

**SUPREME COURT OF NIGERIA**  
20TH JUNE, 1997. SC. 91/1990  
**CORAM:- A.B. WALL, M.E. OGUNDARE, U. MOHAMMED,**  
**Y. O. ADIO, A. I. IGUH, JJSC**

ARCHITECT E. O. OLAOPA

(Practising under the name and style ..... PLAINTIFF/  
Comprehensive Design and Planning Consultants) APPELLANT

AND

OBAFEMI AWOLOWO UNIVERSITY ILE-IFE ..... DEFENDANT  
RESPONDENT

---

***CONTRACTS*** - Formation - Definite offer capable of being accepted must exist - Where no such definite offer is made - Formal contract cannot be inferred.

***CONTRACTS*** - Invitation to treat - A discussion preparatory to formation of a formal contract - Amounts to invitation to treat.

***CONTRACTS*** - Quantum meruit - Basis for the claim is a contract - Where there is no contract between the parties as in this case - Quantum meruit claim cannot succeed.

***CONTRACTS*** - Quantum meruit claim - Cannot arise - Where there is an existing contract - For the payment of an agreed sum.

***PLEADINGS*** - Failure to plead - The issue of quantum meruit - Trial court was in error - To have awarded what was not claimed by way of pleadings.

**FACTS**

Before the defunct Oyo State High Court Ife, the plaintiff/appellant filed an action against defendant/respondent claiming the sum of N159,875.00 as professional fee due in respect of a contract for the design of a proposed commercial complex. Plaintiff maintained that the defendant has failed to pay the said amount after completion of the job. The defendant denied the claim. Each party called witnesses and tendered various documents in proof of his case.

The trial court found that putting together exhibits A, B, C and D, they are not enough to constitute a valid contract between the parties. It however awarded the sum of N15,000.00 to the plaintiff on quantum meruit

which was neither claimed nor pleaded. Plaintiff appealed while the defendant cross appealed to the Court of Appeal which dismissed the plaintiff's appeal and allowed the defendant's cross appeal on the award of quantum meruit. Being dissatisfied, the plaintiff has further appealed to the Supreme Court raising 4 issues.

#### **ISSUES FOR DETERMINATION**

*"4.01. Whether from the totality of the evidence, including oral and documentary evidence and the conduct of the parties in this case, there was a valid offer from the Respondent as offeror which has been accepted by the Appellant so as to constitute a valid agreement for consultancy services between them in respect of the project at Educational Zone, Oyo Road, Ibadan? Etc, see p. 1173*

#### **HELD (Unanimously dismissing the appeal per lead judgment of WALI JSC) Contracts - Formation**

1. For the formation of any contract, there must be a definite offer capable of being accepted. This is the general principle; but there are certain cases in which the court can make a finding that there is a contract even though it is difficult to analyse the transaction in terms of offer and acceptance. Reading through Exhibits A, B, C, D and E relied upon heavily by the appellant to establish a formal contract between him and the respondent, I can find no definite offer in Exhibit A of a formal contract as pleaded in paragraph 2 of the Amended Statement of Claim, nor can I infer such a contract by reading Exhibits A, B, C and D along with the remaining evidence adduced by the appellant. (p. 1176F)

#### **Invitation to treat**

2. All that transpired between the appellant and the respondent was a discussion preparatory to the formation of a formal contract. There was no offer capable of being converted into agreement by acceptance, as the respondent had not completed his share in the formation of a contract by a final declaration of his readiness to undertake an obligation upon certain conditions which the appellant could have accepted. All that happened was no more than an invitation to treat. (p. 1178 E)

#### **Quantum meruit - Basis for the claim is contract**

3. The principle of law is that, a party to an entire contract partly performed by him and was, by the act of the other party, prevented from proceeding further with performance, the law entitles him to be paid for the fruits of the labour he has already rendered. In a situation like this, two alternative remedies are

open to him:-

- (a) damages for breach of contract;
- (b) reasonable remuneration in quantum meruit for the work already done.

So the basis for a claim for payment on quantum meruit is a contract. Where there is no contract between the parties as in this case, a claim on quantum meruit cannot succeed. (p. 1181 A)

### **Failure to plead**

4. And as indicated by the respondent this issue of quantum meruit was not pleaded by the appellant but introduced by the learned trial judge, on compassionate ground, after his finding that there was no contract between the appellant and the respondent for the production of Exhibit 'E'. The trial judge was totally wrong to have embarked on that exercise. A court is not entitled to give to party what he has not claimed by way of pleadings. The court is not a father Christmas to give to a party a relief not claimed by him. The pleadings and the evidence adduced in support thereof are the materials on which it should base its decision, the award of any relief inclusive. (p. 1181 D & H)

### **When quantum meruit claim cannot arise**

5. A claim on quantum meruit cannot even arise where there is an existing contract for the payment of an agree sum, as the appellant is claiming in the present case. (p. 1181 G)

## **NOTABLE POINTS OF INTEREST**

### **ADIO JSC**

#### *1. When payment on a quantum meruit may arise*

Payment on 'quantum meruit' (as much as he has earned) will arise if one person had expressly or impliedly requested another to render him a service or execute a piece or work without specifying any remuneration but the circumstances of the request imply that the service is to be paid for or if a person by the terms of a contract is to do a certain piece of work for a lump sum, and he does only a part of the work, he may be able to claim on a quantum meruit if, completion of the work has been prevented by the act of the other party to the contract. What is essential is that there should be a request or contract express or implied. If, as in this case, there is no request or contract, a claim on quantum meruit cannot arise or be sustained. (p. 1185 D)

