

**GOVERNMENT OF ABIA STATE OF NIGERIA**  
**IN THE SMALL CLAIMS COURT OF ABIA STATE**  
**HOLDEN AT UMUAHIA**  
**BEFORE HIS WORSHIP MARY UKEJE EMENIKE (MRS) CHIEF MAG. GD. 1**  
**ON THIS FRIDAY THE 3<sup>RD</sup> DAY OF MAY, 2024.**

**CLAIM NO: U/SCC/12/2024**

**REGISTERED TRUSTEES METHODIST CHURCH  
DIOCESE OF UMUAHIA**

**(BY HIS ATTORNEY CHIEF OKEY MBANASO) - CLAIMANT**

**VS.**

**E.E. AZUBUIKE ESQ - DEFENDANT**

Parties are present except the Claimant.

**APPEARANCES:-** P.C. Udenwa Esq for the Claimant; B.C. Osisiogwu Esq for the Defendant.

**COURT:** Judgment

The Claimant is claiming the sum of ₦610,000.00 (Six Hundred and Ten Thousand Naira) being the amount the Defendant is owing as a Tenant of Shop No. A10 (formerly A31) Methodist Bookshop Plaza, Ikot Ekpene Road Umuahia. The Claimant is also claiming the sum of ₦2,150 being the Court fee.

The claim was filed on the 16/2/2024 and same was served on the Defendant. Affidavit of Service is filed at page 6 of the Court's file. Upon receipt of the Claim, the Defendant filed a defence and a counter claim on the 21/2/2024 counter claiming the sum of ₦20,857,142.86 for breach of contract.

On the 23/2/2024, plea was taken and the Defendant pleaded not liable to the two arms of the Claimants claim. On that same date, the Claimant opened its case and the Claimant's attorney testified as CW1.

The evidence of CW1 can be summarized thus:

That he is a Legal Adviser to the Claimant since 2016; that he is also the Chairman of the Board managing the Methodist Bookshop Shopping Plaza laying along Ikot Ekpene Road Umuahia where the Defendant is occupying Shop No. A10 formally A31 under a tenancy which expires on 31/10/2014. CW1 tendered authority to represent the Claimant both as a Legal Adviser of the Diocese and the Chairman of the Management Board as Exhibit A and B respectively. He went further to say that consequent upon his inauguration, the Board under his Chairmanship wrote a letter to all the allottees dated 30/11/2016 inviting them for a meeting on the 20/12/2016. The Defendant was duly served with the letter through his Secretary one Victoria Festus with Phone Number 08092476052. Despite that invitation, the Defendant did not attend the meeting. Another meeting was for October, 2022 the defendant copy was received by one Amarachi Ahamefule with Phone No. 08033147393. The witness tendered a proforma of the draft of the 1<sup>st</sup> meeting as Exhibit C. CW1 went on to tender the handover note given to him on the 4/5/2021 by Sir Emmason K. Nwakanma, the outgone Chairman of the board as Exhibit D and went further to say that the said Exhibit D contain all the response to the counter claim. It was his evidence that about 1999, the Diocese of Umuahia at her Synod decided to develop the Methodist Church Bookshop along Ikot Ekpene Road into a shopping Plaza; A committee was set up and members of the Church were urge to contribute to the construction of the Plaza; that fewer shops were on the pipeline but with the response from the Church members, the number was expanded to 60 shops and each allottee paid ₦350,000.00 (Three Hundred and Fifty Thousand naira only) for each shop including the Defendant and that their investment was constituted in such a way that their holdings there expired on 31/10/2014 including that of the Defendant. It was his evidence that Exhibit D specifically spelt that it was tenancy agreement; that upon the expiration in 2015 Synod, the issue of the status of the allottees came up since their investment has expired in October 2014, the Synod deliberated on it, the majority voted that all the allottees should relinquish possession back to Church but the minority which included himself urge the Synod to allow allottees who still wanted to retain his allotment should continue to hold same upon payment of a defined monthly rentage, that his ground was predicated

