

**SUPREME COURT OF NIGERIA**  
FRIDAY 21ST FEBRUARY, 2014. SC. 86/2008  
**CORAM:- M. MOHAMMED, B. RHODES-VIVOUR,**  
**M. D. MUHAMMAD, C. B. OGUNBIYI,**  
**K. B. AKA'AH, JJSC**

1. DR. USENI UWAH  
2. MRS. SILKE UWAH ..... APPELLANTS  
AND  
1. DR. EDMUNDSON T. AKPABIO  
2. DR. JOVITA MBABA ..... RESPONDENTS

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APPEALS - Concurrent findings - Supreme Court does not interfere with findings of lower court - Save where appellant shows that the same is perverse (H1)

JUDGMENTS - Perverse decision - Meaning - Decision is said to be perverse where it is speculative and not based on any evidence - Court took into account matters which it ought not to - And has also ignored the obvious (H2)

ACTIONS - Proof - Standard of - Civil suits are decided on balance of probabilities - Whereby the totality of evidence of both sides is taken into account and appraised - In determining each side's quantum (H3)

AGREEMENTS - Terms - Binding nature - Whenever parties enter into agreement in writing - They are bound by its terms - And neither the parties nor court is legally allowed - To read into the agreement terms not agreed upon (H4)

CONTRACTS - Agency - Disclosed principal - Liability of - Contract made by agent acting within scope of his authority - Is contract of the principal - And it is principal and not agent that sues or is to be sued upon the contract (H5)

**FACTS**

Before the High Court of Akwa-Ibom State Uyo, plaintiffs/re-

spondents commenced this action against defendants/appellants, seeking inter alia for declaration that the partnership of respondents and appellants in Mfon Abasi Nursery/Primary School, Nwut Usiong, Division Itam, Itu, is still in existence and not yet dissolved and a declaration that respondents are still part owners of the School and are therefore entitled to jointly manage same with appellants and share in the profits and liabilities thereof. Appellants filed a defence and counter-claimed among others for declaration that appellants are entitled to possession of the School, having fully paid for same. The parties created the partnership that established and ran the school. 1<sup>st</sup> appellant was made the chairperson of the Board of proprietors while 2<sup>nd</sup> appellant was the Secretary of the Board and Principal of the School. The initial capital of the partnership was provided in equal shares by appellants and respondents who are entitled to equal share of the venture's profits and loss. Subsequently, the parties agreed to dissolve the partnership upon the insistence of appellants. The service of a legal practitioner (Oyouko S. Oyouko) was engaged to supervise the dissolution in a manner that would be fair and equitable to all. The parties agreed that the intention for the option to purchase the school must be submitted to the solicitor not later than 17th May 1995.

It was also agreed that any partner intending to buy the property must submit to the solicitor a written bid, accompanied by a deposit sum of N3 million of the agreed total sale price of N5.5 million; that the option will therefore be made public only at the expiration of the 17th May 1995. The binding documents between the parties were exhibits 3 and 4, being the minutes of the meeting held by the partners with a view of disposing the partnership business. Appellants who indicated interest of buying the property failed to meet up with the deadline as agreed as per deposit of the N3 million. Respondent thus advised that appellants should be refunded money they have paid and that the property should be sold to the general public. Thereafter, the partnership persisted. Meetings were held by the partners who continued to share profits from the School. However, appellants in a twist insisted that the partnership has been dissolved and that having purchased it, the school belongs to them. Respondents in reaction instituted this action. At the end of hearing in the matter, the learned trial judge found for respondents and dis-

missed appellants' counter-claim. Dissatisfied, appellants appealed to the Court of Appeal Calabar Division. The court dismissed the appeal and affirmed the trial court's judgment. Aggrieved further, appellants appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*"1. Whether the Learned Justices of the Court of Appeal were right in upholding the finding and action of the Learned Trial Judge, of excluding and/or rejecting evidence of further acts, meetings, decision and/or agreements made, held transpired and/or taken by or between the Appellants and the Respondents, subsequent to exhibits 3 and 4, on the basis of exclusion of oral evidence by documentary evidence under section 132 of the Evidence Act, thereby resulting in the dismissal of the Appellants' appeal.*

*2. Whether the Learned Justices of the Court of Appeal were right in refusing to hold the Partnership liable and committed to the action of the Solicitor engaged by both the Appellants and the Respondents to dissolve the same and sell the school (the subject of the partnership), of collecting the agreed deposit for the sale of the school to and from the Appellant and for extending the deadline for the payment thereof, under the law of Agency after upholding the finding of the learned Trial Judge that the said Solicitor was a common enemy to both the Appellant and the Respondents.*

*3. Whether the Learned Justices of the Court of Appeal were right in affirming the resolution by the Learned Trial Judge of the issue of whether or not the Partnership between the parties had been dissolved by reference to the conduct and/or "IPSE DIXIT" of the Appellants' and the Respondents' witnesses, as opposed to by the operation and/or consideration of established Legal principles.*

*4. Whether the Learned Justices of the Court of Appeal were right in affirming the decision of the Learned Trial Judge that the Counter claim of the Appellants before it lacked merit and should be dismissed."*

**HELD** (Unanimously dismissing the appeal per  
**MUHAMMAD JSC)**

*APPEALS - Concurrent findings*

**1. Now, what should be the fortunes of parties to this appeal? I agree with learned respondents' counsel that the appellants who urge us to interfere with the concurrent findings of fact of the two courts below have a greater burden to discharge.**

**B It is again the principle, though, that the appellants succeed, once by the reasons contained in their brief as further adumbrated orally at the hearing of the appeal, they establish that the lower court's judgment they appeal against is perverse.**

