

COURT OF APPEAL KADUNA DIVISION
MONDAY 14TH JULY, 2008. CA/K/EP/NA/22/2007
CORAM:- B. A. BA'ABA, A. A. JEGA, J. I. OKORO, JJCA

ALHAJI MOHAMMED MANNIR

YAKUBU

..... APPELLANT

AND

1. ALHAJI IBRAHIM

MOHAMMED IDA

2. INDEPENDENT NATIONAL

ELECTORAL COMMISSION RESPONDENTS

EVIDENCE - Public document - Admissibility - By virtue of Evidence Act s. 97(2)(c) - Exhibit P1 being a public document - Must be certified to be admissible (H1)

ELECTIONS - Qualification - Exhibit P1 - Weight - The mere fact that the exhibit was made by the Federal Government - Is not sufficient to regard it as authentic document - In determination of cross appellant's qualification to contest the election (H2)

APPEALS - Court - Inadmissible evidence - Where trial court admitted and acted upon such evidence - Appellate court should reject and after expunging the evidence - Consider if there is any legal evidence to sustain the claim (H3)

APPEALS - Court - Inadmissible evidence - Effect - Wrongful admission of evidence may not fatally affect decision of court - Unless use of the evidence has occasioned miscarriage of justice (H4)

FACTS

Before the National Assembly Election Petition Tribunal, Katsina State, petitioner/appellant challenged the return of 1st respondent as the elected Senator for the Katsina Central Senatorial District at the general election conducted by 2nd respondent. Appellant mainly contended that as at the time of the election, 1st respondent was not qualified to contest the election by virtue of section 145(1) of Electoral Act 2006. Dispute arose between the parties following the con-

duct of the senatorial election to the Katsina Central Senatorial District on 21st April 2007.

Appellant contested the said election on the platform of All Nigeria Peoples Party, while 1st respondent contested on the Peoples Democratic Party's platform. 1st respondent was returned elected at the end of the exercise. At the hearing of the petition, appellant testified and adopted his sworn deposition. He tendered White Paper (i.e. report of Judicial Commission of Inquiry against 1st respondent) which was admitted in evidence and marked Exhibit "P1". Appellant called five witnesses in support of his petition. 1st respondent testified for himself and called no witness. In its judgment, the Tribunal dismissed the petition for being unmeritorious. Dissatisfied, appellant appealed to the Court of Appeal Kaduna Division. 1st respondent cross appealed on the admission of Exhibit P1 by the trial Tribunal.

ISSUE FOR DETERMINATION

"Whether Exhibit P1 was not legally admitted in evidence in the proceeding."

HELD (Unanimously dismissing the appeal and allow-

ing the cross appeal per **BA'ABA JCA**)

EVIDENCE - Public document - Admissibility

1. It is clear from the provisions of Section 97(2)(c) that the only acceptable secondary evidence of a public document is a certified copy of the document. The sub-section 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 contradiction to the provisions of Section 97(2)(a) of the Evidence 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 Evidence 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.

ONOBURCHERE V. ESEGINE (1986) 1 NWLR (PT. 19) 799,

a Supreme Court decision where the issue of the tendering of an uncertified public document was thoroughly dealt with and concluded that an uncertified public document is inadmissible in law having regard to the provisions of the Evidence Act. It cannot be disputed in the instant cross-appeal that both parties agreed that the White Paper, admitted in evidence as Exhibit P1 is a public document.

Taking into consideration the provisions of Sections 111, 112 and even 113 of the Evidence Act, Exhibit P1 must be certified to be admissible. (pp. 2835 B/H/ 2803 E)

ELECTIONS - Qualification - Exhibit P1 - Weight

2. I have thoroughly examined Exhibit P1 which is unsigned, and undated. In my humble view the mere fact that Exhibit P1 has an inscription on the cover page to the effect that it was made by the Federal Government or by the order of the Federal Government, is not sufficient to regard Exhibit P1 as an authentic document in the determination of the qualification of the cross-appellant to contest election to the senate. (p. 2837 D)

Court - Inadmissible evidence

3. A court can only act upon evidence which is admissible. Where a trial court has admitted and acted upon legally inadmissible evidence, it is the duty of the appellate court to ensure that the legally inadmissible evidence is expunged.

