

**CORAM: HER HONOUR SEDINAM AWO KWADAM (MRS), JUDGE, SITTING AT THE
CIRCUIT COURT 2, ADENTAN, ACCRA ON THE 18TH DAY OF SEPTEMBER, 2024**

SUIT NO. C11/003/2023

JUSTICE NOAH ADADE

GD-263-9295-63A

ODAMETEV ROAD NMAI DJORN

PLAINTIFF

VRS.

1. BOLT GHANA LIMITED

NO. 10 KOFI DZATA STREET

ODEL HEIGHTS – FORMER BEDMATE BUILDING

DZORWULU – ACCRA

DEFENDANTS

2. BOLT HOLDINGS OU

ACCRA

PLAINTIFF PRESENT

DEFENDANTS ABSENT

**SYDNEY ANTONIO, ESQ. HOLDING BRIEF FOR ENOCH DEEGBE, ESQ.PRESENT
FOR PLAINTIFF**

**EMMANUEL AGYARKO – MINTAH, ESQ. HOLDING BRIEF FOR GWENDY
BANNERMAN, ESQ. PRESENT FOR 2ND DEFENDANT**

BY COURT – SUMMARY OF JUDGMENT

The Plaintiff on the first day of August 2022 ordered a Bolt ride on his phone and found himself, his photograph and his details being the driver thereon who was responding to pick him up. When the ride arrived, it was his own employee, one Peter Walker, who was driving the vehicle. Peter Walker confessed to stealing the identity of the Plaintiff and successfully registering himself as a driver on the Bolt App as a driver in 2022. The Plaintiff's engagements with D2 through his lawyers yielded no fruitful results by way of compensation for the Plaintiff. Thus the instant suit.

ISSUE 1

1. The appropriateness of D2 as a party to the suit

Finding and Holding; Owing to admissions of D2 in its pleadings (Statement of Defence) and testimony of D2's only witness, the Operations Manager, DW1, the Court finds that D2 being the data processor for Bolt Operations OU, (the Data Controller) had complete control over the processing of Plaintiff's personal data as presented by Peter Walker, the identity thief. Plaintiff is the Data Subject of the Personal data processed by D2 at the request of the Identity thief, Peter Walker. The Plaintiff's entire suit is hinged on the non-consensual processing of his personal data which was undertaken by D2 at the request of the Identity thief. This processing was done by D2. Therefore, D2 is an appropriate party to the suit. (refer to **Section 96 of Art 843**)

ISSUE 2

2. The vicarious liability or otherwise of D2 for the conduct of its drivers, specifically, the criminal conduct of Peter Walker, the Identity Thief Bolt Driver

Finding and Holding; There exists no employer/employee relationship between D2 and its drivers on the Bolt platform and this includes Peter Walker, the identity thief. What exists between Bolt and its Drivers is a

relationship where the drivers are Independent Contractors. There exists insufficient control exercised by D2 over the drivers as they are independent contractors. D2 cannot therefore be held vicariously liable for Peter Walker's conduct as a Bolt Driver. Further, since the Plaintiff makes no claim against Peter Walker in this suit, the Court cannot hold D2 vicariously liable for anything done by Peter Walker.

ISSUES 3 & 4

3. Issues 3 and 4, issues on the negligence and non-compliance with the Data Protection Act, 2012 (Act 843) of D2 with regards to the Plaintiff shall be treated conjunctively owing to the peculiar nature of the suit

A) Negligence

i) Duty of Care:

Finding and Holding; D2 does not dispute its duty of care towards the Plaintiff. What it disputes is the standard or scope of this duty of care. In the digital verification process of Data Subjects during the processing of their personal data, there exists a statutory obligation on the Data Processor, D2, to obtain personal data meant for processing directly from the Data Subject and with his prior consent except in the stated circumstances in Act 843. (refer to **Sections 20, 21, 28 and 30 of Act 843**). Consequently, there exists a duty for D2 to undertake a liveness identity verification check during the digital verification process whenever it is registering a prospective driver's application on the Bolt platform. **Sections 20, 21, 28 and 30** properly interpreted mean that in order to receive the personal data **DIRECTLY** from the Data Subject for processing, the Data Processor, D2, must check the liveness of the prospective driver electronically or digitally. This would further render the prior consent requirement met by all standards. The technology for liveness identity verification existed as at 2022 and has been implemented by D2 barely 2 years after the institution of the instant suit by the Plaintiff, as of March 2024 (see the testimony of DW1).

