

**IN THE HIGH COURT OF THE FEDERAL CAPITAL  
TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 4, MAITAMA ON THE  
13<sup>TH</sup> DAY OF JANUARY, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/744/2014**

**COURT CLERKS:** *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

**1. MR. CHUDI NELSON OJUKWU** } .....  
**CLAIMANTS** }

**2. MR. SAMPSON OBUA AMOBI**

**AND**

**1. FIRST BANK OF NIGERIA PLC** } .....  
**DEFENDANTS** }

**2. GUARANTY TRUST BANK PLC**

**JUDGMENT**

The Claimant's Writ of Summons and Statement of Claim dated 20/02/2014 which was subsequently amended vide an Amended Joint Statement of Claim dated 2/07/2015 but deemed to be properly filed and served on 12/11/2015 is for the following claims:

- 1) An Order that the failure of the 1<sup>st</sup> Defendant to credit the account of the 2<sup>nd</sup> Claimant with the sum of ₦5 Million only in respect of the 2<sup>nd</sup> Defendant's cheque No. 007 dated 18/02/2011 which was lodged into the 1<sup>st</sup> Defendant's said account on 18/02/2011 was a breach of contract and or negligence.
- 2) An Order directing the 1<sup>st</sup> Defendant to refund and or credit the account of the 2<sup>nd</sup> Claimant with the sum of ₦5 Million only in respect of the 2<sup>nd</sup> Defendant's cheque No. 007 dated 18/02/2011 which was lodged into the 2<sup>nd</sup> Claimant's account with the 1<sup>st</sup> Defendant on 18/02/2011.
- 3) ₦2.5 Million as cost.
- 4) ₦10 Million for general and exemplary damages.
- 5) 25% interest on the said sum of ₦5 Million from 23<sup>rd</sup> February 2011 till Judgment is entered.
- 6) 25% interest on the Judgment sum until finally liquidated.

The Claimants opened their case and called two witnesses. The 1<sup>st</sup> Claimant's witness is Chinonso Onyemaizu. He is a Lawyer in 1<sup>st</sup> Claimant's Law Firm.

He stated that sometimes on 18/02/2011 the 1<sup>st</sup> Claimant issued a cheque with cheque No. 007 for the sum of ₦5 Million in favour of Mr. Sampson Obua Amobi through 2<sup>nd</sup> Defendant. That he deposited the said cheque at 1<sup>st</sup> Defendant's branch in Kubwa. He was informed that the cheque would not be cleared same day but on Monday, 21<sup>st</sup> February 2011. That he was alerted by the 2<sup>nd</sup> Defendant on 23/02/2011 of a fraud in the said account.

The 1<sup>st</sup> Claimant informed him that the cheque which he lodged at the 1<sup>st</sup> Defendant's Kubwa branch on the 18/02/2011 for clearing was rather presented and cashed at the 2<sup>nd</sup> Defendant's Gwagwalada branch on Monday, 21/02/2011 at about 11.36 a.m. by unknown person using National Driver's License as a means of identification.

That 1<sup>st</sup> Claimant informed him that a cloned cheque with the same details was sent to 2<sup>nd</sup> Defendant for clearing on Tuesday, 22/02/2011 where it was intercepted.

That he accompanied 1<sup>st</sup> Claimant to complain to 1<sup>st</sup> Defendant's Branch Manager who promised to investigate same, stating that they received similar report earlier from 2<sup>nd</sup> Defendant.

He was asked by 1<sup>st</sup> Claimant to write a formal Petition to the 1<sup>st</sup> Defendant's branch urging them to regularize the transaction and credit the 2<sup>nd</sup> Claimant.

They visited the 1<sup>st</sup> Defendant's Regional Office but was informed they were still investigating.

The 1<sup>st</sup> Defendant refused to write the 2<sup>nd</sup> Defendant to request for the two cheques.

That 1<sup>st</sup> Claimant made a formal application to the 2<sup>nd</sup> Defendant requesting for the said cheques. That it was the cheque and a letter that was obliged the 1<sup>st</sup> Claimant.

He wrote a further letter to 2<sup>nd</sup> Defendant and received a reply that the clone cheque was a subject of investigation and would need a Court Order. That 1<sup>st</sup> Defendant exonerated itself and staff from the alleged fraud.

That 2<sup>nd</sup> Defendant was negligent as they refused to call account holder for confirmation.

