

**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: 11

SUIT NO: FCT/HC/CR/204/2019

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

VS

1. KENNETH EKWUNNO

2. HICKS INTEGRATED SERVICE NIGERIA LTD.....DEFENDANTS

RULING

This is a Ruling on the Admissibility or otherwise of a document/Statement made by one Gary Wayne Burke on 15/12/2015 to the Economic and Financial Crimes Commission now sought to be tendered in evidence by the Prosecution during the Examination-in-Chief of PW1. The Defendant's Counsel objects to the admissibility of the said document on the ground that the witness who seek to tender the document is not the maker of the document therefore cannot tender same in evidence under the Provision of the Evidence Act, urge court to refuse the document as evidence.

Responding, the Counsel for the Prosecution submits and relies on the relevancy of the Statement and on Section 39(1) of the Evidence Act. Submits further that the witness has sufficiently told the court the

whereabouts of the Complainant who resident in U.S.A and in line with the said Section urge court to admit the document, having laid proper foundation for the Admissibility of the document. Also refers to Section 83(1) (Proviso) of the Evidence Act.

Having carefully considered the submission of Counsel for and against the Admissibility of the document in issue and the judicial authorities cited, I find that the issue which calls for determination is;

“Whether the document in issue is capable of being admissible as evidence”

The document in the instant case is a Statement made by one Gary Wayne Burke to the Complainant. The argument made by the Defendants Counsel is that the document must be tendered by the maker. On the other hand it is the argument of the Prosecution Counsel that the document being relevant to the case is admissible under Section 39(1) of the Evidence Act and also having laid proper foundation the document is admissible under Section 83(1) (Proviso) of the Evidence Act. I have considered the said document and I find that the Statement contained therein are indeed relevant to the case, however it is trite law that relevancy is not the only criteria or condition which a document must satisfy before it could be admitted in evidence.

Section 83(1)(b) of the Evidence Act requires the maker of a document to tender it before it could be admitted in evidence. But by its proviso the need for the maker of the document to tender it before it could be admitted in evidence could be dispensed with. And also where the

document meets the conditions stated in Section 83 2(a) (b) of the Evidence Act. In this instance, Prosecution Counsel relies on the proviso in Section 83 (1) (b) of the Evidence Act as ground for court to admit the document even when the maker is not called to tender the document however the witness failed to lay proper foundation as required by the proviso which reads;

“Provided that the condition that the maker of the Statement shall be called as a witness need not be satisfied if he is dead or unfit by reason of his bodily or mental condition to attend as a witness of if he is outside Nigeria and it is not reasonably practicable to secure his attendance or it all reasonable efforts to find him have been made without success”

The witness told the court that the maker of the document is in the U.S.A without more and this is in my opinion is not sufficient and cogent to satisfy this proviso, thus fatal to the admissibility of the document and renders it in admissible I so hold.

From all of these, it is my finding that though the document is relevant; the objection of the Defendants’ Counsel however succeeds. The document Statement made by Gary Wayne Burke on 15/12/2015 is hereby rejected as evidence and accordingly marked tendered but rejected.

HON. JUSTICE O. C. AGBAZA
Presiding Judge
16/1/2020

HUSSAINA GAMBO FOR THE PROSECUTION

EMMANUEL O. ABANG WITH HIM NATHANIEL O. SALIFU FOR THE
1ST/2ND DEFENDANTS