IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 12

DATE:-5/11/2020

BETWEEN: - **FCT/HC/CV/1130/2017**

1. ADEBAYO ADEKUNLE
2. ADEBAYO BABATUNDE MICHAEL **PLAINTIFFS**

AND

COSCHARIS MOTORS PLC---------- **DEFENDANT**

JUDGMENT

By the order of this Honourable Court granted on the 24th April, 2018 the claimants amended their writ of summons and statement of claim. Thus, by the amended statement of claim dated and filed on the 30th April, 2018, the Claimants claim against the Defendant jointly and severally as follows:-

i. A declaration that the Defendant was in breach of its contractual obligation towards the Plaintiffs.
ii. General compensatory damages in the sum of N5, 000, 00.00 (Five Million Naira only) against the Defendant for the breach of its contractual obligations towards the Plaintiffs.
iii. A declaration that the Defendant is vicariously liable for actions/inactions of its employees/agents to render the required services/carry out the necessary repairs in respect of the vehicle which was left in the Defendant's care and custody in January, 2015.
iv. General compensatory damages in the sum of N5, 000,000.00(Five Million Naira only) against the Defendant for being vicariously liable for the actions/inactions of its employees.

v. A declaration that the Defendant was grossly negligent in its conduct and actions toward the Plaintiffs.

vi. General compensatory damages in the sum of N5, 000,000.00 (Five Millions Naira only) against the Defendant for being grossly negligent in its conduct and actions towards the Plaintiff.

vii. Special damages specified as follows:-

PARTICULARS OF SPECIAL DAMAGES

a. The sum of N1,199,693.00 (One Million , One Hundred and Ninety Nine thousand , Six Hundred and Ninety three Naira only), which the Plaintiff deposited into the Defendant's corporate account number 1012860084 domiciled with Zenith Bank International Plc, as the total cost for the repair which ought to have been carried out on the vehicle.

b. The sum of $1,989.29 (One Thousand, Nine Hundred and Eighty Nine USD) which the 1st Plaintiff transferred to Mr. Chris Wenegieme's account for the purchase of a brand new brain box identified as part no. NNN500451, from the vehicle manufacturer (i.e Land Rover) in the United States of America, pursuant to the professional recommendation of the Defendant's auto Engineer in its Abuja office.

c. The sum of $3,763.88 (Three Thousand Seven Hundred and Sixty Three USD, Eighty Eight pence) which the 1st Plaintiff transferred to Mr. Chris Wenegieme's account for the purchase of a brand new instrument cluster identified as Part No. LR018486, a brand new Audio Control Module identified as Part No.LR018486 and a brand new Parking Aid Monitor identified as Part No. YWC500730 from the land Rover in the United States of America, based on the instruction/recommendation of the Defendant's Abuja workshop Manager as vital for the repair of the vehicles.

d. The sum of N40,000.00 (Forty Thousand Naira) paid by the 1st Plaintiff to Cuwa Crane and Hiab Hiring Association Limited to tow the vehiclefrom the Defendant's workshop premises.

e. The sum of N2,882,500 (Two Million, Eight Hundred and Eighty Two Thousand, Five Hundred Naira) paid by the 1st Plaintiff to SM Global Motors Nigeria Limited in order to restore the vehicle into a working condition upon retrieving the said vehicle from the Defendant's workshop.

Viii. The sum of N2,000,000.00 (Two Million Naira) being the legal costs of and ancillary expenses incurred by the Plaintiffs in commencing this instant action against the Defendant.

Ix. 10% (Ten percent) post judgment –interest on the total judgment sum due to the Claimant pursuant to the order (s) of this Honourable Court from the date of judgment until final liquidation by the Defendant.

Pursuant to the amendment of the Claimants statement of claim, the Defendant on the 6th November, 2018 filed a consequential amended statement of defence.

Thus, parties having duly filed and exchanged pleadings and issues thereby joined, on the 22ndMay, 2019 the Claimants commenced and opened their case for hearing. One witness testified on behalf of the Claimants as PW1. He is Adebayo Adekunle Andrew. PW1 deposed to two witness statements on oath on 30th April, 2018 and 29th January, 2019 and both were adopted by him as his evidence in this case. And pursuant to the settlement of documentary evidence by the parties as provided by the Rules of this Court, the following documents were admitted in evidence on behalf of the claimants:-

(a) Two Certified true copies of automated on- line vehicle registration system are exhibit 1,
(b) UBA Plc statement of account of Mrs. Adebayo Victoria Ebunola is exhibit 2;
(c) Certificate of compliance with an attached document pursuant to section 84 of the Evidence Act is exhibit 3;
(d) Land Rover Denver invoice dated 25th February, 2016 is exhibit 4;
(e) Cash receipt dated 13th April, 2016 issued to Mr. Adebayo Babatunde, three photographs of Land Rover together with attached certificate of compliance pursuant to section 84 of the Evidence Act are exhibits 5 and 6 respectively;
(f) A letter of the 1stClaimant dated 22nd May, 2016 to the Group Managing Director of the Defendant is exhibit 7;
(g) A letter dated 11th August, 2016 by the 1st Claimant's solicitors to the Group Managing Director of the Defendant is exhibit 8;
(h) Letter of the Defendant dated 18th August, 2016 to the Claimant solicitor is exhibit 9;
(i) A quotation on service by SM Global Motors is exhibit 10, The Following documents were further admitted in evidence through PW1
(a) Two certificates of Identification pursuant to section 84 of the Evidence Act are exhibits 11 and 11(a);
(b) Text messages between the 1st Claimant and the GroupManaging Director, Mr. Josiah Samuel is exhibit 11(b);

(c) Text messages of AlhajiSambo on phone No 08033138143 and 1st Claimant are exhibit 11(c)

On the otherhand, exhibit 12, letter dated 19th October, 2017 by the Claimant's solicitors on settlement of documents and attachments thereto were admitted in evidence through PW1 on behalf of the Defendant. Then pursuant to settlement of documents by the parties, the following documents were admitted in evidence on behalf of the Defendant thus:-

(a) Documents i.e job card of the Defendant to the 1st Claimant dated 16th January, 2015 is exhibit 13,

(b) Documents titled:" Direct Dealer warranty- vehicle details is exhibit 14;

(c) Document titled:" Technical Assistance 2079332 is exhibit 15.

And finally, exhibit 16, the certified true copy of certificate of incorporation of the Defendant was admitted in evidence through DW1 on behalf of the Claimants.

The brief facts of the claimants case is that sometimes at the start of January, 2015, the 1st claimant observed that a strange humming noise was emanating somewhere around the back of his car, Black Range Rover sports with registration No. RSH420PJ with chassis number SAISK25428 A135702. PW1 avers at paragraphs 5-14 of the amended statement of claim to the effect that because of the known reputation of the Defendant Nationwide, at the material time, he contacted the Defendant's Manager at the Defendant's office in Abuja, AlhajiSambo. According to PW1 that the Defendant's Manager in Abuja requested him to bring the vehicle to the Defendant's workshop in Abuja for diagnosisand eventual repairs. PW1 avers that the primary complaints of the vehicle were made to the Defendant and the Defendant assured PW1 that the works will be completed within two (2) weeks. However PW1 testified that six (6) months after delivering of the vehicle and its keys at the Defendant's Abuja office and after putting a lot of pressure with several telephone calls to the Defendant, on 26th August, 2015, Defendant's Manager contacted PW1 via a text message as follows:-

> *"Good morning Sir, sorry for the delay sir. Sir here is the details of repairs and account to pay into:-*
> *Coscharis motors Limited*
> *Zenith bank*
> *1012860084*
> *D bill is N1, 411, 402.96*
> *Discount of 15% N211,710*

To pay N1,999,693.00"

The text message of the Defendant Manager is exhibit 11(c).

At paragraphs 15-17 of the amended statement of claim PW1 avers that on the 27th August, 2015 he paid the said sum of N1,999,693.00 into the Defendant's corporate account number 1012860084 with Zenith Bank Plc which amount was paid from the account of the 1st Claimant's Wife, Mrs. Adebayo Victoria Ebunola, account No. 1003101118 domiciled with United bank for Africa (UBA) Plc vide transaction number 033057150827350050080840 31.

The statement of account of Mrs. Adebayo Victoria Ebunola to establish transfer of N1,199,693.00 was received in evidence as exhibit 2.

PW1 avers further that upon receipt of payment of the sum of N1,999,693.00 the Defendant's Manager contacted the Plaintiff and requested him to report to the Defendant's office in Abuja to pick up his vehicle. PW1 avers that on arrival at the Defendant's workshop, PW1 in his utter amusement discovered that no repairs had been done on the vehicle and that the vehicle had been left in a shocking, awful and deplorable state as the interior of the vehicle were filthy, messy and derelict. PW1 therefore states that the Defendant had breached the contract with him by failing to repair the said vehicle and PW1 furnished particulars of breach of the contract at paragraph 18 (1) (a) (b) (c) and (ii)-(viii) of the amended statement of claim.

Then at paragraphs 19-34 of the amended statement of claim, PW1 avers to the effect that after seeing the condition of the vehicle immediately called the attention of the Defendant's Abuja branch Manager and relayed his utter disappointment and frustration with the manner in which the Defendant's staff had handled his vehicle. According to PW1 the branch Manager in Abuja of theDefendant then contacted the Defendant's Abuja workshop Manager at the time and directed him to ensure the vehicle was swiftly repaired and returned to PW1. According to PW1 the workshop Manager of the Defendant assured him that the vehicle will be reinstated to its former pristine condition within two (2) Weeks. PW1 states that after two (2) weeks, the 1st Claimant contacted the workshop Manager of the Defendant and the workshop manager informed him that he was unable toeffect repair on the vehicle because the engine of the vehicle failed to start owing to the fact that the vehicle had been grounded for over seven (7) months.

PW1 asserts that the workshop Manager of the Defendant then recommended to the 1st claimant purchase of a brand new brain box (PCM) for the engine of the vehicle to rectify the issues and facilitate the repairs of the vehicle. The correspondences by the workshop Manager of the Defendant and PW1 by text message on 5th and 6th November, 2015 were admitted in evidence as exhibit 11(c).

