**UNIVERSAL VULCANIZING (NIG.) LTD.**

**V.**

**IJESHA UNITED TRADING & TRANSPORT & ORS**

IN THE SUPREME COURT OF NIGERIA

THE 18TH DAY OF DECEMBER, 1992

SC. 126/1988

**LEX (1992) - SC. 126/1988**

OTHER CITATION(S)

2PLR/1992/91 (SC)

*(1992) NWLR (Pt. 266) 388*

**BEFORE THEIR LORDSHIPS**

ADOLPHUS GODWIN KARIBI-WHYTE, JSC

UCHE OMO, JSC [DELIVERED THE LEAD JUDGMENT]

IDRIS LEGBO KUTIGI, JSC [DISSENTED]

EMMANUEL OBIOMA OGWUEBGU, JSC

SHEHU USMAN MOHAMMED, JSC

**BETWEEN**

UNIVERSAL VULCANIZING (NIG.) LIMITED. - Appellant

AND

1. IJESHA UNITED TRADING & TRANSPORT COMPANY LIMITED (I.U.T.T.C.)

2. PROFESSOR M.I. JEGEDE

3. DR. OLUWOLE AJE

4. MR. D.O. OLADERU

5. SAVANNAH BANK NIGERIA LIMITED

6. ATTORNEY GENERAL, KWARA STATE

7. COMMISSIONER OF POLICE, KWARA STATE - Respondent(s)

**ORIGINATING COURT**

1. COURT OF APPEAL, KADUNA JUDICIAL DIVISION

2. HIGH COURT OF KWARA STATE (ILORIN DIVISION),

**REPRSENTATION**

F.A. AJAYI, SAN with B. ADEOYE and J.O. AGBOOLA – For Appellant

TAIWO OSIPITAN. Esq - for the Cross-appellant - For Appellant

AND

D.A. AKINLOYE, Esq - with A. AKINTOYE. Jnr - for the 1st, 4th and 5th – Respondents

S.A. MOHAMMADU. Esq. Ag. Deputy Director of Public Prosecutions, Ministry of Justice, Kwara State - for the 6th and 7th Respondents - For Respondent

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

COMMERCIAL LAW – CONTRACT:- Offer for sale of land through an authorised agent – When accepted – Legal effect of

COMMERCIAL LAW – CONTRACT – SPECIFIC PERFORMANCES:- Attitude of court to the award of specific performance where a contract of sale of land has been proven to exist – Equitable considerations – Where a rival claim is based on a contract that has been declared null and void – Possession of property – How treated by court

COMMERCIAL LAW – CONTRACT – SPECIFIC PERFORMANCES:- Principle of law as enunciated in Spry on Specific Performance (6th edition 1921 p. 131) – Applicability of in claims for specific performance – Relevant consideration

COMMERCIAL LAW - CONTRACT - BREACH OF CONTRACT:- Measure of damages - Whether an injured party in an action for breach of contract can get more in damages than the loss which he has suffered

COMMERCIAL LAW – AGENCY:- Agent of an incorporated body for the sale of property – How determined – Minutes of its meetings – Relevance of – Employee/Secretary of company acting unilaterally to appoint an estate agent for the company without authorisation of its Board – Validity of sale arising from said appointment when set against rival sale executed by person directly mandated by board to source for a buyer

COMMERCIAL LAW – AGENCY:- Officer/Secretary of a company with legal possession of the company’s seal – Use of the company seal to ‘authenticate” a Deed for sale of company property without authorisation by the Board of Directors of the Company – Legal effect of – Rival sale of same property by person authorised by the Board through a resolution recorded in its minutes – Failure of Secretary to secure execution of authorised sale - Whether evidence Secretary acted mala fide and fraudulently

COMPANY LAW – BOARD OF DIRECTORS:- Operations of a company through the Board of Director – Resolution made by board for sale of property through a named agent who happened to be one of its Directors – Validity of – Whether can be upstaged by a rival sale by the Secretary of the Board through an agent without the prior authorisation of the Board

ETHICS – LEGAL PRACTITIONER – APPELLATE BRIEF DRAFTING:- Prolix and lengthy brief – Where deemed commendable for the learning it exudes but lacking in conformity to the definition of a brief of argument under Order 6 Rule 5 of the Supreme court – Attitude of court to counsel’s brief which is not succinct but lengthy, otiose and repetitive

REAL ESTATE AND PROPERTY LAW – BREACH, SPECIFIC PERFORMANCE AND DAMAGES:- Where a plaintiff claims specific performance, or an injunction – Power of court to award damages either in addition to or in lieu of specific performance or injunction, whether damages have also been specifically claimed or not – Proper exercise of -

REAL ESTATE AND PROPERTY LAW – BREACH, SPECIFIC PERFORMANCE AND DAMAGES:- Where court refuses to award specific performance and instead awards damages – Measure of damages – How determined – Whether the injured party can never get more in damages than the loss which he has suffered – When nominal damages would be proper

REAL ESTATE AND PROPERTY LAW – CONTRACT FOR SALE OF LAND:- A firm offer to sell land through authorised agent(s)– When accepted and communicated – Legal effect of – Agreement for sale of land subject to execution of Deed – Whether tantamount to ‘conditional offer’ of sale or ‘contract subject to contract’.

REAL ESTATE AND PROPERTY LAW – CONTRACT OF SALE OF LAND – BREACH AND SPECIFIC PERFORMANCE:- Conditions precedent for the award of the equitable relief of specific performance in a claim contract relating to land – Failure to plead and prove appropriateness of the location of the property, its suitability, value and or importance to the plaintiff and whether or not alternative accommodations were readily available – Whether fatal

REAL ESTATE AND PROPERTY LAW:- Claim for trespass against a party in possession of property – Where brought by a party whose claim was based on a Deed of sale declared null and void by the court – Legal effect

**PRACTICE AND PROCEDURE ISSUES**

JUDGMENT AND ORDER **-** EQUITABLE REMEDY - SPECIFIC PERFORMANCE:Principles guiding Order of specific performance **-** What a decree of specific performance entails

WORDS AND PHRASES:- “Specific Performance” – Meaning

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The 1st respondent, a trading company, is the owner of plots 13 and 13S, Murtala Mohammed Way, IIorin, on which it constructed a building. At meetings of its board of directors it was decided first to lease and later to sell the said property. Members of the Board, of which the cross-appellant was one (being also the 1st respondent's legal adviser) were specifically authorised to look for either a lessee or an outright purchaser. In pursuance of this mandate the cross-appellant acting through the 3rd respondent, entered into and later concluded a negotiation with the appellant on behalf of the 1st respondent for the sale of and also sold the property for the sum of N170,000.00. A cheque for this sum was subsequently sent by the cross-appellant to the 1st respondent through the 4th respondent who returned same to the cross-appellant, on the ground that he had sold the property.

The 4th respondent was at the time of this transaction, manager and Ag. Secretary of the 1st respondent. It is the case of the appellant that no authority whatsoever was given to him to find a lessee or a buyer. He however with full knowledge of the negotiations of the cross-appellant, proceeded through agents appointed by him - Messrs Odudu & Co. to sell the property to the 5th respondent and convey the property to him. By this time the 1st appellant had moved into the property and renovated same. Following harassment by the police of the plaintiff at the instance of Messrs Odudu & Co., the appellant instituted the present action.

DECISIONS APPEALED AGAINST

The High Court Judge dismissed the plaintiff/appellant's claim in its entirety and held that the plaintiff/appellant did not have an enforceable contract mainly on the ground that there was no authority given to the 2nd defendant/respondent to sell the property to him. In his view, al that transpired amounted to no more than negotiations which is subject to confirmation of the Board of Directors of the 1st plaintiff/appellant. He then allowed the first three claims of the counter-claim, while refusing to grant any damages for trespass only on the ground that no evidence had been led on which such damages would be grounded.

