

SUPREME COURT OF NIGERIA
7TH DECEMBER, 2012. SC. 229/2003
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, S. GALADIMA, N. S. NGWUTA,
S. S. ALAGOA, JJSC**

1. PLATEAU STATE HEALTH
SERVICES MANAGEMENT BOARD APPELLANTS
2. PLATEAU HOSPITAL JOS
AND
INSPECTOR PHILIP FITOKA
GOSHWE RESPONDENT

TORTS - Res ipsa loquitur - Principle - Application - The doctrine operates inter alia - Where there is unexplained occurrence - That happened due to negligence of person other than plaintiff (H1)

AFFIDAVITS - Depositions - Not controverted - Uncontroverted facts in affidavits are taken as true - And only minimal proof is required of them (H2)

COURTS - Issues - Formulation - Correctness of - Court has discretion to rearrange issues by parties - To meet the justice of the case (H3)

FACTS

Plaintiff/respondent (a policeman) had gone to the hospital of 2nd defendant/appellant for treatment of pneumonia and after the said treatment respondent became 100% deaf. A panel of inquiry set up by appellants had arrived at a conclusion that respondent's deafness was due to some injections he received for treatment of pneumonia at appellant's hospital. The panel made a number of good recommendations. However, appellants went on to recommend to respondent's employers that respondent be retired on health grounds. Consequently, respondent lost his job which ultimately affected his financial status as a family man.

When his request for compensation was not granted, respondent took out a writ of summons at the Plateau State High Court

sitting in Jos, claiming the sum of N2million being special and general damages for the negligent conduct of appellants which led to the permanent disability of respondent's hearing senses. Respondent relied on the doctrine of "Res ipsa loquitur" in proof of his claim. Appellants filed their statement of defence, but led no evidence with respect to same. They rather chose to rest their case on that of respondent. After hearing, the court held in favour of respondent. Aggrieved, appellants appealed to the Court of Appeal, Jos. The court held that res ipsa loquitur was applicable in the matter. It therefore found in favour of respondent. Aggrieved further, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

(i) Whether the finding of the learned Justices of the Court of Appeal that the learned trial Judge did not comply with Section 57 of the Evidence Act in admitting and relying on exhibit "C" and "E" in his judgment rendered the doctrine of "Res ipsa loquitur" inapplicable to the Respondent's case, thus rendering same liable to be dismissed.

(ii) Whether the re-arrangement of the issue for determination formulated by the Appellants by the learned Justice of the Court of Appeal based on the Appellants' original grounds of appeal instead of the amended ground of appeal has occasioned any miscarriages of justice on the Appellants necessitating a reversal of the judgment of the Court of Appeal.

HELD (Unanimously dismissing the appeal per

ALAGOA JSC)

TORTS - Res ipsa loquitur - Principle - Application

1. In ROYAL ADE NIGERIA LTD. & ANOR. v. NATIONAL OIL AND CHEMICAL MARKETING COMPANY PLC (2004) 8 NWLR (PART 874) 206; (2004) 18 NSCQR 334, the Supreme Court stated the principle under which the doctrine of "Res Ipsa loquitur" becomes operative as follows:

- 1) Proof of the happening of an unexplained occurrence.**
- 2) The occurrence must be one which would not have happened in the ordinary course of things without negligence**

on the part of somebody other than the Plaintiff.

3) The circumstances must point to the negligence in question being that of the Defendant rather than that of any other person.

Simply put doctrine means the thing speaks for itself.
(p. 3240 C)

AFFIDAVITS - Depositions - Not controverted

2. The above cited two cases amply illustrate what took place in the present case now before us on further appeal. What conclusion can one reasonably draw from a case in which a man who is hale and hearty but for a complaint that he has pneumonia and so proceeds to a hospital to have that ailment treated but comes out of the said hospital with a completely different and worse ailment after taking some drugs administered by the hospital's personnel? The scenario is worse when no attempt is made by the hospital authorities to explain its own side of the story after promising to do so. The Respondent had stated in his affidavit evidence that the Appellants were negligent. The Appellants led no evidence whatsoever of their own to controvert those facts as stated by the Respondent. There is a plethora of cases to the effect uncontroverted facts contained in an affidavit are taken as true and only minimal proof is required of such evidence. (p. 3242 E)

