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

**THIS WEDNESDAY, THE 19TH DAY OF APRIL, 2023**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE**

**SUIT NO: FCT/HC/CV/67/2016**

**BETWEEN**

**1. MR. JAMES AKPAN**
**2. MRS. JAMES AKPAN** …………………….. **PLAINTIFFS**

**AND**

**1. MARTHA ODUKWE**
**2. MR ODUKWE VINCENT**
**3. MR OLIVER NEBOUTA** …………... **DEFENDANTS**
***(Chairman, Foodstuff Sellers Association, Gwagwalada International Market)***

## JUDGMENT

By a Writ of Summons and Statement of claim filed on 9th November, 2016, the plaintiff prayed for the following Reliefs:

a. **A Declaration that the 1st Plaintiff is the sole, lawful and exclusive allottee of Shop 16, Block U (Open Shop), Gwagwalada International Market, Gwagwalada, Abuja, by virtue of the 1st Plaintiff's allocation letter dated the 14th day of August, 2015, which was issued the 1st Plaintiff by Finamedia Global Services Limited.**

b. **A Declaration that the 2nd Plaintiff through the 1st Plaintiff, reserves the possessory rights to exclusive and undisturbed possession of the said Shop 16, Block U (Open Shop), Gwagwalada International Market, Gwagwalada, Abuja to the exclusion of 1st, 2nd and 3rd Defendants and**

**any other person or member of the Foodstuff Sellers Association, Gwagwalada International Market, Gwagwalada, Abuja.**

c. **A Declaration that the 2nd and 3rd Defendants trespassed into Shop 16, Block U (Open Shop), Gwagwalada International Market, Gwagwalada, Abuja, currently occupied by the 2nd Plaintiff, when between the 6th day of April and the 16th day of September, 2016, the 1st and 3rd defendants entered the said Shop 16, Block U (Open Shop), occupied by the 2nd Plaintiff and the 3rd Defendant sought to put the 1st Defendant in possession of the said Shop 16, Block U (Open Shop).**

d. **A Declaration that the receipt dated the 29th day of August, 2016, belonging to the 2nd Defendant, purporting to be issued in respect of Shop 16, Foodstuff Block, Gwagwalada International Market, Gwagwalada, Abuja gives no right to either the 1st or 2nd Defendant over Shop 16, Block U (Open Shop) Gwagwalada International Market, Gwagwalada, Abuja, the 1st Plaintiff having been earlier issued an allocation letter dated the 14th day of August, 2015, in respect of the said Shop 16, Block U, Gwagwalada International Market, Abuja.**

e. **An Order of perpetual injunction, restraining the 1st – 3rd Defendants, their agents, privies or such other person(s) acting under their instructions or behalf, from further trespassing into the said Shop 16, Block U (Open Shop), Gwagwalada International Market, currently occupied by the 2nd Plaintiff, and from further harassing, intimidating or interfering with the 2nd Plaintiff's peaceful enjoyment of exclusive possession, use and occupation of the said Shop 16, Block U (Open Shop), Gwagwalada International Market, Gwagwalada, Abuja.**

f. **The sum of N826, 000.00 as special damages, against the 1st and 3rd Defendants, for the loss of the full carton of knor magi brand and the loss of business suffered by the 2nd Plaintiff, at the instance of the 1st and 3rd Defendants from the 6th – 13th day of April, 2016 and from the 7th August, 2016 to 16th September, 2016.**

g. **The sum of Three Million Naira (N3, 000, 000.00) against the 1st and 3rd Defendants as damages for trespass perpetrated by the 1st and 3rd Defendants, between the 6th of April and the 16th of September, 2016.**

h. **The sum of Two Million Naira, (N2, 000, 000.00) as aggravated damages against the 1st and 3rd Defendants for the inconvenience, harassment and embarrassment suffered by the 2nd Plaintiff by the continued trespass, embarrassment, intimidation and the reprehensive acts of the 1st and 3rd Defendants against the 2nd Plaintiff, in preventing her (2nd Plaintiff) from enjoying peaceful possession, occupation and use of the said Shop 16, Block U (Open shop), Gwagwalada International market, Gwagwalada, Abuja.**

The Defendants filed a Joint Statement of Defence on 12th April, 2018 and set up a Counter-claim against **Plaintiffs** and **Finamedia Global Services Ltd** as 3rd Defendant to the Counter-claim as follows:

1. **A Declaration by this court that the 2nd Defendant/Counter-claimant owns exclusively Shop 16 Food Stuff Block now called Shop 16 in Block U by Finamedia Global Services Limited (the 3rd Defendant to counter-claim).**

2. **An Order of perpetual injunction restraining the 1st and 2nd Plaintiffs/Defendants to counter-claim and the 3rd Defendant to counter-claim, their privies, successors-in-title, agents and assigns from entering into Shop 16 Food Stuff Block also called Shop 16 in Block U or disturbing the peaceful and quiet enjoyment of the said Shop by 2nd Defendant/Counter-claimant.**

3. **Special damages of One Million, Twenty Thousand Naira (N1, 020, 000) only for the periods totaling 120 days calculated at Four Hundred and Twenty Thousand Naira (N420, 000.00) for 60 days at an average daily sales/profits of Seven Thousand Naira (N7000.00) and Six Hundred Thousand Naira (N600, 000.00) for 60 days at an average daily sales/profit of N10, 000.00 being for the loss of use and sales in Shop 16 Food stuff Block also known as Shop 16 in Block U, Gwagwalada International Market subject matter of this suit for various periods between April/May 2016 (a month), September/October 2016 (another**

**month) and between the 14th day of November, 2016 to 25th day of January, 2017, (over two months) against the plaintiff's/defendants to counter-claim jointly and severally.**

4. **Aggravated and exemplary damages of N5 Million (N5, 000, 000.00) only in favour of the counter-claimants and against to 3rd defendant to counter-claim for the physical and mental harassment, sufferings and losses they caused 1st to 3rd Counter-claimants through corporate misdeeds in connivance with the plaintiffs.**

5. **General damages of 5 Million Naira against all the defendants to the counter-claim jointly and severally in favour of the counter-claimants.**

The Plaintiffs in response filed a Joint Reply/Defence to the 1st – 3rd Defendants defence/counter-claim on 14th May, 2018. I note that in the plaintiffs Reply and defence to the counter-claim of defendants, the plaintiffs again made fresh claims against the counter-claimants thus:

1. **A Declaration that the purported allocation letter dated 15th November, 2017 and purportedly issued in respect of Shop 16, Block U, Open shop, Gwagwalada International Market, Gwagwalada, Abuja, in favour of the 2nd Defendant is null and void and same gives no right to the 2nd Defendant over the said Shop 16, Block U, Open shop, Gwagwalada International Market, the 1st Plaintiff having been earlier issued an allocation letter dated 14th August, 2015, in respect of Shop 16, Block U, Open shop, Gwagwalada International Market, Gwagwalada, Abuja.**

2. **And Order of this Honourable Court dismissing the entire counter claims of the 1st – 3rd Defendants' Counter-claim, with substantial costs.**

3. **Any further Order this court may deem fit to make in the circumstances.**

I am not sure that the Reply and defence to the counter-claim of defendants is a proper conduit to make fresh claims as made above. It has been settled by several decided cases that a counter-claim is to all intents and purposes a separate action, although the defendant for convenience and speed usually joins it with his defence. A counter-claim is therefore in the same position as an action, being itself a cross-action and subject to the same rules of court as

pleadings. See **Ogbonna V A.G. Imo State (1992) 1 NWLR (pt.220) 647 at 675 E-G; Dabup V Kolo (1993) 9 NWLR (pt.317) 254 at 270 D; 281 A.**

In Response to the Counter-claim being a cross-action, the defendant in line with the procedural Rules files a defence. With respect to the filing of a Reply, where averments in pleadings are not denied or controverted by the claimant who does not file a Reply to the statement of defence, he is deemed to have admitted the assertions in those paragraphs of the defence and the defendant need not adduce evidence in proof of them.

