

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA COURT 4, FCT., ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK**

**SUIT NO. FCT/HC/CV/573/2013**

**B E T W E E N:**

**INNOVATION ERA NIGERIA LIMITED**

}

**PLAINTIFF**

**AND**

**LEADWAY ASSURANCE COMPANY LIMITED.**

}

**DEFENDANT**

**J U D G M E N T**

The Plaintiff is engaged in the distribution of product of Guinness Nigeria Plc, Nigeria Breweries Limited e.t.c. and operates a fleet of vehicles to assist in the movement of products from the manufacturing company to its depots and warehouses and ultimately to consumers.

The Defendant is an Insurance company and is the insurers of the Plaintiff's vehicles since 2002 whilst the Plaintiff engaged the services of Perfect Trust Insurance Brokers Limited as its insurance brokers.

Sometimes in 2005, the Plaintiff's MAN diesel truck with registration XC 808 RBC was involved in a ghastly accident which became a subject of litigation against the victim's family and the Plaintiff

and Guinness Nigeria Limited in suit FCT/HC/CV/1238/2006 Judgment was delivered against the Plaintiff on the 15<sup>th</sup> April, 2011.

On the 23<sup>rd</sup> June, 2011 the Plaintiff's warehouse was sealed off by the Bailiffs of the High Court of the FCT in the company of Mobile Policemen to the extent that the warehouse was under lock for 5 days. Some of the Plaintiff's staff that resisted the execution of the Judgment were beaten up and arrested. The Plaintiff was constrained to pay the Judgment sum of ~~N~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira) from a loan advanced by the First Bank of Nigeria, the Judgment sum was eventually refunded to the Plaintiff by the Defendant on the 19<sup>th</sup> August, 2011.

The Plaintiff contends that it is entitled for damages arising from the negligence of the Defendant. Plaintiff reasons that the embarrassment and losses suffered by the execution could have been avoided had the Plaintiff been timeously notified of the Judgment of the 15<sup>th</sup> April, 2011.

Aggrieved by the Defendant's failure to notify the Plaintiff of the Judgment as well as the Defendant's negligence in the handling of Suit FCT/HC/CV/1238/2006 and post Judgment damages occasioned on the Plaintiff, the Plaintiff has now instituted this suit against the Defendant and inter alia claiming for special damages for the Defendant's

negligence, demurrage fees, solicitors fees cost of borrowing the Judgment sum paid to the Plaintiff in Suit FCT/HC/CV/1238/2006 e.t.c.

In reaction, the Defendant vehemently refuted liability in negligence in their statement of defence dated the 11<sup>th</sup> March, 2014 and urged this Court to dismiss the Plaintiff's suit.

At trial, Plaintiff called four witnesses, P.W.1, Mr. Ayodele Osolade, the Executive Director of Perfect Trust Insurance Brokers Limited who adopted his witness statement on oath dated 18<sup>th</sup> October, 2013. His testimony, briefly stated is that his company acted as the Plaintiff's insurance brokers whilst the Defendant took over the assets and liabilities of Atlantic Insurance Company Limited, consequently, Defendant became the Plaintiff's insurers.

He disclosed that the Plaintiff paid all the insurance premium relating to the accidented truck MAN Diesel No. XC 808 RBC which insurance premium was fully covered at the time the accident took place. He recounted that the offer ~~₦~~800,000.00 (Eight Hundred Thousand Naira) made by the Defendant's Lawyers to the family of the victims of the accident was turned down as the claimants in Suit FCT/HC/CV/1238/2006 demanded for ~~₦~~2,000,000.00 (Two Million Naira).

He also disclosed that the Defendant's lawyer was appointed as Counsel for the Plaintiff FCT/HC/CV/1238/2006 by the Defendant as the Plaintiff's insurers. P.W.1 recounted that the Plaintiff was not aware of the Judgment delivered on the 15<sup>th</sup> April, 2011 neither was his company as Insurance Brokers of the Plaintiff notified of the Judgment in Suit FCT/HC/CV/1238/2006 until the Plaintiff's premises at 71 Byazhin Road, Kubwa, FCT sealed off by the Court's Bailiffs. He further disclosed that the Plaintiff paid the Judgment sum of ~~₦~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira) in order for the Plaintiff's warehouse to be opened though the Defendant had refunded the Judgment sum of ~~₦~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira) to the Plaintiff on the 19<sup>th</sup> August, 2011.

P.W.1 tendered the Plaintiff's policy No. CV/301/2016 00068/L AND IT WAS ADMITTED AS Exhibit P.W.1A<sup>1-4</sup>. He also tendered Exhibit P.W.1B<sup>1-3</sup>, Plaintiff's letter of demand for the refund of ~~₦~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira). The Judgment sum in Suit FCT/HC.CV.1238/2006 dated 4<sup>th</sup> July, 2011 addressed to the Executive Director of Perfect Trust Insurance Brokers was admitted as Exhibit P.W.1B<sup>1-3</sup>.

