Received 22/07/2026

IN THE HIGH COURT OF JUSTICE OF NIGER STATE
NEW BUSSA JUDICIAL DIVISION
HOLDEN AT NEW BUSSA

SUIT NO: NSHC/09/2025

BETWEEN:

1. **ABUBAKAR MOHAMMED MAIGADA**
   (For himself and on behalf of Guzan Community)
2. **MUHAMMAD KUDU** ..... **PLAINTIFFS**
   (For himself and on behalf of Wuchi Community)

AND

MAINSTREAM ENERGY SOLUTIONS LIMITED ..... **DEFENDANT**

DEFENDANT'S REPLY ADDRESS ON POINT OF LAW

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IN THE HIGH COURT OF JUSTICE OF NIGER STATE
MINNA JUDICIAL DIVISION
HOLDEN AT MINNA

SUIT NO: NSHC/09/2025

BETWEEN:

1. **ABUBAKAR MOHAMMED MAIGADA**
   (For himself and on behalf of Guzan Community)
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1. **INTRODUCTION**

1.1 This is the Defendant's reply on point of law to the Written Address of the Plaintiffs.

1.2 At the outset, the Defendant respectfully submits that a substantial portion of the Plaintiffs' Final Written Address is not a reply in law but a complete re-argument of their entire case.

1.3 The Plaintiffs devoted several pages to re-evaluating the evidence of PW1–PW6 and DW1–DW5, reproducing lengthy extracts of testimony and inviting the Court to prefer their own assessment of the evidence over that already addressed in the Defendant's Final Written Address. A Reply on Points of Law is not intended for this purpose.

1.4 The Plaintiffs' Counsel has spent more time in their address to represent evidence and facts before the court rather than make proper legal submissions and arguments.

1.5 We therefore urge this Honourable Court to discountenance every portion of the Plaintiffs' Address which merely re-argues facts already canvassed.

1.6 The final address of the Plaintiffs actually exposes the incoherent state and misapprehension of the Plaintiffs understanding of the nature of negligence in relation to causation and its effect.

1.7 This Reply identifies the fallacious premise of the arguments upon which these misconceived submissions have been made by the Plaintiffs.

1.8 The clear misapprehension of the state of law by the Plaintiffs presented to this Honourable Court is patent from the issues set out for determination and argued by the Plaintiffs in their Written Address.

1.9 We intend in this reply to show that these fallacious premises pollute the reasoning in the arguments of the Plaintiffs and result in erroneous, untenable and tenuous submissions and conclusions.

2.1 WHETHER THE PLAINTIFFS HAVE ANSWERED THE DEFENDANT'S ARGUMENT ON CAUSATION

2.1.1 The Plaintiffs repeatedly argue that because the Defendant admitted releasing water from the Jebba Dam, negligence has thereby been established.

2.1.2 With profound respect, this submission is legally erroneous.

2.1.3 An admission that water was released is not an admission of negligence.

2.1.4 The burden remained squarely on the Plaintiffs to establish:
a) the existence of a duty of care;

b) breach of that duty;

c) that the Defendant's conduct caused the flooding complained of; and

d) that the losses claimed resulted directly from that breach.

2.1.5 The Supreme Court in **A.B.C. Transport Co. Ltd. v. Omotoye (2019) 14 NWLR (Pt.1692) 197** reiterated that negligence is never presumed and that the claimant must establish every essential ingredient by credible evidence.

2.1.6 Similarly, in **SPDC (Nig.) Ltd. v. Farah (1995) 3 NWLR (Pt.382) 148,** the Court held that proof of an occurrence alone does not establish negligence.

2.1.7 The Plaintiffs led no hydrological evidence establishing that the Defendant's controlled release was the proximate cause of the flooding.

2.1.8 Rather, the evidence before this Honourable Court revealed several possible contributing factors including rainfall, natural flooding patterns, tributaries of River Niger and other environmental conditions.

