

**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/CV/614/2011

BETWEEN:

HON. NED MUNIR NWOKO.....CLAIMANT

(Trading in the Name and Style of NED NWOKO SOLICITORS)

VS

1. THE ATTORNEY GENERAL OF ENUGU STATE

2. THE GOVERNMENT OF ENUGU STATE

3. THE HONOURABLE MINISTER OF FINANCE

4. ACCOUNTANT GENERAL OF THE FEDERATION.....DEFENDANTS

RULING

This is a Ruling on the Admissibility or otherwise of a photocopy of a document issued by the office of the Secretary to State Government, Enugu State on 24/1/2008 to NED NWOKO SOLICITORS, signed by one Martin Ilo, sought to be tendered in evidence by the PW1, during his examination-in-chief. 1st/2nd Defendants' Counsel, objects to the admissibility of the said document on the ground that the document is a copy of a public document under Section 102(a)(iii) of the Evidence Act. And Section 104(1) of the Evidence Act requires that the document be certified by the issuing authority before it can be admitted, that the witness failed to tell the court of step taken to certify the documents granted that the document has been tendered

but now missing does not make it admissible in further proceeding, therefore urge the court to reject the document and mark it so.

Responding Learned Silk, for the Claimant submits that the document was pleaded in Paragraph 6 of their Statement of Claim and same is relevant to the proceedings, that the witness gave evidence that the document was tendered in the earlier court, but could not be found, that a photocopy of the Letter of Appointment is therefore admissible as secondary evidence under Section 89(b) of the Evidence Act. Submits further that the document is not a public document as claimed by the 1st/2nd Defendants' Counsel therefore Section 102(a)(iii) of the Evidence Act relied upon cannot avail them. Refer to the case of Okena Vs C.O.P (1995) 8 NWLR (PT. 416) 705 @ Ratio 2, therefore urge the court to overrule the objection.

I have carefully considered the submission of both Counsel, for and against the Admissibility of the document in issue and I find that the issue which calls for determination is whether the document is capable of being admissible in evidence.

The criteria which govern admissibility of document have been stated in a plethora of authorities as three-fold, that is;

- (1) Is the document pleaded?
- (2) Is the document relevant?
- (3) Is the document admissible in law?

See Okonji & Ors Vs George Njiokanma (1999) 12 SCNJ 254 @ 273.

I have taken a considered look at the document in contention vis-à-vis the pleadings of the claimant and I find that the facts relating to the document are pleaded in the face of the originating summons, the document constitutes the subject matter of the suit. The facts of the document is contained in Paragraph 6 of the affidavit in support of the originating summons filed on 17/11/2011. I also find the document relevant to the case.

The question which follow is whether the document is admissible in law. A look at the submission of counsel for the parties, in the main, is whether the document in issue is a public document or a private document. While 1st/2nd Defendants' Counsel claims that the document is a public document, Claimants' Counsel is of the view that the document is a private document. Upon a close perusal of the document in issue, it is apparent that the document is an official act of an official body, the office of the Secretary to the Enugu State Government, and therefore falls within the meaning of public document as contemplated by Section 102(a) (iii) of the Evidence Act. The document in issue is a photocopy of public document whose original have been agreed was tendered in the earlier court and has not been found, upon being transferred to this court. The question is; will it be just to reject this document whose original have been acknowledged to be in existence and which is already in the custody of the court? I am of the firm view that it will serve to interest of justice to receive the document in evidence in the circumstance as doing otherwise would be tantamount to punishing the litigant on the fault of the court's registry. This is more so as the document has already been found pleaded and relevant to the case. I so hold.

From all of these and having found the document pleaded and relevant to the case this court hereby reject the objection of the counsel to the 1st/2nd Defendant's and accordingly admit it evidence as Exhibit "D".

HON. JUSTICE O. C. AGBAZA

Presiding Judge

20/1/2021

APPEARANCE:

JEPH .C. NJIKONYE (SAN) WITH HIM ISAAC ITA FOR THE CLAIMANT

I.I. EZE FOR THE 1ST/2ND DEFENDANT.