IN THE HIGH COURT OF THE FEDERAL CAPITALTERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS THURSDAY, THE 23RD DAY OF NOVEMBER, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE

SUIT NO: CV/1040/2021

BETWEEN

MR. STEPHEN UDOCHI JOHN ……..……. CLAIMANT

AND

1. **GRAND AIR TRAVELS AGENCIES LIMITED**
2. **MR KENNEDY**

}..DEFENDANTS

JUDGMENT

The Plaintiff's claims against the Defendants as endorsed on the Amended Writ of Summons and Statement of Claim dated 31st March, 2020 are as follows:

1. **A Declaration that the destruction/damage of Mr. Stephen Udochi John's (The Claimant) Laptop Computer by the 2nd Defendant, the 1st Defendant's driver on the 19th October, 2020 is wrongful, unconscionable, illegal and without any legal justification whatsoever.**
2. **A Declaration that the Defendants, did not exercise reasonable care and due diligence when the 2nd Defendant destroyed/damaged the laptop of the claimant on the 19th day of October, 2020 without any legal justification whatsoever.**
3. **A Declaration that the claimant is entitle to a duty of care and fair treatment by the Defendants during the entire duration of the journey from Lagos to Abuja on the 19th day of October, 2020.**

4. **A Declaration that the Defendants breached their duty of care owned to the claimant on the 19th October, 2020 when the 2nd Defendant slat/bed (sic) his driver seat backward and lain heavily against the claimant laptop computer without reasonable care and due diligence thereby destroying and causing damage to the claimant laptop without any legal justification.**

5. **An Order of Court awarding special damages against the Defendants jointly and severally in the sum of Two Hundred Thousand Naira (N200, 000, 000:00k) being the value and cost of the Claimant's laptop computer destroyed and damaged by the Defendants.**

6. **An Order of Court awarding damages against the Defendants jointly and severally in the sum of Twelve Million Five Hundred Thousand Naira only (N12, 500, 000:00k) being general damages arising from the destruction and damages caused to the claimant laptop by the defendants and for loss of the use of the information and vital data stored in the laptop and for loss of business opportunities and loss of income.**

7. **An Order of Perpetual Injunction restraining the Defendants, their Directors, Shareholders, privies, agents and servants howsoever described from having access to any sum standing to the credit of the defendants within the Nigerian banking system to wit: First Bank of Nigeria Ltd, Guaranty Trust Bank Ltd. Heritage Bank Ltd, Access Bank Ltd, United Bank for Africa Ltd, Zenith Bank Ltd, EcoBank Ltd. Standard Chartered Bank Ltd, Stanbic IBTC Bank Ltd, Sterling Bank Ltd, Union Bank Ltd until the total sum of the judgment debt is fully liquidated and paid to the claimant.**

8. **An Order of the Court against the defendants to pay 25% interest on the total judgment sum per annum till the total sum is fully liquidated.**

The Defendants were served with the originating court processes but the 2nd defendant did not file a defence or appear in court all through the course of this proceedings. The 1st Defendant filed a 1st Defendant's Amended statement of defence on 12th January, 2022 and in response, the claimant filed a claimant's Reply to 1st Defendant's Amended Statement of Defence on 18th February, 2020.

In proof of his claimant, the claimant appeared in person as PW1 and the only witness.

The claimant deposed to two (2) witness depositions dated 5th November, 2021 and 28th March, 2022 which he adopted at the Hearing. I will highlight the substance of the evidence of claimant. In the first witness statement on oath, he stated that sometime on 19th October, 2020, he along with 4 other passengers boarded a Sienna vehicle belonging to 1st defendant from Lagos to Abuja and while travelling in the said vehicle, he was carrying his laptop computer which he informed the driver, the 2nd defendant and other staff of 1st defendant that loaded the vehicle and that he was asked by the driver to keep the laptop inside the vehicle and sit close to it which he did.

That while on transit and during a stopover during the course of the journey, the 2nd defendant slanted/bent his sit backward without due diligence and care and without any notification to him or other passengers to remove the luggage kept in the vehicle and lain heavily against his laptop bag containing the laptop and damaged or destroyed the computer.

He stated that at the time of the incident he was given a task to be done within 8 days by his client. That he brought the attention of the damage to the 2nd defendant in the presence of other passengers and that 2nd defendant acknowledged his negligence.

That he was able to ascertain the extant of the damage only when they got to Abuja and a computer repairer was called to ascertain the damage and evaluated the cost of repair as agreed by defendants and him.

PW1 further stated that the cost of repair was determined at N350, 000; the current market cost of a similar computer was put at N470, 000 while a fairly used computer was put at N265, 000.

PW1 stated that when the manager of 1st defendant and 2nd defendant heard the cost, they claimed that the cost was beyond them and that they have to call their superior and instead offered him a free seat from Lagos to Abuja next time he travels which he rejected and instead demanded for a repair of his laptop.

That when the defendants called their superior, the superior said they will not carry out any repairs. That he protested this inaction and informed them that the damage has denied him access to his working tool, his computer, which contains important information and data.

