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

THIS TUESDAY, THE 6TH DAY OF OCTOBER, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/963/2017

BETWEEN

MR. BRAIMOH KADIRI ..... PLAINTIFF
(Also trading under the name "Kambraim Business Ventures")

AND

FIRST CONTINENTAL PROPERTIES LIMITED .....DEFENDANT
(Also trading under the name "Churchgate")

JUDGMENT

The Plaintiffs' claims against the Defendant as endorsed on the writ of summons and statement of claim dated 17th February, 2017 but filed at the Court's Registry on 12th April, 2017 are as follows:

i. **A Declaration that the Defendant failure and/or negligence to pay for utilization of the plaintiff's Earth Moving Heavy Equipment/Motor Cranes (Payloader/Hiab) from October, 2012 to December 2012; and for building materials, mechanical equipments/tools supplied and services rendered by the plaintiff, constitutes a breach of contract.**

ii. **The sum of N4, 000, 000 (Four Million Naira) only, as damages for breach of contract.**

iii. **The total sum of N4, 744,811.88 (Four Million, Seven Hundred and Forty Four Thousand, Eight Hundred and Eleven Naira, Eighty Eight Kobo) only, being the outstanding contract sum, due to the plaintiff from the defendant, for utilization of plaintiff's Earth Moving Heavy Equipments/Motor Crane (Payloader/Hiab), cost of building materials, mechanical equipments/tools supplied and services rendered by the plaintiff to the defendant.**

iv. **10% pre-judgment interest per month, on the total contract sum, from 01/01/2013 till date of judgment.**

v. **10% post-judgment interest per month, on the total judgment sum, from date of judgment till the judgment sum is wholly defrayed.**

vi. **The sum of N23, 724,059.40 (Twenty Three Million, Seven Hundred and Twenty Four Thousand, Fifty Nine Naira, Forty Kobo) only, as plaintiff's loss, due to the defendant's delayed payment, resultant from devaluation of Naira from 2012 till date.**

vii. **The sum of N1, 000, 000. 00 (One Million Naira) only, being the cost of prosecuting this suit.**

The Defendants' statement of Defence is dated 30th May, 2017 and filed on 31st May, 2017 at the Court's Registry.

In proof of his case, the plaintiff testified as PW1 and the only witness. He deposed to a witness statement dated 17th February, 2017 which he adopted at plenary hearing. He tendered in evidence the following documents, to wit:

1. Bundle of eighteen (18) documents each with inscription Churgate monitoring claims (Kambraim site) were admitted in evidence as **Exhibits P1 (1-18).**
2. Eight (8) cash/credit sales invoice in the name of Kambraim Business Ventures were admitted as **Exhibits P2 (1-8).**

PW1 was then duly cross-examined by counsel to the defendant and with his evidence, the plaintiff closed his case.

The Defendant on its part called two witnesses. **Olatubosun Otaiku**, store officer at the Abuja office of defendant testified as DW1. He deposed to a witness statement dated 31st May, 2017 which he adopted at the hearing. He tendered in evidence the following documents:

1. Three (3) copies of Local Purchase Orders (LPO) in the name of First Continental Properties Limited was admitted as **Exhibits D1 – D3.**

2. Ledge Account of plaintiff together with the Certificate of Compliance was admitted as **Exhibits D4 and D5.**

3. Bundle of documents containing twenty two (22) sheets comprising of cash credit/sales invoice, copy of Union Bank Cheque and documents containing Hours of work by heavy equipment were admitted as **Exhibits D6 (1-22).**

DW1 was then cross-examined by counsel to the plaintiff.

The next witness for the defendant was **Ibikun Adeogun**, manager operations who testified as DW2. He deposed to a witness statement dated 31st May, 2017 which he equally adopted at the hearing. He did not tender any document and he was then cross-examined by counsel to the plaintiff and with the evidence of DW2, the defendant then closed its case.

At the conclusion of trial, parties filed and exchanged final written addresses. In the Defendants final address dated 18th February, 2020 and filed on 19th February, 2020 at the Court's Registry, two (2) issues were raised as arising for determination, to wit:

"(a) Whether the Defendant is in breach of any contract with the Plaintiff.

(b) Whether the plaintiff has proved his case on the balance of probability as to be entitled to the reliefs sought."

On the part of the plaintiff, the final address is dated 27th February, 2020 and filed same date in the Court's Registry. In the address, one issue was raised as arising for determination as follows:

"Whether the claimant has proved his case on the balance of probability as to be entitled to the reliefs sought."

The Defendant then filed a reply on points of law to the defendant's address dated 24th March, 2020 and filed on 4th May, 2020. I have set out above the issues as distilled by parties. Issue two (2) raised by Defendant is the same as the single issue raised by the Plaintiff. Issue 1 raised by the Defendant on whether a breach of contract has been established can be accommodated within issue two (2) raised by the Defendant and the single issue raised by plaintiff. In the circumstances, the issues raised by parties can conveniently be accommodated under the single issue raised by defendant, which the court will however slightly modify or alter hereunder in the following terms:

Whether on a preponderance of evidence or balance of probability, the plaintiff has proved his case to entitle him to all or any of the reliefs sought against the defendant.

The above issue has thus brought out with sufficient clarity, the pith of the contest which remains to be resolved by court shortly. It is therefore on the basis of this lone issue that I would now proceed to consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel and resolving whatever issue(s) that may have arisen by the submissions(s).

ISSUE 1

"Whether on a preponderance of evidence or balance of probability, the plaintiff has proved his case to entitle him to all or any of the reliefs sought against the defendant."

