

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

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 10**

**SUIT NO: FCT/HC/CV/2825/2018**

**BETWEEN:**

**PRIMEWEST PROPERTIES LIMITED.....CLAIMANT**

**VS**

**ASO SAVINGS AND LOANS PLC.....DEFENDANT**

**RULING**

This is a Ruling on the admissibility or otherwise of a set of document; Bill, dated September, 2018 issued by Nojim Tairu & Co to Primewest Properties Limited and Receipt No. 000436, issued by Nojim Tairu & Co to Primewest Properties Limited dated September, 2018. Now sought to be tendered in evidence by PW1, during his Examination-In-Chief. Defendant's counsel objects to the admissibility of the said documents on the ground that the documents were procured during the pendency or in anticipation of the action by an interested party. Refers to Section 83 (3) of the Evidence Act and the case of Mrs. Amirah Hussein Yekini & Or Vs Mr. Fredrick O. Otebagbe (2014) LPELR – 4101.

Responding Claimant's counsel submitsthatrelevancy isthe Rule of admissibility and it is the primary consideration for any piece of documents.

Refer to the case of Torti Vs Ukpabi (1984) 1 SC 370 @ 412 also Section 83 (1) of the Evidence Act. Submits further that the document sought to tender as evidence is to establish fact already in the court particularly Paragraph 13 of the Witness Statement on Oath, and that Section 83 (3) relied on by the Defendant Counsel is not relevant to the fact of this case.

In his reply on point of law, Defendant's Counsel submits that the position of the law is that for a document to be admissible form, the document sought to be admitted though relevant is not in admissible form.

I have carefully considered the submission of both counsel and the judicial authorities cited for and against the admissibility of the documents in issue and I find that the issue which calls for determination is whether the set of documents are capable of being admissible in evidence .

The criteria which govern admissibility of document have been stated in a Plethora of authorities as three-folds that is;

- (1) It is relevant?
- (2) Is the document pleaded?
- (3) Is the document admissible in law?

See Okonji & Ors Vs George Njiokanma (1999) 12 SCNJ 254 @ 273.

I have taken a considered look at the documents in contention vis-à-vis the pleadings of the Claimant and I find that the facts which the documents refers care pleaded in paragraph 13 of the Statement of Claim filed by the Claimant. I also find the fact contained in the document relevant to the case. The question which follows is whether the document is admissible in

law? Which in my view are the bases of the objection of the Defendant's counsel.

The grouse of the Defendant Counsel is that the document in issue runs contrary to the Provisions of Section 83 (3) of the Evidence Act, which reads;

“Nothing in this Section shall render admissible as evidence any Statement made by a person interested at a time when proceeding were pending or anticipated involving a dispute is to any fact which the Statement might tend to establish.

For this Provision of the Evidence Act to avail the Defendant, it must be established that the documents sought to be tendered in evidence were indeed made by the witness, the Claimant in this case – the “person interested”. A considered look at the documents in issue reveal that the documents were issued by Nojim Tairu & Co and not the Claimant, this Provisions of Section 83 (3) of the Evidence Act cannot avail the Defendant. I say so in view of the clear Provision of Section 83 (4) of the Evidence Act which provides;

“For the purpose of this Section a Statement in a document shall not be deemed to have been made by a person unless the document or the material part of it was written, made or produced by him with his own hand, or was signed or initiated by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible”.

Therefore the documents not being one, made by the Claimant who seeks to tender it in evidence, the Provision of Section 83 (3) cannot preclude them from being admissible in evidence. I so hold.

The document being relevant pleaded and being originals are admissible as evidence.

From all of these and having found the set of documents pleaded, relevant and admissible in law, the court hereby admit same in evidence and mark them Exhibit "L1 – 2". Accordingly the objection to the admissibility of the documents is hereby overruled.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

10/3/2021

**APPEARANCE:**

NOJIM TAIRU ESQ FOR THE CLAIMANT

S.S. UMORU FOR THE DEFENDANT