The claimant in paragraph 18 of his deposition then identified 3 softwares which he said were in the computer but which is now lost and their value. In paragraph 19, he then alluded to the job he was given by one of his employers **Catriona Cramp** which he could not execute. That he also works for an online education platform, Alison and that the destruction of the computer meant he could not carry out 8 hours work per day on his computer.

He stated further that the damage to his laptop has caused him discomfort as he could not carry out his work which led to embarrassment and loss of income. PW1 stated that the defendants refused to repair the damaged computer and he then instructed his lawyers to write defendants who responded saying he should go to court.

The additional witness statement is essentially a rehash of the 1st deposition and only accentuated the facts earlier averred to.

PW1 tendered in evidence the following documents:

1. Laptop computer (Lenovo) admitted as **Exhibit P1**.
2. Laptop purchase receipt admitted as **Exhibit P2.**
3. Claimant's solicitors (Fort Legal & Co.) letter dated 26th October, 2020 was admitted as **Exhibit P3**.
4. Defendants counsels (Victor Giwa & Associates) letter dated 2nd November, 2020 admitted as **Exhibit P4**.
5. Report of Seun Tech, dealers in laptop sales/repairs, computer gadget, mobile devices dated 21st October, 2020 was admitted as **Exhibit P5**.
6. 2 Receipts/Boarding tickets admitted as **Exhibits P6a and P6b**.
7. Document titled "Memorandum of Understanding" between claimant and MIB Travel and Tour dated 3rd July, 2020 admitted as **Exhibit P7.**
8. Document titled "Alison Certificate" issued to claimant dated 3rd March, 2016 admitted as **Exhibit P8**.
9. Letter of instructions to Tea & Tee Ltd dated 28th February, 2020 admitted as **Exhibit P9**.
10. Published work of claimant with others admitted as **Exhibit P10**.

11. E-mail message sent by Miss Catriona Cramp and the certificate of compliance which also covers the Allison certificate and the published work of claimant (Exhibits P8 and P10) were admitted in evidence as **Exhibits P11a and P11b**.

PW1 was then cross-examined by counsel to the 1st defendant and with his evidence the plaintiff closed his case.

The 1st defendant on its part also called only one witness. Moses Pius Osawe, branch manager of 1st defendant, Abuja branch who testified as **DW1**.

He stated that 1st defendant operates a loading pit for franchise or independent drivers to load passengers and that 2nd defendant is one of such franchise or independent drivers.

DW1 further stated that the vehicle claimant referred to in his claim does not belong to the 1st defendant and that the 2nd defendant is not in the employment of 1st defendant; further that the claimant approached the 2nd defendant at the GAT loading pit as the 1st defendant did not have any vehicle at that material time.

DW1 further stated that they don't subject their customers to checks to ascertain the content of their luggage as they have boldly displayed in their premises a caveat that "All luggage are carried without inspection and at owners risk."

DW1 further stated that the vehicle claimant contracted at the loading pit carried only 5 passengers in compliance with Federal Government Covid 19 protocols and that it has a spacious boot and all passengers were told to put their luggage in the boot. That all other passengers complied with the instructions except claimant but that 1st defendant was not aware of the non-compliance.

DW1 stated that the 2nd defendant is not answerable to the 1st defendant and so the outcome of the journey was not reported to 1st defendant by 2nd defendant.

DW1 further stated that the 1st defendant did not at anytime admit to any liability for the alleged damage to the claimant's computer and that it did not at anytime either alone or with anybody engage the services of any computer repairer to assess and estimate the cost of repairs of the purported damage to claimant's computer.

DW1 further testified that the 1st defendant did not make any offer to compensate claimant and is not aware of any losses claimant allegedly suffered as the computer was not submitted to 1st defendant at the time of boarding the vehicle. That the 1st defendant did not at any time damage the laptop computer of claimant. DW1 stated that **Exhibits P6 a** and **b** (motor tickets) was not issued by 1st defendant and that the laptop computer was never presented at their office for repairs. DW1 tendered in evidence 5 (no.) photographs admitted as **Exhibits D1 (a-c).**

DW1 was then cross-examined by counsel to the claimant and with his evidence the 1st defendant closed its case.

As stated earlier, the 2nd defendant never appeared in court or filed any process in opposition. His right to defend the action was accordingly foreclosed and parties were ordered to file their final written addresses.

At the conclusion of trial, parties filed and exchanged final written addresses. In the **address of 1st defendant dated 19th December, 2022** and filed same date at the Court's Registry, the 1st defendant raised two (2) issues as arising for determination:

1. **Whether or not the written depositions on oath of the claimant's sole witness are competent before this Honourable Court.**
2. **Whether the claimant has successfully proved his case against 1st defendant to entitle the claimant to the reliefs sought.**

The claimant in his address dated 19th January, 2023 and filed on 20th January, 2023 adopted the issues framed by claimant and made submissions thereon. The 1st defendant then filed a Reply on points of law on 6th February, 2023.

I have set out above the issues parties are adidem are the issues that arises in resolving the extant dispute. I am however not on the same page with parties that issue (1) has any relevance with the fundamental question that arises in this case in the context of the issues streamlined in the pleadings and evidence led on record which relates to whether the defendants are liable for the damage done to the computer of claimant.