**C It must be restated that an appellate court's interference with concurrent findings of fact is only allowed where the findings are shown to be perverse or that same is not the result of a proper exercise of discretion. In the case at hand, the appellants, having failed to show that the lower court's affirmation of the trial court's decision has proceeded either on the basis of matters the court wrongly took account of or because the court has ignored the obvious, must fail. (pp. 719 D/725 B)**

*JUDGMENTS - Perverse decision - Meaning*

**E 2. And a decision is said to be perverse, where:**

**(a) It is speculative and not based on any evidence or**

**(b) the court took into account matters which it ought not to have taken into account or**

**F (c) the court has ignored the obvious. (p. 719 F)**

*ACTIONS - Proof - Standard of*

**G 3. Learned appellants' counsel needs to be reminded that civil suits are decided on the balance of probabilities; put differently on the preponderance of evidence. The principle requires that the totality of the evidence of both sides is taken into account and appraised in determining each side's quantum. An imaginary scale is then used to determine which side's evidence is heavier and according preponderates. The party whose evidence is heavier succeeds in the case. (p. 720 C)**

*AGREEMENTS - Terms - Binding nature*

**4. Secondly, the principle has equally become trite that an agreement, where one is established to exist, necessarily binds**

***the parties thereto. Whenever parties enter into an agreement in writing they are bound by its terms and neither the parties nor the court is legally allowed to read into the agreement terms on which the parties did not agree.***

***In the case at hand, the lower court, in affirming the trial court's findings that the appellants are bound by the terms in Exhibits "3" and "4" which constitute an agreement the partners as sane adults are parties to, cannot be wrong. Being endorsement of findings of the trial court which clearly draw from the pleadings and evidence of parties, the parties to the said agreement are disentitled from contending otherwise. Exhibits "21" and "31" which do not constitute such a binding agreement, as rightly held by the two courts below, cannot avail the appellants. By being signatories to Exhibits "3" and "4" appellants have agreed that title to the partnership property is only transferable to them in the manner they authorize their solicitor in Exhibits "3" and "4" to dispose same. In Exhibits "3" and "4" is a tripartite agreement which binds not only the appellants and the respondents but their solicitor as well. Exhibits "21" and "31" which the appellants failed to establish to have superseded the terms of sale contained in Exhibits "3" and "4", cannot, in law, be the legitimate source of appellants' title to the partnership property. Any disposal of the partnership property by Uyouko Esq. in a manner inconsistent with his authority in Exhibits "3" and "4" will not bind the respondents and/or the partnership.*** (pp. 720 E/724 E)

*CONTRACTS - Agency - Disclosed principal - Liability of*

***5. Thirdly, as a general rule, a contract made by an agent acting within the scope of his authority for his disclosed principal, in Law, is the contract of the principal and the principal not the agent is the person to sue or be sued upon the contract.*** (p. 720 G)

## **REPRESENTATION**

Alade Agbabiaka (SAN) with Abutu John, Sylvester Obinka and Hassan Luqman, for the Appellants

Simon Essien with Francis Ekanem and N. Udofia, for the Respon-

**CASES REFERRED TO**

- Godwin v. The Chief Christ Apostolic Church (1988) 14 NWLR (pt. 584) 152
- B Ataguba & Co v. Gura Nig. Ltd (2005) 8 NWLR (pt. 927) 429  
Adewumi v. Plastex Ltd (1986) 3 NWLR (pt. 32) 761  
Igah v. Amakiri (1976) 11 SC 1  
Olalekan v. Wema Bank Plc (2006) 13 NWLR (pt. 998) 617
- C Kano Textile Printers v. G & H (Nig) Ltd (2002) 2 NWLR (pt. 751) 420  
Ajide v. Kelani (1985) 3 NWLR (pt. 12) 248  
U.T.B Ltd v. Dolmetsch Pharm Nig Ltd (2007) 16 NWLR (pt. 1061) 520
- D Labode v. Otubu (2001) 7 NWLR (pt. 712) 256  
UBA Plc v. Jargaba (2002) 2 NWLR (pt. 750) 200  
Adimora v. Ajufo (1988) 3 NWLR (pt. 80) 1  
Ihewuezi v. Ekeanya (1989) 1 NWLR (pt. 96) 239  
Odutola v. Alleru (1985) 1 NWLR (pt. 1) 92
- E Balogun v. Akanji (1988) 1 NWLR (pt. 70) 301  
Osuji v. Ekeocha (2009) 16 NWLR (pt. 1166) 81

**STATUTE REFERRED TO**

- F Evidence Act, ss. 132(1)(d), 151

**LEAD JUDGMENT BY MUHAMMAD JSC**

- This is an appeal against the decision of the Calabar Division of the Court of Appeal (hereinafter referred to as the lower court) delivered on the 18th April, 2007 affirming the judgment of the Akwa-Ibom High Court sitting at Uyo (hereinafter referred to as the trial court) in suit No. HU 368/97 delivered on 28th March, 2003. The respondents herein as plaintiffs commenced the suit seeking the following reliefs:-

- H “(a) A declaration that the partnership of the plaintiffs and the defendants in Mfon Abasi Nursery/Primary School, Nwut Usiong, Division Itam, Itu, is still in existence and not yet dissolved.  
(b) A declaration that the plaintiffs are still part owners of the Mfon Abasi Nursery/Primary School, Nwut Usiong, Itam, Itu and are

*therefore entitled to jointly manage same with the defendants and share in the profits and liabilities thereof.*

*(c) An injunction restraining the defendants from continuing the management of the Mfon Abasi Nursery/Primary School until partnership is dissolved.*

*(d) An order of court appointing an officer of the Akwa Ibom State judiciary as a receiver to manage the affairs of Mfon Abasi Nursery/Primary School for the plaintiffs and defendants and to dissolve the partnership of the School and share the proceeds equally to the partners.”*

The appellants as defendants at the trial court filed a defence and in their counter-claim sought the following reliefs:-

*“(a) A declaration that the defendants are entitled to possession of the Mfon Abasi Nursery/primary School, Nwut Usiong, Itam, Itu Local Government, having fully paid for same.*

*(b) An order for a refund of all monies collected/and or wrongly paid over to the plaintiffs after the defendants had paid for the school, being a total of N332, 000.00k.*

*(c) An injunction from further claiming and or moving into the school.*

*(d) A declaration that Mfon Abasi Nursery/primary School, Nwut Usiong Itam, Itu Local Government Area belongs to the defendants as at 28th September, 1998 when they fully paid for it.”*

At the end of the trial, the learned trial judge found for the plaintiffs and dismissed defendants, counter-claim. Dissatisfied, the defendants appealed to the court below which court affirmed the trial court’s judgment. Still dissatisfied, the appellants have now appealed to this Court. The facts on the basis of which the appeal is brought are stated herein under.

