IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS MONDAY, THE 7TH DAY OF DECEMBER 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1836/18

BETWEEN:

EMMANUELLA SENLONG…….....CLAIMANT

AND

1. ARTEE INDUSTRIES LIMITED
2. HALOGEN SECURITY CO. LIMITED } **.....DEFENDANTS**

JUDGMENT

The Plaintiffs' claims against the Defendants as endorsed on the writ of summons and statement of claim dated 18th May, 2018 are as follows:

i. **A Declaration that the Defendants, jointly and severally, owe a duty of care to the 1st Defendant's customers in respect of their properties, wares and cars parked within the 1st Defendant's business premises at No. 740 Aminu Kano Crescent, Wuse 2, Abuja and under the protection of the 2nd Defendant.**

ii. **A Declaration that the Defendants, jointly and severally, breached the duty of care they owed to the Claimant when they failed to prevent the break-in and theft of the contents of the claimant's car (parked in the 1st Defendant's business premises at No. 740 Aminu Kano Crescent, Wuse 2, Abuja and under the 2nd Defendant's protection) which occurred on the 26th day of March, 2018.**

iii. **A Declaration that the Defendants are jointly and severally liable to the claimant in damages for their breach of the duty of care they owed the Claimant in failing to prevent the break-in and theft of the contents of the Claimant's car (parked in the 1st Defendant's business premises at No. 740 Aminu Kano Crescent, Wuse 2, Abuja and under the 2nd Defendant's protection) which occurred on the 26th day of March, 2018.**

iv. **An Order of Specific damage jointly and severally against the Defendants in the sum of N540, 468 only, being the cumulative cost of the items stolen from the Claimant's car (parked at the 1st Defendant's business premises and under the protection of the 2nd Defendant) on the 26th day of March, 2018, the particulars of which are as follows:**

a. **MacBook Air 13 – inches valued £864, the Naira equivalent being N424, 088 calculated at N492 to £1 as 17/5/17.**
b. **MacBook Air 13 – inches cover valued at £14.40, the Naira equivalent being N7, 084 calculated at N492 to £1 as 17/5/17.**
c. **Spectranet Mifi (Model M022T) valued at N20, 000.**
d. **Brown Carvela Bag valued at £45.83, the Naira equivalent being N22, 548 calculated at N492 to £1 as 17/5/17.**
e. **16GB USB Flash Drive valued at N3, 000.**
f. **Mac studio Fix powder £24.50, the Naira equivalent being N12, 054 calculated at N492 to £1 as 17/5/17.**
g. **Mac and Classic Lipsticks valued at £17.50, the Naira equivalent being N8, 610 calculated at N492 to £1 as 17/5/17 and N1, 000 respectively.**
h. **Lip Balm valued at N500.**
i. **Moschino Perfume valued at £42, the naira equivalent being N20, 664 calculated at N492 to £1 as 17/5/17.**
j. **Samsung A5 2017 Travel Charger valued at N5, 000.**
k. **USB Chord valued at N1, 000.**
l. **Ear piece valued at £10 the naira equivalent being N4, 920 calculated at N492 to £1 as 17/5/17.**
m. **Cost of fixing the shattered window N10, 000.**

v. An Order of General damages jointly and severally against the Defendants in the sum of N5, 000, 000.00 (Five Million Naira) only for the Defendants' breach of their joint duty of care to the Claimant leading to the break-in and theft of the contents of the Claimant's car on the 27th day of March, 2018.

vi. An Order directing the Defendants to pay the plaintiff interest of 10% per annum on the judgment sum from the date of delivery of the judgment till the judgment sum is fully liquidated.

vii. An Order directing the Defendants to jointly pay the cost of this action assessed at N5, 000, 000.00 (Five Million Naira).

viii. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

The 1st Defendant's statement of defence is dated 23rd January, 2019 but filed on 24th January, 2019 while the 2nd Defendant's statement of defence is dated 14th September, 2018 and filed same date at the Court's Registry.

The claimant filed replies to the above processes both dated 25th March, 2019.

In proof of her case, the claimant called two (2) witnesses. The **claimant** herself testified as PW1. She deposed to three witness depositions as follows: (1) The first deposition is dated 18th May, 2018 (2) The other two depositions are both dated 25th March, 2019. She adopted these depositions at trial and tendered in evidence, the following documents, to wit:

1. Copy of P.O.S. (Point of Sale Slip) issued by 1st defendant was admitted as **Exhibit P1.**

2. Three (3) copies of Receipts from Apple, Spectranet and Kurt Geiger were admitted as **Exhibits P2 a, b and c.**

3. Letter by the law firm of Ahmed Raji & Co dated 29th March, 2018 to 2nd Defendant was admitted as **Exhibit P3**.

4. Copy of DHL Express Courier Receipt was admitted as **Exhibit P4**.

5. Letter by 2nd Defendant to the law firm of Ahmed Raji & Co dated 3rd April, 2018 was admitted as **Exhibit P5**.

6. Copy of Letter titled "Complain of Robbery" by Claimant to Manager Spar, Park and Shop dated 26th March, 2018 was admitted as **Exhibit P6**.

7. Statement of Account of claimant was admitted as **Exhibit P7**.

8. Letter by the law firm of Ahmed Raji & Co to the 1st defendant was admitted as **Exhibit P8**.

9. Copy of Extract from the Police Crime Diary was admitted as **Exhibit P9**.

10. Two (2) photographs were admitted as **Exhibits P10 a and b**.

11. Certificate of Compliance by the law firm of Ahmed Raji & Co was admitted as **Exhibit P11**.

PW1 was then cross-examined by both counsel to the 1st and 2nd Defendants respectively.

Doyinsola Alege then testified as PW2. She deposed to a witness deposition dated 25th March, 2019 which she adopted at the hearing. She tendered in evidence nine (9) photographs which she said she took herself and these were admitted in evidence as **Exhibit P12 (1-9)**. PW2 was equally cross-examined by both counsel to the 1st and 2nd defendants and with her evidence, the claimant closed her case.

The 1st defendant on its part called only one witness. **Mr. Sunday Etim**, Admin Manager of 1st defendant testified as DW1. He deposed to a witness statement on oath dated 22nd March, 2019 which he adopted at plenary hearing. He tendered in evidence the following documents:

1. Tenancy Agreement between Lo'nice Nigeria Ltd and Artee Industries Ltd was admitted as **Exhibit D1**.

2. Copy of Contract Agreement between 1st and 2nd defendants was admitted as **Exhibit D2**.

3. Four (4) photographs with the Certificate of Compliance were admitted as **Exhibits D3 (1-4) and D4**.

DW1 was then cross-examined by both counsel to the 2nd Defendant and Claimant and with his evidence, the 1st defendant closed its case.