COURTS - Issues - Formulation - Correctness of

3. It is necessary to state at the outset that a court has an unfettered discretion to re-arrange or formulate issues for determination by the parties to meet the justice of the case.
(p. 3243 H)

REPRESENTATION

E. J. Pwajok, Esq., (Hon. Attorney General of Plateau State) with F. B. Lotben (Mrs.) and N. A. Garba (Mrs.), for the Appellants
Chike Onyemenam with Philips Odungu Esq., for the Respondent

CASES REFERRED TO

Barkway v. South Wales Transport Co. Ltd. (1950) 1 ALL ER 392

- Walsh v. Holst & Co. ltd. (1958) 1 WLR 800;
 Woods v. Duncan (1946) AC 401;
 Odebunmi & Ors. v. Abdullahi (1997) 2 NWLR pt. 489 pg. 526
 Polcarp v. Numbia (1992) 1 ALL NLR Pt. 2 226
 Strabeg (Nig.) Ltd. v. Ogarekpe (1991) 1 NWLR (Pt.170-748)
 B Russel v. L & SW RLY (1908) 24 TCR 548
 Alegbe v. Abimbola (1978) 2 S.C. 39 at 40;
 Cappa d' Alberto ltd. v. Akinjilo (2003) 9 NWLR (Pt 824) 49
 Oyidiobu v. Okechukwu (1972) 5 S.C. 191; M. J. Evans v. S. A.
 Bakare (1973) 3 S.C. 77.
 C Awojugbagbe light Industries ltd. v. P. N. Chinukwe & anor (1995) 4
 NWLR pt. 390 379
 Latinde & Anor v. Bella Lajunfin (1989) 5 S.C. 59
 Unity bank & anor. v. Edward Bonari (2008) 2 SCM 193
 D African Int'l bank ltd. v. Intergrated Dimensional system ltd. & Ors.
 suit no. S.C. 278/2002 (unreported)

STATUTE REFERRED TO

Evidence Act, s.57

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LEAD JUDGMENT BY ALAGOA JSC

- This is an appeal against the judgment of the Court of Appeal
 Jos Division delivered on the 14th July, 2003. At the High Court Jos,
 the present Respondent who was Plaintiff had taken out a writ of
 F summons claiming the sum of two million naira (N2,000,000.00)
 being special and general damages for the negligent conduct of the
 defendants (Appellant in this appeal) which led to the permanent
 disability of his hearing senses. The Respondent had sought for and
 G been granted leave to adduce affidavit evidence by the trial High
 Court. A synopsis of the Respondents case as can be gleaned from
 his statement of claim and affidavit evidence contained at pages 3 - 4
 and 20 - 22 of the Record of Appeal is that the Respondent, a police-
 man had gone to the hospital of the 2nd Appellant for treatment of
 H pneumonia and after the said treatment the Respondent became
 100% deaf. A panel of inquiry set up by the Appellants had arrived
 at a conclusion that the Respondent's deafness was due to some in-
 jections he received for treatment pneumonia at the Appellant's hos-
 pital. That panel had also recommended that the Respondent's em-

ployers, the Nigeria Police, purchase two rare drugs which could cure the Respondent's deafness. The panel further recommended that Respondent be assigned to other duties which would not require communication but surprisingly the Appellants went on to recommend to the Respondent's employers that the Respondent be retired on health grounds, instead of purchasing the drugs which might have cured the Respondent's deafness. In consequence of the Respondent's loss of job, his eight children had to leave school. His request for the payment of compensation having fallen on deaf ears, the Respondent brought an action against the Appellants claiming N200,000.00 (Two Million Naira) as damages for negligence. The Respondent relied on the doctrine of "Res ipsa loquitur".