I had at the beginning of this Judgment stated the claims of plaintiff. The cause of action of plaintiff seems to be predicated in contract. From the pleadings and evidence of plaintiff, this alleged contractual relationship with defendant is predicated or based on two (2) planks:

1. **The contract to render sundry services, such as repairs of mechanical equipments and supplies of various building materials and;**

2. **Contract to provide on hire, Earth moving heavy equipments/hiap for use in the ongoing construction of the world trade center at Central Business Area, Abuja. See paragraph 3of the statement of claim.**

The key to the determination of this action therefore lies in determining whether there is a legally enforceable contract between parties, its nature, ambit and precise parameters and whether there has been a breach of the agreement and depending on the resolution or answer(s) to these questions, what consequences or remedies, if any, should follow in the circumstances.

The plaintiff on the pleadings and evidence contend that he has an enforceable agreement with respect to the identified and or streamlined planks above which the defendant has breached and accordingly entitles him to the Reliefs sought.

On the other side of the aisle, the case of the defendant is that they have no such enforceable contract at all with the plaintiff with respect to the first element or plank but that with respect to the second element, they agree or concede that the hiring of the Earth Moving Equipment, (the hiap machine) from the plaintiff was the only transaction or relationship they had with plaintiff and that they duly paid for the services and are thus are not liable to him for the monetary reliefs or claims as made out.

As already alluded to, it is imperative to now situate these alleged agreement(s), the ambit and or remit of same and its application. It is therefore to the pleadings which has streamlined the issues in dispute and the evidence that we must now beam a critical judicial search light in resolving these contested assertions.

In this case the plaintiff filed a twenty two (22) paragraphs statement of claim which forms part of the Records of Court. I shall refer to specific paragraphs where necessary to underscore any relevant point. The evidence of plaintiff and sole witness is largely within the structure of the pleadings.

The defendant on its part similarly filed a twenty three (23) paragraphs statement of defence joining issues with the plaintiff. I shall equally refer to relevant paragraphs where necessary. The evidence of the two (2) witnesses for the defendant were equally largely within the structure of their defence.

I shall in this judgment deliberately and *in extenso* refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of the evidence on Record.

Let us start by explaining what a contract connotes, as it provides a pivot on which the fate of this case may be tied and will further provide both factual and legal template in resolving some of the questions raised or posed by the extant dispute.

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

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

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

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

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

Let us equally situate the import of a Declaratory Relief which forms the fulcrum of Relief 1 of the Plaintiff's claims and on which other reliefs sought have significant bearing. Understanding what a Declaratory Relief means is critical in view of the extensive submissions made by counsel to the Plaintiff in his address substantially predicating the success of this relief on alleged admission(s) made by the adversary, which I will shortly address.

Declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.**

The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

Having above streamlined what a contract and a declaratory Relief entails in law, it is equally relevant to state certain principles that are now fairly constant and universal which guides the court in the process of evaluation of evidence. It is now settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by

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

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

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

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

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

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

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.** It is necessary to state these principles to allow for a proper direction and guidance as to the party on whom the burden of proof lies in all situations.

Now a convenient starting point is to understand the precise situational basis of the relationship of parties with respect to the **arrangements** earlier **identified** and which was compartmentalized into two (2) blocks for ease of treatment and understanding.

As stated earlier, the pleadings of parties presents a fair take off point. This for me is critical to underpin and understand the basis of any relationship and its mandate. It also provides clear parameters in resolving the issues in dispute in the case and whether the reliefs sought are availing in the context of the threshold required by law.

Now in the plaintiff's statement of claim, these salient averments appear as follows:

"3.The Plaintiff avers that sometimes in 2011, the Defendant (in Abuja) contracted the former to render sundry services, such as repairs of mechanical equipments, sundry supplies of various building materials and to provide, on hire, Earth Moving Heavy Equipments/Motor Cranes (Hiap) for use in the ongoing construction of World Trade Centre situate at Plot 1333, Cadastral Zone, Constitution Avenue, Central Business District, Abuja.

4. It was the understanding of parties that the Plaintiff and Defendant shall jointly prepare MONITORING OF CLAIM, whilst the Defendant keeps same, as record of total number of hours the Plaintiffs hired Earth Moving Heavy Equipments/Motor Cranes (Hiab) were put to use, as record of building materials supplied by the Plaintiff to the Defendant, as well as record of sundry services rendered by the Plaintiff to the Defendant and; for processing of Plaintiff's payments.

5. The Plaintiff further avers that it was the understanding of parties that the Plaintiff shall be paid all accrued contract sums, for good/building materials supplied, hired heavy equipment and services rendered, within 2 (Nos.) weeks from the date of rentage of equipments, supply of building materials or rendering of services, as the case may be.

6. The contractual rates of payment agreed between parties for rentage of Plaintiff's earth moving heavy equipments are as follows:

S/N	NAME OF EQUIPMENT	AMOUNT (N) PER HOUR
1	Pay loader	11,750

2	**Hiab/Hiap**	**6,875**

7. In acceptance/compliance with the terms of the contract, the Plaintiff supplied various building materials to the Defendant, rendered sundry services and provided on hire, his Earth Moving Heavy Equipments/Pay Loader/Motor Crane (Hiab) for use in construction of the ongoing World Trade Centre situate at Plot 1333, Cadastral Zone, Constitution Avenue, Central Business District, Abuja which the Defendant fully utilized and made payments till October, 2012.

8. The Plaintiff avers that from October, 2012 to December, 2012 his Earth Moving Heavy Equipments/Pay Loader/Motor Crane (Hiab) were utilized by the Defendant, without payment, as shown in various MONITORING OF CLAIM, as follows: …

12. The Plaintiff also avers that on requisition by the Defendant, he rendered numerous repair services and supplied various building materials/mechanical equipments or tools, to the latter, at their construction site situate at Plot 1333, Cadastral Zone, Constitution Avenue, Central Business District, Abuja.