On the part of the 2nd Defendant, they called two witnesses. **Mr. Steve Njoku**, Zonal Head of 2nd Defendant testified as DW2. He deposed to a witness deposition dated 14th September, 2018 which he adopted at the hearing. He tendered in evidence the following:

1. Letter dated 3rd April, 2018 written by the law firm of Ahmed Raji & Co was admitted as **Exhibit D5**.

2. Six (6) photographs were admitted as **Exhibit D6 (1-6).**

3. Copy of First Bank Cheque dated 10th July, 2020 issued by 2nd Defendant was admitted as **Exhibit D7**.

D2 was similarly cross-examined by both counsel to the 1st defendant and claimant respectively. The final witness for the 2nd defendant who testified as DW3 is one **Sunday Peter** who works with 2nd defendant. He deposed to a witness statement on oath dated 14th September, 2018 which he adopted at the hearing. DW3 was then cross-examined by both counsel to the 1st Defendant and the Claimant and with his evidence, the 2nd defendant closed its case.

At the conclusion of trial, parties filed and exchanged final written addresses. The final address of 1st defendant is dated 15th June, 2020 and filed same date at the Court's Registry. In the address, two (2) issues were identified as arising for determination as follows:

1. **To the extent that the Claimant's claim is founded on tort of Negligence, is a reasonable cause of action disclosed against the 1st defendant by the Claimant's Statement of Claim.**

2. **Assuming there is a reasonable cause of action disclosed against the 1st defendant by the Claimant's pleadings (though denied), have the Claimant, upon the available evidence on record, proved negligence against the 1st defendant to justify her entitlement to the reliefs sought.**

The final address of 2nd defendant is dated 11th June, 2020 and filed on 15th June, 2020. In the address, one issue was raised as arising for determination as follows:

"Whether the claimant has discharged the burden of proving that the 2nd defendant owes her a duty of care and which duty was allegedly breached by the 2nd defendant."

On the part of the claimant, the final address is dated 14th July, 2020 and filed same date in the Registry of Court. In the address, only one issue was raised as arising for determination thus:

"Having regards to the facts and circumstances of this case as well as the evidence adduced at trial, whether the claimant is not entitled to judgment in terms of the reliefs sought."

The 1st defendant filed a reply on points of law to the claimants address dated 14th September, 2020 but filed on 17th September, 2020. The 2nd defendant similarly filed a Reply on points of law dated 20th July, 2020 and filed same date at the Court's Registry.

I have set out above the issues as distilled by parties as arising for determination. All the issues raised are in substance the same relating to whether the defendants are liable for the alleged losses suffered by the claimant. On a careful consideration of the pleadings and evidence led on record, it appears to me that the issues raised by defendants can conveniently be accommodated within the purview of the single issue raised by plaintiff which the court will however slightly modify or alter in the following terms:

"Whether on a preponderance of evidence or balance of probability, the claimant has proved her case to entitle her to all or any of the reliefs sought against the defendants."

The above issue has thus brought out with sufficient clarity, the pith of the contest which remains to be resolved shortly by the extant judicial inquiry. This issue is not raised as an alternative to the issues formulated by parties. Rather all the issues distilled by parties can conveniently and cumulatively be taken under the above issue. See **Sanusi V Amoyegun (1992) 4 NWLR (pt.237) 527 at 530**.

Let me also quickly make the point clear that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of the critical or fundamental question(s) affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

It is therefore guided by the above wise exhortation that I would now proceed to determine this case based on the issue I have raised and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel.

ISSUE ONE

"Whether on a preponderance of evidence or balance of probability, the claimant has proved her case to entitle her to all or any of the reliefs sought against the defendants."

I had at the beginning of this judgment stated the claims of claimant. The case appears to be predicated on negligence. The 1st defendant has however raised a challenge that a case of negligence was not properly constituted on the pleadings. I will shortly address this challenge but let me make some prefatory remarks. Notwithstanding the apparent lack of clarity with respect to whether the case is one rooted in negligence, bailment or contract, the case of claimant is fairly straight forward and largely situated on the critical question of who bears responsibility for the losses she suffered when her car was vandalised and her personal effects stolen. Her case is that the defendants are jointly and severally liable in negligence.

On the other side of the aisle, both defendants completely absolved themselves of any blame worthy conduct in the circumstances of the case. Indeed the defendants considered the allegation of the alleged vandalization and losses spurious.

In the light of this clear streamlined contested assertion or dispute, the consideration of this merits of this case need not be fettered or hampered by the categorisation with respect to genre or specie of particular tort on which the action is predicated. What the substance and justice of this case, demand is whether a case has been creditably made out on the evidence to entitle claimant to the reliefs sought.

Let me say, albeit advisedly, that I am not even too sure that the dichotomy on the species of tort has much resonance in these modern times where substantial justice is the mantra actively pursued by courts. The settled principle of general application is that where a cause of action and a relief is properly claimed, a claimant cannot be refused simply because he has not stated or wrongly stated the head of the law under which he is seeking the remedy. In other words, a wrong must not necessarily be remediable under a known head of law before it is justiciable. It is a well known legal truism that where there is a wrong, there is a remedy and the courts nowadays are propelled more by the imperatives of doing substantial justice unfettered by technicalities which only serve to subvert the cause of justice. In S**.P.D.C Nig. V Okodeno (2008)9 N.W.L.R (pt.1091)85 at 118 C-F,** the Court of Appeal instructively stated as follows:

"In the instant case, the learned trial judge was right when he held that the nomenclature of torts will not be allowed to blur its consideration of the clear

averred facts of the case before it. That it is irrelevant in the determination of this case whether the claim is based on tort of detinue or is based on tort of trespass. I do not see this pronouncement as an abdication of lawful duties to make findings on the issue by the learned trial judge as submitted by the learned senior counsel for the appellant. The stand of the learned trial judge cannot be faulted. The court today is concerned with doing substantial justice on the matter before it, rather than place reliance on hard rules of technicality based on the principle of law that where there is a right, there is a remedy. The maxim being *ubi jus, ibe remedium*. The distinction that the trial court is called upon to make and subtitles have no substance and justification in them, but are nothing more than a dangerous inheritance from the days when forms of action and of pleadings held the legal system in their clutches."

It is based on this premise in addition to the pleadings of claimant that I must state that I am therefore not enthused by the contention of 1st defendant raised by their issue (1) that no reasonable cause of action was disclosed by claimant on the ground that the claimant in her pleadings made only a blanket allegation of negligence without giving particulars of items of negligence relied on as well as the duty of care owed by defendants.