The Appellants as Defendants filed a joint Statement of Defence contained at pages 15 and 16 of the Record of Appeal but led no evidence with respect to same choosing to rest their case on that of the Plaintiff now Respondent. After addresses of counsel, the learned trial Judge in a reserved judgment found in favour of the Plaintiff (now Respondent) and awarded the sum of N300,000.00 damages in favour of the Plaintiff for negligence. The plea of "Res ipsa loquitur" availed the Respondent. Aggrieved, the Defendants appealed to the Court of Appeal on four grounds from which two issues were distilled i.e the learned trial Judge's reliance on exhibits "C" and "E" - Medical doctor's report even when no medical doctor was called as a witness and that Court's conclusion that "Res ipsa loquitur" applied to arrive at its judgment. The Court of Appeal resolved issue 1 in the Appellant's favour on the ground that exhibits "C" and "E" were of no evidential value contending that the medical doctor who prepared the reports should as an expert have been called upon to give evidence and invoking the provisions of section 57 of the Evidence Act to allow the appeal in part for the above stated reason. The Court of Appeal resolved issue 2 in favour of the Respondent on the basis that "Res ipsa loquitur" was applicable and awarded the sum of N300,000.00 damages for negligence in favour of the Respondent. Aggrieved, the Appellants have yet again appealed to this court. Their notice of appeal dated the 17th July, 2003 at pages 164-167 of the Record of Appeal consists of five grounds of appeal reproduced hereunder devoid of particulars:-

"GROUNDS ONE

The Justices of the Court Appeal erred in law when they failed to consider the appeal based on the issues properly formulated by the appellants rather, their Lordships re-arranged the issues on the erroneous grounds that there was no ground 4. And this occasioned a miscarriage of justice.

B *GROUND TWO*

The Justices of the Court of Appeal erred in law when having held that the Appellants' Issue One succeeded yet in a contradictory manner affirmed the award of N300,000.00 as damages for negligence and this occasioned a miscarriage of justice.

C *GROUND THREE*

Their Lordships misdirected themselves in law when having found that Section 57 of Evidence Act was not complied with by the trial judge yet their Lordships came to a wrong conclusion that Res Ipsa Loquitur applied in this case.

D *GROUND FOUR*

The Learned Justice of the Court of Appeal erred in law when they abandoned the Appellants' amended/additional grounds of appeal and instead relied on the original grounds in determining the appeal and this occasioned a miscarriage of justice.

E *GROUND FIVE*

The Learned Justices of the Court of Appeal erred in law when they failed to differentiate between the 2nd Appellant and the Plateau State Medical Board and wrongly held that it was the 2nd Appellant who referred the Respondent to Jos University Teaching Hospital and this occasioned a miscarriage of justice."

F This appeal came up to be heard on the 9th October, 2012. E. J. Pwajok, Hon. Attorney General of Plateau State, with him F. B. Lotben (Mrs.) and N. A. Garba (Mrs.), adopted and relied on the Appellants' Brief of argument dated 18th October, 2004 and urged this Court to allow the appeal, set aside the judgment of the lower court and also of the trial High Court and dismiss the case for the Respondent. Chike Onyemenam with him Philips Odungu appearing as Counsel for the Respondent, adopted and relied on the Respondent's Brief of Argument dated the 18th October, 2010. Counsel went on to say that the burden of proof is not on the plaintiff when the principle of "Res Ipsa loquitur" is concerned and the Respondent nevertheless went on to lead evidence when there was

no basis for that. He urged this court to dismiss the appeal. Appellants have distilled two issues in their brief of argument. These are:-

i. Whether the learned Justices of the Court of Appeal were right in coming to the conclusion that “*Res ipsa loquitur*” applied in this case when it was established that the learned trial Judge did not comply with Section 57 of the Evidence Act or in the alternative what is the remedy available to an appellant whose appeal succeeds in part. B

ii. Whether the Justice of the Court of Appeal were right in re-arranging the issue and determining the appeal based on the Appellants’ original rather than the Amended/Additional grounds. C

These issues are contained at pages 2 and 3 of the Appellants’ Brief of Argument. For the Respondent, the following issues were formulated at page 6 of the Respondent’s Brief of Argument.

