

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU – ABUJA
DELIVERED ON WEDNESDAY DAY THE 9TH DAY DECEMBER 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO.CR/264/2018

BETWEEN

FEDERAL REPUBLIC OF NIGERIA-----COMPLAINANT

AND

JACOB JOHN SHILOBA-----DEFENDANT

RULING

The prosecution, through the PW1 (the NAPTIP Investigating Officer) sought to tender a medical report from Federal Staff Hospital Gwarimpa as a result of the examination conducted on the victim. The Defence Counsel objected to the admissibility of the document on the ground that the document is an expert opinion and as such, it is the expert that should tender the said medical report as the witness cannot answer questions on the evidence contained not being the maker of the document. Counsel relied on the case of Kayode V. Hon. Minister of FCT & Ors. (2010) LPELR) 1681-SC.

In response, the prosecution submitted that admissibility of evidence is grounded by the Evidence Act and the case cited by the Prosecution was before the emergence of the Evidence Act of 2011. Counsel relied on Section 83 (1) (2) and (3). Counsel submitted further that the witness laid proper foundation that the doctor is presently unavailable but can be made available if need be.

In replying on points of law, the defence Counsel referred to the Supreme Court's decision in the case of Tyonex Nig. Ltd & 1 Ors vs. Pfizer (2020) WRN from pg. 1.

I have listened to the arguments of respective counsel in this case as well as examined the said medical report sought to be tendered. The case cited by the learned Defence Counsel in his reply on points of law is not on all fours with this present case. The Tyonex V Pfizer (supra) case cited by the defence Counsel, relates to the need to call an expert witness to give his opinion on an issue and be cross-examined on the said opinion as the affidavit stating his opinion is not sufficient. However, in this case, although the maker of the document is an expert, he is not listed as a witness and what is sought to be tendered is a medical report as opposed to a medical expert opinion as stated by the Defence Counsel.

It will be pertinent at this point to note the difference between a medical report and a medical expert opinion. The Merriam-Webster Dictionary defined an expert opinion to mean "a belief or judgment about something given by an expert on the subject" in this case, the "subject" would be the medical field, while a medical report as defined by definitions.net mean a report of results of a medical examination of a patient. From the contents of the documents sought to be tendered, it states the findings from the examination conducted on the victim as well as result from the lab test conducted. There is nowhere in the document where the Doctor gave a conclusion, judgment or an opinion on the investigation carried out. What the document merely states are result from the test conducted, therefore, it does not qualify as a

medical opinion rather, it is when a medical doctor informs the Court of the possible or likely impact of the findings in the medical report on the victim that such opinion qualifies as an expert opinion. While the medical report merely states the results of the medical examination conducted on the “alleged victim”, an expert opinion on the other hand, would be for the expert as in this case, the doctor to give his opinion on the contents of the medical report and in the process, clarify issues which the Defence Counsel or Prosecution might raise as regards the impact of the medical report on the victim. In essence, a medical expert has upon sighting a medical report has the duty to apply his specialized knowledge in the medical field forming and providing an opinion to the Court on the possible impact of the medical report on the state of health of the victim.

The issue to be determined at this point is whether the medical report sought to be tendered can be tendered through the PW1, who is not the maker of the said document. In this case, the objection is based on admissibility of a document, that is, the medical report.

Section 83(2) of the Evidence Act 2011 provides that

“In any proceeding, the court may at any stage of the proceeding, if having regard to all the circumstances of the case, it is satisfied that undue delay or expense would otherwise be caused order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may without any such order having been made, admit such a statement in evidence notwithstanding that -

a) the maker of the statement is available but is not called as a witness: and

(b) the original document is not produced, if in lieu of it there is produced a copy of the original document or of the material part of it certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case maybe.”

From this section, the documents sought to be tendered are admissible as the maker of the statement although available is not called as a witness in this case. More so as the Prosecution Counsel has informed the Court that the said doctor who is the maker of the document is a busy surgeon but can be made available to answer questions on the document if needed and upon due notice.

The Supreme Court in the case of **MOHAMMED SARKI FULANI M VS. STATE (2018) LPELR-45195 (SC)** upholding the decision of the trial Court held that it is not mandatory that a medical report should only be tendered by the medical officer who prepared it unless the accused disagrees with the contents of the report or it is desirable to call the medical officer in the interest of justice. Therefore, the contention of the learned Defence Counsel that the document sought to be tendered not being tendered by the maker should be inadmissible, is clearly wrong, besides, Section 55 of the Evidence Act 2011 makes provision for the admissibility of documents emanating from government medical establishments and gives the Court authority to either suo moto or on application of either party, summon the maker to give evidence if necessary. The documents sought to be tendered are clearly from a

Government Hospital, therefore, this document is admissible, however, if the Defence disagrees with the contents of the said report, he can apply that the medical officer be made available to be examined on the contents. The Medical Report and the Lab report forms-Haematology and Microbiology are hereby admitted into evidence as Exhibit J2 a & b.

Parties:Defendant present

Appearances:Thaddeus Odo, Esq., for the Prosecution. O. A. Ogundiran, Esq., for the Defendant.

HON. JUSTICE MODUPE .R. OSHO-ADEBIYI

JUDGE

9TH DECEMBER 2020