

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
DELIVERED ON THURSDAY THE 20TH DAY OF APRIL 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. FCT/HC/PET/479/2021

BETWEEN

MRS SUSAN ADEBOLA OSUNANYA----- PETITIONER

AND

MR. KOLAWOLE O. OSUNANYA ----- RESPONDENT

RULING

PW1 in proof of her testimony before this court sought to tender 2 photographs. Respondent objected to the tendering of the said photographs on the grounds that the reference of the testimony of PW1 is a 4 bedroom flat as evidenced in the land agreement before the court. That the pictures sought to be tendered have nothing to do with a 4 bedroom apartment but simply shows a gate with an advertisement for sale rather than a 4 bedroom flat. Counsel concluded that oral evidence cannot be used to vary the contents of a written document.

Having listened to both counsel, I do agree with Respondent that oral evidence cannot be used to vary, contradict or alter the contents of a documentary evidence. The documentary evidence being referred to by Respondent Counsel is the land agreement before the court. On the other hand, Plaintiff Counsel in tendering these pictures had asked the questions which elicited the answer as summarized below.

Q: In paragraph 3 of your second statement on oath, you referred to the copies of the photographs you took of the property.

A: There is a sign “for sale” on the property and the other one has a sign with “not for sale”

I have looked at the said paragraph 3 of PW1 witness statement on oath and I will reproduced it below paragraph 3

“That I am aware that the cross-petitioner, made several attempts to dispose off (sic) the property which we jointly own at Juwape, by putting up a “for sale sign” which I countered by putting a “not for sale sign” (copies of the photograph are attached herein).

I have looked at the pictures sought to be tendered and it shows a gate leading to a property with a sign post suggesting property is for sale and another boldly written sign stating “property not for sale” but the said 4 bedroom property was not visible in the photograph. The photographs indeed prove that a sign suggesting property is for sale and another not for

sale is written on the gate of a property as evidenced in paragraph 3 of the witness statement on oath of PW1. On the other hand, the picture of the property is not visible in the photograph. It is not in doubt that PW1 pleaded that a sign suggesting property is for sale and another sign stating that property is not for sale is placed on the front of this property and the fact that the property was not visible at the background of the picture does not make the pictures inadmissible. It is trite that once facts that will render a document admissible are pleaded it becomes admissible so far as it passes every other law guiding its admissibility. With respect to these pictures, I do not consider these pictures inadmissible in evidence but being picture that satisfies a part of the pleading of the PW1 (i.e. the for sale and not for sale sign) but failed to capture the property in question simply goes to the probative value as admissibility and weight are two different things see **OMEGA BANK NIG LTD VS OBC LTD (2005) 8 NWLR (PRT. 928) 547; (2005) LPELR – 2636 (SC)** where Niki Tobi (JSC) held as follows:

“In the hierarchy of our adjectival laws probative value comes after admissibility. And so, a document could be admitted without the court attaching probative value to it. Basically, admissibility and weight to be attached to the document admitted are two different things.

Having laid evidence in support of her pleadings that there are two signs on the said property one suggesting property is for sale and the other stating that property is not for sale. I am inclined to admit the pictures in evidence. The probative value to be attached to the photographs will arise from facts in support of the said pictures.

Parties: Petitioner is present. Respondent is absent.

Appearances: Rex Erameh appearing for the Petitioner. Promise Mbani appearing for the Respondent.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
20TH APRIL, 2023**