Therefore, the duty of care D2 owed the Plaintiff and the reasonable standard of that duty of care which is founded in **Sections 20, 21, 28 and 30 of Act 843** includes a liveness identity verification check as part of D2's

digital identity verification of data subjects who purportedly request by an Application to become drivers on the Bolt platform.

Consequently, Bolt Holdings OU (D2) being the Data Processors, owed the Plaintiff herein, being the Data Subject, a duty of care to conduct a liveness identity verification check on the supposed prospective driver applicant when Plaintiff's personal data was submitted by the applicant for processing by D2.

ii) Breach of the Duty of Care:

Finding and holding; the failure of D2 to undertake the liveness identity verification check as part of its digital identity verification process while processing the personal data of the purported applicant, amounts to a breach of D2's duty of care owed the data subject, the Plaintiff herein.

- It further amounts to a non-compliance with **Sections 20, 21, 28 and 30 of Act 843**, in that, the Plaintiff's personal data was not procured **DIRECTLY** from him and thus was processed without his **prior consent**. D2 further breached its duty of care by not complying with **Sections 28 and 30 of Act 843** (Read conjunctively) which oblige it to safeguard the systems it employs in its data processing activities so as to avoid the unauthorised processing of the personal data of data subjects.
- The lack of the liveness identity verification check in the digital identity verification process D2 employs during the processing of the personal data of the Plaintiff resulted in D2 breaching the duty of care towards Plaintiff herein.

iii) Injury or Damage Suffered

Finding and holding; The Plaintiff proved successfully the following injuries he suffered as a result of D2's breach of the duty of care it owed him;

1. **Emotional Distress and Trauma;** The Plaintiff seeing himself as a Bolt driver operating over an uncertain period of time in 2022 caused him profound emotional distress. Knowing that an unknown number of Bolt ride users must have thought him a Bolt Driver despite him being a co-founder and the Chief Executive Officer of Glydetek Group, a financial

software solutions provider for over 70 financial entities in Ghana and a lecturer and Board Chair in Kumasi Technical University, surely had the Plaintiff emotionally distraught and traumatised. The court so finds.

2. **Damage to his reputation;** the Plaintiff, as described above, has a high reputation in his industry. To be regarded as a Bolt driver for this particular Plaintiff may be considered as a downgrade. For a person of such high repute as this Plaintiff to be seen over an uncertain period of time in 2022 as a Bolt driver obviously dents his reputation in the minds of right thinking members of the society, especially in his community of business men and women. The Court recognises this fact, with no prejudice to bolt drivers.
3. **Inconvenience of addressing the breach;** the Plaintiff has tapped into his resources in order to find legal redress to the unsavoury incident occasioned him due to D2's breach of its duty of care towards him. Even contracting D2 to delete the said profile on the Bolt Platform and engaging D2 for possible compensation inconvenienced the Plaintiff and caused him loss of his resources including his time and money. This fact is also recognised by the Court.

Any Plausible Defences?

Section 43(2) of Act 843 provides that *the defence of having taken reasonable care in claims of non-compliance with the Act will suffice to avoid liability by a data processor or controller.*

D2 alleges that it took reasonable care and was not negligent. This court did not make such findings. On the contrary, the court found that the reasonable thing D2 ought to have done in compliance with **Sections 20, 21, 28 and 30 of Act 843** is to have had a liveness identity verification check as part of its digital identification process in the processing of this Plaintiff's personal data at the request of the prospective driver Applicant before registering the said Applicant as a driver on the Bolt App or platform. D2 cannot therefore rely **Section 43(2) of Act 843** to deny or avoid its culpability under **Section 43(1) of Act 843**, especially that as of March

2024, D2 does the liveliness (selfie) identity verification check for prospective driver Applicants as part of its digital identity verification process.

Conclusion on Negligence and Non-compliance (Issues 3 and 4)

- a) *D2 was negligent towards the Plaintiff for failing to undertake a liveliness identity verification check as part of its digital identity verification process during the processing of the personal data belonging to the Plaintiff, the data subject, when the Plaintiff's identity thief requested to be registered by D2 to become a driver on the Bolt Platform/App.*

- b) *Consequently, D2 did not comply with Sections 20, 21, 28 and 30 of Act 843*

ISSUES 5 & 6

Issues 5 and 6: Did the Plaintiff abet his impersonation, and was he negligent to cause his impersonation?