That 1<sup>st</sup> Defendant failed, refused and or neglected to credit Mr. Sampson Obua Amobi's account with the ₦5 Million even though 1<sup>st</sup> Claimant's account had been debited.

The fraud was carried out by the 1<sup>st</sup> Defendant after the cheque was issued and lodged. That Claimants have suffered losses and damages.

The PW1 tendered Exhibits A & B.

- (1) First Bank Deposit Slip.
- (2) Witness' Letter to the ACP.
- (3) Witness' Letter to the 1<sup>st</sup> Defendant's Branch.

Under cross-examination by 1<sup>st</sup> Defendant's Counsel, the witness states:

He is not the account holder. He merely deposited the cheque on the instruction of the account holder. He does not know whether payment of ₦5 Million across the Counter is a breach of banking procedure. He does not think it is right for the 2<sup>nd</sup> Defendant to pay without confirmation. The 1<sup>st</sup> Defendant owed the 1<sup>st</sup> Claimant a duty to pay.

On being cross-examined by the 2<sup>nd</sup> Defendant, he answered that the cheque was issue to him in Wuse 2. That he decided to go to Kubwa to deposit the cheque on the same date. That

in the letter written on 25/02/2011, he said it was traffic that made him go to Kubwa. That there is First Bank Branch in Wuse 2 and its environs. That it was the name of the 2<sup>nd</sup> Claimant that appeared as drawee of the cheque.

That it is the same name the beneficiary of the cheque bears. He is not a signatory of the account of the 1<sup>st</sup> Claimant. He does not know the terms of the contract between Claimants and 2<sup>nd</sup> Defendant. That the cheque he presented is not a clone cheque.

The 2<sup>nd</sup> Claimant's witness is Nelson Ojukwu. He stated orally that on the 2<sup>nd</sup> day of July, 2015, he deposed to a Witness Statement on Oath. He adopted same and his oral evidence.

He stated that on 18/02/2011, he issued a cheque No. 007 for the sum of ₦5 Million in favour of 2<sup>nd</sup> Claimant through a Guarantee Trust Bank Cheque. He drove PW1 in his car to the 1<sup>st</sup> Defendant's branch in Kubwa to deposit the cheque. He was alerted by the 2<sup>nd</sup> Defendant's Gwagwalada branch on Monday, 21/02/2011 of a fraud on the said transaction. That the cheque lodged by the PW1 at the 1<sup>st</sup> Defendant's Kubwa branch on 18/02/2011 for clearing was rather presented and cashed at the 2<sup>nd</sup> Defendant's Gwagwalada branch on Monday, 21/02/2011 at about 11.36 a.m.

That a clone cheque with the same details was sent to 2<sup>nd</sup> Defendant for clearing on 22/02/2011 which was intercepted. That the 2<sup>nd</sup> Defendant is in breach of its fiduciary duty to him. That the fraud was carried out by the 1<sup>st</sup> Defendant after the cheque was issued and lodged at the 1<sup>st</sup> Defendant's Kubwa branch on the 18/02/2011. That he paid ~~N~~1 Million out of a bill of ~~N~~2.5 Million to his Lawyers.

He tendered:

Exhibit D, copy of a letter from LC&N and signed by witness to 1<sup>st</sup> Defendant.

Exhibit E, a letter written by the 2<sup>nd</sup> Defendant to Claimant.

Exhibit F is another letter dated 22/07/2011 by Claimant.

The PW2 further tendered Exhibits G and H.

Under cross-examination, he stated:

That it is 1<sup>st</sup> Defendant and staff that perpetrated the fraud. It is not true that Claimants planned and perpetrated the fraud. That 1<sup>st</sup> Defendant was negligent in handling his cheque. That no confirmation was made by him. That it is a breach of his instruction to pay ~~N~~5 Million across the counter.

He did not give instruction for payment across the Counter. The directive of 2<sup>nd</sup> Defendant to 1<sup>st</sup> Defendant not to pay is

not a right directive. That the staff who received the cheque was sacked for engaging in similar fraud. The cheque was an open cheque.

The above is the case of the Claimant.

The Defendants opened their defence. The 1<sup>st</sup> Defendant's witness is Kelvin Obiefuna. He is a staff of the 1<sup>st</sup> Defendant. He admitted that its staff received and acknowledged the receipt of the cheque, received and stamped the Deposit Slip. He denied the knowledge of any alleged fraud nor effected any.