The law is that even where inadmissible evidence is admitted by the trial court, an appellate court should reject the evidence and after expunging such evidence shall consider if there are remaining any legal evidence to sustain the claim. (p. 2837 F)

Court - Inadmissible evidence - Effect

4. The wrong admission of evidence may not necessarily, fatally affect the decision of a court unless the use of the evidence has brought about miscarriage of justice in the case. The wrongful admission of evidence will not itself create a ground for the reversal of a case unless the appellate court

could have come to a different decision without such evidence.
(p. 2837 H)

REPRESENTATION

Chief M. I. Ahamba, SAN; A. T. Usman-Ibinola (Mrs.), for the Appellant

Chief Wole Olanipekun, SAN; Olufemi Omoniyi; Gbenga Adeyemi; Amide Oputa, Chief E.O. Obunadike, for the Respondents

CASES REFERRED TO

- Anatogu v. Iwaka II (1995) 8 NWLR (pt. 415) 547
Witt & Busch Ltd v. Goodwill & Trust Invest. Ltd. (2007) 8 NWLR (pt. 874) 179
Araka v. Egbue (2003) 17 NWLR (pt. 848) 1
D Nzekwu v. Nzekwu (1989) 2 NWLR (pt. 104) 373
Obi v. INEC (2007) 7 S.C. 268
Ogbuinyiya v. Okudo (1979) ALL N.R. 105
Torti v. Ukpabi (1984) 1 S.C. 370
Abdullahi v. Hashidu (1999) 4 NWLR (pt. 600) 638
E Kale v. Coker (1986) 12 S.C. 252
Buhari v. Obasanjo (2005) 13 NWLR (pt. 941) 1
Ugbola v. Okorie (1975) 12 S.C. 1
Kuforoji v. Y. B. Ltd (1981) 6 - 7 S.C. 40
Enang v. Audu (1981) 11 - 12 S.C. 25
F Okuoja v. Ishola (1982) 7 S.C. 314
Odinaka v. Moghalu (1992) 4 NWLR (pt. 233) 1

STATUTES REFERRED TO

- G Electoral Act 2006, s. 145(1)(a)
Evidence Act, ss. 97(2)(a)(c), 109, 111 - 113
Court of Appeal Act Cap 75 LFN 1990, s. 16

LEAD JUDGMENT BY BA'ABA JCA

- H On the 21st day of April, 2007, Senatorial election to the Katsina Central Senatorial District was conducted by the 2nd respondent in this appeal in which the appellant contested the said election on the platform of the All Nigeria Peoples Party (A.N.P.P.) while the 1st respondent was sponsored by the Peoples Democratic Party (PDP). At

the conclusion of the said election the 1st respondent who scored 522,833 votes was declared the winner of the said election having scored the majority of lawful votes cast at the election.

By a petition filed on 16/5/07, the petitioner/appellant challenged the return of the 1st respondent who is also the 1st respondent in this appeal, as the elected Senator for the Katsina Central Senatorial District at the general election. The main ground in the petition was the qualification of the 1st respondent to contest the election as at the time of the election, the 1st respondent was not qualified to contest the election, relying on the provisions of Section 145(1)(a) of the Electoral Act, 2006. The petition contains 9 paragraphs to be found at pages 7 - 9 of the record.

The 1st respondent filed a reply to the petition containing six paragraphs at pages 38 - 40 of the record.

At the hearing, the appellant as the petitioner, testified and adopted his sworn deposition. He tendered the White Paper which was admitted in evidence and marked Exhibit "P1" and called five witnesses who testified in support of his petition. The 1st respondent also testified and adopted his sworn deposition but did not call any other witness.