The complaint made by 1st defendant under issue (1) is simply that the two (2) witness depositions on oath of claimant were not signed before the

commissioner of oath but that the witness admitted signing same before his lawyer.

In resolving this issue, we must take our bearing from the depositions adopted before this court. The 1st deposition dated 5th November, 2021 was on its face deposed to before the commissioner of oaths in the High Court of FCT, Abuja. The stamp with name of the commissioner of oaths, one **Monica Ajijeh Ojie** is conspicuous on the face of the process and she duly signed the deposition.

The process thus speaks for itself and situates clearly that the deposition on oath was made before the commissioner of oaths in compliance with extant laws. The bare viva voce evidence of the witness that he signed the deposition before his lawyer cannot alter or change the contents of the official stamp and signature of the commissioner of oaths situating clearly that she did all that was legally required within the purview of the Oaths Act 2004. The court cannot go outside the clear official acts carried out by the commissioner in this case which are patently obvious on the face of the process.

The same position holds true for the additional witness deposition which again bears the official stamp of the commissioner of oaths High Court of the FCT Abuja with the name of the commissioner Aisha Bajoga conspicuously written and she also duly signed and dated the process. This process again speaks for itself.

The attempt to therefore seek to impugn the actions of the commissioners of oath through the conduit of a final address will not fly. The final address is no substitute for evidence to be used to demolish a point in issue. The claimant had more than ample time to summon the commissioners to confirm his conclusions on the two processes that it was not disposed before them. He did not and that is fatal. The incompetence of the two depositions has not been established. We should thus not allow ourselves to be detained by issue 1 and it is thus accordingly discountenanced without much ado.

Having regard therefore to the pleadings which has precisely streamlined the facts and issues in dispute and the evidence led by parties, I am of the view that the 2nd issue raised by parties is apt in the resolution of this dispute and it is on the basis of this 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 reference to submissions made by counsel and resolving whatever issues that may have arisen by the submissions.

ISSUE 1

Whether the claimant has successfully proved his case against the defendants to entitle claimant to the reliefs sought?

I had at the beginning of this judgment stated the claims of claimant. The claimant may have projected the case, as one of negligence but I incline to the view that the cause of action seems to be predicated in contract and the key to determining the contested assertions lies in determining the nature and precise parameters of the relationship between parties in this case and whether there has been a breach of the agreement and depending on the resolution of these questions, what consequences or remedy should follow in the circumstances.

Let me quickly add that a breach of Contractual duty must be dealt with according to the law of contract and cannot be regarded as a tort of negligence though the same facts may in some cases amount to a breach of contract and negligence. See **International Messengers Nig. Ltd V David Nwachukwu (2004) 13 NWLR (pt891) 543 at 560 C**.

The only point to add is that whether the action is one rooted in contract or negligence is not of critical significance in modern jurisprudence. I am not too sure that the dichotomy on these species of claims has much resonance in these modern times where substantial justice is the mantra actively pursued by courts. The settled principle of general application is that where a cause of action and a relief is properly claimed, a claimant cannot be refused, simply because he has not stated or wrongly stated the head of the law under which he is seeking the remedy. In other words, a wrong must not necessarily be remediable under a known head of law before it is justiciable. It is a well know legal truism that where there is a wrong, there is a remedy and the courts nowadays are propelled more by the imperatives of doing substantial justice unfettered by technicalities which only serve to subvert the cause of justice. In S**.P.D.C Nig. V Okodeno (2008)9 N.W.L.R (pt.1091)85 at 118 C-F,** the Court of Appeal instructively stated as follows:

"In the instant case, the learned trial judge was right when he held that the nomenclature of torts will not be allowed to blur its consideration of the clear averred facts of the case before it. That it is irrelevant in the determination of this case whether the claim is based on tort of detinue or is based on tort of trespass. I do not see this pronouncement as an abdication of lawful duties to make findings on the issue by the learned trial judge as submitted by the learned senior counsel for the appellant. The stand of the learned trial judge cannot be faulted. The court today is concerned with doing substantial justice on the matter before it, rather than place reliance on hard rules of technicality based on the principle of law that where there is a right, there is a remedy. The maxim being *ubi jus, ibiremedum.* The distinction that the trial court is called upon to make and subtitles have no substance and justification in them, but are nothing more than a dangerous inheritance from the days when forms of action and of pleadings held the legal system in their clutches."

I need not add to the above.

Now the claimant in his **pleadings and evidence** essentially project the case that he had a contractual relationship wherein he paid for and was to be transported by defendants from Lagos to Abuja and in the process his laptop computer was allegedly damaged by the 2nd defendant who is said to be the driver of 1st defendant's vehicle. This damage claimant's contends has caused him damages and provides the basis for the reliefs he claims. The 1st defendant on the other hand in particular contends that they don't have any contractual relationship with claimant and did not damage his computer and as such are not liable for the reliefs as made out by claimant.

