

**SUPREME COURT OF NIGERIA**  
FRIDAY 22ND JANUARY, 2016. SC. 293/2005  
**CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA, M. U.**  
**PETER-ODILI, O. ARIWOOLA, M.D. MUHAMMAD, JJSC**

EZENWA ONWUZURUIKE ..... APPELLANT  
AND  
1. DAMIAN EDOZIEM  
2. ADOL ECHEOZOR  
3. SABASTINE EWURUM  
4. PAUL OHAEGBU  
5. FIDELIS AKUCHIE  
6. ALOY ORIAKU ..... RESPONDENTS

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DOCUMENTS - Proof - Documents must be proved by primary evidence - But secondary evidence may be given - Where inter alia the original is in possession of person against whom the document is to be proved (H1)

DOCUMENTS - Public document - Admissibility - CA rightly adjudged exhibit C to be a public document - And that there ought to have been a certification - That it was true copy of the original (H2)

APPEALS - Finding - The finding of Court of Appeal rejecting exhibit D on the basis of wrongful admission - Cannot be faulted having regard to the record (H3)

**FACTS**

Plaintiff/appellant commenced this suit against defendants/respondents at the High Court of Imo State, claiming an unqualified apology for libel published against him, retraction of the libelous publication and N2 million general damages for the said publication, unlawful arrest and detention. Respondents denied writing any libelous petition against appellant. The matter that triggered the action was that appellant alleged that respondents wrote a libelous petition against him to the Area Commander of the Nigeria Police Force Owerri. The petition was investigated by the police. At the trial, PW2 i.e. the Police officer who investigated the said petition sought to tender the

alleged petition in the course of his evidence. Objection was raised by counsel to respondents on the ground that what was sought to be tendered was a photocopy and not either the original copy or a certified true copy of the said petition. At this stage the counsel to appellant conceded to the fact that the document sought to be tendered was a photocopy and withdrew it saying that he had the original copy of the petition.

Surprisingly, counsel to appellant re-tendered the same photocopy of the alleged petition. Despite objections against it by the counsel to respondents that the document was a public document and ought to be certified as secondary evidence, the trial Court admitted the alleged petition as Exhibit “C” holding that it was a private document. Dissatisfied, respondents appealed to the Court of Appeal Port Harcourt Division essentially on the ground that a document coming from police record was a public document and that its secondary evidence can only be a certified true copy of same. The court allowed the appeal and agreed with respondents that Exhibit “C” being a petition to the police formed part of the record of the police upon its receipt by the police. The court held that PW2 could only have tendered a certified true copy of the alleged petition as secondary evidence. It was further held that the trial Court erred in holding that the said petition coming from the police was a private document. Aggrieved, appellant has appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“1. WHETHER THE LEARNED JUSTICES OF THE COURT OF APPEAL WERE RIGHT WHEN THEY HELD THAT EXHIBIT “C” A PETITION WRITTEN TO THE POLICE BY A PRIVATE CITIZEN HAD TRANSFORMED TO A PUBLIC DOCUMENT AND THEREBY REJECTED THE DOCUMENT.*

*2. WHETHER THE LEARNED JUSTICES OF THE COURT OF APPEAL WERE RIGHT WHEN THEY HELD THAT EXHIBIT “D” ADMITTED BY THE TRIAL COURT WITHOUT OBJECTION IS INADMISSIBLE.”*

**HELD** (Unanimously dismissing the appeal per

**ONNOGHEN JSC)**

*DOCUMENTS - Proof*

**1. It should be noted that the issue as to whether a document needs certification relates to admissibility of secondary evidence of the original document. Under the provisions of Section 97(1) of the Evidence Act the original of a document is what is known as primary evidence while a copy of the original document is known as secondary evidence of the original - see Section 97(1) supra. It is settled law that documents must be proved by primary evidence except in certain circumstances provided under Section 97 of the Evidence Act. The exceptions where secondary evidence may be given and admitted of the existence, condition or contents of the original document are when (a) the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person legally bound to produce it and does not produce it despite being served with notice as stated in Section 98 of the Act or the original is a public document within the meaning of Section 109 of the Evidence Act, supra, in which case the secondary evidence admissible is a certified true copy. (p. 488 G)**

*DOCUMENTS - Public document - Admissibility*

**2. In the instant case, both counsel are in agreement that only a certified true copy of a public document is admissible in evidence as secondary evidence. The dispute however is whether exhibit "C" is a private document or a public document. Whereas appellant contends that it is a private document which needs no certification, the respondents argue that it is a public document which needs certification. The trial Court agreed with appellant while the lower Court agreed with the respondents. The issue, therefore, is which of the contending views is correct? To determine the issue, we have to know what a public document is and whether exhibit 'C' falls within that purview.**

**Section 109 of the Evidence Act, Cap 112, Laws of the Federation of Nigeria (now Section 102 of the Evidence Act, 2011) provides, inter alia, as follows:-**