I agree with the position of the law and the authorities are clear that it is not sufficient for a plaintiff to make a blanket allegation of negligence against a defendant in a claim on negligence without giving in there pleadings full particulars of the items of negligence relied on as well as the duty of care owed to him by the defendant and the breach. See **Koya V UBA (1997) 1 NWLR (pt.481) 251 at 291; Anyah V Imo Concorde Hotels Ltd (2002) 12 S.C. (pt.11) S.C.**

Now it is one thing to rely on a legal principle but quite a different thing to situate or demonstrate violation of the principle relying on the processes or materials filed before the court. Principles do not simply hang in the air or exist in a vacuum; the application to the processes before the court is critical.

It is therefore curious that the conclusion reached by 1st defendant on want of reasonable cause of action in negligence is made relying on just two (2) paragraphs (paragraphs 27 and 28) out of the entire thirty two (32) paragraphs statement of claim filed by the claimant. A severely restricted consideration of the entirety of

the statement of claim as done here would logically lead to a severely skewed understanding of the case made out by the claimant on the pleadings which in my opinion has sufficiently and in substance denoted the particulars of items of negligence relied on as well as the duty of care owed and the breach as I will shortly and in some detail demonstrate.

I incline to the view that to properly situate whether a pleading has met the requirements on standard of averments on a claim founded on the tort of negligence, justice dictates that the entirety of the pleadings must be considered and not in bits and pieces. In doing so, it is pertinent to take our bearing by examining what is even meant by a reasonable cause of action.

It is settled law that in deciding whether there is a reasonable cause of action, the determining factor is the Statement of Claim. The Court needs only to look at and examine the averments in the Statement of Claim of the claimant. See **Ajayi V. Military Admin. Ondo State (1997) 5 NWLR (pt.504) 237; 7up Bottling Co. Ltd V. Abiola (2001) 29 WRN 98 at 116.** The final address of 1st defendant, however beautifully articulated cannot form the basis on which to determine if there is a reasonable cause of action. The answer to the question of whether the statement of claim discloses a reasonable cause of action is to be found in the structure of the statement of claim itself and not in any address or other extraneous material.

In considering whether there exists a reasonable cause action, it is sufficient for a Court to hold that a cause of action is reasonable once the Statement of Claim in a case discloses some cause of action or some questions fit to be decided by a Judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. See **A.G (Fed.) V. A.G Abia State & Ors (2001) 40 WRN 1 at 52; Mobil Producing Nig. Unltd V LASEPA (2003) 1 MJSC 112 at 132**.

What then is a cause of action, which has to be reasonable failing which the court would strike out the pleadings? The phrase cause of action has been given different definitions in a plethora of cases by our courts. It is however soothing that the array of definitions bear the same meaning and connotation. See the cases of

Egbe V Adefarasin (1987) 1 NWLR (pt.47) 1 at 20; Omotayo V N.R.C (1992) 7 NWLR (pt.234) 471 at 483.

In **Akibu V Oduntan (2000) 13 NWLR (pt.685) 446 at 463**, the Supreme Court defined cause of action as:

"A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

(a) The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and
(b) The consequent damage."

In so far as can be evinced from the entirety of the statement of claim and the Reliefs sought, the fact or combination of facts on which the claimant has premised her right to sue in negligence seem to be pleaded in paragraphs 4-28 of the claim. The full particulars of negligence relied on; duty of care and the alleged breach all situated or predicated on the vandalisation or damage of her car in the premises of 1st defendant and under the care of both Defendants have sufficiently been pleaded and or denoted. The allegation of a "blanket allegation" of negligence on the basis of the extant pleadings clearly therefore has no factual or legal resonance.

A statement of claim is said to disclose a reasonable cause of action when it sets out the legal right of the Plaintiff and the obligations of the Defendant. It must further set out the action constituting the infraction of the Plaintiff's legal right or the failure of the Defendant to fulfil his obligation in such a way that if there is no proper defence, the plaintiff will succeed in the relief or remedy which he seeks. See **Nwaka V Shell (2003) 3 MJSC 136 at 149, Ibrahim V Osim (1988) 3 NWLR (pt.82) 257 at 271 – 272**.

After a careful consideration of the Statement of Claim, I am satisfied that it has clearly set out the legal rights of the Claimant and the obligation of the Defendant(s). It has further set out the failure of the Defendant(s) to meet its obligations. The Statement of Claim clearly discloses a reasonable cause of action. It discloses questions fit to be decided by a Court. At the risk of prolixity, any perceived weakness of the claimants' case is not a relevant consideration when the

question is whether or not the Statement of Claim has disclosed a reasonable cause of action.

The fact that learned counsel to the 1st defendant perceives and has submitted that the claimants' action is bound to fail is no ground to strike the action out. No.

Now whether the claimant has established her case as stated earlier on established legal threshold is what I will now consider. That really is the crux of the extant action. It is therefore to the pleadings which has precisely streamlined the issues and facts in dispute and the evidence that we must now beam a critical judicial search light in resolving this dispute.

In this case, the claimant filed a 32 paragraphs statement of claim. The evidence of the two witnesses for the claimant is largely within the structure of the pleadings. The 1st defendant filed a five (5) paragraphs statement of defence and the evidence of their sole witness is also largely within the structure of this defence. On the part of the 2nd defendant, they filed a 32 paragraphs statement of defence and the evidence of their sole witness is similarly and largely within the structure of the defence. As stated earlier, the plaintiff filed a reply each to the defence of defendants which sought to accentuate the positions earlier made.

I will in this judgment deliberately and in extenso refer to the above pleadings of parties as it has clearly streamlined or delineated the issues subject of the extant inquiry. The importance of parties' pleadings need not be over-emphasised because the attention of court as well as parties is essentially focused on it as being the fundamental nucleus around which the case of parties revolve throughout the various trial stages. The respective cases of parties can only be considered in the light of the pleadings and ultimately the quality and probative value of the evidence led in support.

Before going into the merits, let me state some relevant principles that will guide our evaluation of evidence. It is settled principle of general application that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who

would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him. The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.**

It is equally important to situate at the onset the import of **Declaratory Reliefs** which forms the fulcrum of Reliefs 1, 2 and 3 of the Claimants' claims and on which the other reliefs sought have significant bearing. **Declarations** in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.** The point to necessarily underscore is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

I have at some length stated the above principles to allow for proper direction and guidance as to the party on whom the burden of proof lies in all or any particular situation.

Now a convenient starting point is to understand the precise situational basis of the relationship of parties. As stated earlier, the pleadings of parties presents a fair take off point. The pleadings as I have repeatedly stated is critical to underpin and understand the basis of any relationship and its mandate. It also provides clear parameters in resolving the issues in dispute in the case and whether the reliefs sought are availing in the context of the threshold required by law.

