**COL. M. DIXON DIKIO (RTD) AND OTHERS**

**V**

**NIGERIAN SOCIAL INSURANCE TRUST FUND MANAGEMENT BOARD AND OTHERS**

9TH DAY OF MARCH, 2016

IN THE COURT OF APPEAL, HOLDEN AT ABUJA

CA/A/144/M/2012

**LEX (2016) - CA/A/144/M/2012**

OTHER CITATION(S)

2PLR/2016/70 (CA)

**BEFORE THEIR LORDSHIP:**

JUSTICE TANI YUSUF HASSAN, JCA [READ THE LEAD JUDGMENT]

MOORE A. A. ADUMEIN. JCA

JOSEPH E. EKANEM, JCA

**BETWEEN**

1. COL. M. DIXON DIKIO (RTD)

2. MRS. H. A. UMAR

3. MR. MIKE IKENNA IBEH

4. ALH. SIKIRU USMAN

5. HON. TONY IBANA - ABASI ESU

6. DR. MRS AMINA SAMBO

7. MR. ERHABOR EMOKPAE

8. MRS. TOBERU K. LAWAL DADA

9. ALH. NUHU ABUBAKAR

10. MRS C. ADELEKAN

11. ENGINEER AZU AZUIKE

12. HON. ABDULLAHI B. MOHAMMED

13. EMEKA ODUMEGWU OJUKWU

14. ALH. AUDIE MOHAMMED

AND

1. NIGERIAN SOCIAL INSURANCE TRUST FUND MANAGEMENT BOARD

2. TRUST FUND PENSION PLC

3. PROFUND PROPERTIES LTD

**ORIGINATING COURT(S)**

HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA

**REPRESENTATION**

1. O. GBADEYAN

2. A. SHUAIBU ADENIJI - for Appellants

3. P. A. C. OBI

4. I. S. OKPOR

5. IBRAHIM AUDU - for 1st Respondent

6. IDRIS YAKUBU

7. A. F. ATTAH

8. ALEX OWOBI

9. OCHAYI AGBAJI - for 2nd and 3rd Respondent

10. UFOM EKANEM

**ISSUES FROM THE CAUSE(S) OF ACTION**

REAL ESTATE AND PROPERTY LAW:- Publicly owned property with sitting tenants – Sale of -  What constitutes an offer that can be accepted – Invitation to treat distinguished therefrom – An invitation to treat given to sitting tenants distinguished from offer based on right of 1st refusal - Legal implications

COMMERCIAL LAW – CONTRACT:- Offer and acceptance - meaning of – Invitation to treat – Distinction from offer – Failure to satisfy conditions stipulated in an invitation to treat – Legal implications

COMMERCIAL LAW – CONTRACT:- Offer and acceptance - Invitation to treat – Meaning of

COMMERCIAL LAW – CONTRACT:- Offer and acceptance - Whether there is generally no requirement that the offer be made in any particular form – Ingredients of a binding contract

**PRACTICE AND PROCEDURE ISSUES**

APPEAL:- Rule that it is the primary responsibility of the trial court to hear the parties, watch and observe the demeanour of witnesses called to testify before it, admit or reject documents tendered, ascribe probative value to the evidence and then come up with a decision - Where the trial court evaluates the evidence and appraises the facts – Attitude of appellate court to invitation to substitute its own views for the views of the trial court

**MAIN JUDGMENT**

JUSTICE TANI YUSUF HASSAN, JCA (DELIVERING THE LEAD JUDGMENT)

This appeal is against the decision of the High Court of the Federal Capital Territory Abuja delivered on the 28th day of November, 2011 in suit No. CV/687/09.

The Appellants as plaintiffs at the trial court filed a suit against the Respondents as defendants by Writ of Summons on the 4th day of February, 2009. The Appellants statement of claim has 23 paragraphs whereof the plaintiffs claim against the Defendants jointly and severally as follows:

1. A Declaration that, on the true construction of the 1st Defendant's letters of Expression of interest and letters of offer dated 20th June, 2006, 25th September, 2004, 25th September, 2006 and 22th June, 2006 respectively and the Plaintiffs' Acceptance Forms dated 28th June, 2006, 29th June, 2006 30th June, 2006, 22nd June,'2006 and 26th June, 2006 respectively, the 1st and 2nd defendants being a public body are legally bound to transfer title to the plaintiffs.

2. A Declaration that the plaintiffs have duly exercised their option to buy/purchase the properties which is the subject matter of this action in furtherance of the terms contained in the letters of expression of interest sent to them by the 1st defendant.