A letter dated 13<sup>th</sup> July, 2011 written by the Defendant's Counsel, Kola Mustapha Esq. wherein the Defendant agreed to indemnify the Plaintiff was admitted as Exhibit P.W.1C. Under cross examination, P.W.1 admitted that he was not at the Plaintiff's warehouse when the Court enforcement officers came to the Plaintiff's premises.

P.W.2, the Plaintiff Executive Director, by the name Clement Chuks Muojiuba adopted his witness statement on oath dated 14<sup>th</sup> October, 2013 as his evidence in chief. He also confirmed that the accidented MAN Diesel Truck with registration number XC 808 RBS was involved in a ghostly motor accident, the said vehicle was covered with the Defendant's Insurance certificate No. 0001231 with policy No. CV/30/16/000088/L. He recounted that the accident occurred along the Abaji – Lokoja road on the 16<sup>th</sup> November, 2005 whilst the Man Diesel Trust was carrying Guinness products and empties.

P.W.2 also recalled that Adekola Mustapha Esq. was engaged to defend the Plaintiff in Suit FCT/HC/CV/1238/2006. P.W.2 further disclosed that Judgment was delivered against the Plaintiff on the 15<sup>th</sup> April, 2011 without the Plaintiff's knowledge. He further disclosed that prior to the sealing of the Plaintiff's warehouse/sales office at 71 Byazhin Road, Kubwa on the 23<sup>rd</sup> June 2011, the Plaintiff had no knowledge of the fact that Judgment had been delivered against it.

He recounted that 4 of his members of staff were arrested and charged at the Chief Magistrates Court after being locked up from the 23<sup>rd</sup> – 22<sup>nd</sup> June, 2011. P.W.1 also asserts that the Defendant owed the Plaintiff a duty of care to inform it of all developments in the action, rulings and Judgments inclusive. It is also asserted that the Plaintiff had to take a loan of ~~N~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira) from the First Bank of Nigeria to pay off the Judgment debt in order that its warehouse/sales office will be unsealed by the enforcement officers of the Court.

In sum, P.W.1, maintains that the Plaintiff incurred a total loss of ~~N~~14,777,113.26 (Fourteen Million, Seven Hundred and Seventy-Seven Thousand, One Hundred and Thirty Naira, Twenty-Six kobo) as a result of the sealing off of the warehouse.

Plaintiff is seeking for general damages of ~~N~~10,000,000.00 (Ten Million Naira) for the loss of business, loss of goodwill, for the embarrassment suffered and customers loss of confidence in the Plaintiff. The unpaid interest, default charges for 5 days when the Plaintiff's premises was under lock and key which he tagged as N1.8 million, solicitors fees of ~~N~~300,190.00 (Three Hundred Thousand One Hundred and Ninety Naira) for the solicitor's fees incurred for the defence of the Plaintiff's staff, loss of profit ~~N~~835,770.12 (Eight Hundred

and Thirty-Five Thousand Seven Hundred and Seventy Naira, Twelve Kobo) were also claimed against the Defendant. The demurrers paid on the 13 trucks that could not be discharged for 5 days was claimed in the sum of ~~₦~~1,493,021.00 (One Million, Four Hundred and Ninety-Three Thousand Twenty-One Naira). The cost of borrowing the ~~₦~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira) for 54 days as 20% interest from 29<sup>th</sup> June – 19<sup>th</sup> August, 2011 being ~~₦~~187,082.04 (One Hundred and Eighty-Seven Thousand Eighty-Two Naira Four Kobo) as well as the management fee for the loan which is put at ~~₦~~128,840.00 (One Hundred and Twenty-Eight Thousand Eight Hundred and Forty Naira) plus LOT of ~~₦~~32,210.00 (Thirty-Two Thousand Two Hundred and Ten Naira).