13. The services rendered by the Plaintiff to the Defendant and/or building materials/mechanical equipments or tools supplied to the latter, at different rates as agreed by parties, are as contained in numerous "MONITORING OF CLAIMS" prepared by parties, the original of which has remained in custody of the Defendant, as follows: …"

The defendant as stated earlier categorically joined issues with this assertions. In paragraphs 4, 6-9, 12, 13, 14, 16 and 17 of the defence, the defendant averred as follows:

"4. The Defendant denies Paragraph 3 of the Statement of Claim and states that he Plaintiff was only engaged for the hiring of its hiap. The Defendant further avers that it hired hiap from other entities to ensure competition and take advantage of competitive pricing. The Defendant did not hire the Plaintiff for the repair of any mechanical equipment's and/or sundry

supplies of any building materials. The Plaintiff is put to the strictest proof regarding its claim of relationship with the Defendant other than hiring of its hiap.

6. Flowing from the above, the Defendant further states that it is against any form of industry practice for the supply of materials to be undertaken through a "monitoring of claim" as against an LOP which would clearly state the specification of the material to be supplied and the terms and conditions of the transaction.

7. The Defendant denies Paragraph 5 of the Statement of Claim in its entirety and restate that the Defendant never requested the Plaintiff to supply any goods or render any services to it save for the hiring of its hiap. The Plaintiff is put to the strictest proof of his claims at paragraph 5 of the statement of claim.

8. The Defendant denies paragraph 6 of the Statement of Claim in its entirety and avers that apart from its own hiap, it hired hiap from several entities and that there was never a fixed rate it agreed to with the Plaintiff or any other entity. Rates oayable daily fluctuated according to demand and supply. The rates for that period thus fluctuated between N5, 000.00 (Five Thousand Naira Only) and N6, 000.00 (Six Thousand Naira Only).

9. The Defendant denies paragraph 7 of the statement of claims and avers that there was never a contract(s) between the Plaintiff and the Defendant for the supply of building materials.

12. The Defendant wishes to place it on record that it has not noticed any claims of the Plaintiff which are numbered 9-11. Where there are so numbered or a correction is effected, the Defendant denies any such claims and puts the Plaintiff to the strictest proof of all the Claims.

13. The Defendant denies Paragraphs 12 and 13 of the Statement of Claim and restates that Plaintiff was never requisitioned nor contracted by the Defendant to supply any building material nor did the Defendant contract

the Plaintiff to undertake the repair of any heavy machinery. The Plaintiff is put to the strictest proof of his claims at paragraphs 12 and 13 of his statement of claim.

14. The Defendant denies paragraphs 14 and 15 of the Statement of Claim and restates that it never contracted the Plaintiff to provide it with ay of the supplies or services alleged. The Plaintiff is thus put to the strictest proof of his claims at paragraphs 14 and 15 of his statement of claim.

16. Further to the above, the Plaintiff surprisingly submitted copies of his cash/credit sales invoices together with a "Monitoring of Claims" documents (which are internal documents of the Defendant used in the retirement of claims/IOU). The Defendant avers that the documents submitted by the Plaintiff did not evidence a contract between both parties and explained why the Defendant had no record of the transactions for which the Plaintiff was making claims. The Defendant pleads the above documents submitted by the Plaintiff and shall rely on them at the trial. The Plaintiff is put on notice to produce the originals in his custody.

17. The Defendant states that it is clear from the documents submitted by the Plaintiff that the Plaintiff was intent on fleecing the Defendant as may have previously occurred with success."

The defendant from the above is saying that part from the engagement of hiring of hiap machine from the plaintiff at rates that are not fixed and for which he was fully paid, the defendant absolutely had no other business with the plaintiff as contended. These contested assertions now became a matter of proof.

The first and indeed critical point to address is whether there is indeed a legally enforceable agreement between parties. I had early stated the elements of a valid contract in law. The only point to add is that an agreement may not necessarily be in writing. It can also be signified orally. Where that is the case, the ascertainment of the terms is a question of fact. Where it is expressed in writing, the general rule is that the court will be limited to what parties have agreed will regulate the relationship, except of court if evidence is established to the contrary. Lets now

evaluate the evidence to see whether these constituent elements can be precisely identified or streamlined.

I start with the first block or part of the alleged agreement earlier identified relating to supply of sundry services to wit: repairs of mechanical equipments, supply of building materials and other services rendered. Now on the evidence, it would appear that while the plaintiff used the phrase **"contracted"** by defendant in paragraph 3 of his claim, there is really nothing concrete streamlining the terms of this contract and what regulates or is to guide the relationship.

As stated earlier, apart from the admitted transactional relationship of hiring of hiap, which I will deal with separately, the defendant denied that it "contracted" with the plaintiff to render sundry services for:

1. repairs of mechanical equipments,

2. supplies of various building materials.

As stated earlier, no document was put forward showing that the plaintiff was "contracted" and streamlining the terms of this relationship and what would have been used by the court as a pivot for a determination of what constitutes the basis for the mutual reciprocity of legal obligations. If there was in law, a valid written contract agreement, parties will be held bound by the agreement and by all its terms and conditions. There would be no room for parties to depart from what is encapsulated therein or indeed for any interpolations to suit a particular purpose. See **Jeric (Nig). ltd V. UBN plc (2000) 15 NWLR (pt.691) 447 at 462-463 G-A; 466.**

Where there is no such written agreement, this obviously comes with its obvious challenge of determining whether parties *abinitio* agreed to even anything and then the terms of the relationship.

As stated earlier, while an agreement can also be signified orally, the ascertainment of its terms is a question of fact. If there was an **"understanding of parties"** as posited by plaintiff, then this clearly is a matter or question of evidence. Evidence of quality must then be elicited providing basis for the court to ascertain that there was indeed an oral agreement and that these was what was agreed to. This delicate

duty on court cannot be one of conjecture or guess work. It is a duty to be exercised solely on the quality of evidence demonstrated in open court.