At the conclusion of hearing, the Tribunal at page 163 of the record held:-

"We have gone through all the evidence placed before this Tribunal and made our findings with reasons. And for these various reasons given we find that this petition lacks merit and it is hereby dismissed."

Dissatisfied with the judgment of the Tribunal, the appellant who was the petitioner, appealed to this Court, by his Notice of Appeal dated 11/8/07 filed on 14/8/07, containing five grounds of appeal at pages 164 - 168 of the record.

The grounds of appeal without their particulars are as follows:-

"GROUND ONE

The Petition Tribunal erred in law when it went outside the realm of its competence to hold as follows:-

"The 1st respondent did say in evidence that he was never invited and did not appear before the commission of inquiry which evidence was neither challenged nor controverted by the petitioner

or counsel. This probably, explain (sic) why the commission of inquiry was merely suspicious of his action."

GROUND TWO

The Petition Tribunal erred in law when it held that the 1st Respondent was not heard by the Judicial Commission of Inquiry
 B out of whose findings the White Paper Exhibit "P1" was produced.

GROUND THREE

The petition tribunal was in error when it dismissed the allegation of indictment of the 1st Respondent thus:

C *"From Exhibit P1, the indictment against the 1st respondent would be the suspicious way in which he released the fund to Mr. Ibrahim Usman. In other words, the 1st respondent is indicted for diversion of the funds because, the way he released the fund to Mr. Usman is suspect. It is our view that an indictment which is capable of*
 D *disqualifying an elected official must be clear and unambiguous based on fact and not suspicion and must be proved beyond reasonable doubt. See Umanah v. Attah supra, and Okotie-Eboh case supra. (emphasis supplied).*

GROUND FOUR

E *The Tribunal erred in law when it held that the Federal Government did not accept the recommendation of the Judicial Commission of Inquiry against the 1st respondent because it just "noted" the recommendation.*

GROUND FIVE

F *The Petition Tribunal erred in law when it dismissed the petition instead of allowing same, and returning the petitioner as duly elected."*

At the hearing of the appeal which came up on the 21/4/
 G 2008, counsel to the parties adopted and relied on their respective briefs in respect of the appeal and the cross-appeal without advancing any oral argument.

Chief M. I. Ahamba, SAN for the appellant at page 3 of the appellant's brief dated 3/10/07 and filed on 4/10/07 distilled three
 H issues for determination in this appeal as follows:-

"1. Whether the Tribunal had the competence to inquire into the competence of the indictment made by the Judicial Commission of Inquiry in respect of the 1st Respondent. (Ground 1).

2. Whether there was any Legal evidence before the Tribunal

showing any breach of the 1st Respondents' right to fair hearing. (Ground 2).

3. Whether the Tribunal was not in error by dismissing the Petition. (Grounds 3, 4 and 5)."

Chief Wole Olanipekun, SAN, for the 1st respondent in the 1st respondent's brief dated 31/10/07 filed on 1/11/07, distilled only one issue from the appellant's five grounds of appeal at pages 5 - 6 of the 1st respondent's brief as follows:-

"(i) Whether or not the lower Tribunal was not right to have dismissed the Petitioner's petition based on the application of constitutional and statutory provision as applied to the case before it."

The 2nd respondent simply adopted the sole issue formulated by the 1st respondent at page one of his brief.

There is also a cross-appeal in this appeal, against the judgment of the National Assembly Election Tribunal, sitting in Katsina delivered on the 31st, day of July, 2007, by the 1st respondent now cross-appellant dated and filed on 16/8/2007 containing two grounds of appeal at pages 170 - 173 of the record.

