

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONUKALU&GODSPOWEREBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/30/2014

BETWEEN:

**GLOBAL FORMWORK NIG LTD.....CLAIMANT
VS**

1. EXSANIG LTD

2. FEDERAL CAPITAL DEVEAUTH.....DEFENDANTS

RULING

This is a Ruling on the Admissibility or otherwise of a document titled; Global Formwork Nig Ltd (Malaysian Gardens) Saraji District, Phase III Near Apo Mechanic Village Abuja. 19th August 2014 BILLOF QUANTITIES FOR VIBRO FLOATATION OF PART OF *** 2 IN MALAYSIAN GARDENS ESTATE DESTROYED BY EXSANIG LTD. SURVEY PLAN NO. CCNL/FCT/1850/25/14 AREA = 2,086 Hq. Sought to be tendered in evidence by PW1 during his examination – in – chief, 1st Defendant’s Counsel objects to the admissibility of the said document on the ground that; the document is in contravention of Section 83 (1) of the Evidence Act as it not being tendered by the maker, further that the document is not the same as the frontloaded document. Secondly, that the document was make on 19/8/2014 whereas the suit commenced on 23/9/2014, submits

that the document was made by an interested party when proceeding was on, therefore urge the court to refuse the Admissibility of the document.

2nd Defendant's Counsel objecting to the Admissibility of the document, aligns with the submission of the 1st Defendant's Counsel and submits further that by Paragraph 1 of the Statement on Oath of PW1, the document was made by person with interest in the subject matter, which brings the document under document made in anticipation of an action, therefore urge the court to reject the document and mark as same. Refer to Section 83 (3) of the Evidence Act 2011.

Responding, Claimant Counsel submits that the document sought to be tendered is admissible under Section 83 (1) of the Evidence Act same having been tendered through the maker submits that the document being original is in conformity with the Provisions of Section 86 of the Evidence Act. That the document is pleaded in Paragraph 19 of their Amended Statement of claim and both with witness Statement on Oath and the document in issue are signed by same person; Emmanuel Aka.

Submits that the test for admissibility is whether the document is pleaded and relevant to the case, urge court to discountenance the objection, which at best may touch on the weight to be attached to the document. Submits finally that Section 83 (3) of the Evidence Act relied on by the 2nd Defendant Counsel is in applicable in the circumstances. The witness is not a staff of the Claimant, but a professional engaged to carry out his duty, therefore urge court to discountenance this objection and admit the document.

Having carefully considered the submission of Counsel and judicial authorities cited for and against the admissibility of the document in contention I find that only 1 issue calls for determination that is;

“Whether the document is capable of being admissible in evidence”

The criteria which govern the admissibility of documentary evidence has been held to be three-fold in a plethora of cases, and they include;

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

See the case of OkonjiVsGerorgeNjokanma&Ors (1999) 12 SCNJ 254 @ 229.

I have taken an insightful look at the document in contention vis-à-vis the pleading of the Claimant and I find that the facts which the document refers are sufficiently pleaded in Paragraph 19 of the Claimant’s Amended Statement Claim dated 10/9/15 and amended by order of court made on 18/6/2015. I also find those facts as well as the document in issue relevant to the case of the Claimant.

The question which follows is whether the document is admissible in law. The issue of law raised by the Counsel for 1st and 2nd Defendants is that the tendering of the document is contrary to Section 83 (1) and 83(3) of the Evidence Act, respectively whereas the Claimant’s Counsel contends that they are in conformity with both provision of the Evidence Act as the document was made by the witness and drew the courts attention that the

document has the signature of the witness. The facts that the document was made by the witness as shown by his name and signature ** paid to the contention of Section 83(1) of the Evidence Act which requires the maker of a document to tender a document made by him. On the contention by the 2nd Defendant that the document was made on 19/8/2014 whereas the suit commenced on 23/9/2019, therefore the document is inadmissible as it was made when proceeding was anticipated. The court is of the firm view that this Provision of the Evidence Act relied upon by 2nd Defendant is not absolute as Section 83 (5) of the Evidence Act provides that for the purpose of deciding whether or not a statement is admissible as evidence by virtue of Section 83, the court may draw only reasonable inference from the form or contents of the document. In which the statement is contained, or from any other circumstances. And applying this provision to the document vis-à-vis the pleading of the Claimant, the document is pleaded in Paragraph 19 of the said Amended Statement of Claim, to establish particulars of special damages and it is trite law that special damages must be proved by the party who claims it therefore a document made in furtherance of this claim is admissible because it is the reasonable path for a party to a suit to thread. On the basis of the form and content of the document which is being tendered in evidence by the maker, this court therefore holds that the document is in conformity with the provisions of Section 83 (1) (3) of the Evidence Act, which forms the Crux of the Objections of the Counsel for the 1st and 2nd Defendants Counsel. Accordingly the said objection is hereby dismissed. And from all of these having found the document pleaded, relevant and admissible in law

as original under Section 86 of the Evidence Act also in conformity with Section 83 (1) (3) (5) of the Evidence Act, this court hereby admit the document titled. Global Formwork Nig Ltd (Malaysian Gardens) Saraji District, Phase III Near Apo Mechanic Village Abuja 19th August 2014 Bill of Quantities for Vibroflotation of part of Precent 2 in Malaysian Gardens Estate Destroyed by ExsaNig Ltd Survey Plan No. CCNL/FCT/1850/25/14 Area – 2.086 Hq. is admitted as Exhibit “D”.

HON. JUSTICE C. O. AGBAZA

Presiding Judge.

30/6/2022

APPEARANCE:

VICTOR AGUNZI FOR THE CLAIMANT

NNAMDIEKEWEME ESQ. WITH M.C. NWOYE ESQ. FOR THE 1ST DEFENDANT.

A. I. ANUKU ESQ. FOR THE 2ND DEFENDANT