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

THIS THURSDAY THE 5TH DAY OF MARCH, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/958/17

BETWEEN:

CHUKWUMA NWOSU.....PLAINTIFF

AND

1. **JAMES ILUTER**
2. **PRINCE ONYEBUCHI OFFOR** } **.....DEFENDANTS**

JUDGMENT

By an Amended Writ of Summons and Statement of Claim dated 27th April, 2018, the Plaintiff claims the following reliefs against the Defendants as follows:

a. **A Declaration that the Plaintiff is the bona fide purchaser for value of plot No.CA4-14 measuring about 340Sqm, lying and being at Pegi Relocation Layout-Abuja, FCT, within the jurisdiction of this Honourable Court.**

b. **An order of Mandatory injunction commanding and compelling the Defendants herein, whether by themselves, servants, agents and/or privies however, to deliver to the Plaintiff or allow the Plaintiff take quiet possession and enjoyment of Plot No.CA4-14 measuring about 340sqm,**

lying and being at Pegi Relocation Layout-Abuja, FCT, the subject matter of this suit.

c. In the Alternative to the above, the sum of N6,568,400.00 (Six Million, Five Hundred and Sixty eight Thousand, Four Hundred Naira) only as special damages for the purchase price and cost of construction works carried out by the plaintiff on the land the subject matter of this suit.

Schedule of Particulars of Special Damages.

1. **Eight Hundred Thousand Naira (N800,000.00) only being consideration for plot No.CA4-14 measuring about 340sqm, lying and being at Pegi Relocation Layout-Abuja, FCT, now the subject matter of this suit.**

2. **50 bags of Dangote Cement @ N2,500 per bag =N125,000.00.**

3. **8,000 Concrete Blocks @ N250 per black=N2,000,000.00**

4. **62 Bags of Elephant Cement @ N2,700 per bag=N167,400.00**

5. **Eighty (80) 1 inch planks @ N1,500 per plank=N120,000.00**

6. **100 length of Y-16mm iron rod @ N4,600 per length=N46,000.00**

7. **1 complete roll of banding wire=N15,000.00**

8. **1 bag of China nail=N25,000.00**

9. **100 trips of ¾ Gravel @ 2,500 per trip=N250,000.00**

10. **4 trips of Hard Core @ 25,000 per trip =N100,000.00**

11. **12 trips of sharp sand @ 22,000 per trip=N264,000.00**

12. **10 trips of latrite sand @ N15,000.00=N150,000.00**

13.water=N120.000

14.Digging of the building foundation =N100,000.00

15.Blanding of the building foundation =N90,000.00

16.Digging of the suck-away, blinding and block work=N180,000.00

17.Digging of the fence foundation =N82,000.00

18.Blinding of the fence foundation =N65,000.00

19.Laying of the fence blocks =N250,000.00

20.Casting of pillars =N60,000.00

21.Casting of the little round and head cost =N105,000.00

22.Block work and laying of the two buildings =N800,000.00

23.Laying of head core =N40,000.00

24.Iron work =N20,000.00

25.Carpentry work =N20,000

26.Filling of the two building floor (sand) =N80,000.00

27.Hiring of working tools e.g. Shovel, Wheel barrows, rammers and diggers =N60,000.00

28.Transportation of materials to site =N155,000.00

d. The sum of N50 Million Naira as damages for breach of contract.

e. The sum of N500.000.00 as cost of this action.

From the records of court, the Defendants were dully served with the originating court processes and hearing notices were served on them all through the course of this proceedings but they did not personally appear in court or file any process in opposition. Indeed on the records, the 2nd Defendant was represented by counsel on a couple of occasions and despite indications that a defence will be filed on behalf of the 2nd Defendant, none was filed. In proof of his case, the Plaintiff testified as PW1 and the only witness. He adopted his witness deposition at trial and tendered in evidence the following documents, to wit:

