IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI ABUJA

DATE: 24TH DAY OF JUNE, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 6
SUIT NO: CV/0235/2017

ETWEEN:
J.I.T. LOGISTICS LTD ---- CLAIMANT

AND

MRS. MAIMUNA E. ALLO ---- DEFENDANT

JUDGMENT

The claimant instituted this suit vide a Writ of Summons filed on the 22/11/2017 claiming for the following reliefs against the defendant as follows:

"1. A declaration that in view of the extensive construction work by the plaintiff on the property known as plot 1056 Kolda Link, Wuse 2, Abuja, the concluded negotiations and deposit payment received by the defendant and her late husband for purchase of the property, the plaintiff is entitled to an order of specific performance of the contract entered between the parties to this action.

2. A declaration that the plaintiff, as sitting tenant and beneficiary of purchase transaction over the demised premises is entitled to peaceable possession thereof

pending the conclusion of payment of agreed purchase price of the property or the refund of deposit amount received as well as refund of the estimated cost of development calculated at N100 Million whichever is preferable to the defendant.

3. A declaration that the contract entered for the sale to the plaintiff to the subject property between the plaintiff and the defendant still subsists and has not been determined.

4. An order of specific performance mandating the defendant by herself, agents, privies or whosoever acting on her behalf to continue with the purchase arrangement under the agreed terms and conditions of monthly installment payment of N5 Million upon which the defendant had received the sum of N20 Million as agreed installmental payment on the purchase arrangement.

5. An order of injunction restraining the defendant by herself, agents, privies or whomsoever acting on her behalf from enforcing and or giving effect to the threat of forceful eviction of the plaintiff from the property.

6. Cost of this suit."

The defendant upon receipt of the Court processes filed a Statement of Defence and Counter Claim on the 26/3/2018 claiming as follows:

"a) A declaration that there is no binding and subsisting agreement or contract of sale or any agreement or contract at all in respect of plot 1056, Kolda Link, Wuse II, Abuja between the plaintiff and the defendant's late husband.

b) An order of this Court directing the plaintiff deliver to the defendant forthwith, vacant possession of plot 1056, Kolda Link, Wuse II, Abuja, the lease agreement between the plaintiff and the defendant's late husband in respect of the same having expired on 30/9/2014.

c) an order directing the plaintiff to pay the sum of N17.5 Million to the defendant being the arrears of rent for three and half years from September, 2014 to March, 2018 at N5 Million per annum, which period the plaintiff has occupied the defendant's property without payment.

d) ALTERNATIVE TO RELIEF C, an order directing the plaintiff to pay to the defendant the sum of N3.5 Million being the

arrears of rent for three and half years from September, 2014 to March, 2018 at N1 Million per annum based on the rental value of the property agreed between the parties from October, 2004 to September, 2014 as per the lease agreement.

e) An order directing the plaintiff to pay to the defendant the sum of N13,698.00 or in the alternative the sum of N2,739.00 daily from April, 2008 till vacant possession is delivered. The former is based on rent increment from September, 2014, while the later is based on the value of rent as per the lease agreement from October, 2004 to September, 2014.

f) Cost of this action assessed at N500,000.00."

During the trial, the claimant called one witness i.e. Bem Igbakule who testified as PW1. He tendered the following documents marked as Exhibits A, A1 – A12:

- *Conveyance of approval of Development plan dated 9/6/05 marked as Exhibit A.*
- *Lease agreement marked as Exhibit A1.*
- *Letter dated 24/7/13 marked as Exhibit A2.*

- *Copy of cheque dated 1/11/13 marked as Exhibit A3.*
- *Letter dated 30/7/13 marked as Exhibit A4*
- *Letter dated 9/10/13 marked as Exhibit A5*
- *Letter dated 16/6/14 marked as Exhibit A6*
- *Letter dated 30/6/14 marked as Exhibit A7*
- *Copies of cheques marked collectively as Exhibit A8*
- *Letter dated 25/11/14 marked as Exhibit A9*
- *Two letters dated 5/1/15 and 22/6/15 marked collectively as Exhibit A10.*
- *Letter dated 1/7/15 marked as Exhibit A11*
- *Application for change of land use, and official receipt attached marked collectively as Exhibit A12."*

The witness concluded his testimony and was subsequently cross examined.

On the 18/1/2021 the defendant/counter claimant testified for herself and tendered the following documents marked as Exhibits D, D1 – D11:

- *Letter of administration marked as Exhibit D*
- *Lease agreement dated 7/10/04 marked as Exhibit D1.*

- *Letter dated 24/8/06 together with receipt marked collectively as Exhibit D2.*
- *Letter dated 24/7/13 marked as Exhibit D3.*
- *Letter dated 9/10/13 marked as Exhibit D4.*
- *Letter dated 11/10/13 marked as Exhibit D5.*
- *Letter dated 25/11/14 marked as Exhibit D6.*
- *Letter dated 5/3/16 marked as Exhibit D7.*
- *Letter dated 5/1/15 is marked as Exhibit D8.*
- *Letter dated 22/6/15 marked as Exhibit D9.*
- *Letter dated 26/9/17 marked as Exhibit D10.*
- *Letter dated 12/10/17 marked as Exhibit D11."*

The defendant was cross examined on the 1/2/2021.

At the close of evidence, parties were directed to file written addresses. Learned Senior counsel **B.C. Igwilo SAN** filed the defendant's written address dated 19/2/2021. The written address was adopted on the 30/3/2021. Learned senior counsel formulated two issues for determination as follows:

"1. Whether having regards to the documentary and oral evidence led by parties, the Court can grant the reliefs sought by the claimant.

2. Whether the defendant is entitled to the reliefs in the counterclaim and in particular the possession of Plot 1056, Kolda Link, Wuse II, Abuja."

D.D. Tunyan Esq filed the claimant's written address dated 17/3/2021. The written address was adopted by **Solomon Tunyan Esq**. Three issues were formulated therein for determination. The issues are:

"1. Whether based on the facts and circumstances of this case, the claimant has proved its case and is entitled to an order of specific performance of the contract of sale of the property subject matter of this suit between the parties.

In the alternative:

2. Whether or not claimant is entitled to a refund of the deposit amount received by the defendant together with the cost of development of the two storey building calculated at N100 Million only from the defendant.

3. Whether or not defendant has proved her counter claim before the Court."

Upon a proper perusal of the evidence and written submissions of learned counsel on both sides, this Court will adopt the issues formulated by the claimant in determining this suit. Afterall it is the claimants case.

