

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 19TH DAY OF FEBRUARY,
2019
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO: FCT/HC/CV/708/2014

COURT CLERKS: JOSEPH BALAMI ISHAKU & ORS.
BETWEEN:

UCHECHI NNANNA OGWO.....CLAIMANT
AND
STANDARD CHARTERED BANK
NIGERIA LIMITEDDEFENDANT

JUDGMENT

The Claimant's Writ of Summons and Statement of Claim is undated but filed on the 4th day of December 2014. The Claimant's Further Amended Writ of Summons and Statement of claim is dated 29th March 2017. He claims the following against the Defendant.

1. A declaration that the Defendant is liable in negligence for the losses/damage suffered by the Claimant as a result of the Defendant's

negligence in allowing unauthorized withdrawal and online transfer of the sum of N330,000 from the Claimant's current account No. 0001084799 and Savings account No. 5001084804 on the 8th of August 2014 to unknown beneficiaries.

2. A declaration that the Defendant is liable to the claimant for the losses or damage caused to the Claimant by the unauthorized withdrawal and transfer of the total sum of N330,000 from the Claimant's Savings account through the online/internet banking platform services of the Defendant for banking transaction which was set up for the Claimant by the Defendant.
3. The sum of N330,000 being the amount lost by the claimant as a result of the negligence of the Defendant.
4. The sum of N10 Million as general damages for the suffering and trauma caused by the Defendant's negligence.
5. N1 Million as cost of litigation.

The Defendant was served with the Writ of Summons and Statement of Claim. The Defendant reacted by filing a Memorandum of Appearance and Statement of Defence dated 22/06/15 but filed on the 24th of June 2015 which was amended by a consequential Amended Statement of Defence dated 14/02/18.

The Claimant opened his case and called three witnesses in proof thereon. The first Claimant's Witness is the Claimant himself. He is Uchechi Nnanna Ogwo. He lives at No. 4 Ajayi Crowder Street, Asokoro, Abuja. He was formerly living at Peniel Apartment Plot 111 Adetokunbo Ademola Crescent, Wuse II. He currently works with Bring African But was previously employed by Peniel Apartment. He remembers making a Witness Statement on Oath. He adopts same as his oral evidence in this case.

In his Witness Statement on Oath, he stated he has had a 9 years work experience in the banking Industry having worked with Diamond Bank Plc for 1 year 6 months, GTB for 7 years and Zenith Bank for 6 months as

an Executive Training Officer up to the position of an Assistant Manager from 2000 to 2009.

On his employment by Peniel Apartments Ltd in 2010, his employers mandated its entire staff to open and operate a salary account with the Defendant for the ease of payment of salaries, allowances and benefits. He opened a Current and Savings accounts with the Defendant at their Adetokunbo Ademola Crescent, Abuja with Account No. 0001084799 and 500108804 respectively.

The Defendants thereafter offered him its online /internet banking services to enable him carry out banking transactions without having to visit the banking hall and to also allow him and other customers operate their accounts at all times.

That at the inception of the Defendant's online/internet banking services, he was skeptical but when the Defendant assured him of its security measures to forestall any unauthorized withdrawals

from his accounts except via the One Time Password system (OTP), he was left with no option than to accept and start using the Defendant's One Time/internet Platform through the window of the Username and Password activated by the Defendant.

The Defendant's One Time password system (OTP) entails the generation or invention of a special password by the Defendant which is sent to a customer's mobile phone line registered with the Defendant to enable a customer authorize and complete internet banking transfers to a third party or beneficiary each time a customer desires to transfer via the Defendant's internet banking platform. That since his acceptance of the Defendant's online and internet banking services, he has been using it in the ordinary course of transaction and have indeed become used to it and his daily activities have become dependent on the use of the Defendant's internet banking for withdrawals and transfers to third party and also to check his balance on the accounts at any given time.

He learnt overtime from the use of the Defendant's internet banking platform that withdrawals and transfers to third parties cannot be completed without a short message text (sms) from the Defendant which will deliver the OTP to his mobile phone line 07034117700 registered with the Defendant before any transfer is authorized and completed by him online in the correct entry of the OTP on the Transfer Continuation Page on the Defendant's internet banking platform.

