

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 26TH DAY OF MAY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/529/2016

MALLAM BUKAR AL-AMIN PLAINTIFF

AND

UNITY BANK PLC DEFENDANT

JUDGMENT

This suit was originally commenced by writ of summons under the undefended list procedure but was transferred to the general cause list by this Honourable Court on 20th June, 2017.

By Statement of Claim consequentially filed on 22nd November, 2017, the Plaintiff seeks the following reliefs against the Defendant;

- I. *A declaration that the Defendant was negligent in respect of the instruction of the Plaintiff with regard to the Manager's Cheque issued by the Plaintiff in favour of Abdullahi Hassan.*
- II. *A declaration that the Defendant has no right at all to clear the Manager's Cheque issued in favour of Abdullahi Hassan and credit same to Alh. Aminu I. Gaya without any instruction from the Plaintiff especially as a banking instruction.*
- III. *An order of this Honourable Court directing the Defendant to pay the sum of N25,000,000.00 (Twenty Five Million Naira) to the Plaintiff as money debited from the Plaintiff's account but paid to a third party without the Plaintiff's instruction.*
- IV. *10% pre judgment interest calculated on the said N25,000,000.00 (Twenty Five Million Naira) from 26th of November, 2008 till when judgment is delivered in this action.*

- V. *10% post judgment interest calculated from when judgment is delivered till when liquidated.*
- VI. *General damage of N5,000,000 (Five Hundred Thousand Naira) only.*
- VII. *N750,000,000.00 (Seven Hundred and Fifty Million Naira) only.*

Upon being served with the Statement of Claim, the Defendant filed a Statement of Defence on 30th November, 2017 to which the Plaintiff filed a Reply pleading on 6th December, 2017.

The matter went to trial with the Plaintiff himself i.e. Bukar Al-Amin testifying as PW1 in support of his claim. He was cross-examined by the Defendant's Counsel. LadiOlawaju a staff of the Defendant testified as DW1 in the Defendant's defence. She answered questions under cross-examination by the Plaintiff's Counsel. The following documents were admitted in evidence as exhibits at trial and marked as such;

1. Exhibit A:- Manager's Cheque No. 01901199 dated 24th November 2008.
2. Exhibit B:- Copy of deposit slip dated 26th November 2008.
3. Exhibit C:- Unclear copy of Unity Bank Statement of Account.
4. Exhibit D:- Copy of Manager's Cheque No. 01901199 dated 24th November 2008 with Unity Bank Stamp.
5. Exhibit E:- Letter from McNerryIduh & Co. dated 25th November, 2014.
6. Exhibit F:- Letter from McNerryIduh & Co. dated 29th August, 2014.
7. Exhibit G:- Letter from McNerryIduh & Co. dated 23rd February, 2015.
8. Exhibit H:- Letter from McNerryIduh & Co. dated 11th May, 2015.
9. Exhibit J:- Statement of Account of the Plaintiff from 1/1/2006 – 12/31/2009.
10. Exhibit K1:- Statement of Account of Gardo International Ltd from 11/12/2008 to 12/30/2008.
11. Exhibit K2:- Accompanying Certificate of compliance.
12. Exhibit L:- Letter of Indemnity dated 26th November, 2008.

At the close of evidence, final written addresses were filed by parties and adopted as their oral arguments in support of their respective cases.

The Defendant's final written address is dated and filed on 20th December, 2021 while the Plaintiff's final written address was filed on 12th January, 2022. With leave of this Court, the Defendant filed a Reply on Points of Law dated 27th January, 2022 in response to the Plaintiff's address.

In his final address, learned Counsel to the Defendant formulated three issues for the determination of this case to wit;

- a. Whether the Defendant was negligent in the performance of its responsibility as it related to the Manager's Cheque issued by Skye Bank Plc.*
- b. Whether the Defendant owed any duty of care to the Plaintiff in respect of the instruction on the Cheque.*
- c. Whether the Plaintiff has proved his case on the balance of probability as to be entitled to the reliefs sought.*

On his part, the Plaintiff's Counsel distilled the following three issues for determination;

- 1. Whether there is a fiduciary relationship between the Plaintiff and the Defendant.*
- 2. Whether the Defendant was neglect (sic) in handling the Plaintiff's Managers' Cheque.*
- 3. Whether the Plaintiff is entitled to the reliefs claimed.*

Testifying in support of his case, the Plaintiff (PW1) adopted his written witness statement on oath deposed to on 22nd November, 2017 as his testimony.