Issue No. 1

"Whether based on the facts and circumstances of this case, the claimant has proved its case and is entitled to an order of specific performance of the contract of sale of the property subject matter of this suit between the parties."

It is elementary law that in civil matter's, the burden of proof is basically and or generally on the plaintiff. See Olowu v. Olowu (1985) 3 NWLR (Pt. 13) 372; Kokoro – Owo v. Ogunbambi (1993) 8 NWLR (Pt. 313) 627. Apart from the general burden referred to above, the burden of proof of any material issue before evidence is gone into, rests squarely upon the party asserting the affirmative of the said issue. However, after all the evidence has been adduced, the burden

will then rest on the party against whom the Court at that point in time, would give judgment if no further pieces of evidence were adduced. Again, the burden of proof on pleadings, will rest upon the party, whether plaintiff or defendant who substantially asserts the affirmative of the issue. The burden of proof is fixed at the beginning of the trial by the state of pleadings and it is settled as a question of law, remaining unchanged throughout the trial, exactly where the pleadings place it, and does not shift in any circumstances whatsoever. See Chukwu & anor vs. Chukwu & ors (2018) LPELR – 45482 (CA).Okechukwu & Sons v. Ndah (1967) NMLR 368; Imana v. Robinson (1979) 3 – 4 SC 1.

This case is founded on breach of contract. The testimony of PW1 is to the effect that the defendant's late husband Col. Thomas Allo leased his property situate at plot No. 1056 Cadastral Zone A8, Kolda Link, off Adetukunbo Ademola Crescent by NITEL junction, Wuse II, Abuja to the claimant. The agreement was for the development by the claimant of a commercial outfit commencing from 7th October, 2004 with the annual rental value of N1 Million for ten years.

The claimant upon taking possession proceeded to erect a two floor storey building eventhough the representation made by the defendant's husband was that the claimant could erect a bungalow for its eatery business. It turned out that the FCDA informed the claimant that the kind of building that would secure approval must not be less than two suspended floors. When the defendant's late husband was notified of the development, he assured the claimant of sale of the property before the expiration of the lease.

Upon the strength of the representation, the claimant proceeded to secure the approval. Even when FCDA introduced the land use contravention fee of N3.8 Million annually on the property, the defendant though he undertook to remedy the situation by immediately converting the land use from residential to commercial, refused to take any step thereby exposing the claimant to tremendous loss, damage and untold hardship due to concealment of facts as to land use.

It was not until the 24/7/2013 that the defendant's solicitor wrote a letter titled Final First Offer to the claimant. After negotiations, the claimant responded by the letter

dated 9/10/2013 stating the mode of payment convenient to her. That it was after the receipt of the above letter that the defendant's husband agreed to collect instalmental payment of N5 Million monthly to take effect from the expiration of the lease. In furtherance to this, a cheque for N5 Million was issued in favour of the defendant's husband, while the sum of N15 Million was issued to the defendant after the demise of her husband.

The witness further testified that few months to the expiration of the lease, the defendants solicitor wrote the letter dated 15/11/2014 demanding for the lump sum payment of N445,000,000.00 (Four Hundred and Forty Five Million). And by the letter dated 5/1/2015, conveyed a notice of withdrawal of the offer for sale of the property. That the defendant through her solicitor's called for settlement meetings and it was agreed between the parties that in the event of the defendant's refusal to continue with the sale transaction, the plaintiff is entitled to the refund of the deposited amount for the sale as well as the cost of developing the property. While awaiting the defendants positive action towards solving the problem, the plaintiff

received a letter dated 26/9/2017 from Abdulaziz A. Ibrahim & Co. demanding immediate vacant possession of the property.

Under cross examination, the claimants witness stated that during the course of the tenancy a lot of things came to play. The witness when shown Exhibit A1 stated that the defendant did not breach any of clauses therein before the claimant purchased the adjacent property which is yet to be sold. He said the claimant borrowed money to erect the building on the premises. He admitted that the bedrock of the relationship between the parties is the lease agreement. The witness categorically stated that they did not have anything in writing concerning his discussions with the landlord. He said it was not true that by Exhibit A5, the only thing agreed upon was the purchase price of N460,000,000.00 (Four Hundred and Sixty Million Naira). He admitted that the plaintiff did not have the money to buy the property eventhough the property was offered for outright purchase, and that time frame was not stated on Exhibit A2. The witness further said that the defendant agreed that they pay N5,000,000.00 (Five Million Naira) monthly to buy the

property eventhough this arrangement was not put in writing due to the special relationship developed with the defendant's husband.

PW1 admitted that the claimant is still a sitting tenant on the property though the lease has expired and no payment has been made for the purchase of the property. He admitted that there is no established sequential payment. Concerning the underlining and the word 'BAD' written on Exhibit A5, the witness said he did know that the meaning was a rejection. He further confirmed that the claimants are not tenants on the property and they are not the owners. He added that the defendant agreed to step into the shoes of her late husband to be collecting N5,000,000.00 (Five Million Naira) monthly toward purchasing the property.

The defendant who testified as DW1 stated that what was envisaged by the lease agreement was a residential structure and not what was developed by the plaintiff (two floors storey building) which occasioned the demand for contravention charges of N3.8 Million. The witness denied that there was any representation authorizing the plaintiff to do anything contrary to the land use. She further denied that

an assurance was given that the property will be sold to the plaintiff at a reasonable amount before the expiration of the lease.

That Exhibit A2 was not an endless offer and contained the fundamental terms relating to payment of 60% and 40%. That the letter dated 9/10/2013 countered the offer made to the plaintiff. The witness admitted collecting the sum of N15,000,000.00 (Fifteen Million Naira) in four instalments as loan with the understanding that if the property is disposed, it will be refunded to the plaintiff. That her demand for N445,000,000.00 (Four Hundred and Forty Five Million Naira) was made after the expiration of the lease agreement. That the plaintiff consented to vacate the property vide the letter dated 5/3/2016.

The defendant posits that sufficient time was given to the plaintiff for the outright purchase of the property, but to no avail. That the plaintiff has failed to deliver vacant possession of the property after the expiration of the lease and has failed to pay the rent for 3 and half years.

Under cross examination, the witness said they offered to sell the property to the claimants but they could not meet up with the payment. That there was no agreement to build a bungalow on the property. She maintained that the N5,000,000.00 (Five Million Naira) given to her husband was Christmas gift, while the additional N15,000,000.00 (Fifteen Million Naira) was a loan given to her by the claimant. That the defendant paid the ground rent, AMAC charges, and that there was an agreement that both parties will pay the contravention charges. She admitted that the claimant has been paying the contravention charges but stopped payment after her husband died. She requested that the claimant should vacate the premises and also offered to refund the N20,000,000.00 (Twenty Million Naira) given to her. The witness further stated that nobody has ever valued the premises. That sometime in 2014 she agreed to compensate the claimants for the structure erected so that the claimant can vacate the premises.