The cross-appeal is against the admissibility of Exhibit "P1". The two grounds of the cross-appeal are as follows:-

"(1) The lower Tribunal misdirected itself in law and came to a perverse decision when it held thus:

"Under section 113 all the documents mentioned in sub(a) can be tendered either -

(1) by tendering the gazette where it appears - S.113(a)(1)

OR

(2) by tendering a certified copy of the said document - S.113(a)(II) OR

(3) by tendering records of the department duly certified - S.113(a)(III) OR

(4) by tendering any document purporting to be printed by order of Government.

In other word, (sic) any of the way, mentioned above is permissible. We therefore agree with the learned SAN that by virtue of section 113(a)(IV) Evidence Act exhibit P1 is legally admissible being a document purported to be printed by order of Government we therefore resolve this issue in favour of the petitioner and exhibit P1 remain an exhibit legally admitted in evidence."

PARTICULARS OF MISDIRECTION

(i) Section 113 of the Evidence Act does not use the word “tender” but the word “proof”.

(ii) By the combined reading of sections 111, 112 and 114 of the Evidence Act; all public documents shall be certified before same
B can be admitted in evidence and used in judicial proceedings.

(iii) Judicial and binding authorities cited to the lower Tribunal, which were not followed, are to the effect that all public documents, including a Government White Paper, shall be properly certified before they are admitted in judicial proceedings.
C

Section 113(a)(iv) relied upon by the lower Tribunal is no exception to (i), (ii) & (iii) supra.

(iv) In the alternative to (iv) supra, there is no evidence before the lower Tribunal from those who purportedly printed Exhibit
D P1 that it was printed by the order of Government.

(vi) Exhibit P1, being a supposed Government White Paper, has to be certified before it can be admitted and/or cannot come or be admitted within the provisions of section 113(a)(iv) of the Evidence Act

E (2) The lower Tribunal misdirected itself in law and came to a perverse decision in respect of the admissibility of Exhibit P1 when it held thus:

*“Unfortunately the learned counsel for the petitioner failed to comment on this issue of weight to be attached to the said exhibit
F P1. It is however the tribunal view that while we agree with the learned SAN on the principle enunciated in the above mentioned authorities on the worthless nature of unsigned document, that exhibit P1 by virtue of the inscription on the cover page as to date and printer and
G the preamble thereafter that the author, and the date are clearly stated and it is therefore not worthless and will be accorded its full probative values.”*

PARTICULARS OF MISDIRECTION

(i) Public documents are not admitted and acted upon on the
H basis of inscription on the cover page or the contents of their preambles.

(ii) Exhibit P1 has no date and author.

(iii) No evidence was led as to where Exhibit P1 came from or how it was made.

(iv) The admission of Exhibit P1 by the lower Tribunal and the reasons given by the said Tribunal for its admissibility constitute a dangerous precedence in judicial proceedings as:

(a) It runs counter to the clear provisions of the Evidence Act and judicial decisions.

(b) Any litigant can, based on the reasoning of the lower Tribunal, print any document with Government coat of arms inserted thereon, as well as the words “printed by order of Government” to incriminate innocent citizens in judicial proceedings.”

The cross-appellant, formulated a sole issue from the two grounds of appeal for determination in the cross-appeal as follows:-

“(1) Whether or not the lower Tribunal was not in grave error in its reliance on Section 113(a)(iv) of the Evidence Act to accept and/or make use of an uncertified public document, Exhibit P1.”

The cross-respondent’s learned senior counsel also distilled a sole issue in the cross-respondent’s brief as follows:

“Whether Exhibit P1 was not legally admitted in evidence in the proceeding.”

Having examined the facts of this appeal, it appears to me that the sole issue in the cross-appeal is germane to the main appeal, it is for this reason that I have decided to take and determine the cross-appeal first before coming to the main appeal.

Learned senior counsel for the cross-appellant, Chief Wole Olanipekun, SAN, commenced his submission on his sole issue by stating that both parties agreed that Exhibit “P1” is a public document within the meaning and definition of Section 109 of the Evidence Act. Reference was made to paragraph 7(a) of the petition which refers to Exhibit P1 as a Federal Government White paper released or published in September, 2000.