The parties to this appeal, by Exhibit “1”, created the partnership that established and ran the Mfon Abasi Nursery/primary School at Nwut Usiong Itam in Itu Local Government Area of Akwa-Ibom State. This was in 1982. The 1st appellant was made the chairperson of the Board of proprietors while the 2nd appellant was the Secretary of the Board and Principal of the School. The initial capital of the partnership was provided in equal shares by the appellants and the respondents who in terms are entitled to equal share of the venture’s profits and loss. The School attracted many students and tremen-

dous patronage.

Having agreed, upon the insistence of the appellants, to dissolve the partnership, the partners in December, 1994 engaged the services of Oyouko S. Oyouko, a legal practitioner, to supervise the dissolution in a manner that would be fair and equitable to all. Appellants and respondents met on 6th May, 1995 and agreed to sell the School, the subject matter of the partnership. The right of purchase of the School was to open to the general public only after the partners' failure to exercise the right of purchase/refusal which was theirs in the first instance. Mr. Uyouko whom by agreement of the partnership in an earlier meeting had been made a signatory to the partnership accounts, ensured, see Exhibits "21" and "33", that each partner had filled, signed and submitted to him a questionnaire without disclosing to the others what answers the particular partner provided in the questionnaire. Uyouko Esq. did not disclose the answers in the questionnaires to the partners either.

The purchase price to an interested partner of 5.5 million naira was fixed by the partners themselves. Any partner wishing to buy the School, it was further agreed, was to submit a written bid along with a 3 million naira deposit in bank draft to Uyouko Esq. not later than 17th May, 1995. Deposits of less than 3 million naira would not be binding. The bid was to be made open to the general public at the expiration of the 17th May, 1995 deadline allowed any partner who wished to purchase the School. Whatever such a partner who was unable to meet the deadline deposited was to be refunded to him. All these terms are contained in the minutes of the partnership meeting of the 6th of May, 1995. The minutes, Exhibits "3" and "4", were signed by the appellants, respondents and Oyouko Esq., their solicitor, too.

At the 20th May, 1995 partnership meeting, the partners were notified that the appellants who had indicated their desire to buy the School were yet to deposit the sum as and when agreed. Uyouko Esq. informed the partners that, as a result, he had thrown the bid open to the general public. 1st appellant pleaded that time be extended to 27th May, 1995 to enable them pay the 3 million naira minimum deposit before the bid was made open to the general public. The respondents agreed. Unknown to the respondents, the appellants by the 27th May, 1995 had paid nothing. They paid 1 mil-



lion naira instalmentally beginning from 20th June, 1995, a fact conveyed to the respondents by Uyouko at a meeting the partners held on 5th August, 1995. The respondents rejected the development and by Exhibit “16” instructed that the appellants who were in breach of the agreement the partners made on the sale be refunded the money they paid and the School be sold by Uyouko to the general public. Uyouko, by Exhibit “5” of 28th August, 1995, conveyed this instruction to the appellants. B

Thereafter, the partnership persisted. Meetings were held by the partners who continued to share profits from the School. 1st and 2nd appellants, see Exhibit “8”, resumed their positions as Chairman and Secretary of the Board of proprietors and the principal of the School respectively. The partners however removed Uyouko Esq. as signatory to the School’s accounts and terminated his services to the partnership. C

The appellants insisted in the meetings the partners held between 20th May and 20th September, 1997, that the partnership had been dissolved and having purchased it, they owned the School. Respondents reacted by commencing Suit No. HU/365/97 at the trial court against the appellants. The appellants defended the action. They also had their counter-claim. The trial court’s decision in favour of the respondents and the dismissal of the appellants’ counter-claim was affirmed by the court below. The instant appeal is against that court’s judgment to this Court. D

Parties had filed and exchanged their briefs, including appellants’ reply brief, as arguments for and against the appeal. The briefs were adopted and relied upon at the hearing of the appeal. E

The four issues the appellants distilled at paragraph 3, pages 7 - 8 of the appellants’ brief, which issues the respondents also adopted in their brief as having arisen for the determination of the appeal, are:- F

*“1. Whether the Learned Justices of the Court of Appeal were right in upholding the finding and action of the Learned Trial Judge, of excluding and/or rejecting evidence of further acts, meetings, decision and/or agreements made, held transpired and/or taken by or between the Appellants and the Respondents, subsequent to exhibits 3 and 4, on the basis of exclusion of oral evidence by documentary evidence under section 132 of the Evidence Act, thereby resulting in H*

*the dismissal of the Appellants' appeal.*

2. *Whether the Learned Justices of the Court of Appeal were right in refusing to hold the Partnership liable and committed to the action of the Solicitor engaged by both the Appellants and the Respondents to dissolve the same and sell the school (the subject of the partnership), of collecting the agreed deposit for the sale of the school to and from the Appellant and for extending the deadline for the payment thereof, under the law of Agency after upholding the finding of the learned Trial Judge that the said Solicitor was a common enemy to both the Appellant and the Respondents.*