3. A Declaration that the plaintiffs are entitled to be given the right to purchase the properties they currently occupy in furtherance of their occupancy status as tenants of the 1st and 2nd defendants.

4. An order compelling the 1st and 2nd defendants to give effect to be binding agreement between the parties.

5. An order setting aside any sale or purported sale of the properties occupied by the plaintiffs which is the subject matter of this action.

6. An order compelling the 1st and 2nd defendants to accept payment from the plaintiffs in furtherance of the letters of Expression of interest and Acceptance Forms thereof.

The Respondents as defendants filed 27 paragraphs amended statement of defence dated 29th day of September, 2009. Both parties had front loaded their documents.

The Appellants were tenants of the 1st and 2nd Respondents in the properties at Gudu District, Apo Abuja. By a letter dated 22/06/2006, the 1st Respondent's property manager forwarded a letter from the 1st Respondent dated 20th June, 2006, inviting the Appellants to indicate their interest in purchasing the properties they occupied as tenants. The letter expressly stated the pre­requisite for consideration of the Appellants interest to purchase the properties. The condition includes no record of default as regards rent, service charge and other bills. By the terms of the offer made, acceptance was to be by payment of the initial installment of 20% of the offer price which was later reviewed downward to 10% of the offer price. The Appellants failed to pay the initial installment as stated in the offer letters given to them and some of them were in default of payment of rent and service charge.

Thus the 1st Respondent sold the properties to other interested persons.

The appellants then instituted an action against the Respondents at the High Court of Federal Capital Territory, Abuja in suit No. CV/687/09. At the end of the day, the Appellants suit was dismissed. The judgment of the trial court gave rise to this appeal.

The Appellants by their amended Notice of Appeal dated 16th day of April, 2012, filed 17/04/2012 and deemed filed on 27/03/2014 has five grounds of appeal with their particulars and reliefs sought.

In the Appellants brief of argument filed by their counsel O. Gbadeyan three issues were identified as follows:

1. "Whether the trial court was right when it held that there was no valid or subsisting contract between the Appellants and the 1st Respondent when the case presented before it by the Appellants revolves round the breach of the right of First refusal extended to them by the 1st and 3rd Respondents" (Grounds 1 and 3)

2. "Whether the learned trial Judge properly evaluated the evidence placed before him before arriving at the conclusion that the Appellants did not contest and thus admitted the Respondents' assertion that the transaction between the parties was based on contract for which the Appellants did not furnish any consideration" (Grounds 2 and 4).

3. "Whether the learned trial Judge was right when he held that the 1st Respondents letters of Expression of interest written to the Appellants and which were duly accepted by the Appellants were mere invitation to treat and therefore did not qualify as offers capable of becoming binding upon acceptance" (Grounds 5).

The 1st Respondent's brief of argument dated 1st April, 2015 and filed on 7th April, 2015 was settled by its counsel, Idris Yakubu and he adopted the three issues distilled by the Appellants for determination of this Appeal,

The 2nd and 3rd Respondents' counsel A. F. Attah also adopted the three issues identified by the Appellants in their brief of argument dated 2nd April, 2015 filed 22/05/2015 and deemed filed on 30/11/2015,

I shall be guided by the issues identified by the Appellant in resolving this appeal.

ISSUE ONE

"Whether the trial court was right when it held that there was no valid and substing contract between the Appellants and the 1st Respondent when the case presented before it by the Appellant revolves round the breach of the right of first refusal extended to them by the 1st and 2nd Respondents".

The Appellant's counsel submitted on this issue that the trial court was in error to have held that there was - no valid contract between the Appellants and the 1st Respondent when there was ample evidence which established the existence of an agreement between the parties. He referred to Exhibits C, CI, J, Q, R, V, W, Z, AA, DD, EE, LL, MM, QQ, RR, SS, WW, XX, DDD, HHH, III, LLL and OOO, the letters of Expression of interest dated 22rd June, 2006, the respective individual letters of acceptance of the offer admitted in evidence as exhibits D, K, S, T, BB, FF, NN, TT, YY and GGG. Also referred was the evidence of PW1 - PW7 at pages 59-63, 80-93 and 94-99 of the record and the evidence of DW1 under cross-examination when he admitted that the tenants in occupation were given a right of first refusal.