Succinctly put, the Plaintiff's case as demonstrated by his pleadings and his evidence is that he is the owner of Skye Bank Plc Account No. 154176000643 and he had instructed his said bank on 24th November,

2008 to issue a Manager's cheque in the sum of N25,000,000.00 (Twenty Five Million Naira) only in favour of Abdullahi Hassan in respect of a property transaction at Katampe Extension Abuja. The Plaintiff testified that the said Manager's Cheque was accordingly issued and was collected on behalf of Abdullahi Hassan by one Engr. Raji Mohammed Sani. A copy of the said Manager's Cheque was tendered by the Plaintiff at trial and admitted in evidence by this Honourable Court as Exhibit A. The Plaintiff, through his lawyer, wrote two letters (admitted in evidence as Exhibit E and F) to his bank i.e. Skye Bank Plc which according to him confirmed that the sum of N25 Million was debited from the Plaintiff's account on the same 24th November, 2008 in favour of Abdullahi Hassan.

It is further the Plaintiff's case that the said Manager's cheque was deposited at Unity Bank Plc on 26th November, 2008 by one Umar Hawin in favour of one Alh. Aminu I. Gaya contrary to the Plaintiff's instructions. Exhibit B was admitted in evidence as Unity Bank deposit slip in proof thereof. That the N25 Million was confirmed by the Defendant-bank on 24th November, 2008 and credited to the account of Alh. Aminu I. Gaya on 28th of November 2008 by the Defendant after the Manager's cheque had been sent for clearance by the Defendant. Exhibit D is the copy of the same Manager's cheque although endorsed with the Defendant's stamp while Exhibit C was admitted in evidence as copy of bank statement of account of Alh. Aminu I. Gaya. It is the Plaintiff's case that the Defendant cleared the N25 Million in Abdullahi Hassan's name and credited same into the account of Alh. Aminu I. Gaya contrary to the Plaintiff's instruction. It is the Plaintiff's testimony that the Defendant has no instruction from the Plaintiff to credit his said N25 Million (issued in favour of Abdullahi Hassan) to Alh. Aminu I. Gaya or any other person.

It is further the Plaintiff's case that he wrote two letters (Exhibits G and H) through his lawyer to the Defendant on the issue, demanding a refund of the sum of N25 Million which he had issued in the name of Abdullahi Hassan but which the Defendant had paid to Alh. Aminu I. Gaya. That the Defendant had however refused and/or neglected to refund the said sum to the Plaintiff till date.

The Defendant essentially denied the Plaintiff's claim or being indebted to Plaintiff in any way.

In support of the Defendant's defence, DW1 adopted her witness statement on oath of 30th November, 2017 filed in this case as her oral testimony. It is part of the Defendant's defence that the Manager's Cheque in question which it admitted was presented to it for payment is that of Skye Bank Plc and there is nothing on it that shows that it belongs to the Plaintiff. DW1 testified that the Defendant does not know the Plaintiff or any Engr. Raji Mohammed Sanni as they are not its customers nor was the Defendant part of the transaction that led to the transfer of the Manager's Cheque between these two persons. That the Defendant was not privy to the Plaintiff's instruction as regards the Skye Bank Plc Manager's Cheque issued in favour of Abdullahi Hassan.