That the alleged transaction is not known to the 1<sup>st</sup> Defendant. That the cheque it presented to the 2<sup>nd</sup> Defendant was the actual cheque lodged through Mr. Chinomnso Onyemaizu by its customer on the 18<sup>th</sup> February 2011 and it was the cheque actually sent for clearing on the 21<sup>st</sup> February 2011. That the 2<sup>nd</sup> Defendant had earlier sent a Caution Notice warning the 1<sup>st</sup> Defendant not to give value to the cheque as a cheque with the same number had earlier been presented and paid over the Counter of the 2<sup>nd</sup> Defendant's Gwagwalada branch.

That its staff did not perpetrate fraud. That 2<sup>nd</sup> Claimant's account could not be credited by the Kubwa branch of the 1<sup>st</sup>



Defendant because of the Caution Notice it received from the 2<sup>nd</sup> Defendant intimating its Kubwa branch not to give value to the cheque on the ground that the cheque was cloned.

That the action of the 1<sup>st</sup> Defendant did not occasion any financial loss or hardship to the Claimant. That the 1<sup>st</sup> Defendant did not dishonour the cheque by the Claimant and was not in any way negligent.

That it exercised due diligence, reasonable care and skill. That he does not owe the 2<sup>nd</sup> Claimant a duty of care. That it was stopped by the 2<sup>nd</sup> Defendant. That 2<sup>nd</sup> Defendant is in position to know that the cheque presented to the 1<sup>st</sup> Defendant is a cloned cheque.

Under cross-examination, he said the cheque was presented in his branch. It came in on 18/02/2011. It was sent to the clearing house but not cleared. The cheques of other banks are moved to the paying bank. They did not pay the 2<sup>nd</sup> Claimant because of the instruction of the 2<sup>nd</sup> Defendant.

The 2<sup>nd</sup> Defendant's witness is Gloria Umoru. She is a staff of 2<sup>nd</sup> Defendant. On 7/12/2018, she made a Witness Statement on Oath, which she adopts. She states that the 2<sup>nd</sup> Defendant does not have any contractual relationship with the 2<sup>nd</sup> Claimant. That 1<sup>st</sup> Claimant has no mandate or standing

order in his account requiring the 2<sup>nd</sup> Defendant to confirm from him any cheque above ₦250,000.

That on 21/02/2011, Claimant's cheque No. 007 was presented and cashed by one Obua Sampson Amobi who identified himself with a National Driver's License at the Gwagwalada branch of the 2<sup>nd</sup> Defendant.

That on 22/02/2011, the 1<sup>st</sup> Defendant presented another cheque with the same particulars. That the second cheque presented by the 1<sup>st</sup> Defendant for clearing was found to be cloned and incapable of being honoured.

The 2<sup>nd</sup> Defendant is not privy to how the clone cheque was presented to the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant while carrying out routine check discovered that the cheque had previously been processed and paid at the 2<sup>nd</sup> Defendant's Gwagwalada branch. That the signature was also inconsistent with the account holder's mandate.

That both cheques were sent to Magnetic Ink Character Recognition (MICR) Operations which confirmed that the cheque under reference was cloned.

The 2<sup>nd</sup> Defendant called 1<sup>st</sup> Claimant to confirm the cheque presented on February 21, 2011 at Gwagwalada branch before payment was made. That both the genuine and clone

cheques were missing when requested for by Economic and Financial Crimes Commission (EFCC). That the EFCC took no further steps.

That 2<sup>nd</sup> Defendant has not occasioned financial or any other loss to the Claimants jointly and severally. That Claimants are not entitled to the reliefs sought.

Under cross-examination, she answered that the bank did not capture the face of the person who cashed the cheque. She is not aware that the cheque passed through any Magnetic Ink Character Recognition Reader.

The issues for determination as distilled in the Final Written Addresses of Counsel and evidence are:

- (1) Whether the failure of the 1<sup>st</sup> Defendant to credit the 2<sup>nd</sup> Claimant with the sum of ₦5 Million in respect of the 2<sup>nd</sup> Defendant's cheque No. 007 dated 18/02/2011 was a breach of contract and or negligence.
- (2) Whether or not the 1<sup>st</sup> Defendant perpetrated a fraud on the Claimants.