**IGUHJSC**

*2. How a contract matures*

It is trite that for a contract to mature, there must be clear evidence of an offer, an unequivocal acceptance and a valid consideration. None of these three elements was established by the appellant before the trial Court. Indeed Chief Adejumo, learned counsel for the appellant, conceded that no written offer was established before the trial Court. In my view, however, it was not a question of there not being a written offer, there was clearly no offer of whatever type, whether written, oral or implied established before the trial Court by the appellant. In the absence of such an offer, no acceptance in law was possible, much less a consideration. (p. 1186 E)

**REPRESENTATION**

Chief S. A. Adejumo for the Appellant  
D Miss O. N. Lewis for the Respondent

**CASES REFERRED TO**

A.G. Kaduna State v. Atta (1986) 4 NWLR (Pt. 38) 785 at 795  
Majekodunmi v. National Bank of Nigeria, Ltd. (1978) 3 SC 119 at 127  
E Pattinson v. Lucklly (1875) L.R. 10 Exch 330  
Clarke v. Dunraven (1897) AC 59  
Chinwendu v. Mbamali (1980) 3 - 4 SC 31 at 81  
A.G. Bendel v. Aideyan (1989) 4 NWLR (Pt 118) 646 at 681  
Bolton Engineering Company Ltd. v. Graham (1957) 1 Q.B. 159  
F Craven-Ellis v. Canons Ltd. (1936) 2 KB 403 (1936) 3 All ER 1066  
Gilbert & Partners v. Knight (1968) 2 All ER 248  
Scott v. Pattison (1923) 2 K.B. 723 at 727 - 728  
Powell v. Braun (1954) 1 All E.R. 484

**G BOOKS REFERRED TO**

Law of contract - Cheshire and Fifoot 9th Ed. p.27  
Halsbury's Laws of England 4th Ed. vol. 9 para. 692-693

**LEAD JUDGMENT BY WALIJSC**

H By a Writ of summons taken out in the Oyo State High Court, Ife Judicial Division, the plaintiff claimed against the Defendant as follows:-

*"The Plaintiff's claim is for the sum of N159,875.00 being the professional fees including incidental expenses incurred by the plaintiff payable to the plaintiff by the defendant in respect of the contract entered into*



*of the sketch drawings. That shall be the judgment of the court in this case."*

The plaintiff appealed against the judgment while the defendant cross appealed against the same on the issue of award of N15,000.00 on quantum meruit, to the Court of Appeal Division, Ibadan. In a unanimous judgment of the Court of Appeal the lead of which was delivered by Ogwuegbu JCA (as he B then was), the main appeal by the plaintiff was dismissed while the cross appeal on the issue of the award of quantum meruit was allowed and the amount so awarded was set aside and the defendant was awarded N400.00 costs against the plaintiff for the whole appeal.

Aggrieved by the decision, the plaintiff has now appealed to this Court. After obtaining necessary leave of the Court of Appeal and then later of this Court, the plaintiff was granted leave to appeal on grounds 3 and 6 by the Court of Appeal and on ground 1, 2, 4 and 5 by this Court. As a result the parties filed and exchanged briefs of argument.

Before I consider the issues raised and canvassed in this appeal, I think it is pertinent to set out the facts of the plaintiff's case as contained in the following paragraphs of his Amended Statement of Claim:-

"2. Sometime in 1978 there was a contract between the plaintiff and the defendant wherein the plaintiff was appointed by the defendant acting by its then Vice Chancellor Professor O. Aboyade and its Building E works project Committee to design for the defendant a Scheme for the concession area at Education Zone Ibadan with a view to erecting Commercial buildings to generate funds for the defendant.

3. By a letter dated 20th March 1978 Reference No. R/DCA/T/223 the defendant through the directorate of the Council Affairs invited the Plaintiff with the Vice Chancellor to a meeting held on the 28th day of March 1978 to discuss in detail the project referred to in paragraph 2 above.

4. That the plaintiff attended the said meeting wherein he was briefed to design how best to develop the defendants 2.07 Acres of land at Bodija Estate and the 5 acres of land near Emmanuel College, Ibadan."

[illegible]

12. The plaintiff later completed the design and delivered the same together with the quantity survey to the defendant through its Registrar and copies of the Quantity Survey Report were sent to the Vice Chancellor and the Director of Planning Budgeting and Monitoring of the Defendant.

H 15. That sometime in January 1980 or thereabout the plaintiff forwarded his claims for his fees for the first stage of the work for settlement which is N159,875.00.

25. That after series of letters of demand by the plaintiff, the defendant by a letter dated 23rd November, 1981 confirmed its refusal to pay the

said fees."

Both the plaintiff and the defendant will henceforth be referred to in this judgment, as the appellant and the respondent respectively.