It is DW1's testimony that one Umaru Halilu presented the Skye Bank Manager's Cheque in favour of Abdullahi Hassan to be paid into the account of one Gardo International Nigeria Ltd/Alh. Aminu I. Gaya. That the Defendant had initially refused paying the cheque since the bearer of same was not the person presenting the cheque for payment. That Alhaji Aminu I. Gaya however further presented to the Defendant a letter of indemnity on Third Party Cheque in fulfilment of the condition/requirement in banking practice before the Cheque can be paid into his account. Exhibit L was admitted in evidence as the said Letter of Indemnity. It is the Defendant's defence that it was after the presentation of the Cheque for the sum of N25 Million and all other required documents that the Defendant forwarded the said Skye Bank Manager's Cheque to the Central Bank of Nigeria for clearing. That the Central Bank forwarded the Cheque to Skye Bank Plc which then gave value to the Cheque by crediting the value thereof to the Defendant which in turn credited same to the account of Gardo International Nigeria Ltd/Alh. Aminu I. Gaya maintained with the Defendant. Exhibit K1 was admitted in evidence as the Statement of Account of Gardo International Ltd from 11/1/2008 to 12/30/2008. That the original cheque was retained by Skye Bank Plc as is the usual practice. It is the Defendant's defence that it

allowed the payment of the Manager's Cheque into the account of Gardo International Nigeria Ltd/Alh. Aminu I. Gaya because it was the normal banking practice at the time (the year 2008) having been presented with the letter of indemnity. That the Defendant therefore followed due process and never made payment contrary to the Plaintiff's instruction as it never had the Plaintiff's instruction in any way.

In his Reply pleading, the Plaintiff joined issues with the Defendant on its Statement of Defence.

In his final address, learned Counsel to the Defendant argued his first two issues together submitting that before one's conduct can be described as negligent there must be a duty of care owed to the other person which duty was breached occasioning loss to the plaintiff. He contended that Defendant which is a bank is expected to treat all instruments presented to it carefully within the ambit of international best practices which the Defendant did showcase in the handling of the Skye Bank Manager's Cheque. He argued however that the Defendant only owed a duty of care to Skye Bank Plc and not the Plaintiff who is not the Defendant's customer nor is he known to the Defendant. He posited that although it is the Manager's Cheque that connects the Plaintiff with the Defendant, the Plaintiff's name was not mentioned therein to indicate that the instruction therein was given by the Plaintiff. He submitted that the Plaintiff has not been able to establish the four elements of negligence against the Defendant. He argued that the Plaintiff's contention is that the cheque was not paid into the account of Abdullahi Hassan but did not join Abdullahi Hassan as a party or call him as a witness to confirm this assertion. Counsel submitted that the Plaintiff did not show that the Defendant's action of paying the Cheque into a third party account caused him damages or injury in any way.

Counsel to the Defendant further submitted that even if the Defendant were negligent in the payment of the Cheque, the law is that if it was made in good faith and in accordance with established banking procedure, the Defendant would not be found negligent. He relied on Section 14.1 of the Nigeria Banker's Clearing System Rules 2018 (Revised) and submitted

that it was DW1's evidence that letter of indemnity was obtained from the signatory of Gardo International Nigeria Ltd before the value of the Cheque was paid into the Company account by the Defendant as it was the acceptable practice at the time.

On his second issue, Counsel to the Defendant argued that the Plaintiff has not been able to prove all that he alleged against the Defendant as to be entitled to the reliefs sought. He submitted that the Plaintiff has not been able to show that the sum in this case was not received by Abdullahi Hassan nor that he was not a director of the company. He contended that the Plaintiff's claim for damages is speculative and cannot be granted because the Defendant did not breach any contractual relationship with the Plaintiff and the Defendant was not negligent in any way. He cited the case of FEDERAL CAPITAL DEVELOPMENT AUTHORITY & 2 ORS V. UNIQUE FUTURE LEADERS INTERNATIONAL LIMITED (2014) 17 NWLR PT. 1436 P. 242. He submitted that the Plaintiff is not entitled to any of his claims having failed to prove same by credible evidence.

Arguing in support of the grant of the Plaintiff's claim, learned Counsel to the Plaintiff submitted in his final address that there exists a fiduciary relationship between the Plaintiff and the Defendant since the Manager's Draft is from the Plaintiff and it doesn't matter that his name is not on the draft. He contended that the beneficiary is specified on the draft as Abdullahi Hassan and the Defendant had to exercise care to ensure no other person cleared the draft. Counsel thus posited that the Defendant acted in bad faith to have cleared the draft in Abdullahi Hassan's name but paid Aminu I. Gaya and thereby acted negligently making it liable for the money in issue. He relied on the decision of the High Court of the FCT-Abuja in the case of DR. FELIX EMOAKEMHE ORBIH V. FIRST BANK OF NIGERIA PLC & ORS delivered by Affen J (as he then was). He argued that the Defendant's defence that it obtained a letter of indemnity from Aminu I. Gaya on behalf of Gardo International Nigeria Ltd cannot avail the Defendant in this case as Exhibit L does not exclude it from liability.

