IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS WEDNESDAY, THE 19TH DAY OF JANUARY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1251/2016

BETWEEN:

MR. USMAN USMAN KHAN ..... CLAIMANT

AND

1. **MR RICHARD OKOZI**
2. **ABUJA GEOGRAPHIC INFORMATION SYSTEM (AGIS)**
3. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
4. **HON. MINISTER, FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
5. **LT. COL. M. MANGA (RTD)**

..... DEFENDANTS

RULING

In the course of adducing additional evidence further to his recall, the claimant and PW1 sought to tender in evidence three (3) documents:

1. **Memorandum of understanding**
2. **Statement of account**
3. **Memorandum of consent judgment.**

Counsel to the 1st and 5th defendants objected to the admissibility of the three (3) documents. The **statement of account** was withdrawn by counsel to the plaintiff; we are therefore left with the other two documents.

The basis of the objection with respect to the **memorandum of understanding** is that it is dated 23rd July, 2019 and made long after the case was filed and

caught by the provision of **Section 83 (3) of the Evidence Act** and thus inadmissible as it was made when this proceeding was pending. The same arguments were made with respect to the **memorandum of consent judgment** which is undated and unexecuted but said to have been made pursuant to a meeting of parties on 30th October, 2018 again, long after this proceedings has commenced.

In response, counsel to the plaintiff submitted that the documents are relevant and not caught by the provision of **Section 83 (3) of the Evidence Act**. Counsel urged on court to consider the peculiar circumstances of this case to the effect that the documents or evidence came up during the pendency of the matter following events parties voluntarily participated. He relied further on the provision of **Section 83 (5) of the Evidence Act** as providing basis to allow for the reception of the documents.

In a brief reply with respect to the contention that there was a settlement, counsel to the 1st and 5th Defendants stated that there was no settlement and this was averred clearly in their Reply to the Amended Claimants defence to counter-claim.

I have given an insightful consideration to the submissions on both sides of the aisle. The admissibility or otherwise of the two (2) documents calls for the application of the provision of **Section 83 (3) of the Evidence Act** which provides as follows:

"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."

It is trite principle of general application that in resolving the question of admissibility, the court addresses three (3) important questions:

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

The pleadings which generally streamlines the facts and or issues in dispute provides a basis in addressing the posers raised above in addition obviously to the applicable provisions of the Evidence Act, 2011.

In this case, the objection will appear to fall within the confines of whether the documents sought to be admitted are admissible within the purview of **Section 83 (3) of the Evidence Act**. We must therefore have a close look and take our bearing from the provision.

It is conceded that hitherto the ambit and application of this provision created some difficulties in legal circles but the 2011 Evidence Act has provided greater clarity to the import of certain key phrases in the provision.

Let us situate or explain some of this phrases and then apply them to the present challenge. We start with the phrase **"a person interested"**.

This phrase in particular created considerable uncertainty in legal circles with respect to its correct meaning. Let me refer to some important decisions on the interpretation of the phrase. In **Anyaebosin V R.T. Briscoe Ltd (1987) 3 NWLR (pt.59) 84 at 109**, it was held by the Supreme Court that the word "interested" in Section 90 (3) of the Evidence Act (now Section 83 (3) of the Evidence Act 2011) should be given a narrow meaning and does not include the ordinary human interest which every body has in the outcome of proceedings in which he is likely to be a witness. That the mere fact that the maker of a statement tendered in evidence is in the employment of a party to the action does not, by itself, make him a person interested in proceedings within Section 91 (3) of the Evidence Act (now Section 83 of the Evidence Act 2011) and that the senior accountant who prepared the statement of account relied on by the plaintiff at the trial was not a person interested. The court said:

> ***"In general an employee may be said to have interest in the outcome of a case if his skill or competence are involved or his conducts in relation to the events which led to the litigation or when his association with the events is called to question."***

The court further said:

> ***"One other way of determining the interest of an employee in a case in the context of Section 90 (3) of the Evidence Act is to ask the question- is what is at stake in the proceedings the reputation of the maker of the statement in the sense of his being directly responsible for the event being litigated. If the employee's skill or competence is involved or his conduct or association with the events leading to the proceedings are in question or the question posed is answered in the affirmative, then… the statement by such employee would be caught by the provision of***

subsection (3) of Section 90, since the statement of the employee is likely to be tainted by the incentive to conceal or misrepresent facts. The position will of course be otherwise if none of the considerations were present."

Also in the case of **High Grade Services Ltd V. First Bank of Nigeria Limited (1991) 1 SCNJ 110 at 121**, a letter written by a staff of the respondent bank to another branch of the respondent stating that a cheque written in favour of the appellant be dishonoured because the account upon which it was drawn did not exist was held to be admissible and not made by a person interested. Wali JSC (of blessed memory) stated thus:

"It is not in all circumstances where a servant of an employer wrote a document on the latter's behalf that it becomes inadmissible by virtue of Section 90 (3) of the Evidence Act… A person is held not to be interested under subsection 3 of Section 90 of the Evidence Act when he has no temptation to depart from the truth on one side or the other a person not swayed by personal interest, but completely detached, judicial, impartial, independent…"

Karibi-Whyte, JSC (of blessed memory) also said:

"The nature of the disqualifying interest will depend on the nature of the duty undertaken by the servant. Where from the nature of the duty, he can be relied upon to speak the truth, and that he will not be adversely affected thereby, the document has always been admitted in evidence. This is because the rationale of the provision is that he must be "a person who has no temptation to depart from the truth on one side or the other"… Of course, before there will exist a disqualifying interest, or a person will be regarded as "a person interested" there must exist a real likelihood of bias. Hence where an official is discharging a ministerial duty which does not involve any personal opinion, the question of bias will not be in issue, such document will be admissible under Section 90 (3) of the Evidence Act."