Arising from the grounds of appeal, the appellant formulated the following four issues for consideration and determination by this Court, to wit:-

"4.01. Whether from the totality of the evidence, including oral and documentary evidence and the conduct of the parties in this case, there was a valid offer from the Respondent as offeror which has been accepted by the Appellant so as to constitute a valid agreement for consultancy services between them in respect of the project at Educational Zone, Oyo Road, Ibadan?" B

4.02. Whether on the totality of the evidence as borne out by all the correspondences exchanged between the parties and the meetings held and the conduct of the parties which clearly disclose the position of the parties, the contract was a divisible one for which the plaintiff could expect fees for the 1st stage of the contract? D

4.03. Whether on the totality of the evidence in this case and the conduct of the parties, the services rendered by the Plaintiff to the defendant in receiving the brief for the project and producing the preliminary sketch design and approximate estimate of the construction of the project was to be paid for by the defendant in accordance with the scale of fees applicable to Architects as shown in Table 4 of Page VI, paragraph 4.1 of Exhibit Y? E

4.04. Whether the Plaintiff/Appellant by virtue of the pleadings exchanged between the parties including the admitted facts and evidence led on both sides has established grounds entitling him to succeed on his claims for N159,875.00 as his professional fees for consultancy services rendered to the defendant? If the answer is in the affirmative whether the Court of Appeal was right in dismissing the case of the Plaintiff in its entirety?" F

The respondent also in his brief framed three issues for determination in this appeal, which are:- G

"2.01 Whether reading Exhibits A, B, C and D with the evidence on record a valid contract could be said to exist between the parties to ground the Appellant's claim?

2.02 If the answer to issue (1) is in the negative, whether the Appellant's failure to make a claim on quantum meruit is fatal to an award based on same? H

2.03. Whether the Appellant's claim based on scale of fees applicable to Architects could succeed in the absence of evidence of an express

*agreement between the parties that Architects approved scale of fees will apply?"*

Issue 1 and 2 of the respondent's brief are covered by issues 1 and 2 of the appellant's brief respectively while issue 3 is equally covered by issues 3 and 4 of the appellant's brief.

B It is the submission of learned counsel for the appellant that reading and considering Exhibits A, B, C and D together with the other evidence, both oral and documentary, adduced by the appellant in the case, both the trial court and the Court of Appeal were in error in drawing the conclusion that there was no contract between the appellant and the respondent. It was the  
C contention of learned counsel that the Court of Appeal gave a restricted interpretation to the use of the phrase "The plaintiff was asked to help us to prepare drawing" when from the evidence of P.W.5 and the evidence of the respondents' only witness, it was clear that there was such a contract. He also referred to the heading of Exhibit B and the purpose of the meeting spelt out in  
D that Exhibit. Learned counsel cited and relied on the following cases - Hussey v. Horne Payne [1878 - 79] 4 App. Case 311 at 316; A.G. Kaduna State v. Atta (1986) 4 NWLR (Pt. 38) 785 at 795, and Majekodunmi v. National Bank of Nigeria, Ltd. (1978) 3 SC 119 at 127.

E In the alternative learned counsel argued that assuming that there was no contract between the appellant and the respondent and in view of the finding of the trial court that "with the type of correspondences which were exchanged between the plaintiff and the defendant after the plaintiff had initially submitted the sketch drawings in 1978, it can be said that the defendant has by their acquiescence misled the plaintiff to believe that the sketch drawings had been accepted and were to be paid for by the defendant in this case",  
F which has not been challenged, there are materials from which a new contract might be inferred to pay for the work done by the appellant having regard to the respondent's retention of Exhibit E. He cited Lysaght v. Pearson (Times Newspaper of 3rd March, 1879); Chesire and Fifoot, Law of Contract pages  
G 411-412 (6th Edition); Pattinson v. Lucklly (1875) L.R. 10 Exch 330 and Trenco (Nig.) Ltd. v. African real Estate and Investment Co. Ltd. and Anor. (1978) 4 SC 9 at 25 - 30, 31.

H In answer to the submissions made by appellant's counsel, it was the contention of learned counsel for the respondent that it was a misconception for the appellant to say that reading Exhibits A, B, C and D together along with evidence adduced, would constitute a valid contract between the appellant and the respondent for the designing of the proposed commercial complex at Education Zone, Oyo Road, Ibadan, otherwise referred to as concession area at Emmanuel College, Ibadan. Learned counsel submitted that the principle of

law stated and applied in *A.G. Kaduna State v. Atta* (1986) 4 NWLR (Pt 38) is not applicable to the facts of the case in hand. He described the relationship between the appellant and the respondent on the proposed project as fluid and uncertain and which could, all things being equal, develop into a more definite commitment on concrete terms that could ground a claim in favour of the appellant. Learned counsel finally submitted on this issue that the mere retention of Exhibit E by the respondent could not be a basis for concluding that there was a formal contract between the parties and to be paid for by the respondent. B

This issue is almost identical with issue (1) argued by the appellant in the court of Appeal. It involves mainly issues of fact on which the learned trial judge is the best judge. C

It is clear from the evidence that the appellant was invited by the respondent (Exhibit A) to the meeting of 28th March, 1978 to discuss in detail the idea of erecting commercial building on the respondent's piece of land at Education Zone, Emmanuel College, Ibadan, along Oyo Road. See paragraphs 2 and 3 of the appellant's Amended Statement of Claim (supra). In his attempt to establish the averment in paragraph 2 of the Amended Statement of Claim, the appellant as P.W. 1 gave the following evidence:- D

*"I attended the meeting in March 1978 at the appointed time. At the meeting I was given another assignment in addition to the designing of block of flats. The second assignment given to me by the defendant was in respect of the development of the property at the Educational Zone near Emmanuel College along Oyo Road, Ibadan. E*

*Two copies of the minutes of the meeting of 28/3/78 were forwarded to me by the Directorate of council Affairs of the University of Ife, Ile-Ife. This is a photostat copy of the minutes of the meeting held on 28/3/78. F*

*Chief Adejumo:- I seek to tender it. Mrs. Mustapha:- No objection. Notice to produce the original minutes of the meeting of 28/3/78 was served on us.*

