

MR. SOLOIVION OMONIGHO

VS.

1. MR. FRIDAY O. IJOMONE

2. MR. STEPHEN ASOGU NDUKA

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

SC/CV/1196/2021

**MOHAMMED LAWAL GARBA
ADAMU JAURO
MOORE ASEIMO A, ADUMEIN
OBANDE FESTUS OGBUINYA
ABUBAKAR SADIQ UMAR**

FRIDAY, 4TH JULY, 2025

Action: Preliminary objections - meaning and significance thereof

Appeal: Grounds of appeal - omnibus grounds - nature and relevance thereof

Appeal: Preliminary objection- where it intended to challenge the competency of some grounds of appeal - proper procedure - whether to file motion rather than notice of preliminary objection

Court: Award of general damages- whether it is discretionary - nature of discretion thereto

Court: Exercise of discretion - when to act judicially - import thereof

Court: Exercise of discretion by trial court - when appellate court will interfere therewith

Court: Documentary evidence - Power to read holistically - rationale

Court: Award of damages - when appellate court will interfere with award of general damages

Court: Interpretation of contract between parties - role thereof

Contract: Terms thereof - whether parties must obey

Contract: Sale of land - whether does not amount to contract of loan

Contract: Loan agreement - nature thereof

Damages: Award of general damages- basis thereof

Damages: Etymological meaning

Damages: Award thereof - object

Damages: Special damages - nature of

Damages: Special damages - proof thereof - whether strict proof or special damages

Damages: General damages - award thereof - relevant principles

Damages: Award of general damages - whether court has discretion thereto

Instrument of title: Leases - parts thereof - habendum - significance

Judgment and Orders: Where it is said that judgment is against the weight of evidence - connotation thereof

Jurisdiction: Improperly constituted preliminary objection - whether affects jurisdiction of the court

Judgment and Orders: Ratio decidendi and obiter dictum - distinction thereto

Judgment and orders: Ratio decidendi - whether must attack decision of court

Judgment and Orders: Ratio decidendi - whether judgment of court must contain more than one ratio decidendi

Land law: Possession - significance - whether it is nine parts of the law - the principle in Anyabunsi vs. Ugwunze (1995) 6 NWLR (pt. 401)255 at 268

Land law: Absolute sale of land - nature and significance

Land law: Sale of land - where a purchaser acquires land through a beneficial owner - implication thereof

Land law: Sale of land - where land is sold absolutely - whether the defences of constructive notice and possession by tenants will not avail against the purchaser

Practice and Procedure: Documentary evidence - evaluation thereof - whether trial and appellate courts have concurrent jurisdiction on evaluation of documentary evidence - rationale thereof

Practice and Procedure: Appeal - preliminary objection thereto - proper procedure

Practice and Procedure: Award of special damages - whether must be strictly pleaded and proved

Service: Notices - types of notice

Statute: Interpretation - literary rule - rationale

Stare decisis: previous decisions - when does not guide exercise of discretion

Words and Phrases: Beneficial owner - meaning

Words and Phrases: Finding of fact - meaning

Words and Phrases: Possession - meaning

Issues:

- (a) Whether the Court of Appeal was right to dismiss the appellant's preliminary objection to the competence of the notice of appeal filed by the respondents .
- (b) Whether the reasons given by the Trial Court and relied upon by the Court of Appeal were not obiter dictum and was the court right in relying on principles of mortgage in deciding the appeal without considering the equity of the case

- (C) Whether the evidence of possession of the property by the appellant through his tenants was not sufficient notice of encumbrance to the 2nd respondent.
- (d) Whether in the absence of proof of special damages or breach of contract, the lower court was not in error, when it awarded special and general damages to the respondents.

Facts:

The Plaintiff Appellant sued the Defendants Respondents at the High Court of Delta State sitting in Asaba, in respect of ownership of a storey building situate at No.1 Ogudu Lane, off Agomate street ouwian in Udu Local Government Area of Delta State.

The Plaintiff Appellant sought and obtained loan from the first Respondent which he secured, with a deed of Transfer on respect of the said one story building.

In default of repayment of loan, the 1st Respondent sold the house to the 2nd Respondent. Consequently, the Plaintiff Appellant sued the Respondents claiming certain declaratory and injunctive reliefs in respect of the said one story building. The Respondents counter claimed against the Plaintiff Appellant.

At the end of hearing, the trial court delivered judgment in favor of the Plaintiff Appellant. However, the Court of Appeal set aside the decision of the trial court. Hence, the Plaintiff Appellant has now appealed to the Supreme Court.

Held (Unanimously dismissing the appeal)

1. *On meaning and significance of preliminary objection –*

A preliminary objection is a specie of objection which, if sustained by a court, will render further proceedings in a matter unnecessary, see **Abe v. Unillorin** (2013) 16 NWLR (Pt. 1379) 183; **APC v. INEC** (2015) 8 NWLR (Pt, 1462) 531 ; **Jim-Jaja v. C.P, Rivers State** (2013) 6 NWLR

(Pt. 1350) 225; *Petgas Resources Ltd . v. Mbanefo* (2018) 1 NWLR(Pt. 1601) 442; *Ekemezie v. Ifeanach o* (2019) 6 NWLR (Pt. 1668) 356; *Ebebi v. Ozobo* (2022) 1 NWLR (Pt. 1810) 165. It is this dismal consequence on an action, where a preliminary is fruitful, that compels the court to accord it a premier attention whenever it is invoked in any proceeding.

2. *On procedure to challenge an appeal by way of preliminary objection –*

It is now a settled law, beyond any peradventure of doubt, that a motion on notice is filed where a party intends to challenge the incompetence of one or two grounds of a notice of appeal in the presence of an existing valid ground(s) in a notice of appeal. Where a party, in such a circumstance, files a preliminary objection, such a preliminary objection is rendered incompetent in that it will not determine the fate of the appeal in its entirety. It means that a preliminary objection will not be welcomed in an appeal where its determination will partially affect it or keep its outcome in the limbo, see. **Ga;ib v. Mohammed** (2012) NWLR (pt. 1537) 114; **Kente v. Ishaku** (supra); **PDP v. Sheriff** (2017) 15 NWLR (t. 1588) 219; **NNPC v. Famfa Oil Ltd .** (2012) LPELR – 7812 (SC)/ 2012) 17 NWLR (Pt. 1:328) 148; *Cocacola (Nig) Ltd . v. Akinsanya* (2017) 17 NWLR (Pt. 1593)74; **Ezenwaji v. UNN** (2017) 18 NWLR (Pt. 1598) 45; *Petgas Resources Ltd. v. Mbanefor* (2018) 1 NWLR (Pt. 1601) 442; *KLM Royal D ueth Airlines v. Alorna* (2018) 1 NWLR (Pt. 1601) 473; **Isah y, IN EC** (2016) 18 NWLR (Pt. 1544) 175; **FRN y. Atuche**

(2019) 8 NWLR (Pt. 1674) 338; **Lolapo y, COP** (2019) 16 NWLR (1699) 476.
Opeyemi v. State (2019) 17 NWLR (Pt. 1702) 403.

3. *On connotation that judgment is against weight of evidence –*

Indisputably, the respondents' notice of appeal, which colonises pages 333 – 359 of the record, hosts sixteen grounds. At its *terminus ad quem* was ground sixteen, an omnibus ground, that be moaned the trial court's judgment as against the weight of evidence. A castigation of a decision on the premise that a judgment is against the weight of evidence, invariably couched as an omnibus ground connotes that the decision of the trial court cannot be supported by the weight of evidence advanced by the successful party which the court either wrongly accepted or that the inference it drew or conclusion it reached, based on the accepted evidence, is unjustifiable in law. Again, it implies that there is no evidence which, if accepted, will buttress the finding of the trial court.

Furthermore. it denotes that when the evidence adduced by the complaining appellant is weighed against that given by the respondent, the judgment rendered to the respondent is against the totality of the evidence placed before the trial court. In ascertaining the weight of evidence, the law enjoins a trial court to consider whether the evidence is admissibly relevant, credible conclusive or more probable than that given by the other party, see *Mogaji v,*

Odofin (1978) 3 SC91 ; *Anyao ke v. Adi* (1986) (1986) 3 NWLR (Pt. 31) 731 ; *Nwokidu v. Okanu* (supra) (2010) 3 NWLR (Pt. 181) 362; *Akinlagun v. Oshoboja* (2006) 12 NWLR (Pt. 993) 60; *Gov., Lagos State v. Ady iga* (2012) 5 NWLR (Pt. 1293) 291 ; *Oyewole v. Akande* (2009)15 NWLR (Pt. 1163) 11 : *Agala v. Okusin* (2010) IO NWLR (Pt. 1202) 412.

4. On nature and relevance of an omnibus ground of appeal –

Incontestably, the appellant's preliminary objection took a swipe against the competence of grounds 1–15 of the respondents' sixteen -ground notice of appeal. It is, therefore, axiomatic that the preliminary objection spared ground sixteen of the notice of appeal from the onslaught. In the glaring absence of any ounce of condemnation of ground sixteen by the preliminary objection, it was/is apparently valid and viable with the potency to nourish and sustain the respondents' appeal sought to be impugned. As a matter of law, a solitary ground of appeal is sufficient to oxygenate an appeal and even impregnate it with success in deserving circumstances. Ditto for an omnibus ground of appeal which is typified by ground sixteen supra-.—An omnibus ground is usually a grouse employed' by a complaining party against a trial court's appraisal, assessment and apportionment of evidence, be it parol or documentary, and a nudge on the court to reevaluate same, see *Osolu v. Osolu* (2003) 1 1 NWLR (Pt. 832) 608. The case law has given its imprimatur to an omnibus ground as a valid ground of appeal. It flows that an omnibus ground infuses life into a notice of appeal and, *prop*

rio vigo re , viable to sustain an appeal, see *Atuy eye v. Ashamu* (1997) 16 NWLR (Pt. 49) 267; *Adeyeri v. Okobi* (1997) 6 NWLR (Pt. 510) 534; *Oteki v. A. -G., Ben del State* (1986) 2 NWLFq (Pt. 24) 648; *Adelusolu v. Akinde* (2004) 12 NWLR (Pt. 887) 295/(2001) 5 SCN J 235/(2004) 5 SC (Pt. 11) 71 ; *Shehu v. State* (2010) 8 NWLR (Pt. 1195) 1 12. *Aderibigbe y. Abido*ye (2009) 10 NWLR (Pt. 1150) 529.

5. *On proper procedure to challenge the competency of some grounds of appeal –*

In the face of the existential validity of the omnibus ground sixteen, the appellant, the objector before the lower court, ought not to have approached the lower court vide a preliminary objection with the intent to abort the respondents' appeal *in limine*. This court has decreed consistently, as catalogued above, that the appropriate mode or process to challenge the validity of some grounds of appeals, grounds 1–15 therein, is by filing of an application (motion on notice). As long as the primary and principal target of the appellant's preliminary objection was against the competence of grounds 1–15 thereof, it was impotent to determine, one way or the other, the-fortune of the respondents' appeal *in soiiido*, as a whole. On this note, the appellant's approach, a costly faux pas to behold, was a flagrant defilement of the legallyaccepted *modus operandi* in interrogating the competence of some grounds of appeal. The appellant ought to have besieged the lower court via an application to emasculate the respondents' grounds 1- 15 before the lower court. Indubitably, the

improper method constituted a serious *coup de grace* to the competency of the preliminary objection. In sum, the appellant's preliminary objection, which he invented to snuff life out of the respondents' appeal at its embryo, was plagued by an indelible incompetence. The lower court was *firm a terra* in law when it declared that the preliminary objection was stucked in the swamp of incompetency.

6. *On whether an improperly constituted preliminary objection affects the jurisdiction of the court –*

The corollary of the irremediable incompetence was not far-fetched. It was a contagious incompetence in that it contaminated and impinged on the jurisdiction of the lower court to entertain it *ab initio*. Indeed, it did not deserve the investure and consumption of the scarce judicial time and space for its consideration. The lower court's proclamation against the competency of the appellant's preliminary objection was in total alignment with the tenets of the adjectival law. I endorse it in toto. In the result, I have no option than to resolve the issue one against the appellant and in favour of the respondents

7. *on distinction between ratio decidendi and obiter dictum –*

It cannot be gainsaid that each of the two terms, *ratio decidendi* and *obiter dictum* both of which are in competition on the one to arrest the attention of the court, traces its lexical paternity to the Latin language. However, in the large hemisphere of our *corpus juris*, there is a wide yawning gap between the

two competitive terms that cry for the appellation of the contentious finding x – rayed above. In the realm of etymology, *ratio—decidendi* signifies the legal principle which is important in the determination of the issues raised in a case, *id est*, the binding portion of the decision, the reason behind a decision, the rule upon which a court's decision is founded. Contrariwise, an *obiter dictum* is a passing remark made by a *Judex* in a decision which is not necessary for it. While, the former is appealable, the latter is not submissive to an appeal. Whereas, a *ratio decidendi* in a case is binding on a lower court, on the footing of similarity of facts, on the hallowed doctrine of *stare decisis*, an *obiter dictum* is drained of any such authority except it is adopted as a *ratio* in a later authority, see ***Afro-Continental v. Ayantuyi*** (1995) 12 SCN J 1/(1995) 9 NWLR (Pt. 420) 411 ; ***Dairo v. UBN Plc.*** (2007) 16 NWLR (Pt. 1059) 99; ***Osakue v. FCE, Asaba*** (2010) 10 NWLR (Pt. 1201)1 ; ***Odunukwe v. Ofomata*** (2010) 18 NWLR (Pt. 1225) 404; ***NDP v. INEC*** (2013) 6 NWLR (Pt. 1350) 392; ***Abacha v. Fawhinmi*** (2000) 6 NWLR (Pt. 660) 228; ***Adelekan v, ECU-Line NV*** (2006) 12 NWLR (Pt. 993); ***Adedayo v. PDP*** (2013) 17 NWLR (Pt. 1382) 1.

