MISREPRESENTATION IN CONTRACTUAL OBLIGATION AND AVAILABLE REMEDIES: THE AFRICAN JURISPRUDENCE PERSPECTIVES*

Abstract

Human society is totally interdependent since no man has it all. Thus, a farmer needs the consumer of his goods, a manufacturer needs consumer of his products and a nation needs the resources of another nation to survive. This relationship will birth a contractual obligation. This appears to be of a great advantage but at the same time, there is a survival risk which also co-exists in view of the fact that there must be dispute and disagreement as a result of differences in human nature. The exhibition of all these differences may lead to deceit or misrepresentation in contractual obligation ending up in dispute which has to be resolved either judicially or extra-judicially. There are available remedies both in common law and equity under the English legal system such as damages, rescission and restitutio in integrum. In the same vein, in Yoruba traditional legal milieu, the phenomenon, misrepresentation is known to them and its available remedies. They are in form of proverbs, precepts invoked in the course of dispensing justice which are still potent and relevant till today. This paper appraises misrepresentation and its available remedies from the two jurisdictions with a view to pointing out their point of convergences and divergences. It concludes that though these principles may not be formalised under the Yoruba legal parlance, they still serve the same purpose like the English form since the expected end result is justice.

Keywords: Contract, Damages, Rescission, *Restitutio in Integrum,* Misrepresentation

1. Introduction

The law of contract pervades virtually all spheres of human activity[1]. To mention a fraction, the sale of goods, agency, hire-purchase, insurance, industrial or labour relations, company law, partnerships, carriage of goods by air, sea and land, banking law, and a host of franchises and services, are governed by contracts, which itself is made up of mutual promises between the contracting parties.[2] The legal relations created by the law of contract enable a person to whom money, goods, services, or some other benefit has been promised to enforce the promise or to obtain a remedy for its breach[3]. A contract may also be discharged where there is misrepresentation in contractual relationships which could be fraudulent, negligent or innocent. In this paper, we shall address the meaning of misrepresentation, when it can arise, types of misrepresentation, the available remedies and relate them to Yoruba legal culture with a view to pointing out their existence, substance, application and the lessons it has for Western jurisprudence.

2. Misrepresentation in Law of Contract

In common law jurisdictions, a misrepresentation is an untrue or misleading statement of fact made during negotiations by one party to another, the statement then inducing that other party to enter into a contract. It is an untrue statement made by one party (to a contract) to the other, before or at the time of contracting, with regard to some existing fact or to some past event which is one of the causes that induces the contract[4]. It must be borne in mind that a misrepresentation in contractual obligations may amount to deceit in law of tort a side being a phenomenon in law of contract[5]. The party may be liable for deceit in tort or fraudulent misrepresentation in law of contract.

Misrepresentation in contract may be as to the terms of the contract and may not. Where the misrepresentation is the one that connects with the terms of the contract and it is contained in the written agreement expressing and containing the terms of the contract, a breach of such terms may entitle the party to sue for damages and rescission of the contract.[6] Misrepresentation may also take the form of mistake. Mistake in law is when the contracting parties are acting or

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[1] IE Sagay, *Nigerian Law of Contract,* (Spectrum Books Limited, Ibadan, 1998) p1

[2] *Ibid*

[3] RK Goel, The Nigerian Law of Contract: Cases and Materials p1 cited by I.E. Sagay, *Ibid*

[4] *Ibid at* 235.

[5] See Sagay *Ibid*

[6] *Adecentro (Nig) Ltd v Council of Obafemi Awolowo University* Unreported S.C. 33/2000 Delivered on Friday the 6th day of May 2005, *Savanah Bank of Nigeria PLC v Oladipo Opanubi (Practicing under the Name and Style of Opanubi Co)* (2004) 15 NWLR prt (896)437

contracting innocently in ignorance of an existing fact or situation or condition which will affect the subject –matter of their contractual relationship. It can be a common, mutual or unilateral in nature[7].