P.W.2 also reasons that the Defendant's lawyer, Adekola Mustapha Esq. owed a duty of care to the Plaintiff to ensure that the Plaintiff did not experience any embarrassment or hardship beyond the Judgment sum ordered by the Court on the 15<sup>th</sup> June, 2016. P.W.2 tendered the CTC of the Judgment in Suit FCT/HC/CV/1238/2006 AS Exhibit P.W.2A, the CTC of the first information Report which led to the arrest of the Plaintiff's staff at the Magistrate's Court in Dutse was admitted as Exhibit P.W.2B<sup>1-2</sup>. The Plaintiff's Counsel, E. E. Chukwu Esq. letter dated 6<sup>th</sup> May, 2012 addressed to the Managing Director of

the Defendant wherein Plaintiff demanded for damages occasioned by the failure of the Defendant's Counsel to report the Judgment was admitted as Exhibit P.W.2C<sup>1-5</sup>, another letter dated 13<sup>th</sup> June, 2012 written by E.C. Chukwu Esq. addressed to the Defendant again for damages for the sealing up of the Defendant's premises for 5 days was admitted as Exhibit P.W.2E<sup>1-3</sup>, the Defendant's response vide a letter dated 21<sup>st</sup> November, 2011 wherein the Defendant disclaimed liability for the damages claimed by the Plaintiff was admitted as Exhibit P.W.2F.

P.W.2 also tendered the Plaintiff's salary schedule as well as the salary schedule for the Plaintiff's motor boys. The Plaintiff's staff payment schedule was also admitted as Exhibit P.W.2H<sup>1-5</sup>. A professional fees receipt issued by E.C. Chukwu Esq. was admitted as Exhibit P.W.2J. The bank statement of the Plaintiff reflecting the loan taken to offset the Judgment sum was also admitted in evidence.

Under cross examination, P.W.2 said he was not on site when the Court Bailiff came but later he went to join his staff when they were with the Plaintiff's Manager. He recounted that the Plaintiff's staffs were preventing the Court enforcement officers from entering the Plaintiff's premises. P.W.2 maintained that they weren't aware of the Judgment even though they were aware that the case was pending in Court.



E. C. Chukwu Esq., Plaintiff's Counsel testified as P.W.3, he adopted his Witness Statement on Oath dated 14<sup>th</sup> October, 2013 as his evidence in chief. He disclosed that he filed a Memorandum of Appearance in reaction to the Suit FCT/HC/CV/1238/2006 and also ensured service of a Hearing Notice. He recounted that he brokered a settlement meeting involving all the parties in the suit and the insurers as the parties in the suit around May 22<sup>nd</sup>, 2006 and October, 2006. He noted that the Claimant in Suit FCT/HC/CV/1238/2006 wanted ~~N~~2,000,000.00 (Two Million Naira) at the said meeting which was inconclusive as insurance counsel did not offer any thing acceptable to the Claimants.

On the 12<sup>th</sup> December, 2006 when he appeared in Court on behalf of the Defendant, one Olushola Salawu announced that he was holding brief for Adekola Mustapha Esq. a notice of change of Counsel had been filed to that effect. P.W.3 asserted that he bowed out of the case forthwith. The CTC of the memorandum of appearance and Notice of Change of Counsel, Statement of Defence were admitted as Exhibit P.W.3A<sup>1-5</sup>. Under cross examination, P.W.3 confirmed that he caused parties to meet for settlement thereafter he said he attended another meeting towards settlement in Zone 7, Wuse, Abuja. He recounted that he was initially Counsel for the Defendant in Suit

FCT/HC/CV/1238/2006. He asserted that 5 persons were charged to Court and his firm sent lawyers to secure their bail. He also said that he commenced process to get the Plaintiff's warehouse unsealed. He identified the receipt issued for the professional services rendered by him.

Two witnesses were also subpoenaed by the Plaintiff to testify at trial.

One Alex Augustine Agada, a bank official from First Bank of Nigeria tendered the Bank statement of the Plaintiff as Exhibit P.W.1A<sup>1-13</sup> he was not cross examined.

Finally, the 5 witnesses, P.W.5, Eze Uchenna a Zenith Bank official also tendered the Plaintiff's statement of Account which was admitted as Exhibit P.W5A<sup>1-11</sup>.

The Defendant opened their defence on the 16th April, 2018 and called a lone witness, Onasanya Mustapha. He adopted his witness statement of the 12<sup>th</sup> March, 2014. He said he is the Defendant's Assistant Manager. He asserted that the Defendant is not a party in Suit No. FCT/HC/CV/1238/2006. He denied that the Defendant was aware of the sealing up of the Plaintiff's warehouse by the Court officials of the High Court of the FCT in the company of Mobile Policemen in the execution of the Judgment delivered on the 15<sup>th</sup> April, 2011.

He also disclosed that the Defendant is not aware that the Plaintiff's premises was locked up and their staff beaten up. D.W.1 maintained that the Defendant did not owe the Plaintiff a duty of care nor is the Defendant to advise the Plaintiff's staff not to obstruct the Court officials from carrying out their statutory duties. He further maintained that the Defendant's company is not negligent or responsible for the arrest and detention of the Plaintiff's staff, consequently, the Defendant is not responsible for paying solicitors fees or any damage arising from the alleged arrest, detention, imprisonment or the Plaintiff's loss of business profit.

