

SUPREME COURT OF NIGERIA
FRIDAY 11TH JULY, 2003. SC. 167/1999
CORAM:- U. MOHAMMED, A. I. KATSINA-ALU,
A. O. EJIWUNMI, N. TOBI, D. O. EDOZIE, JJSC

THE HON. JUSTICE E. O. ARAKA APPELLANT
AND
THE HON. JUSTICE DON EGBUE RESPONDENT

EVIDENCE - Public documents - Admissibility - By the provision of s. 97(2)(c) Evidence Act - The only acceptable secondary evidence - Is a certified true copy of the document (H1)

STATUTES - Interpretation - Principles - Where a court is exposed to a general and a specific provision - The court will fall upon the specific provision - In the event of apparent conflict (H2)

EVIDENCE - Public documents - Evidence Act s.97(2)(c) - Purpose - The section seeks to ensure authenticity of the document - Tendered viz -a-viz the original (H3)

STATUTES - Interpretation - Literal rule - Where the words used are clear and unambiguous - Court must give same their simple meaning (H4)

JUDICIAL PRECEDENTS - Foreign authorities - Binding nature - Foreign decisions are of persuasive nature - And may be invoked by Nigerian courts where applicable (H5)

FACTS

Plaintiff/appellant sued defendant/respondent before the High Court of Lagos State claiming the sum of N10m as damages for libel by reason of a letter dated 10th September 1984, written by respondent concerning appellant in the way of his office as Chief Judge of Anambra State. In the course of trial, appellant called one Kingsley Ngwu Udoh, a legal practitioner, as witness. The witness testified that he was representing the principal secretary to the Executive Governor of Enugu State who was subpoenaed to tender documents in

the court. After saying that the original letter could not be found, witness tendered a photocopy thereof through counsel for appellant.

Counsel for respondent objected on the ground that the letter being a public document can only be admitted in evidence if it is a certified true copy of the original as required by sections 96 (1) (e) and 96 (2) (c) of the Evidence Act Cap. 62, L.F.N., 1958, now section 97 (1) (e) and (2) (c) of Cap 112, L.F.N., 1990. The learned trial judge overruled the objection and held that the original having been lost, any secondary evidence of the document was admissible under section 96 (1) (c) and 96(2) (a) of Evidence Act, Cap 112. Accordingly the photocopy was admitted as Exhibit 1. Aggrieved, respondent appealed to Court of Appeal which court allowed the appeal and reversed the decision of the trial court. Dissatisfied, appellant filed appeal at Supreme Court.

ISSUE FOR DETERMINATION

“Whether the provision of Section 97(2)(c) is applicable in a case where the original of a public document is lost and cannot be found or where such document has been destroyed and is no longer in existence.”

HELD (Unanimously dismissing the appeal per **TOBI JSC**)

Public documents - Admissibility

1. It is clear from the provision of Section 97(2)(c) that the only acceptable secondary evidence of a public document is a certified copy of the document. The subsection has put the position precisely, concisely and beyond speculation or conjecture by the words “but no other kind of secondary evidence is admissible”. This provision is clearly in contradistinction to the provision of Section 97(2)(a) of the Act which admits any secondary evidence of the contents of the document.

As indicated above, Section 97(2)(c) contains the words “but no other kind of secondary evidence is admissible”. The word “but” in the context, as a conjunction, means “against what might be expected; in spite of this”, and the word is followed by the specific negative expression “no other kind of

secondary evidence is admissible.” Can this court give another interpretation to the very clear words in Section 97(2)(c)? I think not. (pp. 2121 F/ & 2122 A)

STATUTES - Interpretation - Principles

2. It is merely saying the obvious that Section 97(1)(c) comes before Section 97(1)(e). This obvious statement is made to score a less obvious point and it is that the draftsman was clearly conscious of Section 97(1)(c) before he added Section 97(1)(e). There is also the related issue and it is that where a court of law is exposed to two provisions, one general and the other specific, the court will fall upon the specific provision in the event of an apparent conflict. This principle of interpretation may not even apply here because there is no conflict between the provisions of Sections 97(1)(c) and 97(1)(e). (p. 2122 C)

Public documents - Evidence Act s.97(2)(c) - Purpose

3. One main objective behind Section 97(2)(c) of the Evidence Act is to ensure the authenticity of the document tendered vis-à-vis the original. This is in addition to the need for the preservation of public documents. In this age of sophisticated technology, photo tricks are the order of the day and secondary evidence produced in the context of Section 97(2)(a) could be tutored and therefore not authentic. Photo tricks could be applied in the process of copying the original document with the result that the copy, which is secondary evidence, does not completely and totally reflect the original and therefore not a carbon copy of the original. The court has not the eyes of an eagle to detect such tricks. (p. 2124 A)