The case of plaintiff is simply that sometime on the evening of March, 2018, she visited SPAR (Park n Shop) to purchase some items. She arrived in her red Corolla Car at about 7.33 pm and proceeded to purchase certain items. She stated that on exiting the store and approaching her vehicle, she noticed the left passenger window had been shattered and on proceeding to check the contents of her vehicle, she discovered that certain items in the car as disclosed in the pleadings were stolen. Her case essentially is that the defendants are responsible for the losses. Let us however situate and understand the basis of the relationship of parties from the pleadings as it provides some template to understand and situate liability, if any.

The Claimant in her pleadings provided the foundational premise of her case in the following terms:

"

1. **The Claimant is a legal practitioner and a customer of the 1st Defendant. She is resident within the jurisdiction of this Honourable Court.**

2. **The 1st Defendant is a limited liability company duly registered in Nigeria with RC No. 66557. It carries on supermarket business, under the names "Spar" and "Park 'n Shop", at Guru Plaza, Plot 740, Aminu Kano Crescent, Wuse II, Abuja, amongst other locations within the jurisdiction of this Honourable Court.**

3. **The 2nd Defendant is equally, a duly registered company in Nigeria with RC No. 199684. Its principal object is the provision of security for companies, government corporations and individuals alike. In furtherance of this object, the 2nd Defendant carried on its business within the jurisdiction of this court at No. 8, Mafemi Crescent, Mabushi, Abuja.**

4. **The Claimant avers that by an arrangement between the Defendants, the 2nd Defendant is charged with the responsibility of providing all-round security solutions for the business premises of the 1st defendant at Guru Plaza, Plot 740, Aminu Kano Crescent, Wuse II, Abuja.**

5. **The Claimant avers that the 2nd defendant's services as aforesaid was secured by the 1st defendant to provide security for not only the 1st defendant's business concerns – business premises, goods, employees etc. but also to provide security for the 1st defendant's customers (including the Claimant), their wares and cars parked within the 1st Defendant's business premises.**

6. **The Claimant avers that the 2nd Defendant, in the performance of its duties to the 1st Defendant and its customers, employs the services of individuals, who in furtherance of their employment are stationed at strategic locations within the 1st defendant's business premises at Guru Plaza, Plot 740, Aminu Kano Crescent, Wuse 2, Abuja and more particularly at the car park provide for customers by the 1st Defendant.**

7. Further to the above, the Claimant avers that the 2nd Defendant's employees, in the performance of their duties at the said Guru Plaza, Plot 740, Aminu Kano Crescent, Wuse 2, Abuja, guide and direct customers of the 1st Defendant to the parking lot specifically provided by the 1st Defendant for its customers; so as to bring cars and other properties of the 1st Defendant's customers under the 2nd Defendant's 'watchful' guard and protection.

8. The Claimant avers and shall contend at trial that the aforesaid measures taken by the 1st Defendant is in recognition of its duty of care which it owes its customers, employees and everyone who enters into its premises."

The 1st defendant joined issues on these foundational premises in the following paragraphs:

"

1. The 1st Defendant admits paragraph 2 of the Statement of Claim.

3. The 1st defendant vehemently denies paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Statement of Claim and states as follows:

a. In response to paragraphs 4-7, the contract between the 1st and 2nd defendants only extends to provide security inside the 1st defendant's business premises and not the General Car Park at Guru Plaza, Plot 740, Aminu Kano Crescent, Wuse II, Abuja. A copy of the 1st Defendant's contractual agreement with the 2nd defendant is hereby pleaded and shall be relied upon at trial.

e. The 1st defendant operates in Guru Plaza, Plot 740, Aminu Kano Crescent, Wuse II, Abuja in its capacity as one of the serviced tenant of the said property. A copy of the said tenancy agreement is hereby pleaded and shall be relied upon at trial.

f. That by virtue of the tenancy agreement, the 1st Defendant has authority and responsibility over the business store allocated to them only. The

PLAZA FACILITY MANAGEMENT bears responsibility for other areas of the plaza including the general car park.

g. The car park of the Guru Plaza property is open to the general public with disclaimer notices boldly and clearly displayed "VEHICLES ARE PARKED AT OWNERS RISK". The 1st defendant hereby pleads photographs of the disclaimer notice placed in conspicuous places in the property and shall rely on the full import of the caveat at trial."

On the part of the 2nd defendant, they equally joined issues with plaintiff on this foundational premise in the following terms:

"

4. The 2nd defendant denies paragraph 4 of the statement of claim and in further answer states that it is not at all charged with the responsibility of providing all-around security solutions for the business premises of the 1st defendant Guru Plaza, Plot 740, Aminu Kano Crescent, Wuse II, Abuja, ("Guru Plaza"). The 2nd defendant avers that it only contracted with the 1st defendant to provide security services inside the 1st defendant's shop and not in and around the 1st defendant's car park. In other words, the 2nd defendant's contract with the 1st defendant does not include the provision of security at the car park and the entire premises of Guru Plaza where the 1st defendant's business is situate, as Proserv Security Company is the firm saddled with the responsibility of the provision of general security services at Guru Plaza, the location of the 1st defendant's business.

5. The 2nd defendant admits paragraph 5 of the statement of claim only to the extent that it contracted with the 1st defendant to secure 1st defendant's goods and properties inside the 1st defendant's shop at Guru Plaza. The 2nd defendant strongly avers that at no time at all did it contract with the 1st defendant to provide security to 1st defendant's customers (including the claimant), their wares and cars parked within the 1st defendant's business premises. The averment that the 2nd defendant contracted with the 1st defendant to provide security for the 1st defendant's customers (including the claimant), the wares and cars parked within the 1st defendant's

business premises only exist at the claimant's imagination and the claimant is hereby put to the strictest prove of the aforesaid averment.

6. **The 2nd defendant admits paragraph 6 of the statement of claim only to the extent that in performance of its duties to the 1st defendant alone, it employs the services of individuals, who in furtherance of their employment as security guards, are only stationed inside and at the entrance and exit doors of the 1st defendant's shop at Guru Plaza. The 2nd defendant categorically avers that its security guards have never and are not at all stationed particularly or otherwise at the car park provided for customers by the 1st defendant. It is the further averment of the 2nd defendant that its security guards, as far as the 1st defendant's car park is concerned, for the purposes of orderliness alone, only and merely directs 1st defendant's customers to the parking lot. The 2nd defendant's security guards are not at all stationed at 1st defendant's car park to be guarding 1st defendant's customers' cars or anybody's car(s) at all.**

7. **The 2nd defendant admits paragraph 7 of the statement of claim only to the extent that its security guards at the 1st defendant's business premises at Guru Plaza merely guide and direct customers of the 1st defendant to the parking lot provided by the 1st defendant for its customers. The 2nd defendant avers and reiterates that its contract with the 2nd defendant does not at all include mounting a 'watchful' guard and protection over 1st defendant's customers' cars and properties at the car park. The 2nd defendant's security guards are only mandated to watchfully protect 1st defendant's goods and properties inside 1st defendant's shop.**

8. **In response to paragraph 8 of the statement of claim, the 2nd defendant categorically denies that neither it nor the 1st defendant owe the claimant or any other person at all a duty of care as regards cars parked at the parking lot and properties kept inside such cars."**

The relative positions of parties on the pleadings as streamlined above is clear. It is now to the evidence we must have recourse to in determining the nature of the

relationship and its precise mandate and ultimately whether a valid complaint on negligence has been made out by the claimant.

