

accordance with established operational procedures and regulatory guidelines. The Defendant further asserted that adequate warning, sensitization, and public enlightenment measures were undertaken to notify downstream communities, including the Plaintiffs, prior to the controlled discharge of water though failed to substantiate its claims. The Defendant therefore urged this Honourable Court to dismiss the Plaintiffs' claims in their entirety.

2.3 At the trial, the Plaintiffs called 6 witnesses and tendered documentary exhibits in proof of their case. The Defendant, in response, called five witnesses and also tendered several documentary exhibits through its witnesses.

2.4 This Honourable Court conducted two locus in quo visits, first to Guzan and Wuchi Communities to inspect the affected areas, and secondly to Jebba Dam to inspect the operational facilities of the Defendant. At both visits, the Court expressly stated that its observations would not constitute evidence except as supported by pleadings and admissible evidence on record.

2.5 My Lords, the above essentially constitutes an overview of the case to be considered in the determination of this action. At this juncture, an evaluation of facts as presented by all parties in line with their pleadings and evidence led is fundamental.

2.6 On the 16th of July, 2026 the Defendant served the Plaintiffs with its final written address in which the Plaintiffs have now proactively filed a reply.

3.0 THE NATURE OF UNCONTROVERTED EVIDENCE LED BY THE PLAINTIFFS' CASE

3.1 In the present case, the Plaintiffs called six (6) witnesses, comprising two (2) independent expert witnesses and four (4) additional witnesses. The oral testimony of these witnesses was materially consistent and mutually corroborative. Their evidence was further fortified by the documentary exhibits admitted before this Honourable Court namely Exhibits EVR001, A1, A2, A3, and SD01 which provide independent support to the Plaintiffs' case.

3.2 We shall now proceed to evaluate the nature and quality of the evidence adduced by each witness, together with the exhibits tendered through them. My Lord, this body of evidence stands unchallenged and remains uncontroverted.

3.3 PW1, **ESV. Aaron Dada Azhi**, testified as a registered Estate Surveyor and Valuer with about ten (10) years post-qualification experience. He was called as an independent expert witness to professionally assess and value the damage suffered by the Plaintiffs' farmlands following the flooding. PW1 adopted his Witness Statement on Oath and identified the Evaluation Report prepared in the course of his professional

engagement, which was tendered and admitted in evidence as **Exhibit EVR001**. The report assessed the damage suffered by the affected farmlands and valued the losses at over ₦5,150,000,000.00 (Five Billion, One Hundred and Fifty Million Naira) only. During cross-examination, PW1 remained consistent and explained that although the report bears the month of May 2025, the effective valuation date was 7th May 2025, which was not contradicted by the Defendant. The Defendant also questioned the absence of a land survey report, but PW1 clearly explained that his professional assignment was valuation and not land surveying. Significantly, the Defendant did not challenge PW1's qualifications, professional competence, valuation methodology or the actual assessment of losses contained in Exhibit EVR001. The substance of his evidence therefore remained unimpeached.

3.4 PW2--Abubakar Moh'd Maigada, the 1st Plaintiff, is a farmer from Guzan Community whose farmland was directly affected by the flooding. He testified as an eyewitness and victim of the incident and adopted his Witness Statement on Oath as his evidence before this Honourable Court. PW2 identified and tendered the following documents which were admitted in evidence without objection: **Exhibit A1** – Photocopy of the Plaintiffs' Solicitors' letter dated 18th May 2025; **Exhibit A2** – Photocopy of the Defendant's Solicitors' reply dated 22nd May 2025; and **Exhibit A3** – copy of acknowledgement of the Plaintiffs' Solicitors' further letter dated 28th May 2025. During cross-examination, PW2 remained consistent on the material facts of the Plaintiffs' case. The Defendant did not challenge his evidence that the flooding occurred, that farmlands were affected, or that members of the community suffered substantial losses. These material aspects of his testimony remained intact. Furthermore, PW2's evidence was corroborated by the expert valuation contained in Exhibit EVR001, the survey evidence of PW4 and Exhibit SD01, as well as the testimonies of the other affected farmers who testified before this Honourable Court.

3.5 PW3, Muhammad Kudu, is a farmer from Wuchi Community in Mokwa Local Government Area of Niger State. He testified as an eyewitness and one of the persons directly affected by the flooding. He adopted his Witness Statement on Oath and urged this Honourable Court to grant the reliefs sought by the Plaintiffs. The evidence of PW3 corroborates the testimony of PW2 and demonstrates that the flooding was not restricted to Guzan Community alone but also affected Wuchi Community. His evidence therefore establishes the widespread nature of the flooding and its impact on the affected communities. During cross-examination, the Defendant focused largely on general matters relating to the River Niger, climate change, the Lagdo Dam in Cameroon, and geographical distances rather than the facts personally witnessed by PW3. PW3 nevertheless remained firm that the flooding occurred on 1st January 2025 and 15th April 2025, resulting in the destruction of farmlands and livelihoods. The

Defendant was unable to discredit this evidence. The Defendant also suggested that factors such as the Federal Government's construction of the dams, climate change, or the release of water from the Lagdo Dam could have caused the flooding. However, no evidence was placed before this Honourable Court to establish these suggestions. The Defendant equally suggested that the Plaintiffs cultivated government waterways, but this assertion was not supported by any documentary or expert evidence before this Honourable Court.

3.6 PW4, Surveyor Tanko Pada Paiko, testified as a licensed Surveyor with a Professional Diploma in Surveying and registration with the Surveyors Registration Council of Nigeria. He was called as an independent expert witness to determine and map the extent of the areas affected by the flooding in Wuchi Community. PW4 adopted his Witness Statement on Oath and identified the Survey Drawing prepared in the course of his professional assignment, which was tendered and admitted in evidence as **Exhibit SD01**. Exhibit SD01 objectively depicts the flood-affected area and the flood corridor observed during PW4's inspection. During cross-examination, PW4 confirmed that he visited the affected site on 15th May 2025 and personally carried out the survey with his team. The Defendant challenged PW4 on the basis that he had no certification in flood-risk assessment or hydrological survey. However, PW4 was not presented as a hydrologist but as a licensed surveyor engaged to determine the boundary and extent of the affected area. The Defendant further questioned PW4 on environmental guidelines and government waterways, but his qualifications, the survey conducted and the accuracy of Exhibit SD01 were not discredited. PW4 maintained that his assignment was to determine the extent of the affected area and not to witness the flooding itself. PW4 further explained that the red portions on Exhibit SD01 represent the flood-affected area while the green corridor depicts the path created by the floodwater which remained visible after the incident.

3.7 PW5, Alhassan Mohammed, a farmer from Guzan Community whose farmland was directly affected by the flooding, testified both as an eyewitness and as a victim of the incident. He adopted his Witness Statement on Oath as his evidence before this Honourable Court, which remained unchallenged even under cross-examination. PW5 consistently maintained and described the precise location to which the floodwaters extended, a location that corresponds with the Defendants' dam. Although the visit to the Defendants' facility (*locus in quo*) does not itself constitute evidence, it further reinforces PW5's testimony that the water emanated directly from the Defendants' facility. His testimony corroborates the evidence of PW2 regarding the occurrence of the flooding and the destruction of farmlands. During cross-examination, the Defendants focused primarily on issues of farmland ownership, the absence of title documents, and whether the land belonged to the Federal Government. However, the

Defendant did not challenge the fact that the flooding occurred or that PW5 suffered loss as a result. His evidence on these material facts therefore remained unshaken.

