IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT GWAGWALADA

THIS TUESDAY THE 19TH DAY OF MAY, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/1952/2016

BETWEEN:

1. HON. MINISTER OF THE FEDERAL CAPITAL TERRITORY **2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY** **3. FEDERAL CAPITAL TERRITORY ADMINISTRATION** **4. ABUJA FILM VILLAGE INTERNATIONAL LIMITED** **5. ABUJA INVESTMENT COMPANY LIMITED**	**...PLAINTIFFS/DEFENDANTS TO THE COUNTER CLAIM**

AND

1. KOHATH PROPERTY DEVELOPMENT LIMITED **2. LAND OF HONEY ABUJA DEVELOPMENT LIMITED** **3. IMAGINATIVE REAL ESTATE LIMITED** ***(JOINED BY ORDER OF COURT DATED 30/04/2018)***	**…..DEFENDANTS/ COUNTER CLAIMANT**

JUDGMENT

For a proper appreciation of the facts of this case, it is necessary to streamline the pleadings from the commencement of the case.

The Plaintiffs claims as endorsed on the Writ of Summons and Statement of Claim dated 10th June, 2016 and filed same date in the Court's Registry are as follows:

1. **A Declaration that the Terms of Settlement dated and filed on the 18th March, 2015 in Suit Number FCT/HC/CV/4527/2013 between Kohath Property Development Company Limited & Anor., Hon. Minister FCT & Ors. and eventually entered as Consent Judgment on the 19th March, 2015 is null, void and no effect whatsoever having been obtained by fraud.**

2. **A Declaration that the consent judgment entered in Suit Number FCT/HC/CV/4527/2013 between the parties herein on the 19th March, 2015 is null, void and of no effect whatsoever, same having been based on terms of settlement procured by fraud/misrepresentation.**

3. **An Order setting aside Terms of Settlement dated and filed on the 18th March, 2015 in Suit Number FCT/HC/CV/4527/2013 between Kohath Property Dev. Co. Ltd & Anor and Hon. Min. FCT & Ors and eventually entered as consent judgment on the 19th March, 2015.**

4. **An order setting aside the purported consent judgment in Suit Number FCT/HC/CV/4527/2013 between Kohath Property Dev. Co. Ltd & Anor and Hon. Min. FCT & Ors**

5. **Cost of this suit.**

The Originating court processes were duly served on the Defendants. In response, the Defendants filed a statement of defence and set up a counter-claim against plaintiffs. By an order of this Court dated 30th April, 2018, the Defendants/Counter-claimants amended their statement of Defence and Counter-Claimed against plaintiffs as follows:

a. **A Declaration that the Terms of Settlement dated and filed on the 18th of March, 2015 and the consent judgment entered on the 19th of March, 2015 in SUIT NO.FCT/HC/4527/2013 between Kohath Property Development Company Ltd & Anor and Hon. Minister, FCT & 4 Ors are valid, subsisting and was not obtained by fraud, misrepresentation or any other illegal manner whatsoever.**

b. An Order directing the 1st – 5th Plaintiffs/Defendants to counter claim (jointly and severally) including all affiliated principals and agents, to pay the Defendants/Counterclaimants:

i. The sum of N10,000,000,000.00 (Ten Billion Naira) as general damages for loss of business goodwill, irreparable damage to business reputation and injury to shareholders' and investors confidence arising from the 1st – 5th Plaintiffs/Defendants to counter claim continued breach of the Joint Venture Investment Agreement and the Terms of Settlement.

ii. The sum of N10, 000,000,000.00 (Ten Billion Naira) as exemplary damages for tortuous injury inflicted on the counterclaimants in an oppressive, arbitrary and unconstitutional manner.

iii. The sum of $14,171,103 (Fourteen Million One Hundred and Seventy One Thousand One Hundred Three US Dollars) as special damages for breach of the Joint Venture Investment Agreement and the Terms of Settlement.

iv. The sum of $71,355,570 (Seventy One Million, Three Hundred and Fifty Five Thousand, Five Hundred and Seventy US Dollars) as special damages arising from the loss of the 1st Defendant/Counterclaimant from the sale of its Twenty Five Million shares to Imaginative Real Estate Limited in order to raise capital for the Conception master Plan Design and other incidental services on behalf of the 2nd Defendant/Counterclaimant.

v. The sum of N15, 000,000.00 (Fifteen Million Naira) as special damages for the payment of professional fees for the valuation report carried out by the surveyor.

vi. The sum of N86,000,000.00 being the sum of money paid to the firm of Techstent to do ground clearing, excavation and unearthing of a portion of the entire land meant for the development of Phase one of the Land of Honey project.

vii. **The sum of $6,290,790 as special damages for the payment of executive manpower services carried out for the company as evidenced with the invoices, time sheets and employment contracts.**

viii. **The sum $594, 306,000 (Four Hundred and Sixty One Million, Eight Hundred Thousand U.S Dollars) (sic) as loss of past and future earnings on business relating to the execution of the Joint Venture Investment Agreement and the Terms of Settlement.**

ix. **The cost of this suit and the cost of legal consultancy services both locally and internationally, and legal representation in the sum of N500, 000,000.00 (Five Hundred Million Naira) only.**

x. **Interest at the rate of 21% (Twenty One percent) per annum on all Naira (#) and United States Dollars (USD) sums found to be due and payable by this Honourable Court from the date of the consent judgment until the date of judgment in this case and thereafter at the rate of 10% per annum until final liquidation of the judgment debt.**

The plaintiffs in response to the Counter-claim filed their defence dated 31st May 2018 and filed same date in the Court's Registry. The defendants/Counter-claimants also filed a Reply to the Defence of plaintiffs to the Counter-claim dated and filed in the Court's Registry on the 4th June, 2018.

Before trial however commenced, it is imperative to point out that the Plaintiffs applied to the Court on the 27th March, 2017 to **discontinue the substantive action which the Court graciously granted.** The Plaintiffs case was then **struck out**; the defendants and now counter-claimants chose to continue with their counter-claim. Hearing then commenced.

In proof of their counter-claim, the Counter-claimants called two (2) witnesses. **Teniola Eleoramo** testified as DW1. He deposed to a 57 paragraphs Witness Deposition dated 3rd May, 2018 which he adopted at the hearing. He tendered in evidence the following documents, to wit:

The following documents were tendered through PW1 thus:

1. Certified True Copy of Certificate of incorporation of 1st Defendant was admitted as **Exhibit "D1"**

2. Certificate of Occupancy dated 13th October, 2008 was admitted as **Exhibit "D2"**

3. Certified True Copy of Memorandum and Articles of Association of the 2nd Defendant was admitted as **Exhibit "D3"**

4. Joint Venture Investment Agreement dated 28thSeptember, 2010 was admitted as **Exhibit "D4".**

5. The 4th and 5th Plaintiffs' letter of expression of interest dated August 24th, 2010 was admitted as **Exhibit "D5".**

6. 1st Defendant's memorandum dated 1stSeptember, 2010 was admitted as **Exhibit "D6".**

7. Video coverage of flag-off ceremony, a compact disc (CD) with Certificate of Compliance was admitted as **Exhibit "D7".**

8. Certificate of incorporation of the 2nd Defendant was admitted as **Exhibit "D8".**

9. Irrevocable Power of Attorney dated 14thDecember, 2010 was admitted as **Exhibit "D9".**

10. Sale Agreement dated 24thFebruary, 2011 was admitted as **Exhibit "D10**".

11. Deed of Assignment dated 2ndMarch, 2011 was admitted as **Exhibit "D11**".

12. Shareholders' Agreement dated 27thApril, 2011 was admitted as **Exhibit "D12".**

13. Response to proposal for settlement dated 9thJanuary, 2014 was admitted as **Exhibit "D13".**

14. 4th Plaintiff letter to 1st Defendant dated 7thMarch, 2013 was admitted as **Exhibit "D14".**

15. 1st Defendant's letter dated 16thApril, 2013 was admitted as **Exhibit "D15".**

16. Writ of Summons in Suit No: FCT/HC/4527/2013 was admitted as **Exhibit "D16".**

17. Memorandum of the General Counsel/Legal Services Secretariat FCT, Mrs Ima Okpongete Esq. to the 1st Plaintiff of 17thJanuary, 2014 was admitted as **Exhibit "D17".**

18. Record of court proceedings before Honourable Justice Banjoko in **SUIT NO.FCT/HC/4527/2013** was admitted as **Exhibit "D18".**

19. Certified True Copy of 1st Plaintiff personal letter dated 20thAugust, 2013 briefing Dr Amaechi Nwaiwu to represent them in **SUIT NO: FCT/HC/4527/2013** marked as **Exhibit "D19".**

20. Letter dated 20thJune, 2014 written by the Defendant's solicitors to late Dr Amaechi Nwaiwu's office was admitted as **Exhibit "D20**".

21. 4th Plaintiff's letter dated March 12, 2015 was admitted as **Exhibit "D21".**

22. 2nd Defendant's letter dated 13th March, 2015 was admitted as **Exhibit "D22".**

23. The 4th Plaintiff's letter to the 2nd Defendant dated 17thMarch, 2015 was admitted as **Exhibit "D23".**

24. Terms of settlement dated 18thMarch, 2015 was admitted as **Exhibit "D24".**

25. Four (4) photographs of the signing event of the Terms of Settlement and certificate of compliance were admitted as **Exhibit "D25".**

26. Consent judgment entered in **SUIT NO.FCT/HC/4527/2013** on the 19th of March, 2015 was admitted as **Exhibit "D26**".

