

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIIHERO
ON TUESDAY
THE 6TH DAY OF DECEMBER, 2022.

BETWEEN:

SUIT NO. B/947/2021

MR. ENDURANCE ENOGHEGHASE CLAIMANT
AND
ZENITH BANK PLC DEFENDANT

JUDGMENT

The Claimant instituted this suit vide a writ of summons filed on the 18th of October, 2021 claiming against the Defendants as follows:

- (a) Refund of the sum of N1,190,000 fraudulently duped through the negligent act of the Defendant Bank;***
- (b) The sum of N10,000,000.00 (Ten Million) naira general damages for loss of earning occasioned by the negligence of the Defendant; and***
- (c) Cost of litigation of N1, 000,000.00.***

At the hearing, the Claimant testified, tendered some documentary exhibits and closed his case. From the evidence adduced at the trial, the Claimant's case is that on the 16th day of August, 2021 a customer came to his shop to purchase some items valued at the sum of N1,190,000.00 (One Million, One Hundred and Ninety Thousand Naira). He alleged that after the purchase, the customer requested that he should accompany him to his Bank to make a transfer to pay for the items.

He accompanied the customer to the Airport Road branch of the Defendant to do the transfer. At the banking hall, the customer briefed one Mr. Martins, a staff of the Defendant about their mission and the customer was given a counter-cheque

which he filled. The Defendant's staff stamped the counter cheque, took the original and gave the Claimant a duplicate copy. The Claimant alleged that he informed the accounting officer working for the Defendant that he had not received the funds in his Bank account and he told him that it will take about 30 minutes due to network before it will be received. However, the Claimant released the goods to the customer believing that his account would be credited within the stipulated 30 minutes.

He alleged that by mid-day of 16/08/2021 when he did not receive the funds he came back to the banking hall of the defendant to report the matter to the Manager. According to the Claimant, when the Manager questioned Mr. Martins, he admitted that he did not actually check whether there were sufficient funds in the customer's account.

He alleged that the Bank management asked him to give them time to look into the matter and he was later informed that the staff has been sanctioned and relieved of his job. He alleged that the customer absconded with his goods because of the Defendant's negligence hence he instituted this suit against them.

In their Defence, the Defendant called one witness and closed their case. In their evidence, the Defendant alleged that on the day in question, the Claimant came to their Airport Road branch with one of their customer named Obita Samson and requested for a transfer form from one of their staff named Martins Adakpor. They alleged that the transfer of funds was not possible because there were no sufficient funds in the customer's account. They maintained that the Bank did not give any undertaking that the funds will be transferred to the Claimant's account to warrant the Claimant to release the goods to the customer. They alleged that the Claimant was negligent in releasing the goods without waiting for the confirmation of payment.

At the conclusion of the Defendant's case, the learned counsel for the parties filed their final written addresses which they adopted as their final arguments in support of their cases.

In his final written address, the learned counsel for the Defendant, *Austin Ajayi Esq.* formulated a sole issue for determination as follows:

“Whether the Claimant has adduced credible evidence to be entitled to the judgment of this Honourable court.”

Arguing the sole issue, learned counsel posited that from the state of pleadings and the evidence in this case, it is the Claimant who bears both the legal and the evidential burden to convince this Honourable court why judgment should be given in his favour.

He contended that from the pleadings of the Claimant and his testimony in court, the Claimant must prove his case beyond reasonable doubt because of the copious criminal allegations made against the Defendant both in his evidence in chief and during cross examination. He said that the Claimant admitted that he reported the case to the police because the Defendant had committed a crime. That by virtue of *section 135(1) of the Evidence Act*, where in any proceedings whether criminal or civil, if there is an allegation crime, it must be proved beyond reasonable doubt. He also relied on the case of *ALAD & ORS V OGUNDELE & ANOR (2013) LPELR 2138 CA* where the court held as follows:

“... Moreover, an allegation of fraud tantamount to an imputation of a crime and it must be proved beyond reasonable doubt notwithstanding the civil nature of the action...”

Furthermore, counsel relied on the views of the learned authors *MAUREEN STANLEY – IDUN & JAMES AGABA CIVIL LITIGATION IN NIGERIA, REVISED EDITION, 2012, pages 520 – 521.*

Counsel submitted that the Claimant has failed to adduce any credible evidence to substantiate his allegation of crime against the Defendant. He said that the evidence adduced by the Claimant exonerated the Defendant from any liability in this case. He pointed out that the Claimant himself asserted that the Defendant was not part of the business transaction between the Claimant and his customer who allegedly duped him.