It is submitted that by virtue of Section 111(1) of the Evidence Act, every document which is to be used in any proceedings must and shall be certified. Pointing out that by virtue of Section 112 of the Evidence Act, it is a certified copy of a public document that can only be produced in proof of the contents of the public document or part thereof as representing the copies they purport to be. He contended that the provisions of the Evidence Act mentioned can neither be negotiated nor compromised. That in effect, a public document which is not certified is not admissible. See ANATOGU v.

IWEKA II (1995) 8 NWLR (PT.415) 547 at 571; IMO STATE ENVIRONMENTAL PROTECTION AUTHORITY V. NWOSU (1990) 2 NWLR (PT.135) 688; WITT AND BUSCH LTD V. GOODWILL AND TRUST INVESTMENT LTD (2007) 8 NWLR (PT.874) 179 at 203; ARAKA V. EGBUE (2003) 17 NWLR (PT.848) 1 at 8 - 20 and
B NZEKWU V. NZEKWU (1989) 2 NWLR (PT.104) 373 at 404.

According to the learned senior counsel for the cross-appellant, even though decisions of the appellate court were cited before the Tribunal, nevertheless, the Tribunal, held that Exhibit P1 was/is
C admissible under and by virtue of Section 113(a)(iv) of the Evidence Act. It is further submitted that Section 113(a)(iv) is not an exception to Section 111 and 112 of the Evidence Act, particularly within the contents and context of exhibit P1.

Relying on the authority of ABDULLAHI v. HASHIDU (1999)
D 4 NWLR (PT.600) 638 at 646, he submitted that a Government White Paper has been held to be a public document which must be certified before it can be admitted in evidence. Reference was made to the provisions of Section 113(a) of the Evidence Act by the learned senior counsel for the cross-appellant, who argued that a Government
E White Paper does not come within the purview of Section 113(a) of the Evidence Act. He pointed out that Exhibit P1 has in fact no origin as it was not signed, citing several authorities in support of his submission that Exhibit P1, is not a gazette, publication or proclamation.

Learned senior counsel for the cross-appellant drew the attention of the court to the fact that Exhibit P1 was tendered from the
F Bar and that nobody or witness gave any evidence or semblance of same as to its author, how it was obtained or from where it is obtained or procured.

In conclusion, learned senior counsel for the cross-appellant
G urged the court to allow the cross-appeal and set aside the decision of the Tribunal relating to and touching on its reliance on Exhibit P1.

In response to the submission of the learned senior counsel for the cross-appellant, Chief M. I. Ahamba, SAN, learned senior
H counsel for the cross-respondent, in the cross-respondent's brief dated 10/11/07 filed on 13/11/07, referred to pages 151 - 152 of the record and submitted that it is a cardinal and trite principle of interpretation of statutes that not only must words used in a statute be given their natural and grammatical meaning, but that the intention of the Leg-

islature is best discerned from those words, placing reliance on *OVIawe v. I. R. P. LTD* (1997) 3 NWLR (PT.492) 126 at 139; *PETER OBI v. INEC* (2007) 7 S.C. 268 at 315 - 326. He submitted that from the clear and unambiguous words of Section 111, 112 and 113 of the Evidence Act, it is easily discernible that the intention of the law maker was not that all public documents must be certified before they can legally be admitted in evidence. That whether it will be certified or not, will depend on the nature of the public document concerned. Learned senior counsel for the cross-respondent stated that the sections mentioned herein provide three types of public document that must be certified before they can be admitted in evidence and they are as follows:- (a) Document in custody of a public officer (b) Order or official communication by officer and (c) record of Departments. See *OGBUINYIA V. OKUDO* (1979) ALL N.R. 105. It is submitted that Exhibit P1 falls under Section 113(a)(iv) of the Evidence Act which is expressly excluded from certification as a precondition for proving it.