Under cross examination, D.W.1 admitted that he knew Adekola Mustapha Esq. in recent times in the course of handling cases for the Defendant. He confirmed that Leadway bought over Atlantic. He however denied knowing Perfect Trust Insurance Brokers nor does he have any family relationship with A. Mustapha Esq. He said he has progressed to the Associate Director of the Defendant. He confirmed that when there is a litigation involving the Defendant's client and Defendant's lawyer was involved. He said he is unaware of the payment of ~~N~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira) made to the Plaintiff in August 2011.

At the conclusion of trial, both Counsel filed and exchanged final written addresses. The Defendant filed a written address dated the 23<sup>rd</sup> May, 2019 Adekola Mustapha Esq., in his written address of the Defendant identified two issues for determination they are;

1. Whether the Defendant who was not a party to Suit No. FCT/HC/CV/1238/2006 can be held liable to the Plaintiff for the alleged damages suffered in the execution of the Judgment in the suit against the Plaintiff.
2. Whether the Plaintiff can hold the Defendant liable for the consequences of its illegal and or wrongful action when it deliberately frustrated or attempted to frustrate the execution of the judicial process.

Plaintiff filed a final written address dated 4<sup>th</sup> May, 2019, there, E.C. Chukwu Esq., Counsel for the Plaintiff canvassed two issues for determination, they are;

- a) Whether or not the Plaintiff has proved a case in negligence on the preponderance of evidence to be entitled to Judgment.
- b) Whether the Plaintiff is entitled to damages as claimed.

Before I proceed to consider the submissions of both Counsel, I find it expedient to state the facts that are commonly agreed by the parties in this suit.

Both parties are consensual that the Defendant is the insurer of the Plaintiff's MAN Diesel Trusk No. XC 808 RBC which was insured under policy CV/30/16/000068/L. It is also agreed that the vehicle was involved in a ghostly accident along Abuja Lokoja Road in June 2005 which accident became the subject matter of litigation in Suit FCT/HC/CV/1238/2006.

Though the Plaintiff's Counsel, E.C. Chukwu Esq. was hitherto Counsel representing the Plaintiff (co defendant with Guinness Nigeria Plc in Suit FCT/HC/CV/1238/2006) the Defendant's Counsel, Mustapha Adekola Esq. filed a Notice of Change of Counsel in the aforesaid suit and forthwith acted as the Plaintiff and Guinness Nigeria Plc's Counsel.

It is also agreed that Judgment was ordered against the Plaintiff and Guinness Nigeria Plc in Suit FCT/HC/CV/1238/2006 in the sum of ₦6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira) on the 15<sup>th</sup> April, 2011 issues are also not joined between parties on the fact that the Defendant's Counsel, Adekola Mustapha Esq. did not notify the Plaintiff of the Judgment until the Court Bailiff sealed up the Plaintiff's premises on the 23<sup>rd</sup> June, 2011. Parties are also agreed that the warehouse was opened after 5 days upon the payment the Judgment sum by the Plaintiff. It is also agreed that the Defendant subsequently indentified the Plaintiff with the Judgment sum of

~~N~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira).

Parties are however divisive on the liability of the Defendant in negligence arising from the Plaintiff's perceived breach of duty of care in notifying the Plaintiff of the Judgment sum. The Defendant has also disclaimed liability for the damages claimed by the Plaintiff on account of Defendant's failure to intimate the Plaintiff of the Judgment in Suit FCT/HC/CV/1238/2006.

A. Mustapha Esq. sought to argue both issues formulated by him together.

Learned Counsel for the Defendant further raised the poser on is whether the Defendant can be held responsible for the loss of the case and the attendant consequences of the execution of the Judgment.

Mustapha Esq. commended this Court to the decision in **BRITISH AIRWAYS v. ATOYEBI (2014) 13 N.W.L.R. (PART 1424) page 253** where the essential element of negligence was enunciated in order to succeed on a claim of negligence.

1. The existence of a duty of care owed to the complainant by the Appellant
2. Failure to attain the standard of care prescribed by law.

3. Damages suffered by the complainant which must be connected with the breach of duty to take care.

Mustapha Esq. has submitted that the Plaintiff has not shown any duty of care owed by the Defendant. He posits that the fact that the Defendant engaged the firm of Messrs Adekola Mustapha & Co. to defend the case does not alone without more, hang a duty of care on its neck in favour of the Plaintiff.

