

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 12TH DAY OF MARCH, 2024
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/2927/2021

BETWEEN:

IRENE EMMANUEL

CLAIMANT

AND

DR OKONH ANTHONY EWERE

DEFENDANT

JUDGMENT

The claims of the Claimant in this case are founded on allegation of medical negligence. By a Writ of Summons dated and filed on the 4th of November 2021, the Claimant claims against the Defendant as follows:

- 1. A Declaration of this Honorable Court that the Defendant owes the Claimant a duty of care.*
- 2. A Declaration of this Honorable Court that the Defendant was negligent to have cut off series of intestines on the Claimant during surgical incisions.*
- 3. An Order of this Honorable Court directing the defendant to pay to the Claimant the sum of ₦290,970.00 (Two Hundred and Ninety Thousand, Nine Hundred and Seventy Naira Only), being the medication expenses incurred by the Claimant as a result of the breach of duty of care owed the Claimant by the Defendant.*

4. *An Order of this Honorable Court directing the Defendant to pay the Claimant the sum of ₦221,250.00(Two Hundred and Twenty-One Thousand, Two Hundred and Fifty Naira Only), being the medical expenses paid by the Claimant to the University of Abuja Teaching Hospital between 17th November 2020 to 22nd December 2020 as a result of the breach of duty of care owed the Claimant by the Defendant.*
5. *An Order of this Honorable Court directing the Defendant to pay the Claimant general damages in the sum of **₦50,000,000.00 (Fifty Million Naira)** for having breached the duty of care owed the Claimant by the Defendant.*

The fact of the case is that sometime in November 2020, the Claimant, then heavily pregnant and due for delivery, approached the Defendant for medical attention. The Defendant being a medical professional, being acquainted with and having understood the Claimant's medical history, suggested and offered to be carried out cesarean section (CS) on the Claimant for safe delivery of the Claimant's baby. The Claimant accepted the Defendant's professional advice. She was charged for the professional services by the Defendant, which the Claimant paid accordingly. The cesarean section was then carried out by the Defendant. According to the Claimant, the Defendant carried out the cesarean section alone without the assistance of any medical doctor. After the cesarean section was carried out on the Claimant, the Claimant began to experience excruciating pain on her body, weakness of the body and swollen abdomen.

On the 8th of November 2020 or thereabout, the Defendant conducted blood transfusion on the Claimant with the hope that it would stem the complications that flowed from the cesarean section. But this did not stop the pain. Due to the incessant pain on the Claimant's body, the Defendant together with another medical doctor carried out another surgical incision on the Claimant. This,

according to the Claimant, complicated and worsened her condition, whereby feces were discharging through the places the Defendant carried out the incision, including from the vagina.

This condition made the Defendant to discharge the Claimant and referred her to the University of Abuja Teaching Hospital Gwagwalada. This made a team of surgeons at the Teaching Hospital to prescribe a series of medical tests which resulted to the discovery that a number of intestines were negligently cut off and it is for this reason the Claimant was having discharge of feces through the places the Defendant carried out the surgical incision, which included the vagina. This led to the contamination of the Claimant's body system. In order to cleanse the Claimant's body system, a series of surgical processes were carried out on the Claimant and a follow up treatment, which cost the Claimant huge sum of money. The surgeries carried out on the Claimant at the teaching hospital and the prescribed consequential treatment yielded positive result after months of trauma and agony suffered by the Claimant.

In responding to the claims of the Claimant, the Defendant denied liability through a 31-paragraph Statement of Defense dated 20th of March 2022 and filed 30th of March 2022. The Statement of Defence also incorporates a Counter-Claim against the Claimant. The gist of the Counter-Claim as set out at paragraph 33 of the Defendant's pleadings are as follows:

- 1. A Declaration that the Defendant/Counter-Claimant was not negligent in discharging his professional duties towards the Claimant/Defendant to Counter-Claim.*
- 2. A Declaration that the case of the Claimant is frivolous, embarrassing to the Defendant and an attempt to damage the reputation of the Defendant built for over a decade.*

