IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 22 WUSE ZONE 2 ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE DAY OF 12TH MARCH, 2020

SUIT NO: FCT/HC/CV/2507/17

BETWEEN:

BLESSING CHRISTOPHER ---------- PLAINTIFF

AND

NIGERIAN BOTTLING CO. PLC ---------- DEFENDANT

Parties are absent

OLIVER EYA *holding the brief of* ***OLUGBENGA ADEYEMI*** *appears with* ***IFEANYI EZECHUKWU*** *for the Plaintiff.*

KELVIN KELTUS *for the defendant.*

JUDGEMENT

The plaintiff's claim is based on product liability arising out of allegation of consumption of contaminated bottle of Coca-cola, which she claimed resulted into injury to her health and other damages.

The plaintiff operates a mini restaurant where she sells cooked food and defendant's brand of product like Coca-cola, Fanta, Sprite, etc. Sometime in March 2016, she bought from the defendant's agent at Durumi II, two (2) crates of Coke, one (1) crate of Fanta and one (1) crate of Sprite to stock her shop. And out of the product she drank a bottle of Coca-cola and after about two hours she developed stomach upset followed by constant stooling. Her situation got terrible that some sympathizers rushed her to a nearby pharmaceutical store where she bought Flagyl which she took but to no avail. On enquiry she informed her sympathizers that she just drank a bottle of Coke a few hours ago. And based on this information the sympathizers started

observing the remaining bottle of drinks and it was discovered that bottles Fanta and Sprite which are the only drinks that are transparent are full of black particles, strange substances and dirt.

She could not afford to seek medical attention in a hospital in Abuja, so she continued with the Flagyl for about two (2) days without any improvement. On the third day she heeded the advice of her parents by travelling to her village Amaohoho in Igueben Local Government Area of Edo State to seek for medical attention. She spent more than two weeks in her village and was attended to by a native doctor called Chief Aniyanmemkpeng Agadaga who administered local herbs on her and was completely cured of the food poisoning resulting from the consumption of the defendants products. She laid a complaint to the defendant's agent at Durumi II about the incident but was referred to Jabi Road Depot. And on getting there she was casually attended to by the staff who advised her to drop the contaminated drink for a replacement. The plaintiff claimed that the consumption of the contaminated drink has adversely affected her health and petty business. It has also damaged her restaurant patronage. Her income was also affected when she travelled home for treatment. Her Solicitor wrote a letter on her instruction on 8/8/2016 complaining about the pain, loss and inconveniences she suffered. The plaintiff is therefore claiming against the defendant as follows:

1. An Order of Court directing the defendant to tender a formal/official and unreserved apology vide a letter to be written by the defendant to the plaintiff.
2. An Order of Court directing the defendant to pay to the plaintiff a sum of N31,000 (Thirty One Thousand Naira Only) being special damages.

   Particulars of Special Damage

vi. Cost of Flagyl	**₦1,000**
vii. Transportation from Abuja to plaintiff's village	**₦5,000**
viii. Transportation from Plaintiff's village to Abuja	**₦5,000**
x. Treatment of Plaintiff at her village	**₦5,000**
xi. Loss of revenue for two (2) weeks	**₦15,000**
Total	**₦31,000**

3. An Order of Court directing the defendant to pay to the plaintiff the sum of **₦200,000,000 (Two Hundred Million Naira Only)** being general damages to the plaintiff arising from the defendant's illegal and unlawful sale of contaminated and adulterated drinks to the plaintiff and her customers and the attendant consequence.
4. The cost of this action assessed at **₦1,000,000 (One Million Naira Only)**.

The plaintiff adopted her written statement on oath in proof of her claim. The witness statement on oath is akin to the statement of claim. She tendered two (2) bottles of drink as Exhibit A & B while the letter from her Solicitor was admitted as Exhibit C.

Under cross-Examination the witness answered to a question that she eats every morning and that throughout the days in the first week of March she ate in the morning. She does not have anything to show that the person she bought her crate of drinks from was an agent of the defendant. To another question she testified that she has a report but not from a Medical Doctor. Her friend gave her the medical report. Her friend is not a Medical Doctor but knows something about pain. The report was not with her in court. She also informed the court that she finished the drink without remaining anything in the bottle. She did not take any of the drinks for Medical test. She confirmed to the court that the bottle she brought to the court were sealed and she did

not drink out of it. When asked to show the receipt of the transport she took home, she said it was missing. She also had no receipt for her treatment at home. She also did not take the drink to the Herbalist for Medical test. The cross-examination ended with this answer. She was re-examined as to whether after the incident she went to hospital and she answered in the negative.