Now in this case, the critical issue or question is whether there is anything in the evidence of PW1 creditably showing that he was "contracted" by defendant to carry out sundry services of repairs of mechanical equipments and supply of building materials and that payment for these services will be made or paid within two (2) weeks as averred in paragraph 5 of the claim.

The **plaintiff** in his pleadings and evidence averred vide paragraph 4 that there was an understanding of parties, that parties shall jointly prepare a **"monitoring of claim"** document to record and reflect services allegedly rendered.

The **defendant** on its part both in the pleadings and evidence agreed that the understanding of parties relates only to the record of hours that the **Hiap machine** of plaintiff was utilised which will be jointly monitored and approved before any payment is processed but that with respect to supply of any material or service on the defendants site, this is done through the issuance of a **Local Purchase Order** (LPO) or through written contract signed by both parties. The defendant tendered **Exhibits D1, D2, D3** which are samples of such LPO's issued for purposes of supply of any material(s) by the defendant to different companies.

Now an LPO in law and as the above Exhibits show serves a clear purpose of delineating the specifics of the service or material to be supplied, the quantity, unit price and the terms and conditions of such transaction. In such situation, there can be no ambiguity or confusion with respect to what the agreement or even "understanding" entailed.

In this case, the plaintiff agreed under cross-examination that in some cases he was indeed issued a **Local Purchase Order** by defendant to supply certain materials but in some cases that it was done orally. The salient point however here is that the substratum of the present complaints of plaintiff are rooted on alleged oral instructions. At the risk of sounding prolix, these complaints, however they are made, must be creditably established with cogent evidence. The plaintiff in paragraphs 12 and 13 pleaded and highlighted the services he said he rendered on behalf of the defendant on terms he said they agreed to as contained in documents titled **"monitoring of claims"** which he said were prepared by parties. These

"monitoring of claims" were then highlighted. The monitory of claims documents contains columns with different entries. As stated earlier, the defendant disputed the narrative relating to the "monitoring of claims" documents and indeed its contents. The defendant in its pleadings vide paragraph 16 and evidence stated that the "monitoring of claims" documents are internal documents of the Defendant used in the retirement of claims/iou and that it is not evidence of a contract between parties and that explains why they don't have records of the transaction for which plaintiff was making claims.

In evidence, the plaintiff simply repeated the entirety of these narrative in paragraph 13 of his witness deposition and tendered in evidence copies of these monitoring of claims vide Exhibits P1(1-18) and cash receipts invoices tendered as Exhibits P2 (1-8).

Let me quickly say some few words about the Receipt invoices tendered as Exhibits P2 (1-8) and whether probative value can be accorded to it in the context of the case presented by plaintiff. I have emphasised the vital position of pleadings in delineating the crux of any dispute.

The plaintiff in paragraphs 4 and 5 has precisely streamlined the agreement on how payments are to be made as follows:

"4. It was the understanding of parties that the Plaintiff and Defendant shall jointly prepare MONITORING OF CLAIM, whilst the Defendant keeps same, as record of total number of hours the Plaintiffs hired Earth Moving Heavy Equipments/Motor Cranes (Hiab) were put to use, as record of building materials supplied by the Plaintiff to the Defendant, as well as record of sundry services rendered by the Plaintiff to the Defendant and; for processing of Plaintiff's payments.

5. The Plaintiff further avers that it was the understanding of parties that the Plaintiff shall be paid all accrued contract sums, for good/building materials supplied, hired heavy equipment and services rendered, within 2 (Nos.) weeks from the date of rentage of equipments, supply of building materials or rendering of services, as the case may be."

The above is clear. As stated earlier, parties are bound by this understanding and it cannot be altered to suit any purpose. Payments for services rendered in this case must be predicated on preparation of a "monitoring of claim" which is to be jointly prepared and not through cash/credit sale invoices via Exhibit P2 (1-8) prepared by one party, the plaintiff in this case. The production of sales invoices will appear to me not decisive in the circumstances of this case. What gives rise to payment in the context of the specific arrangement in this case is the joint preparation of "monitoring of claims" document(s) which in my opinion gives assurance of transparency and accountability in the business dealings of parties.

The plaintiff in paragraph 14 clearly realised that the invoices on their own are inchoate for purposes of payment until the "monitoring of claims" is jointly prepared. In the said paragraph, he averred thus:

"14. The Plaintiff states that due to non-payment of the afore-stated accrued debt sums, the business relationship between parties deteriorated. The Plaintiff states that by this time, MONITORING OF CLAIMS for other services rendered by the Plaintiff to the DEFENDANT and/or other building materials/mechanical equipments or tools supplied to the latter, was yet to be prepared though the transaction was captured in Cash/Credit Sales Invoice Nos.: 682, 687, 689, 690, 691, 693, 694 & 696."

The above is self explanatory. I have still however out of abundance looked at the invoices Exhibit P2(1-8) and it is difficult to situate what to make of the entries in the said invoices and whether it even relates to supply of building materials, mechanical tools supplied or services rendered. I also note that none of the invoices was signed by the "customer" to situate or allow for the attribution of joint knowledge of the preparation and contents of the invoices by both parties. The plaintiff under cross-examination said he prepared the invoices himself. The absence of the signature of the defendant or customer on these invoices in the context of this dispute cannot be waived away as a mere trifle or unimportant. Furthermore the invoices do not contain any time frame for payment as averred in the pleadings of plaintiff.

The value of these invoices are seriously undermined in the light of the understanding or agreement of parties which plaintiff himself identified on his

pleadings and evidence with respect to the specifics or modalities for payment arising from any service(s) rendered which is rooted in "monitoring of claim" documents.

What we are now left with are the **"monitoring of claim"** tendered by plaintiff as Exhibits P1 (1-18). The plaintiff as already alluded to has submitted that since defendant has stated in its defence that these "monitoring of claim" documents are its internal documents; that this amounts to an admission showing parties have an agreement and the sums agreed to be paid.

