

**SUPREME COURT OF NIGERIA**  
14TH MARCH, 1997. SC. 39/1989  
**CORAM:- M.E. OGUNDARE, E. O. OGWUEGBU, S. U. ONU,**  
**Y. O. ADIO, A. I. IGUH, JJSC.**

PATRICK CHIEKE ..... APPELLANT  
AND  
IYABO OLUYEMISI OLUSOGA & ANOR ..... RESPONDENTS

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**CONTRACTS** - *Discharge of a contract - Where unilateral - It has to be under seal - Or some valuable consideration has to be given.*

**CONTRACTS** - *Accord and satisfaction principle - Agreement of plaintiff to pay some amount towards the discharge of a contract - Where not complied with - It is tantamount to an accord without satisfaction.*

**LAND LAW** - *Sale - By an agent wife of the owner - Whether there was express authority - To sell the land in dispute.*

**LAND LAW** - *Statutes of fraud - And similar legislations - Court will not allow a plaintiff - Make fraudulent use of the statute.*

**LAND LAW** - *Lease - Consent of the family - Whether required in this case - For a valid assignment of the lease.*

**FACTS**

Before the Lagos High Court, the plaintiff/appellant filed an action against the defendants/respondents built upon unlawful possession and sought an injunction to restrain the defendants from further trespass. Plaintiff left Lagos between 1966 and 1970 during the Nigerian Civil War. He left behind his family and some of his landed property. Plaintiff came back to Lagos in February to find the defendant in occupation of the house in dispute. Defendants claimed the land was sold to them by the plaintiff's wife on the authority of the plaintiff.

At the conclusion of trial, the trial court dismissed the plaintiff's claim. His appeal to the Court of Appeal was also dismissed. Being dissatisfied plaintiff has further appealed to the Supreme Court raising 4 questions.

**ISSUES FOR DETERMINATION**

"(i) *Did the obligation or alleged obligation of the plaintiff to sell or convey the property in dispute to the Defendant continue in force after the plaintiff had executed and delivered a promissory note to refund the pur-*

*chase price to the Defendant who accepted the same and retained it.*  
Etc, see p. 552

**HELD** (Unanimously dismissing the appeal per lead judgment of **OGWUEGBU JSC**)

**Discharge of a contract**

1. In this case, the original contract was wholly executed by late Olusoga by paying the purchase price of N1,500.00. If Olusoga were merely to agree that the original contract should be discharged and the plaintiff released from the obligation of repayment of N1,500.00, he would receive nothing of value in exchange. The plaintiff in such a case would have neither suffered a detriment himself nor have conferred an advantage upon Olusoga. It will be a unilateral discharge and will be ineffective unless it is made under seal or unless some valuable consideration is given to Olusoga. (p. 553 G)

**Accord and satisfaction principle**

2. Exhibit "E" was made on 23:2:70. The plaintiff filed the action leading to this appeal on 3:1:72. the plaintiff did not repay the said sum of N1,500.00 even up to 3:1:72 when this action was instituted or thereafter. This is an accord without satisfaction. On a proper construction of Exhibit "E", it cannot be said that what Olusoga accepted in satisfaction is merely the plaintiff's promise to repay and not the repayment of the purchase price of the property. Were it so, the original contract would have been discharged from 23:2:70. The consideration in Exhibit "E" is not a promise for a promise. I am therefore of the respectful view that Exhibit "E" has not the effect of extinguishing the original contract for sale of the disputed property. (pp. 554 D & 555 A)

**Sale - By an agent wife of the owner**

3. It is plain from the concurrent findings of the courts below that P.W.3 had express authority to sell the four properties on behalf of the husband and No 71, Orodu Street is one of them. This conclusion is gathered from the whole evidence and all the surrounding circumstances of the case. I find myself in complete agreement with the concurrent findings made by the courts below that P.W.3 had the authority of the plaintiff to sell the property in dispute. Assuming there was no written authority which is not the case here, a contract for the sale of land made by an agent will be enforced, although the agent be appointed merely by parole. I therefore hold that the contract is binding on the plaintiff. (p. 556 A)

