
CHAPTER FOUR

PROFESSOR CHUKWUEMEKA MBANUGO: A PERFECT NEIGHBOUR IN THE EYES OF THE LAW

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Abstract

It is natural that every man has different statuses both ascribed and acquired statuses. These statuses have different roles attached to them. There are people whom the person is bound to meet in the discharge of the roles attached to his statuses. These people are referred to as his or her neighbors in as much as his actions or in action are likely to affect these people one way or the other. The legal concept of neighborhood principles requires that the person takes care not affect his neighbours negatively. Professor Chukwuemeka Mbanugo is a man that has interacted with people from different fields of life in his life. He has different statuses and different roles attached to his statuses. These statuses range from being a family man, a husband, a father, a Christian, a teacher, a musician, a colleague, a socialite etc. These statuses have different roles attached to them and the people affected by the roles discharged by Professor Chukwuemeka Mbanugo are his neighbours in the eyes of the law. The objective of this work is appraise the legal perspective to neighbourhood principles vis-à-vis the life of professor Chukwuemeka Mbanugo as a family man, a husband, a father, a Christian, a teacher, a musician, a colleague, a socialite etc. The work adopted doctrinal research methodology with analytical approach with the aid of statute books, case law, textbooks, journal articles and Internet materials. At the end, the work concluded that professor Chukwuemeka Mbanugo is a man who discharged his duty of care to his neighbours in the eyes of the law.

Keywords: Law, Duty of care, Neighbourhood principle, Professor Chukwuemeka Mbanugo

Who is a Neighbour in Law?

As a matter of introduction, understanding the concept of “neighborhood in law” is of utmost importance to the appreciation of the whole idea and intendment of this honorary essay. This is more so because, the law imbues a neighbor with a duty of care to others. In a lay man's understanding, a neighbour is simply any person living next door or very near to him. However, this perspective is far below the gamut of the concept in the eyes of the law. Before we venture into dissecting the concept from the legal perspective, it is apposite to underscore at this juncture that the question – “who is a neighbour?” was first asked by a lawyer. The question was directed to Jesus Christ who had entreated His followers to love their neighbour as themselves. The question led to a brief parable by Jesus about a traveler who was robbed, assaulted and abandoned on the road by his assailants. Two persons (a priest and a Levite) passed by the scene of crime, saw the dying man but neglected to offer any assistance whatsoever. The third person (a Samaritan) passed by the scene of crime, sympathized with the dying man and ensured that adequate medical treatment and care was given to the man. Although Jesus did not expressly answer the question thrown by the lawyer, He agreed with

the lawyer when he stated that of all the three persons that passed by the dying man, only “*the one who showed mercy to him,*” qualified to be his neighbour¹. Be that as it may, a literal interpretation of this biblical approach to the issue may give rise to some further questions such as: why were the other two persons (the priest and the Levite) not seen as neighbours to the man? Must a person exhibit a positive moral act to be qualified as a neighbour? Did the robbers not owe the traveler a duty of care? Should the innkeeper who took care of the traveler in trust for the Samaritan be excluded from the ambit of who is a neighbour? However, from a more in-depth interpretation, the biblical neighborhood principle focuses more on the practice of love to all persons including strangers. Although the biblical neighborhood principle may not be easily amenable to contemporary strict legal analysis², it carries great insight on the issue of who is a neighbour. In any case, Professor Chukwuemeka Mbanugo is also a neighbour within the biblical context in that he has on several occasions exhibited acts of love and care to his fellow men.

The Legal perspective of Neighbourhood Principle

In law, the first attempt to formulate a general principle on the issue of who is a neighbour was made by Brett M.R in *Heaven v. Pender* as follows³:

The proposition which these recognized cases suggest, and which is, therefore, to be deduced from them, is that whenever one person is by circumstances placed in a such a position with regard to another that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such a danger.