STATUTES - Interpretation - Literal rule

4. The duty of the court is to interpret the words contained in the statute and not go outside the words in search of an interpretation which is convenient to the court or to the parties or one of the parties. Even where the provisions of a statute are hard in the sense that they will do some inconvenience to the parties, the court is bound to interpret the provisions once

they are clear and unambiguous. It is not the duty of the court to remove the chaff from the grain in the process of interpretation of a statute to arrive at favourable terms for the parties outside the contemplation of the lawmaker. That will be tantamount to traveling outside the statute on a voyage of discovery. This court cannot embark upon such a journey.

The primary function of the court is to search for the intention of the lawmaker in the interpretation of a statute. Where a statute is clear and unambiguous, as it is in this case, the court in the exercise of its interpretative jurisdiction, must stop where the statute stops.

Courts of law follow the literal rule of interpretation where the provision of the statute is clear and no more. And that is the position in this appeal. (pp. 2124 E/ 2125 B)

JUDICIAL PRECEDENTS - Foreign authorities - Binding nature
5. In Prince Adigun v. The Attorney-General of Oyo State (1987) 2 NWLR (Pt. 56) 197, Karibi-Whyte, JSC., said at page 230:

“This court has reached the stage where it does not regard differences from the highest English or other Commonwealth courts of common law jurisdiction as necessarily suggesting that it is wrong.”

I should not be misunderstood as saying that foreign decisions, including Indian authorities, cannot be used by this court. No, that is not the point I am making. Foreign decisions will continue to be useful in the expansion of the frontiers of our jurisprudence, but this court cannot invoke such decisions where it thinks they are contrary to the judgments of the court which are correctly decided. Of course, this court will not hesitate to use any foreign decision if it is correct, even though contrary to our decision, if the court comes to the conclusion that its decision is wrong. In such a case, this court will, in the light of the foreign decision, overrule itself and choose to go by the foreign decision which is correctly given. Subject to the above, the state of the law that foreign decisions are of persuasive authority will remain for all time and forever.

(p. 2125 H)

REPRESENTATION

F. R. A. Williams (Jnr.), for the Appellant
Dr. Gbolahan Elias, for the Respondent

CASES REFERRED TO

Ekeogu v. Aliri (1991) 2 NWLR (Pt. 179) 258
Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377
Nwangwu v. Duru (2002) 2 NWLR (Pt. 751) 265
Berliet (Nig.) Ltd. v. Kachalla (1995) 9 NWLR (Pt. 420) 478
Adisa v. Oyinwola (200) 6 S.C. (Pt. II) 47
Ogualaji v. A-G Rivers State (1997) 6 NWLR (Pt. 508) 224
Savannah Bank v. Ajilo (1989) 1 S.C. (Pt. II) 90
Amokeodo v. I.G.P. (1999) 5 S.C. (Pt. II) 1
African Newspapers Ltd. v. The Federal Republic of Nigeria (1985) 2 NWLR (Pt.6) 137
Adewunmi v. A-G Ekiti State (2002) 1 S.C. 47

STATUTES REFERRED TO

Evidence Act Cap. 62 L.F.N. 1958, ss. 96(1) (e) and 96(2) (c)
Evidence Act Cap. 112 L.F.N. 1990, ss. 97(1) (e) and (2) (c)

BOOKS REFERRED TO

Ratanlal and Dhirajlal, The Law of Evidence 17th Ed. 1987, pp. 172-173
Sakar's Law of Evidence 15th Ed. Pp. 1077, 1100 and 1101

LEAD JUDGMENT BY TOBI JSC

This appeal involves a fairly narrow area of our adjectival law. It has to do with the interpretation or construction of Section 97(2)(c) of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990.

The facts of the case are not in controversy. They are very well set out in the appellant's brief. It is an action on libel. The appellant, as plaintiff, filed an action claiming the sum of N10 million as damages for libel against the respondent in a letter dated 10th September, 1984, written by the respondent concerning the appellant and in the way of his office as Chief Judge of Anambra State.

By their pleadings the parties joined issues and the matter went to trial. Appellant opened his case on 9th October, 1992, by calling Kingsley Ngwu Udoh, a legal practitioner, as his first witness. The witness testified that he was representing the Principal Secretary to the Executive Governor of Enugu State who was subpoenaed to tender documents in the court. After saying that the original letter dated 10th September, 1984, addressed to the Military Governor of Anambra State could not be found, witness tendered a photocopy of the letter through counsel for the appellant. Counsel for the respondent objected on the ground that the letter being a public document can only be admitted in evidence if it is a certified true copy of the original as required by Sections 96(1)(e) and 96(2)(c) of the Evidence Act, Cap. 62, Laws of the Federation of Nigeria and Lagos, 1958, now Section 97(1)(e) and (2)(c) of Cap. 112 of the Evidence Act, 1990.