I had earlier also referred to paragraph 16 of the statement of defence which challenged the narrative of plaintiff which respect to any purported agreement or admission.

It is apposite to again underscore the point that the fundamental crux of the claim of plaintiff seeks a declaratory relief that the failure of defendant to pay for services rendered constitutes a breach of contract. That being so, the success of such declaratory relief must be predicated not on admissions, but the quality and credibility of the evidence to sustain that particular relief. The question simply is has such a credible and convincing case been made by plaintiff?

Let us carefully scrutinize the monitoring of claim documents, Exhibit P1 (1-18).

I have carefully looked at the monitoring of claim Exhibits particularly P1 (6, 9-18) dealing with alleged repairs and supplies and as stated earlier, they contain different columns with different entries. The documents are headed churchgate, subject: world trade center prepared by one **Mrs. Katrin Joy Dadar** who then signed. The name of one **Mr. Fredric Formoso** appears and he equally signed.

There is however nothing in these exhibits precisely delineating any agreement between **plaintiff and defendant** relating to "supply of mechanical equipments, building materials and sundry services as alleged" and executed for and on behalf of the defendant and any specified time frame for payment. There is really nothing before court to predicate an offer and acceptance or indeed a template to situate a binding agreement on the basis of these documents.

Furthermore and no less critical is the important fact that none of the signatories to these documents was produced in evidence to lend weight and credibility to the

case of plaintiff that these documents were indeed made in furtherance of the agreement for the execution of services earlier highlighted. The question that then arises is who is **Mrs. Katryn Joy Dadar** and **Mr. Fredric Formoso**; the persons whose names appear on these documents?

Now neither of these two persons whose names appear on the Exhibits gave evidence in court or spoke to these documents. The defendant may have acknowledged that the documents are there internal memo used in the preparation of claims/IOU's but this without more does not prove the agreement and the consideration subject of the extant suit. In law the proper person to tender a document is its maker, who alone can be cross-examined on it; and where a person who did not make it tenders it, the court ought not to attach probative value to it since the witness cannot be cross-examined on it. See **Belgore V Ahmed (2013) 8 NWLR (pt.1355) 60; Flash Fixed Odds Ltd V Akatugba (2001) 9 NWLR (pt.717) 46.**

Furthermore there is in law a clear dichotomy between admissibility of a document and placing probative value on it. While admissibility is based on relevance, probative value depends not only on relevance but also on proof. An evidence has probative value if it tends to prove an issue. See **Buhari V. INEC (2008) 19 NWLR (pt.1120) 246 at 414 G-H.**

Without evidence demonstrating the import of the documents and the entries, it will be difficult to accord much value to these documents without more. The plaintiff himself did not prepare these documents. If he somehow got them from defendants, then someone from there must be made available to say something about the documents. It is perhaps necessary to state in view of the rather flawed position of plaintiff tendering documents without evidence in support that Documentary evidence, no matter its relevance, cannot on its own speak for itself without the aid of an explanation relating its existence to prop it up. This is not a matter for final address however well written or articulated. The validity and relevance of documents to admitted facts or evidence is when it is done in the open court. It is also not the duty of a court to speculate or work a method of arriving at an answer on an issue which could only be elicited by credible and tested evidence at trial. Where a party, as it were, simply dumps documents on the court without showing how the documents affects his case, it is not the duty of the court to

embark on an independent inquiry to fix the documents on the evidence, more so when it is outside the hearing in court. See **Nwole V Iwuagwu (2000) 16 NWLR (pt.952) 543; A.C.N V Lamido (2012) 8 NWLR (pt.1303) 560 Sa'eed V Yakowa (2013) 7 NWLR (pt.1352) 2.**

What is interesting here is that plaintiff under cross-examination said he does not **work on site**. If that is the case, then aside the pleadings and Exhibits P1 (6, 9-18) which did not provide any clarity to the fluid situation of the alleged services provided by plaintiff, there is really nothing streamlining clearly what mechanical repairs plaintiff carried out, its nature and on what equipment(s) on defendants site. There is equally nothing to show that if any repairs was carried out, it was even with the mandate of defendant. Most importantly, since plaintiff as already alluded says he does not work on site, then somebody on his instructions or direction must have carried out this mechanical repairs or supplies as alleged. In Paragraph 13 for example of his pleadings vide monitoring of claims (No. 1012), allusion was made to **"rewinding of 6KVA electric motor"**; **"repair of gear box and changing of two bearing"**. The logical question is who carried out these repairs and why was he not produced in court to give or add credibility to the assertion of this oral agreement of parties.

Similarly if **"two bearings"** were changed, then the new bearings must have been bought or obtained somewhere? Why is there no evidence before court showing purchase of one single equipment to facilitate any repair(s)? In the same vein if mechanical equipments such as tools, bounding materials etc were supplied at the construction site, it is difficult to accept that supplies were made without evidence or at least paper trail showing evidence of purchase and most importantly receipt of same at the site. It is difficult to accept that business can be conducted in such cavalier and perfunctory manner. If indeed plaintiff chose to conduct his supplies and business this way, then his prayer should be that there should not be a problem with such arrangement. This then becomes a matter for individual conscience and good faith. Where such moral compunction is lacking as is often the case in our society, unfortunately and the matter becomes one for judicial intervention, such a case or matter is invariably compromised for want of clear evidence. The whole trial process, whatever its imperfections is entirely evidence driven. Not just any evidence but evidence of quality and with probative value.

One more point on this issue. It is surprising that the plaintiff did not produce any other witness to corroborate his challenged narrative relating to the supplies and or repairs effected and this served to further weaken the quality of his case. It is again difficult to accept that there is nobody who is aware of these alleged sundry services rendered by plaintiff.

