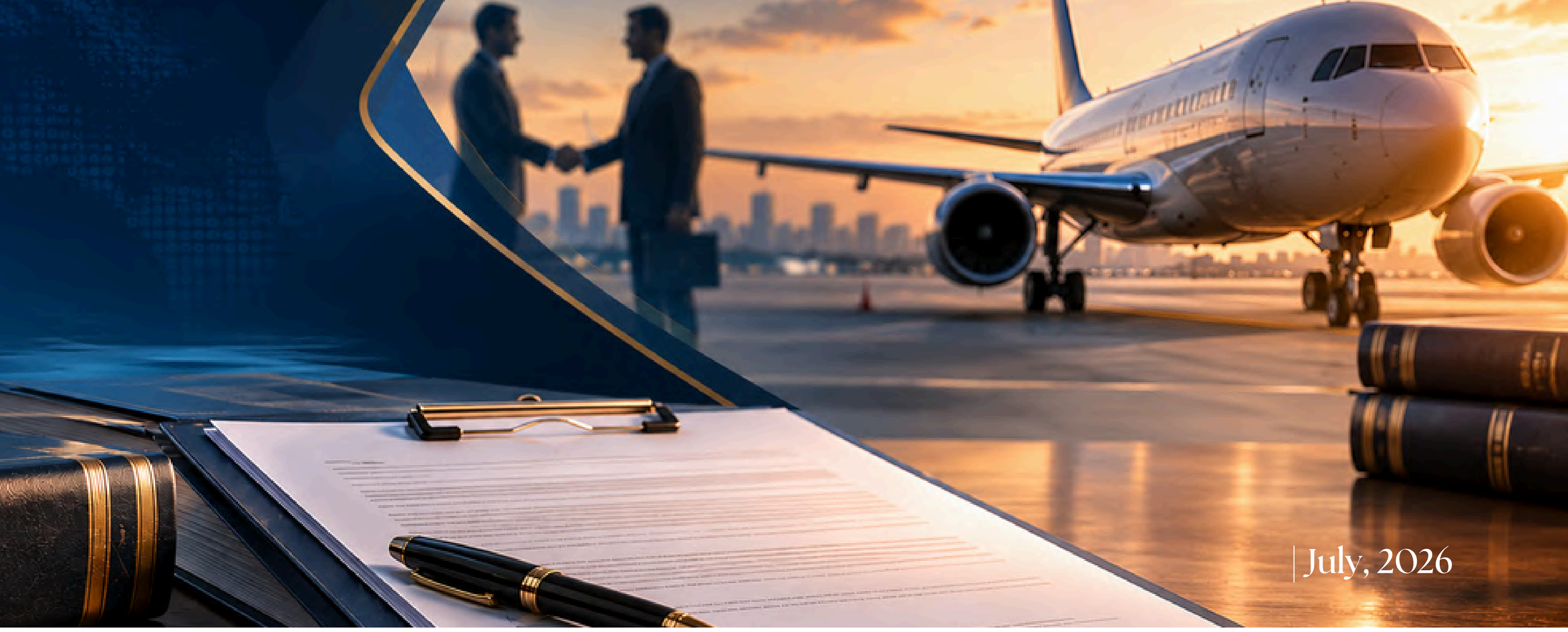

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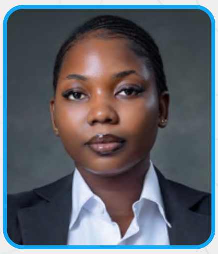
CASE REVIEW: AERO CONTRACTORS NIGERIA LTD & ANOR V. UKPE (2026) - STRICT PROOF OF AGENCY, CERTAINTY OF COMMISSION, AND THE LIMITS OF DAMAGES FOR MENTAL DISTRESS IN COMMERCIAL CONTRACTS.