The plaintiff/appellant and the 2nd defendant/respondent appealed to the Court of Appeal. In its judgment the court dismissed the appeals of the plaintiff/appellant and the 2nd defendant/respondent mainly on the ground that there was no concluded contract between the plaintiff/appellant and the 1st defendant/respondent within the time (10 days) stipulated by the Board of the 1st defendant/respondent for the conclusion of same by the 2nd defendant/respondent. The decision of the trial High Court was therefore affirmed except as to his decision on the claim for damages for trespass. The court held that the counter-claimants are entitled to general damages in support of which there was sufficient evidence. It therefore awarded them the sum of N2,000.00.

ISSUES FOR DETERMINATION

BY APPELLANT

1. Did the 2nd respondent have or did he not have the authority of the 1st respondent as the latter's agent to offer the 1st respondent's leasehold property at Plots Nos. 13 and 13S Murtala Mohammed Way, Ilorin, to the appellant for sale at a price of N170.000.00?

2. If the answer to issue 1 is that the 2nd respondent had such authority, did the 2nd respondent communicate the offer to the appellant and did the appellant accept the offer and if so at what point in time?

3. Did there come into existence and does there still subsist a binding agreement as between the appellant and the 1st respondent for sale of the property in question to the appellant subject to the obtaining of official consent to the sale or transfer of the property to the appellant as required by the appropriate statute law?

4. Or on the contrary, was there an arrangement made by the 4th respondent originally without the authority of the 1st respondent for the sale of the property in question to the 5th respondent for N170.000.00 which arrangement the 1st respondent however later ratified so as to constitute it into a binding sale?

5. What in the circumstances of this case was the legal effect of the purported assignment of the property purportedly by the 1st respondent to the 5th respondent as put forward in the Deed of Assignment dated the 10th of December, 1984*. Exhibit D1,* and what was the legal effect of the official consent to such assignment as conveyed in the letter *Exhibit D1A* of the 23rd of November, 1984?

6. If it should be held that there was no binding sale of the property by the 1st respondent to the 5th respondent to which official consent could and lawfully have been given out that there subsists a binding agreement as between the appellant and the 1st respondent for the sale of the property, is the appellant entitled to an order for the specific performance of that agreement?

7. Was the Court of Appeal, in the circumstances of this case, right in awarding N2,000.00 damages for trespass against the appellant and in favour of the 1st, 4th and 5th respondents?

8. Is the appellant the one against whom an order for perpetual injunction should have been ordered as was done by the learned trial Judge in line 22 at page 81 of the Record and not reversed by the Court of Appeal as prayed in paragraph 4(i) of the appellant's Notice of Appeal to that court at page 87 of the Record?

9. Or is the appellant the party entitled in the circumstances of this case to the orders of perpetual injunction as claimed by the appellant?"

BY 2ND RESPONDENT/CROSS-APPELLANT

(1) Whether the 2nd respondent was the authorised agent of the 1st respondent for the purpose of the letting or the sale of the property in dispute.

(2) On the premise that, the 2nd respondent was the authorized agent of the 1st respondent vis a vis the letting or sale of the disputed property, what is the scope of the 2nd respondent's authority?

(3) Having regard to all the circumstances of the case, whether the 2nd respondent ever exceeded the scope of his authority.

(4) If the 2nd respondent exceeded the scope of authority, whether the Board of Directors of the 1st respondent ratified the 2nd respondent's action vis a vis the sale of the property in dispute to the plaintiff/appellant.

(5) Whether the purported sale of the said property to the 5th respondent (who is not a *bona fide* purchaser for value without notice) was valid having regard to the circumstances of the case.

(6) Whether the Justices of the Court of Appeal were right to have based their findings against the 2nd respondent's on facts that he was neither an executive or supervising director having regard to all the circumstances of the case."

BY 1ST, 4TH AND 5TH RESPONDENTS

"Whether there was a contract of assignment of the property between the appellant and the 1st respondent."

AS ADOPTED BY SUPREME COURT

LEAD JUDGMENT

"1. Was the 2nd respondent/cross-appellant given the authority by the 1st respondent to offer for sale to the plaintiff/appellant at the price of N170,000.00 its property situate at Nos.13 and 135 Murtala Way, Ilorin?

2. If the answer to 1 is in the affirmative, did the cross-appellant thereupon conclude a contract of sale of the property with the plaintiff/appellant?

3. Did the 5th respondent have any authority from the 1st respondent to sell its property aforesaid to the 4th respondent:

4. If the answer to 3 is in the negative, what is the legal effect of this on his assignment of the property to the 5th respondent?

5. Is the appellant in the circumstances of this case entitled to an order of specific performance?"

DECISION OF THE SUPREME COURT

1. In the case before the court, there is a concluded contract, complete and certain, and not illegal or contrary to public policy. The contract relates to sale of land which is a common case where the courts specifically enforce the contract because the land may have a peculiar value to the purchaser. This case does not come within the exceptions where the court will not readily grant specific performance. The next issue calling for determination is the proper order which this court should make in the circumstance. The order of specific performance is an equitable remedy consisting of the order of the court directing a party to a contract to perform his obligations according to its terms. It presupposes an executory as distinct from an executed agreement, something remaining to be done - an order to make it possible for the appellant to obtain the assignment of the property.

2. There was a valid contract between the appellant and the 1st respondent company. Thereafter, there was nothing left to assign to the 5th respondent. The purported assignment to the 5th respondent was clearly null and void and in breach of the contract with the appellant. The 4th respondent had no authority to negotiate for the sale of the property let alone selling the same.

3. The actions of the 4th respondent in respect of this transaction in acting as the agent of the company and further, appointing an agent for the sale of the property of the company, is not only without any authority whatsoever, but it also mala fide and even fraudulent. It therefore clearly follows without more, that when the 4th appellant approached Odudu & Co. to act as agents for the sale of the disputed property, completed applications to consent to assign, used the company's seal (obviously in his possession as Secretary) to "authenticate" the deed of assignment, and collecting some money for so doing, he was acting without any authority from the 1st  respondent company. He was only acting in his personal interest.

4. The 4th respondent is also deemed to have been aware of the sale to the appellant since as Secretary of the Board he acted as Secretary and took minutes of the meeting where the mandate was given to the cross-appellant to sell the property to the appellant if it was prepared to pay the named sum. That he purportedly ‘sold’ the property to a third party within the time allotted to the appellant to respond to the offer goes to no legal effect.

5. Since the sale by the 4th respondent to the 5th respondent is null and void, the 5th respondent has no right to possession of the disputed property, there can be no trespass by the appellant who is not only in possession but entitled to possession. The finding of the court below that there was trespass (in confirmation of the finding of the trial court) is therefore wrong.

6. The court has the duty to determine whether negotiations have passed from the state of negotiations and resulted in actual contract. What this means is that the courts are now no longer leaving the parties to their Common Law remedies, e.g. of damages for breach of contract, where it is clear that there has been a breach of contract and specific performance is claimed. Rather the practice is to make the order sought.

7. Furthermore, an award of damages in lieu of the order of specific performance, which this court can grant, is not the proper remedy here. Since between the appellant and the 5th respondent it is only the appellant who holds a valid contract, the 5th respondent has no further legal interest which can be considered. All he has left is a claim for the refund of his money from the 1st respondent.

8. It would also be inequitable to refuse the remedy sought when the appellant, relying on a contract which has now been found to be valid, has moved into the disputed property before the assignment which the 5th respondent relies on; and has remained in possession ever since.

9. The 5th is deemed to have bought the land with actual or constructive knowledge of the equity of the appellant in the property. This knowledge alone makes it inequitable for it to take any benefit from such transaction.

DISSENTING (IDRIS LEGBO KUTIGI)

10. The appellant failed to show reasons why the equitable remedy of specific performance should apply to him. For example, why they should not be ordered to vacate the property; amount spent renovating the property; appropriateness of the location of the property, specifically its suitability, value and or importance to the plaintiff; and whether or not alternative accommodations were readily available. A decree of specific performance is not automatic on a mere breach of contract. There ought to be materials before the court on which to base the exercise of the discretion.