However, a far more important generalization is that put forward by Lord Atkin in *Donoghue v. Stevenson*⁴. In *Donoghue v. Stevenson*⁵, a manufacturer of ginger beer sold ginger beer in an opaque bottle to a retailer. The retailer resold it to Mr. A, who treated a young woman of her acquaintance with its contents. It was alleged that these included the decomposed remains of a snail which had found its way into the bottle at the factory. The young woman alleged that she became seriously ill in consequence and sued the manufacturer for negligence. The House of Lords held that the manufacturer owed her a duty to take care that the bottle did not contain noxious matter and that he would be liable in tort if that duty was broken. Lord Atkin specifically stated as follows⁶:

The liability for negligence, whether you style it such or treat it as in other systems as a species of “*culpa,*” is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you love your neighbour becomes in law, you must not injure your neighbour and the lawyer's question, who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. *Who then is my neighbour? The answer seems to be – persons*

who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

The above perspective to the issue at hand is more comprehensive *albeit* for the purpose of a legal analysis. Therefore, to the extent that actions or omissions Professor Chukwuemeka Mbanugo is so closely affect others so that he ought reasonably to have them in contemplation as being so affected when directing his minds to the said acts or omissions, the renowned scholar is a neighbour to reckon with in the eyes of the law. The implication is that, based on his status as a neighbour in the eyes of the law, Professor Chukwuemeka Mbanugo has a duty of care from all those to whom his acts or omissions closely affect. As correctly pointed out by a learned writer, the duty of care concept operates negatively to impose limits on the potentially enormous breadth of the principle that people ought to be liable for negligently-caused injury⁷. Therefore, as a neighbour in the eyes of the law, Professor Chukwuemeka Mbanugo is entitled to sue any person who fails to exercise a duty of care to him as a result of which he had suffered damages. In other words, such tortfeasors will be liable to an action in negligence at the instance of the renowned Professor whose right to a duty of care has been breached. An apt definition of the term negligence was given by his Lordship Saulawa J.C.A in the case of *Chevron (Nig.) Ltd & 1 Ors v. Omoregha*⁸ as follows:

The term negligence denotes the failure to exercise the standard of care that a reasonably prudent person would normally have exercised in a similar situation. That's to say, any conduct falling below the legal standard established to protect others against unreasonable risk of harm, as against conduct that is intentionally, wantonly, or willfully disregarding of other's rights⁹.

The Torts Law of Anambra State also defines negligence as a civil wrong which consists of breach of legal duty to take care which results in damage which may not have been desired or even contemplated by the person committing the breach, to the person whom the duty is owed¹⁰. In view of the foregoing, the implication herewith is that, in all his dealings with others, Professor Chukwuemeka Mbanugo, exercised a standard of care that a reasonably prudent person would normally exercise in any given situation, and this has made him avoid being liable to anybody in damages. There are only three things which the law requires to show in order to claim damages in negligence from any person. They are:

- a. That the person owed him a duty of care;
- b. That the person breached the duty of care or failed to exercise due care; and
- c. That the person's failure was the cause of the injury he suffered¹¹.

The first element which a person will be required to show in order to secure a successful action in negligence against his defendant is that the person owed him a duty of care. In the case of *Bourhill v. Young*¹², the court stated that the duty of care arises towards those individuals of whom it may reasonably be anticipated that they will be affected by the act which constitutes the alleged breach. In *Caparo Industries Plc v. Dickman*¹³, the court introduced a tripartite test in approaching the question of determination of the duty of care:

(a) whether the harm was foreseeable; (b) whether there was sufficient proximity between the parties; and (c) whether the imposition of a duty of care would be fair, just and reasonable. To ascertain whether or not a particular person owes a duty of care to in any given circumstance, the court will determine whether there is a legal proximity between them. That is, there has to be a close and direct relationship between Professor Chukwuemeka and the other party so that the act or omission complained of directly affects the person whom the said party (who did the act or made the omission) ought reasonably to know would be affected by his careless act or omission. This relationship is in law called “proximity” and it differs from case to case. In *Bourhill v. Young*¹⁴, the plaintiff was a pregnant woman who was travelling on a train. As she got off from the tram and picked her basket, a motorcyclist passed the tram and some 45 meters away crashed into the defendant's car and was killed. The plaintiff went to the scene of the accident and suffered shock upon seeing blood on the road. The shock caused her to deliver a still born baby a month later. She sued the defendant for negligence and blamed him for her loss. The court held that although the defendant was negligent, he owed no duty of care to the plaintiff in the circumstance – she was standing behind a solid barrier, was not within his field of vision and was in no way at risk from his speed. In the case of *Kabo Air Ltd v. Mohammed*¹⁵, the respondent was a flight attendant of the respondent who travelled from Lagos, Nigeria to Jeddah, Saudi Arabia to convey pilgrims. Later, after their flight arrived at Jeddah, he got into a problem which landed him in the Saudi Arabia Police cell. During preliminary interrogation in English language, he was informed that he will be released once the management of his employer (the appellant) came forward to identify him. Unfortunately, nobody from the appellants came to identify him. He was later tried and sentenced accordingly. After serving his sentence, he returned to Nigeria where he was queried and sacked by the appellant. The court held that the appellant owed the respondent a duty of care as its employee when the latter's whereabouts was not known after they arrived Jeddah and to rally round him when he was facing trial.