Now on the pleadings of claimant vide paragraph 1, the 1st defendant is said to carry on supermarket business under the names "spar" and "park n shop" at Guru Plaza Wuse II Abuja. The 1st defendant may have admitted this paragraph but this does not mean or approximate to mean that 1st defendant carries on business in the whole of **Guru Plaza** as seem to be contended by the claimant in the final address. The claimant here too like the 1st defendant with respect to their contention of absence of reasonable cause of action has hinged the submission only on paragraph 1 of the defence of 1st defendant ignoring in the process other relevant paragraphs having a bearing on the precise location where 1st defendant carries on its business. In paragraphs 3 (e), (f) and (g) (supra), and the evidence led, the 1st defendant made it clear that it only operates in the said Guru Plaza as one of the serviced tenants and that it has authority or responsibility only over the business store allocated to it with responsibility for other areas of the plaza and the general car park in the plaza facility management. The 1st defendant also made it clear that the Guru Plaza is open to the General Public with disclaimer notices clearly displayed. The case made out here seeks to precisely streamline the relationship of 1st defendant with the plaza.

On the pleadings and evidence there is really nothing concrete proffered by claimant suggestive of the fact that this Guru Plaza is owned by the 1st defendant or exclusively occupied it. Indeed on the evidence, it is clear that the 1st defendant operates in the said Guru Plaza as one of the **serviced tenants** of the said property. **Exhibit D1**, the tenancy agreement unequivocally shows that, a company by the name **LO'NICE NIG. LTD** is the landlord and owner of **"the property situated at Plot 740 Aminu Kano Crescent, Wuse II, Abuja consisting of shops and offices"** vide Clause 1 of the Agreement.

Flowing from this tenancy agreement, it is logical to hold and I so hold that **plot 740, Aminu Kano Crescent Wuse II, Abuja** is clearly a premises consisting of shops and offices which are let out to different persons and or entities. The point to underscore here is that it is certainly not only the **1st defendant** that occupies the whole of plot 740 consisting of "shops and offices". Crucially, the plaintiff never made out a clear case to such effect in her pleadings. Indeed the claimant and PW2

under cross-examination agreed that there are indeed various other businesses or business stores in the premises. The entire **plot 740** cannot therefore be said to be exclusive to the 1st defendant. This position is underscored by the tenancy agreement, **Exhibit D1**.

Indeed by the same **Exhibit D1,** what was let out to the 1st defendant vide clause 2 is clear in the following terms:

"2. The LANDLORD is desirous of letting of all that 2,780sq. meters of shop space on the Ground Floor, 1st and 2nd floor located within the premises and the TENANT is desirous of taking same (hereafter referred as the "demised premises") for rent at the fixed determinable period provided hereunder."

I have carefully read the terms of the entire agreement and what was let out to the 1st defendant is as set out above and no more. There is nothing in this agreement situating a designated parking space for 1st defendant. The terms of this agreement obviously is binding as between the 1st defendant and the landlord and its remit cannot be extended or altered to suit a particular purpose or for its provisions to be construed to cover what it never contemplated. See **Section 128 (1) of the Evidence Act.** The claimant unfortunately is no party to this agreement and it is difficult to even situate the legal or factual value of any attempt by her at any interpolations to this agreement. I will return to this point later.

The claimant avers in **paragraphs 3 – 6** that the 1st defendant has an **"arrangement"** with 2nd defendant for the provision of **"all round security solutions"** for the business premises of the 1st defendant at the plaza and that this extends to the 1st defendant's **"business premises, goods, employees etc and to also provide security for the 1st defendant's customers (including claimant), their wares and cars parked within the 1st Defendant's business premises."**

Both defendants denied or joined issues with this averments. The 1st defendant averred that the contract it had with 2nd defendant only extends to provide security inside the 1st defendant's business premises and not to the General Car Park at the Plaza. See paragraph 3(a), (e), (f) and (g) of the defence of 1st defendant. The 2nd defendant in its defence vide paragraphs 4 and 5 stated that its duty was to provide security services inside the 1st defendant's shop and that its provision of security

does not extend to the car park and the entire premises at Guru Plaza and that a security firm Proserv Security Company is the firm saddled with the responsibility of the provision of general security services at the plaza.

The above contested assertions therefore logically became a matter for proof by credible evidence. On the evidence, the claimant is not a party to the security agreement between 1st and 2nd defendants. The challenge here is that there must be credible demonstration of evidence to support the extensive averments made in paragraphs 4, 5, 6, 7 and 8 of the statement of claim. As stated earlier, the fulcrum or crux of the Reliefs sought by claimant are declaratory in nature. These allegations or contentions which provides the necessary template to ground the reliefs must therefore be creditably established by cogent evidence. Arguments predicated on admissions has no traction here or will not fly. Unfortunately, the claimant who made the **assertions** with respect to the ambit of the duties and responsibilities of 2nd defendant earlier highlighted in paragraphs 4 – 8 did not provide any scintilla of evidence beyond challenged oral averments showing:

1. **The "arrangement" between 1st defendant and 2nd defendant streamlining clearly the terms of the security arrangement over the business premises of 1st defendant at Plot 740 and finally;**

2. **The precise remit of the agreement to provide basis to situate its application.**

Again, as already alluded to, the claimant is no party to the agreement and one wonders again at the basis or source of the general averments in the pleadings on the security architecture of the services offered by 2nd defendant on the premises of 1st defendant. If by chance, claimant had access to the agreement, which provided the necessary information to formulate these claims, the question then is why was it not tendered? If it was available and it was not tendered by claimant, this calls for the invocation of the presumption under **Section 167 (d) of the Evidence Act** that if claimant had tendered it, it would not have been favourable to her case. If on the other hand they don't have anything to show or situate the contention of an "arrangement" between 1st and 2nd defendants, then the averments will amount to bare speculative posturing devoid of evidential value.