It is therefore to the pleadings which has precisely streamlined the facts/issues in dispute and the evidence that we must now beam a critical search light in resolving these contested assertions. In doing so, I consider it necessary and pragmatic to first explain what a contract connotes in law, as it would provide both factual and legal template in resolving this dispute.

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.

It is equally apposite to situate the import of a declaratory relief which forms the fulcrum of Reliefs 1-4 of the plaintiffs claims and on which the remaining Reliefs 5-8 are predicated. 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 stated briefly what a contract entails in law, let me equally restate some settled principles that guides a 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. **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.

I had earlier emphasised on the pivotal role or importance of pleadings of parties. Anything outside the purview of the pleadings cannot be relevant. In resolving the issues raised by the present enquiry, there is no better template to situate the respective grievance or position of parties than the pleadings.

A fair take off point is to situate the very basis of the relationship, if any, the terms, again if any, and then finally whether it was breached?

In paragraphs 6, 7 and 8 of the claim, the plaintiff pleaded as follows:

"6. That 1st Defendant is a transportation Company that carries out commercial transport services between Abuja and Lagos and have offices in Abuja and Lagos and has employees that work for her.

7. The Claimant avers that on the 19th of October, 2020 he, along with four other passengers boarded a Sienna vehicle with plate number: GWA-263AX belonging to the 1st Defendant from Lagos to Abuja and while travelling in the said vehicle he was carrying his laptop (computer) which he duly informed the 2nd defendant (who happened to be the driver of the vehicle) and other staff/team of the 1st defendant that loaded the vehicle and he was asked by the driver the 2nd defendant to keep the laptop (computer) inside the vehicle belonging to the 1st defendant and the seat close to it which he did. A copy of the payment receipt issued to the claimant at the point of payment dated 19th October, 2020 and the claimant laptop computer purchase receipt dated 21st June, 2019 are hereby pleaded and same shall be relied upon at the trial of this case.

8. The claimant avers that while on transit during a stopover during the cause of the journey; the 2nd defendant slanted/bent his seat backward without due diligence and care and without any notification to the claimant and other passengers in the vehicle to remove luggage kept in the vehicle and lain heavily directly against the claimant's laptop bag containing the claimant's laptop and damaged/destroyed the claimant's laptop (computer). The damaged laptop computer and a photograph of the damaged laptop computer together with a certificate of authentication are hereby pleaded and same shall be relied upon at the

trial of this case and also a report of a computer repairer disclosing the details of the damage and its effect is hereby pleaded and same shall be relied upon at the trial of this case."

As stated earlier, the evidence of claimant in substance was in line with the above averments.

The 1st defendant joined issues with the above averments and the following paragraphs are relevant:

"4. The 1st Defendant deny paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the Claimant's Statement of Claim and put the claimant to the strictest prove of same.

5. In response to the above denied paragraphs, the 1st defendant states that the 1st defendant is a transport company carrying on business in Lagos and Abuja.

6. That the Sienna Vehicle with Plate Number GWA-263AX referred to by claimant in paragraph (7) of the Amended Statement of Claim does not belong to the fleet of the 1st defendant and the 2nd defendant (Mr. Kenneth Chinedu Igwe) is not in the employment of 1st defendant.

7. That on the 19th day of October, 2020 the claimant approached the 1st defendant Motor-park in Lagos to Abuja whereof he contracted with Mr. Kenneth Chinedu Igwe at the GAT Loading Pit, the 1st defendant not having available vehicle at that moment.

8. That the 1st defendant does not subject its customers to check to ascertain the content of their luggage. And the 1st defendant boldly displayed in its premises a caveat which states that "ALL LUGGAGE ARE CARRIED WITHOUT INSPECTION AND AT OWNER'S RISK." The claimant was aware of the caveat. Photographs of the Caveat and Certificate of Compliance are hereby pleaded and shall be relied upon at the trial.

9. That the Vehicle at the Loading Pit contracted by claimant and other passengers carried only five (5) passengers in compliance with Federal Government COVID 19 Protocols obtainable at the material time.

10. **That the Vehicle had a spacious boot and all five (5) passengers were instructed to put their luggage in the boot of the vehicle. All the other passengers complied with the instructions except the claimant. And the 1st defendant was unaware of the claimant's noncompliance with the said directive.**

11. **That the 2nd defendant is not answerable to the 1st defendant hence the outcome of the journey was never reported to the 1st defendant by the 2nd defendant or the claimant.**

12. **That the passengers of the vehicle (including the claimant) arrived their destinations safely without any form of complaint whatsoever."**

The evidence of the sole witness for the 1st defendant is equally situated within the above structure of the defence.

I have deliberately and *in-exenso* set out the salient averments in parties respective pleadings 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.

Now from the pleadings, the 1st defendant by paragraph 6 of its defence agrees or concedes that it is a transportation company that carries out commercial transport services between Abuja and Lagos and have offices in Abuja and Lagos and has employees that work for her.

In evidence, the claimant stated that he boarded the vehicle of 1st defendant, a Sienna vehicle on 19th October, 2020 with his wife from Lagos to Abuja. He tendered in evidence the receipts payments made in the sum of N12, 000 attached to the flyers of 1st defendant which was tendered as **Exhibits P6a** and **Exhibit P6b**. These two receipts clearly projects a single one trip payment from Lagos to Abuja. The contractual relationship situates that the 1st defendant, for consideration was to take claimant and his wife to Abuja. I shall again return to these receipts.