The bottom line is that there is no factual basis to situate in evidence the assertion of "numerous repair services" and supply of "mechanical equipments/tools" and "various building materials" undertaken by plaintiff for the defendant and the court cannot speculate. The law is settled that it is incumbent on a party to plead material facts in his pleadings and most importantly then to lead evidence in support. The trite position of the law is that averments in pleadings is not evidence. Where facts are pleaded without evidence in support, such pleadings would be deemed as abandoned. It cannot be right in law for any court to treat averments in pleading without evidence as evidence of matters averred therein. See **Awojagbagbe Light Ind. Ltd V Chukwu (1995) 4 NWLR (pt.390) 379 at 427 B; Omo-Agege V Oghojafor (2011) (pt.1234) 341 at 353**.

Indeed on the authorities, the oral or documentary evidence must be accurate in the sence that it brings out the facts as averred in the statement of claim. In other words the evidence led must dance to the same music as in the statement of claim. Where the evidence led does not bring out the facts in the statement of claim, or where there is material contradiction, the court is entitled to hold and will hold that the claimant did not prove his case. Here the court uses the statement of claim as a reference point because that is where the facts of the case originally germinate. See **Boniface V Anyika & Co. Lagos (Nig) Ltd V. Uzor (2006) 15 NWLR (pt.1003) 560 at 572 B-C**.

Unfortunately there is here no clear evidence to support the case made out by plaintiff that he had an agreement or understanding with defendant for supply of building materials, mechanical tools and equipments and carrying out of numerous repairs or other services and that payment for the services is to be made within two (2) weeks.

This now leads me to **transaction** relating to hiring of **hiap machines** which I stated I will treat separately as the defendant admitted to this particular transaction but contends that it has fully paid the plaintiff for the services it rendered.

Now the complaint made by plaintiff here is that the defendant failed to pay for the utilization of the plaintiffs Earth Moving Equipment from **October 2012 to December 2012** vide **Relief 1** of his claim.

In paragraph 6 of his statement of claim, the plaintiff pleaded that the contractual rates agreed for rentage of plaintiffs earth moving heavy equipments are as follows:

1. Pay loader: Amount per hour - 11, 750
2. Hiab/hiap: Amount per hour – 6,875

In paragraph 8 (a-e), the plaintiff pleaded again documents termed "monitoring of claim" which he said were jointly prepared showing record of number of hours the plaintiff's machines were hired. The plaintiff repeated these averments in his witness deposition.

Now as severally stated in this judgment, these averments were all put in issue or contested by the defendant and therefore it became a matter of proof.

Let me quickly state before analyzing the evidence here that in law where two possibilities are equally compatible, neither one can be said to have been proved. Evidence must so preponderate towards the claimant as to exclude any equally well supported belief. See **Ogunro V. Arowolo (1986) 6 NWLR (pt.552) 78 at 87 B-C**.

Let us now judicially scrutinize the evidence on record on this point. Let me start with the case of defendant.

In evidence, the defendant through DW1 and DW2 stated that apart from plaintiff, they also hired Hiap machines or equipments from other entities to ensure competitive pricing and that the rates fluctuated between N5000 and N6000 depending on demand and supply.

The defendant may have hired machines from other sources but they too did not tender any document showing for example that any rate(s) was agreed for hiring of

the equipments or machines of plaintiff or even how much they actually paid plaintiff beyond the assertion that they don't owe the plaintiff any amount, having paid all sums due for the hiring of his machines. The ledger account they tendered vide Exhibit D4 was prepared by them and only show alleged payments made by them. There is nothing therein or any explanation showing what was agreed for the hiring of the hiap and pay loader machines of plaintiff and what the hourly payment agreed was per day.

It is really difficult to situate what real value to attach to this **ledger account** in the absence of clear evidence buttressing the key elements of the payments agreed on and then what they claimed they then paid in the context of the agreement.

For the plaintiff too, beyond challenged oral testimony, there is nothing before court precisely streamlining or showing that any **amount was agreed** as the rate or amount per hour for the hiring of either the pay loader or hiap equipment of plaintiff as pleaded and this is fatal.

The documents **"monitoring of claim"** tendered with respect to the hiring of equipments vide Exhibits P1(1, 2 – 8) equally suffers from the legal challenges faced by similar documents earlier evaluated with respect to the other services said to have been rendered by plaintiff. There was also no clear explanation of the entries in Exhibits P1(1, 2 – 8) and in such unclear circumstances, it is difficult to legally situate the claims made relating to the alleged agreement **relating** to the rates per hour for use of the machines. These exhibits too were prepared and signed by one **Mrs Katryn Joy Dadar** and one **Mr. Fredrick Formoso** for the claimant. I also note that in two of the Exhibits particularly P1 (2 and 5), there are portions for approval by certain persons which were not signed at all. Indeed even in P1(5), only one person signed the Exhibit out of the four persons expected to sign same.

Again, none of the signatories or indeed anybody with a name on these exhibits was produced to give evidence with respect to what they prepared. The point to reiterate is that the plaintiff under cross-examination said he was not on site and that whatever occurred at site is reported to him with respect to number of hours that the machines were used or utilised. That what he is told is what he now uses to prepare his claims. There is really nothing before the court showing who gave

him this information relating to the key elements of the number of hours that the equipments were utilised and even the **rates** said to have been agreed to.

Now even on the usage of the **machines or equipments** and the **rates**; the above Exhibits P1 (1, 2 - 8) show that the equipments were used on specific dates and certainly does not cover the whole of **"October 2012 to December 2012"** as pleaded in paragraph 8 of the pleadings. The entries as alluded to are not also clear. I take some of the **Exhibits**.

Exhibit P1 (1) shows that the loader and Hiap were used on **22nd October, 2012.** The following unclear elements then appear:

A. Site/Project Expenses

1. Rentage of pay loader day:

Purpose: For site usage

Company: Kambraim Business Ventures.

