

**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: 10

SUIT NO: FCT/HC/PET/167/2014

BETWEEN:

MR. SWEET ROBINSON.....PETITIONER

VS

MRS. UCHENNA JOY ROBINSON.....RESPONDENT

RULING

This is a Ruling on the Admissibility or otherwise of a document dated 9/10/2012, I issued by one Dr. Hugo Chaperon, to whom it may concern, now sought to be tendered in evidence by DW1 – the Respondent/Cross Petitioner.

Petitioner’s Counsel is opposed to the Admissibility of the document on the ground that it is contrary to Section 83 (1) (b) of the Evidence Act to admit same in evidence submits that the maker of the document must be the person to tender it in evidence. That the witness failed to comply with the proviso to Section 83 (1) (b) of the evidence Act.

Responding, Respondent’s Counsel Urge court to discountenance the objection, relies on Section 4, 83(1) (b) particularly the last paragraph. Submits that the witness stated that the certificate was issued from outside

the country and that the name of the witness is contained in the document who now seek tender it to show the status of her health. Submits finally that the document is relevant and proper before the court.

I have carefully considered the submissions and judicial authorities cited by both counsel for and against the Admissibility of the document and I find that the issue which calls for determination is;

“Whether the document in issue is indeed capable of being admitted in evidence”

The criteria which govern admissibility of documentary evidence have been held to be threefold, namely;

1. Is the document pleaded?
2. Is the document relevant? and
3. Is the document admissible in law?

See the case of Okonji & Ors Vs George Njokanma.

I have taken a careful look at the document in issue vis-à-vis the pleading of the witness – the Respondent/Cross Petitioner, I find that the document is not pleaded in relation to the facts contained in the Answer/Cross Petition filed by the Respondent on 11/3/2015 I therefore fail to link the content of the document to the case of the Respondent/Cross Petitioner.

On the issue of the maker of the document not called to tender it, the court has held in the case of Flash Fixed Odds Ltd Vs Akatugba (2001) All FWLR (PT. 70) 709 @ 714. Ratio 13 that;

“The maker of a document is the proper person to tender it. If a person who did not make the document tender it, thought permissible, the trial judge should not attach probative value because the person cannot be cross – examined on the document, since he is not the maker and therefore not in a position to answer any question arising there from”

See also Nwokwolo Vs Ohajurika (2010) All FWLR (PT. 511) 849 @ 852/853 Ratio 5.

The document in the instant case is not made by the witness, but on the strength of the authorities cited above it is permissible for court to admit it in evidence. However in the light of the finding of the court that the document is not pleaded and irrelevant to the case, as stated in the answer/Cross Petition of the Respondent, the document therefore fails to pass the three – fold criteria for assessing the admissibility or otherwise of documentary evidence. Accordingly the objection of the Petitioner’s Counsel has merit and is therefore allowed. Accordingly the document is hereby rejected in evidence and marked tendered but rejected.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

30/11/2020

APPEARANCE:

AKINKUNDE AJAYI WITH HIM CHIAMAKA ECHEOZO FOR THE PETITIONER

PETER UCHE UDOKA FOR THE RESPONDENT