The Defendant's Counsel went on to argue that "duty of care" is said to exist where there is sufficient relationship of proximity as between the Defendant and the Plaintiff who suffered the damages such that a reasonable man can conclude carelessness on the part of the Defendant likely to cause the damage. He reasons that no duty of care is owed to the Plaintiff which the Defendant failed to discharge. Mustapha Esq. also wondered whether the fact that the Defendant procured the services of a Counsel does not mean that the Defendant owes the Plaintiff the duty that the case to ensure that the case is not lost and or that the beneficiary of the Judgment should not reap the fruits of his labour.

Learned Counsel for the Plaintiff, E. C. Chukwu Esq. has submitted otherwise. He argued that the action before the Court is predicated on tort and the only duty is to show that a wrongful act has

been committed. He went on to argue that where there are several tortfeasors anyone of them may be sued provided as in the instant case a master and servant relationship exists.

Relying on the decision in **OKEKE v. PETMAY NIG. LTD. (2005) 4 N.W.L.R. (PART 915)** Plaintiff's Counsel has submitted that the servant/agent or the master are equally liable and anyone of them may be sued by the Claimant.

Plaintiff's Counsel has further commended this Court to the decision in **MAKWE v. NWUKOR (2001) F.W.L.R. (PART 63) page 1, SC** where it was held that in a claim of negligence a Plaintiff must establish by evidence;

- a) The existence of a duty of care owed to it by the Defendant.
- b) Failure to attain the standard of care prescribed or breach of that duty by law, and
- c) Damages or injury suffered as a result of the breach.

I am inclined to allude to the submission of the Plaintiff's Counsel that by the insurer/insured relationship between the Plaintiff and the Defendant, the Plaintiff owes a duty of care. Similarly, the principle of *oberima fidei* of utmost good faith binds the insurer and the insured in Insurance Law. The Plaintiff's Counsel has rightly submitted that by the Defendant taking over the defence of Suit No. FCT/HC/CV/1238/2006



the Plaintiff owed the duty of care to in the light of the prosecution of the aforesaid suit by ensuring that the Defendant and the Plaintiff are updated with all the developments in the case particularly on the delivery of the Judgment.

As Counsel engaged by the Defendant, he ought to have intimated the Defendant as well as the Plaintiff of the Judgment, minded that the Judgment sum ordered by the trial Court can be enforced by the successful litigant without any legal obligation to recourse to either of the parties. It is also settled that a person owes a duty of care whenever a reasonable person in the circumstance can foresee the damage, risk or injury that will be occasioned to a person where care is not taken. See the case of **DONUGHUE v. STEVENSON (1951) AC 562 at 580**. Duty of care can be imposed by law or created by contract or trust, see **INTERNATIONAL MESSANGERS NIG. LTD. V. ENGINEER NWACHUKWU (2004) ALL F.W.L.R. (PART 220) page 1216 at 1232–3**.

Learned Counsel for the Plaintiff has argued that it is mandatory for the particulars of negligence to be pleaded. He contends that paragraphs 12 to 19 of the statement of claim copiously pleaded the negligence. The facts that can be discerned in my view from the particulars pleaded are sufficient to establish negligence. The facts

were proved in evidence vide P.W.2 in paragraphs 8, 9, and 12 of the witness statement. The facts that can be discerned from both the Plaintiff's pleading and evidence of the Plaintiff witness is that Adekola Mustapha Esq., Counsel who was engaged by the Defendant filed a notice of change of Counsel and thereafter took over the case as the instructed Counsel for the Defendant. Judgment was delivered against the Defendant on the 15<sup>th</sup> April, 2010 without the knowledge of the Plaintiff. No step was taken by A. Mustapha Esq. to notify the Defendant of the Judgment, in effect the Judgment sum remained unpaid until 19<sup>th</sup> August, 2011. Had the Defendant exercised care by effecting payment of the Judgment sum shortly after the Judgment was delivered or applied for a stay of execution of the Judgment, execution would not have been levied against the Plaintiff on the 23<sup>rd</sup> June, 2011, over two months after Judgment had been delivered.

The Defendant's Counsel has submitted that the Plaintiff could not show any concrete evidence that the Defendant was careless in procuring the legal services of the Counsel. A. Mustapha Esq. or that it was the carelessness of A. Mustapha Esq. that gave rise to the damages suffered, then no duty of care can be informed to make the Defendant liable in negligence.

I do not find any merit in the submission of Counsel for the Defendant. As hitherto noted in this Judgment, an agent/principal relationship exists between the Defendant and the instructed counsel, Adekola Mustapha Esq. Both the servant/agent or the master are severally liable and any of them can be sued as in the instant case. The Plaintiff's case of negligence as I see it and I will also hold is that the negligence is not predicated on the fact that the Defendant's Counsel lost the case.

The Plaintiff's grouse as I understand it and is that neither the Defendant nor the Defendant's solicitor took the reasonable and appropriate step, which inaction resulted to the damages suffered by the Plaintiff. It must be recounted that the Judgment sum ordered forms part of the risk or injuries insured by the Plaintiff under the insured/insurer's relationship between both parties.

