

# CASE DIGEST

---

## COMMERCIAL LAW: AGENCY; ACTS OF AN AGENT ARE BINDING ON THE PRINCIPAL

### SUPER CERAMICS MANUFACTURERS LTD v. H.E.P. ENGINEERING NIGERIA LIMITED

#### SUPREME COURT

*(NGWUTA; ARIWOOLA; MUHAMMAD; OKORO; ABBA-AJI, JJ.SC)*

Sometime in 1998, H.E.P. Engineering Nigeria Limited (the Respondent), a construction firm, agreed with Super Ceramics Manufacturers Ltd (the Appellant) to hire the latter's excavator and payloader. The agreement was later reviewed by the Appellant's letter which was accepted by the Respondent through its reply. These two documents form the bedrock upon which the contract between the parties was made. In accordance with the custom of the construction industries, the parties had right from the onset in 1998 adopted the policy of keeping the hired machineries after each day's work in a secured fenced yard. The Respondent's security personnel guarded the storage or packing yard. The Appellant's machineries hired by the Respondent were controlled and operated by operators/drivers employed by the Appellant who were responsible for ensuring that such machineries or equipments were packed in the secured yard provided by the respondent after each day's work and when the equipments were not in use. On 11/5/1993, the Appellant's excavator hired by the Respondent was damaged by rioters at the Respondent's Dolphin Estate site in Ikoyi and the operator was one Johnson Egwu, an employee of the Appellant, who parked it outside the fenced parking yard provided by the Respondent for parking of the hired machineries. The dispute on who was liable led to the institution of a suit by the Appellant against the Respondent, who filed a final amended statement of defence and counterclaim. After the trial, the trial court gave judgment in favour of the Appellant against the Respondent while the Respondent's counterclaim was dismissed. The Respondent aggrieved, appealed to the Court of Appeal (lower Court), which allowed the appeal and set aside the trial court's judgment.

Dissatisfied with the decision of the lower Court, the Appellant appealed to the Supreme Court. The sole issue for determination is: *Whether the learned Justices of the Court of Appeal were right in holding that the Respondent is not vicariously liable for the negligence of the Appellant's servant.*

In arguing the appeal, the learned counsel for the Appellant submitted that the issue of vicarious liability for the alleged negligent acts of the driver/operator of the excavator was not formulated for determination before the learned Justices of the Court of Appeal and did not arise from the grounds of appeal filed by the Respondent against the decision of the trial court. Counsel contended that the lower Court were clearly in error when they considered and determined the issue of who as between the Appellant and the Respondent was vicariously liable for the alleged negligent act of the driver/operator of the excavator. Learned Counsel in conclusion stated that even if an issue was formulated on the vicarious liability for the alleged negligent act of the driver/operator of the excavator, such issue becomes unarguable on the basis that it is predicated on an incompetent appeal, the relevant grounds of appeal not arising from the decision of the trial court. He urged the court to resolve this issue in favour of the Appellant.

In response, Learned counsel for the Respondent contended that contrary to the Appellant's argument, the Respondent in its brief filed at the Court of Appeal, raised issues as to the negligence of the plaintiff's agent in not moving the said excavator into the protective storage yard. According to him, the Respondent also pleaded the negligence of the Appellant/Plaintiff through its agent/employee in its amended statement of defence and counterclaim at the trial court. In the final submission, the learned Counsel stated that having found that the Respondent could not be held liable in negligence for the acts of the Appellant's driver, the logical and necessary deduction or inference which the court below could have made on the evidence before the court was that the Appellant must be responsible for the negligent conduct of its own servant or agent which cannot be vicariously attributed to the Respondent. He urged the court to resolve this issue against the Appellant.

In resolving the issue, the Supreme Court held thus:

It is not in doubt that the servant (driver/operator) of the Appellant operated the excavator and failed to park same within the security area provided by the respondent. As observed by the court below, had he parked the equipment within the security area, the rioters would not have had access to the equipment and same would have been saved. This was clearly the negligence of the operator of the excavator. I agree with the carelessness that resulted in the damage of the equipment that he parked outside the protected area. In other words, the operator, the Appellant's worker, was negligent. According to the doctrine of vicarious liability, the stated operator was negligent since he was the Appellant's servant and acted in the course of his duties. According to the pleadings and evidence presented in trial court, the Respondent fulfilled all of his contractual obligations. He provided a walled area and a security guard to ensure the excavator's safety when not in operation. The excavator was damaged not by the Respondent's breach of duty, but by the Appellant's agent's failure to maintain the excavator in the space given by the Respondent. Both parties agreed that the appellant's excavator operator was his own employee. According to the circumstances, the excavator operator is an agent of a revealed principal who is personally liable for the acts of his agent, and so the Respondent cannot be held liable, directly or vicariously, for the negligent acts of the Appellant's employee/agent.

Issue resolved in favour of the Respondent.

Rotimi Seriki Esq., for the Appellant.

B. B. Lawal with H. K. Salami, E. T. Samuel, E. B. Aigbe and A. H. Arhere for the Respondent.

This summary is fully reported at (2002) 10 CLRN.

[www.clrndirect.com](http://www.clrndirect.com)

[info@clrndirect.com](mailto:info@clrndirect.com)