8. *On whether a ground of appeal must attack the ratio decidendi –*

It is a trite law that a ground of appeal, which is the nucleus of every appeal, must attack and disclose nexus with a decision that is the subject of appeal. In the sight of the law, a ground of appeal must be linked to and question a *ratio decidendi*, not an *obiter dictum*, of a judgment. A ground of appeal must owe its ancestry to a *ratio decidendi*. Any ground of appeal formulated outside the

precincts of the decision runs foul of this cardinal rule of law and risks being struck out on account of incompetence, see **Adelekan v. ECU-Line Ny** (2006) 12 NWLR (Pt. 993) 333; *Balon wu v, Governor of Anambra State* (2008) 16 NWLR (Pt. 1113) 236; **Lawrence HA.-G; Fed.** (2008) 6 NWLR: (Pt. 1 084) 484; **Okonobor V.D.E & S. 7. Co.** Ltd (2010) 17 NWLR (Pt. 1221) i 81 ; *Odunukwe v, Ofomata (supra)* ; *FBN Plc. v. TSA Ind. Ltd. (2010)* 15 NWLR (Pt. 1216) 247; **D. T, T. Ent, (Nig.) Co. Ltd v, Busari** (2011) 8 NWLR (Pt. 1249) 387: **Ga ruba v. Omokhodion** (2011)15 NWLR (Pt. 1269) 1 45; *Abe v. Uni Iorin (supra)*; *Oleksandr v. Lonestar Drilling Co. Ltd . (2015)* 9 NWLR (Pt. 1464) 337; **Ngere v. Okuruket 'XIV' (supra)-, Chiadi v, Aggo** (2018) 2 NWLR (Pt. 1603) 175; *Isaac v. Imaseun* (2016) 7 NWLR (Pt. 1511) 250; *Okafo r v. Abumofuani* (2016) 12 NWLR (Pt. 1525) 117; **Udom y. Umana (No-1)** (2016) 12 NWLR (Pt. 1526) 179; **KLM Royal Dutch Airlines v. Alorna** (2018) 1 NWLR (Pt. 1601) 473; **O.&.G.E.F.Z.A. v. Osanakpo** (2019) 6 NWLR (Pt. 1668) 224.

9. *On meaning of finding of facts –*

A finding of fact is a determination by a *judex*, jury or an administrative body of a fact supported by the evidence in the record which are usually presented at the trial or hearing. It involves perception and evaluation of evidence by a court, see **Ogundalu v. Macjob** (2025) 8 NWLR (Pt. 1460)96.

10. *On whether decision on loan contract is a ratio decidendi –*

In other words, the trial court owned the bounden duty, heaped/foisted on it by law, to reach a finding, one way or the other,

on the loan transaction which was the thrust of the appellant's agitation in the suit. The trial court acted *ex debito justitiae* when it arrived at that lean finding, *id est* , drought of credible evidence in proof of the claim, Thus, the finding qualified as a classic exemplification of a *ratio decidendi* not a mere *obiter dictum* .

11. *On whether a judgment should have more than one ratio decidendi –*

It must be placed on record that in the eyes of the law, a case is entitled to possess more than one *ratio decidendi* or *rationes decidendi*, see **Adetoun Oladeji (Nig.) v. N.B. Plc** (2007) 5 NWLR (Pt. 1027) 415. Hence, the trial court was not foreclosed from moulding another *ratio decidendi* for its decision. In that kingly status of being a *ratio decidendi*, the finding was amenable to appeal by the respondents who were peeved by it. In essence, the respondents paid due obeisance to the law when they harvested their right to subject the terse finding to the crucible of appeal before the lower court. In effect, the lower court's consideration of the slim finding as a *ratio decidendi* was in due allegiance to the tenets of the law.

12. *On whether reference to mortgage by a lower court is by obiter dictum –*

Incontestably, loan and mortgage may not be Siamese twins in the sphere of commercial law and some of the principles governing their applications may not have a confluence point. Nevertheless, they share a common homology in terms of basic/fundamental principle -the act of borrowing. In this wise, the lower court had the unbridled licence of the law to draw an analogy between them in deserving circumstances such as the one that

germinated in the appeal. it is gleanable from the phraseology and tenor of the analogy, adurnbrated above, that the linkage was an *obiter dictum* par excellence. It was, totally, divorced from the lower court's *raison d'etre* for its decision which was anchored and propagated firmly on the appellant's failure to prove his case that was erected on loan transaction. In effect, all the diatribes, which the appellant rained against the lower court's comparison of the appellant's loan to mortgage, peter into insignificance. Those lame strictures cannot irnbue this issue with any atom of success. Put together, it will be idolising judicial sacrilege to tinker with a finding which has not disclosed any ounce of hostility to the letters and spirit of the law. In the end, I will not hesitate to resolve the issue two against the appellant and in favour of the respondents.

13. *On meaning of Possession in law –*

Firstly, possession, a mantra in law, connotes the exercise of dominion over property, real or chattel, and the right under which one may exercise control over something to the exclusion of others. In the firmament of land law, it signifies an occupation or physical control of a parcel of land either personally or through an agent or *servant* , see *NITEL Plc. v. Rockonoh Prop. Co. Ltd.* (1995) 2 NWLR (Pt. 378) 473; **Oke v. Oke** (2006) 17 NWLR (Pt. 1008) 224; **Okegbemi v. Akinto la** (2008) 4 NWLR (Pt. IC)76) 53.

14. *on whether possession is nine parts of the law-*

It has been described as nine-tenth of the law. A person in effective possession of land can sue trespassers thereon. In **Anyabunsi v, Ugwunze** (1995) 6 NWLR (Pt. 401) 255 at 268, Iguh, JSC, incisively, opined:

A landlord who collects rents from his tenants in respect of his piece or parcel of land is clearly of de jure; possession of such land even though he is not in physical occupation or de facto possession thereof.

See, also, **Udeze v. C;hidebe** (1990) 1 NSCC 114/ (1990) 1 NWLR (Pt. 125) 141/(1990)/SCNJ IC)4: **Tanko v. Uchendu** (2010) 18 NWLR (Pt. 1224) 253; **Onwubuari ri v, Igboasoiki** (201 1) 3 NWLR (Pt. 1234) 357; **Onovo v. Mba** (2014) 14 NWLR (Pt. 1427) 391 ; **Ehwrudje v. Warri L. G.** (2016) NWLR: (Pt. 1520) 337.

15. *On types of Notice-*

Generally, the law recognises three species of notices, *videlicet* . actual, constructive and imputed notices. Actual notice occurs when a person has actual notice of all facts of which he has or had actual knowledge notwithstanding the source of the knowledge. Constructive notice is the notice of fact which a person/party will be deemed to have acquired upon the making of the usual diligent proper and full enquiries in respect of interest in a property. Imputed notice arises when a purchaser, *for* instance, employs an agent, such as a solicitor, any actual or constructive notice which the agent receives/gains is attributed to him, see **Animashaun v. Olojo** (supra), **Jawal v. Dunlong**

(2003) 9 NWLR (Pt. 824) 154; *Malami v. Ohikhuare* (2019) 7 NWLR (Pt. 1670).

16. *On rationale for concurrent evaluation of documentary evidence –*

It admits of no argument, deducible from the above extracts, that the lower court pegged its finding on the efficacy of exhibit H, H1 and K which are documents as ordained by the provision of section 258 of the Evidence Act, 2011. The judicial act was/is in consonance with the dictate of the law which gives the courts the nod to evaluate documentary evidence, see ***Fagunwa v. Adibi*** (2004) 17 NWLR (Pt. -90-3) 544. Indeed, the law, in order to banish injustice from its undeserved throne in the temple of justice, donates concurrent jurisdiction to this court and the lower court in evaluation of documentary evidence, see ***Gonzee (Nig.) Ltd. v. NERD***; (2005) 13 NWLR (Pt. 943) 634; *Olagungu u. Adesoye* (2009) 9 NWLR (Pt. 1146) 225; ***Ilyuya v. Yorin*** (2011) 10 NWLR (Pt. 1254) 1:35; ***Eyibio v. Abia*** (2012) 16 NWLR (Pt. 1325) 51; *Odutola v. Mabogunje* (2013) 7 NWLR (Pt. 1354); *CPC v. Ombugadu* (2013) 18 NWLR (Pt. 1385) 66; ***UTC (Nig) Plc. v. Lawal*** (2014) 5 NWLR (Pt. 1400) 221; *Ogundalu v. Macjob* (2015) 8 NWLR (Pt. 1460) 96; *Onwuzurike v. Edoziem* (2016) 6 NWLR (Pt. 1508) 215; ***Ezechukwu v. Onwuka*** (2016) 5 NWLR (Pt. 1506) 529, ***C.K. & W./W. C. Ltd. v. Akingbade*** (2016) 14 NWLR (Pt. 1533) 487; *Emeka v. Okafor* (2017) 11 NWLR: (Pt. 1577); 410; ***Oko ro y, Okoro*** (2018) 16 NWLR (Pt. 1646) 506; ***D.M.V (Ni 9) Ltd. v. NPA*** (2019) 1 NWLR (Pt. 1652); ***Olomoda v. Mustapha*** (2019) 6 NWLR (Pt. 1667) 36. I will harness from

this co-ordinate jurisdiction in the appraisal of the legion of documentary evidence in the appeal.

17. *On power of courts to read documents holistically-*

Nota bene, the law bequeaths to the courts the unfettered latitude to read a document holistically so as to reach and garner harmonious results of its content, see **Ojokolobo v. Aremu** (1987) 3 NWLR(Pt. 61) 377/(1987) SCN J 98; **Unilife Dev, Co. Ltd. v. Adeshigbin** (2001) 4 NWLR (Pt. 707) 482; **ACB v. Apubo** (2001) 5 NWLR (Pt. 707) 482; **Mbani v. Bosi** (2006) 11 NWLR (Pt, 991) 400; **Bunge v, Gov. Rivers State** (2006) 12 NWLR (Pt. 995) 573; **Agbareh v. Minra** (2008)2 NWLR (Pt. 1071) 378; **Nigerian Army v. Ami nu-Kano** (2010) 5 NWLFR (Pt, 1 188) 429; **BFI Group v. BPE** (2012) 18 NWLR (Pt. I:332) 209; **Julius Berger Nig. PLC. v. T.R.C.B. Ltd .** (2019) 5 NWLR (Pt. 1665) 219.

18. *On application of literary rule of interpretation –*

For a good measure, in construing a document, the law compels the court to apply the literal rule as a canon of interpretation, *id est* , to accord the words employed therein their ordinary grammatical meaning without any lexical ornament that will befog its easy comprehension, see **UBN v. Ozigi** (1994) 3 NWLR (Pt. 333) 385, **UBN Ltd . v. Sax (Nig.) Ltd .** (1994) 8 NWLR (Pt. 361) 150; **Enilolobo v. N.P.D.C. Ltd .** (2019) 18 NWLR (Pt. 1703) 168.

19. *on the significance of a habendum in the deed-*

I have, armed and emboldened by these hallowed principles of law, visited the record at the premises of exhibits H, H1 and K which monopolise the pages of the record passim. I have accorded them a panoramic examination with the finery of a toothbrush. Exultantly, they do not harbour any wooliness. In the recital zone exhibit H, a deed of conveyance, expresses the agreement/ consent of the appellant to meet and satisfy the desire of the first respondent to convey the disputed property to him free from all encumbrances. Expectedly, it houses a habendum clause which signifies the part of an instrument, such as a deed or will, which defines the extent and scope of the interest being granted and the conditions affecting the grant/disposition, see ***Anyaegbunam v. Osaka*** --(2000) 5 NWLR(Pt. 657) 386.

20. *On whether the transactions between the parties was an outright sale rather than a loan agreement-*

In the habendum clause, the appellant, in an unequivocal term, “as the Beneficial owners in undisturbed possession hereby CONVEY UNTO PURCHASER” the property in dispute “in freehold, free from all encumbrances whatsoever”. Therein, the appellant further allocated to the first respondent a blank power/right of enjoyment of the property without any disturbance from him or any person claiming through him. In the legal territory, the verb, “convey”, employed in the deed of conveyance, means “To

transfer or deliver (something, such as a right or property) to another, especially by deed or other writing, especially, to perform an act that is intended to create one or more property interests, regardless of whether the act is actually effective to create those interests”, see Bryan A. Garner et alia (eds.) *Black’s Law Dictionary*, ninth edition (USA: West Publishing Co, 2009) Page 383.. Thus, by virtue of exhibit H, the appellant granted a *carte blanche* transfer of his interest over the disputed property to the first respondent without any tinge of reservation or reversionary interest therein. By exhibit H, the appellant became destitute of any part of interest in the property. As if that was not enough, the appellant, in his own volition, concretised the first respondent’s right over the property through the instrumentality of exhibit H1 - affidavit of sale and change of ownership of the disputed property. Curiously, the appellant starved the court of the evidence of the loan application form and loan agreement, he signed with the first respondent, which he brandished and paraded in his statement of claim. Their presence would have neutralised the *effervescence* of exhibits H and H1. The corrosive effect comes to this. The transaction *inter se* over the property was a quintessence of an outright/absolute sale, not a loan contract.

21. *On nature and significance of absolute sale-*

A sale is a transfer of a property or title for a price. Its elements are, *improvisis*: competent parties, mutual consent, a thing capable of being transferred and price in money-consideration. An absolute sale is one

in which possession and title to the property pass to a buyer immediately upon completion of the bargain, see Bryan A. Garner, *Black's Law Dictionary, ibid*, 1454.

22. *On nature of loan agreement-*

Contrariwise, a loan signifies a sum of money lent to a borrower with interest, see ***Olo wu v. Building Stock Ltd*** . (2018) 1 NWLR (Pt. 1601) 343.

23. *On whether the 1st respondent became the beneficial owner-*

It was crystal clear that the bipartite documents, exhibits H and H1, coronated the first respondent with the deserved insignia of a beneficial owner *vis-avis* the disputed property.

24. *On who is a beneficial owner-*

A beneficial owner is an owner who enjoys completely or all the rights and privileges legally possible for an owner to have/possess in respect of a leased property, see ***Alli v. Ikusebiala*** (1985) 1 NWLR (Pt.4) 630 at 640.

25. *On role of a court in the interpretation of a contract between parties-*

As rightly observed by the lower court, parties are bound by the terms of their contract. That is an inelastic principle of contract law. In legal parlance, the duty of a court is to enforce the agreed terms of contract of parties. It is *ultra vires* its power to alter the terms of

contract of parties as that will make mincemeat of sanctity and freedom of contract.

26. *On when a party must obey the terms of a contract-*

In the absence of mistake, fraud, deception or misrepresentation, a party must obey terms of contract whether they are favourable, gainful, beneficial or hostile to his interest. In the Latin days of the law, it was couched in the abridged maxim: *Pacta sunt servanda* contracts that are not illegal or fraudulent must be observed, see **A-G., Rivers State v. A-G., Akwa Ibom State** (2011) 8 NWLR (Pt. 1248) 31. Exhibits H and HI sealed and displaced the appellant's right over the disputed property.