The defendant on the other hand filed its statement of defence out of time with the leave of court. It averred that the defendant's product was not the cause of the food poisoning alleged by the plaintiff. It denied that the plaintiff suffered any injury to her health that required medical attention. That if it was true that the plaintiff suffered physical illness, that it is possible that anything the plaintiff consumed on that day she allegedly took the defendant's product could have caused the symptoms complained about.

The defendant further averred that the black particles, strange substances and dirt allegedly found in the Fanta and Sprite by the plaintiff could only have been as a result of faulty storage or handling by dealers or distributors or even retailers like the plaintiff herself as such substances cannot be found in the defendant's production facility. The defendant claimed that it has a meticulous bottling process carefully designed and strictly followed to ensure that foreign particles or harmful substances are not found in any bottle of Coke, Fanta, Sprite or Limca or any other drinks produced by the defendant. That the products follows a stringent quality control process which ensures safety and quality of every product that reaches its consumers.

The defendant gave a detailed account of the process steps and stage of its production process and their stringent quality control measures adopted by it in ensuring that its products are fit for consumption. The processes are as spelt out in paragraphs 21-24 of their pleadings. That as a testament of its

production process meeting internationally certified production standard and best practices it had in the course of time received certifications from SGS Limited, Kingdom Limited, Systems and Certification, SGS Societe General de Survelance SA Zurich, Switzerland for the following category:

(a) ISO 9101 2008
(b) ISO 22000 2008
(c) OHSAS 19001 2007
(d) Food and Safety System Certificate

The defendant also averred that throughout the defendant's production chain, various quality assurance tests are carried out in order to ensure safety and quality of every product that the defendant's consumers. The defendant denied being negligent in the production and bottling of its product to the plaintiff or someone else.

The sole witness for the defendant **Adeyemi Hezekiah** adopted his witness statement on oath on the 23/10/18. He is the Quality Assurance Manager. He has been working with the defendant for four (4) years.

Under cross-examination he stated that he has a degree in Food Science & Technology and a second degree in Human Nutrition and Dietaries from the University of Agriculture Abeokuta. To a question he said he is not the only one that is involved in the production of the products and does not work for twenty four (24) hours in the company. He was not there when the plaintiff consumed the product and also did not know whether what she consumed was Coca-cola product or not. He admitted not being in total control of producing the Coca-cola but there is a process to check back to cover the 24

hours production and ascertain the quality. That there are also measures to check whether the bottles are particle free.

Lastly he said he could produce evidence of his being the Quality Assurance Manager if asked to do so. He was not re-examined and the defendant closed its case on this note.

The parties were ordered to file and exchange final written addresses in accordance with the rules of court. On the 21st of January 2019, the defendant's was granted leave to file and serve its written address out of time and also an Order deeming the address as properly filed and served the necessary filing fee having been paid. Both parties adopted their final written address and matter was adjourned to 28/3/19 for judgement. Unfortunately the judgement could not be delivered as scheduled due to the intervening National Assignment at the Elections Tribunal by the Court.

The final written address of the defendant was adopted by Tunde Onamusi. He urged the court to dismiss the claim of the plaintiff because there is no nexus disclosed between the product of the defendant that the plaintiff claimed to have consumed and the illness she allegedly suffered. He argued that there is no direct or positive proof that the product of the defendant caused her stomach upset. And she has also not stated that coke was the only thing she consumed on that day before the alleged ailment suffered.

He further submitted that the plaintiff on this negligent action failed to plead or prove any particulars of negligence, and has not proved any res ipsa loqiutor in her statement of claim. Furthermore Learned Counsel submitted that the plaintiff did not call any Traditional Medical Practitioner which she claimed attended to her to state that it was the defendant's product that caused the

aliment she was actually treated of. That Exhibits A1 and A2, the unopened bottles of the defendant's product are completely useless piece of evidence. That the fact that the bottles were sealed showed that the plaintiff did not drink from them and has therefore proved nothing. That there was no resulting damage proved as such. He submitted that the plaintiff's claim is lacking merit and urged the court to dismiss it with substantial cost.