Thus, based on the advice of the workshop Manager PW1 transferred the sum of N300,000.00 to one Mr.ChristopherNeeguaye (An auto-electrician at the Defendant's Abuja Branch Office) domiciled withEcobankPlc in order to purchase the brain box (PCM) from south Africa. Then in December, 2015, PW1 avers that the workshop Manager of the Defendant contacted him and informed that the brain box (PCM) purchased from South Africa was indicating two (2) chasis numbers upon installation in the vehicle and therefore the vehicle was unable to start. PW1 avers that the workshop Manager of the Defendant sensing the 1stClaimant's frustration, linked up PW1 with the auto- electrician ofthe Defendant and the auto- electrician of the Defendant advised PW1 to purchase another brain box from the vehicle manufacturers in the United States of America. And pursuant to the advice, PW1 avers that he contacted his friend in the United States of America, Mr. Chris Wenegieme and on the 10th December, 2015, Mr. Chris Wenegieme purchased on behalf of PW1 a new brand brain box (PCM) No. NNN500451 from the vehicle manufacturer of Land Rover from United States of America and same was sent to PW1 vide courier service. The electronic generated receipt of Land Rover of the Manufacturers and the certificate of compliance were received in evidence as exhibit 3.

The 1st Claimant, as PW1 testified that he handed over the new brand brain box (PCM) to the workshop Manager of the Defendant sometimes in January, 2016 and the workshop Manager further informed the 1st Claimant that he would require three additional parts in order for the vehicle to be completely repaired. PW1 avers that though shocked and frustrated he still transferred money to his friend in the United States of America to purchase the three spare parts as requested by the workshop Manager. The receipt of purchase issued by Land Rover Denver on 25th February,2016 was admitted in evidence as exhibit 4.

PW1 avers that he handed over to the workshop Manager the three (3) additional spare parts as follows:-

(a) Instrument cluster identified as part No. LR018486;

(b) Audio control module identified as part No. LR011337'
(c) Parking and module identified as par No. YWC500730.

And on receipt of the spare parts, the workshop manager of the Defendant promised to quickly repair the vehicle and ensure same is restored to working condition.

The Plaintiffswitness, PW1 avers further that the Defendant neglected or failed to repair the vehicle fifteen (15) months after the date the vehicle was taken to the Defendant's workshop for minor repairs and on the 13th April, 2016, the PW1 was constrained to hire a tow truck from CUWA Craneand Hiab Hiring Association Limited at a cost of N40,000.00 to remove the vehicle from the Defendant's workshop premises. The cash receipt of CUWA Crane and Hiab Hiring Association, a photograph showing the towing vehicle and PW1's vehicle; as well as certificate of compliance were received in evidence as exhibits 5 and 6 respectively.

PW1 states that while the vehicle was in the custody of the Defendant his vehicle's two brand new tyres wereremoved without his knowledge and replaced with old and worn out tyres.

PW1 testified that the entire ordeal he has suffered from the Defendant has occasioned severe financial,economic, psychological and emotional losses due to the negligence recklessness, unprofessionalism and lethargy of the Defendant's personnel and he set out particulars of vicarious liability at paragraph 35 of their amended statement of claim. PW1 avers further that he then prepares and dispatch a report to the Defendant's ManagingDirector detailing the negligence of the Defendant's employees in respect of the repairs of the 2ndPlaintiff's vehicle. The letters of PW1 and that of his solicitors to the Defendant are exhibits 7 and 8.

PW1 further avers that he had contacted the Managing Director of the Defendant's parent company, Mr. Josiah Samuel as well as the Managing Director of the Defendant, AlhajiSambo Via text message to convey his grievances. The text messages were admitted in evidence as exhibits 11(b) and 11(c) while the certificates of compliance are exhibits 11 and 11(a) respectively. The 1st Plaintiff avers and furnish at paragraph 39 particulars of negligence and then states at paragraphs 40-45 of the amended statement of claim to the effect that upon removing the vehicle from the Defendant's workshop he discovered that the additional parts referred at paragraph 32 of the amended statement of claim which the Defendant instructed him to purchase from the United States of America in order to repair the vehicle were never used by the Defendant.

According to PW1 that no repairs were made on the vehicle despite all the numerous purchases and expenses incurred and expended by PW1 on the requests and demand of the Defendant. PW1 states that the vehicle was in a farworse condition when PW1 removed it from the Defendant's workshop sometimes in April, 2010 than when it was taken in January 2015 for minor repairs. PW1 states further that the vehicle remained in the Defendant's custody, control and possession at theirworkshop until in April, 2016 and due to the gross reckless and negligence action of the Defendant, PW1 states that the sum of N2,882,500.00 was spent in order to restore the vehicle into a working condition upon retrieving same from the Defendant. The Receipt by S. M Global Motors Nigeria Limited was admitted in evidence as exhibit 10.

In conclusion, PW1 urged the Court to grant the Plaintiffs claims as per paragraph 46 of their amended statement of claims.

As I said earlier, the Defendantcalled one witness that testified on its behalf as DW1. He is Silas Chebe, the Defendant's sales Manager in Abuja Branch of the Defendant. He adopted his witness statement on oath deposed to on 6th May, 2018 as his oral testimony in this case. By consent of parties as a result of settlement of documentary evidence exhibits 13,14 and 15 were received in evidence on behalf of the Defendant. And at the close of evidence of DW1, the Plaintiffs' Counsel cross examined him andhe was re-examined by the Defendant's Counsel and later discharged.

The brief facts and evidence of the Defendant's case as presented in their consequential amended statement of defence and the testimony of DW1 is to the effect that the 2nd Plaintiff's name is not in the records of the Defendant as they have only the name of the 1stPlaintiff as their customer and that the 1st Plaintiff never informed them that the 2nd Plaintiff is the son of the 1st Plaintiff and bought the subject vehicle. The Defendant avers that they are registered under the Companies and Allied matters Act as Cosharis motors Limited and has its registered office at Kilometre 32, Lekki/Epe Expressway by containerBus stop, Ayoyaya, Lagos.

At paragraphs 5-9 of the consequential amended statement of defence, the Defendant through DW1 states that the 1st Plaintiff brought the car the subject matter of this suit in company of their Regional Manager FCT/flect, AlhajiShaiabuSambo who compelled the officers of the Defendant to accept the vehicle for repairs even though the car was more than (8) years old which age is above what the Defendant handle in the ordinary course of their business.

The Defendant avers that the following listed items were required for the repairs of the vehicle thus:-

(a) Carrying out general check
(b) Check front suspension
(c) Check brake pad
(d) CD not ejecting
(e) Re-fix front left and right pillar linen
(f) Noise from parking brake
(g) Re-fix door moulding
(h) Re-fix rear right door handle
(i) Carry out full service; and
(j) Re-spray the entire body.

The Defendantavers that the real problem with the Plaintiffs car is as listed on the job order issued to the 1st Plaintiff and that the 1st Plaintiff paid for those services to be rendered and the services were rendered. DW1 further states that two (2) weeks is the normal time for regular repairs on cars being serviced by the Defendant but where the spare-parts required for the repairs is to be imported asin this case the repair time is subject to reception of the imported parts and this was made known to the 1st Plaintiff in the job order where most of the parts required for the repair of the vehicle was marked "N/A meaning not available. The Defendantavers further that their policy is for 80% of the cost price of parts to be imported to be deposited before the importation order can be made.

Then at paragraphs 10- 26 of the Defendant's Defence, they averred to the effect that because the vehicle is over eight (8) years post manufacture and the manufacturer no longer had the spare parts on the shelf and the Defendant had to do back order for the parts requesting the manufacture to produce parts which they have almost phased out of the market and that such procedure to produce the spare parts take time hence the parts were not sent to the Defendant early by the manufacturers. The Defendant further states that the parts requested were never delivered by the manufacturer to the Defendant at the same time. According to DW1 the Defendant repaired the vehicle in accordance with the original job order raised for the vehicle and the 1st Plaintiff paid to the Defendant the sum of N1,400,066.37 after the discount of 15% and the 1st Plaintiff was requested to come and pick the car after the Defendant duly acknowledged receipt of payment from the 1st Plaintiff. Dw1 testified that after repairing the vehicle with all the faults identified when the vehicle was brought to the Defendantin

January, 2015 with new parts ordered from the manufacturer, it discovered that the vehicle had been tampered with earlier by road side mechanics who had changed some parts with cloned parts that could not work with the genuine parts installed and this was made known to the 1st Plaintiff. Thus, DW1 avers that the car was starting but failed to function optimally because of the cloned parts and not because the car was parked in the Defendant's workshop for about seven (7) months. DW1 avers further that as soon as the new power control module (PCM), that is brain box referred to by the Plaintiffs in paragraph 25 of their statement of claim was fixed in the vehicle it started showing that the vehicle has two (2) chassis number which is unusual and made the vehicle not to function well and this information was made known to the 1stPlaintiff and it was explained to him that the road side mechanics have fixed spare parts from another model of the vehicle which caused the PCM to be indicating two chassis numbers.

DW1 testified that the 1st Plaintiff then bought a genuine PCM and other parts to replace the parts that were foreignto the vehicle to enable the Defendant complete the repairs. The Defendant avers that before they could fix this new spare parts to effect the repairs the 1st Plaintiff came and towed the vehicle away with the parts already in the vehicle. The Defendant states further that they were not negligent, reckless, unprofessional or lethargy to cause severe financial, economic, psychological and emotional losses on the 1st Plaintiff and the 1st Plaintiff did not expand time, energy and financial resources.

In conclusion the Defendant urged me to dismiss the claims of the Plaintiffs.

At the close of evidence by both parties after their witnesses on record have been cross examined and re-examined, final written address was ordered to be filed and exchanged. Then on 30th January, 2020, parties adopted their respective final written addresses and the case was adjourned to 27th April, 2020 for judgment. However, judgment could not be delivered within the statutory period of 90 days due to the covid-19 pandemic and the lock down prevented the trial judge from accessing the case files and exhibits in the custody of the registry. After the lockdown, the case was fixed for judgment and judgment could not be delivered once again due to the endsars protest that led to the closure of this Court by a directive of the Honourable Chief Judge FCT, Abuja.