**Statutes of Fraud - Fraudulent use thereof**

4. The plaintiff is trying to hide under the provision of Section 5(2) of the Law Reform (Contracts) Law of Lagos State because P.W.3 (his agent) did not sign Exhibit "M". I think this is an attempt to make that law an instrument of fraud. This court will not allow the plaintiff make fraudulent use of this legislation and take advantage of his own fraud. The courts have always interfered against any party who attempts to make the Statute of Frauds, 1677 and similar legislations an instrument of fraud. (p. 556 H)

**Lease - Consent of the family**

5. It is the assignment of the interest of the lessee (tenant) of Ojora Chieftaincy family land to late Olusoga that is in issue here. There is no evidence before the court of trial that in the conveyance between Ojora Chieftaincy family and the plaintiff, there is a covenant not to assign without the consent of the Ojora Chieftaincy family. Even if there is such a covenant, it is the Ojora family that will complain and not the plaintiff. The consent of the Ojora family is not therefore a condition for a valid transfer of the interest of the plaintiff to Olusoga. (p. 557 C & G)

**NOTABLE POINT OF INTEREST****OGWUEGBUJSC***1. How parties may agree and terminate their contract*

By express agreement, parties may agree that their contract shall be terminated and in that case their respective obligations are to be totally or only partially discharged depending upon the terms of the agreement. If the original contract is wholly or partially executory, the consideration for the discharging agreement is the mutual release of liability; but if it has been completely performed by one party, his discharge of the other must be under seal or must take the form of an accord and satisfaction supported by a fresh consideration. (p. 553 F)

**REPRESENTATION**

Mrs. Abimbola Williams with Ebo Maduforo Esq., for the Appellant  
Agbo Igbintade for the Respondents

**CASES REFERRED TO**

Coker v. Ajewole (1976) 1 All N.L.R. 178 at 183  
Skenconsult Nig Ltd. v. Ukey (1981) 1 S.C. 6 at 9  
Heard v. Pilley (1868/69) L.R. Ch. App 548  
Mestaer v. Gillespie (1805) 11 Ves. 622 at 628

Solomon v. Mogaji (1982) 11 S.C. 1  
 Adejumo v. Ayantegbe (1989) 2 NSCC 444  
 Amida v. Oshoboja (1984) 7 S.C. 68 at 80  
 Oke v. Atoloye (1986) 1 N.W.L.R. (Part 15) 141  
 Adeyeri v. Atanda (1995) 5 KLR 1174

B

**STATUTES REFERRED TO**

Law Reform (Contracts) Law Cap. 66 Laws of Lagos State s. 5(2)

Evidence Act s. 12(b)

Law of property Act, 1925 of England s. 40(1)

C Statute of Frauds 1677 s. 4

**LEAD JUDGMENT BY OGWUEGBU JSC**

This is an appeal against the decision of the Court of Appeal, Lagos Division which affirmed the decision of Oguntade, J. as he then was in a civil D action filed by the plaintiff against the defendants.

The plaintiff who is the appellant herein filed a civil action against the defendants. The claim as stated in paragraph 18 of the Amended Statement of Claim reads:

E ally: “18. The plaintiff claims against the defendants jointly and sever-

(1) For loss of use at the rate of N10.00 (Ten Naira) per month per room for the period during which the defendants are found to be in unlawful possession until they give up such damages in trespass to the plaintiff’s property situate lying and being at No. 71, Orodu Street, Ajegunle, Apapa.

F (2) Injunction restraining the defendants their servants and agents from further acts of trespass on the aforesaid property.”

The original defendant was one Mr. John Olusoga who died on 13:4:72 after pleadings were ordered, filed and exchanged but before hearing commenced. Following applications made to the trial court, Iyabo Oluyemisi G Olusoga and Ibironke Olusoga were substituted in his place by the orders of that court.