***"The following documents are public documents:-***

***(a) Documents forming the official Acts or records of***

***official acts -***

- (i) of the sovereign authority,***
  - (ii) of official bodies and tribunals***
  - (iii) of public officers, legislative, judicial and executive,***
- whether of Nigeria or elsewhere.***

**B (b) Public records kept in Nigeria of private documents.”**  
**In that case, exhibit C was adjudged a public document and that there ought to have been a certification that it was a true copy of the original to make it admissible in evidence. In the circumstance and having regard to the state of the law, I find**  
**C no merit in issue 1 and consequently resolve same against appellant. (pp. 489 C/491 B)**

***APPEALS - Finding***

**D 3. I have carefully gone through the record of proceedings in the trial Court and have found nothing to contradict the finding by the Lower Court at page 92 of the record leading to the rejection of exhibit ‘D’. The findings as quoted supra, “the learned trial Judge in his ruling admitting exhibit ‘C’ had said**  
**E that another group wrote petition dated 7/7/97 disassociating them from the petition written by the defendants which they addressed to the Area Commander. He further said that there was no objection to its admissibility by counsel for the appellants. This is contrary to what the learned trial Judge**  
**F recorded that there was an objection as regarded supra. What more, there is nothing on record to show that the witness manifested any intention to tender another petition dated 7/7/97 said to have been written by another group; yet the learned**  
**G trial Judge admitted it as exhibit ‘D’. This is grossly wrong in Law.”**

**As stated earlier, the above finding cannot be faulted having regard to the record. I therefore have no reason to disturb same. I agree entirely with the Lower Court on this**  
**H issue and consequently resolve the issue against appellant.**  
**(p. 491 H)**

**REPRESENTATION**

Chief Ikenna Egbuna, for the Appellant

F. A. Onuzulike Esq, for the Respondents

**CASES REFERRED TO**

RCC Nig. Ltd. v. Rock Onoh Properties Co. Ltd (2005) 10 NWLR (pt. 934) 615

Orji v. Dorji Textiles Mills (Nig) Ltd. (2009) 18 NWLR (pt. 1173) 467 B

Salawu v. Yusuf (2007) 12 NWLR (pt. 1049) 707

Ezemba v. Ibeneme (2004) 14 NWLR (pt. 894) 617

Tabik Invest. Ltd v. G.T.B. (2011) All FWLR (pt. 602) 1592

Aromolaran v. Agoro (2014) 18 NWLR (pt. 1438) 153

Salzgitters Stahl GMBH v. Tunji Dosumu Ind. Ltd. (2010) All FWLR (pt. 1024) 1057 C

Lewis Peat (N.R.I) Ltd. v. Akhaimien (1976) 7 SC 167

John v. State (2012) All FWLR (pt. 607) 639

**STATUTES & RULES REFERRED TO**

Evidence Act 2011, ss. 102, 123

Evidence Act 2004, ss. 94(1), 97(2)(c)

High Court Rules of Imo State 1988, O. 25 r. 13

**LEAD JUDGMENT BY ONNOGHEN JSC**

On the 22nd day of August, 1997, appellant, as plaintiff caused a writ of summons to be issued against the respondents in which was endorsed the following PARTICULARS OF CLAIM:

*“(1) By a letter signed and addressed to the Area Commander Nigerian Police Owerri, Imo State dated 23/6/47, the Defendants published as concerning the plaintiff and his son as follows:-* F

*“These young criminals led by Uchenna take off for operation from Ezenwa compound. They also share their boom in the same place. Ezenwa also see to their release whenever they are caught. He often threatens to kill anybody who might have a hand in the death of his criminal son. He is also highly involved in Court practice..... Upon return from Police custody Ezenwa ordered his son to kill a number of persons of Umulede suspected by him to have petitioned H for his arrest...”*

Photostat copy of the said letter is exhibited as Exhibit “D”.

(2) The meaning of the above cited passage is that the plaintiff is a criminal to wit; a conspirator conspiring with others who engage

in robber (sic), thereby aiding and abetting robbery, compounding the felony of robbery by assuring the release of robbery suspects, threatening lives and plotting the murder of eminent persons in his community, and being a member of secret cult which they the society abhors

B (3) By the aforesaid publication, the Defendants have maliciously, falsely and deliberately defamed and disparaged our client, in a calculated attempt to ridicule the plaintiff and cast aspersion on him in order to debase, cast aspersion on him and lower his estimation and substance in the eyes of right thinking Nigerians and more  
C precisely the Area Commander N.P.F. Owerri and his officers.

(4) That following the above stated libelous publication, the Area Commander NPF Owerri, arrested and detained the plaintiff at Area Commander's Office for seven hours and was later released on  
D bail.

(5) WHEREFORE the plaintiff claims against the Defendants jointly and severally as follows:-

- (a) An unqualified apology
- (b) A retraction of the said publication
- E (c) Two million naira (N2m) general damages for the libelous publication unlawful arrest and unlawful detention of the plaintiff for seven hours at the Area Commander's Office."