The proper function of a Reply is to raise, in answer to the defence any matter which must be specifically pleaded, which makes the defence not maintainable or which otherwise might take the defence by surprise or which raised issues of fact not arising out of the defence. See **Egesimba V Onuzurike (2002) 15 NWLR (pt.791) 466 at 519 A, B-C**.

There is therefore no room for substantive and fresh or new Reliefs to form either part of the Reply or defence. The procedure adopted by the plaintiffs in formulating fresh claims in their Reply/Defence to the statement of Defence and Counter-Claim of Defendants is unknown to our Rules of Court and the law and will be accordingly discountenanced.

Let me state at the outset that the **3rd defendant to the Counter-claim, Finamedia Globale Services Limited** did not file any process, despite the service of the originating court processes and hearing notices on them all through the course of the proceedings. Indeed on the record, one **Jimmy Kadiri** of counsel appeared in court once on 10th February, 2022 when the defendants/counter-claimants opened their defence and never appeared again.

Hearing then commenced. In proof of claimants' case, they called three witnesses. **The 1st plaintiff James Akpan** testified as **PW1**. He deposed to a witness statement on oath dated 9th November, 2016 which he adopted at the hearing. He tendered in evidence the following documents:

1. Four official Receipts issued by Finamedia Global Services Ltd dated 7th July, 2017 (being payment for initial deposit for one open shop in Gwagwalada Market); 28th July, 2015, 31st July, 2015 and 12th August, 2015 being payments for Block U Shop 16 were admitted as **Exhibits P1 a, b, c and d**.

2. Letter of Offer to 1st plaintiff dated 30th July, 2015 by Finamedia Global Services Limited in respect of Block U Shop 16 (open shop) at the Gwagwalada International Market was admitted as **Exhibit P2a.**

3. Final letter of allocation of shop 16 in Block U (open shop) at Gwagwalada International Market to 1st plaintiff dated 14th August, 2015 was admitted as **Exhibit P2b.**

4. Letter dated 17th October, 2016 by Finamedia Global Services Ltd titled "Re: Confirmation of Allocation or shop 16, Block U, Gwagwalada International Market to Mr. Akpan James" was admitted as **Exhibit P2c**.

5. Letter by the law firm of J.O. Olukunle & Co. dated 14th September, 2016 to the Managing Director Finemedia Global Services Ltd was admitted as **Exhibit P3**.

6. A photograph was admitted as **Exhibit P4**.

PW1 was then cross-examined by counsel to the defendants. **Mrs. James Akpan**, the 2nd plaintiff testified as **PW2**. She deposed to a witness deposition dated 9th November, 2016 which she adopted at the hearing. PW2 was then cross-examined by counsel to the defendants.

**George Odo Ejide** a trader at Gwagwalada Main Market was **subpoenaed** to come and give evidence and he testified as **PW3**. His evidence is that he knows 2nd plaintiff in the market and they sell side by side in the market. He equally knows 1st defendant who is his sister. His shop has no shop number and he does not have the documents of the shop since it is not his own.

PW3 was then cross-examined by counsel to the defendants and with his evidence, the plaintiffs closed their case.

The **Defendants/Counter-claimants** also called three witnesses. **Mrs. Martha Odukwe**, 1st defendant testified as **DW1**. She deposed to a witness statement on oath dated 26th March, 2018 which she adopted at the hearing.

She tendered in evidence the following documents:

1. Official Receipt issued by Finamedia Global Services Ltd dated 23rd May, 2014 in the sum of "N100, 000 being payment for two shops" was admitted as **Exhibit D1**.
2. Official Receipt issued by Finamedia Global Services Ltd dated 6th September, 2017 in the sum of Twenty Five Thousand Naira only being payment for "final balance on one shop" was admitted as **Exhibit D2**.
3. Letter dated 15th November, 2017 by Finamedia Global Services Limited titled final letter of allocation, Gwagwalada International market in respect of shop 16 in Block U was admitted as **Exhibit D3**.
4. Letter by Finamedia Global Services Ltd dated 17th October, 2016 to the Law firm of El-Raj Legal Consult was admitted as **Exhibit D4**.
5. Court Order of interim Injunction granted by Rtd. Hon. Justice M. Balami in Suit No. FCT/HC/CV/67/16 was admitted as **Exhibit D5.**
6. Certified True Copy (C.T.C) of Application for issuance of a Direct Criminal complaint at the Upper Area Court dated 16th September, 2016 was admitted as **Exhibit D6**.
7. Certified True Copy (C.T.C.) of First Information Report dated 1st November, 2016 was admitted as **Exhibit D7**.
8. Certified True Copy (C.T.C) of court proceedings at the Upper Area Court Gwagwalada in case No. FIR/CR/335/16 Between the State V James Akpan was admitted as **Exhibit D8**.
9. Letter by the law firm of El-Raj legal consult to the Managing Director/C.E.O of Finamedia Global Services Ltd was admitted in evidence as **Exhibit D9**.

DW1 was cross-examined by counsel to the claimants. Counsel to the 3rd defendant to the counter-claim chose or elected not to cross-examine DW1.

**Oliver Nebonta**, the 3rd defendant/counter-claimant and Chairman Food Sellers Association, Gwagwalada International Market testified as **DW2**. He deposed to a witness statement dated 12th April, 2018 which he adopted at the hearing. He tendered in evidence the following documents:

1. Letter by Finamedia Global Services Ltd to the Chairman Food Stuff Association Gwagwalada Main Market dated 12th May, 2016 and titled "Agreement among Finamedia Global Services Ltd, Foodstuff Association and Mrs. A. James" was admitted in evidence as **Exhibit D10**.

DW2 was then cross-examined by counsel to the claimants.

The final witness for the defendants/counter-claimants was Vincent Oduke; the 2nd defendant/counter-claimant who testified as **DW3**.

He deposed to a witness statement on oath which he adopted the hearing. He tendered in evidence the following documents:

1. Receipt issued by Finamedia Global Services Ltd in the sum of N25, 000 being payment for "Vat on shop 16 Food Stuff Block" was admitted in evidence as **Exhibit D11a.**

2. Receipt issued by Finamedia Global Services Ltd in the sum of N300, 000 being payment for "Block for Food Stuff shop No. 16" was admitted as **Exhibit D11b.**

3. Letter by Finamedia Global Services Ltd titled "Final Letter of Allocation, Gwagwalada International market in respect of Shop 16 in Block U" dated 15th November, 2017 was admitted as **Exhibit 12**.

DW3 was then cross-examined by counsel to the claimant and with his evidence, **the defendants/counter-claimants closed their case**.

As stated earlier, the **3rd defendants to the counter-claim**, **Finamedia Global Services Ltd** never filed any process in this proceedings. On application, the right of 3rd defendant to the counter-claim to defend the counter-claim was foreclosed and parties were ordered to file final addresses.

At the conclusion of trial, parties filed, exchanged and adopted their final written addresses.

The final address of plaintiff is dated 25th July, 2022 and filed same date at the Court's Registry. In the address, **two issues** were raised as arising for determination:

i. **Whether or not, the plaintiffs have proved their case on the preponderance of evidence to be entitled to their claims against the 1st – 3rd defendants?**

ii. **Whether or not, the 1st – 3rd Defendants Counter-Claim against the Plaintiffs is supported by credible evidence?**

On the part of the Defendants/Counter-claimants, their final address is dated 21st October, 2022 and filed same date at the Court's Registry.

In the address, three issues were raised as arising for determination:

1. **Whether, given the facts contained in the pleadings of plaintiffs and the evidence disclosed by the written statements of witnesses as well as documentary evidence, the plaintiffs have satisfactorily proved their case on the preponderance of evidence.**

2. **Whether from the available evidence and facts before this court, shop 16 Foddstuff Block AND Shop 16 Block U, Gwagwalada International Market are one and same at the point of allocation of the said shops to the respective owners now contending before the court.**

3. **Whether the defendant's/counter-claimants have sufficiently proved their counter-claim and if answered in the affirmative, whether they were not entitled to the judgment of this court as per the reliefs sought by their counter-claim.**

I have given a careful and insightful consideration to all the issues as distilled by parties above. The issues may have been differently worded but they seem to me in substance to be in *pari materia*.