1. Title Deed Plan (T.D.P) and receipt of payment of money for survey admitted as **Exhibits P1 a & b.**

2. Affidavit of loss of document and police extract admitted as **Exhibit P2a and b.**

3. Letter by the Law Firm of Audu Karimu & Co was admitted as **Exhibit P3.**

4. Four(4) Receipts/Invoices dated 1st May, 2013, 29th April, 2013, 1st May, 2013 and 30th April, 2013 were admitted as **Exhibits P4a, b, c and d.**

5. Document titled **"expenditure"** by Plaintiff admitted as **Exhibit P5.**

6. Receipt issued by the Law Firm of Audu Karimu & Co was admitted as **Exhibit P6.**

7. Document titled **"Pegi Relocation Scheme, Site Identification letter"** was admitted as **Exhibit P7.**

8. Certified True Copy (C.T.C) of application for grant/re-grant of a statutory right of occupancy acknowledgment was admitted as **Exhibit P8.**

9. C.T.C of General Form of affidavit dated 29th September, 2014 sworn by one Prince Onyebuchi was admitted as **Exhibit P9.**

10. Eight(8) numbered photographs together with the certificate of compliance admitted as **Exhibit P10.**

PW1 then urged the court to grant the reliefs sought as per the Amended Statement of Claim.

As stated at the commencement of this Judgment despite the service of the originating court processes and hearing notices, at different times during the course of this proceedings, the Defendants chose or elected not to respond or appear in court. Now I recognize that fair hearing is a fundamental element of any trial process and it has some key attributes; these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 16; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228**.

It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run wild. No party has till eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.**

The Defendants here have being given every opportunity to respond to the case made out by Plaintiff against them but they have exercised their right by not responding. Nobody begrudges this election. It is only apposite to reiterate that nobody is under any obligation to respond to any court process once properly served if he so chooses. I leave it at that.

In the final written address, the plaintiff formulated one issue as arising for determination to wit:

"Whether the claimant has on a balance of probability successfully established that he is entitled to the reliefs sought in his claim."

From a careful study of the pleadings and evidence led, the sole issue raised by the plaintiff has captured succinctly the pith of the contest that will shortly be resolved by court and it is based on the issue as formulated that I would now proceed to consider the evidence and submissions of counsel.

ISSUE 1

"Whether the claimant has on a balance of probability successfully established that he is entitled to the reliefs sought in his claim."

Now I had at the beginning of this judgment stated that the Defendants were duly served with the originating court processes and hearing notices during the course of this proceedings but they elected or chose not to file anything or adduce evidence in challenge to that offered by the Plaintiff. In law, it is now accepted principle of general application that in such circumstances, the defendants are assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiffs' unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593) at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case of **Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA (as he then was) expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24 stated thus:**

"… a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to

prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."

It is also opposite to add that the substantive and main relief sought on which the fate of the other reliefs substantially lies is a Declaratory Relief. Relief (a) is a declaratory relief seeking a pronouncement that plaintiff is the bonafide purchaser of the dispute plot. All the other reliefs sought are rooted on the success of this Relief. It is critical to therefore appreciate the correct import of a declaratory relief. In law declarations are in the nature of special claims or reliefs to which the ordinary Rules of pleading particularly on admissions have no application. Indeed it would be futile when declaratory reliefs are sought to seek refuge in the proposition that the adversary did not respond on that there were admissions by the adversary on the pleadings. The authorities on this principle are legion. I will refer to a few.

In **Vincent Bello V. Magnus Eweka (1981)1 SC 101 at 182,** the Supreme Court stated aptly thus:

"It is true as was contended before us by the appellants counsel that the rules of court and evidence relieve a party of the need to prove what is admitted but where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence not by admission in the pleading of the defendant that he is entitled to the declaration."

The law is thus established that to obtain a declaratory relief as to a right, there has to be credible evidence which supports an argument as to the entitlement to such a right. The right will not be conferred simply upon the state of the pleadings or by admissions therein.

In **Helzgar V. Department of Health and Social Welfare (1977)3 AII ER 444 at 451;** Megarry V.C eloquently stated as follows:

"The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what, it has found to be

the law after proper argument, not merely after admissions by the parties. There are no declarations without argument. That is quite plain."

