

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI

ON WEDNESDAY THE 22ND DAY OF FEBRUARY, 2017
BEFORE HIS LORDSHIP HON. JUSTICE AKINTAYO ALUKO
JUDGE

CHARGE NO.FHC/AI/3C/2017


BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

A N D

BARR. GILBERT MONDAY OKORIE 'M' 40 YEAR ... ACCUSED

RULING

The prosecution Counsel had sought to tender a photocopy of Zenith Bank cheque issued in the name of one Victor U. Ukaegbu, the PW1. The cheque was dated 30th June 2016. 

The defence Counsel mounted an objection against admissibility of the cheque. He submitted that the said cheque is a public document by virtue of the fact that it is kept with the police and it is being tendered from the police file. He maintained that the said cheque is mutilated because, being a photocopy of the cheque, number '7' was written on it in ink. He argued that proper foundation was not laid by the prosecution Counsel before tendering the cheque since it is a photocopy of the cheque. It was his position that proper foundation such as, when the original copy got lost, how it got lost

and the efforts made by the PW1 to retrieve it were not laid before tendering the cheque.

In response to the submissions of the defence Counsel, prosecution Counsel submitted that PW1 had already told the court that he lost the original copy of the cheque. He submitted that number 7 written on top corner of the cheque is a file number given to the cheque in the file being kept by the police. Counsel finally submitted that admissibility is governed by relevancy and that since the said cheque is relevant, the court should admit it in evidence.

In reply on point of law and to the new issue raised by the prosecution Counsel to the effect that number "7" written on the cheque is file no given to it by the police in its file, defence Counsel maintained that the cheque has become a public document and the only copy admissible in evidence is either the original copy or Certified True Copy of the cheque.

Counsel cited and relied on the cases of Afolabi vs Alaremu (2011) LPELR - 8894 (CA); Tabik Investment Ltd vs. G.T.B (2011) ALL FWLR (pt 602) 1592 at 1607. Counsel also relied on the provision of section 102 (a) (b) of the Evidence Act.

I have considered the submissions of both Counsel over the objection against admissibility of photocopy of the cheque sought to be tendered by the prosecution Counsel. On the issue of an alleged

mutilation of the cheque, I am of the view that this would not affect the admissibility of the cheque, this even if established, will only go to the weight and probative value to be attributed to the cheque.

On the issue of proper foundation before tendering the cheque, the PW1 in the witness box already told the court that the original copy of the cheque got lost and could not trace it but that the photocopy of the cheque was done and kept with his wife which was given to the police that was eventually tendered. I am of the considered view that the above coming from the PW1 in the witness box suffice as proper foundation in the circumstance of this case.

On whether the said cheque is a public document under section 102 (a) (b) of the Evidence Act, I have looked at and gone through the provision of the section. It is true that by section 102 (b) of the Evidence Act, public records kept of private document constitute public documents, however whether the cheque in question can be classified as public document simply because it carries a number which the prosecution Counsel describe as file number is an issue difficult to resolve in the affirmative.

The cases of Afolabi vs. Alaremu and Tabik Investment Ltd vs. G.T.B (supra) cited and relied upon by defence Counsel are not good authorities on whether photocopy of a cheque issued between two persons over a Civil transaction which find itself into the custody or

possession of the police constitute public document that requires certification before it can be tendered through the person in whose name the cheque was issued. The case of Afolabi vs. Alaremu has nothing to do with the issue of cheque, it has to do with petition written by the writer in his personal capacity to a chieftaincy committee, a government agency.

Similarly the case of Tabik Investment Ltd vs. G.T.B. has to do with private petition sent to the police and addressed to the Commissioner of Police. It must be noted that in the two cases cited by the defence Counsel, the documents in question are petitions addressed to government agency and Commissioner of police respectively who are public officers.



The situation is different in the present case. In the cases cited by the defence Counsel, the persons to whom the petitions are addressed are public officers and the petitions were indeed addressed to them in their official capacity. They received the original copies of the petitions. So if photocopies of the original copies received by them are to be tendered in court, it will be easy for them to certify the photocopies as the original copies are in their custody.

Here the cheque in question was not addressed to the police, there is nothing on it to suggest that it is meant to be kept as public records.

To my mind, the mere assertion and argument of the prosecution Counsel that number "7" written in ink on the cheque is file number does not ipso facto make it a public document.

In the recent case of Onwuzuruike vs. Edoziem & Ors (2016) LPELR 26056 (SC) where the case of Tabik Investment Ltd vs. G.T.B was referred to by the Supreme Court, what was in issue was a petition written to the police which the Supreme Court held to be a public document. It has nothing to do with a copy of cheque privately issued between persons in their private transaction that later found its way into the police's possession.



As it is and in view of the above, the cheque will be admitted in evidence for now because it is relevant to the case at hand with the condition that the court shall direct parties through their Counsel to address it during final address on the probative value to be attributed to the cheque.

The objection of the defence Counsel on the admissibility of the cheque is hereby overruled. Therefore, a copy of cheque i.e Zenith Bank cheque issued in the name of Victor U. Ukaegbu dated 30/06/2016 is hereby admitted in evidence as exhibit B.



HON. JUSTICE AKINTAYO ALUKO
PRESIDING JUDGE

22 - 02 - 2017

ENDORSEMENT:

OBJECTION ARGUED BY:

1. F.S.N Ogazi Esq. with P.I. Elechi Esq
and J.O. Nwanga Esq for the Defendant.
2. E.E. Ojemu Esq for the Prosecution.