The 1st defendant in their defence as already highlighted above and in evidence contend that the Sienna vehicle referred to does not belong to them and that the 2nd defendant does not work for them and further that the claimant approached

2nd defendant who is an independent or franchise driver who is not in anyway attached to them. Now what is strange about the position of 1st defendant is that while in one breadth they claim they have nothing to do with 2nd defendant, in another breadth, they have both in their defence and evidence sought or put up a strong defence for someone they say is an independent or franchise driver.

This contradictory and ambivalent posture detracts from the credibility of narrative of 1st defendant and their sole witness. Now if the 2nd defendant is an independent and franchise driver not in the employment of 1st defendant, where is the evidence to support such assertion? DW1 supplied nothing. If as stated in paragraph 7 of the defence, that claimant contracted 2nd defendant at their GAT Loading Pit as the 1st defendant did not have a vehicle at that point, on what basis did the 2nd defendant then use their loading pit?

The 1st defendant did not make any allusion or plead that they allow independent persons to freely use their loading pit. It is clear that the 1st defendant and their sole witness are simply been economical with the truth with respect to their relationship with 2nd defendant.

Again, if the 2nd defendant is not in their employment or attached to them as pleaded in paragraph 3 of the defence, why did the 1st defendant now put up a defence to actions they claim they have no link or relationship with.

In paragraph 8 they pleaded that they don't subject their customers to check to ascertain the content of their luggage and that they have a caveat boldly displayed on their premises which states that "All luggage are carried without inspection and at owner's risk." They then averred that the claimant was aware of the caveat.

This paragraph is self inculpatory. The 1st defendant here tacitly concede that claimant was in their premises and was their customer. They also tacitly concede that he had luggage with him but that it their policy not to subject their customers to check to ascertain the content of their luggage.

The reference and reliance on the caveat is clear. If he did not use their vehicle, why rely on the caveat?

In paragraphs 9 and 10, the 1st defendant in what further compromises or undermines their sincerity now stated and provided further particulars in a matter they say they have no business with. In these paragraphs they stated the vehicle even carried 5 passengers in compliance with Federal Government

Covid 19 Protocols obtainable at the time and that the vehicle had a spacious boot and that all 5 passengers were instructed to put their luggage in the boot which all passengers complied with except the claimant.

Again if the 1st defendant has no link with the vehicle, how did they come about this information? I am in no doubt therefore that the claimant without any doubt entered into a contractual relationship with 1st defendant for consideration to be taken from Lagos to Abuja. The receipts vide **Exhibit P6a** and **6b** confirms this relationship.

DW1 in evidence said that **Exhibits P6a** and **6b,** the receipts issued does not belong to them but then agrees that the flyer attached to the receipts belongs to 1st Defendant.

The entire evidence of DW1 and the defence put up by 1st Defendant as demonstrated above is wholly contradictory, inconsistent and lacks credibility with particular respect to their relationship with 2nd defendant. Credible evidence in this connection means evidence worthy of belief and for evidence to be worthy of belief or credit, it must not only proceed from a credible source, but it must be credible in itself in the sence that it should be natural, reasonable and probable in view of the entire circumstances. See **Agbi V Audu Ogbeh (2006) 11 NWLR (pt.990) 65 at 116.**

Where evidence of a witness such as DW1 is exaggerated and enters into the realm of recklessness and appears as an effort to reason and intelligence, no credibility ought to be accorded to it. See **Fatunbi V Olanloye (2004) 12 NWLR (pt.887) 229 at 247 C**.

To further destroy any credibility, the 1st defendant and DW1 may have with respect to the fact that 2nd defendant drove for 1st defendant and that indeed claimant boarded the vehicle of 1st defendant, I will here simply quote verbatim the response of solicitors to 1st defendant when they responded to the claims of claimant vide **Exhibit P4** as follows:

"Our client has instructed us to reply to the issue raised by your letter in the following manner:

1. **That all passengers including you were asked to place their luggage in the boot of the car, everyone else complied and placed their luggage in the boot except you.**

2. **That on the day you boarded our Client's vehicle form Lagos to Abuja, you insisted that you wanted your laptop computer beside you.**

3. **That in a bid to make you more comfortable, and in compliance with the Covid-19 Regulations, an empty seat was provided in between you and the next passenger and you were specifically asked to sit behind the Driver and place whatever luggage you had in the empty seat at the middle.**

4. **That a caveat is boldly written at our client's park which states that ALL LUGGAGE ARE CARRIED WITHOUT INSPECTION AND AT OWNER'S RISK.**

5. **That our client and the Driver exercised reasonably care and diligence required of them and therefore bears no liability whatsoever for the damage to your laptop as same occurred as a result of your Negligence.**

6. **That our Client NEVER admitted at any point to being at fault for the alleged damage to your laptop computer and we thereby reiterate this fact.**

7. **That our client shall not embark on any form of repair of your laptop neither will our client be purchasing a new or fairly used laptop for you.**

8. **That you desist from writing letters laying frivolous and baseless accusations against our client.**

9. **That if you feel so strongly about your claim, you are at liberty to institute an action in court to ventilate your grievances.**

We are positively optimistic of full and absolute compliance to our Client's response.

