



NIGERIAN LAW AND PRACTICE JOURNAL

VOL. 4, NO. 2 OCTOBER, 2000

COUNCIL OF LEGAL EDUCATION
NIGERIAN LAW SCHOOL

Contents

Page

Advisory Board/Members of the Editorial Board vii

Editorial Note viii

ARTICLES

1. The Advent of Sharia Law in the Nigerian Legal System:
Constitutional Issues Arising
J. O. Odion, Esq. 1

2. Artificiality of Mortgage Law and Agency of the Receiver:
An Overview
I. O. Smith, Esq. 14

3. A Critical Analysis of the Legislative Process in Nigeria
Dr. Kole Abayomi 26

4. Some Issues in the Discipline of Legal Practitioners
in Nigeria
E. S. Nwauche, Esq. 58

5. Declarations: Final Remedies in Civil Actions
Mr. Femi Afolayan 79

6. Police Right of Audience in Nigerian Courts:
Olusemo v. The Commissioner of Police Revisited
Mr. Victor Nnamdi Opara 92

7. The Common Law as a Source of Nigerian Law of
Evidence — Need for a Review
Mrs. Oluremi Adegoke 106

8. The Admissibility of Documents under Re-examination
— An Appraisal
N. A. O. Ijaiya, Esq. 113

NOTES

9. As you put on the Wig
Alhaji Abdullahi Ibrahim, OFR, SAN 116

The Admissibility of Documents under Re-examination — An Appraisal

N. A. O. Ijaiya

N. A. O. Ijaiya, Esq. LL.B. (Hons), LL.M. (Ife) Barrister-at-Law, is a Lecturer-In-Laws, University of Ilorin, Ilorin, Nigeria.

This essay seeks to examine the need or the appropriateness of tendering a document during re-examination and its admissibility.

A reference to a case at hand will be of assistance.

The case of *Alhaja Safu Onoolapo v. Mr. Adetoro*¹ unreported arose out of a tenancy dispute wherein the plaintiff sued for the following:

1. Order for possession
2. Arrears of rent
3. Mesne profit
4. Order directing the defendant to pay NEPA bill and water rates.

The plaintiff who was represented by the caretaker, while being led in evidence under examination-in-chief told the court that he was the one managing the plaintiffs house and collecting rent on her behalf and that he was issuing receipts to that effect but did not tender any letter of authority or power of attorney.

Under cross-examination, the learned counsel to the defendant asked whether the plaintiff's representative had any letter of authority or power of attorney to manage the house which he answered in affirmative and he further answered that the document is already before the court in a sister's case.

During the re-examination by the counsel for the plaintiff, the plaintiff counsel based on the question raised under cross-examination sought to tender the letter of authority or power of attorney. The defence counsel opposed vehemently on the ground that it is not known under our law.

The learned magistrate refused to allow the document from being tendered under re-examination.

The issue for determination as conceived by this writer is whether by practice or by law a document can be tendered during re-examination and whether same can be admitted.

The evidence Act² provides that "The re-examination shall be directed

to the explanation of matter referred to in the cross-examination, and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter."

Aguda³ had this to say on re-examination, "Whilst the main purpose of re-examination is to offer explanation of matters referred to in cross-examination, but in order to do **substantial justice** the court may permit some new matter to be introduced by the witness at that stage. In this event, the adverse party is usually, by the leave of the court, afforded an opportunity to further cross-examine the witness. Such further cross-examination must however be confined to the matter newly introduced."

From the above cited section of the Evidence Act and the option of the learned jurist, the writer is convinced and persuaded to hold that document which ought to have been tendered under examination-in-chief but due to forgetfulness or mistake on the part of the plaintiff's counsel, was not tendered but under cross-examination, the defendant's counsel raised the issue by asking the question, I quote "do you have any authority or power of attorney to manage the house," and the witness answered in affirmative. Then a fresh issue has been raised which entitled the other counsel to now further put the question to his client by asking him this question under re-examination. "You told the court you have the authority or power of attorney, where is it?"

So the counsel can seek the permission of the court to tender such document. The adverse party by virtue of the Evidence Act⁴ can further cross-examine the witness.

Also by the authority of *Torti v. Ukpabi*,⁵ it was held that relevancy should be primary consideration. That is if a document is relevant the court should admit same in evidence.

A persuasive authority can also be found in Evidence Act⁶ which provides "When either party proposes to give evidence of any fact, the court may ask the party proposing to give evidence in what manner the alleged fact if proved, would be relevant and the court shall admit the evidence, if it thinks that the fact, if proved would be relevant and not otherwise".

This writer submits that by extension this section can be applied to documentary evidence which is relevant to prove a fact before the court.

In conclusion, it is submitted that documents sought to be tendered during re-examination should be allowed, although, it may be argued that since the plaintiff can still call witnesses through whom such document may be tendered or that the counsel may seek the courts permission to recall the witness all these notwithstanding, if any reference or any issue raised in cross-examination touches on the relevancy of such document, then it should be allowed to be tendered and such should be admitted in order to do substantial justice.

NOTES

1. MCI/942/98
2. S. 188(3)
3. Aguda — law and practice relating to Evidence in Nigerian Sweet & Maxwell 1980.
4. S. 188(3).
5. (1984) NSCC 141
6. Section 1 & 5, page 365.