The learned trial Judge, Omotosho, J., of blessed memory, overruled the objection and held that the original of the letter dated 10th September, 1984, having been lost, any secondary evidence of the lost document is admissible under Section 96(1)(c) and Section 96(2)(a) of the Evidence Act. The document was thereafter admitted as Exhibit 1. Omotosho, J., said at pages 58 and 59 of the Record:

“The situation here is that the original of the public document which has been lost cannot be certified and therefore, since by the combined effect of the provisions of Sections 96(1)(c) and 96(2)(a), a lost document may be proved by any secondary evidence, that provision should avail... I am satisfied that the letter sought to be tendered is from proper custody, that the proper foundation has been laid, that the original of the letter - a public document has been lost. On the reasoning which I have expounded, the original having been lost, it is not possible to certify a copy of it and therefore any secondary evidence of the lost document is admissible under Sections 96(1)(c) and 96(2)(a) of the Evidence Act.”

Dissatisfied, the respondent, as appellant, went to the Court of Appeal. That court reversed the decision of the learned trial Judge. Uwaifo, JCA., (as he then was), said at pages 170 and 171 of the Record:

“I see nothing contrary to any canon of interpretation to insist on what the law says in Section 97(2)(c) of the Evidence Act that as

far as a public document is concerned, the secondary evidence admissible is a certified copy of the document, but no other kind of secondary evidence. This is bound to be so from the plain language. Any other provision in the said Act which makes any secondary evidence of a lost document admissible must be interpreted not to include a public document so as not to derogate from its special provision.” B

Dissatisfied, the appellant filed this appeal at the Supreme Court. Briefs were filed and exchanged. The appellant formulated the following issue for determination:

“Whether, in a case where the original of a public document is lost and cannot be found or where such document has been destroyed and is no longer in existence, any secondary evidence of such document (other than a certified true copy thereof) is admissible in evidence.” C

Appellant formulated the following issue in the alternative:

“Whether the provision of Section 97(2)(c) is applicable in a case where the original of a public document is lost and cannot be found or where such document has been destroyed and is no longer in existence.” D

The contents of the two issues formulated in the alternative are the same. The second one merely introduces the applicable section, which makes it more exact.

The respondent formulated the following issue for determination:

“Whether the Court of Appeal was right in holding that under Section 97(2)(c) of the Evidence Act relating to tendering in evidence secondary evidence of a public document, the only admissible evidence regarding such is the certified copy of such document and no other kind of secondary evidence.” E

Learned counsel for the appellant, Mr. F. R. A. Williams (Jnr.), submitted that subsection (1) of Section 97 of the Evidence Act sets out the various classes of cases in which secondary evidence may be given of the existence, condition or contents of a document. The two which are relevant are (c) when the original has been destroyed or lost and in the latter case all possible search has been made for it, and (e) when the original is a public document within the meaning of Section 109 of the Act. Learned counsel submitted that the docu- F

ment tendered in the case falls within both (c) and (e) above.

Learned counsel contended that where an original document is destroyed or irrecoverably lost, the best that can be done is to procure the most credible evidence available of the contents of that original, and in terms of Section 97(2)(a) any secondary evidence of the contents of the document is admissible. To insist that because the document is a public document, then a certified copy of the document, but no other kind of secondary evidence must be produced, is to insist on the impossible, learned counsel argued.

Counsel urged the court to hold that the true intention of the Legislature is not to enact that once a public document has been stolen or fraudulently extracted from public records, or destroyed, or once it is otherwise missing and no longer available, the contents of such a document can never be proved in any court of law. That is a construction which would lead to injustice and which the court ought to avoid, counsel contended. He submitted that where a public document is lost and cannot be found or where such document has been destroyed and is no longer in existence, the provision of Section 97(2)(c) of the Evidence Act does not apply. In other words, any secondary evidence of the document which is confirmed by the custodian of the public document is admissible, counsel submitted. He cited some Indian authorities: C.P.N. Singh v. B.P.N. Singh (1927) AIR Pat. 61; Veerasetty v. Nanchudachari (1955) AIR Mys. 139; Bibi Aisha v. Bushar S.S.M. Avagaj (1969) AIR SC 253; The Law of Evidence, 17th Edition 1987 by Ratanlal and Dhirajlal, pages 172 - 173 and Sarkar's Law of Evidence, 15th Edition by Sudipo Sarkar and V.R. Manohar, pages 1077, 1100 and 1101. He urged the court to allow the appeal.

