

SUPREME COURT OF NIGERIA
17TH JUNE, 2011. SC. 101/2005
CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F.
TABAI, J. A. FABIYI, B. RHODES-VIVOUR, JJSC

1. TABIK INVESTMENT LTD.
2. CHIEF DR. DAVIDSON OGUOCHA APPELLANTS
AND
GUARANTY TRUST BANK PLC. RESPONDENT

DOCUMENTS - Public document - Application to secure - Evidence Act s. 111 (1) - Condition precedent - Approved legal fees must be paid by person seeking to secure it (H1)

STATUTES - Interpretation - Evidence Act s. 111 (1) - The word "shall" - The word connotes an obligation - Legislation is to be given literal interpretation - Where the wording is straight forward and unambiguous (H2)

DOCUMENTS - Public document - Admission - Evidence Act s. 111 (1) - Condition precedent - Appellants must pay the legal fees stipulated - Without which their documents cannot be admitted in evidence (H3)

FACTS

At the High Court of Federal Capital Territory, Abuja, plaintiffs/appellants contend that 1st appellant (a registered company) maintained a current account with defendant's/respondent's Area 3, Garki Branch, Abuja. On 9th of July 2001, 1st appellant together with its Chairman/Chief Executive caused a draft to be issued from 1st appellant's account (domiciled at respondent's bank) in favour of Professor Michael A. Ajomo as purchase price of a plot of land in Abuja, but the draft was not received by the said beneficiary, but rather it fell into the hand of a fraudster. After the payment they took possession and built a duplex on the land. A year later they discovered that the said draft was cleared from respondent's Kano branch, by a man purporting to be Professor Michael Ajomo, who had opened an account there and lodged the draft. On 13th July, 2001 and 19th July, 2001 respondent allowed the fake Professor Ajomo to

withdrew almost the entire N5,000,000.00 from account No. 182159110 which he had been assigned without verifying his identity.

Appellants claimed that respondent violated the laid down procedure for the opening of account, in the case of this purported Professor Ajomo, and so it was negligent in the opening of the account, and the clearing of the amount in the draft in his favour. Respondent denied most of the above claims and stated that it met the due requirements for the opening of the said account No 182159110, even though the requirement of referee was deferred, which was not alien to banking rules. Respondent denied that it was negligent, but alleged that it was appellants that lacked diligence and care in all the transactions regarding the purchase of the land and the purported conversion of the draft. At the close of pleadings, one witness gave evidence, in the course of which documents were admitted in evidence, in spite of objection by learned counsel for respondent. It is against the admission of the documents that respondent appealed to Court of Appeal, Abuja Division and the appeal was allowed. Aggrieved, appellants have appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was right when it held that it is only when the conditions mentioned in Section, 111(1) of the Evidence Act Cap 112 Laws of the Federation 1990 (including payment of legal fee) have been fulfilled that copies of such public documents so certified shall be called certified copies.

2. Whether the Court of Appeal was right by rejecting the exhibits 'A', 'B', 'B2' and 'B3' documents forming part of records of the police department which was also tendered by the police officer (Pw1) from the same police department.

HELD (Unanimously dismissing the appeal per **MUKHTAR JSC**) **DOCUMENTS - Public - Application to secure**

1. The above provision is very clear on what a person seeking public document should do and what the public officer who is releasing it should also do. Such acts expected of a person desirous of securing such document, like payment of fees are specified, and the official acts required by the official in whose custody the document is, is also specified. (p. 1861 G)

STATUTES - Interpretation - Evidence Act s. 111 (1)

2. It is instructive to note that the word 'shall' has been consistently used in respect of each act and performance. The word 'shall' connotes mandatory discharge of a duty or obligation, and when the word is used in respect of a provision of the law that requirement must be met. The word 'shall' may have other meanings, for when used in a legislation it may be capable of translating into a mandatory act, giving permission or direction.