27. *On when a purchaser acquires a property through the beneficial owner-*

The record, the touchstone of the appeal, amply, demonstrates that the first respondent transferred his interest in the property, which he acquired through exhibits H and H1, to the second respondent. It stems from the foregoing highlights that the appellant's grouch about possession of the property and notice thereof on account of the tenants becomes a footnote. The second respondent derived his title from that of a beneficial owner – the first respondent. In the landscape of land law, the second respondent became a bonafide purchaser for value – one who bought in good faith, honestly, without collision of being *partice ps fraudis* and upon a furnished

consideration to the vendor, see *Animashaun v. Olojo*. (*supra*);
Malami v. Ohikhuare (*supra*).

28. *On whether the defence of notice and possession will not avail the appellant-*

It flows that the defences of possession and notice, which the appellant waved menacingly against the second respondent's acquisition of the property, are weak-kneed defences which fly in the face of law and evidence. This is more--go as exhibits H, H1 and K are documentary evidence. It is a common knowledge that in the pyramid of evidence, documentary evidence occupies an Olympian position. This is because, it is permanent, indelible and incorruptible unlike a parol testimony that oozes out of the vocal cord of man and susceptible to distortions by its author. The documents, with the absolute grants made by the appellant therein, castrate his case

In the light of this brief or juridical survey of possession and tenancy notices, conducted in due consultation with the law, the lower court's finding was an immaculate one. It is not offensive to the established land law jurisprudence as to stigmatise it with any of reprobation by this court. *Per contra* , I accord it an unfiltered confirmation. In consequence, I resolve the issue three against the appellant and in favour of the respondents.

29. *On etymological meaning of damages*

Etymologically, damages denote pecuniary compensation or recompense which the law awards to a person wronged for the loss or injury he has sustained by reason of an act, default or omission of a wrong doer whether that act or default or omission is a breach of contract or tort, see *Iyere v. B.F. F M Ltd* (2008) 18 NWLFR (Pt. 1119) 300 at 345; *Ukudie v. SPDCN* (1975) 8-11 SC 155 at 162; *Neka B.B.B. Mfg . Co. Ltd . v. A.CB. Ltd* (2004) 2 NWLR(Pt. 858) 521.

30. *On object of award of damages-*

The object of award of damages is to mitigate or assuage the loss suffered by the wronged party. They manifest in variegated forms.

For a balanced and dispassionate consideration, it is important to mine out the reasoning of the lower court before damnifying the appellant in damages.

31. *On nature of special damages-*

Special or particular damages are those damages which are the actual, but not necessarily, result of the injury complained of, but follow it as a natural and proximate consequence in a particular case, that is, by reason of special circumstances or conditions of a particular wrong, see *Ahmed v. CBN* (2013) 2 NWLR (Pt. 1339); *U.B.N. Plc v, Ajubule* (2011) 18 NWLR (Pt. 1278) 152 ; *Ajigbotosh o v. R. C. C. Ltd .* (2019) 3 NWLR (Pt. 1659) 287; *UBN Plc v, Nwankwo* (2019) 3

NWLR(Pt. 166C)) 474; *Ibrahim v. Obaje* (2019) 3 NWLR (Pt. 1660) 389; *Onyiora h v, C)ny torah* (2019) 15 NWLR (Pt. 1695) 227.

32. *On whether special damages must be strictly pleaded and proved-*

By their nature, special damages do not enure to the benefit of a party as a matter of course. They are not self-executory nor granted in an axiomatic manner. Special damages must be specially pleaded with particulars and strictly proved. By a strict proof, the law means that a party claiming special damages should establish his entitlement to them by credible evidence of such a nature/character that would suggest he is, indeed, entitled to them, see *Oshinjin rin v, Eljas* (1969) NSCC vol. 6, 95; *Cameroon Airlines y. Otutuizu* (2011) 4 NWLR (Pt. 1238) 512; *N eka B.B,B, IVtfg . Co, v. Ltd . A.C,B, Ltd.* (2004) 2 NWLR (Pt. 858) 521 ; *S.P.D.C. (Nig.) Ltd. v. Tiebo VII* (2005) 9 NWLR(Pt. 931) 439; *Gonzee (Nig,) Ltd . v. N .E.R.D.C.* (2005) 13 NWLR (Pt. 943) 634; *N,N.P.C. v. Klifco (Nig.) Ltd.* (2011) 10 NWLR (Pt. 1255) 209; *Ahmed v. CBN* (supra); *Ajagbe v. Idowu* (2011) 17 NWLR (Pt. 1276) 422; *Akinkugbe y. E.H, (Nig.) Ltd .* (2008) 11 NWLR (Pt. 1098) 375.

33. *On whether admission does not relieve a party of strict proof or special damages-*

Admission by an opponent party to special damages does not relieve a claimant from strict proof, see *S.P.D.C, (Nig .) Ltd. v. Tiebo VII* (supra); *Akinkugbe v. E.H. (Nig.) Ltd. (supra)*; *N.N.P.C. v. Klifco (Nig.) Ltd.* (supra).

34. *On principles of the award of general damages-*

General damages are those damages that the law presumes as flowing from the wrong complained of by the victim. They need not be specifically pleaded and strictly proved, see *U.B.N. Plc v. Njab u le* (2011) 18 NWLR (Pt. 1278) 152; *Neka B.B.B. Mfg. Co. Ltd. v. A.C.B. Ltd.* (*supra*); *Ajigbotosho v. R. C. C. Ltd.* (2019) 3 NWLR (Pt. 1659) 289; *UBN Plc v. Nwankwo* (2019) 3 NWLR (Pt. 1660) 474; *Ibrahim v. O baje* (2019) 3 NWLR (Pt. 1 160) 389; *Onyiorah v. Onyiorah* (2019) 15 NWLR (Pt. 1695) 227.

35. *On whether court has discretion to award general damages-*

It is at the discretion of the court to award general damages, see *Cameroon Airlines v. Otutuize* (*supra*) ; *Ahmed v. CBN* (2013) 2 NWLR (Pt. 1339); *Unity Bank Plc v. Ahmed* (2020) 1 NWLR (Pt. 1705) 364.

36. *On the nature of discretion in the award of general damages-*

In this wise, the nagging question, which begs for an answer, is this: did the lower court exercise its discretion properly in awarding the general damages? This poser is a mild summon on this court to indulge in the navigation of the undulating forensic contours of discretionary power of couN in relation to the award of general damages.

In the legal province, discretion signifies: the right or power of a *Judex* to act according to the dictates of his personal judgment and conscience uninfluenced by the judgment or conscience of other persons, see *Suleiman v. C.O.P., Plateau State* (2008) 8 NWLR (Pt. 1089) 298, *AJuwa v. S.P.D.C.N. Ltd.* (2011) 18 NWLR (Pt 1279) 797; *NJC; v. D akwang* (2019) 7 NWLR (Pt. 1672) 532; *Nzekwe v. Anaekwenegbu* (2019) 8 NWLR (Pt. 1674) 235; *Adeniyi v. Tina George Ind. Ltd .* (2019) 16 NWLR (Pt. 1699) 560. An exercise of discretion does not grant the court the unrestrained liberty to act arbitrarily or capriciously. Contrariwise, it gives it the attitude to act judicially and judiciously, see *Sh ittu v. PAN Ltd* , (2018) 15 NWLR (Pt. 1642) 195; *APG A v. Oye* (2019) 2 NWLR (Pt. 1657) 472,' *Aden iyi v. Tina George Ind. Ltd.* (supra).

37. *On when to act judicially-*

To act judicially means that a court is bound by the rules and principles of and not to act arbitrarily or capriciously. It is not an indulgence to romance with judicial whims, but the exercise of judicial judgment, based on facts and guided by law or the equitable decision of what is just and proper under the circumstances.

38. *On when to act judiciously-*

On the other hand, to act judiciously imports the consideration of the interest of contending parties and weighing them in order to arrive at a just

or fair decision, see **Babat uncle v. P .A.S & T.A Ltd** . (2007) 13 NWLR (Pt. 1050) 113.

39. *On when previous cases are not a guide in the exercise of discretion-*

Remarkably, in the wide residence of discretion, previous decisions are not of much relevance. The reason is not far-fetched The facts and circumstances of two cases are not always *in pari materia* . A court of law is not, willy-nilly, bound by a precedent in an earlier decision as that will be akin to a strangulation of an exercise of discretion. It can only use such decisions as guidelines, see **Abacha v. State** (2002) 5 NWLR (Pt. 761) 638; **Bamaiyi v. State** (2001) 8 NWLR: (Pt. 715) 270; **Suleiman v. C,O.P., Plateau State** (supra); **Babatunde v. P.A.S. & T.A. Ltd.** (supra); **Oyegun v. Nzeri be** (2010) All FWLR (Pt. 542) 1612; **Regt. Trustees, P.C.N. v. Etim** (2017) 13 NWLR (Pt. 1581); 1 **NJC v. Dakwa ng** (supra); **Adeniyi v. Tina George Ind. Ltd** . (supra).

40. *On when appellate court will interfere with exercise of discretion-*

An appellate court is loath to interfere with an exercise of discretion save where it is wrongly exercised, *id est*, tainted with irregularity, irrelevant or extraneous matters or is a defilement of the law, or in the interest of justice, see **Ajuwa v. S.P.D.C.N. Ltd** (supra); **T,S.A. Ind. Ltd . v. Kema inv. Ltd** (2006) 2 NWLR (Pt. 964) 300; **Dick v, Our and Oil Co. Ltd** . (2018) 14 NWLR (Pt. 1638) 13; **FRN v, Yahaya** (2019) 7 NWLR(Pt. 1670) 85; **Nzekw e v. Anaekwenegbu** (supra); **Takoh v.**

MTN (Nig) Comm. Ltd . (2019) 10 NWLR (Pt. 1679) 23; *Ogunpehin-v. Nuclus Venture* (2019) 16 NWLR {pt. 1699) 533.

41. *On basis for the award of general damages-*

In paying due homage to the injunction of the law, I have given an indepth study to the lower court's judgment, sought to be creamed, wrapped between pages 470 – 525 of the windy record, particularly the portion exhumed supra, which concerns award of general darnages. In my humnble view, the lower court deployed the guiding principles in the award of general damages as decreed by the outlined oracular authorities as the barometer to gauge their assessment, The first respondent pleaded and testified that the appellant's suit subjected him to bodily and emotional psychological trauma, embarrassment, humiliation and ridicule. Interestingly, the law allows for damages for non-fiscal loss, pains, sufferings, injury, mental feelings and discomfort even when they are not monetarily quantified, see **Eseigbe v, Agholor** (1993) 12 SCNJ 82; *Ighreriniowo v. S. C. C. (Nig.) Ltd* . (2013) IC) NWLR (Pt. 1361) 138; **Muhammad v. IGP** (2019) 4 NWLR (Pt. 1663) 492.

42. *On conditions where appellate court will interfere with award of general damages-*

The foregoing solidifies the legality of the lower court's award of the N10 million general damages. In essence, there were a flood of facts and classic evidence upon which the lower court propagated the award. Put bluntly,

the award was well designed and tailored through the lens of the law. In the same vein, it took care of the competing rights of the warring parties to justice in the, highly, contested suit. Put the other way round, it was a judicious award. In the aggregate, the lower court acted judicially and judiciously and did not fracture the law on exercise of discretion. In sum, the lower court's exercise of discretion was not injudicious nor was it guilty of any of the negative elements that will compel an appellate court to interfere with it

In the spirit of *ex abundant cautela*, this issue is the appellant's disguised invitation to this court to interfere with the award of damages. An appellate court does not usually interfere with award of damages unless: (a) the trial court acted under a mistake of law; or (b) where the trial court acted in disregard of some principles of law; or (c) where the trial court acted under misapprehension of facts; or (d) where it has taken into account irrelevant matters or failed to take into account relevant matters; or (e) where injustice would result if the appellate court does not interfere; or (f) where the amount awarded is ridiculously low or high that it must have been a wholly erroneous estimate of the damages. see **SPDCN v. Tiebo VII**(supra); *Cameroon Airlines v. Otutuizu (supra)*; *British Airways v. Atoyebi* (2014) 13 NWLR (Pt. 1424) 253; *Agu v. General Oil Ltd .* (2015) 17 NWLR (Pt. 1488) 327.

History of the case:

Supreme Court:

Names of justices that sat on the appeal: MOHAIVIMED LAWAL GARBA, MOORE ASEIMO A, ADUMEIN, OBANDE FESTUS OGBUINYA(read the leading judgment), ABUBAKAR SADIQ UMAR, ADAMU JAURO

Appeal No: SC/CV/1196/2021

Date of Judgment: FRIDAY THE 4TH DAY OF JULY. 2025

Names of Counsel: Eric K. Ornare, Esq. (with him, Stanley Asonadi, Esq.) for the appellant .

John. Okoriko, Esq. (with him, G. A. Okereke, Esq.) for the respondents.

OBANDE JSC. (delivering the leading judgment): This appeal probes into the rightness of the decision of the Court of Appeal, Asaba Division (hereunder addressed as “the lower court”), *coram judice*. M. A. Danjuma, B. A. Georgewill and A. O. Obaseki- Adejumo, JJCA, in Appeal No. CA/AS/297/2019 delivered on the 8th September, 2021. In its judgment, the lower court set aside the decision of the High Court of Delta State (the trial court), in Suit No, OUHC/26/2015, delivered on the 21st February, 2019, wherein C. E. Aehilefu, J. granted the appellant’s claim.

The synopses of the material facts of the case, which transfigured into the appeal, are disobedient complexity. The appellant was the owner of a property, which comprised a story building, lying, situate and known as NO. 1 Ogudu Lane, off Agomate Street, Ovwian in Udu Local Government Area of Delta State. In April, 2014, the appellant and his deceased partner, Rufus Onaernoh, won a sub - contract from a contractor to the Delta State Oil Producing Areas Development Commission (DESOPADEC) for the construction of Ofagbe Town Hall in Isoko North Local Government Area of Delta State. They had no funds to

execute the contract. The appellant alleged that they took loans from the first respondent (a money lender) in the sum of N4M each at an interest rate of 20% and for a duration of 4 months. The appellant secured the loan with his said property as collateral, handed over the title documents to the first respondent and executed a deed of transfer and affidavit of sale of the same property in his (first respondent's) favour. He paid N1 m to the first respondent as part payment towards the repayment of the loan. The appellant alleged that the first respondent, despite the part payment, sold the property to the second respondent in spite of all appeals to allow him liquidate the loan. Sequel to that, the appellant beseeched the trial court, via a writ of summons, filed on the 1st April, 2015, and in an amended statement of claim, filed on the 26th October, 2017, tabled against the respondents following reliefs:

(1) A Declaration that the property lying and situate at No. 1 Ogudu Lane off Agomate Street, Ovwian, a place within the jurisdiction of this Honourable court is the bonafide property of the Claimant.