Be that as it may, in the final address of the Defendant, learned Counsel submitted four (4) issues for determination on behalf of the Defendant as follows:-

(1) Whether the 1st Plaintiff is a proper and necessary party to this suit.
(2) Whether the Plaintiffs have made out a case for the various declarations they seek before this Court inrespect of this suit.
(3) Whether the Plaintiffs have made out a case for the special /general damages they seek in this suit.
(4) Whetherthe Plaintiffs are entitled to post judgment interest in this suit.

The Claimants/Plaintiffs' Counsel on the otherhand formulated four (4) issues as well for determination thus:-

(i). Whether the Defendant was in breach of its contractual obligations towards the claimants.

(ii).Whether the Defendant is vicariously liable for Actions/inactions of its employee/agent?

(iii) Whether the Defendant was grossly negligent in its conduct and actions towards the Claimants"?

iv) Whether the Defendant is liable for the damages claimed?

The Defendant's Counsel filed a reply on points of law on 16th December, 2019 in response to the Plaintiffs final written address filed on the 20th November, 2019.

Issues for determination by the Defendant.

ISSUE ONE

Learned Counsel to the Defendant submitted that from the amended statement of claim and witness statement on oath of 1stPlaintiff it is clear that the owner of the subject vehicle is the 2nd Plaintiff who did not participate in any of the transactions that led to this suit and the 1st Plaintiff who is not the owner of the car cannot claim any benefit or loss from that transaction. According to Counsel to the Defendant the vehicle particulars clearly show that the owner of the car is the 2nd Plaintiff and he relied on exhibit 1. He then submitted that no one is allowed by law to add or alter contents of a document by oral testimony. He relied on section 128(1) of the Evidence Act and the case of ***OMIYALE V WEMA BANK PLC (2017)13 NWLR (Pt 1582) page300 and 322 paragraphs D-E.***

Learned Counsel to the Defendant therefore contended that the 2nd Plaintiff must give evidence in support of his claim and he relied on the case of ***WESTERN PUBLISHING CO. V FAYEMI, (2017)13 NWLR (pt 1582) page 218 at 265 paragraph A-f.***

ISSUE TWO

On the 2nd issue, learned Counsel to the Defendant stated that the first three reliefs are declaratory reliefs and therefore the Plaintiff has the duty not only

to plead facts but must prove those facts. He relied on the case of***ONI V GOV OF EKITI STATE, (2019) 5 NNLR (pt1665) page 1 at 22 paragraphs A-F.***

At paragraphs 4.04 and 4.05 of the Defendant's Counsel's final written address, learned Counsel submitted to the effect that it is in evidence that the first job done on the vehicle was on job order dated 15th January, 2015, i.e exhibit 13 which the 1st Plaintiff paid the sum of N1,199,693.00 into the account of the Defendant while the second job was to be done in the car could be gleaned from exhibit 15 dated 10th December, 2015. He then contended that the 1st Plaintiff tried to create the impression that the vehicle was with the Defendant from January, 2015 to December, 2015 without the Defendant doing anything on the vehicle. Counsel to the Defendant submitted that the truth is that the vehicle came in for a second round of repairs in December, 2015 as can be seen in exhibit 15. He then posited that the evidence that there are two jobs involved in this case was elicited through cross examination and he stated that the evidence is relevant to the case at hand. He relied on the case of***IRON BAR V FEDERAL MORTGAGEFINANCE(2009)15 NWLR (pt1165)page 506 at534***. He submitted that the 1st Plaintiff did not approach this Court with clean hands and therefore equity cannot aid him. He relied on the case of ***HUEBNER v AERONAUTICAL INDUSTRIAL ENGINEERING & PROJECTS MANAGEMENT CO. LTD (2017) NWLR (pt1586) page 397 at 420*** *paragraphs* ***G-H.***

Learned Counsel to the Defendant further submitted that the 1st Plaintiff paid initial money for the repairs of the vehicle into the official account of the Defendant but resorted to paying subsequent monies into accounts of other people not nominated by the Defendant and he wants to hold the Defendant liable for the acts of those officers..

He stated that the people the 1st Plaintiff paid money into their account are not account officers of the Defendant to whom money belonging to the Defendant can be entrusted. Counsel stated that the more worrisome fact is that those accounts are private accounts ofthose individuals which were not supported by the Defendant. Thus, Counsel submitted that the staffof the Defendant that collected monies from the 1st Plaintiff did that acting outside the scope of their duties andtherefore the Defendant cannot be held liable for their acts as they were on the frolic of their own as far as collecting money goes.

On the question of negligence as alleged by the Plaintiffs, the Defendant's Counsel submitted that the Defendant is not negligent in the discharge of their duties to the Plaintiffs. He submitted that were the spare parts readily available the Plaintiffs would have fixed them without trying to place order for the spare parts from abroad.

At paragraph 4.07 of the final written address of the Defendant's Counsel, he submitted that assuming without conceding that the Defendant was negligent in the discharge of his duties to the Plaintiff the damages which the Plaintiffs claim are remote and cannot be granted by this Court. He relied on the case of ***SHELL PETROLEUM DEV CO (NIG) LTD V OKEH, (2018)17 NWLR (pt1649) page 420 at 435.***

The Defendant's Counsel also submitted at paragraph 4.08 of his final written address that the contract between the Plaintiff's and the Defendant is for the repair of the subject vehicle. He submitted that it is in evidence that the vehicle was repaired in the first instance but it was brought back for further repairs and the spare parts needed for the repair could not be sourced in Nigeria and they had to resort to importing the said spare parts.

ISSUE THREE

On whether the Plaintiffs have made out a case for the special damages in this suit, learned Counsel to the Defendant submitted that the law is that general damages need not be specifically and specially proved but is assumed by the Court as a natural consequence of the conduct of the Defendant. He relied on the case of ***SMITHLINK BEECHAM PLC V FARMEX LTD, (2010)1 NWLR (pt1175)page 285 at 306 paragraphs C-D*** He then submitted that the claim for general damages is speculative and there is no iota of evidence supporting the claim.

On the issue of special damages claimed by the Plaintiffs, they must prove it to the hilt otherwise the Court would not grant same.

Thus, the Defendant's Counsel submitted that the sum of N1,199,693.00 paid to the Defendant by the 1st Plaintiff is for the service the Defendant provided for the Plaintiffs and that the Plaintiffs have had value for the money and the money is not subject to repayment by way of special damages.

On the other monies paid by the 1st Plaintiff to other peopleDefendant's Counsel submitted that it cannot be claimed from the Defendant as the Defendant did not authorize those payments and that the staff that collected those monies acted outside the scope of their employment which

removes the liability from the Defendant. He cited the case **of *ARISON TRADING ENGINEERING CO. LTD V THE MILITARY GOV OF OGUN STATE,(2009) 15 NWLR (pt1163) page 26 at pages 51-52 paragraphs G-B.***

On the claim of N2,882,500.00 against the Defendant by the Plaintiffs, Counsel to the Defendant submitted that the document, exhibit 10 from SM Global Motors Nigeria Limited is undated and it has nothing to show that it has a relationship with the vehicle described in paragraphs 2 of the Plaintiffs amended statement of claim. Learned Counsel to the Defendant further posited that the document is a quotation and not a receipt for money paid by anybodyto any one and therefore does not substantiate the claim of N2,882,500.00 by the Plaintiffs. And in respect of the claim of N40,000.00 the Defendant's Counsel relying on exhibit 8 the response of the Defendant to the Plaintiff's exhibit 5, submitted that the claim is self- induced as the Defendant requested for one month to effect repairs on the vehicle but the Plaintiffs went ahead to take their vehicle from the Defendant's workshop.

In respect of the claim of N2,000,000.00 for legal fees/costs and ancillary expenses incurred by the Plaintiffs in commencing this suit, learned Counsel submitted that the claim is nebulous and is incapable of precise determination as a special damagesthus, in the realm of speculation. He relied on the case of ***ARISON TRADING & ENGINEERING CO. LTD (supra)*.** Counsel further submitted that the claim of legal costs, smacks the passing the legal fees of the Plaintiffs to the Defendant which is contrary to public policy. He relied on the cases of ***GUINNESS (NIG) LTD V NNOKE (2000) 15 NWLR ((PT689)PAGE 135 AND 150 paragraph C AND NWANJI V COASTAL SERVICES (NIG) LTD. (2004) 11 NWLR (PT 885) page 552, 568-569 paragraphs H-D.***

Learned Counsel therefore urged me to reject this head of claim as it has not been proved.

ISSUE FOUR

On whether the Plaintiffs are entitled to post judgment interest, learned Counsel referred me to order 39 Rule 4, Rules of this Court to the effect that a successful party is entitled to 10% post judgment interest and that such interest has to be on judgment sum. He concluded that the Plaintiffs are not entitled to any post-judgment interest.

In conclusion learned Counsel urged me to dismissthe case of the Plaintiffs with substantial costs.

As I said earlier, the Plaintiff's Counsel formulated four (4) issues for determination as well in the instant suit.

ISSUE ONE

Whether the Defendant was in breach of its contractual obligation towards the claimant?

In arguing the first issue for determination, learned Counsel on behalf of the Claimants stated that the case of the Claimants falls within a slim scope, which is payment of sum due to the Claimants by the Defendants. He then referred me to the statement of claim of Claimant and the testimonyof PW1 wherein PW1 led evidence and tenderedexhibits 1,2,3,4,5,6,7,8,9,10 and 11 A,B and C to show that truly the Defendant was in breach of its contractual obligations towards the claimants and also collected various sum of money from the 1st Claimant under the guise of fixing the vehicle which they failed to repair until the claimants towed out the vehicle from the premises of the Defendant.

