

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS TUESDAY, THE 14TH DAY OF JULY, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1970/17

BETWEEN:

STABLELAND ESTATE NIGERIA LIMITEDPLAINTIFF

AND

IGGO-JORJE INTERNATIONAL LIMITEDDEFENDANT

RULING

I have carefully again considered the submissions on both sides of the aisle with respect to the admissibility of the photocopy of the Bill of Quantity prepared by JO C & partners Ltd.

Now on the authorities, in addressing the issue of admissibility, three (3) questions are normally raised:

1. is the document pleaded?
2. is it relevant?
3. is it admissible in law?

The pleadings in each case which has streamlined the issues in dispute provides a template to answer some of the above questions.

In this case, the Bill of Quantity is pleaded and no doubt relevant to the questions raised with respect to the substantive claim and the counter-claim.

It is true that the rules of court provides for the frontloading of a document but the question or issue of frontloading is not a critical element when the issue of

admissibility is raised. The key objective of pleadings is to put the adversary on notice of the case he is to meet in court.

The pleadings in this case has adequately served that purpose and the adversary cannot complain of been taken by surprise. It cannot however be right or fair that a document having fulfilled the requirements of pleading is held to be inadmissible on the basis of failure to frontload.

If the objection was predicated on that sole ground, I would simply adjourn the matter and order for the party to frontload. No more. Frontloading is obviously encouraged as provided for under the Rules of Court but it cannot override the clear statutory provisions of the Evidence Act. I leave it at that.

This now leads me to the third element of admissibility: is the document sought to be tendered in the form allowed by law?

In law by **Section 88 of the Evidence Act**, documents shall be proved by primary evidence except in cases as streamlined under **Sections 89 and 90 of the Evidence Act**.

In this case, it is not in issue that the Bill of Quantity sought to be tendered is not the original or the primary document itself. It is secondary evidence and the only way it can be received is in the manner as allowed by law.

In this case, the witness has not streamlined or provided any or sufficient foundation to allow for the reception of the secondary evidence of the Bill of Quantity. In evidence, he said the **original** is with the **police**. He has not presented or established or stated any difficulty in getting the original. If the original is with the police, then it can be obtained. If indeed there were difficulties in obtaining the original copy from the police, and none has been identified, the law provides mechanisms that allows for the document to be obtained. The contention by learned counsel that they don't want to disturb the court, whatever that means, cannot be a substitute for compliance with the provisions of the law.

The bottom line is that there is no foundation laid to allow for the reception of the secondary copy or evidence of the Bill of Quantity. Having determined that this issue has compromised the admissibility of the document, I don't consider it necessary to make any comments on the question of the maker which in my

opinion is no longer decisive in the circumstances. The question of maker for me ultimately goes to the weight that will ultimately be attached to the document particularly in the context of **Sections 83 (1) and (2)** particularly **sub (a) & (b)** which allows for the reception of a document even where the original is not produced, the circumstances of each case determining how the court proceeds in each particular situation.

Save for the above few comments on the question of maker of the document, the document is inadmissible for clear failure or complete absences of laying sufficient foundation for the reception of the photocopy. The Bill of Quantity is to be marked, tendered and rejected.

Signed

Hon. Judge

14th July, 2020