3. *A Declaration that the Claimant/Defendant to Counter-Claim is indebted, is liable in special damages to the Defendant/Counter-Claimant in the sum of ₦235,750.00 (Two Hundred and Thirty-Five Thousand, Seven Hundred and Fifty Naira) being the balance of the bill for the Claimant's treatment.*
4. *An Order of this Honorable Court directing the Claimant to forthwith pay the Defendant the sum of ₦235,750.00 (Two Hundred and Thirty-Five Thousand, Seven Hundred and Fifty Naira) being the balance of the bill for the Claimant's treatment.*
5. *An Order of Court directing the Claimant to forthwith pay the Defendant/Counter-Claimant, 10% interest per annum on the sum of ₦235,750.00 (Two Hundred and Thirty-Five Thousand, Seven Hundred and Fifty Naira Only) from 12th November, 2020 when it became due till the date of Judgment.*
6. *An Order of Court awarding exemplary and general damages of ₦50,000,000.00 (Fifty Million Naira only) in favour of the Defendant/Counter-Claimant against the Claimant/Defendant to Counter-Claim to be paid forthwith.*
7. *An Order of the Court directing the Claimant to forthwith, pay the Defendant/Counter-Claimant 10% interest per annum on the entire judgement sum from the date of judgement until liquidation.*
8. *Cost of defending this frivolous suit.*

Upon receipt of the process of the Defendant, the Claimant filed a Reply to the Statement of Defense and a defense to the Counter-Claim on the 7th of June 2022.

At the plenary, the Claimant herself testified as PW1. There was also one Dr George Tilah who was a subpoenaed witness who testified as PW2. Both witnesses were duly cross-examined by learned Counsel to the Defendant. At the close of the case for the Claimant, the following documents were admitted in support of her case. They are:

1. Receipt from University of Abuja Teaching Hospital Gwagwalada marked as **Exhibit A1-A2**.
2. Niza Pharmacy receipt marked as **Exhibit B1-B2**.
3. Life Link Pharmacy receipt, marked as **Exhibit C1-C2**.
4. Letter dated 15th of February 2021 from University of Abuja Teaching Hospital Gwagwalada, marked as **Exhibit D1-D2**.
5. Letter dated 28th of January 2021, addressed to the Chief Medical Doctor, University of Abuja Teaching Hospital, marked as **Exhibit F1-F2**.

On the other hand, the Defendant testified for the defense as DW1, and he was duly cross-examined on behalf of the Claimant. At the close of the Defendant's defense, the following documents were tendered and received in evidence.

1. Cash receipt No. 0101 of Raylife Global Hospital and Diagnosis Ltd, dated 7th of November 2020 as **Exhibit J1**.
2. Breakdown of second surgery (outstanding bill) dated 12th of November 2020 as **Exhibit K1**.

At the close of the case, parties through their respective learned Counsel filed and exchanged Final Written Addresses which were adopted in the open Court. Mr Musa Jacob Haruna Esq of Counsel for the Defendant, in his 13-page address filed on the 21st November 2023, formulated these issues for the

determination of this Court. They are couched thus: *“(1) Whether the Claimant is entitled to the relief sought against the Defendant? And (2) Whether the Defendant is entitled to his Counter-Claim.”*

On his part, Mr S. D. Shittu Esq for the Claimant in his address dated the 7th of December, 2023 and filed same day, formulated five issues, to wit:

“(1) Whether the Defendant owes a duty of care to the Claimant? (2) Whether the duty of care has been breached? (3) Whether the Claimant suffered damages as a result of the breach? (4) Whether the Defendant was negligent in the course of his professional responsibility as a medical doctor? (5) Whether the Claimant is entitled to be awarded damages?”

After a calm and dispassionate consideration of the state of pleadings and the evidence led in support, I form the view that the critical issues for determination are as captured below:

“1. Whether the Claimant has led evidence before this Court to support the allegation of medical negligence so as to entitle her to the reliefs sought?”

2. Whether the Defendant has proved the Counter-Claim against the Claimant?”

RESOLUTION OF ISSUE ONE:

I will start from defining what negligence is. According to the **Black’s Law Dictionary** (8th edition, 2004) at pages 3282-3283, ***“Negligence is the failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation. It is also any conduct that falls below the legal standard, established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly or willfully,***

disregardful of others right. The term donates culpable recklessness.” The principle of negligence attained judicial limelight in the well celebrated case of **Donoghue v. Stevenson (1932) AC 562 at 580**, where the Law Lords of the House of Lords speaking through the mouth of Lord Atkins asked, who is my neighbour? The wordings of Lord Atkins, in answer to the self-asked question are as follows, and I quote:

“The rule that you are to love your neighbor becomes in law, you must not injure your neighbour; and the lawyer’s question who is my neighbor? receives a restricted reply. You must take reasonable care to avoid acts or omission which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be persons who are so closely or directly affected by my acts that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to acts or omissions which are called in question.”