At paragraphs 6.2 -6.7 of the final written address of the Claimants Counsel, learned Counsel submitted to the effect that there exist a valid contract between the Claimants and the Defendanti.e there was offer, acceptance and consideration. He posited that the claimants delivery of the vehicle to the Defendant's office for repairs and the Defendant agreed to carry out the repairs required by the Claimants in respect of the vehicle and that the claimants paid all the amounts he was asked to pay to ensure the vehicle was fixed as evidenced by exhibits 11(A),(b) and (c) validates the contract. Thus, learned Counsel to the claimants submitted that in consideration of the payment of N1,199,693.00 paid into the Defendant's Corporate account under 1012860084 domiciled with Zenith bank Plc given by the claimants was in exchange of promise by the Defendant to repair Claimants vehicle which the Defendant however failed, neglected and refused to fulfil its part of the contract, hence a breach of contract occurred on the part of the Defendant and thus the Claimants are entitled to remedies. He relied on the case of ***HAIDO V USMAN (2004) 3 NWLR (pt859) page 65 at 85 paragraphs H-A.***

Learned Counsel to the Claimants submitted further that exhibits 7,11 (b) and (c) are incontrovertible that the Claimants sent several correspondences to the Defendant in respect of the vehicle but the Defendant failed to repair the vehicle and 1st Claimant expressed disappointment that no repair was carried out on the vehicle and its two brand new tyres installed before the

car was delivered to the Defendant in January, 2015 had been removed and replaced with old ones. The Claimants Counsel posits that the Defendant was not able to controvert the unassailable evidence during trial adduced by the Claimants that there was a breach of contract.

Learned Counsel to the claimants then submitted that DW1's evidence in his witness deposition especially paragraph29 deposed on 6th November, 2018 is contradictory with his oral testimony in Court during cross –examination to the effect that after the 1st Claimant made payments he was informed to come pick his vehicle which he did by driving the vehicle out of the Defendant's premises. Learned Counsel therefore contended that inconsistent evidence of a witness has no probative value and he urgedme to reject the entire evidence of DW1. He relied on the case of ***SHOFOLAHAN V STATE(2013) 17 NWLR (pt1383) page 281 at 311 paragraphs A-B.***Learned Counsel to the claimants therefore urged me to resolve issue onein their favour.

ISSUE TWO

Whether the Defendant is vicariously liable for actions/inaction of its employees/agents?

On this issue 2, learned Counsel stated that vicarious liability is where an employee can be held responsible for the actions/ the inactions of an employee. He relied on the case of***BEKS KIMSE (NIG) LTD V AFRICA (2016)1NWLR (pt1494)page 456 at 471-472.***

At paragraphs6.15- 6.18 of the final written addressof the Claimants, learned Counsel submitted to the effect that there exist a master and servant relationship (which can be likened to that of a principal and agent) between the Defendant and its employees. He posits that the relationship of the Defendant and its employees has the capacity to append liability on the Defendant and he referred me to the evidence of PW1 and exhibits 11 (A),(B) and (C). He submitted that the 1st Claimant related with the employees of the Defendantwho committed tortious act of negligence in the course of their employment.

Learned Counsel then contended that evidence reveals that the 1st Claimant acted on the professional advice and services of the Defendantand its employees (i.e agents) for the repair of the vehicle. He relied further on exhibits 11.(A) ,(B) and (C) and yet the vehicle was not repaired and eventually had to be towed from the Defendant's workshop.

At paragraphs 6.19- 6.23 of the Counsel's final written address on behalf of the Claimants, responding to paragraph 4.05 of the final address of the

Defendant wherein the learned Counsel to the Defendant submitted that the 1st Claimant paid the initial money for the repair of the vehicle into the official account of the Defendant and subsequently resorted to paying into the accounts of other people not nominated by the Defendant, and assuch the Claimant lack the right to hold theDefendant liable. Then learned Counsel to the Claimants submitted to the effect that the argument is far-fetched, incongruous and not supported by law. He posits that the 1st Claimant at all points in time followed the directions and instructions of the agents/employees of the Defendant. According to learned Counsel that the 1st Claimant naturally paid into each account he was instructed to pay into and it is expected that the employees of the Defendant would undoubtedly know how they ran their company and it is not for the 1stClamant to tell them how it is run. He submitted that the 1st Claimant was instructed to pay into subsequent account and he relies on exhibits 11 (A), (B) and (C) respectively, hence the argument at paragraph 4.05 of the final written address is an afterthought and a means of evading eventual liability. Thus, learned Counsel to the Claimants submitted that where a wrong is committed by an employee within the course of his employment, the employer will bear eventualLiability. He relied on the cases of ***UNITED BANK OF AFRICA PLC V OGOCHUKWU (2016) ALL FWLR (pt815)page 261 at 277 paragraphs E-F and NAUDE V SIMON (2014)ALLFWLR (pt753)page 1878 at1901 paragraphs B-D.***

The Claimants Counsel therefore urged me to hold and resolve this issue in favour of the claimants

ISSUE THREE

Whetherthe Defendant was grossly negligent in its conduct and actions towards the Claimants?

At paragraphs 6.24-6.33 of the final written address of the claimants Counsel, Counsel to the Claimants firstly referred to the evidence of the Claimants and facts pleaded in their statement of claim particularly paragraph 39 (V) he submitted that it is undoubtable that fifteen (15) months after the Claimant took the vehicle to the Defendant's workshop for repairs, the vehicle which was driven into the Defendant's workshop without any difficulties with the engine (starting) was unable to start. Learned Counsel to the Claimants posits further that the additional parts the Defendant's Abuja Workshop manager instructed him to purchase from the United States of America in order to repair the vehicle were never used by the Defendants. According to Counsel, two (2) brand new tyres

wereremoved from the vehicle during the time in which the vehicle remained in the Defendant's custody, control and possession at their workshop. Learned Counsel then contended that the Defendant is negligent having breached the duty of care it owed the Claimants in respect of the vehicle. He relied on the case of ***BRITISH AIRWAYS*V ATOYEBI, (2015)ALL FWLR (pt766) page 442 at 480-481 paragraphs H-A.**

Learned Counsel submitted on behalf of the claimants that the duty of care of the Defendant is based on the fact that the Defendant is a renowned auto-mobile company and the standard expected of the company of that nature is high and the Defendant failed to live up to the standard expected of it.

ISSUE FOUR

Whether the Defendant is liable to the damages claimed?

At paragraphs 6.34-6.52 of the final written address, learned Counsel submitted to the effect that the Claimants have by facts and evidence established the various heads of claim as breach of contractual obligation, vicarious liability and negligence.

On the head of claim under special damages learned Counsel to the claimants submitted that it is settled principle that special damages must only be specifically pleaded with relevant particulars but must also be strictly proved with credible evidence.He relied on the case of ***OSUJI V ISIOCHA(1989) 3 NNLR (pt111) page 623 at 633 paragraphs D-****E*

In the instant case, Counsel to the claimants submitted that by the evidence of PW1 and Exhibits 5, 10,11,(b) and 11(c), the Claimants have proved special damages and therefore entitled to same.

The learned Counsel to the Defendant has filed a reply on points of law. I will refer to same in the course of this judgment.

In conclusion, learned Counsel to the Claimants urged me to grant the reliefs claimed by the Claimants.

Now after I have considered the pleadings of parties and the evidence in support of their respective positions the two learned Counsel in their respective final addresses distilled issues for determination of the instant case. I have carefully perused the issues for determination as formulated by both Counsel to the parties. The issues of both parties are inter-related and I adopt the following issues to determine this suit:-

(1) Whether the Defendant was in breach of the contractual obligation towards the claimants?

(2) Whether the Claimants have made out a case for the various declarations they seek before this Court in respect of this suit and therefore entitled to the reliefs sought.

However, before I proceed to determine the above two issues in the instant case, the Defendant's Counsel has raised in his final written address some preliminary issues on points of law. I will therefore consider and determine those preliminary issues on points of law before proceeding or otherwise.

First issue distilled by the Defendant's Counsel is whether the 1st Plaintiff is a proper and necessary party to this suit.

Simply put, by exhibit 1, the 2nd Claimant is the owner of the vehicle driven and brought to the Defendant's workshop by the 1st Plaintiff. It is the position of theDefendant's Counsel that the 1st Claimant is not the owner of the subject vehicle and that it is clear that the owner of the vehicle is the 2nd Claimant who did not participate in any of the transactions that led up to this suit and that the 1st Claimant who is not the owner of the car cannot claim any benefit or loss from that transaction and that it was not the 2nd Claimant that brought the car to the Defendant's workshop. In otherwords, the law is that only parties to a contract should be able to sue to enforce their right or make any claim occasioned from the contract.

In the instant objection of the Defendant it is essentially based on the doctrine of privity of contract which is part of our corpus juris which generally postulates that a contract cannot confer/bestow rights, or impose obligations arising under it, on any person except parties to it.Simply put, a stranger to a contract cannot gain or be bound by it even if made for his benefit.

See ***JOHN DAVIS CONSTRUCTION CO. LTD V RIACUS CO. LTD & ANOR, (2019) LPELR 47588 (CA), REBOLD IND LTD V MAGREOLA, (2015)8 NWLR (pt1461) page 201 at 231.***

Now the Facts and evidence before the Court is that the 2nd Plaintiff is the son of the 1st Plaintiff and the owner of the vehicle in question.

PW1 in paragraphs 2,4,and 7 of his witness statement on oath deposes to the effect that his son, the 2nd Claimant deliver the vehicle to him for his personal use/enjoyment and that at all material times he was in possession of the vehicle when he observed a strange humming noise emanating from somewhere around the back of the vehicle which gave him cause of concern.

PW1, the 1st Claimant testified further that in January, 2015 he drove the vehicle into the Defendant's Abuja office wherein he delivered the vehicle to the Defendant based on the instructions of Defendant's Regional Manager

AlhajiSambo. The Defendant itself admitted that it was PW1, i.e the 1st Claimant that is on their records and the person they have dealings with. There is also uncontrovertible evidence and indeed admission by the Defendant that it was the 1st Claimant that brought the vehicle for repairs and the Defendant accepted pursuant to which the 1st Claimant made payments into the corporate account of the Defendant domiciled with Zenith Bank International Plc. Further under cross examination by the Defendant's Counsel, PW1 testified as follows:-

> *"The contract of repair was entered between me and the Defendant. The Regional Manager of the Defendant text the account details to me which I paid into that account."*

Also by the pleading and evidence of PW1, the vehicle was in possession of the 1st Claimant for his use and enjoyment. This piece of evidence of PW1 was never challenged, contradicted or discredited by the defence during cross examination. Thus, by the pleadings and evidence including documentary evidence the contract of repairs was between the person in possession, i.e 1st Claimant and the Defendant. I entirely agree with the submission of the Claimants Counsel at paragraph 6.67 of his final written address and I holdthe view that the 1st Claimant has locus standi to claim the reliefs sought from the Defendant and I so hold.

