

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

RESUMED ON MONDAY THE 5TH DAY OF FEBRUARY, 2024
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ, SENIOR MAGT. GD. I
HOLDEN AT SMALL CLAIMS COURT 6 PORT HARCOURT

PMC/SCC/260/2023

DEKOO NUBARI TONY
VS.
ZENITH BANK PLC

The claimant is present in court, Defendant is absent. E.B. Chile-Moses Mrs. Appears for the Claimant, U.S. Udosen appears for the Defendant.

JUDGMENT

The Claimant initiated this suit via forms RSSC2 and 3 of this court, dated and filed 01/12/23 and 04/12/23 respectively claiming for:

The sum of ₦4,600,000.00 (Four Million, Six Hundred Thousand Naira) being and representing money transferred from the Claimant's account with the Defendant to another persons account without the claimant's consent or authority. The Defendant through its counsel pleaded non-labile to the claimant's claim.

The facts of the claimants case are that his bank called him sometime on 17/10/23 and informed him of a court order obtained by one Emeliagha Pascal against him, that the court order made on 16/10/23 by an Asaba Magistrate Court was for reversal of the sum of ₦4,600,000.00 (Four Million, Six Hundred Thousand Naira) from the claimant's account to Mr. Emeliagha Pascal's account, that upon receipt of the call he put calls across to the bank to be sure that the call was genuine and it was confirmed to him that the call was from the bank, that he rushed to the bank the next day but they refused to show him a copy of the court order, that he went back and found that Mr. Pascal was someone he had supplied a truck load of cement to for the same amount and that the transfer of ₦4,600,000.00 (Four Million Six Hundred Thousand Naira) to the Claimant's Zenith Bank account from Mr. Pascal was for cement delivered. That by the time he got his lawyer to write to the Defendant asking them to stop the reversal via a letter dated 20-10-23 (but received by the Defendant on 23-10-23), the defendant was said to have complied with the court order for reversal on the 20-10-23.

The facts of the Defendants case are that, the defendant got a court order made by a Magistrate court in Asaba on 17-10-23 and immediately informed the claimant, that the Claimant came to the bank the next day and the court order was confirmed to him. That they informed the claimant that they had a mandate of 48 hours to obey the court order, that consequently on the 20-10-23 the court order was obeyed and the sum of ₦4,600,000.00 (Four Million Six Hundred Thousand Naira) was reversed to the account of one Mr. Emeliagha Pascal Akpokereghe. The defendant denied any liability stating that they acted on a court order directing them to reverse the money.

In prove of the Claimants case he testified and relied on **Exhibits A-D** while in defense the defendant called one witness and relied on **Exhibit E.** parties filed and exchanged final written addresses. The claimant's counsel raised and argued two issues while the defendant's counsel in her final written address raised and argued two issues for determination as well. The claimant's counsel urged the court to grant the claim of the

claimant and she argued that the defendant acted negligently. The Defendant's counsel on her part urged the court to dismiss the claimant's claim with substantive cost. I have carefully read through the argument's of the counsel's in their final written addresses in this case and shall right away from the issues raised by both parties raise two issues for determination in this case which I consider significant in the circumstance:

1. Whether the Defendant acted rightly in obeying the Court Order of the Magistrate Court sitting in Asaba and made on 16-10-23 ?.
2. Whether the Claimant has placed all necessary materials before this court for the court to grant the relief sought.?

Before delving into the issues, it is pertinent to first state that in a civil case the claimant is only required to prove his case on a balance of probability. See **Section 134 of the Evidence (Amendment) Act 2023**.

ISSUE 1:

Whether the defendant acted rightly in obeying the court order of the Magistrate Court sitting in Asaba made on 16-10-23? In defence of this case the defendant relied on **Exhibit E** the court order, the order for emphasis sake is a reversal order for the sum of ₦4,600,000.00 (Four Million, Six Hundred Thousand Naira) from the claimant's account to the account of one Mr. Emeliagha Pascal Akpotereghe, the claimant did not rebut or deny the authenticity of the said order, **Exhibit E** before this court, rather the claimant has in the cause of this proceedings admitted that a court order was made.