As part of the Defendant's instruction was that his Username and Password must be exclusively known only to him and must never be disclosed to anybody for any reason while the Defendant undertook to generate and send the OTP to his phone registered with the Defendant each time he desires to transfer money to third parties. That he kept faith with the instruction and never disclosed or compromised his internet banking log in details to any person. Being an exbanker with clean record, he is aware of the grave consequences of compromising his internet banking log-in details. That

he has been banking with the Defendant using the OTP for a while without any problem until 8/08/14 at around 11 p.m when he noticed some unauthorized withdrawals from his Savings and Current accounts in the total sum of N330,000 to unknown beneficiaries. He noticed an unauthorized withdrawal and transfer of N28,000 from his Savings account to his Current account while there was a subsequent unauthorized withdrawal and transfer of N330,000 to some unknown beneficiaries.

That he was in great shock and tears when he called the Defendant's Customers Call Centre and complained for possible assistance in recovering the unauthorized withdrawals and transfer from his account. The Customer Call Centre received the Complaint and issued him a reference Code No. 20140808595006 and undertook to get back within two working days.

On 9/08/14, he travelled to Lagos and lodged a formal written Complaint at the Defendant's Palms Shopping

Mall branch. He was attended to by one Ms Adeola Gbadeyan an employee of the Defendant. That after the expiration of the 2 working days given by the Defendant's call Centre, he instructed his Solicitors to demand the immediate refund of the sum of N330,000.00 withdrawn and transferred to unknown beneficiaries without the OTP (SMS) from the Defendant to his phone for authorization of the withdrawals and transfer to unknown beneficiaries. That his Solicitors wrote the Defendant a letter of demand for the payment of N330,000 and damages for negligence and same was served on the Defendant on the 13/08/14. The Defendant replied denying liability for the unauthorized withdrawals. That he never received any transaction alert or OTP (SMS) on his phone on 8/08/14 when the unauthorized transactions took place.

That by the banker customer relationship, the Defendant owes him a legal duty to safeguard and protect his fund. That the unauthorized withdrawals and transfer from his account was made possible due

to the Defendants negligence and failure to him as a commercial bank in protecting and securing his fund.

That as a result of the negligence of the Defendant his lifestyle has been distorted and he has not been able to enjoy normal work, social and recreational activities which has affected his schedule of work. That he suffered trauma, sleeplessness, pains, anguish and his health has been affected. That he suffered series of insult and embarrassment due to his inability to meet all outstanding financial obligations and his esteem lowered before those that gave him money for safe keeping. That as a result of the Defendant's negligence his accommodation was threatened because the money withdrawn was meant to offset his house rent which was due while his standard of living was adversely affected.

PW1 tendered Exhibit A – His Solicitors letter dated 12/08/14.

Exhibit B – Witness Written Complaint dated 9/08/14.

He prays the Court to grant his prayers.

Under Cross-examination by the Defendant's Counsel, he answered that he has operated bank account before. That he understands the importance of keeping bank details secure. That he was giving online Bank registration form. That he was given username and password. That he was advised to change the temporary user name and password and he did. That at the time of the transaction, his username and password were different. That apart from the above one was requested to have a number generated by an electronic token or in the case of the Defendant a one time password. It is used once in a transaction. That it was because of the above security that he was comfortable with the use of the online banking platform.

To another question, he answered that it is sent to the registered phone number of the customer. That he is in custody of his phone. That the username and password are specifically known to him. To another question, he answered that the bank does not know his username

and password. That he is aware of Exhibit A and its contents. He answered that there is a response to Exhibit A. He also knows the content of the reply. That the bank informed him that the transaction was carried out with his valid log in details. The 2nd Plaintiff's witness is a subpoenaed witness. He tendered Exhibits C – C2.

(1) Claimant's Statement of Account No. 0001084799 – Personal.

(2) Claimant's Statement of Account Number 5001084804 – Savings and Certificate of Compliance.

The 3rd Claimant's Witness is JANTIKU IJUDIGAN MAMZA. He is also a subpoenaed witness. He works with EFCC and is attached to the Advance Fee Fraud Section, Team 1, Abuja. He has a Petition dated 11/08/14 addressed to the Executive Chairman of EFCC by Claimant. It is Exhibit D. the other document is an application for the release of recovered funds to the tune of N20,000. The fund was released to the owner. Letter dated 10/02/16, application for release of

recovered funds was admitted and marked Exhibit E. the above is the case of the Claimant.