upon the fact that they were the people who answered the clarion call of the Church when it needed help; that the Synod adopted the minority position and a ₦5,000.00 (Five thousand naira) monthly rentage was adopted as rent for those desirous to maintain their allotment. It was his evidence that upon giving possession to the allottees, it was expressly stated that each allottee will be paying ₦5,000.00 (Five thousand naira) royalty/annual dues to the Methodist Church; that from the records available to him, the Defendant only paid 1<sup>st</sup> and 2<sup>nd</sup> year Royalty and never made any payment till that October, 2014 and that is the outstanding ₦50,000.00 (Fifty Thousand Naira) as part of the Claimant's claim, in other words the royalty/annual dues ought to have been paid till October 2014. That from 1<sup>st</sup> November 2014 to January 2024 at ₦5,000, brought the total sum to ₦607,150.00 which the Claimant is claiming. It was his evidence also that personally he has asked the Defendant to pay, the Defendant will promise but never did; that subsequently the Defendant was served at the Multidoor Court and because the rules of the Court provides for voluntary participant, the Defendant avoided it. That the correspondence with him and the Defendant was not written but oral; that it is in bad faith that the Defendant is claiming purchase and that it is only the Defendant that is claiming purchase. CW1 urge the Court to grant their prayer by asking the Defendant to pay up the sum of ₦610,000.00 (Six Hundred and ten thousand naira).

CW1 was cross examined on the 1/3/2024 and the evidence adduced during cross examination was that from the available records, a general offer was made to every interested allottee and not to the Defendant specifically and that the offer letter the defendant exhibited does not bear the name of the Defendant; that the allottees brought part of the money in which the shopping plaza was built. That every allottee paid ₦350,000.00 and it is wrong to say that some paid lesser while the Defendant paid ₦365,000.00 and that inflation affected the project and that he knows from the records that allottees/tenants started taking possession from 2002 upon executing the relevant tenancy agreement with the Legal Adviser upon payment of ₦2,000 (Two thousand Naira) and that the agreement is as exhibited on Exhibit D as an Appendix 3

and that the tenancy started from 1<sup>st</sup> April 2002 to October, 2014 and the advance payment was for that period and no exception.

The Defendant opened his defence on the 8/3/2024 and testified as DW1. His evidence can be summarized thus: that he counterclaim the sum of ₦20,857.142.86 (Twenty Million, Eight hundred and Fifty-seven thousand One hundred and Forty two Naira Eighty Six Kobo). That on 2/11/1999 through an offer letter with Reference No: MOU/ODU/BPC/116/1000 was given to him by the Methodist Theological Umuahia where he worship; that the Claimant asked him to purchase shop at ₦80,000.00 (Eighty Thousand Naira) and when he went to pay, he was told that the cost is ₦350,000 which is akin to building four shops because it was the money he brought that was being used to build the shop just like Ubani Modern Market where you build one shop and take one; that he subsequently paid for one shop when he paid by instalment from 1999-2005 and that the Claimant after giving him the receipt are yet to give him a Power of Attorney to back the consideration which he duly furnished and that he was laid into possession in 2007; that the Claimant having not given him receipt, he wrote five times and yet they kept adamant; DW1 tendered his Methodist Church Membership Certificate as Exhibit E and also tender an offer letter dated 2/11/1999 given to him by Rev. Ikejiofor as Exhibit F; he also tendered receipts of money he paid instalmentally for ₦365,000.00 as Exhibit G; DW1 further stated that the Claimant gave him receipt for the 5<sup>th</sup> and 6<sup>th</sup> instalmental payment and he tendered same as Exhibit H<sub>1</sub> and H<sub>2</sub>. He went further to say that on the 29/8/2005, he wrote an application to the building committee for the return of ₦15,000 which he over paid upon payment of ₦350,000.00 meant to be paid. DW1 tendered the said letter as Exhibit J, it was his evidence that on 6/9/2007, he wrote the Chairman another letter titled Demand Notice for them to give him a Power of Attorney and ₦15,000.00 he tendered the said letter as Exhibit K and that on 28/8/2012, he wrote a reminder and he tendered same as Exhibit L. In proving his counter claim, the defendant evidence was that before he invested ₦350,000.00 as requested by the Secretary of Methodist Church Nigeria, as a meritable Accountant, and a Chartered Accountant, he has consecutively computed the value of his ₦350,000.00 and that was how he arrived at the sum of

₦20,857,142.86. That the contract between him and Methodist Church Nigeria is freehold i.e. for life having assisted them to build four shops out of the 64 shops they built and they gave him one shop.