3. How Misrepresentation can Arise

A statement of opinion, intention or of law different from assertion of fact past or present cannot constitute a misrepresentation in law. Therefore, where the representor uses the words, 'I think', or 'I believe', or 'I plan to' he cannot be liable for misrepresentation if his belief or opinion turns out to be wrong or if he fails to carry out his intention as a result of an unforeseen reason as these constitute expression of opinion or intention and not express or asserted fact.[8] At the same time, a statement of intention or opinion made which the other party believed and acted, but the representor had another intention, and indeed executed the ulterior intention different from his representation to the representee, he will be liable. In *Edington v Fitzmaurice*[9], the court held that a statement of present intentions can count as an actionable misrepresentation and that a misrepresentation need not be the sole cause of entering a contract so long as it is an influence. In this case the defendant company invited investments to help grow the business; The investments were used to pay off debts, The Court of Appeal held that it was a misrepresentation. Generally, a statement of law cannot constitute misrepresentation but a willful misstatement of law will constitute misrepresentation[10].

The position is also different where a party fails to make any representation or disclosure and the representee acted on a wrong assumption. When one party to a contract knows of a fact that has a bearing on the transaction, the failure to disclose this information to the other party is called nondisclosure. Generally, the law does not attach any significance to nondisclosure since a contracting party is not under any duty to disclose material facts known to him. In *Fletcher v Krell*[11], an applicant for the post of governess was held not under any duty to disclose that she was a divorcee and her failure to disclose did not constitute a misrepresentation. [12]One situation where this is common in Nigeria is in the transaction between an employer, the employee, the surety or guarantor[13]. Again, in law of contract, a statement which was true as at the time of making but had become untrue to the knowledge of the maker before the contract was concluded, would constitute a misrepresentation if the maker failed to notify the representee of the change.

Generally, mere silence does not constitute misrepresentation. However, once a representation is made by a way of conduct which suggests that a particular state of affairs exists, that person will be held liable for misrepresentation. In *Alhaji Nurudeen Olufumise v Mrs Abiola Labinjo Falana*[14], the Supreme court Per Obaseki J.S.C. while dismissing the appellants cases held that a respondent who never testified in a suit but appeared by an attorney, cannot be said to mislead the court or refusing, or neglecting to inform the court of the innocuous facts contained in an earlier suit which had been struck out. The court further held that it is an impossibility and the mystery lies in the running riot of the appellant's imagination and animosity towards the respondent. Silence or failure to testify in the circumstance does not amount to fraud and the submission of learned counsel for the appellant that it does is erroneous in law and actively misconceived.

4. Types of Misrepresentation

Until the decision of the House of Lords in the case of *Hedley Byrne & Co v Heller & Partners Ltd*[15], misrepresentation was classified under two categories: Fraudulent and innocent misrepresentation. It was in this case, negligent misstatement was given recognition as an actionable tort and this ushered in negligent misrepresentation.[16]

Fraudulent misrepresentation: Fraudulent misrepresentation is a civil tort arising out of contract law. It is a false statement of fact that causes or induces someone to enter into a contract. A defendant commits fraudulent misrepresentation when he or she lies or misrepresents an important fact about in order to cause or induce the other party to enter into a contract. The misrepresentation can be in the form of anything that is designed to deceive the other party including innuendos, half-truths, or silence when there exists a duty to speak. In *Derry v Peek*[17], Lord Hershell identify

[7] See *Couturier v Hastie* (1856) 5 H.L.C. 673; see also *The Vessel Leona II & Anor v Integrated Oil NAD Gas Ltd* (2002) 12 S.C (PART1) p 55

[8] This position is not without exception. Where it is established that the representor did not honestly hold his opinion or a reasonable man would not have honestly held the opinion, the representor would be held liable. See the case of *Smith v Land and House property Corporation* (1884) 28 Ch.D. 7

[9] (1885) 29 Ch D 459

[10] See *Solle v Butcher* (1950) 1 k, 671 at 692. The position is different where the representor is an expert who statement is in line with his field. See *Esso Petroluem Co Ltd v Mardon* (1976) QB 1. Other examples are contracts *uberrimae fidei* (of utmost good faith) such as insurance, land transaction, fiduciary relationship.