One point to note from the foregoing is that there is no limit to who may owe a duty of care to provided there is evidence of some level of nexus or relationship between the parties. In this connection, the list of persons whom he owes a duty of care includes but is not limited to the following: his employer¹⁶, his lawyers¹⁷, his doctors, drivers plying the same road with him (whether he is driving or walking)¹⁸, his family, his bankers¹⁹, his adjoining neighbours, occupiers of the premises he visits²⁰, e.t.c. Smith J.C. & Burns P. summarizes the sorts of relationships that have traditionally been held by the courts to give rise to a duty of preventing harm as follows²¹: (1) contractual relationships (2) non-contractual undertakings where there is foreseeable risk of harm as a result (3) fiduciary relationships (4) special relationships of dependency (5) relationships between occupiers of adjacent land. As was rightly pointed out by the court in the case of *Nigerian Ports Plc v. Beecham Pharmaceuticals PTE Ltd*²², the duty of care which Prof. Chukwuemeka owes to these persons in their direct or indirect dealings with him entails *inter alia*, giving attention to possible dangers, mistakes and pitfalls and to ways of minimizing those risks.

Apart from showing that the person owed him a duty of care, the court will also require the

party who owes this duty of care to show that the person breached the duty and that he suffered an injury as a result. Therefore, any person who owes Professor Chukwuemeka a duty of care must exercise reasonable care to ensure that the duty is not breached. The court in *Kabo Air Ltd v. Mohammed*²³ defined reasonable care to mean that degree of care which a person of ordinary prudence would exercise in the same or similar circumstances²⁴. Simply put, a person will be said to have breached a duty of care where (a) he or she omitted to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or (b) he or she did something which a prudent and reasonable man would not do²⁵. It is however pertinent to point out that this finding of whether the duty of care was breached is left for the judge to determine. To this end, Rogers W.V.H correctly underscored as follows:

Since the standard is that of the hypothetical reasonable man, in applying this standard it is necessary to ask what, in the circumstances, the reasonable man would have foreseen. The question is not always susceptible to only one possible answer. What to one judge may seem far-fetched may seem to another both natural and probable²⁶.

In the case of *Ekwo v. Enechukwu*²⁷ the plaintiff's hand had been injured in an accident due to the negligence of the defendant's servant. Instead of going to the hospital he went to a native doctor; his arm became gangrenous and had to be amputated. The trial judge held the amputation to be too remote (that is, the amputation was too indirect to sustain an award of damages for negligence). What actuated the trial judge's finding was that the plaintiff decided to go to a native doctor instead of a trained medical doctor. However, upon appeal, the appellate court shared a different view and held that there was a direct physical connection between the negligence and the amputation. The appellate court stated that in view of the widespread belief in native doctors, and of the plaintiff's state of shock and pain, it could not hold that he acted unreasonably. Commenting on this decision, a learned writer has rightly noted that our courts also take account of the beliefs prevailing in our community in deciding whether or not a person is negligent²⁸.

The finding that the duty of care has been breached by the defendant becomes easier where the circumstances inextricably link the wrongdoer with the negligent act or omission in question. This is known in law as the principle of "*Res Ipsa Loquitur*" which means "the thing speaks for itself." In this connection, once the defendant (whether by himself or his servants) is shown to be in control of the thing that caused the accident or harm, and that the accident/harm is such as in the ordinary course of things does not happen if the person in control use proper care, the court would, in the absence of a cogent defence to the contrary, infer that the defendant was in breach of the duty of care²⁹. In *MTN (Nig.) Ltd Communications Ltd v. Sadiku*³⁰, the plaintiff/respondent sued the defendant/appellant for negligence claiming that his pollution of his water well was negligently caused by the defendant/appellant when diesel escaped from the latter's adjoining land into his own land. The defendant admitted that it has a diesel storage tank in its land but denied the possibility of the diesel escaping from its storage tank which was built underground. The court held that

although there was no scientific report from the respondent to substantiate his claims that his well was polluted with diesel from the defendant's land or that it was the diesel that escaped from the defendant's tank that caused the damage, the case was an offence of strict liability which does not depend on the plaintiff proving actual negligence of the defendant or that he has intent to harm, but is based on the breach of an absolute duty to make something safe.