2.1.9 The Plaintiffs merely invite the Court to speculate and the law does not permit such speculation.

THE PLAINTIFFS HAVE NOT DISCHARGED THE BURDEN OF PROVING NEGLIGENCE

2.1.10 We respectfully submit that this is a mere misnomer. A misnomer occurs when the correct person is brought to court under a wrong name and we commend to your Lordship the case ofEmespo J. Cont. Ltd V. Corona S & Co. (2006) II NWLR (PT 991), where the Supreme Court drew between a misnomer which relates to name and mistake as to identity of the party when it held thus: ***"A misnomer occurs when the correct person is brought to court under a wrong name. In the instant case, the court of Appeal rightly held that the appellants error in suing the 1st defendant, who was the time character of the vessel, at the trial court was not a misnomer as to name only, but a mistake as to the identity of the 1st defendant."***

2.1.11 The Plaintiffs incorrectly submit that the evidential burden shifted to the Defendant.

2.1.12 With respect, the burden never shifted because the Plaintiffs failed to establish a prima facie case of negligence.

2.1.13 Sections 131, 132 and 133 of the Evidence Act place the initial burden squarely on the Plaintiffs. The Supreme Court reaffirmed this principle in **Interdrill (Nig.) Ltd. v. UBA Plc (2017) LPELR-41907(SC)** and **Nsude v. Nichodemus (2024) LPELR-62986(SC).**

2.1.14 The Defendant's evidence merely explained its operational procedures. It did not relieve the Plaintiffs of proving negligence.

2.1.15 Indeed, where multiple possible causes of flooding exist, the burden lies on the Plaintiffs to prove that the Defendant's conduct was the effective and proximate cause. We commend to your Lordship the cases of **Shell Petroleum Development Co. Ltd. v. Edamkue (2009) 14 NWLR (Pt.1160) 1 or (2009) LPELR-3048(SC)** and **SPDC v. Tiebo VII (2005) 9 NWLR (Pt.931) 439 or (2005) LPELR-3203(SC).**

EXHIBITS EVR001 AND SD01 DO NOT ESTABLISH NEGLIGENCE

2.1.16 The Plaintiffs argued extensively that Exhibit EVR001 and Exhibit SD01 are admissible.

2.1.17 With respect, this submission completely ignores the real objection raised by the Defendant.

2.1.18 Our objection was never based merely on the date appearing on the reports.

2.1.19 Rather, the Defendant's submission is that the reports were commissioned after the dispute had arisen, for the sole purpose of proving disputed facts that eventually formed the basis of this action.

2.1.20 The dispute between the parties had crystalised before the reports were commissioned.

2.1.21 The mere fact that proceedings were instituted later does not automatically remove the application of Section 83(3) of the Evidence Act

where the surrounding circumstances clearly show that litigation was already contemplated.

2.1.22 PW1 and PW4 cannot escape **Section 83(3) of the Evidence Act, 2011** merely because they are so-called experts.

2.1.23 The Plaintiffs relied heavily on **Ize-Iyamu v. Alonge** to argue that an expert witness is not a "person interested."

2.1.24 With profound respect, that authority does not establish that every report prepared by a paid expert automatically becomes admissible.

2.1.25 Expert opinion only enjoys such protection where the expert acts independently and not where he is specifically engaged to prepare a report to establish disputed facts in anticipated litigation.

2.1.26 The Defendant respectfully submits that admissibility is entirely different from probative value.

2.1.27 Assuming, without conceding, that the exhibits were rightly admitted, they remain incapable of establishing the central issue before the Court, namely, whether the Defendant negligently caused the flooding.

2.1.28 PW1 merely valued the alleged losses, he is neither a hydrologist nor a flood expert.

2.1.29 He admitted relying substantially upon information supplied by the Plaintiffs.

2.1.30 Likewise, PW4 admitted that his assignment was merely to survey land and not to determine the source or cause of flooding.

2.1.31 Expert opinion cannot substitute for proof of causation. In **Seismograph Service (Nig.) Ltd. v. Ogbeni (1976) 4 SC 85 or (1976) LPELR-3029(SC)**, the Supreme Court held that expert evidence is merely advisory and the Court must evaluate its weight in the light of all surrounding circumstances.

2.1.32 Similarly, **Anyaebosi v. R.T. Briscoe (Nig.) Ltd. (1987) 3 NWLR (Pt.59) 84** holds that expert evidence cannot replace proof of material facts.