I may also refer to the observations of Nnamani J.S.C of blessed memory **in Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262 (1988) 5 N.W.L.R (pt.92) 90 as follows:**

"The court of Appeal relied on the decision of this court in Lewis & Peat (N.R.I.) Ltd V. Akhimien (1976)7 SC 157 to the effect that an averment which is not expressly traversed is deemed to be admitted. Admittedly, one does not need to prove that which is admitted by the other side, but in a case such as one for declaration of title where the onus is clearly on the plaintiff to lead such strong and positive evidence to establish his case for such a declaration, an evasive averment...does not remove the burden on Plaintiff. See also Eke V. Okwaranyia (2001)12 N.W.L.R (pt.726)181; Akaniwo V. Nsirim (2008)9 N.W.L.R (pt.1093)439; Maja V. Samouris (2002)7 N.W.L.R (pt.765)78 at 100-101."

The point from the above authorities is simply that declarations are not made because of the stance or position of parties in their pleadings but on proof by credible and convincing evidence at the hearing.

Again from the above, the point appears sufficiently made that the burden of proof lies on the plaintiff to establish his case on a balance of probability by providing credible evidence to sustain his claim irrespective of the presence and/or absence of the defendant(s). See the case of **Agu V. Nnadi (1990) 2 NWLR (pt. 589)131 at 142; Oyewole V. Oyekola (1999)7 N.W.L.R (pt.612) 560 at 564.**

I have stated these principles at length to allow for proper direction and guidance with respect to situating on whom the burden of proof lies and most importantly whether the burden has been creditably established. In resolving the questions presented by this case, the pleadings and evidence on record are critical.

From the pleadings in this case which has precisely streamlined the issues in dispute, the case of Plaintiff is situated or predicated on a contract for sale of Plot No CA 4-14 measuring 340sq lying and being at Pegi Relocation Layout-Abuja F.C.T hereinafter referred to as the **"disputed land".** The case as made out by

Plaintiff on the evidence is interesting and I will give a rather lengthy narrative of the evidence. Plaintiff stated that the 1st Defendant offered him the disputed plot for sale in the sum of N800,000 which he said belonged to one Simon Iorkaa. He Plaintiff indicated interest and demanded for the original documents but he was only given photocopies. That he made a part-payment of **N550,000** to 1st Defendant for the land with the balance of **N250,000** to be paid when the original title documents is produced from the owner Simon Iorkaa.

The Plaintiff stated that a week later, the 1st Defendant informed him that the owner said he won't release the original title documents until the balance is paid and he accordingly paid the balance to 1st Defendant who then disappeared and was not seen for some time. That when he finally saw him, 1st Defendant told him that after he got the original title documents, he ran into a heavy windstorm that **"blew"** all the documents away and that after a thorough search, he was only able to recover the original site plan and T.D.P of the plot which was handed over to him together with affidavit of loss of documents and a police extract.

Plaintiff then testified that he then commissioned 1st Defendant to clear the plot and to build two (2) numbers Bedroom flats on the plot. That thereafter on a routine visit to the site, a **"stop-work"** inscription was written on the plot together with a cell phone number and when he called the line, the 2nd Defendant said the land belonged to him and later presented the original allocation letter. That the 1st Defendant then apologised and pleaded for time to sort out the matter with 2nd Defendant. PW1 then stated that the 1st Defendant and his friend, one Mr. Godfrey met him later and told him that the matter has been settled with 2nd Defendant and that he has paid him N600,000 to surrender the land and the original title documents. That despite this alleged settlement, the 2nd Defendant still knocked down part of the building already built on the land and laid additional blocks which he claimed he spent N300,000 to procure.