27. Defendant's letter dated 20th April, 2015, 24th June, 2015, 18th December, 2015, 5th January, 2016 and 25th January, 2016 were admitted as **Exhibits "D27[1-5]"**

28. 4th Plaintiff's letters dated 27th April, 2015 and 24th June, 2015 were admitted as **Exhibits "D28[1-2]"**

29. Processes in Appeal No: CA/A287/M/2016 at the Court of Appeal was admitted as **Exhibit "D29".**

30. Certified True Copy of Letter of Dr Musa A. Musa in his capacity as Group Managing Director of the 5th Plaintiff to the Acting Solicitor General of the 3rd Plaintiff dated 11th October, 2016 was admitted as **Exhibit "D30".**

31. Certified True Copy of 3rd Plaintiff's letter to the 5th Plaintiff dated 12th October, 2016 was admitted as **Exhibit "D31".**

32. Letter of mandate from Lekki Worldwide Investments Ltd dated 16th January, 2009 and letter of mandate for partnership dated 18th November, 2009 were admitted as **"Exhibit D32[1-2]"**

33. Brochure of event and pictures of the Lou Casteau Academy, Cote d' Azur, France titled "Urbanization in Africa, Investing in New cities" held in Cannes, France was admitted as **Exhibit "D33".**

34. Letter dated 12th March, 2013 from Nationwide Finance of Jacksonville Beach, Florida titled "Fund Providers Letter for $US108,198,551.50" was admitted as **Exhibit "D34".**

35. The management accounts of the 2nd defendant for the years 2012 to 2017 was admitted as **Exhibit "D35".**

36. Valuation Report submitted by the defendant's surveyor was admitted and marked as **Exhibit "D36".**

37. Invoice of clearing of land from Techstent Nigeria dated 16th April, 2013 was admitted as **Exhibit "D37".**

38. Four (4) photographs of clearing of land from Techstent Nigeria with certificate of compliance were admitted as **Exhibit "D38".**

39. 2nd Defendant's Form CAC 2 – Increase in Share Capital was admitted as **Exhibit "D39".**

40. Shares Valuation Report and Share Purchase Agreement were admitted as **Exhibit "D40[1-2]"**

41. Certificate of increase in share capital was admitted as **Exhibit "D41".**

42. Deed of Adherence to the Shareholders' Agreement and Share Certificate were admitted as **Exhibit "D42[1-2]"**

43. Paid invoices and Service Contract executed by Imaginative Real Estate Limited on behalf of the 2nd Defendant/Counter Claimant were admitted as **Exhibit "D43[1-2]"**

44. Business plan and feasibility studies approved by 1st Defendant's Board of Directors was admitted as **Exhibit "D44".**

45. Employment contract/man power supply agreement was admitted as **Exhibit "D45".**

46. Documents evidencing the sale of land to Sterling Assurance Limited and ARM Life by the defendants was admitted as **Exhibit "D46".**

47. Project Manning Solutions invoices of consultancy fees for 2011, 2012, 2013, 2014, 2015, 2016 and 2017 were admitted as **Exhibit "D47[1-2]"**

PW1 was then cross-examined by counsel to the defendants.

PW2 is **Olumide Tijani**, an Accountant and Financial Analyst who was subpoenaed. He stated that he was on subpoena to give evidence in respect of the business plan of land of honey project which his firm prepared and he was part of the team that prepared the plan. He identified the business plan as **Exhibit D44**. That the plan was to prepare a Financial Forecast and Market Analysis including management strategy for the project.

He stated that from his experience, he has knowledge of carrying out market analysis and preparing financial forecast and expected income that can be generated from a project that is going to be executed. He further stated that Exhibit D44 has an appendix to the business plan which shows the financial plan of the project. The financial projections for the project – preliminary business plan was tendered as **Exhibit D48 1 and 2.** That from **Exhibit D48 (1)** the basis of their analysis is the size of the land. That by their analysis in 2011, the worth of land in the area per square meter is N70, 000 U.S. Dollars and that if you multiply that by the size, the gross income that will have been derived from the sale is 1.9 Billion U.S. Dollars by their analysis. That in the real estate market, development cost is about 50% of the gross income that will be generated from the sale of the land which means that the expected earnings is estimated to be $96, 000, 000 U.S. Dollars and that the assumption was very conservative at the time.

Under Cross-examination, PW2 said that the assumptions they made were conservative because they are not on the high side. That they checked the value of the land at the site and compared with that of other lands in Abuja, F.C.T.

With his evidence, the counter claimants closed their case.

In proof of their case, the defendants to the counter-claim, called only one witness, **Chanuwa Gayus Hamman** who testified as DW1. She deposed to a thirty three (33) witness deposition dated 31st May, 2018 which she adopted at the hearing; she was then cross-examined and with her evidence, the defendants to the counter-claim also closed their case.

At the close of the case, parties filed, exchanged and adopted their final written addresses. The final address of defendants to the counter claim is dated 23rd December, 2019 and filed in the Court's Registry on 24th December, 2019. In the address, two (2) issues were raised as arising for determination, to wit:

1. **Whether or not this is a proper case for a Defendant to file a counter-claim.**

2. **Whether the Counter-claimants were able to successfully prove their case to be entitled to the claims as contained in their counter-claim?**

On the other side of the aisle, the Counter-claimants written address is dated 10th January, 2020 and filed in the Court's Registry on the 13th January, 2020. Four (4) issues were streamlined as arising for determination as follows:

1. **Whether the Plaintiffs/Defendants to counter-claim breached the Joint Venture Investment Agreement (Exhibit D4), the Consent Judgment (Exhibit D24) and any other ancillary agreement, entered into by the parties prior to, and after SUIT NO: FCT/HC/CV/4527/2013.**

2. **Whether the Plaintiffs/Defendants to Counter-claims' various conducts leading to Suit NO: FCT/HC/CV/4527/2013, and after the Consent Judgment was obtained in SUIT NO: FCT/HC/CV/4527/2013, constitute acts of negligence, professional misconduct, flagrant abuse of office and abuse of court process thereby causing the Defendants to suffer economic and physical losses.**

3. **Whether the Consent Judgment obtained by the parties in the SUIT NO: FHC/HC/CV/4527/2013 was a product of fraud/misrepresentation and thereby null and void.**

4. **If the answer to issues one and/or issues two and three above are in the affirmative, are the Defendants not entitled to general, special and exemplary damages sought as reliefs before this Honourable Court?**

I have set out above the issues as distilled by parties as arising for determination. Now with respect to issue one (1) raised by the defendants to the counter-claim, relating to the competence of the counter claim, it is important to note that during plenary hearing, a substantive preliminary objection was raised with respect to the competence of the counter claim which was struck out. Counsel to the counter claimants subsequently applied to relist the objection but withdrew same on 29th January, 2020 indicating that they had no challenge to the propriety and or

competence of the counter claim and it was accordingly struck out. I do not accept that the defendants to the counter claim can blow hot and cold at the same time in the manner they seek to present or project the challenge to the competence of the counter claim.

In addition, they have equally joined issues on the Counter Claim and led evidence on same. It is therefore difficult to situate the basis of the extant objection. While the court is obviously ready and willing to hear and determine any complaint, it must be presented in a coherent and consistent manner to avoid creating the impression that a party wants to steal a match on his adversary. I would have discountenanced the said issue without much ado, but to avoid accusations of been unduly pedantic, let me address the issue of the competence of the extant counter claim. The complaint here is that there is no claim or suit against the counter-claimants capable of allowing them to file a counter claim. That the case filed by plaintiff relates to the setting aside of a consent judgment and no more. That the claims sought by the counter claimants are inconsistent with the parent claims and thus incompetent.

I am really not enthused by these submissions which seek to severely delimit the true essence of a counter claim. If the original plaintiff had no claim against the defendants, why then did they file the substantive action. Indeed if the counter claimants could not legally file a counter-claim, why then did they file a defence to it? The court will not engage here in any idle exercise of speculations.

In law, a counter claim is to all intents and purposes a cross action. In **Ogbonna V A.G. Imo State & 3 ors (1992) 1 NWLR (pt.220) 647 at 658 at 675,** the Supreme Court per Nnaemeka Agu JSC (of blessed memory) stated as follows:

"a counter-claim is, to all intents and purposes, a separate and independent action in its own right although, a defendant, for convenience and speed usually joins it with the defence."

It has also been held that a counter-claim from the point of view of pleadings is like a statement of claim. Consequently, the rules applicable to a statement of

claim apply to a counter-claim. See **Shettimari V. Nwokoye (1991) 9NWLR (pt.213) 60 at 71.**

Being a Cross-action, if a defendant has a cause of action against the plaintiff, he may initiate proceedings for it in the very action brought by the plaintiff by raising the cause of action as a counter claim. The defendant does this as an alternative to suing the plaintiff in a separate and independent action for the claim(s).

On the authorities, the claim should be one in which the defendant can sue as a plaintiff. Any valid cause of action, legal or equitable, which a defendant has against a plaintiff may be brought as a cross-action in the very suit in which he is sued. The cause of action need not be for monetary claim or of the same nature or type or arising out of the same transaction as that of the Plaintiff. The only restriction is that it must be one which can be conveniently tried by the same court and in the same proceedings as the plaintiffs' claim. See **Civil Procedure in Nigeria by Fidelis Nwadialo SAN (of blessed memory), 2nd ed. at pages 393 – 394.**

There was no call made at any time by the defendants in this case during hearing for the court to exercise its discretion not to hear the counter-claim on grounds of inconvenience, delay or embarrassment and it therefore appears to me late in the day to raise any complaint on competence of the counter claim. As stated earlier, the defendants who filed the substantive action withdrew same and filed processes in defence of the counter claim and vigorously contested same. The bottom line is that as a cross- action, a counter- claim is for almost every purpose, an independent action, and it is treated, for all purposes for which justice requires it to be so treated, as an independent action and its fate does not depend on the plaintiffs' claims.

I call in aid here the case of **Oroja & ors V Adeniyi & ors (2017) 6 NWLR (pt.1560) 138 at 151 – 152,** where the Apex Court stated thus:

"A counter-claim is an independent action and it needs not relate to or be in any way connected with the plaintiffs' claim or raise out of the same transaction. It is not even analogous to the plaintiff's claim. It need not be an action of the same nature as the original claim. A counterclaim is to be

treated for all purposes for which justice requires it to be treated as an independent action…"

"…Counterclaim though related to the principal action is separate and independent action and our adjectival law requires that it must be filed separately. The separate and independent nature of a counterclaim is borne out from the fact that it allows the defendant to maintain an action against the plaintiffs as profitably as in a separate suit."

The above is clear. **Issue 1** raised by the defendants to the Counter-claim will in the circumstances be discountenanced:

Issue 3 raised by the counter claimants, with respect to whether the consent judgment was a product of fraud/misrepresentation appear to me to have been overtaken by events except perhaps for the court to reiterate the binding position of a judgment delivered by a court of competent jurisdiction in view of the peculiar facts of this case particularly the withdrawn challenge filed to the Consent judgment by the Defendants to the Counter-claim. The defendants to the counter claim did not in there pleadings which has precisely streamlined the facts in dispute, contest or challenge the validity of the Consent Judgment. Indeed as stated earlier, they withdrew the substantive action challenging the consent judgment. **Issue 2** raised by defendants to the counter claim and **issues 1, 2 and 4** raised by the counter claimants all relate to whether the reliefs sought by the counter-claimants are availing. These issues can conveniently be accommodated under one broad issue as follows:

Whether the counter claimants have successfully established there case on the balance of probability to entitle them to the reliefs sought?