3. *Whether the Learned Justices of the Court of Appeal were right in affirming the resolution by the Learned Trial Judge of the issue of whether or not the Partnership between the parties had been dissolved by reference to the conduct and/or "IPSE DIXIT" of the Appellants' and the Respondents' witnesses, as opposed to by the operation and/or consideration of established Legal principles.*

4. *Whether the Learned Justices of the Court of Appeal were right in affirming the decision of the Learned Trial Judge that the Counter claim of the Appellants before it lacked merit and should be dismissed."*

Under the 1st issue, learned appellants' counsel contends that evidence abound outside Exhibits "3" and "4" in proof of the agreement between the appellants and the solicitor on the former's bid to purchase the Mfon Abasi Nursery/Primary School. The record of appeal, it is contended, clearly discloses evidence subsequent to Exhibits "3" and "4", the minutes of meeting of the partnership held on the 6th May, 1995, on the terms and conditions of the sale of the School agreed to by the partners and their Solicitor. Exhibits "3" and "4", learned appellants' counsel insists, only symbolize the commencement of the agreement. Exhibits "21" and "33", the questionnaires, the parties filed, signed and returned to the solicitor, learned counsel submits, particularly establish the fact that the appellants were authorized by the solicitor to pay the purchase price for the School instalmentally.

It is further argued that Exhibits "3" and "4" do not constitute a contract. They are mere minutes of the meeting held by the partners on the 6th of May, 1995. The Exhibits only provide initial rather than the exhaustive terms and conditions for the dissolution of

the partnership and the sale of the partnership's property the lower court wrongly holds they are. The appellants, learned appellants' counsel insists, rightly and justifiably rely on Exhibits "21" and "33" to establish the fact of the existence of a separate agreement between them and the solicitor arising from further developments regarding the sale of the School. Lower court's refusal to affirm the trial court's admission of Exhibits "21" and "33" let alone attach due weight to them as proof of a distinct and separate agreement modifying the initial conditions set out in Exhibits is fundamentally wrong. The lapse, learned counsel concludes, having caused a miscarriage of justice warrants this Court's interference with the lower court's decision. It is urged that the issue be resolved in favour of the appellants and the appeal allowed.

Appellants grouse under the 2nd issue targets the lower court's findings from line 12 page 479 to the 12th line at page 480 of the record of appeal. These findings, learned appellants counsel argues, contradict the same court's findings from the 13th line of page 483 to the 3rd line of page 485 of the record. The earlier findings of the lower court are equally and violently in contrast with the trial court's findings at page 343 lines 2-12 of the record of appeal which findings are yet to be appealed against or set-aside. The trial court's finding that Mr. Uyouko being the partnership's Solicitor is its agent persists. The insistence of the lower court that the respondents are not bound by the acts of such an agent is, it is argued, manifestly wrong. Exhibits "21" and "33" prepared by such an agent should bind the respondents as rightly found by the trial court. The acts of an agent done in the discharge of his functions as such agent, it is submitted, bind the principal. The appellants, having been made to change their positions by the Solicitor's declarations in exhibits "21" and "33", are entitled to make instalmental payments. On the authority of section 151 of the Evidence Act and the decisions in *Ogbonnaya N. Godwin v. The Chief Christ Apostolic Church* (1988) 14 NWLR (Pt 584) 152, *Ataguba & Co v. Gura Nigeria Ltd* (2005) 8 NWLR (Pt 927) 429 and *Adewumi v. Plastex Ltd* (1986) 3 NWLR (Pt 32) 761, learned counsel submits, the respondents are estopped and precluded from denying the truth, existence and bindingness of the agreement contained in Exhibits "21" and "33". Further relying on *Joe Igah v. Amakiri and others* (1976) 11 SC 1 and *Olalekan v. Wema Bank Plc* (2006) 13

NWLR (pt 998) 617, learned appellants' counsel submits that the 2nd issue be resolved in appellants' favour as well.

Appellants' arguments under their 3rd and 4th issues are a rehash of the arguments under their 1st and 2nd issues as already captured. It serves no useful purpose to reproduce them.

B Responding to the argument of learned appellants' counsel, learned respondents' counsel submits, and rightly too, that the central issue the appeal raises is whether the conduct of the appellants and Uyouko Esq., the partnership solicitor, stand in accord with the agreement of the partners on the disposal of the partnership property. Exhibits "3" and "4", beyond stating the conditions governing the sale of the School, contends learned counsel, also form the terms of engagement and operation of the partnership solicitor. The two Exhibits bind not only the partners but the solicitor too. Having been D signed by the partners as admitted by DW1, the fact of their being minutes of meeting does not make Exhibits "3" and "4" less binding on the parties to them. Learned counsel further submits that the evidence of DW1 is that the reversal of any agreement is effected in the meeting of the partners and reduced in minutes of such meetings. E Exhibits "21" and "31", contends learned respondents' counsel, have not been established by the appellants to be reversal of the terms contained in Exhibits "3" and "4". Section 132(1)(d) of the Evidence Act the appellants seek to rely on does not, therefore, avail them.

F Learned respondents' counsel further argues that the appellants still have to contend with the admission of DW2 under cross examination that Exhibits "21" and "31", the questionnaires circulated by the solicitor contain answers personal to each partner. The two Exhibits are, therefore, incapable of overriding the clear and binding words of Exhibits "3" and "4". Learned counsel maintains G that the appellants have themselves conceded that the payment they purport to have made instalmentally was neither based on the content of Exhibits "21" and "31" nor Exhibits "3" and "4". The lower court is right, concludes learned counsel, to have made it impossible H for the appellants to benefit from their breach of the agreement they voluntarily subscribed to in Exhibits "3" and "4" and which remain unaltered by Exhibits "27" and "31". Relying on the *Kano Textile Printers v. G & H (Nig) Ltd* (2002) 2 NWLR (pt 751) 420 at 450; *Ajide v. Kelani* (1985) 3 NWLR (pt 12) 248 at 250-251 and *U.T.B*

Ltd v. Dolmetsch Pharm Nig Ltd (2007) 16 NWLR (pt. 1061) 520 at 529, learned respondents' counsel urges that the 1st issue be resolved against the appellants.