- 3.8 PW6, Jibril Nakodi, is a farmer from Wuchi Community in Mokwa Local Government Area of Niger State. He adopted his Witness Statement on Oath as his evidence before this Honourable Court. As one of the persons directly affected by the flooding, his testimony corroborates the evidence of PW2, PW3 and PW5. He testified that his family had farmed the land for generations without experiencing flooding of the magnitude witnessed in 2025, thereby reinforcing the Plaintiffs' case that the flooding was extraordinary. During cross-examination, the Defendant questioned PW6 on the ownership of the farmland, the alleged status of the land as a waterway, and the source of the floodwater. However, the Defendant did not discredit his evidence that the flooding occurred, affected his farmland and caused substantial loss. Where PW6 lacked technical knowledge, he answered candidly and did not speculate. His evidence was confined to facts within his personal knowledge as an affected farmer, and this candour enhances rather than diminishes his credibility.

DEFENDANT'S UNRELIABLE AND INCONSISTENT CASE

- 3.9 Having regard to the evidence adduced by the Defendant through its five (5) witnesses and the documentary exhibits tendered in support of its defence, the Defendant's case, when subjected to careful scrutiny, is fraught with material inconsistencies, unsupported assertions, significant admissions, and a failure to produce the best available evidence on crucial issues. Accordingly, the evidence of each of the Defendant's witnesses shall be examined individually in order to demonstrate the inherent weaknesses in the defence, the admissions elicited under cross-examination, the contradictions between the oral testimony and the documentary evidence, and the overall inability of the Defendant to discharge the evidential burden imposed upon it in respect of the matters it specifically pleaded.
- 3.10 The Defendant's first witness, Mr. Cornelius Ayodeji Akande (DW1), was presented as a hydrologist with over twenty-nine (29) years of professional experience and the principal technical witness on the operation of the Jebba Dam. Notwithstanding his impressive credentials, the substance of his evidence, particularly under cross-examination, substantially weakened rather than strengthened the Defendant's case. First, DW1 made a categorical admission that the Defendant released water from the Jebba Dam in both January and April 2025, the very periods complained of by the Plaintiffs. He further admitted that such releases were undertaken by the Defendant itself and that the release of water forms part of its generation operations. This admission is of considerable significance because it conclusively establishes the fact of the water releases and removes any dispute as to whether the Defendant discharged

water during the material period. Secondly, while DW1 affirmed paragraph 12 of his Witness Statement on Oath to the effect that stakeholders, local authorities and downstream communities are always carried along through timely notifications and sensitisation measures, no documentary evidence whatsoever was produced to demonstrate that the Plaintiffs or their communities were actually notified before the January and April 2025 releases. Furthermore, DW1 admitted that the Plaintiffs' communities are among the downstream communities referred to in his Witness Statement on Oath. Consequently, the Defendant cannot escape the burden of proving that the alleged notifications were in fact communicated to the Plaintiffs or those representing their communities. Having failed to produce any such evidence, the Defendant's assertion of prior warning remains unsupported. Equally significant is the frailty of the documentary evidence tendered through DW1. Exhibit D2 was presented as the operational record of water releases titled: Jebba Reservoir discharge for January, 2025; however, under cross-examination, it emerged that the document does not expressly bear the Defendant's name on its face and the document is unsigned. Similarly, Exhibit D1, being the letter of invitation issued by Niger State Government, was admitted by DW1 to be merely a copy, while he further admitted that he was not its author and he did not attend the said meeting. DW1 also demonstrated a striking lack of personal knowledge regarding several material facts. He admitted that prior to giving evidence, he had never attended proceedings in this matter, had never been to Minna in connection with the case, and did not even know the nature of the Plaintiffs' claims before the Court. These admissions inevitably affect the weight to be attached to his Written Statement on Oath as it implies that he did not sign the same before the Commissioner for Oath in the Court and he has no idea, whatsoever, of what is contained in his Written Statement on oath or in the case of the Claimant. Perhaps more revealing was DW1's evidence concerning the alleged one-kilometre setback from the river bank. He asserted that downstream communities ought to reside one kilometre away from the river bank and attributed this requirement generally to "Water law." However, he was unable to identify the specific legislation, regulation or statutory provision imposing such an obligation. Far from advancing the Defendant's case, DW1's evidence substantially corroborates the Plaintiffs' case that the Defendant released water during the relevant period and failed to establish that the affected downstream communities, including the Plaintiffs, were duly warned beforehand.

- 3.11 The Defendant's second witness, Mr. Olugbenga Adebola (DW2), testified as the Head of Corporate Communications of the Defendant and was called principally to establish that the Defendant undertook adequate public sensitisation through radio jingles and newspaper publications prior to the release of water from the Jebba Dam.

However, under cross-examination, DW2 made several admissions which significantly diminished the probative value of those documents tendered through him.

He admitted that he was not the maker of Exhibits P1, P2 and P3 and therefore lacked personal knowledge of their preparation. More importantly, he conceded that Exhibits P1 and P2 bear the title "Proposal for Airing of Radio Jingle," while Exhibit P3 is merely an invoice and not evidence of payment. Indeed, when specifically confronted, DW2 expressly admitted that Exhibit P3 is an invoice and not a receipt. These admissions are fatal to the Defendant's attempt to establish that the alleged publicity campaign was actually implemented. The Defendant did not establish that the proposals were accepted, that payment was made, that the jingles were produced, or that they were eventually aired. No receipt, payment voucher, bank transaction, broadcast schedule, certificate of transmission, recording of any radio jingle, or testimony from any representative of the radio station was produced to bridge this evidential gap. Furthermore, DW2 made another important concession by admitting that the signatures appearing on Exhibits P2 and P3 are not the same. This admission undoubtedly raises legitimate questions regarding the consistency and reliability of the Exhibits, particularly where no maker of the documents was called to explain the apparent discrepancy. Equally significant is the fact that DW2 possessed no personal knowledge of the matters in controversy. He admitted that he had never previously attended proceedings in this case and had never visited the Minna High Court in connection with the matter, which inevitably affect the weight to be attached to his written statement on oath as it implies that he did not sign the same before the Commissioner for oath in the Court. More importantly, he admitted that he did not know the exact distance which downstream communities ought to maintain from the river bank and could only refer generally to flood markers without identifying the prescribed distance. It is also noteworthy that the Defendant relied heavily on the existence of flood markers as evidence that affected communities had adequate notice of flood risks. However, DW2's testimony on this issue remained purely general. He neither established the location of any flood marker within the Plaintiffs' communities nor produced any evidence showing that the Plaintiffs were ever specifically informed of the significance of such markers or that the markers corresponded with the areas affected by the flooding complained of in this suit. DW2's evidence consequently provides no credible basis upon which the Court can conclude that the Plaintiffs or their communities received any effective prior warning before the water releases of January and April 2025.