(ii) A Declaration that the purported sale of Claimant's storey building by 1st Defendant to the 2nd defendant is null and void of no effect whatsoever.

OR

In the alternative An order of this Honourable Court setting aside the purported sale of the Claimant's storey building lying and situate at No. 1 Ogude lane of Agamate Street Ovwian by the 1st defendant to the 2nd defendant,

(iii) An Order of this Honourable restraining the defendants herein particularly the 2nd Defendant, his privies agents assign from further

entering remaining in the Claimant's said building or carrying out any sundry acts of renovation thereon and or altering the storey building thereon from the original plan of the claimant.

(iv) --The sum of N25,000,000.00 (Twe-fifty-Five Million) as composite damages *for* the sundry acts of trespass of the Defendants on the property of the Claimant.

(v) any other relief.

As expected, the respondents, upon service of the processes on them, joined issue with the appellant and denied liability by filing defences thereto. In the first respondent's amended statement of defence, he counter-claimed against the appellant for the following reliefs:

1. A declaration that by virtue of the Deed of Transfer dated 25th day of April, 2014 duly executed by the claimant and the 1st defendant and other documents related hereto, the claimant has relinquished his Title/Right over all the building/property lying, situate and known as No. 1 Ogudu Lane, off Agomate Street, Ovwian in Udu Local Government Area of Delta State to the 1st defendant.
2. A declaration that by virtue of the Deed of Transfer dated the 10th day of February, 2015, or thereabout the sales transaction between the 1st defendant and the 2nd defendant in respect of all the building/property lying, situate and known as No. '1 Ogudu Lane, off Agomate Street, Ovwian in Udu Local Government Area of Delta State, is valid.

3. An order of perpetual injunction restraining the claimant, his privies, his Agents, surrogates and/or any other person(s) claiming through the claimant from the property lying, situate and known as No.1 Ogudu Lane, off Agomate Street, Ovwian in Udu Local Government Area of Delta State.
4. An Order of this Honourable Court compelling the claimant to pay the sum of Three Million (3,000,000.00) only to the 1st defendant being special damages incurred by the 1st defendant in the defence of this suit
5. The sum of Fifty Million Naira (50,000,000.00) only being general damages claimed by the 1st defendant against the claimant for the bodily, emotional, psychological trauma, embarrassment, humiliation, ridicule this suit has caused the 1st defendant.
6. And *for* such Order or other Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

In same vein, in the second respondent's statement of defence, he counter-claimed against the appellant for the following reliefs :

- (a) Perpetual Injunction restraining the claimant/defendant, his privies, agents, servants, heirs, assigns, executors, successors-in-title and any person (s) from claiming ownership, possession or occupation of the 2nd defendant/counter claimant's property lying and situate at No,1 Ogudu Lane, off Agomate Street, Ovwian in Udu Local Government Area of Delta State.
- (b) Mandatory Injunction restraining the claimant/defendant, his privies, agents, servants, heirs, assigns, executors, successors-in-title from

any act or acts of furtherlaying claims of ownership, possession or occupation of the 2nd defendant/counter claimant's property lying and situate at No.1 Ogudu Lane, off Agomate Street, Ovwian in Udu Local Government Area of Delta State.

- (C) **A** Declaration that the property lying and situate at No.1 Ogudu Lane, off Agomate Street, Ovwian in Udu Local Government Area of Delta State belongs to the 2nd defendant/counter claimant who has been in possession as a bonafide purchaser.
- (d) An Order restraining the claimant/defendant, his privies, agents, servants, heirs, assigns, executors, successors-in -title and any person(s) from harassing, interfering and or disturbing the 2nd defendant/counter claimant from carrying out renovating (sic) work going at No. 1--Ogudu Lane, off Agomate Street, Ovwian in Udu Local Government Area of Delta State.
- (e) An Order restraining the claimant/defendant, his privies, agents, servants, heirs, assigns, executors , successors -in -title and any person(s) from harassing, interfering and or disturbing the 2^d defendant/counter claimant from enjoying the lawful occupation and possession of the 2^d defendant/counter claimant's property lying and situate at No. 1 Ogudu Lane, off Agomate Street, Ovwian in Udu Local Government Area of Delta State.
- (f) The sum **of N20,000.00** (Twenty Million Naira) as General and Special damages.
- (g) 10% interest on the total judgment sum until the judgment debt is fully liquidated.

Following the discordant claims, the trial court conducted a full dress determination of the case. In proof of the case, the appellant called two witnesses, CW1 and CW2. In disproof of the case, the respondents fielded two witnesses, DW1 and DW2. Tons of documentary evidence were tendered by the parties. At the closure of evidence, the parties, through their respective counsel, addressed the trial court in a manner allowed by law. In a considered judgment, delivered on the 21st February, 2019, reflected between pages 273 – 332 of record, the trial court granted the appellant's claim.

The respondents were dissatisfied with the decision. Hence, they launched an appeal against it to the lower court. The notice of appeal lies between pages 333 - 359 of the record. In a considered unanimous judgment, delivered on the 8th September, 2021, pasted between pages 470 – 525 of the record, the lower court allowed the appeal and granted the respondents' counter-claims.

The appellant was aggrieved by the decision. Consequently, the appellant, on the 4th November, 2021, lodged an eleven-ground original notice of appeal before this court, copied between pages 657 – 661 of the record. The appellant, with the leave of this court, on the 23rd March, 2025, filed a fifteen-ground further amended notice of appeal wherein he prayed this court for:

- (a) An ORDER allowing the appeal and

setting aside the judgment of the Court of Appeal which set aside the judgment of the Trial Court.

- (b) AN ORDER setting aside the award of damages (general and special) and the cost in favour of the respondents.
- (c) AN ORDER entering judgment in favour of the appellant as per reliefs i, ii, iv in his Amended Statement of Claim at the Trial Court.

Thereafter, the parties, through their counsel,-- filed and exchanged their respective briefs of argument in line with the procedure governing the hearing of civil appeals in this coun. The appeal was entertained on the 8th April, 2025.

During its hearing, learned counsel *for* the appellant, Eric K. C)mare, Esq., adopted the appellant's brief of argument, filed on the 5th March, 2025, and the appellant's reply brief, filed on the 28th March, 2025, both deemed properly filed on the 8th April, 2025, as representing his arguments for the appeal. He urged the court to allow it. Similarly, learned counsel *for* the respondents, John Okoriko, Esq., adopted the respondents' brief of argument, filed on the 24th March, 2025 but deemed property filed on the 8th April, 2025, as constituting his submissions against the appeal. He urged the court to dismiss it.

In the appeltant's brief of argument, learned counsel distilled four issues for determination, to wit

- (a) Whether the Court of Appeal was right to dismiss the appellant's preliminary objection to the competence of the notice of appeal filed by the respondents .

- (b) Whether the reasons given by the Trial Court and relied upon by the Court of Appeal were not obiter dictum and was the court right in relying on principles of mortgage in deciding the appeal without considering the equity of the case.
- (C) Whether the evidence of possession of the property by the appellant through his tenants was not sufficient notice of encumbrance to the 2nd respondent.
- (d) Whether in the absence of proof of special damages or breach of contract, the lower court was not in error, when it awarded special and general damages to the respondents.

In the respondents' brief of argument, learned counsel crafted four issues for determination, namely:

- (1) Whether the lower court was right to have dismissed the Appellant's Preliminary Objection challenging the competence of some grounds of appeal together with their particulars in the notice of appeal filed by the Respondents herein, who were the appellants in the Lower Court.
- (2) Whether the reasons given by the Trial Court and relied upon by the Lower Court in arriving at their respective judgments were *obiter dictum* and not the *ratio decidendi* to have negative (sic) the judgment of the Lower Court setting aside the judgment of the trial court.
- (3) Whether the Appellant, who has been adjudged to have out rightly sold the property in dispute to the 1st Respondent, can still rely on the evidence of possession of the property through his tenants (if at all) to establish an equitable interest in the property as notice of encumbrance to the 2nd respondent to deprive the 2nd respondent from enjoying his title over the land as subsequently transferred to the 2nd Respondent by the 1st Respondent.

- (4) Whether from the totality of the documentary and oral evidence led by the respondents (particularly exhibits “H”, “HI”, K and “K3”), the Lower Court was right to have awarded special and general damages and costs to the respondents.

A cursory look at the two sets of issues shows that they are, save for semantics, identical in substance. In fact, the respondents’ issues can be, conveniently, subsumed under the appellant’s. Given this sameness, I will decide the appeal on the basis of the issues nominated by the appellant: the rightful owner of the appeal.

Argument on the issues.

Appellant’s submissions.

Learned appellant’s counsel submitted that there were no valid grounds of appeal before the lower court because of invalid and incompetent particulars. He relied on order 7 rule 2(2) of the Court of Appeal Rules, 2016; *Globe Fishing Ind. Ltd v. Coker* (1990) 7 N WLR (Pt . 162) 265; *Honika Samwil J (Nig) Ltd. v. Hoff* (1994) 2 NWLR (Pt. 326) 252; *Tub Tilbury Construction Co. Ltd v. Ogunniyi* (1988) 2 NWLR (Pt. 74) 64. He described issue three as incompetent because it was framed from competent and incompetent grounds. He cited *Olubakola v. 4.-'G., Lagos State* (2017) All FWLR (Pt. 867) 507. He asserted that the lower court was wrong to hold that the appellant ought to file a motion when the objection attacked all the grounds. He insisted that the preliminary objection was the proper

process and urged this court to strike the respondent's appeal in the lower court.

Learned counsel contended that the trial court's statement on proof of loan transaction was an *obiter dictum*, not the *ratio decidendi*, which was not appealable. He referred to **A. I. C. Ltd v, NNPC** (2005) LPELR – 6 (SC). He observed that the lower court was wrong to have introduced mortgage and resolved the appeal thereon outside the issues presented by the parties. He relied on *Overseas Construction Ltd. v. Creek Enterprises (Nig) Ltd.* (1985) 3 NWLF: (Pt. 13) 407; **Okpanum v. S.G.E Nig. Ltd .** (1998) LPELFR – 2516 (SC); **APC v. Karfi** (2018) 6 NWLR (Pt. 1616) 479; **IUodibbo v. Usman** (2020) 3 NWLR (Pt. 1712)470. He reasoned that a court should consider the totality of a judgment appealed against. He cited **Adegbuyi v. APC** (2014) All FWLR (Pt. 761) 1486; **Adebayo v. A. – G., Fed.** (2008) All FWLR(Pt. 412) 1195. He observed that there was no appeal on the finding on loan transaction and it was conceded. He referred to **Akere v, Governor, Oro State** (2012) 50 NSCQR 345; **UBA Plc, v. B. T. L, ind. Ltd** (2006) 19 NWLR (Pt. 1013) 61. He took the view that there was duress and undue influence by the first respondent on the appellant over the loan transaction and the lower court was wrong in its finding thereon. He persisted that the lower court was wrong to treat the loan transaction as mortgage as different laws govern them. He added that even in a mortgage transaction, the mortgagor has equity of redemption which was not availed to the appellant.

Learned counsel argued that the second respondent, at the time he bought the property, had knowledge of the appellant's interest through his tenants thereat. He relied on **Kaba v. Young** (1944) 10 WACA 135. He opined that he was not a purchaser for value without notice as he had notice of the appellant's interest therein. He asserted that a purchaser of property ought to conduct a search

in the land registry to ensure no encumbrance before buying it otherwise he will be acting *mal afide* and caught by *caveat em pto r*. He cited **Ageh v. Torty a** (2003) 6 NWLR (Pt. 816) 385; **Animashaun v. Olojo** (1990) 6 NWLR (Pt. 154) 111. He maintained that the second respondent who had actual and constructive notice could not be said to be a bonafide purchaser for value. He referred to **Jaffar v. Ladipo** (1969) LPELR – 25556 (SC).

Learned counsel posited that the lower court's award of solicitor's fee to the respondents was wrong in law. He relied on **Ihekwoba v. ACB Ltd** (1998) IO NWLR (Pt. 571) 590; **Nwanji v. Coastal Sew. Nia. Ltd .** (2004) 18 NSCQR 895. He added that the lower couN's award of general damages to the respondents was without basis even as it amounted to double compensation. He cited **Soeta n v, Og u nwo** (1075) 6 SC 67; **Kerew i v. Odugbesan** (1965) 1 ANLR 98; **C)ando Nig. Plc. v. Adijere W. Africa Ltd .** (2013) LPELR 20591 (SC); **Inyang v. Ebong** (2001) 25 WRN 138; **Thompson v, Akingbehin** (2020) LPELR – 58287 (SC). He opined that the second respondent was wrong to claim for trespass and recovery of possession in his counter-claim. He

referred to *Ezekwesi li v, Agb apu onwu* (2003) LPELR– 1204(SC). He explained that a party, the second respondent, who had notice of the encumbrance could not complain of suffering any harm if he was challenged. He cited *Odusoga v. Ricketts* (1997) LPELR– 2256 (SC)/(1997) 7 NWLR (Pt. 51–1-) 1 : *Animashaun v. OloJo* (supra). He insisted that the appellant carried no act against the second respondent to justify the award in general damages.

Respondents' contentions

Learned respondents' counsel subrnitted that the respondents notice of appeal had sixteen grounds and the appellant attacked grounds 1 – 15 leaving the ground 16 which was an omnibus ground. He stated that an omnibus ground and a single ground can sustain an appeal. He relied on *Aderibigbe v. Abidoeye* (2009) 10 NWLR (Pt. 1150) 592; *Abubakar v. Wazi ri* (2008) LPELR– 54 (SC); *Duruaku v. Nwoke* (2016) All FWLR (Pt. 815) 351. He agreed with the lower court that the appellant's preliminary objection was a wrong process because of the omnibus ground. He cited *Muhammad v, IGP* (2019) 4 NWLR (Pt. 1663) 492. He added, in the alternative, that the particulars of the grounds and issue two therein were competent. He referred to *Tindafai v. J ara* (2016) All FWLR (Pt. 834) 96.

Learned counsel contented that based on the pleadings and evidence the parties joined issue on whether the transaction between them was a loan

or an outright sale of the property and the same called for resolution/decision by the court. He described the finding on the loan transaction as the *ratio decidendi* , not an *obiter dictum* . He referred to *A. I. C. Ltd . v. NNPC* (supra). He described the lower court's reference to mortgage as an analogy which could not vitiate the decision. He noted that there was no equity on the part of the appellant as the transaction was an outright sale of the property. He relied on exhibits H, H1 and K. He observed that the lower court based its decision on the issues presented by the parties. He said that the decision of the trial court was perverse and the lower court rightly interfered with it. He cited *Koko v. Koko* (2023) 13NWLR (Pt. 1901) 249.