The duty of the Court is to ascertain whether the plaintiff or the claimant has discharged the onus or burden on him to entitle him to the relief sought. Of course, the

plaintiff or claimant must rely on the strength of his own case and not on the weakness of defence case. See **Mela vs. Ciniki (2017) LPELR – 42999 (CA).**

Learned senior counsel for the defendant submitted that where there is oral as well as documentary evidence, documentary evidence should be used as a hanger to assess oral evidence. Counsel added that reading the collection of N5,000,000.00 (Five Million Naira) monthly installments or indeed anything else outside the four walls of the documents tantamount to speculation and offends elementary rules of interpretation of documents. Assumption or mere assertion is not proof and no one is permitted to read into a document something that is not there. Reference was made to **Kimdey vs. Military Government Gongola State (1988) 2 NWLR (part 77) 445, Fashanu vs. Adekoya 1974) 6 SC 83, Okwusiadi vs. Ladoke AKintola University (2011) LPELR – 4057 (CA).** Counsel further made reference to the case of **BFI Group vs. BPE (2007) LPELR – 8990 (CA)** where the Court held that there must be definite contract in existence of which the Court would order specific performance since part performance cannot by itself determine material terms of the contract.

Learned counsel submitted that there is no solid, precise and certain contract for which specific performance could be decreed. That where there is no written document evidencing contractual relations between the parties and there is no third party to prove the contractual relationship, the Court will fall back on circumstances surrounding the relationships between the parties as narrated by both of them to determine whether there was a contract. He urged the Court to hold that the existence of the hybrid contract as alleged by the claimant is highly improbable considering the circumstances of the case. Reference was made to **Buhari vs. Takuma (1994) 2 NWLR (part 325) 183.**

In response, learned counsel to the claimant submitted also that an order of specific performance can only be granted where there is an enforceable contract. That from the series of correspondences between the parties when construed by the Court, it will be seen that there exist an enforceable contract between the parties. Reference was made to **Ezenwa vs. Oko (2008) 3 NWLR (part 1075) 610, African Cont. Seaways Ltd vs. NDRGW Ltd (1977) LPELR – 209**

(SC), Julius Berger Nig. Ltd. vs. T.R. Comm. Bank Ltd (2019) 1 SC (Part 1) 88.

Counsel further submitted that the claimant is not a Father Christmas or a financial institution that gives out loans as the defendant has failed to state clearly the nature of the N20 Million collected. He added that the defendant during cross examination denounced her witness statement on oath and gave evidence contradicting both her defence and counter claim. That where a party gives evidence which contradicts his earlier statement in writing, the Court should treat such evidence as unreliable. He cited LT. Odunlami vs. Nig. Navy (2013) 6 – 7 SC (part 1) at 120, Nyame vs. FRN (2020) 2 – 3 SC (part 1) 60. That the defendant who has benefited from albeit partly from the contract cannot turn around and cancel or withdraw the offer of sale without regard to the part payment already made by the claimant. Counsel urged the Court to invoke its equitable jurisdiction and grant specific performance as the purported withdrawal/unilateral cancellation of the sale contract, amounts to a fundamental breach of contract. He cited Mekwunye vs. Emirates Airline (2019) 1 – 2 SC (part 1) at 131

I had at the beginning of this judgment stated the claims of the plaintiff. The cause of action of the plaintiff seems to be predicated on contract and the key to the determination of this action lies in determining the nature of the agreement between the parties and whether there has been a breach of the agreement. Depending on the resolution to these questions, what consequences or remedies, if any, should follow in the circumstances. In doing so, it may be convenient to start by defining what a contract is and it's essential elements and to restate some settled principles which will guide our evaluation of the evidence.

Now, a contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. In order to establish a contract, there has to be shown a meeting of the minds of the parties, with a definition of the contractual terms reasonably clearly made out, with an intention to affect the legal relationship. See Agbara vs. Igbo (2013) LPELR – 21246 (CA), Agoma vs. Guinness (Nig) Ltd (1995) LPELR – 251 (SC)

It is the law that parties have the freedom (or 'privilege') of contract and are bound by terms of their agreement, they

must be held to their bargain. This is encapsulated in the Latinism, *Pacta sunt servanda* which means 'agreements must be kept'. See Union Bank of Nigeria vs. Ozigi (1994) 3 NWLR (part 333) 385, Chukwumah vs. SPDC vs. Egbe (2003) 36 WRN 79 at 102.

It is not the preoccupation of the Court to make a contract for the parties or rewrite the one they have made. In so far as the conditions for the formation of a contract are fulfilled by the parties thereto, they will be bound by it. See Koiki vs. Magnusson (1999) 8 NWLR (part 615) 492, Basa vs. Nigeria Civil Aviation Trading centre (1991) 5 NWLR (part 192) 388, Agnotech vs. Mia & Sons Ltd (2000) 12 SC (part 11) 1.

Now the main elements of a valid contract are:

- That the parties must intend to enter into legal relationship. In other words, the parties must 'mean business'
- There must be an agreement, that is to say, an offer and an acceptance.
- There must be consideration.

See Aisha vs. Ahmed (2019) LPELR – 47122 (CA), Aluko & anor vs. Intercontinental Properties Ltd & ors (2015) LPELR – 24776 (CA) 18, Amadi vs. Obiajunwa (2016) LPELR – 40461 (CA).

The question is has the claimant discharged the *onus probandi* cast upon him by law? The law is well settled that anyone who desires the Court to give judgment as to any legal right or liability must prove those facts by credible evidence which is nothing but proof legally presented at the trial on an issue. See Akintola vs. Solano (1986) 4 SC 141. Evidence is the basis of justice and the rule of evidence is that he who asserts the positive must prove. See Okafor vs. Ezenwa (2003) 47 WRN 1 at 59, Morohunfola vs. Kwaratech (1990) 4 NWLR (part 145) 506. The burden of proof rests upon him who asserts the affirmative and not upon him who denies, since by the nature of things, he who denies a fact cannot produce any proof. See Imano vs. Robinson (1974) 6 SC page 83, Osawaru vs. Ezeiruka (1978) 6 – 7 SC 135 at 145, Attorney General Bayelsa State vs. Attorney General, Rivers State (2007) 1 MJSC 48 at 70.