The Defendant's Counsel has however raised in his written replyon points of law at paragraph 1.01 to the effect that the 2nd Claimant cannot make any claim against the Defendant in this case because from the evidence of PW1 he is the person that entered into the repair agreement with the Defendant and not the 2nd Plaintiff. The learned Counsel to the Defendantat paragraph 1.02 of his reply on points of law submitted that since exhibit 5 says that it is the 2nd Plaintiff that paid the amount expressed therein the 1st Plaintiff cannot by oral evidence alter or vary the content of exhibit 5. He also referred me to paragraph 33 of the amended statement of claim and paragraph 32 of PW1's witness statement on oath and concluded that the 1st Claimant lied on oath.

The claim is not perse by the 2nd Plaintiff .I however observed that in both issue one (1) of the final written address of the Defendant and reply on points of law, the learned Counsel only concluded by submitting that 1st Claimant and the 2nd Claimant have no claims against the Defendant but craftily avoided any relief sought by the Defendant in the event this Court finds for the Defendant.He however submitted at paragraph 4.02 of page 9

of his final written address that both Plaintiffs cannot claim jointly as their interest are not the same.

I think there is the need for me to explain the distinction between parties to a suit. The law recognises proper parties, desirable parties and necessary parties. In the case of ***F.H.A V OLAYEMI & ORS (2017) LPELR 43376,*** the Court of Appeal held" proper parties are those who, though not interested in the Plaintiff's claim, are made parties for some good reasons.Desirable parties are those who have an interest or who may be affected by the result. Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence the proceedings could not be fairly dealt with. Inotherwords, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the Plaintiff.

In the instant case, the 2nd Claimant is not a party to the contract of repair between the 1st Plaintiff and the Defendant. The 2nd Plaintiff cannot therefore claim any benefit or interest from such contract. However, by the amended statement of claim of the Plaintiffs and the evidence of PW1, the vehicle in question was purchased for him by the 1st Plaintiff who is his father.

And PW1 tendered in evidence exhibit 1 to that effect. Thus, the 2nd Plaintiff, in my humble opinion is a proper or desirable party though he has nothing to do with the claims of the 1st Plaintiff. While on the otherhand from the state of pleadings and evidence in this case the 1st Plaintiff is a proper and necessary party.The issue number one (1) formulated by the Defendant's Counsel is hereby resolved against the Defendantand in favour of the Claimants.

The Defendant has also raised a preliminary objection that:-

(a) The registered and corporate office address of the Defendant is KM32 LekkiEpeh Express way, beside Green Spring School, by Container Bus Stop, Awoyaya, Lagos.

(b) By section 78 of the Companies and Allied Matters Act and under section 11 Rule 8 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2004 all Court processes ought to be served on corporate Citizen at their registered office or corporate office.

In the written address of the Defendant's Counsel dated and filed on 7th April,2017 he submitted that service of the writ of summons and statement of claim in this case was effected in Abuja which is branch office and not on

a Director, secretary or other principal officer or by leaving at the corporate office of the Defendant.

Without much ado the High Court of the Federal Capital Territory (Civil Procedure) Rules 2004 has been amended. The Rules of Court applicable in the High Court is the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules,2018. And it appears the learned Counsel to the Defendant is not in touch with the current events especially the rules of Court within the FCT where he carries on his legal practice.

In any event, order 7 Rule 8, Rules of this Court provides thus:-

> "Subject to any statutory provision regulating services on registered company, corporation or body corporate, every, originating process requiring personal service may be served on a registered company, corporation or body corporate by delivery at the head office or any place of business of the organization within jurisdiction of the Court."

And by section 78 of the Companies and Allied Matters Act (as amended), it provides

> *"A Court process shall serve on a company in the manner provided by the Rules of Court and any other document may be served on a company by leaving it at or sending it by post to, the registered office or head office of the company"*

In otherwords, section 78 of Companies and Allied Matters Act (CAMA) (as amended) has provided two types of service of documents on a company. The first mode of service as provided by section 78 is in respect of Court processes which service on a company has been made subject to domestic Rules of the particular Court and in this case the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. The second mode of service as provided by section 78 is in respect of other documents which can only be served as provided by the Act, i.e section 78 Companies and Allied Matters Act (CAMA).

In the instant case by the endorsement at the back cover of the return copy which was filed in Court, the Defendant was served with Court processes in this suit at the Defendant's Abuja office on 31st March, 2017 including hearingnotice. I have seen the duplicate copy of the hearing notice served on the Defendant and same was filed as evidence of such service. The Court Bailiff of this Court further deposed to an affidavit of service.

In the instant case the Defendant was duly served with court process in this suit in accordance with order 7 Rule 8, Rules of this Court at the Defendant's branch office here in Abuja.
The objection is therefore misconceived and it is accordingly dismissed.
The next objection of the Defendant raised at paragraph 5.00 of his final written address is to the effect that the Plaintiffs are in contempt of the order of this Court made on 24th April, 2018 to the effect that the Plaintiffs should file and serve their amended statement of claim within 7 days.
According to the Defendant's Counsel even though the Plaintiffs filed within 7 days but they did not serve within 7 daysthereby violating the clear order of this Court.
The position of the law as provided by order 25 Rule 4, Rules of this Court is crystal clear it provides thus:-

> *"If a party who obtained an order to amend does not do so within the time limited for that purpose, or if no time is limited, then within 7 days from the date of the order, such party shall pay an additional fee of N100.00 for each day of default."*

The order of this Court was made on 24th April, 2018. The Plaintiffs complied and filed the amended copies on the 30th April, 2018. However the service of the amended processes, from the affidavit of service filed by the Plaintiffs and deposed to by one Richard Alhassan, a litigation Clerk the Defendant was served on 13th June, 2018. On service of the amended processes of the Plaintiffs, the Defendantfiled on 6th November, 2018 a consequential amended statement of defence. In otherwords, by the affidavit of service filed by the Plaintiffs, the service of the amended statement of claim was clearly not within the time of 7 days stipulated by the order of Court. However, as rightly submitted at paragraph 6.70 of the final written address of the Plaintiffs, this issue was determined on 26th September, 2018 to the effect that what was required of the Plaintiffs was tofiled within 7 days as required by the Rules and not service of the filed amended statement of claim on the Defendant. Inotherwords, the slip was corrected on 26th September, 2018 when the Defendant's Counsel observed that they were not served within 7 days.
Thus, this issue of service of the amended statement of claim on the Defendant has beenthrashed and it is no longer a live issue. If however the Defendant was dissatisfied, the proper action he ought to have taken is to appeal the interlocutory decision of this Court delivered on 26th September,2018 to the Court of Appeal. In the same breath, by order 5

Rules 1 and 2Rules of this Court, the effect of non-compliance by the Plaintiffs to serve within 7 days is a mereirregularity. See also ***OKORIE V OKORIE, (2019)LPELR 47335 (CA) KOSSEN (NIG)LTD V SAVANNAH BANK (NIG) LTD (1999)9 NWLR*****(pt 421).** Hence therefore the objection is misconceived and it is accordingly dismissed.

Thus, having considered and determined the seeming objections raised by the Defendant's Counsel, I will now proceed to determine the two issues distilled for the main suit. The first is WHETHER THE DEFENDANT WAS IN BREACH OF ITS CONTRACTUAL OBLIGATION TOWARDS THE DEFENDANT

Before I determine whether there was a breach of contract between the 1st Plaintiff and the Defendant it is important to first and foremost determine whether there exist a contract between the 1st Plaintiff and the Defendant and the nature of the contract. Firstly, an agreement or contract in law means a mutual understanding between two or more persons about their relative rights and obligations regarding their past or future performances. A contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable in law.

See ***THEODORE EMMANUEL CHARLES OWOO & ORS V MRS UMO ASUQUO EDET, (2011) LPELR 4812 (CA)*** *see also black's law dictionary 8th edition page 74 and 341.*

In otherwords where there is a legally binding agreement or contract between two or more persons, rights are acquired by one party in return for acts or forbearance on the partof the other. Further, for there to be a binding contract or agreement between parties, they must be in consensus adidem with regard to the essential terms and conditions thereof.

Having said the above by paragraphs 5-8 of the amended statement of claim the 1st Plaintiff avers to facts that around the third week of January 2015 he drove the subject vehicle into the Defendant's Abuja office and delivered the vehicle together with the vehicle keys to the Defendant's staff for repairs of (1) repairs of the strange humming noise emanating from somewhere around the back of the vehicle:-

(ii) Repairs of the faulty vehicle radio

(iii) Repairs of the glove compartment and minor upholstery tears.

Paragraphs 5-8 of the amended statement of claim is supported with paragraphs 5-8 of the 1st Plaintiff's witness statement on oath deposed to on 30th April, 2018. The Defendant at paragraph 2 of their consequential amended statement of defence admitted that the 1st Plaintiff brought the subject vehicle for repairs and a job order number S0AB0004226 of

16th January, 2015 issued. The job order of the Defendant was received in evidence as exhibit 13. DW1 also under cross examination testifies that when a customer brings a car for repairs to the Defendant, a contract is established.

In the case of ***ATIBA IYALAMU SAVINGS AND LOANS LTD V SUBERU & ANOR(2018) LPELR 44069***, the Supreme Court of Nigeria held as follows:-

> *"That for there to be a binding contract between parties , they must be in consensus adidenmwith regards to the essential terms and conditions thereof. The parties must intend to create legal relations and the promise of each party in a simple contract, not under seal must be supported by consideration. There must be a concluded bargain which has settled all essential conditions that are necessary to be settled and leave no vital term or condition unsettled."*

See also ***DANGOTE GEN TEXTILE PRODUCTS LTD & ORS V HASCON ASSOCIATE (NIG) LTD & ANOR (2013) 12 SCNJ 456, BILANTILE INT LTD V NDIC (2011) 15 NWLR (PT 1270) page 407 at 423 paragraphs C-F.***

In the instant case by the pleadings and evidence adduced by parties especially the admission of the Defendant as to the existence of the contract of repair of the subject vehicle, I hold the view that contract of repair of the subject vehicle in possession of the 1st Plaintiff exist between the 1st Plaintiff and the Defendantand I so hold.

Now that I have established the existence of a contract of repair between the 1st Plaintiff i.e PW1 and the Defendant, the question that would arise is whether there was a breach of the said contract?

