

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
ON THURSDAY THE 19TH OCTOBER, 2023**

SUIT NO: FCT/HC/GWD/CV/89/2019

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

BETWEEN

1. MR. MATHAIS HABAKKUK BARAU 2. MR. SIMAN BARAU 3. MRS RHODA BARAU	} CLAIMANTS
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AND

1. HAUWA DEBI BARAU HABAKKUK 2. MISS FAITH SHEGNEMI HABAKK (Suing through her Guardian and Lilem, Hauwa Debi Habakkuk) 3. THE CHIEF REGISTRAR & PROBATE REGISTRAR HIGH COURT OF FCT	} DEFENDANTS
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R U L I N G

This matter came up on the 03/07/2023 for continuation of hearing, wherein the last witness (PW4) of the claimant gave evidence. Julius Angbashim Esq represented the claimants while D.A. Atakugba Esq stands in for the 1st and 2nd defendants. The 3rd defendant was not in court and not represented despite evidence of proof of service of hearing notice for the proceedings of the day. Mr. Rhoda Barau, the 3rd claimant on record gave evidence as PW4 in Gbagi language

and same was interpreted by one Sani Mohammed who was under oath to interpret the proceedings correctly from English to Gbagi and vis-versa. The first thing the witness did was to identify her witness statement on oath through her passport photograph and her thumb print and then urged the court to adopt it as her evidence in the matter.

In the course of evidence in chief, the learned counsel Mr. Angbashim sought to tender some documents through the witness. Counsel to the 1st and 2nd defendants, D.A. Atakugba objected to the admissibility of some of the documents the reason for which this ruling is being delivered. The documents are:

- a. A hand written document on letter head of Etsu Bako's palace dated 31/08/2014 headed 'a case between Mrs. Habaku and Mr. Caleb and his family.
- b. A CTC plaint with some pages of record of proceedings of Customary Court of FCT Chukuku pleaded at page 28 of the witness statement on oath.
- c. A photocopy letter from a law firm of Samuel O. Oche dated 08/10/2018 address to the Honourable Acting Chairman of Independent Corrupt Practices and Other Related Offences titled: **RE:INVESTIGATION ADCTIVITIES/NOTICE OF INVITATION**. It is pleaded at page 42 of the witness statement on oath.
- d. A cash receipt of N500, 000,00 for professional fees

In raising objection to the admissibility of a photocopy letter from Samuel O. Oche to ICPC (c above), Mr. Atakugba argument is that the document is a public document and that in line with section 102 of the Evidence Act 2011, only a CTC of it is admissible, whereas, the document before the court is not a CTC, he therefore urged the court to reject the document.

Mr. Angbashim promptly reacted to the objection and argued that the said document is not a public document but a private document under the custody of a citizen which does not require certification. And that being a private document and a photocopy, what is required is to lay a proper foundation which he says was done in the witness statement on oath.

For the plaintiff, the 1st and 2nd defendants have no objection to admitting it in evidence; however, their grouse is what they term the supposed record of proceeding. The argument is that it is a single page document with no suit number or parties to the suit and that it has no signature. He added that the mere certification of the document does not make the document a record of proceedings; hence the court is urged to reject the document.

In response to this, Mr. Angbashim submission is that the plaint note and civil summon together are part of the record of proceedings, all signed by the registrar and properly certified in line with the provision of the Evidence Act (**sections 104 and 105**). He concluded that because it is not a judgment, it does not require the signature of the judge; the court is called upon to discountenance the objection.

For the document from Bako's Palace, Mr. Atakugba referred to it as a documentary hearsay as the 3rd claimant which the document is sought to be tendered through cannot be proved by 3rd claimant (PW4).

The reaction of Mr. Angbashim to the document from Bako's Palace is that the law allows a document to be tender not necessarily through the maker and that if there is the need to cross examine the maker, he can be subpoena to appear before the court. He submitted that there is a change to the law that a document must not only be tender through a maker.

The Court is also urged not to admit the receipt for professional fees on the ground that it is an altered document. I am referred to section 86(1) of the Evidence Act.

In response, it is said the receipt was long altered before it was frontloaded and that it would have been otherwise if the alteration was done after the frontloading. Furthermore, that the court is not concern on where and how a document is gotten but on the relevancy.

I have carefully gone through the documents in issue, the arguments and submissions of the parties. For the photocopy of the letter from Samuel O Oche addressed to ICPC, the document is written by a private law firm to a public institution, the copy of the document sought to be tender is not from the custody of the public institution (ICPC) but from the custody of private person. It is therefore not a

public document. It would have been otherwise if the document came from the custody of the ICPC; Section 102 of the Evidence Act is not applicable in this case. I therefore agree with the counsel to the claimants that this document is a private document and does not require certification; and a proper foundation is laid by the witness and is pleaded. I hereby admit the document and marked it as **Exhibit F**

For the plaint and other record attached, I took time to carefully go through the document in question and I found in it what constitute record of proceedings of a court. The document emanated from Customary Court of FCT Chukuku, Kuje Area Council, the parties are **Hauwa Debi Habaku and Usman Sule Yusuf & 3 ors with suit no: CV/03/18**. The document being a public document is certified in line with section 104 of the Evidence Act and in my view a proof that the document came from the custody of a public officer. The objection is overruled and the document is admitted as **exhibit G**

For Cash receipt: the purpose of tendering the document is to prove that the claimant engaged the service of the legal practitioner to prosecute this case, the alteration from Ayam Michael to Angbashim Julius does not affect the substance of the receipt and the court is not misled by that alteration, based on its relevancy I hereby admit and marked it as **exhibit H**.

For the document from Bako Palance, I did not buy into the submission of the claimant that the principle of tendering documents through the maker is an ancient one; moreover, I cannot attached any

relevancy to the document in the determination of this case, the document is hereby **rejected**.

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HON. JUSTICE A. I. AKOBI
19/10/2023