Now from the pleadings and the evidence, it is common ground that there was a 10 year lease agreement between the parties in respect of the premises situate at Plot 1056, Kolda Links, Wuse II Abuja for which the defendants husband had received the sum of N10 Million. It was this property that was offered to the claimant for sale vide Exhibit A2 letter dated 24/7/2013 titled 'FINAL FIRST OFFER'.

It is pertinent to state that the above letter made reference to the oral offer made to the claimant in February, 2012. The claimant then wrote the letter dated 30/7/2013 (Exhibit A4) indicating interest to buy the property subject to the defendant's husband giving them a reasonable price with payment terms more relaxed and simple. There was no written response from the defendant's husband to the letter dated 30/7/2013.

Then on the 9/10/2013 the claimant wrote Exhibit A5 accepting the offer for sale (Exhibit A2). At this point let us understand the offer to the plaintiff. This is what it provides:

"24/07/2013

J.I.T. Logistics Limited

Plot 1056, Cadastral Zone A8,
Kolda Link, Off Adetokumbo Ademola Crescent
By NITEL junction
Wuse 2, Abuja.

Dear Sir,

FINAL FIRST OFFER

The above subject matter refers.

We are counsel Mr. Thomas Aderemi Allo (hereinafter refer to as our client) on whose behalf we write.

Our client confirm us that by a lease agreement dated 7/10/2004 you leased his landed property located at plot 1056 Cadastral Zone A8, Kolda Link, off Adetokumbo Ademola Crescent by NITEL Junction Wuse 2, Abuja, for a period of ten (10) years which commenced on 1/10/2004 and expires at the end of September, 2004.

That by virtue of the fact that Wuse 2 Abuja has virtually turned commercial and is now almost impossible for our client to live in the area. Consequently our client has opted to relocate and sell the said plot and had orally offered you the first option to purchase the said plot. The said offer was made to you since February, 2012 through your staff – Mr.

Ediogiawerie Enotie. Unfortunately, negotiation on same broke down because JIT Logistics Ltd was involved in other investment.

It is our client's intention to open negotiation with any interested member of the public for the purposes of selling the said plot. However, it is our client express instruction that we give you final first offer for outright purchase of the said plot.

You are hereby urged to open negotiation with our client on this subject. Please note that the total sum must be settled at not more than two installmental payments of 60% and 40% of which both payment must be completed within six (6) months of the initial payment. PLEASE TAKE NOTICE that this offer shall lapse on the 9/8/2013.

Accept our professional regards.

Yours faithfully

Signed Duruorji U.J. Esq"

The above offer letter in my considered opinion is clear and unambiguous. Some of the features of this document include the following:

- The property is plot 1056 Cadastral Zone A8, Kolda Link, off Adetokumbo Ademola Crescent by NITEL Junction Wuse 2, Abuja.
- The defendants husband needed to relocate and sell the said plot and had orally offered the claimant the first option to purchase the plot through the claimant staff Mr. Edoigiawerie Enotie.
- The claimant was given final first offer for outright purchase of the plot.
- Claimant urged to open negotiation with the defendant on the subject matter.
- Payment of the total sum must be settled at not more than two installments of 60% and 40%.
- Both payments must be completed within six (6) months of the initial payment.
- The offer shall lapse on the 9/8/2013.

By the letter of acceptance (Exhibit A5) dated 9/10/2013, could it be said that the claimant had accepted

fully the offer? The claimant in paragraph 18 of the Statement of Claim and Witness Statement on Oath stated that it accepted the offer for payment of the sum of N460,000,000.00 (Four Hundred and Sixty Million Naira) and further added the mode of payment, 'convenient to her'.

Learned counsel to the claimant submitted that the correspondences between the parties when read together will show the existence of an enforceable contract. This is further evidenced by the part payments made by the claimant to the defendant amounting to N20 Million. The defendant however contended that the sum of N5 Million was given as Christmas gift, while the sum of N15 Million was given to her as loan after the demise of her husband.

It is important to point out that the Final First Offer Exhibit A2 stated categorically that the offer shall lapse on the 9/8/2013. The claimant's response to Exhibit A2 dated 30/7/2013 where an interest was indicated in buying the property highlighted some salient issues to be concluded by the defendant among which was the fundamental issue as to the price of the property. By the time Exhibit A5 was written titled *'RE: Acceptance of Offer for the sale of property*

covered by Plot 1056, Cadastral Zone A8, Kolda Link, Wuse 2, Abuja,' the offer (Exhibit A2) had already lapsed. Exhibit A5 States:

> *"9th October, 2013*
>
> *Col. Thomas Allo,*
> *Plot 1056, Cadastral Zone A8,*
> *Kolda Link,*
> *Off Ademola Adetokunbo Crescent,*
> *Wuse II, Abuja.*
> *Dear Sir,*
>
> *Re: ACCEPTANCE OF OFFER FOR THE SALE OF PROPERTY COVERED BY PLOT 1056 CADASTRAL ZONE A8, KOLDA LINK, WUSE 2-ABUJA*
>
> *As a follow up to the meeting held between you and our principal Director (Mr. Enotie Edoigiawere), where a consensus was reached on the agreed price of Four Hundred and Sixty Million (N460,000,000.00) naira only, payable immediately after the sale of the adjacent property recently acquired by JIT Logistics Ltd, which has already been put in the market for sale.*

In the light of the above, we are extremely delighted at the offer of the property and also wish to use this opportunity to thank you for your profound kindness and understanding.

Please, accept our highest regards.

Signed Mr. Johnson A. Usman for JIT Logistics Ltd."

We should not loose sight of the fact that the payment of N460,000,000.00 (Four Hundred and Sixty Million Naira) 'payable immediately after the sale of the adjacent property' was the mode of payment suggested by the claimant and not as stated in the offer letter. In **Chitty on Contracts, 26th Edition, page 34,** an 'offer' was defined as *"an expression of willingness to contract made with the intention that it shall become binding on the person making it as soon as it is accepted by the person to whom it is addressed."*

The learned authors further defined what constitutes 'acceptance' at PP 44 – 45 as *"a final and unqualified expression of assent to the terms of the offer".* The Court at this point has to look at the whole course of the negotiations to determine at what point (if any) the parties reached an

agreement. The acceptance Exhibit A5 varied the terms of the offer instead of complying with the stipulated mode for acceptance. Generally therefore communication may fail to take effect as an acceptance because it attempts to vary the terms of the offer. See **Amaran vs. ETF (2014) LPELR – 22859 (CA).**

It is not unnoticed that the claimant averred that there was an agreement for installmental payment of the purchase price of N5,000,000.00 (Five Million Naira) monthly of which they paid N5,000,000.00 (Five Million Naira) on the 1/11/2013 vide the cheque Exhibit A3. Another N2,500,000.00 (Two Million, Five Hundred Thousand Naira) was paid on the 23/7/2014, N2,500,000.00 (Two Million Five Hundred Thousand Naira) on the 31/7/2014, and N5 Million paid on the 21/10/2014, then N5,000,000.00 (Five Million Naira) paid on the 20/11/2014 vide the cheques collectively marked as Exhibit A8.