This principle has been applied in a plethora of cases such as ***Diamond Bank Ltd v. Partnership Investment (2009) LPELR-939 (SC)***, ***Ighreriniovo v. S.C.C. Nigeria Ltd & Ors (2013) LPELR-20336 (SC)*** among other cases.

A Claimant suing for negligence is obligated to prove the following elements: that he was owed a duty of care by the Defendant; that the Defendant breached this duty of care; and that he suffered damages as a result of that breach. See the case of ***Orhue v. NEPA (1998) LPELR-2758 (SC) at pg 10, paras B-D***. In the Supreme Court case of ***Royal Ade Nig Ltd & Anor v N.O.C.M. Co Plc (2004) LPELR 2959 (SC)***, the Court per Akintola Olufemi Ejiwunmi JSC, held that:

“However, it is my view that before the liability of the respondent to pay damages for the tort of negligence can be established, three things have to be proved by the appellants, (1) that the respondent failed to exercise duty of care, (2) that the respondents owed to the appellants a duty to exercise duty of care, (3) that the respondent’s failure was the cause of the injury in the proper sense of the term.”

In this case before me, the Claimant is suing the Defendant for medical negligence and the duty before the court is to determine whether the evidence that the Claimant has adduced is enough to ground a case of medical negligence. Vital questions require answers such as, was the Claimant a patient of the Defendant at the time the incidence occurred? Did the Defendant owe the Claimant a duty of care in relation to the fact complained of? Did the Defendant breach that duty of care? Did the Claimant suffer damages as a result of that breach? The state of evidence before this Court will enable the Court to answer these questions. On the first question of if there is evidence to show that the Claimant was the Defendant’s patient at the time the incident complained of occurred. The Claimant averred from paragraphs 3-6 of her Witness Statement on Oath that she was certainly a patient of the Defendant. This evidence was not challenged by the Defendant, In fact, the Defendant corroborated this assertion in his own evidence that she was a patient when he tendered receipts of payment he issued to the Claimant. So, the status of the Claimant as a patient of the Defendant is not in doubt.

Does the Defendant owe the Claimant a duty of care? Duty of care is an obligation to exercise reasonable care to avoid causing harm to a certain individual, who could foreseeably be affected by these actions or omissions. **Black’s Law Dictionary (8th edition, 2004)** defines it at **page 1536** as the

“legal relationship arising from a standard of care, the violation of which subjects the actor to liability”. In the Court of Appeal case of **Anyigo v. Ogar (2013) LPELR-23374 CA at pp 19-19 paras A-F**, it was held, per Onyekachi Aja Otisi JCA, that, and I quote:

“In Societe Bancaire (Nigeria) Limited vs. Margarida Salvado De Lluch [2004] 11-12 S.C. 74, the Supreme Court, per Acholonu JSC (of blessed memory) said: “When does a duty of care arise? Actually, a duty of care has its origin on the concept of foreseeability. This principle was first enunciated in Heaven v. Pender (1883) 11 Q. B. D. 503 at 509. Where Brett M. R. said; “Whenever one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger.” Every road user, by whatever means of transportation, including foot-travelers using the road, have a duty to exercise such care and skill in their own conduct on the roads so as not to endanger other road users.”

Duty of care may be statutory. It may also be contractual. In some cases, it is implicated by equity.

