RUNLAWJ

REDEEMER'S UNIVERSITY LAW JOURNAL

FACULTY OF LAW,
REDEEMER'S UNIVERSITY,
EDE, NIGERIA.

Volume 5, Issue II, 2022

REDEEMER'S UNIVERSITY LAW JOURNAL (RUNLAWJ)

ISSN 2636-6462
VOL. 5, ISSUE II, 2022

A Publication of the Faculty of Law, Redeemer's University, Ede, Nigeria.

TABLE OF CONTENTS

UN LAW JOURNAL

Volume 5, Issue II, 2022

ARTICLE

The Status of Local Purchasing Order in a Contract of Sale of Goods: A Critique of the Rights-based Approach in *Abba v. Shell Petroleum Development Company of Nigeria Limited*

Jacob Abiodun Osuntogun[×] and Kehinde Anifalaje[×]

Abstract

This paper examined the judgment of the Supreme Court of Nigeria in Abba v. Shell Petroleum Development Company of Nigeria Limited on the status of Local Purchase Order (LPO) in a contract of sale of goods. Contrary to the general rule in most countries of the world, including the United States of America and Uganda, that the LPO constitutes an offer in the law of contract, the Supreme Court held that it was an invitation to treat which is not enforceable in law. Consequently, this paper subjects this decision into a critical examination with a view to determining its accuracy. For this purpose, it interrogates the role of offer and acceptance and in particular the invitation to treat in the formation of the contract of sale of goods. It also discusses the question of what time it could be said that parties have entered into a contract of sale of goods. It interrogates the legal status of the LPO in commercial transactions and how the status might affect the result of the application of offer and acceptance in a contract, particularly the contract of sale of goods. It concludes that, although the decision in Abba's case cannot be reconciled with similar decisions not only in Nigeria but also globally, it can be justified using the rights-based approach.

Keywords: Contract, Sale of goods, Offer, Invitation to treat, Local purchase order

[×] LLB (Unilag), BL, LLM (OAU), MA (UI), LL.M (University of Pretoria) PhD, University of Witwatersrand, Senior Lecturer, Department of Commercial and Industrial Law, University of Ibadan, Nigeria. Email:osunfolak@yahoo.com.

[×] LLB (Unilag), BL, LLM (Ibadan) PhD (Ibadan),Senior Lecturer, Department of Commercial and Industrial Law, Faculty of Law, University of Ibadan, Nigeria. Email: kennyanif@gmail.com.

1. Introduction

The formation of a contract, as it relates to offer and acceptance in the law of contract, particularly in commercial transactions has, generally, been neglected by scholars as a subject of research.[1] The outcome of this neglect is that the rule of offer and acceptance has been accepted as sacrosanct that cannot be toyed with in the jurisprudence of contract. Unlike the legal scholars, the Supreme Court of Nigeria takes a different path in addressing this issue as it examined at length, the formation of contract and the jurisprudence of offer and acceptance in *Abba v Shell Petroleum Development Company of Nigeria Limited* (*Abba's* case).[2] In that case, the Supreme Court had the opportunity to discuss the relationship between contract and sale of goods, particularly, on the rule of offer and acceptance in the formation of a sale of goods contract. It reiterated the general principles of offer and acceptance as a catalyst for the enforcement of contract and held that a Local Purchase Order (LPO) was not an offer, but a mere invitation to treat and, consequently, there was no contract of sale of goods between the parties for the supply of the spare parts, the subject matter of the LPO.

Indeed, a commercial transaction is, in the first instance, a contract and, consequently, the principles of contract law are applicable thereto. Those principles of contract that are also applicable in a contract of sale of goods are those relating to formation of contract, conditions and warranties, obligations and duties of the parties. For this purpose, the Sale of Goods Act 1893 of the United Kingdom adopted by most states in Nigeria does not fail to show its identity as it provides in section 1thereof that a sale of goods is nothing but a contract.[3] Thus, the elements of contract such as offer and acceptance are necessary for the formation of contract of a sale of goods.[4]

---

1 Shawn Bayern, 'Offer and Acceptance in Modern Contract Law: A Needless Concept' (2015)103 CLR67.

2 [2021]17 WRN 1-182, 94.

