

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION  
HOLDEN AT JABI FCT ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**CASE NO: CR/506/2019**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA.....RESPONDENT**

**VS**

**OSONDU ELUCHIE.....COMPLAINANT**

**RULING**

By the motion on notice with No. M/3838/2022, the defendant/applicant seeks for an order of this court correcting record of proceeding of the court on the 3<sup>rd</sup> day of February, 2020 (the day the PW1-the nominal complainant gave her testimony) as to the following facts:

- (a) That on the said 3<sup>rd</sup> day of February, 2020, this Honourable Court sat in chambers;
- (b) That the said 3<sup>rd</sup> day of February, 2020 PW1 was not sworn nor affirmed before her testimony; and for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The motion is supported by thirteen paragraphed affidavit, and affidavit in support of the observation in record of proceedings and a written address of counsel.

The prosecution filed a counter affidavit of eight paragraphs in opposition of observation in record of proceedings, a counter affidavit in opposition to the motion on notice, and it is accompanied by a written address of counsel.

The defendant filed a further affidavit in support of the motion which is of thirteen paragraphs, and it is accompanied by a written address of counsel.

It is in the affidavit in support of the application that the record of proceedings prepared by this court for its proceedings of 3<sup>rd</sup> February, 2020 when this PW1 testified is not correct as the court recorded that the PW1 was duly affirmed, and the court also omitted to record that the proceedings of 3<sup>rd</sup> February, 2020 when the PW1 testified was conducted in chambers, and that the correction of the record is important as the defendant/applicant needs same to prepare and file his no case submission.

Same on the affidavit in support of the observation in the record of proceedings, the deponent stated that the PW1 was never on oath, nor affirmed when she testified, and that the court recorded in the proceedings that the PW1 was duly affirmed, and that the record did not state that PW1, testified in chambers, and that the record ought to contain the proceedings on that day was conducted in chambers.

In his written address, the counsel to the defendant/applicant submitted that it is the duty of a party who challenges the correctness of the record of proceedings of a court to swear to an affidavit or bring an application telling nor the facts of the proceedings omitting or wrongly stated in the record. Such affidavit must be served on the judge and the registrar of the court who may file a counter affidavit, if there is a need, and are referred to the case of **FBN Plc V. TSA Industries Ltd (2015) 11 NWLR (pt 1470) p. 346.**

The counsel submitted that EXH. 'A' has stated the correct proceeding of the court on the said 3<sup>rd</sup> day of February, 2020, and further submitted the Rules of the court

under which this application is filed empower the court to grant this application and therefore urge the court to grant same.

In the counter affidavit the prosecution/respondent state that paragraphs 4(d) & (e), 6 and 8 of the affidavit in support is incorrect and that the PW1 was duly affirmed before she testified as it contains in the record of proceedings of the 3<sup>rd</sup> February, 2020 and as such, there is no correction to be done in the record of proceedings of 3<sup>rd</sup> February, 2020.

It is stated in the counter affidavit that the prosecution's record contains that the PW1 was duly affirmed.

In his written address, the prosecuting counsel submitted that the parties are bound by the records of proceeding and it cannot lie on the mouth of the former defence counsel and the present counsel to question the record of proceedings of the 3<sup>rd</sup> February, 2020 when the PW1 testified and if the former defence counsel failed to write down what transpired in court on that very day, it is the duty of the court to direct him to do.

The counsel submitted that he who asserts must prove and cited the cases of **Olatunji V. Waheed (2012) 7 NWLR (pt 1298) 24; and I.I.T.A. V. Amranti (1994) 3 NWLR (pt 332)** and also section 137 of the Evidence Act and submitted that it is the duty of the defendant/applicant to produce the proceedings of 3<sup>rd</sup> February, 2020, and he further relied on the cases of **F.R.N. V. Mamu and Arum V. Nwobodo (2004) 9 NWLR (pt 878) 411.**

In the reply affidavit, the defendant/applicant deposed to the fact that the Rosemary Okeke who appeared with the former counsel also deposed to an affidavit that the PW1 was never affirmed and that the proceedings of the 3<sup>rd</sup> February, 2020 was conducted in

chambers and that the correction of the record is important as the defendant needs same to prepare and file his no case submission. In her affidavit, Rosemary Okeke deposed to the fact that the PW1 was never on oath, nor affirmed when she testified and that the record does not indicate that the proceedings was conducted in the chambers and that the record ought to contain the fact that the proceedings of that day was conducted in chambers.

The prosecution went out the procedure to have filed a reply to further affidavit in support of the motion, and therefore is contrary to the provision of Order 43 of the Rules of this court, and that reply affidavit is discountenanced.

Thus, the record of proceedings of court is the only authentic account of what took place in the seat of justice, and therefore, the printed copy of the record of proceedings in a case is binding on both the court and the parties to the case, this remained inviolable and sacrosanct until it is shown by positive proof by a party alleging its incorrectness. See the case of **Nasge V. Obi (2006) All FWLR (pt 330) p. 1156, paras. E-G.**

It is the law and I agree with the counsel to the defendant/applicant that it behooves upon the party challenging the incorrectness of the record of proceedings to file an affidavit setting the facts out that the proceedings omitted or wrongly stated in the record. See the case of **Amadiuche V. Ibok (2006) All FWLR (pt 321) p. 1253 at pp. 1265-1266, paras. H-A.** See also the case of **Nobis – Elendu V. I.N.E.C. (2015) All FWLR (pt 812) p. 1508 at 1524, paras. E-F** where the Supreme Court held that record of courts, are presumed to be correct until they are successfully impugned. See also the case of **Dangana V. Gov. Kwara State (2011) All FWLR (pt 593) p. 1854 at 1883, paras. B-C** where the Court of Appeal Ilorin held that where a party

seeks to impugn the record of a court of law, he must impeach same by tendering the version which he feels is the authentic one by way of affidavit evidence. In the instant application, the affidavit of facts of what transpired on the 3<sup>rd</sup> day of February, 2020 deposed to by the counsel who were in court the day in question is also attached to their application. Apart from the affidavit of the prosecution, the court or the Registrar of this court did not deem it expedient to file a counter affidavit, and it is deemed that the averments in those affidavits are true.

In the circumstances of this application, I am inclined to agree with the defendant/applicant and the record is to be corrected by expunging the phrase **“The PW1 duely affirmed”**.

The claim to add that the court conducted the proceedings of 3<sup>rd</sup> February, 2020 in chambers in the instant proceedings is refused. The reason for conducting the proceedings of 3<sup>rd</sup> February, 2020 will be given in the judgment. Afterall an application to add to the record of the court is not one that is granted for the asking. The reason for the reluctance of the court and to be wary of such importation is not farfetched. The practice if encouraged and condoned, will open up the juridical system to serious ridicule. See the case of **Sudan Interior Mission V. Adewumi (2013) All FWLR (pt 672) p. 1768 at 1774, paras. E-G.**

Signed  
Hon. Judge  
29/4/2024

Appearances:

J.I. Maliki Esq appeared for the prosecution.

Signed  
Hon. Judge  
29/4/2024

The matter is adjourned to 28<sup>th</sup> and 29<sup>th</sup> of May, 2024 for continuation of hearing.

Signed  
Hon. Judge  
29/4/2024