The plaintiff who is of Igbo origin was one of the numerous Easterners who fled Lagos to Eastern Nigeria during the national crises and civil war between 1966 and 1970. He had been living in Lagos for over twenty years H before the crises. On or about August, 1966, he left Lagos for his home town leaving behind in Lagos his family and four houses at 28, Uzor Street, 58, Abukuru Street, 71, Orodu Street and 80, Orodu Street all in Ajegunle. On his return to Lagos in February, 1970, he found that John Olusoga, the original defendant was in occupation of No. 71, Orodu Street. He latter claimed that he

purchased the property in 1966 from the plaintiff's wife who sold it to him on the authority of the plaintiff. He eventually instituted the proceedings leading to this appeal. The defendants/respondents were substituted as his successors in title.

At the conclusion of hearing, the learned trial Judge in a considered judgment, dismissed the claim of the plaintiff. The plaintiff's appeal to the Court of Appeal was unsuccessful hence a further appeal to this court.

From the issues joined in the pleadings, it appeared to the learned trial judge that the main issues calling for his decision are:

*"(a) Was the building, sold to the defendant's predecessor JOHN OLUSOGA and if yes?*

*(b) who sold the building and under what circumstances?*

*(c) Was the sale of the building authorized by the plaintiff?"*

*On the above issues, he found as follows:*

*"From the evidence before me, and upon a reflective and careful consideration of the circumstances surrounding the sale of the building I find as a fact that it was P.W.3 who not only sold the building but carried out the negotiations preparatory to the sale, superintended same and introduced late John Olusoga to tenants in the building. I find as a fact that the purchase price N1,500.00 was paid to P.W.3 and that it was part of her attempt to disguise that fact that she instructed P.W.1 to issue and sign Exhibit "M" I find as a fact that D.W.1 sent original of Exhibit "H" to P.W.3 so that P.W.3 could come and sell plaintiff's buildings. I find as a fact that D.W.1 only assisted P.W.3 innocently and a relation to prepare and issue the receipt Exhibit "H" (sic) to John Olusoga. In making the above findings of fact I have given consideration and balanced against each other the story as presented on the point by both the plaintiff and the defendants. ....*

*In Exhibit "E" the plaintiff acknowledged that P.W.3 and his relation one Sylvanus Chieke sold the building to John Olusoga. He undertook to refund the said purchase price N1,550.00 as soon (sic) possible. P.W.1 was present when plaintiff signed and gave Exhibit "E" to John Olusoga. .... It is quite clear to me that what Olusoga was insisting on was the refund of his money before he handed over the building for handling over the documents could not by itself alter the fact that plaintiff was out of possession and Olusoga was in possession. .... That document is plaintiff's document and act."*

The court below found that the above conclusions of the learned trial judge could not be faulted and dismissed the plaintiff's appeal. In his brief of argument, the plaintiff submitted the following questions for determination in the appeal;-

"(i) *Did the obligation or alleged obligation of the plaintiff to sell or convey the property in dispute to the Defendant continue in force after the plaintiff had executed and delivered a promissory note to refund the purchase price to the Defendant who accepted the same and retained it.*

(ii) *Whether the finding of the courts below that the plaintiff's wife was the agent of the plaintiff (with power to sell the property in dispute) can be supported.*

(iii) *Whether the alleged sale or agreement to sell the property in dispute to the deceased defendant Olusoga was valid in the absence of proof of the consent of the Ojora Chieftaincy family, to the transaction.*

(iv) *Whether the right to title and interest of the plaintiff to the ownership and possession of the property in dispute is capable of being divested from him without the existence of a memorandum in writing which satisfied the requirements of section 5(2) of the law Reform (Contracts) law, Cap.66 Laws of Lagos State."*

The defendants/respondents adopted the above issues for determination in their brief of argument.