The Defendant opened its Defence and called only one witness. He is Ugochuckwu John Nwadike. He works with the 1st Defendant as the Branch Operations and Service manager. He adopted his written Deposition dated 14/02/18. He stated that as part of the account opening process, Internet Banking was offered to the Plaintiff and he was granted access to the service in September 2011. That Plaintiff opened and maintains a Current account and a Savings account with the bank which numbers are 0001084799 and 500108804 respectively. That from Defendants records, the Plaintiff was the head of Sales at Peniel Apartments.

To access the Bank's online banking platform, a customer has to register by filling out online banking registration form wherein he will provide inter alia his account numbers, full names, e-mail address and phone number. After filling out the online banking

registration form and the customer is registered for the internet banking, a welcome message is sent to the e-mail address provided by the customer on the form. That the welcome message contains an online banking temporary ID. For security reasons, an online Temporary Password/PIN is also sent to the registered mobile number provided on the form. The welcome message states clearly that once the temporary/PIN is received, the customer should go to the online Banking window to use the Temporary ID and temporary Password to login. In order to secure further security of the platform, immediately after logging in, the online banking system prompts the customer to change the temporary ID and Temporary Password to a unique ID and password known only to the customer. The Plaintiff was duly advised of these procedures.

To further ensure and advise on security and use of the platform, every customer of the Bank including the Plaintiff herein is warned via the online banking registration message and periodic messages of the following:

- (a) To keep the online banking Username/ID and password confidential at all times to avoid risk misuse.
- (b) Not to record or carry the password in the same place as the username ID.
- (c) Not to use simple combinations like IIII or 12345678 or other easy numbers to guess “strings” for the password.
- (d) Not to share the account information (Username/ID, Password, Debt/Credit Card Number or Pin etc) with anyone.
- (e) If there is any reason to suspect that someone may have used the secure online banking account or if the username/ID or password is lost, to call the bank immediately.

12. The internet banking platform operates on three layers of security to safeguard the customers transactions. These are online banking ID, online banking password and one-time password (OTP) which must all be present for a successful transaction to

occur. The information required to access each of these layers is known to the customer alone and all three must be available to a third party before such third party can gain access to a customer's online banking channel.

The online Banking ID and password are changed by the customer at first login to a unique ID and password known only to the customer and unknown to the bank or its employees. The OTP is a random computer generated password unknown to even officers of the Defendant. It is valid for only one login session or transaction on a computer system or digital device. In contrast to static passwords, OTPs are not vulnerable to replay attacks. This means that a potential intruder who manages to record an OTP that was already used to conduct a transaction will not be able to use it since it will no longer be valid.

In respect of each transaction initiated, a separate OTP is randomly generated and sent by a short message service (SMS), only to the phone number provided by

the customer. The OTP is required to complete any transaction initiated. Thus, to access the internet banking platform, the Plaintiff must first login using his online banking ID and online banking password (both generated by him and known to him only) and conduct each transaction earlier login, an OTP is sent to the Plaintiff's phone number 07034117700 as provided in the form. No transaction can be completed where any of the three information is absent.

The responsibility of securing one's login details lies with the account holder i.e the Plaintiff. That Plaintiff has been banking with the Defendant successfully on its online/internet banking platform but it is not true that the withdrawals and transfer from his Savings and Current account on 8/08/14 or at any time whatsoever were unauthorised by him. The Defendant's record show that the transaction made on 8/08/14 were authorized. That as soon as the Plaintiff's complaint was received on 9/08/14 by Adeola Gbadeyan, it logged same and raised an incidence report which was in turn forwarded to the Bank's Contact Centre Team for investigation of the alleged fraud.

That during investigation, the Plaintiff revealed that he experienced some malfunctions on his phone during the period the transaction took place. That the Defendant has no control over Plaintiff's phone, neither is the Bank Privy to the State of the Plaintiff's phone or its whereabouts. The bank's duty is to ensure that the OTP is sent to the Client's registered phone number on record and this was done. That the Plaintiff is simply on a gold digging exercise.

The bank employs adequate and current security measures on its internet banking platform. The bank from time to time reminds its clients of security risks and advises them to secure their banking details and passwords and not disclose them to anyone. Plaintiff actually made use of the bank's online banking platform from 2011 and the bank always employed its security pre-conditions for transactions done via its online platform. These Security pre conditions were also in place for the Plaintiff's transaction.

If there were any alleged unauthorized withdrawals from the Plaintiff's accounts, which is denied, the transactions were either carried out by the Plaintiff himself or he authorized the transactions and or compromised his online banking details, password and phone/phone number to third parties. The bank discharged its duty of care to the Plaintiff by providing adequate and up to date security on its internet banking platform. Banks customers are advised to safeguard their user names/IDs, passwords and other account details and keep them confidential. The Defendant's internet banking platform is well protected.

