

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

THIS DAY OF JANUARY, 2025.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

SUIT NO: FCT/HC/CV/009/2018

BETWEEN

**NIYI OYELEKE (Trading under the
Name and Style of B.M.O Central Park)PLAINTIFF**

AND

ABDULLAH SEBLINIDEFENDANT

RULING

INTRODUCTION

The PW1 sought to tender in evidence the following documents attached to the witness deposition of Niyi Oyeleke in paragraph 29 of the Claimant’s witness deposition on Oath. These documents are:

- a. The Defendants written undertaking;
- b. Dual Quotation cost evaluation dated 29/2/18
- c. Plaintiff’s letter of demand dated 2/3/18
- d. The Defendant’s Solicitor’s letter in reply to the Plaintiff’s of demand dated 6/3/18
- e. Plaintiff’s letter of reply dated 12/3/18
- f. A copy of the Defendant’s Attorney’s letter dated 12/4/18
- g. A copy of the evaluation report dated 29/2/18
- h. The Receipt evidencing payment of Solicitor’s fee.
- i. The Defendant’s letter to the Plaintiff dated 21/4/18
- j. The series of receipts of purchase made by the Claimant for items destroyed during the fire incident.

The Defendant through his Counsel objected to the admissibility of the documents and submitted that first the witness could not identify with specific features of the documents when they were given to him for confirmation. That what it means he saw the documents before the question was put to him whether these documents are those mentioned in his witness statement on oath. That it means there is no foundation laid by the witness first before tendering these documents.

That secondly, on the alleged undertaking purportedly written by the defendant in his hand writing dated 25/2/18. The dated is not clear. Again the defendant signature is not appended in the document. That the said undertaking alleged to have been written by the defendant bears the seal of FCT High Court which was procured by the Claimant himself and not the defendant, in an attempt to take it look authentic.

The Claimant's Counsel in his Reply on Points of Law, submitted in respect to the objections raised by the Defendant's Counsel regarding the Defendant's handwritten undertaking, that the Court should discountenance same for the following reasons:

1. The document is a public document dully certified by an officer of this Court. That the Evidence Act provides the conditions for admissibility of a certified true copy of a document. That the document must bear the name of the officer, the signature, and the proof or receipt of payment. That the document meets all the conditions enumerated in the Evidence Act.
2. It is a public document it enjoys presumption of regularity. The only person that can deny the document is the FCT Judiciary. That it bears the seal of the FCT Judiciary, the name and the receipt of FCT Judiciary. That the argument of the Defence Counsel is completely misconceived in bad faith and he urged the court to discountenance same as it is completely baseless.

COURT'S ANALYSIS

I have carefully considered the submissions on both sides of the aisle. The issue to be resolved revolves around admissibility of documents. It is an area of law with fairly settled principles. When the issue of admissibility is raised three (3) questions are usually addressed to wit:

1. is the document or are the documents pleaded?
2. are they relevant?
3. are they admissible in law?

Hence the Defence Counsel has withdrawn his objection to the admissibility with respect to documents No. 2 to Documents No. 10 as they are listed above, prefers cross examine the PW1 on the said listed documents 2 to 10, in the circumstances therefore, documents No.2 to No. 10 are hereby admitted in evidence and marked Exhibit PW1 'A', PW1 'B', PW1 'C', PW1 'D', PW1 'E', PW1 'F', PW1 'G', PW1 'H', and Exhibit PW1 'I'.

But on the Document No. 1 above, a critical examination of the document which is the Hand Written Undertaking sought to be tendered, it has the signature, name of the Registrar of the FCT High Court by name Salihu Bubi with his stamp and seal of the FTC High Court affixed on it. There is also a receipt, evidencing payment of the required fees. It is in my opinion a Certified True Copy (C.T.C). Hence the PW1 has led the foundation during his examination in chief that he misplaced the original of the said document, I think it is proper in law to admit the Certified True of Copy (CTC) of same.

The Court of Appeal in the case of **BAYAWO & ANOR V. INEC & ORS (2024) LPELR-62662(CA) (PP. 50-51 PARAS. E-E)** has this to say:

Exhibit P39 expunged being a public document, the only secondary evidence admissible in its proof is a certified true copy and none other. Section 90 (1) (c) of the Evidence Act 2011 puts that beyond contestation with its provision that:

90(1) The secondary evidence admissible in respect of the original documents referred to the several paragraphs of Section 89 is as follows:

(c) in paragraph (e) or (f) a certified true copy and no other secondary evidence is admissible.

See more particularly Araka v. Egbue (2003) LPELR-532 (SC) where the apex Court (Tobi, JSC, in lead judgment) interpreted this provision and stated thus at page 12-13 after a thorough review of the existing case law on the subject:

"It is clear from the provision of Section 97(2) (c) [now 90(1) (c)] that the only acceptable secondary evidence of a public document is a certified true copy of the document. The subsection has put the position precisely and beyond speculation or conjecture by the words "but no other kind of secondary evidence is admissible." This provision is clearly in contradistinction to the provision of Section 97(2) (a) [now 90(1) (a)] of the Act which admits any secondary evidence of the contents of the document." Per UGO ,J.C.A in bayawo & anor v. inec & ors (Pp. 50-51 paras. E-E)

While the Supreme Court said in **KUBOR & ANOR V. DICKSON & ORS (2012) LPELR-9817(SC) (PP. 51 PARAS. D)**

...it is settled law that the only admissible secondary evidence of public documents is a certified true copy of same. Exhibits "D" and "L" not being certified true copies of the Punch Newspaper and the list of candidates which 3rd respondent is mandated to keep in the course of the performance of its official duties, are clearly inadmissible in evidence and the lower courts are right in so holding. The fact that the exhibits are computer print outs or e-documents does not change their nature and character as public documents." Per ONNOGHEN ,J.S.C in kubor & anor v. dickson & ors (2012) LPELR-9817(SC) (Pp. 51 paras. D)

COURT'S DECISION

In the circumstance therefore, the Document No. 1- Hand Written Undertaken being a CTC is hereby admitted in evidence and marked as Exhibit PW1 'J'

This is the ruling of the Court.

Hon. Justice Jude O. Onwuegbuzie

Appearance:

1. F.O Amedu Esq., for the Claimant/Applicant
2. James C. Ude Esq. for the Defendant/Respondent