As a medical professional, the Defendant did owe a duty of care to the Claimant. The Claimant being the Defendant’s patient and his sole responsibility, he is expected to exercise duty of care which includes providing a reasonable standard of care, conducting thorough assessment, informing the patient of her diagnosis, treatment options, risks, benefits and any alternative in

a manner in which the patient can understand. Monitoring the patient, good and timely referrals where necessary, documentation which includes and not limited to accurate and detailed medical records. By fulfilling these responsibilities, a doctor demonstrates their commitment to providing quality care and upholding their duty of care to their patients in general. The Defendant being a medical professional, is required by law and the rules of his profession to handle the Claimant's case diligently, professionally, and carefully within the bounds of his professional ethics and Hippocratic Oaths. In this case, there is no doubt and it is obvious that, by being a doctor under whose care the Claimant was, the Defendant owes the Claimant that duty of care. The relationship between the Claimant and the Defendant satisfies the element of proximity which seeks to establish whether indeed the Defendant owed the Claimant a duty of care. The principle of proximity refers to the closeness or directness of the relationship between the parties. The law considers whether there is sufficient proximity to establish a duty of care. I hold that there is sufficient proximity between the Claimant and the Defendant from the evidence before me to satisfy myself that a duty of care exists in this situation.

The next question the court has to consider is whether the Defendant has breached that duty of care. In considering whether the duty of care has been breached, I have to consider the evidence before this Court. What is the evidence before this court? Paragraphs 7 – 15 of her Witness Statement on Oath specifically captured the breach of that duty of care alleged against the Defendant, to wit:

- 7. That prior to the time the Defendant carried on cesarean section on me, I was very hale and healthy.*
- 8. That the Defendant, solely carried on the cesarean section on me without the assistance of any other medical doctor.*

9. *That after the cesarean section was carried out on me, I started having excruciating pain on my body, weakness of body and swollen abdomen.*
10. *That on the 8th November 2020, the Defendant conducted blood transfusion on me with the hope that it would stop the excruciating pain I was experiencing on my body, weakness of the body and swollen abdomen but to no avail.*
11. *That due to the incessant excruciating pain on my body, weakness of the body and swollen abdomen, the Defendant together with another medical doctor carried out another surgical incision on me.*
12. *That the surgical incision complicated and worsened my medical condition whereby feces were discharging through the places where the Defendant carried out the surgical incision and including my vagina.*
13. *That the Defendant, having noticed that my condition had become convoluted to handle, discharged me and referred me to the University of Abuja Teaching Hospital.*
14. *That while I was hospitalized at the University of Abuja Teaching Hospital, a team of senior doctors examined me and prescribed a series of medical tests which included but not limited to blood tests, x-rays and others.*
15. *That after studying the results of the medical tests carried out on me, the team of senior doctors at the University of Abuja Teaching Hospital discovered that a number of intestines were negligently cut off on my body, it is for that reason I was having a discharge of feces through the places where the defendant carried out the surgical incision and including my vagina leading to the contamination of my body.*

On the other hand, the Defendant in paragraph 7-15 of his Witness Statement on Oath stated that:

7. *It is not true that the Claimant was hale and healthy when she was brought to the hospital.*
8. *The facts in paragraph 8 of the claim are not true, after the cesarean section was carried out on the Claimant, I noticed a mild abdominal distention and constipation, so I insisted that the Claimant remains on admission for further observation as is the normal practice.*
9. *I admit paragraph 9 of the Claim to the extent that on the 8th of November 2020 the Claimant was transfused blood as her packed cell volume (PCV) was 25% and needed blood for her hemodynamic stability and not for the swollen abdomen or pains as she claimed.*
10. *I admit paragraph 10 of the claim to the extent that I recommended to the Claimant's husband for an index surgery and the gross adhesions seen as result of complications of the two previous surgeries the Claimant had. However, the Claimant's husband claimed that he does not have money to go to a tertiary health facility. In a bid to assist the patient, I invited another experienced doctor at my own cost and both doctors successfully conducted an exploratory laparotomy on the Claimant.*
11. *The Defendant avers that paragraph 13 is not within his knowledge. The Defendant adds that it is expected of any health facility to which a patient is referred, to examine a patient and carry out its own tests. That was the reason for the referral for further evaluation/review and management based on facility and expert management.*

12. *The defendant denies paragraph 14 of the claim and further states that nowhere was it stated at the University of Abuja Teaching Hospital Report that the intestines was negligently cut off in numbers by the Defendant.*
13. *The Defendant avers that paragraph 15 is not within his knowledge.*
14. *The Defendant denies paragraph 16, 17, and 18 of the Claim and further states that he was not negligent in his handling of the Claimant's case and is not responsible for any financial liability borne by the Claimant. The Claimant is hereby put to the strictest proof of her assertion.*
15. *The Defendant denies paragraphs 19 and 20 of the claim and further states that the Defendant never engaged in any professional misconduct and it is only a tribunal or Court of law can make such a conclusion not the Claimant.*