The withdrawals from the Plaintiff's account were duly authorized by the Plaintiff in accordance with the security measures of the Bank on its internet banking platform, which the Plaintiff is familiar with by virtue of his activities on the internet banking platform since 2011. That Plaintiff is not entitled to any of the reliefs. The Defendant tendered Exhibit F and F1 – Certificate of Compliance and Computer print out of evidence of

delivery of one time password (OTP) to the Plaintiff's phone number.

Under cross-examination, he answered that he has been with the Defendant for 9 years. He is familiar with the platform. That the details of the form filled for the online transactions is with the bank. They are never destroyed. Only staffs have access to it. That Plaintiff and customers are warned not to disclose their details. That the said message is always on the online platform. That the login credentials and telephone numbers are registered but the devices are not. To another question, he answered that the platform is equipped to detect suspicious transaction without OTP. That without O.T.P a transaction cannot be completed.

To another question, he answered that it was when the disputed transactions were completed that Plaintiff said his phone was not in order on those days which may be true or false. That if a phone is not functional, it may not be successful to deliver an OTP. OTP last for 30 seconds. If it is not delivered within the period, it will

lapse. To another question, witness answered that Plaintiff authorized the transaction. He is aware Plaintiff petitioned EFCC on the unauthorized withdrawal from his account.

He read it that EFCC recovered some of the money. He knows the Defendant owes the Plaintiff a duty of care. There was no prior information that his login details and telephone line was compromised. To another question, he answered that the bank can find out when the disputed transaction occurred. That the funds were paid out using the Plaintiff's details and the one time password. Counsel to parties adopted their Written Addresses. The Defendant's Counsel posited two issues for determination:

- (1) Whether the Defendant is liable in negligence to the Plaintiff.
- (2) Whether the Plaintiff is entitled to the relief sought.

In issue 1, Learned Counsel argues that the evidence of Plaintiff point to three possibilities:

- (1) Negligence of the Plaintiff.

(2) Fraud by identified third parties.

(3) An attempt at quick enrichment by the Plaintiff.

That in accordance with Section 131, 132 and 133 of the Evidence Act, the burden of proof is on the Plaintiff who should prove the negligence of the Defendant. There is no evidence by the Plaintiff to show that access was granted to the online platform other than through his username and password. That Plaintiff stated under cross examination that he was in custody of his phone at all times during that period. That Plaintiff failed to show how the Defendant breached any duty of care to him. That it is Plaintiff who breached his duty to keep his internet banking details confidential. The Defendant submits that the facts and evidence show that it duly discharged its duty to provide a secure online banking platform for the Plaintiff. That Defendant does not owe a duty to the Plaintiff to keep his log in details confidential (as it is not in custody of the defendant) nor has it breached any duty of care owed to the Plaintiff. That the Plaintiff having failed to prove a breach of any duty, the Defendant cannot be held

liable for any alleged damage resulting from his own negligence.

On issue 2, Defendant canvasses that Plaintiff has not established that Defendant owed him a duty to keep his log in details confidential. He has not been able to establish that the Defendant compromised his internet banking log in information or that any of the banker's duties were breached. That Plaintiff is not entitled to the declaratory reliefs sought. He finally urges the Court to dismiss the Suit. The Plaintiff's Counsel also adopted his Written Address and posited one issue for determination. It is Whether from the pleadings and evidence, the Plaintiff has established a case of negligence against the Defendant to entitle him to the reliefs sought. He canvasses that Exhibits F and F1 the computer print out of a third party called agregator showing delivery of OTP is documentary hearsay. That the Court should not attach any weight to it. That from the intervention of EFCC and recovery of N20,000 out of the N330,000, negligence has been established based on the doctrine of *res ipsa loquitor*. That the

Defendant breached its duty of care and Plaintiff suffered huge and unquantified damage. That Plaintiff has discharged the burden placed on it by establishing the Defendant's negligence.

I have read the evidence and the Addresses of Counsel including the Defendant's reply on point of law to the Plaintiff's Final Written Address.

The issue for determination is as couched by the Plaintiff's Counsel which is captured by the Defendant's two issues in his Final written Address. It is whether from the pleading and evidence, the Plaintiff has established a case of negligence against the Defendant to entitle him to the reliefs sought.

