

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO ABUJA

ON THE 30TH DAY OF SEPTEMBER 2020

BEFORE HIS LORDSHIP HON JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO. FCT/HC/CV/5264/14

BETWEEN:

- MRS MARYAM MAIRO ABUBAKAR
 - ACCESS BANK PLC
- }PLAINTIFFS

AND

- HON. MINISTER FEDERAL CAPITAL AUTHORITY
 - FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)
 - ABUJA GEOGRAPHIC INFORMATION SERVICE
 - FORTUNE DAVID PETER FIBERSIMA
- } DEFENDANTS

A.B DARAMOLA FOR THE PLAINTIFFS.

DEFENCE UNREPRESENTED.

Daramola: Matter is for ruling.

Registrar: I called the Defendants' respective counsel on the 24th September 2020 on the phone and informed them of today's date.

Court: Very well, I shall proceed to deliver the ruling.

RULING

On 11th February 2020, in the course of the evidence in chief of PW1, Dr Ahmed Isau for the Plaintiff sought to tender the following documents in evidence through him:

- (1) Photocopy of Deed of Assignment
- (2) Photocopy of search report
- (3) Photocopy of deposit slip dated 26th February, 2007 and 23rd May 2007.
- (4) Photocopy of bank draft

Mr J.O Abari for the 1st to 3rd Defendants objected to the admissibility of the bank draft and deposit slips on the ground that they are public documents by definition of section 102 Evidence Act and that only certified true copies of same are admissible in evidence. See Section 90 (1) (c) Evidence Act.

That the explanation given by the witness that the documents got "mixed up", not lost, is not sufficient to enable him tender photocopies of the documents.

He also objected to the admissibility of the Deed of Assignment; that it is different from the document frontloaded and is unregistered

and inadmissible inlaw under the Land Instruments Registration Act. He did not indicate what the difference was between the document tendered and that frontloaded.

Mr. Abibo for the 4th defendant had no objection to the documents.

Dr Ahmed Isau responded that the deposit slips are not public documents but issued by First Inland Bank and the witness had laid proper foundation as to why the photocopies were being tendered.

That in paragraph 12 of their Further Amended Joint Statement of Claim filed on 8th July 2013 that the purpose for tendering the Deed of Assignment was clearly stated to be as a receipt of payment of ₦160 million, being acknowledgement of payment of purchase price to show that the 2nd Plaintiff has an equitable interest in the land.

He urged the court to discountenance the objection as the deed of assignment did not require registration in the present circumstances.

Mr. Abari replied on point of law that paragraph 15 of the witness statement on oath stated that the 1st Plaintiff sold to the 2nd Plaintiff therefore the Deed of Assignment is registrable for whatever purpose.

On the bank tellers, that by section 102 (b) Evidence Act, having submitted the bank tellers to AGIS they are now public record and therefore public documents.

I have considered the submissions of learned counsel on both sides.

The deposit slips were issued by First Inland Bank for payments made into the bank accounts of Abuja Geographic Information Systems

(AGIS). The documents are therefore private documents and not public documents. The witness has stated that the documents got mixed up when the 2nd Plaintiff merged with Intercontinental Bank Plc and documents were relocated from Abuja to Lagos, and that they have not yet identified where the originals are kept. I think this explanation satisfies the provisions of Section 89 (c) Evidence Act 2011.

Same goes for the bank draft. The photocopies tendered are therefore admissible in evidence.

The Deed of Assignment is also a private document. The purpose for which it was tendered was as an acknowledgment of purchase price of N160million. See paragraph 12 of the Further Amended Joint Statement of Claim of 8th July 2013 and paragraph 5 of the PW1's witness statement on oath of 30th November 2017.

That being the case, the Deed of Assignment does not require registration as it was not tendered as proof of title.

The witness also explained that the document got mixed up in the course of their relocation from Abuja to Lagos, following the merger of the 2nd Plaintiff with Intercontinental Bank Plc, and till date they have not identified the whereabouts of the original.

This satisfies the provisions of Section 89 (c) Evidence Act 2011.

I therefore hold that the document is admissible in evidence.

Accordingly, the objections are overruled.

I admit the documents in evidence and mark them as follows:

- Photocopy of search report is admitted and marked Exhibit P5
- Photocopy of Deed of Assignment – Exhibit P6
- Photocopies of deposit slips stamped 26th February, 2007 and 23rd May 2007 – Exhibit P7A and Exhibit P7B.
- Photocopy of bank draft – Exhibit P8.

Hon. Judge

Court: Matter adjourned to 26th January, 2021 for definite continuation of hearing. Hearing notice to the defendants.

Hon. Judge