[11] (1872) 42 LJ QB 55

[12] See also *Moriamo Ode v J.F.Sick & Co* (1939) 15 NLR 4, *UAC v Paul Jazzar* (1940) 6 WACA 208

[13] Sagay, *op. cit.,* p 301

[14] Unreported. Sc/137/1987 Delivered on Friday 27th April 1990

[15] (1964) AC 465

[16] Sagay, *Op.cit.,* p317

[17] (1889) 14 App. Cas 337

three arms of fraudulent misrepresentation that the false statement must have been made knowingly, without believe in its truth, or recklessly, careless whether it be true or false and finally summarily put it to mean where there is lack of honest believe in the truth of what he states, the statement is fraudulent[18]. In the case of *Sule vs. Aromire* [19] the defendant advertised certain premises for sale. In order to prove the validity of his title, the defendant gave reference to a lawsuit which purportedly declared him the owner. In reality, the lawsuit was in respect to an adjoining property. When the plaintiff bought the property, he discovered that it validly belonged to third parties. The court held that this was a case of fraudulent misrepresentation, thus the defendant was held liable.[20]

Negligent Misrepresentation: A negligent misrepresentation occurs when a person with a duty of care makes a false statement to his client intentionally or without caring to ascertain its truth. Thus, a misrepresentation cannot be termed as negligent unless there is a duty of care owed to the representee.

In the vase of *Nocton v Ashburton*[21], the plaintiff sued his solicitor because the solicitor had given him improper advice regarding the security for a mortgage. The solicitor did this because he stood to benefit from his client's loss. The court held in this case that the misrepresentation was a negligent one, and thus the solicitor was held liable for the plaintiff's loss. Originally, negligent misrepresentation could only apply in cases where there was a direct contractual relationship between the representor and the representee. However, this has been extended to include person who are affected by the representation, although there is no contractual relationship with the representee. The groundwork for this was laid by Lord Denning's dissenting judgement in the case of *Candler vs. Crane, Christmas & Co*[22]. Lord Denning stated that the people upon which liability would rest include: '…accountants, surveyors, valuers and analysts, whose profession and occupation is to examine books of account and other things and to make reports on which other people, other than their clients, rely in the ordinary course of business.' Lord Denning further classified the class of persons, apart from their direct clients, to which a duty was held as:

- Any third person to whom they themselves (the maker of the statement) shows the statement.
- Any person to whom they know their employer is going to show the accounts in order to induce them to invest some money or take some other action.

This principle was solidified by the courts in the latter case of *Hedley Byrne & Co Ltd vs. Heller & Partners Ltd*[23], in this case, the plaintiff was an advertising agent to Easipower Ltd and wanted to find out if Easipower Ltd was credit worthy. In order to find out, they asked their bank — National Provincial — to help them investigate. In the course of investigation National Provincial contacted Heller and Partners, the bankers for Easipower Ltd, for confirmation. Heller & Partners stated 'in confidence and without liability on our part' that Easipower was credit worthy. As a result, the plaintiff went into an advertising contract with Easipower Ltd and ended up losing money. Thus, they sued Heller & Partners.The court held that Heller & Partners was liable for fraudulent misrepresentation. They were however let off the hook due to the exclusion clause 'without liability on our part' in their reply.

Innocent Misrepresentation: Innocent misrepresentation can simply be understood as a false statement which the user made not knowing that it was false and he was also not negligent in ascertaining its truth. A good example of an innocent misrepresentation is in the case of *Derry v Peek*[24]

In this case, a company was statutorily incorporated by the British Parliament to construct tramways by means of animal power (horses). However, if the consent of the Board of Trade was obtained, they could make use of steam power. The directors of the company believed that the Board of Trade would approve their request since in the earlier processes to be followed, they didn't meet any objections. They represented this to the plaintiff, which induced him to purchase shares in the company. Subsequently, the Board of Trade didn't give its assent and thus the company had to be closed down. The plaintiff thus sued for fraudulent misrepresentation. The court held that it would not be applicable in this case because the representor honestly believed in what they represented. It could also not be negligent because by following the due process and meeting no objection, they had tried their best to ascertain the veracity of their assertions. The defendants were thus held not liable for misrepresentation.