Under the 2nd issue, learned respondents' counsel submits that only the authorized acts of an agent binds his principal. In the case at hand, the unauthorized act of the solicitor by virtue of which the appellants allegedly made payments outside what Exhibits "3" and "4" provided cannot in Law bind the respondents in favour of the appellants. The solicitor, it is submitted, has acted outside the scope of his authority and the lower court is right to have so found. This Court, learned counsel further contends, cannot interfere with such a decision. Reliance has been placed to this end on Labode v. Otubu (2001) 7 NWLR (pt 712) 256 at 287 and UBA Plc v. Jargaba (2002) 2 NWLR (pt 750) 200 at 223.

On the whole, learned respondents' counsel urges that the appeal be dismissed, the appellants having failed to establish that the concurrent findings of fact by the two courts below are perverse.

***Now, what should be the fortunes of parties to this appeal? I agree with learned respondents' counsel that the appellants who urge us to interfere with the concurrent findings of fact of the two courts below have a greater burden to discharge.***

***It is again the principle, though, that the appellants succeed, once by the reasons contained in their brief as further adumbrated orally at the hearing of the appeal, they establish that the lower court's judgment they appeal against is perverse. And a decision is said to be perverse, see Adimora v. Ajufo (1988) 3 NWLR (Pt 80) 1 and Ihewuezi v. Ekeanya (1989) 1 NWLR (pt 96) 239, where:***

- (a) It is speculative and not based on any evidence or***
- (b) the court took into account matters which it ought not to have taken into account or***
- (c) the court has ignored the obvious.***

Appellants' overriding complaint against the lower court's judgment is that it has affirmed the decision of the trial court which does not draw from available evidence and also stands in breach of some legal principles.

It is evident from the record of this appeal that whereas the

respondents had set out to build their claim around Exhibits “3” and “4”, the appellants on the other hand rely on Exhibits “21” and “31” in establishing their counter-claim. The appellants argue that the lower court is wrong to have affirmed the trial court’s decision arrived at in spite of the improper appraisal of evidence given by either side in proof of their different claims; that the lower court’s endorsement of the trial court’s wrong inference from accepted facts as well as the trial court’s application of wrong principle to established facts cannot endure. Is the judgment appealed against bedeviled by these fundamental lapses? I think not.

***Learned appellants’ counsel needs to be reminded that civil suits are decided on the balance of probabilities; put differently on the preponderance of evidence. The principle requires that the totality of the evidence of both sides is taken into account and appraised in determining each side’s quantum. An imaginary scale is then used to determine which side’s evidence is heavier and according preponderates. The party whose evidence is heavier succeeds in the case.*** See *Odutola v. Alleru* (1985) 1 NWLR (pt 1) 92, *Balogun v. Akanji* (1988) 1 NWLR (pt 70) 301 and *Osuji v. Ekeocha* (2009) 16 NWLR (pt 1166) 81.

***Secondly, the principle has equally become trite that an agreement, where one is established to exist, necessarily binds the parties thereto. Whenever parties enter into an agreement in writing they are bound by its terms and neither the parties nor the court is legally allowed to read into the agreement terms on which the parties did not agree.*** See *Ojibah v. Ojibah* (1991) 5 NWLR (pt 191) 296 at 314, *Larmie v. D.P.M.S Ltd* (2005) 18 NWLR (pt 958) 438, *Koik v Magnusson* (1999) 8 NWLR (pt 615) 492 at 514.

***Thirdly, as a general rule, a contract made by an agent acting within the scope of his authority for his disclosed principal, in Law, is the contract of the principal and the principal not the agent is the person to sue or be sued upon the contract.*** See *Niger Progress Ltd v. North East Line Corporation* (1989) 3 NWLR (pt 107) 68, *Dr. Tunde Bamgboye v. University of Ilorin & Anor* (1999) 10 NWLR (pt 622) 290 at 329 and *Samuel Osigwe v. PSPLS Management Consortium Ltd & Ors* (2009) 3 NWLR (pt 1128) 378.

To make out their respective cases, the parties to this appeal called two witnesses each at the trial court. PW1 testified inter-alia for the respondents, being the plaintiffs at the trial court, that following the decision of the Board of Directors, the partners agreed and engaged the services of Barrister Uyo S. Uyouko to dissolve the partnership. In pursuance of his brief, PW1 further told the trial court, Uyouko circulated questionnaires which partners completed and returned to him. Exhibit “2” is the questionnaire PW1 completed and returned to Uyouko. By Exhibits “3” and “4”, minutes of meeting of the partners held 6th May, 1995 signed and adopted by the partners in the subsequent meeting held on 20th May, 1995, it was agreed thus:-

*“(1) Partners were given 1st option to bid for and purchase the school, but where no partner is able to buy the School, it would be thrown opened to outsiders to bid and purchase the School.* D

*(2) Because of the partners inability to agree at a sale value of the school where a partner is buying, Uyouko Esq. sought and obtained consent of the Plaintiffs and the Defendants and put the price at N5.5 million for partners.*

*(3) Any partner wishing to purchase the School was required to send his bid along with a minimum deposit of N3 million to be paid into a designated account in Allied Bank, Uyo.* E

*(4) It was again agreed that any payment by a partner which is less than N3 million as deposit will not be binding.*

*(5) The payment of the N3 million deposit was limited by time being 17th May 1995.* F

*(6) Where a partner fails to pay up N3 million deposit on 17/5/95 whatever amount that was deposited towards the purchase of the School shall be refunded to the partner and the sale of the School shall be opened to outside purchasers to bid.”* G

Following the revelation by Mr. Uyouko at the 20th May, 1995 that the appellants had not met the deadline for their purchase of the School as provided for in the 6th of May, 1995 meeting, PW1 stated, the respondents agreed that time be extended for the appellants by a further one week to the 25th May, 1995 to enable them comply with the terms allowed a partner who wished to purchase the School as contained in Exhibits “3” and “4”. On 5th August, 1995, Uyouko Esq. was instructed, during another meeting of the partners, H

to refund the money deposited by the appellants who were yet to comply with Exhibit “3” and “4” and open the bid for the sale of the School to the general public.