11. It is settled law that where a plaintiff claims specific performance, or an injunction, the court has the power to award damages either in addition to or in lieu of specific performance or injunction, whether damages have also been specifically claimed or not. The object of awarding damages for breach of contract is to put the injured party, so far as money can do it, in the same position as if the contract had been performed. The injured party can never get more in damages than the loss which he has suffered. In fact, the injured party may sometimes even get less than the loss he has suffered under the exclusion principle of "remoteness of damages" as laid down in Hadley v. Baxendale (1854) 9 EX 341. Therefore if the party injured has suffered (or proved) no loss, he may win his action, as in this case, because breach of contract is actionable per se but he will get only nominal damages.

**MAIN JUDGMENT**

U. OMO, J.S.C. (DELIVERING THE LEADING JUDGMENT):

The claim of the plaintiff/appellant in the High Court of Kwara State (Ilorin Division), as set out in his Statement of Claim, against defendants/respondents jointly and severally is as follows:-

“(i) an order for specific performance of the sale agreement between the plaintiff and the 1st defendant;

(ii) a perpetual injunction prohibiting the 7 defendants, their servants and/or agents from further trespassing on, or dealing with the said property;

(iii) a declaration that the purported assignment of the same property to the 5th defendant as per Deed of Assignment dated 10th December. 1984, is null and void and of no effect whatsoever and the setting aside of the aforesaid Deed of Assignment."

The 1st, 4th and 5th defendants in addition to filing a joint Statement of Defence also counter-claimed jointly against the plaintiff as follows:-

"(a) That plaintiff vacate the said property immediately.

(b) Perpetual injunction against the plaintiff from further trespass.

(c) A declaration that plaintiff has bought nothing in equity; that there was no valid agreement or contract and that all its alleged acts did not go beyond negotiation.

(d) N 10.000.00 for special and general damages against the plaintiff in favour of the  1st, 4th and 5th defendants.

(i) N60.000.00 for special damage - as estimated cost of reconverting the building which plaintiff had altered the structures.

(ii) N50,000.00 as general damages in favour of 1st, 4th and 5th defendants for breaking their close and debarring 5th defendant from occupying the property which was lawfully assigned to it."'

Pleadings were duly filed and exchanged. At the hearing the evidence in support of the case of the parties and addresses by their counsel were heard: after which judgment was reserved.

In his judgment the learned High Court Judge dismissed the plaintiff/appellant's claim in its entirety. He held that the plaintiff/appellant did not have an enforceable contract mainly on the ground that there was no authority given to the 2nd defendant/respondent to sell the property to him. All he did, in any event, amounted to no more than negotiations which is subject to confirmation of the Board of Directors of the 1st plaintiff/appellant. He proceeded to allow the first three claims (a, b, c) of the counter-claim, and refused to grant the counterclaimants any damages for trespass only on the ground that no evidence had been led on which such damages would be grounded.

The plaintiff/appellant and the 2nd defendant/respondent were dissatisfied with this judgment and therefore appealed against same to the Court of Appeal. In the court below briefs were duly exchanged and oral arguments in expatiation heard.

In its judgment the court dismissed the appeals of the plaintiff/appellant and the 2nd defendant/respondent mainly on the ground that there was no concluded contract between the plaintiff/appellant and the 1st defendant/respondent within the time stipulated by the 1st defendant/respondent for the conclusion of same by the 2nd defendant/respondent. The decision of the trial High Court was therefore affirmed except as to his decision on the claim for damages for trespass. The court held that the counter-claimants are entitled to general damages in support of which there was sufficient evidence. It therefore awarded them the sum of N2,000.00.

Again dissatisfied with this judgment the plaintiff/appellant and the 2nd defendant/respondent appealed to this court. Several grounds of appeal were filed and relied upon by the parties, which I do not intend to set out in this judgment. Suffice it to say that while the plaintiff/appellant attacks the whole judgment, the 2nd defendant in his cross-appeal is complaining against the finding of the Court of Appeal that he exceeded the authority given to him by the Board of Directors when he sold the property in dispute to the plaintiff/appellant.

Briefs were duly filed and exchanged by the parties in this court. The brief of the plaintiff/appellant prepared and tiled by Dr. F.A. Ajayi, S.A.N. calls for some comment. It is a 70 page booklet which is more of a treatise than a brief. Commendable as it for the learning it exudes it does not conform to the definition of a brief of argument in Order 6 Rule 5, as "being a *succinct s*tatement of his argument in the appeal" (note: italics mine). The document filed by Dr. Ajayi is most certainly not succinct*.* It is lengthy, otiose and not surprisingly, repetitive. This court will continue to insist that counsel should comply with the rules of court. It is to be hoped that this court will not be inflicted in the future with the tiresome task of wading through such a document. Not surprisingly, the issues for determination set out in the brief of the plaintiff/appellant (hereinafter called "appellant" only were also rather lengthy, but they are nonetheless set out in this judgment. They are nine (9) in number, as follows:-

1. Did the 2nd respondent have or did he not have the authority of the 1st respondent as the latter's agent to offer the 1st respondent's leasehold property at Plots Nos. 13 and 13S Murtala Mohammed Way, Ilorin, to the appellant for sale at a price of N170.000.00?

2. If the answer to issue 1 is that the 2nd respondent had such authority, did the 2nd respondent communicate the offer to the appellant and did the appellant accept the offer and if so at what point in time?

3. Did there come into existence and does there still subsist a binding agreement as between the appellant and the 1st respondent for sale of the property in question to the appellant subject to the obtaining of official consent to the sale or transfer of the property to the appellant as required by the appropriate statute law?

4. Or on the contrary, was there an arrangement made by the 4th respondent originally without the authority of the 1st respondent for the sale of the property in question to the 5th respondent for N170.000.00 which arrangement the 1st respondent however later ratified so as to constitute it into a binding sale?

5. What in the circumstances of this case was the legal effect of the purported assignment of the property purportedly by the 1st respondent to the 5th respondent as put forward in the Deed of Assignment dated the 10th of December, 1984*. Exhibit D1,* and what was the legal effect of the official consent to such assignment as conveyed in the letter *Exhibit D1A* of the 23rd of November, 1984?

6. If it should be held that there was no binding sale of the property by the 1st respondent to the 5th respondent to which official consent could and lawfully have been given out that there subsists a binding agreement as between the appellant and the 1st respondent for the sale of the property, is the appellant entitled to an order for the specific performance of that agreement?

7. Was the Court of Appeal, in the circumstances of this case, right in awarding N2,000.00 damages for trespass against the appellant and in favour of the 1st, 4th and 5th respondents?

8. Is the appellant the one against whom an order for perpetual injunction should have been ordered as was done by the learned trial Judge in line 22 at page 81 of the Record and not reversed by the Court of Appeal as prayed in paragraph 4(i) of the appellant's Notice of Appeal to that court at page 87 of the Record?

9. Or is the appellant the party entitled in the circumstances of this case to the orders of perpetual injunction as claimed by the appellant?"

The 2nd respondent/cross-appellant (hereinafter referred to as "cross-appellant" only) set out six issues for determination in his brief thus:-

"(1) Whether the 2nd respondent was the authorised agent of the 1st respondent for the purpose of the letting or the sale of the property in dispute.

(2) On the premise that, the 2nd respondent was the authorized agent of the 1st respondent vis a vis the letting or sale of the disputed property, what is the scope of the 2nd respondent's authority?

(3) Having regard to all the circumstances of the case, whether the 2nd respondent ever exceeded the scope of his authority.

(4) If the 2nd respondent exceeded the scope of authority, whether the Board of Directors of the 1st respondent ratified the 2nd respondent's action vis a vis the sale of the property in dispute to the plaintiff/appellant.

