the 1st Defendant, there is no agency relationship between the 1st and the 2nd Defendant and so the Plaintiff cannot succeed in any of his claim. Learned counsel submitted that Exhibit 'B' cannot be a conclusive evidence that the 2nd Defendant has the authority of the 1st Defendant to act as her agent. Equally strong against the Plaintiff, according to Mr. Osili, is that there is no valid contract since all ingredients of a contract are not present in this case – no offer, no acceptance, consideration, no intention to be legally bound and no legal capacity. Learned counsel was clear in submitting that the entire evidence of the Plaintiff was hearsay, and therefore goes to no issue. For all his submission, he cited the cases of **ODUTOLA VS PAPERSACK (NIG) LTD (2006) 18 NWLR (PT. 1012); NJIKONYE VS MTN NIGERIA COMMUNICATION LTD (2008) ALL FWLR (PT. 413); U.B.N PLC VS SOARES (2012) 11 NWLR (PT 1312) 550; MOHAMMED VS MOHAMMED (2012) 11 NWLR (PT. 1310); AND COMBINED TRADE LTD VS ALL STATES TRUST BANK LTD (1998) 2 NWLR (PT. 576) 56.**

Mr O.D. Okeke of Counsel to the 2nd Defendant answered this first issue under reference in the negative. In his view, the Plaintiff, based on a community evaluation of his statement of claim and oral evidence in court, has not established any cause of action against the 2nd Defendant that would entitle him to any legal right. He relied on the cases of **DINGOLI VS BARAU (2012) ALL FWLR (PT. 609) 1156; SEVEN-UP BOTTLING COMPANY VS AKINWARE (2012) ALL FWLR (PT. 624) 145; AND AJAYI VS JOLAYEMI (2005) SCNJ 250.**

The learned counsel to 3rd Defendant argued that the Plaintiff has failed in his bid to get any of the reliefs he claimed in this court. He submitted that paragraphs 5,7,8,9 and 10 of the Plaintiff's witness statement on oath are all hearsay and should be disregarded. He cited the case of **OLAFEMI VS AYO (2009) ALL FWLR (PT 452) 1154.** Learned counsel also submitted that Exhibit 'B' has not created any valid contract. He cited **Ejikonye Vs MTN Communication (Nig) Ltd (Supra); B.F. GROUP VS B.B.E (2008) ALL FWLR (PT. 416) 1915; OLAOGUN ENTERPRISES LTD VS S. J.& M (1992) 4 NWLR (PT. 235) 361** among others.

As I said herein before, the full arguments of all counsel are on record and are deemed incorporated already.

Now, all the above narratives in this judgment leads me instantly to some pertinent crucial questions, to wit;

Is the 2nd Defendant 'agent' of the 1st Defendant?

Did the 1st Defendant authorise Exhibits B and E as to be bound by them? In other words, is there a valid contract between the Plaintiff and the 1st Defendant? This question forms the pith and substance of this case.

In navigating my way to provide answers to these crucial questions, I must deal with some definitions – that of 'agency' and 'agent' have widely popular usage with different meanings. In law, the word 'agency' is used to connote the relationship which exists where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties.

The relation of agency does arise whenever one person called the 'agent' has authority to act on behalf of another called the 'principal'.

The word 'agent' could mean a solicitor, a steward, or a person who collects rent in respect of a house or apartment on behalf of a landlord or someone so authorised to sell land on behalf of another. In **OKWEJIMONOR VS GBAKEJI (2008) 5 NWLR (PT. 1079)**, the Supreme Court held:

“The general law relating to agency, however, may be defined as a relationship which exists or arises where one person has the authority or capacity to create legal relations; i.e. the ‘agent’ who acts on behalf of another called the ‘principal’ whereby the latter undertakes to be answered for the lawful acts of the former with a third party; provided it was done within the scope of his authority or ratified later by the latter. The fundamental element in agency relationship is authority of the agent to act on behalf of the principal.”

In the English case of **KENNEDY VS DETRAFFORD (1897) AC 18**, which was cited by the Supreme Court in Gbakeji (Supra), **Lord Herschell** stated that no word is more commonly and constantly abused than the word 'agent'. I.T. Mohammed J.S.C. (as he then was, now CJN) agreed with Lord Herschell. I too humbly agree with his Lordship of the Supreme Court. Ask me; do I have a choice? I know I have no choice. I am only trying to emphasis their wisdom and erudition.