Furthermore, he maintained that the Defendant did not give any undertaking written or oral to the Claimant that money had been transferred to Union Bank before the Claimant released his goods to a complete stranger. He emphasized that the evidence of the Claimant exculpated the Defendant from any liability in this case and he urged the Court to dismiss the case with aggravated costs in favour of the Defendant.

In his final written address, the learned counsel for the Claimant, *P.A. Ugheoke Esq.* formulated two issues for determination as follows:

- “1. Whether from the state of pleadings, evidence led and exhibit tendered the defendant does owe the claimant a duty of care as to make her liable in the tort of negligence;***
- 2. Whether the act of the defendant through her agent, Mr. Martins Afoke Adakpor did not amount to vicarious liability?”***

Thereafter, the learned counsel marshalled out his arguments on the two issues seriatim.

ISSUE 1:

Whether from the state of pleadings, evidence led and exhibit tendered the defendant does owe the claimant a duty of care as to make her liable in the tort of negligence?

On this issue, he submitted that the Defendant owed a duty of care to the Claimant and is liable to the Claimant and by extension to the entire world in their day to day banking activities irrespective of whether or not the person is a customer of the bank.

He submitted that a duty of care in the tort of negligence is that which an individual owes to anyone who comes across his way. He said that it is not restricted remotely to a relationship between two individuals but quite elastic in nature. He referred the Court to views of *Prof. Gilbert Kodilinye* in his book titled: ***THE NIGERIAN LAW OF TORTS, Chapter 4 Page 38***, where the learned author defined the tort of negligence as follows:

“A breach of a legal duty to take care which results in damages, undesired by the defendant to the plaintiff. Thus it consists of 3 elements:-

- a) A duty of care owed by the defendant to the plaintiff***
- b) Breach of that duty by the defendant***
- c) Damage to the plaintiff resulting from the breach.”***

Applying the above definition and principles of law to this case, counsel submitted and that the Defendant bank owes the Claimant a duty of care in the course of their banking activities and that they breached that duty which has resulted in the damages which the Claimant has suffered.

Counsel contended that from the pleadings and evidence on record, the Defendant’s staff, without due diligence, stamped the transfer form, kept the original copy and gave the Claimant a duplicate copy which was faint and not readable.

He posited that the Defendant never denied the transaction of 16th August, 2021. He said that despite the fact that the transfer receipt was marked rejected, the Defendant acknowledged the “contract document” in paragraph 4 of their statement of defence.

Counsel contended that the Defendant owed a duty of care to every person within their banking hall. That the Defendant’s failure to disclose to the customer in

the presence of the Claimant whether funds are in the account or not after filling the form and purportedly stamping same made her liable.

He submitted that the entire defence of the Defendant is an admission against interest as the Claimant's case remains unchallenged. He pointed out that it is on record that the Defendant's staff Mr. Martins was relieved of his appointment on the same day of the incident. He alleged that the D.W. 1, one Sarah Okhawere who is the head of operation, corroborated the Claimant's evidence that Mr. Martins resigned his appointment.

Counsel submitted that the tort of negligence is a question of fact and not law and he cited the case of ***KALLA VS JARMAKANI TRANSPORT LTD (1961) ALL NLR 747.***

That for a claimant to succeed in an action in negligence, he must establish three essential ingredients, to wit; the existence of a duty to take care, failure to attain that standard of care prescribed by law and damages suffered by the complainant, which is causally connected with the breach of duty to care. He submitted that the Defendant has failed to exculpate itself from liability. That to exculpate itself from liability, the Defendant must show that they established the following three conditions:-

- a) That they took precaution to ensure that money was in the account;
- b) That the Claimant never came to the bank with their customer; and
- c) That a form was never filled.

Counsel submitted that from the evidence, the Defendant failed to establish the aforesaid conditions and the Claimant was able to show that the Defendant was negligent in carrying out its banking operations. That their failure to take precaution in the handling of funds availability subsequently led the Claimant to alter his position thereby suffering damages.

Replying to the submission of the learned counsel for the Defendant that the Claimant must prove his case beyond reasonable doubt, he submitted that the claim is for a refund of the sum of N1, 190,000.00 arising from the negligence of the Defendant bank. He maintained that the Claimant's claim does not fall within the allegation of crime against the defendant.