Pleadings were duly filed and exchanged by the parties and the matter proceeded to hearing.

F At the trial and during the testimony of the investigating Police Officer, PW2, who investigated the petition in question, the appellant's counsel sought to tender the petition by the defendants to which counsel for defendants objected on the ground that same was a photocopy and therefore inadmissible as same was not duly certified.  
G Consequently, the document was withdrawn.

Learned counsel for plaintiff then sought to tender what he describes as the original of the petition in question and was objected to on the same grounds as the first attempt.

H The learned trial judge overruled the objection holding that the document sought to be tendered was not a public document so as to require certification and admitted same as exhibit "C". The petition dated 7/7/97 in which some kindred of the parties disassociated themselves with exhibit 'C' was also admitted and marked ex-

hibit “D”.

It was the admission of exhibit “C” that resulted in the appeal to the Lower Court, Port Harcourt Division in appeal No. CA/PH/86/2000. In a judgment delivered by that Court on the 15th day of November, 2004, the appeal was allowed resulting in the instant further appeal. B

In the appellant brief deemed filed on 4/12/13 learned counsel for appellant, CHIEF IKENNA EGBUNA submitted the following two issues for the determination of the appeal. These are:

“1. WHETHER THE LEARNED JUSTICES OF THE COURT OF APPEAL WERE RIGHT WHEN THEY HELD THAT EXHIBIT “C” A PETITION WRITTEN TO THE POLICE BY A PRIVATE CITIZEN HAD TRANSFORMED TO A PUBLIC DOCUMENT AND THEREBY REJECTED THE DOCUMENT. C

(SEE GROUND 1 IN THE NOTICE OF APPEAL) D

2. WHETHER THE LEARNED JUSTICES OF THE COURT OF APPEAL WERE RIGHT WHEN THEY HELD THAT EXHIBIT “D” ADMITTED BY THE TRIAL COURT WITHOUT OBJECTION IS INADMISSIBLE. (SEE GROUND 2 OF THE NOTICE OF APPEAL)”

In arguing issue 1, learned counsel referred to Section 102 of the Evidence Act, 2011 on what constitutes public documents as well as Blacks Law Dictionary, 9th edition, pages 1348 for the definition of the word “PUBLIC” and 555 for the definition of “PUBLIC DOCUMENT vis-à-vis the definition of “PRIVATE” at page 1315 supra and submits that a consideration of the definitions in the light of the decisions of the Lower Court clearly shows that the Court of Appeal is in error in holding that exhibit ‘C’ is a public document; that a petition written by a private individual to a Police Area Commander cannot form the acts or records of official acts of official bodies etc; that exhibit “C” was tendered from proper custody by the IPO and was duly admitted by the respondents in their pleadings and that by the provisions of Section 123 of the Evidence Act, 2011, what is admitted needs no further proof. Learned counsel further cited and relied on Reynolds Construction Co. Nigeria Ltd v. Rock Onoh Properties Co. H Ltd (2005) 10 NWLR (pt. 934) 615 at 628; Mrs. Ethel O.D. Orji v. Dorji Textiles Mills (Nig) Ltd & ors (2009) 18 NWLR (pt. 1173) 467 at 500; Allan J. Salawu & ors v. Mallam A. A. Yusuf & ors (2007) 12 NWLR (pt. 1049) 707 at 734 and Ezemba v. Ibeneme & ors (2004) F  
G

14 NWLR (pt.894) 617 at 690. Finally learned counsel urged the Court to resolve the issue in favour of appellant.

On his part, learned counsel for the respondents, F.A. ONUZULIKE, ESQ referred to the provisions of Section 109 of the Evidence Act, 2011 and submitted that exhibit ‘C’, being a letter from the respondents to the police became part of the record of the police upon receipt; that the document sought to be tendered was therefore from the police record; that the IPO was required to tender the original petition as primary evidence under the provisions of Section 94(1) of the Evidence Act, 2004 or a certified true copy of the petition as secondary evidence in accordance with Section 97(2) (c) of the Evidence Act 2004: that the trial Court based its decision to admit exhibit “C” on the ground that it was a private document addressed to the police and therefore not a public document; that there is no doubt that exhibit “C” is a photocopy; that the Court should also look at the document and evaluate same relying on *Tabik Investment Ltd v. G.T.B. (2011) All FWLR (pt. 602) 1592 at 1607*, and urged the Court to resolve the issue against appellant.