It is emphasized that Exhibit P1 carries on the cover page an inscription "Printed by the Federal Government Printer, Lagos" and carries in its paragraph 1.5 of the preamble a statement that the White Paper is an approval by the Federal Executive Council of the views and comments on the recommendation and findings as contained in the report of the Commission of Inquiry clearly purports i.e. seems to be made on the orders of the Federal Government of Nigeria which according to the learned senior counsel for the cross-respondent falls under Section 113(a)(iv) of the Evidence Act and can be tendered in evidence without certification.

Relying on the authority of *ADEGOKE MOTORS LTD V. ADESANYA* (1989) 3 NWLR (PT.109) 250 at 275, he submitted that all the authorities cited by the learned senior counsel for the cross-appellant in paragraph 4.4 of the cross-appellant's brief are related to an Act of Government consequently not applicable.

He conceded that even though no witness gave evidence or semblance of same as to the origin of Exhibit P1 because the parties relied on their respective depositions which they adopted in court. See *TORTI V. UKPABI & 2 ORS* (1984) 1 S.C. 370 at 392.

It is further argued that the admission of Exhibit P1 by the Tribunal is quite legal and therefore unassailable. He concluded his

submission by urging the court to resolve the sole issue in the affirmative and dismiss the cross-appeal.

The bone of contention in the cross-appeal is the admission of the Federal Republic of Nigeria Government White Paper on the report of the Judicial Commission of Inquiry into the affairs of the Federal Superphosphate Fertilizer Company (FSFC) Ltd, Kaduna, by the Tribunal at page 85 of the record of proceedings, marked as Exhibit P1.

The genesis of the petition that led to the appeal and this cross-appeal is the provision of Section 66(1) of the constitution of the Federal Republic of Nigeria, 1999 which provides:

“66.-(1) No person shall be qualified for election to the Senate or the House of Representatives if-

(h) he has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunals of Inquiry Law or any other law by the Federal or State Government which indictment has been accepted by the Federal or State Government, respectively.”

It is the contention of the cross-appellant in this cross-appeal that Exhibit P1 being a public document is inadmissible in that it has not been certified as required by Section 111(1) of the Evidence Act and also relied on the provisions of Sections 109 and 112 of the Evidence Act. He contended that the Tribunal was in error by admitting Exhibit P1 relying on Section 113(a)(iv) of the Evidence Act, being a public document. According to the learned senior counsel for the cross-respondent, the document exhibit P1 was rightly admitted in evidence by virtue of the provisions of Section 113(a)(iv) of the Evidence Act.

It is the contention of the learned senior counsel for the cross-respondent that going by the provisions of Sections 111, 112 and 113 of the Evidence Act, it is not all public documents that must be certified before they can legally be admitted in evidence. Pointing out that whether it will be certified or not, will depend on the nature of the public document concerned.

In effect it was argued that Exhibit P1 has been excluded from certification by the provisions of Section 113(a)(iv) of the Evidence Act.

In *ABDULLAHI v. HASHIDU* (1999) 4 NWLR (PT.600) 638 at 646, it was held by this Court that in the normal cause of governance, the government be it Federal, State or Local manifests its acceptance of a report or inquiry by a way of a publication of a white paper which tells the world the reaction of the Government to the Inquiry. B

It is clear from the provisions of Section 97(2)(c) that the only acceptable secondary evidence of a public document is a certified copy of the document. The sub-section 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 contradiction to the provisions of Section 97(2)(a) of the Evidence 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 Evidence Act. In otherwords, 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. C D E

In *MINISTER OF LANDS WESTERN NIGERIA V. DR. AZIKIWE* (1969) 1 ALL N.L.R. 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 109 of the Evidence Act. Section 96(2) of the Evidence act prescribes the type of secondary evidence which may be given in several cases therein set out and Section 96(2)(c) provides as follows: F

'96(2) the secondary evidence admissible in respect of the original document in the several paragraph of sub-section (1) is as follows: G

(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 sub-section is that in case of public document the only type of secondary (sic, evidence) permissible is a certified true copy of the document and non other..." H

See *ARAKA V. EGBUE* (2003) 17 NWLR (PT.848) 1 at 19 and ***ONOBURCHERE V. ESEGINE* (1986) 1 NWLR (PT. 19)**

799, a Supreme Court decision where the issue of the tendering of an uncertified public document was thoroughly dealt with and concluded that an uncertified public document is inadmissible in law having regard to the provisions of the Evidence Act.