(5) Whether the purported sale of the said property to the 5th respondent (who is not a *bona fide* purchaser for value without notice) was valid having regard to the circumstances of the case.

(6) Whether the Justices of the Court of Appeal were right to have based their findings against the 2nd respondent's on facts that he was neither an executive or supervising director having regard to all the circumstances of the case."

Only one issue for determination is set out in the joint brief of the 1st, 4th and 5th respondents (hereinafter referred to as "1st, 4th and 5th respondents") as follows:-

"Whether there was a contract of assignment of the property between the appellant and the 1st respondent."

The main issues for determination in this appeal in my view may be succinctly stated thus:-

"1. Was the 2nd respondent/cross-appellant given the authority by the 1st respondent to offer for sale to the plaintiff/appellant at the price of N170,000.00 its property situate at Nos.13 and 135 Murtala Way, Ilorin?

2. If the answer to 1 is in the affirmative, did the cross-appellant thereupon conclude a contract of sale of the property with the plaintiff/appellant?

3. Did the 5th respondent have any authority from the 1st respondent to sell its property aforesaid to the 4th respondent:

4. If the answer to 3 is in the negative, what is the legal effect of this on his assignment of the property to the 5th respondent?

5. Is the appellant in the circumstances of this case entitled to an order of specific performance?"

Before proceeding to consider the issues for determination set out by me, a brief statement of the facts of this case will be necessary.

The 1st respondent, a trading company, is the owner of plots 13 and 13S, Murtala Mohammed Way, IIorin, on which it constructed a building. At meetings of its board of directors it was decided first to lease and later to sell the said property. Members of the Board, of which the cross-appellant was one (being also the 1st respondent's legal adviser) were specifically authorised to look for either a lessee or an outright purchaser. In pursuance of this mandate the cross-appellant acting through the 3rd respondent, entered into and later concluded a negotiation with the appellant on behalf of the 1st respondent for the sale of and also sold the property for the sum of N170,000.00. A cheque for this sum was subsequently sent by the cross-appellant to the 1st respondent through the 4th respondent who returned same to the cross-appellant, on the ground that he had sold the property.

The 4th respondent was at the time of this transaction, manager and Ag. Secretary of the 1st respondent. It is the case of the appellant that no authority whatsoever was given to him to find a lessee or a buyer. He however with full knowledge of the negotiations of the cross-appellant, proceeded through agents appointed by him - Messrs Odudu & Co. to sell the property to the 5th respondent and convey the property to him. By this time the 1st appellant had moved into the property and renovated same. Following harassment by the police of the plaintiff at the instance of Messrs Odudu & Co., the appellant instituted the present action.

At the hearing of the appeal, counsel for the 1st, 4th and 5th respondents raised preliminary objection to the appellant's brief on the ground that it was based on grounds of appeal not filed within time. Counsel was unable to satisfy the court that this was so. The records on examination disclose that the appellant filed his brief within time and obtained leave to file his additional grounds of appeal in compliance with this court's order. There is therefore no substance in this objection. I now proceed to consider the issues I have framed for determination.

In coming to the conclusion that the cross-appellant had not acted within the scope of his authority, the Court of Appeal had held that what he was required by the board of directors to do was to get in touch with the 1st respondent, ascertain his agreement to purchase the disputed property for N170,000.00, and then report back to the board of directors through the 4th respondent, within ten days. This report back was found by the court below to have been made through Exhibit D23 which was written on 12/11/84, calculated by the court to have exceeded the stipulated time by six days (28/10/84 to 12/11/84).

It is the submission of counsel for the appellant and the cross-appellant that the Court of Appeal was in error in so finding first, because it failed to appreciate the scope of the authority given by the board of directors, which is that:-

"Professor Jegede (my note: the cross-appellant) is to get in touch with Universal Vulcanising Nigeria Limited and *ascertain from the company if it is willing to pay N170,000.00 for the company's property at Ilorin* and if the Universal Vulcanising Company is willing to pay this amount the property should be sold to the company i.e", Universal Vulcanising Company."

In short, once the cross-appellant ascertains the appellant's willingness to pay the required amount and communicates this fact to the 1st respondent within 10 days, the property is sold to the 1st respondent. It did not require that the communication to the 1st respondent, admittedly through the 4th respondent, should be in writing. It is their further submission that the cross-respondent did in fact carry out his mandate within 10 days, and therefore the sale to the appellant for N170,000.00 was concluded. The ten days began as rightly computed by the court below on 27/10/84 and ended on 6/11/84. But on 5/11/84, a day before its expiry per Exhibit D22, the willingness of the appellant was communicated to 4th respondent.

For this submission counsel have further relied on Exhibit 20 where the mandate/authority given to the cross-appellant is clearly set out and Exhibit 22 by which he communicated the result of his contract with the 1st respondent company to the 4th respondent.

The relevant portion of Exhibit 20, which is the minutes of the Annual General Meeting of the Directors and Shareholders of 1st respondent held at Ijesha on 30/3/85, states as follows:-

"When the minutes of the Emergency Meeting of 27/10/84 came up for discussion one of the Directors, Mr. R.O. Makanjuola felt concerned when the motion he presented and moved on the sale of the 1st respondent's property at No. 13 & 135 Murtala Mohammed Road, Ilorin and the subsequent deliberations thereon were not correctly recorded and reflected. For ease of reference I reproduce below the relevant excerpts of the minutes on the topic:

"For example, Mr. R.O. Makanjuola felt concerned regarding the sale of the company's property at Ilorin. For the avoidance of doubt to enable the Ag., Secretary present what was decided in connection with the sale of the Ilorin property, Mr. R.O. Makanjuola repeated his motion, which he moved at the meeting of October, 27th 1984. That Professor Jegede should be given 10 days within which he is to get in touch with Universal Vulcanising Company Limited and ascertain from the company if it is willing to pay N170,000.00 for the company's property at Ilorin and if Universal Vulcanising company is willing to pay this amount the property should be sold to the company i.e. universal Vulcanising Company. Mr. Makanjuola went on to say that the motion was seconded by Mr. D.O. Falokun and was unanimously carried. Members agreed that this was a fundamental omission in the minutes and should be included in the minutes. Professor Jegede also noted in many fundamental errors in the minutes. He said he did not say anything regarding the demolition of property at Ilorin, he therefore insisted that the last sentence to that effect in page 2 last paragraph but one, should be expunged. Members agreed that that was a serious error. Many members pointed to many other errors in the minutes to the extent that members were so dissatisfied and unhappy with the minutes because the minutes did not reflect many of the important and substantial decisions of the meeting. At this juncture and after a lengthy discussion in which members expressed their views, it was decided that the minutes should be re-written to reflect all the corrections and the substantial decisions of the meeting."

See from line 27 at page 162 to the end of page 163 of the Record.

"REPORT OF PROPERTY AT ILORIN"

The meeting expressed its dismay as the turn of events in respect of the company's property at Ilorin. Members demanded to know from the Ag. Secretary whether Professor Jegede got in touch with him within the stipulated period of ten days as to the willingness of Universal Vulcanising Company to pay N170,000.00 for the property at Ilorin. The Ag. Secretary answered in the affirmative and went further to produce Prof. Jegede's letter to that effect and that they received from Prof. Jegede a certified cheque for the sum of N170,000.00. At this juncture the meeting decided to stand by the decision of the Board at its last meeting that the property be sold to Universal Vulcanising Company for the sum of N170,000.00." (Note: Italics mine).

Counsel for the appellant and cross-appellant have submitted that –

"the affirmative answer of the Acting Secretary, the 4th respondent and the confirmatory letter produced by him as mentioned above, derived from Exhibit D22 dated the 5th of November, 1984, on which date accordingly the appellant accepted the 1st respondent's firm offer to sell the property for N170,000,00."

