

mutuality of agreement and mutuality of obligation". See **BILANTE INTERNATIONAL LTD V NDIC (2011) LPELR-781 (SC)**. From the evidence before the court, it is clear that the CW1 was approached by the 2nd Defendant who represented himself as the agent to the 1st Defendant, claiming he has land to sell, which offer was accepted by the CW1 and in consideration thereto, paid a total sum of N3,610,000.00 (Three Million Six Hundred and Ten Thousand Naira), (excluding fees), to the Defendants by the Claimant, as evidenced by Exhibits A, A1 and A4. However, despite the said agreement and execution of Exhibits A, A1, A3, A4 and A5 by both parties, the Defendants have refused, neglected or failed to provide the Claimant with either a genuine piece of land that is not encumbered or refund the Claimant the monies paid by him, thereby failing to perform their own side of the contract bargain and are now in breach of their contract agreement which they willingly undertook. The court, in the case of **Best (Nig) Ltd V. Blackwood Hodge Nig Ltd (2011) LPELR-776 (SC)**, held thus:

*There is no gain-saying the point that a breach of contract is committed when a party to the contract, without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or incapacitates himself from performing same or in a way back down from carrying out a material term. See: Adeoti & Anr v. Ayorinde & Anr (2001) 6 NWLR (Pt.709) 336."Per Fabiyi JSC (Pp. 22-23, paras. G-A).*

The Claimant, in consequence of the said breach by the Defendants, are now requesting for the refund of their money and the Defendants have so far bluntly refused to do till date, hence the present suit against them for recovery of same. The Defendants therefore, having received the said money from the Claimant as captured in Exhibit A4 above, have a moral duty to perform their own side of the bargain by refunding the Claimant the sum of N3,210,000.00 (Three Million Two Hundred and Ten Thousand Naira) together with cost of Three Hundred Thousand Naira (Three Hundred Thousand Naira). There is no evidence before the court showing or suggesting that the Defendants have paid or refunded the monies given to them by the Claimant for the failed land transaction. The Defendants therefore, having not denied or challenged the above evidence of the CW1 with any credible evidence, is deemed to have admitted same and the law is trite that facts not challenged or controverted are deemed admitted and the court can act on same. See **NACEN V. BAP (2011) 11 NWLR (Pt. 1257) pg 193**.

Consequently and in the absence of any credible evidence to the contrary, this court is therefore left with no option than to rely on the uncontroverted evidence of the Claimant. The Claimant is therefore entitled to the refund of the sum of N3,210,000.00 (Three Million Two Hundred and Ten Thousand Naira) together with cost of N400,000.00 (Four Hundred Thousand Naira), being and as representing the entire indebtedness of the Defendants to the Claimant and I so hold.

Accordingly, it is hereby ordered that;

**The Defendants, especially the 1st Defendant, shall pay the Claimant the sum of N3,610,000.00 (Three Million Six Hundred and Ten Thousand Naira), being and as representing the outstanding indebtedness of the Defendants to the Claimant.**

**This is the Judgment of this court. I make no further Orders.**

Dated this 12th day of March, 2026

**LEZIGA C. MITEE (MRS)  
CHIEF MAGISTRATE II, MAGISTRATE COURT 10**