On the pleadings which has precisely streamlined the facts and or issues in dispute, the **central key issue on which all parties are at a consensus adidem relates to the contested claim of ownership of a certain shop space known as Shop 16 in Block U at Gwagwalada International market**.

Both the claimants and defendants/counter-claimants lay claim to this shop space and each essentially seek a pronouncement affirming ownership of this shop space. Both parties thus having the burden to establish their ownership or entitlement to this shop within established legal threshold.

Flowing from the above, there is a claim by claimants and a counter-claim by the defendants/counter-claimant. It is trite law that for all intents and purposes, a counter claim is a separate, independent and distinct action and the counter claimant like the plaintiff in an action must prove his case against the person counter claimed before obtaining judgment. See **Jeric Nig. Ltd V Union Bank (2007) 7 WRN 1 at 18; Shettimari V Nwokoye (1991) 9 NWLR (pt.213) 66 at 71.**

In view of this settled state of the law, both the claimants and the defendants/counter-claimants have the burden of proving their claim and counter-claim respectively. This being so, the issues distilled by claimants which will be modified by court hereunder appears to have captured the crux of the grievance submitted for resolution on both sides of the aisle. In the circumstances, the issues for determination can be condensed and be more succinctly encapsulated in the following terms:

1. **Whether the claimants have established on a preponderance of evidence that they are entitled to all or any of the reliefs claimed.**

2. **Whether the defendants/counter-claimants have equally established on a preponderance of evidence their entitlement to any or all of the Reliefs claimed in their counter-claim.**

The above two issues which will be taken together have in my considered opinion covered all the issues raised by parties. The issues thus distilled by court are not raised in the alternative but cumulatively with the issues raised by parties. See **Sanusi V Amoyegun (1992) 4 NWLR (pt.237) 527.**

Let me quickly make the point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

**"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."**

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issues formulated by court and also consider the evidence and submissions of learned counsel on both sides of the aisle.

In furtherance of the foregoing, I have read the written addresses filed by parties. I shall in the course of this judgment and where necessary or relevant, refer to submissions made by counsel and resolving whatever issues arising therefrom.

**Now to the substance**. As stated earlier, because the two issues raised border on the same contested claim of ownership of a shop space, they will be taken together.

At the commencement of this judgment, I had stated that there is a claim by plaintiffs and a counter-claim by the 1st – 3rd defendants. So these identified parties have the evidential burden of establishing their claims and succeeding on the strength of their cases as opposed to the weakness of the case of the other party. See **Kodilinye V Odu (1935) 2 WACA 336 at 337; Fagunwa V Adibi (2004) 17 NWLR (pt.903) 544 at 568; Nsirim V Nsirim (2002) 12 WRN 1 at 14.**

This principle is however subject to the qualification that a claimant is entitled to take advantage of any element in the case of his opponent that strengthens his own cause. What this means is that it is not enough to merely assert that the case of the opponent is weak; there must be something of positive benefit to the claimant in the case of the opponent. See **Uchendu V Ogboni (1999) 5 N.W.L.R (pt.603) 337.** Accordingly, it is important to add that where the claimant fails to discharge the onus cast on him by law, the weakness of the case of the opponent will not avail him and the proper judgment is for the adversary or opponent. See **Elias V Omo-Bare (1982) NSCC 92 at 100 and Kodilinye V Odu (supra).**

It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and the evidence that we must now beam a critical judicial search light in resolving the contested assertions in this case.

In this case, the **plaintiffs filed a 20 paragraphs Joint Statement of claim** and a **24 paragraphs Joint Reply/Defence to the defendants defence and counter-claim** which forms part of the Record of court. The evidence of the three witnesses called by the claimants was largely within the structure of the pleadings.

The **1st – 3rd Defendants/Counter-Claimants filed a 40 paragraphs Joint Statement of Defence** and a **5 paragraphs counter-claim which equally form part of the Record of Court**. The evidence of their three witnesses was equally largely within the structure of the defence.

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

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

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

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

expression of readiness to contract on terms as expressed by the offeror and which if accepted by offeree gives rise to a binding contract.

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

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

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

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

It is equally important to situate the import of a **Declaratory Relief**. It forms a **major fulcrum of the Reliefs sought by claimants** and equally forms the fulcrum of **Relief 1 of the counter-claim** of defendants and on which other Reliefs sought have significant bearing.

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

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

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

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

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

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

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

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

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

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

Now in a **convenient starting point** which will be pivotal in resolving the present dispute and the conflicting and or contracting claims made is to situate precisely:

1. The **Developers and allocating authority** of the shops at the Gwagwalada International market and;

2. What shop space did they allocate to the plaintiffs and counter-claimants?

A fair resolution of the above questions will provide a clear factual basis to resolve other contested assertions. We must here have recourse to the pleadings as our take off point and then ultimately the evidence led.

By **paragraphs 7 – 9 and 12 of the statement of claim** and evidence led in support, the claimants project unequivocally that the Developers of the Gwagwalada International market and the allocating authority of shops in the market is a company by name **Finamedia Global Services Limited**.

The defendants/counter-claimants may have in **paragraphs 7** of the defence joined issues with respect to the averments in **paragraphs 7-9** of the claim but in paragraph 6, they averred as follows:

**"The 3rd defendant to (the) counter-claim is the company known as Finamedia Global Services Limited that built the Gwagwalada International Market and allocated shops and spaces therein to interested individuals and traders."**

The above is clear. The evidence led on both sides backed up by the documentary evidence all situates clearly and unequivocally that **Finamedia Global Services Ltd (hereunder referred to simply as Finamedia)** developed the market and allocated shops and spaces to interested individuals and traders.

It is logical to hold that if a market is been built or developed, it is not unexpected that there will be a call for interested persons or bodies to apply to buy or purchase or even rent designated shops or spaces depending of course on the arrangement designed by the developer and or owner.

Now whether as at **2014**, there were no buildings or shops available to be given as contended by defendants is really beside the point. The key point or issue is whether **Finamedia or the developers** called for expression of interest by traders to purchase shops; what did they offer to claimants and defendants/counter-claimants and what did they pay for?

Let us critically situate and evaluate the evidence on both sides. I start with the case presented by the claimants.

Now on the evidence following this call to the public to purchase shops, the plaintiffs clearly made payments to Finamedia vide **Exhibits P1 a-d** for a shop space in the total sum of N325, 000.

**Exhibit P1a** dated **7th July, 2015** is the official receipt issued by Finamedia for initial deposit of N100, 000 "for one shop in Gwagwalada Market**."** **Exhibit P1b** is a receipt issued on **28th July, 2015** for an additional payment of N20, 000 being payment for "Block U Shop 16 open space." This receipt for the first time delineated specifically the shop number and the block unit in which the shop space allocated to claimants is located. The claimants made further payments vide **Exhibit P1c** dated **31st July, 2015** in the sum of N60, 000 and **Exhibit P1d** dated **12th August, 2015** in the sum of N145, 000. These Receipts also clearly situated that the payment by claimants was for "Block U Shop 16."

On the evidence after the payments made vide **Exhibit P1 a** and **b**, Finamedia vide **Exhibit P2a** dated 30th July, 2015 made or granted the claimants a **"letter of offer in respect of Block U shop 16 (open shop) at the Gwagwalada International market.**"

The claimants acknowledged receipt of this offer and completed or made full payments for this Block U shop 16 vide **Exhibits P1c dated 31st July, 2015 and P1d dated 12th August, 2015** identified above which then culminated in the final letter of allocation dated 14th August, 2015 vide **Exhibit P2b**.