The use of the word 'shall' in the case at hand, to my mind conjures mandatoriness, the conditions of which must be met and satisfied. It is settled law that a legislation is to be given its ordinary interpretation and effect, most especially where the words used are straight forward and unambiguous. (p. 1861 H)

DOCUMENTS - Public - Admission

3. As I have said earlier, the provision of Section 111(1) of the Evidence Act is clear and unambiguous, and so should be subjected to simple interpretation. The fact that it sets out conditions that must be satisfied before a public document is admitted in evidence requires that such conditions must be met. The argument that the payment of legal fees required in Section 111(1) of the Evidence Act *supra* would be by private members of the public who are applying for such certified true copies of the public document, and not payable by government department as in this case, holds no water. None of the appellants belongs to any government department, so such concession cannot be arrogated to them. The tendering of the documents (exhibits A, B1, B2 and B3) was at the instance of the appellants, as litigants seeking reliefs in the learned trial court. They are neither government officials, nor government agencies nor government department. So they cannot be perceived as falling within any exemption, if at all there is any such. That is to say that the provision of Section 111(1) of the Evidence Act has left no room for any exemption, for if the legislature intended or contemplated that there would be any such exemption it would have been specifically stated.

In the light of the above treatment of this issue, the answer to issue (2) *supra* is in the affirmative. The grounds of appeal to which the issue is married fail and they are hereby dismissed. The end result is that the appeal fails and it is hereby dismissed. This court however

directs that the appellants should pay the required fees as provided in Section 111(1) of the Evidence Act, to meet and satisfy the said provision. (p. 1863 C)

REPRESENTATION

- B Mr. Bankole Falade, with him Itven Ukpono, for the Appellants
Mr. Ademola Adeniyi, with him Oladapo Otitoju, Olushola Atanda, and Ramatu Abdulrahman (Miss), for the Respondents.

CASES REFERRED TO

- C Bello v. A.G. Oyo State (1986) 12 SC Pg. 1
Okiki v. Ajagun (2005) NWLR part 655 page 19
Ezegbu v. F.A.T.B. (1993) 1 NWLR Pt.220 pg. 709
Fawehinmi v. Akilu (1989) 3 NWLR pt.112 pg.643
D Bronik Motors v. Wema Bank (1983) 1 SCNLR 296
Ogunnubi v. Kosoko (1991) 8 NWLR Pt.210 pg.511
Ibrahim v. Sheriff (2004) 14 NWLR part 892 page 43
Buhari v. Obasanjo (2005) 13 NWLR part 941 page 1
Amadi v. N.N.P.C. (2000) 10 NWLR part 674 page 76
E Sunmonu Oladokun (1996) 8 NWLR part 467 page 387
Nonye v. Anyichie & Ors (2005) 2 NWLR Part 910 page 623
Garba v. Federal Civil Service Commission (1988) 1 NSCC p. 306
Toriola v. Williams 1982 7 SC. 27, Sunmonu Oladokun (1996) 8 NWLR pt. 467 p. 387
F

STATUTE REFERRED TO

Evidence Act Cap. 112 Laws of Federation of Nigeria 1990, s. 111(1)

LEAD JUDGMENT BY MUKHTAR JSC

- G The plaintiffs' claim against the defendant as per the writ of summons in the High Court of the Federal Capital Territory are as follows:-
H *“(i) The sum of N5,000,000.00 (Five million Naira) being the value of cheque that the Defendant negligently and unethically allowed to be cleared by the unknown person.*
(ii) The sum of N20,000,000.00 (Twenty Million Naira) being the cost purchase of the said plot of land.
(iii) The sum of N100,000,000.00 (One hundred Million Naira)

as general damages.”

Briefly put, the case of the plaintiffs was that the 1st plaintiff (a registered company) maintains a current account with the defendant’s Area 3, Garki Branch, Abuja. On 9th of July 2001 the 1st plaintiff together with its Chairman/Chief Executive caused a draft to be issued from the 1st plaintiff’s account in favour of Professor Michael A. Ajomo as purchase price of a plot of land in Abuja, but the draft was not received by the said beneficiary. After the payment they took possession and built a duplex on the land. A year later they discovered that the said draft was cleared from the Defendant’s Kano branch, by a man purporting to be Professor Michael Ajomo, who had opened an account there and lodged the draft. On 13/7/2001 and 19/7/2010 the defendant allowed the fake Professor Ajomo to withdrew almost the entire N5,000,000.00 from the said account No.18219110 which he had been assigned without verifying his identity. The plaintiffs claimed that the defendant violated the laid down procedure of the opening of account, in the case of this purported Professor Ajomo, and so they were negligent in the opening of the account, and the clearing of the amount in the draft in his favour. The plaintiffs gave particulars of negligence as follows:-