3 See also, e g, s 3(1) of the Sale of Goods Law, Cap 149, Laws of Oyo State 2000, and s3 (1) of Sale of Goods Law, Laws of Lagos State of Nigeria 2003.The Sale of Goods Act 1893 is a statute of general application applicable in Nigeria except for the States in the Old Western Region, namely Oyo, Ogun, Ondo, Edo and Delta States where the Sale of Goods Law of Western Region was applicable. These States have since enacted their respective Sale of Goods Laws.

4 A J Osuntogun, 'Sale of Goods in the Midst of Similar Transactions: Separating Wheat from Chaff' (2011)2 Business Law Review 66-88; A J Osuntogun, 'Goods in Sale of Goods: An Examination of the Subject Matter' (2010)6Nigerian Bar Journal 85-103.

This article interrogates the role of offer and acceptance and in particular the invitation to treat in the formation of contract of sale of goods. It critically examines the Supreme Court decision in *Abba's* case. It also discusses the question of what time it could be said that parties have entered into a contract of sale of goods. It interrogates the legal status of the LPO in commercial transactions and how the status might affect the result of the application of offer and acceptance in a contract, particularly the contract of sale of goods. The decision of the Supreme Court in *Abba's* case is subjected to critical examination with a view to determining its accuracy. It concludes that, although the decision in *Abba's* case cannot be reconciled with similar decisions, it can be justified using the rights-based approach.

The paper is divided into six sections. The next section explains the facts in *Abba's* case and the *ratio decidendi* of the case in relation to the formation of the contract of sale of goods. Section three examines the reasons why the main principle applied in the case was the principle of offer and acceptance, while section four explores how the principle was applied. Section five critically and thoroughly examines the status of LPO as an invitation to treat and notes that the rights-based approach is the main justification for the appellate courts' decisions in the case, while section 6 provides the concluding remark.

2. The Facts in *Abba's* Case

Plaintiff, as the purported seller of goods, sued Defendant/Respondent for recovery of the sum of Two Million, Five Hundred Thousand Naira (₦2, 500,000.00) being the agreed price of American crane spare parts which he supplied to the Respondent. The main issue for determination at the trial court was whether there was a valid contract of sale of the goods delivered to the Respondent by the Plaintiff. The Plaintiff relied on a LPO issued by Defendant to him. The LPO was admitted and marked as Exhibit "A". The trial Judge gave judgment in favour of the Plaintiff whereupon the defendant, dissatisfied with decision of the trial court, appealed to the Court of Appeal.

The Court of Appeal set aside the judgment of the trial court and held that the LPO, Exhibit "A", issued by the Appellant to the Respondent is, on the fact before the court, no more than an invitation to treat and not an offer to the Respondent. [5]Thus, it concluded that there was no contract between the parties on which the judgement of the trial court could be sustained. The Court of Appeal held further that even if the LPO was to be admitted as an offer, the Respondent in purporting to accept same made a counter-offer or modified the terms of the LPO.[6] The result of that modification according to the Court of Appeal was that 'there was no acceptance of the Appellant's

[5] *Abba's* case(n 2) 102.
[6] Ibid.

goods' and, therefore, 'there was no contract'.[7] The Plaintiff/Appellant dissatisfied with the decision of the Court of Appeal, appealed to the Supreme Court. The Supreme Court dismissed the appeal and affirmed the decision of the Court of Appeal which set aside the judgment of the trial court. Galadima, JSC who delivered the leading judgment of the Supreme Court held that "the court below was right in holding that an LPO was an invitation to treat which is not enforceable".[8] This takes us to the next sub-section which is the reason behind the application of offer and acceptance principle in the case.

