

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI, ABUJA

THIS MONDAY, THE 18TH DAY OF OCTOBER, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO FCT/HC/CR/91/2017

BETWEEN:

COMMISSIONER OF POLICE.....COMPLAINANT

AND

IBRAHIM SUNDAY.....DEFENDANT

RULING

I have carefully considered the submissions canvassed on both sides of the aisle.

The defence counsel contends that sufficient foundation was not laid for the reception of the photograph and further that it is computer generated and having not complied with the provision of **Section 84 of the Evidence Act** is inadmissible. Counsel for the prosecution contends otherwise; that the photograph is not computer generated and is relevant and thus admissible.

Now in this case, during the cross examination of the Defendant, learned counsel for the prosecution sought to tender in evidence, a photograph of the deceased. In the process, no question was asked with respect to who produced the photograph or how it was produced. There is no clarity therefore as to the precise nature of the production of the photograph.

If the argument is that the photograph is not computer generated, what is the basis for such conclusion? Counsel for the prosecution is certainly not a witness and cannot give evidence from the Bar.

Even if I accept at face value and for the sake of argument that the document is not computer generated, and that **Section 84 of the Evidence Act** is inapplicable, the implication is that the photograph itself is not the original but is only secondary evidence. The negative of the photograph is the original and no foundation has been laid as to where the original is to allow for reception of its secondary evidence within the purview of **Section 89 of the Evidence Act**.

Finally it is true that relevance is a foundational consideration on the admissibility of documents but that is not the only criteria. A document may thus be relevant but where secondary evidence is produced instead of the original without proper foundation laid as required by the **Section 89 of the Evidence Act**, its relevance will not save such document in such circumstances.

In the absence of foundation to allow for the reception of secondary evidence, the photograph clearly is inadmissible and it is to be marked, tendered and rejected.

Signed

Hon. Judge

18th October, 2021