That he is not owing the Claimant. That he is asking the Claimant to give him Power of Attorney or alternatively pay him ₦20,857,142.86 counter claim.

DW1 was cross examined on the 5/4/2024 and under cross examination, DW1 admitted that there is nowhere in Exhibit F that his name was written and that he never made any written acceptance to the offer on Exhibit F but he had a verbal agreement with the author of Exhibit F and that he made payments in six instalments instead of two instalments as stated in Exhibit F. Also that he did not make any mandatory payment of ₦2000 for legal documentation as done with other allottees because it was not contained in the offer letter i.e. Exhibit F and as a Lawyer, he did not prepare or draft a Power of Attorney and presented to the Claimant or any other document of transfer for the execution in his favour because there was an offer and he furnished consideration and was given possession and he did not take Methodist Church Nigeria to Court to compel them to transfer title to him because he is not a trouble maker and that the contract was concluded when he was given possession and that he never attended meetings with the Management board of Methodist Church Nigeria, that he took possession in 2009; that he does not have any document of purchase but he built the shop through the allocation paper and that whatever the Synod did was gibberish and whatever decision the Synod took are not tied to the contract because the Synod are not informed.

At the close of evidence of the witness, the parties filed their written addresses and both parties agreed on the number of days needed but the Defendant did not file on the agreed number of days and at the expiration of the number of days agreed for the Defendant to file, the Claimant filed his written address. Subsequently, the Defendant filed his written address on the 15/4/2024. Both parties adopted their written address on the 26/4/2024. The Defendant raised two issues for determination to wit whether the Claimant proved that the Defendant owe him the sum of ₦610,000 and whether the Defendant proved that

he is not a tenant of the Claimant but owned the shop through freehold and that the Claimant is liable to refund the ₦15,000.00 he overpaid the Claimant.

On issue No. 1, Counsel submitted that the Claimant did not prove how the Defendant became his tenant as to owe him the stated sum of ₦610,000.00 and that the Claimant could not establish whether there is leasehold between the Claimant and the Defendant or whether he is a year tenant or monthly tenant. The Defendant submitted that the Claimant did not prove how the debt they are claiming actually arose. The Defendant submitted that there is nothing like royalty in Landlord/Tenant relationship and that both monthly tenant and the use of patent never arose in this case as the contract between them was that of leasehold having purchased the shop from the Claimant. Counsel submitted that the onus and burden of proving a fact rest on the party who asserts and counsel relied on the case of **Omisore V Aregbesola (2015) 15 NWLR Pt 1482 Pg 1@27 and Sections 131, 132 and 133 of the Evidence Act 2011** and submitted that such a party must lead credible and legally admissible evidence in order to succeed. Counsel relied on the case of **Onovo V Mba (2014) 14 NWLR Pt 1427 Pg 391 @ 44.**

On issue No. 2 Counsel submitted that the Defendant proved ownership of the subject matter one out of the 64 shops and that he is a member of Methodist Church Nigeria. Counsel further contended that Exhibit G, H<sub>1</sub> and H<sub>2</sub> are his evidence when the shop was finally allocated to him in September, 2007 and he paid the total ₦350,000.00 between 23/5/2000 to 28/8/2005 and in the process overpaid and relied on his Exhibit J-N and that the exhibits established there is an offer by the Claimant, acceptance by the Defendant who furnished consideration for it. Counsel submitted that contracts are enforceable when there is consideration and consideration is thus mandatory for enforceability. Counsel relied on the case of **Young Shall Grow Motor Ltd V Onulaja (2021)3 NWLR Pt 1763 Pg 300 @39.**

