

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

Date:-12th April,2022

FCT/HC/CV/386/2021

BETWEEN

**1. ZANPA ZHIMABE
2. LAWRENCE O. ARINZE** }

APPLICANTS

AND

EDWIN AKWUEH.....

RESPONDENT

RULING

In the cause of defence trial the Defendant's Counsel through Defendant witness intended to tender the statement of account of the Defendant and also three text messages into his phone which he told the Court that he saved same in his G-mail account. Having told the Court how he received the aforementioned documents the learned Defendant Counsel applied to tender same in evidence. Claimant's Counsel objected to the admissibility of the aforementioned documents in evidence " I object to the admissibility of the text messages and the computer certificate attached thereto." The pictures of the purported structures of the building on the plot and the computer certificate attached thereto and the bank statement. In

paragraph 15 of the Defendant computer certificate the said bank statement is pleaded computer certificate was not mentioned here. The Defendant did not refer to it either directly or indirectly. Secondly in paragraph 12 of the statement of defence the Defendant referred to pictures of the building. He pleaded the pictures but never mentioned computer certificate. The same thing with text messages as contained in paragraph 13 of the statement of defence. The essence of pleading is to eliminate element of surprises where a document that is required to be pleaded is not pleaded the Court would certainly not admit it in evidence. In the instant case not only that the document is not pleaded but they are also not frontloaded see **DAGASH VS BULAMA see also OKOYE VS OBIASAN** Supreme Court said if a document no matter how important if it is not pleaded and if it is not admissible the Court would not admit it that is the position of the Supreme Court and Court of Appeal they must come together the three condition. See section 84 of the Evidence Act that electronic evidence must be accompanied with a certificate of compliance . the Defendant failed to plead the certificate of compliance. The Defendant' Counsel in his response also asserted that the objection were misconceived without fact. The document objected were pleaded and front loaded. The print out of text messages were also pleaded in paragraph 13 whilst the pictures were pleaded in paragraph 12 and the account statement was pleaded in paragraph 13 the Claimants Counsel having considered that the three documents mentioned above were pleaded it also follows that those documents are relevant and admissible. It is trite that facts are pleaded not evidence see section 87 Evidence Act. See the case of **STARLING**

BANK PLC VS FALOLA (2014) LPSLR 22529 CA. Counsel urge the Court to admit same in evidence since they are relevant and also have complied with section 84 of the Evidence Act.

In his reply on point of law the Claimant's Counsel replied that there is a distinction between the case of ***STARLING BANK VS FALOLA (supra)*** and the instant case. If they are contained in the paragraph of his pleading then he ought not to specifically plead it. In the instance case nothing was mentioned regarding computer certificate counsel urge the Court to mark same tendered but rejected in evidence. Having reproduced the position of both side aforesaid for and against. I am of the firm view that the legal requirement of section 84 of the Evidence Act can and shall not be over emphasis from the objection raised by the Counsel from the opening of his statement he made his position very clear regarding the pleading and frontloading of the said document. He went further to heavily relied on non compliance of the computer generated evidence which is the condition of admissibility of electronically generated evidence. He also cited two cases as can be seen from the proceedings but same refused to provide this Court with the citation of the same you cannot blow hot and cold in any proceedings. In that circumstance I completely disagreed with the Claimants Counsel regarding the admissibility of the aforementioned document particularly regarding the bank statement. The witness here was not the maker of the account statement how can he attached a certificate of compliance that is the duty of the bank official generally speaking all the documents are relevant in this proceedings the witness had told the Court graciously how he obtained those documents section 14 of the

Evidence Act have absolutely provide the needed answer in this circumstance equally section 6 and 9 of the Evidence Act which essentially deals with relevancy. Once document is relevant same is admissible. I would like to place on record does section 84 of the Evidence Act abrogate other existing rules regarding the admissibility of document in evidence? Section 84 is assertive in declaring its pre – eminence over admissibility of electronically generated evidence,. The language of the section suggest that it address itself with garment of finality. Once a piece of electronically generated document satisfies the stipulated condition, it becomes admissible , without more, so it appears this may be misleading because the view is total that section 84 has not abrogated other existing rules of evidence applicable to admissibility of documents. One basic rule governing the subject of evidence is relevance. Indeed the golden rule of admissibility expresses itself in the notion that all evidence which is relevant is admissible. The corollary is also correct what is not relevant is not admissible. It follows therefore, that if a piece of electronically generated document is to be admitted in Court, it must first and foremost pass through the crucible of relevancy. From the above and more particularly section 14 of the Evidence Act and section 6 of the same Act it becomes necessary for this Court to admit same in evidence. In respect of how a document is obtained once it is relevant same is admissible see ***HARUNA V AGF(2012) 9 NWLR (PT 419)*** see also ***FAWEHINIM VS NBA (1989) 2 NWLR (PT105) 558*** also the see the case of ***TARTI VS ULPELSABI (1984) SC.*** Once document is relevant same is admissible consequently the objection raised by the Claimant Counsel is

hereby over rule and the statement of account is received in evidence and marked as exhibit 12 while the three text message are received in evidence and marked as exhibit 13.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Chidi Nwankwo:- For the Claimants

Ezenwa Okoli:- Appearing with Akachukwu Azubike for the Defendant.
Defendant in Court.