Excerpts of this Final letter of Allocation to Claimants provides thus:

**"August 14, 2015**

**Mr. James Akpan**
**Gwagwalada, Abuja FCT.**

**Dear Sir,**

**FINAL LETTER OF ALLOCATION, GWAGWALADA INTERNATIONAL MARKET**

**We are pleased to allocate to you Shop in Block U (open shop) at the Gwagwalada International market following your payment of N325, 000 being the full payment… please accept our congratulations on this epic making achievement. If you have any questions concerning this allocation, please contact the office."**

The allocation was signed by no less a person than the **Chairman of Finamedia himself**.

The oral evidence relating to the fundamentals of the relationship between plaintiffs and Finamedia, the developers of the shop and allocating authority with respect to shop 16 in Block U backed up with clear documentary evidence was not really challenged or impugned by defendants during cross-examination.

The position of the law is that where material evidence that is neither challenged nor debunked by the other who had the opportunity to do so, it remains good and credible evidence which should be relied upon by the trial judge who would in turn ascribe probative value to it. See **Insurance Brokers of Nigeria V ATMN (1996) 8 NWLR (pt.466) 316 at 327 G**.

The case thus made out by claimants situates an agreement with Finamedia over the sale of shop 16 Block U (open shop) at the Gwagwalada International market. I had earlier situated the elements of a valid contract. These elements clearly enure in the context of **Exhibit P2a**, the letter of Offer given to claimants by Finamedia. In law, where there is a valid contract or agreement such as **Exhibit P2b**, parties must be held bound by the agreement and by all its terms and conditions. There should be no room for departure from what is stated thereon. See **Jeric (Nig.) Ltd V UBN Plc (2000) 15 NWLR (pt.691) 447 at 462 – 463**.

Let us **pause here** and also critically situate the claims made by defendants with respect to this same shop. Again we must take our bearing from the **pleadings and evidence**.

Now by **paragraph 8(i) of the defence**, the defendants counter-claimants averred that sometimes in 2014, the Foodstuff Sellers Association Gwawalada market held a meeting with Finamedia, the developers of the market where it was agreed that the Association and other trader associations should mobilize their members to enable them get shops or spaces in the market.

Although no evidence of this agreement was furnished, I think the point is not in dispute that **Finamedia** called for interested persons to get shops or spaces in the market they were developing.

**DW2**, the 3rd defendant/counter-claimant and head of the food stuff sellers Association agreed under cross-examination that **"Finamedia own the market and allocated shops to us."**

As found already there is no dispute with respect to the fact that Finamedia are the developers and owners of the market and logically the allocating authority of the shop spaces. It is also logical to hold that shops or open spaces can only enure to a trader who made the necessary payments for the said shop to the owners or developers and who is given an offer letter except of course there is clear evidence that the developers allowed for other mode of payments or any other basis to situate a legal relationship.

In that clear context, it is difficult to accept the contention of **defendants vide paragraph 8(xv) and (xvi) of the defence**, that though no physical open shop of the kind Finamedia was offering was available at the time of the payment but that after several meetings and disturbance by 3rd defendant, that Finamedia in March, April 2016 designated a section of the market (with demarcated pillars to indicate shops when completely built) as food stuff Block and handed over to 3rd defendant as Chairman of Food Sellers Association to distribute to his members and that as at the time the "three blocks" of shops were given to the Association, they were uncompleted, empty and unoccupied by any trader"

Now absolutely no evidence of any **"hand over"** of any three blocks to 3rd defendant to distribute to his members by Finamedia was furnished by defendants or the 3rd defendant himself and the court cannot speculate. It is again important to underscore the point that Finamedia remained at all times on the evidence the developers, owners and allocating authority of the shops at Gwagwalada International market. There is nothing in evidence to support that they shared that responsibility with 3rd defendant at any time.

Indeed 3rd defendant and members of his association on the pleadings and evidence form part of the body of people who made payments towards purchasing shops from Finamedia. It is therefore difficult to legally or factually situate how a subscriber or a person who is one or part of those who have indicated interest to buy from the owner now seeks to project or act as the "owner" distributing shops to purchasers? In the absence of evidence to support that contention, it clearly must be discountenanced as lacking probative value.

Most importantly, if shops were shared by 3rd defendant as alleged, it is curious that absolutely no other member of the Association (and there should be more members than the defendants on Record) came to give evidence to add credibility to this challenged narrative that 3rd defendant shared shops. There is equally no documentary evidence to support or situate he shared shops to any other person or trader.

The principle is settled that pleadings, however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must 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) Ltd (2010) 5 NWLR (pt.1186) 1 at 27**.

Facts therefore deposed to in pleadings must be substantiated and proved by evidence, in the absence of which, the averments are deemed abandoned. See **Aregbesola V Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594 A-B**.

The bottom line is, there is absolutely no evidence to support the contention that Finamedia handed over any blocks of flats to 3rd defendant and ceded their powers to him to share open spaces.

As a logical corollary, it follows that the 3rd Defendant was in no position, legally or factually to give out what he himself agrees does not belong to him. The evidence tendered by the defendants does not even support this flawed contention. By **Exhibit D1** dated 23rd May, 2014, the official Receipt issued by Finamedia, the 2nd Defendant made payment deposit of N100, 000 for two shops and by **Exhibit D2** issued by Finamedia dated 6th September, 2017, the 2nd defendant paid N25, 000 being payment "for final balance on one open shop."

It is obvious that at the time the 2nd defendant made his initial deposit, it was for **two shops**. There was here no indication of any shop paid for and a defined Block related to the allocation.

Now by two receipts payment vide **Exhibits D11a** and **11b** both dated 29th August, 2016, the 2nd defendant made payments for **"vat on shop 16 foodstuff market and payment for Block for food stuff shop No. 16."** There is again no clear indication with respect to whether this shop 16 is in respect of the shop at Block U and the court cannot again speculate. Then by **Exhibit D2** dated 6th September, 2017 the 1st defendant made N25, 000 payment been **"final balance payment on one shop."**

It is again clear that this final payment did not mention any **precise shop or Block and neither the court or parties can speculate** on the contents of these Receipts. These Receipts speak for themselves and cannot be added to or interpolations made to it to suit a particular purpose. See **Section 128 of the Evidence Act**. When these Receipts are juxtaposed with **Exhibits P1 a – d** tendered by plaintiffs, it is clear that with respect to the disputed Block U Shop 16, open shop, the case presented by plaintiffs have more probative value.

At the risk of sounding prolix, the initial deposit of N100, 000 vide **Exhibit P1a** dated 7th July, 2015 was for **one open shop** in Gwgagwalada Market. The initial deposit of N100, 000 by defendants vide **Exhibit D1** dated 23rd May, 2014 was for "two shops." The subsequent receipts payments made by defendants vide **Exhibits D2**, **D11a** and **D11b** which were made after the plaintiffs have since concluded payments over Shop 16, Block U and issued with a letter of allocation did not precisely situate a clear allocation to a particular shop space and at a defined Block unlike that of the payments made by plaintiffs vide **Exhibits P1b – P1d** dated 28th July, 2015, 31st July, 2015 and 12th August, 2015 which clearly and specifically situate complete payment for "Block U Shop 16 open space" by claimants.

At the risk of sounding prolix but for purposes of clarity, for the defendants, the initial payment vide **Exhibit D1** by 1st defendant dated 23rd May, 2014 was just for "two shops." The subsequent payments vide **Exhibit D11a** and **D11b** by 2nd defendant both dated 29th August, 2016 indicated N25, 000 payment for "vat on shop 16 Food stuff Block" and N300, 000 payment for Block for food stuff shop No. 16". The final payment by 1st defendant dated 6th September, 2017

vide **Exhibit D2** in the sum of N25, 000 was payment for "final balance on one open shop."

These payments again it must be underscored did not disclose or situate a particular precise shop number in a clear, precise Block. Indeed the final payment **Exhibit D2** did not even mention any shop or Block as clearly identified in **Exhibits P1a-P1d** of plaintiffs.

Again it is obvious that after the initial deposit in 2014, for two shops, the 1st and 2nd defendants only concluded payments on 6th September, 2017 nearly 2 years after the plaintiff concluded payment for Block U Shop 16 on **12th August, 2015**, vide **Exhibit P1d**.