*Order:- Minutes of the meeting held on 28/3/78 admitted and marked Exhibit 'B'. G*

*The survey plan of the site was later sent to me by the defendant for the purpose of designing the plan for the commercial complex as per the brief in the minutes, Exhibit 'B'. This is the Survey plan of the site forwarded to me by the defendant.*

*Chief Adejumo:- I seek to tender it. H*

*Mrs. Mustapha:- No objection.*

*Order:- Site Plan admitted and marked Exhibit 'C'. In addition to Exhibit 'C', the defendant gave me the feasibility report prepared by a committee set up by the University. It contained briefs for the two projects. This is the copy*

*of the feasibility report sent to me by the defendant.*

*Chief Adejumo:- I seek to tender it.*

*Mrs. Mustapha:- I have no objection. Notice to produce the original was served on us.*

*Order:- Copy of the feasibility report admitted and marked Exhibit 'D'.*

B *After having received Exhibits 'B', 'C', and 'D', I prepared the sketch design for the Commercial Complex as per the brief. On 28/11/78, I submitted the sketch design and there and then the defendant asked for an approximate estimate of the commercial complex. This is a set of the sketch designs of the commercial complex which I prepared and a copy of the set sent to the defendant.*

C *Chief Adejumo:- I seek to tender it.*

*Mrs. Mustapha:- No objection.*

*Order Sketch design admitted and marked exhibit 'E'."*

D P.W. I stated under re-examination that the contract which was the subject of this case was given to him by the respondent on 20th February, 1978. Having regard to the pleadings and the evidence by the appellant I take it that the letter being referred to is Exhibit A which was written by the respondent on 20th March, 1978 and to that effect, I therefore take it that the date mentioned by P.W.1 in re-examination is 20th March, 1978 and not 20th February, 1978 as mistakenly recorded.

E P.W. 2, the former Vice-Chancellor of respondent said in his evidence in Chief that:-

F *"I was present at the meeting where Exhibit 'B' was made out at the minutes of the said meeting. The defendant had five acres of land near Emmanuel College, Oyo Road, Ibadan. The plaintiff was asked to help us to prepare drawings and to give approximate estimate of the cost of the development of the five acres of land."*

G **For the formation of any contract, there must be a definite offer capable of being accepted. This is the general principle; but there are certain cases in which the court can make a finding that there is a contract even though it is difficult to analyse the transaction in terms of offer and acceptance.** See Clarke v. Earl Dunraven (1897) AC 59 and New Zealand Shipping Co. Ltd. v. A. M. Satterthwaite & Co. Ltd. (1974) 1 All ER 1015 at 1020.

H At page 27 of Cheshire and Fifoot - Law of Contract (9th Edition), the law is stated thus:-

*"An offer, capable of being converted into an agreement by acceptance, must consist of a definite promise to be bound provided that certain specific terms are accepted. The offeror must have completed his share in the formation of a contract by finally declaring his readiness to undertake*

*an obligation upon certain conditions, leaving to the offeree the option of acceptance or refusal. He must not merely have been feeling his way towards an agreement, not merely initiating negotiations from which an agreement might or might not in time, result. He must be prepared to implement his promises, if such is the wish of the other party. The distinction is sometimes expressed in judicial language by the contract of an "offer" with that of an "invitation to treat."* (Underling supplied for emphasis) B

**Reading through Exhibits A, B, C, D and E relied upon heavily by the appellant to establish a formal contract between him and the respondent, I can find no definite offer in Exhibit A of a formal contract as pleaded in paragraph 2 of the Amended Statement of Claim, nor can I infer such a contract by reading Exhibits A, B, C and D along with the remaining evidence adduced by the appellant.** Exhibit A was an invitation to the appellant for discussion among other things for the way and means to develop the 5 acres of the respondent's land at the concession area near the Emmanuel College, Oyo Road. Exhibit A contained nothing like appointing appellant in his capacity as chartered architect, to design for the respondent a scheme for the concession Area at Education Zone, Ibadan. Exhibit B the minutes of the meeting resulting from Exhibit A did not contain any offer appointing the appellant by the respondent, to design proposed buildings for developing the said 5 acres. After discussion the question of developing the 5 acres of land near the Emmanuel College the Committee concluded as follows:- E

"Ideals in developing the land

*The following ideas of developing the land near Emmanuel College were announced and listed for future consideration:*

- A bookshop* F
- Hotels? Guest Houses*
- Transit Quarters*
- Conference Centre (about 100 seats)*
- About 20 flats*
- Lodgings for occasional retreats* G
- A shopping centre*
- A pharmacist shop*
- Block of offices for Professionals e.g. Lawyers, Doctors etc.*
- Children's playing centre*
- Service Centre where people can drive in for relaxation.* H

Summary and Conclusion:

*The Director of Planning, Budgeting and Monitoring Unit (Mrs. Joyce A. Aluko) was mandated at the meeting to take necessary action in respect of the land near Emmanuel College, Ibadan. She would be assisted by the Ag.*

*Director of Works and the University Bursar as necessary. The Consulting Architects weretold to move on the issue of preliminary briefs which were mentioned at the meeting in respect of the 2.037 acres of land at Bodija Estate Ibadan. It was unanimously agreed that the briefs will be formalized at the next meeting to be arranged and as members of the committee of Users.*

B *The meeting ended at about 11.50 a.m."*

There is nothing in the excerpt of Exhibit 'B' or from the rest of the said Exhibit B to show that any definite offer to the appellant to produce the drawings contained in Exhibit "E" was made by the respondent. Paragraph 9 of Exhibit "B" is illustrative of this fact which stated thus:-