- 3.12 The Defendant called DW3, Bara'u Abdullahi Shanono, the Head of Corporate Social Responsibility and Community Relations Department of the Defendant. His evidence was principally relied upon to establish that the Defendant carried out

sensitisation exercises through the production and distribution of banners, posters, leaflets and warning materials to communities allegedly affected by possible flooding. DW3 testified that he had been in charge of the Defendant's Corporate Social Responsibility and Community Relations Department for about fourteen (14) years and had visited Guzan and Wuchi communities. He further stated that the Defendant produced banners, posters, leaflets and letters in different languages, including Nupe, Hausa, Yoruba, Bisan and English, to ensure wider understanding by communities along the River Niger. The documents tendered through him were admitted as Exhibits B1, B2, SP1, SP2, LF1, LF2, LF3 and LT01. Under cross-examination, DW3 admitted that although he had visited Guzan and Wuchi communities, his visits were primarily in relation to a proposed community project and not necessarily for the purpose of confirming the dissemination of flood warnings to the communities. More importantly, he admitted that none of the banners, posters or leaflets tendered before the Court specifically contained the names of Guzan or Wuchi communities. The production of general warning materials does not, without evidence of actual distribution and receipt, amount to proof that a particular community was notified. Indeed, the weakness of DW3's evidence became more apparent when he was asked whether there was any evidence before the Court showing that the materials were actually served on Guzan and Wuchi communities through the Local Government authorities, State Government, councillors or traditional rulers, as he claimed. DW3 admitted that the evidence was not before the Court. The Defendant's case rests substantially on the assertion that adequate warning was given to downstream communities before the release of water. Where the Defendant claims to have maintained records showing dissemination of such warnings, the failure to produce those records leaves the Court with no documentary evidence to prove the dissemination.

- 3.13 The Defendant called **Mohammed Abdullahi as DW4**. He identified himself as an employee of the Defendant since 2014 and a hydrologist by profession, having been certified in the field in 2008. His evidence was largely relied upon by the Defendant to provide technical justification for the water releases, explain the hydrological relationship between River Egar and River Niger, establish that the Plaintiffs' communities were situated within flood-prone areas, and support the Defendant's assertion that the releases were allegedly carried out in accordance with professional guidelines. However, a careful evaluation of DW4's evidence reveals several material weaknesses which substantially affect its probative value. DW4 admitted that the Defendant released water between January and April 2025. This admission further reinforces the established fact that the occurrence of water release is not in dispute. DW4 attempted to justify the Defendant's conduct by stating that the releases were

carried out in strict compliance with professional guidelines issued by agencies such as the Nigeria Hydrological Services Agency (NIHSA) and the National Emergency Management Agency (NEMA). However, under cross-examination, DW4 made significant concessions which weakened this assertion. He admitted that he did not know the current guidelines issued by NIHSA and NEMA, did not know when those guidelines were issued, and did not know the contents of the guidelines. A witness cannot establish compliance with a document whose contents and existence he is unable to identify before the Court. Furthermore, DW4 testified that the Defendant utilised hydrological forecasting systems and that the information generated was communicated to riparian communities. He stated that the purpose of disseminating such information was to enable communities to move away from flood-prone areas. However, when asked whether he had any evidence before the Court showing that Guzan and Wuchi communities were informed of the release dates and times, DW4 admitted that he did not personally have such records before the Court. This admission is important because DW4 himself acknowledged that the Plaintiffs' communities were riparian communities and therefore among the persons who required timely warning. Having recognised the importance of communicating release information to such communities, the failure to produce evidence of actual communication to Guzan and Wuchi leaves a critical gap in the Defendant's case. The evidence of DW4 concerning River Egar was also substantially weakened under cross-examination. DW4 stated that River Egar was a tributary which, according to him, emanated from River Kaduna. However, he was confronted with the suggestion that River Egar originated from River Ida in Kogi State, and his response was that he did not know. More importantly, DW4 relied on **Exhibit SD001**, the survey drawing tendered by the Plaintiffs, in support of his interpretation of the location and relationship between River Egar, Guzan and Wuchi communities. However, under cross-examination, he admitted that he was not a surveyor. He further admitted that River Egar was not written anywhere on Exhibit SD001 and that there was nothing on the document indicating that the green marking represented River Egar. DW4 also testified that the Plaintiffs' communities were situated in flood-prone areas. While this may be relevant to the Defendant's argument that the communities were vulnerable to flooding, it does not by itself answer the central issue of whether the Defendant's actions aggravated the flooding complained of. The fact that a community is located within a riparian or flood-prone area does not relieve an operator of a dam from the obligation to exercise reasonable care and provide adequate warning before releasing water. Furthermore, DW4 admitted that the locus visit conducted by the Court on 16th May 2026 was his first visit to Guzan and Wuchi communities. This admission is relevant because it shows that several aspects of his evidence concerning the physical condition, location and characteristics of the Plaintiffs' communities were based on no prior personal

knowledge. In relation to the communities allegedly affected by flooding, DW4 listed several communities he claimed to have visited but admitted that he had no evidence before the Court to support his assertions regarding their distances from River Niger or their vulnerability to flooding. Accordingly, DW4's testimony does not satisfactorily establish that the Defendant exercised the required care, complied with applicable guidelines, or effectively warned the Plaintiffs before releasing water in January and April 2025.

- 3.14 The Defendant's fifth witness, **Mr. Evans Chimdiga (DW5)**, was subpoenaed from the Nigeria Hydrological Services Agency (NIHSA) pursuant to a *subpoena ad testificandum et duces tecum*. Being a witness subpoenaed to testify on disputed matters of fact, his evidence was required to comply with the applicable procedural rules governing witness testimony in civil proceedings. Although DW5 gave extensive evidence in chief and was subjected to cross-examination, the Defendant did not frontload or file any Witness Statement on Oath on his behalf before he testified. The failure to frontload such witness statement renders his evidence-in-chief incompetent and incapable of attracting probative value. Without prejudice to the foregoing, and assuming without conceding that this Honourable Court considers DW5's testimony, the substance of his evidence, particularly under cross-examination, did not establish the material facts necessary to absolve the Defendant of liability. Rather, his evidence was largely limited to general flood prediction and monitoring mechanisms and did not sufficiently address the critical questions of notification, causation, and the Defendant's compliance with its duty of care towards the Plaintiffs' communities. DW5's evidence regarding the 2025 flood forecast documents did not establish that the Plaintiffs' communities of Guzan and Wuchi were specifically identified as areas likely to experience flooding. Exhibits Map 001, Flood 001; flood 002 and flood 003 and exhibits SUB 01, COV. 01 and R.W 01 were admitted temporally through DW5. While DW5 explained that Exhibit Mapg 001 was a flood risk map showing areas of possible flood occurrence and that Exhibit Flood 001 contained the interpretation of the flood forecast, his evidence remained general and nationwide in scope. Under cross-examination, DW5 admitted that Mokwa was not captured as a high flood risk area and that Jebba was also not captured as a high flood risk area in the document. He further admitted that the documents did not specifically identify Guzan or Wuchi communities as flood risk areas. DW5's evidence did not also establish that the Plaintiffs or their communities received any prior warning before the Defendant released water in January and April 2025. The Defendant's case throughout has been that downstream communities are usually notified and sensitised before controlled releases are undertaken. However, DW5, despite being called from the agency responsible for hydrological monitoring and early warning systems, could not provide