There is no doubt whatsoever that exhibit “C” is a photocopy of the petition written by the respondents to the Area Police Commander, Owerri. The dispute, however is whether the said document is a private document or a public document within the law so as to require certification for it to be admissible in evidence. It is the view of the trial Court, as expressed at page 87 of the record that exhibit “C” is a private document and as such it does not need certification. The Court held, inter alia, thus:

*“A petition addressed to the police case (sic) by a private citizen does not thereby become a public document within the meaning of S. 109 of the Evidence Act. The document sought to be tendered, is therefore not a public document as to require certification.”*

***It should be noted that the issue as to whether a document needs certification relates to admissibility of secondary evidence of the original document. Under the provisions of Section 97(1) of the Evidence Act the original of a document is what is known as primary evidence while a copy of the original document is known as secondary evidence of the original - see Section 97(1) supra. It is settled law that documents must be proved by primary evidence except in certain circum-***



**stances provided under Section 97 of the Evidence Act. The exceptions where secondary evidence may be given and admitted of the existence, condition or contents of the original document are when (a) the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person legally bound to produce it and does not produce it despite being served with notice as stated in Section 98 of the Act or the original is a public document within the meaning of Section 109 of the Evidence Act, supra, in which case the secondary evidence admissible is a certified true copy.**

**In the instant case, both counsel are in agreement that only a certified true copy of a public document is admissible in evidence as secondary evidence. The dispute however is whether exhibit "C" is a private document or a public document. Whereas appellant contends that it is a private document which needs no certification, the respondents argue that it is a public document which needs certification. The trial Court agreed with appellant while the lower Court agreed with the respondents. The issue, therefore, is which of the contending views is correct? To determine the issue, we have to know what a public document is and whether exhibit 'C' falls within that purview.**

**Section 109 of the Evidence Act, Cap 112, Laws of the Federation of Nigeria (now Section 102 of the Evidence Act, 2011) provides, inter alia, as follows:-**

***"The following documents are public documents:-***

***(a) Documents forming the official Acts or records of official acts -***

***(i) of the sovereign authority,***

***(ii) of official bodies and tribunals***

***(iii) of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere.***

***(b) Public records kept in Nigeria of private documents."***

In reversing the decision of the trial Court on admissibility of exhibit "C", the Lower Court held, inter alia,

***"Exhibit 'C' a letter dated 25th June, 1997 captioned "PRO-TEST AGAINST THREAT TO OUR LIVES" which contains the al-***

*leged defamatory words was addressed to the Commissioner of Police, Owerri Imo State. The paragraph of the said Exhibit contains a plea to the police, to save their souls from Ezenwa (the plaintiff/respondent) and his groups. The addressee - the Commissioner of police is a public officer charged under the Constitution of the land, for the*  
 B *maintenance of law and order. Exhibit 'C' in my humble view, has become part of the official records of the police. In writing Exhibit 'C' and forwarding it to no other person than the Commissioner of Police, the writers, again in my view, intended that it (Exhibit C) be*  
 C *given official treatment, thus acquiring official coloration. The Nigeria Police is a public institution carrying official tag. So, documents though private in nature, when sent to the Nigeria Police requesting it to discharge its Constitutional duties, upon their receipt by the Nigeria Police became public records kept by then of private document. From*  
 D *the foregoing, Exhibit 'C' comes within the category of documents defined in Section 109 (b) of the Evidence Act. To hold otherwise is to accord Section 109 (b) strained interpretation*

*It is for all I have said supra that I hold that exhibit C is a public document. That being the case, since exhibit 'C' was not certified the*  
 E *learned trial Judge was wrong in law to have admitted it in evidence. In therefore answering the question posed by issue No. 4 on the appellants' brief, I say that the petition is not a private document rather it is a public document. Similarly, I answer issue No. 1 on the respondents' in the affirmative. Exhibit 'C' is a public document."*

F *Is the Lower Court correct in so holding supra?*

*In the case of Tabik Investment Ltd v. G.T.B (2011) All FWLR (pt 602) 1592 at 1607 this Court held that a private petition sent to the police, as in the instant case, formed part of the record of the*  
 G *police and consequently a public document within the provisions of Section 109 of the Evidence Act. The Court held as follows:-*

*"By the provision of Section 318(b) of the Constitution of the Federal Republic of Nigeria 1999 and Section 18(1) of the interpretation Act, a police officer is a public officer and so all documents*  
 H *from the custody of the police, especially documents to be used in Court are public documents."*

Finally, in the recent case of Aromolaran v. Agoro (2014) 18 NWLR (pt. 1438) 153 this Court held that a letter written to the Governor of a State in his official capacity by a person who is not a

government official, is public document because it is a public record kept in Nigeria of a private document which comes under the provisions of Section 109(b) of the Evidence Act, Cap. 112 of the Lagos of the Federation of Nigeria, 1990 (now Section 102 of the Evidence Act, 2011).

***In that case, exhibit C was adjudged a public document and that there ought to have been a certification that it was a true copy of the original to make it admissible in evidence. In the circumstance and having regard to the state of the law, I find no merit in issue 1 and consequently resolve same against appellant.***

On issue 2, learned counsel submitted that the Lower Court was in error in holding that exhibit 'D' was inadmissible when same was admitted without objection at the trial Court; that the document was admitted by the appellants when they failed to join issues with the appellants in their pleading; that the document was pleaded in paragraph 7 of the statement of claim but no issue was joined thereon by the respondents in their statement of Defence, that the respondents are deemed to have admitted the documents and the Lower Court was in error in holding that exhibit 'D' was inadmissible and urged the Court to resolve the issue in favour of appellant and allow the appeal.