Finding and holding; the court did not find any evidence to support the claim made by D2 that the Plaintiff's negligence contributed to his identity having been stolen by Peter Walker. Victims of any theft incident should not be gas-lighted into taking responsibility for their property, including their identities, being stolen by unscrupulous people, even if the thieves may be their employees.

There exists further no evidence to support D2's allegation that the Plaintiff connived with his impersonator to milk D2 financially. Crime must be proved beyond a reasonable doubt, even in a civil case. [See **Section 13(1) of the Evidence Act, 1975 (NRCD 323)**]

There is no proof on record that the Plaintiff in any way abetted his impersonation by his employee. Many are the employers who have had their employees prosecuted and convicted in many courts for stealing from them. This court will not give judicial credence to this allegation where there is actually no foundation for this suspicion and further that it is without a shred of evidence.

The Plaintiff was therefore not negligent in any way that may have caused his identity to have been stolen and used to register him unknowingly and without his prior consent as a driver on the Bolt App. The Plaintiff did not abet his impersonation.

ISSUE 7

Issue 7; Is the Plaintiff Entitled to Compensation?

Finding and Holding:

Section 43 (1) of Act 843 entitles the Plaintiff to compensation for D2's non-compliance with **Sections 20, 21, 28 and 30 of Act 843**.

D2, having been found to have been negligent in its omission of a liveness identity verification check in its digital identification process for prospective driver Applicants on the Bolt App, is mandated under **Section 43(1) of Act 843** to compensate the Plaintiff, and in tort to pay damages to the Plaintiff for its negligence.

This Court, in the circumstances deems it fit, fair and just to award **Compensatory Damages**.

The Court accordingly orders Bolt Holdings Ou (D2), being the data processor for Bolt Operations Ou, owners of the Bolt platform, to pay Compensatory Damages of 1.9 million Ghana Cedis to the Plaintiff (GHC1.9m)

COMMENTS

Picture this scenario; the Honourable Lady Chief Justice of Ghana, or the Rt. Hon. Speaker of the Parliament of Ghana, or the Hon. Attorney-General of the Republic of Ghana, or Counsel for D2, or your mother, or you and your colleagues after work, hail a ride on the Bolt platform only to see yourself appearing as the driver on the

Bolt App coming to pick you up. Imagine discovering that all this while, many Bolt users have seen you as a driver on the Bolt App for only God knows how long.

This is the extent of the risk D2 has run with the safety of the people living in Ghana who use the Bolt ride-hailing App up until March 2024 when it suddenly awakened from its slumber and began to implement an already existing technology by adding to its digital verification process, a selfie (liveliness) verification check for prospective driver Applicants. This was however too little too late for this particular Plaintiff. The harm had already been done to him.

All organisations, big or small who have the privilege of processing the personal data of people must live up to the high standard of care expected of them by statute and general public safety policy in order to prevent unscrupulous people from using their platforms and systems to place the ordinary citizens of Ghana at risk of their identities being used for purposes they never consented to or had any prior knowledge of. The Data Protection Commission of Ghana must rise up to the occasion and protect the citizens of this country and all those living herein from becoming victims of Data Protection breaches like the kind that the Plaintiff herein experienced at the hands of D2.

When a data processor's database has been evidently compromised by such an unsavoury incident such as the events of the instant case, it becomes necessary, for purposes of ensuring the safety of the unsuspecting public, to have the said system audited appropriately in order to weed out all such falsely registered profiles.

In the circumstances and in the overarching need to sanitize D2's as well as other ride-hailing platforms' systems, the following orders are made and directed at the Data Protection Commission;

1. The Data Protection Commission shall ensure that a forensic audit of Defendants systems and database is undertaken, with D2 conducting a liveliness identity verification check for all its drivers registered on the Bolt App or platform up until March 2024 registrations.
2. The Data Protection Commission shall ensure that all other ride-hailing platforms in Ghana undergo this exercise as well for the period they have not

undertaken such verification processes for the drivers who use their platforms.

COST

Cost of GHC20,000 is awarded against D2. The Plaintiff's claim against D1 is dismissed in its entirety as D1 is not an appropriate party to the suit.

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H/H SEDINAM AWO KWADAM (MRS.)

JUDGE

CIRCUIT COURT 2

ADENTAN

ACCRA