The plaintiff on the other hand in her final written address adopted by O. O. Alao formulated two (2) issues for determination to wit:

(1) Having regard to the pleadings and the unimpeached evidence of the plaintiff as PW1, whether the acts of negligence are not established by the plaintiff against the defendant.
(2) Whether or not the plaintiff is entitled to the claim in the writ of summons including damages (Special, general and cost of action) against the defendant for its illegal act.

I have carefully gone through the written arguments of counsel to the parties and all the authorities cited in support, the Issue 1 formulated by the plaintiff revolve around negligence, failure to exercise duty of care in the production of defendant's product, and the attendant injury to the health of the plaintiff. It is imperative to state that in the case at hand and other similar cases, that bothers on product liability, negligence on the part of the producer must be proved before liability can be established and the proof is the same as in any other case of negligence. What then is negligence and how is it proved. Negligence has been defined in a plethora of cases as breach of duty of care, lack of proper care and attention, reckless conduct, etc. in the case of **OKWEGIMINOR V GBAKEJI (2008) AFWLR PT. 409 PG 405 @ P442-443 PER G-**

B also referred to by the plaintiff in her final written address **Per Muhammed JSC**, negligence is defined as;

"Omission to do something which a reasonable man guided upon those conditions which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. In strict legal analysis, negligence means more than heelless or careless conduct, whether as omission or commission, it properly connotes the complex concept of duty, breach and damage thereby omitted by the person to whom the duty was owing."

See **ADESINA V PEOPLE OF LAGOS STATE (2019) LPELR 46403 SC; IGHRERINIORO V SCC NIGERIA LTD (2013) LPELR 20336 SC.**

On how negligence is proved, the plaintiff must plead the particulars of negligence and lead evidence in prove of the particulars so pleaded. See the case of **KOYA V UBA LTD (1997) LPELR 1711 SC** where the Supreme Court held:

"The one issue that ought to be stressed is that a plaintiff as a matter of law is required in an action on negligence to state or give particulars of negligence alleged and to recover on the negligence pleaded in those particulars. It is not sufficient for a plaintiff to make a blanket allegation of negligence against a defendant.

In a claim on negligence without giving full particulars of the items of negligence relied on as well as the duty of care owed to him by the defendant. See ***MACHINE UMUDIJE & ANO V SHELL BP PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD (1975) 9-11 SC 155 @ 160-167.*** *As was explained quite rightly by* ***Milles J.*** *in* ***GEUTRET V EGETON !867 LR 2CP 371 @374****; "The plaintiff must in his declaration give the defendant notice of what his complaint*

is. He must recover Secutralum Allegata et probats what is that a declaration of his sought. (ie of negligence) should state in order to fulfill those conditions . It ought to state the facts upon which he supposed duty is founded and the duty of the plaintiff with the breach of which the defendant is charged. It is not enough to show that the defendant has been guilty of negligence without showing in what respect the negligence was, and how he became bond to use care to prevent injuries to others." Accordingly, in an action on negligence, a plaintiff to succeed must in addition to pleading and establishing the particulars of negligence relied on he must also state and establish the duty of care owed him by the defendant, the fact upon which the duty is founded and the breach of that duty by the defendant."

The plaintiff's counsel argued and rightly too that to succeed in action for negligence, the plaintiff must prove;

a. That the defendant owes plaintiff duty of care.
b. That the defendant has breached its duty of care.
c. That the plaintiff suffered damage as a result of the breach.

It is not in doubt that the defendant like any other manufacturer of products meant for consumption have a duty of care to their consumers in ensuring that the products are right, fit and safe for human consumption. It is a fact that is not negotiable. Therefore a claimant who alleges injury to his health as a result of consumption of a defect in a product must prove that manufacturer did not take reasonable care in the production of the product consumed. In the case of **DONOGHUE V STEVENSON 1932 AC 562 @ 622** which is a Locus Classicus on negligence **Lord Macmillan** said:

"There is no presumption of negligence as the present, nor is there any justification for applying the maximum reipsa loquitor. Negligence must both be averred and proved."