This averment was denied by the defendant who testified that Exhibit A3 was a gift to her late husband and Exhibit A8 are loans extended to her by the claimant to support her and the family after the demise of her husband.

She admitted that the claimant has given them a total of N20,000,000.00 (Twenty Million Naira) on which she has offered to refund to the claimant after the sale of the property.

The question is whether these cheques are evidence of commitment towards the payment of the purchase price of the property. I have seen the endorsement on the copies of the cheques tendered in evidence. There is nothing suggesting that the cheques were meant to be instalmental payments for the property. As a matter of fact, the claimant said there is no written agreement to that effect. Even the GTB cheque for N5,000,000.00 (Five Million Naira) alleged to have been written in favour of the defendant in furtherance of the monthly deposits and which PW1 said the defendant turned down, was not produced before the Court at least to show good faith. The defendant's solicitor explained the purpose of the amounts paid to the defendant in Exhibit A9 as follows:

> *"Our clients, particularly the administrator, has instructed us to express their joint and several profound gratitude to your company for the role you*

have played in her life and the entire family of the deceased since his demise. Particularly, the administrator has instructed us to specifically acknowledge on her behalf the following:

1. *Your company's financing of the processing of the letters of Administration including legal fees to solicitors.*
2. *Receipt of a total sum of N15 Million being releases in three equal installments made to her for immediate family needs including alternative accommodation for the administrator and her infant child of the deceased."*

The claimant averred that the defendant agreed to step into the shoes of her husband to be collecting the sum of N5,000,000.00 (Five Million Naira) monthly. I have gone through the letter Exhibit A6. The letter is notification of death of Allo Babatunde Thomas Sunday. There is nothing in Exhibit A6 suggesting that the defendant agreed to be collecting the instalmental payment of N5,000,000.00 (Five Million Naira) monthly for purchase of the property. I do not

believe the evidence of the claimant that there was an agreement to that effect.

Assuming there was this agreement between plaintiff and defendant for instalmental payments of N5,000,000.00 (Five Million Naira) monthly, the plaintiffs clearly on the pleadings and the evidence could also not meet up with the payment schedule as alleged.

It is noted that the property was offered for sale on the 24/7/2013, and the offer was accepted on the 9/10/2013. The claimant commenced instalmental payment on 1/11/2013. Thus as at 5/1/2015, when the defendant withdrew the offer, the claimant ought to have made payment for 14 months totaling N70,000,000.00 (Seventy Million Naira), but all they paid was N20,000,000.00 (Twenty Million Naira). The claimant testified that they are sitting tenants still carrying on their business on the premises, and they have not paid any rent since the expiration of the initial 10 year lease in 2014, and have not made any payment towards purchase of the property.

Exhibit A2 had made clear the mode of payment, and I agree with learned counsel for the defendant in paragraph 3.30 of the written address that the defendant *'will most probably not accept 92 instalmentals payable over 8 years or to wait for the prospective buyer indefinitely to sell his own property as a precondition'.*

Above is further confirmed by Exhibit D5 the letter written by the defendants late husband stating the unacceptable mode of payment proposed by the plaintiff and insisting on the mode of payment stated in Exhibit A2 and time upon which such payment is to be made. The defendant specifically stated in paragraph 3 of Exhibit D5 as follows:

> *"JIT Logistics Ltd must have observed in the acknowledgment signed by Col. Allo, that the term of payment referred to in Ref C was underlined and the word NO! written and initialized before handing over same to the bearer. The implication is that JIT Logistics Ltd and Col. Allo did not agree on that schedule of payment."*

It is noted that the payment schedule was that convenient to the claimant, being payment of the purchase price immediately after the sale of the nearby property procured by the plaintiff. Learned counsel for the claimant made heavy weather of the fact that Exhibit D5 was forged as it did not follow the traditional mode of communication between the parties, and that the defendant did not address the court on this point.

Forgery is a criminal offence and the legal implication is that the allegation had to be proved beyond reasonable doubt. This is because if the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt. See **Edokpolo & Co. Ltd. v. Ohenhen (1994) LPELR-1016(SC).**

It is of course trite law that, forgery is a very serious crime under our Criminal Laws. In that respect, where it is alleged by a party to a civil action, either as the foundation of the claim or defence, it must be proved beyond reasonable doubt. The practice is that for a party

to be allowed to produce or lead evidence to establish the crime alleged, he must specifically plead same with detailed particulars of the forgery alleged. In other words, a party who intends to prove forgery as the basis of his claim or defence, must expressly plead same with particularity and lead credible evidence of same at the hearing. To prove forgery in a civil claim, the party alleging same must at least plead its major ingredients, such as the person who committed the offence and facts which will enable the court to infer the necessary mens rea. A mere loaded, vague and nebulous averment which only leave room for speculation will not suffice. See Babatola vs. Adewumi (2011) LPELR-3945(CA). It is proof in the realm of probability and not fantastic possibility that is required. See Nwobodo vs. Onoh (1984) 1 SCNLR 1 at 27 – 28, Omoboriowo vs. Ajasin (1984) 1 SCNLR page 108, ACB Plc V. Ndoma-Egba (2000) LPELR-9139(CA).

The question is who forged Exhibit D5? The person who committed the fraudulent act has to be pleaded and proved by the claimant. See Agbasi vs. UBA Plc (2019) LPELR – 47193

(CA). A signature is forged where it is proved to be that of another person who did not sign it. A forged signature is not an irregular signature, but a signature of someone else. See Ibrahim & anor vs. Dogara & ors (2015) LPELR – 46892 (CA). The evidence that will discharge the burden of proof in this instance has to be clear and unequivocal. The burden in my view has not been discharged as no one has been pinpointed to have forged Exhibit D5.

The claimant also posited that time was not made of essence in the contract. This cannot be so, as Exhibit A2 clearly stated the time and mode of payment. Furthermore, Exhibit A9 written by the defendant's solicitor Kamin Asunogie & Co. further made time to be of essence. It provides in the third from last paragraph as follows:

> *"……In the light of the foregoing, having regard to the entire circumstances, of this matter and the length of time it has taken, we have our clients instructions to peacefully request that the transaction be sped up and completed within the next two weeks from the date of your receipt of this letter. The outstanding payment of the sum of N445 Million only is hereby*

demanded to be paid to our clients immediately and not later than two weeks from the date of your receipt of this letter to enable them take care of their needs and move on with life. We must act timeously to avoid delay because delay defeats equity……."