On his part, it is the submission of learned counsel for the respondents that a Court can expunge from record a document wrongly admitted in evidence even at the point of writing the judgment, or on appeal; that exhibit 'D' was tendered by PW2 - the IPO; that when PW2 sought to tender exhibit C, counsel for the respondents raised an objection to its admissibility; that the second time exhibit 'C' was sought to be tendered, counsel for the defence pointed out that the document was accompanied by several other documents, after which the trial Court delivered its ruling admitting the petition as exhibit 'C' and one other accompanying document as exhibit 'D', that exhibit 'D' is one of the other documents counsel for appellant sought to tender along with exhibit 'C' which was objected to; that the Lower Court was right in rejecting exhibit 'D' and urged the Court to resolve the issue against appellant and dismiss the appeal.

***I have carefully gone through the record of proceedings in the trial Court and have found nothing to contradict the***

**finding by the Lower Court at page 92 of the record leading to the rejection of exhibit ‘D’. The findings as quoted *supra*, “the learned trial Judge in his ruling admitting exhibit ‘C’ had said that another group wrote petition dated 7/7/97 disassociating them from the petition written by the defendants which they addressed to the Area Commander. He further said that there was no objection to its admissibility by counsel for the appellants. This is contrary to what the learned trial Judge recorded that there was an objection as regarded *supra*. What more, there is nothing on record to show that the witness manifested any intention to tender another petition dated 7/7/97 said to have been written by another group; yet the learned trial Judge admitted it as exhibit ‘D’. This is grossly wrong in Law.”**

**As stated earlier, the above finding cannot be faulted having regard to the record. I therefore have no reason to disturb same. I agree entirely with the Lower Court on this issue and consequently resolve the issue against appellant.**

It has to be observed that this is yet another interlocutory appeal all the way to the Supreme Court while the substantive matter pends at the trial Court. It has taken some years before the issue is resolved at the expense of expeditious disposal of the case. With the final resolution of the issue, the parties have to return to the Court of trial for the hearing to either continue or start *de novo* depending on the circumstances. This is very sad indeed. In conclusion however, I find no merit whatsoever in this appeal which is accordingly dismissed with two hundred and fifty thousand naira (N250,000:00) costs against the appellant, in favour of the respondents.

Appeal dismissed.

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### NGWUTA JSC

I have read in draft the lead judgment just delivered by my learned brother, Onnoghen, JSC. I adopt the reasons leading to the conclusion that the appeal be dismissed for want of merit. I will add a few words of my own in support of the judgment.

The simple issue in the appeal is whether or not the petition written by the appellant against the Respondent to the Police is a

private document as argued by the appellant and accepted by the trial Court when it admitted it in evidence and marked it Exhibit C or a public document a copy of which needs to be certified before it can be received in evidence as argued by the appellant.

Section 109 of the Evidence Act on Public and Private Documents provides: B

*“S.109: The following documents are public documents:-*

*(a) documents forming the acts or records of the acts:-*

*(i) of the sovereign authority;*

*(ii) of official bodies and tribunals;*

*(iii) of public officers whether of Nigeria or elsewhere:* C

*(b) public records kept in Nigeria of private documents.”*

The public document must form part of the acts or records of the authorities listed. See s.109 (a) (i), (ii) and (iii) or private documents kept in Nigeria as public records. See s.109 (b) of the Evidence Act. D

The document need not be the product of the authority as long as it forms part of its records. In my humble view, the origin or authorship of a document is not determinative of its status as a public document; and this is where the trial Court erred for failure to distinguish the source or authorship of a document from what it eventually becomes. E

The Police, to whom the petition was addressed and who held same as part of their records are public officers within the meaning and intendment of s.109 of the Evidence Act. In the hands of the appellant who wrote it, the document was a private document, but the moment it was received by the Police to whom it was addressed it became part of the record of public officers and thus a public document. F G

It is then a primary evidence in terms of s.94 (1) of the Act and a copy made of it as Exhibit C is secondary evidence which must be certified before it can be received in evidence.

This suit was filed in 1997. Exhibit C is the sole basis upon which the trial Court could have entered judgment for the appellant. H Its legal status could have been properly raised in appeal against the judgment in favour of the appellant by the Respondent.

I think that the appeal is avoidable expenditure of time and resources. May be the appellant should carefully examine the effect

of this judgment on his case before returning to continue the trial in the trial Court. I say this in view of the fact that Exhibit C forms the bedrock of the claims before the trial Court.

For the above and the more comprehensive reasoning in the lead judgment, I also dismiss the appeal for want of merit. I adopt the B order on costs.

