

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI – ABUJA

THIS 17TH DAY OF MAY, 2022

BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA

SUIT NO. FCT/HC/CV/581/2021

BETWEEN

CHIEF (MRS.) JOY OKOCHA

*Doing business in the name and
Style 'Joy Elegance Park and Garden*
AND



-----CLAIMANT

MR. JOHN AKADI -----DEFENDANT

RULING

The ruling before this honourable court is predicated upon the objection raised by learned counsel to the defendant on the admissibility of the documents sought to be tendered by claimant witness1 (PW1) Chief Mrs. Joy Okocha. On the deed of sub-lease of recreational facilities/parks dated 13th August 2007, learned counsel submitted that it is a registrable instrument and same was not registered, He referred to the case of **STARLINE NIG LTD & ANOR VS ONYEAJOCHA& 1 OR.** Counsel contended that pursuant to section 83 (1) Evidence Act 2011 which requires

that a document must be tendered by the maker, that there is nothing to indicate that PW1 is the maker of the document, counsel argued that is not relevant to this proceeding being a deed in respect of a district park situate at Wuse, which is not the property in contention.

With respect to the document dated 3rd July 2007, which is the letter of intent to develop, manage and operate designated park site in the FCT, counsel argued that the document was not tendered by the maker in line with section 83 (1) (B) of the Evidence Act 2011. Learned counsel submitted that the document is not relevant to the instant proceedings having proclaim itself to be in respect of a property located at Kigoma street district which is not a subject of litigation in this suit.

On the lease of green Area for recreational development dated November 28th 2001, counsel argued that the document was not tendered by the maker in line with section 83(1) (B) of the Evidence Act 2011, that PW1 has no relationship with the document.

On sitePlan, counsel contended that it bears no date, there is no indication that it was made in respect of the property the subject matter of litigation, counsel argued further that it was not signed

by any officer of Abuja Geographical Information system that produced it, that PW1 is not the maker and has not established any relationship with the document.

On the three receipts dated 1st March 2011, 1st March 2011., and 12th August 2011, learned counsel submitted that they are not tendered by the maker and pw1 has not established the relationship to the documents as they were clearly not issued to her. Counsel argued that the documents are not relevant to the instant suit.

In response to the objections raised by the counsel to the defendant, learned counsel to the claimant submitted on the sublease agreement that the law is clear that an unregistered registrable instrument is admissible in evidence to proof equitable interest or title in the subject matter. Learned counsel argued that the claimant pleaded the documents to show that she was issued with lease agreement and also letter of intents and the receipts of payments that is the essence of pleading the documents. Counsel contended that the contents are not in issue as to bring the maker, learned counsel relied on Section 83(2) (1) Evidence Act 2011. Counsel argued that with respect to the lease agreement, the witness had deposed in her statement on oath

that she does business in the name and style of Joy Elegance park & Gardens. That the claimant signed as the sub-leasee. He referred this court to the case of **IYKE MEDICAL MECHANDIZER V PFIZER INCORPORATION & 1 ORS (2001) LPELR 1579 (SC) P18** to the effect that a person doing business in a business name whether or not its registered she is the owner or carried on transactions. Counsel submitted that the Siteplan is dated 9th August 2011 and signed by the surveyor.

On his part, learned counsel to the defendant by way of reply referred to section 83(4) Evidence Act, he equally cited the case of **BELGORE V AHMED (2013) 8 NWLR PT 1355 Pg 26 para A-B**

I have listened to the oral adumbration of counsel with regards to the objections raised pertaining the admissibility of the documents sought to be tendered. I have also listened to the oral argument of counsel to the claimants in response to the objections raised. It is my considered legal opinion that the legal question to be asked is:

"Whether the documents sought to be tendered are admissible?"

The principle of law with regards to admissibility of evidence is relevance, once evidence is probative of the fact in issue, it is considered to be relevant and therefore admissible, because relevancy determines admissibility. Therefore, once a piece of evidence is relevant for proper determination of any fact in issue the court is bound to admit it. see **HARUNA V AG FEDERALIONAL (2021) 9 NWLR (PT. 1306) PAGE 419 (SC).**

Admissibility of a document is quite different from the weight to be attached to it, it is only when it is admissible that the court considers weight to be attached thereof, See **OKOREAFIA V. AGWU (2012)1 NWLR (PT. 1282) PAGE 425 (CA).**

At this juncture, it is imperative to state that there is a difference between the admissibility of a document and its probative value, Admissibility is based on relevance, while probative value depends on relevance and proof. In effect a piece of evidence has probative value if it tends to prove an issue. See **NYESON V. PETERSIDE (2016)7 NWLR (PT 1412) PAGE 452.**

I call in aid at this juncture the provision of Section 83(1) Evidence Act which deals with the admissibility of document not

tendered by the maker can only be proper if the process of Section 83(1) of the Evidence Act is complied with:

1. That the maker is dead
2. That the maker is unfit by reason of bodily or mental condition to attend as a witness.
3. That the maker of the document is beyond the seas and it is not reasonably practicable to secure his attendance.
4. If all reasonable efforts to find the maker to attend as a witness were abortive or made without success.
5. That due delay or costs will be caused the maker if the document is to come and testify see **NIMASA VS HEMSMOR (NIG)LTD (2015)5 NWLR (PT. 1452) PAGE 279.**

In the instant case however the argument of learned counsel that the claimant witness (pW1) who sought to tender the document is not the maker does not hold water as the claimant is the owner of 'Joy Elegance Park and Garden. It is an age long principle of law that companies Act through their alter-ego. See **OLAWEPO V SEC (2011)16 NWLR(PT.1272)PAGE 122.**

A careful perusal of the document "SitePlan" equally shows that the document is not only signed but also dated.

On the objections of the learned counsel to the defendant/respondent that the sub lease being a registrable instrument and same was not registered which rendered the sub lease inadmissible. In his response, learned counsel for the claimant argued that the sublease was pleaded by the claimant to show that she was issued with lease agreement and also a letter of intents and receipt of payment.

In the case of **ABDULAH I & ORS V ADETUTU (2019) LPELR** it was held that "the arguments under the issue are almost ubiquitous arguments in land matters. I must note right away that the admissibility or otherwise of an unregistered registrable instrument depends on the purpose of which it is being sought to be admitted. An unregistered registrable instrument sought to be tendered for the purpose of passing or establishing title to land or interest in land would be admissible..... " if however tendered to show that there was a transaction between the lessor and the lessee, it will be admissible as a purchase receipt. It will also be admissible if it is meant to establish a fact which one or both parties have pleaded. In the present case, i find that the

registrable instrument not registered which the claimant sought to tender in evidence could be admitted but on for the purpose of proving existence of a transaction or payment of money. I hereby admit documents in evidence as exhibits as follows;

Federal Capital Territory Administration receipts dated 12th August 2011, 01 March 2011 and 01 March 2011 as exhibits JA1, JA2 AND JA3 respectively.

Site plan showing plot: wuse1/A02/1671 as exhibit JA4.

Letter of lease of open space dated November 28th 2001 as exhibit JA5.

Letter of intent dated 3rd July 2007 as exhibit JA6.

Letter of sublease dated 13 August 2007 as exhibit JA7 respectively

Appearances

Plaintiff in court, Defendant also in court.

Mary Garribo for the plaintiff

PD Pius with Soginti Myasore for the Defendant

Signed

Presiding Hon Judge

17th/05/2022