any evidence that the Plaintiffs' communities were actually notified. Indeed, under cross-examination, DW5 admitted that although his agency monitors water resources and that notification is expected before water releases from facilities such as Jebba and Kainji dams, there was no document before the Court showing that NIHSA was notified before the Defendant released water in January and April 2025. If the Defendant's releases were carried out in accordance with proper procedures and in coordination with relevant authorities, evidence of such coordination ought reasonably to have been produced before the Court. Furthermore, DW5 admitted that the flood forecast documents tendered as Exhibits Map 001, Flood 001, Flood 002 and Flood 003 were intended as early warning tools for the public, particularly flood-prone communities. He further stated that the communities were the ultimate beneficiaries of those documents. However, the evidence before the Court does not show that the Plaintiffs' communities ever received or had access to these documents. Equally important is the limited evidential value of Exhibit RW001, which the Defendant relied upon to establish the volume of water released from Jebba Dam. DW5 admitted that the document did not expressly contain the words "Niger State", "Mokwa", "Jebba" or any clear description identifying the location where the report was generated. His attempt to connect the document to Jebba Dam was based on an abbreviation "J.B." appearing on the document. A document whose connection to the relevant location depends substantially on oral explanation by a witness is inherently weakened, especially where the document itself does not clearly identify the subject matter for which it is tendered. More significantly, DW5's evidence did not establish that the Defendant complied with any professional guidelines or operational requirements before releasing water. He also confirmed to the court the entire Exhibits bears no date it was issued. The evidence of DW5 was also limited by the fact that he had no direct involvement in the Defendant's operational decisions leading to the water releases complained of. Additionally, DW5 admitted that the flood forecast documents were prepared in English language, despite the fact that the communities in question are predominantly Nupe and Hausa-speaking communities. This further raises doubt as to whether the documents relied upon by the Defendant could reasonably have served as effective warnings to the Plaintiffs' communities without evidence of translation, dissemination or community engagement. Consequently, DW5's evidence provides no assistance to the Defendant in disproving the Plaintiffs' allegation of negligence.

REPLY TO THE OBJECTION OF THE DEFENDANT ON EXHIBITS EVR 01 AND EXHIBIT SD 01

My Lord, we consider it expedient to respond to the object of the Defendant's to the admissibility of EVR 01 and Exhibit SD 01.

- 3.15 The objection raised against Exhibit EVR 01 and Exhibit SD 01 is fundamentally misconceived. The central argument of the Defendant is that the document was prepared in anticipation of litigation, thereby offending Section 83(3) of the Evidence Act, 2011. Contrary to the Defendant's submission, Exhibit EVR 01 was not produced after the commencement of proceedings nor in anticipation of litigation. It was prepared in May 2025, in the ordinary course of professional duty, by PW1, an Estate Surveyor, who had been engaged to assess the situation prior to the filing of any suit. The present action before this Honourable Court was only instituted on the 8th of July, 2025.
- 3.16 The fact that the Plaintiffs later relied on the documents in court does not retroactively render it inadmissible. What is more my lord is the applicability of the authorities cited by the Defendant. The cases *Maigadi v. IGP* and *Aliyu v. Bulaki*, involved documents clearly made after suits were filed, specifically to support claims. Exhibit EVR 01, however, predates the proceedings and was prepared as part of professional engagement. Thus, those cases are inapplicable.
- 3.17 My Lord we further submit respectfully that Section 83(3) Evidence Act only excludes documents made by a person interested when litigation is pending or anticipated. PW1, being a professional surveyor, is not a "person interested" in the outcome of the case. His role was limited to providing technical assessment, not advancing the Plaintiffs' claim. Courts have consistently distinguished between documents prepared by professionals in the course of duty and those manufactured solely to bolster litigation. We commend my lord to the case of *Ize-Iyamu v. Alonge* (2007) 6 NWLR (Pt. 1029) 84

By virtue of the provisions of section 91(3) of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990, any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish is inadmissible. Expert evidence is treated as an exception to section 91(3) of the Evidence Act. This is because any expert in his field of knowledge who makes a statement in any form in respect of a matter in court at any stage of the proceedings is generally regarded as a person who has no temptation to depart from the truth as he sees it from his professional expertise. The fact that he is paid by the person who procured his service is immaterial. There must be a real likelihood of bias before a person making a statement can be said to be a "person interested" within the meaning of section 91(3) of the Evidence Act. In the instant case, there was no such evidence on record. [Salako v. Williams (1998) 11 NWLR (Pt. 974) 505; Apena v. Aiyetobi (1989) 1 NWLR (Pt. 95) 85 referred to.] (P. 115, paras. C-G)

3.18 My Lord, it is our respectful submission that **Exhibit EVR 01 and SD 01 are admissible**, as it was neither made during the pendency of this suit nor prepared by a person of interest in the instant case but was acting in his professional capacity. **We commend my lord to the supreme court of Abe v. Damawa (2023) 3 NWLR (Pt. 1871) 335**

3.19 Additionally, the Defendant's argument that Exhibit EVR 01 is hearsay because PW1 relied on measurements and drawings provided by his clients is also misconceived. My Lord the reports said that the in paragraph 5.1 (a) page 24 of Exh EV01 read thus:

That all dimensions quoted were obtained from tape measurements and drawings made available to us by our clients

3.20 My Lord, the work of a valuer is to measure and to evaluate, and the report clearly demonstrates that all dimensions were obtained through actual measurements. This does not render the document hearsay merely because certain drawings were made available by the clients. Indeed, the said drawing, marked as Exhibit SD 01, is properly before this Honourable Court. We respectfully urge Your Lordship to reject the Defendant's objection, as it has no bearing on the accuracy or credibility of the valuer's report. Assuming without conceding, My Lord, there is nothing in law that bars an expert from relying on data supplied to them in forming their opinions, provided they apply their professional expertise to interpret such data. In this case, PW1 has done precisely that.

3.21 My Lord, the Defendant has not disputed the existence of the data or information contained in Exhibit EVR 01 or SD01, nor has any witness been brought forward to challenge the quantum of damages alleged to have been suffered by the Plaintiffs. My Lord, it is trite that the function of a valuer is to survey and to value, which can only be accomplished based on what is on ground and the available data. Accordingly, the following testimony of PW1 stand uncontroverted:

3.21 The Defendant's objection to Exhibit EVR 01 and SD 01 is unsustainable. The exhibits were prepared in the ordinary course of professional duty, not in anticipation of litigation, and therefore does not offend Section 83(3) of the Evidence Act and it is indeed relevant to the instant case. The Court is urged to dismiss the objection and admit Exhibit EVR 01 in evidence, with its probative value to be determined at the stage of evaluation.

4.0 ISSUES FOR DETERMINATION

The Plaintiffs respectfully submit that the following issues call for determination by this Honourable Court in reply to the Defendant's Final written Address:

Whether, having regard to the pleadings and the totality of the admissible evidence before this Honourable Court, the Plaintiffs have established negligence against the Defendant and are consequently entitled to the reliefs sought.

5.0 LEGAL ARGUMENT

Before arguing the Issues for Determination, the Plaintiffs respectfully raise objections to the admissibility of the Defendant's exhibits admitted provisionally during trial.

5.1 OBJECTIONS TO THE ADMISSIBILITY OF THE EVIDENCE TENDERED BY THE DEFENDANT AND THE COMPETENCY OF THE TESTIMONY OF DW5

5.1.1 EXHIBITS D1 AND D2

5.1.1.1 My Lord, the Plaintiffs respectfully object to Exhibits D1 and D2 and urge this Honourable Court to reject and expunge from the record, having been admitted only on a provisional basis. The law is settled that where evidence is inherently inadmissible, the Court possesses the jurisdiction, indeed the duty, to expunge it at the stage of writing judgment. See **GRIER HOUSE ESTATES LTD v. NICON TRUSTEES LTD & ORS (2022) LPELR-59263(CA)**.