On Issue 1, it is trite that negligence is the failure to take reasonable care where there is a duty and it is attributable to the person whose failure to take reasonable care has resulted in damage to another. It is the omission or failure to do something which a reasonable man under similar circumstance would do or the doing of something which a reasonable and prudent man would not do.

See: ***U.T.B NIG. vs. OZOEMENA (2007) 3 NWLR (PT. 1022) P. 448 SC.***  
***ODINAKA vs. MOGHALU (1992) 4 NWLR (PT. 233).***

For the Claimant to succeed in an action for negligence,

- (1) he must plead sufficient particulars of the negligence alleged; he must also adduce credible evidence to show the duty of care owed by the Defendants;
- (2) the breach of that duty by the Defendant; and
- (3) the damage suffered by the Claimant as a result of the Defendant's failure to take care.

By Sections 131, 132 and 133 of the Evidence Act, the onus of proving an allegation is on the Claimant and it does not shift until he has proved his claim on the preponderance of evidence and balance of probability.

The Claimants' pleading is that 1<sup>st</sup> Claimant maintains a current account with the 2<sup>nd</sup> Defendant domiciled at its Tarka/Faskari Street, Garki, Area 3, Abuja. His pleading and evidence is that he has a standing order and or mandate in respect of the said account, which requires the 2<sup>nd</sup> Defendant to confirm from him prior to the payment of any cheque above the sum of ₦250,000. The 2<sup>nd</sup> Defendant's pleadings and evidence is that the 1<sup>st</sup> Claimant has no such mandate or standing order.

It is my view and I so hold that the 1<sup>st</sup> Claimant failed to prove on the preponderance and balance of probability that such standing order/mandate existed.

I have also read the evidence of PW1 and particularly the particulars of negligence. The Claimant owes it a duty to adduce credible evidence to show the duty of care owed by the Defendant and the breach of that duty.

The evidence is that the 1<sup>st</sup> Claimant issued the said cheque No. 007 in the sum of ₦5 Million drawn on the said account with the 2<sup>nd</sup> Defendant in favour of the 2<sup>nd</sup> Claimant.

After issuing the said cheque, he drove the PW1 in his car to the 1<sup>st</sup> Defendant's branch in Kubwa to lodge the cheque in the 2<sup>nd</sup> Claimant's account with the 1<sup>st</sup> Defendant.

Under cross-examination, PW1 said the cheque was issued to him in Wuse 2. He decided to go to Kubwa to deposit the cheque the same date.

In his letter dated 25/02/2011, he said it was because of traffic that made him to go to Kubwa. He also answered that there is First Bank in Wuse II and environs. The Claimants issued the cheque in Wuse II, which is meant to be deposited into an account in 1<sup>st</sup> Defendant.

Despite the avalanche of branches of 1<sup>st</sup> Defendant in Wuse 2 and environs, chose to go to Kubwa, a suburb. There is no doubt that the cheque of ₦5 Million was lodged in the 1<sup>st</sup> Defendant bank in Kubwa. The cheque was not cleared by the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant alerted the 1<sup>st</sup> Defendant that the cheque received was cloned. That the said cheque was presented for payment at their Gwagwalada branch another suburb and it was honoured. The 1<sup>st</sup> Defendant therefore failed to give value to the said cheque.

In my humble view, the Claimants have not by credible and convincing evidence proved the negligence alleged and the breach of the said duty.

The evidence of the Claimants' witnesses seem to me to be well orchestrated. I do not however believe same.

In totality, the Claimants have not been able to prove negligence or breach of any contractual obligation and I so hold.

On whether the Defendants were fraudulent. Fraud is a crime. The standard of proof is beyond reasonable doubt. Fraud is an intentionally deceptive action designed to provide the perpetrator with an unlawful gain or to deny a right to a victim.

The Claimants have not proved that the Defendants intentionally deceived the Claimants.

The Claimants further failed to prove the gain that accrued to the Defendants as a result of the said deception.

In totality, the Claimants failed to prove this issue beyond reasonable doubt and I so hold.

Consequently, the case fails. It is accordingly dismissed.

---

**HON. JUSTICE U. P. KEKEMEKE**  
(HON. JUDGE)

13/01/2022



Parties absent.

Peter Onu, Esq. for the 2<sup>nd</sup> Defendant.

**COURT:** Judgment delivered.

(Signed)

**Hon. Judge**

13/01/2022