In determining the above issue, the following questions, some of which have been raised by the parties herein must be considered and resolved; namely:

i. **What is the basis or pivot to situate the ambit and parameters of the relationship of the parties.**

ii. **Who are the parties to this defined relationship(s)?**

iii. **Is there a precisely defined or streamlined breach of parties obligations or commitments under the relationship(s).**

iv. **Have the counter claimants established in the circumstances that they are entitled to the reliefs sought.**

The above issue and the questions are not raised as an alternative to the issues raised by parties, but the issues canvassed by parties can and shall be cumulatively considered under the above broad issue. See **Sanusi V Amoyegun (1992) 4 N.W.L.R (pt.237) 527.** The issue thus raised and the questions will be taken together as it has in the court's considered opinion brought out with sufficient clarity and focus, the pith of the contest which has been brought to court for adjudication.

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would proceed to determine this case based on the issue and questions I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the

course of this judgment and where necessary make references to submissions made by counsel.

ISSUE 1

Whether the counter claimants have successfully established their case on the balance of probability to entitle them to the reliefs sought?

In determining the above issue, the following questions, some of which have been raised by the parties herein must be considered and resolved; namely:

i. **What is the basis or pivot to situate the ambit and parameters of the relationship of the parties.**

ii. **Who are the parties to this defined relationship(s)?**

iii. **Is there a precisely defined or streamline breach if parties obligations or commitments under the relationship(s).**

iv. **Have the counter claimants established in the circumstances that they are entitled to the reliefs sought.**

The approach I shall adopt in this judgment is to address the above issue and the questions raised together. This will then provide legal and factual basis to determine the grievances of the counter claimants and whether the reliefs sought are availing. I had at the beginning of this judgment stated that the substantive claim or action of the plaintiff was withdrawn and struck out. The counter claim therefore defines the crux of this dispute.

From the pleadings and evidence, the case of the Counter-Claimant are predicated generally on three elements:

(1) alleged breach and continuing breach of a **Joint Venture Agreement** between parties.
(2) the alleged breach and continuing breach of a **terms of settlement**; and
(3) breach and continuing breach of the **Consent Judgment** entered based on the **terms of settlement**.

The counter claimants contend the above acts accassioned extensive damages and on which the monetary claims are predicated.

On the other side of the aisle, the case of the defendants to the counter claim is essentially that they did not breach any agreement and also that they fully complied with the terms of settlement as agreed and the consent judgment.

It is therefore critical to (1) situate this agreement; (2) the terms of settlement and Consent judgment and (3) the parties involved and finally (4) the ambit and application of the Venture Agreement, the terms of settlement and the consent judgment. It is therefore to the pleadings which has streamlined the issues in dispute and the evidence that we must now beam a critical search light in resolving these contested assertions.

In this case, the Counter claimants filed a voluminous 51 paragraphs Amended statement of defence and counter claim which forms part of the Records of court. I shall refer to specific paragraphs, where necessary to underscore any relevant point. The evidence of the two (2) witnesses for the counter claimants is largely within the structure of the pleadings.

The defendants on their part equally filed a lengthy 33 paragraphs defence to the counter claim joining issues with the counter claimants. I shall equally refer to the relevant paragraphs where necessary. The evidence of their sole witness is equally within the structure of the pleadings.

As stated earlier, the Counter Claimants filed a reply to this defence which sought to accentuate the positions earlier made. I will in this judgment deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that

whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the

other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Now a convenient starting point is to understand the precise **situational basis** of the relationship of parties. The pleadings of parties including the original statement of claim filed by the present defendants to the counter-claim presents a fair take off point. This for me is critical to underpin and understand the basis of any relationship and its mandate. It also provides clear parameters to resolve the issues in this case and then determine whether the reliefs sought are availing in the context of the threshold required by law.

In the discontinued substantive action filed by the extant defendants to the counter claim, they averred in their statement of claim as follows:

1. **The 1st plaintiff is the Honourable Minster of the Federal Capital Territory, with his office at the Federal Capital Territory Administration Secretariat, no. 1, Kapital Street Area 11, Garki Abuja within the jurisdiction of this Honourable Court. He is statutorily the chairman of the board of the 2nd Plaintiff.**

2. **The 2nd Plaintiff is the statutory body responsible for the development of the Federal Capital Territory and having its head office at Federal Capital Development Authority (FCDA) Secretariat at no. 1 Kapital Street, Garki Abuja, also within the jurisdiction of this court.**

3. **The 3rd Plaintiff is the administration organ by which the 1st and 2nd plaintiffs administer and develop the Federal Capital Territory, with its office at the same location with the 1st and 2nd Plaintiffs within the jurisdiction of this court.**

4. **The 4th plaintiff is a limited liability company with its head office within the jurisdiction of this Honourable Court.**

5. **The 5th Plaintiff is also a limited liability Company duly incorporated in Nigeria with its Head Office situate in Garki District, Abuja.**

6. **The plaintiffs avers that the 1st plaintiff is statutorily empowered to administer the entire land space comprising the Federal Capital Territory.**

7. **In exercise of the 1st Plaintiff's statutory power as aforesaid, the 1st plaintiff allocated Plots known and described as Plot No. 1 Cadastral Zone L20 Kusaki District Abuja measuring about 3, 293.87 hectares and Plot No. 1 Cadastral Zone E13 Gude (otherwise known as Yanga) District Abuja measuring about 1, 767.55 hectares respectively, to the 4th Plaintiff for the development of a Multi Purpose World Class Comprehensive Entertainment City for the Federal Capital Territory. The said allocation was evidenced by Certificates of Occupancy dated 13th October, 2018. The Certificates of Occupancy are hereby pleaded. The defendants are hereby put on Notice to produce the originals in Court having taken possession and custody of same as a result of a Power of Attorney executed between the 4th Plaintiff and the 1st Defendant.**

The **Counter Claimants** in **paragraph 1** of their **Amended defence and counter claim** and indeed in **paragraph 12 of the Counter-Claim categorically admitted** the above averments relating to the status and situational position or relationship of defendants to the Counter-claim of parties. In the circumstances, those averments are deemed admitted. In law, where a fact is pleaded and is admitted by defendant, evidence on the admitted fact is irrelevant and unnecessary. There is no dispute on a fact, which is admitted. Put another way, what is admitted does not need further proof. See **Bunge V Gov. of Rivers State (2006) 12 NWLR (pt.995) 573 at 599 – 600 H-A.**

The Counter claimants in their **paragraph 1 (a-e)** of the pleadings also advanced the position clearly that they are private companies. They equally alluded to the fact that the 1st plaintiff, now 1st defendant (Minister FCT) has the power to consent to the alienation of propriety rights in landed property situated within the FCT, Abuja.

It is therefore clear from the pleadings of counter claimants vide paragraph 3 of the Amended defence that the background of the transaction clearly involved these private entities particularly **4th and 5th defendants to the counter claim** (Abuja Film Village International Limited and Abuja Investment Property Development Co. Ltd) and the 1st counter claimant (Kohath Property Development Limited).

PW1 made it clear in evidence that these negotiations involving these private entities led to the execution of the **Joint Venture Agreement Exhibit D4** between the 1st counter claimant (Kohath Property Development Ltd) and the 4th defendant (Abuja Investment Property Development Co. Ltd) to the counter claim. In the definition and interpretation section of the Agreement, the two companies were described as private companies duly registered in Nigeria and their Registration RC numbers clearly stated.

Indeed in Clause (1) of the Joint Venture Agreement, it was made clear that the 3rd defendant to the counter claim (Federal Capital Territory Administration) had already transferred the said project land and granted a concession of the licence to the 4th defendant. It is equally a term of the Agreement that upon execution, a joint venture company shall be incorporated under the name **Land of Honey Abuja City Development Company** (2nd counter claimant) and the shareholding structure of this company shall be 85% to the 1st counter claimant and 15% to the 4th defendant. The implication here is that the 2nd counter claimant is jointly owned by the 1st counter claimant and 4th defendant even if the 1st counter claimant has the majority shares. Even at this early stage there is nothing precisely denoting the involvement of 1st – 3rd defendants in the Fundamental elements of the transaction between these private companies beyond the allocation of project Land by the Minister FCT which he had already done.

In marked contrast to the above positions, in **paragraph 17 of the Counter claim**, the Counter Claimants then averred that the **1st – 5th defendants to the counter claim** comprise of **"government agencies, servants of government and wholly government entities."** It may be taken as given that the legal status of 1st – 3rd defendants is self evident but there is absolutely no evidence or clarity demonstrating how or indeed whether the 4th and 5th defendants to the Counter Claim are **"government agencies, servants of government and wholly government entities."**

As stated earlier, in the substantive statement of claim, the 4th and 5th defendants were described as limited liability companies. The counter claimants also as stated earlier unequivocally admitted these averments. Having made these clear concessions, I am not sure that the Counter claimants can now turn run and project in their counter claim a diametrically opposed position to that they already made on the pleadings.

The present position of the Counter claimants that the defendants are **"government agencies, servants of government and wholly government entities"** is bereft of any scintilla of evidence and the court cannot speculate. It is obvious on the pleadings that the 1st defendant (Minister FCT) may have some relationship with the 4th and 5th defendants. It is also possible that the 2nd and 3rd Defendants may also have some relationship with 4th and 5th Defendants but this does not detract from the fact that they are independent limited liability companies incorporated in Nigeria with distinct legal personality.

Furthermore, the nature of the relationship between the defendants was neither streamlined or demonstrated by **clear** and **credible evidence**. The point to perhaps underscore is that in law, once a company is incorporated under relevant laws, as conceded by parties in this case, such company becomes a separate person from the individuals who are its members. The company has capacity to enjoy legal rights and is subjected to legal duties which do not necessarily coincide with that of its members. Such a company is said to have legal personality and is usually referred to as an artificial person. Consequently, it can sue and be sued in its own name, it may own property in its own right and its assets, liabilities, rights and obligations are distinct from that of its members. See **New Res. Int'l Ltd V Oranusi (2011) 2 NWLR (pt.1230) 102.**

Here there is unfortunately no evidence of the constituent members of 4th and 5th defendants; the share holding structure of the companies or even their directors. There is here absolutely no **evidence** to determine who "owns" as it were, these companies. The logical implication is that the 4th and 5th defendants are **private companies**, on the pleadings as admitted and the relationship of parties can therefore only be determined in the light of these admitted facts.

The assertion of Agency or that they are agencies of Government cannot be a product of bare assertions. The court cannot simply speculate and cannot reach a conclusion on the issue in a vacuum. The question of Agency is a function of facts and or evidence elicited and demonstrated at trial. The streamlined forensic evidence properly identified and proved provides the fundamental foundational premise to construe whether Agency was made out.