Putting it another way the Defendant remains obliged to pay the Judgment sum where the suit is defended by the Plaintiff's Counsel in Suit FCT/HC/CV/1238/2006 and the Defendant would still be liable to pay for the damages occasioned by its delay in settling the Judgment sum timeously or its failure to proceed to apply for stay of execution or for failure to take any steps that would preclude the Plaintiff from suffering injury or damage.

Learned Counsel for the Defendant has submitted that the duty of care does not exist and even if it does exist, the duty is too remote to give rise to any claim in negligence against the Defendant. Mustapha Esq. commended this Court to the case of **MTN NIG. COMMUNICATIONS LTD. V. SADIKA (2014) 17 N.W.L.R. (PART 1436) page 382 at 411**, there, the Court of Appeal held that thus: *“What is required to succeed in a claim on the tort of negligence primarily is to prove the existence of a legal duty of care and to go further to establish that there was a breach of such duty of care consequent upon which damage injury or economic loss was suffered”*

I am of the view and will so hold that the foregoing decision aids the case of the Plaintiff rather than that of the Defendant. The Defendant in this case as this Court sees it, is the insurer who is expected to insure the Plaintiff against risks covered by the insurance policy it is assumed. Going by the fact that the Defendant indemnified the Plaintiff for the Judgment sum ordered in Suit FCT/HC/CV/1238/2006 the Defendant has a legal duty to pay for injuries arising under the policy which is the claim of the Plaintiff in Suit FCT/HC/CV/1238.

This being the case, the Defendant was under a duty to ensure prompt payment to avoid any damages(s) that may arise out of

Defendant's legal duty to indemnify Plaintiff from the outcome of the case in Suit FCT/HC/CV/1238/2006.

Having set at paragraphs 17 and 18 of the Plaintiff's pleadings the Defendant's Counsel raised two posers as follows;

- a) How does the Counsel engaged to defend the Plaintiff who appeared for the Plaintiff in that case become the Defendant's Counsel.
- b) How could the Defendant have appealed against the Judgment in which it was not a party or pay Judgment sum not awarded against it or apply to stay execution of the Judgment?

Learned Counsel for the Defendant has submitted that the Plaintiff must plead contractual documents from where an inference can be drawn on the Plaintiff's legal right that could lead to its breach before the Court. I am of the view that parties are consensual that the Plaintiff vehicle is insured by the Defendant under the insurance policy admitted as Exhibit P.W.1A<sup>1-4</sup> and parties are also consensual on the fact that the Defendant indemnified the Plaintiff for the Judgment sum. The deduction from these facts is that the Defendant is under a legal duty as an insurer to be liable to the Plaintiff, moreso as it went further to engage

Counsel to defend Plaintiff in a suit filed by victims of the ghastly accident involving one of the vehicles insured by the Plaintiff.

The Defendant is thus in the position of a master or agent/principal relationship with the Defendant's Counsel making the Defendant vicariously liable for the conduct of the Defendant's Counsel.

Both posers raised by the Defendant's Counsel are misplaced. The issue is not whether the Defendant who is not a party in the suit apply for a stay of execution or appeal against the Judgment. The issue for resolution is whether the Defendant is under an obligation or under a duty of care to notify the Plaintiff of the Court's Judgment timeously in order to avert the damages that are reasonably foreseeable to occur when such duty of care is breached. Having provided legal representation in Suit FCT/HC/CV/1238/2006 for an on behalf of one of its insured clients, it behoves on the Defendant's Counsel to have promptly notified his principal or principal's client on any development in the Judgment that has far reaching consequences should he failed to do the notify timeously.

Had the Defendant's Counsel notified the Plaintiff of the Judgment and the foreseeable consequences of non compliance with the Court's Judgment, the Defendant would have been absolved of the damages now being claimed by the Plaintiff.

This Court's answer to Defendant's issue one is answered in the affirmative, I hold that the Defendant was in breach of the duty of care of taking prompt or necessary steps to prevent the enforcement of the Judgment and the associated damages occasioned to the Plaintiff on the 23<sup>rd</sup> – 27<sup>th</sup> June, 2011. See again the decision in **MTN NIG. COMM. LTD. V. SADIKU (2014) 17 N.W.L.R. (PART 1436) page 382 at 411.** I am not of the view and therefore disinclined to endorse the submission of Defendant's Counsel that the Plaintiff had itself to blame. It amounts to having logic stand on its head by such contention. Mustapha Esq. was under an obligation to intimate his client and/or the Plaintiff on the consequences of not taking necessary steps to pay the Judgment debt.