(i) Whether the finding of the learned Justices of the Court of Appeal that the learned trial Judge did not comply with Section 57 of the Evidence Act in admitting and relying on exhibit “C” and “E” in his judgment rendered the doctrine of “*Res ipsa loquitur*” inapplicable to the Respondent’s case, thus rendering same liable to be dismissed. D E

(ii) Whether the re-arrangement of the issue for determination formulated by the Appellants by the learned Justice of the Court of Appeal based on the Appellants’ original grounds of appeal instead of the amended ground of appeal has occasioned any miscarriages of justice on the Appellants necessitating a reversal of the judgment of the Court of Appeal. F

I find the issues formulated by the Respondent in his Brief of Argument more apt and straight forward in the determination of this appeal and I intend and have adopted same in the consideration and determination of this appeal. Issue 1 as formulated by the Respondent reads as follows, “whether the finding of the learned Justices of the Court of Appeal that the learned trial Judge did not comply with Section 57 of the Evidence Act in admitting and relying on exhibits “C” and “E” in his judgment rendered the doctrine of “*Res ipsa loquitur*” inapplicable to the Respondent’s case, thus rendering same liable to be dismissed.” This issue is by no means confusing. The learned Justices of the Court of Appeal had agreed with the Appellants’ contention that Section 57 of the Evidence Act not having been com- G H

plied with in the sense that which ever medical expert who made exhibits “C” and “E” ought to have been called to give evidence on those exhibits and was not so called, exhibits “C” and “E” were of no evidential value. The appeal was allowed in part on that basis. Does the mere rejection of exhibits “C” and “E” as being of no evidential value render the doctrine of “Res Ipsa loquitur” inapplicable to the Respondent’s case so as to have his case dismissed? That appears to be the question that this issue seeks to answer. Put even more simply, now that exhibits “C” and “E” have been discredited and discarded, do the facts and circumstances of the Respondent’s case not still disclose a case of “Res ipsa loquitur” in law?

In ROYAL ADE NIGERIA LTD. & ANOR. v. NATIONAL OIL AND CHEMICAL MARKETING COMPANY PLC (2004) 8 NWLR (PART 874) 206; (2004) 18 NSCQR 334, the Supreme Court stated the principle under which the doctrine of “Res Ipsa loquitur” becomes operative as follows:

- 1) **Proof of the happening of an unexplained occurrence.**
- 2) **The occurrence must be one which would not have happened in the ordinary course of things without negligence on the part of somebody other than the Plaintiff.**
- 3) **The circumstances must point to the negligence in question being that of the Defendant rather than that of any other person.**

Simply put doctrine means the thing speaks for itself. In BARKWAY v. SOUTH WALES TRANSPORT CO. LTD. (1950) 1 ALL ER 392 the purport of the doctrine was to shift the onus on the defendant to disprove negligence. In that case the Appellant’s husband had been killed while traveling on the Respondent’s bus which accident was a result of burst tyre. The burst tyre was a result of an impact fracture due to heavy blows on the outside of the tyre leading to the disintegration of the inner parts. Although such a fracture might occur without leaving any visible external mark, it was contended that a competent driver would be able to recognize the difference between a blow heavy enough to endanger the strength of the tyre and a lesser blow. The Respondent’s witnesses had argued that they had put in place a system of tyre inspection which was satisfactory but evidence showed that the Respondents had not taken all the steps they should have taken to protect passengers because they had

not instructed their drivers to report heavy blows to tyres likely to cause impact fractures. See also WALSH v. HOLST & CO. LTD. (1958) 1 WLR 800; WOODS v. DUNCAN (1946) AC 401; ODEBUNMI & ORS. v. ABDULLAHI (1997) 2 NWLR (PART 489) page 526 at 535 - 536; POLYCARP v. NUNBIA (1992) 1 ALL NLR (PART 2) 226 at 232. These cases illustrate the working of the principle of *Res Ipsa Loquitur*. The presumption of negligence that *Res ipsa loquitur* imposes on a defendant is rebuttable. It is thus for the defendant to show that he was not negligent. Learned Counsel for the Appellants had submitted, relying heavily on the case of STRAGBEG CONSTRUCTION (NIG.) LTD. v. OGAREKPE (1991) 1 NWLR (PART 170-748) that where a case is open to possibilities, *Res ipsa loquitur* does not apply. That may be a correct statement of the law, but is the present case open to possibilities?