Quantity: 23

Units: Hrs

Price: 11, 750, 000

Subtotal: 270, 250, 00.

2. Rentage of pay loader night

Quantity: 18.00.

Units: Hrs

Price: 11, 750

subtotal: 211, 500,00

3. 5% vat: 24, 007,50
4. Amount: **505,837.50**

3. Rentage of hiap

Quantity: 28.30

Units: Hrs

Price: 6, 875.00

subtotal: 204, 290.03

5% vat 9, 728.13

Amount: **204,128.13**

The total amount claimed in this Exhibit is the sum of **710,128.13.**

The question that agitates the mind here is that if it is taken or is given that we have **24 hours** in a day, how possible is it that the usage of the loader during the day time will cover a period of 23 hours and usage of the same loader at night for the same 22nd October, 2012 will be for 18 hours. The Rentage of Hiab as shown above for a day incredibly spans a period of over 28 hours. As already alluded to, nobody was presented to speak as it were to or about these exhibits and the incredulous amount of hours allegedly covered.

What Exhibit P1(1) shows is that a single day of 22nd October, 2012 has 41 hours for usage of the loader for day and night and the rate charged per day was for 41 hours instead of 24 hours. If the machines work day and night as plaintiff alleged, it certainly cannot go beyond 24 hours. The attempt to alter the number of hours per day from 24 hours to 41 hours is clearly factually an impossible task and this then detracts from the credibility of this document as representing work actually executed per day using the equipments of plaintiff. The same debilitating concerns also affects the computation of rentage of Hiab for a day done on the basis of 28 hours.

I note that under cross-examination plaintiff stated that the **23 hours** in the exhibit is for a week but there is nothing in Exhibit P1(1) saying that the said monitoring of claim document is for a week. The said document is specific to a single day of 22nd October, 2012. It is trite law that oral evidence is not admissible to alter or change the character of Exhibit P1 (1) to suit a particular purpose. See **Section 128 of the Evidence Act.**

Exhibit P1(2) in contradistinction to Exhibit P1(1) now shows clearly that this Exhibit or monitoring of claim document clearly covers a week from **13th October, 2012 to 19th October, 2012**. The hours the pay loader was utilised per day was clearly indicated but there is no indication as to the price or amount per hour for use of same. This Exhibit has two (2) columns for approval which was not signed suggesting it was not even approved. Exhibit P1(5) falls within the same category as **Exhibit P2** for the period 27th October, 2012 to 2nd November, 2012. P1(5) was similarly not approved.

Exhibit P1(3)dated 5th November, 2012 suffers the same undermining defects as P1(1). Rentage of hiap day shift covered a period of 25 hours and the night shift covered a period of 19 hours. The implication is that the amount charged for just 5th November, 2012 covered a period of 44 hours. The point again to underscore is that plaintiff charges hourly, so if the rate for one hour for rentage of Hiap machine as claimed is **6, 875,00** then when this is multiplied by **25 hours** used for the rentage of the hiap machine for day shift, it will give us the amount of **171,875.00** claimed in Exhibit P1(3).

At the risk of prolixity, this sum of N171,875.00 is just for day shift (5th November, 2012) and since a day does not extend beyond 24 hours, making claims based on 25 hours per day shift amount to operating in the realm of impossibilities at best or falsehood at worst. When the amount claimed for the night shift for the same day is added, the ridiculousness of this document becomes apparent. The amount charged for the night shift is 19 hours x 6, 875.00 which is N130,625.00 which is what plaintiff is claiming. The total amount thus claimed clearly is for 44 hours per day in the sum of N317, 625.00. This is certainly incredible and untenable.

Similarly Exhibit P1(4) covers a period of 26 hours hire for hiap day shift and 22 hours for use of the hiap for night shift totaling 48 hours for 12th November, 2012. The amount claimed was on the basis of this 48 hours. Exhibit P1(7) on the other hand covers rentage of hiap for day shift on 26th November, 2012 and what was charged cover a period of 42 hours per day and when multiplied by 6,875,000 per hour charge, we now have the sum of 288,750,00 claimed in this Exhibit.

Finally Exhibit P1(8) dated 12th December, 2012 charged for the hourly use of Hiap machine (day shift) and it was calculated on the basis of 37 hours per day.

I have at length gone through these exhibits to show the complete lack of clarity with respect to the alleged agreement for hiring of plaintiffs hiap machine and loader and the rates agreed to be charged hourly per day. The documents sought to relied on to show what was agreed appear inherently bereft of credibility and probative value.

To further completely undermine the case of plaintiff, these exhibits as stated earlier cover specific periods and or dates/days and certainly does not cover the whole period of October 2012 to December 2012. The point perhaps to underscore at the risk of prolixity is that pleadings, however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must then be led to prove the facts relied on by the party to sustain the allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 F-G.** Averments in pleadings are therefore not evidence. There should be no confusion or doubt about this position. The legal position is very well settled that even if the averments were duly pleaded, it would have been deemed to be abandoned, there being no evidence led to prove such averment(s).

It is therefore difficult by the confluence of the above facts to situate a legally binding contract in the present situation. The question of whether or not parties have agreed to confer rights and impose liabilities on themselves cannot be a matter for speculation or guess work or as stated earlier even the address of counsel no matter how beautifully written and articulated. That question is one of whether the mutual assent between them which must be outwardly manifested can be situated within the evidence. Indeed the test of existence of mutuality is objective and where there is such mutuality, the parties are then said to be *adidem.* In the absence of mutuality, then there is no consensus *adidem* and therefore any claim or pretention to the existence of a contract in such circumstances is compromised. See **Bilante Int Ltd V NDIC (2011)15 NWLR (pt.1270)407 at 423 C-F.**

Flowing from the above and as a logical corollary, the point must be underscored that on the evidence of PW1 himself and the entirety of **Exhibits P1(1-18) and P2(1-8)**, there is no template to situate an enforceable contract entered into by Plaintiff and Defendant which is the foundation of its claims.