Let it be stated clearly and with all the emphasis at my disposal, that no one can become the agent of another except by will or consent of that other person. His consent may be manifested in writing, or orally, or simply by placing that fellow in a situation in which according to ordinary rules of law or rule of ordinary usages of mankind or custom, that fellow is understood to represent and act for the person who has so placed him or her in that position. This view or proposition does not in anyway derogate or at variance with

the doctrine that where one person has so acted by his conduct to lead other people to believe that he had appointed that fellow to act on his behalf or in his/her stead or as his/her agent and knows that the people or someone is about to act on that representation or conduct, he or she would be estopped from disputing the agency relationship.

All I am saying here maybe interpreted correctly to mean that there are various ways an agency relationship can be created and those ways are:

1. By agreement or express appointment;
2. By subsequent ratification by the principal of a contract made on his behalf without the initial authority from the principal;
3. By the Doctrine of Estoppel;
4. By implication of law in cases where it is necessary that a person should not act on behalf of another;
5. By presumption of law which is by cohabitation.

See the case of **U.T.C. (NIG) LTD VS WEMA BANK PLC & INTEGRATED TRUST AND INVESTMENT LTD (2002) 12 NWLR (PT 781) 214; RSUST VS OKEZIE (2019) LPELR 46460; GTB PLC VS SOLOMON (2016) LPELR 40342; SDV (NIG) LTD VS OJO & ANOR (2016) LPELR – 40323 (CA).**

I have set out the facts – mostly found by way of admission, in the early part of this judgment. I need not repeat them.

To begin with and as a precursor, the narratives by the Plaintiff that one Ahmed (PW1) told him the 2nd Defendant had before told him (PW1) that the 1st Defendant (DW12) has decided to sell the shop is nothing but hearsay. It goes to no issue and I cannot rely on it in

taking a decision. You can see the evidence of PW1 under cross-examination.

See **HANI AKAR ENT. LTD VS I.N.M.B. LTD (2011) 1NWLR (PT. 1228) AT 319.**

Related or ancillary to the above in some way is the evidence of PW1 that he called the first Defendant on phone and they both had a discussion. This piece of evidence was meant or intended to prove that the 1st Defendant had given 'authority' to the 2nd Defendant which he (PW1) was 'aware' of. But the said 'authority' had been denied not only by the 1st Defendant but also by the 2nd Defendant. So, PW1 must establish this found act further in order to solidify or ground this claim of 'authority'. This he could have done by giving us the telephone number of the 1st Defendant and also the call log from the service provider – MTN, nothing of such was done. In the circumstance, it is very unsafe for me to believe this piece of evidence and it is therefore rejected. After all, he who asserts must prove. See **S136 of the Evidence Act.**

Moving further, I ask, is there any agency relationship between 1st and 2nd Defendant? From the facts of this case and the various ways of creating 'agency' relationship, it is clear to me that none can be said to be in existence. No express authority to say 'agency' by express permission. Even in the extreme postulation of agency by Estoppel, I cannot find one in existence. This is because there is no implied authority. No authority even by conduct of 1st Defendant. The 1st and 2nd Defendants who were supposed to be the 'prospective' or 'shadow' of 'constructive' Principal and Agent respectively both denied any express authority. They both said it in clear terms. 2nd Defendant said she did not receive any authority. 1st Defendant said she did not give any authority. In the absence of a clearly expressed or perceived authority, then no agency relationship can be fixed. I am not unaware of Exhibit B. The Plaintiff and his counsel made so much heavy weather of it. But Exhibit 'B' merely reading "on behalf of Charity Ezeokoli" without more cannot be conclusive prove that the 1st Defendant had given her (2nd

Defendant) the authority to so act. There must be a written or oral evidence of such authority. None was found in evidence. I have also not seen any evidence of implied authority. By this I mean, I have not seen any evidence that the 2nd Defendant has acted on behalf of the 1st Defendant in the past and in similar transaction or circumstances. I have not been shown that the 2nd Defendant had been placed by the 1st Defendant in such a position that it would be safe to assume or say that she has the authority to act on her behalf either in the perception of the 2nd Defendant or any 3rd Party for that matter. Nothing actually tending to lead to such conclusion. No evidence of similar actions or transactions by the 2nd Defendant to justify a reasonable conclusion that she had been held out in the past or then for such an important role as 'agent' of the 1st Defendant. And in the light of clear evidence of one Mbah Ikechukwu (DW11) that he has been the 'agent' of the 1st Defendant for many years, it seems to me that the 2nd Defendant acted on their own free will. She stands alone, unsupported alone and very lonely without any assistance. Whether she would fall ultimately depends on the 1st Defendant. If the 1st Defendant came to her rescue she may not fall. How? She may endorse her (2nd Defendant) action and be rooted to the ground. By this I mean 'Ratification'. But alas, no such ratification of the 2nd Defendant's action by the 1st Defendant.