That the right of first refusal granted to the Appellants carries with it the right to enter into any such contract or transaction with the Respondents free of any encumbrance or limitation. As such the Appellants right was still subsisting and could not have been terminated by the reason of the letters of offer issued to the Appellants when the verge of the properties were not properly delineated. It is submitted that Appellants acted in accordance with common sense by making adequate inquiry to ascertain the exactness of the offered properties. The court was referred to C.P.D. Co Ltd Vs Adegboruwa (2011) 3 NWLR (part 1234) 239 at 252 paragraphs G-H and Re-Yar'Adua (2011) 17 NWLR (part 1277) 567 at 590 paragraphs E-F.

It is submitted further that the Appellants could not have been expected to pay for properties with undelineated boundaries while the clarification sought on the title and delineations of the plots were not answered. Appellant's counsel argued that this led the trial court to arrive at a wrong conclusion which has occasioned a miscarriage of justice. He relied on Oguntayo Vs Adelaja (2009) 15 NWLR (part 1163) 150 at 186 paragraphs G-H, Akpan Vs Bobo (2010) 17 NWLR (part 1223) 421 at 479 paragraphs C-D and Jinadu Vs EsurombMro (2005) 14 NWLR (part 944) 142 at 194 paragraphs A-C. He urged the court to resolve the issue against the Respondents.

Learned counsel for the 1st Respondent submitted in response that an offer is an expression of willingness to contract made with the intention that it shall become binding on the offeror as soon as it is accepted in the precise terms by the offeree. He referred the court to the case of Amana Suites Hotels Ltd Vs- POP (2007) 6 NWLR (part 1031) 476 paragraph F on the definition of "offer".

That the Appellants contention that a right of first refusal subsist vide acceptance form and the letter of expression of interest dated 22/06/2006 is misconceived, as the letter of expression of interest was merely an invitation to treat.

It is also submitted that there was no oral, written or implied understanding or agreement between the Appellants and the 1st Respondent with regard to right of first refusal to purchase the properties. That the letter of expression of interest dated 22/06/2006 admitted as Exhibits C, CI, J, Q, R, W, 2, AA, DD, EE LL, MM, QQ, RR, SS, WW, XX, DDD, HHH, III, LLL and OOO, their contents unambiguously stated the conditions for consideration of each Appellants right to purchase the property. Some of the Appellants met the requirements stipulated in the letter of expression of interest and subsequently were issued with a letter of offer with a condition that the acceptance was to be by payment of the initial installment of 20% of the offer price which was later reviewed downward to 10% of the offer price.

Relying on the case of Orient Bank Nig Plc Vs Bilante v International Ltd (1997) 8 NWLR (part 515) 76 paragraphs F-G it is submitted that an offer cannot result in a valid contract if it is not definite and precise.  
That the Appellants' contention of their tenancy status under an unexecuted tenancy agreement, they were given a right of first refusal of offer to purchase the properties they occupied as tenants, none of the parties executed the tenancy agreement. He referred to page 28 of the record. The tenancy agreement are exhibits A, H, M, T and WW. The court was referred to Faro Bottling Comp. Ltd. Vs Osuji (2002) 1 NWLR (part 748) 311 and section 132(1) of the Evidence Act

It is submitted for the 1st Respondent that the Appellants contention that a search was conducted at the Land Registry on behalf of a committee, nobody was called to testify in respect of the search conducted. Also the evidence that PW3 that PW1 went to the Land Registry on their behalf and brought back documents relating to their concerns on the properties, neither PW1 "nor PW3 tendered such document. He referred page 44 of the record.

He finally submitted that the Appellants have failed to meet the terms of the offer as envisaged by law. The court was referred to Halsburys Laws of England 4th Edition (2007) on the definition of acceptance which reads:  
"An acceptance of an offer is an indication expressed or implied by the offeree made whilst the offer remains open and in the manner requested in that offer of the offeree's willingness to be bound unconditionally to a contract with the offeror on the terms stated in the offer".

Counsel urged the court to resolve the issue in favour of the Respondent.

Responding for the 2nd and 3rd Respondents, learned counsel in arguing issues 1 and 3 together submitted that what the Appellants have described as offer are nothing but invitation to treat as the Appellants were only invited to indicate their interests to purchase with conditions that an applicant for purchase shall not have record of default of payment of rent, service etc hence it is devoid of elements of a valid offer capable of acceptance. The case of Alhaji M. C. Dahiru Vs Alhaji Musa Buba Kare Kamale (2005 9 NWLR (part 929) 8 at 18 ratio 9-12. Was referred to.  
It is also submitted that Appellants with no record of default of payment of rents, service charge etc were given offers with terms and condition of 20% initial payment which was reviewed to 10%. But for those with default of payment of rents, service charge etc, they were not given offers, for there to be any form of acceptance. The court was referred to Omega Bank Nig. Plc Vs OBC Ltd (2005) 8 NWLR (part 928) 547 at 552-554 ratio 2 and 3 and Alhaji Bamidele Lawal Vs Union Bank of Nig. Pic (1995) 2 NWLR (part 378) 407 at 409.