Appeal dismissed

### ***PETER-ODILI JSC***

C I agree with the judgment just delivered by my learned brother W. S. N. Onnoghen, JSC and in support of the reasoning from which the decision was reached, I shall make some comments.

D This appeal is against the Judgment of the Court of Appeal, Port Harcourt Division which was delivered on the 15th day of November, 2004. The said appeal was from the interlocutory ruling of the High Court of Imo State Coram: P. C. Onumajulu J (as he then was) sitting at Owerri.

E The appellant herein was the respondent at the Court of Appeal and the plaintiff at the trial Court while the respondents were the appellants at the Lower Court and defendants at the trial Court. The Court of Appeal allowed the appeal and it is against that decision that the appellant has filed this Appeal being dissatisfied with the judgment of the Lower Court

#### ***FACTS***

The appellant as the plaintiff instituted an action against the respondents as defendants at the Imo State High Court sitting in Owerri claiming thus:

- G (a) An unqualified apology
- (b) A retraction of the said publication
- (c) Two million naira (N2m) general damages for the libelous publication, unlawful arrest and detention of the plaintiff for seven hours at the "Area Commander's Office."

H In the course of evidence of the prosecution witnesses the appellant himself testified as the PW1 while the police non who investigated the alleged petition of the respondents which gave rise to the suit in the High Court testified as the PW2. The genesis of the suit was that the appellant and the respondents are from the same commu-

nity of Mbieri in Mbaitoli Local Government Area of Imo State. Indeed, they are from the same kindred. The appellant alleged that the respondents wrote a libelous petition against him to the Area Commander of Police Owerri. The petition was investigated by the police.

At the trial Court the PW2 as the police officer who investigated the said petition sought to tender the alleged petition to the police in the course of his evidence. Objection was raised by counsel to the defendants/respondents on the ground that what was sought to be tendered was a photocopy and not either the original copy or a certified true copy of the said petition. At this stage the counsel to the plaintiff conceded to the fact that the document sought to be tendered was a photocopy and withdrew it saying that he had the original copy of the petition. Surprisingly, the counsel to the plaintiff re-tendered the same photocopy of the alleged petition. Despite objections against it by the counsel to the defendants that the document was a public document and ought to be certified as a secondary evidence the trial Court admitted the alleged petition as exhibit "C" together with other documents which were neither mentioned in the exhibit as forming part of it nor were they even mentioned by the witness.

The trial Court admitted the said photocopy of the petition as exhibit "C" holding that it was a private document. The defendants now respondents appealed against the said ruling to the Court of Appeal essentially on the ground that a document coming from police record was a public document and that its secondary evidence can only be a certified true copy of same.

The Court of Appeal upheld the appeal and agreed with the respondents that exhibit "C" being a petition to the police formed part of the record of the police upon its receipt by the police. And that when the investigating police officer, was testifying as the PW2 and sought to tender the said petition to the police he could only tender a certified true copy of it as a secondary evidence. The Lower Court held that the trial Court erred in holding that the said petition coming from the police was a private document. The respondents in their pleading did not admit writing any libelous petition against the appellant.

On the 26th day of October, 2015 date of hearing learned counsel for the appellant adopted the Brief of Argument settled by

Chief Ikenna Egbuna, filed on the 19/6/13 and deemed filed on the 4/12/13. He distilled two issues for determination of the Appeal which are as follows:

1. Whether the learned Justices of the Court of Appeal were right when they held that Exhibit “C”, a petition written to the police by a private citizen had transformed to a public document and thereby rejected the document (Ground 1 in the Notice of Appeal)

2. Whether the Learned Justices of the Court of Appeal were right when they held that Exhibit “D” admitted by the trial Court without objection is inadmissible. (Ground 2 of the Notice of Appeal)

For the respondents was adopted by learned counsel their Brief of Argument settled by F. A. Onuzulike Esq. and filed on 18/2/14. He raised two issues for determination which are to wit:

1. Whether a petition written to the police by a private citizen when being tendered from the record of the police by a police witness does not amount to a public document (Ground 1)

2. Whether exhibit “D” was not one of the documents sought to be tendered with exhibit “C” and therefore rightly rejected by the Lower Court. (Ground 2)

The issues as crafted on either side are really asking the same questions and it does not matter which is utilized by the Court. I shall use those distilled by the respondents as they seem simpler.

#### ISSUE NO. 1

Whether a petition written to the police by a private citizen when being tendered from the record of the Police by a Police witness does not amount to a public document.

It was submitted for the appellant that the Justices of the Court below erred in their understanding and interpretation of the import of a public document and a private document and thereby occasioned a miscarriage of Justice. He set out to show what are public documents and the private ones as defined in Blacks Law Dictionary 9th Edition at page 1348. That when these definitions are read side by side with the proceedings at the trial Court and the Court below and then Sections 102, 103, and 104 of the Evidence Act 2011. It will be clear that the justices of the Court of Appeal were in error. That the Court below was wrong. In holding that Exhibit “C” was wrongly admitted because it was not certified. Also that Exhibit “C” was tendered by the Investigating Police Officer and admitted in the



pleadings by the respondents.