“(i) *By allowing unknown person to open an account in the name of the Beneficiary of the said draft, Prof. Michael Ajomo.*

(ii) *By not properly identifying the person as required by the Banks practice and law or the Defendant standard operating Brochure TSG/CIS/07 of June 1999.*

(iii) *By using a staff of the Bank to stand as a referee to person she does not or had not met in her life.*

(iv) *By allowing the unknown Professor Michael Ajomo to withdraw from the said account without providing proper referees.*

(v) *By allowing the unknown Prof. Michael Ajomo to withdraw bulk of money with mere paper application without cheque book.*

(vi) *Failure to exercise the care and diligence in clearing the cheque.”*

The defendant denied most of the above claims and stated that it met the due requirements for the opening of account No 182159110, even though the requirement of referee was deferred, which was not alien to banking rules. The defendant denied that it

was negligent, but alleged that it was the plaintiffs that lacked diligence and care in all the transactions regarding the purchase of the land and the purported conversion of the draft, and were thus negligent as per the following particulars of negligence.

- B (i) Failure to conduct proper and any search whatsoever on the file of the property at the FCDA lands department to verify the authenticity of the certificate of occupancy shown to him at the inception of the transaction as to put them on notice whether they were dealing with the right person(s) or whether the C of O was genuine or fake.
- C (ii) *Failure to conduct inquiry as to the person of Professor Ajomo, a renown Nigerian and Director General of the Institute of Advance Legal Studies as to verify the intended sale of the land or otherwise.*
- D (iii) *Failure to demand for any authorization given by professor M. A. Ajomo to the person(s) they were dealing with in the sale of the property No. 677 Wuse District, Abuja.*
- E (iv) *Failure to follow or delegate someone to follow the trio of Suleiman Tukur, Eze Aloysius and Ben Nwosu (who claimed to be representing Professor M. A. Ajomo in the sale of the property and who claimed the professor was sick and bed ridden and could not come to Abuja to sign the Deed of Assignment) to Lagos to ensure the said professor is the one they took the Deed of Assignment to, to sign.*
- F (v) *Failure to exercise the reasonable man's level of diligence by demanding the professor's account number in any bank and pay the said sum thereunto rather than give same to person(s) from whom they extracted no authorization from the professor.*
- G (vi) *Failure to take note of the likely fraudulent intention of the person he was dealing with when he told the 2nd plaintiff that he was a Senator."*

At the close of pleadings, one witness gave evidence, in the course of which documents were admitted in evidence, in spite of objection by learned counsel for the defendant. It is on the admission of the documents that the defendant appealed to the Court of Appeal, and the appeal was allowed. Aggrieved by the decision, the plaintiffs have appealed to this court on three grounds of appeal. The learned counsel exchanged briefs of argument which were

adopted at the hearing of the appeal. Two issues for determination were formulated in the appellants' amended brief of argument. The issues are:-

"1. Whether the Court of Appeal was right when it held that it is only when the conditions mentioned in Section, 111(1) of the Evidence Act Cap 112 Laws of the Federation 1990 (including payment of legal fee) have been fulfilled that copies of such public documents so certified shall be called certified copies."

"2. Whether the Court of Appeal was right by rejecting the exhibits 'A', 'B', 'B2' and 'B3' documents forming part of records of the police department which was also tendered by the police officer (Pw1) from the same police department."

In its amended brief of argument, two issues were formulated by the respondent and the issues are:-

"1. Whether documents purporting to be certified true copies would be admissible in evidence if they contravene the provisions of Section 111(1) of the Evidence Act, Cap 112, Laws of the Federation of Nigeria, 1990."

"2. Whether the Nigerian Police is exempted from taking legal fees from persons requiring certification of documents in its (the police) custody."

I will commence the treatment of this appeal with issue (1) in the appellants' brief of argument. In proffering argument under this issue, the learned counsel of the appellant submitted that interpretation of statute is not based on only one rule of interpretation as held by the Court of Appeal, as there are many rules as to the interpretation of any section of statute such as Section 111(1) of the Evidence Act under consideration. He placed reliance on the cases of *Buhari v. Obasanjo* 2005 13 NWLR part 941 page 1, *Garba v. Federal Civil Service Commission* 1988 1 NSCC page 306, *Bronik Motors v. Wema Bank* 1983 1 SCNLR 296, and *Ibrahim v. Sheriff* 2004 14 NWLR part 892 page 43, where according to the learned counsel it was held that in the interpretation of statute there is presumption against unreasonable and inconvenient result. He enumerated five requirements mentioned for obtaining certified true copy of a public document in the appellant's brief of argument. After proffering argument in respect of the five requirements, the learned counsel attacked the finding of the lower court which reads as follows:-