Counsel to the Plaintiff relied on the case of UBN PLC V. OMNI PRODUCTS (NIG) LTD (2006) ALL FWLR P. 1731 on the three essential ingredients in an action for negligence. He submitted that the Defendant owes the Plaintiff a duty of care which was breached amounting to negligence. He contended that the Defendant did not follow any laid down rule or Section 14.1 of the Nigeria Banker's Clearing System Rules 2018 (Revised) as the Defendant cleared the cheque in the name of Abdullahi Hassan and not Alh. Aminu I. Gaya. It is Counsel's position that the Plaintiff has shown by oral and documentary evidence that the Defendant was negligent in the handling of specific instruction of his draft and that he suffered damages. He argued that the Plaintiff has discharged the onus of proof placed on him by law. He submitted that the Defendant failed to prove its allegation that it was the practice in 2008 to pay such money into a third party account where indemnity letter is tendered. The Plaintiff's Counsel further contended that the basis for an order that an interest be paid by the Defendant is that the Defendant has kept the Plaintiff out of his money. He urged the Court to grant the reliefs claimed by the Plaintiff.

Replying on points of law, Counsel to the Defendant reiterated that, not being a customer of the Defendant, the Plaintiff cannot argue that a fiduciary relationship exists between him and the Defendant. He also reiterated that the Plaintiff failed to prove his case and added that the legal authorities relied upon by the Plaintiff's Counsel in his submissions are inapplicable to this case.

After a careful consideration of the pleadings of parties, evidence adduced and arguments of parties, I am of the view that the issue before this Court in this case is but one under which the issues formulated by the parties can be addressed. The sole issue before this Court is therefore as follows;

Whether the instant claim before this Court has been proved as to entitle the Plaintiff to the grant of the reliefs sought in his Statement of Claim.

Let me however quickly address a salient issue first. It relates to the admissibility of Exhibit J.

During trial and at the proceedings of this case on 10th May, 2018, the Plaintiff's Counsel tendered a Statement of Account through PW1 and sought that it be admitted in evidence by this Court. The Defendant's Counsel however objected to the admissibility in evidence of the said document on grounds that it is not signed and it offends Section 84(4) of the Evidence Act 2011 which requires a certificate of computer generated document to be attached to the tendered document. Reacting to the objection, Counsel to the Plaintiff referred this Court to the case of **OKONJI & ORS V. NJOKANMA (1999) 12 SCNJ 254 AT 273**. He contended that Section 84(4) of the Evidence Act 2011 is not applicable to the instant document but Section 258(1)(B) A – D of the same Act.

This Court at that time decided to allow the tendered Statement of Account in evidence as Exhibit J and Rule on the objection in the course of its Judgment.

Now, the position of the law is that where inadmissible evidence is received or admitted in evidence by a trial court, it is its duty when it comes to consider its judgment to treat such inadmissible evidence as if it had never been admitted, i.e. expunge it from the records (even when no objection had been raised to its admissibility). – see the case of **HASHIDU & ANOR V. GOJE & ORS (2003) LPELR-10310(CA) AT PP. 66 – 67 PARAS. D – E**. The principle is that the Court cannot *nolensvolens* (willingly or unwillingly) act on legally inadmissible evidence even with parties' agreement or consent.

The three main criteria governing the admissibility of a document in evidence are;

1. Whether the facts relating to the document have been pleaded
2. Whether it is relevant and
3. Whether it is admissible in law

See **MR. S. ANAJA V. UNITED BANK FOR AFRICA PLC (2011) 15 NWLR PT. 1270 P. 377 AT P. 404 PARAS. D-F.**

See also **ABOABA V. OGUNDIPE (2017) LPELR-42922(CA) AT PP. 14 – 15 PARAS. F-D.**

Exhibit J appears to be a statement of an account with Skye Bank Plc. Exhibit J was undoubtedly pleaded by the Plaintiff in his Statement of Claim (paragraphs 1, 8 and 12) and is relevant to this case. As to whether it is signed, Exhibit J is clearly endorsed with a stamp of Skye Bank Plc, Aminu Kano Crescent Branch, Abuja. Under the circumstances, signature by an actual person is irrelevant to its admissibility.