I agree with the submission of counsel for the appellant and cross-appellant, and hold that a firm offer to sell for N170,000.00 was made by the cross-appellant, accepted by the appellant, and communicated to the 1st respondent, within the stipulated 10 days. The submission of Counsel for the 1st, 4th and 5th respondents that all that can be inferred from Exhibit D 20 is –

"(a) Conditional offer to sell the property to appellant - (within 10 days).

(b) A promise to accept or to make or have an agreement with 1st respondent - (Exhibit D.22).

(c) An agreement subject to contract.

(d) Intention to make a contract or intention to sell on the part of 1st respondent to appellant."

is therefore not correct. This takes care of the first and second issues as framed by me the answers to which must be in the affirmative.

It is necessary to resolve the question raised in the third issue for determination not only so as to know the relative positions of the appellant and the 5th respondent vis-a-vis the property in dispute, but also to know whether there is any basis for the claim of the 1st, 4th and 5th respondents for damages for trespass allegedly committed by the appellant. This is still more important because the appellant is in possession and what the aforementioned respondents are relying on is a right to possession.

No where in the pleadings of the 1st, 4th and 5th respondents is it stated that the 4th respondent as Ag. Secretary of the company had a mandate to scout for lessees or buyers of the disputed property. When it is therefore averred in paragraph 22 of the aforesaid pleadings that –

"'22 Odudu & Co. was appointed agent of 1st defendant for the purpose of selling the said property to 5th defendant'"

what 4th respondent is really saying is that he so appointed Odudu & Co. and not the 1st respondent company. Under cross-examination he stated that-

"It was the board who sold the property and not myself. I am not part of the decision making body." (Note: Italics mine).

If he was not part of the decision making body, what was his authority for embarking on the purported sale through Odudu & Co.? Further under cross-examination by counsel for the appellant, he put the issue beyond any doubt when he stated-

"I am just an employee of the company. There was no meeting directing me to act on behalf of the company. By Exhibit D20, I agreed that 2nd defendant is the only person authorised to deal with the sale or lease of the property," (Note: Italics mine).

It therefore clearly follows without more, that when the 4th appellant approached Odudu & Co. to act as agents for the sale of the disputed property completed applications to consent to assign, used the company's seal (obviously in his possession as Secretary) to "authenticate" the deed of assignment, and collecting some money for so doing, he was acting without any authority from the 1st  respondent company. He was only acting in his personal interest. That this is so, is shown, apart from his own admissions, by the facts, firstly that as late as 27/10/84, at the meeting of the board of directors, he had become aware of the mandate given to the cross-appellant to sell the property to the appellant if it was prepared to pay N170,000.00 instead of the N150,000.00 which it had offered. He was there and took the minutes. Secondly, that by that date i.e. 27/10/84, to his knowledge, an application for consent of the Governor to sub-lease the property to the 5th respondent had already been made (On 15/10/84 to be precise vide paragraphs 26 and 28 of 1st, 4th and 5th respondents pleadings) and thirdly, on 18/12/84, his deed of assignment to Savannah Bank, the 5th respondent, had been signed (vide paragraph 28 of the pleadings of 1st. 4th and 5th respondents). Yet the 4th respondent did not so report to the Board of Directors on 30/3/85, when they decided-

"to stand by the decision of the Board at its last meeting that the property be sold to the Universal Vulcanising Company for the sum of N170.000.00" (Vide Exh. D20 supra).

The actions of the 4th respondent in respect of this transaction with Odudu & Co. acting as his agent and as agent for the 5th respondent, is not only without any authority whatsoever, but it also mala fide and even fraudulent. These characteristics are further confirmed by another excerpt from Exhibit D20 which reads thus:-

"Auditors Report

"The report was adopted for debate. In the process it was discovered that the Company's property at Ilorin which is still subject matter of court action was purportedly sold for N160,000.00 contrary to the information originally given to the Board at its meeting of October 27th 1984, where it was said by the supervising directors that Savannah Bank had offered N170,000.00 though they did not receive the money, they said the photocopy of cheque for N170,000.00 was shown to them. Many members expressed shock at this finding particularly when Universal Vulcanising Company has paid N170,000.00 to the company free from deduction whatever. The meeting decided that since the matter is still in court the N10,000.00 which was said to have been paid to one agent named Odudu should be accounted for by those who entered into the transaction without the authority of the Board." (Note: Italics mine).

This further confirms that not only did the directors and shareholders know about the "negotiations" with 5th respondent; contrary to their expressed decision and instruction, but that they proceeded to re-affirm that the sale should be to the appellant. The answer to the third issue for determination must therefore be an emphatic No!

If the 4th respondent had no authority to sell, then all his actions from his appointment of Odudu & Co as his agent to the signing of the deed of assignment (Exhibit D1) are null and void. In his judgment, the learned trial Judge in the High Court came to the conclusion, when considering the action of the cross-appellant as agent of the 1st respondent in his sale of the disputed property to the appellant that he had varied the terms of his agency. This was because, in his finding, the cross-appellant had sold the property to the appellant for N150,000.00 instead of the N170,000.00 he was instructed to sell it for in Exhibit D20. He then proceeded to state thus:-

"In my view an authorised agent cannot vary the terms of a contract without the knowledge and consent of his principal. If he does so the contract will be void."

He then cited *Skenconsult (Nig) Ltd v. Godwin Ukey 1981) 1 SC.6(9),* where the Supreme Court made its oft-quoted statement of the law that –

"If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometime convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse. "

If the action of an agent acting on terms of his principal which he has varied are null and void, the action of an agent who acted without the authority of his "principal" is doubly worse. The purported assignment of the disputed property is therefore null and void. The answer to the fourth issue for determination is therefore in the negative. May I observe in passing, although there was no submission to that effect, that the 5th respondent was not a purchaser without notice of the interest of the appellant. Messrs Odudu & Co. was also its agent and it knew long before the deed of assignment that the appellant had taken possession of the property and was carrying out renovations. In fact it knew latest in September 1984, whereas the application for consent to sub-lease was made on 15/10/84.

Since the sale to the 5th respondent is null and void he has no right to possession of the disputed property, there can be no trespass by the appellant who is not only in possession but entitled to possession. The finding of the court below that there was trespass (in confirmation of the finding of the trial court) is therefore wrong, and so also is its order for damages. Both decisions are therefore hereby set aside.

It is against the above background that the claim for an order of specific performance has to be considered. The appellant is seeking this order to enable it proceed to obtain an assignment of the property to itself, or at least to get the deed of assignment prepared by the cross-appellant and dated 10/12/84 between it and the 1st respondent processed and signed. An order for specific performance is an equitable and discretionary remedy granted to a successful litigant constraining the other side (the losing party) to carry out the agreement which it had entered into with the successful litigant/applicant. It is therefore an order often resorted to for a breach of contract. Although it is sometimes stated that it will not be readily granted where a remedy in damages is adequate, the general principles governing its grants in present times in cases of a contract for sale of land is stated in Chitty on Contracts:- General Principles 24th edition (paragraph 1634 at p.776) thus:-

"The law takes the view that damages cannot adequately compensate a party for breach of a contract for the sale of an interest in a particular piece of land or of a particular house (however ordinary). It seems that specific performance is available even though the buyer has bought for resale. The vendor too, can get a specific performance."

Appellants counsel also cited and relied on *Bigg and Another v. Boyd Gibbins Ltd (1971) 2 A.E.R. 183*. The head notes of the report of that case cited reads thus:-

"The plaintiffs and the defendants were negotiating for the sale of certain freehold property belonging to the plaintiffs. The plaintiffs wrote to the defendants stating:- 'As you are aware that I paid 25,000 pounds for this property, your offer of 20,000 pounds would appear to be at least a little optimistic. For a quick sale I would accept 26,000pounds” ... In reply the defendants wrote:" ... I accept your offer ...” and asked the plaintiffs to contact the defendants' solicitors. In their final letter the plaintiffs said: 'I am putting the matter in the hands of my solicitors ... My wife and I are both pleased that you are purchasing the property.' The plaintiffs alleged that this exchange of letters constituted an agreement for the sale of the property and brought an action for specific performance."