Indeed to further undermine the case of 1st and 2nd defendants, after the plaintiffs or 1st plaintiff made the payments vide **Exhibits P1a** and **b**, an Offer was made to him vide **Exhibit P2a** of Block U, Shop 16 (open shop) at the Gwagwalada International market and after **final payments** vide **Exhibits P1c** and **P1d** he was given a final letter of allocation of "shop 16, Block U (open shop)" dated **14th August, 2015** vide **Exhibit 2b**.

It is again obvious that as at the time of the **final letter** of allocation to 1st **plaintiff dated 14th August, 2015 by Finamedia**, neither of the 1st or 2nd defendants have been allocated any shop with any particular number and in an identified Block. Again as at the time 1st and 2nd defendants made their final payment vide **Exhibit D2** on **6th September, 2017**, shop 16 in Block U (open space) was no longer available to be allocated to defendants or indeed anybody.

It is obvious and I hold that as at the time 1st defendant made further payments on 29th August, 2016 vide **Exhibit D11a** and **11b** and even the final payment "for one shop" vide **Exhibit D2**, on 6th September, 2017, Shop 16 Block U Gwagwalada International Market was not available or to put it in popular parlance was not in the "market" to be offered to anybody.

Again it is obvious that on the above uncontradicted evidence, the claim by 3rd defendant that towards the end of March/April 2016 (paragraph 8 (xvi) of the Defence) that Finamedia handed over certain blocks to distribute to his members clearly lacks factual basis and credibility and is discountenanced.

As at the time 3rd defendant was making these assertions, shops or at least the shop in dispute had since August 2015 been allocated to the 1st plaintiff vide **Exhibit 2b**.

The 3rd defendant in whatever capacity cannot, as stated earlier, exercise any imagined and non-existent powers over a shop already duely allocated to the 1st plaintiff by the developers or owners.

By the same token the letter of offer purportedly issued by Finamedia to 1st defendant dated 15th November, 2017 vide **Exhibit D12** in respect of the same **Shop 16 Block U** already paid for and allocated to 1st plaintiff as far back as 14th August, 2015 clearly has no legal or factual basis. The principle is settled that you cannot put something on nothing and expect it to stand.

There cannot obviously be concurrent ownership of the same shop. It may be apt to at this point out, at least, on the basis of the evidence evaluated, the rather duplicitous role of the **owners of the shop in this unfortunate dispute**. It is difficult to accept that they were honest in their dealings with parties. If they were, they could not possibly be accepting payments and making allocation to a shop which they have already allocated. To make matters worse, they refused to respond to the case filed against them or to even appear in court to respond to or explain their unfortunate actions in this case. That is an aside; the law must however take its due and proper course and the grievance submitted for resolution determined one way or the other.

In the circumstances, we can legitimately borrow and apply the legal principle that where there are competing interests in matters of declaration of title to land from a common grantor as in this case, both in law and equity, such interest will rank in order of their creation. See **Ilona V Idakwo (2003) 11 NWLR (pt.830) 53 at 91**. Indeed it is settled principle that in law, competing interest rank in order of their creation. See **Dauda V Bamidele (2000) 9 NWLR (pt.671) 199 at 211 C-E**.

In the circumstance, where two parties as in this case plaintiffs and 1st and 2nd defendants trace the source of the title to the disputed shop to Finamedia, the common grantor, the latter in time, that is defendants cannot maintain an action against plaintiffs who first obtained the first right of offer and allocation of the disputed shop. The principle is – *nemo dat quod non habet* – you cannot give what you don't have. See **Dantsoho V Mohammed (2003) 6 NWLR (pt.817) 457 at 487**.

In the extant case, the first **letter of allocation to plaintiffs** made nearly 2 years before that of defendants has not been impugned or challenged and without any doubt takes precedence and priority over that of 1st defendant.

Now it is true that on the evidence, 1st plaintiff and 1st defendant had problems over the disputed shop but 1st defendant in her evidence recognized that 1st plaintiff had always been in possession or at least resisted her attempts to enter shop 16.

Under cross-examination, DW1 stated that when she moved into the shop in 2016, 2nd plaintiff resisted her attempts to enter the shop. Still under cross-examination, she stated that in April 2016, the 2nd plaintiff even reported her and 3rd defendant to police who demanded to see their respective allocations. DW1 admitted that at that time, she did not have an allocation to the shop because they paid to the union while the 2nd plaintiff presented her allocation from Finamedia to the said Shop 16. She indicated that despite this letter of allocation presented by 2nd plaintiff, she insisted that shop 16 belonged to her.

The above evidence therefore projects **firstly**, that there is no dispute absolutely with respect to the identity of the disputed shop which defendants streamlined or raised as their issue (2). It is really a none issue which explains why I did not treat in earlier on, as the pleadings and evidence which I have addressed extensively shows. The trajectory of the evidence and narrative from both sides shows clearly that the protracted dispute is over the **same shop** and parties all **fully know this shop**. They over the years have gone to various courts, police stations and obtained Court Orders on **this shop**. Like in land matters, where parties, by evidence adduced, both oral and documentary, are *adidem* on the identity of the land in dispute, here the disputed shop 16 in Block U, the fact that different names are ascribed to it or that the area where it is located is called different names is not fatal. See **Ojo V Azam (2001) 4 NWLR (pt.702) 57 at 68**. The distinction in names sought to be introduced by defendants is largely unimportant because all parties and even counsel know the disputed shop by their interventions which I have highlighted. Finally even the letter of allocation the defendants finally received on 15th November, 2017 vide **Exhibit D12** is in respect of the **same shop 16 in Block U**, which unfortunately for defendants has already been allocated to claimants. The question of identity of the shop is really a none-issue.

**Secondly**, it is clear beyond any argument from the evidence that at all material times, the plaintiffs have had the allocation to **shop 16** in Block U well before the latter and subsequent allocation to the 1st defendant in 2017. Indeed in evidence the 1st defendant recognized that it was a case of **double allocation**

**over the same shop** and that it was Finamedia that was playing **"double standard"** when it made two allocations over the same shop.

The defendants and their counsel may choose to frame the narrative however they want but the facts of this case disclosed a prior and lawful allocation to plaintiffs but for unexplained reasons, the defendants want the same shop that has already since been allocated.

The question here is where is the justice and fairness of such a position taken by defendants? To seek to appropriate what has already been allocated cannot in my opinion be right or fair.

What again is interesting in this case is that in the midst of the trouble over ownership of the said shop space, it would appear from the evidence that parties deployed all sorts to protect as it were, their perceived interests. The Evidence shows that reports were made at the police station, First Information Reports was at some point filed at the Upper Area Court which did not resolve the dispute.

This perhaps then led to the agreement defendants contend parties **purportedly** had with Finamedia which led to the preparation of **Exhibit D10** as follows:

**"AGREEMENT AMONG FINAMEDIA GLOBAL SERVICES LIMITED, FOOD STUFF ASSOCIATION AND MRS. A. JAMES.**

**At a meeting held in Finamedia Global Services Limited office recently it was agreed as follows that:**

1. **The chairman of the Food Stuff Association at Gwagwalada International Market shall allocate a suitable place for Mrs. James to do her business in the Block currently occupied by other members of the food stuff Association.**

2. **When new shops are completed Mrs. James will be allocated shops that she has paid for and leave the one temporarily allocated to her by the Union.**

3. **Everyone shall now maintain peace in the market and the environment under shich members of the Food Stuff Association do their business shall be made conducive.**

4. **Mrs. James Shall be at liberty to join the Food Stuff Association without any hindrance.**
5. **This agreement is voluntarily reached by all the parties and every one shall fulfill their obligations.**

**Please refer all questions concerning this issue to the management of Finamedia Global Services Limited.**

**Yours truly**

**Ose Ogunkorode**
**Head Legal & Admin"**

I note that counsel to the defendants has relied a lot on this document as proof that the claimants have no claim to the disputed shop and that it represents the position of parties, whatever this means.