Perhaps let me just add that a relation of Agency is generally said to exist whenever one person called the **"agent"** has authority to act on behalf of another called **"the principal"** and consents to act. Whether that relationship exists in any situation depends not on the precise terminology employed by parties to describe their relationship but on the true nature of the agreement, or the exact circumstances of the relationship between the alleged principal and agent. See **Niger Progress Ltd V. North East Line Corp (1989) N.W.L.R (pt.107)68; Okwejiminor V. Gbakeji (2008)5 N.W.L.R (pt.1079)172 at 223-224 G-A.**

In this case, no such Agency relationship was creditably established beyond at best speculative posturing and the courts do not engage in the exercise of speculating. The bottom line is that the parties subject of the **Joint Venture Agreement** Exhibit D4 are two **private companies**. This Joint Venture Agreement in a nutshell involves the financing, development and management of a fully integrated community for the Abuja film village by the 1st counter claimant. The entire agreement between parties was predicated on the allocation by the 1st defendant of the project site to the 4th defendant to the counter claim for the purpose of developing a multipurpose world class entertainment city for the FCT. As already alluded to, the Joint Venture Agreement stated clearly that the FCTA has indeed transferred the land to 4th defendant to the counter claim. It is this allocation by the Minister that provided the fundamental premise for the Joint Venture Agreement vide Exhibit D4.

Now it is stating the obvious that this Joint Venture Agreement is between the parties subject of the agreement and is the basis for the mutual reciprocity of legal obligations and parties are bound by the terms of the agreement. The point to underscore at the risk of sounding prolix is that the parties to this Joint Venture Agreement are:

1. **ABUJA FILM VILLAGE INTERNATIONAL LTD with Registration No: RC 767552 and;**

2. **KOHATH PROPERTY DEVELOPMENT COMPANY with Registration No: RC 511904.**

In construction of contract, certain dynamics are now fairly constant and universal. Contracts of this nature voluntarily entered into by parties are binding on them. In law where there is a valid contract agreement, parties must be held bound by the agreement and by all its terms and conditions. There should be no room for departure from what is stated thereon or any interpolations. See **Jeric (Nig.) Ltd V UBN Plc (2000) 15 NWLR (pt.691) 447 at 462 – 463 G-A; 466.** Agreement equally binds parties and not third parties. Prima facie, oral evidence is not allowed or permitted to add or vary the contents of what is encapsulated in the contract document. See A**grareh V Mimra (2008) 2 NWLR (pt.1011) 378 at 412 G**; see also **Section 128 (1) of the Evidence Act 2011**.

As a logical corollary, the Joint Venture Agreement, **Exhibit D4** can therefore affect only the parties thereto and cannot be enforced by or against a person who is not a party to it. Only a party to a contract can sue or be sued on it. See **Makwe V Nwakor (2001) 14 NWLR (pt.733) 356 at 372 B-F; Kano State Oil & Allied Products Ltd V Kofa Trading Co. Ltd (1996) 3 NWLR (pt.436) 244 at 522.** The bottom line here is that the **Joint Venture Agreement Exhibit D4** involved only two (2) parties as streamlined above and it is therefore not tenable to at this point seek to expand the remit of the agreement to involve third parties. I shall return to this point later.

Now the counter claimant on the evidence stated that they complied with the terms of the Joint Agreement but that the defendants sought to undermine the agreement when they attempted to strip the counter claimant of the project land.

Now it is not clear on the evidence how the **4th defendant**, the only party to the Joint Venture Agreement undermined the agreement. On the pleadings and evidence, it is conceded by all and I had earlier referred to the relevant pleadings that it is the Minister of FCT (1st defendant to the counter claim) who has the power to consent to the alienation of propriety rights within the FCT but the

Minister of FCT is not party to the Joint Venture Agreement, the subtle attempt by the counter claimants to expand its horizon notwithstanding.

The counter claimants then filed an action vide **Exhibit D16** in suit No. FCT/HC/4527/13 vide **Exhibit D16** to protect their interest in the joint venture investment agreement, particularly the project site. After faltering steps, parties however agreed to amicably settle the matter out of court which formed or culminated in the terms of settlement parties filed in court and applied for same to be entered as consent judgment before my respected learned brother **Honourable Justice A.A.I. Banjoko.**

The **Consent judgment** entered on 19th March, 2015 in the said action vide **Exhibit D26** reads as follows:

"JUDGMENT

Upon the Terms of Settlement dated and filed on the 18th day of March, 2015, the parties mutually agreed on the Terms of settlement and the Terms of Settlement shall be entered as the Judgment of this Honourable Court as follows:

1. **The Parties to this suit hereby agree that Plots 2, 24 and 25 Yanga District Federal Capital Territory Abuja totaling 900.205 Hectares shall be allocated by the 1st defendant to the plaintiffs for Land of Honey Development Project.**

2. **The Parties to this suit agree that the 1st plaintiff Kohath Property Development Company Limited shall release the Certificate of Occupancy Registered as Number 40425 at page 1 volume 203 in the Lands Registry Federal Capital Territory Abuja covering approximately 1, 767.55 hectares and particularly described in Plan with beacon No. (FCT L20 PB 59) with coordinates N975, 420.28, E: 321, 279.22 with Certificate of Occupancy No. 3ef6w-1b6bz-9c43r-14c12-16ur4 dated the 13th day of October, 2008 and deliver same to the 4th Defendant, Abuja Film Village International Limited, simultaneously in exchange for a new Certificate of Occupancy to be issued within a reasonable time under the hand of the Honourable Minister of the Federal Capital Territory for mixed use in respect of land**

measuring 900.205 Hectares, identified in the Schedule to this terms of settlement as plots 2, 24 and 25 Yanga District, Federal Capital Territory Abuja to Land of Honey Abuja Development Company Limited.

3. **The parties to the suit agree that the 1st to 3rd Defendants shall grant to the 2nd Plaintiff a full waiver of all sums of money associated with the issuance of a new Certificate of Occupancy which is to be issued under the hand of the 1st Defendant in respect of the 900.205 hectares of land referred to herein, which waiver shall relate to Land Premium, ground rent, Registration and Stamp Duties which are otherwise payable upon the issuance of a Certificate of Occupancy in respect of land situate within the Federal Capital Territory Abuja.**

4. **The Parties to this suit agree that except where specifically altered; all the terms of the Joint Venture Investment Agreement of the 8th September 2010 between the 1st Plaintiff and the 4th Defendant shall remain valid.**

5. **All Parties shall cooperate with one another and execute such instruments or documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations or as may be reasonably necessary or helpful for the realization of the Land of Honey City Project.**

6. **The Terms set out herein shall be made the judgment of this Honourable Court in this suit and are binding on the parties.**

The Terms of Settlement dated and filed on the 18th day of March, 2015 is formally adopted as consent Judgment of this Honourable Court.

This is the Judgment of the Court.

Signed

Hon. Justice A.A.I. Banjoko"

The above judgment is clear and binding on all parties. It cannot also be construed or altered to suit a particular purpose. There is therefore no basis to sustain the

contention of the counter claimants in paragraph 16 of the counter claim as follows:

"The Defendants/Counterclaimants' are counter-claiming pursuant to the judgment of this Honourable Court dated 19th of March, 2015, which expressly necessitates that all full damages be paid by the Plaintiffs/Defendants to Counterclaim to the Defendants/Counterclaimants to the full extent of any loss or damage occasioned by the acts."

I shall shortly deal with the import of the Consent judgment and the alleged breach of its terms but this conclusion in **paragraph 16** above is rather farfetched and must be discountenanced as not falling within the purview of the terms of the Consent Judgment.

Because of the prominence given to the Consent Judgment by the Counter-claimants as one of the pillars of their case, let me here quickly say some words on the import of a Consent judgment. It is not unusual that parties to a case may elect to settle their dispute, the subject matter of litigation without any adjudication by the court, this settlement then is by way of a compromise between the parties and takes effect as a contract. The dispute is thereby disposed of and may not be re-opened in another subsequent action. In this case, the parties obviously executed a terms of settlement vide **Exhibit D24**. If the parties however want the compromise or contract of settlement of their dispute to have the force of a formal judgment, they may request the court to enter judgment in the action embodying the terms of the contract that is, a consent judgment. This is what occurred vide **Exhibit D26** before Honourable Justice A.A.I. Banjoko.

A consent judgment therefore arises if either party is willing to consent to a judgment or order or where both parties agree as to what the judgment or order ought to be, in which case, due effect may be given by the court to such consent. See **Joseph Afolabi & ors John Adekunle & Anor (1983) 8 SC 98 at 100.** The court by formally entering the judgment gives it a binding effect on the parties. The blessing of court, as it were, is critical and or imperative for such effect. In **Woluchem V Wokoma (1974) 3 SC 153** or **(1974) 1 SC at 115 at 128** (REPRINT), the Apex Court, per Ibekwe J.S.C. (of blessed memory) stated:

"The rule is that an action may be settled by consent during trial, usually such a settlement is a compromise and in order to have binding effect on the parties, it is imperative that it should have the blessing of the court. Settlement between parties may be described as a contract whereby new rights are created between them in substitution for, and in consideration of, the abandonment of the claim or claims pending before the court. When the court moves and takes action as agreed upon by the parties, it becomes a Consent Judgment."

In **Oats Educational Services Ltd v Padson Industries Ltd & Anor (2012) LPELR-CA**, the Court of Appeal per Ogbuiya J.C.A stated thus:

"**It follows that a Consent Judgment, which is also agreed judgment, is judgment based on the agreement of parties to an action and given a stamp of legality and efficacy by the court. In practice, the parties negotiate settlement out of the bowel of the court, reduce their terms of agreement into writing, sign and file same in the court and request the court to make it judgment for the parties. Hence, consent or agreed judgment is predicated on the consensus adidem of parties, it is binding on the parties much the same way as judgment obtained after full trial. It is only appealable with the leave of the court that handed it down to the parties."**

The Consent judgment is binding as a judgment given after a normal trial and acts as estoppel as to the matters decided by it and can be **enforced by means of all the execution processes provided for under relevant legislations** to do with enforcement of judgments. See **Talabi V Adeseye (1977) 8-9 SC 20; Ibezin V Ndulue (1992) 1 NWLR 153 at 169-170** and **Oseni V Dawodu (1994) 4 SCNJ (pt.2) 197 at 221.**

Now the above **Consent judgment** as streamlined above is binding on all parties. This court is equally *functus officio* with respect or regards to the matters and issues dealt and or covered by the said consent judgment except of course to the limited post judgment applications which is not in issue now. There is nothing before this court showing that the judgment was set aside on appeal; indeed there was no appeal as what was filed at the Appeal Court was withdrawn, so the Consent judgment therefore remains binding and in force. See **Nwokedi V Okugo**

(2002) 16 NWLR (pt.794) 441 at 449 A-D; Alims Nig. Ltd V UBA plc (2008) ALL FWLR (pt.34) 971 at 981.