3. Reasons behind the Offer and Acceptance Principle

In an attempt to determine how a contract of sale of goods comes into existence, the appellate courts in *Abba's* case applied the offer and acceptance principle and explained the reasons thereof. Rhodes-Vivour, described the case as 'the basics of a contract, offer, acceptance and consideration'.[9]The Honourable Justice opined that the issue for determination in the case was 'whether the Court of Appeal was correct when, much to the displeasure of the Appellant, it set aside the finding of the trial court which found that there was a contract between the parties.'[10]

It is a trite law that, for there to be a contract of sale of goods, there must be a valid contract between the parties since a sale of goods is a contract. As such, for the purpose of determining the existence of a contract in a sale of goods, recourse shall be had to the general law of contract. This, no doubt, may likely be the reason why Rhodes-Vivour, JSC,as noted earlier, said 'this case is about the basics of a contract, offer, acceptance and consideration' which are the elements of making a contract, not only in a contract of sale of goods, but in any other commercial transaction.[11]

Generally, to enter into a contract,[12] the parties must have complied with all the elements of a contract which are offer, acceptance, consideration, and intention to enter into legal relationship and they must have the legal capacity to enter into such a contract. Galadima, JSC who delivered the leading judgment supported this view when he said that the offer made 'must be capable of acceptance not by mere delivery but its acceptance as

---

7 Ibid.
8 Ibid, 114.
9 Ibid, 116.
10 Ibid.
11 Ibid, 114.
12 Note that Adekeye, JSC, in *Best (Nigeria) Ltd. v. Blackwood Hodge (Nigeria) Ltd. & Ors.* (2011) 5 NWLR (Pt. 1239) 95,defined a contract as 'as a legally binding agreement between two or more persons by which rights are acquired by one party in return for acts or forbearances on the part of the other'. It can simply be defined as an enforceable agreement under the law.

well'.[13] Consequently, the offer and acceptance are essential factor in the determination of the case as expounded by the appellate courts.

4. Application of the Principle

As noted earlier, the main principle of law that the courts from the trial court to the Supreme Court applied, in this case, is the traditional doctrine of offer and acceptance. The reason why this principle is the main basis for the determination is that the subject matter in the case was the existence of a contract. On this, Galadima, JSC said that 'the germane issue in the case …was whether there was a valid contract of sale of the goods delivered to the Respondent herein'.[14]Consequently, the appellate courts could not but apply the doctrine of offer and acceptance.

At the trial court, Kulejubola, J held that there was a contract and ordered that the Defendant pay the total sum of ten million, Three Hundred and Seventy-five Thousand Naira (₦10, 375,000.00), being the sum claimed and interest at the rate of 45 percent per annum for seven years,to the plaintiff. The reason for the decision was because the trial court considered the LPO, Exhibit 'A',as an offer and not an invitation to treat. Consequently, it was concluded that a contract came into existence between the parties when Plaintiff delivered the goods to the Defendants. On this, he said the Defendants were estopped from denying their liability to the Plaintiff 'having created a mouth-watering contract based on Exhibit 'A'.[15]On appeal, the Court of Appeal set aside his judgment and held that an LPO which the Plaintiff/Respondent relied upon for the supply of the crane spare parts was an invitation to treat and not an offer. The Court of Appeal on this issue stated that "The Local Purchase Order, Exhibit "A", issued by the Appellant to the Respondent is, on the fact before the court, no more than an invitation to treat, not an offer to the Respondent".[16]Relying on s3 (1) of the Sale of Goods Law, which defines a sale of goods contract to justify its decision,[17] the Court of Appeal attempted to locate and situate the source of offer in the case when it said the offer in this case, could have come from the seller of the parts to the Appellants.[18]On this, the Court noted that'…the transfer or agreement to transfer in the goods constitutes the offer that can be accepted by the other side by accepting delivery of the goods. …It is the seller i.e. the Respondent who would make the offer on the facts of this case."[19]

---

13 *Abba's* case (n 2) 113.

14 Ibid, 101.

15 Ibid.

16 Ibid, 102.

17 Sale of Goods Law, Cap.50, Laws of Bendel State, 1976 which is applicable in Edo State. See also, s3(1) of Sale of Goods Law, Oyo State, s3(1) of Sale of Goods Law, Lagos State and s1(1) of SOGA 1893.

18 *Abba's* case (n 2) 113.