Counsel pointed out that in her evidence at paragraph 8 of her deposition the D.W.1 stated that: "***The customer promised to fund the account to enable the bank to effect the transfer.....***" and this is contrary to paragraph 9 of the same

deposition where she stated as follows: - ***“A form is filled, it is only processed when there is sufficient funds in the account of the holder*”**

He said that juxtaposing paragraphs 8, 9, and 13, it is clear that the Defendant was negligent by acting on the promise of the fraudulent customer without having regards to the Claimant. He said that under cross-examination, the Defendant stated that they could not process the form because the customer did not fund the account.

Counsel submitted that the case of ***ALAD & ORS VS OGUNDELE & ANOR (20113) LPELR 2138*** does not apply in this case as fraud was not alleged against the bank but its customer through the negligent act of the Defendant. He said that the bank was used as a conduit pipe for the actualization of the fraud committed by the defendant. Finally, he submitted that even if there was an allegation of crime, the Claimant has proved it this beyond doubt and he urged the Court to enter judgment for the Claimant.

ISSUE 2:

Whether the act of the Defendant bank acting through her agent, Mr. Martins Adakpor Afoke did not amount to vicarious liability?

Counsel posited that from the available evidence, Mr. Obita Samson was the Defender’s customer and Mr. Martins Afoke Adakpor was the Defendant’s staff.

He further posited that the above scenario created a principal/agent relationship between Obita as the principal and the Defendant as the agent (sic). He submitted that any action or instruction given by Samson binds the agent accordingly so the Defendant is vicariously liable for the acts of Adakpor who received, processed the transfer form and confirmed same to be okay leading to the loss of income by the Claimant.

He submitted that from the beginning of the transaction, the Defendant bank was aware of the account statement of its customer. He referred to Kodilinye (Supra) at page 229 and the English case ***MERSEY DOCKS & HARBOUR BOARD VS. COGGINS & GRIFFITH (LIVERPOOL) LT (1947) A.C.I.*** on the principle of vicarious liability.

Following the above principle, counsel submitted that Mr. Afoke Martin being a servant of the Defendant, was negligent in the course of his duties and his negligence is binding on the Defendant. He urged the Court to hold that the Defendant is vicariously liable for the tort of their servant while in their employment.

Finally, he urged the Court to enter judgment for the Claimants according to his Statement of Claim.

It is settled law that in civil cases, the burden of proof is on the party who asserts a fact to prove the fact. The burden of proof of negligence is upon the Claimant who alleged negligence. This is because negligence is a question of fact, not law, and it is the duty of the party who asserts it to prove it. By virtue of Section 135(1) of the Evidence Act, 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: *NB PLC V. AUDU (2009) LPELR-8863(CA) (PP. 27 PARAS. C)*; *ABUBAKAR & ANOR V. JOSEPH & ANOR (2008) LPELR-48(SC) (PP. 31-32 PARAS. F)*.

The present suit is on the tort of negligence. In the case of *OKWEJIMINOR V GBAKEJI & ANOR (2008) LPELR-2537(SC)*, the apex Court while expositing on negligence referred to the old English case of *Blyth v. Birmingham Waterworks Co. (1856) 11 EXCH. 781 at 784*, where the English Court defined negligence as: *"... the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."*

Again in the old English case of *Lochgelly Iron and Coal Co. v. M'mullan (1934) A.C. 1 at P. 25*, Lord Wright expositied as follows: *"In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission. It properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing."* This latter definition spells out for us the three basic components of the torts of negligence: [a] duty of care [b] breach of the duty of care [c] damage caused by the breach. In a case of negligence, the burden is on the Claimant to plead and lead evidence to prove these three basic components of the tort of negligence.

Once a Claimant fails to establish by credible evidence all or any of these three key ingredients of the tort of negligence, such a claim must fail. See *B. J. Ngilari V. Mothercat Ltd (1999) 13 NWLR (Pt. 636) 626*. See also *Oyidiobu V. Okechukwu (1972) 5 SC 191*; *Orhue V. NEPA (1998) 7 NWLR (Pt. 557) 187*.

In the instant case it is expedient to examine the evidence adduced by the Claimant to determine whether he has established these three salient ingredients.