It was contended in the appellant's brief that there was a meeting between the plaintiff and the late John Olusoga in the house of pathfinder Bamodu (D.W.4) to resolve the dispute arising over the claim by John Olusoga that he had bought No. 71 Orodu Street and at that meeting Exhibit "E" was signed by the plaintiff and delivered to John Olusoga who accepted it and that the courts below treated Exhibit "E" as an admission by the plaintiff of the defendant's averment that Regina Chieke (P.W.3) was an agent of the plaintiff to sell the property in dispute. It was further contended that the courts below failed to consider the legal consequence of Exhibit "E" made by the plaintiff and delivered to the late Olusoga.

It was submitted that a calm reflection of the contents of Exhibit "E" will show that the plaintiff was in effect procuring or purchasing his release from an obligation to sell or convey the property at 71 Orodu Street to the defendant by his promise to refund the sum of N3,000.00 (N1,500) to the defendant. It was further submitted that Exhibit "E" has the effect of dissolving and discharging the contract for sale of the disputed property leaving the plaintiff with the obligation arising from Exhibit "E". In other words, the principle of accord and satisfaction applied. The case of British Russian Gazette Ltd. V. Associated Newspapers Ltd. (1933) 2 K.B.D. 616 at 643 and 644 was cited.

It was argued in the defendants' brief that Exhibit "E" did not discharge the plaintiff from his obligation to sell and convey the property in dispute to the defendant or his successors-in-title (the respondents in this

appeal). It was submitted that a valid contract between the parties may be discharged by performance, by express agreement, by the doctrine of frustration or by breach. The cases of British Russian Gazette Ltd. v. Associated Newspapers Ltd. (supra), Coker v. Ajewole (1976)1 ALL N.L.R. 178 at 183 and Skenconsult (Nig) Ltd. v. Ukey (1981)1 S.C. 6 at 9 were referred to. It was further submitted in the respondents' brief that: B

*"Exhibit "E" as an Accord presupposes the validity of the earlier contract of sale of the property in dispute, because if the original contract is void then the later contract based on it is itself void:- Skenconsult (Nig.) Ltd. & Ors. v. Secondary Ukey (1981)1 S.C.6 at page 9. Exhibit "E" admits that the defendant had carried out the obligation imposed on him by the earlier contract, the Purchase Price had been fully paid. This is a valuable consideration for the original contract of sale of 71 Orodu Street, Ajegunle, to the late John Olubi Olusoga; and in order to make the second contract the accord and satisfaction enforceable at law, consideration must flow from the party seeking to enforce the agreement. In other words the plaintiff must have performed his party of the agreement that is, by making a refund to the respondents of the purchase price for the house, - No. 71 Orodu Street, Ajegunle - Coker v. Ajewole (1976)1 ALL N.L.R.178 at 183, The plaintiff at no time up to the time of filing his action and thereafter furnished any consideration as the price for the accord now being canvassed; Coker v. Ajewole supra."* C D E

It was finally submitted on this issue that in view of the overwhelming evidence and authorities in this case, Accord and Satisfaction will not operate.

By express agreement, parties may agree that their contract shall be terminated and in that case their respective obligations are to be totally or only partially discharged depending upon the terms of the agreement. If the original contract is wholly or partially executory, the consideration for the discharging agreement is the mutual release of liability; but if it has been completely performed by one party, his discharge of the other must be under seal or must take the form of an accord and satisfaction supported by a fresh consideration. See the latin maxim *Eodem modo quo oritur, eodem modo dissolvitur*. F G

**In this case, the original contract was wholly executed by late Olusoga by paying the purchase price of N1,500.00. If Olusoga were merely to agree that the original contract should be discharged and the plaintiff released from the obligation of repayment of N1,500.00, he would receive nothing of value in exchange. The plaintiff in such a case would have neither suffered a detriment himself nor have conferred an advantage upon Olusoga. It will be** H

**a unilateral discharge and will be ineffective unless it is made under seal or unless some valuable consideration is given to Olusoga.** Exhibit “E” is the purported accord and satisfaction. It reads:

*“Promissory Note*

*I Mr. Patrick Chieke, an Ibo man by tribe and of 80 Orodu Street. B Ajegunle, Apapa hereby promise to repay the sum of one thousand, five hundred pounds to Mr. John Olusoga of 71 Orodu Street, Ajegunle, Apapa, the sale of which was made by my relative Mr. Sylvernus (sic) Chieke and my wife Mrs. Chieke now in my home town in the East Central State. I do not intend to sell nor authorized them to sell the said house. I also promise that C I shall refund the amount as soon as possible*

*2d Stamp*  
*NIGERIA*

WITNESS

D	<i>Witness Party Bamodi 80 Orodu Street, 18 Goriola Street, Ajegunle 23/2/70</i>	<i>Ajegunel. Tailoring 23/2/70"</i>
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**Exhibit “E” was made on 23:2:70. The plaintiff filed the action leading to this appeal on 3:1:72. the plaintiff did not repay the said sum of N1,500.00 even up to 3:1:72 when this action was instituted or thereafter. This is an accord without satisfaction. On a proper construction of Exhibit “E”, it cannot be said that what Olusoga accepted in satisfaction is merely the plaintiff’s promise to repay and not the repayment of the purchase price of the property. Were it so, the original contract would have been discharged from 23:2:70. See British Rusian Gazette Ltd. v. Associated Newspapers Ltd (supra). In that case, one Mr. Talbot agreed to compromise two actions of Libel, which were instituted by him and by the British Russian gazette, in respect of certain publication in the Daily Mail Newspaper. His promise was expressed in a letter couched as follows:**

*“I accept the sum of one thousand guineas on account of costs and expenses in full discharge and settlement of my Claims ..... and I will forth-with instruct my solicitors to serve notice of discontinuance; or to take other steps.... to end the proceedings now pending.”*

H Before payment of the sum of one thousand guineas has been made. Talbot discountenanced the compromise agreement and proceeded with the action.

He contended that there was no binding contract until actual payment. It was held that his letter recorded an agreement in which the consider-

ation was a promise for a promise. That is not the case in the present proceedings. **The consideration in Exhibit "E" is not a promise for a promise.**

**I am therefore of the respectful view that Exhibit "E" has not the effect of extinguishing the original contract for sale of the disputed property.**

As to the finding of the courts below that the plaintiff's wife was the agent of the plaintiff with power to sell the property in dispute, it was submitted in the plaintiff's brief that there is no evidence of the appointment of P.W.3 (Regine Chieke) or any of the other persons mentioned in paragraphs 3 and 4 of the Statement of Defence as agents for the plaintiff and that the two lower courts misconstrued and misapplied section 12(b) of the Evidence Act.

The learned respondents' counsel in his brief submitted that there is overwhelming admissible and relevant evidence which was not shaken by cross-examination that at the time of the sale of the plaintiff's four houses by his wife (P.W.3), there was in existence a written authority from the plaintiff to the wife for the sale of his four houses. The learned trial judge stated as follows:

*"The defendants are contending in their paragraph 3 of the statement of defence that the building in dispute as well as premises Nos. 28 Abukuru Street, and 80 Orodu Street all in Ajegunle were sold by P.W.3 as agent for plaintiff under similar circumstances. The common factors are (1) that they were all sold by P.W.3 as agent for plaintiff (2) that one letter of authority was shown to all the would be purchasers (3) That in all the cases P.W.3 got someone else to sign or issue receipts for money paid (4) that the properties were sold about the same time between September to December, 1966 (5) That it was P.W.3 who in all these cases handed over possession and documents of title to purchasers and also introduced the purchasers to the tenants. What is true of one property is likely to be true of the others in the context of this case. See Sec.12(b) of the Evidence Law."*

The Court of Appeal affirmed the above conclusion of the learned trial judge and held that it cannot be faulted.