Appellants’ case through DW1 and DW2 is simply that they had purchased the School by virtue of Exhibits “27” and “31” and that with the dissolution of the partnership they are entitled to the possession of the School. Exhibits “21” and “31”, like Exhibit 2 are questionnaires completed by individual partner and returned to the solicitor. The other partners remain unaware of the content of the other partners filled and returned questionnaires.

After appraising the evidence proffered by witnesses on both sides, the trial court which had the advantage of watching the witnesses in the course of their testimonies states at page 333 of the record thus:-

*“Under Cross Examination DW1 admitted the bindingness of the Solicitor’s action in respect of the dissolution of the partnership and that partnership decisions were taken at the partners meetings, DW1 further admitted that partners are bound by Exhibits 3 and 4, and that as at 20th May 95, Defendants had not paid any amount for the purchase of the School. She stated that she did not know the contents of the questionnaires completed by the Plaintiffs. She admitted that the objection of the Plaintiffs for instalmental payment for school was based on the partners’ decisions of 6th May 95 as per Exhibits 3 and 4.”*

On DW2, the trial court also infers at page 334 as follows:-

*“Under Cross Examination DW2 admitted the bindingness of Exhibit 4 on him because he signed it. He also admitted that a partner who was desirous to purchase the School was to pay a deposit of N3m along with the bid as per Exhibit 4 but stated further that Defendants were allowed to pay by instalments by the Solicitor. DW1 admitted that this later arrangement by the Solicitor for the Defendants to pay for the School by instalments is not in accord with Exhibit 4”*

Given the state of pleadings and evidence of both sides, the trial court at pages 343-344 of the record of appeal, not surprisingly, concludes as follows:-

*“By the Plaintiff’s oral evidence and documentarily, (sic) and the honest and since evidence of the Defendants and the Defendants*



*admissions under cross Examination and documents, it is the view of this Court that the Plaintiffs case is up to the standard in Sections 134 and 135 of the Evidence Act. It is in the light of above circumstances that this Court believes the Plaintiffs evidence as the parties are bound by their contact ... in the circumstances of this case, this Court hereby rejects the Defendants evidence."* B

In affirming the trial court's finding on the real issue in controversy between the parties, the lower court at page 477 line 14 to page 478 lines 9 of the record of appeal reasons as follows:-

*"Learned counsel for the Appellant impugned the judgment of the leaned trial judge on the ground that the learned trial judge ignored the decision of the meeting of 20th May, 1995 but relied heavily on Exhibits 3 and 4. Exhibits 3 and 4 were offered and received in evidence without objection. The Exhibits were tendered by the Respondents who founded part of their case on them. On the other hand the appellants sought to rely on the decision allegedly taken at the meeting of 20-5-95. From the totality of the evidence of parties even though in agreement as regards Exhibits 3 and 4 they do not seem to agree on the decision allegedly taken on 20-5-1995".* C D

The court proceeded to conclude thus:- E

*"Be that as it may the appellants who disregarded Exhibits 3 and 4 claimed they were encouraged in that regard by the Solicitor. From all the circumstances it is nearer the truth to say that the appellants acted in collusion with the solicitor to disregard the resolution passed and adopted and not reversed by any meeting of the parties. The appellants' signed Exhibits 3 and 4 and it does not lie in their mouth to plead they were encouraged to act contrary to a subsisting resolution of the partners".* F

The foregoing findings of the court below encapsulate what the appellants contend provide basis for allowing their appeal. I am unable to agree with them for, try as one would, the findings have remained unamenable to all the shortcomings the appellants stridently endeavour to ascribe to them. Most certainly, Exhibits "21" and "31" the appellants rely on to establish their entitlement to the School, the partnership property, do not constitute any agreement between the two sides that supersedes the one in Exhibits "3" and "4" which unquestionably bind the parties. The latter Exhibits also contain the terms and conditions for the purchase of the partnership property G H

which the appellants in relying on Exhibits “21” and “31” manifestly stand in breach of. Uyouko the solicitor only conveys the title of the partnership property if he acts within the purview of his authority as denoted in Exhibits “3” and “4”. Exhibit “21” and “31” signed only by the appellants and the solicitor cannot bind the respondents who are not signatories to the understanding therein, if any. In *Andrew Nweke Okonkwo v. C.C.B. (Nig) Plc & 2 Others* (2003) 8 NWLR (pt 822) 347, this Court while considering a similar issue to the one this appeal raises held thus:-

*“It is trite law that persons of full age and sound mind are bound by any agreement lawfully entered into by them. Clause 7 of Exhibit B above gave the 1st defendant the right to sell the mortgaged property if the plaintiff failed to repay the loan on the due date without any further consent of the plaintiff. By clause 8 of Exhibit B, the plaintiff also waived his right to be given any notice under any statute or customary law. The Court of Appeal was thus plainly giving effect to the agreement entered into by the plaintiff himself and nothing else when it said the plaintiff had waived his right to any notice of sale... 1st defendant/bank was thus not bound under lease (Exhibit B) to have given the plaintiff any further notice of the proposed sale after the demand notices.”*