Let us at this stage examine the state of pleadings at the trial High Court. The present Respondent, then plaintiff averred that sometime in August, 1990 he reported himself to the Appellants, then defendant's hospital for treatment having taken ill with pneumonia and after the administration of drugs on him he lost his hearing senses, due to the negligence of the Appellants. The Appellants stated in their joint statement of defence that they would lead evidence to show that they were not negligent and that at the trial they would lead evidence in proof of the facts that the Respondent's deafness was as a result of other causes. The Appellants also averred that they would lead evidence to show that the treatment for pneumonia could have side effects. The Appellants never led any evidence at all at the trial. What is one to make out of a situation in which as the Respondent averred in paragraph 5 of his Statement of Claim and Affidavit Evidence he was an able police officer posted to 'B' Division Bukuru Police Command of Plateau State only to leave the Appellants' hospital 100% deaf after treatment? In *Russel v. L & SW RLY* (1908) 24 TCR 548 at 551, Kennedy L.J. property expounded the term "*Res ipsa Loquitur*" thus, "The meaning as I understand that phrase, is this, that there is in the circumstances of the particular case, some evidence which viewed not as a conjuncture but of reasonable argument, makes it more probable that there was some negligence, upon the facts as shown and undisputed, than that occurrence took place without negligence. The *res* speaks because the facts stand unex-

plained and therefore the natural and reasonable, not conjectural inference from the facts shows that what has happened is reasonably to be attributed to some act of negligence on the part of somebody. Res ipsa loquitur does not mean as I understand it, that merely because at the end of a journey, a horse is found hurt, or somebody is hurt in the streets, the mere fact that he is hurt implied negligence. That is absurd. It means that the circumstances are, so to speak, eloquent of the negligence of somebody who brought about the state of things complained of. Belgore JSC lent his voice on the requisites of the maxim “Res ipsa loquitur” when in ODEBUNMI & ORS. v. ABDULLAHI (1997) 2 NWLR (PART 4890) 526 at 535 he said as follows,

“where a thing is shown to be under the management of the defendant or his servants and an accident occurs in the process, and that accident is such as does occur in the ordinary course of things if those who are thus in the management exercise proper care or diligence, in the absence of any explanation by those in the afore-mentioned management as to how the accident happened, the accident is presumed in such cases; for in such cases negligence is inferred to have resulted from the want of care by the persons in the management of their agents or servants. The maxim Res ipsa loquitur means “things speak for themselves.”

The above cited two cases amply illustrate what took place in the present case now before us on further appeal. What conclusion can one reasonably draw from a case in which a man who is hale and hearty but for a complaint that he has pneumonia and so proceeds to a hospital to have that ailment treated but comes out of the said hospital with a completely different and worse ailment after taking some drugs administered by the hospital’s personnel? The scenario is worse when no attempt is made by the hospital authorities to explain its own side of the story after promising to do so. The Respondent had stated in his affidavit evidence that the Appellants were negligent. The Appellants led no evidence whatsoever of their own to controvert those facts as stated by the Respondent. There is a plethora of cases to the effect uncontroverted facts contained in an affidavit are taken as true and only minimal proof is required of such evidence. See ALEGBE

v. ABIMBOLA (1978) 2 S.C. 39 at 40; CAPPAD' ALBERTO LTD. v. AKINJILO (2003) 9 NWLR (PART 824) 49 at 71. It will therefore be seen that "Res ipsa loquitur" can succeed irrespective of the rejection by the Court of Appeal of exhibits "C" and "E". Mention should also be made of exhibit "B" - minutes of the Appellants' Medical Consultants/Specialist's Report which established that the patient (Respondent) had, "a post-febrile deafness after some injections at Plateau Hospital (2nd Appellant)" were administered on him, for the treatment of pneumonia on the 22nd August, 1990". Respondent was recommended for an alternative job with lesser communications while efforts were made at treatment to improve his condition. After Appellants had recommended him to Dr. Isichei for further check up, the same Appellants wrote to his employers - exhibits "D" that he be retired from service. It can therefore be seen that the duty of care which the Appellants had to the Respondent was breached and the Appellants were negligent in the proper management of the health needs of the Respondent. See OYIDIOBU v. OKECHUKWU (1972) 5 S.C. 191; M. J. EVANS v. S. A. BAKARE (1973) 3 S.C. 77. Thus even on the basis of the pleadings, the evidence led by the Respondent and lack of same by the Appellants having chickened out of an opportunity to state their own position by abandoning their statement of defence and leading no evidence at all and the sheer force of the other exhibits notably "B" and "D", exhibits "C" and "E" having been rejected, the Appellants were properly found liable in negligence and Res ipsa loquitur applied and both the trial High Court and the Court of Appeal properly so held that Res ipsa loquitur applied. Issue 1 is therefore resolved in favour of the Respondent against the Appellants.