Therefore, on all fronts, I cannot see my way clear in saying the 1st and 2nd Defendants are in the relationship of Principal and Agent. They are not and on this I stand firm. I am also in total agreement with the learned counsel to the 1st and the 2nd Defendants.

Learned counsel to the 1st Defendant Mr. Celestine Osili wrote at page 7, paragraph 4.07 thus:

"We submit that the Plaintiff has failed to prove the existence of a valid "Agency Relationship" between the 1st and 2nd Defendant in respect of Exhibit 'B'."

3rd Defendant's counsel, Mr Hassan Grema, at page 7, paragraph 4.6 of his address made a similar submission, he said:

"... the 1st Defendant having denied given any authorisation to the 2nd Defendant to act on her behalf and the 2nd Defendant having confirmed same as stated above, the duty was squarely on the Plaintiff to show that indeed the 2nd Defendant had the authority of the 1st Defendant to enter into Exhibit 'B'..."

With due respect to Mr W.Y. Mamman of counsel to the Plaintiff, I refuse to be persuaded by his argument that the 2nd Defendant acted on the behalf of the 1st Defendant. See paragraph 4.1 page 8 of his written address. The available evidence runs contrary to this assertion.

Let's take it for a moment, that the 2nd Defendant was 'agent' of the 1st Defendant, just an assumption – (I am not saying so at all) – can we say in all seriousness, that Exhibit 'B' is a valid contract paper or agreement?

While it is probably impossible to give one absolute and universally correct definition of a contract, the most commonly accepted definition is "a promise or set of promises which the law will enforce". The expression 'contract' may however, be used to describe any of the following;

1. that series of promises or acts themselves constituting the contract.
2. the document or documents constituting or evidencing that series of promises or acts or their performance.
3. the legal relations resulting from that series.

{See Halsbury's Laws (4th Edition) paragraph 201}

It is also undoubtedly true that an agreement between two persons, e.g. A & B, that one of them will either immediately, or so soon after or at some future time, or subject to the performance of some condition, enter into an agreement with the other or be binding with that other is not enforceable because that type of agreement does not fall within the meaning of the term 'contract' as defined in law. This is simply an "Escrow" or "Scroll". An "Escrow" or "Scroll" is a simple writing which is not to become a contract or deed of the party express to be bound by it until some condition has been performed.

See. **BROSSETTE MANUFACTURING NIGERIA LTD VS M/S OLA ILEMOBOLA LTD & 3 ORS (2007) ALL FWLR (PT. 379) 1340.**

What do we find in Exhibit 'B'? It reads in part;

"... the balance of Twenty-Three Million, Two Hundred Thousand Naira only [23,200,000] to be paid tomorrow (11th January, 2014) and as soon as the shop is vacant for Alhaji Biu to take over."

So, there are two (2) conditions stipulated in Exhibit 'B' that would validate the agreement. They are:

1. the balance of consideration or price must be paid on 11th January, 2014.
2. The tenant in the shop must have vacated thereby giving up possession.

The above two conditions made Exhibit 'B' an 'Escrow' and to the extent that they were not even fulfilled made the agreement vide Exhibit 'B' unenforceable and I so declared.

Another interesting point here is the existence of Exhibit 'E'. Exhibit 'E' is a Power of Attorney purportedly donated by the 1st Defendant in favour of 2nd Defendant as an authority to sell the shop in dispute.

I do not intend to waste so much energy on this. I am focus on the fact that 1st Defendant denied Exhibit E as her own. She claimed she did not sign it as the signature on it is not her own. She maintained that her true signature is the one in her statement on oath that she made on 22-2-2017.

I then compared the two signatures. They are quite different. To that extent, the Plaintiff who had asserted the signature in Exhibit 'E' to be that of 1st Defendant has the onus of proof squarely on his head. He who asserts the positive must prove. The Plaintiff did not. I therefore hold that to the extent that the 1st Defendant was not proved to have signed Exhibit 'E', she did not authorise it and it is not her act.