Let me here restate the principle now of general application. It is trite law that pleadings, however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must then be led to prove the facts relied on by the party to sustain the allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 F-G.** Averments in pleadings are therefore not evidence. There should be no confusion or doubt about this position. In the absence of evidence, these averments by claimant situating the alleged terms of the security arrangement between defendants will be deemed as abandoned. See **Aregbesola V. Oyinlola (2011) 9 NWLR (pt.1253) 458 at 594**.

It is true that he 1st defendant tendered vide **Exhibit D2**, the contract agreement between 1st and 2nd defendants but this agreement was not dated or signed by either party and its value and its worth stands compromised abinitio. In the province of the law, an unsigned document commands no judicial value or validity and is completely valueless. See **Omega Bank V O.B.C (2005) 8 NWLR (pt.928) 547; A.G Abia State V. Agharanya (1999) 6 NWLR (pt.607) 362; Garuba V Kwara Invest. Co. Ltd & 2 ors (2005) 5 NWLR (pt.917) 160 at 176**.

Exhibit D2 on which claimant has placed much premium would therefore not carry much weight or probative value in the circumstances or prove the positions asserted by claimant. The argument may be made that the 1st defendant tendered the agreement and that the defendants don't deny the agreement. If some value is placed on this argument, then reading the said agreement will show that the security services to be provided by 2nd defendant covers "the premises" of the 1st defendant. No where was the precise dimensions or delineation of this "premises" and where the services will be offered defined in the agreement besides the description of the office as **"located at Banex Plaza Aminu Kano Crescent Abuja."** It is safe however to say that the remit of the assignment can certainly not extend beyond the office space rented out to 1st defendant vide **Exhibit D1**. It is in this clear context that the duties of 2nd defendant streamlined in **Exhibit D2** must be understood as follows:

" THIS AGREEMENT is made this …….. day of …… 20 …… BETWEEN THE CLIENT Whose Office is located at Banex Plaza, Aminu

Kano Crescent, Abuja Nigeria. A company incorporated under the laws of the Federal Republic of Nigeria (hereinafter referred to as "The Client" which expression shall wherever the context so admits include its successors-in-title and assigns) of the one part and HALOGEN SECURITY COMPANY LIMTED, a company incorporated under the laws of the Federal Republic of Nigeria and having its head office at No. 19B Mobolaji Bank Anthony Way, Ikeja, Lagos State (hereinafter referred to as "the Contractor" which expression shall wherever the context so admits include its successors-in-title and assigns) of the other part.

WHEREAS

(a) The Contractor engages in the provision of Security Services in all ramifications to its clients.

(b) The Client, has requested the Contractor to provide it with comprehensive Security Guard Services in respect of the property and other facilities as may in writing be communicated from time to time.

(c) The Contractor has agreed to provide such Security services as may be required to prevent theft of property of The Client, and to protect the lives and property of The Client, employees, its tenants and visitors within all protected premises…"

There is nothing in the above clauses to support the extensive contentions of claimant as stated in paragraphs 3-6 of its pleadings which clearly seeks to alter or add to the contents of the agreement which in law is inadmissible.

Let me just quickly add to avoid any confusion that I simply looked at the Exhibit D2 out of caution and this did not advance the case of claimant but the principle remains valid that an unsigned document is a worthless piece of paper commanding no value in legal proceedings and cannot confer any legal right or benefit on any party or the party who seeks to rely on it. See **Gbadamosi & Anor V Biala & ors (2014) LPELR – 24389 (CA); Osadare & ors V Liquidator, Nigeria Paper mills (2011) LPELR – 9269 (CA)**. In any event, as stated earlier, and at the risk of sounding prolix, the substance of the case of claimant are

essentially seeking for Declaratory Reliefs. Again, the point need be reiterated that declaratory reliefs are not granted on admissions or on the stance, disposition or even indifference of the adversary. Declaratory reliefs as sought by claimant here must be creditably established by clear and compelling evidence.

As a logical corollary, the unsigned Exhibit D2 and the admission said to have been made by 2nd defendant in paragraph 6 of its defence clearly would be of no assistance to the case of claimant in the circumstances. In any event, it is even difficult to situate any admission in the context of the contested assertions in this case. Paragraph 6 of the 2nd defendant's statement of defence reads thus:

"6. The 2nd Defendant admits paragraph 6 of the statement of claim only to the extent that in performance of its duties to the 1st defendant alone, it employs the services of individuals, who in furtherance of their employment as security guards, are only stationed inside and at the entrance and exit doors of the 1st defendant's shop at Guru Plaza. The 2nd defendant categorically avers that its security guards have never and are not at all stationed particularly or otherwise at the car park provided for customers by the 1st defendant. It is the further averment of the 2nd defendant that its security guards, as far as the 1st defendant's car park is concerned, for the purposes of orderliness alone, only and merely directs 1st defendant's customers to the parking lot. The 2nd Defendant's security guards are not at all stationed at 1st defendant's car par to be guarding 1st defendant's customer's cars or anybody's car(s) at all."

The above paragraph appears to me clear and when read with other paragraphs of the 2nd defendant's defence undermines completely any claims of an admission.

Flowing from the above, the case sought to be made out by claimant that the security duties of 2nd defendant extends beyond providing security inside the business premises of 1st defendant but extends to cars parked within plot 740 would lack traction. This must be so for various reasons. Firstly, I had clearly situated what was let out to the 1st defendant by the landlord of **plot 740 vide Exhibit D1** in graphic terms earlier on. The said entire plot 740 was not let out exclusively to 1st defendant. Indeed the plot comprises shops and offices which were let out to different persons or entities. The claimant and PW2 affirmed this

position. These other tenants of these shops and offices clearly also must have access to the said Plot 740. Their customers equally must have access to the same plot and be able to park their cars.

Secondly, there is nothing in Exhibit D1 situating any particular designated parking plot for only the 1st defendant's customers. The claimant did not lead any credible evidence beyond challenged oral averments or assertions showing that there were indeed designated parking spaces for the different business shops and offices in plot 740 inclusive of 1st defendant. Indeed the unchallenged evidence of DW1 is that there is no designated parking space for only their customers.

Not one single document was identified or evidence clearly identified showing a designated parking space and the modalities for its operation. For example, are parking tickets or pass issued at point of entry? What are the operational terms on this ticket or pass? Unclear averments in pleadings of parties cannot be used to create a case in the final address which was not presented or demonstrated in court by evidence. Learned counsel to the claimant has with respect tried so much and so hard in the final address to construct a scenario of a case not based on the structure of the pleadings and most importantly the evidence led. The point to underscore is that cases are decided on the pleadings and evidence led in support and not by address of counsel. It is trite principle of general application that address of counsel is no more than a handmaid in adjudication and cannot take the place of the hard facts required to constitute credible evidence. No amount of brilliance in a final address can make up for the lack of evidence to prove and establish or disprove and demolish critical points in issue. See **Iroegbu V. My Calabar Carrier (2008) 5 N.W.L.R (pt.1019) 147 at 167; Michika Local Government V. National Populaiton Commission (1998) 11 N.W.L.R (pt.573) 201 and Tapshang V. Lekret (2000) 13 N.W.L.R (pt.684) 381.**

Thirdly, since the remit of Exhibit D1, the tenancy agreement of 1st defendant cannot be extended or altered at this point, what was rented out can only be what was covered by Exhibit D1. There cannot be any additions to the remit of Exhibit D1 at this stage to suit a particular purpose. I therefore agree with the defendants that the general car park at the plaza 1st defendant cannot be said to be exclusively that of 1st defendant as it is accessible to all persons who may have one business or the other to transact in the other shops and offices in the premises.