First on the issue of duty of care. The apex Court has given a guide on how to determine the duty of care in the case of *I.M.N.L. v. NWACHUKWU (2004) LPELR-15269(SC)* thus: *"The recent decision of the House of Lords has summed up the law admirably in Ann v. Merton London Borough Council (1978) AC 728 where Lord Wilberforce stated as follows:- "Through the trilogy in this house; Donoghue v. Stevenson (1932) AC 562, Hedley Byrne & Co. Ltd. v. Heller*

Partners Ltd. (1964) AC 465, Dorset Yacht Co. Ltd. v. Home Office (1970) AC 1004. The position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. First one has to ask as between the alleged wrong doer and the person who has suffered damage if there is a sufficient relationship of proximity or neighbourhood such that in the 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 of care arises ..."* Per MUSDAPHER, J.S.C See also *AGBONMAGBE V CFAO (1996) 1 ALL NLR 140 at 145; MAKWE V NWUKOR (2001) 7 NSCQR 435 and FIRST BANK OF NIGERIA PLC V ASSOCIATED MOTORS CO. LTD (1998) 10 NWLR (Pt.750) 441 at 464.

Going by the proximity test as suggested by the apex Court, I must determine whether the relationship between the parties herein is such that the Defendant can reasonably contemplate that any act of carelessness on their part may likely cause damage to the Claimant.

On the issue of proximity, the Defendant's counsel seriously contended that the Defendant was not part of the business transaction between the Claimant and his customer who allegedly duped him.

Furthermore, he maintained that the Defendant did not give any undertaking written or oral to the Claimant that money had been transferred to Union Bank before the Claimant released his goods to a complete stranger. He emphasized that the evidence of the Claimant exculpated the Defendant from any liability.

The generally accepted principle of negligence is that a person owes a duty of care to his "neighbour" who would be directly affected by his act or omission. The word "care" means serious attention or heed. Under the law of negligence or of obligation, it means the conduct demanded of a person in a given situation. Typically, this involves a person's giving attention both to possible dangers, mistakes and pitfalls and to ways of minimizing those risks. See: *Nigerian Ports Plc Vs Beecham Pharmaceutical PTE Ltd (2013) 3 NWLR (Pt 1333) 454, Kabo Air Ltd Vs Mohammed (2015) 5 NWLR (Pt 1451) 38.*

There is a legal duty owed to take reasonable care to avoid acts or omissions which can be reasonably foreseen to likely injure a neighbour. Who then in law can be described as the neighbour of a Claimant in a claim for negligence? In the Holy Bible, the parable of the Good Samaritan aptly demonstrates who is a neighbour! However, in legal parlance, as far back as 1932, in England, ***Lord Atkin*** had provided an answer as to who in law can be described as a neighbour to a Claimant

in a claim for negligence. In the classical case of *Donoghue V. Stevenson (1932) AC @ P. 580* he stated thus: "*You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who then is my neighbor? 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.*" See also the English case of *Anns V. Merton London Borough Council (1977) 2 All ER 492 @ 498*; and the Nigerian case of *Abusomwan V. Mercantile Bank of Nig Ltd (1987) 3 NWLR (Pt. 60) 180 @ 198*, where the court held that the doctrine of proximity is the foundation of duty of care in the tort of negligence.

The question to ask on the "neighbour" and "duty of care" principle is whether between the Defendant and the Claimant, there is sufficient relationship of proximity or neighbourhood such that in the reasonable contemplation of the former, carelessness on his part may likely cause damage to the latter? See the cases of *Abusomwan Vs Mercantile Bank of Nigeria (supra) and Anya Vs Imo Concorde Hotels Ltd (2002) 18 NWLR (Pt 799) 377*.

The uncontested fact between the parties in this suit is that the Defendant is the banker to the Claimant's customer who is now at large. The Claimant actually followed the customer to the Defendant bank to transfer funds to the Claimant's Union Bank account. Unfortunately the funds were never transferred but the Claimant released the goods to the customer without receiving any alert to confirm the transfer of funds.