Learned counsel for the respondent, Dr. Gbolahan Elias, said that the crux of the appeal before this court is whether under Section 97(1)(e) and (2)(c) of the Evidence Act when secondary evidence of a public document is to be tendered in evidence in court, the photocopy of such public document or a certified true copy of such document is admissible.

He submitted that the combined effect of Section 97(1)(e) and (2)(c) of the Evidence Act is that the only secondary evidence admissible in respect of an original of a public document is a certified true copy of the document and no other kind of secondary evidence. The

language of Section 97(2)(c) is plain, very clear, unambiguous and admits of only one meaning that is, only a certified true copy is admissible and no other copy or other kind, counsel contended. He submitted that when the language of a statute is plain and unambiguous, the task of interpretation can hardly be said to arise as the plain and unambiguous words used should be given their ordinary meaning. He cited *Ogualaji v. Attorney-General Rivers State* (1997) 6 NWLR (Pt. 508) 224; *Warburton v. Loveland* (1932) (H/L) 589; *Nwangwu v. Duru* (2002) 2 NWLR (Pt. 751) 265 at 281 and *Adewunmi v. Attorney-General Ekiti State* (2002) 1 S.C. 47; (2002) 2 NWLR (Pt. 751) 474. He argued that the contention of appellant in paragraphs 5.1 to 5.3 of his brief negates the provision of Section 111 (1) of the Evidence Act. He relied on *Obomhense v. Erhahon* (1993) 7 NWLR (Pt. 303) 22 at 42; *Awolowo v. Shagari* (1979) 6-9 S.C. 51; *Okumagba v. Egbe* (1965) 1 All NLR 64; *Ifezue v. Mbadugha* (1984) All NLR 256 on the principles of interpretation of statute, particularly when the provisions of the statutes are plain and unambiguous. On the specific provision, counsel cited *Minister of Lands, Western Nigeria v. Dr. Azikiwe* (1969) 1 All NLR 49 at 59.

Counsel submitted that in the Evidence Act, more particularly Section 97(2)(c), the Legislature intended that in cases of public documents, only the certified true copy is admissible. If the legislature had intended a photocopy of a public document to be admissible in evidence where the original is lost or destroyed, it would have made Section 97(2)(c) subject to Section 97(1)(c) and (2)(a) of the Act, counsel reasoned.

It was the submission of counsel that in view of the fact that the copy sought to be tendered was from the file of the Ministry of Justice and the original was available at the time the copy was made before being put in the file at the Ministry of Justice, due certification should have been done at the time the copy was made in accordance with Section 111(1) of the Evidence Act. To counsel, the appellant cannot enlist the aid of the court to cure his failure to do the correct thing.

Learned counsel contended that while Section 97(1)(c) and (2)(a) of the Evidence Act is a general provision dealing with all documents, Section 97(1)(e) and (2)(c) of the Act is a special provision specifically with public documents only and both provisions create

different modes of admitting secondary evidence in proof of the original. He argued that it is a settled rule of construction that where a thing is mentioned in both general and special provisions, only the special provision will apply to it and this rule is expressed in the maxim, *Generalia specialibus non derogant*, meaning that general things do not derogate from special.

Applying the same rule of construction to the suit, it is clear that a public document, though covered by Section 97(1)(c) and (2)(a) of the Evidence Act, has been specifically mentioned again in subsections (1)(e) and (2)(c) of the same section, thereby subjecting it to the latter provision which should in all cases apply to it, learned counsel argued. In other words, whereas Section 97(1)(c) and (2)(a) is a general provision by its nature, Section 96(1)(c) and (2)(c) is a special provision meant to cater for the production and admission in evidence of documents mentioned therein, counsel added. He cited *Schroder and Co. v. Major and Co. Nigeria Limited* (1989) 2 NWLR (Pt.101) 1.

Counsel submitted that in order to determine the purport and essence of Section 97, the applicable rule of construction is the *Mischief Rule*. He cited the cases of *International Bank for West Africa Limited v. Imano (Nigeria) Limited* (1988) 7 S.C. (Pt. III) 114; (1988) 3 NWLR (Pt. 85) 633; *Permanent Trustees Company of New South Wales v. Feis* (1918) AC 879 at 885 and *Anyakora v. Obiakor* (1990) 7 NWLR (Pt.130) 52.