5.1.1.2 Exhibit D1 is a photocopy of a letter of invitation dated 6th March 2025 purportedly issued by the Niger State Government inviting the Defendant to a stakeholders' meeting. The document was tendered through DW1, who unequivocally admitted under cross-examination that:

(a) he was not the maker of the document; (b) he did not attend the meeting referred to therein; (c) nothing in the document shows that he participated in or had any connection with the meeting; and (d) the document tendered was not the original, the original allegedly being at the Defendant's headquarters.

5.1.1.3 My Lord, Sections 85, 86, 88 and 89 of the Evidence Act, 2011 establish the general rule that documents must be proved by primary evidence, while secondary evidence is admissible only after the conditions prescribed by law have been strictly satisfied. No foundation whatsoever was laid by the Defendant before tendering Exhibit D1 to justify the admission of a photocopy. DW1 merely stated that "the original copy is in the headquarters." That explanation does not satisfy any of the statutory grounds under Section 89 of the Evidence Act for the admission of secondary evidence.

5.1.1.4 The Court of Appeal reiterated this principle in **ONYECHI v. AFOLABI & ANOR (2024) LPELR-62874(CA)**, where it held that:

"As a general rule, documents must be proved by primary evidence (Section 88 of the Evidence Act). However, where secondary evidence is sought to be admitted... a proper foundation must be laid in accordance with Section 89 of the Evidence Act..."

5.1.1.5 More fundamentally, DW1 was not the maker of Exhibit D1 and possessed no personal knowledge of its contents. The settled law is that documents ought to be tendered through their makers. In **ODOGUN v. STATE (2025) LPELR-80680(SC)**, the Supreme Court emphatically stated:

"The maker of a document must tender it in evidence... A person who did not create a document is not competent to testify regarding its contents... Where a party seeks to rely on a document, the proper procedure requires the maker to be called as a witness"

5.1.1.6 The Defendant neither called the maker of Exhibit D1 nor laid any foundation bringing the document within any of the statutory exceptions under Section 83(1)(b) of the Evidence Act. Similarly, in **M.V. CECILIE MAERSK & ORS v. WINLINE (NIG.) LTD (2015) LPELR-24582(CA)**, the Court held:

"The proper person through whom a document is tendered is the maker of a document. If a person who is not the maker of a document tenders the document the Court should not attach any probative value to the document because the person tendering the document, not being the maker, cannot answer questions arising from the examination."

5.1.1.7 Accordingly, Exhibit D1 was improperly tendered and ought to be expunged. In the alternative, if the Court declines to expunge it, it deserves no probative value whatsoever.

5.1.1.8 Exhibit D2, described as "Jebba Reservoir Discharge for January 2025," is equally inadmissible and should be expunged. The document is unsigned. During cross-examination, DW1 admitted that nowhere on the face of the document does the Defendant's name appear. Although he claimed there was a handwritten endorsement, he was unable to point to any identifiable signature or formal authentication appearing on the document itself.

5.1.1.9 The Supreme Court recently reaffirmed the legal position in **DIKIO & ORS v. NSITY MANAGEMENT BOARD & ORS (2025) LPELR-81322(SC)** thus:

"It is settled law, as a general rule, that an unsigned document does not have any efficacy in law. Such a document is worthless and

commands no legal or judicial value. It is incapable of conferring any legal rights."

5.1.1.10 Exhibit D2 falls squarely within this principle and is therefore worthless in law. Exhibit D2 was not properly authenticated. It bears neither the Defendant's name nor any official designation linking it to the Defendant. DW1 admitted as much under cross-examination. Its alleged authenticity rests solely on DW1's oral assertions, yet documentary evidence must speak for itself. No foundation was laid as to when, under what authority, or in what official capacity it was prepared. It is therefore nothing more than an unauthenticated sheet of figures lacking the reliability required of documentary evidence.

5.1.1.11 We accordingly urge this Honourable Court to expunge Exhibits D1 and D2. Alternatively, if retained, they should be accorded no probative value, having regard to the defects affecting their admissibility, authenticity and evidential weight.

5.1.2 **EXHIBITS P1, P2 AND P3**

5.1.2.1 My Lord, the Plaintiffs respectfully object to Exhibits P1, P2 and P3 from the record urge this Honourable Court to reject and expunge, having been admitted only on a provisional basis pending the determination of their admissibility in this Final Written Address. My Lord is referred to **GRIER HOUSE ESTATES LTD v. NICON TRUSTEES LTD & ORS** (*supra*), where the Court held:

"Law grants to the Court, either trial or appellate, the unbridled latitude to expunge admitted inherently inadmissible evidence at the judgment stage. A Court of law is divested of the jurisdiction to act on inadmissible evidence in reaching a decision."

5.1.2.2 The Exhibits are incapable of proving the facts pleaded by the Defendant and are therefore irrelevant for the purpose for which they were tendered. The Defendant pleaded in paragraphs 6(c), 8, 9 and 15 of its Statement of Defence that it carried out public sensitisation through radio and television jingles and that payment was made to media organisations before the controlled release of water. Exhibits P1, P2 and P3 were tendered to establish those pleaded facts. However, the documents themselves completely fail to prove the facts for which they were tendered. Exhibits P1 and P2 are expressly titled "Proposal for Airing of Radio Jingle." They are nothing more than proposals inviting the Defendant to approve and sponsor the proposed broadcasts. Indeed, the legal meaning of a proposal is well settled. In **TRADE BANK PLC v. DELE MORENIKEJI (NIG.) LTD. (2005) 6 NWLR (PT. 921) 309**, the Court held that *"An agreement essentially consists of an offer or proposal and an acceptance."* They did not show that the proposals were accepted,

that any contract was concluded, that payment was made or that any radio jingle was ever aired. Likewise, Exhibit P3 is merely an invoice issued by Divine Prints requesting payment for printing services. It is not evidence that payment was ever made or that the printing work was executed. The Court of Appeal reiterated in **PDP v. GUSAU & ORS (2023) LPELR-60903(CA)** that *"The basis for admissibility is that the exhibit is relevant, it is pleaded and it is in the form for its admission."* Respectfully, while the Defendant pleaded these documents, the documents are not in the proper evidential form to establish the facts alleged. A proposal remains a proposal, while an invoice remains a request for payment. Neither constitutes proof that the proposed acts were ever carried out.

5.1.2.3 Furthermore, DW2 expressly admitted under cross-examination that he was not the maker of Exhibits P1, P2 and P3. The makers of those documents, namely Prestige FM Radio and Divine Prints, were never called to testify, nor was any foundation laid to bring the documents within the statutory exceptions contained in **Section 83(1)(b) of the Evidence Act, 2011**. The Supreme Court reaffirmed this principle in **ODOGUN v. STATE (supra)** when it held:

"The maker of a document must tender it in evidence... A person who did not create a document is not competent to testify regarding its contents."

5.1.2.4 No attempt was made by the Defendant to satisfy the requirements of **Section 83 of the Evidence Act**. The documents were therefore improperly proved.

5.1.2.5 More significantly, DW2 admitted under cross-examination that Exhibit P3 is an invoice and not a receipt of payment. The law is settled that while a receipt constitutes evidence of payment, an invoice does not. In **GANA v. FRN (2018) LPELR-44344(SC)**, the Supreme Court held that *"Generally when a person produces a receipt it is evidence of payment."* Conversely, the Court of Appeal held in **INCORPORATED TRUSTEES, ZAKI CLUB V. N.N.D.C. LTD. (2024) 6 NWLR (PT. 1934) 317** that *"Documentary quotations and invoices do not suffice as evidence of payment of the sum of money stated in them. The party relying on a quotation or invoice must present evidence of payment made in respect of the quotation or invoice."* The Defendant produced no receipt, no bank transfer, no payment voucher, no acknowledgment of payment and no other documentary evidence showing that the invoice represented an actual payment. Exhibit P3 therefore fails to prove the very fact for which it was tendered.