In his reply, Plaintiff's Counsel contended that what was granted the Defendant was temporary tenancy for a given period which has been determine by effluxion of time, that Exhibit D together with its appendix

which is the report and handover note from the immediate past Management Board are documents that adduced what the Claimant and the allottees agreed on from their actions which the Defendant is one of them. Counsel further contended that Exhibit C was issued to the Defendant in 2016 after the decision of the Synod and the Defendant neither attended nor responded to any of the letters, demands and or invitation which the Defendant admitted under cross examination that he never attended nor has made any payment apart from Exhibit G. That the Defendant's Clerk/Secretary named Festus Victoria received Exhibit C in 2016 for the Defendant while Amarachi Ahamefula another Defendants Clerk received and signed the letter of invite in October 2022 for the meeting with the Synod and the debt profile for the Defendant and the Defendant neither attended nor responded. Counsel contended that the Defendant admitted having not attended the Synod of his Umuahia Diocese and by his utterance, the Defendant is not even an ardent Methodist else he wouldn't have written over five letters over an alleged over payment of ₦15,000.00 since 2005 despite the fact that he was not demanded nor coerced into doing so. Counsel submitted that the Claimant need not offer graphic evidence but real and substantive evidence to succeed and that the Claimant through CW1 offered credible and uncontroverted evidence or proof of his case.

Counsel further contended that there is no evidence of receipts of the alleged letter of demand by the Management Board and that the present board headed by CW1 came into office in 2016 and has received no such demand letter rather the uncontroverted evidence of CW1 in his evidence in Chief of his several overturns he made to the Defendant as a professional colleague to clear his indebtedness. That all documents from the Synod and the Management Board unambiguously stated that from possession was ₦5000 annual dues or royalty while from 1/11/2014 was ₦5,000 monthly rent. Counsel submitted that the law is that he who asserts must prove and the Claimant asserts that the transaction was a tenancy and has offered both oral and documentary proof. That the Defendant asserts that it was outright purchase and the onus is on him to prove outright purchase and the Defendant has not been able to provide an iota of evidence to proof same. Counsel submitted that it is trite that oral or parole evidence cannot be

introduced to override a documentary evidence in the absence of fraud. Counsel further contended that the Defendant cited Ubani market, BCA Road that those places are not magical words but must be relevant to the issue before the Court and the defendant did not exhibit similar offer he got other than making irrelevant pedestrian analogies. With regards to the defendant's counter claim, counsel submitted that the claim of the defendant is based on unsupported misconception that he purchased outrightly the shop A10 that the defendant never disclose nor provided any special arrangement with Methodist Church Nigeria which his own allotment would be sold or outright purchase while others were periodic tenancy of 12 ½ years each for ₦350,000.00.

Counsel contended that the defendant never exhibited any offer in terms of the alleged land offer purchase at BCA Road, Ubani Modern Market, Dollar exchange rate, cement prices etc then; that all are assertions made in the realm of speculations and no verifiable and documented facts. Counsel further contended that the defendant on one breath claimed to own the shop because he built it and another saying the builder had not completed the building, that the Court cannot pick and choose as the Court is neither a gambling house or a place for speculations.

That the defendant having admitted paying ₦350,000.00 for shop A10 is estopped from criminally asserting to pay for 4 shops and was given one. Counsel contended that as a seasoned Lawyer, assuming without conceding the defendant made outright purchase of shop A10, the defendant admitted to not taking any legal steps to protect and or defend his acquisition, Counsel urge the Court to grant the reliefs of the Claimant and dismiss the counter claim.

In his reply on point of law, the defendant submitted that the rule is that a transaction has been reduced to or recorded in writing either by requirement of law or agreement of the parties, the writing becomes in general the exclusive record thereof and no evidence maybe given to prove the terms of the transaction except the document itself. Counsel relied on the case of **C.C & Ind. SPR Ltd v Ogun State Water Corporation (2002) 9 NWLR Pt 773 Pg 629 @ 654**. Counsel further submitted that the importance of a document is that it could be used to