The law provides for how computer-generated documents can be presented to the Court. Under **Section 84(2) and (4) of the Evidence Act 2011**, in order to tender a computer-generated document in evidence certain conditions must be satisfied and a certificate showing such information as are required by the law (to the best of the knowledge of the maker) must be before the Court. It is upon satisfaction of these conditions that a computer-generated document becomes admissible in evidence. See the cases of **KUBOR & ANOR V. DICKSON & 2 ORS (2012) LPELR-9817(SC)** and **ONYADI DEVELOPMENT (NIG) LTD V. KUTA & ORS (2021) LPELR-55867(CA) AT PP. 36 – 38 PARAS. D-C.**

I have read the case of **OKONJI & ORS V. NJOKANMA & ORS (1999) LPELR-2477(SC)** to which the learned Counsel to the Plaintiff has referred this Court in respect of the instant objection. I must say however that this decision was given under the old Evidence Act which does not contain provisions for the admissibility of computer-generated documents like the extant Evidence Act 2011. The provisions of **Section 84 of the Evidence Act 2011** were not considered in **OKONJI & ORS V. NJOKANMA & ORS (SUPRA)** and can therefore not serve as binding authority in respect of the ground of the Defendant's objection.

The instant document Exhibit J is a Statement of a Bank Account of Skye Bank Plc and was tendered by the Plaintiff as such.

In the case of **ULI MICROFINANCE BANK (NIG) LTD V. OKWUCHUKWU (2018) LPELR-44956(CA) AT PP. 2 – 11 PARAS. A-D** and **PP. 29 – 36 PARAS. A-D**, the Court of Appeal was of the position that judicial notice may be taken of the fact that many banks now operate their banking businesses through computer-generated documentary evidence. That customers’ accounts are kept and maintained by the bank by feeding information into the computers in the custody of the bank.

The Court of Appeal has also held that just because statements of accounts are entries from a banker’s book does not exclude them from the application of **Section 84 of the Evidence Act 2011** and the conditions prescribed thereunder where such statement of account is computer generated. – See the case of **U.B.N. PLC V. AGBONTAEN & ANOR (2018) LPELR-44160(CA) AT PP. 11 – 22 PARAS. E-B** where the Court of Appeal held per Oseji JCA as follows;

*“In the instant case, I believe that there is no disputing the fact that the statement of account sought to be tendered had its origin from a computer whether or not it is asserted to be extracted from an electronic ledger which to all intents and purposes the information therein was imputed through a computer and the print out also derived therefrom. The point that I am trying to make here is that, whether the statement of account or electronic ledger is to be tendered either in its original form or as a secondary evidence it is required that it must satisfy the conditions prescribed by Section 84 of the Act. In this regard, I am inclined to accept the fact that the case of **KUBOR VS. DICKSON** cited as (2012) LPELR 15364 (CA) is applicable.*

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From the above cited authorities of this Court and the Supreme Court, the inevitable conclusion reachable in the circumstance is that any computer/electronically generated document, whether tendered as original or secondary evidence is required to comply with Section 84(2) of the Evidence Act, 2011. The electronic ledger

or statement of account derived therefrom are not excluded, being documents derivable or generated from a computer. The sound arguments canvassed by learned counsel for the Appellant are quite commendable but unfortunately the requirements of the law are clear to the letter and should be accordingly complied with. In the final result, the sole issue raised for determination is hereby resolved against the Appellant.”

The implication of the two foregoing decisions of the Court of Appeal on the instant case is that

1. Judicial notice can be taken of the fact that Exhibit J, being a statement of account of Skye Bank Plc, is a computer-generated document; and
2. The provisions of **Section 84 of the Evidence Act 2011**(requiring conditions to be satisfied and a certificate showing such information as are required) apply to Exhibit J.