I shall now proceed with Issue 2 which is "whether the re-arrangement of the issues for determination formulated by the Appellant by the learned Justice of the Court of Appeal based on the Appellants' original grounds of appeal instead of the amended ground of appeal containing an additional ground of appeal has occasioned any miscarriage of justice on the Appellants necessitating a reversal of the judgment of the Court of Appeal"

It is necessary to state at the outset that a court has an unfettered discretion to re-arrange or formulate issues for determination by the parties to meet the justice of the case. See

AWOJUGBAGBE LIGHT INDUSTRIES LTD. v. P. N. CHINUKWE & ANOR (1995) 4 NWLR (PART 390) 379; (1995) 4 SCNJ 1; LATINDE & ANOR. v. BELLA LAJUNFIN (1989) 5 S.C. 59; (1989) 5 SCNJ 59; UNITY BANK & ANOR. v. EDWARD BONARI (2008) 2 SCM 193 AT 240. In AFRICAN INTERNATIONAL BANK LTD. v. INTEGRATED DIMENSIONAL SYSTEM LTD. & ORS. SUIT NO. S.C.278/2002 (unreported, decided on the 11th may, 2012, the Supreme Court per Ariwoola JSC said as follows, “so long as it will not lead to injustice to the opposite side, appellate courts possess the power the power and in the interest of justice to reject, modify or reframe any or all issues formulated by the parties.” Let me go on to state here that where there is a complaint that a re-arrangement or modification of issue by a court has occasioned a miscarriage of justice, the burden lies on the party so complaining to show that there has indeed been a miscarriage of justice by the arrangement or modification. It is not for the court to try to figure out how the rearrangement or modification of issue has occasioned a miscarriage of justice. Learned Counsel for the Appellants at page 7 of the Appellants’ Brief of argument referred to page 117 of the record where the learned Justice of the Court came to this conclusion, “Learned Counsel for the Appellants states that Issue No.1 flows from grounds 1 and 2 of the grounds of appeal and Issue 2 from ground 4. It is my view that Issue No.1 of the Appellants does not flow from ground 1 but Issue No. 2 is from ground 2. There is no ground 4 in the grounds of appeal. No issue has been distilled from ground 3. It is deemed abandoned. It is therefore struck out.” Appellants then went on to say in paragraph 2.2 at page 7 of their Brief of Argument thus, “The omission is fundamental and contributed to a large extent in the contradictory judgment of the lower court.” How was the judgment of the lower court contradictory? Granted that there was a mix up by the Court of Appeal in the arrangement of issues, its judgment was in no way contradictory. Appellants have certainly not shown how. What is of importance is that the Court of Appeal having agreed with the Appellants that the provisions of Section 57 of the Evidence Act which deals with the calling of expert evidence was not complied with as the doctor who prepared exhibits “C” and “E” was not called to give evidence rejected the finding of the trial High Court admitting exhibits “C” and “E”. It was on that basis that the appeal was allowed in part. This

issue is also resolved in favour of the Respondent. On the whole the appeal lacks merit and is dismissed and the judgment of the Court of Appeal Jos Division delivered on the 14th July, 2003 is hereby affirmed. Parties are to bear their own costs.

