

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

**HOLDEN AT COURT 45 SITTING IN WUSE ZONE 2 ABUJA
BEFORE HIS LORDSHIP HON JUSTICE ELEOJO ENENCHE**

DELIVERED ON 2nd March 2023

BAR. ERIC EGWURUBE

V

ALHAJI YAHAYA NDATSU & CHIEF MIKE OBI

RULING

The Defendant/counter claimant sought to tender copies of a land sales agreement between Chief Mike Obiekezie (the seller) and Alhaji Yahaya Suliemen N. (the buyer) dated 9th February 2010 and a power of Attorney made on 13th October 1997 between Hafsat O. Abdulahi and Nze Mike obi. Upon tendering the documents, counsel for the Claimant. S.O. Oche raised an objection to the admissibility of the documents on the grounds that by the provisions of Section 15 of the Land Registration Act, Laws of the FCT 2006 Vol.3, such documents must be registered before they can be admissible in evidence. Counsel cited as well, the case of **OBODOEKE NNUBIA V. HON. A.G. RIVERS & 2 OTHERS (2009) VOL. 40 NSCQR PG. 90 AT 97.** Counsel contends that Section 15 even prohibits the documents from even being pleaded in a matter. He submits therefore that they are not admissible and urged me to reject them and mark them as such. He further contended that the document ought to have been tendered by PW1 and not PW2 who will effectively be speaking for PW1 if he is allowed to tender them. Finally, counsel

argued that the documents sought to be tendered are photocopies while urging me to hold that if the originals were tendered it will be against their interest in line sec. 167 (d) of the Evidence Act.

his counter argument, E.A. Babatunde opined that PW 2 is not only a witness but also, a party in the proceedings and that Pw1 had already stated that he was given a Power of Attorney and Sales Agreement. He argues that what PW2 has done is to identify the documents and tender them. On the first leg of the objection, counsel submitted that the documents were not pleaded as evidence of title. To support this line of argument he referred me to paragraph 18(d) of the counter-claim.

On the first leg of the objection, in **ALHAJI AMINU JUBRILLAH ABDULLAHI & ORS v. MRS. CHRISTIANA IYABO ADETUTU(2019) LPELR-47384(SC)** the supreme court held that the arguments under this issue are almost ubiquitous. Justice C.C. Nweze (JSC) delivering the leading judgment held , that the admissibility or otherwise of an unregistered registerable instrument depends on the purpose for which it is being sought to be admitted as it is, an unregistered registrable instrument, sought to be tendered for the purpose of proving or establishing title to land or interest in land, would be inadmissible under the Land Instruments Registration Law, such a document, derided as an "amorphous document," in **UMOFFIA V NDEM [1973] 12 SC (REPRINT) 58**, is not receivable in evidence for the purpose of establishing any right, title or interest in land being unregistered,. If it is however tendered to show that there was a transaction between parties, 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. Under these two conditions, such a document does not qualify as an instrument as defined in the Land Instruments Registration Law. See also **OKAFOR V. SOYEMI [2001] 2 NWLR (PT. 698) 465; AGBOOLA v. UNITED BANK for AFRICA PLC [2011] 11 NWLR (pt.1258) 375**and **ABU V. KUYABANA [2002] 4 NWLR (PT. 758) 599.**

Put differently, a document, registrable under the Land Instruments Registration Law, may be admitted in evidence without registration, if it is tendered, not as an instrument affecting land but only to establish evidence of a transaction between the parties, **OBIENU V. OKEKE [2006] 16 NWLR (PT. 1005) 225**; **MONKOM v. ODILI [2010] 2 NWLR (pt. 1179) 419**; **AGWUNEDU v. ONWUMERE [1994] 1 NWLR (pt.321) 375**; and **ABU V. KUYABANA [2002] 4 NWLR (PT. 758) 599**. In effect, when a Court is determining whether or not to admit or reject an unregistered registrable instrument, it has to consider the purpose and the use to which it is being put, **OLE V. EKEDE [1991] 4 NWLR (PT. 187) 569**. In the vocabulary of pleadings, the pleader has a duty to show that the document was pleaded as evidence of transaction and not as an instrument of title, **OGUNBAMBI V. ABOWAB 13 WACA 222**; **AGWUNEDU V. ONWUMERE [1994] 1 NWLR (PT 321) 375**; **FAKOYA V. ST. PAUL'S CHURCH SHAGAMU (1966) 1 ALL NLR 74**; **ONI V. ARIMORO (1973) NMLR 237**, and **AKINGBADE V. ELEMOSHO (1964) 1 ALL NLR 154**.

Without a doubt, in this case the two documents sought to be tendered were pleaded as evidence of transaction not title. That much was captured in paragraph 18 (d) of the Defendant's joint statement of defense/ counter claim as well as in paragraph 18(j) of the same document. It reads;

18 (d)...upon payment of a reasonable consideration made to madam Hafsat O. Abdullahi as the original allottee, a power of attorney was donated to the 2nd Defendant who took possession of the said plot . The Power of Attorney is hereby pleaded and shall be relied upon at trial as evidence of the transaction.

18(j)... the Defendants further aver that upon payment of the agreed sum, the original title documents in possession of the 2nd Defendant together with three copies of the deed of assignment between the 1st and 2nd Defendants were handed over to the 1st Defendant in the presence of the Claimant, Pastor James Adebayo, Abubakar Hamza and Muhammed Isah(now deceased). The deed of assignment witnessed by pastor James Adebayo is pleaded and shall be relied upon as evidence of transaction between 1st and 2nd Defendants

Having seen the reason for which the documents were pleaded, I find on that note that having been pleaded as evidence of the transaction, this objection should be discountenanced on that note. The rationale behind this besides the cases cited is that the filing of pleadings is primarily, to settle issues between the parties, **OSUJI V. EKEOCHA (2009) LPELR - 2816(SC); [2009] 16 NWLR (PT.1166) 81**. Thus, if a document is pleaded, it must be for a particular purpose. As such, a document pleaded as transferring interest in land to a party cannot be considered for other purposes not pleaded, however, the one pleaded as evidence of transaction will be held as such. See **EDOHOEKET V. INYANG [2010] 7 NWLR (PT. 1192) 25**; **GBINIJE v. ODJI [2011] 4 NWLR(pt.1236)103**; **ONWUMELU V. DURU [1997] 10 NWLR (PT. 525) 377**. I therefore find and hold that the documents sought to be tendered were pleaded and tendered as evidence of transaction simpliciter.

Counsel also cited section 167 (d) as a ground for the objection. That section deals with evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. I hardly see the relevance of that section to the objection raised as no evidence was herein withheld. At least my attention was not brought to the existence of any. On the final note, a counsel is in charge of his case at all times. Once briefed, it is his duty to do what is professionally expedient to advance the case of his client. This includes the marshalling and presentation of evidence. The objection upon the grounds that the documents should have been tendered through PW1 cannot therefore be sustained. I note that PW2 is not just a witness but he is also a party to the proceedings and is also a party and beneficiary in the documents sought to be tendered before he allegedly passed his title to PW1. In all the objection fails and is dismissed and the documents are admitted in evidence and marked as follows; the Power of Attorney dated 13th October 1997 is admitted and marked as Exhibit "CC6" while the land sales agreement is admitted and marked as "CC7".

Eleojo Enenche

2/03/23

Judge