Authors

Mr. Chibuzor J. Ofoha
Senior Associate | Head, Litigation

info@patrelipartners.com



Ms. Chioma J. Ene
Associate

info@patrelipartners.com

Introduction

The Nigerian real estate sector remains one of the most significant contributors to commercial activity and economic development. Despite its importance, property transactions are frequently characterised by uncertainty surrounding the role and authority of agents. It is not uncommon for several individuals to claim to represent either the vendor or the purchaser in a single transaction, each asserting an entitlement to commission upon successful completion of the transaction. In many instances, these claims are founded on little more than informal introductions, casual negotiations or self-assumed authority, resulting in avoidable disputes and protracted litigation.

This growing bastardisation of agency in property transactions has blurred the distinction between a genuine estate agent acting under the authority of a principal and a mere intermediary seeking financial reward without any legally recognisable agency relationship. The increasing prevalence of such claims underscores the need for greater legal certainty regarding the creation of agency, the burden of proving an agency relationship, and the circumstances in which commission becomes payable.

It is against this backdrop that the Court of Appeal's decision in **Aero Contractors Nigeria Ltd & Anor v. Ukpe**[1] assumes considerable significance. The Court reaffirmed that agency cannot be presumed merely because a person introduced parties to a transaction or participated in negotiations. Rather, the existence of an agency relationship must be established by credible evidence demonstrating that the alleged principal authorised the agent to act on its behalf. The significance of the decision is further enhanced by the Supreme Court's earlier judgment in **Ojo v. SDV (Nig.) Ltd & Anor**,[2] which involved remarkably similar facts and affirmed substantially the same principles. Together, these decisions demonstrate a clear judicial trend towards insisting on strict proof of agency, certainty of contractual terms, and commercial certainty in claims for agency commission arising from property transactions.

1. Unreported Appeal No: CA/PH/23/2020, delivered on 6th February, 2026
2. (2025) LPELR-81498(SC)

Brief Facts of the Case

The Respondent commenced an action at the High Court of Rivers State, claiming that he was instructed by officers of the 1st Appellant to source a property for purchase. He alleged that, acting on those instructions, he identified Ekulema Estate belonging to Chief Ebitimi Banigo, introduced the Appellants to the property, and facilitated its eventual purchase for **₦300,000,000**. Following the completion of the transaction, he demanded payment of a **5% agency commission**, which the Appellants refused to pay.

The Appellants denied ever appointing the Respondent as their agent or agreeing to pay him any commission. The Appellants maintained that their solicitor handled the entire transaction, including negotiations and due diligence, and that no agency relationship existed between them and the Respondent. Consequently, the Respondent sought **₦15,000,000** as unpaid agency commission and **₦50,000,000** as general damages for the emotional and psychological distress allegedly occasioned by the Appellants' refusal to pay. The High Court found in favour of the Respondent, holding that an agency relationship existed and awarded him **₦16,000,000** as agency commission, damages for breach of contract, together with interest and costs.

Dissatisfied with the decision, the Appellants appealed to the Court of Appeal, which ultimately allowed the appeal and set aside the judgment of the trial court.

Critical Commentary

The decision of the Court of Appeal is, with respect, a sound and commercially pragmatic reaffirmation of the principles governing agency, contractual certainty and claims for damages in breach of contract. More importantly, its reasoning is entirely consistent with the earlier decision of the Supreme Court in **Ojo v. SDV (Nig.) Ltd & Anor**, thereby confirming that Nigerian appellate courts have now adopted a settled approach to agency disputes arising from property transactions.

The first notable aspect of the judgment is its insistence that agency must be strictly proved. The Court correctly recognised that agency is a consensual legal relationship founded upon authority and not merely upon participation in a transaction. A person may introduce a purchaser to a vendor, attend meetings or facilitate negotiations without thereby becoming an authorised agent entitled to commission. The Court therefore rightly refused to infer agency from the Respondent's involvement in the transaction in the absence of credible evidence establishing that the Appellants authorised him to act on their behalf. This reasoning accords with the Supreme Court's pronouncement in **Ojo's case**, where the Court reaffirmed that agency is fundamentally contractual and may only arise through recognised legal methods such as express appointment, implication, estoppel, ratification or necessity.