It was further submitted for the appellant that by virtue of Section 123 of the Evidence Act, what is admitted needs no further proof. He cited *Reynolds construction Company Nig. Ltd v. Rock*

*Onoh Properties Co. Ltd* (2005) 10 NWLR (Pt. 934) 615 at 628: *Mrs. Ethel Onyemaechi David Orji v. Dorji Textiles Mills (Nig.) Ltd & 3 Ors.* (2009) 18 NWLR (pt. 1173) 467 at 500 etc. B

For the respondents it was contended that what was tendered as Exhibit C was a photocopy of the petition sent to the police. That in matters involving documentary evidence this Court is in as much a position as the trial Court to look at the document or evaluate the same. That the document in question, Exhibit C was from police custody and was tendered in Court and clearly a public document requiring certification before it can be admitted in evidence. He referred to *Salzgitters Stahl GMBH v. Tunji Dosumu Industry Ltd.* (2010) D ALL FWLR (Pt. 1024) 1057, *Tabik Investment Ltd v. G.T.B* (2011) ALL FWLR (pt.602) 1592 or 1607. C

The document at the roof of the controversy is Exhibit “C”, a petition to the police and it is part of a series of documents and when sought to be tendered was objected to as a public document which had no certification as a true copy of an original. This document was sought to be tendered through the police officer who investigated it from the police record. The question which arose was whether he could tender the original petition as a primary evidence by Section 94(1) of the Evidence Act or a certified true copy of the said petition as a secondary evidence of the same in accordance with Section 97(a) of the Evidence Act 2004. The documents that are categorized as public within the Section 109 of the Evidence Act, 2004 are as follows: E

(a) Documents forming the acts or records of the acts, (i) Off sovereign authority G

(ii) Of official bodies and tribunal and

(iii) Of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere. H

(b) Public records kept of private documents.”

At the trial Court, the learned trial judge admitted the petition as Exhibit “C” as it was a Private document addressed to the police by private citizens and did not become a public document even when

it was coming from police record and so did not come within public documents as envisaged by Section 109 of the Evidence Act and therefore needed no certification.

The Court of Appeal disagreed with that view of the Court of Trial, stating that what came in as exhibit “C” was a public document, a secondary evidence at that which needed certification to qualify to be tendered and admitted in evidence. The exact words of the Court below might make the position clearer and so I quote:”

Exhibit C a letter dated 25th June 1997 captioned “PROTEST AGAINST THREAT TO OUR LIVES” “which contains the alleged defamatory words was addressed to the Commissioner of Police, Owerri, Imo State. The lost paragraph of the said Exhibit contains a plea to the police to save their souls from Ezenwa (the plaintiff/respondent) and his groups. The addressee - the Commissioner of Police is a public Officer charged under the constitution of the land, for the maintenance of law and order. Exhibit C in my humble view, it has become part of the official records of the police. In writing exhibit C and forwarding it to no other person than the Commissioner of Police, the writers, again in my view, intended that if (Exhibit C) be given official treatment, thus acquiring official coloration. The Nigerian police is a public institution carrying official tag. So, documents though private in nature, when sent to the Nigeria police requesting it to discharge its constitutional duties, upon their receipt by the Nigeria police became public records kept by them are within the category of documents defined in Section 109 (b) of the Evidence Act. To hold otherwise is to accord Section 109(b) strained Interpretation. It is for all I have said supra that I hold that exhibit C is a public document. That being the case, since exhibit C was not certified the learned trial judge was wrong in law to have admitted it in evidence. In therefore answering the question posed by Issue No.4 or the appellants, brief, I say that the petition is not a private document rather it is a public document similarly/answer Issue No.1 on the respondent’s in the affirmative. Exhibit C is a public document.”

In making that finding and conclusion the Court of Appeal had the power to do so since in matters pertaining to documentary evidence it is in as much a position as the Court of trial to look at the document and evaluate same. This is to ensure that the trial Court’s evaluation of same is not faulty or outside the provisions of the nec-

essary legislation or where the subsequent finding goes to support what that Court of first instance did in its evaluation or consideration. I place reliance on *Saltzqitter Stahl GMBH v. Tunji Dosumu Industry Ltd* (2010) ALL FWLR (Pt. 1024) 1057.