Further that the 1st Defendant and his friends then gave him some title documents, affidavit of loss of document and another police extract said to have been given by 2nd Defendant and when he inquired as to why they were giving him these documents again, he was told that 2nd Defendant has equally lost the originals. That the 1st and 2nd Defendants again demanded for the N300,000 work 2nd

Defendant claimed he has done on the plot and at that point he became doubtful of their true intentions with respect to the disputed plot and reported the matter to the police at Kuje but they did not investigate the complaint but rather detained him and released him on bail after extracting an undertaking from him to pay 2nd Defendant the sum of N300,000 which he refused to pay. Since then, the Plaintiff claims the Defendants have denied him quiet possession of the disputed land and enjoyment of same having complied fully with the terms of the sale agreement and having spent huge sums developing the plot. The Plaintiff then added that the claim by 1st Defendant that the land belongs to one Simon Iorkaa is false and all the title documents bearing his name given to him are false documents. That the photocopies of the documents shown to him bears Mr. Joshua Kuhiyep Bobai and when he confronted 1st Defendant, he claimed that Mr. Simon Iorkaa acquired his title from Joshua Kuhiyep Bobai.

The above evidence which I deliberately reproduced at length is the basis on which the Plaintiff predicates all the reliefs he is seeking from court. The entire case as already alluded to is based on the alleged failure of the Defendants to live up to their contractual obligations to deliver to plaintiff the disputed plot of land at Pegi. Let us now critically evaluate the evidence and situate whether it supports the case as made out by Plaintiff. Let us however take our bearing by first situating the legal import of a contract.

Now a contract in law is an agreement between two or more parties which creates reciprocal legal obligations to do or not to do a particular thing. To bring a contract to fruition where parties to the contract confer rights and liabilities on themselves, there must be mutual consent and usually this finds expression in the twin principles of offer and acceptance. The offer is the expression of readiness to contract on terms as expressed by the offeror and which if accepted by offeree gives rise to a binding contract.

It should be pointed out clearly that the offer itself is not the contract in law but the taking of preliminary steps that may or may not ultimately crystallize into a contract where the parties eventually become ad-idem and where the offeree signifies a clear and unequivocal intention to accept the offer. See **Okubule Vs Oyegbola (1990) 4 N.W.L.R (pt.147) 723.**

Putting it more succinctly, the basic elements in the formation of a contract are:

1. The parties must have reached agreement (offer and acceptance)
2. They must intend to be legally bound, that is an intention to create legal relation.
3. The parties must have provided valuable consideration.
4. The parties must have legal capacity to contract.

See **Alfotrim Ltd Vs A.G Fed (1996) 9 NWLR (pt.475) 634 SC; Royal Petroleum Co. Ltd Vs FBN Ltd (1997) 6 NWLR (pt.570) 584: UBA Vs Ozigi (1991) 2 NWLR (pt.570) 677.**

All these five ingredients are autonomous units in the sence that a contract cannot be formed if any of them is absent. In succinct terms, for a contract to exist in law, the above five constituent elements must be present. See **Orient Bank (Nig) Plc V. Bilante Int Ltd (1998) 8 N.W.L.R (515) 37 at 76.**

Now the point must be underscored at the risk of prolixity that the substantive relief (a) claimed by Plaintiff is a declaratory relief that the claimant is a bonafide purchaser for value of the disputed plot from Defendants and this can only be established by credible evidence demonstrated before the court. It cannot be a matter of guess work or speculation.

Now on the first key element in the formation of contract stated above, the question that arises here is who are the parties in the extant transaction and what did they agree on.

On the evidence, there is absolutely nothing to show that Plaintiff entered into any precise and clear agreement over sale of a precisely defined plot or parcel of land with the owner or his legal representative and for valuable consideration. On the evidence, there is nothing before me to show that either 1st and 2nd Defendant were ever allocated the disputed plot No. CA 4-14 at Pegi Relocation Layout-Abuja by the issuing authorities or that they bought from the real and or genuine owner of the disputed plot. Indeed there is nothing to show that they are owners at any time of the disputed plot. It is trite principle that you cannot offer for sale what you do not have.