The Court's reasoning is particularly important within the Nigerian real estate industry, where multiple intermediaries frequently claim commission simply because they introduced a property or facilitated preliminary discussions. The judgment therefore promotes commercial certainty by reaffirming that mere participation in a transaction is not synonymous with legal agency. The decision is further strengthened by the Supreme Court's articulation in **Ojo** of what has become known as the **"effective cause" principle**.

3. (1903) 19TLR 573

The Supreme Court held that the mere introduction of a purchaser or property does not automatically entitle an intermediary to commission. Rather, the claimant must establish that his efforts constituted the effective and efficient cause of the completed transaction. The Court relied on the well-established English authority of **Miller, Son & Co. v. Radford**[3] in reaffirming that commission becomes payable only where the agent's services actually procure the sale. This principle substantially reinforces the reasoning adopted by the Court of Appeal in Aero's case, where the Respondent's role was insufficient to establish any legal entitlement to commission.

Equally compelling is the Court's conclusion that proof of agency alone would not have entitled the Respondent to commission. Even assuming an agency relationship existed, the Respondent still bore the burden of proving a concluded agreement regarding remuneration. His inconsistent claim, initially demanding a ten per cent commission before subsequently reducing it to five per cent, undermined the existence of any concluded agreement. The Court therefore correctly refused to imply contractual terms where none had been agreed with certainty. This approach is entirely consistent with the long-established principle that courts enforce contracts made by parties rather than create contracts for them.

Another significant aspect of the judgment is its treatment of damages in breach of contracts. The Court rightly applied the rule in ***Hadley v. Baxendale***[4], reaffirming that damages for breach of contract are compensatory rather than punitive and are confined to losses which arise naturally from the breach or were reasonably within the contemplation of the parties when the contract was made[5]. Its rejection of the trial Court's reliance on ***Emeka v. Midwest Newspaper Corporation***[6], a libel case involving sentimental loss, was entirely justified. The decision preserves the distinction between contractual and tortious damages and prevents the unwarranted expansion of claims for emotional distress in ordinary commercial disputes.

Finally, the most enduring contribution of Aero's case is that it reflects an emerging judicial philosophy favouring commercial certainty over speculative claims. When read alongside the case of **Ojo**, the decision sends a clear message that agency commission cannot be founded upon assumptions, informal dealings or perceived fairness. Rather, it depends upon proof of authority, certainty of contractual terms and credible evidence establishing that the claimant's services were the effective cause of the completed transaction.

4. (1854) 9 EXCH. 34
5. Anibaba v. Dana airlines ltd & Anor (2025) LPELR-80647(SC)
6. (1977) 1 All N.L.R. 13

Conclusion

The decision in **Aero Contractors Nigeria Ltd & Anor v. Ukpe**, viewed alongside the Supreme Court's judgment in **Ojo v. SDV (Nig.) Ltd & Anor**, marks an important development in Nigerian agency and commercial law. Together, these decisions establish that a claim for agency commission cannot succeed merely because a claimant introduced a property or participated in negotiations. Instead, the claimant must prove the existence of a legally recognised agency relationship, a clear agreement on remuneration and that his efforts were the effective cause of the completed transaction. The decisions also reaffirm that damages for emotional or psychological distress will rarely be recoverable in ordinary commercial contracts. Collectively, these judgments provide much-needed clarity and certainty for participants in Nigeria's real estate industry and reinforce the importance of documentary evidence in commercial transactions.

Recommendations

In light of these decisions, estate agents, property consultants and other intermediaries should ensure that they obtain clear written instructions from the party they represent before undertaking any assignment. Such agreements should expressly state the scope of the agency, the agreed commission, and the circumstances in which the commission becomes payable. Property owners, purchasers and corporate organisations should likewise document their engagement of agents and ensure that only authorised representatives are permitted to appoint agents or negotiate commission on their behalf. These simple measures will minimise disputes, discourage speculative commission claims, and provide certainty for all parties. Ultimately, the decision serves as a timely reminder that, in property transactions, a written agency agreement is not merely good business practice; it is the surest protection against costly and avoidable litigation.