In the instant case, the particulars of negligence were not pleaded by the plaintiff. The defendant's averment and evidence of the detailed process of the production was not contradicted or controverted by the plaintiff. I agree with the position of the Learned Counsel to the defendant that there was no nexus between the alleged illness of the plaintiff and the product she claimed she consumed. There was no laboratory test confirming that.

She agreed under cross-examination that she consumed or ate before taking the bottle of Coca-cola that afternoon. She therefore cannot say categorically whether it was the food she ate that caused the alleged food poisoning or the product of the defendant. It is important that the plaintiff establish that the stooling was a direct result of the bottle of Coca-cola that she consumed. There is no evidence establishing the fact that the bottles of Fanta tendered as Exhibit by the plaintiff were from accredited dealers or agents of the defendant.

I also agree with the defendant's position that failure of the plaintiff to produce a Medical Report or call the Herbal Doctor that treated her of the alleged food poisoning to confirm that it was as a result of the product of the defendant or even produce a Medical Laboratory result is fatal to her case. It is essential that the plaintiff bring to the fore all the essential elements that constitute negligence on the part of the defendant in order to succeed in the action. What the plaintiff did in the instant case is mere speculation and to endorse such act is tantamount to opening door to barrage of litigations based on frivolous and speculative conjectures by litigants. The onus is on the

plaintiff to establish by preponderance of evidence that there exist a duty of care by the defendant and that there was a breach thereof which is linked to her complaint. And also the resultant damages. See the provision of Section 133 (1) of the Evident Act which states that in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgement of the court would be given if no evidence were produced on either side regard being had to any presumption that may arise in the pleadings.

See the case of **N.B. Plc V AUDU (2009) LPELR 8863 CA** also referred to by the defendant's counsel in his final written address where the Court of Appeal Per **Omoleye JCA** held;

"In the case of NBC PLC V OLANREWAJU (2007) 5 NWLR (PT. 1027) PG 2551 this court held that there is enough Medical and Science Laboratory advancement in this country for a plaintiff in circumstance similar to those of the instant case to have taken full advantage of in determining whether or not the drink in dispute was contaminated, noxious and actually led to the illness of the consumer/plaintiff in that case. I feel strongly compelled to reiterate hereunder as follows the very lucent opinion of Ogunwymiju JCA in the said case of NBC PLC V OLARENWAJU Supra at Page 269 Paragraph C-P."

The Benin Division of this Court decided in **NBC V OKWEJIMINOR (1998) 8 NWLR (PT. 56) PG 295 @ PG 309** that:

"The onus was on the cross appellant/respondent to discharge the burden of proving the accretion that the Fanta he drank caused his illness. The Learned Justice of the Court of Appeal appeared to have demanded a high standard of proof from the complainant in food poisoning suggested and the subsequent

ailment of the complainant. I have no reason to disagree with this stand. To make the standard of proof less might open a floodgate of litigation based on spurious and untrue assertions against manufactures. This would have the reverse effect of defending the very mischief sought to be cured by placing a burden of care on the manufacturer of consumables. As opined earlier, there is a high standard of advancement in technology in Nigeria to enable a serious person aggrieved by the negligence of multinational companies to affix liability on them by linking their product directly with the ailment complained of."

I agree with the defendant's counsel that the plaintiff's claim to special damages is not supported by evidence whether credible or not. Her claim that she bought flagyl, antibiotics, transported herself to the village and back to Abuja, and loss revenue for two weeks were unsupported claims. The plaintiff ought to have strictly proved the items of special damages listed in her Writ of Summons. There was no production of a single receipt to buttress her claim.

At this juncture I can safely conclude that the plaintiff have failed to discharge the onus placed on her, and by her failure to adduce credible evidence in support of her claim, the burden has therefore not shifted to the defendant as there is practically nothing to defend. The claim of the plaintiff fail in its entirety and it is hereby dismissed.

Signed

Hon. Judge

12/3/2020

KELVIN KELTUS: We shall be asking for cost of **₦5,000,000 (Five Million Naira)**.

OLIVER EYA: We oppose the application for cost.

COURT: I have considered the application for cost, the sum applied for appears too homongus. The plaintiff is a Petty Trader and court does not give an Order that will be difficult and unrealistic to enforce. Consequently I hereby award the sum of **₦50,000 (Fifty Thousand Naira)** as cost against the plaintiff.

Signed

Hon. Judge

12/3/2020