Thanks."

The above letter by the law firm of **Victor Giwa & Associates** on behalf of 1st Defendant speaks for itself. The car boarded by Claimant belongs to 1st defendant and driven by their servant, the 2nd Defendant.

On the whole and on the basis of the evidence, I find and hold that the claimant engaged the services of defendants, for consideration to be taken from Lagos to Abuja.

Having established that parties had a contractual relationship, the next question and indeed the most critical of questions are what are the terms and was it breached?

In law, the existence of a contract is not to be confused with the obligations there under. See **Biyo v Aku (1996) 1 NWLR (pt.422) 1 at 39 A**.

Now a contract voluntarily entered into by parties are binding on them and a court of law will not sanction an unwarranted departure from them unless they have been lawfully abrogated or discharged. See **FGN V Zebra Energy Ltd (2002) 3 NWLR (pt.754) 471 at 491 E-F**.

Parties to an agreement are thus bound by the terms of the agreement they enter into freely. Where the agreement is written, the ascertainment of what parties agreed to will be determined from the terms.

It is correct that in law, an agreement need 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 rate is that the court will be limited to what parties have agreed will regulate the relationship except of course, if evidence is established to the contrary.

Now in this case and on the basis of **Exhibits P6a** and **P6b**, the motor tickets defendants issued to plaintiff, there is no dispute that the parties had an agreement for the plaintiff to be transported from Lagos to Abuja. On the face of these exhibits, a clear noticeable feature is the insertion of the following:

1. "Luggage are at owners risk" and
2. "No refund of money after payment."

The case of the plaintiff and which is the crux of this dispute, essentially is that the relationship he had with defendants went beyond the purview of what is indicated in these receipts. This obviously is now a question of evidence to support this contested assertion. Before dealing with this point, let me make the general principle that it is not the business of the court to make contracts for parties or to re-write one made by them. Where parties have embodied the terms of their contract in a written agreement, they are bound by it and extrinsic

evidence is not admissible to add to any, subtract from or contradict the terms of the written agreement. See **Larmine V D.P.M & Services Ltd (2005) 18 NWLR (pt.985) 88 at 549 para E; 467 para E; 476-477 paras H-C.**

Let us situate the crux of the complaint of claimant and there is no better template to do so that the statement of claim. I will at the risk of prolixity refer to important paragraphs of the pleadings.

In paragraphs 7, 8, 10, 13 and 14, the plaintiff pleaded as follows:

"7. The Claimant avers that on the 19th of October, 2020 he, along with four other passengers boarded a Sienna vehicle with plate number: GWA-263AX belonging to the 1st Defendant from Lagos to Abuja and while travelling in the said vehicle he was carrying his laptop (Computer) which he duly informed the 2nd defendant (who happened to be the driver of the vehicle) and other Staff/team of the 1st Defendant that loaded the vehicle and he was asked by the driver the 2nd defendant to keep the laptop (Computer) inside the vehicle belonging to the 1st defendant and the seat close to it which he did. A copy of the payment receipt issued to the Claimant at the point of payment dated 19th October, 2020 and the Claimant Laptop Computer purchase receipt dated 21st June, 2019 are hereby pleaded and same shall be relied upon at the trial of this case.

8. The Claimant avers that while on transit during a stopover during the cause of the journey; the 2nd defendant slanted/bent his seat backward without due diligent and care and without any notification to the claimant and other passengers in the vehicle to remove luggage kept in the vehicle and lain heavily directly against the Claimant's laptop-bag containing the Claimant's Laptop and damaged/destroyed the Claimant's laptop (Computer). The damaged laptop Computer and a photograph of the authentication are hereby pleaded and same shall be relied upon at the trial of this case and also a report of a Computer repairer disclosing the details of the damaged and its effect is hereby pleaded and same shall be relied upon at the trial of this case.

10. The Claimant avers that he brought the incident to the notice of the 2nd defendant and the 2nd defendant apologized in the presence of other passengers in the vehicle while acknowledging his negligence and fault in the wanton damage of the claimant laptop computer.

13. The Claimant avers that at hearing the cost of the repair and purchase of another Laptop Computer to replace the Claimant damaged Laptop Computer the 2nd defendant and the 1st defendant Manager/Director claimed that the cost was beyond them and will have to call their superior and that what they could offer the Claimant as compensation was a seat free from charges to Lagos when next the claimant wants to travel to Lagos, which costs Twelve Thousand Naira only (12, 000.00). An Offer which the Claimant refused and demanded for a repair of his laptop or purchase of a new one which the Defendant's staff admitted could only be carried out by the superior/top management of the 1st defendant.

14. The Claimant avers that the 2nd Defendant on calling the superior; who spoke with the Claimant on phone (the superior) admitted the 2nd defendant fault but went ahead to say/state that the 1st defendant will not carry out the repairs without giving any justifiable reason."