In this circumstance the Plaintiff never refuted it being computer generated. In the instant case, no information required to be provided under **Section 84(2) and (4) of the Evidence Act 2011** has been provided in respect of Exhibit J. I have perused PW1’s testimony carefully and no required information regarding the making of Exhibit J as a computer-generated document can be found therein or deduced therefrom. No certificate providing the necessary information in respect of the production of a computer-generated document has accompanied Exhibit J. Exhibit J is therefore inadmissible in evidence in the circumstances. – see **KUBOR & ANOR V. DICKSON & 2 ORS (SUPRA)** and **ONYADI DEVELOPMENT (NIG) LTD V. KUTA & ORS (SUPRA)**.

The Defendant’s Counsel’s objection to the admissibility of Exhibit J on grounds that it has not complied with **Section 84 of the Evidence Act 2011** is with merit and is thus upheld. Being inadmissible in evidence, Exhibit J is hereby expunged from the records of the evidence before this Court and shall be discountenanced throughout the rest of this Judgment.

In the resolution of the issue for determination before this Court, the law is that the general burden of proof in civil cases lies on the party against whom judgment would be entered if no evidence was adduced by either party. – see **EZINWA V. AGU (2003) LPELR-7238(CA) AT P. 14 PARAS. A – B.** Thus, the general burden of proof principally lies on the plaintiff as the initiator of a claim – see **IYAMU V. ALONGE(2007) LPELR-8689(CA) AT PP. 45 – 53 PARAS. D–C.** It is also elementary principle of law that he who asserts must prove – see **ACTION ALLIANCE & ORS V. INEC (2019) LPELR-49364(CA) AT PP. 27 – 28 PARAS. F – D.**

It is pertinent to note that the Plaintiff’s claim before this Court borders on allegations of negligence against the Defendant.

Generally, negligence in law connotes an omission or failure to do something which a reasonable man, under the same circumstance, would do or doing of something which a reasonable and prudent man would not do. – see **UNILORIN TEACHING HOSPITAL V. ABEGUNDE (2013) LPELR-21375(CA) AT PP. 29–30 PARAS. E-B** and **ABI V. CBN & ORS (2011) LPELR-4192(CA) PP. 36-37, PARAS. F-B.**

Any breach of duty of care, whether grave or slight, which causes a loss constitutes negligence. – see **STERLING BANK PLC V. SAMAK ASSOCIATES LTD & ORS (2021) LPELR-56409(CA) AT P. 10 PARA. A.**

Thus, the three fundamental ingredients that a plaintiff must prove to succeed in an action for negligence are as follows;

1. The defendant owed the plaintiff a duty to exercise due care.
2. That the defendant failed to exercise due care;
3. The defendant’s failure was the cause of the injury suffered by the plaintiff.

See the cases of

UNILORIN TEACHING HOSPITAL V. ABEGUNDE (SUPRA) AT P. 30 PARAS. B-E;

UBA V. GODM SHOES INDUSTRIES (NIG) LTD (2010) LPELR-9255(CA) AT PP. 41–42 PARAS. A-B

and

FBN PLC V. ODEH (2015) LPELR-25683(CA) P. 24 PARAS. B-C.

Being an issue of fact and not of law, the onus is on the Plaintiff to prove negligence and the ingredients thereof by adducing credible evidence. It is only then that the burden shifts to the Defendant to challenge negligence. – See **BANKU V. SERMATECH (NIG) LTD (2015) LPELR-25839(CA) AT PP. 18-19 PARAS. D-A.**

Regarding the ingredient of duty of care, is there any nexus established between the Plaintiff and the subject matter of this suit i.e. the bank draft (Exhibit A) which was alleged to be wrongly paid by the Defendant?

The Plaintiff in this case alleged that he has an account with Skye Bank Plc and instructed his said bank to issue a Manager's Cheque in the sum of N25 Million in favour of Abdullahi Hassan and his said bank did so by issuing Exhibit A, the value of which was debited from his account with Skye Bank Plc. The Defendant however denied these allegations because there is nothing on the Manager's Cheque (Exhibit A) that suggests that it belongs to the Plaintiff.