resolve an issue or conflicting oral evidence. It could be used as a hanger for which to test the veracity of the oral testimonies. Counsel relied on the case of **Bunga v Governor of Rivers State (2006) 12 NWLR Pt 995**. Counsel also submitted that the parties to a contract are bound by the terms or conditions whether oral or written and also relied on the case of **Golden Construction Co Ltd v Stateco Nig Ltd (2004) 8 NWLR Pt 1408 Pg 171@195**. Counsel submitted that exhibit A-D tendered by the Claimant is in sharp contradiction to those averments which are very material to their case, the result is that they have failed to prove their case and the proper order is dismissal of their case. Counsel relied on the case of **Abibo v Tamino (1999) 4 NWLR Pt 559 Pg 334 @ 339**. Counsel further submitted that where there are material contradictions in the evidence adduced by a party, the Court is enjoined to reject the entire evidence as it cannot pick and choose which conflicting versions to believe or follow. Counsel relied on the case of **Anyanwu v Peoples Democratic Party (2020) 3 NWLR Pt 1710 Pg 134 @ 167**. Counsel further submitted that in the instance case and considering the counter claim of the defendant, where a contract consist of a series of documents, the Court has a duty to scrutinize and examine closely all contractual documents admitted as exhibits to determine whether there exist a contract between the parties and the issues in controversy between them where documents form part of a long drawn out transaction, they should be read and interpreted together and not in isolation. Counsel again relied on the case of **Mekwunye v WAEC (2020) 6 NWLR Pt 1719 Pg 1 @ 38** and the case of **FGN V Zebra Energy Ltd (2002) 3 NWLR Pt 754 Pg 492 – 493** respectively and counsel urge the court to dismiss the Claimant's case and grant the counter claim of the Defendant.

Having read through the evidence of the witnesses and have painstakingly summarized same including the written address of both Counsel and I have carefully looked at all the exhibits tendered before me. I will formulate a two issues for determination which are: whether the claimant has proved that the defendant owe him the sum of ₦610,000.00 and whether Methodist Church Nigeria sold the shop to the defendant who paid ₦350,000.00.

In the cause of this trial, both the claimant and the defendant testified as witnesses. The Claimant's Attorney testified as CW1 while the Defendant testified as DW1. A total of thirteen exhibits were tendered. Exhibits A-D were tendered by the Claimant while Exhibits E-N were tendered by the defendant. For clarity purposes; I will highlight the exhibits as tendered by the Claimant.

**Exhibit A:** A Letter of Authority Dated 25/3/2023

**Exhibit B:** A Letter of Appointment as member of the Diocesan Shopping Plaza Committee.

**Exhibit C:** A Letter dated 30/11/2016, a copy of the draft proforma of the 1<sup>st</sup> meeting.

**Exhibit D:** A Handover note dated 19<sup>th</sup> -23<sup>rd</sup> April 2017.

While Exhibit E-N were tendered by the Defendant and they are:

**Exhibit E:** A Certificate of Membership of Methodist Church.

**Exhibit F:** A Letter dated 2/11/1999 titled 'To All Prospective shop Allotees'. "Vital information on Shop Allocation".

**Exhibit G:** Photocopy of Bank tellers

**Exhibit H<sub>1</sub> & H<sub>2</sub>:** Methodist Church Receipts dated 25/5/2005 and 22/8/2005 respectively.

**Exhibit J:** A letter dated 29/8/2005 titled Application for Refund.

**Exhibit K:** A letter titled Demand Notice dated 6/9/2007

**Exhibit L:** Letter dated 28/8/2012 titled 'Reminder for Refund of Overpayment and Demand Notice'.

**Exhibit M:** Letter dated 7/6/2017 titled 'Reminder IN RE refund of overpayment of ₦15,000.00 and Demand Notice.

**Exhibit N:** A Letter dated 2/11/2021 titled '3<sup>rd</sup> Reminder-Demand Notice cum Refund of ₦15,000.00 Overpayment.

From all the evidence adduced before the Court, the claim of the Claimant is anchored on Exhibit C and D especially, while the Defendant is solidly relying on Exhibit F as his root of title and a document that