The law is trite that facts admitted need no further prove. See **Section 123 Evidence (Amendment) Act 2023** and **CBN V. DINNEH (2010) 17 NWLR (PART 1221) AGE 125-162 AT PARAGRAPH C-D**. The claimant's counsel in Paragraph D of her final written address argued that the court cannot give an order against someone who was not a party to the suit. It is also the finding of this court that the parties agreed to the fact that the order for reversal has already been carried out by the Defendant and an already completed act cannot be stopped neither can it be set aside. See **IDEOZU V. OCHOMA (2006) 4 NWLR (PT. 970) 364 AT 395 C-E PER TEBI JSC**. To argue as the Claimant's counsel has argued that the court cannot give an order against a person who is not a party to a suit (in this case the suit where the **Exhibit E** was made) will amount to calling on this court to sit on appeal on the order of the Magistrate Court sitting in Asaba. The case of **UTACK V. OFFICIAL LIQUIDATOR & ANOR (2008) LPER – 4323 (CA)** is very instructive on this score to the effect that this court cannot be called upon to sit on appeal on the order of a court of coordinate jurisdiction. The order of the court has already been carried out by the defendant, this court cannot be called upon to sit on appeal on that order safe to add that an order of court whether valid or not must be obeyed as long as it is subsisting until same is set aside.

See **RT. HON., MICHEAL BALONWO & ORS V. GOVERNOR OF ANAMI STATE & ORS (2007) 5 NWLR (PART 1028) PAGE 488 AT 564 PARAGRAPHS B-G per Denton West (JCA)**. The defendant was right in obeying the subsisting court order. Accordingly this issue is resolved against the claimant and in favour of the Defendant.

ISSUES 2:

Whether the claimant has placed all necessary materials before this court for this court to grant the relief sought? The crux of the Claimant's case is that the defendant acted negligently, giving the facts and circumstances of this case. Blakks Law Dictionary defined negligence as the failure to behave with the level of care that a reasonable person would have exercised under the same circumstances. Negligence in civil relations

is such an inadvertent imperfection by a responsible human agent in the discharge of a legal duty, as immediately produces an ordinary and natural consequence, a damage to another. Negligence is a tort and is complete when three conditions are satisfied.

1). The Defendant owes a duty of care to the claimant, (2) the Defendant has acted in such a way as to breach that care (3) the conduct of the defendant was careless. See **CLARK LINDSEL ON TORTS 14TH EDITION PAGE 474 AND ORHIE V. NEPA (1998) 9 NWLR (PART 557) 187**, see also the Older case of **MC DOWELL V. G. W. RY (1903) 2 K.B. AT PAGE 338**, where the court held that to maintain an action for negligence it must be shown that (a) there was a duty on the part of the Defendant towards the person injured (b) that the Defendant negligently performed or omitted exercise that duty (d) that such negligence was the effective cause of injury or damage to the Plaintiff. From the above it is deduced that for the claimant to succeed in an action such as the instant case he must plead all the particulars of negligence alleged and the duty of care owed by the Defendant and all these must be supported by credible evidence at the trial. See **KOYA V. UBA (1997) 1 NWLR (PART 481) 251**. The claimant through CW1 constantly maintained that the reversal of the sum of ₦4,600,000.00 (Four Million Six Hundred Thousand Naira) was wrongly done by the Defendant from claimant's account with the Defendant. This fact as stated earlier is not in dispute, the defendant through DW1 confirmed and expressly admitted this fact under fire of cross examination on 16-01-24. Facts admitted need no further prove. See **S.123 Evidence (Amendment) Act (Supra)**. This brings me to whether there is a duty owed to the claimant by the Defendant in the circumstance.