This case is very similar to the present appeal under consideration and it is a strong persuasive authority. Furthermore, in that case the Court of Appeal (Civil Division) of England also considered a submission that the principle of law as enunciated in Spry on Specific Performance (6th edition 1921 p. 131) should be applied in favour of the respondent who was the defendant in the court below and against whom the order of 'specific performance was made. It reads thus:-

"A much more common question is whether negotiations have passed from that state (i.e. the state of negotiations) and resulted in actual contract. If it were only doubtful whether the contract was concluded or negotiations still remained open, the Court of Chancery used to refuse specific performance, and leave the parties to their common law rights if any"

In his judgment, Russel LJ, [answered] this inter alia thus:-

"I do not think that in these days a court dealing with the question of specific predominance of a contract for the sale of land would take that sort of half course, saying 'We think the contract was concluded, but it is a difficult case and therefore we will not order specific performance but will leave the plaintiff to his remedies at law'. I think nowadays the court would come to a conclusion, and having come to a conclusion would, if the conclusion was that there was formed contract whose terms were ascertained, order specific performance."

What this means is that the courts are now no longer leaving the parties to their Common Law remedies, e.g. of damages for breach of contract, where it is clear that there has been a breach and specific performance is claimed. Rather the practice is to make the order sought.

Furthermore, an award of damages in lieu of the order of specific performance, which this court can grant, is not the proper remedy here. Since between the appellant and the 5th respondent it is only the appellant who holds a valid contract, the 5th respondent has no further legal interest which can be considered. All he has left is a claim for the refund of his money from the 1st respondent. It would also be inequitable to refuse the remedy sought when the appellant, relying on a contract which has now been found to be valid, has moved into the disputed property since June 1984, six months before the assignment which the 5th respondent relies on; and has remained in possession ever since.

Accordingly I am satisfied that the appellant is entitled to an order of specific performance, which I hereby order. The answer to issue 5 is in the affirmative.

To summarise, the appeal of the appellant and the cross-appeal of the cross-appellant are hereby allowed. The judgment of the Court of Appeal and the High Court are also set aside together with their orders for costs. In their place, the following orders of this court are thereby substituted:-

(i) the claim of the appellant (as plaintiff) in the High Court is granted,

(ii) the counter-claim of the 1st, 4th and 5th respondents (defendants) in the High Court is dismissed,

(iii) the appellant and the cross-appellant are entitled to the costs of the bearing in the High Court, Court of Appeal, and this court, against the 1st, 4th and 5th respondents only which I assess at –

(a) N300 and N150 respectively in respect of the High Court hearing

(b) N400 and N200 respectively in respect of the Court of Appeal hearing

(c) N1,000 each in respect of the Supreme Court hearing.

**A. G. KARIBI-WHYTE, J.S.C.:**

I have read the judgment of my learned brother Uche Omo, J.S.C. in this appeal. I agree entirely with the conclusions therein. I allow the appeal. I also agree with the orders made, and the costs awarded.  
  

**I. L. KUTIGI, J.S.C.: [DISSENTING]**

The plaintiff's claim against the defendants jointly and severally as stated in paragraph 21 of the Statement of Claim (which supersedes the Writ) read thus:-

"(i) an order for specific performance of the sale agreement between the plaintiff and the 1st defendant;

(ii) a perpetual injunction prohibiting the 7 defendants, their servants and/or agents from further trespassing on, or dealing with, the said property;

(iii) a declaration that the purported assignment of the same property to the 5th defendant as per Deed of Assignment dated 10th December, 1984 is null and void and of no effect whatsoever and the setting aside of the aforesaid Deed of Assignment."

The 1st, 4th and 5th defendants in their joint Statement of Defence also counter-claimed against the plaintiff as follows:-

"(a) That plaintiff vacate the said property immediately.

(b) Perpetual injunction against the plaintiff form further trespass.

(c) A declaration that plaintiff has bought nothing in equity; that there was no valid agreement or contract and that all its alleged acts did not go beyond negotiation.

(d) N110,000.00 for special and general damages against the plaintiff in favour of the 1st, 4th and 5th defendants.

(i) N60,000.00 for special damage - as estimated cost of reconverting the building which plaintiff had altered the structures.

(ii) N50,000.00 as general damages in favour of 1st, 4th and 5th defendants for breaking their close and debarring 5th defendant from occupying the property which was lawfully assigned to it".

At the end of the trial, the learned trial Judge, Ibiwoye, J., dismissed the plaintiff's claim in its entirely. He also dismissed the counter-claim of the 1st, 4th and 5th defendants for special and general damages but the plaintiff was ordered to vacate the property.

Dissatisfied with the judgment of the High Court, the plaintiff and the 2nd' defendant respectively appealed and cross-appealed to the Court of Appeal, Kaduna. Both the appeal and the cross-appeal were dismissed. The plaintiff and the 2nd defendant have now further appealed and further cross-appealed respectively to this court.

The subject-matter of this case is a contract for the sale of 1st defendant/respondent's leasehold property at Plots 13 and 135 Murtala Mohammed Way, Ilorin. Both the appeal and the cross-appeal arose from this same contract. They will therefore be taken and treated together. Dr. Ajayi learned Senior Counsel for the plaintiff has submitted in his brief nine issues for determination. I am not sure whether Dr. Ajayi's brief can be called a brief at all. It is a 70 page foolscap size closely typed document. Mr. Akintoye counsel for the 1st, 4th and 5th defendants and Mr.  Mohammed counsel for 6th and 7th defendants submitted one issue each while Mr.Osipitan, learned counsel for the 2nd defendant/cross-appellant, submitted six issues for determination. But after carefully going through all the briefs filed in the case it is my view that only two issues seriously fall for consideration. All other issues are subsidiary to the main issues. The main issues are –

(1) Whether the 2nd defendant/respondent had the authority of the 1st defendant/respondent to offer to the plaintiff/appellant, the 1st defendant's property at Nos. 13 and 13S Murtala Mohammed Way, Ilorin for sale at the price of N170,000.00.

(2) Whether there was a contract of assignment of the property between the plaintiff/appellant and the 2nd defendant/respondent.

The pleadings are a vital starting point. Paragraphs 3, 5, 6, 8, 9, 10 and 16 of the Statement of Claim read –

"3 ... Plot., 13 and 13S Murtala Mohammed Way, Ilorin, was sold to the plaintiff by the 1st defendant through the 2nd and 3rd defendants with the consent and knowledge of the 4th defendant in July, 1984 for the sum of N150.000.00.

(5) That the plaintiff started renovational work on the premises almost immediately so as to be able to move into the new premises before the expiration of the tenancy aforesaid.

(6) That renovational work reached an advanced stage costing over N80,000 and the plaintiff moved into the present premises the subject matter of this suit on 15/12/84.

8. That the plaintiff was forced to pay an additional sum of N20,000 by the 1st defendant.

9. The 2nd defendant is a Director of the 1st defendant and its Legal Adviser.

10. That up till now the 1st defendant has retained the money (N170,000) paid by the plaintiff.

16. Some agents and/or servants of the 1st defendant after the sale of the property in equity to the plaintiff and without any justification whatsoever negotiated with the agents and/or servants of the 5th defendant and purportedly assigned the same property to the 5th defendant who was aware or have reason to be aware of the earlier sale of the same property to the plaintiff."

The 1st, 4th and 5th defendants however, pleaded in paragraphs 2, 4, 6, 7, 8 and 10 of their joint Statement of Defence thus:

"2. The 1st, 4th and 5th defendants are not in position to admit or deny paragraphs 1, 2, 13, 15 and 17 of the Statement of Claim and put the plaintiff into the strict proof thereof.