19 Ibid, 113.

It is a trite law that invitation to treat is not an offer, but an attempt made by one party to instigate the other party to make an offer to him. Thus, if the decision of the Court of Appeal that LPO was an invitation to treat was true, their decision that there was no contract was correct. Of course, the Court of Appeal considered and tinkered with another option and that was the possibility of an LPO being an offer. On this, the Court of Appeal applied a counter-offer principle and noted that, even if the LPO was an offer to the Respondent therein, the outcome would still be the same because the effect of Exhibit 'A' was that the respondents in purporting to accept same made a counter-offer or modified the terms of the LPO. The Court of Appeal further noted that the Respondent did not act in conformity with the condition and warranty stipulated in the applicable Sale of Goods Law with particular reference to the ownership or right to sell the spare parts which he testified belonged to third party who fixed the prices.[20]

Dissatisfied with the decision of the Court of Appeal which set aside the judgment of the trial court, the Plaintiff/Appellant appealed to the Supreme Court. The Supreme Court upheld the decision and reasoning of the Court of Appeal in setting aside the trial court's judgment and in holding that there was no contract. In doing that, it explained that the main issue for determination was the status of the LPO. According to the Supreme Court, if this issue was correctly addressed, the contention of the Appellant that his right to fair hearing was violated by the Court of Appeal because of its failure to consider the issue of due delivery of the spare parts would no longer have been necessary as it would fizzle out and be of no consequence. Indeed, available evidence from the records indicated that there was no due delivery of the crane spare parts as required in a contract for the sale of goods. The Respondent had refused to sign the relevant waybills to acknowledge receipt of the spare parts for the reasons admitted and accepted by the Appellant, namely, that the Respondent had demanded for source documents before it would sign the said waybills.

The Supreme Court, therefore, considered the status of the LPO and held that it was an invitation to treat. Galadima, JSC was of the view that '[T]he court below was right in holding that; an LPO was an invitation to treat which is not enforceable' and attributed the basis of misconception of law in the case to an erroneous view of the law by the Plaintiff/ Appellant that 'that a Local Purchase Order is *per se* an enforceable contract'.[21]

Galadima, JSC who delivered the leading judgement opined that the Court of Appeal was correct on how it located and applied the principle of offer in

[20] Ibid.
[21] Ibid, 114.

the case when he said '[C]onsistent with s 3(1) of the Sale of Goods Law (supra), the Respondent made an offer to transfer the property in the crane spare parts when he took them to the Appellant.'[22] He further explained the next principle of law, which is acceptance, when he said '[T]his offer must be capable of acceptance not by mere delivery, but its acceptance as well'.[23] Consequently, he held that there was no contract because the offer made by the respondent was not accepted by the appellant.[24]The Supreme Court also affirmed the view of the Court of Appeal on what would be the outcome of the case the LPO was held to be an offer. In line with the reasoning of the Court of Appeal, Galadima, JSC, affirmed that the respondent could be said to have made a counter-offer and, consequently, there was no contract:

> I agree entirely with the conclusion of the court below that, in purporting to accept an offer allegedly contained in Exhibit 'A' by delivery of the spare parts to the Respondent, the Appellant was merely inviting the Respondent herein to deal with him in the transaction of sale of goods. On the clear fact of this case, without calling further evidence, it would appear that the Respondent, rather than accepting the offer contained in Exhibit 'A' proceeded to make a counter-offer.[25]

5. Is the LPO an Invitation to Treat?

The appellate courts were hesitant and reluctant in deciding the status of an LPO. Consequently, they considered the option or probability of an LPO as an offer. However, in spite of their hesitancy, they were unanimous in their conclusion that LPO was an invitation to treat. This aspect of the paper interrogates the decision of the appellate courts that LPO is an invitation to treat. Of course, it might be difficult for the appellate courts to reason otherwise. LPO is a variety of a tender and almost all scholars agree that the general rule that governs tenders is that they are invitations to treat and not an offer.[26] However, beyond that general rule, it is important to interrogate what informed the appellate courts to adopt an invitation to treat approach and what obtains in other jurisdictions. Basically, the Court of Appeal was motivated to treat LPO as an invitation to treat because of the failure of the Respondent to include the prices of the spare parts in '…a list of the spare parts he gave the transport department of the Appellant. The court reasoned

