

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON THURSDAY THE 23<sup>RD</sup> DAY OF FEBRUARY, 2023.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**  
**SUIT NO. CR/402/2019**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA ----- COMPLAINANT  
AND**

- 1. MUSAADAMU SHUAIBU (M)**
- 2. BUKAR BUKAR PETROL (M) ----- DEFENDANTS**

**RULING**

In the course of adducing evidence, the PW1 (Iyeru Oluwole Godsglory) sought to tender in evidence the statement made by Ilevbare Joshua, the M.D. Catmate (the nominal complainant) at the Independent Corrupt Practices and Other related Offences Commission (ICPC).

Defence Counsel objected to the admissibility of the document. The basis of the objection is that the M.D. Catmate was not called to testify. That relevance is not the only test of admissibility. That the essence of tendering the document is for the court to act on it. However, there is nothing before this court to show the court the whereabouts of the maker of the document. That tendering the document the witness cannot answer any question with respect to the document and urged the court to reject the document and mark same rejected.

In response counsel to the complainant submitted that the statement was made by the nominal complainant M.D of Catmate to ICPC where the witness is an officer and the witness received the statement himself. That he wants to tender it as a document he received from the M. D of Catmate. That the document is relevant. That the ICPC certified this document as coming from it. That the issue of the whereabouts of the maker of the document is an issue of weight to be attached to the document and not on relevance.

I have considered the arguments of Learned Counsel to the Complainant along with the argument proffered by the Defence Counsel. In this case, the objection will appear to fall within the confines of whether the document sought to be tendered are admissible in the absence of the maker within the purview of **Section 83 of the Evidence Act, 2011.**

The Defence Counsel is contending that the witness is not the maker of the document sought to be tendered. A document can be tendered by a party to it or by one who has proper custody of it and **Section 156 of the Evidence Act 2011** defined document in proper custody to mean if they are in the place in which and under the care of the person with whom, they would naturally be, but no custody is improper if it is proved to have had a legitimate origin.

The document sought to be tendered is a statement of Ilevbare Joshua. Document is being tendered through PW1 who is the investigating police officer. The document being in the custody of the ICPC is a public document. In tendering a public document, it is trite that it is only the certified true copy that is admissible. The authorship or the maker of a public document is not in issue once it becomes a public document. Hence whether the MD is called to tender such statement being the author is irrelevant once it becomes a public document. It is the law that a public document can be tendered primarily by the authority in whose possession or custody it is kept in such a case the certified true copy would not be necessary but on the other hand, it can be tendered in court provided that the secondary document is certified at the point of tendering same. The statement is a public document in the custody of ICPC as same was addressed to the ICPC hence the ICPC can tender same either as a primary or secondary document. I use the word primary if the original statement is sought to be tendered and I use the word secondary if the copy is sought to be tendered; in this wise, the certified true copy of the secondary document would be admissible. The ICPC is an artificial being who functions through its officers. Consequently, any of the officers of an artificial being can give evidence on behalf of the ICPC. Statement was addressed to the ICPC, statement was obtained in the presence of the PW1, statement has been in the custody of the ICPC from inception, statement is a public document and statement has been certified being a copy

I rely on **Section 102 of the Evidence Act, 2011** which provides:

“The following documents are public documents:

- (a) documents forming the official acts or records of the official acts of -
  - (i) The sovereign authority;
  - (ii) Official bodies and tribunals; or
  - (iii) Public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and
- (b) Public records kept in Nigeria of private documents”.

It is clear from the foregoing that any document forming or emanating from the official act of a sovereign authority, an official body or Tribunal is a public document. Furthermore, any document forming the official acts of public officers, the legislature, judiciary or executive arm of government are also public documents. Therefore, the said letter forming the official act of a public officer is a public document.

The Supreme Court in **PDP VS. INEC (2014) 17 NWLR (Pt. 1437) at p. 563 para B-C** reaffirmed the law that: -

"The only categories of public documents that are admissible are either the original document itself or, in the absence of such original, certified copies and no other".

The said letter has been in the custody of the ICPC and remained so up to the point of tendering in court. The document in question is duly certified being a photocopy, it is my view that it can be tendered through the officer who received it. Consequently, all the objections of the defence Counsel are hereby overruled, and the statement of Ilevbare Joshua made at the Independent Corrupt Practices and Other Related Offences Commission (ICPC) is hereby admitted in evidence as Exhibit MA3

**Parties:** Defendants are present.

**Appearances:** Francis Ogbu appearing for the Complainant. J. A. Salisu appearing for the defendants.

**HON. JUSTICE MODUPE OSHOE-ADEBIYI  
JUDGE  
23<sup>RD</sup> FEBRUARY, 2023**