B Also, the Supreme Court of Nigeria, in NZEKWU v. NZEKWU (1989) 2 NWLR (PT.104) 373 reported in ARAKA (supra) at page 20 said:

C *“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 an addition to the need for the preservation of public document. 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.”*

E **It cannot be disputed in the instant cross-appeal that both parties agreed that the White Paper, admitted in evidence as Exhibit P1 is a public document.**

F **Taking into consideration the provisions of Sections 111, 112 and even 113 of the Evidence Act, Exhibit P1 must be certified to be admissible.**

Sections 109, 112 and 113 provide as follows:

“109. The following documents are public documents-

- G (a) documents forming the acts or records of the acts-
 - (i) of the sovereign authority
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere;
- (b) public records kept in Nigeria of private documents.”

H *“112. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.”*

“113. The following public documents may be proved as follows:-

(a) Acts of the National Assembly or Laws of a State legislature, proclamations, treaties or other acts of State, orders, notifications, nominations, appointments and other official communications of the Government of Nigeria or of any State thereof or of any Local Government-

“(i) which appear in the Federal Gazette or the Gazette of a State, by the production of such Gazette, and shall be prima facie proof of any fact of a public nature which they were intended to notify,

(ii) by a copy thereof certified by the officer who authorized or made such order or issued such official communication,

(iii) by the records of the departments certified by the heads of those departments respectively or by the Minister or in respect of matters to which the executive authority of a State extends by the Governor or any person nominated by him, or

(iv) by any document purporting to be printed by order of Government.”

I have thoroughly examined Exhibit P1 which is unsigned, and undated. In my humble view the mere fact that Exhibit P1 has an inscription on the cover page to the effect that it was made by the Federal Government or by the order of the Federal Government, is not sufficient to regard Exhibit P1 as an authentic document in the determination of the qualification of the cross-appellant to contest election to the senate.

Above all, this Court is bound by the decision of the Supreme Court of Nigeria referred in this judgment.

A court can only act upon evidence which is admissible. Where a trial court has admitted and acted upon legally inadmissible evidence, it is the duty of the appellate court to ensure that the legally inadmissible evidence is expunged. See KALE v. COKER (1986) 12 S.C. 252 at 257 - 258 and BUHARI v. OBASANJO (2005) 13 NWLR (PT.941) 1 at 176 – 177.

The law is that even where inadmissible evidence is admitted by the trial court, an appellate court should reject the evidence and after expunging such evidence shall consider if there are remaining any legal evidence to sustain the claim. The wrong admission of evidence may not necessarily, fatally

affect the decision of a court unless the use of the evidence has brought about miscarriage of justice in the case. See UGBOLA v. OKORIE (1975) 12 S.C. 1. The wrongful admission of evidence will not itself create a ground for the reversal of a case unless the appellate court could have come to a different decision without such evidence.

Section 16 of the Court of Appeal Act, Cap 75, Laws of the Federation of Nigeria 1990, provides:

“16. The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may rehear the case in whole or in part or may remit it to the court below for the purpose of such rehearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court, or, in the case of an appeal from the court below in that court’s appellate jurisdiction, order the case to be re-heard by a court of competent jurisdiction.”