The case of the Counter claimants on the evidence is that the defendants did not comply with both the terms of settlement **Exhibit D24** and the consent judgment **Exhibit D26**. I am not sure even at this stage that the Counter claimants can aggregate their complaint to breach of both the terms of settlement and consent judgment and claim damages. The terms and or contents of both documents are essentially the same. The only difference is the *imprimatur* or official approval by the learned trial judge which metamorphosed the terms **(Exhibit D24)** to a Judgment of Court **(Exhibit D26).**

Strictly speaking, if there is any complaint of alleged violations, it can logically be in respect of the **Consent judgment** which has overtaken as it were, the terms of settlement. Now if the defendants did not comply with the Judgment of court, the counter claimants have a plenitude of legal steps or options to take to enforce the said judgment. For reasons that are not clear on the evidence, they elected not to vigorously pursue any of these legal option(s). On the evidence, the counter claimants contend that they wanted to initiate contempt proceedings but that the defendants then filed an application for leave to appeal and stay of execution of the consent judgment at the Court of Appeal. The defendants withdrew these processes at the Court of Appeal so there was really nothing stopping the counter claimants from proceeding with the contempt proceedings or to enforce the Consent judgment. If the case is that they filed the present action, same was equally withdrawn.

I have above sought to explain and delineate the fundamental elements of the claims of the Counter-claimants. At the risk of cluttering this judgment, let me repeat the elements:

1. **Existence of a Joint Venture Agreement which was said to have been breached. The agreement had clearly defined parties as explained above.**

2. **The breach of the agreement led to the filing of an action against five (5) parties.**

3. Parties agreed to settle; terms of settlement was prepared and an application was made to enter it as Consent Judgment in the case.

The Counter claimants have advanced the point that the failure to abide by the **terms of settlement** and the **consent judgment** amounts to a breach of contract and that it is a continuing breach at that. Now it is true and I alluded to it already that in its true sense, the consent judgment was predicated on the terms of settlement agreed to by parties which is contractual in nature but the solemn judgment of court confers on the terms as agreed a special status by virtue of **Section 287 (3) of the 1999 Constitution**. The consent judgment in question by this provision shall be enforced in any part of the federation by all authorities and persons and by courts with subordinate jurisdiction.

Any **terms of settlement** on its own does not enjoy such constitutional privilege. If no application is made to court for the term(s) of settlement to be entered as consent judgment, the remedy that may lie in the event of breach is for an action in damages for breach of contract. A consent judgment of court cannot therefore be equated with an agreement simpliciter. This must be so, because the classical elements to constitute an agreement or a contract has no place in a judgment of court even if a consent judgment.

In law, it is trite principle of general application that a contract 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. 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 VsA.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.

These elements are not present with respect to a Consent judgment so while the terms of settlement is critical and forms part of the process leading to a consent judgment, the terms itself is of no judgmental significance until the court or judge makes it a judgment of the court or enters it as consent judgment.

The point to reiterate is that the court strictly speaking is not a party to the terms of settlement. If parties decide to settle a matter out of court, that settlement between them takes effect as a contract. The dispute is thereby disposed off and may not be re-opened in another subsequent action. At that point, there is no consent judgment. Such an agreement or out of court settlement supersedes the original cause of action altogether and the court has no further jurisdiction in respect of the original cause of action which has been superseded. If the terms of such new agreement or out of court settlement are breached or not complied with, the injured or aggrieved party has remedy based on the agreement. See **Abey V Alex (1999) 12 SCNJ 234 at 246 – 247.** If however parties want the dispute to have the force of a formal judgment then they must take the next logical step and make the request to court to enter it as a Consent judgment embodying the terms of the compromise.

The contention therefore that the failure to comply with the **Consent judgment** amounts to a breach of contract does not really fly. The counter-claimants have made allusions at the same time to breach of the **terms of settlement** but as already stated, the Consent judgment is predicated on the terms of settlement, so they cannot be construed as separate transactions or in isolation.

As a logical corollary, the fundamental point is that the Consent judgment at the risk of prolixity remains valid and binding. The contention that the defendants have attempted to intimidate, force and coerce the counter claimants into abandoning their claims suffers from a complete lack of credible evidence. There is here again no clarity as to which of the defendants is even intimidating Counter-claimants and how. It is really difficult to sustain this complaint in the light of the **Consent judgment** which has clearly streamlined the legal obligations of parties.

It is difficult to also situate how the counter claimants who appear very enlightened particularly the M.D. (PW1) can be intimidated despite the judgment predicated on a consensual agreement.

Again, if there was any perceived or actual attempt at not complying with the consent judgment, the remedy is to take the appropriate legal steps to ensure compliance. Let me restate the point that every judgment of the court must be obeyed and is effective from the date of delivery or from such date as the judgment itself appoints. The judgment is meant to be obeyed without demand and if there is default in obedience, after a period of grace as the rules may prescribe, the judgment creditor is entitled to commence enforcement proceedings.

Some of the defendants to the counter claim may be Government Institutions but they are not above the law. Indeed as Government Institutions guided by the Rule of law, they owe strict fidelity to the cause of justice and rule of law and one of the key components is respect for the integrity of the judicial process including judgment of court. I leave it at that.

The above pronouncements and findings on the very critical elements of the complaint or grievance of counter claimants provides broad factual and legal template to address the important question of whether the reliefs sought by the counter claimants are availing.

In addressing this point, it is important to state that the Reliefs sought can be categorized into two (2) compartments. The reliefs were not properly numbered in the processes so I had to do some renumbering. There is equally a disconnect in relief (viii) between the figures of $594, 306, 000 and what is contained in the bracket following the sum which reads as "(Four Hundred and Sixty One Million, Eight Hundred Thousand U.S. Dollars)." Now the first relief (a) seeks a declaratory Relief. All the other reliefs are monetary damages, general, special and exemplary. Both sets of reliefs must be creditably established by evidence of quality and cogency. I start with Relief (a), the declaratory relief. In law declaratory reliefs are essentially equitable in nature. The success or otherwise of a declaratory relief is dependent on a judicial and judicious exercise of discretion by a court of law qua justice taking into consideration all the facts and then deciding based on what a fair and equitable under the peculiar circumstances of a

case guided by the principles of law. See **Anfra Ind. Nig. Ltd V. N.B.C.I (1998) 4 NWLR (pt.546) 357; Sunday Eguanwense V Amaghizenwen (1993) 9 NWLR (pt.315) 1 at 30.**

Now **Relief (a)** seeks for a Declaration that the **Terms of Settlement dated and filed on the 18th of March, 2015** and the **Consent judgment entered on the 19th of March, 2015** in **SUIT NO.FCT/HC/4527/2013 between Kohath Property Development Company Ltd & Anor and Hon. Minister, FCT & 4 Ors** are valid, subsisting and was not obtained by fraud, misrepresentation or any other illegal manner whatsoever.

As stated already in this judgment, the **Consent judgment** entered by court was predicated on the terms of settlement filed. They cannot now be treated as separate for purpose of seeking a declaration. The Consent judgment pronounced in a solemn form for the validity of the terms of settlement. That settles the issue.

Since the defendants have abandoned their challenge to the validity of the Consent judgment and did not join issues with respect to its validity, it follows that **Relief (a) has merit** but the declaration shall hereunder be limited, only to the validity of the Consent judgment. As stated earlier, there is nothing to show that this consent judgment was challenged on appeal or that it was set aside on appeal. It therefore remains binding. This is trite principle.

With respect to the remaining reliefs all in damages, let me here situate briefly the legal premises and or basis for the grant of the reliefs before dealing with whether they are availing in the context of the findings already made. In dealing with these specific reliefs, I may be compelled to again refer to the legal basis for grant of each specific claim.

Now in law, general damages flow from the wrong complained of and is usually awarded to assuage loss suffered by the plaintiff from the alleged act(s) of the defendant complained of. Put another way, general damages are the kinds implied by law in every breach of **legal rights**, its quantification however being a matter for the court. See **Corporative Development Bank Plc V. Joe Golday Co. Ltd (2000)14 N.W.L.R (pt.688)506; UBA V. BTL Ind. Ltd (2001)AII F.W.L.R (pt.352)1615.** The emphasis here is on breach of legal rights and not fanciful or imagined rights.

The Supreme Court in **Lar V. Strling Astaldi (Nig) Ltd (1977)11-12 SC 53 at 63** defined general damages as such damages as may be given when the judge cannot point out to any measure by which they may be assessed, except the opinion and judgment of a reasonable man. **Elf Petroleum Nig. V. Umah (2006)AII F.W.L.R (pt.343)1761.**

In awarding damages in an action founded on breach of contract, the rule to be applied is *restitution in integrum,* that is in so far as damages are not too remote, the plaintiff shall be restored, as far as money can do it to the position in which he would have been if the breach had not occurred. See **Okongwu Vs N.N.P.C (1989)4 N.W.L.R (pt. 115) 296 SC; Oshin & Oshin Ltd Vs Livestock Feed Ltd (1997)2 N.W.L.R (pt. 486) 162 at 165 CA.**

On the other hand, special damages have been defined as damages of the type as the law will not infer from the nature of the act; they do not flow in the ordinary course; they are exceptional in their character and therefore, they must be claimed specially and strictly proved. See **A.T.E. Co. Ltd V M.L. Gov. Ogun State (2009) 15 N.W.L.R (pt.1163) 26 at 71; Ekennia V Nkpakara & 2 ors (1997) 5 SCNJ 70 at 90.**

The Apex Court in **X.S (Nig.) Ltd. Vs. Tasei (W.A) Ltd**. **(2006)15 N.W.L.R. (pt.1003) 533 at 552 B-E; 552 E-G** Mohammed J.S.C. stated as follows:

"With regard to how to plead and prove special damages, the law is quite clear that special damages must be specifically pleaded and proved strictly…In this respect, a plaintiff claiming special damages has an obligation to plead and particularise any item of damage. The obligation to particularise arises not because the nature of the loss is necessarily unusual, but because the plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible"

Also in **Neka BBB Manufacturing Co. Ltd V A.C.B. LTD (2004) 2 NWLR (pt.858) 521** the Apex Court stated thus:

"A damage is special in the sence that it is easily discernable. It should not rest on a puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions."