Is the conduct of the Defendant consistent with the standard medical procedure, especially with regards to a Cesarean Section procedure? To answer this question, I shall consider the stipulations of the Code of Medical Ethics, also known as the Rules of Professional Conduct for Medical and Dental Practitioners in Nigeria, prepared by the Medical and Dental Council of Nigeria regarding what is required of medical and dental practitioners in Nigeria. I shall thereafter review the evidence before me to determine whether the Defendant's conduct in handling the case of the Claimant measured up to the stipulations of the Code of Medical Ethics. Rule 29. 4 of the Code of Medical Ethics in Nigeria 2008 provides an insight into what a breach of the duty of care expected of a medical practitioner entails. It states thus:

“1. Failure to attend promptly to a patient requiring urgent attention when the practitioner was in a position to do so;

- 2. Manifest incompetence in the assessment of patient.**
- 3. Making an incorrect diagnosis particularly when the clinical features were so glaring that no reasonable skillful practitioner could have failed to notice them;**
- 4. Failure to advise, or proffering wrong advice to a patient on the risk involved in a particular operation or course of treatment, especially if such an operation or course of treatment is likely to result in serious side effects like deformity or loss of organ, or function;**
- 5. Failure to obtain the informed consent of the patient before proceeding on any surgical procedure or course of treatment when such consent was necessary;**
- 6. Making a mistake in treatment e.g. amputation of the wrong limb, carelessness that results in the termination of pregnancy, prescribing the wrong drug, or dosage in error for a correctly diagnosed ailment, etc;**
- 7. Failure to refer, or transfer a patient in good time, when such a referral or transfer was necessary;**
- 8. Failure to do anything that ought reasonably to have been done under any circumstance for the good of the patient;**
- 9. Failure to see a patient as often as his medical condition warrants or to make appropriate comments in the case notes of the practitioner's observations and prescribed treatment during such visit. It also includes failure to communicate with the patient**

or with his relatives as may be necessary with regards to any developments, progress or prognosis in the patient's condition."

In support of her claim of negligence against the Defendant, the Claimant called an expert witness, Dr George Illah, who described himself as a general surgeon in the University of Abuja Teaching Hospital. He testified under subpoena which was admitted in evidence as **Exhibit G1 and Exhibit G2**, which are the medical report of the Claimant prepared between 18th November 2020 to 22nd December 2022. He also tendered an original referral letter from the Defendant's Hospital to the University of Abuja Teaching Hospital, which is **Exhibit H1 and H2**. One particularly striking information from the PW2's statement is that when the Claimant was admitted on the 17th of November 2020 at the University of Abuja Teaching Hospital, the doctors on duty found that the Claimant was ill with some infection from the previous surgery and the Defendant, during cross-examination, could not discredit this piece of evidence.

Because the Claimant was referred to the Teaching Hospital from the Defendant's hospital, the only logical conclusion open to this Court is that the circumstances of the previous surgery, which was done at the Defendant's hospital, were below the standard required of such medical procedure. The Defendant in his defense at paragraphs 7 to 9 of his Witness Statement on Oath, swore that he noticed the Claimant had a mild abdominal distention and constipation after the cesarean section he performed on her, and that the Claimant had blood transfusion because she needed blood for her hemodynamic stability, and that he recommended to the Claimant's husband for an index surgery for the gross adhesion seen as a result of the complications of the two previous surgeries the Claimant had. But because the Claimant's husband claimed he didn't have money to go to a tertiary health facility, the

Defendant invited another experienced doctor and together they successfully conducted an exploratory laparotomy on the Claimant.