Dealing with the reasons and objectives behind the section, learned counsel submitted that the preservation of the public document is not the only reason behind the section but more importantly the need to ensure the authenticity of the copy of the document sought to be tendered in place of the original. These two conditions, learned counsel contended, are not only interdependent but also inseparable because for the originals of the public document to be preserved as intended by the Act, the court must be convinced that the copy sought to be tendered in its place is an authentic copy of that original. In the same vein, where the original is lost and destroyed there will be nothing to preserve, just as there will be nothing from which it could be established that the copy sought to be tendered is in fact the authentic duplicate of the original as required by the Act, learned counsel argued. He urged the court to dismiss the

appeal.

There is no dispute that the letter dated 10th September, 1984, which was admitted by the trial Judge as Exhibit 1, is a public document within the meaning of Section 109 of the Evidence Act, being letter emanating from the office of the Attorney-General of Anambra State who qualifies both as a public officer and a member of the executive. As no issue was joined on this, I shall not take it any further.

I go to Section 97 of the Act. The section provides in part:

“97(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases.....”

(c) when the original has been destroyed or lost and in the latter case all possible search has been made for it

(e) when the original is a public document within the meaning of Section 109 of this Act.....”

(2) The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of subsection (1) of this section is as follows:

(a) in paragraphs (a), (c) and (d) any secondary evidence of the contents of the document is admissible.....”

(c) in paragraphs (e) or (f) a certified copy of the document, but no other kind of secondary evidence, is admissible.....”

Exhibit 1, being a public document, the applicable provision in the first instance is Section 97(1)(e) and (2)(c) of the Act. In the second instance, Section 97(1)(c) and (2)(a) will also be examined in the light of the facts of the case and submission of counsel.

It is clear from the provision of Section 97(2)(c) that the only acceptable secondary evidence of a public document is a certified copy of the document. The subsection has put the position precisely, concisely and beyond speculation or conjecture by the words “but no other kind of secondary evidence is admissible”. This provision is clearly in contradistinction to the provision of Section 97(2)(a) of the Act which admits any secondary evidence of the contents of the document. In my humble view, Section 97(2)(a) anticipates private documents within the very vague meaning of Section 110 of the Act. In other words, while Section 97(2)(c) provides for public documents, Section 97(2)(a) provides for private documents, which Section 110

simply defines as all other documents which are not public documents.

As indicated above, Section 97(2)(c) contains the words “but no other kind of secondary evidence is admissible”. The word “but” in the context, as a conjunction, means “against what might be expected; in spite of this”, and the word is followed by the specific negative expression “no other kind of secondary evidence is admissible.” Can this court give another interpretation to the very clear words in Section 97(2)(c)? I think not.

It is merely saying the obvious that Section 97(1)(c) comes before Section 97(1)(e). This obvious statement is made to score a less obvious point and it is that the draftsman was clearly conscious of Section 97(1)(c) before he added Section 97(1)(e). There is also the related issue and it is that where a court of law is exposed to two provisions, one general and the other specific, the court will fall upon the specific provision in the event of an apparent conflict. This principle of interpretation may not even apply here because there is no conflict between the provisions of Sections 97(1)(c) and 97(1)(e).

The provisions have been interpreted by the courts. I can take a few of the decisions. In *Minister of Lands, Western Nigeria v. Dr. Azikiwe* (1969) 1 All NLR 49, Coker, JSC., said at page 59:

“We have already pointed out that the original of the document. Exhibit 2, is a public document and indeed it is so within the meaning of Section 108 of the Evidence Act. Section 96(2) of the Evidence Act prescribes the type of secondary evidence which may be given in the several cases therein set out and Section 96(2)(c) provides as follows:

96(2) The secondary evidence admissible in respect of the original document referred to in the several paragraphs of subsection (1) is as follows:

(d) in paragraph (e) or (f) certified copy of the document, but no other kind of secondary evidence, is admissible....

The combined effect of the subsections is that in the case of public documents the only type of secondary evidence permissible is a certified true copy of the document and none other. The document now marked Exhibit 2 is not a certified true copy but a photo-

stat copy and it is therefore inadmissible as secondary evidence of a public document which it purports to be. There was no objection to its admissibility when it was produced but it is not within the competence of parties to a case to admit by consent or otherwise a document which, by law, is inadmissible.”

In Onobruhere v. Esegine (1986) 1 NWLR (Pt. 19) 799, the appellants challenged the admissibility of Exhibits E, E1 and E2, which were uncertified copies of original documents of Official Record (including judgments). This court held that unless duly certified, Exhibits E, E1 and E2 are inadmissible as they are copies of official records (Exhibits E1 and E2 being judgments). Upon failure to produce the primary evidence, a party relying on secondary evidence of them must tender certified true copies. In his leading judgment, Oputa, JSC, said at page 808:

“Exhibit E will be admissible under Section 93(1) of the Evidence Act if it is the original. The court below did not admit Ex. E as an original document. Exhibit E itself ex facie testifies to the existence of the original in the Court Record Book. Even if Ex. E were admissible under Section 96(2)(c) it should be a certified copy of the original in the Court Record Book..... Whether one proceeds under Section 96(2)(c) or Section 110 or 111 of the Evidence Act, Ex. E has to be certified to be admissible as secondary evidence. It was not so certified. Exhibit E was therefore wrongly admitted.