created the breach of contract between him and the Claimant. The pertinent question is did Exhibit F convey title to the Defendant as claimed by the Defendant? Of course, it is settled that if parties enter into an agreement, they are bound by its terms and that there's no one or the court can legally or properly read into the agreement the terms in which the parties have not agreed and did not agreed on. I rely on the case of **Evbuomwan and 3ors V Eleme & 2ors (1994) 7-8 SCNJ Pt 11 Pg 243**. On the face of Exhibit F, the name of the Defendant is not written on it rather it was addressed to all the brethrens of Methodist Church Nigeria who were interested in the allotment of the shops and the Defendant admitted same. On the face of the same exhibit F, the word "purchase" or "sale" "buy" nor "bought" is not found on the face of the Exhibit or any other word that will suggest that the Claimant sold the shop or there was a contract to purchase the said shop. The Court is not permitted to read into the Exhibit the terms the parties never agreed upon. The Claimant tendered Exhibit D with its appendix and also testified in evidence that the Defendant has twice been invited for a meeting by the synod which is the highest decision making body of the Claimant and also by the Management Board and went ahead to provide a concise and cogent evidence as to who received the letter of invitation on behalf of the defendant. That piece of evidence was not contradicted nor challenged rather the defendant response was that whatever decision the Synod made was gibberish and not binding on him. The law is that unchallenged evidence ought to be acted upon as the correct position of the facts in issue. I rely on the case of **CBN V Okojie (2015) EJSC vol 26 pg 2** and the case of **Ifediora & 2 ors V Okafor & 2ors (2019) EJSC vol 127 Pg 46**. Infact in the case of **Bronnwen Energy Trading Ltd V OAN Agency Nig Ltd & 2ors (2022) EJSC vol 183 Pg 2** the Supreme Court said such unchallenged and uncontradicted evidence, the Court has a duty to act on it. I am of the view that if actually there was a breach of contract or a disagreement or a misrepresentation of facts, the Defendant who tendered Exhibit E as his Membership Certificate had ample opportunity to attain any of the meetings and ventilates his grievances but yet in his evidence he said he never went and had no intention of attending because he has the possession of the said shop. It was also in evidence

that the Defendant was asked to pay the sum of ₦2000.00 to the Claimant Legal Adviser for the perfection of a legal document, the witness CW1 said it was a tenancy agreement that was to be signed between the parties; again the defendant did not do so and did not also challenged nor controverted that piece of evidence of CW1. Can the defendant in the strict legal sense of it claim that Exhibit F conveyed titled to him and that he is not a tenant? I doubt if Exhibit F can be a root of title. The Defendant does not have any document to lay claim upon except Exhibit F. If and where there is any disagreement on a particular term of agreement on a particular point, the authoritative and legal source of information for the purpose of resolving the disagreement is of course the written agreement executed by the parties so says the Supreme Court in the case of **UBN Ltd V Sax Nig Ltd & ors (1994) 9 SCNJ Pg 1 & Pg 12**. From the evidence before me, the defendant did not sign any document after he took possession even when he was invited to do so. What then is that document that the Court will rely on in resolving the disagreement. Again let me still dwell on Exhibit F. On the face of the said Exhibit, it was clearly stated that the payment should be done by two instalmental payment and the bank teller submitted in the Church Office for the Claimant's receipt; the question is did the Defendant adhere to the terms of that content in Exhibit F. Even though Exhibit F did not specify the time frame for the payment, the defendant decided to pay in six instalments and tendered Exhibits H<sub>1</sub> and H<sub>2</sub> as official receipt from the Diocesan office issued to him as contained in Exhibit F. Again Exhibit H<sub>1</sub> and H<sub>2</sub> had no word purchase or sale written on it.

The Court acts on facts and not on mere speculation but on empirical facts provided by the parties. This is the position of the law in the case of **Ogboru V Uduaga (2016) EJSC Vol 28 Pg 126** and the case of **Daniel V INEC (2015) LPELR -24566 S.C.** The terms of what was intended was clearly spelt out and the Defendant consciously avoided recognizing those terms simply on the mere fact that he has gotten possession and therefore has no other business with the Claimant. The Defendant tendered Exhibit J and N as Demand notices he has given the Claimant demanding for a refund of ₦15,000 and a Power of Attorney to be issued to him. The question is, was there anywhere in Exhibit F that