---

22 Ibid.

23 Ibid.

24 Ibid, 110.

25 Ibid, 114.

26 See, M O Adesanya and E O Oloyede, *Business Law in Nigeria* (University of Lagos Law Series 2, Evans Bros 1972) 21-22; I E Sagay *Nigerian Law of Contract* (Spectrum Books Ltd 2018)31; Richard Miles, *Blackstone's Sale and Supply of Goods and Services* (Blackstone Press 2001)31; Alobo Eni Eja, *Law of Contract* (Princeton 2016)31.

that in the absence of such an essential element in a sale of goods contract, the submission of a list of spare parts by him to the Appellant could not be treated as an offer. On this, the court noted that as a matter of logic, it followed that 'in issuing the LPO, the Appellant in real-time was merely asking the Respondent to offer to sell to it the items in the LPO at the prices therein stated.'[27] Thus, the Court of Appeal noted that the effect of omission of the prices for the spare parts is that the LPO was an invitation to treat and not an offer. It is important to note that the Supreme Court agreed with this reasoning when Galadima, JSC noted that the decision of the Court of Appeal and the reasons offered for its decision was 'legally sound.'[28]

However, with due respect to the appellate courts, it appears that the above view on the effect of omission may not hold sway in all situations, particularly in a sale of goods transaction, if relevant statutory laws relating to the facts in the case had been considered. First, a critical look at the law governing the formation of contract of sale of goods will show that the reasoning of the appellate courts that the effect of omission of the prices for the spare parts is that the LPO was an invitation to treat and not an offer is misconceived in light of the relevant sale of goods jurisprudence and the statutory law. The reasoning can be faulted by virtue of its implication. Its implication is that in a sale of goods contract, the parties must agree on all the essential elements of a contract, particularly on the price before a contract of sale of goods can be said to exist. This issue was not raised and argued by the counsel to both parties nor considered by both courts during the trial. However, the issue has been subjected of controversy in the past and the controversy has been laid to rest. The controversy dealt with how to reconcile the general rule in contract law that before a contract can be said to exist, parties must have agreed to all elements of the contract, particularly price, with s8 of the 1893 SOGA,[29] which attempts to depart from this general rule. The controversy itself, according to Atiyah, is actuated by s8 of SOGA itself in that it is subject to a presumption that parties have already entered into a contract. He said:

> Section 8 has given rise to more difficulties than might have been thought. The section assumes that a contract has been made by the parties and then proceeds to explain the

---

27 *Abba's* case (n 2).

28 Ibid.

29 S8 (1) & (2) of SOGA.S 8 (1) provides that: "The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties', while sub-section(2) provides that: "Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case". See also See s 8 (1) & (2) of Sale of Goods Law of Oyo State, s 8 (1) & (2) of Sale of Goods Law of Lagos State.

> methods by which the price can be ascertained. But the first point which must be considered in an action on the sale is whether a contract has in fact been finally agreed upon by the parties, and the absence of agreement as to the price (or even as to the mode in which the price is to be paid) may provide good evidence that the parties have not yet reached a concluded contract.[30]

Thus, it is important not only in the law of contract, but also in a contract of sale of goods, to determine what stage in the negotiation process has the parties reached in respect of price before one can conclude that there is a contract of sale of goods. On this issue, two conflicting cases from the UK are important for illustration.[31] In *May and Butcher Ltd v. R (May and Butcher Ltd* case),[32] the major issue for determination was whether there could be a contract of sale of goods if the parties did not agree on essential elements of the contract, particularly, price. The House of Lords answered the question in the affirmative and applied the general rule of contract over the sale of goods law. Lord Buckmaster reiterated the principle of the general contract law as applied in the case over the sale of goods law when he said:

> It has long been a well-recognised principle of contract law that an agreement between two parties to enter into an agreement in which some critical part of the contract matter is left undecided is no contract at all [t] is not open to them to agree that they will in the future agree upon a matter which is vital to the arrangement between them that has not yet been determined.[33]