From the rather unclear and contradictory evidence, Plaintiff initially said that 1st Defendant who offered the disputed plot to him stated that the land belonged to one Simon Iorkaa. Plaintiff never met or saw this Simon Iorkaa or the original title documents but dealt with 1st Defendant and allegedly paid the consideration solely on the basis of what 1st Defendant told him. Now what is strange here is that there is absolutely no clear evidence showing that the Plaintiff paid any consideration to the 1st Defendant for the disputed plot. No less important is that no documents of sale or transfer of interest over the disputed land was executed either between 1st Defendant in his personal capacity or on behalf of anybody.

It is difficult to situate any legally identifiable contractual sale over the disputed plot between Plaintiff and 1st Defendant. To knock off any pretentions to any contractual relationship, the subsequent twist to the narrative when 2nd Defendant came into the picture and put a **"stop work"** on the land and showed a letter of allocation bearing a different owner to that presented by 1st Defendant; the apology offered by 1st Defendant to Plaintiff and the plea to be allowed to talk to 2nd Defendant all showed clearly that the 1st Defendant was not the owner of the disputed plot and could not have offered it for sale to Plaintiff. The Plaintiff himself realised the negative reality that he had been deceived by 1st defendant because both in his pleadings (paragraph 26) and evidence (paragraph 37) he stated categorically that **"the claim by 1st Defendant that the subject matter of the suit belong to one Mr. Simon Iorkaa was false and all the documents given to me by 1st Defendant in connection with that claim are also false documents."** We therefore need not bother ourselves any longer with these exhibits. They clearly have no evidential or probative value. The Plaintiff here himself recognises that any claim to the plot based on the alleged sale by 1st Defendant is clearly irredeemably compromised.

Now what is strange here is that the Plaintiff who appear to me enlightened and rational now went along with the next twist in the narrative of the purported sale of the disputed plot to him. He allowed 1st Defendant who clearly misled or hoodwinked him in the first instance to now go and **"settle"** or discuss with the 2nd Defendant.

Now the terms of settlement that 1st Defendant had with 2nd Defendant was not defined, streamlined or tendered. There is no evidence to show that 1st Defendant paid the 2nd Defendant the sum of N600,000 to transfer his interest on the plot. On the evidence, despite the alleged payment, Plaintiff said that 2nd Defendant went on the land, knocked down part of his building and demanded for N300,000 which 2nd Defendant claimed he spent on the land.

Now even with respect to this second narrative relating to 2nd Defendant, there is again no document of title delineating that the 2nd Defendant has any plot of land over which he could agree a contract of sale with Plaintiff. **Exhibit P7** (the Pegi Relocation Scheme, Site Identification), **Exhibit P8** (the C.T.C of application for grant and re-grant of a statutory right of occupancy) all issued by the issuing authorities show unequivocally that the disputed plot CA4-14 measuring about 340sqm belongs to **Joshua Kuhiyep Bobai** of 30 Clinton Street, New Karu, Nasarawa, Nasarawa State. His state of origin on **Exhibit P8** is Kaduna. Even the general affidavit of loss of document **Exhibit P9** sworn to by the 2nd Defendant show again that the alleged title document stolen from his car bears the name of **Joshua K. Bobai.**

There is again nothing to show that the said **Joshua K. Bobai** sold or transferred his interest over the plot of land to 2nd Defendant or indeed to anybody. If there is no evidence to support such transaction, then it is clear that 2nd Defendant was in no position to sell what does not belong to him.

To further add confusion to the case of Plaintiff, in paragraph 37 of his claim and 38 of his deposition, he stated that when 1st Defendant was confronted with the documents of **Joshua K. Bobai,** he now stated that the earlier discredited **Mr. Simon Iorkaa** acquired his title from **Mr. Bobai**. There is again no evidence to support this rather empty or sterile assertion.

What is particularly strange here is that 2nd Defendant who claims he owns the land even though the title document does not bear this out, did not deal directly with Plaintiff. There is therefore nothing to show that 2nd Defendant owns any land and that he transferred his interest over the land to 1st Defendant who then transferred same to Plaintiff. The bottom line is that neither 1st nor 2nd Defendant had any plot of land to sell or one that they could transfer to the Plaintiff.