Before I wrap up on this first issue, I just cannot resist the temptation to ask some questions or a query to the Plaintiff.

Why should the Plaintiff believe PW1, a policeman and 2nd Defendant when he could have exercised patience to find out from 1st Defendant (the owner of the shop) who is equally known to him?

Secondly, why did he not call in a Solicitor to help him in moulding the transactions legally?

I ask this question because of the huge amount of money involved. Millions of Naira. I think this particular Plaintiff is extremely lucky that he has not lost a Kobo in this affair. All the draft he raised were not cashed and nobody has swindled him of his hard earned money. Very lucky indeed.

In short in conclusion, the Plaintiff did not prove the existence of a valid contract by way of doctrine of agency between the 1st and 2nd Defendants and therefore not entitled to any of the relief he is claiming before this court.

This 1st issue is therefore resolved in favour of the Defendants.

2) Whether the 3rd Defendant has proved his case to be entitled to a favourable grant of his claim or reliefs in the counter-claim.

In law, a counter-claim is a separate, independent and distinct action which would succeed or fail on its merit. It is a claim by the Defendant against the Plaintiff in the same proceeding.

Being viewed like a statement of claim the Plaintiff (now in position of a Defendant) should make a defence to a counter-claim. **See JERIC NIG LTD VS UNION BANK (2001) 7 WRN 1.**

The 3rd Defendant by his statement of defence and counter-claim dated and filed on 3-10-17 claims against the Plaintiff as follows:

1. A Declaration that the 3rd Defendant is the lawful, bonafide and beneficial owner of shop No 214, Block 17, Section A of Wuse Modern Market, Abuja FCT.
2. A Declaration that the purported agreement of sale, if any, between the Plaintiff and the 1st or 2nd Defendant is illegal, null and void.
3. An order of perpetual injunction restraining the Plaintiff from disturbing or further disturbing the ownership or possessory right of the 3rd Defendant.

4. An order for the payment of N5,000,000.00 (Five Million Naira only) against the Plaintiff in favour of the 3rd Defendant.
5. An order against the Plaintiff to pay the 3rd Defendant the cost of maintaining this counter-claim at N1,000,000.00 (One Million Naira only).
6. And for such further order or other orders as this Honourable court may deem fit to make in the circumstances of this case.

The above claim of the 3rd Defendant, Alhaji Kademi looks straight forward, simple and clear to me. The evidence proffered in support also is very clear and not cloudy in any way.

The 3rd Defendant's case is that whilst being a tenant to shop No 214, Block 19, he was offered to buy the same shop by the owner, 1st Defendant. He accepted the offer and furnished consideration. A Power of Attorney was donated in his favour which is Exhibit G1. A Deed of Assignment, Exhibit G2 was also executed in his favour thereby assigning the shop to him by the same 1st Defendant.

The Plaintiff has not controverted any of the above facts and has not attacked the genuineness of the document. In fact, Plaintiff himself agreed the 1st Defendant had sold the shop to the 3rd Defendant.

The 1st Defendant in her statement on oath vide paragraph 27 was categorical that she agreed to sell the shop to the 3rd Defendant who eventually paid for the shop.

The only defence of the Plaintiff to the counter-claim was that the 2nd Defendant has acted as agent of the 1st Defendant and sold the shop to him. I have found that 2nd Defendant, even by their own admission had no such authority.

On the totality of the oral testimonies of the 1st Defendant, and indeed all the 3 Defendants, and all the Exhibits tendered, I find merit in the 1st, 2nd, and 3rd claim of the 3rd Defendant. They are hereby granted.

As for the 4th claim which is N5, 000, 000.00 (Five Million Naira only) against the Plaintiff, I do not know whether this is as general damages or special damages. What the claim is for is not stated. According, it is not proved and the 3rd Defendant in my view is not entitled to any sum of money whether as claimed or at all. This claim is vague.

The last claim is the one asking for N1, 000, 000.00 (One Million Naira only) for maintaining this counter-claim. No receipts were tendered to prove this claim indeed, there is no iota of evidence to support that N1, 000, 000.00 (One Million Naira) was spent in maintaining this counter-claim.

In conclusion, the Plaintiff's claim fails, and it's hereby dismissed while the counter –claim of the 3rd Defendant succeeds in part. Claim 1 – 3 granted, 4 & 5 refused.

SIGNED
JUDGE