“The repeated use of the word ‘shall’ in the section in my view indicates mandatoriness”

It was argued that it is not always that the use of the word ‘shall’ in an enactment connotes mandatoriness, as held by the lower court. He referred to the cases of *Amadi v. N.N.P.C.* 2000 10 NWLR part 674 page 76, and *Okiki v. Ajagun* 2000 5 NWLR part 655 page 19.

In reply, the learned counsel for the respondent took this court through a plethora of authorities on the implication and meaning of the word ‘shall’ in an enactment. See *Olanrewaju v. Governor of Oyo State* 1992 9 NWLR part 265 page 335, *Ogidi v. State* 2005 All FWLR part 251 page 202, and *Odua Investment Co. Ltd. v. Talabi* 1997 7 SCNJ page 600. The learned counsel for the respondent submitted that contrary to the submission of the appellants’ counsel, the interpretation employed by the court below, best suit the interpretation of Section 111(1) of the Evidence Act, as the wording of the section is crystal clear, plain and precise. He further submitted that if a law demands or requires the fulfillment of a condition for the validity of an act, the condition becomes a condition precedent and failure to comply with the condition makes the act a nullity. He cited the cases of *Aina v. Jinadu* 1992 4 NWLR part 233 page 91, *Federal Government of Nigeria v. Zebra Energy Ltd* 2003 FWLR page 154. The learned counsel further emphasized that the totality of the five conditions stipulated by Section 111(1) of the Evidence Act must be fulfilled before any document purporting to be certified true copy could be admissible in evidence as found by the lower court.

I will at this juncture look at the proceedings of the trial court on the day the exhibits that are the subject in controversy were admitted in evidence. When certified true copies of the statements of the staff of the defendant/respondent, Miss Samira Bako and Mr. Haruna Musa to the police were sought to be tendered in evidence, the learned counsel for the defendant objected to their admissibility inter alia thus:-

“The evidence seeking to tender this document are inadmissible, the statements being public documents were not properly certified in accordance with Section 97 (2)(a), 109, 111 of the Evidence Act. There is nothing in this document to show that it is certified true copy or that payment was made.

Okechukwu Ajunwa...

On the issue of the certification in accordance with Section 111 of the Evidence Act. Alatasha vs Asin 1999 5 NWLR part 601 page 32 at page 43 and 44. Payment is not a condition precedent for admission of a certified true copy of a public Document. There is certified as a true copy written at the back of one document. B

Reply on point of law. Ademola Adeniji Section 111 of the Evidence Act not having any provision (sic) should be strictly complied with, its require (sic) payment as a matter of law and there must be evidence of payment sought (sic) be tendered as certified true copy, there is no such evidence on this document, it disqualified the document because of failure of payment. It is not just mere irregularity it is an incurable irregularity. Section 111 of the Evidence Act requires the officer who certified the document or true copy to state his rank and his title, we rest our argument for the non-payment of fee for the certified true copy.” C D

At the end of the day, the learned trial judge admitted the statements in evidence. Now, what is the provision of this controversial Section 111(1) of the Evidence Act Cap. 112, Laws of the Federation of Nigeria, 1990? E

Section 111(1) stipulates thus:-

“Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand. A copy of it on payment of the legal fees therefore together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.” F G

The above provision is very clear on what a person seeking public document should do and what the public officer who is releasing it should also do. Such acts expected of a person desirous of securing such document, like payment of fees are specified, and the official acts required by the official in whose custody the document is are also specified. It is instructive to note that the word ‘shall’ has been consistently used in respect of each act and performance. The word ‘shall’ connotes H

mandatory discharge of a duty or obligation, and when the word is used in respect of a provision of the law that requirement must be met. The word 'shall' may have other meanings, for when used in a legislation, it may be capable of translating into a mandatory act, giving permission or direction. See Nonye

B v. Anyichie & Ors 2005 2 NWLR Part 910 page 623.