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

"It is the duty of the trial Court to determine whether there is a binding contract between parties and this is done by considering the evidence led. The documentary evidence tendered and accepted by the court and the oral testimony in line with pleaded facts. The terms of a written contract on the other hand are easily ascertained from the written agreement. The traditional view is to look for offer, acceptance and consideration. In the absence of any of them, there is no valid contract. Although that is not always the case. Valid contracts can exist in the absence of offer, acceptance and consideration such as in settlement contracts. The overriding consideration in determining if there is a binding contract between the parties is to see whether there was a meeting of the minds between the parties, that is, consensus *ad-idem*. In all cases of contracts, there must be consensus *ad-idem*.

The point flowing from the above decision is the critical role of evidence as a fundamental basis for any decision relating to the existence and the precise parameters and application of any relationship. What is more the substantive **Relief 1** sought by plaintiff is a declaratory relief which as repeated severally is not a matter for admissions, neither is it operational or availing within the unwieldy realms of speculations or conjectures.

Flowing from the above **Relief (i)** seeking for a declaration that the Defendant failure and/or negligence to pay for utilization of the plaintiff's Earth Moving Heavy Equipment/Motor Cranes (Payloader/Hiab) from October, 2012 to December 2012; and for building materials, mechanical equipments/tools supplied and services rendered by the plaintiff, constitutes a **breach of contract** must fail. In the absence of clear evidence showing an agreement reached between parties on the amount charged for utilization of plaintiff's equipments and failure to pay same and also a clear absence of agreement for supply of building materials, mechanical

equipments/tools and other services and the failure to pay for same, it is then impossible to situate a breach of contract in such very fluid and unclear circumstances. In **AG Rivers State V. AG Akwa-Ibom State (supra),** the Apex Court stated further as follows:

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

Relief (i) thus fails.

Relief (ii) for the sum of **4, 000, 000 (Four Million Naira)** damages for breach of contract must fail as a consequence of failure of Relief I. If breach of contract as in this case has not been precisely identified and proved, damages cannot logically inure.

Relief (iii) for the total sum of **N4, 744,811.88 (Four Million, Seven Hundred and Forty Four Thousand, Eight Hundred and Eleven Naira, Eighty Eight Kobo)** only, being the outstanding contract sum, due to the plaintiff from the defendant, for utilization of plaintiff's Earth Moving Heavy Equipments/Motor Crane (Payloader/Hiab), cost of building materials, mechanical equipments/tools supplied and services rendered by the plaintiff to the defendant must similarly also fail. If there is no defined contract showing agreed terms and most importantly the amount agreed as the contract sum for a particular product or service to put the court in a commanding height to determine if any outstanding sum(s) is then due; it will clearly be an impossible task for the court on the basis of a complete dearth of credible evidence in this case to hold that any outstanding amount(s) is due for utilization of services as claimed in this case.

Relief (iv) for pre judgment interest must fail with the failure of **Reliefs 1-3**. In any event even if **Reliefs 1-3** had succeeded, it will be difficult to grant such a claim of pre judgment interest in the absence of evidence and legal template to situate the grant of such relief. No basis was proffered in this case either in the pleadings or evidence that would have allowed for its grant in any case. The Relief fails.

Relief (v) for post judgment interest fails with the failure of Reliefs 1-3. The foundation that would have allowed for its grant has collapsed. You can't put something on nothing and expect it to stand is a well known legal truism.

Relief (vi) for the sum of **N23, 724,059.40 (Twenty Three Million, Seven Hundred and Twenty Four Thousand, Fifty Nine Naira, Forty Kobo)** only, as plaintiff's loss, due to the defendant's delayed payment, resultant from devaluation of Naira from 2012 till date also fails. Again with the failure of **Reliefs (i-iii),** any question of damages due to delayed payment resultant from devaluation of naira since 2012 must also fail. Again, at the risk of sounding prolix, if the alleged outstanding payments due are not clearly and precisely defined or streamlined and then failure to pay proved, any complaint of delayed payment would lack both factual and legal traction.

The final relief for cost of prosecuting the suit clearly also cannot be availing with the failure of the substantive reliefs.

Before I drop my pen finally, let me say that from the evidence, parties may have had some transactional relationship but the reality and in the context of the precise claims in this case and the threshold of proof in law is that there is nothing showing or indeed clear materials furnished denoting that the defendant has by words or conduct evinced an intention not to perform or expressly declared that it is unable to perform its obligations with respect to a defined obligation in some essential respect.

There was nothing before court to show a refusal by defendant to perform its side of any contract in any material respect and the court cannot speculate or engage in any futile exercise of speculation or conjecture. Furthermore there was nothing before me to allow for the conclusion that the defendant do not intend to be bound

by the terms, which in this case was non-existent or fluid and unclear at best, or that they are determined to do so in a manner inconsistent with their obligations.

The point to underscore is that the whole trial process, whatever its imperfections is completely evidence driven. Not just any kind of evidence but admissible evidence with probative value, qualitative and with credibility. Where evidence lacks these key values and is improbable, inherently contradictory, feeble and or tenous, that would amount to a failure of proof. See **A.G. Anambra State V A.G Fed. (2005) All F.W.L.R (pt.268) 1557 at 1611; 1607 G-H**.

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

On the whole, the single issue raised for determination is answered in the negative. As a consequence of this holding, all the reliefs sought by plaintiff are not availing. For the avoidance of doubt, the plaintiff's case therefore fails completely and it is accordingly dismissed.

……....
Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. **A.U.S. Oguajamma, Esq., with Constance Akpadolu for the Plaintiff.**

2. **Paul Audu, Esq., for the Defendant.**