

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON WEDNESDAY THE 24TH DAY OF MAY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CR/353/2019

BETWEEN

COMMISSIONER OF POLICE ----- COMPLAINANT

AND

AMADU ADAMU----- DEFENDANT

RULING

In the course of adducing evidence, the PW3(Insp. Tanim Abdul) sought to tender in evidence the pictures of the complainant, picture of the defendant with weapon, certificate of compliance and statements made by three (3) persons namely, Abdullahim Ibrahim, Abdulkarim Hassan and Samsom G. Sarki. The defendant's counsel is not objecting to the admissibility of the pictures and the certificate of compliance but objects to the admissibility of the three (3) statements. The defendant's counsel objection is based on the fact that the makers of the statement ought to be listed as witnesses and called to tender their statements as it is the law that the maker of a statement is the one who should tender same. That **Section 83 of the Evidence Act** contemplates a situation where a witness is intended to be called but is unfit or unavailable. However prosecuting counsel submitted that the bedrock of admissibility is relevance. That the documents sought to be tendered are relevant to the just determination of this suit. That it is being tendered through the Investigating police officer (IPO) who recorded the statement and the IPO has laid proper foundation as to the whereabouts of the makers of the documents. That the issue before the court goes to the weight of the documents. He relied on **Section 83 (1) (b) & (2) of the Evidence Act, 2011** and the case of **EDIET V. STATE (2019)**.

I have considered the arguments of Learned Counsel to the Complainant along with the argument proffered by the Defence Counsel. When the question of admissibility is raised, the court addresses three (3) important questions:

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

Now the contention here is that the statements are not admissible for not being tendered by the maker. It is correct that the provision of **Section 83 (1) (a) of the Evidence Act, 2011** provides that the maker of a document is one to tender or produce the document in evidence. However, the proviso under **Section 83 (b) of the Evidence Act, 2011** obviates the necessity for producing the maker of the statement upon sufficient situation of the conditions stated or listed in the proviso. Similarly, under **Section 83 (2) of the Evidence Act, 2011** the court is given the undoubted discretion to admit a document notwithstanding the absence of the maker if the court is satisfied that undue delay or expense would otherwise be caused to insist on the production of the maker. The discretion here is of course not granted as a matter of course. The dictates of justice determine how the court exercises its discretion having regard to the entire circumstance of the case.

In the course of tendering these statements the IPO stated that the statements were made by pasteur Fulani who move around with their flock/herds. That they are the nomadic Fulani that move within Nigeria and even West African Countries. That to get them would delay the proceedings of the court and would cost a lot. I note that the makers of two (2) out of three (3) of the statements Abdullahim Ibrahim and Abdulkarim Hassan are Fulani cattle rearers (nomadic Fulani) and these statements were made in 2018, a period of about 5 years now. It is of judicial notice that nomadic fulani's move from place to place in the course of rearing their livestock and at times from country to country. I am satisfied that under the circumstances, this is one situation where to insist on the production of Abdullahim Ibrahim and Abdulkarim Hassan will clearly occasion undue delay as provided by **Section 83 (2) of the Evidence Act, 2011**. Therefore, the objection will be and is hereby overruled.

However, the third statement sought to be tendered is from one Samson G. Sarki a farmer of Pegi village in Kuje Area council of FCT Abuja. The commander Gbagyi Vigilante of Pegi community. The witness PW3 has not stated before this court the whereabouts of Samson G. Sarki or why samson G. Sarki was not called as a witness to tender his statement as the maker. Certainly, the foundation laid by the PW3 that the pasteur fulani's could not be reached and looking for them will cause undue delay cannot avail here as Samson G. Sarki is within the jurisdiction of this court.

Consequently, the court orders as follows;

- i. Statement made by Abdullahi Ibrahim at FSARS on 22/12/2018 is hereby admitted in evidence and marked as Exhibit A3.
- ii. Statement made by Abdulkarim Hassan at FSARS on 23/12/2018 is hereby admitted in evidence and marked as Exhibit A4.
- iii. Statement made by Samson G. Sarki at FSARS on 23/12/2018 is hereby rejected in evidence and marked REJECTED.

Parties: Defendant is present.

Appearances: S. I. Nwafoaku appearing with V. C. Osuji for the prosecution.
Sunday Onubi appearing with E. A. FariOkubeya for the Defendant.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
24TH MAY, 2023**