If I may ask, this is a case where the Defendant had seen that the Claimant had gross adhesions from complications of her two previous surgeries and the Defendant, being a medical expert, before agreeing to set a date for the Claimant to have the third cesarean section, is it not his job as a medical professional to conduct a comprehensive medical examination, so as to assess the extent of the adhesions caused from her two previous cesarean sections, as a preventive measure to help minimize the risk of further complications? If I may ask again, are occurrences of adhesions not common in some women who have had previous surgeries, such as cesarean section? Is this not the duty of care which behooves the Defendant to treat the Claimant as a person “**so closely or directly affected by [his] acts that [he] ought reasonably to have them in contemplation as being so affected when [he was] directing [his] mind to acts or omissions which are called in question**” – the acts or omissions being called in question being the cesarean section he carried out on the Claimant?

The Defendant averred in paragraph 8 of his Witness Statement on Oath that he noticed the Claimant had a mild abdominal distention and constipation after he had carried out the cesarean section on her. Would this not have been avoided if the Defendant had done his due diligence as a doctor by taking several measures like utilizing imaging studies, such as an ultra sound, MRI, or CT scans, to evaluate the severity of the adhesions from complications of the two previous surgeries of the Claimant before performing the third cesarean section on her? From the facts stated by the Defendant in his Witness Statement on Oath, the Defendant allowed the condition of the Claimant to deteriorate before referring her to the Teaching Hospital. There was no need for

the Defendant to carry out the second surgery, in that same hospital, at that time, considering the condition the Claimant was at that time. She should have been referred to a specialist hospital, or a tertiary health facility, since it was obvious that the Defendant's hospital lacks the medical facility and capacity to handle pre-surgery preparations and post-surgery complications, especially seeing the excruciating pain the Claimant was having after the cesarean section the Defendant had performed on her. Carrying out another surgery in his facility, under the same circumstance was not needed at that time. It is immaterial that he got a second doctor to assist him during the second surgery.

The fact that the defendant did not call the second doctor, who had performed the second surgery with him the second time, to corroborate his evidence that he was not negligent, weighs heavily on the mind of this Court. It is my considered view that the Defendant, having failed to comply with the standard medical procedure in treating the case of the Claimant with the sense of urgency her situation deserved breached the duty of care he owed the Claimant.

Lastly, did the Claimant suffer any injury, in the strict sense of the word, from the Defendant's breach of the duty of care he owed her? From paragraphs 16 to 17 of the Claimant's Witness Statement on Oath, the Claimant led evidence to support her claim that she incurred financial expenses, in addition to the personal injury in the form of post-surgery complications, in correcting the effect of the cesarean section the Defendant carried out on her. She tendered some receipts in support of her assertions. These were admitted in evidence as **Exhibits A1-A2, B1-B2 and C1-C2**. What I see here is that the injury is a direct and logical consequence of the breach by the Defendant of that duty of care. If the Defendant had not breached that duty of care, the Claimant would not have been put to suffer the complications and expend financial resources on

corrective medical procedure. Thus, the element of causation, I further hold, has been established.

From the above, has the Claimant pleaded sufficient particulars and led credible evidence in support to hold the Defendant liable with respect to the surgery (cesarean section) under reference? In the case of ***Olayinka & Anor v Dana Motors Ltd (2022) LPELR 58091 CA at pp 22-23 para-B-A***, the Court held that:

“The essential elements or ingredients of actionable negligence have been settled beyond peradventure in a surfeit of judicial decisions. The elements or ingredients are: 1. The existence of a duty to take care owed to the claimant by the defendant. 2. Failure to attain the standard of care prescribed by law (breach of the duty). 3. Damages suffered by the claimant, which must be connected with the breach of the duty to take care. Once the ingredients are established at a hearing, the defendant will be held liable in negligence. See MAKWE vs. NWUKOR (2001) LPELR (1830) 1 at 20-21, AGBONMAGBE BANK LTD vs. CFAO (1966) LPELR (25282) 1 at 10, BRITISH AIRWAYS vs. ATOYEBI (2014) LPELR (23120) 1 at 64-65, UTB vs. OZOEMENA (2007) LPELR (3414) 1 at 14, NGILARI vs. MOTHERCAT LTD (1999) LPELR (1988) 1 at 35, ABUBAKAR vs. JOSEPH (2008) LPELR (48) 1 at 31, OWOYELE vs. MOBIL (supra) and OTTI vs. EXCEL-C MEDICAL CENTRE LTD (2019) LPELR (47699) 1 at 48.”

In this case, it is my considered view and I so hold that the Claimant has been able to establish a case of medical negligence against the Defendant. I hereby resolve the first issue in favor of the Claimant.