This takes me to the Plaintiff's first issue for determination I am of the view and will so hold that the Defendant's Counsel was negligent going by this Court's evaluation of evidence. Here, it is recounted that D.W.1 under cross examination admitted that the Defendant's instruction to act as their Counsel to defend their client/customers in Court. It is also not disputed that the Adekola Mustapha Esq. filed a Notice of Change of Counsel which effectively substituted E.C. Chukwu Esq. with himself E.C. Chukwu Esq. had hitherto been engaged by the Defendant's Counsel in Suit FCT/HC/CV/1238/2006, in the circumstance

the Defendant is liable for the acts or inactions of their Counsel or agent in a case of tortious liability such as in the instant case.

That said, I now turn to issue two formulated by the Plaintiff's Counsel, that is, whether the Plaintiff is liable to claim damages against the Defendant.

The Plaintiff's Counsel has rightly submitted that negligence in tort means blame worthy conduct because it misses the legal standard required of a reasonable person in protecting individuals/corporate bodies against foreseeable, risky, harmful acts or other members of the society negligent acts/omissions towards others gives them right to be compensated for the harm to their body, property, mental well being financial status or relationships. He went further to commend this Court to the decision in **MAKWE v. NWUKOR (2001) F.W.L.R. (PART 63) 1 at 16 SC** where it was held that negligence is a breach of duty of care imposed by common law or statute resulting in damage to the Plaintiff. It is estimable duty of care is owed when there is failure to attain the standard of care prescribed by law, which gives rise to damages.

I am inclined to allude with the submissions of the Plaintiff's Counsel that the existence of a duty of care extends to professionals inclusive of the legal profession. Failure to report the Judgment ordered against a party whom one is providing legal representation amounts to



negligence as is actionable where damage is results. I am also inclined to find forceful the argument of E.C. Chukwu Esq., Counsel for the Plaintiff that in order to succeed in negligence, the ensuing damage must be the direct consequence of the detriment to the victim or Plaintiff. The negligence here is the failure to report the Judgment ordered by the Court and the damage is the damages arising from the execution of the Court's Judgment, in other words the execution of the 23<sup>rd</sup> June, 2011 would have been obviated had the Judgment ordered in April, 2011 been promptly disclosed to the Plaintiff within reasonable time. It would have been left to the Plaintiff and or the Defendant to either file an appeal, apply for a stay of execution or pay off the Judgment debt of ~~N~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira) timeously. Failure to intimate these options to the Plaintiff by one who is professional conversant with the implications of ignoring the Judgment ordered by the Court is in my view and I will so hold, negligence which has resulted to the damages claimed by the Plaintiff.

In this case, diverse claims of damage has been made by the Plaintiff, I will proceed to examine the various reliefs sought.

The Plaintiff in paragraph 27 and 28 of the statement of claim prayed the Court for ~~N~~4,777,133.26 (Four Million, Seven Hundred and Seventy-Seven Thousand One Hundred and Thirty-Three Naira Twenty-

Six Kobo) as special damages and ~~₦~~10,000,000.00 (Ten Million Naira) general damages.

The Plaintiff in paragraph 23 has claimed damages in the sum of ~~₦~~348,132.14 (Three Hundred and Forty-Eight Thousand One Hundred and Thirty-Two Naira Fourteen Kobo) being the cost of borrowing the Judgment sum of ~~₦~~6,442,000.00 (Six Million Four Hundred and Forty-Two Thousand Naira). It is recounted that the Plaintiff was constrained to pay the Judgment sum on the 27<sup>th</sup> June, 2011 whilst the Defendant indemnified the Plaintiff on the 19<sup>th</sup> August, 2011. COT was noted as ~~₦~~32,210.00 (Thirty-Two Thousand, Two Hundred and Ten Naira), the management fee for the loan was ~~₦~~128,840.00 (One Hundred and Twenty-Eight Thousand Eight Hundred and Forty Naira) and interest at 20% per annum was charged from 27<sup>th</sup> June, 2011 to 19<sup>th</sup> August, 2011 at ~~₦~~187,082.14 (One Hundred and Eighty-Seven Thousand Eighty-Two Naira Fourteen kobo).

Plaintiff's evidence in this regard was not controverted, accordingly, I hold that his aspect of the Plaintiff's claim succeeds.

The Defendant is to pay the sum ~~₦~~348,132.14 (One Hundred and Eighty-Seven Thousand Eighty-Two Naira Fourteen kobo) being the cost incurred for the repayment of the Judgment sum.

On the claim for loss of profit amounting to 5 days salaries paid to Plaintiff's staff for work not done as a result of the sealing up, the Plaintiff relied on the salary voucher for June in furtherance of its claim of ~~N~~835,770.12 (Eight Hundred and Thirty-Five Thousand, Seven Hundred and Seventy Naira, Twelve Kobo) in this regard I have examined Exhibit P.W.2H<sup>1-5</sup>.