Exhibit 1 and Ex. 2 ex facie purport to be judgments If these two judgments are to be tendered, Section 131(1) of the Evidence Act makes the Record Book itself the primary evidence. Failing to produce the primary evidence, a party relying on Exhibits E1 and E2 will at least tender admissible secondary evidence of these two judgments. Such secondary evidence will necessarily be certified true copies. Exhibits E1 and E2 do not purport to be certified true copies. They were therefore wrongly admitted..... Exhibits E, E1 and E2 were plainly inadmissible and the court below was in error in holding that they were rightly admitted.”

Similarly, in Nzekwu v. Nzekwu (1989) 3 S.C. (Pt.II) 76, (1989) 2 NWLR (Pt. 104) 373, this court held that a judgment of a court being a public document within the meaning of that expression in Section 108 of the Evidence Act and because of the combined effect of Section 96(1)(e) and (2)(c) of the Evidence Act, 1958, the sec-

ondary evidence admissible in respect of the original document constituting the proceedings and judgment of a court is a certified true copy of the document but no other kind of secondary evidence.

One main objective behind Section 97(2)(c) of the Evidence Act is to ensure the authenticity of the document tendered vis-à-vis the original. This is in addition to the need for the preservation of public documents. In this age of sophisticated technology, photo tricks are the order of the day and secondary evidence produced in the context of Section 97(2)(a) could be tutored and therefore not authentic. Photo tricks could be applied in the process of copying the original document with the result that the copy, which is secondary evidence, does not completely and totally reflect the original and therefore not a carbon copy of the original. The court has not the eyes of an eagle to detect such tricks.

The fulcrum or crux of the submission of learned counsel for the appellant is that Section 97(2)(c) should be interpreted to accommodate a situation where the original of a public document is lost and cannot be found or destroyed and is no longer in existence. Will such a construction vindicate the well established canon of statutory interpretation in our jurisprudence? Let me examine a bit of the law in the area of statutory interpretation. **The duty of the court is to interpret the words contained in the statute and not go outside the words in search of an interpretation which is convenient to the court or to the parties or one of the parties. Even where the provisions of a statute are hard in the sense that they will do some inconvenience to the parties, the court is bound to interpret the provisions once they are clear and unambiguous. It is not the duty of the court to remove the chaff from the grain in the process of interpretation of a statute to arrive at favourable terms for the parties outside the contemplation of the lawmaker. That will be tantamount to travelling outside the statute on a voyage of discovery. This court cannot embark upon such a journey.**

The primary function of the court is to search for the intention of the lawmaker in the interpretation of a statute. Where a statute is clear and unambiguous, as it is in this case, the court in the exercise of its interpretative jurisdiction, must

stop where the statute stops. In other words, a court of law has no jurisdiction to rewrite a statute to suit the purpose of one of the parties or both parties. The moment a court of law intends to rewrite a statute or really rewrites a statute, the intention of the lawmaker is thrown overboard and the court changes places with the lawmaker. In view of the fact that that will be against the doctrine of separation of powers entrenched in the Constitution, a court of law will not embark on such an unconstitutional act. **Courts of law follow the literal rule of interpretation where the provision of the statute is clear and no more. And that is the position in this appeal.**

In *Adewunmi v. Attorney-General of Ekiti State* (2002) 1 S.C. 47; (2002) 2 NWLR (Pt. 751) 474, Wali, JSC, said at page 512:

“In case of statutory construction the court’s authority is limited where the statutory language and legislative intent are clear and plain, the judicial inquiry terminates there. Under our jurisprudence, the presumption is that ill-considered or unwise legislation will be corrected through democratic process. A court is not permitted to distort a statute’s meaning in order to make it conform with the judge’s own views of sound social policy.”

See also *Garba v. Federal Civil Service Commission* (1988) 1 NWLR (Pt.71) 449; *Niger Progress Ltd. v. N.E.L. Corp.* (1989) 4 S.C (Pt.II) 164; (1989) 3 NWLR (Pt. 107) 68; *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt.61) 377, *Savannah Bank v. Ajilo* (1989) 1 S.C. (Pt.II) 90, (1989) 2 NWLR (Pt.57) 421; *Adisa v. Oyinwola* (200) 6 S.C. (Pt. II) 47, (2000) 10 NWLR (Pt.674) 116.

