

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI, ABUJA - FCT**

**CLERK: CHARITY ONUZULIKE
COURT NO. 9**

**SUIT NO: FCT/HC/PET/200/2022
DATE: 23/1/2025**

BETWEEN:

FAGBEMIRO OLAYINKA ABIODUN.....PETITIONER

AND:

FAGBEMIRO EMMANUEL YEMI.....RESPONDENT

RULING

(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

A few minutes ago, learned SAN of Counsel to the Respondent sought to be put in evidence this DW1, 6 documents mentioned in various paragraph of the statements on oath and conditional statements on oath of the witness.

The learned Counsel to the Petitioner objected to the admissibility of the documents on twin grounds:

- (1) The documents were caught by the provision of section 83 of the Evidence Act 2021.
- (2) Secondly that the electronic documents were not backed up by a Certificate as provided by section 84(4) of the Evidence Act.

The learned Counsel then urged the Court to reject the document as inadmissible.

In a short reaction, the learned Silk referred to Exhibit 'N' which was the certificate of compliance with section 84(4) of Evidence Act and which was earlier admitted in evidence on 12/12/2024.

On the issue of section 83 of the Evidence Act, the learned Silk submitted that there is nothing on the face of the document to show that they were prepared by the Respondent. He urged me to admit the documents in evidence since relevancy covered admissibility.

In a short reply on points of law, learned Counsel to the Petitioner, Ogechi Agu Esq. referred to some dates on the documents and the name of the Respondent as appeared in the one of the documents and submitted that she stands with the objection especially as it relates to section 83 of the Evidence Act cited **Ogidi vs. Egba (Supra)**.

I have considered this objection and the fine submission both for and against the admissibility of this document.

For a start, the fact of Exhibit 'N' which is a Certificate as envisaged by section 84(4) Evidence Act, knocks of the bottom of the 2nd ground upon which this objection rested. That they being the case, I agree with the learned SAN and I hold that that leg of the objection is not of the moment.

But what of the first or remaining leg? This is the main crux of this objection. Is it sustainable in fact and law?

The section 83(3) provides thus:

“(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.”

The operative words or phrase in that provision is “a person interested at a time when proceeding were pending or anticipated.....”

It is because of these phrase that I look a quick hard look at the documents – Is there anything on the face of the documents to show that they were prepared by the witness – DW1 Respondent?

It is clear, the DW1 is the Respondent. He is certainly a person interested in this case. Did he prepare any of the 6 documents? My answer is Yes and No. The No answer relates to 5 of the documents, while the positive answer relates clearly to one of the documents.

What do I mean, Exhibits SYNLAB has the name of this Respondent boldly written on it as the Doctor in charge of the SYNLAB Nig. Ltd at Cardiology Unit of Arewa Clinics. No other name appears on the documents as the Doctor-in-charge except the Respondent. It is there in accordance with common sense that we be presumed as the person who prepared the document. And to that extent, the document is caught by the provision of section 83(3) of Evidence Act. It is liable to be rejected and I so do.

As for the remaining five documents, I find no name of the Respondent on them. In fact, the first document dated 15/12/2022 has name of Dr. Olurombi Okibunumi Ifeokiwa as the Dr. that prepared it. He signed it.

The 2nd document dated 20/12/2021 was prepared by Dr. O. K. Ajiboye FMCN. The other 3 documents, which were WhatsApp chats has no names of the maker on them. I cannot therefore say for sure that the Respondent prepared there.

In essence therefore, the remaining 5 documents were not caught by the provision of section 83(3) of the EAC and are therefore admissible in evidence. And I so do. They are relevant to this proceeding and I admit them in evidence as follows:

- (1) Medical Report on Oluwajomiloju Fagbemi, 16 years SFC00106/1222 as Exhibit 'O'.
- (2) The Radiology investigation of Jomiloju Fagbemiro dated 20/12/2021 as Exhibit 'P'
- (3) 3 Whatsapp chats dated simply as "yesterday", "Thursday 3 October" and August 14, 2024 as Exhibit Q1, Q2 and Q3 respectively.

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S. B. Belgore
(Judge) 23/1/2025