The documents are respectively titled Motor Boys Wages for the month of June 2011, 2011 USM Incentive Kubwa, monthly staff Emolument Form, June 2011, Loaders Wages for the month of June and USM salary for the month of June. Aside from rendering this document by P.W.2 at trial no explanation whatsoever was elicited by the witness to connect Exhibit P.W.2H<sup>1-5</sup> to period when the Plaintiff's premises was sealed up. No evidence was adduced to link the claim of ~~N~~835,770.12 (Eight Hundred and Thirty-Five Thousand, Seven Hundred and Seventy Naira, Twelve Kobo) to the salary voucher. The point that is being made is that this Court was left to conjecture the amount payable or paid for 5 days out of the monthly salary of the hired staff for the month of June. How the sum of ~~N~~835,770.12 (Eight Hundred and Thirty-Five Thousand, Seven Hundred and Seventy Naira, Twelve Kobo) was arrived at for this leg of claim cannot in any way be deciphered from the bundle of documents admitted as Exhibit P.W.2H<sup>1-5</sup>.

In short, Exhibit P.W.2H<sup>1-5</sup> does not create a nexus with the amount being claimed as loss of profit. Similarly, on the claim for demurrage paid for the 5 days of the 13 trucks whose goods cannot be discharged, again this Court was kept in the limbo on the proof required to substantiate the claim of ₦1,493,021.00 (One Million Four Hundred and Ninety-Three Thousand Twenty-One Naira) this point was not disclosed in evidence.

Indeed, the attention of the Court was not drawn to documents in respect of this leg of the Plaintiff's claims hence this Court is at a loss on the facts upon which the sum of ₦1,493,021.00 (One Million Four Hundred and Ninety-Three Thousand Twenty-One Naira) was predicated.

Besides, the Plaintiff is claiming the sum of ₦300,000.00 (Three Hundred Thousand Naira) solicitors fees for the unsealing of the premises and legal representation of the 4 members of staff of the Plaintiff.

Learned Counsel for the Defendant has rightly submitted that this leg of claim flows directly from the sealing of the warehouse. Going by the Plaintiff's case specifically, paragraph 9 of the statement of claim, Plaintiff averred that some of the Plaintiff's staff were arrested and detained for "daring to challenge" the Court Bailiff. It is not in contention

that the execution or enforcement of the Judgment of the Court was legal and valid. It follows that the Plaintiff's staff put up resistance to preclude the Court Bailiffs from carrying out the warrant of execution on that day. I am of the view that such illegal act cannot be as envisaged as a foreseeable damage. In other words, the defence of the unlawful act of the Plaintiff's staff by challenging officers of Court who were acting in furtherance of a lawful enforcement cannot be endorsed as a bill payable by the Defendant in damages.

This cannot be said about the legal fees professional fees paid by the Plaintiff for unsealing its premises. A careful examination of Exhibit P.W.2J, the solicitor's fees for legal representation by E.C. Chukwu & Co. reflects the sum of ~~N~~300,190.00 (Three Hundred Thousand, One Hundred and Ninety Naira) only, being payment for case of **C.O.P v. BABANGIDA & 3 ORS** plus services in reopening of premises.

Much as I am of the view that the sealing up of the Plaintiff's premises is a reasonable act in the enforcement of the Court's Judgment, it is impossible to determine the quantum of professional fees paid by the Plaintiff to its Counsel for the unsealing of the premises and the amount paid for representation in the case of **COP v. Babangida and ors**. this being the case, the claim on legal fees fails. It is not for this Court to sift what was paid for execution from what was paid for the

staffs engaged in the prevention of Court officers carrying out the attachment.

Finally, on the Plaintiff's case for general damages, I am in agreement that the award of general damages is not predicated on pleadings and evidence elicited at trial. It is a compensatory claim given at the discretion of the Court. It flows from the wrong and the injury occasioned by the wrongdoing. The sealing has no doubt led to a paralysis of the Plaintiff's activities albeit for 5 days with the attendant inconveniences, need to raise funds to offset the Judgment sum, need to raise funds to open the premises and the avoidable embarrassment occasioned by the needless breach of a duty of care by the Defendant.

In the circumstance, I hereby award damages in the sum of ₦1,000,000.00 (One Million Naira) against the Defendant.

**O.O. Goodluck,**  
***Hon. Judge.***  
**25<sup>th</sup> February, 2020**

**APPEARANCE**

**Parties absent**

**A. Ayopemi Ms.: For the Defendant**

**Plaintiff is absent**