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[18] *Alhaji Nurudeen Olufumise v Mrs Abiola Labinjo Falana* (Supra)
[19] 1951 20 NLR 20
[20] *Alfegbai v Edo State Govt & Ors* (2001) JELR 44318 (SC). (2001) 14 NWLR (Pt 733) 425
[21] (1914) AC 932
[22] (1951) 2KB 164; see High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, where pre-counseling Certificate is compulsory to be among the front-loading processes. This to some extent will exculpate a legal practitioner for any tortuous action of negligence.
[23] *Supra*
[24] *Supra, see also Owners of M.V. Gongola Hope & Anor v Smurfit Cases Nigeria Ltd,* Unreported (SC121/ 2002) Delivered on Friday 15th June, 2007

5. Could Misrepresentation be Spent?
The issue for consideration was whether a representation which is made to a contracting party can be relied upon later by a third party or whether it cannot because it has been spent already. Where a party who makes a representation is aware that the representee is passing on the representation to a third party, that third party can sue the original maker of the misrepresentation. However, where the representee repeats this misrepresentation himself without the original misrepresentor while selling the subject matter of the contract to that other third party, the third party cannot sue the original representor in that it has become spent. The simple reason behind this is that it has become a hearsay and such is not admissible in the law court.

6. Remedies for Misrepresentation
The two principal remedies for misrepresentation, namely rescission and damages. A contract is rescinded for misrepresentation because it would not have been entered into but for the misrepresentation. This justifies only the cutting away of the contract itself and the restoration of the parties to the position they were in before contract so far as the contract is concerned. Consequential losses should be remedied by damages, but under contract law that requires an independent justification. That justification may be found in the law of torts through the actions of deceit and negligent misstatement. In other words, an action in tort rather than in contract and the measurement of damages, therefore, follows that laid down for torts. A party suing for innocent misrepresentation cannot sue for damages except recession in equity and the nearest remedy to damages which he can seek the court for is indemnity. Unlike damages, indemnity does not entail the restoration of the plaintiff to the position he would have been if the misrepresentation had not been made that *status quo ante*. The plaintiff has no right to indemnity against every obligation incurred by him as a result of the contract, for this would amount to damages to which he is not entitled.

Rescission is a remedy made available when the underlying basis for making a contract is fundamentally tainted. Some conduct on behalf of a contracting party undermines the very reason that the other party made the contract in the first place. The contract can be rescinded, at the option of the affected party. The remedy of rescission means that an entire contract is set aside. For legal purposes, it is treated as though it was never made. It never took place. Rescission requires the parties to be restored to their former positions; so, if this is not possible, rescission is unavailable.[25] Therefore there can be no rescission if *restitutio in integrum* is impossible

A misled party who, knowing of the misrepresentation, fails to take steps to avoid the contract will be deemed to have affirmed through 'laches', as in *Leaf v International Galleries*[26]; and the claimant will be estopped from rescinding. The time limit for taking such steps varies depending on the type of misrepresentation. In cases of fraudulent misrepresentation, the time limit runs until when the misrepresentation ought to have been discovered, whereas in innocent misrepresentation, the right to rescission may lapse even before the representee can reasonably be expected to know about it[27].

7. Bars to Remedy of Rescission
It must be stated that for the remedy of rescission to be available the contracting party seeking the remedy must not have affirmed the contract, *restitutio in integrum* must be substantially possible, both sides of the transaction must be able to be undone a bona fide purchaser for value without notice must not have taken an interest in property which would be affected by the rescission. If those bars to rescission have not been satisfied, rescission should be available as a remedy for the causes of action to which it applies as a remedy.