The 1st Plaintiff avers at paragraphs 8-18 of the amended statement of claim and supported by the evidence of PW1 at paragraphs 8-17 of his witness statement on oath gave a graphic picture of the repairs required in the subject vehicle and according to PW1, the Defendant promised to complete the repair works within two (2) weeks. PW1 testified that by April, 2015 the repairs were still yet to be carried out or effected on the subject vehicle and he was constrained to lodged a complaint with the Defendant and the Defendant requested him to exercise patience as the Defendanthad placed orders for certain spare parts needed to put the vehicle in good shape. PW1 testified that after six (6) month the subject vehicle was still not repaired and the Defendant was not forthcoming. In fact exhibits 7,8,9,11©

and 11(e) explain in clear terms that the repairs on the subject vehicle by the Defendantfailed. Exhibits 7 and 8 were sent to the Defendant andduly received by the Defendant and the 1st Plaintiff set out details of the events that occurred in respect of the subject vehicle and the Defendant by exhibit 9 to the 1st Plaintiff's solicitor on the allegation of gross negligence, inefficacy , theft and fraud by the Defendant, the Defendant says:-

"We refer to your letter on the above subject matter dated 11th August, 2016 and those of your client as attached and wish to first apologized for want of prompt feedback on the side of the company.Please note that it was not intentional.

Your Client's case has however become knownto us at the head office and consequently taken the front burner in terms of priority as the company cannot sacrifice its long standing goodwill on the altar of inadvertenceof any of its staff, neither will it wilfully treat its customer with such disdain as recorded in your attached correspondences.

While the company has commenced investigation into the reason for such treatment meted on your client, we would appreciate if you could convince your client to release the subject vehicle back to our Abuja office, so we can fix the vehicle to running condition. The modules shall be replaced on free of cost basis. This commitment is made to correct all negative impressions this case might have instilled into your client about Coscharis Group as well as make good the company's policy of placing customer's satisfaction over and above every other interest and to reinstate the relationship.

In view of the above, the company would therefore refrain from any form of defence at this point, as the satisfaction of your client is most important. We count on your wise Counsel."

The letter, exhibit 9 to the 1st Plaintiff's solicitor re-affirms the position of the 1st Plaintiff to the effect that the subject vehicle driven by the 1st Plaintiff to the Defendant's workshop in Abuja in January, 2015 was not repaired until on the 13th April, 2016, a period of over 15 months, when the 1st Plaintiff towed the subject vehicle out of the Defendant's workshop.

I have on the otherhand perused the consequential amended statement of defence of the Defendantin its entirety and I have also perused DW1's witness statement on oath and under cross examination as well as answers elicited from PW1 by the Defendant's Counsel during cross examination as well.

Now by paragraphs 15,16,17,19 and 20 of the consequential amended statement of defence, the Defendant appears to allude to the fact that there

was two contracts of repairs of the subject vehicle with the 1st Plaintiff. And that appears to be the testimony of DW1 in his witness statement on oath and exhibits 13 and 15.Under cross examination by the Plaintiffs' Counsel on the 25thSeptember 2019, DW1 testified as follows:-

> *"After the Plaintiff made the payment, he was asked to come and pick the car. The Plaintiff was called to pick his car after payment through the service advisor of the Defendant's company. At the time Plaintiff was called, the car was ready to be picked."*

Dw1 further testified under cross examination thus:-

> *"When the Plaintiff came, he drove the vehicle out of the Defendant's company here in Abuja."*

In otherwords, by the statement of defence and evidence led by the Defendant, the Defendant is contending that there were two contracts executed between the 1st Plaintiff and the Defendant as shown or evidenced by exhibits 13 and 15. This is to say, the first contract exhibit 13 was duly performed by the Defendant and the 1st Plaintiff effected payment and he came and picked the subject vehicle by driving same out of the Defendant's workshop.

On the second contract, exhibit 15 alluded by the Defendant; I have closely perused both exhibits 15 and 13 respectively. On exhibit 13, the job card clearly shows the parties to the contract i.eCoscharisMotors limited and Adebayo Adekunle while exhibit 15 does not show thatthe job card dated 10th December, 2015 was between the 1st Plaintiff and the Defendant. Inotherwords, even by its description unlike exhibit 13, exhibit 15 is titled "Technical Assistance" and the contract details are – name:- Ntow Joseph and dealer details- Coscharis Motors Limited.

Thus, as far as exhibit 15 is concerned it is a technical assistance to the Defendant and not between the 1st Plaintiff and the Defendant. I have carefully perused the submission of Counsel to the Defendantat paragraph 4.04 of his final written address thus:-

> *"It is in evidence that the first job done on the vehicle was on job order number SO AB0004226 dated 15th January, 2015 which can be gleaned from exhibit 13 for which the 1st Plaintiff paid the sum of N1,999,693.00 into the account of the Defendant while the second round of job that was to be done in the car is on job card dated 10th December, 2015 as can be gleaned from exhibit 15. What the 1st Plaintiff tried to do in this case is to create the*

impression that the vehicle was with the Defendant from January 2015 to December, 2015 without the Defendant doing anything on the vehicle."

The learned Counsel for the Defendant further submitted:- " This is a Court of law and the truth is that the vehicle came in for a second round of repairs in December, 2015 as can be seen from the job card contained in exhibit 15. The Evidence that there are two jobs involved in this case elicited through cross examination and is therefore very admissible"

By the facts of theDefendant's case and evidence adduced including the submissions of Counsel to the Defendant, the Defendant is being too economical with the truth. As I said before exhibit 15 is not a separate contract involving the 1st Plaintiff and the Defendant and the law is trite that ipse dixit of DW1 cannot by any shred of imagination contradict the contents of a document i.e exhibits 15 or 13 by either altering, adding or varying same by oral evidence. See ***EDEH V MAC- TINO (NIG) LTD, (2018) LPELR. 45859 (CA), UNION BANK OF NIGERIA LTD V SAX (NIG) LTD, (1994)9 SCNJ 1, WAYNE (W.A) LTD LTD V EKWUNIFE , (1989)12 SCNJ 99 AND UNION BANK of (NIG) LTD V OZIGI,(1994)5 SCNJ 41.***

Exhibit 15 is tendered in evidence to establish the second round of job between the 1st Plaintiff and the Defendant. Unfortunately for the Defendant there is nothing on exhibit 15 to show that the 1st Plaintiff is a party to exhibit 15. Thus, exhibit 15 in the instant case is irrelevant to establish the second round of contract between the 1st Plaintiff and the Defendant and it was wrongfully admitted in evidence. And the law is trite that wrongfully or inadmissible evidence admitted in evidence during trial the court has power to expunge such inadmissible evidence from its records.

See ***SURAKATU V ADEKUNLE, (2019) LPPELR 46412 (CA), TIMOTHY & ANOR V OKPEIN & ORS (2018) LPELR 44182 (CA).***

Thus, exhibit 15 tendered in evidence by the Defendant to establish a second round of contract of repairs of the subject vehicle between the 1st Plaintiff and the Defendant, being irrelevant, it is accordingly expunged from the records of thiscase.

Thus I hold the view that the only binding contract known to law between the 1st Plaintiff and the Defendant that exist in the instant case is as contained in exhibit 13 and I so hold.

Having said the above, by the state of pleadings and the evidence adduced, whether exhibit 13 has been breached by the Defendant?

By the evidence of PW1 and exhibits 7,8,9,10 11B and 11C, the 1st Plaintiff gave a graphic testimonies how he drove the subject vehicle to the Defendant's workshop, the payment he effected into the corporate account of the Defendant, the Defendant's purported repairs of the subject vehicle and the call from the workshop Manager of the Defendant that the 1st Plaintiff to come forward and pick the subject vehicle, the dismay of the 1st Plaintiff to discover that no repairs were done on the subject vehicle and the eventual instructions of the Defendant's staff to the 1st Plaintiff on the spare parts required to put the subject vehicle in a good working condition, according to the testimony of PW1 i.e the 1st Plaintiff, the Defendant failed to effect repairs on the subject vehicle for over fifteen (15) months until on the 13th April, 2016 when the subject vehicle was towed out of the Defendant's workshop. See paragraphs 7-33 of the amended statement of claim and paragraphs 7 -32 of PW1's witness statement on oath. In fact by exhibits 7,8,11B and 11C, the 1st Plaintiff vented his frustration and disappointments to the Defendant for her failure to effect repairs on the subject vehicle. The Defendant in its letter exhibit 9 acknowledged the gross negligence and inefficiency of its staff and pleaded with the 1st Plaintiff to release back the subject vehicle back to the Defendant's Abuja office, so that the subject vehicle can be fixed and the modules shall be replaced on free of cost basis by the Defendant. Exhibit 9 of the Defendant was written pursuant to exhibits 7 and 8 of the 1st Plaintiff.

In exhibit 7 to the Defendant,in particular, the 1st Plaintiff states at paragraph 4 line 4 of page 2:-

> *" After confirmation of the payment, AlhajiSamboasked me to pick up the car from the workshop. On getting to the workshop to pick up the car, I met the greatest disappointment of my life because I discovered that no repair work was carried out on the car, the car was very dirty externally and internally and on top of that, two brand new tyres installed before the repair work had been removed and replaced with old ones."*

The Defendant failed to reply to exhibit 7 until after two months when it received the 1st Plaintiff's solicitor's letter, exhibit 8.

Thus, from the avalanche of evidence adduced by the 1stPlaintiff it is erroneous and utterly false for the Defendant to contend that the subject vehicle was repaired and that the 1st Plaintiff picked the car and drove it out of the workshop of the Defendant in Abuja. Exhibits 5 and 6, with the attached photographs also established the fact that the subject vehicle was

towed out of the Defendant's workshopin Abuja. The evidence of DW1 at paragraph 29 of his sworn testimony also supported the position of the 1st Plaintiff to the effect that no repairs were done when the 1st Plaintiff towed the vehicle away.

The Defendant at paragraphs 19 and 20 of her consequential amended statement of defence avers to facts that the 1st Plaintiff was not given two weeks as collection period of the subject vehicle and that the subject vehicle was starting but failed to function optimally because of the cloned parts that were fixed in the vehicle by road side mechanics which could not function well with the genuine parts now installed in the vehicle and not because the car was parked for about 7 months.