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MOHAMMED JSC

This appeal is against the judgment of the Court of Appeal Jos Division delivered on 14th July, 2003, which found the Appellants guilty of negligence and liable in damages to the tune of N300,000.00 in favour of the Respondent who suffered the loss of his hearing senses following the treatment he received at the Appellants' Plateau Hospital Jos. It is my view that on the evidence on record, even the rejection of the documents Exhibits C and E in evidence, the Respondent's affidavit evidence taken with the Appellants' Consultant Report Exhibits 'B', fully supported the case of the Respondent to justify finding in his favour by the trial Court in the absence of any evidence on the side of the scale of justice of the Appellants who refused to give evidence in support of their own defence at the trial Court.

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I have been privileged before today of reading the lead judgment of my learned brother Alagoa JSC in this appeal and I completely agree with him that there is no merit at all in this appeal. Accordingly, I also dismiss the appeal with the parties bearing their respective costs.

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MUNTAKA-COOMASSIE JSC

In the High Court of Justice the Respondent was the plaintiff and sued the defendants now appellants claiming the sum of two million naira (N2,000,000.00) being special and general damages for the negligent conduct of the Appellants. The conduct of the defendants/Appellants caused the permanent disability of the plaintiff's hearing senses. He relied on the doctrine of 'Res Ipsa loquitor' as to why he had this terrible predicament and ailment in his hearing faculty. Defendants then filed a joint statement of defence. At the end the defendants refused to lead any evidence. They rested their case on that of the plaintiff. After parties have addressed the court the

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learned trial judge T. D. Naron in a reserved judgment found in favour of the plaintiff now respondent. The trial court awarded the sum of N300,000.00 damages in favour of the plaintiff for negligence.

Aggrieved by the decision of the trial court the defendants unsuccessfully lodged an appeal to the Court of Appeal Jos Division
B now lower court, on four (4) grounds of appeal. Two issues were distilled by them. The Court of Appeal resolved issue 2 in favour of the respondents holding that the doctrine of ‘Res Ipsa loquitor’ applies. The lower court also awarded N300,000.00 damages for negligence in favour of the respondents. Aggrieved again the defendants/
C Appellants lodged an appeal to this court. They filed a Notice of Appeal containing five grounds of appeal. The grounds were reproduced by my learned brother Alagoa JSC, I shall not produce them here. Two issues were formulated by the Appellants. The respondents herein similarly distilled two issues for the determination of this
D appeal. The appellants urged this court to allow the appeal and set aside the decisions of the lower court while the respondent urged us to dismiss the appeal for lacking in merits.

I was privileged to have a preview of my Lord, Alagoa JSC’s
E judgment before now. I entirely agree with his Lordship’s decision. For the reasons and conclusions neatly adumbrated in the lead judgment of my Lord Alagoa JSC, I too agree that the appeal is devoid of merit same is dismissed by me. The judgment of the Court of Appeal
F is sound same is hereby affirmed. No order as to costs.

GALADIMA JSC

I had the privilege of reading in advance the judgment by my
G learned Brother ALAGOA, JSC. I agree with his reasoning and conclusion leading to the dismissal of this appeal. He has dealt with the two issues raised in the appeal by the Appellant most comprehensively. I do not wish to say more than that I too dismiss the appeal. Parties to bear their respective costs.

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NGWUTA JSC

I had the privilege of reading in draft the lead judgment just delivered by my Lord, Alagoa, JSC and I agree with the reasoning

and conclusion therein.

I would like to say a few words on Exhibits C and F rejected by the lower court and which rejection the appellant relied on to say that the judgment of the lower court is contradictory. *Res ipsa loquitur* is a form of circumstantial evidence by which the plaintiff, in appropriate cases, establishes the defendant's likely negligence. It raises a rebuttable presumption of negligence of the defendant, presenting a question of fact for the defendant to meet with an explanation. It follows that the rejection of Exhibits C and E as of no evidential value has no impact on the respondent's case.

Having raised and relied on the principle of *res ipsa loquitur*, the respondent did not have to establish the cause of his audio disability. He did not need Exhibits C and E. The onus was on the appellants to rebut the presumption of negligence on their part, a burden they did not discharge. There is no contradiction in the judgment of the lower court. Based on the above and the fuller reasons in the lead judgment, I also dismiss the appeal. I abide by the consequential orders.

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