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. In other words, it is the omission or failure to do something which a reasonable man under similar circumstances

would do or the doing of something which a reasonable prudent man would not do.

See ***U.T.B NIG. VS. OZOEMENA (2007) 3 NWLR (PT1022) P488 SC.***

U.B.A LTD. VS. ACHORU (1980) 6 NWLR (PT. 156) 254 SC.

The case of ***DONOGHUE VS. STEVENSON*** laid the foundation of the law of Negligence.

It is complete and actionable when three conditions are satisfied.

1. The Defendant owed a duty of care to the Plaintiff.
2. The duty of care was breached.
3. The Plaintiff suffered damage arising from the breach.

U.T.B NIG. VS. OZOEMENA (Supra).

DONOGUE V. STEVENSON (1932) AC 562.

It is the law that negligence is a question of fact and not law. Therefore each case must be decided in the light of its own facts and circumstances.

For a Plaintiff to succeed in an action for negligence, he must plead sufficient particulars of the negligence alleged. He must also adduce credible evidence to show the duty of care owed by the Defendant, the breach of that duty by the Defendant and the damage suffered by the Plaintiff as a result of the Defendant's failure to take care except the Defendant admits negligence.

ORHUE VS. NEPA 1998 7 NWLR (PT.557) 187 SC.

There is no doubt the fact which is not disputed by all parties that a banker/customer relationship exists between the Plaintiff and Defendant. In the instant case as can be garnered from paragraphs 7 – 11 of the Plaintiff's Statement of Claim and Written Statement on Oath. In paragraph 11 of the Statement of Claim and Oath, the Defendant also owes a corresponding duty to ensure that the his Username and Password are exclusively known to him and must not be disclosed to anyone while the Defendant undertook to generate and send the OTP to the Plaintiff's Phone line

registered with the Defendant, each time the Plaintiff desires to transfer money to a third party.

From the Plaintiff's pleadings and evidence both the Plaintiff and the Defendant owed a duty of care to ensure the safety of the Plaintiff's funds by providing a safe and secure internet platform. The Plaintiff's evidence elicited under cross-examination is instructive. He stated that he was given an online Registration Form. He was also given Username and Password. He was advised to change the temporary Username and Password. He did. At the time of the transaction wherein the alleged amounts were transferred out of his account, he had changed his Username and Password. Aside username and password, he was used to generating an electronic token or One Time password through his Phone. That he was in custody of his Phone, the username and Password are specifically known to him.

He further stated that the bank does not know his Username and Password. In the circumstance of this

case, even though the Plaintiff's funds are deposited in the Defendant's bank, the key to the Plaintiff's account resides in the Plaintiff's hands. He withdraws or transfers at will. The Defendant does not have the key and cannot therefore open the Plaintiff's account. The Plaintiff alluded to the security measures put in place to safeguard interference by intruders in paragraphs 7, 8, 9 and 10 of the Statement of Claim and Oath. However, there is no evidence of how that duty was breached by the Plaintiff except that he wrote a Petition to EFCC which is Exhibit D and a letter of release of recovered funds Exhibit E. There is no iota of evidence of how the funds were transferred either vide a Charge or by the statement of the suspects/beneficiaries arrested. The Plaintiff rather relied on the doctrine of Res Ipsa Loquitor. It is applicable to actions for injury or death caused by negligence where no proof of such negligence is required beyond the accident itself. Where the maxim is pleaded and applied, it shifts the onus of proof from the Plaintiff to the Defendant.

See **MANAGEMENT ENTREPRISES LTD VS. OLUSANYA (1987) 2 NWLR (PT.55) 179 SC.**

JULIUS BERGER (NIG) PLC VS. NWAGWU (2006) 12 NWLR (PT.995) 518.

In order to rely on the doctrine, the Plaintiff must establish two things:

1. That the thing causing the damage was under management or control of the Defendant or his servants.
2. The accident was of such a kind as would not, in the ordinary course of things happened without negligence.

This case has nothing to do with injury or death caused by negligence or an accident. In the circumstance of this case, the doctrine of Res Ipsa Loquitor does not apply.

The Plaintiff is bound to prove the three elements that constitute Negligence.

In my humble view, the Plaintiff failed to prove how that duty of care was breached and by whom.

In the circumstance, the Plaintiff is not entitled to the reliefs sought against the Defendant.

The Suit lacks merit and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

19/02/19