It was contended that section 12(b) of the Evidence Act was misconstrued. Section 12(b) of the Evidence Act Cap.112 Laws of the Federation of Nigeria provides:

*"12 Facts not otherwise relevant are relevant -*

*(b) If by themselves or in connection with other facts they make the existence of any fact in issue or relevant fact probable or improbable."*

The common factors which the learned trial judge highlighted and which are affirmed by the court below are facts which as matters of ordinary logic or experience, tend to render the sale of No. 71, Orodu Street by P.W.3 probable. They are consistent, logically relevant and admissible. They strongly

tend to prove the main fact namely, that P.W.3 sold the property in dispute on the authority of the appellant. In my view, section 12(b) of the Evidence Act was neither misconstrued nor misapplied.

**It is plain from the concurrent findings of the courts below that P.W.3 had express authority to sell the four properties on behalf of the husband and No 71, Orodu Street is one of them. This conclusion is gathered from the whole evidence and all the surrounding circumstances of the case. I find myself in complete agreement with the concurrent findings made by the courts below that P.W.3 had the authority of the plaintiff to sell the property in dispute. Assuming there was no written authority which is not the case here, a contract for the sale of land made by an agent will be enforced, although the agent be appointed merely by parole. See Heard v. Pilley (1968/69)L.R. Ch.App 548. I therefore hold that the contract is binding on the plaintiff.**

As to issue No. (4), the following argument was advanced in the appellant's brief:

*"In this case, in which the plaintiff claims recovery of possession, there can be no doubt that the defendant can only resist the claim if he can prove that there is in existence a contract binding on the plaintiff to sell the property to him. In this connection, reference was made to Sec.(2) of the Law Reform (Contracts) Law of Lagos State. It has already been argued that the contract of sale has been dissolved by accord and satisfaction. In addition it is submitted in the alternative that there is absent (sic) of a memorandum in writing capable of satisfying the Law Reform (Contracts) Law. That being so, the contract is, by statute, unenforceable"*

Having disposed of the issue as to whether the contract is binding on the plaintiff, I will now consider the effect of section 5(2) of the Law Reform (Contracts) Law Cap.114 of Lagos State. It reads:

*"5(2) No contract to which this section applies shall be enforced by action unless the contract or some memorandum or note in respect thereof is in writing and is signed by the party to be charged therewith or by some other person lawfully authorized by him."*

This provision is in pari materia with section 40(1) of Law of Property Act, 1925 of England, Section 4 of the Statute of Frauds, 1677 is the precursor of Section 40 of Law of property Act. 1925. Section 5(2) of the Law Reform (Contract) Law of Lagos State like Section 40(1) of the Property Act, 1925 has as its object the prevention of fraudulent claims based on false evidence. In practice, it has works badly and has helped contracting parties to rely on what are considered technical defences. **The plaintiff is trying to hide under the provision of Section 5(2) of the Law Reform (Contracts) Law of Lagos State**

because P.W.3 (his agent) did not sign Exhibit “M”. I think this is an attempt to make that law an instrument of fraud. This court will not allow the plaintiff make fraudulent use of this legislation and take advantage of his own fraud. The courts have always interfered against any party who attempts to make the Statute of Frauds, 1677 and similar legislations an instrument of fraud. See Mestaer v. Gillespie (1805)11 Ves. 622 at 628 (English Reports 32 Ch.1230). B

On whether the alleged sale or agreement to sell the property to late Olusoga was void in the absence of the consent or the Ojora Chieftaincy Family to the transaction, it was the contention of the appellant that there is no evidence on record that the family approved the sale. I must point out that the transaction in question is not a sale of family land by individual members C of a family without the concurrence of the head of the family. See Solomon v. Mogaii (1982)11 S.C.1 and Adejumo & Ors. v. Ayantegbe (1989)2 NSCC 444. It is the assignment of the interest of the lessee (tenant) of Ojora Chieftaincy family land to late Olusoga that is in issue here. There is no evidence before the court of trial that in the conveyance between Ojora Chieftaincy family D and the plaintiff, there is a covenant not to assign without the consent of the Ojora Chieftaincy family. Even if there is such a covenant, it is the Ojora family that will complain and not the plaintiff.