The case of *International Messengers Nigeria Limited v. Nwachukwu [2004] 13 NWLR (Pt. 891) 543 at 560* lucidly explains the principle of the duty of care in circumstances of this nature. In the said case, the Court explained that where a person is injured from a transaction arising from the contract of two persons, the third party is not precluded from bringing an action on the ground that he was not a party to the contract, the mis-performance or non-performance of which has resulted in the damage. The duty imposed here is not because there was a contract but because the Defendant had implied an undertaking not to injure the Claimant. The rationale is that, even though not so expressed, the obligations towards the contracting party extended to all such persons who are likely to be injured by the acts or omissions of the Defendant. They are neighbours in contemplation or ought to be in contemplation of the Defendant. The relevant question is whether, as between the alleged wrong doer and the person who has suffered damage, there is a sufficient relationship of proximity or neighbourhood such that in the 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 of care arises. Negligence is the failure to use requisite amount of care required by law in the case where duty of care exist.

From the available evidence, I am of the view that notwithstanding the absence of any privity of contract between the Defendant and the Claimant, the Claimant falls within the net of those regarded as "neighbours" to whom the Defendant owed a duty of care. As a banker, the Defendant's duty of care is wide enough to include all those who enter their banking hall to carry out any banking transaction such as a transfer of funds. The Defendant clearly owes a duty of care to the Claimant who was the beneficiary of such transfer of funds. See the following cases: *SAVANNAH BANK V. STARITE INDUSTRIES OVERSEAS CORPORATION & ORS (2000) LPELR-6093(CA) (PP. 7-12 PARAS. D); KEYSTONE BANK LTD V. MARKETING AND MEDIA LTD (2016) LPELR-41290(CA) (PP. 18 PARAS. D);* and *UBA V. WILMAS (NIG) LTD & ANOR (2016) LPELR-40289(CA) (PP. 12-13 PARAS. D).*

Upon the above authorities, I hold that the Defendant owed the Claimant a duty of care under the particular circumstances of this case.

Having determined the existence of duty of care between the Defendant and the Claimant, the next relevant consideration is whether there was a breach of the duty of care. Learned Counsel for the Claimant has seriously contended that the Defendant had breached the duty of care owed to the Claimant in this case. Although negligence is a question of fact, each case must be decided in the light of its own facts and circumstances; the established principle of law is that the degree of care which the duty involves must be proportional to the degree of risk involved if the duty of care should not be fulfilled. See the cases of *North Western Utilities Ltd V. London Guarantee & Accident Co. Ltd (1936) AC 108;* and *U.T.B (Nig.) V. Ozoemena (2007) 3 NWLR (Pt. 1022) 488.* The test is that of a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs.

The onus of proving negligence is on the Claimant who alleges it. Where Claimant pleads and relies on negligence by conduct or action of the Defendant, he or she must prove by evidence the conduct or action and the circumstances of its occurrence giving rise to the breach of the duty of care. Once Claimant has discharged the onus on him, the burden shifts to the Defendant to adduce evidence in challenge. The basic requirement is that the Claimant must plead all the particulars in sufficient detail of the negligence alleged and the duty of care owed by the Defendant must be established by evidence.

The onus is on the Claimant to prove that the Defendant's conduct was careless by failing to measure up to the standard and scope of a reasonable man. See the case of **ALUMINIUM MANUFACTURING COMPANY OF (NIG) LTD V. VOLKSWAGEN OF (NIG) LTD (2010) LPELR-3759(CA) (PP. 13-15 PARAS. F)**.

Furthermore, in the case of **Koya v. U.B.A (1997) 1 NWLR (Pt. 481) 251 at 291**, the apex Court stated thus: **"It is not sufficient for a plaintiff to make a blanket allegation of negligence against a defendant in a claim on negligence without giving full particulars of the items of negligence relied on as well as the duty of care owed to him by the defendant"**. See also the case of **Machine Umudje and Anor v. Shell-BP Petroleum Development Company of Nigeria Ltd. (1975) 9-11 S.C. 155 at 166-167**.

Again in the case of **7UP BOTTLING COMPANY PLC V. EMMANUEL (2013) LPELR-21104(CA) (PP. 31-32 PARAS. F)**, the Court restated the position as follows: **"...it is necessary to consider whether the Appellant's pleaded the facts of the negligence alleged. This is necessary because, it is not enough for a party to allege negligence, facts that constitute the alleged negligence must be pleaded and particularized and evidence must be led to prove the particulars of the alleged negligence."** See: **WAEC Vs. MEKWUNYE (2016) LPELR-40450(CA) Pg.26, Paras. B - E; GUARANTY TRUST BANK PLC Vs. FOX GLOVE NIGERIA LIMITED (2016) LPELR-40167 (CA) Pg. 11-12, Paras. F - B and DIAMOND BANK LTD. Vs. PARTNERSHIP INVESTMENT LTD & ANOR [2009] 18 NWLR (Pt.1172) Pg.67 (SC); (2015) LPELR-939 (SC) Pg.19, Paras. B – D"**

Going through the Claimant's pleadings in this suit, I observed that although the Claimants pleaded a few facts on the alleged negligence of the Defendant, he did not proceed further to give full particulars of the items of negligence relied upon as required by the above authorities. This omission is quite fatal to his case.