It was argued by learned counsel that the deed of conveyance and affidavit of sale of the property showed that the transaction was an outright sale and the issue of *m alafide* and knowledge could not arise. He narrated the elements of contract of sale which existed in the transaction. He relied on *Gege v. Nande* (2006) 10 NWLR (Pt. 988) 265. He maintained that the decision of the trial court was perverse which warranted an interference by the lower court. He explained that the appellant never had either actual or constructive possession of the property, having sold it outrightly, as to rely on evidence of possession through his tenants to establish notice of encumbrance.

Learned counsel further argued that by the ground of the respondents' counter-claims, the appellant became a trespasser on the property and the presumption of nominal general damages operated against him. He relied on **Adesanya v. Ottuewu** (1993) 1 SCN J 77; **Nkano v. Nkano** (1997) 50 LRCN 1 ; **Ehiachim (Nig.) Ltd , v, Mba kwe** (1986) 1 SC 99; **Acumen y. Amao** Vol. 222 LRCN (Pt. 2) 1. He reasoned that the respondent proved special damages and were entitled to general damages as well. He referred to *exhibit K3 , Sterling Ass. (Nig.) Ltd. v. Trustworld Insurance Ltd. (2023) 14 NWLFR (Pt. 1904) 275; UBT (Nig.) v. Ajagbule (2006) 2 NWLR (Pt. 965) 447; British Airways v. Atoyebi (2010)14 NWLR (Pt. 1214) 561 ; N. B, C. Plc. v. Ubani (2014) 14 NWLR (Pt. 1398) 421 ; Nitel Trustees Ltd. V. Sydicated Investment Holdings Ltd. (2003) 5 NWLR (Pt. 1876) 93. He pressed the point that award of general damages is based on exercise of discretion which is not bound by *stare decisis*. He cited **UBN Plc. v. Astra Builders ruA.) Ltd** (2010) 5 NWLR (pt. 1186) 1.*

Resolution of the issues

In order to pacify uniformity, I will attend to the quartet issues in their numerical sequence of presentation by the feuding parties. To this end, I will, without much ado, zoom off with the consideration of issue one. The pith of the issue, on a clinical examination, is plain. It chastises the lower court's dismissal of the appellant's preliminary objection against the respondents' appeal before it (the lower court) on account of, *inter alia*, inappropriate mode of challenging the appeal. The lower court had declared

the preliminary objection incompetent in that it attacked 15 grounds out *Ishaku* (supra); **PDP v. Sheriff** (2017) 15 NWLR (t. 1588) 219; **NNPC v. Famfa Oil Ltd** . (2012) LPELR – 7812 (SC)/ 2012) 17 NWLR (Pt. I:328) 148; *Cocacola (N ig) Ltd . v. Akinsanya* (2017) 17 NWLR (Pt. 1593)74; **Ezenwaji v. UNN** (2017) 18 NWLR (Pt. 1598) 45; *Petgas Resources Ltd . v. Mbanefor* (2018) 1 NWLR (Pt. 1601) 442; **KLM Royal Dutch Airlines v. Alo ma** (2018) 1 NWLR(Pt. 1601) 473; **Jisah v. INEC** (2016) 18 NWLR (Pt. 1544) 175; **FRN v. Attliche** (2019) 8 NWLR (Pt. 1674) 338; **Lolapo y. COP** (2019) 16 NWLR (1699) 476. *Opeyemi v. State* (2019) 17 NWLR (Pt. 1702) 403,

Indisputably, the respondents' notice of appeal, which colonises pages 333 – 359 of the record, hosts sixteen grounds. At its *terminus ad quem* was ground sixteen, an omnibus ground, that be moaned the trial court's judgment as against the weight of evidence. A castigation of a decision on the premise that a judgment is against the weight of evidence, invariably couched as an omnibus ground connotes that the decision of the trial court cannot be supported by the weight of evidence advanced by the successful party which the court either wrongly accepted or that the inference it drew or conclusion it reached, based on the accepted evidence, is unjustifiable in law. Again, it implies that there is no evidence which, if accepted, will buttress the finding of the trial court. Furthermore, it denotes that when the evidence-adduced by

the complaining appellant is weighed against that given by the respondent, the judgment rendered to the respondent is against the totality of the evidence placed before the trial court. In ascertaining the weight of evidence, the law enjoins a trial court to consider whether the evidence is admissible relevant, credible, conclusive or more probable than that given by the other party, see *Mogaji v. Odofin* (1978) 3 SC91 ; *Anyao ke v. Adi* (1986) (1986) 3 NWLR (Pt. 31) 731 ; *Nwokidu v. Okanu* (supra) (2010) 3 NWLR (Pt. 181) 362; *Akinlagun v. Oshoboja* (2006) 12 NWLR (Pt. 993) 60; *Gov., Lagos State v. Ady iga* (2012) 5 NWLR (Pt. 1293) 291 ; *Oyewole v. Akande* (2009) 15 NWLR (Pt. 1163) 11 : *Agala v. Okusin* (2010) IO NWLR (Pt. 1202) 412.

Incontestably, the appellant's preliminary objection took a swipe against the competence of grounds 1–15 of the respondents' sixteen -ground notice of appeal. It is, therefore, axiomatic that the preliminary objection spared ground sixteen of the notice of appeal from the onslaught. In the glaring absence of any ounce of condemnation of ground sixteen by the preliminary objection, it was/is apparently valid and viable with the potency to nourish and sustain the respondents' appeal sought to be impugned. As a matter of law, a solitary ground of appeal is sufficient to oxygenate an appeal and even impregnate it with success in deserving circumstances. Ditto for an omnibus ground of appeal which is typified by ground sixteen supra-. An omnibus ground is usually a grouse employed' by a complaining party against a trial court's appraisal, assessment and

apportionment of evidence, be it parol or documentary, and a nudge on the court to reevaluate same, see **Osolu v. Osolu** (2003) 1 1 NWLR (Pt. 832) 608. The case law has given its imprimatur to an omnibus ground as a valid ground of appeal. It flows that an omnibus ground infuses life into a notice of appeal and, *proprio vigore*, viable to sustain an appeal, see *Atuyeye v. Ashamu* (1997) 16 NWLFR (Pt. 49) 267; *Adeyeri v. Okobi* (1997) 6 NWLF: (Pt. 510) 534); *Oteki v. A.-G., Ben del State* (1986) 2 NWLR (Pt. 24) 648; **Adelusolu v. Akinde** (2004) 12 NWLR (Pt. 887) 295/(2001) 5 SCN J 235/(2004) 5 SC (Pt. 11) 71 ; **Shehu v. State** (2010) 8 NWLR (Pt. 1195) 12. **Aderibigbe y. Abidoeye** (2009) 10 NWLR (Pt. 1150) 529.

In the face of the existential validity of the omnibus ground sixteen, the appellant, the objector before the lower court, ought not to have approached the lower court vide a preliminary objection with the intent to abort the respondents' appeal *in limine*. This court has decreed consistently, as catalogued above, that the appropriate mode or process to challenge the validity of some grounds of appeals, grounds 1–15 therein, is by filing of an application (motion on notice). As long as the primary and principal target of the appellant's preliminary objection was against the competence of grounds 1–15 thereof, it was impotent to determine, one way or the other, the-fortune of the respondents' appeal *in soiedo*, as a whole. On this note, the appellant's approach, a costly faux pas to behold, was a flagrant defilement of the legally accepted *modus operandi* in interrogating the competence of some grounds of appeal. The appellant

ought to have besieged the lower court via an application to emasculate the respondents' grounds 1- 15 before the lower court. Indubitably, the improper method constituted a serious *coup de grace* to the competency of the preliminary objection. In sum, the appellant's preliminary objection, which he invented to snuff life out of the respondents' appeal at its embryo, was plagued by an indelible incompetence. The lower court was *firm a terra* in law when it declared that the preliminary objection was stuck in the swamp of incompetency. The corollary of the irremediable incompetence was not far-fetched. It was a contagious incompetence in that it contaminated and impinged on the jurisdiction of the lower court to entertain it *ah initio* . Indeed, it did not deserve the investiture and consumption of the scarce judicial time and space for its consideration. The lower court's proclamation against the competency of the appellant's preliminary objection was in total alignment with the tenets of the adjectival law.

I endorse it in toto. In the result, I have no option than to resolve the issue one against the appellant and in favour of the respondents

Having dispensed with issue one, I proceed to settle issue two. The marrow of the issue is plain and circumscribed within a narrow compass. It quarrels with the lower court's categorisation of a particular finding of the trial court as a *ratio decidendi*. It is important to comb out the particular finding, which is the *cusu s bell inter partes*. from its quiet residence in the record. The trial court, at pages 324 and 325, of the expansive record, opined:

I cannot find any satisfactory oral evidence led in proof of a loans (sic) transaction between the claimant and the 1st defendant.... I am afraid claimant has not adduced cogent and convincing evidence on the loan transaction.

The lower court, after displaying the relevant holdings of the trial court, at pages 500 to 501 of the record, found:

This properly and perfectly summed up the lower courts (sic) evaluation of the Claimant/Respondent's evidence and I have no reason to fault same.

But at page 330 the court held thus:

“The result of all I have said is that the claimant is entitled to the declaration sought under paragraph (I – VI) of the amended statement of claim against 2nd defendant”

It is against this back drop that the appellants are complaining. Having made such clear findings, as above the court was wrong to have (sic) that they were entitled under the 4 reliefs claimed, there was no satisfactory proof the loan transaction therefore, on what grounds did the trial court arrive at this conclusion? The foundation having been broken there was no extraneous reason that could have changed the proof already before the court, having there was no basis for this.

The warring parties expressed diametrically opposed view points on the status of that excerpt displayed above. The dazzling contention of the

appellant was that the lower court fractured the law by its undeserved promotion of the finding to a dignified status of *ratio decidendi* from its *obiter dictum* position. The respondents disowned the argument and agreed with the lower court's stand which characterised it as a *ratio decidendi*. The justification for the disagreement of the contending parties on the position of the particular finding, which has gained popularity and notoriety in this appeal, will unfold in the fullness of time in this judgment. It cannot be gainsaid that each of the two terms, *ratio decidendi* and *obiter dictum*, both of which are in competition on the one to arrest the attention of the court, traces its lexical paternity to the Latin language. However, in the large hemisphere of our corpus *juris*, there is a wide yawning gap between the two competitive terms that cry for the appellation of the contentious finding. In the realm of etymology, *ratio—decidendi* signifies the legal principle which is important in the determination of the issues raised in a case, *id est*, the binding portion of the decision, the reason behind a decision, the rule upon which a court's decision is founded. Contrariwise, an *obiter dictum* is a passing remark made by a *Judex* in a decision which is not necessary for it. While, the former is appealable, the latter is not submissive to an appeal. Whereas, a *ratio decidendi* in a case is binding on a lower court, on the footing of similarity of facts, on the hallowed doctrine of *stare decisis*, an *obiter dictum* is drained of any such authority except it is adopted as a *ratio* in a later authority, see ***Afro-Continental v. Ayantuyi*** (1995) 12 SCN J 1/(1995) 9 NWLR (Pt. 420) 411 ; ***Dairo v. UBN Plc.*** (2007) 16

NWLR (Pt. 1059) 99; *Osakue v. FCE, Asaba* (2010) 10 NWLR (Pt. 1201)1 ; *Odunukwe v. Ofomata* (2010) 18 NWLR (Pt. 1225) 404; **NDP v. INEC** (2013) 6 NWLR (Pt. 1350) 392; **Abacha v. Fawhinmi** (2000) 6 NWLR (Pt. 660) 228; *Adelekan v, ECU-Line NV* (2006) 12 NWLFR (Pt. 993); *Adedayo v. PDP* (2013) 17 NWLR (Pt. 1382) 1.

It is a trite law that a ground of appeal, which is the nucleus of every appeal, must attack and disclose nexus with a decision that is the subject of appeal. In the sight of the law, a ground of appeal must be linked to and question a *ratio decidendi*, not an *obiter dictum*, of a judgment. A ground of appeal must owe its ancestry to a *ratio decidendi*. Any ground of appeal formulated outside the precincts of the decision runs foul of this cardinal rule of law and risks being struck out on account of incompetence, see *Adelekan v. ECU-Line Ny* (2006) 12 NWLR (Pt. 993) 333; *Balonwu v, Governor of Anambra State* (2008) 16 NWLR (Pt. 1113) 236; **Lawrence HA.-G; Fed.** (2008) 6 NWLF: (Pt. 1084) 484; **Okonobor V.D.E & S. 7. Co.** Ltd (2010) 17 NWLR (Pt. 1221) 81 ; *Odunukwe v, Ofomata (supra)* ; *FBN Plc. v. TSA Ind. Ltd. (2010)* 15 NWLR (Pt. 1216) 247; **D. T, T. Ent, (Nig.) Co. Ltd v, Busari** (2011) 8 NWLR (Pt. 1249) 387; **Ga ruba v. Omokhodion** (2011)15 NWLR (Pt. 1269) 145; *Abe v. Uni Iorin (supra)*; *Oleksandr v. Lonestar Drilling Co. Ltd .* (2015) 9 NWLR (Pt. 1464) 337; **Ngere v. Okuruket 'XIV' (supra)-, Chiadi v, Aggo** (2018) 2 NWLR (Pt. 1603) 175; *Isaac v. Imaseun* (2016) 7 NWLR (Pt. 1511) 250; *Okafor v. Abumofuani* (2016) 12 NWLR (Pt. 1525) 117; **Udom y. Umana (No-1)** (2016) 12 NWLR (Pt. 1526) 179; **KLM Royal Dutch Airlines v. Alorna** (2018) 1 NWLR (Pt. 1601) 473; **O.&G.E.F.Z.A. v. Osanakpo** (2019) 6 NWLR (Pt. 1668) 224.