The 1st defendant categorically joined issues with the above averments in the following paragraphs:

"8. That the 1st defendant does not subject its customers to check to ascertain the content of their luggage. And the 1st defendant boldly displayed in its premises a caveat which states that "ALL LUGGAGE ARE CARRIED WITHOUT INSPECTION AND AT OWNER'S RISK." The claimant was aware of the caveat. Photographs of the Caveat and Certificate of Compliance are hereby pleaded and shall be relied upon at the trial.

9. That the Vehicle at the Loading Pit contracted by claimant and other passengers carried only five (5) passengers in compliance with Federal Government COVID 19 Protocols obtainable at the material time.

10. That the Vehicle had a spacious boot and all five (5) passengers were instructed to put their luggage in the boot of the vehicle. All the other passengers complied with the instructions except the claimant. And the 1st defendant was unaware of the claimant's noncompliance with the said directive.

11. That the 2nd defendant is not answerable to the 1st defendant hence the outcome of the journey was never reported to the 1st defendant by the 2nd defendant or the claimant.

12. That the passengers of the vehicle (including the claimant) arrived their destinations safely without any form of complaint whatsoever.

15. The 1st Defendant never promised, assured, agreed or offer to compensate the Claimant whether in cash or kind for the alleged damage to his Laptop Computer. Claimant is put on notice to produce such Offer or agreement.

16. The 1st Defendant is not aware of any purported loss of softwares installed in the claimant's allegedly damaged laptop as same was never submitted to the 1st defendant for inspection at the time of boarding the vehicle. The claimant is put to the strictest prove of same.

18. The 1st defendant maintains that at no point time material to this case did the 1st defendant, its staff or employees negligently damaged the Claimant's purported Laptop computer."

The above are important averments on the issue as made by parties which I deliberately produced in some detail. The point has already been alluded to but it must be underscored that the trite position of the law is that averments in pleadings are not evidence. Facts deposed to in pleadings must be substantiated and proved by evidence, in the absence of which the averments are deemed abandoned except where they are admitted by the defendant. See **Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594 A-B; Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 F-G**.

Now in this case, the claimant in paragraph 7 stated that after paying for the tickets vide **Exhibits P6a** and **P6b**, he carried along with him his laptop computer (Exhibit P1) which he duly informed the 2nd defendant and driver of the vehicle and other staff/team of 1st defendant that loaded the vehicle and that he was asked by the 2nd defendant to keep the computer inside the vehicle. While the receipts evidencing payment for the trip may not contain any reference to a computer, the defendants however agreed that the claimant indeed brought along his laptop computer for the journey.

I prefer here to again reproduce the contents of the letter of counsel to the 1st defendant vide **Exhibit P4** written in response to the letter of demand written by counsel to the claimant. In **Exhibit P4**, the 1st defendant's counsel stated thus:

"1. That all passengers including you were asked to place their luggage in the boot of the car, everyone else complied and placed their luggage in the boot except you.

2. That on the day you boarded our Client's vehicle form Lagos to Abuja, you insisted that you wanted your laptop computer beside you.

3. That in a bid to make you more comfortable, and in compliance with the Covid-19 Regulations, an empty seat was provided in between you and the next passenger and you were specifically asked to sit behind the Driver and place whatever luggage you had in the empty seat at the middle.

4. That a caveat is boldly written at our client's park which states that ALL LUGGAGE ARE CARRIED WITHOUT INSPECTION AND AT OWNER'S RISK.

5. That our client and the Driver exercised reasonably care and diligence required of them and therefore bears no liability whatsoever for the damage to your laptop as same occurred as a result of your Negligence.

6. That our Client NEVER admitted at any point to being at fault for the alleged damage to your laptop computer and we thereby reiterate this fact.

7. That our client shall not embark on any form of repair of your laptop neither will our client be purchasing a new or fairly used laptop for you."

The above is clear. There is no dispute therefore that the claimant travelled with his laptop computer.

The evidence on both sides with respect to where the laptop was kept in the car however contradicts the narrative of the other and thus unclear.

The claimant said he was asked to keep the laptop in the car by the 2nd defendant without saying where precisely he was asked to keep the laptop.

The 1st defendant on its part stated that all passengers were asked to put their luggage in the boot but claimant insisted that he wants his laptop to be with him and an empty seat was provided for that purpose.

Unfortunately in this case, the plaintiff who has the primary burden to establish creditably the averments in his claim did not produce any other person to support his narrative and add further credibility to the position asserted.

As briefly alluded to already, there is nothing in the pleadings and evidence of claimant showing that the 2nd defendant identified any specific place in the car where the laptop was to be kept.

If the place where the laptop is to kept is on an empty seat as asserted by 1st defendant, was the seat immediately behind the seat of the driver? Is the empty seat such that any alteration of the position of the drivers seat will impact what is on the seat? These are matters that only evidence demonstrated at trial can really proffer an answer to.

The claimant in paragraph 8 contends that while on transit and during a stopover, the 2nd defendant slanted/bent his seat backwards without due diligence and care and without notifying claimant and other passengers to remove the luggage kept in the vehicle and "lain heavily against the claimants laptop and damaged/destroyed (it)."

