

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 26<sup>TH</sup> DAY OF APRIL, 2023.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**  
**SUIT NO.:-FCT/HC/CV/3726/12**

**BETWEEN:**

**1) MR. AKINDEJI AKINADE**  
*(Suing As Lawful Attorney of  
Tanus Property Development Ltd)*

**2) TANUS PROPERTY DEVELOPMENT LTD**

**:.....CLAIMANTS/  
APPLICANTS**

**AND**

**1) SAHARA HOMES LTD**  
**2) BASIC PROPERTIES LTD**  
**3) MINISTER OF THE FEDERAL  
CAPITAL TERRITORY.**  
**4) FEDERAL CAPITAL  
DEVELOPMENT AUTHORITY.**  
**5) INCORPORATED TRUSTEES OF  
LOKOGOMA BASIC ESTATE  
OWNERS/RESIDENTS ASSOCIATION.**

**:.....DEFENDANTS/  
OBJECTORS**

John Paul C. Eze for the Claimants.  
Kingsley Nwangwu for the 5<sup>th</sup> Defendant.  
Other parties are absent.

**RULING ON ADMISSIBILITY OF DOCUMENT.**

At the resumed hearing of the Claimants' case on the 18<sup>th</sup> day of March, 2023, the learned counsel sought to tender a photocopy of a Power of Attorney through the PW1. When asked the whereabouts of the original, the PW1 stated that it is the Court's custody, having been tendered earlier in the course of the hearing of the case, but was rejected by the Court and marked "rejected".

Upon the application by the learned Claimants' counsel to tender the said photocopy in evidence, the learned 5<sup>th</sup> Defendant's counsel vehemently objected to the admissibility of the document on the grounds that same had been tendered earlier but was rejected and marked "rejected".

He argued that the present application to re-tender the document tends to spite the Court.

He contended that although the Court expunged the record of proceedings where the said document was marked rejected, that it would amount to abuse of judicial time and resources, and miscarriage of justice if the same witness is permitted by this Court to re-tender the document or re-introduce the same document tendered by him earlier and was marked "rejected". He referred to **Efim Okong Ita & Ors v. Nkoyo Ekpenyong (2000)LPELR-5614(CA); UBN v. Ozigi (1994)3 NWLR 333.**

Learned counsel further contended that documents once tendered and marked rejected cannot be used to determine any issue in that case. He referred to **Akinsola & Ors v. Ogungbecy & Ors (2021) LPELR-52921(CA).**

He urged the Court to maintain the sanctity of its record and mark the said document rejected.

In response, the learned Claimants' counsel urged the Court to discountenance the objection of the learned defence counsel as same is misconceived.

He submitted that in law, admissibility is predicated on relevancy and pleading.

He argued that the implication of a proceeding that has been expunged is that the proceeding and record do not exist in

Court, and that as such, parties cannot place reliance on record that no longer exist.

Learned counsel submitted that the legal implication is that the trial started de novo on 24/11/21 when the Claimant called PW1.

He posited that a document that is admissible in law may be rejected for reasons that are extraneous, and that such rejection does not make the document inadmissible in law. He argued that the document in that case, should be looked at in relation to the parties and the pleadings.

He argued that the cases cited by the learned 5<sup>th</sup> Defendant's counsel are to the effect that rejected document cannot be used in deciding the issues before the Court, but that, for the Court to mark the document rejected again, it means the Court is looking at its relevance.

He urged the Court to admit the document, its relevance having not been questioned.

The submission of the learned 5<sup>th</sup> Defendant's counsel based on the afore referred cases, to the effect that a document that has been tendered and marked rejected and which has not been appeal against, or which appealed has been unsuccessful, cannot be used by the Court to determine any relevant issue in the case, is a valid and sound submission as it relates to such situation as afore stated.

It is however settled, that a decision is only an authority for what it decides, and nothing more – See **Tanko v. The State (2009) LPELR-3136(SC); Skye Bank PLC & Anor v. Akinpelu (2010) LPELR-3073(SC).**

In this regard, the authorities cited by the learned 5<sup>th</sup> Defendant's counsel, relate to a situation where a document has been rejected and marked as such, and the decision rejecting and marking the document 'rejected' has not been appealed against, or where such appeal is unsuccessful.

The situation with which this Court is faced in this case is peculiar, different, and I would deign to say; novel.

Indeed, the document sought to be tendered had been tendered but rejected and marked "rejected" in an earlier proceeding in this case. But the proceeding in which the said document was rejected, has however been expunged.

Thus, the learned Claimants' counsel argued that the implication is that the said proceeding and its record are no longer existing in Court. The 5<sup>th</sup> Defendant counsel never objected to the application expunging the records of proceedings of that day. In essence, that there is no record that the said document was rejected and marked "rejected."

I find the submission of the learned Claimants' counsel compelling and feel persuaded by same.

Citing the Longman Dictionary of Contemporary English, the Court of Appeal in **Omotosho v. Ojo (2008)Vol.42 WRN 181 at 199**, held, per Okoro, J.C.A. that:

***"To expunge means to remove a name or piece of information from a list or book".***

When a proceeding has been removed from the records of the Court, it means that whatever that transpired in that proceeding no longer exists and therefore, cannot be made reference to in that case. Expunged records means the proceedings or records are deleted and would not be referred to for record of

proceedings. Therefore, an expunged order includes removal of the record and all exhibits attached. The binding nature of records of proceedings is such that both litigants and the Court are bound by it – **Udo v. State (2006)15 NWLR (Pt.1001)179.** When the record is no longer there no party can challenge what is no longer in existence.

I therefore agree with the position of the learned Claimants' counsel, that the proceeding wherein the said document was rejected having been expunged from the records of this Court, the fact that it was rejected and it is a rejected document and marking same rejected no longer exists in the records of this Court. Therefore, same cannot be the basis of objection to the admissibility of the document in this proceeding.

The learned Claimants' counsel rightly submitted that the basis of admissibility in law, is relevancy. See **Abubakar v. Chuks (2008)WRN (Vol.20) 27 at 31.**

There being no objection to the relevancy of the document, the 5<sup>th</sup> Defendant's objection having been based on non-existent factor; the said objection is hereby overruled.

The said document, a Power of Attorney donated to PW1 by Tanus Property Development Ltd is admitted in evidence and marked Exhibit PW2B.

**HON. JUSTICE A. O. OTALUKA**  
**26/4/2023.**