

**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: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/590/2016**

**BETWEEN:**

**ALH. MOHAMMED BELLO.....CLAIMANT**

**VS**

**ALH. BELLO MATAWALLEN BELLO.....DEFENDANT**

**RULING**

This is a Ruling on the Admissibility or otherwise of two documents titled "Items Collected From Belsha on 2/1/2012 by Bello Sardauna ₦99,100.00 Transaction" and another titled "Items Collected From Matawalle on 29/1/2012 by Bello Saradauna ₦63,500.00 Transaction" sought to be tendered collectively as evidence during the Examination-In-Chief of DW1, Claimant's Counsel objects to the Admissibility of these documents on the ground that the Paragraph 8 of the Amended Oath and Paragraph 4 of the Amended Counter-Claim did not allude that the witness in court, is the maker of the document relying on Section 83 (1) (b) of the Evidence Act and that no foundation was laid as for the non-availability of the maker of the documents. Submits that the document hangs in the air, the court cannot be drawn to speculate on who is the maker of the document. Urge court to hold that the document is worthless, unreliable to the case and even if the document is relevant to this case, the law is clear

as to the Admissibility of document and only the maker can tender the document or the witness laid foundation as to the non-availability of the maker.

Responding Defendant's Counsel submits that the witness is the maker of the document – a list of items on behalf of the Defendant delivered to the Claimant. The witness having delivered the items himself, listed out the items so delivered. Submits that the document sought to be tendered is relevant therefore urge court to discountenance the objection of Claimant's Counsel and admit the document in evidence.

Having carefully considered the submission of both Counsel for and against the admissibility of the document in contention, I find that the issue which calls for determination is;

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

The criteria which governs the Admissibility of documentary evidence has been held to be three-folds in a Plethora of cases they include;

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

See Okonji vs Njokanma (1999) 12 SCNJ 259.

I have taken a look at the pleadings of the Defendant vis-à-vis the criteria stated above. I find that the facts contained in the documents are sufficiently pleaded in Paragraph 8 of Defendants Amended Statement of

Defence. I also find the facts are relevant to the case. The pertinent question which follow is whether the document in issue as admissible in law?

Section 83(1)(b) of the Evidence Act requires the maker of the document to tender document made by him, however there are several exceptions to this Rule as prescribed by Sub-Section (b)(2) (a) of Section 83. In the instant case, Claimant's Counsel contend that the witness is not the maker of the document, therefore cannot tender same, whereas it is the argument of Defendant's Counsel is the maker, on the face of the document there is no signature on the document to enable the court resolve this contention between the parties. The Claimant's Counsel apart from asserting that the witness is not the maker, he did nothing to show that the witness is not the maker, the witness has already identified the document mere assertion that the witness is not the maker is not sufficient. To render the document inadmissible under Section 83 (1) (b) of the Evidence Act. Nevertheless the court notes that the document in issue is unsigned and the fact of being unsigned only goes to the weight to be attached to the document which the court cannot pronounce on at this stage of trial.

From all of these, the document having been found pleaded and relevant to the case having also found that the grounds on law which the Claimant's Counsel objects to their Admissibility as insufficient, this court therefore holds that the objection of the Claimant's Counsel is hereby overruled and according the document titled "Items Collected from Belsha on 2/01/2012 by Bello Sardauna N99,100.00 Transaction" and another titled "Items

Collected from Matawalle on 29/01/2012 be Bello Sardauna N63,500 Transaction" are collectively admitted as Exhibit DWC

**HON. JUSTICE O.C AGBAZA**

Presiding Judge.

12/09/2022

**APPEARANCE:**

E. R. OPARA WITH E.F. OFIONG .O.A OBAYOMI ESQ. FOR THE CLAIMANT

B.C NWEKE ESQ. FOR THE DEFENDANT.