Of course, the House of Lords reached its decision without a sound analysis of the sale of goods law. Igweike has, consequently, argued that the judgment was decided without due consideration to Section 61 (2) of the Act.[34] He wrote:

> It may be submitted that the court in this case has applied the law wrongly. First, it seems to have ignored the provisions of Section 61 (2) and 8 (2) of the Act. The former preserves common law "principle of contract law" only in so far as they

---

30 P S Atiyah, *The Sale of Goods* (5th edn, Pitman Publishing 1975) 18; for similar view, Sales Law Review Group (SLRG), 'Report on the Legislation Governing the Sale of Goods and Supply of Services' (2011) 105.

31 See *May and Butcher Ltd v. R* (1934) 2 K.B. 17; *Hillas & Co Ltd v. Arcos Ltd.*, (1932) All ER 494.

32 *May*, Ibid.

33 Ibid, 20.

34 See, SOGA 1893.

> are not inconsistent with the provisions of the Act. The latter unequivocally reserves to the parties to a contract of sale, if they so desire the right to settle the price subsequently or risk the application of a reasonable man's test.[35]

In *Hillas & Co Ltd v. Arcos,*[36] some judges advocated a departure from the principle in *May and Butcher Ltd* case and suggested a liberal approach to the analysis of offer and acceptance rule, particularly in the interpretation of the statutory law of sale of goods so that the intention of the parties can be enforced. For example, Lord Tomlinin in *Hillas* said:

> The problem for a court of construction must always be to balance matters that, without violation of essential principle, the dealings of men as far as possible be treated as effective, and the law may not incur the reproach of being the destroyer of bargains.[37]

In the same case, Lord Wright supported the liberal approach and declared that it is the judicial duty to ensure the enforcement of the intention of the parties unless such intention is ambiguous. His appeal to the judges comes in form of a call to duty when he said:

> It is the duty of the courts to construe agreements made by businessmen – which often appear to those unfamiliar with the business far from complete or precise – fairly and broadly, the courts should seek to apply the maxim *verbaitasunt intellegendeut res magisvaleat quam pereat* – where the contractual intention is clear but the contract is silent on some details.[38]

It is noteworthy thatthe principle in *May and Butcher Ltd* case has not been overruled and, therefore, remains binding in theory although the courts, in practice, have not always followed it.[39] Thus, in *Foley v. Classique Coaches,*[40] the Court of Appeal held that an agreement to supply petrol "at a price to be agreed between the parties in writing and from time to time" was an enforceable contract since the parties had demonstrated an intention to be bound. An argument by the defendants that the agreement to buy the petrol

---

35 KI Igweike, *Nigerian Commercial Law: Sale of Goods* (2nd edn, Malthouse Press 2001)17

36 See, *Hillas* (n 31).

37 Ibid, 499.

38 Ibid, 502 – 504.

39 See Michael Furmston, *Principles of Commercial Law* (2nd edn, Routledge and Cavendish2001) 19

40 (1934) 2 K B 1

was not binding because the price was not certain went into deaf ears.[41] As a matter of fact, the Lagos State High Court could not but follow this liberal approach in *Matco Agencies Ltd v Santer FE Development Co Ltd.*[42] In the instant case, the Plaintiffs delivered machinery and spare parts with a waybill that did not state the price of the goods. When the entire goods have been used, the Plaintiffs sent the price of the goods to the defendants. The Lagos State High Court held that there was an enforceable contract of sale of goods and that the defendants must pay a reasonable price in accordance with section 8 (2) of the sale of goods Act.[43] It is obvious that if the courts had considered this issue, it could not have concluded that the omission of the prices for the spare parts made the LPO an invitation to treat.