In due fidelity to the expectation of the law, I have married the trial court's terse finding, reproduced above, with the connotations of the two expressions as espoused and anatomised by the case law supra. The rationale for the juxtaposition is to locate which of the two expressions accommodates the finding. In hunting for this, I have consulted, perforce, the record, the spinal cord of the appeal, especially at the domain of the appellant's comprehension-friendly amended statement of claim and evidence, *viva voce* and documentary, which warehouse the meat of his case before the

trial court which ultimately midwived this appeal. I can discern therefrom that the pith of his case, already marshalled at the cradle of this judgment, orbits around a loan transaction between him and the first respondent which was secured by the disputed property as collateral for its repayment. On this score, the trial court was bound in law to reach a finding on his proof or disproof of the existence *vet non* of the alleged loan contract to be entitled to judgment. A finding of fact is a determination by a *judex*, jury or an administrative body of a fact supported by the evidence in the record which are usually presented at the trial or hearing. It involves perception and evaluation of evidence by a court, see **Ogundalu v. Macjob** (2025) 8 NWLR (Pt. 1460)96. In other words, the trial court owned the bounden duty, heaped/foisted on it by law, to reach a finding, one way or the other, on the loan transaction which was the thrust of the appellant's agitation in the suit. The trial court acted *ex debito justiti ae* when it arrived at that lean finding, *id est*, drought of credible evidence in proof of the claim, Thus, the finding

qualified as a classic exemplification of a *ratio decidendi* . not a mere *obiter dictum* . It must be placed on record that. in the eyes of the law, a case is entitled to possess more than one *ratio decidendi* or *rationes decidendi*, see ***Adetoun Oladeji (Nig.) v. N.B. Plc*** (2007) 5 NWLR (Pt. 1027) 415. Hence, the trial court was not foreclosed from moulding another *ratio decidendi* for its decision. In that kingly status of being a *ratio decidendi*, the finding was amenable to appeal by the respondents who were peeved by it. In essence, the respondents paid due obeisance to the law when they harvested their right to subject the terse finding to the crucible of appeal before the lower court. In effect, the lower court's consideration of the slim finding as a *ratio decidendi* was in due allegiance to the tenets of the law.

The other *coup de main*, which the appellant launched against the decision, under the canopy of this issue, appertains to its linkage with mortgage. The lower court, all page 502 of the windy record, observed

In my view, the case of the claimant was that; it was a transaction deal by way of a money lenders loan, which is in this case likened *for* clarity sake to be like a mortgage loan from a bank *for* housing or acquiring or building a property, this property is the collateral and its title deeds are deposited while a clause is inserted that at failure to repay the collateral is

forfeited and such loans are time bound.

Incontestably, loan and mortgage may not be Siamese twins in the sphere of commercial law and some of the principles governing their applications may not have a confluence point. Nevertheless, they share a common homology in terms of basic/fundamental principle -the act of borrowing. In this wise, the lower court had the unbridled licence of the law to draw an analogy between them in deserving circumstances such as the one that germinated in the appeal. It is gleanable from the phraseology and tenor of the analogy, adurnbrated above, that the linkage was an *obiter dictum* par excellence. It was, totally, divorced from the lower court's *raison d'etre* for its decision which was anchored and propagated firmly on the appellant's failure to prove his case that was erected on loan transaction. In effect, all the diatribes, which the appellant rained against the lower court's comparison of the appellant's loan to mortgage, peter into insignificance. Those lame strictures cannot imbue this issue with any atom of success. Put together, it will be idolising judicial sacrilege to tinker with a finding which has not disclosed any ounce of hostility to the letters and spirit of the law. In the end, I will not hesitate to resolve the issue two against the appellant and in favour of the respondents.

That takes me to the treatment of the tertiary issue. The mainstay of the issue is amenable to easy appreciation. It censures the propriety of the lower court's failure to ascribe notice of encumbrance of the property to the second respondent on the basis of the appellant's

evidence of possession thereof through his tenants. The operative terms, as housed in the appellant's nursed grudge, are possession and notices. It is imperative to appreciate their imports and characteristics in the legal hemisphere.

Firstly, possession, a mantra in law, connotes the exercise of dominion over property, real or chattel, and the right under which one may exercise control over something to the exclusion of others. In the firmament of land law, it signifies an occupation or physical control of a parcel of land either personally or through an agent or *servant*, see *NITEL Plc. v. Rockonoh Prop. Co. Ltd.* (1995) 2 NWLR (Pt. 378) 473; **Oke v. Oke** (2006) 17 NWLR (Pt. 1008) 224; **Okegbemi v. Akinto la** (2008) 4 NWLR (Pt. IC)76) 53. It has been described as nine-tenth of the law. A person in effective possession of land can sue trespassers thereon. In **Anyabunsi v, Ugwunze** (1995) 6 NWLR (Pt. 401) 255 at 268, Iguh, JSC, incisively, opined:

A landlord who collects rents from his tenants in respect of his piece or parcel of land is clearly of de jure; possession of such land even though he is not in physical occupation or de facto possession thereof.

See, also, **Udeze v. C;hidebe** (1990) 1 NSCC 114/ (1990) 1 NWLR (Pt. 125) 141/(1990)/SCNJ IC)4: **Tanko v. Uchendu** (2010) 18 NWLR (Pt. 1224) 253; *Onwubuari ri v, Igboasoiji* (201 1) 3 NWLR (Pt. 1234) 357; **Onovo v.**

Mba (2014) 14 NWLF{ (Pt. 1427) 391 ; *Ehwrudje v. Warri L. G.* (2016) NWLR (Pt. 1520) 337.

Generally, the law recognises three species of notices, *videlicet* . actual, constructive and imputed notices. Actual notice occurs when a person has actual notice of all facts of which he has or had actual knowledge notwithstanding the source of the knowledge. Constructive notice is the notice of fact which a person/party will be deemed to have acquired upon the making of the usual diligent proper and full enquiries in respect of interest in a property. Imputed notice arises when a purchaser, *for* instance, employs an agent, such as a solicitor, any actual or constructive notice which the agent receives/gains is attributed to him, see *Animashaun v. Olojo* (supra), *Jawa I v. Dunlong* (2003) 9 NWLFR (Pt. 824) 154; *Malami v. Ohikhuare* (2019) 7 NWLR (Pt. 1670).

At this juncture, it is apropos to pluck out, *ipsissirna verba* , from the record, the soul of the appeal, the lower couN's reasoning on this stubborn issue. At pages 512 and 513 of the record, the lower court, per A. O. Obaseki – Adejumo, JCA, found:

The 1st Appellant has denied any loan transaction between the parties and instead stood his grounds that the Respondent voluntarily entered into an outright sale of the property, he proceeded to back up his claims with Exhibits H, H1 and K, during his cross examination his evidence was not shaken, he said the Respondent was not under duress when he sold the property and that the late friend also sold his and has repurchased same. He agreed--that money lending was one of his businesses but he did

not have any dealing of such with the Respondent, there was an affidavit of sale on the 28th April, 2014 at the High Court and the Respondent agreed that he is a graduate so he was literate enough to have understood the implication of what he did.

These documents show that the transaction *for* sale of property was completed and title to property duly transferred. The implication of this is that there is no defence of fraud, illegality, duress or undue influence, he sold since a year ago and did not complain or raise any objection until the house was to be sold. There is no plea of the legal defences or particulars of such. These smacks of an afterthought. He can only bring an action for setting aside the sale to the 1st Appellant and the later sale to the 2nd Appellant.

An examination of the Exhibits reveal a due transfer and same was transferred to 2nd Appellant who was given the full documents amongst other title documents and same is conclusive.

It is trite that a court must give true effect to the plain language of the words use (sic) in the contract and the intention of parties. The court cannot read what is not in the contract; neither can extraneous words or oral evidence alter them.

At pages 514 and 515, His Lordship concluded:

The 1st Appellant has proved the sale and by virtue of these documents and hand over to the 2nd Appellant shown possession and the transfer of Exhibits k & k1. The issue of making inquiries from tenants or the Respondent himself are untenable in the light of Exhibits H, H1 & K (original title documents) in the hands

of the 1;^t Appellant not said to have been stolen, any reasonable man would presume it is genuine. Furthermore, there was no pleading on this and it goes to no issue, see **ATIVE v. KABAL METAL (NIG) LTD (2008) A FWLR (PT 430) 667.**

I am of the view that the 2nd Appellant is an innocent by stander.

It admits of no argument, deducible from the above extracts, that the lower court pegged its finding on the efficacy of exhibit H, H1 and K which are documents as ordained by the provision of section 258 of the Evidence Act, 2011. The judicial act was/is in consonance with the dictate of the law which gives the courts the nod to evaluate documentary evidence, see **Fagunwa v. Adibi** (2004) 17 NWLR (Pt. -90-3) 544. Indeed, the law, in order to banish injustice from its undeserved throne in the temple of justice, donates concurrent jurisdiction to this court and the lower court in evaluation of documentary evidence, see **Gonzee (Nig.) Ltd. v. NERD**(; (2005) 13 NWLR (Pt. 943) 634; **Olagungu u. Adesoye** (2009) 9 NWLR (Pt. 1146) 225; **Ilyuya v. Yorin** (2011) 10 NWLR (Pt.1254) 1:35; **Eyi bio v, Abia** (2012) 16 NWLR (Pt. 1325) 51 ; **Odutola v, Mabogunje** (2013) 7 NWLFR (Pt. 1354); **CPC v, Ombugadu** (2013) 18 NWLR (Pt. 1385) 66; **UTC (Nig) Plc. v. Lawal** (2014) 5 NWLF? (Pt. 1400) 221 ; **Ogundalu v, Macjob** (2015) 8 NWLR (Pt. 1460) 96; **Onwuzurike v, Edoziem** (2016) 6 NWLR (Pt. 1508) 215; **Ezechukwu v. Onwuka** (2016) 5 NWLR (Pt. 1506) 529, **C.K, & W./W. C. Ltd. v,**

Akingbade (2016) 14 NWLR (Pt. 1533) 487; **Emeka v, Okafor** (2017) 1 1 NWLR (Pt. 1577); 410; **Oko ro y, Oko ro** (2018) 16 NWLR (Pt. 1646) 506; **D.M .V (Ni 9) Ltd . v. NPA** (2019) 1 NWLR (Pt. 1652); **Olomoda v. M ustaph a** (2019) 6 NWLR (Pt. 1667) 36. 1 will harness from this co-ordinate jurisdiction in the appraisal of the legion of documentary evidence in the appeal.

Nota bene, the law bequeaths to the courts the unfettered latitude to read a document holistically so as to reach and garner harmonious results of its content, see **C)jokolobo v. Aremu** (1987) 3 NWLR (Pt. 61) 377/(1987) SCN J 98; **U nilife Dev, Co. Ltd. v. Adeshigbin** (2001) 4 NWLR(Pt. 707) 482; **ACB v. Apubo** (2001) 5 NWLR (Pt. 707) 482; **Mk>ani v. Bosi** (2006) 11 NWLR (Pt, 991) 400; **Bunge v, Gov. Rivers State** (2006) 12 NWLR (Pt. 995) 573; **Agbareh v. Minra** (2008)2 NWLR (Pt. 1071) 378; **Nigerian Army v. Ami nu-Kano** (2010) 5 NWLR (Pt, 1 188) 429; **BFI Group v. BPE** (2012) 18 NWLR (Pt. I:332) 209; **Julius Berger Nig. PLC. v. T.R.C.B. Ltd .** (2019) 5 NWLR (Pt. 1665) 219. For a good measure, in construing a document, the law compels the court to apply the literal rule as a canon of interpretation, *id est* , to accord the words employed therein their ordinary grammatical meaning without any lexical ornament that will befog its easy comprehension, see **UBN v. Ozigi** (1994) 3 NWLR (Pt. 333) 385, **UBN Ltd . v. Sax (Nig.) Ltd .** (1994) 8 NWLR (Pt. 361) 150; **Enilolobo v. N.P.D.C. Ltd .** (2019) 18 NWLR (Pt. 1703) 168.

I have, armed and emboldened by these hallowed principles of law, visited the record at the premises of exhibits H, H1 and K which monopolise the pages of the record passim. I have accorded them a panoramic examination with the finery of a toothbrush. Exultantly, they do not harbour any wooliness. In the recital zone exhibit H, a deed of conveyance, expresses the agreement/ consent of the appellant to meet and satisfy the desire of the first respondent to convey the disputed property to him free from all encumbrances. Expectedly, it houses a habendum clause which signifies the part of an instrument, such as a deed or will, which defines the extent and scope of the interest being granted and the conditions affecting the grant/disposition, see ***Anyaegbunam v. Osaka*** --(2000) 5 NWLR(Pt. 657) 386. In the--habendum clause, the appellant, in an unequivocal term, “as the Beneficial owners in undisturbed possession hereby CONVEY UNTO PURCHASER” the property in dispute “in freehold, free from all encumbrances whatsoever”. Therein, the appellant further allocated to the first respondent a blank power/right of enjoyment of the property without any disturbance from him or any person claiming through him. In the legal territory, the verb, “convey”, employed in the deed of conveyance, means “To transfer or deliver (something, such as a right or property) to another, especially by deed or other writing, especially, to perform an act that is intended to create one or more property interests, regardless of whether the act is actually effective to create those interests”, see Bryan A. Garner et alia (eds.) *Black’s Law Dictionary* , ninth edition (USA: West Publishing Co,

2009) Page 383.. Thus, by clint of exhibit H, the appellant granted a *carte blanche* transfer of his interest over the disputed property to the first respondent without any tinge of reservation or reversionary interest therein. By exhibit H, the appellant became destitute of any ota of interest in the property. As if that was not enough, the appellant, in his own volftion, concretised the first respondent's right over the property through the instrumentality of exhibit H1- affidavit of sale and change of ownership of the disputed property. Curiously, the appellant starved the court of the evidence of the oan application form and loan agreement, he signed with the first respondent, which he brandished and paraded in his statement of claim. Their presence would have neutralised the *effervescence* of exhibits H and H1. The corrosive effect comes to this. The transaction *inter* so over the property was a quintessence of an outright/absolute sale, not a loan contract. A sale is a transfer of a property or title for a price. Its elements are, *impri mis*: competent parties, mutual consent, a thing capable of being transferred and price in money-consideration. An absolute sale is one in which possession and title to the property pass to a buyer immediately upon completion of the bargain, see Bryan A. Garner, *Black's Law Dictionary, ibid*, 1454. Contrariwise, a loan signifies a sum of money lent to a borrower with interest, see ***Olo wu v. Building Stock Ltd*** . (2018) 1 NWLR (Pt. 1601) 343. It was crystal clear that the bipartite documents, exhibits H and H1, coronated the first respondent with the deserved insignia of a beneficial owner *vis-avis* the disputed properly. A beneficial owner is an

owner who enjoys completely or all the rights and privileges legally possible for an owner to have/possess in respect of a leased property, see **Alli v. Ikusebiala** (1985) 1 NWLR (Pt.4) 630 at 640.

