

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT GWAGWALADA**

**THIS TUESDAY, THE 28TH DAY OF MAY 2019**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: CR/328/18**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA.....PLAINTIFF**

**AND**

**1. OGBUKE EBUKA**

**2. CENTURY ROOFS LIMITED**

} .....DEFENDANTS

**RULING**

The Prosecuting Counsel sought to tender an original copy of cheque issued by Defendant to the nominal complainant. Counsel to the Defendant objected on the ground that the **cheque forms** part of the petition to the EFCC which is a government institution and is thus a public document within the purview of **Section 102(b) of the Evidence Act** and that it is only a Certified True Copy (CTC) of the cheque that is admissible in evidence.

Learned counsel to the Prosecution however submitted that the objection is misconceived. That what is been tendered is the original of a cheque and under the Evidence Act, there is no requirement of certification.

I have carefully considered the objection and it falls to be decided on a very narrow premise. The only point to clarify is that what is been tendered before court is only a copy of an original **Diamond Cheque** in the name of the nominal complainant and there is no petition tendered along with it.

The Evidence Act makes it crystal clear in **Section 88** that documents shall be proved by primary evidence except in cases mentioned and or streamlined in the Act. That provision is very clear and unambiguous. There is no discrimination or dichotomy between public and private document in this regard. The first recourse

therefore in proving a document is primary evidence or the original document itself; and it is where and only where primary evidence is not readily available that recourse may be had to secondary evidence.

It is true that there has been hitherto different decisions on the question of whether or not the original of a public document is admissible in evidence. The case of **Anatogu V. Iweka II (1995)8 N.W.L.R (pt.415)547 at 571** and some others projected the principle that an original of a public document is inadmissible. The Court of Appeal which has followed the **Anatogu V. Iweka** case in a number of cases charted a different course in **Daggash V. Bulama (2004)AII F.W.L.R (pt.212)166**; **Dana Impix Ltd V. Awukum (2006)3 N.W.L.R (pt.968)544 at 562** among others to the effect that the best evidence of proof of a public document is by producing the said public document or by tendering a certified true copy thereof.

Fortunately there are a number of cases from the Apex Court now notably **LSDPC V Iteogu (2009)17 N.W.L.R (pt.1171)614 at 634** per Onnoghen JSC (as he then was) and **Matari V. Bauchi (2004)AII F.W.L.R (pt.197)1010** reaffirming the admissibility of the primary evidence of a public document (i.e the original) as envisaged by **Section 88**. The point to add as I round up is that a certified copy of a secondary evidence is still a type of secondary evidence notwithstanding that it is the only type of secondary evidence admissible in respect of a public document by virtue of **Section 89(c)**.

On the whole, the objection is discountenanced. The Diamond Bank original cheque No:81881574 dated 13th July, 2018 is admitted in evidence as **Exhibit P1**.

**Signed**  
**Hon. Judge**  
**28th day of May 2019**

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT GWAGWALADA**

**THIS THURSDAY, THE 20TH DAY OF FEBRUARY 2020**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: CR/328/18**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT**

**AND**

**1. OGBUKE EBUKA**

**2. CENTURY ROOFS LIMITED**

}  
.....DEFENDANTS

**BENCH RULING**

Since the objection is the same with respect to that raised as regards **Exhibits P2a-b**, the court equally adopts its ruling and admits the document as follows:

1. The letter by Access Bank dated 10th October, 2019 and the attachments together with the certificate of compliance over investigation activities relating to O. Bukky Integrated Services is admitted as **Exhibit P5a**.
2. The letter by Access Bank dated 10th October, 2019 with the attachments and certificate of compliance over the activities of Century Foods Ltd is admitted as **Exhibit P5b**.

**Signed**  
**Hon. Judge**  
**20th February, 2010**