stated that a Power Of Attorney will be issued to the Defendant for shop A10, the answer is in the Negative. From those Exhibits, the Defendant has to wait till every 5 years or 4 years to remember to write to the Claimant a Demand Notice. The Defendant had issued those number of demand notices and have not taken any action to actualize his demand 17years after he took possession of the shop. This to me looks like a child's play. The Defendant claimed he wrote to the Claimant those 5 times but there was no single evidence of acknowledgement of those letters from the Defendant and the Defendant did not also lead evidence as to who receive it if at all such letters were sent. The law is that where it is alleged that a document was delivered to a person who denies receiving such documents, proof of delivery to such person can be by evidence of a witness credible enough that the person was served with the document. I rely on the case of **Chemiron Inlt Ltd v Stabilini Visinoni Ltd (2018) LPELR 44353 S.C.** I have a doubt in my mind that the Defendant delivered those letters to the Claimant. I have the view that the defendant wrote those letters in the cause of this litigation to aid him proof a point which in my opinion is a non existing point. If he did delivered or gave the letter to the claimant there would have been a credible evidence of receipt and acknowledgement of the same. Exhibit D disclosed the decision of the synod that allottees at the end of 12 ½ years are tenants to the property with a monthly rent of ₦5,000 and an annual dues of ₦5,000.00. The said Exhibit is clear and unambiguous in its content; that the document has proved that it was a tenancy that the parties were into. The law is that where the terms of a contract are clearly expressed in a written document or documents as in this case, the Court cannot go outside those terms to ascertain the intentions of the parties. See case of **Access Bank Plc V Nigeria Social Insurance Trust Fund (2023) EJSC Vol 192 Pg 2** and it is not also the function of the Court to make or rewrite a contract for the parties. See also **Fakorede & Ors V AG Western State (1972)/All NLR Pt 1 Pg 178 @ 189.** I therefore hold that the Claimant from the bundle of facts both documentary and oral evidence adduced before me, the Claimant has proved that the Defendant is his tenant and is indebted to him.

On issue No 2 having said all the above in this Judgment, I do not think I will have difficulty determining this issue no 2. The Defendant laid hold to Exhibit F as being his root of title or evidence of purchase. In another breath, the Defendant claimed he built the shop and swiftly will say was a freehold. The Defendant claimed that there was an offer and he made a consideration of paying the said ₦350,000.00 and therefore the contract has to be enforced. Counsel relied on the case of **Young Shall Grow Motors Ltd V Onalaja (2021) 3 NWLR Pt 1763 Pg 300 @ 319**. The facts of that case was quite different from what is before me. There the appellant had an agreement but did not furnish consideration early enough to seal the contract but what is before me is a question whether Exhibit F conveyed title or right of purchase cum ownership of shop A10 on the Defendant. As I earlier on mentioned, the Defendant is not consistent in what he is claiming. Claiming to build 4 shops and given one; claiming to purchase and at the same time also claiming that as at 2007 the Claimant did not finish building the shop for him but only showed him the shop and claiming freehold. Parties are not allowed to approbate and reprobate on the same issue so also is the Court of law. **See the case of A.G Rivers State V A.G Akwa Ibom State (2011) LPELR – 633 SC or in (2011) 3 Sc 1. See also the case of Adermpe v Eleron (2022) EJSC vol 185 Pg 95.** In so far as Exhibit F did not convey title to the Defendant or has any resemblance of same, I find it difficult to hold that the Claimant sold the shop to the Defendant or that the Defendant purchase the shop. I so hold.

On the counter claim of the Defendant; the Defendant in proof of his counter claim relied on his professional prowess as an Accountant, a Banker and a Lawyer in calculating what he thinks would be the cost of his ₦350,000.00 as at the year 1999 according to him when he was given the offer. The Defendant did not give any evidence as to what the cost of Cement, Land, Dollars etc were as at that time. The law does not deal with speculations nor sentiments. The mentioning of Ubani Modern Market and relying heavily on the happenings of that market and other Plaza is neither here nor there. The Defendant has not been able to proof his counter claim and I so hold. Having said this, it is trite that in Civil Proceedings, Judgment is given to the party with the greater weight or stronger evidence and that is what the Law recognizes as the balance

of probability. **See the case of Inter drill Nig, Ltd V UBA Plc (2017) EJSC Vol 71 Pg 16.** The Claimant has proved his case on the balance of probability accordingly Judgment is entered in favour of the Claimant in the following terms. The Defendant shall pay to the Claimant the sum of **₦610,000.00 (Six Hundred and Ten Thousand Naira)** forthwith being the sum owed the Claimant by the Defendant. Cost of ₦2,000 is awarded against the Defendant. This is the Judgment of the Court.

**Signed**

**His Worship Mary Ukeje Emenike (Mrs)**  
**Chief Mag. Gd. I.**  
**3/05/2024**



**AGBANYIM C.C. (MRS)**  
**Asst. Chief Registrar I**