Before I move to Issue Two, I must say something about the Claimant's Reliefs Number (c) and (d). these reliefs come within the category of damages known as special damages. For a claimant to be entitled to the award of special damages, they must specifically plead same and lead evidence in support of same. In ***G.K.F. Investment Nigeria Ltd. v. NITEL Plc (2009) 15 NWLR (Pt. 1164) 344 S.C. at 373, paras D-F***, the Court defined special damages as ***“Special damages, as the name imply, are damages which must be specifically claimed and described in the pleadings if recovery of them will be ordered by the court.”*** In paragraphs 16, 17 and 18 of the Statement of Claim, these special damages were pleaded. In paragraphs 16 and 17 of the Claimant's Witness Statement on Oath, the Claimant led evidence in support of these pleadings. She also tendered, and this Court admitted receipts of payments for medications. These receipts were marked as **Exhibits A1-A2, B1-B2 and C1-C2**. It is my considered view that the Claimant has proved her entitlement to the special damages sought.

RESOLUTION OF ISSUE TWO

On the issue of whether the Defendant has proved his Counter-Claim against the Claimant and is entitled to the reliefs sought therein and which I have enumerated earlier in this Judgment, it is a settled principle of law that a counter-claim is a separate suit, with a life of its own distinct from the main suit. See the case of ***Anwoyi & Ors v Shadeke & Ors (2006) LPELR 502 (SC) at pp 17-17 paras B-B***, where the Supreme Court held that ***“A counter-claim is by itself, a substantive action which must be proved to the satisfaction of the Court for a counter-claimant to be entitled to judgment”***. Both parties have led evidence and joined issues in support of the above claims. The Counter-Claimant in respect of the Counter-Claim must lead credible evidence to support their claim.

I have held that the allegation of medical negligence has been proved by the Claimant against the Defendant in the main suit. One of the reliefs sought by the Defendant in his Counter-Claim is a declaration that the case of the Claimant is frivolous, embarrassing and an attempt to damage his reputation. I have pondered on the tenability of this claim. How can an aggrieved patient, who honestly makes a complaint against the quality of the medical treatment she got and who believed she was not properly catered for, be seen as damaging the reputation of the doctor who gave her less than satisfactory treatment? Let me also add with considerable haste that, may the day never come where a dissatisfied patient will be afraid to complain about a medical mistake, which could have been avoided by a doctor, be seen as someone trying to ruin or damage the reputation of that doctor. To what gain will damaging the Defendant's reputation do to the Claimant? In essence, the fact that it has been resolved by this Court that the Claimant has been able to establish a case of medical negligence against the Defendant, the claim for damages in the Defendant's Counter-Claim must fail. It is hereby refused and dismissed for want of merit.

Conversely, having resolved Issue One in favor of the Claimant, the suit of the Claimant hereby succeeds and the reliefs sought therein are hereby granted as follows:

- 1. THAT it is the declaration of this Honorable Court that the Defendant was negligent when he carried out the cesarean section procedure on the Claimant, from the first surgery he performed on the Claimant to the second surgery which further complicated the situation of the Claimant.**
- 2. THAT an Order is hereby made by this Honorable Court against the Defendant, to pay the Claimant the sum of ₦290,970.00 (Two**

Hundred and Ninety Thousand, Nine Hundred and Seventy Naira) as specific damages for the medication expenses incurred by the Claimant as a result of the breach of the duty of care owed by the Defendant.

3. THAT the sum of ₦3,000,000.00 (Three Million Naira Only) is hereby awarded against the Defendant as general damages for medical negligence and for having breached the duty of care he owed the Claimant.

This is the Judgement of this Court delivered today, the 12th day of March 2024.

HON. JUSTICE A. H. MUSA
JUDGE
12/03/2024

APPEARANCE

For the Claimant:

S.D.Shittu Esq.
M.D. Sharif Esq.
A.S. Ugwuanyi Esq.
Awal Nasir Esq.

For the Defendant:

M.J. Haruna Esq.
A.S. Jacob Esq.
J.C. Odo Esq.
Khoni Bobai Esq.
P.O. Oghagbon Esq.
J.A. Ndu Esq.
E.O. Agboola Esq.