As rightly observed by the lower court, parties are bound by the terms of their contract. That is an inelastic principle of contract law. In legal parlance, the duty of a court is to enforce the agreed terms of contract of parties. It is *ultra vires* its power to alter the terms of contract of parties as that will make mincemeat of sanctity and freedom of contract. In the absence of mistake, fraud, deception or misrepresentation, a party must obey terms of contract whether they are favourable, gainful, beneficial or hostile to his interest. In the Latin days of the law, it was couched in the abridged maxim: *Pacta sunt servanda* contracts that are not illegal or fraudulent must be observed, see **A-G., Rivers State v. A-G. Akwa Ibom State** (2011) 8 NWLR (Pt. 1248) 31. Exhibits H and HI sealed and displaced the appellant's right over the disputed property.

The record, the touchstone of the appeal, amply, demonstrates that the first respondent transferred his interest in the property, which he acquired through exhibits H and H1, to the second respondent. It stems from the foregoing highlights that the appellant's grouch about possession of the property and notice thereof on account of the tenants becomes a footnote. The second respondent derived his title from that of a beneficial owner – the first respondent. In the landscape of land law, the second respondent became a bonafide purchaser for value – one who bought in good faith,

honestly, without collision of being *partice ps fraudis* and upon a furnished consideration to the vendor, see *Animashaun v. Olojo. (supra)*; *Malami v. Ohikhuare (supra)*. It flows that the defences of possession and notice, which the appellant waved menacingly against the second respondent's acquisition of the property, are weak-kneed defences which fly in the face of law and evidence. This is more--go as exhibits H, H1 and K are documentary evidence. It is a common knowledge that in the pyramid of evidence, documentary evidence occupies an Olympian position. This is because, it is permanent, indelible and incorruptible unlike a parol testimony that oozes out of the vocal cord of man and susceptible to distortions by its author. The documents, with the absolute grants made by the appellant therein, castrate his case

In the light of this brief or juridical survey of possession and tenancy notices, conducted in due consultation with the law, the lower court's finding was an immaculate one. It is not offensive to the established land law jurisprudence as to stigmatise it with any of reprobation by this court. *Per contra* , I accord it an unfiltered confirmation. In consequence, I resolve the issue three against the appellant and in favour of the respondents.

it remains to thrash out the issue four. The focus of the issue is obedient to clarity. It queries the legality of the lower court's award of special and general damages in the absence of their proof. Simply put, the appellant's chief grudge was that there was no evidence before the lower court to predicate the award of special and general damages in favour of the

respondents. Etymologically, damages denote pecuniary compensation or recompense which the law awards to a person wronged for the loss or injury he has sustained by reason of an act, default or omission of a wrong doer whether that act or default or omission is a breach of contract or tort, see *Iyere v. B.F. F M Ltd* (2008) 18 NWLR (Pt. 1119) 300 at 345; *U kudie v. SPDCN* (1975) 8-11 SC 155 at 162; *Neka B.B.B. Mfg . Co. Ltd . v. A.CB. Ltd* (2004) 2 NWLR (Pt. 858) 521. The object of award of damages is to mitigate or assuage the loss suffered by the wronged party. They manifest in variegated forms.

For a balanced and dispassionate consideration, it is important to mine out the reasoning of the lower court before damnifying the appellant in damages. At pages 517 and 518 of the verbose record, the lower court, in its judgment that is the heat of decirnation, per A. O. Obaseki-Adejurno, JCA, found:

I have seen Exhibit K3; Solicitor's letter from John Ojoriko & Co dated 10th May, 2015 stating total legal fee for conduct of this action in the sum of N 3, 000, 000 (Three Million Naira). This is a form of proof of the fees, it is averred to in paragraph 15 of the counter claim and statement of oath. It is pleaded in this terms, therefore, I award the sum of N 3, 000, 000 (Three Million Naira) under special damages.

The sum of N 50, 000, 000 (Fifty Million) for general damages for bodily, emotional, physiological, trauma, embarrassment, humiliation and ridicule sought for in relief V, this is supported by paragraph 17 of the counterclaim of the 1st Appellant and statement of oath, the 1st Appellant is entitled to this, the nature of the claim of the Respondent and peculiarity of this matter I award in the sum of N5 Million.

On the 2nd Defendant/Appellant's counter claim, I adopt the evaluation earlier in this judgment. The 2nd Defendant/Appellant is an innocent bystander and upon the documents presented, bought and proceeded to commence renovation of the said property and evict the tenant. Having bought in lava, he can take decisions on the existing tenants as long as they are within the law. The 2^d Appellant's claim rests on the 1st Appellant. Having succeeded in his counter claim against the Respondent, the 2^d Appellant's title cannot be faulted. I grant reliefs 1 – 6 of the counter claims accordingly .

On relief 7; claim for a special and general damages for N20, 000, 000 (Twenty Million Naira). I have perused the statement of defence and counter claim together with the statement on oath and do not find a scintilla of proof of special damages....

**In the absence of any proof of special damages,
I make no award for special damages. On
general damages, it does not require strict**

proof. ... I award based on the paragraphs 8 and 9 of the 2^d Appellant's statement of defence and statement of oath the sum of N5 million.

The crux of the appellant's grouch was that the N3M solicitor's fee was not a grantable relief under the umbrella claim of special damages. To start with, special or particular damages are those damages which are the actual, but not necessarily, result of the injury complained of, but follow it as a natural and proximate consequence in a particular case, that is, by reason of special circumstances or conditions of a particular wrong, see **Ahmed v. CBN** (2013) 2 NWLR (Pt. 1339); **U.B.N. Plc v, Ajubule** (2011) 18 NWLR(Pt. 1278) 152 ; **Ajigbotosh o v. R. C. C. Ltd .** (2019) 3 NWLR (Pt. 1659) 287; **UBN Plc v, Nwankwo** (2019) 3 NWLR (Pt. 166C)) 474; **Ibrahim v. Obaje** (2019) 3 NWLR (Pt. 1660) 389; **Onyiorah v, Onytorah** (2019) 15 NWLR (Pt. 1695) 227. By their nature, special damages do not enure to the benefit a parly as a matter of course. They are not self-executory nor granted in an axiomatic manner.

Special darnages must be specially pleaded with particulars and strictly proved. By a strict proof, the law means that a party claiming special damages should establish his entitlement to them by credible evidence of such a nature/character that would suggest he is, indeed, entitled to them, see **Oshinjin rin v, Eljas** (1969) NSCC vol. 6, 95; **Cameroon Airlines y. Otutuizu** (2011) 4 NWLR (Pt. 1238) 512; **Neka B.B,B, IVtfg . Co, v. Ltd . A.C,B, Ltd.** (2004) 2 NWLR (Pt. 858) 521 ; **S.P.D.C. (Nig.) Ltd. v. Tiebo VII** (2005) 9 NWLR (Pt. 931) 439; **Gonzee (Nig,) Ltd . v. N .E.R.D.C.** (2005) 13 NWLR (Pt. 943) 634; **N,N.P.C. v. Klifco (Nig.) Ltd.** (2011) 10 NWLR (Pt. 1255)

209; *Ahmed v. CBN* (supra); *Ajagbe v. Idowu* (2011) 17 NWLR (Pt. 1276) 422; *Akinkugbe y. E.H, (Nig.) Ltd* . (2008) 11 NWLR (Pt. 1098) 375. Admission by an opponent party to special damages does not relieve a claimant from strict proof, see *S.P.D.C, (Nig .) Ltd. v. Tiebo VII* (supra); *Akinkugbe v. E.H. (Nig.) Ltd. (supra)*; *N.N.P.C. v. Klifco (Nig.) Ltd. (supra)*.

Now, the law on the grant of solicitor's fees is no longer in a state of fluidity. In *UBN Plc v. Chimaeze* (2014) 9 NWLR (Pt. 141 1) 166, one of the issues that greeted this court was the legality of an award of solicitor's fee. His Lordship, M.D. Muhammad, JSC, at page 184 and 188 thereof, after outlining the illuminating finding of the Court of Appeal, insightfully, declared:

The foregoing finding of the lower court given the pleadings and the testimony of PWI, the respondent/cross appellant, as well as exhibit MOC.7 is unassailable. The N250,000.00k naira claimed was not only specifically pleaded but, from the available evidence, clearly proved....

In the ca-se at hand, appellant's contention that the lower court's (page 44 missing)

(2018) 6 NWLR (Pt. 1616) 479; *ojobo v Iloro* (2019) 17 NWLR (Pt. 1700) 166. This state of the law clearly punctures and disables the appellant's scintillating argument on this knotty point. It cannot fly. The corollary is obvious. The lower court did not, in the least, treat the law with disdain and

contempt, in the award of the solicitor's *fee* , that will compel this court to crucify the impeachable finding .

The second limb of the appellant's complaint is a derision of the award of general damages of N10rn in favour of the respondents. The contention of the appellant was that the respondents did not merit the award. General damages are those damages that the law presumes as flowing from the wrong complained of by the victim. They need not be specifically pleaded and strictly proved, see *U.B.N. Plc v. Ajabule* (2011) 18 NWLR (Pt. 1278) 152; *Neka B.B.B. Mfg. Co. Ltd. v. A.C.B. Ltd. (supra)*; *Ajigbotosho v. R. C. C. Ltd.* (2019) 3 NWLR (Pt. 1659) 289; *UBN Plc v. Nwankwo* (2019) 3 NWLR (Pt. 1660) 474; *Ibrahim v. O baje* (2019) 3 NWLR (Pt. 1 160) 389; *Onyiora h v. Onyiorah* (2019) 15 NWLR (Pt. 1695) 227. It is at the discretion of the court to award general damages, see *Cameroon Airlines v. Otutuize (supra)* ; *Ahmed v. CBN* (2013) 2 NWLR (Pt. 1339); *Unity Bank Plc v. Ahmed* (2020) 1 NWLR (Pt. 1705) 364. In this wise, the nagging question, which begs for an answer,-- is this: did the lower court exercise its

discretion properly in awarding the general damages? This poser is a mild summon on this court to indulge in the navigation of the undulating forensic contours of discretionary power of court in relation to the award of general damages.

In the legal province, discretion signifies: the right or power of a *Judex* to act according to the dictates of his personal judgment and conscience

uninfluenced by the judgment or conscience of other persons, see *Suleiman v. C.O.P., Plateau State* (2008) 8 NWLR (Pt. 1089) 298, *AJuwa v. S.P.D.C.N. Ltd.* (2011) 18 NWLR (Pt 1279) 797; *NJC; v. D akwang* (2019) 7 NWLR (Pt. 1672) 532; *Nzekwe v. Anaekwenegbu* (2019) 8 NWLR (Pt. 1674) 235; *Adeniyi v. Tina George Ind. Ltd .* (2019) 16 NWLR (Pt. 1699) 560. An exercise of discretion does not grant the court the unrestrained liberty to act arbitrarily or capriciously. Contrariwise, it gives it the attitude to act judicially and judiciously, see *Sh ittu v. PAN Ltd* , (2018) 15 NWLR (Pt. 1642) 195; *APG A v. Oye* (2019) 2 NWLR (Pt. 1657) 472, *Aden iy i v. Tina George Ind. Ltd.* (supra). To act judicially means that a court is bound by the rules and principles of law and not to act arbitrarily or capriciously. It is not an indulgence to romance with judicial whims, but the exercise of judicial judgment, based on facts and guided by law or the equitable decision of what is just and proper under the circumstances. On the other hand, to act judiciously imports the consideration of the interest of contending parties and weighing them in order to arrive at a just or fair decision, see *Babat uncle v. P .A.S & T.A Ltd* . (2007) 13 NWLR (Pt. 1050) 113.

Remarkably, in the wide residence of discretion, previous decisions are not of much relevance. The reason is not far-fetched The facts and circumstances of two cases are not always *in p ari m ateri a* . A court of law is not, willy-nilly, bound by a precedent in an earlier decision as that will be akin to a strangulation of an exercise of discretion. It can only use such decisions as guidelines, see *Abacha v. State* (2002) 5 NWLR (Pt. 761) 638;

Bamaiy i y, State (2001) 8 NWLR (Pt. 715) 270; **Suleiman v. C,O.P.**, **Plateau State** (supra); **Babatunde v. P.A.S. & T.A. Ltd.** (supra); **Oyegun v. Nzeri be** (2010) All FWLR (Pt. 542) 1612; **Regt. Trustees, P.C.N. v. Etim** (2017) 13 NWLR (Pt. 1581); 1 **NJC v. Dakwa ng** (supra); **Adeniyi v. Tina George Ind. Ltd.** (supra). An appellate is loath to interfere with an exercise of discretion save where it is wrongly exercised, *id est*, tainted with irregularity, irrelevant or extraneous matters or is a de Element of the law, or in the interest of justice, see **Ajuwa y. S.P.D.C.N. Ltd** (supra); **T,S.A. Ind. Ltd . v. I(ema in v. Ltd** (2006) 2 NWLR (Pt. 964) 300; **Dick v, Our and Oil Co. Ltd .** (2018) 14 NWLFR (Pt. 1638) 13; **FRN v, Yahaya** (2019) 7 NWLR(Pt. 1670) 85; **Nzekw e v. Anaekwenegbu** (supra); **Takoh v. MTN (Nig) Comm. Ltd .** (2019) 10 NWLR (Pt. 1679) 23; **Ogunpehin-v. Nuclus Venture** (2019) 16 NWLR {pt. 1699} 533.

In paying due homage to the injunction of the law, I have given an indepth study to the lower court's judgment, sought to be creamed, wrapped between pages 470 – 525 of the windy record, particularly the portion exhumed supra, which concerns award of general damages. In my hurnble view, the lower court deployed the guiding principles in the award of general damages as decreed by the outlined oracular authorities as the barometer to gauge their assessment, The first respondent pleaded and testified that the appellant's suit subjected him to bodily and emotional psychological trauma, embarrassment, humiliation and ridicule. Interestingly, the law allows for damages for non-fiscal loss, pains,

sufferings, injury, mental feelings and discomfort even when they are not monetarily quantified, see **Eseigbe v, Agholor** (1993) 12 SCNJ 82; **Ighreriniowo v. S. C. C. (Nig.) Ltd .** (2013) IC) NWLR (Pt. 1361) 138; **Muhammad v. IGP** (2019) 4 NWLR (Pt. 1663) 492. The foregoing solidifies the legality of the lower court's award of the N1 0 million general damages. In essence, there were a flood of facts and classic evidence upon which the lower court propagated the award. Put bluntly, the award was well designed and tailored through the lens of the law. In the same vein, it took care of the competing rights of the warring parties to justice in the, highly, contested suit. Put the other way round, it was a judicious award. In the aggregate, the lower court acted judicially and judiciously and did not fracture the law on exercise of discretion. In sum, the lower court's exercise of discretion was not injudicious nor was it guilty of any of the negative elements that will compel an appellate court to interfere with it

In the spirit of *ex abundant S cautela*, this issue is the appellant's disguised invitation to this court to interfere with the award of damages. An appellate court does not usually interfere with award of damages unless: (a) the trial court acted under a mistake of law; or (b) where the trial court acted in disregard of some principles of law; or (c) where the trial court acted under misapprehension of facts; or (d) where it has taken into account irrelevant matters or failed to take into account relevant matters; or (e) where injustice would result if the appellate court does not interfere; or (f) where the amount awarded is ridiculously low or high that it must have been a wholly

erroneous estimate of the damages, see **SPDCN** v. *Tiebo* (supra); *Cameroon Airlines v. Otutuizu* (supra); *British Airways v. Atoyebi* (2014) 13 NWLR (Pt. 1424) 253; *Agu v. General Oil Ltd* . (2015) 17 NWLR (Pt. 1488) 327.

