IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
ON MONDAY THE 4TH OF DECEMBER, 2023

SUIT NO: FCT/HC/CV/198/2019

BEFORE HER LORDSHIP: HON. JUSTICE A.I. AKOBI

BETWEEN

ATAGUBA ABOJE SOLOMON……CLAIMANT

AND

GUARANTY TRUST BANK……DEFENDANT

R U L I N G

In the course of leading evidence in chief on the 04/05/2023, the learned counsel to the claimant O.H. Okene sought to tender through his witness- the claimant on record: (a) an email dated 25/04/23, another dated (b)26/4/23 and (c) Mr. aomomayowa witness statement oath. The defence counsel C.J. Abengowe objected to the admissibility of these documents on the ground that the emails are documents made by an interested person during the pendency of the trial. He posited that the suit was commenced on 2018 while the documents were made in April 2023. He cited some authorities including section 83(3) of the Evidence Act.

On the second document which is witness statement on oath of Mr. Omomayowa; his contention on this is that the witness statement on oath was made before the amendment of statement of defence.

Hence, that whatever stood before no longer exist. The court is urged to reject the documents as it is no longer relevant.

In response, the claimant relied on section 1 of the Evidence Act and submitted that relevancy is the hallmark of admissibility. He added that having pleaded the documents, the best evidence is by tendering it in evidence. The court is urged to admit the documents.

I have listened to the submissions of counsel on both sides and the authorities cited; Section 83 (3) of the Evidence Act state thus:

"Nothing in this Act shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

Having critically examined the content of the email in question; that dated 25/04/2023 and the other dated 26/04/23 vis-à-vis the writ of summons and the statement of defence, I concede that the email were actually made during the pendency of the suit. But the information or facts contend therein in my opinion and I so hold is not capable of establishing the facts of the dispute between the parties. I therefore overruled the objection of the defence in respect of the emails.

On whether the witness statement on oath made before the amendment of the statement defence should collapse due to the amendment? I do not think so. The said witness statement on oath was adopted evidence led and the case was close before the witness was recalled to testify. A witness statement on oath is the evidence of the witness reduced into writing and usually sworn before a Commissioner for Oaths; once adopted in the proceedings, it transforms to the evidence in chief of the witness. See **Registered Trustee of Roman Catholic Mission of Onitsha v, Edoziuno (2021) LPELR- 56188 (CA).** Hence, I do not think witness statement on oath

will due to the amended of the statement of defence because it is not pleading. I therefore disagree with the submission of the defence counsel and overruled the objection. I admit the emails accompanied with certificated of compliance marked them as exhibits G1 and G2 respectively while the witness statement on oath before amendment exhibit H.

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HON. JUSTICE A.I AKOBI
04/12/2023