8. A Brief Prelude to African Legal Thought
African legal culture is an offspring of African traditional thought. According to Taylor, quoted by Babawale[28], culture taken in its wide ethnographic sense is complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society. Aside this, culture can be simply defined as the way of life of a group of people. However, life for such group of people will be worthless and meaningless if there is no legal frame work in existence or cultivated to regulate human conduct in that society for maintenance of peace and order. Before there can be a way of life, there must first be a society and people within that society.

In view of this, one can conveniently assert that African have their own way of settling dispute before the emergence of the English legal system contrary to the western assertion that they have none. African traditional thoughts are not uniform, also unwritten or undocumented. The unwritten nature of African law being a body of rules among the uneducated contributed to the reasons why some earliest scholars particularly the anthropologist and missionaries that first wrote on African legal system found it difficult to belief in the existence of African legal culture; or better put African

[25] See *Erlanger v New Sombrero Phosphate* Co (1878) 3 App. Cas. 308
[26] (1950) 2 KB 86; See *Long v Lloyd* [1958] 1 WLR 753.
[27] See *Leaf v International Galleries. Supra*
[28] Tunde Babawale, *Cultural Rejuvenation for National Integration and Sustainable Development* (Mathouse Press 2010, Lagos) p150.

legal philosophy. This better explains why African law has always been a victim of bias in the study of its way and world by the Europeans[29]. To say the least, the whites were at a time in doubt as to the human nature of the Negro. The preface of a book compiled on West Africa by Richard f. Burton (1895) while discussing African attests to this:

> Some people on the wild and pastoral tribes of the southern regime have been said to be destitute of traditions. The savage custom of going naked, we are told had denuded the mind and destroyed all decorum in the language. Poetry there is none, the songs are merely repetitions of a few hyperbolic expressions. There is no metre, no rhythm, nothing that interests or soothes the feelings or arrests the passions or admiration[30].

Still on that preface Burton quotes Kolle as further saying:

> It is in vain to speculate on this question (whether or not the Negro is part of mankind) from mere anatomical facts, from peculiarities of the hair, or from the colour of the skin: if it is mind that distinguishes men from animals, the question cannot be decided without consulting the languages of the Negroes.

He continued his struggle to prove that the Negro is human:

> Now as grammar proves that Negro languages are capable of expressing human thoughts….so specimens of their 'Native Literature' shows that the Negroes actually have thoughts to express; that they reflect and reason about things just as other men. Considered in such a point of view, such specimens may go a long way towards refuting the old- fashioned doctrine of an essential inequality of the Negroes with the rest of the mankind, which now shows itself not only in America but also in Europe[31].

Therefore, the task of identifying any jurisprudence or legal thought native to Africa cannot be achieved by anyone except Africans themselves. Appreciating African jurisprudence can best be achieved when one adopts normative perspective rather than analytical perspective. The Yorùbá justice system is not winner takes all but peace-making justice (win-win approach). It is retributive and reparatory justice. Administration of justice among the Yorùbá is not in compliance with any written law or a codified law but with a body of customs, usages and codes of manners. In other words, their body of rules flow out of their way of life and this settles why they all live communally also in peace and harmony. The guiding laws flow from the cultural texture of the society and this makes compliance easy which is in consonance with Friedrich Carl von Savigny postulation on idea of law, the *volkgeist* theory. When crimes were committed against any person or property under the Yorùbá legal culture, complaints were lodged at various quarters at any of the tiers depending on the gravity of the offence. Lesser offences were treated by the family heads, higher ones by the chief and most grievous offences by the *Ọba* in the palace. The Yorùbá administration of justice system is divulged of technicality which webs the English Legal system. The procedural aspect of the legal system is not cumbersome.

9. Misrepresentation and its Remedy under the African Legal Thought

The African justice system encompasses a wide range of legal systems influenced by customary law, culture and history. Therefore, we shall focus on Yoruba Legal Culture. The major actors in the administration of justice under the Yoruba legal culture and administration of justice are the elders due to the fact that they are presumed to be rich and clothed with wisdom and experiences of life. The elders invoke proverbs which are in form of the English legal principles of law which guide them at arriving at their conclusions after employing both deductive and inductive reasoning in the course of administering justice. The Yoruba jurisprudence integrates rationality, supernaturalism[32], fairness and burden of proof effective jurisprudence. The elders are so versed and versatile in the usage and application of Yorùbá proverbs in discharging their role as a judicial organ in Yorùbá society when dispute arises with a view to achieving peace and settlement of conflict.