My noble Lords, I just catalogued the circumstances under which an appellate court is showered with the jurisdiction to interfere with an award of damages. I had just found that the lower court paid due loyalty to the law when it awarded the damages in the case. As shown earlier, the lower court did not offend the law nor ignored its principles in the award. It was not mistaken as to the facts. It never patronised matters alien to the case in its assessment of the damages. The progeny is that no injustice will arise if an appellate court fails to intervene in the awards. On the quantum of the damages, the appellant, for reasons best known to him, made no case for mitigation of damages before the lower court or this court. It, therefore, denied the court, to his detriment, of the necessary facts and evidence that would have stimulated this court to prune down the damages. At any rate, the seemingly mountainous sum of #10m awarded to the respondents will, in terms of value, take to flight when funnelled and emptied into the economy that is marooned in the murky ocean of galloping inflation. It is, therefore, a minuscule sum in the commercial landscape. In a nutshell, the lower court was/is not guilty of any of the circumstances, calibrated above, as to magnet the reprobation of this

court and propel it to tamper with the award of damages. It will, therefore, tantamount to a transgression of the law to intervene with the award.

Flowing from the foregoing *tour d'horizons* on award of special and general damages, the lower court's findings, scooped above, do not constitute any enmity with the law. They are not enveloped in the thick fog of improper evaluation of the evidence presented before the trial court and enshrined in the binding record .

Hence, I dishonour the appellant's salivating invitation to sacrifice the lower court's award of special and general damages to respondents on the undeserved altar of perfunctory evaluation on account of paucity of evidence. In the end, I have no choice than to resolve the issue four against the appellant and in favour of the respondents .

On the whole, having resolved the four issues against the appellant, the destiny of the appeal is obvious. It is bereft of any shred of merit and deserves the reserved penalty of dismissal. Consequently, I dismiss the appeal. Accordingly, the decision of the lower court, in Appeal No. CA/AS/297/2019, delivered on the 8th September, 2021 , which set aside the decision of the trial court, in Suit No. OUHC/26/2015, delivered on the 21st February, 2019, is, hereby, affirmed. Appeal dismissed.

JAURO, JSC. : I have read in draft the judgment just delivered by my learned brother, Obande Festus Ogbuinya, JSC. I agree with the

reasoning and conclusion contained in the judgement, which I adopt as mine. For the sake of emphasis, I wish to address the Appellant's contention that the award of general and special damages by the lower court amounted to double compensation .

Double compensation occurs where a party who has been compensated under one head of damages for an injury or loss suffered is awarded damages another head in respect for the same injury. While such a party may be entitled to damages against the party whose act led to the injury, he is not entitled to be compensated under two distinct heads of damages. In essence, the law guards against and frowns upon double compensation. This is known as the rule against double compensation. The aim of the rule is to guard against fraud, to guard against the enthronement of bad faith in litigation, to prevent unjust enrichment where a party is awarded more than he is entitled to *for* a loss or injury suffered and to prevent parties from leveraging a loss suffered for excessive financial advantage. See **THOMPSON & ANOR V. AKINGBEHIN (2020) LPELR – 58287 (SC); MABAMI JE V. aFro (2016) LPELR – 26058 (SC); AGU V. GENERAL OIL LTD C2015) LPELR – 24613 (SC); BRITISH AIRWAYS V. ATOYEBI (2014) LPELR – 23120 (SC); KOPEK CONSTRUCTION LTD V. EKISOLA (2010) LPELR – 1703 (SC).**

Notwithstanding the foregoing, the award of general damages and special damages to a party does not automatically amount to double compensation. Award of both heads of damages may or may not amount

to double compensation depending on the facts and circumstances of the case. Where a party who specifically pleads and strictly proves his entitlement to special damages *for* a loss or injury is also able to prove that he suffered some other loss, which entitles him to general damages, the court can award him both special damages and general damages and that would not amount to double compensation. Where a party is also able to show or where it is glaring from the surrounding circumstances of the case and nature of injury suffered by the party that special damages would not adequately compensate for all the loss suffered, general damages can be lawfully awarded. See **MEKWUNYE V. EMIRATES AIRLINES (2019) 9 NWLR (PT. 1677) 191; ODINAKA & ANOR V. MOGHALU (1992) LPELR – 2222 CSC**).

In the instant case, award of special damages to the 1* Respondent was for solicitor's fees. This is completely different from and not related to the award of general damages for bodily, emotional, psychological trauma, embarrassment, humiliation and ridicule, as claimed by him. Hence, his argument that the award of both general and special damages amounted to double compensation is unsound considering the facts of this case and it cannot fly. The award made by the lower court was appropriate in the circumstance.

For the above and the fuller reasons given by my learned brother, I also dismiss the appeal. I make no order as to costs.

ASEIMO, JSC. : I had a preview of the judgment just delivered by my learned brother, Festus Obande Ogbuinya, JSC. My Learned brother has given very robust reasons for dismissing this appeal. I agree with the reasons and conclusions in the lead judgment.

On Issue 1, the learned counsel for the appellant argued that out of the 16 grounds of appeal, filed in the Court of Appeal by the respondents, “grounds 1 to 15 of the said grounds are without particulars and therefore incompetent”. The respondents’ notice of appeal, filed in the lower court, spans pages 336 to 358 of the record of appeal, and ground one therein is hereby reproduced:

GROUND ONE: MISDIRECTION ON FACTS

The learned trial Judge misdirected himself **on the facts when he held that:**

“Also if the previous transaction is not a money lending transaction but was a different sale why did the 1st defendant deny the signature on that previous sale that was not completed? Also the two friends entered the transaction with the 1st defendant the same date, but the 1st defendant admitted in this court that on

January 2015 the claimant's friend Rufus Onaimoh paid in N2,000,000.00 (Two Million Naira) into his account, another question is that if it is an outright sale why will he deposit N2,000,000.00

(Two Million Naira) into the 1st defendant account and the claimant averred that he has the hint that the defendant wanted to (sic to) sell his house. All these has (sic have) cast doubt in the mind of the court as to whether the transaction between the claimant and the 1st defendant was an outright sale, the 1st defendant was never put in possession of the building of the claimant." and thereby occasioned a grave miscarriage of justice on the Appellants.

PARTICULARS OF MISDIRECTION

1. The learned Trial Judge had already held at page 56, paragraph 3 of the judgment that it is clear from the oral and documentary evidence of the 1st defendant that the sale of the particular completed building was done on 25/4/2014 and to the 1st defendant it was an **outright sale with the document executed in his favour.**
2. There was uncontroverted evidence led by the 1st Appellant herein before the Trial Court that the previous transaction between the 1st Appellant and the Respondent was not a money lending transaction but was an outright sale transaction which was not completed by the parties.
3. There was uncontroverted evidence led by the 1st Appellant herein before the Trial court that the Claimant's friend – Rufus Onaemo also entered into a separate transaction with the 1st Appellant and sold his house, a bungalow situate near Alegbo-Ugbomro Road, Okoribi Town of Effurun in Uvwie Local Government

Area, Delta State to the Appellant on 25th April, 2014 or thereabout in the sum of Ng,900,000.00 (Nine Million, Nine Hundred Thousand Naira only).

4. There was uncontroverted evidence led by the 1st Appellant herein before the Trial Court that that the Claimant's friend – Rufus Onaemo later approached **the 1st Appellant to re-purchase the said bungalow** from the 1st Appellant at an agreed price of N12,000,000.00 (Twelve Million Naira Only).
5. There was also uncontroverted evidence led by the 1st **Appellant herein before the Trial Court that that on 23rd January, 2015 the Claimant's friend – Rufus** Onaemo paid the sum of N2,000,000.00 (Two Million Naira Only) into the account of the 1st Appellant in **furtherance of that agreement to repurchase the said** house from the 1st Appellant.
6. EXHIBIT "E" is the photocopy of the United Bank For Africa (U. B. A.) Plc Instant Transfer Receipt made on 23rd January, 2015 into the 1st Appellant's account.
7. **There is absolutely nothing in EXHIBIT "E", which is the** photocopy of the United Bank For Africa (U.B.A.) Plc Instant Transfer Receipt made on 23rd January, 2015, to suggest even in the remotes sense; that the Respondent jointly paid the sum of N2,000,000.00 (Two Million Naira Only) with Rufus Onaemo into the account of the 1st Appellant.

8. **At lines 6-9 of page 53 of the said judgment, the Trial Court** rightly found and held thus:

“Again claimant said a part payment of two million naira (2,000,000.00) was paid into 1st defendant's bank account, no receipt was also issued to the claimant and **he did nothing about it. I am afraid claimant has not** adduced cogent and convincing evidence on the loan transaction .”

9. As at when the Respondent claimed to have gotten the hint that the 1st Appellant wanted to sell his house in dispute, the 1st

Appellant had already sold the hose to the 2^d Appellant in exercise of his right of ownership of the said house."

A cursory reading of the above ground of appeal shows that there are elaborate particulars lucidly supporting the alleged misdirection complained of by the respondents. The main aim of a ground of appeal is ensure that, by it, a respondent is given adequate information or notice of the appellant's complaint, so that the respondent is not taken by surprise. See **Tavershima M. Hambe v. Agber Hueze** (2001) 4 NWLR (Pt. 703) 372 and **Prince Adebayo Sosanya v. Engineer Adebayo Idowu Onadeko (2005)** 8 NWLR (Pt. 926) 185.

In this case, all the 15 (fifteen) grounds of appeal, complained of by the appellant, had clear and precise particulars buttressing them. The lower court, in the lead judgment, was right when it found and held, *inter alia*, as follows:

"I have examined the first complaint; grounds 1- 15 and find that the particulars are supplied and the ground is one of facts. It provides the extracts of the judgment complained about, and specific findings which conflict with the conclusion of the judgment.

The particulars specify and highlight the particulars facts of finding the lower court made before arriving at the alleged misdirection."

The appellant's purported preliminary objection was rightly dismissed by the lower court.

Under the third issue for determination, the learned counsel for the appellant contended that the respondents had notice of encumbrance of the property in dispute through the appellant's tenants. With respect, the evidence that there were tenants on the property would not qualify as a sufficient notice of encumbrance on the property. The alleged tenants were lawful tenants of the appellant and they were not claiming ownership of the property adverse to that of the appellant. Like buyer of a company who buys same with its liabilities, so is a Jyer of a house deemed to have bought it with the tenants therein. For the avoidance of doubt, the law is that:

"The purchaser of a company buys its assets and liabilities."-

per **Rhodes-Vivour, JSC; in the case of A. O. Afolabi & Ors.v. Western Steel Works Limited & 2 Ors.** (2012) 17 NWLR (Pt. **L329**) **286 at 303.**

In the circumstances of this case, the property in dispute was duly sold and transferred by the appellant to the 2^d respondent in accordance with due process of law.

It is for the few foregoing reasons and the very comprehensive reasons advanced in the lead judgment that I also dismiss this appeal.

I abide by the consequential orders made by my learned brother.

Appeal dismissed.

ABUBAKAR, JSC. : I have had the advantage of reading in advance the draft of judgment just delivered by my learned brother **Ogbuinya, JSC.** His opinions on all the issues for determination in this appeal accord with mine and I adopt his opinions lucidly set out in the said judgment as mlrle.

One of the issues for determination in this appeal is whether in the absence of proof of special damages or breach of contract was not in error, when it awarded special and general damages to the respondents. The appellant urged this Court to set aside the award of damages to the 2^d respondent. Let me hasten to state that special damages by its nature must be specifically pleaded and strictly proved, see **Okunzua v Amosu & Anor (1992) LPELR-2531(SC)**. However, general damages are largely awarded by the discretion of the Court following the quantum of injury suffered by the Claimant. See **Elf Petroleum v u,nah & o,s (2018) LPELR - 43600 (SC)**; **Akinterinwa v Oladunjoye (2000) 1 NWLR (Pt. 659) 93**; **UBN Plc v Ikwen (2000) 3 NWLR (Pt. 646) 223**.

There is no doubt that the 1st Respondent specifically pleaded the special damages that it was the cost of his legal *fees* and this was proved by Exhibit K3, a letter from the 1st Respondent's solicitor wherein the cost of the litigation is contained. I do not have any objection against this and I also hold that that the lower Court was right to have granted same.

Also, on the award of general damages, the Court of Appeal and indeed the Supreme Court are often reluctant to interfere with the award of damages prescribed by the discretion of a trial Court except where the trial Court acted in disregard to principles of law or misconstrued facts. See **Odogu v A.G Federation & Ors (1996) LPELR-2228 (SC); Ighreriniovo v SCC Nigeria Ltd & Ors (2013) LPELR-20336 (SC)**. In this case, I am also persuaded that the lower Court was right in awarding the general damages of #5 Million each to the Respondents. The Respondents, particularly the 1st Respondent highlighted the embarrassment , humiliation and emotional trauma he suffered by reason of the spurious and specious claims of the Appellant. On this score, I will also align myself with the decision of the lower Court in awarding this general damages.

In conclusion, I also dismiss this appeal in its entirety for lacking in merit.

Appeal Dismissed.

GARBA, JSC. : The Leading Judgment written by my Learned Brother, O. F. Ogbuinya, JSC in this appeal, a draft of which I read, fully represents all the views unanimously expressed at the conference of the Hon. Justices over the appeal, on the four (4) issues submitted by the Appellant for decision by the court. The comprehensive consideration of all the material points canvassed by the learned counsel for the parties in their respective briefs leaves nothing useful to be said or added on the issues in the appeal and so I join the Leading Judgment in dismissing the appeal for being grossly devoid of merit.