Let me quickly say here that a trial judge cannot draw inference in a vacuum but only in relation to facts which justify such inference. And since an inference is an act of deducing or drawing a conclusion from existing premises by way of acts, the facts upon which the inference is deduced or drawn must be in proxitimity or intimacy with the inference. Where an inference is at large, it cannot perform inferential function of drawing a conclusion from the premises. See **Boniface Ezeadukwa V Peter Maduka & Anor (1997) 8 NWLR (pt.518) 635 at 663**.

I am not sure this document, **Exhibit D10** really serves any useful purpose in the context of the specific issue concerning ownership of **shop 16 in Block U Gwagwalada market**.

Firstly, this so called agreement was not **signed** by either of the plaintiffs or defendants. For any agreement to be binding and have any meaning, it has to be a product of freewill and they must assent to it signifying that they will be bound by it. The law is settled that parties are bound by the terms of agreement they entered into freely. See **Astra Ind. (Nig) Ltd V N.B.C.I (1998) 4 NWLR (pt.546) 357 at 376**.

It is therefore difficult to situate how a document prepared and signed only by someone from Finamedia with no indicated input by either plaintiffs or

defendants can be said to be binding on them. There is equally no signing of the agreement by any one of them to situate ownership of the agreement.

In the context of the dispute, relating to ownership of Shop 16 Block U, this document really proves nothing and cannot serve as the basis for the mutual reciprocity of legal obligations between plaintiffs and defendants.

Secondly, the document did not say anything about the payments made by the plaintiffs vide **Exhibits P1a – P1d**, the offer of the shop vide **Exhibit P2a** and the final letter of offer of the said shop vide **Exhibit P2b** dated 14th August, 2015. These unchallenged documentary evidence all preceded **Exhibit D10**. The document is completely and curiously silent with respect to ownership or allocation of the disputed shop. The question to ask here is whether counsel for the defendants is arguing that **Exhibit D10** has somehow abrogated or nullified the letter of offer of the shop made to plaintiffs?

If that is the point or argument, it clearly, with respect will not fly. The **Exhibit D10** itself did not say so and counsel cannot read into it what was not written in it.

Thirdly and for whatever it is worth, **Exhibit D10** recognise that when new shops are completed, 1st plaintiff will be allocated "shop she has paid for" and that for me is critical (See paragraph 2 of Exhibit D10). On the evidence what shop did she pay for and over which she was given a letter of allocation? **Shop 16 at Block U (open space)**. This on the evidence is abundantly clear.

In the midst of this lack of clarity especially from Finamedia, the solicitors to plaintiffs wrote to Finamedia vide **Exhibit P3** for much needed clarification with respect to who was allocated shop 16, Block U, Gwagwalada International Market.

In their response, **Finamedia** vide **Exhibit P2c** dated 17th October, 2016 stated clearly some months after **Exhibit D10** was written on 12th May, 2016 as follows:

**"RE: CONFIRMATION OF ALLOCATION OF SHOP 16, BLOCK U, GWAGWALADA INTERNATIONL MARKET TO AKPAN JAMES**

**We refer to your letter of 14th September, 2016 which has been received and referred to us for further action. We wish to inform you as follows:**

- **That Shop 16, Block U; that is in contention was allocated to Mr. Akpan James on the 14th day of August, 2015.**
- **That the same block was allocated to the foodstuff association of the Gwagwalada Main Market, of which your client is equally a member on 3rd day of August, 2016 subject to the pre-existing rights of earlier allottees of the same Block.**
- **That the power of the Chairman, Foodstuff Association is to deploy members of the said Association to unallocated shops and to do same subject to the pre-existing rights of earlier allottees.**

**Hope this makes clear the information you requested.**

**Thanks.**

**Yours faithfully,**

**Ose Ogunkorode**
**Head Legal & Admin"**

The above letter is clear, unambiguous and self explanatory. It was interestingly written by the same Head, Legal Unit of Finamedia who wrote **Exhibit D10**. **Exhibit P2c** unequivocally confirmed that Shop 16 Block U was allocated to 1st plaintiff and that whatever actions the 3rd defendant or the foodstuff Association may elect to take with respect to un-allocated shops is subject to pre-existing rights of earlier allottees. The simple message or directive here is that the rights of earlier allottees including plaintiffs to Shop 16 at Block U remains extant and cannot be tampered with by either 3rd defendant or the foodstuff Association.

I have at length deliberately gone through and carefully evaluated all the oral and documentary evidence tendered and the case made out by plaintiffs with respect to the disputed shop is unassailable. The documents wholly support the case plaintiffs have made with respect to ownership of the disputed shop space.

It is settled principle that any finding of fact, which is made, having regard to the existence of documentary evidence as in this case, cannot be seen to fly in the face of the accepted relevant document(s) by the court. If it is, it will be contradictory and perverse.

The defence counsel unfortunately in this case appear to have proceeded on the erroneous assumption that it is within her exclusive province to make findings of facts or draw conclusion when such findings depends much or entirely on documentary evidence. Such conclusions or findings must reasonably reflect the contents of the document(s) in question as a whole so as to be seen as a true understanding of the terms or contents of the documents. The submissions of defendants on the issue of ownership of the disputed shop, I am afraid do not reflect the contents of the documents tendered in this case.

It is equally settled principle that where any oral evidence on an issue in a case is given and there is cogent documentary evidence on the same issue, it is the duty of the trial judge to test the reliability of the oral evidence against the said documentary evidence. To put in the more familiar expression, it helps the trial judge to reach a fair finding by using the relevant document(s) as a hanger on which to assess the oral testimony. See **Kimdey V Gov. Gongola State (1988) 2 NWLR (pt.77) 445 at 473**.

On the whole and on the basis of the quality and strength of the evidence led which the court has carefully evaluated, the claimants have creditably established their claims to the disputed shop space.

The findings above with respect to both the **substantive claim** and the **Counter-Claim** provides basis to answer the question of whether the Reliefs sought by the claimants and counter-claimants are availing.

I start with the claims of **claimants**. I need not repeat **the Reliefs sought**. On the basis of the findings made situating that the claimants have made a better claim as allottee of the disputed shop 16, Block U (open space) compared to the case made out by defendants/counter-claimants, **Reliefs (a), (b)** succeed and are availing.

**Relief (d)** is equally availing with the success of **Reliefs (a)** and **(b)**. There cannot be concurrent ownership of the same or one shop. With the grant of **Reliefs (a), (b)** and **(d), Relief (e)** for injunction will be availing to assure of the integrity of the allocation of the shop to claimants, their quiet possession and enjoyment of the said shop.

**Reliefs (c)** and **(g)** for trespass and damages for trespass will be taken together. The findings here will also impact **Relief (f)** for special damages which will be taken separately.

Now trespass in law is any infraction of a right of possession into the land of another be it ever so minute without the consent of that owner is an act of trespass actionable without any proof of damages. See **Ajibulu V. Ajayi (2004) 11 N.W.L. R (pt 885) 458 at 48)**

The claim for trespass is therefore rooted in exclusive possession. All a plaintiff suing in trespass needs to prove or show in order to succeed is to show that he is the owner of the land or that he has exclusive possession.