Now apart from DW1's evidence in his witness statement on oath which is a reproduction of the statement of defence, thereis no any other independent evidence to support the fact that the 1st Plaintiff took his car to road side mechanics and cloned parts were fixed in the vehicle.The elicited evidence from PW1 under cross examination by the Defendant's Counselis not helpful to the case of the Defendant. PW1 testified under cross examination as follows:-

"Between June, 2012 and 2015 it was keloxsos that services the car for me"

The above elicited evidence of PW1 does not support the fact that the 1st Plaintiff used road side mechanics and that cloned parts were fixed in the subject vehicle. In otherwords, by the evidence of PW1 under cross examination assuming but not conceding that "Keloxsis" are road side mechanics, there is no evidence of replacing parts of the vehicle with cloned ones as it wasservices rendered to the 1st Plaintiff on the subject vehicle. However, it is in evidence before this Court and admitted by the Defendant that the contract between the 1st Plaintiff and the Defendant was for repairs of the subject vehicle unlike services by " Keloxsis". The Black's law dictionary, 8th Edition at pages 348 and 1325 defines the two terms as follows:-

> "*Service contract: a contract to perform a service especially a written agreement to provide maintenance or repairs on a consumer product for a specified term*"
>
> *"Repair and replace provision:- a contractual clause providing that a product's defect will be remedied by repairing or replacing the defective part or product"*

In the instant case, the services rendered by "Keloxsis" on the subject vehicle was not repair or replace defective parts or product and thus

therefore the question of fixing cloned parts in the subject vehicle does not arise. In the case of the contract between the 1st Plaintiff and the Defendant, the evidence is overwhelming that it was for repairs and replacing of defective parts which by paragraph 29 of DW1's witness statement on oath were procured but the 1st Plaintiff towed the vehicle away with the Parts already in the vehicle.

Thus therefore, by the avalanche of evidence including documentary evidence adduced by the 1st Plaintiff and indeed the admission of the Defendant, I hold the view that the Defendant failed to perform her own side of the bargain and hence breached the contract of repairs of the subject vehicle with the 1st Plaintiff and I so hold.

Having established a breached of contract of repairs against the Defendant, whether the 1st Plaintiff is entitled to the declarations and reliefs sought in the instant case?

A perusal of the claims of the claimants especially the 1st Claimant as revealed by evidence before me reliefs (i)-(vi) of paragraphs 46 of the amended statement of claim are declaratory in nature. Thus, being declaratory claims and or reliefs, the law is trite that the declaratory reliefs are not granted as a matter of course and on a platter of gold. They are only granted whencredible evidence has been led by the person seeking the declaratory relief (albeit the 1st Claimant in the instant case).

See the cases of ***ILIYA & ANOR V LAMU & ANOR (2019) LPELR 47048(CA) ANYANRU V MANDILLAS LTD (2007) 4SCNJ 288, CHUKWUMAH V SPDC (NIG) LTD (1993) LPELR 864 page 64(SC).***

In the instant case therefore, the 1st Claimant must plead and prove his claim for declaratory relief without relying on the evidence called by the Defendant or the Defendant's admission. However there is nothing wrong in a Plaintiff/Claimant taking advantage of any evidence adduced by the defence which tends to establish the Plaintiff's case or claim sought. See ***ANYANRU V MANDILLAS LTD (supra), OGUANGHU V CHIEGBOKA, (2013) 2 SCNJ 693 and MATANMI & ORS V DADA & ANOR (2013)LPELR 19929.***

I have earlier found that the Defendant was in breached of the contract of repairs of the subject vehicle with the 1st Plaintiff. I stand by my earlier findings and I add that by paragraphs 6,7 8,9,10,17,18, 19, 32 and 33 of the amended statement of claim and supported by the evidence of PW1 at paragraphs 6- 11, 16,17 and 32 and exhibits 7,8,9,10,11(c) and 11(e) including exhibit 12 with attached documents tendered in evidence by the

Defendant throughPW1, the 1st Plaintiff has clearly adduced credible evidence to entitled him to the 1st declaration and it is accordingly granted.
Let me at this juncture saythat reliefs (ii),(iv) and (vi) of paragraph 46 of the amended statement of claim will be considered together after the determination of the declaration sought. The issue therefore iswhether the Defendant is vicariously liable for actions/ in actions of its employees in the repair agreement of the subject vehicle and whether the employees of the Defendant were grossly negligent in the contract of repairs of the subject vehicle.
By the evidence adduced by the Plaintiffs, it appears that at the material time of the contract of repairs of the subject vehicle between the 1st Plaintiff and the Defendant, there is no dispute that AlhajiSambo, the Manager of theDefendant office, Abuja, the workshop Manager at the Defendant's Abuja office, an Indian, Mr. Mike , Mr.ChristopherNeequaye (Automobile Electrician of the Defendant's Abuja office) and Mr. Josiah Samuel, the Managing Director of the Defendant were all employees or agents of the Defendant. At paragraphs 21,22, 24 , 26 and 35 of the amended statement of claim the 1st Plaintiff avers to facts of the role of the employees of the Defendantwhich is supported by the evidence of PW1 at paragraphs 18,19,22,24,34 and 36 of his witness statement on oath. Further, PW1 tendered in evidence exhibits 11B and 11C the various correspondences between the 1st Plaintiff and the Defendant's staff aforementioned.
By exhibit 11C the Defendant's Abuja Manager, AlhajiSambo sent a text message to the 1st Plaintiff as follows:-

> *"Good morning sir, sorry for the delay sir.Sir here is the details of the repairs and account to pay into:-Coscharis Motors Limited, Zenith bank 1012860084"*

Based on thistext message from the Defendant's Abuja Manager, the 1st Plaintiff through the account of his wife paid the sum for the repairs of the subject vehicle. On the 5th November, 2015 the Defendant's Abuja Auto electrician sent a text to the 1st Plaintiff as follows:-
"Sir this is the account number of the person who will get the PCM"
The account number was that of Automobile Electrician of the Defendant;, Christopher Neequaye, Ecobank, 3343002613. The 1st Plaintiff transferred the amount of N300, 000.00 to the account and accordingly informed the Defendant Abuja Manager.
Also by exhibit 11B, the Managing Director of the Defendant acknowledged the payments to the accounts of the Defendant's employees and

informedthe 1st Plaintiff that it was obviously wrong for them to have used a staff account to receive money from a customer for spare parts purchase and that the staff involved was investigated and sanctions applied. The Managing Director, in exhibit 11Bapologized for the inconveniences caused by the poor and shoddy jobs.

Thus, by the pleading of the Plaintiffs and the evidence of PW1 as well as exhibits 11B and 11C, it is evident that the Defendant's employee Mr.Christopher Neequayerequested the 1st Plaintiff to pay the amount into his account for the purpose of purchasing the spare part for repairs of the subject vehicle. And it is in evidence also that the 1st Plaintiff informed the Defendant's Abuja Branch Manager, AlhajiSambovide text messages dated 8th December, 2015 attached to exhibit 11C.

Now from the evidence adduced by the 1st Plaintiff, can it be said that the Defendant is vicariously liable for the acts of its employee?

The test for determining vicarious liability of an employer (in the instant case the Defendant) is whether the employees of the Defendanti.e the Abuja Branch Manager, the workshop Manager of Abuja and Auto electrician of Abuja branch of the Defendant gave the 1st Plaintiff the impression that they are acting for the Defendant in the course of their employment at the material time of the transaction or the above employees of the Defendant had acted under the colour of authority of their employment on behalf of the Defendant or had ostensible authority of the Defendant to act in the course of the transaction at the material time?

From the evidence and exhibits tendered before me, certainly the instructions of the Branch Manager and Workshop Manager by introducing the Defendant's Auto electrician to the 1st Plaintiff for the purchase of the PCM and forwarding his account to the 1st Plaintiff to the knowledge of the Defendant's Manager, the ingredients of vicariousliability exist in the instant case.

See the case of *C**.N EKWUOGOR INVESTMENT (NIG) LTD V ZENITH BANK & ORS (2018)LPELR 46602 (CA).***In the case of ***AFRIBANK (NIG) PLC V ADIGUN & ANOR (2008)LPELR 3634***, the Court of Appeal held:-

> *"The law is that for an employer to be liable for the acts of an employee, it would be deemed to be done in the course of employment if it is a wrongful act authorized by the master or a wrongful and unauthorised mode of doing some act authorized by the master."*

See also **UBN V AJAGU, (1990) 1 NWLR (pt126)page 328 at 343 and AWACHIE V CHIME (1990) 5 NWLR (pt150) page 302 at 309.**

Now in the instant case, by exhibit 11C with attached text message dated 5th November, 2015 and 6th November, 2015 between the 1st Plaintiff and the Workshop Manager of the Defendant reads thus:-

"Christopher Neequaye. Is the name Ecobank,

Account number 3343002613.The 1st Plaintiff in response to the above text wrote:-

"N300,000.00 will be sent to that account this morning from vitkays make sure the car is out by next week. The car has been with your company for over 9 months. Enough of this."

Thus, by the evidence of PW1 at paragraphs 21, 22, 23 24 and 34 (a) of his witness statement on oath and exhibits 11B and 11C, I hold the view that the Defendant is vicariously liable to the acts of its employees in the repairs transaction of the subject vehicle between the 1st Plaintiff and the Defendantand I so hold. Accordingly relief (iii) of paragraph 46 of the amended statement of claim is hereby granted as prayed.

In respect of relief (V) i.e a declaration that the Defendant was grossly negligent in its conduct and actions towards the Plaintiffs, by paragraphs 36-45 of the amended statement of claim and supported by the evidence of PW1 at paragraphs 35, 36, 37, 38, 39 and 40 of his witness statement on oath, PW1 avers that the subject vehicle that was driven by him to the workshop of the Defendant for repairs, repairs could not be effected for a period of over fifteen months despite the spare parts purchase for the repairs on the instructions of the Defendant's employees. Exhibits 7,8 and 9 also reinforces the case of the 1st Claimant that the Defendant's staff were negligent in the handling of the subject vehicle despite huge financial commitment on the part of the 1st Claimant. Apart from non-repairs of the subject vehicle for over 15 months.PW1 testified that due to the negligence of the Defendant's staff, two new brand tyres of the subject vehicle were stolen and replaced with old ones.

