

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI-ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

SUIT NO: CV/5693/2011

BETWEEN:

AUSTINE MOORE OKORO.....CLAIMANT

AND

LAZARUS MUOKA.....DEFENDANT

RULING

In the course of the proceedings, the counsel to the claimant sought to tender a photocopy of a bank cheque to which the defendant's counsel objected to on the ground that the said cheque was not specifically pleaded and is also not admissible in the sense that the witness was not a staff of the Equitorial First Bank and as such, she could not have examined this photocopy with the original copy in consonance with section 90(e) (3) and (4) of the Evidence Act.

Counsel further argued that the document sought to be tendered is a photocopy which is secondary evidence and no foundation was laid regarding its original. He also said that the document being a photocopy falls within the realm of Banker's Books by the incorporation of the Evidence Act, and he cited the case of **Oguma Associated Companies Nig. Ltd V. IBWA Ltd (1988) NSC Vol. CA pp. 412 and 413** which is to the effect that the cheque books are part of the entry of the Banker's Book by sections 89-90 (e) (3) and (4) of the Evidence Act, and he cited the case of **Luiffanza German Airline V. Valentine (2013) 1 NWLR (Pt 1336) p. 534** which was to the effect that the only copy

of Banker's Book that is admissible in evidence is the Certified True Copy.

The counsel to the claimant responded and argued that the document is relevant to the cause in issue and is also pleaded in paragraph 18 of the claimant's Amended Statement of Claim, and that the witness who is an officer of the bank has orally identified the document which once done has satisfied the requirement of admissibility.

Thus, paragraph 18 of the Amended Statement of Claim reads:

“The plaintiff avers that on the 3rd day of March, 2011 the plaintiff decided to travel to Lagos where he met with the defendant and requested that the defendant reduced his promise to pay the sum of ₦50,000,000.00 (Fifty Million Naira) in writing reasons for such payments and the defendant indeed reduced the promise in writing. The plaintiff shall at the trial rely on the letter.”

Now, from the above quoted paragraph 18 of the Amended Statement of claim of the claimant, which the claimant referred, it can be seen that the claimant did not plead the document sought to be tendered and did not relate to the fact pleaded. The document is not admissible and is therefore marked as tendered and rejected. See the case of **Ismaila V. Mathew (2017) All FWLR (pt 891) p. 827 at p. 837, para. B.**

Hon. Judge
Signed
3/3/2025

Appearances:

John Bigwan Esq appeared for the plaintiff.

E. Ukaego Esq appearing with Asika Osas Esq for the defendant.