C *"Solution to the problems*

*After identifying the various problems facing the acquisition of the land, the meeting listed specific steps to be followed to solving them, such as:*

D *Step (i) the University should first and foremost ensure that the exact amount of money that is required for payment to the Oyo State Government for the land is paid without further delay and obtain a receipt to that effect.*

*Step (ii) the University should arrange a meeting with the Oyo State Ministry of Land Housing with a view to obtaining the site plan;*

E *Step (iii) once the site plan has been obtained, it should be forwarded to the Consulting Architects. The Vice-Chancellor specifically advised that the University should be more aggressive in seeing that the three steps were followed immediately."*

**All that transpired between the appellant and the respondent was a discussion preparatory to the formation of a formal contract. There was no offer capable of being converted into agreement by acceptance, as the respondent had not completed his share in the formation of a contract by a final declaration of his readiness to undertake an obligation upon certain conditions which the appellant could have accepted. All that happened was no more then an invitation to treat. See Carlill v. Carbolic Smoke Ball Co. (1892) 2 Q.B. 484 in which Bowen L.J. stated the law on the point as follows:-**

G *"It is not like cases in which you offer to negotiate, or you issue advertisements that you have got a stock of books to sell or houses to let in which case 'there is no offer' to be bound by any Contract. Such advertisements are offers to negotiate offers to receive offers - offer to chaffer ....."*

H I have carefully read through the hosts of authorities cited by the appellant and I am unable to see how they help the case of the appellant. They are either not apposite or quoted out of context.

The conclusion by Adekola J, the learned trial judge, who painstakingly considered and evaluated the evidence, that:-

*"It is my view that putting together Exhibits A, B, C and D, they are*

*not enough to constitute a valid contract between the plaintiff and the defendant which would make the defendant liable for the payment of the sum of N159,875.00 as professional fees for the design drawings exhibit E made out by the plaintiff in this case.*

*By reason of the foregoing points, I finally hold that there was no formal contract between the plaintiff and the defendant."*

cannot be faulted. This finding was also rightly affirmed by the Court of Appeal in its lead judgment by Ogwuegbu JCA (as he then was), wherein he stated:-

*I agree also that at that stage no contractual relationship was intended or established between the parties in respect of the 5 acres of land at the Educational Zone, Ibadan. The defendant was yet to make up its mind about that project. Reading Exhibits A, B, C and D, there was no contract which needed any formalization. The Vice-Chancellor did not award any contract and SS. 3(2), 5 (1) (r) and 15 (15) of the University of Ife Law, 1970 cannot be called in aid of the appellant."*

Issue 1 is therefore answered in the negative against the appellant.

Issues 2 and 3 These are taken together by learned counsel for the appellant in the brief he filed. The arguments advanced on these issues have taken care of issue No. 3 in the respondent's brief.

It was the submission of learned counsel that the Court of Appeal was wrong in law, when it held that the appellant's failure to make an alternative claim on the principle of implied contract or on the basis of quantum meruit in his pleading adversely affected his claim. He contended that the Court of Appeal should have considered the totality of the evidence to see whether the award made on quantum meruit was justified since the contract was divisible. He argued that the appellant was entitled to take the Vice-Chancellor (P.W. 2) of the respondent, (as he then was) at the material time seriously that every thing leading to the award of the contract was regular, particularly when the sketch design, Exhibit "E" was not rejected by the respondent but accepted.

Learned counsel submitted that the appellant, having been induced by P.W. 2 who was at the material time Vice Chancellor of the respondent coupled with Exhibits B, C and D and the conduct of the respondent's agents, he embarked on the work for the project at the Educational zone, near Emmanuel college, Ibadan, and he was entitled to full payment of his professional fees for producing Exhibit "E". He said the findings of the learned trial judge on the issue of formalization of the contract and the liability of the respondent to pay reasonable remuneration for the services rendered ought not to have been set aside by the Court of Appeal as the findings were not shown to be unreason-

able and perverse. He urged this court to set aside the Court of Appeal decision and restore the decision of the trial court and order the payment in full of the sum of N159,875.00 as his professional fees for the work done for and at the request of the respondent. In support of the submissions above, learned counsel cited and relied on the following authorities among others -

B Mogo Chinwendu v. Mbamali (1980) 3 - 4 SC 31 at 81; A.G. Bendel v. Aideyan (1989) 4 NWLR (Pt 118) 646 at 681; Trenco (Nig.) LTD. v. African Real Estate & Investment Co. Ltd. & Anor. (1978) 4 SC 9 at 24 and Vanderpye v. Gbadebo (1990) 1 NWLR (Pt 129) 716 at 726.

C On Issue 4, it was the submission of Chief Adebayo Jimo, learned counsel for the appellant, that it was a serious misdirection by the Court of Appeal to state that the cases of Trenco (Nigerian) Ltd. v. African Real Estate & Investment Ltd. & Anor. (1978) 4 SC. 9; Linnards Carrying Company Ltd. v. Asiatic Petroleum Co. Ltd. (1915) AC 205; Bolton Engineering Company Ltd. v. Graham & Sons (1957) 1 Q.B 159, and Obi Obembe v. Wemabod Estate Ltd. D (1977) 5 SC 115 are not apposite and therefore not applicable to the present case. He again contended that there was abundant evidence proffered by the appellant as P.W. 1 and his witnesses to the effect that there was a contract between the appellant and the respondent for the designing of a proposed Commercial Complex for the University of Ife Educational Zone, Oyo Road, E Ibadan, which was concluded sometime in 1978.