The question that will now arise is whether from the facts and evidence adduced by the Plaintiffs especially the testimony of PW1 and the exhibits referred above, the Plaintiffs have proved the essential elements of negligence to entitle them to the declaration sought?

The essential elements to establish in an action for negligence are:-

(a) The existence of a duty of care owed to the Claimant by the Defendant,

(b) Failure of the Defendant to attain that standard of care prescribed by the law; and
(c) Damage suffered by the claimant which must be connected with the breach of duty to take care.

See ***BRITISH AIRWAYS V ATOYEBI (2015) ALL FWLR (pt766) page 442 At 480-481 paragraphs H-A.***

Further, the burden of proof of negligence falls on the Plaintiff who alleges negligence. This is because negligence is a question of fact and the Plaintiff has the burden to prove same by adducing evidence in support of the particulars of negligence. See the case of ***ODULATE V FIRST BANK, (2019) LPELR 47353 (CA).***

In the instant case, the Plaintiffs plead particulars of negligence and led evidence to establish the facts. It is not in dispute that the subject vehicle was driven to the Defendant's workshop by the 1st Plaintiff in January, 2015. Exhibit 13 the job card showed that the date when the subject vehicle was received at the Defendant's workshop was 16th January, 2015 and the promise date was 19th January, 2015. However, the subject vehicle was towed out of the Defendant's workshop after about fifteen (15) months thereafter. The Defendant, in exhibit (9) while acknowledging receipt of exhibits7 and 8 and the treatment meted to the 1st Plaintiff as the result of the subject vehicle states as follows:-

> *"---- as the company cannot sacrifice its long standing goodwill on the altar of inadvertence of any of its staff, neither will it wilfully treat its customer with such disdain as recorded in your attached correspondence"*

The Defendant, up to the close of evidence did not adduce contrary evidence as a result of their investigations that the contents of exhibits 7 and 8 are not true thereby exonerating its staff.

Further contrary to the submissions of the Defendant's counsel at paragraph 4.04 of his final written address DW1 under cross examination by the Plaintiff's Counsel testified thus:-

> *"It is correct that the Plaintiff drove his car into the Defendant's company on 16th January, 2015*"

This piece of elicited evidence by the Defendant's witness, DW1 clearly established the fact that the subject vehicle's engine was in working condition. DW1 also under cross examination by the Plaintiffs' Counsel further testifies as follows:-

The Plaintiff submitted about eight (8) complaints to the Defendant regarding his vehicle which was translated or transferred into a job order. There was no complain on the brain box which we called PCM."

However by paragraphs 23-25 and paragraph 35 of the amended statement of claim, the 1st Plaintiff avers facts and particulars in which theDefendant's staff asked him to procure spare parts with huge financial cost and yet the spare parts were never used and the subject vehicle remained with the Defendant in its workshop for a period of over fifteen (15) months.

The averments of the Defendant at paragraph 24 and 25 of its consequential amended statement of defence has much to be desired as DW1 under cross examination testified that there was no complain about the PCM of the subject vehicle.

Thus, based on the foregoing facts and evidence before me in favour of the Plaintiffs, I agree with the Plaintiff's Counsel position at paragraphs 6.25-6.28 of his final written address and I hold the view that the Plaintiffs are entitled to the declaration and I so hold. Accordingly, relief V of paragraph 46 of the amended statement of claim is hereby granted as prayed.

The Plaintiffs having adduced credible evidence in support of the declarations and same having been granted, the Plaintiffs have however broken down the claims of general compensatory damages into three heads for breach of contract in the sums of N5,000,000.00 for vicarious liability N5,000,000.00 and gross negligence for the sum of N5,000,000.00 as well, all these claims are against the same Defendant.

Now by these heads of claim of the Plaintiffs, I am of the considered view that the acts of the employees are the acts or actions of the Defendant.Inotherwords, by the acts of the Defendant's employees, the Defendant failed to fulfill the terms of the contract of repairs of the subject vehicle and I have found in favour of the 1st Plaintiff a breach of contract. And the Plaintiffs especially the 1st Plaintiff, from the evidence adduced before me, he is entitled to general compensatory damages in order to put him back in the position, he would have been, if the Defendant had not caused him to suffer the injury or loss he is being compensated referred to in the latin maxim as:- "restitution in interregnum.See ***OSUJI V ISIOCHA, (1989)3 NWLR (pt111)page 623;***

In the instant case, from the facts and evidence adduced by the 1st Plaintiff, the 1st Plaintiff is entitled to compensation in form of damages for the breach of contract against the Defendant. Accordingly the sum of N5,000,000.00 is

hereby awarded to the 1st Plaintiff against the Defendant for breach of contract of repairs arising from the acts of the Defendant's employees.
In respect of the claim for special damages, the Plaintiff especially the 1st Plaintiff pleaded particulars of special damages and also led evidence in support of same. The claim of N1,199,693.00 had not been disputed by the Defendant.The amount was paid into the Defendant's corporate account domiciled with Zenith bank Plc. Exhibit 2, shows a transfer of N1,199,693.00 on 27th August, 2015 into corporate account of the Defendant and no repairs effected on the subject vehicle.
On the special damage of $1,989.29, the Plaintiffs pleaded the receipt issued by Land Rover, in the United States of America dated 10th December, 2015 at paragraph 28 of the amended statement of claim.
The receipt evidencing such payment or transfer was not tendered in evidence and the law is that special damagesmust be strictly proved by the production of receipt or other documents to support the claim. The claim is therefore refused and dismissed.
The next claims for special damages is the sum of $3,763,88. It is in evidence that the Plaintiff transferred to Mr.Chris Wenegieme's account for the purchase of brand instrument cluster No. LR018486, brand new Audio Control Module LRO 18486 and brand new parking aid monitor No YWC500730.
The Plaintiffs in support of the Particulars of special damages of the sum of $3,763.88 tendered exhibit 4, the receipt invoice for the purchase of the above items. Further, in both particulars of negligence and vicarious liability the Plaintiffs pleaded facts to the effect that the 1st Plaintiff incurred the expenses for the purchase of the new instrument cluster, Audio Control Module and Parking aid Monitor from the United States of America based on the instructions of the Defendant's Abuja workshop manager. The evidence of the 1st Plaintiff as PW1 at paragraphs 27-29 of his witness statement on oath supports the instant claim. Furthermore, PW1's evidence on the purchase of the items in exhibit 4 on the instructions of the Defendant's workshop Manager in Abuja was not challenged or discredited under cross examination see ***MAINGE V GUAMMA, (20004) 14 NWLR (pt 893) page 323 at 334.***Also by paragraph 25 of the consequential amended statement of defence the Defendant is not denying the instructions of its workshopManager that the 1st Plaintiff to purchase the items in exhibit 4 in order to effect repair on the subject vehicle.

Thus, therefore I hold the view that the 1st Plaintiff is entitled to the special damage of $3,763.88 and I so hold.

The claims of N40,000.00 and N2,882,500.00 by the 1stPlaintiff cannot be granted as the claims falling under special damages is not supported by evidence. The 1st Plaintiff, by his evidence avers that he paid to Cuwa crane and Hiab hiring Association Limited to tow the subjectvehicle. However, the receipt of payment, exhibit 5, according to PW1 under cross examination contains his son's name and thus the evidence of PW1 is at variance with the Plaintiffs pleadings and no explanation given why the receipt was in 1st Plaintiff son's name. On exhibit 10, the 1st Plaintiff under cross examination avers that the name of the owner of the subject vehicle and the registration number and engine number of the subject vehicle is not on exhibit 10. Further, exhibit 10 is a quotation and not a receipt and I wholly agree with the Defendant's Counsel's position in his final written address to the effect that exhibit 10 is a quotation and not a receipt. Consequently therefore the 1st Plaintiff is not entitled to reliefs vii (d) and (e) of paragraph 46 of the amended statement of claim and the reliefs are hereby refused and dismissed.

In respect of the sum of N2,000,000.00 being special damages for the legal costs and ancillary expenses incurred by the Plaintiffs, the Court of Appeal in the recent case of of***IBE & ANOR V BONUM, (2019) LPELR 46452****held* as follows:-

"Now, is the cost of representation in an action part of the Appellants cause of action.The Appellants cause is for libel. Is the cost of his solicitor's fees part of that cause of action paucisverbis, in the diacritical instances of this matter are the Appellants entitled to the award of the relief of their solicitors fees, legal cost or by whatever name called? In ***MICHAEL V ACCESS BANK (2017) LPELR 41981 page 1 at 48-49****, I was privileged to state as follows:-*

> "It seems to me that a claim for solicitors fees which does not form part of the cause of action is not one that can be granted. A relief which a claimant in an action is entitled to, if established by the evidence, are those reliefs which form part of the claimant's cause of action"

In the case of ***NWANJI V COASTAL SERVICES LTD(2004) 36 WRN page 1 at 14-15****,* it was held that it was improper, unethical and an affront to public policy, to have a litigant pass the burden of costs of an action including his solicitors fees to his opponent in the suit."

Thus, it appears from the decision of the AppellateCourts, the current state of the law is that a claim for solicitors fees or solicitors legal costs, which does not form part of the claimant's cause of action is not one that can be granted. Accordingly, the claim for N2,000,000.00 being legal costs and ancillary expenses incurred in commencing this suit is hereby refused and dismissed.

In conclusion, judgment is hereby entered for the 1st Plaintiff and against theDefendantin part .

Accordingly, judgment is hereby entered for the 1st Plaintiff in the sums of N5,000,000.00, N1,199,693.00, N300,000.00 and $3,763.88 against the Defendant as per the reliefs earlier granted while reliefs at paragraphs 46 (vii) ,(b),(d),(e) and (viii) are hereby refused and dismissed. Further, 10% interest is hereby awarded on the judgment sums in favour of the 1st Plaintiff against the Defendant from today until final liquidation of the judgment sums.

That is the judgment of this Court.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
5/11/2020

Parties: - Absent.
H.K Salami:-With me is Y. Samuel for the Plaintiffs.
Tony Ogbulafor: -For the Defendant.
Salami: - We thank the Court for the judgment.
Tony: - I thank the Court for the industry put in.

Sign
Judge
5/11/2020