Furthermore, once it is established that a person has breached the duty of care owed to another the court will hold the person liable in negligence and also order the person to compensate him, provided that the harm or injury which he suffered was a reasonable consequence of the wrongdoer's negligence and he did not contribute to it³¹.

It must be emphasized that a pivotal boost to the right which Professor Chukwuemeka Mbanugo enjoys as a neighbour in the eyes of the law is a supportive judiciary which frowns at acts of carelessness or negligence on him. Our courts are quite eager to award damages once it is shown that a person has acted negligently towards others. In the case of *British Airways v. Atoyebi*³², the claimant boarded a flight with the defendant's company from London to Nigeria. On getting to Nigeria, he noticed that the defendants had forgotten his luggages in the London Airport. He was informed by the defendant that the bag will be returned as soon as possible but two days passed by yet the bag was still not returned. The claimant had to travel back to London to collect his bag. He sued the defendant for negligence and succeeded at the trial court, court of appeal and the supreme court.

In final analysis, given his status as a perfect neighbour in the eyes of the law, Professor Chukwuemeka Mbanugo is one who must be treated with utmost care and respect by all and sundry especially where there is evidence of a close relationship between him and a person so that he would be affected by anything done or omitted to be done by the person. The failure, neglect or refusal to exercise some duty of care towards him may result in an action against the wrong doer for negligence in which case our courts have shown positive inclination to award damages in his favour.

References

¹See the Holy Bible, Luke 10: 29-37.

²For instance, in law, although the Levite and the priest, breached the duty of care by failing to attend to a dying stranger, no court of law in the circumstance may hold them liable in negligence to compensate the stranger. See J.C. Smith & P. Burns "*Donoghue v. Stevenson: The Not So Golden Anniversary*" *The Modern Law Review*, Vol. 46, No. 2, March 1983, pg. 160 (pp. 147-163).

³(1883) 11 Q.B.D 503 at 509.

⁴(1932) A.C 562.

⁵*Supra*.

⁶*Supra* at page 580.

⁷P. Cane *The Anatomy of Tort Law*(Hart Publishing, Oxford, U.K, 1997) pg. 125.

⁸(2015) 16 NWLR 336.

⁹*Supra* at page 350 Paras B-C.

¹⁰Section 217 thereof. See also *UTB Nig. Ltd v. Ozoemena* (2007) 3 NWLR (Pt. 1022) 440.

¹¹*Royal Ade Nig. V. N.O.C.M. Plc* (2004) 8 NWLR (Pt. 874) 206.

¹²(1943) A.C. 92.

¹³(1990) 2 A.C. 605.

¹⁴*Supra*.

¹⁵(2015) 5 NWLR (Pt. 1451) 38.

¹⁶*Iyere v. Bendel Feeds and Flour Mills Ltd* (2008) 18 NWLR (Pt. 1119) 300.

¹⁷See *white v. Jones* (1995) 2 A.C. 207.

¹⁸*Osuji v. Nigerian Breweries* (1972) 3 E.C.S.L.R 768; *Sanyalu v. Farinbe* (1978) L.R.N 327.

¹⁹*First Bank of Nigeria Plc v. Banjo* (2015) 5 NWLR (Pt. 1452) 253.

²⁰See C.C. Nwabachili “The Legal Implications of Duty of Care” *Global Journal of Politics and Research* Vol. 5, No. 4, 2017 pg. 8 (pp. 1-10).

²¹J.C. Smith & P. Burns *Op.cit.* pg. 157.

²²(2013) 3 NWLR (Pt. 1333) 454.

²³*Supra*.

²⁴*Supra* at page 72.

²⁵This line of thought was laid down by Alderson B in *Blyth v. Birmingham Waterworks Co* (1856)11 Ex. 781 at784.

²⁶See W.V.H. Rogers, *Winfield and Jolowicz on Tort*(Sweet & Maxwell, Thompson Reuters, South Asian, 2010) p. 283.

²⁷(1954) 14 W.A.C.A. 512.

²⁸See J. Cottrell, “The Tort of Negligence in Nigeria” *Journal of Africa Law*, Vol. 17, No. 1, (Spring, 1973) pg. 38(pp. 30-39).

²⁹See *Scott v. London & St. Catherine Dock Co.* (1865) 3 H & C 596.

³⁰(2014) 17 NWLR (Pt. 1436) 382.

³¹See *Jones v. LWOX Quarries Ltd* (1952) 2 QB 608.

³²(2014) 13 NWLR (Pt. 1424) 253.