THE PLAINTIFFS HAVE FAILED TO STRICTLY PROVE SPECIAL DAMAGES

2.1.33 The Plaintiffs continue to rely heavily on the valuation report to support their enormous monetary claims.

2.1.34 We submit that this submission is misconceived, it is elementary law that special damages must be strictly proved. We commend to your Lordship the cases of **NNPC v. Clifco Nigeria Ltd (2011) 10 NWLR (Pt.1255) 209 or (2011) LPELR-2022(SC); Arisons Trading & Engineering Co. Ltd. v. Military Governor, Ogun State (2009) 15 NWLR (Pt.1163) 26 or (2009) LPELR-554(SC)** and **Okunzua v. Amosu (1992) 6 NWLR (Pt.248) 416 or (1992) LPELR-2531(SC).**

2.1.35 The Plaintiffs produced no receipts, no farming records, no purchase invoices, no evidence of crop yield and no documentary proof supporting the quantum claimed.

2.1.36 A valuation report cannot manufacture evidence where none exists and we urge the Court to so hold.

THE PLAINTIFFS' OBJECTIONS TO THE DEFENDANT'S EXHIBITS ARE MISPLACED

2.1.37 The Plaintiffs invited this Honourable Court to expunge several of the Defendant's exhibits. Respectfully, the objection is of no moment.

2.1.38 Even if the Court were to attach minimal weight to any of those documents, the Defendant's oral evidence remains intact.

2.1.39 More importantly, the Plaintiffs appear to proceed on the mistaken assumption that attacking the Defendant's exhibits automatically proves their own case. With respect, that is not the law.

2.1.40 The settled principle is that a Plaintiff must succeed on the strength of his own case and not on the weakness of the defence. We commend to your Lordship the cases of **Kodilinye v. Mbanefo Odu (1935) 2 WACA 336 @ 337**

Aromire v. Awoyemi (1972) 1 All NLR 101 and **Egesimba v. Onuzuruike (2002) 15 NWLR (Pt.791) 466.**

THE PLAINTIFFS' OBJECTION TO EXHIBITS D1, D2, P1-P3 IS MISPLACED

2.1.41 The Plaintiffs devoted several pages attacking the Defendant's documentary evidence. With respect, these objections completely miss the purpose for which those exhibits were tendered.

2.1.42 Exhibits D1, D2, P1-P3, B1, B2 and allied documents were tendered to establish:

a) existence of Defendant's operational procedures;

b) stakeholder engagements;

c) sensitization programmes;

d) corporate communications;

e) water release operations.

2.1.43 They were not tendered to prove negligence.

2.1.44 Even if the Court were to attach little weight to any individual exhibit, the oral evidence of DW1, DW2 and DW3 remains admissible and was never destroyed under cross-examination. Documentary evidence merely corroborated oral testimony.

ON DW5'S EVIDENCE

2.1.45 Plaintiffs argued extensively that DW5's testimony is incompetent because no Witness Statement on Oath was frontloaded. With profound respect, this submission is also misconceived and exposed the limitation of the Plaintiffs' understanding of legal procedure.

2.1.46 The Plaintiffs also posited in relation to MAP001, FLOOD001, FLOOD002 and FLOOD003 that **"these documents are general predictive documents prepared for nationwide flood awareness. They neither determine nor establish the actual cause of flooding in the Plaintiffs' communities, nor do they establish that the Defendant's release of water did not contribute to or cause the flooding complained of".**

2.1.47 Again, we submit that the Plaintiffs missed the point, those documents are not tendered for the purpose of relieving the Plaintiffs their evidential burden pursuant to **Sections 131 to 138 of the Evidence Act, 2011.**

2.1.48 DW5 was not an ordinary witness procured by the Defendant. He attended pursuant to a subpoena issued by this Honourable Court. He appeared as a statutory witness from the National Hydrological Services Agency bringing official documents within his custody.

2.1.49 The purpose of subpoena ad testificandum is precisely to compel attendance and testimony.

2.1.50 The Plaintiffs fully cross-examined DW5. No objection was raised or successfully sustained at trial preventing his testimony.

2.1.51 Having cross-examined him extensively, the Plaintiffs cannot now invite the Court to treat the entire evidence as a nullity.

2.1.52 Furthermore, the Plaintiffs cited authorities relating principally to procedural irregularities without demonstrating any miscarriage of justice occasioned by DW5's evidence. Procedural rules are handmaids of justice and not instruments for defeating substantial justice.