The word 'proverb' is derived from the Latin word '*Proverbium*' and, according to the Cambridge Advanced Dictionary of the English language, it is defined as 'a simple and concrete saying, popularly known and repeated, that expresses a truth based on common sense or experience'. In their attempt at distinguishing between proverbs, idioms or clichés, Zolfaghari and Ameri (2012) contend that a proverb is a short sentence, which is well-known and at times rhythmic, including advice, sage theories and ethnic experiences, comprising simile, metaphor and irony which is well known

[29] Olubusola Tunde Shemudara, 'African Legal Thought: A Reflection on Yoruba Legal Culture' *International Journal of Comparative Law and Legal Philosophy (IJOCLLEP)* 4 (1) 2022

[30] Richard F. Burton, *Wit and Wisdom from West Africa* (Tinsley BrothersLondon.1865, Reprinted by Negro Universities, New York)

[31] *Ibid*. It was also quoted in an article titled: 'The Common Law of England – A stranger or an Indigene in Nigeria'

[32] O Jegede, *Shrines, Oath-taking and Jurisprudence in Yorúbá and Igbo Religions of Nigeria.* United states of America (Lambert Academic publishing 2011), pp1-3, 131-159.

among people for its fluent wording, clarity of expression, simplicity, expansiveness or generality and is used either with or without change'.[33]

According to Adewoye in a seminar paper wrote:

> Proverbs are a universal phenomenon, portraying the genius, with the spirit of individual nations. Among largely traditionally non- literate people, like the Yorubas of South – Western, Nigerian, proverbs take on an added significance; they serve as Charters of social and ethical norms in human interactions to antisocial patterns of behaviour …It would be submitted in this paper that in matters of law and justice in Yoruba traditional socio-political system, proverbs assume a functional role as vehicle of juristic thought and, therefore, a vital aid to judicial administration

In the administration of justice, it is not limited to proverbs alone, it includes, precepts, aphorisms, metaphors, maxims, laconisms, idioms, folktales among others. The elders are vast and versed in the usage of proverbs in settling dispute among the natives before christainity, Islamic law and English jurisprudence. For instance: A Yorùbá elder worth is his salt, must be self-respecting. *Àgbàlagba tò wewù àṣejù ètè ni yóò fi ri* meaning: An elder that put on the garment of immoderateness will be disgraced. Still on this usage of Yorùbá precept and proverbs and the role of elders, Olatunji (1984) says: *Àgbà kìí wà lojà kí orì Ọmọ titun wó* meaning: An elder should not be in the market- place and allow a child's head to bend. Another proverb could be added: *Tí ọmọdè bà bè igi loko,àwọn àgbà ló mọ ibi tó màa wó sí.* Meaning if a child is felling a tree in the farm, it is the elder who will know where the tree will fall[34].

Ọlaọba[35] submitted that Ajisafe, the pioneer documentalist of Yorùbá Legal Tradition, glossed over Yorùbá proverb as Legal data in his classic books – Laws and customs of the Yorùbá people. Proverbs play a prominent role in the Yorùbá jurisprudence. The Yoruba people anticipated misrepresentation either by negligence, fraud and innocent and the visiting remedies hence they will say: *Bi ebiti o pa eku, afi eyin fun eleyin* - meaning a trap that fails to catch a rat, then it should be capable of returning the palm fruit or kernel (bait).

Another one is: *Orisa bi ole gbemi, wa a fi mi sile bio se bami* meaning: a deity that cannot protect and guide one should leave the person in the way and manner he is. This is where the meaning of the proverb comes alive. It is a circumstance where the hunter or the one who sets a trap goes to borrow a bait (the eyin) from another person, say a farmer or someone who uses palm kernel in her trade. In a barter economy as it was back in the days with Yoruba people, the understanding in a situation like this is that when you borrow an item for use in procuring or producing something of greater value, the giver of such an item will expect to share in the resulting good fortune as a recompense. The bait is normally assumed forgone where the trapping or hunting is successful. If, however, the exercise is frustrated for any reason and no game is caught, the owner of the bait may expect that the bait be returned to him.