I have examined Exhibit A. Exhibit A does not reflect the name of the Plaintiff anywhere on it. There is no credible evidence before this Court showing that the Plaintiff has an account with Skye Bank Plc. There is no credible evidence before this Court to show that the bank draft (Exhibit A) was funded from the Plaintiff's account. Thus, the Plaintiff has failed to adduce any credible evidence to support his allegations in respect of his ownership of Exhibit A which he had further alleged the Defendant handled negligently.

Now, it is not enough for a party to make an allegation before a Court. He must lead credible evidence to prove same because a party that makes an assertion must prove the truth thereof in order to succeed in the action. – see **UKEJE & ANOR V. UKEJE (2014) LPELR-22724(SC) AT P. 43 PARAS. B – CandFYNEFACE & ORS V. FYNEFACE & ORS (2007) LPELR-8313(CA) AT P. 16 PARA. B.**

Where the party that alleges is the plaintiff and he fails to discharge the burden of proof placed on him by law, there will be nothing for the defendant to defend. The consequence in such a situation is grave as the law is trite that where a plaintiff fails to adduce cogent and credible evidence in support of his case, the case must be dismissed. – see **CHUKWU V. OKOH (2016) LPELR-42117(CA) AT PP. 85 – 86 PARAS. F-EandBALA & ANOR V. HASSAN (2014) LPELR-23997(CA) AT PP. 41 – 42 PARAS. G-B.**

In the instant case, the Plaintiff has failed to adduce cogent and credible evidence to prove his allegation that the bank draft Exhibit A was issued at his instance. There is nothing credible before this Court to establish his connection with the bank draft (Exhibit A) which the Defendant allegedly negligently paid. Having failed to prove any connection with Exhibit A and a right to complain in respect thereof, the Plaintiff has equally failed to show that the Defendant owed the Plaintiff any duty of care in handling Exhibit A.

The Plaintiff has thus failed to establish the first ingredient of negligence i.e. that the Defendant owed the Plaintiff a duty of care in respect of Exhibit A. And of course, where there exists no duty of care the issue of whether same was breached cannot arise.

Even if Exhibit J is somehow admissible in evidence and the Plaintiff can (by some stretch of imagination) be said to have established the first two ingredients of negligence, another ingredient which he must however prove to succeed in his action for negligence is that the Defendant's failure or conduct was the cause of the injury or loss suffered by the Plaintiff. In other words, another ingredient which the Court must consider is whether

any injury, loss or damage has been suffered by the Plaintiff as a result of the Defendant's breach of duty of care.

It is imperative that a party alleging negligence against another should establish some actual loss, injury or damage which he suffered as a result of the breach of duty of that other. For without proving such injury or loss, he cannot be entitled to recover any form of damages from the person against whom negligence is alleged.

On whether damage and negligence must co-exist in an action for negligence, the Court of Appeal held in the case of **ALUMINIUM MANUFACTURING COMPANY OF (NIG) LTD V. VOLKSWAGEN OF (NIG) LTD (2010) LPELR-3759(CA) AT P. 26 PARAS. C-E** as follows;

*“It is pertinent to state that traditionally the tort of Negligence is described as damage. Negligence is only actionable if actual damage is proved. Infact, Negligence alone does not give a cause of action the two - Damage and Negligence must coexist. The essence of damages in Negligence actions is to place the injured party to its previous position so far as money can do it. The same position he would have been if not for the negligence of the Defendant thus the Rule of Law in negligence is the principle of **restitution in integrum.**”*

See also **NIGERIA BREWERIES PLC V. DAVID AUDU (2009) LPELR-8863(CA) AT PP. 45-47 PARAS. A-A and MAKWE V. NWUFOR (2001) 14 NWLR PT.733 P.356.**

In the instant case, the Plaintiff's case is that the bank draft in the sum of N25 Million which he had procured through Skye Bank in favour of Abdullahi Hassan for a land transaction, was paid into an account with a different name by the Defendant when it was presented to it by someone other than Abdullahi Hassan. Even if this act by the Defendant is wrongful, the pertinent question is; what loss, damage or injury has the Plaintiff suffered from this wrongful act?