It is finally submitted for the 2nd and 3rd Respondents that B the Appellant were in occupation of the properties some years | before the advent for the sale of the houses covered by a single | Certificate of Occupancy and described as NSITF Housing Estate, Gudu. The plot therefore cannot and needs not be delineated and 1 demarcated. The court is urged to resolve the issue in favour of the Respondents.

On reply on point of law to the 1st Respondent, learned counsel for the Appellants submitted that section 132(1) of the I Evidence Act relied by the 1st Respondent is inapplicable as the right of first refusal arose from the letters of expression of I interest issued to the Appellants by the 1st Respondent.

In the Appellants reply to the 2nd and 3rd Respondents brief of argument, it is submitted that the 2nd and 3rd Respondents are bound by the initial agreement to confer a right of first refusal on it the Appellant when proper delineation of the verges of the plots have been done.

By a letter dated 22/06/2006, the 1st Respondent's property Manager forwarded a letter from the 1st Respondent dated, 20/06/2006 inviting the Appellants to indicate their interest in purchasing the properties they occupied as tenants. The letter expressly stated the pre-requisite for consideration of the Appellants' interest to purchase the properties.

At page 40-41 of the record, the letter is reflected therein and it is produced here:

"To ..................................................................……………

EXPRESSION OF INTEREST IN PURCHASE OF YOUR HOUSE

The Fund is in the process of concluding arrangement to sell the house you are occupying and decided to give you an offer of first refusal with the following terms and conditions:

1) That there is no outstanding rent and no record of defaulting.

2) Payment for the house will be made within a given period to be advised by NSITF.

3) In the event that you are not interested in the house, it will be offered to the public for sale and tenant shall vacate the house and pay outstanding arrears as soon as the house is sold.

Please find attached a form to be completed and returned to the under-signed not later than 2 weeks from date of this letter".

In the letter dated 22nd June, 2006 written to the plaintiffs, the Defendants erstwhile Agent wrote thus:  
EXPRESSION OF INTEREST IN PURCHASE OF NSITF HOUSING ESTATE GUDU ABUJA

"We forward herewith an expression of interest form and a letter from NSIFT on the above subject. Should the above interest you, kindly fill the form and return to us not later than 3oth June, 2006. Note that clearance payment of rent, service charge and other outstanding bills is pre-requisite for the consideration of your interest purchase.

Thank you..."

The Appellants in response filled the acceptance form for expression of interest to purchase and returned same to the 1st Respondent.

From the evidence on record, the 7th Appellant terminated his tenancy by a letter dated 21/02/2008 and the 8th Appellant's tenancy commenced on 18/06/2008 in the property occupied by the 7th Appellant who is her cousin. That the letter offer to purchase was in the names of the 7th Appellant. This goes to show that there was no agreement from the Respondents to sell the property to the 8th Appellant.

Upon the receipt of the acceptance forms from the Appellants, the Respondents in verification of the Appellants' documents it was discovered that it was a tenancy relationship between the parties as none of the Appellants executed the tenancy agreement forwarded to them to execute.

Also discovered was that the 1st, 5th, 10th and 11th Appellants had default in payment of service charge, rent and utilities. As such formal offers were not made to them to purchase the properties for failure to meet the conditions to purchase as stated in the letter of 22/06/2006, that is expression of interest to purchase.

By a letter dated 26/06/2006, the 1st Respondent's agent conveyed formal offer letters for purchase of the properties to the 2nd, 3rd, 4th 6th, 7ch, 9th, 12th, 13th and 14th Appellants.

They sought for reduction from 20% initial payment and more convenient time for payment. The initial payment was reduced to 10% and the balance to be paid in two installments of 6 months and 12 months respectively- But they failed to meet up with these terms and therefore forfeited their offer.

However invitation was not extended to the 8th Appellant as she was not a tenant then.

The contention of the Appellants is that there is a binding agreement between the Appellants and the 1st Respondent, for the 1st Respondent to sell to them their respective houses which they occupy as tenants. The 1st Respondent on its part argued that by its letter of 22/06/2006, an offer of first refusal was made to the Appellants to express their interest in purchase of the houses they occupy as tenants.