In answer to submissions above it was the contention of learned counsel for the respondent that the case was basically one of a consultant for an on going project being requested to held on the intended project the consultancy of which he is likely to get if it is embarked upon. He submitted F that the mere retention of Exhibit "E" by the respondent can be no basis to concluded that there was intention that it would pay for it. He also submitted that even if it was to be said there was a contract (to which he did not concede) the appellant did not plead in the alternative, for payment on quantum meruit basis. He said the case was fought entirely on the basis that there was a valid G contract and nothing else.

On the case of Trenco (Nig.) Ltd. v. African Real Estate and Investment Ltd. and a host of others (supra) cited by the appellant, learned counsel for the respondent submitted that there are no similarities between the facts in these cases and the present case, hence the principle of law involved in those H cases are not apposite. In support, he cited and relied on Fawehinmi v. NBA (No.2) (1989) 2 NWLR (Pt 105) 558 at 650 paragraph G - H. He also cited and relied on a portion quoted from Hudson's Building and Engineering Contracts (10th Ed) at p. 180 thereof.

He urged the court to dismiss the appeal and affirm the judgment of

the Court of Appeal.

It is pertinent to reiterate my earlier conclusion that there was no contract between the appellant and the respondent based on Exhibits A, B, C, D and the oral evidence presented. So the issue that the purported contract is divisible does not arise. **The principle of law is that, a party to an entire contract partly performed by him and was, by the act of the other party, prevented from proceeding further with performance, the law entitles him to be paid for the fruits of the labour he has already rendered. In a situation like this, two alternative remedies are open to him:-**

(a) damages for breach of contract;

(b) reasonable remuneration in quantum meruit for the work already done.

See Planche v. Corburn (1831) 5 C and P. 58. **So the basis for a claim for payment on quantum meruit is a contract. Where there is no contract between the parties as in this case, a claim on quantum meruit cannot succeed.** The appellant from his pleadings based his claim on breach of contract. Both the trial court and the Court of Appeal rightly found that there was no such contract much less it to be breached. **And as indicated by the respondent this issue of quantum meruit was not pleaded by the appellant but introduced by the learned trial judge, on compassionate ground, after his finding that there was no contract between the appellant and the respondent for the production of Exhibit 'E'. The trial judge was totally wrong to have embarked on that exercise. A court is not entitled to give to party what he has not claimed by way of pleadings.** The question of comparing the facts of cases cited by the appellant and relating them to the facts of the present case with a view to applying the principle of law considered in them to this case, is a total misconception of the issue raised in this head of claim. I agree with the court of Appeal that these cases are not apposite, particularly when there was no alternative claim on quantum meruit by the appellant. In all the cases I have come across, there was either a specific claim on a quantum meruit or was specifically claimed in the alternative. See De Bernardy v. Harding (1853) 9 Exch, 822, Craven-Ellis v. Canons Ltd. (1936) 2 KB 403; (1936) 3 All ER 1066, and William Lacey (Hounslow) Ltd. v. Davis (1957) 1 NWLR 932.

**A claim on quantum meruit cannot even arise where there is an existing contract for the payment of an agree sum, as the appellant is claiming in the present case.** See Gilbert & Partners v. Knight (1968) 2 All ER 248.

**The court is not a father Christmas to give to a party a relief not claimed by him. The pleadings and the evidence adduced in support thereof are the materials on which it should base its decision, the award of any relief inclusive.** See Union Beverages Ltd. v. M.A. Owolobi (1988) 1 NWLR (Pt. 68)

Both Issues 2, 3 and 4 are resolved against the appellant. The appeal on the whole lacks merit and fails. The judgment of the court of Appeal is affirmed. N1,000.00 costs is awarded to the respondent against the appellant.

B

**OGUNDARE.JSC**

I have had the advantage of a preview of the judgment of my learned brother Wali JSC just delivered. I agree with him that this appeal is totally lacking in merit. I only wish to add a few words of my own.

C

On the existence of a contract between the parties, I am not persuaded that any ground exists for my disturbing the concurrent finding of the two Courts below that Exhibits A, B, C and D read together with the other evidence adduced, oral and documentary, did not establish any contract. These documentary evidence only showed steps taken in the process of the Defendant engaging the Plaintiff to prepare necessary architectural documents in respect of the Educational Zone; those steps had not as yet crystallized into a contract between the parties. Learned counsel for the Plaintiff conceded as much. His submission is to the effect that on the totality of the evidence a contract was established. Quite apart from this submission not in line with the Plaintiff's pleadings, learned counsel was unable to pinpoint the evidence that disclosed the contract.

E

On the alternative submission for an award in quantum meruit, it is learned counsel's argument that the Defendant having accepted from the Plaintiff the sketch drawings (Exhibit E), it had misled the latter into believing that Exhibit E would be paid for and a new contract should be inferred. With respect, I have no hesitation in rejecting this line of argument. There being no contract between the parties, there was no basis on which a claim in quantum meruit could be founded - Kofi Sunkersette Obi v. A. Strauss & Co. Ltd. 12 WACA 281. PC; Way v. Latilla (1937) 3 All ER 759 HL.

F

G

The learned author of Halsbury's Laws of England (4th edition) in vol. 9 at paragraphs 692-693 defines the term and lists the categories of quantum meruit.

