

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 29 GUDU – ABUJA
DELIVERED ON THURSDAY THE 9TH DAY OF JULY 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE .R. OSHO-ADEBIYI
SUIT NO.CV/556/2019

SAMBIL KADAMA NIGERIA LIMITED-----PLAINTIFF
(Suing through his Lawful Attorney
ANTHONY BIOSE ESQ)

AND

ESKOM PLC-----DEFENDANT

On the last adjourned date, the Defence opened its case and called its sole witness to testify. The DW1 adopted his witness statement on oath and sought to tender four (4) exhibits. The Plaintiff's Counsel objected to the tendering of the following exhibits:-

1. Letter of Complain dated the 12th day of May 2015; on the ground that the letter is a photocopy and there is no notice to produce issued to the Plaintiff, as the letter is not in their custody. Counsel relied on Section 91 of the Evidence Act.
2. Three (3) photographs attached to the counter claim of the Defence on the ground that the Defence did not comply with the provision of Section 84 of the Evidence Act.

In response to the first objection, the Plaintiff's Counsel relied on Section 91 (b) of the Evidence Act and that the document has been pleaded and it is relevant to this case, Counsel urged the Court to admit this document in evidence.

On the second ground, counsel submitted that the document is pleaded and frontloaded. That they complied with the provision of Section 84 of the Evidence Act, however, it was not tendered but given to the registry of the Court.

I have considered the argument of both Learned counsel. The Plaintiff's counsel has stated that the document was not in their custody and there is no notice to produce, relying on Section 91 of the Evidence Act 2011. That section provides that where the original is shown to be in the power or possession of the adverse party against whom the document it is sought to be tendered, secondary evidence of it may be allowed provided, notice to produce the original has been given to the opposite party. The question that arises is whether there was a notice to produce issued to the Plaintiff. The fact that it was stated in the paragraph 4 of the statement of Defence that "*A copy of the said letter is hereby pleaded and shall be relied upon at the trial*" would serve as sufficient notice to the Plaintiff. Nevertheless Section 91 (b) is to the effect that such notice to produce shall be dispensed with where, from the nature of the case the adverse party must be deemed to have the knowledge that he will be required to produce the original.

The pertinent question to be answered at this point is whether the original of the letter sought to be tendered, is truly in the possession of the defendant, so as to dispense with the need to serve him with notice to produce. I have carefully studied the averments of the respective parties; in paragraph 4 of the statement of defence, the Defendant pleaded the said letter and in paragraph 2 of the reply to the statement of defence, the Plaintiff did not deny that a letter of complain was served on them. This alone in my opinion is sufficient to show that the letter is in their custody.

Consequently, I will admit the document as it is pleaded, relevant and legally admissible. And I so hold.

With respect to the second objection as it relates to the admissibility or otherwise of the three (3) photographs, Section 84 (4) of the Evidence Act, 2011 laid down conditions for the admissibility of evidence of this nature. The Defence Counsel did not tender the certification along with the photographs, instead dropped an unfiled copy of the certificate with the registry of this Court. I agree with Plaintiff's counsel, Section 84 of the Evidence Act lays down conditions to be fulfilled in admitting a document produced by a computer. Those conditions constitute foundational evidence or condition precedent to admissibility, which in my view, is an integrity test for admissibility of computer generated evidence. The Defendant's Counsel did not comply with the provision of Section 84 of the Evidence Act, therefore, the Photographs are marked "rejected", accordingly I so hold.

Parties: Parties are absent.

Appearances: S. T. Gbaa, Esq., appearing with Omale Agboka (Mrs.) for the Plaintiff. N. S. Egbuji, Esq., for the Defendant.

HON. JUSTICE MODUPE .R. OSHO-ADEBIYI

JUDGE

9TH JULY, 2020