There is evidence on record that the defendant have been paying rents to Ojora family. The receipts for the payments are Exhibits “K” - “K3” E and “L” - “D”. It is important to note that one Jimoh Akindele Ojora who testified as P.W.2 stated under cross-examination that:

*“The interest of the Ojora family when lands are transferred from tenant to tenant is the collection of our rents. We cannot do anything about transfer from tenant to tenant. If a tenant transfers without notifying us he remains liable to us as far as we are concerned, for the rents. The family knows about transfers when it is notified.”* F

P.W.2 is a member of Ojora chieftaincy Family and the plaintiff's second witness. It is clear from his evidence that any sale or transfer made by their tenant without notifying them let alone obtaining their consent is not rendered even voidable. The consent of the Ojora family is not therefore a G condition for a valid transfer of the interest of the plaintiff to Olusoga.

For the above reasons, I would dismiss the appeal and affirm the decision of the Court of Appeal, Lagos Division delivered on 12:1:87 with N1,000.00 (one thousand naira) costs to the defendants/respondents. H

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#### OGUNDARE JSC

Also agreed with the lead judgment

### ONU JSC

I had a preview of the judgment just delivered by my learned brother Ogwuegbu, J.S.C. in draft from and I am in full agreement with him that the appeal has no merit and ought to be dismissed.

B I need only add a few words of mine to my learned brother's thorough consideration of the issues raised and admirably resolved by him.

I wish to touch briefly by way of comments on issues 1 and 2 as, in my respectful view, issues 3 and 4 have been adequately considered that I cannot see any improvement that I can make on them. Suffice it to say, that the C facts of this case remind one by way of antithesis the events of the days of the "Abandoned Property" in this country. Inherent and reminiscent in the "Abandoned Property," syndrome was the episode of fleeing from the locations of their houses by persons of Igbo origin for fear of their lives, only for covetous Nigerians to jump into those houses in the manner of "capturing" them and in D some cases with the authorities keeping one eye open and the other eye closed to the illegal phenomena. No sooner than the crises or emergencies were over and the owners of the houses returned, than a battle of wits and resort to legalism were embarked upon both in and out of courts to have them back. Invariably, the fight by the 'returnees' for their houses either ended in E comedy or tragedy. The tragedy aspect of the instant case stands in a class of its own. It stems from the plaintiff's quest to be clever by half and so over-reaching himself as a returnee who could have accepted his fate as he met it. But this was not to be. In this case, in as much as the plaintiff who ought to have preformed his own side of the agreement namely, by making a refund of F the purchase price for the house No. 71 Orodu Street, Ajegunle but failed to do so to the Defendants, at least, up to the time of filing his action on 3-1-72; thus he furnished no consideration for the accord which learned counsel for him in oral submission had urged. This much the learned trial Judge found and the court below affirmed. Hence, the much vaunted accord strenuously argued G by the plaintiff operated, did not in fact operate. See *Ude v. Osuji* (1990) 5 NWLR (part 151) 488. See also Chitty on Contracts General Principles 22nd Edn. p. 489 Art. 1121.

At all events, the original contract of sale of the house was wholly executed on 23/2/66 by the original Defendant (late Oluaoga) of the one part H and PW3 (plaintiff's wife) and Silvernus (Sic) Chieke (the issuer of the receipt of sale) on behalf of the plaintiff on the other part when the original Defendant paid N1,500 (N3,000.00) for the transaction. As the plaintiff did not keep his own side of the bargain after making the promissory Note (Exhibit 'E') but later brought his action leading to the appeal herein on 3-1-72 (a period of some two

years) and as it was not matched by any consideration sallying forth from him, there could be no promise for a promise. See British Russian Gazette, etc. Ltd. v. Associated Newspapers Ltd. (1993) 2 K.B. 626 at 643 and Chitty on Contracts (supra) where it was stated inter alia that

*"Accord and satisfaction is the purchase of a release from an obligation, whether arising under contract or tort, by means of any valuable consideration not being the actual performance of the contract itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative."*