Learned counsel for the appellant has cited quite a number of Indian Authorities on the issue. I have read all of them. They could be of great learning but I do not, with respect, agree with their interpretation of the provision involved in this appeal. In the light of the authorities of this court on the issue, I am unable to throw away those decisions in favour of the Indian authorities. Apart from the fact that I see no reason to do so, the well established principles of stare decisis in our law will not allow me to do so. Foreign authorities of the greatest learning cannot supplant our case law which is rightly decided on issues coming before this court. **In *Prince Adigun v. The Attorney-General of Oyo State* (1987) 2 NWLR (Pt. 56) 197, Karibi-Whyte, JSC., said at page 230:**

“This court has reached the stage where it does not re-

gard differences from the highest English or other Commonwealth courts of common law jurisdiction as necessarily suggesting that it is wrong.”

I should not be misunderstood as saying that foreign decisions, including Indian authorities, cannot be used by this court. No, that is not the point I am making. Foreign decisions will continue to be useful in the expansion of the frontiers of our jurisprudence, but this court cannot invoke such decisions where it thinks they are contrary to the judgments of the court which are correctly decided. Of course, this court will not hesitate to use any foreign decision if it is correct, even though contrary to our decision, if the court comes to the conclusion that its decision is wrong. In such a case, this court will, in the light of the foreign decision, overrule itself and choose to go by the foreign decision which is correctly given. Subject to the above, the state of the law that foreign decisions are of persuasive authority will remain for all time and forever.

This appeal has once again brought to the fore the filing of appeals of an interlocutory nature. While the parties have exercised their constitutional right of appeal, not much could have been lost if the issue before us was taken at the end of the case together with any other ground or grounds of appeal, if the respondent lost out at the end. The action was filed in October, 1985, and we are still on an interlocutory appeal, about eighteen years after. I am not saying that the respondent was wrong in exercising his constitutional right of appeal. I cannot say that. But the point I am making is that a little discretion would have taken this matter lesser period in the courts.

In sum, this appeal fails and it is hereby dismissed. In the circumstances, I hereby order that the case be remitted to the Chief Judge of Lagos State to be tried de novo by another judge. I take judicial notice of the fact that Omotosho, J., who was the trial Judge, is dead. I award N10,000.00 to the respondent.

H

MOHAMMED JSC

I entirely agree. The case of the appellant hinges on the interpretation of the provisions of Section 97 subsection (1)(e) and (f) and subsection (2)(c) of the Evidence Act, Laws of the Federation of

Nigeria, Cap 112, 1990, which read as follows.

97(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

(e) When the original is a public document within the meaning of Section 109 of this Act;

(f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in Nigeria, to be given in evidence;

(2) The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of this subsection (1) of this section is as follows:-

(c) in paragraph (e) of (f) a certified copy of the document, but no other kind of secondary evidence, is admissible;

If there is nothing to modify, nothing to alter, nothing to qualify the language which the instrument contains, it must be construed in the ordinary and natural meaning of the words and sentences - per Lord Halsbury in *St. John Hampstead Vestry v. Coton* (1886) 12 App. Cases I. If the language used in a statute is free from ambiguity and so clear and explicit as to leave no doubt as to its meaning, the court must construe the enactment according to its expressed intention. See *P.D.P. and Anor. v. INEC & Ors.* (1999) 7 S.C. (Pt. II) 30, (1999) 11 NWLR (Pt. 626) 200 and *Nabhan v. Nabhan* (1967) 1 All NLR 47.

Looking at the provision of Section 97(2)(c) of the Evidence Act, it is abundantly clear that the Statute has left no room for me to admit secondary evidence of a public document other than by tendering a certified copy of the document.

This is not the first time court has considered the issue of admission of secondary evidence of a public document. In the case of *Minister of Lands, Western Nigeria v. Azikiwe and Ors.* (1969) NSCC this court held;

“The combined effect of the subsections (e) or (f) is that in the case of public documents the only type of secondary evidence permissible is a certified true copy of the document and none other.”

I have looked at the Indian cases referred to by the appellant's counsel. It is an excellent research conducted by the Chambers of Chief Rotimi Williams, SAN. However, where the intention of the legislature is clear and explicit, the power of the court to travel out-

side on a voyage of discovery is strictly limited. In any event, we are bound to follow the judicial precedent set up by this court under the rule of stare decisis on similar subject matter. It seems to me that the sole guide to the interpretation of the provisions of the Statute in question here is the Statute itself, nothing except an Act of Parliament
B (The National Assembly) can alter the provision enacted therein.