The use of the word 'shall' in the case at hand, to my mind conjures mandatoriness, the conditions of which must be met and satisfied. It is settled law that a legislation is to be given its ordinary interpretation and effect, most especially where the words used are straight forward and unambiguous.

C J See Toriola v. Williams 1982 7 SC. 27, Sunmonu Oladokun 1996 8 NWLR part 467 page 387, and Lawal v. G. B. Ollivant 1972 3 SC. 124.

D In this vein, I subscribe to the holding of the lower court which is encapsulated thus:-

"I think from whichever angle one looks at the provision of this section, one can hardly escape arriving at the only rule of Interpretation of statutes which are clear and unambiguous that is golden rule of interpretation. This section to my mind is so clear and unambiguous that is golden rule of interpretation. This section to my mind is so clear and direct. The repeated use of the word 'shall' in the section in my view indicates mandatoriness."

F The learned justices did not err by the above holding. This issue which is covered by ground (1) of appeal is resolved in favour of the respondent, and the related ground of appeal fails and it is dismissed.

G I will now move to issue (2) supra. In proffering argument under this issue, the learned counsel for the appellant submitted that the learned justices of the Court of Appeal erred in law when they rejected the certified true copies of the documents which the lower court found to be public documents on the basis that there was no evidence of payment of legal fees as required by Section 111(1) of H the Evidence Act. He submitted that even if payment of legal fee is mandatory for certification of copies of public document, such payment would be paid by private and or members of the public who may be applying for such certified true copies of the document, and not government department as in this case.

It is the submission of the learned counsel for the respondent that had the legislature intended the police or anybody or agency to be exempted it would have indicated so in the act. It was argued that the appellants have not shown the provision of law exempting the police from taking legal fee before certifying document in the police custody as certified true copy, and that it is the Evidence Act and not the Police Act that regulates the admissibility of documents in proceedings, and since the provisions of Section 111(1) of the Evidence Act did not exempt the police, from paying the fees. The learned counsel submitted that the phrase ‘any person, used in Section 111(1) of the Evidence Act is not reference to the police, the custodian of the document in this case, but to the litigant who requires the document to be tendered in support of this case.

As I have said earlier, the provision of Section 111(1) of the Evidence Act is clear and unambiguous, and so should be subjected to simple interpretation. The fact that it sets out conditions that must be satisfied before a public document is admitted in evidence requires that such conditions must be met. The argument that the payment of legal fees required in Section 111(1) of the Evidence Act supra would be by private or members of the public who are applying for such certified true copies of the public document, and not payable by government department as in this case, holds no water. None of the appellants belongs to any government department, so such concession cannot be arrogated to them. The tendering of the documents (exhibits A, B1, B2 and B3) was at the instance of the appellants, as litigants seeking reliefs in the learned trial court. They are neither government officials, government agencies nor government department, so they cannot be perceived as falling within any exemption, if at all there is any such. That is to say that the provision of Section 111(1) of the Evidence Act has left no room for any exemption, for if the legislature intended or contemplated that there would be any such exemption it would have been specifically stated. In this respect the court below was on firm ground when it observed and found as follows:-

“It is clear that the Section has not made any exemption from the payment of legal fees by any person who requires to secure a

certified true copy of any public document in custody of a public officer including members of the police force. If there are exemptions, the section or any section related thereto should have specifically provided for such exemptions.”

In the light of the above treatment of this issue, the answer to issue (2) *supra* is in the affirmative. The grounds of appeal to which the issue is married fail and they are hereby dismissed. The end result is that the appeal fails and it is hereby dismissed. This court however directs that the appellants should pay the required fees as provided in Section 111(1) of the Evidence Act, to meet and satisfy the said provision. It is in the interest of justice that this be done as quickly as possible so that the hearing continues immediately. This order is to meet the end of justice. I assess costs at N50,000.00 in favour of the respondent.

D _____

ONNOGHEN JSC

This appeal is an interlocutory one arising from the admission, during trial of a document which was objected to by learned Counsel E for the defendant/respondent in this appeal.

Upon appeal to the Court of Appeal, the appeal was allowed on the ground that the admission of the documents in issue was contrary to the provision of section 111(1) of the Evidence Act, Cap. 112, Laws of the Federation, 1990. The present appeal is against the F decision of the Court of Appeal.

I have had the benefit of reading in draft the lead judgment of my learned brother MUKHTAR, JSC just delivered and I agree with his reasoning and conclusion that the appeal is without merit and G should be dismissed.