The plaintiff's witness under cross examination confirmed that the plaintiff was no longer selling the adjacent property. The question is how does the plaintiff intend to pay for the property when it cannot meet up with the instalmental payments as alleged and do not intend to sell their property which has always been *'the mode of payment convenient to her.'*

From Exhibits A2 and A9, time for payment was specifically made to be of essence. The question is what is the effect of failure to meet up with the time stipulated in a contract? The apex Court has held that failure to comply with the time to take a step stipulated in a contract makes the contract not binding and the offer cannot be accepted until after fulfilling the condition. See the case of **Best (Nig) Ltd vs. Blackwood Hodge (Nig) Ltd (2011) 1 – 2 SC (part 1) 55 at 87** where the Apex Court held as follows:

"It is noteworthy that a contract of sale of this nature is guided by the basic rules of contract where a contract is made subject to the fulfillment of certain specific terms and conditions, the contract is not formed and not binding unless and until those terms and conditions are complied with or fulfilled."

See **FGN vs. Zebra Energy Ltd (2002) 72 SC (part 77) 136 and Tsokwa Oil Mkt Co. vs. B.O.N. Ltd (2002) 5 SC (part 11) 9**

Going by the pleadings and the evidence, Exhibit A5 was more of a counter offer than an acceptance, as it was qualified. In order to constitute acceptance, **Niki Tobi JCA** (as he then was) offered the following position of the law in the case of **Orient Bank (Nig) Plc vs. Blantyre International Ltd (1997) 8 NWLR (part 515) 37**

"In order to constitute an acceptance, the assent to the terms of an offer must be absolute and unqualified. If the acceptance is conditional or a fresh terms is introduced by the person to whom the offer is made, his expression of assent amounts to a

counter offer which in turn requires to be accepted by the person who made the original offer."

See also **Baba vs. Mohd & ors (2017) LPELR – 43141 (CA).**

Furthermore, it is settled that a contract does not come to life only by an offer and acceptance, there has to be consideration and mutuality of purpose. Whichever way we look at this case and based on the evidence and documents presented before the Court, it is my considered view that the plaintiff failed to comply with the conditions precedent in the offer letter, whether as to time of acceptance, time and mode of payment, or within the stipulated time. The plaintiff herein did not accept exactly the terms upon which the offer was made, but introduced the mode of payment convenient to her.

I am at one with the submission of the learned senior counsel that the claimant has unilaterally varied the contract by adding the mode of payment convenient to her and withdrawing its alleged property from the market. It is

therefore not surprising that Exhibit A10 dated 5/1/2015 was written withdrawing the offer to sell the property.

In **Kaydee Ventures Ltd vs. Hon. Minister of FCT (2010) 7 NWLR (part 1192)** the apex Court held as follows:

> *"It is now settled that in matters of contract as in the instant case, in which the terms of the conditions of contract are embodied in a written document, the parties and the Court will not be allowed to read into the contract extraneous terms on which they reached no agreement as the Court in the circumstances is limited to interpretation and enforcement of the terms as agreed by the parties thereto."*

See also **Union Bank of Nigeria Ltd vs. Sax (Nig) Ltd & 2 ors (1994) 9 SCNJ 1 at 8, Segun Babatunde & anor vs. Bank of the North Ltd & ors (2011) LPELR – 8249 (SC)**

Accordingly, I hold that no binding contract was created between the plaintiff and the defendant's husband and/or the defendant based on the pleadings and documentary exhibits presented before this Court.

The question is whether specific performance can be granted. In law, specific performance is an equitable relief given by the Court to enforce against the defendant the duty of doing what the defendant has agreed to do by contract. See **U.B.N vs. Erigbulam (2003) FWLR (part 180) 1365.** In this case as already demonstrated, it was the plaintiff who was unable to meet up with the terms of the offer. The contract failed to materialize or be perfected and therefore it failed to be a binding contract that is enforceable by an order of specific performance. In **International Textile Industries (Nig) Ltd vs. Aderemi (1998) 8 NWLR (part 614) 268 at 303,** the Court held:

> *"To bring an action for specific performance presupposes the existence of valid and subsisting contract and therefore the insistence that it should be performed."*

Furthermore, in the case of **Ogundalu vs. Macjob (2015) LPELF – 24458 (SC) Per Aka'ahs, JSC,** the Court held:

> *"a person seeking to enforce his right under a contractual agreement must show that he has fulfilled*

all the conditions precedent and that he has performed all those terms which ought to have been performed by him."

In this case, there is a responsibility on the claimant to show that it had performed all that is expected from them under the contract. Failure to comply with the terms of the offer and the payment in the manner requested, disentitled the plaintiff to this remedy. It would not be fair on the defendant who is widowed to be held up endlessly by the plaintiff who chose a mode of payment 'convenient to it' after selling its adjacent property. The same property which the plaintiff's witness confirmed they are no longer selling. As noted earlier, even the evidence of the plaintiff as to the payment of N5 Million instalmentally were to be believed, there was no evidence of the performance of that obligation. In my humble view, it would not be a balancing of the equities between the parties to award a decree of specific performance to the claimant. In the absence of a valid contract, an order for specific performance cannot be made. Thus, I resolve issue one against the plaintiff.

The claimants issue No. 2 is in the alternative.

Issue No. 2

"Whether or not claimant is entitled to a refund of the deposit amount received by the defendant together with the cost of development of the two storey building calculated at N100 Million only from the defendant."

This issue stems from claimant's relief 2 which is also in the alternative seeking for *"a declaration that the plaintiff, as sitting tenant and beneficiary of purchase transaction over the demised premises is entitled to peaceable possession thereof pending the conclusion of payment of agreed purchase price of the property or the refund of deposit amount received as well as refund of the estimated cost of development calculated at N100 Million whichever is preferable to the defendant."*

Now the settled position of the law is that the claimant is entitled to seek reliefs or claims from the Court in the alternative. Where reliefs are claimed in the alternative, the trial Court in adjudicating over the suit first of all considers whether the claimant has made out a case for the main or

principal relief…it is only when the principal or main reliefs fails that the Court will be duty bound to consider the alternative claim. See **Agidigbi vs. Agidigbi (1996) 6 NWLR (part 454) 300.**

I have held that the claimant is not entitled to an order of specific performance. The question now is whether the claimant is a sitting tenant on the property subject matter of dispute. The claimant's testimony is that they entered into a lease agreement with the defendant. The lease had elapsed and they were offered the property for outright purchase by the defendant. Under cross examination the witness said thus:

> *"We are still a sitting tenant in the property. Our lease expired and we have not paid. We are also not paying rent when we have exercised option to buy. We cannot say that the property is ours, we are not tenants."*

The defendant on the other hand testified that the plaintiff had stopped paying rent on the property despite

being in possession. Under cross examination DW1 said she asked the claimant to vacate the premises in 2014.