An offer is a statement by one party of a willingness to enter into a contract on stated terms, provided that these terms are, in turn, accepted by the party or parties to whom the offer is addressed.

There is generally no requirement that the offer be made in any particular form. It may be made orally, in writing or by conduct.

In distinguishing between an offer and invitation to treat, an invitation to treat is simply an expression of willingness to enter into negotiations which, it is hoped, will lead to the conclusion of a contract at a later date- An invitation to treat is not an offer that can be accepted to lead to an agreement or contract. It therefore r-cannot form the basis Of any cause of action - Neka B.&.B Manufacturing Co. Ltd Vs A.C.B Ltd (2004) 2 NWLR (part 858) 521 SC. The letter of 22/06/2006 from the Respondents to the Appellants reproduced above, it was simply an expression of the Respondents' willingness to enter into negotiations with the Appellants for the sale of the houses, the Appellants occupied as tenants and was not an offer which was capable of being accepted.

A binding contract that is capable of being enforced by the court, must possess the ingredients of offer, acceptance, consideration, intention to create legal relations and capacity to contract - Omega Bank Vs O.B.C Ltd (2005) 8 NWLR (part 928) 547, Chief Yaro Vs Arewa Construction Ltd (2007) 16 NWLR (part 1063) 333 at 378 and B.F.I.G Vs B.P.E. (2008) All FWLR (part 416) 1915 at Bilante International Ltd (1997) 8 NWLR (part 515) 1

Contrary to the submissions of the Appellants that an offer of first refusal was made to them by the Respondents which they have accepted by filling the acceptance forms and returning same to the 1st Respondent, the purported acceptance of the Appellants was not on the terms of the offeror, nor in the manner so requested. What this means is that, it was no acceptance and there was no valid contract. See Dalek Ltd Vs Ompadec (2007) All FWLR (part 364) 204 at 235, and Lawal Vs Union Bank Pic (1995) 2 NWLR (part 378) 31.

This is so because none of the Appellants satisfied the conditions stated in the letter of expression of interest in purchase of the house, dated 22/06/2006.

On whether an offer or an invitation is the same as an agreement, this court in Ojora Vs Agip (Nig) Plc (2014) 1 NWLR (part 1387) 150 at 165 held that neither an offer nor an invitation can be equiparated with an agreement.

In the instant case there was no concluded contract between the Appellants and the Respondents for the purchase of the houses since there was no agreement between them.

For a valid acceptance of offer, the acceptance of an offer must correspond with the terms of offer Okubule Vs Oyagbola (1990) 4 NWLR (part 147) 723 at 726.

This the Appellants have failed to do in this case. As there is no binding contract between the parties, there is nothing for the court to enforce.

Issue one has also answered the argument canvassed in issue 3.

Issues one and three are resolved in favour of the Respondents against the Appellants.

ISSUE TWO

"Whether the learned trial judge properly evaluated the evidence placed before him before arriving at the conclusion that the Appellants did not contest and thus admitted the Respondents assertion that the transaction between the parties was based on contract for which the Appellants did not furnish any consideration "

The Appellants' counsel submitted that the Appellants could not pay for the purchase price of their respective houses because they sought for clarification on the delineation of the houses and same was not given by the Respondents. That their evidence was confirmed by PW2 and DW3 that there were no boundaries of plots as of 2006 when the houses were offered to them. He referred to pages 107 and 111 of the record.

That the offer letters issued to the Appellants by the respondents were pre-mature as fundamental issues of title and delineation of boundaries were yet to be clarified and the trial court failed to give consideration to the issues before arriving at its decision.

Relying on the case of Ishola Vs U.B.N Ltd (2005) 6 NWLR (part 922) 422 at 43 paragraphs H-A, 444 paragraphs A-B and Aminu Vs Hassan (2014) 5 NWLR (part 1400) 2B7 at 3170318 paragraphs H-B, it is submitted that the trial court has not properly appraise the evidence adduced by the Appellants before arriving at its decision.

Learned counsel for the 1st Respondent in response, submitted that the trial judge properly evaluated the evidence before him, with reference to page 31-34 of the record and the case of Chief Augustine Ndulue and 1 other Vs Igwe Micheal and 2 others (2013) 8 NWLR (part 1356) 311 ratio 3. It is also submitted that the trial judge approached the issues presented by both parties and arrived at the correct conclusions on the evidence before him. That the Appellant's contention that their failure to pay for the offered price was because they sought for clarification on the exact delineation of the house was aptly rejected by the trial court because they could still pursue the issues of delineation and beaconing of the properties even at the conclusion of contract sale.