The Plaintiff has unfortunately been led by the nose and deceived by some unscrupulous and fake land merchants in Abuja. The Plaintiff curiously did not take any steps to conduct a legal search to ascertain the genuiness of the transactions he entered with defendants. The Defendants have absolutely no legal interest over Plot CA4-14 Pegi Relocation Layout which they could sell to Plaintiff or indeed anybody. There is nothing unfortunately to situate key elements of a binding contractual agreement in this case. There is nothing to show that the Defendants were in a position to offer the disputed Plot and there was therefore nothing to accept. There is a complete dearth of evidence showing any contract of sale of the disputed plot.

In the circumstances, I cannot situate any binding legal agreement between Plaintiff and either of the Defendants for the sale of the disputed plot. Let me reiterate the point again, even at the risk of prolixity that the question of whether or not parties have agreed to confer rights and impose liabilities on themselves cannot be a matter for speculation or guess work or even the address of counsel no matter how beautifully written and articulated. That question is one of whether the mutual assent between them which must be outwardly manifested can be situated within the evidence. Indeed the test of existence of mutuality is objective and where there is such mutuality, the parties are then said to be *adidem.* In the absence of mutuality, then there is no consensus *adidem* and therefore any claim or pretention to the existence of a contract in such circumstances is compromised. See **Bilante Int Ltd V NDIC (2011)15 NWLR (pt.1270)407 at 423 C-F.** On the evidence there is no where to situate that parties were *consensus adidem* with respect to the sale of the disputed plot and that is fatal**.**

In **AG Rivers State V. Akwa Ibom State (2011)8 N.W.L.R (pt.1248)3 at 49,** Katsina Alu C.J.N (as he then was and of blessed memory) stated as follows**:**

"It is the duty of the trial Court to determine whether there is a binding contract between parties and this is done by considering the evidence led, the documentary evidence tendered and accepted by the court and the oral testimony in line with pleaded facts. The terms of a written contract on the other hand are easily ascertained from the written agreement. The traditional view is to look for offer, acceptance and consideration. In the absence of any of them, there is no valid contract. Although that is not always the case.

Valid contracts can exist in the absence of offer, acceptance and consideration such as in settlement contracts. The overriding consideration in determining if there is a binding contract between the parties is to see whether there was a meeting of the minds between the parties, that is, consensus *ad-idem*. In all cases of contracts, there must be consensus *ad-idem*."

In the circumstances, **Relief (a)** seeking a declaration that the Plaintiff is a bonafide purchaser of Plot No CA4-14 clearly must fail as there is no evidence creditably establishing any contract of sale. Even if there was and there is none, the Defendant cannot offer for sale what is not theirs on the evidence.

With the failure of **Relief (a)**, **Relief (b)** seeking for orders of mandatory injunction commanding the Defendants to deliver the disputed plot must equally fail. You cannot put something on nothing and expect it to stand.

Relief (c) is a relief in the alternative which the court in law can consider with the failure of the substantive **Reliefs (a)** and **(b)**. The relief seeks for the sum as already streamlined above together with the schedule of particulars of special damages which was equally reproduced above.

Now a relief in the realm of special damages must not only be pleaded but strictly proved. Strict proof in law required in special damages means no more than the evidence must show the same particularly as it is necessary for its pleading. It should therefore normally consist of evidence of particular losses which are exactly known as accurately measured before trial. Strict proof does not means unusual proof but simply implies that a plaintiff who has the advantage of being able to base his claim upon a precise calculation must give the defendant access to the facts which make the calculation possible. See **Neka B.B.B. Manufacturing Co. Ltd V A.C.B (2004) 2 NWLR (pt.858) 521**.

In this case, the damages sought covers the purchase price and cost of construction as particularized above.

Now on the evidence, Plaintiff said he paid 1st Defendant the purchase fee but there is absolutely nothing before me to show that any consideration was paid and how much beyond bare *viva voce* evidence. It is strange that a plot of land will be

bought and there is no evidence or paper trail to show these payments particularly here where the payments was made in two(2) tranches and in the peculiar circumstances they were made or paid. There is equally absolutely no corroborative evidence of any kind showing payment of consideration or the purchase price.