Although this court will not normally interfere with findings of fact of the trial court, the Court will definitely interfere with such findings in the interest of justice where the evidence shows that the findings cannot be supported or were not the proper conclusion and inference drawn from the evidence thereby making the decision of the trial court perverse. I am of the firm view that this exception is apparent in this cross-appeal. See KUFOROJI V. Y.B. LTD (1981) 6 - 7 S.C. 40; ENANG v. AUDU (1981) 11 - 12 S.C. 25, OKUOJA V. ISHOLA (1982) 7 S.C. 314, ODINAKA v. MOGHALU (1992) 4 NWLR (PT.233) 1 at 13.

In view of the foregoing, I hereby resolved the sole issue formulated by the cross-appellant in the affirmative, in that the Tribunal was in great error in its reliance on Federal Superphosphate

Fertilizer Company (FSFC) Ltd Kaduna, admitted in evidence marked Exhibit P1 when the said Exhibit P1 is inadmissible and is hereby expunged.

In the result, the cross-appeal is hereby allowed. The judgment of the National Assembly Election Petition Tribunal, Katsina State in petition No. NA/SEN/EPT/KTS/3/07 delivered on the 31st day of July, 2007 is hereby set aside and substituted with an order dismissing the petition for lacking in merit. B

The cross-appeal having disposed of the appeal, the appeal is hereby dismissed. C

I award costs assessed at N30,000.00 to the cross-appellant against the cross-respondent.

JEGA JCA

I had the advantage of reading the draft of the judgment of my learned brother, Ba'aba JCA and I agree with the reasoning and conclusion. D

The cross-appeal succeeds and is hereby allowed. The judgment of the National Assembly Election Petition Tribunal, Katsina State in Petition No. NA/SEN/EPT/KTS/3/07 delivered on the 31st day of July 2007 is hereby set aside and substituted with an order dismissing the petition for being unmeritorious. E

The cross-appeal having disposed of the appeal, the appeal is hereby dismissed. F

I abide by all the orders made.

OKORO JCA

I was obliged to read in draft a copy of the judgment just delivered by my learned brother Ba'aba, JCA and I am in agreement with his reasons and conclusion that the sole issue in the cross appeal be resolved in favour of the cross appellant thus allowing the cross-appeal and that the outcome of the cross appeal has made a consideration of the main appeal an exercise in futility. It is accordingly, dismissed. H

The facts, of the case relevant to this appeal have been stated in admirable lucid detail by my learned brother, Ba'aba, JCA. I do

not intend to repeat the exercise. It is not in dispute as both parties in this appeal have agreed that Exhibit P1 is a public document within the meaning and definition of Section 109 of the Evidence Act And by Section 112 of the same Act, it is only a certified copy of a public document that can be tendered in proof of the contents of a public document or parts thereof, or as representing the copies they purport to be. Where a public document is not certified, it is inadmissible in evidence. See *Anatogu. Vs. Iweka II* (1995) 8 N.W.L.R. (Pt. 415) 547.

A communal reading of Sections 111, 112 and 113 of the Evidence Act points to an irresistible conclusion that Exhibit P1 being a public document, must be certified before it can be admitted in evidence. This is moreso, as a government white paper, it does not show the name and signature of the maker. It must be certified to authenticate it as the document that the Court is being called upon to rely in determining the fate of a party in the suit. This requirement that public documents be certified to my mind is very apt especially today where the computer can be used to copy and even manipulate the document to suit the purpose of the party tendering it. See *Araka Vs. Egbue* (2003) 17 N.W.L.R. (Pt 848) 1 and *Nzekwu Vs. Nzekwu* (1989) 2 N.W.L.R. (Pt. 104) 373.

It was therefore wrong for the Lower Tribunal to have held Exhibit P1 admissible just because it has an inscription on the cover page to the effect that it was made by the government. Since Exhibit P1 was the foundation of the petition at the Court below, it ought to have been rejected and the petition dismissed.

It is for these reasons and the more detailed ones contained in the lead judgment that I too allow the cross-appeal and dismiss the main appeal. I abide by all the consequential orders made therein, that relating to costs, inclusive.

H