Thus, the appellate courts could have reached a different decision if they had contemplated that the failure to include the price list was not fatal to the case of the Plaintiff/Appellant. This is so because the thought that the omission of the price list is fatal contributed immensely in leading the appellate courts to hold that an LPO was an invitation to treat, a principle that contributed to no contract decision. If the appellate courts were not taken aback by the omission of the price list, they could have deduced the existence of contract in the examination of three major related events between the parties. One, the Plaintiff/Appellant gave a list of the spare parts he wanted to sell to the transport department of the Defendant/Respondent. This of course can be an invitation to treat. Two, the Defendant/ Respondent in response, issued an LPO to the Plaintiff/Appellant to supply the crane parts at certain prices. Third, the Plaintiff/Appellant relied on the LPO and supplied the said goods. If LPO was an offer, why could this supply not be an acceptance that consummated the contract? Let us see how the courts perceived these events. The courts took note of the first event but discarded it as amounting to nothing because of the omission of the price list.

In the midst of uncertainty or hesitance, the courts also considered the second event that is LPO as invitation to treat. As noted earlier, the whole decision rested on failure to appreciate the principle under the sale of goods law that parties can enter into contact without an agreement on price. If the Courts had considered and appreciated this point, they could not have left the first event unclassified even if they will classify it as invitation to treat. Once that event is classified as invitation to treat, they are likely to consider

---

[41] There was a suggestion in an Australian case of *Hall v. Busst* (1960) 104 C.L.R. 206 to the effect that section 8 is "anomalous" and is not to be extended and it has also been suggested in the same case that the section only applies where the goods have been delivered and accepted, and that it has no application to a purely executory contract. Despite the high authority of these dicta they seem to have little to commend them and they have not been followed even in Australia: see P S Atiyah (n 30) 19.

[42] (1971) 2 N C L R 1.

[43] Ibid. On the statutory provisions, see (n29).

the second event, that is, the LPO, as an offer. If it is done in this order, then, the third event, that is the supply of goods by the Plaintiff/ Appellant to the Defendant/ Respondent will be an acceptance of the offer. This would be so because the Plaintiff/Appellant supplied the goods in response to the LPO, which requested him to supply those goods at a certain price.

Another issue that could have supported this new line of reasoning is that previous cases in Nigeria support the view that LPO is an offer and not an invitation to treat which, if accepted by the other party, forms a contract between the parties. In *C A P Plc v. Vital Investment Ltd*[44] Salami, JCA stated that "Local Purchase Orders are themselves contract between the parties to the exclusion of extrinsic evidence in their interpretation."[45] Similarly, in the same case, Ogunbiyi JCA, in agreement to the contractual nature of LPO referred to the case of *Kyaure Construction Ltd. v. Agbana* for approval where it was held that the common usage of agreement by issue of a LPO is that the supplier of the items listed in the order will be paid for the items he supplied and no more. In that case, the court enforced the agreement between the Appellant and the Respondent as contained in the LPO in spite of the argument of the Appellant's counsel that the Appellant initially had entered into an agreement between him and his employer who was the owner of the original building contract prohibiting him from entering into a sub-contracting agreement contained in the LPO between him and the Respondent.

In *Johnson Wax (Nig) Ltd v Sanni,*[46] one of the issues for determination was whether there was a binding contract between the parties for the supply of mosquito coil stands as contained in the LPO. The Court of Appeal held that there was. In its leading judgment, Dongban-Mensem, JCA explained the legal status of LPO when he said the issuance of a local purchase order is not an invitation to treat, but a commitment of an offer made to be followed by performance. Once a local purchase order is issued and goods are supplied, payment becomes imperative.[47] The Supreme Court of Nigeria also acknowledged that LPO is an offer which if accepted becomes a contract in a number of cases such as *Onyekwelu v. Elf Petroleum (Nigeria) Ltd*[48] *Muyiwa Eweje v. OM Oil Industries Ltd.*[49] and *Julius Berger Nigeria Plc. &Anor v Toki Rainbow Community Bank Ltd*,[50] to mention but a few.

---

44 (2006) 6 NWLR (Pt.976) 220.
45 Ibid, 266.
46 (2010) 3 NWLR (Pt.1181)235,245.
47 Ibid, 247.
48 (2009) All FWLR (Pt. 469) 426.
49 Unreported, Suit number SC. 379/2007.
50 (2019) LPELR-46408(SC).

