

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

**THIS WEDNESDAY, THE 19<sup>TH</sup> DAY OF JANUARY, 2022.**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: CV/758/2010**

**BETWEEN:**

<b>1. GODWIN OROHU 2. TOSIN GOMNA 3. FIDELIS DABOER 4. ALHAJI SANI YAHAYA</b>	}	<b>..... PLAINTIFFS/RESPONDENTS</b>
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**AND**

<b>1. FEDERAL MINISTRY OF WORKS 2. MINISTER OF WORKS 3. DANTATA &amp; SAWOE CONSTRUCTION CO. (NIG.) LTD</b>	}	<b>.... DEFENDANTS/ RESPONDENTS</b>
<b>4. FEDERAL MINISTRY OF JUSTICE 5. A.G. OF THE FEDERATION/MINISTER OF JUSTICE</b>	}	<b>... DEFENDANTS/ APPLICANTS</b>

**RULING**

I have carefully considered the submissions on both sides of the aisle on the admissibility of (1) a photograph containing a notice and (2) a letter written by the law firm of Bima Chambers which is said to be secondary evidence.

In addressing the question of admissibility, the court usually addresses three (3) issues:

1. Is the document relevant?
2. Is it pleaded?
3. Is it admissible in law?

In the extant case, the narrow issue is that of whether the documents sought to be tendered are admissible in law.

With respect to the photograph, all that the witness stated in evidence is that the photograph of the notice was taken. There is nothing in evidence with respect to the modalities of how the photograph was taken.

Even if there is such non disclosure, it is self evident that the photograph did not automatically fall from heaven. It certainly must have been a product of a device. Such a device clearly must be something that provides and stores information and falls within the definition of a computer within the confines of **Section 258 of the Evidence Act**.

If as I have found that it is a computer generated document, then for purpose of admissibility, it must conform with the provisions of **Section 84 of the Evidence Act**. In **P.D. Halmark Contractors Nig. Ltd V Gomwalk (2005) LPELR – 24402**, the Court of Appeal held that a photograph ought to comply with the requirement of **Section 84 (4)** in order to be admissible as evidence. The extant photograph is thus admissible having not complied with the clear requirements of the Evidence Act.

With respect to the letter of counsel, there is no doubt that it is secondary evidence or a photocopy of the original. Under the provisions of **Sections 85 and 88 of the Evidence Act**, contents of a document are to be proved by primary evidence or the original and where that is not available, secondary evidence may be given within the confines of **Section 89**. Where the secondary evidence is to be given, the grounds or foundation within **Section 89** to allow for the reception of the secondary evidence is to be supplied by the witness.

In this case, the witness did not lead any iota of evidence laying foundation with respect to the whereabouts of the original copy of the solicitors letter.

Indeed in paragraph 9 of the claim all the plaintiff averred to is that a letter was written to the 1<sup>st</sup> defendant. The witness repeated this assertion in paragraph 13 of his deposition. There is therefore clearly on the evidence no foundation laid as to what happened to the original or the primary evidence to allow for the reception of the secondary evidence.

On the whole in the absence of proper foundation laid with respect to what happened to the original document as envisioned by the above provisions of the Evidence Act, the said letter, a secondary copy or evidence is in admissible.

On the whole the **photograph** and the **letter by Bima Chambers** is to be marked tendered and rejected. The copies of the cheques (4) in number and the Certified True Copy of Court Order in Motion FCT/CV/2301/2010 are admitted as **Exhibit P1 (a-d) and P2.**

**Signed**

**Hon. Judge**