Also submitted for the 1st Respondent is that the transaction between the parties was based on letters of expression of interest dated 22nd June, 2006 and formal letters of offer dated 18th September, 2006 and 10th November, 2006 and the Appellants were not compelled to buy the properties offered, if the terms of offer were not acceptable to them. It was therefore a misconception of the basis of the transaction between the parties when the Appellant contended that the offer letters issued to them by the 1st and 2nd Respondents were premature. He urged the court to resolve the issue in favour of the Respondents.

The 2nd and 3rd Respondent's counsel responded that the trial judge in evaluating the evidence of the parties reproduced the pieces of evidence of both the Appellants and the Respondents, painstakingly scrutinised, assessed and considered document tendered in evidence. Relying on the case of Alhaji Senator Ayinla Olomada Vs Mr. Olaniyi Mustapha and 3 others (2011) All FWLR (part 559) 1080 at 1084, Ubi Bassey Eno Vs Nig. Copy Right Commission (2010) All FWLR (part 547) 604 at 608 ratio and Chief James Oluseyi Olonade Vs H. Baba Tunde Soweimimo (2014) 58 NSCQR (part II) 714 at 719 ratio 5 among others, it is submitted that where a trial court properly evaluated the evidence placed before it as in the instant case, the appellate court will not interfere with it. He urged the court to hold that there was proper evaluation of the evidence before the trial court and the issue be resolved in favour of the Respondent.

In reply on point of law, learned counsel for the Appellants adopted his submissions on the issue as contended in the Appellants' brief of argument.

Where a judgment of a trial court is attacked on the ground of finding or non finding of evidence or evaluation of evidence, the Court of Appeal will seek the followings:

a) The evidence before the trial court

b) Whether the trial court accepted or rejected any evidence upon the correct perception

c) Whether the trial court correctly approached the assessment of the value on it

d) Whether it used the imaginary scale of justice to weigh the evidence on either side, or

e) Whether it appreciated, upon the preponderance of evidence, which side the scale weighed more having regard to the burden of proof - Nabegu Co- (Nig-) Ltd Vs Unity Bank Pic (2014) 7 NWLR (part 1405) 42 at 55 see also Egonu Vs Egonu (1978) 11-12 SC 111 Daramola Vs Attorney General of Ondo State (2000) 7 NWLR (part 665) 440 and Momoh Vs Umoru (2011)15 NWLR (part 1270) 217.

It is the primary responsibility of the trial court to hear the parties, watch and observe the demeanour of witnesses called to testify before it, admit or reject documents tendered, ascribe probative value to the evidence and then come up with a decision. This the trial court has done in this case as reflected in its judgment at pages 21-48 of the record.

Where the trial court unquestionably evaluates the evidence and justifiably appraises the facts as in the instant case, it is not the business of the appellate court to substitute its own views for the views of the trial court. See Agbi-Ogbch (2006) 11 NWLR (part 990) 65 SC, Ojokolobo Vs Alamu (1998) 9 NWLR (part 565) 226 SC and Sha Vs Kwan (2000) 5 SC 178.

The measuring yardstick in evaluation is the consideration of the totality of the entire case, thus arriving at a just determination of the issues in controversy - Ajibulu Vs Ajayi (2014) 2 NWLR (part 1392) 483 at 489.

In the instant case the trial court made findings of fact and there is sufficient evidence in support thereof, there is therefore no justifiable basis to tamper with the findings.

Issue 2 is resolved in favour of the Respondents.

The Appeal lacks merit and it is dismissed. The judgment of the trial court is, affirmed.

No order as to costs.

**MOORE A. A. ADUMEIN. JCA**:

I read before now the judgment just delivered by my learned brother, Tani Yusuf Hassan, JCA.

I agree that this appeal lacks merit and I also dismiss it without any order for costs.

**JOSEPH E. EKANEM, JCA**:

I read in advance the judgment just delivered by my learned brother, T. Y. Hassan, JCA. I agree with the reasoning and conclusion therein.

What emerges from the facts and circumstance of the case as presented at the trial court is that there was an invitation to treat or offer to offer from the 1s1 respondent to the appellants. There was no binding contract between them. It follows therefore that the claims of the appellants could not be and was not granted by the trial court.

For the above reasons and the more elaborate reasons contained in the lead judgment, I hold that the appeal lacks merit and I also dismiss the same.