For these reasons, and the fuller reasons in the judgment of my learned brother, Niki Tobi, JSC., which I have had the privilege to read before now, the appeal is dismissed. The judgment of the Court
C of Appeal is hereby affirmed. I also award N10,000.00 costs in favour of the respondent.

KATSINA-ALU JSC

D I have read before now in draft, the judgment delivered by my learned brother, Niki Tobi, JSC., I agree with it and for the reasons given by him I would dismiss the appeal. I hereby order that the case be remitted to the Chief Judge of Lagos State to be tried de novo by another judge. I abide by the order for costs.

E

EJIWUNMI JSC

F I have had the privilege of reading the draft of the judgment just delivered by my learned brother, Niki Tobi, JSC. In that judgment, the main issue in the appeal has been thoroughly examined and I need not add any further reasons for dismissing the appeal. I agree with all the consequential orders made in the said leading judgment of my brother, Niki Tobi, JSC.

G

EDOZIE JSC

H I have had a preview of the lead judgment just read by my learned brother, Tobi, JSC., and I agree with it that the appeal should be dismissed.

The appeal involves the construction of Section 97(2)(c) of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990, relating to the type of secondary evidence admissible to prove the contents of public documents and specifically to the issue whether a

photocopy of the original document is admissible in that regard. Section 97 of the Evidence Act enacts:

“97(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases:-

(e) when the original is a public document within the meaning of Section 109 of this Act...

(2) The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of subsection (1) of this section is as follows:-

(c) in paragraphs (e) or (f) a certified copy of the document, but no other kind of secondary evidence is admissible...”

The cardinal or golden rule of interpretation of statutes is that the words of the statute must prima facie be given their ordinary meaning without importing into them what is not there. In other words, where the words used in an enactment are plain on the face of it, effect must be given to their literal meaning; see *Niger Progress Ltd. v. North East Line Corporation* (1989) 4 S.C (Pt.II) 64; (1989) 3 NWLR (Pt. 107) 68, *Amokeodo v. I.G.P.* (1999) 5 S.C. (Pt.II) 1, (1999) 6 NWLR (Pt. 607) 467 at 482, *Ekeogu v. Aliri* (1991) 2 NWLR (Pt. 179) 258; *Okumagba v. Egbe* (1965) 1 NMLR 62; *African Newspapers Ltd. v. The Federal Republic of Nigeria* (1985) 2 NWLR (Pt.6) 137, *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt.61) 377. In the last of these cases, this court observed -

“If the language used by the legislature is clear and explicit, the court must give effect to it because in such a situation the words of the statute speak the intention of the legislature. The words of the statute must not be overruled by the judge.”

See also *Berliet (Nig.) Ltd. v. Kachalla* (1995) 9 NWLR (Pt. 420) 478 at p.482, *Awolowo v. Shagari* (1979) 6-9 S.C. 51 at 90-93; *Aqua Ltd. v. Ondo State Sports Council* (1988) 10-11 S.C. 31, (1988) 4 NWLR 622 at 641-642.

Guided as I am by the principles enunciated in the above cases, it is my view that Section 97(2)(c) of the Evidence Act (supra) does not admit of any ambiguity. The language is clear, explicit and categorical that the only secondary evidence admissible to prove the existence, condition and contents of a public document is a certified true copy of the original and no other type of secondary evidence.

The main thrust of the appeal appears to be that if the original

of the public document is lost or destroyed thereby rendering the making of a certified copy impracticable, it would be unjust not to admit other form of secondary evidence such as a photocopy of the original document. I share the plight of the appellant but it must be borne in mind that the duty of the court is to expound the law and not to expand it. It is not the function of the court to supply omissions in statutes and thereby embark on judicial legislation; *Olowu v. Abolore* (1993) 5 NWLR (Pt.293) 255 at p.278; *Osho v. Phillips* (1972) 4 S.C. 252. The provision under consideration, that is, Section 97(2)(c) of the Evidence Act (supra) has been judicially considered in several decisions of this court: see the *Minister of Lands, Western Nigeria v. Dr. Nnamdi Azikiwe* (1969) 1 All NLR 49; *Onobruhere v. Esegine* (1986) 1 NWLR (Pt. 19) 799; *Nzekwu v. Nzekwu* (1989) 3 S.C. (Pt.II) 76, (1989) 2 NWLR (Pt. 104) 373 to mention but a few. The decisions in these cases are consistent that only a certified copy is admissible as secondary evidence to prove the contents of a public document. Those decisions cannot be faulted.

In the light of the foregoing and the more detailed reasons given in the lead judgment, I also dismiss the appeal with an endorsement of all the consequential orders contained in the lead judgment.

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