4. The 1st, 4th and 5th defendants deny paragraphs 3, 4, 5, 6, 8, 10, 11, 16, 18, 20 and 21 of the Statement of Claim and put the plaintiff into the strict proof thereof.

6. 1st defendant never gave the 2nd defendant any written or oral authority to sell the said property which is under a Statutory Certificate of Occupancy Number 5702.

7. That 2nd defendant together with other directors of 1st defendant company were in January, 1984 asked to look for possible tenant, lessee or buyer of the said property and the execution of which 1st defendant set up a committee of Supervising Directors.

8. the 4th defendant did not know and never consented to the sale of the property to plaintiff.

10. No offer to buy the property was received by 1st defendant or his appointed agent, from the plaintiff."

The 2nd defendant on the other hand in his Statement of Defence pleaded in paragraphs 2,3,4,5, 10, 11, 13 and 14 that-

"2. The 2nd defendant admits paragraphs 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 of the Statement of Claim.

3. The 2nd defendant will, however contend at the hearing that he acted throughout the transaction as an agent of the 1st defendant and with the authority and consent of the 1st defendant.

4. The 2nd defendant was conferred with the said authority at a meeting of the 1st defendant held on 28th January, 1984, at Ilesha. Consequently, he will rely on the minutes of the said meeting at the trial.

5. The 2nd defendant was properly held out to the 3rd defendant as the agent of the 1st defendant by the 4th defendant.

10. The 2nd defendant informed the 1st and 4th defendants of the amount of money offered by the plaintiff which amount was N150,000.00.

11. At a meeting of the Board of Directors of the 1st defendant held on 27th October, 1984, it unanimously resolved that the 2nd defendant should inform the plaintiff that if the plaintiff was prepared to pay the sum of N170,000.00 as against the said N150,000.00 the 1st defendant will assign its interest in the property to the plaintiff. The minutes of the said meeting is hereby pleaded.

13. Since the meeting referred to in paragraph 11 herein, the only other and the last meeting of the 1st defendant up till now was held on 30th March, 1985 at which the decision herein contained in paragraph 11 was re-emphasised. The minutes of the said meeting is hereby pleaded.

14. The 2nd defendant subsequently informed the 1st defendant that the plaintiff was prepared to pay the sum of N170,000 for the property the letter dated 15/11/84 containing the said information from 2nd defendant to the 1st and 4th defendant is hereby pleaded,"

I think from the pleadings and evidence led at the trial it is common ground –

(a) That the 1st defendant owns plots 13 and 13S Murtala Mohammed Way. Ilorin;

(b) That the 1st defendant wanted to dispose of the property;

(c) That the 2nd defendant herein was one of the directors of the 1st defendant who among others was asked to look for prospective purchasers;

(d) That the 4th defendant was at all material times the manager of the 1st defendant;

(e) That the plaintiff/appellant indicated his desire to purchase the property.

The 2nd defendant pleaded that he was conferred with authority to sell the property in question at a meeting of the 1st defendant held on 28 January, 1984, and at another meeting of the Board of Directors of the 1st plaintiff held on 27 October, 1984, (See paras. 4 and 11 of Statement of Defence of 2nd defendant). He pleaded that the minutes of the two meetings would be relied upon. At the trial, however, the minutes of the meeting held on 28 January, 1984 were not tendered. Equally the minutes of the meeting held on 27th October, 1984 were also not available and therefore not tendered at the trial. What was tendered were the minutes of the meeting held on 30th March, 1985 at which the decisions of previous meetings held on 28/1/84 and 27/10/84 were affirmed and re-emphasised (see para. 13 of the Statement of Defence of 2nd defendant). These minutes were admitted as EXHIBIT D20 at the hearing.

Dr. Ajayi learned counsel had therefore placed reliance on Exhibit D20 as establishing the 2nd defendant's authority to sell the property in question. He said the court should hold that the 2nd defendant was given ten (10) days at the Directors' meeting held on 27/10/84 within which to get in touch with plaintiff/appellant to inform the plaintiff that the 1st defendant would consider selling the property to it for N170,000.00. He sold on 5th November, 1984 the 2nd defendant addressed Exhibit D.22 to the 4th defendant indicating that the plaintiff/appellant had agreed to purchase the property at N170,000.00. It was contended that Exh. D22 was within the prescribed time limit of 10 days.

I entirely agree with the submissions of Dr. Ajayi above. The 2nd defendant clearly failed to tender the actual minutes of the directors' meetings held on 28/1/84 and 27/1/84. But I think for the purposes of this appeal there is sufficient information and report about what transpired at those meetings and particularly that of 27/10/84 in respect of the property.

From Exh. D20 the members and directors of the 1st defendant company expressed their disappointment and dissatisfaction with the minutes of meetings held on 28/1/84 and 27/10/84. The minutes of the meeting of 28/1/84 were not adopted as they were found to be unintelligible and the Secretary was asked to rewrite them. But when the minutes of 27/10/84 came up for discussion, it was recorded in Exh. D.20 thus –

"For example, Mr. R.O. Makanjuola  felt concerned regarding the sale of the company's property at Ilorin. For the avoidance of doubt to enable the Ag. Secretary present what was decided in connection with the sale of the Ilorin property, Mr. R.O. Makanjuola repeated his motion, which he moved at the meeting of October, 27th 1984. "That Professor Jegede should be given 10 days within which he is to get in touch with Universal Vulcanising Company Limited and ascertain from the company if it is willing to pay N170,000.00 for the company's property at Ilorin and if the Universal Vulcanising Company is willing to pay this amount the property should he sold to the company i.e. Universal Vulcanising Company. Mr. Makanjuola went to say that the motion was seconded by Mr. D.O. Falokun and was unanimously carried. Members agreed that this was a fundamental omission in the minutes and should be included in the minutes.

Report on Property at Ilorin.

The meeting expressed its dismay as to the turn of events in respect of the company's property at Ilorin. Members demanded to know from the Ag. Secretary whether Professor Jegede got in (touch with him within the stipulated period often days as to the willingness of Universal Vulcanising company to pay N170,000.00 for the property at Ilorin. the Ag. Secretary answered in the affirmative and went further to produce Professor Jegede's letter to that effect and that they received from Prof. Jegede a certified cheque for the sum of N170,000.000. At this juncture the meeting decided to stand by the decision of the Board at its last meeting that the property be sold to Universal Vulcanising company for the sum of N170,000.00. “

It would thus appear from the contents of Exhibit D.20 that the 2nd defendant was given another 10days within which to get in touch with the plaintiff to inform it that the 1st defendant would consider selling the property to it for N 170,000.00.The 10 day period was fixed at the meeting of 27/10/84 and therefore the time would start running from 28/10/84 and expire at mid-night on 6/11/84. (*See Akeredolu & Ors v. Akinremi (1985) 2 NWLR (Pt. 1) 787.*

On 5/11/84 the 2nd defendant addressed Exhibit D.22 to the 4th defendant as follows:-

"I have since had telephone conversations with members of the management of the company. They agreed to abide by the decision of the company and that they would be getting in touch with me by or before the end of the week. In the circumstances I shall inform you immediately they get in touch with me, I hope the whole matter would be concluded within two weeks to enable the company i.e. I.U.T.T.C. Ltd, to take final decision on the property."

It is my view therefore that by reason of Exh. D.22, the plaintiff/appellant had at that point in time i.e. on 5/11/84 accepted the 1st defendant's offer and that accordingly a binding contract had come into existence, and by writing Exh. D.22 the 2nd defendant was acting as agent of the 1st defendant which act was within the scope of his authority as conferred by the 1st defendant company at the meeting of 27/10/84. The two issues posed are therefore answered in the affirmative.

The appeal and the cross-appeal therefore succeed and they are hereby allowed. The judgments of the High Court and the Court of Appeal are accordingly set aside.