Outside the fact that the N25 Million value of the bank draft was paid by the Defendant into an account which was not the beneficiary's name (Abdullahi Hassan), the Plaintiff neither pleaded nor proved exactly what injury he suffered by the Defendant's alleged wrongful action. Did Abdullahi Hassan not receive the full value of the draft after all? Did the land transaction fail because the said consideration did not reach Abdullahi Hassan? The Plaintiff did not say and this Court cannot speculate about such matters of fact. In fact, under cross-examination the Plaintiff (PW1) stated that Abdullahi Hassan did not inform him that he (Abdullahi Hassan) did not receive the value of the bank draft.

It therefore appears that while the Plaintiff has attempted to prove the wrongful act of the Defendant with respect to paying the value of the bank draft into an account with a different name from that stated on the bank draft, the Plaintiff has failed to show exactly what injury, loss or damage he has suffered from such wrongful act. Abdullahi Hassan never complained that he did not receive the money. The Plaintiff has thus failed to establish the third ingredient of his claim of negligence.

It is trite that failure to prove any of the three ingredients/elements of negligence will be fatal to the case of a plaintiff. – see **UBA PLC V. GEMEX INTL LTD (2020) LPELR-50977(CA) AT PP. 33 – 36 PARAS. E-F.**

Having failed to prove the ingredients of negligence, it follows therefore from all the foregoing that the Plaintiff has been unable to prove his allegation of negligence against the Defendant. His claim of negligence against the Defendant must fail.

The second declaratory relief sought by the Plaintiff is that the Defendant has no right at all to clear the Manager's Cheque issued in favour of Abdullahi Hassan and credit same to Alh. Aminu I. Gaya without any instruction from the Plaintiff especially as a banking instruction.

Apparently, the Plaintiff has not led credible evidence in respect of the aforementioned claim. The Defendant has denied that the sum of N25million was paid to Alh. Aminu I. Gaya's Account. The Defendant led evidence to the effect that the said sum was credited to the Account of Gardo International Ltd. and not Alh. Aminu I. Gaya. The Plaintiff's Exhibit C and Defendant's Exhibit K1 support the evidence that the said sum of N25million was paid to the Account of Gardo International Ltd. and not Alh. Aminu I. Gaya. Thus, the said claim in relief number two is at variance with credible evidence before the Court. And the said relief being declaratory in nature ought to be proved on the merit by credible evidence before the Court. See **POPOOLA V. EDOBOR & ORS (2017) LPELR – 42539(CA) AT P. 11 PARAS. D–F** and **SAIDI V. IDUBE (2010) LPELR – 4521(CA) AT P. 36 PARAS. D–F** per Gumel JCA.

Suffice to say that the Plaintiff has failed to discharge the burden placed on him by law to prove his claim upon the balance of probability by the preponderance of evidence. See **Section 133 and 134 of Evidence Act (2011)**.

See also

ARANDA V. KELGUM (2016) LPELR – 40324(CA) AT P. 16 PARA C – D per Hussaini JCA

“The proof required of him is of a standard of balance of probability or preponderance of evidence. See Section 133 (1) and 134 of the Evidence Act 2011 Cap E14 and decisions in Mogaji v. Odofin (1977) 4 SC 91; Kaiyaoja v. Egunla (1974) 12 SC 55.”

DIBIAMAKA & ORS V. OSAKWE & ORS (1989) LPELR – 940 (SC) per Oputa JSC **AT P. 16 PARAS. D–E;**

“When evidence is improbable, it can easily be dismissed as untrue as probability has always been the surest road to the shrine of truth and justice. The balance of probability will thus reflect also the

balance of truth. When this happens, it then becomes the balance of justice.”

The second relief therefore must also fail.

All the other reliefs are consequential reliefs which flow from the declaratory reliefs. Considering that the declaratory reliefs have failed, there is no doubt that the corollary reliefs must all suffer a similar fate.

In the light of the foregoing therefore the sole issue for determination is resolved against the Plaintiff.

In the circumstance, the claim of the Plaintiff fails in its entirety and is hereby accordingly dismissed.

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Honourable Justice M. E. Anenih

APPEARANCES:

M.O. Iduh Esq appears for the Plaintiff.

Paul Audu Esq appears with G.T. Poage Esq and O.T. Onoja Esq for the Defendant.