

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT GWAGWALADA**

**THIS THURSDAY, THE 3<sup>RD</sup> DAY OF DECEMBER 2020**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: FCT/HC/CV/2417/10**

**BETWEEN:**

**RAKIYA DALHAT LADAN .....PLAINTIFF**

**AND**

**1. MR. CLEMENT LAYIWOLA LASEINDE  
2. HON. MINISTER FEDERAL CAPITAL  
TERRITORY** } ..... DEFENDANTS

**AND, BY COUNTER-CLAIM, BETWEEN:**

**MR CLEMENT LAYIWOLA LASEINDE ...COUNTER-CLAIMANT/  
APPLICANT**

**AND**

**1. RAKIYA DALHATU LADAN  
2. HON. MINISTER FEDERAL CAPITAL  
TERRITORY  
3. ABUJA MUNICIPAL AREA COUNCIL  
4. FEDERAL GOVERNMENT OF NIGERIA  
(AD-HOC COMMITTEE ON SALE OF FGN HOUSE IN  
ABUJA, FCT)** } .COUNTER-CLAIM/  
DEFENDANTS

## RULING

I have carefully considered the submissions on both sides of the aisle and the narrow issue to be resolved has to do with the precise import and application of the provision of **Section 83 (1) of the Evidence Act**. It is a provision that has been severally construed by our Superior Courts but still generates controversy in legal circles.

Now generally, in determining admissibility, three (3) questions are usually considered:

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

The pleadings of parties provides the structure streamlining the facts or issues in dispute.

In this case, the objection filed is with the last element on whether the document is admissible in law and we must now then construe the provision of **Section 83 (3)** which provides as follows:

**“83(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.”**

The key elements in understanding this provision involves situating what these following phrases means:

1. Person interested; and
2. When proceedings are pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

I start with the latter phrase or sentence. On the pleading and evidence, there is no doubt that the valuation certificate prepared by Jude Law & Co. is dated 12<sup>th</sup> December, 2018 and clearly made when the extant proceedings was already pending and facts and or issues already properly streamlined on the pleadings and

on which evidence was also been led. The Report no doubt in my opinion relates to the extant dispute and clearly put in evidence to strengthen or advance a particular cause.

I now move to the sentence or the phrase, “Person interested”. Now, prior to the coming into operation of 2011 Evidence Act, the controversy has always been as to who a “person interested” really means. Hitherto, the phrase person interested is a term without any well defined meaning. It may mean a direct financial interest on one hand or it may mean nothing more than the ordinary human interest which everybody has on the outcome of a particular proceedings.

The earlier authorities on the issue donated the conclusion that Section 83 (3) be given a narrow rather than a broad meaning. In **Anyaebosi V R.T. Briscoe Nig. (Ltd) 1987 3 NWLR (pt.59) 84 at 109**, Karibi Whyte JSC stated thus:

**“Mr Okoli’s contention that Chief Odukoya is a person interested within the meaning of Section 91 (3), would appear to render inadmissible all statements made by officials in the ordinary course of their duties in matters concerning and relating to their employers. That the word “interested” in its ordinary etymological meaning could refer to both a financial interest, or natural interest in the outcome of proceeding cannot be seriously disputed. But in my opinion the disqualifying interest referred to in Section 91 (3) of the Evidence Act, can only be a financial interest in the outcome of the proceedings. It seems to me too plain to dispute that, that was not the interest as remotely arising from his benefit as an employee; which is too remote to be worthy of consideration. Indeed as was stated by Mr. Okoli. Chief Odukoya had an interest in his employer winning the case. Obviously, this is natural and not usual. It has not been contended that he had an interest to conceal wrong doings resulting from Exhibit P4, or that Exhibit P4 will promote other interest of Chief Odukoya. In such case, there will be the interest to protect himself. Section 91 (3) must be given a narrow interpretation to ensure its effectiveness and permit the continuance of ordinary legitimate transactions.”**

In other words, there must be a real likelihood of bias before the maker of a statement can be said to a person interested within the purview of Section 83 (3) of the Act. Mere sympathy in the success of one of the parties will not suffice.

This will appear to be the position on the import of Section 83 (3) at least to the extent that the person interested was not defined.

Now our Evidential Jurisprudence has evolved perhaps to take care of this long standing controversy. By **Section 258 of the Evidence Act**, a person interested has now been defined, perhaps to lay the ghost of this long outstanding controversy to rest. A person interested is defined under Section 258 as meaning any person likely to be personally affected by the outcome of a proceeding. The narrow issue here is whether Mr. Apeh is such a person to be personally affected by the outcome of the extant proceeding.

Now on the pleadings and evidence, Mr. Apeh is certainly not the 1<sup>st</sup> defendant. On the pleadings and evidence, he is a professional Estate Surveyor and valuer and indeed on the evidence, Mr. Apeh made it clear that his firm Jude Law and Co was consulted to do a professional calculation. This assignment was carried out by them and the result of the valuation is what is contained in the report now sought to be tendered.

It is true that the firm may have been engaged by 1<sup>st</sup> defendant but can it be said that he or the firm will be “personally affected” by the outcome of the proceedings within the confines or purview of Section 258?

As much as I have sought to be persuaded, I incline to the view that a person interested must be narrowly construed and not extended to cover a person who was contracted to carry out a professional exercise.

One more point: There is of course the distinction between admissibility and weight to attach to a particular document. On the authorities, the evidence of an expert must necessarily be evaluated on settled principles at the appropriate time to determine the weight that will be attached to the document.

On the whole, the objection must accordingly fail; the valuation certificate prepared by the firm of Jude Law & Co, Estate Surveyor and Valuer is admitted as Exhibit D10.

**Signed**  
**Hon. Judge**