

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
ON MONDAY THE 6^H NOVEMBER, 2023**

SUIT NOT: FCT/HC/CR/285/2021

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

BETWEEN

COMMISSIONER OF POLICE.....COMPLAINANT

AND

JOSEPH EKONG.....RESPONDENT

R U L I N G

In the course of continuation of trial on the 13/06/2023, the lead prosecuting counsel Chinyere Moneme Esq sought to tender some documents in evidence through his witness ASP Paul Anyebe; the defense counsel Chief S.M. Essienekak opposed the tendering and admissibility of the statement of the accused person on the ground that it was not obtained voluntarily.

The counsel also raised objection to the admissibility of the statement of Josephine Joseph on the ground that the witness in the witness box is not the maker of the document and so cannot be cross examine on the content of the document and that there is no

evidence as to the where about of the maker. The counsel referred the court to section 83(a & (b) of the Evidence Act.

The defense counsel further raised objection to a document written 'dear Dad', he premised his objection of this document on the fact that it is a photocopy and that no proper foundation as to the where about of the original was given. Furthermore, that the document is not dated and not signed; hence, the court is urged to reject the document in evidence.

In response, the prosecuting counsel referred the court to the proviso of the same section 83 of the Evidence Act cited by the defense and that the court should take judicial notice of the record of the court that the victim cannot be found. On the issue of photocopy of a document written 'dear dad', the reaction of the counsel is that a proper foundation was laid when it was stated that the police could not lay their hands on the original; beside that, she contended that the document is relevant to the determination of this case. Cited **Elias v. FRN (2021)16 NWLR (PT.551)**. On matter of signature, it is the contention of the prosecuting counsel that signature could be the name of the author or a mark. Cited **Kwara State Teaching Commission v. GTB Plc (2021)9 NWLR (PT.1782)546 pars B-D**.

I have carefully listened to the arguments and submissions of the parties on the admissibility or otherwise of the above stated documents. When the defense counsel raised objection to the admissibility of the statement of the defendant on ground of

involuntariness, the prosecuting counsel called for the conduct of trial within trial which is the right way to go. See section 29(1), (2) & (3) of the Evidence Act. In the light of the above statutory provision, the court shall proceed to conduct trial within trial in respect of the statement of the defendant sought to be tender.

On the issue that the witness before the court is not the maker of the statement of Josephine Joseph as such the document cannot be tender through him because he will not be liable to cross examination, is to a certain extent in law true. However, it is not in all cases that the document must be tender through the maker. For proper appreciation and ease of reference I considered it pertinent to reproduce the relevant part of section 83 of the Evidence Act relied upon by the parties.

Section 83(1): In any proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document which seems to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied:-

- (a) If the maker of the statement either –
 - (i) Had personal knowledge of the matter dealt with by the statement, or
 - (ii) Where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with by it

are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

- (b) If the maker of the statement is called as a witness in the proceedings;

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Nigeria and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

It is crystal clear from the above provision of the law that this document is admissible under section 83(1)(a)(i) & (ii) of the Evidence Act. The defence did not prove to the court that the maker of the document do not have personal knowledge of the matter dealt with in the statement neither did he show that the document did not form part of the continuous nor that the statement was not recorded during the performance of duty of the witness. Assuming though not conceding that the maker must be call, the record of this court had revealed that all effort to find the maker of that document failed. And by the proviso of section 83 of the Evidence Act, such document is admissible. I therefore agree

with the prosecuting counsel that the document made by Josephine Joseph is admissible under section 83 of the Evidence. I hereby admit the document and marked it as **Exhibit D1**

On the document written '**dear dad**': the defense counsel premised the objection of this on the fact that is a photocopy and no foundation was laid for its admissibility; beside that, that the document has no signature and not dated. The contents of a document may be proved either by primary or by secondary evidence. A primary evidence of a document is the original copy of the document. (See Sections 85 and 86 of the Evidence Act). The law is well established that secondary evidence can only be give when a proper foundation of the where about of the original is given. It is in evidence that the alleged victim wrote this note gave the prosecuting agent a photocopy and the witness testified that they cannot lay their hands on the original. That means in my view that the original cannot be found which substantially met the requirement of section 89(c) of the Evidence Act.

The other arm of objection is that there is no signature on the document. The Black's Law Dictionary 8th edition defined signature to means a person's name or mark written by that person or at the person's direction. See **Ngun v. Mobil Producing Nig. UnLtd (2013)LPELR-20197 (CA)**. After writing the note, the author wrote her name which signifies proper authentication of the document. That in law represents signature.

The final ground of objection is the contention that the document written 'dear dad' is undated. It is desirable for documents to be dated and it has been held in most judicial pronouncement that unsigned and undated documents has no evidential value. However, it is not all documents not dated that are void. Where the content of a document requires commencement date or a time bar such documents must be dated. I do not think it will be appropriate to place this document written by one Josephine an alleged victim to the father complaining of unfair treatment in the same pedestrian. More so, I considered this document as relevant, and relevancy being the hallmark of admissibility I hereby overruled the objection and admit the document marked it as **exhibit D2**.

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HON. JUSTICE A. I. AKOBI
06/11/2023