Learned counsel for the claimant submitted that the issue before this Court is not tenancy, but contract for sale of the property. As the lease agreement has expired, I hold that the claimants are not tenants on the property. And as there is no binding contract existing, no declaration can be made for peaceable possession of the property.

However, for the 2nd leg of relief 2, it is true that the defendant acknowledged receiving the sum of N20,000,000.00 (Twenty Million Naira) from the claimant.

By Exhibit A9, the defendant through her lawyer specifically acknowledged the receipt of the sum of N15,000,000.00 (Fifteen Million Naira) only, being releases in instalments made to her for immediate family needs, while the sum of N5,000,000.00 (Five Million Naira) was paid to her late husband. The defendant's counsel in the written address stated that 'the defendant hoped to set off same from the purchase price.' The defendant's solicitors letter to the

claimant (Exhibit A10) dated 5/1/2015 withdrawing the offer in clause 4 stated thus:

"That the sum already advanced shall be returned to your client directly or through chamber as soon as the property is disposed off within this January, 2015."

Having admitted the receipt of these sums, it shall be granted without much ado to the claimant.

For the N100 Million claimed as cost of development of the two storey building, this in my view is a relief in the realm of special damages which has to be properly pleaded and strictly proved. The plaintiff claimed this amount in the pleadings, but no credible evidence was provided in support of the amount claimed. This Court is at one with submission of learned senior counsel for the defendant that to qualify for special damages, clear evidence needed to be led to establish the actual monetary value.

In **Union Bank Plc vs. Nwankwo & anor (2019) LPELR – 46418 (SC)** the apex Court held:

"The law is settled that where a party claims special damages, the burden is on him to prove the special

damages to the last kobo. He has to do this by leading credible evidence most of the time by documents which show the actual loss he has suffered….special damages must flow from the act complained of in the ordinary course of events. They are exceptional in character and therefore must be specifically and specially claimed and proved strictly."

See also **Arisons Trading & Engineering Co. Ltd (2009) LPELR 554 (SC), Odulaja vs Haddad (1973) 11 SC (Reprint) 218; Obasuyi vs Business Ventures Ltd (2004) 2 NWLR (Pt. 858) 521.**See also **Ogbona vs. Ogbona rightly cited (supra)** by the defence counsel.

This Court is not unaware of the fact that the defendant in her evidence elicited during cross examination denied paragraphs 5, 10, 13 and 14 of the witness statement on oath. For paragraph 5 she stated thus:

"It is not correct as per paragraph 5 that the plaintiff should build a bungalow."

For paragraph 10, the witness said:

"I am not the person who said what is in paragraph 10. It is not what I said. The original structure agreed is 2 storey building not bungalow."

Paragraph 13 she said:

"The above paragraph 13 is not correct. I am the one who did the witness statement on oath. Whatever they put there I do not know."

When paragraph 14 of her witness statement on oath was read out, the witness also denied its contents, that is:

"I am not the person who said paragraph 14 of my witness statement on oath. I did not say so in paragraph 14. We have been paying ground rent. I have receipts."

Totality of these denials is to the effect that there was no agreement for the plaintiff to build a bungalow and no agreement for parties to jointly pay ground rent. Furthermore, by her denial, she said what was agreed is to build a two storey building. I have gone through the paragraphs and the denials made by the defendant under cross examination. It is my considered view that the denials

of the stated paragraphs are not so material as to affect the live issue before this Court which is whether indeed there is a subsisting valid contract of sale between the parties. The reliefs before the Court being declaratory, the law is that a fundamental requirement of a declaratory relief is for the claimant to satisfy the Court that he is entitled in law to the relief claimed. See Chukwumah vs. SPDC (1993) LPELR – SC. 112/1988.

A plaintiff who seeks declaratory relief must adduce credible evidence to establish his entitlement to the declaration, and should not rely on the admissions in the pleadings of the defendant. See Ndu vs. Unudike Properties Ltd (2008) 10 NWLR (part 1094) 24 at 29.

I reiterate once again that though the defendant denounced some part of her evidence before the Court, it was incumbent on the claimant to plead and prove strictly every item of the special damage. See Daniel Holdings Ltd vs. UBA Plc (2005) LPELR – 922 (SC). The party claiming it is not relieved of the requirement of proof with compelling evidence. The claimant herein failed to specifically plead and

prove the claim for N100,000,000.00 (One Hundred Million Naira) being cost of development incurred in developing the plot. By the claimant's own showing in Exhibit D7 dated 5/3/2016, only the sum of N20,000,000.00 (Twenty Million Naira) was stated to be the cost of the erected building, eventhough the claimant maintained that the letter was written in error. I hold therefore that the claim for refund of N100,000,000.00 (One Hundred Million Naira) has not been proved, and it is hereby refused.

In the circumstance, I resolve part of issue No. 2 which is for the refund of N20,000,000.00 (Twenty Million Naira) only in favour of the claimant. In effect, this alternative claim for refund is granted as prayed.

Following my resolution of issue No. 1 against the claimant and having refused the order for specific performance, and considering the order failing to declare the plaintiff as sitting tenant who is entitled to peaceable possession, I hold that Reliefs 3 and 4 are untenable, and are hereby refused.

Same effect befalls the claim for injunction restraining the defendant from evicting the claimant from the property. As the lease agreement has expired, and having held that there is no binding contract between the parties, Relief 5 which is predicated on the success of those reliefs, equally fails.

Issue No. 3

"Whether or not the defendant has proved her counter claim."