Now with respect to exemplary damages, the Supreme Court in **Allied Bank of Nigeria V Akubueze (1997) 6 NWLR (pt.509) 1**, stated that "Exemplary damages properly so called may only be awarded in actions in tort but only in three categories;

i. **In the case of oppressive, arbitrary or unconstitutional action by the servants of the government.**

ii. **Where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff.**

iii. **Where there is an express authorization by statute."**

See also **Guardian Newspaper V Ajeh (2005) 12 NWLR (Pt.938) Pg 205 at 215**. where it was held that:

"**Punitive or exemplary damages are damages on an increased scale, awarded to the Plaintiff over and above what will barely compensate him for his loss where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud or wanton and wicked conduct on the part of the defendant and are intended to solace the plaintiff for mental anguish and punish the defendant."**

In order to succeed, a plaintiff must be able to prove any of the three conditions stated above. He needs not prove all the three conditions to succeed. Once any of the three conditions is proved, a court of law will award exemplary damages. Exemplary damages convey a positive element because its object is to punish the defendant. See also **Union Bank of Nigeria Ltd V Oredin (1992) 6 NWLR (pt.247) 355.**

As stated earlier, I had to renumber **Reliefs (ii) – (xii)** on the Counter claim to now read **(b) (i) – (x)** for ease of understanding. **Relief (b)** is not really a defined relief

on its own but it seeks for an Order directing the 1st to 5th Plaintiffs/Defendants to counter claim (jointly and severally) including all affiliated principals and agents to pay the Defendants/Counter-claimants the amounts covered under (i) – (x) as follows:

b(i) seeks for the sum of **N10, 000, 000, 000 (Ten Billion Naira)** as general damages for loss of business goodwill, irreparable damages to business reputation and injury to shareholders' and investors confidence arising from the 1st – 5th Plaintiffs/Defendants to counter claimants breach of the **Joint Venture Investment Agreement** and the **terms of settlement.**

This relief is rooted or predicated on two grounds:

1. **The Joint Venture Agreement and**
2. **The Terms of Settlement.**

I start with the latter ground. As stated severally in this judgment, the terms of settlement, **Exhibit D24,** has been overtaken by a judgment of a Court of competent jurisdiction which adopted the terms of settlement and entered same as a Consent Judgment. There is therefore now a binding judgment of court which incorporated these terms. Any logical complaint can now really inure only with respect to the **Consent Judgment**, **Exhibit D26** and not the terms. If the complaint as stated earlier relates to the consent judgment, the counter claimants had options to seek for enforcement. They did not and therefore General damages cannot enure to them in such unclear circumstances. With respect to the alleged continuing breach of the Joint Venture Investment Agreement by the 1st – 5th Defendants to the counter claim, again at the risk of sounding prolix, the Joint Venture Agreement has only two parties: The **1st counter claimant** and **4th defendant.** No more. The trajectory of the evidence of PW1 for the Counter-claimants confirms this in all material particulars.

The 1st, 2nd, 3rd and 5th Defendants to the Counter claim are clearly not parties to the joint venture investment agreement **vide Exhibit D4.** The consent judgment, **Exhibit D26** vide paragraph 4 of the judgment accentuated this position particularly the parties to the Joint Venture Agreement in the following terms as follows:

"**4. The parties to this suit agree that except where specifically altered; all the terms of the Joint Venture Investment Agreement of the 8th September, 2010 between 1st plaintiff and the 4th defendant shall remain valid."**

The above is clear. There should therefore be no confusion as to the **parties** subject of the Joint Venture Agreement and who should be liable in the event of any breach or losses suffered occasioned by the breach of the agreement.

In **paragraph 3 (iv) of the Amended defence and counter claim**, it was averred that the then Minister of FCT Senator Bala Abdulkadir Mohammed signed the **Joint Venture Agreement in his capacity as Minister FCT**. I have carefully gone through **Exhibit D4**, the Joint Venture Agreement and there is no where his name even appears on it. It is true that the phrase "Honourable Minister" appears in the document but it is clearly written in long hand with a pen or biro and someone then signed. This appears to me an afterthought as there is no synergy at all with the other parts of the agreement which were all properly typed and delineated. The names of the witnesses were also all clearly typed written. The common seal Abuja Film Village International Ltd was affixed in the presence of its Chairman and Managing Director together with the Executive Secretary of FCDA and Permanent Secretary of FCTA.

It is difficult to accept as contended by the Counter-claimants that the then Minister FCT Senator Bala Abdulkadir Mohammed **"signed this document in his capacity as Minster FCT"** in such cavalier and unbelievable manner. Indeed even if he had signed, in the absence of a proper demonstration of the nexus between the 1st to 3rd Defendants with 4th defendant, it will be difficult to simply accept that on the basis of the signature by some unknown person, that the Minister FCT, FCDA or indeed FCTA is a party to Exhibit D6. Again the Minister FCT, is not party to Exhibit D4, the Venture Agreement so it is difficult to understand how he could have signed a document he is not a party too. The 2nd, 3rd and 5th Defendants are equally not parties to the agreement, so the question of breach of contract by them has no traction.

As stated earlier, the agreement **Exhibit D4** speaks for itself. It is rather too late now to seek to expand the number of parties to the agreement. The bottom line is that parties not subject to Exhibit D4 cannot be made to bear a burden by a contract

to which they are not parties. There cannot in law be a breach or indeed continuing breach of a non-existent agreement or contract in the circumstances. See **Best (Nig.) Ltd V Blackword Hodge (Nig.) Ltd (2011) 5 NWLR (pt.1239) 95 at 112 G-H.**

Now with respect to the **4th defendant** which is the party to the Joint Venture Agreement, there is no clarity with respect to how it breached the terms of the agreement. General averments were made with respect to difficulties in actualizing the venture agreement but nothing specific was tied to 4th defendant. As state earlier, parties are bound by the contents of Exhibit D4. There is no room for departure from what is stated thereon.

Clause 5 (a-h) of the **Venture Agreement** prescribes the duties and responsibilities of parties; **clause 31** then provides for duties of good faith and for parties to devote time to ensure to the success of the venture agreement.

Neither the pleadings or evidence of counter claimants precisely demonstrated clearly breach of the duties and or responsibilities as contained in the agreement on the part of 4th defendant. There is equally nothing credible in evidence showing specific actions of 4th defendant leading to loss of goodwill, irreparable damage to business reputation e.t.c as contended under **Relief b (i).**

By the Joint Venture Agreement, in addition to these streamlined duties and responsibilities, one of the critical elements is that the 4th defendant was to produce and assign **1767.55 hectares** of land to the counter claimants to allow for the take-off of the project**. Exhibits D9** (the irrevocable power of attorney, dated 14th December, 2010), **D10** (the sale agreement dated 24th February, 2011 and **D11** (Deed of Assignment dated 24th February, 2011) show compliance with this aspect of the venture agreement. Indeed paragraphs 1 (e) and (3) (xii) of the pleadings of the counter claimants show conclusively that there was an assignment of this plot by 4th defendant and also a certificate of occupancy was issued assigning the project plot to the 2nd counter claimant. It would appear from the pleadings of the counter claimants (paragraphs 3 xii-xv) and the trajectory of the evidence of PW1 that the sting of their grievance with respect to the difficulties in actualizing the agreement is substantially with the 1st defendant (Minister FCT) and the sister

Government Agencies FCDA and FCTA more than the **party to the Joint Venture Agreement**.

The actions of these bodies cannot, at least in the FCT, be divorced from the reality that the Minister FCT has overall powers with respect to allocation of land in the entirety of the FCT. Indeed the Counter claimants recognised this fact in paragraph 1 (d) of their Amended defence as follows:

"The 1st plaintiff (Minister FCT) has the power to consent to the alienation of propriety rights in landed property situated within the Federal Capital Territory, Abuja."

Now on the evidence, these difficulties led to the filing of a court action which culminated in the consent judgment, which at that point effectively determined any complaints relating to the execution of the venture agreement particularly the allocation of the project plot. The logical question then is at what point after the consent judgment did 4th defendant "continue" with the breach of the joint venture investment agreement. Again what portion of the Joint Venture Agreement did it continue to breach? The counter-claimants were silent on these issues and the court cannot speculate.

Finally even if any breach or breaches can be placed on the shoulders of 4th defendant and this was not creditably done, it is clear that this essentially arose on the pleadings and evidence and as earlier stated from the actions of the Minister FCT representing the Government and other Agencies of Government (FCDA and FCTA) and under **clause 12** of the Joint Venture Agreement, the 4th defendant cannot in such circumstances be liable. **Relief b (i)** is in the circumstances not availing.

Relief b (ii) is for the sum of **N10, 000,000,000.00 (Ten Billion Naira)** as exemplary damages for tortuous injury on the counterclaimants in an oppressive, arbitrary and unconstitutional manner.

I had earlier explained the import of exemplary damages. Here again it is difficult to situate the basis of the claim for exemplary damages for tortuous injury allegedly inflicted on counter claimants.

On the evidence, there is no real clarity on who inflicted these tortuous injury on the counter-claimants. On the authorities, it does not appear right that exemplary damages as postulated by learned counsel are recoverable as a matter of law in an action in contract such as the present case where there is an alleged breach of a Venture Agreement involving 1st Counter-claimant and 4th defendant. See **Allied Bank of Nigeria V. Akubueze (Supra).** Indeed the Supreme Court in this case made it clear per Iguh J.S.C that except in anomalous case of breach of promise of marriage, exemplary damages are, as a rule, not recoverable in actions for breach of contract.

Now in this case, as stated repeatedly, the Venture Agreement Counter-claimants had is with 4th defendant only. There is no evidence clearly demonstrated by Counter-claimants that the 4th defendant breached the Venture Agreement or how their actions were tortuous, malicious and or in disregard of the law. In any event as stated earlier, exemplary damages on the state of the law cannot be availing against 4th defendant.

On the other hand, the 1st – 3rd and 5th Defendants are not parties to the Venture Agreement. They were however clearly subject of a Consent Judgment. The judgment clearly affirmed the validity of the Venture Agreement which they are not parties to. If the 1st – 3rd and 5th Defendants did not comply with the Consent judgment, the appropriate legal steps was to proceed to ensure compliance. These the Counter-claimants did not vigorously pursue as stated earlier. It is difficult to situate how exemplary damages can be availing here. Let me again underscore the point that apart from the fact that the 5th defendant a private company is not a party to Exhibit D4, there is nothing really established against it within the defined categories to allow for grant of Exemplary damages.

Similarly, it must be restated that the 1st – 3rd defendants which are government agencies have no contractual relationship with Counter Claimants whatsoever. Indeed on the evidence, it is common ground that the 1st defendant and Minister FCT is charged with the allocation of lands in the FCT. The 2nd and 3rd defendants are all statutory bodies charged with the administration and development of the FCT under the Minister FCT. These bodies all have defined statutory duties and the Minister in particular has statutory power(s) to consent to the alienation of

landed property in the FCT. The actions of the Minister FCT with respect to the allocation to the counter claimants must be viewed within that background.