The plaintiffs in paragraphs 12-16 of the claim pleaded as follows:

**"12. That sometime on the 6th of April, 2016, or thereabout, the 1st and 3rd Defendants entered the said Shop 16, Block U and accosted the 2nd Plaintiff, challenging the 2nd Plaintiff's right to occupy and use the said Shop 16, Block U, Gwagwalada International Market, and the 1st and 3rd Defendants, with the aid of some touts in the said Gwagwalada International Market, then proceeded to pull and push the 2nd Plaintiff out of the said Shop 16, Block U and threw out the 1st Plaintiff's wares and her metallic box wherein the 2nd Plaintiff keeps her wares after her daily sales, a fact which led to the loss of a full carton of Knor chicken magi brand sold at N6, 000.00.**

**13. That the facts in paragraph 10 above as perpetrated by the 1st and 3rd Defendants caused the 2nd Plaintiff loss in sales for seven (7) days, as the 2nd Plaintiff was prevented by the 1st and 3rd defendants from setting up and selling her foodstuff/wares.**

**14. That the 2nd Plaintiff reported the incident to the Gwagwalada Police Divisional Headquarters, but said Police treated the case with levity.**

**15. That sometime between the 7th day of August, 2016 and the 16th day of September, 2016, the 1st and 3rd Defendants again entered the said Shop 16, Block U and exclusively occupied by the 2nd Plaintiff and accosted the 2nd Plaintiff, challenging the 2nd Plaintiff's right to occupy and use the said Shop 16, Block U, Gwagwalada International Market, and the 1st and 3rd Defendants again proceeded to pull and push the 2nd Plaintiff out of the said Shop 16, Block U.**

**16. That it was when the 1st Plaintiff registered the 2nd Plaintiff with the Association of Foodstuff Sellers, Gwagwalada International Market, which is headed by the 3rd Defendant, that the 3rd Defendant then**

**withdrew from disturbing the 2nd Plaintiff and the 2nd Plaintiff was able to re-enter the said Shop 16, Block U and resume possession and use of same."**

The defendants denied the above averments.

Now as stated earlier, it is one thing to aver a material fact in evidence but it is another thing to lead evidence in support of the averments. Where evidence is not led in support of pleaded facts, the averments on the pleadings are deemed abandoned, because averments in pleadings do not constitute evidence. This is trite principle.

Now in this case, on the evidence as demonstrated, there clearly exists a dispute between claimants and defendants over the disputed shop. Each side lay claim to the shop. On the evidence led, there was a protracted tussle by parties over ownership of the said shop and this led to interventions at different levels by the courts and even by law enforcement agencies. There was nothing on the evidence with respect to the results, if any, of the interventions. The conduct of the allocating body, **Finamedia** was not helpful as already alluded to in that they were not decisive and clear and there ambivalent attitude clearly exacerbated the crises over who was the rightful allottee of the disputed shop. For example, how does one explain the issuance of letter of offer of the same shop (after that of claimant) vide **Exhibit D3** by Finamedia to defendants? The issuance of the letter was also predicated on payments collected for a shop already allocated and duly paid for? It is really strange. It is obvious that the collection of payments by Finamedia and the issuance of a letter of allocation clearly strengthened the contention of defendants that they were also allocated the disputed shop.

Even **Exhibit D10** by Finamedia which I had earlier dealt with and stated cannot bind parties clearly shows the indecisiveness of **Finamedia** in taking a clear stand with respect to the rightful allottee of the disputed shop and this further complicated matters and made the situation fluid and unclear. The same Finamedia that issued **Exhibit D10** then also issued plaintiff with **Exhibit P2c** confirming claimant as the lawful allottee.

The competing and contrasting claims with respect to trespass is thus rather fluid and unclear. The **owners of the shop space,** Finnamedia largely created or encouraged the unfortunate scenario or "drama" that played out between both camps.

Now to the specifics of the **complaints as situated above in the paragraphs of the claim**, which the defendants denied. The claimant stated that sometime on 6th of April, 2016, the 1st and 3rd defendants accosted 2nd plaintiff challenging her right to use the said shop and with the aid of touts pushed her and her wares out but apart from this challenged oral evidence, nothing was put forward to support this assertion. If the incident happened in an open market, it is obvious that there will be people there who would have seen or observed what happened? No such person(s) was produced to add credibility to the narrative of plaintiffs and the court cannot speculate.

If the plaintiff was prevented from setting up and selling her wares for six days, there is really no evidence to support this and the nexus or clear link with defendants and the court cannot again engage in an idle exercise of guess work.

In **paragraph 14** above, the 2nd plaintiff said she reported the case at the police station but that they treated the case with levity. There is again nothing to show that any report was made and the findings, if any. No police officer was summoned to give evidence on this reported incident.

Now **paragraphs 12** and **13** of the claim situates that the trespass occurred sometime on "**6th April, 2016 or thereabout**" and that she 2nd plaintiff was prevented from setting her wares for about "seven (7) days" which indicates that the acts of trespass was for a defined period in April.

Now in **paragraph 15**, the plaintiffs again stated that between "7th August, 2016 and 10th September, 2016", she was again harassed out of her shop. The period of this trespass was also defined to a precise time frame between August and September. Again there is really no credible evidence to support this averment beyond challenged oral assertions.

Now what is strange here is that **Relief (c)** does not reflect these specific acts of trespass complained of. **Relief (c)** complained of acts of trespass from **6th April, 2016 to 16th September, 2016**, a period spanning nearly 5 months with no break in between but paragraphs 12 shows that the acts of trespass was initially for "seven (6) days" at most in April and then continued sometime between 7th August and 16th September, 2016. There was thus a break in between the complained acts of trespass but the **Relief (c)** on the other hand does not disclose any break in the chain of trespass. There is thus a disconnect between the **Relief (c)** sought and the acts of trespass pleaded. When the absence of clear evidence is added to the mix, it is clear that there is really no

credible and admissible evidence to situate acts of trespass against defendants as I have sought to demonstrate. If at all, there were acts of trespass, the allocating authority, Finamedia contributed to the mix-up and confusion which led to claimants and defendants laying claims to the same shop. As I have repeatedly stated, Finamedia was largely responsible for the confusion over ownership of the disputed shop space.

As the 1st defendant captured it in her words, it was a case of **"double allocation"** which the extant case has now resolved. In such unclear and fluid situations, it would not be fair to find anybody at fault for clearly unproven acts of trespass. **Reliefs (c)** and **(g)** will not be availing in the circumstances.

**Relief (f)** prays for the sum of **N826, 000** as special damages against the 1st and 3rd defendants for the loss of the full carton of Knor Maggi brand and the loss of business suffered by the 2nd plaintiff at the instance of the 1st and 3rd defendants from 6th – 13th day of April and from the 7th August 2016 to 16th September, 2016.

Now on the authorities, special damages have been defined as damages of the type as the law will not infer from the nature of the act; they do not flow in the ordinary course; they are exceptional in their character and therefore, they must be claimed specially and strictly proved. See **A.T.E. Co. Ltd V M.L. Gov. Ogun State (2009) 15 N.W.L.R (pt.1163) 26 at 71; Ekennia V Nkpakara & 2 ors (1997) 5 SCNJ 70 at 90.**

The Apex Court in **X.S (Nig.) Ltd. Vs. Tasei (W.A) Ltd**. **(2006)15 N.W.L.R. (pt.1003) 533 at 552 B-E; 552 E-G** Mohammed J.S.C. stated as follows:

> ***"With regard to how to plead and prove special damages, the law is quite clear that special damages must be specifically pleaded and proved strictly…In this respect, a plaintiff claiming special damages has an obligation to plead and particularise any item of damage. The obligation to particularise arises not because the nature of the loss is necessarily unusual, but because the plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible"***

Also in **Neka BBB Manufacturing Co. Ltd V A.C.B. LTD (2004) 2 NWLR (pt.858) 521** the Apex Court stated thus:

**"A damage is special in the sence that it is easily discernable. It should not rest on a puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions."**

I had during the evaluation of the case on trespass and damages for trespass situated the relevant paragraphs. I need not repeat them. The relevant paragraphs in the context of the claim for **special damages** are paragraphs 12-15 and 19 – 20 of the statement of claim. These paragraphs largely situate the alleged complaints of when she was pushed out of the shop, the loss of a full carton of Knorr Magi brand sold at N6000 and the projections made with respect to sales and anticipated profits. Now even if I accept that these paragraphs with respect to projections on anticipated sales and profits have met the requirements of proper pleading, the next hurdle is that of strict proof.