See also Banque Genevoise De Commerce Et Credit v. Cia Mar Di Isola Soetsau Ltd. (No.2) (1962) 1 ALL N.L.R. (part 3) 570. C

Hence, Exhibit 'E' has not the effect of extinguishing the original contract of sale duly and effectively entered into on plaintiff's behalf for the sale (in fact the lease of the disputed house to the Defendants) and the consent said to be required of the radical title holders of the land on which the house is situate being rendered of little consequence upon the overwhelming D evidence adduced by the defence - evidence which as transpired, the trial court accepted and the court below affirmed. The decisions arrived at thereby by the two courts below ought not to be disturbed. The plaintiff is accordingly not absolved from the rigours of his obligation and I so hold.

In this appeal, the plaintiff (Appellant herein), after the national crises and civil war of 1966 to 1970, returned from the Eastern States to claim E possession of his house at 71, Orodu Street, in Ajegunle which his wife as his agent had sold to the predecessor in title to the present Defendants/Respondents.

The sum total of the plaintiff's complaints I wish to reiterate are F whether his obligation or alleged obligation to sell or convey the property in dispute to the original Defendant in whose shoes the present Defendants/Respondents stepped, continued in force after he (plaintiff) had executed and delivered a promissory note to refund the purchase price to the Defendant who accepted the same and retained it and whether the concurrent findings G by the courts below that the plaintiff's wife was the agent of the plaintiff (with power to sell the property in dispute) can be supported.

From the overwhelming evidence adduced at the trial which in my judgment the court below rightly affirmed, it is too late in the day for the plaintiff on the purport of Exhibit 'E' (The Promissory Note) or any other piece H of evidence oral or documentary, to cling to every available or perceived technicality of his contractual obligations duly and consciously undertaken by him. He cannot, on the totality of the evidence led at the trial be allowed to eat his cake and have it at the same time. Nor is it in my opinion permissible for

him to be allowed unfettered and unchallenged to approbate and reprobate. See Amida & ors. v. Oshoboja (1984) 7 S.C. 68 at 80; Philip Obiora v. Paul Osele (1989) 1 N.W.L.R. (part 97) 279 at 299-30; Oke v. Atoloye (1986) 1 N.W.L.R. (part 15) 141 and Hart v. Ezekiel Hart (1987) 4 N.W.L.R. (part 63) 105.

The entire conduct of the plaintiff exposed in this case and culminating in the concurrent findings of fact by the two courts below provide no reason to interfere with them, being neither perverse nor amounting to a miscarriage of Justice. In sum, what the plaintiff's conduct portrays is that of the proverbial ostrich which, burying its head in the sand, is oblivious of the fact that its entire body is outside to the gaze of everybody. The law, equity and good conscience will definitely prevail against the plaintiff to deny him an unmerited success.

It is for these and the more detailed reasons of my learned brother Ogwuegbu, J.S.C. in his lead judgment with which I had unhesitatingly concurred that I too dismiss this appeal. I endorse the consequential orders made.

D \_\_\_\_\_

#### ADIO JSC

I have had the benefit of reading, in draft, the judgment just delivered by my learned brother, Ogwuegbu, J.S.C., and I agree that the appeal does not succeed.

There was overwhelming evidence that the appellant's wife, who sold the property in question, had the authority of the appellant to do so on behalf of the appellant. One was, therefore, not surprised by the concurrent findings of the lower courts on the point. This court will not interfere with the concurrent findings of the lower courts unless the persons challenging the findings can show that they are perverse or not a result of proper exercise of judicial discretion. See Are v. Ipaye, (1990) 2 N.W.L.R. (pt. 132) 298; and Adeyeri 11 v. Atanda, (1995) 2 N.W.L.R. (pt. 397) 572.

I dismiss the appeal and abide by the order for costs.

G \_\_\_\_\_

#### IGUHJSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother Ogwuegbu, J.S.C., and I entirely agree that this appeal is devoid of substance and should be dismissed.

Consequently, I too, dismiss the same and abide by the order as to costs therein contained.