***In the case at hand, the lower court, in affirming the trial court’s findings that the appellants are bound by the terms in Exhibits “3” and “4” which constitute an agreement the partners as sane adults are parties to, cannot be wrong. Being endorsement of findings of the trial court which clearly draw from the pleadings and evidence of parties, the parties to the said agreement are disentitled from contending otherwise. Exhibits “21” and “31” which do not constitute such a binding agreement, as rightly held by the two courts below, cannot avail the appellants. By being signatories to Exhibits “3” and “4” appellants have agreed that title to the partnership property is only transferable to them in the manner they authorize their solicitor in Exhibits “3” and “4” to dispose same. In Exhibits “3” and “4” is a tripartite agreement which binds not only the appellants and the respondents but their solicitor as well. Exhibits “21” and “31” which the appellants failed to establish to have superseded the terms of sale contained in***

***Exhibits “3” and “4”, cannot, in law, be the legitimate source of appellants’ title to the partnership property. Any disposal of the partnership property by Uyouko Esq. in a manner inconsistent with his authority in Exhibits “3” and “4” will not bind the respondents and/or the partnership.*** See *Osherire Ltd v. Tripoli Motors* (1997) 5 NWLR (pt 503) 1; *Yaro v. Arewa Construction Ltd & Ors* (2001) 6 SC (pt II) 149 and *Odutola v. Paper Sack Nigeria Ltd* (2006) 11-12 SC 60. B

***It must be restated that an appellate court’s interference with concurrent findings of fact is only allowed where the findings are shown to be perverse or that same is not the result of a proper exercise of discretion. In the case at hand, the appellants, having failed to show that the lower court’s affirmation of the trial court’s decision has proceeded either on the basis of matters the court wrongly took account of or because the court has ignored the obvious, must fail.*** See: *Atolagbe v. Shorun* (1985) NWLR (pt 2) 360 and *Rabiu v. State* (1980) 8-11 SC 85. This principle explains why I resolve all the germane issues the appeal raises against the appellants. C D

Finding no merit in the appeal, it is accordingly dismissed. E  
The decision of the lower court is hereby affirmed at a cost of N100, 000.00 against the appellants in favour of the respondents.

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### MOHAMMED JSC

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My learned brother Dattijo Muhammad, JSC, had permitted me before today to read his judgment which has just been delivered in this appeal. I am in complete agreement with his reasoning and the conclusion he finally arrived at in resolving the issues put before G this Court by the parties for the determination of this appeal that the appeal is without merit and ought to be dismissed.

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From the record and the issues for determination formulated in the Appellants’ brief of argument and adopted by the Respondents in their Respondents brief of argument, it is quite clear that this appeal which arose from the judgment of the trial High Court finding for the Plaintiffs/Respondents in their claims while dismissing the Defendants/Appellants counter-claims, the appeal itself centered principally on questions of facts on the evidence put in place by the parties

at the trial Court. In other words, the appeal is mainly against concurrent findings of fact by the trial High Court and the Court of Appeal on the dispute between the parties as to whether or not on the evidence on record, the partnership between them had been dissolved and also on whether or not on the same evidence whether the Mfon Abasi Nursery/Primary School Nwut Usiong Itam, the property of the partnership, had been sold to the Defendants/Appellants. The concurrent decisions of both Courts below are to the effect that the partnership agreement between the parties remained in full force while the sale of the school, property of the partnership to the Defendants/Appellants did not take place in the absence of evidence of full-compliance with the conditions of the sale agreed by the parties.

The law had long been settled that once the findings of two lower Courts are reasonably justified by the evidence and no error in law, substantive or procedural, that leads to a miscarriage of justice is made by the lower Courts, this Court will not interfere with such concurrent findings of fact but must treat them with due respect. See *Dibiamaka v. Osakwe* (1989) 3 N.W.L.R. (pt. 107) 101, *Are v. Apaye* (1990) 2 N.W.L.R. (Pt. 132) 298 and *Iroegbu v. Okwordu* (1990) 6 N.W.L.R. (Pt. 159) 643.

It is therefore for the above reasons and more comprehensive reasons contained in the lead judgment, that I find no ground whatsoever for disturbing the judgments of the Courts below. Accordingly, there being no merit at all in this appeal, I also hereby dismiss it while abiding with other orders made in the lead judgment including the order on costs.

### G **RHODES-VIVOUR JSC**

I have had the advantage of reading in draft the judgment of my learned brother, M.D. Muhammad, JSC I agree with it, and for the reasons which he gives I, too would dismiss the appeal with costs of N100,000 in favour of the respondents.

H The appeal is largely on questions of fact as to whether:

1. the partnership agreement between the parties had been dissolved; and
2. the Mfon Abasi Nursery/primary school Nwut Usong Itam the subject of the Partnership had been sold to the defendants/appel-

lants.

The appellants in the Court of Appeal and this court were the defendants in the High Court. Their counter-claim was dismissed, so they appealed.

There are two concurrent findings of facts of the lower courts that the partnership agreement between the parties is still in force, and there was no sole of the subject of the partnership (i.e. the partnership property) to the defendants/appellants as the conditions of sole were not met. The well settled practice of this court is to be slow, or decline to review the evidence a third time unless there is proof of miscarriage of justice or a violation of some principle of law or procedure, or if the finding is found to be perverse. See

Military Gov. of Lagos State & 4 ors. v. Adeyiga & 6 ors, 2012 2 SC (pt.1) p.68; R-Benkay Nig Ltd v. Cadbury Nig PLC 2012 3 SC (pt.iii) p.169; ACN v. Lamido & 4 ors. 2012 2 SC (pt. ii) p.163

In this case the dismissal of the defendants/appellants counter-claim by the trial court was done after sound evaluation of evidence, consequently there is no justification for this court to interfere with the judgment of the Court of Appeal as the appellant has failed woefully to show any miscarriage of justice or that the findings of the courts below are perverse or there was violation of some principle of law in the conduct of the trial or in the conclusion which this court finds to be unassailable.