In addition, the legal status of the LPO in other jurisdictions also supports the view that LPO constitutes an offer in law that does not become a legally binding contract until the seller accepts it. This is the position of the law in the United States of America under the Uniform Commercial Code (UCC). The UCC provides that a 'contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.[51] Specifically, in respect of Purchase Order, it provides that 'an order or other offer to buy goods for prompt or current shipment' shall be interpreted 'as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods'.[52] Consequently, in *Mid-Atlantic International Inc. v AGC Flat Glass North American Inc.*, [53] a court in the United States held that a purchase order is 'an offer which may be accepted by subsequent action on the part of the seller. Similarly, in *Audio Visual Associates Inc. v Sharp Electronics Corp.*, [54]the court noted that a purchase order normally 'takes the form of an offer …providing product choice, quantity, price, and terms of delivery. Also in Uganda, the LPO is regarded as an offer which, if accepted, becomes a contract. In *Setramaco International Ltd., v Board of Directors/ Head Teacher Lubiri Secondary School &Anor,*[55] the Uganda Commercial Court held that the local purchase order was an offer and that the second defendant had apparent authority to sign the local purchase order for the first defendant. Consequently, the first defendant was held to have accepted the goods when they were delivered to it and had to pay for them.

In spite of the afore-mentioned submission, the decision in *Abba's* case can still be justified under the Sale of Goods Act on the rights-based approach. There are two tangible reasons for this. One, the buyer has a right in a sale of goods to reject goods if they do not conform to the description.[56] The appellate courts considered this right and were one of the reasons which informed their decisions to hold that if the LPO was an offer, there was no acceptance.[57] The second is the right of the seller to pass undisputed title to the buyer.[58] The two appellate courts also considered the legal consequence of a contract of sale of goods if the seller has no title to the goods.[59] This

---

51 See, e g, Uniform Commercial Code for the District of Columbia, §28:2—204. (1).

52 Ibid, §28:2—206. (1).

53 District Court of Virginia, Civil NO. 2:12cvl69 (2013); United States Court Of Appeals for the Fourth Circuit, No. 14-1316.

54 210 F.3d 254, 259 (4th Cir. 2000).

55 High Court Civil Suit No. 478 of 2005 (2009) UGCOMMC 22 January 2009.

56 See s12 of Sale of Goods Law of Oyo State, s12 of Sale of Goods Law of Lagos State, s13 (1) of Sale of Goods Act 1893 (n3).

57 *Abba's* case (n 2) 114.

58 See s11of Sale of Goods Law of Oyo State, s11 of Sale of Goods Law of Lagos State, s12 of Sale of Goods Act 1893.

59 *Abba's* case (n 2) 114.

invariably informed their decision that there was no contract because of the failure of the Plaintiff/Appellant to produce evidence of title to the goods.[60] Since these are implied rights in a contract of sale of goods; there is no doubt that the decision of the appellate courts could be justified on this rights-based approach.

6. Conclusion

This paper has examined the court's judgment in *Abba's* case. It discussed the formation of contract as it affects the principles of offer and acceptance in the law of contract and commercial transactions. The jurisprudence of the courts on invitation to treat and how the status of the LPO can be altered in a contract was discussed. It concluded that the decision in *Abba's* case cannot generally be reconciled with similar decisions. This is so because, as the Supreme Court noted, the decision was reached as a result of the special circumstance of the case. This special circumstance was actuated by the failure of the Plaintiff/Appellant to, *inter alia,* provide the source document evidencing title to the goods. Due to that failure, the Supreme Court was of the view that the Defendant/ Respondent was justified to have refused to accept delivery of the goods. Be that as it may, as noted earlier, although the decision in *Abba's* case cannot be reconciled with similar decisions, it can be justified on the rights-based approach. Therefore, the decision is laudable and commendable. In the same vein, it is recommended that judges should adopt a rights-based approach in the course of dispensing justice in commercial transactions, although, such an approach, in certain circumstances, has the potential of displacing the settled principles of law.

[60] Ibid.