Again the contention by claimant in paragraph 3(a) of the Reply of claimant to the 1st defendant's statement of defence that the "1st defendant's premises include the parking area provided by it (i.e. 1st defendant) for its customers…" clearly lacks foundation and is discountenanced without much ado.

In the absence of a clear premise as demonstrated above showing that there is a precise identifiable parking slot exclusively for the 1st defendant and the modalities for its operation, the implication is simply that once anyone goes to the said plot 740, and to any of the shops or offices in the plot, what you do is simply to look for a convenient parking space to park your car. This is not unusual in similar plazas with different shops and offices that dot the landscape in the F.C.T. It is possible that security men of 2nd defendant engage in directing customers to where they park their cars at the parking lot in the premises but this **without more** is not suggestive of the fact that they are there to watch over the cars parked at the General Parking Lot. I agree here with the evidence of the witness for the 2nd defendant that the direction they give is to ensure orderliness of cars parked at the parking lot. This for me is logical because, they are in no position to know that any particular customer is necessarily going to the 1st defendant's shop. Since there are no designated parking space for any shop or office in the said plot 740 and nobody on the pleadings is asked at the main entrance as to which particular shop or office one is going to, it is not inconceivable that the security officers of 2nd defendant may indeed direct one to an available parking space but this then does not mean that the person must necessarily visit the 1st defendant's shop or that they provide security for the entire General Car Park at the plaza. The case presented by 2nd defendant that they don't provide security for the General car park in the plaza including all cars and properties parked therein has more traction.

The bottom line here is that there is no real clarity on the evidence situating a designated car park exclusively for the 1st defendant's customers and also there is no real clarity with respect to the ambit and remit of the duties of the 2nd defendant as I have sought to demonstrate above.

In such very fluid circumstances, is there real hard evidence to situate the complaints of breach of duty of care streamlined in the statement of claim and particularly in paragraphs 27 and 28 of the claimants pleadings thus:

"27. The Claimant avers (contrary to the 2nd Defendant's assertions in its letter of 3rd April, 2018) that the Defendants are jointly and severally responsible for not only the security of 1st defendant's business premises, its goods and staff, but also for the 1st defendant's customers and their properties including that of the Claimant.

28. The Claimant avers and shall contend at trial that the Defendants (jointly and severally) owe a duty of care to the Claimant; which duty was breached when the Claimant's car (parked within the 1st Defendant's business premises) was broken into and her properties stolen under the watch and protection of the 2nd Defendant's personnel."

Let us again scrutinize the evidence and facts but in doing so let us situate what the tort of negligence entails even if I had earlier said that the categorization of tort won't becloud the need to do justice in this case. As stated severally, the claimant alleged in her statement of claim that the defendants were negligent resulting in the vandalisation of her car. She therefore had the onus and the duty to prove that they were negligent.

The general principle, similarly of general application is that the tort of negligence arises when a **legal duty** owed by the defendant to the plaintiff is breached. And to succeed in an action for negligence, the plaintiff must prove by the preponderance of evidence or the balance of probabilities that:

(a) The defendant owed him a duty of care.

(b) The duty of care was breached.

(c) The claimant suffered damages arising from the breach. See **Agbonmagbe Bank Ltd V C.F.A.O. (1966) 1 All NLR 140 at 145**.

The critical underpinning element of the tort of negligence is the breach of the duty of care, which must be actionable in law and not a moral liability. Therefore, until a claimant can prove by clear, cogent and credible evidence the actual breach of the legal duty of care against the defendant, the action will undoubtedly be compromised and fail. See **Nigeria Airways Ltd V Abe (1988) 4 NWLR (pt.90)**

524; Strabag Construction (Nig) Ltd V Ogarakpe (1991) 1 NWLR (pt.170) 733; Anya V Imo Concorde Hotels Ltd & ors (supra).

A case of negligence therefore fails or succeeds on the basis of the quality and probative value of evidence led in support in proof of the constituent elements of negligence highlighted above. The claimant may have as earlier alluded sufficiently pleaded particulars of negligence to support her case but in law a party cannot rely on the pleadings alone and the court cannot equally used the pleadings as evidence unless they are supported by evidence at the trial. See **Koya V U.B.A (supra)**.

It may also be pertinent to legally situate the import of duty of care in an action in negligence and to whom it is owed. The generally accepted principles of negligence is that a person owes a duty of care to his neighbour who would be directly affected by his act or omission. In **Donoghue V Stevenson (1932) A.C 562 at 580, Lord Atkin** stated as follows:

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then is your neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

In **Anns V Merton London Borough Council (1977) 2 All ER 492 at 498**, the House of Lords defines what is the duty of care and to whom it is owed when it held thus:

"Rather the question has to be approached in two stages – first, one had to ask whether as between the wrong doer and the person who has suffered damage, there is sufficient relationship of proximity or neighbourhood such that in reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter in which case, a prima facie duty arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any consideration, which ought to negate, or to

reduce or limit the scope or the duty or limit the class of person to whom it is owed or the damage to which a breach of it may give rise"

This test has severally been adopted and followed by our Superior Courts donating the position that the doctrine of proximity as the foundation of duty of care in tort and it is now firmly established as the basis of an action in negligence. Put in more succinct language, the test of reasonable foreseeability is the essential factor in determining liability for the consequences of a tortuous act of negligence.

On the evidence and at the risk of sounding prolix, the 1st defendant rented a clear identified shop space at Plot 740 vide Exhibit D1. This plot 740, consists of other "shops and offices". There is nothing on the pleadings or evidence showing that these different shops and offices have designated parking space(s). Indeed on the evidence which I found more plausible, there exist no designated parking spaces. What clearly was on ground on the evidence is a general parking space for all those who come to the said plot. The alleged vandalization of claimants car cannot on the evidence be attributed to any act of negligence on the part of defendants having regard to the facts of this case and the reasonable remit of their duties and responsibilities. It is difficult in this type of circumstances to see how the 1st defendant's duty or care can arise for a common parking space shared by all the other shops and office occupants in the premises. The point to again underscore is that the 1st defendant is not the sole occupier of plot 740. That for me is a significant and crucial point which alters the dynamic in this case.