For these reasons and the comprehensive judgment of my learned brother, M. D. Muhammad, JSC, once again I dismiss the appeal with costs as ordered in the leading judgment.

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### **OGUNBIYI JSC**

I read in draft the lead judgment just delivered by my learned brother Dattijo Muhammad, JSC. I agree that the appeal is devoid of any merit and should be dismissed.

For purpose of emphasis, I will however wish to put in one or two words of mine. The facts of the case had been well spelt out in the lead judgment and which established an agreement between the parties per exhibits 3 and 4. In otherwords that the intention for the option to purchase the subject matter, that is the Mfon Abasi Nursery/primary School must be submitted to the partner's solicitor not

later than 17th May, 1995. It was also agreed by the parties that any partner intending to buy the property must submit to the solicitor a written bid, accompanied by a deposit sum of N3 million of the agreed total sale price of N5.5 million; that the option will therefore be made public only at the expiration of the 17th May, 1995. The binding documents between the parties were exhibits 3 and 4, being the minutes of the meeting held by the partners with a view of disposing the partnership business.

The facts of the case have clearly specified that the partnership business was not disposed of in terms of the agreement and hence it's continued persistence. It is further on record as rightly held by the trial court judge and also upheld by the lower court that, while the respondents' claim was firmly grounded in the agreement made by the parties per exhibits 3 and 4, the counter claim by the appellants was however without any basis or foundation. At pages 343 and 344 of the record of appeal for instance, the learned trial court judge found and held as follows:-

*"By the plaintiffs' oral evidence and documentary, and the honest and sincere evidence of the Defendants and Defendants admissions under cross Examinations and documents, it is the view of this court that the plaintiff, case is up to the standard in sections 134 and 135 of the Evidence Act. It is in the light of above circumstances that this court believes the plaintiffs, evidence as the parties are bound by their contract... this court hereby rejects the Defendants evidence."*

Also at pages 480, 481 and 483 of the said record, the learned justices of the Court of Appeal had the following to say:-

*"From all the circumstances it is nearer the truth to say that the appellants acted in collusion with the solicitor to disregard the resolution passed and adopted and not reversed at any meeting of the parties. The appellants signed exhibits 3 and 4 and it does not lie in their mouth to plead they were encouraged to act contrary to a subsisting resolution of the partners... The claim and counter - claim are inextricably bound together in the sense that the success of one is the failure of the other and vice - versa. In their statement of the counter - claim the Appellants adopted and relied on virtually the totality of their statement of defence. They relied on the same evidence in defence of the claim. In the circumstances the court was not bound to consider evidence it already considered and rejected in the main suit*

*when such evidence was offered in proof of a claim the direct opposite of the claim granted in the main suit... Since the court considered and rejected the evidence offered in defence of the respondents' claim it would be a fruitless exercise to reconsider the same evidence offered in proof of an opposite claim by the appellant. In any case, like the Respondents' claim resting on the partnership the counter claim is founded on the direct opposite assertion that the partnership had been dissolved, an assertion that is in conflict with the evidence and conduct of the appellants."*

From the totality of the foregoing concurrent findings by the two lower courts, they are in congruence that the conclusion arrived at cannot be faulted having regard to the evidence adduced inclusive of the exhibits as well as the entire case presented by the parties at the trial court. In other words, the binding documents between the parties are exhibits 3 and 4 and not exhibit 21 and 31 as wrongly claimed by the appellants in proof of their counter claim. I quickly wish to add at this juncture that available evidence reveals that the contents of exhibits 21 and 31 were well within the knowledge of the appellants and the solicitor only to the exclusion of the respondents. The documents cannot therefore operate to bind the respondents who are not a party to same. This is especially where the appellants, did not show forth any reason in making the respondents a party to exhibits 21 and 31 for purpose of establishing their counter claim. Their reliance on the documents without more will not in the result promote their case.

The law is well established on the principle to be followed where the courts are concurrent on their findings. In other words, it does not lie within the power of this court to interfere with such findings of two lower courts as a matter of course; the case in point is *Tiza V. Begha* (2005) 5 SC 1 page 17 per Onu, JSC wherein his Lordship said:-

*"It is now trite law that concurrent findings of the trial court and the Court of Appeal cannot be set aside by this court except such findings are not supported by evidence. See Emeagwara V. Stan PPL (2000) 78 LRCN 1701 at 1720. The trial court found that the plaintiff is the owner of the land in dispute and that Orasoho is the natural boundary between the plaintiffs and defendants. The Court of Appeal confirmed this finding."*

The appellants in the appeal at hand did not show any acceptable and specific reason why this court should interfere with the findings arrived thereat by the two lower courts. I will also in terms of the lead judgment affirm same and dismiss the appeal as lacking in merit. I also abide by the order made as to costs.

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### **AKA'AH S JSC**

I was privileged with a preview of the judgment of my learned brother, M. D. Muhammad, JSC. I agree with his reasoning and conclusion that the appeal is devoid of any merit and deserves to fail.

It is clear from the evidence adduced that the Mfon Abasi Nursery/Primary School Nwut Usong Itam in Itu Local Government Area of Akwa Ibom State, the subject of the Partnership had not been sold to the appellants nor was the partnership dissolved. Their counter - claim was rightly dismissed by the High Court which was affirmed by the lower court. Since the appellants could not show to this Court that the concurrent findings made by the courts below were perverse, this court cannot disturb them. The appeal therefore has no merit and it is accordingly dismissed. I endorse the costs of N100, 000.00 in favour of the respondents against the appellants made in the leading judgment of my brother, M. D. Muhammad, JSC.

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