The proverb can be used to call a person's attention to his obligations to return a thing advanced or given to him, meant to be used as an instrument, device or catalyst for producing another thing of greater value in which the giver of the thing has some interest, but which has now been frustrated. An instance of this is a person who pays a registration fee to a recruitment agent with the hope of getting a job in the process. If the job doesn't come forth, he may request for his money back, but this probably would not work out since there is usually a contractual agreement, overt or hidden, to forfeit the registration fee in such circumstances. A much better example is a situation where a person makes an advance payment for renting an apartment. If it turns out that the Landlord eventually lets the apartment to another person, as it is sometimes the case, he (the Landlord is obliged to return the money first advanced to him. And if he behaves as if he is not aware of his obligation, Yoruba people can say: *'bi ebiti o ba peku a f'eyin f'eleyin*[36]. From the look of these two proverbs, damages, rescission, *restitutio in integrum* are encapsculed in these proverbs and they are pointing towards status *quo ante*.

In African traditional milieu, African proverbs and sayings reflect the cultural values, beliefs, and wisdom of African societies and serve as a source of guidance and inspiration. The significance of African proverbs and sayings lies in their ability to convey complex ideas and concepts in a concise and memorable way and thus, make them a smooth vehicle for passage of justice in their administration of justice.

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[33] Oyedokun-Alli, Wasiu Ademola,' A Jurilinguistic Analysis of Proverbs as a Concept of Justice Among the Yoruba' *Journal of Language Teaching and Research*, Vol. 12, No. 5, pp. 829-836, September 2021.

[34] OO Olatunji, *Yorùbá people their Origin, Culture and Civilization*. Odunjo Memorial Lecture, series 5, (Ibadan University Press 1990), p4, 20.

[35] OB Olaoba, *Yorùbá Legal Culture* (New Ages Publications Ltd, Lagos. 2008) P. 105

[36] Alana J. Babalola, No 5 Yoruba Proverbs- Wisdom of Elders, 2017.

10. Conclusion and Recommendations

A contract is an agreement between two persons or more with the essential ingredients of offer, acceptance, consideration and intention to create a legal relation. However, where the agreed terms of the contract cannot be fulfilled by the party who has taken consideration, he is bound to refund it. Now, as regards the area of convergences and divergences, this paper has showcased the beauty in African legal thought as a complete jurisprudence that recognises contractual obligations. The paper has responded to the phenomenon- misrepresentation and the available remedies in law, although they may not be formalised as it is under the English jurisprudence but they are recognised, always appreciated and embraced under the Yoruba legal culture.

The end of every trial is resolution and attainment of justice. The essence of invocation of these remedies is to attain justice and this has always been achieved under the Yoruba legal culture as well. The English legal system is full of technicality while Yorùbá administration of justice system is divulged of technicality which webs the English Legal system. For instance, a party suing for innocent misrepresentation cannot sue for damages except rescission in equity and the nearest remedy to damages which he can seek the court for is indemnity. A party who ought to file suit making his cause of action in tort and has come under contract may be deprived of his reliefs. However, under the Yoruba legal culture, there is none of these. The English jurisprudence makes stratification on the available remedies for misrepresentation while under the Yoruba legal culture, all the remedies are fused in view of the applicable precepts.

Clearly at this point, it is safe to conclude that Yoruba jurisprudence recognises contractual obligation and, the available remedies to misrepresentation under the English law of contract are not strange to the Yoruba jurisprudence but an integral part of it. Finally, law is inseparable from the society and its cultural heritage. African legal culture has reflected itself as a means of social engineering and a tool to always achieve harmonious relationship in African societies. Hence, it is our candid opinion that, scholars should intensify research that will promote this our common heritage so that it will not extinct by the predomination of the English legal system.