5.1.2.6 The credibility of the documents was further undermined when DW2 admitted under cross-examination that although Exhibits P2 and P3 purportedly emanated from the same signatory, the signatures appearing on both documents were not the

same. The Defendant offered no explanation whatsoever for this material inconsistency. This unexplained discrepancy further weakens the authenticity and reliability of the documents and reinforces the Plaintiffs' submission that they are unsafe for the Court to rely upon.

5.1.2.7 In the final analysis, Exhibits P1, P2 and P3 do not prove the Defendant's pleaded case. They were tendered through a witness who was not their maker, fail to establish the facts pleaded, and Exhibit P3 is merely an invoice, not proof of payment.

5.1.3 EXHIBITS MAP001, FLOOD001, FLOOD002, FLOOD003, SUB01, COV01 AND RW01

5.1.3.1 My Lord, the Plaintiffs respectfully urge this Honourable Court to reject and expunge Exhibits MAP001, FLOOD001, FLOOD002, FLOOD003, SUB01, COV01 and RW01, all of which were admitted only on a provisional basis pending the Plaintiffs' objection in this Final Written Address. My Lord is referred to **GRIER HOUSE ESTATES LTD v. NICON TRUSTEES LTD & ORS** (*supra*) above.

5.1.3.2 Exhibits MAP001, FLOOD001, FLOOD002 and FLOOD003 tendered through DW5 consist merely of NIHSA's annual flood outlook documents and flood forecast maps for the year 2025. Respectfully, 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. The law is settled that admissibility is founded on relevance. Sections 1, 4 and 7 of the Evidence Act, 2011 make relevance the foundation of admissibility. The Supreme Court reiterated this principle in **NWABUOKU & ORS v. ONWORDI & ORS** (2006) LPELR-2082(SC) when Per Niki Tobi, JSC (as he then was) held:

"Admissibility, one of the cornerstones of our Law of Evidence, is based on relevancy. A fact in issue is admissible if it is relevant to the matter before the Court. In that respect, it is correct to say that relevancy is a precursor to admissibility in our Law of the Evidence. Flowing from the above, the negative statement that what is not relevant is not admissible is correct."

5.1.3.3 Respectfully, these forecast documents do not prove the Defendant's pleaded facts. They merely forecast possible flood occurrences generally across Nigeria. They

therefore fail the test of relevance for the purpose for which the Defendant tendered them.

5.1.3.4 Even if the Court were minded to retain the documents, DW5's admissions under cross-examination rendered them incapable of supporting the Defendant's case. DW5 admitted that Exhibit FLOOD001 contains no forecast whatsoever for January 2025;

- i. *Mokwa was not captured as a high flood-risk area;*
- ii. *Jebba was not captured as a high flood-risk area;*
- iii. *the documents merely constitute early warning tools for the general public.*

5.1.3.5 These admissions completely undermine the Defendant's reliance on the documents to explain the flooding that occurred in January 2025, which forms one of the principal complaints before this Honourable Court.

5.1.3.6 Likewise, Exhibit SUB01 is merely the subpoena issued by this Honourable Court compelling DW5's attendance, while COV01 is merely the forwarding letter transmitting the requested documents. The documents merely explain the administrative process by which DW5 appeared before this Honourable Court. Being incapable of proving any fact in issue, they are irrelevant and ought to be expunged.

5.1.3.7 DW5 was subpoenaed pursuant to a subpoena *ad testificandum et duces tecum*. While the subpoena entitled him both to produce documents and to testify, the Defendant failed to comply with the mandatory procedural requirement of frontloading his Witness Statement on Oath before calling him to give substantive evidence. Consequently, the oral evidence elicited from DW5 was incompetent in law and cannot be relied upon by this Honourable Court. Exhibit SUB01 merely evidences the issuance of the subpoena and serves no independent evidential purpose in proving any fact in issue.

5.1.3.8 The Defendant relied upon Exhibit RW01 as the record of water releases from the Jebba Dam. However, under cross-examination, DW5 admitted that nowhere on the face of the document are the words "Niger," "Mokwa," "Jebba" or "Kainji" expressly written; there is no document before this Honourable Court showing that NIHSA was notified before the Defendant released water in January and April 2025; and the attempt by DW5 to rely upon the abbreviation "JB" to identify the document cannot cure the obvious uncertainty appearing on its face. Furthermore, the document does not establish any nexus whatsoever between the recorded figures and the flooding complained of by the Plaintiffs. Consequently, Exhibit RW01 is

incapable of proving the Defendant's pleaded defence. **PDP v. GUSAU & ORS** (supra).

THE COMPETENCY OF THE TESTIMONY OF DW5

5.1.4 My Lord, it is respectfully submitted that the testimony of DW5 is incompetent and should be discountenanced by the Honourable Court. It is trite law that a person summoned under a subpoena duces tecum is required only to produce the documents specified in the subpoena and not to testify on the merits of the dispute. Such a person is not converted into a witness merely by virtue of producing documents before the Court. A distinction must therefore be maintained between a subpoena *duces tecum*, which commands the production of documents, and a subpoena *ad testificandum*, which commands a witness to attend and give oral testimony.

5.1.5 The Court of Appeal clearly explained this distinction in **OWOLABI v. BAKARE (2013) LPELR-21968(CA)**, where Denton-West, JCA, held that:

"Black's Law Dictionary... defined 'subpoena duces tecum' as a subpoena ordering the witness to appear and bring specified documents... while subpoena ad testificandum is a subpoena ordering a witness to appear and give testimony."

5.1.6 In **OKON v. PDP & ORS (2023) LPELR-59645(CA)**, The Court held that merely administering an oath to such a person does not transform him into a witness competent to testify on the substantive issues in dispute. The same principle was reaffirmed in **OLUBEKO v. AWOLAJA & ANOR (2017) LPELR-41854(CA)**.

5.1.7 My Lord, DW5 was subpoenaed pursuant to a subpoena *ad testificandum et duces tecum*. There is therefore no dispute that he was lawfully compelled to attend this Honourable Court both to produce documents and to testify. However, once the Defendant elected to rely on him as a witness *ad testificandum* by leading extensive evidence-in-chief on disputed facts forming part of its defence he is bound by the rule of this Honourable Court to file defence.

5.1.8 The law is settled that a subpoena compelling attendance does not dispense with compliance with the Rules of Court governing the manner in which evidence is received. A subpoena *ad testificandum* merely compels the attendance of a witness; it does not exempt the party calling the witness from complying with the mandatory requirement of filing the witness's written statement on oath before relying upon his testimony. This principle received judicial recognition in **AHIWE & ANOR v. INEC & ORS (2024) LPELR-61674(SC)**, where the Supreme Court held that although the witness was subpoenaed,

5.1.9 My Lord, the Defendant cannot circumvent the mandatory provisions of the rules of this Honourable Court by calling a witness under subpoena ad testificandum and eliciting extensive evidence-in-chief without first filing a Witness Statement on Oath. DW5's evidence-in-chief was thus received in violation of the High Court of Niger State (Civil Procedure) Rules, 2018, and is incompetent. This Honourable Court retains the power to reject or expunge such inadmissible testimony at judgment. See *ZI v. Chuwak* (2019) LPELR-48004(CA), where the Court affirmed that improperly admitted evidence may be expunged by the trial or appellate Court.