As a follow up, this Court may have had the case in hand in mind when it held in the case of *Tabik Investment Ltd v. GTB* (2011) B ALL FWLR (Pt.602) 1592 or 1607, thus:

*“By the provisions of Section 318(h) of the Constitution of Federal Republic of Nigeria 1999 and Section 18(i) of the Interpretation Act, 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”* C

It is therefore no gainsaying that the document in issue, Exhibit “C” was from Police custody and was tendered in Court and so its admissibility must be within the conditions upon which a public document can be so admitted in compliance with the Evidence Act. D

From the foregoing it is clear that the resolution of the issue is in favour of the respondents and that the Lower Court was right in rejecting the document, Exhibit C which had been earlier so admitted as properly tendered in the trial Court. That document was a secondary evidence and without certification was not admissible. E

#### ISSUE TWO

Whether exhibit “D” was not one of the documents sought to be tendered with exhibit “C” and therefore rightly rejected by the Lower Court. For the appellant it was submitted that following Exhibit “C”, another group wrote another petition dated 7/7/97 disassociating themselves from the petition written by the defendant which they addressed to the Area Commander, tendered no objection and admitted as Exhibit “D”. That the basis for the rejection of Exhibit D by the Court below is not borne out by the record of appeal. That Exhibit “D” was admitted without objection by the trial Court and unless there is any law making the admission unlawful or illegal the leaned justices of the Court of Appeal lack the competence to reject it. That the trial Court rightfully admitted exhibit “D” as the defendants/respondents admitted the document when they failed to join issue with the plaintiff/appellants with the document. He relied on Order 25 Rule 13 of the High Court Rules of Imo State 1988; *Lewis Peat (N.R.I) Ltd v. Akhaimien* (1976) 7 SC 167. F G H

In response, learned counsel for respondents said it is trite that a Court can expunge a document wrongly admitted even at the point of judgment writing or on appeal. That a party can complain about the admissibility of a document on appeal if the document is inadmissible particularly when objection was raised to its admissibility. He B cited *John v. State* (2012) ALL FWLR (pt. 607) 639 at 650 - 657.

The stance of the appellant is that the basis for the Court below rejecting Exhibit D is not borne out by the Record of Appeal as there was no objection to its admissibility since the respondents had not joined issues in specific traverse in their Statement of Defence C and so within Order 25 Rule 13 of the High Court Rules of Imo State 1988. It was taken as admitted. The learned trial Judge had admitted the said document as Exhibit D which the Court of Appeal differed from and I shall restate what the Appellate Court said and it is as follows: D

*"As quoted supra, the learned trial judge in his ruling admitting exhibit C had said that another group wrote petition dated 7/7/97 dissociating them from the petition written by the defendants which they addressed to the Area Commander. He further said that there E was no objection to its admissibility by counsel for the defendants/appellants. This is contrary to what the learned trial judge recorded that there was an objection as recorded supra. What more, there is nothing on record to show that the witness manifested any intention to tender another petition dated 7/7/97 said to have been written by F another group: yet the learned trial judge admitted it as by exhibit D. This is grossly wrong in law"*

*The appellant had anchored his position for the admissibility of the said document on Order 25 Rule 13 of the High Court (Civil G Procedure) Rules of Imo State 1988 and the trial Court had agreed with him. That Rule provides thus:"*

Order 25 Rule 13 -

*"It shall not be sufficient to deny generally the facts alleged by the Statement of claim, but the defendant shall deal specifically with H them either admitting or denying the truth of each allegation of fact seriatim as the truth of falsehood of each is within his knowledge, or (as the case may) stating that he does not know whether any given allegation is true or otherwise."*

It is in rejecting that position of the trial Court by the Court of

Appeal that it expunged the said document as wrongly brought in, that the objection raised by the respondents counsel ought to have been upheld.

What is on ground is a clear manifestation of seeking refuge from what cannot be a shelter. Order 25 Rule 13 of the Imo State High Court Rules is not available for the purpose the appellant is clamoring as the document being a public one its admissibility is governed by the Evidence Act and not the Rule of Court cited. Again to be said is that it was not late to raise the objection, the non-traverse in pleading notwithstanding as the objection could be raised of any stage even on appeal. The essential thing is that what is not admissible would not cease to be due to the lateness of its being brought to the fore. I rely on *John v. State* (2012) ALL FWLR (Pt. 607) 639 or 650 - 657.

I have no difficulty in agreeing with learned counsel for the respondents that the issue should and is resolved in favour of the respondents. The two issues have gone in favour of the Respondents and in the light of the better reasoning in the lead judgment of my Lord, W. S. N. Onnoghen JSC. I too dismiss the appeal as I abide by the consequential orders made.

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### **ARIWOOLA JSC**

I had the opportunity of reading in draft the lead judgment of my learned brother Onnoghen, JSC just delivered. I agree with the reasoning therein and the conclusion arrived thereat. The appeal is devoid of merit and rather vexatious and deserves to be dismissed. Accordingly, I also dismiss the appeal. I abide by the consequential orders including the order on costs.

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### **MUHAMMAD JSC**

I read in draft the lead judgment of my learned brother Onnoghen JSC, just delivered. I entirely agree based on the reasoning and conclusion therein that the appeal lacks merit and dismiss it. I abide by the consequential orders made in the judgment.