Furthermore, the position of the law in a case of negligence is that the Claimant must be able to link the breach of the duty of care which occasioned the injury to the Defendant. The cause of the injury has to be traced to the act or omission of the defendant. See **NGILARI VS. MOTHERCAT LTD. (1999) 13 NWLR (PT. 636) 626; ANYAH VS. IMO CONCORDE HOTELS LTD. (2002) 12 SC. (PT. 11) 77; and 7UP BOTTLING COMPANY PLC V. EMMANUEL (2013) LPELR-21104(CA) (PP. 31-32 PARAS. F)**.

From the evidence adduced by the Claimant himself, it is clear that the Claimant failed to link the breach of the duty of care to the Defendant. According to the Claimant, on the 16th day of August, 2021, an unknown customer came to his shop to purchase items worth N1, 190,000.00 (One Million, One Hundred and

Ninety Thousand Naira) from him. He allowed the customer to pack all the items into the customer's vehicle and accompanied the customer to the Defendant bank to enable the customer pay for the goods through a bank transfer.

At the bank, the Defendant's staff allegedly stamped a counter cheque, took the original copy and gave him an illegible duplicate copy. He alleged that he was "*curious of the transaction*", and informed the accounting officer of the Defendant that the funds had not entered into his own Bank account but he was counseled that it will take about 30 minutes due to network before it will be received. Without receiving the funds, he left the bank and allowed the unknown customer to go away with all the items. Subsequently, when he failed to receive the funds, he came back to the bank to complain. From his own evidence, I am of the view that the Claimant's conduct was most reckless and unreasonable. The breach of the duty of care was squarely on the part of the Claimant who parted with valuable goods under very careless circumstances. He did not behave like a prudent merchant. In commercial transactions, the law requires every party to be prudent, the maxim is "*caveat emptor, caveat venditor*" (let the buyer beware, let the seller beware).

In their defence, the Defendant led evidence to show that the transfer of funds was not possible because there were no sufficient funds in the customer's account. They maintained that the Bank did not give any undertaking that the funds will be transferred to the Claimant's account to warrant the Claimant to release the goods to the customer. They alleged that the Claimant was negligent in releasing the goods without waiting for the confirmation of payment.

I do not believe the evidence of the Claimant that the Defendant's staff, Mr. Martins opened up to the Bank Manager that he did not actually check whether there were sufficient funds in the customer's account. I believe and accept the evidence of the Defendant that the Bank did not give any undertaking that the funds will be transferred to the Claimant's account to warrant the Claimant to release the goods to the customer. There is nothing to prove that the Defendant's staff Mr. Martins was relieved of his appointment on the same day of the incident because he was negligent. The evidence of the D.W. 1, who is the head of operation is that Mr. Martins voluntarily resigned from the Bank. I hold that the Claimant himself was negligent when he released the goods to the unknown customer without waiting for the confirmation of payment.

Sequel to the above, I hold that the Claimant has failed to establish the salient ingredient of the breach of the duty of care by the Defendant. As I earlier stated in this judgment, once a Claimant fails to establish any of the three key ingredients of the tort of negligence, such a claim must fail. See *B. J. Ngilari V. Mothercat Ltd (1999) 13 NWLR (Pt. 636) 626*. See also *Oyidiobu V. Okechukwu (1972) 5 SC 191*;

Orhue V. NEPA (1998) 7 NWLR (Pt. 557) 187. In the event, the Claimant's case has failed on this score, and there would be no need to consider whether the Claimant has established the third ingredient of damages arising from the alleged breach of care.

Consequently, this suit is dismissed with the sum of N100, 000.00 (One Hundred Thousand Naira) costs in favour of the Defendant.

P.A.AKHIHIERO
JUDGE
06/12/22

COUNSEL:

P.A UGHEOKE ESQ-----CLAIMANT.

AUSTIN AJAYI ESQ-----DEFENDANT.