The position of the law in the circumstance is that a bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its functions with regards to operations with its contract with its customers. See **ENTERPRISE BANK PLC V. DANWIGWE & ORS (2018) LPELR – 46261 (CA)**. This having been established by judicial authority, I shall proceed forthwith to consider whether the defendant negligently performed or omitted to perform the duty OR whether such negligence was the effective cause of the injury or damage to the claimant. The claimant in his evidence in chief before this court testified that he got to the bank on the 18-10-23, his account officer confirmed to him that there was a bank order for reversed of the sum of ₦4,600,00.00 (Four Million Six Hundred Thousand Naira) only from his account to the account of one Mr. Pascal, he also confirmed to the defendant that he does not know any Pascal but he had to go and check his records. He also testified that he called his friend the CW2 in this case to confirm the full name of Mr. Pascal and CW2 confirmed to CW1 that indeed Mr. Pascal is the person that applied for the reversal order which at the material time has already been granted that he proceeded to his lawyers to instruct them to write **Exhibit B** to the Defendant. However, the defendant through DW1, testified before this court that the claimant was informed that the defendant has only a 48 hour mandate to carry out the courts order, this testimony was also not rebutted under cross examination. This piece of evidence to my mind is a very relevant evidence as it will determine one way or the other whether the defendant acted negligently leading to the damaged caused to the claimant. This is what **Section 55 of the Evidence (Amendment) Act 2023** refers to as evidence that is relevant in a proceeding because if this evidence were accepted it could rationally effect directly or indirectly the assessment of the probability of the existence of a fact in issue in this proceeding. The fact are that the order **Exhibit E** was made on 16-10-2023, served on the Defendant on 17-10-2023, the defendant informed the claimant of the order on same 17-10-2023, the claimant went to the defendants office on 18-10-2023 and in a bid to explain the

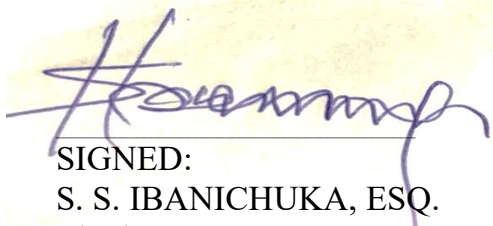
transaction leading to the order and stopping the order briefed his lawyer to act accordingly, the Claimants lawyer wrote **Exhibit B** dated 20-10-2023 but served same on the defendant on 23-10-2023, while the Defendant has carried out the order on 20-10-2023. The question is going by the unchallenged evidence of DW1 that the defendant has a “mandate” of 48 hours to carry out the court order, did the defendant act unreasonably or negligently when it carried out the court order on the 20-10-2023. It is obvious that from the 17-10-2023 when the Defendant became aware of the court order and informed the Claimant on the 20-10-2023, when the defendant carried out the said order, the period of 48 hours said to be mandate period to carry out the court order has elapsed. I hold therefore that since the statement of DW1 that the Defendant had a 48 hours mandate to obey the court order is unchallenged and the defendant informed the claimant of the said order and did not act under 48 hours, the defendant will not have been said to have acted negligently and as such is not directly responsible for the damage of loss of ₦4,600,000.00 (Four Million Six Hundred Thousand Naira) suffered by the Claimant.

Issue two is also resolved in favour of the Defendant and against the claimant. As the onus of proving negligence is on the claimant who alleges it and unless until that is proved it does not shift. See **NGILARI V. MOTHERCAT LTD (1999) 13 NWLR (PART 636) 626.**

The Claimant has failed to prove his claim before this court on the standard required by law. It is hereby adjudged as follows:-

That the claim of the claimant in this suit fails and same is accordingly dismissed.

Parties are to bear their respective costs, parties are reminded of their rights to appeal.



SIGNED:
S. S. IBANICHUKA, ESQ.
5/02/2024