It must be stated that these instructive cases and many other including those referred to by counsel to the plaintiff in his further written submissions were pronounced before the coming into operation of the **2011 Evidence Act.** Now the interpretation section of the **2011 Act**, perhaps as a response to these challenges or difficulties provides in **Section 258** as follows:

"person interested" means any person likely to be personally affected by the outcome of a proceeding."

The above appears to me clear and is self explanatory and defines a **"person interested"** as any person likely to be **personally** affected by the outcome of a proceeding. It would therefore appear that this definition inserted by the law makers in their wisdom in the 2011 Evidence Act is broader than the definition alluded in the decisions of the Apex Court above and would cover a wide range of interests.

In **U.T.C. (Nig.) Plc V Lawal (2014) 5 NWLR (pt.1400) 221**, the Supreme Court defined a **"person interested"** under **Section 83 (3) of the Evidence Act 2011** as a person who has a personal interest, financial, material or otherwise in the outcome of the proceedings. An independent person on the other hand is a person who has no temptation to depart from the truth on one side or the other; a person not swayed by personal interest but completely detached, judicial, impartial and independent. The Supreme Court further enjoined the courts to give the expression **"person interested"** in **Section 83 (3)** a narrow rather than a broad meaning and that there must be a real likelihood of bias before a person making a statement can be said to be a person interested.

Flowing from the above decisions and in particular, the unambiguous provision of **Section 258 (supra),** there can hardly be any argument that the **claimant** seeking to tender the **two (2) documents** to establish the facts contained therein is a **person interested** and obviously likely to be biased in favour of his case and he will no doubt be wholly affected by the whatever decision this court will ultimately pronounce. The wordings or phrase used in **Section 258 (supra)** is **"likely to be personally affected"** by the decision or outcome of the proceeding. There cannot be any pretension or denial here that the claimant does not qualify as a person that will be personally affected by the outcome of the extant case. He fits the bill of a person interested within the context or definition provided by Section 258 and in all material particulars.

To further underscore this position, on the pleadings, which as stated earlier, has streamlined the issues in dispute, the crux of this dispute is in respect of a parcel of land which **plaintiff** and **5th defendant** lay claim to. The documents sought to be tendered now all relate to this parcel of land and to support the case of **claimant**. As stated already the plaintiff is no doubt a person interested within the purview of **Section 83 (3).**

The next phrase has to do with the statement been made **"at a time when proceeding were pending or anticipated involving a dispute as to any fact which the statement might tend to establish."**

Now on the face of the **memorandum of understanding**, it is dated 25th July, 2019. The **memorandum of consent judgment** is not dated but going by the averments in the Amended claimant's reply and defence to the 1st and 5th defendants joint statement of defence and counter-claim vide paragraph 14, the **memorandum of consent judgment was prepared after the memorandum of understanding dated 25th July, 2019**.

Now the present action was filed as far back as 2016. It is clear therefore that at the time **these documents were made**, it was clearly when the extant proceedings was pending and involving a dispute over ownership of land which the extant documents project and seek to establish in favour of claimant.

I have considered the submissions of learned counsel to the claimant that the documents sought to be tendered is not directed at proving any disputed fact but I am not enthused by their submissions.

The first question to raise at the risk of sounding prolix is this:

What is the crux of this dispute? **Ownership of land** which both plaintiff and 5th defendant lay claim too.

The second question to ask is this: To what end are these documents been tendered? On the pleadings of claimant and the contents of the two memorandum, the **decided aim of the documents is to establish the alleged settlement parties agreed to with respect to the disputed parcel of land**.

It is therefore difficult to accept the argument of claimant's counsel that the documents are not directed at proving any disputed fact in issue in favour of either party. Indeed the **Amended Claimants reply and defence** to the **1st and 5th defendants joint statement of defence and counter-claim** completely undermines the argument of counsel to the plaintiff. In the alternative Relief sought, the claimant is praying the court to enter judgment in his favour as **per the terms contained in the undated memorandum of consent judgment which clearly is predicated on the memorandum of understanding**. This relief and the averments in this pleadings of claimant clearly underscores the fact that these documents were made during the pendency of this action and in relation to the facts of the dispute which the documents seek to establish.

Now so much emphasis has been placed by counsel to the claimant on the alleged peculiarities of the case and that the documents are a product of agreement. It must be stated that the **1st and 5th defendants** have in their pleadings rejected any notion that there was any settlement. If it is a product of free will as alleged, issues have been joined on the issue of freewill? I leave it at that. Most importantly, the court cannot dance around the express provision of **Section 83 (3)**. Parties and indeed the court must play and be guided by this provision; it cannot be subverted under any circumstances.

For this same reasons, the provision of **Section 83 (5)** relied on by counsel to claimant is not helpful. The reasonable inference that may be drawn from the documents and the circumstances of a particular case must be one in tandem with the same provision of **Section 83 (3)** or to achieve the ends of the entire provision of **Section 83**. **Section 83 (5)** did not create an alternative avenue to admit documents that contravenes the provision of **Section 83 (3)**. **Section 83 (5)** clearly has no traction here.

On the whole, as much as I have sought to be persuaded, I have not been persuaded that the **memorandum of understanding** and the **memorandum of consent judgment** have met the threshold of admissibility within the confines of **Section 83 (3) of the Evidence Act**. The two documents are accordingly inadmissible and are to be **marked tendered** and **rejected**.

Signed

Hon. Judge.