There are legions of authorities on the meaning and purport of a counter-claim. See **Effiom vs. Iron Bar (2000) 1 NWLR (PT. 678) 341** where it was held thus-

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

See also **Okonkwo vs. C. C. B. (2003) FWLR (PT.154) 457 at 508,** where the nature of a counter-claim was clearly spelt out as follows:

> *"Counter-claim though related to the principal action is a separate and independent action and our adjectival Law requires that it must be filed separately. The separate and independent nature of a counter claim is borne out from the fact that it allows the defendant to maintain an action against the plaintiff as profitably as in a separate suit. It is a weapon of defence which enables the defendant to enforce a claim against the plaintiff as effectually as an independent action. As a matter of law a counter claim is a cross action with its separate pleadings, judgments and costs."*

The fate of a counter claim being an independent action does not depend upon the outcome of the plaintiff's claim. If the plaintiff's case is dismissed, stayed or discontinued, the counter-claim may nevertheless be proceeded with. See **Hassan vs. Bunu & anors (2019) LPELR – 47746 (CA), Oroja &**

ors vs. Adeniyi & ors (2017) LPELR – 41985 (SC), Lokpobiri vs. Ogola & ors. (2015) LPELR – 40838 (SC).

The defendant/counter claimant stated that there was a lease agreement between the parties which has expired since 2014. Demand letter for immediate vacant possession was issued to the plaintiff/defendant to counter claim, but same was ignored. The counter claimant further averred that there is an increase in the rental value of the property from 2014 when the lease expired at the rate of N5,000,000.00 (Five Million Naira) per annum. That the plaintiff is not willing to vacate the property and presently in arrears of rent of 3 and half years.

The plaintiff/defendant to counter claim in the Reply to the Statement of Defence, stated that there is nothing to show/prove the increased rental value claimed by defendant/counter claimant.

Now, the question is whether the defendant/counter claimant is entitled to the reliefs she claimed.

Relief No. 1 seeks for a declaration that there is no binding and subsisting agreement or contract of sale or any

agreement or contract at all in respect of the subject matter between the parties. I have earlier in the judgment held that there is no binding and subsisting contract with respect to the property situate at Plot 1056 Kolda Link, Wuse II, Abuja between the claimant and the defendant's late husband. As a consequence therefore, it is only logical to affirm that position and in the circumstance grant Relief No. 1 as claimed.

Relief 2 is for vacant possession of the plot forthwith, the lease agreement between the parties having expired on the 30/9/2014. Both parties in their evidence before the Court are *ad idem* on the fact that the lease agreement had expired since 2014, but the defendant to counter claim has remained in possession of the premises. The defendant to counter claim testified that they are still sitting tenants in the premises eventhough they are not paying rent and have not purchased the property.

The learned counsel for the counter claimant submitted that the lease having expired, it is only logical for the counter claimant to recover possession of the property. He added that except where parties entered into another agreement,

further stay of the defendant to counter claim would be in default of rent. He urged the Court to grant the reliefs of the counter claimant.

On his part learned counsel for the defendant to counter claim submitted that the defendant to counter claim is no longer a tenant to the defendant as the issue of tenancy is already overtaken by event. He added that the only live issue between the parties is that of sale of the property. He said the reliefs sought by the counter claimant are inappropriate and ought to be dismissed.

This Court is at one with the submission of learned counsel to the defendant to counter claim that the issue of tenancy has been overtaken by events and the issue before the Court is that of the sale of the property. The claimant's having conceded that they are not tenants on the property and neither have they purchased the property in question, have no legal status to remain on the premises as rightly posited by the defendant's counsel. By the provisions of Clause 7 of Exhibit D1 which is the same as in Exhibit A1;

"The lessee covenants that at the expiration of the lease which is end of September, 2014, the property reverts to the lessor.

Based on the above, I have no difficulty in granting this relief.

The defendant/counter claimant claimed arrears of rent under Reliefs 3 and 4. I have earlier agreed with learned counsel for the claimant/defendant to counter claim that the issue before this Court is that of the sale of the property and not that of tenancy upon which the counter claimant seeks for arrears of rent.

In any event, in a claim for arrears of rent the tenant is deemed to be lawfully and validly in possession, but is owing rent. In such a claim for arrears of rent the landlord is not challenging the validity of the continued occupation of the premises by the tenant; indeed, he concedes that the tenant is validly and legally in possession. See Odunsi & anor vs. Abeke (2002) LPELR – 12167 (CA), Olajede & anor vs. Olaleye & anor (2012) LPELR – 9845 (CA).

In this instance, the evidence is that the lease expired in September, 2014 and the counter claimant is challenging the continued stay of the plaintiff/defendant to counter claim on the property. At the expiration of the lease, the defendant to counter claim from the evidence was not in arrears of rent.

There is nothing in evidence showing that the counter claimant agreed with the claimant/defendant to counter claim on the increment of the rental value of the premises from N1 Million to N5 Million annually. In landlord – tenant relationship issue of rent payable by a tenant to a landlord is one of contract. The landlord cannot therefore unilaterally alter the terms the agreement. See Cobra Ltd vs. Omole Estate & Investment Ltd (2000) 1 NWLR (part 655) page 1.

I hold therefore that neither the claim for rent in Relief 3 or that in relief 4 can stand. The claims are refused.

Relief 5 is for an order directing the plaintiff to pay to the defendant the sum of N13,698.00 or in the alternative the sum of N2,739.00 daily from April, 2008 till vacant possession is delivered. This relief seems to be for mesne profits. The expression mesne profits was described as:

"Profits accruing between two points of time, that is between the date when the defendant ceased to hold the premises as a tenant and the date he gives up possession. As a result, the action for mesne profit, ordinarily does not lie unless either the landlord has recovered possession or the tenant's interest in the land has come to an end, or the landlord's claim is joined with a claim for possession."

See Abeke vs. Odunsi & anor (2013) LPELR – 20640 (SC).

This claim is for mesne profits from April, 2008. It is noted that in 2008 the claimant was lawfully on the premises with the lease still subsisting. This claim is thus misconceived and hereby refused.

- In all, the claim of the claimant succeeds in part. The defendant is hereby ordered to refund the sum of N20,000,000.00 (Twenty Million Naira) received from the claimant.
- All other claims are lacking in merit and are hereby dismissed.

- For the counter claim, Reliefs (1) and (2) are granted as prayed. Consequently, the claimant shall deliver to the defendant/counter claimant forthwith vacant possession of plot No. 1056, Kolda Link, Wuse II, Abuja.
- All other reliefs in the counter claim are refused and accordingly dismissed.

Each party shall bear his/her costs.

Hon. Justice M.A. Nasir

Appearances:

Chief Karina Tunyan SAN, with him O.B.A. Ochoja Esq, A.I. Moro Esq, Solomon Tunyan Esq, D.D. Tunyan Esq, P.O. Omiri Esq and E.E. Igodo Esq – for the Claimant

B.C. Igwilo SAN, with him Hameed Ogunbiyi Esq and R.O. Irek Esq – for the Defendant