5.1.10 We respectfully urge this Honourable Court to hold that DW5's oral testimony is incompetent and devoid of probative value. Consequently, the Defendant cannot rely on it, and the Court should attach no evidential weight to DW5's substantive testimony in determining this suit and the purported documents goes to no issue.

5.1.10.1 Furthermore we urge this Honourable Court to expunge the said exhibits from its record. In the alternative, we urge the Court to attach no probative value whatsoever to them, as they fail to establish the material facts pleaded by the Defendant and are of no assistance in resolving the issues in controversy before this Honourable Court.

5.1.10.2 Having dealt with the Plaintiffs' objections, we now respectfully proceed to argue the lone Issue for Determination.

5.2 ISSUE ONE

Whether, having regard to the pleadings and the totality of the admissible evidence before this Honourable Court, the Plaintiffs have established it's case against the Defendant and are consequently entitled to the reliefs sought.

5.2.1 My Lord contrary to the submission of the Defendant's in its address, it is our respective submission that the Plaintiffs have, by credible oral and documentary evidence, discharged the burden placed upon them by law and established their case on the balance of probabilities. Consequently, the evidential burden shifted to the Defendant to rebut the Plaintiffs' evidence. Rather than disprove the Plaintiffs' case, the Defendant's evidence substantially corroborated it through material admissions, contradictions and the failure to produce vital evidence within its custody.

5.2.2 The law is settled that in civil proceedings, the legal burden initially rests on the party asserting the existence of a fact. However, once sufficient evidence is adduced establishing a prima facie case, the evidential burden shifts to the adverse party to rebut that evidence. My Lord is referred to Sections 131, 132, 133 and 134 of the

Evidence Act, 2011. In **NSUDE & ORS. V. NICHODEMUS & ORS. (2024)**

LPELR-62986(SC), the Supreme Court emphatically held:

"It is trite that he who asserts must prove. In civil cases, the burden of proof is dictated by the state of the pleadings. The burden is on the person who would lose if no evidence at all is given on either side. The general and initial burden of proof often rests on the Plaintiff, although it is not static."

- 5.2.3 Similarly, in **INTERDRILL (NIG.) LTD. & ANOR. V. UBA PLC (2017) LPELR-41907(SC)**, the Supreme Court reiterated that the burden is discharged on the balance of probabilities, meaning that judgment ought to be entered in favour of the party whose evidence possesses the greater weight and probative value. It is therefore submitted that once the Plaintiffs adduced credible evidence establishing the Defendant's negligent release of water, the resulting destruction of their farmlands and the losses suffered thereby, the burden shifted to the Defendant to discredit that evidence. The Defendant failed to discharge that burden. My Lord, from the evidence before this Honourable Court, the essential ingredients of negligence were clearly established by the Plaintiffs. The law requires a claimant in negligence to prove: (a) that the Defendant owed him a duty of care; (b) that the Defendant breached that duty; and (c) that the breach occasioned the damage complained of. See **A.B.C. TRANSPORT CO. LTD. V. OMOTOYE (2019) 14 NWLR (PT.1692) 197**. The Supreme Court also explained the nature of duty of care in **NEPA V. AUWAL (2022) LPELR-59473(SC)** thus:

"A duty of care is a legal obligation imposed on an individual or organisation requiring adherence to a standard of reasonable care while performing acts that could possibly harm others."

- 5.2.4 Applying these settled principles to the present case, there is no dispute that the Defendant is the operator and manager of the Jebba Hydroelectric Dam and exercises exclusive control over the release of water from the dam. It was therefore under a legal duty to exercise reasonable care in carrying out an activity capable of causing foreseeable harm to downstream communities, including the Plaintiffs' communities. The Plaintiffs led credible evidence through all of their witnesses establishing that water was released from the dam in January and April 2025 without adequate warning to the affected communities, leading to the flooding and destruction of their dry season farms. More significantly, this critical fact ceased to be contentious because the Defendant itself admitted releasing water. Indeed, under cross-examination, DW1 admitted that water was released in January and April 2025. DW4 equally admitted that water was released during the same period. These admissions go directly to one of the principal facts in issue. The legal effect of these

admissions is settled. Sections 20 to 27 of the Evidence Act recognise admissions made by a party as relevant evidence against that party. Furthermore, in **IBRAHIM V. USMAN & ORS. (2023) LPELR-60315(SC)**, the Supreme Court held that *"It is the law that facts admitted need no further proof."* My Lord is also referred to Section 123 of the Evidence Act. Accordingly, once the Defendant admitted releasing water during the material period complained of by the Plaintiffs, that fact no longer required further proof.

5.2.5 The remaining question before this Honourable Court is whether that release was carried out negligently and whether it caused the damage complained of. It is respectfully submitted that the Defendant's own evidence answers that question in the affirmative. Rather than disproving negligence, the Defendant's witnesses repeatedly made admissions demonstrating that water was in fact released; that the Defendant knew such releases could affect downstream communities; and that it bore responsibility for monitoring and controlling those releases. Even more telling is the Defendant's inability to produce the most crucial documentary evidence within its exclusive possession. Throughout the proceedings, the Defendant repeatedly referred to warning messages allegedly sent to the affected communities, records of consultations with stakeholders, operational records relating to the release of water, and other official documents. Yet none of these material documents was produced before this Honourable Court.

5.2.6 The law is well settled that where a party withholds evidence which could and ought to have been produced, the Court is entitled to presume that such evidence, if produced, would have been unfavourable to that party. Section 167(d) of the Evidence Act expressly provides for this presumption. In **NNAEMEKA & ANOR. V. INEC & ORS. (2024) LPELR-63034(SC)**, the Supreme Court held:

"There is a presumption of law that any evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it." See also **NIGERIAN NAVY & ORS. V. OYEGHE (2025) LPELR-82068(CA)**.

5.2.7 My Lord, this presumption is particularly applicable in this case because the withheld evidence consists of documents exclusively within the Defendant's custody and control. Having asserted the existence of warnings, consultations and operational records, the Defendant bore the responsibility of producing those documents before the Court. Its failure to do so entitles this Honourable Court to invoke the presumption under Section 167(d) of the Evidence Act that such evidence would have undermined rather than supported the Defendant's case.

5.2.8 My Lord, assuming without conceding that the Defendant led evidence in support of its defence, that evidence is riddled with material contradictions. While the Defendant pleaded that adequate warnings were issued before the release of water, none of its witnesses produced any document showing that Guzan and Wuchi Communities were specifically notified before the January and April 2025 releases. DW2 relied only on an invoice and proposals for radio jingles without proof they were aired; DW3 admitted there was no evidence the warning materials were distributed to the Plaintiffs' communities; DW4 admitted he had no document evidencing prior notification to the affected communities; and DW5 admitted there was no evidence that NIHSA was notified before the releases. These contradictions strike at the heart of the Defendant's defence that it exercised reasonable care.

5.2.9 The law is settled that material contradictions on fundamental facts substantially diminish the probative value of a party's evidence. In **OWOOLA & ORS. V. SOLUGE (2026) LPELR-83737(SC)**, the Supreme Court held that where contradictions are material and fundamental, they vitiate the case of the party relying on them. My Lord is also referred to the case of **GONIMI V. AISAMI & ORS. (2026) LPELR-83150(SC)**.