H

"692. Meaning of quantum meruit. The terms quantum meruit" or "quantum Valebat" are used in three distinct senses at common law, namely as denoting: (1) a claim by one party to a contract, for example on breach of the contract by the other party, for reasonable remuneration for what he has done; (2) a mode of redress on a new contract which has replaced a previous one; (3) a reasonable price or remuneration which will be implied in a contract where no price or remuneration has been fixed for goods sold or

work done.

*Of these three types of claim, the second and third are clearly contractual, whereas the first is not based on contract and is considered in the following paragraphs. Analogous to this first type are the Admiralty rules of salvage, and the statutory claims for necessities supplied to persons under a contractual disability and benefits conferred under frustrated contracts."* B

*"693. Types of quasi-contractual claim. Claims for a quantum meruit in respect of work voluntarily done under a contract terminated for breach, or under an unenforceable, void or illegal contract are properly regarded as quasi-contractual. Similarly, a quasi-contractual quantum meruit claim will be available to a plaintiff who is compelled to do what the defendant was under a legal duty to do. It is doubtful, however, whether claims in respect of necessities supplied to persons under contractual disability or for work voluntarily done (other than under a contract terminated for breach) are properly regarded as based on quasi contract."* C

At paragraph 697, the learned author discusses the effect, in law, where work has been done voluntarily, for another. It is clear on the authorities that the mere acceptance by the Defendant of Exhibit E, would not amount to an implied promise to pay for it and as Exhibit E was produced not at the request of the Defendant, the Plaintiff could not claim any remuneration for it - Forman & Co. Property Ltd. v. The Liddesdale (1900) AC 190 PC; Gilbert & Partners v. Knight (1968) 2 All ER 248, where a surveyor, in August 1965, agreed with the owner of a house to prepare drawings, to arrange tenders, to obtain necessary consents and to settle the accounts for certain proposed alterations to the house, and to supervise the work of alteration, the cost of which he estimated at roughly 600, for a fee of 30, which would cover possible extras but not other work. In April and May 1966, when the builder had started work, the owner ordered some more work, which brought the total cost to 2,283.00. The surveyor supervised the additional work, but did not say anything about a fee for doing so until after the work was finished, when he submitted an account for 135, being the agreed 30 plus 100 guineas, a scale fee for supervising the additional work. The owner paid only the agreed 30. Held, on appeal to the Court of Appeal, that the surveyor was entitled to the agreed fee of 30 only, because, although the fee was agreed in relation only to the work originally estimated and possible extras to it, no charge by way of quantum meruit for supervising the additional work Ordered in 1966 was recoverable unless a new contract to pay a fee in respect of that work could be implied, and no such implication could be made as the parties had never discharged the original contract for one lump sum fee of 30. Harman, L.J. observed at pp. 250-251: D

*"Lord Dunedin makes an observation on this subject which seems* E F G H

1184 Olaopa v. O.A.U. (1997) 6 KLR Ogundare JSC  
to me really pertinent in The Olanda (1919) 2 K.B. 728, n. at p. 730 in the House of Lords, a report of which is set out at the end of Steven v. Bromley & Son (1919) 2 K.B. 722. He said:

As regards quantum meruit where there are two parties who are under contract quantum meruit must be a new contract, and in order to have a new contract you must get rid of the old contract.'

B I do not think that these parties did get rid of the old contract: there it was still outstanding not having been discharged - It was never mentioned - and I think the defendant was entitled to assume she would not be asked for a different sum on a different basis. Mr. Tyrell very frankly admitted that it was an error on his part not to remind her. He might so easily have done so when he wrote to her and said 'of course, now you are undertaking this new work if you want me to supervise it you must remember that I am a professional man and shall charge a professional fee'. He did not do so. I think that she was entitled to suppose, and did suppose, that the lump sum which she had agreed to pay would cover whatever alterations she wanted done to this house.

D

It is perhaps rather a hard case on the plaintiffs, but if it is a case of hardship to them or hardship to her, it is they who should suffer because it is they after all who are professionals and she is not. I do not see that there was any such 'getting rid of the old contract', as Lord Dunedin puts it, as to entitle them to their quantum meruit under a new contract - because a new contract there must be, as quantum meruit played no part in the old one."

E I can see no ground on which the award of N15,000.00 in quantum meruit made by the learned trial Judge, in favour of the Plaintiff, could be sustained. The Court below, in my respectful view, was right in setting aside that award. It was never asked for and had no support in law.

F

I dismiss this appeal and abide by the order for costs made in the lead judgment of my learned brother, Wali JSC.

G

#### MOHAMMED JSC

I have had the privilege of reading the opinion of my learned brother Wali, J.S.C. in the lead judgment just delivered. I agree that this appeal has no merit at all. It is crystal clear that exhibits A, B, C and D do not constitute a valid contract between the parties. There was no express or implied agreement by the parties that the appellant will be paid on the architect scale of fees.

H

For the reasons given in the lead judgment, which I adopt as mine, this appeal is dismissed. I also award N1,000.00 in favour of the respondent.

### ADIO JSC

I have had the advantage of reading, in draft, the judgment just delivered by my learned brother, Wali, J.S.C., and I agree that the appeal lacks merit and, therefore, fails. I dismiss it and I abide by the order for costs.