What is now left to be considered is the question of consequential order or orders.

A decree of specific performance is a decree issued by the court which constrains a contracting party to do that which he has promised to do. It is a remedy for breach of contract provided by equity to meet those cases where the common law remedy of damages is inadequate (see *Beswick v. Beswick (1968) A.C.58 H.L.)*. Thus where a vendor or lessor of land refuses to carry out his contract, an order of specific performance may be granted requiring him to execute the necessary conveyance or lease since one piece of land is not necessarily the same as another and damages may therefore not be an adequate remedy.

But a plaintiff will be left to his remedy at law if a decree of specific performance would inflict a hardship on the defendant. Consequently the principle is that specific performance will generally not be granted where damages would be an adequate remedy. There are exceptions. Also specific performance like all equitable remedies is discretionary and the discretion is exercised judicially according to settled principles. So that even where the contract is valid in law specific performance may be refused on general equitable principles. In other words the court will only grant specific performance where it will be just and equitable to do so. It is not obtainable as of right like damages (see *Wood v. Scarth (1855) 2 K & J 33): Lamare v. Dixon (1873) L.R. 6 HL. 414.*

In the case before us, the plaintiff/company called only one witness at the trial. He was Adeyinka Adepoju Adeleye (P.W.1), a branch manager. In his evidence in chief on pages 18 - 21 of the Record, he stated inter alia thus –

"We are suing the defendants in this case because of a purchase of landed property transaction between us and the defendants. To the best of my knowledge the property belongs to the 1st defendant.

... I know the company called W. Odudu & Co. After the agreement we were renovating the purchased property when W. Odudu & Co. came in. No one had informed us that Odudu & Co. is the agent of the 1st defendant company. We will want the court to order us to us to vacate the property or to pay the sum of N110,000.00 to the 1st, 4th and 5th defendants. I pray the court to grant us as per writ of summons."

It is thus apparent on the record that although the plaintiff's witness said the trial court should not order them to vacate the property, no reasons or explanations were offered by the witness. Also although the witness said the purchased property was being renovated when W. Odudu & Co. came in, he failed to state the amount already spent on such renovations and or the reasons for them. (See paras, 5 and 6 of the Statement of Claim above).

I am therefore clearly of the view that on the strength of the materials before us, the plaintiff/appellant has not been able to show why specific performance should be decreed in its favour. There is a dearth of information on the appropriateness of the location of the property in Ilorin, its suitability, value and or importance to the plaintiff and whether or not alternative accommodations were readily available. All these are factors which will enable the court arrive at a decision whether or not to decree specific performance. But these are lacking. A decree of specific performance is not automatic on a mere breach of contract. There ought to be materials before the court on which to base the exercise of the discretion. As I said there are no such materials in this case.

Having said all these, it is settled law that where a plaintiff claims specific performance, or an injunction, the court has the power to award damages either in addition to or in lieu of specific performance or injunction, whether damages have also been specifically claimed or not (see Ibenwelu v. Lawal (1971) 1 All NLR 23). The object of awarding damages for breach of contract is to put the injured party, so far as money can do it, in the same position as if the contract had been performed. The injured party can never get more in damages than the loss which he has suffered. In fact, the injured party may sometimes even get less than the loss he has suffered under the exclusion principle of "remoteness of damages" as laid down in Hadley v. Baxendale (1854) 9 EX 341*; (see also Koufos v. C.Czarnikow Ltd. (The heron II) (1969) 1 A.C. 350 H.L. Cottrill v. S. & L. Building Society (1960) 1 WLR 753)*. Therefore if the party injured has suffered (or proved) no loss, he may win his action, as in this case, because breach of contract is actionable Per se but he will get only nominal damages.

In the instant case as I have already stated above the plaintiff/appellant has not been able to prove that it has suffered any damage or loss as a result of the 1st defendant's breach of the contract to sell the property to it. The plaintiff/appellant is therefore in my view entitled to an award of nominal damages only.

The evidence at the trial showed that the property had been sold to the 5th defendant with consent of the Government of Kwara State (represented by 6th defendant) and that a conveyance had been executed in its favour. The bank draft of N170,000.00 paid by the plaintiff/appellant to the 2nd defendant (as agent of the 1st defendant), was returned to the 2nd defendant who admitted receiving same and sending it back to his own bank which had issued it. Consequently it is hereby ordered as follows –

1. The 1st defendant/respondent shall pay damages of N5,000.00 (five thousand Naira for breach of contract to the plaintiff/appellant in lieu of a decree for specific performance.

2. Claims (ii) and (iii) are struck out.

3. N2,000.00 general damages for trespass awarded by the Court of Appeal to the 1st, 4th and 5th defendant against the plaintiff/appellant is set aside.

4. The 2nd defendant/respondent shall forthwith refund to the plaintiff/appellant the sum of N170,000,00 paid to him in respect of the plots 13 & 13S Murtala Mohammed Way, Ilorin. The N170,000.00 shall be paid together with all interests earned since the bank draft was returned by the 2nd defendant/appellant to his bank.

5. The plaintiff and the 2nd defendant are awarded costs of N1,000 each against the 1st, 4th and 5th defendants jointly.

**E. O. OGWUEGBU, J.S.C.:**

I have had the opportunity of reading in draft the judgment read by my learned brother Omo, J.S.C I agree that the appeal of the appellant and the cross appeal should be allowed.

There was a valid contract between the appellant and the 1st respondent company. Thereafter, there was nothing left to assign to the 5th respondent. The purported assignment to the 5th respondent was clearly null and void and in breach of the contract with the appellant. The 4th respondent had no authority to negotiate for the sale of the property let alone selling the same. The next issue calling for determination is the proper order which this court should make in the circumstance. The appellant in his statement of claim sought an order of specific performance of the sale agreement between it and the 1st respondent. This is an equitable remedy consisting of the order of the court directing a party to a contract to perform his obligations according to its terms. It presupposes an executory as distinct from an executed agreement, something remaining to be done - an order to make it possible for the appellant to obtain the assignment of the property.

This order will put the parties in the position relative to each other in which by their agreement they had intended to be placed. See *Woolverphampton & Walsall Rail Co. v. London & North Western Rail Co. (1873) L.R. 16 Eq. 433 at 439.*

Courts give specific performance instead of damages, only when it can by that means do more perfect and complete justice. See *Wilson v. Northampton & Banbury Junction Rail Co. (1874) 9 Ch. App, 279 at 284.*

There are many cases where specific performance is not available although damages may be obtained. The grant of specific performance is a question of discretion. It is not arbitrary or capricious but governed by fixed rules and principles.

In the case before the court, there is a concluded contract, complete and certain, and not illegal or contrary to public policy.

The contract relates to sale of land which is a common case where the courts specifically enforce the contract because the land may have a peculiar value to the purchaser.

This case does not come within the exceptions where the court will not readily grant specific performance.

The appellant has spent money renovating the premises and is in possession. What greater right has the 5th respondent whose agreement is null and void and of no effect over the appellant? The consent of the appropriate authority to the assignment and the subsequent assignment of the property to it do not validate the contract which is void.

It must also be remembered that the 5th respondent bought with the knowledge of the equity of the appellant in the property. This knowledge alone makes it inequitable for it to take any benefit from such transaction.

The appellant had fulfilled all the conditions precedent and performed all the terms of the contract. What remained to be done is for the 1st respondent to assign after obtaining the requisite consent.

For the above reasons and the fuller reasons contained in the judgment of Omo, J.S.C., I allow the appeal and the cross-appeal and abide by all the orders including those as to costs contained in the said judgment.

**S. U. MOHAMMED, J.S.C.:**

I have read in draft, the lead judgment of my learned brother, Omo, J.S.C., just delivered. I agree that there is merit in the appeal and I allow it. I order specific performance in favour of the appellant and abide by the orders for costs made in the lead judgment.

Appeal and Cross-appeal allowed.