Section 111 (1) of the Evidence Act provides as follows:

“Every public officer having custody of a public document which any person has a right to inspect shall give that person on demand, a copy of it on payment of the legal fees therefore together with a H certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be

called certified copies.”

It is clear from the above provision that the word “shall” is used at strategic positions in the section of the enactment to demonstrate the mandatory nature of the provision. It is not in doubt that a person seeking to take advantage of the provision and the officer entrusted with the responsibility of ensuring that the person takes advantage of same have to comply specifically with the above provisions to achieve the required legal effect. Any failure to comply with any aspect of the requirements either by the party seeking the advantage or the officer in charge of conferring same renders the exercise ineffective.

The provision itself is very clear and unambiguous and does not need any interpretation.

I therefore order accordingly and abide by the consequential order made in the said lead judgment including the order as to costs. Appeal dismissed.

FABIYI JSC

I have read before now the judgment just delivered by my learned brother Mukhtar, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal should, in effect, be dismissed.

I hereby dismiss the appeal and endorse all the consequential orders contained in the lead judgment, that relating to costs inclusive.

RHODES-VIVOUR JSC

I read in draft the leading judgment delivered by my learned brother Mukhtar, JSC. I am in full agreement with the judgment.

I would allow the appeal and make the directives which Hon. Justice Mukhtar proposes. This is an interlocutory appeal that arose as follows. The appellants’ as plaintiffs, sued the respondent, its banker for negligence in the payment of its cheque to fraudsters. The Police investigated the case and obtained statements from officials of the respondent/defendant bank.

During trial learned counsel for the plaintiff sought to tender those Statements made during Police investigations. There was ob-

jection on the ground that they were not paid for. The learned trial judge admitted the statements as Exhibits A, B1, B2 and B3. The Defendant lodged an appeal, The Court of Appeal agreed with the defendant. That court said:

B *"I agree with the learned counsel for the appellant in his submission that Exhibit A, B1, B2, and B3 were wrongly admitted in evidence by the learned trial judge and I so hold."*

This reasoning by the Court of Appeal is correct. Section 111 of the Evidence Act states that:

C *"111 (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees thereof, together with a certificate written at the front of such copy that it is a true copy of such document or part thereof, as the case may be, and*
D *such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.*

E *(2) Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."*

Section 318 (h) of the constitution states that:

F *"318 Public service of the Federation means the service of the Federation in any capacity in respect of the Government of the Federation, and includes service as -*

(h) members or officers of the armed forces of the Federation or the Nigeria police Force or other government security agencies established by law."

G Section 18 (1) of the Interpretation Act Cap. 192 LFN 1990 defines a public officer thus:

"Public officer means a member of the service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria or the Public Service of a State."

H By virtue of Section 318 (h) of the Constitution and Section 18 (1) of the Interpretation Act Cap. 192 LFN 1990 a Police Officer is a public officer, and so all documents from the custody of the police, especially documents to be used in court are public documents. Before a public document can be tendered and accepted by the court

it must be certified. A Public document is certified if:

1. it was paid for
2. there is an endorsement/certificate that it is a true copy of the document in question.
3. the endorsement/certificate must be dated and signed by the officer responsible for certification, with his name and Official Title. B

Certified copies are by statute deemed to be originals. Where there is no certification the presumption of regularity will not be ascribed to it, so it ought to be certified in order that the court is left with no alternative but to accept the authenticity of its contents. The Court of Appeal set aside the judgment of the trial court because Exhibit A, B1, B2 and B3, public documents were not paid for. This is correct, but rejecting the documents is rather harsh. The learned trial judge ought to have ordered counsel to ensure that the said documents are paid for, and after payment the trial continues. There is a good deal of authority that courts must strive to do substantial justice rather than relying on technicality to defeat justice. The following are well known cases on the point. C

Bello v. A.G. Oyo State 1986 12 SC Pg. 1 E

Ogunnubi v. Kosoko 1991 8 NWLR Pt.210 pg.511

Fawehinmi v. Akilu.. 1989 3 NWLR pt.112 pg.643

Ezegbu v. F.A.T.B. 1993 1 NWLR Pt.220 pg. 709.

For the above and the more detailed reasoning in the leading judgment, the appellants should pay the fees required, thereafter trial should proceed. I abide with the order of costs. F

G

H