I incline to the view that the Minister and relevant Agencies could have handled the situation involving the counter claimants allocation of the project site better, but their willingness to sit, discuss and settle the matter in the first place which culminated in the terms of settlement and consent judgment and ultimately the issuance of the certificate of occupancy does not depict, in my opinion actions that can be said to be oppressive and unconstitutional. This point which court can take judicial notice of is that we now even have a different Minister of the FCT distinct from the Minister who was involved from the beginning of the transaction. The case of defendants and evidence of DW1 cannot be discounted with, that in such situation where there is a change in Ministers, new policies may be effected and a re-evaluation of policies, actions and agreements entered into by the last administration. All these take time. These interplay of factors cannot be understated in the context of the peculiar facts of this case. The conduct of the defendants in the circumstances cannot be said to be oppressive or out rightly arbitrary.

In any event, as stated severally in this judgment the Minister FCT, FCDA, FCTA and 5th Defendant are all subject to and bound by the Rule of law. If there was failure to comply with a valid judgment of court as stated severally, it was for the Counter-claimants to takes steps to enforce. It is trite principle of general application that, in law, a claimant is under an obligation to minimize damages or his loss. See **Onwuka V Omogui (1992) 3 NWLR (pt.230) 393 at 433 B; 425 B.** It was therefore incumbent on Counter-claimants to actively seek to minimize their losses by enforcing the judgment as allowed by law. Exemplary damages in law follow the cause. Where there is no cause, there will be no damage. See **Obinua V C.O.P (2007) 11 NWLR (pt.1045) 411 at 426 F; Onagoruwa V I.G.P (1991) 5 NWLR (pt.193) 593.**

A claim for exemplary damages postulates that the action of the defendants is such that the damages against them are intended to punish the defendants and to vindicate the strength of the law and not merely as compensation for the injured Counter-claimants. See **Allied Bank V. Akubueze (supra).**

As stated above, exemplary damages in tort can be awarded under any of the three categories mentioned earlier. Since the root of this case is one predicated on breach of the Venture Agreement with only 4th defendant, it cannot be an appropriate case for the award exemplary damages. For all the reasons stated above, exemplary damages is not availing in this case.

Relief b (iii) is for the sum of **$14,171,103 (Fourteen Million One Hundred and Seventy One Thousand One Hundred Three US Dollars)** as special damages for breach of the Joint Venture Investment Agreement and the Terms of Settlement.

Here too, as in Relief b (i), **special damages** cannot be predicated on the **terms of settlement** that has been overtaken by events which here is the **Consent judgment**. Again it is only 4th defendant that is party to the Joint Venture Agreement. The other defendants clearly cannot bear the burden of any special damages allegedly arising from the breach of the Joint Venture Agreement. With respect to the 4th defendant, in addition to the court's decision with respect to Relief b (i); there is really no proper pleading and evidence streamlining specifically the manner or how the 4th defendant breached the terms of Joint Venture Agreement providing credible and firm basis to calculate or base the huge and extant amount claimed as special damages and the court cannot speculate. It is settled law that a claim in the nature of special damages and by their nature, they are damages of the type as the law will not infer from the nature of the act; they do not flow in the ordinary course, they are exceptional in their character and therefore, they must be claimed specially and strictly proved. See **A.T.E Co. Ltd V Mil. Gov. Ogun State (2009) 15 NWLR (pt.1163) 26.**

I have carefully gone through the pleadings and entire evidence of PW1 in particular and I am unable to find or situate the basis for the sum claimed under Relief b (iii). Is this special damages in respect of actions before the consent judgment or those post Consent judgment? Where is the clear evidence streamlining these actions? The court again, cannot speculate. If on the other hand it covers all periods as the Counter claimants contend, then the situational basis for this claim is rather fluid and tenuous and undermines the claim.

Relief b (iv) is for the sum of the **$71,355,570 (Seventy One Million, Three Hundred and Fifty Five Thousand, Five Hundred and Seventy US Dollars)** as special damages arising from the loss of the 1st Defendant/Counterclaimant from

the sale of its Twenty Five Million shares to Imaginative Real Estate Limited in order to raise capital for the Conception master Plan Design and other incidental services on behalf of the 2nd Defendant/Counterclaimant.

This too is a relief in the realm of special damages which must be proved on established legal standards. Again this relief undoubtedly relates or is predicated on the Joint Venture Agreement involving only the 4th defendant. It is difficult to situate the nexus of the other defendants with this relief and indeed the legal basis for it. As stated earlier in this judgment, the 4th defendant duly delivered with respect to provision and assignment of **1767.55 hectares** to the Counter claimants even if difficulties later arose with respect to title of the project site which is not the forte of 4th defendant which the Counter-claimants on the evidence concede.

The agreement or Joint Venture Agreement provides clearly and comprehensively vide **Clauses 5 (f) and (g)**, **Clauses 15, 16 and 17** that the 1st counter-claimants shall be responsible for the sourcing of funds for the development of the project subject of the agreement. It is clearly therefore within the purview of these provisions of the agreement that the sale of shares to Imaginative Real Estate Ltd vide Exhibit D40 must be situated. In any event, if there was a sale of shares by the Counter-claimants, to a third party, it must certainly be for consideration which must have inured in favor of the Counter-claimants. It is difficult to situate any wrongdoing on the part of 4th defendant when the counter claimants were simply living up to the specific mandate of the agreement which places sole responsibility on them to get funds for the project. With respect to the "other incidental services" said to have been rendered, these incidental services were neither pleaded or evidence led in proof. The basis of this relief is again compromised. On the whole this relief is not availing.

I shall take **Reliefs b(v) – (vii)** together.

Relief b (v) is for the sum of **N15, 000,000.00 (Fifteen Million Naira) as special damages for the payment of professional fees for the valuation report carried out by the surveyor.**

b (vi) is for the sum of N86,000,000.00 being the sum of money paid to the firm of Techstent to do ground clearing, excavation and unearthing of a portion of the entire land meant for the development of Phase one of the Land of Honey project.

b (vii) is for the sum of $6,290,790 as special damages for the payment of executive manpower services carried out for the company as evidenced with the invoices, time sheets and employment contracts.

Following from Relief b (iv), these reliefs relating to procurement of valuation report, ground clearing, execution and payment for executive man power services clearly forms part of the responsibilities or duties of the counter claimants to develop the project site as clearly streamlined in the agreement. It is difficult again to situate how damages can be availing in the circumstances. Another point to note here is that PW1 himself stated under Cross-examination that they were never at any time given a stop work order by defendants or prevented from going to the project site. Indeed PW1 said they were only "indirectly" prevented from going to site by the failure of the defendants to give them "title."

Now if "title" was not given as alleged, the question to ask is why then did the Counter-claimants engage organisations to carry out services covered by these claims. As stated earlier, a claimant is under an obligation to minimize his loss or damages. If the narrative of PW1 is to be believed that they were "indirectly" prevented from going to the project site, there is then no logical basis to engage organisations to carry out any services on the project site. However one looks at this relief, it clearly forms part of the duties of the 1st Counter-claimant under the Venture Agreement as earlier indicated.

In any event, title to this disputed project site is now said to be in possession of the counter claimant even if there is no clarity on the evidence when it was effectively handed over the title. The evidence suggest sometimes in September, 2017. It is curious that nothing was presented in evidence showing when title over the project plot was finally handed over to the Counter-claimants. The practice under the land tenure regime in the FCT is that there is acknowledgment of receipt of such title document. Now in paragraphs 5 and 6 of Reply of the counter claimants to the defence of the defendants, the counter claimants averred as follows:

"5. With reference to paragraphs 14, 15, 16, 27, 29, 30, 31 and 32 of the Defence to Counterclaim, the Defendants/Counter-claimants assert that the Claimants/Defendants to Counter-claim did not honour substantial part of the terms of settlement and the valid judgment of this Honourable Court until most recently, after the Defendants/Counter-claimants had incurred

monumental costs and losses arising from the failure of the Claimants/Defendants to Counter claim to honour the said terms of settlement and valid judgment of this Honourable Court.

6. **The Defendants/Counter-Claimants further assert that only the part of the terms of settlement and consent judgment relating to the allocation of physical land was honoured by the Claimants/Defendants to Counter-claims, while the aspect relating to breach of terms of the joint venture agreement were jettisoned."**

The counter claimants did not precisely delineate what part of the consent judgment was not complied with and the party out of the five (5) defendants responsible. They however concede that the title of the parcel of land subject of the Joint Venture Agreement has been given to them. Similarly, what aspect of the Consent judgment that was "partially" honoured by the respective defendants and how was no where indicated. The part equally that was not honoured by each of the parties has been left to conjecture. There is also nothing to show that the Joint Venture Agreement had ended and even if there was a breach of the venture agreement, it can only be by the party to the agreement and not non-parties. A party to a written contract cannot alter or change midstream the parties and contents of an agreement in his underserved advantage and to the detriment of the unsuspecting and adverse party or parties. See **Larmse V D.P.M & Services Ltd (2005) 18 NWLR (pt.958) 88 at 496 A-B.**

The point to underscore here is that as stated severally in this judgment, a contract comes into existence by agreement of parties. In this case, **Exhibit D4** was a product of the agreement between the parties. The agreement contains terms and or obligations imposed on both parties. In law if a party fails to perform his own part of the contract, he is in breach and a party can in the circumstances be discharged from his contractual obligations.

A discharge of contract indicates that the contract has been brought to an end and it takes different forms. In **Tsokwa Oil Marketing Co. V B.O.N Ltd (1999) 11 N.W.L.R (pt.777) 163**, the Supreme Court held that a valid contract between parties may be discharged by:

(a) Performance; or

(b) By express agreement; or
(c) The doctrine of frustration; or
(d) By breach

In this case, there is no indication that the contract subject of Exhibit D4 was brought to an end. Indeed the duration of the Joint Venture Agreement vide clause 10 is to run for the period stated in the Certificate of Occupancy which in this case is 99 years by virtue of Exhibit D2.

Since the Joint Venture Agreement is still extant and subsisting, meaning that the agreement is still alive, it is difficult to situate the basis of these claims for damages which in the first place forms part of their responsibilities under the agreement. The preparation of valuation report, ground clearing and excavation, payment for man power executive services are all part of the process leading to the development of the Land of Honey Project. It is possible that the alleged delay in the execution of the project has affected the economics of the execution of the project in terms of financial outlay but it is equally true that this will also have corollary effect on the price of the project when it is completed and offered to the public. The **Reliefs b (v) – (vii)** are equally not availing.