There is no credible evidence before court to support this narrative of a stopover, where and the actions that was said to have occurred there. If there is no clear evidence before court to situate that the 2nd defendant indeed directed claimant to keep his laptop in particular place in the vehicle; if there is no explanation of the dimensions of the vehicle and the distance or positions of the seats in the car, it will be really difficult to situate a clear verifiable basis that when 2nd defendant bent his seat backwards, he was aware of the existence of any laptop right behind his seat.

It would have made a world of difference if there was evidence, even if minimal to support that there was a clear direction by 2nd defendant as to where the laptop was to be kept inside the car and evidence to support that he altered the position of his seat backwards which then damaged plaintiff's computer.

It is relevant to again note that the 1st defendant in paragraph 10 and **Exhibit P4** stated that the vehicle had a spacious boot and that all 5 passengers who used

the vehicle were instructed to put their luggage in the boot and all complied with the instructions except claimant.

The bottom line here is that there is no clarity with respect to where claimant kept his laptop in the car and most importantly that same was damaged when the 2nd defendant and driver allegedly bent his seat backwards while they had a stopover while on transit.

These matters, it must be emphasized are not matters for speculation or address of counsel. What is again interesting is that the claimant in paragraph 7 alluded to the fact that he travelled with 4 other passengers but none of these persons who were witness(es) to what transpired was brought to court to give evidence to further situate the credibility of the narrative of claimant.

The claimant for example stated that the 2nd defendant apologized and acknowledged his fault in the "presence of other passengers" but unfortunately none of the passengers as stated earlier was brought to court to give evidence. The claimant equally alluded to the fact that he only knew of the extent of the damage when a computer repairer was called upon to assess the damage. Again it is strange that no attempt was made to get this computer repairer to come and give evidence.

I have referred to these potential collaborating clues that the plaintiff needed to have called to provide logical and clear basis to support his grievance particularly here where there is a dearth of evidence and absence of clear empirical basis to support his cause of complaint.

The 1st defendant as stated earlier categorically joined issues with claimant on all critical aspects of his grievance. If the 1st defendant agreed to compensate claimant or that they accepted guilt in the circumstances, no such evidence was furnished before the court and the court cannot speculate.

The plaintiff made elaborate allegations in the pleadings which sadly is not backed by credible evidence to support the positions averred. 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 in dispute with the other. Evidence must then be led to prove the facts relied on by the party or to sustain allegations raised in pleadings. See **Union Bank Plc V Astra Builders (W/A) (2010) 5 NWLR (pt.1186) 1 at 27 F-G**.

The bottom line here is that it is really difficult to situate where and how the laptop of claimant was damaged by 2nd defendant in the course of the trip from Lagos to Abuja.

At the risk of prolixity, there is no clear template or evidence to situate that any damage was caused to the computer of claimant by 2nd defendant in the vehicle of 1st defendant beyond bare challenged speculative assertions.

The point must be made that any findings of fact must be predicated on clear evidence and not speculations. Where a finding is made having regard to the existence of documentary evidence, such finding again cannot be seen to fly in the face of the accepted relevant document or documents. If it is, it will be contradictory and perverse. Any findings made must reasonably reflect the evidence adduced or the contents of the document or documents in question.

The evidence presented in this case cannot justify the conclusions sought and reached by claimant. The critical question of (1) where the laptop was kept visa-vis the seat of the driver in the car; (2) whether where claimant kept the computer was to the knowledge of 2nd defendant and (3) whether it was indeed damaged by 2nd defendant during a stopover have all been left to much conjecture and as stated earlier, the delicate task of adjudication is not and cannot be reduced to a matter of guess work.

On the whole, the claimant unfortunately has clearly on the evidence failed in establishing that his computer was damaged by the 2nd defendant in the course of the trip from Lagos to Abuja.

The facts presented by claimant are essentially fluid and unclear. The point I have repeatedly made in this case is the central role of evidence as a fundamental basis to reach or arrive at a fair decision on any contested issue. What is more is that in this case as stated earlier, the substantive Reliefs (1) – (4) sought by claimant are declaratory reliefs which is not a matter for admissions, neither is it operational or availing within the unwieldy realms of speculations or conjectures.

With the failure to establish or prove that the alleged damage caused to the laptop computer was caused by 2nd defendant, the entire case of claimant particularly Relief 1 and on which all other Reliefs are based unfortunately have no foundation and must collapse. The principle is once the principal is taken away, the adjunct must equally go away. In the context of the precise special

claims rooted in declarations and the threshold of proof, there is nothing or clear materials furnished by claimant to situate or support that if any damage was caused to his laptop at all, it was by 2nd defendant in the course of the trip from Lagos to Abuja. The court has not been put in a commanding height to find for the claimant.

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**.

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.

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Hon. Justice A.I. Kutigi

Appearances:

1. ***P.O. Asimegbe, Esq. with Benedict Amawu Esq. for the Claimant.***

2. ***G.A. Enyang, Esq., for the 1st Defendant.***