On the facts of this case as already demonstrated, the claimant who drove in and simply parked her car in a general parking space is not such a neighbour that the defendants must or ought reasonably to have in contemplation as being so affected when directing their minds to the acts or omissions which are called in question. Put another way, on the clear facts or circumstances of this case, there is in my view no sufficient relationship of proximity or neighbourhood between parties as contemplated in **Donoghue V Stevenson (supra)**.

The point perhaps to underscore is that an occupier of a premises ordinarily owes a duty of care to all visitors as in all circumstances of the case reasonable to see that a visitor is reasonably safe in using the premises for the purpose for which he is allowed to be there. This duty of care relates to dangers due to the physical state of

the premises and to things done or omitted to be done by the occupier and others for whose conduct he is under a common law liability. The duty here is to take reasonable care that the condition of the premises is not a source of danger.

There is therefore generally no obligation on an occupier to guard or secure goods brought into the premises by visitors against damage or theft unless there exists a special relationship or bailment. No such special relationship or bailment was situated in the pleadings of claimant. Where there is no bailment, the common law rule is that there is no duty on the occupier to protect the goods of his visitors from theft or damage by third parties.

Let us perhaps say some few words on bailment. In law, bailment refers to the transfer of possession but not ownership of personal property for a limited time or specified purpose such that the individual or business entity taking possession is liable to some extent for loss or damage to the property. This type of scenario did not play out in this case. The claimant did not for example hand over the keys of her car or the properties in her vehicle allowing the 1st defendant to take control even if for a limited time.

In law, a mere licence to put goods on land, as in the case of most car parks does not make the operator of the car park a bailee and so does not impose on him the duty to safeguard cars in the car park. Here we must again underscore the point that on the evidence, the 1st defendant does not operate a designated car park under its control at plot 740.

The bottom line in this case is that on the unclear evidence on record, there is no relationship, contractual or otherwise between claimant and the defendants vis-à-vis her usage of the General Car Park at plot 740. The relationship at best could be likened or analogous to that of licensor and licensee. The claimant on the evidence at all material times when she came to the premises or plot 740 retained possession of her car and all that was in it and did not hand it over to the 1st defendant. Again at the risk of prolixity, there is nothing to show that the car was registered at the point of entry neither was a plastic tag given to the claimant at the entrance. There is nothing to situate that she informed anybody of what effects she left or had in the car. Nothing was given to claimant at any point when she parked her car streamlining any condition(s) under which the car was parked.

As rightly stated by defendants, the 1st defendant has its own business premises or shop and the goods in it to protect which was why they engaged the services of 2nd defendant. It is really difficult to accept the argument that for a plaza or plot 140 it has no exclusive or complete control over that there is an existing legal duty to protect the car and properties of any person or others who come to visit their shop and uses the general parking space available to all occupants of the plot or plaza.

The fact that there are officers of 2nd defendant directing traffic alone cannot be taken as importing any legal duty to secure the car(s) and whatever is in of all or any visitor who visits the premises of 1st defendant.

The claimant has on the facts not been able to clearly define the precise relationship from which the duty to take care can be deduced and same was not established. I hold that in such fluid circumstances, it will be difficult to find that 1st defendant was under a duty of care to guard claimant's car against the threat of vandalisation and theft.

Furthermore, there will in the circumstances presented by this case be no general duty on 1st defendant to prevent third parties from causing damage to others, even though there may be a high degree of foresight that they may do so. The sobering reality in the absence of a clear streamlined agreement or a legal regime put in place is that everyone has to take steps as he thinks fit to protect his own property when general parking spaces at such plazas are used or utilised.

On careful reflection on the facts of this case, and as much as I have sought to be persuaded, I am not so persuaded that the 1st defendant who rented a shop space in a premises in which there are other tenants in different shops and offices with no clear designated parking slot or space for 1st defendant can in the absence of a defined or special relationship be said to owe a duty of care to claimant to prevent the damage or theft of certain items left in a car parked at the General Car Park. A person such as claimant who left her car in such situation cannot assume or assert against 1st defendant, much less 2nd defendant any obligation to use reasonable care to look after the car and the effects left in it. Such a car is therefore left in the car park entirely at the owners risk unless the car is delivered into the custody of 1st defendant or 2nd defendant for safekeeping. See **Anyah V Imo Concorde Hotels Ltd & ors (supra)**.

As a logical corollary, it follows that neither the 1st defendant or 2nd defendant owe a duty of care on the very unclear and fluid facts presented by claimant. If no duty of care is owed, then it is immaterial that the claimant suffered damages by reason of defendants negligence. The presence or absence of CCTV footage would in the circumstances have no factual or legal significance in the circumstances.

Before I finally round up, it will be noted that no premium was placed on the question of the disclaimer "cars parked at owners risk" said to have been placed on the premises which in the consideration of the case was not decisive or of any utility value for either side.

On both sides, the issue was no doubt contested. The claimant said there were no such notices prior to and on the date of the incident but the defendants argued otherwise. The 1st defendant may have tendered Exhibits D3 (1-4) as photographs showing the disclaimer but there is nothing in the pictorial representation showing where and when it was taken to situate it within the premises of 1st defendant in question and that the disclaimer had always been there and during the alleged incidence.

On the other side of the aisle, the pictures taken by PW2 for the claimant vide Exhibit P12 (1-9) does not precisely situate or show the entire premises of 1st defendant and there is equally nothing on the pictures showing or depicting when they were taken to prove that as at the time of the incidence, such disclaimers were not there.

The photographs on both sides appear to me simply products of convenience to suit particular purposes. It is difficult to conclusively hold on the basis of the pictures presented on both sides that there were indeed disclaimers or no disclaimers at the scene of the incident. The jurisdiction of court does not extend to making speculations outside what was demonstrated in open court. Since no side has made out clearly the presence or absence of the disclaimer, the legal imperative to consider its legal import in the circumstance hardly arises. See **Overseas Construction Ltd V. Greek Ent. Ltd & Anor (supra)**. Happily as stated earlier, the issue was not decisive in the circumstances of this case.

In the final analysis, the critical element of duty of care having not been proved to be owed, the case of plaintiff must necessarily fail. The plaintiff's case thus fails and it is accordingly dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. **A.A. Usman, Esq. with Danielle Braimoh (Miss.) for the Claimant.**
2. **Jamiu Agoro, Esq. with Mohammed Adedeji, Esq. for the 1st Defendant.**
3. **A.C. Nkemjika (Mrs.) with Obinna Agwu, Esq. for the 2nd Defendant.**