Relief b (viii) is for the sum of $594,306,000 **(Four Hundred and Sixty One Million, Eight Hundred Thousand U.S Dollars) (sic)** as loss of past and future earnings on business relating to the execution of the Joint Venture Investment Agreement and the Terms of Settlement. I had earlier noted the disconnect between the figures and the wordings on the sums claimed. I take it as a typographical error.

As stated earlier, the terms of settlement is no template to situate this type of relief. I need not repeat myself. Here again, nothing has been defined and specific to 4th defendant occasioning breach of the joint virtue agreement to provide basis for the claim of loss of past and future earnings. Again with respect to the terms of settlement, that has been overtaken by the Consent judgment. There cannot in the circumstances be special damages arising out of a breach of the Terms of Settlement.

The point to add is that even if the alleged acts of 4th defendant were streamlined and proven (I must repeat they were not) special damages as stated earlier are not

such that the law will infer from the nature of the act; they do not flow in the ordinary course; they are exceptional in their character and therefore, they must be claimed specially and strictly proved.

In **Neka B.B.B. Manufacturing C. Ltd V. ACB Ltd (supra)** the Apex Court per Pat-Acholonu JSC (of blessed memory) stated thus:

"A damage is special in the sence that it is easily discernable. It should not rest on a puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions."

I have here carefully read paragraphs 45 – 47 of the pleadings of Counter-claimants and it is difficult to situate the particularisation of items of damage to sustain this humongous claim of **$594, 306.000**. The business plan and feasibility studies referred to are clearly predicated on projections and assumptions for returns in investment.

As stated earlier and it perhaps need be reiterated, the Supreme Court in **X.S (Nig.) Ltd. Vs. Tasei (W.A) Ltd**. **(Supra)** per Mohammed J.S.C. stated as follows:

***"With regard to how to plead and prove special damages, the law is quite clear that special damages must be specifically pleaded and proved strictly…In this respect, a plaintiff claiming special damages has an obligation to plead and particularise any item of damage. The obligation to particularise arises not because the nature of the loss is necessarily unusual, but because the plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible*"**

Now even if out of caution I accept these projections and anticipated profits as having met the requirements of proper pleading, the next hurdle is that of strict proof. Now in law, strict proof does not mean an unusual proof, it however implies that sufficient facts must be furnished to allow for computation of the claim. In **Neka BBB Manufacturing Co. Ltd V ACB Ltd (supra)**, the Supreme Court stated thus:

"The term "strict proof" required in special damages means no more than the evidence must show the same particularity as it is necessary for its pleading.

It should therefore normally consist of evidence of particulars losses which are exactly known as accurately measured before trial. Strict proof does not mean 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 such calculation possible."

I have carefully considered the evidence of **PW2**, who tendered the business plan Exhibit D44 and the final projections for the project vide Exhibits D48 1 & 2, and it is clear as he himself stated that these are mere projections which were based on "forecast" and "assumptions" which he claimed were even on the "conservative side". Indeed he stated in evidence that their job or assignment was to do financial forecast, market analysis including management strategy for the project. These projections or estimate of figures or amounts that will happen in the future made by PW2 and his team were clearly not predicated on any solid verifiable template putting the court in any commanding height to assess special damages.

The court obviously cannot speculate. Now if these "projections" are based on "assumptions" even if conservative, there is no guarantee or cast iron formular that the projections will turn out to be true or correct particularly taking into cognisance the extreme volatility and uncertainty in the real market business in Nigeria and Worldwide; in addition to other very fluid economic variables which may or may not undermine completely such projections but certainly impacts on it. It is impossible to make assumptions in such very fluid and unclear circumstance and more so for the court to grant special damages on the basis of what at best are bare speculations.

I had earlier referred to the illuminating pronouncement of **Pats Acholonu J.S.C (of blessed memory) in Neka BBB Manufacturing Co. Ltd V A.C.B Ltd (supra)** and this bears repeating: "A damage is special in the sence that it is easily discernable and does not rest on puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions."

Let us precisely situate this lack of clarity in the case of the Counter-claimants. PW2 stated that in their analysis in 2011, the worth of land in that area per square meter is N70, 000 US Dollars and that if you multiply that by the size, the **gross income** that would have been derived from the sale of the land is 1.9 Billion U.S.

Dollars. There is nothing really beyond reports Exhibits D44 and D48 1 & 2 placed before court showing that land in the area per square meter is 70, 000 U.S. Dollars. Although the counter-claimants pleaded that one (1) Hectare was sold to Sterling Assurance Ltd at $608, 000 and two (2) Hectares to Arm Life at $478, 000 per, there is no evidence of the latter transaction. Even the transaction with Sterling Assurance Ltd vide **Exhibit D46** shows that only the sum of N60, 000, 000 was paid with the balance of 40, 000, 000 to be paid within 6 months of the first payment. Indeed the company stated in its letter dated 23rd December, 2012 to the counter claimants which forms part of Exhibit D46 that they expected that before due date, **"infrastructural development would have commenced to enable us identify the site."**

It is clear that even on the basis of this **document** that the counter-claimants were not offering any precisely identifiable plot and there were no infrastructural development at the site which clearly would necessarily affect the value of the project site when developed. This document appear to be equally based on projections and estimates in view of the barren status of the project site. This document clearly relates to sale of an empty plot. The point to reiterate is that the venture agreement mandates the counter claimants to "develop and manage" the project site assigned to them. As at the time this transaction was entered into with Sterling Assurance, absolutely no development was carried out on the project site and no "title" given to counter-claimants as they stated.

The bottom line is that this relief is essentially predicated clearly on "projections", "forecast", "assumptions" and "anticipated profits" and in such a fluid situation, it will be difficult to assess and quantity damages in the manner sought except of course the court decides to engage in a dangerous exercise of speculating as to the real import of the evidence of the counter-claimants.

In addition, in law Damages in breach of contract are not awarded for anticipated gross income as claimed by counter-claimants but for net income or profit. In considering a claim for loss of anticipated profit, the projection of an anticipated profit in a feasibility report without more has no weight and is not proof of such anticipated profit. See **Antra Industries (Nig) Ltd V. Nigerian Bank for Commerce and Industry (1998) 4 NWLR (pt.546) 357 at 385 – 386 E-F.**

At the risk of sounding prolix, the court has not been furnished with clear evidence of particular losses exactly known and that can fairly and accurately be measured. A court of law qua justice has no duty to speculate. A court can only properly act on the basis of what has been demonstrated and tested in court with clarity and not to act on unverified and unascertained projections or to conjecture figures not based on a clear empirical and factual template. The law is settled that a party is allowed to establish what he pleaded and to obtain only such relief that was prayed for on the basis of the pleadings and creditably established by evidence. See **Ajikande V Yusuf (2000) 2 NWLR (pt.1071) 301. Relief 2 (viii)** is also not availing.

Relief b (ix) is for cost of this suit and the cost of legal consultancy services both locally and internationally, and legal representation in the sum of N500, 000,000.00 (Five Hundred Million Naira) only.

This relief is in the nature also of **special damages** to be established on the usual standard already streamlined. There is here a complete absence of clear pleadings and evidence relating to the cost of legal consultancy services retained locally and internationally and also legal representation. In the absence of pleadings and evidence to support these assertions, the relief must necessarily fail.

With the failure of all the reliefs on monetary claims, **Relief b (x)** claiming interest at the rate of 21% (Twenty One percent) on the sums found to be due must equally fail; you cannot put something on nothing and expect it to stand is a well known legal truism.

As I round up and before streamlining the final orders, let me recapitulate the key points. An important pivot of this case is one of alleged breach of contract. The contract here clearly however has two parties and the terms streamlined in a document, Exhibit D4. Any breach of contract properly construed must be predicated on this contract document and the parties to it. It cannot be altered to suit any particular purpose. In law a breach of contractual duty must be dealt with according to the law of contract and cannot be regarded as a tort of negligence though it is conceded that the same facts may in some cases amount to a breach of contract and negligence. See **International Messengers Nig. Ltd V David Nwachukwu (2004) 13 NWLR (pt.891) 541 at 560 C; Makwe V Nwakor (2001) 14 NWLR (pt.733) 356 at 373 A-B; 383 E.**

In this case, there is nothing really showing that the 4th defendant and only party to Exhibit D4 has clearly by words or conduct evinced an intention not to perform or expressly declared that it is unable to perform its obligations under Exhibit D4 in some essential respect. There was nothing before court to show a refusal to perform their side of the contract neither was there anything to allow the court conclude that they do not intend to be bound by the terms or that they are determined to do so only in a manner inconsistent with their obligations. Any allusions to actions of the Minister FCT, FCDA, FCTA and 5th defendant cannot have any traction in relation to the venture agreement since they are not parties to it. If, anything, the evidence in this case show that the independent actions of the Minister FCT may have affected the timeous execution of the Venture Agreement but as severally stated he is not a party to the agreement.

The second pivot is the consent judgment; it is true that it was predicated on the terms of settlement, agreed to by parties. However with the terms of settlement been adopted and entered as consent judgment, the terms no longer defines the determination of the matter but the judgment of court which is binding and enforceable all over the country. If there is failure to comply, there are plenitude of options under extant laws to ensure compliance. It is for parties to explore and utilise these options. I leave it at that.

The law is settled and the Supreme Court has made it abundantly clear that where a relief is sought, it must not be a matter of speculation or doubt as to what it entails as in this case. A court therefore cannot be expected to make an order which is subject to different interpretation as to whether it meets the relief claimed. Nor has the court a duty to engage in any semantics in the order it makes in an attempt to explain what the party intended to ask for. The guiding principle or rule is that a court must not grant a party what it has not asked for in clear terms and sufficiently proved. See **Joe Golday Co. Ltd. V. Cooperative Development Bank Ltd. (2003) 35 SCM 39 at 105.**

In the final analysis, the counter claim only partially succeeds and for the avoidance of doubt, I hereby make the following orders:

1. **It is hereby Declared that the Consent Judgment entered on 19th day of Mach, 2015 in Suit No. FCT/HC/CV/4527/2013 between Kohath Property Development Co. Ltd & Anor V Hon. Minister FCT & 4 ors is valid,**

subsisting and was not obtained by fraud, misrepresentation or any illegal manner whatsoever.

2. **Reliefs b (i) – (x) all fail and are dismissed.**

3. **I award cost assessed in the sum of N50, 000 payable by the defendants to the Counter Claimants.**

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. Oluwole Kehinde, Esq., for the Counter-Claimants.

2. Yusuf B.A., Esq., for the Defendants to the Counter-Claim.