In law, strict proof does not mean an unusual proof, it however implies that sufficient facts must be furnished to allow for computation of the claim. In **Neka BBB Manufacturing Co. Ltd V ACB Ltd (supra)**, the Supreme Court per Pats-Acholonu JSC (of blessed memory) stated thus:

**"The term "strict proof" required in special damages means no more than the evidence must show the same particularity as it is necessary for its pleading. It should therefore normally consist of evidence of particulars losses which are exactly known as accurately measured before trial. Strict proof does not mean unusual proof… but simply implies that a plaintiff who has the advantage of being able to base his claim upon a precise calculation must give the defendant access to the facts which make such calculation possible."**

In this case the **plaintiffs did not tender any iota of evidence** to situate or support the sales said to be made from the shop. It is strange that no single paper trail of documentary evidence was tendered to support the kind or type of wares sold and the sales and or profits made in a day, week or even a month. The bare challenged assertions in the claim are clearly mere projections and not based on actual or particular losses which are exactly known and can be accurately measured.

I had earlier referred to illuminating pronouncement of **Pats Acholonu J.S.C (of blessed memory) in Neka BBB Manufacturing Co. Ltd V A.C.B Ltd (supra)** and this bears repeating: A damage is special in the sence that it is

easily discernable and does not rest on puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions.

The bottom line really is that the claim for special damages is simply based on "anticipated sales and profits" and in such very fluid situation, it is difficult to assess and quantity special damages, except of course the courts decide to engage in a dangerous exercise of speculating as to the real import of the evidence of plaintiffs. At the risk of sounding prolix, the court has not been furnished with clear evidence of particular losses exactly known and that can fairly and accurately be measured. A court of law qua justice has no duty to speculate. A court can only properly act on the basis of what has been demonstrated and tested in court with clarity and not to act on unverified and unascertained projections or to conjecture figures not based on a clear empirical and factual template.

The law is settled that a party is allowed to establish what he pleaded and to obtain only such relief that was prayed for on the basis of the pleadings and creditably established by evidence. See **Ajikande V Yusuf (2000) 2 NWLR (pt.1071) 301. Relief (g)** thus fails.

The final **Relief (h)** is for the sum of **Two Million as aggravated damages against the 1st and 3rd Defendants for the inconvenience, harassment and embarrassment suffered by the 2nd Plaintiff by the continued trespass, embarrassment, intimidation and the reprehensive acts of the 1st and 3rd Defendants against the 2nd Plaintiff, in preventing her (2nd Plaintiff) from enjoying peaceful possession, occupation and use of the said Shop 16, Block U (Open shop), Gwagwalada International market, Gwagwalada, Abuja**

Aggravated damages in law may be awarded where the defendants motives and conducts were such as to aggravate the injury to the plaintiff. They are a specie of compensatory damages in that their purpose is to compensate the plaintiff for the injury to his feelings of dignity and pride and not the injury sustained. See **Juilus berger Nig. Plc & Anor V Ugo (2015) LPELR-24408 (CA).**

It is trite law that in order to justify an award of exemplary or aggravated damages, it is not sufficient to show simply that the defendants has committed the wrongful act complained of. His conduct must be high handed, outrageous, insolent, vindictive, oppressive or malicious and showing contempt of the

plaintiffs rights, or disregarding every principle which actuates the conduct of civilized men. See **Odiba V Azege (1998) 9 NWLR (pt.566) 370.**

I am not sure on the interplay of the facts of this case that this type of damages is availing as it cannot really be argued with any conviction that the defendants acted with recklessness or malice in the circumstances. The oppressive conduct of defendants needs to be established to sustain this type of Relief.

On the facts as evaluated in some detail, it is clear that the confusion of who was rightly allocated the disputed shop clearly and to a great extent must be attributed to the owner and allocating authority of the shops, Finamedia. I need not repeat the rather ignoble role they played which contributed in no small measure towards making the dispute protracted. Finamedia appeared on the evidence to have made different allocations to parties of the same shop and when the parties started the "fight" over the shop, rather than take decisive steps to intervene and right the wrong by stating clearly that it was claimants that had the prior and first allocation, they chose or elected to send conflicting messages to parties which exacerbated the dispute. On the record, as stated earlier, even when Finamedia was represented in court, they elected not to cross-examine because counsel said they want to settle the matter peacefully, which to me is a tacit admission of the ignoble role they played in the dispute.

Happily on the evidence, since this court intervened and granted orders of injunction vide **Exhibit D5**, there has been no further complaints of any harassment of anybody or violations of the terms of the orders granted.

In the circumstances, **Relief (h)** for aggravated damages is not availing. The actions of defendants cannot be said to be high handed or overtly oppressive but more a product of the actions of Finamedia, the owners of the shop space who made them believe that they were also allocated the same shop.

On the whole, **the issue raised with respect to the claims of plaintiffs** partially succeeds and the final orders will be streamlined hereunder.

This then leads me to the **Counter-Claim** and the issue raised on it and the Reliefs sought.

As indicated earlier, the issue raised with respect to the counter-claim was considered along with the substantive claim and I had stated that the findings will provide basis to also consider the Reliefs sought by the Counter-Claimants. Having demonstrated at length and found that the claimants were allocated the

disputed shop 16 in Block U by Finamedia well before the allocation to the counter-claimant, it is clear that **Relief (1)** has no basis or foundation and fails. The defendants cannot legally and factually claim a shop space which has already been paid for and allocated and which has not been withdrawn or revoked. With the failure of **Relief (1)**, it is obvious that the **Reliefs 2**, **3**, **4** and **5** for injunction, special damages, aggravated and exemplary damages and general damages all predicated on the success of the claim of ownership must equally fail. The principle of general application is where the principal is taken away, the adjunct is also taken away.

On the whole, the **issue** raised with respect to the Counter-Claim is answered in the negative. The case of defendants/counter-claimants on the basis of the evidence and findings thus fails.

In the final analysis and for the avoidance of doubt, I hereby enter judgment and make the following Orders:

**PLAINTIFFS CLAIMS**

1. **IT IS HEREBY DECLARED that the 1st Plaintiff is the sole, lawful allottee of Shop 16, Block U (open shop) Gwagwalada International Market, Gwagwalada by virtue of 1st Plaintiff's allocation letter dated 14th day of August, 2015 which was issued the 1st Plaintiff by Finamedia Global Services Limited.**

2. **IT IS HEREBY DECLARED that the 2nd Plaintiff through the 1st Plaintiff reserves the possessory right to undisturbed possession of the said Shop 16, Block U (open shop) Gwagwalada International Market, Gwagwalada to the exclusion of 1st, 2nd and 3rd Defendants and any other person or member of the Food Stuff Sellers Association, Gwagwalada International Market, Gwagwalada, Abuja.**

3. **IT IS HEREBY DECLARED that the Receipt dated the 29th day of August, 2016 belonging to 2nd Defendant purporting to be issued in respect of Shop 16, Foodstuff Block, Gwagwalada International Market, Gwagwalada, Abuja gives no right to either the 1st or 2nd Defendants over Shop 16, Block U (open shop) Gwagwalada International Market, Gwagwalada, Abuja, the 1st Plaintiff having been earlier issued an allocation letter dated the 14th day of August, 2015 in respect of the said**

**Shop 16, Block U, Gwagwalada International Market, Gwgagwalada, Abuja.**

4. **The Defendants and their Agents, privies or representatives are restrained from acts capable of affecting the lawful and subsisting interest of claimants over Shop 16, Block U (open shop) Gwagwalada International Market, Abuja.**
5. **Reliefs (c), (f), (g) and (h) all fail.**

**ON DEFENDANTS COUNTER-CLAIM**

**The Defendants Counter-claim fails in its entirety and is hereby dismissed.**

There **shall be no Order as to cost** believing that all parties will now sheathe their swords after this rather protracted dispute and litigation and now live and cohabit harmoniously and in peace at the Food stuff market so that the business they engage in will now thrive without rancor or bitterness. Without peace, the necessary environment for businesses to prosper and flourish will be absent; the avoidable and unhealthy situation that hitherto existed in the Market between parties in this case must abate or stop forthwith. A word they say is enough for the wise!

**………………………..**

***Hon. Justice A.I. Kutigi***

***Appearances:***

1. ***D.A. Akatugba, Esq., for the Claimants.***
2. ***Chinwendu N. Asoronye Amokaha (Mrs.) for the Defendants/Counter-claimants.***