5.2.10 My Lord, the Plaintiffs' evidence on the flooding of their farmlands, the destruction occasioned thereby, the absence of effective warnings and the losses suffered remained substantially unshaken under cross-examination. Indeed, on several material points, the Defendant either failed to challenge the Plaintiffs' witnesses or elicited answers that reinforced their case. The settled law is that evidence which is neither challenged nor contradicted ought to be accepted by the Court. **IJOMAH V. MOLOKWU (2025) LPELR-80873(SC)**, **STATE V. EGIGIA (2024) LPELR-62009(SC)**. Furthermore, the Supreme Court in **GAJI & ORS. V. PAYE (2003) LPELR-1300(SC)** held that failure to cross-examine a witness on a material issue amounts to an acceptance of the truth of that evidence. It is therefore respectfully submitted that the Defendant cannot now invite this Honourable Court to reject evidence which it either failed to challenge or effectively admitted during trial.

5.2.11 My Lord, the evidence of PW1, the Estate Surveyor and Valuer, and PW4, the Licensed Surveyor, further lends considerable weight to the Plaintiffs' case. PW1 professionally assessed the damage suffered by the Plaintiffs and prepared the valuation report tendered before this Honourable Court, while PW4 prepared the survey plan identifying the flood-affected farmlands. Their evidence was based on professional inspection, measurements and accepted technical methodology which proves that the breach of the Defendant occasioned the damage complained of.

Significantly, the Defendant neither called any expert witness to challenge their findings nor tendered any contrary valuation or survey report. Their expert evidence therefore remained substantially uncontroverted.

- 5.2.12 My Lord, an unchallenged expert opinion is entitled to considerable weight where there is no credible evidence displacing it. In **SALINI (NIG.) LTD. V. TRANSWORLD INVESTMENT LTD. & ORS. (2022) LPELR-58370(CA)**, the Court held that an uncontradicted expert opinion ought to be relied upon where it is credible and reliable. See also **ISHOLA V. FRN (2023) LPELR-60490(CA)**. There is nothing before this Honourable Court to suggest that the methodology or conclusions reached by the Plaintiffs' experts were unreliable. Their evidence therefore remains the only credible expert evidence before the Court on the extent of the damage suffered by the Plaintiffs.
- 5.2.13 My Lord, it is equally significant that the Defendant failed to call material witnesses whose evidence would naturally have been expected if indeed its pleaded defence was true. No officer directly responsible for issuing the alleged warnings to the Plaintiffs' communities was called. No representative of any broadcasting station testified to confirm the actual transmission of the alleged warnings. Neither was any officer responsible for disseminating warning materials to Guzan and Wuchi Communities called to testify. The law is settled that failure to call a vital witness whose evidence would resolve material issues in controversy may prove fatal to a party's case. In **SOSACO (NIG.) LTD. V. FAIRGATE MARKETING COMMUNICATIONS LTD. & ORS. (2025) LPELR-82517(CA)**, the Court of Appeal held that failure to call a vital witness may be fatal where such witness could determine the case one way or the other.
- 5.2.14 Contrary to the Defendant's submission at paragraph 4.45, where the claim of the Plaintiffs was erroneously stated as ₦5,000,000,000.00 instead of the actual sum of ₦5,150,000,000.00 (Five Billion One Hundred and Fifty Million Naira), and further alleged to lack scientific proof, we respectfully submit that Exhibit EVR 01 clearly demonstrates how the sum of ₦5,150,000,000.00 was meticulously arrived at by valuing the losses suffered by the affected communities. This detailed analysis is expressly contained at pages 12 to 23 of EVR 01, and the figures as well as the veracity of the claims were never challenged by the Defendant. We therefore urge Your Lordship to so hold.
- 5.2.15 My Lord, when the totality of evidence is weighed on the scale of justice, the Plaintiffs' case overwhelmingly prevails. The Supreme Court in *Gonimi v. Aisami & Ors.* (supra) affirmed that quality, not quantity, determines where the balance tilts. Here, the Plaintiffs adduced credible eyewitness testimony, expert opinion,

documentary exhibits, and admissions from the Defendant's own witnesses. Conversely, the Defendant's case is marred by contradictions, unsupported assertions, and failure to produce vital evidence, leaving the Plaintiffs' case un rebutted. We urge my noble lord to so hold.

5.2.16 My Lord, having established that the Defendant negligently breached its duty of care and that such breach directly occasioned the destruction of the Plaintiffs' farmlands and economic livelihood, the Plaintiffs are entitled to the declaratory and consequential reliefs sought. The law is trite that declaratory reliefs are granted where a claimant establishes, by credible evidence, the existence and infringement of a legal right. In **A.G. RIVERS STATE V. A.G. FEDERATION & ANOR. (2022) LPELR-57708(SC)**, the Supreme Court held that *"A declaratory relief... will only be granted where the Plaintiff establishes a right in relation to which the declaration can be made."* The Plaintiffs have established that the Defendant owed them a duty of care, breached that duty through the negligent release of water without adequate warning, and caused the destruction of their farmlands. The Plaintiffs are therefore entitled to the declarations sought.

5.2.17 Similarly, the Plaintiffs have proved their entitlement to specific damages and compensation. In **NDPHC PLC V. MR. SHIMAVE ANTIV (2022) LPELR-57538(CA)**, the Court held that compensation is awarded where the claimant satisfactorily proves the injury or damage suffered. Likewise, in **VICTOR V. FUTA & ANOR. (2025) LPELR-83156(SC)**, the Supreme Court reaffirmed that compensatory damages are awarded to compensate a claimant for the loss suffered as a result of a defendant's breach of duty. EVR 01 remains clearly establishes the destruction of the Plaintiffs' farmlands, crops, irrigation facilities and other economic losses. These losses were professionally assessed by PW1 and remain substantially unchallenged. The Plaintiffs have therefore discharged the burden of proving their entitlement to compensation.

5.2.18 Furthermore, having regard to the Defendant's conduct, particularly its failure to take reasonable preventive measures despite knowledge of the foreseeable consequences of uncontrolled water releases, and its failure to adequately warn the affected communities, the Plaintiffs respectfully submit that this is a proper case for the award of general damages, exemplary damages, injunctive reliefs and costs as claimed in the Writ and Statement of Claim. See **Polaris Bank Plc v. Pinheiro (2025) SC 9 NWLR (Pt. 1994) 197**, **Mekwunye v. Emirates Airlines (2019) SC 9 NWLR (Pt. 1677) 191**

5.2.19 My Lord, the Plaintiffs have established every material fact necessary to sustain this action and entitled to all the reliefs sought. The Defendant has outrightly and

absolutely failed to disprove the Plaintiffs' case or rebut the credible evidence placed before this Honourable Court. We therefore respectfully urge Your Lordship to resolve in favour of the Plaintiffs and grant all the reliefs sought.

6.0 CONCLUSION

6.1 My Lord, there is an age-old African proverb that says: *"When a witch cries in the night and a child dies the following morning, no one doubts the connection."* In the same vein, where the Defendant admits releasing water in January and April 2025, and the Plaintiffs' farmlands were immediately inundated thereafter, the inference to be drawn is not one founded on superstition, but on the compelling and uncontroverted evidence placed before this Honourable Court.

6.2 We therefore most respectfully urge this Honourable Court to resolve all issues in favour of the Plaintiffs, uphold the objections raised to the Defendant's evidence, enter judgment for the Plaintiffs, and grant all the reliefs sought in the Statement of Claim, as the justice of this case demands. We are most obliged.

Dated the 17th day of July, 2026



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17/7/2026

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