

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

THIS MONDAY, 21ST DAY OF MARCH, 2022.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: GWD/CV/26/2018

BETWEEN:

RIMDAN OONE. NANLE PLAINTIFF

AND

**1. CHRISTIAN O. OGBONNA
2. REMY NJOKU
3. MURTALA IBRAHIM
4. JOAKINM AKPONYE
5. ENAIFOYE DOGNAS
6. FEDERAL CAPITAL TERRITORY
DEVELOPMENT AUTHORITY FCDA** } **DEFENDANTS**

RULING

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

On the authorities, when the question of admissibility is raised, the court addresses three (3) important questions:

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

The pleadings which streamlines the issues/facts in dispute provides template to address the above questions. In this case, there is no dispute that the letter in question was pleaded.

There is equally no dispute that the contents of the document relates to the subject matter of dispute which forms the crux of the contested assertions both with respect to the substantive claim and the counter-claim.

Now with respect to the question of inadmissibility in law, counsel to the plaintiff relied on **Section 83 (1) of the Evidence Act** that the maker was not called to tender the evidence and that the document is documentary hearsay.

Now it is correct that the provision of **Section 83 (1) (a) of the Evidence Act** provides that the maker of a document as one to tender or produce the document in evidence. The provision is however not a sacrosanct provision and provides leeway to allow for admission of a document notwithstanding the absence of the maker.

For example, the proviso under **Section 83 (b) of the Evidence Act** obviates the necessity for producing the maker of the statement upon sufficient situation of the conditions stated or listed in the proviso.

Similarly under **Section 83 (2) of the Evidence Act** the court is given the undoubted discretion to admit a document notwithstanding the absence of the maker if the court is satisfied that undue delay or expense would otherwise be caused to insist on the production of the maker.

The discretion here is of course not granted as a matter of course. The dictates of justice determines how the court exercises its discretion having regard to the entire circumstance of the case.

In this case, I had earlier alluded to the fact that the document was pleaded and relevant to the case with respect to both the substantive claim and the Counter-Claim. The document was also written to 2nd defendant who has jointly filed a defence with 1st defendant to the claims of Plaintiff. I note that the maker of the document is one **TPL Enuifoghe Douglas** and it is a document prepared in 2016, a period of about 6 years now. I am satisfied that under the circumstances, this is one situation where to insist on the production of **Mr. Douglas** will clearly occasion undue delay.

On a fair and calm consideration of the facts particularly the relevance and the subject matter, the document deals with, which is critical to cases of both the **claimant** and **counter-claimant**, the objection will be and is hereby discountenanced.

The letter by FCDA to 2nd defendant titled URT: Interference and harassment on Plot No. 333 Doma 'D' Series Extension Gwagwalada is admitted as **Exhibit D4**.

Signed
Hon. Judge