

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.
HON. JUDGE HIGH COURT NO.13**

COURT CLERKS –T.P. SALLAH & ORS

DATE:22 /06/2020

FCT/HC/CR/9/2019

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA-----

COMPLAINANT

AND

**1. JOSEPH IDAKWO
2. ZAMTRAC MANAGEMENT
AND CITY INVESTMENT LTD** }

DEFENDANTS

RULING

The learned silk on behalf of the Defendants seek to tender in evidence a certified true copy of a ruling of Magistrate Court dated 21st February, 2020 by his worship E.D Ebiwari. The learned prosecution objected to its admissibility on the grounds that the document offends section 232 of the Evidence Act 2011 (as amended) and he further submitted that the witness is not the maker of the document. He therefore urged me to reject same in evidence.

In reply, the learned Silk on behalf of the Defendants submitted that section 232 of the Evidence Act is not applicable in the instant case and that the instant document is a public document and it has satisfied and complied with sections 101,102 and 104 of the Evidence Act 2011(as amended). He further submitted that the essence of tendering the document is not to contradict the witness's evidence and that the document can even be tendered from the bar. He therefore urged me to admit the document in evidence.

Having listened to the submissions of both Counsel for and against the admissibility of the document i.e the certified true copy of the ruling of the Magistrate Court, the law is trite that admissibility of documentary evidence is governed by its relevancy and requirement of the law or statute for its admissibility particularly in criminal trials. In otherwords the most important requirement of admissibility of documentary evidence in criminal trial is relevancy. The 2nd requirement is whether the document satisfy the conditions of the law before its admissibility. In the instant case the objection is on law, that is to say, the requirement of section 232 of the Evidence Act has not been satisfied. Certainly by the provision of section 232 of the Evidence Act, the circumstances of the instant application, section 232 of the Evidence Act is not applicable. However I have perused and observed that the document sought to be tendered in evidence is a certified true copy of a ruling of a Magistrate Court. The witness is not a party in the proceedings. In fact the parties are the Inspector General of Police as complainant and Joseph Idakwo as Defendant. Joseph Idakwo is the 1st Defendant in the instant suit before me. There is completely nothing on the face of the document to show that the present witness plays a role in the making of the document. And it is my humble view that the proper persons or parties that the document can be tendered in evidence through them are the Inspector General of Police or its agent and the present Defendant who was a Defendant in the case before the Magistrate Court. The learned Silk has however submitted that the tendering of the document in evidence is not through the witness but from the bar. Unfortunately, the proceedings leading to the application does not reveal so. No doubt, certified true copy of a Public document can be tendered and admitted in evidence even from the bar. In the instant case the application was not strictosensu tendering the document from the bar as the witness was led in evidence and the document given to her and then the application was made by the learned silk for its admissibility in evidence.

In the circumstance, the witness being not the maker of the document, not a party in the proceedings or ruling of the Magistrate Court, this document cannot be tendered through her.

Consequently, therefore, the document is hereby rejected in evidence and it is accordingly marked as R9.

HON. JUSTICE D. Z. SENCHI
(PRESIDING JUDGE)
22/06/2020

Xxx Maikyau SAN:- It is correct I was born in Lagos on the 7th August, 1989. I attended my primary school here in Abuja.

Re exam:-None

Sign
Judge
22/06/2020

Iheanacho:-I apply that the witness be discharged.

Maikyau SAN:-No objection.

Court:- PW1 is hereby discharged without objection.

Sign
Judge
22/06/2020

Iheanacho:-I apply for a date for continuation of hearing.

Court:- Case adjourned to 17th and 24th of July, 2020 for continuation of hearing. Bail of the Defendant to continue.

Sign
Judge
22/06/2020