2.1.53 With respect all the cases cited in this regard by the Plaintiffs are inapposite in this case; the cases of **AHIWE & ANOR v. INEC & ORS (2024) LPELR-61674(SC)** and **OKON v. PDP & ORS (2023) LPELR-59645(CA)** were under consideration in relation to the constitutional provisions of Section 285(5) of the Constitution of the Federal Republic of Nigeria (as amended) and Paragraph 4(5) of First Schedule to the Electoral Act, 2022 which stipulated time for filing of election petition and prevented amendment in electoral cases and that evidence of a subpoenaed witness would amount to an amendment. Therefore, these authorities are not relevant in this case as those election petition cases are sui generis.

2.1.54 Furthermore, DW5 was administered under oath, did not give evidence outside of the official documents of his organisation, he only explained those exhibits to the Court.

2.1.55 We submit also that the authority of **Katagum vs Umar (2026) LPELR-83085(SC)** has cured any defect of not filing a statement on oath. **"When a witness in open Court takes oath as a witness and adopts his or her written statement of relevant facts sworn or not sworn, the written statement ceases to exist as a witness written statement and transforms into the witness' oral evidence in examination in chief upon which the witness can be cross-examined. This admitted oral evidence on oath cannot be expunged as evidence on the ground of any defect in the written witness statement precedent to it." Per EMMANUEL AKOMAYE AGIM, JSC (Pp 41 - 42 Paras F - A).**

2.1.56 The Plaintiffs did not raise any objection to the testimony of DW5 and also cross examined DW5, this further cured any procedural irregularity and we commend to your Lordship the case of Katagum vs Umar (supra), where it was held thus: **"The 1st respondent, by not opposing the PW1's adoption in open Court of the said sworn witness statement as his oral evidence in examination chief, cross examining PW1 on it and by addressing on the probative value and insufficiency of the evidence therein in his final written address, condoned the alleged irregularity and cannot on appeal seek to rely on the irregularity in the deposition to void the evidence in it. The several steps he took after becoming aware of the alleged irregularity, operate in law to permanently bar him from relying on that irregularity to void the evidence in the deposition, especially when he did not show that he suffered any miscarriage of justice relying on the deposition as it was in his final address at the trial Court. A party who at the trial consented to an irregular procedure or process and even participated in its use, cannot validly contend in an appeal against the judgment of the trial Court to the Court of Appeal, that the procedure or process be voided for that irregularity. See Buhari V INEC (2003) 19 NWLR (Pt.1120) 246." Per EMMANUEL AKOMAYE AGIM, JSC (Pp 39 - 40 Paras D - C).**

ADDRESS OF COUNSEL CANNOT REPLACE EVIDENCE

2.1.57 Throughout the Plaintiffs' Final Written Address, learned counsel made extensive submissions on matters unsupported by evidence.

2.1.58 It is settled law that however brilliant an address may be, it cannot substitute for evidence. We commend to your Lordship the cases of **Neka B.B.B. Manufacturing Co. Ltd. v. ACB Ltd. (2004) 2 NWLR (Pt.858) 521 or (2004) LPELR-1982(SC); Buhari v. INEC (2008) 19 NWLR (Pt.1120) 246** and **A.G. Rivers State v. A.G. Akwa Ibom State (2011) 8 NWLR (Pt.1248) 31.**

2.1.59 Accordingly, all submissions unsupported by evidence ought to be discountenanced and we urge the Court to so do.

3. CONCLUSION

In conclusion, the Plaintiffs' Reply is largely an attempt to reconstruct a case that was not proved during trial. Their submissions do not answer the Defendant's central arguments on causation, breach of duty and strict proof of special damages.

The Plaintiffs have failed to establish by credible and admissible evidence that the Defendant negligently released water from the Jebba Dam or that such release was the proximate cause of the alleged losses. Equally, the Plaintiffs have failed to strictly prove the special damages claimed, while much of their address consists of submissions that cannot take the place of evidence.

It is trite that negligence is never presumed and that a plaintiff succeeds only on the strength of his own case. We therefore respectfully urge this Honourable Court to resolve all issues in favour of the Defendant, dismiss the Plaintiffs' claims in their entirety, and award substantial costs against the Plaintiffs.

Dated this 20th day of July 2026.

NIGERIAN BAR ASSOCIATION NBA BABALOLA SUNDAY AKINWUMI

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Reply on points of law — ~~₦~~ 500

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22/07/2026

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