Now even with respect to the construction works, Plaintiff said he commissioned 1st Defendant to clear the plot preparatory to commencement of work and that 1st Defendant hired labourers to clear the site. In paragraph 19 of the claim and 20 of the deposition, he said he contracted 1st Defendant to build two numbers bedroom flat for him on the land which he did. What is strange here is the 1st Defendant who allegedly built the two bedroom flat did not appear in court to give evidence for the Plaintiff. Nobody was presented to give evidence that they participated in the construction works on the plot. Now on the evidence of Plaintiff, after the building of the 2 bedroom flat, a **"stop work"** order was put on the land and it became clear then to Plaintiff that 1st Defendant does not own the land. It is clear to me that with the confusion created with respect to who really owns the land, the Plaintiff could not have logically continued with any construction works after the "stop work" order.

If two flats were built, then the person who was saddled with the responsibility of construction clearly is in the best position to give evidence of what was involved in the construction and how much. The Plaintiff did not himself say he was involved in the construction work. To use his words, he said he **"contracted the 1st Defendant to build two(2) number two bedroom flat."** Again the terms of this contract was not defined or streamlined. If Plaintiff made any payments to 1st Defendant for the construction, this is not disclosed either on the pleadings or evidence.

The itemized schedule of special damages from (1)-(28) including buying of cements, blocks, planks, nails, buying of sand, laterite, the digging of foundation, laying of fence blocks, casting of pillars, iron work, hiring of working tools, transportation of materials could only have been done by the person who the job was contracted to.

The few receipts tendered vide **Exhibits P4 a - d** bears the name of Plaintiff and it appears to me curious that after contracting out the construction job, he will be making purchases in his name.

The bottom line is that these special damages claimed have not been creditably established by cogent and convincing evidence. The items of special damages may have been elaborately itemized but there is no such qualitative evidence to support the grant of the special damages.

Finally with the failure of **Reliefs (a)** and **(b)**, the claim for damages for breach of contract and cost of action must necessarily fail. At the risk of sounding prolix, the case made out by Plaintiff with respect to contract over the sale of the disputed plot is unclear and undoubtedly fatally compromised. It is impossible to situate a breach of contract of failure of sale of land when no enforceable contract has been made out showing there was an agreement to sell the disputed land in the first place. Where there is no contract, there cannot be a breach of contract and an award of damages. **See N.B.I.C V Dauphin (Nig.) Ltd (2014) 16 NWLR (pt.1432) 90.**

Also in the case of **A.G. Rivers State V. AG Akwa-Ibom State (supra),** the Apex Court instructively further stated as follows:

"There can be no breach of a non-existent contract. Once it has been determined that no enforceable contract exists between the parties or that what took place between the parties did not translate to a contract between them, the foundation of the relief claimed collapse with the absence of a cause of action, that is, breach of contract. There can be no consequence of a breach of contract when no contract exists. In the instant case, the appellant did not prove any enforceable contract which was binding on the respondent. Therefore, there was no plausible reason for an award of general damages for breach of contract in the circumstance. (Best Nig. Ltd V. Blackwood Hodge (Nig) Ltd. (2011)5 N.W.L.R (pt.1239)95 Referred to) (pp.427, para F-H; 429, para E-G)."

This case may have its merits but unfortunately must fail on the basis of the absence of clear and or sufficient evidence to sustain or put the court in a

commanding height to grant the reliefs sought. The single issue raised for determination is thus answered in the negative. For the avoidance of doubt, all the **Reliefs (a) – (e)** sought by Plaintiff are not availing. The Plaintiff's case therefore fails and it is accordingly dismissed.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Jatau Kalat, Esq., for the Plaintiff.***

2. ***Dolapo Benjamin, Esq., for the 2nd Defendant holding brief of Eniola Aiyeneberu, Esq.***