

**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/PET/206/2018

BETWEEN:

UCHENNANONYE ORJI.....PETITIONER

VS

1. ZACKYIKPENDU ORJI

2. MAZULU (MAZET)LEKHULA.....RESPONDENTS

RULING

This is a Ruling on the Admissibility or otherwise of the original copy of the International Passport issued by Federal Republic of Nigeria to Orji Maria with No. A06713524 on 14/7/2015, sought to be tendered by Respondent's Counsel through PW1 during Cross-examination. Petitioner's Counsel objects to the Admissibility of the said document on the ground that firstly the not being the maker or owner of the document cannot tender same as Exhibit. Secondly, the passport is a secondary evidence and even where it is a Primary evidence Section 89/91 of the Evidence Act must be satisfied urge court to reject the Admissibility of the International Passport.

Responding, Respondent's counsel urge court to discountenance the Petitioner's Counsel's ground for objection as the document in contention is original copy refer to the case of DaggashVsBulama (2004) 14 NWLR (PT. 892) 144. Also that the document is relevant to the case as it seeks to

show the manner in which mother of the Respondent was described as a relative same way Petitioner was described as stated by her during her examination-in-chief, which facts were pleaded in Paragraph 9 of their Response.

Finally, referring to the case of TortiVsUkpabi submits that the issue of the maker or proper custody is no longer the law urge court to admit the document as calling the maker, Nigerian Immigration Office will delay the trial.

Having carefully considered the submission of Counsel for and against the Admissibility of the document in issue 1 I find that the issue which calls for determination is;

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

The criteria which governs the Admissibility of documentary evidence have been held to be three-fold in a plethora of authorities they include.

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

See the case of OkonjiVsNjokanma (1999) 12 SCNJ 259 (@ 212. However the document in issue is sought to be tendered in evidence during cross-examination and under Section 223 of the Evidence Act a party is allowed to test the accuracy, veracity or discover who a witness is and what is his position in life as well as shake his credit by injury his character, hence

they it is said that the sky is the limit of the party cross-examining a witness.

In the instant case, the document in issue is objected to by the Petitioner Counsel according to him only the maker or the owner could do so and that the document is not the original. I have taken a look at the document in issue and nothing suggest in the least that it is a photocopy, secondly the issue of custody has been put to rest in several authorities and the case of *TortiVsUkpabi (1984) 1 SC 370* cited by the Respondent's Counsel is instructive and the court will go by it. The document being original can be tendered with or without the maker nor the owner. A document not tendered by the maker only affects the weight to be attached to the document and not it's Admissibility.

Furthermore the Respondent's Counsel have argued that since the witness led evidence pertaining to her description as relative in her International Passport, the document south to be tendered is being tendered in Response to that piece of evidence and which fact is pleaded in their response. I find this submission in conformity and satisfactory to the Provision of Section 223 of the Evidence Act and thus admissible in law.

From all of these having found the document being original, satisfactory and in conformity with the Provision of Section 223 of the Evidence Act this court therefore overrule the objection of the Petitioner Counsel to the admissibility of the document and accordingly the original copy of International Passport issued by the Federal Republic of Nigeria to Orji

Maria with No. A0671 3524 on 14/7/15 is hereby admitted as DWC I so hold.

HON. JUSTICE C. O. AGBAZA

Presiding Judge.

30/6/2022

APPEARANCE:

JOHN KYRIANETUK ESQ. FOR THE PETITIONER

LAWRENCE EREWALE ESQ. FOR THE RESPONDENT