I have to point out that I do not agree with the contention of the learned counsel for the appellant that reading Exhibits, "A", "B", "C" and "D" together with the other evidence, both oral and documentary, adduced by the appellant, in this case, the courts below erred in holding that there was no contract between the appellant and the respondent. Exhibit "B" contained the minutes of the meeting which the appellant alleged that he was invited to attend and which he did attend, to discuss the matter. A careful reading of Exhibit "B" showed that there was nothing in the document which can reasonably be construed as an offer, from the respondent, appointing the appellant to design the proposed buildings for the development of the alleged five acres of land.

Payment on 'quantum meruit' (as much as he has earned) will arise if one person had expressly or impliedly requested another to render him a service or execute a piece of work without specifying any remuneration but the circumstances of the request imply that the service is to be paid for or if a person by the terms of a contract is to do a certain piece of work for a lump sum, and he does only a part of the work, he may be able to claim on a quantum meruit if, completion of the work has been prevented by the act of the other party to the contract. What is essential is that there should be a request or contract express or implied. If, as in this case, there is no request or contract, a claim on quantum meruit cannot arise or be sustained.

It is for the foregoing reasons and the detailed reasons given in the judgment of my learned brother, Wali, J.S.C., that I agree that this appeal lacks merit. It fails and I too dismiss it and abide by the order for costs.

### IGUHJSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Wali, J.S.C. and I agree entirely that this appeal is without substance and ought to be dismissed.

On the question of whether or not the appellant was able to establish a valid contract between the parties, the learned trial judge after a thorough examination of the issue pronounced as follows:-

*"It is my view that putting together Exhibit A, B, C and D, they were not enough to constitute a valid contract between the plaintiff and the de-*

*fendant which would make the defendant liable for the payment of the sum of N159,875.00 as professional fees for the design drawings Exhibit E made out by the plaintiff in this case. By reason of the foregoing points, I finally hold that there was no formal contract between the plaintiff and the defendant."*

B The Court of Appeal; for its own part, per the leading judgment of Ogwuegbu, J.C.A, as he then was, with which Kutigi J.C.A, as he then was, and Omololu - Thomas, J.C.A., agreed, affirmed the above finding of the trial Court, holding as follows:-

C *"I agree with the learned trial judge that Exhibits A, B, C and D are not enough to constitute a valid contract between the plaintiff and defendant."*

A little later in its judgment, the court below went on:-

D *"The defendant was yet to make up its mind about that project. Reading Exhibits A, B, C and D, there was no contract which needed any formalization. The Vice-Chancellor did not award any contract and ss.3(2), 5 (1) (r) and 15 of the University of Ife Law, 1970 cannot be called in aid of the appellants. .... Exhibits A, B, C and D did not estop the defendant from denying the existence of a contract because the Exhibits cannot constitute a valid contract."*

E I have myself closely studied the contents of Exhibits A, B, C and D together with the entire evidence led before the trial Court and it is clear to me that no valid contract was established by the appellant between him and the respondent. It is trite that for a contract to mature, there must be clear evidence of an offer, an unequivocal acceptance and a valid consideration. None of these three elements was established by the appellant before the trial Court. F Indeed Chief Adejumo, learned counsel for the appellant, conceded that no written offer was established before the trial Court. In my view, however, it was not a question of there not being a written offer, there was clearly no offer of whatever type, whether written, oral or implied established before the trial G Court by the appellant. In the absence of such an offer, no acceptance in law was possible, much less a consideration. I, therefore, endorse fully, the findings of both Courts below that no valid contract was established between the parties in the transaction in issue. And in the absence of any such contract, the payment of N159,825.00 claimed by the appellant as professional fees H thereunder cannot, naturally, arise.

On the issue of whether the appellant is entitled to the award of N15,000.00 in quantum meruit, it cannot be disputed that where the plaintiff can prove the rendering of services under an unenforceable contract, the contract is admissible as evidence of the value of the services rendered and he

may recover on a quantum meruit basis. So, too, where work is done or services are rendered by a plaintiff at the request of the defendant, and of which the defendant has had the benefit, the plaintiff can also recover the value of the work done or services rendered on a quantum meruit. See Scott v. Pattison (1923) 2 K.B. 723 at 727 - 728.

The relief on quantum meruit strictly speaking, is different from remedies in contract or tort and falls within the common law remedy of quasi-contract. And so, in a contract for work done or services rendered, where no scale of remuneration is fixed or agreed upon, the law imposes an obligation to pay a reasonable sum on the basis of quantum meruit. See Way v. Latilla (1937) 3 All E.R. 759 H.L. and William Lacey (Hounslow) Ltd. v. Davis (1957) 1 W.L.R. 932. The circumstances must however show that the work done or services rendered was not done gratuitously as the principle of quantum meruit is only an incident in assessing the amount due under an ordinary contract where the rate of remuneration was not expressly fixed. See Powell v. Braun (1954) 1 All E.R. 484.

In the present case, however, the appellant nowhere founded his claim on quantum meruit. Neither in his Statement of Claim nor in the appellant's evidence before the Court was a claim on the basis of quantum meruit, no matter how remotely, disclosed. The law is well settled that a Court must not grant to a party a relief which he has not sought and may not in fact desire. See Ekpenyong v. Nyong (1975) 2 S.C. 71 at 81 - 82, Makanjuola v. Balogun (1989) 3 N.W.L.R. (Part 108) 192 at 206 etc. In the second place, even if there was a claim on quantum meruit before the Court, and this is clearly not the case here, there is not one iota of evidence of any yardstick for the quantification or assessment of the value of the work in respect of which the claim is made.

This appeal lacks merit and it is for the above and the more elaborate reasons contained in the leading judgment that I, too, dismiss this appeal. I abide by the order for costs therein made.

G

H